

Document Details		
Title	Disciplinary Policy & Procedure	
Trust Ref No	1346-69295	
Local Ref (optional)		
Main points the document covers	This document covers the process to follow in matters of misconduct	
Who is the document aimed at?	All agenda for change employees	
Author	Fiona MacPherson, Human Resources Manager	
Approval process		
Who has been consulted in the development of this policy?	Trade Unions, Line Manager, employees and Human Resources	
Approved by (Committee/Director)	Human Resources & Workforce group and Quality & Safety Committee	
Approval Date	9 December 2016	
Initial Equality Impact Screening	Yes	
Full Equality Impact Assessment	No	
Lead Director	Director of Corporate Affairs	
Category		
Sub Category		
Review date	Reviewed at Board 5 August 2021 Extended to 31 March 2022	
Distribution		
Who the policy will be distributed to	Line Managers	
Method	Dissemination via datix alerts to managers and available to all staff via the Trust's website	
Document Links		
Required by CQC		
Other		
Amendments History		
No	Date	Amendment
1		
2		
3		
4		
5		

Contents

Paragraph	Page
1.0 Policy Statement	3
2.0 Scope of the Policy	3
3.0 Responsibilities	3
4.0 Principles	5
5.0 Informal Procedure	8
6.0 Suspension	9
7.0 Formal Procedure	12
8.0 Investigations	12
9.0 Preparing for a Hearing	14
10.0 Disciplinary Sanctions	16
11.0 Disciplinary Appeals Procedure	17
12.0 Criminal Charges	18
13.0 Fraud	18
14.0 External Complaints	19
15.0 Referrals to Professional/Statutory Bodies	19
16.0 Cases of Ill Health	19
17.0 Grievances during disciplinary	19
 Appendices	
1 Table A - Disciplinary Officers	20
2 Table B – Levels of Appeal	21
3 Fast Track Disciplinary Process	22
4 Disciplinary Hearing Process	24
5 Procedure to be adopted at an Appeal Hearing	25
6 Process Flowchart	27

1.0 Policy Statement

- 1.1 We recognise that effectively handling disciplinary issues as they arise plays an important role in maintaining strong employment relations and a high morale amongst our workforce.
- 1.2 The Disciplinary Policy and Procedure – in the following referred to as the “policy” - has been specifically designed to handle issues as soon as they arise, by an appropriate manager (with the relevant authority) and within a timely manner, and has taken into account best practice promoted by employment organisations.
- 1.3 All Human Resources policies are underpinned by our vision and values.

2.0 Scope of the Policy

- 2.1 This policy is applicable to all employees (except those in the medical and dental staff group, see section 2.6 below) employed on a contract of employment with us. This Policy does not apply to contractors, agency or locum workers.
- 2.2 This policy is applicable in the following classifications - minor, serious and gross misconduct.
- 2.3 This policy is designed to assist employees to achieve and maintain satisfactory standards of conduct and behaviour and comply with our operating frameworks.
- 2.4 We are committed to ensuring that this policy is applied fairly and consistently to all employees.
- 2.5 This policy is not to be used for issues of poor work performance as those issues are subject to our Maintaining High Standards of Performance Policy.
- 2.6 Medical and dental professionals disciplinary and/or capability issues will be subject to the requirements of ‘Maintaining High Professional Standards in the Modern NHS’ as per the national agreement and our policy.

3.0 Responsibilities

3.1 Head of Human Resources & Workforce

The Head of Human Resources & Workforce has the responsibility to ensure the following requirements are met;

- 3.3.1 The provision and maintenance of this policy.

3.3.2 The provision of training events for managers in support of this policy.

3.3.3 To record and monitor all formal disciplinary issues using this policy. Records will be retained in the Human Resources Department. Trends will be identified as appropriate and necessary action taken (if applicable).

3.2 Line Managers

All employees with line management responsibilities are required to ensure the following requirements are met;

3.4.1 They are familiar with this policy and its application within their area of responsibility.

3.4.2 They have received the appropriate training to implement this policy in a consistent and fair manner as required by the policy statement (1.0) and they maintain these skills via updates.

3.4.3 To seek appropriate advice from a Human Resource professional and any other specialist areas (where necessary).

3.4.4 Employees are made aware of the process for dealing with disciplinary issues.

3.5 Human Resource Professionals

Human Resource professionals are required to ensure the following;

3.5.1 To provide consistent professional advice to line managers in their application of this policy.

3.5.2 They have detailed awareness of this policy and maintain their learning in order that they are able to support those with line management responsibilities.

3.6 Trade Union Representatives

Trade Union Representatives should be familiar with this policy in order to provide advice and support to their members if requested to do so.

3.7 Employees

Employees are required to ensure:

- 3.7.1 Compliance with any relevant professional codes of conduct in addition to all policies, procedures and systems as non-adherence may lead to disciplinary action.
- 3.7.2 Uphold and maintain their standards of work and behaviour in line with the Trust's Visions and Values.

3.8 Commissioning Manager

Commissioning Managers, in particular, are required to:

- 3.8.1 Commission the investigation and nominate an Investigating Officer;
- 3.8.2 Provide a clear terms of reference to the Investigating Officer on the investigation with advice from Human Resources;
- 3.8.3 Be familiar with this policy and its application within their area of responsibility.
- 3.8.4 Have received the appropriate training to implement this policy in a consistent and fair manner as required by the policy statement (1.0) and they maintain these skills via updates.

4.0 Principles

Core principles will support this policy which are as follows:

- 4.1.1 Where a disciplinary issue arises, all parties will ensure that the issue is being managed in accordance with this policy and the procedure will be followed by all parties.
- 4.1.2 Timescales are indicated in calendar days and are included to ensure that matters are dealt with promptly and without unreasonable delay. Timescales detailed are not exact requirements; all reasonable efforts should be made to ensure that the timescales are achieved. Disciplinary issues will be dealt with thoroughly and promptly to minimise distress and service delivery impacts.
- 4.1.3 Informal action will be considered, where appropriate, to resolve problems.

- 4.1.4 Where a formal investigation has been initiated, the process is only considered to be concluded after a hearing has taken place or feedback to the employee has been given.
- 4.1.5 Employees will be provided with a copy of the management case in advance of a disciplinary hearing.
- 4.1.6 For formal action employees will be advised of the nature of the allegation made against them, and will be given the opportunity to state their case before any decision is made at a hearing.
- 4.1.7 At all stages of the process the employee will have the right to be accompanied by a recognised Trade Union Representative, or work colleague.
- 4.1.8 Employees will be given a written explanation of any disciplinary action to be taken. Where appropriate clarification will be provided of what actions are required to be achieved and timescales will be set.
- 4.1.9 In cases of gross misconduct employees may be dismissed for a first breach of discipline when the penalty will be dismissal without notice or payment in lieu of notice.
- 4.1.10 Employees will have the right to appeal against disciplinary warnings or dismissal.

4.2 Application of the Policy Principles

- 4.2.1 All employees will be treated fairly in the application of this policy.
- 4.2.2 This policy requires that any disciplinary processes must adhere to the standard application/approach below (unless the fast track process or informal approach is agreed):
 - 4.2.2.1 **Step 1** - Once the Commissioning Manager has established that an investigation is required, an Investigating Officer must be appointed.
 - 4.2.2.2 **Step 2** – Witness statements will be taken to ascertain the facts and signed written statements will be provided by individuals identified as relevant to the investigation by the Investigating Officer. The employee will be invited to an investigatory meeting also (at which the employee has the right to be accompanied by a recognised trade union representative or work colleague) to discuss the matter with the Investigating Officer. Where, following these investigations and the taking of written statements, there is evidence to suggest there is a case to answer a hearing

must be convened. The employee will be given copies of the relevant documentation in advance of the hearing.

4.2.2.3 **Step 3** - At the hearing the disciplinary panel will consider all of the evidence. A decision will be taken. The decision will be confirmed in writing giving the employee the right to appeal.

4.2.2.4 **Step 4** - The right to appeal. If the employee wishes to appeal a hearing will be arranged (at which the employee has the right to be accompanied) and the employee will be informed verbally of the final decision and confirmed in writing.

4.2.2.5 Implementation of these processes is detailed below.

4.2.3 The following four levels of disciplinary actions which will be invoked as appropriate, to the offence confirmed:

- Formal verbal warning.
- First formal warning
- Final written warning.
- Dismissal or other sanction.

Managers authorised to discipline (by role) are listed in (**Appendix 1**).

4.3 Areas covered by the Disciplinary Policy Principles

4.3.1 This policy is applicable in the following classifications - **minor, serious and gross misconduct**. However, this list is not exhaustive and other areas may be included, for example, behaviour outside of the work environment if it affects an individual's continued suitability for employment.

4.3.2 **Minor matters:** These affect the performance or behaviour of the individual, for example, occasional poor timekeeping or small infringements of working practices.

4.3.3 **Serious matters:** These are infringements serious enough to require a disciplinary action, but not serious enough to warrant dismissal for a first offence. Some examples are as follows:

- Use of abusive language
- Unauthorised absence
- Insubordination
- Wilful poor performance.
- Failure to carry out reasonable instructions.

- Infringement of policies, procedures or other controlled documents which are serious, but do not constitute gross misconduct.

4.3.4 Gross misconduct: Gross misconduct is an offence usually so serious, it fundamentally breaches the employment contract and will normally lead to dismissal without notice for a first breach. This includes, but is not limited to:

- Theft or fraud.
- Physical violence, threatening behaviour or bullying.
- Deliberate and serious damage to property.
- Failure to demonstrate the values of the Trust
- Serious misuse of the Trust's property or name.
- Deliberately accessing internet sites containing pornographic, offensive or obscene material.
- Serious insubordination.
- Discrimination or harassment.
- Bringing the organisation into serious disrepute.
- Serious incapacity at work brought on by alcohol or illegal drugs, causing loss, damage or injury through serious negligence.
- A serious breach of health and safety rules including infection control.
- A serious breach of confidence.

5.0 Informal Procedure

5.1 Informal Discussion

- a. Line managers should deal with all minor incidences of misconduct informally in the first instance by means of discussion with the employee.
- b. The informal discussion should be undertaken by an appropriate person e.g. line manager, in an appropriate setting and at an appropriate time.
- c. It is the managers' responsibility before deciding on any action(s), to ensure that their action is a fair and reasoned approach in light of the circumstance(s), in consultation with HR (the relevant professional lead may also be consulted as required).
- d. The line manager must write to the individual informing them of the meeting arrangements, stating the purpose of the meeting and giving the individual the opportunity to be supported by either a work colleague or Trade Union representative. The manager will be able to seek HR support during the meeting.

- e. The purpose of the **informal discussion** is:
- To establish whether there are any problems facing the employee with which the employee can be helped
 - To ensure the employee understands the implications of their action(s)
 - To ensure that problems are discussed with the objective of encouraging and helping the employee to improve
 - To identify training needs that would improve personal conduct
 - To ascertain whether coaching and advice are appropriate in the circumstance
 - To ensure that the employee understands what needs to be done, how conduct will be reviewed and the time length involved
- f. The informal discussion will only be effective if subsequent actions are followed through with due responsibility. Review meetings must take place as agreed and any identified training should also have taken place.
- g. Depending on the circumstance(s) of the case, a line manager may consider it more appropriate to handle the issue in accordance with the Trust's Maintaining High Standards of Performance Policy.
- h. The employee should be made aware of what action will be taken if they fail to improve their conduct and that a record of the discussion will be kept on their personal file. Normally failure to improve conduct will involve implementing of the formal disciplinary procedure.
- i. Following the discussion, the line manager should confirm the content of the discussion in writing with the individual. The individual should be given the opportunity to comment on and agree the content of the information that will be recorded and a copy of the letter(s) should be retained on the employee's personal file.
- j. The informal discussion is not part of the formal disciplinary procedure and the employee must be informed of this.

6.0 Suspension

- 6.1 At any point in cases of alleged misconduct, a suspension may be considered. Suspension is not an assumption of guilt and is not considered a disciplinary warning.
- 6.2 Suspension should only be used in serious cases of misconduct and may be appropriate in one or more of the following circumstances:
- To remove the employee from the workplace if thought

necessary for the unimpeded conduct of management investigations;

- To prevent the employee causing risk to the emotional or physical welfare of patients/colleagues/self
- The alleged action requires investigation and is of such a serious nature (i.e. potentially dismissible) that it is undesirable for the employee concerned to remain on duty (e.g. assault);
- To remove the employee if they are not capable of performing their normal duties e.g. by virtue of intoxication;

6.3 It is important to consider prior to suspension whether staff can be re-deployed temporarily to other suitable alternative employment within the Trust or return with restricted duties. Please refer to 6.5 in relation to who makes the decision.

6.4 If suspension is required it is important that all parties understand that it is a neutral act and does not in any way imply misconduct or guilt. It allows the individual to leave the workplace on full pay pending an investigation of the allegations made.

6.5 The decision to suspend or redeploy an employee should be taken as soon as possible by:

- **For clinical staff** – the most senior person in the Trust with clinical professional leadership responsibility i.e. Director of Nursing and Operation, or if not possible to contact them or they are not at work, their Deputy Director or relevant Professional Lead who should inform the Director as soon as practicable after making their decision.
- **For non-clinical staff** – the relevant Director of the service/directorate where the employee works or if not possible to contact them or they are not at work, their Deputy Director who should inform the Director as soon as practicable after making the decision

6.6 In all cases of suspension the Human Resources team must be consulted, if this is not possible due to this being out of hours Human Resources must be notified as soon as possible.

6.7 Where the need to suspend an employee occurs outside normal working hours (9am - 5pm) the individual must be sent home by a relevant Manager. Once approval has been sought a meeting with the employee needs to take place in order to suspend them. Where a meeting is not possible i.e. the employee is in police custody, a letter must be sent confirming the action taken.

6.8 Where suspension is necessary, it will need to be done immediately, however employees will be asked if there is a colleague or

trade union representative who they wish to accompany them and they should be given reasonable time in which to arrange this. However, if it is not possible to find a representative quickly, the suspension meeting should not be unduly delayed.

6.9 At the suspension meeting the suspending manager (normally the individual's Line Manager) should:

- Explain the allegations;
- Explain the reasons for the suspension;
- Advise the individual that an investigation will take place
- Inform the individual that they are not permitted to enter the Trust premises unless it is for an investigation meeting, medical treatment or to attend Occupational Health, Staff Counselling or meet with their Staff side representative. Explain that they may attend as a visitor to a patient or to liaise with their staff representative, subject to prior notification;
- Explain that access to systems will be suspended and mobile telephones, key fobs, smartcards etc. will be kept at work in a locked cabinet;
- Inform the individual that the matter should not be discussed with other work colleagues (unless they are their representative);
- Agree an appropriate communication plan for the Investigating Officer to follow whilst the investigation is underway i.e. how and how often the individual wishes to be updated (this should be no longer than every four weeks);
- Offer Occupational Health and Confidential NOSS Counselling support;
- Offer a nominated impartial individual as a support mechanism to discuss any concerns the individual may have;
- Agree arrangements for the individual to contact the suspending manager once they arrive home following the suspension meeting;
- The suspension should be confirmed in writing normally within 3 working days stating the reasons and any conditions that apply;

6.10 Suspensions should be reviewed every 4 weeks by the suspending manager. At each review a letter must be sent to the employee advising them of the progress of the investigation. If the decision is taken to lift the suspension discussions will take place with the employee to facilitate this.

6.11 If a member of staff who has been suspended has a pre-booked period of annual leave this will be permitted. At the end of the annual leave period, suspension will continue. If an individual is not available to attend

meetings due to commitments e.g. going on holiday, annual leave must have been booked with the Line Manager.

- 6.12 Employees who are not fit to work as a result of ill health and submit medical certificates during a period of suspension, will be paid in accordance with the agreed sick pay provisions associated with their terms and conditions of employment. In addition, advice will be sought from the Trust's Occupational Health department to enable the employee to participate in the investigation process.

7.0 Formal Procedure

7.1 Fast Track Procedure

- 7.1.1 A 'Fast Track' system, without completing a full disciplinary investigation, has been introduced for specific circumstances, to help speed up the process and avoid distress to the individual staff member, where the outcome of the investigation would result in a sanction of up to and including a Final Written Warning. In order for this to apply, the staff member must take full responsibility for their actions, accept the allegations against them and then complete the fast track proforma (**Appendix 3**).
- 7.1.2 Once the fast track pro forma has been received a disciplinary meeting will be convened consisting of the relevant Community Services Manager (or equivalent level), HR representative, the employee and their work colleague or trade union representative (where applicable). A disciplinary meeting is not suitable in cases of gross misconduct or where an employee is already subject to a final written warning or the allegations are denied.
- 7.1.3 Meetings will be recorded to enable a written verbatim account of proceedings where appropriate. Individuals will be given the opportunity to check the notes from the meeting for accuracy, and are also able to submit additional written statements should they wish prior to the meeting (at least five working days prior).
- 7.1.4 At the disciplinary meeting:
- The Community Services Manager (or equivalent level) will Chair and feedback the details of the allegations and the information gathered;
 - The employee will have the opportunity to give a response to the allegation and raise any mitigation;
 - If no further issues come to light the Community Services Manager (or equivalent level) will offer a disciplinary warning up to and including a final written warning;
 - Where the employee accepts the warning, this will be confirmed in writing, with a copy placed on their personal file.

The employee will have the right to appeal and will have 10 working days from receipt of the letter to do so.

8.0 Investigations

- a. In many cases, the full facts of an alleged incident relating to unacceptable standards of performance, behavior or conduct will not be immediately apparent. Indeed, it may not be clear whether the alleged incident is serious enough to warrant formal disciplinary action.
- b. Prior to appointing an Investigating Officer consideration may need to be given as to whether suspension from duty is appropriate given due consideration of the incident. Full details of the suspension procedures are set out in section 6.0 of this policy.
- c. The Senior Manager commissioning (Commissioning Manager) the investigation will be responsible for identifying an Investigating Officer and provide the Investigating Officer with clear terms of reference. Ideally, the Investigating Officer should be familiar with the type of problem/area of work. The Investigating Officer should not be directly or indirectly involved in the incident. It should also be noted that an Investigating Officer cannot subsequently be a member of the disciplinary panel in the event a formal hearing is required.
- d. Employees who are the subject of an investigation should be made aware of this as soon as is possible and practicable by the Line Manager, or in their absence an appropriate manager from the Service.
- e. The Investigating Officer will be responsible for ascertaining the full facts of the case and for providing a report to the Manager who commissioned the investigation. In cases where an incident involves, or was witnessed by, a number of employees, this is likely to involve obtaining statements from and /or interviewing each individual employee, who may wish to discuss this matter with, or be accompanied by, their trade union representative. The Investigating Officer Guidelines set out the details in relation to this.
- f. The Investigating Officer should keep the employee under investigation updated with regards to the progress of the investigation.
- g. The length of the investigation will depend on the nature of the allegation or incident. However, investigations should normally be completed within 20 working days (4 weeks). If this is not possible the employee will be kept updated.
- h. The Investigating Officer will be supported by a nominated member of

the Human Resources Department throughout their investigation.

- i. The Investigating Officer will present their findings in a report outlining:
 - the full circumstances of the case,
 - making a recommendation whether there is a case to answer or not
- j. The report, interview statements and any statements submitted with the report will be part of the submission if a decision is made to follow the disciplinary procedure and will be provided to the member of staff concerned prior to any hearing.
- k. Based on the report submitted, the Commissioning Manager will make a decision on whether the formal disciplinary procedure needs to be invoked. At this stage, other options may include dropping the matter, handling it informally or handling it through the Trust's Maintaining High standards of Performance Policy. In any event, this decision should be made following advice from Human Resources. The employee will be advised of the option to be applied.

9.0 Preparing for a Hearing

- a. If the Commissioning Manager has decided (with advice from a member of the HR team) to arrange a disciplinary hearing, that manager supported by Human Resources will be responsible for making the arrangements for the disciplinary hearing.
- b. The disciplinary hearing will normally be chaired by the Commissioning Manager and a member of the HR team will be there to provide advice.
- c. In cases involving allegations of professional misconduct, the clinical lead or a senior professional from the appropriate discipline must also be in attendance.
- d. The Investigating Officer presenting the case at the hearing, must not form part of the Panel in determining the outcome.
- e. It should also be noted that Disciplinary Hearing Panel members cannot be on the Appeal Panel for the same case.
- f. A minimum of five working days' notice must be given to allow the member of staff to seek adequate representation and prepare their defense. This may be extended by mutual consent. A copy of the disciplinary policy must be included with the information. The following items must be included in the letter to the employee:
 - the date, time and venue for the hearing;

- Break-out rooms to be available for the employee and their representative and for the investigation team
 - the names and post titles of the Panel Members;
 - the nature of the complaint against the employee;
 - copies of any reports, statements or information that will be relied on or referred to at the hearing;
 - Names and positions of witnesses to be called by the investigation team
 - Responsibilities of the employee to invite witnesses on their own behalf
 - the fact that the hearing will be of a disciplinary nature and may result in disciplinary action being taken against the employee; and
 - the right of the employee to be accompanied at the hearing by a trade union representative or work colleague.
- g. Where the employee being investigated is an accredited trade union representative, the Commissioning Manager must contact the appropriate Full Time Officer before arranging a disciplinary hearing.
- h. Disciplinary hearings may be re-arranged if the employee or their representative are unable to attend, in such circumstances it is expected that the employee will formally notify the manager hearing the disciplinary.
- i. On the second attempt, a decision will be made in their absence unless there are extenuating circumstances, reported and agreed in advance of the second attempt.
- j. If an employee fails to attend a disciplinary hearing, a further hearing should be arranged and the employee notified that should they fail to attend this meeting a decision will be taken in their absence.
- k. The process to be followed at a disciplinary hearing is outlined in **(Appendix 4)**

9.2 Reaching a Decision

- a. In deliberating, the Panel must consider all the circumstances before deciding first, whether disciplinary action is warranted and secondly what level of disciplinary sanction to apply. In particular, the following factors will need to be considered:
- the seriousness of the offence;
 - any relevant current disciplinary sanctions;
 - how similar incidents have been treated; and
 - any mitigating factors.
- b. The decision of the Panel will normally be notified to the employee on the same day and must be confirmed in writing within five working

days.

- c. The different levels of warnings together with a guide to the period of time each warning should normally remain in force from the date of the hearing are listed in section 10.0. Warnings may run concurrently if they are for different reasons, e.g. one for inappropriate dress and another for unauthorised absence.

10.0 Disciplinary Sanctions

Disciplinary warnings can be as a result of either a Disciplinary Meeting or Hearing. **Appendix 4** outlines those with the authority to impose disciplinary warnings.

10.1 Formal Verbal Warning

A formal verbal warning will be issued for minor conduct issues and will remain live for 6 months. The employee should be informed that any further misconduct will render the employee liable to further, more severe disciplinary action.

10.2 First Written Warning

Where a more serious disciplinary offence has been committed or further minor offences have been committed, the employee will be issued a first written warning. This will remain live for 12 months. The warning will set out the nature of the misconduct and will warn the employee that further misconduct is liable to result in further disciplinary action under this policy.

10.3 Final Written Warning

In cases of failure to improve behaviour, repeat offences or an offence that is sufficiently serious, a final written warning will be issued. It is not necessary to have issued previous warnings prior to issuing a final written warning. The warning will remain live for 24 months.

10.4 Dismissal

Dismissal may occur in cases of gross misconduct or where there is a current live final written warning on file. An employee will be summarily dismissed (i.e. dismissed without notice or a payment in lieu of notice) where the reason for dismissal is gross misconduct; all other reasons for dismissal will have notice arrangements as set out in the employee's contract of employment.

10.5 Gross Misconduct

Gross misconduct is misconduct of such a serious and fundamental nature that it breaches the contractual relationship between the employee and the Trust. In the event that an allegation of gross misconduct is proven, following an investigation and disciplinary hearing, the Trust will be entitled to terminate the employee's contract of employment without notice or pay in lieu of notice (summary dismissal). A list of conduct that amount to gross misconduct can be found in **section 4.3.4** although this list is not exhaustive.

10.6 Action Short of Dismissal

Where a case is serious enough to warrant dismissal, the disciplinary panel may feel it appropriate to explore other options such as demotion or a transfer to a job with a lower status as an alternative to dismissal.

The full details of the transfer or downgrading must be with the agreement of the employee and confirmed in writing. It will be necessary to issue a revised contract where the sanction is permanent.

Following disciplinary action short of dismissal, the Manager must supply support and discuss progress with the employee. The employee is obliged to raise any issues of concern and identify support which they may need to enable the required improvement.

11.0 Disciplinary Appeals Procedure

11.1 Following a formal disciplinary warning (verbal warning and above) employees will have the right to appeal within 10 working days of receiving written confirmation. Appeals received after that time will not be heard unless there are significant mitigating circumstances for the appeal being submitted out of time. At the time of lodging an appeal, the employee must clearly state the grounds for their appeal in writing. Both management and the member of staff must exchange appeal cases at least 5 working days prior to the Appeal Hearing and they must include any supplementary documentation which either party plan to present at the appeal hearing.

11.2 The grounds for appeal can be based on:

- The severity of the warning;
- New evidence that has come to light;
- Procedural irregularities

Appeals will be heard by a Panel see **(Appendix 5)**, and will normally be held within twenty-one days of receipt of the written appeal, or as soon as is reasonably practicable.

The appeal panel will have the power to:

- Uphold the warning;

- Increase the sanction;
- Overturn the warning;
- Impose a lesser warning.

11.3 The purpose of the appeal hearing is a review of the decision of the disciplinary panel and to consider whether the procedure has been followed correctly. The appeal hearing panel is not there to re-hear the case. Appeals will be conducted in the same manner as a disciplinary hearing, except that the appellant employee will state their case first and management side will then respond. The structure of an appeal hearing can be found in (**Appendix 5**). The appeal hearing will be recorded.

11.4 The panel will in most cases make a decision and deliver it on the same day or as soon as reasonably practical. Written confirmation will be provided within 5 working days.

12. Criminal Charges

12.1 Where conduct is the subject of a criminal investigation, charge or conviction the Trust will investigate the facts before deciding whether to take formal disciplinary action.

12.2 The Trust will usually not wait for the outcome of any prosecution before deciding what action, if any to take. Where an employee is unable or has been advised not to attend a disciplinary hearing or say anything pending a criminal matter, the Trust may have to take a decision based on the available evidence.

12.3 A criminal investigation, charge or conviction relating to conduct outside of work may be treated as a disciplinary matter if the Trust considers that it is relevant to the employee's employment.

12.5 In all cases Line Managers must seek advice from the Human Resources department, when they become aware of any criminal convictions against an employee.

12.6 Employees must notify their Line Manager, if they have been convicted of a criminal offence that may have an impact on their employment in the Trust. The manager should seek the advice of the HR department.

12.7 Failure to notify the Trust (via the line manager) of a conviction or custodial sentence that is later identified through the DBS Checking process will be considered very seriously and may result in disciplinary action in itself.

13.0 Fraud

- a. In situations of suspected fraudulent activity the Trust will contact the

Local Counter Fraud Specialist (LCFS) who will undertake a formal investigation.

- b. Following receipt of the formal investigation from LCFS, the Trust may not be required to undertake a further management investigation.

14.0 External Complaints

- a. Any external complaints, i.e. patients or their relatives and visitors will be dealt with under the Trust's Complaints Policy and Procedure. Where a complaint is relating to an employee or group of employees and falls within the remit of the Disciplinary Policy, the line manager for the employee will deal with the complaint under the Disciplinary Policy and Procedure. It is the responsibility of line managers to ensure employees receive appropriate support e.g. Occupational Health.
- b. If an investigation and subsequent disciplinary action is required it will not affect the progress of the complaint. Both processes will be managed separately, although it is recognised that the investigating officers may liaise to corroborate details about the circumstances that lead to complaint. The complainant will **not** be advised that the disciplinary procedure is in progress nor will they be informed of the outcome.

15.0 Referrals to Professional/Statutory Body

- a. Where there has been a serious professional misconduct, the Commissioning Manager and/or the appropriate Executive Director along with the Head of Human Resources and Workforce, should consider the need to contact the relevant professional statutory body e.g. Nursing & Midwifery Council.

16.0 Cases of ill health

- a. The Trust's aim is to proceed with all disciplinary matters with the minimum of delay. The process may therefore continue during an employee's sickness (assuming that the individual has already been given reasonable opportunity to meet and respond to the allegations) which will not preclude the Trust from starting or completing the process, including the gathering of relevant information, conducting interviews or hearings. Professional medical advice will be sought, where appropriate, from Occupational Health to ascertain the likely length of the absence and whether the individual is fit enough to attend a meeting.

17.0 Grievances during disciplinary processes

- a. Where a grievance process could impact upon allegations being taken forward under the disciplinary process, the grievance may be considered by the chair of the disciplinary hearing before a decision on the disciplinary allegations is made. This will constitute the first formal stage of the grievance procedure.
- b. Where a separate grievance process is already underway that does not impact upon the disciplinary process the two procedures shall be dealt with separately and in accordance with the respective policies and procedures.
- c. Any appeal against the grievance decision can be heard at the same time any appeal against a disciplinary sanction is imposed.

Table A – Disciplinary Officers

WARNINGS	CHIEF EXECUTIVE	DIRECTORS	MANAGERS	OTHER STAFF
VERBAL	Chairperson	Chief Executive	Director or Deputy Director or Service/ Department Head	Manager
WRITTEN	Chairperson	Chief Executive	Director or Deputy Director or Service/ Department Head	Manager
FINAL WRITTEN	Chairperson	Chief Executive	Director or Deputy Director or Service/ Department Head	Manager
DISMISSAL or ACTION SHORT OF DISMISSAL	Chairperson	Chief Executive	Director or Deputy Director or Service/ Department Head	Director or Deputy Director or nominated appropriate manager

- NB: i) The Disciplinary Officers should not also be the investigating officer
- ii) In cases of Dismissal the Disciplinary Officer(s) may invite a specialist adviser to assist them.

Table B – Levels of Appeal

WARNINGS	CHIEF EXECUTIVE	DIRECTORS	MANAGER	OTHER STAFF
VERBAL	Sub-Committee of Board	Chairperson	Director or Chief Executive	Director or Deputy Director or Service / Departmental Head or nominated appropriate manager
WRITTEN	Sub-Committee of Board	Chairperson	Director or Chief Executive	Director or Deputy Director or Service/ Departmental Head or nominated appropriate manager
FINAL WRITTEN	Sub-Committee of Board	Chairperson	Director or Chief Executive	Director or Deputy Director or Service/ Departmental Head or nominated appropriate manager
DISMISSAL or ACTION SHORT OF DISMISSAL	Sub-Committee of Board	Sub-Committee of Board	Sub-Committee of Board	Sub-Committee of Board

- i) In cases of appeal against Dismissal the committee or sub-committee of the Board may invite a specialist adviser to assist them.

FAST TRACK DISCIPLINARY PROCESS

It is recognised that there are occasions where staff identify that their behaviour or action was not in line with normal practice/expectations. Where staff **accept** responsibility for their actions and acknowledge that the behaviour or conduct should not be repeated they can choose to take the fast track disciplinary process, subject to the agreement of their Service Delivery Group Manager (or equivalent level) in conjunction with advice from Human Resources.

The fast track disciplinary process does not require a full investigation process to be undertaken. Instead the investigation process will be bypassed and the member of staff will be asked to submit a statement detailing the events that took place and attend a meeting in which they will be required to discuss the following:

- Statement detailing the issue/incident that occurred
- Reasons for the issue/incident that occurred
- Mitigation
- Learning gained from the incident
- Provide a copy of an action plan which demonstrates further learning/competencies to be gained or action to be taken to ensure issue does not arise again

The fast track process will only be used where the member of staff and their Line Manager have consented to the process being used.

The meeting will be chaired by a Community Services Manager or nominated manager, supported by HR. The member of staff will attend the meeting and can be supported by a trade union representative or work colleague. The line manager of the member of staff should also attend.

The Community Services Manager will discuss the issue with all parties and consider the action to be taken which may be:

- No Warning issued and implementation of action plan
- First Written Warning issued and implementation of action plan
- Second Written Warning issued and implementation of action plan
- Referral into a formal investigation and to a disciplinary hearing panel if the action is considered to be a gross misconduct level of further concerns not previously identified have been raised and require investigation.

When deciding on the level of action to be taken the Community Services Manager/nominated manager will take into account the fact that the member of staff has accepted and taken responsibility for their actions.

Where the incident is considered to be at a level of gross misconduct or of final warning level the Formal Investigation process must be followed.

Individuals can appeal against the sanction issued by the panel as per the appeals process identified.

FAST TRACK PROFORMA (to be completed by the Community Services Manager (or equivalent level) or member of staff)

Name:	
Post:	
Division:	
Ward/Department:	
Date Allegation:	
Allegation: (to be written by the Manager)	
Meeting to discuss allegation date:	
Present:	
Mains Points Discussed:	
I (insert name) request to be fast tracked to a meeting where a sanction of up to final written warning may be given without further investigation for the above allegation/s	
I (insert name.....) agree and confirm that I would like to be considered for Fast Track:	
I have discussed with Staff Side rep or Workplace colleague:	<input type="checkbox"/>
I understand allegation and admit the allegation occurred as stated:	<input type="checkbox"/>
Request no further investigation of this allegation:	<input type="checkbox"/>

Signed (Staff Member) _____

Signed (Relevant Manager) _____

Disciplinary Hearing Process

1. Introduction by Chair of the purpose of the hearing and individuals present confirming the role each will play in the proceedings
2. Management presents case and calls witnesses
3. Employee or Representative can ask questions of management and witnesses
4. Management may re-examine witnesses on points raised
5. Employee or Representative puts their case and calls witnesses
6. Management can ask questions of employee and witnesses
7. Panel members may ask questions of employee and witnesses
8. Employee or Representatives may re-examine witnesses on points raised
9. Management sums up their case (no new evidence is to be presented)
10. Employee or Representative sums up their case (no new evidence is to be presented)
11. Panel members adjourn to consider their decision
12. Panel may seek points for clarification if necessary
13. Panel reconvenes and informs the employee of their decision.

Note 1: If at any point the disciplining manager believes further investigation of the facts is required, the hearing will be adjourned.

Note 2: It is not appropriate for 'character' witnesses to be called; any witnesses must be relevant and support the Individuals case.

Note 3: All disciplinary hearings will be recorded.

APPENDIX 5**Procedure to be followed at an Appeal Hearing**

1. **Chair** of Panel to introduce all present and confirm the role each will play in the proceedings.
2. **Chair** to ensure that any member of staff who appears at the hearing unrepresented, unaccompanied is happy to proceed with the hearing alone (if so, this needs to be minuted).
3. **Chair** to confirm the reason for the Hearing i.e. "this is an Appeal Hearing convened at the request of xxxxx following his/her dismissal for xxxxx".
4. **Chair** to confirm the hearing is to be conducted in accordance with the Trust Disciplinary Policy and Procedure.
5. **Chair** to confirm that this is not a re-run of the previous Hearing.

***NB No new evidence can be tabled at the hearing unless agreed by all parties**

6. **Chair** to explain the process to be followed:

7. **The Appellant**

- 7.1. The **appellant** or their representative will state his/her case and provide reasons for appeal, presenting the witnesses they wish to call.
- 7.2. **Management** have the opportunity to question the appellant, their representative and any witnesses called in support of their case
- 7.3. The **panel** have the opportunity to question the appellant, their representative and any witnesses called in support of their case
- 7.4. The **appellant** or their representative may re-examine the witnesses before the witness leaves the hearing.

8. **Management**

- 8.1. **Management** state their response to the reasons for appeal, presenting any witnesses they wish to call.
- 8.2. The **appellant** or representative has the opportunity to question Management and any witnesses called in support of their case.
- 8.3. **Panel** members have the opportunity to ask questions in relation to the Management case and question any witnesses called in support of their case.
- 9.4. **Management** can re-examine the witnesses before the witness leaves the hearing.

10. Chair to confirm with the appellant and Management that they are satisfied they have had sufficient opportunity to state their respective case.

11. Decision Making

11.1 Adjournment for the Panel to deliberate and reach a decision.

11.2 The hearing is re-convened for the Chair of the Panel to deliver the panel's findings and decision.

11.3 The employee must be advised that this will be confirmed to them in writing within 5 working days.

12. Additional Points

12.1 At any point during the hearing an adjournment may be called by the Chair to seek points of clarity, or as a comfort break.

12.2 Management or the Appellant may request a short adjournment for a variety of reasons and this should not be unreasonably withheld.

12.3 Any other party present at the hearing must be identified and an explanation given as to the reason for their presence e.g. note taker.

12.4 Witnesses are only present whilst giving their evidence.

Note 1: All Appeal hearings will be recorded.

APPENDIX 6

PROCESS FLOWCHART

