

Disciplinary Policy

Author with contact details	Business HR		
Lead Executive/ Senior Manager	Chief People Officer		
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Equality, Diversity and Human Right Statement	The Trust is committed to an environment that promotes equality and embraces diversity in its performance both as a service provider and employer. It will adhere to legal and performance requirements and will mainstream Equality, Diversity and Human Rights principles through its policies, procedures, service development and engagement processes. This procedure should be implemented with due regard to this commitment.		
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Revised Disciplinary Policy and Procedures

Covering note by:	Heather Barnett, Chief People Officer, LUHFT
Date	25 January 2023

Dear colleague

Following ratification at Trust Board in April 2021, I am pleased to be publishing our new Disciplinary Policy & Procedures. This document has been developed to: embrace national and local NHS best practice; comply with the recommendations made by Baroness Dido Harding and Perena Issar, NHSE Chief People Officer; and incorporate requirements of the ACAS code of practice, NMC, GMC and GDC guidance on conducting workplace investigations. The revised policy has been developed with input from both operational teams and trade union colleagues.

It is inevitable that there are times when we need to follow formal procedures. Moving forward into 2021, however, it is our aspiration that we will reduce the number of occasions our employees are put through disciplinary procedures which result in no case to answer and we will endeavour to resolve all disciplinary cases within 6 months (except for where this is outside of our control due to criminal proceedings). In order to realise this aspiration, we will ensure appropriate application of this policy as a way to safeguard our employees and ensure there is a fair, timely and consistent approach taken whenever an employee's conduct is perceived to be in breach of Trust values, or their behaviour falls short of expected standards. We are also committed to combatting any unconscious bias or discrimination in our employment and management practices and, like many NHS Trusts, we have been concerned by the disproportionate number of ethnic minority employees that have been subject to our disciplinary procedures.

We have already taken steps towards this by commissioning training for our management teams which will ensure that we have the resources to undertake investigations in a timely manner. We have established robust reporting mechanisms at Executive Management and Trust Board level to ensure senior oversight and monitoring of both the timely conclusion of cases and to ensure that any employee subject to disciplinary procedures has been treated appropriately and in line with our own values and behaviours.

Finally, I am also pleased to confirm that we have committed to the North West Social Partnership Forum (SPF), Just and Learning Culture – Guiding Principles. These have been developed in partnership with our trade unions as a tool to build a just and learning culture for people working in the NHS across the region. These principles are outlined below:

Just and Learning Culture – Guiding Principles

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

It is hoped these principles will also reflect a broader attitude and mindset in which we encourage our managers and colleagues to follow in their day to day work at a time when the NHS is at its most challenged.

With Best Wishes.

Heather Barnett
Chief People Officer

1. Purpose

- 1.1 This policy is designed to ensure a fair, systematic, timely and consistent approach is taken when an employee's conduct is in breach of Trust values, policies or rules or falls short of the expected standards.
- 1.2 As part of our commitment to the Trust's Values of being fair and caring, and as part of our journey in developing a just and learning culture, we will ensure that this policy is applied fairly and consistently, in accordance with the principles of natural justice. This includes ensuring:
- That every allegation of misconduct is thoroughly and promptly assessed to ensure there is sufficient understanding of the issues and circumstances relating to them and, only if this assessment identifies genuine grounds of concern should formal action under this policy be applied.
 - that all investigations are carried out without unreasonable delay and any allegations of gross misconduct are investigated by a trained Case Investigator;
 - that decision-making relating to the implementation of suspension/exclusion or, the application of sanctions which have potentially serious consequences will be well informed and never taken by one person alone;
 - that cases of unsatisfactory misconduct will be dealt with informally between the employee and their line manager, where possible, and will include setting in place any necessary support to ensure the same behaviors do not reoccur;
 - that the health and welfare of employee(s) involved in these procedures, either directly or indirectly, will be paramount to the Trust and will be continually assessed.
- 1.4 While following this policy it may become apparent that another policy is more applicable to the specific circumstances of the case. Where this occurs, line managers should seek immediate advice from the Business HR Team.
- 1.5 This policy applies to all staff and is written recognising that the legal, contractual and regulatory structure in which our employees work has some differences. Medical and Dental Staff are directed to review the Trusts Handling Concerns about Conduct, Performance and Health of Medical and Dental Staff in the first instance:
<http://liverpool-hr.nhs.sitekit.net/working-with-us/policies.htm?postid=277324>
- 1.6 It is recognised that the various professional bodies, of which many health care staff are required to have membership, may also have professional standards of capability, conduct and competence. The Trust requires employees in those professions to adhere to these standards. Where the Trust has serious concerns about a staff member's fitness to practice, they may be referred to their professional body.
- 1.7 The procedure is produced in line with the duties imposed by legislation and recognised good practice, as detailed by the Advisory, Conciliation and Arbitration Service (ACAS) Code of Practice.

- 1.8 In order to ensure appropriate scrutiny and oversight, all decisions and outcomes taken following application of this policy, will be collated and reported at board level, on a regular basis.

1. Policy Content

2.1 Handling Allegations of Misconduct and Investigating the Facts

- 2.1.1 Allegations of misconduct will be assessed by the line manager, with HR advice, to decide if the matter can be managed informally or whether there are grounds for further investigation and/or formal action. Please refer to Appendix 2 for a list of examples of misconduct and gross misconduct.
- 2.1.2 The line manager will carry out some initial fact finding using the Preliminary Fact-Finding Checklist (Appendix 1). They may also meet with other relevant individuals to get a good understanding about what has happened.
- 2.1.3 Where it is decided that further investigation and/or formal action is appropriate, this must be approved by a Senior Manager. This manager will usually become the Case Manager.
- 2.1.4 Where the allegations are not considered to be potential gross misconduct and the employee does not contest these and wishes for the matter to be dealt with quickly, the employee may request their case be dealt with via the Trusts Fast Track Disciplinary Policy – refer to section 2.12.1.
- 2.1.5 The appointment of a Case Investigator for each case is decided in collaboration with the Case Manager and the Business HR representative. Please refer to Appendix 3 for detailed information around roles and responsibilities during a disciplinary process.
- 2.1.6 Investigations should be carried out without unreasonable delay and by a trained investigator. The Case Manager will be responsible for commissioning the investigation and for clearly defining what is to be investigated. Should the Case Investigator consider, as the investigation proceeds, that the scope of the investigation should be widened, this must be approved by the Case Manager and the employee will be informed in writing.
- 2.1.7 Once the investigation is complete, the Case Manager will consider the findings in the investigation report alongside HR advice, and recommend if further action is required; whether the matter can be dealt with informally or whether formal disciplinary action may be appropriate. If the manager believes there is a case to answer at a formal hearing, they will ensure a report is prepared setting out the case and the investigation findings.

2.2 Representation

2.2.1 Any employee subject to disciplinary processes will have the right to be accompanied at an investigatory meeting or hearing by any one of the following persons:

- A workplace colleague
- A trade union representative
- An official employed by a trade union
- Companion from their professional body (who is not acting in a legal capacity)

2.2.2 This companion will be allowed to address any hearing in order to put the employee's case, sum up the employee's case and respond on the employee's behalf to any view expressed at the hearing. This companion may also confer with the employee during the hearing, including asking witnesses questions, but may not answer questions on the employee's behalf.

2.2.3 In exceptional circumstances, with permission from the Deputy Chief People Officer (Operations), employees may be accompanied by a friend or partner. A companion who is not a trade union representative or workplace colleague will not be allowed to address the hearing, sum up the employee's case or respond on the employee's behalf during the hearing.

2.2.4 In some circumstances it may not be appropriate for some individuals to be accepted as a companion. An example of this is if they are a key witness in the investigation. It is not reasonable for an employee to be accompanied by a colleague whose presence would prejudice the hearing or who might have a conflict of interest.

2.2.5 Employees may not be accompanied by both a union representative/workplace colleague and a friend or non-workplace colleague. Exceptions may be made to enable the provision of disability related assistance.

2.2.6 It is the responsibility of the employee to contact their chosen companion and ensure that they are willing to act in that capacity. The employee must also inform the Case Investigator and/or Disciplining Panel that they will be accompanied at the hearing/meeting, and must provide the name and contact details of the companion.

2.2.7 There is no right to be represented or accompanied at the informal stage of this procedure; this does not affect the employee's ability to seek advice from their trade union during the informal stage.

2.3 Participating in the Process

2.3.1 Meetings should be held with reasonable notice, at a reasonable and appropriate place and time, and every effort should be made by all parties to ensure that they are in attendance.

2.3.2 Where an employee is unable or unwilling to attend a meeting/hearing, on the given date then the hearing date may be postponed by up to five working days. Following that the meeting or hearing may nevertheless proceed after all factors are taken into consideration.

2.4 Safeguarding people's health and wellbeing

2.4.1 It is recognised that employees who are the subject of conduct investigations or proceedings are likely to find the situation stressful, as will other staff who may become involved because they are a victim of or witnesses to the event. Managers are responsible for ensuring that staff are appropriately supported at all stages of the process.

2.4.2 At the outset of the disciplinary case the employee must be reminded of the support services available to them through the Trust's Occupational Health and staff counselling service. The employee must be advised that a self-referral to those services can be made or alternatively a management referral will be made on their behalf with the employee's permission. In some circumstances a Case Manager may automatically refer an employee to support services dependent on the nature of the allegations or the employee's circumstances.

2.4.3 Where an employee who is subject to this process has further concerns regarding their health and wellbeing, they should raise in the first instance with the Case Manager, who will ensure they are appropriately supported.

2.5 Stage One: Preliminary Fact finding/ Informal Resolution

2.5.1 Once a line manager has been made aware of a potential conduct issue they must firstly establish the basic facts about the issues. The manager must complete the Preliminary Fact-Finding Checklist (Appendix 1) before making a referral to the Case Manager, who will consider the Preliminary Fact Finding Checklist and make a decision as to what, if any, further action is required. If allegations of a safeguarding nature are raised the line manager will need to contact the safeguarding team to ascertain who is best placed to carry out the preliminary fact-finding checklist. Where there is an immediate risk to patients or staff the line manager, in conjunction with safeguarding must inform a Business HR representative to assist with the decision regarding the necessary steps.

2.5.2 The Case Manager may decide no further action is required, or may, for example, arrange for informal counselling to address less serious issues. Alternatively, the Case Manager may arrange for the matter to be dealt with under an appropriate policy, for example by commencing a formal disciplinary investigation.

Where potential concerns relate to the conduct/behavior of Medical and Dental Staff, the line manager must always refer to the Trusts Handling Concerns about Conduct, Performance and Health of Medical and Dental Staff Policy in the first

instance - <http://liverpool-hr.nhs.sitekit.net/working-with-us/policies.htm?postid=277324>

- 2.5.3 On most occasions it will not be appropriate for line managers to use the disciplinary procedure on the first occasion of minor misconduct by an employee. Informal counselling is not regarded as disciplinary action. It is an informal discussion designed to provide advice and guidance with the objective of encouraging and helping staff to improve. As informal counselling does not result in a formal warning or other action, it would not be expected that the line manager or employee be accompanied. Matters at this stage are best resolved by the line manager and member of staff. Disciplinary action would only follow if further incidents occurred.
- 2.5.4 A brief note of any informal counselling should be made by the line manager and any agreed actions documented. Actions to support an improvement in behaviour may include further development, coaching or training, external support such as staff counselling, or workplace mediation. This note should be counter-signed by the employee and kept on their personnel file.
- 2.5.5 No formal action should be considered against a full time trade union representative or Health and Safety representative until a full time official of the union concerned has been informed by either email or by telephone, after obtaining the employee's agreement.

2.6 Stage Two: Investigation/Deciding if there is a case to answer

- 2.6.1 Where formal action may be required or the issue is contested, a full disciplinary investigation will be commissioned, and terms of reference will be drafted by the Case Manager that will include timeframes for the completion of the investigatory process.
- 2.6.2 The Case Manager is responsible for keeping the employee informed on the progress of the investigation and any delays to the originally anticipated timeframe of completion. The Case Investigator will be responsible for ascertaining the full facts of the case and for providing a report to the Case Manager.
- 2.6.3 When the Case Investigator has completed their investigation they will write a report, detailing the facts and evidence they have established and submit this to the Case Manager. The Case Manager will then determine based on the evidence available, whether there is a case to answer and, if so, whether a disciplinary hearing should be convened.
- 2.6.4 If, after the investigation, it is determined that there is no case to answer the employee should be advised accordingly by the Case Manager in writing and arrangements should be made to meet with the employee to discuss the outcome, explain any outstanding areas of concern or need for future improvement /

counselling etc. and to arrange a return to their duties if they have been redeployed or suspended.

2.7 Stage Three: Disciplinary Hearing

- 2.7.1 If it is determined that there is a disciplinary case to answer the Case Manager will agree arrangements for the next steps (e.g. disciplinary hearing) and the employee should be notified of this in writing at the earliest opportunity.
- 2.7.2 This notification should contain sufficient information about the allegations and potential consequences to enable the employee to prepare to answer the case at any disciplinary hearing. The information will also include the arrangements for the hearing, confirmation of the employee's right to be accompanied and who else will be present and in what capacity.
- 2.7.3 Employees will be given reasonable notice of disciplinary hearings, and this will normally be ten calendar days unless otherwise agreed.
- 2.7.4 The employee must be provided with a copy of the Investigation Report, including any written evidence which forms part of the case against them including any witness statements (if applicable).
- 2.7.5 If the employee's representative is not available to attend on the given date then the hearing date may be postponed by up to five working days. Management and Staff Side representatives should make every effort to attend on the specified date and not unreasonable delay a hearing.
- 2.7.6 In exceptional circumstances, (e.g., if an employee is unfit to attend a hearing in person), consideration can be given to both parties providing written submissions in respect of the appeal. This must be agreed by both parties in advance.
- 2.7.6 Disciplinary Hearings will be convened with a panel of three managers - including one HR representative as advisor to the panel. Please refer to Appendix 4 for a List of Authority.

The following process will be followed for any formal disciplinary hearing:

- The investigation report will (normally) be presented by the Case Investigator* who will be entitled to call witnesses to give relevant evidence where such evidence is included in the investigatory report.
- The employee and/or their representative and the panel will be entitled to ask questions as appropriate.
- The employee and/or their representative will be entitled to present a statement of case and will be entitled to call witnesses who are able to give relevant evidence to the issues raised in the investigation report.

- The Case Investigator* and the panel will be entitled to ask questions as appropriate of any witnesses or about the statement of case.
- 2.7.7 The Case Investigator* and then the employee and/or their representative will have the opportunity to sum up. No new evidence may be introduced at this stage.
- 2.7.8 At the conclusion of this summing up all parties will withdraw to allow the panel to deliberate.
- 2.7.9 If a decision is not provided on the day the parties will be informed of the decision of the **panel** in writing within ten calendar days of the hearing which will detail any right of appeal. Please refer to Appendix 5 for the Disciplinary Hearing Format.
- 2.7.10 At the end of the Disciplinary Hearing the panel must complete the Post Hearing – Lessons Learnt Record (Appendix 9).
- 2.7.11 If the employee or their representative is unable to attend after a second attempt to rearrange, a hearing may proceed in the absence of that person. The employee and their representative will be written to advising them of this. A decision will then be made based upon the evidence available at that time. Where an employee is unable or unwilling to attend a disciplinary hearing then the disciplinary hearing may proceed in the employee's absence after all relevant factors are taken into consideration by the hearing Chair.

**In the case of medical staff, the Case Manager will present, and the Case Investigator will be called as a witness*

2.8 Disciplinary Sanctions

- 2.8.1 When determining what, if any, disciplinary sanction is appropriate the panel must act reasonably in all the circumstances. Factors relevant in determining which disciplinary sanction to apply include:
- The extent to which standards have been breached and / or the seriousness of the misconduct
 - Consistency of treatment
 - Current 'live' warnings
 - Other special circumstances which might mitigate or otherwise affect the appropriate severity of the penalty
 - Impact of the actions on others and the Trust (including reputation)
 - Whether the intended disciplinary action is reasonable in all the circumstances
 - The employees general record
- 2.8.2 All disciplinary sanctions must be confirmed in writing. This will normally be within seven days of a hearing concluding, unless agreement is reached for this to be extended.

2.8.3 The following disciplinary sanctions may be applied. This process is not sequential. A sanction can be applied at any level (i.e. a Final Written Warning without a Written Warning being applied first):

Levels of Disciplinary Sanctions

Disciplinary Sanction	Examples of Circumstances	'Live' Period on a Personnel File
First Written Warning	Where the misconduct is sufficiently serious or where there is a failure to improve conduct.	12 months
Final Written Warning	A final written warning may be given when: behavior which was the subject of a first written warning is repeated, or: there is a further unrelated offence which on its own would warrant a written warning, but in light of the pre-existing warnings a FWW is warranted or: where serious misconduct is found as a first offence.	12 months - This may be extended to 18 months in exceptional circumstances
Dismissal without notice (Summary Dismissal)	Summary dismissal will be applied in cases of gross misconduct. In such cases dismissal is without notice.	
Dismissal with notice	Dismissal may be the appropriate sanction if following the issue of a final written warning there is still no improvement in conduct or if a further offence is committed.	

2.8.4 Warnings will be disregarded for the purpose of “totting up” of disciplinary sanctions after the expiration of their “live period” *but the facts / circumstances may be deemed relevant to future cases* so details will remain on employees’ personal files.

2.8.5 Downgrading and / or transfer shall be considered as alternatives to dismissal and would consequently be accompanied by a final written warning. In instances of downgrading pay protection will not apply.

2.9 Stage Four: Appeal

2.9.1 Employees have the right to appeal disciplinary decisions and / or sanctions issued against them. The purpose of the appeal is to consider the decision

made by the chair of the disciplinary hearing. An appeal hearing is not ordinarily a re-hearing of the original case.

- 2.9.2 The employee must stipulate their full grounds of appeal in writing by completing the Employee Registration of Appeal Pro-forma (Appendix 6). This should be returned within 14 days of the date of the outcome letter.
- 2.9.3 The decision to appeal must be based upon one or more of the following reasons:
- New evidence has come to light that was not previously obtainable
 - A failure to follow Trust disciplinary procedure
 - The level of sanction received is too severe
- 2.9.4 An employee has the right to attend the appeal hearing either alone or accompanied by a Trade Union Representative or a workplace colleague. If the member of staff or their representative fails to attend the appeal hearing the appeal will be considered in their absence, except where an adjournment is agreed by the chair of the panel.
- 2.9.5 In exceptional circumstances, with permission from the Deputy Chief People Officer (Operations), employees may be accompanied by a friend or partner. A companion who is not a trade union representative or workplace colleague will not be allowed to address the hearing, sum up the employee's case or respond on the employee's behalf during the hearing.
- 2.9.6 In cases of dismissal, appeals will be heard by two senior managers (band 8d or above), for example, Deputy Director of Services, Operational Leads or Divisional Director of Nursing, plus senior HR support. In all other cases, appeals will be heard by the next level of manager to that which issues the sanction. Please refer to Appendix 7 for the Appeal Hearing Format. The Trust is committed to ensuring that Appeal Panels are appropriately diverse in representation, experienced and trained. Panel members will be selected to achieve this.
- 2.9.7 In exceptional circumstances, (e.g. if an employee is unfit to attend a hearing in person), consideration can be given to both parties providing written submissions in respect of the appeal. This must be agreed by both parties in advance.
- 2.9.8 Statement of cases must be exchanged no later than 7 days prior to the Appeal Hearing.
- 2.9.9 An appeal hearing decision will be one of the following:
- Confirm the original decision
 - Substitute the sanction for a lesser one
 - Overturn the original decision.
- 2.9.10 All Appeal Hearing outcomes must be confirmed in writing. This will normally be within seven days of a hearing concluding, unless agreement is reached for

this to be extended. There will be no further right to appeal under this policy after this stage.

2. 9.11 Following the Appeal Hearing the panel will complete the Post Hearing – Lessons Learnt Record (Appendix 9).

2.10 Suspension/Exclusion

- 2.10.1 Suspension/Exclusion will only normally be considered if there is a serious allegation of misconduct and:

- working relationships have severely broken down
- there is a risk of the employee interfering with evidence or witnesses or the investigation
- there is a risk to other employees, property or patients
- the employee is the subject of criminal allegations which may affect whether they are fit to undertake their role.
- Safeguarding concerns (once discussed with the safeguarding team)

- 2.10.2 Exclusion arrangements for Medical & Dental Staff are outlined in the Trusts, Handling Concerns about Conduct, Performance and Health of Medical and Dental Staff Policy - <http://liverpool-hr.nhs.sitekit.net/working-with-us/policies.htm?postid=277324>

- 2.10.2 If a sufficiently Senior Manager is not available when an incident occurs which appears to warrant suspension, the most senior member of staff on duty may require the employee to go home pending the appropriate level of manager being available to make a decision.

- 2.10.3 Alternatives to suspension should always be considered and discussed where appropriate; this may include the employee temporarily:

- being moved to a different area of the workplace
- changing their working hours e.g. moving from nights to days where there is more supervision, or working with a different shift / team pending conclusion of the investigation / disciplinary process
- being placed on restricted duties including having reduced access to Trust systems where appropriate
- being transferred to a different role within the workforce
- other meaningful activities that the employee could do should be actively explored. This could include working remotely from home, carrying out activities such as audits, research or teaching if appropriate.

- 2.10.4 When completing Suspension/Action Short of Suspension Decision Record (Appendix 8), line managers must assess the risks of the employee remaining at work and seek HR advice. Where a line manager feels it necessary to suspend an employee, they must seek approval from a Senior Manager (8A or above).

2.10.5 The Chief People Officer and the relevant Executive Director, must be immediately notified following the decision to suspend an employee. A copy of the Suspension/Action Short of Suspension Decision Record (Appendix 8) should be sent on for their record.

2.11 Communicating the Decision to Suspend and Supporting Employees

2.11.1 A manager, with a member of HR, will meet with the employee to inform them of the decision to suspend. This will be followed up in writing within three days of the meeting.

2.11.2 If possible, employees may be accompanied by a trade union representative or companion when informed of suspension. However, the unavailability of a representative will not prevent suspension from taking place.

2.11.3 The manager communicating the decision to suspend must:

- Explain the reasons for suspension, why action short of suspension is not appropriate and confirm how long the suspension is expected to last.
- Explain the employee's responsibilities during their period of suspension.
- Provide a point of contact (usually the line manager) that they can contact if they have any concerns.
- Agree how they will keep in regular contact with the employee throughout.
- Give details about the Staff Support Service, which can be accessed online, via email and telephone.

2.11.4 Suspension will be in place for the minimum time necessary and will be reviewed at least monthly.

2.11.5 During suspension, the employee must be ready and available to engage with the Trust or return to work, if required, upon reasonable notice; this includes attendance at investigation or other management meetings. If the employee is unavailable due to sickness or wishes to take annual leave they must report / request this in the usual way.

2.11.6 Whilst suspended the employee will continue to receive their normal pay, including any enhancements, unless they have allowed their professional registration to lapse or if they have lost their entitlement to work under the Immigration and Asylum Act.

2.11.7 When suspended the employee must not undertake any work, paid or unpaid, without prior permission from their line manager. Where an employee holds employment outside of the Trust and is suspended from the Trust, the employee is obliged to declare their alternative place(s) of work and the suspension information may be shared with another employer if it is in the public interest. The employee will be informed if this is the case.

2.12 Fast Track Disciplinary Policy

- 2.12.1 In some circumstances, where the allegations are not contested, the Trust may offer the use of the fast track process as set out in the Trust Fast Track Disciplinary Policy. It is intended by accessing this policy staff will have disciplinary matters dealt with quickly and alleviate any stress which is associated with a difficult or prolonged Disciplinary investigation. The employee retains the right to be accompanied at a fast track disciplinary hearing and the right to appeal the outcome of the hearing, if a sanction is issued.

2.13 Witnesses

- 2.13.1 Trust employees are encouraged to co-operate with internal investigations to ensure that the Trust gathers all reasonable facts. An employee who has been identified as a witness in an investigation may not unreasonably refuse to provide a statement or attend a meeting.
- 2.13.2 If it is found that there is a case to answer, witness statements and notes of the investigation meeting(s) will be made available to the employee under investigation.
- 2.13.3 Witnesses are expected to co-operate with the Case Investigator and attend any meetings/disciplinary hearings as required. Reasonable time off should be afforded to the witness, in discussion with their Line Manager. Witnesses do not ordinarily have the right to be accompanied at investigation and / or disciplinary hearings.
- 2.13.4 In most cases witnesses will not be required to attend a disciplinary hearing and their statement will suffice. The hearing manager will assess the relevance and reasonableness of witnesses called to attend at a hearing by both the Case Investigator and the employee and reserves the right to deny the presence of a witness if it is deemed unnecessary or not appropriate.
- 2.13.5 Should witnesses be required to attend the disciplinary hearing, it will be the responsibility of the Case Investigator and/or the employee and their representatives to make the necessary arrangements directly with their respective witnesses

2.14 Grievances raised during the disciplinary process

- 2.14.1 Where an employee raises a grievance during the disciplinary process, the disciplinary process may be temporarily suspended in order to deal with the grievance, but, where the grievance and the disciplinary cases are related it may be appropriate to deal with both issues concurrently. The employee and their representative will be consulted in this respect.

2.15 Resignation midway through the investigation

- 2.15.1 Where an employee resigns and leaves the employment of the Trust partway through an investigation or prior to the conclusion of a disciplinary hearing, consideration will be given by the Case Manager as to whether the process should continue to conclusion.
- 2.15.2 If it is decided to proceed, the former employee must be advised that the investigation will continue to conclusion and that a future employment reference will indicate that they were under investigation when they left the Trust, unless the investigation ultimately concludes there was no case to answer or the allegations were unfounded.
- 2.15.3 Where a safeguarding allegation is under investigation when the employee leaves, it is the duty of the Trust to conduct the investigation and where appropriate submit the case to a formal hearing. The former employee will be advised of this and will be provided with the right to respond at the hearing and any subsequent appeal.
- 2.15.4 The professional lead will be advised when a professionally registered employee resigns during an investigation so that they can consider making a referral to the employee's professional body.

2.16 Criminal Offences and Offences Committed Outside Work

- 2.16.1 Any employee subject to a police investigation, must inform their line manager so that they can immediately consider what steps are required, e.g. to protect the safety of others/patients/the employee.
- 2.16.2 If appropriate, the Trust will investigate and, if appropriate, take disciplinary action independently of any criminal investigation or legal proceedings.

Where allegations that occur outside of work are brought to the attention of the Trust by other members of staff, the public, other agencies or professional bodies and where those allegations have the potential to damage the reputation of the Trust, the Trust will investigate these matters so far as reasonably practicable.

- 2.16.3 If, after a detailed investigation, it is considered that the actions of the employee damage the relationship of trust and confidence between the employee and the Trust, action up to and including dismissal may be taken.

2.17 Referrals to Professional Bodies and Other Agencies

- 2.17.1 Depending on the allegations, where an employee is registered with a professional body, such as a registered nurse, nursing associate, or healthcare professional, the regulatory body may be notified of the Trust's concerns when an allegation has been raised. This decision will be taken by the most senior professional lead from the Division, in conjunction with the relevant professional

lead for the Trust e.g All NMC referrals will be logged and overseen by the Divisional Nurse Lead.

- 2.17.2 Where the offence or police investigation relates to mistreatment of a child or an “at risk” adult, the line manager should inform the Trust Safeguarding Team who will consider whether it is necessary to make a report to the Local Authority Designated Officer (LADO).
- 2.17.3 Where appropriate, investigations by the counter fraud team, other agencies such as police or social services, may be carried out separately from investigations under this procedure. In these circumstances the Trust will only delay carrying out internal investigations and following the disciplinary procedure where absolutely necessary and were advised to do so by the professional body and/or other agency.
- 2.17.4 If a line manager, or a member of HR staff supporting a line manager, becomes aware of a concern raised regarding suspected misappropriation of controlled drugs, they should report this immediately to the Chief Pharmacist / Controlled Drugs Accountable Officer (CDAO) via the Medicines Safety Officer email at luhft.mso@liverpoolft.nhs.uk. Put “Potential CD Diversion” in the subject title. This should include suspected but unconfirmed theft of controlled drugs. Do not wait until an investigation has taken place.

3. Exceptions

No exceptions.

4. Training

If there are specific training requirements for staff please include details in this section.

5. Monitoring of Compliance

Minimum requirement to be monitored	Process for monitoring e.g. audit/ review of incidents/ performance management	Job title of individual(s) responsible for monitoring and developing action plan	Minimum frequency of monitoring	Name of committee responsible for review of results and action plan	Job title of individual/ committee responsible for monitoring implementation of action plan

6. Relevant Regulations, Standards and References

- Advisory, Conciliation and Arbitration Service (ACAS)
<https://www.acas.org.uk>
- NHS Improvements Dido Harding letter 24 May 2019 with guidance relating to the management and oversight of local investigation and disciplinary procedures <https://www.england.nhs.uk/2019/06/provider-bulletin-5-june-2019/>
- NHS Resolution “Being fair - Supporting a just and learning culture for staff and patients following incidents in the NHS” <https://resolution.nhs.uk/wp-content/uploads/2019/07/NHS-Resolution-Being-Fair-Report-2.pdf>
- LUHFT Fast Track Disciplinary Policy.
- LUHFT Handling Concerns about the Conduct, Performance and Health of Medical and Dental Staff Policy.

7. Equality, Diversity and Human Right Statement

- a. The Trust is committed to an environment that promotes equality and embraces diversity in its performance as an employer and service provider. It will adhere to legal and performance requirements and will mainstream equality, diversity and human rights principles through its policies, procedures and processes. This policy should be implemented with due regard to this commitment.
- b. To ensure that the implementation of this policy does not have an adverse impact in response to the requirements of the Equality Act 2010 this policy has been screened for relevance during the policy development process and a full impact assessment conducted where necessary after appropriate consultation. The Trust will take remedial action when necessary to address any unexpected or unwarranted disparities and monitor workforce and employment practices to ensure that this policy is fairly implemented.
- c. This policy and procedure can be made available in alternative formats on request including large print, braille, moon, audio cassette, and different languages. To arrange this please contact Business Human Resources in the first instance.
- d. The Trust will endeavour to make reasonable adjustments to accommodate any employee with particular equality and diversity requirements in implementing this policy and procedure. This may include accessibility of meeting venues, providing translation, arranging an interpreter to attend meetings, extending policy timeframes to enable translation to be undertaken, or assistance with formulating any written statements.

8. Legal Requirements

This document meets legal and statutory requirements of the EU General Data Protection Regulation (EU 2016/679) and all subsequent and prevailing legislation. It is consistent with the requirements of the NHS Executive set out in Information Security Management: NHS Code of Practice (2007) and builds upon the general requirements published by NHS Digital/Connecting for Health (CfH).

9. Appendices

Appendix1: Control Front Sheet

Author with contact details			
Lead Executive/ Senior Manager			
Original Issue date			
Issue Date:			
Approval Group			
Consultation			
Location of Staff applicable to		Staff groups applicable to	
Equality, Diversity And Human Right Statement	<p>The Trust is committed to an environment that promotes equality and embraces diversity in its performance both as a service provider and employer. It will adhere to legal and performance requirements and will mainstream Equality, Diversity and Human Rights principles through its policies, procedures, service development and engagement processes. This procedure should be implemented with due regard to this commitment.</p>		
To be read In conjunction with / Associated Documents:	<ul style="list-style-type: none"> ▪ x 	Information Classification Label	<input type="checkbox"/> NHS Confidential <input type="checkbox"/> NHS Protect <input type="checkbox"/> Unclassified
Access to Information	<p>To access this document in another language or format please contact the policy author.</p>		

Appendix 2: Equality Impact Assessment

Title	
Strategy/Policy/Standard Operating Procedure	
Service change (Inc. organisational change/QEP/ Business case/Project	
Completed by	
Date Completed	

Description <i>(provide a short overview of the principle aims/objectives of what is being proposed/changed/introduced and the impact of this to the organisation)</i>

Who will be affected <i>(Staff, patients, visitors, wider community including numbers?)</i>

The Equality Analysis template should be completed in the following circumstances:

- **Considering developing a new policy, strategy, function/service or project(Inc. organisational change/Business case/ QEP Scheme);**
- **Reviewing or changing an existing policy, strategy, function/service or project (Inc. organisational change/Business case/ QEP Scheme):**
 - If no or minor changes are made to any of the above and an EIA has already been completed then a further EIA is not required and the EIA review date should be set at the date for the next policy review;
 - If no or minor changes are made to any of the above and an EIA has NOT previously been completed then a new EIA is required;
 - Where significant changes have been made that do affect the implementation or process then a new EIA is required.

Please note the results of this Equality Analysis will be published on the Trust website in accordance with the Equality Act 2010 duties for public sector organisations

Section 1 should be completed to analyse whether any aspect of your paper/policy has any impact (positive, negative or neutral) on groups from any of the protected characteristics listed below.

When considering any potential impact you should use available data to inform your analysis such as PALS/Complaints data, Patient or Staff satisfaction surveys, staff numbers and demographics, local consultations or direct engagement activity. You should also consult available published research to support your analysis.

Section 1 – Initial analysis

Equality Group	Any potential impact? Positive, negative or neutral	Evidence <i>(For any positive or negative impact please provide a short commentary on how you have reached this conclusion)</i>
Age <i>(Consider any benefits or opportunities to advance equality as well as barriers across age ranges. This can include safeguarding consent, care of the elderly and child welfare)</i>		
Disability <i>(Consider any benefits or opportunities to advance equality as well as impact on attitudinal, physical and social barriers)</i>		
Gender Reassignment <i>(Consider any benefits or opportunities to advance equality as well as any impact on transgender or transsexual people. This can include issues relating to privacy of data)</i>		
Marriage & Civil Partnership <i>(Consider any benefits or opportunities to advance equality as well as any barriers impacting on same sex couples)</i>		
Pregnancy & Maternity <i>(Consider any benefits or opportunities to advance equality as well as impact on working arrangements, part time or flexible working)</i>		
Race		

<i>(Consider any benefits or opportunities to advance equality as well as any barriers impacting on ethnic groups including language)</i>		
Religion or belief <i>(Consider any benefits or opportunities to advance equality as well as any barriers effecting people of different religions, belief or no belief)</i>		
Sex <i>(Consider any benefits or opportunities to advance equality as well as any barriers relating to men and women e.g.: same sex accommodation)</i>		
Sexual Orientation <i>(Consider any benefits or opportunities to advance equality as well as barriers affecting heterosexual people as well as Lesbian, Gay or Bisexual)</i>		

If you have identified any **positive** or **neutral** impact then no further action is required, you should submit this document with your paper/policy in accordance with the governance structure.

You should also send a copy of this document to the equality impact assessment email address

If you have identified any **negative** impact you should consider whether you can make any changes immediately to minimise any risk. This should be clearly documented on your paper cover sheet/Project Initiation Documents/Business case/policy document detailing what the negative impact is and what changes have been or can be made.

If you have identified any negative impact that has a high risk of adversely affecting any groups defined as having a protected characteristic then please continue to section 2.

Section 2 – Full analysis

If you have identified that there are potentially detrimental effects on certain protected groups, you need to consult with staff, representative bodies, local interest groups and customers that belong to these groups to analyse the effect of this impact and how it can be negated or minimised. There may also be published information available which will help with your analysis.

Is what you are proposing subject to the requirements of the Code of Practice on Consultation?	Y/N
---	-----

Is what you are proposing subject to the requirements of the Trust's Workforce Change Policy?	Y/N
Who and how have you engaged to gather evidence to complete your full analysis? (List)	
What are the main outcomes of your engagement activity?	
What is your overall analysis based on your engagement activity?	

Section 3 – Action Plan

You should detail any actions arising from your full analysis in the following table; all actions should be added to the Risk Register for monitoring.

Action required	Lead name	Target date for completion	How will you measure outcomes

Following completion of the full analysis you should submit this document with your paper/policy in accordance with the governance structure.

You should also send a copy of this document to the equality impact assessment email address

Section 4 – Organisation Sign Off

Name and Designation	Signature	Date
Individual who reviewed the Analysis		
Chair of Board/Group approving/rejecting proposal		
Individual recording EA on central record		

Appendix 3: Roles and Responsibility

Role	Responsibility
<p>The Board</p>	<ul style="list-style-type: none"> • Have oversight of investigations and disciplinary procedures by regularly and openly receiving and considering comprehensive data relating to investigation and disciplinary procedures. • Ensure appropriate training and resources are provided to Case Investigators, Case Managers, decision-makers / panel members.
<p>The Chief People Officer</p>	<ul style="list-style-type: none"> • The Chief People Officer is responsible for the implementation of this policy and for ensuring it is reviewed and implemented in line with relevant legislation and NHS guidance. • Responsible for reporting annual updates to the Board on the types of disciplinary matters being dealt with and the outcomes of those.
<p>Line manager is responsible for ensuring they follow this policy in individual cases and for:</p>	<ul style="list-style-type: none"> • Undertaking preliminary fact finding in relation to potential misconduct by speaking to the employee and discussing the incident / circumstances. • If required, speaking to other witnesses or colleagues who are relevant and may be able to give an account of what took place. Take a record of what they are told. • Seeking HR Advice and complete the 'preliminary fact finding' checklist • Providing the completed 'preliminary fact finding' to a senior manager / Case Manager who will consider the options for the onward management of the issue. • Informing the employee of the next steps as decided by the Case Manager, for example, if a formal investigation is required. • Regularly communicating with employees who are subject to investigation and/or formal action and ensure they are kept informed about what is happening and to ensure they are appropriately supported, seeking advice from Occupational Health where appropriate. Unbiased
<p>The Case Manager is responsible for ensuring this policy is followed in the event that a formal investigation is required and for:</p>	<ul style="list-style-type: none"> • Providing fair and unbiased oversight and decision making in cases of potential misconduct in the investigation and pre-hearing stages. • Providing constructive challenge and seeking assurance on behalf of the Trust that cases are being handled fairly and proportionately, that decisions are well informed and the welfare of employees is given priority.

	<ul style="list-style-type: none"> • Writing to the employee to commence a formal investigation, detailing the allegations, the name of the appointed Case Investigator, the timescales of the process and what the employee should expect throughout the process, enclosing appropriate policies/ supporting information. • Appointing an appropriately trained Case Investigator, providing them with a Terms of Reference for the investigation and any pertinent information relating to the case. • Communicating regularly with the assigned Case Investigator to understand the status of the investigation, any delays and the reasons for them, the anticipated completion date and the amendment/ expansion of the Terms of Reference as may be required. • At the conclusion of the investigation, considering the findings in conjunction with a member of the Business HR team and deciding on the appropriate next steps and communicating this to relevant employee/s. • In the case of medical staff, the Case Manager will present at the disciplinary hearing and were required, at the appeal stage.
<p>Case Investigator</p>	<ul style="list-style-type: none"> • Carry out a thorough and impartial investigation. • Meet with the Case Manager at the outset of the investigation to discuss the circumstances which have given rise to a formal investigation and to consider the Terms of Reference. • Develop an investigation strategy and communicate this to the Case Manager. • Conduct investigation interviews with HR support; ensure interviewees are given the opportunity to review the notes / statements taken and provide comments. • Provide regular updates on the progress of the investigation to the Case Manager and the employee involved. • Escalate any additional allegations or concerns that emerge during the investigation to the Case Manager, including any issues that are delaying the investigation. • Produce a formal report in response to the Terms of Reference for review and consideration by the Case Manager. • In the event a disciplinary hearing is required the Case Investigator will attend to present the findings of the investigation. Except in the case of medical staff, where the Case Manager will present the findings to

	<p>the hearing and Case Investigair will be called as a witness.</p>
<p>HR Support</p>	<ul style="list-style-type: none"> • Ensures that any matters relating to alleged misconduct are managed in line with the Trust’s Disciplinary Policy. • Provides timely advice to managers on managing misconduct, advising on the range of options and appropriate considerations to enable managers to decide whether informal or formal action is appropriate in the circumstances. • Ensures misconduct is handled consistently and proportionately across the Trust, ensuring all parties are treated fairly and impartially. Provides challenge and examines cases to ensure no biases or conflicts of interest exist. • Actively ensures matters are progressing in a timely way. • Ensures the right support is in place for any employees in conjunction with line managers, seeking advice from Occupational Health as required. • Fully considers the findings of the investigation and advise the Case Manager on options of further action including whether formal or informal action is appropriate. Provide advice and guidance to Case Manager when considering the findings of the investigation report, in line with the application of the Policy, Trust Values and just and learning culture • Advises on the composition of Panels and supports the preparation of hearings ensuring everyone involved is properly briefed and trained. • A HR representative will attend disciplinary hearings to advise the Panel on proceedings. The assigned HR support for the Case Investigator will attend to support the presentation of the case.
<p>Chair of hearing</p>	<ul style="list-style-type: none"> • Chairs the hearing and leads the disciplinary hearing panel in its deliberations. • Considers the advice, deliberations and views of the other panel members, but is ultimately responsible for the disciplinary decision and outcome. • Ensures the fair and reasonable conduct of the hearing in accordance with the Trust’s Disciplinary Policy. • Ensures that the employee is afforded their right to be accompanied. • Explores if any adjustments should be made to proceedings to support employees and particularly for disabled employees or those with health conditions.

	<ul style="list-style-type: none"> • Explains the procedure to be followed, ensures introductions are made, and that all parties have all relevant documentation. • Ensures the investigator presents their findings, and that the employee has the opportunity to challenge the case and evidence against them, and also to state their case. • Adjourns to consider the decision, ensuring all relevant evidence is considered appropriately, and that any mitigation is taken into account. • Determines whether allegations are substantiated on the balance of probabilities. • If the allegations are substantiated, decides on sanction with advice and input from other panel members and HR support, taking into account any 'live warnings', the seriousness of the case, sanctions applied in similar cases and the nature of the employees' job, as well as the employee's mitigation. • Informs the employee of the decision, the sanction and the rationale for the decision. • Informs the employee of their right of appeal. • Confirms the outcome in writing to the employee. There may be circumstances where the panel is unable to reach a decision on the day of the hearing, in this circumstance, the employee may be informed of the outcome of the disciplinary process in writing.
<p>Other panel members</p>	<ul style="list-style-type: none"> • Support the Chair of the hearing in ensuring the fair conduct of the hearing and compliance with the Trust's Disciplinary Policy. • Ask questions or clarify any issues raised during the hearing. • Consider, on the balance of probability, whether allegations are proven. • Help the Chair determine whether the allegations are substantiated and, if so, the appropriate sanction taking account of mitigation offered, the seriousness of the case, the sanctions applied in similar cases, any previous warnings which are still in effect, and the nature of the employee's job.

Appendix 4: Preliminary Fact Finding Checklist

This checklist must be completed by the Line Manager **BEFORE** making a referral to the authorising Senior Manager to make a decision to commence a formal disciplinary investigation:

Care Group/Specialty/Department:	Your Name:
Date alleged incident took place:	Date you were made aware:
Brief description of alleged incident:	

Outcome of discussion with HR:	
Senior Managers Comments:	
Senior Manager Approval:	Name: Signature: Date:

	Indicator	Tick applicable answer	Considerations and further information
INFORMAL ACTION	Have you previously had informal discussions with the member of staff about this issue or similar issues in the same way you would with any other employee?	Yes Not Sure No	The Trust's Disciplinary Policy emphasises conversations of concern and an opportunity for informal action to bring about improvement and learning; as opposed to punishment
HARM AND/OR DAMAGE CAUSED	Did the individual actions result in harm or damage?	Yes Not Sure No	If Yes or Not Sure commence a preliminary investigation to establish facts
	Did the individual knowingly breach known rules, safe operating procedure and/or breach Trust values and behaviours?	Yes Not Sure No	If Yes evidence the professional body and/or Trust rules, Trust Values and Behaviours that were breached

	Is there evidence the employee took an unacceptable risk?	<p>Yes</p> <p>No</p>	If Yes provide a brief summary of the evidence:
CAPACITY	Did mental or physical ill health contribute to the alleged incident?	<p>Yes</p> <p>Not Sure</p> <p>No</p>	<p>If Yes underlying health conditions should be taken into consideration when deciding the next step.</p> <p>OH can provide guidance on the likelihood of any medical condition contributing to or impacting an incident</p> <p>If you're Not Sure then a discussion should take place with the individual and then a referral to OH for further advice</p>

	Indicator	Tick applicable answer	Considerations and further information
CAPACITY (continued)	Have you considered other mitigating circumstances e.g. home/family etc?	Yes No	Discuss with the employee if there are any circumstances with may have impacted upon performance or decision making
	Was the employee under the influence of a substance and/or is there a history of known substance abuse?	Yes No	If Yes seek further guidance from HR and OH. Consult the policy on substance misuse.
SKILLS AND KNOWLEDGE	Is there a protocol / procedure / policy that refers to the expected standard of behaviour / conduct?	Yes No	If Yes please detail protocol / procedure / policy. Is the protocol / procedure / policy clear? If No , should there be one to provide staff with the applicable framework for expected standards of behaviour and care?
	Have you reviewed the member of staff's skills and competency and determined if they knew of the rules or performance standard. Does the individual have the knowledge and skills?	Yes No	If it's evident the individual did not have the knowledge / skills or awareness
	Does the member of staff have the knowledge and skills, but did not apply this?	Yes No	If the member of staff knows how to and can in practice, but isn't then continue with formal investigation
	Would you expect a different member of staff in a similar role /	Yes	

	position with similar experience to act in a similar manner?	No	
	Indicator	Tick applicable answer	Considerations and further information
Comparator	As the manager how well have you read and reacted to the situation?	Proportionately Disproportionately	<p>Consider whether unconscious bias contributed to your decision.</p> <p>Unconscious bias can often show up as micro-behaviours (the little things that we say and do that show how we regard those around us)</p>
	Have you created the right relationship with the employee?	Yes No	
	Is the action you're considering consistent with how other employees within your team have been treated for the same or similar misconduct or action?	Yes No	<p>If No why have you chosen to consider disciplinary action on this occasion?</p> <p>Provide explanation:</p> <p>By carrying out an investigation for disciplinary action against this employee you need to ensure this action is consistent with how other employees have been treated for the same or similar misconduct / action.</p>

Appendix 5: Examples of Serious/Gross Misconduct

Disciplinary Rules are necessary for ensuring a safe and efficient workplace for all employees and workers within the Trust, and for maintaining good employment relations.

The following are possible issues that would warrant disciplinary action:

MISCONDUCT –

a breach of the rules of the Trust:

- I. Failure to comply with reasonable instructions or non-co-operation with Management Activities.
- II. Abuse of authority
- III. Unauthorised absence from duty or failure to comply with the Trust's notification requirements for sickness absence, holiday booking, or any other type of absence.
- IV. Poor timekeeping including late arrival, leaving early and extended breaks when not part of authorised flexible working nor previously agreed with a line manager.
- V. Unacceptable behaviour or language
- VI. Failure to adhere to agreed Trust policies and procedures, including own department protocols
- VII. Being an accessory to a disciplinary offence
- VIII. Misuse or lack of proper care of Trust property or facilities, including computers and other equipment.
- IX. Smoking in prohibited areas.
- X. Any matter listed under Gross Misconduct which falls short of gross misconduct
- XI. Insubordination
- XII. Failure to maintain required Professional Registration
- XIII. Breach of contract, allowing professional registration

This list is not exhaustive nor does it limit the Trust's ability to appropriately classify potential misconduct cases on an individual basis

GROSS MISCONDUCT –

A breach of contractual terms of employment, which may warrant summary dismissal:

- I. Falsification or inaccurate statements in official documentation, including information used in support of an application for any post
- II. Fraudulent claims for reimbursement; travel claims, flexi time, time sheets
- III. Any offences under the Fraud Act 2006 and related legislation
- IV. Ill treatment of wilful neglect of patients
- V. Verbal or physical abuse of patients, staff, visitors or members of the public including racial or sexual abuse or harassment or victimisation.
- VI. Violence or exceptionally offensive behaviour, including foul/ abusive language
- VII. Unauthorised removal or possession of Trust property
- VIII. Theft from the Trust, its staff, patients or public
- IX. Incapability at work through alcohol/drugs or being under the influence of alcohol, non-medically prescribed drugs and or illegal drugs in the workplace
- X. A serious breach of confidence (excluding any protected disclosure under the Whistleblowing policy)
- XI. Deliberate damage to Trust property or facilities
- XII. Causing loss, damage or injury to a patient/ member of staff or a member of the public through serious negligence/ recklessness (this may include an action or omission)
- XIII. Serious breach of health and safety rules
- XIV. Serious insubordination
- XV. Discrimination
- XVI. Bullying or harassment
- XVII. Deliberately accessing internet sites containing offensive or obscene material
- XVIII. Serious breach of confidentiality
- XIX. Bringing the Trust into serious disrepute
- XX. Serious malpractice under any professional code of conduct

- XXI. Criminal offences that might affect a person's suitability for their job or where there has been a failure to disclose convictions/proceedings
- XXII. Undertaking private work without authorisation during hours when contracted to work for the Trust
- XXIII. Inappropriate use of email or internet including retaining, receiving and forward to colleagues, emails containing offensive or obscene material
- XXIV. Serious breach of data
- XXV. Breach of contract, allowing professional registration to lapse on numerous occasions

This list is not exhaustive, nor does it limit the Trust's ability to appropriately classify potential misconduct cases on an individual basis.

Appendix 6: List of Authority – Applicable to all staff excluding medical staff.

In the case of conduct issues against medical staff, the Trusts MHPS policy should be referred to for the appropriate levels of authority

Staff Group	First Written Warning	Final Written Warning	Dismissal	Appeals
Chief Executive	Trust Chairman	Trust Chairman	Trust Chairman with x2 Non-Executive Directors	Composition of appeal to be confirmed in this circumstance.
Executive Directors	Chief Executive	Chief Executive	Chief Executive with x2 Non-Executive Directors	Chairman and x2 Non-Executive Directors
Directors and Deputy Directors	Executive Director	Executive Director	Executive Directors	X2 Executive Directors and One Non-Executive Director.
Staff directly reporting to Executive Directors	The appropriate: Executive Director	The appropriate: Executive Director and Professional Advisor if appropriate	Executive Director with an appropriate Director and Professional Advisor	Executive Director with an appropriate Director
All other staff	Line manager	Line manager	Heads of Service or equivalent 2 nd line manager level.	Divisional Director of Operations or equivalent Head of Service. In case of dismissal – Executive director and 2 nominated directors (or their nominees)

Appendix 7: Disciplinary Hearing Format

1. Introductions

- Introduce those present and their role.
- Explain the purpose of the hearing – to consider whether disciplinary action will be taken in accordance with the Trust Disciplinary procedure.
- Confirm the right to representation including the role of the representative at the hearing.
- Explain how the hearing will be conducted.

2. Management Case

- The Case Investigator* will present the case supported by HR.
- Both the panel hearing the case and the employee (or their accompanying person) will be given the opportunity to ask questions of the Case Investigator. *
- Management witnesses may be called, or a witness's own written and signed statements read out. Both parties are entitled to ask questions of any witnesses who give evidence in person.

3. Employee Case

- The employee (or their accompanying person) is given the opportunity to state their case in response to the management case.
- Both the panel hearing the case and the Case Investigator* and their HR support will be given the opportunity to ask questions of the employee and their accompanying person.
- Employee witnesses may be called, or a witness's own written and signed statements read out. Both parties are entitled to ask questions of any witnesses who give evidence in person.

4. Summing Up

- The Case Investigator* and employee's accompanying person will be asked summarise the main points of their case after questioning is complete.
- No new evidence may be introduced at this late stage.

5. Adjournment

- An adjournment will be taken in order for the panel to consider all the evidence presented.
- Both management side and the employee and their representative will be asked to leave the room.

6. The Decision

- All parties will be asked to return to the hearing.

- The decision should be confirmed to the employee verbally and followed up in writing within 7 calendar days. The decision may be one of the following (depending on the nature of the case and individual circumstances):
- No further action
- Informal counselling
- First written warning
- Final written warning
- Dismissal without notice

Dismissal with notice

If the panel is unable to make a decision at the hearing as further information/time is required, the employee must be informed as to when they can expect written notification of the decision, which should be within 7 calendar days of the hearing concluding.

**In the case of Medical Staff this will be the Case Manager*

Appendix 8: Appeals Procedure

EMPLOYEE REGISTRATION OF APPEAL PRO-FORMA

Please complete as much of the below form as you can with the information available to you.

In cases of dismissal related outcomes all appeals to be sent to the Chief People Officer, Royal Liverpool Hospital, Trust Board, Prescot Street, L7 8XP or the Business HR Department, 5th floor UCD Building, Prescot Street, L7 8XP.

Personal Details (to be completed by the person submitting an appeal)	
Surname	
Forename(s)	
Employee Number	
Address for Correspondence	
Email Address (if available) Work/Home	
Contact Telephone Number	
Department	
Division/Section/Ward	
Job Title	
Line managers name:	

I wish to appeal against a decision made on (date)..... [you must submit your appeal form within 14 days of the date of the decision letter]

I was issued with:
(Delete sanction as appropriate)

- First Written Warning
- Final Written Warning
- Dismissal
- Alternative to Dismissal (i.e. Downgrading)

Please provide the name of the Manager who issued the sanction/decision you are appealing against*:-

.....
.....

Section 2 – Grounds for Appeal*

Please set out your grounds for a summary of appeal*:- i.e. it must be for one of the following reasons:

1. New evidence has come to light that was not previously obtainable
2. A failure to follow Trust disciplinary procedure
3. The level of sanction received is too severe

Section 3 – Further Explanation of Grounds of Appeal

Please use a separate piece of paper if necessary but ensure all pages are numbered and clearly referenced when making reference to any Appendices attached to this case report.

Please provide further explanation of your grounds for appeal. This should contain specific issues / examples which support your grounds of appeal highlighted in section 2: -

Section 4 – Right to Representation

Please tick and complete which of the following is applicable to yourself:-

- I wish to be accompanied by _____ who is a representative of _____ (Name of Trade Union/Professional Organisation).
- I wish to be accompanied by _____ (name), a fellow Trust employee of my choice
- I have chosen not to be represented at the hearing of my appeal

Section 5- Witness Information

Please provide details of anyone you would like to be called as a witness

Full Name:
Job Title:
Contact Information:
Relevance to case:

Section 5 - Dates for Hearing

Please provide any dates when you, your representative and/or witnesses are unavailable over the following 8 weeks: -

**Please note - once dates are booked it is difficult to re-arrange hearings and once booked, hearings will only be postponed in very exceptional circumstances.*

Date received by Department:

Appendix 9: Appeal Hearing Format

1. Introductions

- Introduce those present and their role.
- Explain the purpose of the appeal hearing – to consider the grounds for appeal.
- Confirm the right to representation.
- Explain how the hearing will be conducted.

2. Employee Case

- The employee or their representative is given the opportunity to state their grounds for appeal and evidence to support.
- Both the panel hearing the case and the management representative along with their HR support will be given the opportunity to ask questions of the employee case.
- Employee may call witnesses. Both parties are entitled to ask questions of any witnesses, if present.

3. Management Case

- The disciplinary hearing Chair will state the Trust's case in the presence of the employee and his/her representative, and may call witnesses.
- Both the appeal panel hearing the case and the employee (or their accompanying representative) will be given the opportunity to ask questions of the management case.

4. Summing Up

- The employee and their representative will be asked to summarise the main points of their case first after questioning is complete. The disciplinary hearing Chair will then be asked to sum up their case.
- No new evidence may be introduced at this late stage.

5. Adjournment

- An adjournment will be taken in order for the panel to consider all the evidence presented.
- Both management side and the employee and their representative will withdraw.

6. The decision

- All parties will be asked to return to the hearing.
- The decision should be confirmed to the appellant verbally and followed up in writing within 7 calendar days.
- An appeal hearing decision will be one of the following:
 - Confirm the original decision
 - Substitute the sanction for a lesser one
 - Overturn the original decision.
- There will be no further right to appeal under this policy after this stage.
- If the panel is unable to make a decision as further information/time is required, the appellant must be informed as to when they can expect written notification of the decision, which will be within 7 calendar days.

Appendix 10: Suspension/Action Short of Suspension Decision Record

Member of staff subject to allegation	
Job Title/Band	
Nature of allegations and date arose:	

	Consideration	Response	Evidence
1	Has a preliminary investigation/ fact finding exercise been undertaken to understand the situation?	Yes / No	
2	Do the concerns amount to allegations of serious misconduct and / or is there concern that: <ul style="list-style-type: none"> working relationships have severely broken down the employee could tamper with evidence or influence witnesses there is a risk to other employees, property or patients Further incidents may occur? the individual needs safeguarding from further allegations? The employee is the subject of criminal proceedings which may affect whether they can continue to undertake their role. i.e. NMC, HPC, Work Permit 	Yes / No	<i>(SUSPENSION SHOULD ALWAYS BE A LAST RESORT)</i>
3	If yes to any of the above, is it possible to: <ul style="list-style-type: none"> temporarily move the individual to another area until the outcome of the investigation? limit/restrict/supervise the employee's duties or practice whilst the investigation is carried out? 	Yes / No	

4	If no to Q3, have you contacted the Business HR team to discuss the possibility of suspension?	Yes / No	
5	Before carrying out the suspension, have you consulted with the respective Director for your area?	Yes / No	

	Consideration	Response	Evidence	
6	Do you need to contact the Trust Safeguarding Team?	Yes / No		
7	Does the individual work on the Bank? Do you need to liaise with Temporary Staffing to prevent the worker from working bank shifts for the Trust during the period of suspension?	Yes / No		
Final Decision:		Suspension	Yes / No	Action short of suspension
				Yes / No
Name of Case Manager				Date
Name of HR Representative				Date

NB: Copy of this form must be sent to the Chief People Officer and relevant Executive Director.

Suspension Review Dates

The outcome of the suspension review should be confirmed to the employee in writing each month.

Date of Review	Comments	Date letter sent



Appendix 11: Post Hearing – Lessons Learnt Record

Member of staff subject to Disciplinary Action		Job Title Division	
Nature of Allegation		Outcome of Hearing	
Date Process Commenced		Date Process Concluded	

Area of Discussion (Examples of areas for focus below)	Identified Issues	Action Required	Owner of Action	Completion date
If suspended – alternatives to suspension were considered first and were these not appropriate the rationale for suspension was clearly documented and communicated to the employee.				
If suspended - this was reviewed on a regular basis and communicated back to employee.				
Employee was offered appropriate support at the earliest opportunity i.e. OH referral, staff counselling, Psychologist, Mentor.				
Terms of reference/ allegation were clearly defined & referenced to applicable Trust process/ policy/SOP/behaviours & values				
Case Investigator was trained and competent/or had sufficient				

support & buddy throughout process.				
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Area of Discussion (Examples of areas for focus below)	Identified Issues	Action Required	Owner of Action	Completion date
Timescales for completing investigation were in line with Trust policy. If there were unreasonable delays there was mitigation for this.				
There was effective communication between parties throughout the process.				
The investigation report presented an unbiased view of the matters.				
The investigation report was thorough and did not leave unanswered questions.				
Where referral to a regulatory body was required, this was done in an appropriate and timely manner and the employee was informed of this at the appropriate time.				
Any comments/concerns raised by employee or representative regarding process followed.				

The panel are responsible for collectively completing the Lessons Learnt Record and ensuring any action required is fed back to the relevant individual. The HR support to the panel is responsible for ensuring the completed record is logged and forms part of the Business HR departments annual review of employee relation cases.

