


Board of Directors' Meeting

7 October 2021

Agenda item	256/21			
Report	Updated Disciplinary Policy and Employee Investigations Policies			
Executive Lead	Director of People and OD			
	Link to strategic pillar:		Link to CQC domain:	
	Our patients and community		Safe	
	Our people	√	Effective	
	Our service delivery		Caring	√
	Our partners		Responsive	
	Our governance	√	Well Led	√
	Report recommendations:		Link to BAF / risk:	
	For assurance		Link to risk register:	
	For decision / approval	√		
	For review / discussion			
	For noting			
	For information			
	For consent			
Presented to:	<ul style="list-style-type: none"> Operational People Group – 20th September 2021 Policy Approval Group (PAG) in August 2021 JNCC on 20th July 2021 WPPG meeting 23rd June 2021 and again on 6th July 2021 			
Dependent upon (if applicable):	Continued partnering with Divisions to support local ownership of disciplinary matters, staff across the Trust having capacity to attend training and carrying out duties in accordance with these policies.			
Executive summary:	<p>In light of recommendations from Dido Harding in 2019 and more recently Chief People Officer Prerana Issar, we have made improvements to our Disciplinary Policy and Employee Investigations Policy.</p> <p>The improvements to these policies are in line with our People Strategy ambitions to support wellbeing, improve staff engagement and keep great people.</p> <p>This paper describes the key changes to the policy and explains how these will be implemented.</p> <p>The Board of Directors is asked to approve the policies and the implementation plan.</p>			
Appendices	<p>Appendix 1 – Disciplinary Policy</p> <p>Appendix 2 – Employee Investigations Policy</p>			
				

1.0 Introduction

- 1.1 In light of recommendations from Dido Harding in 2019 and more recently the NHS Chief People Officer Prerana Issar, we have engaged and worked in partnership with managers, staff and staff-side representatives to make improvements to our Disciplinary Policy and Employee Investigations Policy.
- 1.2 The Disciplinary Policy is designed to ensure a fair and systematic approach is taken when an employee's behaviour or action is in breach of workplace rules or falls short of the expected standards of behaviour.
- 1.3 The Employee Investigations Policy sets out arrangements to ensure a fair, consistent and effective approach in dealing with employee investigations. This may apply to disciplinary cases, grievances and other employee relations matters.
- 1.4 The improvements to these policies are in line with our People Strategy ambitions to support wellbeing, improve staff engagement and keep great people. They provide a greater focus on putting people at the centre of our processes and adopting a just culture approach that has an overriding focus on the wellbeing of those involved. There is a real desire for us to take better care of our staff when they go through these difficult processes.
- 1.5 This paper provides describes the key changes to the policy and explains how these will be implemented.

2.0 Key Changes

2.1 Just culture

Our decision making incorporates the key aspects of the NHS Just Culture guide. We ensure staff are engaged with the process and any information they put forward to is given proper consideration. We are also open minded and take proper account of all factors that have influenced an issue, so we make fair decisions and learn from staff experiences. We have started using Decision Making Groups who, using a template document, are prompted to consider aspects of the Just Culture guide. We have also introduced 'right to reply' meetings so that staff are engaged and listened-to earlier in the process.

2.2 Restorative outcomes

The aim of any disciplinary process is to avoid the same misconduct occurring again. Very rarely does formal disciplinary action do this by itself. Staff are much more likely to learn and change if they are supported to do so, not threatened with consequences if they don't. This mindset is being used in our decision making groups and, where appropriate, we are adopting a restorative learning approach rather than a punitive one. The policy contains a new list of informal approaches that can be used to aid resolution and restoration.

2.3 Overriding concern for health and wellbeing

This means that employee wellbeing comes first. If we find that our planned approach is harming someone's wellbeing, we explore other options and adopt a different approach, or delay our processes when needed. There are prompts within our decision making documents to consider the wellbeing of all those involved. There is

also a new section in Appendix 6 of the Disciplinary Policy specific around health and wellbeing.

2.4 Equality

We know that our ethnic minority colleagues are more likely to become involved in one of our processes. This is not acceptable and we are taking steps to avoid unconscious bias. At decision making groups we are actively discussing whether culture, ethnicity, language or religion could have an influence on the issue. We will also be involving cultural ambassadors in the decision making process.

2.5 Feedback and learning

It's so important that we learn from our staff experiences. We are going to actively encourage staff involved in our processes to provide us with anonymous feedback on their staff experience. There are also prompts within our template documents to consider learning from specific incidents and how this can be shared. Staff stories have already been shared within the People Advisory team allowing the team to really reflect on their roles/ our processes and gain greater insight into the impact on our people.

3.0 Implementation Plan

3.1 Changing the policies is only a starting point, the changes must then become embedded in practice across the Trust.

3.2 Once the policies are approved, the People Advisory Team will launch a communications and engagement plan that will include:

- Template documents to sit alongside each step of the process. These documents contain prompts to ensure the policy is applied correctly.
- Direct engagement with senior Divisional and Corporate leaders
- Training materials and resources, including scenario-based learning where the freedom to treat people as individuals will be demonstrated
- Delivery of training sessions for Commissioning Managers and Investigating Officers
- Trust-wide communications via the Information Bulletin
- Email update to managers using the HR Managers Resources Folder

4.0 Conclusion

4.1 These updated policies provide a more supportive and person-centred approach to our disciplinary process. Operational People Group are asked to approve the policies and the implementation plan.

Rhia Boyode
Director of People & Organisational Development
September 2021



Disciplinary Policy

W7

Additionally refer to:

- W31 Handling Concerns about Doctors and Dentists
- HR04 Verification of Professional Registration Policy
- HR13 Reimbursement of Travel, Accommodation and Subsistence Expenses Policy
- W22 Employee Wellbeing and Attendance Management Policy
- W4 Resolving Bullying and Harassment Policy
- W10 Employee Performance Management Policy & Procedure
- W12 Appraisals and Pay Progression
- W37 Employee Investigations Policy
- CG07 Concerns and Complaints
- CG26 Managing Allegations against staff who work with Children and Young People

Version:	V13
V1 issued	March 2008
V4 approved by	JNCC
V4 date approved	July 2021
V4 Ratified by:	Trust Board
V4 Date ratified:	TBC
Document Lead	People Advisory Service & Governance Manager
Lead Director	Director of People and OD
Date issued:	TBC
Review date:	TBC
Target audience:	All Trust Employees

Version Control Sheet

Document Lead/Contact:	People Advisory Service & Governance Manager nick.dowd@nhs.net
Document ID	W7 (Previously HR36)
Version	13
Status	In Consultation
Date Equality Impact Assessment completed	September 2021
Issue Date	TBC
Review Date	TBC
Distribution	Please refer to the intranet version for the latest version of this policy. Any printed copies may not necessarily be the most up to date
Key Words	Disciplinary, Misconduct, Standards of Behaviour, suspension, restriction of duties, safeguarding.
Dissemination	Global Email, Information Bulletin, Workforce Flashcard, Managers Resources email list.

Version history

Version	Date	Author	Status	Comment
3.1	March 2014	Anna Martin	Final	Full redraft of original Trust Policy, issued June 2014.
4.1 – 4.5	June 2017	Nick Dowd	Draft	Policy discussed at JNCC Policy meeting between June 2017 and July 2018. Some parts removed and added to new Employee Investigations Policy. Appendix 4 added.
5.1	May 2021	Nick Dowd / Chris Goulding	Draft	Addition of sections 9, 13 and 15
6-13	June to July 2021	Nick Dowd / Chris Goulding	Draft	Amendments following feedback during consultation. DMG process added.

Contents	Page
1. Policy on A Page	4
2. Document Statement	5
3. Scope	5
4. Responsibilities	5
5. Employee Representation	6
6. Criminal Actions/Convictions/Offences	6
7. Suspensions and/or Temporary Redeployment/Adjustment to Duties	7
8. Disciplinary Procedure - Employment Relations Pathway	8
9. Disciplinary Sanctions	11
10. Grievances Raised During the Disciplinary Process	12
11. Employees Resigning from the Trust	12
12. Standards of behaviour	13
13. Training Managers in the Disciplinary Policy	14
14. Review Process	14
15. Equality Impact Assessment (EQIA)	14
16. Process for Monitoring compliance	15
17. References	15
18. Associated Documents	16

Appendix 1 Guidance & Tool kits

Appendix 2 Disciplinary Fast-Track Process - Sanctions Meeting

Appendix 3 Procedure at Disciplinary Hearing

Appendix 4 Procedure at Appeal hearing

Appendix 5 Authority to Act Chart

Appendix 6 Types of Informal OD Interventions, the role of the HR Practitioner during the Disciplinary process and Health & Well Being Support

1 Policy on a Page

- SATH is committed to ensuring that employees are managed in a supportive, consistent, fair and effective manner and encourages employees to achieve and maintain high standards of conduct.
- This Disciplinary Policy is designed to ensure a fair and systematic approach is taken when an employee's behaviour or action is in breach of workplace rules or falls short of the expected standards of behaviour.
- The fair treatment of staff supports a culture of fairness, openness and learning whilst safeguarding the interests of the Trust, patients and employees.
- The policy complies with the ACAS guide on Discipline and Grievance at Work and the lessons and recommendations set out in the letter from Baroness Dido Harding to NHS Trust Chairs and Chief Executives of the 24 May 2019. The Trust has followed this guidance and the underlying themes include:
 - Rigorous assessment of cases requiring an objective and prompt examination of the issues and circumstances should be carried out to establish whether there are grounds for a formal investigation and/or for formal action.
 - Independence in the selection of commissioning manager, investigating officer and HR Advisory roles.
 - Ensuring those that are commissioning, investigating and advising are fully trained and competent
 - Safeguarding people's health and wellbeing.

2 Document Statement

- 2.1 This policy sets out a framework and the arrangements to ensure a fair, consistent and effective approach in dealing with disciplinary matters designed to encourage and facilitate acceptable standards of conduct and behaviour.

3 Scope

- 3.1 This policy applies to all employees of the Trust including those employed via the Temporary Staffing Department and should be read in conjunction with all appropriate codes of conduct/rules for professional bodies.
- 3.2 For cases where there are allegations against Medical and Dental staff, please also refer to the Trust's Handling Concerns about Doctors and Dentists (W31).
- 3.3 The policy does not apply to issues of capability, poor performance or ill health, which should be dealt with under the appropriate policies listed on the front page.

4 Responsibilities

4.1 Trust Board

The Board has responsibility to oversee this policy and ensure that appropriate processes and actions are in place in order that employees are treated in a fair and consistent manner.

4.2 Executive Directors and Other Senior Managers

Responsible for ensuring appropriate systems and processes are in place across their Divisions and Departments and managers are fully trained and competent to carry out the procedures in this policy; with an emphasis on rigorous assessment of the case and appropriate decision making. Executive Directors/other Senior Managers will also ensure that disciplinary matters are dealt with in a timely manner in accordance with this policy. Shared learning following the disciplinary process should be disseminated.

4.3 Line Managers

Line Managers are responsible for ensuring employees are aware of this policy and its contents and understand the standards of conduct and attendance required and bringing any concerns they may have about individual employees to their attention in a timely and sensitive manner. Line managers need to ensure they are sufficiently trained and competent in carrying out a disciplinary process.

4.4 Workforce Director and the Workforce Directorate

The Workforce Director has overall responsibility for this policy.

The Workforce Directorate team will provide support and guidance on the Policy and advise on procedures to ensure a fair and consistent process is followed and take part in the Decision-Making Group (see below).

The role of the workforce practitioner during disciplinary investigations should be limited to advising on 1. **Procedure** 2. **Process** 3. **Law**. Involvement must be transparent and open and stay within these 3 bounds. Decision makers must reach their own conclusions. For further guidance on the role of the HR Practitioner (see Guidance and tool kits).

4.5 Employees

4.5.1 All employees are expected to and must comply with this policy.

4.5.2 Where an informal or formal disciplinary investigation is invoked, employees are required to actively participate. This will enable the facts to be fully established and the findings identified in a timely and constructive manner, whether this concerns them personally or a work colleague. Paid time off will be provided. It is important that all those being asked to contribute to the process do so in an honest and constructive manner. Any employee who is referred or self refers to their professional body (NMC, GMC, GDC, HCPC etc) must inform their line manager as soon as possible. Failure to do so may in itself, result in disciplinary action being taken.

4.6 Trade Unions/Professional organisations

The role of the trade union/Professional organisation representative (TUPO) is to act as a representative and advocate to provide the employee with advice and support on matters relating to staff discipline.

4.7 Trust Employed Work Colleague

The role of the Trust Employed Work Colleague is to provide the employee with support. They may also take part in relevant meetings/hearings, speak on behalf of the employee and represent them with their permission.

4.8 Accountable Officer for Controlled Drugs

The Trust's Accountable Officer for Controlled Drugs (currently the Chief Pharmacist) must be notified of any disciplinary matters relating to medicines. They are then responsible for ensuring the legal requirements relating to the Health Act 2006 are complied with. This includes notifying regulators (e.g. the CQC, NHS England) and statutory bodies (e.g. the Police).

5 Employee representation

5.1 An employee has the right to be represented, if they wish, at any formal stage of the proceedings by either a representative from a recognised TUPO or a Trust employed work colleague. Although there is no right to be accompanied at informal meetings; to support wellbeing and with the permission of the manager, employees may request to be accompanied at informal meetings provided this does not unreasonably delay the meeting.

5.2 It is strongly advised by the Trust and Staff Side that should this procedure be invoked that the employee seeks the support of their TUPO where applicable. It is the employee's responsibility to liaise with their representative to arrange support. The Trust will facilitate time off for accredited TUPO's and workplace colleagues.

5.3 Employees who are suspended can meet with their representative on Trust premises (see section 7.1.5).

6.0 Criminal Actions / Convictions / Offences

6.1 Where events are the subject of a police investigation or legal process, then unless there are reasons why it should be deferred, the disciplinary process will be undertaken alongside the police investigation.

- 6.2 If a staff member is suspected of committing an act of Fraud in the course of their duties, then advice should be sought from the line manager, Human Resources and Finance before a decision is taken to report this to the Local Counter Fraud Specialists (LCFS).
- 6.3 If an employee is given a police caution, reprimand, bind overs, warning, or under investigation, charged with or convicted of a criminal offence outside employment, they are required to notify their manager and HR without delay.
- 6.4 Employees who receive a caution from the police whether this is following a police investigation or in response to an offence should inform their line manager within 24 hours of receiving the caution. The manager may seek advice from HR in terms of any action that needs to be undertaken.

7 Suspension and/or Temporary Redeployment/Adjustment to duties

7.1 Suspension

- 7.1.1 In certain cases it may be necessary to suspend the employee from duty. Suspension should only take place where there is a risk to patient safety, members of staff or to ensure the investigation can be completed unhindered and re-deployment is not a reasonable alternative. A risk assessment (available from the workforce department) must be completed by the line manager prior to any decision being taken. Any decision to suspend should be taken by an Executive Director in conjunction with the Workforce Director or his/her nominated deputy.
- 7.1.2 The suspension should be as brief as possible and be reviewed every 10 working days with an update provided to the employee from the Commissioning/Suspending Manager.
- 7.1.3 Suspension is a neutral act and is not a disciplinary sanction. Suspension is on full pay which is the remuneration that the employee would have received had they been at work, it is calculated based on a reference period of the previous 12 weeks at work (this includes bank staff).
- 7.1.4 The suspending manager will confirm in writing the terms of the suspension to the employee as soon as possible and within 5 working days of the actual date the employee was suspended.
- 7.1.5 If the employee needs to attend hospital sites for meetings or medical appointments, they must gain permission from the suspending manager, the investigating officer, or the commissioning manager in writing (letter/email/text message), prior to attending. In cases of medical emergencies for themselves or family members, employees are not required to get permission in advance but should notify one of the above managers as soon as possible afterwards.
- 7.1.6 The employee must remain available during their normal working hours for meetings that may be arranged as part of the investigation and disciplinary process. If they have flexible working arrangements in place this will be considered.
- 7.1.7 Suspended employees will be asked to notify the suspending manager of any other work (voluntary or paid) that they do, and this may only continue during the suspension with the written permission of the commissioning manager. In some circumstances the Trust may be required to notify other agencies of this work.

7.1.8 Normal annual leave procedures will continue to apply, including the process for requesting time off and carry over of leave between leave years.

7.2 Temporary Redeployment/Adjustment to duties

7.2.1 Where suspension is not deemed to be necessary, but it is considered inappropriate for the employee to remain in their current position and/or performing their current duties the employee may be temporarily redeployed. The employee's pay will not be affected during this temporary period. Consideration will be given to the individual's specific circumstance in each case. This will be reviewed on a monthly basis.

7.2.2 Redeployment could involve - moving location; restricted or alternative duties; increased supervision or supervised access to patients; restricted contact with patients or colleagues

7.2.3 Where an employee is redeployed on a temporary basis to an alternative location travel expenses will be reimbursed in accordance with the Trust Reimbursement of Travel, Accommodation and Subsistence Expenses Policy (HR13). Travel time will not normally be given, however individual circumstances can be discussed with the line manager.

8. The Disciplinary procedure: Employment Relations Pathway

The purpose of the pathway is to provide a framework for managers and staff to actively follow when dealing with disciplinary matters at informal and formal stages. When an incident/ issue is raised the relevant manager should seek advice from the HR team.

Before deciding what next steps are appropriate, the manager should gather sufficient information to determine whether the matter can be resolved informally or whether more formal action should be considered. This should be done quickly and informally, normally through gathering written statements and other documentary evidence. This may include an informal meeting with the employee.

In certain cases it may be necessary to suspend the employee from duty (see section 7).

8.1 Stage 1: Informal procedure

Where informal action is appropriate the manager should aim to resolve the matter by meeting the employee, seeking support from HR (if necessary) and utilising the suggested Organisational Development (OD) and informal interventions (see Guidance and tool kits at the end of this policy). Employees may need support at this meeting (see section 5.1)

If informal resolution is unsuccessful or not appropriate a Decision-Making Group should be formed.

8.2 Stage 2: Decision Making Group (DMG)

A Decision-Making Group is comprised of a minimum of 3 to review the information available about a case and agree next steps. Membership would include:

- the line manager of the individual,
- the relevant clinical, medical or the Head of department for the area
- a member of the HR team.

The purpose of the Decision-Making Group is to understand the initial evidence available, in order to make a decision on next steps. DMG decisions should be consistent with the application of 'just culture' principles, which recognises that it is not always appropriate or necessary to invoke formal management action in response to a concern or incident, a comprehensive and consistent decision-making methodology should be applied that provides for full and careful consideration of context and prevailing factors when determining next steps.

Next steps may include but are not limited to.

- seeking further information (if required) to assist in the decision-making process on next steps. This may be carried out:
 - informally through written statements, document review, CCTV/text/email/social media evidence etc if relevant.
 - through a "right to reply" meeting between a suitable manager and the employee. (The aim of right to reply meetings will be to listen to the employee's evidence and mitigation and to better understand the facts of the case. The employee will have to right to be accompanied, see section 5)
- Recommending attempts to resolve the issue informally with the management team, seeking support from an OD practitioner, as necessary. Interventions that are put in place and their impact in attempting to resolve the situation need to be closely monitored (see Guidance and tool kits for types of informal and OD interventions).
- Utilising the Fast-Track process (see section 8.5)
- Commission a formal investigation utilising the Employee Investigations Policy (W37)
- Considering any restrictions/ exclusions that may be appropriate (see section 14).

Once a decision has been made on next steps, the chair of the Decision Making Group must ensure the employee is notified of the next steps and the rationale behind their decision.

8.3 Stage 3 - Formal Procedure

The formal procedure should be followed where the informal approach has failed to secure the required improvements in conduct or behaviour or where the Decision-Making Group believes there is a case to answer in that a breach of conduct may have occurred that is too serious to be dealt with informally. Investigations will be carried out in accordance with the Trust's Employee Investigations Policy (W37).

8.3.1 Fast Track Procedure

- The 'Fast Track' process is to help speed up the process of staff being disciplined, which may reduce anxiety and stress to the member of staff rather than going through a full disciplinary hearing. It is crucial from the beginning that employees understand that by opting to use the Fast-Track procedure there is no right of appeal.
- The Fast-Track process can be followed where it is felt that **Misconduct** has occurred and been admitted.
- The Fast-Track procedure will not be used for matters of **Gross Misconduct**.
- To use the Fast-Track process, the staff member **must admit** to the allegations, agree with this process and a DMG (see section 8.3) must agree there is a case to answer and the circumstances are appropriate for Fast Track.

- The employee is to be informed that there will be an agreed outcome in terms of a formal sanction. This will either be a First or final Written Warning of a minimum of **6 and** maximum of **12 months** depending on the circumstances of the conduct. The outcome cannot be dismissal. If the sanction is likely to be a final written warning there is the option for the employee to opt for a full disciplinary hearing. Before the sanction is given the panel considering the case should call an adjournment enabling the employee with their representative to decide whether to accept the sanction or to request that their case moves to a full disciplinary panel hearing.
- The employee is to be informed that by electing to use the Fast-Track Process, as there is an agreed outcome, there will be **no right of appeal** against the outcome.
- Employees can only have one Fast Track Procedure considered in a 12-month period.

8.3.2 Formal Action – Case to answer

- Where it is determined that there is a case to answer the commissioning manager should decide whether the case should proceed to a formal sanctions meeting (Fast Track procedure) with the consent of the employee - see 8.3.1 and Guidance and tool kits) or
- The case should be considered at a disciplinary hearing (see Guidance and tool kits).
- The authority to take formal disciplinary action is outlined in Guidance and tool kits.
- In accordance with the General Data Protection Regulations any evidence provided by employees during this process may be retained within their personal file and/or stored securely (electronically or hard copy) within the HR department.
- All witness statements relating to the allegations will be provided to the employee and any witnesses may be called to disciplinary hearings in accordance with Guidance and tool kits.

8.3.3 Appeals

- An employee/appellant has the right to appeal against the decision of the chair of the disciplinary hearing under this procedure. The appeal should be made in writing to the next level of management (named within the hearing outcome letter) within 14 calendar days of receipt of written confirmation of the decision.
- Appellants who are appealing their dismissal will need to inform the workforce representative from the disciplinary panel of any meeting with their TUPO representative that occurs on Trust premises.
- Appeal hearings are convened to review the decision and the outcome of the original disciplinary hearing.
- An employee must set out clearly the grounds upon which the previous decision is being contested and the outcome they are seeking, as this will form the basis of the appeal hearing.
- Grounds of appeal:
 - they disagree with the finding that they committed the alleged act(s) of misconduct
 - they feel that Trust procedures were not correctly and fairly implemented
 - discrimination and/or sanction inconsistent with how others have been treated
 - new evidence not previously available at the original hearing.
- If the reason for the appeal is unclear, the employee may be asked to clarify their grounds before the appeal hearing takes place.

- Where new evidence is presented the chair of the appeal meeting may choose to refer the matter back to the original disciplinary panel for them to consider the evidence and decide whether this changes their outcome. Following this if the employee remains dissatisfied they retain the right of appeal.
- The appeal hearing will be heard by the next level of management and will be supported by a workforce representative. In cases of professional misconduct the panel chair may be accompanied by a professional lead.
- The appeal is not a re-hearing of the original disciplinary hearing, nor is it a re-investigation but a consideration of the specific areas with which the employee is dissatisfied in relation to the original disciplinary hearing decision. The panel will be required to satisfy itself on the following points:
 - Whether the investigation was adequately investigated and substantiated
 - Whether the Trust's procedures were correctly and fairly implemented
 - Whether the disciplinary action taken was reasonable, in all circumstances
- The disciplinary sanction and decision of the original disciplinary hearing may be upheld, reduced or removed as a result of any appeal lodged. If the sanction is removed then this will also be removed from the individual's personal file
- In the event of an appeal hearing decision that an employee should be reinstated; the employee will receive payment from the date of termination to the date of re-employment..
- There will be no further right of appeal following this stage of the procedure.

9 Disciplinary Sanctions

9.1 First Written Warning

- 9.1.1 In the case of minor offences, the employee may be given a first written warning, setting out the nature of the offence and the likely consequences of any further offences. The employee should be told that their conduct is not acceptable and more serious disciplinary action will be taken in the event of continued breaches of conduct.
- 9.1.2 The written warning will be confirmed in writing within 7 calendar days of the date of the decision by the chair of the panel. The warning will be live for up to 9 months (and could be less depending on the case) from the date of issue after which it will become spent but will remain on the personal file.
- 9.1.3 Receipt of a formal disciplinary warning may affect pay progression. See section 7.5 of the Annual Appraisal and Pay Progression Policy (W12) for more information.

9.2 Final Written Warning

- 9.2.1 In the case of further offences of a similar nature or a first instance of more serious misconduct (that would warrant dismissal if it were repeated), the employee may be given a final written warning. The employee should be clearly warned that further misconduct may result in dismissal.
- 9.2.2 The final written warning will be confirmed in writing within 7 calendar days of the date of the decision by the chair of the panel together with the right of appeal against the decision and the outcome letter will be kept on file; the warning will be live for up to 18 months (and could be less depending on the case) from the date of issue after which it will become spent but will remain on the personal file.

9.2.3 Receipt of a formal disciplinary warning may affect pay progression. See section 7.5 of the Annual Appraisal and Pay Progression Policy (W12) for more information.

9.3 Dismissal and Summary Dismissal

9.3.1 Dismissal or summary dismissal may take place where:

- a final written warning remains live, and the misconduct or related behaviour has been repeated or continues; or
- the employee is considered to have committed an act of gross misconduct or
- the employee is charged with or convicted of a criminal offence which is sufficiently serious as to justify dismissal; or
- a Statutory Bar is imposed on the employee which prevents them from carrying out some or all their duties; or
- the employee no longer meets the standards set down for their profession by the relevant Authority; or
- the employee loses their professional registration (see also HR04 Verification of Professional Registration).

9.3.2 The Trust reserves the right to make a payment in lieu of notice. In all cases, any outstanding payments in respect of annual leave, agreed time owing, overtime worked, unsocial hours payments etc., due on the date of termination will be paid, normally on the next available pay date.

9.3.3 In cases of gross misconduct the employee may be summarily dismissed without notice or payment in lieu of notice. Any decision to dismiss will only be taken as the outcome of a full disciplinary hearing in accordance with this procedure.

9.3.4 Any decision to dismiss an employee will be confirmed in writing by the chair of the panel within 7 calendar days of the hearing, together with the right of appeal against the decision.

10 Grievances raised during the disciplinary process

- If, during a disciplinary process, the employee raises grievances of a serious nature, for example, allegations of sexual or racial discrimination and harassment, or something of a similar nature the employee must raise this with the HR Practitioner overseeing the case.
- In some cases a separate investigation relating to the grievance may need to be concluded before a final decision can be reached at the disciplinary hearing.
- Knowingly vexatious or malicious allegations from the employee may be taken into account when the appropriate sanction is being considered.

11 Employees Resigning from the Trust

- Where an employee voluntarily resigns from their post and leaves with immediate effect prior to the date of a disciplinary hearing, the Trust may proceed with the disciplinary investigation or Hearing. The employee must still be formally invited to any Hearing and advised that should they not attend a decision will be made in their absence. The individual is notified formally in writing of the outcome and any subsequent actions.

- Any decisions taken in these circumstances will be reflected in any future reference requests.

12 Standards of behaviour

12.1 Examples of behaviour expected by the Trust

The following are examples of the behaviour expected by the Trust, although the list is not exhaustive:

- The Trust has established a behavioural framework that all staff should adhere to and that includes the behaviours associated with the Trust's values.
- Attend work punctually and regularly in line with operational requirements
- Carry out reasonable requests/instructions from your manager promptly and efficiently and to the required standard
- Time off must be approved in advance by the appropriate level of manager and be in line with your contract of employment
- Follow the procedure outlined in the Managing Attendance and Wellbeing when notifying the Trust of your sickness absence
- You must comply with all the Trust policies and procedures and bring serious breaches to the attention of management
- Adhere to professional body and statutory guidelines as appropriate and act professionally at all times

12.2 Examples of Misconduct

No set of disciplinary standards can cover all circumstances that may arise during employment; therefore, the following list should not be regarded as exhaustive or complete. It has been drawn up to enable employees to know and understand the types of conduct that will warrant disciplinary action and describe the Trust's approach to issues of staff misconduct. This list is not exhaustive::

Failure to comply with reasonable management instructions	Unauthorised /inappropriate use of NHS property i.e. IT equipment or patient property
Acts of insubordination	Smoking in non-designated areas
Persistent failure to wear ID badges/adhere to dress code	Using offensive language
Deliberate failure to administer drugs in line with NMC & Trust guidelines	Actions that bring the Trust into disrepute
Persistent bad timekeeping	Deliberately not providing safe and high-quality service without concern or respect for the feelings of other staff, patients & visitors.
Unauthorised absence	Failure to disclose a conflict of interest.

In serious or persistent cases of the above, the misconduct may be regarded as 'gross misconduct'

12.3 Examples of Gross Misconduct

This list is not exhaustive:

Dishonesty/Theft	Assault (verbal or physical)
Serious personal or professional misconduct or negligence	Malicious damage
Harassment/bullying of an employee who has made a protective disclosure including cyber bullying	Under the influence of alcohol or drugs whilst on duty
Breach of contract	Intentionally making false statements
Breach of confidentiality	Inappropriate use of the internet or the Trust's social media
Covert recording (e.g. making a video or audio recording of a private meeting/discussion involving others, without their knowledge and consent)	Breach of Equality and/or Human Rights Legislation Breach of legislative or regulatory duty e.g. H&S, CQC
Deliberate failure to renew professional registration	Criminal offences outside employment affecting the employee's role
Permanent or temporary loss of professional registration (see HR04 Verification of Professional Registration Policy)	Deliberate failure to disclose a conflict of interest.
Breach of professional standards	Fraud and/or corruption

13 Training Managers in this Disciplinary Policy

The Trust acknowledges the importance of training managers involved in the application of this policy and will therefore ensure that appropriate training and support is available from the Workforce Directorate.

14 Review process

This policy will be reviewed every three years or before if there are legislation changes. The monitoring of this policy includes an annual audit and where non-compliance is identified an action plan will be drawn up and monitored at the Workforce Committee.

15 Equality Impact Assessment (EqIA)

The Trust will ensure it is compliant with the Equality Act 2010 and the employment practices within it, and will commit itself to eliminate all unfair discrimination, harassment, bullying and victimisation.

16 Process for monitoring compliance

Aspect of compliance or effectiveness being monitored	Monitoring method	Responsibility for monitoring (job title)	Frequency of monitoring	Group or Committee that will review the findings and monitor completion of any resulting action plan
The policy is fairly applied to staff in a transparent and consistent manner	Use of workforce database to review cases by protected characteristics under the Equality Act 2010. Review of disciplinary sanctions to check consistency	People Advisory Team Manager	Yearly	Workforce committee JNCC
Number of cases being referred to HR Advisors/Managers for support	Use of workforce database	People Advisory Team Manager	Yearly	Workforce committee
Number of appeals against decisions taken under this procedure.	Use of workforce database	People Advisory Team Manager	Yearly	Workforce committee
Ongoing discussions with JNCC representatives		Deputy Workforce Director	Ongoing	JNCC

17 References

- Legislation
 - Employment Act 2008
 - Employment Tribunals (Constitution and Rules of Procedure) (Amendment) Regulations 2008
 - Employment Rights Act 1996 as amended
 - Employment Rights Dispute Resolution Act 1998
 - Employment Relations Act 1999
 - Employment Rights Act 2004.

Previous legislation covering discipline and grievances at work was historically found in the Employment Act 2002 and the Employment Act 2002 (Dispute Resolution) Regulations 2004 (SI 2004/752). However, the procedures were repealed in their entirety from 6 April 2009 under the Employment Act 2008)

- CIPD – Good Practice Guidelines for Disciplinary and Grievance Procedures (Members only section of website)
- ACAS – Code of Practice for Disciplinary and Grievance Procedures - http://www.acas.org.uk/media/pdf/k/b/Acas_Code_of_Practice_1_on_disciplinary_and_grievance_procedures-accessible-version-Jul-2012.pdf

- HR Inform Guidelines for Disciplinary and Grievance Procedures (Members only section of website)
- DBS website <https://www.gov.uk/government/publications/dbs-referrals-form-and-guidance>
- Lessons and recommendations set out in the letter from Baroness Dido Harding to NHS Trust Chairs and Chief Executives of the 24 May 2019

18 Associated Documentation

HR01 Equality and Diversity Policy
 HR07 Disciplinary Policy for Doctors and Dentists.
 HR09 Alcohol and Substance Misuse.

HR13 Reimbursement of Travel, Accommodation and Subsistence Expenses Policy
 HR31 Managing Attendance & Employee Wellbeing

HR65 Occupational Health Service
 HR66 Staff Counselling Service.

W10 Employee Performance Management Policy & Procedure
 W19 Leave Policy
 Cluster

W37 Employee Investigations Policy

All the above are available from:

Internal - http://intranet/hr/HR_Policies.asp

External - <https://www.sath.nhs.uk/working-with-us/hr/policies/>

CG26 Managing Allegations against Staff who work with Children and Young People

CG07 Concerns and Complaints

Available from http://intranet/document_library

GUIDANCE AND TOOL KITS

The following guidance should be read in conjunction with the Disciplinary policy.

Disciplinary Sanctions Meeting where an employee opts to use the Fast track procedure (see 8.3.1)

- The Sanctions Meeting process is applicable in cases where an employee has agreed to follow the Fast Track procedure (see 8.3.1) and accepts full responsibility for their actions. The outcome of the investigation would result in a sanction of up to and including a Final Written Warning.
- The decision to progress to a Sanctions meeting will not be made until after an investigation.
- The Fast Track procedure does not apply:
 - to medical and dental staff (see W31),
 - the employee disputes the allegations and/or requests a full hearing,
 - the outcome may be dismissal, or
 - the employee is already subject to a live final written warning.
- In these circumstances a full disciplinary hearing must be convened.

Where the fast-track procedure is used the Sanctions proforma must be completed prior to the meeting commencing.

- The Sanctions Meeting is a formal meeting that would follow the principles outlined in the ACAS Guide, including the right to representation but does not require the attendance of an Investigating Officer to present the case.
- The Sanctions Meeting will consist of the Chair, HR, the employee, their TUPO or workplace colleague (where applicable).
- If the employee rejects the sanction, they must notify the Chair within 10 working days of receipt of the outcome letter. In this eventuality a disciplinary hearing will be arranged.
- All documents or evidence collated will be shared with the employee and they will be notified of the arrangements in writing and their right to representation.

At the Sanctions Meeting following the Fast Track procedure

- The employee will be asked to confirm that they admit the allegations and have the opportunity to comment on the incident which has given rise to the disciplinary.
- The Chair of the Sanctions Meeting may ask questions about the case. The meeting will be adjourned in order that the panel can reach a decision on the sanction. The sanctions could range from no warning, first written or final written warning. The Chair could also refer the case to a disciplinary hearing if further concerns not previously identified have been raised which may require further investigation.
- The outcome letter will be confirmed in writing within 7 calendar days of the meeting.

SANCTIONS PROFORMA

Employee Name:	
Position Held:	
Care Group:	
Ward/Department:	
Date of Allegation:	
Allegation: (To be written by the Commissioning Manager)	
<p>I (<i>insert name</i>) request a sanctions meeting where a sanction of no case to answer, action in line with the Employee Performance Management Policy (W10), a first written or final written warning in accordance with the Disciplinary Policy (HR36) may be given for the above allegation/s.</p>	
<p>I have/have not (<i>delete as appropriate</i>) discussed the sanctions meeting with Staff Side rep or Workplace colleague</p> <p>Signature of Staff Side rep or Workplace colleague (where applicable)</p> <p>Signature Date</p>	
<p>I understand and admit the allegation occurred as stated</p>	<input type="checkbox"/>

Employee Signature Date

On completion forward to the Commissioning Manager within the timescales set out in your letter

Received by Commissioning Manager

Signature Date

Procedure at Disciplinary Hearing

1. The Disciplinary Hearing Panel

- 1.1 Panel members are selected with no previous involvement in the case and must be trained in the Disciplinary policy.
- 1.2 Where the case concerns professional conduct, a senior member of that profession should be part of the panel if the Chair is not qualified in that profession.
- 1.3 The role of the HR representative is to provide support and advice to the panel and to participate in the hearing and decision-making process, with the chair making the final decision.
- 1.4 The employee will be notified of the panel members in advance and may request an alternative panel be appointed, if there are justifiable reasons; made in writing, to the HR representative supporting the panel at least five working days before the hearing is due to take place.

2. Exchange of Evidence and Witnesses

- 2.1 The employee will be provided with a copy of the investigation report, all relevant documentary evidence and names of management witnesses no later than 5 working days prior to the hearing.
- 2.2 If the individual intends to rely on any additional written evidence at the hearing that has not already been provided in the investigation report, this should be presented to the Chair at least 5 working days prior to the hearing.
- 2.3 It is the responsibility of each party to arrange for their witnesses to be present at the hearing. Non-availability of witnesses must be shared as far in advance as possible by both sides.

3. The Process

- 3.1 The Chair will start with introductions and outline the process to be followed. All disciplinary hearings will be recorded. If audio recording, all parties must consent to this.
- 3.2 Management side (normally the Investigating Officer) will present the case and summarise the findings of the investigation and call each of their witnesses to answer questions. The employee or their representative may question each witness.
- 3.3 The employee or their representative will present their case and call any witnesses Management may question each witness
- 3.4 Management will sum-up the case against the employee.
- 3.5 The employee or their representative will sum-up their case.
- 3.6 The Chair of the hearing will ask any further questions of either party to resolve any outstanding queries or matters that have arisen during the hearing.

- 3.7 The Chair will adjourn to reach a decision and will reconvene the meeting, calling back the employee and their representative and the Management representative(s) to inform them of the decision. In many cases, the hearing will reconvene on the same day. In other circumstances, the Chair will inform both parties that more time will be required before a decision can be reached.
- 3.8 The Chair will confirm the outcome decision of the panel in writing to the employee with copies to the employee's representative and to the management representative, within 10 working days.

4. Learning and Improving

- 4.1 Commissioning Managers/Chair of the hearing panel have a responsibility to feedback any general learning points identified during a particular disciplinary case.

This should be part of the Process of monitoring (see section 16).

Procedure at an Appeal Hearing

1. **The Appeal Hearing Panel procedure follows the same procedure as the Disciplinary hearing (see points 1 – 2 above).**
2. **The Process**
 - 2.1 The Chair will start with introductions and will outline the process to be followed.
 - 2.2 The employee/appellant or their representative will present their appeal, explaining why they believe the decision taken at the disciplinary hearing was unfair or unreasonable.
 - 2.3 The employee/appellant or their representative may present any new evidence not available at the disciplinary hearing. The Chair may decide whether to continue with the appeal, remit the case back to the earlier hearing panel or to have the case re-investigated.
 - 2.4 The employee or their representative will then sum up their case.
 - 2.5 The chair of the original disciplinary hearing will then present their response, explaining the basis on which their decision was made, including any mitigation offered by the employee and respond to any new evidence presented by the employee, including relevant witnesses.
 - 2.6 The chair of the original disciplinary hearing will then sum-up their case.
 - 2.7 The Chair of the appeal hearing may adjourn the hearing at any time to seek advice or clarification on any matters that remain outstanding, for example if professional advice is sought. The panel will adjourn to consider its decision. .
 - 2.8 The Chair will reconvene the appeal hearing, calling back the employee and their representative to inform them of the decision of the hearing. The Chair may inform both parties that more time will be required before a decision can be reached and therefore will write to the employee/appellant.
 - 2.9 The Chair will confirm the outcome of the hearing in writing to the employee, the employee's representative and the previous chair of the original disciplinary hearing within 10 working days of the date of the appeal hearing.
 - 2.10 The decision of the appeal panel is final and concludes the Disciplinary Procedure.

Authority to Act Chart

	Minimum level of Authority to act or hear appeals				
Employee Status	Suspension	First or Final Written Warnings	Written Warning Appeals	Dismissal	Dismissal Appeal
Chief Executive and Board Directors	As determined by the Remuneration Committee				
Managers who report to a Trust Board Director	Must be authorised by Trust Board Director	Trust Board Director*	Chief Executive*	Trust Board Director *	Chief Executive*
Consultants and other career grade medical and dental employees	See Human Resources policy HR07	As set out in the Trust's Disciplinary Policy for Doctors and Dentists (HR07). Where the case is remitted back into this procedure, the following applies:			
		Care Group Medical/Clinical Director or Assistant COO	Medical Director or Deputy Medical Director*	Medical Director or Deputy Medical Director*	Medical Director or Chief Executive*
Other medical and dental employees	See Human Resources policy HR07	As set out in the Trust's Disciplinary Policy for Doctors and Dentists (HR07). Where the case is remitted back into this procedure, the following applies:			
		Centre Manager	Care Group Medical/Clinical Director	Care Group Medical/Clinical Director	Deputy Medical Director
Other employees	Must be authorised by Trust Board Director	Min. Band 7 (See section 6 of Appendix 1)	Must be more senior than the manager who issued the warning	Min. Band 8a	Must be more senior than dismissing manager

Notes

- Action may only be taken by an individual who is more senior than the member of staff against whom allegations have been made.
- *The Chief Executive and Trust Board Directors may delegate their authority to another Trust Board Director or to a Care Group Director where appropriate. The delegate must still be senior to the employee being disciplined.

Types of informal / Organisational Development (O.D.) Interventions

Interventions that might be considered:

- Manager/ individuals supported through facilitated coaching conversations to resolve issues, meeting informally. They should work together to understand the problem and identify what support the employee needs to prevent this issue(s) re-occurring.
- The emphasis will be on agreeing corrective action without recourse to the formal Disciplinary Policy. Managers may also wish to utilise the Trust's Employee Performance Management Policy (W10) where appropriate.
- The manager should ensure the employee understands the standards of conduct expected and explain that future issues of a similar or related nature are likely to lead to a formal disciplinary process.
- The outcome of the meeting should be confirmed to the employee in writing and a copy of the letter kept on the employee's personal file.
- Manager supported to undertake health & well- being conversations and agree plan with the employee.
- Mediation (internally/ external options) is available
- Commission SaTH cultural framework diagnostic tool to understand root causes. This will be commissioned by lead of the area and undertaken internally by an OD practitioner.

The role of the HR Practitioner during the Disciplinary Investigation

- The role of the workforce practitioner during disciplinary investigations should be limited to advising on - **Procedure - Process - Law.**
- Decision makers must reach their own conclusions.
- What is ok?
 - Give advice on how the investigation approaches investigation meetings
 - Give advice on the way an investigation report is presented
 - Ensure the report addresses all the necessary issues
 - Make disciplinary chair/ commissioning manager/TUPO aware of previous cases across the Trust to ensure consistency
 - If we are to have a role in deciding guilt/ innocence or sanction then we must be upfront about that.
- What is not ok?
 - Amend the investigating officers report
 - Decide on guilt or innocence
 - Decide on the level of sanction
- The role in practice
 - Assigned to an investigation. You will have overall oversight and co-ordination of the progress of that investigation. Includes procedural/ process and legal support to commissioning manager and investigator within HR role and remit.
 - Support Commissioning Manager to commission investigation in line with process.
 - Seek assurance from the investigation officer regarding their investigation plan.
 - Monitor progress and timescales in line with procedure and process.

- Ensure Commissioning manager tracks progress and support to resolve any queries that arise.
- Escalate any concerns to the Investigation Officer and or commissioning manager.
- Confirm who will complete 'wellness checks' on individuals subject to investigation or who have raised concerns.
- Ensure wellness checks are carried out and offer advice and support in relation to the Health and Well Being interventions available.
- Review the draft investigation report and give advice on how the report is presented and ensure it addresses all the issues.
- Be aware of similar cases and sanctions to advise the disciplinary chair/ commissioning manager to ensure consistency.
- If commissioning manager decides to escalate the case to a hearing you would co-ordinate setting up of panel (with HR Assistance support). Then the case is allocated to new HR practitioner who supports Hearing Manager.
- Should the case go to appeal the HR practitioner who supported the hearing manager would then support the management case in appeal with a new HR practitioner allocated to support the appeal. HR assistant support to assist in co-ordination and setting up appeal.

Health and Wellbeing Support

- The Trust will adopt an inclusive, compassionate and person-centred approach. The process must be underpinned by an overriding concern to safeguard employee health and wellbeing, whatever the circumstances.
- It is the responsibility of all those involved to make reasonable adjustments to the process to support the health and wellbeing of those taking part. Staff affected may seek wellbeing support from:
 - Line manager
 - Alternative senior manager if the line manager is not available or the line manager is involved in the case.
 - Human Resources (ext 2891 or email:)
 - A Trade Union/Professional Organisation representative (details and contact numbers are available on the HR pages of the Trust intranet site or via switchboard)
 - Freedom to Speak Up Guardians (telephone via switchboard or email: sath.fts@nhs.net)
- Occupational Health or the Trust's Employee Assistance Programme. There is also a wealth of wellbeing resources on the Trust's Intranet: http://intranet.sath.nhs.uk/hr/health_wellbeing/mind.asp.
- Where a person who is the subject of an investigation or disciplinary procedure suffers any form of serious harm, whether physical or mental, this should be treated as a 'never event' which therefore is the subject of an immediate independent investigation commissioned and received by the board. Further, prompt action should be taken in response to the identified harm and its causes.



Employee Investigations Policy

W37

Additionally refer to:

- W7 Disciplinary Policy
- W10 Employee Performance Management Policy & Procedure
- W31 Disciplinary Policy for Doctors and Dentists
- W22 Employee Wellbeing & Managing Attendance Policy
- W4 Resolving Bullying and Harassment Policy
- CG04 Serious Incident Policy
- CG05 Reporting and Investigation of incidents, Complaints and Claims
- CG07 Concerns and Complaints
- CG17 Guidelines for Managers and Employees on the management of individuals involved in adverse events
- NHSI Just Culture Guide

Version:	V2
V1 issued	May 2018
V2 approved by	JNCC
V2 date approved	July 2021
V2 Ratified by:	Trust Board
V2 Date ratified:	TBC
Document Lead	People Advisory Service & Governance Manager
Lead Director	Director of People and OD
Date issued:	TBC
Review date:	TBC
Target audience:	All Trust Employees

Version Control Sheet

Document Lead/Contact:	People Advisory Service & Governance Manager nick.dowd@nhs.net
Document ID	W37
Version	3
Status	In Consultation
Date Equality Impact Assessment completed	September 2021
Issue Date	TBC
Review Date	TBC
Distribution	Please refer to the intranet version for the latest version of this policy. Any printed copies may not necessarily be the most up to date
Key Words	Investigation, Disciplinary, Bullying and Harassment, Performance Management, Grievance, Whistleblowing
Dissemination	Global Email, Chatterbox, Staff Updates, Workforce Flashcard, Managers Resources email list.

Version history

Version	Date	Author	Status	Comment
1	Nov 2017	Nick Dowd (HR Advisory Team Manager)	Draft	Discussed at JNCC Policy Group November 2017 to July 2018.
2	May 2021	Nick Dowd / Chris Goulding	Draft	Amendments following review of disciplinary policy.

Contents

1 Policy on a Page.....4
2 Document Statement.....5
3 Overview5
4 Responsibilities.....5
5 Employee representation.....7
6 The Investigation Process7
7 Training needs.....10
8 Review process10
9 Equality Impact Assessment (EqIA).....10
10 Process for monitoring compliance10
11 References11
12 Associated Documentation11

1 Policy on a Page

This Employee Investigations policy of the Trust aims to ensure a fair, consistent and effective approach in dealing with employee investigations. This policy is in-line with the ACAS Code of Practice on Disciplinary and Grievance Procedures and in all cases a full and thorough investigation will take place to inform appropriate management decisions as part of the procedural process.

This policy applies to all employees of the Trust. However, for investigations relating to the conduct/capability of Doctors and Dentists, there are additional requirements as stipulated by the Maintaining High Professional Standards in the NHS (MHPS), which are outlined in the Trust's Disciplinary Policy for Doctors and Dentists (HR07). Any investigations relating to the conduct/capability of Doctors and Dentists must comply with HR07 and MHPS.

The Employee Investigations Policy can be used in conjunction with other Policies e.g. Disciplinary and Grievance.

The policy provides the framework and arrangements for the process of carrying out an investigation which includes:

- Commissioning Manager sets out the terms of reference of the investigation
- Commissioning Manager appoints an Investigating Officer
- Commissioning Manager shares all information gathered so far to Investigating Officer.
- Investigating Officer attempts to gather all relevant information.
- Investigating Officer consults with HR Advisory Team and Commissioning Manager and presents their findings in a written report.
- Commissioning Manager reviews the Investigators report and decides on action and next steps informing the relevant members of staff.

2 Document Statement

This policy sets out arrangements to ensure a fair, consistent and effective approach in dealing with employee investigations. The process is designed to ensure a full and thorough investigation takes place to meet the guidance of the ACAS Code of Practice on Disciplinary and Grievance Procedures and to allow appropriate management decisions to be made.

The Trust recognises that investigations may be difficult for those involved and is committed to working with employees and their representatives to provide adequate support throughout the process.

3 Overview

This policy applies to all employees of the Trust. However, for investigations relating to the conduct/capability of Doctors and Dentists, there are additional requirements as stipulated by the Maintaining High Professional Standards in the NHS (MHPS) which are outlined in the Trust's Disciplinary Policy for Doctors and Dentists (HR07). Any investigations relating to the conduct/capability of Doctors and Dentists must comply with HR07 and MHPS.

This policy may be used in a variety of circumstances that include (but are not limited to):

- Allegations relating to employee conduct or behaviours
- Concerns raised under the Trust's Resolving Bullying and Harassment Policy
- Gathering information to determine the outcome of a Grievance
- Gathering information in relation to whistleblowing concerns

Where an incident/complaint forms part of the Clinical Governance processes within the Trust, an investigation under this policy may run in parallel where appropriate. Reference should be made to the Trusts Clinical Governance guidelines, policies for supporting staff when adverse events, incidents or complaints are received and to guidance from professional bodies as appropriate particularly in cases where there are potential "fitness to practice" considerations.

4 Responsibilities

4.1 Trust Board

The Board has responsibility to oversee this policy and ensure that appropriate processes and actions are in place to ensure employees are treated in a fair and consistent manner.

4.2 Executive Directors and other Senior Managers

Are responsible for ensuring appropriate systems and processes are in place across their Divisions and Departments to disseminate shared learning from investigations, assisting the appointment of investigating officers and ensuring that these matters are dealt with in a timely manner and in accordance with this policy.

4.3 Line Managers

Line Managers are responsible for ensuring employees are aware of this policy and its contents and for supporting employees if they are required to participate in an investigation. This includes ensuring that employees are given appropriate paid time to take part in an investigation in a timely manner and making referrals to the Occupational Health and Staff Counselling Services where appropriate.

4.4 Commissioning Managers

The commissioning manager will normally be a senior manager within the relevant Division. However, they must be independent of the issue under investigation.

At the start of an investigation, Commissioning Managers are responsible for setting out the terms of reference for the investigation and appointing an appropriate Investigating Officer and administrative support.

The Commissioning Manager then has oversight on the progress of the investigation to ensure it is completed in accordance with this policy and in a fair, consistent and timely manner. This is normally achieved through a case review which should take place at least monthly during the investigation.

The Commissioning Manager must also ensure the employee(s) being investigated is updated on the progress of the investigation on a monthly basis.

At the conclusion of the investigation the Commissioning Manager will review the findings and make a decision on appropriate action in accordance with the relevant Trust policy.

4.5 Investigating Officers

Investigating Officers are responsible for carrying out investigations in accordance with this policy and in a fair, consistent and timely manner. Appropriate training and/or support will be provided by the HR Advisory Team.

Their role is to establish the facts of the case and conclusions and to present these to the Commissioning Manager, it is not to make any recommendations or judgments.

Investigating officers must be independent of the issue being investigated and if the allegations relate to a professional issue they must have an appropriate level of knowledge to conduct the investigation, or a specialist adviser will also be appointed to advise the Investigating officer

4.6 Workforce Directorate

The Workforce Director has responsibility for this policy.

The HR Advisory Team will provide support and guidance in accordance with the ACAS code and employment law, assisting in the timely completion of investigations. In exceptional circumstances this may include assisting the Investigating Officer in compiling their investigation report. The report remains the responsibility of the Investigating Officer who must have final sign off of the completed report.

Commissioning managers/Investigating officers) must reach their own conclusions.

4.7 All Staff

Employees are required to participate fully during investigations, in a timely and constructive manner, whether this concerns them personally or a work colleague. Paid time off will be provided. Employees are expected to provide full and honest evidence.

All matters relating to investigations are considered strictly private and confidential. Employees should not discuss the details of the investigation with anyone, with the exception of their representative/colleague, the Investigating Officer, the Commissioning Manager and the HR Advisory Team in relation to the case. Failing to maintain confidentiality may result in disciplinary action.

Where an employee wishes to be accompanied or represented (in accordance with section 5) they will be responsible for contacting their representative and arranging for them to attend meetings.

4.8 Trade Unions

The role of the Trade Union/Professional organisation representative (TUPO) is to act as advocate and representative for the employee and to provide advice and support. They may also be asked to assist in sharing any learning that comes from investigations.

4.9 Trust Employed Work Colleague

The role of the Trust Employed Work Colleague is to provide the employee with representation and support.

5 Employee representation

At any formal meeting relating to an investigation, an employee has the right to be represented, if they wish, by either a representative from a recognised TUPO or a Trust employed work colleague. Although there is no right to be accompanied at informal meetings; to support wellbeing and with the permission of the manager, employees may request to be accompanied at informal meetings provided this does not unreasonably delay the meeting.

The representative/colleague cannot be someone who is involved in the investigation. The Trust will facilitate time off for TUPOs and workplace colleagues acting as support to the employee. It is strongly advised by the Trust and Staff Side Representatives that employees seek the advice and support of their TUPOs when involved in investigations.

Employee's may not bring members of their family into the informal or formal processes of this policy. In line with the Trust's policy on Health and Well Being consideration needs to be given to any reasonable adjustments that are in place to support the employee because of an underlying health condition. The involvement of family members in this context may be appropriate.

6 The Investigation Process

6.1 Commissioning an Investigation

- 6.1.1 Prior to commissioning an investigation advice must be sought from the HR Advisory Team.
- 6.1.2 If the investigation relates to disciplinary issues, please refer to the Disciplinary Policy for guidance on Decision Making Groups prior to commissioning an investigation.
- 6.1.3 The Commissioning Manager must have enough information to be assured that a formal investigation is appropriate in the circumstances. This may include documentation and written statements from those involved. The decision should not be taken lightly as it may have a significant negative affect on those involved and can be a costly and time-consuming process.
- 6.1.4 At the start of each investigation, the Commissioning Manager will specify in writing the terms of reference for the investigation and provide this to the appointed Investigating Officer along with any relevant documentation already gathered. Where the investigation involves a specific professional issue, an appropriately qualified person should be appointed as the Investigating Officer, or as a specialist advisor to the Investigating Officer.
- 6.1.5 The Commissioning Manager will also notify the employee(s) of the name of the Investigating Officer at the earliest opportunity.
- 6.1.6 Where there are justifiable reasons for doing so, such as a conflict of interest, an individual may request that an alternative Commissioning Manager and/or Investigating Officer is appointed before the investigation is started. Such a request will be considered by another senior manager not involved in the case. If the decision is to reject the request, clear reasons must be given..

- 6.1.7 The Commissioning Manager will review all relevant information about a case which may include reviewing an employee's personal file(s), which in turn will be provided to the Investigating Officer. The employee should be informed of any personal information that is shared about them. Employees may request to review their personal file with their Line Manager.
- 6.1.8 In some circumstances the Commissioning Manager may benefit from referring to the NHSI Just Culture Guide when making a decision to commission an investigation.
- 6.1.9 Where the investigation relates to the actions of an accredited Trade Union representative no formal investigation shall be commenced until the circumstances of the case have been discussed with a fulltime officer of the organisation concerned.

6.2 The Investigation

- 6.2.1 Investigating Officer should always read this policy prior to an investigation and seek advice from the HR Advisory Team. Appropriate training/support will be provided.
- 6.2.2 The Trust recognises the impact that can be caused by investigations and will adopt an inclusive, compassionate and person-centred approach. The process must be underpinned by an overriding concern to safeguard employee health and wellbeing, whatever the circumstances. Further information about wellbeing and support during an investigation can be found in the Disciplinary Policy.

It is the responsibility of all those involved to make reasonable adjustments to the process to support the health and wellbeing of those taking part.

Employees affected may seek health and wellbeing support from any of those listed below, at any time during the process.

- Line manager
- An alternative senior manager if the line manager is not available or the line manager is involved in the case.
- Human Resources (ext. 2891 or email: sath.hradvice@nhs.net)
- A Trade Union/Professional Organisation representative (details and contact numbers are available on the HR pages of the Trust intranet site or via switchboard)
- Freedom to Speak Up Guardians (telephone via switchboard or email: sath.fts@nhs.net)
- The line manager may refer the employee to Occupational Health or the Trust's Employee Assistance Programme. Equally, the employee can self-refer to Occupational Health.

- 6.2.3 The Investigating Officer will undertake a detailed and thorough investigation by attempting to gather all relevant evidence. This is usually through formal interviews and review of documentation but may extend to other methods (e.g. CCTV). The Investigating Officer will decide who they need to interview and what evidence they need to gather in consultation with the HR Advisory Team, the Commissioning Manager and the appointed specialist advisor (if one has been appointed). The Investigating Officer should also encourage the employee to bring any material evidence to the meeting to enable the investigation to cover all the facts.
- 6.2.4 Prior to an investigation interview, the Investigating Officer will write to the employee outlining what will be discussed, providing sufficient information to allow them to respond at interview. There is no requirement for the Investigating Officer to provide a list of questions in advance of the interview.
- 6.2.5 All employees who are formally interviewed must be offered the opportunity to be accompanied to their interview in accordance with section 5 of this policy. This person may (with the employee's permission) speak on the employee's behalf but cannot answer questions for them.

- 6.2.6 Reasonable notice of meetings will be given (normally 7 calendar days). If it is necessary to postpone any interview due to the availability of the employee or their representative/colleague another date will be arranged by the Trust, ideally within 5 working days of the original date. All parties must work together to find a suitable date within a reasonable time frame. The Investigating Officer should raise any concerns about delays with the Commissioning Manager.
- 6.2.7 Formal interviews will be recorded. Consent must be gained from all those taking part for digital audio recording to take place. After the meeting the Investigating Officer should check the accuracy of the minutes before providing a copy to the individual concerned and their representative/colleague if the employee consents to this. Employees will then be given an opportunity to review the minutes and make any comments as needed.
- 6.2.8 Interviews will take place in person. However, at the discretion of the Investigating Officer and with the agreement of the employee there may be occasions where evidence is gathered via other means (e.g. telephone interviews, questions in writing and through virtual meetings via Microsoft Teams technology).
- 6.2.9 Personal data gathered by, or released to, the Investigating Officer must be held securely, and its use limited to the matter under investigation. The Trust will operate consistently with the guiding principles of the General Data Protection Regulations (GDPR).
- 6.2.10 In accordance with GDPR any evidence provided by employees during the investigation may be retained within their personal file and/or stored securely (electronically or hard copy) by the HR Advisory Team. If the evidence contains sensitive personal data, employees may request that this is deleted or returned to them at the end of the process.
- 6.2.11 During the investigation into the allegations against the employee and dependant on the information gathered, the Terms of Reference may be changed or added to. It is important that the Investigating Officer provides the Commissioning Manager with an update on progress on at least a monthly basis. The Commissioning Manager must then update the employee on a monthly basis. Suspended employees require more frequent updates. Please see section 7.1.2 of the Disciplinary policy.
- 6.2.12 The findings of the investigation should be documented in a report with accompanying appendices and provided to the Commissioning Manager. Templates and guidance will be provided by the HR Advisory Team.
- 6.2.13 All patient identifiable data in documents **must** be anonymised or pseudonymised in the investigation report and appendices.
- 6.2.14 If an employee leaves the Trust before the investigation has been concluded, where it is possible the investigation will be completed and depending on the outcome of the investigation i.e. case to answer or no case to answer this will be communicated to the individual. If there is a case to answer the individual may be informed that a referral will be made to their Professional body and reflected in any future work or professional reference request.
- 6.2.15 Evidence may be shared with the Trust's Patient Advice and Liaison Service (PALS) where the investigation is linked to a complaint. See Concerns and Complaints Policy (CG07) for any investigations linked to patient/relative complaints. The Trust may also be required to share evidence with the police if requested to do so.
- 6.3 After the Investigation

When the findings of the investigation have been received and reviewed, the Commissioning Manager will decide what action is appropriate and notify the relevant employee(s). There are

many possible circumstances and outcomes which cannot all be described here, however some of the possible outcomes to an investigation may include:

- No further formal action is required.
- Local department learning, updates to policies, SOP's etc.
- If the Commissioning manager decides there is a case to answer then a hearing will be set up in accordance with the Trust's Disciplinary Policy (W7) where the investigation relates to an employee's conduct or behaviour.
- Management in accordance with the Trust's Employee Wellbeing and Absence Management Policy (W22) where the findings indicate a health issue.
- Management in accordance with the Trust's Employee Performance Management Policy (W10) where the findings indicate a performance issue.

7 Training needs

The Trust acknowledges the importance of training for managers involved in the application of this policy and will therefore ensure that appropriate training and support is available from the Workforce Directorate.

Any manager commissioning or undertaking an investigation must receive appropriate training/support from the HR Advisory Team before and during the process.

All managers are expected to disseminate information in relation to this policy to staff. Any staff involved in investigations will be directed towards this policy.

8 Review process

This policy will be reviewed as and when required and within 3 years. The monitoring of this policy includes an annual audit that comprises of the table below. Where non-compliance is identified an action plan will be drawn up and monitored at the Workforce Committee. Where remedial action can be taken immediately, the action must be recorded appropriately.

9 Equality Impact Assessment (EqIA)

This policy applies to all employees equally and does not discriminate positively or negatively between protected characteristics.

10 Process for monitoring compliance

Aspect of compliance or effectiveness being monitored	Monitoring method	Responsibility for monitoring (job title)	Frequency of monitoring	Group or Committee that will review the findings and monitor completion of any resulting action plan
The policy is fairly applied to staff in a transparent and consistent manner	Use of workforce database to review cases by protected characteristics under the Equality Act 2010.	HR Advisory Team Manager	Yearly	Workforce committee

Number of cases being referred to HR Advisors/Managers for support	Use of workforce database	HR Advisory Team Manager	Yearly	Workforce committee
Number of investigations that result in no case to answer	Use of workforce database	HR Advisory Team Manager	Yearly	Workforce committee

11 References

- Legislation
 - Employment Act 2008
 - Employment Tribunals (Constitution and Rules of Procedure) (Amendment) Regulations 2008
 - Employment Rights Act 1996 as amended
 - Employment Rights Dispute Resolution Act 1998
 - Employment Relations Act 1999
 - Employment Rights Act 2004.
 - Previous legislation covering discipline and grievances at work was historically found in the Employment Act 2002 and the Employment Act 2002 (Dispute Resolution) Regulations 2004 (SI 2004/752). However, the procedures were repealed in their entirety from 6 April 2009 under the Employment Act 2008)
- ACAS – Code of Practice for Disciplinary and Grievance Procedures - http://www.acas.org.uk/media/pdf/k/b/Acas_Code_of_Practice_1_on_disciplinary_and_grievance_procedures-accessible-version-Jul-2012.pdf

12 Associated Documentation

- NHSI Just Culture Guide

Available: <https://www.england.nhs.uk/patient-safety/a-just-culture-guide/>

- W7 Disciplinary Policy
- W10 Employee Performance Management Policy & Procedure
- HR01 Equality and Diversity Policy.
- W31 Disciplinary Policy for Doctors and Dentists
- HR09 Alcohol and Substance Misuse.
- W22 Employee Wellbeing & Managing Attendance Policy
- W4 Resolving Bullying and Harassment Policy

All the above are available from:

Internal - http://intranet/hr/HR_Policies.asp

External - <https://www.sath.nhs.uk/working-with-us/hr/policies/>

- CG04 Serious Incident Policy
- CG05 Reporting and Investigation of incidents, Complaints and Claims

Employee Investigations Policy W37

- CG07 Concerns and Complaints
- CG17 Guidelines for Managers and Employees on the management of individuals involved in adverse events

Available from http://intranet/document_library