



## Human Resources

# SWH 00734 Disciplinary Policy

---

The Trust's Intranet holds the current approved guidance documents.

### Notice to staff using a paper copy of this document.

Staff must ensure that they are using the most up-to-date document to guide their practice and must check that the version number of the paper copy matches that of the one on the Intranet.

<b>Version</b>	3.0
<b>Job Title of Responsible Manager</b>	Head of Operational Human Resources
<b>Replacing Document</b>	Disciplinary Policy v2.0
<b>Ratifying 'Body'</b>	Policy Review Group
<b>Date Ratified</b>	January 2019
<b>Date for Review</b>	January 2024
<b>Relevant Standards:</b>	Health and Social Care Act 2008 (Regulated Activities) [Amendment] Regulations 2015: 19

## Document History

Issue Status e.g. Draft or Final	Catalogue and Version Number	Document Title	Date	Actioned by: (Job Title or Name of Approving/ Ratifying Body)	Page/ Section/ Paragraph	Comments
Final	SWH 00734 V1.0	Disciplinary Policy	January 2013	Policy Review Group	Whole document	Policy ratified by Policy Review Group
Final	SWH 00734 V1.1	Disciplinary Policy	January 2014	Joint Negotiating & Consultative Committee (JNCC)	Section 20.7	Amended policy approved by JNCC
Final	SWH 00734 V2.0	Disciplinary Policy	June 2015	Policy Review Group	Whole document	Policy ratified by Policy Review Group
Draft	SWH 00734 V3.0	Disciplinary Policy	December 2018.	JNCC	Whole document	Review of policy by the JNCC Policy Sub Group in its entirety between April – December 2018, in accordance with review timetable. No significant change to practice, apart from introduction of report produced at end of investigation, confirming conclusions and action recommended.  Approved document
Final	SWH 00734 V3.0		January 2019	Policy Review Group	Whole Document	Ratified document

## Table of Contents

To access a section directly from the Table of Contents – ‘hover’ the mouse over the section you require and then press Ctrl and click the mouse.

<b>DOCUMENT HISTORY .....</b>	<b>2</b>
<b>1 INTRODUCTION.....</b>	<b>5</b>
<b>2 PURPOSE .....</b>	<b>5</b>
<b>3 AUDIENCE .....</b>	<b>5</b>
<b>4 ASSOCIATED TRUST DOCUMENTS .....</b>	<b>6</b>
<b>5 RESPONSIBILITIES/DUTIES .....</b>	<b>6</b>
5.1 BOARD OF DIRECTORS (BoD) .....	6
5.2 CHIEF EXECUTIVE .....	7
5.3 DIRECTOR OF HUMAN RESOURCES.....	7
5.4 LINE MANAGERS.....	7
5.5 ALL EMPLOYEES.....	7
5.6 HUMAN RESOURCES DEPARTMENT.....	7
<b>6 MISCONDUCT INVOLVING FRAUD OR CRIMINAL ACTIVITIES.....</b>	<b>8</b>
<b>7 PROTECTION OF CHILDREN AND VULNERABLE ADULTS.....</b>	<b>8</b>
<b>8 SUPPORT FOR EMPLOYEES .....</b>	<b>8</b>
<b>9 CONFIDENTIALITY .....</b>	<b>8</b>
<b>10 RIGHT TO REPRESENTATION.....</b>	<b>9</b>
<b>11 DISCIPLINING STAFF SIDE REPRESENTATIVES .....</b>	<b>9</b>
<b>12 RECORDING OF HEARINGS AND MEETINGS .....</b>	<b>9</b>
<b>13 INFORMAL ACTION .....</b>	<b>9</b>
<b>14 DELEGATED AUTHORITY TO DEAL WITH DISCIPLINARY MATTERS.....</b>	<b>10</b>
<b>15 SUSPENSION .....</b>	<b>10</b>
<b>16 INVESTIGATION.....</b>	<b>11</b>
<b>17 REFERRAL TO DISCLOSURE AND BARRING SERVICE (DBS)/ PROFESSIONAL BODIES .....</b>	<b>13</b>
<b>18 TRAINING.....</b>	<b>13</b>
<b>19 WITNESSES.....</b>	<b>13</b>
<b>20 DISCIPLINARY HEARING.....</b>	<b>14</b>
<b>21 DISCIPLINARY ACTION.....</b>	<b>14</b>
21.1 FIRST STAGE FORMAL WARNING.....	14
21.2 SECOND STAGE FORMAL WARNING .....	15
21.3 FINAL FORMAL WARNING.....	15
21.4 ACTION SHORT OF DISMISSAL .....	15
21.5 DISMISSAL .....	15
21.6 SUMMARY DISMISSAL FOR GROSS MISCONDUCT .....	15
21.7 INCREMENTAL PROGRESSION.....	16
<b>22 WRITTEN CONFIRMATION OF THE OUTCOME OF A DISCIPLINARY HEARING .....</b>	<b>16</b>
<b>23 FAILURE TO ATTEND.....</b>	<b>16</b>
<b>24 APPEALS PROCEDURE.....</b>	<b>17</b>
24.1 GROUNDS FOR APPEAL.....	17

---

24.2	POTENTIAL OUTCOMES FOR AN APPEAL .....	17
24.3	PROCESS FOR SETTING UP AND APPEAL HEARING.....	18
24.4	COMPOSITION OF AN APPEAL PANEL.....	18
24.5	EMPLOYEE REPRESENTATION .....	18
24.6	OTHER CONSIDERATIONS .....	18
<b>25</b>	<b>INCIDENT REPORTING.....</b>	<b>19</b>
<b>26</b>	<b>MONITORING COMPLIANCE.....</b>	<b>19</b>
<b>27</b>	<b>EQUALITY IMPACT ASSESSMENT .....</b>	<b>19</b>
<b>28</b>	<b>AUTHOR.....</b>	<b>19</b>
<b>29</b>	<b>CONTRIBUTORS .....</b>	<b>19</b>
<b>30</b>	<b>REFERENCES .....</b>	<b>19</b>
<b>31</b>	<b>APPENDICES .....</b>	<b>20</b>
<b>32</b>	<b>APPENDIX A: DISCIPLINARY RULES.....</b>	<b>21</b>
<b>33</b>	<b>APPENDIX B: PROCEDURE FOR ARRANGING A DISCIPLINARY HEARING.....</b>	<b>27</b>
<b>34</b>	<b>APPENDIX C: APPEAL HEARING PROCEDURE .....</b>	<b>30</b>
<b>35</b>	<b>APPENDIX D: MONITORING COMPLIANCE FORM .....</b>	<b>32</b>
<b>36</b>	<b>APPENDIX E: EQUALITY IMPACT ASSESSMENT FORM.....</b>	<b>33</b>

## **1 Introduction**

South Warwickshire NHS Foundation Trust recognises the need to encourage and support employees to provide the highest quality of care to our patients.

This document sets out the Trust's policy in relation to issues of misconduct and the process by which such issues should be managed. Misconduct is defined as a deliberate act, failure to follow instruction or omission by an employee in breach of Trust policies, procedures, stated expectation or requirement.

South Warwickshire NHS Foundation Trust (SWFT) has a duty to promote equality and diversity. Discrimination on the grounds of sex, disability, age, sexual orientation, religion or belief, race, gender reassignment, marriage and civil partnership, pregnancy and maternity is against the law and will not be tolerated. The Trust has an Equality Strategy and an Equality Action Plan. An important part of the plan is to ensure that the Trust's policies and procedures promote equality.

## **2 Purpose**

This policy is designed to advise, help and encourage all employees to achieve the standards of conduct required of them and to effect an improvement should this prove necessary. The Trust believes that fair, equitable, timely and effective arrangements should exist for dealing with disciplinary matters and that employees should be treated with justice, equality and in a consistent manner.

This policy outlines the principles and the processes which will be followed when it is necessary to take action of a disciplinary nature against employees. The intention is that potential disciplinary cases are dealt with at an early stage, with a view to resolving problems as quickly and fairly as possible and that employees are encouraged to improve their standard of conduct.

Wherever possible, issues of minor misconduct should be dealt with informally rather than through the formal stages of the procedure and advice can be sought on this if necessary from the Human Resources Department or Staff Side representatives.

## **3 Audience**

This document applies to all managers and employees when addressing issues of misconduct. It should also be used by the Human Resources team and Staff Side representatives when supporting managers and employees in the management of conduct issues.

This policy will not apply to non NHS healthcare staff (e.g. third party contracted staff). However, it is expected that such staff should follow the principles laid down in this Disciplinary Policy while working on Trust premises.

In the case of Bank workers, an investigation into any alleged misconduct may be undertaken to help inform a decision to refer the matter to a professional body or the Disclosure and Barring Service (DBS).

When dealing with disciplinary issues relating to Medical and Dental employees, the

following processes should be followed:

#### Doctors in Training

The West Midland Deanery's Policy and Guidance for Doctors and Dentists in Difficulty should be referred to initially. This is available on the Trust's intranet.

#### All Other Directly Employed Medical Staff

The Trust has adopted the Department of Health's framework document "Maintaining High Professional Standards in the Modern NHS". This document details the process which should be followed when addressing issues of misconduct for directly employed medical and dental employees who are not doctors in training.

## **4 Associated Trust Documents**

SWH 00006	Alcohol and Drugs in the Workplace Procedure
SWH 00020	Incident Management Policy including the Management of Serious Incidents
SWH 00059	Performance and Capability Policy
SWH 00181	Confidentiality – Code of Practice
SWH 00270	Sickness Absence Management Policy
SWH 00276	Criminal Records (Disclosure and Barring Service) Policy
SWH 00310	Whistle Blowing Policy (Freedom to Speak Up and Raising Issues of Concern)
SWH 00327	Fraud, Bribery and Corruption Policy
SWH 00346	Information Governance Policy
SWH 00356	Being Open and the Duty of Candour
SWH 00554	Dignity at Work Policy
SWH 00607	Grievance Policy
SWH 00632	Online Social Networking Guidance
SWH 00634	Staff Rostering Policy
SWH 00775	Guidance for managing allegations of abuse made against a person who works with children and young people
SWH 00924	Incremental Progression Policy (Agenda for Change Bands 1 to 8B and points 1-4 of Bands 8C, 8D and 9)
SWH 01184	Maintaining High Professional Standards in the Modern NHS
SWH 01626	Internet Usage Policy
SWH 01656	Gifts, Hospitality and Sponsorship Policy

## **5 Responsibilities/Duties**

### **5.1 Board of Directors (BoD)**

The BoD is responsible for determining the governance arrangements of the Trust including effective risk management processes. It is responsible for ensuring that the necessary clinical policies, procedures and guidelines are in place to safeguard patients and reduce risk. In addition they will require assurance that clinical policies, procedures and guidelines are being implemented and monitored for effectiveness and compliance.

## **5.2 Chief Executive**

The Chief Executive Officer (CEO) has overall responsibility for patient safety and ensuring that there are effective risk management processes within the Trust which meet all statutory requirements and adhere to guidance issued by the Department of Health.

The CEO holds each line manager accountable for meeting objectives and to work together towards meeting the objectives approved by the Board.

## **5.3 Director of Human Resources**

The Director of Human Resources is the Executive with delegated responsibility for ensuring the content of this policy is applied fairly and consistently across South Warwickshire NHS Foundation Trust.

## **5.4 Line Managers**

Line Managers are responsible for ensuring that:

- This document is made available to all employees within their department
- The employees they are responsible for implement and comply with this document
- Those employees who will undertake any procedural elements contained within this document have been trained and deemed competent to do so
- Employees are aware of the standards of behaviour expected of them and any other local requirements, e.g. starting and finishing times within wards/departments
- All employees have a detailed and up to date job description and that all employees have access to regular supervision and appraisal

## **5.5 All Employees**

Employees are obliged to ensure that they know and follow the standards of behaviour detailed in Trust documents relevant to them and their functions within the Trust. These standards will be provided in the Trust's "Disciplinary Rules" (**Appendix A**) and other documents issued from time to time.

## **5.6 Human Resources Department**

The Human Resources Department is responsible for assisting with the implementation of this policy. A member of the Human Resources team must be consulted for advice at any formal stage of the policy. A representative from the Human Resources team will also attend formal disciplinary meetings to advise on the policy and its application, ensuring that disciplinary decisions are consistent and fair.

A member of the Human Resources Department may be involved in issues at an informal stage, to provide advice.

The Human Resources Department will monitor the number and nature of formal disciplinary issues across directorates, staff groups, employees from black and minority ethnic backgrounds, employees with a disability and employees by age and gender. Individual records will be kept confidential.

In partnership with Staff-Side, the Human Resources Department will review the Disciplinary Policy in the light of changes to legislation or developing case law.

## **6 Misconduct involving Fraud or Criminal Activities**

Matters which may potentially be fraudulent or criminal in nature should be discussed with a Human Resources Manager at the earliest opportunity, who will advise on the involvement of the Local Counter-Fraud Specialist, Local Security Management Specialist (LSMS) or the Police. (Fraud, Bribery and Corruption Policy SWH 00327)

## **7 Protection of Children and Vulnerable Adults**

The Trust has a responsibility with regard to safeguarding children and vulnerable adults. In cases which indicate that there has been harm or risk of harm to children or vulnerable adults, the Trust will make a referral to the Disclosure and Barring Service (DBS). This may lead to the staff member being added to the list of those who are barred from working with these groups. When a referral to the DBS is made, the member of staff will be notified of this action by the Trust.

In cases where an allegation of abuse is made against a staff member who works with children, the Trust's Health Guidelines 'Allegations of abuse made against a person who works with children and young people' (SWH 00775) should be referred to.

## **8 Support for Employees**

Employees are advised that at any time they can access support and counselling through the Trust's Staff Support Service (telephone 01926 495321 ext 8459). Support is also available from Occupational Health (telephone 02476 965420) and the Chaplaincy, for spiritual support (01926 495321 ext 4121). Staff can also contact their trade union, staff organisation or professional association representative for support. Contact details are available on the intranet.

If, at any stage, an employee considers that the Disciplinary Policy is not being applied fairly, they are entitled to raise a grievance in accordance with the Trust's Grievance Policy (SWH 00607)

The Freedom to Speak Up Guardian can be contacted on 07919 226887 or [ftsug@swft.nhs.uk](mailto:ftsug@swft.nhs.uk)

## **9 Confidentiality**

Issues of misconduct shall be treated with the highest level of confidentiality. All written documents/records (e.g. written statements, reports, minutes) and proceedings relating to matters dealt with under this policy are and must remain confidential.

Witness statements, although given in confidence, may be shared with the individual under investigation if needed to form part of the management case for a disciplinary hearing.

A record should be kept of all discussions or interviews at which any action is agreed under the policy and a copy given to the employee. All records are held by the manager on the personal file. A record should also be kept of the conclusions of any subsequent review, with copies to the individual.

## **10 Right to Representation**

All employees have a statutory right to be accompanied at any formal stage of the policy by a representative of their trade union, staff organisation or professional association or a work colleague not acting in a professional capacity. It is not envisaged that employees will need to be represented during the informal stages of the policy. However, if the employee feels that this would be helpful, representation will not be unreasonably refused.

Prior to any meeting under the formal stages of the Disciplinary Policy, the employee must be advised of their right to representation and it shall be the responsibility of the individual employee to arrange for representation if required. Employees will normally be given a minimum of 5 working days' notice of any formal meeting under this policy. If the individual is having difficulty obtaining representation, a delay of up to two weeks will normally be acceptable.

## **11 Disciplining Staff Side Representatives**

Normal disciplinary standards apply to the conduct of Staff Side representatives as employees. If disciplinary action is considered for an accredited Staff Side representative, the representative's agreement should be sought to discuss this with a senior trade union representative or full-time trade union official.

## **12 Recording of Hearings and Meetings**

Subject to prior agreement by both parties, disciplinary hearings and investigation meetings may be recorded for minute taking purposes. A copy of any recording produced will be made available to both parties, if requested. If a recording is made, either party may produce a transcript from the recording. If this is done, a copy of the transcript must be shared with the other party.

## **13 Informal Action**

In most cases, it will be appropriate for issues of minor misconduct to be dealt with informally rather than through the formal disciplinary procedure. The authority to give informal guidance and supervisory advice is inherent in a managers' role and it is expected that this authority will be exercised wherever possible to prevent escalation of the conduct issue. Informal action is not part of the formal disciplinary procedure. However, such action may be referred to during subsequent formal disciplinary proceedings.

The purpose of an informal discussion is to highlight areas of concern and try to improve them. All reasonable efforts should be made to identify the cause of the problem and the appropriate support which is required to address it. It may be necessary for the manager and the individual to agree a plan in which the standards required are specified, together with a timescale and any additional support or training to be provided.

The outcome of an informal discussion should be confirmed in writing to the member of staff in the interests of clarity. It should be made clear that such informal action is not part of the disciplinary procedure. A copy of this letter will be kept on the employee's personal file and a copy will also be sent to the member of staff. The letter will remain live on the file for a period of 6 months.

It should be made clear to the individual that continued failure to meet the required

standards is likely to result in formal disciplinary action.

If the member of staff is unhappy with any aspect of informal action taken by their manager, they may invoke the Grievance Policy (SWH 00607).

## 14 Delegated Authority to Deal with Disciplinary Matters

Executive Directors may only be disciplined or dismissed by the Chief Executive or Acting Chief Executive in their absence.

In cases where dismissal is a potential outcome of the disciplinary process, including incidents of gross misconduct, disciplinary action may be taken by Directors or managers at Associate Director of Operations level or equivalent. It is possible to delegate this authority to a general manager, head of service or equivalent level manager, and this will be confirmed in writing. Such a decision to delegate authority should be taken in conjunction with advice from a Human Resources Manager.

## 15 Suspension

Suspension is a neutral act, not disciplinary action, whilst an investigation takes place. Suspension should only be used where necessary and no record will be retained of a suspension once it has been lifted.

Consideration should be given to the implications of suspension for the employee and to possible alternatives to suspension, such as alternative or restricted duties, temporary redeployment etc.

Whilst suspended, the employee must not access any Trust premises or contact any work colleagues without the specific permission of the investigating manager. This includes contact on social media. It is accepted that there may be circumstances when a member of staff who has been suspended may wish to contact a colleague and such permission will not be unreasonably refused. Any medical appointments on Trust premises should be advised to the investigating manager in advance. It is expected that the member of staff will not discuss the investigation with work colleagues. There may be circumstances where the member of staff who is suspended will wish to speak to colleagues about the investigation, for example to ask them to act as a representative at a meeting/hearing, or to call them as witnesses. In such circumstances, the member of staff should seek the prior approval of the investigating manager. No prior approval is required for the member of staff to contact staff side representatives, the Freedom to Speak Up Guardian, or to attend Occupational Health or Staff Support appointments.

Employees may be suspended if the allegation is serious and:

- The continued presence of the employee constitutes a risk to patients and staff, or NHS property, or to the employee; or
- Suspension would facilitate a full and proper investigation by management into possible serious breaches of discipline; or
- The allegation is potentially one of gross misconduct (as defined in **Appendix A**), in which case suspension would normally be immediate

An appropriate available manager may suspend an employee provided that they have the authorisation of a senior manager of General Manager/ Head of Service level or equivalent

(or on-call manager if out of hours). At this meeting, the suspending manager should remove the employee's swipe card, smart card and also mobile phone, laptop or other electronic devices belonging to the Trust as appropriate. These items must be kept safely during the period of the investigation. The decision may also be taken to remove remote access to NHS IT services.

The suspending manager will also, where appropriate, discuss with the individual the message that will be communicated to colleagues about the reason for their absence from work. In cases where a member of staff is temporarily moved to an alternative role, or if duties are amended or restricted, there will also be a discussion about what will be communicated to colleagues, and the way in which this will be done.

Suspension will be confirmed in writing without delay, but not more than 3 working days later. The letter will confirm the effective date of the suspension, the reason for the suspension, the terms of the suspension and that a full investigation will take place. The member of staff will be given a copy of this Disciplinary Policy.

Suspension will normally be on full pay (including any regular enhancements).

When considering suspension, advice should normally be sought from the Human Resources Department, unless when it takes place out of hours when the suspension must be notified to the Human Resources Department on the next working day. This is to ensure consistency across the Trust.

A review of the suspension will take place within the first 2 weeks after the initial suspension and thereafter at regular intervals of at least every 4 weeks. At each review, consideration will be given to whether the suspension needs to continue. The investigating manager will inform the staff member in writing if the suspension will continue. This process of review also applies to members of staff who are temporarily moved to an alternative role or who have amended or restricted duties.

A member of staff may take annual leave while suspended from duty. Annual leave should be booked with the member of staff's line manager. Prior to making the request, the individual should liaise with the investigating manager to ensure that the proposed leave dates do not hinder the investigation. Requests for annual leave will not be unreasonably refused.

An anonymised report on suspensions and the length of time that they have been in place will be presented to the JNCC as part of the twice yearly Caseload Update. In the unusual event that a suspension lasts more than 6 months, this update to JNCC will include the reason for the delay, an indication of how long the suspension is expected to continue and a plan for completion of the investigation.

## **16 Investigation**

The aim of an investigation is to establish what has happened and decide whether there is a case to answer. An investigating manager will be appointed through discussion with an appropriate senior manager, known as the Appointing Manager, and the Human Resources Department. The investigating manager will be an individual who is objective and has not been previously involved in the incident.

In the case of any issue that potentially involves fraud, bribery or corruption, the Local Counter-Fraud Specialist should be contacted for advice before a disciplinary investigation is commenced.

The investigating manager and the disciplining manager shall in no circumstances be the same person. These roles must be kept separate.

The staff member will be informed as soon as possible that an investigation is to take place, the issues that will be under investigation, and who the investigating manager will be.

Every attempt will be made to conclude the investigation as quickly and thoroughly as possible, before memories fade. Investigating managers should endeavour to complete the process within one month. Where it is likely that the investigation will take longer than one month, the investigating manager must communicate to the member of staff the reason for this. Throughout the investigation, the member of staff will be kept informed in writing of the progress and the reason for any delays by the investigating manager.

An investigation will include the need to interview the staff member and also any witnesses, if appropriate, to establish the facts. In some cases, the staff member or witnesses may need to be interviewed on more than one occasion.

Staff may be represented at investigation interviews by their staff side representative or a colleague, if they wish. The investigation will not be held up unreasonably due to the choice of representation and in such cases the staff member should seek alternative representation.

Having carried out an investigation and acquainted themselves fully with the facts of the case, the investigating manager will produce a report for the manager who appointed them, summarising the findings and conclusions and recommending either:

- That no action be taken
- That informal action is sufficient
- That a disciplinary hearing is convened

The investigation report will be reviewed by the Appointing Manager, and the outcome of the investigation will be confirmed. If it is decided that a disciplinary hearing will be convened, the manager who has reviewed the investigation should not be the disciplining manager.

The purpose of this step in the process is to provide an opportunity for the investigation outcome to be reviewed by another manager. This will help to ensure that a reasonable and thorough investigation has been undertaken before any decision is taken to progress to arranging a formal disciplinary hearing.

If the employee leaves the Trust before an investigation is complete, a decision may be taken to continue the investigation to its conclusion. The decision may also be taken to proceed to a disciplinary hearing even if an employee has also left the Trust by this time.

---

## **17 Referral to Disclosure and Barring Service (DBS)/ Professional Bodies**

The Trust reserves the right to notify the DBS or appropriate professional body if the investigation indicates that relevant misconduct has, or is likely to have, arisen.

## **18 Training**

Training is available from the Human Resources Department for investigating managers and disciplining managers. Investigating and disciplining managers should not normally undertake an investigation or hear a case without undertaking this training or, in the absence of training, without guidance from the Human Resources Department.

## **19 Witnesses**

In order to conduct a thorough investigation the investigating manager will need to interview any witnesses to the incident(s).

Witnesses whose statements are put forward as part of a disciplinary case may be called by the investigating manager presenting the management case to attend the disciplinary hearing, if required to give evidence. It is the investigating manager's responsibility to inform management witnesses of the date and time of the hearing.

A member of staff who is the subject of a disciplinary hearing may also ask witnesses to attend. This includes management witnesses who have given statements but who have not been called to attend the hearing by the investigating manager. The member of staff must ensure that such witnesses are relevant to the allegations, either because they were present at the time of the incident or for some other reason. The member of staff must get permission from the investigating manager if they need to contact witnesses whilst on suspension.

The member of staff must inform the investigating manager in advance if they intend to call witnesses. It is the staff member's responsibility to inform the disciplining manager of the names of the witnesses they wish to call. It is the responsibility of the member of staff to make arrangements for the witnesses to attend the disciplinary hearing. If a member of staff who has been suspended wishes to call another member of staff as a witness, they should contact the Human Resources representative on the disciplinary panel to discuss arrangements.

The Disciplinary Panel may also decide to call witnesses and the hearing may be adjourned, if necessary, so that arrangements for witnesses to attend can be made.

Witnesses may be represented or accompanied at all investigation meetings. Witnesses may be permitted to be accompanied at disciplinary hearings as long as representatives are available on that day. Managers will ensure that witnesses are given sufficient time to attend investigation interviews and the disciplinary hearing. Sufficient time should also be given for meetings with staff side representatives. All meetings should be scheduled at times that meet service needs.

During the process of the disciplinary hearing, all reasonable efforts will be made to keep witnesses separate from each other.

Witnesses may only remain in the disciplinary hearing whilst giving evidence. On completing their evidence, witnesses will leave the hearing but will remain available for recall, if necessary.

Where the witness is a patient or a member of the public, they cannot be required to attend a disciplinary hearing but their written statements / interview notes may be considered at the hearing.

## **20 Disciplinary Hearing**

Please refer to **Appendix B** for full details of the procedure for setting up a disciplinary hearing.

The purpose of a disciplinary hearing is to determine the facts and to enable the disciplining manager to come to a decision as to whether formal disciplinary action is justified and, if so, at what level.

The disciplinary hearing will be chaired by the disciplining manager, see section 14 “Delegated Authority to Deal with Disciplinary Matters”. A representative from the Human Resources Department will be in attendance to advise the disciplining manager on areas of employment law and the correct interpretation of this policy. If the allegation(s) relates to professional misconduct, a representative from that profession may be appointed as a panel member.

The staff member will be given every opportunity to state their case. The staff member’s representative or colleague should be allowed to address the hearing to put forward and sum up the employee’s case, respond on their behalf to any views expressed during the meeting and to confer with the employee during the hearing. They do not, however, have the right to answer questions on the employee’s behalf, address the hearing if the employee does not wish it or prevent the employee from explaining their case.

## **21 Disciplinary Action**

The following section details the levels of formal disciplinary action which may be taken as a result of a disciplinary hearing. A disciplinary hearing can only be convened after a full investigation has taken place.

The procedure allows for one or more levels of warnings to be omitted, depending on the seriousness of the allegation(s). In the case of gross misconduct the outcome would normally be Stage 4, which is summary dismissal (see section 21.6). An outcome of a disciplinary hearing could also be that no action is taken or that informal action is agreed.

### **21.1 First Stage Formal Warning**

A first formal warning may be given to an employee after a formal investigation and disciplinary hearing. Such a warning will normally be given in instances of minor misconduct which were not considered appropriate to be dealt with through informal action.

A first formal warning will normally remain current for 6 months, after which it will be disregarded for disciplinary purposes.

### **21.2 Second Stage Formal Warning**

Should there be a further need for disciplinary action, or for more serious breaches of discipline, a second formal warning may be issued.

A second formal warning will normally remain current for 12 months, after which it will be disregarded for disciplinary purposes.

### **21.3 Final Formal Warning**

Should there be a need for further disciplinary action, or for a more serious act of misconduct, a final formal warning may be issued.

A final formal warning will normally remain current for 12 months, although in exceptional circumstances a longer period may be identified. After the end of the identified period it will be disregarded for disciplinary purposes.

### **21.4 Action Short of Dismissal**

As an alternative to dismissal, the disciplining manager may consider the offer of another sanction such as demotion, disciplinary transfer or loss of seniority/pay. Such action will be taken in conjunction with a final written warning. In cases where a disciplinary transfer is imposed, there is no requirement for the Trust to create a suitable alternative post, if one does not exist. If a member of staff is demoted to a post on a lower grade, pay protection will not apply. If the new role requires a new DBS check, the member of staff will be required to register with the DBS service.

### **21.5 Dismissal**

For cases of serious misconduct or gross misconduct or for repeated breaches of discipline, an employee may be dismissed by director or a senior manager with the authority to dismiss (see section 14).

In cases where an employee is dismissed, they will be given:

- Written reasons for the dismissal and the full facts on which the dismissing manager has based the decision
- The period of notice to which they are entitled under their contract of employment (except in cases of gross misconduct – see section 21.6) and the effective date of dismissal
- Details of the right of appeal

Termination of employment will be confirmed in writing to the member of staff by the disciplining manager within 5 working days of the disciplinary hearing, with a copy of the letter placed on the personal file.

### **21.6 Summary Dismissal for Gross Misconduct**

Gross misconduct is an act that is so serious that it fundamentally breaches the mutual trust and confidence that should exist between employee and employer and justifies the dismissal of the employee. A list of matters that are considered to be gross misconduct is included in the Disciplinary Rules (**Appendix A**). Please note that this list is not exhaustive.

If the disciplining officer decides to dismiss an employee at a disciplinary hearing following a finding of gross misconduct, this will be summary dismissal. Summary dismissal is with immediate effect. The employee loses the right to any paid notice.

### **21.7 Incremental Progression**

The Incremental Progression Policy (Agenda for Change Bands 1-8B and points 1 – 4 of Bands 8C, 8D and 9) (SWH – 00924) will be applied as appropriate in instances when a formal disciplinary warning is issued. For full details of the way in which incremental progression may be affected by a formal disciplinary warning, please refer to the Incremental Progression Policy.

## **22 Written Confirmation of the Outcome of a Disciplinary Hearing**

The disciplinary manager will write to the member of staff within 5 working days of the disciplinary hearing. The letter will include:

- The date that the hearing took place, the reason for the hearing and a record of who was present. (If an employee declined the right to be represented, this should be acknowledged)
- The disciplinary action being taken. If a formal warning is given, the employee should be told which stage of the disciplinary procedure the warning constitutes
- The full reasons for any disciplinary action taken, including the areas where the conduct failed to meet the required standard and what the member of staff needs to do to improve
- Confirmation of the decision and the time limits associated with any warnings
- Reference to any previous warnings that are current and relevant
- That repetition of the breach of discipline or failure to improve may lead to further disciplinary action or dismissal, as appropriate
- Where appropriate, reference to the fact that the relevant professional body or Disclosure and Barring Service (DBS) will be informed
- Details of any implications for incremental progression
- Details of the right of appeal

Where an employee is to be dismissed, the letter should state that the contract of employment is to be terminated and on what grounds. In addition, it should include any appropriate period of notice or pay in lieu of notice. In the case of summary dismissal, the letter should state that no notice or notice payment will be made.

In cases where no disciplinary action is taken as a result of the disciplinary hearing, the disciplining manager will also write to the employee within 5 working days, to give full reasons for the decision and also any recommendations for the individual or service.

## **23 Failure to Attend**

If the member of staff fails to attend a disciplinary hearing with good reason, the hearing will be rearranged. The rescheduled date will normally be notified to the staff member within 5 working days.

If the member of staff fails to attend a rearranged hearing without good cause, the

disciplining manager may decide to continue in the member of staff's absence.

If the investigating manager, disciplining manager, HR representative or staff side representative are unable to attend (for example, due to sickness) the hearing will be rearranged and a rescheduled date will normally be notified to the staff member of staff within 5 working days. If any of these people are likely to be absent for a long period (for example due to long term sickness absence), then a replacement will be found as soon as possible.

It is expected that, except in the case of sickness or approved annual leave, a member of staff who is on paid suspension will be available to attend a disciplinary hearing.

## **24 Appeals Procedure**

In all cases where formal disciplinary action is taken, the member of staff has the right of appeal. An appeal, giving the full grounds for the appeal, should be made in writing within 21 days of receipt of the letter confirming the disciplinary action and should be addressed to the line manager of the disciplining manager, provided that they have not previously been involved in the case. Grounds of appeal should be given; it is not sufficient just to state an intention to appeal. If the line manager has been previously involved, an alternative director or manager will be identified. The name of the individual to whom an appeal should be directed will be given in the disciplinary outcome letter.

### **24.1 Grounds for Appeal**

Requests for an appeal can only be made where the staff member believes that they have substantial grounds. These are:

- That the decision was unfair; and/or
- That a piece of factual information was not put forward or was not available at the hearing or, if heard, was not properly taken into account by the chairperson; and/or
- That the disciplinary action is too severe given the nature of the misconduct; and/or
- That the disciplinary hearing was not conducted in accordance with the Disciplinary Procedure

The letter giving the grounds for appeal should detail why the appellant considers that substantial grounds exist: i.e. why the decision was unfair; which piece of factual information was not put forward or available or properly taken into account; why the disciplinary action given was too severe; or what aspects of the disciplinary hearing were not conducted in accordance with the Disciplinary Procedure.

The appeal will only hear evidence around the above and, except in exceptional circumstances, will not be a re-run of the original hearing.

### **24.2 Potential Outcomes for an Appeal**

An appeal may result in the following outcomes:

- The original decision is upheld; or
- The original decision is rescinded; or
- A different level of disciplinary warning is administered.

### **24.3 Process for Setting up and Appeal Hearing**

Wherever possible the appeal hearing should take place within 4 weeks of receipt of the appeal.

On receiving the grounds for appeal from the appellant, the manager to whom the appeal is made will request a written response from the disciplining manager. The written grounds for appeal and the management response will be made available to all parties and the appeal panel at least 5 working days before the appeal hearing.

### **24.4 Composition of an Appeal Panel**

Appeals against disciplinary action other than a dismissal will be normally heard by the director or manager to whom the appeal was sent (see section 24). If the manager is unable to hear the appeal, responsibility can be delegated to another manager of equivalent or higher seniority.

Appeals against dismissal will be heard by a panel comprising the director or manager to whom the appeal was sent (or an alternative manager of equivalent or higher seniority) and another senior manager. The second senior manager could be a senior member of the Human Resources department.

Where the case relates to professional misconduct, a representative from that profession may be appointed as a panel member.

For all appeal hearings, an appropriate member of the Human Resources Department will be present to advise the panel on aspects of employment law and the application of the Disciplinary and Appeals procedures.

Please refer to **Appendix C** for the Appeal Hearing Procedure.

### **24.5 Employee Representation**

The appellant must attend the Appeal Hearing personally. The appellant has the right to be represented by a representative of their trade union, professional organisation, staff organisation or a colleague.

### **24.6 Other Considerations**

#### **a) Failure of the Appellant to Attend**

Should the appellant fail to attend the hearing, without reasonable cause notified before the date of the hearing, the appeal will be deemed to have been withdrawn.

#### **b) Inability to Attend**

Should the management representative(s), staff side representative or a member of the Appeal Panel be unable, with reasonable cause, to attend the hearing, the Appeal Panel can agree to the hearing of the appeal at a future date.

#### **c) Witnesses**

Either the appellant or the management side may call witnesses to the Appeal Hearing.

---

Witnesses may only remain in the Appeal Hearing whilst giving evidence. On completing their evidence, witnesses will leave the hearing but will remain available for recall, if necessary.

## **25 Incident Reporting**

In the event of an incident relating to a disciplinary issue with a member of staff it will be reported as appropriate via the Incident Reporting system (Datix) as described in the Incident Management Policy including the Management of Serious Incidents (SWH 00020) and the Being Open and the Duty of Candour (SWH 00356).

## **26 Monitoring Compliance**

The Senior Human Resources Manager will ensure that the key processes set out in this document are audited. The results will be fed back via the SRC and the JNCC committee.

Where monitoring has identified deficiencies, recommendations and an action plan will be developed to improve compliance with the document. See **Appendix D** for specific details.

The Human Resources Department will maintain a record of all disciplinary investigations and formal disciplinary hearings held under this policy, to ensure that it is applied fairly and consistently. The policy will be reviewed 5 years after implementation, or earlier if issues are raised in relation to its effectiveness.

## **27 Equality Impact Assessment**

All Trust documents are required to have a preliminary Equality Impact assessment (EIA) performed on them in order to establish whether any group of people will be impacted on unfairly by the document. An EIA has been performed on this document and the outcome is shown in **Appendix E**.

## **28 Author**

Helen Kenyon, Senior Human Resources Manager

## **29 Contributors**

JNCC Policy Sub Group  
Staff Side

## **30 References**

ACAS Code of Practice, Discipline and Grievance in the Workplace  
NMC: The Code – Standards of Conduct, Performance and Ethics for Nurses and Midwives  
HCPC – Standards of Conduct, Performance and Ethics  
GMC – Good Medical Practice  
Core Standards for NHS Managers (NHS Employers 2002)  
Disclosure and Barring Service referral process  
West Midlands Workforce Deanery: Professional Support and Dealing with Doctors in Difficulty

South Warwickshire NHS Foundation Trust (2017) SWH 01184 Maintaining High Professional Standards in the Modern NHS

South Warwickshire NHS Foundation Trust (2018) SWH 00327 Fraud, Bribery and Corruption Policy

South Warwickshire NHS Foundation Trust (2014) SWH 00775 Managing allegations of abuse made against a person who works with children and young people

South Warwickshire NHS Foundation Trust (2019) SWH 00607 Grievance Policy

South Warwickshire NHS Foundation Trust (2017) SWH 00924 Incremental Progression Policy (Agenda for Change Bands 1 to 8B and points 1-4 of Bands 8C, 8D and 9)

South Warwickshire NHS Foundation Trust (2015) SWH 00020 Incident Management Policy, including the Management of Serious Incidents

South Warwickshire NHS Foundation Trust (2015) SWH 00356 Being Open Policy and the Duty of Candour

South Warwickshire NHS Foundation Trust (2016) SWH 00059 Performance and Capability Policy

South Warwickshire NHS Foundation Trust (2016) SWH 00181 Confidentiality – Code of Practice

South Warwickshire NHS Foundation Trust (2015) SWH 00239 Professional Presentation Policy for All Staff

South Warwickshire NHS Foundation Trust (2016) SWH 00310 Whistle Blowing Policy (Freedom to Speak Up and Raising Issues of Concern)

## **31 Appendices**

- Appendix A: Disciplinary Rules
- Appendix B: Procedure for arranging a disciplinary hearing
- Appendix C: Appeal hearing procedure
- Appendix D: Monitoring Compliance Form
- Appendix E: Equality Impact Assessment

## **32 Appendix A: Disciplinary Rules**

### **1. Introduction**

The Trust respects and values its employees and believes that it is preferable that good standards are self-imposed and that all employees achieve good standards of conduct and performance so that patients receive a high quality service. The Trust's principal objective is the development of high quality healthcare services to patients. It is acknowledged that this can only be achieved with the cooperation, participation, support and commitment of all employees.

These rules are an appendix to the Trust's Disciplinary Policy, which details the procedure to be followed when it is necessary for disciplinary action to be taken against an employee.

### **2. General Rules**

The following gives an indication (but not an exhaustive list) of the general standards of performance and behaviour expected of employees. Failure to comply with these rules may lead to disciplinary action. While a first breach of the rules would not normally result in dismissal (except in the case of gross misconduct, see section 3, below) continued breaches, after warnings and opportunities to improve, could cumulatively do so.

In addition, many departments have specific rules relating to the activities of that department; failure to adhere to which may also result in disciplinary action being taken.

#### **2.1. General Standards of Conduct and Performance**

Every Trust employee is expected to combine prompt and efficient service with a concern for the feelings of other, especially patients and other members of the public. If the performance and conduct of an employee falls short of the standards expected s/he will be first advised by his/her manager of shortcomings and given every opportunity to correct the deficiencies. If unsatisfactory performance or conduct continues, s/he will be liable to action being taken under the Disciplinary Policy or Performance and Capability Policy, which may lead to dismissal.

#### **2.2. Hours of Attendance**

Every employee is required to give constant and regular attendance. Failure to attend regularly and punctually for work reduces operational effectiveness and shows lack of consideration for other colleagues and the patients we serve.

The manager will take action and if, following discussions and counselling, there is no improvement, formal action under the Disciplinary Policy will be taken which could lead to the termination of employment.

Some employees are required to self-record their times of work on timesheets, including electronic timesheets on HealthRoster. Other employees, operating systems of flexi time are required to keep a record of their hours of attendance. Deliberate misuse or abuse of time sheets and time recording systems including making false entries is regarded as gross misconduct, which may result in dismissal.

Employees may not absent themselves from work without prior permission from their immediate supervisor, except in cases of sickness, contact with infectious diseases or sudden domestic emergency (these should always be reported as soon as possible). For

periods of sickness, employees are expected to adhere to the sickness reporting procedure laid down within their department. All episodes of uncertified sick leave or unexplained absences will be sympathetically investigated by managers and may lead to appropriate action being taken under the Trust's procedures.

There are specific provisions for time off for recognised officers of staff side organisations and trade unions. Representatives' absence from work in furtherance of their duties or activities should be by prior approval of their supervisor/manager in accordance with the Trust's procedure for time off for trade union duties and activities.

### **2.3 Confidentiality**

All employees working in the NHS are bound by a legal duty of confidence to protect personal information. This means that all employees are obliged to keep any patient or personally identifiable information strictly confidential. Some Trust business information may also be bound by confidentiality rules. Breaches of confidence are regarded as a very serious matter, are always subject to action and could result in summary dismissal. Employees should always adhere to the Professional Codes of Conduct, Trust policies including the Confidentiality Code of Practice (SWH 00181) and any national codes of conduct or guidance.

This extends to social networking sites, such as Facebook or Twitter. Employees must never discuss a patient, relative or carer on such sites.

### **2.4. General Respect of Others**

Employees should carry out all legitimate requests of their supervisors/managers efficiently and diligently.

### **2.5. Health and Safety**

Every employee is responsible for performing their work in a manner that is safe both to themselves and to others and to bring to the notice of supervisors/managers any activity that might adversely affect any colleagues or patients.

Safety is paramount in the Trust and employees are required to observe any safety regulations. All accidents/incidents must be reported to the employee's supervisor/manager immediately and an incident form completed, in accordance with the Trust's Incident Management Policy (SWH 00020)

### **2.6. Personal Conduct and Dignity**

Employees are expected to conduct themselves in a proper and dignified manner at all times whilst on duty. In addition, any activities of an employee not on duty which can reasonably be regarded as bringing the Trust into disrepute, affects his or her integrity or affects working relationships with other employees or service users, may be subject to formal action under the Disciplinary Policy.

All staff employed by the Trust have a responsibility to treat other members of staff with dignity and respect and not to make comments, either directly or by inference, which could cause upset and/or offence or damage the reputation of the Trust or its employees. This responsibility applies to the use of social networking sites such as Facebook or Twitter

### **2.7. Honesty and Integrity**

All employees are expected to be honest at all times, to apply the highest standard of personal and professional integrity and to take the utmost care when handling, on the Trust's behalf, the property of the Trust and patients. It is imperative that employees ensure that they have specific authority to be in possession of goods or property belonging to either the Trust or patients.

### **2.8. Personal Presentation**

Personal presentation and standards of uniform must be maintained to the highest level at all times. Presentation standards of employees are an expression of the Trust's professionalism and efficiency. Please refer to the Trust's Professional Presentation for All Staff Policy (SWH 00239).

### **2.9. Incident Reporting**

All employees have a responsibility and are expected to report all accidents, incidents and near misses on the Trust's internal reporting form, in accordance with the Trust's Incident Management Policy (SWH 0020).

### **2.10. Declarations of Interest**

An employee shall inform his/her manager, Associate Director of Operations, Director or Chief Executive as soon as s/he becomes aware that s/he or their partner has a pecuniary interest in a contract that the Trust has entered into, whether or not s/he is party to the contract. In the case of a partner, the interest of one is deemed to be the interest of the other.

### **2.11. Other Employment**

Employees are not normally precluded by their contracts of employment from accepting other employment outside their normal working hours. However, such employment must not in any way hinder or conflict with the interests of their employment with the Trust or the ability to perform to the required standards. Any employee, who is in doubt as to the advisability of accepting other employment, especially if it is in the same field as their Trust employment, should consult his or her manager.

### **2.12. Driving**

Employees are required, when on Trust business, to drive with due care and attention and to observe at all times rules governing the use of mobile telephones, safe driving, speed limits, parking restrictions that are designed to keep themselves and other members of the public safe.

### **2.13. Professional Responsibility**

Employees who are registered with a professional body (for example the GMC, NMC, HCPC etc.) are reminded that employing authorities have a duty to report any incidents of professional misconduct to that body. The organisation may separately investigate the circumstances and take any necessary disciplinary action. Employees are also reminded of their own responsibilities in reporting matters to their professional body.

## **3. Gross Misconduct**

Gross misconduct may result in summary dismissal. An employee committing an act that is deemed to be gross misconduct may expect to have their employment terminated

without notice on the grounds that such behaviour amounts to a serious and unacceptable breach of contractual terms.

Examples of these offences are outlined below:

### 3.1. **Theft**

Theft of attempted theft of personal or NHS property from a patient, client, member of staff or member of the public. This may include the use or borrowing without permission of NHS property or facilities, the intellectual rights of the organisation or the theft of software or other information technology assets.

### 3.2. **Fraud**

For fraud to have occurred, the person must have acted dishonestly with the intention of making a gain for themselves or anyone else, or have inflicted a loss (or risk of a loss) on another

Fraud is defined in three categories:

- False Representation – eg claiming to have certain professional qualifications, but knowing them to be false; claiming for shifts that have not been worked; claiming travel expenses for journeys not undertaken
- Failing to Disclose Information – eg failing to disclose that a work visa has expired
- Abuse of position – eg a clinician completing a prescription for their own use, then persuading another less senior clinician to certify it, so allowing medication to be obtained.

### 3.3. **Bribery and Corruption**

Under the Bribery Act 2010 there are three main bribery offences:

- Offering, promising or giving a bribe to another person
- Requesting or agreeing to receive or accept a bribe
- Failure of a commercial organisation to prevent bribery (corporate offence)

### 3.4. **Gross or Wilful Negligence**

Action or lack of action, which may threaten the health and safety or welfare of a patient, client, member of the public or another member of staff. This includes reckless abuse of rules designed to ensure safe working practices, including fire orders and smoking regulations and the use of mobile phones while driving.

Action, or lack of action, which results in significant financial loss or other damage to the Trust is also included.

### 3.5. **Verbal or physical abuse, violence, assault, threatening or menacing behaviour, harassment or bullying and discrimination**

All patients, employees and members of the public should feel valued as individuals. They should be treated fairly and with respect, regardless of sex, disability, age, sexual orientation, race/nationality, religion or belief, gender reassignment or gender/marital status. Bullying and harassment are viewed with great concern and may be considered gross misconduct.

**3.6. Deliberate mishandling of patient or staff records**

Falsification or destruction of patient/client records, or unauthorised alteration of patient records without due cause. Inappropriate and unauthorised access to Trust documents, including patient and staff records.

**3.7. Malicious damage**

Deliberate or reckless damage to NHS property, the property of others on NHS premises, or property belonging to a patient, client or another member of staff, including data or information stored electronically.

**3.8. Alcohol and Drugs**

Staff must not report for duty under the influence of, or smelling of, alcohol or drugs, or to drink alcohol, use illegal or volatile substances or misuse legally prescribed drugs during work hours or on Trust premises at any time. Please refer to the Alcohol and Drugs in the Workplace Procedure (SWH 0006).

**3.9. Failure to follow Trust procedures**

Serious breach of or refusal to follow Trust policies and procedures, Standing Financial Instructions and Standing Orders.

**3.10. Sexual misconduct**

Sexual interactions of any kind with another member of staff, while on duty, or with a patient or client through the course of duty.

**3.11. Disclosure of information**

Misuse or disclosure of confidential information to unauthorised persons, other than protected acts under the Public Interest (Disclosure) Act 2013. Please refer to the Whistle Blowing Policy (Freedom to Speak Up and Raising Issues of Concern) (SWH 00319).

**3.12. Professional misconduct**

Action in serious breach of a professional code of conduct.

**3.13. Bringing the Trust into serious disrepute**

Any act by an employee that may undermine confidence in the Trust or any service provided by it.

The list above is not intended to be exhaustive.

**4. Criminal offences**

If an employee is arrested or charged with any offence, they are required to notify their manager as soon as reasonably practicable. The manager will consider whether the alleged offence has any implications for their employment. This obligation applies to staff at all times, including when on sick leave, annual leave, maternity leave etc. It should be noted that the Trust has a duty to follow the requirements of Professional Bodies in reporting any criminal charges to them.

Disciplinary action may be taken if there are reasonable grounds to believe that a criminal offence has been committed, whether or not there is also a prosecution pending. There is

the right to dismiss an employee without awaiting the outcome of legal proceedings when the Trust is satisfied, on the basis of the evidence available, that this is appropriate.

A manager may immediately suspend the employee from duty pending the outcome of an internal investigation and disciplinary proceedings if the alleged criminal offence could affect the employee's employment with the Trust. If as a result of the Trust's own investigations there are reasonable grounds to believe that the alleged criminal offence took place and that public confidence in the Trust could be undermined by that person's continuing employment, then the employee may be dismissed.

---

### 33 Appendix B: Procedure for Arranging a Disciplinary Hearing

It is the responsibility of the disciplining manager to ensure that the arrangements for a formal disciplinary hearing are in place.

#### 1. Notification of the Disciplinary Hearing

Prior to convening a disciplinary hearing, the following arrangements should be confirmed in writing with the member of staff:

- The date, time and venue of the hearing
- The precise details of the allegations or complaints against the employee
- The right to representation at the hearing
- Details of who will be present at the hearing and what their roles will be
- The names of witnesses whom the management side intends to call
- The requirement for the member of staff to notify the chair of the disciplinary panel of any witnesses they intend to call
- A statement of case for the hearing including all evidence and relevant documents which will be considered
- An indication of the possible consequences from the hearing

The disciplinary hearing should be held as soon as reasonably practical after the completion of the investigation. The staff member will be given at least 10 working days' notice in writing of a proposed disciplinary hearing. The written notice will include full details of the alleged breach of discipline and the potential consequences. The letter will also confirm the members of the disciplinary panel and the person who will present the management case. It will also confirm the right of the member of staff to call witnesses. Wherever possible, the hearing will be at a time and date acceptable to both parties.

#### 2. Documentation for the Disciplinary Hearing

The staff member will be sent two copies of the management case for the disciplinary hearing (including written statements, the names of witnesses and any other information that the investigating manager will be presenting in the case against the staff member) at least 5 working days before the hearing. Where the member of staff requests, the investigating manager will send a copy of the management case directly to their nominated staff side representative or other representative. In the event that no such request is made, it is the responsibility of the member of staff to pass one of the copies of the management case given to them on to their representative.

If the employee wishes additional documentation to be considered, they should provide a copy of the documents for the chair of the panel no less than 3 days in advance of the

hearing.

If the employee intends to call witnesses at the hearing, they should inform the chair of the panel of the names of the witnesses no less than 3 days in advance of the hearing. It is the responsibility of the employee to make the arrangements for the witnesses to attend.

### 3. The Disciplinary Hearing

At the beginning of the disciplinary hearing, the chair should:

- Introduce and explain the roles of everyone present
- Clearly state the purpose and nature of the hearing, including the fact that it is being held in accordance with the Disciplinary Policy
- Clearly state the allegations to be considered
- Explain the structure that the hearing will follow and confirm the witnesses which may be called by either side
- Ensure that all parties are aware that they can request an adjournment at any point during the hearing
- Ask for confirmation of whether any recordings are being made of the hearing, by either party.

The chair of the disciplinary panel will then ask the investigating officer to present the case against the member of staff, going through the evidence which has been gathered and calling any witnesses that may assist in the presentation of the facts. The members of the disciplinary panel and the employee and his/her representative will have the right to ask questions of the investigating officer and any witnesses.

The employee and their representative should be given every opportunity to answer the allegations or complaints in full and present any evidence in support of their case. The disciplinary panel may ask questions of the employee. The employee may also call witnesses. Such witnesses may be questioned by the disciplinary panel or investigating officer.

If matters are raised during the hearing which either side considers require further investigation, then the Chair should decide whether to adjourn the hearing for a mutually agreed period to allow this to happen. Any additional information which emerges must be shared with both parties and the employee must have the opportunity to respond.

Once all the evidence has been presented at the hearing, the chair should ask each side to sum up the main points of their case.

The chair should then adjourn the hearing and take whatever time is reasonable to make a decision regarding the disciplinary action, with the support of the Human Resources representative. In reaching a decision, full consideration should be given to all the facts

presented, including the employee's previous employment history and any mitigating circumstances. The chair should then decide, on the balance of probabilities, whether the allegations or complaints are valid and, if so, what action to take. Each case should be looked at on its own merits and any relevant circumstances taken into account.

Once the panel has reached a decision, the chair will then reconvene the hearing and verbally advise the employee whether disciplinary action will be taken and, if so, at what level. The chair should also consider and discuss with the employee the improvements in conduct which should be made, the method by which these can be achieved and the timescales for review.

The chair should also advise the employee of their right to appeal against a decision to take disciplinary action and to whom such an appeal should be addressed.

#### 4. Written notification of the outcome of the hearing

Following the disciplinary hearing, the chair of the panel must confirm the outcome of the hearing to the employee in writing within 5 working days. Please refer to section 22 "Written Confirmation of the Outcome of a Disciplinary Hearing" of the Disciplinary Policy for the information which should be included in the outcome letter.

---

## 34 Appendix C: Appeal Hearing Procedure

### Preliminary

- a. The Chair of the Panel will ensure that the appellant, their representative and the management representative (the disciplining officer) are introduced.
- b. The Chair of the Panel will ascertain the person taking the lead for the appellant, and will then outline the procedure to be followed in hearing the appeal.

### Appellant's Submission

- a. The appellant or the appellant's representative will state the appellant's case in the presence of the management representative, and may call witnesses.
- b. The management representative will have the opportunity to ask questions of the appellant, the appellant's representative and witnesses. The Appeal Panel will have the opportunity to ask questions of the appellant, the appellant's representative and witnesses.
- c. The appellant or the appellant's representative will have the opportunity to re-examine witnesses on any matter referred to in their examination by the Appeal Panel, or the management representative(s).

### Management Submission

- a. The disciplining officer will state management's case in the presence of the appellant and the appellant's representative, and may call the investigating officer or other people as witnesses if their evidence is relevant to the grounds of the appeal.
- b. The appellant or the appellant's representative will be given the opportunity to ask questions of the disciplining officer and witnesses.
- c. The Appeal Panel will have the opportunity to ask questions of the disciplining officer and witnesses.
- d. The disciplining officer will have the opportunity to re-examine witnesses on any matter referred to in their examination by the Appeal Panel, the appellant or the appellant's representative.

### Further Examination by the Appeal Panel

Nothing in the foregoing procedure shall prevent the Appeal Panel from inviting either party to elucidate or amplify any statement given, or from asking such questions as are necessary to determine whether or not it is proposed to call any evidence in respect of any part of the statement(s); or alternatively, whether either party is in fact claiming that the matters are within their own knowledge, in which case they will be subject to examination as a witness.

### Summing Up

- a. The appellant or the appellant's representative will have the opportunity to sum up their case.
- b. Following the appellant's summing up, the disciplining officer will have the opportunity to sum up the management's case.
- c. In summing up neither party may introduce any new matter.
- d. Adjournments
- e. The Chair of the Appeal Panel has discretion to adjourn the appeal for whatever period is necessary in order that further evidence may be produced by either party,

or for any other reason.

### **Adjournments**

The Chair of the Appeal Panel has discretion to adjourn the appeal for whatever period is necessary in order that further evidence may be produced by either party, or for any other reason.

### **Conclusion**

- a. Both parties will withdraw whilst the Appeal Panel considers the case.
- b. The Appeal Panel, together with the Human Resources representative will deliberate in private.
- c. The Appeal Panel may recall both parties to clear any point(s) of uncertainty on evidence given during the hearing. If recall is necessary both parties will return, notwithstanding that only one may be concerned with the matter giving rise to the doubt.

### **Decision of the Appeal Panel**

- a. Both parties involved will be recalled to receive the decision of the Appeal Panel. This decision is final and will be confirmed in writing.
- b. The Appeal Panel may decide just to give a written outcome rather than reconvening the hearing.
- c. When conveying the decision, the Chair of the Appeal Panel will outline the principal reasons for the decision.
- d. Notwithstanding the decision reached, the Chair of the Appeal Panel may wish to draw the attention of the parties concerned, either separately or jointly, to any matter of concern arising out of the appeals hearing.

### 35 Appendix D: Monitoring Compliance Form

<b>Title of Document</b>	<i>Disciplinary Policy</i>	
<b>Relevant Standards</b>	<b>Health &amp; Social Care Act</b>	<b>Other e.g. West Midlands Quality Review Service, Peer Reviews etc</b>
	19	

#### Monitoring/Audit Plan

<b>Process / minimum requirement to be audited / monitored</b>	<b>Lead</b>	<b>Tool/How</b>	<b>Written Reporting Frequency</b>	<b>Written Reporting Arrangements</b>
<i>HR Caseload update report to JNCC</i>	<i>Senior Human Resources Manager</i>	<i>Caseload update</i>	<i>At least twice yearly</i>	<i>To JNCC</i>

*The above Table outlines the minimum requirements to be audited/monitored; additional audits will be commissioned in response to deficiencies identified within the service through morbidity and mortality reviews/benchmark data provided by CHKS or in response to national initiatives e.g. NICE, RCOG guidelines and CNST standards.*

*Lessons learnt and action plans will be shared with all the relevant stakeholders.*

<b>Name:</b>	<i>Helen Kenyon</i>	<b>Job Title:</b>	<i>Senior Human Resources Manager</i>	<b>Date:</b>	<i>December 2018</i>
--------------	---------------------	-------------------	---------------------------------------	--------------	----------------------

**36 Appendix E: Equality Impact Assessment Form**

Has an Equality Impact Assessment been carried out?	<b>YES</b>
<b>Preliminary Stage 1 Equality Impact Assessment (must be completed if required*)</b>	
What date was Stage 1 completed and published?	<b>3<sup>rd</sup> December 2018</b>
Has a Full Assessment Stage 2 Equality Impact Assessment Tool been undertaken*?	<b>No</b>
If yes, what was the date of assessment and publication of Stage 2 and action plan?	<b>N/A</b>