

# Disciplinary Policy HRP1 (Version 6.2)

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Document summary	Provides a framework to ensure that all issues of misconduct are managed in a fair and consistent manner, in accordance with the principles of natural justice and in line with the ACAS Code of Practice.

Document History		
Version number	Comments	Date
1	New	
2	Planned review	EWC – January 2014
3	Planned review	EWC – March 2017
3.1	Correction ( <i>to wording in section 10 and update of FT logo</i> )	June 2017
4	Update to policy ( <i>examples of misconduct moved from toolkit to policy</i> )	August 2017
5	Revised ( <i>Trust logo and name updated to represent new Trust name - no material changes</i> )	June 2019
6	Planned review	EWC – August 2021
6.1	further review/ amendment with JUSS	December 2021
6.2	Update to informal counselling and how to deal with allegations concerning staff from other organisations	January 2024

## Policy on a page

This policy is designed to facilitate and encourage all employees to maintain acceptable standards of conduct whilst safeguarding the interests of the Trust, its patients, service users and staff. It sets out the standards of conduct expected and identifies clear procedures for addressing adverse events, ensuring a fair and consistent approach is applied by all parties and “just and learning” principles are applied.

This policy observes current employment, equality and human rights laws and the Advisory, Conciliation and Arbitration Service (ACAS) Code of Practice. The principles of a just and learning culture will be considered before any disciplinary action is taken.

In general, minor cases will initially be managed informally through advice, coaching and counselling rather than through the formal disciplinary route. The Trust is committed to taking a restorative approach where the focus is on understanding “what” has happened and understand where there is a need for learning by an individual or the organization, rather than seeking to apportion blame immediately.

- Where formal disciplinary processes are deemed appropriate, the policy details that investigation requirements, including timescales, are clear and that facts relating to each case will be established through an appropriately conducted investigation process
- suspension will be considered where there is no other alternative
- the opportunity to be represented by a Joint Union Staff Side representative or work-place-based colleague is afforded to the individual(s) subject to allegations of misconduct at all formal stages of this policy
- all formal actions or outcomes arising from this policy must be confirmed in writing within the specified timeframes
- no employee will be dismissed for a first breach of conduct except in cases of gross misconduct
- the opportunity to appeal a disciplinary sanction is afforded

The NHS People Promise enables us to embed a consistent and enduring offer to all staff in the NHS where we are compassionate and inclusive towards one another and strive to create a culture where employees feel safe and confident when expressing their views as well as feeling comfortable when they need to speak up, knowing they will be listened to and supported, helping one another through challenges showing respect and civility to one another.

## SUPPORTING STATEMENTS

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

### SAFEGUARDING IS EVERYBODY'S BUSINESS

All Wirral Community Health & Care NHS Foundation Trust employees have a statutory duty to safeguard and promote the welfare of children and adults, including:

- being alert to the possibility of child/adult abuse and neglect through their observation of abuse, or by professional judgement made as a result of information gathered about the child/adult;
- knowing how to deal with a disclosure or allegation of child/adult abuse;
- undertaking training as appropriate for their role and keeping themselves updated;
- being aware of and following the local policies and procedures they need to follow if they have a child/adult concern';
- ensuring appropriate advice and support is accessed either from managers, *Safeguarding Ambassadors* or the Trust's safeguarding team;
- participating in multi-agency working to safeguard the child or adult (if appropriate to your role; ensuring contemporaneous records are kept at all times and record keeping is in strict adherence to Wirral Community Health & Care NHS Foundation Trust policy and procedures and professional guidelines. Roles, responsibilities and accountabilities, will differ depending on the post you hold within the organisation;
- ensuring that all staff and their managers discuss and record any safeguarding issues that arise at each supervision session.

### EQUALITY AND HUMAN RIGHTS

Wirral Community Health & Care NHS Foundation Trust recognises that some sections of society experience prejudice and discrimination. The Equality Act 2010 specifically recognises the protected characteristics of age, disability, gender, reassignment, pregnancy and maternity, race, religion or belief, sex and sexual orientation. The Equality Act also requires public authorities to have due regard to the need to eliminate unlawful discrimination against someone because of their marriage or civil partnership.

The Trust is committed to equality of opportunity and anti-discriminatory practice both in the provision of services and in our role as a major employer. The Trust believes that all people have the right to be treated with dignity and respect and is committed to the elimination of unfair and unlawful discriminatory practices.

Wirral Community Health & Care NHS Foundation Trust also is aware of its legal duties under the Human Rights Act 1998. Section 6 of the Human Rights Act requires all public authorities to uphold and promote Human Rights in everything they do. It is unlawful for a public authority to perform any act which contravenes the Human Rights Act.

Wirral Community Health & Care NHS Foundation Trust is committed to carrying out its functions and service delivery in line with a Human Rights based approach and the FREDA principles of **F**airness, **R**espect, **E**quality **D**ignity and **A**utonomy.

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## 1. PURPOSE AND RATIONALE

Wirral Community Health and Care NHS Foundation Trust (the Trust) recognises the need for managers to manage their staff in a supportive, consistent and fair manner. This policy is designed to facilitate and encourage all employees to maintain acceptable standards of conduct whilst safeguarding the interests of the Trust, its patients, service users and staff.

The purpose of this policy is to provide a framework to ensure that a fair process is followed in the management of employee conduct, in accordance with the just and learning culture and in line with the ACAS Code of Practice.

The Trust wants to ensure a process is followed when an incident occurs which gives cause for concern. We want to encourage improvement where necessary and ensure the practice of lessons learnt is embedded in the Trust. Opportunities for Organisational learning will be explored following any incident and/or during and following all disciplinary investigations whereby improvement actions will be assigned by the relevant manager.

This policy is a key People policy and encourages employees and workers to uphold the Trusts values



## 2. OUTCOME FOCUSED AIMS AND OBJECTIVES

Through implementation of this policy the Trust aims to:

- encourage employees and workers to achieve and maintain standards of acceptable conduct
- provide a consistent and fair process for dealing with alleged unacceptable standards of conduct
- emphasise the need to seek resolution of issues at the earliest possible stage, to avoid any delay and to bring about learning and improvement rather than simply impose formal sanctions
- ensure that, where appropriate, matters of misconduct will be considered informally as part of the day-to-day management arrangements
- ensure that any disciplinary matter is dealt with fairly and that steps are taken to establish the facts
- use the Just and Learning Culture principles and to give employees the opportunity to respond before taking formal action.

### 2.1 The Just and Learning Culture

A Just and Learning Culture is an environment where we put equal emphasis on accountability and learning. It's where we ask the employee to give an account of how the event happened and what support is needed by those affected by the event both directly and indirectly. Here is the link to the just culture guidance [NHS England » A just culture guide](#)

The Just Culture Guide supports a consistent, constructive and fair evaluation of the actions of staff involved in an incident which gives cause for concern. There will be some situations where a disciplinary procedure will clearly be appropriate; however, the principles of a just and learning culture seek in all other circumstances, to provide an alternative and supportive mechanism to resolve issues (appendix 2).

The Trust has adopted the guiding principles developed by the North West Social Partnership Forum in relation to develop and sustain a restorative just and learning culture for people working in the NHS as good practice in the region. These can be seen in full in appendix 3.

### 3. SCOPE

This policy applies to all staff, including bank workers, in respect of their personal and professional conduct (including conduct external to the organisation where it can be demonstrated to have a bearing on the employment contract or employment relationship).

Employees on secondment to the Trust will also be expected to observe the standards of conduct identified within this policy however if anyone on secondment to the Trust was subject to an allegation of misconduct this would be referred back to their substantive organisation to address under their relevant organisational policy in most situations, unless otherwise agreed by the organisations.

If concerns around conduct of a doctor or dentist arise the Doctors and Dentists Disciplinary Framework (HRP1a) should be referred to in the first instance.

### 4. DEFINITIONS (Glossary of Terms)

Glossary of Terms	Definition
Terms of Reference	a document completed by the Commissioning Manager to identify the scope of an investigation and confirm the allegations to be investigated under this policy
Work-based Colleague	An employee of the Trust able to accompany an employee /worker who is subject to an investigation and/or hearing for moral support, providing there is no conflict of interest.
Action plan	a document that lists what steps must be taken in order to achieve a specific goal within a specified timeframe
Case to answer	Where there is sufficient evidence following a disciplinary investigation to proceed to a disciplinary hearing
Conflict of Interest	when an individual has competing interests, which might impair, appear to, or could be perceived to, influence their ability to make objective, unbiased decisions.

### 5. RESPONSIBILITIES, ACCOUNTABILITIES AND DUTIES

#### 5.1 The Board of Directors

The Board has responsibility for the implementation of this policy and the monitoring of compliance

#### 5.2 People and Culture Committee

The People and Culture Committee will be responsible for ratifying the policy.

#### 5.4 Chief People Officer

The Chief People Officer is the named officer responsible for ensuring the content of this policy is applied fairly and consistently across the Trust. The Chief People Officer has responsibility for monitoring compliance with this policy.

#### 5.5 Joint Union Staff Side (Trade Unions)

Joint Union Staff Side representatives have an important role in supporting and advising employees /

workers on policies and procedures and for promoting just and learning principles. Joint Union Staff Side representatives are able to accompany employees to an investigation meeting / disciplinary hearing, ask questions on behalf of their member, sum up the employee / worker case and, in some cases, answer questions on behalf of their member.

## **5.6 Deputy Director/Service Director/Head of Service**

Deputy Directors/Service Directors/Heads of Service are responsible for overseeing the dissemination and implementation of this policy across their service. They are responsible for commissioning and providing terms of reference for any investigations carried out under this policy, ensuring that Investigating Officers are supported to undertake thorough, robust investigations.

They also have a responsibility for taking forward any learning identified as a result of any investigations.

## **5.7 Team Leader/Line Manager**

Line managers and team leaders are responsible for ensuring that staff are aware of this policy and understand the rules relating to conduct and the potential consequences if they are not adhered to.

The key responsibilities for line managers in respect of this policy are:

- Reviewing the incident, error or allegation using the just culture guide and liaise with HR to decide if informal resolution can be undertaken
- If an informal resolution cannot be undertaken, then gathering the facts to enable application of the Just and Learning principles by the commissioning manager
- Keeping written records and ensuring confidentiality
- Making a referral to Occupational Health if a member of staff feels they are not fit to be interviewed to gain an assessment of their fitness to engage with the process
- Ensuring any concerns raised by the staff member that are related to the investigation are appropriately acted on.

## **5.8 All Staff**

All staff are to ensure that their conduct is aligned with Trust values and behaviors. It is the responsibility of employees and workers to observe the standards of conduct expected of them along with any professional codes and safeguarding requirements. Employees and workers are expected to perform their duties in accordance with contractual obligations and relevant agreements (i.e., bank worker agreement, secondment agreement).

Staff subject to disciplinary investigation involved in any incident, whether informal or a formal must attend any meetings as requested by their manager or the investigating officer, participate fully in the disciplinary process and cooperate with the requirements of this policy, it is their responsibility to carry out any agreed actions and seek support from their line manager where required.

In exceptional circumstances where the employee/worker is unable to attend any meetings held in line with this policy they are expected to inform their manager and the Investigating Officer, if applicable, at the earliest opportunity.

Employees and workers for the Trust are obliged to bring to the attention of their manager any concerns regarding practices within the Trust which could have a damaging effect on service users, other employees/workers or the reputation of the Trust (see also Speaking Up policy, GP51).

If any staff member is unsure of the appropriate standards of conduct, it is their responsibility to ensure that they seek guidance and clarity from their line manager.

## **5.9 Human Resources Department**

The HR department has responsibility for ensuring that the policy is followed fairly and consistently. Their duties will involve:

- advising and supporting managers on the application of the policy
- ensuring the effective and consistent implementation of the policy
- Promoting just and learning principles and supporting the development of a just and learning culture through a consistent approach
- providing advice and guidance to managers and clarification of this policy as required.
- providing advice for line managers following an adverse event to decide the next steps
- providing support and guidance to an Investigating Officer as part of an investigation and at formal hearings
- providing support to the panel chair in formal hearings and appeals
- providing challenge and examine cases to ensure no biases or conflicts of interest exist
- maintaining records of outcomes of formal disciplinary's for the purposes of ensuring a consistent approach and reporting to the executive team via board meetings
- reviewing and amending the policy as necessary
- adhering to the protocol between HR and the Anti-Fraud Specialists (AFS)

## **5.10 The Commissioning Manager**

This will usually be a senior manager, for example, Head of Service/ Service Director.

It is the responsibility of the commissioning manager to consider the information provided regarding an incident by the line manager and to decide the next steps using the principles of a just and learning culture.

If required, the Commissioning Manager will commission an investigation, assign an investigating officer and oversee the progress to ensure that the timescales within this policy are observed. On completion of the investigation, the commissioning manager is responsible for deciding appropriate outcomes.

The commissioning manager will ensure that the employee has allocated support throughout the investigation process. In cases where the employee's line manager is involved in the process it is crucial that support is available from another identified manager, a Joint Union Staff Side representative, a work-based colleague who has not been involved in the sequence of events and /or the Trust's Employee Assistance Programme.

## **5.11 The Investigating Officer (IO)**

The Investigating Officer is an individual assigned by the Commissioning Manager to investigate allegations against an employee/worker. It is the responsibility of the Investigating Officer to obtain all relevant information/facts and take all reasonable steps to determine the validity and accuracy of the allegations. The Investigating Officer will be responsible for:

- conducting a thorough, fair, impartial investigation in order for the Commissioning Manager to determine whether there is a case to answer
- arranging and conducting investigative meetings with the employee and any witnesses as appropriate



- gathering statements and all relevant information/data as appropriate
- making the commissioning manager aware of anything additional that arises during the investigation and/or if there are any anticipated delays
- updating relevant parties on where the investigation is up to, including any delays and the reasons for these
- producing an investigation report outlining the facts of the case and the evidence produced for consideration by the Commissioning Manager
- attending a disciplinary hearing to present the evidence, when requested (if there is a case to answer)

The investigating officer will normally be an employee of the Trust or a sessional Investigating Officer from the Trust's bank. In exceptional cases where a conflict of interest cannot be resolved by the appointment of an alternative internal Investigating Officer, or due to the complexity of the case, capacity issues or seniority of the individual being investigated, an external investigator will be used. Such external appointments will be approved by the Chief People Officer or Deputy Chief People Officer.

The Investigating Officer will be supported by a HR representative who can advise on process and ensure that the investigation is thorough; they will also support the Investigating Officer at any subsequent hearing.

### **5.12 Work-based Colleagues**

Work-based colleagues must be employees of the Trust and ensure that they maintain confidentiality throughout any investigation process.

## **6. STANDARDS OF CONDUCT**

Employees are required to be familiar with and to follow departmental rules, their own professional codes of conduct and Trust policies and procedures relevant to their job.

All staff are expected to be professional, courteous and considerate to others including service users, members of the public and staff members. They are also required to respect confidentiality and sensitive information, and to ensure that their actions are not detrimental to the condition or safety of patients/service users.

All employees and workers at all times on Trust premises, on business and in any work-related setting outside the workplace must avoid using abusive, obscene or offensive words/remarks.

### **6.1 Raising Concerns (Speaking Up)**

When concerns are raised about the safety of an individual being cared for or a colleague is being compromised by clinical/professional practice, systems, policies or procedures, this will be investigated in line with the Trust's Speaking Up policy. If, as a result of this, there are concerns about the conduct of an employee, the disciplinary procedure will be convened.

In cases where there is a concern or allegation that someone working or volunteering with children or vulnerable adults:

- has or may have harmed a child or vulnerable adult
- may have committed a criminal offence related to a child or vulnerable adult
- has behaved in a way that indicates they may pose a risk of harm to children or vulnerable adults and therefore unsuitable to work with this group

then the manager who becomes aware of the concern should refer to the Policy for Management of Allegations (SG06). This may result in referral to the Wirral LADO/ALADO and referrals may also be required to the Central Advice & Duty Team (CADT). Specific advice can be sought from the

Safeguarding team. The Trust also has the legal duty to refer to DBS and relevant professional body, where appropriate, as detailed in section 16.

## **6.2 Dignity and Respect at Work**

Any complaints made in relation to bullying and harassment will be investigated in line with the Trust's Bullying and Harassment policy. If it is found that there is a case to answer, the normal disciplinary investigation process will be followed, as per this policy. Please see the Bullying and Harassment Policy (HRP4) for further information.

## **6.3 Criminal Charges and Other Formal Agency Investigations**

Employees are required to inform their line manager and Service Director/Head of Service immediately if they are investigated, cautioned, warned, arrested, charged or have allegations brought against them by an external organisation or agency, e.g., the police, social services, the Independent Safeguarding Authority, Her Majesty's Revenue and Customs, The Child Support Agency or their professional body. You must also notify your Service Director or Head of Service of the outcome of any investigations, hearings or court proceedings as soon as you are notified. Failure to disclose may result in disciplinary action being taken against you.

A criminal investigation, charge or conviction relating to anything outside work may be treated as a disciplinary matter if considered that it is relevant e.g., affect the employee's suitability for their role or reputations of the Trust, or where the existence of the allegations, charge or conviction could otherwise seriously undermine the trust and confidence that the Trust has in the employee.

## **6.4 Confidentiality**

Employees and workers should be aware that all information concerning service users is confidential. Any breach of service user confidentiality will be treated as a disciplinary matter. Serious breaches will be treated as gross misconduct and may be reported to the Information Commissioner's Office.

Disciplinary cases will be treated sensitively and confidentially. Information will only be shared with those who have a legitimate right to be informed in accordance with Data Protection Act 2018 and the Common Law Duty of Confidentiality. Breaches of confidentiality by any party may result in disciplinary action.

Employees who are asked to provide evidence as part of an investigation will be reminded of their responsibilities, not to divulge information to anyone, apart from their Joint Union Staff Side Representative or work-based colleague.

It should be noted that the rules relating to confidentiality should also be applied to information that is received by employees and workers about their colleagues, whether they be subordinates or senior members of the team, in the course of their duties. This information may include sensitive information on topics such as details of pay or other benefits, or development plans to address capability. Such information should not be inappropriately shared and all employees and workers are reminded to maintain professionalism when in possession of sensitive or restricted information regarding other Trust employees or workers.

It is recognised that in certain circumstances information may have to be given eg to the police and authorisation should be sought where there may be uncertainty in respect of the legal position e.g. The Children's Act 1989, Amended 2004.

Access to patient/service user information, including treatment regime by Trust employees and workers, may be agreed where prior authorisation is sought, in order to support individual employees and workers in legal proceedings.

## **6.5 Allegations of Fraud and the interface with NHS Counter Fraud**

It is important for all staff to be aware that some forms of misconduct could potentially be considered 'fraudulent' under criminal law, and could lead to criminal prosecution as well as disciplinary or civil action examples could include (but not limited to) deliberately making false or exaggerated mileage claims on travel expenses forms, making false claims on timesheets for hours not actually worked, making false statements about, or forging documentation relating to, qualifications/references when applying for a particular job, working elsewhere whilst off sick, or obtaining financial or other property/services of the Trust by deception.

Where a disciplinary issue of possible fraud of this nature is being considered, the matter should be discussed in the first instance with the Trust's Anti-Fraud Specialist (AFS). All cases of suspected fraud within the Trust must initially be reported to the Chief Finance Officer & Deputy Chief Executive Officer and the Trust's nominated Anti-Fraud Specialist (AFS) immediately, or to the Chief Executive if those individuals are implicated. Any employee can also contact any senior manager of the Trust, Freedom to Speak Up Guardian, or the Chair of the Audit Committee to discuss their concerns if they feel unable, for any reason, to report the matter to the AFS or Chief Finance Officer & Deputy Chief Executive.

Depending on the exact nature and scale of the possible misconduct, it may be that a criminal investigation into the activities of the employee is considered necessary. In such cases, commencing disciplinary action at the outset may not always be appropriate especially if it would alert the employee to any criminal investigation and lead to the possible altering or destruction of evidence of potentially criminal activity. In any such situation, decisions on the way to proceed should only be taken after consultation with the Trust's Anti-Fraud Specialist, the Chief Finance Officer & Deputy Chief Executive and Chief People Officer.

Any internal investigation into allegations of potential fraud should be deferred until a full and detailed discussion has taken place with the nominated Anti-Fraud Specialist. The involvement of NHS Protect does not necessarily mean a disciplinary investigation will not take place and each situation is to be judged on its own merits. For both the Anti-Fraud Specialists and HR, any matter referred which raises any suspicion of fraud, bribery or corruption must be dealt with in accordance with the requirements set out in this policy and the Trust's Anti-Fraud, Bribery and Corruption Policy (FP03).

## **6.6 Bribery**

In line with the Bribery Act 2010, staff must:

- ensure the interests of patients and service users are paramount and that use or management of public funds ensures value for money
- declare any external interest which may result in gaining direct or indirect financial advantage as a consequence of the work which could influence any decisions they make; or which could interfere with their contractual obligations / agreements to the Trust
- not misuse or make available confidential information on patients, service users, colleagues or the Trust inappropriately
- not abuse their official position for personal gain or in showing favoritism
- not accept inappropriate gifts or hospitality

Refer to Trust's Anti-Fraud, Bribery and Corruption Policy (FP03) for more information.

## **6.7 Allegations against staff from other organisations**

This policy applies to Trust staff who wish to raise concerns about staff employed by other organisations. In these cases, if staff are unable to informally resolve their concerns or the allegations are of a serious nature, staff are encouraged to report these to their manager at the earliest opportunity and the HR team will link in with the employing organisation to establish an appropriate way forward in managing the concerns or allegations, in line with relevant organisational policies.

Line managers will be responsible for keeping the Trust employee updated, maintain communication and provide support during the process. Support can also be obtained from Joint Union Staff Side, the Trust's confidential Employee Assistance Programme, Occupational Health and/or HR.

## **7. PRELIMINARY REVIEW**

As soon as management are made aware of an adverse event/incident then there should be a review of the whole of the event, in line with the principles of a just and learning culture. Usually this will be the line manager but senior managers in each service or locality will decide who is appropriate to carry out the review on a case by case basis, dependent on the circumstances.

This step of the procedure is to ensure initial facts are established to enable decision makers to decide upon the next steps, for example, the reviewer should assess if it was a system or process that led to the event rather than an individual's conduct and whether the matter requires progression to formal investigation or not.

This will require initial facts to be established promptly such as dates & times of incident, people involved or people who have potentially witnessed the incident, where the incident took place and any other information available, for example CCTV when appropriate in line with Trust policies. To gather the initial information, it may be that managers need to ask people involved for their account of the adverse event. This will not be an official investigation meeting but a "fact finding" process and will be informal.

The review of an event/incident should be completed as quickly as possible with management treating this as a high priority. As a guideline this should not take any longer than 3 days. However, this is not a strict timeframe as it will depend on the specific circumstances. If the facts cannot be swiftly established, then other action may need to happen such as suspension/move to alternative duties. If further information shows that suspension etc is no longer appropriate, then this will end.

Having reviewed all the facts, as part of the preliminary review, the Line Manager should decide the appropriate action using the Just Culture Guide (appendix 2)

If, following a preliminary review, disciplinary action is required that is likely to result in a low level sanction and the employee admits to the allegation then a fast-track process can be considered if all parties are in agreement (section 10).

## **8. BREACHES OF CONDUCT**

Failure to meet the standards of conduct required may result in disciplinary action being taken by the Trust (section 11). The Trust's policy is to ensure that any disciplinary matter is dealt with fairly and that steps are taken to establish the facts using the Just and Learning Culture principles and to give employees the opportunity to respond before taking formal action.

### **8.1 Misconduct**

A first offence will not normally lead to dismissal unless it is deemed to be gross misconduct (see below) but it may result in formal disciplinary warning being issued. Subsequent offences (within prescribed time limits) could lead to escalation of sanction or dismissal.

Examples of levels of misconduct (though not an exhaustive list) can be found in appendix 1.

### **8.2 Gross misconduct**

Gross misconduct is misconduct that is so serious that, by itself, it fundamentally breaches the contract of employment / contractual agreement (for workers) and justifies dismissal without notice (i.e., summary dismissal). It refers to any breach of conduct which, following investigation, could reasonably be considered to have severed the trust and confidence which exists between employer and staff

member. The action taken will reflect the seriousness of the offence (and therefore culpability of the staff member) and will depend on the individual circumstances and consequences of each case, but particular consideration will be given to the implications or resultant consequences of the offence and whether the offence is persistent.

Examples of levels of gross misconduct (though not an exhaustive list) can be found in appendix 1.

### **8.3 Alternatives to Suspension**

The decision to suspend an employee should be a last resort and should only be taken when alternative courses of action have been fully explored and considered, such as:

- Temporary assignment in a broadly similar role in another service or location
- Restricted duties in existing role and location
- Placing the employee under additional supervision
- Temporary assignment to a different role that is within the skills and knowledge of the employee

A risk assessment would be conducted when considering any alternatives to suspension.

### **8.4 Suspension**

Alternatives to suspension should always be considered e.g., temporary redeployment to other duties or restricted duties (section 8.3). In cases of potential gross misconduct or where management otherwise considers it to be in the best interests of either the Trust or the staff member to remove them from the workplace pending a disciplinary investigation then they may be temporarily suspended from work. Suspension is a precautionary neutral measure and not a disciplinary action/sanction. Suspension will always be on full pay and the staff member will be kept informed throughout the period of suspension.

It may be necessary to suspend staff in the following instances:

- The allegations made are sufficiently serious to constitute gross misconduct and may justify dismissal if substantiated. In this regard staff may however still be dismissed even if not previously suspended.
- The continued presence of staff at work could impede a proper fact-finding process.
- The member of staff could be at risk if they remained at work or could put other staff, service users, the public or the interests of the Trust at risk.

Before suspending an employee / worker, the Deputy Chief People Officer must be consulted and serious consideration given to any possible alternative measures that may be available. At this stage it is important to ensure that any conflict of interest is avoided in relation to those making the decision to suspend.

Ordinarily employees / workers should be given the opportunity to be represented at a suspension meeting however where this is not immediately available, or where the allegation(s) are so serious, then, as a last resort, it is permissible to suspend without a Joint Union Staff Side representative or work-based colleague present.

The line manager or another appropriate manager will act as a buddy support during this process to ensure that contact is maintained and the employee is kept updated and supported whilst not in work.

During a period of suspension employees should not attend any of the premises of the Trust without prior permission, unless in emergency situations or to receive treatment/accompany a family member for treatment. Staff should not contact anyone who is potentially a witness in the investigation at all but can contact other staff members not likely to be directly involved in the investigation so long as matters

relating to the investigation are not discussed. The suspension will be regularly reviewed (at least every 4 weeks) by the commissioning manager.

## **9. INFORMAL COUNSELLING**

Most concerns can often be addressed effectively and swiftly by the employee's immediate line manager having a structured 1:1 discussion with the individual regarding the standards required and the required improvement in their conduct. Counselling is not a disciplinary action. It is usually an informal 1:1 discussion designed to offer advice and guidance and individuals should be informed of this. Counselling would follow instances of carelessness or minor misconduct. A counselling meeting will take the form of a two-way, constructive discussion with the objective of encouraging and supporting the employee/worker in improving their conduct.

During this meeting the manager should:

- discuss the concerns that have come to light and provide examples and/or relevant documents
- listen to the staff members response, allow opportunity for reflection and any reasons for the behaviour change
- inform the employee of the standards expected by the Trust and the level of improvement needed
- discuss support and training to achieve the required standards
- a time bound process for review and resolution, if appropriate (usually up to 3 months)

Possible outcomes could include the issuing of a management instruction, provision of informal advice, coaching, training or other learning and development activities (if training/development needs are identified) and/or no further action.

Agreements/outcomes from informal counselling should be recorded in writing by the manager, marked as "informal counselling" and shared with the employee. This can be done in various ways. An option is to use the suggested template within this policy (appendix 5)

If the informal counselling takes place as part of supervision, separate documentation marked "informal counselling" should still be completed in accordance with above.

Employees / workers should be made aware that that the discussion is in line with the informal stage of the disciplinary policy and any further minor breaches of misconduct, following an informal counselling, could lead to formal disciplinary action with a copy of the disciplinary policy provided to them.

Should an employee have any concerns with regards to the outcome of an informal counselling meeting they should raise this with the next level line manager and/ or a Joint Union Staff Side representative for advice. Alternatively, staff can refer to the Trust's Grievance and Resolution Procedure.

## **10. FAST TRACK PROCEDURE**

If the employee / worker admits to the allegation(s), and the Commissioning Manager deems the allegation(s) would more than likely result in a low level sanction (first written warning) being issued at the hearing stage, a decision can be reached to fast track the disciplinary process. This will remove the need for producing a formal investigation report and proceeding to a disciplinary hearing, although a thorough examination of the known facts will take place. An investigating officer will not, therefore need to be appointed. Full details of the fast track process are detailed in the toolkit.

If suggestion is given to adopting the fast track process the Commissioning Manager must consult with the relevant HR Business Partner. Fast tracking must be agreed by all parties, i.e., employee/worker (and his/her representative), the Commissioning Manager, and the HRBP.

If the fast track process is adopted, the disciplinary sanction will be confirmed in writing to the individual allowing them 5 working days to reflect on their agreement to this process.

This process is not appropriate for matters that may result in a final written warning or Gross Misconduct. If an issue arises as part of the fast track process, which warrants a full investigation, a full investigation will be instigated. The Commissioning Manager will have the final decision.

## **11. FORMAL DISCIPLINARY INVESTIGATIONS (REFER TO APPENDIX 4 FOR TIMESCALES)**

The formal procedure will only be applied where the conduct breach is too serious to be managed informally or informal counselling has failed to reach the required improvements in conduct.

In these cases, the Commissioning Manager will commission an investigation by developing a terms of reference and appoint an appropriate Investigating Officer to gather the relevant facts relating to the allegation(s) in line with agreed terms of reference. If new issues come to light during the course of the investigation, the terms of reference must be amended and the employee/worker will be informed verbally and then followed up in writing.

The line manager will meet with the individual initially to inform them of the need to proceed to a disciplinary investigation including the exact allegations that will be investigated. This meeting will usually take place within 5 working days from the preliminary review. It is inappropriate for the individual to respond to any allegation at this stage. The meeting will be confirmed in writing and the Investigating Officer will be in contact with the individual to progress with the investigation.

In the case that a Joint Union Staff Side Representative is subject to a disciplinary investigation, the Trust will advise the full time officer.

### **11.1 Assigning an investigating officer**

Before commencing an investigation and appointing an investigating officer the Commissioning Manager should consider the specific responsibilities they are assigning.

Careful consideration should be given to ensuring that the investigating officer has sufficient resources that will fully support the thorough completion of the process and their ability to conduct an objective and independent process. They should be suitably trained and also be able to demonstrate the aptitude and competencies to carry out the role they are being assigned, this will include an awareness of relevant aspects of best practice and principles of natural justice and an appreciation of race and cultural considerations.

It is the role of the Investigating Officer to thoroughly investigate all the facts of the case, collecting all relevant information (i.e., witness statements, employee records, supporting evidence) to enable them to compile a robust investigation report. No disciplinary action will be considered until a thorough investigation has been conducted to establish the facts and circumstances of the case.

As part of the investigation process, the Investigating Officer will arrange to meet with the individual concerned to establish the facts of the case and provide them with the opportunity to respond to the allegations. The Investigating Officer will confirm the meeting details in writing clearly stating the allegations being investigated and, during the meeting, record of discussions will be captured and sent

to the individual for review. HR will be present at the meeting and the staff member can be accompanied by a Joint Union Staff Side Representative or a work-based colleague.

Investigations should be completed as quickly, but as thoroughly as possible and in any event should normally be completed within 6 weeks. With some cases there may be aspects that fall outside of the control of the Investigating Officer that mean the expected timescale for conducting the investigation is not achievable, examples of this may include employee's annual leave, availability of key witnesses and/or the quantity of evidence needing examination. Any requests to exceed this timeframe must be authorised by the Commissioning Manager and the employee/worker will be informed in writing.

On completion of the investigation the Investigating Officer is required to submit an Investigation Report to the Commissioning Manager. This report should not comment on any possible disciplinary outcome but purely act as a summary of the investigation findings to enable the Commissioning Manager to determine if there is a disciplinary case to answer. The employee/worker will be informed when the report has been submitted.

### **11.2 Attendance at Meetings**

All employees/workers subject to disciplinary investigation are required to participate and have a duty to take all reasonable steps to attend meetings/submit relevant evidence as requested by the Investigating Officer. If, due to unavailability or difficulties arranging representation, the employee/worker cannot attend an investigatory meeting on a proposed date, they can suggest an alternative time and date so long as it is reasonable and it is not more than five working days after the original date.

If the employee fails to attend a meeting or does not respond without good reason, the investigating officer will attempt to reschedule another meeting. If the employee does not attend, without good reason, the investigation may progress without the employee's input which will result in the report being submitted based on the evidence available.

### **11.3 Absence during an Investigation**

It should be noted that in the event of an employee / worker being absent from work due to sickness during an investigation, the investigation should continue as far as is reasonably practicable. Occupational Health and Human Resources should be consulted as to the appropriate support mechanisms for the employee / worker. The process outlined in HRP5 Managing Attendance Policy will be followed in relation to their absence from work.

### **11.4 Witnesses**

The investigation process is likely to involve the Investigating Officer meeting with key witnesses. The witness can choose to be accompanied by a work-based colleague providing this does not lead to any breach of confidentiality, is not considered a conflict of interest or it does not hinder the completion of the investigation. If the witness was a Joint Union Staff Side member then they would be entitled to be represented by their relevant Regional Officer.

Alternatively, the Investigating Officer may deem it more appropriate to collate witness statements. If on receipt of a written statement the investigating officer needs further clarification, then they will need to decide on whether to interview the witness or seek clarification in writing. If a face to face interview is required, this can take place in person or on MS Teams.

There is a duty on all employees to be open and honest and provide evidence upon request. In cases where employees are reluctant to participate, Investigating Officers should explore the reasons, provide reassurance and seek to resolve any concerns they have. It may be that they are unable to attend for



a legitimate reason, such as illness, and it could be possible for the meeting to be rearranged or the employee is able to produce a witness statement instead.

Anonymity should be avoided as far as possible, as it may not be possible to guarantee this throughout the whole process e.g., at an Employment Tribunal.

It should be clearly outlined to the witnesses involved that they may be required to attend a hearing, if there is a case to answer. The investigating officer should ascertain whether the witnesses have any concerns regarding attending a hearing. If a key witness refuses to take part in a hearing, then this should be communicated to the Commissioning Manager and the Commissioning Manager will need to review the impact this may have on the case.

### **11.5 Outcome of Investigation**

The investigation report will be shared with the Commissioning Manager who will determine whether there is a disciplinary case to answer.

It is important for Investigating Officers and any subsequent disciplinary panel members to be aware that the 'burden of proof' rests with the investigation report.

On considering the investigation report the Commissioning Manager can decide:

- there is no case to answer based on the information presented and therefore no further action will be necessary
- there is a case to answer and a need to refer the case to a disciplinary hearing due to there being sufficient concern (section 13)
- further action will be necessary however this would be under other Trust policies e.g., Performance Management Policy (HRP24), or identification of learning and development needs, or through an informal counselling
- to instruct further investigations due to apparent gaps in the investigation findings

The employee/worker will be informed of the outcome in writing within 5 working days of the report being submitted. If there is a case to answer, the commissioning manager will invite the employee/worker to a disciplinary hearing.

If there is a case to answer, then the Professional Lead (where applicable) must be advised and consulted before proceeding to disciplinary hearing. This is to ensure that the principle of plurality is adopted such that important decisions which have potentially serious consequences are well informed, reviewed from multiple perspectives and never taken from one person alone. This also ensures senior level oversight for consistency and objectivity.

## **12. SUPPORTING EMPLOYEES**

Employees may require additional support during these procedures which can be obtained from the employee's line manager, TU representative, designated HR representative, Occupational Health and/or the Trust's Employee Assistance Programme (Health Assured). In addition, individual counselling may be offered to affected employees via Health Assured, which is a free counselling service available to all Trust employees.

It is important throughout the procedure for the manager to keep talking with both the employee and any other staff affected. Clear, regular and confidential communication can help make sure employees are kept informed of what is happening, have the opportunity to ask questions and can minimise the potential for stress and other mental health issues.

Managers and investigating officers are responsible for maintaining communications and will make every effort to ensure employees receive clear, comprehensive and sensitive information about the allegations and regular progress updates on any investigation until the matter is concluded.

An assessment of the individual needs of those affected should be considered and all aspects of support

should be explored, this may include utilising tools available on Staff Zone in relation to Mental Wellbeing such as the Wellbeing Recovery Action Plan (WRAP) tool. Further guidance can be obtained in the Supporting Mental Wellbeing Policy HRP29. Where there are concerns about an employee's health or wellbeing, Occupational Health advice will be obtained.

### **13. DISCIPLINARY HEARINGS**

If, on completion of the investigation, the Commissioning Manager believes a disciplinary hearing is warranted as they consider the findings suggest sufficient concern, a hearing should be convened as soon as is reasonably practicable. A hearing panel will be appointed in accordance with the scheme of delegation (refer to the toolkit). The Commissioning Manager will usually be the chair of the panel at any disciplinary hearing and along with another manager or professional advisor depending on the allegations. Panel members will have no previous involvement in the case or any conflict of interest that could influence decision making.

A minimum of 10 working days' notice in writing shall be given of the date of the hearing at which point will confirm if the Investigating Officer intends to call any witnesses and a copy of the investigation report and appendices will also be shared. If the staff member wishes to submit any papers to be considered in addition to those shared by management and/or call any witnesses they will need to provide these details to the panel and Investigating Officer no later than 5 working days prior to the date of the hearing, unless otherwise agreed.

There will be a member of the Human Resources team present to advise the panel and also one to support the Investigating Officer as they present the findings of the investigation. The staff member will have the right to be accompanied by a trade union representative or a work-based colleague. The hearing shall be conducted in line with the protocol set out in the toolkit.

If, due to unavailability or difficulties arranging representation, the employee/worker cannot attend a hearing on the proposed date, they can suggest an alternative time and date so long as it is reasonable and it is not more than five working days after the original date. Where an employee/worker fails to attend a disciplinary hearing with no reasonable explanation, the hearing may be held in their absence and a decision will be made based on all available evidence. Similarly, advice should be sought on the options available in respect of an employee who is unable to attend due to ill health.

The outcome of any hearing will be confirmed in writing within 5 working days of the date of the hearing, this letter will also need to clearly set out the employee/worker right of appeal.

### **14. FORMAL DISCIPLINARY OUTCOMES**

An employee / worker will not normally be dismissed for a first breach of conduct except in cases of gross misconduct. When determining the appropriate level of sanction, the disciplinary panel should consider the test of reasonableness, taking into account any mitigating factors.

Where formal disciplinary warnings are issued this may also result in the withholding of incremental pay progression.

The formal sanctions available to a disciplinary panel are as follows:

#### **a) First written warning.**

A first written warning may be given in the following circumstances: -

- in cases more serious than would warrant informal action, but not serious enough to require higher sanction; or

- in cases of repetition by the employee of minor acts of misconduct which have been the subject of informal counselling

A first written warning will normally remain live for a period of 6 months from date of issue. If a further act of misconduct of a similar nature occurs while the warning is live, then further disciplinary action may be appropriate, which a final written warning or dismissal (depending upon the seriousness) may follow.

**b) Final written warning.**

A final written warning may be given in the following circumstances:

- misconduct where there is already an active written warning on the employee/worker's record; or
- misconduct that is considered sufficiently serious to warrant a final written warning even though there are no other active warnings on the individual's record

A final warning shall include an explanation that further acts of misconduct will result in serious action, possibly including dismissal. A final written warning will remain live for a period of 12 months from date of issue. If a further act of misconduct of a similar nature occurs while the warning is live, then further disciplinary action may result following which dismissal may follow.

**c) Dismissal.**

Dismissal will usually be appropriate for further misconduct where there is an active disciplinary warning on the individual's record. Notice will be normally served and paid in lieu.

**d) Summary Dismissal.**

Summary dismissal will usually be appropriate for any gross misconduct or other conduct which justifies such dismissal. A summary dismissal is without notice and therefore with immediate effect.

**e) Alternatives to Dismissal**

In some cases of gross misconduct alternatives to dismissal or action short of dismissal may be considered e.g.:

- Downgrading (without pay protection)
- Redeployment
- Extension of previous warning period (where applicable and no longer than 12 months)

These alternatives will usually be accompanied by a disciplinary sanction, i.e., a final written warning, and a development plan.

**14.1 Management of Disciplinary Sanctions**

It is the responsibility of the employee's line manager to monitor the conduct of the employee on an on-going basis but specifically as outlined in any warning immediately following its issue. Line managers will also ensure that any remedial action as set out in a warning is actioned.

If there have been no further causes for concern or misconduct within the period of any warning it will expire after the period indicated above.

All records in connection with a disciplinary investigation should remain confidential and not kept for longer than necessary in line with GDPR. Records of any warnings will be disregarded for cumulative

disciplinary purposes but will be retained on file once they have expired except in cases involving safeguarding issues or where there appears to be a history of recurring misconduct.

In exceptional circumstances an expired warning may be relied upon where there is a history of recurring misconduct, advice on such cases must always be sought from the relevant HR Business Partner.

## **15. APPEALS**

Employees / workers have the right of appeal against any formal disciplinary action taken against them and will be informed of this right at the time they are advised of the outcome of the disciplinary hearing. There is a right of appeal if the disciplinary outcome was agreed through invoking the Fast Track process as detailed in section 10 above.

Any appeal must be made in writing within 10 working days by the employee / worker from the date of the hearing decision letter and must contain clear grounds for its submission. Management reserves the right not to allow access to an appeal where no reasonable grounds for appeal are given. Grounds of the appeal may relate to either:

- the severity of the sanction
- the identification of substantial new and relevant information to the case
- evidence to demonstrate that the Trust procedure has not been applied properly

Where the grounds for appeal are based on the severity of the imposed sanction and the appeal the facts relied upon by the dismissing officer are not in dispute, there will not be a re-hearing of the case but a review of the case. Where the grounds for appeal are for the two latter reasons the appeal will take the form of a full re-hearing.

The appeal hearing (or review of the case and severity of imposed sanction) will be conducted by a manager with the level of authority as detailed in the scheme of delegation (found in the toolkit) and the employee/worker will have the right to be accompanied by a trade union representative or a work-based colleague. The chair of the original disciplinary hearing will also be in attendance to present their response to the appeal. Alternatively, further investigation of the facts may be required and a pause to the hearing before the panel can make a decision.

The hearing shall be conducted in line with the protocol set out in the toolkit.

Possible outcomes from appeal hearings include:

- Upholding of original disciplinary action
- Change to the original level of warning (reduction)
- Overturning original decision and potential reinstatement/re-engagement in cases of dismissal

The employee/worker will be given at least 5 working days' notice of the date of the appeal hearing. If the employee/worker or accompanying person is unable to attend, another meeting will be arranged within 5 working days.

## **16. DUTY TO REFER**

### **16.1 Disclosure & Barring Service (DBS)**

The Trust has a legal duty to refer to the DBS any relevant information concerning an individual working with children or vulnerable adults on a regulated activity, where that person has caused harm or poses a risk of harm to children and/or vulnerable adults.

## **16.2 Professional Body**

Where a disciplinary matter arises that involves a member of staff who is a registered with a professional body, then depending upon the nature and seriousness of the case, the appropriate professional lead in association with a member of the Human Resources team will consider a referral to the professional body. Advice must be sought from a HR Business Partner or Head of HR.

## **16.3 Other public bodies**

Consideration should also be given to other public bodies that may need to be informed of disciplinary proceedings/outcomes. Examples of this include the Information Commissioner Office (ICO) for breaches of data protection.

## **17. ORGANISATIONAL LESSONS LEARNED**

The Trust wants to ensure that, when an incident happens that gives cause for concern, we follow a process to decide what actions need to happen next to either address learning/skills issues or improve systems and processes. We want to encourage improvement and ensure the practice of lessons learnt is embedded in the Trust.

Following the completion of any internal disciplinary process a meeting will be convened with key stakeholders to discuss any organisational learning that may have arisen from the investigation or any subsequent hearings or appeals. Anonymised information will be reviewed at the Trust's People Reflections and Learning Group, to oversee progress with actions/learning and identify recurrent themes and opportunities for wider organisational learning. Actions will be assigned to take forward such learning on behalf of the organisation and improvement will be monitored via the People and Culture Committee. This process will be led by the Service Director or Deputy Director who will have overall responsibility to ensure that actions are carried through and any change is implemented.

## **18. TRAINING**

All employee's and external bodies assigned to undertake the management roles identified within this policy, i.e., investigating officer, commissioning manager or hearing panel member, will have the appropriate knowledge, experience and training to undertake such roles.

## **19. CONSULTATION**

The following groups were consulted with in the development of this policy:

- Joint Union Staff Side
- People and Culture Committee

## **20. MONITORING COMPLIANCE**

The effective implementation and review of this policy will be monitored by the Chief People Officer and the HR Policy Review Group who have delegated responsibility from the People and Culture Committee.

The impact of the policy will be monitored using existing cultural measures and performance data e.g., feedback from Staff Surveys and Speaking Up cases, data on numbers and distribution of cases.

Changes to the policy will be cascaded to staff via the Staff Bulletin and made available on the Trust's Staff Zone.

This policy will be reviewed through the HR Policy Review Group no later than 3 years after implementation.

## **21. EQUALITY AND HUMAN RIGHTS ANALYSIS**

In line with the Trust's commitment to meet its statutory requirements outlined in the Equality and Diversity Strategy each procedural document is screened using an Equality Impact Assessment (EIA) Screening Tool. This demonstrates the Trust's commitment to equality and human rights by recognising that the experiences and needs of every individual are unique and strives to value and respect the diversity of staff, patients/service users, carers and the public.

EIA's support organisations to avoid discrimination on any grounds including age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex or sexual orientation. Carers are also protected from discrimination, as they are associated with people with a protected characteristic i.e., disabled people. Should staff become aware of any exclusions that do not comply with this statement would need to complete an incident form and an appropriate action plan put in place

An equality impact assessment tool has been completed and forwarded to the Equality and Diversity Lead – the EIA will be available on the Trust's website.

## **22. LINKS TO OTHER POLICIES**

Disciplinary Toolkit ([Disciplinary Toolkit – StaffZone \(wiralct.nhs.uk\)](http://wiralct.nhs.uk))

HRP1a Doctors and Dentists Disciplinary Framework

HRP2 Grievance and Resolution Policy (formally Policy for Handling Individual and Collective Grievance and Disputes)

HRP4 Bullying and Harassment policy (formally Dignity at Work policy)

HRP5 Managing Attendance policy

HRP24 Performance Management policy

FP06 Anti-Fraud, Bribery and Corruption Policy

GP51 Speaking Up policy

SG6 Management of Allegations Policy

## **23. REFERENCES**

ACAS Code of Practice

Children's Act 1989 (Amended 2004)

General Data Protection Principles (2018)

MIAA Anti-Fraud Services: Anti-Fraud and Human Resources [HR] Liaison and Joint Working Protocol (incorporating Investigations, Sanctions and Redress)

NHS Protect - Tackling fraud and managing security Parallel criminal and disciplinary investigations (Policy statement – April 2013)

Safeguarding Vulnerable Groups Act 2006

Learning Lessons to Improve People Practices letter 24 May 2019, NHS England & Improvement

## **Appendix 1: Examples of misconduct and gross misconduct**

### **Examples of misconduct:**

The following are examples of the most common breaches good practice and misconduct they represent. Please note this list is for illustrative purposes only, to be used as guidance, it is not exhaustive and every case will be assessed on its own merits, in light of individual circumstances.

#### **1. Misconduct:**

##### **1.1 Behaviour:**

- Refusal or failure to carry out a reasonable instruction.
- Unprofessional behavior including verbal abuse to others
- Conduct which could bring the Trust into disrepute.

##### **1.2 Attendance and Time-keeping:**

- Failure to comply with attendance and time-keeping requirements, e.g. lateness;
- Failure to follow absence reporting procedures as specified in the Managing Attendance policy (HRP5);
- Failure to attend for duty as required (unauthorised absence);
- Taking unauthorised or excessive breaks;

##### **1.3 Poor working practices:**

- Failure to maintain proper records;
- Failure to follow Trust procedures

##### **1.4 General:**

- Misconduct in relation to official documents;
- Minor damage to Trust property;
- Inappropriate behaviour or abuse of authority towards a colleague or member of the public or person in the Trust's care;
- Unauthorised absence without reasonable cause whilst claiming to have been on duty;
- Failure to comply with conditions of service or working procedures;
- Failure to comply with health and safety requirements;
- Serious misconduct in relation to official documents;
- Serious instances of professional misconduct;
- Personal behaviour conducted either inside or outside of work or working hours that results in bringing the trust into disrepute or has an impact on their role;
- failure to meet required standards of performance and behaviour as expected within the employee's role and responsibilities.
- Repeated failure to maintain contact when off work during a period of sickness absence without good reason

## 2. **Gross Misconduct:**

- Serious Dishonesty – eg whereby the dishonesty of the employee /worker leads to a breakdown in the relationship of Trust between employer and employee/worker, including deliberate falsification of records;
- Disclosure of confidential information – eg whereby an individual shares confidential information in relation to a patient/service users or member of staff;
- Assault – any assault, fighting or threatened behaviour directed at either a patient, member of staff /worker or fellow employee/worker;
- Theft – actual or attempted theft on NHS or associated premises, whether on or off duty, including unauthorised or unlawful possession of property of the Trust, fellow employees / worker or members of the public;
- Fraud – any deliberate attempt to defraud the Trust, fellow employees /workers or members of the public;
- Corruption – any receipt of money, goods, favours in respect of services rendered during the course of their duties;
- Failure to maintain registration with relevant mandatory professional body;
- Wilful or malicious damage – the intentional causing of damage to the Trust’s property or property of fellow employees/workers, patients/service users or members of the public;
- Gross negligence – any action or failure to act which could result in serious damage to property or equipment, or endanger the health and safety of others. This would also include failure to give appropriate care and protection to patients within the Trust’s care or fellow employee;
- Gross insubordination – eg wilful refusal to carry out a reasonable instruction or behaviour which seriously undermines management or the Trust;
- Misrepresentation – falsification or failure to declare relevant information fundamental to one’s employment, which may include a criminal offence;
- Sexual, racial or other forms of harassment/ bullying – serious cases of racial or sexual harassment or bullying against other employees or patients/service users; or a manager failing to take appropriate action after an incident is brought to his/her attention;
- Misuse of Information Technology – unauthorised and improper use of Trust IT systems;
- Breach of confidentiality or unauthorised/inappropriate access to records, via paper based or electronic systems;
- Inappropriate use of social networking sites which could bring the Trust into disrepute – including posting of defamatory comments about the Trust, staff or patients/service users, unauthorised disclosure of business information, potential confidentiality breach;
- Being on duty under the influence of alcohol or drugs, other than those that have been medically prescribed;
- Breach of Confidence – serious and/or persistent breaches of confidence, including the covert recording of staff conversations, meetings ie without expressed consent.

*These lists are not exclusive or exhaustive.*



# A just culture guide

## Supporting consistent, constructive and fair evaluation of the actions of staff involved in patient safety incidents

This guide supports a conversation between managers about whether a staff member involved in a patient safety incident requires specific individual support or intervention to work safely. Action singling out an individual is rarely appropriate - most patient safety issues have deeper causes and require wider action.

The actions of staff involved in an incident should **not** automatically be examined using this *just culture* guide, but it can be useful if the investigation of an incident begins to suggest a concern about an individual action. The guide highlights important principles that need to be considered before formal management action is directed at an individual staff member.

An important part of a just culture is being able to explain the approach that will be taken if an incident occurs. A just culture guide can be used by all parties to explain how they will respond to incidents, as a reference point for organisational HR and incident reporting policies, and as a communication tool to help staff, patients and families understand how the appropriate response to a member of staff involved in an incident can and should differ according to the circumstances in which an error was made. As well as protecting staff from unfair targeting, using the guide helps protect patients by removing the tendency to treat wider patient safety issues as individual issues.

### Please note:

- A **just culture guide** is not a replacement for an investigation of a patient safety incident. Only a full investigation can identify the underlying causes that need to be acted on to reduce the risk of future incidents.
- A **just culture guide** can be used at any point of an investigation, but the guide may need to be revisited as more information becomes available.
- A **just culture guide** does not replace HR advice and should be used in conjunction with organisational policy.
- The **guide** can only be used to take one action (or failure to act) through the guide at a time. If multiple actions are involved in an incident they must be considered separately.

### Start here - Q1. deliberate harm test

#### 1a. Was there any intention to cause harm?



Yes

**Recommendation:** Follow organisational guidance for appropriate management action. This could involve: contact relevant regulatory bodies, suspension of staff, and referral to police and disciplinary processes. Wider investigation is still needed to understand how and why patients were not protected from the actions of the individual.

END HERE

### No go to next question - Q2. health test

#### 2a. Are there indications of substance abuse?



Yes

**Recommendation:** Follow organisational substance abuse at work guidance. Wider investigation is still needed to understand if substance abuse could have been recognised and addressed earlier.

END HERE

#### 2b. Are there indications of physical ill health?



Yes

**Recommendation:** Follow organisational guidance for health issues affecting work, which is likely to include occupational health referral. Wider investigation is still needed to understand if health issues could have been recognised and addressed earlier.

END HERE

#### 2c. Are there indications of mental ill health?

### if No to all go to next question - Q3. foresight test

#### 3a. Are there agreed protocols/accepted practice in place that apply to the action/omission in question?



If No to any

**Recommendation:** Action singling out the individual is unlikely to be appropriate; the patient safety incident investigation should indicate the wider actions needed to improve safety for future patients. These actions may include, but not be limited to, the individual.

END HERE

#### 3b. Were the protocols/accepted practice workable and in routine use?

#### 3c. Did the individual knowingly depart from these protocols?

### if Yes to all go to next question - Q4. substitution test

#### 4a. Are there indications that other individuals from the same peer group, with comparable experience and qualifications, would behave in the same way in similar circumstances?



If Yes to any

**Recommendation:** Action singling out the individual is unlikely to be appropriate; the patient safety incident investigation should indicate the wider actions needed to improve safety for future patients. These actions may include, but not be limited to, the individual.

END HERE

#### 4b. Was the individual missed out when relevant training was provided to their peer group?

#### 4c. Did more senior members of the team fail to provide supervision that normally should be provided?

### if No to all go to next question - Q5. mitigating circumstances

#### 5a. Were there any significant mitigating circumstances?



Yes

**Recommendation:** Action directed at the individual may not be appropriate; follow organisational guidance, which is likely to include senior HR advice on what degree of mitigation applies. The patient safety incident investigation should indicate the wider actions needed to improve safety for future patients.

END HERE

### if No

**Recommendation:** Follow organisational guidance for appropriate management action. This could involve individual training, performance management, competency assessments, changes to role or increased supervision, and may require relevant regulatory bodies to be contacted, staff suspension and disciplinary processes. The patient safety incident investigation should indicate the wider actions needed to improve safety for future patients.

END HERE

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Based on the work of Professor James Reason and the National Patient Safety Agency's Incident Decision Tree

Supported by:



NHS England and NHS Improvement



## Appendix 3

Just and Learning Culture in North West – Guiding Principles – June 2021

### Background

Discussions in the North West SPF consistently show a strong desire to develop and sustain a restorative just and learning culture for people working in the NHS across the region.

### Principles

Informed by the above, employers and trade unions working in partnership through the NW SPF have agreed the following-guiding principles, as suggested good practice across the region:

- Everyone should be encouraged to live the values of compassion and kindness with colleagues, every day
- Colleagues should be able to work in an environment where they feel supported and empowered to learn when things don't go as expected, through restorative practice
- Colleagues should be encouraged to speak the truth about something which didn't go to plan, without fear of punitive individual repercussions
- In the case of an adverse event, employers should not instinctively ask 'who' was to blame but 'what' led the event to occur
- Formal disciplinary processes and suspensions should be avoided wherever possible, in favour of explorative conversations, to include discussions about all personal responsibility
- processes, which are informal and fair, adhering to just and learning principles
- It is never too late to reconsider the correct approach to an employment relations issue, and consider alternative resolution outside of formal disciplinary and grievance processes
- When there is a need for formal processes, they should be undertaken compassionately, begin with an investigation of the facts around what went wrong and be undertaken in a timely manner
- Just and learning culture should not be mistaken for an uncritical culture where 'anything goes' – which can be as harmful and inexcusable as a 'blame culture'
- Whilst the concept of just and learning culture pre-dates the pandemic, COVID-19 has only further emphasised the importance of treating people as human beings, and a just culture naturally aligns with this mindset
- In addition to creating the culture we aspire to for the good of our colleagues; employers should recognise the potential to save time and money that can be reinvested, as a result of reduced disciplinarys, suspensions and workforce turnover (based on Mersey Care data)
- Wherever possible, the natural links and alignment should be drawn between the development of just and learning restorative culture locally, and the national expectations around culture as directed by NHS Chief People Officer.

Whilst the NW SPF is hopeful all employers will consider embedding a local policy reflective of the above, the principles also outline a broader attitude/mindset, constructive for all to reflect on in their day to day work at a time when the NHS is at its most challenged.

Signed by the Joint Chairs of the North West SPF:

Mike Gibney, The Walton Centre

James Bull, UNISON

## Appendix 4

Intended timescales of the policy

<b>Action</b>	<b>Timescale</b>	<b>Responsibility</b>
Preliminary review	3 working days from becoming aware of the incident	Usually the <b>line manager</b> <i>Senior manager will decide who is appropriate dependant on the case</i>
<b>IF DISCIPLINARY INVESTIGATION IS REQUIRED</b>		
Employee informed (and suspension commenced – if appropriate following risk assessment)	5 working days from outcome of preliminary review	Line Manager
Terms of reference developed and IO assigned	5 working days from outcome of preliminary review	Commissioning Manager
Investigation commences and report produced	30 working days from employee being informed or IO assigned (whichever is latest)	IO
Commissioning Manager to consider the report and employee informed of outcome	5 working days from receipt of the report	Commissioning Manager
<b>IF CASE TO ANSWER</b>		
Hearing date arranged	10 working days from outcome	Commissioning Manager (Panel chair)
Hearing decision confirmed in writing to employee	5 working days from date of hearing	Panel chair
<b>APPEAL</b>		
Appeal submitted	10 working days from date of letter confirming hearing decision	Staff member
Hearing date arranged	10 working days from receipt of appeal	Appeal panel chair
Outcome of appeal confirmed to employee in writing	5 working days from date of hearing	Appeal panel chair

**Appendix 5**

**CONFIDENTIAL - Disciplinary policy – informal counselling record of discussion**

Optional template which can be used to detail discussions about conduct/ behaviour and must be read in conjunction with the Disciplinary Policy section 9.

As this is an informal meeting there is no right to be accompanied however the staff member can seek support from a union representative at any stage. To be kept in the confidential personal file and a copy given to the staff member

<b>Date of meeting/ discussion</b>	
<b>Name of staff</b>	
<b>Manager completing form</b>	
<b>Key theme/s discussed</b>	
<b>Outcome or key actions agreed</b>	

Should an employee have any concerns with regards to the outcome of an informal counselling meeting they should raise this with the next level line manager, Human Resources and/ or a staff side representative for advice. There is no right to appeal for informal counselling therefore recourse may be through the Grievance and Resolution Policy.

Both parties to retain a copy for reference

**Appendix 6**

**Monitoring Compliance**

<b>Minimum requirement to be monitored</b>	<b>Process for monitoring (e.g. audit)</b>	<b>Responsible individual / group/ committee</b>	<b>Frequency of monitoring</b>	<b>Evidence</b>	<b>Responsible individual for development of action plan</b>	<b>Responsible committee for monitoring of action plan and Implementation</b>
Content of the policy	Review of content	HR Policy Review Group and JUSS	Every 3 years	Updated policy on SAFE	Head of HR (E&W)	People & Culture Committee
Organisational learning	Review of anonymised information to oversee progress with actions/learning and identify recurrent themes and opportunities for wider organisational learning	People Reflections and Learning Group	Every 8 weeks	Minutes	Head of HR (E&W)	People & Culture Committee
Numbers of disciplinary investigations	Reporting on TIG	Integrated Performance Board	Monthly	TIG report	Deputy Chief People Officer	People & Culture Committee
Employee Relation Cases and protected characteristics	Equality Analysis		Every 1 year	Workforce Equality Report (Public Sector Duties)	Head of HR (E&W)	People & Culture Committee