

# Disciplinary Policy & Guidance

## Document Governance

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| <b>Ratified Date</b>  | 19/07/2023 | <b>Version Number</b> | 8 | <b>Expiry Date</b><br><i>Max. 3 years from ratification</i> | 26/04/2024 |
| <b>Reason(s) for change</b> (if not new at this edition)  |            |                       |   |   |            |
| Updates throughout the policy in line with feedback and reviews including; process for managing case conferences, addition of zero tolerance wording, reference to CCTV and updates to guidance to reflect Policy. Inclusion of new guidance within appendix 1 relating to Just Culture Fact Finding process. |            |                       |   |   |            |

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|--------------------------|--|--------------------------|-------|------------------------|------------|
| <b>Document Type:</b>    | Policy Guidance  | <b>Reference Number:</b> | HR014 | <b>Document level:</b> | Trust wide |
| <b>Document Grading:</b> | High   |                          |       |                        |            |
| <b>Document purpose:</b> | <p>The Disciplinary Policy provides a framework to manage concerns about staff conduct in a fair and timely manner. It aims to help staff achieve and maintain required standards of conduct, thus ensuring the safe and high quality provision of patient/client care.</p> <p>This policy is non-clinical in content.</p> |                          |       |                        |            |
| <b>Applicable to:</b>    | <p>This policy is applicable to all employee of the Trust.</p> <p>Bank and Agency Workers should refer to the Trust's Standard Operating Procedure for the Engagement of Bank Workers</p>  |                          |       |                        |            |

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| <b>People/Groups Consulted:</b>      | HR Team<br>Trade Union Representatives<br>Executive Directors<br>Equality, Diversity and Inclusion Lead<br>HR & Staff Side Policy Group<br>HR & Staff Side Policy Group |
| <b>Approval Meeting:</b>             | JNCC  |
| <b>Governance Assurance Meeting:</b> | People & Culture Committee  |

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| <b>Other documents to be read in</b> | Trust Vision and Values<br>Code of Conduct for Employees |
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| <b>conjunction:</b> | Anti-Fraud, Bribery and Corruption Policy<br>Safeguarding policies<br>Allegations of Abuse by Staff against Children and Vulnerable Adults Policy<br>Supporting Staff following Traumatic and or Violent Incidents<br>Grievance Policy & Procedure<br>Procedure for responding to concerns about doctors, dentists and pharmacists<br>Disclosure and Barring Service (DBS) Policy<br>CCTV Systems Procedure |
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### Version Control and Change Summary

| Version Number | Date       | Section    | Author                 | Comments  |
|----------------|------------|------------|------------------------|---|
| 7              | March 2023 | Appendix G | Liz Keir<br>Lisa Lever | Updated to merge guidance (HR014a) into policy update Just Culture section and addition of Just Culture Charter appendix G. Updated into standard policy template.  |
| 8              | July 2023  | Various    | Lisa Lever             | Updates throughout the policy in line with feedback and reviews including; process for managing case conferences, addition of zero tolerance wording, reference to CCTV and updates to guidance to reflect Policy. Inclusion of new guidance within appendix 1 relating to Just Culture Fact Finding process. |

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## **1.0 Introduction and Purpose**

- 1.1** Lancashire & South Cumbria NHS Foundation Trust (the Trust) requires the highest standards of conduct from all employees in order to provide the best care we can to our patients and service users. We understand that there may be occasions when individual behaviours fall below expected standards and this policy is designed to ensure a fair, transparent and consistent approach to the resolution of such concerns.
- 1.2** The Trust aims to put patients at the heart of all we do, therefore patient safety and safeguarding is the highest priority to ensure that patient safety and safeguarding of people is kept to the highest of standards.
- 1.3** The Trust aims to foster a no-blame culture, which encourages staff to speak up when things go wrong, rather than fear repercussions, so that a resolution can be sought and lessons learned.
- 1.4** The Trust is committed to ensuring that the principles of the Just Culture Guide, as produced by NHS Improvement, and the Trusts own Just Culture Charter are incorporated into the Trust's Disciplinary Process and a summary of the guide can be found in Appendix 1.
- 1.5** This policy has been developed in consultation with the Trust's accredited Trade Unions and is in accordance with the ACAS Code of Practice on Disciplinary and Grievance procedures.

## **1.6 Policy Statement**

- 1.6.1** A Just and Learning Culture in LSCFT enables everyone to contribute to a fair, safe and compassionate environment. It is a culture that asks and curiously enquires into 'what' happened, not 'who' did what when an incident has occurred and promotes accountability, learning and support in equal measure. We will work together to be open with each other when things go wrong to feel supported and empowered to learn rather than feeling blamed.
- 1.6.2** We all have a responsibility to be honest, kind and willing to learn in all our interactions with each other. We will work in line with the 3 guiding principles of a Just and Learning Culture, of Fairness, Openness and Transparency and Learning not blame.

**1.6.3** Please refer to the Trust Just Culture Charter in Appendix 1.

**1.6.4** The Trust operates a zero-tolerance approach to unacceptable behaviour relating to any protected characteristic. This means that allegations raised are taken seriously, and dealt with promptly. We will listen to those who have suffered harm/unacceptable experiences and we will offer support as well as involving them in identifying how we will address the allegations, such as the application of Trust policies including the Grievance & Disciplinary Policies. We will challenge and take action to address inappropriate behaviour. We will offer support to those impacted and we will proactively increase knowledge and awareness for all.

## **2.0 Scope**

**2.1** This policy applies to all Trust employees including Medical and Dental staff. However, in instances when the professional conduct, capability or competence of a Medical or Dental professional arises, this policy must be applied in conjunction with the Procedure for responding to concerns about doctors, dentists and pharmacists.

**2.2** This policy does not apply to bank or agency workers and concerns regarding the conduct of such workers will be managed in line with the Trust's Procedure for dealing with concerns relating to Bank Only Workers.

**2.3** Where an employee's ability to do their job is affected by a lack of skill, knowledge, or through ill health, this will be managed through the relevant Trust Policy (Performance Improvement Policy or Health at Work Policy).

**2.4** This policy must be read alongside other Trust publications which reference the Trust's Values and expected norms of behaviour, including the Trust Code of Conduct..

## **3.0 Definitions**

### **3.1 Employee Assistance programme (EAP)**

An external support for staff, providing free advice and guidance on employment and personal matters. This can include talking therapies, legal and financial advice or debt advice.

### **3.2 Trade Union (TU) Representative**

Accredited representatives of Trade Unions within the Trust, who are able to advice and accompany members to any formal meeting under this process.

### **3.3 Protected characteristics**

The Equality Act (2010) defines protected characteristics as age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex or sexual orientation.

### **3.4 Diversity & Inclusion Representative**

Someone who has the training, knowledge or lived experience which equips them to provide advice in relation to allegations of prejudice relating to protected characteristics.

## 4.0 Duties

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

**4.1.2 Managers** must ensure that their people are aware of the required standards of conduct and handle disciplinary concerns fairly and promptly in accordance with this policy and procedure. They are responsible for promoting a culture in which concerns are dealt with openly and fairly, with an emphasis on learning from mistakes. Managers must seek advice about formal disciplinary cases from the HR Team. Employee wellbeing should be considered throughout the application of this policy. Employees should be made aware of the support available to them including the Employee Assistance programme. See 5.2.1 for details of how to access this.

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

**4.1.4 Trade Union Representatives** will work in partnership with managers to ensure that the policy and procedure is applied in a fair and consistent manner. Where an allegation arises, trade union representatives will work with other stakeholders to ensure that decisions can be taken promptly, thereby minimising staff anxiety.

## 5.0 The Policy/Procedure

**5.1.1** The Trust operates a three-stage Disciplinary Process which is used to address both low-level and more serious disciplinary concerns:

- **Informal Resolution:** Informal Action can be used as a management response to low-level conduct concerns.
- **Formal Investigation:** For persistent misconduct or more serious concerns, a full and thorough investigation process will take place.
- **Investigation Outcome:** Following thorough evaluation of facts, a case may result in an agreed or imposed sanction being given. All employees have a right of appeal against imposed sanctions.

**5.1.2** There are two categories of Disciplinary Offences; Misconduct and Gross Misconduct. Misconduct refers to deviations from general standards of conduct and performance, which if recurrent could result in dismissal. Gross misconduct refers to an act deemed so serious that, following a full investigation, summary dismissal from post may be

considered. Further information relating to Categories of Disciplinary Misconduct and examples of each can be found in Appendix 2.

## **5.2 Support Available to Employees during Misconduct Investigation**

**5.2.1** The Trust acknowledges the impact that an investigation process can have on employees and therefore the following supports will be available throughout the process: As part of the Trust's Health and Wellbeing provision, Occupational Health services and the Employee Assistance Programme can be accessed via the Your Health & Wellbeing website at <https://wellbeing.lscft.nhs.uk/>

- Trade Union Support – The Trust encourages all employees with a Trade Union membership to contact their local representative at the earliest opportunity for expert advice, support and guidance.
- Workplace Colleague Support – Employees that are not represented by a Trade Union Representative at formal investigation meetings and hearings will be entitled to be accompanied by a workplace colleague. This does not have to be a colleague from the employee's immediate area of work and every effort will be made by the workplace colleague's manager to allow attendance at any formal meetings as required.
- A Wellbeing Support – all employees affected by this policy will be provided with a Workplace Wellbeing Support. This will usually be a manager that the individual knows well enough to speak openly with, who can provide updates on the process and arrange any additional support. The employee is allowed to discuss the investigation process with their Wellbeing Support. A Wellbeing Support will be selected in liaison with the employee to ensure suitability and will be able to signpost the employee to additional support services as required.
- A Personal Support – Employees with a disability or impairment which may impact on their ability to participate in formal disciplinary meetings will be able to attend with a Personal Support, in addition to their Trade Union Representative or workplace colleague. In exceptional circumstances, the Trust may allow a Personal Support to be in attendance for all other employees, dependant on the circumstances of the case. A Personal Support could be a personal friend or relative (not acting in a legal capacity). Please note that whilst the Trust may allow a Personal Support to attend meetings, this cannot be in addition to a TU representative or Workplace colleague.
- Diversity & Inclusion support - all employees holding a protected characteristic (whether they have made or are the subject of an allegation) will be able to seek support from a D&I representative. We recognise the harm that is caused to the individual when they are the subject of prejudice and we will ensure that they are supported throughout the process.

- Occupational Health – all employees who are moved into a formal investigation process will be offered support from Occupational Health colleagues. Employees who report as unfit for work during the investigation process will be referred to Occupational Health for support and to assess their fitness to engage with the process.
- Employee Assistance Programme (EAP) – Employees are encouraged to access the Trust's EAP provision for support during the investigation process; this can include financial advice, legal advice and talking therapies.
- If a disciplinary hearing is required for a Doctor, Dentist or Pharmacist the practitioner may be accompanied in any hearing by a companion. The companion may be another employee of the Trust, an official or representative of the British Medical Association, British Dental Association, Pharmacists' Defence Association, or any other accredited trade union or defence organisation. The companion may be legally qualified but they will not be acting in a legal capacity.

### **5.3. Informal Resolution of Concerns**

**5.3.1** The Trust acknowledges the detrimental impact that formal investigation processes can have on an employee and wider team and therefore encourages the resolution of concerns using the informal process, when it is reasonable and proportionate to do so. Allegations which may, if substantiated, amount to gross misconduct cannot be managed under Informal Action.

**5.3.2** The following are examples of misconduct which may be addressed with Informal Action: Please note that this list is not exhaustive.

- Poor time-keeping
- Personal use of telephones
- Unauthorised absences
- Failure to act on a reasonable instruction
- First low-level misconduct and out of character behaviour.

**5.3.3** Low-level matters of misconduct can be resolved through the Informal Action process, which consists of a confidential one-to-one meeting between the manager and employee to address the concerns, form an action plan and move forward together.

**5.3.4** Employees will not be given formal notice of the meeting and are not able to be accompanied to the Informal Action Meeting by a Representative. However, the employee is encouraged to seek advice from their Trade Union Representative ahead of the meeting, should they wish to.

**5.3.5** Notes of the Informal Action Meeting must be taken and issued to the employee within one week of the meeting using the Informal Action Agreement Template (see Appendix 3). Both the manager and employee must sign the notes, as a mark of their commitment to the improvement the employee's behaviour.

**5.3.6** A copy of the Informal Action Agreement will be placed on the employee's HR file and will remain live for six months. Any further misconduct during the period of Informal Action may result in further disciplinary action being taken. If a repeat of the misconduct occurs following the six month Informal Action period, formal disciplinary action may be taken.

## **5.4 Just Culture Fact Finding**

**5.4.1** Before commencing a formal investigation process, Managers must gather facts from those immediately involved using the 'Just Culture Fact Finding Process Guidance' (Appendix 1). Early intervention should look at what happened, for example, who was hurt or harmed, why did this happen and what is the immediate way ahead to ensure there is no repeat. This is not a formal stage of the process, but is an opportunity for the manager to gather all pertinent facts in order to establish the best way forward. This should take place as soon as is reasonably practicable and no later than 5 days from the date at which the incident is reported.

**5.4.2** At this stage, managers may:

- Speak to the staff involved to gather relevant information including specific information about what has happened? Who was hurt or harmed? Why did it happen? What is the immediate Way Ahead?
- Ask the staff involved to provide a written statement of their recollection of the incident. Statements should be signed and dated and if taken over the phone a record of the conversation is taken and emailed to the individual so that they can confirm they are accurate.
- Encourage the employee/s involved to contact their local Trade Union Representative and provide contact details of TU Representatives, where possible.

### **5.4.3. Use of CCTV as part of Disciplinary Process**

- CCTV images or raw footage from Oxevision will not normally be used during an internal disciplinary process unless images of employees show something that the Trust could not be expected to ignore such as criminal activity, potential acts of gross misconduct or behaviour that puts others at risk.

They should not be used to investigate less serious allegations of misconduct where any of this criteria are not met. Footage should be retained so that any employee subject to allegations can see it and respond during the fact find and subsequent investigation process (as appropriate); this should be the moving footage, not still images.

Where it is considered that viewing CCTV or raw footage is appropriate and warranted this should be discussed with the Trust Local Security Management Specialist and subsequently viewed in line with the Trusts CCTV systems procedure and / or the Trust Oxevision policy.



Where CCTV images or raw footage are required for evidential purposes in Trust disciplinary proceedings, they will be properly processed, fairly and securely in line with the Trust CCTV Systems Procedure. The images will only be shared with a nominated individual by the Trusts Local Security Specialist and it is the responsibility of the HR support to the investigation to record who has viewed them during investigation meetings.

The footage should be included as part of the investigation into an allegation under the Trust's Disciplinary Procedure and therefore made available in accordance with that policy at any formal hearing. Any footage will be securely retained by the Trust Local Security Specialist until such time as any appeal process is exhausted.

#### **5.4.4**

Should the manager conclude that there are concerns of misconduct which need to be considered, a Fact Find Document will be completed and a Case Conference Meeting arranged.

### **5.5 Case Conference Meeting**

**5.5.1** The Case Conference Meeting takes place to ensure a multi-disciplinary review of the initial facts of the case and to form a consensus agreement on how to proceed. The Case Conference Meeting should take place within 5 days of the Fact Find being completed. Please refer to the Procedure for Managing Employee Relations Case Conferences for further details which is contained within the Guidance Appendix 1.

**5.5.2** The suggested membership of the meeting includes; 8b or above Operational Manager, or equivalent (where appropriate, 8a Service with delegated authority, relevant Professional Lead, HR Business Partner support and, if relevant, a Trust level Nursing or AHP lead, a Safeguarding representative, and/ or Diversity and Inclusion (D&I) representative. If the Trade Union membership status of the employee/s in question is known, it is recommended the Staff Side chair will be made aware of the concerns so that support can be offered to the employee at the earliest opportunity.

**5.5.3** A Case Conference Meeting must take place before a Disciplinary Investigation is instigated.

**5.5.4** During the Case Conference Meeting, decisions will be taken on Precautionary Action (see Section 5.7) and on whether or not the matter needs to be dealt with formally or referred back for Informal Action to be taken (Section 5.3). It is important that the Just Culture principles as detailed in Appendix 1 are considered and discussed as part of the case conference and where appropriate informal action and an improvement action plan focussed on learning may be considered.

**5.5.5** Where it is felt that an internal investigation may prejudice Protection of Vulnerable Adults, Safeguarding Children, regulations or fraud; theft; Police; IT or other enquiries, the investigation may not be able to commence until clearance has been given to do so. The Chair of the Case Conference with HR support will make further enquiries if

this is the case.

**5.5.6** Reference must be made to the appropriate regulations or Information Governance Guidance.

**5.5.7** The Counter-Fraud Officer must be informed before an investigation is instigated where there is an allegation of fraud, failure to declare a business interest, misuse of public funds or wilful damage. Reference should also be made to the Trust's Policy on Fraud, Bribery and Corruption

## **5.6 Precautionary Action**

- Where serious concerns are raised it may be appropriate for the employee to be temporarily redeployed to a different area of work, have their professional practice restricted or be suspended from work, whilst the matter is investigated. This decision can be recommended by a Manager at Band 8a but needs to be authorised by a manager at Band 8b or above. If the employee holds a bank position the manager must contact the Temporary Staffing to team to ensure any restrictions are also mirrored for their bank position. Precautionary action would usually be considered at a Case Conference meeting however consideration may need to be given in some cases to the implementation of interim action to safeguard the staff member and / or service users prior to a Case Conference being held. Any action taken prior to the Case Conference will be subsequently reviewed at the Case Conference meeting once convened.

**5.6.2** In deciding whether or not to take precautionary action, the band 8b manager will consider the employee's substantive role and any bank work with the Trust. The following questions should be considered:

- Is It be possible to conduct a fair investigation if the employee remains in post?
- It there a risk to staff or service users if the employee remains in post?

NB. It is important that the Just Culture principles as detailed in Appendix 1 are considered and discussed as part of the decision making.

The precautionary action will be re-reviewed at the case conference meeting or if precautionary action has not been taken immediately then precautionary action should be considered at the case conference stage.

**5.6.3** Alternatives to suspension must be considered as a primary aim and could include the following:

- moving the employee to a different area of the workplace
- changing the employee's working hours
- placing the employee on restricted duties, including having reduced access to Trust systems where appropriate
- closer supervision of the employee

- transferring the employee to a different role within the organisation (the role must be of a similar status to their normal role, and with the same terms and conditions of employment) Other meaningful activities that the individual could do must be actively explored. This could include working remotely from home or carrying out activities such as audits, research or teaching.

**5.6.4** Redeployment, restriction or suspension are neutral, precautionary acts and do not apportion any blame to the individual concerned. The precautionary act will be in place for the minimum period possible. A review of continuation of suspension, redeployment or restriction will take place every two weeks and the employee informed of the reason for a further suspension or restriction in writing. For cases which are paused during police or other external agency involvement, review of suspension will take place every four weeks.

**5.6.5** During the period of redeployment or suspension the employee will receive regular contact from their Wellbeing Support at agreed intervals, although weekly contact is advisable.

**5.6.6** Any employee subject to precautionary action will not receive any detrimental treatment or loss of earnings as a result. The pay of employees on suspension from work will be calculated based on an average of their earnings over a reference period prior to their suspension. The manager must contact payroll service to ensure this is facilitated.

**5.6.7** Employees who are to be subject to precautionary action will be offered support from a Trade Union Representative or work colleague at the meeting. Often precautionary action takes place at short notice and therefore if a companion is not available within a reasonable timeframe the meeting must go ahead.

**5.6.8** The suspension of any employee that is registered with a professional body must be escalated by the relevant professional Lead to the relevant Executive Lead or nominated deputy for final decision to be made (Chief Nurse, Chief Allied Health Professional or Medical Director).

## **5.7 Terms of Reference**

**5.7.1** If, following a Case Conference Meeting, a decision is taken to proceed with a formal disciplinary investigation it is then necessary to develop Terms of Reference.

**5.7.2** The Terms of Reference provides a specification for what the Investigation Officer needs to do and how the investigation will be completed. The Terms of Reference can be updated at any stage in the process, if additional information arises, however any changes to the allegations must be agreed with the Commissioning Manager and HR Business Partner / this may be discussed at a reconvened Case Conference meeting. The updated Terms of Reference will be communicated in writing to the employee.

## **5.8 Informing the Employee of the Allegation(s) Against Them**

**5.8.1** Where possible, the employee will be informed of the allegations against them in a private supportive meeting, by the Commissioning Manager (or their nominated deputy). If the employee is subject to precautionary action, the employee will be informed of the allegations at the Precautionary Action Meeting.

**5.8.2** In all cases a letter will be sent to the employee detailing:

- The allegations made against them.
- The name of the Investigating Officer and HR representative.
- Any precautionary action and the conditions of this action.
- Their right to be accompanied / represented at formal stages of the procedure.
- Their Wellbeing Support

## **5.9 Investigations**

**5.9.1** When assigning an Investigation Officer (IO), the Case Manager will consider the appropriateness of the appointment in terms of current workload, planned leave, experience, objectivity towards the case in question and Inclusion and diversity considerations surrounding one or more protected characteristics.

**5.9.2** It is recommended that the investigation process is concluded within 12 weeks of the date at which an IO is appointed, however it is acknowledged that for more complex cases, or those with several witnesses to interview, this may be unachievable. Investigations that exceed the 12 week deadline will require the IO to report the reasons for delay to the Commissioning Manager and the employee will be informed. It is recommended regular meetings are arranged between the Commissioning Manager and IO so updates on progress can be reported. It is advisable that the IO keep a timeline of the investigation which may be required for inclusion in the investigation report.

**5.9.3** The IO will interview and/or arrange for written statements to be obtained from all witnesses as soon as possible. Where this is not possible within a reasonable period of time due to the absence of an individual, the IO will decide whether there is sufficient evidence to proceed with the rest of the process.

**5.9.4** Employees have a duty to assist in the investigation wherever possible and if the matter progresses to a disciplinary hearing any interview notes or statements will be disclosed to the employee under investigation unless, in the opinion of the IO and HR, there are exceptional circumstances making this inappropriate (e.g. fear of physical violence).

**5.9.5** The IO will collate all information which may include extraction of system records, datix reports and prepare a report of the findings. The report will be submitted to the Commissioning Manager who will decide if there is a case to answer and whether it is necessary to proceed with a disciplinary hearing. Any previous disciplinary warnings should not be included in the investigation report at this time. Prior warnings would only be highlighted if the case is to proceed to disciplinary hearing.

- 5.9.6** For allegations of a serious nature, or where impartial, expert advice may be required due to the complexity of the case, it may be necessary for an Expert Witness to be interviewed by the IO. The IO will share with the Expert Witness only facts that are necessary to enable them to offer expert advice on the case. The confidentiality of patients and employees will be adhered to at all times.
- 5.9.7** A Human Resources representative will be available to provide advice and support throughout the investigation and if required will be present at any investigation meetings.
- 5.9.8** Employees must not undertake any covert recording of the Investigation Interview, Hearing or any other communications as part of the investigation process and to do so may result in further disciplinary action being taken. The Trust will not accept the submission of recorded evidence during the disciplinary process if there is reasonable belief that it has been obtained covertly.
- 5.9.9** It is recommended that the Commissioning Manager arranges regular meetings with the Investigating Officer to gain updates on progress with the investigation throughout the process.
- 5.9.10** In the case of an allegation being made against an employee who holds a protected characteristic, advice should be sought from a Diversity & Inclusion representative

## **5.10 Investigation Outcome**

- 5.10.1** If the Manager commissioning the investigation is satisfied there is no case to answer, the employee will be notified immediately and this information confirmed in writing.
- 5.10.2** If the Manager believes there is a case to answer they will meet with the employee in private (and in the presence of his/her trade union representative, if available) and advise that the matter will be progressed to a disciplinary hearing as soon as reasonably practicable.
- 5.10.3** The Commissioning Manager may decide at any point during the investigation process and based on the findings that the issue should not go forward to a Disciplinary Hearing, but that informal action is required, or other interventions such as coaching or an Occupational Health referral, as necessary. The employee must be informed in writing of the decision regarding next steps.

## **5.11 Agreed Sanction outside of a hearing**

- 5.11.1** If, on review of the facts presented in the Investigation Report, the Commissioning Manager believes that there is evidence to suggest the employee has behaved inappropriately, the decision may be taken to offer the employee an Agreed Sanction without the need to proceed to a hearing.
- 5.11.2** The Commissioning Manager, with HR input, will only consider this if:
- A First Written Warning is a just and proportionate response to the misconduct that has occurred

- The employee admits to the allegation(s) and provides credible reassurance that their conduct will improve
- The facts are not in dispute
- The employee is not already subject to a live warning
- The allegations could not amount to Gross Misconduct.

**5.11.3** If agreed, the Commissioning Manager, a HR representative and the employee must meet to discuss the option of an Agreed First Written Warning.

**5.11.4** At the meeting, the implications of signing up to an Agreed Sanction will be discussed and if still acceptable to the Commissioning Manager and Employee, a document will be signed by both parties to confirm acceptance of the Agreed Sanction.

**5.11.5** If an employee wishes to retract their acceptance of an Agreed Sanction, the Disciplinary Process will be reinstated and move to a formal hearing.

## **5.12 Disciplinary Hearing**

**5.12.1** If the Commissioning Manager believes that there are grounds to move to a Disciplinary Hearing, this will be arranged as soon as possible, taking into account the availability of Trade Union Representatives. If the disciplinary hearing is required for a doctor, dentist and pharmacist the practitioner may be accompanied in any hearing by a companion. The companion may be another employee of the Trust, an official or representative of the British Medical Association, British Dental Association, Pharmacists' Defence Association, or any other accredited trade union or defence organisation. The companion may be legally qualified but he or she will not be acting in a legal capacity. The employee will receive an advance copy of the Investigation Report which will be presented at the hearing.

**5.12.2** When arranging the hearing, consideration must be given to the amount of evidence to be reviewed, to ensure that the panel, employee and Trade Union Representative are all afforded sufficient time in which to prepare for the hearing. It is recommended that 14 calendar days' written notice of hearings is offered, however this may be extended to a maximum of 28 calendar days' notice for hearings with high volumes of evidence.

**5.12.3** Employees have a right to be accompanied during a Disciplinary Hearing by an accredited Trade Union Representative or workplace colleague and the Trust will work in collaboration with representatives to arrange a mutually convenient hearing date at the earliest possibility. Should circumstances arise which result in the hearing being cancelled at the employees request, the Trust will offer one further hearing date. If the employee and/or representative fail to attend the reconvened hearing, the panel may take the decision to proceed in their absence.

**5.12.4** If an individual is unable to attend a disciplinary hearing because of sickness absence, alternative arrangements should be offered to the employee such as:

- Submitting written submissions

- Participating in the hearing at an alternative location
- Participating remotely
- Also seek Occupational Health advice re fitness to attend and any adjustments that could be made.

**5.12.5** Relevant witnesses may be called to attend the Hearing by the Investigating Officer and this will be co-ordinated by them. Should the employee wish to call a management witness they should submit this request to the Chair of the Panel. If agreed, the Chair will ask the Investigation Officer to arrange attendance. Should the employee or their representative wish to call witnesses who were not involved in the investigation, it is the responsibility of the employee/representative to arrange attendance.

**5.12.6** The Trust is committed to undertaking formal investigation and hearing processes with as little disruption to patient/service user care as possible and, although they may be interviewed as part of the investigation process, they will not be called to attend as witnesses at a hearing. Any interviewing of patients/service users will be undertaken in conjunction with the care team.

**5.12.7** Individuals providing character references are not permitted to attend as a witness. Instead a written statement can be submitted to the panel for consideration. Character references will only be considered if the allegations are proven, where they will be provided to the Hearing Manager for consideration when deciding a sanction.

**5.12.8** A Professional Lead/Advisor must be present at the disciplinary hearing if the allegations link to a professional standard and/or directly impact on safe patient care. Their role at the hearing is to provide advice to management on professional and/or the care provided to our patients/service users. The Professional Lead/Advisor will play no part in deciding a sanction at the disciplinary hearing as the final decision rests with the chair.

**5.12.9** All managers who Chair or sit on hearing panels must have read the guidance on managing / chairing hearings prior to a hearing and will be supported by a HR colleague in doing so.  
The Commissioning Manager of the investigation should not chair the disciplinary hearing.

## **5.13 The Hearing Decision**

**5.13.1** When coming to a decision, the Hearing manager must consider whether or not, on a balance of probability, there is enough evidence to confirm the allegations are likely to have occurred. In coming to this decision, the Hearing Manager must only consider the facts that are pertinent to the case.

**5.13.2** Once point **5.13.1** has been determined, the Hearing Manager will then be provided with additional relevant information in order to decide on the sanction, such as:

- The employee's general record including relevant active disciplinary sanctions
- Details of any support that the employee has been provided with previously

- Details of any mitigating circumstances
- Any relevant character references

### 5.13.3

Following the Disciplinary Hearing, the Chair of the Hearing must inform the employee of the decision without undue delay and send a letter, usually within 7 calendar days, informing of the decision.

### 5.14 Disciplinary Sanctions and Levels of Authority

**This table explains the levels of managers within the Trust and where the authority lies to undertake certain duties connected with disciplinary matters**

| Category                    | Case Conference                      | Suspension | Informal Action | First Written Warning | Final Written Warning | Dismissal | Appeal |
|-----------------------------|--------------------------------------|------------|-----------------|-----------------------|-----------------------|-----------|--------|
| Shift Manager               |                                      |            | √               |                       |                       |           |        |
| Line Manager                |                                      |            | √               |                       |                       |           |        |
| Senior Manager 8b or above. | Y (8a with delegated authority only) | √          | √               | √                     | √                     | √         | √      |
| Exec Director               |                                      | √          | √               | √                     | √                     | √         | √      |
| Chief Exec                  |                                      | √          | √               | √                     | √                     | √         | √      |
| Chair of Trust Board        |                                      | √          | √               | √                     | √                     | √         | √      |

### Panel Requirements

| Staff Group  | Final Written Warning / Dismissal     | Appeal against Final Written Warning                      | Appeal against Dismissal in all cases  |
|--|---------------------------------------|---|--|
| All Staff up to and including Band 8a  | Minimum level Band 8b                 | Network Director, Clinical Director or Executive Director | 1 Network Director or Clinical Director or Equivalent Head of Operations for Support Services, 1 Executive Director, 1 Non-Executive Director and 1 Professional Advisor (if a clinical member of staff) |
| Band 8b to Network Director (or equivalent) <b>not</b> including Network Directors | Network Director or Clinical Director | Executive Director  |  |



|   |                                       |                                       |   |
|---|---------------------------------------|---------------------------------------|---|
| Band 9 and above - including Network Director/ Clinical Director<br>Medical and Dental Staff outside of AFC Terms and Conditions up to Deputy Medical Directors | Executive Director                    | Chief Executive                       |   |
| Executive Director  | Chief Executive                       | Chairman and 1 Non-Executive Director | Chairman and 2 Non-Executive Directors              |
| Chief Executive   | Chair plus one Non-Executive Director | 2 Non-Executive Directors             | 2 Non-Executive Directors and 1 Independent Advisor |

In exceptional circumstances the above authority levels will be permitted to be delegated appropriately with the agreement of Human Resources.

**5.14.1** The following table details the three main Disciplinary Sanctions:

| Sanction              | Length of Sanction | Example of Sanction  |
|-----------------------|--------------------|--|
| First Written Warning | 12 months          | This sanction is usually appropriate for a first act of misconduct where there are no other active written warnings on the employee's disciplinary record.   |
| Final written warning | 12 months          | Misconduct where there is already an active written warning on the employee's record; or<br><br>Misconduct that is considered sufficiently serious to warrant a final written warning even though there are no other active warnings on the employee's record.   |
| Dismissal             | N/A                | This sanction is usually appropriate when further misconduct occurs, where there is an active final written warning on the employee's record; or<br><br>Gross misconduct that is considered sufficiently serious to warrant dismissal, even though there are no other active warnings on the employees record. |

**5.14.2** Records of disciplinary action will be held on the employee's personal file. They will be disregarded for disciplinary purposes after the expiry date of the warning as shown above. The date the warning is active will be clearly documented on the outcome letter from the disciplinary hearing and will usually be active from the date of the hearing. If an employee has a disciplinary sanction on their record and commits a further offence, after the usual investigation process, should it be decided there is a case to answer, the hearing panel would only be notified of the warning once it is established there is enough evidence to confirm the allegation/s is/are likely to have occurred.

**5.14.3** In cases where repeated misconduct is established which results in a dismissal of the employee, the termination of the contract will be with pay in lieu of notice. In these circumstances no pay in lieu of holiday entitlement will be made, other than pay in lieu of statutory holiday entitlement.

## **5.15 Action Short of Dismissal - Transfer and/or Demotion**

**5.15.1** In addition to or in place of other disciplinary outcomes, a decision may be made to transfer and/or demote an individual. This decision cannot be made unless the misconduct was such to warrant dismissal but has been reduced to another sanction when mitigating factors have been taken into account. Must be made in conjunction with the relevant professional lead as appropriate

**5.15.2** The employee will have a choice as to whether or not to accept these sanctions as an alternative to dismissal. If he/she refuses, then dismissal will apply.

**5.15.3** An employee who agrees to work at the downgraded position will accept that their wages/salary will be adjusted accordingly (i.e. protection of salary will not apply).

**5.15.4** In cases where gross misconduct is established and a decision is taken to summarily dismiss the employee, the termination of the contract is without notice or pay in lieu of notice. In these circumstances no pay in lieu of holiday entitlement will be made, other than pay in lieu of statutory holiday entitlement.

## **5.16 Support Available to Employees Following a Disciplinary Outcome**

**5.16.1** Employees returning to work following periods of suspension or working in alternative duties must be provided with Management Supervision during their first week back in work. During this supervision, the manager will update the individual on any changes that may have occurred in their substantive place of work whilst they were absent. The manager will establish whether or not the employee needs any refresher training on their return and arrange this accordingly. The manager will also arrange any follow-up support for the employee with Occupational Health or talking therapies.

**5.16.2** Employees that are dismissed from the Trust will still be able to access Occupational Health and Employee Assistance Programme services for a period of two months post-dismissal.

## **5.17 Appeals Process**

- 5.17.1** All employees in receipt of a formal sanction or dismissal have a right to appeal the decision. The appeal must be made in writing to the Chief People Officer. This must be done within 10 calendar days of receipt of the outcome letter and should clearly state the basis on which the appeal is to be made. Appeals may be made on various grounds including: new evidence, failure to follow policy/processes, undue severity or inconsistency of the sanction given.
- 5.17.2** When the appeal hearing is arranged, a letter detailing the arrangements for the appeal hearing will be sent to the employee at least 10 calendar days in advance of the meeting.
- 5.17.3** All reasonable steps will be taken to hold the hearing within 2 months of receipt of the appeal letter. Where this is not possible, reasons for the delay will be communicated to the employee. If an employee wishes to be accompanied at the appeal, they must make every effort as soon as possible after lodging their appeal to ensure that their Trade Union Representative or Workplace Support will be available to attend.
- 5.17.4** Appeals against dismissal will, in all cases, be heard by a Network Director or Clinical Director or Equivalent Head of Operations for Support Services, 1 Executive Director, 1 Non-Executive Director and 1 Professional Advisor (if a clinical member of staff) .
- 5.17.5** Any decision made at an appeal hearing will be final and concludes the Trust's internal disciplinary process.
- 5.17.6** Where an appeal against dismissal is upheld, reinstatement will be dated from the effective date of dismissal, and may therefore result in back-dating of pay. The Manager hearing the appeal will make decisions regarding any conditions for the reinstatement of the member of staff.
- 5.17.7** Following the Appeal Hearing, the Chair of the Hearing must inform the employee of the decision without undue delay and send a letter usually within seven days of the decision.
- 5.17.8** The Chair of the Hearing will arrange a debrief with appropriate members of the management team (Associate Director of Operations/Service Manager/relevant Operational Lead) with HR support to review any lessons learnt and assign actions as appropriate. This should be carried out in line with the We are Learning framework which can be discussed with the relevant HR representative.

## **5.18 Complaints about the Application of the Policy**

- 5.18.1** Concerns about the application of the Disciplinary Policy will be handled as part of the disciplinary appeal and will not be considered as a separate grievance unless the employee's grievance alleges they were unfairly treated in connection with a protected characteristic or that the action is not genuinely based on grounds of conduct.

## **5.19 Criminal Charges or Convictions outside Employment**

**5.19.1** Employees who are arrested, charged, cautioned or served with a summons for a criminal charge must inform the Trust, usually via line management. Failure to do so may result in disciplinary action.

**5.19.2** If an employee is charged with, or convicted of, a criminal offence not related to work, this is not in itself reason for disciplinary action. A Case Conference meeting (Section 5.5) should establish the facts of the case and consider whether the matter is serious enough to warrant starting the disciplinary procedure or whether or not precautionary action is required (section 5.6).

**5.19.3** When considering whether or not the formal disciplinary process should be invoked, the manager will consider the following questions:

- Does the offence, or alleged offence, have any effect on the employee's suitability to do their job, and/or their relationship with colleagues, customers, and the Trust?
- If yes, the formal disciplinary process should be invoked.
- If the employee is remanded in custody, consideration must be given to whether the post can be kept open for the duration of the employee's imprisonment – If no, the formal disciplinary process should be invoked.
- A decision will not normally be deferred simply because the outcome of a prosecution is not yet known.

Where a Disclosure and Barring Service (DBS) check reveals undeclared convictions, the employee could be subject to an investigation under the Disciplinary Policy and this may potentially result in Disciplinary Action. Failure to correctly declare known criminal convictions may also be subject to criminal and/or civil sanctions being pursued by the Trust together with potential referral to any relevant professional body. Please refer to the Disclosure and Barring (DBS) Procedure and Policy for further information.

## **5.20 Referrals to Professional Bodies and Other Agencies**

**5.20.1** Depending on the allegations, where an employee is registered with a professional body, the regulatory body may be notified. This decision will be taken by the most senior professional lead from the directorate, in conjunction with the relevant professional lead for the Trust. All referrals to Professional Bodies must be escalated to the respective Executive Director.

**5.20.2** The Trust will consider whether a referral to Professional Bodies and/or other agencies is required following a thorough investigation process and any subsequent disciplinary hearing. However, for cases of significant concern, a referral may take place prior to completion of the investigation and may take place after the fact find.

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

Where appropriate, investigations by the counter fraud team, other agencies such as police or social services may be carried out separately from investigations under this

procedure. The Trust will give its full cooperation to ensure any such external investigations are properly carried out. Representatives from other agencies may advise The Trust to pause their own internal disciplinary investigations whilst the agencies external investigations are ongoing. In these exceptional circumstances The Trust will likely pause their internal disciplinary investigation.

**5.20.4** Where cases include serious personal data breaches likely to result in a risk to the rights and freedoms of data subjects, the Trust has a legal duty to report such cases to the Information Commissioner's Office within 72 hours via the Trust's Data Protection Office.

**5.20.5** The Trust is committed to minimising the opportunities for fraud and corruption wherever they occur, and is committed to taking positive action to achieve this. All cases of suspected fraud will be reported to the Trust's Local Counter-Fraud Specialist and advice provided as to next steps. Options include, Trust Local Counter-Fraud Specialist to investigate and Disciplinary Investigation to be paused. Local Counter Fraud Specialist to investigate and Disciplinary Investigation to run concurrently or Disciplinary Investigation only with updates provided to Local Counter Fraud Specialist as to findings.

**5.20.6** As a regulated activity provider, the Trust has a legal duty to refer employees to DBS, where conditions are met. This applies even when a referral has also been made to a Local Authority Safeguarding Team or Professional Regulator. It is the responsibility of the 8b Manager (Case Conference Chair from the Network, 8a with delegated authority) to ensure that a DBS referral is made. Please refer to the Trust's Disclosure and Barring Service (DBS) Policy for the Conditions under which a referral must be made and for details regarding the process.

## **5.21 Trade Union Officials**

**5.21.1** As employees, accredited representatives of Trade Unions are subject to the normal disciplinary standards. However, no disciplinary action will be taken until the circumstances of the case have been discussed with a Full Time Official. The Full Time Official must be informed at the earliest possible opportunity after the incident comes to light.

**5.21.2** Accredited representatives will not be subjected to any disciplinary action relating to their role as a Trade Union representative.

## 6.0 Monitoring

| Standard                                | Time frame/<br>format            | How this will be monitored   | By whom                               |
|---|----------------------------------|--|---------------------------------------|
| Consistency of application              | Following each Disciplinary Case | Lessons Learned Template to be completed following every disciplinary case | Commissioning Manager and HR Support  |
| Consistency of application and outcomes | Monthly                          | Employee Relations Oversight Group   | Various HR and Professional Lead Reps |
| Timescales met                          | Bi-Weekly                        | Casework Review Meeting  | HR reps                               |

## 7.0 References (including applicable NICE publications)

ACAS Code of Practice on Disciplinary and Grievance Procedures

## 8.0 Implementation plan

| Category   | Action(s)  | Target date | Responsible person                                  |
|------------|--|-------------|---|
| Engagement | Debrief/lessons learnt sessions to take place following disciplinary process to ensure that lessons are learnt and best practice is maintained in line with We are |             | Head of HR Business Partnering & Employee Relations |
| Training   | HR to provide training in the implementation of this policy to ensure fair and consistent application  | 01/09/2023  | Head of HR Business Partnering & Employee Relations |

# 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?



Yes

**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?



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

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

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

### 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?



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

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 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

## Just & Learning Culture Resources

# Definition

A Just and Learning Culture in LSCFT will provide a system of shared accountability amongst all parties enabling everyone to contribute to a fair, safe and compassionate environment that makes everyone feel supported and empowered to learn when something goes wrong rather than seeking to apportion blame or feeling blamed.

To support this we will be honest, kind and willing to learn in all aspects of our interactions with each other.





## What does a **Learning Culture** mean at LSCFT?

### We are always learning

- When there is an incident, we will approach this from a human factors perspective and seek to learn from what has gone wrong in care
- We will use supervision to reflect on incidents we have been involved in and use this as an learning opportunity to improve patient care
- We speak up if we are concerned about safety and focus on opportunities to improve
- Our leaders will share lessons learnt with their teams on a regular basis
- Our teams will be open about challenges and celebrate what is working well



## Guiding principles

### Our 3 guiding principles will underpin the Just and Learning Culture within LSCFT



- **Fairness** - LSCFT is committed to developing a Just and Learning Culture recognizing that treating staff fairly, having insight and input from staff in incidents and learning from incidents is vital to our continuous learning and improvement journey.



- **Openness and Transparency**- LSCFT is committed to develop a culture of openness and transparency, accepting that we don't always get things right first time and that we will learn to continually improve.



- **Learning not Blame**- LSCFT is committed to being compassionate and supportive to those involved in incidents, promoting and encouraging consistent and curious enquiry and always ask 'what happened' and not 'who did what'. We will work towards reducing variability in how managers respond to staff involved in patient safety and other incidents to ensure they are treated fairly.

This will become the way we do things round here and will be embedded in our policies, procedures and practice.



## **Just Culture Fact Finding Process Guidance**

### **A fact find should establish - The**

Q - What.

Q - Who.

Q - Why.

Q - Way Ahead.

A Just Culture looks first at what was responsible for an issue or situation before looking at who was responsible. The actions of individuals need to be placed into context early, not at the end which often happens.

The purpose of any employee relations process is to correct or improve either behaviour or performance, and to sustain the change or prevent a repeat. However we often only begin rebuilding or repairing relationships and situations at the end of the investigation following recommendations or the imposition of a sanction. By adopting a Just Culture approach to employee relations matters we will make our investigation process constructive rather than destructive.

Whilst all investigations will ultimately ask the question why, it is essential that early intervention looks at what happened, who was hurt or harmed, why did this happen and what is the immediate way ahead to begin repairing and ensuring it doesn't happen again.

Line Managers are crucial in this role, along with the HR Advisor and Staff Side partners supporting the process. Employees need to take responsibility and be accountable for their actions, however so does the organisation. To do this, individuals and their actions need to be placed into context via immediate fact finding before any formal investigation is considered.

Line Managers need to establish:

Q - What has happened?

Q - Who was hurt or harmed?

Q - Why did it happen?

Q - What is the immediate Way Ahead?

**Fact Finding:**

|  |  |
|--|--|
| What has happened and Who (or what) was hurt or harmed   |  |
| Summary of what happened   |  |
| Statement from witnesses   |  |
| Statement from the member/s of staff involved  |  |
| Why did it happen?   |  |
| Has there been a system failure – was the policy or procedure not adequate or not followed – if not followed why not?      |  |
| Is there a lack of resources – was equipment or staffing correct and available?  |  |
| Do the individuals involved have the knowledge, skills or awareness – did they know what to do, are there training issues? |  |
| Mitigation – are there any personal factors that have contributed?   |  |
| What is the Way Ahead?   |  |
| Is there any immediate action or intervention that could be done to stop a repeat or to repair a relationship quickly?     |  |
| Is an immediate referral for support required, for example to Occupational Health?   |  |
| Should a restriction be put in place immediately so that training or a repair could be completed?                          |  |

Fact finding is not part of the formal process and will simply be a conversation between the line manager and the employees involved as soon as possible. Employees can either submit a summary to support what is being said or the manager will make a brief note of the discussion which will be signed and dated by the employee.

Once fact finding is complete, a case conference should be arranged with the necessary membership. Copies of all fact finding documentation should be provided prior to the case conference to enable discussion and agreement on the following:

Q - Is a formal Investigation required?

Q - Who will investigate?

Q - Is precautionary action required?

Where it is determined that a formal investigation is necessary this will commence as soon as possible, with the commissioning manager confirming that the investigation Officer has the necessary time and ability to fulfil this role. Investigations should be commenced and completed within the minimum timeframes possible. The Investigating Officer, the HR Advisor and Staff Side will be as flexible as possible in supporting efficient formal investigations thereby further minimising the impact on the individuals involved.

Where a suspension is considered appropriate this will be approved by an 8b manager or above. Where an employee is suspended this will always be for the minimum period necessary.

## **Appendix 2**

### **Categories of Disciplinary Misconduct**

When establishing the best course of action to resolve misconduct concerns, there are two categories, **Misconduct** and **Gross Misconduct**.

Misconduct refers to deviations from general standards of conduct and performance, which if recurrent could result in dismissal. The below list is not exhaustive or exclusive, and is intended as guidance only:

i. **Behaviour**

All staff should carry out reasonable oral or written instructions of their line managers/supervisors.

Employees must not abuse their status or position when dealing with fellow employees, patients or members of the public.

ii. **Dishonesty**

The Trust expects its employees to be honest, not only in employment with the Trust.

An employee should not, without sufficient cause, alter, erase, add to, destroy or mutilate any document or record.

iii. **Contractual Obligations**

There are certain statutory obligations which are placed on some employees (requirement to hold a driving licence, professional registration, etc.) and failure to comply with these may render the continuation of their contract of employment itself impossible.

iv. **Attendance**

Staff are expected to attend for duty at the correct time and work their contracted hours. In the case of sickness, sudden domestic emergency or other good reason which prevents a member of staff from reporting for duty, or requires them to go off duty early, the responsibility lies with the member of staff concerned to inform his/her manager or deputy in accordance with locally agreed procedures.

v. **Private Business/Outside Employment**

Employees wishing to engage in employment in off duty hours shall give prior notification to their manager. Staff should remember that such employment must not adversely affect their work with the Trust. The Disciplinary Procedure may be invoked if the Trust concludes that the employee's performance is affected or if the interests of the Trust are adversely affected by the nature of the outside employment.

vi. **Security**

Local rules and procedures will, as appropriate, deal with security arrangements. Deliberate or negligent disregard of security will be treated as a disciplinary matter.

The unauthorised cutting of keys, use of incorrect name badge and/or ID badge is strictly forbidden.

Employees must ensure that they are familiar and comply with the requirements of the IM&T Security Policy. There may be instances when a breach of the IM&T Security Policy may be regarded as Gross Misconduct, e.g. deliberate or intentional misuse of passwords.

**vii. Health and Safety**

All staff are expected to observe basic health and safety rules in accordance with the Health and Safety at Work Act 1974, failure to comply may lead to disciplinary action.

**viii. Neglect of Duty**

All staff have a duty to fulfil their contract.

**ix. Sleeping on Duty**

In order to maintain safety and securing of all employees and service users staff must not sleep whilst on duty.

Gross Misconduct is classified as a fundamental breach of contract which potentially could justify a summary dismissal. The below list is not exhaustive or exclusive, and is intended as guidance only:

**i. General**

Any breach of the rules outlined in the previous section, which is so serious that it amounts to gross misconduct (or gross, or wilful negligence) justifying dismissal without previous warning.

**ii. Ill treatment or wilful neglect of patients**

Any serious or re-occurring ill treatment, either physical or verbal or wilful neglect of patients will amount to gross misconduct.

**iii. Theft, Fraud, Bribery, failure to declare a business interest and Deliberate Falsification of Records**

Any instances of theft of property from the Trust, or from patients, visitors, or other members of staff on health service premises, or on its business.

Any incident of fraud, failure to declare a business interest or deliberate falsification of records or documents.

**All employees are under an express obligation to report any potential acts of bribery, including where an employee has personally committed an act of bribery**

- iv. Physical Violence and Fighting**  
Any attempt to fight or cause physical harm to a patient, member of public or fellow employee that takes place on health service premises, or whilst on duty.
- v. Unfair treatment of others due to a protected characteristics / Bullying**  
All members of staff have a duty not to act in a way which is discriminatory, abusive or which constitutes racial, sexual, or other forms of unfair treatment to any member of staff, patient or member of the public.
- vi. Malicious Damage**  
Where an employee deliberately causes waste, loss, damage or vandalism to the property of the Trust/clients/staff, and/or fails to report such a loss or damage.
- vii. Being Unfit for Duty**  
Serious misbehaviour and/or being unfit for duty through the effects of alcohol, drugs or illicit substances.
- viii. Breach of Sexual boundaries / sexual abuse/ assault**  
Any instances of criminal sexual acts, entering into sexual relationships with a service user or other sexually motivated/ inappropriate actions towards service users (professional bodies provide guidance for registrants on maintaining appropriate professional boundaries with service users although it would be for the professional body to determine a breach of their guidance).
- ix. Inappropriate use of communication systems and social media**  
Staff should ensure professional and appropriate use of communications systems and social media
- x. Non-reciprocated Behaviour**  
Employees must be aware that behaviour towards another employee or service user that is not reciprocated and not acceptable can result in disciplinary action against them
- xi. Confidentiality**  
The nature of all health service work, especially information about the contracted affairs of the Trust, patients and staff, is highly confidential. Employees must not divulge this information to any unauthorised person or agency without prior permission (Subject to the Public Interest (Disclosure) Act 1998).

**APPENDIX 3**

**INFORMAL ACTION AGREEMENT**

This agreement exists to record:

- The employee misconduct that has occurred
- The actions that the employee has agreed to make to improve the behaviours
- The commitment of the line manager in supporting the improvements

The employee must be aware that this Informal Action will remain on their HR file for a period of six months and that any further misconduct during this time may be investigated formally.

|                               |  |   |
|-------------------------------|--|---|
| <b>Date</b>                   |  |   |
| <b>Employee</b>               |  |   |
| <b>Job Title</b>              |  |   |
| <b>Line Manager</b>           |  |   |
| <b>Details of Discussion</b>  | <ul style="list-style-type: none"> <li>• &lt;&lt;Bullet point format&gt;&gt;</li> </ul> <p><i>Manager to inform employee of the allegations, how this has breached Trust Code of Conduct, what management expectations are.</i></p> <p><i>Record employee response</i></p> | <ul style="list-style-type: none"> <li>•</li> </ul> |
| <b>Agreed Action</b>          | <ul style="list-style-type: none"> <li>• &lt;&lt;Bulletpoint format&gt;&gt;</li> <li>• <i>Include improvement target and timescales and any other action to be undertaken</i></li> </ul>   | <ul style="list-style-type: none"> <li>•</li> </ul> |
| <b>Next Review Date</b>       |  |   |
| <b>Employee Signature</b>     |  |   |
| <b>Line Manager Signature</b> |  |   |



## Appendix 4

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

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

- Gathering initial facts in relation to misconduct, speaking to the employee and put the allegations to them and get their account of what has taken place. Take notes.
- Speaking to other witnesses or colleagues who are relevant and may be able to give an account of what took place. Take notes or record audio.
- Using this checklist to think through their approach
- Seeking HR Advice and where relevant the support of a Diversity & Inclusion representative.
- Seeking approval from a senior manager (8b/8a with delegated authority) or above via Case Conference before carrying out a formal Disciplinary investigation or proceeding to informal action. Make sure they are fully briefed.
- Letting the employee know what is going to happen next for example that the matter will be investigated, ideally face to face and make sure they are properly supported and referred to the Occupational Health and provide details of other support services including the Employee Assistance Programme.
- Letting the employee know the name of the investigator and that they will be in touch
- Informing witnesses if they need to be interviewed as part of the investigation and confirm the name of the investigator who will contact them. Make sure they are properly supported throughout.
- Regularly checking in with employees who are subject to investigation and/or formal action and ensure they are kept informed about what is happening and have the opportunity to ask questions and are advised about timescales and what will happen next.
- Managing the health and wellbeing of staff involved seeking advice from Occupational Health where appropriate.
- Ensuring details of the investigation are only shared on a strictly need to know basis and that any staff involved in the investigation are aware of the duty of confidentiality

### HR Support

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

- Actively ensures matters are progressing in a timely way.
- Ensures the right support is in place for any employees and referrals are made to the Staff Liaison Officer, Contact and Occupational Health where appropriate.
- Ensures regular contact is in place with employees.
- Advises on the selection of Panels and support the preparation of hearings ensuring everyone involved is properly briefed.
- Attends hearing and advise the Panel on proceedings.

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

- Meet with the commissioning manager at the outset of the investigation to agree the terms of reference.
- Develop an investigation plan
- Complete a timeline of the investigation process
- Conduct investigation interviews, write up interviews and get the interviewee to check and sign off.
- Provide regular updates on the progress of investigations to the commissioning manager and the HR Support.
- Escalate any additional allegations or concerns that emerge during the investigation to the commissioning manager and the HR Business Partner/ HR Advisor including any issues that are delaying the investigation. It may be necessary to reconvene a case conference panel to agree further terms of reference. If additional allegations are agreed the employee must be notified of these in writing.
- Produce a report presenting the investigation findings for the commissioning manager.
- Attend hearings, if required, to present management case and answer questions arising from the Investigation Report.

### **Commissioning Manager (8b or above) (8a with delegated authority)**

Provides impartiality and oversight to decision making in cases of misconduct at a case conference meeting. The role of the Commissioning manager is to provide constructive challenge and seek assurance on behalf of the Trust that cases are being handled fairly and proportionately, that decisions are well informed and the welfare of employees is given priority. If a commissioning manager is 8a they must have in writing (email is sufficient) evidence of delegated authority from a 8b manager.

The senior manager will seek to establish the following:

- Clarity about the allegations and assurance that the manager has gathered enough initial information to support their proposed course of action
- The action proposed by the manager is necessary, proportionate and justifiable in the circumstances and consistent with similar cases
- That all alternatives have been fully explored to ensure the matters are being dealt with in the most constructive way and in accordance with just culture principles.
- If further investigation is needed, an investigating Officer should be appointed.
- That the welfare of the employee and anyone else affected by the issues has been properly considered and a plan for support and communications has been developed and carried out.

- Providing support to ensure the investigation runs smoothly and the Investigator is provided with access to materials, documentation, systems and relevant employees and witnesses.
- Having regular check-ins with the investigator to get a progress update and ensure the investigation is running promptly.
- That no biases or conflicts of interest are potentially influencing the proposed actions
- Review the investigation report and decide whether or not there is a case to answer and agree next steps such as no case to answer, informal action, pre agreement or disciplinary hearing.

### **Chair of hearing**

- It is preferable if the chair of the disciplinary hearing is not the commissioning manager of the investigation
- Ensures the fair conduct of the hearing in accordance with the Trust's Disciplinary Policy.
- Makes sure that the employee is aware of their right to be accompanied
- Explores if any adjustments should be made to proceedings to support employees and particularly for disabled employees or those with health conditions.
- Explains the procedure to be followed, introduce the parties taking part
- Checks that each side has all relevant documents
- Ensures each side has the opportunity to state their case
- Makes sure all relevant evidence is considered
- Considers whether further investigation is required if new matters arise
- Adjourns to consider the decision and weigh up all the evidence presented
- Decides whether allegations are substantiated on balance of probabilities
- Takes account of mitigating factors
- Considers any 'live' warnings (only after a decision has been made about whether the allegations are on the balance of probabilities have been found to have occurred.)
- Decides on sanction with advice from other panel members and HR support
- Acts consistently with previous decisions.
- Informs the employee of the decision and the reasons for it
- Informs the employee of their right of appeal.
- Arranges a debrief meeting after hearing to include relevant managers from service to ensure any recommendations required

### **Other panel members**

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

## APPENDIX 5:

### Hearing Process Guide

#### 1. Introduction by manager chairing the hearing

- Introduce those present
- Confirm purpose of the hearing is to consider whether disciplinary action should be taken in accordance with the Disciplinary Policy and Procedure
- Confirm that all parties have received the necessary paperwork
- Advise that any pay protection arrangements would end following the hearing if precautionary action was in place
- Outline procedure for the hearing

#### 2. Manager or investigator presents case

- Manager outlines findings
- Manager calls any witnesses
- Employee/representative/ accompanying person and chair/HR Adviser may question the witnesses
- Manager may re-examine the witnesses
- Employee/representative and chair/HR Adviser may ask questions about the case in order to clarify facts

#### 3. Employee/representative responds to the management case

- Employee/representative/ accompanying person responds to the allegation, offers an explanation for the alleged misconduct and/or raises any special or mitigating circumstances to be taken into account
- Employee/representative calls any additional witnesses
- Manager and chair/HR Adviser may question the witnesses
- Employee/representative may re-examine the witnesses
- Manager and chair/HR adviser may ask questions of the employee in order to clarify facts

#### 4. Summing up – no new evidence presented at this stage

- Manager sums up
- Employee/representative/ accompanying person sums up

#### 5. Adjournment for manager to consider case

- Agree with all parties how and when the decision will be notified to the employee / representative if time does not permit decision to be given in person following the adjournment. [Where the conduct of more than one member of staff is being considered in relation to the same incident, the adjournment between the Disciplinary Hearing and the outcome letter may be a few days, until all the Disciplinary Hearings have been completed.

#### 6. Reconvene for decision – manager verbally informs employee/representative of:

- The outcome of the hearing/disciplinary action

- The right of appeal
- The outcome of the hearing to be confirmed in writing within 7 calendar days of the date of the hearing

**7. Arrange a debrief** to ensure actions are allocated to managers where learning lessons are required.

## Appendix 6:

### Disciplinary Guidance

#### Introduction

This guidance seeks to clarify procedural points and provide further guidance to support managers in handling disciplinary matters. Further advice is available from Human Resources (HR) on handling particular cases and complex issues. If there is any doubt, please speak to Human Resources who will be able to offer support.

In order to provide a fair process for all employees, it is important that all managers across the Trust follow the guidance set out in the enclosed document and that detailed records are kept of the process, actions and any meetings for future reference.

#### Scope

This guidance should be read in conjunction with the Lancashire & South Cumbria NHS Foundation Trust Disciplinary Policy. For conduct issues involving medical and dental employees please refer to the Procedure for responding to concerns about doctors, dentists and pharmacists.

#### **What to do when allegations/complaints are made or possible misconduct has been observed.**

The process highlighted below should be considered whenever an allegation is made about an employee's conduct or you have directly observed inappropriate conduct by an employee.

Action in the context of alleged conduct outside of work should be considered if the conduct/offence is likely to seriously undermine the employment relationship and trust/confidence in the employee given their role in the Trust. For example, theft of money would have implications for an employee's continued employment in a post handling cash or violent behaviour would affect an employee's suitability to continue in a role working with vulnerable people.

At this point, the manager should start to ascertain the facts of the incident and record the details of the allegation(s) and witness statements. This includes phone calls and other informal communications. This is normally referred to as a fact find and more information is provided below and within the Just Culture Fact Finding Guide within Appendix 1.

If the allegation concerns patient abuse or a serious patient safety issue, The local Safeguarding team should be notified ([sg.reviews@lscft.nhs.uk](mailto:sg.reviews@lscft.nhs.uk)). Local senior managers will need to convene a Case Conference to consider if there is a need to for the employee to be suspended or have their duties restricted until the investigation is completed. These measures should not be used as a disciplinary sanction and the employee will always be suspended on full pay. The principles of Just Culture must be considered for incidents such as these (see Appendix 1). Further information concerning Suspension is located in Section 5. Arrangements for Medical staff are outlined within the Procedure for responding to concerns about doctors, dentists and pharmacists.

If the allegation is related to fraud, the Local Counter Fraud Team should be notified immediately before any fact find takes place. Advice should then be taken as to how to progress. No action to inform the police should be taken until the issue has been discussed with the Local Counter Fraud Team and Human Resources.

If the allegation is related to controlled drugs or medication – where employees have been involved in incidents that relate to drugs controlled under the Misuse of Drugs Act, the Trust's Accountable Officer must be informed (Dr Sonia Ramdour – [Sonia.ramdour@lscft.nhs.uk](mailto:Sonia.ramdour@lscft.nhs.uk) – 01772 695306). In all incidents involving medication, the investigating manager should seek the advice of the Trust's Chief Pharmacist (or deputy).

## Initial Fact Finding

Where concerns about an employee's conduct have been raised, consideration should be given as to whether verification of the initial details given by the complainant is required before initiating an investigation.

You may need to consider the support needs of an internal complainant particularly where the incident may have been disturbing or traumatic to an employee or a service user.

The purpose of verification is:

- To check that the matter is legitimate and has some substance in fact.
- To confirm the issues e.g. using documentation such as rota or leave records to establish if the employee was present at the times that correspond with the allegations. If the alleged conduct relates to the care or medication of a service user, use appropriate records to verify the information
- A limited amount of investigation and/or verification may be necessary before it is apparent that there is a case of alleged gross misconduct justifying suspension.
- To explain how you intend to deal with the matter.
- Check the detail of the allegation/complaint, gathering additional details as appropriate.

## Conducting a Fact-Finding meeting with the employee

Arrange to meet with the employee as soon as possible. This should be in a room where other staff will not disturb, interrupt, or overhear any conversations.

If the conduct is related to fraud, **do not contact** the employee or Police until you have contacted the Anti-Fraud Specialist and Human Resources and they have confirmed that you can do so.

As this meeting is an informal fact-find, the employee will not be offered the opportunity for a companion to be present at this informal meeting.

Outline to the employee the allegations/complaint, as appropriate, that have been made and that further verification is required. If the allegations relate to possible criminal investigations, it may not be possible to give full details at this point. If it is anticipated the investigation is a criminal one, advice from the Police should always be sought before continuing.

Explain that the fact-finding meeting is not a form of disciplinary action but has been instigated to allow for further verification/confirmation to be made and/or arrangements for suspension to be instigated.

Provide the employee with a copy of the Disciplinary Policy.

Take a brief note after the meeting of what you have discussed with the employee. The notes from the conversation should be shared with the employee at the earliest opportunity after the meeting.

## **Case Conference**

The Case Conference Meeting takes place to ensure a multi-disciplinary review of the initial facts of the case using the Just Culture Principles and to form a consensus agreement on how to proceed. The case conference would consider issues such as whether precautionary action is necessary, have the necessary parties been informed or involved in the case conference and whether or not a formal disciplinary investigation should be commissioned. There is further details on the requirements of a case conference included within section 5.5 of the Policy and there is a procedure contained within the appendix to this guidance 'Procedure for the case management of Employee Relations (ER) Fact Finds and Case Conferences'. The Case Conference Meeting should take place within 5 days of the Fact Find being completed and must take place before a Disciplinary Investigation is instigated.

If the allegation relates to a trade union representative HR will notify the full-time officer or branch secretary of the relevant trade union at an early stage, before any formal investigation commences. Disciplinary action against a trade union official can lead to serious disputes if it is seen as an attack on the Union's functions, although normal disciplinary standards apply to their conduct as workers.

## **Considering suspension from duty**

In most circumstances, suspension will be where the alleged behaviour is so serious and is of such a nature that an individual could face the possibility of summary dismissal and in most cases would be considered at a case conference meeting.

Suspension may also occur where:

- It would be dangerous/impractical to continue to allow the individual to remain at work, and/or
- There is a danger that the individual's continuing presence at work would jeopardise investigations into the alleged misconduct(s).
- If the issue is one of alleged gross misconduct then suspension must be considered. However if there are circumstances where the employee could work in another area or perform reduced duties this should be explored

Such options could include:

- Removing/restricting some duties from the employees current role



- Temporarily moving the employee to an alternative work site/job role
- The employee may be asked to work under the direct supervision of another manager/person as appropriate.

A limited amount of investigation and/or verification may be necessary before it is apparent that there is a case of potential gross misconduct justifying suspension.

Clearly, suspension must be handled appropriately and sensitively given the circumstances of the case. It is important to stress that it is not a form of punishment and suspension is a neutral act and should be discussed at a Case Conference prior to a decision being made and authorised by 8b manager (8a with delegated authority). The principles of Just Culture must be considered (Appendix 1) at the Case Conference.

When considering allegations relating to patient abuse or safety, the incident should always be referred to local Safeguarding.

When considering suspension from duty, consideration should also be given to alternative options that would minimise the need for full suspension.

When considering the options you must also take into account the impact on the employee and their colleagues, and ensure appropriate communication and arrangements are planned.

The overriding principle in any investigation, but particularly important in suspension, is that an employee is presumed innocent until the case has been considered is established at disciplinary hearing.

You should note the issues you have considered when deciding whether or not to suspend an employee, as this could form part of the management case at the disciplinary hearing.

There is the requirement to monitor any period of suspension to ensure that it continues to be required. There should be a formal review of the suspension on a regular weekly basis and the suspended employee should be kept up to date, or as agreed. Alternatives to suspension should also be considered for example; restricted duties, temporary transfer or removal of system access.

### **Authority to suspend/restrict duties**

Table in 5.14 outlines those who have the authority to suspend an employee. If you require clarity as to whether you are able to suspend, contact Human Resources for advice.

A decision to suspend an employee can only be made via a Case Conference. The Case Conference must be chaired by a Senior Manager 8b or above (8a with delegated authority), and have in attendance the manager who undertook notes of the Case Conference will be taken, which will include the rationale for the decision taken. The principles of Just Culture must be considered (Appendix 1) prior to a decision being made.

If the employee is a Staff Side representative, advice should be sought from Human Resources in advance of the Case Conference.

## **Arranging a suspension meeting**

If dealing with suspension, you should invite the employee to a short meeting and advise him/her of the general nature, as appropriate, of the alleged misconduct. In addition, that suspension from all or part of their duties is to be considered or a move to a temporary location is appropriate.

If an employee is off duty and you are unable to contact them at home, then they should be informed in writing not to commence duty, but to contact a named manager as a matter of urgency. The manager should then inform them of the suspension / restriction to their role.

When notifying the employee of the meeting, you should advise them that they are entitled to bring a Staff Side representative or Trust work colleague with them for support. However, the meeting should not be delayed if a Staff Side representative is unable to attend for whatever reason.

A member of Human Resources should wherever possible, accompany the Commissioning Manager at Band 8b (8a with delegated authority) or above in an advisory capacity. The meeting should be held in a room where you will not be disturbed and where the conversation cannot be overheard.

If you are aware the employee is a member of an accredited Trade Union, it is advisable to notify the union of the reason, date and time of the meeting as soon as possible. Generally, a meeting should be held with the employee to inform them of the suspension. There may be some circumstances where the availability of the member of staff may make this impractical, e.g. if they are in police custody. Where reasonably practicable, the employee should be offered the opportunity to have a trade union representative or work colleague present at the meeting and reasonable efforts to obtain support should be made, but this action should not be delayed unreasonably to accommodate the representative.

The prospect of suspension may lead an employee to take sickness absence (e.g. stress reasons). However, a subsequent dismissal may be unsafe procedurally if action is not taken immediately to suspend in appropriate cases. As sickness is certified it would be paid as such until the employee is deemed fit to return to work at which point the suspension would be active. You are therefore advised that if the employee does not respond to the suspension meeting, and you are satisfied that this action is appropriate, you should suspend by letter.

The suspension should always be confirmed in writing.

## **Suspension Meeting**

Confirm at the start of the meeting the employee can have a Staff Side representative or Trust work colleague present if available.

Outline the reason for the meeting and the allegations, where appropriate, that have been made.

You should not enter into discussions of the evidence but establish in principle the employee's initial response to the allegation. You should also discuss whether it is reasonable in the

circumstances to proceed with suspension, or whether a temporary restriction of duties or temporary re-location would be sufficient. You may adjourn the meeting briefly to consider this or seek advice before continuing.

In cases where suspension from work is being applied, you should also advise that until the investigation is concluded they would be restricted from undertaking Bank shifts. The manager should also contact the Temporary Staffing Manager to inform them that the employee has been suspended and will not be able to undertake Bank shifts until further notice.

Where restrictions on duties are applied or alternative duties are to be allocated, you should consider whether it is appropriate for the employee to undertake Bank shifts and advise them accordingly.

Advise the employee that they will receive full pay whilst on suspension and should request annual leave as normal. Where the employee does not have a substantive contract (pure Bank) they will receive no pay and will not be offered any further Bank shifts until the conclusion of the investigation.

Inform the employee that a full investigation into the allegations will be conducted, during which they will be invited to attend a formal investigation interview.

Ensure that the employee provides a contact telephone number and address. Also, advise that the employee should remain contactable during normal working hours (Mon – Fri, 9.00 am – 5.00 pm) and be available to attend duty or an interview during these hours.

Check if the employee has any training or annual leave scheduled over the next 4 weeks. In most cases where annual leave has been booked, this should be honoured and the investigating officer(s) advised accordingly. Consideration of any training courses should be made and the employee advised whether it is appropriate for them to attend.

Provide the employee with a copy of the Disciplinary Policy.

Advise the employee that they are entitled to a union representative or Trust colleague to accompany them and support them during any subsequent meetings.

Where possible, an indication as to the timescale of the investigation should be outlined, which the employee will be kept informed of should this change.

In cases where allegations of abuse have been made, the employee should be made aware that the details will be notified to local Safeguarding.

Any period of suspension can be stressful for an employee and offering confidential support from Occupational Health/Employee Assistance Programme may be appropriate during this time.

In addition employees subject to disciplinary investigation will be appointed a wellbeing support. The 8b Manager (Case Conference Chair from the Network (8a with delegated authority)) will then have responsibility for contacting the wellbeing support and confirming their willingness to undertake this role and agreement that the employee is happy with the suggested individual. The wellbeing support should not be connected to the investigation.

A letter confirming the suspension should be handed to the staff member at the meeting where possible or sent directly to the employee's home address immediately after the suspension meeting has taken place.

Suspension should be for the shortest practicable time in order for the investigation to be completed and for the employee to prepare their case. In the event that a suspension needs to extend beyond 10 working days, the employee will be contacted by the Investigating Officer and kept informed of the situation and at appropriate intervals thereafter. There must be a formal review of the suspension on a two-weekly basis and the suspended employee must be kept up to date, or as agreed.

Alternatives to suspension must also be considered, for example restricted duties, temporary transfer or removal of system access. When suspending an employee from work the employee should be asked for their ID badge, Smartcard, alarm, phone, laptop and any other applicable items.

Advise the Temporary Workforce Service Manager in writing if the employee is restricted from undertaking Bank shifts, to enable them to make the appropriate arrangements.

Employees on suspension will not be allowed into any areas of work unless in receipt of services or to attend their own hearing. Should individuals on suspension be required to attend meetings with their trade union or workplace colleague, these meetings should where possible be away from the site of the individual suspended/site an incident took place. Employees may not discuss the investigation or suspension with Trust employees / colleagues / friends or relatives who work within the Trust throughout the investigation, as this will incur potential disciplinary action. Support however is available from HR Business Partnering and Staff Side when required. If suspension is being considered then managers are advised to contact a member of the Human Resources team and ask if the employee wishes to be accompanied by a staff side representative or workplace colleague at the suspension meeting.

Employees on suspension will continue to accrue annual leave and bank holidays during the period of their suspension. Employees may request to take a period of annual leave whilst on suspension. Requests will need to be approved by the employee's line manager. Where the period of annual leave hinders the completion of the investigation, or the formal hearing, the request may be refused. There is no entitlement to carry forward annual leave into the next annual leave year.

If the suspension is ultimately lifted, and the employee returns to work you will need to consider carefully how the employee can best be re- integrated into the team/department

## **Allegations**

### **Allegations of Abuse**

In cases where an allegation of adult or child abuse has taken place, you will need to refer the allegation via local Safeguarding procedures and discuss how the investigation should proceed. The Trust Safeguarding Lead should also be notified.

## **Allegations of Theft and/or Fraud**

In the case of potential fraud, theft and matters with financial implications for the Trust, advice should be sought from the Counter Fraud Officer before the employee is contacted or any formal investigation is carried out.

If you are unsure as to whether the Counter Fraud Officer needs to be informed, please speak to Human Resources who will be able to advise you.

Information gathered by the Counter Fraud Officer will be used in the investigation and any subsequent disciplinary hearings if appropriate.

## **Allegations of misconduct related to the misuse of controlled substances**

If the allegations of misconduct regarding the misuse of controlled drugs relates to the Accountable Officer, the Medical Director should be informed who will arrange for an Accountable Officer from another Trust to be involved in the investigation.

Where this pertains to controlled drugs, the Chief Pharmacist should also be notified immediately.

## **Allegations of prejudice in relation to any protected characteristic**

If an allegation of prejudice in relation to any protected characteristic is made, advice should be sought from a Diversity & Inclusion representative to discuss how the investigation should progress. It is important that any such allegations are taken seriously, and dealt with promptly. The person who has suffered harm should be at the centre of the process and their views should be sought on how the allegations should be dealt with.

## **Allegations made against an employee or bank worker who holds a protected characteristic**

In the case of an allegation being made against an employee who holds a protected characteristic, advice should be sought from a Diversity & Inclusion representative. That representative will support the investigation to be free from bias, will respectfully challenge stereotypes and will ensure that the employee is not treated any less favourably as a result of holding a protected characteristic (or characteristics).

## **Where criminal proceedings are being pursued**

In the event of misconduct coming to light, which may also be the subject of criminal proceedings, it is still for the Trust to investigate the employment matter. The courts will consider the criminal matter separately under a different burden of proof. In employment, the burden of proof is "the balance of probability", i.e. based on reasonable belief and a reasonable investigation, not proof beyond reasonable doubt.

As far as possible, internal investigation and appropriate decisions should take place internally without reliance on police proceedings, because the criminal process is different. However, before you carry out formal investigations you should always talk to HR first who may need to

seek approval from the relevant police officer. There may be situations where the internal disciplinary investigation or aspects of it may need to be placed on hold to allow the criminal proceedings to be concluded without the Trust's actions influencing these.

## **Investigations**

### **Formal investigations**

A formal investigation must be commissioned by an appropriate senior manager (8b or above (8a with delegated authority) with the delegated authority to commission cases. The Commissioning Manager must then select an Investigating Officer usually from the same Network, but from a different service line/business unit. It may be appropriate to seek an Investigating Officer from outside of the network. At the same time, the Human Resources Support to the investigation will be nominated. It is important that arrangements are made in a timely manner.

The Commissioning Manager must prepare clear Terms of Reference for the investigation and as part of this process, write to the employee to outline the basis for the investigation and the process which will be followed and advise who will be carrying out the investigation.

As part of the Investigating Officers role, they must ensure the employee subject to the allegation(s) is:

- Kept informed during the investigation
- Informed when the investigation is complete
- Notified of the next steps in the investigation

Also, ensure any complainant is kept informed of the progress of the matter and the outcomes to be pursued. (This should not breach any employee's rights to confidentiality).

### **Identifying an investigation team**

In very complex and potentially serious cases, it may be appropriate to set up a formal investigation team. Advice should be sought from Human Resources should you feel this to be appropriate. In other circumstances, it may be quite adequate for one manager to investigate the matter. Where a formal team is to be set up, it should:

- Consist of an Investigating Manager, supported by a Human Resources Adviser/Business Partner
- Have a lead officer who is responsible for planning, co-ordinating the process and the outcome.
- Be appropriate to the nature of the issue(s) to be investigated.
- Consist of officers who have relevant knowledge/experience and who will investigate objectively.
- If possible, reflect diversity balance as appropriate to the case, e.g. gender
- Have access to specialists (e.g. clinical expertise, financial expertise) advice as appropriate

- Aim to complete the investigation within the 12-week timescales outlined in the Disciplinary Policy

### **Planning the investigation**

Any investigation should be planned and have clear parameters detailed in the Terms of Reference (See Guidance Appendix 2). Only information relevant to the matter that will aid the decision-making should be gathered.

When planning the investigation, you will need to identify the following:

- Which staff you will need to interview and their availability.
- The documentation to be reviewed.
- If any Service Users require interviewing, do you have the skills and knowledge to do this? If you do not, you need to arrange for a suitable person to undertake this.
- Any other relevant interviews such as external witnesses and their availability
- The timescales for completion and how the interviews, and associated work needs to be scheduled in, and the investigation itself completed in a timely manner.

### **Use of CCTV as part of Disciplinary Process**

CCTV images or raw footage from Oxevision will not normally be used during an internal disciplinary process unless images of employees show something that the Trust could not be expected to ignore such as criminal activity, potential acts of gross misconduct or behaviour that puts others at risk. They should not be used to investigate less serious allegations of misconduct where any of this criteria are not met.

Footage should be retained so that any employee subject to allegations can see it and respond during the fact find and subsequent investigation process (as appropriate); this should be the moving footage, not still images.

Where it is considered that viewing CCTV or raw footage is appropriate and warranted this should be discussed with the Trust Local Security Management Specialist and subsequently viewed in line with the Trusts CCTV systems procedure and / or the Trust Oxevision policy.

Where CCTV images or raw footage are required for evidential purposes in Trust disciplinary proceedings, they will be properly processed, fairly and securely in line with the Trust CCTV Systems Procedure. The images will only be shared with a nominated individual by the Trusts Local Security Specialist and it is the responsibility of the HR support to the investigation to record who has viewed them during investigation meetings.

The footage should be included as part of the investigation into an allegation under the Trust's Disciplinary Procedure and therefore made available in accordance with that policy at any formal hearing. Any footage will be securely retained by the Trust Local Security Specialist until such time as any appeal process is exhausted.

### **Where sickness occurs during the process**

When an employee becomes aware of the allegations or is asked to provide a witness statement/give evidence at a hearing the employee may react in different ways, for example by commencing a period of sickness absence.

Witnesses or the alleged employee's sickness should continue to be managed in the normal way, in line with the appropriate Trust policies.

Where witnesses are absent from work, managers will need to establish the importance that the witness has in providing statements/evidence. If alternative sources of information or witnesses are available, it may not be necessary to delay the process.

Where the witness is essential to the process, an Occupational Health appointment should be made to establish if the investigating officers can proceed with the investigation. In many circumstances, the speedy resolution of the investigation may resolve the sickness absence. If Occupational Health advise that the witness is well enough to be interviewed, arrangements should be made in line with the normal process. However, consideration of the location of the interview may need to be made.

If Occupational Health advice is that a witness is not well enough to proceed, the investigation may need to be delayed and the situation reviewed on at least a fortnightly basis. This will depend on individual circumstances.

Advice should be sought from Human Resources.

### **Where resignation occurs during the process**

Witnesses or the person against whom the allegation is made may submit a resignation at any point during the process. The line manager should manage the resignation in the normal way including offering a discussion on their reason(s) for leaving and/or an exit interview.

If the resignation comes into effect during the investigation process, witnesses can be invited to attend an investigation interview. However, they are not obliged to attend. During their notice period however, they are required to attend.

If the resignation is prior to any formal disciplinary hearings, witnesses can be invited to attend, but again are not obliged to if they have left the Trust by the date of the hearing.

If the person against whom the allegation is made resigns the management documentation and letter inviting the employee to the hearing should still be sent out.

Although the person against whom the allegation has been made is not obliged to attend the hearing, this should continue in its normal manner to consider the information. The hearing should still decide whether the former employee would have been subject to formal disciplinary sanctions and at what level.

The outcome of the hearing should be notified to the former employee along with the appeal processes.

Consideration should also be made regarding the appropriateness of referral to other bodies [e.g., Safeguarding or professional bodies such as NMC or HCPC, or the Disclosure & Barring



Service (DBS)]. Normal reporting procedures should be followed and the former employee advised. Any outcome such as dismissal will also have to be reflected in any future employment references.

## **Interviewing**

Use of witness(es) in disciplinary matters will be appropriate where:-

- The disciplinary matter arises from a complaint from an employee, and/or other party (the complainant is in effect a witness).
- A person saw, heard events or has information directly relevant to the matter.
- A person has detailed and relevant knowledge to offer (e.g. expert witness).
- Interviewing a complainant and other relevant witnesses will be part of the investigation of alleged misconduct

## **Preparation before interview**

It is important that in your planning you have considered the order in which you need to interview witnesses to limit the amount of re- interviewing upon new information becoming known. Best practice would be to interview the individual/s who had the allegations made against them last.

Prepare a list of key questions/issues to raise; information gathered during the fact find can be used to support the process of question preparation. To get the most information from the witness you should use open questions such as who, what, where, when, how, why. In addition it is helpful to start initially at each interview with broad questions and gradually ask more specific as the investigation meeting progresses. Where an investigation team has been commissioned, all parties should be involved in preparing the questions to ensure all aspects are covered.

Consider what information you can share in order not to breach an individual's confidentiality.

Book an appropriate time and venue. This must be in a room where you will not be disturbed or the conversation cannot be overheard. Best practice would be that you should consider a venue away from the location of any incident that may have taken place or the normal working location of those individuals being interviewed.

Prepare a brief explanation of the reason for meeting/interviewing the witness.

Contact the witness to advise the date, time and venue for the investigation interview and their right to have a union representative or colleague in attendance. In some cases, this will be by phone to ensure timescales are maintained. However, this should also be confirmed in writing as per the template letter available on e-HR Infopoint. Ensure that the witness is aware that there are no allegations against them.

For service user/carer interviews or external witnesses, they may wish a friend to be with them for support. If this is appropriate, you should ensure when arranging the interview that the support person is aware they will not be able to contribute or answer questions but will be there purely to support the witness

## **The Interview meeting**

If an investigation team comprises of more than one person, the whole team must be present at each witness interview.

Firstly, it is important to put the witness at ease. It is likely that the witness will be nervous and to ensure you are able to gain a full detailed response, the rapport you build during the introduction is key.

Explain the purpose and context of the interview within the investigation process.

Explain how the meeting will be conducted. Where appropriate, outline that some of the questions relate to background information to enable the investigating officers to be able to put any allegations into context.

Maintaining confidentiality is a high priority during the investigation. Remind witnesses of their responsibilities to maintain confidentiality and not discuss the interview or its content with others. Advise witnesses that should any issues arise, they must contact the Investigating Officer.

Explain that notes will be taken and that you will prepare a summary statement (not a verbatim statement), which you will agree with the witness and he/she will sign and return within the next 5 working days/ 1 week following receipt of the notes. The covering note which accompanies the statement sent to the witnesses should advise the witness that if they do not return the signed notes within 1 week of the date of the correspondence then the Investigating officer will assume the witness agrees to the content.

Inform of the potential outcomes e.g. use of information or statement in the course of the investigation, and in any disciplinary proceedings arising from it and the potential to be called to a hearing as a witness.

Ask open-ended questions to encourage the witness to open up; use follow-up questions as appropriate. (Who, What, Where, When, Why, How). Commence each interview with broad questions and then gradually ask more specific questions as the investigation meeting progresses.

Clarify your understanding by summarising what the witness has said. This will prevent any confusion arising and the need to amend statements later.

As well as prepared questions, ask if the witness can provide any further information, assistance or is aware of anyone else who should be interviewed.

If the witness is a service user, it may not be appropriate for the investigating officer(s) to interview them directly. It is important that before any service user is contacted steps are taken to ensure that the relevant person named in the care plan, i.e. clinician, named nurse etc., has given approval of the interview. Should it be deemed inappropriate, the investigating officer should liaise with an appropriate manager to identify a suitable person who could be interviewed instead, such as a carer or clinician. This should not be an employee who is also required to provide witness information during the investigation process.

## **Producing Statements**

Draft and agree a statement of the interview with the witness. The statement should include:

- Witness name
- Interviewer(s) name
- Record of other people present
- Data and time of the interview (including any adjournments)

The content of the statement should be a factual record of the investigation interview. This does not have to be verbatim.

Send a copy of this statement to the witness to consider and amend if appropriate. If the witness wishes to change the statement, dependent upon the extent of the changes, it may be appropriate to meet the witness again and clarify any points. This should be recorded either as an additional attachment to the original statement or an amendment of the original statement. Both statements should be submitted and considered as part of the investigation or any future disciplinary action. Where the statement has not been considerably altered, the copy that has been amended should be used for the investigation report. There is no need to amend and then re-issue the statement; it should be clear where amendments were made.

Request that the statement is signed and dated. Retain a copy as part of the investigation and give a copy to the witness. Documents sent from employees from their LSCFT email account will be taken as signed and dated (whether or not they contain a signature).

In order to avoid situations in which the individual interviewed fails to return their signed statement advise on the covering note accompanying the statement that if they do not return the signed statement within one week of the date of the email/correspondence then the investigating team will assume they agree to the contents. Provide the evidence of the attempt to request a signature within the bundle.

If there is a dispute as to what is said during an interview, the area of uncertainty should be identified, i.e. what the witness believes was said and what the manager believes was said. If necessary two versions will be included in the bundle of evidence including the investigating teams version and the witness/alleged perpetrators version of the statement.

Witness statements are the property of the investigation: if a witness wishes to withdraw/change a statement(s) the original statement should be presented alongside any new statement, which the witness may wish to make.

### **Reluctant witnesses/conflicts of interest.**

There is the requirement for LSCFT employees, who are identified as witnesses, to co-operate with investigations as this is specified in the Code of Conduct for Employees. However, external witnesses do not have this same requirement and therefore do not have to engage with the process.

Where a witness appears to be hostile/reluctant, find out why: is he/she being put under pressure, or is reluctant to get an employee into trouble. You should confirm the requirement for them to

engage and the support which is available should any recourse occur in the future. However, they still have a duty to engage with the process.

If conflicts of interest become known during the investigation, these should be recorded and statements/information provided and considered for its relevance and appropriateness.

### **Trade union access to witnesses**

An investigation into employee conduct is a management process. Internal (employee) witnesses are required to co-operate.

A Trade Union Representative is acting as a companion; they may wish to collect its own evidence in support of its member. However, employees are not under a duty to co-operate with a Trade Union investigation.

If a Trade Union Representative is acting as a companion and wishes to interview witnesses who are part of a management investigation, they must seek permission from management, who must check that the witness is willing to co-operate.

Trade Union Representatives acting as companions should encourage their member/s to highlight to the investigation team any individuals they feel should be called as a witness in order for them to be considered to be interviewed as part of the investigation.

You will need to consider reasonable time-off requests for employee witnesses on the employee/Trade Union side to attend interviews/a hearing.

### **The investigation report**

Once a formal investigation is complete, the investigation officer or team will prepare a report detailing their findings.

The investigation report will ideally include:

**Background information** - the nature of the complaint or management concerns, dates and initial action taken such as verification, suspension etc.

**Process followed** - how you conducted the investigation and whom you interviewed and when. Any issues you encountered along the way.

**Summary of main findings** - Does each allegation have enough evidence for a disciplinary panel to consider this at a hearing?

You should note that the 'burden of proof relating to misconduct is not proof beyond reasonable doubt. The test is whether you reasonably believe following a reasonable investigation, that 'on the balance of probabilities' misconduct occurred such as to merit disciplinary action where appropriate. You should refer to this in your recommendations. Recommendations including for example:

- Whether each allegation have enough evidence for panel to consider this at a disciplinary

- hearing
- Management interventions/supervision/support/training
- Systems improvements
- Wider service implications

A template Management Statement of Case is included in e-HR Infopoint.

## **Investigation Recommendations**

Recommendations should indicate if any policies or procedures are unclear, require amending or are not being followed in general. It is not for the Investigating Officer to state whether the allegations are upheld or not.

Other considerations should relate to training required both for the individual subject to the allegations and any witnesses/team cited in the investigation.

In order to meet our responsibilities relating to equal opportunities, it is important that the investigating manager considers if there are any factors relating to someone who has a protected characteristic under the Equality Act that needs to be taken into account as part of the disciplinary process. In such cases therefore, the manager should seek to establish whether the nature of the issue could be related to such matters as:

- language or communication difficulties
- culture or background
- unfair treatment by others/bullying

Where it is believed that these factors have been or may have been relevant to the issue having arisen then this should be specified in the investigation report and any subsequent recommendations. The report should also say what the factors are and explain how they could have contributed to the issues.

At times, it is possible that allegations can change and /or additional allegations arise over the course of an investigation. Should this be the case it is important that if further allegations arise the Investigating Officer highlights these additional allegations to the Commissioning Manager. It may be necessary at this point to reconvene a case conference meeting to discuss the additional allegations and agree whether these will be added to the terms of reference. If additional allegations and/or changes are to be made to the terms of reference/allegations then the commissioning manager (or a nominated deputy) must contact the individual concerned to inform them and follow this up in writing. The Investigating officer will then be required to investigate the additional concerns/allegations. Failing to follow this process can result in allegations not being valid for presentation at a hearing.

## **Pursuing disciplinary action**

Following completion of the investigation report, a decision must be made as soon as possible about whether disciplinary action is to be pursued.

Once the investigation has concluded, the commissioning manager should review the process to ensure that a balanced investigation has been carried out on which to base any proposed

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If you are reading a printed copy of this document you should check the Trust's Policy A-Z Library to ensure that you are using the most current version.

disciplinary action.

It is important at this stage to ensure time is allocated to prepare the Management Statement of Case and set up a disciplinary hearing.

A review of the timescales should be made to ensure that this could be done within the timescale. If not, the employee and their representative should be informed of the delay and the reasons for it. Where possible an agreement on the timescales going forward should be made.

### **Preparing the Management Statement of Case**

Where disciplinary action has been recommended, a Management Statement of Case should be prepared appropriate to the allegation and the level of proposed action.

This will utilise the information gained during the investigation that is relevant to the disciplinary action of the individual employee. In some cases, there may have been a number of employees' actions being investigated. However, only the elements relevant to this particular hearing should be included, and it may be appropriate to reference other employee's actions to put the allegation into context.

You should be aware that your written case will provide the basis on which the employee will prepare their response to the allegations. In terms of natural justice, an employee should have sufficient information about the allegations of which they are accused.

Additionally, in the case of subsequent dismissal, the Management Statement of Case will be part of the evidence considered by an internal appeal and possibly by an Employment Tribunal in determining whether dismissal has been reasonable in all the circumstances. Thorough preparation and well-structured documentation are therefore essential.

The Management Statement of Case should:

- Be clearly structured.
- Use clear language.
- Provide adequate contextual information.
- Concentrate on whether each allegation has enough evidence for a disciplinary panel to consider this at a hearing. Make use of appendices for supporting evidence referred to in the text (e.g. witness statements, datix reports, system information, investigation report etc.) ensuring all statements are signed. NB: If a statement is not signed, enclose a copy of the covering letter which accompanied the statement sent to the individual to display show the attempt made for signing i.e. so the panel is aware the individual was made aware if the statement is not signed within 1 week of the date of the correspondence then the Investigating Officer will assume the witness agrees to the contents of the statement. In addition if there is a dispute as to what is said during an interview, the area of uncertainty should be identified, i.e. what the witness believes was said and what the manager believes was said. If necessary two versions will be included in the bundle of evidence including the investigating teams version and the witness/alleged perpetrators version of the statement.

- Timeline of investigation

Where the consequence of the hearing could be dismissal, as the manager bringing the case you should be aware of the legal tests for fair dismissal:

- What would be the reason (or principal reason) for dismissal?
- Would the manager making the decision to dismiss have a reasonable belief, based on reasonable grounds (i.e. adequate investigation) that the employee committed the alleged misconduct?
- In all the circumstances of the case, (including the size and resources of the Trust) would the decision to dismiss be reasonable?

In your statement you must make the allegations as precise as possible  
E.g. if the issue is relating to money going missing, is the allegation one of negligence or fraud/theft? It is also particularly important that there has been sufficient investigation into the matter particularly where the allegations are disputed.

A Management Statement of Case template is included in [e-HR Infopoint](#).

## **Disciplinary Hearings**

### **Meetings for Informal Actions**

Informal Action should be considered where it is the first minor offence of misconduct and where there is admission of inappropriate conduct.

Informal Action should be conducted by the employee's line manager (or alternative manager where there is a clear conflict of interest).

A meeting to discuss the employee's conduct should be scheduled once the outcome of the investigation is known.

Details of the meeting should be advised to the employee (and their representative) along with a clear outline of the misconduct in question.

The line manager should arrange for a note taker to be present at the meeting, to record the content of the meeting and provide a record should this be needed later.

The agenda for the meeting should be as follows:

- Introductions and purpose of the meeting (line manager)
- Overview of the allegations and key points supporting Informal Action
- Employee puts forward their view, points of clarification and mitigating circumstances
- Because of the nature of this meeting, rather than a strict agenda, it is suggested that a less formal dialogue between both parties is used

The line manager should ensure the employee has no further information to put forward or issues to be raised prior to adjourning the meeting to fully consider the facts and information from the meeting.

The outcome of the meeting should be communicated verbally to the employee in the first instance. Along with advising they have the right to appeal the decision, before written confirmation is sent in the form of the notes from the meeting (Informal Action Agreement).

### **Hearings for Formal Sanctions**

The Commissioning Manager recommending formal disciplinary action has the responsibility for supporting with the arrangement for a disciplinary hearing. This will include:

- Identifying and nominating an appropriate manager to chair the panel where there is no conflict of interest. It is recommended that the commissioning manager does not chair the disciplinary hearing.
- Confirming a date for the hearing is in line with the Disciplinary Policy timescales.

Information concerning the composition required for panels is located in the table within 5.14 of the Policy.

The Investigating Manager has responsibility for:

- Arranging an appropriate panel, consider if specialist advisers are required with advice from the Chair of the Panel.
- When arranging the hearing, it is appropriate to check all parties' availability including representative if appropriate.
- Ensuring the Hearing is booked for an adequate period, which will be dependent upon the level and detail put forward. It is advisable to book at least half day, however if there are a number of witnesses being called or there are a number of complexities, a full day will be necessary. The Hearing should be held at a Trust site suitable to the circumstances.
- Dependent upon the location of the Hearing, it may also be necessary to book breakout rooms for witnesses and/or the presenting parties (employee and line manager)
- Circulating a copy of the Management Statement of Case to all panel members.
- Ensuring Employee case is submitted within the timescale and this is circulated to the disciplinary panel.

The Chair of the Panel has responsibility for:

- Take receipt of the employee/Staff Side Statement of Case.
- Arrange for an appropriate note taker for the hearing.
- Making a decision in relation to the sanction that will be issued and confirming it in writing following the hearing.

### **Panel preparation**

Prior to the hearing, the disciplinary panel should review the content of both the Management Case and Employees Case. The panel may also want to consider a pre-meeting to discuss the case.



If additional information is required or any points need clarification, the Chair of the Panel has the right to request this information prior to the hearing.

It would be useful to identify prior to the hearing whether any precautionary action was applied to the employee and whether any arrangement were put in place with payroll in order to avoid any under payment to the employee. The precautionary action would ordinarily end following the hearing therefore it is important the employee is updated as to the position at the hearing and payroll is notified following the hearing. The HR Support for the panel would notify the Chair of the hearing of this information and link in with payroll to adjust any pay following the hearing.

## **Disciplinary Hearing**

Please refer to the flowchart in the Guidance Appendix.

## **The Chair of the Panel**

Should open the meeting by covering the following:

- Introductions/housekeeping as appropriate to the location Outline the role of the notetaker \*(Notes to be taken of meeting, note taker will record breaks and other details of the hearing). Notes from the disciplinary hearing do not need to be shared unless the case proceeds to appeal then they will be contained within the bundle for the appeal hearing.
- Confirm a summary of the reason for the disciplinary hearing
- Outline the procedure and format of the hearing
- Confirm at what level of the Trust's Disciplinary Policy the hearing is being held
- Advise that any pay protection arrangements would end following the hearing if precautionary action was in place
- Advise timescales/breaks

## **Investigating Officer's Presentation**

The Investigating Officer will be required to present a summary of the evidence provided in the Management Statement of Case, detailing any relevant key elements.

## **Employee Presentation**

The Employee (and their representative) will have the opportunity to present their case. This should outline the main points and details relevant to the case. Employee representatives are not permitted to provide a response to questions asked to the employee, they can only present the case and summarise the case when asked to do so by the employee.

## **Witnesses**

Both parties have the opportunity to invite any witness(s) to for questioning.

The Investigating Officer may call relevant witnesses to attend the Hearing and this will be co-ordinated by them. Should the employee/Staff Side representative wish to call a management

witness they should submit this request to the Chair of the Panel. If agreed, the Chair will ask the Investigating Officer to arrange attendance. Should the employee/Staff Side representative wish to call witnesses who were not involved in the investigation, it is the responsibility of the employee/Staff Side representative to arrange attendance.

The questioning of the witnesses should follow the sequence below:

- Manager
- Employee (or their Staff Side representative)
- Hearing Panel

The employee should be offered the opportunity to invite any witness(s) to be questioned. Any witnesses will only attend the hearing to give their evidence and answer any questions; they will then leave the hearing.

### **Considering the outcome**

When considering the outcome, three key elements must be considered:

- Belief that the alleged misconduct has taken place.
- Reasonable grounds for the belief.
- Ensure a reasonable investigation has been carried out.

These elements are widely applied by Employment Tribunals.

### **Determining the facts**

The burden of proof is based on the balance of probabilities, not the criminal burden of beyond all reasonable doubt even if there are criminal elements.

The Disciplinary Panel has to be reasonably convinced that the employee carried out the act(s) of misconduct otherwise no disciplinary action can be taken.

The decision should be based on the facts of the case that were established through a fair and thorough investigation.

The procedure followed through the investigation should also be considered to ensure it was fair. If there are aspects of the investigation or Disciplinary Policy that were not followed, the Disciplinary Hearing Chair must consider if this has implications for the outcome of the hearing.

### **Mitigation**

The law requires the decision to be fair and equitable in accordance with the substantial merits of the case. This allows deviation from the normal sanction to apply a different one based on the circumstances.

Mitigating circumstances to consider may include:

- Health
- Family problems
- Work pressure
- Inexperience
- Long service in some situations

### **Rationale for the outcome**

A rationale for the outcome should be recorded to outline what considerations have been made.

This will be required for both the confirmation letter to be sent to the employee, along with any future appeal/tribunal if appropriate.

The Disciplinary Hearing Panel will be able to consider previous warnings in order to identify whether a particular pattern of behaviour exists, which gives rise to serious concerns about someone's employment, given the specific nature of their role with vulnerable clients. The Hearing panel should only be notified of any previous warnings after it is established, on the balance of probability there is enough evidence to confirm the allegations are likely to have occurred.

For Hearing's where there are allegation(s) of patient harm, the principles of Just Culture must still be considered (Appendix 1).

### **Alternative sanctions or actions**

It may not always be appropriate to issue formal disciplinary warnings. The Disciplinary Hearing Chair has the right to consider other actions in the form of identifying training/development needs, review of workloads or pressures, suitability of the employee to work in their current role/location.

Alternative sanctions could include demotions, moves or restriction to the role. When alternative sanctions are being applied, it is important to ensure these can be accommodated by the Trust prior to any communication or recommendations to the employee. For example, we should not be recommending the employee works days instead of nights as an alternative to disciplinary action if the service does not operate in the day. Additionally, posts cannot be created in order to satisfy the sanctions of a Disciplinary Hearing.

The Disciplinary Hearing Chair will also need to consider if there is a requirement to repair any working relationships that may have been adversely affected during, or by, the investigation process.

### **Advising of the outcome of a disciplinary hearing**

Where practicable, the Chair of the Panel should ideally communicate the outcome verbally at the end of the hearing to all parties once all the evidence has been heard. In certain circumstances, it may be that this is not appropriate, in which case the outcome can be

communicated in writing shortly after the hearing has finished.

The outcome should be confirmed in writing to the employee and the rationale for the decision will be case specific. Guidance on completing letters is available from the Human Resources Department.

It is important to ensure any actions/recommendations that form part of the outcome of the disciplinary hearing are communicated and carried through – this includes ensuring the Action Plan to support an employee returning into the workplace is enacted. This includes the management team informing payroll regarding the employees return to the workplace following precautionary action to avoid any overpayment. It is recommended that a debrief is arranged in order to ensure responsibilities are allocated to all relevant parties. Failure to do so could affect the ability to issue subsequent warnings relating to the same or similar conduct issues. It is important that the individual be advised of the right of appeal and the process they can follow to do this.

## **Sanctions**

### **First Written Warning**

It is appropriate to issue a First Written Warning if the employee already has a current informal action for misconduct or if it is a first more serious misconduct.

The employee will be warned that a repetition or other subsequent misconduct may lead to further disciplinary action being taken against them, not excluding dismissal. They will also be informed that the warning will remain active for 12 months from the date of the hearing.

### **Final Written Warning**

It is appropriate to issue a Final Written Warning following a repetition or other subsequent misconduct and the employee already has a First Written Warning or in the case of very serious misconduct.

The employee will be warned that a repetition or other subsequent misconduct may lead to further disciplinary action being taken against them, not excluding dismissal. They will also be informed that the warning will remain active for 12 months from the date of the hearing.

## **Dismissal**

It will be appropriate to dismiss someone on the grounds of misconduct following a repetition or other subsequent misconduct and the employee already has a live Final Written Warning or in the case of gross misconduct.

In the case of gross misconduct, the dismissal will be without contractual notice.

## **Professional Lead**

Cases where the need for a professional lead / advisor is identified, i.e. where clinical issues arise, are commissioned and investigated in line with the principles of this guidance. The professional lead / advisor will only be present at the disciplinary hearing. Their role at the hearing is to provide professional advice to management on professional issues; the professional lead / advisor plays no part in deciding the outcome of the disciplinary panel.

This is the responsibility of the chair take a decision, taking into account the professional advice given.

## **Appeals Procedure**

Information concerning the composition required for panels is located in section 5.14 of the Policy.

Upon receipt of a letter from an employee exercising their right to appeal, the Chief People Officer should ensure the employee has submitted details outlining their basis of the appeal.

If this is not clear, the Chief People Officer should contact the employee and confirm the details required, and set a timescale for them to be received.

Human Resources has the responsibility for arranging an appeal hearing. This will include:

- Send a copy of the appeal letter to the original disciplinary panel chair.
- Arrange an appropriate panel, consider if specialist advisers are required.
- Set a date for the hearing in line with the policy timescales.
- Request the original disciplinary panel chair submits a detailed rationale to the appeal panel chair and employee (and their representative if appropriate). If appropriate it is recommended the original disciplinary investigation report is not included in the bundle to avoid a re-hearing.
- Circulate copies of the appeal letter and disciplinary rationale to members of the appeal panel
- Arrange a room for the appeal hearing and breakout rooms for employee/witness as appropriate
- Arrange for an appropriate note taker for the appeal hearing.
- Prior to the hearing, the appeal panel should review the content of both the letter of appeal and the disciplinary panel rationale.
- If additional information is required or any points need clarification, the appeal manager has the right to request this information prior to the hearing.

## **Appeal Hearing**

For the Appeal Hearing process, please refer to Appendix 5

The Appeal Hearing Chair should open the meeting by covering the following:

- Introductions/housekeeping as appropriate to the location Outline the role of the note taker. \*(Notes to be taken of meeting, note taker will record breaks and other details of

the hearing. These notes can be shared and likely to requested if the case proceeds to an Employment Tribunal)

- Confirm a summary of the reason for the appeal
- Outline the procedure and format of the hearing
- Advise timescales/breaks

### **Employee Presentation**

The employee (and their Staff Side Representative) will have the opportunity to present their case. This should outline the main points and details relevant to the appeal.

### **Management Presentation**

The original Disciplinary Hearing Panel Chair will be required to present a summary of the rationale and detail any key elements relevant to the case and justification for the original disciplinary outcome. If appropriate it is recommended the original disciplinary investigation report is not included in the bundle to avoid a re-hearing.

### **Witnesses**

Both parties have the opportunity to invite any witness(s) to be questioned. Witnesses

should be relevant to the case and provide key information. The questioning of the witnesses should follow the sequence below:

- Employee (or their representative)
- Disciplining Manager
- Appeal Panel

### **Considering the outcome of an appeal**

When considering the outcome, three key elements must be considered (which should have also been considered by the original Chair of the Panel):

- Belief that the alleged misconduct has taken place
- Reasonable grounds for the belief
- Ensure a reasonable investigation has been carried out.

These elements are widely applied by Employment Tribunals.

When considering the appeal, it is necessary to consider if the disciplining manager made a fair and reasonable decision, based on the information.

The outcome of the appeal can be one of three as outlined below:

- To uphold the decision given at the hearing
- To review the level of warning or action taken at the hearing

- To uphold the staff appeal and remove any sanction/action imposed

### **Advising the outcome of an appeal hearing**

Where practicable, the Appeal Hearing Chair should ideally communicate the outcome verbally at the hearing to all parties once all the evidence has been heard. In certain circumstances, it may be that this is not appropriate, in which case the outcome can be communicated in writing shortly after the hearing has finished.

The outcome should be confirmed in writing to the employee and a copy sent to the Disciplinary Hearing Manager and the employee's line manager.

The letter should clearly outline the outcome of the appeal hearing and provide a comprehensive summary of the considerations made.

In cases where a dismissal has been overturned, the appeal manager should liaise with the employee's line manager to ensure they are re- instated and supported back into the work place.

Where recommendations are made relating to training/supervision or alternative work location, the Appeal Hearing Chair should discuss this with the line manager who then has the responsibility for implementing the recommendation.

It is important to ensure any actions that form part of the outcome of the appeal hearing are communicated and carried through. This must be actioned. Failure to do so could affect the ability to issue subsequent warnings relating to the same or similar issues.

### **Impact on the team/individuals involved in the process.**

It is important to remember that there is likely to be an impact on the team (in which the employee works) during and after the disciplinary process.

Where employees have been suspended, consideration should be made how to support both the employee returning to work along with the concerns of the team.

Where colleagues have provided witness statements against the employee, there will be a need to monitor the work relationships to ensure neither party is subject to bullying or unfair treatment.

Colleagues do not have a right to know that an employee has been suspended or are the subject of disciplinary action.

Where individuals express concerns about their wellbeing, they should be advised that support is available from Occupational Health/Employee Assistance Programme/Resilience Hub and signposted to how they can access this support.

### **Employment Tribunal**

The employee has the right to submit a claim through an Employment Tribunal. Any such claims should be directed immediately to the Human Resources Department, as essential timescales

must be met.

A Human Resources representative will be nominated to liaise with solicitors and appropriate managers during the process.

Witnesses, including the Disciplinary Hearing Chair and Appeal Hearing Chair may be required to provide statements to the tribunal. Human Resources will liaise with the solicitor to co-ordinate this.

Support through this process will be available via the Human Resources Department.

### **Professional Code of Conduct**

Where disciplinary action is taken which indicates an employee has breached their Professional Code of Conduct, a referral will need to be made to the appropriate Professional Body.

Where referrals to a Professional Body are made, you should advise the employee in writing, detailing when the referral is to be made, what is being included and the area of their Professional Code which is alleged to be breached. It is for the Professional Body to determine whether their Professional Code has been breached, not employees of LSCFT.

Referrals to a professional body should be made via the relevant Senior Trust lead for each relevant profession. For example for the NMC they should be made via the Associate Chief Nurse, Patient Experience, Engagement and Safeguarding for the Trust. Referrals to the HCPC should be made via the Director of Allied Health Professionals..

Disciplinary action against the Accountable Officer for Controlled Drugs should be reported directly to the Health Care Commission. This should be made via the Medical Director.

Support can be offered to staff affected by a referral to a professional body. The Director of Nursing will be responsible for ensuring that this is in place.

### **Referrals to the Disclosure and Barring Service (DBS)**

Where disciplinary action has been taken in relation to patients being harmed, consideration will be given to a referral to the Disclosure and Barring Service (DBS). There are two conditions that must be met in order for a referral to be made:

#### **Condition 1**

Permission is withdrawn for a person to engage in regulated activity with children and/or vulnerable adults, or the person is moved to another area of work that isn't regulated activity; and

#### **Condition 2**

There is a reasonable belief the person has carried out one of the following:



- Engaged in relevant conduct in relation to children and/or adults
- An action or inaction has harmed a child or vulnerable adult or put them at risk or harm; or
- Satisfied the harm test in relation to children and/or vulnerable adults e.g. there has been no relevant conduct but a risk of harm to a child or vulnerable adult still exists; or
- Been cautioned or convicted of a relevant (automatic barring either with or without the right to make representations) offence

Source: [www.gov.uk](http://www.gov.uk)

## **Disciplinary Records**

A copy of the outcome letter to the employee should be held on the employee's personal file.

A disciplinary warning will remain live on an employee's personal file for the following periods from the date of confirmation of the warning.

Informal Action – 6 months

First Written Warning - 12 months Final Written Warning - 12 months

Following these periods, warnings will remain on an employee's file but considered spent.

The Chair of the Panel has the discretion to vary these timescales in exceptional circumstances. Previous disciplinary records should only be brought to the disciplinary panel's attention once a decision regarding whether on the balance of probabilities there is sufficient evidence to confirm the allegations are likely to have occurred.

## **Guidance Appendix 1**

### **Procedure for the case management of Employee Relations (ER) Fact Finds and Case Conferences**

#### **Step 1 - Incident raised within service**

- Service lead to escalate accordingly through to Associate Director of Operations (ADO) for Clinical Networks or equivalent in Support Services and to appropriate professional lead (and / or triumvirate depending on severity of case)
- Fact find process to be initiated by appropriate manager. See guidance on fact finds in the disciplinary policy
- HR to be notified and ER Tracker to be updated
- Initial notes to be taken by whom the incident is raised with for sharing as part of fact find
- Consideration may need to be given in some cases to the implementation of interim action to safeguard the staff member and / or service user prior to a Case Conference being held. Any action take at this stage will be subsequently reviewed at the Case Conference meeting. Safeguarding colleagues can be contacted for advice regarding safeguarding procedures and any necessary actions.

#### **Step 2 - Fact Find**

To be undertaken in a swift and timely manner by an appropriate Manager / Team Lead or Professional Lead in the service in question. Under normal circumstances, the fact find should be undertaken within 5 days of the incident, allegation or complaint becoming known.

The purpose of the fact find is to gather some initial information about the allegation, complaint or incident. Information that may be gathered are witness statements, IT or Paper records, CCTV information, this is not an exhaustive list. The fact find is not a disciplinary investigation and should not develop into one.

The fact find template should be used and guidance followed as per the Trust disciplinary policy and process.

#### **Step 3 - Case Conference Call**

During the case conference discussion the Just Culture Guide (embedded in the Case Conference Form) needs to be considered and discussed and the checklist worked through to assess whether formal action is required or whether alternative action / support / learning and reflection is more appropriate. The attached Just Culture Guide should also be considered and referred to.

A Just and Learning Culture in LSCFT (Lancashire and South Cumbria NHS Foundation Trust) enables everyone to contribute to a fair, safe and compassionate environment. It is a

culture that asks and curiously enquires into ‘what’ happened, not ‘who’ did what when an incident has occurred and promotes accountability, learning and support in equal measure. We will work together to be open with each other when things go wrong to feel supported and empowered to learn rather than feeling blamed.

The purpose of the case conference is to ensure a multidisciplinary team including specialist experts, review the fact find and agree on the next steps.

A case conference call needs to be held for any incident, whether this be a conduct matter; a potential grievance; a case that could be classed as bullying or harassment, a safeguarding incident, fraud case, a complex absence case (if appropriate) or a professional body referral (if appropriate) and is to be held for substantive and temporary staff and bank workers (for bank workers please use the ‘Procedure for Dealing with Bank Only Workers’).

Consideration will need to be given to potential severity of the case based on the fact find and in line with the Trust’s Disciplinary Policy and Procedure and Code of Conduct which could determine subsequent action for cases of misconduct or gross misconduct.

All stages of the case conference must have patient safety and safeguarding as the primary focus within any decision making.

The case conference should not proceed unless the correct attendees can be available to attend and the fact find documentation should be made available to all prior to the meeting.

The meeting may need to consider viewing CCTV and if such the HR lead should liaise with the Trust Local Security Specialist for this request. Any CCTV footage should be viewed in accordance with the Trust CCTV systems procedure.

It is the responsibility of the Network or Support Service area to make the appropriate arrangements for the case conference meeting to take place. Representation at a Case Conference meeting should include the following Network or Operational Service representatives;

- Senior Leadership Team (SLT) representation – ADO for the relevant Care Group, or the equivalent Operational Service Manager or Director at 8b or above with a note taker being provided by the Network/Service area. Where it is considered appropriate this can be delegated to a Service Manager or equivalent Operational Manager this at 8a or above
- Lead for relevant profession as applicable – Nursing, Psychology or AHP (Allied Health Professional) (please include for non-registered staff who work in that profession.)
- Relevant HR Business Partner representative
- Network or Support Services Manager and / or Team Leader
- By invite - a safeguarding representative should attend for example in cases involving the police and / or in cases of allegations where a patient or a staff member has been harmed or potentially harmed. Contact [SG.reviews@lscft.nhs.uk](mailto:SG.reviews@lscft.nhs.uk) to request attendance. Names of staff members, role, ward/team and brief details of the allegation must be provided to allow the safeguarding team to have enough information prior to case

- By invite / exception a Trust level Nursing or AHP lead may be requested to attend. This should be determined by the Network Director of Nursing / Network Associate Director of AHPs/consultant AHP
- By invite / exception a representative from ED&I (Equality, Diversity and Inclusion) – for cases involving BAME (Black, Asian and Minority Ethnic) / LGBT+ staff or bank workers who are either named as the alleged perpetrator or the incident is potential prejudice. Contact the ED&I team.

Completion of a case conference template is required.

During the call, the following actions should be agreed;

- next steps – is an investigation required – if not and alternative action is more appropriate – what will this consist of?
- consideration of alternative duties or suspension or action to be taken if not an investigation – Band 8b and above needs to agree the act of suspension
- whether all necessary safeguarding actions / procedures have been taken / followed
- defining the Terms of Reference (if required)
- agreement on Commissioning Manager (if required)
- nomination of appropriate Investigation Officer (if required)
- agreement of administration support for the Investigation (if required)
- Wellbeing contact, support for staff member (and / or those impacted by the case as appropriate) and regular check in with staff member subject to the investigation. This could also include those who are likely to be witnesses or in the cases of a grievance or dignity at work case are the staff member who is the subject of the complaint.
- Liaise with staff side colleagues as appropriate
- Consider whether escalation is required to the Trust Chief Nurse and Quality Officer (via Associate Chief Nurse Patient Experience/Engagement/Safeguarding). If this is required this will be the responsibility of the Chair of the Case Conference with support from the relevant Professional Lead
- Consider whether or not a professional referral is required at this stage.

During the Case Conference Meeting, decisions will be taken on Precautionary Action (see Section 5.6 of the Trust disciplinary policy) and on whether or not the matter needs to be dealt with formally or referred back for Informal Action to be taken (Section 5.3 of the Trust disciplinary policy). It is important that the Just Culture principles as detailed in Appendix 1 if the policy are considered and discussed as part of the case conference and where appropriate informal action and an improvement action plan focussed on learning may be considered.

Where it is felt that an internal investigation may prejudice Protection of Vulnerable Adults, Safeguarding Children, regulations or fraud; theft; Police; IT or other enquiries, the investigation may not be able to commence until clearance has been given to do so. The Chair of the Case Conference with HR support will make further enquiries if this is the case.

#### **Step 4 – Initiate actions in line with Trust policy and procedure**

- Actions will be determined from the Case Conference Call and could include;
  - Investigation
  - Alternative course of action – to be considered in line with the Trust Just Culture Charter principles
    - Is support from OD, ED&I or psychology colleagues needed
  - No further action required
    - Follow up with staff member for any learning / reflection / supervision from incident as required
- Lead Manager to ensure appropriate and relevant documentation completed and employee informed of relevant action from above options. It is important that the member of staff is aware of when they will be receiving any correspondence before it arrives to ensure this is managed in the most supportive way.

#### **Step 5 - Regular review by Locality Commissioning Manager once an investigation is commissioned**

This should be done in conjunction with the HR lead to check progress of the case by obtaining regular updates from the Investigating Officer. This should also include;

- Updates from the wellbeing contact for the staff member
- In cases of suspension, regular reviews must take place to consider whether suspension needs to continue
- Reviewing that Occupational health referrals have been completed as necessary
- Ensuring that relevant safeguarding representatives are kept informed of the actions and outcomes from any reviews by emailing [sg.reviews@lscft.nhs.uk](mailto:sg.reviews@lscft.nhs.uk)
- It is useful throughout the process to make a note of any learning at any stage for further review once the case has been completed.

#### **Step 6 - Update Network / Service SLT and / or HR SLT (as required)**

- **This may be necessary for example with suspension cases or those with police involved**

Please note that a Lessons learnt and review will take place on the conclusion of a case with the ADO and / or SM or relevant Operational Lead with HR support, this will cover:

- Debrief following conclusion of the case to consider the questions posed by the NHSi review
- Could we have done anything differently – what and how?
- Key learning points to be shared with the Network / Service Business Delivery SLT and / or Quality Governance group and People Group.
- A case review will be undertaken with the relevant legal support for all cases that progress to ET stage.
- This should be carried out in line with the We are Learning framework which can be discussed with the relevant HR representative

## Guidance Appendix 2

### Terms of Reference

#### **STRICTLY PRIVATE AND CONFIDENTIAL**

### Terms of Reference

#### **Commissioning Manager:**

**Case Investigator (if appointed): HR Support (if appointed):**

#### **1) Allegations to be investigated**

To investigate the following allegations against [name of employee who is the subject of the investigation]:

- 

Establish, so far as is practicable, the facts in relation to the allegations.

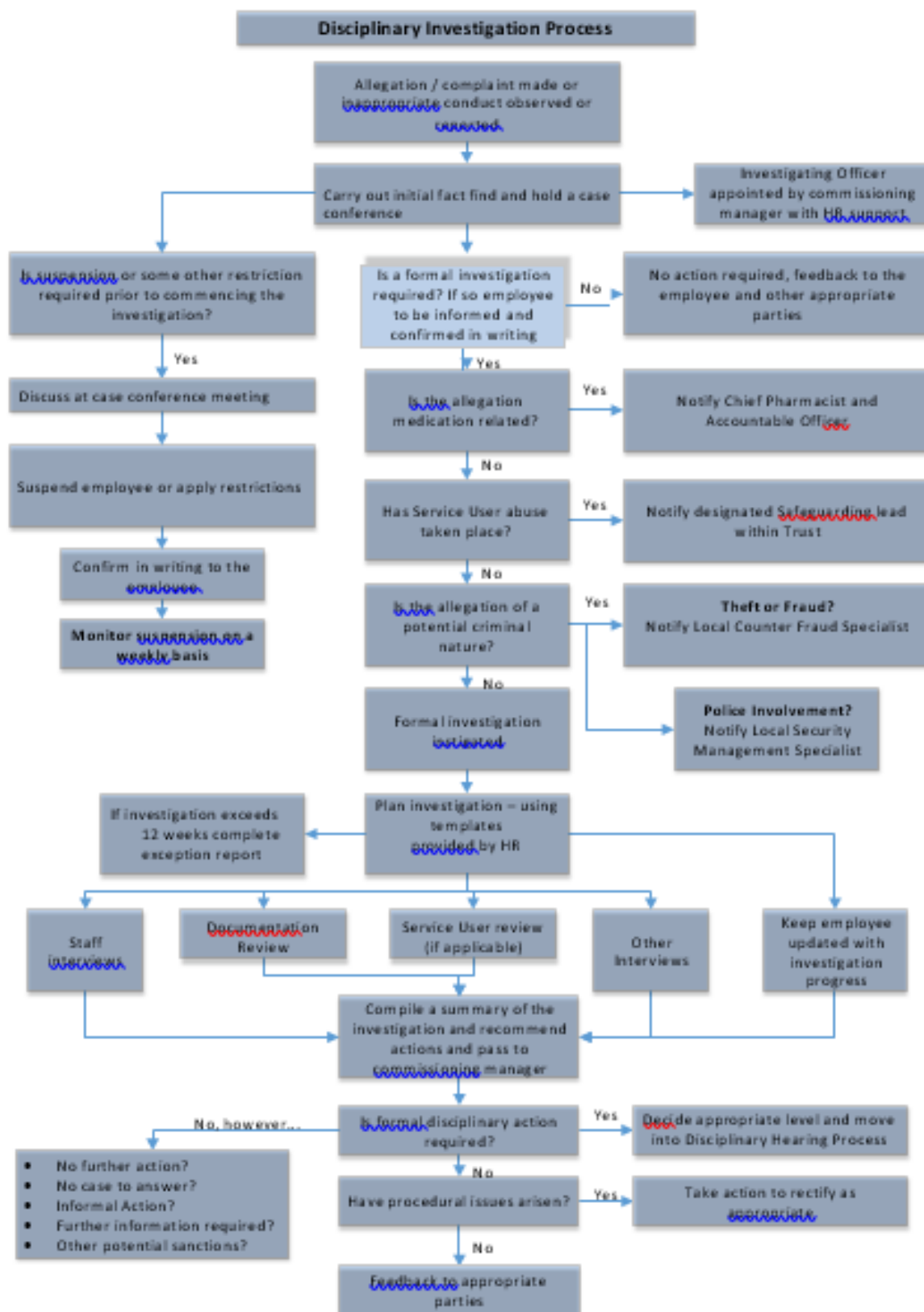
It is accepted that once the investigation has commenced there may be additional relevant areas to be investigated. If this is the case the Investigating Officer should notify the Commissioning manager and a case conference may be reconvened to discuss this further. In additional terms of reference are agreed the employee will be notified of any extension to the terms of reference.

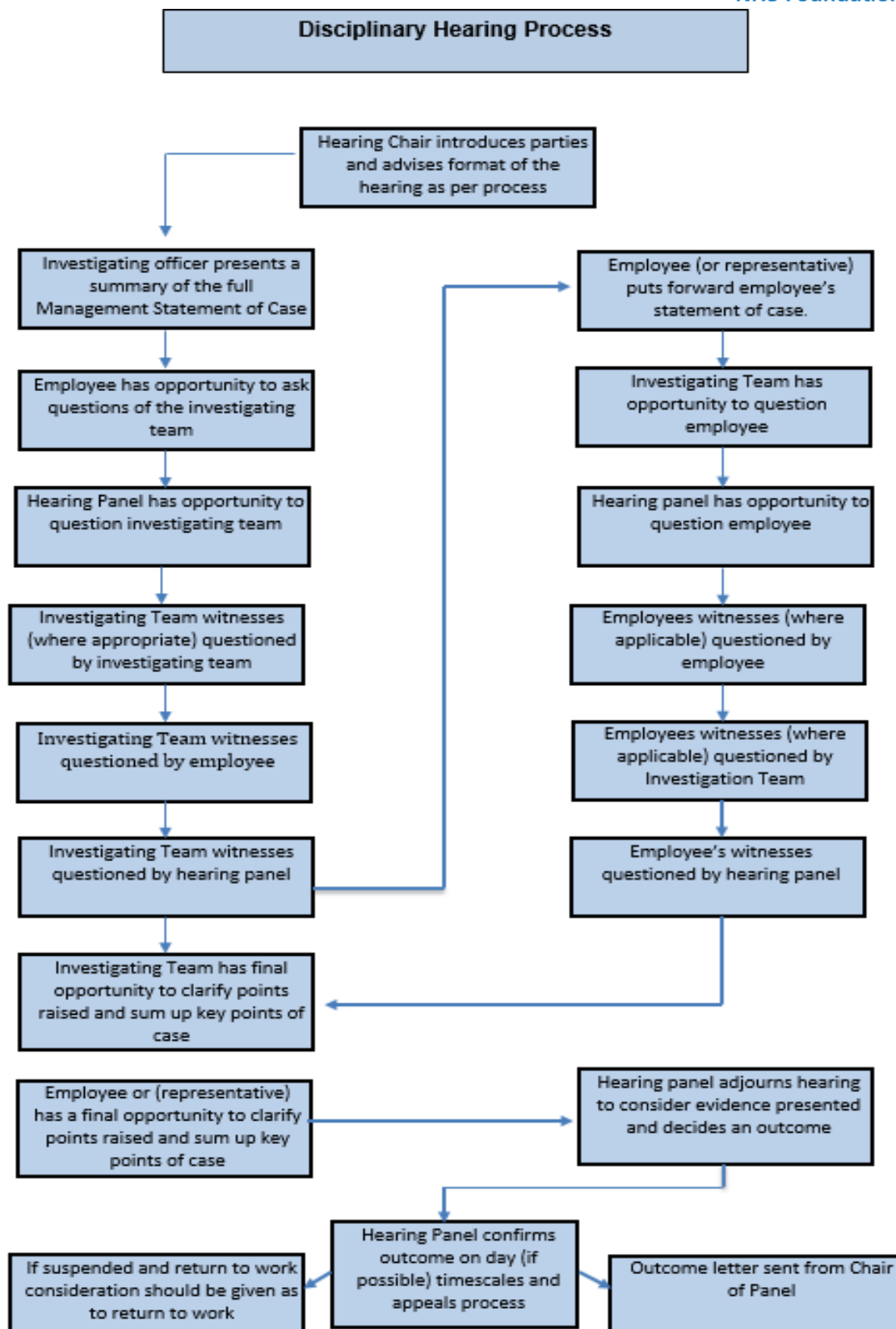
#### **2) Investigation Report**

The completed investigation report will be presented to the Commissioning with recommendations as to whether or not formal action, informal action or no further action should be taken. Should the case proceed formally, the Investigation Officer will be required to present a summary of the case findings.

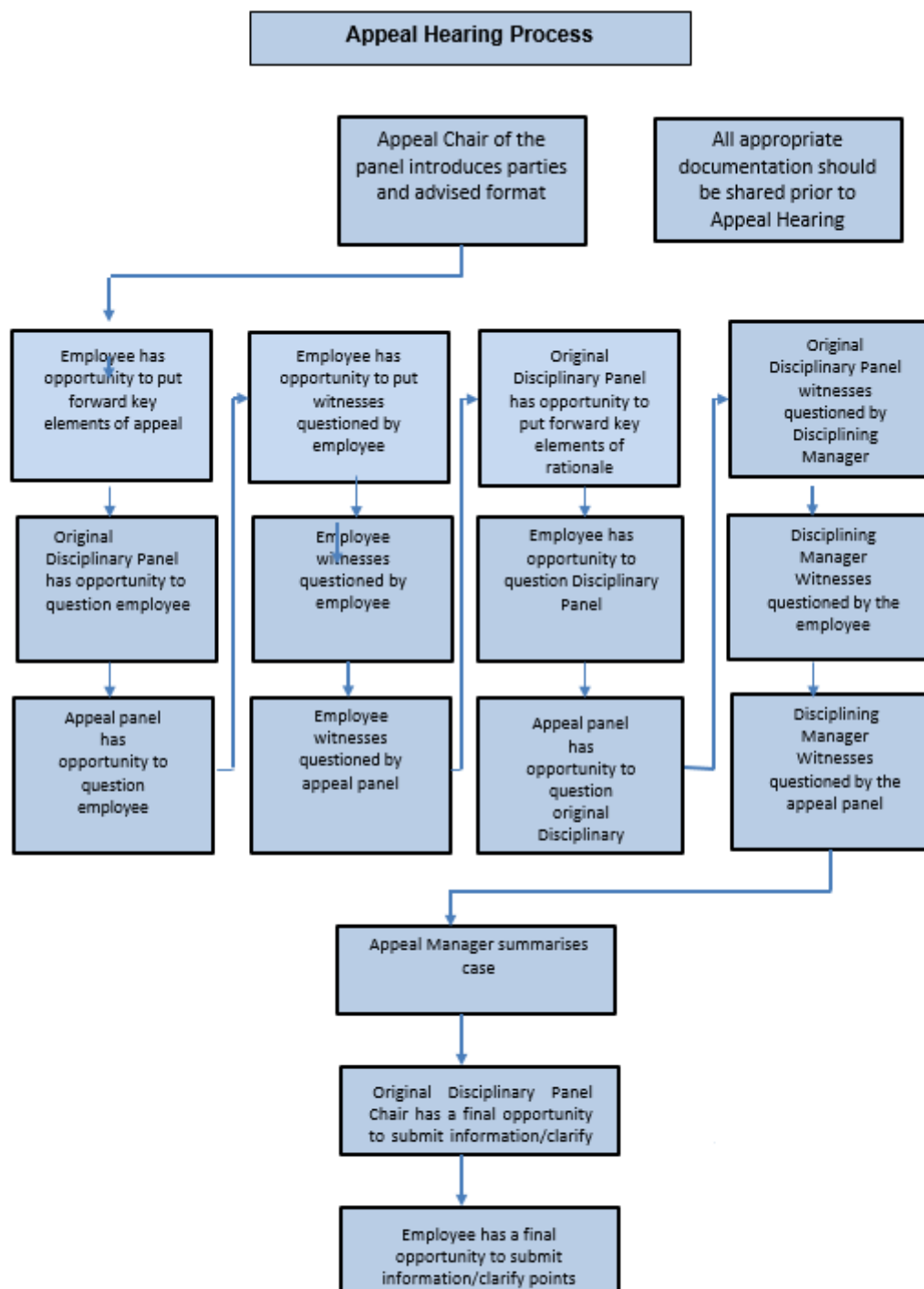
#### **Timescales**

To conduct the investigation within the 12-week timescale as outlined within the disciplinary policy and report any exceptions to this to the Commissioning Manager.









**[Appendix i: Equality Impact Assessment:**

When completing, remove all guidance text like this but do not alter or delete any elements of this assessment

LSCFT puts equality, inclusion, and human rights at the centre of the design and delivery of inclusive services for the diverse communities we serve, and the empowering culture we create for our staff.

The legal case is set out in the Equality Act 2010 and the practice is embodied by our staff every day, without exception.

We are stronger together.

[Equality@lscft.nhs.uk](mailto:Equality@lscft.nhs.uk)



This assessment applies to any Trust procedural document, or activity required in a document which will have an impact on people. Please refer to the Equality Impact Assessment (EIA) Form Guidance which can be found via the link [here](#) and includes a recording how to complete an EIA form. This assessment must be done in collaboration with the E & D Lead.

**1. What is the title of the Procedural document and purpose of the activity in requires or involves that needs to be considered and assessed for its impact on people?**

Disciplinary Policy

**2. Which group/s of people is/are being considered?**

Patients / Service Users     Staff     Public     Partner agencies

Other (please specify here) Staff side representatives

**3. Which of the following protected characteristics may or are likely to be affected by this policy? (\* in any box as needed)**

|  |                          |                          |   |                          |                                     |                                     |                          |                          |                                     |
|--|--------------------------|--------------------------|---|--------------------------|-------------------------------------|-------------------------------------|--------------------------|--------------------------|-------------------------------------|
| Age  | Disability               | Gender-reassignment      | Marriage/Civil Partnership in employment only | Pregnancy & Maternity    | Race                                | Religion or Belief                  | Sex                      | Sexual Orientation       | Other Detail below                  |
|  |                          |                          |   |                          |                                     |                                     |                          |                          |                                     |
| <input type="checkbox"/>   | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/>                      | <input type="checkbox"/> | <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input checked="" type="checkbox"/> |
| <b>Other:</b> Those disadvantaged through isolation due to living alone, rurality, caring responsibilities |                          |                          |   |                          |                                     |                                     |                          |                          |                                     |

**4. What engagement is taking place or has already been undertaken with those who are likely to be affected?**

Engagement has been undertaken with staff side colleagues as part of a Focus Group dedicated to the review and update of the Disciplinary Policy. HR colleagues have also had an opportunity to comment on the revised policy.

**5. What impact or potential impact has been identified through the consultation?**

It is not believed that any protected groups will be directly affected by the revision of the Trust's Disciplinary Policy. Updates to the policy have been made in collaboration with the Trust's staff side colleagues and HR Representatives. However, there may be a potential impact on staff from some protected groups as a result of the implementation of the policy. For example, the Trust's 2020 WRES findings indicate that a BAME colleague is almost twice as likely to enter into the Disciplinary Process that a White British counterpart. Further information on how the Trust will mitigate future risk of the disproportionate treatment of BAME colleagues can be found below at Section 7.

**6. What further steps are needed to mitigate or safeguard against the impact/potential impact identified?**

Further details can be found in the Action Plan at Section 7.

| Outcome of the assessment   | Action/s Required  | Timescale | Accountability |
|---|--|-----------|----------------|
| Outcome 1: <b>No change(s) required</b><br><i>When the scoping exercise has not identified any potential for prejudice or adverse impact and all opportunities to promote equality have been taken.</i> | *No further steps identified   |           |                |
| Outcome 2: <b>Adjustments to remove barriers that were identified in the consultation</b><br><i>We need to be satisfied that the proposed adjustments will remove the barriers identified.</i>          | The Trust's WDES and WRES data show that disabled and ethnic minority staff are disproportionately more likely to enter the formal disciplinary process. The |           |                |

|  |  |  |  |
|--|--|--|--|
|  | <p>Trust is committed to reducing the likelihood for all staff, including ethnic minority and disabled staff, entering the formal disciplinary process. With this in mind the Trust has adopted good practice accountability measures. These will include: before disciplinary action is taken, local managers must demonstrate that going down the disciplinary route is appropriate. Pre-formal action check by a Human Resources Business Partner (HRBP) will support managers to decide if formal action is necessary and proportionate. As part of LSCFT's commitment to a 'just and learning culture', where the emphasis is on learning from errors rather than blame, a post action audit may also take place of staff who have gone through the formal disciplinary process to look at any biases or adverse treatment of any staff group.</p> <p>The Trust is rolling out a comprehensive Birmingham Race Action Partnership (BRAP) Training model which aims to eliminate workplace biases and racial inequality. All HR Business Partners will undertake the training and will be able to challenge any biased or discriminatory practices and ideology throughout the disciplinary process. In addition to this, the HR Team will include Unconscious Bias Training as part of the wider policy training rollout so that Investigation Officers, Case Managers and HR Support are aware of responsibilities with regard to equality, diversity and inclusion.</p> |  |  |
|--|--|--|--|

|   |  |  |  |
|---|--|--|--|
|   | <p>Whilst enforced as a neutral act to ensure a thorough investigation can take place, suspension from work may have the potential to negatively impact some groups, such as Carers and those that are already isolated outside of work due to living alone or living rurally. The revised Disciplinary Policy requires managers to assign a Wellbeing Support to all suspended employees, to act as a point of contact and provide regular meaningful communication with the suspended party.</p> <p>It is unclear from data held whether or not there is a detrimental effect on members of staff based on Sex, Sexual Orientation or age however this will be further investigated from 2021.</p> |  |  |
| <p><b>Outcome 3: There is still potential for adverse impact or missed opportunities to promote equality.</b></p> <p><i>This requires the consideration of 'reasonable adjustments' under the law to adapt and enable people to engage in or access the activities/practices required by the policy. In this case, the justification for continuing must be described here and should also be in line with the duty to have 'due regard'. For the most important relevant policies, compelling reasons will be needed. We need to demonstrate that there are sufficient plans to reduce the negative impact with 'reasonable adjustments' and/or plans to monitor the actual impact</i></p> |  |  |  |
| <p><b>Outcome 4: Stop and rethink.</b></p> <p><i>When an EIA shows actual or potential unlawful prejudice you will now need to make changes to the policy and practices it requires.</i></p>  |  |  |  |

|   |   |
|---|---|
| <p><b>How will we monitor this and to whom will we report outcomes?</b></p> <p>The Chief Officer of the policy must be made aware of this assessment and any monitoring or rewriting in relation to outcomes 2,3 or 4</p> <p><i>Risks identified throughout the assessment process and controls designed to address them, must be described and rated and recorded on IRIS or in service risk registers in line with Trust processes. Assurance</i></p> | <p>The Executive Owner is aware that this EIA has been undertaken as part of the policy review process. Any future reviews will be undertaken by the policy author.</p> |
|---|---|

|  |  |
|--|--|
| <i>mechanisms should be developed for each activity to ensure that equality and diversity compliance is achieved on an ongoing basis</i> |  |
|--|--|

**7. Who undertook this assessment and when?**

|   |                                       |
|---|---------------------------------------|
| Name: Hannah Crawford   |                                       |
| Job Title: HR Advisor   | Date assessment started:              |
| Service: Human Resources  | Date assessment completed: 12.04.2021 |
| Sign off: High – to be signed off by E&D Team<br>Medium – to be signed off by Author with E&D advice<br>Low – signed off by Lead Author | EIA Grade: High                       |

**8. Authorised by (Signature):** Pav Akhtar

**Date:** 26.04.2021