

Disciplinary Procedure

FOR OUH STAFF ONLY: A supporting toolkit for this procedure is available – [Disciplinary Procedure](#)

Category:	Procedure
Summary:	This document establishes the expected standards of behaviour for all employees and actions to be taken when behaviours fall short of the standards expected.
Equality Impact Assessment undertaken:	June 2021
Valid From:	14 July 2021
Date of Next Review:	1 year
Approval Via:	Trust Board
Distribution:	Trust wide
Related Documents:	<ul style="list-style-type: none"> Appeals Procedure Alcohol and Drugs Misuse Guidelines Collective Disputes Procedure Counter Fraud Policy and Reporting Procedures Grievance Procedure Induction Policy Linking Pay Progression and Performance Policy Managing Work Performance Procedure Procedure for Handling Concerns Related to Conduct, Capability or Health of Medical and Dental Practitioners Professional Registration Policy Raising Concerns (Whistleblowing) Policy Respect and Dignity at Work Procedure Special Leave Procedure Workforce Equality, Diversity and Inclusion Policy
Author(s):	Assistant Director of Workforce – Employee Relations
Further Information:	HR Intranet
This Document replaces:	Disciplinary Procedure v 5.0

Lead Director: Chief People Officer

Issue Date:

Contents

Introduction	3
Scope	4
Aim	4
Definitions	4
Responsibilities	5
Disciplinary Procedure	7
Pre-Assessment.....	7
Informal Stage.....	7
Suspension from Work.....	7
Investigation.....	9
Witnesses	10
Right to be Accompanied	11
Investigation Outcome	12
Disciplinary Hearing	12
Decision Following Formal Hearing.....	13
Outcome	14
Dismissal.....	14
Confidentiality	14
Dealing with Anonymous Information	14
Conduct Outside Employment.....	15
Fraud Allegations	15
Involvement of Other Agencies	16
Some Other Substantial Reason.....	16
Overlapping Disciplinary and Grievance Procedures	16
Appeal	17
Training.....	17
Monitoring Compliance	17
Review	17
References	18
Equality Impact Assessment	18
Document History	18
Appendix 1 – Equality Impact Assessment.....	19
Appendix 2 – Pre Assessment Checklist.....	24
Senior Manager Name & Job Title	27
Senior Manager Signature	27
Appendix 3 – Suspension Checklist	28
Appendix 4 - Composition of the Hearing Panel.....	35
Appendix 5 - Behaviours the Trust Considers to be Misconduct.....	36
Appendix 6 - Behaviours the Trust Considers to be Gross Misconduct	37
Appendix 7 – Disciplinary Hearing Format	39
Appendix 8 – Living Out Our Values	41

Introduction

1. This procedure supports and promotes the Trust's values and the strategic aim to deliver compassionate excellence for all our patients.
2. The Trust's aim is to ensure that conduct matters are dealt with fairly and that steps are taken to establish the facts using the principles of a Just and Learning Culture together with the Trust Values and Behaviours to give employees an opportunity to reflect and learn from their behaviours before taking formal action.
3. The fair treatment of our employees will support a culture of fairness, openness and learning in the NHS by making employees feel confident to speak up when things go wrong, rather than fearing blame. An objective and prompt examination of the issues and circumstances will be carried out to establish whether there are truly grounds for a formal investigation and/or for formal action or whether training for the employee, support, guidance and/or informal management may be more appropriate and productive
4. This procedure sets out the Trust's expectation that both managers and employees maintain acceptable standards of conduct and attendance at all times. The Trust is committed to supporting and encouraging its employees in achieving this.
5. Our Trust values guide everything we do, help us make decisions, and shape the way that we interact with patients and with each other. All staff are expected to behave in a way that brings these values to life:
 - 5.1. Strive to improve on what we do through change and innovation.
 - 5.2. Learn from successes and setbacks.
 - 5.3. Encourage a spirit of support, integrity, respect and teamwork.
 - 5.4. Put patients at the heart of what we do and recognise different needs.
 - 5.5. Deliver high standards of health care.
 - 5.6. Take pride in the quality of care we provide.
6. For each value the Trust has defined three sets of behaviours:
 - 6.1. What we love to see – these are the practices and attitudes that will ensure we provide an outstanding level of patient care and service;
 - 6.2. What we expect to see – these are the practices and attitudes that we expect from everyone who works for us; and
 - 6.3. What we don't want to see – these are the practices and attitudes that aren't acceptable and will ensure that we don't achieve the standards of care and service we are aiming for.
 - 6.4. Further information and examples of the behaviours can be found in Appendix 8.
7. As part of day-to-day interaction between manager and employee and through individual staff appraisal, employees should be made aware of the standard of their conduct and any problems should be highlighted and resolved as quickly as possible. Advice should be sought from the appropriate Human Resources representative before invoking the formal stages of this procedure.
8. Where an issue is considered to be one of both inadequate performance and misconduct, then the matter will be dealt with under this procedure and the employee informed accordingly.
9. Information related to employees managed under this procedure will be treated as confidential. Employees who do not maintain confidentiality may be subject to separate disciplinary action.

Scope

10. This procedure applies to all employees of Oxford University Hospitals NHS Foundation Trust (the Trust) on substantive or fixed term contracts and Retention of Employment (RoE) employees.
11. Those employed on medical and dental contracts should be managed under the Procedure for Concerns Relating to the Conduct, Capability or Health of Medical and Dental Practitioners in the first instance. The matter may subsequently be heard under this procedure if the matter relates to misconduct and is not related to clinical practice.
12. This procedure does not form part of any employee's contract of employment and is for guidance.

Aim

13. The purpose of this procedure is to ensure that:
 - 13.1. disciplinary cases are managed consistently across the Trust and in line with current legislation, employment case law and best practice; and
 - 13.2. disciplinary issues are dealt with in a non-discriminatory, transparent, fair and timely manner.

Definitions

14. The terms used in this procedure are as follows:
 - 14.1. A **Just and Learning Culture** creates a culture of openness where the emphasis is on establishing the facts of an incident first before any decision is made to undertake a formal investigation. This approach allows for the setting of expectations and standards and supports the establishment of trust between employees and their managers.
 - 14.2. **Suspension** from work on full pay may be required in certain circumstances (see paragraphs 35-53) whilst an investigation into allegations of misconduct is undertaken. It should be made clear to the employee that suspension is not a disciplinary sanction and is not a presumption of guilt. Suspension will be for the shortest possible time and reviewed on a regular basis to ensure it remains the most appropriate option.
 - 14.3. **Alternative Employment** may occur where it is necessary to restrict an employee's normal duties due to concerns over clinical practice, health, safety or wellbeing of patients, colleagues or the employee concerned.
 - 14.4. An **investigation** is an impartial and independent process by which information is gathered to determine the facts of the case.
 - 14.5. A **statement** is the signed and dated written evidence of a party who is interviewed as part of an investigation. Where possible statements should be typed.
 - 14.6. A **formal hearing** is convened if the investigation finds evidence of the alleged misconduct which needs to be considered. A hearing forms part of the formal stages of this procedure.
 - 14.7. **Misconduct** is unacceptable and improper behaviour which may breach the Trust's policies, procedures, values or behaviours but does not normally warrant dismissal unless repeated after due warning.
 - 14.8. **Gross misconduct** is misconduct of such a serious nature that it fundamentally breaches and destroys the contractual relationship between employer and employee. It is an act (or an omission), which makes any further working relationship and mutual trust impossible. If on completion of the disciplinary process it is concluded gross misconduct has taken place, the result will normally be dismissal without notice (i.e. summary dismissal). Gross misconduct does not

always automatically mean summary dismissal, this must be reasonable taking into account the misconduct and any mitigating factors.

- 14.9. **Mediation** is a confidential and voluntary process which brings two or more employees together in the presence of a mediator to resolve problems, disputes or disagreements.

Responsibilities

15. The **Chief Executive Officer** has overall responsibility for the values and behaviours of the Trust.
16. The **Chief People Officer** has delegated responsibility for this procedure.
17. **Managers** are responsible for:
 - 17.1. Exhibiting behaviour which meets the Trust's standards at all times and which is also in line with the Trust values and behaviours.
 - 17.2. Ensuring that their employees are aware of this procedure. Each employee should be informed of the standard of conduct expected in their job.
 - 17.3. Referring new employees to this procedure as part of their local induction and encouraging them to familiarise themselves with the document.
 - 17.4. Ensuring that this procedure is applied fairly and consistently.
 - 17.5. When asked to undertake an investigation, complete the investigation in a timely manner.
18. The **Workforce Directorate** is responsible for:
 - 18.1. Providing consistent, legally sound advice and guidance on the application of this procedure.
 - 18.2. Monitoring the application of the formal stages of this procedure to ensure that it is being applied in a consistent and non-discriminatory manner.
 - 18.3. Supporting the Investigating Officer and Case Manager throughout the procedure.
 - 18.4. Reviewing and updating this procedure and associated guidance documents on a regular basis.
 - 18.5. Providing support and training for managers taking on the role of Investigating Officer, Case Manager and Chair.
19. **Employees** are individually responsible for:
 - 19.1. Maintaining appropriate standards of conduct, acting within their level of competence, and seeking advice from their manager if they are unsure of what to do in a certain situation.
 - 19.2. Acting in accordance with Trust policies, procedures, values and behaviours and familiarising themselves with this procedure.
 - 19.3. Providing a witness statement and/or attending an investigation meeting if requested to do so.
 - 19.4. Not discussing the facts of the case with any other employee, apart from their Trade Union Representative or Welfare Officer.
 - 19.5. Attending disciplinary meetings and appeal hearings when required, unless there are extenuating circumstances which would prevent attendance. These circumstances must be reported to the Case Manager.
20. The **Case Manager** is responsible for:
 - 20.1. Overseeing the formal disciplinary process.

- 20.2. Preparing the terms of reference for an investigation and keeping these under review.
- 20.3. Setting the timescales for completion of the investigation.
- 20.4. Appointing the Investigating Officer to investigate the allegations.
- 20.5. Informing the employee of the allegations, the name of the Investigating Officer and the timescale for the investigation to be completed.
- 20.6. Providing updates to the employee on case progression no less than every two weeks to ensure the employee receives regular and clear communication about the case. If the timescale for completion of the investigation is extended, the Case Manager should communicate this to the employee at the earliest opportunity.
- 20.7. Reviewing the period of suspension or restriction to practice, as appropriate.
- 20.8. Receiving the final investigation report and determining whether to convene a disciplinary hearing.
- 20.9. Where other agencies are involved, for example the police, Local Authority Representative (in the case of safeguarding issues) or the Local Counter Fraud Specialist/NHS Protect the Case Manager should ensure regular contact is maintained with the agency
21. The **Chair** is responsible for Chairing a formal disciplinary hearing and determining the outcome, based on the evidence presented by all parties. If the case relates to a matter of misconduct by a medical or dental practitioner, previously investigated under the Procedure for Handling Concerns Related to Conduct, Capability or Health of Medical and Dental Practitioners the disciplinary hearing will be chaired by an appropriate manager in accordance with that procedure.
 - 21.1. Presenting the management response to any appeal hearing.
22. The **Investigating Officer** is responsible for:
 - 22.1. Undertaking a full and thorough investigation, establishing the facts of the case and collecting all relevant evidence and information thoroughly and impartially.
 - 22.2. Undertaking investigation interviews with all witnesses and/or requesting statements from witnesses, as appropriate.
 - 22.3. Producing an investigation report that addresses the allegations detailed in the Terms of Reference, providing sufficient information, referenced to relevant policies/procedures, to enable the Case Manager to determine if there is a case to answer.
 - 22.4. Completing the investigation in a timely manner and without undue delay. Where necessary, liaising with the Case Manager regarding any potential delays in completing the investigation.
 - 22.5. Presenting the case at a formal disciplinary hearing, where appropriate.
23. The **Welfare Officer** is responsible for supporting the employee once a formal disciplinary investigation begins. The Welfare Officer will ensure the employee has a nominated individual to speak to about the disciplinary process and what to expect at each stage. The Welfare Officer will also be trained to recognise and escalate concerns in relation to employee wellbeing.
24. In instances where there is an issue of misconduct or gross misconduct to be considered, which, in the opinion of the Trust, breaches professional standards, the Trust may make a referral to any relevant professional regulator or professional body. In these circumstances the referral will be made by either the **Chief Nursing Officer** or **Chief Medical Officer** dependant on the professional regulator or professional body the member of staff is registered with.

Disciplinary Procedure

Pre-Assessment

25. This is the first stage of any potential disciplinary matter. It is an informal process and does not require terms of reference to be set.
26. The purpose of the pre-assessment is to establish the facts for a matter when there is reasonable belief that Trust policies, procedures or guidelines have been contravened.
27. The pre-assessment will usually be undertaken by the employee's line manager and should be completed within 2 working days of the incident becoming known.
28. The employee must be informed that the pre-assessment process is taking place but any meeting with the employee as part of the pre-assessment process will be informal.
29. At the point of being informed about the pre-assessment process, the employee will be offered a referral to the Centre for Occupational Health and Wellbeing and provided with details of the Employee Assistance Programme. In cases where there is significant concern for the employee's wellbeing a referral to the Trust's Psychological Medicine Service should also be considered at this stage.
30. A pre-assessment checklist (Appendix 2) must be completed to inform the decision as to whether the matter can be resolved informally or if the formal disciplinary process should be initiated.
31. Where the outcome of the pre-assessment indicates that further formal investigation is appropriate, this must be reviewed and then formally signed off by a senior manager from a different Division who holds authority to dismiss in accordance with this Procedure. There will be the ability to delegate this authority if the sign off would cause undue delay. The senior manager will have had no previous involvement in the case and will provide independent oversight.

Informal Stage

32. If, following the pre-assessment process, it is determined that there is a requirement for informal action then a meeting should be held with the employee. A record of discussion of this meeting must be shared with the employee, including the date of the meeting and a clear explanation of the issues raised, the support that will be given to the employee to prevent a repeat of the conduct/behaviour and the expected standards of the employee's future conduct and/or behaviour. This should be retained on the employee's personal file locally, usually for a period of six months and reviewed with the employee regularly. A template is provided in the Disciplinary Procedure Toolkit.
33. At this stage, it will not usually be necessary to involve the employee's union representative or a member of the Human Resources team.
34. During discussions at the informal stage, employees should be made aware that if the issues discussed persist or reoccur, formal disciplinary action may be taken.

Suspension from Work

35. It is expected that in most cases suspension from work will not be necessary and employees will be able to remain in their substantive role while an investigation is undertaken.
36. If there is no alternative to suspension it must be made clear to the employee that suspension is not a disciplinary sanction and that there is no assumption of guilt.
37. A decision to suspend can only be made once the risks of the employee remaining at work have been properly assessed using the Trust's suspension checklist (Appendix 3), all alternatives to suspension have been properly considered and advice has been sought from HR.

38. Suspensions must be approved by both a senior manager at the Trust (Divisional Nurse/OSM/Assistant Director or above) and a senior member of the HR Team (HRBP or above).
39. If a sufficiently senior manager is not available when an incident occurs indicating that suspension may need to be considered, the matter should be referred to the most senior person on duty to decide whether the employee should be sent home pending the appropriate senior manager taking charge of the situation the next working day.
40. Suspension will normally only be considered when there is a serious allegation of misconduct and it must be remembered that simply because the allegation is serious is not necessarily a reason to suspend an employee. The decision must be made in relation to risk. The following are examples of where suspension may be necessary if alternatives to suspension cannot be found:
 - 40.1. Where the employee poses a threat to the Trust, patients or other employees if they remain at work;
 - 40.2. Where it is reasonably believed that the employee may destroy evidence or attempt to influence witnesses thus impacting on the investigation if they remain at work;
 - 40.3. Where relationships at work have broken down;
 - 40.4. Where the employee is the subject of criminal proceedings which affect whether they can do their job;
 - 40.5. Where an employee's registration with their professional body has been suspended or conditions of practice have been placed on the employee.

Communicating the Decision to Suspend and Supporting Employees

41. The Trust will make every effort to ensure that employees are informed of the decision to suspend in a face-to-face meeting; the outcome of which will be confirmed in writing to the employee within 5 calendar days of the meeting taking place.
42. The employee may be accompanied by a Trade Union representative or work colleague at the suspension meeting however the unavailability of a representative cannot prevent the suspension from taking place.
43. At the meeting the manager communicating the decision to suspend will:
 - 43.1. Clearly explain the reasons for suspension and how long it is expected to last;
 - 43.2. Provide a named point of contact (usually the employee's line manager) who the employee can contact with any concerns and a named point of contact in the HR team;
 - 43.3. Agree how regular contact will be maintained with the employee while they are suspended;
 - 43.4. Make arrangements for an appropriate occupational health referral and advise the employee of the support available to them while they are suspended e.g. Employee Assistance Programme, Occupational Health, Pastoral Care Services;
 - 43.5. Explain that the employee may still contact work colleagues who they would usually communicate with outside of work but must not discuss the investigation with them;
 - 43.6. Discuss with the employee how they would like their absence to be explained to colleagues and/or patients should it be necessary to do so.
44. At the meeting the terms of the suspension will be provided to the employee. These should include:
 - 44.1. Not doing anything that could interfere with the investigation;

- 44.2. Treating the matter confidentially;
 - 44.3. How to contact witnesses to support their case;
 - 44.4. Any restrictions on visiting Trust premises unless given prior permission;
 - 44.5. Requirement to remain available during their normal working hours to attend meetings. In instances where these hours are outside normal working hours agreement should be sought as to how meetings will be arranged;
 - 44.6. How to request periods of absence while suspended e.g. annual leave and sickness absence
45. If deemed necessary, the employee may be asked to hand in Trust property such as keys, ID card, Trust mobile phone etc. at the time of suspension. Again, this should be considered on the basis of risk as opposed to being the norm.

Timescales for Suspension and Suspension Reviews

- 46. Suspension will be for the minimum time period and, if it remains in place, will be reviewed by the Case Manager no later than 14 calendar days after the employee is informed of the suspension.
- 47. If an employee has been suspended for 4 weeks the suspension review by the Case Manager should move to weekly intervals to determine whether ongoing suspension remains the most appropriate course of action.
- 48. After each suspension review the Case Manager must write to the employee to confirm the outcome of the review.

Pay During Suspension

- 49. Suspension will be on normal pay unless there are exceptional circumstances which warrant suspension without pay (See paragraph 53).
- 50. Normal pay is calculated on the basis of the employee's average pay in the 3 months prior to the suspension and will include overtime, enhancements and/or other regular allowances.
- 51. Whilst an employee is suspended they must not undertake any other paid work during the hours they are contracted to work for the Trust. Where a suspended employee usually works an irregular shift pattern and has secondary employment they should discuss with the Case Manager how this can be undertaken during the period of suspension.
- 52. Where an employee has additional employment outside the Trust details relating to their suspension may be shared with other employers if it is in the public interest, for example, where it is considered that there is a risk to patient safety.
- 53. Suspension without pay may be considered where an employee's professional registration has lapsed or been suspended/is subject to conditions of practice or because they have lost the right to work under the Immigration and Asylum Act. Consideration will be given to the individual circumstances of employees in such cases before determining whether suspension without pay is a proportionate measure to be taken.

Investigation

- 54. Once it has been determined through the pre-assessment process that the alleged conduct is sufficiently serious to invoke the formal disciplinary procedure, a Case Manager will be appointed.
- 55. The Case Manager, together with their HR support, will be responsible for assigning an impartial Welfare Officer who will provide support to the employee throughout the formal process.

56. The Case Manager will then appoint an Investigating Officer who received appropriate training to undertake this role.
57. The Case Manager will produce a Terms of Reference setting out the scope of the investigation to the Investigating Officer, ensuring the allegations to be investigated are clear and unambiguous.
58. The Case Manager will inform the employee in writing of the allegation(s) that has/have been made against them. The letter should include the Terms of Reference, inform the employee that they will be required to participate in a formal investigation and remind the employee of sources of support, which may include their Trade Union, the Employee Assistance Programme, Centre for Occupational Health and Wellbeing and the Chaplaincy team.
59. The purpose of the formal investigation is to gather relevant information and to determine if there is a potential disciplinary case to answer by establishing the facts of the case. It is not the role of the Investigating Officer to decide if a disciplinary offence has occurred or to suggest what sanction may be appropriate.
60. While there will always be a robust and comprehensive investigation the intention is that any formal investigation will be proportionate to the nature of the allegations being investigated.
61. If there is no disagreement concerning the facts because the employee admits the misconduct, a full investigation may not be necessary before a hearing is arranged.
62. Investigations must be undertaken with guidance and support from HR, and should be concluded thoroughly, impartially and in a timely manner.
63. At an investigatory interview, the Investigating Officer will explain to the employee that a written record of the meeting will be made and that this record will form part of their investigation report. The member of staff invited to the investigation interview will have the opportunity to review the notes of the interview to confirm it is an accurate reflection of the issues discussed.
64. If an employee does not attend an investigation interview without good reason the Investigating Officer should contact the employee to ascertain the cause of the absence and a second date should be offered for the interview. Should the employee fail to attend on a second occasion without good reason the employee may be given an opportunity to submit a written response to the allegations within a reasonable timeframe. Should the employee fail to attend two scheduled interview times and fail to provide a written submission without good reason, the investigation may be concluded without their input.
65. Upon completion of an investigation, the Investigating Officer will produce an investigation report for the Case Manager's consideration, which sets out clearly the evidence established by the investigation.
66. If the Case Manager, on reading the report, determines that there is evidence which needs to be considered at a formal disciplinary hearing, they will make arrangements to convene a hearing.
67. If a hearing is convened, a copy of the full investigation report, including all appendices, will be provided to the employee as part of the hearing documentation.
68. If the Case Manager concludes that there is no case to answer all documentation relating to the case will be sent to the appropriate HR team one month after completion of the case to be destroyed confidentially. In these circumstances a copy of the investigation report will not be shared with the employee.

Witnesses

69. During the investigation stage of this procedure the Investigating Officer should interview any witnesses who may have evidence related to the alleged misconduct. A note taker

will usually be present at the interview to take notes. The notes from the interview with witnesses should be accurate and reflect the content of the interview but will not usually be verbatim. The interview notes will be typed up and sent for the witness to check, sign and date as an accurate record of the interview.

70. A witness may be asked to provide a written statement, either in addition to or instead of attending an investigation interview. If a written statement is required, the Investigating Officer should ask the witness to produce a written statement, taking account of the following guidance:
 - 70.1. Assume that the reader knows nothing about the facts of the matter.
 - 70.2. State the name and job title of the witness and, if appropriate, their qualifications and experience.
 - 70.3. Deal with events in the order in which they occurred, giving precise dates and times if known.
 - 70.4. Use plain English and where possible, avoid jargon or technical and complex language.
 - 70.5. If the allegation is in relation to protocols or procedures not being followed, the witness should explain what the agreed or usual procedure is and then describe the nature of the departure from this.
 - 70.6. Statements should be signed and dated as an accurate statement of facts.
71. Anonymous witness statements will not usually be accepted as part of a disciplinary investigation. If a witness is worried about suffering a reprisal or victimisation, they should be offered appropriate support and the employee against whom allegations have been made should be reminded that victimisation or harassment of a witness may be treated as a separate disciplinary matter.

Right to be Accompanied

72. An employee has the right to be represented by a Trade Union Representative or accompanied by a work colleague at any formal meetings under this procedure; this includes investigation interviews and hearings. In cases where an employee is an accredited Trade Union Representative, the Full-Time Officer may be involved as the employee's representative. The companion will not be permitted to act in a legal capacity.
73. Medical practitioners may have additional rights of representation as set out in the Procedure for Concerns Relating to the Conduct, Capability or Health of Medical and Dental Practitioners. A doctor can be represented by a friend, partner/spouse, work colleague, trade union/defence organisation representative, and also has a right to a legal representative instructed or employed by a defence organisation.
74. The Trust reserves the right to ask for identification of a Trade Union Representative, if they are not an employee of the Trust.
75. The companion may address the 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. They may also confer with the employee during the hearing. The companion cannot answer questions on the employee's behalf, address the hearing if the employee does not wish it or prevent the Trust from explaining its case.
76. In exceptional circumstances, and at the Trust's discretion, the employee may be permitted to be accompanied by a friend or partner but this companion will not be allowed to represent the employee in any way.
77. It is the employee's responsibility to ensure their chosen companion is willing and able to attend a hearing. The employee must inform the Chair, at least three days in advance

of the hearing, who they will be accompanied by including the person's name and contact details.

78. It is not reasonable for an employee to insist on being accompanied by a person whose presence would prejudice the hearing or investigation or who might have a conflict of interest. The Trust reserves the right to refuse the attendance of such a person.
79. If the employee cannot attend an investigation interview or disciplinary hearing because their representative is unavailable on the date given, the Trust will postpone the meeting or hearing to a time proposed by the employee, provided that is within seven days of the original date and the alternative time and date is appropriate for all other parties involved. Only one attempt will usually be made to reschedule the meeting.
80. If this is not possible to achieve within the timescale, the employee will be advised to seek alternative representation as the meeting will proceed as scheduled.
81. Under no circumstances should employees be unreasonably refused the right to be accompanied by a Trade Union Representative or a work colleague .
82. In cases where English is not the employee's first language, it may be necessary to involve the services of an interpreter. In such cases the interpreter will be sourced by the Trust, it is not appropriate to allow a colleague or family member to act as an interpreter.
83. Where an employee may have a disability which could affect their understanding of the process, guidance should be sought from HR.

Investigation Outcome

84. The Case Manager, together with their nominated HR support, will review the investigation report and consider the findings to decide whether any further action is required.
85. The employee must be notified in writing by the Case Manager of the outcome of the investigation in a timely manner. In some circumstances it may be appropriate to meet with the employee in the first instance to relay the outcome of the investigation, following this up in writing after the meeting.
86. If a formal hearing is to be convened, the Case Manager will write to the employee to advise them of the date, time and place of the hearing, the nature of the allegations, the names of the panel members hearing the case and any witnesses to be called by management. Appendix 4 provides guidance on panel composition. The employee will also be advised of the right to be accompanied, and the right to call witnesses in support of their case.
87. In cases that are proceeding to a formal disciplinary hearing, the Case Manager, together with their nominated HR support, will be responsible for appointing a Chair of the disciplinary hearing. This will be a senior manager who has had no prior involvement in the case at any stage (including pre-assessment).

Disciplinary Hearing

88. The hearing will be chaired by a senior manager who has had no prior involvement in the case. The format for the hearing is detailed in Appendix 7. If the case relates to a matter of misconduct by a medical or dental practitioner, previously investigated under the Procedure for Handling Concerns Related to Conduct, Capability or Health of Medical and Dental Practitioners the disciplinary hearing will be chaired by appropriate manager in accordance with that procedure.
89. In cases involving allegations of gross misconduct, the employee must be advised that if gross misconduct is found then this could lead to their dismissal. Where dismissal would mean the employee would effectively be prevented from practising their

profession in the future, consideration must be given to allowing legal representation at the hearing.

90. Medical and dental practitioners employed by the Trust on medical and dental contracts have the right to representation set out in the Trust's Procedure for Handling Concerns Related to Conduct, Capability or Health of Medical and Dental Practitioners.
91. The employee will usually be given 14 calendar days' notice of any hearing date and will be provided the management case and all associated documents at this point. In some circumstances and where both parties agree it may be beneficial to expedite the process and less than 14 days' notice may be agreed.
92. If an employee is absent from work due to sickness (or if an employee who has been suspended would be absent due to sickness if it were not for the suspension) at the time of the hearing, then an alternative date will usually be arranged for the hearing, depending on the reason for the absence. Advice will be sought from the Centre for Occupational Health and Wellbeing about the employee's fitness to attend a formal hearing if it appears the employee will not be fit within a short period of time, usually within seven days or depending on the reason for the sickness absence. If the employee is deemed not fit to attend a hearing within a reasonable time frame, then they may be invited to provide written submissions and the hearing will proceed in their absence.
93. Where an employee is not able to attend the hearing, without good reason, the Chair may decide to proceed in their absence and will make a decision on the evidence available.
94. Any documentary evidence that the employee wishes to be considered during the hearing should be sent to the Chair at least five calendar days in advance of the hearing. If the employee wishes to call witnesses to the hearing then statements from each witness must be provided to the Chair at least five calendar days before the hearing.
95. At the hearing the Investigating Officer will be responsible for presenting the management case.
96. A confidential note taker will attend the disciplinary hearing to take written notes. A typed copy of these notes will be circulated to all parties in the case of an appeal.

Decision Following Formal Hearing

97. An adjournment will take place before the Chair reaches a decision.
98. The Chair must come to a view on the facts. If the facts have been disputed, the Chair must decide on the version of events they believe to be correct on the balance of probabilities. The balance of probabilities means that the Chair is satisfied that the occurrence of the event was more likely than not.
99. In reaching a decision as to any penalty to be imposed, the Chair should:
 - 99.1. consider the employee's representations and any mitigating factors;
 - 99.2. consider the gravity of the offence;
 - 99.3. act in a manner consistent with similar previous cases; and
 - 99.4. consider the employee's position within the Trust, any previous disciplinary record and length of service.
100. If the employee has received previous disciplinary warnings that have expired, the Chair may take into account previous written warnings that have been issued when deciding whether a particular sanction is reasonable.

Outcome

101. After the presentation of the evidence and an adjournment, the hearing will usually be reconvened to inform the employee of the outcome and of any penalty to be imposed. In exceptional circumstances, the decision may be communicated in writing only.
102. In the case of warnings, the Chair will explain what improvement is expected, the timeframe for improvement, what training and support may be provided to achieve improvement, how long the warning will remain on file and the consequences of a failure to improve.
103. A letter of confirmation will be sent to the employee by the Chair, normally within seven calendar days of the hearing, by First Class and Recorded Delivery post. If the employee has provided an email address then the letter will also be emailed. The letter must be copied to the employee's trade union representative where appropriate. The Chair will also confirm that as a result of the warning the employee's incremental point will be placed on hold for the duration of the formal warning, in accordance with the Linking Pay Progression and Performance Policy.
104. A record of the warning will usually be considered live for the following periods, subject to satisfactory conduct:

First Written Warning	Up to 12 months subject to satisfactory conduct
Final Written Warning	Up to 24 months subject to satisfactory conduct

Following this period of time, the warning will be removed from the employee's personal file.

Dismissal

105. Any decision to dismiss shall be confirmed in writing and shall:
 - 105.1. clearly state the reason for the dismissal;
 - 105.2. state the date on which the employment will terminate;
 - 105.3. specify whether the dismissal is with or without notice/pay in lieu of notice;
 - 105.4. remind the employee of their right of appeal and how it might be exercised.
106. In cases of gross misconduct an employee may be summarily dismissed with immediate effect and without notice or payment in lieu of notice. This should be confirmed in writing.
107. If an employee is dismissed with notice, the length of the notice period or payment in lieu of notice must be equivalent to their contractual or statutory notice period, whichever is greater.

Confidentiality

108. Statements, letters and other communications are confidential to those involved in the disciplinary process.

Dealing with Anonymous Information

109. Where information is received from an anonymous source or where the informant is known but does not want their identity to be revealed, advice should be sought from the HR team. Where an issue is raised as a concern or a whistleblowing issue, reference should be made to the Trust Raising Concerns (Whistleblowing) Policy.
110. Managers receiving anonymous information by telephone should:
 - 110.1. record all details of the call, including the date, time and duration;

- 110.2. ask for details and encourage the caller to put the complaint in writing, seeking an explanation if they decline; and
 - 110.3. ask how the caller knows the information, whether it is direct knowledge or hearsay, whether they know the employee personally and whether anyone else knows about the information.
111. Where a manager receives an anonymous letter they should:
- 111.1. exercise caution before relying on the information for disciplinary proceedings and make efforts to substantiate the information through other sources; and
 - 111.2. undertake an initial investigation to establish whether there is potentially a case to answer, which would then lead to a formal disciplinary investigation. Where allegations are not upheld, the relevant paperwork should be sent to the HR department for confidential filing.

Conduct Outside Employment

112. Disciplinary proceedings may be invoked where:
- 112.1. conduct outside employment seriously impairs an employee's ability to undertake their duties;
 - 112.2. the conduct of an employee calls into question their integrity or suitability to carry out their duties; and/or
 - 112.3. the conduct of the employee is likely to bring the Trust into disrepute.
113. The fact that an employee has been charged with a criminal offence should not be regarded as an indication of guilt. Conviction of an offence, however, is sufficient proof that an offence has been committed.
114. If criminal proceedings are ongoing, an interim option available to the manager is suspension on nil pay until such time as an informed decision can be taken. Advice should be taken from an appropriate senior member of the HR Team (HRBP or above) and any decision to suspend on nil pay authorised by a senior manager (Divisional Nurse/OSM/Assistant Director or above).
115. Criminal proceedings may take significant time to be concluded and the manager does not have to wait until the matter has been brought before the courts before proceeding with a an investigation and if required a disciplinary hearing. However, it is essential to ensure that any investigation undertaken by the Trust does not interfere with or prejudice any police investigation. Interviews with staff should not usually take place until the member of staff has been interviewed by the police as this could interfere with the police investigation. Advice should be sought from HR before deciding upon a course of action.
116. A full investigation may not be necessary before convening a hearing, depending on the circumstances. It is usually necessary for the employee to be provided with an opportunity to respond to the allegations before any decision is made. Alleged breaches of the contract of employment may be considered at a disciplinary hearing, before a court has decided whether the employee is guilty of an offence.

Fraud Allegations

117. Where fraudulent activity is suspected, the manager should immediately refer the matter to the Trust's Local Counter Fraud Specialist or NHS Protect for investigation. An investigation will be undertaken in accordance with the Trust's Counter Fraud Policy and Reporting Procedures.
118. Where an employee is a victim of an incidence of fraud or an allegation of fraud is reported to them, they should contact their line manager in the first instance. If their line manager is not available they should report the incident to the next most senior person. The employee should complete a Datix form if appropriate.

119. This procedure does not detract from employee's right to raise a concern under the Freedom to Speak Up – Raising Concerns (Whistleblowing) Policy.

Involvement of Other Agencies

120. Occasionally a manager may be approached by another agency such as the police, Local Authority Representative for Child Protection Issues or the Local Counter Fraud Specialist / NHS Protect with concerns about the conduct of an employee. In such instances it may be necessary to put the internal disciplinary process on hold pending an external investigation, in order to prevent a loss of evidence. Advice should be sought from HR before deciding upon a course of action.
121. Close liaison with the other agency will be required including, where appropriate, the coordination of arrangements to place the employee concerned on special leave. However, the fact that an external investigation is taking place will not in itself prevent the Trust from taking forward proceedings under this procedure. Advice should always be sought from HR. For safeguarding issues see the Trust's Safeguarding Procedure.
122. Where the allegations involve criminal activity the police may need to become involved and the Trust may be involved in the reporting process. The decision to refer the matter to the police should be made by a senior manager.

Some Other Substantial Reason

123. An employee may, in certain circumstances, be dismissed for 'some other substantial reason' (SOSR). There is no legal definition of SOSR but it may be used in situations where there has been a fundamental breakdown of trust and confidence with an employee which is not as a result of a distinct conduct or performance issue but may occur where relationships with work colleagues have broken down irreparably, or where an employee's conduct has seriously damaged the reputation of the organisation.
124. It is essential that a fair, transparent and evidence-based process is followed and that the employee is informed of the potential consequences of their conduct or behaviour. The Trust must act reasonably, taking into account the circumstances of each individual case, ensuring there is sufficient evidence to justify the dismissal.
125. If a manager is considering that the conduct or behaviour of an employee falls within this reason then they should seek advice in the first instance from their HR representative.
126. Before a hearing is convened to consider dismissal for SOSR a thorough and impartial investigation into the facts of the alleged behaviours should be undertaken, with an investigation report detailing the findings produced. This mirrors the Disciplinary Procedure in the formal stages, including the arrangements for convening a hearing.
127. A dismissal for SOSR would ordinarily be with paid notice, unlike dismissal for gross misconduct which would usually be summary, without notice.

Overlapping Disciplinary and Grievance Procedures

128. Where an employee raises a grievance during a disciplinary process and where the grievance and disciplinary cases are related, both cases will normally be dealt with concurrently.
129. In cases of alleged discrimination, the disciplinary process may be placed on hold to allow for an investigation into the claims to be concluded, depending on the concerns raised.
130. Where it is not appropriate to deal with both issues concurrently the disciplinary process may be temporarily suspended in order to deal with the grievance first. Advice should be sought from HR in each case.
131. The approach will be mindful of the need to avoid unnecessary delays.

Appeal

132. Employees have a right to appeal against the outcome of a disciplinary hearing. Any appeal must be in writing, stating the full grounds of appeal and must be made within 14 calendar days of receiving written notification of the outcome of the hearing. The appeal should be addressed to the Deputy Director of Workforce and Organisational Development.
133. The appeal will be managed under the Appeals Procedure.

Training

134. There is no mandatory training associated with this procedure, however, before undertaking a specific role in this procedure managers should complete the training provided for that role to ensure competency. In addition, workshops on the Disciplinary Procedure are provided and line managers should attend these as part of their management training. Ad hoc training sessions based on an individual's training needs may also be defined within their annual appraisal or job plan.

Monitoring Compliance

135. Compliance with the procedure will be monitored in the following ways:

Aspect of compliance or effectiveness being monitored	Monitoring method	Responsibility for monitoring (job title)	Frequency of monitoring	Group or committee that will review the findings and monitor completion of any resulting action plan
Number of formal disciplinary cases	Internal audit	Director of Workforce	Bi-annually	Workforce Committee
Protected characteristics of employees subject to formal action	Equality Delivery System 2 (EDS2) and Workforce Race Equality Standard (WRES)	Workforce E&D Lead	Annually	Workforce Committee and Equality, Diversity and Inclusion Steering Group

136. In addition to the monitoring arrangements described above, the Trust may undertake additional monitoring of this procedure as a response to the identification of any gaps or as a result of the identification of risks arising from the procedure prompted by incident review, external reviews, or other sources of information and advice. This monitoring could include:

- commissioned audits and reviews;
- detailed data analysis;
- other focused studies.

Results of this monitoring will be reported to the nominated committee.

Review

137. This procedure will be reviewed in one year. This is earlier than as set out in the Developing and Managing Policies and Procedural Documents Policy as it is recognised that as we develop our Just and Learning Culture further revisions to this procedure are likely to be necessary.

References

138. [ACAS website](#)
139. [NHS Employers](#)
140. [Gov.UK](#)
141. [CIPD website](#)
142. [Agenda for Change Terms and Conditions Handbook](#)
143. [Maintaining High Professional Standards in the Modern NHS for Doctors and Dentists.](#)
144. [NHS Counter Fraud Authority](#)

Equality Impact Assessment



145. As part of its development, this procedure and its impact on equality have been reviewed. The purpose of the assessment is to minimise and if possible remove any disproportionate impact on the grounds of race, gender, disability, age, sexual orientation, religion or belief, pregnancy and maternity, gender reassignment or marriage and civil partnership. No detriment was identified.

Document History

Date of revision	Version number	Reason for review or update
May 2014	2.3	Review due in previous document
June 2015	4	Reference to Linking Pay Progression and Performance Policy added.
January 2016	4.1	Review of procedure
February 2016	4.2	Review of formatting
April 2016	4.3	Updated following consultation and feedback
November 2016	5.0	Review of procedure

Appendix 1 – Equality Impact Assessment

1. Information about the policy, service or function

What is being assessed	<i>Delete as appropriate</i> New Policy / Procedure New Service Function Existing Policy / Procedure Existing Service / Function
Job title of staff member completing assessment	Assistant Director of Workforce – Employee Relations
Name of policy / service / function:	Disciplinary Procedure – Workforce Directorate
Details about the policy / service / function	Revision of the Disciplinary Procedure in response to NHSE/I requirements to align with best practice and Just Culture approach
Is this document compliant with the Web Content Accessibility Guidelines?	<i>Delete as appropriate</i> Yes / No / Not applicable for the following reason(s)
Review Date	28/6/2021
Date assessment completed	DD/MM/YY
Signature of staff member completing assessment	
Signature of staff member approving assessment	

2. Screening Stage

Who benefits from this policy, service or function? Who is the target audience?

Delete as appropriate

- Patients
- Staff
- Family / Carers
- Other (please specify)
- Not applicable

Does the policy, service or function involve direct engagement with the target audience?

Delete as appropriate

Yes - continue with full equality impact assessment

No - full equality impact assessment not required

3. Research Stage

Notes:

- If there is a neutral impact for a particular group or characteristic, mention this in the 'Reasoning' column and refer to evidence where applicable.
- Where there may be more than one impact for a characteristic (e.g. both positive and negative impact), identify this in the relevant columns and explain why in the 'Reasoning' column.
- The Characteristics include a wide range of groupings and the breakdown within characteristics is not exhaustive, but is used to give an indication of groups that should be considered. Where applicable please detail in the 'Reasoning' column where specific groups within categories are affected, for example, under Race the impact may only be upon certain ethnic groups.

Impact Assessment

Characteristic	Positive Impact	Negative Impact	Neutral Impact	Not enough information	Reasoning
Sex and Gender Re-assignment – men (including trans men), women (including trans women) and non-binary people.			X		There is no differential treatment on the basis of this protected characteristic.
Race - Asian or Asian British; Black or Black British; Mixed Race; White British; White Other; and Other			X		There is no differential treatment on the basis of this protected characteristic. This revised procedure introduces a 'Just Culture' approach and evidence from Imperial College demonstrates that this reduces the likelihood of staff from a BAME background being subject to disciplinary action to the same level as white colleagues. Further detail is included in the Outcome Measures in the Summary Stage of this assessment.
Disability - disabled people and carers			X		There is no differential treatment on the basis of this protected characteristic.
Age			X		There is no differential treatment on the basis of this protected characteristic.
Sexual Orientation			X		There is no differential treatment on the basis of this protected characteristic.

Characteristic	Positive Impact	Negative Impact	Neutral Impact	Not enough information	Reasoning
Religion or Belief			X		There is no differential treatment on the basis of this protected characteristic.
Pregnancy and Maternity			X		There is no differential treatment on the basis of this protected characteristic.
Marriage or Civil Partnership			X		There is no differential treatment on the basis of this protected characteristic.
Other Groups / Characteristics - for example, homeless people, sex workers, rural isolation.			X		There is no differential treatment on the basis of this protected characteristic.

Sources of information

*Imperial College Disciplinary Procedure
Mersey Care NHS Foundation Trust
NHS Resolution
NHS Employers*

Consultation with protected groups

List any protected groups you will target during the consultation process, and give a summary of those consultations

Group	Summary of consultation

Consultation with others

List any other individuals / groups that have been or will be consulted on this policy, service or function.

- Staff Side
- Trust Alliance Committee Members
- Divisional HR teams
- Trust Management Executive members

4. Summary stage

Outcome Measures

List the key benefits that are intended to be achieved through implementation of this policy, service or function and state whether or not you are assured that these will be equitably and fairly achieved for all protected groups. If not, state actions that will be taken to ensure this.

The revised procedure places employee wellbeing at the centre of the procedure and ensures that this is properly considered at all stages. The revised procedure also ensures that there is senior level oversight at all stages and introduces a pre-assessment approach to ensure that all cases are reviewed formally reviewed and then signed off by a senior manager before a formal disciplinary process can commence.

OUH WRES data has previously indicated that there is a disproportionate number of BAME staff entering into a formal disciplinary process. The increased level of senior authorisation required before formal action can commence will ensure that there is a structured approach to our Disciplinary Procedure and should demonstrate a positive impact on our WRES data with all employees in protected groups receiving equitable treatment. This expectation is supported by evidence from other NHS Trusts (including Mersey Care NHS Foundation Trust, Imperial College NHS Foundation Trust and Barts Health NHS Trust) which has demonstrated that this formal structure and early assessment safeguards against a disproportionate impact of disciplinary procedures on staff with protected characteristics.

The revisions to this procedure are taking place within a wider programme of activity to support the implementation of a Just Culture at OUH and the development and embedding

of the best EDI initiatives, supported by evidence based research, to reduce and remove any disproportionality in our processes.

Positive Impact

List any positive impacts that this policy, service or function may have on protected groups as well as any actions to be taken that would increase positive impact.

This procedure provides a transparent, fair and consistent approach for dealing with issues of misconduct. The Just Culture approach should ensure no adverse impact on employees with protected characteristics. As part of monitoring of the application of the procedure the protected characteristics of all staff subject to formal action will be monitored and results of the monitoring reported to the Trust Board.

Unjustifiable Adverse Effects

List any identified unjustifiable adverse effects on protected groups along with actions that will be taken to rectify or mitigate them.

Enter details here

Justifiable Adverse Effects

List any identified unjustifiable adverse effects on protected groups along with justifications and any actions that will be taken to mitigate them.

Enter details here

Equality Impact Assessment Action Plan

Complete this action plan template with actions identified during the Research and Summary Stages

Identified risk	Recommended actions	Lead	Resource implications	Review date	Completion date

Appendix 2 – Pre Assessment Checklist

PRE-ASSESSMENT CHECKLIST

This must not be used for Medical and Dental Staff

Name of employee:	
Division/Department/Ward:	
Date:	
Name of Manager Completing Checklist:	
Job Title of Manager Completing Checklist:	
HR support provided by (name):	

To support completion of this checklist please access the [Just Culture Guide](#) available on the NHS England/Improvement website.

PLEASE NOTE: FULL DETAILS MUST BE GIVEN IN THE RATIONALE COLUMN

	CHECKLIST	RATIONALE
1.	Has there been a critical incident and/or serious allegation(s) made?	
2.	Is the reported incident a clinical incident? If yes , is the clinical incident serious enough to enter the SI process? If yes , has the employee been identified as part of the SI process as responsible to such an extent that disciplinary investigation is required?	
3.	Has the alleged incident(s) been reviewed in line with the Just Culture Guide: 1. Deliberate Harm - Was there any intention to cause harm? 2. Health - Is there any indication of substance abuse and/or mental ill health and/or physical ill health? 3. Foresight -	

	<p>a. Are there agreed protocols/accepted practice in place that apply to the action/alleged omission?</p> <p>b. If yes to (a) were these protocols/accepted practice workable and in routine use?</p> <p>c. If yes to (a) and (b) did the employee knowingly depart from these?</p> <p>4. Substitution –</p> <p>a. Would other employees from the same peer group behave in the same way in similar circumstances?</p> <p>b. Was the employee absent when relevant training was provided to their peer group?</p> <p>c. Did more senior members of the team fail to provide supervision that would normally be provided?</p> <p>5. Mitigation – Are there any significant mitigating circumstances?</p>	
4.	Is/are there any allegation(s) against the employee that potentially constitute gross misconduct (see Disciplinary Procedure for examples)?	
5.	Are you able to clearly explain to the employee the reason(s) for the investigation?	
6.	Is your course of action realistic and reasonable in the circumstances?	
7.	Is the employee an accredited Staff Side organisation representative (so that, if action is taken, the relevant Full Time Officer can be notified)?	

8.	Has a Case Manager for the investigation been identified?	
9.	Has HR support to the Case Manager been identified?	
10.	Has an Investigating Officer who will be able to give priority to the investigation been identified?	
11.	Has a date for the Case Manager to meet with the employee to commence the process been agreed with the employee?	
EMPLOYEE SUPPORT		
12.	Confirm the employee's correspondence address, telephone numbers, email address and preferred method of contact.	
13.	Have you allocated an impartial third party (Welfare Officer) to support the employee?	
14.	Has the employee been signposted to Trust EAP services, Occupational Health, Trade Union etc.	

Decision Record:

Initial Decision:	<input type="checkbox"/> No further action required <input type="checkbox"/> Informal action required <input type="checkbox"/> Proceed to formal investigation
Manager Name & Job Title	
Manager Signature	
Date	

Senior Manager Review - Outcome	<input type="checkbox"/> No further action required <input type="checkbox"/> Informal action required <input type="checkbox"/> Proceed to formal investigation
<p>If outcome following senior manager review differs from initial decision rationale must be stated here:</p> 	
Senior Manager Name & Job Title	
Senior Manager Signature	
Date	

Appendix 3 – Suspension Checklist

SUSPENSION CHECKLIST

This must not be used for Medical and Dental Staff

Name of employee:	
Division/Department/Ward:	
Date:	
Name of Senior Manager Completing Checklist:	
Job Title of Senior Manager Completing Checklist:	
Name of HRBP Support to Senior Manager:	

To support completion of this checklist please access the [Just Culture Guide](#) available on the NHS England/Improvement website.

Once completed this checklist must be sent to the Assistant Director of Workforce – Employee Relations to review and confirm the suspension decision prior to the employee being informed

	SUSPENSION CHECKLIST	RATIONALE
1.	Why are you considering suspension? i.e. Has there been a critical incident and/or serious allegation(s) made?	
2.	Have you ascertained details of the incident(s) that leads you to think that suspension is the only reasonable course of action?	
3.	Has the alleged incident(s) been considered against the test in the Just Culture Guide: <ol style="list-style-type: none"> 1. Deliberate Harm - Was there any intention to cause harm? 2. Health - Is there any indication of substance abuse and/or mental ill health and/or physical ill health? 3. Foresight - <ol style="list-style-type: none"> a. Are there agreed protocols/accepted practice in place that apply to the action/alleged omission? 	

	<p>b. If yes to (a) were these protocols/accepted practice workable and in routine use?</p> <p>c. If yes to (a) and (b) did the employee knowingly depart from these?</p> <p>4. Substitution –</p> <p>a. Would other employees from the same peer group behave in the same way in similar circumstances?</p> <p>b. Was the employee absent when relevant training was provided to their peer group?</p> <p>c. Did more senior members of the team fail to provide supervision that would normally be provided?</p> <p>5. Mitigation – Are there any significant mitigating circumstances?</p>	
4.	Is/are there any allegation(s) against the employee that potentially constitute gross misconduct (see Disciplinary Procedure for examples)?	
5.	Is the presence of the employee likely to hinder an initial investigation?	
6.	Are there any patient safety issues if the employee is suspended i.e. skills gaps?	
7.	Is there a risk of harm to self/others if the employee remains at work?	
8.	Has there been a breakdown in relationships between the employee and other work colleague(s)?	
9.	Is there a workable alternative to suspension (e.g. deployment to another work area, restriction of work duties, homeworking)?	
10.	If restriction of duties is to be considered, have you considered what duties you are intending to restrict?	
11.	Do you think the employee will honour the alternative to suspension?	
12.	Are you able to clearly explain to the employee the reason(s) for suspension?	

13.	Is your course of action realistic and reasonable in the circumstances?	
14.	How will the employee's absence/change in work duties be explained to work colleagues?	
15.	Who needs to be made aware of your course of action (suspension, deployment, restriction of duties, homeworking etc)? Payroll HR Records HRBP Senior Manager Exec Lead Professional Lead	
16.	Does the nature of the incident warrant the Communications Manager being consulted? Where applicable: Has internal communication of the issue been discussed and agreed? Has external communication of the issue been discussed and agreed? Has the response to press enquiries been considered and agreed?	
17.	Is the employee an accredited Staff Side organisation representative (so that, if action is taken, the relevant Full Time Officer can be notified)?	
18.	Are you able to give the subsequent initial investigation your priority?	
19.	Have you identified a date when you can meet with the employee as part of the initial investigation - and notified the employee?	
20.	Have you identified an Investigating Officer who will be able to give priority to the initial investigation? If not who will progress this?	
IF DECISION MADE TO SUSPEND/ALTERNATIVE TO SUSPENSION IMPLEMENTED		
21.	Has the employee been sent a formal letter notifying them of the suspension/alternative to suspension and the allegations to be investigated? (By the manager commissioning the investigation?)	

22.	Is a Change of Circumstances Form to notify HR and Payroll of the suspension/alternative to suspension required? If yes, has this been sent?	
23.	Has the case been set up on ER Tracker and the suspension/alternative to suspension recorded?	
24.	Is it necessary to notify IT to temporarily lock the account, retain all information and not to delete the account?	
EMPLOYEE SUPPORT		
25.	Confirm the employee's correspondence address, telephone numbers, email address and preferred method of contact.	
26.	Have you allocated an impartial third party to support the employee?	
27.	Has the employee been signposted to Trust EAP services, Occupational Health, Trade Union etc.	

N.B - If necessary, have you retained the employees ID badge and any necessary work-related belongings?

Additional comments:

At the suspension meeting, let the employee know:

- Reasons for the suspension.
- Which policy/code may have been considered to be contravened.
- Pay will continue and the suspension will be as brief as possible.
- Not to contact other staff/contractors to discuss the issues under investigation.
- Not to access their work email account or system.
- Not to enter Trust premises without prior agreement with the excluding manager or HR Consultant.
- Investigation meetings will take place and if the employee is called, they must make themselves available.
- If they have problems with TU representation, they should let HR know in order for HR to assist with this.
- The employee must not undertake any other paid work during contracted hours whilst on suspension.
- Any decision made re NHSP shifts.
- Who the Case Manager is.

Decision Record

Initial Decision:	<input type="checkbox"/> Remain at work in substantive role <input type="checkbox"/> Alternative to Suspension <input type="checkbox"/> Suspension
Senior Manager Name & Job Title:	
Senior Manager Signature:	
Date:	

Assistant Director of Workforce – Employee Relations Review of Decision - Outcome	<input type="checkbox"/> Remain at work in substantive role <input type="checkbox"/> Alternative to Suspension <input type="checkbox"/> Suspension
--	--

If outcome following this review differs from initial decision rationale must be stated here:

Name & Job Title:	
Signature:	
Date:	

End of Suspension

When lifting a suspension please contact your HRBP to discuss and agree actions required.

	SUSPENSION LIFTING CHECKLIST	COMMENTS
1	Has the employee been notified of the change? If so by whom, how, and when?	
2	Has this been confirmed to the employee in writing?	
3	Has the Line Manager been informed?	
4	Has the Investigating Officer been notified?	
5	Has the professional lead been notified?	
6	Do other people need to be informed of the change? If so, who and why? Who will inform them and how?	
7	Has the line manager completed a Change of Circumstances form to notify HR Records that the suspension has been lifted?	
8	Has the payroll been correctly completed regarding suspension status and the return to work entered?	
9	If the employee was suspended on nil pay has the line manager completed a Change of Circumstances form to restore their status back to normal pay?	
10	Have arrangements been made to meet with the employee on their return to the workplace with a return to work meeting?	
11	Has a plan been put together to integrate the employee back into the workplace?	
12	If the employee has been dismissed, who needs to be informed and by whom? (Line manager, staff, communications).	
13	Has a debrief session been arranged with those affected (staff and patients)?	
14	Does a formal communication need to be sent out?	
15	How will future press enquiries be addressed?	

Confirmation of Decision to End Suspension

Senior Manager Name & Job Title:	
Senior Manager Signature:	
Date:	
HRBP Name:	
HRBP Signature:	
Date:	

Appendix 4 - Composition of the Hearing Panel

1. The panel to hear the evidence at a formal disciplinary hearing will consist of:
 - 1.1. the Chair (manager hearing the case);
 - 1.2. a Human Resources representative;
 - 1.3. a manager with relevant experience to advise the Chair, if the matter relates to a professional issue;
 - 1.4. a Non-Executive Director, where the hearing concerns staff directly accountable to the Chief Executive.
2. Any member of the panel may ask questions throughout the disciplinary hearing.
3. The Trust views a decision to dismiss an employee as being exceptional. In cases where the hearing outcome may potentially result in dismissal, the role of the Chair will be restricted to those with the authority to act as dismissing officer. These are as follows:
 - 3.1. Chief Executive Officer
 - 3.2. Chief Officers
 - 3.3. Directors
 - 3.4. Deputy Directors
 - 3.5. Divisional Directors of Nursing
 - 3.6. Divisional Directors of Operations
4. If a hearing might be postponed as a result of a dismissing officer not being available to attend a hearing, the dismissing officer may ask a manager with an appropriate level of seniority to chair the hearing. Should the Chair decide that dismissal is the appropriate action, this decision must be ratified by the dismissing officer.
5. The dismissing officer should not normally be the employee's immediate manager.

Appendix 5 - Behaviours the Trust Considers to be Misconduct

1. Misconduct is unacceptable and improper behaviour which may breach the Trust's policies but does not normally warrant dismissal unless repeated after due warning.
2. Examples of misconduct could include:
 - 2.1. Refusing or failing to carry out a reasonable management instruction.
 - 2.2. Unsatisfactory attendance at work, e.g. unauthorised absenteeism, lateness, leaving work without permission, overstaying breaks.
 - 2.3. Conduct, which disrupts the work of others.
 - 2.4. Failure to observe the Trust's procedures for recording of working time and attendance, reporting of sickness and time off work.
 - 2.5. Failure to conform to agreed working practices.
 - 2.6. Failure to take reasonable care of Trust property.
 - 2.7. Failure to act in accordance with the Trust's values.
 - 2.8. Using Trust property, equipment or transport for private use without authorisation.
 - 2.9. Failure to comply with the Trust's no smoking policy.
 - 2.10. Failure to comply with any other Trust policy.
 - 2.11. Misuse of the Internet, email, or other Trust facilities.
3. Consistently failing to demonstrate the behaviours and/or values the Trust expects of its staff. The above are examples and are not exclusive or exhaustive.
4. Dependent upon the degree and circumstances of any of these examples, they might constitute gross misconduct.

Appendix 6 - Behaviours the Trust Considers to be Gross Misconduct

1. Gross misconduct is misconduct of such a serious nature that it fundamentally breaches and destroys the contractual relationship between an employer and an employee. It is an act (or an omission), which makes any further working relationship and mutual trust impossible. If on completion of a disciplinary process, it is concluded gross misconduct has taken place, the result will normally be dismissal without notice (i.e. summary dismissal). Gross misconduct does not always automatically mean summary dismissal; this must be reasonable taking into account any mitigating factors.
2. If an employee is believed to have committed an act of gross misconduct, advice should be sought immediately from HR.
3. Examples of gross misconduct include, but are not limited to:
 - 3.1. A serious neglect of duty and responsibility.
 - 3.2. Harassment, bullying or any act of discrimination.
 - 3.3. Theft or unauthorised removal of property belonging to the Trust, patients or other members of the general public.
 - 3.4. Bringing the Trust into disrepute.
 - 3.5. Fraudulently obtaining money, property, confidential information or material advantage from the Trust.
 - 3.6. Unauthorised entry into computer records.
 - 3.7. Malicious and vexatious claims of bullying and harassment.
 - 3.8. Malicious and vexatious claims under the Raising Concerns Policy.
 - 3.9. Deliberate falsification of official records.
 - 3.10. The submission of sick notes not genuinely issued by a General Practitioner (repayment of sick pay may also be sought and/or referral to the Local Counter Fraud Specialist for investigation).
 - 3.11. Sharing of smart cards, network login details or passwords with another individual where not permitted by Trust policy or procedure.
 - 3.12. Deliberate falsification of claims for earnings and expenses.
 - 3.13. Assault or attempted assault or physical violence.
 - 3.14. Abusive behaviour towards patients, visitors or colleagues.
 - 3.15. Falsification of timesheets and other pay-related documents.
 - 3.16. Malicious damage to Trust property.
 - 3.17. Failure to comply with departmental rules or professional codes of conduct.
 - 3.18. Serious breaches of confidentiality.
 - 3.19. Taking photos of patients in any setting, without obtaining prior informed consent, gained through completing a patient consent form.
 - 3.20. Inability to work due to being under the influence of alcohol and/or illegal substances.
 - 3.21. Negligence.
 - 3.22. Serious breach of health and safety rules and procedures.

- 3.23. Fraudulent misuse of the Trust's name or property.
- 3.24. Serious failure to comply with any Trust procedure or policy.
- 4. The above examples are not exclusive or exhaustive and offences of a similar nature will be dealt with accordingly.
- 5. Where appropriate, disciplinary outcomes will be notified to the appropriate professional body, which may consider action in relation to its own professional code of conduct.

Appendix 7 – Disciplinary Hearing Format

1. The following should be present at the hearing:
 - 1.1. The panel, which will comprise of the Chairperson and a HR advisor who will advise the Chair on the process and ask questions related to points of clarity where necessary.
 - 1.2. The employee against whom the allegations have been made.
 - 1.3. The employee's trade union representative or work colleague, or if the employee is a medical or dental practitioner employed by the Trust on medical and dental contracts, such other representative as provided for in the Trust's Procedure for Handling Concerns Related to Conduct, Capability or Health of Medical and Dental Practitioners.
 - 1.4. The manager who carried out the investigation (the Investigating Officer).
 - 1.5. A confidential note-taker.
 - 1.6. Relevant witnesses, who will only be required to attend for part of the hearing during which they will give evidence and answer appropriate questions.
 - 1.7. The HR advisor to the Investigating Officer may be required to attend the hearing by the Investigating Officer if their advice or support is required.
 - 1.8. If it is necessary and appropriate, a specialist advisor may attend the hearing to provide professional advice on clinical or technical issues to the Chair and their HR advisor. This specialist advisor will be impartial and will not be involved in the decision making process.

Order of Events

2. The Chair will:
 - 2.1. confirm the purpose of the hearing in line with the Trust's Disciplinary Procedure;
 - 2.2. explain the format for the hearing;
 - 2.3. ensure appropriate introductions are made;
 - 2.4. check that no additional paperwork is being tabled on the day; and
 - 2.5. read out the allegations being considered at the hearing.
3. The Investigating Officer will be invited to present the management case of the findings from their investigation which provide evidence to support the allegations.
4. The employee and/or their representative may ask questions of the management case.
5. The Chair and their HR advisor may ask questions of the management case.
6. If the Investigating Officer is calling witnesses they will be invited to attend, individually. The employee and/or their representative, and the Chair and their HR advisor will have the opportunity to ask questions.
7. The employee or their representative will be invited to present their response to the allegations, providing any mitigation and explanation for the alleged behaviour or conduct.
8. The management side may ask questions of the employee's case.
9. The Chair and their HR advisor may ask questions of the employee's case.

10. If the employee is calling witness(es) they will be invited to attend, individually. The employee and/or their representative, and the Chair and their HR advisor will have the opportunity to ask questions.
11. Both sides will be invited to summarise their cases, with management going first (this is not an opportunity to introduce new material and no further questions will usually be permitted at this stage).
12. The Chair will adjourn the hearing to allow time to consider the case and take advice where necessary. During this adjournment the employee, their representative and the Investigating Officer will leave the hearing. Any deliberations during this adjournment will not be minuted.
13. The hearing will be reconvened if it is possible to deliver the outcome decision within a reasonable time frame. Where this is not possible or where further information is needed before a decision can be made, the Chair will explain that the outcome will be notified in writing to the employee within seven working days.
14. In cases where a formal warning is issued or the employee is dismissed, the Chair will inform the employee in writing of their right to appeal against the decision.

Appendix 8 – Living Out Our Values

For each of the values the Trust has defined behaviours that will either ensure that we meet the standards we're aiming for or will mean that we'll miss the mark. For each value there are three sets of behaviours:

- **What we love to see** – these are the practices and attitudes that will ensure we provide an outstanding level of patient care and service
- **What we expect to see** – these are the practices and attitudes that we'd expect from everyone who works for us
- **What we don't want to see** – these are the practices and attitudes that aren't acceptable, and will ensure that we don't achieve the standards of care and service we're aiming for

As we know, there are clear links between improved staff experience and better patient experience, and better patient experience leads to safer patient care and improved outcomes for everyone.

We hope that by defining these behaviours and sharing them we'll all be able to work together to bring them to life at work. That way we'll consistently achieve the highest standards of patient care and service. And our reputation for excellence will keep on growing.

Value: Improvement

Striving to improve on what we do through change and innovation

What we love to see	What we expect to see	What we don't want to see
You actively seek feedback from patients, colleagues and managers about your work and performance and you value what they say.	You value feedback from patients, colleagues and managers and you're willing to change the way you work as a result.	You don't ask for feedback and don't see the value of it. You don't see patients or their families as a source of feedback.
You regularly set realistic, fair and achievable targets in your work for yourself and other people and review them regularly.	You work towards targets and review progress against targets given for yourself and other people.	You set targets and objectives that are unclear or you work towards targets without reviewing your progress.

You're always thinking creatively and innovatively about work and looking for ways to change and improve practices.	You're open to being challenged about how you work and you encourage other people to try new ways of working.	You react defensively to new ideas and you don't take on board other people's points of view.
You take responsibility for putting changes and improvements in place to improve patient care and the service we provide.	You help and support the people who put changes and improvements in place to improve patient care and the service we provide.	You pass the responsibility for putting changes in place to other people or you undermine the efforts of people making changes and improvements.

Value: Learning

Learning from successes and setbacks

What we love to see	What we expect to see	What we don't want to see
You're enthusiastic about learning and development and initiate your own learning opportunities.	You take responsibility for own learning and development and ensure that your learning is up to date.	You're not proactive about your learning and development - you take a passive approach to it.
You share learning and development with others in your team and beyond. You encourage others to embrace learning and development opportunities.	You're open and aware about limitations and gaps in your expertise and you're willing to close these gaps with appropriate learning opportunities.	You're overconfident and unwilling to admit any shortcomings or you don't share what you've learned with colleagues and patients.
You reflect on your mistakes and learn from them. You work alongside others to identify ways to avoid mistakes in the future.	You reflect on your mistakes and learn from them. You think about how to change or improve your practice to avoid repeating them.	You're defensive about making mistakes and don't change the way you work to avoid repeating them.
You make the link between what you learn and how it benefits the patient, organisation or colleagues.	You understand the link between learning and improving the service we provide.	You lack awareness about learning and the link between quality, performance and improved patient care.

Value: Respect

Encouraging a spirit of support, integrity, respect and teamwork

What we love to see	What we expect to see	What we don't want to see
You recognise everyone as an individual and tailor your approach to meet their particular needs.	You listen to people and treat them with dignity and respect.	You treat everyone the same and don't recognise people as individuals.
You think carefully about how your actions will affect other people and reflect on the impact you've had on them.	You communicate clearly and respectfully.	You behave disrespectfully towards other people and don't think about how your actions might affect them.
You make sure that other people understand the importance of respecting and safeguarding people's confidential information.	You respect and safeguard people's confidential information.	You don't respect other people's confidential information or try to safeguard it.
You challenge any form of harassment or discrimination you see happening to colleagues or patients.	You escalate your concerns when you see any form of harassment or discrimination and make sure the problems are addressed.	You don't challenge instances of harassment or discrimination towards colleagues or patients.

Value: Compassion

Putting patients at the heart of what we do and recognising different needs

What we love to see	What we expect to see	What we don't want to see
You see things from the patient and family's perspective and always put their needs first.	You put the patient and their family at the centre of your work.	You tend to focus on your own needs and put them before the patient's needs.

What we love to see	What we expect to see	What we don't want to see
You take the time and effort to understand people and their situations and do everything you can to care for them.	You care about people and their situations.	You sometimes treat others in a way that you yourself wouldn't want to be treated.
You value and acknowledge the experiences of other people.	You're non-judgemental about other people and their experiences.	You can be insensitive and judgemental towards colleagues and patients.
You go the extra mile for your colleagues and/or patients.	You support people through difficult situations, listen to them to understand their needs and do what you can to help them.	You do the minimum required to help other people.

Value: Delivery

Delivering high standards of health care

What we love to see	What we expect to see	What we don't want to see
You consistently deliver over and above what's expected of you.	You focus on delivering high standards in your work at all times. You do what you say you'll do.	You focus on your own priorities and interests. As a result you tend to under deliver and you don't achieve your potential.
You communicate openly and honestly when things go wrong and take responsibility for making changes.	You clarify and manage other people's expectations. You communicate openly and honestly when things go wrong.	You don't clarify or manage other people's expectations. You're not transparent or clear in explaining when things go wrong.
You actively encourage growth in partnership and look for opportunities to develop partnership working with other people.	You deliver outcomes in partnership with other people.	You work in isolation and don't deliver outcomes with other people.

What we love to see	What we expect to see	What we don't want to see
You encourage and support other people to take responsibility for delivering quality outcomes as quickly as possible.	You take responsibility for delivering quality outcomes as quickly as possible.	If you can't deliver on your outcomes and commitments, you blame other people.

Value: Excellence

Taking pride in the quality of care we provide

What we love to see	What we expect to see	What we don't want to see
You strive for excellence in everything you do and inspire and motivate other people to deliver an excellent service.	You're motivated and enthusiastic about delivering an excellent service to other people.	You do the minimum amount required in your work. You work in isolation from others and don't share your expertise or ideas with other people.
You celebrate other people's success and encourage them to strive for excellence.	You celebrate success and acknowledge and share with other people when things go well.	You don't share or celebrate success with other people.
You collaborate with other people to review performance and quality.	You analyse your performance and the quality of care you provide.	You lack self-awareness and don't analyse your performance at work.
You're a role model for the organisation and you inspire other people by example.	You present a professional approach and appearance.	You often don't present a professional approach or appearance.