

Disciplinary Policy, Procedure and Rules

Scope	Trust wide
Owner	Workforce and Development Group
Contact	Head of HR
Version	9
Issue Date	July 2012
Reviewed	March 2021
Next Review date	March 2024

Search summary:

In dealing with minor misconduct or unsatisfactory performance, managers should undertake informal discussion before embarking on disciplinary action.
The suspension policy is lodged within this document for convenience and does not imply that an employee is subject to any disciplinary process.

VERSION CONTROL

Document Location

Oxleas NHS Foundation Trust Intranet	<i>See under</i> HR Policies
--------------------------------------	------------------------------

Change History

Version	Owner	Changed by	Change summary	Date ratified
1	Workforce Group	N/A	First issue of policy	February 2005
2	Workforce Group	Carol Lenz	Second issue of policy	August 2008
3	Workforce Group	Lynda Town	Third issue of policy	March 2011
4	WLDG	Lynda Town	Amendment to appendix 4 and Appendix 5	Nov 2011
5	WLDG	Lynda Town	Amendment to reference to warnings and advisory discussions	July 2012
5.1	WLDG	Lynda Town	Amendment to appendix 3 and invite letter to confirm timescale for witnesses	Nov 2012
5.2	WLDG	Lynda Town	Amendment to section 20 regarding criminal convictions	February 2013
5.3	WLDG	Lynda Town	Amendment to Advisory Discussions and suspension	July 2013
5.4	WLDG	Lynda Town	Amendment to Appendix 10 cc to manager	April 2014
5.5	WLDG	Lynda Town	Amendment to suspension removal of proforma and inclusion of reason in letter. Update to list of standards of behaviour. Update re referral to appropriate bodies.	July 2014
5.6	WLDG	Lynda Town	Amendment to suspension letter regarding IT access.	Dec 2015
5.7	WLDG	Lynda Town	Amendment to timescales for investigations and details of timescale for allocation of investigation officer	April 2016
6	WLDG	Lynda Town	Fourth issue of policy, No changes	April 2017
7	Workforce Committee	Kim Gilbey	Amendment following changes to the Data Protection Regulations	May 2018
8	Workforce Committee	Kim Gilbey	Inclusion of Just Culture, Terms of Reference and Commissioning Managers. Template letters removed from policy.	April 2020
9	Workforce Committee	Kim Gilbey	Microaggressions, Just Culture guidance and pay progression restrictions included.	March 2021

Responsibility for distribution of this document:

Kim Gilbey, Head of Employee Relations & Staff Engagement

**DISCIPLINARY POLICY, PROCEDURE AND RULES
CONTENTS**

	POLICY	Page
1.	Introduction	4
2.	Application	4
3.	General Principles	4
4.	Right to be Accompanied	5
5.	Refusal to Participate in the Disciplinary Process	6
6.	Resignations Prior to Disciplinary Hearings	7
7.	Participation in the Disciplinary Process When On Sick Leave	7
	PROCEDURE	
8.	Just Culture Review	7
9.	The Role of Human Resources	7
10.	The Role of the Commissioning Manager	8
11.	Investigation	9
12.	Advisory Discussion	9
13.	Formal Procedure	10
14.	Written Warning	10
15.	Final Written Warning	10
16.	Dismissal Following Written Warnings	11
17.	Summary Dismissal	11
18.	Authority to Take Disciplinary Action	11
19.	Appeals	11
20.	Appeals Against Outcomes	12
	RULES	
21.	Introduction	13
22.	Standards of Behaviour and Conduct	13
23.	Breaches of Statutory Requirements	14
24.	Criminal Action	14
25.	Professional misconduct	15
26.	Implications for Pay Progression	15

Appendix 1	Disciplinary Flowchart
Appendix 2	Just Culture Guidance
Appendix 3	Advisory Discussion Guidelines
Appendix 4	Managerial Guidelines for Proceedings at Formal Disciplinary Hearings and Appeal Hearings
Appendix 5	Suspension Policy
Appendix 6	Timescales at a glance
Appendix 7	Microaggressions - Definition

1. INTRODUCTION

The aim of this document is to formulate arrangements which will ensure a non-discriminatory, fair, effective and consistent method of dealing with disciplinary matters throughout the Trust, which emphasises corrective rather than punitive measures.

Each manager has responsibility for ensuring that all staff members have been made aware of the Disciplinary Procedure and Rules. Each member of staff should be informed of the standards of conduct and work performance expected in their job. New staff will be referred to this document and encouraged to familiarise themselves with its contents.

2. APPLICATION

These procedures and rules apply to all staff employed by the Trust on matters concerning their personal conduct, including staff with honorary contracts, but excluding bank staff and staff of independent contractors providing a contract for services to the Trust. If the matter relates to performance, the Capability Procedure needs to be applied.

Matters relating to the professional conduct of medical staff will be dealt with in accordance with the Trust's Professional Standards Policy for Medical Staff.

In cases of known drug or alcohol addiction of staff, advice should be sought from the appropriate Director, the Director of Strategy and People or the Trust's Occupational Health provider, the interests of patients being paramount.

3. GENERAL PRINCIPLES

Managers will ensure that all action taken under this policy and procedure is fair and reasonable.

The Trust will seek to ensure that any failures or shortcomings of staff in relation to the duties and responsibilities of their posts or their behaviour are brought to the attention of the member(s) of staff at the earliest opportunity.

Alternatives to disciplinary action will be considered using the Just Culture methodology. Appropriate steps will be taken on an informal basis to secure a mutually acceptable remedy, where appropriate, with training, mentoring, target setting and monitoring. The Just Culture panels will determine whether a formal disciplinary investigation is required.

Where a formal investigation is required, a Commissioning Manager will be appointed to oversee the process. The Commissioning Manager is responsible for *commissioning* an investigation into the allegations made. They can hear the case, should it proceed to a hearing, or alternately they can commission a Hearing Manager.

The role of the Commissioning Manager is to lead and be responsible for managing the overall process and bringing the investigation to a timely conclusion. The Commissioning Manager will appoint an Investigating Officer. The Trust will endeavour to arrange this within 7 calendar days. Where there is a delay beyond this time, the Commissioning Manager will inform the member of staff.

Unless an exceptionally complex investigation is needed, the investigation should normally take no longer than 56 calendar days, once a decision has been made that a formal investigation is required. If the investigation requires further time, authorisation must be sought from the

Commissioning Manager. All parties involved in the disciplinary will be notified of any extension granted as well as the reasons for that extension.

Prior to any disciplinary investigation meeting, the employee will be informed of the nature of the complaint in writing at least 7 calendar days before the date of the meeting. Terms of Reference will be shared with them, so they are clear about the nature of the investigation and the support available to them.

A letter detailing the date, time and venue for a hearing will be sent no later than 7 calendar days prior to the hearing.

Within the management case, as part of the background information, any advisory discussions that have previously taken place in relation to the current issue(s) will be detailed. The Investigating Officer will have gained this information from the manager directly.

The disciplinary hearing panel shall not take into account any live or expired formal warnings until after the panel has made a decision as to whether any disciplinary offence has been committed. This is detailed in appendix 4; Managerial guidelines for proceedings at formal disciplinary hearings and appeal hearings.

The HR support for the chair will take along details of any live warnings that exist in order to share these at the appropriate time and any expired warnings. Any expired warnings can only be considered where the conduct is of a similar nature and there is clear justification. The justification will be for the panel to consider and decide upon.

The outcome of any formal disciplinary action will be recorded and held on the individual's personal file for the duration of the warning. The details will be removed at the end of the duration of the warning, unless there is a substantial reason for not removing these. Where issues of professional judgement are involved, a professional advisor to the panel may be required. The chair of the panel will appoint a suitable professional advisor where necessary and will have the final decision on the identity of the advisor. Where such an individual is not available within the Trust, an external expert may be sought.

Details of allegations/complaints should be shared with those who the allegations are made against as they need to be able to prepare and respond accordingly. A complaint letter will not normally be shared in full, particularly where an allegation has been made against a number of employees and the letter may not be relevant to a particular employee. Where a complaint letter is used, it may be necessary for certain parts of the letter to be anonymised or redacted where such parts would not be relevant to the investigation or it would not be appropriate to disclose such parts for the purposes of the investigation.

The purpose of notes of disciplinary hearings is to provide documentary evidence in the case of an appeal. These will, therefore, be made available to individuals on receipt of an appeal.

4. RIGHT TO BE ACCOMPANIED

The 'right to be accompanied' means that, by law, an employee can bring a relevant person ('companion') to a disciplinary hearing. In a disciplinary investigation meeting, there is no legal right to be accompanied, but it is good practice for employers to allow it.

If the employee wishes to be accompanied, they must choose their companion from one of the following:

- a work colleague
- a workplace trade union representative who is certified or trained in acting as a companion

- an official employed by a trade union.

Under discrimination law, employers must make reasonable adjustments for disabled employees. This might mean allowing someone else to attend, for example a support worker or someone with knowledge of the disability and its effects.

Where a manager has reasonable grounds to consider that there is an immediate or urgent need to suspend an employee at short notice, it may not always be possible for the employee to be accompanied.

It is the responsibility of each employee to arrange representation. The employee must tell the investigating officer/hearing manager who their chosen companion is, in good time before the disciplinary meetings. A companion is allowed reasonable time off from duties without loss of pay, but no-one is obliged to act as a companion if they do not wish to do so. It is the responsibility of the employee to provide his/her companion with any documentation and information relating to the issues and the disciplinary meetings.

If the employee's choice of companion is unreasonable, the Trust may require the employee to choose someone else, for example:

- if in the Trust's opinion the employee's companion may have a conflict of interest or may prejudice the meeting; or
- if the employee's companion works at another site and someone reasonably suitable is available at the site at which the employee works; or
- if the employee's companion is unavailable at the time a meeting is scheduled and will not be available for more than five working days afterwards.

Disciplinary standards apply to accredited staff representatives in the normal way with regard to their conduct as employees. Where action is proposed involving an accredited staff representative, the appropriate full time official or senior representative of the organisation will be contacted after the agreement of the accredited staff representative has been obtained and before any action is taken. It will normally be expected that an official from a trade union recognised by the Trust will accompany the employee at the hearing. Reference should be made to the Trade Union Recognition Agreement policy, if necessary.

If a companion is unavailable for the hearing the Trust will postpone and reconvene. The employee should suggest an alternative date within the next 7 calendar days. If this is not possible, the hearing will be arranged and, if the companion is not available on this occasion, the employee will need to choose an alternative suitable companion or the hearing will be heard without the presence of a companion.

The employee's companion is present in a supportive role and is permitted to address the hearing to put and sum up the employee's case, respond on behalf of the employee to any views expressed at the hearing and confer with the employee during the hearing. The companion will not be permitted to answer questions on behalf of the employee, address the hearing if the employee does not wish it or prevent the Trust from explaining their case.

5. REFUSAL TO PARTICIPATE IN THE DISCIPLINARY PROCESS

Employees who are unwilling, without sufficient reason, to respond to a statement of alleged misconduct and/or to attend a disciplinary hearing will have their case decided in their absence.

6. RESIGNATIONS PRIOR TO DISCIPLINARY HEARINGS

If an employee resigns during a disciplinary procedure, the investigation should be completed and if a disciplinary hearing would have been convened but for the resignation, the disciplinary hearing must still take place and a judgement taken based on reasonable grounds to determine

whether the allegations have foundation. The line manager will ensure that the employee is invited to attend the hearing as usual and will inform them that, if they choose not to attend, a decision will be made in their absence. Completing the investigation will allow the disciplining manager to make a judgement on whether further action is required, e.g. referral to a regulatory body or request the issue of an alert letter to protect the public. Any findings should also be reflected in any future work or professional references.

7. PARTICIPATION IN THE DISCIPLINARY PROCESS WHEN ON SICK LEAVE

The fact that an employee is on sick leave when facing a disciplinary hearing or when called as a witness, should not automatically cause delay in dealing with the matter. Managers must consider the nature of the illness or injury and decide whether it is reasonable to proceed with the hearing in the circumstances.

The following options may then be implemented:

- the employee(s) will be requested to attend the interview in person even if they are not fit for duty. This will, however, follow consultation with Occupational Health;
- the employee will be requested to submit a detailed written reply to the allegations or, if called as a witness, a written account of the relevant evidence; and/or
- the employee will be requested to brief a trade union representative to attend the hearing as their representative on their behalf.

PROCEDURE

8. JUST CULTURE REVIEW

When an alleged breach of discipline has occurred, it will be necessary for the appropriate manager to establish whether a prima facie case exists by gathering the facts:

- What actually happened?
- Who was involved?
- Was any explanation given by the employee?
- Were there any mitigating circumstances?
- Is suspension necessary?

Employees are required to provide statements, when requested, as part of their obligation as a healthcare professional. These should be provided within 48 hours of the request (any delay should be agreed with the person making the request). Statements must be clear, be dated, be named and signed.

Information gained during the preliminary review may be used within a disciplinary investigation and therefore employees involved will always be given the opportunity to seek advice or guidance from their trade union or professional association, prior to submitting a written account of events. This will not unreasonably hold up the preliminary investigation.

The preliminary fact-finding process should normally be concluded within 7 calendar days of the appropriate manager becoming aware.

Once the preliminary review has been carried out, the findings will be presented to a Just Culture panel. All incidents will be examined using the Just Culture Decision Template. The Just Culture methodology asks a series of questions to help clarify whether a formal disciplinary investigation is the right course of action to take. It helps to identify whether alternate actions would be more appropriate; including additional support, training or guidance for the individual concerned, or support/reviews for the wider team if the concerns are systemic (where singling

out one individual would be unfair and counter-productive). The methodology helps to ensure that all cases are assessed in a consistent manner and action taken is fair and transparent, regardless of staff group, profession, background or ethnicity.

The make-up of the Just Culture panels may vary across the Directorates. However, it is essential that there is a minimum of three people on each panel, to allow for an open discussion of the case. The panel should include a Senior Clinician or Senior Manager from the Directorate as well as an HR representative (further guidance is attached at Appendix 2).

9. THE ROLE OF HUMAN RESOURCES

A representative of the HR Directorate (either an HR Business Partner or HR Advisor) should be consulted by managers prior to the commencement of each stage of the procedure. Similarly, HR are available to advise employees of the appropriate procedure and their rights within it.

No formal disciplinary proceedings should commence or continue without the presence of a representative from HR to advise on the consistent application of all procedural matters.

10. THE ROLE OF THE COMMISSIONING MANAGER

When it is deemed necessary for a full investigation to be instigated, a Commissioning Manager will be appointed to oversee the process. The Commissioning Manager will ensure all initial fact-finding investigations have taken place and the Just Culture panel has been held.

Where a formal investigation is required, the Commissioning Manager will;

- Commission an Investigating Officer to undertake the formal investigation process,
- Notify the employee of the allegations to be investigated,
- Prepare the Terms of Reference for the Investigating Officer,
- Revisit the Terms of Reference and amend where necessary, if the Investigating Officer identifies any new information during the course of the investigation,
- Ensure the investigation proceeds in a timely manner and monitor this on a regular basis,
- Consider any requests from the Investigating Officer to extend the investigation timeframe and communicate the reasons for approved extensions to all relevant parties,
- Determine the appropriate action to be taken, on receipt of the findings of the investigation,
- Inform the employee concerned of the outcome of the investigation and any subsequent action.

If the decision is to deal with the matter informally, the Commissioning Manager will speak to the employee/s concerned about what they need to do to improve and in what timescale. A record of the informal outcome will be recorded on the employee's personnel file.

If the decision is to proceed to a formal hearing, the Commissioning Manager may hear the case themselves (if this does not pose a conflict of interest) or, alternatively, will commission a Hearing Manager.

11. INVESTIGATION

The Commissioning Manager will appoint an Investigating Officer to investigate the allegations. There should be no conflict of interest and the Investigating Officer should have received appropriate training. There should only be one Investigating Officer.

A full investigation will be carried out into the allegation or incident before any further formal action is taken. A person acting in the capacity of Investigating Officer may not also act as a witness in the same proceedings. The purpose of an investigation is for the Trust to establish a fair and balanced view of the facts relating to any disciplinary allegations against an employee,

before deciding whether to proceed with a disciplinary hearing. The amount of investigation required will depend on the nature of the allegations and will vary from case to case. It may involve interviewing and taking statements from the employee and any witnesses, and/or reviewing relevant documents. Investigative interviews are solely for the purpose of fact-finding and no decision on disciplinary action will be taken until after a disciplinary hearing has been held.

Employees must co-operate fully and promptly in any investigation. This will include informing the Trust of the names of any relevant witnesses, disclosing any relevant documents to the Trust and attending investigative interviews and/or giving a written account of events if required. Such written account should normally be compiled independently of other witnesses. Employees involved will always be given the opportunity to explain their actions and will be advised of their rights to seek advice or guidance from their trade union or professional association, prior to submitting a written account of events.

Once in full possession of the available evidence, the Investigating Officer with their HR representative should detail whether they feel there are grounds to proceed with a disciplinary hearing and present this to the Commissioning Manager. The Investigating Officer will make provisional findings of fact for each allegation, based on the evidence presented and clearly set out where there is a factual dispute. They will determine whether, on balance, there is a case to answer. They will also make recommendations as to the appropriate next steps, based on their provisional findings. Alternative recommendations may include taking the matter no further, arranging for training, counselling etc. The fact that an incident may have happened in isolation with no witnesses should not prevent a hearing proceeding if it is felt there are still grounds for concern following the investigation.

If, at any stage of the investigation, the Investigating Officer finds that there will be no requirement for a disciplinary hearing, they will share this information with the Commissioning Manager and the employee and his/her representative (if any) will be informed immediately.

The Investigating Team should always be present at any subsequent disciplinary hearing.

Suspension of the employee may be appropriate in potentially serious circumstances such as gross misconduct

In cases of potential fraud, the Trust Counter Fraud Officer should initially be contacted to discuss the case before any investigation is undertaken.

12. ADVISORY DISCUSSION

Initially, for minor matters of misconduct, a one to one informal advisory discussion should be undertaken. This can be a more satisfactory method of resolving problems than a disciplinary interview. The main objective of the discussion is to encourage and help the employee to improve and ensure there is a record of the discussion and the standards expected. The details of the discussion will therefore be confirmed in a letter within 7 calendar days of the advisory discussion (see the advisory discussion guidelines in appendix 2 for more details). The letter will be retained locally by the manager. Should the employee disagree with anything detailed in the letter they should raise this with the manager within 14 calendar days of receipt of the letter.

13. FORMAL PROCEDURE

No action will be taken under the formal stages of this procedure without a formal disciplinary hearing. Guidelines for proceedings at the disciplinary hearing are attached to this policy.

There are up to three levels of sanction in the formal disciplinary procedure for unacceptable conduct. These are:

- Written Warning
- Final Written Warning
- Dismissal.

The outcome of a formal disciplinary hearing will be confirmed at the hearing or, if this is not possible, sent to the employee by recorded delivery within 7 calendar days of the hearing. A written or final written warning will set out the nature of the misconduct and the change in behaviour or improvement in performance required (with timescales). The employee will be told how long the warning will remain current and what the consequences will be of any further misconduct within the set period. The employee will also be advised of his/her right of appeal.

The Chair of the disciplinary hearing may make additional recommendations, as well as determining the relevant sanction.

If a decision to dismiss is taken, this will only be taken by a manager who has the authority to do so. The employee will be informed as soon as possible of the reasons for the dismissal, the date on which the employment contract will end, the appropriate period of notice and their right of appeal.

If the decision is not communicated on the hearing day itself, the decision is valid from the date on which the decision is received by the employee, which shall be deemed to have been served or given:

- if it was served personally, at the time of service;
- if it was served by post, recorded delivery or special delivery, one (1) working day after it was posted.

14. WRITTEN WARNING

The warning will set out the nature of the offence and inform the employee that further misconduct is liable to result in further disciplinary action under this procedure. The warning will specify the period for which it will apply, which will be 12 months, and this will be placed for the specified period on the employee's personal file.

15. FINAL WRITTEN WARNING

Where there is already an active written warning on the employee's disciplinary record or the employee engages in misconduct that the Trust considers sufficiently serious to warrant a final written warning (even though there are no other active warnings on the employee's record), a final written warning will be issued.

The warning will set out the nature of the offence and inform the employee that further misconduct would render him/her liable to further action under this procedure up to and including dismissal. The warning will specify the period for which it will apply, which will be 18 months, and this will be placed for the specified period on the employee's personal file.

16. DISMISSAL FOLLOWING WRITTEN WARNINGS

If, despite formal warnings, an employee's conduct remains unacceptable and/or the employee commits an act or acts of further misconduct whilst he/she is under a final written warning, the employee will be liable to dismissal with notice or pay in lieu of notice following a disciplinary hearing.

However, if, during the period of a written warning, an additional but unrelated act of misconduct occurs, then the Trust may treat this incident as a separate matter, which will be

subject to this procedure. The Trust shall not be precluded from implementing any penalty up to and including summary dismissal.

17. SUMMARY DISMISSAL

If, after a full investigation and disciplinary hearing, the Trust is satisfied that gross misconduct has occurred, summary dismissal will be implemented. This is dismissal without notice or pay in lieu of notice. A summary dismissal may occur regardless of whether there are active warnings on the employee's disciplinary record. A non-exhaustive list of examples of gross misconduct are set out in the section entitled "Rules" below.

18. AUTHORITY TO TAKE DISCIPLINARY ACTION

Job titles and positions are constantly changing and evolving in line with the modernisation and development of the organisation. The job titles mentioned in this section are, therefore, illustrative only and the interpretation of this section should always ensure:

- That the decision-maker is of appropriate seniority and has authority and ability to uphold and enforce the decision.
- That any manager involved in an appeal has sufficient seniority to be empowered to reverse the original decision and must have had no previous involvement in the case.
- The dismissal of officers directly accountable to the Chief Executive must be agreed by the Trust Board.
- The following posts would be examples of those with authority to dismiss and to chair and serve on appeal panels:
 - The Executive Team comprising the Chief Executive, Deputy Chief Executive, Director of Finance, Medical Director, Director of People & Strategy, or Director of Nursing and Governance.
 - All Directors and nominated Deputies and Heads of Services.

19. APPEALS

Employees have the right to appeal against the issue of all formal written warnings or against dismissal.

The purpose of the appeal will be to determine whether the procedures were followed correctly; that the decision to take disciplinary action was fair and reasonable, and that the action taken was within a band of reasonable responses. Any new evidence should be allowed to be considered. However, if the employee raises any new matters in their appeal, the Trust may need to carry out further investigation. If any new information comes to light, the Trust will provide the employee with a summary including, where appropriate, copies of additional relevant documents and witness statements. The employee will have a reasonable opportunity to consider this information before the hearing. The outcome of an appeal will be communicated in writing.

Any intention to appeal must be notified in writing to the manager named in the letter confirming the outcome of the disciplinary hearing, within 14 calendar days of the receipt of the letter. The appellant's letter must state clearly the grounds for appeal which should fall within the definitions contained in the paragraph above and, if this is not the case, further information may be requested in order for the appeal process to continue.

An appeal hearing will be convened within 28 calendar days of receiving notification from the employee of his/her intention. If this requires further time, authorisation must be sought from the Director of People & Strategy. All parties involved in the disciplinary will be notified of any extension granted as well as the reasons for that extension.

If the employee is appealing against dismissal, the date on which dismissal takes effect will not be delayed pending the outcome of the appeal. However, if the employee's appeal is successful, the employee will be reinstated with no loss of continuity of service or pay.

The employee will be given at least 7 calendar days' written notice of the date, time and venue of the appeal hearing.

Both parties will be required to submit written statements of case no later than 5 calendar days before the appeal hearing, together with any supporting evidence. Management should set out the reasons for disciplinary action being taken. It should be sufficiently detailed to enable the employee to understand on what basis the decision was reached and to prepare his/her own case of defence. The employee's statement should set out clearly the grounds on which they are contesting the manager's decision. Both parties should provide details of any witnesses they intend to call.

If either of the statements provide significant new information, the manager hearing the appeal can delay the appeal hearing to allow for further investigations.

As soon as both statements are received they should be circulated to:

- The manager hearing the appeal;
- The manager presenting the case;
- The employee;
- The employee's representative.

20. APPEALS AGAINST OUTCOMES

Written Warning, Final Written Warning and Dismissal – there is one level of appeal.

When appealing against a written warning, final written warning or dismissal, employees have the right to a hearing before a manager senior to the manager who authorised the decision, as long as they have had no prior involvement. The decision taken at an appeal against a written warning/dismissal is final.

Appeal decisions may include:

1. Original decision is upheld.
2. Uphold the appeal, but substitute a less serious disciplinary penalty.
3. Re-instate the employee if he/she was dismissed.

The outcome stays on file from the original hearing date, not from the appeal date.

RULES

21. INTRODUCTION

The Trust has certain rules and regulations, including standing financial instructions, standing orders and standards of behaviour that are established for the wellbeing and safety of its staff and the efficient running of the Trust.

It is recognised that the following rules cannot be exhaustive, but are intended to be illustrative of the standards expected. Guidelines or rules may vary according to particular circumstances and the type of work and the size of the department. Many departments will have specific rules,

which will be communicated regularly to relevant staff and failure to observe these rules may also result in disciplinary action being taken.

22. STANDARDS OF BEHAVIOUR AND CONDUCT

Listed are examples of the inappropriate standards of behaviour and conduct which could result in disciplinary action. This list is not exhaustive. For capability issues in relation to performance, please refer to the Capability Procedure.

21.1 Conduct Justifying A Written Warning

- Failure to obey reasonable instructions or insubordination
- Persistent poor timekeeping
- Unauthorised absence
- Smoking on NHS premises
- Failure to report a data breach within 24 hours, in order for the trust to comply with its obligations under the General Data Protection Regulations (introduced in May 2018).

21.2 Conduct Justifying Final Written Warning, Dismissal or Summary Dismissal (Gross Misconduct)

- Inappropriate behaviour to clients/staff;
- Physical violence;
- Continued or repeated unauthorised absence;
- Theft, fraud, falsification of records, unauthorised access to records;
- Bullying and harassment;
- Repeated use of microaggressions, particularly related to race, disability, sexual orientation, age or gender identity;
- Deliberate misuse or damage to Trust property or the property of patients/clients or of fellow employees;
- Serious insubordination;
- Misuse of the Trust's name;
- Negligent care or treatment of patients/clients;
- Dishonesty;
- Endangering the health, safety or well being of staff, patients/clients or members of the public; this could include smoking in hazardous areas;
- Incapability through alcohol;
- Possession, or the use of, prohibited drugs;
- Serious breaches of security eg. Sharing of passwords;
- Misappropriation of Trust or Client's monies;
- Sleeping on duty;
- Accepting or effecting any bribe, gift or inducement in cash or kind;
- Failure to declare interests or hospitality received;
- Failure to disclose any criminal convictions, cautions, reprimands, bindovers/final warnings when these are incurred during employment;
- Failure to register with the appropriate professional body (where registration is mandatory);
- Failure to provide proof of the right to work in the UK;
- Serious breaches of confidentiality, eg disclosing confidential information or gaining unauthorised access to personal information. Refer to the Trust Confidentiality Code of Conduct for further details;
- Continued failure to report data breaches;
- Dereliction of duty, including failure to observe the relevant professional codes of conduct;

- Sexual misconduct, including carrying out of any sexual activity between a Trust employee and a person with a mental disorder whilst a relationship of care continues [NB: Sexual Offences Act 2003];
- Exceeding appropriate boundaries with clients regarding relationships/ contacts;
- Email and internet misuse in accordance with the Trust's policy;
- Any entries made inside or outside the workplace on internet social networking sites that are defamatory, derogatory, or discriminatory about the organisation, its customers, suppliers, employees or any clients of the Trust;
- Bringing the Trust into disrepute;
- Breach of trust and confidence;
- Misuse of the Trust's sickness policy;
- Covert recording of meetings or hearing processes.

23. BREACHES OF STATUTORY REQUIREMENTS

Where an employee no longer meets the statutory requirements of their post, the Trust may terminate employment – examples of this are registration with the appropriate professional body, proof of the right to work in the UK, driving licences, etc. In appropriate circumstances, alternative employment may be offered.

24. CRIMINAL ACTION

Where events giving rise to disciplinary action are the subject of police investigation or legal process, management reserves the right to take disciplinary action. The Trust will not usually wait for the outcome of any prosecution before deciding what action, if any, to take. Where the employee is unable or has been advised not to attend a disciplinary hearing or say anything about a pending criminal matter, the Trust may have to take a decision based on the available evidence.

In cases that involve patient/staff incidents it may be appropriate to refer the allegation to the Safeguarding Adults Procedure within the Borough where the incident occurred. This may or may not prevent the disciplinary procedure starting until the police investigation has been completed.

It is your responsibility to inform your manager or HR Business Partner with immediate effect if you receive any criminal convictions, cautions, reprimands, bindovers/final warnings during your employment with the Trust. You do not need to tell us if you are charged with a parking offence. Once you inform the Trust this information may, dependent on your role, have implications on your continuing employment. Failure to disclose any criminal convictions, cautions, reprimands, bindovers/final warnings will be deemed to be gross misconduct and the disciplinary procedure will be instigated.

A criminal investigation, charge or conviction relating to conduct outside work may be treated as a disciplinary matter if the Trust considers that it is relevant to the employee's employment. The main consideration will be whether the situation is one that makes the individual unsuitable for his/her type of work, or unable to satisfactorily fulfil their contractual obligations. Managers contemplating action under this heading will seek the advice of their HR Manager prior to taking any action.

The Trust reserves the right to suspend the employee from duty pending the outcome of any criminal investigation or proceedings depending on the nature and circumstances of the alleged criminal activity.

25. PROFESSIONAL MISCONDUCT

In addition to the Trust investigating possible misconduct and taking appropriate action, staff are reminded that the Trust has a responsibility to report any incident of alleged professional misconduct to the appropriate professional body and other appropriate bodies, for example the Disclosure & Barring Service, who may investigate the case. Consideration should also be given to whether there is a requirement to request an alert letter be issued.

Referrals will only be done on the completion of the Trust's internal procedures, except where this is required by the professional body at an earlier stage. For the HCPC a referral will be made prior to completion of the internal procedures where there is a separate police investigation or there has been a safeguarding referral.

It will be the responsibility of the disciplinary hearing panel to make any appropriate referrals. If there is an appeal this responsibility will pass over to the appeal panel. The appropriate referral forms should also be used.

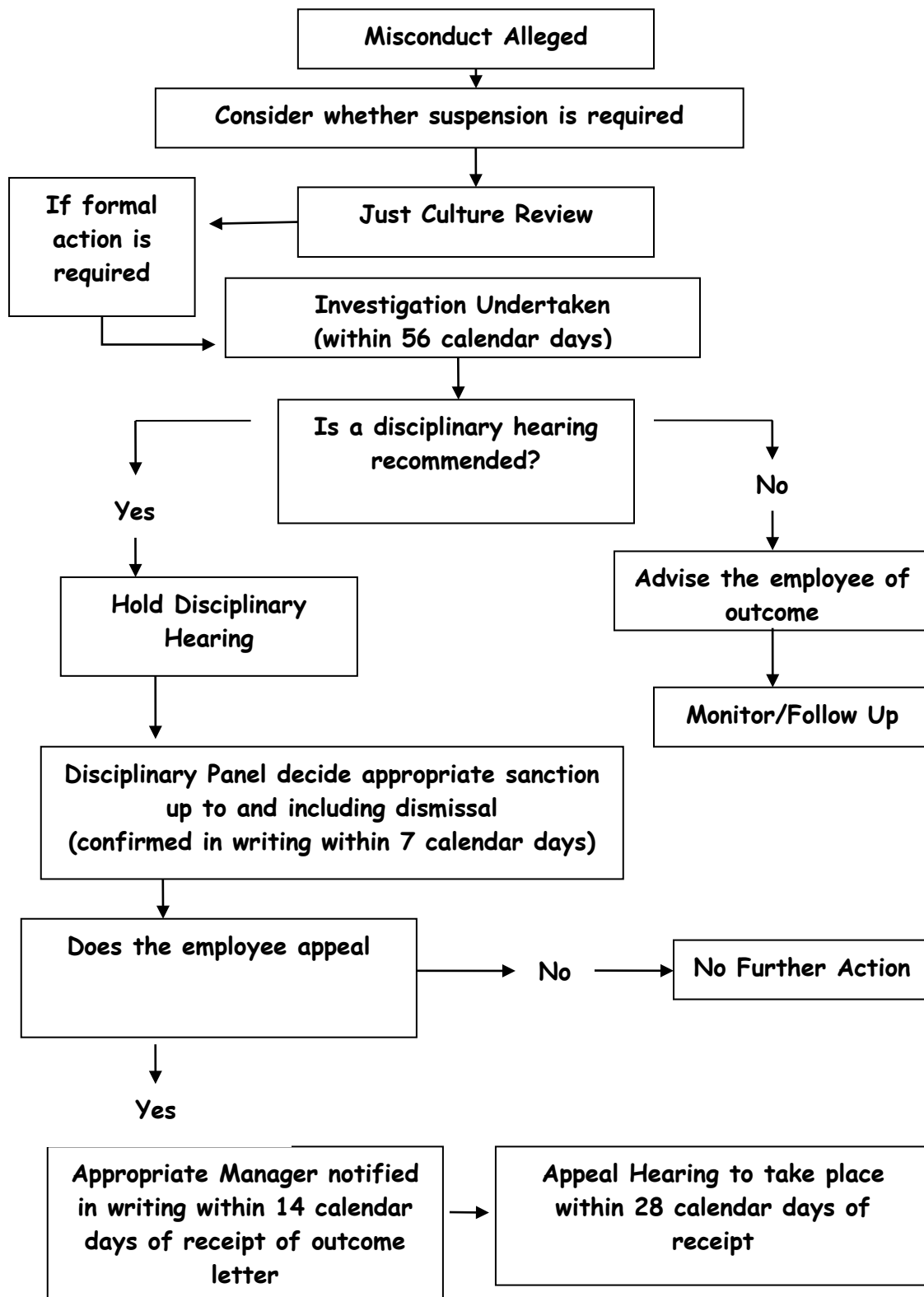
26. IMPLICATIONS FOR PAY PROGRESSION

If a formal warning is received as a result of a disciplinary hearing, this will have an impact on incremental pay progression in accordance with the 2018 national agreement to reform the Agenda for Change pay structures. Progression through incremental pay points is now conditional on individuals meeting agreed standards of conduct. Incremental progression will be withheld if, at the point of review, the member of staff has a live formal warning. Please refer to the Pay Progression Policy for further details.

Where pay progression has been withheld (or re-earned pay not awarded), this will be applied retrospectively if the outcome of the hearing is successfully appealed.

Suspension from work is a neutral act. Incremental progression / retention of re-earned pay should be confirmed automatically for staff who are suspended but meet the conditions for pay progression at the time of their increment date. Pay progression will also not be withheld for members of staff who are involved in a formal disciplinary investigation. Progression is only withheld at the review date if they have a live warning on file.

DISCIPLINARY FLOWCHART



JUST CULTURE GUIDANCE

The Just Culture model asks a series of questions to help clarify whether a formal disciplinary investigation is the right course of action to take. It helps to identify whether alternate actions would be more appropriate; including additional support, training or guidance for the individual concerned, or support/reviews for the wider team if the concerns are systemic (where singling out one individual would be unfair and counter-productive). The methodology helps to ensure that all cases are assessed in a consistent manner and action taken is fair and transparent, regardless of staff group, profession, background or ethnicity.

Just Culture deals with concerns around conduct, which should include the full range of issues, from persistent poor time-keeping, attitude or a failure in patient care. The list is not exhaustive and managers should refer to the Trust's Disciplinary Policy for further guidance. Some issues may have been dealt with in supervision previously, but should now be reviewed using the Just Culture methodology to ensure there is consistency in approach across the teams.

Just Culture does not apply to cases of sickness absence, poor performance (capability), grievances or bullying and harassment allegations. Managers should refer to the relevant Trust policies for these cases. Managers need to be aware of their obligations for new staff under the Trust's Probationary Period Policy and Procedure.

Just Culture process

When an incident occurs, the relevant Team Manager will need to discuss it with the member of staff in the first instance and advise them of the need to refer the case to a Just Culture panel. Appropriate support should be put in place for the member of staff, such as a referral to Occupational Health or Care First or arrangements made for extra supervision etc.

The Team Manager will be required to undertake a preliminary fact-finding exercise. This will include the collation of written statements from the member of staff concerned and any witnesses. This fact-finding exercise should not be as detailed as a formal investigation, but should be comprehensive enough to allow the panel to have a meaningful discussion about the events that led up to the incident.

The fact-finding exercise will normally cover the following points:

- What actually happened?
- Who was involved?
- Was any explanation given by the member of staff involved?
- Were there any mitigating circumstances?

If the incident is serious enough to warrant suspension, this must be discussed with the HR Business Partner for the Directorate and the Director of Strategy & People. The decision to suspend or temporarily redeploy a member of staff from the team will not be delayed whilst a Just Culture panel is convened.

The information collated in the fact-finding exercise should give sufficient background information to allow the panel to answer the questions in the Just Culture template (are there health concerns / are there clear protocols in place that the staff member would be aware of / have they undertaken the relevant training / are there mitigating circumstances). This initial fact-finding exercise should be completed within 7 calendar days of the incident, as per the Trust's Disciplinary Policy.

Cases should be reviewed at the earliest opportunity and decisions should not be delayed unnecessarily due to the timing of the next scheduled panel meeting. Discussions can be held remotely where required and the expectation is that the Just Culture panel will be held within 14 calendar days of the incident being identified.

The details of the fact-finding case should be sent in advance of the Just Culture panel to the Chair of the panel. Names should be redacted, to ensure confidentiality, although initials can be used if this helps provide clarity. Full details of the employee name and the incident will be recorded on the template that is retained by HR, so that the individual's protected characteristics can be captured for monitoring purposes.

The Team Manager will be required to attend the Just Culture panel to present the case and answer any additional questions, this is to allow for an informed decision to be made regarding appropriate next steps.

Just Culture panels

The make-up of the panels may vary across the Directorates. However, it is essential that there are a minimum of three people on each panel, to allow for an open discussion of the case. The make-up of the panel should be as diverse as possible.

The Chair of the panel will be the Professional Lead, Senior Clinician or Service Manager. They will have the authority to make the final decision if there is a lack of consensus. The panel can be made up of Line Managers from a variety of disciplines and backgrounds, to ensure there is a diverse range of views taken into consideration. However, it is important to have one panel member from the relevant discipline, who will be able to advise on expected standards of performance / practice. There will always be an HR representative on the panel, to provide policy guidance and advise on precedent.

Ground rules should be set by the Chair at the beginning of the Just Culture panel; in all instances confidentiality must be maintained. The panel should be reminded not to discuss the case outside of the meeting. In particularly sensitive cases, upon receipt of the case information, the Chair of the Just Culture panel may decide to limit the panel to themselves, the presenting manager, their line manager if appropriate and a member of the HR Team.

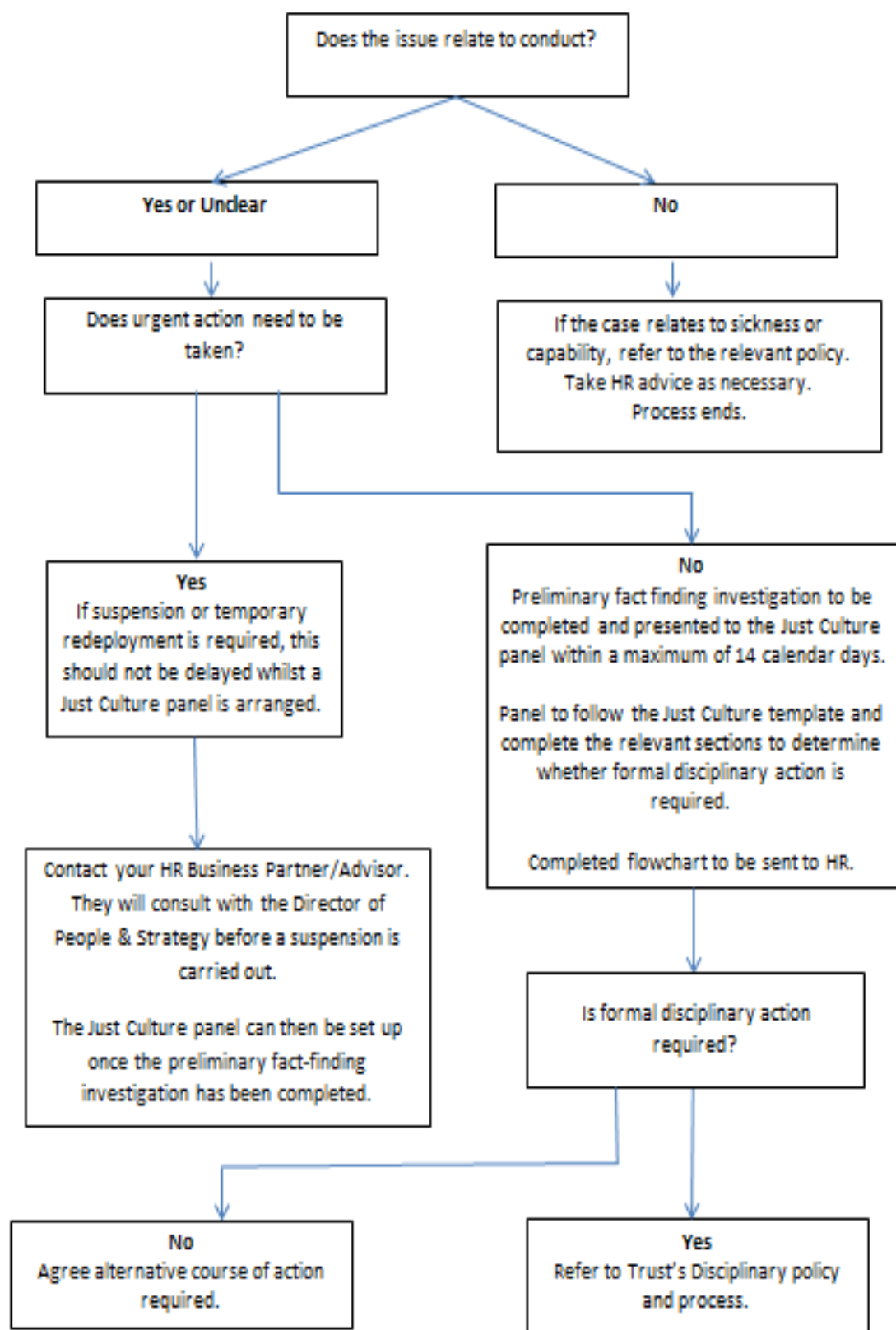
Next Steps

The Team Manager should inform the staff member of the outcome of the Just Culture panel as soon as possible, preferably in person where possible and support offered as appropriate.

If, upon completion of the Just Culture panel review, there is a decision to proceed to a formal disciplinary investigation, a Commissioning Manager and an Investigating Officer will need to be assigned. The Commissioning Manager could be the Chair of the Just Culture panel, providing there is no conflict of interest. Please see the disciplinary policy for further information on the role of the Commissioning Manager.

The Team Manager who presented the case to the Just Culture panel could be assigned to be the Investigating Officer (IO). However, if there is a conflict of interest or the Team Manager is required to be interviewed as a witness to the incident, an alternative IO will need to be identified.

Just Culture Flowchart



ADVISORY DISCUSSION GUIDELINES

An advisory discussion may often be a more satisfactory method of resolving problems than a disciplinary interview. It should take the form of a discussion with the objective of encouraging and helping the employee to improve. An employee does not have a right to be accompanied at an advisory discussion, however, if the employee requires assistance to overcome a disability or an interpreter, they should be allowed to bring a companion or speak to HR for advice. The employee should fully understand the outcome of the advisory discussion and should be encouraged to make a note of the discussion for reference purposes.

The discussion should be held out of the hearing of other employees. It should be a two way discussion, aimed at pointing out any shortcomings in conduct and encouraging improvement. Criticism should be constructive and the emphasis should be on finding ways in which the employee can remedy any shortcomings.

Any explanations, given by the employee, should be listened to by the manager. If it becomes clear that there is no case to answer, this should be made clear to the employee.

Where an improvement is required, the standards required should be fully explained. In addition it should be made clear how the performance or conduct will be reviewed and over what period. The employee should be told that if there is no improvement further disciplinary action may be taken.

If, during the discussion, it becomes clear that the matter is more serious, the discussion should be adjourned. It should be made clear that the matter will be pursued under the formal disciplinary procedure. If the manager has reason to request HR support, the employee will also be able to seek representation.

The manager will write to confirm the discussion within 7 calendar days of the meeting and retain a copy of the letter. This will not be placed on the personnel file. Should the employee disagree with anything detailed in the letter they should raise this with the manager within 14 calendar days of receipt of the letter.

MANAGERIAL GUIDELINES FOR PROCEEDINGS AT FORMAL DISCIPLINARY HEARINGS AND APPEAL HEARINGS**DISCIPLINARY HEARINGS**

The hearing should be held in a private place away from interruptions. The manager presenting the case will ensure that all the relevant facts and documentation are available.

The management representative will ensure that any witnesses who can do so attend the hearing, unless the employee accepts that witness statements are statements of fact in advance of the hearing.

The management representative should ensure that he/she is accompanied by a member of the HR department, in an advisory capacity.

The management representative shall state the management case and may call witnesses.

The employee and their companion (see the section entitled "Right to be Accompanied" above) shall have the opportunity to ask questions relating to the management case or anything that was stated during the formal procedure of the management representative and any witnesses.

The members of the panel shall have an opportunity to ask questions of anyone present.

The employee and companion shall present their case and may call witnesses provided the employee gives the Trust sufficient advance notice no later than 24 hours prior to the hearing, to arrange for the attendance of the witness(es). The employee's companion may make representations to the disciplinary panel and ask questions, but should not answer questions on the employee's behalf. The employee may confer privately with their companion at any time during the hearing.

The management representative(s) shall have the opportunity to ask questions relating to the employee case or anything that was stated during the formal procedure of the employee, his/her representative and any witnesses.

As witnesses are not present throughout the hearing, representatives of both management and the employee, as well as the panel, can question witnesses once they have provided their initial evidence. The panel is empowered to recall witnesses to the hearing if they consider that this will help in making the decision.

The management representative shall have the opportunity to sum up their case.

The employee and his/her representative shall have the opportunity to sum up their case.

Nothing in the foregoing procedure shall prevent the members of the panel from inviting either party to amplify any statement(s) made or from asking further questions in order to obtain as much relevant evidence as is available.

The panel may, at their discretion, adjourn the hearing in order that further evidence may be produced by either party. This may involve re-interviewing witnesses in the light of any new points arising at the hearing. The employee will be given a reasonable opportunity to consider any new information obtained before the hearing is reconvened.

Whilst the presentation of an employee's case may be undertaken by his/her companion, the employee will, unless agreed for exceptional reasons at the outset of the hearing, be expected to respond to direct questions from both the management representatives and the panel.

The panel shall deliberate in private with the option of recalling both parties to clarify any areas of uncertainty. If recall is necessary, both parties shall return, notwithstanding that only one may be questioned.

The disciplinary panel shall not take into account any statement of previous acts of misconduct by the employee or the issue of expired formal written warnings until after the panel has made a decision as to whether any disciplinary offence has been committed.

In the event of dismissal, the employee will be required to return all Trust property to the Trust. The Trust reserves its rights in relation to any of its property that is not returned.

The disciplinary panel will inform the employee in writing of its decision and its reasons for it within 7 calendar days of the disciplinary hearing. Where possible the disciplinary panel will also explain this information to the employee in person. The Chair of the panel may make recommendations for further action, for example additional training or review/monitoring arrangements.

APPEAL HEARINGS

An HR Business Partner will act as an advisor to the appeal hearing. The hearing will, whenever practicable, be at a mutually convenient time/date for all those involved.

In cases of appeals against dismissal, it may be necessary, at the request of the manager, employee or his/her representative, to have available to the panel a professional adviser who has experience of the particular discipline of the employee. The assessor will only advise the panel on any matter arising during the hearing that relates to the professional conduct of the employee.

In advance of the appeal hearing, the employee will submit a written statement of the grounds on which the disciplinary action is being contested in accordance with the appeals procedure. The names of any witnesses to be called will also be supplied.

The management representative will submit a written statement setting out the reason for the action taken, attaching any supporting information and indicating any witnesses to be called.

Statements of case will be circulated to the panel/manager hearing the appeal, management representative, employee and companion 7 calendar days before the hearing.

At the hearing the following will apply:

- a) The appellant or his/her representative shall put their 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, his/her representative and witnesses.
- c) The members of the appeal panel shall have the opportunity to ask questions of the appellant, his/her representatives and any witnesses.
- d) The appellant or their representative shall have the opportunity to re-examine the witnesses on any matter referred to in their examination by the appeal panel and the management representative.

- e) The management representative shall state the management case in the presence of the appellant and his/her representative and may call witnesses.
- f) The appellant or their representative shall have the opportunity to ask questions of the management representative.
- g) The members of the appeal panel shall have the opportunity to ask questions of the management representative and any witnesses called by the management representative.
- h) The management representative shall have the opportunity to re-examine the witnesses on any matter referred to in the examination by the appeals panel, the appellant or their representative.
- i) The management representative and the appellant or their representative shall have the opportunity to sum up their cases if they so wish. The appellant and their representative shall have the opportunity to conclude the presentations.
- j) Nothing in the foregoing procedure shall prevent the members of the appeal panel from inviting either party to clarify or amplify any statement they may have made or from asking further questions as may be necessary.
- k) The appeal panel may at its discretion adjourn the appeal in order that further evidence may be produced by either party to the dispute. The employee will be given a reasonable opportunity to consider any new information obtained before the hearing is reconvened.
- l) The management representative, the appellant and their respective representatives shall then withdraw.
- m) The appeal panel shall deliberate in private, recalling, if necessary, both parties to clear points of uncertainty on evidence already given. If recall is necessary both parties shall return notwithstanding that only one party may be concerned with the point giving rise to doubt.
- n) The disciplinary appeal panel will inform the employee in writing of its decision within 7 calendar days of the disciplinary appeal hearing. Where possible the disciplinary appeal panel will also explain this information to the employee in person.

SUSPENSION POLICY

1.0 INTRODUCTION

The Trust recognises that there may be occasions where it is necessary to suspend an employee from duty. This policy outlines the purpose and principles to be followed in the case of suspension.

2.0 DEFINITION

Paid suspension is where an employee of the Trust, who is available to work, continues to receive their normal full pay, but is not required to attend or undertake work for or on behalf of the Trust. A suspension transfer occurs where an employee is available to attend or undertake work, but is directed to work in another department or location as an alternative to suspension.

Suspension in itself is not disciplinary action and does not in any way imply guilt, however it is recognised that this may be a difficult and upsetting time for staff. It should be implemented to enable a thorough examination of the facts and/or when there is agreement with the member of staff that it is clearly undesirable for them to remain on duty or in the work place. Suspension of the employee may be appropriate in potentially serious circumstances such as allegations of gross misconduct. Managers should consider alternatives to suspension where appropriate and document the reason for suspension in the suspension letter. A condition of continued payment during suspension will be that the employee must be available during normal working hours to attend any meeting that may be convened as part of any investigation. In addition, during any period of suspension, an employee should not visit any Trust premises, access any Trust IT systems or contact any of the Trust's clients, customers, suppliers, contractors, staff or patients unless the employee has been authorised to do so by an appropriate manager. Any restriction from premises does not apply in instances where an employee, as a patient, is required to attend Trust premises in order that they may receive treatment.

In the case of a lapse in registration in line with the Professional Registration policy suspension may be unpaid. For the case where an employee does not appear to have the appropriate documentation to prove they have a right to work in the UK suspension will be paid until clarification is gained from the UKBA that they are not legally able to work in the UK and at this time suspension will move to unpaid. Where this lapse is due to the employee having not acted in good time to prove their right to work in the UK the suspension will be on nil pay.

3.0 AUTHORITY TO SUSPEND

As suspension is only undertaken in particular circumstances. A decision to suspend can only be taken by the appropriate senior manager of the Trust, i.e. the manager of the employee's line manager and with prior discussion with HR. Where this is impracticable because, for instance, the decision needs to be taken out of hours, then the most appropriate senior manager on call will be charged with making the decision.

The Director of People & Strategy should be advised where suspension is agreed.

4.0 PRINCIPLES

The reasons for suspension will be explained to the individual and confirmed in writing by the manager **within 48 hours**. The individual will have the opportunity to be accompanied during the manager's explanation wherever possible or practicable and if required. The employee should

be advised of his/her right to seek help and advice from his/her recognised union or staff organisation before commenting on an allegation.

During suspension a number of individuals will maintain contact which will include the line manager, the investigation officer (when appointed), or a Trade Union representative/HR. There will also be support available via Occupational Health and Care first.

Every attempt will be made to ensure that the period of suspension is kept to a minimum and will be for no longer than is necessary to investigate the allegations. Where a member of staff has been suspended in excess of 4 weeks, the Director of People & Strategy will, in conjunction with the appropriate manager, consider whether the suspension should be extended beyond that point. A fortnightly review must then be undertaken and the employee kept regularly informed of decisions affecting the length of the suspension. The Trust can choose to not apply this timescale at its discretion in cases involving police enquiries or where legal proceedings are pending depending on the particular circumstances of the case.

It is important that the Trust takes every measure possible to increase patient safety and will, therefore, consider if it is required to advise any other organisations of the suspension.

Appropriate departments should be informed of the suspension eg. Temporary Staffing, IT and managers should complete a Change Form.

Consideration should be given to whether any appropriate bodies need to be informed of the suspension in line with their guidance.

TIMESCALES AT A GLANCE

Suspension

- 48 hours to receive a letter confirming suspension.

Disciplinary hearing

- 7 calendar days to identify an investigation officer
- 58 calendar days to complete investigation, if not authorisation must be sought from Director of HR & OD. All parties involved in the disciplinary to be notified of any extension granted as well as reasons for the extension.
- 7 calendar days prior to investigation meeting to receive details of allegations.
- 7 calendar days written notice of date, time and venue of disciplinary hearing including the investigation report and any other documentation.
- Any further written statement or mitigating circumstances for disciplinary hearing to be submitted no later than 5 calendar days before the hearing.
- If representative unable to attend hearing, employee to suggest alternative date within next 7 calendar days.
- 7 calendar days to receive outcome of hearing.
- 14 calendar days to appeal against outcome from when outcome letter is received.

Appeal hearing

- 28 calendar days to complete an appeal process, if not authorisation must be sought from Director of HR & OD. All parties involved in the disciplinary to be notified of any extension granted as well as reasons for the extension.
- 7 calendar days written notice of the date, time and venue of the appeal hearing.
- Both parties required to submit written statement of case together with any supporting evidence for appeal hearing to be submitted no later than 5 calendar days before the hearing.
- 7 calendar days to receive outcome of appeal hearing.

MICROAGGRESSIONS - DEFINITION

Microaggression is a term used for brief and commonplace verbal or behavioural indignities, whether intentional or unintentional, that communicate hostile, derogatory, or negative prejudicial slights and insults towards any group, particularly culturally marginalised groups.

Psychologist Derald Wing Sue defines microaggressions as "brief, everyday exchanges that send denigrating messages to certain individuals because of their group membership". The person making the comments may be otherwise well-intentioned and unaware of the potential impact of their words.

Microaggressions can be experienced by anyone perceived as outside or 'other' to the group in the majority or who hold the power.

Examples of Racial microaggressions

- *"You have a fantastic vocabulary for someone whose first language isn't English."*
- *"Is that something that's common in your culture?"*
- *"How do you say your name again? I can never remember how to pronounce your name, can I just call you..."*

Examples of Gender Identity microaggressions

- Comments about what toilet a person uses or what they are wearing (these are often dismissed as banter or a joke),
- Insisting on using the trans person's birth name,
- Refusing to acknowledge a person's gender identity, regardless of their expressed choice.

Examples of Disability microaggressions

- *"What's wrong with you? You don't look unwell."*
- *"Dyslexia isn't really a disability"*
- *"I'm a bit OCD too".*

Examples of Sexual Orientation microaggressions

- Mimicking a tone of voice that suggests someone is gay or a lesbian based on stereotypes
- Making an assumption that a lesbian or gay couple does not have children.

Examples of Gender (Sex) microaggressions

- Questioning women about when they plan to have children
- Assumptions about male versus female characteristics
- Women teasing men about 'man flu'
- Men or younger colleagues making jokes about hot flushes and menopause.

Examples of Age microaggressions

- Shouting at an older person or using the same voice you would use with a small child
- Asking an older colleague when they are going to retire
- Jokes about newly registered / recruited colleagues being young, with the implication they can't know much.