

Disciplinary Policy and Procedure

This Policy is designed to ensure that all employees are aware of and maintain the high standards of conduct required by this Trust. It describes clearly the process for reporting, investigating and managing allegations of misconduct and ensures all employees are treated fairly and consistently.

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Version Control and Summary of Changes

| Version number | Date | Comments (description change and amendments) |
|----------------|--------------|--|
| 1 | January 2012 | Draft -Version .1.2 replaces the Leicestershire Partnership NHS Trust's (LPT's) former Performance and Conduct policy dated 1st November 2005(Updated Feb and June 2007) and aligns the disciplinary policies from LPT, Leicester City Community Health Services (LCCHS) and Leicestershire County and Rutland Community Health Services (LCR CHS). It incorporates current employment law, Agenda for Change terms and conditions of service, ACAS guidance, professional codes of conduct and good practice. This policy replaces the disciplinary policies of the organisations referred to above so that all employees of LPT are now covered by the same disciplinary policy. |
| 2 | 22/05/12 | Added the following; 6.6 – The employee will be kept informed of progress by the line manager 6.7 – Any suspension will be kept as short as possible and will be reviewed regularly as a minimum every 4 weeks |
| 3 | 11/06/12 | Added Abbreviations on page 5 Section 10.15 added- Where possible and where the name of the employee's staff side representative is known, the date of the investigation meeting, disciplinary or appeal hearing will be agreed with the employee and their representative. All parties should make efforts to avoid unreasonable delay when arranging a mutually convenient date and time for the investigation, disciplinary or appeal hearing. |
| 4 | 27/07/12 | 8.21 amended 'suspending manager' to 'commissioning manager' 8.22 – added 'cooling off' period in the definitions, timescales and recording for pay purposes. |
| 5 | 03/04/13 | Typos amended and flowchart updated due to error 10.14 amended to replace CRB with DBS |
| 6 | 02/Dec/14 | LPT has been replaced by the Trust throughout the document for reasons of consistency. Other changes have been made based on best practice, advice received from the Equality Team, and Employment Law Advisors and following consultation with the Staff Side Policy Group and the Healthy Organisation Group (HOG). The Suspension section has been moved from paragraph 8.0 to paragraphs 10.0 to 10.4. Paragraphs 8.4 ,8.6 8.10 have been moved to Appendix |

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| | | <p>3,the Guidance on Suspension and Checklist</p> <p>Alternatives to Suspension section moved to Section 9 from Section 8.29 to 8.34</p> <p>Moved Cooling Off period to Paragraph 8.0 from 8.22</p> <p>Alternative to holding a disciplinary hearing moved from Paragraph 8.35 to paragraph 11.18.</p> <p>Paragraph 8.36 is now paragraph 11.20 -. The paragraph was unclear about the role of HR in the issuing the warning by agreement meeting and has been amended to reflect this.</p> <p>Paragraph 11.22 –Agreed there should be no right of appeal where an employee accepts a warning by agreement. Wording of paragraph amended to reflect this change.</p> <p>Added new paragraph on Incremental Progression at 11.46</p> <p>11.46 - Where a disciplinary panel issues either a First Written Warning or a Final Written Warning and the employee has not reached the top of their pay band, the terms of the Trust Starting Salaries and Pay Progression Policy will apply. This means that incremental progression may be withheld for a period of 12 months whilst the warning is live. Where the misconduct is proven and has impacted on the performance of the employee the disciplinary panel will make a recommendation to withhold incremental progression. The final decision to withhold incremental progression will rest with the employee’s line manager. The employee will be advised of this at the hearing and it will be confirmed in the disciplinary hearing outcome letter. A copy of the letter will be provided to the line manager so that the appropriate action can be taken.</p> <p>Holding a disciplinary hearing- Paragraph 8.60 - A copy of the digital recording will be given to the employee This has been removed. It now reads: The recording will be transcribed if the employee has lodged an appeal or a complaint at an ET. A copy of the digital recording may be given to the employee on request</p> <p>Removed paragraph 9.36 –limiting summing up time to 15 minutes.</p> <p>Amended paragraph 11.37 to read:and summing up</p> <p>Levels of disciplinary sanction Added the following to paragraph 11.47 - In cases of serious or gross misconduct, it may be appropriate to apply a higher disciplinary sanction directly without first applying a lower</p> |
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sanction.

Level 3 – Dismissal in a case of gross misconduct:

Paragraph 11.59 amended to read as follows:

b) In a case of gross misconduct: where the nature of the breach of discipline is so serious that it warrants dismissal without notice **and without pay in lieu of notice** i.e. summary dismissal.

Alternative to dismissal or additional action accompanying First or Final Written Warnings

Added - Where a first or final written warning has been issued by agreement (paragraphs 11.18 - 11.23), supplementary actions as detailed in paragraph 11.64 may also be applied.

Paragraph 11.48 amended to read :

Supplementary actions as detailed in paragraph 11.64 below may also be applied to both First Written Warnings and Final Written Warnings.

Alternative to Dismissal with a Final Written Warning - paragraph 11.64 amended to read:

In exceptional circumstances the disciplinary panel may feel that an alternative to dismissal is a more appropriate course of action than dismissal. In these cases alternatives such as relocation/reassignment or demotion (**subject to the availability of a suitable vacancy**) can be imposed along with a final written warning.

Appeal Hearings Paragraph 12.10 amended -

Agreed not to issue a copy of the appeal hearing recording to the employee as this does not routinely happen. Sentence removed. **Added** –However if an ET is lodged then the recording will be transcribed.

Section 13 - Use of witnesses and witness statements.

Added the following paragraphs for clarity:

13.4 Any witnesses called to the hearing on the employees behalf must be known to the employee and be able to provide evidence relevant to the allegations.

13.5 Patients/Service Users should only be called as witnesses in exceptional circumstances. Advice should be sought from Human Resources regarding the appropriateness of calling patients/service users as witnesses. Each case will be looked at on its own merit.

Section 16 – Training – new paragraph added.

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| | | <p>Appendix 1 – Disciplinary rules Added new rules based upon advice received from the Equality and Human Rights team. These are rules:2.3,3.13 and 3.14</p> <p>Added new rules based on best practice and Employment Law advice at 3.31,3.32 and 3.15</p> <p>Appendix 3 – Suspension checklist and guidelines amended.</p> <p>Suspension letter – agreed to increase period of time in which to issue letter from 3 days to within 5 working days</p> <p>Flowchart – Appendix 4 – Disciplinary Hearing Process Process at the end of the hearing amended to remove adjournment for mitigation .Now move straight to decision. Management summing up and recommendations and staff side summing up and mitigation are presented without the need for an adjournment.</p> <p>Added - a prompt to remind panel that they should inform the employee if a referral to their Professional body or DBS is to be made. Also whether a recommendation to withhold incremental progression is to be made.</p> <p>Disciplinary procedure timescales – Appendix 6 Provides further detailed clarification on roles and timescales.</p> <p>Appendix 7 - Added NHS Constitution Principles which apply to this policy.</p> <p>Appendix 8 - Due Regard Screening added</p> |
| 6.1 | June 2016 | <p>Amended Appendix 2: Levels of Authority for taking Formal Disciplinary Action within the Disciplinary Policy and Procedure Panel composition: Added category of staff ‘Band 8c or above’ and removed and replaced Non-Executive Director on appeal panels for ‘All other staff’</p> |
| 6.2 | July 2016 | <p>Amended Appendix 4:How the Disciplinary Hearing will run Guidance to panel on actions to be taken when hearing reconvenes to deliver decision: At bullet point 2 added reminder to panel, where a decision to dismiss has been taken and employee has a bank worker agreement, to consider recommendation to terminate bank agreement and to notify the bank hearing panel of the recommendation.</p> <p>Amended Appendix 1: Disciplinary Rules Changed to Examples of Conduct that may result in Disciplinary Action</p> |

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| 6.3 | December 2016 | <p>Amended Paragraphs 11.12 ,11.41 and 12.10 : Digital Recordings</p> <p>For reasons of Information Governance removed references to copies of digital recordings being made available to employees on request. Changed to employees will be able to listen to the digital recording on request if there is a dispute about the contents of the notes.</p> |
| 6.4 | June 2017 | <p>Added new example of behaviour that may warrant disciplinary action</p> <p>Professional conduct that is not in keeping with the Trust values.</p> |
| 6.5 | August 2017 | <p>Added new example of behaviour that may warrant disciplinary action</p> <p>Frequent poor attendance, including repeated unauthorised absence or frequent poor timekeeping</p> |
| 6.5 | August 2017 | <p>Added new example of behaviour that may warrant disciplinary action</p> <p>Failure to report any risks they may identify in relation to their own physical and/or mental health at work to Management which might impair the employee's ability to perform the duties of the post or comply with the provisions of the Health & Safety at Work Act.</p> |
| 6.5 | August 2017 | <p>Appendix 3</p> <p>Added Staff Side Lead or Staff Side Secretary to be contacted requesting their attendance at the suspension meeting Added confirm if member of staff has bank post if so contact Centralised Staffing Solutions to advise of suspension</p> |
| 6.5 | August 2017 | <p>Appendix 4</p> <p>Removed management to recommend level of sanction Added if member of staff has bank post Centralised Staffing will be informed of outcome/sanction</p> |
| 7.0 Formal Review of Policy | October 2017 – January 2018 | <p>Minor typos, punctuation and grammar amendments made throughout the document.</p> <p>Para 2.7 –following legal advice amended paragraph to clarify purpose of timescales stated within the policy. The following sentences were added:</p> <p><i>“The timescales stated within this policy are not intended to be prescriptive. They are best practice guidelines and will be followed wherever practicable”.</i></p> <p>Para 4.1 Changed LODG to Strategic Workforce Group (SWG) as it is now the responsibility of this group to adopt policies within LPT</p> |

Para 5.7 – changed “Nursing or Admin Bank Manager to “*Temporary Staffing Service Manager of the Centralised Staffing Solutions Service*

Paras 11.17,11.21,11.25,11.27.11.38,11.52 and 11.57 all amended to read “ *will normally*” instead of should

Para 11.18 – Warning By Agreement amended following agreement with Staff Side that **up to 5 days will be given to employees to allow consideration of the offer** of a written warning by agreement instead of the case being considered at a disciplinary hearing.

Paras 11.52 and 11.57 – Added sentence to clarify the effective date of issue of a warning as follows:

“The effective date of the warning is either the date of the hearing where the employee is present to hear the decision or the date of receipt of the letter where the employee was not present at the hearing.”

Also clarified that appeal rights will be included in letter confirming the warning.

Added in new para 11.62 to explain date of termination if employee is not present at the hearing. This is based on recent Court of Appeal case law.

Para 13.1 - added in witnesses will be required to provide either signed statement or “*signed agreed notes taken during the investigation*”

Amended paragraph 16 to add in training on key aspects of this policy is mandatory for all new managers and is covered in the Essential HR training for managers

Added new example of behaviour that may warrant disciplinary action at 2.20 and 3.34 of Appendix 1

2.20 *“Conduct not in keeping with the Trust values of compassion, respect, integrity and trust.”*

3.34 *“Conduct not in keeping with the Trust values of compassion, respect, integrity and trust which is considered to be more serious than misconduct.”*

Added examples to the following behaviours at 2.6,2.8 and 3.28 of Appendix 1:

2.6 Negligence in respect of performance of duties which employees are employed to carry out, *e.g. breach of observations policy.*

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| | | <p>2.8 Dishonesty <i>e.g. falsifying of patient observations.</i></p> <p>3.28 A serious breach of trust and confidence <i>e.g. wilfully falsifying patient observations or the electronic patient record in an attempt to mislead.</i></p> <p>Amended Appendix 3 - paragraph 4 of Suspension Guidelines to include reference to the Freedom to Speak Up Guardian and the Listening Ear Service</p> |
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All LPT Policies can be provided in large print or Braille formats, if requested, and an interpreting service is available to individuals of different nationalities who require them.

For further information contact:

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Definitions that apply to this Policy

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| Staff Representative | Either a “Trade Union/Staff Organisation representative” or a colleague of the employee (i.e. an employee of the Trust uninvolved with the investigation) |
| Trade Union/Staff Organisation Representative | An accredited representative of a Trade Union/Staff Organisation recognised by the Trust under its Facilities and Time Off Work etc. agreement. |
| Gross Misconduct | Misconduct of such a serious nature as to fundamentally repudiate the employee’s contract of employment. Such misconduct may result in summary dismissal without prior warning(s), notice or pay in lieu of notice. (For examples of types of misconduct which will be regarded as gross misconduct see appendix 1) |
| Discounted | Where, in the General Disciplinary Procedure, reference is made to warnings being discounted the Trust will regard the warning as spent for all purposes except where it is necessary to rebut, at Employment Tribunal, an employee’s claim to have an unblemished record. To this end all documentation relating to discounted warnings must be removed from the personal file and be retained by the appropriate Human Resources department in separate secure storage. |
| Working Days | Working days shall comprise Monday to Friday excluding bank holidays. Correspondence unless hand delivered, should be posted first class and will be deemed to have been received the next day. |
| Clear Working Days | Clear working days shall be regarded as excluding the day on which, say, a written warning is received and each working week shall be regarded as comprising 5 consecutive days. |
| Calendar Months | A calendar month shall be regarded as running from the first to the last day of each month e.g.: 1 st May – 30 th April (12 calendar months) Or 15 th May – 14 th May (1 calendar month) - if the calendar months starts in the middle of the month. |
| Taken as Read (at the hearing) | It is expected that all panel members, management side and employees’ side will have read all the documentation relating to the case prior to the disciplinary hearing. The documentation will not be read out on the day, however, both sides will present a summary of their cases on the day. |

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| Cooling Off Period | Employees are sent home for a short period of time to allow management to determine whether suspension is appropriate in a particular case and to obtain further information. The cooling off period will not normally exceed 24 hours, but may do so if employees are sent home over a weekend or over a bank holiday period. The cooling off period will be recorded as Special Leave with pay. |
| Due Regard | Having due regard for advancing equality involves: <ul style="list-style-type: none"> • Removing or minimising disadvantages suffered by people due to their protected characteristics. • Taking steps to meet the needs of people from protected groups where these are different from the needs of other people. • Encouraging people from protected groups to participate in public life or in other activities where their participation is disproportionately low |

Abbreviations

WOD - Workforce and Organisational Development Committee

CHS – Community Health Services

FYPC – Families, Young People and Children’s

AMH&LD –Adult Mental Health and Learning Disabilities

NMC – Nursing and Midwifery Council

GMC – General Medical Council

Human Resources and OD – Human Resources and Organisational Development

SWG - Strategic Workforce Group

WWG - Workforce and Well Being Group

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Equality Statement

Leicestershire Partnership NHS Trust (the Trust) aims to design and implement policy documents that meet the diverse needs of our service, population and workforce, ensuring that none are placed at a disadvantage over others. It takes into account the provisions of the Equality Act 2010 and advances equal opportunities for all. This document has been assessed to ensure that no one receives less favourable treatment on the protected characteristics of their age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex (gender) or sexual orientation.

In carrying out its functions, the Trust must have due regard to the different needs of different protected equality groups in their area. This applies to all the activities for which the Trust is responsible, including policy development, review and implementation

1.0 Summary

This Policy is designed to ensure that all employees are aware of and maintain the high standards of conduct required by this Trust. It describes clearly the process for reporting, investigating and managing allegations of misconduct and ensures all employees are treated fairly and consistently.

2.0 Introduction

- 2.1 This disciplinary policy and procedure applies to all employees of the Leicestershire Partnership NHS Trust (the Trust)
- 2.2 It is designed to ensure that employees are aware of and maintain the high standards of conduct required by the Trust. One of the primary aims of the procedure is to encourage a permanent improvement in the employee's conduct where it has been identified as unacceptable. It is also designed to ensure that employees are treated equitably, fairly and consistently.
- 2.3 All employees of the Trust are expected to maintain good standards of conduct and uphold the Trust Values, relevant legislation, Professional bodies' codes of practice such as the NMC, GMC etc., NHS codes such as the code of conduct for managers, the code of confidentiality, national agreements, conditions of service, the NHS Constitution and the Trust's policies, procedures and practices.
- 2.4 Cases of minor misconduct such as occasional lateness, occasional use of NHS resources such as telephone, photocopier for personal use etc. should normally be dealt with informally (refer to section 7 of this procedure). If informal action does not bring about the required level of improvement, the formal stage of the procedure will be invoked (refer to section 8 of this procedure).
- 2.5 Misconduct considered too serious to be classed as minor will be dealt with as either misconduct or gross misconduct under the formal stages of the procedure (refer to section 11).

- 2.6 This procedure can be invoked at any stage depending upon the nature of the alleged misconduct.
- 2.7 Every effort should be made to adhere to the timescales stipulated in this policy and procedure. However, there will be occasions where timescales may need to be varied. This may arise for a variety of reasons and could include, for example, where arrangements need to be made for an interpreter to attend investigation meetings or a disciplinary hearing. The timescales stated within this policy are not intended to be prescriptive. They are best practice guidelines and will be followed wherever practicable.
- 2.8 The Trust is committed to applying the procedure fairly and acting as a reasonable employer at all times in dealing with employees who are subject to this procedure.
- 2.9 All employees should be aware that where an allegation has been raised maliciously the Trust will invoke its Disciplinary Policy and Procedure against the malicious complainant.

3.0 Purpose

- 3.1 This policy and procedure provides a framework through which the Trust will facilitate employees to take personal responsibility for their conduct, behaviour and performance and, where appropriate, to implement improvement.
- 3.2 The overriding aim of this policy and procedure is to correct inappropriate conduct and standards of performance to create a working environment where the highest standards possible may operate.
- 3.3 This policy and procedure protects the rights of the individual employee by affording them impartial consideration in any disciplinary proceeding, ensuring the right to representation by a Trade Union Representative or workplace colleague and making available the right to appeal against disciplinary sanctions.
- 3.4 This policy and procedure protects the rights of management to exercise the authority delegated to them by the Trust in organising and supervising work and setting and maintaining standards of behaviour and efficiency

4.0 Duties within the Trust

- 4.1 The Strategic Workforce Group have the responsibility for adopting this policy and ensuring that it is carried out effectively.
- 4.2 The Director of Human Resources and Organisational Development has a responsibility to:
- Ensure this policy and procedure is consistently applied
 - Monitor the operation of this policy and procedure

- 4.3 Managers will be responsible for:
- Ensuring that all employees are aware of this policy and the seriousness with which allegations of misconduct are viewed.
 - Ensuring a proper and thorough investigation is carried out where there are grounds for suspicion of misconduct after taking appropriate advice from Human Resources.
 - Ensuring that all staff involved in the disciplinary process are made aware of whom in the Trust can offer advice and support
 - Ensuring administrative support is provided to the investigation team
- 4.4 Employees are responsible for:
- Their conduct, behaviour and performance and are expected to act in a professional manner at all times.
 - Reporting to their line manager or HR, acts or incidents where there are grounds for suspicion of misconduct.
- 4.5 Human Resources are responsible for:
- The implementation, monitoring and review of this policy.
 - Providing training and awareness sessions on all aspects of this policy.
 - Providing advice, support and guidance to managers and employees on the application of this policy and the process to be followed.

5.0 SCOPE

- 5.1. This policy and procedure applies to all employees of the Trust (including those who have been TUPE transferred into the Trust) in relation to matters of misconduct including professional misconduct.
- 5.2 This policy and procedure does not apply to Bank Workers, external Seconded and Contractors. However, see paragraphs 5.7 to 5.9 below.
- 5.3 This policy and procedure is not a contractual document and does not form part of the contract of employment. However, all employees of the Trust are expected to comply with the terms set out in this document.
- 5.4 For medical staff (excluding locums) this policy and procedure will be applied in conjunction with the “Maintaining High Professional Standards in the Modern NHS” framework. This document can be found on the Department of Health website or accessed using the following link:
http://www.dh.gov.uk/en/Publicationsandstatistics/Publications/PublicationsPolicyAndGuidance/DH_4103586
- 5.5 In cases of capability i.e. poor performance due to a genuine lack of skill or ability, please refer to the Trust’s Performance Management Policy and Procedure.

- 5.6 In cases of prolonged absence from work due to sickness please refer to the Managing Sickness Absence Policy and Procedure.

Bank Workers, External Secondees and Contractors

- 5.7 Concerns from staff or the public relating to Nursing Bank Workers, and Administrative and Clerical Bank Workers should be directed in the first instance to the Temporary Staffing Service Manager of the Centralised Staffing Solutions Service where further advice and guidance will be provided. For other Bank Workers, concerns should be directed to the appropriate line manager at the place of work.
- 5.8 Concerns relating to external Secondees and Contractors should be raised in the first instance with the appropriate line manager at their place of work within the Trust.
- 5.9 Any issues of misconduct or gross misconduct will be dealt with using the principles outlined within this Policy and Procedure.

6.0 PRINCIPLES

- 6.1 The Trust is responsible for setting and maintaining standards of conduct in the workplace and for ensuring that a procedure is in place for dealing with any breaches.
- 6.2 Managers are responsible for ensuring that all employees are aware of the standard of conduct that is expected of them and the implications of any breaches.
- 6.3 Disciplinary issues will be dealt with in an open and fair manner. The Disciplinary Procedure will be applied in a consistent and non-discriminatory way.
- 6.4 The Trust encourages the use of informal methods for dealing with minor lapses in conduct through the development and application of good employment practices.
- 6.5 Confidentiality will be maintained at all stages of the process.
- 6.6 The employee will be kept informed of progress by their line manager.
- 6.7 Any suspension will be as short as possible and will be reviewed regularly.
- 6.8 Suspension is a neutral act, there is no presumption of guilt and it is not a sanction against the employee.
- 6.9 Employees against whom the disciplinary procedure has been invoked have the right:
- To be informed, in advance of any hearing, of the details of the allegations being made against them including sight of any

documentary evidence

- To be heard in good faith and not be pre-judged
- At a hearing to challenge the allegations by providing their own evidence, questioning other witnesses and calling their own witnesses before a decision is reached ;
- To be accompanied by either their staff side representative or a work colleague uninvolved with the incident (s) at investigation meetings and formal meetings/hearings which could result in formal disciplinary action or at appeal hearings ;
- In exceptional circumstances and where it has been agreed by the Trust, to be accompanied by a family member or friend who may not be a member of the legal profession or have a legal background;
- Not to be dismissed for a first breach of discipline except in the case of gross misconduct;
- To be made aware, at the earliest opportunity, of serious allegations, which may be considered as gross misconduct and which may result in dismissal
- To appeal against any formal sanction issued following a disciplinary hearing

6.10 There is no entitlement to be accompanied by a legal representative at any part of the internal disciplinary process. This applies to all employees except for medical staff for whom there are separate guidelines.

6.11 The timescales stated within this policy are not intended to be prescriptive. They are best practice guidelines and will be followed wherever practicable.

6.12 There may be occasions where an employee's conduct is satisfactory throughout the period the warning is in force or the period of review only to lapse very soon thereafter. Where a pattern emerges and/or there is evidence of abuse the employee's previous record of conduct will be taken into account when deciding on the next course of action.

7.0 Pre –Disciplinary Action (INFORMAL STAGE)

7.1 In the first instance managers are encouraged to deal with incidents of minor misconduct informally by discussing issues with the employee as part of routine line management. This is a normal part of a manager's role.

7.2 Concerns over conduct should be raised when they occur or as soon as possible thereafter.

7.3 The manager should reinforce to the employee the standards of conduct expected of them and explain that any further incidents of misconduct may lead to formal action.

7.4 Where improvement is required the manager should make sure the employee understands what needs to be done, how their conduct will be reviewed, and over what period. The manager may wish to arrange further discussions to

review the employee's conduct.

- 7.5 The manager should be careful that any informal action does not turn into formal disciplinary action as outlined under the formal stages of this procedure.
- 7.6 Following the meeting, the manager must send to the employee, a written confirmation of their discussion including any actions required and timescales for review etc. A copy of this confirmation should also be kept in the employee's personal file for future reference.
- 7.7 If informal action does not bring about the required level of improvement, the manager should instigate the formal stage of this procedure. HR advice should be sought at all stages of the disciplinary process.
- 7.8 If, during the discussion it becomes apparent that the matter is more serious than initially believed the meeting should be adjourned. The employee should be advised that the matter will be dealt with under the formal stages of the procedure.

8.0 Cooling Off Period

- 8.1 In exceptional circumstances it may be necessary to send an individual home for a "cooling off" period; this should normally not exceed 24 hours. This is not a formal suspension. If later it is deemed appropriate that either an alternative to suspension or formal suspension should apply, then a meeting will be held with the employee at the earliest opportunity to confirm what action is being taken.

9.0 Alternatives to suspension

- 9.1 In certain cases where potential gross misconduct has been alleged, it may be appropriate to consider alternatives to suspension.
- 9.2 This course of action will only be taken after a detailed risk assessment has been carried out by the line manager and full assurance is given by them that, until the disciplinary matter is concluded, robust measures will be put in place to ensure no further risk is posed by the employee's continued presence at work.
- 9.3 Examples of measures to be taken include restricted duties, close monitoring and supervision, temporary removal of some responsibilities such as budget management, authorising payments, timesheets etc.
- 9.4 Where the alternative to suspension is viewed as a more appropriate course of action than suspension itself, the employee must abide by the restrictions imposed upon them.
- 9.5 Alternatives to suspension should only be used after careful consideration. When a manager is considering this course of action they must seek advice

from Human Resources and a Senior manager in their Directorate who has the authority to suspend.

- 9.6 Alternatives to suspension must be approved, as a minimum, by Heads of Service or by appropriate managers with delegated authority.
- 9.7 A script for an alternative to suspension meeting is attached as Appendix 3a

10.0. SUSPENSION

- 10.1 There may be instances where suspension with pay is necessary while an investigation is being carried out. Examples of such cases include potential gross misconduct cases, or where there are reasonable grounds for concern that the employee may tamper with the evidence, destroy evidence and/or pressurise witnesses during the investigation.
- 10.2 Suspension will only be applied after careful consideration. When a manager is considering suspension of an employee they must seek advice from a senior manager in their Directorate and Human Resources.
- 10.3 Suspension in itself is not a disciplinary sanction and does not indicate any guilt of the individual involved. It is a neutral act that enables the Trust to fully investigate allegations of a serious nature and/or to protect the employee from subsequent allegations of covering up evidence.
- 10.4 Please refer to Appendix 3 for the Suspension Guidelines and Checklist.

11.0 FORMAL STAGE

- 11.1 Where the informal stage has not resulted in the required level of improvement or the alleged misconduct is serious or gross misconduct the formal stages of the procedure as outlined below should be followed:

INVESTIGATION

- 11.2 All employees have a responsibility to co-operate with the investigation process.
- 11.3 An investigation into the alleged misconduct will be commissioned by the employee's line manager or a more senior manager.
- 11.4 The commissioner of the investigation will draw up terms of reference for the investigation and appoint the investigating officer/s. The choice of the investigating officer/s will depend upon the nature of the allegations and locality/service/directorate in which the incident has occurred.
- 11.5 Prior to the investigation commencing, the commissioning manager will inform the employee in writing that an investigation has been commissioned under the formal stage of the disciplinary procedure, who the investigating officers

are, the allegations being investigated and provide them with the Terms of Reference for the investigation.

- 11.6 During the course of the investigation, the commissioning manager can amend/ expand the terms of reference and allegations. If this occurs the commissioning manager will inform the employee of the changes.
- 11.7 Human Resources will act as an advisor during the investigation. In most cases it will be appropriate for an HR representative to be the co-investigating officer.
- 11.8 Where an investigation meeting with the employee is required, the employee will be given reasonable notice (normally 5 working days) to attend this meeting. The employee will be advised of his/her right to be accompanied by either their staff side representative or a work colleague. Where a work colleague accompanies an employee, the colleague must not be involved in the incident that is being investigated.
- 11.9 In exceptional circumstances and where agreed by the Trust, the employee can be accompanied by a family member or friend. Where reasonable adjustments are required, every effort will be made to identify appropriate and/or additional measures of support such as a link worker/support worker. There is no right to legal representation in these meetings/hearings.
- 11.10 The investigation should normally be completed within 8 weeks
- 11.11 Where the investigating officer(s) need(s) to interview any witnesses, they must be informed why they are being interviewed and be made aware that they may be required to give evidence at any subsequent hearing. Witnesses will be advised of their right to be accompanied by their staff side representative or a work colleague. There is no right to legal representation at the investigation meetings.
- 11.12 The investigating officer(s) will make notes of the investigation meeting. The notes of the meeting will be sent to the employee to sign as a record of the meeting. The meeting will also be digitally recorded. Digital recordings will not be transcribed; however the opportunity to listen to the recording will be available to both parties on request in the event there is a dispute regarding the accuracy of the notes.
- 11.13 Where the employee declines to sign the investigation notes due to a dispute over accuracy the employee's notes will be appended to the investigation notes and both sets of notes will be referred to in future proceedings.
- 11.14 Where the employee and/or witnesses fail to return a signed copy of the investigation notes to the investigation team, unsigned notes will be accepted as an accurate record and used in future proceedings
- 11.15 Once the investigation has been completed the investigating officer(s) will submit their report to the commissioner of the investigation. As a minimum the report will include the findings of the investigation team with supporting evidence, a conclusion as to whether there is sufficient evidence to proceed to

a disciplinary hearing and recommendations.

- 11.16 The commissioning manager will make a final decision on whether to accept the findings and the recommendations of the investigating officer(s).
- 11.17 Where the investigation concludes there is insufficient evidence to proceed to a disciplinary hearing the employee will be notified of this outcome in writing, normally within 5 working days of the commissioning manager accepting this finding.

POST INVESTIGATION PROCESS

Alternative to holding a disciplinary hearing

- 11.18 Following investigation, where it is decided that there is a disciplinary case to answer and the employee accepts they are at fault, the employee can be offered a choice of accepting an appropriate level of disciplinary sanction (either a first written warning or a final written warning) by agreement without going through a disciplinary panel. The employee will be given up to 5 days to consider the offer of the warning by agreement. This offer will be made without prejudice.
- 11.19 This option will not be available where, in the commissioning manager's view, there is sufficient evidence to present the case to a disciplinary hearing on the grounds of gross misconduct and in cases where dismissal is a potential outcome. In such instances advice must be sought from HR prior to any communication being made to the employee.
- 11.20 Where the employee agrees to accept the above offer, a meeting will be conducted by the commissioning manager to issue the disciplinary sanction (or in the absence of the commissioning manager this can be delegated to a senior manager at an appropriate level). An HR representative previously uninvolved with the investigation will be present at this meeting. The employee will also have a right to be accompanied by their staff side representative or a work colleague not involved in the investigation.

At the meeting, the commissioning manager will verbally share the key findings and conclusions of the investigation with the employee and their representative.

- 11.21 The details of the sanction and the fact that it was issued by agreement will be confirmed in writing. Supplementary actions as detailed in paragraph 11.64 below may also be applied. The meeting will not be digitally recorded. A letter confirming the outcome will normally be sent within 5 working days of the meeting taking place.
- 11.22 The employee will have no right to appeal against this decision.
- 11.23 If the employee decides not to accept the offer of a warning by agreement this will not be disclosed to the disciplinary hearing panel.

Holding a disciplinary hearing

- 11.24 Where the case progresses to a disciplinary hearing the employee should be notified of this in writing.
- 11.25 The disciplinary hearing will normally be held within 6 weeks of the commissioning manager confirming acceptance of the outcome of the investigation.
- 11.26 All parties will be provided with copies of all documents including statements of case, notes of the investigation interviews, employee and witness statements and any other documents in support of the management and employee's case.
- 11.27 The notification of the date of the hearing, management statement of case and other supporting documents will normally be sent to the employee at least 10 working days before the date of the hearing to enable them to formulate a response. The employee's statement of case, any witness statements and names of any witnesses the employee wishes to call should be submitted to the chair of the panel at least 5 working days before the date of the hearing.
- 11.28 The notification must include the allegations against the employee which the disciplinary panel will consider and its possible consequences. The notification should also give details of the time and venue and names of any management witnesses to be called at the disciplinary hearing.
- 11.29 Both the employee and management will be responsible for arranging their own witnesses to attend the hearing.
- 11.30 The employee will be advised of his/her right to be accompanied by their staff side representative or a work colleague. There is no right to legal representation at disciplinary hearings.
- 11.31 The composition of the panel for the hearing will be as shown in Appendix 2 of this procedure.
- 11.32 Guidance on the process to be followed at a disciplinary hearing is included in Appendix 4 of this procedure.
- 11.33 At the hearing the management statement of case and the employee's response to the case will be taken as read. However, a summary outline of the case will be presented by both sides.
- 11.34 Both management and employee will be given a reasonable opportunity to ask questions and call relevant witnesses.
- 11.35 Any party who intends to call witnesses must submit witness statements or investigation interview notes prior to the hearing. These witness statements will be shared with all parties. Please refer to paragraph 11.27 above for the relevant timescales.

- 11.36 The panel will ask questions to both sides and witnesses.
- 11.37 The chair of the panel will have the authority to impose time limits on each party in terms of presentation of their case, questioning time and summing up.
- 11.38 Upon reaching a decision the chair of the panel will deliver the decision to both parties at the hearing. The decision will normally be confirmed in writing to the employee no later than 5 working days from the date of the hearing.
- 11.39 There may be occasions when a decision cannot be reached on the concluding day of the hearing. In these instances, the parties will be notified of the decision in writing.
- 11.40 In exceptional circumstances, where further material evidence has come to light which requires investigation, the disciplinary hearing can be adjourned by the chair pending further investigation. Where adjournment occurs, the panel should be reconvened as soon as possible.
- 11.41 Disciplinary hearings will be recorded digitally. The original recording will be kept securely in HR. Digital recordings will only be transcribed if an internal appeal has been lodged or a complaint has been made to an Employment Tribunal. Employees may listen to the recording on request if there is a dispute about the contents of the notes.
- 11.42 Where the disciplinary hearing results in a disciplinary sanction being issued to the employee and they feel that the disciplinary sanction is unjustified they can appeal against the decision. Any appeal must be made to the Director of Human Resources and Organisational Development within 10 working days of the date of the letter confirming the disciplinary sanction. The employee must set out the grounds for their appeal in writing. Appeals can be raised on one of the following grounds:
- the procedure: a failure to follow procedure that may have had a material effect on the decision
 - the decision - the evidence did not support the conclusion reached
 - the penalty - was too severe given the circumstances of the case

An appeal hearing will be conducted as outlined in Section 12 of this procedure.

DISCIPLINARY ACTION

- 11.43 At the end of the hearing the disciplinary panel will decide whether, on the balance of probability, there is sufficient evidence to substantiate the allegation/s against the employee and, if so, whether or not disciplinary or any other action is justified.
- 11.44 In deciding whether a disciplinary sanction is at an appropriate level the panel will take into account relevant factors such as the extent of the breach of

standards, any precedents, the employee's general work record and length of service.

- 11.45 The decision of the disciplinary panel will become effective from the date on which the decision is made. If the decision is later overturned by an appeal panel and the employee has incurred any loss of earnings as a result of the original panel's decision these will be reimbursed.

Incremental Progression

- 11.46 Where a disciplinary panel issues either a First Written Warning or a Final Written Warning and the employee has not reached the top of their pay band, the terms of the Trust Starting Salaries and Pay Progression Policy will apply. This means that incremental progression may be withheld for a period of 12 months whilst the warning is live. Where the misconduct is proven and has impacted on the performance of the employee the disciplinary panel will make a recommendation to withhold incremental progression. The final decision to withhold incremental progression will rest with the employee's line manager. The employee will be advised of this at the hearing and it will be confirmed in the disciplinary hearing outcome letter. A copy of the letter will be provided to the line manager so that the appropriate action can be taken.

LEVELS OF DISCIPLINARY SANCTION

- 11.47 There are three levels of disciplinary sanction that can be used depending upon the nature of misconduct. In cases of serious or gross misconduct, it may be appropriate to apply a higher disciplinary sanction directly without first applying a lower sanction
- 11.48 Supplementary actions as detailed in paragraph 11.64 below may also be applied to both First Written Warnings and Final Written Warnings.

Level 1: First Written Warning

- 11.49 In the case of misconduct which is more serious than minor misconduct or in the case of minor misconduct where the informal approach has been tried and failed, the panel may decide to issue a first written warning. This is the lowest level of formal disciplinary sanction.
- 11.50 The warning will be considered spent after a period of 12 months from the date of issue.
- 11.51 A further act of misconduct whilst the first written warning is live would normally result in a final written warning.
- 11.52 The decision to issue a first written warning, the nature of the misconduct, consequences of further misconduct, the retention period and appeal rights will be confirmed in writing. A copy of this letter will be placed on the employee's personal file for a period of 12 months. The effective date of the warning is either the date of the hearing where the employee is present to

hear the decision or the date of receipt of the letter where the employee was not present at the hearing.

11.53 The employee will have a right to appeal against this decision.

Level 2: Final Written Warning

11.54 This is the next level of sanction and would be appropriate:

- In a case of misconduct, where a first written warning under this procedure is already live; or
- In a case of serious misconduct which is short of gross misconduct.

11.55 The final written warning will be considered spent after a period of 24 months from the date of issue.

11.56 A further act of misconduct whilst the final written warning is live would normally result in dismissal or an alternative to dismissal.

11.57 The decision to issue a final written warning, the nature of the misconduct, consequences of further misconduct, the retention period and appeal rights will be confirmed in writing. A copy of this letter will be placed on the employee's personal file for a period of 24 months. The effective date of the warning is either the date of the hearing where the employee is present to hear the decision or the date of receipt of the letter where the employee was not present at the hearing.

11.58 The employee will have a right to appeal against this decision.

Level 3: Dismissal

11.59 Dismissal of an employee is the most serious of all the disciplinary sanctions. A decision to dismiss should only be taken by a manager who has the authority to do so (see Appendix 2). Dismissal may apply:

- a) In a case of misconduct where a first or final written warning under this procedure is already live; or
- b) In a case of gross misconduct: where the nature of the breach of discipline is so serious that it warrants dismissal without notice and without pay in lieu of notice i.e. summary dismissal.

11.60 Where an employee is dismissed in a case of misconduct as described in paragraph 11.59 (a) above then the termination will take place with immediate effect. The employee will be entitled to receive a payment in lieu of notice. This will be subject to the normal tax and National Insurance deductions. Payment for outstanding annual leave accrued up until the date of dismissal will be made less any money which may be owed by the employee to LPT.

11.61 Summary dismissal for gross misconduct will take effect immediately and the employee will not be entitled to notice or a payment in lieu of notice. Payment for outstanding annual leave accrued up until the date of dismissal will be made. Any monies owed by the employee to LPT will be deducted in the final salary payment.

11.62 The relevant details included in paragraphs 11.60 or 11.61 above, as appropriate, will be confirmed to the employee in writing together with the date on which the employment ended, the reasons for dismissal and the right of appeal. The effective date of dismissal will either be the date of the hearing, if the employee was present or the date on which the employee was spoken to or the letter received and read, if the employee was not present at the hearing. For the purposes of a termination date it will be deemed that the letter was received and read the day after it was posted. The posting date will be deemed to be the date on the letter and the termination date for employees not present at the hearing and not subsequently spoken to on the day of the hearing, will therefore be the day after the letter was posted.

The letter confirming the dismissal will usually be sent within 5 working days of the hearing taking place.

11.63 The employee will have a right to appeal against this decision.

Alternative to Dismissal and additional action accompanying First or Final Written Warnings

11.64 In some instances the disciplinary panel may feel that an alternative to dismissal is a more appropriate course of action than dismissal. In these cases alternatives such as relocation/reassignment or demotion (subject to the availability of a suitable vacancy) can be imposed **along with a final written warning.**

11.65 Where alternative to dismissal is part of the sanction, the disciplinary panel will need to ensure there is a suitable vacancy for the employee which is available immediately.

11.66 No pay protection will apply where the above actions result in a loss of earnings for the employee. Similarly no excess mileage will be payable where the above actions result in the employee travelling further from their existing base.

11.67 The employee will have a right to appeal against this decision.

12.0 APPEAL HEARING

12.1 Where an employee feels that the action taken against them is unjustified they can appeal against the decision. Any appeal must be made to the Director of Human Resources and Organisational Development within 10 working days of the date of the letter confirming the disciplinary action. The employee's written letter of appeal must include the grounds for appeal, the statement of case and any other documentation which they wish the appeal panel to consider. The Appeal Hearing will be conducted as set out in Appendix 5.

12.2 An Appeal Hearing is not designed to re-hear the case but to examine the grounds of appeal. The employee must be specific about the grounds of appeal; these will effectively form the agenda for the hearing. Appeals can be

raised on one of the following grounds:

- the procedure: a failure to follow procedure that may have had a material effect on the decision
- the decision - the evidence did not support the conclusion reached
- the penalty - was too severe given the circumstances of the case

12.3 As part of the appeal process the employee's grounds for appeal will be shared with the original disciplinary panel. The chair of the original disciplinary panel will assume the role of 'management' for the appeal hearing.

12.4 Composition of the appeal panel will be in accordance with Appendix 2 of this procedure. No person previously involved in the decision or handling of the case should sit on the panel.

12.5 The role of the appeal panel is to consider the appropriateness of the decision made, based upon the information that was available to the original disciplinary panel. In doing so, the panel will need to determine whether in the circumstances the disciplinary sanction applied was appropriate given the evidence presented, and in consideration of any mitigation that was presented.

12.6 Where the ground for appeal is an alleged procedural failure, the appeal panel will consider whether this had any impact on the appropriateness of the decision made by the disciplinary panel.

12.7 Normally no new evidence will be presented at the appeal hearing. However where the employee presents a strong argument to bring new evidence, the chair of the appeal panel, in conjunction with Human Resources, will decide whether it is appropriate to allow any new evidence at the appeal stage. The decision of the chair will be final and must be accepted by all parties.

12.8 Appeals will generally be heard **within 6 weeks** of receipt of the letter of appeal by the Director of Human Resources and Organisational Development.

12.9 The appeal hearing will be conducted in a similar manner to a disciplinary hearing. The appeal hearing format is attached as Appendix 5 of this procedure.

12.10 Appeal hearings will be recorded digitally. The recording will be kept securely in HR. Digital recordings will only be transcribed if a complaint has been made to an Employment Tribunal. The employee may listen to the digital recording on request if there is a dispute about the content of the transcription.

12.11 Notification of the date of the appeal hearing, the employee's appeal statement and other supporting documents should be sent to the management representative at least **10 working days** before the date of the hearing to enable them to formulate a response.

12.12 At least **5 working days** before the appeal hearing, all parties will be provided with copies of all documents including notification of the date, time and venue of the appeal hearing, the employee's grounds for appeal, their appeal

statement, the management response to the employee's appeal, employee and witness statements and any other documents submitted by the employee and management in support of their case.

- 12.13 Both the employee and management will be responsible for arranging their own witnesses to attend the hearing.
- 12.14 The employee will be advised of his/her right to be accompanied by their staff side representative or a work colleague. There is no right to legal representation at appeal hearings.
- 12.15 The chair of the original disciplinary panel would normally represent management side. Where necessary HR support can be sought in presentation of the management case.
- 12.16 The employee will have an opportunity to call any witnesses. The management side will also have the opportunity to call witnesses. Both parties and the panel will be able to ask questions.
- 12.17 The appeal panel will cross examine witnesses and both parties as necessary.
- 12.18 The appeal panel will normally announce their decision on the concluding day of the hearing and wherever possible confirm it in writing within [5 working days](#) of the hearing.
- 12.19 Where it is not possible to reach a decision on the concluding day, the decision will be notified to the employee and the management side in writing, usually within 5 working days of the hearing.
- 12.20 The possible outcomes of the appeal hearing are that the panel can:
- Uphold the original decision,
 - Overturn the original decision and substitute it with a higher level sanction
 - Uphold the appeal and overturn the original decision completely resulting in no formal action against the employee
 - Uphold the appeal and substitute the original decision with a lesser sanction,
 - Refer the case for a rehearing (only in exceptional circumstances)
- 12.21 Referral for a re-hearing in exceptional circumstances includes those cases where in the opinion of the appeal panel, the original panel decision was perverse and would warrant nothing less than rehearing of the case.
- 12.22 Where the appeal against dismissal is upheld the employee's employment will be reinstated from the date of dismissal and continuity of service will be maintained.
- 12.23 The appeal panel's decision will be final and there will be no further right of appeal for the employee within the Trust unless the case has been referred

for a re-hearing in which case the employee will have the right to appeal against the decision made by the new panel.

13.0 OTHER ISSUES

Use of witnesses and witness statements

- 13.1 Witnesses for both sides will be expected to provide either a signed written statement or signed agreed notes, which may have been taken by the investigating officer during an interview with the witness.
- 13.2 The purpose of calling witnesses is to allow the disciplinary panel to gather as much evidence as possible in order to make a fair judgment on the allegations. It is important that all parties carry out questioning of witnesses in a sensitive manner. Aggressive questioning or badgering of witnesses will not be tolerated. The chair of the disciplinary panel will ensure that the proceedings are carried out in an orderly manner.
- 13.3 Written witness statements should be made available to all parties at least 5 working days before the hearing.
- 13.4 Any witnesses called to the hearing on the employees behalf must be known to the employee and be able to provide evidence relevant to the allegations.
- 13.5 Patients/Service Users should only be called as witnesses in exceptional circumstances. Advice should be sought from Human Resources regarding the appropriateness of calling patients/service users as witnesses. Each case will be looked at on its own merit.

Allegations of fraud

- 13.6 In cases of allegations of fraud, the Trust's Local Counter Fraud Specialist must be contacted directly prior to instigating any action. The Human Resources Department must be contacted for advice in these circumstances.

Allegations Against Staff Side Representatives

- 13.7 In cases where formal action is being considered with regard to an accredited representative of a recognised trade union or professional organisation, the manager will seek to discuss the details with an official of the organisation concerned in advance, provided they have received permission from the employee to do so.

Actions Which Are Possible Criminal Acts

- 13.8 Where information is received by LPT that an employee has committed or is suspected of committing or conspiring to commit a criminal act it must be reported to the police as soon as suspected.
- 13.9 LPT will continue to progress its internal investigation and apply its disciplinary procedure unless it is established that by doing so it would impede the police

investigation.

Allegations of Criminal Acts Unrelated to Employment or Outside Work

- 13.10 Allegations of criminal acts unrelated to employment should not be treated as an automatic reason for disciplinary action.
- 13.11 Each case needs to be looked at individually. Serious consideration should be given as to whether the employee can continue in their job once they have been charged. LPT will consider whether the alleged offence, if proven, is one that makes the employee unsuitable for their role. LPT will also consider whether, pending the trial, the employee can continue in their present job, be allocated to other duties or should be suspended from work.
- 13.12 In certain situations where suspension is not necessary and the employee is not available for work for a certain period, absence without pay may be approved. In other cases the employee may need to be suspended pending police enquiries.
- 13.13 Where a decision is made that the alleged offence also constitutes potential misconduct under LPT's disciplinary procedure, LPT will progress an internal investigation and apply its disciplinary procedure unless it is established in consultation with the Police that by doing so it would impede the Police investigation
- 13.14 Where LPT has refrained from taking action pending the outcome of the matter and the employee is acquitted but management feels there is enough evidence to suggest that the alleged action, is an example of misconduct/gross misconduct then appropriate action will be taken.
- 13.15 HR advice should always be sought when considering the matters above.

Referral to other agencies including Statutory/Regulatory Bodies

- 13.16 LPT is under an obligation and will report as required by law to the relevant regulatory professional bodies and the statutory body, the Disclosure and Barring Service, any serious act of misconduct following advice from the appropriate professional lead.
- 13.17 The Disclosure and Barring Service is the organisation responsible for making barring decisions on individuals who may currently work or seek to work in regulated activity with vulnerable groups including children.

Referrals will normally be made by the appropriate professional lead.

Postponement of investigation meeting/disciplinary/appeal hearing

- 13.18 Where possible and where the name of the employee's staff side representative is known, the date of the investigation meeting, disciplinary or appeal hearing may be agreed with the employee and their representative. All parties should make efforts to avoid unreasonable delay when arranging a mutually convenient date and time for the investigation, disciplinary or appeal

hearing.

13.19 If the individual or their representative is unable to attend a scheduled meeting s/he may request one postponement, provided the request for postponement is made on reasonable grounds. The meeting will be rescheduled as soon as possible and ideally held within **5 working days** of the original date. The Trust will be under no obligation to allow further postponements.

13.20 Where the employee or their staff side representative/work colleague is unable to attend the rescheduled meeting, the Trust will be under no obligation to allow further postponement. In such cases the meeting/hearing will proceed without the employee or their representative and the decision will be made on the information available.

Role of a staff side representative/work colleague at the disciplinary hearing and appeal hearing:

13.21 At the disciplinary/appeal hearing where the employee wishes, the staff side representative/work colleague can address the hearing in order to:

- put the employee's case
- sum up the employee's case
- respond on behalf of the employee to any views expressed at the hearing
- confer with the employee during the hearing and
- ask management and witnesses questions

13.22 The staff side representative/work colleague cannot however answer any questions on the employee's behalf.

Grievance raised by the employee whilst undergoing a disciplinary matter

13.23 Where an employee raises a grievance during a disciplinary process, the disciplinary process may be temporarily suspended in order to deal with the grievance. Where the grievance and disciplinary cases are related, it may be appropriate to deal with both issues concurrently.

Record Keeping

13.24 A full set of papers including a digital recording of the hearing; copies of all documentation and the letter confirming the outcome will be kept in a separate confidential file by the HR department and retained for a period of 10 years as specified in the NHS Code of Practice on Records Management.

13.25 Where formal disciplinary action has been taken against the employee, a letter confirming the action will be kept on the employees personal file for the life of the warning.

14.0 Due Regard

14.1 The Trust's commitment to equality means that this policy has been screened in relation to paying due regard to the general duty of the Equality Act 2010. The intention is to eliminate unlawful discrimination, harassment, and victimisation and to advance equality of opportunity and foster good relations.

14.2 An example of this can be found in Section 11.9 where it states"

"In exceptional circumstances only and with agreement with Human Resources/Staff side representatives, attempts will be made to identify any reasonable adjustments and/or additional measure of support. This may include a link worker/support worker."

14.3 Throughout this disciplinary process, all parties will ensure that dignity and respect is shown at all times for all parties involved in the process. This should be evidenced by:

- The support mechanisms available, in relation to reasonable adjustments e.g. information in an appropriate format such as large print and
- Equality monitoring of employees under the disciplinary procedure to ensure appropriate measures are put in place where necessary to alleviate identified adverse impact.

14.4 In addition to the examples highlighted above, equality monitoring of all relevant protected characteristics to which the policy applies will be undertaken as required. Robust actions to reduce, mitigate and where possible remove any adverse impact will be agreed and effectively monitored.

15.0 Dissemination and Implementation

15.1 The policy is approved by the Leicestershire Partnership NHS Trust Strategic Workforce Group and is accepted as a Trust wide policy. This policy will be disseminated immediately throughout the Trust following adoption.

15.2 The dissemination and implementation process is:

- Line-Managers will convey the contents of this policy to their staff
- Staff will be made aware of this policy using existing staff newsletters and team briefings
- The policy will be published and made available on the Intranet.

16.0 Training

16.1 Training on key aspects of this policy are included in LPT's Essential HR training course which is mandatory for all new and existing managers to attend.

17.0 Monitoring Compliance and Effectiveness

This policy will be reviewed after 3 years, or as required to ensure it meets the needs of the service and changes in relevant legislation.

| Criteria | Measurable | Frequency | Reporting to | Governance |
|--|--|-----------|-------------------------|-----------------------------------|
| The timescales of the formal stages of the procedure will be completed in line with the policy | Average number of days taken to complete case work from incident to resolution | Monthly | HR senior leads meeting | Workforce and Wellbeing Committee |
| | % case work completed within 60 day target | Monthly | | |
| | No of staff suspended for over 1 month | Monthly | | |
| | No of staff suspended for over 3 months | Monthly | | |
| | No of staff suspended for over 6 months | Monthly | | |
| | No of staff suspended for over 1 year | Monthly | | |
| | Average duration of suspensions | Quarterly | | |

18.0 Links to Standards/Performance Indicators

| TARGET/STANDARDS | KEY PERFORMANCE INDICATOR |
|--|---|
| Care Quality Commission registration standards (outcome 14) <i>Supporting Workers</i> (21) of the Health & Social Care Act (2008) (Regulated Activities Regulations 2010 CQC essential standards) | The trust maintains compliance with CQC registration standards, this policy supports outcome standards 14 |

References and Associated Documentation

- Former LPT Performance and Conduct policy and Procedure (archived)
- LCCHS Disciplinary Procedure (archived)
- LCR CHS Disciplinary Procedure (archived)
- Employment Legislation
- ACAS Guidance
- Information Lifecycle Management and Records Management Policy
- Supporting Staff involved Incidents, Investigations, Complaints and Claims

Leicestershire Partnership NHS Trust

Examples of Conduct that may result in Disciplinary Action

1.0 Introduction

- 1.1 These examples apply to all employees of the Leicestershire Partnership NHS Trust (the Trust).
- 1.2 All Trust employees are required to comply with the standards of conduct set out in the various NHS codes of conduct including the NHS code of conduct for managers, and relevant professional/statutory bodies' codes of conduct.
- 1.3 Employees are required to familiarise themselves with the standards of conduct set out in these codes and by the Trust.
- 1.4 Employees are required to attend for work regularly and punctually; to perform their duties to a satisfactory standard to observe set procedures, policies and rules; to behave in a courteous and helpful way; and to ensure the highest quality of service is provided.
- 1.5 Sections 2 and 3 below outline examples of unacceptable conduct which are likely to lead to disciplinary action being taken. In particular section 3 includes examples of serious misconduct which are classed as gross misconduct and will normally lead to summary dismissal for a first breach.
- 1.6 Each employee of the Trust is responsible for their own conduct. Anyone in doubt must seek guidance from his/her line manager or Human Resources.

2.0 Examples of Misconduct which will justify disciplinary action

(These examples are for guidance only and are not intended to be exhaustive)

- 2.1 Matters related to frequent poor attendance, including repeated unauthorised absence or frequent poor timekeeping
- 2.2 Inappropriate appearance, or language or behaviour offensive or harmful to other employees, staff employed by contractors providing services to the Trust, to patients, visitors or other members of the public.
- 2.3 Discriminatory language and/or behaviour which is offensive to an individual in relation to their protected characteristics.
- 2.4 Impaired ability to perform the duties of the post through alcohol or drugs.
- 2.5 Failure to obey a reasonable instruction without reasonable explanation which is accepted by management.
- 2.6 Dishonesty e.g. falsifying of patient observations.

- 2.7 Criminal offences committed at/or outside work, which affect the employee's suitability or ability to undertake the duties of the post or makes the employee unacceptable to other employees.
- 2.8 Negligence in respect of performance of duties which employees are employed to carry out, e.g. breach of observations policy.
- 2.9 Failure to exercise the duties of care encompassed by the Trust's Policy on Health & Safety at Work and the Health & Safety (etc.) Act 1974. This would include failure to inform Management of any deterioration in health or faculties which might impair the employee's ability to perform the duties of the post or comply with the provisions of the Health & Safety at Work Act.
- 2.10 Offences committed in breach of the 1983 Mental Health Act.
- 2.11 Falsification or failure to declare information requested on medical questionnaires or application forms.
- 2.12 Breaches of confidentiality harmful to the interests of patients or other employees.
- 2.13 Knowingly being in unauthorised possession of Trust property whether on or off the premises.
- 2.14 Offences committed in breach of the Food Hygiene (General) Regulations, 1970 and the Food Safety Act, 1990 or any regulations made thereunder.
- 2.15 Professional conduct which falls short of the normally accepted professional standards but which is less serious than when such conduct arises from gross or wilful negligence.
- 2.16 Breach of the smoke free policy.
- 2.17 Bringing the Trust into disrepute.
- 2.18 Failure to declare a conflict of interest, engaging in other employment or business, without seeking authorisation, which conflicts with the proper fulfilment of duties or which is prejudicial to the Trust's interests.
- 2.19 Breach of Data Protection Act and other related acts/codes which must be complied with to safeguard information.
- 2.20 Conduct not in keeping with the Trust values of compassion, respect, integrity and trust.

3.0 Examples of Gross Misconduct

Gross misconduct is misconduct of such a serious and fundamental nature that it breaches the contractual relationship between the employee and LPT. In the event that an employee commits an act of gross misconduct, LPT will be entitled to terminate summarily the employee's contract of employment without notice or pay in lieu of notice.

(These examples are for guidance only and are not intended to be exhaustive.)

- 3.1 Actual or attempted theft from patients, other staff or contractors.
- 3.2 Any attempts to commit fraud against the Trust, including dishonesty in respect of completing timesheets or expenses forms, or in the use of recording systems or in the completion of self-certification forms for sickness absence.
- 3.3 Gross Insubordination e.g. willfully disobeying a reasonable instruction given by your line manager or someone in authority, which is within your job role and responsibility, and/or within your level of competence and/or within your professional code of conduct.
- 3.4 Corruption or Bribery i.e. the offering, giving, soliciting or acceptance of inducements which may influence the actions of others
- 3.5 Being under the influence of alcohol or illegal drugs whilst at work.
- 3.6 Insulting, indecent or offensive behaviour including verbal abuse, violent or threatening behaviour towards patients, members of the public, contractors or other staff.
- 3.7 Deliberate or unauthorised administration of drugs which could have serious consequences.
- 3.8 Gross or wilful negligence that causes unacceptable loss, damage or injury.
- 3.9 Unauthorised disclosure of confidential information relating to a patient or a member of staff or LPT' business unless disclosure is made in the public interest.
- 3.10 Deliberately accessing internet sites containing pornographic, offensive or obscene material.
- 3.11 Any use of confidential information outside the proper and recognised course of duty including breaches of the Computer Misuse Act, 1990 such as knowingly to attempt to gain unauthorised access to any programme or data held on a computer whether without or with intent to commit or facilitate the commission of further offences or to modify any programme or data in a computer without authorisation. Employees are particularly required to note that all information about patients is classified as confidential. No statement should be made to representatives of the media or other bodies unless the officer has specific delegated responsibility but this is not intended to apply to a local or full-time official of a nationally recognised staff organisation whilst acting in that capacity within the particular organisation's rules and in connection with an industrial dispute.
- 3.12 Serious breach of Data Protection Act and other related acts/codes which must be complied with to safeguard information.
- 3.13 Unlawful Discrimination or harassment of a workplace colleague or patient/service user on the grounds of age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex (gender) or sexual orientation.

- 3.14 Victimisation or abuse of staff, patients, the public or others.
- 3.15 Ill-treatment or mis-handling of patients.
- 3.16 Serious neglect of or interference with Trust property (including vehicles, computer systems, applications, e-mail and Internet software and data.) whether or not resulting in damage or injury. This includes transmitting and receiving inappropriate information and material across IT systems such as e-mail and the Internet and serious misuse of the Trust's property or name.
- 3.17 Serious breach of Health & Safety rules relevant to the employee's duties and responsibilities not limited to but including conduct likely to result, or actually resulting, in damage to property or injury to persons, or neglect of personal safety, or refusal to wear protective equipment or clothing provided by the Trust.
- 3.18 Forming inappropriate relationships with service users.
- 3.19 Intentional or unintentional falsification of or failure to declare information requested on, medical questionnaires or application forms that is fundamental to the contract. This would include the falsification of qualifications which are statutorily required for employment or which result in additional remuneration.
- 3.20 Corruption, including failure to declare a pecuniary interest in contracts, abuse of position for personal benefit to the member of staff, their relatives or friends, or the undeclared receipt of gifts as an inducement or reward.
- 3.21 Conduct of private business in Trust time or on Trust premises.
- 3.22 Committing a criminal offence or receiving a Police Caution whilst in employment which in the opinion of management may render continued employment either undesirable or impossible.
- 3.23 Failure to declare and/or concealing convictions for criminal offences (whether related or unrelated to employment) whilst in employment.
- 3.24 Abuse of a position of power.
- 3.25 Bringing the Trust into serious disrepute.
- 3.26 Professional misconduct regarded as the more serious breaches of, e.g. Professional Bodies' Codes of Practice/Conduct.
- 3.27 Offences committed in breach of the Food Hygiene (General) Regulations, 1970 and the Food Safety Act, 1990 or any regulations made there under.
- 3.28 A serious breach of trust and confidence e.g. wilfully falsifying patient observations or the electronic patient record in an attempt to mislead.
- 3.29 Any overt or covert recordings of suspension meetings, disciplinary investigation meetings/interviews and disciplinary and appeal hearings by employees is not permitted under any circumstances and is expressly prohibited by the Trust. This rule also applies to any meetings taking place within the Trust including meetings or

hearings taking place under the Trust's Performance Management, Dignity at Work, Managing Ill Health and Grievance and Disputes Policies and Procedures.

- 3.30 When communicating through social networking sites such as Facebook, Twitter, blogs etc., employees should ensure their conduct on line is the same as it would be in the real world. Employees should uphold the reputation of the Trust and conduct should be of a high standard at all times. Employees must not:
- Share confidential information online
 - Post inappropriate comments about colleagues or patients.
 - Use social networking sites to bully or intimidate colleagues.
 - Pursue personal relationships with patients or service users.
 - Distribute sexually explicit material.
 - Manipulate photos with an intention to mock individuals and share these on line even when privately shared between friends
 - Use social networking sites in any way which is unlawful.
- 3.31 Frequent poor attendance, including repeated unauthorised absence or frequent poor timekeeping
- 3.32 Failure of an employee to report any risks they may identify in relation to their own physical and/or mental health at work to Management which might impair their ability to perform the duties of the post or comply with the provisions of the Health & Safety at Work Act.
- 3.33 Taking unofficial industrial action
- 3.34 Conduct not in keeping with the Trust values of compassion, respect, integrity and trust which is considered to be more serious than misconduct.
- 3.35 Any other misconduct, in breach of Trust Policy or Code of Conduct, judged to be of a similar gravity to the examples quoted.

*This list is not intended to be exhaustive.

Leicestershire Partnership NHS Trust

Levels of Authority for taking Formal Disciplinary Action within the Disciplinary Policy and Procedure

| Category of Staff | First and Final Written Warnings | Appeal against First and Final Written Warnings | Dismissal | Appeal against Dismissal |
|---------------------------|--|---|--|--|
| Chief Executive | Panel of 3 comprising: <ul style="list-style-type: none"> • Chairman of the Trust • Non-Executive Director • HR Representative | *** Panel of 3 comprising: <ul style="list-style-type: none"> • Chairman from another NHS Trust • Non-Executive Director • HR Representative | Panel of 3 comprising: <ul style="list-style-type: none"> • Chairman of the Trust • Non-Executive Director • HR Representative | *** Panel of 3 comprising: <ul style="list-style-type: none"> • Chairman from another NHS Trust • Non-Executive Director • Senior HR Representative |
| Executive Directors | Panel of 2 comprising: Chief Executive and HR Representative | *** Panel of 3 comprising: <ul style="list-style-type: none"> • Chairman • Non-Executive Director • HR Representative | Panel of 3 comprising: <ul style="list-style-type: none"> • Chairman • Non-Executive Director • HR Representative | *** Panel of 3 comprising: <ul style="list-style-type: none"> • Chief Executive or Chairman from another NHS Trust • Non-Executive Director • Senior HR Representative |
| Staff at Band 8c or above | Panel of 2 or 3 (See Note 4) comprising: Line Manager and HR Representative | *** Panel of 2 or 3 (See Note 4) comprising: <ul style="list-style-type: none"> • Manager above and next in line to the manager who issued the warning • Manager or professional lead (if relevant to case) • HR Representative | Panel of 3 comprising: <ul style="list-style-type: none"> • Director • Manager or Professional Lead (if relevant to case) and • HR Representative <p>See Note 5</p> | *** Panel of 3 comprising: <ul style="list-style-type: none"> • Non-Executive Director • Director • Senior HR Representative |
| All Other Employees ** | Panel of 2 or 3 (See Note 4) comprising: Line Manager and HR Representative | *** Panel of 2 or 3 (See Note 4) comprising: <ul style="list-style-type: none"> • Manager above and next in line to the manager who issued the warning • Manager or professional lead (if relevant to case) • HR Representative | Panel of 3 comprising: <ul style="list-style-type: none"> • Director or Head of Service • Manager or Professional Lead (if relevant to case) and • HR Representative <p>See Note 5</p> | *** Panel of 3 comprising: <ul style="list-style-type: none"> • Director or Head of Service • Manager at Band 8c or above • Senior HR Representative |

N.B. ** for medical staff, the panel composition will be in line with the requirements under the "Maintaining High Professional Standards in the Modern NHS" framework.

*** For all appeals none of the panel should have been previously involved at any level or be from the same service.

Leicestershire Partnership NHS Trust

Levels of Authority for taking Formal Disciplinary Action within the Disciplinary Policy and Procedure

Note:

1. Where the panel does not include a representative from Human Resources, the panel will have access to senior HR advice as required.
2. The panel should be independent i.e. no individual on the panel should have been involved with the case under consideration or in any decision making in relation to the case
3. Where appropriate, actions may be delegated to designated officers
4. In the case of disciplinary hearings involving medical staff, nursing staff, and therapy staff, the panel will normally include a professional from the relevant discipline.
5. Line Managers must not dismiss their direct reports.

Suspension Checklist and Guidelines

1. Is suspension necessary?

In cases that appear to involve gross misconduct, where it may allow a more objective investigation or where it may be prejudicial to LPT's interests for the employee to remain at work, a brief period of suspension should be considered while the case is being investigated.

Suspension is a neutral act, there is no presumption of guilt and it is not a sanction against the employee.

Employees suspended from work will receive their normal pay inclusive of any enhancements for rostered duties.

Employees will be permitted to take pre booked and authorised annual leave which falls within the period of suspension.

2. Who can authorise suspension?

Directors, Heads of Service or Senior Managers reporting to Heads of Service have the authority to suspend. A member of the Human Resources Department/Staff Side may be present at the suspension meeting. Contact should be made with Staff Side Lead or Staff Side Secretary to inform them of suspension and request their attendance at the suspension meeting.

3. Where should the employee be informed of the suspension?

Ideally in the employee's workplace, although in exceptional circumstances this may be done at the employee's home with their agreement.

4. What should the manager tell the employee when placing them on suspension?

The manager is responsible for advising the employee of the following information:

- The reason why they are being placed on suspension and the allegations made
- That the matter will be investigated under the Trust's Disciplinary Policy and Procedure
- Likely duration of suspension
- To ascertain whether the employee has any pre- booked and authorised annual leave which is imminent
- Check if they have a bank post , they cannot undertake any bank work during the suspension period, Manager to contact Centralised Staffing Solutions to inform of suspension
- That they will receive full normal pay whilst on suspension
- Suspension is a neutral act, there is no presumption of guilt and it is not

- a disciplinary sanction against the employee
- That they will remain on suspension until an investigation has been completed and, if necessary, a hearing arranged;
- That they are not permitted to enter Trust premises without permission from their manager unless for medical treatment;
- That they should remain available during normal working times for any meetings arranged in relation to the disciplinary matter;
- That they must not contact any employee of LPT or any other individual to discuss matters relating to the disciplinary matter/allegations, unless that person is their staff side representative or the Freedom to Speak Up Guardian.
- To contact their staff side representative for advice and support.
- Advise the employee that a manager uninvolved in the case will be made available to provide advice and support. These details will be confirmed in writing
- Updates will be provided on the progress of the investigation. The frequency of the updates and the method of communication will be jointly agreed by the employee and the Commissioning Manager
- Advise the employee of the Trust's counselling service which is available to all employees
- Advise the employee of the Trust's Occupational Health Service.
- Advise the employee of the Trust's Listening Ear Service
- Advise the employee that annual leave continues to be accrued whilst they are on suspension.
- That on conclusion of the suspension meeting they are required to leave the premises immediately and will be escorted from the premises by the suspending manager.
- That prior to leaving the premises they are required to hand over any Trust property they may hold including their Trust Identity Badge, any Ward/Office/Locker/Drug Cupboard keys, Smart Card, Mobile Phone, Nursing Bag, Laptop etc.
- The employee will be requested to provide a written statement responding to the allegations within the next 5 working days.

5. How long before the suspension is confirmed in writing?

The suspending manager should confirm the suspension in writing within 5 working days of the suspension meeting taking place

6. Travel arrangements for the employee

The suspending manager will ensure that arrangements are in place for the employee to travel home safely. Where necessary the manager can arrange transport for the employee and/or (with the employee's permission) contact a family member or a friend to make arrangements for the journey home.

7. How long will suspension last and how often should it be reviewed?

The period of suspension should be as brief as possible and should be reviewed every 4 weeks by the commissioning manager.

8. What should I do if it becomes clear during the investigation that this is not a gross misconduct matter?

If during the course of the investigation it becomes clear that whilst the matter may lead to disciplinary action it is no longer considered to be gross misconduct the employee should be allowed to return to work. The commissioning manager should keep a record of the review and the reasons for the suspension to continue or record the reasons if the suspension is lifted.

9. Does the employee have a right to be accompanied at the suspension meeting?

Suspension does not constitute a disciplinary action and there is no statutory right for an employee to be accompanied at the suspension meeting. However where reasonably practicable a staff side representative should be invited to attend a meeting and support the employee as long as this does not cause any unnecessary delay.

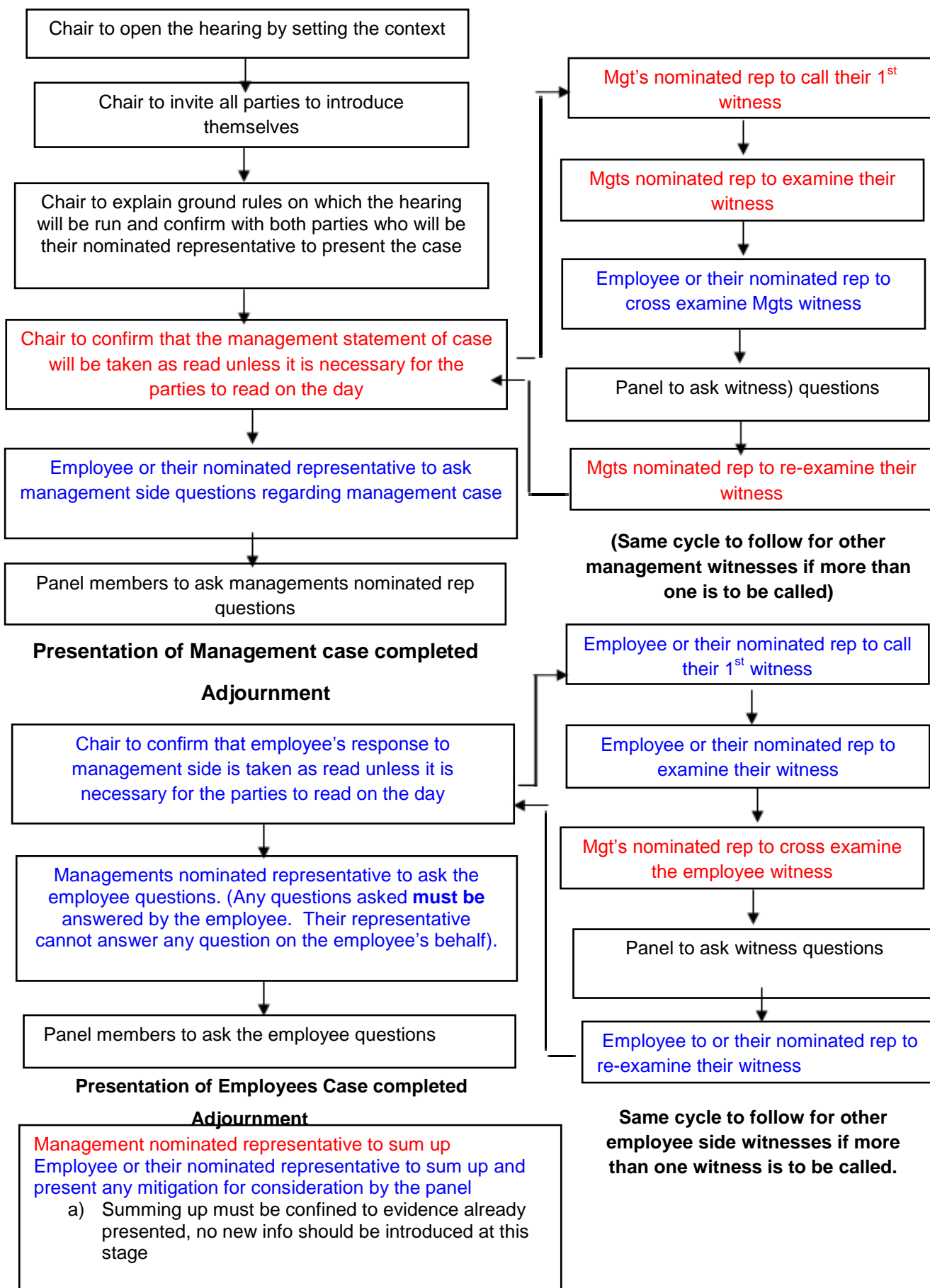
10. Can the employee take annual leave whilst they are suspended from work?

During the suspension period, the employee will generally be allowed to take annual leave but this must be discussed and agreed with the appropriate manager prior to booking the holiday. Any leave which has been authorised prior to the period of suspension will be honoured. Annual leave should be requested and authorised in the normal way using the employee's annual leave record card which will indicate the entitlement for that leave year. Annual leave and Bank Holidays continue to be accrued whilst the employee is suspended from work.

11. What happens if the employee reports being ill whilst suspended from work?

Where, during suspension the employee reports being ill, they should be classed as being on sick leave. In this situation, certification rules and sick pay provisions as outlined in the Trust's Policy and Procedure for Managing Ill Health will apply. A referral to the Occupational Health Department may be made to establish if the employee is fit to participate in the disciplinary process. Whilst the employee is on sick leave during suspension, all other terms of suspension will continue to apply e.g. not accessing Trust premises without prior permission. (Please refer to section 12.7 of the Managing Ill Health Policy and Procedure)

Flowchart to show how Formal Disciplinary Hearing will be run



Flowchart to show how the Formal Disciplinary Hearing will be run

Adjournment for the panel to decide whether allegations have been substantiated and to decide on the appropriate level of sanction (if any).

- The Panel will consider the evidence presented by both parties and witnesses (if any), together with any mitigation which may have been offered and decide whether on **the balance of probability** the allegation/s are substantiated

(If there is more than one allegation, the panel must decide for each allegation individually whether, on the basis of evidence presented, it has been substantiated)

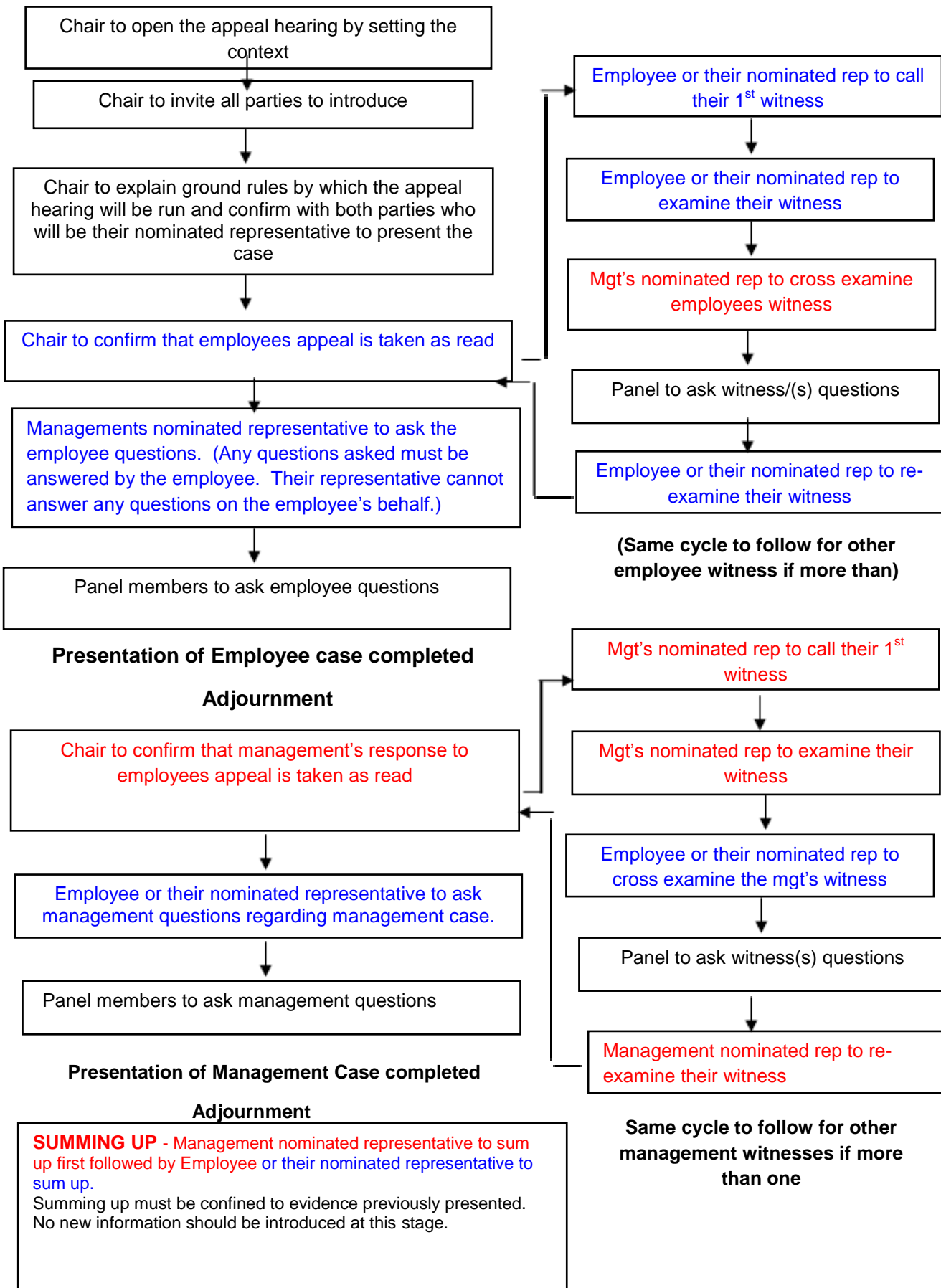
- *The Panel will consider the appropriate level of sanction to issue based on their findings*

Hearing to reconvene (Where the panel is able to deliver the decision on the day)

- The Chair of the panel will advise the employee whether the allegation(s) have been substantiated. i.e. (If more than one allegation the chair must do this for each allegation individually)
- The Chair of the panel will deliver the decision and inform the employee if a referral is being made to the relevant professional body and /or DBS
- If the employee has a Bank post the Chair will inform them that the Centralised Staffing Solutions team will be informed of the outcome/ sanction
- Where the employee has been issued with a disciplinary sanction, he/she will be informed of their appeal rights.
- The decision will be confirmed in writing within 5 working days of the hearing taking place.
- The management side will not be present when the panel informs the employee of the outcome of the hearing
- The management side will be informed of the outcome of the hearing by the Chair of the panel immediately after the employee has been informed
- The hearing will conclude when both sides have been made aware of the decision.

N.B. Where the panel is unable to deliver the decision on the day, both parties will be informed that the decision will be confirmed in writing.

Flowchart to show how Formal Appeal Hearing will be run



Flowchart to show how the Appeal Hearing will be run

Adjournment for the appeal panel to reach a decision

The appeal panel will consider the appropriateness of the original decision made, based upon the information that was available to the original disciplinary panel. In doing so the panel will need to determine:

- a) whether in the circumstances the disciplinary sanction applied was appropriate given the evidence presented, and in consideration of any mitigation that was presented
- b) Where procedural failure is alleged, the panel will also consider if there was any failure to follow the procedure that may have had a material effect on the original decision

The possible outcomes of the appeal hearing are as follows:

- uphold the original decision
- uphold the appeal and overturn the original decision completely resulting in no formal action against the employee
- uphold the appeal and substitute the original decision with a lesser sanction,
- Refer the case for a rehearing (only in exceptional circumstances)

Hearing to reconvene

- The Chair of the appeal panel will deliver the decision
- The decision will be confirmed in writing, usually within 5 working days of the hearing taking place
- The management side will not be present when the panel informs the employee of the outcome of the appeal hearing
- The management side will be informed of the outcome of the appeal hearing by the Chair of the panel immediately after the employee has been informed
- The appeal hearing will conclude when both sides have been made aware of the decision

The appeal panel's decision will be final and there will be no further right of appeal open to the employee within the organisation unless the case has been referred for a re-hearing in which case the employee will have the right to appeal against the decision made by the new panel.

Where the appeal panel is unable to deliver the decision on the day, both parties will be informed that the decision will be confirmed in writing.

DISCIPLINARY PROCEDURE TIMESCALES

| Action | Timescale | Person Responsible |
|--|--|---|
| Suspension from Duty | | |
| Take advice from relevant senior manager and HR. Determine whether suspension is appropriate or alternative to suspension. Inform employee of decision to suspend /alternative to suspension | Suspend from duty or advise of alternative to suspension as soon as is reasonably practicable after the decision to suspend/alternative to suspension is taken. | Suspending Manager |
| Suspension /alternative to suspension confirmed in writing to the employee | As soon as possible and normally Within 5 working days of the date of the suspension | Suspending Manager |
| Review of suspension | Weekly intervals or as agreed with employee | Commissioning Manager (with advice from Investigation team) |
| Outcome of suspension review confirmed in writing to the employee | Within 5 working days of completion of the review | Commissioning Manager |
| Investigations | | |
| Invite to investigation meeting in writing | Usually 5 working days prior to the date of the meeting | Investigation Team |
| Investigation concluded | Normally Within 8 weeks of the Terms of Reference being issued to the Investigation Team. n.b. Timeframe may be extended due to absence on annual leave or sick leave or unavailability of parties involved in the investigation. | Investigation Team |
| Disciplinary Meetings | | |
| Invite to disciplinary meeting in writing | Usually 5 working days prior to the date of the meeting | Commissioning Manager |

| | | |
|---|---|--|
| Confirm sanction in writing | Within 5 working days | Commissioning Manager with support from HR |
| Disciplinary Hearings | | |
| Hearing to be arranged | Usually within 6 weeks of receipt of the investigation report being completed | Human Resources |
| Invite to disciplinary hearing in writing and management case issued to employee | 10 working days prior to the date of the hearing | Chair of the Panel |
| Employees statement of case to be received | 5 working days prior to the date of the hearing | Employee |
| Rearrangement of disciplinary hearing, if appropriate | Within 5 working days of original date given | Human Resources |
| Outcomes of Disciplinary Meetings & Hearings | | |
| Outcome confirmed in writing to member of staff | Normally within 5 working days of the meeting/hearing | Chair of the Panel/Commissioning Manager (with support from HR) |
| First written warning to be removed from personal file | 12 months from the date on which the sanction was confirmed in writing | Line Manager |
| Final written warning to be removed from personal file | 24 months from the date on which the sanction was confirmed in writing | Line Manager |
| Appeals | | |
| Member of staff to register their appeal in writing and submit the grounds on which they are making the appeal together with any supporting documentation | Within 10 working days of the date of the letter confirming the outcome of the disciplinary sanction | Employee |

| | | |
|--|---|--------------------|
| Appeal to be heard | Normally within 6 weeks of receipt of the notification of appeal | Appeal Panel |
| Invite to appeal hearing | At least 10 working days prior to the date of the appeal hearing to enable the management side to formulate their response | Chair of the Panel |
| Management to submit their response to the employee's appeal | 5 working days prior to the date of the appeal hearing | Management Side |
| Outcome of appeal confirmed in writing | Within 5 working days of the appeal hearing taking place | Chair of the Panel |

The NHS Constitution

NHS Core Principles – Checklist

Please tick below those principles that apply to this policy

The NHS will provide a universal service for all based on clinical need, not ability to pay.
The NHS will provide a comprehensive range of services

| | |
|---|-------------------------------------|
| Shape its services around the needs and preferences of individual patients, their families and their carers | <input type="checkbox"/> |
| Respond to different needs of different sectors of the population | <input type="checkbox"/> |
| Work continuously to improve quality services and to minimise errors | <input checked="" type="checkbox"/> |
| Support and value its staff | <input checked="" type="checkbox"/> |
| Work together with others to ensure a seamless service for patients | <input checked="" type="checkbox"/> |
| Help keep people healthy and work to reduce health inequalities | <input checked="" type="checkbox"/> |
| Respect the confidentiality of individual patients and provide open access to information about services, treatment and performance | <input type="checkbox"/> |

Due Regard Screening Template

| Section 1 | | |
|---|--|---|
| Name of activity/proposal | Disciplinary Policy and Procedure | |
| Date Screening commenced | 17 th March 2015 | |
| Directorate / Service carrying out the assessment | Workforce and Organisational Development/Human Resources | |
| Name and role of person undertaking this Due Regard (Equality Analysis) | Theresa Wheeliker, HR Business Partner | |
| <p>Give an overview of the aims, objectives and intended outcomes of the proposal:</p> <p>Aims This Policy is designed to ensure that all employees are aware of and maintain the high standards of conduct required by this Trust. It describes clearly the process for reporting, investigating and managing allegations of misconduct and ensures all employees are treated fairly and consistently.</p> <p>Objectives To support all staff in maintaining the high standards of conduct required by the Trust and to provide clarity on what to do if they come across inappropriate conduct and behaviour. To support managers with investigating and managing allegations of misconduct whilst treating employees equitably, fairly and consistently.</p> <p>Intended Outcomes To encourage a permanent improvement in the employee's conduct where it has been identified as unacceptable and to ensure that employees are treated equitably, fairly and consistently.</p> | | |
| Section 2 | | |
| Protected Characteristic | Could the proposal have a positive impact Yes | Could the proposal have a negative impact No |
| Age | Yes, this policy and procedure is supportive of staff who fall within the remit of the Equality Act 2010 protected characteristics including disabled employees and makes adjustments to ensure the process is fair. | The policy and procedure ensures all misconduct is managed consistently and fairly across the Trust as a whole, with very clear guidelines to be followed in every case |
| Disability | | |
| Gender reassignment | | |
| Marriage & Civil Partnership | | |
| Pregnancy & Maternity | | |
| Race | | |
| Religion and Belief | | |
| Sex | | |
| Sexual Orientation | | |
| Other equality groups? | | |

Section 3

Does this activity propose major changes in terms of scale or significance for LPT? For example, is there a clear indication that, although the proposal is minor it is likely to have a major affect for people from an equality group/s? Please tick appropriate box below.

| Yes | | No | |
|---|--|----------------------------|-------------------------------------|
| High risk: Complete a full EIA starting click here to proceed to Part B | | Low risk: Go to Section 4. | <input checked="" type="checkbox"/> |

Section 4

It this proposal is low risk please give evidence or justification for how you reached this decision:


Key aspects of the Equality Act 2010 are embedded throughout the policy ensuring reasonable adjustments are considered. These may include, but are not limited to, identifying appropriate and/or additional measures of support such as a link worker/support worker to accompany employees at disciplinary investigation meetings and temporary or permanent adjustments to work type that could improve the employee's situation.

The Trust is also happy to associate itself with the new **Workforce Race Equality Standard** which comes into effect from the 1st April 2015. Embedded within the standard are a number of workforce metrics which will help to identify and reduce any evidence of adverse impact towards black employees compared to other groups and actions will be agreed to address these accordingly.

Equality monitoring has been incorporated in the overall policy compliance process which aims to provide assurance that any potential adverse impact on any protected group during the implementation of the policy and associated procedures are identified and removed at the earliest opportunity.

Sign off that this proposal is low risk and does not require a full Equality Analysis:

Head of Service Signed:



Date: 9th June 2015