

# East Kent Hospitals University NHS Foundation Trust

## Disciplinary Procedure

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## Version Control Schedule

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2	January 2007	Martin Luff, Head of Corporate HR	Archive	
3	July 2009	Martin Luff, Head of Corporate HR	Archive	
4	April 2012	Martin Luff, Head of Corporate HR	Archive	Process pragmatism updates
5	February 2013	Martin Luff, Head of Corporate HR	Archive	Counter Fraud and Procedural Update
6	September 2013	Martin Luff, Head of Corporate HR	Archive	Francis Report principles of openness, transparency and candour included
7	August 2014	Martin Luff, Head of Corporate HR	Archive	Nominated person to lodge appeal and timescale revised
8	March 2016	Martin Luff, Head of Employee Relations	Archive	Amendments to Disciplinary Offences list, Fraud section updated, "Status of Expired Warnings" section added
9	July 2019	Martin Luff, Head of Employee Relations	Archive	Amendments to: disciplinary offences list to include gambling at work; suspension section revised; option for employee to agree to written warning without the need for a disciplinary hearing
9.1	September 2019	Martin Luff, Head of Employee Relations	Archive	Amendments to Disciplinary Offences list for 1) bullying, harassment and discrimination and 2) prohibition on smoking
10	August 2021	Martin Luff, Head of Employee Relations	Active	Re-write to embed "just culture" way of working and recommendations from the NHS Chief People Officer as set out in her 1 December 2020 Dear Colleague letter "Sharing Good practice to improve our people practices"

## Consultation and Ratification Schedule

Name and Title of Individual	Date Consulted
Human Resources: Employee Relations, HR Business Partners, ER Advice, Senior HR Managers	August 2021
Fraud Team	August 2021
Occupational Health	August 2021

Hempsons Solicitors	August 2021
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## **Associated Documentation**

The following Trust procedural and guidance documents are cross-referenced:-

Disciplinary Procedure – Managers Toolkit

Maintaining High Professional Standards in the Modern NHS Policy

Performance Improvement Policy and Procedure

Sickness Absence Policy

Anti-Fraud, Bribery and Corruption Policy

Parents Toolkit

Managing Allegations Against Staff Policy

Fit and Proper Persons Requirement Policy

Smoke Free Policy

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## **1. Policy Summary**

- 1.1. This policy describes the Trust's disciplinary procedure, which must be followed fairly in all instances where disciplinary action is regarded as necessary.
- 1.2. This document sets out the Trust Policy and Procedure in relation to a colleague's conduct. The Trust expects all employees to meet high standards of behaviour. It is important that employees understand their obligations and rights regarding this aspect of employment.

## **2. Introduction**

- 2.1. The Trust requires high standards of conduct from everyone and is committed to helping people improve and learn from mistakes. This policy and procedure is designed to ensure a fair, systematic and consistent approach is taken when an employee's behaviour or action is in breach of workplace rules or falls short of the expected standards.
- 2.2. This policy has been developed in consultation with the Trust's recognised trade unions and is in accordance with the ACAS Code of Practice on disciplinary procedures.

## **3. Principles of Openness, Transparency and Candour**

- 3.1. All staff must be honest, open and truthful in all their dealings with their colleagues, patients and the public. Organisational and personal interests must never be allowed to outweigh the duty to be honest, open and truthful.
- 3.2. The Trust supports the consistent, constructive and fair evaluation of the actions of colleagues involved in patient safety incidents using the NHS Improvement just culture guide.
- 3.3. The fair treatment of colleagues supports a culture of fairness, openness and learning in the NHS by making staff feel confident to speak up when things go wrong, rather than fearing blame. An objective and prompt examination of the issues and circumstances should be carried out, including giving employees the opportunity to respond in order to determine whether there are truly grounds for a formal investigation and/or for formal action.

## **4. Purpose and Scope**

- 4.1. This procedure applies to all employees. Performance issues which relate to an individual's capability will be handled under the Trust's Performance Improvement Policy and Procedure. Professional conduct and competence issues for medical and dental staff are covered by a separate Trust policy

and procedure titled Maintaining High Professional Standards in the Modern NHS.

- 4.2. The procedure provides a framework to manage concerns about someone's conduct in a fair and timely way. It aims to help people achieve and maintain required standards of conduct.
- 4.3. This procedure does not form part of any employee's contract of employment and it may be amended at any time. We may also vary this procedure, including any time limits, as appropriate in any case.

## **5. Duties**

### **5.1. Line Managers**

- 5.1.1. Managers are responsible for ensuring their team is aware of the required standards of conduct and for bringing any concerns to the attention of employees at the earliest opportunity.
- 5.1.1 Managers should try to resolve minor matters of concern informally. If informal approaches do not bring about improvement or if misconduct is sufficiently serious, formal stages of this procedure should be followed.
- 5.1.2 Managers will ensure that all action taken under this policy and procedure is reasonable and proportionate. During the investigation stage, employees will be told why disciplinary action is being considered and they will be given the opportunity to respond to allegations before decisions about formal sanctions are taken.

### **5.2. Human Resources**

- 5.2.1. The Human Resources team will provide to support and advice to the Commissioning Manager, Hearing Officer, Case Manager, Case Investigator and Line Managers.

### **5.3. Commissioning Manager**

- 5.4. The Commissioning Manager will appoint a case manager and case investigator. The Commissioning Manager will be a senior manager at 8b or above within the Care Group or Corporate area. The Commissioning Manager will have no previous involvement in the case and will provide independent oversight.

### **5.5. Case Manager**

- 5.5.1. The case manager, with assistance from human resources will draw up the terms of reference for the investigation. On receipt of the case investigator's report, the case manager should decide whether the case should proceed to

a formal disciplinary hearing, having taken HR advice and discussion with the commissioning manager. They should produce a case manager report and present the investigation report within this report for review by a hearing officer/panel.

- 5.5.2. The case manager will have received relevant training/support from HR in order to carry out the role.

## **5.6. Case Investigator**

- 5.6.1. The case investigator is responsible for leading the investigation into any allegations or concerns against an employee, establishing the facts and reporting the findings to the case manager, via a report. In some cases, the evidence will be factual and straightforward and there will not be a need for a lengthy investigation process. It may simply be a case of taking a statement from the employee and collating relevant documentation. In other cases, the issues may be more complicated and involve interviewing the employee and taking a statement from them and other witnesses.

- 5.6.2. The case investigator should ensure that a thorough investigation is undertaken.

- 5.6.3. The case investigator will have received relevant training/support from HR in order to carry out the role.

## **5.7. Hearing Officer**

- 5.7.1. The hearing officer should consider the report from the case manager and case investigator and any representations made by the employee and decide, following a disciplinary hearing, whether an act of general misconduct or gross misconduct has been committed and if so, the disciplinary sanction that should be made.

- 5.7.2. The Hearing Officer will have received relevant training/support from HR in order to carry out the role.

## **6. Handling Allegations of Misconduct and Investigating the Facts**

- 6.1. Allegations of misconduct will be carefully assessed by the relevant manager, with HR advice, to decide if the matter can be managed informally where possible or whether there are grounds for further investigation and/or formal action.

- 6.2. The manager will carry out some initial fact finding and meet the employee to establish their version of events. The manager may also meet with other relevant individuals to gain a good understanding about what has happened.



- 6.3. Where it is decided that further investigation and/or formal action is appropriate, this must be approved by the Commissioning Manager (8b and above) having taken senior HR advice. The Commissioning Manager will have no previous involvement in the case and will provide independent oversight.
- 6.4. Investigations will be carried out by a case investigator without unreasonable delay. The case manager will be responsible for clearly defining what is to be investigated within an investigation terms of reference.
- 6.5. Depending on the circumstances of the case, the employee may be invited to attend an investigatory interview. If such an interview is held prior to a disciplinary hearing, the employee will be informed at the outset that the interview is an investigatory interview. Employees can be accompanied at investigation meetings by a work colleague trade union representative, where this does not unreasonably delay the investigation. The Trust reserves the right to dispense with an investigatory interview and to proceed directly to a formal disciplinary hearing.
- 6.6. Once the case investigator has completed their investigation the case manager will consider the findings and having taken HR advice and discussed with the commissioning manager will decide if further action is required; whether the matter can be dealt with informally or whether formal action may be appropriate.
- 6.7. Where the issues are anticipated to be general misconduct issues resulting in a first written warning, or a final written warning, then a “fast track”, agreed disciplinary action approach may be appropriate, please refer to Section 9 and Appendix B of this Procedure.
- 6.8. Where the case manager believes there is a case to answer at a formal hearing, they will ensure a report is prepared to supplement the case investigator’s report setting out their decision. The case manager should ensure that all relevant information is presented at the hearing including background information about the employee, their work record and any mitigating factors to ensure a full and balanced case is presented for the hearing panel to consider.
- 6.9. If a reference request is received whilst an employee is under a disciplinary investigation there is a duty of care to provide a reference that is true, accurate and fair and which does not present facts so as to give a misleading impression overall. A manager providing a reference in these circumstances should consider its duty to both the recipient and the subject of the reference when deciding what to include. This may involve taking human resources

advice before including a potentially contentious point in a reference.

- 6.10. For medical and dental staff please also refer to the Trust Policy on Maintaining High Professional Standards in the Modern NHS.

## **7. Support for Individuals Involved in Investigation and Disciplinary Processes**

- 7.1. Concern for the health and welfare of people involved in investigation and disciplinary procedures should be paramount and continually assessed. Appropriate professional occupational health assessments and intervention should be made available to any person who either requests or is identified as requiring such support.
- 7.2. All communication, in whatever form it takes, should be timely, comprehensive, unambiguous, sensitive and compassionate.
- 7.3. The line manager should keep in regular contact with any employees involved in investigations or disciplinary process to check on their welfare and offer support.

## **8. Informal Management**

- 8.1. The Trust recognises that cases of minor misconduct are best dealt with informally and quickly. A quiet word is often all that is needed.
- 8.2. In many cases additional training, coaching and advice may be needed. When there are concerns about conduct, managers will speak with the person in private as soon as possible, normally within a few days. This will be a two-way discussion, aimed at talking through shortcomings and encouraging improvement.
- 8.3. Feedback should be constructive with an emphasis on finding ways to improve. The manager will make sure the employee understands the standards expected and will explain how their conduct will be monitored and set a clear timescale for improvement. Managers will discuss with employees any support or training they may need. Managers should keep brief notes of any informal action, share these with the employee and add this to the employee's personal file.

## **9. Agreed Disciplinary Action (Fast Track Process)**

- 9.1. The Trust has introduced a 'Fast Track' system within the Disciplinary Policy to help speed up the process of employees being disciplined, where they admit to the allegations made and the expected outcome of the investigation would result in a sanction of First Written Warning (for general misconduct

offences) or a Final Written Warning (for further general misconduct offences when an employee is already in receipt of a First Written Warning) without completing a full disciplinary investigation.

- 9.2. This fast track process will apply where:
  - 9.2.1. the Trust considers that the alleged misconduct falls into the general misconduct category (and this will be confirmed in any disciplinary invite letter) and;
  - 9.2.2. the employee admits in writing the general misconduct.
- 9.3. The Fast Track Process should not be used in cases of short-term sickness absence, these should be taken forward through the Trust Sickness Absence Policy and Procedure.
- 9.4. The Fast Track Process should not be used where the alleged misconduct falls into the gross misconduct category.
- 9.5. The Fast Track Principles set out in Appendix B should be followed.
- 9.6. The employee or employee representative may write to Human Resources to inform them that the employee agrees to receive either a First Written Warning or a Final Written Warning (see paragraph 9.1 above) without the need for a disciplinary hearing.
- 9.7. Human Resources and the commissioning manager will consider the request and may agree to the request or refuse it as they consider appropriate. The commissioning manager may propose an alternative disciplinary sanction short of dismissal.
- 9.8. If the commissioning manager and the employee/employee representative agree on the disciplinary sanction then that will have the same effect as if it had been given after a disciplinary hearing.
- 9.9. There is no right of appeal against any disciplinary action agreed in this way.

## **10. Formal Procedure**

- 10.1. Once the matter has been investigated and it has been established that there is a case to answer, a disciplinary meeting 'hearing' will be arranged.
- 10.2. The hearing should be held as soon as possible after the investigation. Managers, employees and their representatives must make every effort not to unreasonably delay meetings.
- 10.3. To proceed to a hearing, approval must be obtained from the Head of Employee Relations after careful consideration of the evidence gathered to date.

## **11. Disciplinary Offences Definitions**

### **11.1. General Misconduct**

11.1.1. The Trust reserves the right to implement the disciplinary procedure at any informal or formal stage taking into account the alleged misconduct of the employee. In appropriate cases, the Trust has the discretion to issue a higher sanction than a first written warning for general misconduct offences.

11.1.2. The following list gives examples of the circumstances that could lead to formal disciplinary action (this list is not exhaustive):

11.1.2.1. persistent bad timekeeping;

11.1.2.2. unauthorised absence;

11.1.2.3. absence without leave (AWOL);

11.1.2.4. minor damage to the Trust's facilities or property;

11.1.2.5. failure to observe the Trust's policies and procedures;

11.1.2.6. minor breaches of professional codes of conduct;

11.1.2.7. failure to provide sickness certificates promptly;

11.1.2.8. failure to follow the Trust Standing Financial Instructions;

11.1.2.9. unreasonable refusal to follow an instruction issued by a manager or supervisor;

11.1.2.10. failure to inform the Trust of secondary employment with another employer;

11.1.2.11. bullying and harassment;

11.1.2.12. refusing to work;

11.1.2.13. misuse of social media affecting the reputation of the Trust or causing colleagues distress or offence;

11.1.2.14. breach of confidentiality;

11.1.2.15. misuse of authorised access to information and systems, unauthorised access to information and systems, and any activity that could breach the security of the Trust ICT infrastructure and any other breach of the Trust Information Security Policy;

11.1.2.16. breach of the Trust Mobile and Smartphone Policy including using a mobile phone for Trust business use whilst driving a Trust motor vehicle or whilst using their own car on Trust business;

11.1.2.17. failure to comply with health and safety requirements;

- 11.1.2.18. failure to inform their manager of any charge, caution or conviction relating to acts committed on or off duty;
- 11.1.2.19. failure to maintain registration where this is a requirement of the job;
- 11.1.2.20. failure to display We Care values in interactions with other people;
- 11.1.2.21. behaviour outside of work that could affect the professional reputation of the individual or the reputation or operations of the Trust.
- 11.1.2.22. smoking on site.

Vaping is allowed on Trust grounds but is prohibited in any Trust building. Staff must cover their uniform/ID badges when vaping. Staff who vape on or off site must adhere to the criteria detailed in the Smoke Free Policy at all times.

## **11.2. Gross Misconduct**

- 11.2.1. Gross misconduct is misconduct of such a serious and fundamental nature that it breaches the contractual relationship between the employee and the Trust. In the event that an employee commits an act of gross misconduct, the Trust will be entitled to terminate summarily the employee's contract of employment without notice or pay in lieu of notice. Matters that the organisation views as amounting to gross misconduct include (this list is not exhaustive):
  - 11.2.1.1. stealing from the Trust, members of staff or the public or other offences of dishonesty, including fraud and/or corruption;
  - 11.2.1.2. deliberate falsification of a qualification that is a stated requirement of the employee's employment or results in financial gain to the employee;
  - 11.2.1.3. deliberate falsification of records, reports, accounts, expense claims or self-certification forms, whether or not for personal gain;
  - 11.2.1.4. failure to report incidents which could cause harm to others, e.g. break down of equipment or errors in administration of patient treatment;
  - 11.2.1.5. working without valid right to work documentation;
  - 11.2.1.6. working without statutorily required qualifications;
  - 11.2.1.7. false declarations made during the recruitment process;
  - 11.2.1.8. working elsewhere whilst on sick leave;

- 11.2.1.9. continued/extended absence without leave (AWOL);
- 11.2.1.10. receipt of money, goods, favours or excessive hospitality in respect of services rendered whilst a Trust employee;
- 11.2.1.11. sexual misconduct at work or outside work where this brings the Trust's name into disrepute;
- 11.2.1.12. fighting with or physical assault on a patient, member of the public or fellow employee;
- 11.2.1.13. verbal assault, or menacing behaviour directed at a patient, member of the public or fellow employee;
- 11.2.1.14. deliberate and serious damage to or misuse of the Trust's property;
- 11.2.1.15. being under the influence of alcohol or illegal drugs whilst at work, or the consumption or misuse of alcohol or illegal drugs/substances at work, or the misuse of all drugs;
- 11.2.1.16. possession, custody or control of illegal drugs on the Trust's premises;
- 11.2.1.17. serious breach of the Trust's rules, including, but not restricted to, health and safety rules and rules on computer use;
- 11.2.1.18. wilful refusal to follow a reasonable management instruction;
- 11.2.1.19. conviction of a criminal offence that is deemed by the Trust to be relevant to the employee's employment;
- 11.2.1.20. failure to inform a manager if arrested on a charge or served with a summons on a criminal charge;
- 11.2.1.21. conduct that may bring the Trust's name into disrepute;
- 11.2.1.22. discrimination or harassment of a fellow worker, patient or member of the public;
- 11.2.1.23. bullying or victimisation of a fellow worker, patient or member of the public;
- 11.2.1.24. gross negligence, i.e. any action or failure to act which has or could have resulted in harm to a patient, the serious damage of property or equipment, or otherwise endanger health and safety, including a failure to give appropriate care and protection to patients in the Trust's care;
- 11.2.1.25. being asleep on duty, unless authorised;

- 11.2.1.26. loss of legal authority to continue employment. This includes failure to retain registration where this is a condition of employment, and also where legal authority to carry out the duties for which the individual is employed, e.g. the loss of a driving licence in the case of a driver;
- 11.2.1.27. serious breach of confidentiality;
- 11.2.1.28. serious breach of data protection legislation;
- 11.2.1.29. non-disclosure of infection status;
- 11.2.1.30. bribery offences under the Bribery Act 2010;
- 11.2.1.31. fraud offences under the Fraud Act 2006;
- 11.2.1.32. failure to comply with the fit and proper persons requirements;
- 11.2.1.33. serious failure to comply with the Duty of Candour;
- 11.2.1.34. online gambling at work;
- 11.2.1.35. serious breach of a professional code of conduct as determined by a professional body;
- 11.2.1.36. failure to act impartially or to declare an interest in a contract or business in which the Trust is engaged or considering;
- 11.2.1.37. scientific misconduct; fabrication, falsification, plagiarism or deception in proposing, carrying out or reporting results of research.

11.2.2. Some disciplinary offences fall within both the general misconduct and gross misconduct offences and will be assessed according to the seriousness of the issues and circumstances.

### **11.3. Professional Misconduct**

11.3.1. Employees who are subject to discipline by professional bodies are reminded that the Trust has a duty to report any incidence of possible professional misconduct to the appropriate body who may investigate the case.

11.3.2. Any action taken by an employee's professional body does not preclude the Trust from investigating the circumstances of any incident of professional misconduct and taking appropriate action under the Trust's disciplinary policy and procedure. The Trust is entitled to proceed with any action relating to this procedure even if there are pending professional or regulatory body proceedings regarding an employee.

### **11.4. Fraud Allegations**

- 11.4.1. Examples of fraud and bribery against the NHS may include but are not limited to:
- 11.4.1.1. working for another employer whilst sick;
  - 11.4.1.2. false reporting of sickness;
  - 11.4.1.3. failing to notify the Trust of a significant salary overpayment;
  - 11.4.1.4. manipulation of documentation such as controlled drugs registers or parking permits;
  - 11.4.1.5. false claims for hours worked, overtime or expenses;
  - 11.4.1.6. falsifying information or documentation in a job application;
  - 11.4.1.7. offering or receiving a bribe or agreeing to do so in their capacity as an NHS employee;
  - 11.4.1.8. undertaking private work during Trust time, or using Trust resources;
  - 11.4.1.9. failing to disclose a change to right to work status, a criminal investigation, caution or conviction, an external interest or receipt of gifts and hospitality;
  - 11.4.1.10. inappropriate diversion of Trust monies.
- 11.4.2. Allegations of fraud and bribery should first be discussed with the Director of Finance and Performance, their designated representative, and/or the Local Counter Fraud Specialist for investigation. Local managers should report an issue as soon as they become aware of potential fraud/bribery. They will not undertake a local investigation until authorised to do so as this may compromise evidence in a potential criminal case.
- 11.4.3. The results of a criminal investigation by the Local Counter Fraud Specialist will be passed onto the Trust to then consider whether it is appropriate to initiate disciplinary proceedings against the employee. The exact timing of a disciplinary investigation will be determined by the progress of any criminal investigation with the Local Counter Fraud Specialist and Trust representatives liaising at all times. The Trust will also consider whether to report the incident to the employee's professional body and/or take civil action against the employee.
- 11.5. Child Abuse or Adult Abuse Allegations**
- 11.5.1.** The Local Authority Designated Officer (LADO) for Child Health should be immediately informed where there is an allegation of child abuse or an alleged abuse of an adult by an employee, either at work or in relation to an



incident outside of work. Child abuse allegations should be raised with the LADO through the Trust Named Nurse and Safeguarding Children Team. The Named Nurse or Team can provide contact details for the LADO.

## **11.6. Fit and Proper Person Requirements**

11.6.1. Where the contract of employment of an executive director is terminated in circumstances in which there are reasonable grounds for believing that he or she is not a fit and proper person to hold such a post, the Trust is obliged to report the matter to the Care Quality Commission and NHS Improvement.

## **12. Suspension**

12.1. There may be instances where suspension with pay is necessary while investigations are carried out. The Trust has the right to suspend with pay where there are reasonable grounds for concern that evidence may be tampered with or destroyed, or witnesses pressurised before the disciplinary hearing, or if there is a potential risk to the Trust or other employees or third parties in allowing the employee to remain at work.

12.2. In all cases the Trust should carefully consider whether full suspension is really necessary or whether there is an alternative such as allowing the employee to continue with non-clinical or other duties or work in another unit.

12.3. Suspension for Agenda for Change staff must be authorised by one of the following:

12.3.1. Care Groups: Clinical Director, Operations Director or Head of Nursing/Head of Midwifery and Nursing

12.3.2. Corporate: Director or Deputy Director of Service

12.4. The Chief Nurse/Director of Quality should be informed of all suspensions relating to professional nursing and midwifery staff.

12.5. The authority to formally exclude a medical staff practitioner is vested in the Medical Director and in his or her absence or out of hours an Executive Director of the Trust.

12.6. If the matter involves suspected fraud or corruption, possible suspension should be discussed with the Local Counter Fraud Specialist.

12.7. Trust property may be required to be surrendered during the period of suspension.

12.8. Where there are matters relating to child or adult abuse allegations against an employee, advice should be taken from the executive lead with responsibility for safeguarding, the LADO for child health, the safeguarding

children team and human resources prior to making the decision to suspend. Any imposed bail conditions must be taken into consideration.

- 12.9. An employer can suspend an employee from work if their health and safety is in danger. This can either be a medical suspension, for example if the employee has a serious allergic reaction to a chemical they use at work, or suspension for maternity reasons for example if the employee is pregnant and works in a laboratory that uses radiation. The employee's risk assessment must be reviewed before suspension. There are additional rules relating to suspension for maternity reasons. These are set out in the Parents Toolkit.

### **13. Representation**

- 13.1. Employees can be accompanied at investigation meetings by a workplace colleague or trade union representative. Employees can seek trade union representation and advice at any time.
- 13.2. A request to adjourn an investigatory meeting to allow an employee to be accompanied should not be unreasonably refused. The Trust will also allow the meeting to be deferred on one occasion due to non-availability of a trade union representative or a workplace colleague. However, it should be stressed that a representative should make him/herself available within as short a timescale as possible and in any event no longer than five working days in order to enable the investigation to be completed within a reasonable time.
- 13.3. Employees have the right to be accompanied at a formal disciplinary hearing by a trade union representative or a workplace colleague of their choice. Employees may ask for an interpreter to attend where English is not their first language.
- 13.4. The employee's trade union representative or workplace colleague can put forward the employee's case, summarise their case, respond on the employee's behalf to any views expressed at the hearing, confer with the employee, and ask any questions of witnesses if required. They should not answer questions put to the employee on their behalf, address the hearing against the wishes of the employee or prevent the Trust management from explaining their case.

### **14. The Disciplinary Hearing**

- 14.1. Where time limits are referred to in the course of this procedure they may be varied by agreement between the employee and the Trust.

- 14.2. Where, upon completion of an investigation there are reasonable grounds to believe that there is a case to answer the employee will be invited to attend a disciplinary hearing.
- 14.3. At any time between the date of invitation to the disciplinary hearing and the start of the disciplinary hearing, the employee or the employee's representative may contact the manager designated to conduct the disciplinary hearing to try to agree any disciplinary action in accordance with Section 15 and Appendix B of this procedure. A request will not normally result in an adjournment of the disciplinary hearing so any contact should be made in good time before the start of the hearing.
- 14.4. In the event of a disciplinary hearing taking place the Trust will:
  - 14.4.1. give the employee reasonable notice of the hearing;
  - 14.4.2. tell the employee the purpose of the hearing and that it will be held under the Trust's disciplinary procedure;
  - 14.4.3. explain the employee's right to be accompanied at the hearing by a trade union representative or workplace colleague;
  - 14.4.4. give the employee written details of the nature of his/her alleged misconduct; and
  - 14.4.5. in advance of the hearing, provide to the employee all relevant information (which should include statements taken from any fellow employees or other persons that the Trust intends to rely upon against the employee).
- 14.5. Where the employee is unable to attend a disciplinary hearing and provides a good reason for failing to attend, the hearing will be adjourned to another day.
- 14.6. Unless there are special circumstances mitigating against it, if the employee is unable to attend the rearranged hearing, the rearranged hearing will take place in the employee's absence. The employee's companion may attend in such circumstances and will be allowed the opportunity to present the employee's case. The employee will also be allowed to make written submissions in such a situation.
- 14.7. Where the chosen companion is unavailable on the day scheduled for the hearing, it will be rescheduled to an alternative date. The Trust will set a new date for the hearing and if the employee is unable to attend on the revised date, the Trust reserves the right to proceed with the hearing in the employee's absence.
- 14.8. A disciplinary hearing should be conducted by an independent manager (the

hearing officer) who has not been involved in the investigation. This manager will normally work outside the employee's immediate department. In some cases, there will need to be more than one hearing officer to review the evidence at the hearing as part of a disciplinary panel. A human resources adviser will advise the hearing officer/panel.

- 14.9. The case investigator and case manager will not be the hearing officer or a member of the disciplinary panel, although such individuals may present any supporting facts and material to the disciplinary hearing. The employee will be entitled to be given a full explanation of the case against him/her and be provided with any statements provided by witnesses.
- 14.10. The disciplinary hearing should follow the order described in Appendix C.
- 14.11. As soon as possible after the conclusion of the disciplinary proceedings, the manager conducting the hearing will convey the decision to the employee. The decision will be confirmed in writing. If a formal disciplinary sanction is issued, the employee will be notified of his/her right of appeal.

## **15. Disciplinary Action**

- 15.1. In normal circumstances it would not be appropriate for managers to invoke the disciplinary procedure on the first occasion when there is a minor conduct issue that has caused concern. Managers are expected to see members of staff and counsel them as to where they are not attaining the expected standard of conduct.

### **15.2. Informal Action**

#### **15.2.1. Recorded Oral Warning**

- 15.2.1.1. Where a minor offence or offences have been committed, a recorded oral warning may be given. The warning will ordinarily state that any further misconduct will render the employee liable to further, more severe disciplinary action.
- 15.2.1.2. A formal hearing is not required. A recorded oral warning may be issued by an employee's immediate manager and remains on an individual's personal file for a period of six months. There is no right of appeal against a recorded oral warning but the employee may place a note of mitigation on their personal file.

### **15.3. Formal Action**

- 15.3.1. Except where there is an agreed sanction as set out in Section 9 and Appendix B, a formal disciplinary hearing is required. Possible outcomes following a formal hearing could be no disciplinary case to answer, a

recorded oral warning or formal disciplinary action as described below. There may be more than one disciplinary sanction applied, for example a final written warning and transfer or downgrading. In all cases affecting Agenda for Change staff where a formal disciplinary warning is issued if the employee is due a pay step increase in the period that the warning is “live” they will not be eligible for the pay increase and this will not be backdated once the warning expires. This rule does not apply to medical staff. Upon completion of the disciplinary hearing, the senior manager conducting the hearing will convey his/her decision to the employee. The decision will be confirmed in writing within seven days.

### **15.3.1.1. First Written Warning**

15.3.1.1.1. Where either a more serious disciplinary offence has been committed that warrants formal action or further minor offences have been committed by an employee following a recorded oral warning that remains "live", the employee will receive a first written warning. In appropriate cases the Trust has the discretion to issue a higher sanction than a first written warning for general misconduct offences. A first written warning remains “live” on an employee’s personal file for a period of nine months. Agenda for Change employees will not be eligible to receive a pay step increase during the period that the warning is “live” and for six months after. Pay step increases are not backdated once the deferral period ends. There is one level of appeal against a first written warning to the next level of management.

### **15.3.1.2. Final Written Warning**

15.3.1.2.1. Where a serious disciplinary offence amounting to gross misconduct has been committed, thereby justifying summary dismissal, but the hearing officer/panel decides, after taking into account all appropriate circumstances, that a lesser penalty is appropriate, or, where an employee commits further disciplinary offences after a first written warning has been issued and remains "live", a final written warning may be given. A final written warning remains “live” on an employee’s personal file for a period of twelve months. Agenda for Change employees will not be eligible to receive a pay step increase during the period that the warning is “live” and for six months after. Pay step increases are not backdated once the deferral period ends. There is one level of appeal against a final written warning to

the next level of management.

- 15.3.1.2.2. The Trust reserves the right to extend the duration of a final written warning in certain circumstances should an employee's conduct justify it. This decision will be made by the Director of Human Resources or their nominated deputy following a written application by the employee's manager. The length of the extension will be at the discretion of the Director of Human Resources or their nominated deputy.

### **15.3.1.3. Transfer or Downgrading**

- 15.3.1.3.1. Where a final written warning is given to an employee as an alternative to dismissal, the hearing officer/panel may also impose the transfer of the employee to other work with downgrading if necessary. There is no protection of pay.
- 15.3.1.3.2. This action should only be taken with the employee's consent. If the employee does not agree to the downgrading, then dismissal would be the alternative.
- 15.3.1.3.3. This form of action will only be taken where it is felt that the conduct or capability of the employee would be significantly improved in a lower banded or different role.

### **15.3.1.4. Dismissal**

- 15.3.1.4.1. Where the employee has committed further acts of misconduct (these being acts of misconduct other than gross misconduct) following a final written warning, the employee may be dismissed with notice or with pay in lieu of notice.
- 15.3.1.4.2. Where the Trust establishes that an employee has committed an act of gross misconduct, the employee may be summarily dismissed.

## **16. Mitigating Circumstances**

- 16.1. In deciding on a formal sanction, the hearing officer may wish to take into account the following mitigation if put forward by the employee or their representative
  - 16.1.1. An acceptance from the employee that they played a part in the offence;
  - 16.1.2. Remorse for the incident and any offence caused
  - 16.1.3. What the employee has done since the incident to show they have

reflected and/or retrained to ensure there will be no reoccurrence;

- 16.2. Some acts of general misconduct or gross misconduct are so serious that any mitigation considered would not impact on the decision to issue a formal sanction.

## **17. Status of Expired Warnings**

- 17.1. An expired warning may be taken into account by the Trust and relied upon as evidence of repeated behaviour but will not be a reason to dismiss.

## **18. Appeal**

- 18.1. An employee may appeal against any disciplinary sanction imposed against him/her, with the exception of an informal recorded oral warning. The employee must provide written notice of the appeal within fourteen days of being informed of the disciplinary sanction being imposed against him/her. All formal appeals should be directed to the Director of Human Resources. An employee will lose their right to appeal if they have not lodged their appeal within this timescale.

- 18.2. When lodging an appeal, the employee should state:

18.2.1. the grounds of appeal, which may include any new evidence not presented at the original disciplinary hearing; and

18.2.2. whether he/she is appealing against the finding that he/she has committed the alleged act or acts of misconduct, or against the level of disciplinary sanction imposed.

- 18.3. The disciplinary appeal hearing should follow the order described in Appendix C.

- 18.4. The appeal will be heard by a senior manager who has not been involved in the decision to impose the disciplinary sanction on the employee.

- 18.5. Upon completion of the appeal, the senior manager conducting the hearing will convey his/her decision to the employee. The decision will be confirmed in writing. The Senior Manager's decision, on behalf of the Trust, at the appeal is final.

## **19. Involvement of Regional Officer in Suspected Offences by Local Trade Union Representatives**

- 19.1. If an employee who is an accredited representative of a trade union recognised by the Trust for collective bargaining purposes is suspected of having committed a disciplinary offence, the Trust will take no action under

this procedure (with the exception of suspending the employee in a case of suspected or known gross misconduct) until the Trust has had a chance to discuss the matter, with the prior agreement of the employee, with a full-time official of that trade union.

## **20. Equality Impact Assessment**

20.1. An Equality Impact Assessment is attached at Appendix D. The application of this policy should not discriminate, areas of good practice and risk areas requiring attention should be highlighted.

## **21. Stakeholders, Consultation, Approval and Ratification Process**

21.1. This policy applies to all Trust staff. Staff will be consulted on its content through the Trust Staff Committee. The policy is approved by the Staff Committee and ratified through the Trust Policy Authorisation Group.

## **22. Review and Revision Arrangements**

22.1. This policy will be reviewed as scheduled in three years' time unless legislative or other changes necessitate an earlier review.

## **23. Dissemination and Implementation**

23.1. Once agreed by the appropriate Trust ratification group/committee, this policy will replace the old version on the Trust intranet. A Trust-wide e-mail will be sent to managers advising them of the updated version with instructions on how they can access it.

## **24. Document Control including Archiving Arrangements**

24.1. This policy conforms to the policy for the Development and Management of Procedural Documents.

24.2. This policy will be uploaded to the Trust's policy management system.

## **25. Monitoring Compliance**

25.1. Compliance with this policy will be monitored by Human Resources through an annual report on its use presented to the Trust Staff Committee and Strategic Workforce Committee including a breakdown of application by protected characteristics.

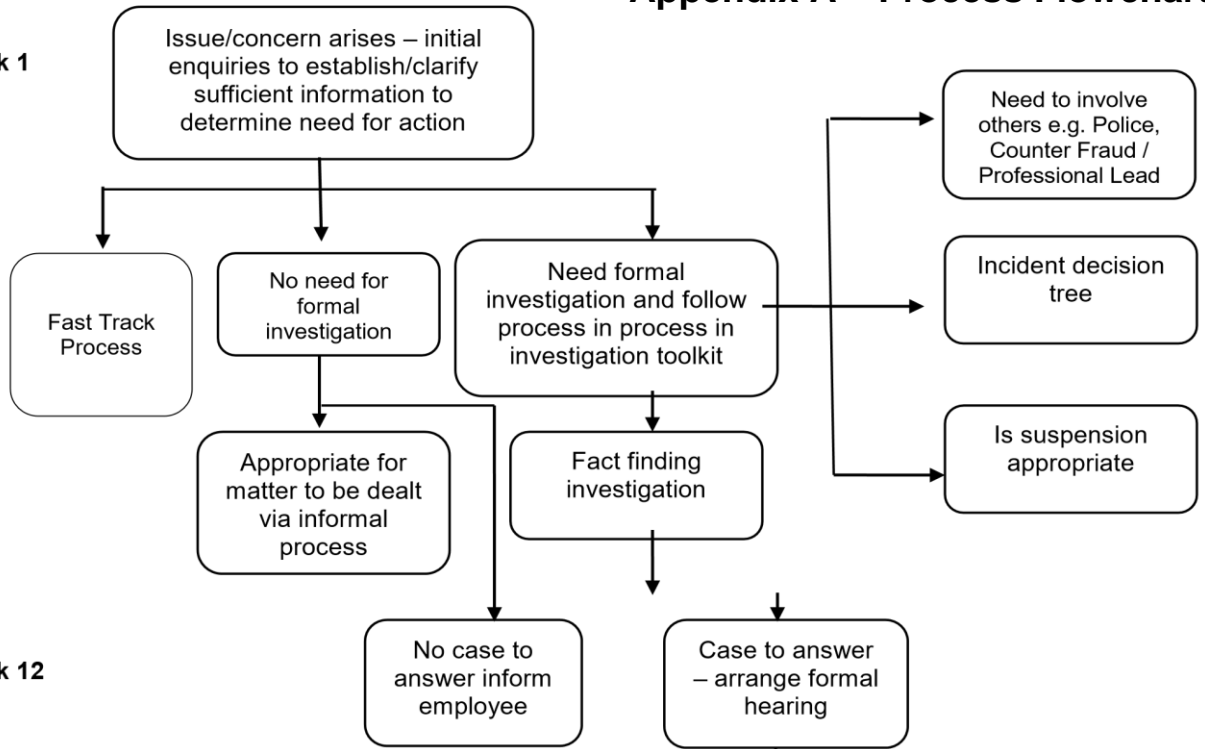
## **26. References**



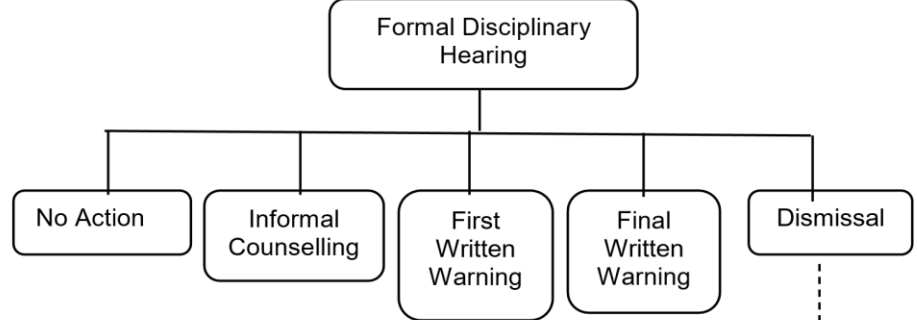
- 26.1.1.1. Sources of reference material include:
- 26.1.1.2. ACAS Code of Practice on Disciplinary Procedures
- 26.1.1.3. NHS Improvement “A just culture guide”  
<https://www.england.nhs.uk/patient-safety/a-just-culture-guide/>

## Appendix A – Process Flowchart

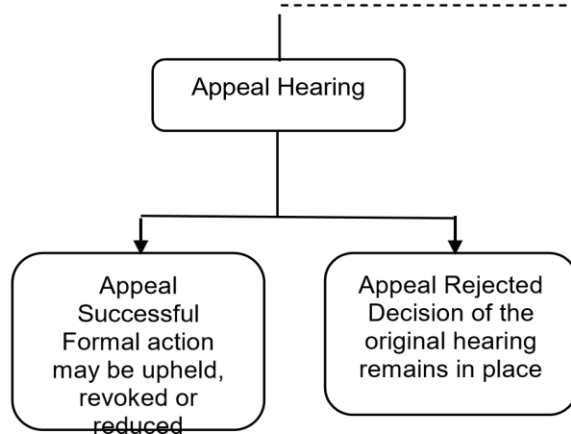
**Week 1**



**Week 12**



**8 weeks of receipt of appeal**



## Appendix B – Fast Track Principles

- 1.1. Where the disciplinary outcome of a particular case is anticipated to result in a First Written Warning (or Final Written Warning for repeated acts of general misconduct) an employee and/or staff side may ask management to move directly to that conclusion without completing a full-fact finding investigation.
- 1.2. The manager may also suggest to staff side that the case may be suitable to be dealt with under Fast Track. There should be sufficient information for both the employee to request a Fast Track and for management to make a decision on the appropriateness of the request. There must be a belief that the employee has learnt from the experience and is unlikely to repeat their misconduct and adhere to the values of the Trust.
- 1.3. Fast Track will not be considered for matters of gross misconduct or where dismissal may be appropriate, nor can it be used if any of the allegations are contested by the employee or if there is a connected disciplinary process involving another employee.
- 1.4. In the event that the manager considering the facts decides that there may be no case to answer with the detail/evidence they have been given; this should be discussed with Human Resources.
- 1.5. The pro-forma request form should be either completed by the manager or employee and submitted to the Assistant Head of Employee Relations within 72 hours of the initial request.
- 1.6. Staff who are not in a trade union should discuss their concerns with their manager, Human Resources or a workplace colleague before completing and submitting their pro-forma request.
- 1.7. Staff can only apply and be considered to have one Fast Track per 12-month period.  
  
In responding to any such request:
- 1.8. All requests must be submitted via the pro-forma attached to the Assistant Head of Employee Relations before any investigation commences.
- 1.9. A meeting with the employee and their staff side representative (if in a union) will be necessary at this point to gather further information. The line manager will be responsible for the collection of this information so that this can be passed on to the Employee Relations Team for the decision making.
- 1.10. The Employee Relations Team will seek to ensure that the employee has discussed the matter with their staff side representative, human resources or a workplace colleague if they are not a member of a staff side organisation before

making such a request.

- 1.11. Employee Relations may need to discuss the request with the appropriate manager before the management response to the request is given. After reviewing the evidence, the Assistant Head of Employee Relations decision as to whether to take the Fast Track route or not is final and will be confirmed to the member of staff and their manager and also staff side if they are involved.
- 1.12. Once a decision has been made Employee Relations will remind employees that there will be no right of appeal against a warning given using Fast Track.
- 1.13. Where the Assistant Head of Employee Relations considers that the fast track approach is inappropriate for whatever reason the normal disciplinary fact-finding process will be followed and this will be fed back to the employee.
- 1.14. Cases that may fall under the fast track are described in the general misconduct definitions of the Disciplinary Procedure.
- 1.15. Medication errors can be considered as part of the Fast Track process. However, every error will be reviewed by a panel, consisting of Lead Nurse, HR and Manager to consider the suitability of the Fast Track process.
- 1.16. If the Fast Track application is accepted there will be no need for a formal fact-finding investigation although a sufficient and reasonable examination of the facts must have taken place in order to ensure the manager hearing the case agrees to the sanction of first/final written warning.
- 1.17. If the Fast Track process is agreed; a Fast Track meeting will take place with a senior manager of the service at minimum band 8b with HR present and the employee may be accompanied. No witnesses will be called. Brief hand written or typed notes will be kept by the senior manager at the meeting. The senior manager hearing the case will not be the manager who was involved with any of the previous direct discussions with the employee. This meeting must take place within 21 days of the issue being raised by the line manager, employee or staff representative.
- 1.18. The process for a fast track meeting will be as follows:
  - Introductions
  - The senior manager outlines the nature of the allegation(s) accepted by the employee and advises that they will be awarded the agreed sanction of first or final written warning (for further general misconduct if the employee is already in receipt of a live first written warning).
  - The senior manager confirms with the employee that they accept the allegations previously stated.

- The employee or their representative will have the right to put forward any comments or statements relating to the incident (including any mitigation).
- The senior manager may wish to question the employee.
- The senior manager will adjourn briefly to consider the case. If more information is required to decide on the sanction the meeting may be adjourned to allow a further investigation to take place.
- The senior manager will then communicate their decision to the employee and their representative. The penalty will not exceed the previously stated limited sanction but in exceptional circumstances (e.g. the employee denies some of the allegations) the manager may decide that the matter should be referred for further investigation and/or to a full disciplinary hearing for potentially a higher sanction to be considered.
- The senior manager will send a letter confirming the decision to the employee. The record of any warning will be kept on the personal file and a copy sent to Employee Relations.
- The disciplinary sanction imposed will be given in accordance with the Trusts disciplinary policy.
- There is no right of appeal.

## FAST TRACK PRO-FORMA

(to be completed by the manager or member of staff)

<b>Name:</b>	
<b>Post:</b>	
<b>Ward/Department:</b>	
<b>Care Group:</b>	
<b>Date of Allegation:</b>	
<b>Allegation: (to be written by the manager)</b>	
<b>Meeting to discuss allegation date:</b>	
<b>Present:</b>	
<b>Main Points discussed:</b>	
<b>I (insert name) request to be fast tracked to a meeting were a sanction of a first / final (delete as appropriate) written warning maybe be given without further investigation for the above allegation/s</b>	
<b>I (insert name) agree and confirm that I would like to be considered for Fast Track:</b>	
<b>I have no right of appeal against the sanction of First Written Warning/Final Written Warning (delete as appropriate)</b>  <b>Issued. Signed</b>  <b>(insert name):</b>	<input type="checkbox"/>

I have discussed with Staff Side rep or Workplace colleague:	<input type="checkbox"/>
Understand allegation and admit the allegation occurred as stated:	<input type="checkbox"/>
Request no further investigation of this allegation:	<input type="checkbox"/>

**Received by Assistant Head of Employee Relations**

**Signed:**

**Assistant Head of Employee Relations**

**Approved / Not approved:**

**For Office Use:**

- Meeting arranged**
- First written warning issued**
- First written warning issued**
- Database updated**
- Fast track not approved and fed back to individual/staff side**

Trust Address

Date

Name and address of employee

Dear xxxxxx

**Fast Track Disciplinary Meeting**

I am writing regarding your Disciplinary Fast Track Request Form dated ..... and would inform you that your request has been accepted by the Assistant Head of Employee Relations. I would therefore like to confirm that you should attend a Fast Track Disciplinary Meeting with me to consider the following allegation(s) of general misconduct, the basis of which you signed as accepting on your form (copy enclosed):

- .....
- .....
- .....

This meeting will be conducted under the Fast Track process of Trust’s Disciplinary Policy and Procedure (copy enclosed).

Detailed below are the arrangements for this meeting

Location:

Date:

Time:

You have a right to be accompanied at this meeting by a representative of a trade union recognised by the Trust, a full time official of any other trade union or a work-based colleague. I would be grateful if you could inform me if you are to be accompanied prior to the day of the hearing.

Under the Fast Track process an HR representative will be present.

You should be aware that the outcome of this hearing will be that you will receive a first / final (delete as appropriate) written warning which is in compliance with the maximum limited sanction you confirmed as acceptable on your Disciplinary Fast Track Request Form.

You now have a final opportunity to pull out of the Fast Track process and request a full investigation and disciplinary hearing. If you elect to take this course of action you should inform email me at least 3 working days prior to the day of the meeting. You will not suffer any detriment if you choose to proceed with your right to a full disciplinary hearing.



If you have any queries in advance of the meeting please contact me.

Yours sincerely

cc Assistant Head of Employee Relations

## **Appendix C – Procedure During Formal Disciplinary Hearings and Appeal Hearings**

The process set out below describes the process for formal disciplinary hearings.

In relation to appeal hearings, the Chairperson of the appeal panel may choose to take the same approach in terms of order of proceedings or, with the agreement of management and staff side, re-arrange the order.

The panel and the human resources adviser may ask questions at any time for the purposes of clarification and to ensure a full and thorough investigation of the case.

The following procedures should be observed at all formal hearings:

1. The person leading the hearing (the chair) will introduce the hearing, and explain its purpose and how it will be conducted. The purpose of the hearing will normally be to establish the facts and determine, on conclusion of the hearing, whether the Trust has proper grounds to take disciplinary action against the employee and, if so, the level of such disciplinary action.
2. The parties present at the hearing will introduce themselves and confirm their respective roles in the hearing. The employee will be entitled to be accompanied, if he/she wishes, by a trade union representative or workplace colleague of his/her choice (the companion).
3. The chair will state that the hearing is being conducted as part of the Trust's disciplinary procedure, and confirm that a written record of the hearing will be made. In certain cases, the Trust may wish with the employee's consent to audio record formal hearings.
4. The chair will state whether any witnesses have been asked to give evidence at the hearing, and if so, who they are.
5. The management representative(s) should state their case.
6. The employee (or their companion) will have the opportunity to question the management representative(s).
7. The panel and the human resources representative will have the opportunity to question the management representative(s).
8. Any witnesses whom the Trust has decided to call will be called into the hearing and asked to state their evidence in front of the parties.
9. The employee (or their companion) should state their case.
10. The management representative(s) will have the opportunity to question the employee and their companion.

11. The panel and the human resources representative will have the opportunity to question the employee and their companion.
12. Any witnesses whom the employee has decided to call will be called into the hearing and asked to state their evidence in front of the parties.
13. The management representative(s) shall have the opportunity to sum up, if they so wish.
14. The employee (or their companion) shall have the opportunity to sum up, if they so wish. The employee (or their companion) shall have the right to speak last.
15. In their summing up, neither the management(s) nor the employee or their companion may introduce any new matter.
16. The panel may at their discretion, adjourn the hearing in order that further evidence is acquired by either party or for any other reason.
17. When the panel is satisfied that the management representative(s) and the employee (and/or their companion) have completed their case, and that no further information is required, the panel will adjourn to consider their decision in private.
18. Parties will only be recalled to clear points of uncertainty. If one party is called then the other should also be present. Witnesses may also be recalled where further evidence is required.
19. Following an adjournment, a decision as to whether the allegations have been substantiated sufficiently will be made. If the allegation is substantiated, the panel will decide whether any disciplinary penalty is necessary and reasonable in all the circumstances. Where a disciplinary penalty is considered necessary, the panel will decide what type would be most appropriate having regard to the seriousness of the offence and the mitigation put forward.
20. When the decision has been reached, the hearing will normally be reconvened and the decision given verbally to the employee. This decision will then be confirmed in writing within seven days.

## Appendix D - Equality Analysis (EA)

An Equality Analysis not just about addressing discrimination or adverse impact; the policy should also positively promote equal opportunities, improved access, participation in public life and good relations.

Person completing the Analysis		
Name	Martin Luff	
Job title	Head of Employee Relations	
Division/Directorate	Employee Relations	
Date completed	20 July 2021	
Who will be impacted by this policy	<input checked="" type="checkbox"/> Staff (EKHUFT) <input type="checkbox"/> Staff (Other) <input type="checkbox"/> Service Users	<input type="checkbox"/> Carers <input type="checkbox"/> Patients <input type="checkbox"/> Relatives

### Assess the impact of the policy on people with different protected characteristics.

When assessing impact, make it clear who will be impacted within the protected characteristic category. For example, it may have a positive impact on women but a neutral impact on men.

Protected characteristic	Characteristic Group	Impact of decision Positive/Neutral/Negative
e.g. Sex	Women Men	Positive Neutral
Age	None	Neutral
Disability	None	Neutral
Gender reassignment	None	Neutral
Marriage and civil partnership	None	Neutral
Pregnancy and maternity	None	Neutral
Race	None	Neutral
Religion or belief	None	Neutral
Sex	None	Neutral

Sexual orientation	None	Neutral
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If there is insufficient evidence to make a decision about the impact of the policy it may be necessary to consult with members of protected characteristic groups to establish how best to meet their needs or to overcome barriers.

Has there been specific consultation on this policy?	This policy/procedure has been discussed by management and trade union representatives and approved by the Trust Staff Committee.
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Did the consultation analysis reveal any difference in views across the protected characteristics?	No
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<b>Mitigating negative impact:</b> Where any negative impact has been identified, outline the measures taken to mitigate against it.	
---	--

<b>Conclusion:</b> Advise on the overall equality implications that should be taken into account by the policy approving committee.	
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## Appendix E – Policy Implementation Plan

To be completed and attached to any policy when submitted to the appropriate committee for consideration and approval.

<b>Policy Title:</b>	Disciplinary Policy and Procedure
<b>Version Number:</b>	10
<b>Director Responsible for Implementation:</b>	Executive Director of Human Resources and Organisational Development
<b>Implementation Lead:</b>	Head of Employee Relations

<b>Staff Groups affected by policy:</b>	All Trust Staff
<b>Subsidiary Companies affected by policy:</b>	N/A
<b>Detail changes to current processes or practice:</b>	
<b>Specify any training requirements:</b>	N/A
<b>How will policy changes be communicated to staff groups/ subsidiary companies?</b>	Electronic format on the Trust's policy management system. Applicable Trust-wide to all employees