



Disciplinary Procedure

This procedural document supersedes: Disciplinary Procedures – CORP/EMP 2 v.5.



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Executive Sponsor(s):	Karen Barnard, Director of People & OD
Author/reviewer: (this version)	Anthony Jones, Deputy Director of People & OD
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Amendment Form

Please record brief details of the changes made alongside the next version number. If the procedural document has been reviewed **without change**, this information will still need to be recorded although the version number will remain the same.

Version	Date Issued	Brief Summary of Changes	Author
Version 6	Re-issued 19 March 2019	Corrected numbering errors in the Disciplinary Procedure.	Anthony Jones
Version 6	31 May 2018	Changes to format plus some changes to monitoring arrangements and title updates Minor amendments for factual accuracy	Sam Francis/ Anthony Jones
Version 5	17 August 2015	Minor amendments for factual accuracy	Ruth Cooper
Version 4	January 2010	<p>'Disciplinary Procedure Guidance Note for Managers' is now incorporated in this policy as Appendix 3 - major adjustments have been made and therefore needs to be re-read in full.</p> <p>1.4 points the reader to examples of gross misconduct.</p> <p>2.1 clarification of alternative arrangements for medical staff.</p> <p>3.4 slight amendment of wording for clarification</p> <p>3.5 Update of where additional information can be found</p> <p>3.6 Clarification of who to report fraud and/or corruption to.</p> <p>3.7 Slight amendment to words to remove reference to gender.</p> <p>3.8 more detailed information regarding rights to representation.</p> <p>4.2 Clarification on responsible manager decisions.</p> <p>5. Rewording and clarification on roles and responsibilities</p> <p>6.4 Removal of a duplicate statement regarding pay.</p>	J Lang

		<p>7.3 Clarification on right to be accompanied.</p> <p>8 Re-wording around involvement of LCFS in disciplinarys involving criminal offences.</p> <p>9 Clarification of the role of ‘responsible manager’ and consideration given at hearings to professional codes of conduct.</p> <p>10.1 points reader to further reading on investigations</p> <p>10.2 Amendment to wording</p> <p>10.3 points reader to further reading on investigations and wording amended for clarification.</p> <p>10.4 Re-wording of ‘responsible’ manager</p> <p>11 [1] Clarification of requirement.</p> <p>11[4] Removal of some unnecessary words</p> <p>11.2 Clarification of requirements for posting of Letters</p> <p>12[5] Details inserted to ensure consideration of referral to appropriate external bodies is made.</p> <p>12.2 Clarification of requirements of posting of letters</p> <p>16 Additional reference document added</p>	

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1 INTRODUCTION

1.1 The Trust is committed to providing an excellent standard of patient care. To do this, we rely on staff receiving support to enable them to fully understand their role and the Trust's expectations of them, and on all staff being committed to demonstrating positive and effective behaviours. This commitment will be underpinned by appropriate supportive policies and procedures. This procedure should be regarded as one of mutual and joint working, which enables employees to restore standards of performance to an acceptable level.

1.2 This policy and its associated documents apply to all Trust employees. This procedure should not be used to address issues of capability, which are dealt with under the Trust's Capability Procedure - CORP/EMP 25.

1.3 Management of personal and professional conduct, capability & ill health concerns involving medical and dental staff will be undertaken in accordance with the national framework detailed in 'Maintaining High Professional Standards in the Modern NHS (2005) (MHPS) and these are set out in Conduct, Capability, Ill Health and Appeals Policies and Procedures for Practitioners - CORP/EMP 13. However, the process for the hearing itself will follow the provisions of the Trust Disciplinary Procedure.

2 PURPOSE

2.1 This procedure is intended to enable disciplinary matters to be dealt with quickly, fairly, consistently and reasonably, having regard to the equity and substantial merits of each case.

2.2 The procedure should not be viewed primarily as a means of imposing sanctions. The procedure's prime purpose is to help and encourage employees to achieve and maintain standards of conduct, attitude and job performance, and to ensure that every employee reflects the values and behaviours expected within Doncaster and Bassetlaw Teaching Hospitals NHS Foundation Trust, treating patients, carers, members of the public and members of staff with dignity and respect, promoting a professional attitude at all times.

2.3 Wherever possible and appropriate, problems should be resolved through support/retraining/counselling, referring to other Trust Policies and Procedures before resorting to formal disciplinary procedures, with appropriate advice and support from Human Resources (See paragraph 4.4).

2.4 Apart from proven cases of gross misconduct, which generally warrant dismissal, no employee will be dismissed for a first offence without having first been warned and without having been given the opportunity to attain the required standards. Except in cases of gross misconduct, dismissal should only be used as a disciplinary sanction for misconduct, where earlier procedural stages have failed to produce the required improvement. Examples of acts which may be considered as gross misconduct can be found in Appendix 2.

2.5 This procedure requires that, at all stages of the formal procedure, the employee should be informed, in advance, of any hearing or interview, of the nature of the allegation or complaint and the employee should be notified of the right to be accompanied by a 'Companion' in accordance with paragraph 4.1.9. They should also be given advance notice of the purpose of any interview or hearing.

2.6 The principles to be followed are that disciplinary issues will be managed as a priority and that any interview or hearing should be, wherever practicable, convened without causing undue delay to the disciplinary process. At the disciplinary hearing the employee, is to have the opportunity to bring witnesses, to offer evidence, to respond to the management case and to state their case to the disciplinary panel who will make the disciplinary decision, before the decision is made. Upon notification of the decision, the employee is to be informed of their rights and method of appeal (see section 4.12).

2.7 The level at which the procedure is invoked will be determined by the seriousness of the allegation/misconduct and/or where appropriate, the existence of a previous warning which has not expired.

N.B. Gross misconduct is defined as a breach of discipline which is so wilful; pre-meditated; serious or irresponsible, that it strikes at the root of the employment contract. It is misconduct which effectively destroys the trust and confidence which the Trust must have in an employee. This includes criminal offences outside employment where the offence is one that makes the individual unsuitable for the type of work or unacceptable to other employees.

3 DUTIES AND RESPONSIBILITIES

3.1 **People & Organisational Development** - The Director of People & Organisational Development reserves the right for either the Director or a member of the P&OD department to participate at the informal and formal stages of this procedure for the provision of advice.

3.2 **The Companion** – A companion can be a recognised trade union official, representative from a professional association or a work colleague.

The companion is allowed to address the disciplinary hearing in order to:

- put forward the employee's case
- sum up the employee's case
- respond on the employee's behalf to any view expressed at the disciplinary hearing.

The companion can also confer with the employee during the disciplinary hearing. It is good practice to allow the companion to participate as fully as possible in the disciplinary hearing, including asking witnesses questions.

The companion has no right to answer questions on the employee's behalf, or to address the disciplinary hearing if the employee does not wish it, or to prevent the employer from explaining their case.

Further information on the right to be accompanied can be found in the ACAS Code of Practice 1 – Disciplinary and Grievance Procedures.

3.3 **Employees** - The duty to co-operate

It is recognised that it is in the interests of both any affected staff member and the Trust to ensure the procedures set out in this document are carried out efficiently and without unnecessary delay. All parties will reasonably co-operate at all times to ensure that this occurs.

3.4 **Responsible Manager** – This is the manager who has responsibility, under the delegation of authority, to appoint an investigating officer, review the investigatory information and decide whether the issue should be heard in a formal disciplinary hearing, and make decisions around the level of disciplinary action to be taken following a disciplinary hearing.

3.5 **Investigating Officer** – Appointed by the Responsible Manager, with regard to the type of allegations and the skill set required to conduct an appropriate investigation, the investigating officer will collect and collate all the available evidence, provide a summary of the facts of the case to the responsible manager. He/she may be required to attend any resultant disciplinary hearing and present the supporting facts and material; it follows, therefore, that the investigating officer can neither adjudicate at the hearing nor be in any way involved/connected with the allegation.

4 PROCEDURE

4.1.1 It is the Trust's policy that the agreed procedures set out in this document shall be observed in the handling of disciplinary cases. Exceptionally, there may be cases in which procedure may be amended, examples of which are:

[a] where an employee has been given a term of imprisonment; A hearing will be held in the absence of the employee, with the opportunity for written information to be considered by a panel.

[b] when an employee refuses or fails to attend a disciplinary hearing without good reason; A hearing will be reconvened once only and may be held in the absence of the employee.

[c] where an employee admits the allegations without challenge and agrees to receive a sanction outside of a hearing - see paragraph 4.7.5.

4.1.2 In cases of gross misconduct, such amendments to procedure will only be fair where guilt is so obvious that failure to follow the procedure will not render an injustice to an employee. In extreme cases, subject to the observations of the principles of natural justice as set out in paragraph 4.1.8, the Trust reserves the right to immediately dismiss.

4.1.3 This procedure will be reviewed, should it be necessary, and as a result of changes in legislation, or at the request of either parties to the agreement, or as a consequence of local conditions of service being agreed and implemented by the Trust.

4.1.4 Disciplinary action against a trade union official can lead to a serious dispute if it is seen as an attack on the union functions. Although normal disciplinary standards apply to their conduct as employees, no disciplinary action beyond a Verbal Warning should be taken until the circumstances of the case have been discussed with a Full Time Official. Where disciplinary action is to be taken a Trade Union Official has the right to be accompanied by a companion who is a Full Time Officer or more senior union colleague. In all cases where disciplinary action against union officials is contemplated the Director/Deputy of People and Organisational Development should be notified.

4.1.5 In addition to investigating the matter in accordance with the normal disciplinary procedure, managers should also report all suspected financial irregularities to the Director of Finance in order to ensure co-ordination of agencies such as Internal Audit, the Trust's Local counter Fraud Specialist, the Police etc. and to ensure that the allegations and evidence are properly co-ordinated. Examples may include suspected thefts or frauds. Further information is given in relation to matters of Fraud and Corruption in appendix 3 and the Trusts Fraud Policy and Response Plan.

4.1.6 Where disciplinary matters are associated with attempts to defraud or corrupt, then although normal disciplinary standards will still apply in parallel, the Trust will be required to notify the Trusts Local Counter Fraud Specialist (LCFS), the Police, Internal and external audit and NHS Counter Fraud Office.

4.1.7 In cases of potential Safeguarding matters, the Trust's Safeguarding Lead must be informed and advice sought on appropriate action towards the patients involved.

4.1.8 In dealing with disciplinary matters, even where the procedure is amended in extreme cases of proven gross misconduct, it is essential that the following rules are observed:

- [a] the employee should know the nature of any accusation(s) against them;
- [b] the employee should be given an opportunity to state their case to the person (or body) who will take the disciplinary decision, before the decision is made;
- [c] that those hearing the matter should act in good faith.
- [d] each step in the procedure and action taken within it, must be taken without unreasonable delay.

[e] the timing and locations of meetings must be reasonable.

4.1.9 All employees have a statutory right to be accompanied by a companion at a disciplinary hearing, held under the provisions of the procedure. A companion can be a recognised trade union official or work colleague. This statutory right does not extend to other meetings within the disciplinary process e.g., investigatory meetings. However, staff may be accompanied by a companion at these, provided that this does not cause an unreasonable delay in the process. Further details regarding rights to representation can be found in Appendix 3, section 3. Employees must take all reasonable steps to attend investigatory; disciplinary or appeal hearings convened under this policy. If an employee or their companion cannot attend the disciplinary hearing, the employee must propose an alternative date for a hearing within the next 10 calendar days. If it is acceptable, the employer will re-arrange the hearing for the new date. A hearing may only be rescheduled on one occasion. Should an employee fail to attend a hearing, this may be held in their absence.

4.1.10 Management reserve the right, with agreement, to inform a full time official/senior local official of a trade union, professional organisation or staff association of any disciplinary proceedings or action involving a member.

4.1.11 In cases where disciplinary action is taken against an employee regarding allegations that could be a breach of the code of practice of the applicable Professional Registration Body, the Trust reserves the right to refer their case to that professional body. Consideration should be given in respect of what stage this should occur and an immediate referral at investigation stage may be required. Where the professional body then suspends, removes or places conditions on an employee's professional registration, the Trust may need to take further disciplinary action.

4.1.12 An employee may request to be legally represented at hearings, only in respect of an Appeal, the outcome of which may impact on or exclude them from their ability to practice their chosen profession. Once a request has been made, the decision on this will be at the discretion of the Trust. In reviewing such a request, the gravity of the allegations and their consequences shall be considered. At such appeal hearings where an employee's request to be legally represented is approved, the Trust may do likewise and the employee shall be responsible for such costs as they may incur.

4.1.13 If an employee raises a formal grievance or formal complaint of bullying or harassment during the course of a disciplinary case, consideration will be given to suspending procedures whilst the grievance or complaint is addressed. Where the grievance and disciplinary cases are connected, it may be appropriate to deal with both issues concurrently. If an investigation finds that the grievance is groundless and that it was raised solely with the intention of avoiding or disrupting the disciplinary process, this will be resumed and consideration given to whether further disciplinary action should be taken in relation to this matter.

4.1.14 Unauthorised audio/visual recording of any meetings held as part of this procedure is not permitted by the Trust, unless there are exceptional circumstances and this should be by agreement in advance of the hearing.

4.2 DELEGATION OF AUTHORITY TO DEAL WITH DISCIPLINARY MATTERS

4.2.1 The authority to deal with disciplinary matters is delegated in accordance with the schedule attached at Appendix 1 to these procedures. It should be noted that the Managers referred to in the schedule are the level to whom authority is delegated. However the Trust reserves the right, where it considers it appropriate, to delegate such authority to other Managers. Should the level of a Manager, against whom disciplinary action is being contemplated, be equal to or higher than that of the level described in the schedule, a more senior decision maker will be required. As a general rule, no Manager may dismiss an immediate subordinate.

4.2.2 It is the manager with delegated responsibility who will, having reviewed the investigatory information, decide whether the matter needs to proceed to a disciplinary hearing.

4.3 SUSPENSION

4.3.1 Suspension from duty must only take place should there be no other option that would ensure the safety of patients and employees, protect the integrity of the investigation and ensure the alleged offense does not take place again. Some examples of alternatives to suspension that must be considered are working under restricted duties, in an alternative environment, working from home where appropriate or on non-clinical duties.

4.3.2 Authority to suspend rests with the appropriate senior member of staff on duty at the time. Following receipt of information which may lead to suspension of an employee, he/she may seek advice from a more senior member of staff on-call within the Trust before taking the decision to suspend. Advice must also be sought from a member of the People and Organisational Development Department.

4.3.3 In certain cases (e.g. where gross misconduct is suspected or alleged, where continued working may give rise to further misconduct or interfere with the process of fair investigation) management reserves the right to immediately suspend an employee. It should be made clear to the employee that suspension is a neutral act and not a disciplinary sanction nor is it a presumption of guilt, but a means of facilitating proper investigation and/or preventing further misconduct or allegation.

4.3.4 Whenever possible a suspension meeting will be arranged to advise an employee of their suspension. If an employee is off duty and all reasonable enquiry fails to contact the employee at home, they should be informed in writing not to commence duty, but to contact the writer of the letter (or some other named officer) as a matter of urgency.

4.3.5 At the time of suspension, the reason for it and, where established, its duration, together with advice that the employee should contact their trade union or professional organisation, will be notified to the employee and confirmed in writing as soon as possible. A copy of the suspension letter must be sent to the Human Resources Case Management Team. SBS should be advised in writing of the suspension with no reduction in normal pay.

4.3.6 Whilst on suspension staff will continue to receive their normal pay which means an average of contracted pay, paid over the previous 3 months.

4.3.7 Where an employee has been charged or convicted of a criminal offence and is in custody, on remand or restricted due to legal restrictions (e.g. curfew) and thus unavailable for work, the period of absence will be considered as unauthorised and therefore the employee will not be paid by the Trust.

4.3.8 Where an employee's registration with their professional body has been suspended or is subject to conditions of practice, reference should be made to the Trust's Professional Registrations Policy – Fitness to Practice – CORP/EMP 11. A lapse in registration can lead to suspension without pay or alternative employment arrangements; or possible dismissal where lapses in registration are not acted upon within a reasonable period of time.

4.3.9 Where a suspended employee fails to engage with the disciplinary process or fails to maintain contact during a period of suspension, the Trust reserves the right to suspend all pay.

4.3.10 Suspensions must be reviewed 2 weekly and contact maintained with the employee by the suspending manager or other designated person. At least fortnightly contact must be made should the suspension extend beyond 2 weeks.

4.3.11 During a period of suspension, it is expected that an employee should remain available for work. If professional registration is required, this should be maintained during suspension. It is reasonable to expect them to attend meetings in normal working hours, unless a period of annual leave has been booked and notified in advance of the meeting. Requests for annual leave should be submitted following normal departmental practice.

4.3.12 If an employee becomes too ill to work during suspension, this should be reported to their manager following normal absence notification procedures. Where this means an employee is unable to attend meetings held under this procedure, advice will be sought from Occupational Health regarding their ability to participate. In terms of administration, sickness absence takes precedence over suspension. This has the effect that the suspension is placed on hold until the individual is well enough to return to work. Once they are well enough to return, if the matter is ongoing, the suspension would be reinstated.

4.4 COUNSELLING

4.4.1 Many unsatisfactory situations of a minor nature occur because of misunderstandings about the content of the job, because employees have different learning

styles, or, in some cases, because employees do not realise the full importance of complying with particular parts of their terms and conditions.

4.4.2 There will, therefore, be many opportunities to resolve difficulties of a minor nature without the need to resort to formal disciplinary procedures. These can take many forms which will generally be referred to as counselling interviews and which will be conducted by the employee's immediate manager. At this stage efforts will be made to determine whether there are problems facing the employee either at work or domestically which could have a bearing on the situation and efforts will be made to try and resolve any such difficulties.

4.4.3 At this stage, there will be no necessity or right to involve a companion, first because the interview is of a counselling nature and secondly because many such interviews will take place, and indeed are best undertaken immediately. If an employee is dissatisfied with the conduct of such an interview, it will, of course, be open to them to raise this with their manager.

4.4.4 A written record should be made of any counselling discussions and provided to the employee, to enable both the manager and employee the opportunity to clarify exactly what standards are expected, what follow up actions are required and agree support that needs to be put in place. This should be agreed and signed by both the manager and employee.

4.5 CRIMINAL OFFENCES

4.5.1 The Trust reserves the right to take disciplinary action where alleged conduct or incidents, either within or outside the workplace, are subject to criminal or counter fraud investigations and, in certain circumstances, this could lead to dismissal. The Trust will consider the circumstances, the ability of the individual to fulfil their obligations in a satisfactory manner and their suitability for continued employment. This will include undertaking an assessment of the potential risk to patients and members of staff as well as reputational damage.

4.5.2 Where it appears that a criminal offence has been committed within employment (e.g. theft, fraud, assault etc.) the Trust will inform the LCFS, police or other appropriate parties.

4.5.3 Such cases will be dealt with, so far as possible, in accordance within this disciplinary procedure. However, this may not be possible if it interferes with either LCFS or police investigations or prejudices any court proceedings.

4.5.4 A senior manager, will decide whether disciplinary action is appropriate at any stage during or after the police investigation, prosecution, or any appeal procedure. A criminal offence within employment may amount to gross misconduct and result in dismissal, even if it is a first offence.

4.5.5 Where separate disciplinary matters arise from the same incident, apart from those directly related to the alleged criminal offence, they will be investigated and dealt with in accordance with the disciplinary procedure.

4.5.6 Where staff are unavailable for work due to a criminal conviction, they should be dealt with as detailed in paragraph 4.3.7 where appropriate.

4.6 FORMAL STAGES OF DISCIPLINARY ACTION

The selection from the disciplinary procedure of the sanctions appropriate for each breach of discipline is a matter of judgement for Responsible Managers having considered all the appropriate evidence at a disciplinary hearing and having regard to;

- [a] the seriousness of the disciplinary breach in question;
- [b] the circumstances or features of the particular case;
- [c] the employee's length of service and previous record;
- [d] any relevant professional codes of practice or conduct;
- [e] consideration of fairness, justice and consistency;
- [f] the requirements of employment legislation that the employer acts reasonably, having regard to equity and the substantial merits of the case.

The operation of this procedure will include one or more of the following stages:

- [1] Stage 1 - for which the issue of a recorded verbal warning will be appropriate;
- [2] Stage 2 - for which the issue of a first written warning will be appropriate;
- [3] Stage 3 - for which the issue of a final written warning will be appropriate;
- [4] Stage 4 – dismissal

In accordance with the provisions of paragraph 3.1, the Director of People & Organisational Development reserves the right for either the Director or a member of the P&OD department to participate at any stage of this procedure in the provision of advice. Managers are strongly advised to seek the guidance and/or the assistance of the Director of People & Organisational Development and P&OD staff, at any stage in the procedure but always when sanctions at either Stage 3 or 4 are being considered.

4.7 INVESTIGATION

4.7.1 Where circumstances necessitate it, the immediate supervisor should first establish whether, on first impression, a case exists, which if founded could lead to disciplinary action being taken. Prior to any formal investigation commencing, the immediate line manager must discuss the allegation with the employee to gain their initial response. If there appears to be a case, then the responsible manager will appoint an investigating officer who will conduct the investigation on their behalf. The investigation will be conducted in accordance with Appendix 3. Should the employee at this stage admit to the allegation against them, this shall be considered by the Responsible Manager and may potentially be handled under 4.7.5 - Sanction Outside of a Hearing.

4.7.2 Where the Responsible Manager believes there is a requirement for a formal disciplinary investigation, the employee should be advised accordingly of the nature of the allegations that are to be investigated and the arrangements made for an investigatory interview to be convened by the Investigating Officer.

4.7.3 After the Responsible Manager has given the employee notice of the allegation, the Investigating Officer will seek to establish the facts in accordance with the guidance given in Appendix 3. In collecting evidence, the Investigating Officer has a duty to act in good faith. No less than 7 calendar days prior to being called to any disciplinary hearing, the employee must be given a statement of the Investigating Officer's findings and all available documentation necessary for him/her to make sense of those alleged facts. In hearing the case and weighing the evidence, it is for the Chair of the panel to decide the degree of weight they attach to written evidence, as opposed to that which can be challenged by cross questioning of witnesses.

4.7.4 Having investigated a case where the facts warranted the consideration of disciplinary action, the employee must be called to a disciplinary hearing. The employee must be informed in writing, in advance, of the allegations against them that, if founded, may result in disciplinary action, and of their right to be accompanied. At this hearing the employee must be given the opportunity to state their case, to produce witnesses if required, and to respond to the investigating officers findings. They should be given the opportunity to address and to make representation to the panel with authority to take disciplinary decisions, prior to any decision being made. Upon being informed of the disciplinary decision, the employee must also be informed as to their right of appeal (see section 4.12).

4.7.5 Where an employee is accused of a breach of disciplinary rules which falls short of gross misconduct and acknowledges and admits their actions, issuing a sanction outside of hearing may be appropriate. This may be suggested by the investigating manager but, to demonstrate engagement with this process, it must then be requested, either by the member of staff or by the member of staff's union representative.

4.7.6 Usually a sanction outside of a hearing would not require the full and normal investigation process to be undertaken and concluded. However, the member of staff requires confirmation of the allegations against them in writing ensuring they are clear on

the detail of each allegation. A senior manager, usually General Manager / Head of Nursing, would be required to consider the request for a sanction outside of a hearing and can either agree to the request or reject the request. If the senior manager chooses to reject the request for a sanction outside a hearing the normal investigation and disciplinary hearing process will be followed. Any rejection should be accompanied by the rationale for this decision.

4.7.7 If, however, the Senior Manager chooses to agree to the request for a sanction outside of a hearing then the Senior Manager will consider the allegations against the member of staff, seek advice from colleagues in the People & OD Directorate and if appropriate discuss any mitigating circumstances with the member of staff or the member of staff's union representation. After giving the matter due consideration the Senior Manager will arrange to meet with the member of staff and the member of staff's representative, with support from the People & OD Directorate, and confirm the level of sanction and any other remedial action required. This will be confirmed in writing to the member of staff.

4.7.8 Due to the nature of requesting a sanction outside of a hearing and the fact that the member of staff has admitted wrong doing and accepted the allegations against them and the breach in Trust disciplinary rules it is not anticipated that the member of staff will exercise their right of appeal against the sanction given. However, if a member of staff chooses to exercise their right of appeal the Trust reserves the right to undertake a full investigation into the matter and follow the disciplinary process outlined in this policy.

4.8 DISCIPLINARY WARNINGS

4.8.1 If it is appropriate to the particular stage of the procedure to issue a written warning, then a letter confirming the warning should be provided within seven days of the disciplinary decision. The letter of warning must include:

- [1] the nature of the disciplinary action and a clear statement of the misconduct, i.e. the allegations
- [2] the reason for the action, together with a summary of the facts on which the disciplinary action is being based;
- [3] what is expected of the employee in future;
- [4] an explanation that this is a formal disciplinary warning which will be recorded and will be retained on the employee's personal file. The type of warning will be specified (e.g. verbal, first written warning or final written warning) as will any time limit given for improvement or review. (e.g. 6-12 months)

In the case of review, it must be made clear to the employee whether or not the review will be conducted at the end of the specified period or whether review will be a continuous process undertaken throughout the period. Similarly, whether or not (in the event of further unsatisfactory behaviour etc.) a decision as to further action

will be taken at the end of the review period or whether management reserve the right to take some further action at any time during the period.

In cases where a training need has been identified, as part of the review process, appropriate arrangements will be made for the employee to receive any necessary instruction and/or training to afford them an opportunity to acquire skills to appropriately discharge the duties of the post for which they are employed (in exceptional cases retraining may not be either appropriate or practical, and in such cases the employee and their companion will be given the reasons as to why management have taken this view). Normal rights to be accompanied apply if further action is contemplated.

[5] any warning will clearly state the period during which it will remain extant and/or upon the employee's personal file for reference purposes;

[6] notice that any subsequent misconduct of the same or of a similar nature will result in further, more severe, disciplinary action. The warning to be worded in such terms as to ensure that the employee is left in no doubt as to the consequences of any further breach;

[7] a statement of the employee's right and method of appeal.

4.8.2 All written warnings must be either handed to the employee in the presence of a reliable management witness, be posted to their stated or last known home address, or sent using a secure, verified e-mail address.. A copy will be given to the employee's companion.

4.8.3 Records of disciplinary hearing warnings issued and/or circumstances of dismissal will be retained by managers for the time limit specified at paragraph 4.11. On expiry of this period of time a written summary of the circumstances of each case will be made by the manager and retained on the personal file. Original documents, e.g. witness statements, will be removed from the personal file. Any expired warnings will be disregarded for the issuing of further sanctions. Whilst they will not be relied on for disciplinary decisions, they may be relied on to demonstrate repeated patterns of same/similar conduct.

4.9 DISMISSAL

4.9.1 Where a decision has been taken to dismiss, in accordance with this procedure, then the facts of dismissal must be confirmed by letter. The letter will include:

[1] the nature of the disciplinary action;

[2] a statement of the full reason for dismissal, together with a summary of the facts leading to the decision;

[3] full details of relevant current warnings taken into consideration;

[4] confirmation of the employee's right and method of appeal, giving time limits for appeal and stating how and to whom the appeal should be addressed.

[5] whether details of the case will be referred to any outside agency e.g., a professional body, ISA or the issue of an alert letter.

4.9.2 The letter concerning the decision to dismiss should be provided, if practicable, within seven days of the decision, either being handed to the employee or by being sent by first class post or recorded delivery to the employee's stated or last known home address, or sent using a secure, verified e-mail address. The letter will be signed by the person having delegated authority to dismiss (see Appendix 1).

4.10 ACTION SHORT OF DISMISSAL - TRANSFER OR DEMOTION

4.10.1 In addition to warnings and/or in place of other disciplinary outcomes a decision may be made to transfer or demote an individual. This decision cannot be made unless the misconduct was such to warrant dismissal, but has been reduced to another sanction when mitigating factors have been taken into account.

4.10.2 The employee will have a choice as to whether or not to accept these sanctions as an alternative to dismissal. If he / she refuse then dismissal will apply.

4.10.3 An employee who agrees to work at the downgraded position will accept that their wages / salary will be adjusted accordingly (i.e. protection of salary will not apply).

4.11 TIME LIMITS

4.11.1 In order to ensure a measure of consistency in respect of the period for which warnings will remain extant (i.e. the period during which repetition of the same or a similar offence will result in automatic reference to a subsequent stage of the procedure) the following limits will prevail in respect of the different types of warning:

[1] a recorded verbal warning will remain extant for a period of six months;

[2] a first written warning will remain extant for a period of six months;

[3] a final written warning will remain extant for a period of twelve months from the date of the letter of warning.

4.11.2 If the employee is absent from work for a period of over 4 weeks during the warning period, this will be extended to reflect this.

4.11.3 Full written records of circumstances leading to the decision will be retained for 24 months.

4.12 RIGHT OF APPEAL

4.12.1 Employees have the following rights of appeal:

[1] against the issue of a recorded verbal warning or written warning, to the next higher level of management not previously involved. The appeal to be lodged within 21 calendar days of the date of the warning letter;

[2] against dismissal, to the Chief Executive of the Trust, within 21 calendar days of the date of the letter of termination. Such appeals will be heard by a sub-committee of the Trust Board.

4.12.2 Such appeals should normally take place within five weeks of the receipt of the appeal by the Trust although it is acknowledged that there will be circumstances when it is required for this period to be extended. The employee shall be given at least 10 calendar days' notice of the appeal hearing. The outcome of any appeal hearing will be confirmed in writing.

5 TRAINING/SUPPORT

The training requirements of staff will be identified through a training needs analysis. Role specific education will be delivered by the service lead.

Managers should speak to the Case Management Team or their HR Business Partner if they require any further guidance or support.

6 MONITORING COMPLIANCE WITH THE PROCEDURAL DOCUMENT

What is being Monitored	Who will carry out the Monitoring	How often	How Reviewed/ Where Reported to
All Disciplinary cases	Responsible line manager	Commencement of the informal stage	HR Case Management Team
Applicability of policy	HR Business Partners/Senior Managers	Monthly	As part of Accountability Meetings
Currency	HR Case Management Team	Ongoing	Monitor developments in good practice/legislation

<p>Audit of cases</p> <ul style="list-style-type: none"> • Nature of allegation • Level of action taken • Action by staff group • Action by Division/Directorate • Action by Equality data • Number of appeals and the results 	Trust Board	Annually (or exceptionally)	Report considered and actions/changes commissioned
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7 DEFINITIONS

None identified

8 EQUALITY IMPACT ASSESSMENT

The Trust aims to design and implement services, policies and measures that meet the diverse needs of our service, population and workforce, ensuring that none are disadvantaged over others. Our objectives and responsibilities relating to equality and diversity are outlined within our equality schemes. When considering the needs and assessing the impact of a procedural document any discriminatory factors must be identified.

An Equality Impact Assessment (EIA) has been conducted on this procedural document in line with the principles of the Equality Analysis Policy (CORP/EMP 27) and the Fair Treatment For All Policy (CORP/EMP 4).

The purpose of the EIA is to minimise and if possible remove any disproportionate impact on employees on the grounds of race, sex, disability, age, sexual orientation or religious belief. No detriment was identified. (See Appendix 4)

9 ASSOCIATED TRUST PROCEDURAL DOCUMENTS

CORP/EMP 1 - Sickness Absence Policy

CORP/EMP 4 – Fair Treatment for All

CORP/EMP 11 - Professional Registrations Policy – Fitness to Practice

CORP/EMP 13 - The Conduct, Capability, Ill-Health and Appeals Policies and Procedures for Practitioners

CORP/EMP 14 – Raising Concerns: We Care, We Listen, We Act

CORP/EMP 25 – Capability Procedure: Managing Poor Performance

CORP/FIN 1D – Fraud, Bribery and Corruption Policy and Response Plan

10 REFERENCES

ACAS Code of Practice 1 – Disciplinary and Grievance Procedures. (Ref CP01)

ACAS Discipline and grievances at work – the ACAS guide (Ref H02)

www.acas.org.uk

APPENDIX 1 – SCHEDULE OF DELEGATED AUTHORITY TO DEAL WITH DISCIPLINARY MATTERS

The Directors of Services may only be suspended/disciplined/dismissed by the Chief Executive or Acting Chief Executive in their absence.

Deputy Directors, Care Group/Directorate Managers, and Heads of Service may only be suspended/disciplined/dismissed by the Director of Service or equivalent.

All other members of staff may only be suspended or disciplined by the appropriate Senior Line Manager, except in cases of gross misconduct. Members of staff would then normally only be disciplined by the Care Group/Directorate/Business/Unit/Ward Manager, Heads of Nursing, Senior Managers acting in a General Manager capacity, Matrons or the Director of that service.

In the case of gross misconduct advice must be sought from the People & Organisational Development Department

APPENDIX 2 – DISCIPLINARY PROCEDURE - STAFF COPY

This document forms part of your contract of employment

DONCASTER AND BASSETLAW TEACHING HOSPITALS NHS FOUNDATION TRUST

The Trust has made an agreement with the Staff Side Representatives to provide an agreed means for dealing with breaches of discipline.

DISCIPLINARY

Rules Relating to the Employment

As is recognised in the ACAS Code of Practice, any set of rules is unlikely to be exhaustive or embrace all the circumstances which may arise. The Trust realises that it is not possible to provide a set of disciplinary rules to cover all circumstances that arise.

The Trust recognises that because of the nature of the work involved, staff will often be required to follow practices and procedures which, because of their nature, cannot be written down precisely. In addition, the Trust recognises that many staff within the organisation are professionally qualified/highly trained and an essential feature of their work will be to exercise independent judgement, and any precise procedures may act as a constraint against this vital element.

All staff within the Trust should receive the necessary training and instruction to enable them to carry out their duties competently. Should you be unsure of how to complete a task, or if you are unsure about any particular practices or procedures, then you should contact your immediate superior for advice and guidance.

Your Appointing Officer or Head of Department will advise you of any specific rules or procedures which apply within your department and when a breach of these rules is likely to result in the form of disciplinary action.

It is important at the outset to attempt to establish the differences between action that may be taken following breaches of rules etc. (Conduct), and action which may be taken due to your ability to give an overall satisfactory performance of job duties. (Capability)

Where a breach of rules/procedures has occurred or your job performance through a specific incident is considered irresponsible, or you fail to carry out an important function or duty, then disciplinary action will be applied and will be related to the seriousness of the misdemeanour, unless counselling between yourself and manager is considered suitable to bring the matter to a satisfactory conclusion.

Where the overall performance of your duties is considered unsatisfactory, then this will be brought to your attention and you will be given every opportunity to improve, including the application of any Performance Appraisal system by the manager, and/or if appropriate special arrangements for alternative job duties as agreed between yourself and the manager concerned. Should your

performance fail to improve following the above course of action then capability procedure will be followed or disciplinary action may be applied, whichever is appropriate.

To help in your work, the following information sets out the circumstances when disciplinary action may arise:

[i] **Contractual Obligations** - As a member of the staff of the Trust, it is expected that at all times you will comply with the contractual requirements which you have entered into between yourself and your employer.

Your contract of employment, of which you have already received a copy, details the obligations which you have entered into in accepting employment.

[ii] **General Conduct** - You are reminded that your behaviour and actions both inside and outside of work should uphold the reputation of the Trust and your own professional/personal integrity. This includes postings on social networking sites.

[iii] **Attendance for Duty** - Your contract requires that you will present yourself for duty at the correct time and work for the hours stated. If you are subject to shift work your commencement of duty time may vary from week to week. You will be expected to present yourself for duty in such a manner that you can carry out your work competently and effectively.

[iv] **Smoking on Duty**. The Trust has a policy of no smoking on its sites. A copy of this may be seen on request. You are reminded that smoking in all areas of Trust premises is strictly forbidden.

[v] **Theft/Fraud** - Theft will involve any action in which property is removed and subsequently used for your own purposes. There are occasions when it will not necessarily even involve the removal of property, e.g. the consumption of food which has been provided for patients or other people, making private telephone calls without declaring them, and passing through the official mail, letters that are not of official business.

Claiming payment for time that you did not work is also a form of theft, e.g. making false entries on a time sheet or arranging for another person to clock you in or out.

Where disciplinary matters are associated with attempts to defraud or corrupt, then although normal disciplinary standards apply, the Trust will be required to notify the Police, Internal and external audit and NHS Counter Fraud Office

[vi] **Personal Harassment** - As a member of staff of the Trust it is expected that you will uphold the Trust policy, that it is the right of every employee to work in an atmosphere free of personal harassment and that you should take steps to promote such a workplace.

Personal harassment may include; bullying, unwelcome remarks or suggestions, malicious gossip, practical jokes, offensive literature or pictures, gestures, unnecessary physical contact, physical assault.

[vii] **Criminal/Civil Offences** - All charges and cautions brought against you for any criminal or civil offence, whether connected with your employment or not, must be reported immediately to your Head of Department.

[viii] **Unauthorised Presence on Health Service Premises** - Staff are reminded that they should only be on Health Service premises for official purposes or in a private capacity in the same way as hospital visitors or as a visitor to an official or private function, except for those staff who are resident when they have access to their area of residence and to the hospital dining rooms.

[ix] **Private Business** - Private business arrangements in paid time are forbidden. Private business arrangements are where an individual member of staff undertakes other work during paid time, where patients and other members of staff are customers, the results of which provide additional personal income by way of cash or goods, i.e. running mail order catalogues.

[x] **Confidentiality** - The nature of all Health Service work, especially that relating to information about patients *and staff* is highly confidential. Any unauthorised disclosure to any outside person or agency or misuse of information will be treated as a serious breach of discipline, *All staff are required to safeguard personal data in accordance with the requirements of the Data Protection Act 1998.* If you are ever in doubt please consult with your Head of Department or Manager.

[xi] **Gifts** - All staff are strictly forbidden to seek gifts, including money, in respect of any services provided. Staff are also strictly forbidden to accept money, or any gifts which are offered as an inducement to provide or accept services.

[xii] **Declaration of Interests** - All employees should declare such interests to the Trust where they have a relevant and material interest in a business or other activity which may lead to the supply of either goods or services to the Trust.

[xiii] **Unauthorised Use of Computer Systems** - Staff must not make unauthorised access to, modification to or copy computer material in breach of the Computer Misuse Act 1990. Staff should only access information required to do their job

Access to Internet sites which are not work related is strictly forbidden, as is the download of any programs or utilities which are not supported by Computer Services or which may affect the computer systems.

Receiving, sending or distributing offensive material, e.g. racist, sexist or pornographic material will result in disciplinary action, possibly dismissal.

The examples quoted above do not constitute an exhaustive list.

Disciplinary Action

It is important that the gravity of any disciplinary action should be related as closely as possible to the nature and seriousness of the misdemeanour. It is accepted that the vast majority of misdemeanours will be dealt with satisfactorily by counselling between yourself and the manager concerned. It is, therefore, important that in order for the counselling stage to be constructive, the counselling will not be regarded as part of any formal disciplinary action.

Where formal disciplinary action is seen to be necessary, then one or more of the under-mentioned will be applied:

Verbal Warning

First Written Warning

Final Written Warning

Dismissal

In addition, where a manager is able to deal with breaches of discipline in an alternative satisfactory way, which is accepted by both yourself and the manager, then this course of action may be taken.

Factors Related to Disciplinary Action

[i] At all points, you will be given every opportunity to present whatever facts you wish to be taken into account, at a personal interview.

[ii] Apart from counselling, at all formal hearings you will have the right of being accompanied by a companion who may be a recognised representative of your trade union or alternatively, you may choose to be accompanied by a work colleague. This right does not extend to other meetings within the disciplinary process e.g., investigatory meetings. However, staff may be accompanied by a companion at these, provided that this does not cause an unreasonable delay in the process.

[iii] Any disciplinary action resulting in the issuing of a verbal warning or a first written warning will be disregarded if, in the ensuing six months, there has been satisfactory conduct. The period will be twelve months in the case of a final written warning. Any expired warnings will be disregarded for the issuing of further sanctions. Whilst they will not be relied on for disciplinary decisions, they may be relied on to demonstrate repeated patterns of same/similar conduct.

[iv] Following any interview at which any decision is made to issue you with a first written warning, a final written warning or a decision taken to dismiss you, you will receive within seven calendar days a letter concerning any such action taken, stating the nature of the action together with a summary of the alleged facts upon which the action was based. You may ask for a copy of any letter for your companion.

Gross Misconduct

Gross misconduct is an act which is so serious that it overturns the employment contract, and will justify summary dismissal (this is dismissal without notice)

It is for the Trust to determine if an act is gross misconduct, however examples of what gross misconduct might include are;

- Theft or fraud
- Physical violence or bullying
- Deliberate and serious damage to property
- Serious misuse of an organisation's property or name
- Deliberately accessing internet sites containing pornographic, offensive or obscene material
- Serious insubordination

- Unlawful discrimination or harassment
- Bringing the organisation into serious disrepute
- Serious incapability at work brought on by alcohol or illegal drugs
- Causing loss, damage or injury through serious negligence
- A serious breach of health and safety rules
- A serious breach of confidence

Appeals

You will have a right of appeal if you have been subject to disciplinary action resulting in your employment being terminated this will be submitted to the Chief Executive. However, if you are dissatisfied with the issuing of a verbal warning or written warning, you may appeal in writing to the next higher level of management.

All staff are reminded that they may have access to the official disciplinary procedure operating within the Trust via the Trust intranet.

APPENDIX 3 – GUIDANCE NOTE FOR MANAGERS

Guidance Note for Managers

- Section 1: The Investigation
- Section 2: The Use of Suspension
- Section 3: Investigating Officers
- Section 4: Witness Statement
- Section 5: Clinical Investigations
- Section 6: Procedure to Follow at a Disciplinary Hearing
- Section 7: Disciplinary Decisions
- Section 8: Investigation of Fraud and Corruption

INTRODUCTION

1 There can be few decisions which can reflect an organisation's management style more than those made in the disciplinary setting. These guidance notes are written with the intention of facilitating appropriate management action that will ensure fair and judicious decision in the disciplinary arena. The Trust disciplinary procedure is agreed with the Staff Side and together they have produced a document which reflects management's responsibility to maintain discipline, which is understood by all staff, and which ensures that all disciplinary matters will be dealt with in a fair and consistent manner. Managers should make themselves fully conversant with the procedure and address any enquiries to members of the People & Organisational Development department before commencing any action within the procedure.

OBJECTIVES OF THE PROCEDURE

2 The objectives of the disciplinary procedure are:

- 2.1 To promote improvement in individual conduct and not simply to be used as a means of imposing sanctions. The formal procedure should, therefore, only be used when informal avenues have been fully explored.
- 2.2 To promote fairness, order and consistency in the treatment of individuals for alleged failures to meet the required standards of work or conduct.
- 2.3 To ensure that employees are made aware of the standards of conduct expected of them.
- 2.4 To give ample warning to individuals of the consequences of failing to achieve or maintain those standards.
- 2.5 To guide managers and supervisors in the day to day dealings with those they supervise.
- 2.6 To provide for full and speedy consideration by management of all the relevant facts in order that disciplinary action can be applied equitably.

REPRESENTATION

3.1 Employees have a statutory right to be accompanied by a companion where a disciplinary hearing could result in:

- A formal warning being issued; or
- The taking of some other disciplinary action; or
- The confirmation of a warning or some other disciplinary action (appeal hearings)

3.2 Staff may be accompanied by a companion at other meetings within the disciplinary process e.g. investigatory meetings, provided that this does not cause an unreasonable delay in the process.

3.3 A companion may be a work colleague, or a trade union representative.

3.4 It would not be reasonable for an employee to be accompanied by a companion whose presence would prejudice the hearing, nor would it be reasonable to be accompanied by a full time officer companion when there is someone suitable and willing available on site, particularly where this introduces unreasonable delay to the process.

3.5 Further guidance on rights to be accompanied by a companion can be found in the ACAS Code of Practice on Disciplinary and Grievance procedures. Where agreement cannot be reached then the principals contained within the code of practice will apply.

CHECKLIST FOR HANDLING A DISCIPLINARY MATTER

4.1 This checklist sets out the key steps which Responsible Managers should consider when handling a disciplinary matter. All managers should observe the principles of natural justice embodied below:

4.2 Gather all the relevant facts:

- Promptly before memories fade seeking statements from staff member/witnesses
- In serious cases, consider suspension with pay whilst an investigation is conducted (see Section 2)
- Where matters involve clinical matters refer to Section 5.
- Where fraud is suspected, advice needs to be sought without delay from the Local Counter Fraud Specialist (LCFS). It is vital that allegations of fraud are referred without delay to prevent the loss or tampering of potential evidence sources. Fraud investigations are carried out independently to the disciplinary process and follow legal procedures enshrined in criminal law and as directed in the NHS Counter Fraud and Corruption manual. Guidance for referring allegations of fraud are contained in the Fraud, Bribery and Corruption Policy and Response Plan or can be made by calling the confidential NHS Fraud & Corruption Reporting Line on: 0800 028 40 60.

4.3 Be clear about the complaint(s) and the investigation. Prime facie (on first impression) decide if action is needed at this stage.

4.4 If yes, decide whether the action should be:

- Advice and counselling (informal)
- Formal Investigation

4.5 If informal counselling is the decision, a meeting should take place within 7 calendar days to conclude the matter. This timeframe can be extended with agreement of both parties:

- Don't forget to record the discussion/objectives in the personal file

4.6 If there is a prima facie case and a formal investigation is required, appoint an investigating officer to commence the investigatory process (See Section 1)

4.7 If a formal investigation has taken place, you should undertake a review of the investigation report and decide whether or not the matter should proceed to a formal disciplinary hearing.

4.8 If your decision is to proceed to a disciplinary hearing then you should arrange a disciplinary hearing as appropriate.

4.9 Arrange for an appropriate panel to be constituted. You should never conduct these matters on your own and you should always be accompanied by a member of the People & Organisational Development Department for disciplinary hearings where the outcome may be final warning or dismissal.

4.10 Please remember that all employees subject to investigation under the procedure should be given the opportunity to be accompanied at any disciplinary hearings by a companion who could be their trade union representative or a work colleague.

4.11 Invite the member of staff to the disciplinary hearing. The letter should include the following information;

- Date, time and venue of the hearing
- Allegations which will be addressed
- Copies of any documents to be considered by the panel at the hearing, including the management report, witness statements, and any other documentary evidence.
- Right to be accompanied
- Right to call any witnesses
- That a formal disciplinary outcome is likely
- If the matter is so serious that the panel may consider dismissal, then this should also be stated.

4.12 Ensure delivery of documents is evidenced.

4.13 If an employee or their companion cannot attend the disciplinary hearing, the employee must propose a reasonable alternative date for a hearing within 10 calendar days of the original date. If it is acceptable, the employer will re-arrange the hearing for the new date. A hearing may only be rescheduled on one occasion.

4.14 Ensure that an accurate record of proceedings is taken.

4.15 Further guidance on the disciplinary hearing can be found at Section 6.

SECTION 1: THE INVESTIGATION

A1.1 A crucial ingredient for the fair handling of disciplinary matters is an adequate investigation. This does not necessarily mean exploring every avenue, but it does mean:

- Enquiring into the circumstances surrounding the suspected or alleged misconduct;
- Obtaining a statement from the respondent.
- Giving the employee a chance to offer an explanation;
- Taking a balanced view of the information that emerges;
- Enabling the Responsible Manager to reach a decision on whether or not there are sufficient grounds for an allegation of misconduct; and if so, deciding whether it should be dealt with informally or under the disciplinary procedure (formal).

A1.2. Ensure that all supervisors and managers are sufficiently aware of their responsibilities for managing their staff and how to initiate action under the disciplinary procedure if the need to do so arises.

A1.3 The responsible manager will decide who will investigate the alleged misconduct and provide these persons with sufficient authority to undertake the investigation, to suspend the employee if necessary, and be provided with sufficient information about the conduct of investigations to enable matters to be both speedily and adequately handled. (See Section 3 - Investigating Officers, Section 5 for matters associated with Clinical Investigations and Section 8 for matters of fraud.)

A1.4 The person conducting the investigation should normally interview the employee as a preliminary step, making it clear that it is not a formal disciplinary hearing but an investigatory interview to hear any response the employee may wish to make about the suspected or alleged act of misconduct and to establish the facts of the case. Notes should be taken of the meeting.

A1.5 The investigating officer should always be accompanied at an investigatory meeting by either a member of the People & Organisational Development Department or another member of management.

A1.6 The employee may have a companion in attendance if he or she so wishes as long as this does not result in an unreasonable delay to the investigation meeting.

A1.7 Other persons believed to have information about the alleged misconduct (witnesses) may also be interviewed and/or written statements obtained from them. Statements should be signed and dated. Where statements are provided electronically and a signature is unavailable, these should be received from a secure, verified e-mail address. Where the statements contain sufficient correlating information, it may be decided not to interview and to take the statements as read. Do not rely on private conversations which may not be substantiated at a later date.

A1.8 On completion of the investigation, the investigating officer should prepare a statement of what facts have emerged from the enquiries. The facts and documents should be assembled and

presented to the responsible manager. If the matter proceeds to a disciplinary hearing then any relevant information collected during the course of the investigation will be made available to the individual prior to the disciplinary hearing.

A1.9 The responsible manager will be required to decide whether the matter needs to be considered within the context of the disciplinary procedure (normally a formal hearing) and, if so, the employee should be informed of this decision and the hearing convened.

A1.10 If a hearing is decided upon, the employee should be given copies of all the statements obtained during the course of the investigation and any other documents/evidence relevant to the matter which will be referred to during the hearing. If any of them support any contentions put forward by the employee during the investigation, then these will be made available also.

A1.11 The delivery of all documents relating to the disciplinary matter should be clearly evidenced.

SECTION 2: THE USE OF SUSPENSION

A2.1 When an allegation is made against a member of staff which, if well founded, might lead to disciplinary action, suspension may be considered. If it is, it is most important that any decision is taken after carefully considering the reasons for doing so.

A2.2 It is important to remember before suspending a member of staff that consideration should be given to alternatives to suspension. Some examples of alternatives to suspension are working under restricted duties, in an alternative environment, working from home where appropriate or on non-clinical duties. Consideration should also be given to restriction of access to Trust property and assets such as IT systems and restricted areas.

A2.3 It should be borne in mind that suspension from employment on full pay is not punitive in nature, it is not part of the disciplinary process and under no circumstances does it constitute disciplinary action or indicate guilt. This is complicated by the fact that it is by its nature very public, in contrast to the disciplinary process itself, which should remain in the strictest confidence throughout.

A2.4 If the employee is in custody convicted of a criminal offence then they will be suspended on no pay on the grounds that they are not available to report to work.

A2.5 Where an employee's registration with their professional body has been suspended or is subject to conditions of practice, reference should be made to the Trust's Professional Registrations Policy – Fitness to Practice – CORP/EMP 11. A lapse in registration can lead to suspension without pay or alternative employment arrangements; or possible dismissal where lapses in registration are not acted upon within a reasonable period of time.

A2.6 The most frequent reasons for suspending staff are:

- Where the employer considers it necessary to allow an acutely intense situation to settle - a "cooling off" period - while the incident/allegations are investigated;
- Where an employer needs more time to investigate the circumstances surrounding an allegation of misconduct or incompetence;
- Where the investigation of a case may be hindered by the presence of the person under investigation;
- Cases where the employer believes there is good reason for concern for the safety/wellbeing of patients and/or staff;
- In the rare circumstances where dismissal for gross misconduct is being considered.

A2.7 The terms of the suspension should be set out clearly in writing to the employee and should include an instruction not to attend any Trust premises except at the investigation, at the request of the investigating officer to discuss the case being investigated, or as a normal member of the public in terms of attending at the hospital for treatment or care and/or visiting.

A2.8 The period of suspension should be as short as possible, consistent with the management and investigation of the case. To ensure that this is so, a 2 weekly review of this aspect of the case is valuable, specifically focusing on whether the reason for suspension is still valid. Since suspension is not in itself disciplinary action, lifting this restriction need not compromise the management of the case.

A2.9 During a period of suspension, it is expected that an employee should remain available for work. If professional registration is required, this should be maintained during suspension. It is reasonable to expect them to attend meetings in normal working hours, unless a period of annual leave has been booked and notified in advance of the meeting. Requests for annual leave should be submitted following normal departmental practice.

A2.10 If an employee becomes too ill to work during suspension, this should be reported to their manager following normal absence notification procedures. Where this means an employee is unable to attend meetings held under this procedure, advice will be sought from Occupational Health regarding their ability to participate.

A2.11 Where a suspended employee fails to engage with the disciplinary process or fails to maintain contact during a period of suspension, the Trust reserves the right to suspend all pay.

SECTION 3: INVESTIGATING OFFICERS

A3.1 Under the Trust's disciplinary procedure the role of the investigating officer is paramount. He/she will collect and collate all the available evidence, provide a summary of the facts of the case to the responsible manager. He/she will attend any resultant disciplinary hearing and present the supporting facts and material; it follows, therefore, that the investigating officer can neither adjudicate at the hearing nor be in any way involved/connected with the allegation.

A3.2 The investigating officer will normally be the immediate supervisor of the employee against whom the allegation is made, except where this supervisor is involved or connected with the allegation. However, any member of management can be appointed as an investigating officer and this decision must rest with the Responsible Manager who will ultimately adjudicate at the disciplinary hearing and will always be at least one step removed from the employee concerned, i.e. the immediate supervisor's manager.

A3.3 There is a statutory right for employees to be accompanied by a companion at a disciplinary hearing where;

- A formal warning is being issued; or
- The taking of some other disciplinary action; or
- The confirmation of a warning or some other disciplinary action (e.g. appeal hearing)

There is therefore no statutory right for employees to be accompanied at investigatory interviews, or meetings to suspend an employee. However the Trust will under normal circumstances allow employees under investigation, interviewed as part of a formal investigation to have a companion in attendance if he or she so wishes as long as this does not result in an unreasonable delay to the investigation.

Checklist of Procedures for Investigating Officer

A3.4 The guidance below sets out clearly the steps to be taken by the investigating officer from being asked to undertake the role to presenting the facts at any subsequent disciplinary hearing.

A3.5 All aspects should be handled both promptly and adequately

A3.6 Obtain a brief of the allegation from the responsible manager and any supporting documents already to hand.

Where the allegation involves "professional" conduct, then the Responsible Manager, in conjunction with the investigating officer, will ensure that the appropriate advice is accessed and appropriate professional codes of conduct/practice are reviewed.

A3.7 Consider the brief and set down an action plan considering witnesses to be seen and any further documentary evidence to be obtained, e.g. NMC and other professional Codes of Conduct, other relevant Trust policies and procedures, job descriptions, Standing Financial Instructions, etc.

A3.8 Obtain further documentary evidence.

A3.9 Request witnesses to complete a witness statement (see Section 4) without delay whilst events are fresh in their minds. Collect statements promptly. If necessary arrange individual appointments with witnesses to discuss their statements and clarify as necessary. The purpose of these meetings should be fully explained and should normally be held within one week of the allegation being made.

A3.10 Write to the employee concerned in the allegation, without delay, giving full details of the allegation and if appropriate asking him/her to provide a written statement in response. Arrange a meeting to discuss the allegations and evidence ensuring that the employee is aware that the meeting is an investigatory interview and not part of the disciplinary hearing, and explain that the employee may have a companion in attendance if he or she so wishes as long as this does not result in an unreasonable delay to the investigation.

A3.11 If appropriate arrange this meeting as the last of your interviews so that you have all the witness statements to hand and can interview the employee concerned adequately. Arrange interviews for the same day where possible.

Please ensure throughout, that all employees interviewed are aware of your role, the purpose of the meeting, and possible outcomes.

A3.12 Set aside a quiet, undisturbed room for the interviews and ensure that you are accompanied at the meeting by a member of the People & Organisational Development Department. (see A1.5). It is advisable to conduct the interviews on the same day where possible and to check and double check the points raised.

A3.13 Thank the witnesses for their assistance and inform them that they may be called as witnesses at any subsequent disciplinary hearing and that notes of the meeting may also be used/shared at any disciplinary hearing. Re-assure as necessary.

A3.14 Use open questions to clarify unclear points. Do not ask leading questions.

A3.15 Accurately record details of interviews, paying particular attention to any discrepancy within the original statement/information and clarifying any change in response. Arrange for the details to be typed up for use at any subsequent hearing, and forward a copy to the individual concerned for information.

A3.16 Thank the employee concerned for his/her assistance and give an assurance of early contact regarding the outcome of the investigation.

A3.17 Consider all the facts and prepare a written statement (management report) of what has emerged from the enquiries.

A3.18 Provide the responsible manager with a copy of your management report together with all the documents and any other evidence gathered as part of your investigation.

A3.19 Attend any subsequent disciplinary hearing/appeal to present "management's case" and any supporting facts and evidence and answer questions as required.

A3.20 If, during the course of your investigation, you find that a serious breach of discipline has occurred, you may consider suspending the employee concerned on full pay as a precautionary measure, pending the outcome of the matter. This authority was delegated to you upon appointment as the investigating officer, noting that paid suspension is not punitive and must be confirmed in writing as soon as possible. However, see Section 2 and advice should be sought from People and Organisational Development.

Witness Statements

A3.22 Request statements from eye witnesses and any others involved, Investigating officers should adopt a supportive approach to witnesses, respecting how difficult the process can be for some employees. -. However individual employees do have a contractual duty to co-operate fully with Trust investigations and if an individual is required to participate, this would be considered to be a reasonable management instruction.

A3.23 No pressure should be brought to bear to try and generate a witness statement.

A3.24 Statements should be obtained as soon as possible, as not only will this mean that evidence is being taken whilst it is still fresh in the mind of the witness, but it should also minimise the recollection becoming biased by the pressure of colleagues or others. See Section 4.

A3 25 In exceptional circumstances, if a witness will not actually commit themselves to a written statement then the witness should be interviewed and detailed notes of the interview made. Send a copy of the notes of the meeting to the witness for information.

You should also advise them that whilst they are not willing to make a statement, they may be required to attend any subsequent disciplinary hearing in order to give evidence to the notes of the meeting.

SECTION 4: WITNESS STATEMENTS

Details of Incident Being Investigated (Date, Time, Place Etc.)

Name of person writing the statement

Position of person writing the statement

Date of statement

Normal place of work

Place where statement written

Confirmation of names and posts of any other persons present during the incident

Statement

Please give full details of what you observed and what you believed were the facts, in your own words, including the reason why you were in that vicinity (please continue overleaf if necessary).

Sign and date the statement.

SECTION 5: CLINICAL INVESTIGATIONS

A5.1 In addition to the requirements as set out for Investigating Officers under Section 3 of this appendix; the following are some issues that would need to be considered in relation to an investigation surrounding clinical practice. This list is not presumed to be exhaustive but simply is an indicator of matters that need to be considered.

A5.2. Policies and Procedures

- Are there Trust or local clinical guidelines, protocols or procedures which underpin the clinical practice?
- Are there national guidelines which underpin practice?
- Is there a professional body or an organisation which promotes good practice in this area?

The Investigating Officer will need to clarify:

- Is there a national or local position on this issue or is the issue relevant only to this Trust?

Other issues that Investigating Officers will need to consider through the investigation process are the extent to which professional judgement was appropriately exercised and which sections, if any, of Professional Codes of Conduct/Practice are in question.

A5.3 Documentation

Documentation is of crucial importance when investigating clinical practice. The following are issues which need to be examined:

- What was recorded is it to an expected standard, taking into account the environment, staffing levels, pressures, skill and grade of nurses?
- Does the investigation support what is recorded in the documentation?
- Are the supporting documents required to assist the investigation, i.e. controlled drug register etc Please note that where patient notes are used as supporting documents these must always be redacted.

NB It is important to note that the conduct of the individual must always be related to their experience and qualification and judged in relation to the expected standard.

A5.4 Equipment

If the investigation requires examination and referral to equipment, the following issues need to be considered.

- Are there guidelines for maintaining equipment in those areas?
- What training in the use of the equipment has been given?
- Is there a clear line of responsibility for ensuring that equipment is used and maintained in an appropriate manner?
- Has the current equipment been adapted for use by the staff suitable for their own needs based on their practice?

Are the differences in clinical practice highlighted by a senior member of staff via the induction process of a new member of staff to that area?

A5.5 Roles of the Clinician

If a procedure has not been undertaken it needs to be established:

- Who should have informed the clinician that the procedure was required to be undertaken?
- Has the procedure been undertaken previously?
- Are there any precedents?
- Has the individual had any counselling in respect of alleged poor performance in this area?

NB There is a separate procedure to follow for Medical and Dental Staff.

SECTION 6: PROCEDURE TO BE FOLLOWED AT DISCIPLINARY HEARING

- A6.1. The Management representative shall state the Management case in the presence of the employee and the employee's representative, and call witnesses as appropriate.
 - 6.2. The employee or his/her representative shall have the opportunity to put questions to the Management representative and each of the witnesses called in turn.
 - A6.3. The members of the panel will have the opportunity to ask questions of the Management representative and each of the witnesses in turn.
 - A6.4. The Management representative will have the opportunity to re-examine any witnesses called on any matter referred to in cross-examination by members of the panel and/or the employee or his/her representative.
 - A6.5. The employee or his/her representative shall put their case in the presence of the Management representatives and call witnesses as appropriate.
 - A6.6. The Management representative will have the opportunity to question the employee, the employee's representative and each witness called in turn.
 - A6.7. Members of the panel will have the opportunity to ask questions of the employee, the employee's representative and each witness called in turn.
 - A6.8. The employee or his/her representative will have the opportunity to re-examine any witness on any matter referred to in cross-examination by the Management representative and/or members of the panel.
 - A6.9. The Management representative will have the opportunity to make a closing statement to sum up the case.
 - A6.10. The employee or his/her representative will have the opportunity to sum up their case.
 - A6.11. In their final summing up neither party may introduce any new matter or evidence.
 - A6.12. There is nothing in the above procedure to prevent members of the panel from inviting either party to clarify any statement they have made, or to ascertain if they propose to call evidence in respect of any parts of their statements, or alternatively whether they are speaking from personal knowledge.
 - A6.13. If either representative is speaking from personal knowledge then they will be able to be questioned by the Management or Staff Side representative, as appropriate, and by members of the panel.
 - A6.14. The panel may, at its discretion, adjourn the hearing in order that further evidence may be produced by either party. To facilitate a proper hearing both Management side and the Employee and their companion if they have one, will withdraw whilst the panel considers.
- If recall is necessary both parties shall return even if only one is concerned with the point that is giving rise to doubt.

SECTION 7: DISCIPLINARY HEARING PROCESS AND DECISIONS

A7.1 Any responsible manager adjudicating at a hearing under the Trust disciplinary procedure, as a member of the panel or as an individual, has the responsibility for disciplinary decisions and is expected to act reasonably in the interests of fairness to the Trust on the one hand and fairness to the individual on the other. If disciplinary action results in dismissal, the responsible manager might have to explain his or her decision at an appeal hearing or to an Employment Tribunal, if the dismissed employee satisfies the legal requirements to go there and chooses to do so. In some circumstances, if the employee fails to respond to formal warnings and is dismissed for a further act or omission, the reasonableness of the warning may be challenged if the dismissal would have been unlikely but for the existence of the previous formal warning on the employee's record. The employee has a right of appeal under the Trust's disciplinary procedure, and those hearing the appeal would wish to know how and why the initial decision was taken.

A7.2 At the hearing the responsible manager should open the hearing by:

- Introducing those present and explain the purpose of the hearing and the process which will be followed (as per Section 6).
- Setting out the nature of the allegation(s) and the potential outcome.

A7.3 Except in the most exceptional cases, call an adjournment to consider the evidence before reaching a decision.

A7.4 These considerations put a burden on the responsible manager to act with reasonable objectivity, fairness and consistency. Whatever the foreknowledge of the responsible manager, he or she must act with impartiality before reaching a decision. To do this, the following questions should be posed before a decision is reached.

1. Has there been as much investigation as is reasonable in the circumstances?
2. Have I paid sufficient regard to any explanation put forward by or on behalf of the employee?
3. Do I genuinely believe that the employee has committed the misconduct as alleged?
4. Have I reasonable grounds on which to sustain the belief that on the balance of probabilities (i.e. is it more likely than less likely) that the employee did what is alleged?

A7.5 "Yes" answers to each of these questions will mean finding that the employee has committed the act of misconduct. What to do about it will then become the next consideration for the manager. Three further questions will help with this, namely:

1. Is the conduct sufficiently serious to justify the disciplinary decision I am contemplating?
2. Have I given due regard to any mitigating circumstances put forward by or on behalf of the employee (and any response to these by management's representative, if any)?
3. Is it consistent with other decisions made in similar disciplinary cases heard within the Trust.

The member of the People & Organisational Development Department will be able to advise on such matters.

A7.6 If then, after full consideration of these questions, a decision is taken that dismissal is the appropriate sanction, the prospects of the employee being successful at an Employment Tribunal will be significantly reduced if the manager, when giving evidence at a Tribunal about the reasons for the dismissal and how the decision was arrived at, presents the 7 questions to the Tribunal and explains that each was carefully and sequentially answered by them with a firm "yes", or by the panel if there was one, before taking the decision to dismiss.

A7.7 It is, therefore, imperative that a full and accurate record of both the hearing and the deliberations is made, as soon as possible after the hearing is concluded, and kept with all the case papers.

A7.8 Such records are invaluable when deliberating on the case in the future. It could be a number of months before the case, if it is referred to an Employment Tribunal, is heard.

A7.9 With regard to less serious disciplinary hearings, the same degree of record keeping should be maintained.

A7.10 When the decision about which sanction if any to award has been made, the disciplinary hearing should be reconvened to:

- Inform the individual of the decision of the panel and the sanction taken, if any.
- To explain the reason for the decision.
- Explain their right of appeal and how it operates.
- In the case of a warning, explain what improvement is expected, how long the warning will last, and what the consequences of failure to improve may be.

A7.11 The outcome of the hearing should be confirmed in writing, ensuring that reasons for the decision are clear and are directly related to the allegations set out in the letter inviting the individual to the disciplinary hearing.

SECTION 8: INVESTIGATION OF FRAUD AND CORRUPTION - SOME KEY ISSUES

A8.1 The Trust is committed to eliminating any potential for fraud or corruption within it and an integral part of the investigation of such matters is having procedures in place to:

- Encourage prevention
- Promote detection
- Identify a clear pathway for investigation under the auspices of the Trust Disciplinary Procedure.

A8.2 The Trust is already involved in a high degree of external scrutiny of its affairs by a variety of bodies such as:

- District Audit - the External Auditor
- Audit Commission
- Central Government Departments and Parliamentary Committees
- HM Customs and Excise
- Inland Revenue
- NHS Counter Fraud Service

A8.3 Staff should be encouraged to raise any concerns they may have on issues associated with fraud or corruption and that they may do this in the knowledge that these allegations will be treated in confidence, as all allegations are, and properly investigated. Where they believe a route is necessary other than the normal line management relationship, then they are able to raise concerns via alternative routes such as:

- The Trust's Local Counter Fraud Specialist
- Chief Executive
- Executive and Non-Executive Directors
- Audit Committee
- Internal Audit
- External Audit
- NHS Fraud & Corruption Reporting Line
- NHS Protect online

A8.4 Staff may wish to consult policy CORP/EMP 14 – Raising Concerns: We Care, We Listen, We Act, which provides further guidance in raising concerns in the Trust in difficult situations.

A8.5 This would equally apply to members of the public who believe they have information regarding allegations of fraud or corruption.

A8.6 The investigating officer (identified under Section 3) will be responsible for following up an allegation of fraud or corruption received and, in addition to beginning the investigation, they will notify immediately the Internal Audit Service, the Local Security Manager Specialist as appropriate, and the Director of Finance . They should also involve at this stage the Director of People & Organisational Development in order to obtain the appropriate advice.

A8.7 An integral part of the investigation of any alleged fraud or corruption will be to ensure compliance with:

- Trust Standing Orders
- Standards of Business Conduct & Declaration of Interests
- Compliance with Trust Standing Financial Instructions

A8.8 The investigation of allegations of fraud and corruption should be used pro-actively in order that the Trust is able to maintain a continuous overview over such arrangements. In particular through the Director of Finance, Internal Audit Service, the Local Security Manager Specialist, Standing and Financial Instructions, and Accounting Instructions to ensure that there is a co-ordinated approach that is developmental.

APPENDIX 4 - EQUALITY IMPACT ASSESSMENT PART 1 INITIAL SCREENING

Service/Function/Policy/Project/ Strategy	Care Group/Executive Directorate and Department	Assessor (s)	New or Existing Service or Policy?	Date of Assessment
Disciplinary Policy	People & OD	Anthony Jones	Existing	29 January 2018
1) Who is responsible for this policy? People & OD				
2) Describe the purpose of the service / function / policy / project/ strategy? Set out principles and procedures for disciplinary arrangements in the Trust				
3) Are there any associated objectives? Employment Law; ACAS Code of Practice				
4) What factors contribute or detract from achieving intended outcomes? – Conduct of staff; capability of managers				
5) Does the policy have an impact in terms of age, race, disability, gender, gender reassignment, sexual orientation, marriage/civil partnership, maternity/pregnancy and religion/belief? No				
<ul style="list-style-type: none"> • If yes, please describe current or planned activities to address the impact 				
6) Is there any scope for new measures which would promote equality? No				
7) Are any of the following groups adversely affected by the policy?				
Protected Characteristics	Affected?	Impact		
a) Age	No			
b) Disability	No			
c) Gender	No			
d) Gender Reassignment	No			
e) Marriage/Civil Partnership	No			
f) Maternity/Pregnancy	No			
g) Race	No			
h) Religion/Belief	No			
i) Sexual Orientation	No			
8) Provide the Equality Rating of the service / function /policy / project / strategy – tick (✓) outcome box				
<input checked="" type="checkbox"/> Outcome 1	<input type="checkbox"/> Outcome 2	<input type="checkbox"/> Outcome 3	<input type="checkbox"/> Outcome 4	
<i>*If you have rated the policy as having an outcome of 2, 3 or 4, it is necessary to carry out a detailed assessment and complete a Detailed Equality Analysis form – see CORP/EMP 27.</i>				
Date for next review:		January 2021		
Checked by:		John Scott	Date:	29 January 2018