

TRUST-WIDE NON-CLINICAL POLICY

Disciplinary Procedure

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TRUST-WIDE NON-CLINICAL POLICY

2018 – Version 5

Striving for perfect care for the people we serve

TRUST-WIDE NON-CLINICAL POLICY

DISCIPLINARY PROCEDURE

Further information about this document:

Document name	Disciplinary Procedure HR01
Document summary	This document sets out Trust Policy and Procedure in relation to a colleague's conduct. The Trust expects all colleagues to meet high standards of behaviour. It is important that colleagues understand their obligations and rights regarding this aspect of employment.
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To be read in conjunction with	This policy should be read in conjunction with the following documents: ACAS Code of Practice – 2009 Equality Act 2010 Dignity and Respect at Work – prevention of harassment & bullying at work (HR14) Raising Concerns at Work (Whistleblowing) (HR06) Policy for Handling Concerns about the Conduct, Handling Concerns about the conduct, performance and health of medical staff (HR12) Disclosure and Barring Service Checks (HR16) Nicotine Management (SA 20) IM&T Security Policy (including links to security standards) (IT02) Confidentiality & Data Sharing (IT10) Information Governance (IT 12) Anti-Fraud, Bribery and Corruption Policy (FO6).
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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 adults, including:

- being alert to the possibility of child/ adult abuse and neglect through their observation of abuse, or by professional judgement made as a result of information gathered about the child/ 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/ 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 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 **Fairness, Respect, Equality Dignity, and Autonomy**

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1 PURPOSE AND RATIONALE

1.1 Purpose

This document sets out Trust Policy and Procedure in relation to a colleague's conduct. The Trust expects all colleagues to meet high standards of behaviour. It is important that colleagues 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 colleagues to maintain satisfactory standards of conduct. The trust want to ensure that when something happens that wasn't as expected that we follow a process to decide what actions need to happen next. We want to encourage improvement where necessary and ensure the practice of lessons learnt is embedded in the Trust.

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 using the Just and Learning Culture principles and to give employees the opportunity to respond before taking formal action.

2 SCOPE

This procedure applies to all colleagues of the Trust. The only exceptions will be that of Medical and Dental Staff in relation to professional misconduct where these matters will be dealt with in accordance with Policy HR12. This policy also applies to colleagues 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 colleague'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.

3 DEFINITIONS

- 3.1 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.
'Colleague'	Anyone employed by the Trust, including staff on fixed term contracts.

Term	Definition
'Trade Union/Staff Association'	nally recognised NHS negotiating body.
'Gross misconduct'	Misconduct that is so serious as to potentially make any further relationship between the Trust and the Employee impossible.

4. The Just and Learning Culture

- 4.1 Mersey Care believes a Just and Learning Culture can be seen as an environment where we put equal emphasis on accountability and learning. Its where we ask you to give an account of how the event happened and what it meant to you and what support is needed by those affected by the event both directly and indirectly.
- 4.2 It's a culture that instinctively asks in the case of an adverse event: "what was responsible, not who is responsible". It's not finger-pointing and it's not blame-seeking. That said, a Just and Learning Culture is not the same as an uncritically tolerant culture where anything goes - that would be as inexcusable as a blame culture.

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 accountability 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 employees so that they are fully aware of the Disciplinary Policy and Procedure and are aware of their responsibilities.
- 5.3 **Line Manager** – The key responsibilities of line manager include:-
- 5.3.1 Reviewing the incident, error or allegation and speak to HR to decide if informal resolution can be undertaken.
 - 5.3.2 If not informal resolution then gather the facts to enable application of the Just and Learning principles by the case manager.
 - 5.3.3 Consult with a HR Representative before suspending any employee or taking any formal action.
 - 5.3.4 Follow the Supporting Colleagues Policy to ensure the member of staff's Health and Wellbeing is considered and the correct support put in place eg referral to Occupational Health, counseling or other external support.
 - 5.3.5 Agree the amount of contact such as weekly or fortnightly should an employee be absent from work. If you are involved in the incident yourself then allocate another manager to support the colleague.
 - 5.3.6 Keep a log of all contacts made with the employee – date, time, message left, and details of discussion.

- 5.3.7 Make a referral to Occupational Health if a colleague feels they are not fit to be interviewed to gain an assessment of their fitness to attend.
- 5.3.8 Passing onto the Case Manager/Investigating Officer, or allocated HR adviser any concerns raised by the colleague with them that are related to the investigation.
- 5.3.9 Ensuring that procedures are used primarily to help and encourage improvement
- 5.3.10 Keeping written records and ensuring confidentiality.
- 5.3.11 Ensuring that all colleagues are aware of required departmental standards
- 5.3.12 Ensuring that all actions are in accordance with this Disciplinary Procedure

5.4 **Case Manager** –has responsibility for:-

- 5.4.1 To consider the information provided regarding the incident by the line manager - to decide the next steps using the Just and Learning Principles with the senior HR representative such as is further information required.
- 5.4.2 If required, commissioning an investigation of the allegation/s
- 5.4.3 Appointing an investigating officer in conjunction with the HR representative.
- 5.4.4 Consider whether suspension is necessary to safeguard the investigation.
- 5.4.5 Determining the terms of reference for the investigation including all allegations made, this may include updating the terms of reference and allegations if new evidence requires a change. The colleague will be advised in writing of the revised allegations.
- 5.4.6 Review suspensions and whether they need to continue based on the investigations progress.
- 5.4.7 Review the progress of the investigation ensuring timescales are adhered to
- 5.4.8 Deciding if there is a case to answer or not upon completion of investigation.
- 5.4.9 Present the case to the hearing chair.

5.5 **Investigating Officer** – has responsibility for:

- 5.5.1 The investigating officer will investigate and establish the facts in the case by holding fact finding interviews and gathering statements and data as appropriate.
- 5.5.2 The investigating officer will produce an investigation report for the case manager. The report will outline the facts of the case and should not include any recommendations.
- 5.5.3 To interview all relevant people including those who are leavers, agency staff, pure bank and any other external stakeholders.
- 5.5.4 The investigating officer should make the case manager aware of anything additional that arises during the investigation. The case Manager will review and decide whether an amendment to the terms of reference and allegations are required.
- 5.5.5 Updating the colleague on where the investigation is up to, including any delays and the reasons for these
- 5.5.6 Must keep the case manager updated of anything that would mean suspension could be lifted or amended duties altered.
- 5.5.7 Should the matter proceed to a disciplinary hearing the investigating officer may be called as a witness.

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

- 5.6.1 Providing advice to line managers following an adverse event to decide the next steps.
- 5.6.2 Ensuring that employment policies and procedures are legally compliant.
- 5.6.3 Providing necessary professional guidance and advice to enable the process.

- 5.6.4 Liaising closely with Local Counter Fraud Specialist (LCFS) in respect of parallel criminal and disciplinary investigations.
- 5.6.5 Ensuring that the investigation is following due process and conducted in a timely manner, and escalating where appropriate.
- 5.6.6 Supporting the investigating manager with their fact finding meetings.
- 5.6.7 Support the Chair at the disciplinary hearing.
- 5.6.7 Updating the colleague on where the investigation is up to, including any delays and the reasons for these.
- 5.6.8 Maintaining accurate records and monitoring progress via a central database.
- 5.6.9 Ensuring referral to the Disclosure and Barring Service and professional lead where appropriate.
- 5.6.10 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.
- 5.6.11 Provide advice to line managers, following an adverse event to decide the next steps.
- 5.6.12 On conclusion of the case Human Resources will ensure retention of all records pertaining to the case.
- 5.6.13 Human Resources are also responsible for holding and updating a central database of disciplinary cases and for ensuring consistency in any action taken.

5.7 Colleagues—are responsible for:

- 5.7.1 All colleagues are to ensure that their conduct is aligned with Trust values and behaviours. All colleagues of the Trust should ensure that they understand and comply with the Trust standards relating to conduct and they carry out their duties in accordance with contractual obligations and with appropriate care.
- 5.7.2 Colleagues who are absent from duty due to sickness whilst involved in a fact-finding investigation have a responsibility to attend Occupational Health to assess fitness to attend an interview.
- 5.7.3 Colleagues are responsible for informing the investigating officer of anybody whom they wish to be interviewed as part of the investigation.
- 5.7.4 Attending the hearing however, if a Colleague is unable to attend a hearing even after re-arranging to a different date then a hearing can be held in their absence. Exceptional circumstances will be taken into consideration. Colleagues must be aware that disciplinary action, up to and including dismissal can be taken in their absence if they fail to attend fact finding meetings or hearings. Colleagues may request that their Union representative/work colleague may attend this hearing on their behalf and/or the colleague may make written representations.

5.8 Trade Union Representatives

- 5.8.1 Trade Union Representatives have an important role to play in providing advice and/or support to individual colleagues, work in partnership with the Trust to ensure conduct and behavior is in line with the Trust values and behaviours.
- 5.8.2 A colleague under investigation for alleged misconduct or facing formal disciplinary proceedings has the right to be accompanied by an accredited trade union representative. Accredited trade union representatives can present evidence on behalf of the colleague at the disciplinary hearing and appeal hearing.
- 5.8.3 Trade union representatives who are being investigated have the right to be accompanied by a regional officer.

6. ASPECTS FOR CONSIDERATION

6.1 Allegations of Fraud and the interface with NHS Counter Fraud

- 6.1.1 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 (LCFS). The involvement of the LCFS does not necessarily mean a disciplinary investigation will not take place and each situation is to be judged on its own merits.
- 6.1.2 For both the LCFS and HR, any matter referred which raises any suspicion of theft, 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).

6.2 Local Counter Fraud Specialists

- 6.2.1 All suspicions of theft, 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, concerns should be reported to another member of the MIAA Counter Fraud Team.
- 6.2.2 Alternatively, suspicions can be reported through the NHS Fraud and Corruption Reporting Line (FCRL) (Mon-Fri 8am-6pm) on free phone 0800 028 40 60; or, via the NHS Online Fraud Reporting Form www.reportnhsfraud.nhs.uk; or, via the Trust's Executive Director of Workforce.
- 6.2.3 Please be aware that personal details do not have to be disclosed when reporting a concern.

6.3 Duty of Candour

- 6.3.1 The Francis report highlighted the importance for NHS bodies to be open, honest and transparent. This includes:
 - a) The Trust sharing information from a disciplinary investigation with service users and carers regarding a patient safety incident, where appropriate
 - b) Encouraging open and honest dialogue with Service Users
 - c) Where appropriate, interviewing service users as part of the process.

6.4 Whistle-blowing

- 6.4.1 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 (Freedom to speak up policy including Whistle-blowing – HR06). If as a result of this, there are concerns about the conduct of an employee, the Disciplinary Procedure will be convened. The trust has a Freedom to Speak up Guardian who colleagues can go to raise a concern about their or another colleagues negative experience of care or working for the trust if it has not been addressed by the line manager.

6.5 Dignity and Respect at Work

- 6.5.1 Any complaints made 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 (HR14) for further information.

6.6 Safeguarding

- 6.6.1 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 Deputy Director of Nursing. See Safeguarding Policy (SD17).

6.7 Information Governance

- 6.7.1 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:

- a) Held safely and confidentially
- b) Obtained fairly and effectively
- c) Recorded accurately and reliably
- d) Used effectively and ethically
- e) Shared appropriately and lawfully

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

- 6.7.3 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 an employee then the seriousness of the incident will determine the level of misconduct applicable. For further information see Trust Policy Information Governance & Information Risk (IT12).

6.8 Medical Staff

- 6.8.1 For Medical Staff employed by the Trust, 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.

7. PROCESS / PROCEDURE

7.1 Review of adverse event

- 7.1.1 It is with the aim of reducing disruption and undue stress to anyone involved in an adverse event that the 'review of the event' step is being introduced.
- 7.1.2 In line with the Just & Learning Culture as soon as management are made aware of an adverse event then there should be a review of the whole of the event. This step of the procedure is to ensure initial facts are established to enable decision makers to decide upon the next steps, for example was it a system or process that led to the event rather than an individual's conduct and whether the matter requires progression to formal investigation or not.
- 7.1.3 This will require initial facts to be established such as dates & times of incident, people involved or people who have potentially witnessed the incident (all parties' not just colleagues), where the incident took place and any other information available for example CCTV. To gather this initial information it may be that managers need to ask people involved for their account of the adverse event, this will not be an official investigation fact finding meeting and will be informal. Notes

of these initial informal fact finding meetings will be made available to the colleague prior to or at the beginning of a formal fact finding meeting if the matter moves to formal investigation stages. These will be reviewed with the colleague and any necessary amendments will be made in agreement before being used for the formal process.

- 7.1.4 The review of an incident/issue should be completed as quickly as possible with management treating this as a high priority. As a guideline this should not take any longer than 3 days however this is not a strict timeframe as it will depend on the specific circumstances. If the facts cannot be established within a timescale in which other action may need to be implemented, for example suspension/ a move/ alternative duties this may have to commence for the protection of service users or preservation of evidence, however if the initial facts provide enough information for any action already taken to be reversed then this will be done. In terms of who will carry out the review of an incident the senior managers in each division will decide upon this on a case by case basis dependent on the circumstances.

7.2 Just and Learning Culture Principles

- 7.2.1 Every member of staff has a valuable role to play and a unique contribution to make that will ensure the highest possible standards of care are delivered and sustained.
- 7.2.2 Need to provide a supportive approach to improving and changing behaviour and practice within the Trust
- 7.2.3 Encompass a more proactive approach to acting on improvements either at a personal or organisational level in order to learn from experience and prevent or reduce mistakes or risk.
- 7.2.4 Creation of a culture of openness with a emphasis on improvements leads to the establishment of trust between staff and managers
- 7.2.5 Staff will need to feel confidence in the organisation, be able to see their involvement/contribution recognised and making a difference in the service provided.
- 7.2.6 Immediate gathering of facts and gain understanding of the situation that has occurred before making any decisions on suspension or not/move to another placement
- Details of the issue from the individuals perspective
 - Explore the knock on effects (where applicable) of the incident/issue/practice
 - Explore the behaviours/actions
- 7.2.7 There will be some situations where the disciplinary procedure will clearly be appropriate; however this framework seeks in all other circumstances to provide an alternative and supportive mechanism

8 SUSPENSION

8.1 Suspension information

- 8.1.1 In some circumstances a colleague may need to be suspended from work - this will be for no longer than is necessary to investigate the allegations which will be confirmed in writing.
- 8.1.2 Suspension should not be regarded as disciplinary action and is a holding measure to enable investigation and does not imply that any decision has already been made about the allegations.
- 8.1.3 During the period of suspension the Investigating Officer and HR must maintain regular contact with the suspended colleague, in order to keep the colleague

informed of any progress in the investigation. The Investigating Officer and HR Representative will agree with the colleague what will be reasonable contact for the duration of the suspension.

- 8.1.4 During the suspension, the colleague 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 there is a booking reference for a shift).
- 8.1.5 During suspension, the colleague must not make direct contact with our Trust colleagues to discuss details of the particular case other than their Trade Union Representative, the Investigating Officer or HR Representative. A colleague on suspension must not enter Trust premises, other than to obtain treatment for them 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.

8.2 Annual leave during suspension

- 8.2.1 The trust will honor annual leave which has been pre booked with the trust prior to suspension. However, if the colleague wishes to take additional annual leave during the period of suspension they can seek permission from the case manager.

8.3 Working whilst suspended

- 8.3.1 Colleagues who are suspended from duty must remember that all aspects of their employment contract remain effective and therefore should ensure they remain available to attend any required meetings with managers within the trust.
- 8.3.2 Colleagues who are suspended must discuss with the case manager if they hold a second job and want to continue with this work during their suspension. This discussion needs to cover the type of work, what the role is and whether the reason for suspension would impact on this other workplace. This will be noted on the individuals file.

9 SPECIAL RULES – CRIMINAL CHARGES

- 9.1 A colleague must disclose to their manager any arrests, convictions, cautions, warnings, reprimands or bind overs that are issued to them prior or during employment. Where a colleague's 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.
- 9.2 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.
- 9.3 A criminal investigation, charge or conviction relating to anything outside work may be treated as a disciplinary matter if considered that it is relevant.

10 INFORMAL STRUCTURED CONVERSATION

- 10.1 Most concerns can often be addressed effectively and swiftly by the colleague's immediate line manager having a structured discussion with the individual regarding the standards required and the required improvement in their conduct. If an improvement is not seen then this may lead to performance management.
- 10.2 During this meeting the Manager should;

- a) Explain that the meeting is informal in approach and is to discuss concerns. Discuss the concerns that have come to light with the colleague and explain that the reason for holding an informal meeting is to reflect on the concerns and discuss the reasons and explore any support required.
- b) Inform the colleague of the standards expected by the Trust and the level of improvement needed. This will be documented and a copy shared with the colleague.

11 BREACHES OF CONDUCT

11.1 Fast Track Procedure

11.1.1 Mersey Care NHS Foundation Trust has introduced a 'Fast Track' system within the Disciplinary Policy to help speed up the process of colleagues 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 colleague 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 colleague will be informed of the sanction without the right to appeal.

11.1.2 Certain medication errors will be considered as part of the Fast Track process.

11.1.3 A first failure to maintain registration with appropriate professional body can be considered as part of Fast Track process.

11.1.4 This will not be used for matters that may result in a final written warning or Gross Misconduct.

11.2 Misconduct

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

- 1) Failure to comply with a reasonable request;
- 2) Abusive, objectionable or insulting behaviour;
- 3) Foul or abusive language;
- 4) Minor Breach of Professional Code of Conduct
- 5) Repeated failure to maintain registration with appropriate professional body;
- 6) Communication of any unauthorised written material;
- 7) Failure to maintain the required standard of dress or presentation;
- 8) Minor breaches of employment contract
- 9) Negligent conduct;
- 10) Minor breaches of Trust Policies;
- 11) Breach of the Trust's Standing Financial Instructions (SFIs), Standing Orders (SOs), and/or Scheme of Reservation and Delegation (SoRD); standards of Business Conduct
- 12) Failure to comply with Trust Values
- 13) Failure to renew DBS
- 14) Accessing inappropriate materials on the Internet during working hours
- 15) Inappropriate use of internet and social network sites, for example Facebook and Twitter.

11.3 Gross Misconduct

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

- 1) Theft/Misappropriation – any instance of unauthorised removal of property from the Trust or from a service user, carer or members of staff
- 2) Physical Assault – Physical assault upon a service user, carer, a fellow employee or member of the public;
- 3) Threatening/Menacing Behaviour towards a service user, carer, a fellow employee or a member of the public;
- 4) 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;
- 5) Serious Damage – to Health Service property, property of service users'/carers, or members of staff;
- 6) Breach of the Anti-Fraud and Corruption (F06) – Acceptance of gifts,, money, goods, favours or excessive hospitality in respect of services rendered;
- 7) 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;
- 8) Discrimination or harassment;
- 9) Breach of Professional Code of Conduct
- 10) The concealment or destruction of evidence;
- 11) Inappropriate or Unprofessional relationship with any service user.
- 12) Deliberately accessing or downloading material from any site that is of a pornographic, discriminatory or of an offensive nature – IM&T Security Policy (IT02);
- 13) Sleeping whilst on duty;
- 14) Possession or attempt to supply alcohol or substances (which may or may not be illicit);
- 15) Being under the influence of alcohol or substances (which may or not be illicit), either prior to reporting for duty or whilst on duty, which has impaired ability to undertake duties;
- 16) Communicating any material which breaches the Trust Equality and Diversity policies;
- 17) Commits a serious act, which is deemed to be prejudicial to the interests of the Trust or its employees;
- 18) Breach of Trust Corporate Nicotine Management Policy (SA20) on more than 2 occasions;
- 19) Knowingly taking carers/parental/paternity/adoption leave for purposes other than supporting a child/dependant
- 20) Making or sending malicious or vexatious allegations against the Trust, managers, colleagues or service users;
- 21) Victimising an employee who has raised concerns under the Whistleblowing, Dignity at Work, Grievance, Disciplinary Policies/Procedures;
- 22) Serious breach of the Trust's Standing Financial Instructions (SFIs), Standing Orders (SOs), and/or Scheme of Reservation and Delegation (SoRD);
- 23) 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.

- 24) Deception- giving false information including qualifications, health, immigration status, failure to disclose a criminal conviction or caution in order to gain employment or other benefits.

12 PROCEDURE FOR INVESTIGATIONS

- 12.1 The procedure for conducting investigations is set out in detail in a guidance document entitled the Investigation Toolkit.
- 12.2 An adverse event is reported.
- 12.3 An initial review will take place and may also involve Trade Union colleagues.
- 12.4 If this is viewed as potential misconduct a case manager will be appointed and either a senior manager or the case manager will inform the colleague who is the subject of the investigation verbally (where possible) of the allegations they are facing. This will be confirmed in writing within 7 calendar days of the alleged adverse event wherever possible. This letter should explain the allegation(s) which should be specific. If the colleague has difficulty reading the contents of the letter should be explained to them orally.
- 12.5 Prior to any formal disciplinary hearings being held, a full and impartial fact finding investigation into the circumstances and facts relating to the alleged misconduct will take place.
- 12.6 A Case Manager will appoint an Investigating Officer whose role it is to establish the facts and provide a fact finding report outlining these to the case manager who will decide, with advice from Human Resources, whether there is a case to answer.
- 12.7 The case manager will set the terms of reference at the commencement of the investigation and share these with the investigating officer. If new issues come to light during the course of the investigation, the terms of reference must be amended.
- 12.8 A HR representative will be assigned to support the investigating officer. The investigating officer should not have been involved in the adverse event. As part of the investigation, the investigating officer must write to the colleague 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 fact finding interview will be sent out within 7 calendar days and must be returned within 7 calendar days.
- 12.9 All individuals interviewed as part of the investigation will be provided with a statement of the fact finding interview. 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 officer. Notes must be returned as soon as possible after receipt of the draft statement. Failure to return the notes within 7 calendar days (unless prior agreement for a different period of time) will mean that the notes of the investigatory meeting will be entered into the Fact Finding Report as they stand).
- 12.10 The investigating officer must update the case manager every two weeks. Regular contact must also be maintained with the colleague 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.
- 12.11 Both the colleague under investigation and the Case Manager 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 fact finding investigation and invited to attend any subsequent hearings. The

hearing chair considering the case may also request the attendance of witnesses if their presence is necessary.

- 12.12 The onus is upon the Case Manager and staff side representative for the colleague or the individual employee if they are not represented to ensure that details of their witnesses are given to HR. HR will write to them with the dates, times and venue of the hearing.. The Trust will ensure that every effort is made to facilitate their availability at the hearing.
- 12.13 A witness may be accompanied at the hearing by a workplace colleague not involved in the investigation or by a trade union representative.
- 12.14 Under certain circumstances the colleague, Case Manager, or the panel may call people who are not colleagues of the trust to attend as witnesses, if these have previously been involved in the fact finding investigation. Their evidence should clearly demonstrate why their attendance is relevant.

13 Representation

- 13.1 A Colleague may wish to bring a representative to the fact finding interviews, disciplinary hearing or appeal hearing. The representative may be either a trade union representative or a work colleague not connected to the investigation.
- 13.2 If the colleague's representative is unavailable at the time a meeting is scheduled and will not be available for more than 7 calendar days afterwards, the trust may ask the colleague to choose someone else to represent them.

14 Employee resignation during an investigation

- 14.1 Where a colleague leaves before an investigation is completed any reference provided for that employee will state they left whilst under investigation and there is an unresolved investigation into alleged misconduct. In some cases, it may be necessary to conclude the investigation following resignation of a colleague. If the case indicates that it is serious enough to warrant a referral to the DBS or a professional body the colleague will also be notified of this and the referral made.
- 14.2 Advice should be sought from an HR Business Partner in these circumstances.

15 Where a grievance is raised

- 15.1 Where a formal grievance is raised during a disciplinary process, the appropriate action will be determined on a case by case basis.
- 15.2 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.

16 Deciding if there is a case to answer

- 16.1 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.
- 16.2 The decision should be noted in writing to the individual within 7 calendar days of receipt of the report.

17 Arranging a disciplinary hearing

- 17.1 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.
- 17.2 The hearing chair 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)
- 17.2 The case manager will present the case.
- 17.3 Disciplinary hearings should be held as early as 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. In exceptional circumstances where a colleague requests the postponement of a disciplinary hearing this will be considered on its own merits.. 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 colleague. The letter confirming the rearranged meeting should inform the colleague that the matter may be dealt with in their absence.

18 Formal disciplinary hearing

- 18.1 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 14 calendar days in advance unless otherwise mutually agreed. However, best practice would be that where possible documents would be sent out as soon as possible.
- 18.2 If the disciplinary hearing could result in dismissal, the individual should be advised of this in the letter.
- 18.3 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 judgment for the manager who has listened to the information presented during the Disciplinary Hearing. They will take into consideration:-
 - a) the seriousness of the disciplinary breach in question
 - b) the relevance and context of facts/information presented
 - c) issues relating to fairness, consistency and the substantial merits of the information presented
 - d) any currently live relevant disciplinary warnings
 - e) any mitigation
- 18.4 After the conclusion of the disciplinary hearing, the outcome including where no formal sanction has been given should be confirmed by the chair of the hearing. This should be in writing including any other associated recommendations within 7 calendar days of the date of the hearing where possible; any delays in the decision for exceptional circumstances must be communicated in writing. 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.

19 DISCIPLINARY SANCTIONS

- 19.1 The sanctions for misconduct are set out below. No sanction should be imposed without a hearing unless fast track process has been followed. We aim to treat colleagues fairly and consistently, and a sanction imposed on another colleague 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.

- 19.2 A colleague will not normally be dismissed for a first act of misconduct, unless it is decided that it amounts to gross misconduct.
- 19.3 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 colleague of minor acts of misconduct which have been the subject of informal counselling (see Section 11.2 for example of misconduct).
- Fast Track process

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 the colleague's record; or
- Misconduct that is considered sufficiently serious to warrant a final written warning even though there are no other active warnings on the colleague's record.

A final written warning will remain live for a period of **12 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 a final warning on the colleague's record; or
- Any gross misconduct regardless of whether there are any active warnings on the colleague's record. dismissal without notice or payment in lieu of notice.

(d) Transfer 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 downgrade may be offered as an alternative to dismissal.

(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 a colleague 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.

20 MANAGEMENT OF SANCTIONS

- 20.1 It is the responsibility of the colleague's line manager to monitor the conduct and performance of the colleague 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 colleague up to and including the end of the period stipulated in the warning.
- 20.2 The HR Department will monitor and maintain records of all disciplinary cases. 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.

21 APPEALS

- 21.1 Colleagues have the right to appeal against all disciplinary sanctions given to them. To do so, colleagues should write to the Executive Director of Workforce stating the reason why they wish to appeal against the disciplinary action. This must be within 21 calendar days of the action being confirmed in writing. The Executive Director of Workforce will convene an Appeals Panel to hear the appeal.
- 21.2 In cases of dismissal appeals, 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 aim to take place within 8 working weeks of the receipt of the appeal by the Trust, although the Trust may, in exceptional circumstances, be entitled to extend this period.
- 21.3 The colleague will receive written acknowledgement of their request to appeal and be asked to provide a written statement outlining their reasons for appeal. This should normally be within 21 calendar days of the receipt of the acknowledgement letter.
- 21.4 The appeal statement will be shared with management who will provide a written response statement within 21 calendar days of receipt.
- 21.5 Both statements will be shared with both parties at least 14 calendar days before the appeal hearing date.
- 21.6 Once the appeal is heard the outcome will be confirmed in writing.

22 CONSULTATION

- 22.1 The following colleagues / groups were consulted with in the development of this policy document:
- HR Policy Group
 - Senior Managers
 - Staff Side Representatives

23 TRAINING AND SUPPORT

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

24 MONITORING

- 24.1 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.

25 SUPPORTING DOCUMENTS

List of Supporting Documents

Ref No	Name	Purpose
	ACAS Code of Conduct – 2009	
	Equality Act 2010	
HR 14	Dignity and Respect at Work – prevention Of harassment & bullying at work	
HR 06	Raising Concerns at Work (Whistleblowing)	
HR 12	Handling concerns about the Conduct, Performance and Health of Medical Staff	
HR 16	Disclosure and Barring Service Checks	
SA 20	Nicotine Management	
IT 02	IM & T Security Policy (including links to Security standards)	
IT 12	Information Governance	

26 GLOSSARY OF TERMS

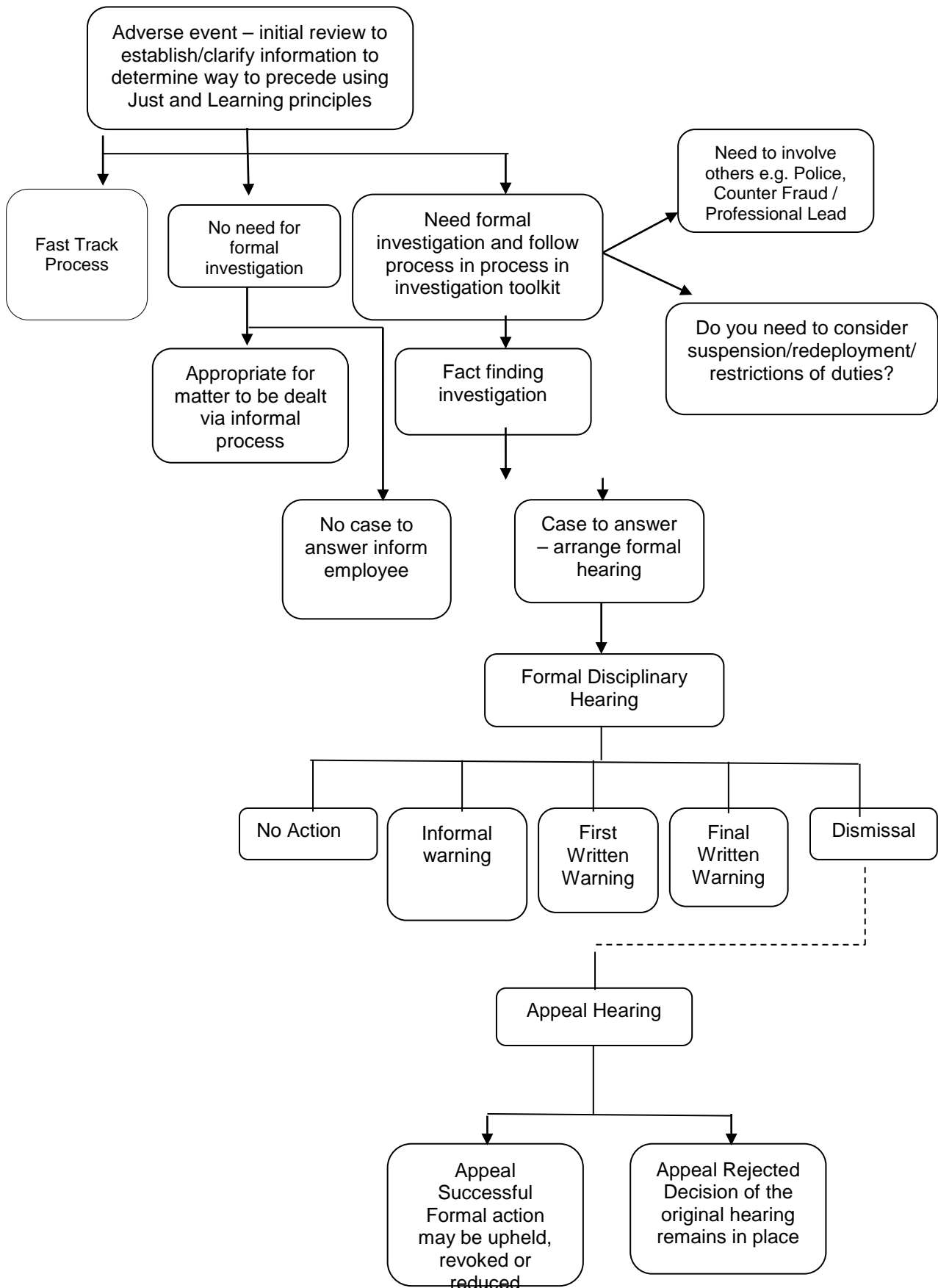
Glossary of Terms

Term	Description	Reference
ACAS	Advisory, Conciliation and Arbitration Service	
GMC	General Medical Council	
NMC	Nursing & Midwifery Council	
HPC	Health Professional Council	

MERSEY CARE NHS FOUNDATION TRUST LEVELS OF AUTHORITY

CATEGORY OF STAFF	SUSPENSION/INFORMAL COUNSELLING 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



FAST TRACK PRINCIPLES

Fast Track Principles

Where the disciplinary outcome of a particular case is anticipated to result in a First Written Warning an colleague 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 colleague 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 colleague 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 colleague or if there is a connected disciplinary process involving another colleague.

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 completed by the manager or colleague and submitted to the divisional HR Team within 72 hours of the initial request.

Colleagues 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 colleagues 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 Head of Human Resources.
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 Head of HR.. 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 divisional HR Team to the colleague and their manager and also staff side if they are involved.
3. Once a decision has been made The Head of Human Resources will remind employees that there will be no right of appeal against a warning given using Fast Track (which is different ACAS guidance).
4. 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 divisional HR Team..

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, 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 calendar 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 colleague and advises that it (they) will be awarded the agreed sanction of first written warning.
- The senior manager confirms with the colleague that they accept the allegations previously stated.
- The colleague 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 colleague.
- 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 colleague 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 colleague. The record of any warning will be kept on the personal file.

- The disciplinary sanction imposed will be given in accordance with the Trust's Disciplinary policy.

FAST TRACK PROFORMA (to be completed by the manager or colleague)

Name:	
Post:	
Division:	
Ward/Department:	
Date of Allegation:	
Allegation: (to be written by the manager)	
Meeting to discuss allegation date:	
Present:	
Main Points discussed:	
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	
I (insert name) agree and confirm that I would like to be considered for Fast Track:	
I have no right of appeal against the sanction/First Written Warning Issued. Signed (<u>insert name</u>):	<input type="checkbox"/>
I have discussed with Staff Side rep or Workplace colleague:	<input type="checkbox"/>
Understand allegation and admit the allegation occurred as stated:	<input type="checkbox"/>
Request no further investigation of this allegation:	<input type="checkbox"/>

Received by Divisional HR Team 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 colleague

Dear xxxxxx

Fast Track Disciplinary Meeting

I am writing regarding your Disciplinary Fast Track Request Form dated and would like to 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 HR01 which is available on the trust intranet site. 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 me at least 5 calendar days prior to the day of the meeting, by emailing (INSERT NAME) at Name@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 Divisional HR Team