



# 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.

**Key words:** Disciplinary, Conduct, Misconduct, Behaviour, Leadership Behaviours

**Version:** 2

**Approved by:** Strategic Workforce Group

**Ratified By:** People and Culture Committee

**Date this version was ratified:** TBC

**Date issued for publication:** TBC

**Review date:** April 2027

**Expiry date:** October 2027

**Type of Policy:** Non Clinical

*This is a controlled document. Whilst this document may be printed, the electronic version posted on the intranet is the controlled copy. Any printed copies of this document are not controlled. As a controlled document, this document should not be saved onto local or network drives but should always be accessed from the Trust Website.*

## Contents

|  |    |
|--|----|
| <b>SUMMARY &amp; AIM</b> .....   | 3  |
| <b>KEY REQUIREMENTS</b> .....  | 3  |
| <b>TARGET AUDIENCE</b> .....   | 4  |
| <b>TRAINING</b> .....  | 4  |
| 1.0 Quick look summary .....   | 5  |
| 1.1 Version control and summary of changes .....                               | 6  |
| 1.2 Key individuals involved in developing and consulting on the document..... | 10 |
| 1.3 Governance.....  | 10 |
| 1.4 Equality Statement .....   | 10 |
| 1.5 Due Regard .....   | 10 |
| 1.6 Definitions that apply to this policy.....                                 | 10 |
| 2.0 Purpose and Introduction.....  | 11 |
| 3.0 Policy Requirements .....  | 12 |
| 4.0 Duties within the Organisation .....                                       | 12 |
| 20.0 Monitoring Compliance and Effectiveness .....                             | 28 |
| <b>21.0 Standards/Performance Indicators</b> .....                             | 28 |
| 22.0 References and Bibliography .....   | 28 |
| 23.0 Fraud, Bribery and Corruption consideration .....                         | 28 |
| Appendix 2.....  | 32 |
| Appendix 3.....  | 35 |
| <b>Appendix 4</b> .....  | 36 |
| <b>Appendix 5</b> .....  | 37 |
| <b>Appendix 6</b> .....  | 38 |
| Appendix 7 Training Needs Analysis.....  | 40 |
| Appendix 8 The NHS Constitution .....  | 41 |
| Appendix 9 Due Regard Screening Template .....                                 | 42 |
| Appendix 10 Data Privacy Impact Assessment Screening.....                      | 44 |

## Policy On A Page

### **SUMMARY & AIM**

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.

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.

### **KEY REQUIREMENTS**

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.

The Trust has Standards of Conduct and Behaviour which are expected of all staff, as set out in Appendix 1. All staff are expected to act in accordance with our Trust leadership behaviours.

Appropriate provision of feedback that is insightful and positive is fundamental to developing Leadership behaviours for all, and the CUBE - Context, Understanding, Behaviour and Effect model should be used.

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.

The over-arching principle of this Policy is that action taken should be reasonable, proportionate and take account of mitigating factors.

The Trust is committed to working in partnership with trade union representatives throughout formal processes.

The timescales stipulated in this policy and procedure are best practice guidelines but are not intended to be prescriptive.

### **TARGET AUDIENCE**

This policy applies to all staff directly 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 and the Managing Concerns About Medical Staffing Policy .

### **TRAINING**

Training provided to new managers and refresher training for experienced managers.

## 1.0 Quick look summary

- Minor issues are best dealt with informally and quickly by line managers.
- Potentially more serious breach of the Trust's Standards of Conduct and Behaviour require the manager to carry out an initial fact-finding.
- 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. This will not normally exceed five working days, in exceptional circumstances, 'cooling off' periods may be extended by a further three working days.
- The outcome of fact finding must be recorded on a 'triage decision record'.
- Consideration of identifying suitable alternative duties; alternative to suspension/suspension may be required. The arrangements will be discussed with the employee and confirmed in writing within 5 working Days of this meeting. Suspension/Alternative to suspension should last for as short a time as is strictly necessary and must be reviewed every 10 working days and notification of the outcome provided to the employee.
- Where fact-finding identifies that the incident 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.
- Where formal action by agreement is recommended then follow the steps and timescales in section 9.2 to 9.7.
- 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. Employees have the right to representation by a staff side representative or colleague during the formal stages of this process,
- 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.
- 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; and will appoint an investigation team (an independent manager and an HR Representative), who will carry out the investigation.
- The commissioning manager will write to the staff member to inform them of the formal investigation provide the 'terms of reference' for the investigation.
- Where it is determined that no further investigation is required formal notification will be provided to the employee to confirm the allegations in the Terms of Reference and to advise them that a disciplinary hearing will be arranged.
- 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.
- 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.

- Hearing Panel members will have no previous involvement with the case or conflict of interest that could influence decision-making.
- The employee will be given at least 15 working days' notice of the date of the hearing in writing. The employee's statement of case must be submitted 5 working days prior to the date of the hearing. The employee will be given two copies of the management report and any related documents that will be considered at the hearing. Employees have the right to representation by a staff side representative or colleague.
- Following the Hearing, wherever possible the employee will be notified of the outcome by the Chair of the hearing on the day of the hearing. 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).
- 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 within 10 working days of the date of the letter confirming the disciplinary sanction, this must be in writing and set out the grounds for their appeal - their statement of case.
- An appeal hearing will be arranged at the earliest opportunity. The appeal panel will not consist of anyone involved in the original investigation or hearing.
- The employee will be given at least 15 working days' notice of the date of the appeal hearing in writing. The management statement of case will be shared with the employee 5 working days prior to the date of the appeal hearing
- The appeal hearing is intended to review the specific grounds of appeal set out in the employee's statement of case.
- Wherever practicable the employee will be notified of the outcome by the Chair of the appeal hearing on the day of the hearing. The outcome of the hearing will be confirmed in writing within 5 working days of the verbal notification.
- The appeal panel's decision is final and there is no further right of appeal.

## 1.1 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.   |
| 1.1            | June 2022 | Appendix 3: Levels of Authority for Disciplinary Action amended with staff side agreement.<br>Section 12.3 has been updated with information on DBS referral process   |
| 2              | June 2024 | <ul style="list-style-type: none"> <li>• Policy on a Page Added</li> <li>• Quick Look Summary Section Added</li> <li>• Section 1.0 Equality Statement &amp; Due Regard updated to Trust's current version</li> <li>• Key Individuals List added</li> <li>• Governance Section Added</li> </ul> |

| Version number | Date | Comments (description change and amendments)   |
|----------------|------|--|
|                |      | <ul style="list-style-type: none"> <li>• Former governance structure removed from Section 4 'Duties within the Organisation'</li> <li>• Definitions Section: 'Early Resolution' Added 'For issue of Gross Misconduct, Early Resolution is not applicable'</li> <li>• Section 4.2 Added: 'For cases that result in a formal hearing or warning by agreement, to arrange for a casework de-brief and review of the learning points arising from this, once the formal process is fully concluded.'</li> <li>• Section 4.4 Added: 'To maintain strict confidentiality at all times in respect of the investigation process and the matters that are the subject of the investigation.'</li> <li>• Removal to section 5.3 due to duplication with 5.2 and inclusion within 5.2 of elements of original 5.3.</li> <li>• Section 5.2 updated to: 'The manager is responsible for keeping in contact with the employee(s) subject to the disciplinary process (both formal and informal) and any other staff affected, and ensuring that employees receive clear and timely updates throughout the process and until the matter is concluded. Clear, regular and confidential communication should help people involved remain informed about what is happening, gives the opportunity to raise questions and can reduce stress and other mental health issues'.</li> <li>• Section 5.5 Suitable colleague defined as 'a LPT employee, who's participation in the process does not create a conflict of interest.'</li> <li>• Section 5.6 Removed 'E.g. Cultural Ambassadors' <ul style="list-style-type: none"> <li>• Section 7.1 Added 'For concerns involving Medical staff, please refer to the Managing Concerns about Medical Staff Policy and the Maintaining High Professional Standards procedure.'</li> </ul> </li> <li>• Section 7.3 Policy title updated to: 'Appendix 8 - Allegations against Staff of the 'Safeguarding &amp; Public Protection Policy &amp; Procedures'</li> <li>• Section 7.6 'Cooling Off' period timescales updated to five working days, exceptionally extendable by an additional three working days.</li> <li>• Section 7.11 amended to: 'Refer to formal resolution (Commission a formal investigation); may include consideration of identifying suitable alternative duties; alternative to suspension/suspension options (see Section 10.0). Where a formal investigation is commissioned, suitable pastoral support should be allocated to support the employee(s) that is/are the subject of the investigation.'</li> <li>• Section 7.11 Policy Titles updated to: 'Appendix 8 - Allegations against Staff of the 'Safeguarding &amp; Public Protection Policy &amp; Procedures'; Attendance Management and Wellbeing; Alcohol, Drug and Substance Harmful Use and Misuse'.</li> </ul> |



| Version number | Date | Comments (description change and amendments)   |
|----------------|------|--|
|                |      | <ul style="list-style-type: none"> <li>• Section 8 amended to: 'Manager with support from and HR representative' and fact finding timescales changed to 5 working days, for consistency of wording.</li> <li>• Sections 8.0: Fact Finding stage and the Process Flowchart have been updated to 'Cooling Off' period timescales of five working days, exceptionally extendable by an additional three working days.</li> <li>• Section 9.1 Added: 'Under these circumstances warning by agreement may be considered' (See Section 9.2).</li> <li>• Section 9.2 Added: '(providing a minimum of five working days' notice, unless exceptionally a lesser timescale is mutually agreed by all parties)'. <ul style="list-style-type: none"> <li>• Section 9.6 Added 'The warning by agreement will become 'live' on the date the employee formally confirms their acceptance of the warning, to the manager.'</li> </ul> </li> <li>• Section 10.2 Added: 'however consideration must be given to ensuring that the alternative work is suitable for the employee, for example, in terms of their skills and/or their ability to reasonably travel to an alternative work location.'</li> <li>• Section 10.3 Added: 'Where an employee's working patterns reasonably allows, managers should seek where reasonably possible, to avoid holding suspension meetings on a Friday; at the weekend; or on a public holiday; in order to enable a newly suspended employee to have timely access to sources of support. The 'Cooling Off' period may be used to help support this.</li> <li>• Section 10.5 Amended to: 'Alternative to suspensions/suspensions must be reviewed every 2 weeks/10 working days, to confirm that the measures in place are still required. The Commissioning Manager will complete suspension review documentation after each review and update the employee must be updated following each review. The Commissioning Manager will issue the employee with a Suspension Review letter after every-other review (i.e. every 4 weeks/20 working days).'</li> <li>• Section 10.6 Added: 'In cases where the employee is suspended and the employee advises they are too ill to work, then that will be recorded as sickness absence rather than suspension, and the period of absence will be managed under the terms of the Attendance Management and Wellbeing Policy. When the employee is considered fit to resume work, then the period of suspension will resume.'</li> <li>• Section 11.5 Added: 'The commissioning manager should set a realistic timescale for completion of the investigation within the Terms of Reference and should manage the staff members' expectations if the investigation timescales become unavoidably extended.'</li> <li>• Section 12.2 Amended to: 'Witnesses in support of the employee's case who were not interviewed or who did not</li> </ul> |



| Version number | Date | Comments (description change and amendments)  |
|----------------|------|---|
|                |      | <p>submit a statement as part of the investigation, may be contacted (once the investigation is complete), by the employee or their staff side representative to request they provide a signed statement and - where required - attend the hearing'. Timescale to notify employee of a hearing changed from 10 to 15 working days.</p> <ul style="list-style-type: none"> <li>• Section 12.3 Added: '(unless exceptional circumstances prevent this)'.</li> <li>• Section 12.3.2 Added: 'A record of all DBS referrals will be maintained by the Professional Practice Team.'</li> <li>• Section 16.3 Amended to: 'Appeals must be made to the Head of Operational HR within 10 working days of the date of the letter confirming the disciplinary sanction'.</li> <li>• 17.3 Added 'Witnesses must be able to provide a significant and relevant contribution to the allegations being considered. Where this is unclear from the statement provided, the appeal panel may request further information and will assess the relevance and determine whether witnesses are permitted to attend. The panel's decision on this will be final. The employee will be responsible for making arrangements for their (approved) witnesses to attend the hearing.'</li> <li>• Section 17.5 Timescale to notify employee of an appeal hearing changed from 10 to 15 working days.</li> <li>• Section 17.10 Definition of 'perverse' added: '(i.e. significantly at odds with the weight of the evidence presented in the case; or contrary to the terms of this procedure)'.</li> <li>• Section 18.2 Policy title updated to: 'Appendix 8 of the Allegations against Staff of the Safeguarding &amp; Public Protection Policy &amp; Procedures'.</li> <li>• Section 18.4 Added: '(under the Dispute Resolution in the Workplace policy)'.</li> <li>• Section 18.5 Added: 'and is unable to engage' And 'Where an employee goes off sick during a period of suspension or alternative to suspension, this will be recorded as Sickness Absence rather than suspension/alternative to suspension.'</li> <li>• Section 18.6 Added: 'electronic records', and changed the retention period from 10 to 6 years in line with current NHS Code of Practice on Records Management.</li> <li>• Section 22 Hyperlinks removed in line with Trust guidance. Additional Policies referenced: 'LPT Safeguarding &amp; Public Protection Policy &amp; Procedures - Appendix 8 Allegations against Staff; LPT Sexual Safety Charter; LPT Dispute Resolution in the Workplace policy'.</li> <li>• Appendix 2 'Triage decision Record' Form updated to latest version.</li> <li>• Appendix 3: References to Chairman changed to Chairperson.</li> </ul> |

| Version number | Date | Comments (description change and amendments)   |
|----------------|------|--|
|                |      | <ul style="list-style-type: none"> <li>Appendix 6: 'Cooling Off' period timescales added. Timescale to notify employee of a hearing/appeal hearing, changed from 10 to 15 working days.</li> <li>Appendix 6: Added 'Working days are defined as Monday to Friday.'</li> <li>Appendix 10: Updated 'Due Regard' template added.</li> </ul> |

For Further Information Contact: Human Resources [lpt.hradvisoryteam@nhs.net](mailto:lpt.hradvisoryteam@nhs.net)

## 1.2 Key individuals involved in developing and consulting on the document

| Name               | Designation   |
|--------------------|---|
| Chris Manning      | Senior HR Business Partner                              |
| Wider Consultation | All LPT Staff Bands 7 and above<br>Trust Policy Experts |

## 1.3 Governance

| Level 2 or 3 approving delivery group | Level 1 Committee to ratify policy |
|---------------------------------------|------------------------------------|
| Strategic Workforce Group             | People and Culture Committee       |

## 1.4 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.

If you would like a copy of this document in any other format, please contact [lpt.corporateaffairs@nhs.net](mailto:lpt.corporateaffairs@nhs.net)

## 1.5 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 10) of this policy.

## 1.6 Definitions that apply to this policy

|                         |   |
|-------------------------|---|
| <b>Employee / staff</b> | Either a "Trade Union/Professional Organisation representative" |
|-------------------------|---|

|                                     |  |
|-------------------------------------|--|
| <b>representative</b>               | 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. For issue of Gross Misconduct, Early Resolution is not applicable.  |
| <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.   |

## 2.0 Purpose and Introduction

**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.

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 Policy Requirements

- 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 with 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 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).

#### **4.2 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.
- For cases that result in a formal hearing or warning by agreement, to arrange for a casework de-brief and review of the learning points arising from this once the formal process is fully concluded.

#### **4.3 Lead Professionals are responsible for:**

- Providing professional support and advice to managers and HR.

#### **4.4 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.
- To maintain strict confidentiality at all times in respect of the investigation process and the matters that are the subject of the investigation.

### **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 employee(s) subject to the disciplinary process (both formal and informal) and any other staff affected, ensuring that employees receive clear and timely updates throughout the process and until the matter is concluded. Clear, regular and confidential communication should help people involved remain informed about what is happening, gives the opportunity to raise questions and can reduce stress and other mental health issues.
- 5.3** 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.
- 5.4** 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 (a LPT employee, who's participation in the process does not create a conflict of interest). 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.

- 5.5** 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 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.
- 5.6** 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.
- 5.7** 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. For concerns involving Medical staff, please refer to the Managing Concerns about Medical Staff Policy and the Maintaining High Professional Standards procedure.

- 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 'Appendix 8 - Allegations against Staff of the Safeguarding & Public Protection Policy & Procedures' and with advice from the 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 (for example: HR, Nursing/AHPs/Medics, 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 five working days. Where an individual is placed on a 'cooling off' period the fact-finding must be concluded within five working days where reasonably practicable. In exceptional circumstances, 'cooling off' periods may be extended by a maximum of three working days 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.

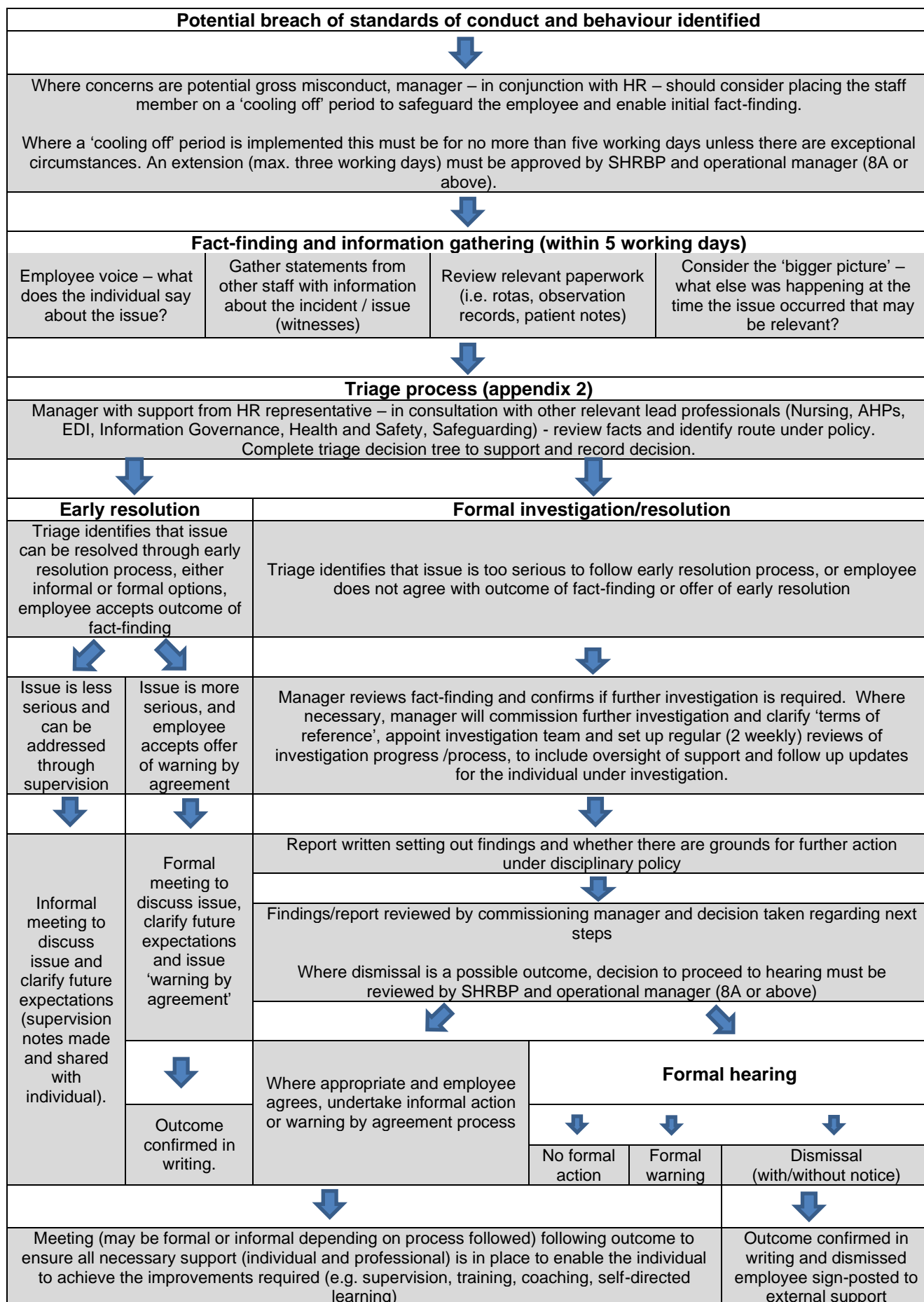


**7.10** Triage decision records will be retained by HR to enable central oversight and monitoring and to support consistency in process and proportionate decision-making.

**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 (Commission a formal investigation ); may include consideration of identifying suitable alternative duties; alternative to suspension/suspension options (see Section 10.0). Where a formal investigation is commissioned, suitable pastoral support should be allocated to support the employee(s) that is/are the subject of the investigation.
- 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 Management and Wellbeing; Alcohol, Drug and Substance Harmful Use and 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 'Appendix 8 - Allegations against Staff of the Safeguarding & Public Protection Policy & Procedures' and with advice from Safeguarding Lead and other professionals/external partners. Appropriate risk assessment will be undertaken 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. Under these circumstances warning by agreement may be considered (See Section 9.2). 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 (providing a minimum of five working days' notice, unless exceptionally a lesser timescale is mutually agreed by all parties), 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. The warning by agreement will become 'live' on the date the employee formally confirms their acceptance of the warning, to the manager.

- 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 working 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, however consideration must be given to ensuring that the alternative work is suitable for the employee, for example, in terms of their skills and/or their ability to reasonably travel to an alternative work location. 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. Where an employee's working patterns reasonably allows, managers should seek where reasonably possible, to avoid holding suspension meetings on a Friday; at the weekend; or on a public holiday; in order to enable a newly suspended employee to have timely access to sources of support. The 'Cooling Off' period may be used to help support this.
- 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 2 weeks/10 working days, to confirm that the measures in place are still required. The Commissioning Manager will complete suspension review documentation after each review and update the employee following each review. The Commissioning Manger will issue the employee with a Suspension Review letter after every-other review (i.e. every 4 weeks/20 working days).
- 10.6** In cases where the employee is suspended and the employee advises they are too ill to work, then that will be recorded as sickness absence rather than suspension, and the period of absence will be managed under the terms of the Attendance

Management and Wellbeing Policy. When the employee is considered fit to resume work, then the period of suspension will resume.

## **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 12).
- 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. The commissioning manager should set a realistic timescale for completion of the investigation within the Terms of Reference and should manage the staff members' expectations if the investigation timescales become unavoidably extended.
- 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 15 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 (once the investigation is complete), by the employee or their staff side representative to request they provide a signed statement and – where required - attend the hearing. 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 (unless exceptional circumstances prevent this) 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 the employee is not a member of a professional body the panel will consider whether to make a barring referral to the Disclosure and Barring Service (DBS). A referral tells the DBS of concerns that an individual may have harmed – or put at risk of harm - a child or vulnerable adult. Further guidance on when a referral is appropriate can be accessed on the [www.gov.uk](http://www.gov.uk) website. Where the panel's decision is that a DBS referral should be made, this will be undertaken by the clinical specialist on the panel, with support from an appropriate professional lead, if required. A record of all DBS referrals will be maintained by the Professional Practice Team.
- 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 Head of Operational HR 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. Witnesses must be able to provide a significant and relevant contribution to the allegations being considered. Where this is unclear from the statement provided, the appeal panel may request further information and will assess the relevance and determine whether witnesses are permitted to attend. The panel's decision on this will be final. The employee will be responsible for making arrangements for their (approved) 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 15 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' (i.e. significantly at odds with the weight of the evidence presented in the case; or contrary to the terms of this procedure) 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 15.0).

**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 'Appendix 8 - Allegations against Staff of the Safeguarding & Public Protection Policy & Procedures'.

**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' (under the Dispute Resolution in the Workplace policy), 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, and is unable to engage, advice will be sought from Occupational Health regarding their fitness to engage in the process and any adjustments which could be considered to facilitate 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. Where an employee goes off sick during a period of suspension or alternative to suspension, this will be recorded as Sickness Absence rather than suspension/alternative to suspension.

#### **18.6 Record Keeping**

- A full set of papers/electronic records, 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 6 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 desirable or developmental (see Appendix 7).

## 20.0 Monitoring Compliance and Effectiveness

| Page/<br>Section | Minimum Requirements to<br>monitor  | Method for<br>Monitoring  | Responsible<br>Individual /Group                     | Frequency of<br>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 | Reports drawn from case management system and case work debrief process | Staff Partnership Forum<br>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 | 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

NHS England's 'A Just Culture Guide'

LPT Safeguarding & Public Protection Policy & Procedures - Appendix 8 Allegations against Staff

LPT Sexual Safety Charter

LPT Dispute Resolution in the Workplace policy.

## 23.0 Fraud, Bribery and Corruption consideration

The Trust has a zero-tolerance approach to fraud, bribery and corruption in all areas of our work and it is important that this is reflected through all policies and procedures to mitigate these risks.

Fraud relates to a dishonest representation, failure to disclose information or abuse of position in order to make a gain or cause a loss. Bribery involves the giving or receiving of gifts or money in return for improper performance. Corruption relates to dishonest or fraudulent conduct by those in power.



Any procedure incurring costs or fees or involving the procurement or provision of goods or service, may be susceptible to fraud, bribery, or corruption so provision should be made within the policy to safeguard against these.

If there is a potential that the policy being written, amended or updated controls a procedure for which there is a potential of fraud, bribery, or corruption to occur you should contact the Trusts Local Counter Fraud Specialist (LCFS) for assistance.



## 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<br/>(minor misconduct)</b>                    | <b>Formal resolution<br/>(misconduct)</b>  | <b>Formal resolution (gross misconduct) – matters so serious they breach the contractual employment relationship</b> |
|--|--|--|
| <b>Supervision, guidance, clarification of expectations</b>          | <b>Possible formal warning or dismissal with notice where issues are repeated</b>                    | <b>Possible summary dismissal</b>  |
| 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 supported by HR Lead, and relevant lead professionals)

|                          |  |                      |  |
|--------------------------|--|----------------------|--|
| Name of individual:      |  | Job title:           |  |
| Manager completing form: |  | Job title:           |  |
| HR advisor:              |  | Date form completed: |  |
| Ward/Department          |  | Directorate:         |  |
| Allegations/concerns:    |  |                      |  |

|    | Question/Test  | Finding   | Evidence (record relevant information from fact-finding) |
|----|--|---|--|
| 1. | <b>Deliberate harm test:</b><br>Was there any intention to cause harm? | <b>Yes</b><br>Take action under formal resolution process |  |
|    |  | <b>No</b><br>Go to question 2.                            |  |
|    |  | <b>Yes</b>  |  |

|    |  |  |  |
|----|--|--|--|
| 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>  | Ensure this is considered in decision making.<br>Go to question 3  |  |
|    |  | <b>No</b><br>Go to question 3  |  |
| 2. | <b>Health test:</b><br><br>Are there indications of ill-health (physical/ mental/ substance abuse) that may have impacted on the incident/issue?   | <b>Yes</b><br><br>Take action under Attendance Management and Wellbeing Policy / Substance Misuse Policy   |  |
|    |  | <b>No</b><br><br>Go to question 3.   |  |
| 3. | <b>Foresight test:</b><br><br>a. Are there agreed SOPs/ policies/ accepted practice in place in relation to issue identified?<br><br>b. Were the SOPs/ policies / accepted practice workable and in general use?<br><br>c. Did the individual knowingly depart from these SOPs/ policies/ practices?   | <b>Yes</b><br><br>Go to question 4.  |  |
|    |  | <b>No</b><br><br>Take action to address the wider issues identified. This may include under early resolution process                             |  |
| 4. | <b>Substitution test:</b><br><br>a. Would others with comparable experience, qualifications behave in the same way in similar circumstances?<br><br>b. Is the individual up-to-date with relevant training?<br><br>c. Is the individual up-to-date with supervision?<br><br>d. Have there been similar concerns of a similar nature in the past? | <b>Yes</b><br><br>Take action to address the wider issues identified. This may include actions for the individual under early resolution process |  |
|    |  | <b>No</b><br><br>Go to question 5.   |  |
| 5. | <b>Mitigating circumstances:</b>   | <b>Yes</b>   |  |

|   |  |   |   |  |  |
|---|--|---|---|--|--|
|   | 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 a minority ethnic background manager should take advice as set out in section 5.5 of policy | Take action in consideration of the mitigating circumstances and in line with Trust policy. |   |  |  |
|   |  | <b>No</b><br><br>Take appropriate action in line with Trust policies.                       |   |  |  |
| <b>Summary of decision and rationale:</b> |  |   | No action required  |  |  |
|   |  |   | Early resolution (informal action/improvement notice)             |  |  |
|   |  |   | Early resolution (offer formal warning by agreement)              |  |  |
|   |  |   | Formal resolution (formal investigation)                          |  |  |
|   |  |   | Formal investigation – panel (no further investigation required)  |  |  |
|   |  |   | Alternative to suspension (suspension risk assessment undertaken) |  |  |
|   |  |   | Suspension (suspension risk assessment undertaken)                |  |  |

## 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>Chairperson 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>Chairperson 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>Chairperson 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>Chairperson from another NHS Trust</li> <li>Non-Executive Director</li> <li>Senior HR Representative</li> </ul>                    |
| Executive Directors  | <b>Panel of 2 comprising:</b><br><br>Chief Executive and HR Representative  | <b>*** Panel of 3 comprising:</b> <ul style="list-style-type: none"> <li>Chairperson</li> <li>Non-Executive Director</li> <li>HR Representative</li> </ul>  | <b>Panel of 3 comprising:</b> <ul style="list-style-type: none"> <li>Chairperson</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 Chairperson 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><br><br>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><br><br>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>Manager at 8B level or above</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 manager at 8C level or above</li> <li>Manager at Band 8b 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.

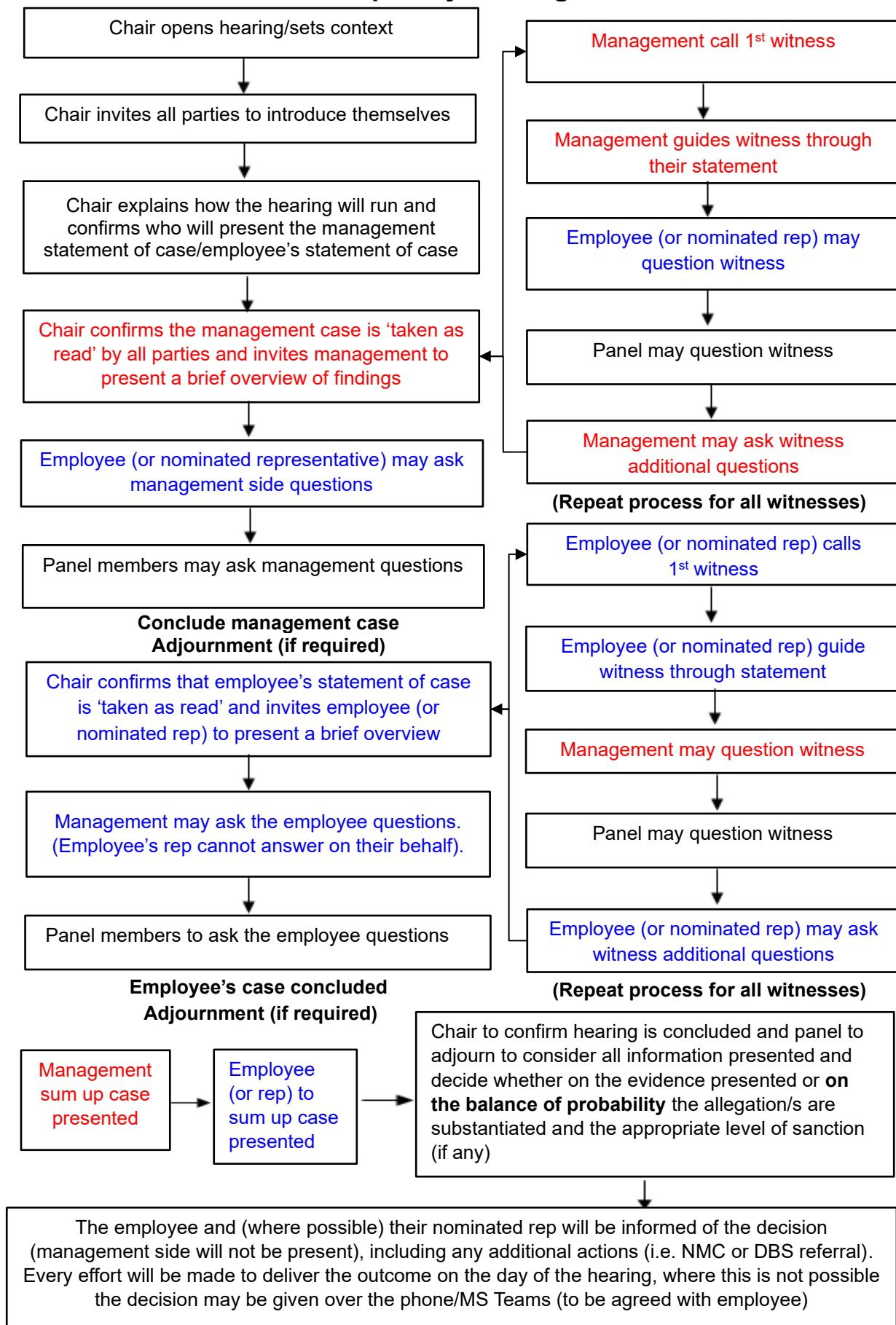
\*\*\* For **all** appeals none of the panel should have been previously involved at any level or be from the same service.

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

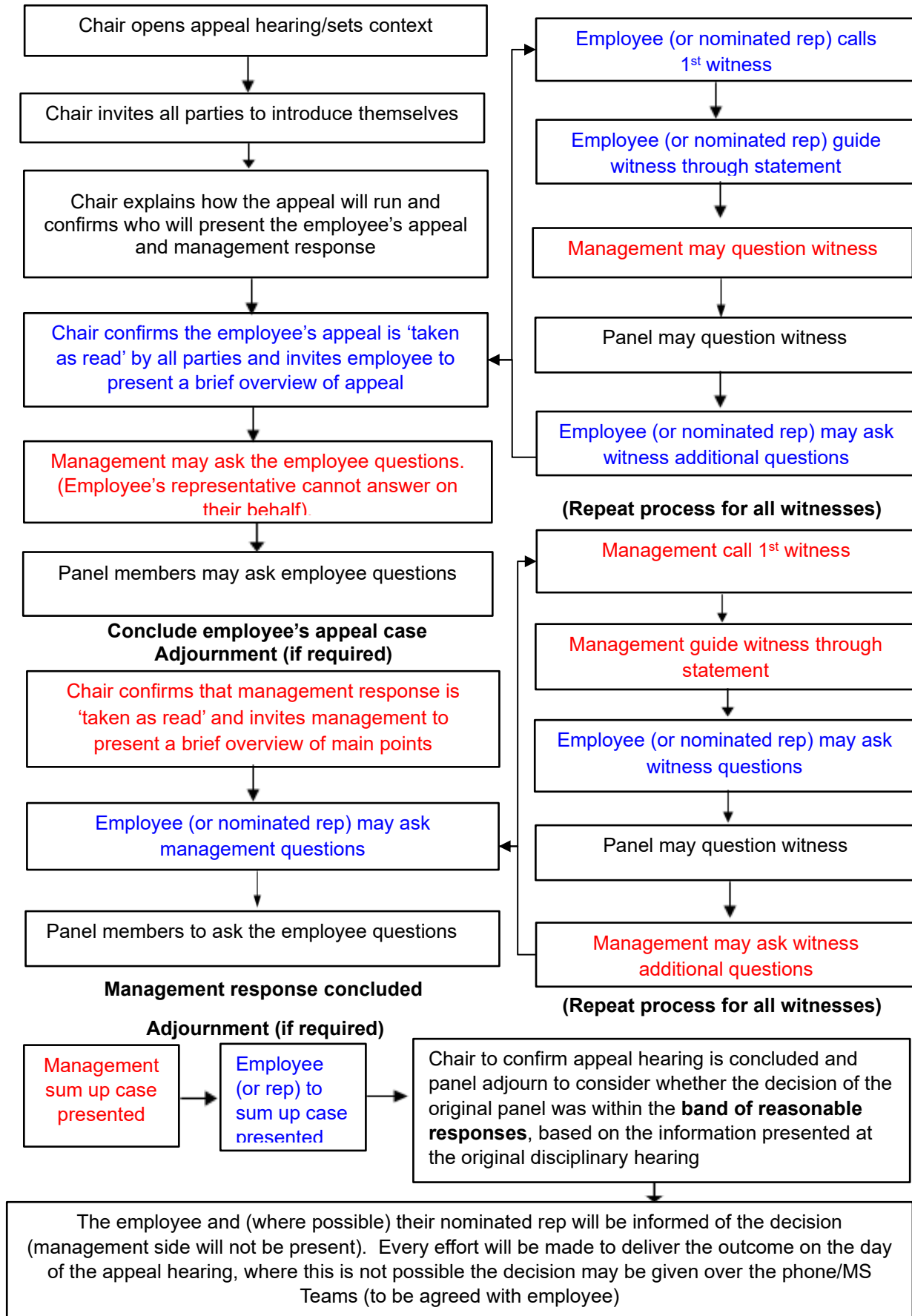
### Formal Disciplinary Hearing flowchart





## Appendix 5

### 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.

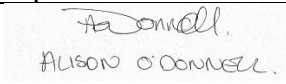
| Action   | Timescale  | Person Responsible  |
|--|--|---|
| <b>'Cooling Off' Period</b>  |  |   |
| 'Cooling Off' period   | 5 working days   | Manager   |
| Exceptional Extension to 'cooling off' period  | 3 working days   | Senior HR Business Partner & Operational Manager 8A or above. |
| <b>Suspension 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* | 15 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 10 working days of receipt of the outcome letter            | Employee  |
| Appeal hearing   | Within 6 weeks of receipt of the notification of appeal            |   |
| Written notification of appeal hearing*  | 15 working days prior to the date of the appeal hearing            | Chair of the Panel  |
| Submission of management case  | 5 working days prior to the date of the appeal hearing             | Management Side   |
| Written confirmation of appeal outcome   | Within 5 working days 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.

Working days are defined as Monday to Friday.

## Appendix 7 Training Needs Analysis

|  |  |                |                                   |
|--|--|----------------|-----------------------------------|
| <b>Training topic/title:</b>   | Essential HR for Line Managers   |                |                                   |
| Type of training:<br>(see Mandatory and Role Essential Training policy for descriptions) | <input type="checkbox"/> Not required<br><input type="checkbox"/> Mandatory (must be on mandatory training register)<br><input type="checkbox"/> Role Essential (must be on the role essential training register)<br><b>YES - Desirable or Developmental</b> |                |                                   |
| Directorate to which the training is applicable:   | X Directorate of Mental Health<br>X Community Health Services<br>X Enabling Services<br>X Estates and Facilities<br>X Families, Young People, Children, Learning Disability and Autism<br>X Hosted Services  |                |                                   |
| Staff groups who require the training: (consider bank /agency/volunteers/medical)        | All staff with line management responsibility  |                |                                   |
| Governance group who has approved this training:   | Strategic Workforce Group  | Date approved: | 2024                              |
| Named lead or team who is responsible for this training:                                 | Human Resources and Advisory Team  |                |                                   |
| Delivery mode of training: eLearning/virtual/classroom/informal/adhoc                    | virtual  |                |                                   |
| Has a training plan been agreed?   | Yes  |                |                                   |
| Where will completion of this training be recorded?                                      | X uLearn   |                |                                   |
| How is this training going to be quality assured and completions monitored?              | HR review content based on themes from cases and feedback from staff. Completions of training are reported to Directorate workforce groups to monitor.   |                |                                   |
| <b>Signed by Learning and Development Approval name and date</b>                         | <br>ALISON O'CONNELL  |                | Date: 2 <sup>nd</sup> August 2024 |


## Appendix 8 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 Due Regard Screening Template

|  |   |
|--|---|
| Section 1  |   |
| Name of activity/proposal  | Disciplinary Policy & Procedure   |
| Date Screening commenced   | 1/4/24  |
| Directorate / Service carrying out the assessment  | Human Resources   |
| Name and role of person undertaking this Due Regard (Equality Analysis)  | Chris Manning,<br>Senior HR Business Partner  |
| Give an overview of the aims, objectives and purpose of the proposal:  |   |
| <p>AIMS: 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.</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> |   |
| Section 2  |   |
| Protected Characteristic   | If the proposal/s have a positive or negative impact please give brief details  |
| Age  | This policy is accessible to all staff irrespective of their age. The policy guides managers to consider protected characteristics as a potential mitigating factor at the earliest stage of the process  |
| Disability   | Disabled staff can access this policy and alternative formats can be made available. The policy guides managers to consider protected characteristics as a potential mitigating factor at the earliest stage of the process   |
| Gender reassignment  | This policy is available to all staff irrespective of transgender issues. The policy guides managers to consider protected characteristics as a potential mitigating factor at the earliest stage of the process  |
| Marriage & Civil Partnership   | This policy is available to all staff irrespective of marriage or civil partnership status. The policy guides managers to consider protected characteristics as a potential mitigating factor at the earliest stage of the process  |
| Pregnancy & Maternity  | Staff on maternity leave will be able to access this policy.  |
| Race   | A person who speaks another language other than English may not be able to access the policy in its current format. The Trust has comprehensive interpretation and translation services. The policy 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. The policy guides managers to consider protected characteristics as a potential mitigating factor at the earliest stage of the process. |
| Religion and Belief  | This policy is available to all staff irrespective of religion or belief. The policy guides managers to consider protected characteristics as a potential mitigating factor at the earliest stage of the process.   |

|   |  |  |              |
|---|--|--|--------------|
| Sex   | This policy is accessible to staff irrespective of gender. The policy guides managers to consider protected characteristics as a potential mitigating factor at the earliest stage of the process.             |  |              |
| Sexual Orientation  | This policy is accessible to staff irrespective of 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>  |  |  |              |
| 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.  |  |  |              |
| 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.<br><b>X</b> |              |
| <b>Section 4</b>  |  |  |              |
| If this proposal is low risk please give evidence or justification for how you reached this decision:   |  |  |              |
| <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> |  |  |              |
| Signed by reviewer/assessor   | Chris Manning  | Date                                   | 18 July 2024 |
| <i>Sign off that this proposal is low risk and does not require a full Equality Analysis</i>  |  |  |              |
| Head of Service Signed  |   | Date                                   | 18 July 2024 |



## Appendix 10 Data Privacy Impact Assessment Screening

|  |  |  |
|--|--|--|
| <p>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.</p> <p>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.</p> |  |  |
| <b>Name of Document:</b>   | <b>Disciplinary Policy and Procedure</b> |  |
| <b>Completed by:</b>   | <b>Chris Manning</b>                     |  |
| <b>Job title</b>   | <b>Senior HR Business Partner</b>        | <b>Date: 01/07/2024</b>  |
| <b>Screening Questions</b>   | <b>Yes / No</b>                          | <b>Explanatory Note</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.   | Yes                                      | Potential for individual disclosures that related to mitigating circumstances                    |
| 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.  | No                                       |  |
| 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?   | Yes                                      | Potential for information to be disclosed should there be the need to refer to regulatory bodies |
| 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?   | No                                       |  |
| 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.   | No                                       |  |
| 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?  | Yes                                      | Part of a formal process to appropriately manage an individual's employment                      |
| 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.  | Yes                                      | Part of a formal process to appropriately manage an individual's employment                      |
| 8. Will the process require you to contact individuals in ways which they may find intrusive?  | Yes                                      | Part of a formal process to appropriately manage an individual's employment                      |
| <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><br/> <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>   | <b>S Ratcliffe</b>                       |  |
| <b>Date of approval</b>  | <b>14/08/2024</b>                        |  |

Acknowledgement: This is based on the work of Princess Alexandra Hospital NHS Trust