

## Disciplinary Policy and Procedure (HR-006)

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## 1. INTRODUCTION

The disciplinary policy and procedure is a process to help and encourage employees to maintain appropriate standards of conduct and to ensure consistent and fair treatment for all in relation to disciplinary issues. The Trust supports an open and fair culture and as part of this culture all incidents and errors (including clinical incidents) should be openly admitted and recorded using the Serious and Untoward Incidents Procedure. Disciplinary action will only be taken when it is felt that there has been a deliberate attempt to disguise errors and/or dangerous practice or when the incident involves negligence or poor standards of care.

For the benefit and safety of patients, staff and the Trust, there needs to be good discipline. Sometimes failure by staff to provide acceptable standards of conduct or performance will not be a question of not knowing the rules, but failing to follow them. The disciplinary procedure is intended to be used where there is deliberate failure by staff to follow acceptable standards of conduct or performance.

The Trust aims to develop a 'just' culture and it is therefore essential that staff are treated fairly and with dignity should an investigation under the disciplinary procedure be necessary. It is also imperative that the organisation is receptive to learning from past outcomes and follows best practice. Should an employee feel they have been treated unfairly they may raise the issue by using the Trust's Grievance Procedure.

The disciplinary procedure is a confidential process. Individuals involved in any disciplinary action, in any capacity, must not under any circumstances discuss this with anyone else outside of the formal proceedings held under the Disciplinary Policy and Procedure.

## 2. SCOPE

This policy applies to all Trust employees irrespective of age, race, colour, religion/belief, disability, nationality, ethnic origin, gender, sexual orientation or marital status, domestic circumstances, social and employment status, HIV status, gender reassignment, political affiliation or trade union membership in line with the Equality Act 2010. All employees will be treated in a fair and equitable manner recognising any special needs of individuals where adjustments need to be made. No member of staff will suffer any form of discrimination, inequality, victimisation, harassment or bullying as a result of implementing this policy.

## 3. POLICY STATEMENT

The aim of the disciplinary policy and procedure is to reinforce the Trust's requirements and expectations of all staff and to bring about improvements in conduct. In some cases misconduct can be so serious that the individual's employment cannot be continued. In other cases staff will have failures and misconduct brought to their attention and will respond to the opportunity to improve. Where an employee's inadequate performance is felt to be caused by a lack of capability in terms of skill, aptitude or ability, the Capability Procedure should be used.

## 4. DUTIES AND RESPONSIBILITIES

### Chief Executive

To assure the Board that this policy is acted on through delegation to the appropriate business units and committees.

### Trust Board

- To ensure that this policy is acted on through delegation of responsibility for the development and implementation of the policy to the appropriate directors and committees.
- To ensure the policy, procedure and guidelines comply with UK law requirements.
- To ensure the policy and procedures are monitored and reviewed formally through the

appropriate committees e.g. TCNC.

### **Directors and Assistant Directors**

The Directors and Assistant Directors will ensure that this policy is acted on through a process of policy dissemination and implementation in collaboration with Trust senior managers.

### **Senior Managers, Managers and Clinicians**

Ensure all staff within their area of responsibility are informed about the contents of this and other associated policies and procedures and will apply this policy and procedure in a fair and equitable manner.

### **Human Resources**

The Human Resources Team will provide appropriate technical advice and support.

### **Employees**

All employees will comply with this and any other associated policies and procedures.

## **5. PROCEDURES**

### **Informing Employee**

If any issue may result in disciplinary action or dismissal the line manager should make the employee aware of the alleged failing or incident and the possible consequences within five working days. This should be confirmed in writing and include the nature of the employee's conduct, the basis of the allegations and that it is a strictly confidential process. The line manager is able to access advice and support from the HR Manager/HR Advisor.

The employee should be advised to seek support and guidance from the following:

- Trade Union representative
- Investigating Officer
- Occupational Health
- Staff Counselling Service

Should the member of staff belong to a clinical professional body, dependent on the nature of the allegation, the professional body will be notified of the investigation. Appropriate advice from the professional lead should be sought at this stage by either the line manager or the HR Manager/Advisor: however, the employee has a duty to inform the relevant body as part of their Code of Conduct.

### **5.1. Informal Procedure**

Before taking formal disciplinary action, every effort will be made by the manager to resolve the matter by informal discussions with the employee, if appropriate. An informal word is often all that is required to resolve an issue. Managers have the right to conduct one to one discussions with members of staff regarding areas of concern and this would not normally involve other parties or lead to disciplinary action but should be documented in the supervision notes.

If a member of staff takes sickness absence during either the informal or formal part of the disciplinary process, the disciplinary process will continue unless advice from Occupational Health or a G.P. suggests otherwise. If appropriate the process will be suspended and resumed once the employee has returned to work.

### **Mediation**

It may be appropriate for the matter to be dealt with by way of mediation, depending on the nature of the grievance. At any stage, and with the agreement of both parties, confidential mediation may take place facilitated by a trained mediator.

## 5.2. Formal Procedure

### 5.2.1. Investigation

Disciplinary action will not be taken against an employee until the circumstances have been fully investigated and this will be carried out by the line manager unless the circumstances make this inappropriate. Investigations will be carried out as soon as is reasonably practicable, however, the timescale for an investigation may vary, due to the complexity of the individual case. The line manager or designated investigating officer will lead the investigation supported by an HR representative and if the employee takes sickness absence leave the proceedings will continue unless advised otherwise by Occupational Health.

Where disciplinary action is being considered against an employee who is a trade union representative the normal disciplinary procedure will be followed. Following agreement with the employee, the matter will be notified to an official employed by the union.

Employees will be informed in writing that they are required to attend an investigation meeting. They will be provided with details of the initial allegation against them and be advised of the right to be accompanied. A copy of the disciplinary procedure will be provided and they will be advised that the meeting is for investigation purposes only and is not a disciplinary hearing. The letter will include details of possible outcomes (Appendix 3).

At the investigation meeting the line manager/investigating officer will:

- Ensure that the member of staff is clear as to the matter(s) under consideration.
- Give the individual the opportunity to state his/her view of the circumstances.
- Investigate the circumstances and establish the facts.
- Decide what action is appropriate as an outcome of the meeting which may include an Oral Warning issued at the Investigatory Meeting or a Fast Track Hearing.

Following the investigation meeting the employee will be provided with a copy of their statement. They will be given the opportunity to amend it before signing and returning it. Failure to return the statement within the stated timescale or make comment will be construed as acceptance of the statement. Other staff may be investigated and required to give witness statements at this point.

If during the investigation or disciplinary process the employee takes inappropriate action or is involved in another incident of misconduct this may be subject to a separate investigation.

Upon completion of the investigation, the line manager/investigating officer will consider the details of the case, provide a summary report and with the support of the HR representative, decide on the course of action to be taken. It may be decided that:

- The allegation is unfounded and that there is no case to answer.
- The issue is believed to be one of lack of capability in terms of skill, aptitude or ability and would be more appropriately addressed through the Capability Procedure.
- Further management action is necessary to ensure no further failing – could be attributed to lack of resources, support or supervision, training or mediation etc.
- An oral warning and/or disciplinary supervision should be issued/undertaken (see below 5.2.2)
- The case should be progressed through the Disciplinary Policy and Procedure.

### 5.2.2. Oral Warning and Disciplinary Supervision Disciplinary Supervision Issued At Investigation Meeting

On completion of the investigation an option of conducting disciplinary supervision may be instigated. A record of this would normally stay on file for a maximum of 12 months. A supervision record sheet would be used to record the discussions held under disciplinary supervision. During the disciplinary supervision meeting matters related to the incident/issues will be fully explored and the employee should demonstrate an understanding of concerns related to their

behaviour/performance.

**N.B. This option may only be used:**

- If the employee is accompanied by their representative – applicable if the employee is a union member.
- For minor issues.
- If all parties are in agreement that disciplinary supervision would be a fair and reasonable outcome

**5.2.3. Oral Warning Issued at Investigatory Meeting**

Following full investigation of the facts and circumstances surrounding an incident, the option of issuing an oral warning there and then, which would normally stay on the file for 6 months (unless there had been previous incidents/warnings) at the time of the investigatory meeting, could be considered.

**N.B. This option may only be used:**

- If the employee is accompanied by their representative – applicable if the employee is a union member.
- For minor issues.
- When the management case is accepted in full.
- If all parties are in agreement that an oral warning would be a fair and reasonable outcome.

The advantages of these options are that it eliminates the need to appear at a formal disciplinary hearing and the matter is concluded quickly to avoid undue stress being placed upon the member of staff and any potential witnesses.

An oral warning and disciplinary supervision are the only disciplinary outcomes which may be reached outside a formal disciplinary hearing.

**5.2.4. Fast Track Hearing**

This option is used as an alternative to a full disciplinary hearing and will tend to be used when it is agreed by all parties that:

- The management case is not in dispute and therefore it is not necessary to call witnesses. This is used to resolve an issue as quickly as possible. The hearing can usually be arranged more easily than a full disciplinary hearing and the duration of the hearing is considerably reduced as no witnesses are involved and the management case is not contested. Contemporaneous notes should be made for the record.
- Prior to the hearing the manager responsible for investigating the issue will produce a management case which includes details of information gathered throughout the investigation, written statements, other relevant documentation to support their case and details of any relevant previous disciplinary record/current warnings. The minimum time limit for the exchange of cases between the two sides is reduced to a time agreed by both parties. The member of staff can raise mitigating factors and will have the right of appeal.

The outcomes of a fast track hearing could be:

- No case to answer
- Capability procedure
- Sanctions of an oral, written or final written warning

**5.2.5. Disciplinary Hearing**

If it is decided there is a case to answer the HR representative will arrange a Disciplinary Hearing and all formal hearings will be recorded for accuracy, a copy of which will only be provided to the employee if the case goes to Appeal. When the transcript is agreed the recording will be

destroyed. The panel for the Disciplinary Hearing will be a Chairperson and a second HR representative to provide support. The employee will be notified in writing of the hearing, the details of the allegation and the possible outcomes at least 10 working days prior to the date of the hearing once the investigation has been fully completed. (Appendix 6).

If the employee is unable to attend on the date convened due to sickness the hearing will be rearranged and a referral made to the Occupational Health Department. Should there be non-attendance at the Occupational Health appointment or the rearranged hearing the case will be heard in their absence.

The line manager/investigating officer will prepare the management case, supported by the HR representative. The management case must be received by the employee 10 working days prior to the date of the hearing.

The member of staff will prepare their case. The Chair of the panel must receive this document no later than five working days prior to the date of the hearing and the Chair will forward a copy to the management side (HR representative).

Both the management side and staff side must give prior notice to the HR representative (supporting the Investigating Officer) of witnesses to be called in support of their cases at least 5 working days prior to the hearing. The HR representative will inform all parties of the witnesses who will attend the hearing. If witness statements are presented as part of either the management or staff side case then the witness must attend the hearing to allow for questioning by both parties and the Panel. In exceptional circumstances the panel will have the discretion to decide whether to call witnesses or accept the written statement bearing in mind the impact on the case and the outcome. The management side and staff side are each responsible for ensuring their witnesses' attendance. There is no provision for witnesses to be represented either during the investigation process or at the formal hearing. In order for a witness to be called they must have provided a signed witness statement as part of the management or staff side case.

**No new evidence can be submitted at the hearing by the management side, staff side or witnesses. If any new evidence does get submitted it will not normally be considered as part of the disciplinary hearing.**

Once the hearing is concluded the panel will adjourn to allow proper consideration of all matters raised and to make a decision as to whether disciplinary action is appropriate. The Chair will notify the parties of the expected length of the adjournment and this will depend on the seriousness and complexity of the case. Adjournments are expected to be between half an hour and twenty four hours.

When the hearing is reconvened the Chair will inform the employee of the decision and this will be confirmed in writing within 10 working days of the disciplinary hearing. The letter will also give the right to appeal against the decision.

### **5.3. Disciplinary Sanctions**

#### **5.3.1. Oral Warning**

An oral warning could be considered which would normally remain on file for 6 months (unless there had been previous incidents), if the Disciplinary Panel felt that this was more appropriate than a written warning.

#### **5.3.2. Written Warning**

A written warning is given where an employee has failed to respond adequately to discussions held under 5.1 Informal Procedure, or where there has been a failure or misconduct more serious than would warrant action under 5.1 Informal Procedure or 5.3.1 Oral Warning but not warranting a final written warning.

The written warning will give details of the complaint against the employee. In the case of

misconduct, the warning will state that, if the employee commits a further offence of misconduct during the period specified in the warning, further disciplinary action will be considered under 5.3.3 Final Written Warning as stated below. In the case of unsatisfactory work performance, the warning will advise the employee as to what steps he or she should take to improve and state, that if such improvement is not achieved within the period specified in the warning, action under 5.3.3 will be considered. The written warning will also advise the employee of the right of appeal in accordance with section 5.4 below. A copy of the written warning will be placed on the Human Resources Department's file relating to the employee. The warning will be spent, and will be removed from the Human Resources Department's file, after 12 months, subject to the employee's conduct and work performance having been satisfactory throughout that period.

**N.B.** When the incident involves patient care the record of disciplinary action will be kept on their personal file indefinitely.

### **5.3.3. Final Written Warning**

A final written warning is given where the employee has failed to respond adequately to a first written warning, where a further failure/misconduct occurs or where there has been a failing or misconduct of a sufficiently serious nature.

The final written warning will give details of the complaint against the employee. In the case of misconduct, the warning will state that, if the employee commits a further offence of misconduct, during the time limit specified in the warning, his or her employment may be terminated. In the case of unsatisfactory work performance, the warning will advise the employee as to what steps he or she should take to improve and state, that if such improvement is not achieved within the period specified in the warning, his or her employment may be terminated. The final written warning will also advise the employee of the right of appeal in accordance with section 5.4 below. A copy of the final written warning will be placed on the Human Resources Department's file relating to the employee. The warning will be reviewed after 18 months subject to the employee's conduct and work performance having been satisfactory throughout that period.

### **5.3.4. Dismissal**

Dismissal is a course of action when an employee has failed to respond adequately to a final written warning or has a final written warning and commits a further offence of misconduct or his/her work performance continues to be unsatisfactory. The hearing should be conducted by someone with the authority to dismiss (Band 8a and above) and may also be a sanction used when the offence is of a serious nature. Dismissal is with paid notice or payment in lieu of notice.

**N.B.** There are some senior staff whose employment can only be terminated by a decision of a full Trust Board and these staff are notified of this situation on appointment. Such power of dismissal is not delegated to officers or a committee in these cases.

### **5.3.5. Summary Dismissal**

Summary dismissal is termination of the member of staff's employment with immediate effect, without notice or payment in lieu of notice. Pay will cease with effect from the date of the dismissal; accrued and unpaid annual leave will be calculated up to the date of termination and this will be included within the employee's last pay. This date is also the commencement of the 3 month time limit for the employee to make an Employment Tribunal claim. This action is deemed good practice and will not be seen to prejudice the outcome of any appeal. This sanction will be used where the actions of the employee are serious and would be termed as gross misconduct. Appendix 1 lists examples of actions which are normally regarded as grounds for gross misconduct.

### **5.3.6. Alternative Sanctions to Dismissal**

In cases of gross misconduct where dismissal was a clear possibility, but significant mitigating circumstances were presented to and accepted by the disciplinary panel, alternative sanctions as described below may be awarded:

- a) **Relegation** – where the conduct of the employee has been well below the standard for an

extended period and is deemed unlikely to attain the required standard at the employee's current grade level. In such cases the employee's salary will be reduced to the maximum salary point of the new lower grade. An appropriate level of written warning will normally accompany the written confirmation of decision to downgrade. An employee must agree to this course of action as an alternative to dismissal.

- b) **Transfer** – a transfer as an alternative to dismissal may be considered, provided that the employee, after full consideration with his/her representative, agrees to this exceptional course of action. An appropriate level of written warning will normally accompany the written confirmation of the decision to transfer.
- c) **Training Requirement** –disciplinary action may be accompanied by a requirement to undertake relevant tests. This may involve a change in normal working patterns, but there will be no loss of earnings and normal training expenses will be reimbursed, provided that the staff member co-operates and a subsequent improvement in work performance results within a reasonable time period. In this latter context the manager, the staff member and their representative should agree a suitable review period and date so that a formal review meeting takes place.
- d) **Supplementary Action** – may be needed for exceptional cases e.g. to overcome operational difficulties or where further training has failed. This may include permanent or temporary transfer to another department, post, shift etc., with or without loss of earnings and with or without excess travel costs. This supplementary action would be determined by the disciplining manager and is part of the disciplinary procedure

## 5.4. Appeals

### 5.4.1. Timescales

An appeal can be made against a disciplinary sanction. Any appeal should be submitted in writing, stating the reasons for the appeal, to the Director of Human Resources within 10 working days of receipt of the letter confirming the disciplinary sanction. The appeal will be acknowledged within five working days of receipt.

### 5.4.2. Reasons for Appeal

An appeal against the decision can be made on the grounds below:

- If the disciplinary process was not followed.
- If additional information has come to light since the hearing which might have affected the outcome.
- If the employee believes the disciplinary sanction was unjust.

### 5.4.3. Appeal Hearing

The appeal will be heard by a member of staff who is the same level/Band or senior to the Chair of the disciplinary panel and who has not been directly involved in the circumstances leading to action being taken.

All parties involved in the appeal hearing will be supplied with all of the documentation, and documentation submitted in relation to the earlier stages of the procedure, no later than 10 working days prior to the date of the appeal hearing.

**Witnesses may only be called if they are involved in any additional information.** Both the management side and staff side must give prior notice to the HR representative (supporting the Chair of the panel) of witnesses to be called in support of their cases at least 5 working days prior to the hearing. The HR representative will inform all parties of the witnesses who will attend the hearing. The management side and staff side are each responsible for ensuring their witness's attendance.

Once the appeal hearing is concluded the panel will adjourn to allow proper consideration of all matters raised and to make a decision as to whether or not to uphold the disciplinary sanction. The Chair will notify the parties of the expected length of the adjournment and this will depend on the seriousness and complexity of the case. Adjournments are expected to be between half an hour

and twenty four hours. When the appeal hearing is reconvened the Chair will inform the employee of the decision and this will be confirmed in writing within 10 working days of the appeal hearing. The outcome of this meeting will be final.

#### **5.4.4. Notification of Outcome**

If the allegation against the employee is upheld at a disciplinary hearing the disciplinary sanction will be notified to the employee's line manager and Head of Service. No other parties will be informed of the disciplinary outcome except in the case of dismissal, see below, Notification of Dismissal.

If, following the appeal the employee is re-instated, any pay arrears owed to the employee for the period between the dismissal and the reinstatement will be paid.

#### **5.4.5. Notification of Dismissal**

It may be necessary to report the dismissal of an employee to an outside body such as the employee's Professional Body and/or the Disclosure and Barring Service. The Human Resources department should be contacted for advice on the protocol to be followed in such cases.

Dismissals must be notified promptly to the local Registration Authority Agent using form RA03 to enable an employee's Smartcard to be de-activated.

If the employee's work base is protected by a security pad the dismissal must be notified to the relevant person to arrange for the security pad code to be changed.

### **5.5. Fraud and Bribery**

Where fraud or bribery is suspected, the manager should contact the Director of Finance and Corporate Assurance, or the Local Counter Fraud Specialist (LCFS). This should be done **immediately**. The Director of Finance and Corporate Assurance, LCFS and the Human Resources representative will liaise and decide on how to proceed with the investigation as per LCFS/HR Protocol (Appendix 2). Under no circumstances should the manager discuss their suspicions with the suspect. The manager will be informed on how to proceed.

The Trust will take steps to recover from employees, assets and/or monies received that they are not entitled to, whether occurring because of their intent or due to a lapse in internal control. The LCFS/HR Protocol would be followed and the Protocol includes examples of fraud.

The Bribery Act 2010 makes it a criminal offence to bribe or be bribed by another person, by offering or requesting a financial or other advantage as a reward or incentive to perform a relevant function or activity, improperly performed.

The penalties for any breaches of the Act are potentially severe. There is no upper limit on the level of fines that can be imposed and an individual convicted of an offence could face a prison sentence of up to ten years.

### **5.6. Suspension from Duty**

Where an allegation of a serious offence has been made against an employee, it may be necessary for the employee to be suspended from duty or moved to another area pending completion of the investigation. Movement to another area and its associated costs will be discussed with the employee. Suspension may also be considered for less serious incidents when it may be in the best interests of the employee to be absent from duty during the investigation.

The decision to suspend should be made following agreement with a Senior Manager (Band 8 and above) and the Human Resources representative. It must be made clear to the employee that suspension is not a disciplinary measure and the suspension will be on full pay including special duty payments. At the meeting the employee will be clearly informed of the allegation and reason for suspension and this will be confirmed in writing within 5 working days by the manager carrying out the suspension or the Human Resources representative. The employee should be advised to

seek representation and also of the availability of support from Occupational Health and the Staff Counselling Service.

In order to avoid the possibility of prejudicing the investigation, the employee should be informed that during the period of suspension, they must not:

- Make contact with any possible witnesses unless agreed with the Investigating Officer.
- Contact anyone within the Trust with the exception of the Investigating Officer, the Human Resources representative, Occupational Health or the Staff Counselling Service. It is acknowledged that allowances need to be made around contact with friends who are employees of the Trust.
- Visit Trust premises other than for arranged meetings with any of the above or for personal hospital appointments.

The HR representative will accompany the manager wherever possible, to suspend a member of staff from duty. Should an issue arise which a manager feels has the potential to warrant suspension out of office hours, the employee should be placed on paid authorised leave until the situation can be reviewed with a more senior manager and/or HR Advisor/Manager.

Where an incident relates to allegations in respect of child protection or vulnerable adults, the appropriate Trust policy or designated person should be consulted for guidance on procedure:

- Child protection – Designated Nurse, Safeguarding Children.
- Vulnerable Adults – Safeguarding Vulnerable Adults Policy.

In the above cases, the police will be informed. Internal investigation into such cases should be conducted without delay during the time the police investigation is ongoing, and/or criminal proceedings are pending. One of the Trust's investigatory team should be nominated as a key communicator with the police, keeping up to date with the progress of the police investigation and ensuring that information is not passed onto the alleged perpetrator which may prejudice criminal proceedings. Consideration should also be given as to whether the Care Quality Commission and the Local Authority Safeguarding Teams should be informed.

## **5.7. Representation**

At each stage of the formal disciplinary procedure, employees are entitled to be accompanied by a trade union representative or a work colleague and the line manager/investigating officer will be accompanied by a Human Resources Manager/Advisor.

## **5.8. Referral to Professional Bodies and Disclosure and Barring Service**

Where there are concerns raised during the disciplinary process about the conduct or competence of a member of staff, the appropriate Director will consider whether the matter should be referred to the individual's professional body. If it is decided that referral is appropriate, then the individual will be informed of this action before it takes place.

The Disclosure and Barring Service places a duty on employers to share information and the Trust must notify the DBS of relevant disciplinary proceedings enabling individuals who pose a threat to vulnerable groups to be identified. When an individual has been dismissed or an individual resigns, retires or has been transferred to a non-contact role as a result of them harming, or potentially harming, a child or vulnerable adult the DBS must be notified. HR must be contacted for advice.

## **5.9. Confidentiality**

The disciplinary procedure is a confidential process and if breached will be dealt with as a disciplinary offence. Individuals involved in any disciplinary action, in any capacity, must not under any circumstances discuss this with anyone else outside of the formal proceedings held under the Disciplinary Policy and Procedure.

Staff must be aware that information relating to confidential processes and the Trust's business

processes must not be shared on social networking sites; if breached this will be considered to be a disciplinary offence. Please refer to the Electronic Communications Policy P010 and the Confidentiality Code of Conduct.

When a member of staff has a contract with any other NHS or healthcare organisation, in circumstances that may affect patient/client safety, a decision may be taken to inform the other employer. The employee will be informed of this decision and the outcome of the investigation/disciplinary hearing will be communicated to the other employer.

## **6. EQUALITY AND DIVERSITY**

An Equality and Diversity Impact Assessment has been carried out on this document using the Trust-approved EIA.

## **7. MENTAL CAPACITY**

Non-clinical policy therefore not relevant.

## **8. BRIBERY ACT**

The Bribery Act 2010 makes it a criminal offence to bribe or be bribed by another person by offering or requesting a financial or other advantage as a reward or incentive to perform a relevant function or activity improperly performed.

The penalties for any breaches of the Act are potentially severe. There is no upper limit on the level of fines that can be imposed and an individual convicted of an offence can face a prison sentence of up to 10 years.

For further information see [www.justice.gov.uk/guidance/docs/bribery-act-2010-quick-start-guide.pdf](http://www.justice.gov.uk/guidance/docs/bribery-act-2010-quick-start-guide.pdf).

If you require assistance in determining the implications of the Bribery Act please read the Trust Bribery prevention policy available on the intranet at <http://intranet.humber.nhs.uk/bribery-prevention-policy-p183.htm> or contact the Trust Secretary on 01482 389194 or the Local Counter Fraud Specialist on telephone 01482 866800 or [fraud@humber.nhs.uk](mailto:fraud@humber.nhs.uk)

The Bribery Act applies to this policy.

## **9. IMPLEMENTATION**

This policy will be disseminated by the method described in the Policy for the Development and Management of Procedural Documents.

The implementation of this policy requires no additional financial resource.

## **10. MONITORING AND AUDIT**

HR quarterly report to the Governance Committee.

## **11. REFERENCES/EVIDENCE/GLOSSARY/DEFINITIONS**

ACAS

For definitions see Appendix 1.

## **12. RELEVANT TRUST POLICIES/PROCEDURES/PROTOCOLS/GUIDELINES**

All Trust policies may link to the usage of the Disciplinary Policy.

## **APPENDIX 1: DEFINITIONS**

### **Gross misconduct:**

Gross misconduct is a very serious offence which completely undermines the basis of trust and confidence on which the contract between the employer and the employee is founded and which is, in effect, a breach of contract.

The following is not an exhaustive list but examples of what the Trust would regard as constituting gross misconduct:

### **Fraud:**

Any attempt to defraud the Trust or member of the public in the course of official duties.

### **Theft of Health Service Property:**

Removal of Health Service property without having first obtained the relevant permission, unless in bona fide furtherance of the employee's duties.

### **Theft of Non-Health Service Property:**

Where this reflects directly upon the nature of the employee's job or general trustworthiness.

### **Breach of Confidentiality:**

Being responsible for, or party to, the disclosure of information relating to staff, patients or ex-patients, to persons not having a right to such information.

### **Assault or Aggressive, Insolent or Abusive Behaviour:**

Towards a patient, member of the public or staff.

### **Bribery or Corruption:**

Acceptance of gifts/hospitality or inducements which would influence the impartiality of staff in the performance of their duties.

### **Unfit for Duty:**

Where this could seriously jeopardise the service and the level of care provided and would include unauthorised consumption of alcohol or drugs with similar effects whilst on duty.

### **Negligence or Ill-treatment of patients:**

Endangering the Service and care/well-being of patients, visitors and staff.

### **Gross Disobedience:**

The deliberate and persistent refusal to carry out a legitimate instruction or refusal to comply with a significant term or condition of employment.

### **A Criminal Offence:**

Where this reflects on an employee's position or suitability for employment in a Health Service environment.

### **Abuse of Electronic Communication Systems:**

Downloading pornography or circulating inappropriate e-mails.

### **Sexual Misconduct:**

Engaging in sexual misconduct whilst on duty and/or on Trust premises.

### **Inappropriate Personal Relationships:**

Having an inappropriate personal relationship with a known client or ex-client of the Service (Please refer to appropriate policy).

**Wilful Misrepresentation of, or Failure to Disclose Facts Relating to, Employment History:**  
including previous posts, qualifications, relationships to Trust members, criminal offences or warnings. (Some NHS posts are exempt from the Rehabilitation of Offenders Act and a significant number require CRB checks).

**Failure to Hold Current Professional Registration:**

Failure to register, cancellation or lapse of registration with statutory professional body.

**Failure to Report Contraction of a Prescribed Contagious Disease:**

Or known contact with such.

**Perpetration of a Hoax, Practical Joke or other Malicious Act**

Resulting in serious disruption of the Service.

**Interference with or Misuse of Recording Devices or Systems:**

Where this leads to misinterpretation of hours worked or other claims e.g. travel or study leave expenses.

**Malicious Damage and/or Wilful or Reckless Conduct:**

Where this results in damage to Health Service property, equipment or plant.

**Serious Breach of Health & Safety Standards:**

A breach which did or may have exposed self and/or others to risks of a serious nature

## APPENDIX 2: PROTOCOL FOR LOCAL COUNTER FRAUD SPECIALIST (LCFS) AND HUMAN RESOURCES

Both parties should establish and maintain a good day to day working relationship where information is shared, duplication avoided and the actions of neither party compromises each other's work. In addition it is necessary that this co-operation and co-ordination can be demonstrated and to that end this protocol sets out the formal steps that should be taken by both parties.

In order to avoid the situation where Human Resources could inadvertently compromise a fraud investigation it is essential that the LCFS is made aware **immediately** of potential cases. If there are any doubts as to whether fraud or corruption (including bribery) is involved then the potential case should be discussed with the LCFS before any disciplinary investigation is started. Some examples of the types of fraud and corruption cases investigated by the NHS Counter Fraud and Security Management Service have been provided at the end of this document.

In all cases of conflict between the two roles, where agreement cannot be reached as to the course of action to be taken, the Director of Finance and Director of HR should be consulted.

### 1. Potential Fraud or Corruption Cases (including bribery) Notified to the LCFS

1.1. The Trust's Fraud Policy stipulates that if fraud or corruption is suspected then the matter must be referred to the Trust's LCFS or Director of Finance and Corporate Assurance immediately.

1.2. In order that the LCFS can target their proactive work in high risk areas they need to be aware of significant weaknesses that might allow fraud to occur. There may be instances where Human Resources are aware of cases, which do not warrant the commencement of a fraud or corruption investigation, but which have highlighted possible system weaknesses which could lead to fraud and corruption. These should also be referred to the LCFS for consideration for local proactive fraud detection work.

### 2. Application of Sanctions in Respect of Fraud, Corruption and Bribery

2.1. As the investigation into a suspicion of fraud, corruption and bribery commences and proceeds, both the Director of Human Resource and the LCFS should consider the full range of sanctions that are available.

#### Sanctions include:

- Disciplinary action – including by professional regulatory bodies
- Civil – recovering money defrauded, interest and costs
- Criminal – fine, imprisonment, confiscation and compensation orders, Bribery Act 2010. The investigation should be conducted so as to ensure that the widest range of possible sanctions remains available.

2.2. The NHS Counter Fraud and Security Management Services has produced a policy statement on "Applying Appropriate Sanctions Consistently". This draws on expert, specialist and legal advice and should be consulted and applied to ensure that the full ranges of sanctions are considered in every investigation.

The policy statement covers the following areas:

Section 1	Applying appropriate sanctions	
Section 2	Reporting, compensation and precedence issues	Section 3 Abuse of process and fairness
Section 4	Employment/disciplinary proceedings	
Section 5	Trust regulatory/FHSAA/professional proceedings	Section 6 Investigative tactics and sanctions

### **3. Investigation Process**

**3.1.** In accordance with the Trust's Fraud Policy and Response Plan, in order to conduct a formal investigation into an allegation of fraud, the following arrangements will be put in place:

- In cases of fraud over £15,000 the LCFS will notify NHS Counter Fraud and Security Management Service Regional Operational Team who will conduct the investigation on behalf of the Trust.
- Cases of fraud less than £15,000 will be investigated by the LCFS. The LCFS will report to the Director of Finance.
- In all internal fraud investigations, to assist communication and to ensure the investigation runs efficiently, an investigation team will be established as soon as the Director of Human Resources and the LCFS deem necessary.

This will comprise of:

- The LCFS
- The relevant line manager
- A Human Resources representative nominated by the Director of Human Resources and Workforce Development.

**3.2.** Where fraud is suspected, it is important to obtain as much information as possible in a sensitive and confidential manner without alerting the person under suspicion.

The LCFS will undertake the fraud investigation in consultation with the Investigation Team. The LCFS will report to the Investigation Team on a regular basis, the frequency of meetings to be decided by the Team. Close consultation will be ongoing during the course of the investigation.

**3.3.** The LCFS will consult verbally with the Investigation Team and proceed with the investigation. The fraud investigation should as far as possible be undertaken prior to any disciplinary action being taken, however, each investigation will be reviewed on its own merit by the Investigation Team. If this impacts significantly on the Trust's disciplinary procedures the LCFS should inform the Director of Finance and Director of Human Resources. The LCFS will investigate all the facts and circumstances surrounding the incident and or allegation by interviewing the staff involved and obtaining relevant documentary evidence and witness statements.

It is the responsibility of the LCFS to ensure all parties are kept informed of developments and close links are maintained.

**3.4.** In order to carry out the investigation, the Human Resources representative on the Investigation Team may advise it is necessary to formally suspend the individual(s) under investigation. In accordance with the Trust's disciplinary procedures, the Line Manager or appropriate representative in consultation with the Human Resources Representative must carry out any suspension.

**3.5.** Depending on the circumstances of the case, the Investigation Team may consider it necessary to conduct a disciplinary investigation concurrently with the fraud investigation. Interviews with witnesses may be carried out within the normal remit of management duty where this is deemed appropriate by the Investigation Team but consultation must be made with the LCFS to ensure that any interviews do not compromise the Fraud investigation. Such interviews will be in accordance with the Trust's disciplinary procedures. Any subsequent suspension will be in accordance with the Trust's disciplinary procedures.

## **Evidence Provided for Disciplinary Investigation**

The LCFS will provide any necessary evidence to Human Resources for disciplinary purposes.

A decision about the amount of evidence that can be provided will be discussed and agreed for each individual case to ensure that a balance is achieved in allowing a disciplinary to proceed without jeopardising a criminal case. The LCFS will endeavour to work with Human Resources on the provision of evidence to achieve the best results for the NHS.

- 3.6.** The LCFS will discuss every internal fraud case with the NHS Counter Fraud and Security Management Service Regional Operational Team.
- 3.7.** At any stage during the fraud investigation it may become apparent that there will be insufficient evidence to prosecute. In such cases the LCFS, after consultation with the NHS Counter Fraud and Security Management Service Regional Operational Team, will report the above to the Director of Finance and Director of Human Resources for appropriate action in accordance with the Trust's disciplinary procedures.
- 3.8.** Similarly, following prosecution, or if a case is not suitable for prosecution, the LCFS will liaise with the Director of Human Resources to transfer responsibility for the case to the Human Resources Representative as above.
- 3.9.** The LCFS will assist the hand-over and will provide a report, a case summary, evidence and witness statements to the responsible Human Resources/ Investigation Team. The Trust's disciplinary procedure will be then followed where appropriate.

## **4. Other issues**

- 4.1.** At least twice a year meetings will be held between the LCFS and Director of Human Resources to discuss general issues, protocols and liaison. It will be the responsibility of the LCFS to call these meetings.
- 4.2.** The LCFS should copy Human Resources as appropriate into the distribution list for any relevant Fraud Notices received from the NHS Counter Fraud and Security Management Service.

## APPENDIX 3: MEETING AGENDA

### AGENDA

Hearing to be held on *Day, Date, Time*

at *Venue*

#### **NAME**

#### **Introduction**

- 1 Panel Chair to describe Procedure and format of Meeting
- 2 Management side to present Management Case and witnesses
  - 2.1 Staff side to question Management case and witnesses
  - 2.2 Panel to question Management Case and witnesses
- 3 Staff side to present Staff Side Case and witnesses
  - 3.1 Management side to question Staff Side case and witnesses
  - 3.2 Panel to question Staff side case and witnesses
- 4 Brief adjournment to prepare summary
- 5 Management side to conclude Management Case - no new information
- 6 Staff side to conclude Staff side Case – no new information
- 7 Adjournment
- 8 Decision

## APPENDIX 4: APPEAL HEARING AGENDA

**APPEAL HEARING** to be held on **Day, Date, Time**  
at **Venue**

### **NAME**

- 1 Introduction
- 2 Panel Chair to describe Procedure and format of Meeting
- 3 Staff side to present Staff Side Case and witnesses
  - 3.1 Management side to question Staff Side and witnesses
  - 3.2 Panel to question Staff Side and witnesses
4. Management Side to present Management case and witnesses
  - 4.1 Staff Side to question Management Case and witnesses
  - 4.2 Panel to question Staff Side and witnesses
- 5 Brief adjournment to prepare summary
- 6 Staff side to conclude Staff side Case – no new information
- 7 Management side to conclude Management Case - no new information
- 8 Adjournment
- 9 Decision

## APPENDIX 5: INVITATION TO AN INVESTIGATORY MEETING

(Reference) (Date)

**STRICTLY PRIVATE AND CONFIDENTIAL**  
(Name) (Address)

Dear (name)

### Investigatory Meeting

I am writing to ask you to attend an investigatory meeting to discuss the allegation that you (**allegation**).

The meeting will be held on :

**Date:**

**Time:**

**Venue:**

**Name, Job title**, has been appointed as Investigating Officer and will conduct the meeting.

**Name**, HR Manager/Advisor will attend the meeting.

On completion of the investigation a decision will be made as to whether or not it is appropriate to consider the allegation at a Disciplinary Hearing.

The meeting will be treated as strictly confidential and you have the right to be accompanied by a Trade Union representative or work colleague.

Please confirm your attendance by contacting me on (**number**) or email (**address**).

Yours sincerely

(name) (job title)

## APPENDIX 6: INVITATION TO A DISCIPLINARY HEARING

(Reference) (Date)

**STRICTLY PRIVATE AND CONFIDENTIAL**

(Name) (Address)

Dear (name)

**Disciplinary Hearing: To consider the allegation that (allegation).**

Further to the above allegation and subsequent investigation carried out by (name) and myself, in accordance with the Trust's Disciplinary Procedure, I am writing to advise you of the following decision:

The allegation should be referred to a Disciplinary Hearing.

In accordance with the Disciplinary Procedure you are required to attend a Disciplinary Hearing on:

**Date:**

**Time:**

**Venue:**

The panel will be chaired by (name), (job title) supported by (name), (job title).

The management case will be presented by (name), (job title), supported by (name), (job title).

I enclose a copy of the management side case. Should you wish to submit a case in mitigation, please send a copy to (name), (job title), (address), by close of play on (date), which is 5 clear working days prior to the hearing.

If it is your intention to call witnesses as part of your mitigation, please could you inform me of the people concerned, by close of play on (date). It is your responsibility to ensure the staff side witnesses attend.

Please note that if action is taken under the Disciplinary Policy you have the right to appeal under that policy.

The decision of the Disciplinary Panel will be one of the following outcomes:

- a) No case to answer
- b) Oral warning
- c) Written warning

- d) Final written warning
- e) Dismissal
- f) Summary dismissal

Please find attached a copy of the Disciplinary Policy.

You have the right to be accompanied at the meeting by a work colleague or trade union representative and the Hearing will be treated as strictly confidential.

Please confirm your attendance by contacting me on (**number**) or email (**address**).

If you have any further queries please do not hesitate to contact me. Should you require additional support at this time, you may wish to contact the Trust's Occupational Health Department on (01482) 389333.

Yours sincerely

**(name) (job title)**

cc **(name)** – Union Representative

## APPENDIX 7: NOTIFICATION OF OUTCOME/SANCTION FROM DISCIPLINARY HEARING

(Reference) (Date)

**STRICTLY PRIVATE AND CONFIDENTIAL**

(Name) (Address)

Dear (name)

You attended a disciplinary hearing on ..... I am writing to confirm the outcome/sanction\* agreed at that time.

I confirm that it was agreed that there was no case to answer\*

I confirm that you were issued with an Oral/Written/Final Written Warning\* which will be placed on your file and disregarded for disciplinary purposes after a period of .....months, provided that your conduct improves/performance reaches a satisfactory level\*.

- a) The nature of the unsatisfactory conduct/performance\* was:
- b) The conduct/performance\* improvement expected is:
- c) The timescale within which the improvement is required is:\*
- d) The likely consequence of further misconduct/ inefficient improvement is\* Final written Warning/Dismissal\*

You have the right to appeal against the decision (in writing) to the Director of Human Resources within 10 working days of receipt of this letter.

Yours sincerely

Name Title

\* Delete/amend as appropriate

**APPENDIX 8: NOTICE OF APPEAL MEETING AGAINST WARNING**

(Reference) (Date)

**STRICTLY PRIVATE AND CONFIDENTIAL**  
(Name) (Address)

Dear (name)

You have appealed against the written/final written warning\* confirmed to you in writing on  
.....

Your appeal will be heard by.....

**Date**.....

**Time**.....

**Venue**.....

You are entitled to be accompanied by a Trade Union representative or work colleague.

The decision of this appeal hearing is final and there is no further right of review.

Yours sincerely

Name Title

\*Delete/amend as appropriate

**APPENDIX 9: NOTICE OF RESULT OF APPEAL AGAINST SANCTION**

(Reference) (Date)

**STRICTLY PRIVATE AND CONFIDENTIAL**  
(Name) (Address)

Dear (name)

You appealed against the decision of the disciplinary hearing that you be given a  
.....warning in accordance with the Trust Disciplinary procedure. The  
Appeal hearing was held on .....

I am now writing to inform you of the decision taken by the Manager who conducted the  
appeal hearing , namely that the decision to..... stands/be  
revoked\*

No further disciplinary action is being taken/the new disciplinary sanction is\*  
.....

You have now exercised your right of appeal under the Trust Disciplinary policy and this  
decision is final.

Yours sincerely

Name Title

\* Delete/amend as appropriate

## APPENDIX 10: DOCUMENT CONTROL SHEET

This document control sheet, when presented to an approving committee must be completed in full to provide assurance to the approving committee.

Document Type	Policy – Disciplinary Policy		
Document Purpose			
Consultation/ Peer Review:	Date:	Group / Individual	
<i>list in right hand columns consultation groups and dates - &gt;</i>			
Approving Committee:		Date of Approval:	
Ratified at:		Date of Ratification:	
Training Needs Analysis:  <i>(please indicate training required and the timescale for providing assurance to the approving committee that this has been delivered)</i>		Financial Resource Impact	
Equality Impact Assessment undertaken?	Yes [ ]	No [ ]	N/A [ ] Rationale:
Publication and Dissemination	Intranet [ ]	Internet [ ]	Staff Email [ ]
Master version held by:	Author [ ]	HealthAssure [ ]	
Implementation:	<i>Describe implementation plans below - to be delivered by the Author:</i>		
	<ul style="list-style-type: none"> <li>.</li> <li>.</li> <li>•</li> </ul>		
Monitoring and Compliance:			

### Document Change History:

Version Number / Name of procedural document this supersedes	Type of Change i.e. Review / Legislation	Date	Details of Change and approving group or Executive Lead (if done outside of the formal revision process)
3.01		Feb 2015	Disciplinary supervision added
3.02		Apr 2015	Reviewed and updated by policy group. Additional scope for appeal page 10 point 5.4.2
3.03		Aug 2017	Front sheet amended - policy under review, to be considered by TCNC Sept'17
3.04		April 2020	