

DISCIPLINARY POLICY (H1)

This is a controlled document. It should not be altered in any way without the express permission of the author or their representative. On receipt of a new version, please destroy all previous versions.

Date of Issue:	September 2017	Next Review Date:	January 2021
Version:	2.3	Last Review Date:	January 2019
Author:	HR Manager		
Director(s) responsible:	Workforce and Organisational Development		
Approval Route			
Approved By:		Date Approved:	
JCNC/LCNC		18 th July 2013/18 th September 2013	
JCNC/LCNC		August 2014	
Cost Improvement Meeting		10 December 2015	
Links or overlaps with other policies:			
Sickness Absence Management Policy (HR06)			
Maintaining High Professional Standards in the NHS (No.11)			
Improving Performance Policy H17			

Amendment History

<u>Issue</u>	<u>Status</u>	<u>Date</u>	<u>Reason for Change</u>	<u>Authorised</u>
1	Approved	September 2013	Harmonised policy	JCNC and LCNC
2	Approved	August 2014	Deletion of last sentence 11.3 and addition of reason for gross misconduct	JCNC & LCNC
2.1	Approved	December 2015	Amendment to Appeal Panel – Exec no longer required to chair and min panel 2 senior managers	Cost Improvement
2.2	Approved	Sept 2017	Remove reference to ICare & Contact in para 10.5 and replace with ICON	HR Manager
2.3	Approved	15 Jan 2019	General review and audit	HR Advisor

Rapid Equality Impact Assessment

Policy Title (and number)	Disciplinary Policy				
Policy Author	HR Manager				
Version and Date (of EIA)	2.1 December 2015				
Associated documents (if applicable)					
RELEVANCE: Does the aim/purpose of the policy relate to each of the aims of the Public Sector Equality Duty?					
• Eliminate unlawful discrimination or other conduct prohibited by the Equality Act 2010					Yes x
• Advance equality of opportunity between people from different groups					Yes x
• Foster good relations between people from different groups					Yes x
SIGNIFICANCE AND IMPACT: Consider the nature and extent of the impact, not the number of people affected.					
Does the policy affect service users, employees or the wider community? (if no, proceed to sign off)					Yes x
Does the policy affect service delivery or business processes?					No x
Does the policy relate to an area with known inequalities (deprivation/unemployed/homeless)?					No x
EQUALITY ANALYSIS: How well do people from protected groups fare in relation to the general population? <i>PLEASE NOTE: Any 'Yes' answers may trigger a full EIA and must be referred to the equality leads below</i>					
Is it likely that the policy/procedure could treat people from protected groups less favorably than the general population? (see below)					
Age	No x	Disability	No x	Sexual Orientation	No x
Race	No x	Gender	No x	Religion/Belief (non)	No x
Gender Reassignment	No x	Pregnancy/ Maternity	No x	Marriage/ Civil Partnership	No x
Is it likely that the policy/procedure could affect particular 'Inclusion Health' groups less favorably than the general population? (substance misuse; teenage mums; carers; travellers; homeless; convictions; social isolation; refugees)					No x
Please provide details for each protected group where you have indicated 'Yes'.					
What if any, is the potential for interference with individual human rights? (consider the FREDA principles of Fairness/ Respect/ Equality/ Dignity/ Autonomy)					
N/A					
RESEARCH AND CONSULTATION					
What is the reason for writing this policy? (What evidence/ legislation is there?)					
To ensure that there is a fair, non-discriminatory, consistent, effective and prompt approach to disciplinary matters throughout the organisation					
Who was consulted when drafting this policy/procedure? What were the recommendations/suggestions?					
HR team and union representatives.					
ACTION PLAN: Please list all actions identified to address any impacts					
Action				Person responsible	Completion date
AUTHORISATION					
Name of person completing the form				Signature	
Validated by (line manager)				Signature	

Please contact the Equalities team for guidance:

For South Devon & Torbay CCG, please call 01803 652476 or email marisa.cockfield@nhs.net

For Torbay and South Devon NHS Trust, please call 01803 656676 or email pfd.sdhct@nhs.net

Contents

2	Purpose	1
3	Scope	1
4	Equality and Diversity Statement	1
5	Flexibility in HR Procedures	2
6	Capability and Disciplinary Procedures	2
7	Counter Fraud Procedure	2
8.	Right of Accompaniment	2
9.	Timeframes & Availability	3
10	Disciplinary Procedure	3
	10.1 Preliminary Investigation	3
	10.2 Suspension & Temporary Redeployment	4
	10.3 Informal Action	4
	10.4 Formal Investigation	4
11.	Disciplinary Meeting	5
12	Professional Misconduct	8
13	Appeals Procedure	9
14	Training and Awareness	9
15	References	9
16	Contact Details	10
17	Monitoring and Review	10
18	Appendix A - People authorised to take disciplinary action and hear appeals	11
19	Appendix B – Framework for an Appeal Meeting	12
20	Appendix C – Examples of misconduct	15

Policy Statement

- 1.1 Torbay and South Devon NHS Foundation NHS Trust supports the following statement, taken from the ACAS Code of Practice on Disciplinary Practice and Procedures:

“Many potential disciplinary issues can be resolved informally. However, where an issue cannot be resolved informally then it may be pursued formally. This [policy] sets out the basic requirements of fairness that will be applicable in most cases.”

2 Purpose

- 2.1 The purpose of this policy is to ensure that there is a fair, non-discriminatory, consistent, effective and prompt approach to disciplinary matters throughout the organisation.

3 Scope

- 3.1 This policy applies to all those employed by Torbay & South Devon NHS Foundation Trust, together with those on a joint contract with the organisation and another employer.

- 3.2 Those with honorary contracts from the organisation who are students at the University of Plymouth are subject to the University’s Disciplinary Procedures. However, the organisation retains the right to suspend and/or expel such staff in appropriate circumstances.

- 3.3 This policy does not apply to temporary staff, Bank staff and independent contractors (including agency staff) working on a Contract for Services basis.

- 3.4 Where an incident involves the professional conduct or competence of:
- Medical or Dental staff the matter will be dealt with in accordance with the Maintaining High Professional Standards in the NHS (No.11).
 - In situations where there is an issue of personal misconduct, Medical and Dental staff will be subject to this disciplinary policy
 - Clinical staff are also subject to the provisions of the relevant statutory bodies.

4 Equality and Diversity Statement

- 4.1 The Trust is committed to preventing discrimination, valuing diversity and achieving equality of opportunity. No person (staff, patient or public) will receive less favourable treatment on the grounds of the nine protected characteristics (as governed by the Equality Act 2010): sexual orientation; gender; age; gender re-assignment; pregnancy and maternity; disability; religion or belief; race; marriage and civil partnership. In addition to these nine, the Trusts will not discriminate on the grounds of domestic circumstances, social-economic status, political affiliation or trade union membership.

- 4.2 The Trust is committed to ensuring all services, policies, projects and strategies undergo equality analysis. For more information about equality analysis and Equality Impact Assessments please refer to the Equality and Diversity Policy (policy number 13 – ex-SDHCT only).

H1 – Disciplinary Policy

- 4.3 If you require a copy of this policy in an alternative format (for example large print, easy read) or would like any assistance in relation to the content of this policy, please contact the Equality and Diversity team on 01803 656680.

5 Flexibility in HR Procedures

- 5.1 Normally this procedure will apply as set out. However, in some circumstances, two or more policies may apply to a situation, e.g. where a member of staff is taken through the disciplinary procedure and a grievance is raised. In these circumstances the most appropriate procedures will be determined by the manager/HR using the principles of ACAS best practice and employment law. This decision will be reached following discussion with the employee and/or their representative, the final decision of the most appropriate process will remain with management. The aim should be to incorporate the essential elements from each procedure but minimise the number of meetings and correspondence to the benefit of all parties to resolve and manage issues promptly.

6 Capability and Disciplinary Procedures

- 6.1 When dealing with disciplinary issues, managers, with the assistance of HR should, at the earliest opportunity differentiate between issues of conduct and issues of capability. Issues of conduct and capability need to be addressed differently; therefore separate procedures have been produced on how each should be handled.
- 6.2 In dealing with questions of an employee's ability to perform a job, negligence should be distinguished from incapability. Negligence normally involves a measure of personal blame for which some form of action under the Disciplinary Policy will be appropriate.
- 6.3 Incapability, in this context, is due to lack of ability, skills or experience and dealt with in accordance with the Improving Performance Policy (H17).
- 6.4 Questions of capability due to sickness absence and ill health should be dealt with through the organisation's Attendance Policy (H33).

7 Counter Fraud Procedure

- 7.1 When an allegation has been made against an employee of the Trusts relating to fraud or corruption the line manager should ensure that the suspected employee is **NOT** informed and that the process detailed in the separate Management Guidance is followed.

8. Right of Accompaniment

- 8.1 All employees have the right to be accompanied and/or represented by a Trade Union representative (or workplace colleague) to which they belong at the time of the allegation or workplace colleague not acting in a legal capacity. Management will give maximum assistance in securing representation promptly so that the matter can be resolved without unnecessary delay.
- 8.2 If the employee's representative/workplace colleague is unable to attend the date originally proposed, the employee must contact the Investigating manager and agree another date for the meeting to convene provided that it is reasonable and is not more than five working days after the originally proposed date. This five day limit will only be extended in exceptional circumstances. This may mean you need to consider being accompanied by an alternative representative/workplace colleague.

- 8.3 The representative may address the investigation and hearing, ask questions and confer privately with the employee, but has no legal right to answer questions on behalf of the employee.
- 8.4 Employee guidance on the disciplinary process is available under HR policies and procedures on the intranet.

9. Timeframes and Availability

- 9.1 It is recognised that the disciplinary process can be very time consuming, however it is important that everyone involved; management, human resources, staff-side and employees make every effort to give this process priority to ensure a prompt conclusion.
- 9.2 It is an expectation that all involved will make themselves available for meetings and ensure correspondence is dealt with promptly. Where individuals cannot accommodate the process in a timely manner and this may result in a delay of two weeks or more, for example due to sickness, annual leave or other work commitments, consideration should be given to providing alternative representation, human resources support or investigating manager.
- 9.3 It may be necessary to change the working days of the employee and/or witnesses to facilitate attendance at meetings.

10 Disciplinary Procedure

10.1 Preliminary Investigation

- 10.1.1 Where a potential disciplinary matter arises, the manager should carry out a preliminary investigation. This will involve establishing the facts of the incident and may involve a brief discussion with a complainant, a witness, or where necessary, the employee concerned, whenever possible an initial written account of the events should be obtained. If it is necessary to discuss the incident with the employee, they should be advised that it is not a formal disciplinary meeting and is solely to establish the facts. There is no right to representation at this meeting. The employee must also be advised that an outcome of the preliminary investigation could be a requirement for them to attend a further formal meeting.
- 10.1.2 Where the matter appears to be of a minor and straightforward nature the manager should deal with the issue informally, as in accordance with section 10.3
- 10.1.3 If, following the preliminary investigation, it is felt that the matter requires further investigation, or that the matter is a potential disciplinary incident, a formal investigation should be conducted.

10.2 Suspension & Temporary Redeployment

10.2.1 Suspension is not a disciplinary sanction but may be appropriate in potentially serious circumstances where it is considered that allowing the employee to continue working could place the safety and/or well-being of patients, employees or the employee at risk, or where it is felt that the continued presence of the employee may impair the investigation, or in the interests of protecting the organization and/or in certain cases where police inquiries take place consideration must be given to suspending the employee.

10.2.3 In certain circumstances it may be appropriate to consider temporary redeployment to an alternative work area whilst the investigation takes place.

10.3.3 At any point during the investigation dependent on the information ascertain it may be necessary to re-consider a decision to suspend or find temporary re-deployment.

10.3 Informal Action

10.3.1 In the interests of good management and employee relations, minor disciplinary matters should wherever possible, be resolved informally. It should be regarded as a means of avoiding formal disciplinary action rather than as an early stage of the disciplinary procedure.

10.3.2 This process should always take place in a private and confidential setting and should be undertaken on a one-to-one basis between the manager and employee concerned.

10.3.3 The aims of advice and support should be to assist and encourage the employee in meeting the standards of conduct required of them. Notes of the key points referred to in the one-to-one session must be made and issued to the employee. A note that the one-to-one session has taken place and the date may be retained on the personal file.

10.3.4 The employee must be informed that if there is no improvement or if an offence is committed again, the next stage may be to invoke the formal disciplinary procedure.

10.4 Formal Investigation

10.4.1 An investigating manager will be responsible for conducting the investigation process supported by a Human Resources representative.

10.4.2 The investigation is a process of gathering information and establishing facts of a complaint, incident or allegation. The investigation should start as soon as possible after the alleged incident has occurred or complaint received.

10.4.3 When the investigation is complete the investigating manager will be responsible for completing the investigation report, which must include their findings as a result of the investigation and their recommendations on any further action to be taken.

10.4.4 The investigation report should be sent to the senior manager responsible for the department, service or team involved. This manager, together with advice from Human Resources will have the responsibility for making a decision as to whether the matter is referred to a disciplinary meeting or an informal one-to-one meeting or no case to answer. The investigating manager, the employee and their nominated representative will receive written confirmation of the senior manager's decision.

H1 – Disciplinary Policy

10.4.5 Guidance on the investigation process and report can be found in the Management Guidance on the Disciplinary Policy available on ICON.

11. Disciplinary Meeting

11.1 If following receipt of the investigation report the senior manager believes there is a case to answer and the incident potentially warrants disciplinary action, then a disciplinary meeting will be arranged. The meeting will be arranged without unreasonable delay taking into account the availability of all parties.

11.2 At least 14 calendar days prior to the meeting the investigating manager and employee will be written to confirm:

- The meeting is being held in accordance with the organization's disciplinary procedure and who will be present;
- The alleged misconduct, the classification of the misconduct, i.e. minor, serious, gross and pending the outcome of the meeting, disciplinary action up to and including what level may be taken;
- The date, time and location of the meeting;
- The names and roles of the disciplinary panel, confirmation of the name of the manager presenting the management case, the representative presenting the employee case.
- Reference to any previous disciplinary action;
- Confirmation of the employees of the right of representation at the meeting by a Trade Union Representative or workplace colleague.
- Requirement to exchange cases and confirm witnesses.

Prior to a Disciplinary Meeting

11.3 The confidential nature of witness statements, records and reports must be respected by all parties and must not be disclosed to anyone not directly involved in the case. Any breach of confidentiality may be the subject of further disciplinary action.

11.4 It is not a requirement to call all witnesses who have been party to the investigation. It may be sufficient to include their statement within the investigation report. It will be the responsibility of management and the employee to call and brief their own witnesses.

11.5 Whilst both management and the employee will have the opportunity to decide which witnesses they may wish to call at the meeting. The panel will in addition have the authority to request the attendance at the meeting of any witnesses they deem to be relevant to the case. The anonymity of witnesses will be considered in exceptional circumstances where there is a genuine belief of intimidation.

11.6 Composition of the panel for disciplinary meetings:

Chair - The person who chairs the meeting and makes the decision regarding the outcome will be an appropriate director or manager.

Professional Advisor - In cases that involve professional issues and the chairperson hearing the case is not of that profession, a professional advisor should also be part of the panel. The function of the professional advisor is to provide expert advice to the panel.

- 11.7 Support to the panel - all disciplinary meetings must have a Human Resources representative present to assist and advise the panel. This is to ensure that there is a full and thorough meeting, that the agreed procedure has been fully complied with and that any decision made is fair and reasonable in the circumstances.

Conducting a Disciplinary Meeting

- 11.8 During the meeting the employee will be fully informed of the nature of the alleged offence and the established facts.
- 11.9 The employee will be provided with every opportunity to question the investigating manager, management witnesses, put forward their case, call witnesses in their defence and offer mitigating circumstances.
- 11.10 When all the evidence has been presented the meeting should be adjourned for the panel to reach a decision.
- 11.11 All evidence should be submitted to the chair of the panel prior to the disciplinary meeting seven calendar days prior the disciplinary meeting. Only in exceptional circumstances and at the discretion of the chair will new evidence be permitted at the meeting itself.
- 11.12 In certain circumstances the meeting may have to be adjourned pending a specialist report, e.g. additional information or medical assessment before a final decision can be reached.
- 11.13 Where appropriate the employee, their representative and the manager presenting the case should be recalled and informed of the chairperson's decision. Where this is not possible or should the employee wish the outcome of the disciplinary meeting can be communicated in writing. If disciplinary action is the result, the employee should be informed of the salient points of the decision, which should be confirmed in writing within five working days.

11.14 The levels of warning are set out below.

Outcome	Given for	Life of warning
First written warning	Minor misconduct	12 months
Final written warning	Serious misconduct or further offence	24 months, reducing to a first written warning after 12 months
Dismissal	Gross misconduct or further offence	Not applicable

Alternatives to Dismissal

11.15 Where there are mitigating circumstances, alternatives to dismissal may be considered.

11.16 This may apply where an employee who has a current final written warning on file for misconduct has a further allegation of misconduct against them proven, but where there are very strong factors which mitigate against dismissing the employee. Or alternatively it could be where an employee commits an offence, which is classed as gross misconduct and would normally lead to summary dismissal, but where very exceptional circumstances warrant consideration of action short of dismissal but more than simply issuing a final written warning.

11.17 Action short of dismissal may include extending an existing final written warning, issuing a final written warning for a period longer than 24 months, redeployment, down-banding, changing shift pattern.

11.18 In such circumstances protection of salary will not be applicable.

11.19 The employee must be advised that the proposed action is offered as an alternative to dismissal. The employee may, if they wish, opt for dismissal/summary dismissal rather than accept the alternative to dismissal.

11.20 In the event of continued failure to meet the required standards in a case where an alternative to dismissal has been applied, further disciplinary action may be taken depending on the circumstances.

11.21 The employee's right of appeal is not affected and remains in accordance with the disciplinary policy.

11.22 The employee must be advised, in writing, of their right to appeal against any formal disciplinary action.

Non Attendance

- 11.23 Employees whether the subject of an investigation/meeting or as a witness, are obliged to attend investigative meetings and disciplinary meetings as a requirement of their contract of employment and must take all reasonable steps to do so. Failure to do so may result in disciplinary action, including dismissal, being taken in their absence.
- 11.24 Every effort will be made to convene a meeting date that is suitable for all parties; however, it is the employee's responsibility to ensure that they have Trade Union representative or workplace colleague available. A meeting date will not be delayed unnecessarily due to the availability of representation. This may mean the employee making arrangements to be accompanied by an alternative representative.
- 11.25 If the employee is unable to attend the disciplinary meeting, they should notify the chair of the panel and give the reason for non-attendance as soon as possible and in advance of the meeting. If no prior notice of non-attendance is provided the disciplinary meeting will proceed in the employee's absence and they will be notified of the outcome in writing.
- 11.26 Where an employee fails to attend because of extenuating circumstances, they will be invited to another disciplinary meeting, where possible within five days of the original meeting. Where there is no valid reason for non-attendance, the meeting will proceed and a decision made in the employees absence.

Resignation prior to a Disciplinary Meeting

- 11.27 In cases where an employee resigns prior to a disciplinary meeting, the chairperson, with support from Human Resources, will decide whether it is appropriate for the disciplinary meeting to proceed. This decision will be communicated to the individual in writing.
- 11.28 In circumstances, where a decision is reached that it is necessary to proceed with the disciplinary meeting, the individual will be given the right to be in attendance at the meeting. If the individual declines this opportunity or fails to attend the meeting, then the disciplinary meeting will proceed and a decision made in the individuals absence.

12 Professional Misconduct

- 12.1 Employees who are subject to disciplinary proceedings due to professional misconduct are reminded that where the organisation has investigated the circumstances and has taken disciplinary action, it may be reported to the appropriate professional body. These bodies may then choose to investigate the case further.
- 12.2 The organisation also has a legal duty to make a referral to the Disclosure and Barring (DBS) when an individual has harmed or poses a risk of harm to a child or vulnerable adult.
- 12.3 Where an employee is subject to disciplinary proceedings and also registered with the Temporary Staffing Bank any suspension or disciplinary action will also apply to their Bank work. Therefore where an employee is dismissed or has restrictions on their practice this will also be applicable to their work with Temporary Staffing Bank, who will be notified accordingly.

13 Appeals Procedure

- 13.1 An employee who wishes to lodge an appeal against the outcome of a disciplinary meeting must do so in writing to the designated manager within 14 calendar days' of the date of the letter confirming the outcome and clearly state the grounds for the appeal.
- 13.2 The employee must provide details under the grounds for their appeal as follows:
- **New evidence comes to light**
The grounds of the appeal must detail the nature of new evidence.
 - **They believe the disciplinary procedure was not followed correctly**
Summary of why the process was not followed correctly.
 - **They believe the manager was incorrect in reaching their findings**
Details concerning the reason why there is a belief the finding was incorrect.
- 13.3 Failure to provide details of the grounds for appeal as described above may lead the Trust to decline the appeal. The decision of the appeal is final.
- 13.4 The Appeal Process will be conducted as described in appendix B
- 13.5 Unless agreed otherwise, a request for an appeal hearing which is received later than the 14 calendar days' timeframe allowed will not be arranged, and the employee written to explaining that this is because they were out of time with their request. This will include circumstances where, following a meeting where a sanction or warning was issued, the employee takes leave from the Trust. For clarity this will include annual leave, sick leave, maternity or a career break/sabbatical.

14 Training and Awareness

- 14.1 Advice and support will be provided by the HR team to support staff and managers in adhering to this policy and their understanding of dealing with disciplinary issues.
- 14.2 The HR team will raise awareness of this policy through manager briefing sessions, the publication of information on iCare and Contact and to advise staff of changes to the policy through the staff bulletin and ratification processes.
- 14.3 Guidance documents are available to both Staff and Managers regarding the application of this policy.

15 References

- 15.1 ACAS Code of Practice

16 Contact Details

- 16.1 Any queries regarding this policy should be directed to the HR team of the Directorate of Workforce and Organisational Development.

HR Helpline – 01803 655754 (ext. 55754)
HR department – 01803 654506

17 Monitoring and Review

- 17.1 The application of this document will be monitored by the Human Resources department through a sample audit of disciplinary case files on a 12 month basis.
- 17.2 A full review will take place every two years by the Directorate of Workforce and Organisational Development unless changes to legislation of national/local terms and conditions determine otherwise.

18 Appendix A - People authorised to take disciplinary action and hear appeals

Disciplinary Action	Taken By	Appeal
First Written Warning	Manager not previously involved in the case	<ul style="list-style-type: none"> • Higher level of management • Professional Advisor (if applicable) • HR representative support to the panel
Final Written Warning	Manager not previously involved in the case	<ul style="list-style-type: none"> • Higher level of management • Professional Advisor (if applicable) • HR representative support to the panel
Dismissal	<ul style="list-style-type: none"> • Chief Executive • Executive Directors • Other Directors • Clinical Directors • Divisional General Managers/Zone Managers • Heads of Service • Associate Directors • Deputy Directors • Assistant Directors • Chief Pharmacist 	<p>Appeal panels may be drawn from the list opposite (excluding Matrons & Operational Managers.)</p> <p>The appeal panel will comprise of:</p> <p>Minimum of two senior managers from the list opposite.</p> <p>Professional Advisor (if applicable)</p> <p>HR representative providing professional advice to the panel</p>

In exceptional circumstances the authority to dismiss may be delegated to a manager who is not on the above list, however they will have been appointed by a manager on the above list in discussion with HR.

19 Appendix B – Framework for an Appeal Meeting

1. Prior to an appeal panel meeting

- 1.1 Where possible the employee will be given a minimum 14 calendar days written notice of the date, time and venue of the appeal meeting.
- 1.2 The employee has the right to appear personally before the panel, either alone or accompanied by a trade union representative or workplace colleague.
- 1.3 Both parties will be required to submit written statements of the case, together with any supporting evidence a minimum of 7 calendar days before the appeal meeting is due to take place, unless otherwise agreed.
- 1.4 The management statement should set out the reasons for the action taken/conclusion reached. It should be sufficiently detailed to enable the employee to understand on what basis the decision was reached, and to prepare their own case.
- 1.5 The employee's statement should set out clearly the grounds on which they are contesting the outcome. It should be sufficiently detailed to enable the manager and panel to understand on what basis the appeal was lodged.

The employee must provide details under the grounds for their appeal as follows:

- **New evidence comes to light**
The grounds of the appeal must detail the nature of new evidence.
 - **They believe the procedure was not followed correctly**
Summary of why the process was not followed correctly.
 - **They believe the panel was unjust in reaching its conclusion**
Details concerning the reason why there is a belief the conclusion was incorrect.
- 1.6 Both parties should provide details of any witnesses they intend to call. It will be the responsibility of management and staff side to call and brief their own witnesses.
 - 1.7 Witnesses will not normally be required to be in attendance for the whole of the appeal meeting. Each witness will be called to give evidence and will then leave the room. Wherever possible the witness will be told at this point whether they are free to leave or are likely to be recalled.
 - 1.8 As soon as both statements have been received they should be simultaneously circulated to:
 - Panel members hearing the appeal
 - Manager representing the case
 - Employee
 - Employee's representative

2. Composition of the panel for appeal meetings

2.1 Manager/Chairperson

The person chairing the appeal meeting should be of a higher level than the manager who made the original decision.

2.2 Servicing Officer

The servicing officer will be a Human Resources representative.

The servicing officer will be responsible for; advising the panel on the procedure to be followed and reviewing the decision with the panel; ensuring that both parties are advised in writing of the panel's decision.

2.3 Professional Advisor

In cases which concern a professional matter, at least one panel member should have specialist knowledge of the employee's field of work. Where this is not so, a professional advisor acceptable to both parties should be appointed. The professional advisor should advise the panel only on matters relating to the employee's professional conduct or competence.

Any objections to the professional advisor proposed must be based on reasonable grounds.

2.4 Observers

Observers may be present only with the permission of the Chairperson and both parties. They must withdraw immediately at the direction of the Chairperson.

3. CONDUCTING AN APPEAL MEETING

3.1 The Chair of the panel will:

- Introduce those present.
- Explain the purpose of the meeting.
- Advise all present of the order of the procedure, which will be followed at the meeting, and to ensure that it is understood by the employee and where appropriate their representative:

3.2 The following procedure should be adopted:

The employee or their representative will present their case.

The employee or their representative will call any witnesses during the presentation of their case.

The manager may ask questions of the employee and any witnesses, as may the panel.

H1 – Disciplinary Policy

The employee or their representative will have a final opportunity to question the witnesses.

The manager will present their case and call any witnesses.

The employee or their representative may ask questions of the manager and any witnesses, as may the panel.

The manager will have a final opportunity to question the witnesses.

The employee or their representative will sum up their case. The summing up shall not introduce any new matter.

The manager will sum up their case. The summing up shall not introduce any new matter.

Following summing up both parties, the employee and the presenting manager, will leave the room.

3.3 It should be noted that the panel members may:

- Ask for clarification of any statements made during the course of the proceedings.
- Decide to adjourn at any stage, or at the request of either party. The duration of the adjournment will be made clear and a decision reached on the time the meeting is to be reconvened.

3.4 When all the evidence has been presented the meeting should be adjourned for the panel, with Human Resources support in attendance, to reach a decision on the case. Both parties may be recalled if points of uncertainty need to be clarified.

3.5 Once a decision has been reached the employee, their representative and the manager should be recalled and informed of the manager's/Chairperson's decision.

3.6 One of three decisions will be made:

- To not uphold the appeal and endorse the action taken.
- To uphold the appeal and remove the sanction from the employee's file and reinstate the employee if they were dismissed.
- To uphold the appeal but provide other recommendation(s) and/or in disciplinary cases substitute a less serious sanction.

3.7 The decision will be confirmed in writing within 7 calendar days.

4.0 Salary arrangements following a successful appeal against dismissal

4.1 Where an employee is reinstated or re-engaged following a successful appeal against dismissal, reimbursement shall be based on the normal rate of pay the employee would have received if they had been working. Employment will be viewed as unbroken from the date of the original effective date of dismissal for purposes of calculating continuous employment.

20 Appendix C – Examples of misconduct

The examples below have been grouped into categories, however depending on the severity of the incident it may fall within another category.

The list below is not exhaustive and judgement should be exercised.

Minor Misconduct

- Lateness without reasonable explanation
- Failure to report for duty
- Failure to follow a reasonable management instruction
- Discourtesy to patients, visitors or other members of staff
- Failure to wear protective clothing as prescribed and issued
- Poor attendance record/capabilities
- Abuse of privileges
- Professional misconduct
- Personal behaviour that results in bringing the organisation into disrepute

Serious Misconduct

- Failure to respond to minor misconduct warnings
- Unauthorised absence
- Unacceptable behaviour
- Failure to comply with conditions of service or working procedures
- Refusal to carry out reasonable instructions given by an authorised person
- Removal of the organisation's property without authorisation
- Failure to maintain registration with relevant mandatory professional bodies
- Failure to follow a reasonable management instruction
- Professional misconduct
- Personal behaviour that results in bringing the organisation into disrepute
- Making a false allegation or spurious claim against other members of staff.

Gross Misconduct

The following offences are amongst those regarded as gross misconduct and which may result in summary dismissal. This is an illustrative and not an exhaustive list:

- **Assault** - This refers to any assault or menacing behaviour directed at a patient/client, member of the public or colleague that takes place on the organisation's premises or whilst on duty. This includes fighting.
- **Corruption** - Corruption is defined as the "offering, giving, soliciting or acceptance of an inducement or reward, which may influence a person to act against the interest of the organisation".

Examples include receipt of money, goods, favours or excessive hospitality in respect of services rendered e.g. from contractors in anticipation of receiving orders for goods or work.

- **Conviction** - Committing an act outside of work or being convicted of a criminal offence which is liable to affect the performance of the employment contract and the relationship between the organisation and the employee.
- **Failure to carry out reasonable instructions** - This refers to wilful failure or refusal to carry out or to follow reasonable instructions/rules in accordance with the organisations policies, procedures and terms of employment.
- **Fraud** - Fraud is defined as the “intentional distortion of financial statements or other records by persons internal or external to the Trusts which is carried out to conceal the misappropriation of assets or otherwise for gain”.

Examples include the misrepresentation of entitlement to expenses or allowances, falsification of records, including personal or health, or misrepresentation on time sheets, including unauthorised completion of time sheets for another member of staff.

- **Illegal use of a mobile phone** - Using a mobile phone whilst driving, when not using hands free equipment, where such use of equipment has been authorised by the Trust.
- **Information Governance – Confidentiality** - Legislation and common law duty of confidentiality explicitly requires that personal information is handled in a secure, confidential and ethical way. Personal information is provided by patients and staff with an expectation that a duty of confidence applies and that information cannot normally be disclosed or shared without their consent. All employees are required to abide by the Data Protection Act 1998 and the Trust’s confidentiality guidelines. This also applies to information held on memory sticks.
- **Internet and email use** - Deliberately accessing internet sites or sending or retrieving emails containing pornographic, offensive or obscene material.

Excessive use of a computer or tablet, e.g. iPad, for personal use during work time.

Social Networking Sites - All staff are reminded that photographs should not be taken within the workplace without Trust permission and the appropriate consent from individuals. The posting of unauthorised photographs taken on NHS premises, or any information about any aspect of the Trust’s work, or inappropriate comments relating to colleagues or patients on social networking sites, e.g. Twitter, Facebook or blogs, or personal websites could be subject to disciplinary action.

- **Malicious damage** - This is intentional damage to the organisation’s property or the property of patients/clients, visitors or employees.
- **Negligence** - This refers to any action or failure to act which could result in serious damage to health, safety, property or equipment. It includes failure to give appropriate care and attention to patients/clients in the Organisations care.
- **Theft** - Theft is defined as the dishonest taking of property belonging to another person with the intention of depriving the owner permanently of its possession.

H1 – Disciplinary Policy

This refers to any instance of theft of property from the organisation, patients/clients, visitors, from other employees on the organisation's premises, or a patient's home. This also refers to the theft of time.

The organisation's property must not be removed from the premises for personal use, nor used for private purposes within the premises, without prior approval of the appropriate manager.

- **Unauthorised absence** - Gross misconduct will occur where an employee absents themselves from the workplace for no apparent reason and fails to communicate their absence and the reason for it within a reasonable period of time. Not all instances of unacceptable behaviour will automatically be regarded as gross misconduct.
- **Unacceptable Behaviour** – Gross misconduct will occur when an employee demonstrates unacceptable behaviour that is persistent, repetitive and part of an overall pattern, where that behaviour has previously been brought to the attention of the individual and there has been no change or improvement. Alternatively, some forms may be serious enough to be recognised even if the behaviour has occurred only once. Whatever forms it takes the behaviour is unwarranted and unwelcome to the individual. Not all instances of unacceptable behaviour will automatically be regarded as gross misconduct.
- **Unfit for duty** - This refers to where an employee is deemed to be unfit to carry out their duties (e.g. through the effects of drink and drugs) or by being asleep on duty (unless on stand-by).

Where an employee has alcohol or drug abuse problems these are recognised as health issues and any incident will be considered in this context before deciding on the appropriate action.

- **Unlawful discrimination or harassment** - Unlawful discrimination is treating someone less favourably because of their sex, age, political belief, sexual orientation, disability, marital status, race, nationality, ethnic or national origin, colour, religion or belief, social class, gender reassignment, personal circumstances or offending background provided it does not constitute a risk to vulnerable groups.

Harassment is when a person engages in unwanted conduct, which has the purpose or effect of violating another person's dignity and/or creating an intimidating, hostile, degrading, humiliating or offensive environment for them.

- **Working whilst on sickness absence** - While purporting to be absent from work due to sickness, working or indulging in activities which are likely to be inconsistent with the reason for absence and/or which are unlikely to be conducive to recovery.
- **Serious breaches of the organisations policies and procedures.**
- **Any action which may threaten the health and safety of a patient, member of the public or a colleague.**