

Disciplinary Policy

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8	Review of process and create a separate procedure document, templates updated to incorporate new values logo
9	Updated and format tidied
10	New sections on conduct outside employment, authority to suspend and dismiss, informal warnings removed and additional guidance and tools on conducting investigations

Consultation

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1. Introduction

- 1.1 The Trust is committed to ensuring that appropriate policies, practices and procedures are in place and are adhered to by employees and other workers on its behalf. These are intended to support the Trust values for the workforce and in the delivery of safe, effective care for patients.
- 1.2 Occasions may arise when an employee's conduct falls below the standards required by the Trust and action will need to be taken to address this. A disciplinary flowchart can be found at **Appendix A**.
- 1.3 This disciplinary policy and procedure complies with the provisions of the Employment Rights Act 1996 and the ACAS Code of Practice on Disciplinary and Grievance Procedures.
- 1.4 This policy applies to all staff directly employed by the Trust. Separate local and national procedures are available for the Chief Executive and Directors of the Trust and reference should be made to appropriate Department of Health guidelines.
- 1.5 Issues involving new employees still within their probationary period will be dealt with under the Trust's Probationary Policy.
- 1.6 Concerns relating to the ability of an employee to perform their duties, e.g. where a perceived lack or failure in performance is involuntary and may be addressed by further training and support, will be dealt with under the Trust's Performance Management Policy.
- 1.7 Matters relating to individuals employed by a third party will be addressed by the source agency/company.
- 1.8 Professional conduct and competence of medical staff may also be considered separately by the relevant professional organisation.
- 1.9 For medical and dental staff, this policy may be used in conjunction with the Trust's MHPS – Procedure for Handling Concerns about Doctors and Dentists taking into account advice from NHS Resolution (formerly the National Clinical Assessment Service).

2. Purpose / Aims and Objectives

The purpose of this policy and procedure is to encourage employees to achieve and maintain high standards of conduct and behaviour in accordance with the requirements of the Trust and relevant professional codes of conduct, by:

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- ensuring employees have a clear understanding of what is expected of them and the process to be used if conduct falls short of the standards required by the Trust
- providing a fair, objective and consistent method of dealing with disciplinary matters and ensuring employees and managers are supported appropriately
- helping to create good employee relations within the Trust

3. Definitions

3.1 **Commissioning Manager:** - the person responsible for instigating an investigation.

3.2 **Investigation:** - a fact-finding exercise to collect all the relevant information on an issue.

3.3 **Investigating Officer:** - the person responsible for carrying out an investigation.

3.4 **Investigation Plan:** - the terms under which an investigation will be carried out.

4. Roles and Responsibilities

4.1 **Management:-**

- set and maintain high standards of conduct, behaviour and attendance and that employees are aware of and understand them
- provide support and guidance to enable employees to achieve these standards throughout their employment
- apply the disciplinary procedure fairly and consistently, without unlawful discrimination. See **Appendix A – Disciplinary Flowchart**
- raise and deal with issues promptly and not unreasonably delay meetings, decisions or confirmation of those decisions
- where necessary the manager will commission an investigating officer who has not been involved in the matter previously, to conduct an investigation; remain independent of that investigation but ensure the investigation is conducted in an objective, fair and timely manner

4.1.1 The Commissioning Manager will make the decision, based on the findings of the investigation, whether or not further disciplinary action should be taken where they feel unable to consider a disciplinary matter on an impartial basis, with advice from their line manager and/or HR, refer the matter to another independent manager of an equivalent level

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4.2 Investigating Officer

- ascertain all the facts relating to the alleged misconduct and produce a balanced report setting out their findings and taking into account any mitigating factors – see the Trust's **Investigation Guidelines**
- the Investigating Officer will present the allegations at the hearing including the investigation report, providing clarity where needed
- it is not their responsibility to decide any action as a result of their findings or to influence the decision of a hearing panel

4.3 Employee

- maintain high standards of conduct and behaviour and uphold the Trust's values
- co-operate with investigations and attend meetings and hearings as required
- ensure all relevant evidence and facts are presented for consideration
- make arrangements for a companion or a trade union representative and witnesses to attend if required
- notify HR of their TU representative and inform HR if they engage another TU representative during the process

4.4 Human Resources

- advise and guide management and employees on the application of this policy and procedure, and help to ensure consistency of sound disciplinary practice across the Trust
- maintain a central, confidential record of disciplinary investigations, hearings and appeals
- provide relevant data for internal audits and other analyses, ensuring adherence to the Trust's policies on data protection and information governance

4.5 Hearing/Appeal Panels:

- ensure that reasonable and fair investigations and hearings are carried out, and that all relevant facts available pertaining to the allegation/s have been obtained
- The panel chair upon receipt of the hearing pack will determine whether an additional panel member is required. It is also the Chair's responsibility to attend

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the hearing with a designated note taker, independent of HR to ensure the accurate capture of proceedings.

- consider new relevant evidence
- decide what action, if any, is reasonable based on the facts and evidence presented
- the panel Chair will nominate a panel member to check the notes for accuracy

4.6 Trade Union representatives:

- will work in partnership with managers to ensure that the policy and procedure is applied in a fair and consistent manner.
- where an allegation arises, trade union representatives will work with other stakeholders to ensure that decisions can be taken promptly, thereby minimising staff anxiety.

If an accredited Trade Union representative's request for time off to attend a meeting under the Disciplinary Procedure is refused and they believe the refusal to be unreasonable, they should raise the matter with the Head of Employee Relations.

5. Key Principles

- 5.1 The Trust seeks to eliminate unlawful discrimination against colleagues, potential employees and patients on the grounds of sex, marital status, disability, sexual orientation, gender identity, age, race, ethnic or national origin, religion, pregnancy/maternity, political opinion, or trade union membership and to promote equality of opportunity and good relations between employees and clients.
- 5.2 Reasonable adjustments or arrangements for meetings and hearings may be made e.g. for an employee or companion with a disability or for employees whose first language is not English.
- 5.3 An electronic recording may only be made during interviews, meetings or hearings under this procedure, if agreed by all parties or where this may be required as a reasonable adjustment. A copy will be made available to all parties. See the Trust's guidelines on Information Governance: <http://qpulse-drs.medway.nhs.uk/Corporate/Documents.svc/documents/active/attachment?number=GUCGR023>.
- 5.4 This policy will be applied consistently and equitably and reflects the Trust's commitment to creating a positive culture of respect for all individuals including employees, patients, their families and carers as well as community partners, and to promote positive practice that values the diversity of all individuals and communities.

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5.5 In serious cases, the Trust may have a responsibility to inform external bodies such as the police, GMC, HCPC and NMC. Where the employee is a registered professional e.g. a nurse or midwife, the consideration should be given to which part(s) of their professional code may have been breached and the relevant Head of Nursing, Head of Midwifery or Medical Director should notify the professional body by way of a referral. Any correspondence from the professional body regarding the member of staff should then be escalated to the appropriate Deputy Director of Nursing or equivalent and the Chief Nurse or Medical Director as appropriate.

5.6 If an allegation or information is received which indicates that an employee (whether during or outside of work) has or may have:

- behaved in a way that has harmed a child or adult , or may have harmed a child or adult; or
- possibly committed a criminal offence against or related to a child or adult; or
- behaved towards a child or adult in a way that indicates they may pose a risk of harm to children or adults

Such allegations will be referred immediately to the Head of Safeguarding, the Medical Director, Director of Nursing and Non-Medical Professionals or in their absence, the Assistant Director of Quality and Clinical Excellence, who will notify external parties as appropriate. See the Trust's **Managing Safeguarding Allegations Against Staff** - <http://qpulse-drs.medway.nhs.uk/Corporate/Documents.svc/documents/active/attachment?number=SOP0318>

5.7 In cases involving suspicion of fraud and/or corruption, the Trust's Counter-Fraud Specialist will be informed. The Director of HR or authorised delegate should consult with the Director of Finance to determine whether an investigation under the Disciplinary Policy will be pursued alongside the separate investigations under the Trust's Counter Fraud guidelines.

5.8 With all cases, including patient safety incidents Managers must complete a **Pre-Disciplinary Checklist**. See **Appendix B** of this policy before any decision or action is taken to address the matter under the relevant Trust policy.

5.9 Every attempt will be made to deal with matters speedily, whilst ensuring that matters are dealt with thoroughly. Strict adherence to the timeframes within this policy and procedure is strongly advised. However, if it is not practicable to adhere to these, all relevant parties will be notified and kept apprised of progress.

5.10 Informal action will be considered, whenever appropriate, to resolve issues. The right to be accompanied does not apply to informal discussions. However for investigatory meetings the Trust may agree to a reasonable request to be accompanied. This is not a statutory right.

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- 5.11 At the formal stage, no disciplinary action will be taken until the case has been fully and properly investigated – please refer to the Trust’s **Investigation Guidelines**. No decision will be made and no formal sanction imposed without holding a disciplinary hearing, at which the employee will be given the opportunity to state their case.
- 5.12 The formal procedure may be implemented at any level if the employee’s alleged misconduct warrants this (see below).
- 5.13 An appropriate HR representative will be involved at all levels of the formal stage of the procedure, including participation on hearing panels. If a member of HR has been involved in the case previously, they will not then be included on a hearing panel.
- 5.15 No employee will be dismissed for a first-time breach of discipline except in the case of gross misconduct, when the disciplinary action may be dismissal or summary dismissal (i.e. dismissal without notice or pay in lieu of notice).
- 5.16 An employee has the right to appeal against any formal disciplinary action.
- 5.17 Frivolous, malicious or vexatious complaints will not be tolerated and may result in disciplinary action. Managers will ensure that an employee’s future prospects within the Trust are not affected by such false accusations.

5.18 **Employee Support**

If employees who are subject to disciplinary procedure believe that the investigator is not keeping them updated or the process has been unduly delayed, they can contact the Employee Relations team. The Employee Relations Manager will escalate as appropriate.

Disciplinary process can be a difficult time. Staff subject to the process may consider getting in touch with the Employee Assistance Programme that can offer counselling and support with coping in difficult situations.

6. Confidentiality

- 6.1 It is the Trust’s aim to deal with disciplinary matters sensitively and with due respect for the privacy of any individuals involved. All employees must treat as confidential any information communicated to them in connection with a matter which is subject to this policy and procedure. Any non-adherence may be regarded as misconduct in itself.
- 6.2 All proceedings and records of disciplinary matters must remain confidential and kept in accordance with the Data Protection Act 2018, which gives individuals the right to request and have access to certain personal data. The data should include:
- the nature of the disciplinary

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- the Trust's response - what was decided and actions taken
 - the reason for the actions
 - whether an appeal was lodged
 - the outcome of the appeal
 - any formal minutes taken and copies of all correspondence
 - any subsequent developments
- 6.3 In certain circumstances, some information may be withheld e.g. to protect patients, witnesses or other employees.
- 6.4 Records relating to any action taken under this procedure will be removed from the employee's personnel file once a warning or sanction has expired. These records will be kept on a separate central HR file for statistical analysis and for reference in any subsequent related disciplinary case.

7. Resignation During Disciplinary

- 7.1 Should an employee resign from the Trust during an investigation, the Trust reserves the right to complete the investigation based on all available information and to carry out any subsequent disciplinary hearing.
- 7.2 Employees who have left the Trust may remain subject to an investigation and will be invited to attend meetings or hearings voluntarily. The former employee will be notified of the outcome in writing and the outcome may be referred to the relevant professional body if deemed appropriate.
- 7.3 Where the outcome would have imposed a disciplinary sanction, the Trust may choose to give details within an employment reference.

8. Grievance During Disciplinary

- 8.1 There is no legal requirement that a disciplinary process should be postponed while the employer deals with a grievance raised by the employee.
- 8.2 However the commissioning manager may decide to suspend the disciplinary procedure if for example:
- the disciplinary procedure itself is flawed
 - a grievance has been raised during the disciplinary process
 - there is a conflict of interest for anyone conducting or advising on the process
 - there may be bias in the conduct of the disciplinary hearing
 - there has been selective evidence supplied by the investigating officer
 - there is possible discrimination against the employee

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- 8.3 If for any of the above reasons it is found that the grievance should “stand alone” then the grievance procedure will be undertaken first. Otherwise the disciplinary procedure takes priority.
- 8.4 Where the grievance raised by the employee is unrelated to the disciplinary process, but is raised while the disciplinary process is on-going, there is usually no need for the disciplinary process to be put on hold. Unless the circumstances in which the grievance is raised are so serious that they overshadow the disciplinary process, it is appropriate to investigate the grievance in parallel, but not as part of, the disciplinary process.

9. Suspension

- 9.1 Suspension from duty may be necessary while an investigation is carried out, e.g. where:
- there is alleged gross misconduct
 - serious criminal charges have been brought against the employee, or there are allegations of criminal activity
 - there is a risk to an employee’s health or safety
 - interests of the employee, patients, colleagues, the public or the Trust are at risk
 - remaining on duty may inhibit a fair and objective investigation, and no alternative duties are practicable
 - the employee could tamper with or destroy evidence
 - working relationships have broken down
- 9.2 A suspension checklist See - **Appendix C - Suspension Checklist** may assist managers to determine whether suspension is appropriate.
- 9.3 Suspension will be authorised by a manager at Band 8B or above, who will discuss the case with a senior HR representative, e.g. HR Business Partner, Assistant Director of HR, Director of HR.
- Where the suspension involves a nurse, midwife, nursing associate or clinical support worker, the relevant Head of Nursing, Head of Midwifery, Deputy Director of Nursing or equivalent will, after taking HR advice and deciding that suspension is appropriate, recommend this to the Chief Nurse prior to the suspension being confirmed. Following agreement from the Chief Nurse (or deputy in their absence), the relevant Matron can then proceed with the suspension.
- 9.4 Outside office hours, the decision to suspend rests with the Service Manager or Director on call, who should notify the relevant Divisional Manager and a senior HR representative at the earliest opportunity.
- 9.5 If possible, employees may be given the opportunity to contact a trade union representative or work colleague before being suspended, to provide support at the meeting. However, this is not mandatory and should not delay the suspension.

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- 9.6 Suspension should only be used after careful consideration, and should be reviewed to ensure it is not prolonged unnecessarily. It should be made clear that the suspension is temporary, not an assumption of guilt and not a disciplinary sanction.
- 9.7 Consideration should be given to whether alternatives to suspension, such as different duties, restrictions on clinical practice, or a change in work location or shift pattern, would be appropriate.
- 9.8 During a period of suspension, the employee is not permitted to contact work colleagues concerning the investigation, or to enter Trust premises without the prior permission of the suspending manager.
- 9.9 The suspending manager and HR representative will monitor the suspension at least every 5 working days and wherever possible the investigation should be completed within 30 working days – please refer to the Trust’s **Investigation Guidelines**.
- 9.10 During a period of suspension there should be regular contact with the employee to ensure that they are supported as appropriate and kept informed of the progress of the investigation. The suspending manager and/or HR representative should discuss welfare and any support the Trust may offer, any issues around alternative duties, and confirm when suspension will be reviewed and the next date for contact.
- 9.11 The employee can take annual leave during the period of suspension but this must be agreed with the suspending manager.
- 9.12 Employees will normally keep contractual pay, terms and conditions during suspension, based on an average earning over the previous three month period, including any enhancements.
- 9.13 If the suspension relates to a registered clinical professional, the employee will be required to self-refer as necessary to the appropriate professional governing body, informing them of the allegation. The suspending manager will inform the employee to refrain from clinical responsibilities outside the Trust. If any employee fails to self-refer as required, the Trust may make the referral on their behalf.
- 9.14 Whilst suspended, the employee is not permitted to undertake work for any other employer unless agreed and approved by the Trust e.g. for restricted duties. The employee is not permitted to exceed the hours or days agreed and where necessary or in order to meet its responsibilities, the Trust will make the secondary employer aware of the suspension.

10. Investigation

- 10.1 When any incident of misconduct is alleged to have occurred, the line manager will ensure that the facts are established promptly before memories of events fade. Please refer to the Trust’s **Investigation Guidelines**.

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- 10.2 In certain circumstances all relevant information may be available to the manager at an early stage, and further investigation may not be necessary. However, in all cases a thorough investigation must be undertaken.
- 10.3 Where a manager feels they are unable to consider a disciplinary matter on an impartial basis or where they are not available, with advice from their line manager and/or HR, the matter will be referred to another manager of an equivalent level.
- 10.4 The manager dealing with the matter, as the commissioning manager, may wish to appoint an independent investigating officer.
- 10.5 The commissioning manager will notify the employee concerned in **writing (See Investigation Guidelines: Appendix D – Template Letter informing an employee they are subject of an investigation)**, normally within 5 working days:
- that an investigation is to be carried out
 - the nature of the allegation(s) against them
 - the likely timescale for the investigation
 - the name and contact details of the the investigating officer, who will be in touch to make arrangements
 - that they may be accompanied at any investigation meeting by a work colleague or trade union representative
 - the name and contact details of the HR Advisor who can provide the employee with advice on the process
- 10.6 If available, the employee should also be sent statements and evidence so they may respond fully to the allegations, and be given another opportunity to respond once all evidence is to hand.
- 10.7 The investigating officer will ascertain all the facts relating to the alleged disciplinary offence and produce a balanced report setting out their findings and taking into account any mitigating factors. It is not within the remit or responsibility of the investigating officer to make recommendations about any action as a result of their findings, or to influence the decision of a hearing panel.
- 10.8 A full and thorough investigation must be undertaken as quickly as possible and normally within 30 working days. This is an indicative timeframe and is dependent on the complexity of each case. If timeframes are to be exceeded, the employee will be notified.
- 10.9 Having received the investigating officer's report, the commissioning manager will take the decision whether further action is required under the disciplinary procedure.
- 10.10 If further evidence or incidents arise following completion of the investigation or following the report being submitted, the details of these may be submitted to the

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commissioning manager to determine if the investigation needs to be reopened to include these.

11. Informal Procedure

- 11.1 For minor infringements of rules or expected behaviour, managers will discuss this with the employee informally, outlining what is unacceptable and the expectations in future.
- 11.2 The manager should confirm the informal discussion in writing and explain that a similar recurrence may lead to formal action. They should point out that this is not a formal sanction but should outline the misconduct, (where possible provide tangible examples, timekeeping records etc), what improvement is needed and the timescale. This is an improvement notice. See **Appendix E- Improvement Notice Template** An Improvement Notice should remain live for three months in the first instance.
- 11.3 Managers should then ensure appropriate monitoring and review arrangements are in place throughout the duration of the improvement notice.
- 11.4 It is important that any informal action does not turn into formal disciplinary action, as this may unintentionally deny the employee certain rights, such as the right to be accompanied or to appeal.
- 11.5 There is no right to be accompanied at the informal meeting connected to the issuing of an improvement notice, nor is there a right of appeal against an improvement notice.
- 11.6 If owing to extenuating circumstances, at the end of the improvement notice period, an employee has failed to achieve the required standards, but this does not warrant formal action, the improvement notice may be extended for a period not in excess of three months.. Employees should be made aware that they will be monitored and that failure to meet required standards will result in the case being escalated to the formal stage of the procedure.
- 11.7 Where there is a repetition of misconduct or there is a genuine cause for concern and no satisfactory explanation has been provided, these incidents will be noted by the manager as a series of such occurrences, and will require action under the formal procedure.
- 11.8 Where there is a sustained improvement in conduct upon the expiration of the Improvement Notice, it will be expunged from the employee's file.

12. Formal Procedure

- 12.1 Depending on the seriousness of the alleged offence, the case may enter the formal procedure at any level:

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Level		Likely Outcome	Chair of Disciplinary Panel	Chair of Appeal Panel
1	Misconduct	First Written Warning and/or other sanction (12 months)	Band 7 and above	Band 8a and above
2	Serious Misconduct	Final Written Warning and/or other sanction (18 months)	Band 8a and above	Band 8b and above
3	Gross Misconduct	Dismissal with/without notice, or other sanction (24 months)	Band 8b and above as appropriate for the individual case	Assistant Director and above

- 12.2 The outcomes described above will not apply automatically, and higher/lower penalties may be applied if judged more appropriate, according to the circumstances of the case.
- 12.3 The Trust may consider further sanctions in addition to a warning, or as an alternative sanction to suspension or dismissal e.g. offering redeployment, restricted or change of duties and/or relocation, re-grading (without pay protection). Where this results in a contractual change, this will only be implemented by agreement with the employee.
- 12.4 Any instance of further inappropriate conduct or misconduct (either identical or related to the original concern) during the currency of an existing warning will normally then be assessed at a higher level within the procedure.
- 12.5 A record of warnings will be kept for the appropriate period of time but will then be considered spent, subject to achieving and sustaining satisfactory conduct.
- 12.6 Only managers at Assistant Director level and above can take the decision to dismiss.
- 12.7 The employee will be provided in writing with reasons for dismissal, the date on which the employment will terminate, and the right of appeal.
- 12.8 If some sanction short of dismissal is imposed, the employee will receive an outcome letter including a summary of the sanction imposed, a warning that dismissal could result if there is no satisfactory improvement, and advising a right of appeal.
- 12.9 The examples of misconduct given in the section below are illustrative, but not exhaustive.

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13. Levels of Action

13.1 Level 1 – Misconduct

A first written warning (**Appendix F – First Written Warning Template**) will be issued if conduct does not meet acceptable standards, setting out the nature of the misconduct and the change in behaviour required and the right of appeal. The warning will also inform the employee that a final written warning may be considered if there is no sustained satisfactory improvement or change.

Examples of misconduct:

- failure to respond to an informal warning/notice of improvement
- repeated discourtesy to patients, the public or colleagues
- repeated lateness for duty
- failure to maintain satisfactory standards of conduct and behaviour
- minor breach of confidentiality
- minor breaches of health and safety rules
- minor breaches of the Trust's values and behaviours, policies, or other relevant professional codes of conduct

13.2 Level 2 – Serious Misconduct

If the offence is sufficiently serious, or if there is further misconduct or a failure to improve during the currency of a prior warning, a final written warning may be issued.

The warning will give details of the misconduct, the improvement required and the timescale. (**See Appendix G – Final Written Warning Template**). It will also warn that failure to improve may lead to dismissal (or some other action short of dismissal) and will refer to the right of appeal.

Examples of serious misconduct:

- failure to respond to a written warning at level 1
- more serious breach of confidentiality
- disregard of approved procedures
- more serious breaches of the Trust's values and behaviours, policies, or other relevant professional codes of conduct
- unauthorised absence from duty
- refusal to obey a reasonable management instruction
- maligning the Trust's name or procedures

13.3 Level 3 – Gross Misconduct

If, on completion of the investigation and the full disciplinary procedure, the Trust is satisfied that gross misconduct has occurred, the result will normally be summary

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dismissal without notice/payment in lieu of notice. See (**Appendix H – Dismissal Letter Template**)

However depending upon the circumstances of the case, the disciplinary panel may decide to impose a sanction short of dismissal, e.g. redeployment, regrading, restricted or change of duties and/or relocation.

Examples of gross misconduct:

- failure to respond to a final written warning at Level 2
- malicious damage to the property of the Trust or other parties
- serious misuse of the Trust's property or name
- unauthorised removal, use, misappropriation, possession or theft of property belonging to the Trust, a fellow employee, patient or member of the public
- other serious offences of theft, attempted theft, dishonesty or corruption, acceptance of bribes or inducement
- fraud, including breaches of Code of Conduct and Standing Financial Instructions
- deliberate falsification of records
- disclosure of confidential matters to unauthorised person(s)
- omissions or false statements in e.g. disclosure of interest, application for employment, patient/incident reports, or other Trust documents and records
- acts of violence or aggression, including physical assault, verbal aggression or fighting
- harassment, bullying or discrimination
- gross negligence, including serious breach of Health and Safety rules or conduct which may endanger the safety of others
- breach of contract, including negligence leading to statutory bar on continuation of contracted role (e.g. loss of State Registration or loss of driving licence)
- conduct associated with misuse of drugs and/or alcohol
- participation in other employment without Trust permission and/or where conflict of interest may arise
- improper use of electronic mail or internet facilities, e.g. deliberately accessing internet sites containing pornographic, offensive or obscene material
- sexual misconduct at work
- serious insubordination or disregard of agreed procedures
- significant breach of Trust values and behaviours, policies, or professional codes of conduct
- actions leading to loss of trust and confidence in the employee's suitability for employment (this may include offences outside employment and/or bringing the Trust into disrepute)

The above lists are not exhaustive. The categorisation of conduct into **serious** misconduct and **gross** misconduct are largely guided by level of risk and impact.

14. Conduct Outside Work

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- 14.1 An employee's conduct outside their employment with the Trust may be subject to action under this procedure if considered by the Trust to be relevant to their employment. It may be deemed necessary to suspend the employee during the course of an investigation.
- 14.2 If an employee has been arrested, cautioned, received a summons, reprimanded, warned, remanded in custody, charged or convicted of an offence outside of employment, this will not be regarded as an automatic reason for dismissal or other disciplinary action. However, employees have a duty to notify their manager of any such matters.
- 14.3 Where the circumstances of the alleged offence may make the individual unsuitable for continued employment, or bring the Trust into disrepute, management will conduct appropriate enquiries where possible and may proceed to disciplinary action based on the evidence available, irrespective of the course of other proceedings.
- 14.4 If the employee receives a custodial sentence the employment contract may be frustrated and employment may be terminated.

15. Disciplinary Hearing

- 15.1 See the **Disciplinary Standard Operating Procedure** for guidance on conducting a disciplinary hearing.
- 15.2 If the line/commissioning manager decides that a formal hearing is warranted, they will write to the employee concerned giving a minimum of 5 working days' notice of the hearing, and providing the following:
- notification of their requirement to attend a disciplinary hearing
 - the date, time and venue, and who will comprise the hearing panel
 - confirmation of details of the specific allegation(s) and why the conduct is unacceptable
 - a copy of the investigation report together with statements, notes of interviews and any other relevant information collected during the investigation
 - notification that they have the right to be accompanied by a trade union representative or work colleague and the ability to call any witnesses to the hearing
 - the names of any witnesses who may be called by management to attend the hearing

See Appendix J – Invite to Disciplinary Letter Template

- 15.3 A minimum of 2 working days before the hearing, the employee must confirm to the commissioning manager their attendance, whether they will be accompanied to the hearing and, if so, by whom, and the names of any witnesses they will be calling. The employee is responsible for arranging the attendance of their own companion and witnesses.

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- 15.4 Any additional information should be presented to all parties a minimum of 2 working days before the hearing and it is not usually appropriate to submit additional information on the day of the hearing. However in exceptional circumstances, the panel can accept a late submission, after considering its relevance and importance to the case.
- 15.5 If the employee or companion cannot attend a hearing on a proposed date, the employee can suggest an alternative date if it is reasonable and is not more than 5 working days after the original date, although consideration will be given to any work shifts.
- 15.6 If the employee is not deemed fit to attend a hearing within a reasonable time frame, they may be invited to provide written submissions to the panel and the hearing can proceed in their absence.
- 15.7 If without reasonable explanation either party fails to attend within 30 minutes of the specified start time, the panel has absolute discretion to adjourn or to determine the outcome on the basis of the evidence provided and further representations from any party in attendance.
- 15.8 The employee has a right to be accompanied at a hearing where a formal warning may be issued, or some other disciplinary action (such as demotion or dismissal) could take place.
- 15.9 The companion must be a work colleague employed by the Trust, a trade union representative or an official employed by a trade union. A trade union representative who is not an employed official must have been certified by their union as being competent to accompany the employee. There is no right to legal representation.
- 15.10 If the employee agrees, their companion will be able to address a hearing, question witnesses, confer with the employee, put forward the employee's case, sum up the case, respond on the employee's behalf to any view expressed at the hearing, but does not have the right to answer questions on the employee's behalf.
- 15.11 In addition to the general right to be accompanied described above, no action under the formal procedure should be taken against an accredited representative of a recognised staff organisation without prior discussion with a full time officer of that organisation. The full time officer will also be informed of any suspension from duty of a recognised representative.
- 15.12 Where the employee indicates that they need special assistance at the hearing (e.g. an interpreter or hearing loop) arrangements will be made to accommodate this.
- 15.13 An electronic recording of the hearing may be made if agreed by all parties or where this may be required as a reasonable adjustment. A transcript of the meeting will be made available to all parties.

Disciplinary Policy

15.14 Witnesses who have provided a statement as part of the investigation may be asked to attend the hearing to answer questions. Appropriate support will be provided by the Trust to facilitate this. Under exceptional circumstances, a witness statement can be considered at the hearing without the witness being present, but in order to ensure full disclosure of facts and information it is preferable that a witness attends in person.

16. Appeal

16.1 See the **Disciplinary Standard Operating Procedure** for guidance on an appeal hearing.

16.2 The purpose of the appeal hearing is to examine and consider whether the disciplinary process and sanction issued were fair and reasonable.

16.3 It is not the purpose of the appeal process to re-examine the evidence which led to the original decision and therefore, under normal circumstances, there will be no need for previous witnesses to attend an appeal hearing.

16.4 However in order to properly consider the fairness of the disciplinary procedure and the disciplinary panel's decision, it may be necessary to revisit and reconsider evidence previously submitted and/or to take further witness statements.

16.5 It will not normally be permitted for either side to present new material on the day of the appeal and it will be at the discretion of the appeal panel to allow this, after consideration of its relevance and importance.

16.6 The Appeal Panel can take the following action:

- uphold the disciplinary sanction imposed at the disciplinary hearing
- uphold the employee's appeal and either reduce or expunge the sanction
- determine that the case should be reheard

16.7 For appeals against formal first and final written warnings, the panel should comprise the Chair (this should be a manager at Band 8+ and at a higher level than the chair of the disciplinary panel) and an appropriate HR representative.

16.8 For appeals against dismissal, the panel should comprise the Chair (at Assistant Director level and above) and an appropriate HR representative.

16.9 For cases relating to a professional matter, there should be an additional panel member who represents the relevant professional group/organisation.

16.10 Disciplinary action taken under this procedure may be subject to appeal on grounds of:

Disciplinary Policy

- a failure in investigation or disciplinary procedure, detrimental to the employee's case
 - conflict of evidence or new evidence which was not available at the time of the disciplinary hearing
 - the imposition of a penalty disproportionate to the offence
- 16.11 An employee wishing to appeal against a disciplinary decision must do so in writing within 10 working days to the HR Director at medwayft.hrdirector@nhs.net stating the grounds on which the disciplinary decision should be reviewed. See **Appendix 9 for A Disciplinary Appeal Form**.
- 16.12 If the grounds of appeal are met, the disciplining manager (the chair of the disciplinary panel) will provide a written statement of the case to the appeal chair and this will be provided to the appellant within 5 working days of the appeal hearing.
- 16.13 The HR Director will arrange for a suitable Chair to hear the appeal. The appeal hearing will normally be held within 20 working days of receipt of the appeal and will be chaired by a manager at a higher level than the manager who chaired the initial disciplinary panel, and who has not been previously involved in the case.
- 16.14 An appropriate HR representative will attend as an adviser to the disciplining manager and a separate HR representative who has not been involved in the case previously will attend as a panel member.
- 16.15 At least 5 working days' notice will be given to the employee of the hearing so that a companion can be arranged if required. The hearing will not be unreasonably delayed by the non-availability of the companion.
- 16.16 If without reasonable explanation either party fails to attend within 30 minutes of the specified start time, the panel has absolute discretion to adjourn or to determine the appeal on the basis of the evidence before the panel and any further representations from any party in attendance.
- 16.17 After the conclusion of the hearing or if this is not possible, within 5 working days, the chair of the panel will give all parties a decision which will be followed up in writing. The panel's decision will be final.
- 16.18 The employee has a right to be accompanied at an appeal hearing where a formal warning has been previously issued, or some other disciplinary sanction e.g. demotion or dismissal) has taken place.
- 16.19 The companion must be a work colleague employed by the Trust, a trade union representative or an official employed by a trade union. A trade union representative who is not an employed official must have been certified by their union as being competent to accompany the employee. There is no right to legal representation.

Disciplinary Policy

16.20 If the employee agrees, their companion will be able to address a hearing, question witnesses, confer with the employee, put forward the employee's case, sum up the case, respond on the employee's behalf to any view expressed at the hearing, but does not have the right to answer questions on the employee's behalf.

17. Monitoring and Review

What will be monitored	How/Method/Frequency	Lead	Reporting to	Deficiencies/gaps Recommendations and actions
Policy review	Review every three years. Additional review when legislative changes require	Employee Relations Team	Deputy Director of HR & OD	Where gaps are recognised action plans will be put into place
Recording of data on all cases	Using a case tracker or spreadsheet to provide monthly data	Employee Relations Team	Deputy Director of HR & OD	Required changes will be actioned by named person within a specific timeframe
Monitoring of process of live cases and adherence to timescales	Using a case tracker or spreadsheet to provide monthly data	Employee Relations Team	Deputy Director of HR & OD	Required changes will be actioned by named person within a specific timeframe

18 Training and Implementation

Training on this policy and the associated procedure is available on request from the Employee Relations Team.

19 Equality Impact Assessment Statement

- 19.1 All public bodies have a statutory duty under The Equality Act 2010 (Statutory Duties) Regulations 2011 to provide "evidence of analysis it undertook to establish whether its policies and practices would further, or had furthered, the aims set out in section 149(1) of the [Equality Act 2010]"; in effect to undertake equality impact assessments on all procedural documents and practices.
- 19.2 The author has reviewed this document and has concluded that there are no adverse effects or disadvantage to protected groups.
- 19.3 If you believe you are disadvantaged by anything contained in this document please contact the author who will then respond to the enquiry.

Disciplinary Policy

20. Appendices

- Appendix A – Disciplinary Flowchart
- Appendix B - Pre-Disciplinary Checklist
- Appendix C – Suspension Checklist
- Appendix D – Suspension Letter – Template
- Appendix E – Improvement Notice Template
- Appendix F – First Written Warning Template
- Appendix G – Final Written Warning Template
- Appendix H – Dismissal Letter Template
- Appendix I – Appeal Form
- Appendix J - Invite to Disciplinary Template

21 References

Document
References:
Employment Rights Act 1996 Data Protection Act 2018 Disciplinary Standard Operating Procedure: Disciplinary Investigation Guidelines ACAS Code of Practice on Disciplinary and Grievance Procedures 2015 Discipline and Grievance at work: the ACAS guide (February 2019)
Trust Associated Documents:
Disciplinary Procedure (SOP0226)
Information Governance Guideline - Use of cameras video and audio recorders on Trust premises (GUCGR023)
Anti-Fraud, Bribery and Corruption
Grievances Policy
Freedom to Speak up Policy
Attendance Management Policy

Disciplinary Policy

22 Equality Impact Assessment Pro Forma

Manager's name	Head of Employee Relations
Directorate	HR & OD
Date	November 2019
Function, strategy, policy or service	Disciplinary Policy & Procedure
Main aims, purpose and outcomes of the function, strategy, policy, service or work	Encourage employees to achieve and maintain high standards of conduct and behaviour by ensuring employees have a clear understanding of what is expected of them and the process to be used if they fall short of the standards required.
How will these aims affect our statutory duty to: 1. Advance equality of opportunity? 2. Eliminate unlawful discrimination, harassment and victimisation? 3. Foster good relations between different groups? 4. Protect and promote human rights?	By promoting equitable treatment of employees this policy ensures that all the Trust's statutory duties (as listed 1 to 4) are fulfilled.
Associated frameworks/NHS Operating Framework mention e.g. national targets NSFs	NHS Constitution pledges to staff.
Who does it affect? <i>e.g. staff, patients, carers</i>	All employees

Disciplinary Policy

Engagement and consultation process carried out (<i>state who was involved, how and when they were engaged and the key feedback</i>)	Consultation with staff representatives, HR and via the Trust's Joint Staff Council
What aspects of the policy, including how it is delivered, or accessed, could contribute to inequality?	None
What different needs, experiences or attitudes are particular communities or groups likely to have in relation to this policy?	There are unlikely to be any particular needs.

Screening assessment grid for equality groups listed within the Equality Act (2010)

Equality group	Positive impact	Neutral impact	Negative impact	Reason/comment/evidence/ necessary action planning following equality analysis screening
Age Gender Reassignment Marriage and civil partnership Pregnancy and maternity Race Religion/belief Sex (i.e. gender) Sexual Orientation Others (e.g. carers, homeless people, sex workers)		X X X X X X X X		By promoting equitable treatment of employees this policy ensures that all those with a protected characteristic will have equality of opportunity
Disability	X			The duty to make reasonable adjustments for employees with disabilities is reflected in this document.

Human rights considerations	The Human Rights Act contains 15 rights, all of which NHS organisations have a duty to act compatibly with and to respect, protect and fulfil.			
	Yes	No	Neutral	Reason/comment/evidence/ necessary action planning following equality analysis screening

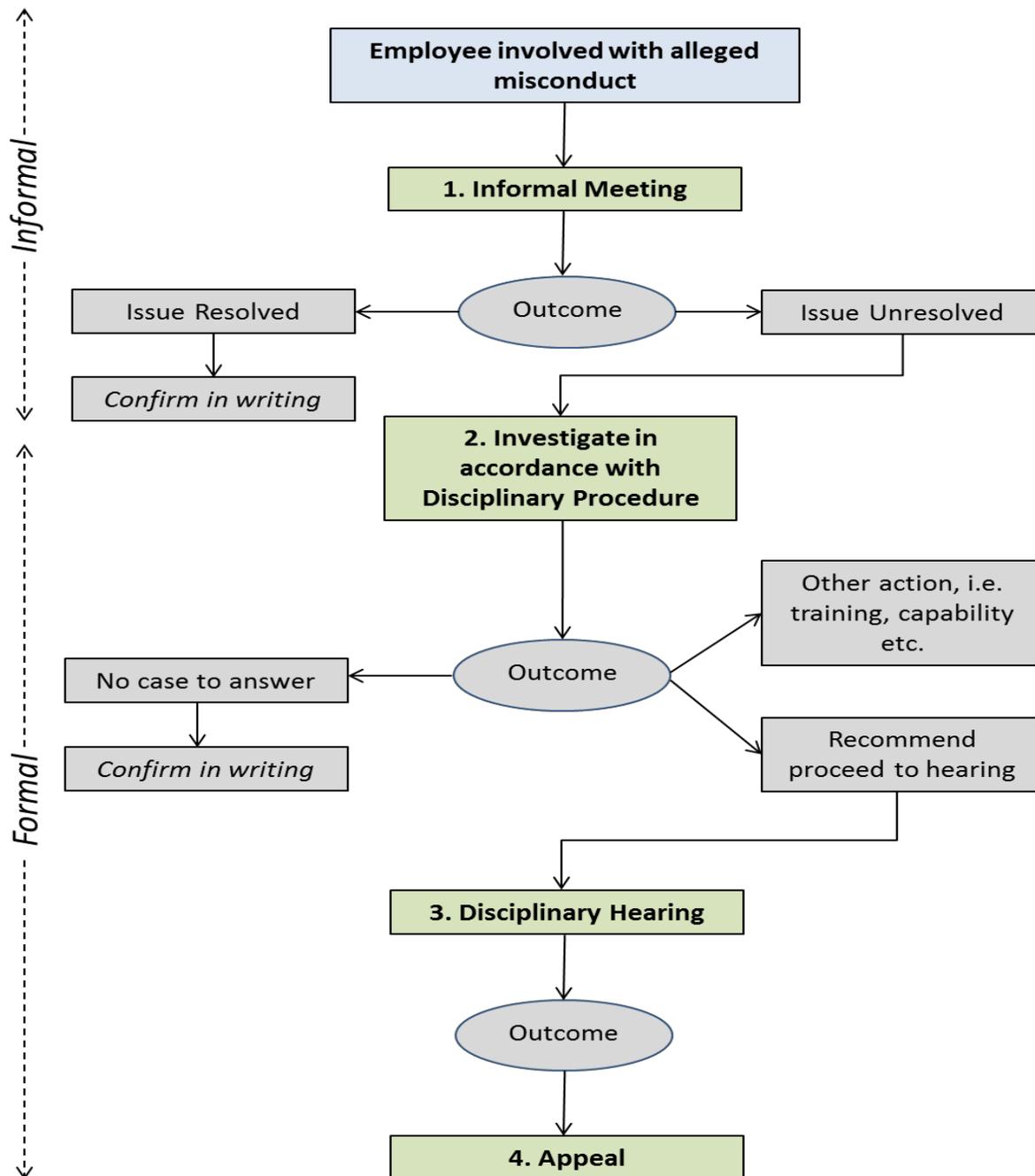
Disciplinary Policy

Does the subject of this EIA contribute to encouraging respect for human rights?	X			This policy promotes equitable treatment of employees.
Is there any evidence that the subject of this EIA is at risk of unlawfully restricting an individual's human rights?		X		
If so please suggest how these actions will be mitigated				

Appendix A – Disciplinary Flowchart

Disciplinary Policy

Disciplinary Flow Chart



V/General File/Policies & Procedures/Flow Charts/Appeal Flow Chart

Appendix B – Pre-Disciplinary Checklist

Have you asked yourself the following questions (1-6) before making a decision to formally investigate the individual concerned?

Disciplinary Policy

1. Is it a capability or conduct issue?
2. If a conduct issue, does the conduct of the employee sit within the list of gross misconduct stated in the non-exhaustive list in the Disciplinary Policy?* (Y/N)
 - a. Did the worker intend to cause harm? (Y/N)
 - b. Did the worker come to work drunk or was there any other noticeable impairment to their judgement or competence? (Y/N)
 - c. Did the employee knowingly and unreasonably increase risk by violating known safe operating procedures? (Y/N)
 - d. Would another similarly trained and skilled employee in the same situation act in a similar manner (the 'James Reason substitution test')¹ (Y/N)
3. Have you reviewed the worker's knowledge against their skills and determined if the worker knew of the rule or performance standard? (Y/N) If so, which of these applies?
 - i. The worker does not have the knowledge of what to do and so can't in practice (Y/N)
 - ii. The worker knows in theory but can't in practice (Y/N)
 - iii. The worker knows how to and can in practice, but isn't (Y/N)
4. Have you done a preliminary investigation to understand the situation well? (Y/N)
 - i. Have you ensured you have taken statement(s) from the employee involved and given them an opportunity to present their version of events? (Y/N)
 - ii. Have you exhausted the informal route? (Y/N)
 - iii. Have you maintained consistency in dealing with this situation regardless of the employee's banding and protected characteristics? (Y/N)
5. How well have you reacted to this situation? Have you as a manager...
 - a. Read the situation well (Y/N)
 - b. Got the employee's attention (Y/N)
 - c. Created the right relationship with the employee (Y/N)
 - d. Raised the concern informally with the member of staff in the same way you would with any other employee (Y/N)
 - e. Actively observed or identified which of 3i, ii, iii, 2c applies? (Y/N)
6. How open have you been in taking an overview of activities and impact?
 - a. Have you ensured the employee understands the situation well? (Y/N)
 - b. Have you ensured they have understood the rationale for applying the Disciplinary Policy? (Y/N)
 - c. Do they understand the 'pause and review process' and the next steps involved in this? (Y/N)
 - d. Have you checked if the employee is aware of various support mechanisms such as Trust Employee Assistance programme, OH, HR, and Union? (Y/N)
 - e. Have we positioned praise or blame? (Y/N)
 - f. Have we ensured they agree with the conclusion? (Y/N)
 - g. Have the next steps been discussed with the employee? (Y/N)
7. Given that our Trust's values and disciplinary policy emphasise improvement and learning, not punishment, have you:
 - i. Considered whether the employee has shown any remorse and understands the implications of their actions? (Y/N)
 - ii. Have you followed Trust values whilst dealing with this situation? (Y/N)
8. Referring to question 3, if evidence is strong then:
 - If the employee does not know how, so can't in practice, then a development plan is required
 - If the employee knows in theory, but can't in practice, then a development plan is required
 - If the employee knows how to and can in practice, but isn't, then continue with formal Investigation for disciplinary action.

Disciplinary Policy

Finally, have you determined that, by carrying out an investigation for disciplinary action against this individual, it is consistent with how other employees have been treated for the same or similar misconduct/action? (Y/N)

*** Questions 2a to 2d would be applicable in cases of Serious Incidents (SI)***

1 James Reason provides a decision tree for determining culpability for unsafe acts - Reason, J (1997). 16

Recommendation: Follow organisational guidance for appropriate management action. This could involve individual training, performance management, competency assessments, changes to role or increased supervision, and may require relevant regulatory bodies to be contacted, staff suspension and disciplinary processes. The patient safety incident investigation should indicate the wider actions needed to improve safety for future patients.

Manager's Name:

Band:

Signature:

Date:

Appendix C – Suspension Checklist

Disciplinary Policy

This checklist should be read and completed in conjunction with the Trust's Disciplinary Policy and Procedure. The following questions may assist managers in determining whether or not suspension of an employee is appropriate.

Name of Employee:	Band:	Dept:
	Yes/No (where applicable)	Details
Has there been a critical incident and/or serious allegation(s) made?		
Has there been a breakdown in relationships between the employee and other work colleague(s) resulting in them not being able to continue working together?		
Is the presence of the employee likely to hinder an investigation?		
Is there a workable alternative to suspension e.g. deployment to another work area, restriction of / alternative work duties?		
What duties would you restrict?		
What alternative duties would be appropriate?		
How will the employee's absence/ change in work duties affect work colleagues and patients?		
Can you put into place workable arrangements to cover the employee's absence/change in work duties?		
Who needs to be made aware of your course of action (suspension, deployment, restriction of duties)? E.g. Dept Director, HR		
Is the employee an accredited Trade Union representative (so that, if action is taken, the relevant Full Time Officer can be notified)?		
Is your course of action realistic and reasonable in the circumstances?		

Manager's Name:

Band:

Signature:

Date:

Appendix D – Suspension Letter - Template

Disciplinary Policy

Medway Maritime Hospital
Windmill Road
Gillingham
Kent
ME7 5NY

[DIVISION]

Direct Line 01634 830000 ext. XXXX

Private and Confidential

NAME

ADDRESS

ADDRESS

ADDRESS

ADDRESS

Dear XXXX,

Suspension from Duty

I am writing to confirm your suspension from duty on full pay (including enhancements)] with effect from today, [date]. The reason for your suspension is to enable a full investigation into an allegation against you of [state allegation].

In accordance with the Trust's Disciplinary Policy and SOP, suspension is a neutral act that allows the Trust to establish the facts of the above allegations in an atmosphere unaffected by the pressures of work.

The investigation into the allegation may result in disciplinary action being taken. Therefore you are advised to consult with a representative of a trade union or professional body that you may be a member of. Should other allegations or issues come to light as a result of the investigation you will be notified of them at the earliest opportunity.

Conditions of Suspension

Whilst the purpose of suspension is not a disciplinary sanction, the following conditions apply while you are on suspension:

1. You must not undertake work for another organisation during the hours for which your contract of employment with the Trust will apply.
2. You must not enter Trust premises without prior authorisation, unless for the express purposes of an investigation meeting, to meet with a trade union representative/ workplace colleague or attending the premises as a patient.

Disciplinary Policy

3. You should remain available during your normal hours of work and must notify me of any period when you will not be contactable at your home address. You should also comply with the Trust's Attendance Management Policy and SOP in relation to reporting your sickness, if applicable, as though you were at work.
4. If you have any pre-booked annual leave this will be honoured and will be deducted from your annual leave entitlement as normal.
5. It may be necessary to recover Trust property or assets from you in order to gain access to work related information - you are required to comply with such requests.
6. You must not make any contact with a member of the organisation unless with prior agreement with myself.
7. Your suspension will be reviewed on [insert date].

Investigation Process

An investigation will be conducted into this matter and you will be contacted if you are required to provide a statement. In the interests of all concerned this will be investigated as quickly as possible. If you would like to make a statement please let me have this within the next five days.

We recognise the personal effect this procedure may have on yourself and your colleagues and as such we will make every effort to keep the details of your suspension confidential and request that you do the same.

If you require any personal support during this time, please be advised that you can contact our Occupational Health Department on 01634 833883 (x3883). However please note that they will be unable to offer procedural advice or opinions.

If you have any queries or questions regarding the contents of this letter please do not hesitate to contact me.

Yours sincerely

NAME
JOB TITLE

Cc. NAME, Senior HR Advisor

Disciplinary Policy

Appendix E – Improvement Notice

This template should be read and completed in conjunction with the Trust's Disciplinary Policy and Procedure. It can be used by managers to summarise discussions/ outcomes at informal meetings and can be amended as appropriate to reflect individual circumstances.

Name of Employee	
Job Title	
Department	
Name of Manager Conducting Meeting	
Date of Meeting	

Issue discussed: e.g. timekeeping
Exploration of issues/Summary of key points discussed and the agreed outcome: <i>Expand text box as necessary.</i>
What needs to improve and why? e.g. impact of conduct or behaviour
Employee's explanation
Improvements and standards required including timescales
Agreed actions/support
Next steps if no improvement
Date of next review meeting:

Signed (Employee) Date

Signed (Manager) Date

One signed copy of this notice to be retained by the manager, one copy to be given to the employee, and an electronic copy sent to Employee Relations.

Disciplinary Policy

Appendix F – First Written Warning – Template Letter

[DIVISION]
Direct Line 01634 830000 ext. XXXX

Medway Maritime Hospital
Windmill Road
Gillingham
Kent
ME7 5NY
01634 830000

DATE

Private and Confidential

NAME
ADDRESS
ADDRESS
ADDRESS
ADDRESS

Dear XXXX,

Outcome of Disciplinary Hearing

I write following the disciplinary hearing on [date] held under the Trust's Disciplinary Policy and Standard Operating Procedure. You were accompanied by [name and job title] also present at the meeting was [name and job title of Advisor] and myself.

I explained the purpose of the meeting was to discuss the allegation of misconduct below:

<INSERT>

I explained to you that you had the right to be accompanied at this disciplinary meeting with a Trade Union Representative or a work based colleague. [Delete as appropriate- You were accompanied/stated that you were attending unaccompanied].

[In cases of information governance/data protection breaches]The Trust has now concluded its investigation into your actions in connection with an alleged breach of patient confidentiality whereby you accessed a patient's medical records without a legitimate reason to do so. At the start of the investigation you were advised that such activities also breach the Data Protection Act (DPA) s55(1), and that should the investigation confirm the allegations to be accurate the Trust may report the findings of the investigation to the Information Commissioner's Officer (ICO) for their consideration under the scope of s55 of the Act.

During the meeting, we discussed the cases presented by management and yourself and everyone had an opportunity to ask questions.

After further consideration, I can now confirm that I uphold/partially uphold allegation/s [state which if not upholding all] and you are receiving a First Written Warning under the Trust's Disciplinary Policy and Procedure. This First Written Warning will remain in force for 12 months until [date].

Disciplinary Policy

The reasons for this decision are:

If there is no satisfactory improvement within the period outlined above, or if there is further misconduct, you could be either be issued with a Final Written Warning, or depending on the circumstances this could ultimately lead to your dismissal.

If you make a satisfactory improvement, you must sustain it.

You may, if you wish, appeal against this First Written Warning. You should put your appeal in writing to Executive Director of HR & OD via medwayft.hrdirector@nhs.net within 10 working days of the date of this letter.

Please confirm receipt of this letter to x by xdate.

Yours sincerely

NAME

JOB TITLE

Cc. NAME, Senior HR Advisor

Disciplinary Policy

Appendix G – Final Written Warning Letter – Template

[DIVISION]
Direct Line 01634 830000 ext. XXXX

Medway Maritime Hospital
Windmill Road
Gillingham
Kent
ME7 5NY
01634 830000

DATE

Private and Confidential

NAME
ADDRESS
ADDRESS
ADDRESS
ADDRESS

Dear XXXX,

Outcome of Disciplinary Hearing

I write following the hearing on [date] held under the Trust's Disciplinary Policy and Procedure. You were accompanied by [name and job title] also present at the meeting was [name and job title of Advisor] and myself.

I explained the purpose of the meeting was to discuss the allegation of misconduct below:

<INSERT>

I explained to you that you had the right to be accompanied at this disciplinary meeting with a Trade Union Representative or a work based colleague. [Delete as appropriate- You were accompanied/stated that you were attending unaccompanied].

[In cases of information governance/data protection breaches] The Trust has now concluded its investigation into your actions in connection with an alleged breach of patient confidentiality whereby you accessed a patient's medical records without a legitimate reason to do so. At the start of the investigation you were advised that such activities also breach the Data Protection Act (DPA) s55(1), and that should the investigation confirm the allegations to be accurate the Trust may report the findings of the investigation to the Information Commissioner's Officer (ICO) for their consideration under the scope of s55 of the Act.

During the meeting, we discussed the cases presented by management and yourself, and everyone had an opportunity to ask questions:

After further consideration, I can now confirm that you are receiving a Final Written Warning under the Trust's Disciplinary Policy and Procedure. This Final Written Warning will remain in force for 18 months until [date].

Disciplinary Policy

The reasons for this decision are as follows:

.....

If there is no satisfactory improvement within the period outlined above, or if your conduct deteriorates, this could ultimately lead to your dismissal. If you make a satisfactory improvement, you must sustain it.

You may, if you wish, appeal against this Final Written Warning. You should put your appeal in writing to the Executive Director of HR & OD via medwayft.hrdirector@nhs.net within 10 working days of the date of this letter.

Please confirm receipt of this letter to X by xdate.

Yours sincerely

NAME

JOB TITLE

Cc. NAME, Senior HR Advisor

Disciplinary Policy

Appendix H – Dismissal Letter Template

[DIVISION]
Direct Line 01634 830000 ext. XXXX

Medway Maritime Hospital
Windmill Road
Gillingham
Kent
ME7 5NY
01634 830000

DATE

Private and Confidential

NAME
ADDRESS

Dear XXXX,

On {Date} you received a Final Written Warning in accordance with the Trust's Disciplinary Policy and Procedure. You were warned that the likely consequence of further misconduct or insufficient improvement was dismissal.

Insert who attended.....

Management presented case, and you were given an opportunity to respond. Everyone had the opportunity to ask questions of both parties.

Following the meeting on {Date} it was decided, after careful consideration of all the evidence and discussions at the meeting, that your conduct was still unsatisfactory and that you be dismissed in accordance with the Trust's Disciplinary Policy and Procedure.

Or:

On {Date} you attended a second meeting for misconduct in accordance with the Trust's Disciplinary Policy and Procedure.

Following this meeting it was decided, after considering all the evidence, that your conduct:

- was sufficiently serious to warrant dismissal with notice/ amounted to gross misconduct warranting summary dismissal {delete as appropriate}
- and that you be dismissed in accordance with the Trust's Disciplinary Policy and Procedure.

Or:

On {date} you attended a formal disciplinary hearing for misconduct in accordance with the Trust's Disciplinary Policy and Procedure.

Following this meeting it was decided, after carefully considering all the evidence available, that your conduct:

Disciplinary Policy

- was sufficiently serious to warrant dismissal with notice/ amounted to gross misconduct warranting summary dismissal {delete as appropriate}
- and that you be dismissed in accordance with the Trust's Disciplinary Policy and Procedure.

Then:

The reasons for your dismissal are:

{be specific, state the grounds clearly, together with the employee's submissions and a reasoned statement of why you are rejecting them}

{State clearly if the charge was gross misconduct – this will normally result in summary dismissal}

Then:

You are entitled to [XXXX – check against statutory amount] weeks' notice of dismissal. We are giving you {x} weeks' {notice/ pay in lieu of notice}. Your last day of service will be {Date}.

Or:

This is a summary dismissal due to gross misconduct and there will be no notice period. Your last day of service will be (the date they were informed – say if that done by phone).

Please return your pass and other property of the Trust (*e.g. car park permit, uniform, keys. equipment*) to your line manager before you leave/ or give timeframe.

Pay (add details as appropriate – HR will advise)

Annual leave (add details as appropriate – HR will advise)

Your P45 will be issued in due course and the NHS Pension Scheme will contact you concerning your entitlements.

You have the right of appeal against the decision to dismiss you. You should put your appeal in writing to the Executive Director of HR & OD via medwayft.hrdirector@nhs.net within 10 working days of the date of this letter.

Yours sincerely

NAME

JOB TITLE

Disciplinary Policy

Appendix I – Appeal Form

Name of employee	
Job title	
Department/location	
Date of disciplinary hearing	
Date employee received disciplinary outcome	
Disciplinary outcome (tick as appropriate)	<input type="checkbox"/> First Written Warning <input type="checkbox"/> Final Written Warning <input type="checkbox"/> Other Sanction e.g. redeployment, regrading, restricted or change of duties, relocation <input type="checkbox"/> Dismissal
Grounds for appeal (tick as appropriate)	<input type="checkbox"/> Failure in investigation or disciplinary procedure, detrimental to the employee's case <input type="checkbox"/> Conflict of evidence or new evidence which was not available at the time of the disciplinary hearing <input type="checkbox"/> Imposition of a penalty disproportionate to the offence

Please provide details of why you are appealing against the disciplinary decision. You should include all the reasons you would like the appeal panel to consider, as you may not be able to introduce new information at a later stage. The information you supply will be used as evidence in an appeal hearing and will be made available to the disciplinary panel and the appeal panel. Expand the text box as necessary.

NB: The Appeal Panel can take the following action:

- uphold the disciplinary sanction imposed at the disciplinary hearing
- uphold the employee's appeal and either reduce or expunge the sanction
- determine that the case should be reheard

Signed (Employee) Date

One signed copy to be retained by the employee and an electronic copy to be sent to the Executive Director of HR & OD at medwayft.hrdirector@nhs.net

Disciplinary Policy

Appendix J – Invite to Disciplinary Letter Template

DIVISION
Direct Line 01634 830000 xXXXX

Medway Maritime Hospital
Windmill Road
Gillingham
Kent
ME7 5NY
01634 830000

DATE

Private and Confidential

NAME
ADDRESS
ADDRESS
ADDRESS

Dear NAME,

Disciplinary Hearing

I am writing to invite you to attend a formal disciplinary hearing, held under the Trust's Disciplinary Policy and SOP. This hearing will be held on [DATE] at [TIME] in [LOCATION]. [IF PGC: On arrival please report to and wait at the Postgraduate Centre reception until you are collected when the panel are ready to commence the hearing].

The allegation(s) to be discussed is(are) as follows:

- XX
- XX

The allegation(s) is/are classed as Misconduct/Serious Misconduct/Gross Misconduct (delete as appropriate)

[IF APPLICABLE: You should be aware that the possible consequences arising from the hearing may be disciplinary action up to and including dismissal.]

You should make every effort to attend this meeting. If you fail to attend, the Trust reserves the right to proceed with the meeting and make a decision [IF APPLICABLE: up to and including dismissal] in your absence.

Present at the hearing will be:

- NAME, JOB – Chair
- NAME, JOB – HR Advisor to the panel
- NAME, JOB – Management team
- NAME, JOB – Management team and note taker

Disciplinary Policy

You have the right to be accompanied at the disciplinary hearing by a Trade Union Representative or a work based colleague. It is your responsibility to find a representative who is available on this date and give them a copy of this letter.

During the hearing you will be given a reasonable opportunity to ask questions, present evidence and call relevant witnesses. If you wish to submit copies of relevant papers or witness statements to be considered at the hearing, these must be provided by [DATE], to allow the panel sufficient time to review and consider them.

Please find enclosed a copy of the Trust's Disciplinary Policy and Procedure for your information. Also enclosed is a copy of the investigation report for your review prior to the meeting.

If you require any personal support during this time, please be advised that you can contact our Occupational Health Department on 01634 833883 or ext. 3244. However please note that they will be unable to offer procedural advice or opinions.

As with all formal meetings, confidentiality of all parties is maintained and as such you must not discuss this case with other parties in the Trust, apart from those named in this letter and your representative, or unless you are calling relevant witnesses.

Please contact me within 2 days of receiving this letter to confirm that you will be attending, whether or not you will be accompanied and if so, by whom.

Yours sincerely

NAME

JOB TITLE

Cc.