## DISCIPLINARY POLICY & PROCEDURE

<table>
<thead>
<tr>
<th>POLICY REFERENCE NUMBER</th>
<th>HR 014</th>
</tr>
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<tbody>
<tr>
<td>DATE RATIFIED</td>
<td>December 2015</td>
</tr>
<tr>
<td>NEXT REVIEW DATE</td>
<td>31 March 2020, extended until 30 September 2020</td>
</tr>
<tr>
<td>APPROVED BY (state group)</td>
<td>Executive Management Team (EMT)</td>
</tr>
<tr>
<td>ACCOUNTABLE DIRECTOR</td>
<td>Director of Human Resources</td>
</tr>
<tr>
<td>POLICY AUTHOR</td>
<td>HR Team</td>
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### Policy Statement / Key Objective:

To provide a framework to enable conduct issues to be addressed in a fair, equal and consistent manner.
## Executive Summary

<table>
<thead>
<tr>
<th>Title of Policy</th>
<th>Disciplinary Policy</th>
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<tr>
<td>Subject</td>
<td>Concerns relating to conduct</td>
</tr>
<tr>
<td>Applicable to</td>
<td>All employees, temporary employees working under a contract of service, Apprentices and Students. Medical and Dental staff - In conjunction with the Responding to Concerns Policy.</td>
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<tr>
<td>Key Policy Issues</td>
<td>Promote fairness and consistency in the treatment of individuals. Provision of advice in the kinds of acts/behaviour which can constitute breaches of discipline. Clarifies the rights and responsibilities of management and staff in respect of disciplinary actions. Provision of an appeals mechanism against disciplinary decisions.</td>
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<tr>
<td>Original Issue Date</td>
<td>June 2011</td>
</tr>
<tr>
<td>Issue Date</td>
<td>December 2015</td>
</tr>
<tr>
<td>Dates Policy Reviewed</td>
<td>October 2017</td>
</tr>
<tr>
<td>Next Review Date</td>
<td>30 June 2019, extended until 31 March 2020, extended until 30 September 2020</td>
</tr>
<tr>
<td>Policy written by</td>
<td>HR Team</td>
</tr>
<tr>
<td>Policy Lead</td>
<td>HR Consultant</td>
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<tr>
<td>In Consultation with</td>
<td>Staff side &amp; Management</td>
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<tr>
<td>Monitoring Arrangements</td>
<td>HR is responsible for overseeing the introduction, operation and monitoring of the policy and where appropriate data are available, will report to the Trust Board on matters relating to the policy.</td>
</tr>
<tr>
<td>Approved by</td>
<td>Executive Management Team</td>
</tr>
<tr>
<td>Authorised by</td>
<td>Director of Human Resources</td>
</tr>
<tr>
<td>Related Procedural Documents</td>
<td>Disciplinary Guidance, Code of Conduct</td>
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<tr>
<td>Links to CQC outcomes</td>
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1.0 Introduction

1.1 This policy sets out the standards of behaviour that are expected of all employees of LCFT and workers (e.g. bank staff) and to encourage improvement in individual conduct and must be read in conjunction with the LCFT Disciplinary Guidance.

1.2 This policy is in place to ensure that fairness, equity and consistency are applied to all staff. The application of this policy will be undertaken in a timely manner that ensures confidentiality of the issues and of the members of staff and management involved.

1.3 It sets out the responsibilities and duties of management and staff in respect of disciplinary issues.

1.4 This policy and procedure is in line with the relevant legislation and the Advisory, Conciliation and Arbitration Service (ACAS) guidance set out as follows:

- ACAS code of practice on disciplinary & grievance procedures
- The Trade Union and Labour Relations (Consolidation) Act 1992
- The Employment Rights Act 1996
- The Employment Act 2008
- Fraud Act 2006

2.0 Scope

2.1 This policy applies to all staff including medical and dental staff. However, in the case of Medical and Dental staff this policy must be used in conjunction with the Responding to Concerns Policy.

2.2 This policy does not cover situations appropriate to be dealt with under the Trusts policies which cover capability (Managing Attendance Policy, Performance Improvement Policy and Responding to Concerns) where an unacceptable level of performance is due to a lack of capability rather than to an employee deliberately/wilfully ignoring instructions or producing sub-standard work.

3.0 Definitions

3.1 The standards of behaviour expected of employees are those necessary for the proper operation of the workplace, and to maintain mutual trust and confidence between the employer and employee. The Trust Values provide a framework for the standards of behaviour expected of employees.

3.2 Where standards of behaviour fall below what is expected, this could constitute misconduct. The Trust takes all allegations of misconduct seriously and where
necessary the disciplinary policy will be followed. A full breakdown of what constitutes misconduct and gross misconduct is located in Appendix 1.

4.0 **Duties**

4.1 **Responsibility of the Trust Board**

4.1.1 The responsibility for the provision of a policy and discipline rests initially with the Trust Board.

4.1.2 Additionally, the Trust Board will ensure, through the line management structure, that this policy is applied fairly and equitably and that staff are aware of the standards of conduct required.

4.2 **Responsibility of Human Resources (HR)**

4.2.1 Human Resources (HR) will oversee the introduction, operation and monitoring of this policy to ensure the fair and consistent application throughout the Trust in accordance with employment legislation.

4.2.2 Human Resources (HR) will ensure the provision of training, guidance and support to line managers on the operation of this policy.

4.2.3 Human Resources (HR) will support managers and Investigating Officers in the application of this policy and ensure the policy is applied fairly and consistently throughout the Trust.

4.2.4 Human Resources (HR) will ensure the monitoring of warnings records on employee personal files.

4.3 **Responsibility of Line Managers**

4.3.1 Line Managers are responsible for ensuring that this policy is applied fairly and consistently within their own area.

4.3.2 Line Managers will ensure that employees are aware of and understand the code of conduct, standards and behaviour required by the Trust and professional organisations/bodies.

4.3.3 If managers have any concerns regarding suspected instances of fraud, they must immediately inform the Network/Clinical Director or nominated deputy.

4.4 **Responsibility of the Commissioning Manager**

4.4.1 The Commissioning Manager (Manager at Band 8b or above) will commission an investigation and identify an appropriate Investigating Officer.

4.4.2 In regards to the investigation they will confirm the allegations that are to be investigated to the individuals concerned and once the investigation report has been concluded, they will make a decision on any action required in a timely manner.

4.5 **Responsibility of the Investigating Officer**
4.5.1 The Investigating Officer undertakes a comprehensive investigation into the alleged allegations in a timely manner.

4.5.2 To lead the investigation, arrange administrative support to witness meetings and provide a detailed report on the findings of the investigation to the Commissioning Manager.

4.5.3 The Investigating Officer will be supported by a member of the HR team who will provide professional HR advice to the investigation.

4.6 Responsibility of the Employee’s Companion (Staff Side Representative or Workplace Colleague)

4.6.1 The employee(s) can be accompanied at meetings by a companion; this would normally be a staff side representative or Workplace colleague.

4.6.2 The companion will support the employee during meetings and potentially advise employees on any views expressed at the meeting and confer with the employee during the meetings.

4.6.3 The companion does not, however, have the right to answer questions on the worker’s behalf, address the hearing if the employee does not wish it or prevent the employer from explaining their case.

5.0 Disciplining Accredited Trade Union Representatives

In the event that allegations are made against an employee who is also an accredited trade union representative, a Full Time Officer from the appropriate trade union will be informed as soon as the allegation(s) are raised and may represent the employee at any stage of the formal disciplinary process and / or during the preceding investigation.

6.0 Informal Action

6.1 Managers must always discuss conduct issues with their employees at the earliest opportunity and where appropriate should first attempt to deal with any minor misconduct informally before resorting to the formal procedure. If employees commit a minor infringement of the established standards of conduct, their manager will usually advise that a further breach may result in the formal process being instigated. A copy of the notes pertaining to the informal action will be attached to the individual’s personal file in the form of a letter.

6.2 If management and the staff side representative feel that informal action should be used rather than proceed to a formal process, a case conference may be held with the Commissioning Manager, HR and staff side representative to discuss. The decision to take this approach rests with the Commissioning Manager.

7.0 Step 1 – Formal Stage

7.1 Prior to this stage, a fact finding will have been undertaken by a relevant manager who has been involved in concerns being raised. (More information
Disciplinary Policy
& Procedure

concerning a fact find is located in the Disciplinary Guidance Document.) Following an initial fact-finding exercise, should the matter warrant formal action the matter will be referred to a Commissioning Manager, currently Band 8b or above, the employee will be informed by the Commissioning Manager of the following:

- the allegations made against them and the basis of the allegations
- outline the potential breaches of the Disciplinary Policy and Code of Conduct for Employees.
- that the formal disciplinary procedure is to be used and that step 2 of the procedure is to commence.
- any suspension from work and the conditions of suspension.
- their right to be accompanied / represented at all stages of the procedure

This will be confirmed in writing and the employee will also be supplied with a copy of the Disciplinary Policy and Procedure. The Commissioning Manager will identify an Investigating Officer to undertake the investigation with support from HR.

7.2 Suspension

7.2.1 In most circumstances suspension will apply where the alleged behaviour is so serious and is of such a nature that an individual could face the possibility of summary dismissal. Authority to suspend comes from a manager at Band 8b or above, with Network Director approval, following consultation with a Senior HR Business Partner. Further information in regards to suspension is available in the management guidance document on e-HR and further advice is available from a member of the HR team.

7.2.2 Alternatively to suspension should be considered by managers i.e. temporary redeployment and the Commissioning Manager for the case should complete a suspension rationale form and contact sheet available on e-HR.

7.2.2 Contact with the Staff Side chair, for cases involving trade union members, to advise and discuss suspension is important at this stage.

7.2.3 Employees who are to be subject to suspension will be offered support from a companion (work colleague or a trade union representative) at the suspension meeting. Often suspension is actioned at short notice and therefore if a companion is not available the suspension meeting will go ahead.

8.0 Step 2 – Investigations

8.1 The investigation process will be used when it is believed that an employee may have committed a breach of conduct either:-

- A further minor breach of conduct that has already been subject to informal action.
- A matter too serious to be dealt with by informal action.
- All cases of alleged gross misconduct.
8.2 The purpose of the investigation is to elicit the facts regarding the alleged misconduct and should be carried out as soon as possible and without unreasonable delay.

8.3 Where gross misconduct is alleged and precautionary suspension from duty is necessary, authority must have come from a manager at Band 8b or above, with Network Director approval, following consultation with a Senior HR Business Partner.

8.4 Where allegations have been made which relate to a professional matter and or professional misconduct, or which relate to suspected abuse of vulnerable adults/children it may be appropriate to inform the regulating professional body, or organisation. Before doing so, the line manager must contact the Trust’s Safeguarding Team and inform the Medical Director or Director of Nursing in addition to the HR Team. Referral to the Local Counter Fraud Service may also be applicable at this stage. Consideration would need to be given in relation to if there is a requirement to refer the matter to the Police.

8.5 Following the investigation, the investigating officer will summarise their findings in the form of an Investigation Report for submission to the Commissioning Manager. The Commissioning Manager will then decide whether or not there is a case to answer based upon the Investigation Report and, subsequently, whether or not a formal disciplinary hearing or any informal action is required or establishing a pre-agreement as detailed in Section 10.0.

8.6 Prior to a hearing the investigating officer and the employee or their representative can agree to discuss if any witnesses will be called to the hearing.

8.7 Witnesses may be called to attend the hearing where relevant to the management or staff side case. Where it is disputed as to the relevance of a witness the Chair of the Panel will make the final decision. Relevance of witnesses must be fully disclosed to the chair of the panel upon request.

9.0 Step 3 – Formal Disciplinary Hearing

9.1 Where the Commissioning Manager believes that there are reasonable grounds that an employee may have committed an act of misconduct, the employee will be asked to attend a disciplinary hearing where they will have the right to be accompanied by a companion (work colleague or a trade union representative).

9.2 The purpose of the hearing is for management to present evidence and the employee to state their case and an opportunity for all parties to present and question to enable clarity of the evidence provided. Only key witnesses to the issue(s) in question would be asked to attend the hearing by either management or the employee. Statements from either party should be directly relevant to the case.

9.3 Sufficient notice (minimum 10 working days’ notice) of the hearing will be given by management. This notice will be confirmed in writing and the management statement of case will be distributed to all relevant parties.
9.4 The employee against whom allegations have been made will be required to forward their statement of case and a rationale for requesting any witnesses, to all relevant parties, prior to the day of the hearing. The employee will be responsible for arranging attendance of any witnesses supporting their case at the hearing.

9.5 If appropriate, a professional lead/advisor will be present at the disciplinary hearing. Their role at the hearing is to provide professional advice to management on professional issues and they play no part in deciding a sanction at the disciplinary hearing.

9.6 Guidance on how to conduct a disciplinary hearing is contained in the Disciplinary hearing agenda (available on e-HR).

9.7 The potential outcomes from a disciplinary hearing are as follows:

- No action
- Informal action
- First written warning
- Final written warning
- Redeployment to another post including demotion (reduction of grade/pay)
- Dismissal with contractual notice
- Summary dismissal (without contractual notice)

Details regarding managers with the authority to Chair disciplinary hearings can be found in the Disciplinary Guidance.

10.0 Pre-Agreement

10.1 Following an investigation where there are exceptional circumstances an agreement can be reached by both parties in relation to not proceeding to a formal hearing, but considering the acceptance of a sanction. This can only apply where the relevant facts are not in dispute and both sides are in agreement about the outcome of the process.

10.2 In these circumstances a meeting will still be held with the employee and followed up in writing. Where agreement is not reached, the normal process is resumed.

10.3 This approach will not apply to allegations of gross misconduct or where dismissal is a possible outcome.

10.4 This approach must also be avoided where the individual concerned is already subject to a live disciplinary sanction.

10.5 The only formal sanction that can be delivered by pre-agreement is a first written warning.

11.0 Appeals Process
11.1 Any employee who is dissatisfied with the outcome of any stage of the formal disciplinary process may appeal in writing to the Director of Human Resources stating the grounds of appeal. This must be done within 10 working days of the disciplinary decision being communicated to the employee in writing, must be made in writing and should clearly state the basis on which the appeal is to be made.

11.2 For an appeal the employee will be asked to attend a hearing where they will have the right to be accompanied by a companion (work colleague or staff side representative). Sufficient notice (minimum 5 working days’ notice) of the appeal hearing will be given by management.

11.3 All reasonable steps will be taken to hold the hearing within 2 months following receipt. 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 companion will be available to attend so as not to delay proceedings.

11.4 Appeals against dismissal will, in all cases, be heard by a Network Director, an Executive Director and a Non-Executive Director (or above, dependant on the level of staff group involved) and a Professional Lead/Advisor (as appropriate). See the Disciplinary Guidance document for further information. The decision will be final.

11.5 In cases of appeal against dismissal the employee will not be permitted to resume working until the matter has been decided.

12.0 Training

Line managers may access one-to-one advice and guidance from the HR department. Where a significant need to increase management capability in the application of the policy is identified within the Network, training sessions will be delivered to a cohort of line managers.

Further advice and support in relation to this policy can be obtained through e-HR or the HR Advice Centre.

13.0 Referrals

There may be a requirement to undertake a further referral to an internal or external body which could come at any time, prior, during and post an investigation having taken place. For further information in relation to the process which must be undertaken, please refer to the Disciplinary Guidance Document.

14.0 Monitoring (including standards)

14.1 The governance of this policy, including the reviews, monitoring and reporting will be overseen by Trust’s Partnership Group and/or HR Delivery and
Governance Group. The reviews will be undertaken in accordance with the review date set out within the policy or at appropriate intervals when required.

15.1 Reference Documents

- Disciplinary Guidance
- The Code of Conduct for Employees
- Counter Fraud Policy
- Dignity at Work Policy
- Safeguarding policies
- Procedure of the management of allegations of abuse by staff against children and vulnerable adults
- Procedure for supporting staff following traumatic stressful incidents complaints or claims
- Grievance Policy
- ‘No Secrets’ guidance
- Responding to Concerns about Doctors and Dentists
Appendix 1 - Guidance to Classification of Disciplinary Offences

Gross Misconduct

Gross Misconduct is essentially a fundamental breach of contract. Within this appendix there is guidance on what classifies as an offence which may constitute gross misconduct. However, if a disciplinary allegation does not fall into one of the below categories, a decision as to whether it should be classified as gross misconduct would be made based on whether a fundamental breach of contract has occurred or whether it involves one of the below underlying principles:

- Fraud or dishonesty
- Service user safety
- Staff safety
- Illegal acts
- Serious breach of Trust values
- Contravening professional standards

It is not possible to prescribe, classify and list every possible circumstance, which would require disciplinary action. However, the following list gives a sample of the most obvious serious offences which may be classified as gross misconduct, and which will justify summary dismissal (dismissal without notice). The list is not exhaustive or exclusive, and is intended as guidance only.

1. Physical assault against staff, patients or visitors.
2. Being involved in an inappropriate relationship with a service user.
3. Acts of Fraud, attempted or otherwise.
4. Abuse of authority.
5. Serious failure to adhere to health and safety regulations.
7. Deliberate damage to Trust premises or property.
8. Harassment or bullying.
9. Serious acts of insubordination.
10. Bringing the Trust into disrepute.
11. Incapacity at work (including whilst being “on-call”) or being under the influence of alcohol or drugs/substances
12. The illegal possession of drugs and/or the administration of such drugs to oneself or others on Trust premises, or allowing such a practice to take place.
14. Serious misuse of the Trust’s internet or email system/s.
15. Criminal conviction which impacts on the employee’s suitability and/or ability to continue in their role.
16. Misappropriation or attempted misappropriation of Trust funds or resources.
17. Wilful misrepresentation of any kind – including at the time of appointment.
18. Ill treatment of staff, patients or visitors.
19. Inappropriate sexual behaviour towards staff, patients or visitors.
20. Unauthorised disclosure deliberately or otherwise.
21. Unauthorised acceptance of payment from patients, visitors, contractors or other parties having dealings with the Trust, which might be interpreted as seeking to exert influence to obtain preferential consideration.
22. Negligent or deliberate failure to comply with the legal requirements and/or the Trust’s regulations concerning medicines.
23. Misuse of any media and/or social media which adversely affects the Trust.
24. Failure to disclose a police warning, caution, criminal conviction or on-going investigation.
25. Breach of Policies from partner organisations and / or s e.g. HM Prison Service Policy.
26. Bribery or corruption.
27. Gross dereliction of duty.
28. Endangering the lives of service users, staff and/or visitors
29. Serious breach of trust and/or confidence.
30. Engaging in employment outside or during normal working hours which adversely affect their work with the Trust including working (for LCFT or another organisations staff bank services) whilst being signed unfit for work.
31. Falsification of a qualification which is a stated requirement of the Trust, or which might result in additional remuneration.
32. Being an accessory to a gross misconduct disciplinary offence
33. Non-declaration of a criminal offence.
34. An act sufficiently serious to cause substantial damage to the Trust’s reputation.
35. Breach of legal regulations e.g. Duty of Candour, Fit and Proper Persons Test
36. Failure to co-operate with a formal investigation
37. Failure to report concerns (i.e. safeguarding)

**Misconduct**

Misconduct refers to deviations from general standards of conduct and performance, which if recurrent could result in dismissal.

1. Disobeying reasonable instructions or non-cooperation with reasonable management instructions
2. Persistent poor timekeeping.
3. Unauthorised absence from work.
4. Failure to follow Trust policies.
5. Foul, offensive or abusive language.
6. Failure to follow a reasonable management instruction.
8. Dishonesty.
9. Misuse of the Trusts email and / or internet system.
10. Failure to adhere to health and safety regulations.
11. Unacceptable behaviour whilst on duty.
12. Failure to notify sickness absence in line with Trust policy.
13. Unauthorised sleeping on duty.
14. Being an accessory to a disciplinary offence.
15. Horseplay or unacceptable behaviour whilst on duty.
16. Falsification or any omission to official documentation including electronic care records.
17. Unauthorised use of RA smartcards and systems, including inappropriate access to clinical/staff records.