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# **Disciplinary Procedure**

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## 1 Introduction

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This document sets out the Trust Procedure for managing disciplinary concerns/allegations raised against a staff member and should be read in conjunction with the [Guidance on the Disciplinary Procedure](#).

The Worker Protection (Amendment of Equality Act 2010) Act 2023 creates a duty on employers to take reasonable steps to stop sexual harassment from colleagues and third parties in the workplace. This includes protecting their employees and people employed by other organisations, such as suppliers or visitors, from sexual misconduct.

We have signed the [sexual safety in healthcare organisational charter](#) and we are committed to a zero-tolerance approach to sexual misconduct in the workplace to create a workplace where everyone feels safe.

This procedure should be read in conjunction with the Trust's Sexual Misconduct Policy Framework

This procedure supports the Trust to co-create a great experience for all patients, carers and families from its diverse population by maintaining professional and appropriate standards staff conduct to support **outstanding and compassionate care, all of the time**.

This procedure supports the trust to co-create a great experience for our colleagues by ensuring that the processes to support and maintain proper conduct in the **workplace are fit for purpose**. The controls in the procedure contribute to a **well led and managed** workforce.

## 2 Purpose

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The document will also ensure that staff are aware of what constitutes potential misconduct and provides managers with the necessary tools to address such cases.

We want to ensure that staff feel comfortable in challenging individuals who are not living the Trust values and are aware of mechanisms in place to raise their concerns and receive appropriate support in doing so.

The Trust expects all of its employee to conduct themselves in a way that is in line with its values, policies and procedures and whilst the Trust promotes the fair treatment of staff and supports a culture of fairness, openness and learning, attempts will be made to understand how failings have occurred. However, individuals will be held to account where there is substantiated evidence of behaviours that would warrant formal

disciplinary action and in the cases that amount to gross misconduct, these may lead to dismissal.

### 3 Who this procedure applies to

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- This procedure applies to all employees (except Medical staff, see below)
- This procedure supports staff to meet the required standards
- This procedure is to make staff aware of the consequences if they fail to meet the required standards



In the case of medical staff, investigations into concerns about a doctor's conduct or capability should be carried out in line with the Trust's [Medical Remediation and Disciplinary Policy](#).



Grievances/concerns raised about the case/process will be addressed either by the General Manager/Head of Service or at the disciplinary hearing or appeal and not through the Grievance Procedure.

### 4 Related documents

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This procedure describes how to manage concerns of conduct, raised against a staff member, and should be read in conjunction with the Trust's During Employment Policy.

This procedure also should be read in conjunction with:-

- [Guidance on the Disciplinary Procedure](#)
- [Managing Concerns of Potential Poor Performance \(Capability\) Procedure](#)
- [Trust Values](#)
- [Trust Sickness Absence Procedure](#)
- [Freedom to Speak up \(Raising Concerns Whistle Blowing\)](#)
- [Disclosure and Barring Referral Procedure](#)
- [Grievance Procedure](#)
- [Probationary Period Procedure](#)
- [Bullying and Harassment Reporting and Resolution Procedure](#)
- Sexual Misconduct Policy Framework
- Human Rights, Equality, Diversity and Inclusion Policy

## 5 Managing concerns of disciplinary conduct raised against a staff member

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### 5.1 On the receipt of any concern

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On the receipt of any concern of conduct raised against a staff member, the manager must refer to the [Guidance on the Management of Conduct](#).

Managers should be familiar with and operate within the 'Just Culture' principles which supports individuals being treated fairly and consistently. A Just Culture looks first at what was responsible for an issue or situation before looking at who was responsible. The actions of individuals need to be placed into context early, not at the end which often happens. A Just Culture is about creating a culture of fairness, openness and learning in the NHS. This is to make colleagues feel confident to speak up when things go wrong, rather than fearing blame. Supporting colleagues to be open about mistakes allows valuable lessons to be learnt. An 'Informal approach' will be used, where appropriate, for low level misconduct and to resolve problems promptly.

It is highly important to consider support for those involved in disciplinary matters including staff that are subject of the investigation and witnesses. Consider referrals to ESS and other support networks.

To ensure consistency and fairness please consult with contacts in people and culture at any point of the process as well as colleagues from Equality and Diversity and Nursing and Professional leads.

### 5.2 Concerns relating to inappropriate sexual misconduct

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The Trust has a separate Policy – Sexual Misconduct Policy Framework, which outlines the process for when concerns relating to sexual misconduct arise. Where a decision is made in line with the Sexual Misconduct Policy Framework, that the concerns require formal investigation, the investigation will be conducted in line with this Procedure and accompanying guidance.

### 5.3 Potential outcomes

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The Guidance provides further details of potential outcomes following the initial fact finding which includes: -

- **Informal outcome e.g. Counselling/reflection.**

- **Agreed disciplinary outcome (12 month written warning).**

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## - Formal investigation

The General Manager of the Service will be required to ratify the outcomes of agreed disciplinary action and formal investigation. In terms of the formal investigation, they will also review the subsequent findings and decide if it will result in a hearing undertaking the role of commissioning manager. If appropriate the General manager can also request that the initial outcome be considered by an independent Review Group (IRG). This would normally be in the event of a potential conflict of interest. Members of the IRG will include an independent chair, People Partner and other leads as required including EDI/Nursing. The chair of the IRG will then become the commissioning manager for the subsequent decision-making process.

The guidance document provides a flow chart to support the decision making process.

## 5.4 Concerns raised by a patient/staff member/manager/member of the public

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If this procedure is triggered by concerns raised by a patient/staff member/manager/member of the public or as a result of the outcome of another Trust process, i.e. Freedom to speak up review, Bullying and Harassment Formal Resolution Meeting, Safeguarding investigation, SUi or Information Governance. Full details of the outcome should be provided to the General Manager/Head of Service for appropriate action to be identified in line with this procedure.



Where minor lapses of conduct/inappropriate behaviour is either observed by a manager or reported to a manager, these should be dealt with in a timely manner and can usually be dealt with either by conversation, in supervision or counselling in line with this procedure and guidance. A manager has the discretion to address these concerns without the need for the information to go to a General Manager for consideration.

All conversations should be documented and signed by both parties. Advice can be sought from the People and Culture, Operational HR Team.

When identified contributing factors may be as a result of a long or short term health condition, stress related reaction, previous trauma, personal experience/circumstances, cultural factors or as a result of any other protected characteristic, the impact of these on the potential conduct must be considered prior to a decision being made about the appropriate course of action.

## 6 Formal investigations -

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### 6.1 The General Manager/Head of Service will: -

- Meet with the individual, with a People and Culture Representative and advise that the case will proceed to formal disciplinary investigation.
- Afford the individual the opportunity to be accompanied at the meeting by a companion or staffside representative. In the event of either the People and Culture or Staffside Representative are not being available, the meeting can go ahead as planned, in order to avoid any unnecessary delays.
- Ensure that the meeting is conducted in line with the Trust Values.
- During the meeting, inform the individual of the formal allegations that are to be dealt with in line with formal investigation stage of the Trust's Disciplinary Procedure.
- Review any temporary arrangements in place i.e. authorised absence and if appropriate consider if formal suspension/alternative to suspension is required – guidance can be found at Section 8.
- Ensure that appropriate support mechanisms are in place and confirm that they will continue.
- Examples of Misconduct/Gross Misconduct can be found at Appendix 1
- Provide the People and Culture Operational representative will all of the information gathered, who will then refer the case to the Trust's Investigation Team.

## **6.2 The investigating officer will: -**

- Carry out and conclude the investigation - Using the information gathered as part of the preliminary assessment/analysis and gathering any additional information that may be required. This may involve interviewing staff who have already submitted statements in order to gather additional information and or points of clarity. Guidance on Formal investigation is at appendix 4
- Provide the individual with regular updates ideally (every 2 weeks) on the progression of the investigation.
- Provide the General Manager/Head of Service with updates on the investigation and provide any information to the General Manager/Head of Service that may alter the severity of the nature of the allegations. The General Manager/Head of Service will advise the individual of any amendments to the allegations.
- Conclude the investigation in a timely manner – ideally within 6 weeks.



Whilst all decisions taken in relation to the staff member are the responsibility of the Trust, it is acknowledged that there may be on some occasions, the requirement to place internal processes on hold, for example in the event of a criminal police investigation. The Trust will however, continue to work closely with the external body to avoid any unnecessary delays.

## **6.3 Upon receipt of the completed investigation report the Commissioning manager will:-**



- Consider the report within 1 week and determine if there is a disciplinary case to answer or not.
- Inform the individual (either in person or via telephone/ Team) of whether there is a disciplinary case to answer or not.
- When the outcome is that there is a disciplinary case to answer a Disciplinary hearing will be arranged – providing at least 2 weeks' notice.

## 7 Format of the Disciplinary Hearing / Appeal Hearing



A Disciplinary Hearing Panel will consist of a Determining manager and a People & Culture representative

An Appeal Hearing Panel will consist of a Determining manager (senior to the determining manager at the disciplinary hearing) a 2nd panel member plus a People & Culture representative

\*Professional advisors will be requested for panels on an individual basis when required\*

Steps required in the hearing:

1. The Investigating Officer shall state the Management case in the presence of the employee and their representative and may call witnesses.
2. The employee or their companion shall have the opportunity to ask questions of the Investigating Officer and witnesses.
3. The Disciplinary Panel/Appeal Panel shall have the opportunity to ask questions of the Investigating Officer and witnesses.
4. The Investigating Officer shall have the opportunity to re-examine their witness on any matter referred to in their examination by members of the Disciplinary/Appeal Panel, the employee or their companion. Witnesses will withdraw from the hearing.
5. The employee or their companion shall put their case in the presence of the Investigating Officer and may call witnesses.
6. The Investigating Officer shall have the opportunity to ask questions of the employee, their companion or their witnesses.
7. The members of the Disciplinary/Appeal Panel shall have the opportunity to ask questions of the employee, their companion or their witnesses.
8. The employee or their companion shall have the opportunity to re-examine their witnesses on any matter referred to in their examination by members of the Disciplinary/Appeal Panel or the Investigating Officer. Witnesses will withdraw from the hearing having been reminded of their responsibility to maintain confidentiality.
9. The members of the Disciplinary/Appeal Panel may invite either party to clarify or expand upon any statement they may have made; ask questions to determine whether or not any evidence will be called in respect of any part of their statement or evidence. Both parties may examine the clarifications in accordance with points 2 or 6 above.

10. The panel will ensure that any new information has been made available to both parties and has been fully considered during the hearing
11. The Panel may, at their discretion, adjourn the hearing in order that further evidence may be produced by either party or where evidence requires additional time to be considered or for any other justifiable reason.
12. The Investigating Officer and the employee or their companion will be given the opportunity to sum up their case if they so wish. The employee or their companion shall have the right to speak last. In their summing up neither party may introduce any new matter.
13. The panel will satisfy themselves that all parties have made all the points that they wish and are satisfied with the fairness of the hearing.
14. The panel will adjourn the hearing to enable full consideration of all the evidence presented and to consider their decision.
15. The Panel will deliberate in private only recalling both parties to clear points of uncertainty on evidence already given.
16. If a decision can be reached the same day the employee and/or their companion will be advised verbally of the outcome of the hearing (including the information contained in section 4 Appendix 6.)
17. Confirmation of the result of the disciplinary/appeal hearing will be put in writing and sent to both parties **within 5 working days**. If for any reason this confirmation or the decision will be delayed beyond this period the employee must be advised of the reason for the delay and the likely timescale for receipt.



If an employee fails to attend a hearing, reasonable steps should be taken to establish the reason. In the absence of a justifiable reason, the hearing will take place in the individual's absence. When there is a justifiable reason or the employee's representative cannot be contacted, all reasonable steps should be taken to advise of an alternative date; further failure to attend will result in a decision being made in the individual's absence.



Witnesses are expected to attend a disciplinary hearing, if called by the individual/representative, management or the hearing panel. Witnesses can request the support of a Union Representative. If in attendance a Union Representative or companion may be able to attend in support of a witness but will not be permitted to participate in the hearing process unless expressly invited to at the discretion of the panel. All parties involved in the hearing will be bound by confidentiality.

## 8 Potential outcomes of the Disciplinary Hearing

### The Decision

## 8.1 Rationale

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**Before deciding whether a disciplinary sanction is required and what form it should take, the Determining Manager should consider:**

- Whether there are reasonable grounds to believe that any of the allegations are true; and/or where appropriate whether on the balance of probabilities any of the allegations are proven. (It should be noted that the burden of proof in disciplinary cases is “on the balance of probability” and only in criminal law is the burden of proof “beyond all reasonable doubt”).
- Whether the individual is performing at a satisfactory level and, if not, does the employee realise and accept that there is a problem with their work performance.

## 8.2 Considerations of sanction

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**Before deciding what form of disciplinary action should be taken, if any, the Determining Manager should consider:**

- The employee’s “live” disciplinary record and whether they have been made fully aware of the standards required; and
- Any mitigating circumstances which make it appropriate to lessen the severity of the action; and
- The action taken in similar cases in the past; and
- Whether the proposed action is reasonable in the circumstances

In determining the appropriate disciplinary sanction, the nature and seriousness of the circumstances needs to be considered. Refer to Appendix 2. The following range of options is available depending on the case:

- Written warning
- Final written warning
- Alternatives to dismissal
- Dismissal

In the case of minor offences and poor performance, disciplinary sanctions will normally be progressive.

For all disciplinary sanctions short of dismissal or an alternative to dismissal there will be a specified period of time during which any further misconduct/failure to improve performance to a satisfactory level of any type will normally lead to further disciplinary action being taken, usually at the next level. The various levels and periods of time are indicated below:

If the decision is that the case needs to be referred to the Capability Procedure then consideration may be given as to whether a sanction should be given due to the level of seriousness of the situation. This would then be dealt with in line with the appropriate stages of the capability procedure.

### 8.3 Timing/communicating decision

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Where possible decision will be made on the same day. If a decision can be reached the same day, the employee or their representative may be advised verbally of the outcome of the disciplinary hearing. The decision will be communicated in writing by the Determining Manager to the employee within 5 days.

### 8.4 Outcome letter

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**The outcome letter will include:**

- the allegations against the employee.
- the decision(s) of the Determining Manager.
- the reasons for the decision(s).
- the disciplinary sanction imposed and the rationale for the level of sanction.
- the timescale over which the disciplinary action is effective.
- any special conditions applying to the disciplinary action, e.g. in cases of poor performance an action plan setting out the improvements that are expected, timescales for improvements, supervision requirements, review periods.
- the consequences of any further misconduct/failure to improve performance to a satisfactory level.
- details of the outcome of any grievance issues raised and how these has been addressed.
- details of any panel recommendations.
- notification that the details of the disciplinary action taken will be retained on the individual's personal file in line with the GDPR s17.
- notification of the right of appeal against the decision.

### 8.5 Delays

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If for any reason the confirmation of or the decision is delayed beyond this period the employee must be advised of the reason for the delay and the likely timescale for receipt. This should be confirmed in writing.

### 8.6 Dismissal

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**In the case of dismissal the letter should also include:**

- notification of the last day of employment and whether the dismissal is without notice (i.e. summary dismissal) or with notice
- notification of whether the employee will be required to work any period of notice as this will affect the last day of employment or whether dismissal will be with pay in lieu of notice. This option must be agreed with the individual
- where summary dismissal takes place in cases of gross misconduct, no period of notice is payable

- notification of the number of days or hours annual leave payable or to be recovered
- notification of the right of appeal against the decision to dismiss or against an alternative to dismissal in accordance with Section 6.9 of this policy and procedure.
- whether the matter is to be referred to the Professional Body and/or the Independent Safeguarding Authority

## 8.7 Recommendations

1. Any panel recommendations must be fed back to the appropriate individual in writing.

<b>Written Warning</b>	Depending on the circumstances of each particular case the warning may be operational for a period of <b>between 6 and 18 months</b> , after which time the warning will be considered to be spent. A written warning may be issued in the case of:
<b>A written warning may be issued in the case of:</b> <ul style="list-style-type: none"> <li>• misconduct,</li> <li>• where there is a recurrence of misconduct and the employee has previously been counselled as part of the informal process or,</li> <li>• where an employee's performance does not improve within the review period following informal processes aimed at improving performance.</li> </ul>	
<b>Final Written Warning</b>	The warning will be operational for a period of <b>between 12 and 24 months</b> .
<b>A final written warning may be given if there is:</b> <ul style="list-style-type: none"> <li>• a recurrence of misconduct within the period of an existing warning,</li> <li>• an employee's performance does not improve within the review period or lapses again during the period of a written warning.</li> <li>• misconduct / poor performance of such a serious nature that only one warning should be given</li> </ul>	
<b>Alternatives to Dismissal accompanied by a Final Written Warning</b>	An alternative to dismissal will be considered in all cases where the disciplinary outcome is that dismissal should take place but there are mitigating circumstances to take into account.
The Determining Manager may decide to offer to transfer the individual elsewhere in the Trust. This will always be accompanied with a final written warning. It is the responsibility of	

<p>the Determining Manager to identify a suitable vacancy. In exceptional circumstances demotion may be applied but it must be offered as an alternative to dismissal and accepted by the employee.</p> <p>Demotion should not be applied without prior discussion with the Director or Deputy Director of People and Culture</p> <p>In cases of demotion there will be no protection of earnings.</p> <p>The employee must be offered the demotion or transfer in writing, and have clear objectives that must be achieved within an agreed time scale.</p> <p>If an alternative to dismissal is refused this should be recorded and the employee will be dismissed.</p>	
<p><b>Dismissal</b></p>	<p>Dismissal is the ultimate step that can be taken by the Trust in the disciplinary process.</p>
<p><b>Employees will not normally be dismissed</b> without a previous warning except in the case of Gross misconduct. Where applicable, employees will be offered the opportunity of taking pay in lieu of notice.</p>	
<p><b>Summary Dismissal</b></p>	<p>Summary dismissal is the termination of an individual's employment without notice and should only be used in cases of Gross Misconduct</p>
<p><b>Dismissal is appropriate when:</b></p> <ul style="list-style-type: none"> <li>• Circumstances have resulted in written warning(s) being issued in accordance with the Trust procedure and the employee's subsequent conduct is regarded as inappropriate, inadequate or insufficient.</li> <li>• Particular circumstances are such that the Determining Manager considers that the employee should not continue in employment as the offence constitutes gross misconduct. Examples of offences which would constitute gross misconduct are contained in Appendix 1.</li> </ul>	

## 9 Appeals process

### 9.1 Arrangements

Arrangements will be made for the appeal to be heard without unreasonable delay, normally **within 3 months** of the date lodged.

Prior to the hearing of an appeal, both management and staff side will be asked to submit relevant documentation considered in the previous stage for the information of the panel. Management should ensure their submission outlines the main issues of the case to be heard and should be submitted to the People and Culture Department at

least 3 weeks before the date of the hearing (or 12 working days before the hearing if the correct number of copies is submitted).

Employee submissions should be made to the P&C Department **no later than** 2 weeks before the hearing to enable it to be sent to the panel and management

Both management witnesses and the employee's witnesses should be notified to the P&C Department at least 5 working days prior to the hearing.

## 9.2 Appeals Panel

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In the case of an appeal against an alternative to dismissal or a dismissal, the Appeals Panel will consist of two Directors, one of whom will act as the Chair of the panel. The Director of People and Culture or a nominated deputy will attend in an advisory capacity and the appeal panel may appoint an assessor when the case relates to professional conduct or competence.

In the case of an appeal against a disciplinary sanction, the appeal will be heard by a manager senior to the Determining Manager at the Disciplinary Hearing. A Representative from the People and Culture Directorate will attend in an advisory capacity and the appeal panel may appoint an assessor when the case relates to professional conduct or competence.

The appeal panel will not include anyone who has been directly involved in the original decision.

The appeal panel may hear any new evidence not available at the disciplinary hearing.

## 9.3 Right to be accompanied

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The employee will have the right to be accompanied by an accredited representative or a colleague employed by the Trust.

## 9.4 Considerations

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Before making a decision, the Appeal Panel should consider:

- Whether there has been as much investigation as was reasonable in the circumstances
- All matters raised that were related to the original decision
- Whether the actions taken or not taken were reasonable in the circumstances
- Whether any mitigating circumstances which may have a bearing on the case were reasonably considered
- Whether there is a genuine belief that the employee has committed the misconduct as alleged
- Whether the decision and action was proportionate to the alleged misconduct



- Whether the action taken was within the band of reasonable responses that an employer would have been able to take in the circumstances
- Whether there have been any similar cases in the past
- Whether any new evidence has been submitted which was not available to the Determining Manager and whether it means the original decision should be changed

## 9.5 Appeal panel outcomes

The appeal panel will determine one or a combination of the following decisions:

- That the original decision(s) was correct
- That the original decision(s) was not appropriate, and impose a lesser disciplinary sanction.
- That the original decision(s) was not appropriate, and withdraw the disciplinary sanction.

## 9.6 Communicating Decision

If a decision can be reached the same day, the employee or their representative will be advised verbally of the outcome of the appeal hearing.

This decision will be communicated in writing, **within 5 working days**, by the Chairman of the Appeals Panel or the Senior Manager hearing the appeal, to both parties. If for any reason this confirmation or the decision will be delayed beyond this period the employee must be advised of the reason for the delay and the likely timescale for receipt.

In all cases this document will include:

- the allegations against the employee
- the disciplinary sanction that was imposed
- the decision(s) of the Appeal Panel
- the reasons for those decisions

## 9.7 Limit of appeal process

There will be no right of appeal beyond this stage.

## 10 Definitions

Term	Definition
The “right to be accompanied”	<p>Employees have the right to be accompanied at meetings that could result in:</p> <ul style="list-style-type: none"> <li>• a formal warning being issued to a worker (i.e. a warning that will be placed on the worker’s record);</li> </ul>



	<ul style="list-style-type: none"> <li>the taking of some other disciplinary action (such as suspension without pay, demotion or dismissal) or other action; or</li> <li>the confirmation of a warning or some other disciplinary action (such as an appeal hearing).</li> </ul> <p>Informal discussions, counselling sessions or investigatory meetings do not attract the right to be accompanied. Meetings to investigate an issue are not disciplinary meetings. However, individuals will be offered the opportunity to be accompanied provided this does not unduly delay the process. If it becomes apparent that formal disciplinary action may be needed then this should be dealt with at a formal meeting at which the employee will have the statutory right to be accompanied.</p>
Employee's Companion:	<p>"The Chosen Companion may be a fellow worker, a trade union representative, or an official employed by a trade union. A trade union representative who is not an employed official must have been certified by their union as being competent to accompany a worker" (ACAS Code of Practice). A fellow worker is an employee of the Trust.</p> <p>The companion may address the hearing in order to present the employee's case, question witnesses, sum up the employee's case and respond on behalf of the employee to any view expressed at the hearing. The companion may not answer questions on behalf of the employee</p> <p>A companion has the right to time off to attend the hearing and co-ordination of diaries when arranging a hearing will be carried out wherever possible.</p>
Accredited Representative:	An elected or appointed representative of a Professional Organisation or Trade Union who is notified to and accepted by the Trust as a formal representative of that organisation
Counselling by the Manager:	An informal discussion with the objective of encouraging and helping the employee to improve.
Agreed Disciplinary Outcome (Agenda for Change staff only)	<p>Agreed disciplinary outcome can be used at two stages in the process – either before undertaking a formal investigation or before a disciplinary hearing takes place and under certain specified criteria: -</p> <ul style="list-style-type: none"> <li>If it felt to be a fair way of dealing with the misconduct.</li> <li>If the alleged misconduct is an isolated incident, and the employee has a previous record of good conduct.</li> <li>It is not an allegation that could constitute gross misconduct</li> </ul>

	<p>The employee fully admits to the misconduct and/or after investigation does not dispute the facts of the case.</p> <p>More detail is set out in the guidance document.</p>
Investigating Officer:	An individual who has been appointed to gather factual evidence regarding the allegation(s) and who will present the case at a disciplinary hearing.
Independent Review Group	A group chaired by a professional lead who decides the appropriate outcome of information /analysis formed at the request of the General manager. Where a formal investigation is required, the case will be referred to the relevant HOS who will be responsible for Section 4 of this procedure. On conclusion of the formal investigation the report will be sent to the Chair of the group to make a decision on whether the case should progress to a disciplinary hearing.
Determining Manager:	A manager appointed to make a decision at the disciplinary hearing about any sanction that could be imposed after hearing the evidence from both parties. This should be a manager with the level of authority as outlined in Appendix 6. However, the determining manager should not have direct line management responsibilities for the employee, i.e., a manager from a different service area/directorate can act as determining manager.
Suspension:	When the Trust requires an individual to refrain from attending work for a period of time whilst the investigation proceeds. Examples of suspension/alternative to suspension are given at Appendix 1. For medical staff referred via the Medical Disciplinary Policy and Procedure the term used is “exclusion”.
Disciplinary Sanction:	Action imposed after formal disciplinary hearing.
Spent:	When a disciplinary sanction has passed the period of time that it is “live” and therefore should be disregarded in relation to determining the level of any future disciplinary action.

## 11 How this procedure will be implemented

- This procedure will be published on the Trust’s intranet and external website. Awareness of the new procedure will be included in the Trust internal bulletin.
- Line managers will disseminate this procedure to all Trust employees through a line management briefing.

## 12 Training needs analysis

Staff/Professional Group	Type of Training	Duration	Frequency of Training
All staff	Training NA – Awareness required	n/a	n/a
New managers	New managers training	2 hours section within longer training programme	Once on commencing role as manager within Trust
People and Culture People Partners, Staff side, existing managers	Training on updates to existing process to high changes	1 hour	once

## 13 How the implementation of this procedure will be monitored

	Auditable Standard/Key Performance Indicators	Frequency/Method/Person Responsible	Where results and any Associate Action Plan will be reported to, implemented and monitored; (this will usually be via the relevant Governance Group).
1	Commencement and Conclusion of the Formal Investigation - 6 weeks	Investigating Officers/People and Culture Operational Team Representative.	Barriers, resulting in delays, identified and reported to the General Manager/Head of Service  Monitored – People and Culture – Case Management Meeting
2	Monitoring of timescales from: concerns being raised to conclusion of process either informal/formal.	People and Culture HR Operational Representatives/Investigating Officers	6 monthly reports to be produced for and provide to JCC.

## 14 Document control (external)

To be recorded on the policy register by Policy Coordinator

Required information type	Information
Date of approval	15 July 2025
Next review date	15 July 2028
This document replaces	Managing Concerns of Potential Conduct (Disciplinary) Procedure HR-0043-v4.1
This document was approved by	People and Culture Policy Working Group
This document was approved	27 June 2025
This document was approved by	Joint Consultative Committee
This document was ratified	15 July 2025
An equality analysis was completed on this policy on	May 2025
Document type	Public
FOI Clause (Private documents only)	n/a

Version	Date	Amendment details	Status
v4.1	15 March 2022	Full review with minor amendments:- <ul style="list-style-type: none"> <li>New Trust format</li> <li>5.2 Added and additional info included in yellow information box under 5.2</li> <li>S6 rewording of title</li> <li>S10 Definition of PAG added</li> <li>Appendix 6 – Added to Level 3 – this may be delegated to a Level 4 Manager who previously held a Level 3 Role</li> </ul>	Withdrawn
v5	15 July 2025	Full review with minor clarifications and updates throughout, key changes include: <ul style="list-style-type: none"> <li>removal of the Preliminary Assessment Group (PAG) process and proposals that the General Manager will be responsible for commissioning a formal investigation, facilitating an agreed</li> </ul>	Approved

		<p>outcome or requesting an independent review group consider the information.</p> <ul style="list-style-type: none"> <li>• Change of name to Disciplinary Procedure</li> </ul>	
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## 15 Equality Analysis Screening Form

Please note: The Equality Analysis Policy and Equality Analysis Guidance can be found on the policy pages of the intranet

Section 1	Scope
Name of service area/directorate/department	People and Culture
Title	Disciplinary (Procedure and Accompanying Guidance)
Type	Procedure and Accompanying Guidance
Geographical area covered	Trust Wide
Aims and objectives	To provide a procedure and guidance which complies with the ACAS Code of Practice for addressing cases of misconduct by staff. To ensure that all staff are aware of what is expected of them. To ensure that when disciplinary concerns are raised they are addressed appropriately.
Start date of Equality Analysis Screening	March 2025
End date of Equality Analysis Screening	May 2025

Section 2	Impacts
Who does the Policy, Service, Function, Strategy, Code of practice, Guidance, Project or Business plan benefit?	All Trust Staff to comply with the procedure. Those responsible for the implementation of this procedure should ensure it is carried out in a fair and consistent way
Will the Policy, Service, Function, Strategy, Code of practice, Guidance, Project or Business plan impact negatively on any of the protected characteristic groups?	<ul style="list-style-type: none"> <li>• <b>Race</b> (including Gypsy and Traveller) <b>NO</b></li> <li>• <b>Disability</b> (includes physical, learning, mental health, sensory and medical disabilities) <b>NO</b></li> <li>• <b>Sex</b> (Men, women and gender neutral etc.) <b>NO</b></li> </ul>

	<ul style="list-style-type: none"> <li>• <b>Gender reassignment</b> (Transgender and gender identity) <b>NO</b></li> <li>• <b>Sexual Orientation</b> (Lesbian, Gay, Bisexual and Heterosexual etc.) <b>NO</b></li> <li>• <b>Age</b> (includes, young people, older people – people of all ages) <b>NO</b></li> <li>• <b>Religion or Belief</b> (includes faith groups, atheism and philosophical beliefs) <b>NO</b></li> <li>• <b>Pregnancy and Maternity</b> (includes pregnancy, women who are breastfeeding and women on maternity leave) <b>NO</b></li> <li>• <b>Marriage and Civil Partnership</b> (includes opposite and same sex couples who are married or civil partners) <b>NO</b></li> <li>• <b>Veterans</b> (includes serving armed forces personnel, reservists, veterans and their families) <b>NO</b></li> </ul>
Describe any negative impacts	The potential for inconsistency in decision making.
Describe any positive impacts	This allows for local decision making and introduces the option of an agreed outcome which is intended to reduce delays and the subsequent impact on staff. Implementation will involve training and awareness and guidance to support consistency and fairness in decision making.

<b>Section 3</b>	<b>Research and involvement</b>
What sources of information have you considered? (e.g. legislation, codes of practice, best practice, nice guidelines, CQC reports or feedback etc.)	ACAS Code of Practice, Employment Rights Act 1996 Focus groups
Have you engaged or consulted with Patients, carers, staff and other stakeholders including people from the protected groups?	Yes, stakeholder representatives were invited to attend a number of focus groups regarding the Procedures.

If you answered Yes above, describe the engagement and involvement that has taken place	As above Policy working group and JCC Working group with staff side, General Managers P&C leads and Investigating Officers.
If you answered No above, describe future plans that you may have to engage and involve people from different groups	NA

<b>Section 4</b>	<b>Training needs</b>
As part of this equality analysis have any training needs/service needs been identified?	No formal training
Describe any training needs for Trust staff	n/a
Describe any training needs for patients	N/A
Describe any training needs for contractors or other outside agencies	N/A

**Check the information you have provided and ensure additional evidence can be provided if asked**



## 16 Approval checklist



Title of document being reviewed:	Yes / No / Not applicable	Comments
<b>1. Title</b>	Yes	
Is the title clear and unambiguous?	Yes	
Is it clear whether the document is a guideline, policy, protocol or standard?	Yes	
<b>2. Rationale</b>		
Are reasons for development of the document stated?	Yes	
<b>3. Development Process</b>		
Are people involved in the development identified?	Yes	
Has relevant expertise has been sought/used?	Yes	
Is there evidence of consultation with stakeholders and users?	Yes	
Have any related documents or documents that are impacted by this change been identified and updated?	Yes	
<b>4. Content</b>		
Is the objective of the document clear?	Yes	
Is the target population clear and unambiguous?	Yes	
Are the intended outcomes described?	Yes	

Are the statements clear and unambiguous?	Yes	
<b>5. Evidence Base</b>		
Is the type of evidence to support the document identified explicitly?	Yes	
Are key references cited?	Yes	
Are supporting documents referenced?	Yes	
<b>6. Training</b>		
Have training needs been considered?	Yes	
Are training needs included in the document?	Yes	
<b>7. Implementation and monitoring</b>		
Does the document identify how it will be implemented and monitored?	Yes	
<b>8. Equality analysis</b>		
Has an equality analysis been completed for the document?	Yes	
Have Equality and Diversity reviewed and approved the equality analysis?	Yes	
<b>9. Approval</b>		
Does the document identify which committee/group will approve it?	Yes	
<b>10. Publication</b>		
Has the policy been reviewed for harm?	Yes	

Does the document identify whether it is private or public?	Yes	
If private, does the document identify which clause of the Freedom of Information Act 2000 applies?	N/A	
<b>11. Accessibility</b> ( <a href="#">See intranet accessibility page for more information</a> )		
Have you run the Microsoft Word Accessibility Checker? (Under the review tab, 'check accessibility'. You must remove all errors)	Yes	
Do all pictures and tables have meaningful alternative text?	Yes	
Do all hyperlinks have a meaningful description? (do not use something generic like 'click here')	Yes	

## 17 Appendices

### Appendix 1 - Alternatives to suspension and suspension from duty

 <p>In circumstances where either alternatives to suspension or suspension from duty are being considered, a People and Culture representative <b>must</b> be involved in the considerations to:</p> <ul style="list-style-type: none"> <li>• ensure that actions taken are measured and appropriate,</li> <li>• ensure that the full impact of the proposed action is considered, and</li> <li>• ensure that suspension is a <b>last</b> resort. Where situations arise outside of normal working hours then suspensions should not take place without the issues being discussed with the second on call manager.</li> </ul> <p>Before deciding on suspension from duty, a manager is responsible for considering, with appropriate parties, whether there are any other alternatives. The manager should also ensure that basic information is available before suspending e.g. confirm that the employee was on duty at the time of a reported incident, and where possible carry out a preliminary investigation.</p> <p>Guidance notes on Suspension from Duty and Alternative to Suspension from Duty meetings is at <a href="#">Appendix 2</a></p>	
<p><b>Examples of Alternative to Suspension</b></p>	<ul style="list-style-type: none"> <li>• Restrict the employee's duties</li> <li>• Transfer the employee to other work or work location</li> <li>• Place the employee under extra supervision for a temporary period (e.g. whilst the investigation is carried out)</li> <li>• Permit the employee to take annual leave.</li> </ul>
 <p>Where there is significant risk to the individual, clients or investigation process, suspension may be appropriate, discussions must take place with the People and Culture Operations Team.</p> <p>Some other examples of reasons for suspensions are below:</p>	
<p><b>Examples of reasons for consideration of Suspension from Duty</b></p>	<ul style="list-style-type: none"> <li>• Theft</li> <li>• Fraud</li> <li>• Assault</li> <li>• Falsifying Patient Records</li> </ul>



When a member of staff fully admits that the allegations are correct and provides a written statement, it may be possible to go straight to a disciplinary hearing without the need for a full formal investigation. The General Manager/Head of Service must seek advice from the People and Culture department as it may still be necessary to do a full investigation e.g. where other staff may be involved.

## Appendix 2 – Guidance on alternative to suspension and suspension from duty meetings

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**Below gives guidance on what information is required to be covered during the meeting to place an individual on Alternative to Suspension from duty**

*If not accompanied, reminded of right to be accompanied;* however policy does allow us to continue if this is not practical

Advise individual that the meeting is being held in line with the Trust's Disciplinary Procedure.

- Advise of allegations:
- Ask for a brief response to allegations
- Advise of any allegations that may constitute Gross misconduct / misconduct
- Advise of any breaches of relevant policies or procedures & provide copies
- Advise that decision is to put in place an alternative to suspension with immediate effect.
- Advise of details of alternative to suspension:
- Advise that alternative to suspension does **not** constitute disciplinary action, nor is it a presumption of guilt.
- Advise that alternative suspension could be up to a period of 12 weeks, and will be reviewed on a weekly basis.
- Check how individual prefers to be updated e.g. Face to face meeting (where practicable)/ phone call / email / other?
- Check whether the individual has any other posts with the Trust, i.e. bank or second contract. If so, advise that the individual will not be offered any bank shifts until further notice (if appropriate).

**Below gives guidance on what information is required to be covered during the meeting to place an individual on Suspension from duty**

*If not accompanied, reminded of right to be accompanied;* however policy does allow us to continue if this is not practical

Advise individual that the meeting is being held in line with the Trust's Disciplinary Procedure.

- Advise of allegations
- Any response to allegations (only need brief response)
- Advise that allegations may constitute gross misconduct; therefore a disciplinary hearing could result in dismissal
- Advise of any breaches of relevant policies or procedures & provide copies
- Advise that decision is to suspend with immediate effect
- Advise that suspension does **not** constitute disciplinary action, nor is it a presumption of guilt
- Advise suspension could be up to a period of 12 weeks, and will be reviewed on a weekly basis

- Check how individual prefers to be updated e.g. face to face meeting (where practicable) / phone call / email / other?
- Check whether the individual has any other posts with the Trust, i.e. bank or second contract. If so advise that the individual will not be offered any bank shifts until further notice (if appropriate)
- Advise if individual goes off sick that they need to submit sick notes in normal way
- Advise individual that they are able to take annual leave in normal way
- Confirm address and contact details for correspondence (tel. no. and address)
- Advise name of investigating officer
- Discuss support contact (should be line manager unless they are a witness or IO)
- Advise that prior permission is needed before entering Trust premises unless attending for purposes of investigation or personal medical treatment
- Advise that subject should not discuss the investigation with anyone involved in the investigation e.g. witnesses and other individuals identified as part of this process e.g. IO / support contact / P&C etc.
- Advise that subject should only access their nhs.net account for the purposes of keeping up to date with Trust news or for information related to the investigation and must not under any circumstances use their nhs.net account for any activities relating to the duties of their role
- Advise of support services available (ensure pack is provided)
- Advise of opportunity to be accompanied at any meetings
- Check individual's understanding and if any questions
- Advise this meeting will be followed up in writing today

## Appendix 3 – Examples of misconduct / gross misconduct

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In the interest of good employee relations, this summary seeks to inform employees how particular issues are viewed by the Trust to ensure that employees and managers understand how issues may be addressed.

This document describes examples of misconduct which the Trust considers to be sufficiently serious as to warrant disciplinary action. It must be noted that the following lists are **purely illustrative and not exhaustive** since employment will also be governed by local workplace rules, practices and procedures. The publication of these rules will not restrict the right of the Trust or any of its managers to determine what stage of the disciplinary procedure is appropriate in the light of the circumstances of each individual case, including summary dismissal.

For the sake of brevity, every type of misconduct referred to below is not necessarily repeated in every section. A particular type of misconduct may be treated as misconduct or gross misconduct depending on the facts of the case, and any impact upon patients will be taken into account.

### Part 1 – Misconduct

Breaches of the following rules usually warrant the issue of a written warning, final written warning or dismissal with notice, depending upon the circumstances (Dismissal with notice for misconduct will normally be as a result of repeated warnings):

- a) unacceptable behaviour/conduct towards patients
- b) unauthorised absence
- c) abuse or misuse of sickness pay/leave provisions
- d) abuse or misuse of study leave provisions
- e) breach of contract/terms and conditions of employment
- f) participating without authority in other employment, trade, business or profession which is prejudicial to, or which adversely affects, employment with the Trust
- g) private trading on Trust premises without permission (by Management) – whether or not for personal profit
- h) failure to carry out reasonable instructions given by management effectively and in a timely manner
- i) failure to report incidents in line with the policies and procedures of the Trust
- j) unacceptable conduct contrary to any NHS policies, guidelines and standards as amended from time to time
- k) any conduct or performance bringing the NHS/the Trust into public disrepute (including inappropriate use of social media)
- l) any breach of the Trust's standing orders and financial standing instructions
- m) breach of the Trust's IT security policies
- n) any breach of directorate, department or human resource policy rules or procedures
- o) failure to adequately perform duties of individual job descriptions
- p) misuse or abuse of facilities or time off provisions granted to Trade Unions and Professional Organisations



- q) breach of the Health and Safety rules and/or statutory regulations regarding Health and Safety
- r) failure to ensure the safe keeping of personal identifiable information or commercially sensitive information.
- s) failure to protect and ensure the safekeeping of Trust property including lease cars.
- t) carelessness or negligence in the performance of duties.
- u) Breaches of the Trust Values and Behaviours

## **Part 2 – Gross Misconduct**

The following are examples of gross misconduct that may warrant summary dismissal (dismissal without notice), even for a first offence:

- a) dishonesty relating to employment matters (e.g. fraudulent use of flexi time system, fraudulent travel/subsistence claims, dishonestly obtaining permission for authorised absence, collusion in attempting to take unauthorised absence)
- b) gross fundamental breach of contract/terms and conditions of employment (including the Trust Values and Behaviours)
- c) theft of any NHS or Trust property, or theft of any other property belonging to another whilst on duty or the removal of NHS or Trust property from the premises without authorisation to do so
- d) malicious or reckless damage to NHS property or the property of others whilst on duty
- e) fraud – any deliberate falsification of records or any attempts to defraud the Trust or any patient, member of staff or member of the public
- f) assault, intimidation, threatening behaviour, physical abuse or verbal abuse upon a patient, member of staff or member of the public, or any harassment or bullying of staff
- g) professional misconduct
- h) the receiving or offering of bribes
- i) committing a criminal offence whilst on duty or whilst acting on behalf of the Trust or off duty if it is of a nature that the Trust loses confidence in the employee.
- j) failing to inform the Trust of any arrest or charge in connection with any criminal offence or served with a summons on criminal charges (excluding parking offences or minor motoring offences)
- k) illegal possession, use, or distribution of drugs
- l) incapacity to perform duties due to the influence of alcohol, solvents or drug abuse
- m) any serious carelessness or negligence in the performance of duties including that which threatens the health and safety of patients, visitors, or staff, including a failure to or an unreasonable delay to report a serious incident
- n) any harassment or victimising a Whistle Blower, or deliberate attempts to cover up concerns
- o) breach of confidentiality – disclosure of privileged and confidential information to unauthorised persons or organisations.
- p) serious misrepresentation, or providing false or misleading information in any application for employment or deliberately withholding personal information,

including qualifications held and legal charges or offences not covered by exemption under the Rehabilitation of Offenders Act, at the time of appointment or at any time during employment

- q) seeking and receiving gifts/gratuities for services rendered in the course of employment or otherwise (see Standards of Business Conduct)
- r) intentional or serious breach of the Trust's Equality and Diversity Policy.
- s) serious breach of health and safety rules and/or statutory regulations regarding health and safety
- t) ill treatment, abuse, or mishandling of patients
- u) gross insubordination
- v) withdrawal of statutory qualifications required for the post or failure to register/reregister.
- w) misuse, carelessness or negligence in the use of an occupational Smart Card
- x) serious breach of the Trust's policy regarding the safety of person identifiable information.
- y) vexatious or malicious complaints not made in good faith
- z) accessing with intent or forwarding pornography using the Trust's systems

## Appendix 4 – Formal Investigations

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It is crucial that the Determining Manager (on behalf of the Trust) has sound evidence on which to base their decisions. Failing to conduct a full investigation in all but the most exceptional of circumstances may render a dismissal unfair and result in costly consequences in terms of tribunal awards and staff morale.

Investigations will be required within the Trust in response to a wide range of situations, including but not limited to:-

- Disciplinary allegations
- Grievances
- Complaints about discrimination, harassment or bullying
- Complaints from patients and relatives
- Personal injury claims
- Issues of capability
- Allegations of fraud
- The Trust also has a Whistleblowing Procedure and harassing or victimising a whistleblower (including informal pressures) will be considered a serious disciplinary offence and will be dealt with under this procedure.

Where a decision has been made that formal investigation is required the following should be applied:

- The purpose of any investigation is not to build a case or a defence but to establish the facts. The investigating officer will determine the appropriate method of investigation, depending on the nature of the allegations.
- The investigating officer should, without delay, obtain statements from the employee and any witnesses (if not obtained during the preliminary investigation), together with other relevant documentary information. The statements should be in their own words, signed and dated. Staff must be advised that any information given will be used as part of an investigation report and they must be honest in their responses and that the information provided may be used in a disciplinary hearing, should that be the outcome of the investigation. The employee under investigation may be seen first to have the opportunity to state their initial response. This may not always be practicable, however.
- Adequate time and notice of meetings should be given to employees who need to be interviewed or produce statements. Where the employee to be interviewed is the subject of a complaint or allegation, where possible they will be provided with details of such complaint or allegation in advance of the interview.
- All staff being interviewed should be given a reasonable opportunity to obtain support and / or guidance from a trade union or staff organisation, or from a work colleague.
- The initial evidence gathered should be used to prepare an estimate of the time and resources needed to complete the investigation.
- The evidence collected should be tested for accuracy against other witness accounts and / or documentary evidence.

- Witnesses should be aware that statements prepared during the investigations will be used as evidence for any subsequent disciplinary hearing.
- Little reliance should be placed on 'hearsay' evidence unless this points to, or can be tested against, more reliable evidence.
- Every reasonable effort should be made to respect the confidentiality of all staff involved in the investigation. However, staff should be advised that unless there are exceptional circumstances, the respondent will be entitled to see all statements and interview records in the event of formal proceedings.
- Where CCTV footage is to be used as evidence, time is to be made available during the investigation for the individual under investigation to view the footage.
- The investigating officer should determine what evidence is relevant to the issue at hand, i.e. what helps to prove the facts rather than what strengthens or weakens the case.
- The evidence collected should be used as the basis for a decision as to any further action that may be required.
- Regular updates are to be provided by the Investigating Officer to the General Manager/ Head of Service in relation to the progression of the investigation and to discuss any evidence obtained that may require the view of General Manager/ the Head of Service to review the nature/seriousness of the allegations. This should also include whether there is still a case to continue the investigation.
- Once concluded the full investigation case will be provided to the General Manager / Head of Service to make a decision on whether there is a case to answer or not.
- The standard of proof for most internal investigations and any subsequent disciplinary hearing will need to be "on the balance of probabilities". The case does not have to be proved "beyond reasonable doubt" for it to stand up in an employment tribunal.
- Any documentary evidence containing patient information must be anonymised.
- Staff may wish to access a copy of their investigation report (for example in cases which have resulted in no case to answer), this must be done by submitting a subject access request via the Trust Information Governance Department.

Further advice and guidance on conducting investigations can be obtained from the People and Culture Department.



Grievances/concerns raised about the case/process will be addressed either by the General Manager/Head of Service or at the disciplinary hearing or appeal and not through the Grievance Procedure.

## Appendix 5 – Review following disciplinary action / recommendations and reporting to professional bodies

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### Review following disciplinary action

1. A line manager, in conjunction with any other professionals identified in correspondence associated with the disciplinary action taken, will review the required actions at an interval agreed or consistent with the severity of any action taken and prior to the end of a period of disciplinary action.
2. In cases of poor performance where the review meetings show that an improvement to a satisfactory level has been achieved, this should be confirmed in writing to the individual. Where there is an outstanding period of a written or final written warning this should remain in place.
3. In some circumstances the Trust is required to notify the appropriate professional body e.g. Nursing and Midwifery Council, Health Professions Council, General Medical Council, who are responsible for the professional practice of particular staff groups, of appropriate cases of investigations, warnings, dismissals or restrictions placed on practice.
4. Depending upon the seriousness of the offence, the Trust may be obliged to inform the professional body at any stage of the formal procedure.
5. The Trust may also, at its discretion, report action taken under these procedures to the relevant professional body where it considers that such reporting is necessary.
6. Where a Determining Manager finds it necessary to recommend referral to a professional body, the employee must be notified in writing of the intention to do so in conjunction with the relevant Executive Director. This will usually take place after an appeal has been heard.

### Reporting to other Agencies

7. The Trust will also involve the Safeguarding Children or Safeguarding Vulnerable Adults Procedures where appropriate. This should be done as soon as the allegations are first received.
8. The Trust will make appropriate referrals to the Disclosure and Barring Authority
9. The Trust will report matters involving suspected criminal / illegal activity to the police.
10. Where appropriate the Trust will request the NHS North of England to issue an Alert letter

## Appendix 6 – Level of authority to implement disciplinary sanctions

Informal Stage	Written Warning	Final Written Warning	Suspension	Dismissal
Level 1	Level 1	Level 1	Level 1	Level 1
Level 2	Level 2	Level 2	Level 2	Level 2
Level 3	Level 3	Level 3	Level 3	Level 3
Level 4	Level 4	Level 4		
Level 5/First Line Managers at Level 6	Level 5			

- Level 1 Chief Executive/ Managing Director
- Level 2 Care Group Directors/Directors /Deputy Care Group Directors/Deputy Directors
- Level 3 Associate Directors / General Managers/ Heads of Service / Senior Managers reporting to Directors There may be occasions when this is delegated to an appropriate Level 4 Manager (for example a Service Manager who has previously held a role that would fall within level 3)
- Level 4 Senior Manager (e.g. Service Manager ) reporting to Level 3
- Level 5 Managers (e.g. Ward Managers / Team Managers) reporting to Level 4
- Level 6 all other staff