

*Policy Approval Group: 21/06/2021
To be ratified by the Workforce Committee: 14/07/2021*

| | | | |
|---|----------------------------|--|---------------------------------|
| CORPORATE DOCUMENT | | | |
| Policy Document Title: Disciplinary Policy | | | |
| This document is relevant for staff at: | Luton Hospital site | Bedford Hospital site | Both Hospital sites ✓ |
| Document Author Helen Smith, HR Advisor Projects | | | |
| Policy Developed in Consultation with: HR Business Partners Staff Side Representatives | | | |
| Is this policy document new or revised / or has minor amendments? Document supersedes Disciplinary Policy (Bedford Site and Luton & Dunstable Site) | | | |
| Reason for amendments: Please <u>highlight</u> all amendments in your document. New document for merged Trust. | | | |
| Document Number <i>(if applicable):</i> | | Version Number: 1.0 | |
| Target Audience/Scope: <i>(who is the document applicable to)</i> | | All Trust Staff (excluding Medical Staff) | |
| Associated Trust Documents: <i>(policies / guidelines which directly impact on this document)</i> | | Probation Period Policy Managing Employee Capability/Performance Policy Managing Sickness Absence Policy Equality and Diversity Policy Equality Impact Assessment Guidelines | |
| Date of Approval: | | Review Date: | |
| Chair/Chief Executive/Chief Lead Signature: | | | |

Privacy Statement

In accordance with the Trust's Privacy Notice for employees, the Trust will hold computer records and personnel files relating to you, which contain personal data. The Trust will comply with its obligations under the General Data Protection Regulations and all other data protection legislation. The data the Trust holds will include employment application details, references, bank details, performance appraisals, holiday and sickness records, salary reviews and remuneration details and other records; which may, where necessary include special category data relating to your health, identity, data held for equality monitoring purposes, criminal offence data and data regarding DBS checks. The Trust requires such data for personnel administration and management purposes for the performance of your contract of employment and to comply with its obligations regarding the keeping of employee records. The majority of information that you provide us with is mandatory to enable us to perform the contract of employment; where information is requested from you on voluntary basis, you will be advised of this and will be properly advised of your rights in respect of consent.

The Trust's Privacy Notice sets out the legal basis for processing your personal data and your rights to access this data are prescribed by law.

The Trust requires you to familiarise yourself with the Trust's Information Governance (data protection) Policy which set out its obligations under the General Data Protection Regulation and all other data protection legislation. You must comply with the Trust's Data Protection Policy at all times and you agree that you will only access the systems, databases or networks to which you have been given authorisation. The Trust will consider a breach of its Data Protection Policy by you to be a disciplinary matter, which may lead to disciplinary action, up to, and including dismissal. You should also be aware that you could be criminally liable if you disclose personal data outside the Trust's Policies and Procedures. If you have any queries about your responsibilities in respect of data protection, you should contact the Trust's Data Protection Officer.

TRUST VALUES

Teamwork:

We work mindfully and collaboratively to create a well-organised, professional, and supportive atmosphere that achieves the best possible outcomes for all.

Honesty:

We are open, authentic and have integrity and in all we do, reflecting on our actions to improve the quality of care and experience we deliver.

Respect:

We respect colleagues, patients and carers by actively listening, responding, and providing everyone with a voice to create a positive work atmosphere.

Inclusivity:

We are fair and inclusive, giving access for all by considering and valuing difference and appreciating the diversity within our community and workforce.

Valuing People:

We value patients, colleagues and carers as individuals by showing care and empathy, working to create a culture where we look after each other's wellbeing.

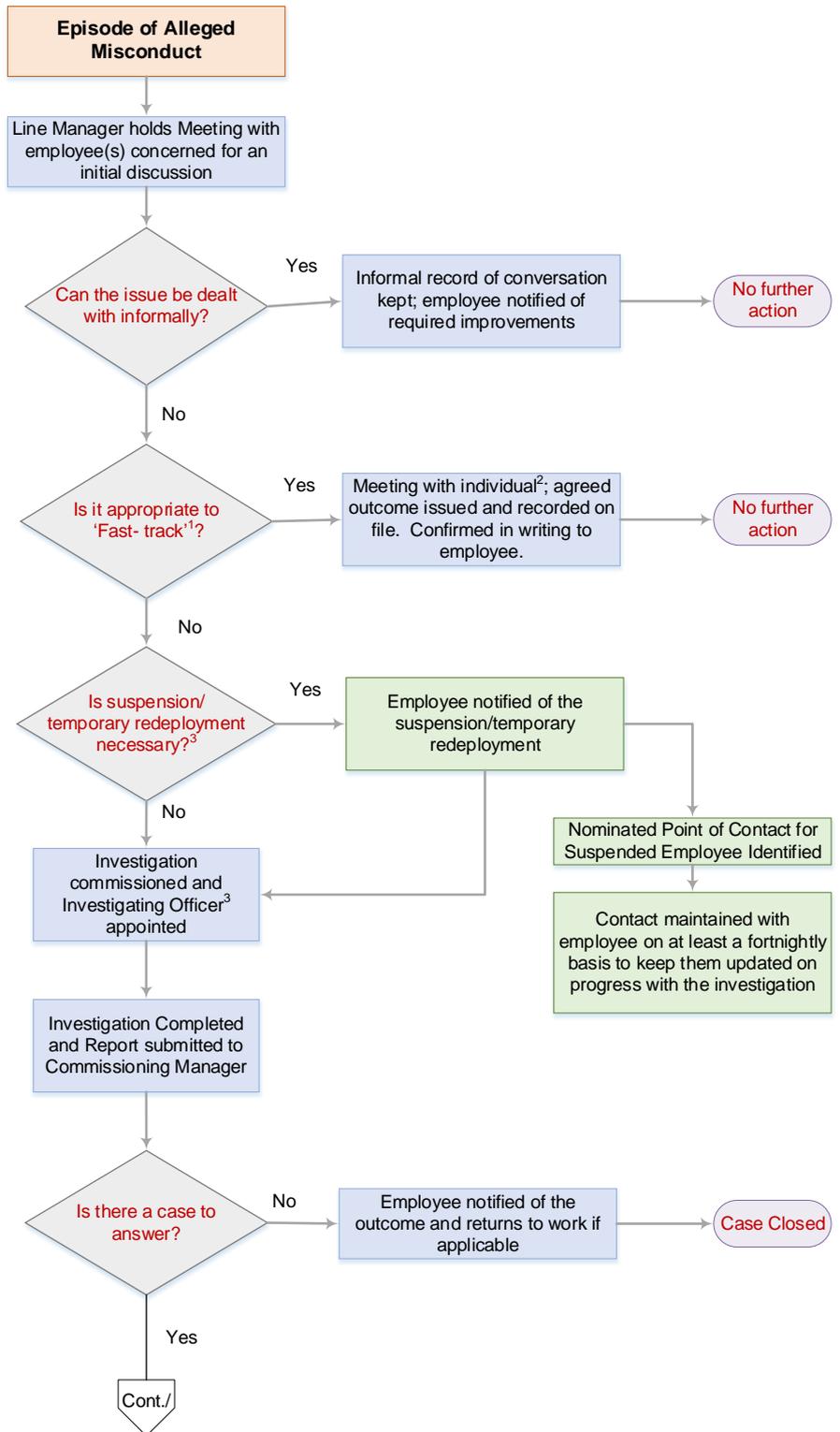
Excellence:

We share knowledge, information and support each other to develop, innovate and learn. Always looking at ways we can improve the care, safety and experience of our patients and the sustainability of our hospitals.

CONTENTS

| Section | | Page No. |
|--------------------|---|----------|
| | Trust Values | 1 |
| | Overview of Process | 3 |
| | Suspension Decision Tree | 5 |
| 1.0 | Introduction | 6 |
| 2.0 | Just and Learning Culture | 6 |
| 3.0 | Purpose and Scope | 6 |
| 4.0 | Policy Statement | 6 |
| 5.0 | Definitions | 7 |
| 6.0 | Legislation | 8 |
| 7.0 | Employees with a Disability | 8 |
| 8.0 | Supporting Employees | 8 |
| 9.0 | Confidentiality | 8 |
| 10.0 | Roles and Responsibilities | 9 |
| 11.0 | Handling Allegations of Misconduct/Investigating the Facts | 11 |
| 12.0 | Referrals to Professional Bodies and other Agencies | 11 |
| 13.0 | Informal Management and Training | 11 |
| 14.0 | Employee Companion/Representative | 12 |
| 15.0 | Fast-track Procedure | 12 |
| 16.0 | Suspension/Exclusion from Duty | 13 |
| 17.0 | Formal Disciplinary Hearing | 15 |
| 18.0 | Disciplinary Sanctions | 17 |
| 19.0 | Appeal against Disciplinary Sanction | 18 |
| 20.0 | Recording Meetings | 19 |
| 21.0 | Pay Progression | 19 |
| 22.0 | Trust Reputation | 19 |
| 23.0 | Impact and Equalities | 19 |
| 24.0 | Communication | 19 |
| 25.0 | Monitoring Compliance and Standard Key Performance Indicators | 20 |
| 26.0 | Further Guidance and Training | 20 |
| Appendix 1 | Examples of Misconduct | 21 |
| Appendix 2 | Examples of Serious/Gross Misconduct | 22 |
| Appendix 3 | Template Letter ~ Suspension | 23 |
| Appendix 4 | Template Letter ~ Follow-up Suspension | 25 |
| Appendix 5 | Template Letter ~ Invite to Investigation Meeting | 26 |
| Appendix 6 | Template Letter ~ Invite to Investigation Meeting (Witness) | 27 |
| Appendix 7 | Template ~ Investigation Report | 28 |
| Appendix 8 | Template Letter ~ Invite to Disciplinary Hearing | 33 |
| Appendix 9 | Template Letter ~ Invite to Disciplinary Hearing (Witness) | 34 |
| Appendix 10 | Process for the Appeal Hearing | 35 |
| Appendix 11 | Levels of Authority | 36 |
| Appendix 12 | Governance | 37 |
| Appendix 13 | Equalities and Impact Assessment Form | 38 |

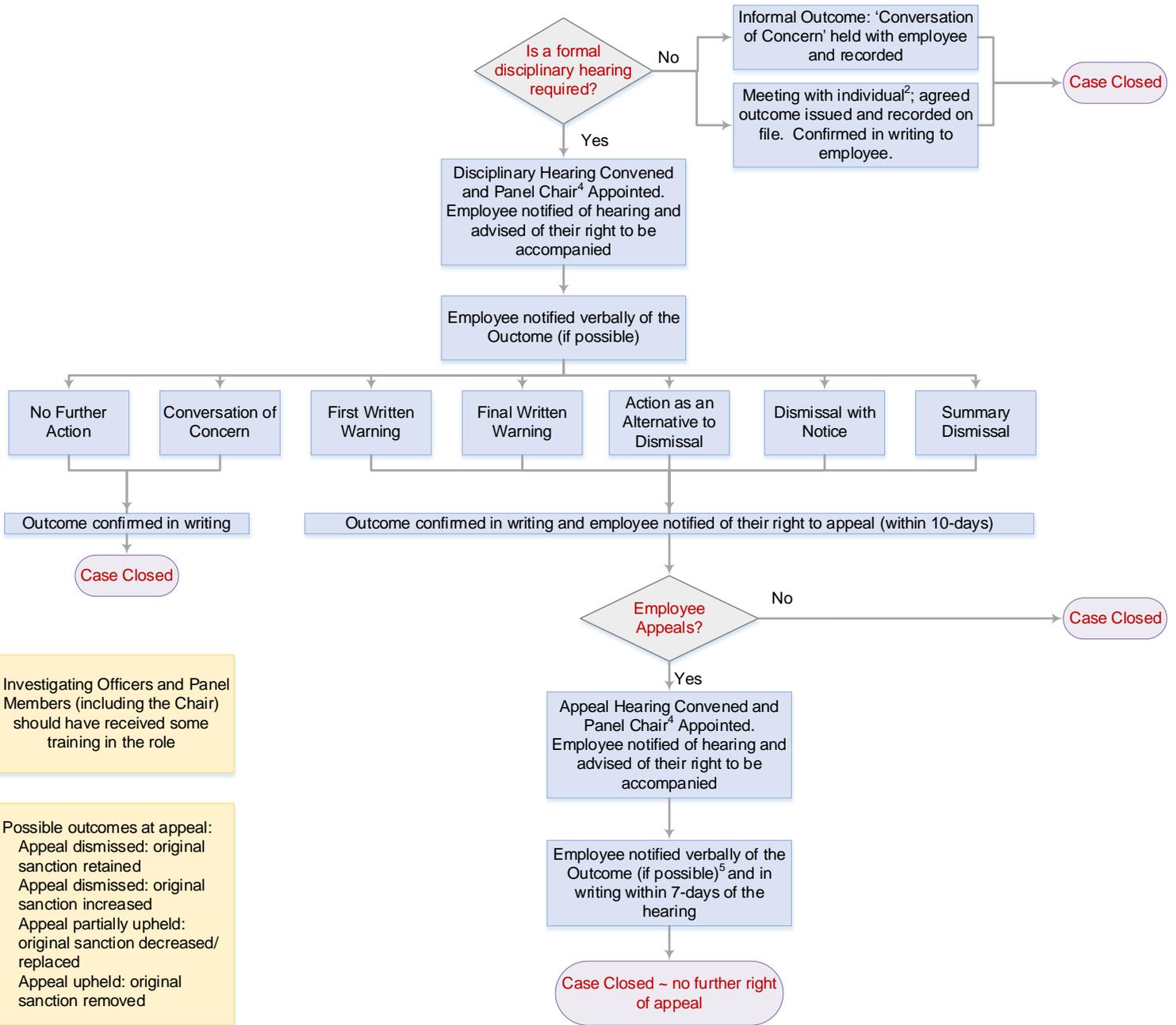
OVERVIEW OF PROCESS



¹ Where the individual has admitted the allegations and/or there is clear and sufficient evidence from the outset

² Individual can be accompanied by a Trade Union Representative or Work Colleague

³ Follow 'Suspension Decision Tree' (Page 4); approval from a Senior Manager to suspend or temporary redeployment is required



⁴ Investigating Officers and Panel Members (including the Chair) should have received some training in the role

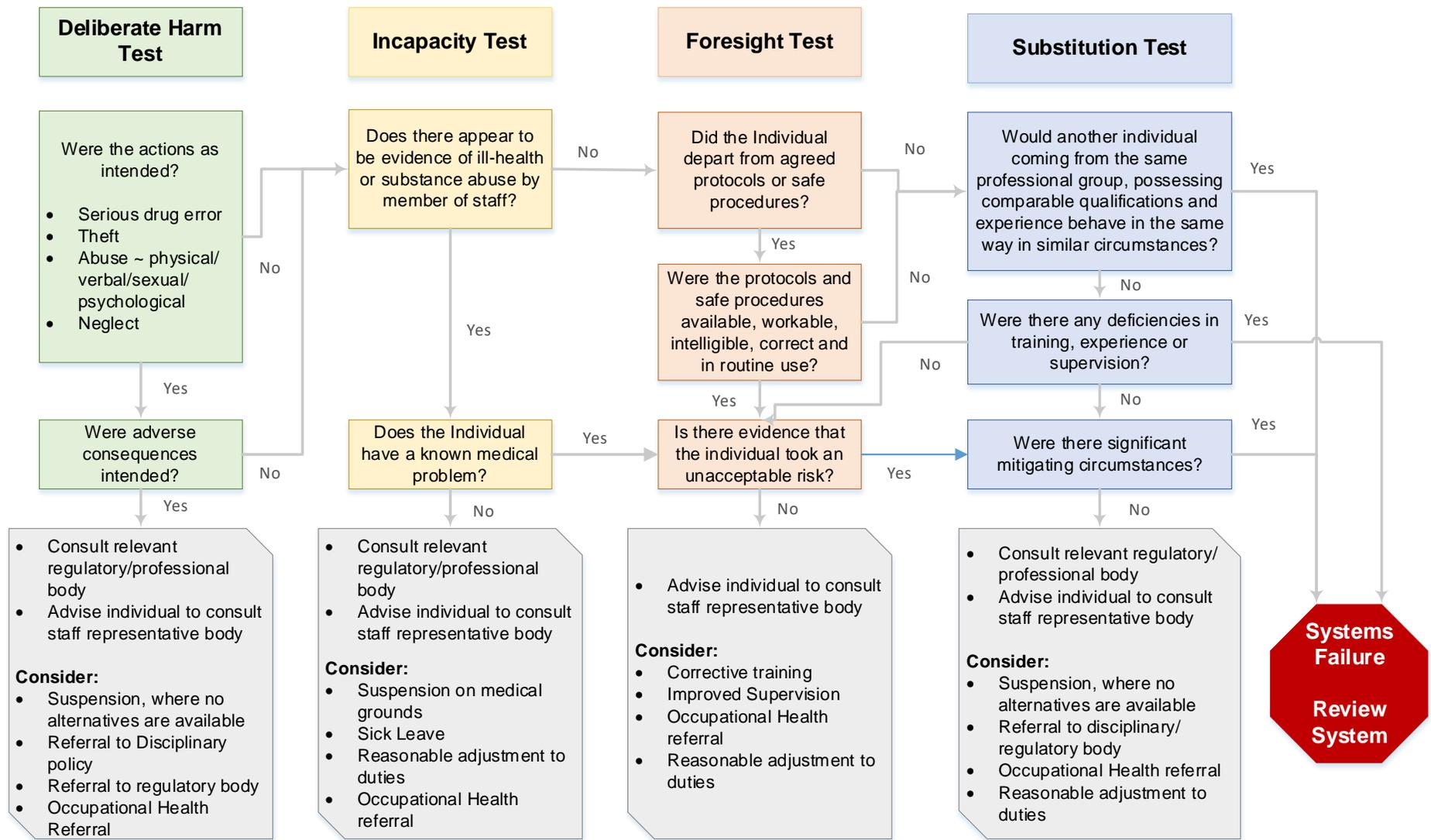
⁵ Possible outcomes at appeal:

- Appeal dismissed: original sanction retained
- Appeal dismissed: original sanction increased
- Appeal partially upheld: original sanction decreased/replaced
- Appeal upheld: original sanction removed

SUSPENSION DECISION TREE

Work through the tree for each individual involved

Start Here



Highlight any systems failures identified

1.0 INTRODUCTION

Bedfordshire Hospitals NHS Foundation Trust requires high standards of conduct from everyone and is committed to helping people improve and learn from mistakes. This policy and procedure is designed to ensure a fair, systematic and consistent approach is taken when an employee's behaviour or action is in breach of workplace rules or falls short of the expected standards.

This policy has been developed in consultation with the Trust's recognized Trade Unions and is in accordance with the ACAS Code of Practice on Disciplinary and Grievance Procedures.

Where an employee's ability to do their job is affected by a lack of skill or knowledge, or ill-health, this will be managed by following the Trust's Performance and Capability Management Policy.

2.0 JUST AND LEARNING CULTURE

The fair treatment of staff supports a culture of fairness, openness and learning in the NHS by making staff feel confident to speak up when things go wrong, rather than fearing blame. An objective and prompt examination of the issues and circumstances should be carried out to establish whether there are truly grounds for a formal investigation and/or formal action. Would training for the employee, support, guidance or informal management be more appropriate and productive?

The Trust believes that a Just and Learning Culture can be seen as an environment where we put equal emphasis on accountability and learning. It's where we ask you to give an account of how the event happened, what it meant to you and what support is needed by those affected by the event both directly and indirectly. It is a culture that instinctively asks in the case of an adverse event: "*what was responsible*", not "*who is responsible*". It is not finger-pointing and it is not blame-seeking. Equally though, a Just and Learning Culture is not the same as an uncritically tolerant culture where 'anything goes'.

3.0 PURPOSE AND SCOPE

The Disciplinary Policy and Procedure provides a framework to manage concerns about someone's conduct in a fair and timely way. It aims to help people achieve and maintain required standards of conduct.

The policy applies to everyone employed by Bedfordshire Hospitals NHS Foundation Trust. It applies to all categories of misconduct by non-medical and medical staff. For further information about managing the conduct issues of medical staff, see the Maintaining High Professional Standards for Medical and Dental Staff Policy.

4.0 POLICY STATEMENT

Managers are responsible for ensuring their team is aware of the required standards of conduct and for bringing any concerns to the attention of employees at the earliest opportunity. Managers should try to resolve minor matters of concern informally. If informal approaches do not bring about improvement or if misconduct is sufficiently serious, the formal stages of this procedure should be followed.

Managers will ensure that all action taken under this policy and procedure is reasonable and proportionate. At an early stage, employees will be told why disciplinary action is being considered and they will be given the opportunity to respond to allegations before decisions about formal sanctions are taken.

Managers must not discriminate in the application of this policy in respect of protected characteristics covered by the Equality Act 2010. The policy conforms to the Fraud Act 2006 and Bribery Act 2010 and will be used in conjunction with the Trust's Counter Fraud and Bribery Policy as applicable.

The policy will also be used in conjunction with the Trust’s Safeguarding Adults – Responding to Concerns, Safeguarding Children and Responding to Concerns (Freedom to Speak Up) Policies as appropriate and applicable to the circumstances.

The Trust aims to conclude all disciplinary investigations and action within a 12-week period to avoid long periods of uncertainty and to lessen the anxiety for the employee. However, there may be occasions where, due to the complexity of the investigation and/or the availability of key individuals, it is necessary and appropriate to extend this timeframe. In such cases, the Commissioning Manager will keep all parties updated on progress and anticipated completion date.

5.0 DEFINITIONS

The following definitions are used within this Policy:

| | |
|--|---|
| Commissioning Manager: | This would normally be the Line Manager of the individual(s) who may have committed the misconduct; exceptionally the Line Managers’ Manager will take on this role if the Manager has prior involvement in the case. |
| Conversation of Concern: | The outcome of an informal 1 : 1 meeting between the employee and their line manager where the manager can raise concerns they may have about an employee’s conduct before they have become serious enough to warrant more formal disciplinary action. A file note should be kept for 12 months and a copy given to the employee (e.g. an email confirming the conversation). |
| Investigating Officer: | An impartial person who has had no previous knowledge of or involvement with the complaint or concern and is normally separate to the department in which it occurred unless it is mutually agreed otherwise. |
| Investigation: | An impartial fact-finding process; the outcome of which will be a report to be presented to the Commissioning Manager. |
| Malicious Allegation: | Complaints/allegations that are made and found to be without foundation (following an investigation), with the intention to cause harm or upset other people. If proven, this may constitute gross misconduct. |
| Minor Misconduct: | Straightforward and minor in their nature e.g. poor attendance, poor timekeeping and should be resolved through timely informal action |
| Misconduct: | A failure to meet the expected standards of conduct as stipulated within Trust policies and procedures; would include repeated acts of minor misconduct, which are not resolved through informal action. |
| Representative: | A representative of a recognised Trade Union or an Employee of the Trust; legal representation is not permitted within internal proceedings. |
| Serious or Gross Misconduct: | A single act of misconduct that is serious enough on its own to justify the employee's summary dismissal; in cases where gross misconduct is suspected, an investigation should be carried out. |
| Suspension/ Temporary Redeployment: | In cases where it is deemed that there may be a substantial risk to patients, the individuals or colleagues, then it may be appropriate to consider suspending or temporary redeploying the individual out of the department. |
| Vexatious Allegation: | As per malicious allegations, but with the intention of causing annoyance or to delay another process |

6.0 LEGISLATION

This policy complies with legislative requirements and the NHS Terms and Conditions of Employment. No one piece of legislation deals exclusively with the management of staff, including conduct and disciplinary. However, numerous pieces of legislation have an impact on this area and, therefore in this policy, key legislation includes:

- Equality Act 2010 (with specific reference to the Equality provisions)
- Data Protection Act 2018
- The Employment Act 2008

7.0 EMPLOYEES WITH A DISABILITY

Reasonable adjustments will be made to support employees with disabilities or health conditions as defined by the Equality Act 2010 to participate in this procedure. These adjustments will be considered on a case-by-case basis and may include permitting employees with disabilities to be accompanied to meetings/hearings by a second person, as a support worker or someone with knowledge of the disability and its effects.

8.0 SUPPORTING EMPLOYEES

Being the subject of allegations of misconduct can be very upsetting and stressful for the employee and other colleagues affected. It is important throughout the procedure for the Manager to keep talking with both the employee and any other staff affected. Clear, regular and confidential communication can help to make sure employees are kept informed of what is happening, have the opportunity to ask questions and can avoid stress and other mental health issues.

Managers are responsible for maintaining communications and will make every effort to ensure that employees receive clear, timely, comprehensive and sensitive information about the allegations and regular progress updates on any investigation until the matter is concluded.

Where there are concerns about an employee's health and wellbeing, Occupational Health advice will be obtained.

Employees, including those who are involved as witnesses, will be supported by an appropriate Manager and will have access to the Trust's CiC Employee Assistance Programme. Additional support will be available from the Trust's Peer2Peer Listeners.

Access to the CiC Service is via www.well-online.co.uk. For Bedford Site staff, the login is 'jhlogin' and for Luton & Dunstable Site staff, the login is 'lalogin'; in both cases, the password is 'wellbeing'.

9.0 CONFIDENTIALITY

Information shared during the disciplinary process will be provided on a confidential basis and in line with the Trust's Data Protection and Confidentiality Policy and Procedure.

Managers and employees are responsible for maintaining the confidentiality of information associated with the case. Any breach of confidentiality may be investigated under this Policy as applicable.

10.0 ROLES AND RESPONSIBILITIES WITHIN THIS POLICY

| Title | Role | Key Responsibilities |
|------------------------|----------------|--|
| All Employees | Adherence | <ul style="list-style-type: none"> • To carry out their work in a professional way which demonstrates the values of the Trust • Familiarise themselves with Trust and local policies and procedures and act within these at all times • To respect the need to maintain confidentiality at all stages of the disciplinary process and to discuss aspects of the case only with their representative/companion. • Obtain permission from the Commissioning Manager prior to approaching witnesses for statements and/or accessing information relevant to the investigation • Make all reasonable attempts to attend any meetings conducted in line with this process and to co-operate with the investigation process • Check, sign and return records of interviews with any amendments within a reasonable time-frame, which does not unduly impede the progress of the investigation • Inform their Line Manager if criminal proceedings are being pursued for an offence(s) committed outside the working environment. • Exercise their right to representation at investigation meetings and hearings if they wish to be accompanied • To cooperate with their Line Manager/Investigation Officer with the arrangements for any meetings/hearings conducted under this process; this includes providing an alternative date for a meeting in the event that their companion/representative is not available on a given date. |
| Employees as Witnesses | Compliance | <ul style="list-style-type: none"> • Co-operate with investigations through the submission of statements and attendance at meetings/hearings conducted during the process • To respect the need to maintain confidentiality at all stages of the disciplinary process and not to discuss any aspect of the case with anyone. • Check, sign and return records of interviews with any amendments within a reasonable time-frame, which does not unduly impede the progress of the investigation • Give an honest account of what they have witnessed in relation to the allegations under investigation • Seek advice from HR/Trade Union Representative on completing any witness statements as appropriate |
| All Line Managers | Implementation | <ul style="list-style-type: none"> • Maintaining core values and standards; including the Code of Conduct • Applying this policy consistently and in a way that does not discriminate • Ensuring that employees are aware of and understand the Policy and their responsibilities under this Policy • Keeping written records of all meetings; including file notes relating to the disclosure of criminal proceedings • Maintain and respect the confidentiality of all employees at all times; do not discuss the investigation/process with anyone unless there is a legitimate need to do so • Be sensitive to individual employee needs and be discreet and consistent in their approach to all employees who are involved with the disciplinary process • Proactively manage all instances of misconduct in line with this Policy in a timely manner and without unnecessary escalation • Remain impartial throughout the process • Commission investigations where needed as part of the formal process • Seek Occupational Health advice about support or reasonable adjustments for employees as required • Carry out necessary risk assessments and consider these alongside the application of other Trust Policies |

| Title | Role | Key Responsibilities |
|-------------------------------------|----------------|---|
| Commissioning Manager | Implementation | <ul style="list-style-type: none"> • Commission an investigation at the earliest opportunity following the act of misconduct/adverse incident • With the support of HR, to identify an Investigation Officer to carry out the investigation, notify them of the allegation(s) and Terms of Reference in writing and supply them with any available evidence • Remain impartial throughout the process • Monitor the investigation to ensure that it is concluded in a timely manner and keep all relevant parties informed of progress and the reasons for any delays • Provide the employee with a copy of the allegations against them, the Terms of Reference and any available documentary evidence • Identify a single point of contact for the employee from whom they can seek support and help throughout the disciplinary process |
| Investigating Officer | Implementation | <ul style="list-style-type: none"> • Remain impartial throughout the process • Collect evidence and facts relating to the incident; e.g. documentary evidence, witness statements, CCTV etc. • Ensure that notes from investigation meetings are typed-up and sent to the individual without undue delay • Provide a report detailing the findings of the investigation that is free from judgement and opinion and which includes all documents/evidence referenced within the report as appendices • Disclose any relationship/conflict of interest prior to the commencement of an investigation • Keep the Commissioning Manager informed of progress with the investigation and notify them of the reasons for any delays, along with an anticipated completion date • To present the management case at any subsequent disciplinary hearing |
| Trades Unions/Staff Representatives | Representation | <ul style="list-style-type: none"> • Represent staff at the formal stages of the procedure if requested • Provide support and guidance to members on the application of this policy • Work in partnership with the Trust & Human Resources to review this policy at appropriate intervals |
| Occupational Health | Advisory | <ul style="list-style-type: none"> • To provide advice to managers about supporting employees who may be under stress throughout the course of an investigation and to provide additional support to those employees |
| Employee Relations | Responsible | <ul style="list-style-type: none"> • Provide specialist advice, support and guidance to managers on the use of policy including training/coaching • Provide support to managers in managing individual cases where necessary; guide the Investigating Officer through the process and support them with the production of the final report • Participate as a panel member in hearings (including appeal hearings) and provide advice and guidance to the Panel Chair and all participants on the process to be followed • Provide guidance in respect of decisions to suspend employees as appropriate • Support the Trust in ensuring consistency of the application of this policy • Support the collation, review, audit and analysis of data concerning disciplinary activity across the Trust • Ensuring that this policy complies with legislative requirements, good employment practice and equality of opportunity |
| Trust Board | Strategic | <ul style="list-style-type: none"> • Ensure that appropriate conditions at work exist to ensure that Trust Employees are able to perform their duties effectively and in accordance with their contractual obligations and Trust Policies and Procedures |
| Director of Human Resources | Executive Lead | <ul style="list-style-type: none"> • Lead responsibility for the implementation of this policy • Allocation of resources to support the implementation of this policy • Ensure any serious concerns regarding the implementation of this policy are brought to the attention of the Trust Executive |

11.0 HANDLING ALLEGATIONS OF MISCONDUCT/INVESTIGATING THE FACTS

Allegations of misconduct will be carefully assessed by the relevant manager, with advice from HR, to determine if the matter can be managed informally or if there are grounds for further investigation and/or formal action.

The Manager will carry out some initial fact-finding and meet the employee to establish their version of events. The Manager may also meet with other relevant individuals to get a good understanding about what has happened. Where it is decided that further investigation is required, this will be carried out without unreasonable delay. The Manager who is responsible for commissioning the investigation will ensure that the Terms of Reference are completed and that what is to be investigated is clearly defined.

The Commissioning Manager will appoint the Investigating Officer and will ensure that they are sufficiently experienced to conduct the investigation based on the specific circumstances of the case. Where an investigation may lead to the dismissal of an employee, the Investigating Officer should be properly trained or have extensive experience of conducting investigations.

The Investigating Officer will provide updates to the Commissioning Manager in regular intervals, usually fortnightly, but this will be agreed at the start of the investigation.

Once the investigation has been completed, the Commissioning Manager will consider the findings and with HR advice, will determine if further action is required and where it is, whether this can be dealt with informally or whether formal disciplinary action is appropriate.

If the Manager believes that there is a case to answer at a formal hearing, they will ensure a report is prepared setting out the case and the investigation findings. The Manager should ensure all relevant information is presented at the hearing, including background information about the employee, their work record and any mitigating factors to ensure a full and balanced case is presented for the hearing to consider.

12.0 REFERRALS TO PROFESSIONAL BODIES AND OTHER AGENCIES

Depending on the allegations, where an employee is registered with a professional body, such as a registered nurse, midwife or nursing associate, the regulatory body may be notified. This decision will be taken in conjunction with the professional lead for the Trust i.e. Chief Nurse, Chief Pharmacist, Head of Pathology Services etc. All NMC referrals will be logged and overseen by the Corporate Nursing Group.

Where there are allegations concerning the safeguarding of children or vulnerable adults, the Trust's Safeguarding Lead must be notified.

Where appropriate, investigations by the Counter-Fraud Team, other agencies such as the Police or Social Services may be carried out separately from internal investigations conducted under this procedure. The Trust will give full co-operation to try to ensure any such investigations can be carried out to a high standard. In such circumstances, the Trust will only delay internal investigations where it is necessary to do so.

Where cases involve serious personal data breaches likely to result in a risk to the rights and freedoms of data subjects, the Trust has a legal responsibility to report such breaches to the Information Commissioner's Office within 72-hours via the Trust's Information Governance Team.

13.0 INFORMAL MANAGEMENT AND TRAINING

The Trust recognises that cases of minor misconduct are best dealt with informally and quickly. A quiet word, additional training, coaching and/or advice is often all that is needed.

When there are concerns about conduct, Managers will talk to the employee in private as soon as possible and normally within a few days (**conversation of concern**). This will be a two-way discussion aimed at talking through shortcomings and encouraging improvement. The aim of a conversation of concern is to:

- Set out the nature of the problem
- Explore the issue in more detail, including any underlying causes/reasons
- Outline the expected standard of conduct/behaviour
- Agree a plan of action to correct unsatisfactory conduct
- Agree any additional training or support as necessary; including a referral to Occupational Health if applicable

Feedback should be constructive with an emphasis on finding ways to improve. Managers should keep brief notes of any conversation of concern for reference purposes.

Where appropriate, Managers may also summarise concerns and expectations in writing to the employee, a copy of which will be held on their personal file for a period of 12-months. If informal action does not bring about the required improvement or the misconduct is too serious to be classed as 'minor' then formal disciplinary action may be considered.

14.0 EMPLOYEE COMPANION/REPRESENTATIVE

When an allegation arises which might result in formal disciplinary action, managers should advise employees to seek trade union advice and, if applicable, ask the employee for the name and contact details of their representative.

Employees are encouraged to attend formal hearings/meetings accompanied by an accredited trade union representative, colleague or other companion not acting in a legal capacity. It is the responsibility of the employee to arrange for a companion to accompany them; they should also provide the Panel/Investigating Office with details of their companion.

Employees should make every effort to attend meetings and they should notify their Line Manager/Investigating Officer as soon as possible if they are unable to attend. Consideration will be given to rearranging any hearing/meeting date to an alternative date provided by the employee within 7-calendar days, of the original date if they or their chosen companion is unable to attend on that date. The choice and availability of a companion should not unduly delay the process.

At any hearing/meeting; an employee's representative may present the case on behalf of the employee, but they will not be permitted to respond to questions directed to the employee.

Where any proposed action involves an accredited trade union representative, the appropriate full-time officer will be contacted before the proposed action commences.

15.0 FAST-TRACK PROCEDURE

Where the individual has admitted the allegations and/or there is clear and sufficient evidence from the outset, it may be appropriate to follow a fast-track process without the need for a full investigation to be conducted. This process recognises that participation in a formal investigation and hearing can be stressful and damaging to an employee's health and well-being and therefore seeks to swiftly reach an acceptable and appropriate outcome.

This process may result in an agreed outcome (formal sanctions) or a conversation of concern (informal sanction). An agreed outcome in these circumstances can include a final written warning. In circumstances where the employee's dismissal is a possible outcome; a full investigation must be completed and a formal disciplinary hearing convened. This would include cases where an individual already has a live sanction on their record as well as cases of possible serious/gross misconduct.

In such cases, a meeting will be arranged by the Line Manager with the employee, at which they can be accompanied by a Trade Union Representative or work colleague. Where an agreed outcome is reached, there will be no further right of appeal.

Examples where a fast-track process may be considered include but are not restricted to failure to maintain registration with an appropriate professional body or medication errors.

16.0 SUSPENSION/EXCLUSION FROM DUTY

In most cases, suspension from work will not be necessary and the employee will be able to continue doing their normal job whilst the matter(s) are investigated. The key principles which will be applied in respect of suspension/exclusion from duty are:

- Suspension is not a disciplinary sanction and there is no assumption of guilt
- Periods of suspension will be kept under regular review and the suspension will be lifted as soon as it is appropriate to do so
- Employees who are suspended will continue to receive their normal pay whilst suspended; the only exception to this will be where staff have been suspended because their eligibility to work has been removed
- All suspensions will be managed sensitively and confidentially.

The decision to suspend will only be taken in cases of potential serious/gross misconduct, where genuine risks have been identified and all alternative options, including temporary redeployment, have been ruled out. The Suspension Decision Tree on page 4 should be followed to determine whether suspension is an appropriate course of action. The following may also be taken into account in arriving at a decision to suspend:

- A serious breakdown in working relationships
- There is a risk that the individual may tamper with evidence or exert undue influence on witnesses and/or the investigation
- There is a risk to the employee themselves, other employees, patients or property
- The employee is subject to criminal proceedings which may affect whether they can do their job

Alternatives to suspension must be considered and HR Advice sought on the appropriateness of these in the circumstances. Some examples of alternatives to suspension, which could be considered, are:

- Being moved to a different area of work
- Changing their working hours
- Being placed on restricted duties, including having restricted access to Trust systems
- Working under close supervision
- Temporary redeployment into an alternative role of similar status and with the same terms and conditions of employment
- Remote working from home; either in their substantive role or undertaking meaningful alternative activities and work

16.1 AUTHORITY TO SUSPEND

The authority to suspend an employee rests with General Managers or Heads of Nursing. Outside of normal working hours, the Senior Manager on-call will have delegated authority to suspend an employee (including Doctors) if necessary. The General Manager will determine if it is appropriate to notify the relevant professional head prior to an employee being suspended.

Where the exclusion of Medical Staff is being considered, reference needs to be made to the Maintaining High Professional Standards for Doctors and Dentists Policy. Save for incidents that occur out of hours, the authority to suspend a Doctor lies with the Medical Director.

16.2 PAY DURING SUSPENSION

In most cases, employees who are suspended from duty will receive their full pay, based on current and planned working patterns. Circumstances where this will not apply will be in cases where, by the individual's own actions they are prevented from working in the capacity for which they are employed. These may include, but not be restricted to:

- Failure to maintain professional registration
- Loss of entitlement to work under Asylum and Immigration legislation

Individuals who work with the Trust through the Bank will only be entitled to receive pay for any booked shifts that are withdrawn from them during any period whilst their conduct is under investigation. They will not be entitled to pay for any shifts which had not been booked, but which they might ordinarily have worked, had they not been under investigation.

16.3 ALTERNATIVE EMPLOYMENT DURING SUSPENSION

If in receipt of pay during a period of suspension from the Trust, an employee must not undertake any paid work during the hours for which they are contracted to work, this includes bank and agency shifts.

16.4 TIMESCALES FOR SUSPENSION

Suspension will be for the minimum time necessary and will be reviewed by the Commissioning Manager every 5-days. A record will be made and held on file of each review that is undertaken and any decision taken in respect of the individual's suspension from duty. If there is any change in circumstances, which means that the reason for the initial suspension no longer exists, then the suspension will be lifted and the employee allowed to return to work.

Regular contact must be maintained with the employee throughout the period of suspension, to keep them informed of progress with the investigation and provide them with an anticipated completion date.

16.5 ACCESS DURING SUSPENSION

Whilst suspended, employees will not have access to any Trust IT equipment or systems and mobile phones/laptops should be surrendered during the period of suspension. Alternative methods of communication with the employee during suspension should be agreed.

During periods of suspension, employees should not enter Trust premises unless for medical appointments/emergencies or to attend meetings in connection with the investigation and/or suspension. If an employee who is suspended wishes to access information and/or witnesses (subject to their consent), material to the investigation, permission must first be sought from their nominated liaison officer. Where such requests are made, advice should be sought from HR.

16.6 OTHER MATTERS DURING PERIODS OF SUSPENSION

Annual Leave

Annual leave will continue to accrue during periods of suspension and any annual leave already booked at the time of suspension will be honoured. Should an employee wish to take annual leave whilst suspended from duty, they should submit a request to their Line Manager as per usual. Leave which has not been taken during the leave year due to the individual being suspended from duty will be carried over in accordance with statutory provisions.

Save for exceptional circumstances, employees will not be expected to cancel/rearrange agreed periods of annual leave to attend meetings/hearings in connection with the investigation and/or suspension. Equally, planned meetings will not be cancelled/rearranged to accommodate an employee taking annual leave unless there are mitigating reasons for agreeing to such a request.

Sickness Absence

If an employee becomes ill during a period of suspension, they must inform their Line Manager in accordance with the Trust's sickness absence reporting procedure. Where the period of absence is expected to last for a prolonged period, the Investigating Officer should also be notified in order that they can adjust the investigation timetable accordingly.

Where the employee's sickness absence is of considerable concern, a referral to Occupational Health may be appropriate and advice should be sought from them in regards to the employee's fitness to participate in the investigation.

17.0 FORMAL DISCIPLINARY HEARING

17.1 DISCIPLINARY HEARING PANEL

The Trust is committed to ensuring that disciplinary panels are diverse in representation, have appropriate seniority; and have knowledge, skills, experience and training that are relevant to the case in question. As far as it is reasonably practicable to do so, the make-up of panels will cater for factors such as the BAME or disability status of the individual employee.

If the employee and/or their representative has any concerns in respect of the make-up of the hearing panel, they should raise these concerns with the Chair of the panel at least 3-days prior to the date of the hearing.

17.2 PREPARING FOR THE HEARING

Employees will be given at least 7-calendar days' notice of the hearing in order to have time to prepare. The employee will be provided with two copies of the management (investigation) report and any related documents. Prior to the hearing, the employee will be advised of the potential outcome i.e. formal warning or the termination of their employment.

Notes from meetings with witnesses and/or statements provided by them during the investigation will be used as the basis for their attendance at the hearing. They will not be specifically asked to provide an additional statement for the hearing; but where one is submitted to the panel, this will be provided to the employee, along with the management case.

Arrangements for the attendance of witnesses is the responsibility of those requiring them to attend. Witnesses will be given notice of their attendance at meetings/hearing and should be afforded appropriate time off to attend hearings (and investigation meetings); but it is the responsibility of the witness to obtain appropriate line manager approval to attend at the designated time.

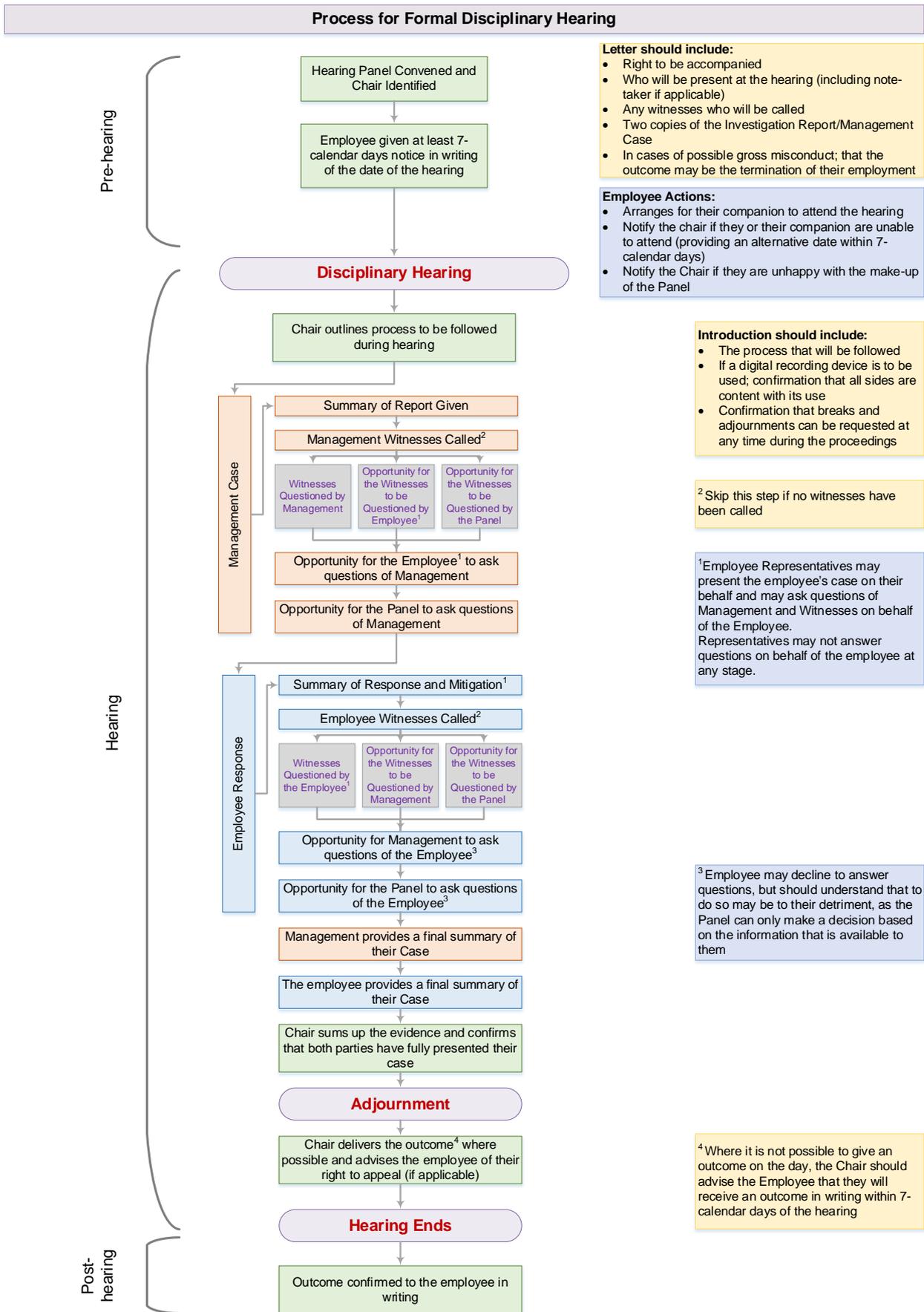
Any personal information relating to employees, patients or other individuals should be redacted from any documents submitted to the hearing panel.

17.3 HEARING FORMAT

The format of the hearing is as per the flow-chart on page 16. In most instances, the management case will be presented by the Investigating Officer; who will be asked to present their findings to the panel. The employee will be given the chance to set out their case, answer any allegations, ask questions, show evidence, call relevant witnesses and respond to any information given by witnesses.

Witnesses will be called if they have a significant contribution to make to the case. If statements from Trust employees are presented as evidence, every reasonable effort will be made to ensure that they attend the hearing/meeting; unless it is agreed with the employee that the facts are not in dispute and/or the presence of one or more witnesses would serve no material purpose.

PROCESS FOR FORMAL DISCIPLINARY HEARING



17.4 HEARING CONSIDERATIONS

In considering any sanction, the hearing Chair/Panel will take account of the employee's previous work record, any current/live sanctions that are on file and any other mitigating factors as deemed relevant in the circumstances.

17.5 HEARING OUTCOMES

Where it is reasonable and practicable to do so, the Chair and Panel will make a decision on the day of the hearing and this will be communicated by the Chair to the individual employee in person. Where this is not feasible and/or in cases where the employee requests otherwise, notification of the outcome will be given to the employee in writing or by phone.

The outcome will also be confirmed in writing, normally within 7-calendar days of the hearing/meeting. If disciplinary action is taken, the letter will normally include:

- Details of the complaint/allegations that have been considered
- The sanction applied, including the duration of the sanction
- Any other improvement that is required
- Details of the right to appeal
- Consequences of any further action which may be taken if there is any further incidents of concern and/or there is no satisfactory improvement

In some instances, a hearing may determine that no formal sanction being applied; but may instead put in places expected standards to be achieved, training requirements and/or other departmental/individual recommendations as appropriate.

Guidance on writing outcome letters should be sought from Human Resources.

18.0 DISCIPLINARY SANCTIONS

Once the hearing panel has considered all the facts, a decision will be taken on the appropriate action. Depending on the findings, this may result in; no further action, informal management action/conversation of concern or a disciplinary sanction. The seriousness of the misconduct will determine the level of disciplinary action to be taken.

First Written Warning ~ if the employee fails to meet required standards following informal action or if the misconduct is sufficiently serious to warrant a formal sanction, a first written warning may be applied. A first written warning will be confirmed in writing and may be placed on the employee's record for a period of up to 12-months, thereafter and assuming that there have been no further lapses of conduct, it will be removed.

Final Written Warning ~ if the failure to meet required standards continues or if the offence is of sufficiently serious (but not gross) misconduct, a final written warning may be given. Final written warnings are confirmed in writing and may be placed on the employee's record for a period of up to 24-months. In circumstances where a final written warning is issued as an alternative to dismissal, this will be placed on the employee's record for a period of not less than 24-months.

Dismissal ~ if conduct remains unsatisfactory or if the offence constitutes gross misconduct, the outcome of the hearing will normally be the termination of the employee's contract of employment. Except in cases of gross misconduct, dismissal will be with notice in accordance with the periods stipulated in the principal statement of terms and conditions. Cases of gross misconduct may result in summary dismissal (without notice). If it is appropriate to do so, in cases of dismissal, a report may be made to the relevant professional body.

Alternative to Dismissal ~ in addition to a final written warning for 24-months, the following actions may be appropriate as an alternative to dismissal:

- Transfer to another department/site
- Demotion or downgrading without pay protection
- Change of shift or working pattern

'Alternatives to dismissal' can only be applied following a formal disciplinary hearing; they cannot be used within the fast-track procedure or as part of an agreed outcome.

19.0 APPEAL AGAINST DISCIPLINARY SANCTION

With the exception of conversation of concern or an agreed outcome, all employees have the right to appeal against any sanction applied under this policy; full details of the process to be followed in making an appeal will be communicated to the employee within the letter confirming the outcome of the disciplinary hearing.

Appeals against Warnings/Alternative to Dismissal

Should be made in writing to the manager of the Chair of the hearing panel within 7-calendar days of receipt of the outcome letter, stating the grounds for appeal.

Appeals against Dismissal (with or without notice)

Should be made in writing to the Associate Director of HR Operations within 7-calendar days of receipt of the outcome letter confirming the dismissal, stating the grounds for appeal.

Appeals will be acknowledged within 7-calendar days and hearings normally arranged as soon as practicable thereafter.

19.1 GROUNDS FOR APPEAL

Any appeal will only consider the grounds for appeal and will not be considered as a rehearing of the original disciplinary hearing. The reasons for appeal should be based on one or more of the following:

- Unfairness by comparison to how the policy has been applied to others or bias of the panel
- Incorrect decision or too severe penalty based on the evidence provided to the panel
- Did not follow the principles/procedure as detailed within this policy
- New evidence has come to light since the sanction that would have affected the decision

19.2 APPEAL HEARING

A manager with an appropriate level of seniority to hear the appeal will chair the hearing and a representative of the HR Team will support them. The process to be followed in an appeal hearing is illustrated in Appendix 10.

As with disciplinary hearings, the Trust is committed to ensuring that appeal panels are diverse in representation, have appropriate seniority; and have knowledge, skills, experience and training that are relevant to the case in question. As far as it is reasonably practicable to do so, the make-up of panels will cater for factors such as the BAME or disability status of the individual employee.

The panel hearing the appeal will consider the following points:

- Does the panel believe that the employee committed the act of [gross] misconduct?
- Are there reasonable grounds on which to base that belief?
- Was the investigation sufficient as was reasonable in the circumstances of the particular case?
- Was the sanction reasonable considering all of the circumstances?

For the avoidance of doubt, all sanctions will be available to the appeal panel, up to and including dismissal.

20.0 RECORDING MEETINGS

Investigation meetings and disciplinary hearings may be digitally recorded for the purposes of creating an accurate record of the meeting/hearing and individuals will be notified in advance of this. Agreement will be sought from all parties to a digital record being taken at the start of the meeting/hearing. All recordings will be made and retained in accordance with the provisions of Data Protection legislation.

Individuals and/or their representative/companion will not be permitted to make their own recordings of any meeting/hearing without prior approval. Making covert recordings of any meetings/hearings could constitute gross misconduct and may result in disciplinary action being taken

21.0 PAY PROGRESSION

In accordance with the revised NHS Terms & Conditions (Agenda for Change) pay progression framework, employees who have reached their pay step review date and who have a live disciplinary sanction on their record will not meet the required standards for pay progression to be applied. Consequently, a decision will be taken by their Line Manager to defer pay progression and subject to all other standards having been met; it will be applied with effect from the day after the sanction expires.

Suspension from work on full pay is considered a neutral act and in order to ensure that this is the case, employees who are suspended from work on their pay step date will have their pay step applied from this date, provided that they were meeting all of the required standards at the point of suspension.

Employees have the right to appeal against any decision to defer pay progression and details of how to do this can be found in the Pay and Pay Progression Policy, which can be downloaded from the Intranet.

22.0 TRUST REPUTATION

This is the commonly held opinion of the Trust and may be the opinion of the general public, patients, service users, other NHS Trusts and other Healthcare Organisations in the UK and internationally,

Trust reputation may be affected by actions such as:

- Inappropriate conduct whilst wearing a Trust Uniform or ID badge;
- Uploading images or making derogatory reference to the Trust; it's employees, patients, service-users or carers etc. on Social Media/internet sites;
- Discussing Trust business with members of the media without having appropriate authority to do so.

This list is not exhaustive and provided examples of actions by employees and others engaged to do work on behalf of the Trust and which the Trust deems to be acts of [gross] misconduct and of bringing the Trust into disrepute.

23.0 IMPACT AND EQUALITIES

An Equality Analysis has been carried out for this policy and has concluded that there are no detrimental effects and some positive effects of this policy.

24.0 COMMUNICATION

Copies of the policy will be available via the Trust's intranet site. Monitoring data and other feedback relating to the management of absence will be regularly distributed to the relevant channels in appropriate formats.

The following websites provide useful information:

www.acas.co.uk

www.unison.org.uk

www.equalityhumanrights.com

www.cipd.co.uk

www.gov.uk/dwp

www.nhsemployers.org

25.0 MONITORING COMPLIANCE & STANDARDS/KEY PERFORMANCE INDICATORS

Monitoring of the policy and procedure will be undertaken by the Associate Director of HR Operations and will be reviewed regularly by Employee Relations and Staff Side.

| What is the standard/audit criteria | Timeframe/ How often | How/Method | Reviewed and action plan development by who/which group | Action Plans monitored by and how often |
|--|------------------------|--|--|---|
| Number of disciplinary cases; nature of cases and outcomes | Quarterly/ Annually | Statistics obtained through ESR and Departmental Tracking | HR Business Partner team undertake regular checking of data with the appropriate Trust Divisional Team | Annual Audit |
| Profile of employees who are subject to disciplinary proceedings | Quarterly/ Annually | Monitoring trends by all protected characteristics ~ Equality Act 2010 | HR Business Partner Team/ WDES/WRES | Annual Audit |
| Staff training | Quarterly/ Annually | Statistics obtained from the Training Department | HR Business Partner Team; Workforce Committee and Executive Management Board | Annual Audit |

The Policy will ensure the standards determined by the NHS Litigation Authority (NHSLA) and Care Quality Commission standards are met. The equality monitoring reports will provide data in support of these key performance indicators and through advice and audit checks. The Employee Relations Team will ensure the policy is consistently applied.

26.0 FURTHER GUIDANCE AND TRAINING

Further guidance on the application of this policy is available from the Employee Relations Team or trade union representative.

EXAMPLES OF MISCONDUCT

The following list gives examples of the circumstances that could lead to disciplinary action. Such action may be informal or formal depending on the nature and extent of the offence. There may be occasions when the level of offence would constitute serious/gross misconduct.

This list is not exhaustive and does not indicate any limitation upon the employer's right to exercise discretion in individual cases.

- | | |
|---|---|
| <ul style="list-style-type: none"> • General Conduct and/or behaviour which is offensive to others | <ul style="list-style-type: none"> • Breaches of health and safety rules and regulations |
| <ul style="list-style-type: none"> • Failure to comply with Trust Values | <ul style="list-style-type: none"> • Minor breaches of Professional Codes of Conduct |
| <ul style="list-style-type: none"> • Foul or abusive language | <ul style="list-style-type: none"> • Negligent Conduct |
| <ul style="list-style-type: none"> • Unauthorised absence/failure to follow Trust procedure in respect of absence | <ul style="list-style-type: none"> • Smoking on Trust premises |
| <ul style="list-style-type: none"> • Poor timekeeping | <ul style="list-style-type: none"> • Failure to comply with the Trust's uniform policy |
| <ul style="list-style-type: none"> • Abuse/misuse of the sickness pay/leave provisions | <ul style="list-style-type: none"> • Malicious/vexatious complaints, untruths and lies made about colleagues |
| <ul style="list-style-type: none"> • Abuse/misuse of study leave provisions | <ul style="list-style-type: none"> • Inappropriate use of Social Media including Facebook and Twitter |
| <ul style="list-style-type: none"> • Breach of contract/terms and conditions of employment | <ul style="list-style-type: none"> • Misuse of Information Technology including accessing inappropriate internet sites during working hours |
| <ul style="list-style-type: none"> • Misuse of Trust facilities | <ul style="list-style-type: none"> • Failure to disclose any other employment/business interests which is prejudicial to or which adversely affects the individual's employment with the Trust |
| <ul style="list-style-type: none"> • Breach of confidentiality: failure to safeguard and/or disclosure of confidential information to unauthorised person(s) | <ul style="list-style-type: none"> • Breaches of the Trust's standing orders, financial standing instructions and policies |
| <ul style="list-style-type: none"> • Failure to carry out a reasonable management instruction | |

EXAMPLES OF SERIOUS/GROSS MISCONDUCT

The following list summarises examples of gross misconduct and which may lead to summary dismissal (dismissal without notice). This would be misconduct which is so serious that any further working relationship with the Trust would be impossible.

This list is not exhaustive and does not indicate any limitation upon the employer's right to exercise discretion in individual cases.

| | |
|---|--|
| <ul style="list-style-type: none"> Physical or serious verbal assault on a patient or member of staff | <ul style="list-style-type: none"> Bullying and harassment |
| <ul style="list-style-type: none"> Theft or Fraud (false representation) | <ul style="list-style-type: none"> Bribery |
| <ul style="list-style-type: none"> Incapacity through alcohol and/or drugs | <ul style="list-style-type: none"> Serious breaches of health and safety rules and regulations |
| <ul style="list-style-type: none"> Negligent behaviour | <ul style="list-style-type: none"> Behaviour at work; serious failings in regards to adherence to Trust Values |
| <ul style="list-style-type: none"> Unauthorised absence (persistent and/or prolonged) | <ul style="list-style-type: none"> Criminal activity or actions which aide/abet any other individual engaged in criminal activity |
| <ul style="list-style-type: none"> Malicious and/or negligent damage to Trust property | <ul style="list-style-type: none"> Serious breaches of Professional Codes of Conduct |
| <ul style="list-style-type: none"> Conduct which brings the Trust into disrepute; through personal conduct or the provision of false information | <ul style="list-style-type: none"> Loss of legal authority e.g. qualifications, registration, work permit etc. |
| <ul style="list-style-type: none"> Unauthorised and/or unlawful possession or use of property belonging to the Trust, other staff members, patients or members of the general public | <ul style="list-style-type: none"> Discrimination against other employees, patients or members of the general public on the grounds of a protected characteristic as defined by the Equality Act 2010 |
| <ul style="list-style-type: none"> Misuse of Information Systems; inappropriate and/or excessive use of private e-mails, internet sites including social media, telephone/mobile systems and EPR and ESR | <ul style="list-style-type: none"> Standards of business conduct; including failure to act impartially or declare an interest in a contract or business in which the Trust is engaged or considering |
| <ul style="list-style-type: none"> Breach of confidentiality: failure to safeguard and/or disclosure of confidential information to unauthorised person(s) | <ul style="list-style-type: none"> Serious breach of trust and confidence; any act which causes irreparable damage to the Trust and the relationship of Trust and Confidence between employee and Trust |

TEMPLATE LETTER ~ SUSPENSION
(To be sent within 3-days following suspension)

Dear <<Insert Name>>

Re: Suspension from Duty

Further to our meeting on <<insert date>>, I am writing to confirm your suspension from duty with effect from <<insert start date of suspension>>. It has been determined that it is appropriate to suspend you from duty because it is alleged that <<insert reason for suspension>>.

I would like to reassure you that suspension is not a form of disciplinary action or an assumption of guilt, but is necessary to allow a full investigation to be carried out. You are advised though that once the investigation has been completed, the allegations may be considered at a disciplinary hearing.

I do not expect your suspension to last for more than 2-weeks, but I will update you if it is necessary to extend the period of suspension beyond this.

<<Insert name>> will carry out the investigation over the next few days and you will be invited to attend a meeting to discuss the allegations against you as part of this investigation. The details of this meeting will be sent to you in due course. If you would find it helpful, you can submit a written statement in advance of the meeting.

<<Insert name (usually the individual's line manager or nominated contact for support)>> will keep in regular contact with you and update you on progress with the investigation.

I appreciate that this process can be a stressful one and your nominated support during this process will be <<insert name and contact details>>. If you require additional support this can be accessed via the Trust's CiC Employee Assistance Programme on 0800 085 13760 or via www.well-online.co.uk. The login is <<jhlogin (Bedford staff)/lalogin (Luton & Dunstable staff) – delete as applicable>> and the password is 'wellbeing'. Additional support can also be accessed via the Trust's Peer2Peer Listeners.

Whilst you are suspended, you should bear in mind the following conditions:

- You must not do anything that might interfere with the investigation
- You are not allowed to contact your work area or approach anyone involved, or likely to be involved, in the investigation
- If you would like to contact witnesses who may support your case, you should contact me, or your nominated contact, or your Trade Union Representative in the first instance.
- Except for medical appointments, you are required to remain off Trust premises unless you have my permission to attend a meeting with your trade union representative, an investigation meeting, an OH appointment or for another reason approved by me.
- You should be available Monday to Friday between 9 00 am and 5 00 pm to attend meetings in connection with the investigation, except in periods of annual leave already agreed.
- If you would like to request annual leave or other types of leave during your period of suspension, you should do so in line with normal departmental procedures.
- You must notify me immediately of any changes to your contact details.
- You are not permitted to undertake any paid work during the hours for which you are contracted to work for the Trust, this includes Bank and Agency work.
- If you become ill, you must notify me and follow the agreed reporting procedures in respect of sickness absence.

You will be paid as normal during this period of suspension (there are circumstances where it would be appropriate for the period of suspension to be unpaid; advice on these can be obtained from HR).

I will endeavour to ensure that the investigation is concluded within a reasonable timeframe and that you are kept informed of progress.

Yours sincerely

<<Insert Name>>
<<Insert Job Title>>

cc Human Resources
<<Name of Trade Union Representative – if known and applicable>>

TEMPLATE LETTER ~ FOLLOW-UP SUSPENSION
(To be sent if member of staff still suspended after two weeks)

Dear <<Insert Name>>

Re: Suspension from Duty

Further to my letter of <<insert date>>, I write to advise you that the investigation has not yet been completed and it is therefore necessary for you to remain suspended from duty.

I appreciate that this is a particularly stressful time for you and I hope that it will be possible for the investigation to be completed by <<insert date>>.

In the meantime, should you wish to discuss the progress of the investigation I am happy for you to telephone me on <<insert number>>. Alternatively, if you believe it would be helpful, we can arrange to meet to discuss the progress being made with the investigation.

You are reminded that if you require additional support this can be accessed via the Trust's CiC Employee Assistance Programme on 0800 085 13760 or via www.well-online.co.uk. The login is <<jhlogin (Bedford staff)/lalogin (Luton & Dunstable staff) – delete as applicable>> and the password is 'wellbeing'. Additional support can also be accessed via the Trust's Peer2Peer Listeners.

I will continue to keep you informed of progress with the investigation and to ensure that it is completed as expediently as possible.

Yours sincerely

<<Insert Name>>
<<Insert Job Title>>

cc Human Resources
<<Name of Trade Union Representative – if known and applicable>>

TEMPLATE LETTER ~ INVITE TO INVESTIGATION MEETING

Dear <<Insert Name>>

Re: Investigation Meeting

I have been appointed as the Investigation Officer to conduct an investigation into an allegation that <<insert allegation>>.

The above allegations, if proven, may constitute misconduct /gross misconduct as set out within the Trust's Disciplinary policy (a copy of which is available from the intranet).

As part of this investigation, you are required to attend an investigation meeting. The following arrangements have been made for your investigatory interview:

Date: <<Insert Date>>
Time: <<Insert Time>>
Location: <<Insert Venue (which may be virtual)>>

The investigatory meeting will be chaired by myself and <<insert name and job title>>, will also be present and the meeting will be recorded for the purpose of creating an accurate record. Please could you bring with you any information or documentation that may be of assistance to the investigation.

You may if you wish be accompanied at the investigation meeting by a representative from a recognised Trade Union/Professional Organisation or friend/colleague working in the Trust not acting in a legal capacity.

Please confirm your attendance at this meeting by contacting <<name>> via <<insert contact details which may be an e-mail address or contact number>>.

In accordance with the Trust Disciplinary Policy, I must inform you that as a result of the investigation, disciplinary action may be taken against you, including the consideration of issuing a formal warning/ your dismissal from the Trust.

Please be advised that if you fail to attend this investigation meeting without prior contact with us, then the investigation will continue and decisions may be made based on the information available.

I appreciate that this process can be a stressful one. If you require additional support this can be accessed via the Trust's CiC Employee Assistance Programme on 0800 085 13760 or via www.well-online.co.uk. The login is <<jhlogin (Bedford staff)/lalogin (Luton & Dunstable staff) – delete as applicable>> and the password is 'wellbeing'. Additional support can also be accessed via the Trust's Peer2Peer Listeners.

Yours sincerely

<<Insert Name>>
<<Insert Job Title>>

cc Human Resources
<<Name of Trade Union Representative – if known and applicable>>

TEMPLATE LETTER ~ INVITE TO INVESTIGATION MEETING (Witness)

Dear <<Insert Name>>

Re: Investigation Meeting

I have been appointed as the Investigation Officer to conduct an investigation under the Trust's Disciplinary Policy, a copy of which is available to view on the Trust's Intranet. The investigation concerns allegations made in relation to <<insert employee's name>> and I have been advised that you may have information that is relevant to this investigation.

To this end, I should like to invite you to an investigatory interview as detailed below:

Date: <<Insert Date>>
Time: <<Insert Time>>
Location: <<Insert Venue (which may be virtual)>>

The investigatory meeting is a fact-finding exercise. Notes and/or a recording will be taken of the meeting and these will be typed up and forwarded to you to read and check for factual inaccuracies. Once agreed, the information you give will be used to help the Trust's investigation, and to determine the appropriate way forward.

At this meeting you have the right to be accompanied by a recognised trade union representative or a work colleague employed by the Trust. It is your responsibility to make arrangements in terms of your representation.

I would remind you that this matter is confidential and should not be discussed with anyone else.

Please confirm your attendance at this meeting by contacting <<name>> via <<insert contact details which may be an e-mail address or contact number>>.

Yours sincerely

<<Insert Name>>
<<Insert Job Title>>

cc Human Resources

TEMPLATE ~ DISCIPLINARY INVESTIGATION REPORT

INVESTIGATION REPORT

Dept.:

Author:

Date:

Investigation Report

Introduction and Background

The investigation has been conducted in an objective and non-judgmental manner in order to establish the facts of the incident/allegations as outlined above.

Investigation Authorised/Commissioned by:

<<Insert name and position>>.

Investigating Officer-

I am <<insert name, role and brief summary of what experience you have to undertake the investigation>>. I have been appointed as the Investigating Officer for this investigation by the Trust on <<insert date investigation began>>. The role of the Investigating Officer is to investigate the allegations outlined, the circumstances in which the allegations happened and any mitigation.

I have been supported in this investigation by <<insert name and position of HR Representative>>.

Terms of reference (Appendix XX)

The allegations have been identified as:

- <<Insert allegations as included within the Terms of Reference>>

In line with this, the following questions were to have been answered:

- <<insert questions i.e. 'does this form a pattern of behaviour for the individual?''>>

Trust Policies

The following policies have been considered and/or adhered to in the course of this investigation:

- i.e. Disciplinary Policy

Background – *this section should provide a brief overview of the incident as it occurred.*

This report concerns the above employee <<insert name followed by initials in parenthesis (XX); *thereafter use initials*>>.

Provide a brief summary of what happened, include:

- Date(s) of the incident(s)
- Who reported the incident and to whom this was reported
- If the incident was recorded on DATIX
- Names/details of any members of staff (or patients/visitors) who witnessed the incident
- If applicable, whether safeguarding was notified

If applicable:

A formal meeting was held on <<insert date>> and this was chaired by <<insert name and position>>, who was supported by <<insert name of HR Representative>>. Given the severity of the allegations, it was considered appropriate for XX <<to be suspended from duty pending the outcome of the investigation OR for an alternative to suspension to be applied, which was <<insert details of alternative>>. This took effect from <<insert date>> and has been reviewed on a regular basis.>>

XX's employment record identifies <<no previous conduct issues relevant to the allegations addressed within this investigation OR previous conduct issues which resulted in <<insert sanction/conversation of concern>> being placed on their record. *Only state any previous conduct issues/sanctions which remain live on the file or which are pertinent to the investigation in hand.*

Background of Employment *this section should include a summary of the individuals' employment with the Trust*

XX is a <<insert employee's band, role and department (and site if applicable)>>. XX has been employed in this role since <<insert start date>>. << Insert any other relevant details in respect of the individuals' employment with the Trust prior to them commencing in this role>>.

Method of Investigation

Investigation Process; (how the investigation was authorised)

The incident was raised with <<insert name and position>>, who commissioned the investigation and this commenced on <<insert date>>. Terms of reference were agreed and the investigating officer was appointed on <<insert date>>.

XX is currently suspended from duty (with pay) since DATE. Alternatives to exclusion were considered however it was deemed appropriate to suspend due to the employee's conduct/ OR to prevent the employee causing risk or danger to patients/colleagues OR to remove the employee as they were deemed to be incapable of performing their normal duties OR the allegation(s) made against them are classed as gross misconduct.

OR XX currently remains in employment within the Trust with restrictions put in place as an alternative to suspension.

If applicable- As an alternative to suspension, XX's return to work on alternative duties was explored by <<insert name of person and position>>. However, the decision was taken that it was not appropriate for them to return to work until the investigation was complete due to <<insert reason>>.

Statements and Meetings (list all meetings held and statements collected)

Statements have been collected from XX and from those who it has been identified as being present at the time of the incident. Where it has been appropriate to do so, investigation meetings have also been held with those identified as witnesses. The full list of statements collected and meetings held is given below:

| Name (if accompanied at meeting, state who by) | Position | Date of Meeting/ Statement | Annex |
|---|----------|-------------------------------|-------|
| | | | |
| | | | |
| | | | |
| | | | |
| | | | |
| | | | |
| | | | |
| | | | |

Evidence Collected (list all evidence collected)

The investigation has collected and considered the following items of evidence, all of which are appended to this report;

| Evidence | Date | Annex |
|------------------------|------|-------|
| i.e. Datix report XXXX | | |

i.e. Patient file notes

i.e. Occupational Health report

Evidence not Included (if applicable; list all evidence that could not be collected and/or was not considered and why)

The following evidence has not been included within the report because it was either not possible to obtain the evidence within the desired time-frame and/or the evidence was considered but was not deemed to be relevant in the context of the allegations under investigation.

| Evidence | Rationale as to why not included |
|----------|----------------------------------|
| | |
| | |
| | |

Summary of Findings

Summary of written and physical evidence (name and summarise each document contained, set out how the evidence supported or did not support your findings and why)

- **Document XX**

Details as to how this supported or did not support findings and why

Summary of witness evidence [name and summarise each witness statement, quote from statement where relevant, set out how the witness statement supported or did not support your findings and why]

- **Statement XX**

Facts established (detail what the investigation has established)

- **Allegation 1**

Details of evidence relating to this particular allegation and what your findings are.

Trust and professional policies, procedures, protocols, guidelines relevant to the investigation. (Identify which particular part of the procedure was breached (quote it) and how it was breached, see examples below)

- **The NMC Code:** Standards of conduct, performance and ethics for nurses and midwives (Appendix XX. The NMC Code incorporates the following statements...
- **The Disciplinary Procedure.** The Trust's Disciplinary procedure identifies a number of offences the organisation regards as very serious and potentially could be treated as gross misconduct. The allegations subject to this investigation report are as follows.

Include relevant details as to how the procedure was breached.

Facts that could not be established (detail any part of the investigation that was inconclusive)

Mitigating Factors (detail if there were any mitigating factors uncovered that are relevant to the investigation)

Other relevant information (detail any other information that is relevant to the matter examples below)

- Detail any professional registration bodies informed of the concern and the rationale for doing this.
- Delays to the investigation process and the reasons for this
- Reflections of the employee i.e. remorse shown by employee.
- Any other relevant information

Conclusion (Summary from investigating officer, listing the allegations in turn and identifying what evidence there is to support the allegation, and whether the employee agrees with or accepts each allegation)

In conclusion; there is evidence to support some/all of the allegations and as such, the case should be referred to a disciplinary panel for full consideration. **OR;**

In conclusion, the employee has admitted the allegations and this is supported by the available evidence and it would be appropriate to consider an agreed outcome. **OR;**

In conclusion, there is insufficient evidence to support the allegations.

Recommendations; in some instances it may be appropriate to recommend procedural improvements that could be made as a consequence of the investigation that has been conducted. This should be confined only to procedural matters and should not be a recommendation into matters for determination by a disciplinary panel.

NAME

ROLE

DEPARTMENT

DATE

TEMPLATE LETTER ~ INVITE TO DISCIPLINARY HEARING

Dear <<Insert Name>>

Re: Disciplinary Hearing

I write to advise you that the investigation into your conduct has now been completed and the investigation report has been submitted to me. The allegation(s) under investigation was <<insert detail of the allegation>>.

I have concluded that in this regard there is a case to answer to and I have arranged for a disciplinary hearing to be convened as detailed below, at which the investigation report can be considered:

Date: <<Insert Date>>
Time: <<Insert Time>>
Venue: <<Insert Venue, which may be virtual>>

<<Insert Name and Job Title>>, supported by <<Insert HR Representative name and title>> will hear the case and the Management Case will be presented by the Investigating Officer, <<insert name and job title>> supported by <<insert HR Representative name and title>>. The hearing will be recorded for the purpose of creating an accurate record.

A copy of the investigation report is enclosed to enable you to prepare your response. You have the right to be accompanied by a Trade Union representative or a workplace colleague employed by this Trust, family members or qualified legal professionals are not permitted.

You are advised that should you fail to attend at this time, the matter will be considered in absentia and you will be notified of the outcome in writing.

As a result of this hearing, sanctions may be considered in accordance with the Trust's Disciplinary Policy and Procedures, a copy of which is also enclosed. You are advised that the Trust views such allegations as [serious/gross]* misconduct and consequently the outcome of the hearing may result in a decision to [issue you with a formal warning/terminate your contract of employment with the Trust.]* **delete as applicable*

You have the right to produce a written statement of case and call witnesses. The statement of case should be forwarded to me as soon as possible together with the names of any of your witnesses.

Please confirm your attendance at this meeting by contacting <<name>> via <<insert contact details which may be an e-mail address or contact number>>.

Yours sincerely

<<Insert Name>>
<<Insert Job Title>>

cc Human Resources

TEMPLATE LETTER ~ INVITE TO DISCIPLINARY HEARING (Witness)

Dear <<Insert Name>>

Re: Witness Attendance at Disciplinary Hearing

Further to the investigation into allegations made in relation to <<insert employee's name>>, it has been determined that the matter should be referred to a formal disciplinary hearing. You have been asked by <<insert name, which should be the Chair of the Panel or the Management Representative>> to attend the hearing as a witness and the details of the hearing are given below:

Date: <<Insert Date>>
Time: <<Insert Time>>
Location: <<Insert Venue (which may be virtual)>>

On arrival, please ask for <<insert contact name>> and they notify the panel accordingly.

The purpose of inviting you to the hearing is to ask you some questions regarding the statement that you provided to the investigation in relation to the allegations made against the individual.

The meeting will be held under the Trust's Disciplinary Policy (a copy can be found on the Trust's intranet).

Please confirm your attendance at this meeting by contacting <<insert name and contact details>>.

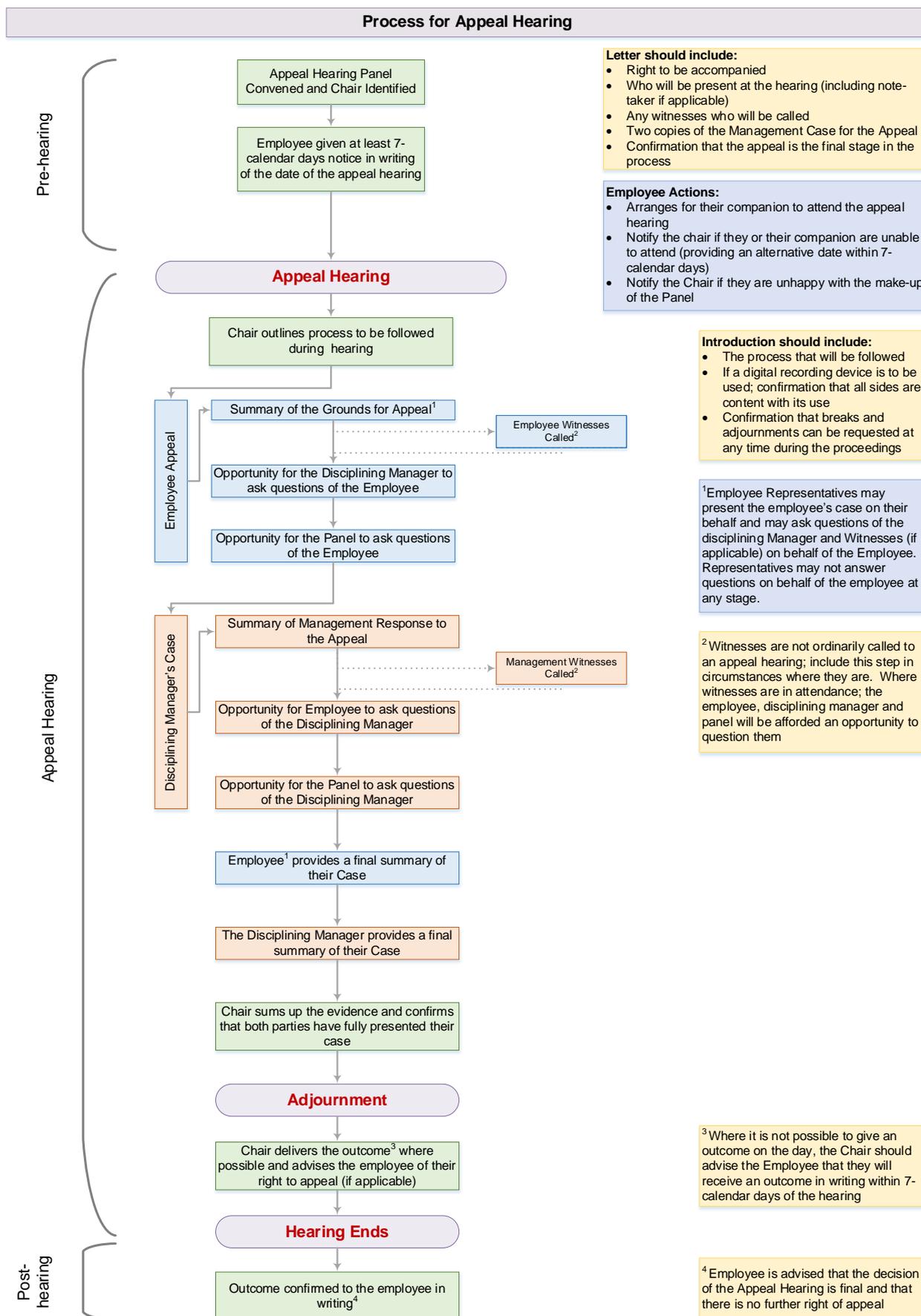
Thank you for your co-operation and assistance in this matter.

Yours sincerely

<<Insert Name>>
<<Insert Job Title>>

cc Human Resources

PROCESS FOR THE APPEAL HEARING



LEVELS OF AUTHORITY

| Policy applies to | Employees below Head of Department | Head of Department and General Managers | Associate Directors | Executive Directors |
|--|--|--|--|---|
| Authorisation to Suspend | General Manager Head of Department Executive Director Senior manager on-duty/on-call ¹ | Executive Director Senior Manager on-duty/on-call | Executive Director | Chief Executive Deputy Chief Executive |
| Authorisation to discipline up to and including dismissal | General Manager Head of Department | Associate Director/Head of Nursing Executive Director | Executive Director | Chief Executive Deputy Chief Executive |
| Right of Appeal to | Associate Director of HR Operations | Associate Director of HR Operations | Associate Director of HR Operations | Associate Director of HR Operations |
| Appeal Hearing up to and including dismissal | General Manager | Associate Director/Head of Nursing Executive Director | 2 Executive or Non-Executive Directors | Chief Executive Plus 1 Executive or Non-Executive Director |

¹ Post holders expected to implement suspensions will usually be a Band 8a or above

| | |
|--|---|
| Governance | |
| Training: <i>(training requirements – if applicable)</i> | Training for new and existing Managers on the application of the policy. Training for Investigation Officers |
| References: | |
| Search Terms: | <ul style="list-style-type: none"> Conduct/Misconduct Gross Misconduct Disciplinary Warning Final Written Warning Dismissal Summary Dismissal Conversation of Concern Agreed Outcome Panel Chair Suspension Decision Tree Investigation Officer |
| Equality Impact Assessment date completed: | April 2021 |
| Monitoring Criteria /Audit Criteria: Including the method, frequency, reporting arrangements and the responsible owner (s): Review every 3-years Director of HR/Associate Director of HR Operations | |

Equality Analysis - Impact Assessment Screening Tool for Policies

| AREA | Negative Impact | | Significant? | |
|--|--------------------------|-------------------------------------|--------------------------|-------------------------------------|
| | Y ✓ | N ✗ | Y ✓ | N ✗ |
| Gender | <input type="checkbox"/> | <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input checked="" type="checkbox"/> |
| Religion/ belief | <input type="checkbox"/> | <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input checked="" type="checkbox"/> |
| Age | <input type="checkbox"/> | <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input checked="" type="checkbox"/> |
| Disability (includes: mental health, learning disability, physical, sensory) | <input type="checkbox"/> | <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input checked="" type="checkbox"/> |
| Ethnicity (includes: travellers and gypsies) | <input type="checkbox"/> | <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input checked="" type="checkbox"/> |
| Sexual Orientation (includes: gay, lesbian, bisexual) | <input type="checkbox"/> | <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input checked="" type="checkbox"/> |
| Transgender / Tran-sexual | <input type="checkbox"/> | <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input checked="" type="checkbox"/> |
| Marriage or Civil Partnership | <input type="checkbox"/> | <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input checked="" type="checkbox"/> |
| Pregnancy or Maternity | <input type="checkbox"/> | <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input checked="" type="checkbox"/> |
| Additionally: | | | | |
| Social/Economic | <input type="checkbox"/> | <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input checked="" type="checkbox"/> |
| Rural/Urban | <input type="checkbox"/> | <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input checked="" type="checkbox"/> |
| Health Inequalities | <input type="checkbox"/> | <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input checked="" type="checkbox"/> |
| Application of NHS Accessible Information Standard | <input type="checkbox"/> | <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input checked="" type="checkbox"/> |

Impacts are usually measured in terms of positive, neutral and negative impact; e.g., it is useful to record if an impact is significantly positive for one group and neutral or negative for another group and to weigh up this along with the size of the groups within decisions.

For the purposes of this policy, it is a significant positive impact to include and ensure that all these factors will be considered and embedded in all strategies, policies, procedures and frameworks written. This is along with the use of the Equality Analysis - Impact Assessment Screening Tool for Policies, which will ensure that informed decisions are made that enable fair treatment, access and inclusion.

For any boxes marked as 'yes' above please complete details below:

| Area | Issue | Further Steps to be Taken |
|--------------------------|--------------------------|---------------------------|
| <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |

Negative Impact

- Q1. Will the policy create any problems or barriers to any community or group? No
- Q2. Will any group be excluded because of the policy? No
- Q3. Will the policy have a negative impact on community relations? No

If yes, a full equality assessment must be done.

WILL THE POLICY ...

**POSITIVE
IMPACT**

**State How, i.e. evidence
used to reach this
decision**

| | POSITIVE IMPACT | | State How, i.e. evidence used to reach this decision |
|--|-----------------|-----|--|
| | Y ✓ | N ✗ | |
| 1. Remove the risk of direct or indirect discrimination | ✓ | | |
| 2. Remove the risk of poor conduct or harassment | ✓ | | |
| 3. Promote good community relations | N/A | | |
| 4. Promote a positive attitude between and to people of different groups | ✓ | | |
| 5. Encourage participation of people from different and under-represented groups | N/A | | |
| 6. Consider more favourable treatment of disabled people | ✓ | | |
| 7. Promote and protect human rights | ✓ | | |
| 8. Promote Equal Opportunities and Fair Treatment | ✓ | | |
| 9. Promote Access and inclusion | ✓ | | |
| 10. Promote Dignity and Respect | ✓ | | |

Assessed By:

| | | | |
|----------------|--|--------------|---|
| Signed: | <input type="text"/> | Date: | <input type="text" value="18<sup>th</sup> May 2021"/> |
| Name: | <input type="text" value="Helen Smith"/> | Post: | <input type="text" value="HR Advisor ~ Projects"/> |
| Signed: | <input type="text"/> | Date: | <input type="text"/> |
| Name: | <input type="text"/> | Post: | <input type="text"/> |