

# Disciplinary procedure

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## EXECUTIVE SUMMARY

Kent Community Health NHS Foundation Trust (KCHFT) or (the Trust) is committed to providing first class healthcare and support services. In order to maintain high standards, it is essential that all employees conform to the standards, values and behaviours set by the Trust, described in the Values into Action Framework, to ensure an efficient and safe environment for patients, visitors and employees and to maintain good relations within the workplace. Colleagues with a leadership or management role should always adhere to the Leader and Managers Behaviour Framework.

This procedure describes what KCHFT considers to be misconduct and what the responsibilities of Directors, Managers and Employees are in ensuring they are aware of and are adhering to the Trust's rules, policies, procedures and values. It describes the process to be followed should an allegation of misconduct be made against any KCHFT employee. It sets out the resulting action, should, (following an appropriately conducted investigation), evidence be found to indicate that the allegation is founded.

### Scope and Purpose of Procedure

The purpose of this procedure is to ensure that all KCHFT employees are aware of what the Trust considers to be misconduct and what the process for investigating and addressing disciplinary matters will be should they arise.

This procedure applies to all employees of KCHFT whether on locally agreed, Agenda for Change or Medical and Dental terms and conditions. This procedure supersedes all previous iterations and replaces any relevant policies and procedures under previous terms and conditions of employment held by individuals who have transferred from other organisations.

Any apprentice, student, trainee, volunteer or other individual who works on Trust premises but is not directly employed by the organisation, will be subject to the Trust's standards of conduct and behaviour. Where applicable they will be dealt with under the scope of their own employer's disciplinary procedure or the disciplinary processes used by their relevant educational, training or professional body.

The procedure does not apply in cases of poor performance that can be attributed to capability which will be addressed through the Trust's Capability policy.

Where allegations of misconduct involve an employee on Medical and Dental terms and conditions, reference must first be made to the Responding to concerns regarding doctors and dentists' policy and/or the Maintaining High Professional Standards policy.

Where an issue is identified that relates to the protection of vulnerable adults (POVA) or the protection of children, it will be dealt with in accordance with the Trust safeguarding and inter-agency protocols and any relevant external and/or regulatory bodies as appropriate.

### Risks addressed

The proper application of this procedure ensures that issues related to the conduct of Trust employees are addressed fairly and consistently, taking account of the principles of natural

justice and in accordance with the Employment Rights Act 1996, Employment Relations Act 1999 and Employment Act 2008.

## Governance Arrangements

<b>Directorate or Function Governance Group responsible for developing document</b>	HR, OD and Communications
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<b>Review criteria</b>	This document will be reviewed prior to review date if a legislative change or other event dictates.

## Key References

Employment Rights Act 1996
Employment Relations Act 1999
Employment Act 2008
ACAS Code of Practice on Disciplinary Procedures

## Related Policies/Procedures

<b>Title</b>	<b>Reference</b>
Appraisal policy	HR015
Disclosure and Barring services (DBS) policy	HR017
Resolution and Accountability Framework	
Maintaining High Professional Standards policy	HR027
Managing Sickness Absence policy	HR007
Responding to concerns regarding doctors and dentist's policy	HR054
Standards of Business Conduct and Conflicts of Interest policy	CQS023

## Document Tracking Sheet

<b>Version</b>	<b>Status</b>	<b>Date</b>	<b>Issued to/Approved by</b>	<b>Comments/Summary of Changes</b>
2.0	Approved	22/05/2015	Trust Board	New Kent Community Health NHS Trust replacing legacy Eastern and Coastal Kent Community Health NHS Trust and West Kent Community Health. Kent Community Health NHS Trust disciplinary rules and procedure version 1. Key changes include new timescales for

				conduct of investigations (4 weeks), revision of the examples of misconduct, review of the roles and responsibilities, removal of right to be accompanied at investigation meetings, provision of digital recordings copies and removal of provision of transcribed minutes. Extension of the previous fast track disciplinary process to 2 types of Fast track processes, where the individual(s) accept the responsibility for the allegations.
3.0	Approved	03/2016	Trust Board	<p>Policy format changed to align with Trust standard policy template.</p> <p>Flow chart describing the investigation and hearing process removed. Authority to act amended, removed and added to Disciplinary hearing manager's toolkit.</p> <p>Amendments were made to the procedure to update the list of types of misconduct and serious misconduct was removed to leave the categories of misconduct and gross misconduct.</p> <p>Greater clarity of the roles and responsibilities has been added. Information about the "Fit and Proper person test" has been included.</p> <p>Table 2: Trust Disciplinary sanctions removed and greater detail about levels and types of sanctions described along with the hearing process.</p>
3.1	Approved	11/2016	Senior Employee Relations Adviser	An amendment was made to section 13.5 to clarify that in instances where the misconduct is deemed to warrant it a final written warning may be issued without having to had issued a first written warning in the first instance.
3.2	Approved	3/2017	Head of Employee Relations	<p>Clarity relating to the full range of potential appeal outcomes to ensure consistency with Trust generic appeals policy and Trust practice (para 14.5 in this policy)</p> <p>Updated conduct list to accurately reflect the Trust view on seriousness of conduct offences and action in relation to failure to update professional body registration in particular.</p> <p>Appendix 1 updated to provide improved clarity of the hearing procedure.</p> <p>Additional Appendix to clearly outline the Appeals procedure for Managers.</p> <p>New Trust logo added, EA wording updated, formatting tidied.</p>

3.3	Approved	September 2017	Senior Employee Relations Adviser	Amendments to section 5.6.2 to remove some other substantial reason and provide more examples. The addition of section 5.7 some other substantial reason. Formatting tidied.
3.4	Approved	April 2018	Employee Relations Team Admin	NHS Protect changed to NHS Counter Fraud Authority.
3.5	Approved	June 2020	Head of Employee Relations	<p>Addition of “apprentice” under the scope and purpose section.</p> <p>Removal of reference to POCA (incorrect abbreviation)</p> <p>Addition of reference to Leader and manager’s behaviour framework and the Responding to concerns regarding doctors and dentist’s policy.</p> <p>Addition of section on lapsed professional registration at section 5.7.</p> <p>Change of references from Director of Nursing to Chief Nurse.</p> <p>Addition of section on referring to the disclosure and barring service (DBS) at section 7.0.</p> <p>Amendment of reference to Monitor to NHS Improvement.</p> <p>Amendment to sections 13.1.2, 14.4.1, 14.5.2 and 14.7.1 to remove wording stating warnings will be held on personnel files indefinitely.</p> <p>Removal of wording in section regarding incremental increases being withheld. Replaced with requirement to arrange a pay-step review meeting to ensure changes to national terms and conditions have been reflected at section 14.2.</p> <p>Addition of section on Expired warnings at section 14.6.</p> <p>Addition of section detailing that assurance reports are provided to the strategic workforce committee on a bi-</p>

				monthly basis at section 18.3.
				Change to formatting to accommodate addition of sections.
3.6	Draft	August 2021	Acting Head of HR Services	<p>Addition of a section on Health and Wellbeing</p> <p>Reference to the Just and Learning Culture and how this is applied</p> <p>Addition of the considerations that are given to a panels composition to take account of colleagues with a protected characteristic</p> <p>Addition of Appendix 1 “A just culture guide”</p> <p>Removal of references to his/hers, she/he, him/her and replaced with them/their/they</p> <p>Addition of reference to the Resolution and Accountability Framework at paragraph 1.3</p>

**CONTENTS**

		<b>PAGE</b>
	EXECUTIVE SUMMARY	<b>2</b>
1.0	INTRODUCTION	<b>8</b>
2.0	EQUALITY DIVERSITY AND INCLUSION	<b>8</b>
3.0	EQUALITY ANALYSIS	<b>9</b>
4.0	ROLES AND RESPONSIBILITIES	<b>9</b>
5.0	SUPPORTING COLLEAGUES INVOLVED IN AN INVESTIGATION	<b>10</b>
6.0	EXAMPLES OF MISCONDUCT AND BREACHES THAT WILL LEAD TO DISCIPLINARY INVESTIGATIONS	<b>11</b>
	LAPSED PROFESSIONAL REGISTRATION	<b>15</b>
	DISMISSAL FOR SOME OTHER SUBSTANTIAL REASON	<b>16</b>
7.0	PROFESSIONAL MISCONDUCT	<b>17</b>
8.0	REFERRAL TO THE DISCLOSURE AND BARRING SERVICE (DBS)	<b>17</b>
9.0	FIT AND PROPER PERSON TEST	<b>18</b>

10.0	SUSPENSION/EXCLUSION	<b>18</b>
11.0	POTENTIAL CRIMINAL OFFENCES (INCLUDING FRAUD / BRIBERY AND CORRUPTION)	<b>19</b>
12.0	REPRESENTATION	<b>20</b>
13.0	DISCIPLINARY ACTION	<b>20</b>
14.0	INFORMAL ACTION	<b>20</b>
15.0	FORMAL ACTION	<b>21</b>
16.0	APPEAL	<b>23</b>
17.0	MISCELLANEOUS	<b>24</b>
18.0	TRAINING AND AWARENESS	<b>24</b>
19.0	MONITORING COMPLIANCE AND EFFECTIVENESS OF THIS PROCEDURE	<b>24</b>
20.0	GLOSSARY AND ABBREVIATIONS	<b>25</b>
21.0	REFERENCES	<b>25</b>
Appendix 1	A JUST CULTURE GUIDE	<b>26</b>
Appendix 2	PROCEDURE DURING FORMAL DISCIPLINARY HEARINGS AND APPEAL HEARINGS	<b>27</b>
Appendix 3	PROCEDURE DURING APPEAL HEARINGS	<b>29</b>

## 1.0 INTRODUCTION

- 1.1 Kent Community Health NHS Foundation Trust (KCHFT) or (the Trust) is committed to providing first class healthcare and support services. In order to ensure all employees are aware of what is considered to be unacceptable standards of behaviour these have been described in this disciplinary procedure. The following procedure will be applied fairly in all instances where disciplinary action is regarded as necessary by the organisation's management.
- 1.2 Managers are expected to manage all issues of misconduct as soon as a concern is raised. Managers will be supported by the Employee Relations team throughout the process and any resulting action will be proportionate to the allegations.
- 1.3 In some circumstances where issues relating to conduct/behaviour arise, it may be more appropriate to apply the [Resolution and Accountability framework](#) rather than the disciplinary procedure. Advice should be sought from the employee relations team when considering which is the most appropriate course of action to take.
- 1.4 In assessing whether an investigation or disciplinary action following an investigation is the appropriate route to address issues that arise all managers and decision makers should apply the NHS Improvement “just culture guide” at Appendix 1 and advice should be sought from the employee relations team when doing so.
- 1.5 Any individual involved in the application of this procedure should adhere to the principle of strict confidentiality throughout the process. Failure to do so could, in itself, result in separate disciplinary action against those breaching this rule.

## 2.0 EQUALITY, DIVERSITY AND INCLUSION

- 2.1 Employees must be aware of personal responsibilities under Equality legislation, given that there is a corporate and individual responsibility to comply with Equality legislation. This also applies to contractors when engaged by the Trust, for NHS business.
- 2.2 Managers have a personal responsibility for ensuring that employees within their teams act in a way that creates an inclusive environment and in accordance with Equality legislation. They have an instrumental role in ensuring that employees are aware of what acceptable conduct is and preventing inappropriate behaviour from occurring. Managers must take timely and appropriate action in accordance with this procedure to deal with any issues of misconduct that arise.
- 2.3 When hearing arrangements are being made to consider the findings of an investigation that has taken place in line with this policy the HR adviser managing the case will ensure the disciplinary hearing panel is appropriately composed with a member that shares or has knowledge or understanding of the protected characteristic of the colleague that is responding to a case against them.

### **3.0 EQUALITY ANALYSIS**

- 3.1 KCHFT is committed to promoting and championing a culture of diversity, fairness and equality for all our colleagues, patients, service users and their families, as well as members of the public.
- 3.2 Understanding of how policy decisions, behaviour and services can impact on people with 'protected characteristics' under the Equality Act 2010 is key to ensuring quality and productive environments for patient care and also our workforce.
- 3.3 Protected Characteristics under the Equality Act 2010 are:
- Race
  - Disability
  - Sex
  - Religion or belief
  - Sexual orientation (being lesbian, gay or bisexual)
  - Age
  - Gender Re-assignment
  - Pregnancy and maternity
  - Marriage and civil partnership
- 3.4 It is also important for the Trust to look to the future and ensure that it remains equitable to all, by considering elements that may be outside current legislation, such as financial deprivation, educational discrimination, class exclusion and many other elements.
- 3.5 An equality analysis should be completed whilst a policy is being drafted and/or reviewed in order to assess the impact on people with protected characteristics. This includes whether additional guidance is needed for particular patient or staff groups or whether reasonable adjustments are required to avoid negative impact on disabled patients, carers or colleagues.
- 3.5 The Equality Analysis for this is available upon request by contacting the Engagement Team via [kchft.equality@nhs.net](mailto:kchft.equality@nhs.net).

### **4.0 ROLES AND RESPONSIBILITIES**

#### **4.1 Directors**

- 4.1.1 Directors are responsible for ensuring that they make themselves available to chair hearings and appeal hearings where required to do so, or to determine whether to delegate authority to alternative senior managers who can act as chair to the panel in their place. Where the circumstances warrant it, they will be required to make a decision with regards to suspension/exclusion. When considering this as an option they should look at all alternative options to suspension/exclusion before agreeing this course of action. Directors should also encourage the senior managers in their area of responsibility to undertake the role of chair at hearings and appeal hearings, to ensure that where a disciplinary issue arises it is dealt with in a timely and appropriate way.

## **4.2 Heads of Service/ Managers**

- 4.2.1 Heads of Service/ Managers should make themselves available to participate in a disciplinary process, whether this be as the chair of a panel, as the case manager or as a case investigator. When acting as a case manager they should assist in identifying investigating officers within their service when requested to do so, and provide support to ensure they have the capacity to undertake the investigation in a timely way.

## **4.3 Employees**

- 4.3.1 Employees are required to adhere to the Trust's rules, policies, procedures and Values into Action Framework and should familiarise themselves with what constitutes misconduct in any of the categories outlined in this procedure.

## **4.4 Employee Relations (ER) Team**

- 4.4.1 The ER team will be required to keep up to date with employment legislation and be aware of case law that materially impacts on cases that are being investigated or considered at hearing stage.
- 4.4.2 The ER team will be able to provide managers with advice and support throughout the investigation and during any subsequent formal action that may result, including acting as employee relations support to the panel at any formal hearing.
- 4.4.3 At all times HR Advisers involved in supporting managers either prior to or post an investigation will consider using the "just culture guide", appendix 1, to ensure that consideration of a number of important principles are being made before formal action is taken against an individual. Doing so will support the organisation to take learning from an incident and share this with services across the Trust to prevent issues of a similar nature arising again if it is identified that there is a system, process or procedural failing rather than a case of misconduct by an individual.

## **5.0 Supporting colleagues involved in an investigation**

- 5.1 The Trust recognises that being involved in an investigation either as the subject of the investigation or as a witness can be a difficult time. At the beginning of an investigation colleagues will be provided with details of the support services available to them. This information can also be found on [Flo](#)
- 5.2 The case manager and investigating officer will be the first point of contact for any questions or concerns relating to the investigation. The case manager will be responsible for assigning a buddy to the individual under investigation.
- 5.3 Colleagues that are members of a trade union can speak to their union representatives. Those individuals that are not a trade union member can identify a colleague in their workplace who they may bring to formal meetings as outlined in section 12.0
- 5.4 Where an individual feels a referral to occupational health may be useful to them their manager should make the referral as soon as this is requested. Colleagues

may also access the Trust Counselling service confidentially, details of which can be found on Flo.

- 5.5 The KCHFT Black Asian Minority Ethnic (BAME), Disability and Carer's and LGBTQ+ staff networks are another source of support to colleagues. Details of how to contact them can be found on Flo too.
- 5.6 Further information on the Health, Wellbeing and Support for colleagues involved in an investigation can be accessed on Flo.

## **6.0 EXAMPLES OF MISCONDUCT AND BREACHES THAT WILL LEAD TO DISCIPLINARY INVESTIGATIONS**

- 6.1 The examples of misconduct described below should not be regarded as exhaustive. In addition, many departments/directorates have local protocols and failure to observe these could result in disciplinary action.
- 6.2 Whilst the particular circumstances of the case, its seriousness and any mitigating factors will be considered, full regard will be given to the principle of consistent treatment of every employee.
- 6.3 The Trust reserves the right to take informal or formal disciplinary action dependent upon the nature of the alleged misconduct of the employee.
- 6.4 Repeated misconduct offences do accumulate. Employees may be dismissed through a series of escalated warnings if it is clear that previous warnings have had no effect on improving their behaviour to the expected standard.

### **6.5 Misconduct**

- 6.5.1 Where misconduct offences are proven, an individual may be issued a warning, the level of which will be dependent on the nature of the offence taking into account previous instances of misconduct by that individual. Matters that are considered misconduct include (but are not limited to):

- Lateness for duty without reasonable explanation
- Failure to report for duty without reasonable explanation
- Poor attendance
- Failure to follow the Trust's policies and procedures
- Minor instances of discourtesy/rudeness to patients, visitors or other employees
- Failure to wear correct uniform or protective clothing where provided or unsatisfactory condition or appearance related to personal hygiene
- Abuse of the Trust's Managing Sickness Absence policy or not following the required reporting procedures in relation to sickness absence
- Management failure to comply with the Trust's Manager's charter and Trust policies
- Management failure to ensure that employees within the scope of their responsibility also comply with the Trust's Manager's charter and Trust policies

- Failure to meet required standards of performance and behaviour as expected within the employee's role and responsibilities and the Trust Values into Action Framework
- Insubordination and/or failure to carry out reasonable management requests or instructions
- Failure to comply with local or department rules relating to wilful poor performance, health and safety or conduct
- Smoking in Trust premises or Trust vehicles
- Minor damage to the Trust's property
- Failure to inform the Trust of secondary employment with another employer
- Outside employment – employees engaging in secondary employment in off duty hours must ensure that such employment does not adversely affect their work in the Trust. The disciplinary procedure may be used if the Trust feels that the employee's performance is affected
- Unauthorised absence
- Deliberate failure to comply with conditions of service or working procedures
- Serious instances of professional misconduct
- Personal behaviour conducted either at or outside of work or working hours that results in bringing the Trust or any of its employees into disrepute, or creates disruption to services or care
- Causing distress to colleagues, patients or members of the public through inappropriate conduct, either at or outside of work, including through social media, via emails or telephone (such as serious breaches of the Trust Values into Action Framework, discriminatory comments, shouting, swearing, bullying behaviour)
- Breaches of Information Governance and or patient confidentiality
- Failure to comply with the rules relating to conflict of interests, hospitality and gifts as outlined in the relevant Trust policy
- Failure to notify the Trust of a salary overpayment (either as a one-off payment or accrued over a period of time).

## 6.6 Gross Misconduct

6.6.1 Gross misconduct is misconduct that is so serious that it strikes at the root of the trust and confidence that must exist for the contract of employment to be effective. In most cases, where the investigation and disciplinary hearing conclude that the allegations are upheld, the result will be summary dismissal without notice or payment in lieu of notice.

6.6.2 The following are considered to be acts of gross misconduct:

- **Gross Negligence including** - Any action or failure to act that could result in serious damage to property or equipment, or endanger the health and safety of themselves and of others

Any action or failure to act that could result in a failure to provide appropriate care and protection to patients

- **Gross Insubordination** - including wilful refusal to carry out a reasonable instruction or behaviour or other display of attitudes that seriously undermine

management's authority

- **Bullying and Harassment** - harassment associated with an individual's protected characteristic(s) or bullying of colleagues, patients or visitors either as an offender, or as a manager failing to take appropriate action after an incident is brought to their attention
- **Behaviour that brings the Trust into disrepute or seriously interrupts the provision of service or care** - wilful acts which seriously undermine the Trust's professional standing or that of its employees
- **Serious breaches of Information Governance** - including disclosure of confidential Information to unauthorised persons; particularly in relation to an employee or patient, or as a manager failing to take appropriate action to prevent continued breaches by direct reports
- **Serious breach of the Trust's rules** - including, but not restricted to, health and safety rules
- **Assault** – any verbal or physical assault, fighting or threatening behaviour directed at a patient, member of the public or fellow employee
- **Theft** – unauthorised or unlawful possession of property belonging to the Trust, fellow employees or members of the public. This should be reported to the Local Security Manager.
- **Fraud** – any deliberate attempt to defraud the Trust, fellow employees or members of the public. This should be reported to TIAA (Local Counter Fraud Service).
- **Falsification of records** – patient notes, reports, accounts, expense claims or self-certification forms, whether or not for personal gain
- **Failure to report incidents** - which could cause harm to others, e.g. break down of equipment or errors in administration of patient treatment
- **Failure to comply with Duty of Candor requirements** - this confers on all Trusts the requirement to inform and apologise to patients if there have been mistakes in their care that have led to significant harm
- **Corruption** – this refers to any receipt of money, goods, favours in respect of services rendered
- **Bribery** – This refers to giving, promising or offering a bribe. Also, to request, agree to receive or accept a bribe (as defined by the bribery act 2010). Any suspicion of an employee engaging in this behaviour should be reported to counter fraud immediately
- **Wilful or Malicious Damage** – the intentional causing of damage to the Trust's property or property of fellow employees, patients or members of the public

- **Inappropriate relationships with patients or service users** – relationships may or may not be of a sexual nature and incorporates any relationship that is deemed to be professionally inappropriate in relation to patients or service users whilst under the care of an employee or their service
- **Being Unfit for Duty** – this could result from being under the influence of alcohol, illegal or recreational drugs
- **Possession, custody or control of illegal drugs on the Trust's premises or whilst on duty**
- **Misrepresentation** - falsification or failure to declare relevant information on an employment application form, an enrolment form or occupational health questionnaire. Any suspicion that an employee has engaged in this behaviour will be reported to counter fraud immediately and may also constitute a criminal offence
- **Unacceptable Behaviour** - towards employees, patients, visitors or public in the course of work, on Trust premises or outside work where the issues potentially bring the Trust into disrepute
- **Misuse of Information Technology** - unauthorised and improper use of the Trust information technology systems as specified in the relevant Trust policy
- **Destroying/Concealing Evidence of Malpractice** – the intentional destruction or concealment of evidence of malpractice
- **Failure to disclose a criminal offence** - at the time of appointment or during employment such as a conviction, summons, caution or charge
- **Victimisation of employees** - who have exercised a statutory right e.g. Whistleblowing or an Equality Act 2010 protected action and are subject to victimisation by a manager, colleague or other employee. This includes managers not acting to prevent such victimisation
- **Non-Compliance with 'Declaration of Interest' requirements** – employees must declare any conflict of interest in accordance with Trust policy
- **Unauthorised use or Misuse of Trust Facilities or Property** - Misuse of Trust vehicles, plant machinery, tools, equipment, facilities or property e.g. serious misuse of telephones or internal post
- **Acting outside of your authority** – including inappropriate decision making or actions that are outside of standard operating procedures or policies that are associated with patient care. Inappropriate decisions, actions or communications that may bring the Trust into disrepute or negatively impact on Trust contracts and relationships with commissioners, partners or service providers (this does not include appropriate use of the Whistleblowing procedure)
- **Being asleep on duty** - unless authorised

- **Loss of legal authority to continue employment** - This includes breach of a statutory requirement e.g. loss of the legal right to work in the UK, loss of a driving licence as a result of motoring offences where driving is an essential part of the role and deliberate and failure to retain professional body registration where this is a condition of employment.
- **Non-disclosure of infection status** – Employees must notify their line manager and seek professional advice if they suspect they have been exposed to a serious communicable disease
- **Inappropriate use of social networking and internet sites** - This will apply to an employee who makes inappropriate comments about the Trust or any of its employees on a social networking site in the public domain (e.g. Facebook or Twitter). It applies to comments made which may cause reputational damage to the Trust because of the views expressed. Actions that would be deemed to constitute Internet trolling, whereby an employee sends a threatening, offensive or indecent letter, electronic communication or article which results in distress or anxiety to another employee, patient or member of the public. This rule applies regardless of whether this occurs whilst at work and on-duty or outside work and off-duty.
- **A fundamental breach of the Contract of Employment** – This may include:
  - Failure to meet statutes concerning Professional Registration.
  - It may also apply to the removal of a driving licence from a colleague for whom driving is an essential part of their work, or wilful failure to obtain a DBS check, or work permit.
  - Withholding information that has a serious bearing on the offer of or continuation of employment, e.g. a conviction or dismissal from a previous employer that the employee fails to disclose.
  - Conviction for a criminal offence, committed in or out of work that renders the employee inappropriate or unavailable for continued employment.
  - Where information becomes known that would render the employee inappropriate for the post they occupy.
  - Where the trust feels there is a breach in trust and confidence in an employee's ability to conduct their role or the relationship between the organisation and the employee breaks down irretrievably

6.6.3 All allegations made in this category will be investigated and presented at a formal hearing.

6.6.4 Other acts of misconduct may come within the general definition of gross misconduct.

## 6.7 LAPSED PROFESSIONAL REGISTRATION

6.7.1 The employee is solely responsible for ensuring that their registration remains in date and valid. They should regularly review the details held by their professional body to ensure that any notifications or reminders are sent to the correct address or email account and that payment details are correct to ensure subscription fees are taken from the correct account and on time to prevent a lapse in their registration.

6.7.2 KCHFT colleagues must inform their head of profession and Employee Relations (ER) immediately if they are subject to proceedings by their regulatory body in this country or abroad.

6.7.3 In the following circumstances the disciplinary procedure will be applied,

The employee:

- fails to notify the Trust of proceedings against them
- is removed from the register by the professional body, temporarily or permanently

6.7.4 It is the employee's responsibility to renew their registration in enough time to allow for all stages or any delays in the process e.g. revalidation or time for the regulatory body to process the application. For this reason, the Trust would encourage all employees to pay for their registration via direct debit.

6.7.5 Where it becomes evident that registration has lapsed advice will be provided by the Employee Relations team, and the following procedure described below will be followed.

1. The employee's line manager is required to either meet or arrange a telephone conversation with the employee immediately to inform them that they are suspended without pay with immediate effect and will be required to attend a disciplinary hearing, normally held within 5 working days. A letter must be sent to the employee confirming the terms of suspension without pay and asking them to attend a disciplinary hearing on a stated date. This can be obtained from the Employee Relations team.
2. The Workforce team will ensure that the employee's pay is suspended until further notice.
3. The employee must be instructed to take immediate action to restore their registration and confirm this has been done to their line manager.
4. If on discovery of lapsed registration and after further investigation the employee has been working in a qualified role whilst not registered, the disciplinary action to be considered will include summary dismissal.
5. When the line manager has received information that re-registration has been successful and the disciplinary hearing has been completed, unless the outcome is dismissal, they should agree a return to work date and contact the Workforce team with the details and complete a change form re – instating pay.

6.7.6 Should there be a genuine belief by the line manager that this occurred due to circumstances outside the control of the individual then any decision to act outside this process must be agreed by the Head of Employee Relations and the Service Director in collaboration with the Chief Nurse or Medical Director.

## **6.8 DISMISSALS FOR SOME OTHER SUBSTANTIAL REASON**

At times there may be other substantial reasons that the trust and confidence in an

employee's ability to conduct their role or the relationship breaks down irretrievably between the Trust and the employee. These issues may include but are not limited to the examples given above under 'fundamental breach of contract'.

In these circumstances the employee will be notified in writing of the Trust's intentions and provided with a reasonable amount of time in which to respond. Where possible a formal hearing will be convened however, there may be occasions where due to the nature of the allegations a decision may be made outside of a hearing and confirmed to the employee in writing. The employee will have the right to appeal against the Trust's decision as outlined in section 14 below.

## **7.0 PROFESSIONAL MISCONDUCT**

- 7.1 Employees who are subject to disciplinary action are reminded that the Trust has a duty to report any instance of professional misconduct to the appropriate professional body who may investigate the case. The panel will make a recommendation to the Chief Nurse, for Agenda for Change employees, or the Medical Director, for Medical and Dental employees who will make the referral if deemed appropriate.
- 7.2 Action taken by an employee's professional body does not preclude the Trust from also investigating the matter and taking appropriate action under the Trust's disciplinary procedure. The Trust can act even if there are pending professional or regulatory body proceedings regarding an employee.

## **8.0 REFERRAL TO THE DISCLOSURE AND BARRING SERVICE (DBS)**

- 8.1 Employers in the NHS have a legal duty to refer individuals to the DBS in certain circumstances. Situations that may lead to a referral include instances where an individual has harmed a child or member of a vulnerable group, or where they have put them at risk of harm.
- 8.2 There are two conditions set by the DBS that, ordinarily, both need to be met for the legal duty to apply. The first is when the employer has withdrawn permission for a person to engage in regulated activity with children and/or vulnerable groups, or they move the person to another area of work that isn't regulated activity. This includes situations where this action would have been taken but for the person being redeployed, resigning or retiring. The second condition is where the employer believes the employee has carried out one or more of the following:
- An action which satisfies the harm test.
  - Engagement in relevant conduct.
  - They have been cautioned or convicted of a relevant offence.
- 8.3 The duty still applies if an individual has resigned before a formal decision to dismiss or remove them from a regulated activity has been made.
- 8.4 A referral can still be made in the interests of safeguarding children or vulnerable adults where the above conditions are not fully met. This may be the case where allegations have been made against an employee but they have not been removed from a regulated activity because there is insufficient evidence to dismiss them.

- 8.5 Only following a full investigation will a recommendation to refer to the Chief Nurse, for AfC employees, or the Medical Director, for Medical and Dental employees, be made. The recommendation will be made by either the case manager or the panel at the conclusion of the formal hearing. Following a review of all of the relevant information the Chief Nurse or Medical Director will make the final decision to refer if it is deemed appropriate.
- 8.6 The flowchart in the following link will help in making the decision as to whether a referral to the DBS is required <https://www.gov.uk/government/publications/db-referrals-referral-chart>

## **9.0 FIT AND PROPER PERSON TEST**

- 9.1 The Health and Social Care Act 2008 (Regulated Activities) Regulations 2014 set out the standards that an individual is required to meet to be considered compliant with the Fit and Proper Person Test. Where the contract of employment of an executive director or relevant senior manager is terminated in circumstances in which there are reasonable grounds for believing that they are not a fit and proper person to hold such a post, the Trust is obliged to report the matter to NHS Improvement and the Care Quality Commission.

## **10.0 SUSPENSION/EXCLUSION**

- 10.1 There may be instances where suspension/exclusion with pay is necessary while investigations are carried out. The Trust has the right to suspend with pay where there are reasonable grounds for concern that evidence may be tampered with or destroyed, witnesses may be pressurised before any disciplinary hearing, or if there is a potential risk to the Trust, other employees, patients or third parties in allowing the employee to remain at work. The suspension/exclusion will be reviewed on a regular basis.
- 10.2 Suspensions required as a result of failure to retain professional registration will be unpaid.
- 10.3 Where an alternative to suspension/exclusion involves transferring the employee to a different location, where necessary and appropriate any excess mileage can be claimed. Any additional travel time will be considered as working time.
- 10.4 Unreasonable refusal to accept an alternative to suspension/exclusion or attend an investigation meeting may constitute misconduct and will be subject to disciplinary action. It will also result in suspension/exclusion without pay.
- 10.5 If the matter involves suspected fraud, bribery or corruption the matter should be discussed with TIAA.
- 10.6 Where there are matters relating to child or adult abuse allegations against an employee, advice should be taken from the safeguarding team, the Local Authority Designated Officer (LADO) and Employee Relations prior to making the decision to suspend. The Chief Nurse should be notified of any cases involving a member of the Nursing or Midwifery or Allied Health professions (AHP) staff group. The

Medical Director will need to be notified of any cases involving Medical or Dental employees.

- 10.7 Whilst suspended an employee must abide by the conditions of the suspension/exclusion which will be outlined in writing to them following the suspension/exclusion meeting, in addition to the letter they will be provided with any relevant policies.
- 10.8 The employee has the right to contact their Trade Union Representative for advice following their suspension.

#### **11.0 POTENTIAL CRIMINAL OFFENCES (INCLUDING FRAUD/ BRIBERY AND CORRUPTION)**

- 11.1 If following a preliminary investigation there is evidence to suggest that a criminal offence may have been committed, these matters should be discussed with the appropriate senior manager and reported to the Trust's Health, Safety and Security team who will liaise with the police if appropriate. In such circumstances, managers shall not be precluded from taking disciplinary action in accordance with this procedure so long as it is not prejudicial to any potential criminal investigation.
- 11.2 The Trust is not required to wait until after a criminal trial to proceed with its own investigation, though on occasion it may be prudent to do so.
- 11.3 Where a reported issue may constitute fraud, bribery or corruption then TIAA and the Employee Relations team should be informed and they will conduct an initial investigation. In the first instance, the individual being investigated should not be informed of the allegations as this could prejudice the case. Managers and employees suspecting fraud, bribery or corruption should immediately contact TIAA (contact details are available on the Trusts' intranet site). Alternatively, this can be reported to NHS Counter Fraud Authority via the fraud and corruption reporting hotline on Freephone 0800 028 40 60.
- 11.4 Where a disciplinary investigation is running concurrently with a counter fraud and/or Police investigation, it is important that the Trust investigating officer liaises regularly with TIAA, the health, safety and security team and or the police officer in charge.
- 11.5 Where a criminal offence has been allegedly committed by an employee at or outside work, an investigation of the facts and circumstances surrounding the case as it relates to their employment will be conducted, unless a request from the Police or Local Counter Fraud Specialist (LCFS) has been made that to do so may be detrimental to a criminal investigation. The investigation will seek to establish whether, on the balance of probability, the incident/misconduct occurred.
- 11.6 If an investigation by TIAA reveals evidence of bribery or finds at least one piece of corroborating evidence, the case will then be passed to the Police.
- 11.7 If the fraud or bribery referral concerns one of the Trust Executives or Non-Executives, the LCFS will discuss the referral with NHS Counter Fraud Authority

and may agree the investigation is carried out by an investigator from NHS Counter Fraud Authority.

- 11.8 Following the outcome of any counter fraud / police investigation, and subsequent criminal proceedings the Trust reserves the right to review the findings and to consider the employee's suitability for continuation of employment. An employee, subsequently found not guilty, does not have any further right of appeal in respect of any internal disciplinary action.

## **12.0 REPRESENTATION**

- 12.1 Employees have the right to be accompanied at formal hearings by either a trade union representative or a Trust workplace colleague of their choice. Hearings involving Doctors or Dentists will be held in compliance with the MHPS Policy.
- 12.2 There is no right for employees to be accompanied by a trade union representative or Trust workplace colleague at investigation interviews, although this should not be unreasonably refused. However, there may be occasions where a manager is accompanied at an investigatory meeting by an employee relations representative. This will be particularly relevant for investigations relating to gross misconduct matters or issues which involve input from the police or TIAA. Where a manager is accompanied at an investigatory meeting by an ER representative, the employee may also be accompanied by a trade union representative or Trust workplace colleague.
- 12.3 A request to adjourn an investigatory meeting to allow an employee to be accompanied should not be unreasonably refused. However, it should be stressed that a representative should make themselves available within as short a timescale as possible and in any event no longer than five working days in order to enable the investigation to be completed within a reasonable time.
- 12.4 There is no right for employees to be accompanied by a trade union representative or Trust workplace colleague at a meeting where an Informal recorded warning is being issued.

## **13.0 DISCIPLINARY ACTION**

- 13.1 In normal circumstances it would not be appropriate for managers to invoke the disciplinary procedure on the first occasion when there is a minor conduct issue that has caused concern. Managers are expected to see employees and guide them as to where they are not attaining the expected standard of conduct. Written records of any discussions will be kept which the employee is able to access.

## **14.0 INFORMAL ACTION**

### **14.1 Recorded Informal Warning**

- 14.1.1 Where a minor offence or offences have been committed, a recorded informal warning may be given. The warning will ordinarily state that any further misconduct will render the employee liable to further, formal disciplinary action.

- 14.1.2 A formal hearing is not required. A recorded informal warning may be issued by an employee's immediate manager and remains on an individual's personal file for a period of 6 months. There is no right of appeal against a recorded informal warning but the employee may place a letter of mitigation on their personal file.

## **15.0 FORMAL ACTION**

- 15.1 Where an individual has previously received a recorded informal warning or where a more serious offence has been committed, formal action may be necessary. A formal disciplinary hearing is required.
- 15.2 Possible outcomes following a formal hearing could be no disciplinary case to answer, an informal recorded warning or formal disciplinary action as described below. Upon completion of the disciplinary hearing, the senior manager conducting the hearing will convey their decision to the employee. The decision will be confirmed in writing within five working days.
- 15.3 Should an employee have a live disciplinary sanction on file at the time of their appraisal their pay step will be delayed until the warning has expired. Their manager will arrange a pay-step review meeting with them immediately prior to the expiry of the warning. This meeting will also be used to confirm that all other requirements have been met and to ensure that the colleague progresses to the next pay step, effective the day after the sanction expires.

## **16.0 The Disciplinary Hearing**

- 16.1 Where, upon completion of an investigation there are reasonable grounds to believe that an employee has committed an act of misconduct, the employee will be invited to attend a disciplinary hearing.
- 16.2 In the event of a disciplinary hearing taking place the Trust will:
- give the employee reasonable notice of the hearing, usually seven calendar days
  - tell the employee the purpose of the hearing and that it will be held under the Trust's disciplinary procedure
  - explain the employee's right to be accompanied at the hearing by a trade union representative or Trust workplace colleague
  - give the employee written details of the nature of their alleged misconduct
  - in advance of the hearing, provide to the employee all relevant information (which should include statements taken from any fellow employees or other persons that the Trust intends to rely upon against the employee), usually seven calendar days prior to the hearing taking place.
- 16.3 Where the employee, their Trade Union Representation or their Trust workplace colleague is unavailable on the day scheduled for the hearing, it will be rescheduled, provided that the employee is available to attend a re-arranged hearing within five working days.
- 16.4 Unless there are special mitigating circumstances which prevent the employee from attending the rearranged hearing, the reconvened hearing will take place in the

employee's absence. The employee's trade union representative or workplace colleague may attend in such circumstances and will be allowed the opportunity to present the employee's case. The employee will also be allowed to make written submissions in such a situation.

- 16.5 A disciplinary hearing should be conducted by an independent manager (the Chair) who has not been involved in the investigation. In some cases, there will need to be more than one panel member to review the evidence at the hearing as part of a disciplinary panel. Where the issue relates to one of professional misconduct, this should be a Clinician with the relevant clinical background. In any cases involving issues of professional conduct with a Doctor or Dentist the panel will be constituted in compliance with the MHPS Policy. An Employee Relations Adviser will attend the hearing and provide support to the panel members.
- 16.6 The employee will be entitled to a full explanation of the case against them and be provided with any statements provided by witnesses unless there are mitigating factors that justify not doing so.
- 16.7 The disciplinary hearing should follow the order described in Appendix 2.
- 16.8 Where appropriate, the chairperson of the hearing shall, in discussion with the professional adviser on the panel, make a recommendation as to whether a referral to the employee's professional body, Disclosure and Barring Service and/or, the Independent Safeguarding Authority should be made. If a recommendation to refer is made this will be done by either, the Medical Directors office, where the hearing concerns an employee from the Medical and Dental staff group, or the Chief Nurse for AfC employees.
- 16.9 Within five working days of the conclusion of the disciplinary proceedings, the manager conducting the hearing will convey the decision to the employee. The decision will be confirmed in writing. If a formal disciplinary sanction is issued, the employee will be notified of their right of appeal.

#### **16.10 First Written Warning**

- 16.10.1 Where either a more serious disciplinary offence has been committed that warrants formal action or further offences have been committed by an employee following a recorded informal warning that remains "live", the employee will receive a first written warning. A first written warning remains on an individual's personal file for a period of six months.

#### **16.11 Final Written Warning**

- 16.11.1 In some circumstances an employee's first offence may be sufficiently serious to warrant moving to a final written warning despite them not having a previous warning on their file. This would be the case if the individual's actions were likely to have or had resulted in a serious or harmful impact.
- 16.11.2 Other circumstances in which a final written warning may be issued are where an employee commits further disciplinary offences after a first written warning has been issued previously and remains live or where a serious disciplinary offence

amounting to gross misconduct has been committed, thereby justifying summary dismissal, but the hearing panel decides, after considering any mitigating factors, that a lesser penalty is appropriate. A final written warning remains on an individual's personal file for a period of twelve months.

### **16.12 Expired warnings**

- 16.12.1 Expired warnings will be retained on an employee's personnel record as it may be necessary to take account of the warning when considering future conduct, for example establishing a pattern of behaviour or an awareness of the relevant rules. Any expired warnings will be marked as expired and moved to the archive section of the personnel file.

### **16.13 Transfer or Downgrading**

- 16.13.1 Where a final written warning is given to an employee as an alternative to dismissal, the Chair of the panel may also impose the transfer of the employee to other work with downgrading if necessary. There is no protection of pay. The warning will remain on an individual's personal file for a period of eighteen months.
- 16.13.2 This action should only be taken with the employee's consent. If the employee does not agree to the downgrading, then dismissal would be the alternative.
- 16.13.3 This form of action will only be taken where it is felt that the conduct or capability of the employee would be significantly improved in a lower banded or different role.

### **16.14 Dismissal**

- 16.14.1 Where the employee has committed further acts of misconduct (these being acts of misconduct other than gross misconduct) following a final written warning, the employee may be dismissed with notice.
- 16.14.2 If an employee is dismissed for an act of Gross Misconduct they will be summarily dismissed without further notice or pay in lieu of notice.

## **17.0 APPEAL**

- 17.1 An employee may appeal against any formal disciplinary sanction imposed against them. The employee must provide written notice of the appeal within fourteen calendar days of the date of the letter confirming the outcome of the disciplinary hearing. All formal appeals should be directed to the Head of Employee Relations. An employee will lose their right to appeal if they have not lodged their appeal within this timescale. When lodging an appeal, the employee should state:

- the grounds of appeal
- whether they are appealing against the finding that they have committed the alleged act or acts of misconduct, or against the level of disciplinary sanction imposed.

- 17.2 The disciplinary appeal hearing should follow the order described in Appendix 3.

- 17.3 The appeal will be heard by a manager more senior than the chairperson of the original hearing and will not have been involved in the decision to impose the disciplinary sanction on the employee. Where an Executive Director has taken a decision to dismiss, at least one other Executive Director will be a member of the appeal panel.
- 17.4 Upon completion of the appeal hearing, the senior manager conducting the hearing will convey their decision to the employee. The decision will be confirmed in writing. The decision at the appeal is final and there is no further right of appeal.
- 17.5 The appeal panel, in its discretion can choose to uphold or rescind any sanction invoked by the previous panel, they may also feel that any previous sanction level should be increased or reduced. In addition, they may feel it necessary for a sanction to be imposed.

## **18.0 MISCELLANEOUS**

- 18.1 Where disciplinary action is contemplated against a Trade Union Official, the appropriate full-time officer or senior lay official will be notified, prior to any initial fact-finding action being taken (with the exception of suspending the employee in a case of suspected or known gross misconduct in which case they will be informed as soon as possible).

## **19.0 TRAINING AND AWARENESS**

- 19.1 The procedure will be published on the Trust's intranet following ratification. In addition, the Employee Relations team will ensure that services are made aware of the new version through its regular reporting to the Organisational Development Business Partner's and Heads of Service.
- 19.2 Coaching sessions will be offered to all employees with management responsibility to enable them to effectively use and implement the procedure.

## **20.0 MONITORING COMPLIANCE AND EFFECTIVENESS OF THIS PROCEDURE**

- 20.1 The Employee Relations team will monitor compliance with this procedure. The team will regularly discuss cases to ensure good practice, consistency of decision making and will communicate lessons learned from cases to directorates through monthly reports and the ODBP's.
- 20.2 Anonymised data relating to disciplinary cases will be held to enable the Trust to monitor and identify if there are any trends that indicate disproportionate action or bias in respect of any of the equalities protected characteristics, by staff group, Directorate or location. Where any concerns are identified action will be taken to further investigate the root causes of trends and actions agreed to eliminate any further issues.
- 20.3 Assurance reports will be provided on a bi-monthly basis to the Strategic workforce committee (SWC) which highlight any cases involving suspension, exclusion or formal investigation.

## 21.0 GLOSSARY AND ABBREVIATIONS

Abbreviation	Meaning
KCHFT	Kent Community Health NHS Foundation Trust
ACAS	The Advisory Conciliation and Arbitration Service
AfC	Agenda for Change
AHP	Allied Health Professions
DBS	Disclosure and Barring Service
ODBP's	Organisational Development Business Partners
POVA	Protection of Vulnerable Adults
TIAA	The Internal Audit Agency
LCFS	Local Counter Fraud Specialist
LADO	Local Authority Designated Officer

## 21.0 REFERENCES

Sources of reference material include: -

- ACAS Code of Practice on Disciplinary Procedures
- "An employer's duty to refer to the DBS" - NHS Employers website

## Appendix 1



# 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?



If No to any

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?



If Yes to any

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

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## Appendix 2

### PROCEDURE DURING FORMAL DISCIPLINARY HEARINGS

The process set out below describes the process for formal disciplinary hearings.

The panel and the Employee Relations Adviser may ask questions at any time for the purposes of clarification and to ensure a full and thorough investigation of the case.

The following procedures should be observed at all formal hearings: -

1. The person leading the hearing (the chair) will introduce the hearing, and explain its purpose and how it will be conducted. The purpose of the hearing will normally be to establish the facts and determine, on conclusion of the hearing, whether the Trust has proper grounds to take disciplinary action against the employee and, if so, the level of such disciplinary action.
2. The parties present at the hearing will introduce themselves and confirm their respective roles in the hearing. The employee will be entitled to be accompanied, if they wish, by a trade union representative or Trust workplace colleague of their choice.
3. The chair will state that the hearing is being conducted as part of the Trust's disciplinary procedure, and confirm that a written record of the hearing will be made.
4. The chair will state whether any witnesses have been asked to give evidence at the hearing, and if so, who they are.
5. The management representative should state their case.
6. The employee (or their representative) will have the opportunity to question the management's representative
7. The panel and the employee relations representative will have the opportunity to question the management's representative.
8. Any witnesses whom the Trust has decided to call will be called into the hearing and asked to state their evidence in front of the parties.
9. The employee (or their representative) should state their case.
10. The management representative will have the opportunity to question the employee and their representative.
11. The panel and the Employee Relations representative will have the opportunity to question the employee and their representative.
12. Any witnesses whom the employee has decided to call, will be called into the hearing and asked to state their evidence in front of the parties.
13. The management representative(s) shall have the opportunity to sum up, if they so

wish.

14. The employee (or their representative) shall have the opportunity to sum up, if they so wish. The employee (or their representative) shall have the right to speak last.
15. In their summing up, neither management nor trade union representative may introduce any new matter.
16. The panel may at their discretion, adjourn the hearing in order that further evidence is acquired by either party or for any other reason.
17. When the panel is satisfied that management representative and the employee (and/or their representative) have completed their case and that no further information is required, the panel will adjourn to consider their decision in private.
18. Parties will only be recalled to clear points of uncertainty. If one party is called then the other should also be present. Witnesses may also be recalled where further evidence is required.
19. Following an adjournment, a decision as to whether the allegations have been substantiated sufficiently will be made. If the allegation is substantiated, the panel will decide whether any disciplinary penalty is necessary and reasonable in all the circumstances. Where a disciplinary penalty is considered necessary, the panel will decide what type would be most appropriate giving regard to the seriousness of the offence and the mitigation put forward.
20. When the decision has been reached, the hearing will normally be reconvened and the decision given verbally to the employee. This decision will then be confirmed in writing within five working days.
21. Any actions or recommendations agreed as a result of the disciplinary or appeal hearing will be communicated to the line manager to ensure they are actioned and reviewed alongside any timescales imposed.

## APPENDIX 3

### Appeal Hearing process

#### 1. INTRODUCTIONS

Those present: -

The Hearing panel

XXX, XXX

XXX, Human Resources XXX (Advisor to the panel)

Management side

XXX, XXX

XXX, Human Resources Advisor

Employee side

XXX

XXX, Companion/ TU rep

Management Witnesses

XXX

Employee side witnesses

XXX

#### 2. PURPOSE OF THE MEETING

The purpose of the appeal hearing will be to consider XXX in relation to XXX

#### 3. THE APPEAL HEARING PROCESS

The employee or companion will present their case. Questions may then be asked in the following order:

a. Management side

b. The panel

The employee may then call witness(es), if applicable and ask questions of them.

The witness(es) may then be questioned in the following order: -

a. The employee side

b. Management side

c. The panel

The employee where appropriate may re-examine the witnesses

The panel where appropriate may re-examine the witnesses

The manager will present the response to the employee side presentation.

Questions may then be asked in the following order: -

- a. The employee
- b. The panel

The manager may then call witness(es), if applicable and ask questions of them.

The witness(es) may then be questioned in the following order: -

- a. Management side
- b. The employee
- c. The panel

The manager where appropriate may re-examine the witnesses

The panel where appropriate may re-examine the witnesses

Witnesses should not be recalled unless the panel at their discretion requires any further clarification. All parties (Employee side, management side and the panel) should be present where this situation occurs.

Once each party has completed their questioning each party will be given an opportunity to sum up in the following order: -

- a. The employee side
- b. Management side

Once both parties have had the opportunity to sum up their case the panel will adjourn the hearing to consider the case. The panel will, where possible, reconvene to provide the outcome to the parties and will also communicate the decision in writing. Where it is not possible or necessary to reconvene the panel, the panel may consider communicating the decision in writing.