

## Policy Document Control Sheet

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## VERSION CONTROL TABLE

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## TABLE OF REVISIONS

Date	Section	Revision	Author
30.4.03	All		Sue Williams, Senior Personnel Manager
27.4.05	All	Legislation update	Sue Williams, Head of Operational Personnel
6.6.07	All	Process Update and Flowchart	Sue Williams, Head of Operational Personnel
14.04.09	All	Legislation Update	Sue Glennie, Divisional Personnel Manager
25.05.10	Section 7.1	Withholding of increment due to the issue of a written warning	Sue Glennie, Divisional Personnel Manager
1.4.11	All	Harmonised procedure following integration of CDDFT & CHS	Divisional HR Manager
1.4.13		Extension to review date	Human Resources Manager
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10.4.15		Extension to review date (to September 2015)	Human Resources Manager
31.7.15		Amendment to Section 9.2 – clarity that Formal Discussion is an outcome  Clarity on appeal hearing process  Other updates. New Policy Format	Human Resources Manager
25.5.18		Full Review  Guidance on cases involving	HR Business Partner

		reference to patient  Removal of Appendix G  Correction to formal disciplinary action from informal  Removal of Increment Deferrals  Update to reflect requirements of GDPR	
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## 1 INTRODUCTION

It is the policy of the County Durham and Darlington NHS Foundation Trust to encourage and therefore to expect employees to attain and maintain the highest possible standards of conduct and to ensure that employees know what standards are expected of them in their work. The disciplinary rules and procedures in this document are designed to ensure that, where disciplinary action is contemplated, staff are treated fairly and reasonably. The policy is not intended primarily as a means of imposing sanctions and punishment but as a means of emphasising and encouraging the attainment of good standards of individual conduct.

Issues of poor performance (other than those by reason of ill health) are dealt with by the Trust in accordance with the Capability Procedure. Poor performance attributable to ill health will be dealt with under the Trust's Management of Attendance Procedure.

## 2 PURPOSE

The purpose of this Disciplinary Procedure is to set out the steps which managers should take in order to ensure that there is a fair, unbiased and systematic approach to handling disciplinary matters in the Trust.

The primary aim of any disciplinary action will be to seek and maintain positive improvements in standards of conduct and job performance within the Trust. Employee representatives should be afforded every opportunity to represent the interests of their members who may be involved.

## 3 SCOPE

The Disciplinary Rules apply to all employees in the Trust

This procedure applies to all employees of County Durham and Darlington NHS Foundation Trust except where professional conduct or competence of medical staff is in question, for whom separate provisions apply – Maintaining High Professional Standards in the NHS

## 4 ROLE OF HUMAN RESOURCES

The role of the HR Representative in a disciplinary matter is to provide advice and guidance to managers and employees in order to help ensure that the procedure is applied consistently and fairly. In most circumstances, a member of the HR management team should provide support to managers during an investigation but **must** be in attendance at a disciplinary hearing. Guidance on Investigating Officer roles and expectations can be obtained via HR supporting officers.

## 5 FORMAL DISCUSSION

For minor breaches of discipline, managers may consider that recourse to formal disciplinary proceedings is inappropriate and that a formal discussion is sufficient to address the issue with the employee concerned.

This stage is used as an initial step to resolve issues of unacceptable conduct, outside the formal disciplinary procedure.

If a member of staff is failing to meet the required standards of conduct, the immediate line manager or supervisor will meet with the employee on a one to one basis.

All meetings under this stage must be held in the workplace unless an alternative appropriate venue within the Trust is agreed by both parties. Each situation will be determined on an individual basis.

The purpose of a formal discussion is to:

- a) highlight the inappropriate behaviour/explore areas of concern
- b) give the employee a chance to respond
- c) clarify the standards required and, where appropriate, encourage an employee to improve
- d) Establish whether there are any contributory factors or additional problems facing the employee with which help can be offered
- e) Provide support and training, if appropriate, to achieve the required standards.

The employee should fully understand the outcome of the discussion and the manager should write to the employee to summarise this. A copy of the letter should be kept on the employee's personal file. This is important as, if the employee continues to fail to meet the required standards of conduct, these records can be referred to as evidence as part of the formal procedure outlined below.

If it becomes apparent during the formal discussion that the matter is more serious than first thought, the discussion should be adjourned and the employee advised that the matter will be taken forward under the formal procedure. Where formal discussions fail or are seen to be inappropriate, the disciplinary procedure will be used and the employee will be advised accordingly.

## 6 REPRESENTATION

Under the Employment Relations Act 1999 and the *ACAS Code of Practice - Disciplinary and Grievance Procedures*, the employee has a right to be accompanied by a 'companion' at formal meetings that may result in a warning or some other action. However, the Trust will continue to extend the right to be accompanied at any formal meeting which is part of the process. The employee may be accompanied by a trade union representative, an official employed by a trade union or a work colleague employed by the Trust but not someone acting in a legal capacity. Employees may only have one companion and the companion should not be someone who would prejudice the investigation/hearing process.

The Trust also allows employees being investigated, or witnesses, to be accompanied at the investigation stages of the procedure, as long as that will not delay the investigation or the companion is not part of the investigation.

A Trust employee who has agreed to accompany a colleague (also employed by the Trust) is entitled to take reasonable paid time off to fulfill that responsibility, where possible.

The companion should be allowed to address the hearing and to put and sum up the employee's case, but does not have the right to answer questions on the employee's behalf.

It is the employee's responsibility to arrange their own representation.

## 7 DISCIPLINARY ISSUES INVOLVING TRADE UNION REPRESENTATIVES

No disciplinary action should be taken against local trade union representatives until the circumstances of the case have been discussed with a full-time officer of that organisation.

All reasonable steps must be taken to inform the full-time officer where suspension of a local representative is necessitated. In practice this will mean that the full-time officer will be contacted after the employee has been notified of the allegation but prior to an investigatory interview.

## 8 SUPPORT

The Staff Health and Wellbeing Department and Employee Assistance Programme are available to provide confidential independent support to all employees involved in an alleged incident/investigation should they require it.

For the Staff Health and Wellbeing Department contact:

University Hospital of North Durham	0191 3332351
Darlington Memorial Hospital	01325 743493

For the Employee Assistance Programme contact: 0800 085 1376

## 9 FORMAL DISCIPLINARY PROCEDURE

Failure to comply with the required standards of conduct will lead to disciplinary action. Disciplinary action does not necessarily follow through each of the stages e.g. in some circumstances where the matter is sufficiently serious, a final written warning may be issued or dismissal take place without recourse to the preceding stages.

Any employee who makes a deliberately false or malicious allegation regarding an employee's conduct will face disciplinary action which could ultimately lead to dismissal.

### 9.1 Investigation

When a potential disciplinary matter arises, an appropriate supervisor or manager should undertake an assessment of the facts, ie speak to the member of staff concerned immediately outlining the nature of the matter or complaint and getting and recording their response, including any mitigating circumstances.

If the manager decides that the issue warrants further investigation, they should then inform the member of staff:

- that there will be a thorough investigation of the circumstances by a nominated investigating officer
- that s/he will need to provide a written signed statement of their account of the facts relating to the complaint
- that s/he will be given sufficient opportunity to prepare and state his/her case
- that no disciplinary action will be taken until an investigation and possibly a disciplinary hearing are completed
- that at all stages of the formal procedure they may be represented.

The member of staff should receive written confirmation of the above facts and summary of the allegation as soon as possible. It is important to investigate thoroughly any potential disciplinary offence. Where possible, the Investigating Officer should establish the facts promptly before recollections fade. In some cases the investigation will require the holding of an investigatory interview with the employee and others the investigation stage will be the collation of evidence, to determine whether to proceed to a disciplinary hearing i.e. where there has been failure to co-operate with absence management procedure the investigation will be the collation of all relevant document/correspondence.

Where necessary, the Investigating Officer should as soon as possible interview and/or ask for written statements from parties either directly involved or witnesses to the alleged complaint/incident.

The disciplinary process should not be delayed if the employee goes on sick leave during the investigation and is unable to attend an investigatory interview. The employee will be referred to the Staff Health and Wellbeing Department for an assessment of their ability to attend an investigatory interview and management will act on that advice. This may result in the employee being offered the opportunity to submit a written statement (if they have not already done so) and may be required to respond to written questions.

When a disciplinary case involves allegations of clinical malpractice, consideration should be given to nominating an Investigating Officer with relevant clinical expertise.

Where it is considered appropriate and with the approval of the head of service, it may be advisable to use a manager from another department/directorate to investigate/hear a disciplinary matter.

## 9.2 Cases involving Patient Notes

Patient notes cannot be given to third parties, even those that are redacted and copied, as this would contravene the Confidentiality: NHS Code of Practice and the HCISC A Guide to Confidentiality in Health and Social Care (2013;2014) which contains the Caldicott Principles. However, an employee needs to be given a fair chance to respond to the allegations against them. Therefore during investigations, any relevant notes will be copied, redacted and shown to and discussed with the employee under investigation.

The employee will be notified that they can request that arrangements are made for them and their union representative to sit and view the relevant notes prior to any Disciplinary Hearing. The notes that are viewed will be copied and redacted. In the event that these copies are not clear, consideration will be given to allowing the employee to view the original record.

Viewing of the notes will take place with the investigating officer in the room.

An employee may make a request to view the notes more than once to enable them to adequately respond to the allegations.

Should the matter subsequently result in a disciplinary hearing, copies of the redacted patient notes will not be sent out with the investigation pack. Copies will be made available to the panel members on the day of the hearing and collected in at the end of the proceedings.

## 9.3 Suspension

In some cases, a period of suspension should be considered while breaches of disciplinary rules are investigated. This will only be imposed after careful consideration and the requirement to remain on suspension will be kept under review.

A manager may consider suspension necessary for any of the following reasons (this list is not exhaustive):

- Offence so serious as to likely warrant dismissal
- Risk to patient safety
- Risk to colleagues' safety

- Risk employee may impede the investigation (eg interfere with evidence/intimidate witness)
- In the interests of service delivery
- In the interest of diffusing a serious situation
- Where relationships have broken down

Where possible the suspension risk assessment checklist (copy available on StaffNet or from the HR Management Team) should be completed by the line/service manager before the decision to suspend is made and where possible a HR Manager consulted. Where this is not possible the checklist should be completed as soon as possible following suspension. At this point a HR Manager must be consulted.

In some cases it may well be preferable, on the grounds of reasonableness, as an alternative to suspension to:

- restrict the employee's duties.
- transfer him/her to other duties/work area/site
- place the employee under extra supervision for a temporary period (e.g. whilst investigations are carried out).

Suspension of an employee does not in itself constitute a disciplinary action nor will it be seen as a presumption of guilt.

The employee's immediate manager has the authority to suspend an employee from duty - advice and guidance is available from the HR Department. In circumstances where that manager is unavailable a more senior manager from the department should be contacted and, out of hours, the senior manager/nurse on call should be contacted regarding a decision to suspend the employee.

In carrying out the suspension, the manager should:

- state why the employee is being suspended.
- make it clear that suspension is not a disciplinary action.
- make it clear that the employee should not come back onto Trust premises without the prior permission of their manager (except for the purposes of personal or family healthcare).
- make it clear that the employee can come on to Trust premises to see their representative, providing they give prior notification to their manager.
- make it clear that independent support is available to the employee from the Staff Health and Wellbeing Department and the Employee Assistant Programme
- advise the employee to seek support/assistance from either their trade union representative, HR or fellow worker
- inform the employee that they must not discuss the matter with anyone other than their representative, occupational health, staff counselor, the Investigating Officer or HR.

A letter confirming the above should be sent to the employee within five (5) calendar days of the suspension or as soon as reasonably practicable. Suspension should always be on full pay unless the employee fails to comply with the requirement of this and any other Trust policy or the Trust has reasonable grounds to believe that the employee has breached his or her obligation under this and any other Trust policy. In such circumstances the Trust has a contractual right to withhold pay.

Should the employee subsequently become ill and provide a sick note their absence will be regarded as sick leave. If their sickness precludes their attendance at a subsequent disciplinary hearing, the employee will be referred to the Staff Health and Wellbeing

Department for a medical opinion as to when the employee will be fit enough to attend a hearing and management will act on that advice. Should the employee be well enough to return to work prior to any disciplinary issue being resolved, he or she should contact HR so that a decision can be taken as to whether the employee's suspension should be re-instated

Whilst on suspension an employee must remain contactable at the home address they have notified to the Trust during the times they would otherwise have been on duty (unless they have otherwise notified their manager of an alternative address at which they will be contactable) and be available to attend meetings at short notice. . Where employees have pre-booked annual leave which occurs during the period of suspension then this will be honoured and the employee will be expected to take this from their annual leave entitlement. Whilst suspended the employee must not undertake any alternative employment whether paid, or unpaid at the times when they would normally have been at work for the Trust without written consent of the Trust. Employees will not be able to undertake any bank shifts whilst on suspension and any shifts already booked will be cancelled.

Suspension will be reviewed periodically to ensure that it is not unnecessarily protracted.

It should be noted that where an employee has not been suspended, following an investigation, issues can still be deemed as gross misconduct warranting summary dismissal.

#### 9.4 Investigation Outcome

The Investigating Officer should review all information following the investigation to establish whether there is a case to answer and produce an investigation report. Possible outcomes from the investigation are:

1. There is no case to answer – the employee should be notified and this should be confirmed in writing
2. There are concerns of a minor nature which can be addressed via a formal discussion without recourse to a formal disciplinary hearing – a meeting will be held with the employee and line manager and HR (the employee can be accompanied) – the outcome of the meeting will be confirmed in writing
3. There is a case to answer and the matter should progress to a disciplinary hearing

#### 9.5 Disciplinary Hearing

##### Arrangements

An employee required to answer allegations at a disciplinary hearing will be sent a letter containing the arrangements for the hearing, details of the allegations being considered, right to representation:

The letter will enclose any documents/evidence that the Investigating Officer wishes to be considered in evidence (If there are any documents which cannot be sent in advance, ie patient notes - please see section on Page 9, then this must be made clear in the letter), confirmation of witnesses that are to be called by management. The employee will be Asked to submit in advance of the hearing (at least two calendar days before) any documents that they wish to be taken into consideration and the names of any witnesses they wish to call.

An employee will be given a minimum of ten (10) calendar days' notice from the date of the letter of a disciplinary hearing, unless there is mutual agreement between the employee and the Investigating Officer that the hearing takes place sooner.

An employee should inform the chair of the hearing immediately if there are any reasonable adjustments required in order for them or their accompanying colleague/trade union representative to attend the hearing.

The panel may, at its own discretion, also appoint an advisor (who may be external) who has not been involved in the investigation process.

### Cases involving Registered Healthcare Professionals

Where it appears that the matter is potentially serious and the case concerns a registered healthcare professional, a more senior person from that profession (or a nominated deputy) should be on the disciplinary panel.

### Procedure at the Hearing

The meeting will be conducted by an appropriately authorised manager (chairperson/disciplining officer), accompanied by a HR Representative. When the case involves clinical malpractice, consideration should be given to nominating a hearing panel member with clinical expertise. Where this expertise is not available within the Trust, external expertise will be sought.

The disciplinary hearing must be adjourned before reaching a decision.

All decisions made will be based on the facts and mitigating evidence as available at the time of the disciplinary hearing.

At the hearing:

- the manager chairing the hearing will tell the employee of the allegations against them.
- the Investigating Officer will present their findings to the manager chairing the hearing including calling any witnesses

The employee and representative will be given the opportunity to:

- respond to the management case, including questioning any management witnesses.
- state their own case.
- present any witnesses (who may be questioned by management).

Notes can be taken by all parties.

### Decision

After an appropriate adjournment it is hoped that, in normal circumstances, a decision will be reached on the day of the hearing. In such instances the disciplining officer will recall the employee and outline the decision, giving appropriate reasons.

In reaching a decision regarding disciplinary action, the manager hearing the case must:

- consider the employee's general record including current live warnings.
- consider any mitigating circumstances.
- consider appropriate action in terms of fairness and consistency with other disciplinary decisions.
- never dismiss for a first breach of discipline except in cases of gross misconduct.

Following the hearing, the manager hearing the case must inform the employee of the decision and send a letter within fourteen (14) calendar days of the date of the Hearing confirming the following:

- the decision taken
- the level of disciplinary action
- any future improvement expected of the employee
- the length of time the warning will remain active and the likely consequences of further offences
- the right of appeal and the method of lodging an appeal
- Whether a referral will be made to their regulatory body (where appropriate)

However, where a case is likely to require further consideration following the hearing, written confirmation should be provided to the employee within 14 calendar days, or as soon as reasonably practicable, indicating the date by which a full response can be expected.

Authority to take Disciplinary Action:

This will be in accordance with the table at Appendix C.

## 10 DISCIPLINARY ACTION

### **10.1.1 Warnings**

Warnings given under the Disciplinary Procedure will remain active for the following periods:

- Written Warning: 12 months
- Final Written Warning: 18 months with the provision to extend to 24 months

For minor breaches of discipline a Written Warning will be appropriate. Where there is a more serious breach of discipline, or the employee fails to improve, a Final Written Warning or dismissal may be necessary.

Records of disciplinary action will be held on the employee's personal file which will be carefully safeguarded. They will be disregarded for disciplinary purposes after the expiry date of the warning. Warnings will cease to be 'live' following the specified period and will not be relied upon in future disciplinary action other than as possible evidence of a pattern of behaviour.

There may be occasions where an employee's conduct is satisfactory throughout the period the warning is in force only to lapse shortly thereafter. Where a pattern emerges, the employee's disciplinary record should be borne in mind in deciding how long any warning should last.

### **Substantial Absence of Employee during Existence of Disciplinary Warnings**

An employee with a live disciplinary warning who is absent from work (e.g. sickness, maternity, additional paternity leave, adoption leave, shared parental leave, career break, authorized/unauthorized absence, Jury Service, leave for reservists) for a period of four weeks or more will have the equivalent length of absence during the live warning period added to the expiry date of the warning.

This arrangement will not apply during periods of special leave (unless referred to above), annual leave, suspension (unless the allegation is later proven, at which point the equivalent length of absence due to suspension would be added), study leave or secondment/or training

### **10.1.2 Dismissal**

Is appropriate in cases where a final written warning has failed to secure the required improvement in conduct or behaviour and merits dismissal with notice.

### **10.1.3 Summary Dismissal**

In cases of gross misconduct, or loss of qualifications required for a post, an employee may be dismissed without notice after following the disciplinary procedure.

**Gross misconduct** (or gross or willful negligence) is generally seen as misconduct serious enough to destroy the contract between the employer and the employee, making any further working relationship and trust impossible. It can and may lead to dismissal without prior warning (i.e. summary dismissal). Examples of gross misconduct might include theft/fraud, physical violence or bullying, bringing the Trust into serious disrepute, serious breach of confidence.

Where employment is terminated for gross misconduct no payment in lieu of notice or payment in lieu of contractual holiday entitlement will be made. Payment in lieu of statutory holiday entitlement will be made in accordance with the Working Time Regulations.10.2

### **10.1.4 Downgrading to Alternative Employment**

In certain cases the disciplining officer may, as an alternative to dismissal offer to downgrade the employee to alternative employment. The employee should be told the details of the post and the hearing should be adjourned to allow time for the employee to consider the offer (normally the employee is expected to respond within two (2) calendar days of the offer being made).

Where an employee refuses to be downgraded to alternative employment, the hearing panel should reconvene and the employee should be summarily dismissed.

All instances of downgrading to alternative employment should be accompanied by a Final Written Warning.

In some circumstances a move to an alternative role can be agreed by mutual consent, even when this is not an alternative to dismissal.

Downgraded employees will not be eligible to apply for posts within the Trust at their previous or higher band during the warning period.

### **10.1.5 Transfer to Alternative role/work area**

In certain cases the disciplinary office may determine that the employee should be move to a different work area (without downgrading)

Transfer to an alternative role/work area may still be accompanied by a disciplinary sanction.

### **10.1.6 Referral to Statutory/Regulatory Body**

Concerns should be raised immediately to Statutory Bodies if

- Matters under investigation involve dishonesty violence detriment or harm to service users
- The Trust has dismissed, suspended or downgraded a registrant's status while investigating a fitness to practice concern about them or as a result of an investigation.
- A registrant resigns while you are investigating a fitness to practise concern about them or as a result of your investigation or
- A registrant has been charged with, cautioned or convicted of a criminal offence.

In cases of serious misconduct/dismissal or resignation, the Trust is required to notify the specified professional/statutory/regulatory body.

Where an employee is dismissed or transferred to an alternative role, advice will be sought from the HR Team on whether a referral to the Disclosure and Barring Service should be made.

## 11 APPEALS

Where an employee feels that the disciplinary action taken is wrong or unjust, they have the right of appeal against this action. The opportunity to appeal against a disciplinary decision is essential to natural justice and appeals may be raised by employees on any number of grounds, for instance new evidence, undue severity or inconsistency of the sanction.

In all circumstances the appeal will, in the first instance, be a review of the disciplinary hearing process, decision and sanction. It will not be a re-hearing. If, following the review, the appeal panel believe a re-hearing is necessary they may order this and arrangements will be made for a re-hearing to take place.

An appeal must never be used as an opportunity to punish the employee for appealing the original decision and it should not result in any increase in sanction as this may deter individuals from appealing.

The appeal should be dealt with by the next level of management above that of the disciplining officer and to a manager who has not previously been involved in the case. An appeal must be lodged within fourteen (14) calendar days of the date of the disciplinary letter. The appeal letter must outline the grounds for the appeal.

Appeals should be heard without unreasonable delay.

A member of the HR Management team will also attend the hearing in an advisory capacity.

The panel may, at its own discretion, also take appropriate professional advice in reaching a decision and/or appoint an assessor who has not been involved in the circumstances leading to the disciplinary action.

It is important that both parties exchange written statements of their case at least ten (10) calendar days prior to the appeal hearing, unless a shorter period is agreed, and that the members of the appeal panel are presented with copy statements to afford the panel the opportunity to read and understand the case. -

Procedure for the appeal hearing can be found at Appendix B.

The Chairperson will confirm to the employee and their representative, in writing, the decision of the appeal panel within fourteen (14) calendar days of the hearing or as soon as reasonably practicable.

The decision of the Appeal Panel is final and there is no further level of appeal against the decision within the Trust.

## 12 GENERAL INFORMATION

### 12.1 Criminal Offences outside Employment

Disciplinary action, including dismissal usually concerns matters connected with employment but the Trust may extend this Procedure to cover issues, which occur outside the working environment if it is considered that the action of the employee is relevant to their employment within the Trust, adversely affects the reputation of the Trust, or it has an impact on the employee's suitability to do their job.

No employee should be disciplined simply because of a charge or conviction and any decision should be based upon a reasonable internal investigation. A decision should not be

deferred simply because the outcome of a prosecution is not yet known. These matters should be considered in line with employment terms and conditions and where appropriate relevant code of practice.

## **12.2 Postponement of Meetings/Hearings**

It is in the best interest of the Trust and employee to resolve issues of this nature as quickly as possible. Where an employee wishes to postpone a hearing due to their trade union representative/work colleague not being able to attend on the proposed date, they should propose an alternative date falling within 5 days of the original hearing date and efforts will be made to accommodate this. Where an employee is unable to attend due to circumstances outside their control, and unforeseeable at the time the meeting was arranged, the hearing will be rescheduled on only one occasion. Where the employee is ill, advice will be taken from the Staff Health and Wellbeing Department.

## **12.3 Failure to attend Meetings/Hearings**

There are occasions where an employee will not cooperate, whether by refusing to attend the Staff health appointment, refusing or failing to attend a disciplinary investigation, hearing or appeal hearing without good reason, or refusing to take part in an alternative resolution to the disciplinary issue (i.e. by holding the hearing off site, or dealing with it by way of written representation).

During the investigation the employee will be informed that the manager will make a decision based on the information which is available to them and will be informed that the disciplinary hearing will proceed in their absence.

During the hearing the employee will be offered the opportunity to send a written submission for consideration at the hearing and/or send a representative. The representative will be able to put forward the employee's case and to call witnesses.

The Manager hearing the case should be satisfied that every opportunity was given to the employee to present their case and that every reasonable effort has been made to ensure that the employee attends.

The manager hearing the case may then reach a decision regarding any disciplinary action in their absence based on the evidence available.

## **12.4 Confidentiality**

All parties involved in these proceedings are required to maintain absolute confidentiality. They should not discuss the alleged incident or their evidence or interview with any other member of staff. In addition, any information or documents issued to them, or which they have access to during this process must not be disclosed to any persons not directly involved in this process.

The Trust will address any failure to maintain such confidentiality.

## **12.5 Grievances raised during the investigation**

Where an employee raises a grievance during a disciplinary process, the disciplinary process may be temporarily suspended in order to deal with the grievance. Where the grievance and disciplinary cases are related, it may be appropriate to deal with both issues concurrently.

## 12.6 Resignation during the disciplinary process

Where an individual wishes to resign during a disciplinary investigation, this request should be referred to a HR Manager. It will be explained to the employee that the disciplinary process will continue until its conclusion

## 12.7 Safeguarding Children

In all cases involving inappropriate conduct with children, an Executive Director should be contacted immediately (or on-call manager if out of hours) and the manager must make a referral in accordance with the County Durham or Darlington Child Protection Procedures. The Associate Director of Workforce and the Professional Head of Service should be advised in order that they may consider a referral to the Police and the appropriate Regulatory Body.

## 12.8 Healthcare Professional Alert Notices (HPAN)

In all cases, where an employee could pose a significant risk to patients, staff or the public and where the Director wishes an HPAN be issued, the Chief Executive or Executive Director must submit this request to the National Clinical Assessment Services (NCAS). The Director of Workforce & OD must be informed when such a request is made.

## 12.9 Cases involving theft/fraud

In cases where fraud or theft is suspected, the Local Counter Fraud Officer should be advised in accordance with the Policy on the Prevention of Fraud, Theft and Corruption.

## 13 DATA PROTECTION

All employees working in the NHS are bound by a legal duty of confidence to protect personal information they may come into contact with during the course of their work. This is not just a requirement of their contractual responsibilities but also a requirement within Data Protection Legislation which the Trust must comply with

## 14 DISSEMINATION ARRANGEMENTS

All staff working for the Trust should be made aware of this policy.

This policy will be available on StaffNet

## 15 MONITORING & REVIEW

The Associate Director of Workforce is responsible for monitoring the application of this policy and to ensure that the procedure is reviewed no later than three years from the date of issue. The Procedure may be amended at any time by joint agreement.

Monitoring Criterion	Response
Who will perform the monitoring?	Human Resources Business Partner
What are you monitoring?	The application and compliance with process for investigation and hearing

When will the monitoring be performed?	1. At conclusion of each hearing 2. Twice yearly audit
How are you going to monitor?	1. Completion of Case Reflection Forms at end of each hearing by panel chair 2. Review sample of ten complete Disciplinary Case Files
What will happen if any shortfalls are identified?	Education and learning lessons shared with Care Group/Corporate managers and HR Management Team
Where will the results of the monitoring be reported?	W&OD SMT
How will the resulting action plan be progressed and monitored?	Via monthly HR Team meetings
How will learning take place?	Feedback & lessons learned to Managers and HR Reps involved in process  Via monthly HR Team Meeting

## 16 REFERENCES

Trade Union and Labour Relations (Consolidation) Act 1992  
Employment Act 2008  
Employment Relations Act 1999  
ACAS Code of Practice – Disciplinary and Grievance Procedures  
Maintaining High Professional Standards in the Modern NHS'  
Data Protection Act

## 17 ASSOCIATED DOCUMENTATION

PO/PD/0002 Dignity at Work Policy  
PROC/PD0010 Grievance Procedure  
CDDFT Data Protection Policy

## 18 APPENDICES

- Appendix A – Disciplinary Rules
- Appendix B – Disciplinary Appeal Hearing Procedure
- Appendix C – Minimum level of authority to take disciplinary action
- Appendix D – Flowchart
- Equality Analysis Impact Assessment – available on HR Management page on StaffNet

**APPENDIX A****DISCIPLINARY RULES****1 INTRODUCTION**

These rules apply to all staff employed by the Trust. Individuals who work on a bank/casual basis who are not employees are expected to comply with these rules, but will not be subject to the disciplinary procedures; however, offers of work may be withdrawn. The Trust reserves the right to refer any worker to their relevant professional body or the Disclosure and Barring Service where misconduct is suspected

In the interest of good employee relations this summary seeks to describe examples of misdemeanours that the Trust considers to be sufficiently serious as to warrant disciplinary action. However, it must be noted that the following lists are **purely illustrative** and not exclusive or exhaustive since employment will also be governed by local workplace rules, practices and procedures. Furthermore, the publication of these rules will not restrict the right of the Trust or any of its authorised Managers, to determine what stage of the disciplinary procedure is appropriate, in the light of the circumstances of each individual case, including summary dismissal.

Observance of these rules and expected standards of conduct are a condition of employment with the Trust. Employees are responsible for reading and observing the rules and procedures applicable to their particular employment.

A particular type of misconduct may be treated as misconduct or gross misconduct depending on the facts of the case.

**2 MISCONDUCT**

Misconduct occurs when an employee breaches the standards of general conduct, which are fundamental to their employment. Where misconduct has occurred, formal warnings will be issued and will remain on an employee's personal file for a specified period of time.

**3 GROSS MISCONDUCT**

Gross misconduct (or gross or willful negligence) is generally seen as misconduct serious enough to destroy the contract between the employer and the employee, making any further working relationship and trust impossible. It can and may lead to dismissal without notice (i.e. summary dismissal).

Examples of gross misconduct might include: theft or fraud; physical violence or bullying; deliberate and serious damage to property; serious misuse of the Trust's property or name; deliberately accessing internet sites containing pornographic, offensive or obscene material, serious insubordination; unlawful discrimination or harassment; brining the Trust into disrepute; serious incapability at work brought on by alcohol or illegal drugs; causing loss, damage or injury through serious negligence; a serious breach of health and safety; a serious breach of confidence (this list is not exhaustive, and there may be other examples of gross misconduct that could lead to dismissal)

**4 STANDARDS OF MISCONDUCT**

The following paragraphs set the standards of general conduct which are fundamental to your employment and, if breached may lead to disciplinary action. However, there may be

circumstances whereby the nature of the misconduct is regarded as very serious and may be regarded as Gross Misconduct, leading to summary dismissal (see paragraph 10.1.3).

NOTE: The list is neither exclusive nor exhaustive and other forms of misconduct may give rise to disciplinary action:

- 4.1 **General Conduct** - a high standard of conduct is expected from staff at all times. As employees of the Trust, staff are looked upon to present a good impression to the general public, to patients and their relatives, and are at all times required to behave in a manner which is unlikely to cause offence. Employees are expected to avoid any conduct, performance or actions that might jeopardise the reputation of the Trust or its employees or bring the NHS or Trust into public disrepute. This includes comments about colleagues or the Trust posted on social networking sites which are deemed to be offensive or inappropriate.

It is the responsibility of all employees to ensure that they are fit for work on every occasion they are on duty. This includes appearance, perceived consumption of alcohol or drugs, or any other factors which affect the image they portray to patients, the public, and other employees.

All employees are required to co-operate with internal Trust investigations

**Social Media** - Employees are expected to avoid any conduct or actions that might jeopardise the reputation of the Trust or its employees or bring the NHS or Trust into public disrepute. This includes comments about colleagues or the Trust posted on social networking sites which are deemed to be offensive or inappropriate, and may also include private messaging groups

- 4.2 **Behaviour** – all employees should carry out the reasonable and lawful oral or written instructions of their Supervisors.

Employees must not abuse their status or position when dealing with fellow employees or members of the public.

- 4.3 **Dishonesty/Falsehood/Misrepresentation** – The Trust expects its employees to be scrupulously honest not only in their dealings with the Trust, but also with patients, colleagues, visitors and the public.

An employee should not falsify or, without sufficient cause, alter, erase, add to, destroy or mutilate any document or record.

Making false expense & time sheet claims. In circumstances where employees are responsible for completing their own start and finish times documentation (e.g. flexi-time working) they must ensure that this is complete and accurate.

Unauthorised use of trust stationery, equipment or property e.g. private photocopying, sending private mail via the hospital franking machine service, private telephone calls.

Making false statements at interview, on applications/medical history documentation, or in any information used in support of an application for any post in the employment of the Trust.

The abuse or misuse of sickness pay/leave or study leave provisions.

Any instance of theft of property from the Trust, or from patients, visitors, or other Members of staff on health service premises, or on its business.

Any deliberate attempt to defraud the Trust, a member of the public, another member of staff or a patient in the course of official duties.

Failing to declare any personal financial interest in outside companies, firms or other Agencies, or other NHS bodies with which the Trust deals, either on starting Employment with the Trust, or as soon as such an interest becomes known/is acquired.

The receipt of goods, favours, or excessive hospitality in respect of services rendered e.g. from contractors in anticipation, or recognition of receiving orders for goods, or services (Ref. Hospitality Register).

(Ref: Policy & Procedure to Prevent & Detect Theft, Fraud and Corruption).

- 4.4 **Contractual Obligations** - there are certain statutory obligations, which are placed on some employees (requirement to hold a driving licence, professional registration etc.) and failure to comply with these may render the continuation of their contract of employment itself impossible
- 4.5 **Unauthorised absence from duty/non-attendance** - staff are expected to attend for duty at the correct time and work their contracted hours. Staff should not leave duty without prior permission. In the case of sickness, sudden domestic emergency, or other good reason which prevents a member of staff from reporting for duty, or requires them to go off duty early, the responsibility lies with the member of staff concerned to inform his/her manager or deputy in accordance with local procedures (Ref: Sickness Absence Notification Procedure, and Special Leave Policies).
- 4.6 **Smoking on Duty** – the Trust prohibits smoking on all premises and grounds and employees must comply with the requirements outlined in the Trust’s No Smoking Policy.
- 4.7 **Alcohol/Drugs** - staff must not smell of alcohol, or be under the influence of alcohol or drugs, when coming on duty or during the course of their duties. In no circumstances should alcohol or drugs be consumed during working time (Ref: Alcohol and Drug Awareness Policy).

Serious misbehaviour and/or being unfit for duty through the effect of alcohol, drugs or substance abuse.

- 4.8 **Private Business/Outside Employment** - the Trust advises its employees engaging in employment in off duty hours to seek the prior agreement of their manager (Secondary Employment Policy). Staff should remember that such employment must not adversely affect their work with the Trust. The Disciplinary Procedure may be invoked if the Trust concludes that the employee’s performance is affected or if the interests of the Trust are adversely affected by the nature of the outside employment.

Employees should not conduct any non-work related activities on Trust premises without prior authorisation.

Conducting private business arrangements or engaging in outside employment during the hours when contracted to work for the Trust is forbidden. Private business arrangements are when an individual member of staff undertakes other work/activities during paid time, the result of which provide additional personal income by way of cash, goods, or other benefit (whether or not for personal profit).

- 4.9 **Security** - local rules and procedures will, as appropriate, deal with security arrangements. Deliberate or negligent disregard of security will be treated as a disciplinary matter. The unauthorised cutting of keys, use of incorrect ID badge is strictly forbidden.

4.10 **IT Security** - employees must ensure that they are familiar and comply with the requirements of all Trust related policies regarding IM&T Security and Information Governance. In particular they must:

- Ensure the security of their own log in and password
- Not deliberately or intentionally misuse passwords
- Not undertake inappropriate or excessive internet use.
- Not use IT facilities for non Trust activities
- Use any of the Trust IT systems inappropriately, including any external systems hosted by third parties i.e. ContactPoint whilst employed by the Trust
- Ensure they use the NHS National Smart Card in accordance with national and Trust guidance
- Ensure that they handle all personal identifiable information they come into contact with in the course of their duties, in accordance with the Data Protection Act 1998.

4.11 **Confidentiality** – the nature of all health service work, especially information about the affairs of the Trust, patients, relatives, visitors and staff (personal identifiable information), is highly confidential. Employees must never divulge this information to any unauthorised person or agency without prior permission (employees are reminded that it is a contractual requirement to maintain confidentiality in accordance with the Data Protection Act 1998). This includes comments posted on social networking sites.

4.12 **Health & Safety** - all staff are expected to observe basic health and safety rules, and any action or failure to act which threatens the health and safety of a patient, member of the public, another member of staff or contractor working on health service premises or a failure to co-operate with management under the terms of the Health & Safety at Work Acts, will be treated as a disciplinary matter (Ref. Trust Health & Safety Policy).

Any incidents, where through negligence or recklessness, an employee places at risk the safety of him/herself or others, are likely to be deemed as gross misconduct e.g. possession of offensive weapons on Trust premises

4.13 **Discrimination/Harassment/Bullying** - all members of staff have a duty not to act in a way which is discriminatory, abusive, or harass someone because of an (actual or perceived) protected characteristic under the Equality Act 2010 (race/nationality, religion/belief, age, sexual orientation, gender identity, disability or long term health condition, sex or through unwanted sexual advances, pregnancy/maternity or their marriage/civil partnership status) Ref. Equality Diversity and Human Rights Policy (POL/PD/0009), Dignity at Work Policy (POL/PD/0002). All staff must make themselves aware of the Dignity at Work and Equality and Diversity Policies and comply with their requirements.

4.14 **Neglect of Duty** – all staff have a duty of care, and neglect of that duty, will be treated as misconduct, if the employee fails to:

- Carry out their duties which statute or the contract of employment requires;
- Participate in training which is a condition of employment;
- undertake the duties/responsibilities connected with the job in a satisfactory and competent manner;
- account for, or to make a prompt and true return of, any money or property that comes into their possession in the course of their duties;
- report any matter that should be reported;
- take reasonable care to prevent any loss, damage or injury to any person or property

4.15 **Unauthorised sleeping whilst on duty**

- 4.16 **Ill treatment or wilful neglect of patients.** This will include non-adherence to clinical care and hygiene standards in any area, including those specifically to prevent Hospital Acquired Infections, e.g. hand washing and clothing standards (Re Dress Code Policy), which could expose patients to increased risk.
- 4.17 **Assault & Fighting** - any fighting, assault or attempt to cause actual bodily injury upon a patient, member of the public, or fellow employee that takes place on health service premises, or whilst on duty (this does not mean that staff cannot take reasonable restraining measures with difficult patients).
- 4.18 **Offensive Behaviour** - any offensive, intimidating or threatening behaviour, or conduct that is likely to offend/violate common decency
- 4.19 **Malicious Damage** - where an employee, deliberately or by neglect causes waste, loss, damage or vandalism to the property of the Trust/patients/clients/staff, and/or fails to report such loss or damage.
- 4.20 **Unauthorised statements to the media**
- 4.21 **Unauthorised/covert recording of meeting/hearings**

## 5 PROFESSIONAL CONDUCT

Professional healthcare staff are responsible for complying with the relevant standards set by their regulatory or professional bodies (for example the GMC's Good Medical Practice, or the NMC's Code of Professional Conduct). A breach of such standards may lead to action by the Trust independently of any taken by the regulatory or professional body concerned.

Where disciplinary action is contemplated relating to professional conduct of an employee the officer empowered to take such disciplinary action should ensure that he or she receives any necessary advice from appropriate senior employees of that profession.

Where a serious professional issue arises and investigations are being carried out then the professional head must be contacted and kept informed e.g. if this concerns a nurse then the Director of Nursing would need to be informed.

The Trust is required to notify the specified statutory body which is responsible for the professional discipline of particular employee groups of all cases of dismissal or resignation connected with convictions in the Courts. The Trust will also report action taken under these procedures where it is considered that such reporting is necessary.

## 6 OFFENCES COMMITTED OUTSIDE EMPLOYMENT

All employees are obliged to notify their manager of any arrest, caution, criminal charges or convictions outside employment.

Offences committed outside employment will not necessarily influence an employees position at work, but may do so where this is considered to be prejudicial to the service. The main consideration will be whether the offence is one that makes the employee unsuitable for their type of work, and/or their actions make any further working relationship and trust impossible.

In all cases the manager must assess the role and responsibility levels in light of the offence and having considered the facts, will need to consider whether the conduct is sufficiently serious to warrant instituting the disciplinary procedure. For instance, employees should not be dismissed solely because a charge against them is pending or because they are absent as a result of being remanded in custody.

The Head of Human Resources will be notified in all cases.

**APPENDIX B****Disciplinary Appeal Hearing Procedure**

Following the application of a disciplinary sanction the following procedure should be followed for conducting a Disciplinary Appeal Hearing.

The Chair will:

- make the necessary introductions
- explain and make it clear to the employee and all present that this is a Disciplinary Appeal Hearing
- The purpose of the meeting should be clearly stated:
  - To consider their appeal against the disciplinary action imposed
  - The format of the Appeal Hearing

An adjournment may be called by either party at any time during the hearing.

**Format of Hearing**

- The employee or their representative shall state the case for their appeal and call any witnesses (if applicable).
- The Disciplining Officer shall be entitled to question the witnesses called.
- The Panel shall be entitled to question any witnesses called.
- The employee or their representative may re-examine his/her witnesses on any matters referred to in their examination by a member of the Panel or Disciplining Officer.
- The Disciplinary Officer and Panel will be entitled to question the employee following presentation of their case.

(Witnesses will withdraw following questions)

- The Disciplining Officer shall state the management case and call any witnesses (if applicable).
- The employee or their representative shall be entitled to question any witnesses called.
- The Panel shall be entitled to question any witnesses called.
- The Disciplining Officer may re-examine his/her witnesses on any matters referred to in their examination by members of the panel and/or the employee or their representative.
- The Employee or their representative and Panel will be entitled to question the Disciplining Officer following presentation of their case.

(Witnesses will withdraw following questions).

- The Disciplining Officer shall summarise their case.
- The employee or their representative shall summarise their appeal. The employee or the employee's representative has the right to speak last.

- Normally in summing up, neither party may introduce any new evidence. However if at this point, further evidence to support the appeal is required, the members of the Panel may, at their discretion, adjourn in order that either party may produce further evidence.
- The Disciplining Officer, the employee and his/her representative shall withdraw.

### **Adjournment**

- The Panel, the HR representative and/or specialist advisor will adjourn in private only recalling both parties to clear points of uncertainty on evidence already given. If recall is necessary both parties shall return, notwithstanding that only one is concerned with the point given rise to doubt.
- After private deliberation it is hoped a decision will be reached on the day of the hearing. In such instances the Chairperson will recall the employee and management and outline the decision, giving appropriate reasons
- The Chairperson will confirm to the employee and their representative in writing the decision of the appeal panel within 14 calendar days of the hearing.
- However, where a case is likely to require further consideration following the hearing, written advice should be provided to the employee within 14 calendar days, indicating the date by which a full response can be expected.
- Following this process the Chairperson must explain to the employee and their representative that the decision made by the appeal panel is final and there will be no further right to appeal.

**APPENDIX C**

**MINIMUM LEVEL OF AUTHORITY TO TAKE DISCIPLINARY ACTION**

<b>Staff Group</b>	<b>Written/Final Written Warning</b>	<b>Dismissal</b>
Chief Executive	Trust Board Panel	Trust Board Panel
Director	Chief Executive & Chairman	Chief Executive, Chairman and Non Executive Director
Other Staff	Line/Department Manager	General Manager/Associate Director

