

Trust-Wide Policy	
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## Disciplinary Policy and Procedure

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### **Foreword by Professor Tim Orchard**

I am pleased to write the foreword for this new disciplinary policy, although it was triggered by a set of very tragic circumstances: Following his dismissal from the Trust in December 2015, Nurse Amin Abdullah tragically took his own life in February 2016. The Trust commissioned an independent consultancy Verita to carry out an investigation, the findings of which were accepted in full by the Trust.

On receiving the report we immediately implemented a range of measures to ensure cases are thoroughly assessed before any investigation or formal procedures are followed, and have subsequently introduced a team of trained investigators, trained managers who hear cases at formal hearings and expanded our pastoral support for employees. Following the introduction of these measures we have reduced formal disciplinary investigations and hearings by a third. We have also reduced the likelihood of staff from a Black, Asian and Minority Ethnic background being subject to a disciplinary hearing to a level where our BAME staff are now no more likely to be subject to disciplinary action than their white colleagues.

However, after the Verita investigation we committed to a full review of our Disciplinary Procedure. Inevitably as a large employer as part of upholding standards for our patients, there are times when we need to follow formal procedures, but in these circumstances it is essential that we treat people with dignity and kindness in line with our values, regardless of the circumstances.

We are also committed to combatting any bias or discrimination in our employment and management practices and like many NHS Trusts have been deeply concerned by the disproportionate number of BAME employees that have been subject to disciplinary procedures in the past.

I am grateful for the commitment and continuing input from Amin's partner, Terry Skitmore and Dr Narinder Kapur who have provided robust but constructive challenge in the creation of this policy and more generally on how we have responded in the wake of Amin's tragic death. They were also key in shining a spotlight on these issues at a national level, and this procedure reflects the Recommendations from the NHS Improvement group convened in response to the Verita Report and communicated to NHS Trusts in 2019 by Baroness Dido Harding, Chair of NHS Improvement.

I also want to thank staff-side representatives and regional trade union colleagues who provided valuable insight and advice, and for input from the national advisory, conciliation and arbitration service (ACAS). Not only does this procedure reflect the ACAS Disciplinary Code of Practice, but their expertise has been invaluable in training our managers.

Any allegations of misconduct in the Trust now start from a different basis: As part of our commitment to developing a just and learning culture cases are thoroughly assessed to ensure there is sufficient understanding of the issues or concerns, and the circumstances relating to them, to justify the initiation of formal action. We should always be asking ourselves whether our actions are proportionate and justifiable and whether managing situations informally achieves a more productive outcome.

I am pleased to say that we have clearly made progress, but we know that we cannot be complacent. We need to continually reflect and challenge ourselves to ensure everyone is treated fairly and build a culture of openness and transparency to ensure we are doing the right thing by our people.

As I said in 2018, I very much regret that Amin is not here to be offered an apology for the mistakes that we made and the way he was treated and to hear the personal commitment from me that we will act on all the learning from his case. This Disciplinary Procedure is another small step to building on that commitment and I hope contributes to our ambition of becoming an exemplar of good practice in this area.

**Professor Tim Orchard**

**Chief Executive**

**Imperial College Healthcare NHS Trust**

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**1. Introduction**

1.1 Imperial College Healthcare NHS Trust requires high standards of conduct from everyone and is committed to helping people improve and learn from mistakes. This policy and procedure is designed to ensure a fair, systematic and consistent approach is taken when an employee's behaviour or action is in breach of workplace rules or falls short of the expected standards.

1.2 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. 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. Would training for the employee, support, guidance or informal management be more appropriate and productive?

1.3 This policy has been developed in consultation with the Trust's recognised trade unions and is in accordance with the ACAS Code of Practice on disciplinary and grievance procedures.

1.4 Where an employee's ability to do their job is affected by a lack of skill or knowledge, or ill health, this will be managed by following the Performance and Capability Management Policy.

**2. Purpose & Scope**

2.1 The Disciplinary Policy and Procedure provides a framework to manage concerns about someone's conduct in a fair and timely way. It aims to help people achieve and maintain required standards of conduct.

2.2 The Policy applies to everyone employed by Imperial College Healthcare NHS Trust. It applies to all categories of misconduct by non-medical and medical staff. For further information about managing the conduct issues of Doctors and Dentists see the Handling Concerns about Doctors and Dentists' Conduct, Performance and Health Policy and Procedure.

**3. Policy Statement**

3.1 Managers are responsible for ensuring their team is aware of the required standards of conduct and for bringing any concerns to the attention of employees at the earliest opportunity.

3.2 Managers should try to resolve minor matters of concern informally. If informal approaches do not bring about improvement or if misconduct is sufficiently serious, formal stages of this procedure should be followed.

3.3 Managers will ensure that all action taken under this policy and procedure is reasonable and proportionate. At an early stage, employees will be told why disciplinary action is being considered and they will be given the opportunity to respond to allegations before decisions about formal sanctions are taken.

3.4 Employees can be accompanied and represented, at a disciplinary hearing by a work colleague, trade union representative or other companion from any background, not acting in a legal capacity.

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- 3.5 Disciplinary cases will be treated sensitively and confidentially. Information will only be shared with those who have a legitimate right to be informed in accordance with Data Protection Act 2018 and the Common Law Duty of Confidentiality. Breaches of confidentiality by any party may result in disciplinary action. Standard Operating Procedures agreed between Human Resources and the Data Protection Office will be followed.
- 3.6 All managers who Chair or sit on hearing Panels must have appropriate and up to date training on managing / chairing disciplinary cases. Such training should involve appropriate refreshers within three years of the hearing.
4. **Handling Allegations of Misconduct and Investigating the Facts**
- 4.1 Allegations of misconduct will be carefully assessed by the relevant manager, with HR advice, to decide if the matter can be managed informally where possible or whether there are grounds for further investigation and/or formal action.
- 4.2 The manager will carry out some initial fact finding and meet the employee to establish their version of events. The manager may also meet with other relevant individuals to get a good understanding about what has happened.
- 4.3 Where it is decided that further investigation and/or formal action is appropriate, this must be approved by a senior manager (8c and above). The senior manager will have no previous involvement in the case and will provide independent oversight.
- 4.4 Investigations will be carried out without unreasonable delay. All cases that could lead to dismissal will be investigated by a trained investigator. The manager will be responsible for commissioning the investigation and for clearly defining what is to be investigated.
- 4.5 Employees can be accompanied at investigation meetings by a work colleague, trade union representative or other companion from whatever professional background but not acting in a legal capacity, where this does not unreasonably delay the investigation. Employees can seek trade union representation and advice at any time.
- 4.6 Once the investigation is complete, the manager will consider the findings and with HR advice decide if further action is required; whether the matter can be dealt with informally or whether formal disciplinary action may be appropriate. Where the manager proposes to proceed to a formal disciplinary hearing this must be approved by a senior manager (8c or above).
- 4.7 If the manager believes there is a case to answer at a formal hearing, they will ensure a report is prepared setting out the case and the investigation findings. The manager should ensure all relevant information is presented at the hearing including background information about the employee, their work record and any mitigating factors to ensure a full and balanced case is presented for the hearing to consider.

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**5. Referrals to Professional Bodies and Other Agencies**

5.1 Depending on the allegations, where an employee is registered with a professional body, such as a registered nurse, midwife or nursing associate, the regulatory body may be notified. This decision will be taken by the most senior professional lead from the directorate, in conjunction with the relevant professional lead for the Trust such as the Divisional Director of Nursing, the Director of Nursing, Chief Pharmacist, Chief of Allied Health Professionals or Head of Pathology Services. All NMC referrals will be logged and overseen by the Lead nurse for workforce, regulation & revalidation. For more information, see Professional Registration Policy and Procedure and NMC referrals procedure.

5.2 Where allegations concern the safeguarding of children or vulnerable adults, the Trust's Safeguarding lead must be notified without delay.

5.3 Where appropriate, investigations by the counter fraud team, other agencies such as 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.

5.4 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 Data Protection Office.

**6. Informal Management**

6.1 The Trust recognises that cases of minor misconduct are best dealt with informally and quickly. A quiet word is often all that is needed.

6.2 In many cases additional training, coaching and advice may be needed. When there are concerns about conduct, managers will talk to the person in private as soon as possible, normally within a few days. This will be a two-way discussion, aimed at talking through shortcomings and encouraging improvement.

6.3 Feedback should be constructive with an emphasis on finding ways to improve. The manager will make sure the employee understands the standards expected and will explain how their conduct will be monitored and set a clear timescale for improvement. Managers will discuss with employees any support or training they may need. Managers should keep brief notes of any informal action for reference purposes.

6.4 Where appropriate, managers may also summarise concerns and expectations in writing, a copy of which will be placed on the personal file. If informal action does not bring about the required improvement, or the misconduct is too serious to be classed as minor, formal disciplinary action may be considered.

**7. Formal Procedure**

7.1 Once the matter has been investigated and it has been established that there is a case to answer, a disciplinary meeting 'hearing' will be arranged.

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

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7.3 To proceed to a hearing where dismissal may result, approval must be obtained from a People Business Partner or a more senior member of the People & OD team after careful consideration of the evidence gathered to date.

## 8. **Hearing Panel**

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

8.2 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 Advisor.

8.3 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 the divisional or directorate management team or an Executive Director where appropriate. If the employee is a senior divisional manager or consultant-level appointment, the Panel will always be chaired by an Executive Director. The remaining two Panel members will consist of an HR advisor from the Trust and a member external to the trust who has knowledge, skills and experience that reflect the background and/or specialty of the employee in question.

8.4 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 and cater for factors such as BME status, disability status, etc. Panel members will be selected to achieve this, and where appropriate additional panel members will be recruited. If employees have any concerns in relation to diversity or possible bias of the Panel, they can raise this with their Divisional Director of People or the Director of People & OD.

8.5 Panel members will have no previous involvement in the case or any conflict of interest that could influence decision making.

## 9. **Preparing for the Hearing**

9.1 People will be given at least seven calendar days' notice of the hearing in order to have time to prepare. The employee will be provided with two copies of the management report (investigation report) and any related documents including witness statements to be presented at the hearing. Any personal patient information will be redacted.

9.2 Prior to the hearing, the employee will be advised of the potential outcome such as a formal warning or dismissal.

## 10. **Who the Employee Can Bring with Them**

10.1 Employees are encouraged to attend formal hearings accompanied by an accredited trade union representative, colleague or other companion, of whatever professional background but not acting in a legal capacity. It is the responsibility of the employee to arrange their companion and to inform the Panel who they would like to attend.

10.2 Disabled employees may also wish to be accompanied by a second person as a support worker or someone with knowledge of the disability and its effects.

10.3 Where action is proposed involving an accredited trade union representative, the appropriate full time officer will be contacted before action is taken.

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- 10.4 When an allegation arises which might result in formal disciplinary action managers should advise employees to seek trade union advice and ask the employee for the name and contact details of their trade union representative. When it is necessary to organise meetings at which people are entitled to representation, if the manager knows the name of the trade union representative, managers should liaise with the representative to try to agree a mutually convenient date.
- 10.5 Employees should make every effort to attend meetings and notify their manager as soon as possible if they cannot attend. If an employee or their companion/representative is unable to attend, they must suggest an alternative date so that the hearing takes place within five working days from the original date. If an employee is unable to attend a rescheduled meeting, alternative arrangements such as telephone conference, representative attending on their behalf or written submissions may be considered or the meeting may proceed in their absence.
11. **Hearing Format – for Full Details See Appendix 1**
- 11.1 At the hearing, the manager will present the case and where applicable invite any witnesses. Where an investigation has been carried out, the investigator will be invited to the hearing to present their findings and answer any questions.
- 11.2 The employee will be given the chance to set out their case, answer any allegations, ask questions, show evidence, call relevant witnesses (with good notice), respond to any information given by witnesses.
- 11.3 In considering the sanction, the hearing Chair/Panel will take account of the employee's previous work record and other mitigating factors.
- 11.4 Witnesses will be called if they have a significant contribution to make to the case. If statements from Trust employees are presented as evidence, every reasonable effort will be made to ensure that they attend the meeting, unless it is agreed with the member of staff that the facts are not in dispute and/or the presence of one or more witnesses would serve no material purpose.
- 11.5 The outcome of a hearing will be notified in person by the Chair of the hearing. Only where this is not possible or the individual requests otherwise, should notification be by phone or in writing.
- 11.6 The outcome of the meeting will also be confirmed in writing, normally within seven calendar days. If disciplinary action is taken, the letter will include details of the complaint, the improvement required (if appropriate) and the right to appeal where a formal sanction is issued. It will also state that further disciplinary action may be taken if there is not a satisfactory improvement.
- 11.7 Hearings may result in no formal sanctions being issued; however standard setting, training and/or departmental/individual recommendations may be put in place, if appropriate.
- 11.8 Template letters can be obtained from the intranet but managers are advised to seek HR advice when confirming formal disciplinary sanctions in writing.
- 11.9 Separate procedures and guidance for managing misconduct of medical and dental staff can be found in Handling Concerns about Doctors and Dentists' Conduct, Performance and Health Policy and Procedure.

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- 11.10 It is the Trust's policy to audio record all formal hearings that may result in dismissal and appeal hearings. Audio recordings can be made available on request to employees who are subject to formal disciplinary/capability proceedings and, with their consent, to their representative. Audio recordings will be destroyed after one year.
12. **Supporting Employees**
- 12.1 Being subject to allegations of misconduct can be very upsetting and stressful for the employee and other colleagues affected.
- 12.2 It is important throughout the procedure for the manager to keep talking with both the employee and any other staff affected. Clear, regular and confidential communication can help make sure employees are kept informed of what is happening, have the opportunity to ask questions and can avoid stress and other mental health issues.
- 12.3 Managers are responsible for maintaining communications and will make every effort to ensure employees receive clear, timely, comprehensive and sensitive information about the allegations and regular progress updates on any investigation until the matter is concluded.
- 12.4 Where there are concerns about an employee's health or wellbeing, Occupational Health advice will be obtained.
- 12.5 Employees, including those who are involved as witnesses, will be supported by an appropriate manager and will have access to the Trust's Contact service and offered support from a Staff Liaison Officer.
- 12.6 CONTACT is available to offer counselling and support to any employee affected by the matters covered in this policy. For staff at Hammersmith & Charing Cross, please ring 32747 (020 3313 2747 if external) and for staff at St. Mary's 21519 (020 3312 1519 if external). More information about the service is available on the intranet.
13. **Formal Disciplinary Sanctions**
- 13.1 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.
- 13.2 The seriousness of the misconduct will determine the level of disciplinary action to be taken. The procedure may be entered at any stage.
- 13.3 **Stage 1 - First Written Warning:** If the employee fails to meet required standards following informal action or if the offence is sufficiently serious to warrant moving straight to the formal stages, a First Written Warning may be given. First Written Warnings are confirmed in writing and apply for 6 months after which time they lapse.
- 13.4 **Stage 2 - Final Written Warning:** If the failure to meet required standards continues or if the offence is one of sufficiently serious (but not gross) misconduct, a final written warning may be given. Final written warnings are confirmed in writing and apply for 12 months after which time they lapse. In exceptional circumstances, where a final written warning is an alternative to dismissal, final written warnings may be live for up to 24 months.

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13.5 **Stage 3 – Dismissal:** If conduct remains unsatisfactory or if the offence constitutes gross misconduct, dismissal will normally result. Except in cases of gross misconduct, dismissal will be with notice. Cases of gross misconduct may result in summary dismissal, i.e. dismissal without notice. Dismissals may be reported to the relevant professional body as appropriate.

13.6 **Additional action as a result of being issued with a disciplinary warning:** If a first or final written warning is issued, the member of staff will not be awarded an annual pay increase on the pay step date in the twelve months after the issue of a warning. The Chair of a hearing will ask the line manager to action this via the ESR manager self-service function. For staff commencing NHS employment or those who moved to a higher banded role on or after 1 April 2019, if a first or final written warning is issued, the member of staff will not progress to the next pay step point if the warning is live on their pay step date. In those situations, the manager should initiate a pay step review meeting before the expiry of the warning and if all other requirements have been met, the member of staff will progress to the next pay step effective from the date after the warning expires.

13.7 In addition, to the issue of a final written warning for up to 24 months the following actions may be appropriate:

- Transfer to another department / site.
- Demotion or downgrading (without pay protection).
- Change of shift or working pattern.

#### 14. **Appeals**

14.1 Everyone has the right to appeal against any formal disciplinary action. Appeals will be handled in accordance with the Appeals Policy and Procedure.

14.2 Appeals against dismissal will be heard by a Panel of at least three members. The Chair will be an Executive Director (CEO will hear appeals from Executive Directors and the Chairman for an appeal from the CEO). The remaining Panel members will include a member external to the trust who has appropriate training and experience and a senior member of the People & OD team.

14.3 The Trust is committed to ensuring Appeal Panels are appropriately diverse in representation, experienced and trained. Panel members will be selected to achieve this. If employees have any concerns in relation to bias or diversity of the Panel, they can raise with their Divisional Director of People or the Director of People & OD.

14.4 Appeal Panel members will have no previous involvement in the case or any conflict of interest that could influence decision making.

#### 15. **Examples of Misconduct**

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

- Employees are expected to combine prompt and efficient service with respect for the feelings of others, including patients, visitors and colleagues, whatever their background.
- Bullying and harassment
- Refusing to work
- Employees must be honest, open and truthful in all their dealings with patients, colleagues and the public.
- Employees are expected to attend for duty for the hours laid down in their contracts of employment and as agreed with their managers.
- Being absent without permission. In cases of sickness or sudden domestic

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emergency, employees must inform their manager in accordance with departmental notification rules.

- During sickness absence, employees are expected to keep their manager informed of their progress and submit sickness certificates promptly.
- Misuse of social media affecting the reputation of the Trust or causing colleagues distress/offence
- Employees must carry out reasonable instructions.
- Anyone undertaking other employment outside their contractual hours must ensure that it does not hinder or conflict with the interests of their employment with the Trust or their duty to abide by relevant professional codes of conduct or have any adverse effect upon their work performance. Employees should inform their managers of employment outside working hours.
- Breach of confidentiality
- Misuse of authorised access to information and systems, unauthorized access to information and systems, and any activity that could breach the security of the Trust ICT Infrastructure and any other breach of the Trust Information Security Policy
- Sleeping on duty (this does not include sleeping during agreed breaks or out of hours arrangements)
- Employees are expected to comply with health and safety requirements.
- Employees are expected to treat Trust facilities and property with respect.
- Employees must inform their managers of any charge, caution or conviction, relating to acts committed on or off duty, at the earliest possible opportunity.
- Failure to maintain professional registration where it is a requirement of the job (see requirements as per Trust Professional Registration policy)
- Employees should at all times undertake their work in accordance with Trust and departmental policies and procedures and, where appropriate, their professional codes of conduct.
- People are expected to display positive attitudes and supportive behaviours in line with Trust values in their interactions with other people
- Breaches of professional codes of conduct and Trust policies
- Behaviour outside of work that could affect the professional reputation of the individual or the reputation or operations of the Trust.

## 16. **Gross Misconduct**

16.1 Some acts count as 'gross misconduct' because they are very serious or have very serious effects.

16.2 Where there may have been gross misconduct, a full investigation must still be carried out and the full disciplinary procedure followed.

16.3 In cases of gross of misconduct a hearing Panel can decide to dismiss without notice or payment in lieu of notice.

16.4 Examples of gross misconduct could include (this list is not exhaustive):

- Serious lack of care to duties or other people which could result in serious loss, damage or injury ('gross negligence')
- Theft
- Fraud
- Deliberate falsification of records or documents
- Working without valid "Right to Work" documentation
- Working without statutorily required qualifications
- Working elsewhere whilst on sick leave

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- False declarations made during the recruitment process
- Receipt of money, goods, favors or excessive hospitality in respect of services rendered while a Trust employee
- Physical violence
- Verbal abuse
- Harassment or bullying
- Unlawful discrimination
- Being unfit for duty through the effects of alcohol or drugs
- Abuse, misuse or deliberate damage of Trust property or equipment
- Serious breach of data security requirements, any activity that could breach security of the Trust ICT Infrastructure and any other serious breach of the Trust Information Security Policy including serious misuse of authorised access / unauthorized access to information and systems.
- Serious breach of Health and Safety and other statutory rules
- Serious breach of a professional code of conduct as determined by the professional body
- Failure to act impartially or to declare interest in a contract or business in which the Trust is engaged or considering
- Scientific Misconduct - Fabrication, falsification, plagiarism or deception in proposing, carrying out or reporting results of research
- Serious breach of trust and confidence - Any act which causes irreparable damage to the relationship of trust and confidence between the employee and the Trust.

**17. Suspension (Exclusion)**

17.1 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.

17.2 Suspension is not a disciplinary sanction and there is no assumption of guilt.

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

17.4 Suspensions will be managed sensitively and confidentially.

17.5 When considering suspension, managers must assess the risks of the employee remaining at work and seek HR advice. Where a manager wishes to suspend an employee, they must seek approval from a senior manager (8B or above) and a People Business Partner.

17.6 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.

17.7 Suspension will only normally be considered if there is a serious allegation of misconduct and:

- working relationships have severely broken down
- there is a risk of the employee tampering with evidence, influencing witnesses and investigation
- there is a risk to the employee themselves, other employees, property or patients
- the employee is the subject of criminal proceedings which may affect whether they can do their job.

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- 17.8 Alternatives to suspension must be considered, with HR advice where appropriate and could include the employee temporarily:
- being moved to a different area of the workplace
  - changing their working hours
  - being placed on restricted duties including having reduced access to Trust systems where appropriate
  - working under supervision
  - being transferred to a different role within the organisation (the role should be of a similar status to their normal role, and with the same terms and conditions of employment).
  - Other meaningful activities that the individual could do should be actively explored. This could include working remotely from home, carrying out activities such as audits, research or teaching.

18. **Communicating the Decision to Suspend and Supporting Employees**

- 18.1 Every effort will be made for the manager to meet with the employee to inform them of the decision to suspend. This will be followed up in writing within three working days (Appendix 2).

- 18.2 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. When a manager is thinking of suspending someone, the manager should try to contact the on-call trade union representative or companion via the switchboard to notify them of the time and venue of the meeting.

- 18.3 The manager communicating the decision to suspend will:
- Explain the reasons for suspension and how long it is expected to last.
  - Explain the employee's responsibilities during their suspension.
  - Provide a point of contact (usually the line manager) that they can contact if they have any concerns.
  - Agree how they will keep in regular contact with the employee throughout.
  - Give details about support from CONTACT, the Staff Counselling and Stress Management Service on 020 3313 2747 or 020 3313 2424.
  - If it is necessary to explain the employee's absence, the manager will discuss with the employee how they would like it to be explained to colleagues and/or patients.

- 18.4 The terms of the suspension and the employee's obligations will also be provided which includes:
- not doing anything that could interfere with the investigation
  - treating the matter confidentially
  - seeking permission from the manager to contact colleagues
  - if they wish to contact witnesses to support their case, they should do this via their manager or, if different, the manager dealing with the matter or their Trade Union representative or companion
  - except for medical appointments, they must not visit Trust premises unless given permission by the line manager or a named deputy to attend for a specific purpose, e.g. a meeting a representative, an investigation meeting, a counseling appointment, a medical consultation
  - the requirement to remain available between 9.00 am to 5.00pm, Monday to Friday, excluding public holidays, to attend meetings. Permission for any periods of absence, e.g. annual leave, must be requested

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- 18.5 If deemed necessary, the suspending manager may ask the employee to hand in Trust property such as keys, ID card, Trust mobile phone, bleep, laptop or any other mobile device at the time of exclusion. The manager may also temporarily revoke remote access if in use or remove / restrict access to Trust systems by referral to the Data Protection Office. In these circumstances, the manager and employee must agree alternative methods of keeping in contact.
- 18.6 The employee will be given the name and contact details of someone who will keep in regular contact with them and updated on progress of the investigation. This will normally be their line manager, or a second named individual if the line manager is unavailable
- 18.7 The employee will be supported by the Staff Liaison Officer from the Trust's Contact Service and will have full access to counseling and support services.
19. **Timescales for Suspension**
- 19.1 Suspension will be for the minimum time necessary and will be reviewed every 5 days and lifted when the reason for suspension no longer exists.
- 19.2 Most investigations should be concluded within two weeks of suspension. Where this is not possible people should be informed that they remain suspended and told when the investigation is likely to be completed. This should be followed up in writing (see Appendix 3). Managers should make themselves available to meet employees to discuss the progress of the investigation.
- 19.3 If the employee wants to go on holiday during their suspension, they must still make a request to take annual leave.
20. **Pay during Periods of Suspension**
- 20.1 Suspension is on normal pay, i.e., the pay the person would have received if they had been at work based on a 12 week reference period (excluding pay for bank shifts). People receive no pay when they are suspended because they have allowed their professional registration to lapse or because they have lost their entitlement to work under the Immigration and Asylum Act. People on zero hours/bank contracts receive no pay during suspension.
- 20.2 If in receipt of pay on suspension from the trust, a suspended person must not undertake any paid work during the hours for which they are contracted to work. People suspended for clinical / professional reasons must not undertake any work, paid or unpaid, without prior permission from the appropriate manager. Where an employee holds employment outside of the Trust and is suspended from the Trust, the employee is obliged to declare their alternative place/s of work and the suspension information may be shared with another employer if it is in the public interest.
21. **Medical and Dental Staff**
- 21.1 Exclusion arrangements for Medical & Dental Staff are outlined in the Policy and Procedure for Handling Concerns about the Conduct, Performance and Health of Doctors and Dentists.

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22. **Criminal Offences and Offences Committed Outside Work**

22.1 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.

22.2 Where the offence or police investigation relate to mistreatment of a child or an “at risk” adult, the manager should inform the trust safeguarding team who will consider whether it is necessary to make a report to the Local Authority Designated Officer (LADO).

22.3 If an employee is subject of a police investigation, they are obliged to inform their manager so that the manager can consider whether any steps are required, e.g. to protect the safety of others.

22.4 Where allegations that occur outside of the Trust are brought to the attention of the Trust by other agencies or professional bodies, and those allegations have the potential to bring the reputation of the Trust into disrepute or may affect the suitability of the employee to continue in Trust employment, the Trust will investigate as reasonably as is practical. If after a detailed investigation it is considered that the actions of the employee damage the relationship of trust and confidence with the Trust, action up to and including dismissal may be taken.

23. **Duties**

23.1 Appendix 4 sets out roles and responsibilities involved in managing cases of misconduct. This section outlines responsibilities for upholding standards of conduct.

23.2 **Managers** must ensure that their people are aware of the required standards of conduct and handle disciplinary concerns fairly and promptly in accordance with this policy and procedure. They are responsible for promoting a culture in which concerns are dealt with openly and fairly, with an emphasis on learning from mistakes. Managers must seek advice about formal disciplinary cases from their Senior HR Advisor.

23.3 **Employees** are required to maintain good standards of behaviour and comply with the policy and procedure. Employees are expected to raise concerns about colleagues' behaviour to an appropriate manager, especially where there could be consequences for patient safety. The Raising Concern Policy applies.

23.4 **People Business Partners** will advise and coach managers to develop the skills necessary to deal with cases confidently and effectively. The HR team will, with trade union representatives, ensure that the policy is regularly reviewed and monitored.

23.5 **Trade Union representatives** will work in partnership with managers to ensure that the policy and procedure is applied in a fair and consistent manner. Where an allegation arises, trade union representatives will work with other stakeholders to ensure that decisions can be taken promptly, thereby minimising staff anxiety. If an accredited Trade Union representative's request for time off to attend a meeting under the Disciplinary Procedure is refused and they believe the refusal to be unreasonable, they should raise the matter with the Divisional Director of People.

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24. **Misapplication of the Procedure**

24.1 If an employee believes that the 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 procedure.

25. **Policy Implementation and Dissemination**

25.1 The policy and procedure will be notified to heads of operations, clinical and professional leads and cascaded to all supervisory levels of management, with instruction that it replaces all previous documents, via e-mail and the intranet. The existing policies and procedures will be archived on the intranet and replaced with this document. Induction and any relevant training courses will be updated accordingly.

25.2 Advice and support on the application of this policy and procedure can be obtained from your Divisional HR team and trade union representatives.

25.3 Managers will ensure that the disciplinary procedure is applied fairly. The application of the formal procedure by ethnicity, gender, disability and age is monitored by the Directorate of People and Organisation Development. Data on the application of the procedure will be discussed at the Partnership Committee and management team meetings and reported in the Trust's annual Workforce Equality Information Statistical Report.

26. **References**

- Advisory, Conciliation and Arbitration Service (ACAS) <https://www.acas.org.uk>
- NHS Improvements Dido Harding letter 24 May 2019 with guidance relating to the management and oversight of local investigation and disciplinary procedures <https://www.england.nhs.uk/2019/06/provider-bulletin-5-june-2019/>
- Verita report <https://www.imperial.nhs.uk/about-us/news/investigation-disciplinary-process-actions-and-learning-for-trust>
- NHS Resolution "Being fair - Supporting a just and learning culture for staff and patients following incidents in the NHS" <https://resolution.nhs.uk/wp-content/uploads/2019/07/NHS-Resolution-Being-Fair-Report-2.pdf>

**27. Monitoring Arrangements**

Lead	Policy Objective	Method	Frequency	Responsible Committee / Group
Employee Relations Function	Review of policy to ensure all information remains current	Review	Every 3 Years	Chief Executive / Executive Committee

**28. Supporting Information**

Current Document Information	
Document Lead:	Fiona Percival, Divisional Director of People & Organisation Development
Responsible Executive Director:	Kevin Croft, Director of People & Organisation Development
Date Approved by Policy Approval Group:	13.07.2020
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Current Document Replaces	
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Related Trust Documents:	Appeals Procedure; Policy and Procedure for Handling Concerns about the Conduct, Performance and Health of Doctors and Dentists; Grievance Policy and Procedure; Professional Registration Policy; Information Security Policy; Data Protection, Confidentiality and Information Sharing Policy.

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Committees / Groups	Partnership Committee; Staff Side

Consultation		
	Sent to	Date
Committee / Groups:		
Departments / Individual:		

Version Control History			
Version	Date	Policy Lead	Changes
1.2	06.09.2010	Employee Relations	Approved
2.0	28.03.2017	Corporate Governance	Final ratified
2.1	03.09.2018	Anita Niczyporuk	Amendments to process made
3.0	21.07.2020	Compliance Unit	Final ratified.

**Procedure for Disciplinary Hearings**

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- 1. Introduction by manager chairing the hearing**
  - Introduce those present
  - Confirm purpose of the hearing is to consider whether disciplinary action should be taken in accordance with the Disciplinary Policy and Procedure
  - Confirm that all parties have received the necessary paperwork
  - Outline procedure for the hearing
  
- 2. Manager or investigator presents case**
  - Manager outlines findings
  - Manager calls any witnesses
  - Employee/representative/ accompanying person and chair/HR Adviser may question the witnesses
  - Manager may re-examine the witnesses
  - Employee/representative and chair/HR Adviser may ask questions about the case in order to clarify facts
  
- 3. Employee/representative responds to the management case**
  - Employee/representative/ accompanying person responds to the allegation, offers an explanation for the alleged misconduct and/or raises any special or mitigating circumstances to be taken into account
  - Employee/representative calls any additional witnesses
  - Manager and chair/HR Adviser may question the witnesses
  - Employee/representative may re-examine the witnesses
  - Manager and chair/HR adviser may ask questions of the employee in order to clarify facts
  
- 4. Summing up – no new evidence presented at this stage**
  - Manager sums up
  - Employee/representative/ accompanying person sums up
  
- 5. Adjournment for manager to consider case**
  - Agree with all parties how and when the decision will be notified to the employee / representative if time does not permit decision to be given in person following the adjournment. [Where the conduct of more than one member of staff is being considered in relation to the same incident, the adjournment between the Disciplinary Hearing and the outcome letter may be a few days, until all the Disciplinary Hearings have been completed.
  
- 6. Reconvene for decision – manager verbally informs employee/representative of**
  - The outcome of the hearing/disciplinary action
  - The right of appeal
  - The outcome of the hearing to be confirmed in writing within five working days of the date of the hearing

**Template Suspension Letter  
To be sent within 3 days following suspension**

Name Address

Date

Dear \*\*\*\*\*

**RE: Suspension from duty**

Further to our meeting on [DATE] I am writing to confirm your suspension with effect from [DATE].

I have decided to suspend you from duty because it is alleged that [INSERT REASON].

I would like to reassure you that suspension is not a form of disciplinary action or an assumption of guilt, but is necessary to allow a full investigation to be carried out. You should however realise that once the investigation has been completed, the allegations may be considered at a disciplinary meeting.

I do not expect your suspension to last more than 2 weeks but I will update you if the suspension needs to be extended.

I OR \*\*\*\* NAME/TITLE [DELETE AS APPROPRIATE] will carry out an investigation over the next few days. NAME/TITLE [Normally line manager] will keep in regular contact with you and update you on progress of the investigation.

EITHER

You are invited to a meeting on \*\*\*\* at \*\*\* in \*\*\* to discuss the allegations against you. If you find it helpful you can submit a written statement in advance of the meeting.

OR

I OR \*\*\*\* NAME OF INVESTIGATOR will contact you shortly to invite you to a meeting to discuss the allegations against you. If you find it helpful you can submit a written statement in advance of the meeting

While you are suspended you should bear in mind the following conditions:

- You must not do anything that might interfere with the investigation.
- You are not allowed to contact your work area or approach anyone involved, or likely to be involved, in the case.
- If you would like to contact witnesses who may support their case you should contact me, \*\*\*\*\* NAMED DEPUTY, or your trade union representative, in the first instance.
- Except for medical appointments you are required to remain off Trust premises unless you have my permission to attend a meeting with your trade union representative, an investigation meeting, a counselling appointment, a medical consultation etc
- You have to be available Monday to Friday from 9.00 am to 5.00pm to attend meetings, except during periods of annual leave already agreed
- If you would like to request annual leave or other types of leave during your period of suspension, you should do so in line with normal departmental procedures
- You must immediately notify me of any changes to your contact details

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- You are not allowed to undertake any paid work during the hours for which you are contracted to work for the Trust.
- If you become ill, you must notify me and follow agreed reporting procedures.

While suspended you will receive normal pay / you will not receive pay [DELETE AS APPROPRIATE] – please see the section 20 of the disciplinary procedure for more information.

With your agreement, I will ask the Staff Liaison Officer from the Trust's Contact Service to contact you to provide support.

I appreciate that the position is a stressful one. If you would like support from CONTACT, the Staff Counselling and Stress Management Service, you should phone 020 3313 2747 or 020 3313 2424. Alternatively, if you would like me to arrange for someone from CONTACT to contact you let me know.

I will endeavour to conclude the investigation within a reasonable timescale and ensure you are kept informed of progress.

Yours sincerely,

**NAME OF MANAGER**

**JOB TITLE**

**Cc** Name of Trade Union Representative if known

Valid Until 21.07.2023

**Template Follow-up Suspension Letter  
To be sent if member of staff still suspended after two weeks**

Name  
Address

Date

Dear

**RE: Suspension from Duty**

Further to my letter of [INSERT DATE], I am writing to advise you that the investigation has not yet been completed and it is therefore necessary for you to remain suspended from duty.

I appreciate that this is particularly stressful for you. I hope the investigation will be completed by [INSERT DATE].

In the meantime, should you wish to discuss the progress of the investigation I am happy for you to telephone me on the above number. Alternatively, we can meet if you would find this more helpful.

I appreciate that the position is a stressful one. If you would like support from CONTACT, the Staff Counselling and Stress Management Service, please phone 020 3313 2747 or 020 3313 2424 or let me know if you would like me to arrange for them to contact you.

Yours sincerely,

**NAME OF MANAGER  
JOB TITLE**

**Cc** Name of Trade Union Representative if appropriate

## **Roles and Responsibilities Involved in Managing Cases of Misconduct**

### **Line manager is responsible for ensuring this policy is followed and for:**

- Gathering initial facts in relation to misconduct, speaking to the employee and put the allegations to them and get their account of what has taken place. Take notes.
- Speaking to other witnesses or colleagues who are relevant and may be able to give an account of what took place. Take notes.
- Using this checklist to think through their approach
- Seeking HR Advice
- Seeking approval from a senior manager (8c) or above before carrying out a formal investigation or proceeding to formal action. Make sure they are fully briefed.
- Where necessary and where approval has been given, commissioning an investigation, setting out what needs to be investigated and agreeing a deadline for completion with the investigator.
- Letting the employee know what is going to happen next for example that the matter will be investigated, ideally face to face and make sure they are properly supported and referred to the Staff Liaison Officer and Contact Service. Confirm in writing.
- Letting the employee know the name of the investigator and that they will be in touch
- Informing witnesses if they need to be interviewed as part of the investigation and confirm the name of the investigator who will contact them. Make sure they are properly supported throughout.
- Regularly checking in with employees who are subject to investigation and/or formal action and ensure they are kept informed about what is happening and have the opportunity to ask questions and are advised about timescales and what will happen next.
- Providing support to ensure the investigation runs smoothly and the Investigator is provided with access to materials, documentation, systems and relevant employees and witnesses.
- Having regular check ins with the investigator to get a progress update and ensure the investigation is running promptly.
- Managing the health and wellbeing of staff involved seeking advice from Occupational Health where appropriate.
- Ensuring details of the investigation are only shared on a strictly need to know basis and that any staff involved in the investigation are aware of the duty of confidentiality
- At the conclusion of the investigation, considering the findings and with advice from a HR Advisor decide appropriate actions you wish to take.
- Fully briefing the 8c manager on the investigation findings and seeking approval for next steps e.g. managing informally or proceeding to a formal hearing.
- The HR Advisor will assist and advise managers on preparing for formal hearings, ensuring all documentation is distributed, and any witnesses are invited and briefed.
- Presenting case at a hearing and where applicable invite the Investigator to present their findings.

### **HR Advisor**

- Provides timely advice to managers on managing misconduct, advising on the range of options and whether informal or formal action is appropriate in the circumstances.
- Ensures misconduct is handled consistently and proportionately across the Trust and in accordance with its policies and procedures and legal responsibilities.
- Provides challenge and examine cases to ensure no biases or conflicts of interest exist.
- Ensures all parties are treated fairly and impartially and the Trust's Disciplinary procedures are followed.
- Advises on options available to the manager and identify any risks.
- Provides the manager and investigator with timely advice throughout the handling of misconduct
- Actively ensures matters are progressing in a timely way.

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- Ensures the right support is in place for any employees and referrals are made to the Staff Liaison Officer, Contact and Occupational Health where appropriate.
- Ensures regular contact is in place with employees.
- Fully considers the findings of the investigation and advise the manager on options of future actions including whether formal or informal action is appropriate
- Ensures relevant approval is obtained.
- Advises on the selection of Panels and support the preparation of hearings ensuring everyone involved is properly briefed and trained.
- Attends hearing and advise the Panel on proceedings.

**Investigator** - carries out a thorough and impartial investigation. Their role is to:

- Meet with the commissioning manager at the outset of the investigation to agree the terms of reference.
- Develop the terms of reference and an investigation plan and get it signed off by the commissioning manager.
- Conduct investigation interviews, write up interviews and get the interviewee to check and sign off.
- Provide regular updates on the progress of investigations to the commissioning manager and the Senior HR Advisor.
- Escalate any additional allegations or concerns that emerge during the investigation to the commissioning manager and the Senior HR Advisor including any issues that are delaying the investigation.
- Produce a reporting presenting the investigation findings for the commissioning manager.
- Attend hearings, if required, to answer questions arising from the Investigation Report.

### **Senior Manager (8C or above)**

Provides impartiality and oversight to decision making in cases of misconduct. The role of the senior manager is to provide constructive challenge and seek assurance on behalf of the Trust that cases are being handled fairly and proportionately, that decisions are well informed and the welfare of employees is given priority. The senior manager will seek to establish the following:

- Clarity about the allegations and assurance that the manager has gathered enough initial information to support their proposed course of action
- The action proposed by the manager is necessary, proportionate and justifiable in the circumstances and consistent with similar cases
- That all alternatives have been fully explored to ensure the matters is being dealt with in the most constructive way and in accordance with just culture principles.
- If further investigation is needed, whether the manager can carry this out (has the time and appropriate skills) or if a trained investigator should be commissioned. For cases that may result in dismissal a trained investigator must carry out the investigation.
- That the welfare of the employee and anyone else affected by the issues has been properly considered and a plan for support and communications has been developed and carried out.
- That the manager themselves is getting the right support.
- That no biases or conflicts of interest are potentially influencing the proposed actions
- That there are sufficient grounds and understanding of the issues and circumstances to conclude there is a case to answer at a formal hearing.

### **Chair of hearing**

- Ensures the fair conduct of the hearing in accordance with the Trust's Disciplinary Policy.
- Makes sure that the employee is aware of their right to be accompanied
- Explores if any adjustments should be made to proceedings to support employees and particularly for disabled employees or those with health conditions.
- Explains the procedure to be followed, introduce the parties taking part
- Checks that each side has all relevant documents
- Ensures each side has the opportunity to state their case

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- Makes sure all relevant evidence is considered
- Considers whether further investigation is required if new matters arise
- Adjourns to consider the decision and weigh up all the evidence presented
- Decides whether allegations are substantiated on balance of probabilities
- Takes account of mitigating factors
- Considers any 'live' warnings
- Decides on sanction with advice from other panel members and HR support
- Acts consistently with previous decisions.
- Informs the employee of the decision and the reasons for it
- Informs the employee of their right of appeal.
- Ensures adaptations and adjustments are made to proceedings to support disabled employees and those with particular needs.

**Other panel members**

- Support the Chair of the hearing in ensuring the fair conduct of the hearing and compliance with the Trust Disciplinary Policy.
- Ask questions or clarify any issues raised during the hearing
- Consider on the balance of probability whether allegations are proven
- Help the Chair determine the appropriate sanction taking account of mitigation offered, the seriousness of the case, the sanctions applied in similar cases in the past, any previous warnings which are still in effect, the nature of the employee's job, the work record of the employee.

**Staff Liaison Officer** - provides emotional support to staff going through a disciplinary or formal process within the Trust. The service is offered by the CONTACT team and it is a confidential service which also provides counselling.

**Equality Impact Assessment**

**Title of Policy:** Disciplinary Policy and Procedure

**Policy Version:** v3.0

**Document Lead:** Fiona Percival, Divisional Director of People & Organisation Development

**Responsible Executive Director:** Kevin Croft, Director of People & Organisation Development

Please review the policy and ensure that during the development or review and consultation phases the below characteristics have been considered. If there are any impacts on any of the protected groups, please list the impact and the action taken.

Protected Group	Is There An Impact (Yes / No)	Comments and Action To Mitigate
Age	Yes / No	No impact identified
Disability	Yes / No	No impact identified
Gender Reassignment	Yes / No	No impact identified
Marriage or Civil Partnership	Yes / No	No impact identified
Pregnancy and Maternity	Yes / No	No impact identified
Race	Yes / No	No impact identified
Religion or Belief	Yes / No	No impact identified
Sex	Yes / No	No impact identified
Sexual Orientation	Yes / No	No impact identified