

Disciplinary Procedure	
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Summary of Trust-wide CBR: <i>(Brief summary of the Trust-wide Corporate Business Record)</i>	The Disciplinary Procedure covers matters of conduct where the responsibility lies with the individual.
Purpose of Trust-wide CBR: <i>(Purpose of the Corporate Business Record)</i>	Disciplinary rules and procedures are necessary for promoting orderly employment relations as well as fairness and consistency in the treatment of individuals.
Trust-wide CBR to be read in conjunction with: <i>(List overarching/underpinning strategies, policies and procedures – refer to CBR Evidence Summary)</i>	Grievance Procedure Managing Attendance Policy Capability and Performance Procedure Dignity at Work Policy Equality and Diversity Strategy
Relevance: <i>(State one of the following: Governance, Human Resource, Finance, Clinical, ICT, Health & Safety, Operational)</i>	Workforce
Superseded Trust-wide CBRs (if applicable):	

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1.0 SCOPE

The purpose of this procedure is to provide the framework whereby all employees are supported and encouraged to achieve and maintain standards of conduct and behaviours which are in line with the trusts values and ensure that the patient is at the center of all we do. The procedure is designed to ensure consistent, equitable, and fair treatment for all employees.

This procedure applies to all employees regardless of length of service, including those Trust employees managed by partners of the Trust, such as ISS. It does not apply to agency workers, bank workers or self-employed contractors. For medical or dental staff, any issues concerning misconduct will be dealt with through this procedure read in conjunction with the guidance set out in Maintaining High Professional Standards in the Modern NHS (as amended from time to time).

This procedure does not form part of any employee's contract of employment and it may be amended at any time in partnership with Staff Side Representatives. The Trust may also vary this procedure, including time limits, in partnership with the staff side representatives and as appropriate.

The Trust may elect at its absolute discretion which of its policies/procedures should be adopted to deal with any particular issue or complaint.

2.0 INTRODUCTION

Disciplinary rules and procedures are necessary for promoting good employment relations as well as fairness and consistency in the treatment of individuals. The aims of this Disciplinary Procedure are to set out the standards of conduct expected of all employees in line with the trust's values, and to provide a framework within which managers can work to maintain satisfactory standards of conduct.

Matters of poor performance will be managed in line with the Trust's Capability and Performance Procedure where it is alleged that an employee is not performing their duties to the required standard due to a lack of:

- Qualification and/or
- Lack of training and/or
- Lack of skills or aptitude and/or

Matters of poor performance will be managed with this procedure where it is alleged that an employee refuses to perform their duties to the required standard.

3.0 STATEMENT OF INTENT

No disciplinary action will be taken against an employee until the case has been fully investigated. It is in the interests of both the Trust as the employer and the member of staff concerned that all disciplinary matters are dealt with promptly but without compromising a proper and thorough investigation.

The employee may elect to be accompanied by their Trade Union representative or a work place colleague. This applies to all stages of the procedure apart from informal discussions and suspension meetings. Where an employee wishes to exercise their statutory right to be accompanied, the employee will be required to provide details of their intended companion in advance of any meeting/hearing covered by this procedure. If the employee's chosen companion is considered to be unreasonable and may prejudice the meeting/hearing, the employee may be asked to choose an alternative companion to be agreed by the relevant manager.

The employee will be advised of all and any complaints against them to allow for the opportunity to state their case before any disciplinary decision is made.

If additional allegations are identified during an investigation process the employee will be notified in writing and will be offered the opportunity to attend an investigation meeting to respond to such allegations

An employee will have the right of appeal against any disciplinary sanction imposed.

No disciplinary action will be taken against a Trade Union Representative until the case has been discussed with a Full Time Official. The Full Time Official will also be notified if suspension of a Trade Union Representative is considered.

Workforce Operations advice will be available to all parties to ensure the fair and consistent application of this procedure. In dealing with issues which may lead to disciplinary action, managers are encouraged to seek the advice of workforce operations at the earliest opportunity.

A copy of any warning imposed as a disciplinary sanction will be held on the employee's personal file and at the expiry of the duration of the warning the record will be disregarded and removed from the employee's personal file. Only in exceptional circumstances where an employee exhibits very similar or very serious conduct for which they have previously been subject to a disciplinary sanction expired sanctions may be considered.

If an employee falls sick during the investigation or disciplinary process then advice should be sought from Occupational Health as to the employee's ability to participate in the ongoing process. Any investigative, disciplinary meetings or hearings will only be delayed if Occupational Health advises that for health reasons the employee is not able to attend.

An employee will not normally be dismissed for a first act of misconduct, unless the Trust decides it amounts to gross misconduct or the employee has not yet completed their probationary period (where applicable).

If an employee has difficulty in understanding the procedure being adopted due to a disability or for any other reason, they should discuss the issue with a member of the Workforce Operations Department or their union representative/workplace companion as soon as possible.

Where an employee raises a grievance during a disciplinary process the Associate Director of Workforce (Operations) will consider whether it is appropriate for the disciplinary process to be temporarily suspended in order to deal with the grievance. Where the grievance and disciplinary cases are related it may be appropriate to deal with both issues concurrently. Consideration as to whether the content/nature of the grievance can be considered at any subsequent disciplinary hearing will be made by the Associate Director of Workforce (Operations).

4.0 DEFINITIONS

Trade Union Representative – a trade union representative who is an employee, elected, trained and accredited by their union in accordance with their rules.

Trade Union Officer – an official employed by a trade union. **Work Place Colleague** – a colleague (employee) who works for the trust.

5.1 DUTIES / RESPONSIBILITIES

The Chief Workforce and Information Officer is responsible for the implementation and monitoring of this procedure, and will ensure that the procedure is properly implemented and that employees receive appropriate information, guidance and training.

Managers are responsible for ensuring that:

- This procedure is implemented and operates effectively in their sphere of control.
- Ensure that the informal stage is used wherever possible.
- Bring to the employee's attention the requirements and purpose of this procedure and their individual responsibilities in this respect.
- All employment matters are dealt with in a fair and consistent manner, and are appropriately documented.
- Any concerns raised under the scope of this procedure are treated seriously and sensitively and in confidence.
- Managers when required will act as an investigation officer following appropriate training.

Workforce (Operations) are responsible for ensuring that:

- That consistent advice and support is provided to managers at all stages throughout the fact finding investigation and any potential disciplinary hearing.
- In order to ensure fairness and consistency, The Workforce Operations team will consider any potential disciplinary investigations on a weekly basis and advise managers whether a formal investigation is required.
- Ensure all managers are trained and competent to carry out this procedure and that managerial action is monitored effectively.

Employees have a responsibility to:

- Adhere to the requirements and purpose of this procedure.
- Draw to the attention of senior managers suspected or actual conduct issues.
- Co-operate with measures introduced to ensure the required standards of conduct at work are maintained.
- Refrain from victimising colleagues who have made allegations or complaints of conduct or who have provided information about such issues.

6.1 DETAILS OF THE POLICY

6.2 Informal Discussions

Line managers are encouraged wherever possible to resolve minor conduct issues on an informal basis. Informal discussions should be held in private on a one-to-one basis without delay whenever there is cause for concern. Such discussions do not form part of the formal Disciplinary Procedure and there is therefore no right to be accompanied.

The manager should document the detail of such discussions to refer to should the concerns continue, this process does not form part of the formal procedure and therefore details of this discussion should not be kept in the employees personal file but should be securely held locally by the manager.

6.3 Confidentiality

It is the aim of the Trust to deal with disciplinary matters sensitively and with due respect for the privacy of any individuals involved. All employees must treat information provided in connection with the disciplinary matter confidentially. Employees may only discuss such matters with their Trade Union Representative or Work Place Colleague. In the event of suspension or temporary removal from the department unless otherwise instructed employees are allowed to maintain contact with their colleagues but must not discuss any matters relating to the investigation.

6.4 Electronic Recording

Electronic recordings of any meetings or hearings under this procedure are prohibited; unless there are exceptional circumstances and have been agreed by the Associate Director of Workforce (Operations) and Staff Side.

6.5 Fact Finding Investigation

It is important to carry out an investigation of potential disciplinary matters without unreasonable delay to establish the facts of the alleged misconduct, before deciding whether to proceed with a disciplinary hearing. The degree of investigation required will depend on the nature of the allegations and will vary from case to case. In most cases this will require holding an investigatory meeting with the employee and any other relevant witnesses before concluding and drafting an investigation report and potentially proceeding to any disciplinary hearing. In others, the investigatory stage will be the collation of evidence by the Trust for the use at any disciplinary hearing. An Investigating Officer will be appointed to carry out the investigation, with support from the Workforce (Operations) department where appropriate.

All employees who are the subject of an investigation should be notified in writing of the following:

- That an investigation is to be undertaken following receipt of allegations against the employee of potential misconduct.
- The nature of the allegations which have been made and require investigation.
- That they are invited to attend at an investigatory interview. The employee should be awarded reasonable notice to allow them to seek representation.

Employees must co-operate fully and promptly with any investigation. This will include informing the Investigation Officer of the names of any relevant witnesses, disclosing any relevant documents, attending investigative interviews, and subsequent disciplinary hearings if required.

The Investigation officer may request that the employee provides a written statement describing their recollection of the incident or event. The Investigation Officer may request that a statement is produced by the employee in advance of the investigative meeting to expedite the investigation process. In such circumstances the employee is required to sign and date the statement prior to sending it to the Investigation Officer.

Employees interviewed as part of a fact finding investigation will be sent a written summary of the evidence they have provided during the interview. The employee is required to sign

and return a copy of the notes to verify them as a true and accurate record of the meeting. Should the employee fail to return a signed copy of the notes within the seven (7) calendar days, one further attempt will be made in writing by the Investigation Officer. Failure to respond within a further seven (7) calendar days will result in the unsigned notes being included in the investigation report.

All statements and interview notes will be included in the investigation report and issued to the employee in appropriate circumstances.

Fact-finding investigations and reports should be conducted promptly and thoroughly and completed if possible within six (6) weeks. If, for any reason, this is not possible, the Investigation Officer should ensure that all parties involved are informed of the delay.

Having established all the facts as far as reasonably practicable, the Investigation Officer should produce a report which will conclude:

- There is no case to answer; or
- There is a case to answer but informal action is appropriate; or
- There is a case to answer and a formal hearing should be convened.

If it is found that an employee has made vexatious allegations in bad faith, it will be considered appropriate to undertake a disciplinary investigation into the employee's conduct which could result in disciplinary action.

No disciplinary action will be taken without full investigation.

6.6 Potential Criminal Misconduct and Fraud Investigations

The Trust's Disciplinary Procedure is not intended to replace the investigation of matters involving potential criminal misconduct on the part of the employee. The Associate Director of Workforce (Operations) or nominated manager will be responsible for informing the Police, as appropriate of any matters which may give rise to criminal charges.

It is important to note that other professional bodies such as the NHS Protect and Safeguarding have a different remit to the Trust. It is important to discuss individual cases with Workforce (Operations) who will escalate the matter to the appropriate body.

Where possible fraud is suspected the Trust's arrangements for referring such matters to NHS Protect will apply. The investigation may run in parallel although it is likely that the Trust investigation will conclude sooner. It is important to note that the outcome of one investigation will not prejudice the outcome of another and the outcomes will be independent.

Where the conduct of an employee is the subject of a criminal investigation, charge or conviction the Trust will investigate the facts before deciding whether to take formal disciplinary action.

The Trust will not usually wait for the outcome of any criminal proceedings before deciding what action, if any to take. The Trust should consult with the Police to establish whether a disciplinary investigation would impede the Police investigation. Where the employee is unable or has been advised not to attend a disciplinary hearing or say anything about a pending criminal matter, the Trust may have to take a decision based on the available evidence.

A criminal investigation, charge or conviction relating to conduct outside work may be treated as a disciplinary matter if the Trust considers that it is relevant to the employee's suitability to undertake their role, or it is relevant to the employee's relationship with their work colleagues, the patients or if the matter is considered to bring the Trust's name into disrepute. Consideration should be given as to whether and a pending criminal case, if proven, this would render the employee unsuitable to continue in their present role and whether the employee should be allocated to other duties or suspended.

This procedure is not designed to replace any aspect of the Vetting and Barring Scheme, managed by the Independent Safeguarding Authority (ISA). Under the legislative requirements of the scheme, the Trust is obliged to notify, as appropriate, the ISA of any individual working in regulated activity. If an employee has or may have engaged in an activity that causes concern for the safeguarding of children or vulnerable adults, the Trust has a legal duty to refer the case to the ISA. Such referrals will be completed by the Chief Nursing Officer or Chief Medical Officer.

In addition, the Trust will receive information about any employee working in regulated activity that is subject to investigation in line with the requirements of the Vetting and Barring Scheme.

6.7 Suspension

In some circumstances the Trust may need to suspend an employee from work. The suspension will be for no longer than is necessary and the Trust will confirm the arrangements to the employee in writing. Suspension of this kind is a precautionary measure and is not a disciplinary sanction and does not imply that any decision has been made about any allegations made against the employee.

As an alternative to suspension, an employee may be deployed to other suitable duties during the course of an investigation.

A decision to suspend must not be taken lightly and must be discussed with the Associate Director of Workforce (Operations) (or their nominated deputy), or the on-call manager out of hours to escalate as appropriate, prior to any suspension taking place. In out of hours situations (5 pm – 9 am) where no senior manager can be contacted, a manager may decide to temporarily relieve the employee of their duties until the opportunity to discuss the concern with the Associate Director of Workforce (Operations) arises. Suspension will be with full pay inclusive of enhancements based on an average calculation).

Circumstances in which suspension may be deemed to appropriate will include:

- Where the alleged offence may constitute an act of gross misconduct.
- Where the employee's presence constitutes a serious risk to themselves, patients, other employees or property of the Trust.
- Where the employee is under charge or suspicion of a criminal offence which significantly affects their status, role or responsibilities within the Trust.
- Where the employee's presence would prevent a full and proper investigation taking place.

In advising the employee of the decision to suspend, the appropriate manager will advise the employee of the following:

- The reason for suspension in broad terms (as there may not be a formal allegation at this stage).
- Arrangements for reviewing the suspension; this will be fortnightly in the first instance then monthly thereafter.
- The conditions of the suspension.

- The member of staff will be asked to return their identification badge/SMART card/RAS card.
- That they should leave Trust premises with immediate effect.

Suspension will be confirmed in writing and shall specify the following:-

- Nature of the alleged offence.
- The reason for suspension.
- The name of the manager dealing with the suspension.
- The conditions under which the suspension shall continue; the effective start of the suspension; arrangements for review.

The employee will be advised that they should not make contact to discuss the details of the investigation with any staff, with the exception of the suspending manager, Investigation Officer Trade Union Representative or workplace colleague for the duration of the suspension. Employees should refer to the Trust's Confidentiality Policy for guidance. The employee should seek prior approval of the suspending manager to approach any workplace colleague to act as their companion in exercising their right to be accompanied to any investigative / disciplinary meetings/hearings.

Employees may enter hospital premises for treatment for themselves or to accompany or visit relatives or dependents receiving care. If possible employees are required to notify the suspending manager in advance. If this is not possible given the circumstances, then Workforce Operations Department should be contacted as soon as possible thereafter.

During a period of suspension the employee must remain available for work with the Trust during core working hours (9.00 am – 5.00 pm). The employee must inform the suspending manager of any other organisation(s) with whom they undertake either voluntary or work of a similar nature and seek consent to continue to undertake such work, or study leave. In the event that the employee is not available (e.g. on annual leave without agreement) the Trust may decide to treat the matter as unauthorised absence in which case the employee will not be entitled to receive pay.

6.8 Annual Leave during Suspension

If an employee has pre-booked and has been granted annual leave during the period of suspension the employee is entitled to take this leave without interruption. Any new requests for annual leave after the date of suspension will be considered and not be unreasonably withheld.

6.9 Sickness during Suspension

If the employee is absent from work due to sickness after a decision is taken to suspend the sickness will supersede the suspension and the absence will be recorded as sick. In this instance, employees should be advised of the need to adhere to the conditions of a suspension. When the employee is signed fit to return to work suspension from duty would take immediate effect.

If an employee falls sick whilst on suspension, then advice should be sought from Occupational Health as to the employee's ability to participate in any suspension review, investigative or disciplinary meetings. Any suspension review, investigative or disciplinary meeting/hearing will only be delayed if the Trust's Occupational Health Service advises that employee is not able to attend for health reasons.

In cases where there is concern that the employee may be a risk to patients, the Trust has an obligation to inform other organisations including those in the private sector, of the restrictions on employment or the suspension and provide a summary of the reasons. Employees may be required to supply details of other employment. A failure to do so may result in further disciplinary action and/or referral to the relevant regulatory body, as patient safety is paramount. Where the Trust has placed restrictions on employment, the employee should not undertake any work which contravenes such restriction. Acting in contravention of the restriction may result in disciplinary action and the matter being referred to the relevant professional regulatory body.

If it is decided that the suspension should come to an end, formal arrangements must be made for the return to work of the employee. If deemed appropriate, there may be a requirement for the manager to outline a return to work plan when returning the employee to work in their full duties.

6.10 Disciplinary Hearing

Invitation to a Disciplinary Hearing

Following any investigation, if it is concluded that there is a disciplinary case to answer, the employee should be notified of this in writing a minimum of fourteen (14) calendar days in advance of the hearing. The notification will inform the employee of the following:

- The date, time and venue of the hearing which normally will be no later than four (4) weeks after the conclusion of the investigation report.
- Their right to be accompanied at the hearing.
- The name and designation of the panel members who will conduct the hearing.
- The names and designations of the Investigation Team.
- The allegation(s).
- The possible range of sanctions (up to and including dismissal) if the outcome of the hearing is that the allegations are proven.
- The name of any witnesses that may be called to the hearing.
- The consequences of failing to attend the hearing.

It is the employee's responsibility to secure Trade Union Representative or workplace colleague if required.

Specialist Advisors

There may be occasions when specialist advisers are asked to sit on the hearing panel to provide advice to the chair for professional misconduct issues. Where a health professional is the subject of a disciplinary hearing; the panel's membership should include an appropriately registered health professional. In most cases this will be a senior health professional. If it is considered appropriate by the health professional that a referral should be made to the employee's professional body it is their responsibility to ensure that the Chief Nursing Officers are advised, in addition to ensuring that the appropriate referral is made. A copy should also be placed on the employee's personal file.

Right to be Accompanied

At all formal stages of the procedure the employee will have the right to be accompanied by their Trade Union Representative or a workplace colleague. The companion may address the hearing, sum up the employee's case, respond on behalf of the employee to any views expressed at the hearing, and to confer with the staff member during the meeting. The

companion does not have the right to answer questions on the employee's behalf or, address the hearing if the employee does not wish it or prevent the employee from presenting their case. Work colleague is allowed reasonable time off from duties without loss of pay but no-one is obliged to act as a companion if they do not wish to do so.

Attending the Hearing

If the employee or their companion cannot attend the hearing they should inform the Chair of the panel of the reason immediately and an alternative time 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. If the employee fails to attend on two occasions without good reason, the matter may be heard in the employee's absence and a decision may be made based on the available evidence.

The format of the disciplinary hearing is outlined in Appendix 1: Disciplinary Hearing Procedure.

Hearing Documentation

At least fourteen (14) calendar days prior to the hearing the employee will receive the investigation report and any supporting documentation which will consist of all the information to be relied upon at a hearing.

This may include witness statements provided in the course of the investigation process, or summaries of the evidence obtained. In the event that any item of evidence are not able to be provided to the employee due to the format of the evidence, for example CCTV footage or electronic data, the employee and their Union Representative/workplace colleague will be provided the opportunity to review the evidence on trust premises in advance of the disciplinary hearing.

The employee and/or their companion are required to supply the panel, at least seven (7) calendar days prior to the hearing, copies of all relevant documents and any other evidence they intend to rely on at hearing. Only in exceptional circumstances and with explicit agreement of the panel chair will documents be accepted and considered within the hearing. In such circumstances the panel chair reserves the right to postpone the disciplinary hearing in order for further investigation to be carried out.

Attendance of Witness

The Investigation Officer, the employee and the panel have the right to request the attendance of relevant witnesses at the hearing based on the facts presented. Witnesses will have been interviewed as part of the investigation process or provided a statement. All parties should take careful consideration when determining which witnesses will be called to attend the hearing. The panel will have the final determination of what constitutes a relevant witness. However, it is normally where an individual can potentially provide added value to the written facts presented.

All staff are expected to attend a hearing where required. In the event that a witness has a genuine fear of intimidation, or the calling of a witness appears to be vexatious, the panel will consider if the attendance of the witness continues.

The panel chair will manage the conduct of all required to attend the hearing. If the panel chair considers the behaviour of any party to be inappropriate, an adjournment will be called to consider if the hearing should proceed.

Further Investigations

The panel chair may adjourn the disciplinary at any time if they consider that further investigation such as re-interviewing witnesses/obtaining relevant information are required in 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.

Disciplinary Outcomes

The employee will be informed in writing of the decision of the panel chair together with the reasons for that decision, usually within seven (7) calendar days of the hearing. In the event that the decision is to dismiss the employee, the employee will be advised of the date their contract of employment terminates. The employee will be informed of their right of appeal.

6.11 Disciplinary Sanctions

The usual sanctions for misconduct are set out below. No penalty should be imposed without a hearing with the exception (6.11) detailed below. The Trust aims to treat all employees fairly and consistently. Each case will be assessed on its own merits.

If the panel chair concludes there is no case to answer then no disciplinary sanction will be imposed. If misconduct is found and does not warrant a sanction, the panel may offer advice regarding future conduct or make other recommendations. All outcomes will be recorded in writing.

First Written Warning (without a disciplinary hearing)

The Trust recognises that the requirement to attend a disciplinary hearing can be a stressful experience, irrespective of the Trust's efforts to minimise this.

For matters of conduct that are likely to result in a first written warning being issued by the panel chair, there may be circumstances when an employee is offered the opportunity to accept a first written warning without having to attend a disciplinary hearing. For this option to be considered the following conditions must be met:

- The employee has fully admitted to the allegation(s).
- The employee has acknowledged during the investigation that they understand the seriousness of their actions.
- The employee has taken full responsibility for their actions and has shown insight into their actions.
- The investigation Officer has the appropriate level of authority to issue a first written warning.

Should the Investigation officer deem this appropriate they should make representation regarding their rationale to the Associate Director of Workforce (Operations).

The Investigation officer will inform the employee that there is sufficient evidence to convene a hearing, and that the hearing would be likely on the basis of information presented, resulting in the sanction of a first written warning. The member of staff will be given seven (7) calendar days to consider whether to accept the warning at this stage. This offer will be confirmed in writing and the employee will be encouraged to consult with their Trade Union Representative/workplace colleague in determining whether they wish to accept the offer, or to proceed to a disciplinary hearing.

If the staff member decides to accept the offer of the first written warning this outcome will be confirmed to them in writing. The conditions of the warning will be the same as if issued at a formal hearing; i.e. the duration of the sanction and the right of appeal will be the same.

First Written Warning

Where misconduct is confirmed, it will normally be appropriate to issue the employee with this level of warning will usually be appropriate for a first act of misconduct where there are no other active written warnings on the employee's record. Written confirmation of the first written warning should contain:

- The reason for the warning.
- The duration of the warning.
- Required improvement.
- That further misconduct could lead to a further disciplinary sanction, i.e. final written warning or dismissal.
- The timescale for lodging an appeal and how it should be made.

Final Written Warning

A final written warning will usually be appropriate for misconduct where there is already an active written warning on the employee's disciplinary record; or where the misconduct is sufficiently serious to warrant a final written warning even though there are no other active warnings on the employee's record. The final written warning should contain:

- The reason for the warning, including reference to any previous but current warnings which have been issued.
- The duration of the warning.
- Required improvement.
- That further misconduct could lead to a dismissal.
- The timescale for lodging an appeal and how it should be made.

Dismissal

Dismissal will usually be appropriate for: acts of misconduct where there is an active final written warning on the employee's record; or any gross misconduct regardless of whether there are active warnings on the employee's record.

Gross misconduct will result in immediate dismissal without notice or payment in lieu of notice.

Expired disciplinary warnings will not be taken into account in determining disciplinary sanctions, except in exceptional circumstances where an employee has exhibited very similar and serious conduct to that which was previously the subject of a disciplinary warning.

In normal circumstances, the following length of warnings will apply:

Length of Warnings

First written: up to six (6) months

Final Written: up to twelve (12) months

In exceptional circumstances the panel chair has the discretion to reduce the duration of the warning as appropriate.

In some cases the panel chair may at their discretion consider alternatives to dismissal and will usually be in addition to a final written warning. Examples of alternatives include:

- (a) Demotion;
- (b) Transfer to another department or job

Gross Misconduct

Gross misconduct is misconduct that is serious enough to irreparably damage the working relationship between the Trust and the employee. The following are examples of potential acts of gross misconduct, the list is not exhaustive:

- (a) Serious breach of Trust policy.
- (b) Theft or unauthorised possession of any property belonging to the Trust, a patient, contractor or colleague.
- (c) Deliberate and serious damage to Trust property, or the property of a patient, contractor or colleague.
- (d) Fraud, forgery or other dishonesty (including falsification of reports, records, accounts, expense claims, time sheets, medical certificates or self-certification forms).
- (e) Repeated or serious failure to follow reasonable instructions, or any other act of insubordination.
- (f) Serious neglect of duties, or a serious or deliberate breach of contract or operating procedures.

- (g) Breaching statutory rules relating to the employee's work.
- (h) Being under the influence of alcohol, illegal drugs or other substances during working hours.
- (i) Possession, use or supply or attempted supply of illegal drugs on Trust premises.
- (j) Violent, dangerous or intimidating conduct.
- (k) Serious acts of unlawful discrimination or harassment of a colleague, patient or member of the public in breach of the Dignity at Work Policy.
- (l) Causing loss damage or injury through gross negligence.
- (m) Conviction for a criminal offence that may affect the Trust's reputation or relationships with staff, patients or the public or otherwise affects the employee's suitability to continue in their employment.
- (n) Any conduct considered likely to bring the Trust into disrepute.
- (o) Any conduct which breaches the Trust's trust and confidence in the employee.
- (p) Misuse of the Trust's property or name (including posting inappropriate information on to social networking sites or on other internet sites).
- (q) Physical violence or bullying, or behaviour which provokes violence.
- (r) Serious or repeated breach of Health and Safety regulations & rules or serious misuse of safety equipment.
- (s) Serious misuse of the Trust's information technology systems contrary to the Trust's policy on the use of the Internet and E-mail.
- (t) Misuse of NHS resources and/or equipment.
- (u) Unauthorised use or disclosure of confidential information or failure to ensure that confidential information is kept secure (subject to the Public Interest (Disclosure) Act 1998).
- (v) Unauthorised use, processing or disclosure of personal data contrary to the Trust's Data Protection Policy.
- (w) Acceptance of bribes or other secret payments.
- (x) Accepting a gift from a patient, visitor or third party in connection with the employee's employment without prior consent from the employee's line manager.
- (y) Refusal to disclose any of the information required by the employee's employment or any other information that may have a bearing on the performance of the employee's duties.
- (z) Giving false information as to qualification, entitlement to work or suitability for role (including immigration status).
- (aa) Making a disclosure of false or misleading information under the Raising Concerns Policy maliciously, for personal gain, or otherwise in bad faith.

- (bb) Making untrue/ vexatious allegations in bad faith contrary to the Dignity at Work Policy.
- (cc) Victimising a colleague who has raised concerns, made a complaint or given evidence or information under the Raising Concerns Policy, Dignity at Work Policy, Grievance Procedure, Disciplinary Procedure or otherwise.
- (dd) Unauthorised entry into an area of the premises to which access is prohibited.
- (ee) Undertaking unauthorised paid or unpaid employment during the employee's working hours.
- (ff) Conduct which contravenes the standard of professional behaviour required by the employee's regulatory body.
- (gg) Wilful, careless, inappropriate or unethical behaviour likely to compromise standards of care or patient safety, or create serious dysfunction to the effective running of a service.

6.12 Authority to Take Disciplinary Action

The chair of the disciplinary panel will have the opportunity to provide the following sanctions based on the nature of the allegations:

First Written Warning

Ward Managers, Departmental Managers, Clinical Leads, Service/Specialty Manager

This list is not exhaustive and should include those identified with the authority to issue final written warnings and the authority to dismiss.

Final Written Warning

Modern Matron, Group Manager Head of Service

This list is not exhaustive and should include those identified with the authority to dismiss.

Dismissal

Chief Officers Directors

Associate/Deputy Directors, Clinical Directors

6.13 Appeals

An employee must be offered the right to appeal against a disciplinary decision. . An appeal should typically be heard on the following grounds:

- The Trust has failed to adhere to its own procedures.
- Inconsistently treated the employee in comparison to colleagues or former colleagues.
- Was not reasonable in the circumstances; or
- New evidence has come to light.

In exceptional circumstances an appeal will not re-hear the disciplinary case but review the fairness of the disciplinary decision in conjunction with the employee's grounds of appeal.

To lodge an appeal against a disciplinary outcome the employee or their companion at the instruction of the employee, must write to the Chief Workforce & Information Officer outlining the grounds of the appeal, within ten (10) calendar days of the receipt of the written confirmation of the disciplinary decision. The appeal hearing will be scheduled where possible within twenty-one (21) calendar days of receipt of the appeal letter.

The employee and their companion must supply at least fourteen (14) calendar days in advance of the hearing, their written case including copies of all relevant documents that they intend to rely on at the hearing. Only in exceptional circumstances will employees and their companion be able to table documents during the hearing. The management response to the appeal will be provided to employee seven (7) days in advance of the hearing.

Where the employee raises new and relevant matters in their appeal, the panel chair may defer the appeal hearing to conduct further investigation if any new evidence comes to light the employee will be provided with a summary, including where appropriate copies of any additional relevant documents, witness statements or summaries of witness evidence. The employee will have a reasonable opportunity to consider this before the reconvened hearing.

Appeal hearings should be conducted in accordance with Appendix 2: Appeal Hearing Procedure.

An appeal against **First Written Warning** will be heard by Modern Matron
Group Manager Head of Service
Or any of the below

An appeal against **Final Written Warning & Dismissal** will be heard by;

Clinical Directors

Chief Officers Directors

Associate/Deputy Directors

Where the employee is a Doctor, the Chief Medical Officer or their nominated deputy will usually form part of any appeal panel. All disciplinary sanctions can be revoked or reduced following the appeal.

If the decision of the appeal chair is to re-instate this will occur with no loss of continuity of service or pay.

7.0 DISSEMINATION AND IMPLEMENTATION

The Disciplinary Procedure will be implemented with immediate effect after ratification with all new cases raised after this date managed within the remit of this policy.

In addition to being updated on the e-library the dissemination of this procedure will be supported by management training facilitated by the HR Operations function. It is also expected that our staff side convener will communicate the implementation

8.0 TRAINING

The Trust will provide training and guidance for managers on the Disciplinary Procedure and will also ensure that all employees and potential employees are made aware of this procedure, as appropriate.

9.0 MONITORING COMPLIANCE WITH THE PROCEDURAL DOCUMENT

9.1 Monitoring Table

Aspect of compliance or effectiveness being monitored	Monitoring method	Individual/ department responsible for the monitoring	Frequency of the monitoring activity	Group / committee which will receive the findings / monitoring report	Group / committee / individual responsible for ensuring that the actions are completed
	<i>HR Review</i>	<i>HR</i>	<i>Fortnightly</i>	<i>HR Equality and Diversity Committee</i>	<i>HR Equality and Diversity Committee</i>

10.0 STAFF COMPLIANCE STATEMENT

All staff must comply with this Trust-wide Corporate Business Record and failure to do so may be considered a disciplinary matter leading to action being taken under the Trust's Disciplinary Procedure. Actions which constitute breach of confidence, fraud, misuse of NHS resources or illegal activity will be treated as serious misconduct and may result in dismissal from employment and may in addition lead to other legal action against the individual/s concerned.

11.0 EQUALITY & DIVERSITY STATEMENT

Throughout its activities, the Trust will seek to treat all people equally and fairly. This includes those seeking and using the services, employees and potential employees. No-one will receive less favourable treatment on the grounds of sex/gender (including Trans People), disability, marital status, race/colour/ethnicity/nationality, sexual orientation, age, social status, their trade union activities, religion/beliefs or caring responsibilities nor will they be disadvantaged by conditions or requirements which cannot be shown to be justifiable. All staff, whether part time, full-time, temporary, job share or volunteer; service users and partners will be treated fairly and with dignity and respect.

12.0 REFERENCES AND BIBLIOGRAPHY

None

13.0 UHCW ASSOCIATED RECORDS

Grievance and Disputes Procedure

Capability and Performance Procedure

Dignity at Work Policy

Managing Attendance Policy

14.0 APPENDICES

APPENDIX 1

UNIVERSITY HOSPITALS COVENTRY AND WARWICKSHIRE NHS TRUST DISCIPLINARY HEARING PROCEDURE

1	The Chairperson should ensure that all introductions are established, ensure that the composition of the panel is explained to all present and outline the format of the hearing. If a note taker is present, the Chairperson should explain that these notes will act as record of proceedings and will not be verbatim.
2	The Chairperson will outline the allegations that are to be considered at the disciplinary hearing and confirm that the employee received an invitation to the disciplinary hearing and a copy of the management statement of case. The Chairperson will confirm receipt of any documentation which is to be presented in support of the employee's case.
3	The Chairperson will confirm if the Investigating Officer or the employee have requested the attendance of any witnesses.
4	The Chairperson will explain that the Investigating Officer will present their case first and that the panel and the employee and their representative will have the opportunity to ask questions.
5	The employee/their companion will then be asked to present their case. The Investigating Officer and the panel will have the opportunity to ask questions.
6	The Investigating Officer will then be given the opportunity to summarise the case. The employee or their representative will then be given the opportunity to summarise their case and provide any information in regard to mitigating circumstances. The Chairperson will reiterate that no new information can be provided during the summing up.
7	The panel will then adjourn to consider the information and make a decision. During the course of the hearing, if either side feels that brief adjournments may be necessary, these will be allowed at the Chairperson's discretion.
8	When a decision has been reached the panel will reconvene the hearing to confirm the outcome of the hearing. If it is not possible to conclude the disciplinary hearing, the employee will be informed of the outcome within seven (7) calendar days.
9	If a sanction is applied, the Chairperson must outline the employee's right of appeal, tenure of the sanction, improvement required and that future misconduct could result in further disciplinary action being taken.
10	If the panel confirms that dismissal is the outcome of the disciplinary hearing, the Chairperson will outline the employee's right of appeal and if the dismissal is with or without pay in lieu of notice.

APPENDIX 2

UNIVERSITY HOSPITALS COVENTRY & WARWICKSHIRE NHS TRUST

APPEAL HEARING PROCEDURE

1	The Chairperson should ensure that all introductions are established, ensure that the composition of the panel is explained to all present and outline the format of the hearing. If a note taker is present, the Chairperson should explain that these notes will act as an overview of proceedings and will not be verbatim.
2	The Chairperson will confirm the sanction that is being appealed and the grounds for the appeal. The Chairperson will confirm that the employee received an invitation to the hearing and a copy of the management statement of case. The Chairperson will confirm receipt of any documentation which is to be presented in support of the appellant's case.
3	The Chairperson will confirm if the employee or the management representative have requested to call any witnesses to the hearing.
4	The Chairperson will explain that the appeal hearing is not a re-hearing of the original case but an opportunity for the employee to state why they disagree with the decision / sanction and for the management representative to explain the basis of their decision.
5	The employee / their companion will then be asked to outline their grounds of appeal and the management representative and the panel will have an opportunity to ask questions.
6	The management team will then present their response to the appeal and the panel and the employee/their companion will have the opportunity to ask questions.
7	The employee or their companion will then be given the opportunity to summarise their case.
8	The management representative will then be given the opportunity to summarise their case.
9	The panel will then adjourn to consider the information and make a decision. During the course of the hearing, if either side feels that brief adjournments may be necessary, these will be allowed at the Chairperson's discretion.
10	When a decision has been reached the panel will reconvene the hearing to confirm the outcome of the hearing. If it is not possible to conclude the appeal hearing, the employee will be informed of the outcome within seven (7) calendar days.
11	The Chairperson of the appeal panel has the authority to uphold, dismiss or reduce the disciplinary decision.
12	The decision of the Chairperson is final and there is no further right of appeal.