

Board of Directors (in Public) Item 5.8

Subject: Annual Review of Disciplinary Cases – 2020/21
Date of Meeting: Tuesday 30th March 2021
Prepared by: Vicki Wilson, Head of HR
Presented by: Karen Nightingall, Chief People Officer
Purpose of Report: To Note

BAF Reference	Impact on BAF
DP1, DP2	Ensuring that our disciplinary procedures are compliant with IPP recommendations and consistent with the principles of a compassionate and just culture will support our delivery of the NHS People Plan, specifically in relation to 'Looking after our people' and 'Belonging in the NHS'.

1. Executive Summary

In line with requirements set out in a letter from Prerana Issar, NHS Chief People Officer to all Trust Chief Executives and HR Directors in December 2020, this paper provides a review of disciplinary activity at LHCH during 2020/21 and looks at our disciplinary procedures against the 'Improving People Practices' (IPP) recommendations.

Whilst there has been an overall increase in activity during 2020/21, there has been more effective management of these cases in terms of decisions to suspend, review of ongoing suspensions and timeliness of suspensions being lifted. Good progress has been made in relation to IPP, however there remains more to do to ensure that our staff are not unnecessarily subject to procedures which are known to have a significant and long last detrimental impact on their health and wellbeing.

Updating of the Trusts Disciplinary Policy (approved March 2021), new template documentation and revised reporting (April 2021) will support the continued improvements in response to the IPP recommendations as part of the implementation of the Trust's IPP action plan.

2. Background

Following a tragic event that occurred at Imperial College Healthcare NHS Trust in 2016, NHS England and NHS Improvement conducted an important piece of work, through an appointed Advisory Group, which led to a series of recommendations. Many of these recommendations were used as the basis for the provision of additional guidance to provider organisations in relation to the management of disciplinary procedures. The IPP guidance links with other recent NHS Improvement guidance on developing a more compassionate and just culture and features within the NHS People Plan. This work aligns closely with our Trust values, is reflective of LHCH as a responsible and caring employer and supports our ambition to be the best place to work.

In December 2020, Prerana Issar, NHS Chief People Officer wrote to all Trust Chief Executives and HR Directors, urging organisations to continue to do more in this area, including a specific ask to review on a yearly basis and by the end of this financial year, all disciplinary procedures against the recommendations and that these are formally discussed/minuted at a Public Board or equivalent.

3. Review of 2020/21 disciplinary procedures against the IPP recommendations

The purpose in issuing this IPP guidance to organisations was to encourage all NHS staff, and in particular boards and HR teams, to reflect on its contents. Boards were further asked to review and assess their respective procedures and processes relating to the management of investigatory and disciplinary matters against the guidance, and to make any adjustments required to bring their organisation in line with best practice. An assessment of the Trusts compliance with each of the 7 key recommendations is outlined below.

3.1. Adhering to best practice

The Trusts Disciplinary Policy and procedures have been reviewed in partnership with Staff Side colleagues and are consistent with national best practice and adhere to the Advisory, Conciliation and Arbitration Service (ACAS) "Code of practice on disciplinary and grievance procedures".

3.2. Applying a rigorous decision-making methodology

In response to IPP the Trust updated its practice to ensure that in all decision-making that relates to the application of sanctions, the principle of plurality is adopted, such that important decisions which have potentially serious consequences are very well informed, reviewed from multiple perspectives, and never taken by one person alone. During 2020/21 all disciplinary hearings have been heard by a panel of at least two people. The Disciplinary Policy has now been updated to ensure that this requirement, which reflects our current practice, is clearly stated.

However, a key aspect of this particular recommendation relates to the consistent application of 'just culture' principles, which recognise that it is not always appropriate or necessary to invoke formal management action in response to a concern or incident. Whilst significant improvements have been made in this area, the Trust has not yet achieved a consistent approach in ensuring full and careful consideration of context and prevailing factors when determining the appropriate course of action at the outset.

3.3. Ensuring people are fully trained and competent to carry out their role

The Trust has provided, through its employment solicitors Weightmans, a number of training sessions for those involved in various roles within disciplinary processes. This has included case investigator, case manager, and Trust Board training sessions, as well as individual coaching sessions being provided where individuals have had roles within very complex cases or needed additional support. The HR Team maintains a register of trained individuals. All those who have been involved in disciplinary procedures during 2020/21 have undergone relevant training and been considered appropriate for the roles they have undertaken. The Trust will continue to ensure individuals receive regular refresher and update training.

3.4. Assigning sufficient resources

Before commencing investigation and disciplinary procedures, appointed case managers, case investigators and other individuals charged with specific responsibilities should be provided with the resources that will fully support the timely and thorough completion of

these procedures. Whilst the data shows an overall improvement in the timescale for completion of disciplinary cases, there still appears to be conflicting priorities for those with specific responsibilities for disciplinary matters which continue to contribute to avoidable delays. The Trust must ensure that all managers fully understand the significance of their responsibilities in this area so that cases are appropriately prioritized and appropriate capacity and resources are identified.

3.5. Decisions relating to the implementation of suspensions/exclusions

The Trust revised its processes in response to IPP to ensure that any decision to suspend/exclude an individual is not taken by one person alone, or by anyone who has an identified or perceived conflict of interest. Decisions to suspend/exclude are documented and should be subject to regular (at least fortnightly review). Documentation to support the rationale for suspensions is incomplete in some cases and whilst it evidences some review, there has not always been documentation of this as frequently as is required. There is further work to do to ensure that all suspension decisions are reviewed with the frequency expected, and that the reason for continued suspension is clearly documented.

3.6. Safeguarding people's health and wellbeing

Concern for the health and welfare of people involved in investigation and disciplinary procedures is of paramount importance and is monitored by the responsible HR representative, and the independent pastoral support identified at the start of a case. A communication plan should be established with people who are the subject of an investigation or disciplinary procedure. There is not always evidence of this consistently being applied and all parties being clear on what the plan and expectations are for communication. There is further work to do to ensure consistency of approach in this area, with the plan forming part of the associated terms of reference and ensuring that all communication, in whatever form it takes, is timely; comprehensive; unambiguous; sensitive; and compassionate.

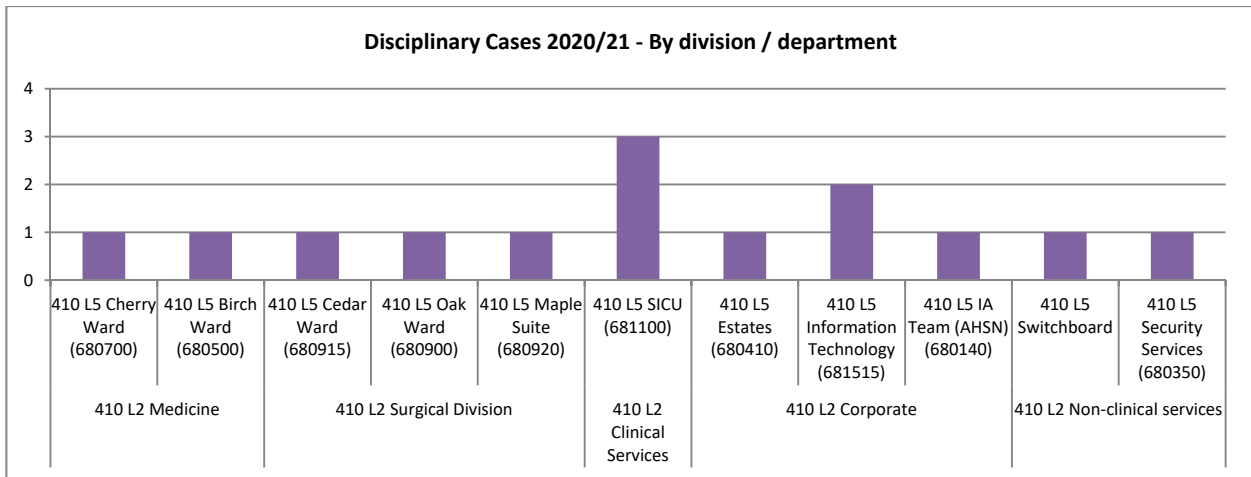
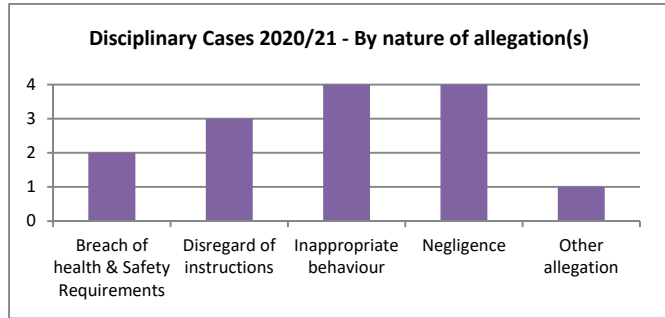
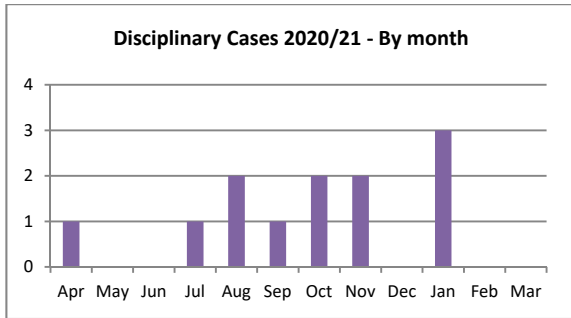
There has not been any identified case of harm to an individual who has been the subject of an investigation or disciplinary procedure. However, in line with this IPP recommendation, this would be treated as a 'never event' and subject to an immediate independent investigation commissioned and received by the board should this occur.

3.7. Board-level oversight

Mechanisms have been established within the HR team, including the development of a new Employee Relations Tracker so that comprehensive data relating to investigation and disciplinary procedures is recorded and reviewed. Updates on disciplinary activity are shared with the Executive Team and People Committee, however more detailed, regular and consistent reporting to Trust Board is required including the adherence to process; justification for any suspensions/exclusions; decision-making relating to outcomes; impact on patient care and employees; and lessons learnt. Development of the use of the ER Tracker, and revised disciplinary procedures, will facilitate capture of the relevant information to be able to report in this way.

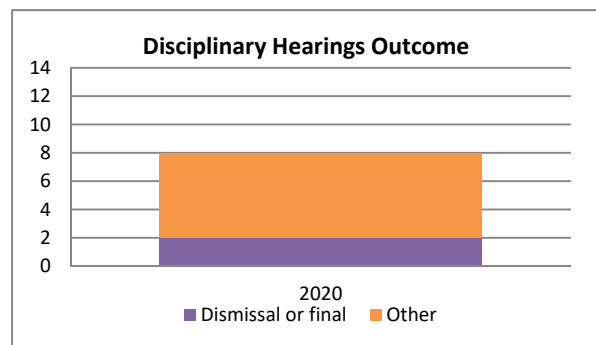
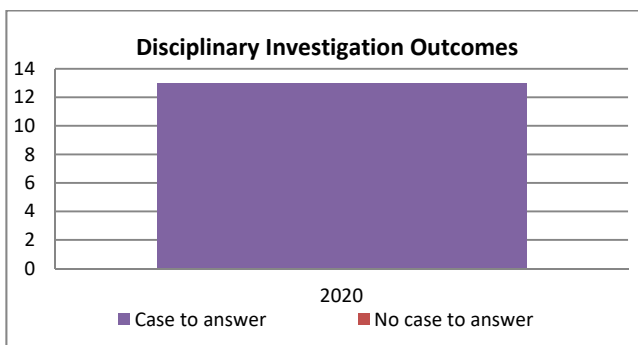
4. Disciplinary Cases during 2020/21

There were 14 cases in 2020/21, an average of just over one case per month. A breakdown of the nature of allegations and the division and departments where cases occurred is shown below.



Suspension applied in 21% of cases with 3 individuals suspended during the year. One individual was suspended for 32 weeks and the other two for 11 weeks. Of these three suspensions, the longest one resulted in no case to answer at a hearing, the other two, one remains open and is due for a hearing this month, the other resulted in a fast track' mutually agreed first written warning.

In terms of case outcomes, all cases during 2020/21 resulted in a case to answer following investigation. However, only 2 of the 8 which have reached a hearing (4 remain open and 1 employee resigned pre-hearing), resulted in either a dismissal (1) or final written warning (1).



Whilst the agreed HR process is for a lessons learnt review to be undertaken after every case, this is inconsistent in practice and not adequately documented were they are carried out. If the Trust is able to conduct these routinely it will provide significant opportunity for learning and improvements within the process and the experience of those who are subject to disciplinary procedures.

5. Equality Analysis

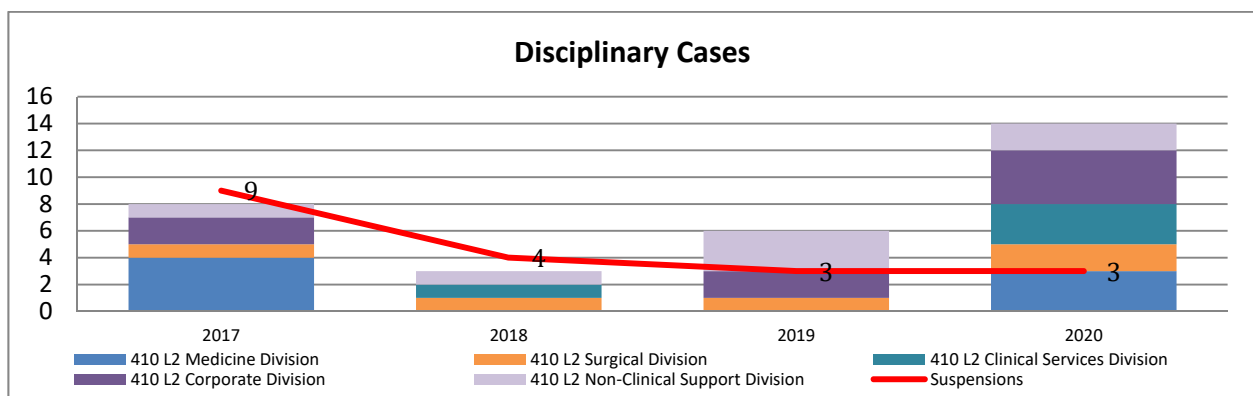
21% of employees (3/14) who were subject to disciplinary procedures were BAME staff. This shows a significantly higher proportion of our BME colleagues are subject to disciplinary procedures than their white counterparts. 2 of these cases resulted in first written warning (agreed through fast track) for medication errors, and one case remains open and due for hearing this month (alleged disregard of instructions).

6. Comparisons with previous years

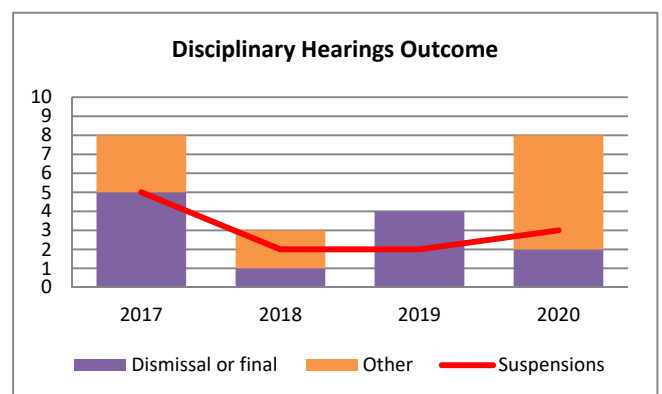
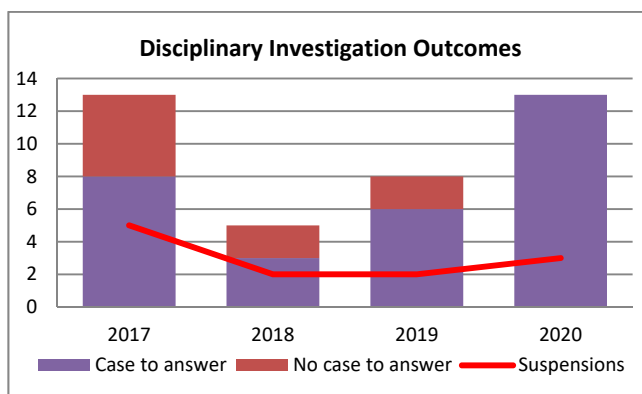
Whilst there has been a notable increase in the number of overall cases, the proportionate number of suspensions has significantly reduced. The average length of suspension has also reduced.

	2017	2018	2019	2020
Total Disciplinary Cases	15	5	8	14
Total Suspensions	9	4	3	3
% of overall cases involving suspension	60%	80%	38%	21%
Average length of suspension (days)	213	104	152	127

The graph below illustrates the changes in disciplinary practices at LHCH across the last 4 years and shows there are proportionally a greater number of cases in corporate and non-clinical areas.



Outcome analysis shows that whilst there have been a greater number of cases, and a greater number with a case to answer, the number and proportion of hearings resulting in dismissal or final written warning is greatly reduced.



7. Conclusions

Good progress has been made in relation to IPP however there remains more to do to ensure that our staff are not unnecessarily subject to procedures which are known to have significant and long last detrimental impact on their health and wellbeing. Whilst there has been an overall increase in activity during 20230/21, there has been more effective management of these cases in terms of decisions to suspend, review of ongoing suspensions and timeliness of suspensions being lifted.

A continued shift in the approach to disciplinary procedures is also needed to ensure the principles of a just and learning culture are embedded within LHCH practice. The Trust must ensure appropriate importance is given to disciplinary procedures and that adequate resources are made available for those responsible for undertaking a role in disciplinary procedures and that the impact upon the employee is understood and appreciated. Continued improvements in monitoring and reporting are required to ensure consistency in application of the required processes and standards, particularly in relation to communication plans with those subject to disciplinary procedures, review and documentation of rationale for suspension, overall documentation and reporting, and lessons learnt following each disciplinary case.

Updating of the Trusts Disciplinary Policy (approved March 2021), new template documentation and revised reporting (April 2021) will support the continued improvements in response to the IPP recommendations as part of the implementation of the Trust's IPP action plan.

8. Recommendations

The Board of Directors is requested to note the contents of this paper.