



**Bradford Teaching Hospitals**  
NHS Foundation Trust

## **DISCIPLINARY POLICY AND PROCEDURE**

## Document Control

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Target audience	BTHFT Staff
Summary	<p>This policy is intended to provide guidance on:</p> <ul style="list-style-type: none"> <li>The process that 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 standard of work and/or conduct.</li> <li>The procedure is produced in line with the duties imposed by legislation and recognised good practice, as detailed by the Advisory, Conciliation and Arbitration Service (ACAS).</li> </ul>
Changes since last revision	<ul style="list-style-type: none"> <li>- Incorporation of the Just Culture Approach and adaption within the Trust.</li> <li>- Before commissioning an investigation the commissioning manager should ensure a fact finding exercise has been carried out.</li> <li>- Inclusion and reference of the Trust's People Charter.</li> <li>- To ensure investigative officers assigned from their area to undertake investigations as part of this policy are provided protected time to ensure the process is completed within the timescales laid down in this policy.</li> <li>- If an employee is suspended, the situation will be reviewed fortnightly instead of monthly, for the duration of the investigation to ensure both the suspension from work or limitations are still appropriate.</li> <li>- Where an employee who is the subject of the allegations is called to an investigation meeting, they will be given a minimum of 3 working days' notice in writing informing them of details of the allegations against them.</li> <li>- Inclusion of Appendix 2,3 &amp; 5, which highlight the People Charter, Just Culture Guidelines and Terms of Reference document.</li> </ul>
Monitoring arrangements	<ul style="list-style-type: none"> <li>- Monthly provision of data for HR Metrics to CSU's.</li> <li>- Quarterly reporting to the Executive Team of Disciplinary data, including gender and ethnicity plus summary of Suspensions.</li> <li>- Annual audit by the corporate governance team of the ratification process, control of documents and process for the management of documents.</li> </ul>
Training requirements	Any advice can be provided by the HR Department

Equality Impact Assessment	This Policy was assessed in February 2024
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## **SECTION A - POLICY**

### **1 Introduction**

- 1.1 At Bradford Teaching Hospitals NHS Foundation Trust (hereinafter referred to as the Foundation Trust) our vision is to be an outstanding provider of healthcare, research and education and a great place to work.
- 1.2 Our People Strategy outlines the need to develop a modern workforce with the skills, flexibilities, values and behaviours to deliver new models of healthcare, to enable the delivery of our transformation programme and support the delivery of our overall Trust priorities. The NHS People Plan is about delivering more people, working differently, in a compassionate and inclusive culture.
- 1.3 The Foundation Trust recognises the need for our people to be managed in a manner which is supportive, consistent, just and fair. We also recognise that our people need to be aware of the standards of conduct expected of them during their employment, and the consequences of failing to meet these standards of conduct.
- 1.4 This policy and procedure is designed to facilitate and encourage all employees to maintain acceptable standards of conduct, whilst safeguarding the interests of the Foundation Trust, its patients, clients and all our people.
- 1.5 The Trust has adopted a Just Culture approach which is based on the Just and Learning Culture credited to the Mersey Care Foundation Trust. Just Culture is centred on the desire to create an environment where staff feel supported and empowered to learn when things do not go as expected, rather than feeling blamed. This is a culture that instinctively asks in the case of an adverse event: “what was responsible, not who is responsible”. It is not about finger pointing and not blame-seeking. But it is not the same as an uncritically tolerant culture where anything goes that would be as inexcusable as a blame culture. When something does go wrong we should look to learn from the event or incident. In circumstances where there is a need to follow the formal stages of this policy we should aim to conclude our processes as quickly as possible and ensure that any member of staff who is subject to allegations is supported to ensure their wellbeing.
- 1.6 This policy and procedure also outlines the process that 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 standard of work and/or conduct.
- 1.7 The procedure is produced in line with the duties imposed by legislation and recognised good practice, as detailed by the Advisory, Conciliation and Arbitration Service (ACAS).

### **2 Scope of the Policy and Procedure**

- 2.1 This policy and procedure applies equally to all employees employed within the Foundation Trust.
- 2.2 Where there are external statutory or other provisions affecting Foundation Trust employees (e.g. the Nurses, Midwives and Health Visitors Act 1979) these must be taken into account where appropriate when disciplinary action is taken. For Doctors and Dentists the Disciplinary, Capability, Ill Health & Appeals Policy and Procedure for Doctors & Dentists applies which implements the National Policy Framework (Maintaining High Professional Standards in the Modern NHS).

- 2.3 Management of Attendance / Performance Improvement / Harassment and Bullying - this procedure is not to be used for dealing with management of attendance, or performance improvement or harassment and bullying issues which must be dealt with in accordance with the appropriate policy/procedure.
- 2.4 The Foundation Trust's Our People Charter (see Appendix 2) sets a framework for a shared responsibility by the employee and the employer regarding expectations of behaviour and accountability. Its aim is to enable the development of a blame free culture of civility which aligns personal responsibility with actions required by employees to create a culture of civility and to reduce the need to resort to formal procedures and to improving the relationship between employer and employee in relation to trust and confidence.
- 2.5 Where things do go wrong the Our People Charter should be used with the Just Culture guide [(see Appendix 3)] as an alternative means to address concerns and more minor misdemeanours, allowing a more positive approach to achieving improved behaviour and/or standards of conduct. It also recognises that at times there may be a significant system or organisational failure that has contributed to the incident/error which will need to be considered.
- 2.6 The Just Culture approach is not designed to negate or remove the use of formal BTHFT policies and procedures where it is appropriate to do so and with any concern, incident, allegation or error an investigation may still be undertaken. However, in the case of allegations of serious/gross misconduct it is appropriate to initially follow this Policy and Procedure in terms of investigation whilst recognising that at any point in the decision making the Just Culture approach could still be used/ reverted to if all parties agree.
- 2.7 Staff Side Representatives can approach managers prior to or at the end of a formal investigation to discuss if their members wish to accept personal responsibility and if resolution can be reached without resorting to a formal hearing but managers reserve the right to apply formal procedures if there is appropriate evidence to support the decision. HR advice should always be taken.

### **3 Policy Statement and Purpose**

- 3.1 To promote improvement in individual conduct and not simply to be a means of imposing sanctions. Wherever possible the formal procedure should be used only when informal avenues have been exhausted or when an action or situation is sufficiently serious for formal action to be required.
- 3.2 To ensure that employees are made aware of the standards of conduct expected of them.
- 3.3 To promote fairness and consistency in the treatment of individuals for alleged failures and to help them meet the required standards of conduct.
- 3.4 To give ample warning to individuals of the consequences of failing to achieve standards.
- 3.5 To guide managers and supervisors in day to day dealings with employees.
- 3.6 To provide for full and speedy consideration by management of all the relevant facts, in order that disciplinary action can be applied equitably.
- 3.7 The principles of the procedure are to:-
- Adopt a Just Culture approach in dealing with untoward incidents

- Avoid taking a punitive approach when dealing with mistakes and errors where possible as outlined in Appendix 3
- Utilise incidents as the basis to learn and adapt practice
- allow for matters to be dealt within designated timescales without undue delay and in a confidential manner ensuring the management of risk
- inform employees of their right to be accompanied at the earliest opportunity
- inform employees of the complaints against them and provide supporting evidence as part of the investigation
- inform employees what disciplinary action might be taken
- outline the levels of authority management have when taking disciplinary action
- advise management to investigate fully before any disciplinary action is taken
- allow employees to have their say before management reaches a decision
- other than for gross misconduct or an offence of serious misconduct which also warrants dismissal, no employee shall be dismissed for a first breach of discipline
- ensure that employees are given an explanation for any sanction
- offers an employee a right of appeal against a decision
- ensure that employees are provided with details of expected changes in behaviour/conduct in the future

## **4 Roles and Responsibilities**

### **4.1 Chief Executive**

The Chief Executive has overall responsibility for ensuring compliance with this policy.

### **4.2 Director of Human Resources**

The Director of Human Resources is responsible for ensuring that the policy is reviewed and disseminated throughout the organisation. This includes ensuring that appropriate training is developed for line managers and that appropriate HR support is provided to line managers in dealing with disciplinary matters.

### **4.3 All employees will endeavour to conduct themselves in a professional manner and act as advocates of the Foundation Trust at all times. All employees will also comply with the procedures and rules set out in this policy. All employees will ensure they are familiar with the behavioural expectations of the Foundation Trust and be aware of the consequences of failing to meet these expectations. All employees have a responsibility to report to their line manager any conduct they witness which may be deemed unacceptable.**

### **4.4 Deputy Directors of Operations/Directors of Nursing and equivalent**

Should ensure investigative officers assigned from their area to undertake investigations as part of this policy are provided protected time to ensure the process is completed within the timescales laid down in this policy. The appropriateness of the investigator should be agreed with the HR Manager or HR Business Partner for the service.

Should ensure they approve the use of the trained investigative officer pool to ensure the process is completed within the timescales laid down in this policy. The lead investigator should not be from the same service as the individual subject to the investigation. The investigate may be from another service or team within the same CSU or Department, for example a Cleaning Services Manager may undertake an investigation in the Portering service.

The investigation terms of reference template (Appendix 5) requires approval at this level prior to commencement of an investigation. To ensure timely commencement

of the investigation, approval should be given by the commissioning manager within 2 working days upon receipt of the template.

- 4.5 **All Managers** will set an example to those they manage by conducting themselves professionally at all times and providing compassionate and inclusive leadership. Managers will help employees achieve the standards required and provide timely feedback if standards fall short. Managers will consider dealing with minor breaches of conduct informally in all cases as per para 2.5. Where it is felt necessary to proceed formally, line managers will investigate thoroughly any alleged incident of misconduct and comply with the procedures as set out in this document. Managers will seek the advice of the appropriate Human Resources (HR) Manager before undertaking any disciplinary investigation. Managers will ensure consistency in their approach to all allegations of misconduct, and will particularly bear in mind the equality statement in section 17.1 of this document.

Managers assigned to carry out both preliminary and formal investigations should ensure they are carried out thoroughly within the allotted timescales.

- 4.6 **Human Resources** will provide advice to managers on the application of employment law and policy in terms of investigations, disciplinary hearings and appeals, and will assist the nominated manager when making decisions on the outcome of disciplinary or appeals hearings. HR Managers will ensure that decisions taken do not knowingly place the Foundation Trust in legal jeopardy under current legislation. They also seek to ensure that consistency is applied in cases that are similar in context and that high standards of acceptable employment practices are maintained. HR Managers will be required to challenge the decisions of managers in terms of any action taken in line with the policy to ensure it is consistent, appropriate, and non-discriminatory.
- 4.7 **Staff Side Representatives** will provide support and advice to employees in facilitating the policy. Staff side representatives will represent employees in the workplace at formal meetings and hearings under this policy at the request of the employee. Staff side will work in partnership with Managers and HR representatives to ensure employees are treated fairly and consistently. Staff side representatives attending any meeting within this policy must be from a union recognised in line with the Foundation Trust's Recognition Agreement. A list of these trade unions can be found in section 1.2 of the Foundation Trust Policy on Facilities for Staff Organisations.

## **5 Applying this Policy and Procedure to Staff Organisation Representatives**

- 5.1 Should it be necessary to apply this procedure to an accredited representative of a staff organisation then the full time officer of the organisation concerned must be notified before any action is taken.

## **6 Criminal Offences**

- 6.1 Criminal offences outside employment should not be treated as automatic reasons for dismissal regardless of whether the offence has any relevance to the duties of the individual as an employee. The main consideration should be whether the offence is one that makes the individual unsuitable for his or her type of work or unacceptable to other employees. Any decision on this matter must be taken by the appropriate General Manager/ Senior General Manager/ Deputy Director of Operations/ Deputy Director of Nursing/ Director of Nursing or above in conjunction with the appropriate HR Manager. Where the employee is a registrant the Chief Medical Officer or Chief Nurse should always be notified.



- 6.2 Employees should not be dismissed solely because a charge against them is pending, or because they are absent through being remanded in custody. Where an employee has been charged with a criminal offence and the conduct requires prompt attention, there is no requirement to await the outcome of the prosecution before taking fair and reasonable action, in accordance with this policy and procedure.
- 6.3 Suspicions of Fraud and Corruption (including Bribery). In cases where fraud or corruption (including bribery) is suspected, any disciplinary investigation can only be commenced after the line manager and/or a member of the HR team have had an initial discussion with the Foundation Trust's Counter Fraud Specialist.

## **SECTION B - PROCEDURE**

### **7 Informal Discussions**

- 7.1 Managers are encouraged to hold informal discussions with employees relating to their conduct. Our People Charter and the Just Culture guide are useful documents to frame the discussions. See Appendix 2 and Appendix 3.
- 7.2 Such discussions represent the first attempt to help an employee, and may indicate a training need or organisational defect. There is no formal right to be accompanied at this stage although the manager may permit the employee to be accompanied if they believe the matter to be of a nature that requires support.
- 7.3 Unless persistent, minor breaches of discipline are usually best dealt with on an informal basis by the employee's immediate line manager. The use of the Our People Charter would be an appropriate means of addressing minor misdemeanours in the first instance with an action plan agreed to assist individuals in achieving the required improvement.
- 7.4 Only where this fails to bring about the desired improvement, or the matter being dealt with cannot be resolved through informal means or is sufficiently serious, should the formal disciplinary procedures be implemented.
- 7.5 A brief record of the informal discussion and agreed actions should be kept on the employee's personal file. The record would remain in force for 3 to 6 months depending on the circumstances. Please refer to the management toolkit for the template to be used to record the informal discussion and other relevant documentation. Please refer to the examples given in the toolkit to ensure a consistent approach is taken when recording informal discussions.

### **8 Suspension from Work**

- 8.1 Suspension from work should be a last resort that is proportionate in the circumstances having first considered other mechanisms for removing risk i.e. transfer to another area of work / department or restricting duties pending the investigation. However, there are certain circumstances where an individual will need to be suspended from work whilst an investigation is carried out.

These circumstances include:

- where the allegation is gross misconduct and remaining in the workplace poses significant risk to the employee, his / her colleagues / members of the public or Foundation Trust property
- where the presence of the employee at work could hinder the investigation process

- Please refer to examples of when suspension may be appropriate (Appendix 3b). These examples are intended to ensure a consistent approach is taken when suspension is considered.

- 8.2 Suspension is not in itself a disciplinary sanction and will be for no longer than is necessary. As an alternative to suspension, consideration should be given to the possibility of transferring the employee to another area of work / department or restricting their practice or duties (for example, administrative), whilst the investigation is being undertaken, dependent on risk.

The situation will be reviewed fortnightly for the duration of the investigation to ensure both the suspension from work or limitations are still appropriate.

- 8.3 Please see Table A for managers with authority to suspend. Authorisation for suspension must be sought from the Chief Nurse in the case of nurses and midwives and AHP's, and the Director of HR for all other staff groups **before** a suspension is carried out, Out of hours the decision must be taken by the Executive Director on call and discussed with the Chief Nurse/Director of HR on the next working day.
- 8.4 Where a manager is considering suspension, Human Resources advice must be sought at the earliest opportunity and any necessary professional advice taken. Suspension will normally be carried out on a face to face basis, with reasons given for the suspension, but in exceptional circumstances this can be conducted by telephone. Where an employee is informed that they are to be suspended, they will be entitled to be accompanied but in the event that their chosen representative cannot be present, the Foundation Trust will arrange that a witness is present
- 8.5 Where an individual is suspended from duty, the suspension will apply to all posts and contracts held within the Foundation Trust, for that individual including bank and locum / agency work.
- 8.6 Where an individual is suspended from duty, they are not permitted to undertake paid work for another employer during their normal working hours with the Foundation Trust, including bank and locum work.

The decision to suspend will be confirmed in writing within three working days of the suspension. This will include confirmation of the terms of suspension, including the reasons for the suspension, the fact that suspension is not a disciplinary sanction and that suspension is on full pay, to be inclusive of any regular enhancements payable (i.e. unsocial hours).

Bank workers will not be booked for any further shift until the investigation process is concluded.

If a Bank worker has had a consistent pattern of work for a prolonged period of time this should be highlighted to the relevant HR Manager in order to ensure the correct approach is taken with regards protected pay.

The employee will also be informed that they may contact their colleagues who they feel would be a support mechanism for them. However they must not discuss the allegations or the details of the allegations with anyone other than their union representative, Occupational Health or the investigating manager. Should the employee need access to any emails, documents or calendar information they must request these from the investigating manager or the HR Department. It will be agreed with the employee who the most appropriate manager will be to keep in touch with them during the suspension, frequency and type of keep in touch arrangements will be agreed between both parties. The employee will be sign posted to occupational health services and the Trust employee assistance programme for support as necessary.

- 8.7 Suspensions will be reviewed by the relevant commissioning manager on a 2 weekly basis and HR, to determine whether the suspension should continue, and also to ensure that the employee is supported throughout the period of suspension and regularly updated on how the investigation is progressing. Upon review, consideration should be given to whether an individual may be brought back to work on restricted or amended duties in line with paragraph 8.2.
- 8.8 Whilst on suspension, an employee will be required to surrender his/her hospital identification badge and any keys or swipe cards they have. These will be returned to the individual if appropriate once the suspension has been lifted.
- 8.9 If an employee becomes ill during the period of suspension sickness absence supersedes the suspension and the employee will be recorded as being off sick from work. At the point of the employee becoming well enough for work the suspension would resume.
- 8.10 Employees who are suspended are only allowed to come onto Foundation Trust premises with the express permission of the suspending or investigating manager, except in the following circumstances:
- Where the individual is seeking medical treatment for themselves or a member of their family;
  - Where the individual is attending the Foundation Trust for a counselling or occupational health appointment or a meeting with their Trade Union/ Professional Association representative.
- 8.11 Please note this section does not apply to doctors and dentists and link to Doctors policy should apply ([PP05 Disciplinary, Capability, Ill Health and Appeals Policy and Procedure for Doctors and Dentists](#))

## **9 Investigation**

- 9.1 Before commissioning an investigation the commissioning manager should ensure a fact finding exercise has been carried out to see if the matter can be resolved informally without the need for a formal investigation. If a potential breach of conduct is identified, the commissioning manager (usually the General Manager/ Deputy Director of operations/Deputy Director of Nursing/ Director of Nursing / Head of Service or equivalent) will appoint an investigating manager to carry out the investigation. Where appropriate, they will be supported by a member of the HR department. Please see appendix 6 for guidance on carrying out a fact finding exercise which should be carried out in conjunction with Appendix 3- Just Culture guidance to ensure a consistent, constructive and fair evaluation of the facts
- 9.2 A full and thorough investigation of all the facts and circumstances is essential, and investigation of alleged breaches of discipline shall be carried out without delay, but in such a manner so as not to preclude the careful collection of all the facts.
- 9.3 The investigating manager must undertake the investigation without delay and ensure that it is given priority. Whilst there is no time limit for completion of the investigation, the investigating manager should strive to complete it within 4 weeks of appointment and submit the investigatory report within a further week. Timescales should be reviewed by the commissioning manager, ensuring that those involved in the investigation are regularly updated.

Where the investigating manager takes leave of absence or is unable to fulfil the responsibility to investigate then this should be reported by the HR representative

to the commissioning manager so that the investigation can be reassigned without delay.

- 9.4 If an investigation has not been concluded within 4 weeks, the investigating manager is required to produce a written progress report to the commissioning manager to provide an update and assurance that the delay is unavoidable and a timescale by which the investigation will be completed. In the circumstances outlined above, the commissioning manager will then review the report and agree an action plan. If the commissioning manager is not the Deputy Director of Operations /Deputy Director of Nursing/ Director of Nursing /Head of Service (or equivalent) the case will be escalated to them to review and agree an action plan.

The commissioning manager should write to the employee subject to the allegations to advise of the delay and the reasons for the delay and to confirm that they have reviewed the case and decided that it is fair and reasonable for the investigation to continue despite the delay. The employee should also be given a timescale within which the investigation is expected to be completed.

Witnesses required to provide statements to be used as part of the investigation should be given sufficient time to complete and agree them. Only in exceptional circumstances should witness statements remain anonymous (for example, a witness who does not want to be named as they are fearful of being victimised as a consequence).

Key witnesses that may be absent due to sickness should be reported to the commissioning manager who will refer to Occupational Health to ascertain fitness to attend investigatory interviews or hearings.

- 9.5 Where the employee who is the subject of the allegations is called to an investigation meeting, they will be given a minimum of 3 working days' notice in writing informing them of details of the allegations against them. An employee may be accompanied at an investigatory meeting by a work colleague or trade union representative. Following the investigation meeting, an employee will be sent a copy of the notes/statement taken at the meeting and will be asked to sign them to confirm accuracy. They may submit a separate personal statement should they so wish. Where an individual is unable to get a Union Representative or a colleague to attend the investigation meeting and wishes to be accompanied the meeting will be rearranged and a further date will be provided to allow the employee another opportunity to seek representation.
- 9.6 On completion of the investigation, the investigating manager will produce a report on their findings which will make a recommendation as to whether or not there is a case to answer at a disciplinary hearing. The final decision as to whether or not the case proceeds to a disciplinary hearing will be made by the commissioning manager whose responsibility it will then be to convene the disciplinary hearing where it is decided that this is what should happen.
- 9.7 In cases of potential fraud and corruption the investigation may be jointly undertaken with the Foundation Trust's Local Counter Fraud Specialist (LCFS). No investigation should be commenced without an initial discussion with them.
- 9.8 In cases of suspected child abuse or adult abuse managers must refer to the Foundation Trust's Safeguarding Adults - Policy & Guidance for Managing Incidents of Suspected Adult Abuse, Safeguarding Children Policy and Policy and Procedure for the Management of Allegations against People who work with Children which outlines how you should handle incidents of suspected abuse.

The manager should consult the Foundation Trust's Named Senior Manager for Safeguarding Children or Adult Protection Co-ordinator before instigating an investigation under the

Disciplinary Procedure. (The Director of HR for Safeguarding Children and the Lead Nurse for Safeguarding Adults).

## **10 Notice in Writing of a Disciplinary Hearing**

10.1 If it is decided that a formal disciplinary hearing is required, the commissioning Manager will write to the employee, (copy to the representative, if known), giving **10** working days' notice of the date of the hearing. If the matter relates to a conduct issue that involves a Doctor or Dentist, Section 3 of the Foundation Trust's Disciplinary, Capability, Ill Health and Appeals Policy and Procedure for Doctors and Dentists must be referred to.

10.2 The invite letter should outline the nature of the allegations which are to be answered at the hearing to enable him/her to have the opportunity to state his or her case before a decision is reached. The letter will include details of those who will be present at the hearing.

A copy of the full investigation report, including witness statements and other documents which the investigating manager intends to present at the disciplinary hearing must be submitted to the disciplinary panel and the employee, (copy to the representative if known), 10 working days in advance of the hearing. It is the responsibility of the investigating manager to ensure these documents are circulated.

10.3 The letter should inform the employee of the potential outcome of the disciplinary hearing, i.e. the issuing of a formal disciplinary sanction. In cases of serious or gross misconduct, the employee should be warned that the disciplinary hearing may lead to their dismissal from the Foundation Trust.

10.4 The letter will also detail the employee's right to be accompanied at the hearing in accordance with section 11 of this policy. If the employee's representative is unavailable on the date chosen and the employee proposes a reasonable alternative date within 5 working days of the original date proposed for the hearing, such a request must be approved by the manager concerned.

Where an employee is persistently unwilling or unable to attend a disciplinary hearing without good cause, the Foundation Trust will hold the meeting in the absence of the employee and make a decision based on the evidence available.

10.5 If the employee or their Trade Union representative wishes to submit a statement of case or any additional information to support their case at the hearing, this must be submitted to the disciplinary panel Chair **5** working days in advance of the hearing. This will then be shared with the manager presenting the case so that all parties have the same information prior to the hearing.

## **11 Representation**

11.1 An employee must be informed in writing of his/her right to be represented at disciplinary investigation meetings and the disciplinary hearing. Where the employee wishes to be accompanied at the hearing this must be someone who is either:

- A trade union official (this includes full time officers) or
- A co-worker employed by the Foundation Trust and chosen by the employee
- If the employee is under the age of 18, they may be accompanied by their parents/guardians

- 11.2 The representative may address the hearing and can present the statement of case on behalf of the employee. However, the representative cannot answer direct questions on the employee's behalf. The representative may also confer with the employee during the hearing and will be permitted to ask questions of any witness produced by management. The employee is also entitled to be represented (as above) in any investigatory meeting called by Management.

## **12 Formal Disciplinary Hearing**

- 12.1 No employee can be given any of the disciplinary sanctions referred to in paragraph 15 without a formal hearing, and the opportunity to state his/her case. For further advice on how to conduct the hearing, the manager should refer to the management toolkit and must seek the advice of the appropriate HR Manager. Other than for gross misconduct or an offence of serious misconduct which also warrants dismissal, no-one is to be dismissed for a first breach of discipline. Examples of offences that could be gross misconduct and which could lead to summary dismissal if committed by an employee are set out in Appendix 1.

## **13 Conduct of the Hearing**

- 13.1 The disciplinary panel will consist of the appropriate manager in accordance with Table A, together with an HR representative. Other managers can be added to the panel as appropriate, for example where clinical or other expertise is required. The Deputy Director of Nursing or appropriate professional lead will sit on all panels where the case is against a registered employee if the allegations are of a professional manner in respect of professional misconduct.
- 13.2 The investigating manager will present the results of his/her investigation into the matter and will introduce documentary evidence and witnesses as appropriate. Key witnesses will normally be called to attend a disciplinary hearing to give their evidence. The investigating manager may, where circumstances dictate, be supported by an HR representative or another appropriate manager. Once any witnesses have given evidence they will be required to leave the hearing.
- 13.3 Once the management evidence has been completed the employee and his/her representative will then be allowed to present their written statement and other documents and introduce witnesses as appropriate. All parties present at the hearing will be entitled to ask questions of both the management and the staff side case as required. Following the presentation of cases and once all questions have been asked, both sides will have the opportunity to sum up their case. Management side will sum up first, followed by the employee or staff side.
- 13.4 Both management and the employee and staff side representative will then be asked to withdraw to enable the disciplinary panel to reach a decision.
- 13.5 Wherever possible, a decision will be made on the day of the disciplinary hearing. Both parties will be recalled into the hearing and the chair will deliver the outcome and what, if any, sanction is to be applied.
- 13.6 In extenuating circumstances, it may be necessary to adjourn the hearing and reconvene on an alternative date. This may be the case if the panel feel that more information is needed prior to being able to make their decision. However, this should be on an exceptional basis only.
- 13.7 The outcome of the hearing will be confirmed in writing and a copy will be sent to the employee's representative where appropriate.

13.8 The letter informing the individual of the outcome of the meeting shall include:

- Details of the allegations which were considered at the hearing;
- Which of the allegations were upheld;
- The sanction to be imposed and its duration;
- The change in behaviour required to avoid further action;
- Consequences of a further breach of conduct, or failure to improve.
- If they are to be referred to a professional body

13.9 The employee shall also be informed of the right of appeal in accordance with paragraph 17 of this procedure.

## 14 Disciplinary Sanctions

14.1 The point at which the procedure is entered and the sanction applied will depend entirely on the seriousness of the offence. A series of minor offences or a repetition of one such offence will normally involve an oral, written and final written warning before dismissal whilst a serious offence may warrant a final written warning or possibly even dismissal.

**Table A – Authority to Issue Sanctions / Dismiss**

Action	Authority	Appeal Authority
Suspension Manager	Matron, CSU General Manager or equivalent	To be authorised in advance by Chief Nurse or Director of HR or nominated deputy in their absence see section 8.3
Oral, First, and Final Written Warning (including action short of dismissal)	CSU General Manager / or  Equivalent/	Directors/Deputy Directors/Heads of Service  or equivalent Individuals to submit their appeals to the Deputy Director of HR
Dismissal	Directors/Deputy Director of Operations/Director of Nursing or equivalent.	Trust Board Appeal (will include a Non-Executive Director, a Senior Leader in the Trust (Executive Directors, Director of Operations, Director of Transformation, Operations Medical) Director. and a staff side representative – individuals to submit their appeal to the Director of HR,

In the case of disciplinary hearings on conduct matters for Consultants, the disciplinary panel will normally consist of the Chief Executive and the Director of HR or their Deputy. Where there are issues of professional conduct or of a professional nature the panel must include a member who is either medically qualified or dentally qualified and who is independent of the Foundation Trust. (See Section 3, Disciplinary, Capability, Ill Health and Appeals Policy and Procedure for Doctors and Dentists).

\*The staff side representative must be accredited in accordance with the Policy on Facilities for Staff Organisations and would normally be a member of the JNCC or at least be a senior official within their respective branch. The staff side representative cannot be a full-time officer and cannot be from the same staff organisation the appellant (and his/her representative) belongs to.

In the event of a staff side representative not being available, the Foundation Trust reserves the right for a second management representative to sit on the Appeals Panel, as a replacement.

**Table B – Duration of Sanctions**

Level of Sanction	Duration of Sanction	Comments
Oral (confirmed in writing)	6 months	
First Written Warning	12 months	
Final Written Warning /	18 months In exceptional circumstances the serious nature of the disciplinary situation can warrant an extension of the time limit to 24 months, for a final written warning.	It should be made clear to the employee that any further incidence of misconduct, if proven, will normally lead to dismissal during the 18 or 24 month period, dependent on the circumstances of the case.
Dismissal		If there is no improvement in conduct or standards then dismissal or action short of dismissal may be considered as per paragraph 14.2. Where the offence is gross misconduct, dismissal would be summary (i.e. with immediate effect and no notice / pay in lieu of notice)

### **Aggregated and concurrent Sanctions**

Where an individual already has a live disciplinary sanction on their record and this sanction directly relates to the matter being considered at a disciplinary hearing, the panel should aggregate the sanction (i.e. if an individual has an oral warning and is then subject to a disciplinary sanction for a similar related issue, they should be given a written or final written warning for the second breach of conduct).

If the current warning is not related to the matter being considered, the panel have the option to issue concurrent warnings for matters of a different nature. It is therefore possible for individuals to have several warnings on their record for unrelated conduct issues. Less serious sanctions should not be aggregated.

### **14.2 Other Action Short of Dismissal**

There may be cases where management take the view that organisational and employee circumstances may best be served by action short of dismissal itself. In these circumstances, one of or a combination of the following sanctions may be considered as an alternative to dismissal. These sanctions will normally be applied on a permanent basis.

- Disciplinary transfer
- Loss of increment(s) (reverting back to a lower salary within the pay band)
- Demotion



- Extending the length of the final written warning by 6 months (24 months in total)

The sanction(s) (other than the extension of the final written warning as per the final bullet point of paragraph 14.2 above) will be used in conjunction with a final written warning in accordance with paragraph 14.1, Table B.

#### **14.3 Withholding of Incremental Pay Progression**

In line with Annex 23 of Agenda for Change, NHS Terms and Conditions of Service Handbook pay step progression will be held where an individual has a live disciplinary sanction (Applies to AfC employees only).

#### **14.4 Dismissal**

Employees dismissed on the grounds of misconduct are entitled to receive the appropriate period of notice except in cases of summary dismissal for gross misconduct (see appendix 1) where no notice is payable.

#### **14.5 Withdrawal of Action**

Should any disciplinary action be reconsidered and effectively withdrawn at any stage of the procedure, any written references will be disregarded for the purposes of any further disciplinary action.

#### **14.6 Details of Warnings**

Details of all warnings and other action short of dismissal shall be maintained on the employee's personal file for the life of the sanction (detailed in Table B). After its expiry it will be disregarded for the purposes of any further disciplinary action.

### **15 Right of Appeal**

- 15.1 An employee aggrieved by the disciplinary sanction given, including dismissal, has the right of appeal in accordance with Table A. The appeal can be on the grounds of the decision or outcome of the hearing; or the process, if they feel that policy or procedure has not been applied.
- 15.2 Appeals against Oral, First and Final Written warnings should be submitted to the Associate Director of HR stating the reason for the appeal no later than 10 working days following the date on the letter notifying the individual of the sanction. The appeal hearing will then be convened, chaired by the appropriate manager outlined in Table A and supported by a member of the HR Department not previously involved in the case.
- 15.3 Appeals against dismissal should be made to the Director of HR stating the reason for the appeal no later than 10 working days following the date of the letter notifying the individual of their dismissal.
- 15.4 The constitution of the panel will be in accordance with Table A.
- 15.5 For appeals against dismissal, the panel has the authority to make a decision on the matter on behalf of the Foundation Trust Board of Directors.
- 15.6 In all appeal cases every effort will be made to hear the appeal within one month, but where this is not possible both parties should mutually agree a date to hear the appeal.

- 15.7 Any manager responsible for, or involved in, the disciplinary action shall not be a member of an appeals panel, although he/she may be present either as a witness or as the management representative.
- 15.8 The employee will be given as much notice as possible of the date of the appeal, and will be entitled to be represented (see paragraph 11 on representation). The employee will be allowed to call witnesses in his/her own defence.
- 15.9 For appeals against dismissal where there is a possibility that a special knowledge of the field of work of the employee may be required, the employee, the management representative and/or the panel may request the appointment of an independent assessor from the relevant profession to act in an advisory capacity to the panel. The independent assessor should be agreed by all parties.

## **16 The Procedure for Appeal Hearings**

- 16.1 Both management and the employee with staff side will be required to submit written statements of case to either the Deputy Director of HR (appeals against oral, first written and final written warnings) or the Director of HR (appeals against dismissal) in advance of the hearing. The appeal hearing will only go ahead where both parties provide written statements of case.
- 16.2 The Management representative will normally be the Manager who issued the disciplinary sanction although this may be an HR representative if appropriate. The Management Representative will be accompanied at the appeal by an HR representative and must be present throughout the hearing.
- 16.3 The Management Representative will present the Management Statement of Case first followed by the employee if they have no representation or the Staff Side Representative who may present on behalf of the employee.
- 16.4 Both parties may introduce witnesses who have previously presented their evidence at the original disciplinary hearing. If either party has a valid reason for wanting witnesses to be present for the whole of the hearing this should be cleared with both the panel Chair and the other party's representative. The members of the panel will be entitled to question either party at any time during the appeal.
- 16.5 Both parties will be allowed to cross-examine each other's' representative and witnesses.
- 16.6 Both parties will be allowed to re-examine their own witnesses on any points which emerge from the cross-examination. Re-examination cannot however be used to introduce new evidence.
- 16.7 Both parties will be allowed to sum up with the appellant summing up last. In their summing up neither party may introduce new material.
- 16.8 Any points of order or procedure will be resolved at the discretion of the panel Chair, always bearing in mind the need for the appeal to be conducted in a fair and equitable manner with both parties being given sufficient chance to state their cases.
- 16.9 The employee and his/her representative shall be entitled to be present throughout the hearing but will be required to withdraw along with the management representatives when the panel considers its findings. The employee and his/her representative will then be informed by the panel of its decision. The decision of the panel must be communicated in writing to the employee within one week of the appeal hearing.

## 17 Impact Assessments

### 17.1 Equality Impact Assessment

#### Equality Impact Assessment

This Policy was assessed in February 2024 to determine whether there is a possible impact on any of the nine protected characteristics as defined in the Equality Act 2010. The policy has also been assessed to determine whether it impacts on human rights against the FREDA principles (Fairness, Respect, Equality, Dignity, Autonomy).

Whilst the policy should be applied consistently regardless of protected characteristic, it has been identified to have potential impact on the following:

**Race** - It is recognised nationally and from analysis of disciplinary activity in the past, that Ethnic Minority staff are more likely to face disciplinary investigation. Our Disciplinary rates for ethnic minority staff mirror the national picture.

**Gender** - Whilst there is no significant gap in the number of male staff entering a disciplinary process compared with female staff, it has been determined that proportionately the number of male staff that are subject to the disciplinary process is higher given the make-up of a workforce of 23% male staff compared to 77% female.

The policy will be applied consistently regardless of protected characteristic. However, where impacts for race and gender have previously been identified monthly and bi-monthly reports are being completed for both formal and informal cases to identify any patterns/ issues where advice should be sought from EDI and any action taken. Further investigation into disciplinary outcomes to assess whether ethnic minority staff have poorer outcomes has been undertaken with all reports overseen by the Associate Director of HR and reviewed by Executives.

**Disability** - It is recognised that some staff may require support, have specific needs or be unable to understand or read the text of this policy due to a disability. In such instance it will be explained on a one-to-one basis by the Department responsible for this policy or the manager of the member of staff and this is detailed in the policy. Any support will be provided in confidence.

**Religion or belief** - Increasing numbers of staff from other religious groups mean that managers must consider when working through the people charter and fact finding, that if religion is involved then appropriate advice is sought.

Although there is currently a lack of data, the policy has so far been found not to impact on:

- Marriage and civil partnership
- Sexual Orientation
- Maternity/ Pregnancy
- Age
- Gender Re-assignment
- Other relevant groups

Where there has previously been a lack of data, monthly reporting will be expanded to capture data (where available) relating other protected characteristics, so that any disproportionate impact can be identified and addressed. An action plan has been developed to ensure the refreshed policy and accompanying toolkit are clearly communicated across the organisation and comprehensive training and support provided to managers. This will include engaging with our diverse staff (through the

Trust Staff Equality Networks) to ensure that their views are taken into account and any previously unseen impacts identified.

This assessment will be reviewed when the policy is next updated or sooner if evidence of further impact emerges.

## **17.2 Financial Impact Assessment**

There are no direct financial implications in respect of this policy

## **18 Training Requirements**

The HR Department will provide training and support in the application of the policy as and when required.

The HR Department will provide quarterly training relating to how to conduct investigations and it is expected that investigating officers will have completed this training prior to undertaking an investigation. It is envisaged each service should have a trained investigator.

## **19 Monitoring Arrangements**

The policy and procedure will be monitored in line with any changes in legislation/guidance which may be required to the Policy/Procedure before the planned review date.

The Board of Directors at its closed meeting will receive an anonymised bi-monthly summary report of all suspensions and disciplinary cases under investigation.

## **20 Links with other Foundation Trust Policies and Procedures and External Documents**

20.1 This document can be used in reference to and in conjunction with the following Foundation Trust documents:

- Information Governance Policy
- Harassment and Bullying Policy
- Facilities for Staff Organisations Policy
- Safeguarding Adults Policy
- Safeguarding Children Policy
- Policy and Procedure for the Management of Allegations of Child Abuse against Staff
- Disciplinary, Capability, Ill Health and Appeals Policy and Procedure for Doctors and Dentists
- Fraud and Corruption (including Bribery) Policy
- People Charter
- Appraisal, Development and Performance Management Policy Management of Attendance and Employee Health and Wellbeing Policy and Procedure
- Social Media Policy
- Information Governance Guidance on Social Networking
- Employment Checks Policy and Procedure
- Our People Strategy – Our People, Our Future 2017 - 2022

20.2 The policy also makes reference to and contains the principles outlined in the following external documents:

- The Employment Relations Act 2004
- The 2015 ACAS Codes of Practice on Disciplinary and Grievance

Procedures:

- Maintaining High Professional Standards
- The Equality Act 2010
- The Data Protection Act 1998

## **21 Policy Review**

21.1 This policy will be reviewed every 2 years.

**BRADFORD TEACHING HOSPITALS NHS FOUNDATION TRUST**  
**DISCIPLINARY RULES**

## **INTRODUCTION**

The ACAS Code of Practice states that fairness and transparency are promoted by developing and using rules and procedures for handling disciplinary and grievance situations. These should be set down in writing, be specific and clear. Employees and, where appropriate, their representatives should be involved in the development of rules and procedures. It is also important to help employees and managers understand what the rules and procedures are, where they can be found and how they are to be used.

Under the Employment Act 2002 employers are required to specify any disciplinary rules applicable to the employee or refer to a document which is reasonably accessible to the employee and which specifies such rules.

In view of the legal requirements noted above and in the interests of good employee relations practice the following disciplinary rules, giving appropriate examples, have been drawn up for the guidance of management, staff organisation representatives and all employees. It is emphasised that no set of rules can cover every circumstance, and the action taken by management in any particular situation must take into account the particular circumstances relevant to that situation.

Our People Charter outlines the behaviours we can expect from one another and what our people can expect from the Foundation Trust. It enables us all to celebrate good behaviour and challenge poor behaviour, taking a Just Culture approach. Please see appendix 2 for the Charter.

## **GENERAL RULES**

### **1 Hours of Attendance**

- 1.1 Every employee is required to give constant and regular attendance. Failure to attend punctually or regularly will normally result in disciplinary action being taken, including dismissal if the offences continue after the issue of warnings as detailed in the Foundation Trust's Disciplinary Policy and Procedure. The distance of employee's homes from their place of work, or any difficulty of travelling cannot be accepted as reasons of irregularity of attendance, and it is not normally the Foundation Trust's practice to agree special working hours on the basis of such factors.
- 1.2 Some employees are required to record their time of arrival and/or departure in a book, by using a time clock or via an electronic roster. Misuse of such arrangements (e.g. clocking another person's card or making false entries in an attendance book/sheet or electronically) will lead to disciplinary action being taken - usually dismissal.

- 1.3 Whilst at work employees must not absent themselves without obtaining the prior permission of their supervisor/manager. Such absences must be reported to the relevant supervisor/manager in accordance with the appropriate procedure. If the manager is satisfied, following such an investigation, that an employee has no good grounds for the unsatisfactory attendance, then disciplinary action will be taken in accordance with the Foundation Trust's Disciplinary Policy and Procedure.

Absence due to sickness is not a disciplinary matter and must be dealt with by using the Foundation Trust's Policy on the Management of Attendance.

- 1.4 Where concerns are raised regarding an issue of conduct that is related to attendance at work then these should, depending on the circumstances, be managed in line with the Foundation Trust's Disciplinary Policy and Procedure. Examples of possible attendance related misconduct include, but are not limited to:

- Persistent lateness, extended breaks or leaving early without prior permission
- Repeated failure to follow correct reporting procedure
- Having unauthorised absence
- Late submission of continuous Fit Notes without good reason
- Working elsewhere whilst off sick
- Failure to attend Sickness meetings or Occupational Health appointments without good reason
- Patterns of absence, other information bringing into question whether the absence is genuine. Examples might include:
  - Employee found to be undertaking activities inconsistent with the reason given for illness during sick leave.
  - Pattern of absence suggesting deliberate avoidance of being managed under the policy.
  - Patterns of absence e.g. not returning after extended leave, holiday periods such as religious festivals or public holidays, before and after rostered days off.

Prior to taking action, the manager should consider whether it is appropriate to refer an employee to Occupational Health to establish whether patterns of absence are attributable to an underlying health condition.

If an employee is absent through sickness but fails to comply with the certification and reporting requirements, the Foundation Trust is not obliged to pay sick pay for the period they are absent from work. The absence will be recorded as unauthorised and the Foundation Trust may take action in accordance with the Foundation Trust's Disciplinary Policy and Procedure.

Annual leave will not accrue during periods of unauthorised absence. Anyone with a period of unauthorised absence should have their annual leave for the current year recalculated and adjusted by their manager.

Where it is not possible to make contact with the employee or the employee does not intend to return to work the matter should be discussed with the HR Department as soon as possible.

- 1.5 Holiday and special leave arrangements must be approved in advance, in accordance with existing procedures.

## **2 Standards of Conduct**

- 2.1 Every employee is expected to take personal responsibility to undertake a prompt and efficient service with a concern for the feelings of others - especially patients and members of the public but also their co-workers. If the behaviour or conduct of an employee falls short of the standards required, the individual will first be advised by their supervisor/manager of their shortcomings and will be given an opportunity to correct them. The use of the People Charter and taking a Just Culture approach should be considered in the first instance. However, should the unsatisfactory behaviour or misconduct continue he/she will be subject to disciplinary action (including dismissal), in accordance with the Foundation Trust's Disciplinary Policy and Procedure.
- 2.2 All medical or personal information relating to patients and employees is strictly confidential. Breaches of confidentiality will be regarded very seriously, and will always result in serious disciplinary action being taken.
- 2.3 Employees must inform their manager if they have an interest in a contract which the Foundation Trust has entered into, or proposes to enter into. This is in line with the Trust's Conflict of Interest Policy, In the case of a married couple, or other close relationship, the interest of one is deemed to be the interest of the other. For further advice see the Foundation Trust's Policy on Standards of Business Conduct.
- 2.4 Employees must not bring the Foundation Trust or any of its employees into disrepute in any of their communications or actions. This includes any reference to the Foundation Trust in electronic communications through Social Networking sites where members of the public may be able to view any such reference to the Foundation Trust. This includes:
- sharing confidential information online
  - posting inappropriate comments about the Foundation Trust, colleagues or patients
  - using social networking sites to bully or intimidate colleagues
  - pursuing personal relationships with patients or service users
  - distributing sexually explicit or hate material.
  - using social networking sites in any way which is unlawful.

## **3 Summary Dismissal**

- 3.1 There are certain types of misconduct which will warrant dismissal without the normal period of notice or pay in lieu of notice. These come under the category of "Gross Misconduct". Gross misconduct is seen as misconduct serious enough to destroy the employment contract between the employer and employee and to make any further working relationship and trust impossible. Examples of offences which are normally regarded as gross misconduct are set out below, although this list is neither exclusive nor exhaustive.
- a) Deliberate damage to Foundation Trust property  
Deliberate damage to any item of Foundation Trust property or equipment.
- b) Stealing from the Foundation Trust, employees, patients or the public.  
Any instance of theft from the Foundation Trust, its employees, patients or the general public including the unauthorised use of Health Service equipment or property.



- c) Physical assault/intimidation  
Any assault on /or intimidation of a patient, a visitor or employee in the course of duty, or off duty but whilst on Foundation Trust's premises.
- d) Fraudulent Behaviour  
Any fraudulent behaviour, with the dishonest intent to gain or cause a loss in accordance with the Fraud Act 2006. This includes false representation, failure to disclose information and abuse of position.
- e) Gross Negligence which endangers other people  
Any action or any failure to act which seriously threatens the health, safety, or welfare of a patient, a visitor, or an employee.
- f) Breach of Confidentiality  
Any breach of confidentiality involving patient or employee records. This will include any serious breach of the Foundation Trust's Information Governance Policy.
- g) Misuse of Vehicles  
Breach of rules contained in "Notice to Drivers", including the carriage of unauthorised passengers or goods.
- h) Incapacity for work due to being under the influence of alcohol or illegal drugs  
Any incident of incapacity for work due to being under the influence of alcohol, illegal drugs or some other non-prescribed mood altering substance where any offence or misconduct occurs (see also Policy on Alcohol and other drugs in the workplace).
- i) Gross Insubordination  
Any incidence of abusive behaviour to a line manager or repeated refusals to obey reasonable instructions from a Line Manager.
- j) Perpetration of a Hoax  
Perpetration of a hoax practical joke or other malicious act resulting in serious disruption to services.
- k) Corruption and Bribery  
Any corrupt behaviour which is broadly defined as the offering or acceptance of inducements, gifts, favours, payment or benefit in kind, which may influence the action of any person in accordance with the Bribery Act 2010. This includes giving, promising or offering a bribe, or requesting, agreeing to receive or accepting a bribe.
- l) Breaches of the Foundation Trust's Policy on Harassment and Bullying  
Incidents of sexual harassment, racial harassment or bullying at work. This extends to communication outside the workplace (including the use of social networking sites) where employees, patients, carers or visitors to the Trust are discussed in derogatory terms with other employees, or where the communication can be viewed / witnessed by members of the public.
- m) Serious breaches of the Foundation Trust's Policy on Information Governance  
Serious breaches include visiting "offensive" websites and/or excessive personal use during work time. Guidance can be sought from the Information Governance Manager.
- n) Bringing the Foundation Trust into disrepute by posting derogatory comments on social networking sites which are accessible to members of the public and/or other Trust employees

- 3.2 This list is not exhaustive and is merely indicative of the type of allegation which may constitute gross misconduct. If an allegation is deemed sufficiently serious, lack of inclusion on the above list will not preclude the allegation from being deemed gross misconduct.
- 3.3 In cases where the Foundation Trust's Managers have reasonable grounds for believing that offences of the type listed above have been committed, they will commence an immediate investigation. In accordance with the Foundation Trust's Disciplinary Policy and Procedure this may require the immediate suspension of an employee (or employees) from duty. If following such an investigation it is considered that an employee, or employees, are guilty of an offence of the type described, dismissal, without notice, for gross misconduct will follow immediately.
- 3.4 In carrying out such investigations and arranging disciplinary hearings, the Foundation Trust's Managers will observe the principles laid down in the Disciplinary Policy and Procedure. The Foundation Trust will take the disciplinary action described above in any case where, following an investigation, the Foundation Trust's Managers are satisfied that an employee is guilty of gross misconduct. Normally under such circumstances such disciplinary action will be taken, even if the police are still investigating and irrespective of whether or not there is court prosecution.

#### **4 Statutory Registration**

- 4.1 Certain employees are required by law to be registered with a particular body - e.g. General Medical Council, Nursing and Midwifery Council, Health and Care Professions Council. Employees who require a professional registration in order to practice are responsible for ensuring that their registration does not lapse and ensuring that they allow sufficient time to comply with the re-registration requirements of the regulatory body. Registration is both a contractual and a statutory requirement. In circumstances where a registration has lapsed, the employee will be suspended with no pay until the re-registration is confirmed. Registration lapses will not be back dated to the expiry date once the registration is eventually renewed. Employees who continue to work in a registered capacity when they are aware that their registration has lapsed will be subject to disciplinary action up to and including dismissal in accordance with the Trust Disciplinary Policy and Procedure. Employees who repeatedly fail to renew their registration before it lapses will also be subject to disciplinary action up to and including dismissal. .

#### **5 Professional Bodies**

- 5.1 Employees who are subject to the standards of performance/behaviour of professional bodies (e.g. Nursing and Midwifery Council, Health and Care Professions Council, General Medical Council, Disclosure and Barring Service) are reminded that the Foundation Trust has a duty to report instances of sub-standard performance or conduct to the appropriate body, as well as carrying out its own investigation and taking disciplinary action in appropriate cases. Employees affected will be advised when the Foundation Trust has to report such instances.

#### **6 Alert Letters**

- 6.1 The Foundation Trust has a mandatory responsibility to have a procedure in place for the activation and management of Alert letters in accordance with the NHS Resolution, Practitioner Performance Advice Service procedures. An alert letter is a way in which NHS Organisations are made aware. of a Doctor or other

registered health professional whose performance or conduct could place patients or employees at serious risk. Please refer to the Procedure for the Management and issue of Alert letters to confirm when this procedure should be used.

## **7 Loss of Driving Licence**

7.1 Employees employed in posts for which there is a contractual requirement for the possession of a valid driving licence must inform their supervisor/manager if that licence is withdrawn for any reason. Failure to do this will result in summary dismissal. Where persons who are employed in such a post lose their licence, their employment will normally be terminated. Suitable alternative employment will be considered in such cases, but will only be offered:-

- a) Where a suitable alternative vacancy exists at the time.
- b) When the circumstances of the case merit such an offer being made (e.g. loss of licence due to a medical condition).

## **8 Safety Rules / Codes of Practice**

8.1 Any employee who deliberately ignores laid down safety rules and procedures will have disciplinary action taken against him/her. This applies equally to codes of practice. For example codes of practice are provided in all catering departments and ward areas to ensure the hygienic handling, preparation, storage and transport of foodstuffs. It is an implied term of the Contract of Employment of employees in these areas that they at all times follow the guidance given in these codes of practice. Failure to follow the codes of practice will normally result in disciplinary action being taken against the employee(s) concerned.

## **9 Criminal Offences Outside Employment**

9.1 Any employee who is convicted of a criminal offence must inform his/her supervisor/manager as soon as practicable. In addition where an employee is charged with a serious criminal offence such as a sexual offence, theft, fraud or a serious assault then the supervisor/manager must also be informed at the earliest available opportunity. Failure to do so may result in disciplinary action being taken.

The action the Foundation Trust will take in such circumstances will depend on the facts of the case.

## **10 Harassment and Bullying**

10.1 Instances of abuse or harassment in respect of the protected characteristics as defined in the Equality Act 2010 will be treated as disciplinary offences, and unlawful discriminatory practices on a personal level will be viewed most seriously and will result in disciplinary action being taken.

10.2 Instances of racial harassment in the course of employment will result in disciplinary action being taken. This includes racial abuse, racially explicit derogatory statements which are found objectionable and offensive, racial graffiti, offensive jokes of a racial nature, and an offensive manner in communication which is not used with other employees and which is likely to constitute racial harassment.

- 10.3 Instances of sexual harassment will result in disciplinary action being taken. Sexual harassment is unwanted conduct of a sexual nature. It has the purpose or effect of violating the dignity of an employee, or creating an intimidating, hostile, degrading, humiliating or offensive environment for them which may also affect their performance at work. Something can still be considered sexual harassment even if the alleged harasser didn't mean for it to be. It also doesn't have to be intentionally directed at a specific person. It can include any unwanted written or verbal comments of a sexual nature such as remarks about someone's appearance, questions about their sex life or offensive jokes; displaying pornographic or explicit images; emails with content of a sexual nature; unwanted physical contact and touching; sexual assault.
- 10.4 In the event of a disciplinary hearing being convened that is as a result of harassment or bullying (irrespective of which policy the matter was investigated under i.e. Harassment and Bullying Policy or Disciplinary Policy), the Human Resources representative involved in the disciplinary process must advise the Harassment and Bullying Lead of the nature of the issue and of the disciplinary outcome.

For further details, see the Foundation Trust's Policy on Harassment and Bullying.



# A just culture guide

## Supporting consistent, constructive and fair evaluation of the actions of staff involved in patient safety incidents

This guide supports a conversation between managers about whether a staff member involved in a patient safety incident requires specific individual support or intervention to work safely. Action singling out an individual is rarely appropriate - most patient safety issues have deeper causes and require wider action.

The actions of staff involved in an incident should **not** automatically be examined using this *just culture guide*, but it can be useful if the investigation of an incident begins to suggest a concern about an individual action. The guide highlights important principles that need to be considered before formal management action is directed at an individual staff member.

An important part of a just culture is being able to explain the approach that will be taken if an incident occurs. A just culture guide can be used by all parties to explain how they will respond to incidents, as a reference point for organisational HR and incident reporting policies, and as a communication tool to help staff, patients and families understand how the appropriate response to a member of staff involved in an incident can and should differ according to the circumstances in which an error was made. As well as protecting staff from unfair targeting, using the guide helps protect patients by removing the tendency to treat wider patient safety issues as individual issues.

- Please note:**
- A **just culture guide** is not a replacement for an investigation of a patient safety incident. Only a full investigation can identify the underlying causes that need to be acted on to reduce the risk of future incidents.
  - A **just culture guide** can be used at any point of an investigation, but the guide may need to be revisited as more information becomes available.
  - A **just culture guide** does not replace HR advice and should be used in conjunction with organisational policy.
  - The **guide** can only be used to take one action (or failure to act) through the guide at a time. If multiple actions are involved in an incident they must be considered separately.

▼ Start here - Q1. deliberate harm test

1a. Was there any intention to cause harm?

▶ Y

**Recommendation:** Follow organisational guidance for appropriate management action. This could involve: contact relevant regulatory bodies, suspension of staff and referral to police and disciplinary processes. Wider investigation is still needed to understand how and why patients were not protected from the actions of the individual.

END HERE

▼ No go to next question - Q2. health test

2a. Are there indications of substance abuse?

▶ Yes

**Recommendation:** Follow organisational substance abuse at work guidance. Wider investigation is still needed to understand if substance abuse could have been recognised and addressed earlier.

END HERE

2b. Are there indications of physical ill health?

▶ Yes

**Recommendation:** Follow organisational guidance for health issues affecting work, which is likely to include occupational health referral. Wider investigation is still needed to understand if health issues could have been recognised and addressed earlier.

END HERE

2c. Are there indications of mental ill health?

if No to all go to next question - Q3. foresight test

3a. Are there agreed protocols/accepted practice in place that apply to the action/omission in question?

3b. Were the protocols/accepted practice workable and in routine use?

3c. Did the individual knowingly depart from these protocols?

▶ If No to any

**Recommendation:** Action singling out the individual is unlikely to be appropriate; the patient safety incident investigation should indicate the wider actions needed to improve safety for future patients. These actions may include, but not be limited to, the individual.

END HERE

if Yes to all go to next question - Q4. substitution test

4a. Are there indications that other individuals from the same peer group, with comparable experience and qualifications, would behave in the same way in similar circumstances?

4b. Was the individual missed out when relevant training was provided to their peer group?

4c. Did more senior members of the team fail to provide supervision that normally should be provided?

▶ If Yes to any

**Recommendation:** Action singling out the individual is unlikely to be appropriate; the patient safety incident investigation should indicate the wider actions needed to improve safety for future patients. These actions may include, but not be limited to, the individual.

END HERE

if No to all go to next question - Q5. mitigating circumstances

5a. Were there any significant mitigating circumstances?

▶ Yes

**Recommendation:** Action directed at the individual may not be appropriate; follow organisational guidance, which is likely to include senior HR advice on what degree of mitigation applies. The patient safety incident investigation should indicate the wider actions needed to improve safety for future patients.

END HERE

if No

**Recommendation:** Follow organisational guidance for appropriate management action. This could involve individual training, performance management, competency assessments, changes to role or increased supervision, and may require relevant regulatory bodies to be contacted, staff suspension and disciplinary processes. The patient safety incident investigation should indicate the wider actions needed to improve safety for future patients.

END HERE

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Based on the work of Professor James Reason and the National Patient Safety Agency’s Incident Decision Tree

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## SUSPENSION GUIDANCE

Suspension is an emotive term and, although it is not of itself a conduct action, it can be seen by both the individual and others as having negative connotations, including implied guilt. On that basis suspension should be a last resort after consideration of how to mitigate risk during the course of the investigation with the options below:

- Temporary redeployment to another work area or role, limiting / altering the duties of the individual
- Putting in place additional supervision of work

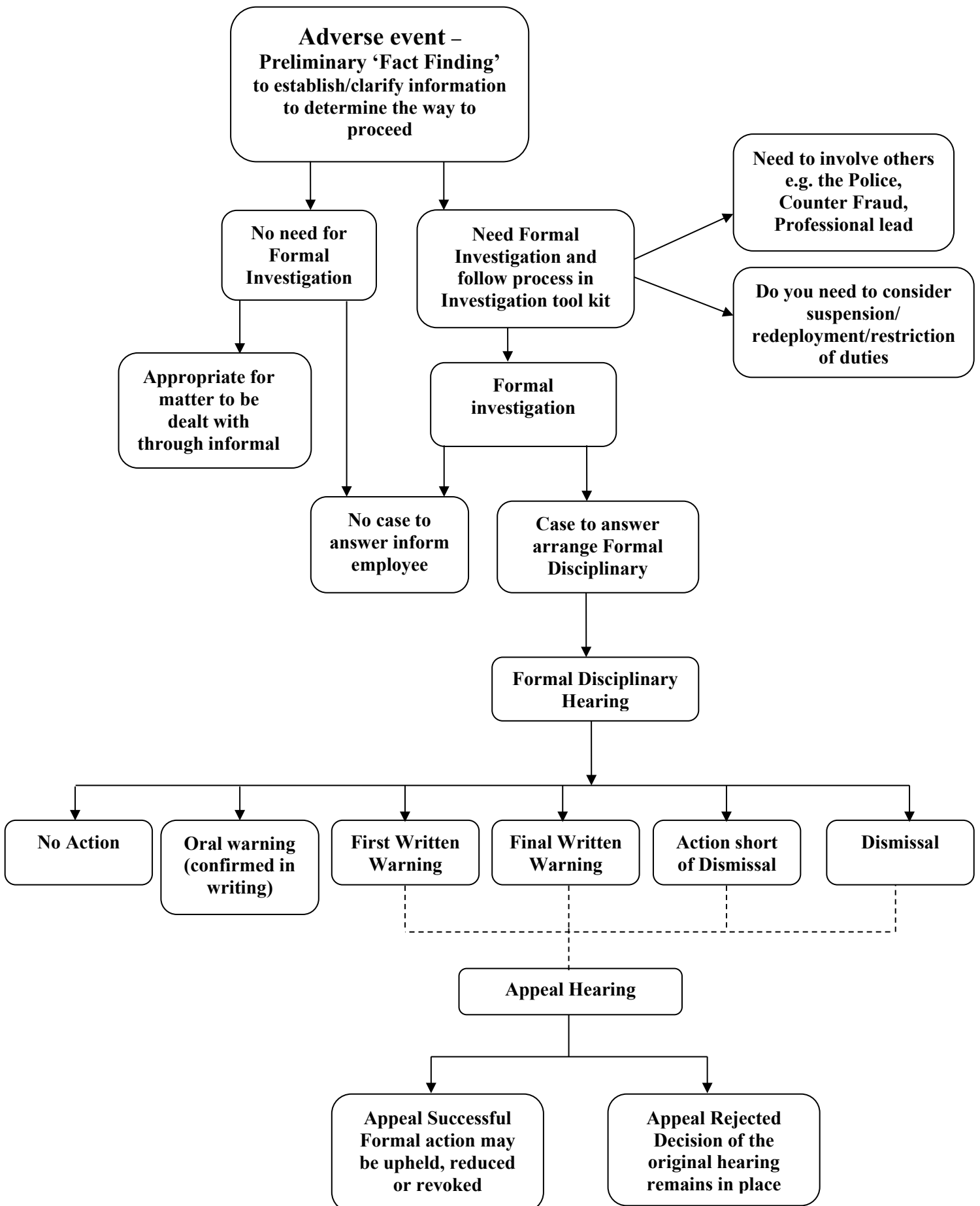
Before deciding to suspend an employee, the manager should assess the degree of risk involved. This would include considering whether the employee poses a risk to clinical, financial or staff governance, or is a risk to self, others, patients or the organisation.

### **Situations where suspension might be used**

The following situations are examples of where suspension might be used, but this list is not exhaustive:

- Where a person against whom allegations have been made could be seen to either interfere with or influence an investigation if they were to remain at work
- Allegations of clinical incompetence which poses a significant risk to patient safety
- Where it is suspected that an individual is under the influence of either alcohol or drugs
- Where there is a need to remove an employee from the premises to cool down (e.g. where staff have been fighting, note it may be necessary to suspend both employees in this example)
- Where allegations are made of bullying or harassment and it is considered necessary for whatever reason that the person under investigation cannot attend work
- Where there is an allegation of abuse of patients, especially children or vulnerable adults
- Where the employee may pose a threat to themselves or others in the organisation
- In cases where this would adversely affect a contractual relationship

## PROCESS FLOW CHART





### Terms of Reference Template

Below are the Investigation Terms of Reference which outlines the remit of the investigation process.

<b>Investigation Commissioner</b>	
<b>Approval for use of the designated investigative officer</b>	
<b>Lead Investigator</b>	
<b>HR Representative</b>	
<b>Timescale of the Investigation</b>	
<b>Individual whose alleged conduct is subject to investigation</b>	
<b>Who is the employees lead Contact person during suspension/ investigation?</b>  <b>Has the employee been notified of the lead contact person?</b>  <b>Policy in Use</b>	
<b>What is to be investigated?</b>	
<b>Investigatory meetings to be held with:</b>	
<b>What evidence is already available to the investigation?</b>	
<b>What other evidence or information needs to be sought as part of the investigation?</b>	
<b>How will findings of the investigation be presented?</b>	
<b>Who the findings will be reported to and by when?</b>	
<b>Who needs to be contacted if changes to this Terms of Reference need to be agreed?</b>	
<b>Health &amp; Wellbeing information provided to the employee ?</b>	

**Fact Find Assessment**

Upon completion of the Fact Find Assessment, the manager should complete this form and submit it to their HR Manager. This should be completed within 3 days of the incident or the manager being made aware of the incident. HR Advice should be sought from the outset.

**Employee Name:** \_\_\_\_\_

**ESR Number:** \_\_\_\_\_

**Role:** \_\_\_\_\_

**Ward/Department:** \_\_\_\_\_

**Manager:** \_\_\_\_\_

**Date of Incident/Allegation:** \_\_\_\_\_

**Nature of Incident/Allegation:** \_\_\_\_\_

\_\_\_\_\_

**Name of Witness 1 and what they witnessed:** \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

**Name of Witness 2 and what they witnessed:** \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

**Employee Response (including mitigation)** *(not to be taken if Counter Fraud or Safeguarding involved until they have given clearance)*

\_\_\_\_\_

\_\_\_\_\_

**Fact Find Assessment findings (is there sufficient evidence at this stage to indicate that the incident/allegation did take place, that this involves a breach that will need to be investigated?)**

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

**Are there any restrictions in place** (for example moved to another area/patient record access removed):

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**Depending on the nature of the incident, there are a number of reporting mechanisms that are required to be followed. Please indicate below if the necessary departments have been contacted:**

**Reported to Safeguarding: Yes/No**

**Reported to Counter Fraud: Yes/No**

**Contacted HR: Yes/No**

**Patient No:** \_\_\_\_\_

**Documents attached:**

**(For example – incident reporting forms, witness statements, complaint letter)**

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**Manager's decision and rationale:** \_\_\_\_\_

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**Name of Manager undertaking the Fact Find Assessment:** \_\_\_\_\_

**Date considered:** \_\_\_\_\_

**Name of HR Lead:** \_\_\_\_\_

**Proceed to Formal Investigation: Yes/No**

**Date Agreed:** \_\_\_\_\_