

Item 5.6a

## Disciplinary

## Policy

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# Document Statement

Liverpool Heart & Chest Hospital NHS Foundation Trust aims to provide a supportive approach to ensuring staff achieve and maintain the highest standards of behaviour. The fair treatment of staff supports a culture of fairness, openness and learning in the NHS by making staff feel confident to speak up when things go wrong, rather than fearing blame.

This document sets out Trust Policy and Procedure in relation to employee conduct and aims to ensure that issues are dealt with in a fair, timely and consistent manner when concerns regarding a colleague's conduct are raised. It is important that staff understand their obligations and rights regarding this aspect of employment. Fair treatment of staff means a fair, open, just and learning culture. This is a framework to manage concerns about someone's conduct fairly and help everyone to achieve and maintain the standards of conduct that make the Trust a safe and welcoming place for its patients. An objective and prompt examination of the issues and circumstances should be carried out to establish whether there are truly grounds for a formal investigation and/or for formal action and where possible this should always include having obtained an account from the employee.

This policy is in accordance with the ACAS Code of Practice.

This policy applies to all staff who are employed directly by the Trust. In addition to this policy, there are separate guidelines for dealing with cases of professional competence and conduct of medical staff. In such cases, please refer to the Trust's Handling Concerns About the Conduct, Performance and Health of Medical Staff policy, which is based upon the requirements set out within the national guidelines "Maintaining High Professional Standards in the modern NHS."

This policy does not apply to volunteers, agency workers, contractors or other individuals not directly employed by the Trust. In the event of conduct concerns relating to any such individual, further advice should be sought from the HR department.

## 1. Roles and Responsibilities

### 1.1. Employees

1.1.1. All employees have a responsibility to ensure that they understand the Trust values and behaviours and the rules relating to conduct. All employees are expected to exercise care in the performance of their duties and ensure these are carried out in line with their contractual obligations.

1.1.2. Where a concern arises regarding an employees conduct, all staff have a responsibility to ensure this is reported to an appropriate manager. Staff who have reported inappropriate conduct of a colleague have a right to be supported by the Trust after speaking up on any matter. Where an employee feels they cannot approach a manager directly, concerns should be reported through one of the many channels available to staff, including the Freedom to Speak Up process, and which are described in more detail in the Trust's Freedom to Speak Up (FTSU) Policy.

1.1.3. All employees are expected to cooperate with any disciplinary process the Trust undertakes. Where an employee is subject to disciplinary action they are expected to attend all formal and informal meetings. Where an employee has a good reason for being unable to attend they must inform the appropriate manager or HR at the earliest opportunity.

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1.1.4. Employees have the right to be accompanied through all formal stages of the procedure by a representative of a recognised trade union or by a workplace colleague. It is the employee's responsibility to arrange his/her own representation.

## **1.2. Managers**

1.2.1. Managers are responsible for ensuring that staff are aware of the policy and understand the process relating to conduct and the likely consequence if disciplinary rules are broken.

1.2.2. Managers should deal with any issues raised regarding staff conduct in a timely, fair and consistent manner. Particular consideration should be given as to whether the matter is in fact one of conduct or performance or both and an appropriate and fair way forward should be planned following this analysis. Managers should seek advice and guidance from either a senior manager or HR representative where necessary.

1.2.3. Managers have a duty to consider carefully at an early stage whether any formal action is required at all. They should be sure that they understand fully all the issues or concerns before deciding on the appropriate action. This should include a discussion with the employee to establish their version of events, before any decision is made. If required they should seek advice and guidance from either a senior manager or HR representative where necessary. Early consideration is a key requirement in order to ensure that the principles of a just and fair culture are followed.

1.2.4. Where possible, managers may decide to handle issues of misconduct informally. Best practice is to explain to the individual involved why the informal discussion was required in writing. This should always include a confirmation that it is not any part of a formal process and should be used to encourage individual responsibility and a person centred approach.

1.2.5. In cases where they do not think it is possible to handle an issue of misconduct informally after they have considered all the information, managers should discuss the with a more senior manager (8c or above). If the senior manager agrees that formal action should be taken, they will undertake the role of Case Manager, in order to determine the appropriate next steps. The Case Manager evaluates on the basis of the information they have whether a formal process is actually required. If they do not think a formal process is required they refer it back to the manager for counselling, training or an informal discussion, explaining to the manager why they have taken this decision to maximise organisational learning.

## **1.3. Case Manager**

1.3.1. Where the Case Manager decides that formal action is necessary, they will be responsible for notifying the employee in writing of the specific allegations against them, clearly stating if the matter is considered to be misconduct, or gross misconduct and the possible consequences. A copy of the disciplinary Policy must be attached for reference purposes.

1.3.2. The Case Manager is responsible for ensuring that there is appropriate framing of all concerns and allegations in the terms of reference. Making the allegations clear and easy to understand is a key stage in the process and the Case Manager should seek advice and guidance from a HR representative. No disciplinary process should commence unless the Case Manager is sure that the concerns and allegations are appropriately framed, no wider than is necessary, not repetitious and easy to understand.

1.3.3. In cases of misconduct (excluding gross misconduct) where the employee does not contest the allegations, the Case Manager should offer the employee the opportunity to use the 'Fast Track' process, where a formal investigation is not undertaken. See Appendix 1 for further information.

1.3.4. There may be some circumstances where the employee does not contest the allegations, but the Case Manager is of the view that an investigation is still required. This may be for the benefit of the individual employee, the Trust, patients of the Trust, or because the Case Manager believes that all concerned will be best served by an investigation that allows everyone to have their say and allows for appropriate learning, particularly where issues of patient safety are concerned. In such circumstances, the employee will be advised of the sanction they are to receive and the purpose of the investigation will not be to alter that sanction but will be so that appropriate learning can take place.

1.3.5. Where fast track does not apply and an investigation is required, the Case Manager is responsible for the terms of reference and for finding a suitable Investigating Officer. The Case Manager should ensure that the Investigating Officer has the relevant capacity and administrative support to conduct the investigation in a timely manner.

1.3.6. The Case Manager has an ongoing duty to ensure that the terms of reference remain appropriate. The decision whether to consider amending or updating these is for the Case Manager. If the Investigating Officer identifies any further concerns or allegations which may be outside of the original scope or has any reason to believe that some of the allegations should not be being pursued or are inappropriately worded they should raise this with the Case Manager. Case Managers should ensure that they take HR advice before making decisions about altering the terms of reference in the middle of an investigation. If there is any alteration it should always be clearly and carefully explained to the employee.

1.3.7. Where the matter is sufficiently serious, the Case Manager may be required to report the matter to a third party. This could include but is not limited to) a safeguarding, police, counter fraud or professional body referral. See Appendix 2.

1.3.8. The Case Manager should also consider if any action is necessary, such as moving an employee to another area of work or suspending the employee. Consideration of this issue should be given in accordance with Section 4 of this document.

1.3.9. The Case Manager is ultimately responsible for ensuring that the investigation undertaken is timely, sufficiently thorough and that the investigation report provides a full and balanced reflection of the findings. The Case Manager is responsible for ensuring they receive regular updates from the Investigating Officer regarding the progress of the investigation and should regularly review any decisions regarding suspension or referral in light of the updates provided.

1.3.10. Timeliness in the completion of investigation reports is very important and the Case Manager should advise the Head of HR if they have concerns about the length of any investigation. Occasionally there are issues that hold up the progress of an investigation, but wherever this happens HR representatives need to be aware that appropriate additional support may be needed for the employee whose conduct is being investigated. It is the duty of the Case Manager to report to HR if delay might be affecting the wellbeing of the employee adversely.

1.3.11. After receiving the Investigating Officers report, the Case Manager is responsible for deciding if there is a case to answer at a disciplinary hearing. The Case Manager should formally

write to the employee to notify them of their decision. Where it is decided there is a case to answer, the Case Manager should notify the employee of the details of the disciplinary hearing.

1.3.12. The Case Manager will be required to present their case at a disciplinary hearing, which will include the submission of a written Statement of Case. They will also be responsible for identifying any relevant witnesses they require to attend to support the presentation of their case.

## **1.4. Investigating Officers**

1.4.1. Investigating Officers are responsible for ensuring they conduct a timely and thorough investigation in line with the terms of reference as set out by the Case Manager and with the advice of an HR representative.

1.4.2. Investigating Officers are responsible for planning and arranging all aspects of the investigation, including investigatory interviews and gathering of any relevant documentary evidence. It is the responsibility of the Investigating Officer to make the appropriate arrangements for administrative support in relation to carrying out the investigation and where necessary they should seek support for additional resources via the Case Manager.

1.4.3. Investigating officers are required to provide regular updates to the Case Manager on the progress of the investigation. They should particularly refer to the Case Manager any issue which may have relevance to the Case Managers decision regarding referral or suspension of the employee. This does not only relate to circumstances where the Investigating Officer thinks a suspension may be warranted, it also covers a situation where an employee is suspended and the Investigating Officer forms a view that suspension might not be warranted. The decision is for the Case Manager but it is the Investigating Officer's responsibility to alert the Case Manager to the need to consider this.

1.4.4. Investigating Officers are responsible for reporting to the Case Manager any concerns which may be identified through the course of the investigation but which are outside the scope of the terms of reference initially set. Investigating Officers are responsible for compiling an investigation report which accurately and fairly reflects the findings of their investigation.

1.4.5. Investigating officers must report to the Case Manager if they consider that an investigation is not going to be completed within the timescale set by the Case Manager and the reasons why, providing an estimate of the new likely timescale to completion. The Case Manager must ensure that the employee is provided with this information.

1.4.6. At the conclusion of an investigation report an Investigating Officer should always set out brief background information about the employee, their work record, disciplinary record, length of service and any potential mitigating factors. That is so that these can be taken into account before any final decisions are made at a hearing.

1.4.7. In some circumstances, Investigating Officers may be required to present their report at a disciplinary hearing. This will not always be required, as it is expected that the investigation report will detail the relevant facts and findings. However, in cases where the investigation has been of a complex nature and the facts/findings could be open to significant challenge from either the panel or the employee, then it may be reasonable for the Investigating Officer to attend the hearing to respond and subsequently avoid any delays in the decision making by the panel.

## **1.5. Disciplinary Hearing Panel**

1.5.1. All disciplinary cases will be heard by a trained manager (Chair).

1.5.2. Cases that may result in a formal warning will be heard by a Panel of two people: a trained manager (Chair) of appropriate seniority and an HR Representative.

1.5.3. Cases that may result in dismissal will be heard by a Panel of three or more members. The Chair will normally be a member of a divisional / directorate management team or an Executive Director where appropriate. If the employee is a senior divisional / directorate manager or consultant-level appointment, the Panel will always be chaired by an Executive Director. The Panel must always include an HR representative. The remaining panel member will be another independent senior manager, or in some cases it may be appropriate to recruit a member external to the trust who has knowledge, skills and experience that reflect the background and/or specialty of the employee in question.

1.5.4. The Trust is committed to ensuring Panels are diverse in representation, have appropriate seniority and have knowledge, skills, experience and training that are relevant to the case in question. Panel members will have no previous involvement in the case or any conflict of interest that could influence decision making.

1.5.5. The Panel is responsible for ensuring they carry out a fair hearing and give full consideration to all facts and due deliberation as to whether a disciplinary sanction should be applied once the case has been heard.

1.5.6. The Panel should ensure that all parties have received all of the necessary documents, and that the employee has been given the right to representation at the hearing. The Panel should ensure that they have clear information that allows them to make a decision on any of the allegations or concerns set out in the Terms of Reference. If there is any matter where the Panel considers that they require further information before reaching a decision they should refer back to the Investigating Officer (whether or not the Investigating Officer is presenting at the hearing) and ask them to obtain that further information.

1.5.7. Where possible a decision will be delivered to the individual on the day and that outcome confirmed in writing within five working days of the hearing, including advising the individual of their right to appeal the decision. If the Panel thinks that further time is needed before making its decision, the employee should be informed and provided with a timescale of when they can expect to hear. Where appropriate the Panel should offer the individual the opportunity to return to a reconvened hearing to get the decision.

1.5.8. In any circumstances where the Panel considers there is no case to answer, as well as advising the individual of this they should explain to the Investigating Officer, the Case Manager and a HR representative why they consider that is the case and a learning exercise should take place based on that information.

## **1.6. Human Resources**

1.6.1. HR representatives will be responsible for providing support throughout any formal process and will provide advice and guidance to managers dealing with matters informally. HR will provide support and guidance specifically to Case Managers, Investigating Officers and the Hearing Panel.

1.6.2. HR representatives are responsible for ensuring that where a case does not progress in a timely manner, or they have any other concern regarding the case, including where an issue which

may affect the health and wellbeing of the employee, this is escalated without delay to the Head of HR or Chief People Officer.

1.6.3. All Disciplinary Panels will be approved by HR and will hear the case if it is decided there is a case to answer. The Panel Chair should have the appropriate level of authority as per the Trust's Scheme of Delegation.

1.6.4. HR will be responsible for ensuring that the Trust has trained sufficient competent Case Managers, Investigating Officers, and Disciplining Managers to service the needs of the Trust and for arranging ongoing training so that knowledge is up to date and competency can be demonstrated.

1.6.5. It is the responsibility of the Chief People Officer to update the Trust Board about disciplinary processes generally, any learnings for the Trust, and positive steps taken to support the health and wellbeing of all employees of the Trust.

1.6.6. The Chief People Officer is responsible for the development and implementation of this policy.

## **1.7. Representation (Trade Union / Staff Side or Workplace Colleague)**

1.7.1. Accredited Trade Union Representatives will have the right to represent and advise their members in all matters relating to the Disciplinary Policy and Procedure.

1.7.2. During the formal stages of the procedure, the employee has a right to be represented by an accredited Officer of a recognised Trade Union or Professional Association, or by a work colleague who is an employee of the Trust.

1.7.3. The Representative will be allowed to support the employee at the hearing, to address the hearing when asked to do so by the Hearing Panel, to put forward the employee's case and to sum up the case on the employees behalf, however they will not be permitted to answer questions on behalf of the employee.

## **1.8. Partnership Forum**

1.8.1. The Trust Partnership Forum will be responsible for the ratification of this policy.

## **1.9. Trust Board**

The Trust Board is responsible for maintaining oversight of all disciplinary matters within the Trust and for determining appropriate action to be taken in relation to any concerns reported to them about timeliness, independence, objectivity, or safeguarding of health and wellbeing or any other concerns that affect disciplinary processes undertaken in the Trust. The People Committee has delegated responsibility from the Trust Board to perform this role, and will report to the Trust Board on any matters of concern.

# **2. Controlled Document Standards**

2.1 The Trust expects all Staff to conduct themselves in a manner that reflects well on the organisation and high standards of behaviour are required. To underpin and strengthen the Trusts' Patient Experience Vision a set of values and behaviours have been developed as stated below:-

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# IMPACT



**I**

**Inclusive:** We will create an environment where everyone is treated with dignity and respect and where the talents and skills of different groups are valued

1. Be aware of own beliefs and behaviours and how these may impact others
2. Listen to others points of views
3. Be open to others opinions, recognising and valuing our diverse backgrounds and experiences



**M**

**Make a Difference:** We will ensure that what we do contributes to providing outstanding care for our patients

1. Work to the best possible standard and take pride in the work you do
2. Continually develop and expand our knowledge and skills
3. Promoting innovative practice and partnership working



**P**

**Person Centred:** Value each person as an individual – our patients, their families, each other and our communities

1. Greet everyone with a warm welcome and a smile
2. Treat each person as an individual, taking into account their preferences and needs
3. Be kind, friendly and communicate well



**A**

**Accountable:** Every member of staff takes personal responsibility for the services they provide, taking pride in the work they do

1. Be accountable for your own work and behaviour and lead by example
2. Be competent and confident in your role, understanding how it fits in with the bigger picture
3. Speak out safely in the appropriate way when you see things that concern you



**C**

**Continuous Improvement:** We will deliver the best service for our patients through continuously improving what we do and how we do it

1. Identify and share ways to improve how we do things.
2. Be receptive to the ideas of others on how to improve
3. Be open, positive and get involved in change



**T**

**Teamwork:** We work together as one whole team to achieve our vision to be 'The Best'

1. Treat others with courtesy and respect
2. Share learning and communicate, actively involving others in decision making
3. Show respect to every individual and recognise them for the contribution they make

2.2. Failure to adhere to the values and behaviours of the Trust may result in action being taken in line with this policy. Depending on the severity of the alleged issues identified, action could be considered under the informal or formal stages of this policy.

## 3. Procedure

### 3.1. Disciplinary Procedure

3.1.1. A manager decides whether a conduct issue can be dealt with informally. If possible, the informal route is preferred but is not appropriate for the most serious conduct issues or if misconduct is repeated. Managers will follow the principles set out under section 1.2.

3.1.2. If they do not think informal action is appropriate they will discuss with a Case Manager

3.1.3. If the Case Manager thinks formal action is required they will follow the principles set out above under section 1.3.

3.1.4. If appropriate, a Fast Track procedure will be followed as set out in Appendix 1.

3.1.5. If necessary an Investigating Officer will be appointed and the investigation carried out in accordance with the principles in section 1.9.

3.1.6. If required, a hearing is arranged. A Disciplinary Panel supported by HR will hear the case according to the principles in section 1.4

3.1.7. Possible Sanctions at a Disciplinary hearing if there is a case to answer are defined below in section 2.7.

3.1.8. If the decision is appealed, the employee must present their grounds of appeal in writing within 10 working days of the disciplinary hearing outcome being notified to them in writing.

3.1.9. An appeal will be heard by 3 senior managers, one of whom must be a senior HR representative. The appeal hearing is a review and will focus on considering the employee's stated grounds for appeal.

### 3.2. Investigatory Meetings

When an employee is called to attend an investigatory interview, the employee will be informed at the outset of the interview that this is an investigatory interview and not a disciplinary hearing. The employee will be given reasonable notice of the interview in writing and the invite letter should include the following details:

- The purpose of the interview and that it will be conducted in line with the Trust's disciplinary policy
- An outline of the allegation/s including whether they fall within the remit of misconduct or gross misconduct
- Arrangements for the interview including date, time, venue and names of those present
- Confirmation that they are allowed to be accompanied
- Formal notes of such interviews will be taken. Once the interview has been concluded, the notes should be sent to the employee within a reasonable timeframe for ratification.

### **3.3. Witnesses**

In order for an investigation to be thorough and fair, it is important that all employees recognise their duty to take part in any investigation where they may be required. Employees may be required to document a formal statement covering their recollection of the basic facts and/or attend an investigatory meeting to provide further information.

### **3.4. Investigation Report**

Once all relevant information has been collected and considered, the Investigating Officer should compile a report. The report will include:

- An executive summary
- Terms of reference, including allegations and potential disciplinary rules broken
- Methodology
- Summary/analysis of facts found including where there is corroboration and/or mitigation
- Conclusion
- Appendices - all statements, investigation interviews, any relevant policies that have been utilised in the investigation and any other documents examined should be included as appendices

### **3.5. Potential Outcomes of Investigation**

There are four potential options for the Case Manager to consider:

- No further action if the allegation has not been substantiated
- Referral for action through the capability policy if the matter is deemed to be one of capability rather than disciplinary
- Informal action if the matter is deemed not to be serious enough to warrant a formal hearing
- Proceed to a formal disciplinary hearing

### **3.6. Disciplinary Hearing**

3.6.1. The HR representative supporting the investigation should arrange the hearing as soon as possible allowing for the employee to have 5 working days' notice (although the individual may choose to have the hearing arranged sooner). The employee should receive notification of the hearing in writing and the letter should include the following information:

- The purpose of the hearing and that it will be held in accordance with the Trust's Disciplinary Policy.
- The allegations
- The alleged misconduct should be outlined as misconduct or gross misconduct and the potential consequences clearly stated
- Arrangements for the hearing including date, time, venue and names of those present
- Details of any witnesses to be called
- Their right to be accompanied
- Copies of all relevant information that management intends to rely upon during the hearing including a full copy of the investigation report

3.6.2. If the employee intends to rely upon any relevant written documentation in the hearing, they are required to submit this to the Panel, via the HR department, no less than 3 working days in advance of the hearing, unless otherwise agreed by both parties. They should also advise of any witnesses they wish to call. Witnesses should be individuals who can make a contribution related to the specific allegations, this would not, therefore, include character witnesses.

3.6.3. Where the employee cannot attend on the date proposed and provides a good reason, the hearing will be adjourned to another day and this should be within 5 working days of the original date of the hearing. Any new arrangements will be confirmed in writing to the employee. If the employee does not attend the re-arranged hearing, a decision may be made in their absence taking into account all the information held. In such cases, the employee's Trade Union representative or workplace colleague may attend the hearing to present the employee's case. The employee will also be allowed to make written submissions.

3.6.4. The purpose of the formal disciplinary hearing is to hear all the relevant facts pertaining to the case, as detailed by the investigation, allow the employee the opportunity to state their case, including any possible mitigating circumstances, conclude whether there has been a breach of the Trust's Disciplinary Rules, and agree the appropriate disciplinary sanctions. Only in exceptional circumstances (and at the discretion of the Panel Chair) will new documents be accepted at the hearing. In such cases, sufficient time should be given to either party to consider such information.

### **3.7. Sanctions**

Once all the facts have been considered by the hearing Panel, a decision will be taken on the appropriate action. Depending on the findings, this may result in no action being taken, informal management action or a disciplinary sanction. The seriousness of the misconduct will determine the level of disciplinary action to be taken.

3.7.1. First Written Warning –A first written warning will be recorded and confirmed in writing and will usually be spent after a period of 12 months

3.7.2. Final Written Warning –A final written warning may be given where a first written warning has failed to secure the required improvement in conduct. It may also be given as an alternative to dismissal. A final written warning will usually be spent after 12 months but may occasionally be issued for a longer period.

3.7.3. Possible Addition to Warnings - A defined period of supervised practice or re-training may be required in conjunction with either a first or a final written warning. These will always include specific timescales, objectives and agreed support.

3.7.4. Dismissal – this is the sanction in cases of gross misconduct, or where there is any further misconduct of any nature whilst under a final written warning. Before dismissal is confirmed the Disciplining Manager must consider all other available courses of action including but not limited to those set out in the following paragraph.

3.7.5. Alternatives to Dismissal - Actions short of dismissal should always be considered but may not be appropriate in every case. These would normally be (but are not limited to) transfer to a different role, department or shift pattern, and/or demotion/downgrading. This will usually be applied in addition to a warning sanction. Protection of pay would not apply in such circumstances.

3.7.6. Anyone receiving a warning should be aware that it applies only to period of time when they are in work. If an employee is absent due to illness or special leave this period of time will be discounted from the warning itself, ie only time actually in work applies to a warning.

### **3.8. Appeals**

3.8.1. Employees have the right to appeal any disciplinary sanction imposed against them. Such appeals must be lodged in writing to the Head of HR within 5 working days of the date of the letter confirming the outcome of the formal disciplinary hearing. This letter must clearly include the grounds on which the appeal is being made. The dismissal or other sanction applied takes effect from the date of the decision and the lodging of an appeal will not stop the sanction taking effect.

3.8.2. Appeals against dismissal will be heard by a Panel of three or more members. The Chair will normally be an Executive Director (CEO will hear appeals from Executive Directors and the Chairman for an appeal from the CEO). The Panel must always include an HR representative. The remaining panel member will be another independent senior manager or non-executive director, or in some cases it may be appropriate to recruit a member external to the trust who has knowledge, skills and experience that reflect the background and/or specialty of the employee in question.

3.8.3. The Trust is committed to ensuring Panels are diverse in representation, have appropriate seniority and have knowledge, skills, experience and training that are relevant to the case in question. Panel members will have no previous involvement in the case or any conflict of interest that could influence decision making.

3.8.4. The role of Chair at appeal is to review the decision given at the disciplinary hearing. It should be noted that an Appeal is not a re-hearing of the original case, but a review of the reasons submitted by the member of staff who was issued with the sanction.

3.8.5. Appeals will be heard as soon as is reasonably possible and the decision of the Appeal Panel is final.

### **3.9. Conducting remote investigatory meetings and disciplinary hearings**

If a face-to-face meeting cannot be safely arranged, or if anyone has another reasonable objection to holding the meeting in person, it should be considered whether it is possible to carry out the procedure remotely in a fair way. Where possible, agreement should be sought in relation to any investigation meetings or hearings that are proposed to be held remotely. It is important to consider the individual circumstances and sensitivity of each case when deciding how to proceed. Where a decision is made to conduct a meeting or hearing remotely, all individuals must be clearly visible on camera for the duration of the meeting/hearing. The Chair of the panel will be responsible for making decisions regarding conducting a remote disciplinary hearing or appeal hearing, and the Investigating Officer will be responsible for making decisions regarding conducting a remote investigatory interview.

### **3.10. Employee resignation during a disciplinary process**

Where an employee leaves before an investigation is completed, notes will be kept so that any reference provided for that employee will indicate that there is an unresolved investigation into alleged misconduct. Such references must be fair and accurate, but will state that procedures have not been completed. In some cases, it may be appropriate to conclude the process following the resignation of an employee, and referral an external agency such as DBS or a professional body may also be necessary. Advice should be sought from an HR representative in all cases involving resignation of an employee during a live process.

### **3.11. Grievances against Disciplinary Process**

If an employee believes that this policy has not been applied properly, they can submit a statement of grievance. If the concern is related to an on-going disciplinary process, the concern should be raised and will be addressed as part of the disciplinary process.

### **3.12. Recognised Staff Representatives**

No disciplinary action may be taken against a recognised Staff Representative until the full-time official of the union concerned has been contacted. If the allegations are so serious and require suspension from duty, the Trust has the right to suspend the individual however the full time officer must be advised at the earliest opportunity.

## **4. Misconduct / Gross Misconduct and Offences Committed Outside Work**

### **4.1. Examples of misconduct and gross misconduct**

Examples of misconduct and gross misconduct are listed in Appendix 4. These examples are not intended to set out an exhaustive list, but are intended to spell out as clearly as possible some examples of unacceptable conduct, which may lead to formal disciplinary action or summary dismissal. There could be offences / situations not specified in this document which involve a breakdown in trust or confidence between the individual and employer which may result in disciplinary action including dismissal.

### **4.2. Offences Committed Outside Work**

If an employee is charged or convicted for an offence, whether committed on or off duty, the Trust will consider whether the offence renders the employee unsuitable for continued employment and may take formal action up to and including dismissal. The Trust reserves the right to take action independently of any legal proceedings.

## **5. Suspension**

5.1. In most cases, suspension from work will not be necessary and the employee will be able to continue doing their normal job while matters are investigated.

5.2. Decisions on suspension should not be taken by one person alone unless there is an immediate safety or security issue. The Case Manager should consult with another Senior Manager (8c or above) and seek advice from an HR representative before making a decision on suspension.

5.3. The decision to suspend will only be taken if genuine risks are identified and all alternative options have been ruled out.

5.4. If a sufficiently senior manager is not available when an incident occurs which appears to warrant suspension, the most senior member of staff on duty may ask the person to go home pending an appropriate manager taking charge of any subsequent action no later than the next working day.

5.5. Every effort will be made for the manager to meet with the employee to inform them of the decision to suspend. Any suspension from work is always on full pay and the grounds for any suspension, including the fact that it is not considered a disciplinary action, must be fully explained to the employee. The employee should also be advised how long it is expected to last and how the regular contact with them will be maintained. The manager should discuss with the employee how the employee would like their absence explained to colleagues and/or patients, details of how to access appropriate staff support and identification of a nominated individual who will ensure



regular contact with the employee to provide pastoral support. This will be followed up in writing within three working days.

5.6. Employees can be accompanied by a trade union representative or companion when informed of suspension. However, the unavailability of a representative will not prevent suspension from taking place

5.7. Wherever possible lengthy suspensions will be avoided as the Trust recognises that they are particularly detrimental to the health and wellbeing of the person suspended. Suspension will be reviewed every 2 weeks and lifted when the reason for suspension no longer exists.

5.8. Exclusion arrangements for Medical & Dental Staff are outlined in the Handling Concerns About the Conduct, Performance and Health of Medical Staff policy.

## 6. Policy Implementation Plan

Managers have a responsibility to ensure their staff have read and understood this policy and procedure. New staff will be informed of the policy as part of their Trust induction. Staff and management awareness will be provided via divisional and corporate structures, HR communications, Team Brief and Corporate Communications.

## 7. Monitoring of Compliance

The Chief People Officer will be responsible for the monitoring of and compliance with this policy. Updates will be provided to the Trust People Committee and an annual report to the Trust Board.

## 8. Appendices

- Appendix 1: Fast Track Process
- Appendix 2: Referral to Third Parties
- Appendix 3: Disciplinary Hearing process
- Appendix 4: Examples of Misconduct/Gross Misconduct
- Appendix 5: Equality Analysis

### Appendix 1

#### Fast Track Process

In cases of alleged misconduct where dismissal is not an option and where an employee does not wish to contest the allegations, they can opt to have their case dealt with by way of the fast-track process. In such cases the following process will apply:

1. In all cases where an employee admits the allegations put to them in full, the Case Manager should consider offering them the opportunity to access the fast track process. Equally, a trade union representative or work colleague supporting the employee may suggest this option to the employee.

2. If the employee wishes to take this route they should sign and submit a statement on a 'fast track request form' within 5 working days of the allegations being put to them in full by the Case Manager, providing the following information:
- Accepting all the allegations put to them by the Case Manager
  - Explaining the circumstances in which the misconduct occurred including any mitigating circumstances they would wish to be taken into account. This can be submitted with the fast track form as a supporting statement.
  - Accepting what they did was wrong and why
  - Requesting a fast track hearing on the understanding that 'limited sanction(s)' (informal sanction or first written warning) can be imposed.
  - The Line Manager confirms that the information provided in the form is accurate.
  - It is advised that employees should seek advice from a trade union representative or work colleague before reaching this decision.
3. The fast-track process is not applicable for matters of gross misconduct or where dismissal could be an outcome. Nor can it be used if any one of the allegations is contested by the employee or if there is a connected disciplinary process involving another employee. The fast track process is therefore only appropriate where the sanction that may be imposed is a sanction that is short of a dismissal for example an informal action or first written warning.
4. If the fast track process is accepted there will be no need for a formal investigation report although a sufficient and reasonable examination of the facts must have taken place in order to ensure that the Case Manager will be able to decide on what would be a reasonable disciplinary sanction in the circumstances.
5. If the Case Manager feels that the fast track approach is appropriate following advice from an HR representative, they must confirm the proposed sanction to the employee in writing within 3 working days of receipt of the fast track request form.
6. If an employee chooses not to accept a fast track sanction, they must notify the Case Manager of this within 3 working days and the case will continue to proceed in line with the formal disciplinary procedure.
7. If a full investigation has already commenced the employee may still elect at a later stage to complete and submit a fast track request. In this situation the investigation will be paused pending a decision by the Case Manager.
- Appendix 2

## Referral to Third Parties

### 1. Referral to the DBS

The Trust has a legal duty to make a referral to the DBS when the following two conditions have both been met. This referral must be made by the Case Manager after seeking advice from a HR representative.

#### Condition one

You withdraw permission for a person to work in regulated activity with children and/or adults either through dismissal or by moving the person to another area of work that is not regulated activity. This includes situations where an employer/volunteer manager would or may have dismissed the person or moved them to other duties, if the person had not resigned, retired, or



otherwise left their work – for example, a nurse resigns when an allegation of harm to a patient is first made. The Trust needs to establish that harm did occur, or was at risk of occurring, and decides that they may have dismissed the person had they not left and so makes a referral to the DBS.

and

Condition two

You think the person has carried out one of the following:

- Been cautioned or convicted of a relevant (automatic barring) offence; or,
- Engaged in relevant conduct in relation to children and/or adults (i.e. an action or inaction (neglect) that has harmed a child or vulnerable adult or put them at risk or harm); or,
- Satisfied the harm test in relation to children and / or vulnerable adults. (i.e. there has been no relevant conduct (i.e. no action or inaction) but a risk of harm to a child or vulnerable still exists).

Full details of how and when to make a referral and guidance on the Harm Test can be found on the DBS website using the link below:

<https://www.gov.uk/government/organisations/disclosure-and-barring-service>

## 2. Professional Body Referral

Depending on the allegations, where an employee is registered with a professional body, the regulatory body may be notified. This decision will be taken by the most senior professional lead from the Division, in conjunction with the relevant professional lead for the Trust and advice from a senior HR representative.

## 3. Safeguarding Referral

Where there is a concern relating to mistreatment of a child or an “at risk” adult, the Case Manager, after seeking advice from a HR representative, will inform the Trust Safeguarding Lead who will consider whether it is necessary to make a report to the Local Authority Designated Officer (LADO).

## 4. Mersey Internal Audit (MIAA) / Counter Fraud Referral

Where there is a concern relating to potential alleged Fraud, the local NHS Counter Fraud Specialists should be contacted for advice before any investigation is commenced.

## 5. Information Commissioner’s Office Referral

Where cases include serious personal data breaches likely to result in a risk to the rights and freedoms of data subjects, the Trust has a legal duty to report such cases to the Information Commissioner’s Office within 72 hours via the Trust’s Information Governance Lead.

## 6. Police Referral

Where there is a concern relating to a potential criminal act, the Case Manager, after seeking advice from a HR representative, will inform the Police.

## 7. Investigations

Where appropriate, investigations by the other agencies such as MIAA, police or social services, may be carried out separately from investigations under this procedure. The Trust will give full cooperation to try to ensure any such external investigations are carried out to a high standard. In these circumstances the Trust will only delay carrying out internal investigations and following the disciplinary procedure where absolutely necessary.

### Appendix 3

#### Disciplinary Hearing Procedure

In order to ensure consistency throughout the Trust, the following arrangements have been agreed and must be followed for every disciplinary hearing.

##### 1. Introductions

- Introduce those present and their role
- Explain the purpose of the hearing – to consider whether disciplinary action must be taken in accordance with the Trust Disciplinary procedure
- Explain how the hearing will be conducted

##### 2. Management Statement of Case

- The Case Manager will present the case
- Both the Chair and the employee (or their accompanying person) will be given the opportunity to ask questions of the investigating officer
- Management witnesses may be called. All parties are entitled to ask questions of any witnesses

##### 3. Employee Statement of Case

- The employee is given the opportunity to state their case in response to the management case and answer any questions that may have been asked
- The Chair and the Management side have the opportunity to ask questions
- Employee witnesses may be called. All parties are entitled to ask questions of any witnesses.

##### 4. Summing Up

- The investigating officer and employee representative must now summarise the main points of the discussion after questioning is complete. This allows all parties to be reminded of the issue, the arguments put forward and to ensure that nothing is missed.
- No new evidence may be introduced at this late stage

##### 5. Adjournment

- The Chair will adjourn to make a decision. This allows time for reflection and proper consideration of the issues. The hearing can also be adjourned at any time by either party.

##### 6. The Decision

- Where possible, the employee and management side will be asked to return to the hearing for the decision to be delivered.
- The decision will also be confirmed in writing within five working days of the hearing and the employee will be informed of their right to appeal

## Appendix 4

### Examples of Misconduct / Gross Misconduct

#### 1. Examples of Misconduct

The following list gives examples of the circumstances that could lead to disciplinary action (this list is not exhaustive):

- Failure to act in line with the Trusts' values and behaviours
- Failure to comply with a reasonable request;
- Abusive, objectionable or insulting behaviour;
- Foul or abusive language;
- Unauthorised absence from duty and/or poor timekeeping
- Disorderly conduct;
- Unauthorised display of posters/notices or unauthorised removal of Trust posters/notices;
- Unauthorised distribution of written material;
- Failure to maintain the required standard of dress or presentation;
- Negligent performance;
- Neglect of safety standards;
- Failure to wear essential protective/safety equipment;
- Smoking on site
- Violation of safety/hygiene rules, regulations and codes of practice;
- Inappropriate use of the internet for personal reasons
- Misuse of Trust property or facilities
- Being an accessory to a disciplinary offence
- Commits a serious act, which is deemed to be prejudicial to the interests of the Trust or its employees.
- Unauthorised absence
- Timekeeping / persistent lateness

#### 2. Examples of Gross Misconduct

Some acts count as 'gross misconduct' because they are very serious or have very serious effects. In cases of gross misconduct a hearing Panel can decide to dismiss without notice or payment in lieu of notice. Examples of gross misconduct could include (this list is not exhaustive):

- Serious or repeated failure to act in line with the Trusts' values and behaviours
- Ill Treatment or wilful neglect of patients
- Serious breaches of policies, etc. — Serious offences, which are in breach of any of the Trust's agreed policies/procedures or recognised national legislation e.g. Serious infringement of health & safety rules and failure to follow safe working practices which endangers or is likely to endanger others.
- Confidentiality — Serious breaches of confidentiality relating to patients, staff or other persons. This would include deliberate abuse or misuse of patient records.
- Information Governance – Breaches of Information Governance standards: security, record keeping and data protection.
- Corruption — Receipt of any gift or consideration of any kind, other than of minor value, from contractors or their agents, any organisations, firms, individuals, patients or visitors with whom the employee is brought into contact by reason of their official duties, as an inducement or reward.

- Criminal convictions — Convictions received outside work, which make the individual unsuitable for his/her type of work. Where an employee has been convicted of a criminal offence it will be for the Trust to establish the nature of the offence and decide whether the conviction is relevant to the person's duties in the Trust. It is the employee's obligation to inform the Trust of any convictions obtained during the course of their employment.
- Discrimination — Any action by an employee of the Trust which is discriminatory in terms of the Trust's Equal Opportunities Policy, and specifically any act of racial, sexual or disability discrimination or racial/sexual harassment e.g Refusal to work with people who have, or are suspected of having AIDS or are HIV positive.
- Sexual misconduct
- Drugs/alcohol — Being under the influence of alcohol, drugs or other substances.
- Fraud/falsification — Any attempt to defraud the Trust and/or its employees or deliberate falsification of records. Any fraud whether committed at work or external to the workplace either on or off duty. This would also include the falsification of records, which would result in additional remuneration.
- Working elsewhere whilst absent through illness and claiming sick pay
- Gross or wilful negligence of duties — In respect of performance of duties which staff are employed to carry out, including the duties of care encompassed by the Trust's Health and Safety Policy and health and safety legislation e.g. Sleeping whilst on duty.
- Professional competence/conduct — Any serious breach of professional competence/conduct.
- Failure to repeatedly follow a reasonable verbal or written instructions from your manager, or other supervisory member of the Management team.
- Theft/mis-appropriation — Actual or attempted theft/misappropriation from the Trust, its staff, patients or the public and other offences of dishonesty e.g receipt of money, goods, favours or excessive hospitality in respect of services rendered, preferred or anticipated.
- Violence and aggression — Any violence, aggression or abuse towards another member of staff, a patient/visitor or a member of the public. This includes foul or abusive language used in circumstances, which would cause extreme distress to any employees, patients or members of the public. e.g Willful or serious maltreatment or assault on patients, employees or other members of the public.
- Bullying and harassment – see separate policy on the prevention of harassment and bullying at work for further details.
- Undertaking private work without authorisation during hours when contracted to work for the Trust
- Undertaking secondary employment (paid or for benefit) without prior approval by the Trust, which results in a conflict of interest or is a detriment to the Trust
- A serious breach of trust and confidence – this excludes any protected disclosure under the Whistleblowing policy.
- Serious breach of contract of employment – e.g. failing to follow an explicit statement contained in an Employees Contract.
- Misuse of the Trust's property or name or bringing the Trust into serious disrepute or any action likely to bring the Trust into disrepute
- Deliberately accessing or downloading or removing material from any website that is pornographic, racially offensive or of a nature that contravenes the Trust's commitment to equality and diversity. This category would also include the deliberate removal of essential data from the Trust's computer system.
- Falsification of qualifications or information used in support of an application for any post
- Falsification/Withholding of information provided in relation to Criminal Records Bureau/ISA application
- Deliberate damage to property or facilities of the Trust, Staff or patients

## 9. Endorsed By

Name of Lead Clinician / Manager or Committee Chair	Position of Endorser or Name of Endorsing Committee	Date

## 10. Record of Changes

Section No	Version No	Date of Change	Description of Amendment	Description of Deletion	Description of Addition	Reason