

## Disciplinary Procedure

**CONTROLLED DOCUMENT**

<b>CATEGORY:</b>	Procedure
<b>CLASSIFICATION:</b>	Human Resources
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## **1. Introduction**

- 1.1 University Hospitals Birmingham NHS Foundation Trust (the 'Trust') expects all staff to meet high standards of behaviour to deliver the best possible care and service.
- 1.2 The Trust aims to create a just and learning open culture of accountability where staff, managers and the Trust learn together from experience to improve behaviours and practices. On occasions when things go wrong, in most circumstances a supportive approach will be appropriate to achieve changes to systems or in how people behave at work.
- 1.3 There will, however, be some situations when conduct has potentially fallen below an acceptable standard where the informal or formal stages of this procedure may be necessary to improve behaviour. This procedure ensures issues are dealt with fairly, consistently reasonably and promptly.
- 1.4 An addendum to the Disciplinary Procedure 'IPC Requirements Addendum to Disciplinary Procedure' has been agreed and can be found in Appendix A.
- 1.5 An addendum to the Disciplinary Procedure 'Addendum to Disciplinary Procedure and to the Professional/Statutory Registration Policy and Procedures for Monitoring Registered Staff' has been agreed and can be found in Appendix B.

## **2. Handling Allegations of Misconduct and Investigating the Facts**

- 2.1 Allegations of misconduct will be carefully assessed by the relevant Manager, with HR advice, to decide if the matter can be managed informally where possible or whether there are grounds for further investigation and / or formal action.

## **3. Informal Approach**

- 3.1 Where appropriate, a manager should address minor misconduct informally in the first instance by meeting with the employee to establish their version of events. These discussions must take place on a 1:1 basis. In exceptional circumstances, it may be deemed appropriate for an additional attendee to be present with the manager. If this is the case, the member of staff will be given advance notice and informed that they can bring someone with them as a companion. If HR is in attendance, the member of staff will be informed of their right to be represented by a recognised Trade Union representative. The manager may also meet with other relevant individuals to get a good understanding about what has happened.

- 3.2 Minor misconduct can often be addressed effectively and swiftly by the member of staff's line manager. In an informal meeting between the line manager and the member of staff, the conduct concerns will be reflected on including any reasons that standards were not maintained, and specific improvements explained. Support required will be explored. Managers must follow up the meeting with a 'letter of concern' to the member of staff detailing the discussions, any actions agreed and the consequence of not improving standards of conduct. This letter will be retained on the personal file and may be referred to if there are further issues of misconduct.
- 3.2 If a discussion fails to reach a solution or the approach is inappropriate in the circumstances, it may be necessary to follow the formal process. Managers should seek advice from the HR Advisory Service regarding this.
- 3.3 Investigations will be carried out without unreasonable delay.

#### 4. Definitions

- 4.1 **Misconduct** is unsatisfactory behaviour, negligence or failure to maintain a duty of care. Examples can be found in Appendix C.
- 4.2 **Gross misconduct** is of such a serious and fundamental nature as to potentially make any further relationship between the member of staff and the Trust impossible. Examples can be found in Appendix D.

#### 5. General Procedural Practices

- 5.1 Before formal disciplinary action is taken, the member of staff will have been made aware of the allegations against them in writing, have an opportunity to have Trade Union representation and support, had an opportunity to respond to the allegations, and the facts appropriately established.
- 5.2 If a member of staff falls sick during the disciplinary process, meetings/hearings will only be delayed if Occupational Health advises that attending will be detrimental to the member of staff's health or they are not cognitively fit to participate. Occupational Health will take Medical Specialist's advice and guidance into consideration when making a decision. The advice will also detail any reasonable adjustments or support that could enable the member of staff to attend. Where continued sickness absence prevents a member of staff from attending rescheduled disciplinary meetings, the matter may be progressed in their absence based on available information. The member of staff can give their Trade Union representative permission to attend and present on their behalf.
- 5.3 Where a grievance is raised by a member of staff subject to an ongoing disciplinary process, Human Resources will determine the appropriate

action. If the issues relate to the disciplinary, the matter will generally be dealt with as part of the disciplinary process. Two processes may run concurrently unless the grievance is so significant in relation to the disciplinary case that disciplinary proceedings should be deferred.

- 5.4 No disciplinary action will be initiated in relation to an accredited and recognised Trade Union representative without having a conversation with the relevant Trade Union Regional Office. This includes any plans to suspend, unless suspension is an immediate requirement and an official of the Trade Union cannot be contacted; in this event, the Trade Union Regional Office will be notified of the suspension at the earliest possible opportunity.
- 5.5 During the formal stage of the procedure, including any investigation meetings, summary notes (not verbatim) will be made by the HR representative and these will be shared with the member of staff and used within the management case. The member of staff will have an opportunity to check, verify and comment on the summary notes.
- 5.6 All meetings will take place on-site unless there are site-based restrictions in place which prevents the meeting from going ahead on Trust premises. In such cases, it would be appropriate to conduct the meeting remotely as a teleconference call for investigation meetings, and as a video conference in the case of a hearing.

## **6. Suspension**

- 6.1 At any point a member of staff may need to be suspended. Suspension is not disciplinary action and does not imply any decision about the allegations. Suspension will be for no longer than necessary. In most cases, suspension from work will not be necessary and the employee will be able to continue to work while matters are investigated. Suspension will only be used to remove the member of staff from the workplace where temporary redeployment or restrictions to duties is not practicable:
  - i. To allow an unimpeded investigation to take place; and/or
  - ii. Where they pose a genuine risk to the health, safety or wellbeing of patients/ colleagues/ visitors or self; and/or
  - iii. If incapable of normal duties due to drug or alcohol intoxication.
- 6.2 Alternatives to suspensions could include the member of staff temporarily:
  - i. Being moved to a different area of the Trust;
  - ii. Changing their working hours;
  - iii. Restricted duties including having reduced access to Trust systems where appropriate;
  - iv. Working under supervision;

- v. Other meaningful activities that the individual could do should be actively explored. This could include working remotely from home.
- 6.3 Before taking any action to suspend, the line manager or senior manager will discuss potential suspension with Senior Management and Authorising Officers, who are defined below in 6.4.
- 6.4 Suspension, and alternatives to it, will be discussed in a roundtable review meeting in order to ensure that all relevant information is available and being given holistic consideration, with the following participants in attendance:
- i. Line manager/senior manager for the employee;
  - ii. Managing Director or Corporate Director (or a Deputy directly nominated to attend with delegated authority) relevant to the employee's work area for all staff other than those falling under Nursing, Corporate Nursing or Facilities, in which case attendance will be by the Chief Nurse/Trust-wide Director of Nursing (or a Deputy directly nominated to attend with delegated authority);
  - iii. Legal representatives – Director of Corporate Affairs or Employment Solicitor;
  - iv. HR representatives – Deputy Director HR Operations or Head of HR.

**Further guidance on the process for authorising suspensions can be found in Appendix E.**

- 6.5 Suspensions will be managed sensitively and confidentially. A manager will meet the member of staff to explain the reasons for suspension and the rules that apply to it, confirmed in writing within 3 working days. Where a discussion is not possible, a telephone call and letter will be sent. A Trade Union representative or colleague can attend the meeting if available. The suspension will not be delayed if support is not available for the member of staff.
- 6.6 Suspension will be on full pay (calculated as an average of earnings in the preceding 13 weeks), unless there is a specific requirement to suspend without pay (e.g. lapse of statutory registration or expiry of right to work in the UK, or if bail conditions prevent the member of staff from attending work). If unfit to work because of sickness during suspension, normal reporting and management of sickness rules apply, and pay will instead be made in accordance with sick pay entitlements until such time as the member of staff informs management that they would be fit for work.
- 6.7 The Manager communicating the decision to suspend will:

- i. Explain the reasons for suspension and how long it is expected to last;
- ii. Explain the member of staff's responsibilities during the suspension;
- iii. Provide a point of contact (usually the line manager) that they can contact if they have any concerns;
- iv. Agree how they will keep in regular contact with the member of staff throughout;
- v. Give details about support from Occupational Health and Staff Counselling services;
- vi. Ask the member of staff to hand in Trust property, such as keys, ID card, Trust mobile, bleep, laptop or any other mobile device at the time of suspension.

6.8 During suspension the member of staff must not without prior permission access Trust IT systems or premises, except than to attend a meeting in relation to the disciplinary process which includes meeting with the Trade Union representative, or to access Occupational Health services, or to attend as a patient or visitor. Contact must not be made with Trust colleagues to discuss the case, other than with a Trade Union representative or to ask someone to be a witness or to accompany at an investigation meeting or hearing. If the member of staff requires to attend Trust premises for any other reason, they must gain permission from the Investigating Officer or Human Resources. Additional paid work or employment (including bank work) must not be undertaken. Human Resources will inform UHB+ of any suspended staff.

6.9 The Investigating Manager will, in conjunction with Human Resources, review the suspension at least every 14 calendar days or sooner should circumstances necessitate an earlier review, and inform the member of staff in writing of the outcome. Any consideration of lifting a suspension before a case is concluded must be discussed with the Director of Nursing or Corporate Equivalent and the Deputy Director of Human Resources. A copy of the letter will be sent to the Trade Union Representative if there is one involved in the process.

6.10 Pre-approved annual leave which falls during suspension will still count as holiday. New requests must be made in line with normal arrangements and will not be unreasonably declined unless it significantly impedes the progress of the disciplinary. Standard carry-over arrangements apply. Please see Annual Leave Procedure for further details.

## **7. Representation**

7.1 A member of staff may be accompanied at formal stages by a Trade Union representative or a workplace colleague.

- 7.2 If unable to attend on a proposed date, an alternative date must be provided which is within 7 calendar days of the original date of the meeting.
- 7.3 If during a formal hearing the member of staff so directs, a Trade Union Representative/work colleague can explain their case, respond on their behalf and confer, but cannot answer questions put directly to the member of staff or try to stop management asking relevant questions or outlining their views.
- 7.4 Trade Union Representatives/work colleagues will not be allowed if there is a conflict of interest which may prejudice the meeting.
- 7.5 Disabled staff may also wish to be accompanied by a second person as a support worker with knowledge of the disability and its effects.

## **8. Formal Stage**

### **8.1 Initial Review and Formal Investigation**

- 8.1.1 Where misconduct has potentially occurred, an initial review of the facts of the matter and surrounding circumstances will take place by an appropriate departmental manager and Human Resources. This may include asking those involved and any witnesses for an informal account of what has happened. Consideration will be given to whether there was a system or process issue that led to the incident rather than misconduct. In the interests of a just and learning culture, Trade Union representatives may be informed and the issues discussed impartially with them. This review will be completed within 5 calendar days of the matter being reported, unless the facts cannot reasonably be established in that timeframe.
- 8.1.2 Where the matter is reviewed as potential misconduct, Human Resources will appoint a senior manager as Case Manager who will confirm the allegations to be investigated, review any suspensions in place, and review progress to ensure timescales are adhered to. The Case Manager will decide next steps upon completion of the investigation.
- 8.1.3 Human Resources and the Case Manager will identify an Investigating Manager and Human Resources ('HR') representative to establish the facts and provide a report of the findings following a proportionate, balanced and unbiased investigation. Neither will have been involved in the initial review. In some cases, the investigation can be undertaken by a HR representative alone. The member of staff will still be entitled to be accompanied to meetings by a Trade Union Representative or a work colleague. The Investigation Manager or HR representative will maintain contact with the member of staff during the investigation, providing updates on timelines and signposting to support if required.

- 8.1.4 The Case Manager will arrange for the member of staff to be informed (verbally where possible) of the allegations against them and the process for investigation, confirmed in writing.
- 8.1.5 The Investigation Team will contact the member of staff to arrange an investigation meeting either verbally/ by email in the first instance giving the member of staff 7 calendar days' notice of the meeting. These arrangements will be followed up in writing to the member of staff.
- 8.1.6 The Investigation Team will contact relevant witnesses to request a statement or to arrange an investigation meeting. This will be done either verbally/ by email in the first instance giving the member of staff 7 calendar days' notice of the meeting. These arrangements will be followed up in writing to the member of staff.
- 8.1.7 Where an investigation results in the matter progressing to a formal disciplinary hearing, summary notes of the meeting will be produced by Human Resources and provided to the individual interviewed to confirm as an accurate summary of what was said.
- 8.1.8 If on review of the evidence the Investigation Team and Case Manager conclude that there is either no case to answer or that the matter should be dealt with through an informal letter of concern, the HR representative will inform the relevant senior manager and brief the member of staff's Line Manager accordingly. The Investigation Team will produce a summary of findings, but a full investigation report is not required. Feedback will be provided by the Investigation Manager to the member of staff. The line manager will be responsible for making any necessary follow up arrangements (e.g. return to work if suspended or lifting of any restrictions imposed). This outcome would be confirmed in writing to the member of staff.
- 8.1.9 If based on the evidence gathered and the balance of probability there is a case to answer, a full investigation report will be produced. The Investigating Manager will recommend to the Case Manager the option of a Fast Track Disciplinary or to proceed to a Disciplinary Hearing; the decision will be made by the Case Manager.
- 8.1.10 Detailed outlines of the roles and responsibilities of Case Manager, Investigating Officer, staff, witnesses and the HR Team can be found in Appendix F.

## **8.2 Fast Track Disciplinary**

- 8.2.1 The Trust may conclude a disciplinary matter by issuing a First or Final Written Warning through a Fast Track process. The option can be requested by the member of staff or offered by the Investigation Team.
- 8.2.2 The fast track process can only be requested or offered where:

- i. The member of staff has fully admitted responsibility for the allegations against them and reflected appropriately to show learning such that they are unlikely to repeat the misconduct; and
  - ii. The conduct is not serious enough to warrant dismissal; and
  - iii. The member of staff does not have a 'live' final written warning on file.
- 8.2.3 The member of staff may request that the Case Manager progress the matter straight to a sanction being issued. The request must be made in writing using the form in Appendix G. It can be requested before completion of a full investigation, although a sufficient and reasonable examination of the facts must have taken place. The Case Manager will respond to the request within 7 calendar days. If the request is accepted the Case Manager will inform the member of staff of the likely level of sanction and allow the member of staff 7 calendar days to confirm acceptance of the sanction. If accepted, the Case Manager will write to the member of staff detailing the improvements that are required and confirm the level of warning, duration of the warning and the right of appeal.
- 8.2.4 The Investigation Team may believe that a Fast Track conclusion could be offered. This may be identified before a full investigation has been completed, although a sufficient and reasonable examination of the facts must have taken place. The Investigation Team will prepare a summary report of the findings and discuss this with the Case Manager and a senior HR Manager. The Case Manager will confirm whether the Fast Track option is appropriate and determine the level of sanction to be offered. The Investigation Team will offer the Fast Track option to the member of staff verbally, advising of the likely level of sanction and allow the member of staff 7 calendar days to confirm acceptance of the sanction. If accepted, the Case Manager will write to the member of staff detailing the improvements that are required and confirm the level of warning, duration of the warning and the right of appeal.
- 8.2.5 In some cases it may be deemed more appropriate to hold a meeting to issue the agreed level of sanction. If this is the case, the member of staff will be informed verbally/ by email providing at least 7 calendar days' notice and then followed up in writing to confirm the arrangements of the fast track meeting.
- 8.2.6 The scheduled meeting will be held by an appropriate manager from the service area. As the process and likely level of warning will have been agreed in advance, there is no requirement for a HR representative to be present. If requested the member of staff can invite their Trade Union representative or work colleague.
- 8.2.7 At that meeting the manager will summarise the disciplinary case, and the member of staff will be provided with an opportunity to make a statement and provide their reflections on the incident, outlining any mitigation and lessons learned. The manager will detail the

improvements that are required and confirm the level of warning, duration of the warning and the right of appeal. The details of the meeting will be confirmed by the manager in writing within 7 calendar days, and a copy placed on the personnel file and also submitted to Human Resources.

8.2.8 If at any point the member of staff disputes some of the allegations or new information arises, the Case Manager may decide that the matter should be referred out of the Fast Track process for further investigation and/or to a full disciplinary hearing where any level of sanction can be considered.

8.2.9 If the member of staff does not agree to enter the Fast Track process, or fails to attend a scheduled Fast Track Meeting without good reason, a full disciplinary hearing will be convened in line with paragraph 8.3 below.

### **8.3 Disciplinary Hearing**

8.3.1 If concluded following investigation there is a case to answer, and the Fast Track process has not applied, a Disciplinary Hearing will be held.

8.3.2 The Hearing should be held as soon as possible after the investigation. Managers, employees and their representatives must make every effort not to unreasonably delay meetings.

8.3.3 Human Resources will arrange the hearing, appointing an appropriate manager as Chair (see Appendix H) and a HR representative. In particularly complex or specialist cases, or where the matter could potentially result in a decision to dismiss, a third manager e.g. a Clinical Specialist will be appointed to the panel to give advice and guidance relevant to the case to the panel. The Hearing Panel will not have had prior involvement in the case.

8.3.4 Should the employee and / or representative be unable to attend the scheduled Hearing, they must suggest an alternative date so that the Hearing takes place within five working days from the original date. If an employee is unable to attend a rescheduled Hearing, alternative arrangements such as video conference, representative attending on their behalf or written submissions may be considered, or the Hearing may proceed in their absence.

8.3.5 The HR representative on the panel will write to the member of staff advising them of the arrangements for the hearing with at least 14 calendar days' notice. The letter will confirm the allegations, and if the hearing could result in dismissal this will be stated. Any witnesses to be called by the Investigation Team will be listed. The member of staff will be advised that they can call to the hearing additional witnesses relevant to the allegations (i.e. not character referees); it will be the member of staff's responsibility to notify the Chair of the Panel and the

HR Representative supporting the Panel to make the necessary arrangements with any witnesses they wish to call.

- 8.3.6 A copy of the investigation report and any evidence to be relied upon by the presenting Investigation Team will be provided to the member of staff and the Hearing Panel at least 14 calendar days prior to the hearing. A second copy of the report will be provided to the member of staff where supported by a trade union representative. The member of staff can submit a written statement of case to the Disciplinary Hearing Chair at least 5 calendar days prior to the hearing.
- 8.3.7 At the start of the Disciplinary Hearing the Chair will outline the process (see Appendix I). The Panel will ensure that the member of staff fully understands the allegations and has time to respond and state their case. If at any point the panel Chair determines that further investigation of the facts is required, the hearing will be adjourned.
- 8.3.8 Where possible a decision will be made on the day of the hearing. Where this is not possible the member of staff will be informed when the decision is likely to be made. The outcome will be confirmed in writing, no more than 7 calendar days after the hearing.
- 8.3.9 The Hearing Panel will make a judgement based on the balance of probabilities, and if a sanction is deemed appropriate will take account of the seriousness of the misconduct, any mitigation, the substantial merits of the information presented, issues relating to fairness and consistency, and any 'live' written warnings on the member of staff's file. Only then will the panel determine what sanction, if any, should be issued.
- 8.3.10 All formal Hearings and Appeal Hearings will be audio recorded. Audio recordings can be made available on request to staff who are subject to formal disciplinary proceedings, and with their consent to their representative.

## **8.4 Disciplinary Sanctions**

- 8.4.1 Any sanction will be confirmed in writing which summarises the hearing and its conclusions, and will advise the member of staff of any improvement/recommendations required, the period for which a warning will be 'live' and the likely consequences of further misconduct in that warning period. Staff issued a formal warning will have their incremental pay deferred for the duration of the warning.
- 8.4.2 The purpose of a warning is to allow the member of staff to improve their behaviour/conduct. If absent from work due to sickness or special leave for a period of 4 weeks or more, the warning will be suspended until the individual returns to work. This will be explained in the outcome letter.

8.4.3 The panel's HR representative will inform the member of staff's Line Manager of the outcome of any disciplinary and UHB+ of the decision if the member of staff holds a role with UHB+. The line manager must monitor improvements and ensure remedial action takes place.

8.4.4 Available sanctions are as follows:

- i. **First Written Warning – live for 12 months from date issued**  
Where there is a finding of misconduct more serious than would warrant informal action, or where there are repeated minor acts of misconduct which have previously been addressed informally and documented on their personal file, the member of staff will be issued with a First Written Warning.
- ii. **Final Written Warning – live for 18 months from date issued**  
Where there is a finding of serious misconduct, or misconduct and there is already a 'live' warning on the individual's file, the member of staff will be issued with a Final Written Warning.
- iii. **Dismissal**  
Dismissal will usually be appropriate where a member of staff has failed to improve to the required standards and there is a live final warning on record, or where there is a finding of very serious or gross misconduct. Where a case is not deemed to amount to gross misconduct but is serious enough to warrant dismissal the member of staff will be entitled to paid notice or pay in lieu of notice.  
  
A member of staff will be summarily dismissed without notice or a payment in lieu of notice where the reason for dismissal is gross misconduct.  
  
The Trust must also notify the professional body of the outcome where the member of staff is a registered practitioner.
- iv. **Action short of dismissal/alternatives to dismissal**  
A Disciplinary Hearing Panel may decide as an alternative to dismissal to issue a Final Written Warning in conjunction with a sanction of redeployment/down banding to a different work area or role (which could result in loss of pay due to being in a lower pay band or changes in shift patterns), or require the member of staff to undertake training during which time there may be a temporary change to role or duties.
- v. **Pay Progression**  
Staff will have pay progression suspended whilst under a formal disciplinary sanction. The member of staff will be informed of any impact on pay progression in writing at the point that a formal sanction is issued under this procedure.

## 8.5 Supporting Staff

- 8.5.1 Being subject to allegations of misconduct can be very upsetting and stressful for the employee and other colleagues affected.
- 8.5.2 It is important throughout the process for the Manager to keep in contact with both the member of staff and any staff affected. Clear regular and confidential communication can help make sure employees are kept informed of what is happening, having the opportunity to ask questions can avoid stress and other mental health issues.
- 8.5.3 Staff can seek support from their manager. Trade Union/ defence body (for medical and dental staff) Representative, Human Resources, the Freedom to Speak Up Guardian, Confidential Contacts or through Occupational Health who can provide access to counselling services.

## **8.6 Appeal**

- 8.6.1 Staff can appeal against a disciplinary sanction issued through a Disciplinary Hearing or the Fast Track process if they believe the sanction should be overturned because it was too severe, inappropriate or because new information has come to light. The appeal must be submitted in writing to the Deputy Director of Human Resources within 14 calendar days of receipt of the outcome letter, stating the reason for appealing. The Deputy Director of Human Resources will convene an Appeal Panel.
- 8.6.2 An appeal against a First or Final Written Warning will be heard by a senior manager who is impartial and where possible more senior than the original Disciplinary Panel Chair, with independent HR support. An appeal against a decision to dismiss will be heard by a panel comprising 2 Board Directors and a Deputy Director level HR representative. The Trust will make reasonable efforts to ensure timely hearing of appeals.
- 8.6.3 The member of staff will submit to the Appeal Panel Chair their written case, including copies of all documentation they wish to rely on at the hearing, at least 14 calendar days before the Appeal Hearing. This will be forwarded to the original Disciplinary Panel Chair who will prepare with their HR representative a response to the stated grounds of appeal, forwarded to the Appeal Panel Chair and the member of staff and any representative at least 7 calendar days before the Appeal Hearing.
- 8.6.4 The purpose of the Appeal Hearing is to review whether the disciplinary outcome was reasonable and proportionate based on the evidence available at the original hearing, and to consider whether the procedure was followed correctly. It is not a re-hearing of the case. The structure of the Appeal Hearing can be found in Appendix J.

- 8.6.5 The Appeal Panel can: confirm the original decision and uphold the sanction; or revoke the original decision; or substitute a lower sanction.
- 8.6.6 The Appeal Panel will in most cases confirm a decision on the same day, but there may be occasions when an adjournment is necessary. Written confirmation of the outcome will be provided within 7 calendar days.
- 8.6.7 The decision is final, with no further right of appeal.
- 8.6.8 Appeal panel members will have no previous involvement in the case or any conflict of interest that could influence decision making.

## **9. Absence or Non-Attendance**

- 9.1 Disciplinary matters can be stressful. This stress is often best alleviated by concluding the disciplinary as soon as is practicable so that there is timely closure and finality for all concerned. Staff must take active steps to be available for any meeting. Protracted delays are to be avoided.
- 9.2 Where a member of staff is unfit for work or absent for other reasons, this does not necessarily mean a meeting or hearing cannot be attended. They will need to provide medical evidence from their GP that they are unfit to participate in the disciplinary process, and must consent to a referral to Occupational Health. Reasonable adjustments will be identified if necessary to enable the case to progress (e.g. allowing written submissions, by attendance of a representative in place of the member of staff, or holding the meeting at a different venue).
- 9.3 If a member of staff has cancelled a meeting/hearing on two or more occasions without reasonable explanation, or it can be reasonably believed that they are unlikely to attend a meeting in the near future, and in the view of the manager there is no further material information or evidence which the member of staff could offer, decisions may be taken in the absence of the member of staff based on the evidence and information available. The meeting manager will write to the member of staff of such intention to proceed in their absence before taking any decisions.

## **10. Referral to relevant authorities**

- 10.1 It may be necessary at any point in the disciplinary procedure to refer the member of staff to their appropriate professional body e.g. NMC/HPC. In accordance with legislation, the Trust may also provide relevant information to external agencies e.g. Police, the Disclosure and Barring Service or the Information Commissioner's Office. The decision will be made by the relevant professional lead and confirmed in writing to the member of staff. Where allegations concern the

safeguarding of children or vulnerable adults, the Trust's safeguarding lead must be notified without delay.

The Trust must also notify the professional body of the outcome.

## **11. Criminal Charges**

- 11.1 Staff must tell their manager about any active police investigations, or any arrests, convictions, cautions, warnings, reprimands or bind overs issued to them prior to or during employment. For Trust vehicle drivers this includes minor motoring offences (e.g. speeding), further details can be found in the Motor Vehicle Policy. Issues arising outside work may be a disciplinary matter if it impacts on the member of staff's suitability for their role or the Trust's reputation. Failure to disclose may in itself be a disciplinary matter. If a member of staff is unable to or advised not to participate in a disciplinary process pending a criminal matter, a decision may have to be taken based on available evidence.
- 11.2 The Trust will not usually wait for the outcome of any prosecution before deciding what action, if any, to take as it is not obliged to make a decision in line with a criminal court. A written statement will be sought from the Police, Local Counter Fraud Specialist or relevant safeguarding authority to confirm whether the Trust can undertake its own investigation without impeding criminal proceedings.

## **12. Documentation on personal file**

- 12.1 All letters of concern and formal disciplinary sanctions will be retained on the member of staff's personal file for the duration of their employment. The letter of concern or disciplinary sanction will be 'live' for the duration of the concern/ sanction. Following this it will remain on the personal file however it will not be active for any further conduct/ disciplinary concerns.

## **13. References**

ACAS Disciplinary and Grievances at Work

## **14. Associated Policy and Procedural Documentation**

Employee Relations Policy  
Dignity at Work Procedure  
Raising Concerns at Work (Whistleblowing) Procedure

### **Infection Prevention Control Requirements Addendum to Disciplinary Procedure**

The Trust may at times for the purposes of infection prevention and control in pandemic or epidemic situations need to put in place arrangements for social distancing and/or use of face mask requirements. This will be where essential for reducing the potential spread of infections (e.g. Covid-19, influenza) to staff, patients and visitors.

Specific requirements would be communicated clearly to all staff:

### **Failure to Comply with Infection Prevention and Control Requirements**

Where the Trust has issued instruction on the requirements for infection prevention control measures to be followed by staff (such as social distancing or face mask wearing, for example), if members of staff are found to have failed to comply with such rules this will in the first instance be treated as a health and safety concern considered under the informal arrangements of the Disciplinary Procedure. The hope is that this will be enough to avoid further breaches.

If, however, members of staff are found to repeatedly fail to comply with IPC rules, these breaches will be deemed as health and safety negligence to be managed through a pre-determined formal disciplinary sanction without the need for separate investigation. These mirror the existing disciplinary sanctions in terms of escalation.

<b>Level of breach</b>	<b>Types of Breach</b>	<b>Pre-determined outcome</b>
First breach	<ul style="list-style-type: none"> <li>Where standards of IPC measures have not been adhered to, the line manager will discuss with the staff member the concerns and explain that immediate adherence to the health and safety rule is required.</li> </ul>	<p>A letter of concern will be issued by the line manager detailing the discussion, actions agreed and the consequence of not adhering to social distancing rules – both in terms of personal safety and safety of others, and also in terms of potential sanctions.</p> <p>This letter will be retained on the personal file and may be referred to if there are further issues of misconduct.</p>
Second breach	<ul style="list-style-type: none"> <li>Repeated failure to comply with IPC measures despite receiving a letter of concern.</li> </ul>	Following discussion with the member of staff on their account of what

		<p>happened, if a breach is concluded to have occurred, the line manager in discussion with HR will issue a First Written Warning.</p> <p>This letter will be retained on the personal file for 12 months.</p>
Further breaches	<ul style="list-style-type: none"> <li>Repeated failure to comply with IPC measures despite receiving a First Written Warning.</li> </ul>	<p>This will be referred for formal investigation for repeated health and safety negligence under the Trust's Disciplinary Procedure. Potential outcomes could be a sanction of a Final Written Warning and up to and including Dismissal.</p>

The member of staff will have the right to appeal against the following sanctions:

- **Appeal against first written warning**

This will be a desktop review by a Senior Manager supported by an HR representative. Evidence considered as part of the issuing of the sanction will be considered, along with any written submission by the member of staff. If during the review the Senior Manager and HR representative determine that further clarification or documentation is required from the member of staff, they have the discretion to seek this either in writing or through a meeting; should a meeting be required, the member of staff will have the right to be accompanied by a work colleague or trade union representative.

- **Appeal against final written warning and dismissal:**

This will be conducted in accordance with the appeals process set out in the Trust's Disciplinary Procedure.

An appeal against any level of sanction must be made in writing within 14 calendar days of the date of the sanction having been issued. Appeals received after the 14 day time period will not be heard unless there is good reason for the appeal being submitted out of time. At the time of lodging an appeal, the member of staff must clearly state the grounds for their appeal.

By introducing the above process, it is expected that compliance around IPC measures during a pandemic or epidemic will be maintained.

**Addendum to Disciplinary Procedure and to the Professional/Statutory Registration Policy and Procedures for Monitoring Registered Staff**

The Trust's Professional/Statutory Registration Policy and the Procedures for the monitoring of registered staff set out the requirements and processes for all staff who are legally required to maintain their professional registration.

The professional registration bodies exist to safeguard the health and wellbeing of the public, and to provide assurance to patients and employers that all professionally registered staff are properly qualified and competent to work in the United Kingdom. This registration must be maintained and renewed when instructed by the relevant professional body.

**Practitioner Responsibility**

It is the professional responsibility of the individual to ensure that they have current and valid registration with their professional body that allows them to practice as a registered practitioner, and any registrant that allows their registration to lapse will be required to make an application for readmission to regain access to the register. Failure to maintain required registration will result in a suspension of pay and suspension from duty, pending reinstatement of registration, and will normally result in a disciplinary sanction.

**Registration Lapse and/or Failure to Revalidate**

Whilst failure to maintain registration and/or revalidate is considered to be a conduct issue and will be addressed in accordance with the Disciplinary Procedure, the Trust would wish to support the individual to re-register as quickly as possible and to minimise the time that the individual is out of the workplace.

Where it can be demonstrated that the failure to register was due to system or administrative failure by the professional body, the Trust will not issue a warning or commence a formal investigation. However the employee will be suspended from duty without pay until their registration has been reinstated.

All other lapses in registration will be addressed via a pre-determined disciplinary sanction which will be issued by letter without the requirement to investigate.

If members of staff are found to repeatedly fail to comply with the legal requirement to maintain statutory registration and/or revalidate, there may be a requirement for this to be investigated in line with the full arrangements under the formal disciplinary process. The table below sets out how pre-determined sanctions would apply:

Lapse in Registration or Failure to Revalidate Identified	Actions Required by Individual	Actions Required by Manager	Pre-determined outcome	Formal Disciplinary Investigation
<p><b>First breach</b> Failure to Register and/or Revalidate</p>	<p>Individual will be required to contact the professional body immediately to commence the process for readmission to the register.</p> <p>Individual will inform the line manager as soon as they have been reinstated onto the register and will provide evidence of this.</p>	<p>Line Manager will meet with the individual to discuss the lapse or failure to revalidate and establish the reasons and determine appropriate action. Individual will be suspended from duty without pay and a letter detailing the discussion and actions agreed will be sent to the individual. This letter will be retained on the personal file and may be referred to if there are further issues of misconduct. Line Manager will complete an HR2 or ESR 2 form to inform payroll to suspend pay. When confirmation is received that the individual has been reinstated onto the register the line manager will arrange for the individual to return to work and for pay to be reinstated.</p>	<p>Following discussion with the member of staff and having established the reasons, and sought advice from HR, the line manager will issue a First Written Warning as described in the Disciplinary Procedure The letter will set out the requirement for the employee to renew their professional registration within a set time period. The letter will be retained on the personal file for 12 months.</p>	<p>N/A</p>
<p><b>Second breach</b> Failure to Register and/or Revalidate within 12 months of</p>	<p>Individual will be required to contact the professional body immediately to commence the process for readmission to the register.</p>	<p>Deputy Director of Nursing (DDN) or equivalent level directorate manager, will meet with the individual to discuss the lapse and / or failure to undertake</p>	<p>Following discussion with the member of staff and having taken account of the reflective statement</p>	<p>N/A</p>

<p>First Written Warning</p>	<p>A reflective statement must be completed as soon as possible and reviewed by Deputy Director of Nursing (DDN) or equivalent level directorate manager, and HR Manager.</p> <p>Individual will inform the DDN, or equivalent level directorate manager, as soon as they have been reinstated onto the register and will provide evidence of this.</p>	<p>revalidation. Individual will be suspended from duty without pay and a letter detailing the discussion and actions agreed will be sent to the individual. This letter will be retained on the personal file and may be referred to if there are further issues of misconduct. Line Manager will complete an HR2 or ESR 2 form to inform payroll to suspend pay. When confirmation is received that the individual has been reinstated onto the register the line manager will arrange for the individual to return to work and for pay to be reinstated.</p>	<p>provided and advice sought from HR, the DDN, or equivalent level directorate manager, will issue a Final Written Warning. as described in the Disciplinary Procedure The letter will set out the requirement for the employee to renew their professional registration within a set time period. The letter will be retained on the personal file for 12 months.</p>	
<p><b>Further breaches</b> Failure to Register and/or Revalidate within 18 months of Final Written Warning</p>	<p>Repeated failure to maintain registration and / or to renew registration through revalidation.</p>	<p>Director of Nursing (DN), or equivalent level directorate manager, will meet with the individual to discuss the lapse and / or failure to undertake revalidation. Individual will be suspended from duty without pay and will be advised that a formal investigation will commence. A letter detailing the discussion will be sent to the individual.</p>	<p>The case will be referred for formal investigation under the Trust's Disciplinary Procedure for repeated failure to comply with the Professional /Statutory Registration Policy.</p>	<p>The process for a formal disciplinary investigation will be followed in accordance with the Trust Disciplinary procedure. Potential outcomes could be an extension of the previously issued Final Written Warning and could include</p>

		<p>This letter will be retained on the personal file and may be referred to if there are further issues of misconduct.</p> <p>Line Manager will complete an HR2 or ESR 2 form to inform payroll to suspend pay.</p>		<p>a sanction up to and including Dismissal.</p>
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The member of staff will have the right to appeal against the following sanctions:

- **Appeal against first written warning**

This will be a desktop review by a Senior Manager supported by a HR representative. Evidence considered as part of the issuing of the sanction will be considered, along with any written submission by the member of staff. If during the review the Senior Manager and HR representative determine that further clarification or documentation is required from the member of staff, they have the discretion to seek this either in writing or through a meeting; should a meeting be required, the member of staff will have the right to be accompanied by a work colleague or trade union representative.

- **Appeal against final written warning and dismissal:**

This will be conducted in accordance with the appeals process set out in the Trust's Disciplinary Procedure.

An appeal against any level of sanction must be made in writing within 14 calendar days of the date of the sanction having been issued. Appeals received after the 14 day time period will not be heard unless there is good reason for the appeal being submitted out of time. At the time of lodging an appeal, the member of staff must clearly state the grounds for their appeal.

**Examples of Misconduct**

The following list gives examples of what the Trust would normally regard as misconduct (but not gross misconduct):

- i. Minor breaches of Trust policy, rules or practices;
- ii. Minor breaches of a relevant professional body's Code of Conduct;
- iii. Failure to maintain required registration with appropriate professional body;
- iv. Unauthorised absence or breaks from duty (including non-notification of absence or failure to return from a period of authorised absence);
- v. Poor attendance and timekeeping, including wasting time during contracted working hours;
- vi. Poor standard of dress or personal presentation;
- vii. Non-cooperation, insolence, insubordination or refusing to obey reasonable instructions from a line manager or other manager;
- viii. Poor or careless standard of work where this relates to conduct rather than skill/competence (which should be addressed through the Performance Improvement Procedure);
- ix. Smoking in areas where it is not allowed;
- x. Using the internet or email for personal purposes, other than on an occasional basis, or making an excessive number of personal calls during working hours;
- xi. Failure to follow reasonable management instructions, e.g. continued failure to attend mandatory training despite being given the support to attend/complete.

This list is not exhaustive and should be referred to as a guide.

### Examples of Gross Misconduct

The following list gives examples of what the Trust would normally regard as gross misconduct and likely to lead to dismissal without warning, notice or pay in lieu of notice:

- i. Serious or deliberate misuse or breach of Trust policy, rules or practices, especially those designed to ensure safe operation;
- ii. Theft or unauthorised possession of any property belonging to the Trust, a patient, contractor or colleague;
- iii. Deliberate or negligent serious damage to Trust property, or the property of a patient, contractor or colleague;
- iv. Fraud, forgery or other dishonesty and probity issues (including falsification of reports, records, accounts, expense claims, time sheets, medical certificates, or self-certification forms);
- v. Repeated or serious failure to follow reasonable instructions, or any other act of serious insubordination;
- vi. Serious neglect of duties, or a serious or deliberate breach of contract or operating procedures;
- vii. Sleeping whilst on duty;
- viii. Failure to follow procedure leading to the incorrect administration of prescribed medical treatments;
- ix. Possession or being under the influence of alcohol, illegal drugs or other substances while at work;
- x. Supply or attempted supply of illegal drugs on Trust premises;
- xi. Bullying or violent, aggressive, dangerous or intimidating conduct;
- xii. Discrimination or harassment of a colleague, patient or member of the public in relation to any of the protected characteristics set out in the Equality Act 2010;
- xiii. Victimising a member of staff who has raised concerns under Raising Concerns at Work (Whistleblowing), Dignity at Work (prevention of bullying and harassment), grievance or disciplinary procedures;
- xiv. Causing loss or damage or injury through gross or wilful negligence;

- xv. Conviction for a criminal offence that may affect the Trust's reputation or relationship with staff, patients or the public, or otherwise affects the member of staff's suitability to continue in their employment;
- xvi. Conduct likely to bring the Trust in to serious disrepute;
- xvii. Inappropriate or unprofessional relationship with any patient/service user;
- xviii. A serious and/or fundamental breach of trust and confidence;
- xix. Misuse of the Trust's property or name (including posting inappropriate information onto social networking sites or any other internet sites);
- xx. Serious or repeated breach of Health & Safety regulations and rules or serious misuse of safety equipment;
- xxi. Serious misuse of the Trust's information technology systems contrary to the Trust policy in this regard, including knowingly accessing websites containing offensive, obscene or pornographic material;
- xxii. Unauthorised access, use, processing or disclosure of confidential information, or failure to ensure that confidential information is kept secure;
- xxiii. Acceptance of bribes or unauthorised payments or gifts;
- xxiv. Giving false and misleading information in order to gain employment or other gains, including falsification of records and false information relating to qualifications or entitlement to work;
- xxv. Malicious misuse of any of our procedures, such as making false or vexatious allegations when taking out a grievance or raising a complaint of bullying or harassment;
- xxvi. Unauthorised entry into an area of the Trust premises to which access is prohibited, including bringing unauthorised persons in to restricted areas;
- xxvii. Conduct which contravenes the standard of professional behaviour required by the member of staff's regulatory body.

This list is not exhaustive and should be referred to as a guide:

**Disciplinary Suspension/Restrictions – process for authorisation**

1. Suspension is an exceptional process applied to non-medical staff under the Disciplinary Procedure, and is expected to be rarely required. (Separate arrangements apply to medical staff under the Maintaining High Professional Standards Procedure, which is not covered by the steps set out below.)
2. Suspension is very much the last resort. Before suspension is considered, thorough exploration should be made of all steps which could be taken to avoid suspension. Therefore, before suspension can be considered, it is expected that management give detailed consideration to:
  - i. Maintaining the employee in their existing role and work environment;
  - ii. Restricting the employee's duties and/or access;
  - iii. Restricting access to work environments or others in the workplace (staff or patients).
3. Suspension will only be used to remove the employee from the workplace where temporary redeployment or restrictions to duties is not reasonably considered practicable in order to:
  - i. Allow an unimpeded investigation to take place; and/or
  - ii. Remove a significant risk to the health, safety, wellbeing, property or information of patients, the Trust, colleagues, visitors or the employee; and/or
  - iii. Manage immediate risks due to suspected drug or alcohol intoxication.
4. In accordance with the Disciplinary Procedure, before taking any action to suspend the line manager or senior manager will discuss potential suspension with Senior Management and Authorising Officers, who are defined in Paragraph 6.ii, 6.iii and 6.iv below.
5. Where the risks of the employee remaining in the workplace while a roundtable review meeting is established may be significant, the employee will be advised to stay at home on paid absence while an outcome is sought. This will be particularly applicable in incidents that arise outside core office hours (evenings, weekends and bank holidays). Authorisation to send home must be sought from the Chief People Officer, Deputy Director HR Operations or Executive on-call. The individual is not to undertake bank shifts in this period, including shifts already assigned.
6. Suspension, and alternatives to it, will be discussed in a roundtable review meeting in order to ensure that all relevant information is available and being given holistic consideration, with the following participants in attendance:
  - v. Line manager/senior manager for the employee;

- vi. Managing Director or Corporate Director (or a Deputy directly nominated to attend with delegated authority) relevant to the employee's work area for all staff other than those falling under Nursing, Corporate Nursing or Facilities, in which case attendance will be by the Chief Nurse/Trust-wide Director of Nursing (or a Deputy directly nominated to attend with delegated authority);
  - vii. Legal representatives – Director of Corporate Affairs or Employment Solicitor;
  - viii. HR representatives – Deputy Director HR Operations or Head of HR.
7. The roundtable review meeting will be called by the Deputy Director HR Operations or Head of HR, and will be within one working day of the index incident or concern raised.
  8. The HR representative in attendance at the roundtable review meeting will be responsible for documenting the considerations (using Appendix A) which will include a clear position on the outcome:
    - i. If suspension is authorised, the reasons for suspension, the alternatives considered and the rationale for not adopting, and the timeline for review of suspension;
    - ii. If alternatives to suspension are authorised, the reasons for these restrictions, the rationale for not suspending and the consideration given to ensure the restrictions do not go so far as to be effectively suspension;
    - iii. If no suspension or restrictions are applied, the rationale and approach to management of any residual risks.
  9. If the roundtable meeting does not reach an agreed majority position on suspension, the authorisation ultimately rests as a HR matter with the Chief People Officer, in accordance with the Disciplinary Procedure, who may discuss further with the Chief Executive.
  10. Where an employee who has accessed significant amounts of personal data in breach of information governance is not suspended, the Chief Legal Officer must be informed as the Senior Information Risk Owner for the Trust.
  11. Suspension or restrictions in the first instance will be for an initial period of 3 working days (defined as normal office hours of Monday to Friday), subject to further review by HR and Legal representatives. If remaining in place, reviews thereafter will be undertaken at least every 14 calendar days by the Case Manager and Senior HR, and until such time as the suspension or restrictions are lifted. These reviews must be documented and the employee updated accordingly. This 14-day review period can be shortened where circumstances necessitate an earlier review, or amended to a longer interval but then only with the prior agreement of the Chief People Officer or Deputy Director HR Operations, and only in circumstances where it is evident that the basis of the suspension will not be resolved in the immediate future.
  12. In order to enable meaningful review of suspension or restrictions in the 3 working day period and thereafter every 14 calendar days, it will be critical

that casework is commenced immediately with accelerated progress in evidence gathering. Suspension and restrictions should be kept in place for the shortest time possible, and so the fact of a 3 working day review sets clear expectation that we should be in a position to lift some suspensions and restrictions at that point in some instances.

13. The psychological health and wellbeing of the individual subject to suspension or restrictions must be foremost in the minds of those making decisions about suspension and restrictions, and those undertaking reviews thereafter. Wellbeing checks must be undertaken at the same time as suspension/restriction review outcomes are communicated.
14. This document sets out non-contractual guidance. Additional queries should be escalated to Human Resources.

### Suspension/Restrictions Authorisation Record

<b>Employee Name:</b>	
<b>Allegations:</b>	
<b>Date of Roundtable Review:</b>	
<b>Attendees:</b> <b>Line manager/Senior Manager</b> <b>Managing Director/Corporate Director, or Chief Nurse/Director of Nursing, (or nominated deputy)</b> <b>Legal</b> <b>HR</b>	
<b>Maintain the employee in existing role and work environment?</b>	Yes / No Rationale:
<b>Restrict duties and/or access?</b>	Yes / No Rationale, and nature of restrictions:
<b>Restrict work environment or contact?</b>	Yes / No Rationale, and nature of restrictions:
<b>Suspend?</b> Allow an unimpeded investigation to take place; and/or Remove a genuine risk to the health, safety or wellbeing of patients, colleagues, visitors or the member of staff; and/or Manage risks due to drug or alcohol intoxication.	Yes / No Rationale, and nature of restrictions:
<b>Circumstances in which any imposed restriction or suspension will be lifted:</b>	
<b>Date for any suspension or restriction to be effective from:</b>	
<b>Record completed by:</b>	

## Roles and Responsibilities in a Disciplinary Investigation

Case Manager (CM)	<p>The role of the CM is to provide constructive challenge and seek assurance on behalf of the Trust that cases are being handled fairly and proportionately that decisions are well informed and the welfare of the employees are given priority.</p> <p>The CM will be responsible for confirming the allegations to be investigated.</p>
	<p>The CM is required to identify an Investigation Officer (IO) from a pool of trained investigating officers who has sufficient time to investigate the issue(s) and deal with the investigation promptly. If not, it may be necessary to identify another IO.</p>
	<p>Communication between the CM and IO is vital to ensure there is clarity around terms of reference and expectations for the investigation.</p>
	<p>The CM should discuss weekly with the IO to gain feedback on the progress, and ensure the investigation remains focused, or whether a different course of action is required.</p>
	<p>That no biases or conflicts of interest are potentially influencing the proposed actions.</p>
	<p>Ensure there are sufficient grounds and understanding of the issues and circumstances to conclude there is a case to answer.</p>
	<p>Based on the report submitted, the CM will make a decision on the next steps - The options include:</p> <ul style="list-style-type: none"> <li>• No further action</li> <li>• Letter of concern</li> <li>• Fast track</li> <li>• Progressing to a Misconduct Hearing</li> </ul> <p>The CM may also return the case for further investigation if gaps are identified.</p> <p>The CM should consider whether there is organisational learning that may need implementing either alongside or instead of proceeding to a Hearing. At this stage, it may become apparent that the use of other policies may be more appropriate.</p> <p>Consideration to be given to feedback to individuals involved in the process.</p>

Investigation Officer (IO)	The IO will be a trained investigator who will be required to carry out a thorough and impartial investigation into the allegations set by the CM.
	The IO should confirm their availability and aim to complete the investigation in a timely manner (within 4 weeks)
	The IO is responsible for conducting investigations in a fair and unbiased manner and upon conclusion of the investigation, providing a report to the CM.
	The IO will provide an update to the CM on progression of the investigation on a weekly basis, highlighting any issues that may delay the investigation.
	The IO, in conjunction with HR will review suspensions of any employee every 2 weeks and confirm the decision to continue the suspension or lifting of suspension in writing. Any lifting of suspension must only be done, following discussion with either the Director of Nursing or Corporate Equivalent and the Director of Workforce or Deputy Director of Human Resources
	The IO will present their findings to the CM in a report outlining the full circumstances (the facts) of the case, including statements and evidence submitted.
	The IO will ensure the wellbeing of all parties throughout the investigation process and seek advice from HR/OH as appropriate.
The employee under investigation and witnesses	<p>Employees have a duty to provide information connected with an employment concern, and must cooperate with any investigation process or formal meeting(s) as either the subject or potential witnesses. This includes attending formal meetings and checking, signing and returning statements in a timely manner.</p> <p>The Employee under investigation including any witnesses interviewed all have a duty adhering to confidentiality throughout this process and to not discuss matters with anyone else other than their trade union or work colleague representative.</p>

<p>Human Resources Team</p>	<p>HR are required to ensure that the processes are conducted fairly, proportionately, and in line with policy frameworks.</p> <p>Actively ensure matters are progressed in a timely manner.</p> <p>They will act as the overseer of cases, working to ensure that all parties are supported, providing objectivity and appropriate challenge where needed.</p> <p>HR will ensure Investigation Officers, Commissioning Managers and panel members have access to appropriate guidance, training and coaching to enable them to carry out their roles effectively.</p> <p>HR will attend investigation meetings to support the IO.</p> <p>HR representatives will act as advisors to the Chair/Panel at both Disciplinary and Appeal hearings.</p> <p>HR will provide advice, guidance and support to Managers in the use of this procedure as appropriate.</p>
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**Request for Fast Track**

Personal Details	
Name:	Job Title:
Department:	Division:
Contact Number:	Name of Representative/Work Colleague (if applicable):
Allegations:	
I request to be fast tracked to a disciplinary meeting where a sanction up to Final Written Warning may be given without further investigation for the above allegations which I accept full responsibility for.	
Tick to confirm acknowledgement of the following statements:	
I understand the allegations against me.	<input type="checkbox"/>
I fully admit the allegations occurred as stated.	<input type="checkbox"/>
I consider that no further investigation of this allegation is required due to my full admission.	<input type="checkbox"/>
I have discussed my request with any trade union representative involved in my case.	<input type="checkbox"/>

Signed .....

Date .....

**Please submit to the Disciplinary Case Manager via Human Resources.**

## List of Disciplining Officers

Set out below are lists of those roles authorised to Chair disciplinary hearings and appeals up to and including the sanctions stated:

### **Authorised Dismissing Officers**

Chief Executive  
Board Chief Officers and Directors  
Directors  
Associate/Deputy Directors  
Deputy Chief Nurses  
Chief Pharmacist

### **Managers authorised to issue Final Written Warning**

Authorised dismissing officers  
General Managers  
Senior Managers (Band 8b and above)  
Clinical Service Leads

### **Managers authorised to issue First Written Warning**

Authorised dismissing officers  
All managers authorised to issue a Final Written Warning  
Senior Human Resources Managers  
Managers (Band 8a and above)  
Site Manager  
Operations Managers  
Matrons and above  
UHB+ Clinical Manager

### **Managers authorised to issue informal 'Letter of Concern'**

Team, Ward or Department Managers  
Team Leaders  
HR Manager  
Housekeeping Manager  
Portering Manager  
Catering Manager

**Procedure to be followed at a Disciplinary Panel Hearing**

1. Chair of Panel to introduce all present and confirm the role each will play in the proceedings.
2. Chair to ensure that any member of staff who appears at the hearing unrepresented or unaccompanied is happy to proceed with the hearing alone (this needs to be minuted).
3. Chair to clarify if either party intends to call witnesses in support of their case.
4. Chair to explain the process to be followed, conducted in accordance with the Trust Disciplinary Procedure:
  - 4.1 The Investigation Manager/Team will state the management case and call any management witnesses;
  - 4.2 The member of staff can question the management witnesses and the Investigation Manager/Team;
  - 4.3 The Panel can question the management witnesses and the Investigation Manager/Team;
  - 4.4 The Investigation Manager/Team may re-examine witnesses on points raised;
  - 4.5 The member of staff or their representative will state their case and call any witnesses;
  - 4.6 The Investigation Manager/Team can question the member of staff's witnesses and the member of staff;
  - 4.7 The Panel can question the member of staff's witnesses and the member of staff;
  - 4.8 The member of staff or their representative may re-examine witnesses on points raised;
  - 4.9 Chair to confirm with the Investigation Manager and member of staff that they are satisfied they have had sufficient opportunity to state their respective cases. If so, both parties should be offered the opportunity of a short adjournment to produce a summing up statement;
  - 4.10 Management to sum up their case (no new evidence is to be presented);
  - 4.11 The member of staff or their representative to sum up their case (no new evidence is to be presented);
  - 4.12 Adjournment for the Panel to deliberate and reach a decision;

- 4.13 Panel may seek points for clarification if necessary.
5. The hearing is re-convened for the Chair of the Panel to deliver the panel's findings and decision, or notified of timescale for decision if further deliberation required.
6. The member of staff will be advised that the outcome will be confirmed to them in writing within 7 calendar days.

**Note 1: If at any point the Chair of the Disciplinary Hearing believes further investigation of the facts is required, the hearing will be adjourned.**

**Note 2: It is not appropriate for 'character' witnesses to be called; any witnesses should be relevant and support the member of staff's case.**

## Appendix J

### Procedure to be followed at a Disciplinary Appeal Hearing

1. Chair of Panel to introduce all present and confirm the role each will play in the proceedings.
2. Chair to ensure that any Appellant who appears at the hearing unrepresented or unaccompanied is happy to proceed with the hearing alone (this needs to be minuted).
3. Chair to confirm the reason for the Hearing i.e. "this is an Appeal Hearing convened at the request of xxxxx following their sanction/dismissal for xxxxx".
4. Chair to clarify if either party intends to call any witnesses in support of their case.
5. Chair to confirm that this is not a re-run of the previous Hearing.

**\*NB No new evidence can be tabled at the hearing unless agreed by all parties**

6. Chair to explain the process to be followed, conducted in accordance with the Trust Disciplinary Procedure
7. **The Appellant**
  - 7.1 The Appellant or their representative will state their case and provide reasons for appeal, presenting the witnesses they wish to call;
  - 7.2 Management can question the Appellant, their representative and any witnesses called in support of their case;
  - 7.3 The Panel can question the Appellant, their representative and any witnesses called in support of their case;
  - 7.4 The Appellant or their representative may re-examine the witnesses before the witness leaves the hearing;
8. **Management**
  - 8.1 Management state their response to the reasons for appeal, presenting any witnesses they wish to call;
  - 8.2 The Appellant or representative can question Management and any witnesses called in support of their case;

- 8.3 Panel members can ask questions in relation to the Management case and question any witnesses called in support of their case;
- 8.4 Management can re-examine the witnesses before the witness leaves the hearing;
9. Chair to confirm with the **Appellant** and Management that they are satisfied they have had sufficient opportunity to state their respective case. If so, both parties should be offered the opportunity of a short adjournment to produce a summing up statement. A reasonable timeframe should be agreed to reconvene and hear their summing up statements.
10. **Summing Up**
  - 10.1. The **Appellant** or their Representative to sum up their case.
  - 10.2. **Management** to sum up their case.
11. **Decision Making**
  - 11.1. Adjournment for the Panel to deliberate and reach a decision.
  - 11.2. The hearing is re-convened for the Chair of the Panel to deliver the panel's findings and decision.
  - 11.3. The Appellant should be advised that this will be confirmed to them in writing within 7 calendar days.
12. **Additional Points**
  - 12.1. At any point during the hearing an adjournment may be called by the Chair to seek points of clarity, or as a comfort break.
  - 12.2. Management or the Appellant may request a short adjournment for a variety of reasons, and this should not be unreasonably withheld.
  - 12.3. Any other party present at the hearing must be identified and an explanation given as to the reason for their presence e.g. note taker.
  - 12.4. Witnesses are only present whilst giving their evidence.

## **Appendix K**

### **Addendum to Disciplinary Procedure and to the Professional/Statutory Registration Policy and Procedures for Monitoring Registered Staff**

The Trust's Professional/Statutory Registration Policy and the Procedures for the monitoring of registered staff set out the requirements and processes for all staff who are legally required to maintain their professional registration.

The professional registration bodies exist to safeguard the health and wellbeing of the public, and to provide assurance to patients and employers that all professionally registered staff are properly qualified and competent to work in the United Kingdom.

This registration must be maintained and renewed when instructed by the relevant professional body.

#### **Practitioner Responsibility**

It is the professional responsibility of the member of staff to ensure that they have current and valid registration with their professional body that allows them to practice as a registered practitioner, and any registrant that allows their registration to lapse will be required to make an application for readmission to regain access to the register. Failure to maintain required registration will result in a suspension of pay and suspension from duty, pending reinstatement of registration. Failure to take the appropriate steps within a reasonable timeframe to re-register may result in a disciplinary sanction.

#### **Registration Lapse and/or Failure to Revalidate**

Whilst failure to maintain registration and/or revalidate is a conduct issue and may lead to formal disciplinary action, in the first instance, the Trust would wish to support the member of staff to re-register as quickly as possible and to minimise the time that the member of staff is out of the workplace.

Where it can be demonstrated that the failure to register was due to system or administrative failure by the professional body, no disciplinary process will be applied or sanction issued. However, it will still be necessary for the Trust to stop the member of staff from working, and this will be without pay, as they will not have the registration to fulfil their contract of employment. As soon as registration is reinstated, the member of staff will recommence work.

All other lapses in registration will be addressed via this addendum with a possible pre-determined disciplinary sanction which will be issued by letter without the requirement to investigate in the first instance. If members of staff repeatedly fail to comply with the legal requirement to maintain statutory registration and/or revalidate, there may be a requirement for an investigation to take place in line with the disciplinary process.

The table below sets out the actions which need to be taken once a registration has lapsed and any subsequent potential disciplinary sanctions which may apply.

Lapse in Registration or Failure to Revalidate Identified	Actions Required by member of staff	Actions Required by Manager	Failure to comply with the agreed actions to re-register
First breach, failure to register and/or revalidate	<p>Member of staff will be required to contact the professional body immediately to commence the process for readmission to the register.</p> <p>Member of staff will inform the line manager as soon as they have been reinstated onto the register and will provide evidence of this.</p> <p>Should they undertake a reflective piece at this point ?</p>	<p>Line Manager will meet with the member of staff to discuss the lapse or failure to revalidate and establish the reasons for the lapse.</p> <p>Member of staff will be suspended from duty <u>without pay</u> and a letter detailing the discussion and agreed actions to re-register/ revalidate will be sent.</p> <p>This letter will be retained on the personal file and may be referred to if there are further issues.</p> <p>Line Manager will arrange follow up meeting to check compliance against agreed actions and status of professional registration.</p> <p>Line Manager will complete an HR2 or ESR 2 form to inform payroll to suspend pay. When confirmation is received that the member of staff has been reinstated onto the register the line manager will confirm return to work arrangements and for pay to be reinstated at the point the registration was renewed</p>	<p>In the first instance, the member of staff will be given a reasonable timeframe in which they must take proactive steps to reinstate their registration.</p> <p>If the member of staff fails to re-register/ revalidate within the agreed timeframes, without a justified reason, the ADN or equivalent level manager will subject to the member of staff's explanation and following advice from HR, choose to issue a First Written Warning as described in the Disciplinary Procedure.</p> <p>The letter will set out the requirement for the member of staff to renew their professional registration within a set time period. The letter will be retained on the personal file for 12 months.</p>
Second breach or failure to maintain registration and / or to	The member of staff will be required to complete a formal statement explaining reasons for their failure to	The Line Manager must ensure that the member of staff remains on suspension	Following discussion with the member of staff and having taken account of their statement and advice from HR, the ADN, or equivalent level manager,

<p>renew registration through revalidation within 12 months of the First Written Warning and / or failure to comply with the agreed actions</p>	<p>register and/or revalidate and/ or follow the agreed actions within the timeframes given.</p> <p>The member of staff will be required to set out the steps they will take to ensure their registration and or/ revalidation is renewed at the earliest.</p> <p>The statement must be completed as soon as possible and reviewed by the Associate Director of Nursing (ADN) or equivalent level manager, and HR Manager.</p> <p>Member of staff will inform the Line Manager as soon as they have been reinstated onto the register and will provide evidence of this.</p>	<p>without pay until evidence of registration being reinstated has been obtained.</p> <p>Line Manager will ask the member of staff to complete a reflective statement and maintain regular contact with them, reviewing professional registration status and compliance against the agreed requirements to reinstate registration.</p>	<p>may choose to issue a Final Written Warning. as described in the Disciplinary Procedure The letter will set out the requirement for the employee to renew their professional registration within a set time period. The letter will be retained on the personal file for 18 months.</p>
<p>Repeated failure to maintain registration and / or to renew registration through revalidation within 18 months of the Final Written Warning and / or failure to comply with the agreed actions</p>	<p>The member of staff will be required to set out the steps they will take to ensure their registration and or/ revalidation is renewed at the earliest opportunity.</p> <p>Member of staff will inform the Line Manager as soon as they have been reinstated onto the register and will provide evidence of this.</p> <p>The member of staff will be required to comply with the formal Disciplinary investigation process.</p>	<p>The Line Manager must ensure that the member of staff remains on suspension without pay until evidence of registration being reinstated has been obtained.</p> <p>Line Manager will ask the member of staff to complete a reflective statement and maintain regular contact with them, reviewing professional registration status and compliance against the agreed requirements to reinstate registration.</p>	<p>The case will be referred for formal investigation under the Trust's Disciplinary Procedure for repeated failure to comply with the Professional /Statutory Registration Policy.</p>

The member of staff will have the right to appeal against the following sanctions:

- **Appeal against first written warning**

This will be a desktop review by a Senior Manager supported by a HR representative. Evidence considered as part of the issuing of the sanction will be considered, along with any written submission by the member of staff. If during the review the Senior Manager and HR representative determine that further clarification or documentation is required from the member of staff, they have the discretion to seek this either in writing or through a meeting; should a meeting be required, the member of staff will have the right to be accompanied by a work colleague or trade union representative.

- **Appeal against final written warning and dismissal**

This will be conducted in accordance with the appeals process set out in the Trust's Disciplinary Procedure.

An appeal against any level of sanction must be made in writing within 14 calendar days of the date of the sanction having been issued. Appeals received after the 14-day time period will not be heard unless there is good reason for the appeal being submitted out of time. At the time of lodging an appeal, the member of staff must clearly state the grounds for their appeal.

Any appeals must be submitted in writing and emailed to: [hrapeals@uhb.nhs.uk](mailto:hrapeals@uhb.nhs.uk).

## Professional Registration Lapse Process

