



**Public – To be published on the Trust external website**

# **Managing concerns of potential conduct (Disciplinary Procedure)**

## **Ref HR-0043-v4**

**Status: Approved**

**Document type: Procedure**

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# 1 Introduction

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This document sets out the Trust Procedure for managing concerns/allegations raised against a staff member.

- This procedure applies to all employees (except Medical staff, see below)
- This procedure supports staff to meet the required standards
- This procedure is to make staff aware of the consequences if they fail to meet the required standards

The document will also ensure that staff are aware of what constitutes poor performance and conduct and provides managers with the necessary tools to address such cases.

One of our strategic goals as outlined in the Trust Strategic Framework 2021 – 2025 is :

To co-create a great experience for our colleagues. If you work at TEWV, by 2025 you will feel:

- Proud, because your work is meaningful.
- Involved in decisions that affect you.
- Well led and managed.
- That your workplace is fit for purpose.

The Trust's Journey To Change Launched in 2021 outlines the Trust's new set of Values

- The Trust is committed to co-creating safe and personalised care that improves the lives of people by involving them as equal partners. The most important way we will get there is by living our values, all of the time

Respect	Compassion	Responsibility
<ul style="list-style-type: none"> <li>• Listening</li> <li>• Inclusive</li> <li>• Working in partnership</li> </ul>	<ul style="list-style-type: none"> <li>• Kind</li> <li>• Supportive</li> <li>• Recognising and Celebrating</li> </ul>	<ul style="list-style-type: none"> <li>• Honest</li> <li>• Learning</li> <li>• Ambitious</li> </ul>

- We want to ensure that staff feel comfortable in challenging individuals who are not living the Trust values, and are aware of mechanisms in place to raise their concerns and receive appropriate support in doing so.



In the case of medical staff, investigations into concerns about a doctor's conduct or capability should be carried out in line with the Trust's Medical Remediation and Disciplinary Policy.



Grievances/concerns raised about the case/process will be addressed either by the Commissioning Manager or at the disciplinary hearing or appeal and not through the Grievance Procedure.

## 2 Related documents

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This procedure describes how to manage concerns of potential conduct, raised against a staff member, and should be read in conjunction with the Trust's During Employment Policy.

This procedure also should be read in conjunction with:-

- [Guidance on Managing Concerns of Potential Conduct](#)
  - [Capability Procedure](#)
  - Trust Values
  - [Sickness Absence Management Procedure](#)
  - [Whistle Blowing Policy](#)
  - [Disclosure and Barring Service Procedure](#)
  - [Grievance Procedure](#)
  - [Probationary Period Procedure](#)
  - [Bullying and Harassment Reporting and Resolution Procedure](#)
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### 3 Managing concerns of potential conduct raised against a staff member

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The Guidance on Managing Concerns of Potential Conduct Ref HR-0043-001 linked below outlines the actions to be taken when concerns of potential conduct are raised against a staff member.

This stage of the process does not constitute formal investigation or formal disciplinary action, but allows the Trust the opportunity to gather all of the information available in order to make a decision on the appropriate way forward.

(Link to Guidance on Managing Concerns of Potential Conduct Ref HR-0043-001 [link](#) )



Where minor lapses of conduct/inappropriate behaviour is either observed by a manager or reported to a manager, these should be dealt with in a timely manner and can usually be dealt with either by conversation or in supervision. All conversations should be documented and signed by both parties. Advice can be sought from the People and Culture, Operational Team.

### 4 Where Formal investigation is identified as the outcome of the Preliminary Assessment/analysis

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**The Chair of the preliminary assessment/analysis panel (commissioning manager) will:-**

- Meet with the individual, with a People and Culture Representative and advise that the case will proceed to formal disciplinary investigation. The individual will be afforded the opportunity to be accompanied at the meeting by a companion or staffside representative. In the event of either the People and Culture or Staffside Representative not being available. The meeting will go ahead as planned in order to avoid any unnecessary delays.
- During the meeting, inform the individual of the formal allegations that are to be dealt with in line with formal investigation stage of the Trust's Procedure on Managing Concerns of potential conduct.
- Review any temporary arrangements in place i.e. authorised absence and if appropriate consider if formal suspension/alternative to suspension is required – guidance can be found at Section 8.
- Ensure that appropriate support mechanisms are in place and confirm that they will continue.
- Provide the individual with regular updates ideally (every 2 weeks) on the progression of the investigation
- Examples of Misconduct/Gross Misconduct can be found at Appendix 1
- Provide the People and Culture Operational representative will all of the information gathered, who will then refer the case to the Trust's Investigation Team.

## The investigating officer will:-

- Carry out and conclude the investigation - Using the information gathered as part of the preliminary assessment/analysis and gathering any additional information that may be required. This may involve interviewing staff who have already submitted statements in order to gather additional information and or points of clarity. Guidance on Formal investigation is at appendix 4
- Provide the commissioning manager ideally (every 2 weeks) with updates on the investigation and provide any information to the commissioning manager that may alter the severity of the nature of the allegations. The commissioning manager will advise the individual of any amendments to the allegations.
- Conclude the investigation in a timely manner – ideally within 6 weeks.



Whilst all decisions taken in relation to the staff member are the responsibility of the Trust, it is acknowledged that there may be on some occasions, the requirement to place internal processes on hold, for example in the event of a criminal police investigation. The Trust will however, continue to work closely with the external body to avoid any unnecessary delays.

## Upon receipt of the completed investigation report the commissioning manager will:-

- Consider the report within 1 week and determine if there is a disciplinary case to answer or not.
- Inform the individual (either in person or via telephone/ Team) of whether there is a disciplinary case to answer or not.  
When the outcome is that there is a disciplinary case to answer a Disciplinary hearing will be arranged – providing at least 2 weeks notice.

## 5 Format of the Disciplinary Hearing / Appeal Hearing



A Disciplinary Hearing Panel will consist of a Determining manager and a People & Culture representative

An Appeal Hearing Panel will consist of a Determining manager (senior to the determining manager at the disciplinary hearing) a 2<sup>nd</sup> panel member plus a People & Culture representative

\*Professional advisors will be requested for panels on an individual basis when required\*

1. The Investigating Officer shall state the Management case in the presence of the employee and his/her representative and may call witnesses.

2. The employee or their companion shall have the opportunity to ask questions of the Investigating Officer and witnesses.
3. The Disciplinary Panel/Appeal Panel shall have the opportunity to ask questions of the Investigating Officer and witnesses.
4. The Investigating Officer shall have the opportunity to re-examine their witness on any matter referred to in their examination by members of the Disciplinary/Appeal Panel, the employee or their companion. Witnesses will withdraw from the hearing.
5. The employee or their companion shall put their case in the presence of the Investigating Officer and may call witnesses.
6. The Investigating Officer shall have the opportunity to ask questions of the employee, their companion or their witnesses.
7. The members of the Disciplinary/Appeal Panel shall have the opportunity to ask questions of the employee, their companion or their witnesses.
8. The employee or their companion shall have the opportunity to re-examine their witnesses on any matter referred to in their examination by members of the Disciplinary/Appeal Panel or the Investigating Officer. Witnesses will withdraw from the hearing having been reminded of their responsibility to maintain confidentiality.
9. The members of the Disciplinary/Appeal Panel may invite either party to clarify or expand upon any statement they may have made; ask questions to determine whether or not any evidence will be called in respect of any part of their statement or evidence. Both parties may examine the clarifications in accordance with points 2 or 6 above.
10. The panel will ensure that any new information has been made available to both parties and has been fully considered during the hearing
11. The Panel may, at their discretion, adjourn the hearing in order that further evidence may be produced by either party or where evidence requires additional time to be considered or for any other justifiable reason.
12. The Investigating Officer and the employee or their companion will be given the opportunity to sum up their case if they so wish. The employee or their companion shall have the right to speak last. In their summing up neither party may introduce any new matter.
13. The panel will satisfy themselves that all parties have made all the points that they wish and are satisfied with the fairness of the hearing.
14. The panel will adjourn the hearing to enable full consideration of all the evidence presented and to consider their decision.
15. The Panel will deliberate in private only recalling both parties to clear points of uncertainty on evidence already given.
16. If a decision can be reached the same day the employee and/or their companion will be advised verbally of the outcome of the hearing (including the information contained in section 4 Appendix 6.)
17. Confirmation of the result of the disciplinary/appeal hearing will be put in writing and sent to both parties **within 5 working days**. If for any reason this confirmation or the decision will be delayed beyond this period the employee must be advised of the reason for the delay and the likely timescale for receipt.



If an employee fails to attend a hearing, reasonable steps should be taken to establish the reason. In the absence of a justifiable reason, the hearing will take place in the individual's absence. When there is a justifiable reason or the employee's representative cannot be contacted, all reasonable steps should be taken to advise of an alternative date; further failure to attend will result in a decision being made in the individual's absence.



Witnesses are expected to attend a disciplinary hearing, if called by the individual/representative, management or the hearing panel. Witnesses can request the support of a Union Representative. If in attendance a Union Representative or companion may be able to attend in support of a witness but will not be permitted to participate in the hearing process unless expressly invited to at the discretion of the panel. All parties involved in the hearing will be bound by confidentiality.



For cases which may result in dismissal the hearing will be recorded. Depending on the format of the hearing the appropriate recording mechanism will be used.

## 6 Potential outcomes of the Disciplinary Hearing

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### The Decision

- 1. Before deciding whether a disciplinary sanction is required and what form it should take, the Determining Manager should consider:**
  - Whether there are reasonable grounds to believe that any of the allegations are true; and/or where appropriate whether on the balance of probabilities any of the allegations are proven. (It should be noted that the burden of proof in disciplinary cases is “on the balance of probability” and only in criminal law is the burden of proof “beyond all reasonable doubt”).
  - Whether the individual is performing at a satisfactory level and, if not, does the employee realise and accept that there is a problem with their work performance.
- 2. Before deciding what form of disciplinary action should be taken, if any, the Determining Manager should consider:**
  - The employee’s “live” disciplinary record and whether they have been made fully aware of the standards required; and
  - Any mitigating circumstances which make it appropriate to lessen the severity of the action; and
  - The action taken in similar cases in the past; and
  - Whether the proposed action is reasonable in the circumstances
- 3. If a decision can be reached the same day, the employee or their representative may be advised verbally of the outcome of the disciplinary hearing. The decision will be communicated in writing by the Determining Manager to the employee within 5 days.**
- 4. The outcome letter will include:**
  - the allegations against the employee.
  - the decision(s) of the Determining Manager.
  - the reasons for the decision(s).
  - the disciplinary sanction imposed and the rationale for the level of sanction.



- the timescale over which the disciplinary action is effective.
- any special conditions applying to the disciplinary action, e.g. in cases of poor performance an action plan setting out the improvements that are expected, timescales for improvements, supervision requirements, review periods.
- the consequences of any further misconduct/failure to improve performance to a satisfactory level.
- details of the outcome of any grievance issues raised and how these has been addressed.
- details of any panel recommendations.
- notification that the details of the disciplinary action taken will be retained on the individual's personal file in line with the GDPR s17.
- notification of the right of appeal against the decision.

**5. If for any reason the confirmation of or the decision is delayed beyond this period the employee must be advised of the reason for the delay and the likely timescale for receipt. This should be confirmed in writing.**

**6. In the case of dismissal the letter should also include:**

- notification of the last day of employment and whether the dismissal is without notice (i.e. summary dismissal) or with notice
- notification of whether the employee will be required to work any period of notice as this will affect the last day of employment or whether dismissal will be with pay in lieu of notice. This option must be agreed with the individual
- where summary dismissal takes place in cases of gross misconduct, no period of notice is payable
- notification of the number of days or hours annual leave payable or to be recovered
- notification of the right of appeal against the decision to dismiss or against an alternative to dismissal in accordance with Section 6.9 of this policy and procedure.
- whether the matter is to be referred to the Professional Body and/or the Independent Safeguarding Authority

**7. In determining the appropriate disciplinary sanction, the nature and seriousness of the offence needs to be considered. Refer to Appendix 2. The following range of options is available depending on the case:**

- Written warning
- Final written warning
- Alternatives to dismissal
- Dismissal

**8. In the case of minor offences and poor performance, disciplinary sanctions will normally be progressive.**

**9. For all disciplinary sanctions short of dismissal or an alternative to dismissal there will be a specified period of time during which any further misconduct/failure to improve performance to a satisfactory level of any type will normally lead to further**

disciplinary action being taken, usually at the next level. The various levels and periods of time are indicated below:

10. If the decision is that the case needs to be referred to the Capability Procedure then consideration may be given as to whether a sanction should be given due to the level of seriousness of the situation. This would then be dealt with in line with the appropriate stages of the capability procedure.

11. Any panel recommendations must be fed back to the appropriate individual in writing.

<b>Written Warning</b>	Depending on the circumstances of each particular case the warning may be operational for a period of <b>between 6 and 18 months</b> , after which time the warning will be considered to be spent. A written warning may be issued in the case of:
<p><b>A written warning may be issued in the case of:</b></p> <ul style="list-style-type: none"> <li>• misconduct,</li> <li>• where there is a recurrence of misconduct and the employee has previously been counselled as part of the informal process or,</li> <li>• where an employee's performance does not improve within the review period following informal processes aimed at improving performance.</li> </ul>	
<b>Final Written Warning</b>	The warning will be operational for a period of <b>between 12 and 24 months</b> .
<p><b>A final written warning may be given if there is:</b></p> <ul style="list-style-type: none"> <li>• a recurrence of misconduct within the period of an existing warning,</li> <li>• an employee's performance does not improve within the review period or lapses again during the period of a written warning.</li> <li>• misconduct / poor performance of such a serious nature that only one warning should be given</li> </ul>	
<b>Alternatives to Dismissal accompanied by a Final Written Warning</b>	An alternative to dismissal will be considered in all cases where the disciplinary outcome is that dismissal should take place but there are mitigating circumstances to take into account.
<p>The Determining Manager may decide to offer to transfer the individual elsewhere in the Trust. This will always be accompanied with a final written warning. It is the responsibility of the Determining Manager to identify a suitable vacancy. In exceptional circumstances demotion may be applied but it must be offered as an alternative to dismissal and accepted by the employee.</p> <p>Demotion should not be applied without prior discussion with the Director or Deputy Director of People and Culture</p> <p>In cases of demotion there will be no protection of earnings.</p>	

<p>The employee must be offered the demotion or transfer in writing, and have clear objectives that must be achieved within an agreed time scale.</p> <p>If an alternative to dismissal is refused this should be recorded and the employee will be dismissed.</p>	
<b>Dismissal</b>	Dismissal is the ultimate step that can be taken by the Trust in the disciplinary process.
<p><b>Employees will not normally be dismissed</b> without a previous warning except in the case of Gross misconduct. Where applicable, employees will be offered the opportunity of taking pay in lieu of notice.</p>	
<b>Summary Dismissal</b>	Summary dismissal is the termination of an individual's employment without notice and should only be used in cases of Gross Misconduct
<p><b>Dismissal is appropriate when:</b></p> <ul style="list-style-type: none"> <li>• Circumstances have resulted in written warning(s) being issued in accordance with the Trust procedure and the employee's subsequent conduct is regarded as inappropriate, inadequate or insufficient.</li> <li>• Particular circumstances are such that the Determining Manager considers that the employee should not continue in employment as the offence constitutes gross misconduct. Examples of offences which would constitute gross misconduct are contained in Appendix 1.</li> </ul>	

## 7 Appeals process

1. Arrangements will be made for the appeal to be heard without unreasonable delay, normally **within 3 months** of the date lodged.
2. Prior to the hearing of an appeal, both management and staff side will be asked to submit relevant documentation considered in the previous stage for the information of the panel. Management should ensure their submission outlines the main issues of the case to be heard and should be submitted to the People and Culture Department at least 3 weeks before the date of the hearing (or 12 working days before the hearing if the correct number of copies is submitted).
3. Employee submissions should be made to the P&C Department **no later than 2 weeks** before the hearing to enable it to be sent to the panel and management
4. Both management witnesses and the employee's witnesses should be notified to the P&C Department at least 5 working days prior to the hearing.
5. In the case of an appeal against an alternative to dismissal or a dismissal, the Appeals Panel will consist of two Directors, one of whom who will act as the Chair of the panel. The Director of People and Culture or a nominated deputy will attend in an advisory capacity and the appeal panel may appoint an assessor when the case relates to professional conduct or competence.
6. In the case of an appeal against a disciplinary sanction, the appeal will be heard by a manager senior to the Determining Manager at the Disciplinary Hearing. A Representative

from the People and Culture Directorate will attend in an advisory capacity and the appeal panel may appoint an assessor when the case relates to professional conduct or competence.

7. The appeal panel will not include anyone who has been directly involved in the original decision.
8. The appeal panel may hear any new evidence not available at the disciplinary hearing.
9. The employee will have the right to be accompanied by an accredited representative or a colleague employed by the Trust.
10. Before making a decision, the Appeal Panel should consider:
  - Whether there has been as much investigation as was reasonable in the circumstances
  - All matters raised that were related to the original decision
  - Whether the actions taken or not taken were reasonable in the circumstances
  - Whether any mitigating circumstances which may have a bearing on the case were reasonably considered
  - Whether there is a genuine belief that the employee has committed the misconduct as alleged
  - Whether the decision and action was proportionate to the alleged misconduct
  - Whether the action taken was within the band of reasonable responses that an employer would have been able to take in the circumstances
  - Whether there have been any similar cases in the past
  - Whether any new evidence has been submitted which was not available to the Determining Manager and whether it means the original decision should be changed
11. The appeal panel will determine one or a combination of the following decisions:
  - That the original decision(s) was correct
  - That the original decision(s) was not appropriate, and impose a lesser disciplinary sanction.
  - That the original decision(s) was not appropriate, and withdraw the disciplinary sanction.
12. If a decision can be reached the same day, the employee or their representative will be advised verbally of the outcome of the appeal hearing.
13. This decision will be communicated in writing, **within 5 working days**, by the Chairman of the Appeals Panel or the Senior Manager hearing the appeal, to both parties. If for any reason this confirmation or the decision will be delayed beyond this period the employee must be advised of the reason for the delay and the likely timescale for receipt.
14. In all cases this document will include:
  - the allegations against the employee
  - the disciplinary sanction that was imposed
  - the decision(s) of the Appeal Panel
  - the reasons for those decisions
15. There will be no right of appeal beyond this stage.

## 8 How this procedure will be implemented

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- This procedure will be published on the Trust's intranet and external website. Awareness of the new procedure will be included in the Trust internal bulletin
- Line managers will disseminate this procedure to all Trust employees through a line

management briefing.

## 9 Training needs analysis

Staff/Professional Group	Type of Training	Duration	Frequency of Training
All staff	Training NA – Awareness required		

## 10 How the implementation of this procedure will be monitored

Auditable Performance Indicators	Standard/Key	Frequency/Method/Person Responsible	Where results and any Associate Action Plan will be reported to, implemented and monitored; (this will usually be via the relevant Governance Group).
1	Commencement and Conclusion of the Formal Investigation - 6 weeks	Investigating Officers/People and Culture Operational Team Representative.	Barriers, resulting in delays, identified and reported to the Commissioning Manager  Monitored – People and Culture – Case Management Meeting
2	Monitoring of timescales from: concerns being raised to conclusion of process either informal/formal.	People and Culture HR Operational Representatives/Investigating Officers	6 monthly reports to be produced for and provide to JCC.

## 11 Definitions

Term	Definition
The “right to be accompanied”	<p>Employees have the right to be accompanied at meetings that could result in:</p> <ul style="list-style-type: none"> <li>• a formal warning being issued to a worker (i.e. a warning that will be placed on the worker’s record);</li> <li>• the taking of some other disciplinary action (such as suspension without pay, demotion or dismissal) or other action; or</li> <li>• the confirmation of a warning or some other disciplinary action (such as an appeal hearing).</li> </ul> <p>Informal discussions, counselling sessions or investigatory meetings do not attract the right to be accompanied. Meetings to investigate an issue are not disciplinary meetings. However, individuals will be offered the opportunity to be accompanied provided this does not unduly delay the</p>

	process. If it becomes apparent that formal disciplinary action may be needed then this should be dealt with at a formal meeting at which the employee will have the statutory right to be accompanied.
Employee's Companion:	<p>"The Chosen Companion may be a fellow worker, a trade union representative, or an official employed by a trade union. A trade union representative who is not an employed official must have been certified by their union as being competent to accompany a worker" (ACAS Code of Practice). A fellow worker is an employee of the Trust.</p> <p>The companion may address the hearing in order to present the employee's case, question witnesses, sum up the employee's case and respond on behalf of the employee to any view expressed at the hearing. The companion may not answer questions on behalf of the employee</p> <p>A companion has the right to time off to attend the hearing and co-ordination of diaries when arranging a hearing will be carried out wherever possible.</p>
Accredited Representative:	An elected or appointed representative of a Professional Organisation or Trade Union who is notified to and accepted by the Trust as a formal representative of that organisation
Counselling by the Manager:	An informal discussion with the objective of encouraging and helping the employee to improve.
Investigating Officer:	An individual who has been appointed to gather factual evidence regarding the allegation(s) and who will present the case at a disciplinary hearing.
Commissioning Manager:	A manager (the chair of the Informal Stage Panel) who decides there is a need for an investigation, who will ensure that the investigation is carried out in a thorough and timely manner and will assess the investigation report to determine whether it should process to a disciplinary hearing. Queries/grievances raised during the investigation will be addressed by the Commissioning Manager
Determining Manager:	A manager appointed to make a decision at the disciplinary hearing about any sanction that could be imposed after hearing the evidence from both parties. This should be a manager with the level of authority as outlined in Appendix 6. However the determining manager should not have direct line management responsibilities for the employee, i.e. a manager from a different service area/directorate can act as determining manager.
Suspension:	When the Trust requires an individual to refrain from attending work for a period of time whilst the investigation proceeds. Examples of suspension/alternative to suspension are given at Appendix 1. For medical staff referred via the Medical Disciplinary Policy and Procedure the term used is "exclusion".
Disciplinary Sanction:	Action imposed after formal disciplinary hearing.
Spent:	When a disciplinary sanction has passed the period of time that it is "live" and therefore should be disregarded in relation to determining the level of any future disciplinary action.

## 12 Document control (external)

To be recorded on the policy register by Policy Coordinator

Date of approval:	06/07/2021	
Next review date:	06/07/2024	
This document replaces:	Disciplinary Procedure Ref HR-0043-v3	
This document was approved by:	Name of committee/group	Date
	PWG	11 June 2021
This document was ratified by:	JCC	06 July 2021
	Name of committee/group	Date
An equality analysis was completed on this document on:	n/a	
	06 July 2021	
Document type	Public	

### Change record

Version	Date	Amendment details	Status
4	06 July 2021	Fully reviewed and updated version. Note includes procedure name change.	Approved

## Appendix 1 - Alternatives to suspension and suspension from duty




In circumstances where either alternatives to suspension or suspension from duty are being considered, a People and Culture representative **must** be involved in the considerations to:

- ensure that actions taken are measured and appropriate,
- ensure that the full impact of the proposed action is considered, and
- ensure that suspension is a **last** resort. Where situations arise outside of normal working hours then suspensions should not take place without the issues being discussed with the second on call manager.

Before deciding on suspension from duty, a manager is responsible for considering, with appropriate parties, whether there are any other alternatives. The manager should also ensure that basic information is available before suspending e.g. confirm that the employee was on duty at the time of a reported incident, and where possible carry out a preliminary investigation.

Guidance notes on Suspension from Duty and Alternative to Suspension from Duty meetings is at [Appendix 2](#)

<b>Examples of Alternative to Suspension</b>	<ul style="list-style-type: none"> <li>• Restrict the employee's duties</li> <li>• Transfer the employee to other work or work location</li> <li>• Place the employee under extra supervision for a temporary period (e.g. whilst the investigation is carried out)</li> <li>• Permit the employee to take annual leave.</li> </ul>
 <p>Where there is significant risk to the individual, clients or investigation process, suspension may be appropriate, discussions must take place with the People and Culture Operations Team.</p> <p>Some other examples of reasons for suspensions are below:</p>	
<b>Examples of reasons for consideration of Suspension from Duty</b>	<ul style="list-style-type: none"> <li>• Theft</li> <li>• Fraud</li> <li>• Assault</li> <li>• Falsifying Patient Records</li> </ul>



When a member of staff fully admits that the allegations are correct and provides a written statement, it may be possible to go straight to a disciplinary hearing without the need for a full formal investigation. The commissioning manager must seek advice from the People and Culture department as it may still be necessary to do a full investigation e.g. where other staff may be involved.



## Appendix 2 – Guidance on alternative to suspension and suspension from duty meetings

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Below gives guidance on what information is required to be covered during the meeting to place an individual on **Alternative to Suspension from duty**

If not accompanied, reminded of right to be accompanied; however policy does allow us to continue if this is not practical

Advise individual that the meeting is being held in line with the Trust's Disciplinary Procedure.

- Advise of allegations:
- Ask for a brief response to allegations
- Advise of any allegations that may constitute Gross misconduct / misconduct
- Advise of any breaches of relevant policies or procedures & provide copies
- Advise that decision is to put in place an alternative to suspension with immediate effect.
- Advise of details of alternative to suspension:
- Advise that alternative to suspension does **not** constitute disciplinary action, nor is it a presumption of guilt.
- Advise that alternative suspension could be up to a period of 12 weeks, and will be reviewed on a weekly basis.
- Check how individual prefers to be updated e.g. Face to face meeting (where practicable)/ phone call / email / other?
- Check whether the individual has any other posts with the Trust, i.e. bank or second contract. If so, advise that the individual will not be offered any bank shifts until further notice (if appropriate).

Below gives guidance on what information is required to be covered during the meeting to place an individual on **Suspension from duty**

If not accompanied, reminded of right to be accompanied; however policy does allow us to continue if this is not practical

Advise individual that the meeting is being held in line with the Trust's Disciplinary Procedure.

- Advise of allegations
- Any response to allegations (only need brief response)
- Advise that allegations may constitute gross misconduct; therefore a disciplinary hearing could result in dismissal
- Advise of any breaches of relevant policies or procedures & provide copies
- Advise that decision is to suspend with immediate effect
- Advise that suspension does **not** constitute disciplinary action, nor is it a presumption of guilt
- Advise suspension could be up to a period of 12 weeks, and will be reviewed on a weekly basis
- Check how individual prefers to be updated e.g. face to face meeting (where practicable) / phone call / email / other?
- Check whether the individual has any other posts with the Trust, i.e. bank or second contract. If so advise that the individual will not be offered any bank shifts until further notice (if appropriate)
- Advise if individual goes off sick that they need to submit sick notes in normal way
- Advise individual that they are able to take annual leave in normal way

- Confirm address and contact details for correspondence (tel. no. and address)
  - Advise name of investigating officer
  - Discuss support contact (should be line manager unless they are a witness or IO)
  - Advise that prior permission is needed before entering Trust premises unless attending for purposes of investigation or personal medical treatment
  - Advise that subject should not discuss the investigation with anyone involved in the investigation e.g. witnesses and other individuals identified as part of this process e.g. IO / support contact / P&C etc.
  - Advise that subject should only access their nhs.net account for the purposes of keeping up to date with Trust news or for information related to the investigation and must not under any circumstances use their nhs.net account for any activities relating to the duties of their role
  - Advise of support services available (ensure pack is provided)
  - Advise of opportunity to be accompanied at any meetings
  - Check individual's understanding and if any questions
  - Advise this meeting will be followed up in writing today
-

## Appendix 3 – Examples of misconduct / gross misconduct

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In the interest of good employee relations, this summary seeks to inform employees how particular issues are viewed by the Trust to ensure that employees and managers understand how issues may be addressed.

This document describes examples of misconduct which the Trust considers to be sufficiently serious as to warrant disciplinary action. It must be noted that the following lists are **purely illustrative and not exhaustive** since employment will also be governed by local workplace rules, practices and procedures. The publication of these rules will not restrict the right of the Trust or any of its managers to determine what stage of the disciplinary procedure is appropriate in the light of the circumstances of each individual case, including summary dismissal.

For the sake of brevity, every type of misconduct referred to below is not necessarily repeated in every section. A particular type of misconduct may be treated as misconduct or gross misconduct depending on the facts of the case, and any impact upon patients will be taken into account.

### Part 1 – Misconduct

Breaches of the following rules usually warrant the issue of a written warning, final written warning or dismissal with notice, depending upon the circumstances (Dismissal with notice for misconduct will normally be as a result of repeated warnings):

- a) unacceptable behaviour/conduct towards patients
- b) unauthorised absence
- c) abuse or misuse of sickness pay/leave provisions
- d) abuse or misuse of study leave provisions
- e) breach of contract/terms and conditions of employment
- f) participating without authority in other employment, trade, business or profession which is prejudicial to, or which adversely affects, employment with the Trust
- g) private trading on Trust premises without permission (by Management) – whether or not for personal profit
- h) failure to carry out reasonable instructions given by management effectively and in a timely manner
- i) failure to report incidents in line with the policies and procedures of the Trust
- j) unacceptable conduct contrary to any NHS policies, guidelines and standards as amended from time to time
- k) any conduct or performance bringing the NHS/the Trust into public disrepute (including inappropriate use of social media)
- l) any breach of the Trust's standing orders and financial standing instructions
- m) breach of the Trust's IT security policies
- n) any breach of directorate, department or human resource policy rules or procedures
- o) failure to adequately perform duties of individual job descriptions
- p) misuse or abuse of facilities or time off provisions granted to Trade Unions and Professional Organisations
- q) breach of the Health and Safety rules and/or statutory regulations regarding Health and Safety

- r) failure to ensure the safe keeping of personal identifiable information or commercially sensitive information.
- s) failure to protect and ensure the safekeeping of Trust property including lease cars.
- t) carelessness or negligence in the performance of duties.
- u) Breaches of the Trust Values and Behaviours

## Part 2 – Gross Misconduct

The following are examples of gross misconduct that may warrant summary dismissal (dismissal without notice), even for a first offence:

- a) dishonesty relating to employment matters (e.g. fraudulent use of flexi time system, fraudulent travel/subsistence claims, dishonestly obtaining permission for authorised absence, collusion in attempting to take unauthorised absence)
- b) gross fundamental breach of contract/terms and conditions of employment (including the Trust Values and Behaviours)
- c) theft of any NHS or Trust property, or theft of any other property belonging to another whilst on duty or the removal of NHS or Trust property from the premises without authorisation to do so
- d) malicious or reckless damage to NHS property or the property of others whilst on duty
- e) fraud – any deliberate falsification of records or any attempts to defraud the Trust or any patient, member of staff or member of the public
- f) assault, intimidation, threatening behaviour, physical abuse or verbal abuse upon a patient, member of staff or member of the public, or any harassment or bullying of staff
- g) professional misconduct
- h) the receiving or offering of bribes
- i) committing a criminal offence whilst on duty or whilst acting on behalf of the Trust or off duty if it is of a nature that the Trust loses confidence in the employee.
- j) failing to inform the Trust of any arrest or charge in connection with any criminal offence or served with a summons on criminal charges (excluding parking offences or minor motoring offences)
- k) illegal possession, use, or distribution of drugs
- l) incapacity to perform duties due to the influence of alcohol, solvents or drug abuse
- m) any serious carelessness or negligence in the performance of duties including that which threatens the health and safety of patients, visitors, or staff, including a failure to or an unreasonable delay to report a serious incident
- n) any harassment or victimising a Whistle Blower, or deliberate attempts to cover up concerns
- o) breach of confidentiality – disclosure of privileged and confidential information to unauthorised persons or organisations.
- p) serious misrepresentation, or providing false or misleading information in any application for employment or deliberately withholding personal information, including qualifications held and legal charges or offences not covered by exemption under the Rehabilitation of Offenders Act, at the time of appointment or at any time during employment
- q) seeking and receiving gifts/gratuities for services rendered in the course of employment or otherwise (see Standards of Business Conduct)

- r) intentional or serious breach of the Trust's Equality and Diversity Policy.
- s) serious breach of health and safety rules and/or statutory regulations regarding health and safety
- t) ill treatment, abuse, or mishandling of patients
- u) gross insubordination
- v) withdrawal of statutory qualifications required for the post or failure to register/reregister.
- w) misuse, carelessness or negligence in the use of an occupational Smart Card
- x) serious breach of the Trust's policy regarding the safety of person identifiable information.
- y) vexatious or malicious complaints not made in good faith
- z) accessing with intent or forwarding pornography using the Trust's systems

## Appendix 4 – Formal Investigations

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It is crucial that the Determining Manager (on behalf of the Trust) has sound evidence on which to base their decisions. Failing to conduct a full investigation in all but the most exceptional of circumstances may render a dismissal unfair and result in costly consequences in terms of tribunal awards and staff morale.

Investigations will be required within the Trust in response to a wide range of situations, including but not limited to:-

- Disciplinary allegations
- Grievances
- Complaints about discrimination, harassment or bullying
- Complaints from patients and relatives
- Personal injury claims
- Issues of capability
- Allegations of fraud
- The Trust also has a Whistleblowing Procedure and harassing or victimising a whistleblower (including informal pressures) will be considered a serious disciplinary offence and will be dealt with under this procedure.

Where a decision has been made that formal investigation is required the following should be applied:

- The purpose of any investigation is not to build a case or a defence but to establish the facts. The investigating officer will determine the appropriate method of investigation, depending on the nature of the allegations.
- The investigating officer should, without delay, obtain statements from the employee and any witnesses (if not obtained during the preliminary investigation), together with other relevant documentary information. The statements should be in their own words, signed and dated. Staff must be advised that any information given will be used as part of an investigation report and they must be honest in their responses and that the information provided may be used in a disciplinary hearing, should that be the outcome of the investigation. The employee under investigation may be seen first to have the opportunity to state their initial response. This may not always be practicable, however.
- Adequate time and notice of meetings should be given to employees who need to be interviewed or produce statements. Where the employee to be interviewed is the subject of a complaint or allegation, where possible they will be provided with details of such complaint or allegation in advance of the interview.
- All staff being interviewed should be given a reasonable opportunity to obtain support and / or guidance from a trade union or staff organisation, or from a work colleague.
- The initial evidence gathered should be used to prepare an estimate of the time and resources needed to complete the investigation.
- The evidence collected should be tested for accuracy against other witness accounts and / or documentary evidence.
- Witnesses should be aware that statements prepared during the investigations will be used as evidence for any subsequent disciplinary hearing.
- Little reliance should be placed on 'hearsay' evidence unless this points to, or can be tested against, more reliable evidence.

- Every reasonable effort should be made to respect the confidentiality of all staff involved in the investigation. However, staff should be advised that unless there are exceptional circumstances, the respondent will be entitled to see all statements and interview records in the event of formal proceedings.
- Where CCTV footage is to be used as evidence, time is to be made available during the investigation for the individual under investigation to view the footage.
- The investigating officer should determine what evidence is relevant to the issue at hand, i.e. what helps to prove the facts rather than what strengthens or weakens the case.
- The evidence collected should be used as the basis for a decision as to any further action that may be required.
- Regular updates are to be provided by the Investigating Officer to the Commissioning Manager in relation to the progression of the investigation and to discuss any evidence obtained that may require the view of the Commissioning Manager to review the nature/seriousness of the allegations. This should also include whether there is still a case to continue the investigation.
- Once concluded the full investigation case will be provided to the Commissioning Manager to make a decision on whether there is a case to answer or not.
- The standard of proof for most internal investigations and any subsequent disciplinary hearing will need to be "on the balance of probabilities". The case does not have to be proved "beyond reasonable doubt" for it to stand up in an employment tribunal.
- Any documentary evidence containing patient information must be anonymised.
- Staff may wish to access a copy of their investigation report (for example in cases which have resulted in no case to answer), this must be done by submitting a subject access request via the Trust Information Governance Department.

Further advice and guidance on conducting investigations can be obtained from the People and Culture Department.



Grievances/concerns raised about the case/process will be addressed either by the Commissioning Manager or at the disciplinary hearing or appeal and not through the Grievance Procedure.

## **Appendix 5 – Review following disciplinary action / recommendations and reporting to professional bodies**

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### **Review following disciplinary action**

1. A line manager, in conjunction with any other professionals identified in correspondence associated with the disciplinary action taken, will review the required actions at an interval agreed or consistent with the severity of any action taken and prior to the end of a period of disciplinary action.
2. In cases of poor performance where the review meetings show that an improvement to a satisfactory level has been achieved, this should be confirmed in writing to the individual. Where there is an outstanding period of a written or final written warning this should remain in place.
3. In some circumstances the Trust is required to notify the appropriate professional body e.g. Nursing and Midwifery Council, Health Professions Council, General Medical Council, who are responsible for the professional practice of particular staff groups, of appropriate cases of investigations, warnings, dismissals or restrictions placed on practice.
4. Depending upon the seriousness of the offence, the Trust may be obliged to inform the professional body at any stage of the formal procedure.
5. The Trust may also, at its discretion, report action taken under these procedures to the relevant professional body where it considers that such reporting is necessary.
6. Where a Determining Manager finds it necessary to recommend referral to a professional body, the employee must be notified in writing of the intention to do so in conjunction with the relevant Executive Director. This will usually take place after an appeal has been heard.

### **Reporting to other Agencies**

7. The Trust will also involve the Safeguarding Children or Safeguarding Vulnerable Adults Procedures where appropriate. This should be done as soon as the allegations are first received.
8. The Trust will make appropriate referrals to the Disclosure and Barring Authority
9. The Trust will report matters involving suspected criminal / illegal activity to the police.
10. Where appropriate the Trust will request the NHS North of England to issue an Alert letter



## Appendix 6 – Level of authority to implement disciplinary sanctions

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Informal Stage	Written Warning	Final Written Warning	Suspension	Dismissal
Level 1	Level 1	Level 1	Level 1	Level 1
Level 2	Level 2	Level 2	Level 2	Level 2
Level 3	Level 3	Level 3	Level 3	Level 3
Level 4	Level 4	Level 4		
Level 5/First Line Managers at Level 6	Level 5			

- Level 1 Chief Executive
- Level 2 Directors/Clinical Directors/Senior Clinical Directors/ Deputy Medical Directors
- Level 3 Associate Directors / Associate Clinical Directors / Head of Service / Senior Managers reporting to Directors
- Level 4 Senior Manager (e.g. Locality Manager) reporting to Level 3
- Level 5 Managers (e.g. Ward Managers / Team Managers) reporting to Level 4
- Level 6 all other staff

## Equality Analysis Screening Form

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Please note; [The Equality Analysis Policy and Equality Analysis Guidance](#) can be found on the policy pages of the intranet

Name of Service area, Directorate/Department i.e. substance misuse, corporate, finance etc.	People and Culture				
Policy (document/service) name	<b>Managing Concerns of Potential Conduct (Disciplinary Procedure)</b>				
Is the area being assessed a...	Policy/Strategy	<input type="checkbox"/>	Service/Business plan	<input type="checkbox"/>	Project
	Procedure/Guidance			x	Code of practice
	Other – Please state				
Geographical area covered	Trustwide				
Aims and objectives	<p>The purpose of this Procedure is to ensure that staff are aware of what constitutes poor performance and conduct and provides managers with the necessary tools to address such cases in a fair and equitable way.</p> <p>Sets out the Trust Procedure for managing concerns of potential conduct raised against a staff member.</p> <p>Includes guidance and a framework for the initial response to concerns being raised and gives full consideration of a situation where concerns are made about a staff member.</p>				
Start date of Equality Analysis Screening (This is the date you are asked to write or review the document/service etc.)	15/06/2021				
End date of Equality Analysis Screening (This is when you have completed the	06/07/2021				

equality analysis and it is ready to go to EMT to be approved)	
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**You must contact the EDHR team if you identify a negative impact. Please ring the Equality and Diversity team on 0191 3336267/3046**

1. Who does the Policy, Service, Function, Strategy, Code of practice, Guidance, Project or Business plan benefit?					
The Procedure benefits all staff and managers by , ensuring a fair and equitable approach to managing concerns. Provides guidance to help with the initial management of concerns on an informal basis. Provides support and guidance to both managers and staff throughout the process.					
2. Will the Policy, Service, Function, Strategy, Code of practice, Guidance, Project or Business plan impact negatively on any of the protected characteristic groups below?					
<b>Race</b> (including Gypsy and Traveller)	No	<b>Disability</b> (includes physical, learning, mental health, sensory and medical disabilities)	No	<b>Sex</b> (Men, women and gender neutral etc.)	No
<b>Gender reassignment</b> (Transgender and gender identity)	No	<b>Sexual Orientation</b> (Lesbian, Gay, Bisexual and Heterosexual etc.)	/No	<b>Age</b> (includes, young people, older people – people of all ages)	No
<b>Religion or Belief</b> (includes faith groups, atheism and philosophical belief's)	No	<b>Pregnancy and Maternity</b> (includes pregnancy, women who are breastfeeding and women on maternity leave)	No	<b>Marriage and Civil Partnership</b> (includes opposite and same sex couples who are married or civil partners)	No

**Yes** – Please describe anticipated negative impact/s

**No** – Please describe any positive impacts/s - The guidance informs managers that appropriate advice and support is to be obtained during the informal preliminary/investigation process from the Trust’s EDHR Team if either the individual subject to the concerns or the individual raising the concerns fall within one of the above protected characteristic . Occupational Health advice will be sought for staff who have identified that either an underlying health condition or disability may have had an impact on their behavior or cause for concern..

<b>3. Have you considered other sources of information such as; legislation, codes of practice, best practice, nice guidelines, CQC reports or feedback etc.? If ‘No’, why not?</b>	<b>Yes</b>		<b>No</b>	
<b>Sources of Information may include:</b> <ul style="list-style-type: none"> <li>Feedback from equality bodies, Care Quality Commission, Equality and Human Rights Commission, etc.</li> <li>Investigation findings</li> <li>Trust Strategic Direction</li> <li>Data collection/analysis</li> <li>National Guidance/Reports</li> </ul>	<b>x</b>			
<ul style="list-style-type: none"> <li>Staff grievances</li> <li>Media</li> <li>Community Consultation/Consultation Groups</li> <li>Internal Consultation</li> <li>Research</li> <li>Other (Please state below)</li> </ul>				
<b>4. Have you engaged or consulted with service users, carers, staff and other stakeholders including people from the following protected groups?: Race, Disability, Sex, Gender reassignment (Trans), Sexual Orientation (LGB), Religion or Belief, Age, Pregnancy and Maternity or Marriage and Civil Partnership</b>				
<b>Yes</b> – Please describe the engagement and involvement that has taken place				
Full consultation commenced 15 <sup>th</sup> June 2021				

<b>No</b> – Please describe future plans that you may have to engage and involve people from different groups

5. As part of this equality analysis have any training needs/service needs been identified?					
<b>Yes</b>	Please describe the identified training needs/service needs below Awareness of new guidance. Webinars to be developed and delivered on new guidance and process				
A training need has been identified for;					
Trust staff	Yes	Service users	No	Contractors or other outside agencies	No
<b>Make sure that you have checked the information and that you are comfortable that additional evidence can provided if you are required to do so</b>					
If you need further advice or information on equality analysis, the EDHR team host surgeries to support you in this process, to book on and find out more please call: 0191 3336267/3046					

## Approval checklist

To be completed by lead and attached to any document which guides practice when submitted to the appropriate committee/group for consideration and approval.

	Title of document being reviewed:	Yes/No/ Not applicable	Comments
<b>1.</b>	<b>Title</b>		
	Is the title clear and unambiguous?	yes	
	Is it clear whether the document is a guideline, policy, protocol or standard?	yes	
<b>2.</b>	<b>Rationale</b>		
	Are reasons for development of the document stated?	yes	
<b>3.</b>	<b>Development Process</b>		
	Are people involved in the development identified?	yes	
	Has relevant expertise has been sought/used?	yes	
	Is there evidence of consultation with stakeholders and users?	yes	
	Have any related documents or documents that are impacted by this change been identified and updated?	yes	
<b>4.</b>	<b>Content</b>		
	Is the objective of the document clear?	yes	
	Is the target population clear and unambiguous?	yes	
	Are the intended outcomes described?	yes	
	Are the statements clear and unambiguous?	yes	
<b>5.</b>	<b>Evidence Base</b>		
	Is the type of evidence to support the document identified explicitly?	yes	
	Are key references cited?	yes	
	Are supporting documents referenced?	yes	
<b>6.</b>	<b>Training</b>		
	Have training needs been considered?	yes	
	Are training needs included in the document?	yes	

	Title of document being reviewed:	Yes/No/ Not applicable	Comments
<b>7.</b>	<b>Implementation and monitoring</b>		
	Does the document identify how it will be implemented and monitored?	yes	
<b>8.</b>	<b>Equality analysis</b>		
	Has an equality analysis been completed for the document?	yes	
	Have Equality and Diversity reviewed and approved the equality analysis?	yes	
<b>9.</b>	<b>Approval</b>		
	Does the document identify which committee/group will approve it?	yes	
<b>10.</b>	<b>Publication</b>		
	Has the document been reviewed for harm?	yes	
	Does the document identify whether it is private or public?	yes	
	If private, does the document identify which clause of the Freedom of Information Act 2000 applies?	NA	