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**CONTENTS**

|  |  |  |  |
| --- | --- | --- | --- |
|  |  | | **PAGE** |
|  | Introduction | | 4 |
|  | Scope of the Procedure | | 5 |
|  | Roles and Responsibilities | | 5 |
|  | Right of Representation | | 6 |
|  | Process to determine the appropriate route of each case | | 6 |
| 6.  7.  8.  9.  10.  11.  12.  13.  14.  15.  16.  17.  18.  19.  20.  21. | Resolution process  Review of action plan  Informal Procedure  Suspension, Transfer or Alternative Duties  Action in Relation to Accredited Trade Union/Staff  Organisation Representatives  Criminal Offences Occurring in the Workplace  Criminal Charges/Offences Occurring outside the Workplace  Overlapping Disciplinary and Grievance Cases  Professional Advice  Disciplinary Investigation  The Formal Stages  Disciplinary Warnings  Right of Appeal  Monitoring  Equality Impact Assessment  Version Control | | 7  9  9  10  12  12  13  14  14  14  16  19  21  23  23  23 |
| **APPENDICES** | |  |  |
| Appendix 1  Appendix 2  Appendix 3  Appendix 4  Appendix 5  Appendix 6 | | Flowchart for appropriate route and resolution process  Employees’ Cultural and environment impact statement Checklist  Line Manger Cultural and environment impact statement Checklist  Panel Decision checklist  Witness template for fact find  Overview of Disciplinary Process |  |
| Appendix 7 | | Procedure for a Disciplinary Hearing |  |
| Appendix 8 | | Authority to take Disciplinary Action |  |
| Appendix 9 | | Right of Appeal |  |
| Appendix 10 | | Procedure for a Disciplinary Appeal Hearing |  |
| Appendix 11 | | Equality Impact Assessment |  |
| Appendix 12 | | Version Control Sheet |  |

DISCIPLINARY PROCEDURE

1. INTRODUCTION

The South West Yorkshire Partnership NHS Foundation Trust (the Trust) is committed to creating and maintaining a positive working environment and harmonious employee relations.

In implementing this procedure Managers should ensure they do not discriminate directly or indirectly on the grounds of age, disability, race, nationality, ethnic or national origin, gender, religion, beliefs, sexual orientation, domestic circumstances, social state, HIV status, gender reassignment, or political affiliation or trade union status.

Alongside our vision to make SWYT a great place to work, we value every member of staff in the organisation and this process is designed to make formal processes fairer for all involved.

This procedure deals with issues of conduct, as distinct from capability There is a separate procedure to deal with capability issues. There is also a separate procedure which addresses issues arising out of capability on health grounds.

As an organisation we want to reduce the overall likelihood of all staff entering a formal process.

While the formal part of the Trust’s procedure is based on the ACAS Code of Practice, the trust has implemented the resolution process that has been agreed by staff side and HR and welcomed by managers as an effective and more reflective learning culture, the objective being that where possible staff are given the opportunity to learn from issues in a less formal way and help develop the learning for the individual/ manages/ services and whole organisation.

When informal mechanisms are not considered appropriate and when informal discussion or resolution is not appropriate or has failed, there will however be times a formal investigation, and disciplinary procedure will be necessary for conduct of a serious nature.

All allegation(s) against an employee will be investigated prior to any Disciplinary Hearing/action taking place.

The procedure will follow the basic principles of natural justice. That is the employee will be informed of the allegations, they will be given the opportunity to state their case and they will be heard in good faith. A flowchart of the Disciplinary Procedure is shown at Appendix 6.

The establishment of a Four step assurance process is one element of a concerted focus to reduce the overall likelihood of all staff entering a formal process.

1. Step 1 - Fact find including a series of structured Questions for the employee and line manager to support the decision-making process and ensure a learning culture wherever possible

2. Step 2 - Decision panel including the commissioning manager (usually General manager), HR support and appropriate Cultural and environmental advisor to work through the decision in a fair and transparent way. They will complete a form with the information they considered, and the decision made (Appendix 4)

3. Step 3 - go to resolution and learning process or full investigation as outlined in this document, disciplinary procedure

4. Step 4 - Review and assurance process. A quarterly review process will be held between Head of Operational HR, HR Managers, WRES, WDES leads. The review is to gain assurance that a fair and transparent process and the cultural review process has been followed for all current cases. As well as ensuring a fair and equitable process across different Care Groups and services. Good practice and learning will be shared through an external lesson learned and review process across our Trust.

1. SCOPE OF THE PROCEDURE

This procedure applies to all employees of the Trust and relates to issues of conduct, and attendance misconduct. There is an exception for Medical and Dental staff where matters of professional conduct/competence will be dealt with in accordance with Maintaining High Professional Standards in the Modern NHS - A Framework for the Initial Handling of Concerns about Doctors and Dentists in the NHS.

Where allegations of fraud, corruption (including bribery), child abuse or abuse of vulnerable adults are made against a member of staff, reference should also be made to the relevant policy/procedure and investigation processes concerned.

1. ROLES AND RESPONSIBILITIES

The Trust Board is responsible for agreeing this procedure. The Lead Director is the Chief People Officer. The Lead Director will ensure that appropriate guidance on the application of the Disciplinary Procedure is available. Managers are responsible for ensuring the process is undertaken in a fair, consistent and timely way.

Managers and staff are responsible for ensuring that they are aware of the procedure and follow it appropriately. Where there is uncertainty, they should ensure they seek appropriate advice and support from an appropriate Human Resources representative or as outlined below, under Rights of Representation. Staff must ensure that they are familiar with their responsibilities and follow the disciplinary rules at work.

HR staff will be available at all stages of the procedure to give support and advice and attend formal meetings, where appropriate. HR staff will be present at all Disciplinary and Appeal Hearings.

1. RIGHT OF REPRESENTATION

An employee under any part of this process including resolution or investigation has the right to be represented or accompanied. They have a right to be accompanied at any formal interview or hearing by an accredited representative of their trade union, by an official employed by a trade union, or by a fellow worker not acting in a legal capacity. The employee should be informed of their right to representation prior to any meeting or hearing convened under this procedure.

1. Process to determine the APPROPRIATE ROUTE of each case

The Commissioning Managers will ensure that: -

1. A full fact find has been completed by an appropriate team manager (see details below). This should include completion of the employee (appendix 2) and managers (immediate line manager) (appendix 3) cultural and environment impact statement check list (should any support be needed to complete this the employee can seek support from staff side and both parties can seek support from a manager or HR)
2. The fact find should meet the threshold to allow a decision regarding the seriousness of the alleged conduct which will determine whether a full investigation, the resolution process or informal action should take place. Dependent on the circumstances, this should include, as a minimum

* Statements from all relevant witnesses to an incident (including the individual whose conduct is of concern). Witnesses will be asked to write their own statement if they have observed / been involved in an incident. (Please see appendix 5 for the template to be given to staff) An investigative interview Must not take place at this stage
* Any relevant documentary evidence should also be collated and reviewed
* The employee and manager (Immediate manager) cultural and environment impact statement check list must be collated and provided to the decision panel. (Appendix 2 and 3) These MUST be completed ASAP
* The manager will then provide a short summary of the fact find along with the documentation obtained to the decision panel
* This must be completed within 7 working days

1. The decision Panel

* Within 5 working days of receiving the information the decision panel comprising of the Commissioning manager, HR representative and cultural and environment advisor must review the information and confirm the decision (advice may be sought from Professions where patient safety is identified, and counter fraud where fraud is suspected etc)
* The case MUST be referred to a resolution panel review in all cases unless they believe the case warrants a full investigation as it falls under the following categories which could constitute gross misconduct. These reasons include:

a) Serious safeguarding concerns

b) Fraud/ theft

c) Violent or abusive behaviour

d) Bullying, harassment, or discriminatory practices

e) Incapacity on duty including unfit for duty because of alcohol or non-prescribed drugs

f) Repeat offense following resolution process

g) Any other act of potential gross miss conduct

h) The employee Fails to accept the resolution panel’s decision

Or

The case is a very minor incident outside of the employee’s normal conduct and there is no learning other than reflection for the employee and there is also no learning for the manager/service or Trust. In such a case, this may be dealt with via informal coaching with the line manager (see section 8)

* Where there is no learning for the individual but there is potential learning for the manager/ service/ Care Group or Trust, the resolution panel should still be arranged to determine this learning in these areas
* Should a decision be made to go to full investigation under the disciplinary Procedure, the manager must meet with the individual and confirm a detailed reason why the allegations are of such a serious nature that the resolution panel is not fit for purpose. This must be confirmed in writing within 2 working days of the meeting. Section 15 onwards outlines the procedure to be followed if the decision panel determines that a full investigation under disciplinary procedure is required.

1. THE RESOLUTION PROCESS (flow chart at appendix1)
2. The Commissioning Manager will meet with the individual (and where possible) their trade union representative or a work colleague to offer the resolution process approach. The individual will be given 2 days to consider their decision and accept the approach and understand that any action plan agreed by the resolution panel review will need to be adhered to. If the individual does not agree with this approach, a formal investigation under disciplinary procedure will be commissioned and the disciplinary procedure be followed to its conclusion and they will forfeit the right to move back into the resolution process at any stage.
3. A resolution review panel will consist of Commissioning manager, HR representative and a staff side representative. (an appropriate Professional for specialist advice may also be included on the panel) The staff side member can be from the same Trade union as supporting the staff member but must not have been involved in the case. No other person including the manager may be involved in the panel (unless as an observer for development purposes only). Each panel member will be given all the information obtained at the fact find, directly into an individual folder on the shared drive, one week prior to the review panel meeting to identify potential actions or learning for: -

* The staff member
* The manager
* The service
* The Care Group
* The Trust

1. A ’resolution panel’, meeting will be arranged via MS teams and chaired by the commissioning manager to discuss the thoughts for a resolution and actions to be agreed.
2. If there is insufficient information available, the commissioning manager will request further fact finding identifying the specific information required.
3. Options available could include and more than one option can be considered as a resolution, for example: -

* Action plan for the individual/ manager/service//Care Group/trust, to include specific measurable goals and the outcomes required
* Reflective supervision for individual/manager/team
* Coaching for individual/ manager/ team
* Learning for the service / escalation of improvements in practice to all staff members/ other managers or Care Group.
* Expected outcomes, timescales and agreed evaluation/ review for all above

1. Once a decision has been made a ’resolution meeting’ will be arranged by the commissioning manager or an alternative manager at the request of the commissioning manager as appropriate. The meeting will take place where possible within 2 weeks of the panel’s decision with the individual and their Trade union representative / work colleague to discuss the concerns identified, any action agreed by the panel and how these actions will be implemented.
2. The individual staff member will receive a letter confirming the required actions and timescales. The letter will also include that if any further conduct issues of a similar nature occur within the next 12 months this may lead to formal disciplinary investigation / action. Following this process, the individual will continue in their substantive role. There will be no right to appeal the outcome.
3. The same process will be followed if there is learning for the manager. A meeting will be arranged by the commissioning manager to feed back any learning / actions for them.

Where there is learning for the service the General Manager will discuss this with the Deputy Director and develop an appropriate action plan. Consideration will be given to whether learning should be shared Trust-wide. The Deputy Director of the service will be responsible for a trust wide or across Care Group learning actions

7. REVIEW OF THE ACTION PLANS AND OUTCOMES

1. A manger will be given responsibility to ensure that any action plan or any other agreement for the individual is completed and actioned. They will be required to update the original resolution panel that all actions have been completed in the timescales defined. Where the action is not completed because the individual does not engage in the process, the case will be referred to the original resolution panel. A decision could be to refer the initial case to a disciplinary investigation and hearing along with the failure to engage in the process
2. A general manager will be responsible for any learning or action plans for the line manager being completed. They will be required to update the original resolution panel that the action have been completed on time. A failure to engage in the process by the manager will result in the individual manger being referred to the original resolution panel to decide on an appropriate action
3. A deputy director for the service will be responsible for any learning or action plan within the service/Care Group/Trust and will feedback to the panel that it has been completed in the appropriate timescales
4. INFORMAL COACHING

This will enable very minor problems to be addressed before they develop further and help staff by offering advice and guidance. This will be undertaken by the employee’s immediate supervisor.

The Manager should meet with the employee informally, on a one-to-one basis, to identify and discuss the areas of concern. This should include the setting out of future expectations, the consequences of a continued shortfall and may including any development/training opportunities or mentorship.

1. SUSPENSION, TRANSFER OR ALTERNATIVE DUTIES

* The investigating officers will, as part of the investigative process, continually review the need for suspension. As a result they may make recommendations to the manager who commissioned the investigation, that a suspension should be lifted, or imposed should the facts warrant this. During the suspension the employee will usually receive full pay based on their normal pay. Paragraph 9 sets out an exception where an employee may not receive full pay.
* Suspension is not disciplinary action, nor is it a presumption of guilt, however, it must not be taken lightly, or without careful consideration of the circumstances of the case.
* It may be appropriate after consideration of the circumstances to take alternative action to suspension. This could include the transfer of the employee to another area of work or leave the employee in situ but with restricted or alternative duties. Such alternative action will not preclude dismissal being considered as an appropriate sanction following an investigation and Disciplinary Hearing.
* Suspension, transfer or alternative duties may be considered where:
  + The allegations are of such a serious nature they could constitute gross misconduct.
  + A breach of health and safety legislation is involved and an investigation into the facts is taking place.
  + It would not be possible to carry out a full and proper investigation with the employee still present in the work area.
  + The employee could not continue to work normally whilst an investigation was pending or underway.
  + The employee would have an opportunity to alter or tamper with the evidence relating to the allegations.
  + There is a likelihood that if the employee continued to work further offences would occur.
  + The employee is considered unfit for duty for some other reason.

The above is not intended as an exhaustive list but gives examples of some of the reasons why suspension, transfer or alternative duties may be appropriate.

* The authority to suspend will normally rest with a Manager, or in their absence, a deputising Manager. However, given the nature of the service, for its safe operation, there may be occasions when the designated person in charge on the site may suspend e.g. during shift working or at a remote geographical location.

The person in charge may send an individual home, until arrangements can be made for the appropriate senior manager to suspend that individual.

* The period of suspension, transfer or alternative duties should normally be for four weeks after which a review of the action taken should take place on a four weekly basis. The Chief People Officer will be informed on a regular basis that a member of staff is suspended.
* The suspension, transfer or alternative duties must be confirmed in writing to the employee within three working days of verbal notification. The letter should detail the allegations, the reason for the suspension (transfer or alternative duties), a review date and the action taken. The letter should state that the employee will receive pay based upon their normal pay as appropriate.
* Whilst suspended, transferred or undertaking alternative duties the employee must not contact (including use of the internet, texting, telephoning, etc) any of their work colleagues, or witnesses involved in the investigation to discuss the matter with them, as this will be regarded as misconduct. Where such contact is intended to corroborate or change evidence or breach the terms of their suspension; this will be regarded as gross misconduct.
* If suspended, the employee must not visit Trust premises without the express permission of the Manager who commissioned the investigation. An exception to this would be informing the Manager when accessing Trust services, as a patient or carer. Meetings with a Trade Union Representative or fellow worker should take place away from the employee’s immediate work area and the Manager who commissioned the investigation should be informed if other Trust premises are to be used as the venue.
* Where an employee has been transferred, they must refrain from attending their permanent place of work, without the express permission of the Manager who commissioned the investigation.
* It is expected that an employee who is suspended from duty will be contactable and available for interview or meetings, on what would have been their normal working days. Should the employee be unavailable on these days, they must request annual leave which will be deducted from their entitlement. During any period of annual leave, the terms of the suspension will continue simultaneously.
* During a period of suspension an employee will not be permitted to work for any other organisation, or in private practice on what would have been their normal working days for the Trust.
* Where an employee submits a sick note whilst suspended from duty, their pay will revert to sick pay as specified under their terms and conditions of service. The employee’s sickness absence will be managed in accordance with the Trust’s Sickness Absence Policy. During any period of sick leave, the terms of suspension will continue simultaneously.
* The manager who commissioned the investigation will ensure suspended staff are offered support and are informed of the Trust’s Staff Counselling Service. This is to reduce the feelings of isolation experienced during this time. An independent manager, not involved with the case, will be allocated to offer regular support and act as a link between the Trust and the individual.
* Suspension due to failure to maintain statutory registration with a professional organisation is dealt with under a separate procedure. (See Professional Registration of Doctors, Nurses, Pharmacists and Allied Health Professionals in the Trust’s Intranet Document Store).

10. ACTION IN RELATION TO ACCREDITED TRADE UNION/STAFF ORGANISATION REPRESENTATIVES

As an employee, local accredited Trade Union/Staff Organisation officials are subject to the usual disciplinary standards. However, in order to avoid any misunderstanding of an attack on their organisation, no formal disciplinary action will be taken without a discussion with the full time official of the organisation concerned, on the circumstances of the case.

In cases of suspension, every attempt should be made to contact the representative’s Full Time Officer in advance. If this is not possible, the suspension should take place and the Full Time Officer be informed at the earliest opportunity.

11. CRIMINAL OFFENCES OCCURRING IN THE WORKPLACE

11.1 Other Relevant Policies to Consider

There are several other policies which deal with allegations of criminal offences which may be committed by an employee at work. The following policies are not intended as an exhaustive list but may need to be considered as part of an investigation:

• Policies and Procedures for Safeguarding Vulnerable Adults

• Policies and Procedures for Safeguarding Children Allegations

• Standards of Business Conduct

• Counter Fraud and Corruption Policy

• Bribery Act 2010 Policy

11.2 Counter Fraud

Where fraud, corruption or bribery against the Trust is suspected the Local Counter Fraud Specialist (LCFS) must be contacted without delay. The LCFS will then investigate the allegations separately from a civil and criminal perspective in accordance with the Trust’s Counter Fraud and Corruption Policy and Bribery Act 2010 Policy. However, if the allegation relates to a member of staff and once the LCFS has been contacted, disciplinary action should still continue to be dealt in the normal manner under this procedure.

11.3 Police Involvement

Where criminal offences are suspected (other than allegations of fraud, corruption or bribery as noted above), the Police should be contacted. Any incidents which result in the involvement of the Police will not normally prevent a Manager from completing an investigation under this policy and taking appropriate action. However, the Manager should work closely with the Police during the investigation(s).

12. CRIMINAL CHARGES/OFFENCES OCCURING OUTSIDE OF THE WORKPLACE

12.1 The Trust expects high standards of its employees, particularly as the Trust provides care for very vulnerable people.

An employee must notify their Manager, in writing, of any convictions received during their period of employment. Not doing so may lead to disciplinary action being taken against them.

This will also apply to an employee who is arrested on any charge, cautioned, bound over, served with a summons of a criminal charge or under Police investigation.

12.2 Prior to any action being taken in relation to criminal charges/offences outside employment with the Trust, it must be discussed with the Chief People Officer or alternatively a HR Manager and the Chief Executive.

12.3 In circumstances where an employee has been remanded in custody, suspension should be considered and may be either with or without pay. This should be discussed with the Chief People Officer or alternatively a HR Manager and the Chief Executive.

12.4 It may be necessary to consider suspending the employee whilst awaiting the outcome of criminal proceedings.

12.5 Where an employee is convicted of an offence, a full investigation must be undertaken, and a Disciplinary Hearing convened prior to any disciplinary action being taken.

12.6 Where an employee is in custody, the investigation and Disciplinary Hearing may be conducted in their absence. However, the employee will be given the opportunity to nominate a Trade Union Representative or fellow worker not acting in a legal capacity, to attend on their behalf.

12.7 Failure to declare criminal convictions under the Rehabilitation of Offenders Act 1974 (Exemptions) Order 1975 (Amendment) Order 1986, prior to commencement of employment, may lead to summary dismissal (i.e. without notice). Where a member of staff has failed to declare convictions prior to employment this may be regarded as a criminal matter and will be referred to the LCFS for further investigation.

13. OVERLAPPING DISCIPLINARY AND GRIEVANCE CASES

The disciplinary investigation and any subsequent action will not normally be interrupted or delayed by the presentation of a grievance or claim of bullying and harassment. The manager hearing the case will determine whether or not the harassment allegations or grievance will be considered separately, or as part of the disciplinary process.

14. PROFESSIONAL ADVICE

Where professional conduct or competence is involved a senior member(s) of the appropriate profession will be available to give advice at all stages of the procedure.

15. disciplinary INVESTIGATION

15.1 If the Panel at section 5, determine that the alleged conduct warrants a formal investigation under the Disciplinary Procedure, a terms of reference will be drawn up for the Investigating Officers. Unless there are compelling reasons not to do so (e.g., the investigation concerns allegations of fraud, corruption, safeguarding children etc), the manager will also ensure that the TOR is shared with the employee

15.3 Where fraud, corruption or bribery against the Trust is suspected the Local Counter Fraud Specialist (LCFS) must be contacted without delay. The LCFS will then investigate the allegations separately from a civil and criminal perspective in accordance with the Trust’s Counter Fraud and Corruption Policy and Bribery Act 2010 Policy. However, if the allegation relates to a member of staff and once the LCFS has been contacted, disciplinary action should still continue to be dealt in the normal manner under this procedure.

15.4 If abuse of a child or vulnerable adult is suspected the Specialist Adviser of Children and Vulnerable Adults must be involved. This may also require the appropriate Safeguarding Children and Vulnerable Adults Policies to be followed.

Where the case met the threshold for a full formal investigation under the disciplinary procedure the case MUST be reviewed on a 4-week basis by the commissioning manager and a HR Manager to determine if the case is less serious than previously thought and can move into the resolution process.

The investigator and HR support must therefore update the commissioning manager of any significant changes to the seriousness’ of the allegations based upon the TOR prior to the meeting

The outcome must be communicated in writing to the Individual detailing the specific reasons why a resolution process is not being followed

15.5 Wherever possible, an employee will normally be given five working days’ notice to attend an investigative meeting. This may be given verbally or in writing. It may also take place sooner by mutual agreement.

15.6 The investigation should be completed without undue delay and aim to be completed in 8 weeks

Where the investigation is expected to continue beyond an eight-week period the investigator must notify the commissioning manager why this time frame is not possible, and the length of time needed. This should only be the occur in exceptional circumstances where there are with a large number of witnesses to interview.

employee should be informed of the decision in writing by the Manager who commissioned the investigation. The extension should be for a maximum period of four weeks at any one time and the employee should be informed of the reasons for the extension and any progress made.

15.7 Where it is believed that a serious breach of conduct has, or may be committed, e.g. in cases of theft or abuse of service users, the Trust reserves the right to install temporary directed surveillance equipment. This can only be authorised by the Chief Executive.

15.8 The use of direct covert surveillance equipment would need to be proportionate and appropriate. Care will be taken to protect the privacy and decency of employees and service users. Advice will also be sought from the Local Counter Fraud Specialist and the Trust’s Local Security Management Specialist. Surveillance equipment will be removed at the earliest appropriate opportunity.

15.9 Upon completion of the investigation, the Investigating Officer, will inform the Manager who commissioned the investigation that it is completed . However, to remove accusations of bias, the case will be reviewed by an independent manager (IMR) at 8b or above, who was not previously involved with the case,

15.10 The full report and appendices will be shared in the IMR manager’s shared folder and HR representative and if relevant, this will also be shared with a professional representative).

15.11 The IMR MUST consider if the findings of the investigation no longer meet the threshold for potential gross misconduct and are appropriate to move to the Resolution process at this point. This consideration must be communicated in writing to the commissioning manager, communicating a detailed reason why this would not be appropriate at this stage

15.12 If the decision is to proceed to a disciplinary hearing, the Manager who commissioned the investigation will normally hear the case. They will inform the employee in writing of the decision to proceed to a disciplinary hearing within five working days.

Where the decision is not to proceed to a formal disciplinary hearing, the Manager who commissioned the investigation will follow section 6 or 8 and undertake a resolution panel/ informal counselling etc will meet the member of staff to give feedback.

16. THE FORMAL STAGES

In circumstances where informal actions/ resolution have not achieved the required improvement(s) and minor breaches of discipline continue, or if as a result of the initial investigation, there is a possibility that disciplinary action could be warranted, the member of staff will be required to attend a Disciplinary Hearing. The hearing will take place, wherever possible, within two weeks of the conclusion of the investigation.

The individual will be asked to inform the panel if it is their intention to bring witnesses to the hearing. Where a witness is not known to the manager, their identity and the reason for being called will be given to the manager prior to the hearing. Requests for witnesses to attend the hearing will not be unreasonably refused.

There must be a significant reason for either party to cancel a Disciplinary Hearing and it should then be rearranged at the earliest possible date.

Where an employee fails to attend a Disciplinary Hearing on two occasions, for reasons which are deemed not to have been foreseeable when the hearing was arranged, they will be offered a further date. However, they will be informed that failure to attend on a third occasion will normally lead to the hearing taking place in their absence.

16.1 Disciplinary Hearing

The Disciplinary Hearing Panel will normally, as a minimum, consist of the Manager who commissioned the investigation and a HR Representative not previously involved in the investigation.

In cases involving professional conduct or competence a senior member of the relevant profession may be invited to join the panel. They must not have had previous involvement in the case.

The employee will be given a minimum of ten working days’ notice of the date of the Disciplinary Hearing. The letter inviting the employee to the hearing should normally include:

• The date, time and venue of the hearing

• The purpose of the hearing

• Details of the allegation(s)

• The identify of panel members

• The name of the Investigating Officer presenting the findings

• The name of the HR Representative accompanying the Investigating Officer,

where relevant

• The right to be represented (see Section 4)

• The names of witnesses to be called

Attached to the letter will be the management statement of case which will include:

• A summary of the case

• Signed statements from witnesses

• Any other documentary evidence

• A copy of the Trust’s Disciplinary Procedure.

The employee is not required to submit a statement of case; however they are encouraged to submit one if they wish to do so. This should be submitted five working days before the hearing, to enable the panel to read and consider it as part of the hearing.

Where the documentary evidence mentioned above relates to service user sensitive information, this will be made available to both parties prior to and at the Disciplinary Hearing. However, it will not be photocopied or allowed to leave Trust premises. Where a suitable redaction can be made which protects service user’s confidentiality, this may be used as an alternative and included in the documentary evidence.

The Disciplinary Hearing will be conducted as set out in Appendix 7, where it will be for all members of the panel to weigh up the evidence after listening to both cases and then advise the chair of the panel. The chair would normally be the manager who commissioned the investigation. The chair will consider the panel’s views and make the final decision as to what, if any, disciplinary action is warranted.

Should it be felt necessary by the panel that further investigations are needed, then an adjournment may be called, and provisions made for it to be resumed later. Either side may request a short adjournment at any stage, and this will not be unreasonably refused.

16.2 Disciplinary Action

The decision on what disciplinary action is taken will relate to the circumstances of each individual case. It is possible to enter into any of the actions detailed below depending on the seriousness of the offence.

Therefore, repetition of minor breaches of discipline may invoke a series of progressive warnings, or more serious cases could lead directly to a final written warning or dismissal.

16.3 Misconduct

The term misconduct applies where an employee fails to comply with the rules and standards of conduct that apply throughout the Trust, or to their particular work area. Managers have a responsibility to make these rules and standards clear to employees who, in turn, must ensure that they understand what is expected of them.

Examples of misconduct are set out below:

• Refusal to carry out a reasonable instruction given by an authorised

person

• Contravention of health and safety legislation and procedures

• Failure to meet acceptable standards of conduct

• Repeated lateness/poor time keeping

• Unsatisfactory and unacceptable performance of duties

The above are intended as examples and are not an exhaustive list.

The Trust may include other types of behaviour under the category of misconduct.

16.4 Gross Misconduct

The term gross misconduct applies where an employee’s acts or omissions are of such a degree that they seriously interfere with the provision of service, affect the health and safety of service users or result in a serious breach of contractual relationship with the Trust.

Examples of gross misconduct are set out below:

* Wilful damage or theft of the property of the Trust, service users, carers, staff visitors, contractors or volunteers

• Bullying, harassment or discriminatory practices or actions of other employees, service users or the public

• Fraud, including attempts to defraud the Trust, its officers, the public, service users, relatives or visitors. This may also include where employment with the Trust has been obtained fraudulently. Fraudulent actions may lead to criminal proceedings being taken against the individual

• Violent or abusive behaviour, assault or attempted assault upon service users, other employees or visitors

• Ill treatment of patients

• Incapacity on duty including unfit for duty due to the effects of alcohol or non-prescribed drugs

• Corruption/bribery e.g. acceptance of money or goods in respect of favours or services rendered

• Failure to respond to previous warnings as to matters of misconduct and performance

• Persistent refusal to carry out reasonable instructions given by an authorised person

• Breach of confidentiality

• Serious misuse of IT equipment and the Trust’s email, internet and intranet systems

• Gross negligence

• Deliberate contravention of health and safety legislation and procedures

• Criminal offences outside of the workplace

• Bringing the Trust’s name into serious disrepute

The above are intended as examples and is not an exhaustive list. The Trust may include other types of behaviour under the category of gross misconduct.

17. DISCIPLINARY WARNINGS

17.1 Formal Verbal Warning

A formal verbal warning may be issued in cases of minor offences. The employee should be informed in writing of the following within seven working days of the Disciplinary Hearing:

• The reason the warning has been given

• That the warning will remain on their record for a period of six months after which it will be removed and disregarded

• What improvement in behaviour and performance is expected, in what time period and how it will be assessed

• That failure to improve, or future breaches during the warning period may result in further disciplinary action

• The right to appeal against the decision

17.2 Written Warning

A written warning may be issued for more serious offences or repetition of minor offences. The employee should be informed of the following in writing within seven working days of the Disciplinary Hearing:

• The reason the warning has been given

• That the warning will remain on their record for a period of 12 months after which it will be removed and disregarded

• What improvement in behaviour and performance is expected, in what time period and how it will be assessed

• That failure to improve or future breaches during the warning period may result in further disciplinary action

• The right to appeal against the decision

17.3 Final Written Warning

A final written warning may be issued for repetition of less serious offences or if the misconduct is sufficiently serious to warrant more than a written warning but not serious enough to justify dismissal. The employee should be informed of the following in writing within seven working days of the Disciplinary Hearing:

• The reason the warning has been given

• That the warning will remain on their record for a period of 18 months after which it will be removed and disregarded

• What improvement in behaviour and performance is expected, in what time period and how it will be assessed

• That failure to improve or future breaches during the warning period may lead to dismissal

• The right to appeal against the decision

17.4 Dismissal

This is the most serious form of disciplinary action and as such will only be applicable to either issues of gross misconduct, where issues are so serious as to render continued employment unacceptable, or where there has been a repetition of less serious offences. The employee should be informed of the following in writing within seven working days of the Disciplinary Hearing:

• The reason for the decision

• The date the dismissal will take effect

• That summary dismissal (ie for gross misconduct) will take effect without notice or notice pay

• The right of appeal against the decision

17.5 Alternative Action Short of Dismissal

In exceptional cases the use of downgrading and/or transfer may be considered by the panel should they believe it could be an alternative to dismissal. Any downgrading and/or transfer will be subject to the agreement of the employee concerned. The Panel will ensure that any such proposals are realistic and practicable in the circumstances. Should the individual refuse (or not respond in the stated time period) the previously disciplinary sanction, based on the merits of the case, will be taken. Where agreement is reached with the individual to downgrade or transfer, this action will not be subject to appeal.

17.6 Referral to Professional Bodies and Independent Safeguarding Authority

Where there are concerns raised during the disciplinary process about the conduct or competence of a member of staff, the chair of the panel will discuss this with the appropriate Director (usually the Director of Nursing, Quality and Professions). The Director will then consider whether the matter should be referred to the individual’s professional body. If it is decided that referral is appropriate, then the individual will be informed of this action before it takes place.

Where a member of staff is removed from a regulated or controlled activity, or of they leave while under investigation for allegedly causing harm, or posing a risk of harm, the Trust is legally obliged to refer this information to the Independent Safeguarding Authority.

17.7 Authority to take Disciplinary Action

Appendix 8 indicates those Managers who are able to take disciplinary action.

18. RIGHT OF APPEAL

18.1 The Purpose of an Appeal

The purpose of an Appeal Hearing is to consider whether the decision made at the Disciplinary Hearing was reasonable in the circumstances and to allow the opportunity for any omissions at the Disciplinary Hearing to be addressed including the consideration of any new evidence.

Appendix 9 indicates those Managers who are able to hear appeals.

Appeal Hearings will be conducted in accordance with the procedure set out at Appendix 10. As the manager who made the decision to take disciplinary action is expected to justify their decision, they present their case to the panel first.

The employee will be informed of their right to be represented (see Section 4).

18.2 The Grounds of an Appeal

Appeal Against the decision to take Disciplinary Action

Where the employee appeals against the decision of the manager to take disciplinary action, the Appeal Hearing Panel will review the evidence presented to the Disciplinary Hearing Panel. They will then consider whether or not a reasonable decision had been reached. Where necessary witnesses will be called to clarify evidence.

In an appeal hearing a more serious sanction cannot be given. However in exceptional circumstances, if the panel feels the action taken is beyond the bands of reasonableness, the chair of the panel can then refer the case to a new panel, not previously involved with the case.

18.3 Appeals against Formal Verbal, First Written or Final Written Warnings

An employee’s request to appeal against disciplinary action must state the grounds of the appeal. It must be made in writing to the next level of management within seven working days of the date of the letter confirming the decision of the Disciplinary Hearing.

The appeal will be heard by the next level of senior management (see Appendix 9) normally within six weeks of the date that the letter of appeal was received. The Appeal Hearing Panel will consist of a Manager, a HR Representative and (where appropriate), a Professional Advisor none of whom will have previously been involved.

The employee will normally be given a minimum of ten working days’ notice of the Appeal Hearing date.

Statements of case from both parties should be submitted to the Manager at least five working days prior to the Appeal Hearing. The cases will then be exchanged with copies provided for both parties and the Appeal Hearing Panel.

If upon receipt of the exchanged cases, either party believes that new evidence has been included, they may, if required, approach the Manager to request a postponement to allow time for the new evidence to be considered.

There is no further right of appeal under this procedure.

18.4 Appeals against Dismissal

An appeal against dismissal must state the grounds of appeal and be made in writing to the Chief People Officer within seven working days of the date of the letter confirming the decision of the Disciplinary Hearing.

The appeal will normally be heard within six weeks of the date that the letter of appeal was received. The Appeal Hearing Panel will be a Sub Committee of the Trust Board consisting of three Directors, one of whom will be a Non Executive Director. The Non Executive Director will chair the panel. A Professional Advisor will also be a member of the panel, where appropriate. The secretary to the panel will be a Senior HR Representative.

The employee will normally be given at least 10 working days notice of the Appeal Hearing date.

Statements of case from both parties must be submitted to the Chief People Officer at least ten working days prior to the Appeal Hearing. The cases will then be exchanged with copies provided for both parties and the Appeal Hearing Panel. It is for the dismissing manager to decide which witnesses to call in support of the management case and for the member of staff, or their representative, to call witnesses in support of their case.

The panel may also decide that further witnesses need to be called in order to clarify the case before them.

If upon receipt of the exchanged case, either party believes that new evidence has been included, they may, if required approach the Chief People Officer to request a postponement to allow time for the new evidence to be considered

The Sub Committee with either uphold the sanction, or dismiss it. If the Sub Committee regards the sanction as inappropriate (particularly where new evidence has been presented), then it may reduce the sanction. However, if the committee considers the need for further investigations, they have the discretion to refer the case back to the original, or a new investigative team/disciplinary panel for reconsideration.

Where an appeal against dismissal is upheld reinstatement of the employee will be from the date of dismissal and arrears of salary will be paid. The panel may reinstate with a lesser warning. The warning would then commence from the date of the panel’s confirmation letter.

There is no further right of appeal under this procedure.

19. MONITORING

This procedure was produced by the People directorate, following discussions and consultation with Staff Side Organisations. The People Directorate will maintain records of all disciplinary action taken under this procedure. This will enable reviews to be undertaken to ensure that disciplinary action is not subject to bias, or that any particular group of staff is unfairly discriminated against. Reports on investigations instigated under this procedure will be reported to the Trust Board on a regular basis, but not less than once a year.

20. EQUALITY IMPACT ASSESSMENT

An Equality Impact Assessment is included at Appendix 11.

21. VERSION CONTROL

See Version Control Sheet at Appendix 12.

**Appendix 1**

**Commissioning Manager ensures fact find is undertaken by appropriate Manager. Statements, cultural and environmental impact statements, and other documents obtained**

**Commissioning Manager/HR /** **cultural and environment advisor (plus professional if required) Review of Fact find information and record decision**

**Potential serious allegations as identified in resolution procedure /potential gross misconduct**

**Yes**

**No**

**Resolution process to be followed**

**Commissioning Manager will meet with individual and their Trade Union representative or work colleague to offer resolution process approach.**

**Individual accepts the Resolution approach and any agreed action plan applied**

**Commissioning Manager/HR/Trade Union representative to consider information (within one week) to form a Resolution Panel**

**Where there is learning for the service the General Manager will discuss this with the Deputy Director and develop an appropriate action plan. Consideration will be given to whether learning should be shared Trust-wide. Deputy Director to feedback completion to panel**

**Progress through a formal Management Investigation**

**Continuous review of investigation documents**

**No**

**Resolution Panel to be arranged chaired by the Commissioning Manager to discuss thoughts for resolution & actions.**

**Options for resolution could include one or more;**

**\*Action Plan for individual/manager/service, Reflective supervision for individual/manager, learning for the service/escalation of improvements in practice for staff**

**1 Week consideration time. Each panel member to consider/identify actions or learning from the fact find for; the staff member, the manager and the service.**

**Resolution Meeting –Commissioning Manager to meet with individual- Actions agreed. Individual to receive letter detailing outcome and actions.**

**Manager to report back to panel actions completed**

Independent Management Review

**Decision regarding Hearing or Resolution Panel**

**Appendix 2**

**Employees’ Cultural and environment impact statement Checklist**

|  |
| --- |
| **Q.1** In your view does the incident or issue relate to: -   1. A serious safeguarding/patient safety concern that cannot immediately be disproved 2. A case of fraud or Theft that cannot immediately be disproved 3. Violent or abusive behaviour that cannot immediately be disproved 4. Bullying and harassment or deliberate discriminatory practices 5. Incapacity on duty including unfit because of alcohol or non-prescription drugs 6. A repeat offence for which you have already attended a resolution panel 7. Any other act of a serious nature which could considered as gross misconduct e.g., a criminal offence, a serious implication for professional practice/registration |
| **Yes/No**  **If yes, this incident would normally lead to a full investigation under the disciplinary procedure.** Isthere any mitigation that would need to be considered that may prevent a formal disciplinary investigation**?** This could include custom and practice, service cultural or personal issues relating to health, background, or culture that the panel may need to be aware of.  **Please detail** |
| **If no, please specify why you do not consider the incident/issue raised to fall under the one of the above categories**  **Please detail** |
| **Q2. Do You think this is a training /learning need?**   1. How long have you been in your job role? 2. What led to this incident/issue happening? 3. Would a similar trained and skilled employee in the same situation act in a similar way 4. What skills do you need to develop or learn? 5. What have you done since the incident /issue to develop the skills needed and reflect on your practice/behaviour etc?   **Please consider the above points and give specific information** |
| **Q3. How do you think this matter should be dealt with?**   1. Via informal coaching between you and your line manager as this is a very minor incident and there is no learning for you/ the manager/service or Trust. This is outside of your normal conduct. 2. Via the resolution process as this is a mid-level incident and there is learning for you/ your manager/ the service or the Trust which may include robust action plans 3. A formal investigation under the disciplinary process as the mater falls under the threshold of potential gross misconduct including serious safeguarding, theft or fraud, Violent or abusive behaviour, discriminative practices, unfit for duty due to alcohol or non-prescribed drugs, a repeat issue or any other serious conduct   *Please think careful about the issue raised with you and honestly consider each solution, stating which one you think would be most suitable for the Trust to implement in your circumstance and Why.*  **Please give details** |
| **Q4. In considering the allegations and issues have you considered whether there may be any cultural influences that might have a bearing on the decision-making?**   1. Are you able to have open conversations in your team/ with your manager? 2. Are you having supervision? 3. Is there the correct support in place for you? 4. Have you found yourself in this position in the past? Has this happened before? How was it dealt with on other occasions? 5. Has your line manager raised the concern in the same manner as they would do so with any other member of staff? 6. Are there any communications difference that might relate to cultural background? 7. As an employee do you believe that there are other factors such as individual circumstances or factors relating to your protected characteristics (ethnicity, disability, gender, sexual orientation) that should be taken into account?   **Please consider all of the above and give detailed information to be considered in your circumstance** |
| **Employee’s Statement**  In completing this Pre-Disciplinary Investigation Checklist, I believe that:   * the right relationship has been created for me to understand the facts of this matter sufficient to be able to respond to Questions 1-4 above, * consistency has been maintained in dealing with this situation regardless of my banding and protected characteristics, and * I understands the situation well including next steps and I am aware of various support mechanisms such as Staff counselling, OH, HR, and Union? (Y/N).   **Employee’s Name & Job Title**  **Date** |

**Appendix 3**

Line Managers cultural and environment impact statement Checklist

|  |
| --- |
| **Q.1** In your role as line manager of (Insert name) do you believe the allegation or issue that have been raised relate to: -   1. A serious safeguarding/patient safety concern that cannot immediately be disproved 2. A case of fraud or Theft that cannot immediately be disproved 3. Violent or abusive behaviour that cannot immediately be disproved 4. Bullying and harassment or deliberate discriminatory practices 5. Incapacity on duty including unfit because of alcohol or non-prescription drugs 6. A repeat offence for which you have already attended a resolution panel 7. Any other act of a serious nature which could considered as gross misconduct e.g., a criminal offence, a serious implication for professional practice/registration |
| **Yes /No**  **If yes, this incident would normally lead to a full investigation under the disciplinary procedure.** Isthere any mitigation that the panel should consider that may prevent a formal disciplinary investigation**?** This could include custom and practice, service cultural or personal issues relating to health, background, or culture that the panel may need to be aware of.  **Please detail** |
| **If no, please specify** why as line manager you do not consider the incident/allegation to fall under the one of the above categories  **Please detail** |
| **Q2. Do You think this is a training /learning need?**   1. How long the individual has been in their job role 2. What led to this incident/issue happening? 3. Would a similar trained and skilled employee in the same situation act in a similar way 4. What skills/development do you think the employee requires to prevent any further incidents. 5. Have you implemented any learning / training for the individual or provided supervision on the incident? 6. Have you implemented any changes in the work area for all staff, as a result of this incident?   **Please consider the above points and give specific information** |
| **Q3. As the line manager, what do you believe is an appropriate action to take in the circumstances?**   1. Via informal coaching between you and the employee as this is a very minor incident and there is no learning for the employee/ you/ the service or Trust. This is outside of the range of their usual conduct. 2. Via the resolution process as this is a mid-level incident and there is learning for the employee / you/ the service or the Trust which may include robust action plans 3. A formal investigation under the disciplinary process as the mater falls under the threshold of potential gross misconduct including serious safe guarding, theft or fraud, Violent or abusive behaviour, discriminative practices, unfit for duty due to alcohol or non-prescribed drugs, a repeat issue or any other serious conduct   *Please think careful about the issue raised and as the line manager honestly consider each solution, stating which one you think would be most suitable for the Trust to implement in the employees’ circumstance and Why.*  **Please give details** |
| **Q4. In considering the allegations and issues please consider if there may be any cultural influences that might have a bearing on the decision-making?**   1. Are you able to have open conversations in your team/ with the employee? 2. Are they having regular supervision? 3. Is there the correct support in place for the individual? 4. Has the employee found themselves in this or a similar position in the past?? How was it dealt with on other occasions and how did the employee respond? 5. Are there any communications issues with the employee that might relate to cultural background? 6. As line manager, do you believe that there are other factors such as individual circumstances or factors relating to the employee’s protected characteristics (ethnicity, disability, gender, sexual orientation) that could have resulted in the incident and that should be taken into account?   **Please consider all the above and detail any information to be considered in the circumstance** |
|  |

**Appendix 4**

Panel Decision checklist

|  |  |
| --- | --- |
| List Panel members  Date |  |
| Q.1. Do you have sufficient information to make an informed decision?  Y/N  If No  Please detail action taken | If yes, please detail what you referred to Statements Y/N  Documents and policies Y/N  Employees check list Y/N  Line managers check list y/N  Anything else please specify |
| Q.2. Does the incident relate to?   1. A serious safeguarding/patient safety concern that cannot immediately be disproved 2. A case of fraud or Theft that   cannot immediately be disproved   1. Violent or abusive behaviour that cannot immediately be disproved 2. Bullying and harassment or deliberate discriminatory practices 3. Incapacity on duty including unfit because of alcohol or non-prescription drugs 4. A repeat offence for which you have already attended a resolution panel 5. Any other act of a serious nature which could considered as gross misconduct e.g., a criminal offence, a serious implication for professional practice/registration | If No, Go to Question 3  If yes, Go to Question 4 |
| Q.3 Is this a very minor incident outside of the employee’s normal conduct with no learning other than reflection for the employee. There is also no learning for the manager/service or Trust. with via informal coaching with the line manager | Yes, refer to informal counselling section of the disciplinary policy  No, go to resolution process |
| Q.4 Is there any mitigation that the panel have consider that may prevent a formal disciplinary investigation?  (This could include custom and practice, service cultural or personal issues relating to physical or mental health, background, or culture that the panel have been made aware of aware of.  (For health is a referral to occupational health required before a decision can be made) | **Please detail mitigation considered and impact on the decision** |
| Q.5 would a similar trained and skilled employee in the same situation act in the same way | Yes/ No - please give a detailed explanation of consideration’s including (are they newly qualified and in preceptorship/ how long in job role) |
| Q.6 Are there any specific cultural issues that have been considered | Yes/ No please give a detailed explanation of considerations and impact on decision |
| Q.7. Are there any factors relating to the employee’s protected characteristics (ethnicity, disability, gender, sexual orientation, maternity, or religion) that the panel have considered | Yes/ No detail explanation of considerations and impact on decision |
| Overall outcome of panel decision | Please cross out as appropriate   * Minor incident managed via informal coaching with the line manager * Resolution panel * Full investigation under the disciplinary procedure |
| Please provide detailed explanation of panel decision including any concerns by individual panel members |  |
| Signatures of panel members |  |

**APPENDIX 5**

**SOUTH WEST YORKSHIRE PARTNERSHIP NHS FOUNDATION TRUST**

**Witness Statement template for fact find**

You have been asked to provide a statement concerning an incident that occurred recently. This proforma has been prepared to help you, by listing the main points that should be covered in your statement. The information contained within your statement will enable the investigating team to build a complete picture of what happened. You should give an account, in your own words, of what happened on the day / night in question. Please ensure the events are given in chronological way that is, taking a logical step by step approach to the way the incident happened. It is important that your statement is as accurate and factual as possible.

You should usually include the following (unless this is not possible):

The time you were on duty

Where you were when the incident occurred

What you saw and heard

When the incident occurred

Why it occurred

What was said at the time and by whom?

Who was there at the time and what did they do

If you think it would be helpful, please include a diagram.

When any incident occurs, the Trust needs to ensure it is investigated thoroughly and fairly

**Name: Date of incident:**

**Job title:**

**Statement**

**Statement (continued)**

(Please continue on another piece of paper if necessary)

I \**(name)* agree that the statement I have given is an accurate record of my recollection of events on *\*(enter the date of the incident)*

Signed: Dated:

 **APPENDIX 7**

PROCEDURE FOR A DISCIPLINARY HEARING

The following procedure will be followed at all Disciplinary Hearings.

During the procedure either party may request a short adjournment at any stage and this will not be unreasonably refused.

1. All parties including the Panel Members will be introduced to each other and a brief outline of the proceedings given by the Chairman of the panel.

2. The Investigating Officer supported, where relevant, by a HR representative will present their case and call any witnesses.

3. The employee and/or, their representative will have the opportunity to ask questions of the Investigating Officer and their witnesses.

4. The members of the panel will have the opportunity to question the Investigating Officer and their witnesses.

5. The management representative may re-examine their witnesses on any matters referred to in their examination by members of the panel or the employee and/or, their representative.

6. At this stage a witness may be released or asked to remain available should the panel or either party feel that further questions or clarification may be required later in the hearing.

7 The employee and/or, their representative will present the case for the employee and call any witnesses.

8. The Investigating Officer, supported by a HR representative, where present, will have the opportunity to question the employee and their witnesses.

9. The members of the panel will have the opportunity to question the employee and their witnesses.

10. The employee and/or, their representative may re-examine their witnesses on any matters referred to in their examination by members of the panel or the Investigating Officer.

11. At this stage a witness may be released or asked to remain available should the panel or either party feel that further questions or clarification may be required later in the hearing.

12. The Investigating Officer and the employee and/or, their representative will have the opportunity to sum up their cases. Neither party shall introduce any evidence at this stage which has not previously been submitted. Reasonable time will be allowed for either party to prepare to ‘sum up’.

13. Nothing in the foregoing procedure shall prevent the panel from inviting either party or witnesses to describe or clarify any statement they have made.

14. Should the panel believe that further investigation or evidence is required, then an adjournment may be called to enable this to take place. The hearing will be reconvened as soon as practicably possible.

15. Following the ‘summing up’ both parties will withdraw from the hearing.

16. The panel will deliberate in private only recalling both parties to clear points of uncertainty on evidence already given. If recall is necessary, both parties will be requested to return notwithstanding that only one is concerned with the point giving rise to doubt.

17. Prior to the disciplinary hearing the panel will not be made aware of any other current warnings issued to the employee. However, such warnings may be notified to, and considered by, the panel before they reach a final decision.

18. The panel members, after listening to both cases will consider the evidence presented and decide is a disciplinary sanction is warranted and what this should be.

19. The panel will reconvene to announce their decision to both parties verbally where possible. In any event the individual will be notified of the decision in writing within 7 working days of the hearing.

**APPENDIX 8**

**SOUTH WEST YORKSHIRE PARTNERSHIP NHS FOUNDATION TRUST**

**AUTHORITY TO TAKE DISCIPLINARY ACTION**

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| **Category of Staff Subject to**  **Disciplinary Action** | **Oral Warning** | **Written Warning** | **Final Written Warning** | **Dismissal** |
| Director | Chief Executive | Chief Executive | Chief Executive | Chief Executive |
| Senior Personnel (8b and above or equivalent) | Director/ Deputy Director or equivalent | Director/ Deputy Director or equivalent | Director/ Deputy Director or equivalent | Director/ Deputy Director or equivalent |
| Other staff | Manager (Band 7 or above) | Manager (Band 7 and above or equivalent) | Manager (8b and above or equivalent) | Manager (8b and above or equivalent) |

**APPENDIX 9**

**SOUTH WEST YORKSHIRE PARTNERSHIP NHS FOUNDATION TRUST**

**AUTHORITY TP HEAR RIGHT OF APPEAL – DISCIPLINARY ACTION**

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| **Category of Staff Subject to Disciplinary Action** | **Oral Warning** | **Written Warning** | **Final Written Warning** | **Dismissal** |
| Director | Chair | Chair | Chair | Sub-Committee of the Trust Board |
| Senior Personnel  (8b and above or equivalent) | Director | Director | Director | Sub-Committee of the Trust Board |
| Other staff | Manager (Band 8b and above or equivalent) | Manager (Band 8b and above or equivalent) | Manager (Band 8b and above or equivalent) | Sub-Committee of the Trust Board |

**APPENDIX 10**

**PROCEDURE FOR A DISCIPLINARY APPEAL HEARING**

The following procedure will be followed at all Disciplinary Appeal Hearings.

During the procedure either party may request a short adjournment at any stage and this will not be unreasonably refused.

|  |  |
| --- | --- |
| 1. | All parties including panel members will be introduced to each other and a brief outline of the proceedings given by the Chairman of the panel. |
| 2. | The Management Representative who may be supported by a manager (who may be a Human Resources Representative) will present their case and call any witnesses. |
| 3. | The employee and/or their representative will have the opportunity to question the Management Representative, and their witnesses. |
| 4. | The members of the panel will have the opportunity to question the Management Representative and their witnesses. |
| 5. | The Management Representative may re-examine their witnesses on any matters referred to in their examination by members of the panel or the employee and/or their representative. |
| 6. | At this stage a witness may be released or asked to remain available should the panel or either party feel that further questions or clarification may be required later in the hearing. |
| 7. | The employee and/or, their representative will present the case for the employee and call any witnesses. |
| 8. | The Management Representative **(**supported by a manager who may be a Human Resources representative) will have the opportunity to question the employee and their witnesses. |
| 9. | The members of the panel will have the opportunity to question the employee and their witnesses. |
| 10. | The employee and/or, their representative may re-examine their witnesses on any matters referred to in their examination by members of the panel or the Investigating Officer. |
| 11. | At this stage a witness may be released or asked to remain available should the panel or either party feel that further questions or clarification may be required later in the hearing. |
| 12. | The management representative, employee and/or their representative will have the opportunity to sum up their cases. Neither party shall introduce any new evidence at this stage which has not previously been submitted. Reasonable time will be allowed for either party to prepare to ‘sum up’, if required. The employee or their representative shall speak last. |

|  |  |
| --- | --- |
| 13. | Nothing in the foregoing procedure will prevent the panel from inviting either party or representative to describe or clarify any statement they have made. |
| 14. | Should the panel believe that further investigation or evidence is required, then an adjournment may be called to enable this to take place. The hearing will be reconvened as soon as practicably possible. |
| 15. | Following the ‘summing up’ both parties will withdraw from the hearing. |
| 16. | The panel will deliberate in private only recalling both parties to clarify points of uncertainty on evidence already given. If recall is necessary, both parties will be requested to return notwithstanding that only one is concerned with the point giving rise to doubt. |
| 17. | The panel will reconvene to announce their decision to both parties verbally where possible. In any event the individual will be notified of the decision in writing within 7 working days of the hearing. |

**Equality Impact Assessment**

**Disciplinary Procedure**

**Date of EIA: 7 August 2023 Review Date: August 2024**

**Completed By: Diane Taylor, Associate Director of People Operations and Helen Cherry, Medical Staffing Manager**

|  |  |  |
| --- | --- | --- |
|  | **QUESTIONS** | **ANSWERS AND ACTIONS** |
| **1** | **What is being assessed?** | **Disciplinary Policy** |
| **2** | **Description of the document** | This policy is intended to build a culture of learning from incidents, matters of concern or where things did not go as expected.  The Policy also outlines procedures to use formal measures where these are deemed appropriate for instances where potential gross misconduct is alleged.  The Policy includes a 4 step approach whereby decisions and judgements can be made to ensure informal and formal processes are followed appropriately dependent upon facts determined. |
| **3** | **Lead contact person for the Equality Impact Assessment** | Diane Taylor Associate Director of People Operations |
| **4** | **Who else is involved in undertaking this Equality Impact Assessment** | Members of the Employment Policy Subgroup consisting of Management and Staff Side Representatives.  People Directorate Colleagues,  Trust Equality Representative |
| **5** | **Sources of information used to identify barriers etc**  Prompts: service delivery equality data – refer to equality dashboards ([BI Reporting - Home (sharepoint.com)](https://swyt.sharepoint.com/sites/BIReporting) satisfaction surveys, complaints, local demographics, national or local research & statistics, anecdotal. Contact [InvolvingPeople@swyt.nhs.uk](mailto:InvolvingPeople@swyt.nhs.uk) for insight | **The below data includes information from the Equality Workforce Monitoring Annual Report 2023. The number of disciplinary cases is low which may skew percentages and therefore comparisons should be viewed with caution.**  **This policy aims to specifically reduce inequality by laying down the Trust’s aims to minimise the instances of formal Disciplinary measures being taken against individuals. It is not anticipated that this policy will have any negative impact on any protected characteristic groups going forward** |
| **5a** | **Disability Groups:** | Staff in post  Disabled – 8.8%  Not/Unknown – 91.2%  **% Personally, experiencing disciplinary proceedings:**  There is no data suggesting that a disabled member of staff was involved in a disciplinary in the reference period. Where a disability is identified during an investigation, reasonable adjustments will be made on a case by case basis. |
|  | **QUESTIONS** | **ANSWERS AND ACTIONS** |
| **5b** | **Gender:** | Staff in post  79.3% - Female  20.7% - Male  **% personally experiencing Disciplinary Proceedings:**  **Female = 17 (58.6%); Male = 12 (41.4%)** |
| **5c** | **Age:** | Staff in Post  Under 19 – 0.1%  20-29 – 13.6%  30-39 – 24.2%  40-49 – 23.8%  50-59 – 27.4%  60-69 – 10.4%  70+ - 0.5%  **% personally experiencing disciplinary proceedings:**  Age breakdown data not available. |
| **5d** | **Sexual Orientation:** | Staff in Post  Heterosexual – 83.9%  Gay or Lesbian – 2.7%  Bisexual – 1.4%  Unknown – 12%  **% personally experiencing Disciplinary Proceedings:**  **Heterosexual = 86.2% (25)**  **Unknown = 10.3% (3)**  **Gay or Lesbian 3.4% (1)**  Due to the relative small numbers involved it is difficult to draw firm conclusions from the data however the above shows that 1 LGBT member of staff was involved in disciplinary proceedings and the unknown percentage is lower than the trust profile. |
| **5e** | **Religion & Belief:** | Staff in post  Atheism – 20.9%  Christianity – 46.2  Unknown – 17.5%  Other – 11.5%  Islam – 3.9%  **% personally experiencing Disciplinary Proceedings:**  Atheism – 6.9% (2)  Christianity – 41.4% (12)  Unknown – 10.3% (5)  Other – 24.1% (7)  Islam – 17.2% (3)  Due to the relative small numbers involved it is difficult to draw firm conclusions from the data however the above shows that fewer staff who have stated they are Christian or other have been involved in disciplinary proceedings compared with the trust staff profile. Staff in the Islam religious group have a higher incidence compared with the trust staff profile. |
| **5f** | **Marriage and Civil Partnership** | Staff in post  Civil Partnership – 1.4%  Divorced/Legally Separated – 9.6%  Married – 49.6%  Single – 37.5%  Widowed – 1%  Unknown – 0.8%  **% personally experiencing Disciplinary Proceedings:**  **No data available for this category)** |
| **5g** | **Pregnancy and Maternity** | **There is No data for this category, but no adverse effect is anticipated from the policy** |
| **5h** | **Gender Re-assignment**  Prompt: Transgender issues should be considered | **There is No data for this category, but no adverse effect is anticipated from the policy** |
| **5I** | **Carers**  Prompt: Caring responsibilities paid or unpaid, hours this is done should be considered | No data available however it is estimated that 1 in 5 of the workforce may have caring responsibilities. No adverse effect is anticipated from the policy |
| **5j** | **Race**  Prompt: Indigenous population and BME Groups such as Black African and Caribbean, Mixed Heritage, South Asian, Chinese, Irish, new Migrant, Asylum & Refugee, Gypsy & Travelling communities.) | Staff in post  Asian – 5.3%  Black – 4.2%  Chinese or Other – 1.2%  Mixed – 1.4%  White – 87.7%  Unknown – 0.3%  **% personally experiencing Disciplinary Proceedings:**  **Asian = 10.3% (3);**  **Chinese or Other = 3.4% (1)**  **White = 86.2% (25)**  Due to the relative small numbers involved it is difficult to draw firm conclusions from the data however the above shows that 1 Chinese /Other member of staff was involved in disciplinary proceedings; 86.2% of disciplinary proceedings were with white staff which is slightly lower than the trust profile; 10.3% of disciplinary proceedings were with Asian staff which is higher than the trust profile. |

**Action Plan**

EIAs are now reviewed using a grading approach which is in line with our Equality Delivery System (EDS). This rates the quality of the EIA. This means that the team can review the EIA and make recommendations only. The rating and suggested standards are set out below:

* + **Under-developed** – red – **No data**. **No strands** of equality
  + **Developing** – amber – **Some census data plus workforce**. **Two strands** of equality addressed
  + **Achieving** – green – **Some census data plus workforce. Five strands** of equality addressed
  + **Excelling** – purple –**All the data and all the strands** addressed

Potential themes for actions: Geographical location, built environment, timing, costs of the service, make up of your workforce, stereotypes and assumptions, equality monitoring, community relations/cohesion, same sex wards and care, specific issues/barriers.

|  |  |  |  |  |  |  |
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| **Who will benefit from this action? (tick all that apply)** | | **Action 1: This is what we are going to do** | **Lead/s** | **By when** | **Update -outcome** | **RAG** |
| **Age** |  | Undertake an in depth review of the policy to include learning from the introduction of resolution processes and to also identify if there is any impact on protected characteristic groups through the identification and review of equality data this includes the annual WRES and WDES data and associated action plans | HR operational lead | Aug 2024 |  |  |
| **Disability** |  |
| **Gender reassignment** |  |
| **Marriage and civil partnership** |  |
| **Race** |  |
| **Religion or belief** |  |
| **Sex** |  |
| **Sexual Orientation** |  |
| **Pregnancy maternity** |  |
| **Carers** |  |

**Involvement & Insight: New or Previous (please include any evidence of activity undertaken in the box below)**

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| As part of the NHS People Plan a just culture approach is identified as a way forward in NHS Organisations  The themes of feedback regarding the Disciplinary Policy included Lengthy process, Processes are traumatic/harmful, Lack of humanity in the process, feelings of being unsupportive, being taken through a formal process when other factors were identified such as working practices, management and training issues.  A just culture restorative approach has been established for Disciplinary/Resolution cases to change to a restorative approach, where staff and mangers move and commit to a culture of finding solutions and a resolution to issues to establish healthy teams was identified. These themes along with the Just culture approach were taken on board by the group to develop a policy that was centred around a restorative practice approach.  Research shows that organisation that fully embraces restorative practices has the potential to create a safer, happier, and more effective workplace for everyone. The key components are:-   1. invites the affected parties into a dialogical process in which they can take responsibility for their role in the problem and its resolution. 2. determine how to repair the harm caused and restore trust and respect to damaged relationships, and to discuss how to avoid repetition. 3. Restorative approaches encourage the active participation of all those in the organisation affected by the incident, both those directly involved in it and those indirectly affected as bystanders or witnesses or co-workers. 4. Restorative practice allows for multiple voices across the organisation and multiple accounts of the problem to be heard, and for respectful dialogue to occur. 5. Restorative practice strengthens the skills of collaborative problem solving and consensus-based decision making in the workforce 6. Restorative conversations help to rebuild trust between colleagues, which is fundamental to any organisation’s success, by making space for personal storytelling, confession, remorse, apology, and reconciliation to occur. 7. Restorative processes serve to dissipate feelings of anger, alienation, and importance in the workforce by acknowledging each person’s experience and empowering them to devise solutions 8. Restorative inquiry enables systemic and structural causes of the harm, if any, to come to the surface and for prevention strategies to be co-designed 9. Restorative resolutions, by focusing on the repairing of harms and meeting of needs, allow for a better future to emerge and for past mistakes to become learning opportunities   This is the basis of the change in the policy which will take time to embed and will be reviewed in 12 months |
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| 1. **Methods of Monitoring progress on Actions**   Review numbers of formal Disciplinary investigation to determine if they have reduced including for specific groups  Review the number of resolution meetings that have taken place and if they are successful 6 months after the meeting |

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| |  | | --- | | 1. **Publishing the Equality Impact Assessment**   On the intranet document store as an attachment to the policy. | |

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| |  | | --- | | 1. **Signing off Equality Impact Assessment:**   Lindsay Jensen, Deputy Chief People Officer \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_    Date: 4/9/23 | |

***Once approved, you must forward a copy of this***

***Assessment/Action Plan by email to:***

[**InvolvingPeople@swyt.nhs.uk**](mailto:InvolvingPeople@swyt.nhs.uk)

**Please note that the EIA is a public document and will be published on the web.**

**Failing to complete an EIA could expose the Trust to future legal challenge.**

**APPENDIX 12**

**Version Control Sheet**

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| **Version** | **Date** | **Author** | **Status** | **Comment / changes** |
| 1.0 | Oct 2010 | James Corson HR Business Manager | Current | This is not the first version, but first revision, post Policy Development Policy and Foundation Trust status. Minor changes made throughout, including amending the format. Changes made re Fraud investigation and requirements regarding Vulnerable Adults. Alterations to authority to dismiss and hear appeals also made in the light of the Trust new management arrangements. |
| 1.1 | Apr 2012 | James Corson  HR Business Manager |  | This version now covers the Bribery Act and includes a flow chart outlining how the procedure operates. It is the first major revision since the new Foundation Trust was formed and the transaction bringing together previous Barnsley, Calderdale and Wakefield PCT’s. Their policies/procedures were consulted in compiling this procedure. This single procedure now replaces all the previous disciplinary documents for the forerunner organisations above. |
| 1.3 | April 2015 | James Corson, HR Business Manager | Previous | Reviewed by Executive Management Team 23.04.15 and review date extended to April 2016. |
| 1.4 | Jan 2016 | Janet Hirst, Assistant Director of HR – Operations | Previous | Reviewed by Executive Management Team February 2016 and review date extended to April 2017. |
| 1.5 | Jan 2022 | Assistant Director of HR (Employment and HR Operations) | Previous | Interim review to include resolution process agreed with staff side. Updated EIA. |
| 1.6 | Oct 2023 | Helen Cherry  Medical Staffing Manager | Final | Minor changes/updates as an interim measure prior to further in depth review and rewrite – changes to job titles including Director of HR to Chief People Officer. |