
Policy and Procedure

Disciplinary P&P

Key messages

- It is the responsibility of managers to set and maintain clear standards of expected conduct and behaviour with their employees.
- The Trust's disciplinary policy provides a framework to deal with issues of misconduct in a fair, reasonable and consistent way.
- The policy has been reviewed in partnership with trade union partners and incorporates best practice taken from the nationally recommended Imperial College Healthcare NHS Trust disciplinary policy and procedure and 'Just and Learning Culture' management principles.
- For misconduct that may result in a formal warning, the disciplinary policy and procedure needs to be followed prior to the issuing of a formal warning.
- For misconduct where the employee has accepted responsibility and the facts are not in contention, a fast track disciplinary process can be used (unless the possible outcome could be dismissal).
- Whilst suspension or exclusion may be necessary in circumstances where a serious allegation has been made, the Trust does not underestimate the impact of suspension or exclusion and will always consider alternatives where possible.
- Employees will have the right to appeal against first and final written warnings and dismissal.

Foreword

We are pleased to write the foreword for this comprehensively reviewed disciplinary policy.

On the 23 May 2019, Baroness Dido Harding (Chair, NHS Improvement), in light of the tragic death of Nurse Amin Abdullah, wrote to all NHS trusts and foundation trusts requesting an urgent review of disciplinary processes and procedures, to improve people management practices. In response to this request, Cambridge University Hospitals NHS Foundation Trust (CUH) is seeking to embrace and embed restorative Just and Learning Culture (JLC) principles in the way concerns and complaints made against employees are managed.

The JLC principles CUH has embedded in its improved people management practices are:

- There will be no rush to judgement; the management focus is on what happened, not on who did it.
- A preliminary review of an incident or complaint will be undertaken to inform any management decisions before a disciplinary process is instigated.
- A pre-action review process is now embedded in the disciplinary procedure, requiring a collective management decision making process when management consider complaints or concerns against staff members.
- Management decision making is based on the principles of fairness, reasonableness and proportionality.
- Management strategies for dealing with complaints and concerns against staff members have been recalibrated, focusing on informal and early intervention wherever reasonably possible.
- The use of suspension (exclusion for medical and dental staff) from duty will only be used as an option of last resort and will only be sanctioned by a senior manager or director.
- The tone and language used in correspondence regarding disciplinary matters will reflect the Trust's values of – Together: Safe, Kind, Excellent.

Additionally, following Baroness Harding's original communications, the NHS Chief People Officer wrote to all NHS trusts and foundation trusts on 1 December 2020 urging all organisations to review their disciplinary policies and procedures using the Imperial College Healthcare NHS Trust disciplinary policy and procedure as an example of good practice. CUH has undertaken this and it will seek to continue to learn from other examples of good practice.

CUH is absolutely committed to the health and well-being of all staff which extends to fair, reasonable and proportionate people management practices incorporating JLC principles. CUH will always endeavour to minimise the potential for psychological harm.

We thank all management and staff side colleagues who worked together in a spirit of collaboration and partnership to complete this very important undertaking and to make the aims that we have together set out a reality.

Director of Workforce and Staff Side Co-Chairs

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1 Scope

The scope of this policy is Trust-wide: This procedure applies to all non-medical and dental staff.

In relation to medical and dental staff the Disciplinary Policy and Procedure applies for issues of personal misconduct.

The national 'Maintaining High Professional Standards in the Modern NHS' (MHPS) framework applies to all medical and dental staff for issues relating to:

- professional misconduct
- capability
- ill-health
- exclusions (suspension/ exclusion terms are used interchangeably and arrangements for medical and dental staff are set out in MHPS)

This is a Trust policy which does not form part of the employees' contracts of employment. It may be amended by the Trust following consultation with staff side.

2 Purpose

To provide a framework to manage concerns about someone's conduct in a fair, reasonable, and timely way. It aims to support people to achieve and maintain the required standards of conduct, and to learn from mistakes.

The fair treatment of employees supports a culture of fairness, openness and learning in the NHS by making employees 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.

Whilst this policy is designed to emphasise standards, and wherever possible, to encourage improvements in behaviour, a breach of discipline that results in an employee being issued with a first or final warning constitutes conduct that is contrary to the Trust's expected standards. In such situations, for those staff on NHS Agenda for Change terms and conditions, this will result in the next pay step not being awarded as outlined in the [ADR and pay progression procedure](#).

3 Delegated authority to take disciplinary action

Information regarding delegated authority to take disciplinary action is detailed in [appendix 1](#).

4 Definitions

4.1 Staff side representative

In this document where the term 'staff side representative' is used, this refers to a shop steward, branch official or representative appointed and accredited by a nationally recognised NHS negotiating body and officially recognised by Cambridge University Hospitals NHS Foundation Trust.

5 Introduction

This document sets out the policy and procedure for dealing with disciplinary matters within Cambridge University Hospitals NHS Foundation Trust.

6 Manager responsibilities

- To ensure employees are aware of the required standards of conduct which they are expected to observe/ achieve, and for bringing any concerns to the attention of the employee at the earliest opportunity.
- To maintain Trust standards of conduct and behaviour within the group of employees for whom they are responsible.
- To deal appropriately with employees whose conduct falls short of that required by the Trust.
- To ensure all action taken under this policy and procedure is fair, reasonable and proportionate and that the disciplinary policy and procedure is consistently applied in a timely manner.

7 General principles and information

7.1 Principles

- Employees will be encouraged to maintain standards of conduct and behaviour in line with the Trust's expectations.
- Wherever possible, employees will be informed of any allegation against them at an early stage and will be provided with the opportunity to state their case before any decision to commence a formal investigation is taken.
- Employees will have the right to be represented by a staff side representative and/or accompanied and supported by a work colleague/ Trust chaplain, friend or family member or support worker not acting in a legal capacity, during a disciplinary investigation meeting, hearing or appeal.
- Employees will have the right to appeal against a first or final written warning or dismissal.

- The procedure may be implemented at any stage if the employee's alleged misconduct warrants formal action.
- AfC Bands 2-9 – the next pay increment will be delayed where a first or final warning has been issued. For those on the top point of bands 8c, 8d and 9, salary will be reduced by 5% or 10% until the end of the following year. Paragraph 12 provides further detail.
- Disciplinary cases will be treated sensitively and confidentially. Information will only be shared with those who have a legitimate right to be informed in accordance with Data Protection Act 2018 and the Common Law Duty of Confidentiality. Breaches of confidentiality by any party may result in disciplinary action.

Note: Issues relating to sickness absence will be managed in line with the [Sickness Absence and Attendance Procedure](#). Concerns relating to employee work performance will be managed in line with the [Managing Employee Performance Procedure](#).

7.2 Maintaining standards of employee conduct and behaviour

It is the responsibility of managers to set clear standards of expected conduct and behaviour and ensure understanding and agreement of what is expected with the employee.

Where a manager considers that action should be taken to encourage an employee to improve their conduct, they should meet informally with the employee in order to address the issues at an early stage. This meeting will be used to bring to the employee's attention the aspects of conduct that are unsatisfactory. The manager should reiterate the acceptable standards of behaviour and ensure understanding and agreement of what is expected with the employee.

A file note should be made with a copy provided to the employee or alternatively, if this is not felt sufficient, then a management letter can be given. The manager should provide any additional support or essential training identified as being necessary, and offer additional supervision where appropriate, set clear targets and monitor the outcomes. The employee should commit to achieving the necessary improvements in their conduct.

This approach forms part of the normal management process and does not form part of the disciplinary procedure.

7.3 Reasons for disciplinary action

The lists below are not exhaustive and there may be actions which do not appear but may nevertheless be the subject of disciplinary action. If an employee is unsure about the rules that apply or the expected standard of conduct they must ask the person to whom they are responsible.

7.3.1 Misconduct

Examples of misconduct where a form of warning may be necessary or where cumulative or repeated acts could lead to dismissal are as follows (the list is not exhaustive):

- **repeated lateness for work**
- **being offensive/ rude** to a patient, member of staff or the public
- **drug errors** not warranting more serious action
- **failure to follow reasonable management instructions**
- **unauthorised absence**
- **breaches of the Trust behaviour standard (CUH values of ‘Together – Safe, Kind, Excellent’) where capability is not considered a factor**
- **minor breaches of health and safety**
- **refusal to wear appropriate uniform/ protective clothing where provided**
- **failure to follow sickness reporting procedure**
- **breaches of data and patient confidentiality (including the inappropriate use of Epic)**

7.3.2 Gross misconduct

Gross misconduct is defined as misconduct of such a serious nature that the Trust is justified in no longer tolerating the employee’s continued presence within the organisation.

Where there may have been acts of gross misconduct, a full investigation must still be carried out and the full disciplinary procedure followed. Instances of gross misconduct can lead to summary dismissal after a formal investigation and disciplinary hearing, if the allegations are found to be substantiated.

Examples of gross misconduct where summary dismissal may be issued include (the list is not exhaustive):

- **theft or attempted theft**
- **fraud** – any deliberate attempt to obtain money or goods through falsification of any records, or documents that relate to your employment.
This includes:
 - personal use of hospital tests (eg blood tests) and services (eg postal services)
 - falsification of time sheets/ misuse of time clocks
 - travel claims, etc

- **violence or assault** – upon a patient, member of staff or member of the public
- **indecent or sexual offences**
- **malicious damage**
- **dishonest practice** – for example using position for personal gain
- **wilful negligence** or any action or failure to act which threatens the health and safety of any patient, member of staff or member of the public
- **being unfit for duty** for other than medical reasons
- **disclosure of confidential information** of a personal or patient related nature to unauthorised persons
- **abuse of Trust equipment/ property**
- **breaches of Trust policies, procedures or protocols** that lead to a serious incident
- **breaches of Trust policy through the inappropriate use of social media/ networking sites**

7.4 Conduct outside work

All examples outlined in [section 7.3](#) relate to employment.

The employee should also understand that their behaviour outside of the working environment (including staff residences) could be dealt with under the Trust's disciplinary procedure if it affects continued suitability for employment eg if an employee is convicted of a serious criminal offence which is not directly related to employment, this could still be regarded as gross misconduct and could result in dismissal without a notice period. Furthermore, other acts outside employment could also lead to disciplinary action, eg where incidents could bring the Trust into disrepute. This includes the use of social media and networking sites where the content of an employee's messages or posts are considered inappropriate, especially where it is obvious or there is inference that the author is an employee of the Trust.

7.5 Types of disciplinary action

7.5.1 Informal process

There will be occasions when a manager or supervisor will have to bring misconduct matters such as lateness to an employee's attention. The Trust recognises that cases of minor misconduct are best dealt with informally and quickly. This conversation will include a reiteration of the expected standards of conduct with confirmation by the employee that they understand what is required. In many cases additional training, coaching and advice may be needed. The manager will talk to the member of staff in private as soon as possible. This will be a two way discussion, aimed at talking through

shortcomings and encouraging improvement. The manager will also discuss any support or training the member of staff may need.

Following the conversation a file note should be made (using the file note pro-forma) and a copy provided to the employee. The file note should be retained on the employee's personal file for three months, after which time it should be removed.

Where misconduct continues whilst under a live file note and it is felt the matter does not warrant a formal process a management letter can be given. A management letter can also be given if it is deemed informal action is the appropriate step to take but a file note would not be sufficient. Managers should meet with the employee to discuss the misconduct and expected standards. A management letter should then be sent to the employee detailing the conversation which took place (template letter can be obtained from HR Consult). The management letter should be retained on the employee's personal file for six months, after which time it should be removed.

These actions should be regarded as the informal day-to-day process of maintaining an acceptable standard of conduct/ behaviour within the workplace.

There will be circumstances when the removal of management letters from personal files may not be appropriate, for example, because of the disclosure and reporting obligations to regulatory professional bodies. In such circumstances, the appropriateness of retaining records will be subject to the test of fairness, reasonableness and proportionality as considered appropriate by the relevant registered professional lead (eg chief nurse, medical director, director of Workforce, responsible officer). In all other circumstances this will be considered by a divisional head of Workforce, Employee Relations manager, or Medical Staffing manager.

7.5.2 Formal process

The following levels of formal warnings may apply depending upon the seriousness of the case (further detail is also provided in [section 9](#)):

- **Verbal warning**
A verbal warning will apply for a first offence of an act of misconduct not warranting a higher level warning.
- **First written warning**
A first written warning will apply for more serious misconduct, or where there has been a repetition or no satisfactory improvement in the behaviour for which the employee received a formal verbal warning.
- **Final written warning**
A final written warning will apply where there has been a failure to improve behaviour following previous warnings, or repetition of the same

misconduct. However, if the misconduct is sufficiently serious, it may be appropriate to issue a sanction at this level straight away.

- **Dismissal**

An employee can be dismissed from their employment with the Trust in the following instances:

- If the employee has a current written warning and there has been any similar or related misconduct within the warning period, the outcome will be dismissal with the required period of notice (pay in lieu), **or**
- Where an act of gross misconduct has been found, the outcome will be summary dismissal without notice or pay in lieu of notice.

8 Duration of warnings

Warnings will expire after the following time lapse after which time they should be removed from the employee's personal file and shredded subject to satisfactory conduct and behaviour:

Informal:

- File note 3 months
- Management letter 6 months

Formal:

- Verbal warning 3 months
- First written warning 6 months
- Final written warning 12 months and up to 24 months in exceptional circumstances eg as an alternative to dismissal

Should the employee again be the subject of disciplinary action, warnings which have expired cannot be taken into account, unless in exceptional circumstances.

There will be circumstances when the removal of management letters from personal files may not be appropriate, for example, because of disclosure and reporting obligations to regulatory professional bodies. In such circumstances, the appropriateness of retaining records will be subject to the test of fairness, reasonableness and proportionality as considered appropriate by the relevant registered professional lead (eg chief nurse, medical director, director of Workforce, responsible officer). In all other circumstances this will be considered by a divisional head of Workforce, Employee Relations manager, or Medical Staffing manager.

9 The formal disciplinary procedure

For all allegations of misconduct that may warrant formal action, including verbal warnings, there will be an investigation of the facts which may include investigatory meetings. Investigations will be carried out without unreasonable delay. The process to be followed will be appropriate to the circumstances and level of misconduct. This ensures that issues are identified and addressed appropriately and in a fair and consistent manner.

9.1 The right to representation and support

Any employee who is the subject of disciplinary investigation or action or who has been suspended or excluded from duty has the right to be represented by a staff side representative and/or accompanied and supported by a work colleague, Trust chaplain, friend or family member or support worker not acting in a legal capacity. This applies to investigations and disciplinary hearings.

There is no entitlement to legal representation.

No disciplinary action will be taken against recognised staff side representatives or branch officials until a full-time official of the appropriate staff organisation has been notified. No details of the case will be disclosed to the full-time official without the agreement of the individual concerned.

9.2 The investigatory process

9.2.1 Initial investigation

The initial investigation of the facts will be undertaken normally within the department to determine if there are reasonable grounds for an allegation of misconduct. This should commence as soon as possible and be concluded normally within 48 hours.

The initial investigation may involve statements being taken from the employee and witnesses and the details of the incident being reviewed within the context of Trust policies and procedures.

In the case of a repeated minor misconduct, eg timekeeping, a minimal investigation may be required.

The outcome of the initial investigation will be one of the following:

- no case to answer
- consideration of whether to proceed to a full investigation.

Before initiating a full investigation, the Pre-Action Review pro-forma should be completed by the reviewing manager before a decision to commence a formal disciplinary investigation is taken. It should be used to comprehensively consider the allegation, circumstances and mitigations, as well as checking for any

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unconscious bias. This will be completed in conjunction with ER/ Medical Staffing/ cultural ambassadors as appropriate.

Where an allegation is considered to be potential gross misconduct, the outcome of the initial investigation could lead to suspension or exclusion, pending full investigation (see [section 9.3](#))

9.2.2 Full investigation

The investigation will be conducted by investigating officers, one of which will be a member of staff from human resources (HR), with sufficient experience/ training to undertake the role. The investigating officers cannot be the same individual hearing the case nor can they be a witness to the alleged incident of misconduct.

Formal investigations in relation to allegations of misconduct by medical and dental staff will be in line with the requirements of MHPS.

The extent of the investigation will depend upon:

- the nature and complexity of the alleged misconduct – including whether there is a current warning on file for similar/ related misconduct
- if the employee accepts responsibility for the misconduct

9.2.3 Length of investigations

The investigation should commence as soon as possible and be carried out without unreasonable delay, with a clear terms of reference of what is to be investigated.

An investigation involving less than serious misconduct should be completed within two to four weeks. If these timescales are not possible, the employee under investigation should be advised of the delay and given an indication of the likely duration of the investigation.

An investigation involving serious misconduct and/or where suspension is involved should normally be completed as swiftly as possible and ordinarily within six to eight weeks.

The length of investigations are determined by the availability of participants, the complexity of the case and the numbers of witnesses involved. Cases involving medical and dental staff ordinarily take longer to investigate than the time frames stated above.

9.2.4 Other allegations requiring investigation

During the investigatory process, other allegations may arise that require investigation. In such cases, a decision will be made by the commissioning or case manager (the person responsible for commissioning the investigation,

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investigation team and who will clearly define what is to be investigated) as to whether these allegations will be included in the original investigation or require a separate process.

If any staff member engages in dishonest or deceitful behaviour during a formal investigation, or seeks to impair the conduct of the investigation in any way (eg by interfering with witnesses), this will be regarded very seriously and could warrant action under this procedure and could amount to gross misconduct.

9.2.5 External investigations (police, counter fraud, etc)

Where there are external investigations, eg police or counter fraud, the Trust will normally proceed with its internal investigation and disciplinary process. Exceptions may apply where it would prejudice any criminal action bearing in mind that the burden of proof required under employment law is less than that required under criminal law.

If an employee is charged or convicted of an offence, whether committed on or off duty, the Trust will consider whether the offence renders the employee unsuitable for continued employment and may take formal action up to and including dismissal. The Trust reserves the right to take action independently of any legal proceedings.

If an employee is the subject of a police investigation or arrested, they are obliged to inform their manager so that the manager can consider whether any steps are required eg to protect the safety of others.

Where allegations that occur outside of the Trust are brought to the attention of the Trust by other agencies or professional bodies, and those allegations have the potential to bring the Trust into disrepute or may affect the suitability of the employee to continue in Trust employment, the Trust will investigate as reasonably as is practical. If it is considered the actions of the employee damage the relationship of trust and confidence with the Trust, action up to and including dismissal may be taken.

9.2.6 Supporting employees

Being subject to 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 make sure employees are kept informed of what is happening giving them an opportunity to ask questions thereby minimising stress and lessening the chance of mental health issues arising.

Managers are responsible for maintaining communications and will make every effort to ensure employees receive clear, timely, comprehensive and sensitive

information about the allegation and regular progress updates on any investigation until the matter is concluded.

Where there are concerns about an employee's health or well-being, occupational health advice will be obtained.

Employees, including those who are involved as witnesses, are entitled to be supported by an appropriate manager and will have access to other sources of support, ie staff side representatives, Freedom to Speak Up Guardian, Health Assured, Chaplaincy, Occupational Health, etc.

9.3 Suspension/ exclusion (term used interchangeably)

9.3.1 Safeguarding children and vulnerable adults

The Trust must follow safeguarding children and safeguarding vulnerable adult protocols when applying the suspension process. See [appendix 2](#).

9.3.2 Suspension as a precautionary measure

In most cases, suspension from work will not be necessary and the employee will be able to continue doing their normal job while an allegation is investigated. If suspension is deemed appropriate, it is a precautionary measure undertaken in circumstances where a serious allegation has been made and it is considered in the best interest of the employee and/or other parties for them to remain away from the workplace whilst investigations take place. It is not a form of disciplinary sanction and there is no assumption of guilt.

Suspensions will be managed sensitively and confidentially.

Suspension will only normally be considered if there is a serious allegation of misconduct and where any of the following apply:

- the initial assessment of the allegation concludes the offence could warrant dismissal for gross misconduct
- working relationships have severely broken down
- there is a risk of an employee tampering with evidence or influencing witnesses or the investigation
- there is a risk to the employee themselves, other employees, property or patients
- the employee is the subject of criminal proceedings which may affect whether they can do their job

Payment during suspension will be on full pay, and will be based on total average earnings received during the preceding three months.

The Trust does not underestimate the impact of suspension and it will always consider alternatives to suspension such as: restricted duties, supervised practice, change of working hours, removal from on-call, change of workplace

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etc. If alternatives to suspension are applied, the employee will receive their normal rate of pay.

Where suspension is applied the Trust is committed to ensuring investigations are dealt with as swiftly and sensitively as possible. Employees have the right to be accompanied at a suspension meeting where possible, but may not be practicable in the out-of-hours period.

9.3.3 Authorisation to suspend an employee from duty

Normally the decision to suspend will be taken by a senior manager and HR representative at band 8b and above.

Situations will occur when senior members of divisional board, senior members of Workforce and professional leads are not available, for example weekends and nights. In these circumstances the operational matron on duty should make the decision on if the employee needs to be sent home on authorised paid leave until a decision to suspend can be discussed.

The suspension of a nurse, midwife or allied health professional will only be undertaken after consultation with the chief nurse or alternative professional lead (or designated deputy), and for medical/ dental staff after consultation with the medical director (or designated deputy). This consultation may need to be undertaken retrospectively if the decision to suspend was in unsocial hours.

9.3.4 Written confirmation of suspension

The suspending manager must write to the suspended employee within three working days enclosing the [suspension information sheet](#).

The letter must:

- confirm the reason for the suspension
- confirm that alternatives to suspension have been considered and the reasons why this was not possible
- inform the employee of their right to raise their concerns to the next line of management senior to the suspending manager if they feel that the suspension is unfair or for an unreasonable period
- confirm the support available

9.3.5 Appeal against suspension

If the employee feels the suspension is unfair or is continuing for an unreasonable length of time, they may appeal to the line manager of the suspending manager.

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9.3.6 Support for the employee while on suspension

The line manager should ensure that suspended employees are able to access information to help prepare their response to the allegation.

The employee will be allocated a member of the Employee Relations team, with no connection to the case, who will be a key source of support as required.

The employee will also be advised of other sources of support, ie staff side representatives, Health Assured, Chaplaincy, Occupational Health, etc.

9.3.7 Access to Trust facilities while on suspension

Suspended staff are normally allowed access to Trust facilities such as:

- the occupational health service
- the staff health centre for staff registered with the GP service
- the Frank Lee Leisure Centre
- the concourse, and food court for staff living onsite
- trade union facilities
- chaplaincy service

Note: Depending on the nature of the allegation, restrictions to the above may be applied. The employee would always be advised of any such restrictions.

9.3.8 Review of suspension

The suspension will be reviewed every three weeks (for medical/ dental staff exclusion review see MHPS) by the investigating managers (and in the case of nurses, midwives and allied health professionals in conjunction with the chief nurse's office or in the case of medical/ dental staff, with the medical director's office, as appropriate) and the employee will be informed of the outcome of each review. The review should consider whether the employee should remain on suspension and whether all alternatives have been considered.

9.3.9 Lifting of suspension

If, at any time after the employee has been suspended, the investigation shows that either:

- the allegations are without foundation, or
- further investigation can continue with the employee returning to work;

the employee will be allowed to return to work as soon as practicable without compromising the potential outcome of any hearing. This may be under supervision, restricted/ changed duties or altered hours of work. It may also involve a change of base or role during any continued investigation.

Depending upon the length of the suspension, consideration will be given by the manager to the provision of any support and/or training that may be necessary to assist the employee's smooth reinstatement in the workplace.

Records of any suspension which does not lead to disciplinary action must be safely and confidentially destroyed.

9.4 Investigation conclusion

The outcome following the completion of the investigation will depend on the complexity of the case:

- i) for a straightforward case the findings will be summarised in a case summary that will outline the key findings,
- ii) more complex cases will require an investigatory report; this will provide more detailed information and may include enclosures/ statements etc.

The outcome of the investigation as determined by the commissioning/ case manager will be one of the following:

- **No case to answer:** the employee and their representative should be informed immediately.
- **Informal action** (as outlined in [section 7.5](#)).
- **Proceed to a 'fast track' disciplinary hearing:** the employee has accepted responsibility and the facts are not in contention. The fast track process cannot be used in cases where a possible outcome could be dismissal.
- **Proceed to a disciplinary hearing:** the findings of the investigation demonstrate there is a case to answer and either the facts are in contention and/or the seriousness of the case requires a full hearing.

10 The disciplinary hearing process

10.1 HR involvement at disciplinary hearings

An HR representative must attend any disciplinary hearing.

The Trust is committed to ensuring hearing panels are diverse and panel members will be selected (see [appendix 1](#)) to achieve this, where possible. If employees have any concerns in relation to diversity or possible bias of the panel, they can raise this with their Employee Relations manager/ head of Employee Relations.

Panel members will have no previous involvement in the case or any conflict of interest that could influence decision making.

10.2 The disciplinary hearing – fast track process

The fast track disciplinary hearing follows the format outlined in [section 10.3](#) with the following exceptions:

- Where the option of a fast track is offered the employee will be given seven days to consider whether they wish to proceed under the fast track process.
- An employee may choose to waive their right to five days' notice of the meeting in order to expedite the process. The employee should check that the person representing or accompanying them is able to attend a meeting with less than five working days' notice.
- Given that the employee has accepted responsibility and the facts are not in contention, a sanction may be applied in line with the seriousness of the misconduct. The maximum possible outcome of a fast track disciplinary hearing would be a final written warning.
- For cases where more than one employee has accepted responsibility for a given offence, a group disciplinary meeting may be offered, subject to the joint agreement with the employees and their staff side representative. This does not preclude an individual's right to be granted an individual fast track disciplinary hearing if they so wish.

10.3 The disciplinary hearing

10.3.1 Arranging hearing and timescales

A full hearing will be arranged where the commissioning/ case manager decides that the findings of the investigation demonstrate there is a case to answer, the facts may be in contention and/or the case is considered sufficiently serious.

The hearing will be convened at the earliest opportunity following the conclusion of the investigation, whilst dependent on panel members, witnesses and those required to be present at the hearing. If for exceptional circumstances there are significant delays, the employee must be advised.

10.3.2 Invitation letter

The letter containing the disciplinary hearing arrangements must contain:

- the allegation
- the right to representation and support
- the maximum possible outcome sanction
- that an HR representative will attend the hearing (as stated in [section 10.1](#))

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- details of the composition of the hearing panel (in accordance with [appendix 1](#))
- a copy of the case summary or investigatory report
- copies of statements and details of any witnesses

Wherever possible, those making statements will be available for questioning.

Where a witness who has provided a statement is not called for questioning by the employee, their statement will still be admissible as evidence.

The following, whilst not exhaustive, are examples of witnesses who would not be expected to be available for questioning and their evidence and statements would be presented by the investigation manager:

- minors
- patients
- members of the public
- ex-employees
- some employees (when it is mutually agreed by both parties that it is not necessary to call them as witnesses)

10.3.3 Outcome

The hearing manager, in consultation with the other panel members and HR support, decides whether the allegations are substantiated on a balance of probabilities and the level of sanction to be issued.

Where no formal sanction is applied, an outcome letter must be issued.

In circumstances where management instruction is to be followed, a management letter must be issued.

Where disciplinary action is taken, the hearing manager must explain the following:

- which level of warning has been issued
- why the warning has been issued
- the required standard of conduct and behaviour and the process for reviewing this
- that further disciplinary action will be taken if there is any similar or related misconduct within the warning period
- that the warning will remain on file for the time period appropriate to the level of warning (as stated in [section 8](#))

- the next pay step date will be delayed (for those on the top point of bands 8c, 8d and 9 salary is reduced by 5% or 10% from the pay step date until the end of the following year). [Section 12](#) provides further detail.
- the employee's right to appeal against the warning.

All these factors must be confirmed in a letter to the employee with a copy being made available to their representative, if requested, within five working days of the meeting.

11 Dismissal

Following investigation and a full disciplinary hearing, an employee can be dismissed in two circumstances.

11.1 Dismissal following a final written warning

If an employee has a final written warning and there is a further breach of discipline for a similar or related offence, then the employee may be dismissed, subject to full consideration of the facts and mitigation. Pay in lieu of notice will be given.

11.2 Dismissal for gross misconduct

If an act of gross misconduct is found, an employee may be summarily dismissed, subject to full consideration of the facts and mitigation. Gross misconduct decisions are immediate without notice pay.

If it is decided that the employee should be dismissed the employee must be informed of the following:

- the reason for dismissal, with reference to previous warnings
- the mitigation and consideration of alternatives to dismissal considered where appropriate
- the employee's right to appeal (and provided with an Appeal Pro-forma)
- the effective date of dismissal
- that an alert will be placed on their file to risk assess any future applications to the Trust

These facts must be confirmed as soon as possible and ordinarily in writing within five working days of the hearing.

Note: Where the employee is covered by a professional registration body and the reason for dismissal may be considered a breach of the professional code of conduct, the Trust will refer the case to the relevant organisation eg Nursing and

Midwifery Council (NMC), Health and Care Professions Council (HCPC), General Medical Council (GMC) or General Pharmaceutical Council (GPhC).

Where this applies the employee will be advised of this in writing.

12 Impact of disciplinary action on pay

Being issued with a first or final written warning will result in the next pay step being delayed for the duration that the sanction is live on the employee's file. For those on the top point of bands 8c, 8d and 9 salary is reduced by 5% or 10% from the pay step date until the end of the following year.

Any impacts on pay progression will be advised in writing.

13 Retention of warnings on personal files

When the period of the warning has elapsed the manager must remove any documentation of the warning from the employee's personal file and destroy it confidentially, assuming there has been no further breach of discipline within the warning period. An employee will have the right to inspect their personal file to ensure such records have been removed.

As stated in [section 8](#) of this policy, the retention of warnings given to registered professionals will be subject to the test of fairness, reasonableness and proportionality, as considered appropriate by the relevant registered professional lead (eg chief nurse, medical director, director of Workforce, responsible officer). In all other circumstances this will be considered by a divisional head of Workforce, Employee Relations manager, or Medical Staffing manager.

14 Right of appeal against formal written warnings (first and final) and dismissal

All employees have the right to appeal against receiving a written warning (first and final) or against dismissal. Appeals will be handled in accordance with the appeals procedure.

Appeals for first/ final written warnings will be heard by the next level of manager up from the hearing panel chair. In cases of dismissal the appeals panel will consist of one executive director and one non-executive director. The appeal must be made in writing within 21 calendar days of receipt of the dismissal letter using the appeal form provided.

In cases of continued unauthorised absence where an employee is issued a final written warning the appeal must be made in writing within seven days of receipt of the letter.

The Trust is committed to ensuring appeals panels are appropriately diverse in representation, experienced and trained. Panel members will be selected to achieve this. If employees have any concerns in relation to bias or the diversity of the panel, they can raise this with the head of Employee Relations, Employee Relations manager or divisional head of Workforce.

Appeal panel members will have no previous involvement in the case or any conflict of interest that could influence decision making (see [Appeals Procedure](#)).

15 Confidentiality

Any suspension, investigation or disciplinary action taken under this procedure is confidential.

16 Monitoring compliance with and the effectiveness of this document

The workforce directorate will, in conjunction with the Policy Sub-group of the Management Staff Forum, monitor the effectiveness of the Disciplinary Policy and Procedure on an ongoing basis.

The number of disciplinary cases and outcomes are recorded on electronic staff record system and, as part of the annual equal opportunities employment monitoring, reports will be used to audit the number of disciplinary cases across all protected groups to check that there is no adverse impact on any particular group.

17 Associated documents

- [Appeals procedure](#)
- [Appraisal and development review \(ADR\) and pay progression](#)
- [Grievance and dignity at work procedure](#)
- [Sickness absence and attendance policy and procedure](#)
- [Managing employee performance procedure](#)
- [Safeguarding children policy](#)
- [Safeguarding adults policy](#)
- [Suspension information sheet](#)

Equality and diversity statement

Cambridge University Hospitals NHS Foundation Trust is committed to a policy of equal opportunities in employment. The aim of this procedure is to ensure no job applicant or employee receives less favourable treatment because of their race, colour, nationality, ethnic or national origin, or on the grounds of their age, gender, gender reassignment, marital status, domestic circumstances, disability, HIV status, sexual orientation, religion, belief, political affiliation or trade union membership, social or employment status or is disadvantaged by conditions or requirements which are not justified by the job to be done. This policy and procedure concerns all aspects of employment for existing staff and potential employees.

Disclaimer

It is **your** responsibility to check against the electronic library that this printed out copy is the most recent issue of this document.

Document management

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Appendix 1: Delegated authority to take disciplinary action

The Board of Directors has delegated authority to take disciplinary action to the appropriate level of management. This will depend on the management structure of individual departments but will normally be delegated as follows:

- i. dismissal – executive director or director, their direct reports and one level below
- ii. final written warning – as (i) down to head of department
- iii. formal verbal and first written warnings – as (i) and (ii) down to immediate supervisor/ manager.

If the appropriate manager is not available to either take dismissal action or issue a final written warning, an officer of equivalent or higher grade should act for them.

Appendix 2a: Safeguarding child protection protocol

Protocol to follow when reporting an allegation/ suspicion that a member of staff has abused a child in the course of employment:

Where an allegation of abuse is made against a member of staff there will be three strands to the investigation:

1. The inter-agency child protection investigation.
2. The police investigation of whether a crime has been committed.
3. The Trust's disciplinary procedures.

Action:

1. Inform the manager of the member of staff who will take immediate steps to ensure the safety of the child concerned, and consider the safety of any other relevant children.
2. The member of staff should be suspended immediately, pending the outcome of investigations. The manager will seek the advice of HR in regard to any subsequent action which may be required under the Trust's disciplinary procedures.
3. The manager will immediately refer the allegation to the social services department in the child's home address area, and the local police Child Protection Unit for investigation. Police and social services will then determine how they will investigate, including obtaining parental consent to interview or examine the child.
4. There must be an inter-agency discussion as to whether medical advice should be sought, and if so consideration will be given as to the appropriateness of a medical examination. A decision must also be made about appropriate consent being obtained for the above.
5. A strategy meeting will be convened before or after the investigation involving the core child protection agencies.
6. Detailed guidance on the management of child abuse allegations will be in compliance with Cambridgeshire Local Safeguarding Children's Board (formerly known as Cambridgeshire ACPC) inter-agency procedures: these should also be consulted.

Appendix 2b: Protection of vulnerable adults

In the event of an employee being suspected of abusing a vulnerable adult, the relevant director or senior manager should be notified and the HR manager involved at the earliest opportunity. A decision will be taken on whether to suspend pending the outcome of investigations.

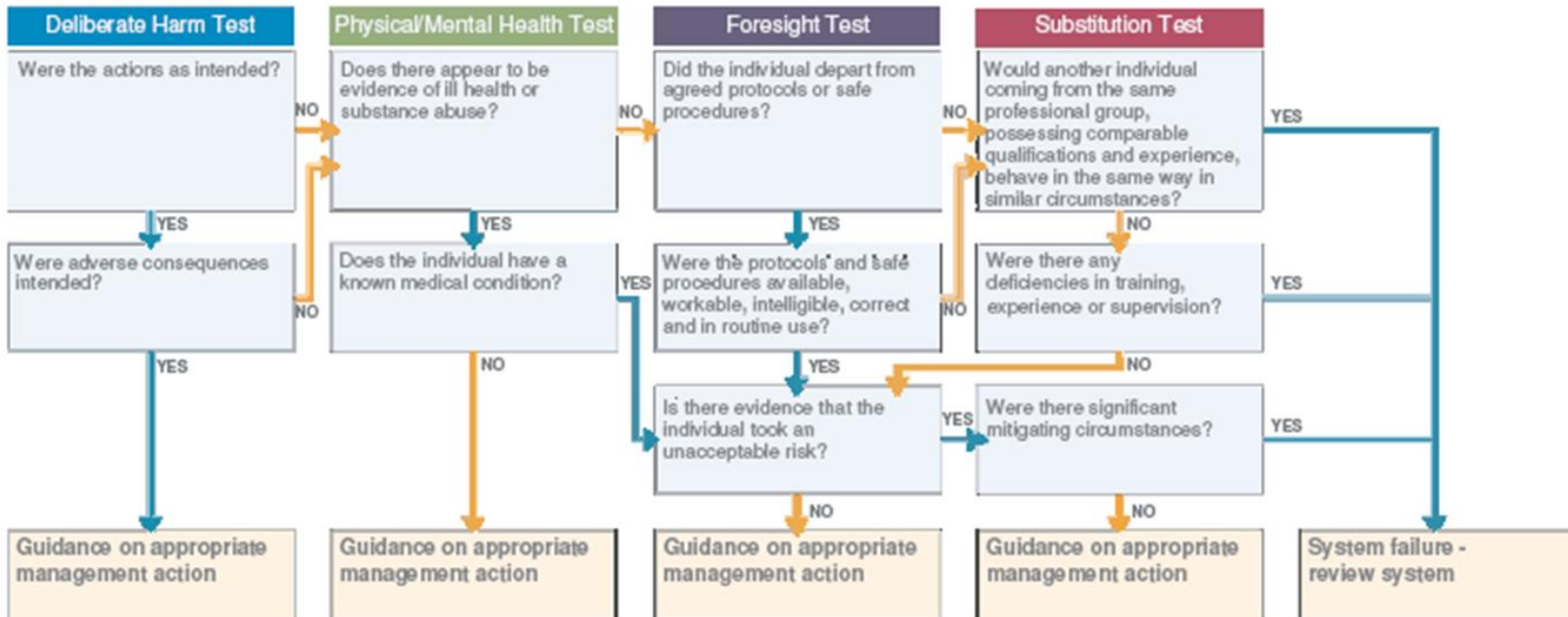
Immediate steps must be taken to ensure the safety of the vulnerable adult concerned, and any other relevant vulnerable adults. Refer to the Trust's [safeguarding adults policy](#).

Appendix 3: NPSA incident decision tree



National Patient Safety Agency

Incident Decision Tree



Based on James Reason's Culpability Model. © National Patient Safety Agency 2005