



Disciplinary Policy 2020	
ID Reference Number	HR/POL/03

Category	Policy
Classification	Human Resources
Purpose	To be corrective rather than punitive, and it should be recognised that its existence is to help and encourage employees to achieve and maintain acceptable standards of conduct, and to ensure consistent and fair treatment for all employees.
Superseded Trust-wide Controlled Documents	Disciplinary Policy and Procedure (v 3.0)
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Title of Originator/Author	HR Business Partner
Title of Responsible Director	Associate Director of People
Impact / Equality Impact Assessed	Yes
Target Audience	All Trust employees (excluding Medical & Dental Staff)

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Version	Title of Trust Committee/Forum/Body/Group consulted during the development stages of this controlled document	Date
1	JNC	11 th March 2020
	Policy Review Group	16 August 2020

DOCUMENT AMENDMENT FORM

Date	Page No	Amendment	Authorised by
11/03/20		<p>Removed appendices' of letters and toolkit will be a separate document that will be accessible for all just not included as part of the policy.</p> <p>Information where needed but remove the detail that was unnecessary to be included in the policy.</p> <p>Completed in conjunction with SWFT policy and mirrored where possible.</p> <p>Emphasised responsibilities of all parties, line managers, employees, HR etc.</p> <p>Added in section around overlapping of Grievance and Disciplinary cases and actions that may take place.</p>	
	7	Confidentiality clause and clarity around redaction (IG reviewed and supported).	
	8	Confirmation of how notes will be recorded/provided to employee which was not included previously.	
	8	Suspension same however provided clarity on levels of suspension. Provided guidance around uplift of suspension and who will make the decision and discuss this.	
	10	Investigation – again clarity on roles and responsibilities including requirements of outcomes.	
	12	Witnesses – emphasised their role and expectations and included then need for them to be aware that they may be requested to attend at short notice, not causing undue delay from need representatives.	
	12	<p>Fast Track – up to final however accept that they made a mistake, no live warning and not serious enough to warrant dismissal.</p> <p>Warnings prev only had first (9 months) and final (12 months). Now have first (6 months) second (9 months) and final 12 months.</p> <p>Tidied up grounds of appeal process and included I who appeals should go to in table format.</p> <p>Table for investigation process paperwork.</p> <p>Clarity on decision making for exclusion reviews and uplifts (commissioning manager – independent).</p>	

- Ten or less minor amendments can be made before the document is revised.
- Major changes must result in immediate review of the document.

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1 Introduction

- 1.1 George Eliot Hospital NHS Trust (GEH) recognises the need to encourage and support employees to provide the highest quality of care to our patients.
- 1.2 This document sets out the Trust's policy in relation to issues of misconduct and the process by which such issues should be managed. Misconduct is defined as unacceptable behaviour, failure to follow instruction or omission by an employee in breach of Trust policies, procedures or stated expectations or requirements of individuals.
- 1.3 George Eliot Hospital NHS Trust has a duty to promote equality, diversity and inclusion. Discrimination on the grounds of sex, disability, age, sexual orientation, religion or belief, race, gender reassignment, marriage and civil partnership, pregnancy and maternity is against the law and will not be tolerated. The Trust has an Equality Strategy and an Equality Action Plan. An important part of the plan is to ensure that the Trust's policies and procedures promote equality.

2 Purpose

- 2.1 This policy is designed to advise, help and encourage all employees to achieve the standards of conduct required of them and to effect an improvement should this prove necessary. The Trust believes that fair, equitable, timely and effective arrangements should exist for dealing with disciplinary matters and that employees should be treated with justice and equality in a consistent manner.
- 2.2 This policy outlines the principles and the processes which will be followed when it is necessary to take action of a disciplinary nature against employees. The intention is that potential disciplinary cases are dealt with at an early stage, with a view to resolving problems as quickly and fairly as possible and that employees are encouraged to improve their standards of conduct.
- 2.3 Wherever possible, issues of minor misconduct should be dealt with informally rather than through the formal stages of the policy and advice can be sought on this if necessary from the Human Resources Department or Staff Side representatives.

3 Audience

- 3.1 This document applies to all managers and employees when addressing issues of misconduct. It should also be used by the Human Resources team and Staff Side representatives when supporting managers and employees in the management of conduct issues.
- 3.2 This policy will not apply to non NHS healthcare staff (e.g. third party contracted staff), however, it is expected that such staff should follow the principles laid down in this Disciplinary Policy whilst working on Trust premises.
- 3.3 In the case of Bank workers, an investigation into any alleged misconduct may be undertaken to help inform a decision to refer the matter to a professional body or the Disclosure and Barring Service (DBS). In addition it may be used to consider if the bank contract should continue during the investigation process.

- 3.4 When dealing with disciplinary issues relating to Medical and Dental employees, please refer to the Trust, 'Disciplinary and Management of Performance Policy for Medical and Dental Staff' policy.

4. Responsibilities/Duties

4.1 Board of Directors (BoD)

The BoD is responsible for determining the governance arrangements of the Trust including effective risk management processes. It is responsible for ensuring that the necessary clinical policies, procedures and guidelines are in place to safeguard patients and reduce risk. In addition they will require assurance that clinical policies, procedures and guidelines are being implemented and monitored for effectiveness and compliance.

4.2 Chief Executive (CEO)

The Chief Executive Officer (CEO) has overall responsibility for patient safety and ensuring that there are effective risk management processes within the Trust which meet all statutory requirements and adhere to guidance issued by the Department of Health and Social Care.

The CEO holds each line manager accountable for meeting objectives and to work together towards meeting the objectives approved by the Board.

4.3 Associate Director of People

The Associate Director of People is the Executive with delegated responsibility for ensuring the content of this policy is applied fairly and consistently across the Trust. They will therefore have the responsibility for Trust-wide implementation and compliance.

4.4 Line Managers

Line Managers are responsible for ensuring that:

- This document is made available to all employees within their department
- Are expected to address conduct matters informally where possible and appropriate
- As employees they are responsible for implementation and compliance with this policy
- Their employees, who are undertaking roles in line with this policy have been trained and deemed competent to do so
- Employees are aware of the standards of behaviour expected of them and any other local requirements, e.g. starting and finishing times within wards/departments
- All employees have a detailed and up to date job description and that all employees have access to regular supervision and appraisal

4.5 All Employees

Employees are obliged to ensure that:

- They know and follow the standards of behaviour detailed in Trust documents relevant to them and their functions within the Trust. These standards will be provided in the Trust's "Disciplinary Rules" (**Disciplinary Toolkit**) and other documents issued from time to time.
- Employees should act in an appropriate manner as a member of staff at the George Eliot Hospital NHS Trust.
- Employees must co-operate fully at all stages throughout this policy.
- Employees must act in accordance with their professional codes of conduct, where applicable.

4.6 Human Resources Department

The Human Resources Department is responsible for assisting with the implementation of this policy. A member of the Human Resources team must be consulted for advice at any formal stage of the policy. A representative from the Human Resources team will also attend formal disciplinary meetings to advise on the policy and its application, ensuring that disciplinary decisions are consistent and fair.

A member of the Human Resources Department may be involved in issues at an informal stage, to provide advice.

The Human Resources Department will monitor the number and nature of formal disciplinary issues across directorates, staff groups, employees from black and minority ethnic backgrounds, employees with a disability and employees by age and gender. Individual records will be kept confidential.

In partnership with Staff-Side, the Human Resources Department will review the Disciplinary Policy in the light of changes to legislation or developing case law.

The HR Department will be the only service to maintain full copies of confidential files, following the outcome of any investigation.

5 Misconduct involving Fraud or Criminal Activities

Matters which may potentially be involving fraud, bribery or corruption or criminal in nature should be discussed with Human Resources at the earliest opportunity, who will advise on the involvement of the Local Counter-Fraud Specialist, Local Security Management Specialist (LSMS) or the Police. They should be contacted for advice before a disciplinary investigation is commenced.

6 Protection of Children and Vulnerable Adults

The Trust has a responsibility with regard to safeguarding children and vulnerable adults. In cases which indicate that there has been harm or risk of harm to children or vulnerable adults, the Trust will make a referral to the Disclosure and Barring Service (DBS). This may lead to the staff member being added to the list of those who are barred from working with these groups. When a referral to the DBS is made, the member of staff will be notified of this action by the Trust.

In cases where an allegation of abuse is made against a staff member who works with children or adults, relevant safeguarding policies will be referred to such as 'Safeguarding children policy or Safeguarding adults policy' and advice may also be sought by the Trusts safeguarding lead/s.

7 Support for Employees

Employees are advised that at any time they can access support available from Occupational Health, Employee Assistance Programme and the Chaplaincy, for spiritual support. Staff can also contact their trade union, staff organisation or professional association representative for support.

The Freedom to Speak Up Guardian can also be contacted via the email address: freedomtospeakup@geh.nhs.uk

If, at any stage, an employee considers that the Disciplinary Policy is not being applied fairly, they are entitled to raise a grievance in accordance with the Trust's Grievance Policy.

8 Overlapping Grievance and Disciplinary Cases

If an employee raises a grievance whilst a disciplinary process is ongoing, the manager will seek advice from Human Resources to consider and decide if one of the processes should be temporarily suspended in order to deal with the other.

If the grievance and disciplinary cases are related it may be appropriate to deal with both issues

concurrently. In circumstances where grievance and disciplinary cases overlap managers must discuss the case with HR before proceeding.

9 Confidentiality

Issues of misconduct shall be treated with the highest level of confidentiality. All written documents/records (e.g. written statements, reports, minutes) and proceedings relating to matters dealt with under this policy are and must remain confidential.

Witness statements, although given in confidence, may be shared with the individual under investigation if needed to form part of the management case for a disciplinary hearing.

Where necessary redactions of statements and or investigation interview notes will be considered when information is to be shared with other parties as part of a disciplinary process. If a decision is made not to redact then the reasons for this will be recorded. Advice and guidance may be considered from the Information Governance team before a decision is made.

10 Right to Representation

All employees have a statutory right to be accompanied at any formal stage of the policy by their trade union representative, or a work colleague not acting in a legal capacity.

Prior to any meeting under the formal stages of the Disciplinary Policy, the employee must be advised of their right to representation and it shall be the responsibility of the individual employee to arrange for representation if required. Please refer to the 'Investigation process document' which provides confirmation of notice periods associated with invites to any formal meeting under this policy.

11 Disciplining Staff Side Representatives

Normal disciplinary standards apply to the conduct of Staff Side representatives as employees. If disciplinary action is considered for an accredited Staff Side representative, the representative's agreement should be sought to discuss this with a senior trade union representative or full-time trade union official.

No disciplinary action will normally be taken against the representative until the details of the case have been discussed with the appropriate Full Time Officer.

For clarity, exclusion from duty is not a disciplinary action. If exclusion of an accredited representative is being considered, every effort will be made to contact a Full Time Officer or duty officer immediately, however, it is recognised that the circumstances of exclusion mean that it will not always be possible to notify a fulltime officer until after the event.

12 Sickness Absence

If an employee or witness is on sick leave when requested to attend an investigation meeting or a disciplinary hearing, this should not automatically cause a delay. Managers must consider the nature of the illness or injury and decide whether it is reasonable to proceed with the disciplinary hearing in the circumstances.

The following options may then be implemented:

- The employee(s) will be requested to attend the hearing in person even if they are not fit for full duty. This will, however, follow consultation with the Occupational Health in the event that the employee says they are not fit to attend.
- The employee will have the opportunity to add anything to the documentation to be presented to the disciplinary hearing and if relevant to highlight any mitigating factors and the hearing will go ahead in their absence.

- In exceptional circumstances the employee will be requested to brief a work colleague or their trade union representative to attend the hearing as their representative on their behalf, and the hearing will go ahead without the individual in attendance.
- A witness statement and/or any notes of interviews will be considered or discounted in the absence of the witness.

13 Recording of Hearings and Meetings

Subject to prior agreement by both parties, disciplinary hearings and investigation meetings may be recorded for minute taking purposes. A copy of any recording produced will be made available to both parties, if requested. If a recording is made, either party may produce a transcript from the recording. If this is done, a copy of the transcript must be shared with the other party.

If the meeting or hearing is not recorded, then investigation notes of any formal meetings will be taken with a copy being provided to the individual following the meeting. Please refer to the 'Investigation process document' with regards to the expectations of when notes are to be reviewed and signed by the individual.

If the notes remained unsigned after this period of time, without any mitigating circumstances, they will be accepted as an accurate reflection of the meeting and will still be used in formal proceedings. Unsigned notes does not equate to unusable evidence.

14 Informal Action

In most cases, it will be appropriate for issues of minor misconduct to be dealt with informally rather than through the formal disciplinary policy. The authority to give informal guidance and supervisory advice is inherent in a managers' role and it is expected that this authority will be exercised wherever possible to prevent escalation of the conduct issue. Informal action is not part of the formal disciplinary policy and therefore neither party will be represented. Informal action may be referred to during subsequent formal disciplinary proceedings.

The purpose of an informal discussion is to highlight areas of concern and try to improve them. All reasonable efforts should be made to identify the cause of the problem and the appropriate support which is required to address it. It may be necessary for the manager and the individual to agree a plan in which the standards required are specified, together with a timescale and any additional support or training to be provided.

The outcome of an informal discussion should be confirmed in writing to the member of staff by the manager in the interests of clarity. It should be made clear that such informal action is not part a formal sanction under the disciplinary policy. A copy of this letter will be sent to the member of staff and a copy will be held on their personal file and will be retained for a period of 6 months.

During the discussion and within the letter, it should be made clear to the individual that continued failure to meet the required standards is likely to result in formal disciplinary action.

15 Delegated Authority to Deal with Disciplinary Matters

Executive Directors may only be disciplined or dismissed by the Chief Executive or Acting Chief Executive in their absence.

In cases where dismissal is a potential outcome of the disciplinary process, including incidents of gross misconduct, disciplinary action may be taken by senior managers at Band 8a level or above.

16 Exclusion

Consideration should be given to the implications of exclusion for the employee and to possible alternatives to exclusion, such as alternative or restricted duties, temporary redeployment etc.

When considering exclusion, advice should normally be sought from the Human Resources

Department, unless when it takes place out of hours when the exclusion must be notified to the Human Resources Department on the next working day. This is to ensure consistency across the Trust. Managers will be expected to utilise the exclusion toolkit which is included as part the Disciplinary Toolkit.

Exclusion is a neutral act, not disciplinary action, whilst an investigation takes place. Exclusion should only be used as a last resort and where necessary.

Whilst excluded, the employee must not access any Trust premises or contact any work colleagues without the specific permission of the investigating manager. This includes contact on social media and via other messenger services. It is accepted that there may be circumstances when a member of staff who has been excluded may wish to contact a colleague and such permission will not be unreasonably refused. The investigating team must be notified of this request prior to it taking place.

Any medical appointments on Trust premises should be advised to the investigating manager in advance. It is expected that the member of staff will not discuss the investigation with work colleagues. There may be circumstances where the member of staff who is excluded will wish to speak to colleagues about the investigation, for example to ask them to act as a representative at a meeting/hearing, or to call them as witnesses. In such circumstances, the member of staff should seek the prior approval of the investigating manager. No prior approval is required for the member of staff to contact staff side representatives, the Freedom to Speak Up Guardian, or to attend Occupational Health.

Employees may be excluded if the allegation is serious and:

- The continued presence of the employee constitutes a risk to patients and staff, or NHS property, or to the employee; or
- Exclusion would facilitate a full and proper investigation by management into possible serious breaches of discipline; or
- The allegation is potentially one of gross misconduct (as defined in section 21.8), in which case exclusion may be deemed the most appropriate action immediately

Managers who can exclude are those at a level of Band 8a or above (including oncall manager if out of hours). It is expected that exclusion will not take place until the manager has sought advice from their senior manager whom will discuss this with HR before a decision is made.

At this meeting, the excluding manager should ensure the following actions are taken:

- Remove the employee's swipe card and smart card (if applicable)
- Remove Trust mobile phone, laptop or other electronic devices belonging to the Trust as appropriate.
- Any other relevant equipment that may be required

These items must be kept safely during the period of the investigation. The decision may also be taken to remove remote access to NHS IT services.

The excluding manager will also, where appropriate, discuss with the individual the message that will be communicated to colleagues about the reason for their absence from work. In cases where a member of staff is temporarily moved to an alternative role, or if duties are amended or restricted, there will also be a discussion about what will be communicated to colleagues, and the way in which this will be done.

Exclusion will be confirmed in writing without delay, in line with the 'Investigation Process document'.

The letter (found in the Disciplinary Toolkit) will confirm the following:

- The effective date of the exclusion
- The reason for the exclusion
- The terms of the exclusion
- Confirmation that a full investigation will take place.

Consideration should be given to whether the employee holds any other contracts of employment with the Trust, e.g., Bank/agency contracts. Exclusion from **all** Trust contracts should also be included in the letter confirming exclusion.

The member of staff will be given a copy of this Disciplinary Policy.

Exclusion will normally be on full pay (including any regular enhancements). Pay will be worked out over an average of the previous 13 weeks. There may be circumstances where exclusion with no pay is applicable. This will be in the following circumstances:

- Their eligibility to work has expired;
- Following appointment, their eligibility to work has subsequently been found to be fraudulent;
- Mandatory professional registration has lapsed

In any other circumstances, where managers feel exclusion without pay is appropriate, the matter will be discussed with a senior member of the HR Department before action is taken.

Every attempt will be made to ensure that the period of exclusion is kept to an absolute minimum. A review of the exclusion will take place between the Investigating Manager and HR support as outlined in the 'Investigation Process document'. At each review, consideration will be given to whether the exclusion needs to continue. The Commissioning Manager will inform the staff member in writing if the exclusion will continue. This process of review also applies to members of staff who are temporarily moved to an alternative role or who have amended or restricted duties. Managers are expected to utilise the Exclusion Toolkit as part of the Disciplinary Toolkit for all reviews of exclusion.

Decisions to uplift exclusion will take place once all relevant information is gathered from the Investigating Manager. This discussion will take place between the Investigating Manager and the Commissioning Manager, in discussion with the HR Business Partner or HR other senior HR colleague, before a decision has been taken.

A member of staff may take annual leave while excluded from duty. Annual leave should be booked with the member of staff's line manager. Prior to making the request, the individual should liaise with the investigating manager to ensure that the proposed leave dates do not hinder the investigation. Requests for annual leave will not be unreasonably refused.

17 Investigation

The aim of an investigation is to establish what has happened and decide whether there is a case to answer. An investigating manager will be appointed through discussion with an appropriate senior manager, known as the Commissioning Manager, and the Human Resources Department. The investigating manager will be an individual who is objective and has not been previously involved in

the incident. The 'Investigation process document' will provide guidance on all roles and responsibilities of assigned managers within the Disciplinary Process.

The investigating manager and the Panel chair shall in no circumstances be the same person. These roles must be kept separate.

The staff member will be informed as soon as possible that an investigation is to take place, the issues that will be under investigation, and who the investigating manager will be. If this communication is given verbally, this will be followed up in writing by the commissioning manager.

During the investigation process, if further allegations come to light or there are changes to the initial allegations put forward to the employee, they will be advised in writing of the new or revised allegations and be given an opportunity to respond.

Every attempt will be made to conclude the investigation as quickly and thoroughly as possible, before memories fade. Investigating managers should endeavour to complete the process within the timeframe set out in the 'Investigation Process Document'. It is accepted that this timeframe may be extended due to the complexities of investigations. Where it is likely that the investigation will take longer than the expected timeframe, the investigating manager must communicate this to the staff member, advising them of the reasons for the delay. Throughout the investigation, the member of staff will be kept informed of the progress and the reason for any delays by the investigating manager.

An investigation will include the need to gather statements and / or interview the staff member and also any witnesses including patients/relatives, if appropriate, to establish the facts. In some cases, the staff member or witnesses may need to be interviewed on more than one occasion.

Staff may be represented at investigation interviews by their staff side representative or a work colleague, if they wish. The investigation will not be held up unreasonably due to the choice of representation and in such cases the staff member should seek alternative representation if their chosen representative is unable to attend.

Having carried out an investigation and acquainted themselves fully with the facts of the case, the Investigating manager will produce a report for the Commissioning manager, summarising the findings and conclusions and recommending either:

- That no action be taken
- That informal action is sufficient
- That a fast track disciplinary meeting can be convened
- That a disciplinary hearing is convened
- Referral is required to performance management process

The investigation report will be reviewed by the Commissioning Manager, and a decision will be made with regards to the action required based on the facts of the case. The Commissioning Manager will then write to the individual to confirm the next steps. If it is decided that a disciplinary hearing will be convened, the Commissioning manager who has reviewed the investigation will not be the Panel chair.

The purpose of this step in the process is to provide an opportunity for the investigation outcome to be reviewed by independent manager. This will help to ensure that a reasonable and thorough investigation has been undertaken before any decision is taken to progress to arranging a formal disciplinary hearing.

If the employee leaves the Trust before an investigation is complete, a decision may be taken to continue the investigation to its conclusion. The decision may also be taken to proceed to a disciplinary hearing even if an employee has also left the Trust by this time. In particular, this is relevant for those employees governed by professional codes of conduct or matters relating to criminal or of a fraudulent nature.

18 Witnesses

In order to conduct a thorough investigation the investigating manager will need to interview any witnesses to the incident(s).

Witnesses whose statements are put forward as part of a disciplinary case may be called by the investigating manager presenting the management case to attend the disciplinary hearing, if required to give evidence. It is the investigating manager's responsibility to inform management witnesses of the date and time of the hearing and ensure their attendance.

A member of staff who is the subject of a disciplinary hearing may also ask witnesses to attend. This includes management witnesses who have given statements but who have not been called to attend the hearing by the investigating manager. The member of staff must ensure that such witnesses are relevant to the allegations, either because they were present at the time of the incident or for some other reason relevant to the investigation. The member of staff must get permission from the investigating manager if they need to contact witnesses whilst they are on exclusion.

The member of staff must inform the investigating manager in advance if they intend to call witnesses. It is the staff member's responsibility to inform the panel chair of the names of the witnesses they wish to call. It is the responsibility of the member of staff to make arrangements for the witnesses to attend the disciplinary hearing. If a member of staff who has been excluded wishes to call another member of staff as a witness, they should contact the Human Resources representative on the disciplinary panel to discuss arrangements.

The Disciplinary Panel may also decide to call witnesses and the hearing may be adjourned, if necessary, so that arrangements for witnesses to attend can be made.

Witnesses may be represented or accompanied at all formal proceedings and may be invited to attend at short notice. It is expected that if witnesses are to be represented by a recognised trade union, there should be no reason for undue delay and should make alternative arrangements if their chosen representative is unable to attend on the day in question to support them.

Managers will ensure that witnesses are given sufficient time to attend investigation interviews and the Disciplinary Hearings. Sufficient time should also be given for meetings with staff side representatives. All meetings will aim to be scheduled at times that meet service needs.

During the process of the disciplinary hearing, all reasonable efforts will be made to keep witnesses separate from each other.

Witnesses may only remain in the disciplinary hearing whilst giving evidence. On completing their evidence, witnesses will leave the hearing but will remain available for recall, if necessary.

Where the witness is a patient or a member of the public, they will not be required to attend a disciplinary hearing but their written statements / interview notes may be considered at the hearing.

19 Fast Track Disciplinary Meeting

19.1 A fast track meeting is a formal meeting where a sanction can be applied based on misconduct by an employee. During the investigation process and where considered appropriate the employee may be given the opportunity to accept responsibility for the misconduct in question to opt for a quicker resolution.

In considering this option the Investigating manager must be satisfied that the following criteria is met:

- The employee has accepted the allegations made against them and taken full responsibility

for his/her actions

- The allegations are not serious enough to warrant dismissal
- The employee does not currently have a “live” written warning on their file

- 19.2 The Investigating manager will advise the employee that it is the intention to refer the case into the Fast Track Disciplinary meeting where a formal warning will be issued. If the employee agrees to the Fast Track Process, a fast track meeting will be arranged.
- 19.3 The employee will be given a notice of the meeting as per ‘Investigation process document’.
- 19.4 The meeting will be chaired by an independent manager and a HR Representative. Also present at the meeting will be the employee and their representative (optional), the Investigating manager and the HR representative whom supported the investigating manager.
- 19.5 The investigating manager will provide a brief report of the investigation to the meeting and the employee will be required to provide their reflections on the incident outlining any mitigation and lessons learnt.
- 19.6 At the conclusion of the meeting, the Chair will confirm the decision to issue a formal warning and the level of this warning unless during the course of the meeting a valid reason has arisen for not proceeding with this course of action. The warning will be dated from the date of the meeting and remain “live” in accordance with the disciplinary sanctions (up to and including final written warning) (section 21).
- 19.7 The warning will be confirmed in writing and the letter will set out the nature of the misconduct and will advise the employee that further misconduct whilst the warning is live is liable to result in further disciplinary action. After expiry of the warning the letter will remain on an employee’s file but the warning will be considered spent. The employee will have the right to appeal against this decision in accordance with appeals process, section 25).
- 19.8 If the employee does not agree to enter into the Fast Track process then a full disciplinary hearing will be convened.
- 19.9 If the employee fails to attend the Fast Track Meeting without good reason the matter will proceed to a full disciplinary hearing.

20 Disciplinary Hearing

For full details of the procedure for setting up a disciplinary hearing please see the Investigation process document.

The purpose of a disciplinary hearing is to determine the facts and to enable the panel chair manager to come to a decision as to whether formal disciplinary action is justified and, if so, at what level.

The disciplinary hearing will be chaired by the panel chair as outlined in the Investigation Process document. A representative from the Human Resources Department will be in attendance to advise the panel chair on areas of employment law and the correct interpretation of this policy. If the allegation(s) relates to professional misconduct, a representative from that profession may be appointed as an additional panel member.

The staff member will be given every opportunity to state their case. The staff member’s representative or colleague should be allowed to address the hearing to put forward and sum up the employee’s case, respond on their behalf to any views expressed during the meeting and to confer with the employee during the hearing. They do not, however, have the right to answer questions on the employee’s behalf, address the hearing if the employee does not wish it or prevent the employee

from explaining their case.

21 Disciplinary Action

The following section details the levels of formal disciplinary action which may be taken as a result of a disciplinary hearing. A disciplinary hearing can only be convened after a full investigation has taken place.

The policy allows for one or more levels of warnings to be omitted, depending on the seriousness of the allegation(s). In the case of gross misconduct the outcome would normally be summary dismissal (see section 21.6). An outcome of a disciplinary hearing could also be that no action is taken or that informal action is agreed.

Please see the Disciplinary Toolkit for support and guidance with regards to possible sanctions considered appropriate for misconduct.

21.1 Incremental Progression

Employees on Agenda for change terms and conditions who are issued with a formal warning will have their incremental date deferred for the period of the time that the warning is live. Managers will be required to complete the appropriate update on ESR for payroll to be notified

21.2 First Stage Formal Warning

A first formal warning may be given to an employee after a formal investigation and disciplinary hearing. Such a warning will normally be given in instances of minor misconduct which were not considered appropriate to be dealt with through informal action or previous informal action may have failed.

This may be appropriate where:

- failure to improve and/or the conduct or performance is sufficiently unsatisfactory;
- informal action has proved ineffective; or
- the offence warrants formal action.

Provided there have been no further incidents of misconduct, a first written warning will normally be discounted after a period of **6 months** from the date of the disciplinary hearing when it was given.

Written warnings issued as a result of a failure to register with the appropriate professional body (where registration is mandatory), shall remain on file for **a year or until successful completion of the subsequent registration plus one year**, i.e., the registration date following the one relevant to the initial warning.

21.3 Second Stage Formal Warning

Should there be a further need for disciplinary action, or for more serious breaches of discipline, a second formal warning may be issued.

A second formal warning will normally remain current for **9 months**, after which it will be disregarded for disciplinary purposes.

21.4 Final Formal Warning

Should there be a need for further disciplinary action, or for a more serious act of misconduct, a final formal warning may be issued.

This sanction may be appropriate where:

- previous warnings have failed to improve or change behaviour;
- the offence is sufficiently serious;
- a previously issued First Written Warning is still valid and further disciplinary action is warranted; and
- in exceptional circumstances, as an alternative to dismissal

Provided there have been no further incidents of misconduct, a final written warning will normally be discounted after a period of **12 months** from the date of the disciplinary hearing when it was given, subject to the employee's satisfactory conduct during the life of the warning. In exceptional circumstances a longer period may be identified. After the end of the identified period it will be disregarded for disciplinary purposes.

21.5 Action Short of Dismissal

As an alternative to dismissal, the panel chair may consider the offer of another sanction such as demotion, relocation/redeployment or loss of seniority/pay. Such action will be taken in conjunction with a final written warning. In cases where a disciplinary transfer is imposed, there is no requirement for the Trust to create a suitable alternative post, if one does not exist. If a member of staff is demoted to a post on a lower grade, pay protection will not apply. If the new role requires a new DBS check, the member of staff will be required to register with the DBS service.

21.6 Dismissal

For cases of serious misconduct or gross misconduct or for repeated breaches of discipline, an employee may be dismissed by a senior manager with the authority to dismiss (see section 14).

This sanction may be appropriate where:

- there is a failure to reach the required standard of conduct specified in previous warning(s);
- following an act of gross misconduct;
- a previously issued final formal warning is still valid and further disciplinary action is now warranted; and
- a lesser warning is still valid and the misconduct is sufficiently serious to warrant immediate recourse to this level.

Dismissal is likely to apply as a result of further incident(s) within the duration of a 'live' final written warning. These further incidents need not necessarily relate to the initial incidents. Under these circumstances contractual notice will be paid.

Confirmation of dismissal will be sent by recorded delivery and through the normal post and/or by email if an email address is provided.

In cases where an employee is dismissed, they will be given:

- Written reasons for the dismissal and the full facts on which the dismissing panel chair has based their decision
- The period of notice to which they are entitled under their contract of employment (except in cases of gross misconduct – see section 21.6) and the effective date of dismissal
- Details of the right of appeal

Following the disciplinary hearing, termination of employment will be confirmed in writing to the member of staff by the panel chair within the timescales set out on the 'Investigation process document'. A copy of the outcome letter will be placed on their personal file.

21.7 Summary Dismissal for Gross Misconduct

Gross misconduct is an act that is so serious that it fundamentally breaches the mutual trust and confidence that should exist between employee and employer and justifies the dismissal of the employee. A list of matters that are considered to be gross misconduct are outlined in section 21.7. Please note that this list is not exhaustive.

If the panel chair decides to dismiss an employee at a disciplinary hearing following a finding of gross misconduct, this will be summary dismissal. Summary dismissal is with immediate effect. The employee loses the right to any paid notice.

21.8 Example actions that may constitute gross misconduct

Gross misconduct is a serious breach of contract and includes misconduct which is likely to prejudice the Trust or its reputation or irreparably damage the working relationship and trust between the Trust and the employee.

The following are an example of potential acts of gross misconduct and is intended as a guide and is neither exclusive nor exhaustive:

- Serious breach of Trust policy;
- Theft or unauthorised possession of any property belonging to the Trust, a patient, contractor or colleague;
- Deliberate damage to Trust property, or the property of a patient, contractor or colleague;
- Fraud, forgery or other dishonesty (including falsification of reports, records, accounts, expense claims, time sheets or self-certification forms);
- Repeated or serious failure to follow reasonable instructions, or any other act of insubordination;
- Serious neglect of duties, or a serious or deliberate breach of contract or operating procedures;
- Breaching statutory rules relating to the employee's work;
- Being under the influence of alcohol, illegal drugs or other substances during working hours;
- Possession, use or supply or attempted supply of illegal drugs on Trust premises;
- Violent, dangerous or intimidatory conduct;
- Acts of unlawful discrimination or harassment of a colleague, patient or member of the public in breach of the Dignity at Work Policy;
- Causing loss damage or injury through gross negligence;
- Conviction for a criminal offence that may affect the Trust's reputation or relationships with staff, patients or the public or otherwise affects the employees suitability to continue in their employment;
- Any conduct considered likely to bring the Trust into disrepute;
- Misuse of the Trust's property or name (including posting inappropriate information on to social networking sites or on other internet sites);

- Physical violence or bullying, or behaviour which provokes violence;
- Serious or repeated breach of Health and Safety regulations and rules or serious misuse of safety equipment;
- Serious misuse of the Trust's information technology systems contrary to the Trust policy on the use of Internet and E-mail;
- Misuse of NHS resources and/or equipment;
- Unauthorised use or disclosure of confidential information or failure to ensure that confidential information is kept secure (subject to the Public Interest (Disclosure) Act 1998);
- Unauthorised use, processing or disclosure of personal data contrary to the Trust's Data Protection Policy;
- Acceptance of bribes or other secret payments;
- Accepting a gift from a patient, visitor or third party in connection with the employee's employment without prior consent from the employee's line manager;
- Refusal to disclose any of the information required by the employee's employment or any other information that may have a bearing on the performance of the employee's duties;
- Giving false information as to qualification, entitlement to work or suitability for role (including immigration status);
- Knowingly taking parental, paternity or adoption leave when not eligible to do so or for a purpose other than supporting a child;
- Making a disclosure of false or misleading information under the Freedom to Speak Up Policy maliciously, for personal gain, or otherwise in bad faith;
- Making untrue allegations in bad faith contrary to the Dignity at Work Policy.
- Victimising a colleague who has raised concerns, made a complaint or given evidence or information under the Whistleblowing Policy, Dignity at Work Policy, Grievance Procedure, Disciplinary Policy and Procedure or otherwise;
- Unauthorised entry to an area of the premises to which access is prohibited;
- Undertaking unauthorised paid or unpaid employment during the employee's working hours;
- Conduct which contravenes the standard of professional behaviour required by the employee's regulatory body;
- Wilful, careless, inappropriate or unethical behaviour likely to compromise standards of care or patient safety, or create serious dysfunction to the effective running of the service;
- Failing to give proper support to other employees, including members of staff in training.

22 Referral to Disclosure and Barring Service (DBS)/ Professional Bodies

The Trust reserves the right to notify the DBS or appropriate professional body if the investigation indicates that relevant misconduct has, or is likely to have, arisen.

23 Written Confirmation of the Outcome of a Disciplinary Hearing

The disciplinary manager will write to the member of staff following the outcome of the disciplinary hearing as outlined in the investigation process. The template letter can be found in the Disciplinary Toolkit.

Timescales associated with outcome letters will be available within the Investigation Process document.

24 Failure to Attend

If the member of staff fails to attend a disciplinary hearing with good reason, the hearing will be rearranged. The rescheduled date will normally be notified to the staff member as outlined in the 'Investigation Process document'.

If the member of staff fails to attend a rearranged hearing without good cause, the panel chair may decide to continue in the member of staff's absence.

If the investigating manager, panel chair, HR representative or staff side representative are unable to attend (for example, due to sickness) the hearing will be rearranged and a rescheduled date will be arranged. Notification to the staff member will be given. If any of these people are likely to be absent for a long period (for example due to long term sickness absence), then a replacement will be found as soon as possible.

It is expected that, except in the case of sickness or approved annual leave, a member of staff who is on paid exclusion will be available to attend a disciplinary hearing.

25 Appeals Procedure

In all cases where formal disciplinary action is taken (including Fast Track), the member of staff has the right of appeal. An appeal, giving the full grounds for the appeal, should be made in writing within the timescales outlined in the Investigation Process document. The appeal should be addressed to the next level of manager, provided that they have not previously been involved in the case as outlined below:

Sanction	Appeal to	Appeal to be heard by
First stage warning	Senior Manager next in line within the relevant service	Senior Manager next in line to the manager that issued the First stage warning and HR Representative
Second stage warning	Senior Manager next in line within the relevant service	Senior Manager next in line to the manager that issued the second stage warning and HR Representative
Final stage warning	Senior Manager next in line within the relevant service	Senior Manager next in line to the manager that issued the final stage warning and HR Representative
Dismissal/ Summary Dismissal	Associate Director of People	Director (or nominated deputy) and HR Representative

Where the case relates to professional misconduct, a representative from that profession may be appointed as an additional panel member.

Grounds of appeal should be given within the appropriate timescales; it is not sufficient just to state an intention to appeal. If the next level of manager has been previously involved, an alternative director or manager will be identified. The name of the individual to whom an appeal should be directed will be

given in the disciplinary outcome letter.

25.1 Grounds for Appeal

Requests for an appeal can only be made where the staff member believes that they have substantial grounds. These are:

- The decision taken was not within the band of reasonableness
- Inequitable treatment
- Failure to follow procedure

The letter giving the grounds for appeal should detail why the appellant considers that substantial grounds exist.

The appeal will only hear evidence around the above and, except in exceptional circumstances, will not be a re-hearing of the original disciplinary hearing.

Arrangements for the appeal hearing are included in the 'Investigation process document'.

25.2 Potential Outcomes for an Appeal

An appeal may result in the following outcomes:

- The original decision is upheld; or
- The original decision is rescinded; or
- A lower level of disciplinary sanction is administered

25.3 Employee Representation (Appeal hearing)

The appellant must attend the Appeal Hearing personally. The appellant has the right to be represented by a representative of their trade union, professional/ staff organisation or a work colleague.

25.4 Other Considerations

- **Failure of the Appellant to Attend**

Should the appellant fail to attend the hearing, without reasonable cause notified before the date of the hearing, the appeal will be deemed to have been withdrawn.

- **Inability to Attend**

Should the management representative(s), staff side representative or a member of the Appeal Panel be unable, with reasonable cause, to attend the hearing, the Appeal Panel can agree to the hearing of the appeal at a future date.

- **Witnesses**

Either the appellant or the management side may call witnesses to the Appeal Hearing.

Witnesses may only remain in the Appeal Hearing whilst giving evidence. On completing their evidence, witnesses will leave the hearing but will remain available for recall, if necessary.

26 Timescales

Please see below indicative timescales for relevant processes in line with policy. Please note, full information is included in the investigation process document.

Related Policy	Action	Responsibility	Timeframe
Disciplinary and Grievance Policy	Invite to formal meeting	Investigation Officer	Within no more than 7 calendar days' notice
Disciplinary and Grievance Policy	Rearranged invite to formal meeting	Investigation Officer	Within 5 calendar days
Disciplinary and Grievance Policy	Notes to be signed by employee and returned to Investigation team	Employee	Within 7 calendar days
Disciplinary and Grievance Policy	Commissioning manager reviewing the report for decision making	Commissioning manager	Within 7 calendar days of receiving the report
Disciplinary and Grievance Policy	Commissioning manager to advise employee of the outcome of the report	Commissioning manager	Within 5 calendar days of making the decision following the review of the report
Dignity at Work	Informal resolution or no case to answer feedback meeting offered to employee and complainant (if no meeting, see below)	Investigation Officer	Within 7 calendar days
Dignity at Work	Outcome letter to employee and complainant following feedback meeting	Investigation Officer	Within 7 calendar days
Dignity at Work	Complete the formal investigation	Investigating Officer	Within 4 weeks
Dignity at Work	Outcome letter to employee and complainant	Investigating officer	Within 7 calendar days
Dignity at Work	Review of investigation outcome	Review Panel	Within 7 calendar days
Dignity at Work	Outcome of investigation review	Review Panel	Within 7 calendar days
Disciplinary	Disciplinary Hearing invite	Investigation Officer	A minimum of 7 calendar days' notice will be given to the employee
Disciplinary	Rearranged disciplinary hearing	Investigation Officer	Within 5 calendar days
Disciplinary	Management case provided to employee	Investigation Officer	A minimum of 7 calendar days' notice will be given to the employee (emailed directly to work email address if within work)
Disciplinary	Staff side statement of case	Employee	No less than 5 calendar days prior to the hearing date
Disciplinary	Witnesses on behalf of staff side	Employee	Employee must inform chair of the panel no less than 3 calendar days prior to the hearing
Disciplinary	Outcome of hearing letter	Chair of panel	To be sent from the Chair to the employee within 7 calendar days of the hearing taking place
Disciplinary	Reconvened hearing date	Chair of panel	No less than 7 calendar days' notice
Disciplinary &	Grounds of appeal to be	Employee	Within 10 calendar days of

Grievance	submitted by employees		the date of the outcome letter
All	Acknowledge receipt of appeal letter and grounds of appeal from appellant	Appeal Chair	Within 5 calendar days of receipt
Disciplinary	Provide management response to appeal from appellant	Appeal Chair	No less than 5 calendar days prior to the appeal hearing
Disciplinary	Invite to appeal hearing	Appeal Chair	Provide no less than 5 calendar days' notice of the hearing
Disciplinary	Failure to attend to appeal hearing from appellant with no notification prior	Employee	Will receive a letter from Appeal Chair advising them that the Trust accept the withdrawal of their appeal
Disciplinary	Reasonable cause for non-attendance at the appeal hearing from all attendees	Appeal Chair	Date will be rearranged within 4 weeks
Disciplinary	Outcome of appeal hearing	Appeal Chair	Within 7 calendar days of the date of the hearing taking place.

27 Training

Training is available from the Human Resources Department for Investigating Managers and Panel Chairs. Investigating Managers and Panel Chairs should not normally undertake an investigation or hear a case without undertaking this training or, in the absence of training, without guidance from the Human Resources Department.

28 Monitoring Compliance

The HR Department will ensure that the key processes set out in this document are audited. The results will be fed back JNC committee.

The Human Resources Department will maintain a record of all disciplinary investigations and formal disciplinary hearings held under this policy, to ensure that it is applied fairly and consistently. The policy will be reviewed 5 years after implementation, or earlier if issues are raised in relation to its effectiveness.

29 Dissemination

Each member of staff is responsible for maintaining up-to-date awareness of existing policies, and for adhering to those policies in the course of their daily work.

All new staff joining the Trust should be made aware through their line management of all current Trust-wide documents and directorate documents relevant to them.

30 Implementation

The policy will be available on the Trust intranet site in the master Policy library.

A Trust wide e-mail will be issued to all staff to inform them that the document has been reviewed.

31 Document Control / Archiving

The document will be managed as per the process described within the Trust's Policy for the Development and Management of Controlled Documents.

This policy will be reviewed at the date specified or earlier if circumstances dictate. This document will be included on the Trust intranet site under the Master Policy Library”.

32 Monitoring Table

Aspect of compliance or effectiveness being monitored	Monitoring method	Individual or department responsible for the monitoring	Frequency of the monitoring activity	Group/ committee/ forum which will receive the findings/monitoring report	Committee/ individual responsible for ensuring that the actions are completed
Ensuring that Managers and Staff follow the appropriate process in dealing with concerns regarding discipline and conduct.	Review of the disciplinary process.	HR	Annual	JNC	JNC

33 GEH Associated Records and References

- Sickness absence Policy
- Performance Management Policy and Procedure
- Professional Registration Policy
- Data Protection Policy
- Disciplinary and Management of Performance Policy for Medical and Dental Staff
- Freedom to Speak Up Policy
- Safeguarding children policy
- Safeguarding adults policy

Advisory, Conciliation and Arbitration Service (2015) *Code of Practice on Discipline and Grievance Procedures*. Available at: <https://www.acas.org.uk/acas-code-of-practice-for-disciplinary-and-grievance-procedures/html> (Accessed: 1 June 2020).

NHS Staff Council (2016) *NHS Terms and Conditions of Service Handbook: Annex 26: Managing sickness absences - developing local policies and procedures*. Available at: <http://www.nhsemployers.org/tchandbook/annex-26-to-29/annex-26-managing-sickness-absences> (Accessed: 1 June 2020).

NHS Staff Council (2019) *NHS Terms and Conditions of Service Handbook: Annex 27: Principles and best practice of partnership working*. Available at: <https://www.nhsemployers.org/tchandbook/annex-26-to-29/annex-27-principles-and-best-practice-of-partnership-working> (Accessed: 1 June 2020).

Agenda for Change Terms and Conditions now included in general NHS Terms and Conditions of Service- see reference below:

NHS Staff Council (2019) *Terms and conditions of service handbook*. Available at: <https://www.nhsemployers.org/tchandbook> (Accessed: 3 June 2020).

Public Interest Disclosure Act 1998, c. 23. Available at: <http://www.legislation.gov.uk/ukpga/1998/23/contents> (Accessed: 3 June 2020).

Trade Union and Labour Relations (Consolidation) Act 1992, c. 52. Available at: <http://www.legislation.gov.uk/ukpga/1992/52/contents> (Accessed: 1 June 2020).

34 Staff Compliance Statement

All staff must comply with the Trust-wide controlled document and failure to do so maybe considered a disciplinary matter leading to action being taken under the Trust's Disciplinary Policy.

Actions which constitute breach of confidence, fraud, misuse of NHS resources or illegal activity will be treated as serious misconduct and may result in dismissal from employment and may in addition lead to other legal action against individual concerned.

35 Equality and Diversity Statement

The Trust aims to design and implement services, policies and measures that meet the diverse needs of the needs of our service, population and workforce, ensuring that none are placed at a disadvantage over others.

Equality Impact Assessment Tool

To be completed and attached to any procedural document when submitted to the appropriate Committee for consideration and approval.

		Yes/No	Comments
1.	Does the document/guidance affect one group less or more favourably than another on the basis of:		
	• Race	No	
	• Ethnic origins (including gypsies and travellers)	No	
	• Nationality	No	
	• Gender	No	
	• Culture	No	
	• Religion or belief	No	
	• Sexual orientation including lesbian, gay and bisexual people	No	
	• Age	No	
	• Disability - learning disabilities, physical disability, sensory impairment and mental health problems	No	
2.	Is there any evidence that some groups are affected differently?	No	
3.	If you have identified potential discrimination, are there any exceptions valid, legal and/or justifiable?	N/A	
4.	Is the impact of the document/guidance likely to be negative?	No	
5.	If so, can the impact be avoided?	N/A	
6.	What alternative is there to achieving the document/guidance without the impact?		
7.	Can we reduce the impact by taking different action?		

If you have identified a potential discriminatory impact of this procedural document, please refer it to Associate Director of People, together with any suggestions as to the action required to avoid/reduce this impact.

For advice in respect of answering the above questions, please contact a member of the HR Department.