Disciplinary Guidance Document
Contents

1.0 Introduction

2.0 Scope

3.0 What to do when allegations/complaints are made or conduct has been observed
   3.1 Informing the employee

4.0 Initial Fact Finding
   4.1 Conducting a Fact Finding meeting with the employee

5.0 Considering suspension from duty
   5.1 Authority to suspend
   5.2 Arranging the suspension meeting
   5.3 Suspension meeting

6.0 Allegations
   6.1 Allegations of abuse
   6.2 Allegations of theft or fraud
   6.3 Allegations of misconduct related to misuse of Controlled drugs

7.0 Where criminal proceedings are being pursued

8.0 Investigations
   8.1 Formal Investigations
   8.2 Identifying an investigation team
   8.3 Planning the Investigation
   8.4 Where sickness occurs during the process
   8.5 Where resignation occurs during the process
   8.6 Interviewing
   8.7 Preparation before interview
   8.8 The interview meeting
   8.9 Producing statements
   8.10 Reluctant witnesses/conflict of interest
   8.11 Trade union access to witnesses
   8.12 Sharing witness information
   8.13 The investigation report
   8.14 Investigation recommendations
   8.15 Pursuing disciplinary action
   8.16 Preparing the management statement of case
   8.17 Recorded informal counselling
9.0 Disciplinary Hearings
  9.1 Meetings for an Informal Counselling
  9.2 Hearings for Formal sanctions
  9.3 Panel preparation
  9.4 Disciplinary hearing
    9.4.1 Disciplinary Hearing Manager
    9.4.2 Investigating Manager
    9.4.3 Employee
    9.4.4 Witnesses
  9.5 Considering the outcome
  9.6 Determining the facts
  9.7 Mitigation
    9.7.1 Rationale for outcome
    9.7.2 Alternative sanctions or actions
  9.8 Advising the outcome of a disciplinary hearing

10.0 Appeals Procedure
  10.1 Appeal hearing
    10.1.1 Employee
    10.1.2 Disciplining Manager
    10.1.3 Witnesses
  10.2 Considering the outcome of an appeal
  10.3 Advising the outcome of an appeal hearing
  10.4 Impact on team

11.0 Employment Tribunal

12.0 Professional code of conduct

13.0 Disciplinary records

14.0 Adult/child protection issues

15.0 Flow Charts
1.0 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 HR 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.

2.0 Scope

This guidance is designed to be read in conjunction with the Lancashire Care Foundation Trust Disciplinary Policy. For conduct issues involving medical and dental employees please refer to the Responding to Concerns Guidance for Medical and Dental Staff.

3.0 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 e.g. theft of money would have implications for an employee’s continued employment in a post handling cash or violent behaviour would impact on 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 under Section 4.

If the allegation is related to patient abuse or a serious patient safety issue, the local Safeguarding team should be notified. The investigating manager will need to contact the Commissioning Manager for them to confirm 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. Further information concerning Suspension is located in Section 5. Arrangements for Medical staff are outlined within the Responding to Concerns Policy.

If the allegation is related to fraud, the Local Counter Fraud Specialist (LCFS) should be notified immediately before any investigation takes place. Advice should then be taken as to how to progress the investigation. No action to inform the police should be taken until the issue has been discussed with the LCFS and HR.

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. In all incidents involving medication, the investigating manager should seek the advice of the Trust’s Chief Pharmacist (or deputy).

### 3.1 Informing the employee

Where you have determined that further investigation/action is necessary, this needs escalating to a (Commissioning) Manager at Band 8b or above to commission an investigation. This should be communicated by Commissioning Manager without delay to the employee verbally where possible, and in writing including the name of Investigating Officer and workplace contact for support.

Ensure that you have offered the opportunity to be accompanied by a trade union representative or work colleague for the Trust, in line with the requirements of the Disciplinary Policy. This should be offered in writing, the letter should also give a summary of the allegation(s), date, time, venue and attendees of the investigation. A draft invite letter is available on e-HR InfoPoint.

If the allegation relates to a trade union representative, you must contact HR as soon as possible. HR will then notify the full-time officer or branch secretary of the relevant trade union at an early stage, before you notify/interview the employee/trade union representative. 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.

In cases where criminal investigations are being pursued it may not be appropriate to provide full details of the allegations as this could impact on the criminal investigation. Advice should always be sought from HR in the first instance in cases that involve the Police/
Counter Fraud Team. The Counter Fraud Team and/or the Police may then be involved before pursuing an investigation of this type.

Where appropriate consider suspension or alternatives as per the guidelines on section 5 of this document.

Advise the employee that the allegation/complaint will need to be investigated and that when the investigation is complete a decision will be made about whether disciplinary action will be pursued.

Following the investigation meeting with the employee, confirm whether further investigation is necessary, how this will proceed, time-scales, possible outcomes (e.g. formal disciplinary action), the need to interview the employee formally during the investigation etc.

Confirm contact details for the employee and trade union representative to enable you to inform them of progress, particularly if timescales lapse.

It is always important that managers keep the employee and staff side representative regularly informed of the progress of an investigation and this is normally carried out by the Investigating Officer.

4.0 Initial Fact Finding

Where you have concerns about an employee's conduct, you should consider whether you need to verify the initial details given by the complainant 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 the service users.

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.
4.1 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 or interrupt or overhear any conversations.

If the conduct is related to fraud, do not contact the employee or police until you have contacted the Counter Fraud Team and HR 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 has been made and that further verification is required. If 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/confirmaation 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.

5.0 Considering suspension from duty

In most circumstances suspension will be where alleged behaviour is so serious and is of such a nature that an individual could face the possibility of summary dismissal.

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

Please contact Human Resources for further guidance and/or discuss with a Staff Side Officer in respect of suspension of a staff side representative.

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.

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, which would minimise the need for full suspension.

When considering these 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.
5.1 Authority to suspend/restrict duties

Appendix 1 outlines those who have the authority to suspend an employee. If you require clarity as to whether you are able to suspend, contact HR for advice.

Any decision to suspend must be made by a Manager (Band 8b or above) of the Directorate in which the employee is based following consultation with a HR representative.

5.2 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. Plus, 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 union representative or Trust colleague with them for support. However, the meeting should not be delayed if a union representative is unable to attend for whatever reason.

The Commissioning manager at Band 8b or above should wherever possible, be accompanied in an advisory capacity by a member of the HR team and ensure they have discussed and have approval from the Network Director.

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 a recognised 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.

5.3 Suspension Meeting

Confirm at the start of the meeting the employee can have a union representative or Trust 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 should refrain 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 may be appropriate during this time.

Alternatively employees may prefer to have an independent mentor during this time. If the employee wishes to take this option up, they should be involved in identifying a suitable mentor. You will then have responsibility for contacting the mentor and confirming their willingness to undertake this role. The mentor 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 and kept informed of the situation and at appropriate intervals thereafter. There must be a formal review of the suspension on a 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 Bank Staffing 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 if and when required. If suspension is being considered then managers are advised to contact a member of the HR 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.

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

6.0 Allegations

6.1 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.

6.2 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 HR 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.

6.3 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.

7.0 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 postponed.

However, it is acknowledged that this may be difficult given the rules of sub judice, and you should seek advice from HR.

Therefore please bear in mind that Investigation timescales may have to be put on hold to allow the criminal proceedings to be concluded without the Trust’s actions influencing or impacting on these.
8.0 Investigations

8.1 Formal investigations

A formal investigation must be commissioned by an appropriate senior manager (8b or above) with the delegated authority to commission cases. The commissioning manager must then select an Investigating Officer 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 HR 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).

8.2 Identifying an investigation team

In very complex and potentially serious cases, it may be appropriate to set up a formal investigation team. Advise should be sought from HR 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 HR Adviser/Consultant
- 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.
8.3 Planning the investigation

Any investigation should be planned and have clear parameters detailed in terms of reference. Only information relevant to the matter and which 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.

8.4 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 off sick, managers will need to establish the importance that the witness has in providing statements/evidence. If alternative sources of information are available or witnesses, 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.

- Have a tight but realistic timescale to work to.
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 monthly basis. This will depend on individual circumstances.

Advice should be sought from Human Resources.

8.5 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 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). Normal reporting procedures should be followed and the employee advised. Any outcome such as dismissal will also have to be reflected in any future employment references.
8.6 Interviewing

Use of witness/witnesses 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.

8.7 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 coming to light. 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. 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 which 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. 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, the support person is aware that they will not be able to contribute or answer questions but will be there purely to support the witness.

8.8 The Interview meeting

If an investigation team comprises of more than 1 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.

As far as is possible, ensure confidentiality of information. 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 following receipt of the notes.

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)

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

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 that steps are taken to ensure that approval of the interview has been given by the relevant person named in the care plan, i.e. clinician, named nurse etc. 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.

8.9 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, dependant 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 hasn’t 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 LCFT email account will be taken as signed and dated (whether or not they contain a signature).

If the witness is unwilling to sign the statement, note this on the statement. You can still sign and date it personally but you will need to decide how useful the statement will be as evidence.
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.

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.

8.10 Reluctant witnesses/conflicts of interest.

There is the requirement for LCFT 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 don’t 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 come to light during the investigation these should be recorded and statements/information provided and considered for its relevance and appropriateness.

8.11 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.
8.12 Sharing witness information

Witness statements are likely to be part of the evidence referenced to in your Statement of Case. Should disciplinary action be recommended the statements will be shared with the employee at this time. Witnesses should be made aware of this at the time of interview.

In very exceptional circumstances, it may be necessary to keep the identity of the witness anonymous because of legitimate fears for personal safety. In such cases, you should seek HR advice.

Any statements / information gained as part of an investigation involving service users should be anonymised.

Where the investigation arises as a result of a written complaint, it may be appropriate for a copy of this to be shared with the employee potentially facing disciplinary action. In relation to natural justice, the employee needs to have adequate details of the misconduct of which he/she is accused. However, it is not necessary at the investigation stage to make all witness statements available to the employee.

8.13 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 who you interviewed and when. Any issues you encountered along the way.

**Summary of main findings** - on balance did the investigation support or refute the complaint or management concerns?

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 make reference to this in your recommendations.

Recommendations including for example:

- Whether there is a prima facie case to answer
- Management interventions/supervision/support/training
- Systems improvements
- Wider service implications

An Investigation Report template is included in e-HR Infopoint.

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

8.14 Investigation Recommendations

The recommendations should be based on a balanced investigation taking into account evidence that both support the allegation, but also any which supports the employee.

Recommendations should also indicate if any policies or procedures are unclear, require amending or are not being followed in general.

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 which 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
- discrimination by others

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 over the course of an investigation. Should this be the case, it is important that if further
allegations are found and to be explored as part of the investigation, that the individual is advised in writing of the additional allegations being considered. This is an important point as failing to do this can result in allegations not being valid for presentation at a hearing.

8.15 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 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 can 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.

8.16 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 key relevant issues and demonstrate how the evidence supports your case.
- Make the link between the misconduct, its implications and its effect on the individual’s employment if the disciplinary is upheld
- Make use of appendices for supporting evidence referred to in the text (e.g. witness statements, investigation report etc) ensuring all statements are signed.

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.

9.0 Disciplinary Hearings

9.1 Meetings for an Informal Counselling

An informal counselling should be issued where it is the first minor offence of misconduct and where there is admission of inappropriate conduct.

Informal Counselling 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 at a later date.

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 counselling
- 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.

### 9.2 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.
- Confirming a date for the hearing is in line with the policy timescales.

Information concerning the composition required for panels is located in the second table within Appendix 1.

The Investigating Manager has the responsibilities 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 of time 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 the responsibilities for:

• Take receipt of the union/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.

9.3 Panel preparation

Prior to the hearing, the disciplinary panel should review the content of both the Management Case and Employees 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.

Please refer to the ‘Managers Resource Pack for Disciplinary Hearings’

9.4 Disciplinary Hearing

Please refer to the flowchart in Appendix 3.

9.4.1 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 note taker.
• 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 timescales/breaks.

9.4.2 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 key elements relevant.

In using historical information, pertaining to previous warning or sanction/s, the Investigating Officer would need to justify within a hearing why previous behaviour and/or warnings should be considered.

9.4.3 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 aren’t 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.

9.4.4 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. Witnesses called by the investigating officer would be arranged by the investigating officer to attend the hearing and they would advise the Chair of whom they intended to invite and provide justification for attendance. Trade Union Representatives are required to make the relevant arrangements for their witnesses to attend a hearing and also need to confirm with the Chair whom they intend to invite and provide justification for their attendance.

The questioning of the witnesses should follow the sequence below:

• Manager
• Employee (or their 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 leaving the hearing.

9.5 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.

9.6 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 is guilty of misconduct otherwise no disciplinary action can be taken.

The decision should be based on the facts of the case which 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 procedure which were not followed, the Disciplinary Hearing Chair must consider if this has implications for the outcome of the hearing.

9.7 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
- Inexperienced
- Long service in some situations
9.7.1 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.

9.7.2 Alternative sanctions or actions

It may not always be appropriate to issue formal disciplinary warnings. The Disciplinary Hearing Manager 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.

9.8 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. Failure to do so could impact on the ability to issue subsequent warnings relating to the same or similar conduct issues. It
is important that the individual is advised of the right of appeal and the process they can use to do this.

9.9 Sanctions

9.9.1 Stage One – 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.

9.9.2 Stage Two – 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.

9.9.3 Stage Three – 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 notice.

9.10 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 of the panel to take a decision, taking into account the professional advice given.
10.0 Appeals procedure

For the Appeals procedure please refer to the flowchart at the end of this guidance.

Information concerning the composition required for panels is located in the second table within Appendix 1.

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

If this is not clear, the Director of HR 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).
- 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/witnesses 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.

10.1 Appeal Hearing

Please refer to the flow chart at the end of this guidance.

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. Confirm a summary of the reason for the appeal.
10.1.1 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.

10.1.2 Management Presentation

The original Panel of the Chair will be required to present a summary of the rational and detail any key elements relevant to the case and justification for the original disciplinary outcome.

10.1.3 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

10.2 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 action imposed

10.3 **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 circumstance 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 employees 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 employees 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 impact on the ability to issue subsequent warnings relating to the same or similar issues.

10.4 **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 monitor the work relationships to ensure neither party is subject to bullying or harassment.

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 and signposted to how they can access this support.

11.0 Employment Tribunal

The employee has the right to submit a claim through an employment tribunal. Any such claims should be directed immediately to the HR department as essential timescales must be met.

A HR 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. HR will liaise with the Solicitor to co-ordinate this.

Support through this process will be available via the HR department.

12.0 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 that is in breach.

Referrals to the NMC should be made via the Lead Nurse for the Trust.

Referrals to the HCPC should be made via the Director or equivalent of the relevant professions.

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.

13.0 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.
Following these periods, warnings will still remain on an employee’s file but will be considered spent.

Informal Counselling – 6 months
First Written Warning - 12 months
Final Written Warning - 12 months

The chair of the panel has the discretion to vary these timescales in exceptional circumstances.

14.0 Safeguarding

Reference can be made to spent warnings in cases that relate to client abuse.

This was introduced into the Disciplinary Policy for the purpose of client protection. By retaining all disciplinary warnings on file the Trust will be in a position, in specific circumstances, to consider spent warnings where it is relevant and reasonable to do so.

Emphasis must be placed on the reasonableness and relevance of taking such warnings into account. Authorised managers so doing will be advised by HR staff on the decision they are to make and its reasonableness and relevance.

Whilst a spent warning will remain on the employee's personal file it will never be taken into account unless it can be demonstrated that it is relevant and reasonable to do so in the context of the Trust’s responsibility for client protection. The object is not to put these employees into a worse position than other employees but to accommodate where their particular role and responsibilities mean that client protection is paramount.

Disciplinary Hearing Chairs will also be able to consider such warnings in their decision where they form part of the investigating manager’s case. In most cases the fact there are previous warnings on file should not influence a decision upon the 'guilt' of the employee in respect of the specific allegations in question.

However there may be exceptional circumstances where the presence of previous warnings may be legitimately used in forming a view upon the balance of probabilities. Advice will be provided by an HR Representative. Again, the reasonableness and relevance of taking such warnings into account in any employment or disciplinary decision must be justified in these circumstances.
Spent disciplinary records will not be used during the investigation process. It is the responsibility of the investigating manager taking forward the case to a disciplinary hearing to consider the relevance as outlined above.
Appendix 1-
Authority to deal with Disciplinary matters

<table>
<thead>
<tr>
<th>Category</th>
<th>Suspension</th>
<th>Informal Counselling</th>
<th>First Written Warning</th>
<th>Final Written Warning</th>
<th>Dismissal</th>
<th>Appeal</th>
</tr>
</thead>
<tbody>
<tr>
<td>Shift Manager</td>
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<tr>
<td>Line Manager</td>
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<tr>
<td>Senior Manager 8b or above.</td>
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<td>√</td>
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<tr>
<td>Exec Director</td>
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<tr>
<td>Chief Exec</td>
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<td>√</td>
<td>√</td>
<td>√</td>
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<tr>
<td>Chair of Trust Board</td>
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<td></td>
<td>√</td>
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<td>√</td>
<td>√</td>
</tr>
</tbody>
</table>

Panel Requirements

<table>
<thead>
<tr>
<th>Staff Group</th>
<th>Final Written Warning / Dismissal</th>
<th>Appeal for Final Written Warning</th>
<th>Appeal for Dismissal in all cases</th>
</tr>
</thead>
<tbody>
<tr>
<td>All Staff up to and including Band 8a</td>
<td>Minimum level Band 8b</td>
<td>Network Director, Clinical Director or Executive Director</td>
<td>1 Network Director or Clinical Director, 1 Executive Director, 1 Non-Executive Director and 1 Professional Advisor (as appropriate)</td>
</tr>
<tr>
<td>Band 8b to not Network Director (or equivalent) not including Network Directors</td>
<td>Network Director or Clinical Director</td>
<td>Executive Director</td>
<td></td>
</tr>
<tr>
<td>Band 9 and above - including Network Director/ Clinical Director Medical and Dental Staff outside of AFC Terms and Conditions up to Deputy Medical Directors</td>
<td>Executive Director</td>
<td>Chief Executive</td>
<td></td>
</tr>
<tr>
<td>Executive Director</td>
<td>Chief Executive</td>
<td>Chairman and 1 Non-Executive Director</td>
<td>Chairman and 2 Non-Executive Directors</td>
</tr>
<tr>
<td>Chief Executive</td>
<td>Chair plus one Non-Executive Director</td>
<td>2 Non-Executive Directors</td>
<td>2 Non-Executive Directors and 1 Independent Advisor</td>
</tr>
</tbody>
</table>

In exceptional circumstances the above authority levels will be permitted to be delegated appropriately with the agreement of Human Resources.
Appendix 2 – Disciplinary Investigation Process

Disciplinary Investigation Process

- Allegation / complaint made or inappropriate conduct observed or reported
  - Carry out initial fact find (if appropriate)
    - Is a formal investigation required? If so employee to be informed and confirmed in writing
      - No action required, feedback to the employee and other appropriate parties
    - Is the allegation of a potential criminal nature?
      - Yes
      - Notify Chief Pharmacist and Accountable Officer
      - Notify designated Safeguarding lead within Trust
      - Theft or Fraud? Notify Local Counter Fraud Specialist who will lead the fraud investigation
      - Police Involvement? Notify Local Security Management Specialist
    - Has Service User abuse taken place?
      - Yes
      - Notify Local Counter Fraud Specialist who will lead the fraud investigation
    - Is the allegation medication related?
      - Yes
      - Notify Chief Pharmacist and Accountable Officer
    - Formal investigation instigated
      - If investigation exceeds 8 weeks complete exception report
      - Plan investigation – using templates and Disciplinary Action Planner provided by HR
      - Staff interviews
      - Documentation Review
      - Service User review (if applicable)
      - Other Interviews
      - Keep employee updated with investigation progress
      - Compile a summary of the investigation and recommend actions and pass to commissioning manager
        - No further action?
        - No case to answer?
        - Informal Counselling?
        - Further information required?
        - Other potential sanctions?
        - No
        - Have procedural issues arisen?
          - Yes
          - Take action to rectify as appropriate
          - No
        - Deciding appropriate level and move into Disciplinary Hearing Process
      - No
Appendix 3 – Disciplinary Hearing Process

Disciplinary Hearing Process

Hearing Chair introduces parties and advises format of the hearing as per process

Investigating Officer presents a summary of the full investigation report

Employee has opportunity to ask questions of the investigating team

Hearing Panel has opportunity to question investigating team

Investigating Team witnesses (where appropriate) questioned by investigating team

Investigating Team witnesses questioned by employee

Investigating Team witnesses questioned by hearing panel

Investigating Team has final opportunity to clarify points raised and sum up key points of case

Employee (or representative) has a final opportunity to clarify points raised and sum up key points of case

Employee (or representative) puts forward employees statement of case

Investigating Team has opportunity to question employee

Hearing Panel has opportunity to question employee

Employee witnesses (where applicable) questioned by employee

Employee witnesses questioned by Investigating Team

Employee witnesses questioned by hearing panel

Employee witnesses questioned by hearing panel

Hearing Panel adjourns hearing to consider evidence presented and decides on outcome

Hearing Panel confirms outcome on day (if possible) timescales and appeals process

Outcome letter sent from Chair of Panel

If suspended and return to work consideration should be given as to return to work

Investigating Team has final opportunity to clarify points raised and sum up key points of case
Appendix 4 – Appeal Hearing Process

- **Appeal Hearing**

  - Appeal Chair of the Panel introduces parties and advises of the format

  - All appropriate documentation should be shared prior to Appeal Hearing

  - Employee has opportunity to put forward key elements of appeal

  - Original Disciplinary Panel has opportunity to question employee

  - Appeal panel has opportunity to question employee

  - Employee has opportunity to put forward key elements of rationale

  - Original Disciplinary Panel has opportunity to put forward key elements of rationale

  - Original Disciplinary Panel witnesses questioned by Disciplining Manager

  - Disciplining Manager witnesses questioned by the employee

  - Employee witnesses questioned by Disciplining Manager

  - Employee witnesses questioned by appeal panel

  - Employee has opportunity to question Disciplinary Panel

  - Appeal panel has opportunity to question original Disciplinary Panel

  - Disciplining Manager witnesses questioned by the appeal panel

  - Appeal Manager summarises case

  - Employee has a final opportunity to submit information/clarify points raised

  - Original Disciplinary Panel has a final opportunity to submit information/clarify points raised

  - Appeal Manager confirms decision on the day (if possible) timescales and communication method of the outcome