

Meeting Title	Board of Directors		
Date	18th March 2021	Agenda item	Bo.3.21.12

Improving People Practices – Disciplinary Procedures

Presented by	Pat Campbell, Director of HR		
Author	Pat Campbell, Director of HR / Faeem Lal, Associate Director of HR		
Lead Director	Pat Campbell, Director of HR		
Purpose of the paper	To present an overview of the Trust's position against the seven recommendations from the independent review		
Key control	To be in the top 20% of NHS employers		
Action required	For approval		
Previously discussed at/ informed by			
Previously approved at:	Academy/Group	Date	
	People Academy	27 th January 2021	

Key Options, Issues and Risks

Following discussion at the People Academy this paper presents the Board of Directors with a position statement against the seven recommendations that fell from the independent review of disciplinary practices following the death of an NHS member of staff from a London Trust in 2016.

The goal is to enable a fair and compassionate culture in the NHS which requires a reflection of how we all manage disciplinary cases.

Analysis

The Trust has reviewed our disciplinary procedure and practices and had a detailed discussion at our January People Academy. The HR department have also explored best practice with our staff side.

Our data for the period December 2019 to November 2020 showed that we had 48 cases which progressed to a formal investigation under our disciplinary procedure with 32 cases progressing to a formal hearing. Of those that progressed to a formal hearing 11 were issued with a verbal warning which is the lowest level sanction. Whilst we are in line with our peers on the numbers of employee relations cases we have the number of cases not progressing to a formal hearing or subsequently receiving a verbal warning suggests the need for us to strengthen the decision making at the outset when an allegation is first made. Our policy is being revised in this regard.

Other priorities of action were discussed and agreed at People Academy and are identified in the conclusion of the report.

Recommendation

The Board of Directors are asked to:

- I. Agree with the areas for action which will result in a revised disciplinary procedure agreed in partnership with our staff side which will be in place by 30th June 2021.
- II. Agree the proposals around strengthening Board level oversight.
- III. Note that the Disciplinary Procedure will be published on our public website.

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Risk assessment						
Strategic Objective	Appetite (G)					
	Avoid	Minimal	Cautious	Open	Seek	Mature
To provide outstanding care for patients			g			
To deliver our financial plan and key performance targets			g			
To be in the top 20% of NHS employers					g	
To be a continually learning organisation				g		
To collaborate effectively with local and regional partners					g	
The level of risk against each objective should be indicated. Where more than one option is available the level of risk of each option against each element should be indicated by numbering each option and showing numbers in the boxes.	Low		Moderate	High	Significant	
	Risk (*)					
Explanation of variance from Board of Directors Agreed General risk appetite (G)						

Benchmarking implications (see section 4 for details)	Yes	No	N/A
Is there Model Hospital data relevant to the content of this paper?	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Is there any other national benchmarking data relevant to the content of this paper?	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Is the Trust an outlier (positive or negative) for any benchmarking data relevant to the content of this paper?	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>

Risk Implications (see section 5 for details)	Yes	No
Corporate Risk register and/or Board Assurance Framework Amendments	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Quality implications	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Resource implications	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Legal/regulatory implications	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Diversity and Inclusion implications	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Performance Implications	<input type="checkbox"/>	<input checked="" type="checkbox"/>

Regulation, Legislation and Compliance relevance
NHS Improvement: (please tick those that are relevant)
<input type="checkbox"/> Risk Assessment Framework <input type="checkbox"/> Quality Governance Framework <input type="checkbox"/> Code of Governance <input type="checkbox"/> Annual Reporting Manual
Care Quality Commission Domain: Well Led
Care Quality Commission Fundamental Standard: Staffing
NHS Improvement Effective Use of Resources: People
Other (please state):

Relevance to other Board of Director's academies: (please select all that apply)
People <input checked="" type="checkbox"/> Quality <input type="checkbox"/> Finance & Performance <input type="checkbox"/> Other (please state) <input type="checkbox"/>

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Background

In May 2019 all Trusts received correspondence from Baroness Dido Harding, NHSI/E Chair to inform them of an independent review of people practices in relation to the death of a nurse, Amin Abdullah. Amin was the subject of an investigation and disciplinary procedure at a London Trust which culminated in his summary dismissal. Whilst awaiting appeal he took his own life. An independent inquiry was launched into the circumstances of the case.

Following the 2019 letter the HR department with our staff side colleagues held a shared learning event facilitated by one of our employer lawyers which led to an interim review of our policy.

On 1st December 2020 Prerana Issar, NHS Chief People Officer, wrote to all Trusts referencing the seven recommendations for Trusts to consider in reviewing their policies and practices and ensuring that they are inclusive, compassionate and people-centred with health and wellbeing being paramount.

The letter requested that Trusts identify where action is required, review on an annual basis and ensure formal discussion at a Public Board Meeting. It is also suggested that the Trust's Disciplinary Policy be made available on the Trust website.

As part of the review we undertook an analysis of our disciplinary procedures by gender and ethnicity and this is attached at Appendix 3. An updated version is attached at Appendix 4. Board members are asked to note that Appendices 3 and 4 are exempt from publication under the Freedom of Information Act as the low number of cases within each category could potentially make this information identifiable for particular individuals.

The People Academy had a detailed debate at its January meeting and the following represents our position against each of the seven recommendations and areas for further action.

The Seven Recommendations from the Independent Review

1) Adhering to best practice

- a) The development and application of local investigation and disciplinary procedures should be informed and underpinned by the provisions of current best practice, principally that which is detailed in the ACAS 'code of practice on disciplinary and grievance procedures' and other non-statutory ACAS guidance; the GMC's 'principles of a good investigation'; and the NMC's 'best practice guidance on local investigations' (updated 02.02.21).
- b) All measures should be taken to ensure that complete independence and objectivity is maintained at every stage of an investigation and disciplinary procedure, and that identified or perceived conflicts of interest are acknowledged and appropriately mitigated (this may require the sourcing of independent external advice and expertise).

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Bradford Teaching Hospitals Position:

The Trust's Disciplinary Policy and Procedure is based on the ACAS Code of Practice and other non-statutory ACAS guidance. The Policy goes further and takes account of best practice principles from a number of bodies including the CIPD which is the recognised registered body for HR professionals.

Our Doctors' Disciplinary Procedure is in line with the nationally agreed 'Maintaining High Professional Standards in the NHS' (MHPS) and has been reviewed by our lawyers. Both policies have been subject to consultation and negotiation with our JNCC and LNC.

As a matter of principle all investigating officers, commissioning managers and panel members are chosen on the basis that they have no previous involvement in a case or conflict of interest. In order to ensure complete independence in sensitive cases the Trust has used investigators from other Trusts or from an independent company. This would be agreed by the Associate Director of HR in consultation with the Director of HR.

As part of the work of the Deputy HR Director Network and Regional BAME Network the HR team are exploring the establishment of a reference panel to review closed disciplinary cases against metrics to be agreed.

2) Applying a rigorous decision-making methodology

- a) Consistent with the application of 'just culture' principles, which recognise that it is not always appropriate or necessary to invoke formal management action in response to a concern or incident, a comprehensive and consistent decision-making methodology should be applied that provides for full and careful consideration of context and prevailing factors when determining next steps.
- b) In all decision-making that relates to the application of sanctions, the principle of plurality should be adopted, such that important decisions which have potentially serious consequences are very well informed, reviewed from multiple perspectives, and never taken by one person alone.

Bradford Teaching Hospitals Position:

The Trust's Disciplinary Policy encourages issues to be resolved at the lowest possible level. The Trust's Personal Responsibility Framework (PRF) sets a framework for a shared responsibility by the employee and employer regarding expectations of behaviour and accountability to enable the development of a blame free culture. When things go wrong the PRF is intended as an alternative means to address concerns and minor misconduct issues. The number of cases however (33%) which did not progress to a formal disciplinary hearing suggests that the PRF is not being used consistently across the organisation. The Trust intends to relaunch the PRF and strengthen the disciplinary procedure to ensure an initial fact finding investigation is undertaken to determine whether there is evidence to escalate into a formal process or whether informal action would be more appropriate. This would align our policy more closely to our Doctors' Disciplinary Procedure. This approach has been agreed in principle by staff side. The most recent benchmarking data on model hospital is 2018/19 where the Trust was in line with the peer median of having 12 disciplinary cases per 1,000 employees with 14 cases being the national median.

The Trust will also use the Just Culture Guide consistently to inform decision making building on the success of our approach to managing drug errors.

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The Trust's policy is clear that in the application of sanctions no one manager would make a decision alone. They will always have a HR representative advising them and a professional advisor dependent on the nature of the case.

3) Ensuring people are fully trained and competent to carry out their role

Individuals should not be appointed as case managers, case investigators or panel members unless they have received related up to date training and, through such training, are able to demonstrate the aptitude and competencies (in areas such as awareness of relevant aspects of best practice and principles of natural justice, and appreciation of race and cultural considerations) required to undertake these roles.

Bradford Teaching Hospitals Position:

All investigating officers are supported by a qualified HR member of staff and advice provided throughout the process. We have previously commissioned training of investigators and have a pool of people we can use but this is an area we need to expand ensuring we have a representative group of investigators. As part of our management development a training package is being designed which we will expect all our managers who may be asked to be investigators or hear cases to attend. This will include training on unconscious bias. The intent will be to deliver this in partnership with our legal advisors and also provide training to the HR team. Training for Board members who sit on appeal panels is also being organised.

4) Assigning sufficient resources

Before commencing investigation and disciplinary procedures, appointed case managers, case investigators and other individuals charged with specific responsibilities should be provided with the resources that will fully support the timely and thorough completion of these procedures. Within the overall context of 'resourcing', the extent to which individuals charged with such responsibilities (especially members of disciplinary panels) are truly independent should also be considered.

Bradford Teaching Hospitals Position:

The disciplinary procedure states that the investigating manager must undertake the investigation without delay and ensure it is prioritised. There is no time limit in the Policy but Investigators should strive to complete within four weeks of appointment and submit the investigatory report within a further week. If an investigation is not concluded within four weeks a written progress report is required and a timescale should be agreed between the Investigator and the Commissioning Manager. Timescales are managed tightly in medical and dental cases but there is scope for improvement in non-medical cases. In the main Investigating Officers undertake this work in addition to their substantive role which can result in extended investigation timeframes. The Policy review will strengthen the need for an allocation of time to be agreed by the Investigating Manager with their line manager, and for the HR Business Partner to be proactively managing cases in their areas with escalation to the Director of HR when investigations are not completed within eight weeks. Every care is taken to ensure investigators or panel members have had no previous involvement in a case.

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5) Decisions relating to the implementation of suspensions/exclusions

Any decision to suspend/exclude an individual should not be taken by one person alone, or by anyone who has an identified or perceived conflict of interest. Except where immediate safety or security issues prevail, any decision to suspend/exclude should be a measure of last resort that is proportionate, time bound and only applied when there is full justification for doing so. The continued suspension/exclusion of any individual should be subject to appropriate senior-level oversight and sanction.

Bradford Teaching Hospitals' policy in this regard is strong and we are confident that suspension is carried out as a last resort. For medical and dental staff the Chief Executive, Chief Medical Officer and Director of HR are involved in any exclusion decision. The Chief Nurse in the cases of nurses and midwives and AHPs, and the Director of HR for all other staff groups must authorise any decision to suspend before it is carried out.

6) Safeguarding people's health and wellbeing

- a) Concern for the health and welfare of people involved in investigation and disciplinary procedures should be paramount and continually assessed. Appropriate professional occupational health assessments and intervention should be made available to any person who either requests or is identified as requiring such support.
- b) A communication plan should be established with people who are the subject of an investigation or disciplinary procedure, with the plan forming part of the associated terms of reference. The underlying principle should be that all communication, in whatever form it takes, is timely; comprehensive; unambiguous; sensitive; and compassionate.
- c) Where a person who is the subject of an investigation or disciplinary procedure suffers any form of serious harm, whether physical or mental, this should be treated as a 'never event' which therefore is the subject of an immediate independent investigation commissioned and received by the board. Further, prompt action should be taken in response to the identified harm and its causes.

Bradford Teaching Hospitals Position:

At the outset of an investigation a meeting is held with the member of staff to advise of the reason for the investigation, the timescale and the terms of reference. A communication plan should be agreed with the member of staff and they should be signposted to health and wellbeing support and a formal referral to Occupational Health offered and made if necessary. If a member of staff is not represented by a Trade Union representative they will be signposted to the Staff Advocacy Service or to a Staff Network Representative. A wellbeing support leaflet is being developed which will be issued to all staff undergoing an investigation or under suspension. If any individuals under investigation suffer serious harm an immediate investigation would be undertaken.

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7) Board level oversight

Mechanisms should be established by which comprehensive data relating to investigation and disciplinary procedures is collated, recorded, and regularly and openly reported at board level. Associated data collation and reporting should include, for example: numbers of procedures; reasons for those procedures; adherence to process; justification for any suspensions/exclusions; decision-making relating to outcomes; impact on patient care and employees; and lessons learnt.

Bradford Teaching Hospitals Position:

The Director of HR has oversight of data relating to disciplinary procedures and processes. The Chief Medical Officer manages cases in relation to medical and dental staff with the Chief Nurse having an overview of nursing and midwifery cases.

The Board (Closed) receives reports on a four weekly basis of any doctor who is excluded as per the requirements of MHPS. This takes the form of a summary of the progress in each case and a statistical summary. It is proposed that to strengthen the Board level oversight this report is extended to include all suspensions. The Director of HR will also provide an annual report on disciplinary cases broken down by protected characteristics to the People Academy which will then be shared with the Board of Directors.

Analysis

The People Academy reviewed data for disciplinary cases for 2020 which is included at Appendix 3. The data showed that we had a total of 48 cases which progressed to a formal investigation under the disciplinary procedure with 32 cases progressing to a formal hearing. Of those cases that progressed to a formal hearing 11 ended up with a verbal warning (a third of cases), the lowest level sanction. This has demonstrated the need to instate a fact finding investigation at the outset of the process (as per the Doctors' disciplinary process) to strengthen the decision making at the beginning of an investigation and with HR support determine if the PRF can be used, or informal action. This means a freeing up of time of Investigating Managers and reduction in stress for the employee and witnesses having to undergo a formal investigation. Training for managers and staff will be around civility and respect in the workplace and tackling behavioural issues as they arise.

Conclusion

The HR team continue to review our people practices in line with our People Strategy and the NHS People Plan and in partnership with our staff side colleagues. Key actions agreed at People Academy to take forward as referenced through this paper are:

- Training for investigators and panel members.
- Strengthening the timeliness around investigation completion.
- Strengthening the use of informal action/use of Just Culture principles.
- Review of health and wellbeing support with a wellbeing support leaflet developed.

Other issues being explored are a process for debriefs in particular following appeal hearings and the need to enhance our pool of mediators..

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Meetings are already in place with our staff side to take these actions forward and agree revisions to our Disciplinary Policy and Procedures.

Recommendation

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- I. Agree with the areas for action which will result in a revised disciplinary procedure which will be in place by 30th June 2021.
- II. Agree the proposals around strengthening Board level oversight.
- III. Note that the Disciplinary Procedure will be published on our public website.