



**University Hospitals Dorset**  
NHS Foundation Trust

# **Managing Disciplinary Issues**

## **Procedure**

**1 October 2020**

**This procedure should be read in conjunction with the Trust  
Managing Disciplinary Issues policy**

**If this document is printed – please check in the Policies, Procedures and  
Guidelines section of the intranet to ensure this is the most up to date  
version.**

**Out of date policy documents must not be relied upon.**

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Appendix A - A guidance on disciplinary rules/offences

## **1. Introduction**

This disciplinary procedure is recommended for use by line managers in all areas of the Trust to ensure consistency and good practice. It aims to promote and maintain high standards of conduct, professionalism and attendance.

## **2. Roles, rights and responsibilities**

### **2.1 Human Resources (HR) will be responsible for:**

- advising all parties on the appropriate application of this procedure and for providing specific management and staff guidance
- attending all formal disciplinary hearings where the outcome may be a final written warning, dismissal, demotion or redeployment. In exceptional circumstances they may support line managers at other hearings, by prior agreement with both parties
- monitoring the use of the disciplinary policy and procedure across the Trust.

### **2.2 The commissioning manager/case manager will be responsible for:**

The commissioning manager/case manager will usually be the line manager for the employee being investigated or where this isn't appropriate a nominated alternative.

- completing the terms of reference for an investigator
- appointing an appropriate investigating manager
- liaising with HR regarding the investigation process
- when the investigation is complete to decide a way forward taking into account HR advice and the investigating manager's recommendation.

### **2.3 The investigating manager will be responsible for:**

- establishing the facts and gathering evidence as fully and as quickly as possible
- contacting and updating the employee on the progress of the investigation
- supplying the employee with all supporting evidence and reports regarding the complaint
- preparing a report and submitting it to the commissioning manager

- where the recommendation is to proceed to a hearing, the investigating manager will present their findings
- where there is no case to answer, the investigating manager will be asked to feedback to the commissioning manager the findings and any learning or developmental needs.

#### **2.4 Trade union representatives and companions:**

- can act as the employees advocate, providing them with advice and support on matters relating to the case. They will only do this if the employee invites them to do so
- can accompany or represent employees at any formal meeting to discuss concerns about the employees' conduct, attendance or performance. In exceptional circumstances, and only by prior agreement with the employee's line manager, they may accompany or represent the employee at informal meetings
- cannot answer questions on behalf of the employee
- are responsible for giving advice to the employee or management about how the situation can be resolved in a timely and constructive way.

#### **2.5 Line managers are responsible for:**

- explaining the standards of conduct, attendance, or performance to the employee and bringing to their attention where policies and protocols have been breached
- if necessary, ensuring provision of an interpreter, including funding
- ensuring that high standards are maintained, bringing any concerns that they have about an employee to their attention in a timely and sensitive way
- contacting their HR advisor prior to invoking the formal disciplinary procedure
- preparing invite and outcome letters using the templates provided. HR should be consulted if the letter includes a final written warning or dismissal.

The employee and line manager will have equal responsibility for exploring a solution in a constructive way.

Where conduct is related to a professional qualification or registration, an appropriately qualified manager should be consulted.

The authority to dismiss, redeploy or demote an employee lies with a director who may delegate this authority to an appropriate deputy.

## **2.6 Employees are responsible for:**

- familiarising themselves with the disciplinary policy and procedure and for making sure that they understand the contents. Clarification can be sought from HR when required
- adhering to the standards and procedures detailed in the disciplinary policy and procedure and to fully co-operate with management in ensuring this adherence
- conducting themselves in a professional manner at all times, towards patients, relatives and colleagues; achieving good attendance and timekeeping and delivering high standards of care
- their own actions at all times. This extends to social events organised in or by the Trust and other events outside of the Trust, where poor behaviour could bring the Trust into disrepute. Please see paragraph 9 in managing disciplinary issues policy and staff code of conduct
- reporting to their line manager any situations which they believe may have a detrimental effect on their ability to maintain a high standard of conduct, attendance, or performance. This may include an underlying health condition, concerns outside of work or not knowing how to handle a particular situation
- arranging their own representation, for any formal hearing, with a trade union representative or a work colleague or friend not acting in a legal capacity
- the employee and line manager will have equal responsibility for exploring a solution in a constructive way.

## **2.7 Employees have the right to:**

- be accompanied throughout the formal stages of the procedure. Where an employee has a disability and requires specific support, they may be accompanied by a representative and a relevant support worker. This will be agreed on an individual basis. In these circumstances, consideration will also be given to requests for similar representation at informal stages of the process
- be given an explanation of where they are not meeting the standards of conduct required and have access to evidence-based examples
- receive an explanation of the process that will be adopted to address conduct shortfalls and the potential outcomes

- be given the opportunity to comment on the conduct issues that have been identified
- appeal against any formal disciplinary action taken against them.

### **3. Disciplinary procedure**

This procedure aims to ensure the safe and effective operation of the Trust, while working with management, staff side/trade unions to ensure employees are aware of their rights and obligations in respect of disciplinary policy.

The Trust supports a culture of fairness, openness and learning by making staff feel confident to speak up when things go wrong, rather than fearing blame. Careful consideration should be given whether there truly is something specific about an individual that needs support or management versus whether the issue is wider, in which case singling out the individual is often unfair and counter-productive.

Consideration must be given to ensure all individuals are consistently treated equally and fairly no matter what their staff group, profession or background.

Prior to any disciplinary action the line manager or another nominated person will ensure that all the facts of the case are available for consideration, together with any mitigating circumstances. In complex cases this may involve a formal investigation.

The Trust may be prevented by the police or another statutory/regulatory body from carrying out an investigation. In these circumstances each case will be reviewed by a Director or Operations/Head of Nursing or equivalent, or a nominated deputy, who will decide on the way forward.

When commencing an investigation into an allegation, there shall be no assumption that disciplinary action will automatically follow.

Where gross misconduct is proven this may result in dismissal without notice.

The disciplinary procedure may be implemented at any stage if the alleged misconduct warrants such action and will depend on the seriousness of the offence. A series of minor offences or a repetition of one offence may involve going through the whole procedure whilst one offence of serious misconduct may lead directly to a final warning. An act of gross misconduct may lead to dismissal without prior warnings.

### **4. Raising Concerns**

Concerns may arise in a number of ways from a specific incident to a gradual decline in standards. The line manager should initially:

- undertake an initial risk assessment to determine the impact on patients: the service; colleagues or the individual. Consideration should also be given to the likelihood of recurrence
- determine which Trust procedure should apply – there are a range of policies that may be more appropriate including capability and managing attendance
- decide whether informal or formal action is required. It is likely that in most cases informal action will resolve or correct the concerns.

## **5. Right to representation**

Employees are statutorily entitled to elect to be represented by a trade union representative or accompanied by a work colleague at all formal stages of this procedure. They should notify their manager prior to any hearing who is attending. Representation by any member of the employee's family or partner is not permitted.

A member of staff who has been requested to accompany a colleague during the disciplinary process is entitled to take a reasonable amount of paid time off duty to fulfil this responsibility.

Wherever possible HR should liaise with the trade union representative to arrange a mutually agreed date at the earliest opportunity.

Where the employee's chosen trade union representative is not available within a reasonable timescale, the employee should ask the trade union to nominate a suitable alternative representative.

Where an employee or their representative unreasonably cancels or delays a disciplinary hearing, the hearing may be rearranged twice. On the cancellation of two dates, the third will be set and held with or without the employee present.

When arranging hearing dates, the manager must be mindful of any relevant religious holidays.

Where required, an employee may also be accompanied by a qualified interpreter. This individual will not be considered as a representative. This must be agreed and arranged in advance of the meeting, on an individual case by case basis.

Where an employee has a disability or there are exceptional circumstances and requires specific support, the employee may be allowed to be accompanied by a representative and a relevant support worker. This will be agreed on an individual basis. In these circumstances, consideration will also be given to requests for similar representation at informal stages of the process.

## **6. Occupational Health**

Where a line manager suspects an employees' physical or mental health may be a cause of the alleged misconduct, this should be discussed with the employee and where appropriate a referral made to Occupational Health for assessment.

Following the assessment and occupational health report, the line manager should decide, in consultation with HR, whether to proceed with disciplinary action or to apply an alternative appropriate policy/procedure or signpost for alternative support.

## **7. Stages of the disciplinary procedure**

The procedure may be invoked at any stage depending on the seriousness of the alleged incident. Managers should consult with HR if they wish to enter the process at a later stage.

### **7.1 Informal meeting**

For minor breaches of conduct at work the employee's line manager should meet with the employee for an informal discussion. Due to the informal nature of the discussion the employee does not have the right to representation and written notification of the meeting is not required. During the discussion the line manager should outline the alleged breach of conduct and detail what improvements are necessary within an agreed timescale. The employee is encouraged to take this opportunity to have an open discussion with their line manager so that all relevant issues can be addressed.

A file note of the informal meeting will be made and held by the line manager, using the agreed template document that accompanies this procedure. The employee should sign and retain a copy.

Any agreed actions, objectives or training to resolve issues should be within a set timescale and subject to review.

If, during the meeting, it becomes obvious that the matter is more serious the discussion should be adjourned. It should then be made clear that the matter will be pursued under the formal disciplinary procedure.

### **7.2 Formal Process**

A formal investigation should be a final resort, in line with Just Culture principles and only taking place after an initial triage has taken place with HR to ascertain that a formal investigation process is appropriate.

The triage process helps to objectively consider whether the decision to take formal action is proportionate to and appropriate for the concern raised. Please complete Appendix B with your HR advisor/business partner.

The formal disciplinary process will be applied where:

- the employee does not respond to informal discussion or counselling; or
- the line manager believes that a breach of conduct may have occurred that is too serious to be dealt with informally.



### 7.3 Suspension and possible alternatives to suspension

Suspension should only be considered as a last resort and never used in a punitive manner.

The suspension of an employee from duty is not a disciplinary action.

Suspension must only be used as a means for allowing sufficient time for enquiries to be completed or where it would be unsafe, or inappropriate, to allow the employee to continue working.

Suspension will be on full pay based on average of pay received over the preceding 13 weeks.

During a period of suspension employees will be offered individual support from a named person from the Trust.

Alternative ways of managing risk and other measures short of suspension should be considered. Where suspension may be considered as unnecessary but it is inappropriate for the employee to continue to remain in their current position/and or performing their current duties, alternative options should be explored if this is practicable and appropriate in the circumstances.

Alternative measures could include:

- Restricted or alternative duties
- Increased supervision or supervised access to patients
- Change to working pattern
- Temporary redeployment into a different role/department
- Working from home.

### 7.4 Investigations

If the facts of the case are simple to establish, were witnessed and clearly occurred, or the employee has admitted to the offence, then an investigation may not be necessary and the manager could proceed straight to a disciplinary outcome in the normal way. For minor offences the following option could be considered:

### 7.5 Issue verbal or first written warning by mutual acceptance

In some cases when minor offences have been committed an alternative option could be considered by issuing a **verbal** or **first written warning** to the employee by mutual acceptance without the need to conduct a disciplinary hearing. This can only be considered if there is no dispute about the minor offence taking place by the accused employee and all other parties involved.

It must also be agreed by the employee, HR Representative, line manager and trade union representative, if applicable, that this option is the most appropriate way forward in the circumstances of the case, i.e. where the employee has admitted to the allegation and the likely outcome at a hearing would be a verbal/first written warning.

Warnings by mutual acceptance may also be considered to be a supportive option, particularly if there is a concern about the well-being of the accused employee. This approach would avoid distress for the employee attending a disciplinary hearing and would provide a quicker outcome for the individual, rather than potentially exacerbating their decline in health.

Following the issue of the warning the employee will have the right of appeal as outlined in section 9 of this procedure.

## **7.6 Commissioning/case manager**

Where the facts of the case and allegations made cannot be easily established, an investigation will need to be carried out. The investigating officer will normally be the employee's line manager unless the circumstances of the case determine that an independent investigating officer should be appointed. If this is the case the line manager should contact their HR advisor in order to commission a trained investigator from an alternative area.

To maintain impartiality, the investigator will not be the manager holding the disciplinary hearing.

## **7.7 Conducting an investigation**

Guidance notes on conducting an investigation can be found at:

[https://intranet.rbch.nhs.uk/policies/human-resources/i03\\_the\\_investigation\\_process.pdf](https://intranet.rbch.nhs.uk/policies/human-resources/i03_the_investigation_process.pdf)

The investigation is a key stage of the disciplinary process and should be carried out with the minimum delay when relevant information is still fresh in people's minds. The purpose is to establish all the relevant facts of the case and gather evidence that may be needed should a disciplinary hearing be convened.

On completion of investigation the investigating manager will make a recommendation to the commissioning manager. This may include:

- Advising that there is no case to answer
- Advising that informal advice and guidance, coaching or counselling is necessary
- Advising that the matter be dealt with under the disciplinary procedure.

## **7.8 Decision on whether to hold a disciplinary hearing**

If, on the advice of the investigating manager, the commissioning/case manager decides that a disciplinary hearing is deemed necessary, then a letter in the commissioning/case manager's name, notifying the employee of the hearing date, will be sent out within 14 days of the end of the investigation.

The commissioning/case manager may decide to appoint a different manager to chair the proceedings, dependent on the severity of the allegations.

If the commissioning/case manager decides that a hearing is not necessary then the employee should be informed in writing advising that there is no case to answer and/or depending on the circumstances, that informal advice and

guidance, coaching or counselling is appropriate.

Examples of unacceptable conduct can be found at Appendix A.

## **7.9 Disciplinary hearings**

If there is a case to answer, a disciplinary hearing should be arranged as soon as possible after the investigation has been completed.

The employee will be invited to attend a formal disciplinary hearing in writing, normally at least 7 calendar days in advance of the proposed hearing date.

Details/documentary evidence of the case against the employee will be sent to the employee prior to the formal disciplinary, i.e. investigation report/copies of witness statements and the employee must be advised of his/her right to representation and to bring witnesses.

Prior to the hearing the employee will confirm their attendance to the appropriate manager, at least two days before the hearing is due to take place, stating whether they will be accompanied and/or calling any witnesses.

An authorised person who has not had prior involvement in the investigation processes will chair the disciplinary hearing. The investigating officer will also attend to present the case based on their findings. A member of HR may also be present.

The hearing will be recorded with the permission of all parties. In that event, an audio copy will be provided to the employee at their request.

At the hearing, the commissioning/case manager will explain the complaint against the employee and go through any evidence or ask the investigating manager to present the case. The employee will be able to set out their case and answer any allegations that have been made. The employee will also be allowed to ask questions, present evidence and to call witnesses. They will be given the opportunity to raise points about any information provided by the witnesses.

Employees will be able to claim time off in lieu or be paid for attending a disciplinary interview if such a hearing is conducted outside normal working hours.

Where an employee or their representative unreasonably cancels or delays a disciplinary hearing, the hearing may be rearranged twice. On the cancellation of two dates, the third date will be set and the hearing held with or without the employee present.

## **7.10 Sickness absence, delay and failure to attend during disciplinary proceedings**

It is in the interests of the employee for the disciplinary hearing to be held as quickly as possible. However, if an employee becomes sick during disciplinary proceedings, which prevents them from attending the hearing, then a doctor's medical certificate must be provided.

The meeting should be re-arranged and the employee should be notified in writing of the details.

An occupational health referral will be made to seek advice regarding attendance at the hearing. It may be appropriate for Occupational Health to contact the employee's GP to ascertain whether or not there is any other relevant medical condition which the disciplinary panel should consider.

Where the reason for sickness does not preclude the employee attending a disciplinary hearing it may be held whilst the employee is off sick. Alternatively, the disciplinary hearing can be held in the absence of the employee.

If circumstances necessitate, the employee can request one postponement of up to seven calendar days, or more by mutual agreement. All hearings should be held as soon as practicably possible. Disciplinary issues should not be unreasonably delayed due to the non-availability of a specific representative, or the employee being unable to attend due to long-term sickness or a custodial sentence that is likely to postpone the meeting indefinitely or for a long period of time.

The employee must have been informed of the course of action if they fail to attend a re-arranged hearing.

The employee may send in a written statement in answer to the allegations to be considered by the panel and/or have their union representative attend on their behalf. Where the employee may have difficulty in providing a written statement due to a disability or where English is not a first language, they can request to submit this in another format. This could include a dictated response, recording or information presented by a representative. This will be agreed on a case by case basis.

### **7.11 Witnesses**

Witnesses can be called by either party. The knowledge and/or information about an event or allegation should have been witnessed personally.

For further information: <https://intranet.rbch.nhs.uk/policies/human-resources/non-papertrail/witness-information.pdf>

The line manager of the witness will be required to release them from duty to attend the hearing.

Witnesses will be able to claim time off in lieu or be paid for attending a disciplinary hearing or appeal if it is held outside of normal working hours. It is the employee's responsibility to contact any witnesses they wish to call.

### **7.12 Professional Advice and Involvement**

Where an employee is a member of a profession, is accountable to a manager who is not within that profession and is subject to a disciplinary enquiry relating to a professional issue, then the appropriate professional adviser/manager must be fully involved in all aspects of the disciplinary process.

In cases of a potential serious breach of professional standards the appropriate professional adviser/manager should refer the employee to the relevant regulatory body within 14 days of the hearing. An allegation made against a health professional, who is registered with a health professions council and which may affect their fitness to practice due to misconduct, lack of competence, conviction or caution for a criminal offence or physical or mental health must be reported to the appropriate regulatory body by the head of profession.

## **8. Formal procedure**

### **8.1 Stage one – formal meeting**

If, following informal counselling, as described in paragraph 7.1, the required improvement has not been made within the agreed timescale or the allegation is sufficiently serious to enter the procedure at a later stage, the line manager will arrange to meet with the employee under stage one of the formal procedure.

The employee will be provided with the facts of the case and given an opportunity to respond.

In cases of a first instance of minor misconduct a **verbal warning** may be appropriate.

It is not essential for an HR representative to be present where a hearing is likely to result in a verbal warning, although HR advice may be sought if required.

A file note (Record of Verbal Warning) will be prepared by the hearing manager confirming the details of the verbal warning. The file note will be signed by both the hearing manager and the employee.

A copy will be kept on the employee's HR personal file and a copy will be given to the employee within 14 days of the disciplinary hearing. The file note will include the following information:

- the nature of the misconduct;
- no breach of conduct and that the disciplinary process will cease;
- the reason(s) for the warning;
- improvement required;
- the *consequences* of a repeat offence/failure to improve;
- the length of time the warning will be valid for, usually up to six months.

There is no right of appeal to a formal counselling/verbal warning, but employees may ask to file a reply if they disagree.

## 8.2 Stage two – formal hearing

If, following a stage one meeting, the required improvement has not been made within the agreed timescale or the allegation is sufficiently serious to enter the procedure at a later stage, the line manager will arrange to meet with the employee under stage two of the formal procedure.

Line managers should seek advice and support from their HR representative or a trade union representative.

The employee will be provided with the facts of the case and given an opportunity to respond.

If it is established that there has been no breach of conduct the disciplinary process will cease, or if there has been a breach of conduct but it is not serious enough to warrant formal disciplinary action and/or mitigating circumstances have been taken into account it may be dealt with by informal action.

A **first written warning** may be given in cases of more serious misconduct, or where there has been repetition of misconduct.

The employee will be sent a written confirmation of the first written warning within 14 days. The letter should include the following information, the:

- Nature of the misconduct;
- Reason(s) for the warning;
- Consequences of a repeat offence;
- Period of time given for improvement and the improvement expected; -
- Length of time the warning is valid for, usually up to 12 months;
- Right of appeal, including time limits and to whom an appeal should be made to.

## 8.3 Stage three – formal hearing

If, following the stage two hearing, the required improvement has not been made within the agreed timescale or the allegation is sufficiently serious to enter the procedure at a later stage, the line manager will arrange to meet with the employee under stage three of the formal procedure.

Line managers should seek advice and support from their HR representative or a trade union representative.

The employee will be provided with the facts of the case and given an opportunity to respond.

If it is established that there has been no breach of conduct the disciplinary process will cease, or if there has been a breach of conduct but it is not serious enough to warrant formal disciplinary action and/or mitigating circumstances have been taken into account it may be dealt with by informal action.

A **final written warning** may be given in cases of more serious misconduct, or where there has been repetition of misconduct already subject to current warning(s).

The employee will be sent a written confirmation of the Final Written Warning within 14 days. The letter should include the following information:

- the reason(s) for the warning;
- that similar misconduct could lead to dismissal or some other action short of dismissal;
- the period of time given for improvement and the improvement expected;
- the length of time the warning is valid for, usually 12 months;
- the right of appeal, including time limits and to whom an appeal should be made.

#### **8.4 Stage four – final formal hearing**

Where the required improvement has not been made within the agreed timescale or the allegation is very serious and may be considered to be gross misconduct, the line manager will refer this to a senior manager within the Care/Corporate Group and a final formal hearing will be arranged. Refer to disciplinary policy – authority to dismiss. Please see policy appendix A and B.

The case will be presented by the manager who decided the outcome at the previous hearing or by the investigating manager. Copies of all the documents will be sent to the employee at least 7 calendar days prior to the hearing date. It is the employee's responsibility to provide details to their representative.

Line managers **must** seek advice and support from their HR representative.

The employee will be given an opportunity to present their response, advise any mitigating circumstances and to ask questions.

Once all the facts have been discussed, the disciplinary hearing will be adjourned for all the facts to be given full consideration prior to any decision being made. The length of the adjournment will vary in each case. The decision will be based on what the manager conducting the hearing reasonably believes to have happened on the balance of probabilities.

Once the decision is made, if it is the same day the hearing will be reconvened and the employee informed of the outcome, this will be followed up with a full written decision. If it is not possible to reach a decision at the end of the hearing then the outcome will be communicated to the employee in writing within 14 days of the hearing.

The employee's disciplinary and general record, length of service, actions taken in any previous similar cases and explanations given by the employee should be taken into account.

The possible outcomes are that there has been:

- no breach of conduct and that the disciplinary process will cease; or
- a breach of conduct but it is not serious enough to warrant formal disciplinary action and/or mitigating circumstances have been taken into account and it can be dealt with by informal action; or
- a breach of conduct which is considered sufficiently serious to warrant formal disciplinary action, including dismissal.

### 8.4.1 Action short of dismissal

Other action should always be considered before making a final decision to dismiss.

Where an employee has previously been issued with a series of warnings or in some cases where there are mitigating circumstances to a gross misconduct and the hearing will otherwise result in a dismissal, the hearing manager may consider alternative action such as demotion, transfers or redeployment, either temporary or permanent.

This outcome needs to be agreed by both parties as an alternative outcome to dismissal. Employees may wish to take advice from their trade union representative.

It is recommended that the panel set objectives which must be achieved within a specified timeframe. If the employee is demoted or pay and benefits are reduced as a result of this action then pay protection does not apply in these circumstances. If the employee does not consent to the action short of dismissal, or comply with the terms of the sanction, then they will be dismissed.

Action short of dismissal should always be issued in conjunction with a final written warning.

Where the very exceptional circumstances of a case are taken into account and a final written warning is issued, when in normal circumstances dismissal would occur, **the final written warning would remain on file for up to 3 years**. Other alternative actions may include temporary or permanent transfer to another job or location or temporary or permanent demotion.

### 8.4.2 Dismissal

Reasons for dismissal will be classified as:

- **Procedural dismissal** - where there has been repetition of offences already the subject of current warning(s). (A final written warning will already have been issued).
- **Summary dismissal** - (i.e. instant dismissal usually without notice) where, after investigations and a disciplinary hearing, it is established that an act of gross misconduct, major breach of duty or conduct has occurred.

A dismissal letter should be issued to the employee within 14 days stating:

- the reason for dismissal
- the amount of notice given
- the date on which the contract of employment will terminate
- the right of appeal including time limits and to whom an appeal should be made.

### 8.5 Records/Duration of Warnings

Warnings will normally cease to be 'live' following the specified period of satisfactory conduct and should be disregarded for future disciplinary purposes.



There may however be occasions where an employee's conduct is satisfactory throughout the period the warning is in force only to lapse very soon thereafter.

Where a pattern emerges and there is evidence of recurrence, the employee's disciplinary record should be borne in mind in deciding how long any current warning should last.

## **9. Right of Appeal**

Following the issue of a formal sanction (except a verbal warning), the employee has the right of appeal, if they:

- believe the outcome is unfair or unjust and can demonstrate this;
- believe that the principles of this procedure have not been applied and can evidence this;
- there is new evidence or mitigating reasons that were not available at the time of the formal hearing.

Should the employee wish to appeal they should write to the Head of HR Operations within 14 calendar days of receipt of the outcome letter.

An appeal panel will consider the grounds for appeal only and not be a re-hearing of the original formal meeting.

Where the employee may have difficulty in providing an appeal in writing due to a disability or where English is not a first language, they can request to submit this in another format. This could include a dictated response or information presented by a representative. This will be agreed on a case by case basis.

The appeal will be heard by a panel of individuals consisting of a line manager with relevant and appropriate seniority, for example, the line manager's manager, and an HR representative, who was not at the original meeting where formal action was taken.

The employee has the right to be accompanied or represented at any appeal hearing by a trade union representative or work companion.

At the end of the hearing the appeal panel will need time to consider their decision. Depending upon the complexity of the case it may be possible to inform the employee verbally of the outcome on the day of the hearing. The employee will be notified of the final decision in writing within 14 days (where reasonably practicable).

The appeal panel are responsible for identifying recommendations and/or areas for improvements resulting from the case, if appropriate.

The appeal decision is final and there is no recourse to any further internal procedures.

## **10. Trade Union Representatives**

Where disciplinary action is being considered against an accredited trade union representative, the full circumstances of the case shall be discussed with an HR Business Partner and the appropriate full time trade union official.

## **11. Independent Safeguarding Authority**

If the Trust removes a member of staff or volunteer because they have harmed a child or vulnerable adult (or there is a risk of harm); or if a member of staff is dismissed due to patient care; the Independent Safeguarding Authority must be informed by the employee's line manager. The paperwork should be completed and sent to the ISA with a copy sent to HR for the employee's personal file. This process should occur in all cases even if the member of staff leaves the Trust's employment during an investigation and the disciplinary has not taken place.

<http://www.isa.homeoffice.gov.uk/default.aspx?page=379>

Any allegation/arrest which relates to a child or adult safeguarding issue should be escalated immediately to the appropriate professional director, their deputy or in their absence the medical director.

## **12. Pay steps**

If an employee is issued with a formal disciplinary sanction, the pay progression standards will not have been achieved as outlined in NHS terms and conditions, annex 23 - pay progression. If a pay step is due, the pay step date should therefore be delayed until the day after the sanction expires. The manager should initiate a pay step review meeting before the expiry date of the sanction.

A disciplinary sanction cannot be applied retrospectively to delay a pay step date if it comes into effect after the pay step date.

If a disciplinary sanction is in place at the time of the pay step date and is subsequently repealed as a result of a successful appeal, the pay step will be backdated to the pay step date if all other standards have been met.

## GUIDANCE ON DISCIPLINARY RULES/OFFENCES

It is not practical to draw up a detailed list of all occurrences which could lead to disciplinary action, as circumstances will always vary. The following is merely intended to be a range of examples to assist in determining appropriate courses of action.

### Minor Misconduct

Examples of offences which might lead to a first level warning would be lateness without reasonable explanation, minor variation from accepted standards, minor causes of insubordination, verbal abuse to other members of staff, absenteeism, etc. Repetition of such offences could lead to further disciplinary action being taken.

### Serious Misconduct

Failure to respond to previous warnings could result in either a second level or a final warning, depending on the severity of the misconduct. Additionally certain types of conduct could lead directly to this form of disciplinary action. Examples of breaches of discipline included in this category might be: -

- refusal to carry out reasonable instructions
- repeated failure to wear protective clothing as prescribed, or, a single case where failure to do so placed the individual or others at risk
- failure to carry out clear safe working practices where this resulted in a risk to self or others
- unauthorised disclosure of matters of a confidential nature
- breaches of the Trust's Policies and Procedures
- breaches of conduct according to the Professional Codes of Practice
- Repeated unauthorised absence

### Gross Misconduct

Examples of breaches of discipline which could warrant dismissal would include: -

a)	Theft	Unauthorised possession of property belonging to the Trust, patients or staff
b)	Corrupt Practices	Unlawful receipt of money, goods, favours or excessive hospitality in respect of services rendered
c)	Fraud	Any deliberate attempt to defraud the Trust or patient or members of staff. This would include (but is not limited to): <ul style="list-style-type: none"> <li>• Undertaking alternative paid employment whilst on sick leave from the Trust</li> <li>• Submitting false time records or allowance, overtime,</li> </ul>

		<p>expense, mileage claims</p> <ul style="list-style-type: none"> <li>• Conducting private work in the Trust's paid time.</li> <li>• Taking bribes from suppliers who provide goods or services to the Trust</li> <li>• Providing false information or concealing previous criminal convictions in order to obtain employment with the Trust</li> </ul>
d)	Assault/physical Violence	Violence or malicious ill treatment of patients or other members of staff
e)	Incapacity through drink or drugs	Incapacity to perform normal duties through the consumption of alcohol or the misuse of drugs. Due recognition will be taken of the Alcohol & Substance Misuse policy
f)	Illegal Substances	Being in possession of an illegal substance; or being involved in the sale or distribution of illegal drugs
g)	Betting/gambling	Betting or gambling whilst on the Trust's premises
h)	Damage	Intentionally causing damage to the property of the Trust, patients or other members of staff
i)	Health & Safety	An act which seriously endangered the health or safety of oneself or others. Knowingly allowing a serious breach of the Trust and/or Statutory Health & Safety Regulations
j)	Confidentiality	Serious breaches of confidentiality including the misuse of, or failure to safeguard confidential information and/or patient data
k)	Insubordination	Serious insubordination.
l)	Professional Misconduct	Serious breaches of conduct according to the professional codes of practice
m)	Negligence	Serious negligence in the performance of the employee's duties
n)	Misuse	Serious misuse of the Trusts time, property or name
o)	Misuse of the Internet	Deliberately accessing internet sites containing pornographic, offensive or obscene material
p)	Disrepute	Bring the Trust into serious disrepute
q)	Bullying, discrimination, harassment or victimisation	Any attempt to bully, unlawfully discriminate, harass or victimise patients or other members of staff whether on the grounds of disability, race, sex, religion, age or sexual orientation or any other reason
r)	Policies & Procedures	A serious breach of the Trust's policies & procedures
s)	Police Investigation/ Conviction	Failure by the employee to disclose that they are the subject of a police investigation or to declare any convictions, bind overs, cautions, reprimands or warnings, or any other involvement with the Police, Crown or Magistrates Court during the course of their employment with the Trust which may have a potential impact on their ability to carry out their role
t)	Misleading or False Information	Failure by the employee to disclose information, or provision by him/her of false or misleading information on an application form, medical questionnaire, rehabilitation of offenders act form, or during employment interview which may have a potential impact on their ability to carry out their role

**CONFIDENTIAL TRIAGE  
ALLEGED INCIDENT/CONCERNS/ALLEGATIONS**

**INITIAL GATHER OF FACTS** - Completion by Line Manager with HR operational team support:

<b>Manager name:</b>	
<b>Job role:</b>	
<b>Date:</b>	

<b>Staff member name:</b>	
<b>Job role:</b>	
<b>Start Date</b>	

**BACKGROUND INFORMATION / ESTABLISHED FACTS**

An incident/allegation was reported by (NAME) on (DATE)

State (DETAILS OF INCIDENT)

Include:

- Any information reviewed i.e. rota's/notes/statements/CCTV/police information etc
- What have you found from speaking to those involved actually happened?
- Patient/staff safety issues?
- Any potential mitigation?
- Health considerations / personal support offered.

**LIST WHO HAS BEEN SPOKEN WITH AS PART OF THE FACT-FIND:**

<b>Name</b>	<b>Job title</b>	<b>Supporting</b>
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		<b>Statement Received Y/N</b>

<b>POLICY / ACCEPTED PRACTICE</b>	
<b>Are relevant policies/procedures available?</b>	Comments
<b>Are the policies/procedures workable?</b> Do they make sense in the context of the environment, in the routine, consider work as done verses worked imagined	Comments
<b>Were the policies/procedures knowingly departed from?</b> Is there awareness that people's actions were diverging from what is described.	Comments
<b>Exception to Peers?</b> Is the behaviour very different to what colleagues/peers with comparable experiences and skills would do in similar circumstances? If the answer is yes, then it is in exception to peers.	Comments
<b>Was training available?</b> Consider the quality and regularity of the training, and whether that was appropriate for our people and the situation.	Comments
<b>Sufficient Supervision?</b> Was it provided	Comments

**TRIAGE DISCUSSION** - Completion by Deputy Chief People Officer/Head of HR Operations:

PRESENT	DATE HELD

CHECK LIST		
		Date/Comments
INCIDENT/DATIX REPORT	Y/N	
RAISED WITH HR OPS TEAM	Y/N	
PIPOT / SAFEGUARDING	Y/N	
SUSPENSION RISK ASSESSMENT	Y/N	
PREVENT	Y/N	
COUNTER FRAUD	Y/N	
PATIENT/STAFF RISKS	Y/N	
RELEVANT PROTECTED CHARACTERISTICS	Y/N	

TRIAGE OUTCOME		
	Tick	Comments
Formal Disciplinary/Performance Investigation		
Informal Progression		
Further fact finding action		
Other follow up		

TRIAGE ADDITIONAL NOTES