

Disciplinary Policy and Procedure 5.3			
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VERSION CONTROL SUMMARY

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1.0	N/A	First issue	February 2007
2.0	All	Review	July 2010
2.1	Appendix 8	Corrected	March 2011
3.0	All Section 5.0 Section 7.0 Section 8.0 Appendix C	Review & harmonisation Scheme of delegation Stages of procedure Disciplinary outcomes & sanctions Disciplinary hearing process	January 2013
3.1	Section 5.0 & Section 8.0	Amended as agreed at JCNP	January 2013
3.2	Page 22	Inclusion of Appendix E which outlines the Trust's Serious Offences/Gross Misconduct rules	October 2013
3.3	Page 15	Addition of Section 9.0 regarding the withholding of increments	December 2013
4.0	All	Review of the entire document and Harmonised	May 2015
4.1		Changed Oakdale Counselling to Insight Wellbeing at Work	December 2015
4.2	All	Document Control Template updated to include:- NHS Litigation Authority Standards removed CQC Fundamentals of Care updated EDIA Tool added or updated Job titles, roles and committee structures updated.	June 2016
4.3	Page 20	Section 19: amendment to process for making referrals to professional body by Deputy Chief Nurse.	August 2017
4.4	Page 6	Section on Cultural Ambassador added to the policy	September 2017
5.0	Pages 11 – 13	Section on Pre-hearing Settlements/Agreed Outcomes added to the policy	August 2018

5.1	All	Changes to role of Commissioning Manager and Investigating Officer at hearings. General tidying and transfer to new policy template	January 2020
5.2	Page 29	Updated counselling service contact details	April 2020
5.3	All	Review in line with Just and Fair Culture and in conjunction with a review of the Investigation Procedure (in Alleged Breaches on employment Policies)	June 2021

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Foreword by Matthew Winn and Anita Pisani

We are pleased to write this foreword for our Trust disciplinary policy. We have reviewed this policy in light of a set of circumstances outside our organisation which led to a tragic outcome. As a Trust we want to learn from the experience of others and are committed to creating a Just and Learning Culture in all we do and not least in how we manage any potential or actual disciplinary situation our staff may find themselves in.

Alongside this revised policy we have implemented a range of measures to seek to ensure such cases are thoroughly assessed before any investigation or formal procedures are followed, have trained investigators who gather the facts, trained managers who make decisions including at formal hearings and we have expanded our pastoral support for staff.

Following the introduction of these measures we aim to reduce formal disciplinary investigations and hearings and reduce the likelihood of staff from a Black, Asian and Minority Ethnic (BAME) background being subject to a disciplinary hearing to a level where our BAME staff are no more likely to be subject to disciplinary action than their white colleagues. Therefore, this policy should be read in conjunction with our Cultural Ambassador Policy.

Inevitably, as a large employer and as part of upholding standards for our patients and colleagues, there are times when we need to follow formal procedures, but in these circumstances it is essential that we treat people with fairness, dignity and kindness and learn from such incidents, in line with our values, regardless of the circumstances.

We are grateful for the commitment and continuing input from Heather Bennett, our Staff Side Chair, the human resources team and other colleagues who have experienced aspects of this policy, and who have provided robust and constructive challenge in the creation of this policy.

We also want to thank our wider group of staff-side representatives and regional trade union colleagues who provided valuable insight and advice. This procedure reflects the ACAS Disciplinary Code of Practice.

Building on our 'People First' approach, we are pleased to say that we have clearly made progress, but we know that we cannot be complacent. We need to continually reflect and challenge ourselves to ensure everyone is treated fairly and build a culture of openness and transparency to ensure we are doing the right thing by our people.

This Disciplinary Policy and Procedure is another small step in our ambition of continuing to be an Excellent Employer.

Matthew Winn
Chief Executive

Anita Pisani
Deputy Chief Executive / Director of Workforce

1.0	INTRODUCTION
1.1	Cambridgeshire Community Services NHS Trust (The Trust) knows that most staff work to the highest standards of conduct at all times and instances when this does not happen are rare. When they do happen the Trust is committed to helping people improve and learn from mistakes.
	This policy and procedure is designed to ensure a fair, systematic and consistent approach is taken in instances when a member of staff's behaviour or action is in breach of workplace rules or falls short of the expected standards.
1.2	The fair treatment of staff supports a culture of fairness, openness, restoration and learning by making staff feel confident to speak up when things go wrong, rather than fearing blame.
	An objective and prompt examination of the issues and circumstances should be carried out to establish whether there are grounds for a formal investigation and/or for formal action or, if training, support, guidance or, if informal management may be more appropriate and productive, less stressful and in the best interests of all involved.
1.3	This policy has been developed in consultation with our staff side/trade union partners and is in accordance with the ACAS Code of Practice on disciplinary and grievance procedures, NHS best practice and learning from incidents.
1.4	Where an individual's ability to do their job is affected by a lack of skill or knowledge, or ill health, this will be managed by following other relevant policies.
2.0	PURPOSE AND SCOPE
2.1	This Disciplinary Policy and Procedure provides a framework to manage concerns about someone's conduct in a fair and timely way. It aims to help people achieve and maintain required standards of conduct.
2.2	The policy applies to everyone employed by the Trust and applies to all categories of misconduct by all staff. For further information about managing the process for conduct issues of Doctors and Dentists see the Handling concerns policy (Medical and Dental employees).
3.0	POLICY STATEMENT
3.1	Managers are responsible for ensuring their staff are aware of the required standard of conduct and for bringing any concerns they have about conduct to the attention of individuals at the earliest opportunity. Small instances of alleged misconduct should not be 'stored up' until big enough to take formal action over.
3.2	Managers should try to resolve minor matters of concern informally. Only if informal approaches do not bring about improvement or if the alleged misconduct is sufficiently serious should formal stages of this procedure be followed.

3.3	Managers will ensure that all action taken under this policy and procedure is timely, reasonable and proportionate. At an early stage, employees will be told why disciplinary action is being considered and they will be given the opportunity to respond to allegations before decisions about formal sanctions are taken.
3.4	Disciplinary cases will be treated sensitively and confidentially. Information will only be shared with those who have a legitimate right to be informed in accordance with Data Protection Act 2018 and the Common Law Duty of Confidentiality. Breaches of confidentiality by any party may result in disciplinary action.
3.5	All managers who chair or sit on formal hearing panels must have the appropriate skills. Training will be provided through a range of methods including 1:1 coaching with either a HR practitioner or other experienced manager, attending training, e-learning or through information sharing etc.
4.0	HANDLING ALLEGATIONS OF MISCONDUCT AND INVESTIGATING THE FINDINGS
4.1	Allegations of misconduct will be carefully assessed by the relevant manager, with HR advice, to decide if the matter can be managed informally where possible or whether there are grounds for further investigation and/or formal action.
4.2	The manager will carry out some initial fact finding and meet the individual to check how they are, being mindful that they may be angry, upset or distressed and to establish their version of events. The manager may also meet with other relevant individuals to get a good understanding about what has happened.
4.3	Where, following this prima facie fact finding, it is decided that further investigation and/or formal action is appropriate, this must be approved by a senior manager (for this purpose, senior manager is defined as a person in a post banded at agenda for change 8a and above in the service). The senior manager will have no previous involvement in the case and will provide independent oversight.
4.4	Investigations will be carried out without unreasonable delay and be led by a trained Investigating Officer in line with the Investigation Procedure which clearly defines the roles and responsibilities of the line manager, commissioning manager (if different to the line manager) investigating officer, HR practitioner, staff representatives, and where applicable the Cultural Ambassador (see the Cultural Ambassador Policy).
4.5	Once an investigation is complete, the commissioning manager will consider the findings with advice from a HR practitioner and decide on their proposed next actions. They will then discuss their proposed next actions with either the Director of Workforce or Assistant Director of Workforce, before a decision is made on whether further action is required; whether the matter can be dealt with informally or whether the case needs to proceed to a disciplinary hearing.

4.6	Where it is agreed that there is a case to answer at a formal hearing, the commissioning manager, supported by HR, will ensure a report is prepared. This report will set out the case based on the investigation findings and ensure all relevant information is presented at the hearing. Relevant information includes background information about the employee, their work record and any mitigating factors to ensure a full and balanced case is presented for the disciplinary hearing panel to consider.
4.7	Where it has been agreed there is no case to answer, the employee must be told at the earliest opportunity.
5.0	PRE HEARING SETTLEMENTS / AGREEMENTS / AGREED OUTCOMES
5.1	<p>It is recognised that conduct proceedings can cause anxiety for all concerned and whilst often necessary, can create additional pressure on staff. Therefore where an individual admits an allegation and the facts are not in dispute, it may not be necessary for the investigating officer to carry out an initial lengthy investigation.</p> <p>Or</p> <p>If, when receiving the management case in the documents pack in preparation for a formal hearing, the member of staff feels the allegations and findings are true and fair, it may not be in anyone's interest to proceed to a disciplinary hearing where both parties are in agreement not to do so.</p>
	<p>In such cases, and where there is agreement in respect of issues of a case, the culpability of the employee and the possible sanction, the commissioning manager may decide that a pre-hearing negotiated settlement may be the best way forward. They will make contact with the individual to initiate a discussion on this option.</p> <p>Or</p> <p>The individual can initiate this discussion either directly or through their trade union representative.</p>
5.2	The final decision on if this process is applicable remains with the commissioning manager in conjunction with advice from HR.
5.3	Pre-hearing negotiated settlements, more commonly known as 'agreed outcomes' provide an opportunity to deal with the matter as sensitively and as stress free as possible.
5.4	<p>Agreed outcomes are unlikely to be appropriate in cases of:</p> <ul style="list-style-type: none"> • Potential gross misconduct (see Section 17) and therefore, where dismissal is a possible outcome, unless in exceptional circumstances, and where the employee has admitted the alleged misconduct and has shown insight and contrition and they have requested that an agreed outcome is considered; • Where an employee is already subject to a current warning for similar or related misconduct unless prepared to agree a more severe sanction • Where it may conflict with, or compromise, 'due process' e.g. audit or reports to a regulatory body.

5.5	Pre-hearing settlements/agreed outcomes are part of the disciplinary process and therefore the same principles and rules in respect of natural justice will be applied.
5.6	The employee will be invited to attend a meeting, as set out below, at which they have the opportunity to put forward their explanation of events, along with any other points they wish to make. The meeting should only take place after the employee has had a reasonable period of time to consider the issues to be discussed at the meeting.
5.7	The employee should be informed in writing of the basis on which proposed disciplinary action is contemplated and the issues which the Trust would like to discuss with them and informed of their right to be accompanied by a work colleague, trade union representative or other companion not acting in a legal capacity.
5.8	The meeting will be conducted by the commissioning manager accompanied by a HR practitioner. Prior to the meeting all available relevant information will be available to those attending.
5.9	This process is optional and where a member of staff does not want to follow this process it will not proceed. In these circumstances a disciplinary hearing will be convened.
5.10	On conclusion of the meeting the manager should consider whether, in the light of what has been said at the meeting, a disciplinary sanction is appropriate and, if so, what the sanction should be. The employee should then be informed of the outcome and confirmed in writing within five (5) working days.
5.11	The employee will provide either written acceptance of the proposed sanction, or written confirmation that they do not agree with the outcome (this is not an appeal) within ten (10) working days of the notice of the action.
5.12	In the event that an employee does not agree to the outcome, a disciplinary hearing will be convened as though the agreed outcomes process had not taken place. No one involved in any decisions at an agreed outcome meeting will form part of the disciplinary hearing panel.
5.13	The employee will receive an outcome letter, a copy of which they will be asked to sign to confirm acceptance of this and that they understand that there is no right of appeal.
6.0	REFERRALS TO PROFESSIONAL BODIES AND OTHER AGENCIES
6.1	Dependent on the allegations, where an employee is registered with a professional body, the regulatory body may be notified of the concerns. The decision on this will be taken by the most senior professional lead from the directorate, in conjunction with the Chief Nurse. For more information, see Professional Registration Policy and Procedure and NMC referrals procedure.

6.2	Where allegations concern the safeguarding of children or vulnerable adults, the Trust's Safeguarding Lead must be notified without delay.
6.3	Where appropriate, investigations by the counter fraud team, other agencies such as police or social services, may be carried out separately from investigations under this procedure. The Trust will give full cooperation to try to ensure any such external investigations are carried out to a high standard. In these circumstances the Trust will only delay carrying out internal investigations and following the disciplinary procedure where absolutely necessary.
6.4	Where cases include serious personal data breaches likely to result in a risk to the rights and freedoms of data subjects, the Trust has a legal duty to report such cases to the Information Commissioner's Office within 72 hours via the Trust's Data Protection Office. The manager should discuss this with the Information Governance Manager.
7.0	INFORMAL MANAGEMENT
7.1	Cases of minor misconduct are best dealt with informally and quickly. A quiet word is often all that is needed.
7.2	In many cases additional training, coaching and advice may be needed. When there are concerns about conduct, managers must talk to the person in private as soon as possible, normally within a few days of becoming aware of the concerns. This will be a two-way discussion aimed at checking how they are, talking through the alleged shortcomings and where applicable any mitigations and encouraging improvement.
7.3	Feedback should be constructive with an emphasis on finding ways to improve. The manager will make sure the employee understands the standards expected and will explain how their conduct will be monitored and set a clear timescale for improvement. Managers will discuss with employees any support or training they may need and written confirmation, either a letter or an email with brief details including any agreements/actions should be sent to the member of staff as soon as possible after any meetings. Managers should keep brief notes of any informal action for reference purposes.
7.4	Where appropriate, managers may also summarise concerns and expectations in writing, a copy of which will be kept in the employee's personal file. Where informal action does not bring about the required improvement, or the misconduct is too serious to be classed as minor, formal disciplinary action may be considered.
8.0	FORMAL PROCEDURE
8.1	If it has been established that there is a misconduct case to be answered, a disciplinary hearing will be arranged.
8.2	The hearing should be held as soon as possible after the investigation is concluded and decision made to proceed. All those involved will make every effort not to unreasonably delay the hearing.

8.3	Proceeding to a hearing will only happen if in reviewing the investigation report and discussing the commissioning manager's proposed actions, with the Director of Workforce or Assistant Director of Workforce, it is agreed that this is appropriate.
9.0	HEARING PANEL
9.1	All disciplinary panels will be chaired by a manager who is appropriately skilled.
9.2	All cases will be heard by a panel of no less than two people: a chair of appropriate seniority and a HR practitioner and, where appropriate, a Cultural Ambassador and where required, a subject matter expert.
9.3	Cases that may result in dismissal will be heard by a panel of three or more members. The chair will normally be a member of the directorate management team. If the employee is a senior manager or consultant-level medical appointment, the panel will always be chaired by an Executive Director. The remaining panel members will consist of a HR representative, a Cultural Ambassador, where applicable, and panel members who have knowledge, skills and experience that reflect the background and/or speciality of the employee in question.
9.4	The Trust is committed to ensuring panels are diverse in representation, have appropriate seniority and have knowledge, skills, experience and training that are relevant to the case and individual. Panel members will be selected to achieve this, and where appropriate additional panel members will be selected. If employees have any concerns in relation to diversity or possible bias of the panel, they can raise this with the Director of Workforce.
9.5	Panel members will have no previous involvement in making decisions on the case or any conflict of interest that could influence decision making.
10.0	PREPARING FOR THE HEARING
10.1	Staff will be given at least seven (7) calendar days' notice of the hearing in order to have time to prepare. The employee will be provided with two copies of the pack which will include the investigation report and interview notes, the case the commissioning manager will present, and any related documents including witness statements to be presented at the hearing. They can share the second copy with their representative. Any personal patient or staff information will be redacted.
10.2	Prior to the hearing, the employee will be advised of the potential outcome such as a formal warning or dismissal.
11.0	WHO THE EMPLOYEE CAN BRING WITH THEM
11.1	Employees are encouraged to attend formal hearings accompanied by an accredited trade union representative, appropriate Trust colleague or other companion not acting in a legal capacity. It is the responsibility of the employee to arrange their companion and to inform the panel chair who they would like to attend with them.

11.2	Staff who require it may also wish to be accompanied by a second person as a support worker or someone with knowledge of their disability and its effects.
11.3	Employees may also wish to be accompanied by a translator or person to assist where language or literacy may be a barrier. The Trust can support the employee in arranging this as appropriate.
11.4	Witnesses can also request to be accompanied for support, by a colleague employed by the Trust (as long as they are not otherwise involved in the investigation) or a trade union representative or any other person acting in an unpaid or non-legal capacity.
11.5	Where action is proposed involving an accredited local trade union representative, the appropriate full time officer will be contacted before action is taken.
11.6	When an allegation arises which might result in formal disciplinary action, managers should advise employees to seek trade union advice and ask the employee for the name and contact details of their trade union representative. When it is necessary to organise meetings at which people are entitled to representation, if the manager knows the name of the trade union representative, the manager should liaise with the representative to try to agree a mutually convenient date.
11.7	Employees should make every effort to attend meetings and notify their manager as soon as possible if they cannot attend. If an employee or their companion/representative are unable to attend, they will be asked to suggest an alternative date so that the hearing takes place within five working days from the original date. If an employee is unable to attend a rescheduled meeting, alternative arrangements such as telephone conference, Teams call, their representative attending on their behalf or a written submission being made may be considered or the meeting may proceed in their absence.
12.0	HEARING FORMAT (FOR FULL DETAILS SEE APPENDIX 5)
12.1	At the hearing, the commissioning manager will present their case for bringing the misconduct allegations to a hearing, call the investigating officer as a witness and where applicable invite any other witnesses. The chair of the panel will have already been advised by both parties who they will be calling as witnesses.
12.2	The employee will be given the chance to set out their case in response, answer any allegations, ask questions, show evidence, call relevant witnesses (who they have invited and informed the panel chair of in advance) respond to any information given by witnesses.
12.3	Witnesses will be called if they have a significant contribution to make to the case. If statements from Trust employees are presented as evidence which is disputed, every reasonable effort will be made to ensure that they attend the meeting. Where it is agreed with the member of staff that the facts are not in dispute and/or the presence of one or more witnesses would serve no material purpose, they will not be required to attend.

12.4	In considering the sanction, the hearing chair/panel will take account of the employee's previous work record and other mitigating factors.
12.5	The outcome of a hearing will be notified in person by the chair of the hearing. Only where this is not possible or the individual requests otherwise, should notification not be in person.
12.6	The outcome will be confirmed in writing, normally within seven (7) calendar days. If disciplinary action is taken, the written confirmation will include details of the complaint, the improvement required (if appropriate) and the right to appeal where a formal sanction is issued. It will also state the length of the warning and that further disciplinary action may be taken if there is not a satisfactory improvement.
12.7	The chair of the panel must seek advice on writing the outcome letter from the HR practitioner panel member.
12.8	Separate procedures and guidance for managing misconduct of medical and dental staff can be found in the Handling Concerns Policy (Medical and Dental Employees) and the Standards of Conduct and Employment Practice Policy.
12.9	It is not the Trust's policy to audio record formal hearings. However an audio recording can be requested and this will be considered and subject to the agreement of all participants.
12.10	The panel chair will arrange a formal case closure meeting with the commissioning manager, at which any agreed learning will be discussed and any proposed management actions agreed with time scales.
12.11	The panel chair will arrange a follow up meeting with the commissioning manager six (6) months after the hearing to review the implementation of any learning, actions etc.
13.0	SUPPORTING STAFF
13.1	Being the subject of allegations of misconduct can be distressing for the employee and other colleagues affected including witnesses to any such alleged actions.
13.2	It is important throughout the procedure for the line managers of the individual and of any witnesses to keep talking with both the employee and any other staff affected maintaining pastoral support. Clear, regular weekly and confidential communication can help make sure employees are kept informed of what is happening, have the opportunity to ask questions and can avoid stress and other mental health issues. Normal line management one to ones and pastoral support will continue. Staff who feel their line manager is not maintaining contact and normal support should contact them to ask for this in the first instance. If they feel they cannot do this or they do not get a response they should let the relevant HR practitioner supporting the case know who will liaise with the line manager on behalf of the individual.

13.3	Line managers are responsible for maintaining regular communications and will make every effort to ensure employees receive clear, timely, comprehensive and sensitive information about the allegations and regular progress updates on any investigation until the matter is concluded. The line manager will speak with the investigating officer to get an update on progress of the investigation if required, so they can keep their member of staff informed. This includes the managers of witnesses as well as the person subject to the investigation and includes updates on any delays in the process with the rational and new time scales, so all involved are kept supported and fully informed.
13.4	An alternative line manager or third party will be appointed if the professional relationship between the employee and their current line manager is impacted to such an extent by the current process that it is not appropriate that they maintain the role of pastoral and wellbeing support.
13.5	Employees, including those who are involved as witnesses, will be supported by an appropriate manager and will have access to the Trust's Occupational Health and staff counselling services and access to the Staff Side Chair if not in a union themselves.
13.6	Confidential counselling is available to any employee affected by the matters covered in this policy. Information on these services can be found in Appendix 3. HR practitioners are available to advise line managers on the support they should give to their staff but should not take over the manager's role in supporting their staff or maintaining contact with them.
14.0	FORMAL DISCIPLINARY SANCTIONS
14.1	Once all the facts have been considered by the hearing panel a decision will be taken on the appropriate action. Depending on the findings, this may result in no action being taken, informal management action or a disciplinary sanction.
14.2	The seriousness of the misconduct will determine the level of disciplinary action to be taken. The procedure may be entered at any stage.
14.3	Stage 1 - First Written Warning: If the employee fails to meet required standards following informal action or if the offence is sufficiently serious to warrant moving straight to the formal stages, a First Written Warning may be given. First Written Warnings are confirmed in writing and apply for six (6) months after which time they lapse and should be removed from the employee's personal file.
14.4	Stage 2 - Final Written Warning: If the failure to meet required standards continues or if the offence is one of sufficiently serious (but not gross) misconduct, a final written warning may be given. Final written warnings are confirmed in writing and apply for twelve (12) months after which time they lapse and should be removed from the employee's personal file. In exceptional circumstances, where a final written warning is an alternative to dismissal, final written warnings may be live for up to twenty four (24) months.

14.5	Where the allegation is upheld and constitutes gross misconduct, the outcome will normally be a dismissal, which will be without notice. Dismissals may be reported to the relevant professional body or external body/organisation as appropriate.
14.6	Additional action as a result of being issued with a disciplinary warning: If a first or final written warning is issued, the member of staff will not be awarded an annual pay increase on the pay step date for the duration of the warning. The chair of a hearing will ask the line manager to action this via the ESR manager self-service function. For further information please see the Trust's Earned Pay Progression Policy.
14.7	In addition, to issuing a final written and an alternative to dismissal the following actions may be appropriate: <ul style="list-style-type: none"> • Transfer to another department/site; • Demotion or downgrading (without pay protection); • Change of shift or working pattern. NB: this list is not exhaustive.
15.0	APPEALS
15.1	Everyone has the right to appeal against any formal disciplinary action. Appeals will be handled in accordance with the appeals process for this policy.
15.2	Appeals against dismissal will be heard by a panel of at least three members. The chair will be a Director, Service Director or Assistant Director. The remaining panel members will include a member of the Trust who has appropriate training and experience and a senior HR practitioner. When required an external expert may be part of the panel, for example in cases involving someone who is themselves the most senior expert in the field of the alleged misconduct.
15.3	The Trust is committed to ensuring appeal panels are appropriately diverse in representation, experienced and trained. Panel members will be selected to achieve this. If employees have any concerns in relation to bias or diversity of the panel, they can raise this directly with the Director of Workforce.
15.4	Appeal panel members will have no previous involvement in the case or any conflict of interest that could influence decision making.
16.0	EXAMPLES OF MISCONDUCT
16.1	The following list gives examples of the circumstances that could lead to disciplinary action (this list is not exhaustive). Employees are expected to combine prompt and efficient service with respect for the feelings of others, including patients, visitors and colleagues, whatever their background. Examples of misconduct below and this list is not exhaustive: <ul style="list-style-type: none"> • Bullying and/or harassment/breaches of Trust values and dignity and respect; • Refusing to work; • Not attending for duty in line with your working hours; • Being absent without permission;

	<ul style="list-style-type: none"> • During sickness absence, keep line managers informed of their progress and submit sickness certificates promptly; • Misuse of social media affecting the reputation of the Trust or causing colleagues distress/offence; • Failure to follow reasonable management instruction; • Anyone undertaking other employment outside their contractual hours must ensure that it does not hinder or conflict with the interests of their employment with the Trust or their duty to abide by relevant professional codes of conduct or have any adverse effect upon their work performance. Employees should inform their managers of employment outside working hours; • Breach of confidentiality; • Misuse of authorised access to information and systems, unauthorized access to information and systems, and any activity that could breach the security of the Trust ICT infrastructure and any other breach of the Trust Information Security Policy; • Sleeping on duty (this does not include sleeping during agreed breaks or out of hours arrangements); • Failure to comply with health and safety requirements; • Failure to treat Trust facilities and property with respect; • Failure to inform managers of any charge, caution or conviction, relating to acts committed on or off duty, at the earliest possible opportunity; • Failure to maintain professional registration where it is a requirement of the job (see requirements as per Trust Professional Registration policy); • Failure to follow Trust and departmental policies and procedures and, where appropriate, their professional codes of conduct; • Breaches of professional codes of conduct and Trust policies; • Behaviour outside of work that could affect the professional reputation of the individual or the reputation or operations of the Trust.
17.0	GROSS MISCONDUCT
17.1	Some acts count as 'gross misconduct' because they are very serious or have very serious effects.
17.2	Where there may have been gross misconduct, a full investigation must still be carried out and the full disciplinary procedure followed.
17.3	In cases of gross of misconduct a hearing panel can decide to dismiss without notice or payment in lieu of notice.
17.4	Examples of gross misconduct could include (this list is not exhaustive):
	<ul style="list-style-type: none"> • Serious lack of care to duties or other people which could result in serious loss, damage or injury ('gross negligence'); • Theft; • Fraud; • Deliberate falsification of records or documents;

	<ul style="list-style-type: none"> • Working without valid 'Right to Work' documentation; • Working without statutorily required qualifications; • Working elsewhere whilst on sick leave; • False declarations made during the recruitment process; • Receipt of money, goods, favours or excessive hospitality in respect of services rendered while a Trust employee; • Physical violence; • Verbal abuse; • Serious/extreme level of bullying and/or harassment/ breaches of Trust values and dignity and respect; • Unlawful discrimination; • Being unfit for duty through the effects of alcohol or drugs; • Abuse, misuse or deliberate damage of Trust property or equipment; • Serious breach of data security requirements, any activity that could breach security of the Trust ICT infrastructure and any other serious breach of the Trust's Information Security Policy including serious misuse of authorised access/unauthorized access to information and systems; • Serious breach of confidentiality; • Serious breach of Health and Safety and other statutory rules; • Serious breach of a professional code of conduct as determined by the professional body; • Loss of or failure to renew professional registration which is an essential requirement of the role • Failure to act impartially or to declare interest in a contract or business in which the Trust is engaged or considering; • Scientific Misconduct - fabrication, falsification, plagiarism or deception in proposing, carrying out or reporting results of research; • Serious breach of trust and confidence - any act which causes irreparable damage to the relationship of trust and confidence between the employee and the Trust.
18.0	SUSPENSION (EXCLUSION)
18.1	For Medical and Dental staff refer to the Handling Concerns Policy (Medical and Dental Employees).
18.2	In most cases, suspension from work will not be necessary and the employee will be able to continue doing their normal job while matters are investigated.
18.3	Suspension is not a disciplinary sanction and there is no assumption of guilt.
18.4	The decision to suspend will only be taken if genuine risks are identified and all alternative options have been ruled out.
18.5	Suspensions will be managed sensitively and confidentially.

18.6	When considering suspension, managers must assess the risks of the employee remaining at work and seek advice from a HR practitioner. Where a manager wishes to suspend an employee, this must be discussed and agreed by managers in roles at band 8a or above or by delegated responsibility (Appendices 3 & 4). They must seek approval from the service director. The decision to suspend will not be taken by an individual alone.
18.7	If an appropriate senior manager is not available when an incident occurs which appears to warrant suspension, the most senior member of staff on duty may ask the person to go home pending an appropriate manager taking charge of any subsequent action as soon as possible after the incident.
18.8	Suspension will only normally be considered after all other reasonable alternatives have been consider and if there is a serious allegation of misconduct which if substantiated would be regarded as gross misconduct and: <ul style="list-style-type: none"> • working relationships have severely broken down; • there is a risk of the employee tampering with evidence, influencing witnesses and investigation or otherwise may prejudice the investigation; • there is a risk to the employee themselves, other employees, property or patients; • the employee is the subject of criminal proceedings which may affect whether they can do their job.
18.9	Alternatives to suspension must be considered, with HR advice where appropriate and could include the employee temporarily: <ul style="list-style-type: none"> • being moved to a different area of the workplace; • changing their working hours; • being placed on restricted duties including having reduced access to Trust systems where appropriate; • working under supervision; • being transferred to a different role within the organisation (the role should be of a similar status to their normal role, and with the same terms and conditions of employment); • other meaningful activities that the individual could do should be actively explored. This could include working remotely from home, carrying out activities such as audits, research or teaching.
19.0	COMMUNICATING THE DECISION TO SUSPEND AND SUPPORTING EMPLOYEES
19.1	Every effort will be made for the manager to meet with the employee to inform them of the decision to suspend. This will be followed up in writing within three (3) working days (Appendix 3).
19.2	Employees can be accompanied by a trade union representative or companion when informed of suspension. However, the unavailability of a representative will not prevent suspension from taking place. When a manager is thinking of suspending someone, the manager should try to contact the staff side chair to notify them of the time and venue of the meeting.

19.3	The manager communicating the decision to suspend will:
	<ul style="list-style-type: none"> • Explain the reasons for suspension and how long it is expected to last; • Explain the employee's responsibilities during their suspension; • Provide a point of contact (usually the line manager) that they can contact if they have any concerns; • Agree how they will keep in regular contact with the employee throughout; • Give details about support from the staff counselling service; • If it is necessary to explain the employee's absence, the manager will discuss with the employee how they would like it to be explained to colleagues and/or patients; • Check that they can safely get home and make arrangements if required and have the opportunity to collect any personal belongings they want to take with them.
19.4	The terms of the suspension and the employee's obligations will also be provided which includes:
	<ul style="list-style-type: none"> • not doing anything that could interfere with the investigation; • treating the matter confidentially; • seeking permission from the manager to contact colleagues; • if they wish to contact witnesses to support their case, they should do this via their manager or, if different, the manager dealing with the matter or their trade union representative or companion; • except for medical appointments, they must not visit Trust premises unless given permission by the line manager or a named deputy to attend for a specific purpose, e.g. a meeting a representative, an investigation meeting, a counselling appointment, a medical consultation or to access information they require to support their case. If attending for medical appointments they should inform their manager prior to the appointment time; • the requirement to remain available in their normal working hours to attend meetings.
19.5	The employee should book annual leave as normal with their line manager. It is an expectation that during suspension employees will book and take annual leave as normal, e.g. if suspended for six (6) months to have taken half their annual leave during that period, minimising the accumulation of annual leave. Leave arrangements are to be decided on a case by case basis in discussion with the manager.
19.6	If deemed necessary, the suspending manager may ask the employee to hand in Trust property such as keys, ID card, Trust mobile phone, laptop or any other mobile device at the time of exclusion. The manager may also temporarily revoke remote access if in use or remove/restrict access to Trust systems. In these circumstances, the manager and employee must agree alternative methods of keeping in contact.
19.7	The employee will be given the name and contact details of someone who will keep in regular contact with them and updated on progress of the investigation. This will normally be their line manager, or a second named individual if the line manager is unavailable.

19.8	The employee will be able to access support from their trade union representative or a colleague, but can also access support from the Trusts staff side chair.
19.9	If suspension is lifted prior or subsequent to a disciplinary hearing, an appropriate return to work strategy will be implemented, including undertaking mandatory training updates if this has lapsed.
20.0	TIMESCALES FOR SUSPENSION
20.1	Suspension will be for the minimum time necessary and will be reviewed every 4 weeks and lifted when the reason for suspension no longer exists. The commissioning manager should review the suspension in discussion with the HR practitioner supporting the investigation and the commissioning manager will write to the suspended employee with the outcome of the review and rationale.
20.2	Investigations will be concluded as soon as possible. The investigation officer will give regular updates to all associated with the investigation as to progress.
20.3	If the employee wants to go on holiday during their suspension, they must still make a request to take annual leave.
21.0	PAY DURING PERIODS OF SUSPENSION
21.1	During suspension an employee will normally receive full pay (this will be calculated as the average earnings over the previous twelve (12) weeks). In exceptional cases, the Trust may withhold the pay of an employee, e.g. an employee is held on remand or who is not contactable during their suspension so therefore is not available during their contracted hours. Each case will be considered on its merits by the appropriate manager who should consult HR before such a decision is taken.
21.2	If in receipt of pay on suspension from the Trust, a suspended person must not undertake any paid work during the hours for which they are contracted to work. People suspended for clinical/professional reasons must not undertake any work, paid or unpaid, without prior permission from the appropriate manager. Where an employee holds employment outside of the Trust and is suspended from the Trust, the employee is obliged to declare their alternative place(s) of work and the suspension information may be shared with another employer if it is in the public interest.
22.0	MEDICAL AND DENTAL STAFF
22.1	Exclusion arrangements for medical and dental staff are outlined in the Handling Concerns Policy.

23.0	CRIMINAL OFFENCES AND OFFENCES COMMITTED OUTSIDE WORK
23.1	If an employee is charged or convicted of an offence, whether committed on or off duty, the Trust will consider whether the offence renders the employee unsuitable for continued employment and may take formal action up to and including dismissal. The Trust reserves the right to take action independently of any legal proceedings.
23.2	Where the offence or police investigation relates to mistreatment of a child or an 'at risk' adult, the manager should inform the trust safeguarding team who will consider whether it is necessary to make a report to the Local Authority Designated Officer (LADO).
23.3	If an employee is subject of a police investigation, they are obliged to inform their manager so that the manager can consider whether any steps are required, e.g. to protect the safety of others.
23.4	Where allegations that occur outside of the Trust are brought to the attention of the Trust by other agencies or professional bodies, and those allegations have the potential to bring the reputation of the Trust into disrepute or may affect the suitability of the employee to continue in Trust employment, the Trust will investigate as reasonably as is practical. If after a detailed investigation it is considered that the actions of the employee damage the relationship of trust and confidence with the Trust, action up to and including dismissal may be taken.
24.0	DUTIES
24.1	Line Managers
24.1.1	Line managers will ensure that their staff are aware of the required standards of conduct and will manage disciplinary concerns fairly and promptly in accordance with this policy and procedure. They are responsible for promoting a culture in which concerns are dealt with openly and fairly, with an emphasis on learning from mistakes. Managers must seek advice about formal disciplinary cases from their HR practitioner but maintain ownership of resolving the matter, managing the process and maintaining contact with any staff members involved in such cases. This includes any witnesses they manage, ensure they receive managerial and pastoral support and have access to counselling and OH support as required.
24.2	Employee
24.2.1	All staff should maintain good standards of behaviour and comply with the policy and procedure. Employees are expected to raise concerns about colleagues' behaviour to an appropriate manager, especially where there could be consequences for patient safety. The Whistleblowing (Raising Concerns) Policy applies.

24.3	HR Practitioners
24.3.1	The Trust has a team of HR practitioners who will advise and coach managers on the handling of disciplinary matters and they will support managers to have the skills necessary to deal with cases confidently and effectively. HR practitioners will ensure that the policy is regularly reviewed and the HR team will also arrange training for investigating officers.
24.4	The Director of Workforce or Assistant Director of Workforce
24.4.1	The Director of Workforce or Assistant Director of Workforce will review with the commissioning manager, their recommended next steps following their review of a disciplinary investigation. They will act as a critical friend and will ensure a compassionate, fair, restorative and consistent approach is taken.
24.5	The Director of Workforce
24.5.1	The Director of Workforce will provide anonymised bi-annual updates to the Private Trust Board on the number and type of disciplinary cases.
24.6	Trade Union Representatives
24.6.1	Trade union representatives will work in partnership with managers to ensure that the policy and procedure is applied in a fair and consistent manner. Where an allegation arises, trade union representatives will work with other stakeholders to ensure that decisions can be taken promptly, thereby minimising staff anxiety. If an accredited Trade Union representative's request for time off to attend a meeting under the disciplinary procedure is refused and they believe the refusal to be unreasonable, they should raise the matter with the Director of Workforce.
25.0	MISAPPLICATION OF THE PROCEDURE
25.1	If an employee believes that the policy has not been applied properly, they can submit a statement of grievance. If the concern is related to an on-going disciplinary process, the concern will be addressed as part of the disciplinary procedure.
26.0	POLICY IMPLEMENTATION AND DISSEMINATION
26.1	This policy and procedure will be lodged in the Document Library on the Trust Intranet and accessible via the Trust's website and HR business partners will notify their service leads that it replaces all previous documents.
26.2	Advice and support on the application of this policy and procedure can be obtained from HR practitioners, line managers and trade union representatives.
26.3	Managers will ensure that the disciplinary procedure is applied fairly. The application of the formal procedure by ethnicity, gender, disability and age is monitored by the Trust.

27.0	REFERENCES
	<ul style="list-style-type: none"> Advisory, Conciliation and Arbitration Service (ACAS) https://www.acas.org.uk/ NHS Improvements Dido Harding letter 24 May 2019 with guidance relating to the management and oversight of local investigation and disciplinary procedures https://www.england.nhs.uk/2019/06/provider-bulletin-5-june-2019/ Verita report https://www.imperial.nhs.uk/about-us/news/investigation-disciplinary-process-actions-and-learning-for-trust NHS Resolution 'Being fair - Supporting a just and learning culture for staff and patients following incidents in the NHS' https://resolution.nhs.uk/wp-content/uploads/2019/07/NHS-Resolution-Being-Fair-Report-2.pdf
28.0	MONITORING ARRANGEMENTS
28.1	The HR team will log all disciplinary cases and an anonymised summary of cases will be shared with the Trust Board bi-annually at a Private Trust Board meeting. These anonymised summaries will include the type of case; protected characteristics of staff involved; outcome and timings. This will enable appropriate Board-level oversight to take place on a regular basis.
29.0	DIVERSITY & INCLUSION STATEMENT
	Cambridgeshire Community Services NHS Trust will ensure that this policy is applied in a fair and reasonable manner that does not discriminate on such grounds as age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion and belief, sex & sexual orientation.

APPENDIX 1: CASE CHECK LIST / ACTION PLAN

WORK IN PROGRESS - TO FOLLOW

APPENDIX 2: PROCEDURE FOR DISCIPLINARY HEARINGS

1. Introduction by manager chairing the hearing:

- Introduce those present;
- Confirm purpose of the hearing is to consider whether disciplinary action should be taken in accordance with the Disciplinary Policy and Procedure;
- Confirm that all parties have received the necessary paperwork;
- Outline procedure for the hearing.

2. Manager or investigator presents case:

- Manager outlines findings;
- Manager calls any witnesses;
- Employee / representative/ accompanying person and chair / HR adviser may question the witnesses;
- Manager may re-examine the witnesses;
- Employee / representative and chair / HR adviser may ask questions about the case in order to clarify facts.

3. Employee/representative responds to the management case:

- Employee / representative / accompanying person responds to the allegation, offers an explanation for the alleged misconduct and/or raises any special or mitigating circumstances to be taken into account;
- Employee / representative calls any additional witnesses;
- Manager and chair / HR adviser may question the witnesses;
- Employee / representative may re-examine the witnesses;
- Manager and chair / HR adviser may ask questions of the employee in order to clarify facts.

4. Summing up – no new evidence presented at this stage:

- Manager sums up;
- Employee/representative/ accompanying person sums up.

5. Adjournment for manager to consider case:

- Agree with all parties how and when the decision will be notified to the employee / representative if time does not permit decision to be given in person following the adjournment. Where the conduct of more than one member of staff is being considered in relation to the same incident, the adjournment between the disciplinary hearing and the outcome letter may be a few days, until all the disciplinary hearings have been completed.

6. Reconvene for decision – manager verbally informs employee/representative of:

- The outcome of the hearing / disciplinary action;
- The right of appeal;
- The outcome of the hearing to be confirmed in writing within five working days of the date of the hearing.

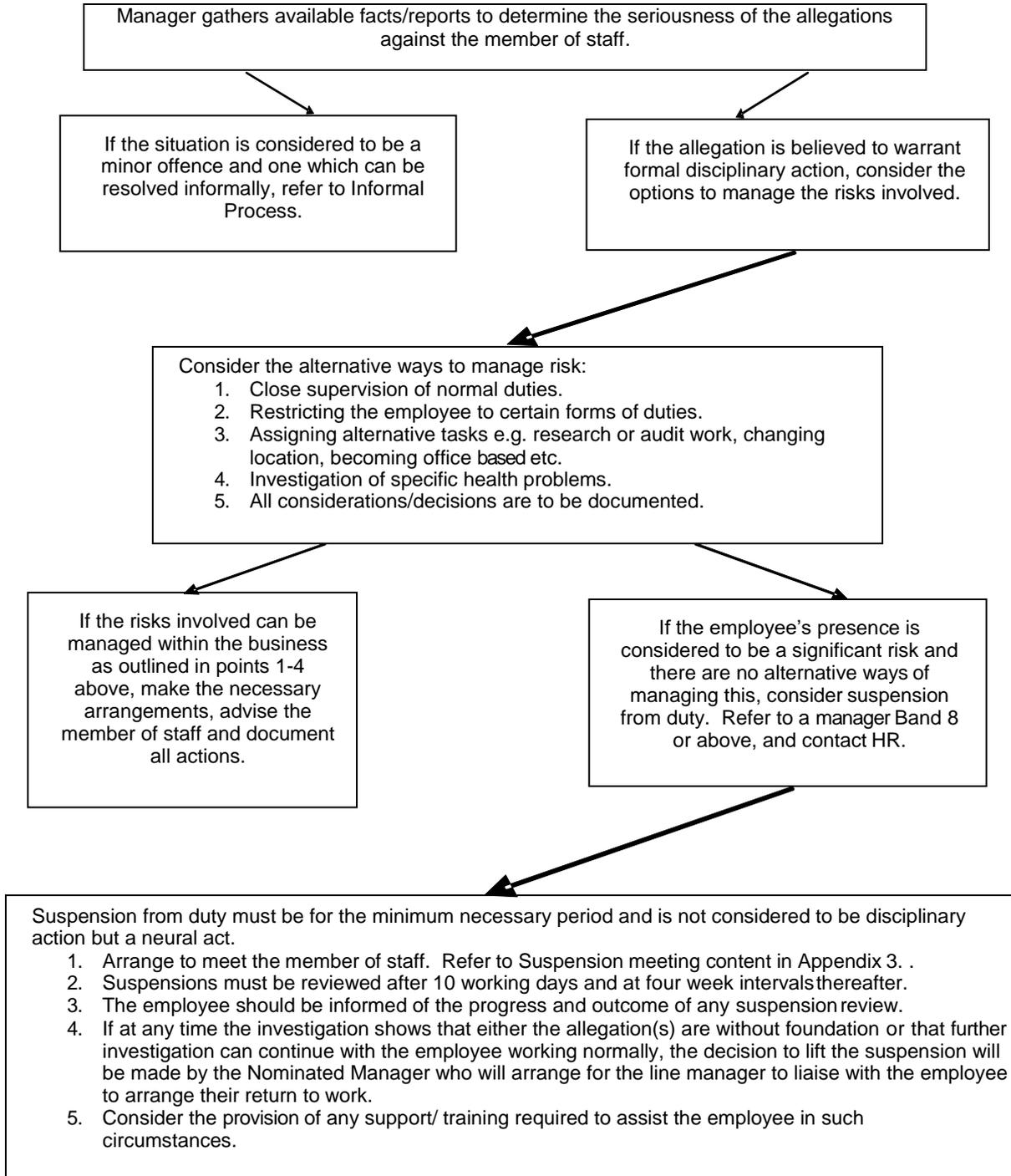
APPENDIX 3: SUSPENSION MEETING CONTENT

The decision to suspend a member of staff must include a senior manager at band 8a or above, who may delegate authority and authorise a line manager to deliver this decision on their behalf. The decision to suspend will not be taken by one individual. Broad areas to cover are as follows:

- Explain allegation(s) made against employee. These may be broad allegations however the individual should have sufficient information to fully understand the seriousness of the allegations;
- Explain that given the seriousness of the matter you have considered alternative action but have concluded that it is appropriate to suspend him/her from duty pending a full investigation into these allegations;
- Explain that suspension from duty is not a disciplinary sanction but a precautionary measure to allow a thorough investigation to take place. Suspension will be on full pay;
- Explain that an investigating officer will be appointed. The role of the investigation is to establish the facts and to allow the employee to be adequately represented during further discussions about the allegations;
- Discourage the employee from offering explanation and/or mitigation regarding the allegations. Explain that an investigating officer will be appointed immediately and will take responsibility for investigating this incident/matter;
- Explain that the investigating officer will ask the employee to make a statement regarding these allegations and as part of the investigation the investigating officer will need to have an investigatory meeting with him/her. The purpose of the investigation is to establish all the relevant facts of the case and gather all relevant information;
- Confirm that when the investigation is completed, a report will be compiled, and a decision made by the commissioning manager on how to proceed. The commissioning manager will decide:
 - if there is a case to be answered, and therefore if a disciplinary hearing is appropriate;
 - if the matter does not warrant a disciplinary hearing, but informal action will be taken by the line manager;
 - if no further action will be taken;
- Give employee a copy of the Trust's Disciplinary Policy and Procedure, including the Investigation Procedure (in the Alleged Breaches on Employment Policies) and Appeals Procedure. Confirm you are doing this so that he/she is aware of the principles of suspension and the way forward;
- Advise that their colleagues will be told that they are on period of authorised leave whilst on suspension;
- Confirm that the commissioning manager or line manager will contact him/her again upon completion of the report to advise them accordingly;
- During his/her suspension the employee must inform the investigating officer of any change of address or change of contact details e.g. phone number/email address;
- Consider whether it is necessary to take any action in relation to the return of items of Trust property e.g. ID/entry cards, keys, client files and working papers, and that he/she should cease all contact with patients or service users unless specific permission is obtained from the Senior Manager for the service;

- Acknowledge that this may be a difficult time but that there is support available to him/her. Independent and confidential counselling services are provided by:
 - Help Employee Assistance: for all staff except those based in Luton
Tel: 0800 031 4549, Online portal: <https://ccs.optimise.health/>
 - The Counselling Foundation: for Luton based staff only
Tel: 01727 856 693, Email: stalbandsadmin@hbcf.co.uk
- Confirm the suspension in writing either at the time of suspension or immediately thereafter;
- Check if any personal possessions need to be removed from Trust premises. It is usual to accompany an employee when they collect their possessions, which will be done with as much discretion as possible;
- Ensure that the member of staff is fit to drive/travel home. Assist him/her to access alternative travel arrangements if needed (e.g. taxi, public transport);
- Answer any further questions as appropriate.

APPENDIX 4: SUSPENSION FLOW CHART



APPENDIX 5: DISCIPLINARY HEARING PROCESS

At the hearing, the following procedure will normally be observed:

1. The manager / chair of the panel will make introductions and remind all parties of the purpose of the hearing.
2. Confirm that notes of the meeting may be taken by all present; however recording devices are not permitted, unless previously agreed.
3. The commissioning manager will state the management case including their reasons for believing there is a case to answer and call any witnesses including the investigating officer.
4. The manager / panel members and employee (or their representative) will be entitled to question any witnesses called.
5. The management representative may re-examine his or her witnesses on any matters referred to by the manager / panel or the employee (or their representative).
6. The employee (or their representative) will state the case for the employee and call any witnesses.
7. The manager / panel and the management representative will be entitled to question any witnesses called.
8. The employee (or their representative) may re-examine his or her witnesses on any matters referred to by the manager / panel or the management representative.
9. The manager / panel may invite the management representative, employee (or their representative), to clarify or amplify any statement he or she may have made or to sum up their case.
10. The manager / panel may at their discretion adjourn in order that further information may be ascertained.
11. Where possible, the chair of the panel will inform the employee of the outcome at or immediately after the hearing. However, in complex or lengthy cases it may be necessary for the panel to take time to properly consider the facts and communicate the outcome to the employee at a later date.

**APPENDIX 6: CHECKLIST TO ASSIST DECISION MAKING AT
 DISCIPLINARY HEARING**

1.	Has there been adequate investigation that is reasonable in the circumstances?	Yes/No
2.	Has the disciplinary procedure been followed/	Yes/No
3.	Have I taken sufficient account of any other information/ advise e.g. Occupational Health advice/information?	Yes/No
	Have I taken account of the employee's explanation?	Yes/No
4.	Is it reasonable to believe that the employee committed the alleged misconduct? (The test is would any other reasonable employer reach the same conclusion).	Yes/No
5.	Do I have reasonable grounds for that belief? <ul style="list-style-type: none"> • List these grounds: 	Yes/No
6.	Does the evidence support this? <ul style="list-style-type: none"> • List the supporting evidence: 	Yes/No
If the answers to the above are all 'Yes' and misconduct is found:		
7.	Is the misconduct sufficiently serious to justify the disciplinary action I am contemplating?	Yes/No
8.	Have I taken into account any mitigating circumstances including Occupational Health advice (where relevant)?	Yes/No
9.	Have I taken into account any current warnings?	Yes/No
10.	Have I compared to other similar cases?	Yes/No
11.	Is my decision within the band of reasonable responses of a reasonable employer in the circumstances?	Yes/No
12.	If considering dismissal, could the individual be demoted as an alternative to dismissal and if not, why not.	Yes/No

APPENDIX 7: SERIOUS OFFENCES (GROSS MISCONDUCT)

	Some offences are regarded as very serious and may be treated as gross misconduct. The procedure for such cases is identified in the Disciplinary Policy and Procedure.
	The list below gives examples of serious offences:
1.0	Theft
	Any instance of theft from the Trust, from patients/clients, visitors or other members of staff. Line managers should be informed of all suspected thefts. It is best practice to report confirmed thefts to the police. This is the responsibility of whoever has had the property stolen.
	Trust property must not be removed from Trust premises for personal use, nor used for private purposes within the premises without prior written approval of the employee's manager.
2.0	Fraud
	Any deliberate attempt to defraud the Trust, the NHS in general or members of the public in the course of official duties. This includes but is not limited to:
	<ul style="list-style-type: none"> • misrepresentation of time sheets, expenses or allowances; • deliberate falsification of records; • giving false information on an application form (NB under legislation it may be possible to claim their salary back); • claiming sick pay whilst not sick and whilst working somewhere else; • working if no right to work in the UK.
	If you have any concerns regarding possible fraud please contact the NHS Local Counter Fraud Service for advice.
3.0	Transactions with Patients
	Employees are not permitted to enter into financial transactions with patients/clients or their relatives relating to goods, property or payment for services, especially where this could be to the financial advantage of the employee.
4.0	Corruption
	The Trust policy on Conflicts, Hospitality, Gifts and Commercial Sponsorship sets out provisions regarding the acceptance of gifts and hospitality. The conduct of staff in the public service must be scrupulously impartial and honest.
5.0	Private Working
	Please refer to Section 14.0 of the Trust's Standards of Conduct & Employment Practice Policy.
	An employee must not undertake private work for financial or other reward during normal agreed working hours for the Trust.

6.0	Failure to Disclose an Interest of Self/Family/Associate in a Contract
	Contrary to the Standing Orders (this rule is only applicable to officers specifically involved in this type of work).
7.0	Assault
	Any assault on a patient/client, visitor, member of the public or fellow employee whilst either on duty or on the Trust's premises OR off duty and off Trust premises.
8.0	Negligence
	Any action, omission or failure to act, which threatens the health or safety of a patient/client, visitor, member of the public or another member of staff.
9.0	Health and Safety
	A serious failure to co-operate with management and other employees under the terms of the Health and Safety at Work Act or regulations made thereunder.
10.0	Malicious Damage
	To Trust property or the property of patients/clients, visitors or staff.
11.0	Being Unfit for Duty
	Through the effect or the after effects of drink or drugs (refer to the Substance Misuse in the Workplace Policy), or by being asleep on duty (unless authorised to be so, e.g. on standby duty), or presenting for work in any state or condition that the Trust deems as rendering you unfit to perform your duties.
12.0	Refusal to Carry Out a Reasonable Management Instruction
	This includes insubordination to a senior officer or supervisor.
13.0	Loss of Legal Authority to Continue Employment
	The loss of legal authority to carry out the duties for which employed such as loss of professional registration, failure to maintain professional body registration etc.
14.0	Breach of Confidentiality
	Any matters of a confidential nature in particular any information relating to patients/clients, individual staff records and details of contract prices and terms must, under no circumstances be divulged or passed on to any unauthorised person or persons, subject to the Trust's Whistleblowing (Raising Concerns) Policy and any other relevant documents such as the Hospital Red Book for Medical and Dental staff and the Public Interest (Disclosure) Act 1998.
15.0	Breach of Data Security
	Misuse of or failure to safeguard confidential information and/or patient data.
16.0	Misrepresentation
	A misrepresentation of details required on application for employment with the Trust with special reference to a failure to disclose conviction as required under the Rehabilitation of Offenders Act 1974 (Exemptions) Order 1975. Under legislation it is possible to sue employees to recoup any salary paid to them if employment was obtained using falsified details.

17.0	Bullying, Harassment and Victimisation
	Serious bullying, harassment or victimisation of patients/clients, members of the public or members of staff. See also Bullying and Harassment (Dignity at Work) Policy.
18.0	Misuse of Trust Facilities
	Including computer facilities (e.g. e-mail and internet, in accordance with Trust policies on email and internet use).
19.0	Bringing the Trust into Serious Disrepute
	Including misuse of Trust names, criminal activity, misrepresentation of the Trust on social media sites etc.
20.0	Service Disruption or Failure/Multiple Breaches
	Where there have been a group of incidents which on their own would not constitute a serious incident but collectively could be deemed as gross misconduct.
21.0	Off Duty Offences
	In the case of an employee being arrested or charged with an offence off duty, the Trust will consider whether or not the alleged offence has any implications for the person's employment with the Trust. Any such employee who is arrested on any charge or served with a summons on a criminal charge must inform his/her manager immediately.
22.0	Breach of Trust and Confidence
	Acts which undermine the mutual trust and confidence on which the contract of employment is based.
	Contracts of employment within the Trust are built on an implicit mutual trust and confidence. Where the actions of the individual have meant that the Trust can no longer have this trust and confidence in the individual, and that the mutual trust and confidence on which the contract of employment is based, have been breached. This breach does not usually take place in isolation and is often part of a wider misconduct but it is important to consider breaches of trust and confidence when considering demotion as an alternative to dismissal in serious cases.
23.0	Directors of Service
	If Directors breach the Fit and Proper Persons Test, they are no longer eligible to hold a Director post and will be dismissed for some other substantial reason under Loss of Legal Authority to Continue Employment.
	This list cannot be considered exhaustive and the human resources department should be consulted in respect of any cases suspected of being gross misconduct or misconduct.

APPENDIX 8: SCHEME OF DELEGATION

The relevant people involved in a disciplinary case will depend on individual circumstances. The following is the norm, but may be varied in discussion with trade union representatives in order to retain transparency and to ensure disciplinary cases are dealt with at the lowest level possible and as speedily as possible.

Scheme of Delegation/Authority to take Disciplinary Action	
Informal Process:	Managed and confirmed in writing by line manager
Formal Process: First Written Warning	Where the case is not complex and/or there is no new contested evidence following on from an informal process, e.g. continuation of poor timekeeping, a First Written Warning may be issued by the same manager who managed the informal process. In such circumstances an investigation and hearing will not be required; OR Where the case is more complex and requires an investigation the case will be heard by the line manager’s manager. Right of appeal.
Formal Process: Potential Final Written Warning	There will normally be an investigation and a hearing. However, where the case is not complex and/or there is no new contested evidence following on from a first written warning then in some circumstances an investigation may not be required; OR Where the case is more complex and requires an investigation the case will be heard by the line manager’s manager and dismissal is not thought to be a likely outcome.* Right of appeal.
Formal Process: Potential Dismissal	There will always be an investigation and a hearing. Where the matter is deemed to be sufficiently serious that it could result in dismissal, the panel will consist of a minimum of 2 managers which could be an operational manager and a HR professional. The chair of the panel must be band 8a or above. It will normally be the service lead but may also be another appropriate manager of similar status. A relevant professional expert may be in attendance where applicable (i.e. Nurse, Physiotherapist, Occupational Therapist etc.). Right of appeal.

*

N/B Where it is not possible to predict the potential outcome of a case is upheld at a hearing, the Trust will establish a panel made up of manager who can take action up to Dismissal, and this does not re judge the potential outcome but aims to avoid hearing being adjourned if it becomes apparent that a more senior panel is required.

Additionally, in exceptional circumstances, where a panel without authority to dismiss has heard a disciplinary case, which finds the alleged offence is of a more serious nature, they can seek agreement from a manager with authority to dismiss, to give delegated authority to that panel to dismiss.

Appeal	<p>The chair of the appeal panel will normally be a manager of the manager issuing the sanction. Where this is not possible it may be another appropriate senior manager of similar status. The chair should not have had significant involvement in the case on a previous occasion. NB this does not preclude a chair who has some knowledge of the case and or gave authority to suspend, as long as they have not had direct contact with the investigation and disciplinary hearing leading to the appeal.</p> <p>The panel will be made up of at least 2 managers, one of whom will be a HR professional. Appeal against dismissal will usually be made up of 3 members one of whom will be a HR representative and another relevant subject expert.</p> <p>The chair of the appeal panel will have the discretion to co-opt external advisers in exceptional circumstances and where appropriate.</p>
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APPENDIX 9: ROLES AND RESPONSIBILITIES INVOLVED IN MANAGING CASES OF MISCONDUCT

Line Manager is responsible for ensuring this policy is followed and for:

- Gathering initial facts in relation to misconduct, speaking to the employee and put the allegations to them and get their account of what has taken place. Take notes;
- Speaking to other witnesses or colleagues who are relevant and may be able to give an account of what took place. Take notes;
- Using this checklist to think through their approach;
- Seeking HR practitioner advice;
- Seeking approval from a senior manager (8a) or above before carrying out a formal investigation or proceeding to formal action. Make sure they are fully briefed;
- Where necessary and where approval has been given, commissioning an investigation, setting out what needs to be investigated and agreeing a deadline for completion with the investigating manager;
- Letting the employee know what is going to happen next for example that the matter will be investigated, ideally face to face and make sure they are properly supported. Confirm in writing;
- Letting the employee know the name of the investigating officer and that they will be in touch;
- Informing witnesses if they need to be interviewed as part of the investigation and confirm the name of the investigating officer who will contact them. Make sure they are properly supported throughout;
- Regular weekly checking in with employees who are subject to investigation and/or formal action and ensure they are kept informed about what is happening and have the opportunity to ask questions and are advised about timescales and what will happen next;
- Providing support to ensure the investigation runs smoothly and the investigating officer is provided with access to materials, documentation, systems and relevant employees and witnesses;
- Having regular check ins with the investigating officer to get a progress update and ensure the investigation is running promptly;
- Managing the health and wellbeing of staff involved seeking advice from Occupational Health where appropriate;
- Ensuring details of the investigation are only shared on a strictly need to know basis and that any staff involved in the investigation are aware of the duty of confidentiality;
- At the conclusion of the investigation, considering the findings and with advice from a HR practitioner and discussing their recommended actions with the HR Director or AD Workforce;
- Prepare for formal hearings, ensuring all documentation is distributed, and any witnesses are invited and briefed;
- Presenting case at a hearing including inviting the Investigating officer to present their findings.

Use the Case Check List / Action Plan to ensure all involved take their allocated actions in a timely way and keep staff updated.

HR Practitioner

- Provides timely advice to managers on their management of misconduct, advising on the range of options and whether informal or formal action is appropriate in the circumstances;
- Supporting managers to handle cases consistently and proportionately across the Trust and in accordance with its policies and procedures and legal responsibilities;
- Provides challenge and examine cases to ensure no biases or conflicts of interest exist;
- Support managers to ensure all parties are treated fairly and impartially and the Trust's Disciplinary procedures are followed;
- Advises on options available to the manager and identify any risks;
- Provides the manager and investigator with timely advice throughout the handling of misconduct.
- Ensures the right support is in place for any employees and referrals are made to Occupational Health where appropriate;
- Ensures regular contact is in place with employees;
- Fully considers the findings of the investigation and advice the manager on options of future actions including whether formal or informal action is appropriate;
- Ensures relevant approval is obtained;
- Advises on the selection of panels and support the preparation of hearings ensuring everyone involved is properly briefed and trained;
- Attends hearing and advises the Panel on proceedings.

Use the Case Check List / Action Plan to ensure all involved take their allocated actions in a timely way and keep staff updated.

Investigating Officer (see separate Investigation Procedure) - carries out a thorough and impartial investigation. Their role is to:

- Meet with the commissioning manager at the outset of the investigation to agree the terms of reference;
- Develop the terms of reference and an investigation plan and get it signed off by the commissioning manager;
- Appoint an administrator to support them;
- Conduct investigation interviews, ensure the write up interviews and get the interviewee to check and sign off;
- Provide regular updates on the progress of investigations to the commissioning manager;
- Escalate any additional allegations or concerns that emerge during the investigation to the commissioning manager including any issues that are delaying the investigation;
- Produce a reporting presenting the investigation findings for the commissioning manager to use to make their decision;
- Attend hearings to answer questions arising from the investigation report.

Senior Manager (8a or above)

Provides impartiality and oversight to decision making in cases of misconduct. The role of the senior manager is to provide constructive challenge and seek assurance on behalf of the Trust that cases are being handled fairly and proportionately, that decisions are well informed and the welfare of employees is given priority. The senior manager will seek to establish the following:

- Clarity about the allegations and assurance that the manager has gathered enough initial information to support their proposed course of action;

- The action proposed by the manager is necessary, proportionate and justifiable in the circumstances and consistent with similar cases;
- That all alternatives have been fully explored to ensure the matters is being dealt with in the most constructive way and in accordance with just culture principles;
- If further investigation is needed, whether the manager can carry this out (has the time and appropriate skills) or if a trained investigator should be commissioned. For cases that may result in dismissal a trained investigator must carry out the investigation;
- That the welfare of the employee and anyone else affected by the issues has been properly considered and a plan for support and communications has been developed and carried out;
- That the manager themselves is getting the right support;
- That no biases or conflicts of interest are potentially influencing the proposed actions;
- That there are sufficient grounds and understanding of the issues and circumstances to conclude there is a case to answer at a formal hearing;
- Inform the employee at the earliest opportunity should it be agreed there is no case to answer.

Chair of Hearing

- Ensures the fair conduct of the hearing in accordance with the Trust's Disciplinary Policy and Procedure;
- Makes sure that the employee is aware of their right to be accompanied;
- Explores if any adjustments should be made to proceedings to support employees and particularly for disabled employees, those with health conditions, language or literacy issues;
- Explains the procedure to be followed, introduce the parties taking part;
- Checks that each side has all relevant documents;
- Ensures each side has the opportunity to state their case;
- Makes sure all relevant evidence is considered;
- Considers whether further investigation is required if new matters arise;
- Adjourns to consider the decision and weigh up all the evidence presented;
- Decides whether allegations are substantiated on balance of probabilities;
- Takes account of mitigating factors;
- Considers any 'live' warnings;
- Decides on sanction with advice from other panel members and HR support;
- Acts consistently with previous decisions;
- Informs the employee of the decision and the reasons for it;
- Informs the employee of their right of appeal;
- Ensures adaptations and adjustments are made to proceedings to support disabled employees and those with other needs, i.e. language or literacy issues.

Other Panel Members

- Support the chair of the hearing in ensuring the fair conduct of the hearing and compliance with the Trust's Disciplinary Policy and Procedure;
- Ask questions or clarify any issues raised during the hearing;
- Consider on the balance of probability whether allegations are proven;
- Help the chair determine the appropriate sanction taking account of mitigation offered, the seriousness of the case, the sanctions applied in similar cases in the past, any previous warnings which are still in effect, the nature of the employee's job, the work record of the employee.



Rapid Equality Impact Assessment Tool

When looking at the impact on the equality groups, you must consider the following points in accordance with General Duty of the Equality Act 2010:

In summary, those subject to the Equality Duty must have due regard to the need to:

- eliminate unlawful discrimination, harassment and victimisation;
- advance equality of opportunity between different groups; and
- foster good relations between different groups

EQUALITY IMPACT ASSESSMENT – WHAT IS THE IMPACT TO DIFFERENT GROUPS IN SOCIETY?		
<p>Choose either Positive or Negative impact. POSITIVE it could benefit or would have very little or no impact. NEGATIVE it could disadvantage. Please provide supporting comments, both on positive and negative impacts. You may be asked to complete a FULL EQUALITY IMPACT ASSESSMENT to understand the impact further.</p>		COMMENTS
Age: Consider and detail across age ranges on old and younger people. This can include safeguarding, consent and child welfare.	Positive	
Disability: Consider and detail on attitudinal, physical and social barriers.	Positive	
Race: Consider and detail on difference ethnic groups, nationalities, Roma gypsies, Irish travellers, language barriers.	Positive	
Sex: Consider and detail on men and women	Positive	
Gender reassignment: (including transgender) Consider and detail on transgender and transsexual people. This can include issues such as privacy of data and harassment	Positive	
Sexual orientation: Consider and detail on heterosexual people as well as lesbian, gay and bi-sexual people.	Positive	
Religion or belief: Consider and detail on people with different religions, beliefs or no belief.	Positive	
Pregnancy and maternity: Consider and detail on working arrangements, part-time working, and infant caring responsibilities.	Positive	
Marriage and civil partnership status	Positive	
Environment: Consider impact on transport, energy and waste	Positive	
Other identified groups: Consider and detail and include the source of any evidence on different socio-economic groups, area inequality, income, resident status (migrants) and other groups experiencing disadvantage and barriers to access.	Positive	
Were any NEGATIVE impacts identified?	NO	
If YES please contact the Assistant Director of Corporate Governance who is the Equality & Diversity Lead for the Trust to complete a full Equality Impact Assessment		