

## TRUST-WIDE NON-CLINICAL POLICY

# Disciplinary Procedure

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2015 – Version 4

Quality, recovery and wellbeing at the heart of everything we do

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# DISCIPLINARY PROCEDURE

### Further information about this document:

Document name	<b>Disciplinary Procedure HR01</b>
Document summary	This policy provides a method of dealing with any apparent shortcomings in conduct with a view to helping an employee become effective again. This policy fully explains the approach Mersey Care NHS Foundation Trust takes towards dealing with disciplinary matters.
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To be read in conjunction with	<b>This policy should be read in conjunction with the following documents:</b>  ACAS Code of Practice – 2015 Equality Act 2010 Dignity and Respect at Work – prevention of harassment & bullying at work ( <b>HR14</b> ) Raising Concerns at Work (Whistleblowing) ( <b>HR06</b> ) Policy for Handling Concerns about the Conduct, Handling Concerns about the conduct, performance and health of medical staff ( <b>HR12</b> ) Disclosure and Barring Service Checks ( <b>HR16</b> ) Nicotine Management ( <b>SA 20</b> ) IM&T Security Policy (including links to security standards) ( <b>IT02</b> ) Information Governance ( <b>IT 12</b> )
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**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

## CONTENTS

		Page
1	Purpose and Rationale	5
2	Outcome Focused Aims and Objectives	5
3	Scope	5
4	Definitions	5
5	Duties	5-7
6	Process and Procedure	8-
	6.1 When this Disciplinary Procedure is applicable and Interface with other Policies/Processes	16
	6.2 Suspension	
	6.3 Written Accounts	
	6.4 Special Rule – Criminal Charges	
	6.5 Informal Process	
	6.6 Breaches of Conduct:	
	Fast Track Process – (6.61)	
	Misconduct – (6.6.2)	
	Gross Misconduct – Summary Dismissal (6.6.3)	
	Serious Misconduct falling short of Gross Misconduct (6.6.4)	
	6.7 Procedure for Investigations	
	6.8 Disciplinary Sanctions	
7	Consultation	16
8	Training and Support	17
9	Monitoring	17

## APPENDICES

A	Mersey Care NHS Foundation Trust Levels of Authority
B	Process Flowchart
C	Fast Track Principles
D	Investigation Toolkit

## 1 PURPOSE AND RATIONALE

### 1.1 Purpose

This document sets out Trust Policy and Procedure in relation to an employee's conduct. The Trust expects all employees to meet high standards of behaviour. It is important that employees understand their obligations and rights regarding this aspect of employment.

### 1.2 Rationale

The aims of this disciplinary procedure are to provide a framework within which managers can work with employees to maintain satisfactory standards of conduct and to encourage improvement where necessary.

It is the Trust's policy to ensure that any disciplinary matter is dealt with fairly and that steps are taken to establish the facts and to give employees the opportunity to respond before taking formal action.

## 2 OUTCOME FOCUSSED AIMS AND OBJECTIVES

- 2.1 To improve and protect standards of care by providing an effective, consistent and fair framework for ensuring the expected standards of conduct and/or behavior are observed.
- 2.2 To comply with best practice and employment legislation.
- 2.3 Where the expected standards of conduct and/or behavior are not met the Procedure provides a valuable tool to correct these standards and is not regarded as a punitive process
- 2.4 To ensure managers, staff and their representatives are aware of their rights, responsibilities and obligations within the disciplinary process.
- 2.5 To ensure that no disciplinary action is taken until a case has been appropriately investigated

## 3 SCOPE

This policy and procedure applies to all staff employed by the Trust regardless of length of service. The only exceptions will be that of Medical Staff in relation to professional misconduct where these matters will be dealt with in accordance with Policy HR12 and bank staff (who do not hold a permanent contract) for whom separate procedures are in place. This policy also applies to staff on fixed-term contracts. Any misconduct issues relating to service user carer representatives will be dealt with in line with the People Participation Policy.

This procedure does not form part of any employee's contract of employment and it may be amended at any time. We may also vary this procedure, including any time limits, as appropriate in any case.

## 4 DEFINITIONS

- 4.1 The relevant terms and their definitions (within the context of this policy document) are outlined below:

**Table 1: Definitions**

Term	Definition
'the Trust'	Mersey Care NHS Foundation Trust.
'Employee'	Anyone employed by the Trust, including staff on fixed term contracts.
Trade Union/Staff Association'	Nationally recognised NHS negotiating body.

Term	Definition
"Gross misconduct"	Conduct that is so serious as to potentially make any further relationship between the Trust and the Employee impossible.
A.C.A.S.	Advisory, Conciliation and Arbitration Service
G.M.C	General Medical Council
N.M.C	Nursing and Midwifery Council
H.C.P.C	Health and Care Professions Council

## 5 DUTIES

5.1 **Chief Executive** - The Chief Executive has delegated responsibility for ensuring compliance with this policy to the Executive Director of Workforce.

5.2 **Lead Executive Director** – Executive Director of Workforce has strategic responsibility for ensuring there is compliance with this Policy and that it is applied in a fair and consistent manner. The Director will cascade and communicate to all Executive Directors, Directors, Managers, Human Resources staff, Staff Side representatives and staff so that they are fully aware of the Disciplinary Policy and Procedure and are aware of their responsibilities.

5.3 **Line Managers** – The key responsibilities of line managers include:-

- Ensuring that procedures are used primarily to help and encourage employees to improve
- Keeping written records and ensuring confidentiality.
- Ensuring that all staff are aware of required departmental standards
- Consulting with a HR Business Partner before suspending any employee or taking any formal action.
- Ensuring that all actions are in accordance with this Disciplinary Procedure

5.4 **Case Manager** – the case manager has responsibility for:-

- commissioning an investigation of the allegation/s
- appointing an investigating officer in conjunction with the HR department
- determining the terms of reference for the investigation, this may include additional Terms of Reference
- deciding if there is a case to answer or not upon completion of investigation

The case manager may also consider issues such as the suspension of the employee.

5.5 **Investigating Officer** – The investigating officer will investigate and establish the facts in the case by holding investigatory interviews and gathering statements and data as appropriate.

The investigating officer will produce an investigation report for the case manager. The report will outline the facts of the case.

The investigating officer can request that they add to the Terms of Reference during the investigation should something significant come to light that is directly associated with the investigation.

Should the matter proceed to a disciplinary hearing the investigating officer would present the investigation report to a disciplinary panel.

In cases involving suspension, the investigating officer or the individual's line manager must maintain regular contact with the suspended employee, in order to keep the employee informed of any progress in the investigation.

- 5.6 **Staff** – It is the ultimate responsibility for all staff to ensure that their conduct is consistently aligned with Trust values and behaviours. All employees of the Trust should ensure that they understand and comply with the Trust and departmental standards relating to conduct and they carry out their duties in accordance with contractual obligations and with appropriate care.

Staff who are absent from duty due to sickness whilst involved in a fact-finding investigation will be referred to Occupational Health for support and guidance.

Advice will also be sought as to whether the individual is fit to attend a fact finding interview.

Staff are responsible for informing the investigating officer of anybody whom they wish to be interviewed as part of the investigation. This would only be the case if they are considered relevant to the investigation.

Employees are reminded that disciplinary action, including dismissal, can be taken in their absence.

- 5.7 **Human Resources** – Human Resources are responsible for:-

- Ensuring that employment policies and procedures are legally compliant.
- Providing necessary professional guidance and advice to enable the process.
- Liaising closely with Local Counter Fraud Specialist (LCFS) in respect of parallel criminal and disciplinary investigations.
- Ensuring that the investigation is following due process and conducted in a timely manner, and escalating where appropriate.
- Maintaining and monitoring progress.
- Ensuring referral to the Disclosure and Barring Service and professional lead where appropriate.
- A member of the HR Team will advise and support both case managers and investigating officers in all disciplinary matters, in order to ensure that impartiality and an equal standard of discipline applies throughout the Trust.
- Human Resources should be consulted before any action is taken in relation to the formal stages of this procedure.
- On conclusion of the case Human Resources will ensure retention of all records pertaining to the case.
- Human Resources are also responsible for holding and updating a central database of disciplinary cases and for ensuring consistency in any action taken.
- The Human Resources department will report all disciplinary cases to the Board.

- 5.8 **Trade Union Representatives**

Trade Union Representatives have an important role to play in providing advice and support to individual employees and to generally work in partnership with managers to ensure optimum levels of staff conduct and behaviour.

A member of staff under investigation for alleged misconduct or facing formal disciplinary proceedings has the right to be accompanied by an accredited trade union representative or a colleague who is also employed by the Trust. Both colleagues and accredited trade union representatives can present evidence on behalf of the employee at the disciplinary hearing and appeal hearing.

- 5.9 **The Central Investigations Team**

The Central Team has been set up to help improve the timescales in accordance with the Disciplinary Policy. The responsibilities of the investigation team will include:

- Working with Safeguarding Teams within the Clinical Divisions
- Reviewing staff suspensions to ensure they are dealt with in a timely manner
- To act as the Investigating Officer as appropriate.
- Providing support to the Human Resources Team with their administration of cases
- Arrange disciplinary hearings.
- Manage the appeal process.
- Administer the process for referral to Disclosure and Barring Service
- Provide the Divisions and Quality Surveillance Groups with reports of employee relations activity

## 6 PROCESS / PROCEDURE

### 6.1 When this Disciplinary Procedure is applicable and the interface with other policies/processes

#### 6.1.1 Allegations of Fraud and the interface with NHS Counter Fraud

Any internal investigation into allegations of potential fraud should be deferred until a full and detailed discussion has taken place with the nominated local counter fraud specialist. The involvement of NHS Counter Fraud does not necessarily mean a disciplinary investigation will not take place and each situation is to be judged on its own merits.

For both the LCFS and HR, any matter referred which raises any suspicion of fraud, bribery or corruption must be dealt with in accordance with the requirements set out in this policy and the Trust's Anti-Fraud, Bribery and Corruption Policy (FO6).

#### **Counter Fraud Specialists:**

All genuine suspicions of fraud, bribery or corruption can be reported to the LCFS directly, via the Trust's counter fraud provider, MIAA, on 0151 285 4500. If the Trust LCFS is not available, please report your concerns to another member of the MIAA Counter Fraud Team.

Alternatively, report your suspicions through the NHS Fraud and Corruption Reporting Line (FCRL) (Mon-Fri 8am-6pm) on freephone 0800 028 40 60; or, via the NHS Online Fraud Reporting Form [www.reportnhsfraud.nhs.uk](http://www.reportnhsfraud.nhs.uk); or, via the Trust's Executive Director of Resources.

Please be aware that you do not have to leave your personal details.

#### 6.1.2 Duty of Candour

The Francis report highlighted the importance for NHS bodies to be open, honest and transparent. This includes:

- The Trust sharing information from a disciplinary investigation with service users and carers regarding a patient safety incident, where appropriate
- Encouraging open and honest dialogue with Service Users
- Where appropriate, interviewing service users as part of the process.

#### 6.1.3 Whistle-blowing

When concerns are raised about unlawful conduct, financial malpractice or dangers to the public or the environment, this will be investigated in line with the Trust's Policy for Concerns at Work about Patient Care or Matters of Business Probity/Conduct (Whistle-blowing – HR06). If as a result of this, there are concerns about the conduct of an employee, the Disciplinary Procedure will be convened.

#### 6.1.4 Dignity and Respect at Work

Any complaints raised in relation to bullying and harassment will be investigated in line with the Trust's Dignity and Respect at Work- prevention of harassment & bullying policy and Procedure. If it is found that there is a case to answer, the normal disciplinary investigation process will be followed, as per this policy. Please see the Policy (HR06) for further information.

#### 6.1.5 Safeguarding

All allegations of safeguarding should also be referred as a safeguarding referral to the relevant local authority. When safeguarding allegations are made against any employee or bank worker this must be reported to the Trust Director of Social Care and Safeguarding. See Safeguarding Policy (SD17).

#### 6.1.6 Information Governance

Information Governance ensures that one of the Trusts most important assets, information, in both clinical and management terms, is respected and held in secure and manageable conditions. It is therefore of paramount importance to ensure that information is efficiently managed on the basis of the HORUS categorization:

- Held safely and confidentially
- Obtained fairly and effectively
- Recorded accurately and reliably
- Used effectively and ethically
- Shared appropriately and lawfully

The Trust has put into place a range of appropriate policies, procedures and management arrangements to provide a robust framework for Information Governance.

All data loss/data breach incidents will be fully investigated by the Trust, and should it be identified that there has been any misconduct by staff then the seriousness of the incident will determine the level of misconduct applicable. For further information see Trust Policy Information Governance & Information Risk (IT12).

#### 6.1.7 Medical Staff

For Medical Staff, the policy is to be used in conjunction with the Policy for Handling Concerns about the Conduct, Performance and Health of Medical Staff Employed by Mersey Care NHS Foundation Trust (HR12), which should always be followed as the overarching policy if an issue arises regarding a doctor.

## 6.2 SUSPENSION

In some circumstances staff may need to be excluded from work. This is also known as 'suspension'. The suspension will be for no longer than is necessary to investigate the allegations which will be confirmed writing. While excluded staff should not visit Trust premises or contact any of our clients, customers, suppliers, patients, contractors or staff unless authorised to do so.

Suspension of this kind is not a disciplinary penalty and does not imply that any decision has already been made about the allegations.

During the period of suspension the Investigating Officer or the Nominated contact must maintain regular contact with the suspended employee, in order to keep the employee informed of any progress in the investigation.

During the suspension, the employee remains on full pay as though he/she was at work i.e. pay will include contractual payments e.g. enhanced hours. Hours worked through the Additional Staffing Bank will not be protected (unless the member of staff has a booking reference for a shift) During suspension, the employee must not make direct contact with other Trust employees to discuss details of the particular case other than their Trade Union Representative, the Investigating Officer or designated contact person. Staff on suspension must not enter Trust premises, other than to obtain treatment for themselves or their families, meet with their trade union representative, or attend staff support. Additionally, they must make themselves available during office working hours so they can be contacted by the Investigation Officer where necessary.

For further details on the process of suspension, see Investigation Toolkit.

### **6.3 WRITTEN ACCOUNTS**

After an incident or an allegation the supervisor or manager could request staff members to write an account about what they have witnessed immediately after the incident or the alleged incident has occurred. Staff will be asked to sign and date the statement.

### **6.4 SPECIAL RULES – CRIMINAL CHARGES**

Staff must disclose to their manager any convictions, cautions, warnings, reprimands or bind overs that are issued to them prior or during employment. Where staffs conduct is the subject of a criminal investigation, charge or conviction an investigation of the facts will be undertaken before deciding whether to take formal disciplinary action.

It is not usually Trust policy to wait for the outcome of any pending prosecution but each situation will be judged on its own facts. The investigating officer will need in writing a statement from the Police or relevant safeguarding authority including a rationale as to whether or not the fact finding investigation can continue. This information should also be included in the final disciplinary report.

A criminal investigation, charge or conviction relating to anything outside work may be treated as a disciplinary matter if considered that it is relevant.

### **6.5 INFORMAL PROCESS**

Cases of misconduct can often be addressed effectively and swiftly by the employee's immediate line manager having a structured discussion with the employee regarding the standards required and the required improvement in their conduct.

During this meeting the Manager should;

- Explain that the meeting is informal in approach and is to discuss some concerns that have been known.
- Discuss the concerns that have come to light with the employee and explain that the reason for holding an informal meeting is to reflect on the concerns and take any corrective action necessary in given timelines.
- Inform the employee of the standards expected by the Trust and the level of improvement needed.

A record of the meeting must be kept, and a review period should be agreed. The review period should generally not last longer than 6 months.

The Informal Process is not designed to replace the disciplinary procedure. In appropriate cases it allows an alternative approach to achieving improved conduct.

Please note that the Informal Process replaces the Personal Responsibility Framework.

## **6.6 BREACHES OF CONDUCT**

### **6.6.1 Fast Track Procedure**

Mersey Care NHS Foundation Trust has introduced a 'Fast Track' system within the Disciplinary Policy to help speed up the process of staff being disciplined, where the outcome of the investigation would result in a sanction of First Written Warning; without completing a full disciplinary investigation. Firstly the staff member must admit to the allegations and then be accepted by the Head of HR as being appropriate for Fast Track. Then a meeting will take place and the staff member will be awarded the sanction without the right to appeal.

Certain medication errors will be considered as part of the Fast Track process; however every error will be reviewed by a panel, consisting of Lead Nurse, Head of HR and a Manager to consider the suitability of the medication error and the appropriateness of the request to use this process.

This will not be used for matters of Gross Misconduct.

The following are examples of what may be considered as misconduct. Please note that the list is not exhaustive.

### **6.6.2 Misconduct**

- Failure to comply with a reasonable request;
- Abusive, objectionable or insulting behaviour;
- Foul or abusive language;
- Disorderly conduct;
- Communication of any unauthorised written material;
- Failure to maintain the required standard of dress or presentation;
- Minor breaches of employment contract or negligent performance e.g. punctuality, unauthorised absence;
- Minor breaches of Trust Policies e.g. Health & Safety, IT, Information Governance;
- Breach of Trust Corporate Smoking Cessation Policy (SA20) whereby an initial breach has previously been addressed informally
- Breach of the Trust's Standing Financial Instructions (SFIs), Standing Orders (SOs), and/or Scheme of Reservation and Delegation (SoRD); Standards of Business Conduct
- Failure to comply with Trust values of Continuous Improvement, Accountability, Respect and Enthusiasm (RM/AO)

### **6.6.3 Gross Misconduct and Summary Dismissal**

The following are examples of what may be considered as gross misconduct. Please note that the list is not exhaustive.

- Theft/Misappropriation – any instance of unauthorised removal of property from the Trust or from a service user, carer or members of staff
- Physical Assault – Physical assault upon a service user, carer, a fellow employee or member of the public;
- Threatening/Menacing Behaviour towards a service user, carer, a fellow employee or a member of the public;
- Recklessness/Negligence in work – any action, or failure to act, which threatens the health and safety of a service user, carer, member of the public or another member of staff;

- Serious Damage – to Health Service property, property of service users'/carers, or members of staff;
- Corruption (F06) – receipt of money, goods, favours or excessive hospitality in respect of services rendered;
- Confidentiality – loss of confidential information, unauthorised access to confidential information, disclosure or breach of confidence in relation to information regarding a service user/carer or member of staff except where such a breach constitutes a protected disclosure for the purposes of the Trust's Concerns at Work;
- Unlawful discrimination or harassment;
- Breach of Professional Code of Conduct including failure to maintain registration with appropriate professional body;
- The concealment or destruction of evidence of malpractice;
- Inappropriate or Unprofessional relationship with any service user
- Deliberately accessing or downloading material from any site that is of a pornographic, discriminatory or of an offensive nature – IM&T Security Policy (IT02);
- Sleeping whilst on duty;
- Possession or attempt to supply alcohol or substances (which may or may not be illicit);
- Consumption of alcohol or substances (which may or not be illicit), either prior to reporting for duty or whilst on duty, which may impair ability to undertake duties;
- Inappropriately accessing the Internet during working hours (unless related to work or educational purposes);
- Inappropriate use of internet and social network sites, for example Facebook and Twitter;
- Communicating any material which breaches the Trust Equality and Diversity policies;
- Commits a serious act, which is deemed to be prejudicial to the interests of the Trust or its employees;
- Breach of Trust Corporate Smoking Cessation Policy (SA20) on more than 2 occasions;
- Knowingly taking carers/parental/paternity/adoption leave for purposes other than supporting a child/dependant
- Making false allegations against another employee;
- Victimising an employee who has raised concerns under the Whistleblowing, Dignity at Work, Grievance, Disciplinary Policies/Procedures;
- Serious breach of the Trust's Standing Financial Instructions (SFIs), Standing Orders (SOs), and/or Scheme of Reservation and Delegation (SoRD);
- Misrepresentation at any time, including at the time of appointment or when applying for any post in the Trust, e.g. previous positions held, qualifications held, date of birth, declaration of health, or failure to disclose a criminal offence or pending criminal action, subject to the provisions of Rehabilitation of Offenders Act 1974.

#### 6.6.4 Serious Misconduct Falling Short Of Gross Misconduct

Where an initial offence of misconduct is more serious than a minor offence, but not as serious as gross misconduct, then a Manager may, following a full investigation, award the penalty of a final written warning.

## 6.7 PROCEDURE FOR INVESTIGATIONS

The procedure for conducting investigations is set out in detail in a guidance document entitled the Investigation Toolkit (Appendix D).

- 6.7.1 A **Case Manager** will appoint an **Investigating Officer** whose role it is to establish the facts and provide them to the case manager who will decide, with advice from Human Resources, whether there is a case to answer that has been any inappropriate behaviour and/or breach of Trust policies such that a disciplinary investigation should be convened.

- 6.7.2 Employees who are the subject of an investigation should be made aware of this, in writing, within 5 working days of the alleged incident wherever possible. This letter should inform the employee of the allegation(s) (which should be as specific as possible) and the reasons why this is not acceptable. If the employee has difficulty reading, the contents of the letter should be explained to them orally.
- 6.7.3 Prior to any formal disciplinary hearings being held, a full and impartial investigation into the circumstances and facts relating to the alleged misconduct will take place. The individual under investigation will be informed of this as soon as possible, and this should be followed up in writing. The individual will be given details of the allegation of misconduct.
- 6.7.4 A HR representative will be assigned to support the investigating officer. The investigating officer should not have been involved in the incident. As part of the investigation, the investigating officer must write to the employee to invite them to meet to discuss the allegations. During this meeting notes must be taken recording the questions asked and the responses given. The notes of the investigatory meeting must be returned within 5 working days
- 6.7.5 The investigating officer must send a status update report to the case manager every two weeks. Regular contact must also be maintained with the staff member every two weeks as a minimum, and four weeks as a maximum. The format of this contact, e.g. letter, email, should be agreed at the outset of the investigation.
- 6.7.6 Further advice and guidance relating to the carrying out of disciplinary investigations are contained in the separate management guidelines document entitled “disciplinary investigations”.

**6.7.7 Terms of Reference**

The case manager will set the Terms of Reference at the commencement of the investigation. If new issues come to light during the course of the investigation, the Terms of Reference must be amended.

**6.7.8 Notes of Investigatory Meetings**

All individuals interviewed as part of the investigation will be provided with a statement of the investigatory meeting. They will be given the opportunity to make amendments and additions where appropriate and they are required to confirm that it is an accurate reflection of what has been said, and return to the investigating manager. Notes must be returned as soon as possible after receipt of the draft statement. Failure to return the notes in a timely manner will mean that the notes of the investigatory meeting will be entered into the Fact Finding Report as they stand (see Investigation Toolkit).

**6.7.9 Trade Union Representation**

You may wish to bring a representative to any disciplinary or appeal hearing under this procedure. The companion may be either a trade union representative or a work colleague not connected to the investigation.

If your representative is unavailable at the time a meeting is scheduled and will not be available for more than five working days afterwards, the Trust will ask you to choose someone else.

**6.7.10 Employee resignation during an investigation**

Where an employee leaves before an investigation is completed, notes will be kept so that any reference provided for that employee will indicate that there is an unresolved investigation into alleged misconduct. Such references must be fair and accurate, but will state that procedures have not been completed, reflecting the current position. In some cases, it may be necessary to conclude the investigation following resignation of an employee. In addition, referral to the Disclosure and Barring

Service and/or professional body may also be necessary. Advice should be sought from an HR Business Partner in these circumstances.

#### **6.7.11 Where a grievance is raised**

Where a formal grievance is raised during a disciplinary process, the appropriate action will be determined on a case by case basis.

If the issues relate to the content of the disciplinary process or the disciplinary process itself the matter will generally be dealt with as part of the disciplinary process.

The two processes may run concurrently following, where possible, agreed timescales, unless the content of the grievance is so significant in relation to the disciplinary case that a deferral of the disciplinary proceedings becomes inevitable.

#### **6.7.12 Deciding if there is a case to answer**

Once the investigation is complete, the investigating officer will prepare a report for the case manager. Having received and reviewed the report, the case manager will decide whether there is a case to answer. Human Resources will offer professional support/advice to the case manager.

The decision should be noted in writing to the individual within 5 working days of receipt of the report.

#### **6.7.13 Arranging a disciplinary hearing**

If it has been established that the matter should be referred to a formal disciplinary hearing, then arrangements for this should be made without delay.

The hearing officer must not be the case manager; another senior manager must be appointed to hear the case, in line with the Scheme of Delegated Authority (Appendix A)

Disciplinary hearings should be held as early as possible. As a general guide, the hearing should take place within 12 weeks of the commencement of the investigation wherever possible. In order to avoid delay, the manager hearing the case should agree a mutually convenient time and date as soon as possible for the hearing with the individual and his or her or trade union representative. Where a trade union representative cannot attend on the date proposed, the individual can request that an alternative time and date be arranged within the next 5 days of the original hearing. In exceptional circumstances where an employee requests the postponement of a disciplinary hearing this will be considered on its own merits. If there is a good reason for non attendance the meeting will be re-arranged. If the employee does not attend a second meeting there is no obligation on the Trust to rearrange it again and the manager may decide to proceed with the hearing in the absence of the employee. The letter confirming the rearranged meeting should include a warning to the effect that the matter may be dealt with in their absence.

#### **6.7.14 Formal disciplinary hearing**

A letter containing details of the allegation(s) and setting out details of the date and time of the disciplinary hearing, together with copies of all documentation that will be used or referred to during the disciplinary hearing, should be sent to the individual at least five working days in advance unless otherwise mutually agreed. However, best practice would be that where possible documents would be sent out as soon as possible.

If the disciplinary hearing could result in dismissal, the individual should be advised of this in the letter. The employee should also make available copies of any statements and/or written material which s/he intends to refer to, along with details of any witnesses who will be present to give evidence, no later than five working days prior to the Hearing.

The Manager hearing the case at the Disciplinary Hearing should not normally have had any prior involvement in the formal investigation. Decisions relating to the level of disciplinary action to be taken, if any, will be a matter of judgement for the manager(s) who has listened to the information presented during the Disciplinary Hearing. He or she will take into consideration:-

- the seriousness of the disciplinary breach in question
- the relevance and context of facts/information presented
- issues relating to fairness, consistency and the substantial merits of the information presented
- any currently live relevant disciplinary warnings

After the conclusion of the disciplinary hearing, the outcome should be confirmed by the Chair of the panel in writing within 3 working days of the date of the hearing where possible, any delays in the decision for exceptional circumstances must be communicated in writing. If the decision of the Chair/panel has been that no formal sanction is to be issued, then this should be confirmed, along with any other associated recommendations.

In addition it may be deemed necessary to refer the case to a professional body e.g. NMC as well as a DBS Referral. This will be confirmed in the outcome letter where necessary.

#### 6.7.15 **Witnesses**

Both the employee under investigation and the Investigating Officer will be given the opportunity to request witnesses to attend the disciplinary hearing. Their subsequent evidence should clearly demonstrate why their attendance is relevant. Character witnesses are not relevant to the disciplinary hearings. Where possible, agreement will be reached on which witnesses should be interviewed as part of the management investigation and invited to attend any subsequent hearings. The panel considering the case may also request the attendance of witnesses if their presence is necessary.

The onus is upon the Investigating Officer and staff side representative for the employee or the individual employee if they are not represented to ensure that their witnesses have been contacted/called for. The Trust will ensure that every effort is made to facilitate their availability at the hearing.

A witness may be accompanied at the hearing by a workplace colleague not involved in the investigation or by a trade union representative.

## 6.8 **DISCIPLINARY SANCTIONS**

The usual penalties for misconduct are set out below. No penalty should be imposed without a hearing. We aim to treat employees fairly and consistently, and a penalty imposed on another employee for similar misconduct will usually be taken into account but should not be treated as a precedent. Each case will be treated on its own merits.

You will not normally be dismissed for a first act of misconduct, unless it is decided that it amounts to gross misconduct.

The formal disciplinary sanctions which may be issued following a disciplinary hearing are as follows:-

### **(a) First Written Warning**

A first written warning may be given in the following circumstances:-

- In cases more serious than would warrant informal action, but not serious enough to require another sanction.
- In cases of repetition by the employee of minor acts of misconduct which have been the subject of informal counselling (see 6.6.2 for examples of misconduct).

A first written warning will remain live for a period of **12 months**.

**(b) Final Written Warning**

A final written warning may be given in the following circumstances:-

- Misconduct where there is already an active written warning on your record; or
- Misconduct that we consider sufficiently serious to warrant a final written warning even though there are no other active warnings on your record.

A final written warning will remain live for a period of **18 months**.

Written warnings will set out the nature of misconduct, the change of behaviour required, the period for which the warning will remain active, and the likely consequences of further misconduct in that active period.

**(c) Dismissal**

Dismissal will usually be appropriate for:

- Further misconduct where there is an active warning on your record; or
- Any gross misconduct regardless of whether there are any active warnings on your record. Gross misconduct may result in dismissal without notice or payment in lieu of notice.

**(d) Transfer, Demotion or Downgrading**

In some cases we may at our discretion consider alternatives to dismissal. These will usually be accompanied by a final written warning. For example, a demotion may be offered as an alternative to dismissal, if so this must be agreed to by the employee.

**(e) Suspending the warning**

The purpose of issuing a warning is to allow the opportunity for the individual to improve behaviour in work within the period of the warning and future employment.

If an employee is absent from work due to illness or special leave for a period of 4 weeks or more, the warning will be suspended until the individual returns to work.

This will be detailed in the warning letter to ensure that the individual understands this issue.

## **6.9 APPEALS**

Employees have the right to appeal against all disciplinary penalties imposed upon them. To do so employees should write to the Executive Director of Workforce stating their reason why they wish to appeal against the disciplinary action within 15 days of the action being confirmed in writing. The Executive Director of Workforce will convene an Appeals Panel to hear the appeal, and the hearing notes from the appeal panel will be included with the outcome letter. In cases of staff dismissal, the panel will comprise of three members, one of whom must be a member of Trust Board and two senior managers who are senior to the dismissing manager. However, for any other sanction, the appeal will be heard by an Executive Director of the Trust. The hearing of the appeal by the Appeals Panel will take place within 2 months of the receipt of the appeal by the Trust, although the Trust may, in exceptional circumstances, be entitled to extend this period. The employees will be given at least 7 calendar days notice of the date of the appeal hearing.

## **7 CONSULTATION**

7.1 The following staff / groups were consulted with in the development of this policy document:

1. HR Policy Group
2. Senior Managers and Staff Side Representatives

## **8 TRAINING AND SUPPORT**

Training will be delivered on an ad-hoc basis as and when required.

## **9 MONITORING**

It is the responsibility of the employee's line manager to monitor the conduct and performance of the employee on an on-going basis but specifically as outlined in any warning immediately following its issue. Line managers will also ensure that any remedial action as set out in a warning is actioned. Records of such reviews and progress will be maintained by the manager and discussed with the employee up to and including the end of the period stipulated in the warning.

The HR Department will monitor and maintain records of all disciplinary cases. Monitoring will be undertaken by the senior members of the Workforce Team and the results of the monitoring will be reported to Operational Groups in the Divisions on a monthly basis and to the Trust Quality Surveillance Group.

An annual report will be provided to the Executive Directors and the Finance and Performance committee which reports to the Board, detailing annual figures of case work highlighting issues such as diversity information, pay band, staff groups and location.

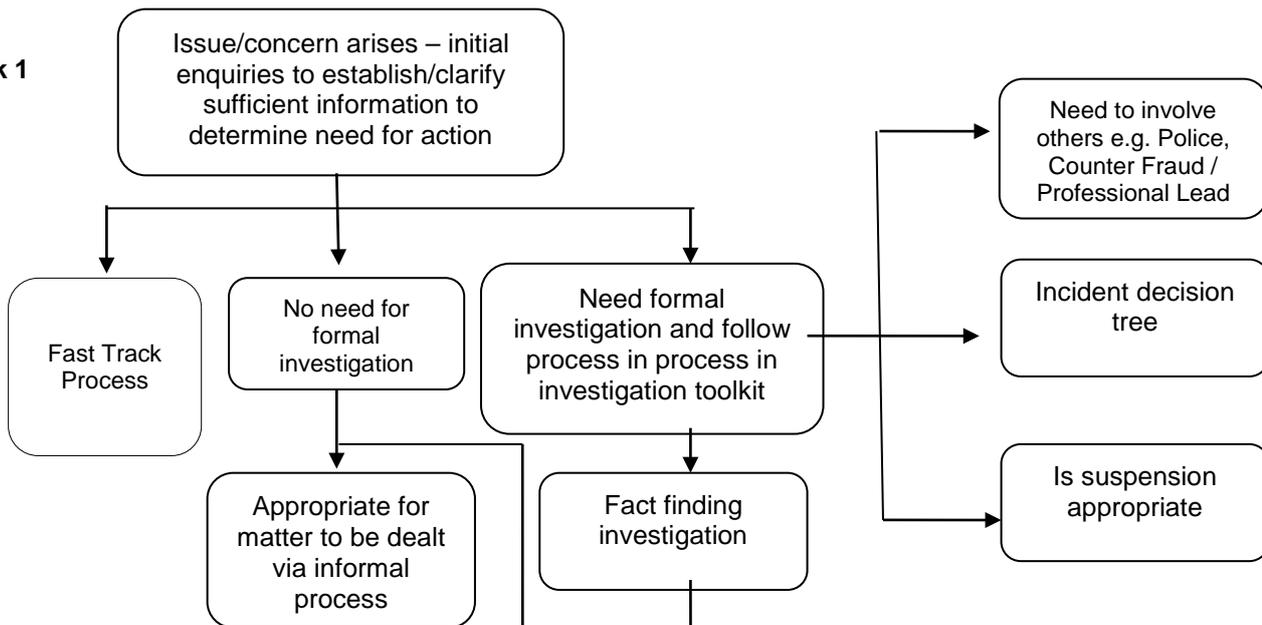
### MERSEY CARE NHS FOUNDATION TRUST LEVELS OF AUTHORITY

CATEGORY OF STAFF	SUSPENSION/ISSUE OF VERBAL OR FIRST WRITTEN WARNING BY:	ISSUE OF FINAL WARNING BY:	DISMISSAL DOWNGRADING OR TRANSFER BY:
Chief Executive	Trust Chairman	Trust Chairman	Trust Chairman with Non-Executive Trust Members
Executive Directors	Chief Executive	Chief Executive	Chief Executive with Trust Chairman/Non-Executive Trust Members
Medical & Dental Staff	Chief Executive	Chief Executive/ Medical Director (for suspension)	Trust Chairman/Chief Executive
Other staff directly responsible to the Chief Executive	Chief Executive	Chief Executive	Chief Executive
Staff Directly responsible to:	The appropriate Line Manager	The appropriate Line Manager:	The appropriate Line Manager
Executive Directors	Executive Director	Executive Director	Chief Executive
All other staff	Immediate Manager	Next Level Manager above Immediate Manager	The appropriate: Executive Director/Divisional Director or Designated Deputy

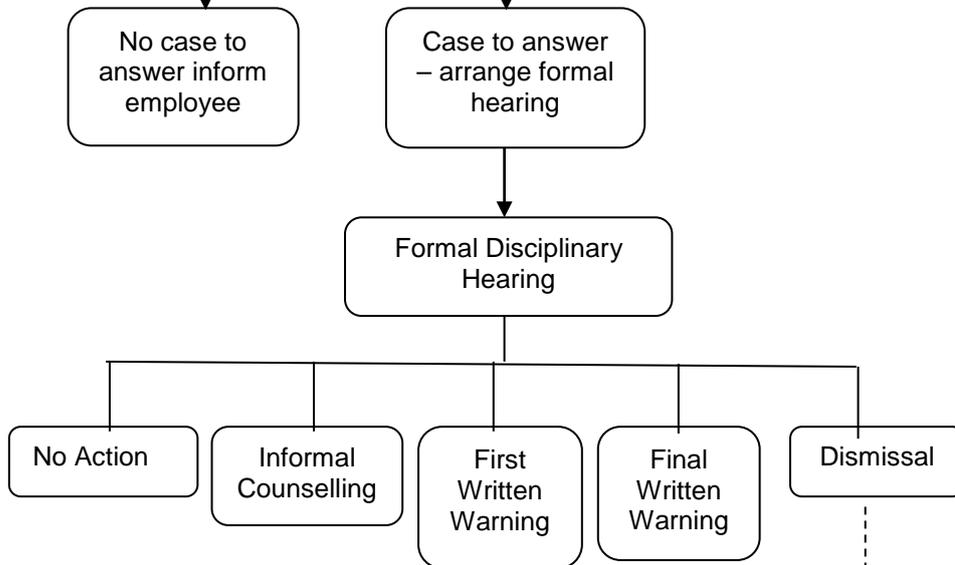


**PROCESS FLOWCHART**

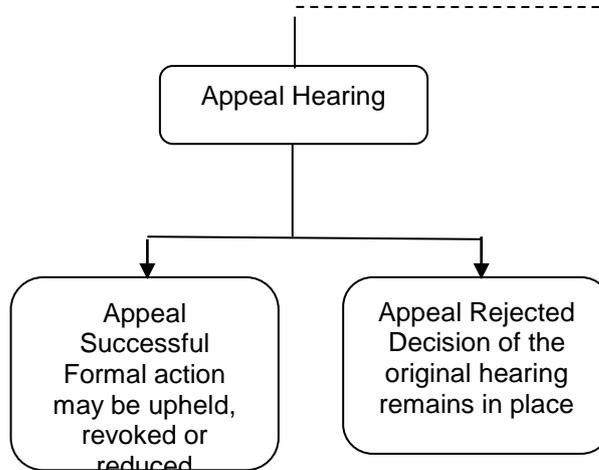
**Week 1**



**Week 12**



**8 weeks of receipt of appeal**



## FAST TRACK PRINCIPLES



### Fast Track Principles

Where the disciplinary outcome of a particular case is anticipated to result in a First Written Warning an employee and /or staff side may ask management to move directly to that conclusion without completing a full fact finding investigation. The Manager may also suggest to staff side that the case may be suitable to be dealt with under Fast Track. It should be noted however that there should be sufficient information for both the employee to request a Fast Track and for management to make a decision on the appropriateness of the request i.e. Datix form. At the meeting there must be a belief that the employee has learnt from the experience and is unlikely to repeat their misconduct and adhere to the values of the Trust.

Fast Track will not be considered for matters of gross misconduct or where dismissal maybe appropriate. Nor can it be used if any of the allegations are contested by the employee or if there is a connected disciplinary process involving another employee.

In the event that the Manager/Senior Manager considering the facts decides that there may be no case to answer with the detail/evidence they have been given; this should be discussed with Human Resources.

The Pro-forma request form can be either completed by the manager or employee and submitted to the Investigations Team Leader within 72 hours of the initial request.

Staff who are not in a union should discuss their concerns with their manager, Human Resources or a workplace colleague before competing and submitting their pro-forma request.

**Please note that staff can only apply and be considered to have one Fast Track per 12 month period.**

**In responding to any such request:**

⋮

1. All requests must be submitted via the pro-forma attached to the Investigations Team Leader based in the workforce team, who will liaise with the Deputy Director of Workforce/Head of HR, before any investigation commences.
2. A meeting with the employee and their staff side representative (if in a union) will be necessary at this point to gather further information. The Line Manager/Senior Manager will be responsible for the collection of this information so that this can be passed on to the Investigations Team Leader for the decision making.
3. The Investigations Team Leader will seek to ensure that the employee has discussed the matter with their staff side representative, Human Resources or a workplace colleague if they are not a member of a staff side organisation before making such a request.
4. The Investigations Team Leader may need to discuss the request with the appropriate Line Manager/Senior Manager before the management response to the request is given. After reviewing the evidence, The Head of HR decision as to whether to take the Fast Track route or not is final and will be confirmed by the Investigation Team Leader to the member of staff and their manager and also staff side if they are involved.
5. Once a decision has been made The Investigations Team Leader will remind employees that there will be no right of appeal against a warning given using Fast Track (which is different to current Trust policy and ACAS guidance).

6. Where the Head of HR considers that the fast track approach is inappropriate for whatever reason the normal disciplinary fact finding process will be followed and this will be fed back to the individual by the Investigations Team Leader.

Cases that may fall under the fast track but not exhaustive could include: social media, drug errors, lack of documentation, confidentiality, minor IG breaches, breaches of procedure internet misuse etc. Please note that this list is not exhaustive.

Please note that medication errors will be considered as part of the Fast Track process, however every error will be reviewed by a panel, consisting of Lead Nurse, HR and Manager to consider the suitability of the Fast Track process. Mersey Care have developed Guidelines for the Management of Medication Errors within all professional groups. The Guidelines state that certain prescribing and or administration of medication errors can be considered as part of the Fast Track process. Following a medication error the manager will complete a medicines errors matrix in line with the Guidelines for the Management of Medication Errors (via Pharmacy website). Errors that are rag rated as red can be considered for the Fast Tract process.

If the Fast Track application is accepted there will be no need for a formal fact finding investigation although a sufficient and reasonable examination of the facts must have taken place in order to ensure the manager hearing the case awards the agreed sanction of first written warning.

If the Fast Track process is agreed; a Fast Track meeting will take place with a senior manager of the Service, no witnesses will be called and no HR representative will be present. Brief hand written or typed notes will be kept by the senior manager at the meeting. The senior manager hearing the case will not be the manager who was involved with any of the previous direct discussions with the employee.

**This meeting must have taken place within 21 days of the issue being raised with their manager or staff representative.**

**The process for a fast track meeting will be as follows:**

- Introductions
- The senior manager outlines the nature of the allegation(s) accepted by the employee and advises that it (they) will be awarded the agreed sanction of first written warning.
- The senior manager confirms with the employee that they accept the allegations previously stated.
- The employee or their representative will have the right to put forward any comments or statements relating to the incident (including any mitigation).
- The senior manager may wish to question the employee.
- The senior manager will adjourn briefly to give consideration to the case. If more information is required to make a decision on the sanction the meeting may be adjourned to allow a further investigation to take place.
- The senior manager will then communicate their decision to the employee and their representative. The penalty will not exceed the previously stated limited sanction but in exceptional circumstances (e.g. the employee denies some of the allegations) the manager may decide that the matter should be referred for further investigation and/or to a full disciplinary hearing for potentially a higher sanction to be considered.
- The senior manager will send a letter confirming the decision to the employee. The record of any warning will be kept on the personal file and a copy sent to the Investigations Team Leader.
- The disciplinary sanction imposed will be given in accordance with the Trusts' Disciplinary policy.

**FAST TRACK PROFORMA (to be completed by the manager or member of staff)**

<b>Name:</b>	
<b>Post:</b>	
<b>Division:</b>	
<b>Ward/Department:</b>	
<b>Date of Allegation:</b>	
<b>Allegation: (to be written by the manager)</b>	
<b>Meeting to discuss allegation date:</b>	
<b>Present:</b>	
<b>Main Points discussed:</b>	
<b>I (Insert name) request to be fast tracked to a meeting were a sanction of a first written warning maybe be given without further investigation for the above allegation/s</b>	
<b>I (insert name ..... ) agree and confirm that I would like to be considered for Fast Track:</b>	
<b>I have no right of appeal against the sanction/First Written Warning Issued. Signed (insert name ):</b>	<input type="checkbox"/>
<b>I have discussed with Staff Side rep or Workplace colleague:</b>	<input type="checkbox"/>
<b>Understand allegation and admit the allegation occurred as stated:</b>	<input type="checkbox"/>
<b>Request no further investigation of this allegation:</b>	<input type="checkbox"/>

Received by Investigating Team Leader  Signed: \_\_\_\_\_

Approved/ Not approved:

---

Deputy Director of Workforce/Head of HR (Delete as appropriate)

For Office Use:

- Meeting arranged
- First written warning issued
- Database updated
- Fast track not approved and fed back to individual/staff side

Trust Address

Date

Address of employee

Dear xxxxxx

**Fast Track Disciplinary Meeting**

I am writing regarding your Disciplinary Fast Track Request Form dated ..... and would inform you that your request has been accepted by the Head of HR. I would therefore like to confirm that you should attend a Fast Track Disciplinary Meeting with me to consider the following allegation(s) of misconduct, the basis of which you signed as accepting on your form (copy enclosed):

- .....
- .....
- .....

This meeting will be conducted under the Fast Track process of Trust's Disciplinary Policy and Procedure (copy enclosed).

Detailed below are the arrangements for this meeting

Location:

Date:

Time:

You have a right to be accompanied at this meeting by a representative of a trade union recognised by the Trust, a full time official of any other trade union or a work based colleague. I would be grateful if you could inform me if you are to be accompanied prior to the day of the hearing.

Under the Fast Track process no witnesses and no HR representative will be present.

You should be aware that the outcome of this hearing will be that you will receive a first written warning which is in compliance with the maximum limited sanction you confirmed as acceptable on your Disciplinary Fast Track Request Form.

You now have a final opportunity to pull out of the Fast Track process and request a full investigation and disciplinary hearing. If you elect to take this course of action you should inform us at least 3 working days prior to the day of the meeting, by emailing Julie Duffy, Investigation Team Leader at [julie.duffy@merseycare.nhs.uk](mailto:julie.duffy@merseycare.nhs.uk) . You will not suffer any detriment if you choose to proceed with your right to a full disciplinary hearing.

If you have any queries in advance of the meeting please contact me.

Yours Sincerely

**xxxxxxxxxxxxxx**  
**Senior Manager**

Cc Investigations Team Leader

## INVESTIGATION TOOLKIT

**This toolkit sets out the steps to be taken when concerns about the conduct or performance of a member of staff need to be investigated or when suspension may be required. This toolkit is to be read in conjunction with the Trust's Disciplinary Procedure.**

### 1. INTRODUCTION

The purpose of this toolkit is to ensure that concerns regarding the conduct or performance of staff, which require formal investigation, are investigated in a fair and consistent manner. Investigation may be a preliminary step which leads to action being taken in accordance with other Trust policies.

If you have any queries in relation to this or the policy then please do not hesitate to contact your HR Business Partner or HR Advisor.

### 2. SCOPE

This process applies to all staff and formal investigations unless overridden by other policies relating to a specific staff group or set of circumstances.

In the case of some straight forward line management concerns in relation to conduct or performance of a member of staff, a formal investigation may not be necessary. A decision may be made to deal with the matter informally. Examples of where an informal process may be used would include sickness issues and persistent lateness.

However, in more complex cases, or where others may have witnessed alleged incidents or may have relevant information, a matter should be fully investigated before a decision is made regarding further action to be taken. In cases where the manager suspects financial irregularities the matter should be brought to the attention of the Director of Finance. It should be noted that in cases of suspected fraud, the matter will be referred to the NHS Counter Fraud Management Service and interviews may be carried out in accordance with Police and Criminal Evidence (PACE) legislation.

### 3. SUSPENSION

In certain circumstances (as outlined below) it may be necessary to suspend an employee from duty pending investigation into allegations made.

The following are examples of what may be considered as gross misconduct. Please note that the list is not exhaustive.

- Theft/Misappropriation – any instance of unauthorised removal of property from the Trust or from a service user, carer or members of staff
- Physical Assault – Physical assault upon a service user, carer, a fellow employee or member of the public;
- Threatening/Menacing Behaviour towards a service user, carer, a fellow employee or a member of the public;
- Recklessness/Negligence in work – any action, or failure to act, which threatens the health and safety of a service user, carer, member of the public or another member of staff;
- Serious Damage – to Health Service property, property of service users'/carers, or members of staff;
- Corruption (FA06) – receipt of money, goods, favours or excessive hospitality in respect of services rendered;
- Confidentiality – loss of confidential information, unauthorised access to confidential information, disclosure or breach of confidence in relation to information regarding a service user/carers or member of staff except where such a breach constitutes a protected disclosure for the purposes of the Trust's Concerns at Work;

- Unlawful discrimination or harassment;
- Breach of Professional Code of Conduct including failure to maintain registration with appropriate professional body;
- The concealment or destruction of evidence of malpractice;
- Inappropriate or Unprofessional relationship with any service user
- Deliberately accessing or downloading material from any site that is of a pornographic, discriminatory or of an offensive nature – IM&T Security Policy (IT02);
- Sleeping whilst on duty;
- Possession or attempt to supply alcohol or substances (which may or may not be illicit);
- Consumption of alcohol or substances (which may or not be illicit), either prior to reporting for duty or whilst on duty, which may impair ability to undertake duties;
- Inappropriately accessing the Internet during working hours (unless related to work or educational purposes);
- Inappropriate use of internet and social network sites, for example Facebook and Twitter;
- Communicating any material which breaches the Trust Equality and Diversity policies;
- Commits a serious act, which is deemed to be prejudicial to the interests of the Trust or its employees;
- Breach of Trust Corporate Smoking Cessation Policy (SA20) on more than 2 occasions;
- Knowingly taking carers/parental/paternity/adoption leave for purposes other than supporting a child/dependant;
- Making false allegations against another employee;
- Victimising an employee who has raised concerns under the Whistleblowing, Dignity at Work, Grievance, Disciplinary Policies/Procedures;
- Serious breach of the Trust's Standing Financial Instructions (SFIs), Standing Orders (SOs), and/or Scheme of Reservation and Delegation (SoRD);
- Misrepresentation at any time, including at the time of appointment or when applying for any post in the Trust, eg previous positions held, qualifications held, date of birth, declaration of health, or failure to disclose a criminal offence or pending criminal action, subject to the provisions of Rehabilitation of Offenders Act 1974

The act of suspension is not a disciplinary act. It is a neutral act enabling the individual to be released from their place of work pending investigation and a decision on the appropriate outcome. Whilst suspended, the employee will normally remain on full pay.

Suspension will normally be carried out by the employee's manager. However in exceptional circumstances, in the absence of the employee's manager, another manager may suspend a member of staff on the basis of the criteria above (for example 'out of hours' or during annual leave of the employee's manager).

### **Suspension interview**

At the suspension interview, the employee may be accompanied by a trade union representative or a workplace colleague and will be informed of the allegations against them and why the suspension is taking place.

Notification of the suspension and the reasons for the suspension will be confirmed in writing to the employee as soon as possible and within 3 working days of the date of suspension.

NOTE: - A suspension may have to be carried out 'out of hours' when a staff side representative may not be available. In such a situation, the individual may be accompanied by a workplace colleague.

### **Medical Suspension**

Medical Suspension of an employee may occur when there are grounds for the manager to conclude that an employee is unfit for duty and this must be confirmed by the Trust's Occupational Health Physician.

It may be more appropriate to direct the individual to their GP or emergency services.

### **Letter of Suspension**

The written confirmation of suspension must be sent to the employee within three

working days, and should include the following details:

- The reason for the suspension
- The fact that it will be on full pay
- Any information required under the regulations for Maintaining High Professional Standards. (Medical staff)
- That it is a neutral act, a precautionary measure and is not a disciplinary sanction.
- The terms of the suspension e.g. not to enter the workplace other than to obtain treatment for themselves or their family, or to attend an arranged meeting with their trade union representative.
- Not to enter the workplace without prior agreement from their authorised manager.
- Not to access systems
- Not to discuss or disclose any specific information relating directly to the case. Any breaches of confidentiality may be deemed in itself misconduct.
- The support available from the Occupational Health Department if required.
- A contact name and number for any queries.
- That during their period of suspension they must not undertake any bank or agency work.

During the period of suspension the Investigating Officer or the individual's Line Manager must maintain regular contact with the suspended employee, in order to keep the employee informed of any progress in the investigation.

### **Police/Counter Fraud Management Service (CFMS) Investigation**

Where an employee is under investigation for, or charged with, an alleged criminal offence (and the alleged offence is such that it may have relevance to the type of work that the employee undertakes or affect the employment relationship) the employee will be excluded with pay. During this time, the Trust will carry out a thorough investigation, the result of which should determine whether or not disciplinary action would be appropriate. It is not always necessary for any police (or CFMS) investigation to be concluded before the Trust makes a decision in relation to its own investigation. The Trust may approach the Police/CFMS for information obtained during the course of their investigation which may be used as part of the Trust's own investigation.

In cases other than suspected gross misconduct, it may be appropriate to consider temporary redeployment of the employee/s whilst investigations are proceeding, as an alternative to suspension. This should be with the agreement of the member of staff and confirmed in writing.

After being informed of their suspension the member of staff must be accompanied whilst they collect personal property and then escorted from Trust premises.

Whilst suspended, the employee may not access Trust property (unless seeking treatment for themselves or their family, or to attend an arranged meeting with their trade union representative) without the agreement of the authorised manager. Where necessary an escort will be arranged.

As suspended employees are unable to enter Trust premises individuals can feel isolated from their normal support mechanisms. The suspended member of staff will require support and appropriate sources of support will be identified with the suspended member of staff, for example, an appropriate Trade Union representative and the Occupational Health department. A member of the Trust management or a member of the HR team will be identified as a point of contact to provide an element of support.

This individual will have the responsibility of keeping the suspended member of staff up to date on the progress of any investigation and to act as a recognised point of contact for any issues the employee may wish to raise.

When a suspension is lifted, it may not be practical that this is always carried out by the same manager who suspended the individual, but should be carried out by a manager of the same level of seniority as the suspending manager. Confirmation that a period of suspension is lifted should be confirmed in writing.

## **The Investigation**

The **Case Manager** will identify an individual who has relevant expertise to be the **Investigating Officer**. Investigations will be conducted by an independent manager.

The manager commissioning the investigation (usually the Case Manager or nominated Deputy) will write to the staff member concerned to detail the allegation to be investigated and to advise that a fact finding investigation will proceed in accordance with the Trust Disciplinary Procedure.

The terms of reference will clearly state, who is involved in the case, what is alleged to have taken place, when the allegation took place, recommendations of who should be interviewed as part of the process and a timescale expected for completion of the investigation. If it becomes apparent that the scope of the investigation needs to be amended during the course of the investigation, then the terms of reference should be amended accordingly.

The investigating officer will write to the individual concerned to invite them to attend the Disciplinary Investigation (fact finding) meeting. The letter must state the full allegation which must be consistent in all documentation. Standard letters can be provided from HR to amend accordingly.

HR support will be offered to investigating officer during the process.

The investigating officer must send a status update report to the case manager every two weeks. Regular contact must also be maintained with the staff member every two weeks as a minimum, and four weeks as a maximum. The format of this contact, e.g. letter, email, should be agreed at the outset of the investigation.

## **Fact Finding Meeting**

The investigating officer should liaise with their HR support prior to commencement of the investigation to agree suitable dates for meeting and set aside for meeting with staff member and any witnesses. Priority should be given to your diary.

Questions should be prepared prior to meeting with the staff member and where possible sent to HR before the meeting occurs. Alternatively you can work on the questions collaboratively with your HR support. Questions should be full and comprehensive in order to gain as much information as possible surrounding the allegation and should form a timeline relating to the incident. Questions should not be leading but should probe to identify contributory factors.

The investigating officer must make the necessary arrangements to provide administrative support for notes to be taken at the investigation meeting. HR are happy to provide any coaching or support necessary to the administrative support to ensure that they are comfortable with the process and what is required.

At the beginning of the meeting explain the process of the fact finding investigation and advise the staff member that this process is conducted in accordance with the Trust Disciplinary Procedure.

Advise the staff member that the purpose is to gather as much information relating to the allegation as possible. Following full investigation, the findings will be presented in a report which will be submitted to the commissioning manager. They will make a decision as to whether there is a case to answer and if this matter should proceed to a disciplinary hearing. Advise the staff member that your report will not contain any personal opinions, conclusions or recommendations. Furthermore the staff member will be provided with a copy of this report should it proceed to a disciplinary hearing.

Begin your questions and ensure that all points are covered. Notes should be taken throughout.

You must advise any witnesses being interviewed that any information they have provided as part of this investigation will be included in the final disciplinary investigation report. This will be available to the staff member being investigated should the case proceed to a disciplinary hearing. You must also make the witness aware that they may be called as a 'management witness' at a disciplinary hearing, but will be supported through this process if this is the case.

At the end of the meeting ask the staff member if they have anything to add that is relevant to the investigation.

Following the meeting the investigation notes should be typed and sent out to the staff member as soon as possible

Ensure that the minutes are returned to H.R signed and dated. If the minutes are not returned within 5 working days they should be resent with a covering letter advising the staff member that if they are not returned by a given date they will be enclosed in the final report unsigned

Other documentation relevant to the case will be gathered; for example timesheets, relevant entries in patient records or other records etc. Due care will be taken to maintain patient confidentiality where records are copied to third parties.

The investigating officer should compile a report after completing all the interviews producing a chronology of events starting with the alleged incident and proceeding through all the witness statements. The report should include:-

- an introduction to the matter being investigated
- background information
- methodology including details of all those interviewed
- findings – a summary which can be supported by witness statements
- copies of all statements collected

On completion of the investigation, the Investigating Officer will produce an Investigation Report for the Case Manager. The report will outline the facts of the case.

## **Disciplinary Hearings**

Disciplinary hearings should be held as early as possible. As a general guide, the hearing should take place within 12 weeks of the commencement of the investigation wherever possible. In order to avoid delay, the manager hearing the case should agree a mutually convenient time and date as soon as possible for the hearing with the individual and his or her or trade union representative. Where a trade union representative cannot attend on the date proposed, the individual can request that an alternative time and date be arranged on one occasion, within 5 working days of the original date. Where an employee requests the postponement of a disciplinary hearing this will be considered on its own merits. If there is a good reason for non attendance the meeting will be re-arranged. If the employee does not attend the second meeting there is no obligation on the Trust to rearrange it again and the manager may decide to proceed with the hearing in the absence of the employee. The letter confirming the rearranged meeting should include a warning to the effect that the matter may be dealt with in their absence.

If the disciplinary hearing could result in dismissal, the individual should be advised of this in the letter. The employee should also make available copies of any statements and/or written material which s/he intends to refer to, along with details of any witnesses who will be present to give evidence, no later than five working days prior to the Hearing.

The Manager hearing the case at the Disciplinary Hearing should not have had any prior involvement in the formal investigation. Decisions relating to the level of disciplinary action to be taken, if any, will be a matter of judgement for the manager(s) who has listened to the information presented during the Disciplinary Hearing. He or she will take into consideration:-

- the seriousness of the disciplinary breach in question
- the relevance and context of facts/information presented
- issues relating to fairness, consistency and the substantial merits of the information presented
- the employee's previous employment record including any previous warnings
- any currently live relevant disciplinary warnings

## **APPEAL PROCEDURE**

### **Introduction**

Employees have the right to appeal against all disciplinary penalties imposed upon them. To do so employees should write to the Executive Director of Workforce stating their reason why they wish to appeal against the disciplinary action within 15 days of the action being confirmed in writing. The Executive Director of Workforce will convene an Appeals Panel to hear the appeal. In cases of staff dismissal, the Panel will comprise of three members, one of whom must be a member of Trust Board and two senior managers who are senior to the dismissing manager. At least one of the managers on the panel must be from a different division from the dismissed employee. All panel members will have had no previous involvement in the case. The employees will be given at least 7 calendar days notice of the date of the appeal hearing.

A Secretary to the Panel will be appointed and they will service the panel and both parties on the day of the hearing and can be contacted prior to the hearing to discuss process.

### **Purpose of the Appeal Panel**

The Appeal Hearing is not intended to be a full rehearing of the case presented at the disciplinary hearing. The purpose of the Appeal Panel is to review the decision that has been taken at the initial hearing. Each party will have the opportunity to present their case in accordance with the procedure as detailed below.

The Panel will review the facts of the case, determine whether the process followed was within Trust guidelines and determine whether a fair decision was taken based upon information available at the time of the disciplinary action being taken.

If new information comes to light following the decision being taken, this will need to be considered by all parties.

To ensure that the panel are prepared for the hearing both management representatives and the employee and their representatives must prepare a statement (referred to as a 'Statement of Case') and any supporting papers for the Panel to consider. This should be forwarded to the Appeals Administrator at least ten days before the date of the appeal. Please note that if no statement of case is received from the employee, then no management case will be issued until the day of the appeal hearing. Copies of the papers submitted to the Appeal Panel will be forwarded to both the management representative, the employee and their representative.

If witnesses are to be called, it is the responsibility of management representatives, the employee, and their representative to contact such witnesses and ask them to attend on the agreed date. Witnesses not involved in the initial hearing can not be called to the Trust Board appeal hearing, although character references may be considered by the panel.

### **Procedure**

At the hearing of a Disciplinary Appeal before the Trust Board Appeal Panel the following procedure shall be observed:

1. The Representative of the Trust Management shall state the case for the Trust and may call witnesses.
2. The Appellant or Representative and the Members of the Trust Board Appeal Panel shall have the opportunity to ask questions of the Management Representative and witnesses.
3. The Management Representative may re-examine the Management witnesses on any matters referred to in their examination by the Appellant / Representative and Trust Board Appeal Panel members. Please note that witnesses not involved in the initial hearing cannot normally be called to the appeal hearing
4. The Appellant or Representative shall state their case in the presence of the Management Representative and may call witnesses for the Appellant.
5. The Management Representative and the Members of Trust Board Appeal Panel shall have the opportunity to ask questions of the Appellant / Representative and witnesses.
6. The Appellant or Representative may re-examine their witnesses on any matters referred to in their examination by the Management Representative or the members of the Trust Board Appeal Panel. Please note that witnesses not involved in the initial hearing can not be called to the appeal hearing
7. The Management Representative and the Appellant's Representative shall have the opportunity to sum up their case if they so wish. The Appellant or their Representative shall have the right to speak last. In the summing up, neither party may introduce any new matter.
8. Nothing in the foregoing procedure shall prevent the members of the Trust Board Appeal Panel from inviting either party or a representative to elucidate or amplify any statement they may have made.
9. The Trust Board Appeal Panel may, at its discretion, adjourn the appeal in order that further evidence may be produced by either party or for any other reason.
10. The Appellant, the Appellant's Representative, the Management Representative and all witnesses shall withdraw.
11. The Trust Board Appeal Panel and the officer appointed as Secretary shall deliberate in private, only recalling both parties to clarify points of uncertainty on evidence already given. If recall is necessary, both parties shall return notwithstanding only one is concerned with the point in doubt.

12. The Trust Board Appeal Panel will be served by an independent Secretary, who will be responsible for all administration matters leading up to the Appeal.

The Secretary will not have had any direct involvement in the matter under consideration and will be impartial when requested to advise the Trust Board Appeal Panel.

13. All parties will be recalled following the panel's deliberations. The Chair of the Panel will announce the panel's decision to all parties and will confirm this in writing within 10 working days, together with the notes of the appeal hearing.
14. The panel may uphold or dismiss the appeal or may substitute the disciplinary decision with an alternative, which could be an increased or decreased sanction.

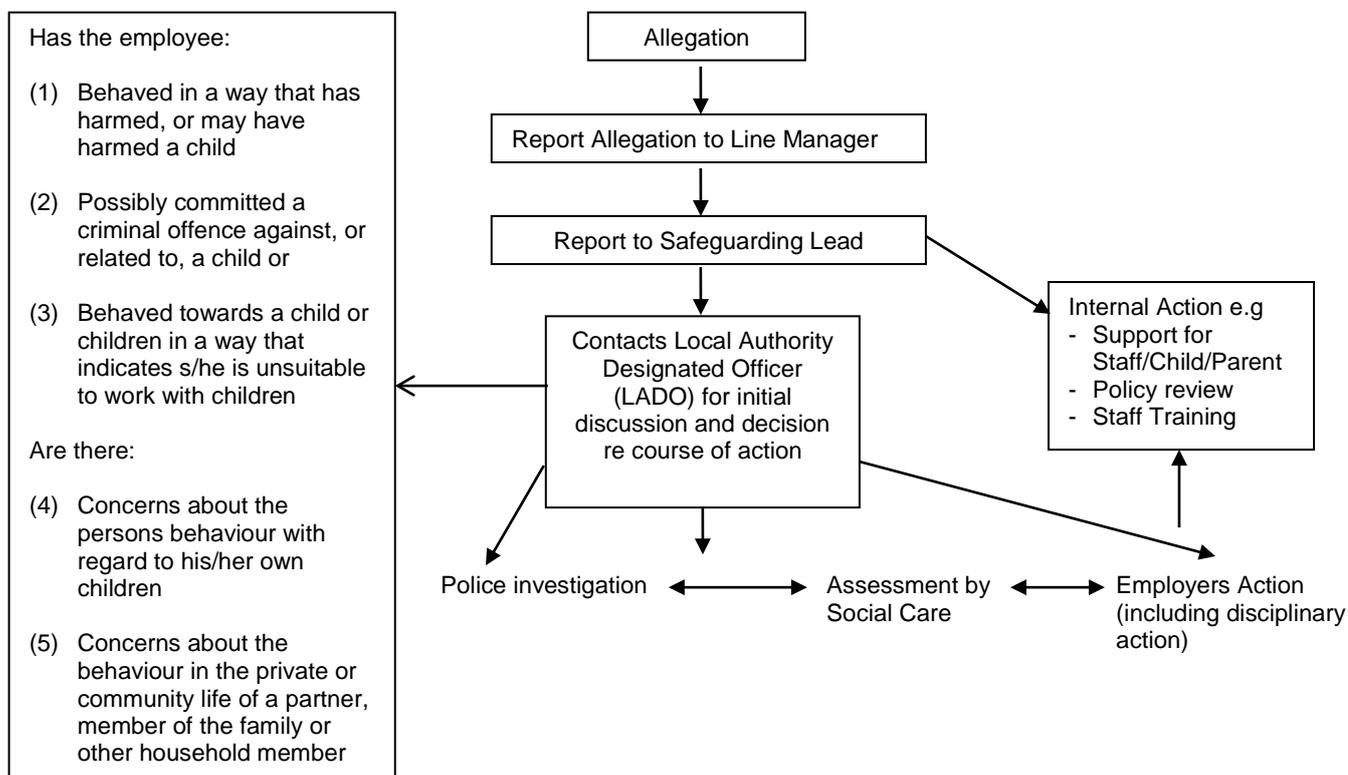
## SAFEGUARDING VULNERABLE ADULTS/CHILDREN

### 1 ALLEGATIONS OF CHILD HARM/VULNERABLE ADULT ABUSE MADE AGAINST PROFESSIONALS:

- 1.1 The local Safeguarding Children/Adults Boards have in place guidance regarding allegations against staff.
- 1.2 Each NHS organisation is required to have a local process that will ensure that we handle any allegations of child harm/abuse of vulnerable adults or risk made against professionals and any volunteers.

### 2 PROCESS

- 2.1 When allegations are made against any employee or volunteer, the employee to whom it is reported to must advise their line manager. The line manager must inform the Safeguarding Lead.
- 2.2 Unless advised by the Local Authority Designated Officer (LADO) or the Police, the Trust investigations and potential disciplinary matters will continue as per the Trust disciplinary procedure.



**LADO tracks progress, monitors outcomes and reports to the LSCB and DfES**

### Suspension Checklist

The purpose of this checklist is to ensure that managers fully advise staff of the terms of suspension and the reason why they have been excluded.

When possible try to arrange staff side representation prior to meeting or advise staff members staff side that this will be taking place.

Explain the purpose of the meeting is to suspend member of staff from duty with immediate effect.

Reason – explanation as to why – alternatives considered but this is best cause of action in this case.

### **Terms of Suspension**

- Not a disciplinary sanction
- Contact person - \_\_\_\_\_ to maintain regular contact should advise if going on holiday or sick.
- Remain on full pay
- No contact with other Trust staff
- Only contact staff side rep, investigating officers or contact person or Occupational Health.
- Must not enter Trust premises (other than for treatment purposes) or meetings relating to the suspension/disciplinary investigation.
- Must make self available during normal working hours (so can be contacted if necessary)
- Annual leave can be taken during suspension – manger should ask if any holidays booked for the next couple of months and to agree annual leave to be taken.
- Issues regarding advising the rest of team
- Staff Support Services – 0151 330 8103

### **Action**

- Confirmed in writing (confirm address)
- Escort off premises, collect any belongings – mobile phones, keys, laptop, name badge, ID card and access fob.
- Consideration to withholding IT Account Access.
- Hand copy of Disciplinary Policy.
- Notify Nurse Bank regarding potential bookings.
- Update letters re progress of investigation.
- (High Secure Services to contact duty manager to advise them)

### **Disciplinary Investigation Guidance Notes**

As a line manager you may be required to undertake a disciplinary fact finding investigation. These guidelines are intended to assist you in this process;

- You will be appointed as investigating officer by your Service Manager or appropriate senior manager.
- The Service Manager will write to the staff member concerned to advise of the allegation and that an investigation will proceed in accordance with the Trust Disciplinary Procedure
- The allegations for the investigation will be set out by the Service Manager to the investigating officer prior to commencement. If you are unsure about the allegation please seek clarification
- When appointed as investigating officer for a disciplinary investigation (Not adverse incident) you must write to the individual concerned to invite them to attend the Disciplinary Investigation outlining the full allegations. The allegation **must** be consistent in **all** documentation. Standard letters can be provided from HR for the investigating officers to amend accordingly.

### **The Disciplinary Investigation Meeting**

- HR support will be offered to investigating officers during all investigations
- The investigating officer should link in with the appropriate HR representative for your Division prior to commencement to agree a convenient meeting date, and during the investigation should further support be required
- Investigation questions should be prepared prior to the meeting and where possible sent to HR. Questions should be full and comprehensive and form a timeline relating to the incident.
- The investigating officer must make arrangements/provide administrative support for notes/minutes to be taken at the investigation meeting. HR are happy to provide any coaching or support necessary to the administrative support to ensure that they are comfortable with the process and what is required.
- Introduce all parties at the meeting
- If the staff member is unaccompanied at the meeting, remind them that they do have the opportunity to be represented and ask whether they are happy to proceed unaccompanied.
- At the beginning of the meeting the investigating officer must explain the process of the fact finding investigation and that it is in accordance with the Trust Disciplinary Procedure. Advise the staff member that the purpose is to gain as much information relating to the allegation as possible, and that the findings will be put into a report which will be presented to the Service Manager who will make a decision as to whether there is a case to answer and whether this should proceed to a disciplinary hearing. Advise that your report will not contain any personal opinions or recommendations.
- Begin your questions and ensure that notes are taken through out and all points are covered.
- If you are interviewing a witness you must advise the staff member that their minutes will be included in the final report which will be available to the person being investigated should the case proceed to a disciplinary hearing. You must also make the staff member aware that they may be called as a management witness at a disciplinary hearing
- At the end of the meeting ask the staff member if they have anything to add that is relevant to the investigation
- Ensure that any statements/minutes taken from staff are typed up and sent out to the staff member (the layout of the minutes follow a standard format – HR can e-mail this to the investigating officer)

- Ensure that the minutes are returned signed and dated
- The findings of the investigation meetings should then be put into a report. The format/layout for the disciplinary report is standard - the HR support would be happy to e-mail a copy across to the investigating officer to assist with this.

### **The Disciplinary Hearing**

Should a decision be made by the case manager that there is a case to answer you will need to be aware of the following;

- The investigating officer will need to present the disciplinary report to the panel at the hearing, summarising key findings. HR can support you through this process.
- If you are calling any management witnesses to the hearing, you be required to notify the witness and talk them through the hearing process and what will happen. You will also be required to prepare questions to ask the witness at the hearing