

Disciplinary Policy & Procedure

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Links to Organisational/Service Objectives, business plans or strategies	Terms and conditions of service
Executive Summary This policy describes the Trust's approach to the application of the disciplinary procedure which must be adhered to across the organisation.	
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Version History Log

This area should detail the version history for this document. It should detail the key elements of the changes to the versions.

Version	Date Approved	Version Author	Status & location	Details of significant changes
1	December 1996		Superseded	
1.3	June 2005	Sally Black	Superseded	May 07 Disciplinary Sanctions added – p11, agreed by LNC
1.4	July 2007	Sally Black	Superseded	Appendix L added – Extract from ACAS – agreed by LNC
2	October 2010	Vicki Mallows	Superseded	See version history on previous documents
3	October, 2012	Vicki Mallows	Current	See version history on previous documents
3.1	Amended Dec 2012	Vicki Mallows	Corrected formatting in Appendix B. Corrected wording in Rule 17 of Appendix B.	See version history on previous documents
4.0	December 2014	HR Manager (LB)	Superseded	Policy format updated. If the respondent admits to the allegations a decision can be made to proceed to a sanction only hearing. Any level of sanction can be issued at a sanction only hearing except for dismissal. The employee will still have the right of appeal. Change to sanctions – written warnings now to be issued for 6 months (longer only in exceptional circumstances, up to 12 months). And final written warnings for 12 months (18 months but only in exceptional cases) The Appeals process

				can no longer increase either the level of length or level of sanction given at the original hearing.
5.0	February 2019	HR Business Partner	Staffroom	<p>Policy format/wording updated.</p> <p>Removed references to respondent.</p> <p>Update of informal action, encouragement of early interventions.</p> <p>Clarification regarding file notes and time to be held on file now 12 months.</p> <p>Clarification regarding appeals, re-name and re-word of sanctions only process.</p> <p>Updated code of conduct and disciplinary rules.</p> <p>Clarification on roles and responsibilities</p> <p>Increased reference to reasonable adjustments and supporting employees.</p> <p>Added opportunity to be accompanied at a suspension/exclusion meeting.</p> <p>Individuals invited to provide initial written response in writing.</p> <p>Investigations not under the MHPS framework should be concluded within 6 weeks.</p>
5.1	December 2019	HR Business Partner	Staff Room	<p>Updated to reflect Care Group structure</p> <p>Change to appeal panel set up.</p>

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The Trust is committed to making reasonable adjustments in respect of this policy and associated procedures to enable an employee with a disability, as defined by the Equality Act 2010, to fully participate in the process. It is the responsibility of the employee to identify any specific requirements under the Act.

1. Introduction & Scope

York Teaching Hospital NHS Foundation Trust (the Trust) expects all employees to demonstrate high standards of work and behaviour. It is committed to creating and maintaining a positive working environment and effective working relationships in line with the Trust values; whilst meeting its duty of care towards all employees.

All employees represent the Trust and the NHS as a whole and it is important that individuals therefore provide a professional and caring image to patients, visitors and colleagues to enable our commitment to our patients to deliver safe and effective healthcare.

The Trust promotes a culture of feeling safe to report allegations of alleged misconduct or to speak up about mistakes without fear of blame or inappropriate repercussions.

The policy document applies to all employees of York Teaching Hospital NHS Foundation Trust (the Trust) and deals with alleged personal or professional misconduct; this document should be read in conjunction with the standards of expected behaviour and the Code of Conduct (Appendix 2). **For staff on honorary contracts, please contact HR for advice.**

The investigation of alleged personal and professional misconduct, capability and ill health concerns involving **medical and dental staff** will be undertaken in accordance with the national framework set out in “Maintaining High Professional Standards in the Modern NHS” (MHPS framework) 2005. In line with this framework, capability issues will be tied in with the work of the national clinical assessment service (NCAS). Where purely personal conduct issues are identified, they will then be managed under this policy and procedure.

This policy should be read in line with the guidance notes available on the Trust’s Intranet site.

2. Definitions / Terms used in policy

MHPS Managing High Professional Standards

Vexatious or frivolous allegations this means allegations brought without sufficient grounds or lacking seriousness.

Precautionary suspension is an action taken to avoid potential risk to both employee and employer. Precautionary suspension does not apply to Medical and Dental Staff.

Exclusion relates only to Medical and Dental Staff and is where an individual can be temporarily removed from the workplace or a particular duty where there is a potential risk to the organisation, patients or employee or where there is evidence of a risk of the individual undermining the investigation.

The balance of probabilities which means ‘more likely than not’.

The decision as to if the balance of probabilities test has been met must be based on the information gathered during the disciplinary process.

A **witness** is an individual who is deemed to have information which is pertinent / relevant to the investigation.

3. Policy Statement

The Trust will make every reasonable effort to ensure that all employees are aware of the standards of conduct and behaviour expected of them, and are supported in achieving those standards. All employees who work for the Trust have a responsibility to keep up to date with Trust policies and procedures. Copies are available on the intranet.

When dealing with matters of alleged misconduct it is expected that managers maintain a positive working environment for the employee who is subject of the misconduct allegations. All employees involved in the process are expected to respond appropriately and in accordance with the Trust values.

All cases of alleged misconduct will be dealt with fairly, appropriately and constructively, in accordance with the Trust disciplinary procedure. Following a due process, where it is deemed appropriate to issue a disciplinary sanction, the sanction will be proportionate to the circumstances of the specific case,

Through proactive management, line managers should identify potential areas of concern / alleged misconduct at an early stage, discussing any alleged misconduct, as appropriate, with employees informally in the first instance.

If, in the course of an alleged disciplinary matter, an employee raises a grievance that is related to the case, the disciplinary process may be temporarily suspended in order to deal with the grievance or it may be appropriate to deal with both issues concurrently.

The Trust will deal appropriately with any report of alleged misconduct where allegations made are found to be vexatious.

This policy is supported by a range of procedural documents as outlined in section 6 to assist with its effective implementation.

The Trust will act in line with the ACAS Code of Practice and the following principles:

Act reasonably - informal action will be considered initially, as appropriate, to resolve matters of misconduct. No employee will be dismissed for a first breach of discipline except in the case of gross misconduct, when the outcome may be dismissal without notice or payment in lieu of notice.

Deal with matters promptly and avoiding unnecessary delays – alleged disciplinary matters will be dealt with in a proportionate and timely way. It is expected that neither the Trust nor the employee (or chosen representative) should unreasonably delay meetings, decisions or confirmation of those decisions.

Handle matters consistently and appropriately - disciplinary cases will be handled in line with the Trust Disciplinary policy and procedure, ensuring consistency, and fairness in approach.

Carry out disciplinary investigations – in most cases of misconduct where it is deemed that a formal process is the appropriate course of action, a balanced,

comprehensive and proportionate investigation into the allegations will take place. Exceptions, for example, may include where all parties have agreed that the 'agreed disciplinary actions' process will be followed or where the facts are clear and the employee has already been provided with an opportunity to respond.

Inform employees of the alleged misconduct in good time - the employee will be advised of the nature of the alleged misconduct and be provided with enough information to allow them the opportunity to respond. In cases where written complaints are received; these will be shared with the employee and appropriately redacted if necessary.

It is possible that during any investigation, further information becomes available which will be shared in a timely manner with all relevant parties and prior to any meetings with the employee.

Witness statements obtained during the investigation will be shared, as appropriate, with the employee (redacted if necessary) if proceedings progress to a formal hearing.

Provide an opportunity for the employee to respond at a formal meeting - following an investigation, if required, the employee will be invited to a disciplinary hearing in writing in good time and will be given the opportunity to state his/her case, raise points, ask questions and call witnesses before any decision is made.

Offer the employee the right to be accompanied / represented - the employee will have the right to be accompanied / represented by a Trade union / Staff representative, work colleague or friend (not acting in a legal capacity) at any formal meeting convened as part of the disciplinary process. Confidentiality must be maintained by all those involved in the process at all times.

Please note: the right to be accompanied does not apply to a suspension meeting, as suspension is precautionary and is not in itself a disciplinary action. However, the opportunity to be accompanied at a suspension meeting will be offered where reasonably practicable to do so; this provision should not however unduly delay the suspension meeting.

Provide an opportunity to appeal against the outcome - the employee will be notified of the decision promptly and in writing and have the right to appeal against any disciplinary sanction imposed.

3.1 Disciplinary procedure

3.1.1 Allegation of misconduct

All cases of misconduct should be dealt with in line with the informal and formal disciplinary procedures as outlined in this procedural document and the associated guidance notes as outlined in section 6 of this document.

3.1.2 Confidentiality

Individuals who are applying or responding to this procedure, notwithstanding their role, are expected to maintain confidentiality at all times; an individual found to have breached confidentiality may be subject to disciplinary action.

3.1.3 Responding to Allegations of Misconduct

Where misconduct is alleged or suspected, the line manager will notify the employee against whom the allegations have been made and undertake an initial fact-find to

understand the potential seriousness of the allegation, having gathered the information, the line manager in conjunction with HR will determine the most appropriate course of action.

This initial early fact-finding, will enable an informed decision as to whether the allegations may be substantiated and if so whether they can be dealt with informally or are serious enough to warrant a formal investigation.

In all instances where an allegation of fraud has been made, advice must be sought from the Trust's Local Counter Fraud Specialist, who will determine, in conjunction with HR as to how the allegation should be investigated.

Medical and Dental staff

Where the allegations relate to medical and dental staff, early advice should be sought from the Managing High Professional Standards team. Written complaints received will be shared with individuals (redacted if necessary) as soon as possible.

In cases of professional conduct all serious concerns will be registered with the Chief Executive. The Medical Director or a delegated Senior Manager will act as Case Manager and appoint an experienced Case Investigator.

As prescribed in the MHPS Framework a Case Manager and Investigating Officer will ensure the investigation is carried out fairly and thoroughly. A Non-Executive Director will be appointed by the Chairperson to oversee the progress of the case. Information will be provided to the individual subject of the concern as soon as reasonably practicable to do so.

Where a case involving issues of professional conduct proceeds to a hearing under the Trust's conduct procedures the panel must include a member who is medically qualified (in the case of doctors) or dentally qualified (in the case of dentists) and who is not currently employed by the organisation.

3.1.4 Criminal Charges/Proceedings

An employee who is charged with, or convicted of, a criminal offence (including receipt of a summons) must inform their line manager immediately.

Notification about criminal proceedings or a conviction (including bind-over orders and cautions) will not necessarily lead to the disciplinary process being invoked. Following disclosure the Trust (who) will determine what, if any, action will be taken after considering the facts of the case and the relevance of the charge or conviction to the job undertaken.

Staff employed for all or part of their duty as a driver or where the requirement to drive is an essential part of their duties must inform their manager immediately if charged with any driving offence including points on their licence.

3.1.5 Precautionary Suspension (Non-Medical and Dental Staff)

A precautionary suspension may be considered appropriate where the allegations may, if proven, constitute gross misconduct. It is also appropriate if there is a perceived risk, such as, risk to the organisation, patients or employees or evidence of a risk of the individual undermining the investigation.

Before suspending an employee, the line manager in consultation with the professional lead (as appropriate), **MUST** discuss the case with HR. Every effort will be made to provide the individual with the support of a Trade Union representative,

notwithstanding their membership of a union. Contact will be made with the representatives on call to attend any suspension meeting. All parties in such circumstances are expected to maintain confidentiality regarding the meeting; failure to do so, may result in disciplinary action. Every effort should be made to accommodate suspending an individual in a face to face meeting. Only in exceptional circumstances should suspension occur remotely.

Decisions to suspend an employee will only be taken with careful consideration of all of the circumstances and the nature of the complaints/ allegations made.

Alternatives to suspension, such as restricting an employee's duties should always be considered and discussed with HR. Appropriate support will be provided and contact maintained by a nominated individual usually from within the directorate.

The individual will be independent from the investigation and will not be party to the detail obtained through the investigative process. Every effort should be made for contact to be made with the individual suspended within one working day of the suspension taking place. Where concerns are raised regarding the welfare of the individual subject of the suspension, advice may be sought from Occupational Health.

Suspensions will be reviewed on a regular basis and the employee will be kept informed of those reviews in writing. Where appropriate, dependent on the nature of the allegations, the employee may be asked to temporarily surrender Trust property e.g. a VPN or mobile telephone.

Individuals undertaking the suspension of an employee should remember that this is a precautionary measure; it may prove a difficult time for the employee and therefore should deal with the meeting, appropriately and respectfully. The presence of security staff at a suspension should never be as a matter of course and should only be in exceptional circumstances where there is determined to be a significant risk to other staff.

If a decision to suspend an employee is made out of normal office hours, then the Senior Manager on-call should be contacted in the first instance and HR should be informed of the decision as soon as possible.

Whilst it is expected that individuals will not discuss the case with others from within the organisation, it is recognised that there may be some exceptions; where the suspended individual feels this to be the case; they should discuss the circumstances with the Investigating Officer (IO) at the earliest opportunity and agree a way forward.

Where a suspension is lifted either during the investigative process or immediately following a decision at hearing (where the sanction fell short of a dismissal), it is expected that the line manager will contact the individual to agree a supportive return to work plan.

Please note: suspension does not apply to Medical & Dental staff, exclusion will be considered where appropriate. As with suspension, under the 'Maintaining High Professional Standards' exclusions **must** be reviewed on a regular basis.

Where patient safety is not a concern, and in line with the MHPS Framework, where the case involves medical or dental staff, the practitioner will be offered the opportunity to voluntarily exclude themselves from practice or to suggest an alternative to exclusion.

Employees suspended or excluded from work will normally receive their full pay for the duration of the suspension and an average of any enhancements that would have been due based on the normal working pattern.

Suspension without pay will be deemed appropriate for example, where a) the employee has failed to maintain their professional registration and it is not deemed possible to temporarily move them to an unregistered role¹ or b) an employee fails to provide documentary evidence of the legal right to work / remain in the UK.

Where an employee returns from work following a precautionary suspension, it is important that supportive discussions are held between the manager and the employee to help the employee reintegrate into the workplace.

3.1.6 Dealing informally with matters of alleged misconduct

Cases of alleged minor misconduct are often best dealt with informally. In a case of minor misconduct, the manager will meet with the employee, discuss the allegation(s) and expected future conduct. Discussions should take place with the emphasis on providing advice, support and guidance and in some cases additional training and coaching may be determined appropriate.

Managers must deal with minor allegations of alleged misconduct in a proactive and timely manner in the hope that it will resolve the matter and avoid escalation to a formal process.

The meeting should take place as soon as possible after the alleged misconduct. Following the meeting, the manager will write to the employee to provide a record of the discussions which both parties will sign; and will include any disagreements on the content, this informal action, termed a 'file note', will form part of the employment history and will be held on the employees personnel file for a period of 12 months. During this process, consideration should be given to providing the employee an opportunity to write a reflective statement which would also be retained on the file for a period of 12 months.

As this process constitutes informal action, there is no right to representation at the meeting; employees can however seek advice and guidance from their Trade Union/Staff Representative. Informal action does not provide the employee with a right of appeal.

It should be noted where future similar misconduct takes place, which may have on its own been suitable to be dealt with as informal action; consideration will be given to dealing with such matters under the formal process where appropriate.

If an employee has a concern with the way that an informal process has been dealt with; they should raise their concerns with HR or their Trade Union/Staff Representative.

3.1.7 Investigating Allegations of Misconduct

Where it is felt that the allegations of misconduct require a full investigation, an appropriate Investigating Officer will be appointed and supported by HR. An appropriate manager will notify the employee in person outlining the allegation(s); this meeting will be followed up in writing.

¹ See Maintaining Professional Registration Policy

Any allegation(s) of misconduct should be clear, concise and provide enough information to allow the employee to respond. Individuals may be asked to provide a response in writing which will be taken as their initial response; this will be followed up as appropriate with a face to face investigation meeting. Where agreed, notes of this meeting will be taken, agreed and signed by all parties at the time of the meeting and will form part of the employees response. Alternatively the notes will be typed and sent to the employee for them to review and sign.

The IO will be provided with details of the allegations and, with the support of the HR representative, will progress the investigation in a timely manner.

It is the expectation of the Trust that the IO takes the lead in the investigation. The role of the HR representative is to provide the IO with professional advice and guidance. The Trust expects all disciplinary investigations are balanced and proportionate and free from assumptions and personal opinion.

If during the course of the investigation it becomes clear that further allegations come to light or the initial allegations need amendment, the IO should discuss this with HR to agree and issue new / revised allegations as appropriate. It is important to remember that the employee must have enough information to allow them to fully respond to the allegations.

Any individual found to have made vexatious or frivolous allegations, may be subject to disciplinary action.

Where during the course of the investigation, allegations are made regarding other employees; this will be dealt with accordingly through the disciplinary procedure.

The employee alleged of the misconduct is entitled to be accompanied by a Trade Union / staff representative or work colleague in the course of any investigatory interview or subsequent hearing. There is however, no right to legal representation.

Where new/ revised allegations are provided to the employee following the investigative interview, the individual must be given a further opportunity to respond, this might be either in a face to face meeting or by providing a written response; the IO in conjunction with the employee will determine which is most appropriate in the circumstances.

Representatives (and the employee alleged of misconduct) must be available in a timely manner to ensure delays are minimised. Where delays have an impact of more than 14 calendar days, and more than one date has been offered, the employee alleged of misconduct will be notified in writing of the date the meeting will go ahead. It will be the employee alleged of misconduct's responsibility to ensure they obtain representation.

Complainants and witnesses may be supported by a Trade Union / Staff representative or work colleague; those undertaking a supporting role will not be entitled to answer questions on behalf of the employee.

Where an allegation of misconduct is made against an employee who is also a recognised Trade Union representative, the allegations must be clear as to if the alleged misconduct relates to their conduct as an employee, as a representative, or both. In either case early discussions should be held with the Regional representative. **Please note:** It is for the Union and not the Trust to remove the individual from their Trade Union duties, where appropriate to do so.

In the case of gross misconduct where it is felt that suspension is deemed appropriate as a precautionary measure, it should be clearly set out which role the suspension relates to. In some cases, depending on the nature of the allegations, it may be appropriate to consider suspension from both roles whilst a balanced and proportionate investigation takes place.

Most disciplinary investigations should be concluded wherever possible within a period of six weeks. However, in certain cases this may need to be extended and should be concluded within three calendar months if reasonably practicable to do so.

Under the 'Maintaining High Professional Standards' guidance, disciplinary investigations for Medical and Dental Staff should be concluded within four weeks.

Where the employee makes early admission in relation to the allegations and demonstrates insight and/or personal responsibility for their actions, the relevant Senior Manager in consultation with HR can make the decision to either:

- i) Proceed with a standard disciplinary process or;
- ii) Proceed to agreed disciplinary actions process

3.1.8 Mutually Agreed action (previously known as Sanctions Only)

Please note this process does not apply to matters which may constitute gross misconduct.

There is an expectation that any mutually agreed action is taken early on following allegations coming to light. Where an allegation of misconduct is made and the employee fully admits the misconduct and is able to provide insight and therefore assurance about future conduct, it may be possible to agree a disciplinary outcome. This should occur following discussion between the employee and/or their representative (if applicable), their directorate and HR.

The level of sanction and any associated recommendations (if applicable) need to be explicit in the document the employee and a Trust representative is required to sign. The employee should be provided with a minimum of one working day but no more than two working days reflective time to consider the content of the document prior to signing. If all parties are in agreement, this process will avoid the need for a formal disciplinary investigation.

When determining this approach, consideration should be given to whether the misconduct is an isolated incident and the employee has a previous record of good conduct.

During this process, the employee may wish to write a reflective statement which may be considered as part of the mutually agreed actions process and would be retained with the personal file as per section 3.1.11.

Mutually Agreed action includes sanctions up to and including a final written warning. As this is mutually agreed there is no right of appeal.

If disciplinary action under this provision is discussed but not agreed then the normal disciplinary process will be followed.

It should be noted that if further information comes to light during this process which would mean that gross misconduct is a potential outcome, this process will be halted and advice sought from HR to determine the next steps.

3.1.9 Determining Disciplinary Action

Following a balanced, comprehensive and proportionate investigation, the IO in consultation with HR will prepare a report detailing their findings and make a recommendation as to the next steps; this might include to:

- Take no further action;
- Deal with the matter informally;
- Refer the matter to a different procedure e.g. Performance Management;
- Proceed to a formal disciplinary hearing.

The decision to take no further action may be taken prior to formulating a report if there is clearly insufficient evidence to proceed. The decision should be made by the commissioning manager in consultation with the IO and the HR representative. There is an obligation to inform the employee of this outcome as soon as possible and this should not be delayed pending the formulation of a report.

The investigation report which will be disclosed as part of any formal disciplinary process should be concise and not include hearsay. Findings should be based on the investigation and should not make reference to the IO's personal opinion.

3.1.10 Formal Disciplinary Hearing

Where it is determined that holding a disciplinary hearing is the appropriate course of action; the employee alleged of the misconduct will be informed in writing giving at least 7 calendar days' notice of the date of the hearing and the allegations. The case will be heard by a senior manager who will be advised by HR. A professional adviser may attend the hearing as an independent witness if it is felt to be relevant and appropriate.

The employee alleged of misconduct will be notified of their right to be represented by a Trade union/ staff representative of which he/she is a member, or by a work colleague and will be provided with a disciplinary pack in good time prior to the hearing.

The IO supported by HR, will be present at the hearing and all parties will have an opportunity to query or question any evidence provided to the hearing manager. All questions should be directed through the hearing manager. Witnesses will only normally be called to a hearing where the information provided is contradictory.

If the employee alleged of the misconduct leaves the Trust before the hearing is completed, consideration will be given to concluding the case in their absence the outcome will be notified to the employee and any subsequent reference will reflect that outcome. Where appropriate this will also be forwarded to the professional body.

The Deputy Director of Healthcare Governance should be informed by HR whenever a disciplinary relates to a breach of confidentiality, computer misuse or other information Governance related allegation/offence.

3.1.11 Disciplinary Sanctions

If the allegations, on the balance of probabilities, are proven, decisions relating to the level, if any, of disciplinary action to be taken will be a decision for the Hearing Manager, who must consider:

- The seriousness of the disciplinary breach in question.

- The relevance and context of the facts/information presented.
- The employee alleged of misconduct's previous employment record and the existence of any current, relevant disciplinary warnings.
- Issues relating to fairness, consistency and the substantial merits of the information presented.
- Any mitigating factors.

The Hearing Manager (Care Group Manager, Deputy Care Group Manager, Head of Nursing/Service, 8b level or equivalent) will be supported by HR who will provide advice on procedure and relevant case law. Where a case involves a Doctor the Medical Director or his nominated deputy shall assume the role of Hearing Manager.

The possible sanctions are described in the table below.

Sanction	Length of time on personal file
Written Warning	Minimum 6 months (longer in exceptional circumstances up to 12 months)
Final Written Warning	12 months (18 months but only in exceptional cases)
Dismissal *	N/A
Downgrading, Redeployment or Transfer	1 year (with option to increase to a maximum of 2 years) ²

Where a sanction below dismissal is given and the employee is on National Terms and Conditions (formally Agenda for Change) please refer to the incremental pay progression policy for guidance on how this might affect the employee's increment.

*A dismissal where allegations of gross misconduct are proven on the balance of probabilities may (if deemed appropriate) be with immediate effect and without pay in lieu of notice; this is referred to a Summary Dismissal.

It may be determined that the allegations are proven, either fully or in part, but a formal sanction is not appropriate, in such cases the chair can refer the matter back to the line manager for informal action or referral to another HR process. The rationale for this decision will be fully explained to the employee.

Where an employee has been dismissed as a result of misconduct (or gross misconduct) they can only re-apply to work in the organisation (either directly or via an agency) after a 2-year period. It will be the decision of the recruiting manager in conjunction with HR if re-employment is appropriate; this will depend on the nature of the allegations that led to the dismissal and whether the employee declared their dismissal in their application.

² As an alternative to dismissal and accompanied by a final written warning. This indicates the length of time that the record of the reason for the downgrading, redeployment or transfer will remain on the employee's personal file. It does not mean that the downgrading, redeployment or transfer to another post will cease after this period.

Any post-employment reference provided by the Trust will reflect where an employee left with a disciplinary sanction on file or resigned whilst a disciplinary process was ongoing.

Where downgrading, redeployment or transfer is considered where a suitable post exists, pay protection will not apply. The new manager, as appropriate, will be advised of the reason for the redeployment or transfer.

3.1.12 Appeals

There is a right of appeal against a formal disciplinary sanction (with the exception of mutually agreed action). Any appeal should be submitted to HR within fourteen calendar days of the date of the letter advising of the hearing outcome and clearly state the reasons for appeal.

The appeal panel will be independent having had no previous involvement in the disciplinary process. Appeals in the majority of cases should be a review based on specific points of appeal and not a full rehearing, except for example, where the chair of the panel determines there has been a significant process failing.

The panel will be made up of a Director or Non-Executive Director, who should assume responsibilities as Chair, and a Director, Deputy Director or Care Group Manager. The panel will be supported by HR who will provide advice on procedure and relevant case law.

Possible outcomes from the appeal include:

- To uphold the appeal and amend the original sanction. This may result in a lower sanction being given or offer an alternative position where dismissal has occurred.
- The appeal is dismissed and the original decision endorsed in full;
- The appeal is dismissed and a more serious sanction is issued;
- Further information is required. This may require a more detailed investigation to take place (making any reference to specific shortfalls in the original investigation);
- A full re-hearing of the case is undertaken and a decision reached as to an appropriate outcome having heard all the evidence.

If during the appeal new information related to the case being heard comes to light which leads the panel to determine the misconduct is more serious than originally assessed by the disciplinary hearing; the appeal hearing must determine whether it is appropriate to pause the process to allow for further investigation to be undertaken into the new evidence.

If new evidence comes to light that potentially lessens the seriousness of the case; this **must** be taken in to account when determining the outcome.

4 Impact upon Individuals with Protected Characteristics

No negative impact has been identified; the policy provides an overt statement in respect of making reasonable adjustment to enable an individual with a disability to full engage with the process. Equality impact assessment can be found at Appendix 6.

5 Accountability

Operational implementation, delivery and monitoring of the policy resides with the Human Resources Department.

The success of this policy is dependent on a range of individuals being involved in the implementation of this document. The responsibilities on individuals in ensuring compliance with this document are detailed in Appendix 1.

Appendix 1: Roles and Responsibilities

At all times, line managers must take account of the potential effects of disciplinary allegations, investigations and hearings on employees, patients and visitors, including those directly involved in the process and provide the appropriate support. Where it is identified that an individual is potentially vulnerable or has some health concerns, advice may be sought from Occupational Health as to appropriate support which may be put in place.

All Employees

- ❑ Must adhere to this policy and associated procedures and the Code of Conduct and should not behave in such a way that breaches the disciplinary rules and be a role model in demonstrating acceptable standards of behaviour
- ❑ Must fully and appropriately participate in the disciplinary process, this might be as an employee responding to allegations or as a witness

Managers

- ❑ Must adhere to this policy and associated procedures and the Code of Conduct and should not behave in such a way that breaches the disciplinary rules and be a role model for staff in demonstrating acceptable standards of behaviour
- ❑ Must have an understanding of the ACAS code of practice for handling disciplinary matters.
- ❑ Will ensure staff are aware of the standards of behaviour expected of them and have an awareness and understanding of the Disciplinary Policy & Procedure
- ❑ Will ensure the proper use of the disciplinary procedure; including documenting all meetings and conversations undertaken under this procedure
- ❑ Will deal with minor allegations of alleged misconduct in a proactive and timely manner in the hope that it will resolve the matter and avoid escalation to a formal process. This may include making a note on the individual personnel file to be signed by both parties; any disagreements on the content will be noted.
- ❑ When acting as an Investigating Officer act promptly and ensure the employee who is subject of the misconduct allegations is updated regularly. As an investigating officer, communicate clearly with all parties empathetically and with respect and demonstrate they are acting in line with the ACAS code.
- ❑ As the individual commissioning the investigation, act promptly to determine the most appropriate course of action
- ❑ Maintain contact with staff who are suspended, the schedule, appropriate levels of support and type of contact should be agreed with the employee.
- ❑ Appropriately access advice and support from HR
- ❑ Will provide Trade Union representatives with time off in line with Trust policy to support any member who is subject of this policy / procedure.

HR

- ❑ Will provide appropriate training, advice and guidance to ensure the effective management of alleged disciplinary matters
- ❑ Advise on the content of any correspondence

- ❑ Will as appropriate, be present and provide advice at investigation meetings, formal hearings and appeals
- ❑ Convene appeals against sanctions
- ❑ Ensure that all legislative requirements are adhered to, including compliance with all aspects of the Disciplinary Policy and Procedure;
- ❑ Ensure that cases are dealt with in a fair and appropriate manner.
- ❑ Provide appropriate advice, guidance to managers on appropriate courses of action, where it is assessed that cases do not require investigation. Senior Managers will also be involved in such case management to ensure that any barriers e.g. availability of witnesses, are minimised as much as possible.
- ❑ Will share outcomes and learning from individual cases with the HR team to ensure consistency.
- ❑ Identify patterns of misconduct and key learning to enable the organisation to review and address any potential underlying issues appropriately.

Professional Standards Team (all of the above (HR) and in addition)

- ❑ Will manage Doctors and Dentists in accordance with the guidelines set out in the Maintaining High Professional Standards in the Modern NHS Framework.
- ❑ Will work with the National Clinical Assessment Service (NCAS) where there are concerns regarding practitioners capability.
- ❑ The Chief Executive will have overall responsibility for managing exclusion procedures and ensuring that cases are properly managed.
- ❑ The Chairperson will appoint a Non-Executive Director to oversee the progress of formal investigations.

Trade Union / Staff Representatives

- ❑ Will ensure they support their members appropriately and in a timely manner e.g. when asked to attend meetings.
- ❑ Will seek appropriate levels of approval to attend meetings during work time.

Professional Adviser

- ❑ Will act as an independent witness and provide advice and guidance to all those present at either a Disciplinary Hearing or an Appeal regarding the code of conduct of the profession in question.
- ❑ The Adviser can question witnesses, the individual whom the allegations have been made against; the Investigating Officer and the chair of the hearing about points relevant to the associated code of conduct.
- ❑ Any individual present can ask a question of the adviser.
- ❑ The Adviser does not have a role in the decision making as this is the role of the chair.

Witnesses

- ❑ Will provide an honest and open account of the alleged misconduct
- ❑ Attend a discipline hearing where called and able
- ❑ Respond to questions
- ❑ Maintain confidentiality of the process at all times

Appendix 2: Code of conduct

The Code of Conduct gives examples of the standard of conduct at work that the Trust expects of its employees. This list is intended to be indicative and is not exhaustive. Any breach of the general rules may be regarded as misconduct or gross misconduct, depending on the circumstances of each case, and disciplinary action may result.

- 1 Employees must seek appropriate approval from their manager if they require being absent from their place of work during normal working hours.
- 2 Employees must notify their manager promptly if they are absent from duty due to illness and must also provide the correct sickness certification in a timely manner.
- 3 Employees must arrive punctually and ready for duty, at the start of the normal working day or shift start time and after breaks. Employees must notify their manager promptly if they are going to be late.
- 4 Employees must demonstrate the highest standards of honesty and integrity at all times and respect the confidentiality of patients and colleagues.
- 5 Employees must not use the Trust's resources for their own personal use. Use of personal devices such as mobile telephones for non-work purposes must be restricted to official breaks.
- 6 All staff must observe Health and Safety policies and safe working practices at all times and use protective equipment where this is provided e.g. steel toe-capped shoes.
- 7 Employees must comply with the Trust's policy on smoking and any specific requirements e.g. using designated areas where they exist, times (breaks as agreed with line manager), covering/changing out of uniforms.
- 8 Employees must comply with the principles of the Substance Misuse Policy & Procedure.
- 9 Employees in regulated professions are responsible for ensuring that their professional registration remains current at all times and that they comply with the professional standards set by their regulatory body.
- 10 Employees must treat the Trust's resources and equipment with respect and avoid any damage, loss or misuse of such resources or equipment.
- 11 Employees must treat patients, visitors, other service users and colleagues with dignity, respect and courtesy and in a non-discriminatory manner at all times. For example this includes not talking over patients when making beds or transporting people around the site. Conversations should include patients.
- 12 Where there are safety risks employees may not bring unauthorised visitors onto Trust premises.
- 13 Employees must carry out any legitimate and reasonable requests or instructions from a manager or supervisor in the furtherance of their duties and must work effectively and constructively, whether employee or part of a team.

- 14 Employees must inform their line manager if they have been or may have been in contact with any contagious or notifiable disease as per the Sickness Absence Policy and Procedure.
- 15 All employees must carry out the duties and responsibilities of their post to the best of their abilities, with due regard to appropriate Trust policies and procedures. Employees must act in accordance with, and promote the Trust values.
- 16 Employees must inform their line manager if they are being investigated in relation to a criminal offence.
- 17 Employees must appropriately disclose to their line manager where they have been convicted of a criminal offence, have received a caution for a criminal offence, have been or are currently subject to, or charged with a criminal offence (where not already disclosed as part of the normal pre-employment / recruitment checks)
- 18 Employees must inform their line manager of any situation / instance they are aware of that may bring the Trust into disrepute.
- 19 Employees must provide documentary evidence of a legal right to remain/work in the UK when requested, including compliance with the Trust's annual checks.

Appendix 3: Disciplinary rules

Disciplinary Rules are necessary for the safe and efficient performance of work and for the maintenance of good relations between employees and management. The list of disciplinary rules set out below is intended to be indicative, not exhaustive; other misconduct may also give rise to disciplinary action.

- 1 Conduct that is likely to bring discredit to the organisation.
- 2 Improper, disorderly or unacceptable conduct at, during or when arriving for work or leaving work.
- 3 Late attendance and/or inadequate timekeeping.
- 4 Absence from work without proper cause.
- 5 Deliberately withholding or providing false or inaccurate information orally or by the falsification of records or documents.
- 6 Failure to comply with a reasonable order, instruction, Trust Policy/Procedure, or contractual requirement.
- 7 Misuse of the sickness benefit scheme.

Some breaches of disciplinary rules are regarded as gross misconduct, which may result in summary dismissal without notice or payment in lieu of notice; including but not limited to:

- 8 Bullying
- 9 Theft, including NHS property, assets or funds.
- 10 Losses, damage to or misuse of NHS equipment or property through wilfulness or gross negligence.
- 11 Any fraudulent activity in the course of employment.
- 12 Corruption, including accepting gifts or hospitality, or demanding monies as a bribe or for favour (as per the Standards of Business Conduct Policy), or to have offered, promised or given of a bribe or to have requested, agreed to receive or accepted a bribe.
- 13 Committing an act outside work, or being convicted of a criminal offence that is liable to adversely affect the contract of employment and/or the relationship between the employee and the Trust.
- 14 Gross insubordination for example determined or continued action(s) in defiance of a specific reasonable management instruction to the contrary, particularly where this puts patients, colleagues or members of the public at risk.
- 15 Gross negligence.
- 16 Failure to observe Health and Safety policies and safe working practices at all times and failure to use protective equipment where this is provided e.g. steel toe-capped shoes.

- 17 Being unfit to perform the duties or responsibilities of a post through the consumption of alcohol or whilst under the influence of drugs or other substances.
- 18 Acts of violence or threatening violence.
- 19 Conduct which is incompatible with an employee's professional role or status.
- 20 Perpetration of a hoax, practical joke or other malicious act which results in disruption of the service or harm to others.
- 21 Unwelcome or intimidating behaviour, however conveyed, of a physical, verbal or non-verbal nature that may be construed as harassment or direct or indirect discrimination towards others.
- 22 Any use of social networking sites whether during work hours or not, that brings the Trust into disrepute or perpetrates other offences set out in these disciplinary rules.
- 23 Being party to unauthorised disclosure of any personal information relating to patients or staff including that obtained from the Trust's records or computer systems. Any breach of confidentiality.
- 24 Misuse of IT systems, including unauthorised entry into the Trust's computer systems, playing computer games etc.
- 25 Introducing software on to the Trust's computer systems or communications network without adequately testing beforehand for software viruses.
- 26 Abusing access to the Trust's Internet, email or other computer facilities for reasons other than connected with the execution of duty during working time; personal use of such facilities must be limited to official breaks and not incur a cost to the Trust.
- 27 At any time using the Trust's computer facilities to access, display, store, distribute, record or edit sexually explicit material.
- 28 Repeated episodes of misconduct or failure to address/improve on issues previously formally identified as misconduct.
- 29 Failure to maintain professional registration.
- 30 Failure to maintain the legal right to work and/or right to remain in the UK as per the Immigration, Asylum and Nationality Act 2006. Or failure to comply with Trust procedures for evidencing the legal right to work and/or remain in the UK, e.g. the annual documentation check.
- 31 Victimising or treating anyone differently as a result of their involvement in a complaint or investigation.
- 32 Sleeping on duty, except when authorised.

Appendix 4: Policy Management

1 Consultation Process

The Trust will involve stakeholders and service users in the development of its policies.

Consultation has taken place with the following stakeholders:

Senior Managers, Executive Board members, Joint Negotiation & Consultation Committee members and Joint Local Negotiating Committee members have all been formally consulted about the review of this Policy and Procedure.

Following consultation with stakeholders and relevant consultative committees, this policy has been reviewed by the Trust's Quality Assurance group to ensure it meets the NHSLA standards for the production of procedural documents.

Following completion of the Quality Assurance Process, this policy, and any subsequent policy revisions will require the approval of the Employment Policy Group, the Local Negotiating Committee, Joint Negotiation & Consultation Committee and the Executive Board.

2 Quality Assurance Process

The author has consulted with the following to ensure that the document is robust and accurate:-

Following consultation with stakeholders and relevant consultative committees, this policy has been through quality assurance checks prior to being reviewed by the authorising committee to ensure it meets the standards for the production of policy and equalities legislation and is compliant with the Development and Management of Policies policy.

The policy has also been proof read and the review checklist completed by the Policy Manager prior to being submitted for approval.

3 Approval Process

The approval process for this policy complies with that detailed in 3.3 of the Policy Guidance.

4 Review and Revision Arrangements

This Policy and Procedure will be reviewed in accordance with the date stated on the front page of the document, following consultation with Managers and Staff Side Representatives.

This will include assessment of the policy's effectiveness and its compliance with current legislation.

Subsequent changes to the policy will continue to require the approval of the appropriate committees and changes will be detailed on the version control sheet at the front of the policy.

The Human resources directorate will be responsible for review of this policy in line with the timeline detailed on the cover sheet.

Subsequent reviews of this policy will continue to require the approval of the EPG/JNCC/LNC

5 Dissemination and Implementation

Most managers and some staff are already familiar with the Trust's disciplinary procedure even if they are not aware of detailed processes involved and detailed in the policy, the main objective for implementation is raising awareness of new style and approach. A full training program will be rolled out to managers and additional

support and advice are always available from the Human Resources department and are embedded in many parts of this procedure.

6 Register/Library of Policies/Archiving Arrangements/ Retrieval of Archived Policies

Please refer to the Policy Development Guideline for detail

Once approved, this policy will be brought to the attention of all relevant staff working at and for York Hospital NHS Foundation Trust following the completed Plan for dissemination of the policy

This policy is available in alternative formats, such as Braille or large font, on request to the author of the policy.

7 Standards/Key Performance Indicators

A record of disciplinary cases and outcomes made under the policy will be maintained by the Human Resources Department and periodically reviewed to ensure consistency.

8 Training

Specific training will be given to support managers in the delivery of the policy.

9 Trust Associated Documentation

- Pay progression policy
- “Maintaining High Professional Standards in the Modern NHS (2005)”.
- Maintaining Professional Registration Policy and Procedure.
- Criminal Records Bureau Disclosures Policy and Procedure.
- Recruitment, Selection and Appointment Policy and Procedure.
- Sickness Absence Policy and Procedure.
- Personal Responsibility Framework.
- Trust Values.
- Guidance on the Use of Social Media.
- Fraud and Corruption Policy
- Disciplinary procedural guides
 - Fact finding proforma
 - What to expect when suspended
 - Notes for nominated officer supporting the suspended employee
 - Notes for providing a written response to the allegations
 - Investigation procedure notes for the investigating officer
 - What to expect from an investigation interview (as a witness)
 - What to expect from an investigation interview (as the individual subject of the allegations)
 - What to expect from a discipline hearing
 - What to expect from an appeal hearing
 - What to expect from a mutually agreed actions hearing

10 External References

ACAS Code – Disciplinary and Grievance
Anti Fraud, Bribery and Corruption Policy

11 Process for Monitoring Compliance and Effectiveness

In order to fully monitor compliance with this policy and ensure effective review, the policy will be monitored as follows:-

Minimum requirement to be monitored	Process for monitoring	Responsible Individual/ committee/ group	Frequency of monitoring	Responsible individual/ committee/ group for review of results	Responsible individual/ committee/ group for developing an action plan	Responsible individual/ committee/ group for monitoring of action plan
a. Monitor by protected characteristics to identify any inequalities	Recording of formal disciplinary cases through the Employee Relations section of ESR	Line Manager & Human Resources	Ongoing	Human Resources Directorate	Human Resources Directorate	Human Resources Directorate

Appendix 5: Dissemination and Implementation Plan

Title of document:	Discipline policy and procedure
Date finalised:	9 th April 2018
Previous document in use?	Discipline Policy version 2014
Dissemination lead	Jenny Flinton
Implementation lead	Jenny Flinton
Which Strategy does it relate to?	Workforce

Dissemination Plan	
Method(s) of dissemination	Training
Who will do this	Sarah Vignaux
Date of dissemination	15 th April 2019
Format (i.e. paper or electronic)	Electronic
Implementation Plan	
Name of individual with responsibility for operational implementation, monitoring etc	Jenny Flinton / Sarah Vignaux
Brief description of evidence to be collated to demonstrate compliance	Review against prevailing employment law and ACAS guidance.

Appendix 6: Equality Impact Assessment

Relevance (initial) screening

A **screening** process can help judge relevance and provides a record of both the **process** and **decision**. Screening should be a short exercise that determines relevance for all new and revised strategies, policies, services and functions.

Completed at the earliest opportunity it will help to determine:

- the relevance of proposals and decisions to equality, and
- whether or not it is necessary to carry out a full equality impact assessment

Directorate HR	Service area/Project: Discipline Policy	
Lead person: Sarah Vignaux	Date: 24.10.18	
1. Title: <Name of the Strategy/Policy/Project/Service		
Is this a: <Tick as appropriate>		
Change to an existing Strategy / Policy	<input checked="checked" type="checkbox"/>	New Strategy/policy <input type="checkbox"/>
Change to Service(s) / Function (s)	<input type="checkbox"/>	Other <input type="checkbox"/>
If other, please specify:		
2. Summary of the strategy, policy, Service(s) for function(s) being assessed:		
Review and subsequent re-write of discipline policy in line with ACAS guidance.		
3. Relevance to equality		
All the Trusts policies, projects, strategies, services and major developments affect patients, carers, service users, employees or the wider community. These will also have a greater or lesser relevance to equality and diversity. The following questions will help you to identify how relevant your proposals are. When considering these questions think about age, carers, disability, gender reassignment, race, religion or belief, sex, sexual orientation, pregnancy and maternity and any other relevant characteristics (for example socio-economic status, social class, income, unemployment, residential location or family background and education or skills levels).		
Questions	Yes	No
Is there any indication or evidence (including from consultation with relevant groups) that different groups have different needs, experiences, issues and priorities in relation to the proposed policy or proposal?	Yes	

Is there potential for or evidence that the proposed policy or proposal will affect different population groups differently (including possibly discriminating against certain groups)?		No
Have there been or are there likely to be any public concerns (including media, academic, voluntary or sector specific interest) about the policy or proposal?		No
Could the proposal affect how our services, commissioning or procurement activities are organised, provided, located and by whom?		No
Could the proposal affect our workforce or employment practices?	Yes	
Is there potential for or evidence that the proposed policy or proposal will not promote equality of opportunity or promote good relations between different groups?		No

If you have answered **no** to the questions above please complete **section 6**

If you have answered **yes** to one or more of the above and;

- Believe that the policy or proposal is equality relevant, please complete **section 5** and carry out a full Equality Impact Assessment
- Believe you have already considered the impact of your proposal on equality and diversity and there is little or no relevance, please go to **section 4**
- Believe that whilst the policy or proposal is equality relevant, a full Equality Impact Assessment is not necessary at this stage, please go to **section 4**

Please note: the information below is provided to explain the responses given above and not because it is felt a requirement to undertake a full impact assessment.

<p>4. Considering the impact on equality and diversity</p> <p>If you have answered yes to one or more of the screening questions and believe that the policy or proposal is not equality relevant or that a full equality impact assessment is not required at this stage, please provide specific details for all three areas below:</p> <p>N/A</p> <p>• How have you considered equality and diversity? (think about the scope of the proposal, who is likely to be affected, equality related information, gaps in information and plans to address, consultation and engagement activities (taken place or planned) with those likely to be affected) The policy has been subject of rigorous checks over an extended consultation period through the Trust negotiating bodies. In 2016, evidence within the WRES suggested that BME groups were more likely than white staff to enter the formal discipline process. In our WRES action plan of that year, we committed to undertake a review of the discipline training and increase the support given to directorates in taking forward matters of misconduct; a policy and process review was deemed appropriate action. Evidence shows that in subsequent years this narrative has changed to white staff being more likely to enter the formal discipline process. It should be noted that an increase or decrease of just one person can seemingly have a big swing impact on the relative likelihood. In undertaking the review no identifiable cause for the relative likelihood was</p>

identified within the previous policy or procedural documents; this is a new policy which retains elements of its predecessor and has been based on the ACAS guide. It includes a number of supportive documents and is intended to ensure that the individual subject of the misconduct allegations, notwithstanding any particular protected characteristic is appropriately supported through the process.

We have overtly added the provision for reasonable adjustments to each of the policy and procedural documents and broken the guidance down in to step by step guidance to each part of the process for individuals to aid understanding and enable engagement with the process. It is expected that this provision will start conversations with any individual across the protected groups who need additional support.

Whilst the policy and associated procedural documents have due regard to the protected groups, it is recognised that it is important to ensure individuals are properly supported in its implementation. To this end, the policy roll out will be accompanied by a suite of managers training and training for investigating officers with the aim of consistency of approach and style. Colleagues from the executive policy group will be included in the development and delivery of the training programs.

The procedural documents are aimed to support employees of the Trust in its application and act as a reminder for those who are involved in the process.

• **Key findings**

(think about any potential positive and negative impact on the different protected characteristics, potential to promote strong and positive relationships between groups, potential to bring groups/communities into increased contact with each other, perception that the proposal could benefit one group at the expense of another)

There is always a risk of a negative impact on an employee regardless of their protected characteristic due to the nature of the policy, which can be regarded as 'punitive'.

The updated policy has been designed in line with ACAS guidance, it ensures the employee at the end of the process has the appropriate levels of information, in the right format to enable them to engage and respond. Additional steps have been taken to ensure the welfare of suspended staff, extend the scope of contact with other staff whilst suspended (not including discussions about the investigation), but to ensure support and continued relationships.

• **Actions**

(think about how you will promote positive impact and remove or reduce negative impact)

Training

HR drop in sessions

Ongoing review of supportive documents

5. If the policy or proposal is equality relevant, you will need to carry out a full Equality impact assessment

Date to scope and plan your equality impact assessment:

N/A

Date to complete your equality impact assessment:

N/A

Lead person for your equality impact assessment:(Include name and job title)	Initial screening Sarah Vignaux HR Business Partner
6. Approval	
The findings and decisions are recorded within this document demonstrate our due regard to the general equality duty.	
Completed by:	Sarah Vignaux Date: Jan 2019
Approval of service/policy by:	JNCC / LNC Date: 3 March 2019
Submitted to Q-Pulse:	Date: