

# Disciplinary Policy and Procedure

The purpose of this policy is to ensure a fair, systematic and consistent approach is taken when an employee's behaviour or actions are in breach of LPT's Standards of Conduct and Behaviour or falls short of the expected standards.

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## Contents

Equality Statement	3
Due Regard	3
Definitions that apply to this policy	4
1.0 Purpose of the policy	4
2.0 Summary and Key Points	5
3.0 Introduction	5
4.0 Duties Within the Organisation	5
5.0 Supporting staff and ensuring equality and fairness	6
6.0 Informal Management	7
7.0 Initial fact-finding	8
8.0 Process Flowchart	10
9.0 Early resolution process	11
10.0 Alternative to suspension/suspension	11
11.0 Formal resolution/investigation	12
12.0 Formal Hearings	13
13.0 Levels of disciplinary sanction/action following disciplinary process	15
14.0 Support following disciplinary processes (action short of dismissal)	16
15.0 Support following dismissal	16
16.0 Right of appeal	17
17.0 Appeal hearing	17
18.0 Other issues	18
18.1 Allegations against staff side representatives	18
18.2 Allegations of criminal acts (related and unrelated to employment)	18
18.3 Referral to other agencies	19
18.4 Grievances during disciplinary action	19
18.4 Record keeping	19
19.0 Training requirements	19
20.0 Monitoring Compliance and Effectiveness	20
21.0 Links to Standards/Performance Indicators	20
22.0 References and Bibliography	21
Appendix 1 Standards of Conduct and Behaviour	22
Appendix 2 Triage Decision Record	24
Appendix 3 Levels of authority for disciplinary action	26
Appendix 4 Disciplinary hearing flowchart	27
Appendix 5 Appeal hearing flowchart	28
Appendix 6 Disciplinary Procedure Timescales	29
Appendix 7 Training Requirements	30
Appendix 8 The NHS Constitution	31
Appendix 9 Stakeholders and Consultation	32
Appendix 10 Due Regard Screening Template	33
Appendix 11 Data Privacy Impact Assessment Screening Template	35

## Version Control and Summary of Changes

Version number	Date	Comments (description change and amendments)
1.0	May 2021	New Policy produced through co-design with representatives from Human Resources, operational management, staff side, LPT Change Champions, Cultural Ambassador and the Equality, Diversity and Inclusion team.

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### Equality Statement

Leicestershire Partnership NHS Trust (LPT) 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 promotes 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, sex (gender), gender reassignment, sexual orientation, marriage and civil partnership, race, religion or belief, pregnancy and maternity.

### Due Regard

LPT will ensure that Due regard for equality is taken and as such will undertake an analysis of equality (assessment of impact) on existing and new policies in line with the Equality Act 2010. This process will help to ensure that:

- Strategies, policies and procedures and services are free from discrimination;
- LPT complies with current equality legislation;
- Due regard is given to equality in decision making and subsequent processes;
- Opportunities for promoting equality are identified.

Please refer to due regard assessment (appendix 4) of this policy

## Definitions that apply to this Policy

<b>Employee / staff representative</b>	Either a “Trade Union/Professional Organisation representative” or a colleague of the employee (i.e. an employee of the Trust uninvolved with the investigation)
<b>Staff side</b>	Collective term for trade union/professional organisation representatives
<b>Working day</b>	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.
<b>Misconduct</b>	Actions or behaviour which breach Standards of Conduct and behaviour.
<b>Gross misconduct</b>	Actions or behaviour which breach Standards of Conduct and Behaviour and are 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)
<b>Early resolution</b>	Action taken under the policy without recourse to a full, formal investigation. Early resolution options may be offered to staff where misconduct is identified by the Trust and acknowledged by the staff member.
<b>Formal resolution</b>	Action taken under the policy where the need for a full, formal investigation is identified due to the seriousness of the issues identified (gross misconduct) or where information established during fact-finding is disputed and/or the offer of early resolution options is rejected by the staff member
<b>Cooling off period</b>	A period of paid special leave where employees are sent home for a short period of time to allow management to undertake fact-finding in cases of alleged serious or gross misconduct.
<b>Fact-finding</b>	A shortened investigation undertaken by the manager to establish the facts in relation to alleged misconduct/ gross misconduct.
<b>Triage</b>	A guided decision-making tool based on the principles of a ‘Just Culture’ to support managers to review information gathered during fact-finding and take appropriate next steps under this policy
<b>Taken as read (at a hearing)</b>	All documents and reports submitted to a panel hearing must be read prior to the hearing by the panel, management side, the employee and the employee’s representative. Such documents are ‘taken as read’ and therefore should not be presented in full at the hearing.

### 1.0. Purpose of the Policy

**Leicestershire Partnership NHS Trust (‘the Trust’) requires high standards of conduct and behaviour from everyone and is committed to helping people improve and learn from mistakes.**

The purpose of this policy is to ensure a fair, systematic and consistent approach is taken when an employee’s behaviour or actions are in breach of the Trust’s Standards of Conduct and Behaviour or falls short of the expected standards.

## **2.0. Summary and Key Points**

The Standards of Conduct and Disciplinary Policy and Procedure provide a framework to manage concerns about someone's conduct or behaviour in a fair and timely way. The policy and procedure reflects the ACAS Code of Practice on Disciplinary and Grievance Procedures and also takes account of the NHS Improvement 'Just Culture' recommendations and the Trust's commitment to developing a just and learning culture. As part of upholding standards for our patients and staff, it is inevitable that there are times when formal procedures and action will need to be followed; however it is essential that people are treated with kindness, empathy and compassion in line with Trust Values, regardless of the circumstances.

## **3.0. Introduction**

- 3.1.** The policy applies to all staff substantively employed by the Trust. It does not apply to bank or agency workers or the staff of contractors. For medical staff this policy and procedure will be applied in conjunction with the 'Maintaining High Professional Standards in the Modern NHS' framework.
- 3.2.** The Trust has Standards of Conduct and Behaviour which are expected of all staff. This Policy ensures that all staff are aware of these standards and understand the process for reporting, investigating and managing alleged breaches of those standards. The Standards of Conduct and Behaviour are set out in Appendix 1 and also clarifies examples of conduct and behaviour which may constitute misconduct or gross misconduct.
- 3.3.** All staff should act in accordance to our Trust leadership behaviours for all and be able to evidence adherence in situations that involve disciplinary action. A fundamental approach to developing our Leadership behaviours for all is the ability to both give and receive feedback in a positive and insightful way. The feedback method is based on defining; Context, Understanding, Behaviour and Effect (CUBE).
- 3.4.** The fair treatment of staff supports a culture of fairness, openness and learning by making staff feel confident to speak up when things go wrong, rather than fearing blame. When issues of inappropriate conduct and behaviour are identified, an objective and prompt examination of the issues will be carried out to establish and agree the actions to be taken under this Policy. This may include informal support, guidance and supervision or formal investigation/action.
- 3.5.** The over-arching principle of this Policy is that action taken should be reasonable, proportionate and take account of mitigating factors.
- 3.6.** The timescales stipulated in this policy and procedure are best practice guidelines and should be followed wherever practicable. However, the timescales are not intended to be prescriptive and may be varied in consideration of particular circumstances.

## **4.0. Duties within the Organisation**

- 4.1.** The Trust Board has a legal responsibility for Trust policies and for ensuring that they are carried out effectively.
- 4.2.** The Trust Policy Committee is mandated on behalf of the Trust Board to adopt policies
- 4.3.** Trust Board Sub-committees have the responsibility for agreeing policies and protocols.
- 4.4.** Divisional Directors and Heads of Service are responsible for:
  - Ensuring this policy is applied consistently within directorates/ services.
- 4.5. Managers and Team leaders as responsible for;**
  - Sharing the Trust's Standards of Conduct and Behaviour with their teams and

- ensuring that employees understand Trust expectations.
- Addressing any concerns about conduct/behaviour directly with individuals in a clear and compassionate way and identifying and providing support to individuals as required.
- Undertaking supervision as a two-way process and recording discussions regarding conduct/behaviour in supervision.
- Where action is taken under this policy, maintaining contact with individuals involved throughout disciplinary processes and ensuring they are kept informed at the intervals specified in the policy.
- Undertaking fact-finding and triage of any disciplinary matters, with support from HR and other relevant professionals.
- Where required, undertaking formal investigations, producing reports and presenting information at hearings, with support from HR and other relevant professionals.
- Ensuring that action under this policy is proportionate and takes account of any identified mitigating factors.
- Monitoring the progress of investigations, with support from HR
- Ensuring the investigation team has sufficient resources and appropriate support (e.g. administrative support).

#### **4.6. HR is responsible for:**

- Implementation, monitoring and review of this policy
- Providing training and awareness sessions on this policy
- Providing advice, support and guidance to managers and employees on the application of this policy.
- Ensuring the consistent application of this policy.
- Providing HR input, advice and support to managers, commissioning managers, investigation managers, hearing panels and appeal hearing panels as described in this policy.

#### **4.7. Lead Professionals are responsible for:**

- Providing professional support and advice to managers and HR.

#### **4.8. Responsibility of Staff**

- To be aware of and adhere to the Trust's Standards of Conduct and Behaviour at all times.
- To take personal responsibility for their conduct and behaviour
- Where requested, provide a statement, attend an interview or hearing as a witness
- Where concerns are raised in relation to their conduct or behaviour, to engage with appropriate discussions with their manager and/or adhere to the requirements of this policy.

#### **5.0. Supporting staff and ensuring equality and fairness**

**5.1.** The Trust recognises that being the subject to allegations of misconduct is distressing and stressful for the individual involved and other colleagues affected by the issues and/or more formal investigation or action.

**5.2.** The manager is responsible for keeping in contact with the individual and any other staff affected. Clear, regular and confidential communication should help people involved remained informed about what is happening, gives the opportunity to raise questions and can reduce stress and other mental health issues.

- 5.3. The manager will be responsible for maintaining communication with employees subject to disciplinary processes (both formal and informal) and ensuring that employees receive clear and timely updates throughout the process and until the matter is concluded.
- 5.4. Staff involved in investigations – including witnesses - will be advised of the support available to them internally and externally at an early stage. Where there are concerns about an individual's health or wellbeing an Occupational Health referral will be made at the earliest opportunity.
- 5.5. The Trust is committed to working in partnership with trade union representatives throughout formal processes. Where staff are members of a trade union they will be encouraged to contact their representative for support and guidance. Staff will be entitled to be accompanied during formal interviews and at hearings by their trade union representatives or a suitable colleague. However, legal representation is not permitted during internal Trust processes. The representative/ colleague can confer with the employee, ask questions and make statements on the employee's behalf, both at interviews and during any formal hearing; however they cannot answer questions on behalf of the employee.
- 5.6. The Trust is committed to ensuring fair and equitable decision-making and will ensure that reasonable adjustments are made to support staff with protected characteristics when they are subject to disciplinary processes;
- Where appropriate, advice will be sought from the Equality Diversity and Inclusion (EDI) team and/or appropriate trained staff (e.g. Cultural Ambassadors) to inform the investigation and decision-making processes which involve staff from minority ethnic backgrounds. In the event of formal hearings or appeal hearings where an individual from a minority ethnic background is subject to an allegation, all reasonable efforts will be made to arrange for the panel to include a panel member from a minority ethnic background.
  - Reasonable adjustments will be arranged for staff with mental or physical disabilities, neurodiversity or other protected characteristic and advice sought from Occupational Health or other relevant experts, if required.
- 5.7. Where individuals are subject to suspension or alternative to suspension arrangements, an independent manager will be allocated to provide pastoral support throughout any formal processes.
- 5.8. The Disciplinary Policy and Procedure focuses on compassionate approaches to issues of unsatisfactory conduct and behaviour for all staff involved.
- 6.0. Informal management (minor or less serious behaviour/conduct issues)**
- 6.1. Minor or less serious behaviour/conduct issues are best dealt with informally and quickly by line managers; a quiet word is often all that is needed.
- 6.2. Managers are responsible for addressing minor/less serious issues with individuals by providing constructive and clear feedback on the issue which is giving concern. These conversations should take place as soon possible after the incident or issue has occurred.
- 6.3. Managers must ensure the discussion is a two-way conversation and that the individual has the opportunity to respond to the concerns raised. The emphasis should be on ensuring there is a clear understanding of the issue and the improvements that are required. The manager should use the principles of the CUBE feedback model - based on defining; Context, Understanding, Behaviour and Effect – to support these conversations. Where further support, guidance or training is indicated this should be organised without undue delay.
- 6.4. The manager should make a note of the discussion as part of the individual's normal

management / clinical supervision record.

- 6.5.** In the event that informal management action does not bring about the required improvement, or an issue is too serious to be considered minor then further fact-finding will be required to determine the appropriate action under this policy.

**7.0. Initial fact-finding (potential misconduct or gross misconduct)**

- 7.1.** When a potentially more serious breach of the Trust's Standards of Conduct and Behaviour is identified the manager will be responsible for carrying out initial fact-finding. This should take place as soon as possible after the incident and aim to be concluded within 5 working days where reasonably practicable.
- 7.2.** Managers should advise employees involved in fact-finding that they can seek advice and support from their union representatives. Seeking advice and support from staff side representatives is viewed positively and will not disadvantage the employee in anyway. Where appropriate, staff side may link in with management and/or HR representatives.
- 7.3.** The fact-finding must include information provided by the staff member (alleged perpetrator) and their response to the issues which have been identified. The only exception to this is where Safeguarding/Police involvement requires the Trust not to share information with an individual. In these cases, this policy should be followed in conjunction with the Allegations against Staff Policy and with advice from Safeguarding Lead and other professionals/external partners.
- 7.4.** The fact-finding should establish a clear timeline and pull together as much relevant information as possible (i.e. rotas, patient notes, observation sheets, CCTV, statements from witnesses). The manager should meet with the employee and any other relevant individuals to get a good understanding about what has happened. This is an informal discussion and there is no right to be accompanied. Statements should be gathered from all those with information concerning the incident.
- 7.5.** During the fact-finding the manager should seek advice and guidance from other lead professionals as required (HR, Nursing/AHPs, Information Governance, Safeguarding and EDI). Where there is an allegation of fraud then the Trust's Counter Fraud Specialist must be contacted immediately for advice and guidance.
- 7.6.** The fact-finding must consider any mitigating factors or context to the incident prior to a decision being taken about the next appropriate steps under this policy. In some cases it may be necessary to send an individual home for a 'cooling-off' period to allow this fact-finding to take place. A 'cooling off' period will not normally exceed 72 hours. Where an individual is placed on a 'cooling off' period the fact-finding must be concluded within 72 hours where reasonably practicable. In exceptional circumstances, 'cooling off' periods may be extended by a maximum of 48 hours with approval from a Senior HRBP and an operational manager (Band 8A or above). The employee *must* be kept informed of any decision to extend the 'cooling off' period.
- 7.7.** Where a safeguarding or potential criminal act is alleged, the cooling off period may be used to enable further information to be gathered and/or liaison with Safeguarding Lead and other professionals/external partners.
- 7.8.** Once the fact-finding is concluded the manager, in conjunction with an HR representative and any other relevant professional, must carefully review the outcome of the fact-finding and complete the 'triage decision record' (Appendix 2) to record any mitigation or relevant context to the incident. This enables decisions to be taken on a case-by-case basis, taking account of incident and individual specific factors.
- 7.9.** In discussion with HR and any other relevant professionals, the manager should record what has been established during the fact-finding under each of the sections; as a minimum this should include what has been found, the source of the information



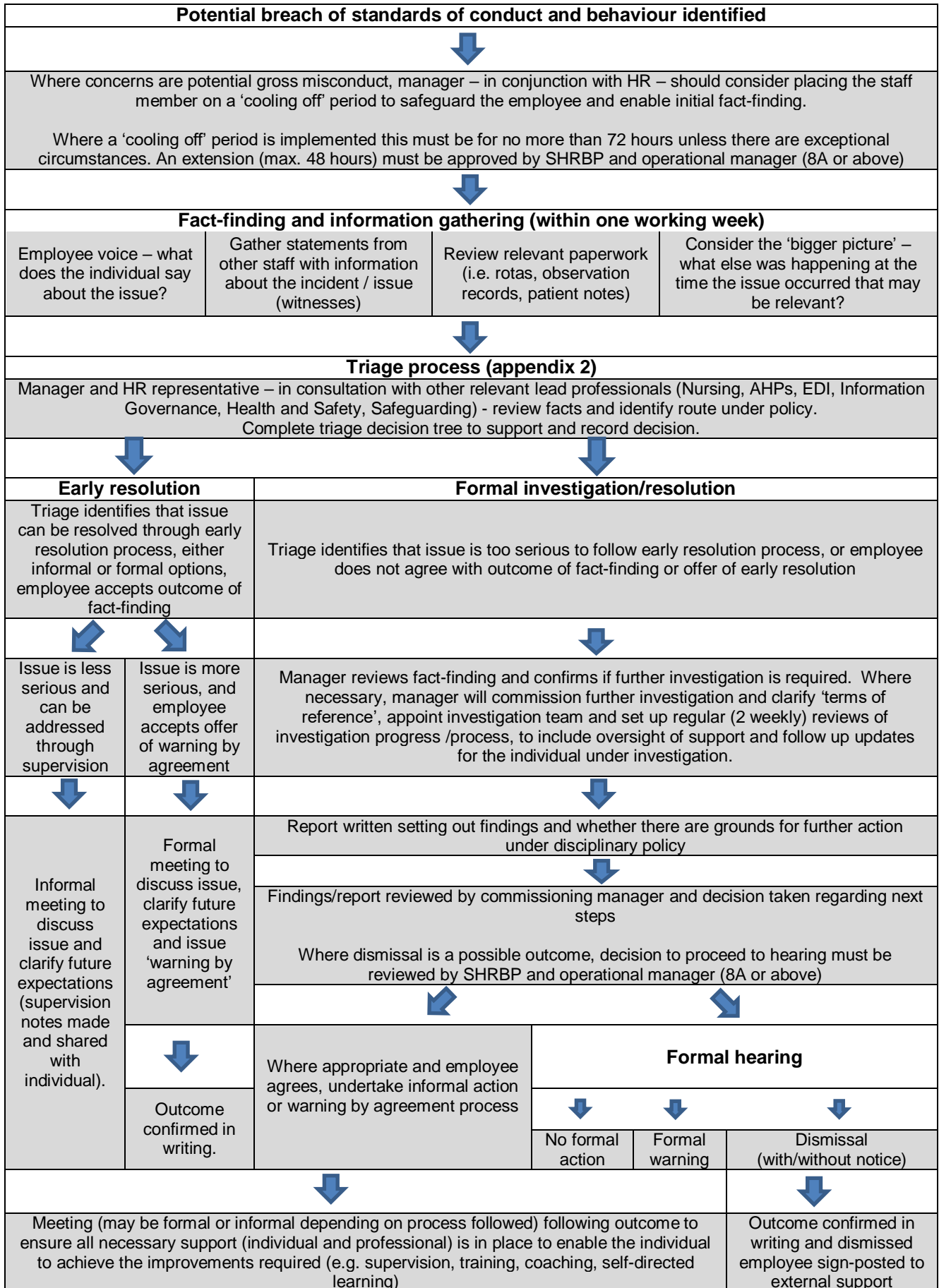
and the supporting evidence which has been identified. The summary and rationale section should draw together all the information considered and the suggested course of action under this Policy as set out in the flowchart in section 8.0.

**7.10.** Triage decision records will be retained by HR to enable central oversight and monitoring and to support consistency in process and proportionate decision-making.

**7.11.** The possible outcome of the triage process are:

- No further action
- Offer early resolution (informal action) – section 9.0
- Offer early resolution (formal action by agreement)
- Refer to formal resolution (formal investigation/action); may include consideration of alternative to suspension/suspension options (see Section 10.0)
- Where triage identifies that issues were a result of performance concerns, ill-health or substance misuse the appropriate Trust policy will be followed (Supporting Performance, Attendance and Wellbeing, Substance Misuse)
- Where there is an active police/safeguarding investigation and the Trust is unable to progress an internal investigation, information will be reviewed in conjunction with the Allegations against Staff Policy and with advice from Safeguarding Lead and other professionals/external partners. Appropriate risk assessment will be taken to inform decisions about returning the employee to the workplace or potential alternative to suspension/ suspension arrangements (see section 10).

## 8.0. Process flowchart.



## **9.0. Early resolution process (potential misconduct or serious misconduct)**

- 9.1.** The triage process should be undertaken using the template (Appendix 2) to guide and process. Triage should consider the specific circumstances of each case and early resolution *may* be offered in the following circumstances:
- The fact-finding has established the issue is not as serious as was first thought and/or there are significant mitigating factors. Informal management action is still required to set expectations for future conduct and behaviour (see section 5.0).
  - The fact-finding has established that there has been a more serious breach of the Standards of Conduct and Behaviour which warrants the issuing of a formal warning. The staff member agrees with findings and has reflected on their responsibilities in relation to the issues identified.
  - The fact-finding has established that there has been a more serious breach of the Standards of Conduct and Behaviour which warrants the issuing of a formal warning. Triage process has identified significant mitigating factors which have been considered and agreed to reduce the level at which disciplinary action is taken (i.e. issue would otherwise be gross misconduct, but mitigating factors mean the issue is treated as misconduct). The staff member agrees with findings and accepts personal responsibility for their role in the incident.
  - Early resolution **will not** be offered in cases where the incident is so serious that – even taking account of any mitigating factors – it could constitute gross misconduct and be a fundamental breach of the employment contract (see appendix 1 for examples of potential gross misconduct).
- 9.2.** Where a first or final formal written warning by agreement is to be offered, the manager will inform the employee of the proposal to offer a warning by agreement and give a brief explanation of the rationale for moving to a warning by agreement meeting. The manager will also confirm with the employee if they have sought or intend to seek advice from a staff side representative.
- 9.3.** Where the employee is a member of a staff side organisation and has given permission, the manager or HR representative will make reasonable efforts to contact the identified staff side representative to discuss the proposed warning by agreement. This discussion will:
- Provide the staff side representative with information regarding the summary findings and the brief rationale for offering a warning by agreement.
  - Enable the staff side representative to raise any concerns or queries in relation to the proposal in advance of the meeting.
- 9.4.** Following 9.2 and 9.3, where no significant concerns have been raised, a warning by agreement meeting will be arranged. The employee may be accompanied at the meeting by a staff side representative or a colleague. The meeting will be conducted by the manager supported by an HR representative. At the meeting, the manager will share a brief report which will summarise the outcome of the fact-finding and explain the rationale for a formal warning. The manager will ensure there is a clear understanding of the issue and the improvements that are required and any support to achieve this. Where further support, guidance or training is indicated this should be organised without undue delay.
- 9.5.** The employee will be given 5 days to confirm if they wish to accept this offer. The offer is made ‘without prejudice’ and if an employee decides not to accept the offer this will not be disclosed during any future formal proceedings.
- 9.6.** Where a first or final formal written warning is accepted, a letter will be sent to the employee confirming the warning and the expectations for future conduct/behaviour. The letter will also set out any support, guidance or training in place to assist the employee. The letter will be sent within 5 working days of the employee confirming

they wish to accept the warning. A copy of the warning will be placed on the personal file for the period specified in section 13.

**9.7.** There is no right of appeal against a first or final written warning which is issued by agreement.

#### **10.0. Alternative to suspension/suspension**

**10.1.** In cases where potential gross misconduct is alleged, it may be necessary for measures to be taken to protect the employee and manage any risks presented by the allegations against them. These measures may include restricted duties, removal of access to certain systems, increased supervision, redeployment to an alternative work area (alternative to suspension) or – in exceptional circumstances – exclusion from the workplace (suspension) while the investigation is on-going.

**10.2.** When alternative to suspension is put in place, the staff member will be advised at a meeting of the restrictions in place and the expectations of them during the period of the investigation. The arrangements will be confirmed in writing within 5 days of the meeting. Alternative to suspensions may be in areas outside of the individual's normal workplace and carrying out tasks which may not normally be part of the employee's substantive post. Appropriate support will be put in place for the individual and employees are expected to co-operate with the arrangements in place.

**10.3.** Suspension from work will only be applied after careful consideration and with advice from HR and approval from the head of the service (or another appropriate senior manager). The individual will be informed of their suspension at a meeting, during which the terms of their suspension will be explained. Where time allows, the Trust staff side Chair will be informed of the suspension meeting and will be given the opportunity to provide a union representative to support the individual at the meeting (regardless of union membership), however the meeting will not be delayed or rearranged if this cannot be facilitated.

**10.4.** The arrangements and terms of the alternative to suspension/suspension will be confirmed in writing following the meeting. The letter will include the terms of the alternative to suspension/suspension, the rationale for the measures being put in place and when the arrangements will be reviewed.

**10.5.** Alternative to suspensions/suspensions must be reviewed every 10 working days to confirm that the measures in place are still required. The employee must be updated following each review.

#### **11.0. Formal investigation/resolution (potential misconduct or gross misconduct)**

**11.1.** In the event that fact-finding identifies that the incident is so serious that - even taking account of any mitigating factors – it could constitute gross misconduct, or if a staff member does not accept the outcomes of the fact-finding or an offer of early resolution, or where further investigation is required; a full formal process will be followed.

**11.2.** The manager will review the fact-finding, in conjunction with HR representative, and determine if further investigation is necessary. Where it is determined that no further investigation is required the manager will write to the employee to confirm the allegations (terms of reference) and to advise them that a disciplinary hearing will be arranged (see section 10.).

**11.3.** Where it is decided that further investigation is necessary, the investigation will be commissioned by the manager or another appropriate manager (the 'commissioning manager'), who will clearly identify the 'terms of reference' for the investigation. The 'terms of reference' describe the alleged incident and the Standard(s) of Conduct and Behaviour which have potentially been breached. Where the incident is

potential gross misconduct this will be specified. During the course of the investigation, if further issues are identified, the 'terms of reference' may be amended or expanded.

- 11.4. The commissioning manager will appoint an investigation team who will carry out the investigation (an independent manager and an HR Representative).
- 11.5. The commissioning manager will write to the staff member to inform them that a formal investigation will take place. The letter will clearly set the 'terms of reference' for the investigation and will advise them when they will be updated on the progress of the investigation.
- 11.6. The investigation team will review the information gathered during the fact-finding and carry out further investigation.
- 11.7. Where the investigation team decide to conduct interviews, interviewed staff may be accompanied by either a staff side representative or a colleague who is not otherwise involved in the investigation. Notes of the interview will be taken and will be sent to the employee to sign. The interview will also be digitally recorded but the recording will not be transcribed. The recordings will *only* be made available to listen to where there is a dispute over the accuracy of the notes *and written amendments are not accepted by the other party*.
- 11.8. Patients/Service Users should only be interviewed or called as witnesses to hearings in exceptional circumstances. Appropriate medical and Human Resources advice must be obtained to inform any decision in relation to patient/service user involvement.
- 11.9. When the investigation is concluded, the investigation team will prepare a report to summarise the findings, supporting evidence and whether there is a disciplinary case to answer. The report will be shared with the commissioning manager.
- 11.10. Where the investigation team have identified that there is a case to answer, but the issue is not identified as potential gross misconduct and/or significant mitigation has been identified through the investigation (i.e. issue would otherwise be gross misconduct, but mitigating factors lead the commissioning manager, in conjunction with HR, to conclude that the issue should be treated as misconduct), the commissioning manager may offer the member of staff an opportunity to consider accepting a formal warning by agreement (under the terms set out in section 7.0) as an alternative to proceeding to a formal hearing.
- 11.11. A formal hearing will be arranged where the fact-finding/investigation identified a case to answer and the issue is identified as potential gross misconduct, or where a warning by agreement has been offered and turned down by the employee. Where an employee has been offered and refused the opportunity to accept a warning by agreement, this will not be disclosed at the hearing or in correspondence related to the hearing.
- 11.12. Formal hearings should be held as soon as possible after the conclusion of the disciplinary investigation. Managers, employees and their representatives must make every effort not to unreasonably delay hearings.
- 11.13. Where the hearing may result in dismissal, the decision must be reviewed by a Senior HRBP who will review the investigation report and supporting evidence.

## **12.0. Formal Hearings**

### **12.1. Panel composition:**

- The Trust is committed to ensuring that hearing panels are diverse in representation and panel members will be selected who have appropriate seniority, knowledge, skills and experience relevant to the case being considered (including consideration of factors such as minority ethnic status, disability status, professional background etc.). Where appropriate, additional panel members will be recruited to

ensure appropriate representation.

- Panel members will have no previous involvement with the case or conflict of interest that could influence decision-making.

## **12.2. Preparation for the hearing**

- The employee will be given at least 10 working days' notice of the date of the hearing in writing. The letter will confirm the arrangements for the submission of the employee's statement of case, which must be submitted 5 working days prior to the date of the hearing, including the names and statements of any witnesses the employee wishes to call (see 12.2.4). The letter will also set out the arrangements for the hearing and advise the employee of the potential outcome of the panel (i.e. formal warning/ dismissal).
- The employee will be given two copies of the management report and any related documents that will be considered at the hearing. Any patient information will be redacted. Where the employee is represented by a union representative, the second copy of the report may be provided directly to the union representative with the agreement of the employee.
- Where witnesses are to be called by either management or the employee, they must have a significant contribution to make to the case. Where the witness has not been interviewed or submitted a statement as part of an investigation, a signed statement must be received at least 5 working days prior to the hearing to enable the panel to review the information that will be provided by the witness.
- Witnesses in support of the employee's case who were not interviewed or who did not submit a statement as part of the investigation, may be contacted by the employee or their staff side representative to request they provide a signed statement and – where required - attend the hearing, once the investigation is complete. See section 11.8 in relation to patients/service user involvement in disciplinary proceedings.
- Employees are encouraged to attend formal hearings accompanied by a staff side representative or colleague. Legal representation is not allowed. It is the responsibility of the employee to arrange their companion, share the management report with them and inform the panel who will accompany them.
- If the employee or their companion is unable to attend the hearing on the arranged date, they must suggest an alternative date so that the hearing takes place within 5 working days of the original hearing. Where an employee is unable to attend a rearranged date, alternative arrangements such as receiving written submissions may be considered, or the hearing may proceed in their absence.

## **12.3. Hearing format (flowchart at Appendix 4)**

- At the hearing, the commissioning manager and an HR representative will present the case and – where applicable – call any witnesses. Where an investigation has been carried out, the investigator will be invited to present their findings and answer any questions.
- The hearing will be digitally recorded but will only be transcribed if an internal appeal is lodged or a claim has been made to an Employment Tribunal.
- The employee will be given the opportunity to respond to the findings in the management report, answer the allegations, set out their case, call relevant witnesses and ask questions of witnesses and the investigating manager.
- The panel will take account of the employee's previous work records (including any previous formal warnings) and any mitigating factors presented at the hearing when considering an appropriate sanction.
- Wherever possible and practicable the employee will be notified of the outcome by the Chair of the hearing on the day of the hearing. Where it has not

been possible for the panel to reach a decision on the day of the hearing, the Chair will agree how and when they will contact the employee to advise them of the outcome, this may be via the telephone or MS Teams.

- The outcome of the hearing will be confirmed in writing within 5 working days of the verbal notification. If disciplinary action is taken, the letter will include details of the allegation(s) which were considered, the decision of the panel and the rationale for the decision. The employee will be advised of their right of appeal.

- Where the employee has been dismissed, the letter will set out the terms of their dismissal (e.g. with/without notice, last date of service, payment of outstanding annual leave).

**12.3..1.** Where an employee has previous 'live' formal warnings on file these will be considered and further formal warnings may result in dismissal for misconduct. Misconduct dismissals attract notice pay.

**12.3..2.** A dismissal for gross misconduct is a summary dismissal and does not attract notice pay.

- Where a disciplinary sanction is issued (first or final written warning), the letter will set out the terms of the warning and length of time the warning will be considered 'live', the improvement in conduct that is required and the fact that further disciplinary action may be taken if there is not a satisfactory improvement in the employee's conduct. The letter will also include any relevant information relating to pay progression as a result of the sanction.

- Where the employee is a member of a professional body, such as a registered nurse, midwife or nursing associate, the regulatory body may be notified of the outcome. This decision will be taken by the panel member representing the profession at the hearing. Referrals to professional bodies will be logged and overseen by the department of the Director of Nursing and AHPs. In exceptional circumstances and only where it is discussed and agreed with a senior relevant professional lead, referral to the professional body may take place during the investigation stage/prior to the hearing.

- Where an employee also holds a temporary (bank) post with the Trust, Centralised Staffing Solutions will be advised of any disciplinary sanction issued. Where the employee has been dismissed from their substantive post, the panel will also make a decision in relation to their temporary worker (bank) agreement and this will be included in the outcome letter.

- Where the hearing results in no formal disciplinary action, the panel may still set out expected standards, training, and individual and/or team recommendations.

### **13.0. Levels of Disciplinary Sanction/Actions following disciplinary process**

**13.1.** Where it is found that there is a formal case to answer in relation to allegations of misconduct/ gross misconduct the action taken will depend on the severity of the misconduct identified.

**13.2.** Mitigating factors must be carefully considered in order to determine a fair, reasonable and proportionate outcome.

#### **13.3. Level 1: First Written Warning**

- A first written warning may be given in circumstances when an employee has failed to make required improvements following informal action/ expectation setting, or if the issue is sufficiently serious to move directly to a formal warning.

- A first written warning may be offered by agreement or may be issued following a formal hearing.

- A first written warning is confirmed in writing and is considered 'live' for 6 months after which time they lapse.

#### **13.4. Level 2: Final Written Warning**

- A final written warning may be given in circumstances where an employee has failed to make required improvements while a First Written is 'live' or if the issue is sufficiently serious to move directly to a final warning.
- A final written warning may be offered by agreement or may be issued following a formal hearing.
- A final written warning is confirmed in writing and is considered 'live' for 12 months after which time they lapse. In exceptional circumstances, where a final written warning is issued following a disciplinary hearing as an alternative to dismissal, final written warnings may be issued and considered 'live' for a period of 24 months.
- Where a final written warning is issued other actions may also be taken, these actions may be with agreement or mandated by a panel and could include:
  - Demotion or downgrading (without pay protection)
  - Change of shift or working patterns (without pay protection)
  - Permanent or temporary transfer to another team/department/site (without excess mileage or pay protection).

#### **13.5. Level 3: Dismissal (with/without notice)**

- Where further misconduct is identified whilst a first or final written warning is 'live', previous warnings will be considered. Where a first written warning is 'live' and a subsequent final written warning would otherwise be given or where a final written warning is 'live' and a subsequent first written warning would otherwise be given, this would normally result in dismissal *with notice*. Dismissal can only be an outcome from a panel hearing.
- Cases of gross misconduct will result in summary dismissal (i.e. dismissal without notice).

#### **13.6. Additional action alongside disciplinary sanctions**

- Where an individual is issued with a formal written warning pay progression will be delayed in line with LPT's Pay Policy and NHS New Pay Deal.
- Where a pay step is delayed due to a live disciplinary sanction the line manager will initiate a pay step review meeting before the expiry of the sanction. This will be used to confirm that all other requirements have been met and to ensure that the staff member progresses to the next pay step, effective the day after the sanction expires. The pay step date will remain the same.

#### **14.0. Support following disciplinary processes**

**14.1.** It is recognised that employees who have been subject to disciplinary processes may require additional support and the Trust is committed to providing immediate and on-going support to individuals.

**14.2.** At the conclusion of a disciplinary process (except in circumstance where the employment relationship has ended) a meeting will be arranged with the manager and an appropriate HR representative. The employee may be accompanied by a staff side representative or colleague at this meeting.

**14.3.** The focus of this meeting will be on moving forward positively and for all parties to be able to identify barriers or concerns and potential solutions. The meeting will not



be to revisit the disciplinary outcome.

**14.4.** This meeting will also take place when an employee is returning to work following an outcome of 'no case to answer' or where a safeguarding/police investigation has resulted in no action to ensure appropriate support.

**14.5.** Examples of actions which may be discussed include;

- Clarification of expectations going forward
- Increased supervision for a specified period
- Signposting to internal and external sources of support for health and wellbeing
- Referral to a coach or mentor
- Identifying an appropriate work 'buddy' or supervisor
- Additional or repeated training/development
- Individual or team development sessions
- Mediation or facilitated meetings.

#### **15.0. Support following dismissal**

**15.1.** Where disciplinary processes result in dismissal (with or without notice) the individual will be signposted to external sources of support (e.g. mental health support, personal financial support).

#### **16.0. Right of appeal**

**16.1.** Where a disciplinary hearing results in a disciplinary sanction or dismissal and the employee/ex-employee feels the outcome is unjustified they can appeal the decision.

**16.2.** There is no right of appeal against warnings which are issued by agreement.

**16.3.** Appeals 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.

**16.4.** The appeal must be in writing and set out the grounds for their appeal, their statement of case (i.e. the information that they wish to have reviewed at appeal) and any other relevant documentation and can only be raised on one or more 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.

**16.5.** In the event that the appeal does not meet the criteria above it will not be accepted and a letter will be sent to the employee advising them of the rationale for not accepting the appeal.

#### **17.0. Appeal hearing**

**17.1.** An appeal hearing will be arranged at the earliest opportunity following receipt and acceptance of the employees written grounds of appeal as set out in section 16.4-16.5. The appeal panel will not consist of anyone involved in the original investigation or hearing and will take account of the Trust's commitment to ensuring fair and equitable decision-making as set out in section 4.6.

**17.2.** The employee's grounds of appeal, statement of case and any additional information submitted will be shared with Chair of the original disciplinary hearing to enable them to review the information and prepare a 'management statement of case' which will respond to the points raised by the employee and clarify the rationale for the outcome of the disciplinary panel. The Chair of the disciplinary

panel will be supported by an HR representative in preparing the response and at the appeal hearing.

- 17.3.** Where the employee intends to call witnesses to the appeal hearing, these witnesses must be named in the statement of case and a statement setting out the evidence to be provided by the witness provided. The employee will be responsible for making arrangements for their witnesses to attend the hearing.
- 17.4.** Except in exceptional circumstances, the employee will not be permitted to present new evidence at the appeal hearing. Where the employee requests to present new evidence the chair of the appeal panel will consider the request in conjunction with the panel's HR representative. The decision of the chair will be final.
- 17.5.** The employee will be given at least 10 working days' notice of the date of the appeal hearing in writing. The letter will confirm when they can expect to receive the management statement of case, which must be shared with the employee 5 working days prior to the date of the appeal hearing, including the names of any witnesses which management side will call. The letter will also confirm the composition of the appeal panel and set out all the arrangements for the appeal hearing.
- 17.6.** The appeal hearing is not to re-hear the case considered at the disciplinary hearing but to review the specific grounds of appeal set out in the employee's statement of case. The appeal panel will;
  - Consider the appropriateness of the decision made, based upon the information available to the original disciplinary panel and determine disciplinary sanction applied was appropriate given the evidence presented, and in consideration of any mitigation that was presented.
  - Where a procedural failure is alleged by the employee, the appeal panel will consider if such a failure exists and – if proven - whether this failure had any impact on the appropriateness of the decision made by the disciplinary panel.
- 17.7.** The hearing will be digitally recorded but will only be transcribed if a complaint is made to an Employment Tribunal.
- 17.8.** The appeal hearing will run in accordance with the flowchart in Appendix 5.
- 17.9.** Wherever possible and practicable the employee will be notified of the outcome by the Chair of the appeal hearing on the day of the hearing. Where it has not been possible for the panel to reach a decision on the day of the hearing, the Chair will agree how and when they will contact the employee to advise them of the outcome, this may be via the telephone or MS Teams.
- 17.10.** The outcome of the hearing will be confirmed in writing within 5 working days of the verbal notification. Possible outcomes are:
  - Uphold the original decision
  - Overturn the original decision and substitute it with a higher sanction
  - Uphold or partially uphold the appeal and substitute the original decision with a lesser sanction
  - Uphold the appeal and overturn the original decision, resulting in no formal action against the employee
  - In exceptional circumstances only, refer to a rehearing (e.g. where the original panel decision was perverse and the entire case should be reheard at a new disciplinary hearing). Where a case is reheard the employee would have the right to appeal the outcome of the rehearing.
- 17.11.** Where an appeal against dismissal is upheld, the employee will be reinstated from the date of the original hearing and continuity of service will be maintained. Appropriate measures will be put in place to support the employee to return to the

workplace (see section 1).

**17.12.** The appeal panel's decision is final and there is no further right of appeal.

## **18.0. Other issues**

**18.1. Allegations Against Staff Side Representatives:** 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.

## **18.2. Allegations of Criminal Acts (related or unrelated to employment)**

- Where an employee has committed or is suspected of committing or conspiring to commit a criminal act at work, this will be reported to the police. The Trust will continue with action under this policy, unless it is established that doing so would impede the police investigation. Where required, the employee will be placed on alternative to suspension or suspension, pending police enquiries and/or the conclusion of the internal disciplinary process. Suspension must be considered as a last resort (see section 10.0).
- Allegations of criminal acts unrelated to employment will not be treated as an automatic reason for action under this policy. Each case will be considered individually, and advice taken from HR and other relevant professional leads. Where the alleged offence constitutes potential misconduct or gross misconduct, action will be taken under this policy, unless it is established that doing so would impede the police investigation. Where required, the employee will be placed on alternative to suspension or suspension, pending police enquiries and/or the conclusion of the internal disciplinary process. Suspension must be considered as a last resort (see section 10.0).
- Regardless of the outcome of the police investigations/criminal proceedings, where there is sufficient evidence to suggest that the alleged action is potential misconduct/gross misconduct then action will be taken under this policy.
- Please note, that in the above circumstances, this policy must be considered in conjunction with the Allegations Against Staff Policy.

**18.3. Referral to other agencies including Statutory/Regulatory Bodies:** Advice will be taken from the relevant professional leads in relation to any serious misconduct and appropriate referrals will be made to the relevant regulatory professional bodies and the statutory body, the Disclosure and Barring Service.

**18.4. Grievance raised during the disciplinary process:** 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.

**18.5. Sickness absence during disciplinary process;** where an employee is off sick during the disciplinary process, advice will be sought from Occupational Health regarding their fitness to engage in the process and any adjustments which could be considered to facilitated and support their involvement+. Where Occupational

Health advise indicates that sickness absence will continue then management – in conjunction with HR – will consider the impact on the disciplinary process and whether to continue in the employee’s absence.

### 18.6. Record Keeping

- A full set of papers, including (where relevant) 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.
- Where formal disciplinary action has been taken against the employee, a letter confirming the action will be kept on the employee’s personal file for the life of the warning.

### 19.0. Training needs

There is a need for training identified within this policy. In accordance with the classification of training outlined in the Trust Learning and Development Strategy this training has been identified as role development training (see Appendix 7).

### 20.0 Monitoring Compliance and Effectiveness - complete the template below

Ref	Minimum Requirements	Evidence for Self-assessment	Process for Monitoring	Responsible Individual / Group	Frequency of monitoring
	Number of cases, adherence to policy timescales, outcomes and organisational learning  Average number of days taken to complete case work from incident to resolution	Number of cases, adherence to policy timescales, outcomes and organisational learning  Average number of days taken to complete case work from incident to resolution	Reports drawn from case management system and case work debrief process	Staff Partnership Forum  Strategic Executive Board	Bi-annual

### 21.0 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 <a href="#">CQC essential standards</a> )	The trust maintains compliance with CQC registration standards, this policy supports outcome standards 14

## 22.0 References and Bibliography

The policy was drafted with reference to the following:

ACAS Code of practice on disciplinary and grievance procedures retrieved from <https://www.acas.org.uk/acas-code-of-practice-for-disciplinary-and-grievance-procedures/html> (2015, March 11)

A just culture guide. Retrieved from [https://www.england.nhs.uk/wp-content/uploads/2021/02/NHS\\_0932\\_JC\\_Poster\\_A3.pdf](https://www.england.nhs.uk/wp-content/uploads/2021/02/NHS_0932_JC_Poster_A3.pdf)

Allegations against Staff Policy  
Imperial College London Disciplinary Policy and Procedure

## Appendix 1

### Standards of Conduct and Behaviour

These standards of conduct and behaviour apply to all employees of Leicestershire Partnership NHS Trust (the Trust):

1. Adhere to the Trust's Leadership Behaviours by:
  - a. Valuing one another; communicate with kindness and respect, value everyone's contribution
  - b. Recognise and value people's differences; respect everyone equally by helping create a community that demonstrates unconditional positive attitudes, where people feel they belong, are valued, empowered and proud to work at LPT.
  - c. Work together; be supportive, appreciative and encouraging of each other, enabling a positive team spirit which gives the best outcomes for colleagues and patients
  - d. Take personal responsibility; give the best at work to deliver the highest standards
  - e. Always learning and improving, embracing change and actively seeking opportunities to keep improving.
2. Uphold and demonstrate the Trust values of compassion, trust, integrity and respect.
3. Attend work regularly and punctually.
4. Be honest and trust-worthy.
5. Carry out reasonable instructions (appropriate to role, level of competence and responsibility).
6. Adhere to uniform policy, appropriate standards of dress and personal presentation.
7. Carry out duties with due care and attention.
8. Use Trust resources appropriately, honestly and with due care and attention.
9. Maintain patient and employee confidentiality, in accordance with the Trust's Confidentiality agreement.
10. Exercise personal duty of care and carry out duties in accordance with all Trust Policies and Procedures and relevant Acts of Parliament (i.e. Safeguarding Policy and Statutory Duties, Health and Safety at Work Act, Mental Health Act, Food Hygiene (General) Regulations, Food Safety Act, Data Protection Act, Computer Misuse Act, Infection Prevention and Control)
11. Carry out duties in adherence to any Professional Code of Practice/Conduct which is relevant to the role.
12. Seek authorisation for any other employment and declare any potential conflict of interest in relation to personal business interests which may conflict with duties carried out for the Trust.
13. Ensure that behaviour and conduct outside of work – including on social media and the internet – upholds the reputation of the Trust and is of the highest standard at all times.

If the above Standards of Conduct and Behaviour are breached, appropriate action will be taken under this Policy. The level of action will depend on the seriousness of the breach.

Examples of issues which breach the Code and the potential level of action under this Policy are shown below (this is not intended to be an exhaustive list and is for illustrative purposes only):

<b>Informal resolution (minor misconduct)</b>  <b>Supervision, guidance, clarification of expectations</b>	<b>Formal resolution (misconduct)</b>  <i>Possible formal warning or dismissal with notice where issues are repeated</i>	<b>Formal resolution (gross misconduct) – matters so serious they breach the contractual employment relationship</b>  <i>Possible summary dismissal</i>
Occasional lateness	Any minor breaches of rules which <b>do not</b> improve after informal resolution has been attempted	Gross or wilful negligence or harm to patients or colleagues
Occasional breach of uniform policy	Breaches of Trust Policies or relevant Acts of Parliament	Bringing the Trust into serious disrepute
Use of inappropriate language	Failure to follow reasonable instructions	Serious breaches of Trust Policies or relevant Acts of Parliament
Minor and unintended breach of Trust's Information Governance Policy	Breach of confidentiality harmful to the interests of patients or staff	Criminal offences outside of work which impact on ability to carry out, or suitability, for role
Failure to adhere to Trust's Leadership Behaviours	Criminal offences outside of work which impact on role	Serious breach of trust and confidence
Minor breaches of Trust Policies or relevant Acts of Parliament	Unauthorised possession of Trust property	Bullying and/or harassment
Minor misuse of Trust property (i.e. printer paper)	Unacceptable professional conduct/standards	Serious unprofessional conduct/standards
		Theft or fraud

## Appendix 2

### Resolution of conduct issues: triage decision record (to be completed by manager and HR Lead)

	Question/Test	Finding	Evidence (record relevant information from fact-finding)
1.	<b>Deliberate harm test:</b> Was there any intention to cause harm?	<b>Yes</b> Take action under formal resolution process	
		<b>No</b> Go to question 2.	
2.	<b>Regardless of intention, did the incident result in harm or could it have resulted in harm (to patients, service users or colleagues)?</b>	<b>Yes</b> Ensure this is considered in decision making. Go to question 3	
		<b>No</b> Go to question 3	
2.	<b>Health test:</b> Are there indications of ill-health (physical/ mental/ substance abuse) that may have impacted on the incident/issue?	<b>Yes</b> Take action under Attendance Management and Wellbeing Policy / Substance Misuse Policy	
		<b>No</b> Go to question 3.	
3.	<b>Foresight test:</b> a. Are there agreed SOPs/ policies/ accepted practice in place in relation to issue identified? b. Were the SOPs/ policies / accepted practice workable and in general use? c. Did the individual knowingly depart from these SOPs/ policies/ practices?	<b>Yes</b> Go to question 4.	
		<b>No</b> Take action to address the wider issues identified. This may include under early resolution process	



4.	<p><b>Substitution test:</b></p> <p>a. Would others with comparable experience, qualifications behave in the same way in similar circumstances?</p> <p>b. Is the individual up-to-date with relevant training?</p> <p>c. Is the individual up-to-date with supervision?</p> <p>d. Have there been similar concerns of a similar nature in the past?</p>	<p><b>Yes</b></p> <p>Take action to address the wider issues identified. This may include actions for the individual under early resolution process</p>			
		<p><b>No</b></p> <p>Go to question 5.</p>			
5.	<p><b>Mitigating circumstances:</b></p> <p>Are there significant mitigating circumstances? (i.e. circumstances personal to individual and/or any protected characteristic (i.e. physical or mental health, neurodiversity, language barriers, acceptance of personal responsibility, remorse and reflection) Where employee is from an minority ethnic background manager should take advice as set out in section 3.12.1 of policy</p>	<p><b>Yes</b></p> <p>Take action in consideration of the mitigating circumstances and in line with Trust policy.</p>			
		<p><b>No</b></p> <p>Take appropriate action in line with Trust policies.</p>			
<p><b>Summary of decision and rationale:</b></p>			<p>Early resolution (informal action/improvement notice)</p>		
			<p>Early resolution (offer formal warning by agreement)</p>		
			<p>Formal resolution (formal investigation)</p>		
			<p>Alternative to suspension</p>		
			<p>Suspension</p>		

## Appendix 3

### Levels of Authority for Disciplinary Action

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

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.

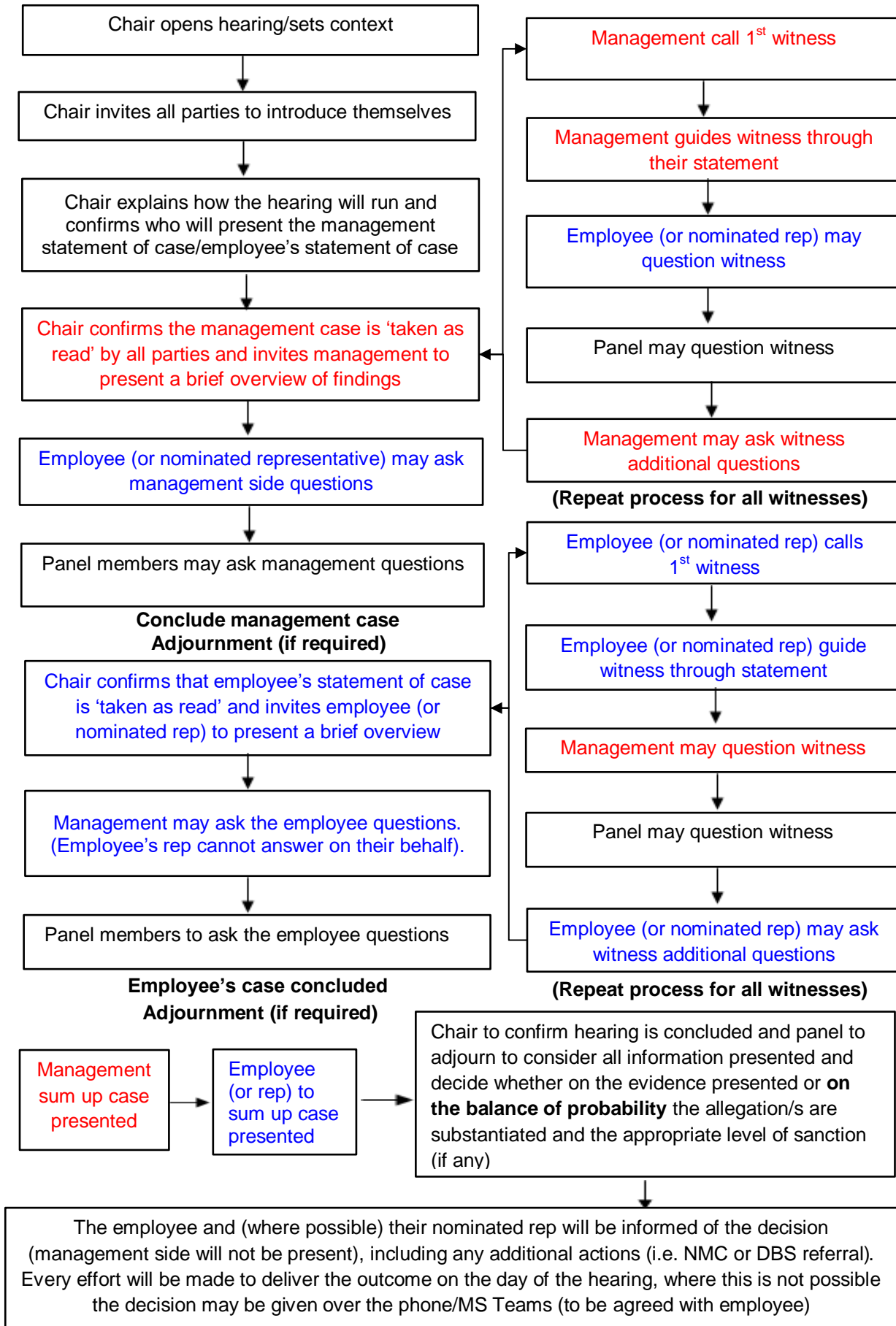
\*\*\* For all appeals none of the panel should have been previously involved at any level or be from the same service.

#### Notes:

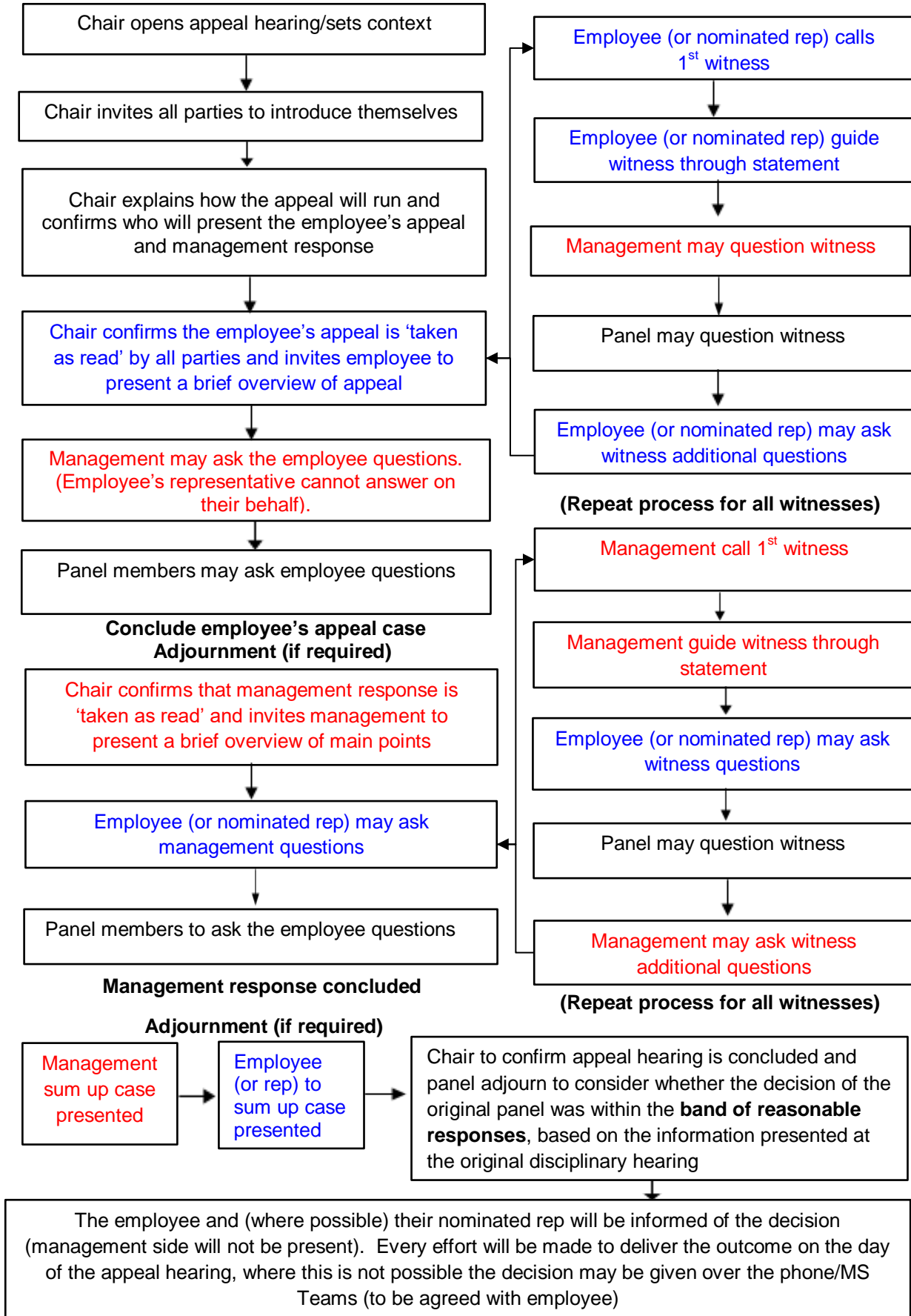
1. The panel should be independent (not previously involved in the case)
2. Where appropriate, actions may be delegated to designated officers
3. For disciplinary hearings involving registered professionals, the panel will normally include a professional from the relevant discipline.
4. Managers can not dismiss direct reports.

Appendix 4

**Formal Disciplinary Hearing flowchart**



### Formal Appeal Hearing flowchart



## Appendix 6

### DISCIPLINARY PROCEDURE TIMESCALES

These timescales are best practice guidelines and should be followed wherever practicable. However, the timescales are not intended to be prescriptive and may be varied in consideration of individual circumstances.

Action	Timescale	Person Responsible
<b>Suspension from Duty/Alternative to suspension arrangements</b>		
Suspension /alternative to suspension confirmed in writing	Within 5 working days of the date of the suspension	Suspending Manager
Review and verbal feedback to employee	Every 10 days	Commissioning Manager
Outcome review confirmed in writing to the employee	Within 5 working days of completion of the review	Commissioning Manager
<b>Investigations</b>		
Written notification of investigation meeting*	5 working days prior to the date of the meeting	Investigation Team
Investigation timeframe	8 weeks	Investigation Team
Written notification that investigation has concluded	5 working days from submission of report	Investigation Team
<b>Warning by agreement meetings</b>		
Written notification of warning by agreement meeting	5 working days prior to the date of the meeting	Manager/HR
Confirmation of warning in writing	Within 5 working days of employee confirming acceptance of warning	Manager/HR
<b>Disciplinary Hearings</b>		
Hearing arrangements	6 weeks from conclusion of investigation	Human Resources
Written notification of disciplinary hearing and management case issued to employee*	10 working days prior to the date of the hearing	Chair of the Panel
Submission of employee's statement of case	5 working days prior to the date of the hearing	Employee
<b>Appeals</b>		
Notification of appeal from employee	Within <b>10 working days</b> of receipt of the outcome letter	Employee
Appeal hearing	Within <b>6 weeks</b> of receipt of the notification of appeal	
Written notification of appeal hearing*	<b>10 working days</b> prior to the date of the appeal hearing	Chair of the Panel
Submission of management case	<b>5 working days prior</b> to the date of the appeal hearing	Management Side
Written confirmation of appeal outcome	Within <b>5 working days</b> of appeal hearing	Chair of the Panel

\*where employee or their representative is unable to attend scheduled meetings/hearings they may request one postponement providing this is made on reasonable grounds. The meeting/hearing will be rescheduled as soon as possible and ideally within 5 working days of the original date. The Trust is under no obligation to allow further postponements and in these circumstances the meeting/hearing may go ahead in the absence of the employee and/or their represent.

## Training Requirements

### Training Needs Analysis

<b>Training topic:</b>	Essential HR for Line Managers
<b>Type of training:</b> (see study leave policy)	<input type="checkbox"/> Mandatory (must be on mandatory training register) <input checked="" type="checkbox"/> Role specific <input type="checkbox"/> Personal development
<b>Division(s) to which the training is applicable:</b>	<input checked="" type="checkbox"/> Adult Mental Health <input checked="" type="checkbox"/> Community Health Services <input checked="" type="checkbox"/> Enabling Services <input checked="" type="checkbox"/> Families Young People Children & Learning Disability Services <input checked="" type="checkbox"/> Hosted Services
<b>Staff groups who require the training:</b>	<i>All staff with line management responsibility</i>
<b>Regularity of Update requirement:</b>	Once
<b>Who is responsible for delivery of this training?</b>	Human Resources Team
<b>Have resources been identified?</b>	Yes
<b>Has a training plan been agreed?</b>	Yes
<b>Where will completion of this training be recorded?</b>	<input checked="" type="checkbox"/> ULearn <input type="checkbox"/> Other (please specify)
<b>How is this training going to be monitored?</b>	Monthly reporting to Workforce Groups

## The NHS Constitution

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

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

## Appendix 9

### Stakeholders and Consultation

#### Key individuals involved in developing the document

Name	Designation
Kirsty Whatmore	Senior HRBP
Gail Phillipson	HRBP
Jas Lally	SHR Advisor
Sarah Tyers	SHR Advisor
Val Dawson	Staff Side Lead
Jane Lavelle	Staff Side Secretary
Haseeb Ahmad	Head of Equality, Diversity and Inclusion
Jane McCarron	CHS Management representative
Rachel Kingman	DMH Management representative
Change Champions	Change Champion representatives
Lauren Bland	Graduate Trainee


#### Circulated to the following individuals for comment

Name
Directors / Heads of Service and Direct Reports
Operational HR Team
Equalities Team
Staffside
Workforce Organisational Development Wellbeing Group



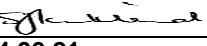
## Due Regard Screening Template

Section 1	
<b>Name of activity/proposal</b>	Disciplinary Policy and Procedure
<b>Date Screening commenced</b>	27 May 2021
<b>Directorate / Service carrying out the assessment</b>	Human Resources Advisory Team
<b>Name and role of person undertaking this Due Regard (Equality Analysis)</b>	Kirsty Whatmore, Senior HR Business Partner
<b>Give an overview of the aims, objectives and purpose of the proposal:</b>	
<b>AIMS:</b> To ensure a fair, systematic and consistent approach is taken when an employee's behaviour or actions are in breach of the Trust's Standards of Conduct and Behaviour or falls short of the expected standards.	
<b>OBJECTIVES:</b> 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.	
Section 2	
Protected Characteristic	If the proposal/s have a positive or negative impact please give brief details
Age	The policy guides managers to consider protected characteristics as a potential mitigating factor at the earliest stage of the process.
Disability	The policy guides managers to consider protected characteristics as a potential mitigating factor at the earliest stage of the process. This policy highlights the need to consider reasonable adjustments for disabled staff involved in disciplinary processes
Gender reassignment	The policy guides managers to consider protected characteristics as a potential mitigating factor at the earliest stage of the process.
Marriage & Civil Partnership	The policy guides managers to consider protected characteristics as a potential mitigating factor at the earliest stage of the process.
Pregnancy & Maternity	The policy guides managers to consider protected characteristics as a potential mitigating factor at the earliest stage of the process.
Race	The policy guides managers to consider protected characteristics as a potential mitigating factor at the earliest stage of the process. It also signposts managers to EDI Team for appropriate advice were staff from minority ethnic groups are subject to disciplinary action. The policy also requires formal panel hearings to be representative, wherever practicable.
Religion and Belief	The policy guides managers to consider protected characteristics as a potential mitigating factor at the earliest stage of the process.
Sex	The policy guides managers to consider protected characteristics as a potential mitigating factor at the earliest stage of the process.
Sexual Orientation	The policy guides managers to consider protected

	characteristics as a potential mitigating factor at the earliest stage of the process.		
Other equality groups?	The policy guides managers to consider protected characteristics as a potential mitigating factor at the earliest stage of the process.		
<b>Section 3</b>			
<b>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 <u>tick</u> appropriate box below.</b>			
Yes		No	
High risk: Complete a full EIA starting click <a href="#">here</a> to proceed to Part B		Low risk: Go to Section 4.	✓
<b>Section 4</b>			
<b>If this proposal is low risk please give evidence or justification for how you reached this decision:</b>			
<p>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 reasonable adjustments during disability processes and measures to ensure that protected characteristics are considered as a potential mitigating factor at the earliest stage of the process.</p> <p>The Trust annually reviews Workforce Race Equality Standard (WRES) and Workforce Disability Equality Standard (WDES) data. Embedded within the standards are a number of workforce metrics which will help to identify and reduce any evidence of adverse impact towards minority ethnic or disabled employees compared to other groups and actions will be agreed to address these accordingly.</p> <p>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.</p>			
<b>Signed by reviewer/assessor</b>	Kirsty Whatmore	<b>Date</b>	28 May 2021
<i>Sign off that this proposal is low risk and does not require a full Equality Analysis</i>			
<b>Head of Service Signed</b>		<b>Date</b>	28 May 2021

## Appendix 11

### DATA PRIVACY IMPACT ASSESSMENT SCREENING

<p><b>Data Privacy impact assessment (DPIAs) are a tool which can help organisations identify the most effective way to comply with their data protection obligations and meet Individual's expectations of privacy.</b></p> <p><b>The following screening questions will help the Trust determine if there are any privacy issues associated with the implementation of the Policy. Answering 'yes' to any of these questions is an indication that a DPIA may be a useful exercise. An explanation for the answers will assist with the determination as to whether a full DPIA is required which will require senior management support, at this stage the Head of Data Privacy must be involved.</b></p>		
<b>Name of Document:</b>	<b>Disciplinary Policy and Procedure</b>	
<b>Completed by:</b>	<b>Kirsty Whatmore</b>	
<b>Job title</b>	<b>Senior HR Business Partner</b>	<b>Date 28/05/2021</b>
<b>Screening Questions</b>	<b>Yes / No</b>	<b>Explanatory Note</b>
<b>1. Will the process described in the document involve the collection of new information about individuals? This is information in excess of what is required to carry out the process described within the document.</b>	Yes	<b>Potential for individual disclosures that related to mitigating circumstances</b>
<b>2. Will the process described in the document compel individuals to provide information about them? This is information in excess of what is required to carry out the process described within the document.</b>	No	
<b>3. Will information about individuals be disclosed to organisations or people who have not previously had routine access to the information as part of the process described in this document?</b>	Yes	<b>Potential for information to be disclosed should there be the need to refer to regulatory bodies</b>
<b>4. Are you using information about individuals for a purpose it is not currently used for, or in a way it is not currently used?</b>	No	
<b>5. Does the process outlined in this document involve the use of new technology which might be perceived as being privacy intrusive? For example, the use of biometrics.</b>		
<b>6. Will the process outlined in this document result in decisions being made or action taken against individuals in ways which can have a significant impact on them?</b>	Yes	<b>Part of a formal process to appropriately manage an individual's employment</b>
<b>7. As part of the process outlined in this document, is the information about individuals of a kind particularly likely to raise privacy concerns or expectations? For examples, health records, criminal records or other information that people would consider to be particularly private.</b>	Yes	<b>Part of a formal process to appropriately manage an individual's employment</b>
<b>8. Will the process require you to contact individuals in ways which they may find intrusive?</b>	Yes	<b>Part of a formal process to appropriately manage an individual's employment</b>
<p><b>If the answer to any of these questions is 'Yes' please contact the Data Privacy Team via <a href="mailto:Lpt-dataprivacy@leicspart.secure.nhs.uk">Lpt-dataprivacy@leicspart.secure.nhs.uk</a></b></p> <p><b>In this case, ratification of a procedural document will not take place until review by the Head of Data Privacy.</b></p>		
<b>Data Privacy approval name:</b>	Sam Kirkland, Head of Data Privacy/Data Protection Officer 	
<b>Date of approval</b>	<b>04.06.21</b>	