

Policy Number	SSCSD002
Policy Name	Disciplinary Policy
Policy Type	Divisional
Accountable Director	Director of Workforce
Author	Liverpool Community Health Business Human Resources
Recommending Committee	South Sefton Community Services Division Transaction Workforce Work Stream
Approving Committee	Executive Committee
Date Originally Approved	25/05/2017
Next Review Date	05/2018

This document is a valid document, however due to organisation change some references to organisations, organisational structures and roles have now been superseded. The table below provides a list of the terminology used in this document and what it has been replaced with. When reading this document please take account of the terminology changes on this front cover

Terminology used in this Document	New terminology when reading this Document
Liverpool Community Health (LCH)	Mersey Care NHS Foundation Trust

This policy is deemed non-contractual and will transfer with their incorporated procedures but was agreed as being a necessary addition during staff side negotiation

FOR OFFICE USE ONLY (Work Stream submission check)

This document is compliant with current best practice guidance

This document is compliant with legislation required in relation to its content

What change has this document undergone in the policy alignment process relating to the South Sefton Transaction?

None Minor Major This is a new document

This document has been reviewed and is no longer required

Does this document impact on any other policy documents?

Yes , if yes, which policies are effected? [Click here to enter text.](#)

No

Signed:

Date: 25/05/2017

SUPPORTING STATEMENTS – this document should be read in conjunction with the following statements:

SAFEGUARDING IS EVERYBODY'S BUSINESS

All Mersey Care NHS Foundation Trust employees have a statutory duty to safeguard and promote the welfare of children and vulnerable adults, including:

- being alert to the possibility of child/vulnerable adult abuse and neglect through their observation of abuse, or by professional judgement made as a result of information gathered about the child/vulnerable adult;
- knowing how to deal with a disclosure or allegation of child/adult abuse;
- undertaking training as appropriate for their role and keeping themselves updated;
- being aware of and following the local policies and procedures they need to follow if they have a child/vulnerable adult concern;
- ensuring appropriate advice and support is accessed either from managers, *Safeguarding Ambassadors* or the trust's safeguarding team;
- participating in multi-agency working to safeguard the child or vulnerable adult (if appropriate to your role);
- ensuring contemporaneous records are kept at all times and record keeping is in strict adherence to Mersey Care NHS Foundation Trust policy and procedures and professional guidelines. Roles, responsibilities and accountabilities, will differ depending on the post you hold within the organisation;
- ensuring that all staff and their managers discuss and record any safeguarding issues that arise at each supervision session

EQUALITY AND HUMAN RIGHTS

Mersey Care NHS Foundation Trust recognises that some sections of society experience prejudice and discrimination. The Equality Act 2010 specifically recognises the *protected characteristics* of age, disability, gender, race, religion or belief, sexual orientation and transgender. The Equality Act also requires regard to socio-economic factors including pregnancy /maternity and marriage/civil partnership.

The trust is committed to equality of opportunity and anti-discriminatory practice both in the provision of services and in our role as a major employer. The trust believes that all people have the right to be treated with dignity and respect and is committed to the elimination of unfair and unlawful discriminatory practices.

Mersey Care NHS Foundation Trust also is aware of its legal duties under the Human Rights Act 1998. Section 6 of the Human Rights Act requires all public authorities to uphold and promote Human Rights in everything they do. It is unlawful for a public authority to perform any act which contravenes the Human Rights Act.

Mersey Care NHS Foundation Trust is committed to carrying out its functions and service delivery in line with a Human Rights based approach and the FREDA principles of **F**airness, **R**espect, **E**quality **D**ignity, and **A**utonomy

Liverpool Community Health NHS Trust

Disciplinary Policy

Disciplinary Policy

Version Number:	V3
Ratified by:	People, Performance & Culture Committee
Date of Approval: (Original Version)	November 2010
Name of originator/author:	Business Human Resources
Approving Body / Committee:	JNCC
Date issued: (Current Version)	May 2014
Review date: (Current Version)	May 2018
Target audience:	Organisation wide
Name of Lead Director / Managing Director:	Director of Human Resources and Organisational Development
Changes / Alterations Made To Previous Version (including date of changes)	<p>As part of the harmonisation process for HR policies, the Disciplinary Policy has been revised. The revised policy in practice is similar to its predecessor and complies with ACAS guidelines. The policy does include sample letters, a risk assessment tool and guidelines for dealing with issues of safeguarding and issues of fraud.</p> <p>Section 6.24 has been added, which clarifies that discussing patients, relatives, carers, other employees, or Trust business on social networking sites such as Facebook and Twitter will be regarded as a disciplinary offence.</p>

Contents

Section	Page
1. Introduction	5
2. Aims and Objectives	5
3. Scope	5
4. Responsibilities	5
4.1 Director of Human Resources and Organisational Development	5
4.2 Business Human Resources	5
4.3 Commissioning Officer	6
4.4 Investigating Officer	6
4.5 Support Officer	6
4.6 Line Manager	7
4.7 Employees	7
4.8 Witnesses	7
4.9 Representatives	7
5. Principles	7
6. Main Policy Content	8
6.1 Informal Action: Letters of Concern	8
6.2 Commissioning a Disciplinary Investigation	8
6.3 Suspension, Redeployment or Restriction of Duties	9
6.4 Disciplinary Investigation	9
6.5 Conclusion of Investigation	10
6.6 Scheduling of a Disciplinary Hearing	10
6.7 Employee Response	11
6.8 Membership of a Disciplinary Panel	11
6.9 Format of a Disciplinary Hearing	11
6.10 Delivering the Outcome	11
6.11 Disciplinary Hearing Sanctions	12
6.12 Rescheduling an Investigatory Meeting or Disciplinary Hearing	12
6.13 Right to Representation	13
6.14 Appeals	13
6.15 Keeping Records	13
6.16 Spent Warnings	14
6.17 Monitoring	14
6.18 Trade Union Representatives	14
6.19 Criminal Charges and Convictions	14
6.20 Criminal Charges and Convictions Related to the Incident Under Investigation	14
6.21 Fraud	15
6.22 Criminal Records Disclosure	15
6.23 Allegations of Child Harm or Abuse made Against Professionals	15
6.24 Confidentiality and Data Security	15

Disciplinary Policy

7.	Associated Documents and References	16
7.1	Relevant Legislation	16
7.2	Associated Policies and Guidance Documents	16
8.	Useful Contacts	16
9.	Policy Governance	17
9.1	Equality and Diversity	17
9.2	Management and Review of Policy	17
Appendices		
Appendix 1	Terms of Reference to Investigate Template	18
Appendix 2	Risk Assessment Form and Guidance	20
Appendix 3	Commissioning Officer Review/Sign Off For Investigation Report	23
Appendix 4	Delegated Scheme of Authority	25
Appendix 5	HR Investigations Organisational Lessons Learnt	26
Appendix 6	The Right To Be Accompanied	27
Appendix 7	Disciplinary Rules	29
Appendix 8	Letter of Concern	32
Appendix 9	Process to be Followed when Allegations of Child Harm or Abuse Made Against Professionals	33
Appendix 10	Allegations of Fraudulent Activity	34

1. Introduction

The Trust recognises that from time to time employees may fall short of the standards required by the Trust or may fail to behave in an appropriate manner, either within or outside of the workplace. This policy has been developed to provide a fair, objective, effective and confidential way of dealing with matters relating to conduct which may, following an investigation lead to a disciplinary hearing and possible disciplinary action. This policy will be applied firmly but sensitively, with a true sense of natural justice, equality and consistency.

2. Aims and Objective

A core aim of the disciplinary policy is to engender reasonable behaviour from workers. It should help and encourage employees to address conduct issues rather than just be used as a means to impose a punishment.

The policy should support the Trust in ensuring employees achieve high standards of conduct, attendance and performance at work, and also provide a mechanism to identify areas where improvements in systems and processes are needed.

3. Scope

This policy applies to all employees (including bank workers and volunteers) of Liverpool Community Health NHS Trust with the exception of Medical and Dental Clinicians.

In all disciplinary cases regarding Medical and Dental Clinicians, managers are required to refer to the Trust's "Procedure for Handling Concerns about the Conduct, Performance and Health of Medical and Dental Staff" and "Procedure and Guidance for Dealing with Matters of Conduct for Medical and Dental Staff".

Disciplinary issues relating to agency workers must be referred back to the provider agency.

4. Responsibilities

4.1 Director of Human Resources and Organisational Development

- Ensure a disciplinary policy and procedure which promotes good employment relations is in place
- Ensure managers are supported in the implementation of the policy and procedure
- Ensure the disciplinary policy is reviewed and monitored regularly

4.2 Business Human Resources

- Monitor policy implementation to ensure fairness and consistency across the workforce
- Monitor the outcomes of disciplinary action to ensure fairness and consistency across the workforce
- Provide training on the implementation of the policy
- Provide advice and guidance on matters relating to the policy
- Ensure the integrity of any investigation by maintaining confidentiality

- Make arrangements for formal hearings and provide copies of investigatory reports in line with agreed timescales
- Following disciplinary hearing, arrange for Investigatory Reports to be confidentially destroyed (see 'keeping records' for Governance requirements)

4.3 Commissioning Officer

- Notify a Business Human Resources representative prior to any formal disciplinary action (including investigation) taking place
- Produce Terms of Reference (Appendix 1) which clearly outline the allegations to be investigated
- Identify an appropriate Investigating Officer and administrative support
- Ensure the integrity of any investigation by maintaining confidentiality
- Consider the suspension, redeployment or restriction of duties of any employees within the scope of the investigation. In cases of suspension complete the risk assessment (Appendix 2) and ensure periodic reviews occur
- Immediately following the review of an event, notify (in writing) the employee under investigation of the decision to commission an investigation, and of any subsequent changes to the Terms of Reference of the investigation
- Ensure all Terms of Reference are addressed within the Investigation Report, and sign off the report as complete (Appendix 3)
- Inform the employee of the outcome of the investigatory process
- If necessary, invite the employee to a formal disciplinary hearing
- Chair disciplinary hearing, or delegate to an appropriate officer with the required scheme of authority (Appendix 4)
- Inform the employee of the outcome of any disciplinary hearing, or delegate to an appropriate officer with the required scheme of authority (Appendix 4)
- Inform Governance of any agreed Division / Trust wide recommendations for monitoring (Appendix 5)
- If necessary, notify any professional body of the outcome of any hearing

4.4 Investigating Officer

- Establish and investigate the facts arising from the Commissioning Officer's Terms of Reference
- Undertake the investigation in a timely manner
- Ensure the integrity of any investigation by maintaining confidentiality
- Highlight any additional allegations which may need to be included within the Terms of Reference to the Commissioning Officer
- Present an investigation report to the Commissioning Officer outlining investigation findings and subsequent recommendations in a timely manner
- Present Investigation Report at any formal disciplinary hearings

4.5 Support Officer

In the case of suspension, a support officer should be identified for the employee under investigation to:

- Keep the employee up to date and informed of any organisational / divisional changes
- Signpost the employee to appropriate welfare support e.g. Staff Support, Occupational Health

The support officer should not discuss the case with the employee

4.6 Line Manager

- Ensure employees are aware of the standards of conduct required whilst at work, signposting to Trust policies
- Provide a thorough induction to new employees by way of corporate and local induction processes

4.7 Employees

- Attend investigatory meetings and disciplinary hearings as required in order to answer questions regarding the allegation(s) raised within the Terms of Reference
- Return statements and any other information requested for the completion of the investigation in a timely manner
- Ensure the integrity of any investigation by maintaining confidentiality

4.8 Witnesses

- Attend investigatory meetings and disciplinary hearings as required
- Return statements and any other information requested for the completion of the investigation in a timely manner
- Ensure the integrity of any investigation by maintaining confidentiality

4.9 Representatives

- Support the timely completion of any investigations conducted in accordance with this policy
- Ensure the integrity of any investigation by maintaining confidentiality
(For further information see Appendix 6)

5. Principles

- No disciplinary hearing will be held without a level of investigation taking place; this may simply be the gathering of facts. The employee will be advised of the nature of the allegations against them and be given the opportunity to state their case prior to any decision being made
- Any employee being investigated under this Policy will be afforded the right to representation, (by a trade union representative, official employed by a trade union or fellow worker) at disciplinary hearings where there may be a formal disciplinary warning applied.
- Where the events surrounding a disciplinary matter are clear, an investigation may consist purely of the gathering of facts and supporting documents; an investigatory meeting may not be necessary prior to a disciplinary hearing.
- The Commissioning Officer and Investigating Officer will receive advice and guidance throughout all stages of the procedure from a Business Human Resources representative.
- Malicious allegations (made in conjunction with any policy) which are found to be untrue may be deemed as a disciplinary offence.
- Except in a case of gross misconduct (defined in Appendix 7), an employee will not be dismissed for a first breach of misconduct.
- Disciplinary sanctions can only be applied by Managers with the authority to do so under the Scheme of Delegation (Appendix 4)
- Where the facts are in dispute, no disciplinary penalty will be imposed until the case has been carefully investigated and it is concluded on the balance of probability that the allegations are substantiated and proven.

- The disciplinary process will be dealt with as swiftly as is reasonably possible
- Confidentiality will be observed at all stages of the disciplinary process by all parties including witnesses. Failure to maintain confidentiality is in itself a disciplinary offence.
- Employees have the right of appeal against any formal sanction applied under the disciplinary policy

6. Main Policy Content

6.1 Informal Action: Letters of Concern

Managers are reminded to refer to the Trust's Capability Policy when dealing with issues regarding unsatisfactory performance.

Cases of minor misconduct (e.g. poor timekeeping) can usually be addressed informally. These may take place on more than one occasion and are not regarded as a formal sanction.

The details of any such discussions should be outlined in a letter of concern (Appendix 8) stating the area of misconduct, identifying any corrective actions (e.g. training) and outlining the expected standards of conduct. The employee must also be made aware that should conduct fail to improve or further instances of this misconduct occur, formal disciplinary action may be instigated. A copy of this letter should be given to the employee, and a further copy must be forwarded to Business HR to ensure a record of this discussion is retained upon the personal file.

If it becomes clear during the course of an informal discussion that the nature of misconduct is too serious to be classed as minor, the discussion should be ended and a formal disciplinary investigation commissioned.

Informal action does not have the right of appeal, however should an employee disagree with the issuing of a letter of concern they may request for the alleged misconduct to be reviewed by the next level of management. Whilst a decision may be made not to issue a letter of concern, this manager may also decide the level of misconduct requires the commissioning of a formal disciplinary investigation.

6.2 Commissioning a Disciplinary Investigation

Any manager who wishes to commission a disciplinary investigation must consult with a Business Human Resources representative prior to identifying an investigating officer and informing the worker. Prior to informing an employee that disciplinary investigation is taking place a meeting will be convened in which the known facts at that time will be considered. Attendance at this meeting may typically include the Commissioning Officer, the line manager of the employee whose conduct is being reviewed, and representatives from Business HR and Governance. At this stage the employee will not be present

Should a disciplinary investigation be appropriate, the Commissioning Officer will appoint an Investigating Officer. The Commissioning Officer must ensure that the appointed Investigating Officer is afforded sufficient time away from their duties to undertake the role and is afforded appropriate administrative support. A Business Human Resources representative will be appointed to offer advice and guidance throughout the investigations process, and at any subsequent Hearing.

The Commissioning Officer will provide the Investigating Officer and the employee with details of the allegations to be investigated.

6.3 Suspension, Redeployment or Restriction of Duties

On occasion it may be necessary to redeploy or restrict the duties of an employee to enable a full investigation. In exceptional circumstances, it may be necessary to consider suspending an employee from duty. These actions are a neutral act and do not constitute disciplinary action or imply guilt; employees will remain on full pay (except in cases of lapsed professional registration when the Trust may stop pay or temporarily downgrade an employee for as short a time as possible). Such measures may be necessary:

- To enable further or more detailed investigation
- To prevent evidence pertinent to the investigation being interfered with
- Where the alleged misconduct represents a potential risk to patients, fellow employees or the Trust.

Where suspension is contemplated, Business HR must be consulted, and a risk assessment completed by the Commissioning Officer (Appendix 2).

Wherever possible, employees will be afforded the right to be accompanied by a trade union representative, official employed by a trade union or a fellow worker. A list of local staff side representatives can be obtained by contacting the Staff side office or accessing the Trust's intranet site. It is the employee's responsibility to arrange any such representation. In situations where it is not possible to arrange for an employee to be accompanied at short notice i.e. in the case of suspension, the Commissioning Officer / line manager will make every effort to contact the Staff side chair or secretary to appraise them of the situation.

During periods of suspension employees must not discuss the disciplinary process with any other Trust workers, agents or sub-contractors. This is with the exception of the, Investigating Officer, chosen representative and Business HR. Employees should also not enter any premises of the Trust (other than to receive medical treatment, or visit relatives receiving treatment) without the prior agreement of the Investigating or Commissioning Officer.

Following the decision to suspend, redeploy or restrict the duties of any worker, the decision will be confirmed in writing to the employee. The decision to suspend, redeploy or restrict duties will be reviewed on a weekly basis by the Commissioning Officer.

6.4 Disciplinary Investigation

In normal circumstances the line manager of the employee will perform the role of the Investigating Officer. Where this is not appropriate the Commissioning Officer must identify a suitable alternative.

The Investigating Officer's role is to collate as quickly and efficiently as possible the full details surrounding the allegations. Guidance on how to complete an Investigatory Report can be found in Disciplinary Investigation Guidelines.

Employees and witnesses will be given 7 days' notice of any investigatory meeting in order to prepare. In circumstances whereby an investigatory meeting needs to be rearranged, this will be done at the earliest opportunity.

It is expected that an investigation will be completed within 4 weeks of the statement of the employee facing the allegations being returned. Where an investigation is unable to be completed within this timeframe, the Investigating Officer will write to the employee being investigated outlining the reasons for delay, this will be repeated on a fortnightly basis if required. The Investigating Officer will also inform the employee in advance of any known delays e.g. planned annual leave.

6.5 Conclusion of Investigation

Having completed a report which addresses the Terms of Reference and makes recommendations based on the findings, the Investigating Officer will present their report to the Commissioning Officer. The Commissioning Officer will review the report and once satisfied the full terms of reference have been addressed, complete the Disciplinary Report Sign Off Sheet (Appendix 3). The Commissioning Officer will write to the employee advising them of the outcome of the investigation within 7 days of receiving the report. Possible outcomes may include; no case to answer, informal action (letter of concern) or the convening of a formal disciplinary hearing.

6.6 Scheduling of a Disciplinary Hearing

On deciding to proceed to a formal disciplinary hearing, the Commissioning Officer will inform Business HR of their decision and provide a complete copy of the Investigation Report (including all referenced appendices).

Business Human Resources will set a time, date and venue for the hearing. Details will be confirmed to the worker, in writing by the Commissioning Officer. The letter should include the following information:

- Date, time and venue of the hearing (at least 10 working days' notice will be given, however this may be altered by mutual agreement)
- Confirmation the hearing is to be held in accordance with the Trust's disciplinary policy
- Allegations being considered by the panel
- Composition of the disciplinary panel
- Management representative presenting the investigatory report
- Witnesses being called in support of the investigatory report
- The opportunity for the employee to call witnesses (notice of 5 working days prior to the hearing is required)
- The opportunity for the employee to submit any further evidence to support their case (notice of 5 working days prior to the hearing is required)
- An indication of the level of sanction which may be applied
- The right to be accompanied by a fellow employee (employed by Liverpool Community Health), trade union representative or an official employed by a trade union
- Opportunity to request any reasonable special adjustments in order to attend

Accompanying this letter will be an identical copy of the Investigatory Report (including all referenced appendices) provided by the Commissioning Officer. Business HR will ensure all members of the disciplinary hearing panel, the

Investigating Officer and the employee attending the hearing receive identical copies of the Investigation Report (including all referenced appendices) provided by the Commissioning Officer. Employees will receive two copies, one of which is intended for their representative. If requested, the representative's copy will be forwarded to them directly.

6.7 Employee Response

Should the employee wish to submit further evidence or information to be considered by the panel, this must be submitted no less than 5 working days prior to the hearing to the Business HR representative on the panel.

An employee may seek guidance on how to compile their response. The response should be concise and specifically address the allegations to be considered during the hearing. Pages should be numbered and if additional documents are included a contents page should be added to the front of the pack.

Additional information submitted outside of these timescales may not be considered by the Panel.

6.8 Membership of a Disciplinary Panel

The disciplinary panel will normally be chaired by the Commissioning Officer, and will also include a Business Human Resources representative. The nature of some allegations may make it appropriate for an additional manager or professional advisor to form part of the panel.

The composition of the panel should be considered to take into account gender, race, disability, age, religion and sexual orientation and forethought should be given to this when determining panel membership.

6.9 Format of a Disciplinary Hearing

Please refer to Disciplinary Hearing Guidelines document.

6.10 Delivering the Outcome

The decision of the Panel and the reasons for reaching that decision will normally be delivered following an adjournment to consider the information contained within the Investigation Report and presented during the hearing. If this is not possible e.g. due to the amount of information presented or time constraints, the panel may decide to adjourn the hearing to consider their decision and inform the employee of the outcome in writing.

Following all disciplinary hearings, the outcome will be confirmed in writing by the Chair of the disciplinary panel. The letter should include:

The written confirmation, which will be from the chair of the panel, should include:

- Date, time and venue of the hearing
- Persons present
- Allegations considered by the panel
- Level of sanction issued by the panel
- The rationale for reaching this decision
- Reference to previous warnings (if relevant)

- Additional recommendations e.g. training needs, systems changes
- Duration of the sanction
- Right of appeal

6.11 Disciplinary Hearing Sanctions

The level of disciplinary sanction issued will be based upon information contained within the Investigation Report and presented during the Hearing, and may be as follows:

- No disciplinary action: No case to answer
- No formal disciplinary action: This may include the requirement for an employee to attend training or undertake competences. It may also include the issuing of a letter of concern.
- First Written Warning: Appropriate in cases of misconduct. Warnings remain effective on file for a period of 12 months.
- Final Written Warning: Appropriate where there is a current formal warning effective on file, or where a serious case of misconduct has occurred. Letters remain effective on file for a period of 12 months. In some instances of serious misconduct or repeated offences the panel may issue a final written warning for a further period of time, up to 18 months
- Dismissal: Appropriate in cases of gross misconduct, or where there is a current written warning effective on file. A member of staff may be summarily dismissed (without notice or a payment in lieu of notice) **only** in the event of gross misconduct.
- Actions short of dismissal: In some cases of gross misconduct where significant mitigating circumstances are presented and accepted by the panel, sanctions short of dismissal may be considered. This may include redeployment or demotion (with associated loss of pay) in conjunction with a final written warning, which in this instance may be extended to a maximum of 24 months. Any demotion should be proportionate to the severity of the offence.

The Chair of the disciplinary hearing must have the authority to issue the disciplinary sanction as per the Delegated Scheme of Authority (Appendix 4)

6.12 Rescheduling an Investigatory Meeting or Disciplinary Hearing

There is a contractual obligation for employees to attend investigatory meetings and disciplinary hearings, as requested by the Trust. This is also true of employees of the Trust who witnessed events being investigated.

There may be occasions when an employee is unable or unwilling to attend such meetings. The Investigating Officer (in the case of investigatory meetings) or Chair of the disciplinary panel (in the case of disciplinary hearings) will need to consider all the facts, and should seek advice from Business HR in determining how to proceed. Areas for consideration may be holding the meeting at an alternative site, making reasonable adjustments for an employee with a disability or seeking Occupational Health guidance as to whether the employee is fit to attend the meeting.

Should the employee being investigated continue to be unavailable to attend investigatory meetings and / or a disciplinary hearing, the investigation / hearing may continue without the employee's involvement. This may result in the Trust proceeding with a hearing in their absence, with a decision made on the evidence available. This

may result in disciplinary action up to and including dismissal being taken in an employee's absence.

The employee will be informed in advance where this is to be the case. The Investigating Officer (in the case of investigatory meetings) or Chair of the disciplinary panel (in the case of disciplinary hearings) will keep a record for the reason of nonattendance.

6.13 Right to Representation

Employees being investigated under the disciplinary policy are not entitled to be represented during an investigatory meeting however the Trust will accommodate requests to be represented in situations where this will not result in the investigation process being delayed. Employees are entitled to be represented at disciplinary hearings where there may be a formal disciplinary warning applied.

A representative may:

- Put forward/sum up the employee's case
- Respond on the employee's behalf to any view expressed at the hearing
- Confer with the employee during the hearing

Representatives are not permitted to answer questions directly asked of the employee. (Further information is contained within Appendix 6)

6.14 Appeals

Employees have the right to appeal against any formal disciplinary action taken against them. Any appeal must be in writing, to the Deputy Director of Workforce, stating the grounds of appeal and sent within 14 days of the date on the letter confirming the original disciplinary sanction.

The grounds of appeal must clearly outline the issues to be considered by an appeal panel. The late submission of additional information may not be considered by an appeal panel.

Wherever possible, an appeal hearing will be chaired by an authority higher than that on the original disciplinary panel; at the very least this will be a manager of equal authority and one not previously involved in the investigation or disciplinary hearing.

The decision of the chair of the appeal is final and will be confirmed in writing. Appeals against informal outcomes are not permitted.

For the format of a Disciplinary Appeal Hearing, please refer to Disciplinary Hearing Guidelines document

6.15 Keeping Records

The letter confirming the outcome will be kept on the individual's personal file for the duration that the sanction is effective.

Following a disciplinary hearing, Business HR will ensure copies of Investigation reports are confidentially destroyed. In accordance with Governance requirements,

Business HR will retain a master copy of all Investigation Reports and their outcome for a period of 10 years.

Where Division / Trust wide recommendations are identified from the Investigation Report the Commissioning Officer will inform Governance of these for monitoring (Appendix 5).

6.16 Spent Warnings

Once the effective period of a formal warning has expired, all correspondence relating to the disciplinary action, including any letters confirming the outcome will be removed from the employee's personal file.

6.17 Monitoring

All outcomes will be monitored to ensure that the policy and procedure is applied fairly and equitably and to ensure that no group is over represented through this process.

The Business Human Resources Department will collate and provide to the Trust Board, at least annually, monitoring information relating to disciplinary cases. This will include analysis of:

- Types of cases brought
- Outcomes
- Equality and Diversity metrics

6.18 Trade Union Representatives

Where a Trade Union representative becomes the subject of a disciplinary investigation or where disciplinary action is being considered the normal standards of the disciplinary policy apply. Prior to any investigation and only after obtaining the worker's agreement the case must be discussed with a senior trade union representative or full time union official.

6.19 Criminal Charges and Convictions

If an employee is charged with or convicted of a criminal offence not related to work, this is not in itself reason for disciplinary action. The line manager must establish the facts of the case and seek advice from a Business Human Resources representative. Key areas of consideration are:

- Whether the offence, or alleged offence is one that makes the employee unsuitable for the type of work they would normally perform
- Whether as per the Contract of Employment the employee immediately informed the Trust of any charges and the outcome of the Police action i.e. convicted, cautioned or exonerated

Employees must also comply with the requirements of their particular professional body in reporting any charges and subsequent outcome.

6.20 Criminal Charges or Convictions Related to the Incident Under Investigation

The possibility of criminal charges being brought in relation to the incident under investigation does not in itself automatically require a suspension of any internal proceedings. However, if there is any possibility of internal proceedings influencing or

impeding a criminal investigation, advice must be obtained from Business Human Resources before proceeding.

6.21 Fraud

In the event of any allegation where fraud is identified or suspected, the line manager must liaise with the Local Counter Fraud Specialist and / or the Director of Finance as soon as reasonably practicable and prior to any internal investigation.

(Please see Appendix 9 for more information)

6.22 Criminal Records Disclosure

Liverpool Community Health NHS Trust is responsible for ensuring that employees and volunteers who work with vulnerable adults or children are recruited and retained in a safe and reasonable manner. With this in mind, all new staff and current staff whose duties involve regular unsupervised access to vulnerable adults or children (in areas specified by legislation), will be required to disclose any criminal record (spent or otherwise).

NHS posts are exempt from the Rehabilitation of Offenders Act, and therefore any cautions, reprimands or final warnings will be considered as part of this process as well as convictions. All prospective employees, bank workers or volunteers must disclose this information as part of the CRB process.

Having a conviction will not necessarily prevent applicants from being appointed to posts within the Trust. This will depend on the nature of the post that the applicant has applied for and the circumstances and background to their offence(s).

6.23 Allegations of Child Harm or Abuse Made Against Professionals

Employers' procedures should identify a senior manager within their organisation to whom allegations or concerns that a member of staff or volunteer may have abused a child should be reported, and should make sure that all staff and volunteers know who that is. The procedures should also identify an alternative person to whom reports should be made in the absence of the named senior manager, or in cases where that person is the subject of the allegation or concern, and ensure that they are dealt with as quickly as possibly consistent with a fair and thorough process.

LCH's procedure to be followed when an allegation is made against a professional is available alongside the Disciplinary Policy information on the LCH intranet site and can also be located by performing a keyword search for 'allegations against professionals', 'child harm' or 'abuse'.

6.24 Confidentiality and data security

Employees are expected to keep any knowledge that they gain about a patient, another employee and the financial and commercial business of the Trust completely confidential. This means that employees must not discuss details of a patient's medical record, care or treatment plan with anyone else except the clinical staff caring for them. This extends to maintaining confidentiality about individuals employees may know, and who they may have seen in the Trust as a patient, whether as an inpatient or for an outpatient clinic. This also extends to social networking sites, such as Facebook or Twitter. Employees must never discuss a patient, relative, carer, other employee or Trust business on such sites. Any breach of this will be regarded as a disciplinary offence.

Clarity regarding what can be disclosed, and to whom, should always be sought from a manager prior to disclosure when in any doubt. Misuse of, or failure to properly safeguard confidential information will be regarded as a disciplinary offence.

7. Associated Documentation and References

7.1 Relevant Legislation

- Employment Act 2002
- The Equality Act 2010
- ACAS Disciplinary Guidelines
- Trade Union and Labour Relations (Consolidation) Act 1992
- Data Protection Act 1998
- Computer Misuse Act 1990
- Children Act 1989 and 2004

This list is not exhaustive.

7.2 Associated Policies and Guidance Documents

To support effective implementation and understanding the following Policies and Documents are signposted for additional guidance.

- Grievance Policy
- Capability Policy
- Supporting Positive Attendance Policy
- Bullying and Harassment Policy
- Verification of Registration
- Internet and Email Policy
- Mobile Device Policy
- Working Together to Safeguard Children, Guidance for Safe Working Practices for Adults who work with Children and Young People (DfES)
- NMC Code of Conduct
- CRB Document

This list is not exhaustive.

8. Useful Contacts

Business Human Resources
0151 296 7722

Staff Side Office
0151 296 7927

Staff Support Service
0151 330 8103

ACAS
www.acas.co.uk

9. Policy Governance

9.1 Equality and Diversity

The Trust is committed to an environment that promotes equality and embraces diversity in its performance as an employer and service provider. It will adhere to legal and performance requirements and will mainstream equality and diversity principles through its policies, procedures and processes. This policy should be implemented with due regard to this commitment.

To ensure that the implementation of this policy does not have an adverse impact in response to the requirements of the Equality Act 2010 this policy has been screened for relevance during the policy development process and a full impact assessment conducted where necessary prior to consultation. The Trust will take action when necessary to address any unexpected or unwarranted disparities and monitor workforce and employment practices to ensure that this policy is fairly implemented.

This policy and procedure can be made available in alternative formats on request including large print, braille, moon, audio cassette, and different languages. To arrange this please contact the Business Human Resource team.

Liverpool Community Health NHS Trust will endeavour to make reasonable adjustments to accommodate any employee with particular equality and diversity requirements in implementing this policy and procedure. This may include accessibility of meeting venues, providing translation, arranging an interpreter to attend meetings, extending policy timeframes to enable translation to be undertaken, or assistance with formulating any written statements

9.2 Management and Review of Policy

Business Human Resources will be responsible for the management of this policy. The formal review of all HR Policies will be undertaken in accordance with the Trusts HR Policy Review Programme. In addition, the effectiveness of this policy will be monitored by the Business HR Team and the policy may be reviewed and amended at any time if is deemed necessary. Notification of changes to policies will be communicated to staff.

Staff should be aware that the Trust's intranet site version of this document is the only version that is maintained and controlled. Any printed copies should be viewed as 'uncontrolled' and as such may not necessarily contain the latest updates and amendments.

Appendix 1 Terms of Reference to Conduct a Disciplinary Investigation

Introduction

In relation to

1. Allegation(s)

Establish the issues and investigate these, taking the following list of allegations as a starting point: -

- a)
- b)
- c)
- d)

2. Evidence

- 2.1 Obtain any further clarification of the issues and evidence, as you see fit, from (documents, interview with complainant, witnesses etc.)
- 2.2 Identify and interview relevant witnesses.
- 2.3 Identify and investigate any other possible sources of relevant information in relation to the identified issues/allegations.

3. New Allegations

- 3.1 If, during the course of your investigation additional information comes to light that identifies more concerns or adds to the allegations listed above then you must advise the Commissioning Officer immediately.
- 3.2 Where it becomes apparent that the additional information/allegations require further investigation then this must be communicated to the individual against whom the allegations are levied. It will be the responsibility of the Commissioning Officer to communicate this.

4. Human Resources Support

Whilst you are conducting this investigation you will be supported by (name) HR Manager / Advisor. He / She can be contacted on 0151 (insert number) or alternatively emailaddress@liverpoolch.nhs.uk

5. Secretarial/Admin Support

Your admin/secretarial support whilst conducting this investigation will be provided by

6. Your Report

6.1 Where possible, make appropriate findings of fact in relation to the issues and allegations identified and where you are able, make appropriate observations (e.g. factual disputes), draw conclusions and / or make recommendations i.e. the balance of probability of an allegation being found and make appropriate recommendations.

6.2 In particular, your report should establish, with reference to the Trust's Disciplinary Procedure (copy attached), whether a disciplinary case is established in respect of allegations above

6.3 Record these in a report format.

7. Confidentiality / Data Protection

You should at all times keep your investigation confidential. You should not discuss your investigation in general conversation with others and you should not disclose your final report/outcomes other than with the assigned Business Human Resources support or the Commissioning Officer.

Should you need access to other records HR/Governance/ IT systems then you should seek the appropriate authority in the first instance.

8. Timescale

8.1 We have agreed a target date for provision of your report to me by week commencing (insert date).

8.2 Please keep me apprised of the timescale and, in particular, confirm whether the target date remains realistic once you have identified your intended list of witnesses and scheduled interview appointments. It is expected this will be no later than 6 weeks from the date of the initial scoping meeting

Commissioning Officer (Name)

Signed

Date

Appendix 2 Risk Assessment Form (Disciplinary Procedure)

Activity covered by this assessment			
Employee name		Job role of employee	
Assessor		Date of assessment	

What could go wrong should the employee remain in their job role (the hazard)	Who / what would be affected?	Have you taken HR advice and from who?	What are you already doing/or are able to do to prevent this from happening or reduce the consequences if it does?	How adequate are these existing controls? A = Adequate I = Inadequate U = Unsure			Risk Assessment C = Consequence L = Likelihood		What is the level of risk? (CxL)	Decision to Suspend? Yes/No
				A	I	U	C	L		

Commissioning Officer (Name)		Identified support officer if decision to suspend	
Signed		Date	

Guidance for completing the Risk Assessment Form

The above risk assessment form should only be completed where a suspension from work is being considered.

Suspension

Where there appears to be a case of: serious misconduct; risk to patients and/or other people; risk to Liverpool Community Health NHS Trust as a whole for example in terms of property or loss of reputation; risk of interference in an investigation; then it may be appropriate to consider suspending the worker(s) from duty. The risk assessment form is a tool to enable managers to consider the correct course of action to follow. Other issues to consider may be:

Does the person have access to sensitive data which needs to be restricted, is it a question of capability in a particular area in which case their duties need to be restricted, does the individual have access to external links, i.e., the SHA, LA, HSE, etc and could be damaging the reputation of the Trust.

Suspension, should only be used as a last resort following the consideration of alternative measures as mentioned below, and will be with pay. Suspension is not a presumption of guilt and should not be seen as a sanction, but merely as a protective measure for all concerned.

Description of what could go wrong should the employee remain in their job role (the hazard):

A description of the hazard should be summarised here detailing what could happen and how or why. Ask yourself:

- ✓ What could go wrong?
- ✓ How could it happen?

Who/what would be affected or compromised:

List here all the people who might be affected by the hazard, this may include:

- ✓ Patients or their relatives
- ✓ Staff members
- ✓ Members of the Public
- ✓ Visitors
- ✓ Contractors
- ✓ The Trust as a whole (i.e., in the event of litigation/reputation)
- ✓ Would the investigation be compromised by the employee staying in work

What are you already doing/or are able to do to prevent this from happening or reduce the consequences if it does?

List here any measures that you have put in place to prevent a recurrence of the problem, this may include:

- ✓ Restricting the employee from carrying out certain duties
- ✓ Improving the supervision of the employee in carrying out their activities
- ✓ Redeployment of the employee to another job role whilst the investigation takes place
- ✓ Home working

How adequate are these existing controls?

Consideration should be given to any measures put in place to try and reduce/prevent the incident/problem recurring and whether or not these are adequate to prevent or significantly reduce the likelihood of the incident/situation recurring.

Consequence:

You should then consider the consequence if the event/hazard occurs. Ask yourself:

- ✓ What would the effects be?
- ✓ How severe would the effect be?
- ✓ How much would it cost?

The effect or consequence of the risk occurring should be scored using the following:

- 1 – Insignificant / No Harm
- 2 - Minor
- 3 - Moderate
- 4 - Major
- 5 – Catastrophic

Likelihood:

Next you should consider the likelihood of the event/hazard occurring. Ask yourself:

- ✓ Is there a history of this type of event occurring?
- ✓ How likely is it for this risk to occur?

The likelihood of the risk occurring should be scored as follows:

- 1 – Rare
- 2 – Unlikely
- 3 – Possible
- 4 – Likely
- 5 – Almost Certain

Risk Score:

The consequence of the event/hazard multiplied by the likelihood of the event/hazard occurring gives you the overall risk score. Consideration needs to be given as to whether or not there is a significant risk that would warrant suspension.

Appendix 3 - Commissioning Officer Review / Sign Off For Investigation Report

As the Manager responsible for Commissioning the above investigation you are required to review and authorise the report prior to further action being taken

Question	YES/NO	Comments
Does the investigation report clearly outline the allegations and terms of reference?		
<p>Are you satisfied that the investigation process undertaken has managed to ensure the following are complete:</p> <ul style="list-style-type: none"> • all issues have been fully considered • witnesses contacted • evidence collected and produced 		
<p>Does the Investigation Report require further investigation of any issues/evidence?</p> <p>If so, please outline in the comments column what further investigation is required?</p>		
Does the investigation report clearly outline all the relevant facts of the case?		
<p>Is the Investigation Report presented in a:</p> <ul style="list-style-type: none"> • Logical / sequential manner? • Clear manner • Format / spellings correct and complete • Numbered including appendices • Paginated 		

Does the Investigation Report clearly outline the findings and recommendations of the Investigation Officer/s?		
Does the Investigation Report require clarification of any points, statements or sentences? If so, please state in the comment box what clarification is required?		
Have all the 'relevant' Liverpool Community Health policies been considered as part of this investigation?		

As Commissioning Manager are you happy to sign off the findings, recommendations and evidence, as detailed within the Investigation Report?	Yes <input type="checkbox"/> No <input type="checkbox"/>
If no, when do you require further investigations to be completed by:	

Name (please print)	
Signed	
Date	

Appendix 4 - Delegated Scheme of Authority

<u>Staff Group</u>	<u>First Written Warning</u>	<u>Final Written Warning</u>	<u>Dismissal</u>
Chief Executive	Liverpool Community Health NHS Trust Chair	Liverpool Community Health NHS Trust Chair	Liverpool Community Health NHS Trust Chair with Non-Executive Members
Directors	Chief Executive	Chief Executive	Chief Executive with Liverpool Community Health NHS Trust Chair/Non Executive Members
Clinical Directors	Chief Executive	Chief Executive	Chief Executive with Liverpool Community Health NHS Trust Chair/Non Executive Members
Other staff directly reporting to the Chief Executive	Chief Executive	Chief Executive	Chief Executive / Liverpool Community Health NHS Trust Chair
Staff directly reporting to Directors	The appropriate Director	The appropriate Director	Chief Executive (or nominated deputy) with the appropriate Director
All other staff	Line Manager	Next Level Manager	The appropriate: Director / Divisional Manager (or nominated Deputy) / Head of Department (or nominated Deputy)

Appendix 5 - HR Investigations Organisational Lessons Learnt

Division and Service incident occurred	
Service Lead / Representative	
Description of event/issue - this may be gathered from a number of similar events/ issues that have occurred within the service (omit any staff/patient identifiable information in order to maintain anonymity)	
HR Policy used	
Was an investigation undertaken?	
Commissioning Officer	
Investigating Officer	
Service Specific Recommendations	
Trust Wide Recommendations	
Impact of action taken (if known)	
Education and Training needs identified (if any)	
Signed (Commissioning Officer)	
Date	
Date submitted to Governance	

Appendix 6 - The Right to be Accompanied

What is the Right to be Accompanied?

Employees have a statutory right to be accompanied where they are required or invited by their employer to attend certain disciplinary or grievance meetings. 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. Employees must make a reasonable request to their employer to be accompanied

When Does the Right Apply?

Employees have the right to be accompanied at meetings that could result in:

- A formal warning being issued to an employee (i.e. a warning that will be placed on the worker's record)
- The taking of some other disciplinary action (such as suspension without pay, demotion or dismissal) or other action or
- The confirmation of a warning or some other disciplinary action (such as an appeal hearing).

Informal discussions, counselling sessions or investigatory meetings do not attract the right to be accompanied. Meetings to investigate an issue are not disciplinary meetings. 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.

What is a Reasonable Request?

Whether a request for a companion is reasonable will depend on the circumstances of the individual case and, ultimately, it is a matter for the courts and tribunals to decide. However, when employees are choosing a companion, they should bear in mind that it would not be reasonable to insist on being accompanied by a colleague whose presence would prejudice the hearing or who might have a conflict of interest. Nor would it be reasonable for an employee to ask to be accompanied by a colleague from a geographically remote location when someone suitably qualified was available on site. The request to be accompanied does not have to be in writing.

The Companion

The companion may be:

- A fellow employee (i.e. another of the employer's workers)
- An official employed by a trade union. Employees may ask an official from any trade union to accompany them at a disciplinary or grievance hearing, regardless of whether or not they are a member or the union is recognised.
- Workplace trade union representative, as long as they have been reasonably certified in writing by their union as having experience of, or having received training in, acting as a worker's companion at disciplinary or grievance hearings. Certification may take the form of a card or letter.

Applying the Right

The companion should be allowed to address the hearing in order to:

- Put the worker's case
- Sum up the worker's case
- Respond on the worker's behalf to any view expressed at the hearing
- Confer with the employee during the hearing.

The employer is, however, not legally required to permit the companion to answer questions on the worker's behalf, or to address the hearing if the employee does not wish it, or to prevent the employer from explaining their case

Employees have a statutory right to be accompanied by a fellow employee or trade union official when they are required or invited by their employer to attend disciplinary interviews/hearings.

Informal discussions or counselling sessions do not attract the right to be accompanied unless they could result in formal warnings or other actions.

Employees should inform their employer if they wish to be accompanied and tell the employer who their companion is.

The Companion can be a fellow employee or a trade union representative.

Nobody has to accept an invitation to act as a Companion, and should not be pressurised to do so.

When choosing a Companion, the employee should be aware that it would not be reasonable to insist on being accompanied by a fellow employee whose presence would prejudice the meeting or who might have a conflict of interest.

The Companion can have a say at the interview/hearing but cannot answer questions for the employee.

Appendix 7 - Disciplinary Rules

Misconduct:

Any failure to meet the required standards of behaviour, conduct, performance or attendance which may be set out locally, in Professional Codes of Conduct or Trust Policies and Procedures.

For example:

- i. Disobeying reasonable management instructions
- ii. Unsatisfactory work performance
- iii. Abuse of authority
- iv. Unauthorised absence from duty and/or poor timekeeping
- v. Falsification or deliberate inaccuracies in statements within official documentation including poor record keeping that may impact on patient health / safety
- vi. Incapability through alcohol/drugs or being under the influence of alcohol, non-medically prescribed drugs and or illegal drugs in the workplace
- vii. Unacceptable behaviour or language
- viii. Inappropriate use of email or internet including receiving and forwarding to colleagues, emails containing offensive or obscene material
- ix. Cyber Bullying/inappropriate use of e-mail and social networking sites
- x. Inappropriate use of mobile phones
- xi. Misuse of Trust property or facilities
- xii. Failure to adhere to agreed Trust policies and procedures, including own department protocols
- xiii. Being an accessory to a disciplinary offence

Gross Misconduct:

Behaviour of such a nature that the Trust is justified in no longer tolerating the continued presence at the place of work. These acts seriously breach contractual terms.

Examples include:

- i) Ill treatment or wilful neglect of patients
- ii) Unauthorised removal or possession of Trust property
- iii) Theft from the Trust, its staff, patients or public
- iv) Unauthorised absence from duty and/or poor timekeeping

- v) Serious incapability at work through alcohol/drugs or being under the influence of alcohol, non-medically prescribed drugs and or illegal drugs in the workplace
- vi) Sexual misconduct
- vii) Violence or exceptionally offensive behaviour
- viii) A serious breach of confidence
(excluding any protected disclosure under the Whistle blowing policy)
- ix) Fraudulent claims for reimbursement through travel claims, flexi time, time sheets etc.
- x) Falsification of qualifications or information used in support of an application for any post or failure to declare medical conditions on a Pre-Employment Health Questionnaire
- xi) Deliberate damage to Trust property or facilities
- xii) Causing loss, damage or injury through serious negligence
- xiii) Serious breach of health and safety rules
- xiv) Serious insubordination
- xv) Unlawful discrimination
- xvi) Harassment and/or bullying including persistent and malicious cyber-bullying (e-mail, social networking sites etc).
- xvii) Deliberately accessing internet sites containing offensive or obscene material
- xviii) Bringing the Trust into serious disrepute
- xix) Serious malpractice under any professional code of conduct
- xx) Conviction of a criminal offence that substantially influences or affects your ability to meet the requirements of your role.
- xxi) Lapse of professional registration
- xxii) Undertaking private work without authorisation during hours when contracted to work for Liverpool Community Health NHS Trust.
- xxiii) Inappropriate use of email or internet
- xxiv) Working for another employer whilst off sick from Liverpool Community Health
- xxv) Unauthorised sleeping on duty
- xxvi) Misuse of social networking sites either during or outside of working hours

xxvii) posting or blogging on social networking sites such as 'Face book' and 'Twitter' anything that brings the Trust's reputation into disrepute, what an employee thinks about a manager's decisions, or something that defames another staff member's character

xxviii) Inappropriate comments about the Organisation to the Press

This is not an exhaustive list and there may be other acts of misconduct of similar gravity that would constitute gross misconduct.

Appendix 8 – Letter of Concern

Name / Job Title
Address
Tel. no

Strictly Private and Confidential

Name
Address

Date

Dear Name,

Informal Letter of Concern

Thank you for meeting with me on **date**. This meeting took place following concerns raised regarding **summarise incident / events and reference the policies / protocols breached**.

In future I would expect that **explain what the employee needs to do differently in the future, policies that should be adhered to, highlight impact the behaviour had on team/service**.

Whilst at this moment, there is no intention to deal with this as part of the formal disciplinary process, I would like to make you aware that repeats of such behaviour may lead to formal action in the future. A copy of this letter will be placed on your file and should there be any further instances of this nature it would form part of any subsequent disciplinary investigation.

I would like to point out that as this is not a formal sanction you do not have the right of appeal against this decision.

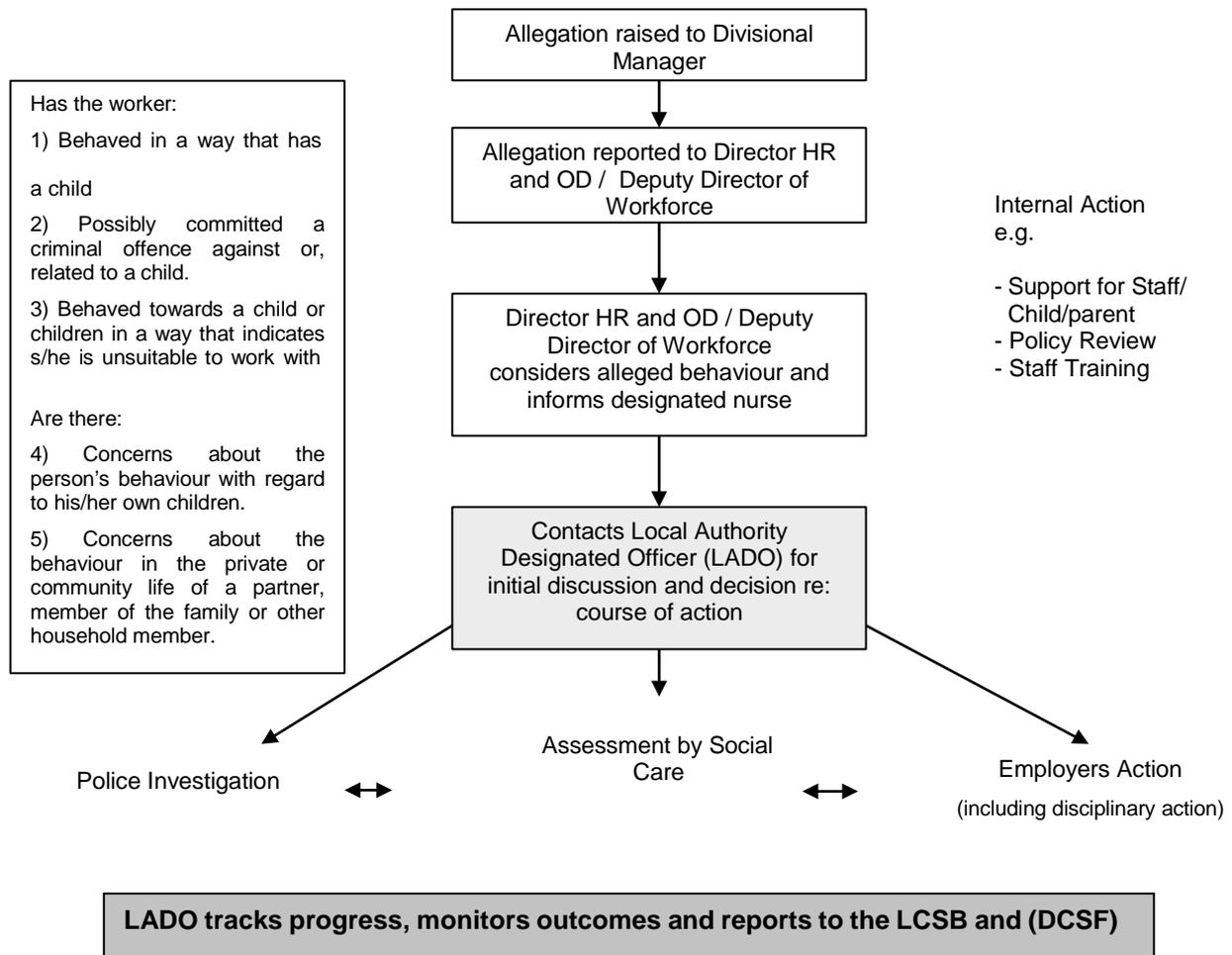
Yours Sincerely

Name
Designation

Appendix 9 - Process to be Followed when Allegations of Child Harm or Abuse Made Against Professionals

When allegations are made against any employee, bank worker or volunteer the employee to whom it is reported must advise their senior manager. This senior manager must advise the Director of Human Resources / Organisational Development Deputy. The flowchart below shows the steps to be followed.

Unless advised by the Local Authority Designated Officer (LADO) or the Police; the trust investigations and potential disciplinary matters will continue as per the PCT disciplinary procedure.



Appendix 10 - Allegations of Fraudulent Activity

1. As soon as is reasonably practicable Business Human Resources must notify the Local Counter Fraud Specialist (LCFS) or Director of Finance of any allegations relating to fraudulent activity of a Liverpool Community Health employee.
2. The LCFS will be granted an initial period to assess the information and gather additional information or evidence in order to determine the most appropriate course of action.
3. If **no evidence of fraud** is found the LCFS will notify the Director of Finance and inform Business Human Resources as to the reasons for the decision. Liverpool Community Health may still continue with its own internal investigation which may or may not lead to disciplinary action.
4. If there is **evidence of fraud** the LCFS will continue with their investigation and the appropriate course of action will be agreed with the Director of Finance.
5. In some instances it may be necessary to **suspend** an employee in such cases the LCFS will supply Business Human Resources with all the available facts to ensure that this is the most appropriate course of action. Any suspension would be undertaken in line the Liverpool Community Health policy
6. If further investigation is deemed necessary by the LCFS this will be conducted in accordance with the Police & Criminal Evidence Act 1984 and the NHS Counter Fraud and Corruption Manual.
7. Liverpool Community Health will co-operate fully in any such investigation.
8. In some instances it may be necessary to conduct 'Interviews under Caution'. In such circumstances legal representation may be required. Attendance of legal representatives is in line with the Police & Criminal Evidence Act 1984 and is not be confused with the stipulations of an internal Liverpool Community Health investigation as detailed in this policy.
9. Liverpool Community Health will not notify the employee that they are the subject of an LCFS fraud investigation unless this has been fully discussed and agreed with the LCFS or Mersey Internal Audit Agency (MIAA)
10. The following are likely outcomes of an MIAA investigation
 - **No Case to Answer** – in these cases the LCFS will provide a report to the Director of Finance in which the details of the case and the reason that no further action can be taken will be explained. A Liverpool Community Health internal investigation may or may not take place which could result in disciplinary action.
 - **Criminal Prosecution** – where a prima facie case is established against an individual it may be decided that criminal prosecution is the most appropriate sanction.

- **Civil Action** – in some instance it may be decided that civil action is the most appropriate sanction in order to recoup some of the costs of the fraudulent activity.

- **Internal Disciplinary Process** – in some cases it may be decided to follow the organisations disciplinary process. In these cases the LCFS will provide information and act as a witness to present their findings. In some instances a member of the Business Human Resources department may be jointly involved in the interview process however the LCFS officer will not be appointed as the internal investigating officer

11. The decision as the most appropriate course of action will be taken following consultation between the LCFS, the Director of Finance and Business Human Resources

12. A decision may be made to pursue parallel actions for example the LCFS may continue to pursue criminal sanctions whilst Liverpool Community Health will conduct an internal disciplinary action. This may result in the internal process being completed prior to criminal sanctions being taken.

In such circumstances the LCFS will provide sufficient copies of evidence in order to allow an internal investigation to commence.

The decision will be made on a case by case basis and the emphasis will be on criminal sanctions.

13. Irrespective of the sanctions pursued Liverpool Community Health will use all measures available to recover any monies lost to fraudulent activity.