

## Disciplinary and Dismissal Policy

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## DOCUMENT HISTORY

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NB This policy relates to the Isle of Wight NHS Trust hereafter referred to as the Trust

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## 1 Executive Summary

The purpose of the Disciplinary and Dismissal Policy and Procedure is to help employees achieve and maintain acceptable standards of conduct. To achieve this aim it is vital that culture exists within the Isle of Wight NHS Trust (herein after referred to as 'The Trust') whereby employees know and understand what is expected of them and that concerns about conduct are addressed promptly and effectively.

The policy outlines robust guidance for dealing with minor infringements of conduct through to serious instances of potential gross misconduct.

The policy also provides robust guidance for dealing with the retraction of offers of employment and the termination of fixed term contracts.

It also covers a procedure for dealing with lapses in professional registration.

This policy applies all non-medical employees whose contract of employment is with the Isle of Wight NHS Trust.

All issues regarding medical employees will be managed in line with the Conduct, capability, Ill Health and Appeals Policy and Procedure for Medical and Dental Practitioners.

Individuals who provide services in accordance with the agreement for provision of bank services will be managed in line with the Trust Code of Conduct for Bank Workers.

## 2 Introduction

The Disciplinary Policy and Procedure aims to provide a robust, fair and objective framework for dealing with cases of misconduct that arise within the Trust.

The policy is underpinned by the principles that:

- All issues will be, where possible, resolved informally.
- That management of conduct issues will be in line with the procedures of this policy.

The Trust will therefore:

- Recognise its legal responsibilities under The Employment Act 2002 as amended by the Dispute Resolutions Regulations 2004.
- Ensure that all staff are aware of and committed to, the Trust's expectations of their conduct and their role in carrying out Trust policies and procedures.
- Train and issue appropriate guidance to its managers in handling such matters.
- Expect Trade Unions to recognise their responsibility to train their representatives in the handling of conduct matters.
- Ensure that no member of staff has formal disciplinary action against them without:
  1. Being advised of the substance and nature of the issue.
  2. Full exploration of the issues being undertaken, with the opportunity to put their case forward.

- ❑ Ensure that no staff member is dismissed for a first offence except in response to cases of a reasonable belief of gross misconduct.
- ❑ Ensure where appropriate, the disciplinary issue may be referred to the Disclosure and Barring Service (DBS) or relevant professional body.

### **3 Definitions**

**Disciplinary action:** applies to formal action that may be taken against an employee from formal warnings and dismissal where there is reasonable belief that misconduct has occurred

**Reasonable belief:** Any disciplinary action taken will be based on the evidence obtained, on the balance of probabilities that misconduct has occurred. This is significantly different to a criminal investigation whereby the onus is to prove an occurrence 'beyond reasonable doubt'

**Misconduct** can be defined broadly as inappropriate actions taken by an individual that contradict the rules, principles and policies of the Trust

**Gross misconduct** – misconduct so serious that it destroys the employment relationship and justifies dismissal.

**Summary dismissal** – dismissal without pay or pay in lieu of notice. However any outstanding annual leave due up to the date of dismissal will be paid.

Examples of what constitutes conduct, including misconduct and gross misconduct are included in Section 8.

### **4 Scope**

This policy applies all non-medical employees whose contract of employment is with the Isle of Wight NHS Trust.

All issues regarding medical employees will be managed in line with the Conduct, capability, Ill Health and Appeals Policy and Procedure for Medical and Dental Practitioners.

Individuals who provide services in accordance with the agreement for provision of bank services will be managed in line with the Trust Code of Conduct for Bank Workers.

### **5 Purpose**

The purpose of this policy aims to provide a robust, fair and objective framework for dealing with cases of misconduct that arise within the Trust in accordance with the statutory employment legislation.

### **6 Roles and Responsibilities**

#### **6.1 Staff responsibilities**

- ❑ To understand the policy.
- ❑ To follow the policy.
- ❑ To co-operate and ensure fair and equitable resolutions to conduct when it arises.

## **6.2 Management responsibilities**

- ❑ To understand and follow policy.
- ❑ To support individuals in an environment that is conducive to good conduct and behaviour.
- ❑ To communicate and reinforce to staff the standards of conduct expected by the Trust.
- ❑ To resolve, where possible, disputes and issues through robust and fair informal action.
- ❑ To ensure accurate documentation is recorded throughout the informal notes and formal stages of this procedure.
- ❑ To ensure diary time is available to progress formal issues in a timely manner.
- ❑ To ensure timely resolution and onward process to resolve issues promptly.

## **6.3 Human Resources responsibilities**

- ❑ To provide support, advice, and guidance to staff and managers on dispute resolution.
- ❑ To provide risk based advice on the management of conduct and disciplinary action in relation to staff.
- ❑ To support line managers and Investigating Officers in the implementation of this policy and procedure.
- ❑ To support the setting up of disciplinary hearings.

## **6.4 Management Levels of authority**

The levels of authority in the support and resolution of conduct matters will follow the management hierarchy of the Trust:

- ❑ Level 1 - First Line Managers (E.g. Sister, Charge Nurse, Team Leaders, Assistant Operational Managers).
- ❑ Level 2 – Senior and Middle Managers (E.g. Operational Managers, Modern Matrons).
- ❑ Level 3 – Deputy/Assistant Directors and/or Heads of (E.g. Associate Directors, Deputy Directors, Head of Clinical Services, Clinical Directors, Head of Operations).
- ❑ Level 4 – Executive Board Level (Voting / Non-Voting Directors).
- ❑ Level 5 – Non Executive Board Level (Chaired by the Chairman of the Trust, with two non-Executive Directors).

Only individuals at Level 3 or above have the authority to dismiss. Managers at level 1 and 2 may issue verbal or written warnings.

## **7 Policy detail/Course of Action**

### **7.1 Timescales**

For the purpose of this procedure working days is not inclusive of weekends or public holidays.

### **7.2 Representation**

Employees have the right to seek guidance from, and be accompanied by, their recognised trade union, or a workplace colleague/friend (acting in a non-professional capacity) at any/all of the formal stages of the Disciplinary and Dismissal Policy.

In accordance with Advisory, Conciliation and Arbitration Service (ACAS) Code of Practice, the companion is able to address the hearing to put and sum up the employee's case, respond on behalf of the employee to any views expressed at a hearing and to confer with the employee during the hearing. The companion, does not however, have the right to answer questions on the employee's behalf.

If the employee's companion is unable to attend the date originally proposed for the meeting, the employee must contact the relevant HR Officer to request an extension to the meeting date. The request must be reasonable and within a reasonable timescale.

The availability of representation should not unreasonably delay the ability for issues to be addressed in line with this policy. Therefore, in certain circumstances a decision to proceed may occur having given due consideration to the above.

## **8 SCOPE OF CONDUCT**

Misconduct generally refers to an individual's behaviour. Conduct issues can be classified as misconduct or in more serious cases, gross misconduct.

### **8.1 Sources of concern regarding conduct**

Issues of misconduct may be observed or reported from a number of sources. Examples are listed below but it is recognised that this list is by no means exhaustive:

- Patient or service user observations.
- Staff observations.
- Management observations.
- Concerns raised by a professional body.
- Report or complaint from another NHS, or non-NHS, organisation.
- Provision of false information.
- Complaints or concerns raised by patient and/or colleague.
- Allegations of harassment or bullying.
- Outcome of a grievance investigation or hearing.
- The outcome of an internal investigation.
- The outcome of a serious untoward incident investigation and/or findings of a review/report.

### **8.2 Definition of misconduct**

Misconduct can be defined broadly as inappropriate actions taken by an individual that contradict the rules, principles and policies of the Trust. Examples of misconduct will vary widely but may fall into one of the following broad categories:

- An infringement of Trust policies, procedures and rules including standards of professional behaviour required by the Trust and / or a relevant regulatory body.
- A refusal to comply with reasonable requirements of the Trust;
- A failure to fulfil contractual obligations.
- Failing to provide proper support to other members of staff.
- Poor standards of time keeping.
- Wilful, careless, inappropriate or unethical behaviour likely to compromise standards of patient care or safety or likely to create serious dysfunction to the effective running of the service.



- Carrying out of criminal offences outside the work place.
- Breach of confidentiality

The Trust's 'Vision, values and behaviours' represents the minimum level of behaviour required of staff. Breaches of these rules are likely to be considered misconduct.

### **8.3 Definition of gross misconduct**

Serious breaches of conduct are likely to be regarded as gross misconduct. Some examples of gross misconduct are listed below (List is not exhaustive):

- Theft.
- Assault or malicious damage.
- Negligence that poses a serious threat to the safety of a patient, employee or member of the public, including negligence that causes serious damage to Trust property.
- Fraud, dishonesty or corruption
- Failure to safeguard
- Failure to report
- Being unfit for duty through drink or misuse of drugs.
- Serious instances of harassment and bullying.
- Serious acts of insubordination.
- Markedly irresponsible behaviour, such as physical violence or menacing behaviour.
- Unauthorised sleeping on duty.
- Conduct at work likely to offend decency.
- Viewing of material from the Internet or email that contravenes the Security, Confidentiality and Disclosure of Trust Information Technology Policies.
- Conduct that falls below the standards of a professional code of conduct or code of ethics.
- Breaches of the Trust policy on the confidentiality including adherence to the Data Protection Act.
- A proven criminal offence, a plea of guilty, or reasonable belief of an offence either at work or outside of work, where the latter is liable to bring the Trust into disrepute, or make it undesirable for the Trust for the employee to remain in the post to which they were appointed.
- Provision of false or misleading information (Including omissions of key information) during recruitment.

All employees working for/on behalf of the Isle of Wight NHS Trust are bound by a legal duty of confidence to protect Person Identifiable Data and Trust Sensitive information, which they may come into contact with during the course of their work. This is not just a requirement of their contractual responsibilities but also a requirement within the Data Protection Act 1998 and relevant legislation and, in addition, for health and other professionals through their own professional Code of Conduct. Information breaches will be dealt with on a case by case basis and specialised advice sought from relevant professional lead and/or manager.

## **9 INFORMAL MANAGEMENT OF CONDUCT**

It is good practice and more efficient for issues to be addressed informally. The discussion should outline clear parameters of good conduct, should set clear goals and offer appropriate support and feedback. The discussion should be documented (a file note template can be found the Disciplinary Policy Toolkit resources on the HR Portal).

It is important that the following principles are applied when dealing with conduct issues informally:

- Informal action should fully explore the issues fairly and objectively.
- Informal action should clearly set expectations. The individual should fully understand the outcome and be clear of what is expected of them.
- The goal should be to bring about improvements in performance.
- The informal action outcome should be clearly documented with a copy given to the staff member, who agrees the objectives.
- It should be clear that this is not formal disciplinary action.

In cases of serious allegations and or serious concerns with conduct it may not be appropriate to resolve the issues through informal action.

Where appropriate the issue may be referred to the Disclosure and Barring Service (DBS) or relevant professional body.

### **9.1 Meeting with the individual**

Where a line manager considers that action should be taken to encourage an employee to improve conduct, they may hold an informal discussion with the employee in private. HR involvement should be considered to ensure consistency. In cases of concern with an individual's conduct this should be brought to the individual's attention at the first available opportunity.

This meeting will be used to:

- a) Bring to the employee's attention the respects in which it is thought that the individual's conduct is not acceptable.
- b) To ascertain whether the employee thinks that there is a problem.
- c) To listen to any explanations or statements made by the employee in relation to the information received.
- d) To discuss support that can be offered and to explore what support there may be.
- e) To discuss how the employee should seek to improve and the timescale for improvement.
- f) To set clear SMART (Specific, Measurable, Attainable, Realistic and Time Limited) objectives.
- g) If, after reviewing the evidence, it may be appropriate to orally warn the individual that continued non-delivery of agreed standards may lead to formal disciplinary action and eventually the possibility of dismissal.
- h) To put the verbal advice in writing within the summary of the discussion and give a copy to the staff member. This will include a copy of the completed file note (a file note template can be found the Disciplinary Policy Toolkit resources on the HR Portal).

Once all of the above have been explored thoroughly it is expected that there will be the following outcomes from the meeting:

- Clear understanding of the situation from a staff and managerial perspective.
- Clear understanding from the individual regarding standards of conduct that are expected.
- Clear understanding from management of the support, guidance and supervision the staff member may expect to receive to achieve the agreed objectives.
- Clear objectives for the individual, with timescales.

- A mechanism for review of progress.
- A programme of support to help improve conduct issues where appropriate.
- A letter to the member of staff summarising the key points described above that have been agreed by the staff member and management. A copy of any notes or file note should be enclosed with the outcome letter. (Note: The letter is not formal disciplinary action and this should be made clear).

## **10 SUSPENSIONS IN CASES OF MISCONDUCT**

### **10.1 Initial Fact Finding**

In circumstances when a serious concern is raised, the line manager should initiate initial fact finding. The line manager should meet with all the relevant individuals to establish the initial facts of the situation. This may include speaking to the individual who the allegation is made against. Following the initial fact finding exercise the line manager should consider whether a cooling off period is necessary. Advice should be sought from Human Resources at the earliest opportunity.

### **10.2 Cooling off periods**

Cooling off periods are designed to be used as a 'without prejudice' mechanism for defusing a serious situation, and or, mitigating any alleged risk to patient or staff safety prior to consideration of a formal suspension.

It should be used when it is not possible to set up a formal suspension meeting. This could be in situations such as evenings / weekends or when a manager needs to take immediate action to defuse a situation.

In every case where a serious allegation has been made, consideration will be given as to whether there should be a "cooling off" period.

#### **10.2.1 Procedure for enacting a cooling off period**

If it is decided that a "cooling off" period is required, the employee should be advised of the nature of the allegation, and asked to leave the Trust premises on authorised leave. If there is a written allegation, the employee must be given a copy of the written allegation at this time.

Cooling off is 'without prejudice' and the individual will be on authorised paid leave.

The member of staff should be asked to return to a further meeting with their recognised trade union representative, or a friend (acting in a non-professional capacity), prior to being sent home for a 'cooling off period'. They should be informed that the outcome of this meeting may result in suspension from duty.

Prior to leaving the premises, the employee should be informed of the date, time and venue for this further meeting prior to being sent home on a 'cooling off' period. If this is not practicable then the employee should be notified when they will be contacted (contact will normally be via telephone) to confirm these arrangements.

The manager should seek advice and guidance from human resources on whether formal suspension is appropriate.

### 10.3 Suspension from duty

The manager will be responsible for convening a meeting, to discuss the allegations/issues at the earliest opportunity following notification of the incident this will normally be within 24 hours. Where this is not possible, such as weekends, it should be at the earliest possible time.

The employee is entitled to be accompanied at this meeting by a recognised trade union representative or friend/colleague acting in a non-professional capacity.

If, after a preliminary exploration of the facts, the manager is satisfied that there is no case to answer to the employee will return to duty.

Whilst each potential disciplinary case is unique, and it is not possible to be prescriptive, suspension should only be considered where:

- a) The safety of patients, clients, residents or visitors is at genuine risk.
- b) The safety of staff, including the individual subject to the disciplinary action is at genuine risk
- c) A serious allegation of harassment or assault is made.
- d) The circumstances of the allegation/complaint suggest that the employee may be guilty of a serious offence and it would be unwise to leave the employee at work.
- e) Other circumstance where the employee's continuing presence would seriously impede the flow of work, or would prejudice an objective investigation.
- f) Violence has occurred, or is likely to occur if action is not taken.
- g) Offensive language has been used.
- h) The situation is extremely volatile.

#### 10.3.1 Initiating a suspension

If it is decided that suspension from duty is necessary and appropriate, the manager (with the correct level of authority or delegated authority at level 1 or above) may suspend the employee.

If a decision to suspend, the employee is entitled to be accompanied by their recognised trade union representative or friend/colleague (acting in a non-professional capacity). The manager may also be supported at the meeting by a management colleague or representative from Human Resources

The employee must be informed of why the allegations are thought to be of substance and the reasons for suspension. The suspending manager must put confirmation of the suspension in writing to the employee within **5 working days** with a copy of the written allegation.

This letter must contain:

- A record of who attended the suspension meeting
- The allegation / complaint against the individual and a record that they were informed of this during the meeting.
- That the incident will now be investigated and who the investigating officer will be (if known at this stage).
- That they must not enter Trust premises without permission unless as a service user or patient (See below).
- That they can access the support services as required.
- A copy of the Disciplinary and Dismissal Policy and Procedure.

### 10.3.2 Principles of suspension

Suspension will be conducted under the following principles:

- This should be on full pay, including average enhanced earnings and other regular allowances as contained within the terms and conditions of employment.
- The Employee will continue to accrue annual leave as if they had been at work as normal. The employee must remain available to attend any investigation interviews or subsequent hearings. If the individual has pre booked leave this will be honoured.
- Suspension is without prejudice. It can be used to protect the interests of the employee, other employees, or the Trust. It may also be necessary to ensure that a fair and thorough investigation is carried out.
- Suspension is not a disciplinary action.
- Employees on suspension may not enter the Trust premises without permission of the excluding manager or HR representative, except as a patient or accompanying or visiting a member of their family who is a patient. Such employees must keep themselves available to attend for interview or hearing with appropriate notice.
- Suspension should be as brief as possible and reviewed regularly.
- The decision to suspend is not taken lightly and without careful consideration.
- Employees are to ensure that they are not to discuss any confidential part of the investigation with colleagues, however it is recognised that staff may have a requirement to approach potential witnesses, character witnesses etc.

**Suspensions will be reviewed by the manager on a regular basis and the employee will be notified of the outcome in writing.**

### 10.4 Support for the individual

Occupational Health support and counselling will be offered to all staff that is suspended, during an investigation. Occupational Health will advise on any reasonable adjustments, which will need to be considered to enable the member of staff to attend for support and counselling.

It is the responsibility of the respective manager to communicate with suspended staff on day-to-day issues that may affect them. For example, minutes of staff meetings, team briefing etc. Managers are responsible for distributing copies of relevant documentation including organisational change documents, to employees or to contact them directly by phone, e-mail or letter. Distribution of internal communications, payslips and professional guidelines changes are examples of such documentation. **Managers should contact staff on at least a fortnightly basis and if necessary more frequently.**

An employee, who is subject to a suspension, has a duty to ensure reasonable contact is maintained with the Trust.

Trade Unions and professional associations provide their members will support and guidance in relation to Disciplinary Procedures. Employees are encouraged to seek support at an early stage in the process.

## **11 Referral to professional body**

Where appropriate the issue may be referred to the relevant professional body. The timing of this referral will be considered on a case by case basis giving consideration to the nature and severity of the allegations. A referral may be made at any time during the disciplinary process.

If a member of staff is suspended from duty consideration must be given as to whether notification to the relevant Professional Body is required at that stage, this will be determined on a case by case basis. Advice may be sought from the Head of Clinical Services/Deputy Director or Nursing and/or Executive Director of Nursing and Workforce.

## **12 INVESTIGATING CONDUCT ISSUES**

### **12.1 Purpose and scope of investigation**

The purpose of the investigation is to:

- Establish the exact nature of the incident/complaint
- Establish whether the evidence substantiates the allegation.
- A formal investigation may not always be necessary if all the facts surrounding an incident are clear from the outset.
- Guidance should be sought from Human Resources in cases where an investigation is not considered necessary.

### **12.2 Notification of individual(s)**

Any member of staff who is the subject of a formal investigation will receive a letter notifying them that an investigation will be undertaken, together with a copy of a written allegation/complaint as appropriate.

The letter will also contain:

- The name of the Investigating Officer.
- The nature of the allegations.
- The Terms of Reference for the investigation.

### **12.3 Terms of Reference**

The commissioning manager will formally appoint an investigating officer and provide clear Terms of Reference for the investigation.

The Terms of Reference will provide clear, objective guidance on the grounds that need to be explored with a realistic time scale for completion

The Terms of Reference will be formally communicated in writing to the member(s) of staff against whom the allegation has been made.

The Investigating officer should be accredited to carry out an investigation via Trust Training or experience deemed to be equivalent.

The investigating officer will complete a written report outlining the evidence relating to each of the Terms of Reference and present to the commissioning manager within the time scale allotted.

**The commissioning manager must maintain regular contact with the investigating officer to ensure that the investigation is progressing, keeping the HR Officer informed.**

#### **12.4 Carrying out the investigation**

The investigation will be conducted as quickly and as sensitively as possible to ensure that the recollections of the facts are not forgotten. This is likely to include interviews with and/or the obtaining of written statements from all concerned parties.

The Trust standard for completing investigations is within 45 days of the decision to commission an investigation however this may be extended depending on the circumstances of the case. The commissioning manager will confirm the timescales when setting the terms of reference for the investigation.

Any member of staff required to attend an investigation interview, provide a written statement, and/or attend a Disciplinary hearing has the right to seek prior advice of their Trade Union representative. Human Resources can provide advice on the process.

Any staff member required to provide a statement during interview will be asked to sign a copy to provide assurance that they agree with the content. All signed statements collected will be included in the final investigation report.

If an individual fails to return a signed statement, the statement may be included in the Investigating Officers Report, stating that a signed copy had not been returned.

If a member of staff, who is subject to an investigation, is off sick, Occupational Health will assess them to determine if they are well enough to participate in the investigation process.

A member of staff may decline from seeing the Occupational Health physician, in which case the investigation will proceed on the information available.

#### **12.5 Reporting findings**

On conclusion of the investigation, the Investigating Officer will provide a written report, including recommendations, to the commissioning manager, who in association with Human Resources, will decide whether the matter should be considered for a formal disciplinary hearing.

In addition to the commissioning manager, Human Resources will be provided with a full copy of the completed report on conclusion of the investigation.

The commissioning manager will meet the individual to confirm the outcome of the investigation and to confirm whether there is a case to answer. The outcome of this meeting will be confirmed in writing by the line manager.

### **13 EXTERNAL INVESTIGATIONS**

Where external investigations have been commissioned to review an incident (such as a protection of vulnerable adults / children investigation) the manager must seek advice from the Safeguarding Lead to agree the timing of any investigation commissioned in line with the Disciplinary and Dismissal Policy.

Once the facts of the case have been determined via the external investigation, the line manager will consider whether a disciplinary hearing should be called or if further investigation is required in accordance with this policy. The line manager in consultation with the investigating officer and Human Resources should make this decision

## **14 CRIMINAL PROCEEDINGS**

### **14.1 Employees obligation if involved in a criminal act**

An employee must inform their line manager at the earliest possible opportunity if arrested, under investigation, charged or may be subject to formal police procedures including caution, conditional/unconditional discharge, fine or any other procedure likely to be subject to formal legal action. Healthcare professionals must inform the Nursing and Midwifery Council or other relevant professional bodies, if they have been cautioned, charged or found guilty of a criminal offence. Failure to do so may result in formal disciplinary action.

### **14.2 Action by the Trust during a Police investigation**

Where the Trust's investigation finds a suspected criminal act, this will be reported to the police by the line manager (only after consulting the Local Security Management Specialist and/or Human Resources).

Where the police investigate the allegation, the Trust's own investigations will only proceed after having consulted with the police to ensure the continuation of the investigation and the alleged incident would not impede the police investigation. If the police consent to internal proceedings continuing the timings and scope of the internal investigation should be agreed with the Police. If the Police do not consent to the Trust continuing with an investigation, the Trust will comply with this request.

### **14.3 Action in cases of suspected fraud**

The Isle of Wight NHS Trust is totally committed to maintaining an honest, open and well-intentioned culture and is therefore dedicated to the elimination of any fraud or corruption within the Trust.

If Fraud or Corruption is suspected **confidentiality** is vital to ensure the integrity of the information and any subsequent investigation.

Please report any suspicions of Fraud and Corruption **direct** to the Local Counter Fraud Specialist or the Executive Director of Finance or contact the National Fraud and Corruption reporting line on 0800 028 40 60.

Please refer to the organisations Countering Fraud and Corruption Policy and Reporting Procedure for details, the policy is available on the Countering Fraud Intranet Page. This action will ensure that the organisation is demonstrating every effort to Countering Fraud.

### **14.4 Action by the Trust when an individual is charged with a criminal offence**

If an employee is charged with, or convicted of a criminal offence this is not normally in itself reason for disciplinary action. Consideration needs to be given to what effect the charge or conviction has on the employee's suitability to do the job and their relationship with the Trust, colleagues and the public's trust and confidence.



When a member of staff is charged with a criminal offence the Trust will take a measured view about whether it is desirable to continue with employment. Where it is not the Trust will:

- Engage Disciplinary proceedings by holding a hearing to dismiss the employee.
- Consider use of the modified procedure for dismissal where an individual is being remanded in custody for an offence they have pleaded guilty to.

#### **14.5 Action by the Trust in the event that criminal charges are proven**

In a circumstance where criminal charges have been proven, the Trust will carefully consider whether the conviction renders the individual unsuitable for further employment.

The Trust will consider the overall circumstances of the conviction and in particular the safety of patients, staff and members of the public and decide whether exclusion and further investigation is necessary.

If the individual is subsequently imprisoned the Trust may consider using the modified procedure to end employment.

#### **14.6 Action in the event of acquittal or insufficient evidence**

Where a criminal case is pursued but the individual is acquitted, or where there was insufficient evidence to take the matter to court, the manager and HR Officer in consultation with the Local Security Management Specialist will review all the evidence available to decide whether the appropriate action is re-instatement or whether professional and behavioural issues require further investigation and review.

The Trust will consider whether there is evidence to suggest that there is a threat to patients, staff or members of the public. If the Trust believes this to be the case, the alleged misconduct will be addressed under these procedures.

Where appropriate the issue may be referred to the Disclosure and Barring Service (DBS) or relevant professional body.

### **15 PREPARATION FOR A DISCIPLINARY HEARING**

#### **15.1 Appointment of a Hearing Coordinator**

A nominated individual from Human Resources will act as the Hearing coordinator. They will be responsible for:

- Advising the Line Manager on overall process.
- Ensuring the Hearing is convened within relevant timescales.
- Setting up an appropriate date/time/venue.
- Collating documentation received from the line manager and the employee and preparing relevant documentation bundles.
- Contacting and securing panel members.

#### **15.2 Invitation to hearing**

After investigation, and where the Line Manager has consulted with HR, and there is agreement that the case will be taken to a disciplinary panel, Human Resources (usually the Hearing co-ordinator) will write to the employee inviting them to the disciplinary conduct

hearing. The individual will receive this letter within a reasonable timescale before the date of the hearing (unless there are exceptional circumstances) to allow sufficient time for him/her to prepare their case.

This letter will, where possible, include:

- Clear and complete details of the allegations, attaching a copy of the investigatory report and any supporting evidence and management case (including relevant witness statements);
- Confirmation of the individual's right to be accompanied and that it is their responsibility to arrange the attendance of their representative
- Details of members of the panel;
- Confirmation that any document the employee or representative intend to refer to at the hearing, including statement of case, should be received by the Resources Co-ordinator before the hearing to be included in the bundle. The deadline for documents to be submitted will be confirmed in this letter.
- Details of who is attending to present the management case;
- Details of any witnesses to be called in support of the management case;
- Confirmation that disciplinary action may be taken as a result of the hearing (including the potential severity if there is a possibility of dismissal)

### **15.3 Documents and witnesses**

Any documents to which the individual and/or his /her representative intend to refer at the hearing (including any statement of case and witness statements) should be provided to Human Resources Hearing Coordinator. The deadline for documents to be submitted will be confirmed by the Hearing Co-ordinator.

The management case response and case should also be received by human resources prior to the hearing and the deadline for submission will be confirmed by the Hearing Co-ordinator.

The individual or his/her representative, and the individual presenting the management response, must confirm the names of any witnesses they intend to call to the hearing. The timescales will be confirmed by the hearing co-ordinator.

If the employee does not intend to rely upon witness evidence but does intend to call a witness (who has not already provided a statement as part of the investigation) in support of his or her case, the individual must provide a written synopsis of the relevant evidence the witness will provide. This synopsis must be provided before the hearing and the hearing co-ordinator will confirm the deadline for submissions.

It is the responsibility of the person(s) calling the witnesses to arrange for their attendance at the hearing. Witnesses will not be required to attend all of the hearing, only the period for which they are required to give evidence. Where witnesses are employees of the Trust, they will be paid for attendance at the hearing. Where a synopsis has been provided of a witness' evidence by the employee, the employee must ensure the witness attends the hearing to provide their evidence unless that evidence has been explicitly agreed by the management side.

### **15.4 Postponement requests**

The employee must take all reasonable steps to attend the hearing. Requests for postponements will be considered by the Chair of the panel and will be dealt with reasonably taking into account all of the circumstances of the case, including:

- The reason for the request;
- The period that the allegations have been outstanding;
- The period it is anticipated that the employee will remain absent
- The future availability of the panel and witnesses.

### **15.5 Ill health at the time of a hearing**

If an employee notifies the Trust that they are unwell prior to a hearing the Trust reserves the right to request that the employee attend an Occupational Health appointment. Occupational Health will make an informed and objective assessment of the employee's health and will consider whether it is appropriate to proceed with the hearing.

The occupational health physician will recommend one of the following:

- The employee, although unfit for normal duty, is fit enough to proceed with the hearing.
- The employee is fit enough to proceed with the hearing with the Trust making reasonable adjustments to the process which will be clearly specified by Occupational Health.
- The employee is medically unfit to proceed with the hearing and recommend a postponement. A timescale will be stated as to when they will be fit to enable the hearing to be rearranged.
- The employee is medically unfit to proceed with the hearing and this is unlikely to change for the foreseeable future. It is recommended that the hearing takes place in their absence with their case being presented by an advocate or Trade Union Representative.

### **15.6 Failure to attend the hearing by the employee**

A failure to attend a conduct hearing by the employee without valid reason may result in the process being carried out in the employee's absence. The decision lies with the Chair of the hearing who may decide to proceed with the hearing in the employee's absence.

The Chair will ensure that all the evidence is considered thoroughly and robustly in the absence of an employee attending.

## **16 THE DISCIPLINARY HEARING**

### **16.1 Panel Members**

The disciplinary panel will consist of the level of manager authorised to make the disciplinary sanctions as set out in section 5. This will be dependent on the severity of the allegation in question. The Human Resources Hearing co-ordinate will provide advice and guidance as to the correct composition of the Disciplinary panel in line with this policy.

If dismissal is a possible outcome the panel must be chaired by a manager at Level 3 authority.

### **16.2 Procedure of the hearing**

The Chair of the panel is responsible for ensuring the hearing is conducted properly and in accordance with the Trust's procedure.

The individual has the right to be accompanied at the hearing under the conditions set out in section 3 of this policy.

The Investigating Officer, and other support that may be appropriate to support the management case, throughout the hearing, may accompany the Commissioning Manager.

At all times during the hearing, the panel, its advisers, the employee, his/her representative and the Line Manager must be present.

Witnesses will only be present to give evidence and will not be present for the whole hearing.

During the hearing, requests may be made for brief adjournments. The Chair may formally adjourn for a stipulated period when further investigation may be required before reaching a decision.

The procedure for the hearing will be as follows: -

- a) The Line Manager / Case Manager presents the management case;
- b) The management side will present the details of their case based on the investigation report.
- c) The management witnesses will be called in turn. Each witness will confirm their witness statement and provide any additional information. The Line Manager / Case Manager may ask additional questions.
- d) The individual or their representative may ask questions of the witnesses.
- e) The panel may question the witness(s) / management side once both sides' representatives have asked questions.
- f) The Line Manager / Case Manager may then ask further questions to clarify any point that has been raised either by the questions of the individual or his representative or from the Panel.
- g) The Chair may ask the Line Manager / Case Manager to clarify any issues arising from the management case.
- h) The individual and/or their representative shall present their case and call any witnesses. The above procedure used for the management's witnesses shall be followed.
- i) The Chair can request any points of clarification on the individual's case.
- j) The Chair shall invite the Line Manager/ Case Manager to make a short closing statement summarising the key points of the management's case.
- k) The Chair shall invite the individual or his/her representative to make a short closing statement summarising the key points of their case. Where appropriate, this will include any grounds of mitigation.
- l) The panel shall adjourn to consider its decision.

## **17 FORMAL DISCIPLINARY ACTION**

The following outcomes may apply after a disciplinary hearing:

- No action.
- First written warning.
- Final written warning, (Including possible Disciplinary downgrading).
- Dismissal.

These disciplinary sanctions are normally followed consecutively but a disciplinary hearing panel may elect to go straight to written warnings, or dismissal, depending upon the severity of the allegations in cases where they have a reasonable belief, based on the evidence presented, that the allegation is true.

Where appropriate the issue may be referred to the Disclosure and Barring Service (DBS) or relevant professional body.

## 17.1 Written Warnings

### 17.1.1 First written warning

Where a previous verbal warning does not result in improved behaviour, or where the issue is more serious, a formal written warning may be appropriate.

A copy of the warning will be kept on the individual's personal file but will be marked as spent and disregarded for disciplinary purposes after a specified period. **That period will not exceed one year.**

The warning will give details of:

- The complaint/allegation.
- Why this sanction is appropriate based on the evidence presented.
- The improvement or change in behaviour required including SMART objectives where appropriate.
- The training or support that may be given (if appropriate) and the timescale allowed for this.

Arrangements for monitoring the employee's behaviour during the warning.

The SMART objectives for the employee to improve behaviour.

Any points of mitigation that were taken into consideration; and

That the individual has the right to appeal, who the appeal should be addressed to, and the timescale for its receipt.

That the warning will be kept on file for the period specified (**not exceeding 1 year**).

The warning will also inform the individual that a final written warning may be considered if there is not a satisfactory improvement or change.

The written confirmation of the written warning shall be dispatched to the individual within 5 working days from the conclusion of the hearing.

Where appropriate the issue may be referred to the Disclosure and Barring Service (DBS) or relevant professional body.

### 17.1.2 Final written warning

Where there is a failure to improve or change behaviour during the currency of a prior written warning, or where the infringement is sufficiently serious, the individual will normally be given a final written warning.

A copy of the final written warning will be kept on the individual's personal file but be marked as spent and disregarded for disciplinary purposes after a specified period. **The period shall not exceed one year.**

The confirmation of the final written warning should give details of:

- The complaint/allegation.
- The reasons for the decision.
- The training or support that may be given (if appropriate) and the timescale allowed for this.
- The points of mitigation that were taken into consideration; and
- Warn the individual that failure to improve performance or modify behaviour may lead to dismissal.
- Arrangements for monitoring the employee's behaviour during the warning.
- The SMART objectives for the employee to improve behaviour.
- That the individual has the right to appeal, who the appeal should be addressed to, and the timescale for its receipt.
- That the warning will be kept on file for the period specified (**not exceeding 1 year**).

Confirmation of the final written warning will be sent out within 5 working days from the conclusion of the hearing.

Where appropriate the issue may be referred to the Disclosure and Barring Service (DBS) or relevant professional body.

### **17.2 Downgrading**

If an individual has reached the stage where termination of employment would normally be appropriate, it may be possible to consider alternative action if it is appropriate.

In deciding whether the alternative action is appropriate, the severity of the allegation, mitigating circumstances, including length of service and previous employment history, will be taken into account.

Alternative action may include demotion to a lower grade. Action taken will be clearly stated during the hearing, and subsequently in writing, in line with the guidance of a final written warning above.

The demotion will be effective from the date of the disciplinary decision and will be confirmed in the outcome letter above.

Where appropriate the issue may be referred to the Disclosure and Barring Service (DBS) or relevant professional body.

### **17.3 Dismissal**

Dismissal will occur where a lesser sanction is not appropriate. The panel must have, and be able to demonstrate through the evidence presented that:

- They have a reasonable belief that the allegation is true.
- That a fair and robust investigation was commissioned and carried out. or that the facts were clear from the outset and an investigation was not necessary.
- That dismissal is a reasonable response to the allegation in question.

Where there is a continuation of a situation, which is already the subject of a final written warning, or where there is gross misconduct, the panel hearing the case may decide that dismissal with/without payment in lieu of notice (as appropriate) is the only appropriate remedy.

Dismissal without notice is usually appropriate in cases of gross misconduct.

An authorised manager (at level 3 or a manager given delegated authority) may only take such action.

The period of notice, where applicable, will run from the date of the notification of the disciplinary decision, and will be in line with the individuals contractual notice period.

The panel will inform the employee verbally of the decision at the close of the hearing. Confirmation will be sent in writing and will be dispatched to the individual and his/her representative in the form of a registered letter **within 5 working days** of the decision being taken.

The letter will contain:

- The complaint/allegation.
- The evidence that has been heard by the panel.
- Why the panel has a reasonable belief that the allegation is true
- The reasons for the dismissal and the type (With or Without Notice).
- The points of mitigation that were taken into consideration.
- Arrangements for return of uniform / badge and other Trust property.
- That the individual has the right to appeal, who the appeal should be addressed to, and the timescale for its receipt.

Where appropriate the issue may be referred to the Disclosure and Barring Service (DBS) or relevant professional body.

#### **17.4 Review Meetings**

A monitoring schedule will be established where a formal warning has been issued for the conduct of the employee. This will have been stated in the employee's outcome letter after a disciplinary hearing. The line manager (or other designated manager) will meet with the individual, at least monthly, to formally monitor and record progress against the objectives that have been set. The manager must be at least at Authority level 1.

After a robust and thorough discussion with the employee the manager may choose to:

Advise them, where performance has failed to meet the desired and agreed objectives and standards of behaviour, that the issue will be heard at a further disciplinary hearing.

OR

Continue with monitoring for the agreed period against the same objectives.

The line manager will record notes at each meeting and ensure that these represent an accurate record of the discussion.

Formal monitoring will continue for the duration of the warning.

### **17.5 Unacceptable behaviour during a warning**

Where an employee's behaviour does not meet the standards and objectives stipulated when disciplinary action was taken, a further formal hearing will be called. In addition to the original documentation used at the original hearing the management case will include formal records of the manager's assessment of performance during the review period.

The line manager should notify their relevant Human Resources Officer when instances such as this arise.

## **18 Dismissals for non disciplinary reasons**

There may be circumstances where an employee is dismissed for a reason other than as a result of disciplinary and/or capability procedures. The procedure below should be followed for non-renewals of fixed term contracts, withdrawal of offers of employment and managing lapsed registrations.

### **18.1 Fixed term contracts**

The Fixed Term (Prevention of Less Favourable Treatment) Regulations 2002 state that Fixed-term employees should not be treated less favourably than comparable permanent employees on the grounds they are fixed-term employees, unless this is objectively justified. Under the Employment Rights Act 1996, the expiry and non-renewal of a fixed term contract is treated as a dismissal and therefore Line Manager should ensure that a fair process when ending fixed term contracts is followed in accordance with this policy.

#### **18.1.1 Legal implications**

Employees on fixed term contracts of duration of one year or more have a right to a written statement of reasons for the dismissal. If the contract lasts two years or more and the contract is not renewed, the employee will have the right to a redundancy payment.

#### **18.1.2 Process for ending a fixed term contract**

It is a requirement that the Line Manager meets with the individual employed on a fixed term contract at least 3 months prior to the end date of their contract to discuss the cessation of the fixed term contract or its extension as appropriate.

The line manager must write to the individual at least 5 working days before the meeting.

This letter will include:

- The purpose of the meeting.
- The purpose of the fixed term contract (I.e. a time limited project, maternity cover etc).
- That the contract is due to come to an end.
- That the contract is unlikely to be renewed / likely to be renewed.
- Details of who is attending the meeting.
- Confirmation of the individual's right to be accompanied.

#### **18.1.3 Conducting the meeting**

The line manager must discuss the fact that the contract is due to end on the specified date and whether an extension will/will not be granted. The employee should be allowed an opportunity to discuss their intentions. Brief notes of the meeting will be taken. A Human Resources representative may be present at the meeting.



#### **18.1.4 Confirmation in writing**

If the fixed term contract is not going to be extended further then the employee must be informed of this decision in writing. This letter should be written by a manager with authority to dismiss at least at level 3.

The letter should state:

- The date and time of the meeting.
- Who attended.
- A summary of the discussion (attaching notes taken where applicable).
- The reason for the non-renewal of the contract (i.e. natural end of project).
- That the employee has the right to appeal and who an appeal should be lodged with.

Where a line manager has agreed an extension this should be formalised in writing specifying the length of extension; the reason the contract is required to be extended (e.g. project has been extended) and the end date of the extension of the fixed term contract.

#### **18.1.5 Rights to redundancy pay**

If the employee has more than two years' continuous employment they are entitled to a redundancy payment.

Human resources should be advised in cases where continuous service exceeds 2 years. Redundancy will be managed in line with the employee's Terms and Conditions of Service.

### **18.2 Withdrawal of offer of employment**

Offers of employment are usually subject to satisfactory pre-employment clearances e.g. References and Disclosure and Barring Service (DBS) clearance. In certain circumstances, when unsatisfactory clearances are obtained, offers of employment may be withdrawn. It is of paramount importance that selection mechanisms are robust to mitigate the risk of such situations arising.

#### **18.2.1 Identifying problems with pre-employment checks before an individual commences employment with the Trust**

Where an individual has been offered a post with the Isle of Wight NHS Trust, subject to satisfactory clearances and checks (Disclosure and Barring Service clearance and references), but concerns have been identified through these checks, the recruiting manager will take the following action:

- Inform Human Resources of the concern and seek guidance on approach.
- Contact the individual and explore the concerns raised.
- Discuss with Human Resources the content of the conversation, and any mitigation provided by the individual.
- Decide on whether the Trust can continue with an offer of employment.

The decision will be confirmed in writing, by the recruiting manager, to the individual within a reasonable timescale of the concern being identified.

This procedure will also apply in cases where the Trust has received satisfactory clearances, a full offer of employment has been made, and then new information has come to light that raises doubt over the individuals suitability for the post. If a formal offer has been made, after receipt of checks, and has been accepted by the new starter, they are entitled to paid notice in lieu. This will be in line with NHS terms and conditions of employment.

## **18.2.2 Identifying problems with pre-employment checks once an individual is in employment**

Where issues have been identified through pre-employment checks, the line manager should meet with the employee to explore the issue.

The concerns may include suspicion that the employee has falsified information during the recruitment and selection stage. Where serious concerns are identified about an individual's suitability to continue working within the role the line manager should consider initiating a 'cooling off period' and then formal suspension.

This will be until the facts have been investigated / collected and a formal hearing is convened.

Where there is reasonable belief to suggest that an employee has provided false information, or failed to disclose important details, during the recruitment and selection stage this will be deemed as gross misconduct and the employee may be dismissed during the hearing.

## **18.3 Dismissal for lapse of professional registration**

### **18.3.1 Identification of a lapse in registration**

It is a contractual responsibility of all registered healthcare professionals to ensure their professional registration is kept up to date. The Trust cannot allow a healthcare professional to practice where their professional registration has lapsed.

In the event that a lapse in a professional registration is discovered the line manager may consider whether the clinician can work as an unregistered member of staff at the appropriate rate of pay during this time period.

Alternatively, in circumstances where this is not deemed appropriate, the line manager will invoke suspension. Where a manager is unable to convene a formal suspension meeting, or where a lapse is discovered out of hours the manager should invoke an immediate cooling off period followed by formal suspension. Suspensions for lapse of registration will be unpaid.

The individual will be informed that they have a reasonable period (usually two calendar weeks) from the date of formal suspension or temporary redeployment into a non-registered role to ensure their registration is resolved. The individual will be informed that failure to ensure their registration status is resolved may result in dismissal.

Where appropriate the issue may be referred to the Disclosure and Barring Service and/or relevant professional body after dismissal.

### **18.3.2 Process for dismissal for lapsed registration**

If, after the agreed period of time to re-register, the employee has failed to do so without valid mitigation a disciplinary hearing will be convened in line with section 15 of this policy.

If no valid mitigation is provided by the individual, the Disciplinary Panel will consider the appropriate sanction up to and including summary dismissal. The employee will have the right to appeal.

## 19 APPEALS

Any member of staff issued with a formal warning or dismissed under this procedure, has the right of appeal. An employee who wishes to lodge an appeal against such action should write to the Human Resources department within **10 working days** of the date of the outcome letter from the hearing/decision.

### 19.1 Managing Appeals

#### 19.1.1 Grounds for Appeals

The letter of appeal must contain clear grounds, which must be:

The severity of the action given the circumstances of the case; and/or  
A failure to adhere to agreed procedure;

#### 19.1.2 Composition of an Appeal Panel

The appeal will be to the next line of management. The table below provides an illustration of the levels of appeal:

Level of Original Management Decision	Composition of Appeal Panel
Level 1 - First Line Managers (E.g. Sister, Charge Nurse, Team Leaders, Assistant Operational Managers).	Level 2 – Senior and Middle Managers (E.g. Operational Managers, Modern Matrons).
Level 2 – Senior and Middle Managers (E.g. Operational Managers, Modern Matrons)	Level 3 – Deputy/Assistant Directors and/or Heads of (E.g. Associate Directors, Deputy Directors, Head of Clinical Services, Clinical Directors, Head of Operations).
Level 3 – Deputy/Assistant Directors and/or Heads of (E.g. Associate Directors, Deputy Directors, Head of Clinical Services, Clinical Directors, Head of Operations).	Level 4 – Executive Board Level (Voting / Non-Voting Directors).
Level 4 – Executive Board Level (Voting / Non-Voting Directors).	Panel should be composed of 3 non-executive directors and chaired by the Chair of the Trust.

The Appellant will receive written confirmation from Human Resources that their appeal has been received within a reasonable timescale of its receipt.

The Appeal Hearing will be arranged by the Hearing co-ordinator (A representative from Human Resources) to the Panel, within a reasonable timescale of receipt of the appeal. The date will depend upon the availability of the panel members and trade union representatives. Every effort will be made for an early date.

The Appellant and Management Respondent must submit written statements to the Hearing co-ordinator to the panel, detailing their case, together with any other supporting documentation that will be referred to at the Appeal Hearing. The deadline for documents to be submitted will be confirmed to the appellant by the Hearing Co-ordinator.

Any particular arrangements that are required by the Appellant or Management Respondent should be notified to the appropriate Hearing co-ordinator to the Panel e.g. overhead projector to be available, access to a lift, prior access to the venue.

### **19.1.3 Witnesses**

It will be the responsibility of the Appellant and the Management Respondent to call and brief any witness they require to attend in order to support their case. The availability of a witness should be considered when agreeing to a date for the appeal.

The Hearing co-ordinator to the Panel must be notified prior to the hearing of the attendance of any witness. The timescales will be confirmed by the hearing co-ordinator.

### **19.1.4 Support from Human Resources**

The Human Resources representative (Hearing co-ordinator to the Panel) will be responsible for:

- Arranging the composition of the Appeal Panel, including date, time and venue of the hearing.
- Providing both parties with copies of the written statements and any supporting documentation. This will be undertaken within a reasonable timescale prior to the date of the hearing.
- Arranging a pre-hearing meeting for the Appeal Panel, ensuring that the panel has all the relevant papers required for the hearing.
- Acting in the role of Hearing co-ordinator to the panel by maintaining a clear and accurate record of the hearing. With the exception of adjournments and the private deliberations of the Appeal Panel.

A member of Human resources may be an advisor to the panel (or part of the panel) to provide professional and technical advice to the panel

### **19.2 Time Limits**

When arrangements for the Appeal Hearing are made, the personal circumstances of the Appellant will be taken into account in the following circumstances – illness, annual leave and statutory duties.

The Appeal will be regarded as out of time and the final internal stage exhausted if:

- After 2 attempts to arrange an Appeal Hearing, the appellant is unable to attend (without the exception of those circumstances above).
- The grounds for appeal are not explicit at the time of lodging it.
- The written statements and supporting evidence is not submitted in time.
- The agreed date for the hearing is postponed following the non-attendance of a witness (with the exception of unplanned illness or statutory duties).

After there have been reasonable attempts to invite an individual to attend an appeal hearing in line with the process above, the chair may convene the hearing without the individual present.

All documentation will be thoroughly reviewed to ensure due process and consideration without the individual present to present their case.

### **19.3 Conduct of the Appeal Hearing**

#### **19.3.1 Appointment of a Chairperson**

Prior to the Appeal Hearing, the Hearing co-ordinator to the panel will elect a chairperson in line with section 16.1.2.

#### **19.3.2 Role of the Chairperson**

The chairperson will be responsible for chairing the Appeal Hearing. They will:

Introduce those present to the Appellant and his/her representative or friend.

Explain the purpose of the hearing, how it will be conducted and what powers the panel has.

#### **19.4 Process**

The process will follow the same format as a formal conduct Hearing.

- After both sides have presented their case, the Appeal Panel will privately deliberate the evidence offered.
- The hearing will be reconvened and the Chair will advise both parties of the decision. Wherever this is not possible (for example, awaiting the outcome of other information), both sides will be appraised as soon as possible.

Written confirmation of the decision of the Appeal Panel will be sent to within a 5 working days of the conclusion of the hearing.

#### **19.5 Adjournments**

Requests for adjournments by either party should be addressed during the hearing to the Chair.

Both parties will be invited to leave the hearing during an adjournment and invited to return by the Hearing co-ordinator to the Panel.

#### **19.6 Jurisdiction of the Appeal Panel**

The Appeal Panel may, at any juncture, and at their discretion, postpone an appeal in order that either party produces further evidence. Any postponement will be kept to a minimum.

The Appeal Panel can downgrade a decision of a previous stage but cannot upgrade it e.g. upgrade a verbal warning to a written warning. It can also direct the staff and/or management sides to apply recommendations resulting from the hearing.

### **20 Consultation**

Consultation will be launched at the Staff Partnership Forum and published on the Trusts Draft Policy Site. Awareness of the consultation will be made via E-bulletin and via email to CBU/Directorate Management Teams.

### **21 Training**

This Disciplinary and Dismissal Policy and Procedure does not have a mandatory training requirement but the following non mandatory training is recommended:-

- New Managers – High Performing Leaders and Managers course
- Building Block Skill Session – Managing performance (conduct)
- Building Block Skill Session - Investigating Officer Training for employment issues

## 22 Monitoring Compliance and Effectiveness

The overall responsibility for the monitoring of effectiveness of this policy lies with the Executive Director of Human Resources. Responsibility for monitoring and effectiveness at CBU/Corporate Directorate level sits with the management teams within the relevant CBU/Corporate Directorate.

The policy's effectiveness is monitored by:

- Monthly Employee Relations Report to the Board.
- Monthly reporting of Employee Relation issues to CBU/Corporate Directorates
- Exception reporting at CBU/Directorate Performance Reviews
- HR officers providing consistent risk based advice in line with the policy
- Maintaining accurate records in HR through Case Management System
- Escalation of issues to the Senior HR Management Team including Deputy Director of HR with issues of concern and where policy has not been followed.

## 23 Links to other Organisational Documents

- Isle of Wight NHS Trust Grievance Policy and Procedure
- Isle of Wight NHS Trust Capability Policy and Procedure
- Isle of Wight NHS Trust Recruitment and Selection Policy
- Isle of Wight NHS Trust Attendance Management Policy
- Isle of Wight NHS Trust Dress Code Policy
- Isle of Wight NHS Trust Conduct, Capability, Ill Health and Appeals Policy and Procedure for Medical and Dental Practitioners
- Isle of Wight NHS Trust Bank Workers Code of Conduct
- Isle of Wight NHS Verification of Registration of Clinical Staff Policy
- Countering Fraud and Corruption Policy and Reporting Procedure

## 24 References

- ACAS Code of Practice 1 on Disciplinary and Grievance Procedures  
<http://www.acas.org.uk/media/pdf/f/m/Acas-Code-of-Practice-1-on-disciplinary-and-grievance-procedures.pdf>
- ACAS Disciplinary and Grievances at work – The ACAS Guide  
<http://www.acas.org.uk/media/pdf/f/m/Acas-Code-of-Practice-1-on-disciplinary-and-grievance-procedures.pdf>

## 25 Appendices

Appendix A Financial and Resourcing Impact Assessment on Policy Implementation  
Appendix B Equality Impact Assessment (EIA) Screening Tool

## Financial and Resourcing Impact Assessment on Policy Implementation

*NB this form must be completed where the introduction of this policy will have either a positive or negative impact on resources. Therefore this form should not be completed where the resources are already deployed and the introduction of this policy will have no further resourcing impact.*

<b>Document title</b>	<b>Disciplinary and Dismissal Policy</b>
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<b>Totals</b>	<b>WTE</b>	<b>Recurring £</b>	<b>Non Recurring £</b>
Manpower Costs	0	0	0
Training Staff	0	0	0
Equipment & Provision of resources	0	0	0

### Summary of Impact:

No impact – Policy is already in place, this is a review of existing policy framework

**Risk Management Issues:** Failure to adhere to policy may increase risk of litigation at Employment Tribunal

### Benefits / Savings to the organisation:

### Equality Impact Assessment

- Has this been appropriately carried out? YES/NO
- Are there any reported equality issues? YES/NO

If “YES” please specify:

### Use additional sheets if necessary.

Please include all associated costs where an impact on implementing this policy has been considered. A checklist is included for guidance but is not comprehensive so please ensure you have thought through the impact on staffing, training and equipment carefully and that ALL aspects are covered.

<b>Manpower</b>	<b>WTE</b>	<b>Recurring £</b>	<b>Non-Recurring £</b>
Operational running costs	0	0	0

<b>Totals:</b>	0	0	0
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<b>Staff Training Impact</b>	<b>Recurring £</b>	<b>Non-Recurring £</b>
	0	0
<b>Totals:</b>	0	0

<b>Equipment and Provision of Resources</b>	<b>Recurring £ *</b>	<b>Non-Recurring £ *</b>
Accommodation / facilities needed	0	0
Building alterations (extensions/new)	0	0
IT Hardware / software / licences	0	0
Medical equipment	0	0
Stationery / publicity	0	0
Travel costs	0	0
Utilities e.g. telephones	0	0
Process change	0	0
Rolling replacement of equipment	0	0
Equipment maintenance	0	0
Marketing – booklets/posters/handouts, etc	0	0
<b>Totals:</b>		

- Capital implications £5,000 with life expectancy of more than one year.

Funding /costs checked & agreed by finance:	
Signature & date of financial accountant:	
Funding / costs have been agreed and are in place:	
Signature of appropriate Executive or Associate Director:	



### Equality Impact Assessment (EIA) Screening Tool

Document Title:	Disciplinary and Dismissal Policy
Purpose of document	This policy outlines the procedure to manage issues relating to conduct of staff (non-medical).
Target Audience	Employees engaged on Agenda for Change and VSM terms and conditions of employment
Person or Committee undertaken the Equality Impact Assessment	Senior HR Manager

- To be completed and attached to all procedural/policy documents created within individual services.
- Does the document have, or have the potential to deliver differential outcomes or affect in an adverse way any of the groups listed below?

If no confirm underneath in relevant section the data and/or research which provides evidence e.g. JSNA, Workforce Profile, Quality Improvement Framework, Commissioning Intentions, etc.

If yes please detail underneath in relevant section and provide priority rating and determine if full EIA is required.

		Positive Impact	Negative Impact	Reasons
<b>Gender</b>	Men	✓		This policy outlines the procedure to manage issues relating to conduct of staff. Adherence to this policy will ensure that all disciplinary and dismissals are dealt with consistently, fairly and in line with the legislative framework.
	Women	✓		As above
<b>Race</b>	Asian or Asian British People	✓		As above
	Black or Black British People	✓		As above
	Chinese people	✓		As above
	People of Mixed Race	✓		As above

	White people (including Irish people)	✓		This policy outlines the procedure to manage issues relating to conduct of staff. Adherence to this policy will ensure that all disciplinary and dismissals are dealt with consistently, fairly and in line with the legislative framework
	People with Physical Disabilities, Learning Disabilities or Mental Health Issues	✓		As above
<b>Sexual Orientation</b>	Transgender	✓		As above
	Lesbian, Gay men and bisexual	✓		As above
<b>Age</b>	Children	<i>Not applicable</i>	<i>Not applicable</i>	<i>Not applicable</i>
	Older People (60+)	✓		As above
	Younger People (17 to 25 yrs)	✓		As above
<b>Faith Group</b>				
<b>Pregnancy &amp; Maternity</b>		✓		As above
<b>Equal Opportunities and/or improved relations</b>		✓		As above

Notes:

Faith groups cover a wide range of groupings, the most common of which are Buddhist, Christian, Hindus, Jews, Muslims and Sikhs. Consider faith categories individually and collectively when considering positive and negative impacts.

The categories used in the race section refer to those used in the 2001 Census. Consideration should be given to the specific communities within the broad categories such as Bangladeshi people and the needs of other communities that do not appear as separate categories in the Census, for example, Polish.

### 3. Level of Impact

If you have indicated that there is a negative impact, is that impact:			
		<b>YES</b>	<b>NO</b>
<b>Legal</b> (it is not discriminatory under anti-discriminatory law)			
<b>Intended</b>			

If the negative impact is possibly discriminatory and not intended and/or of high impact then please complete a thorough assessment after completing the rest of this form.

3.1 Could you minimise or remove any negative impact that is of low significance? Explain how below:	
3.2 Could you improve the strategy, function or policy positive impact? Explain how below:	
3.3 If there is no evidence that this strategy, function or policy promotes equality of opportunity or improves relations – could it be adapted so it does? How? If not why not?	
Scheduled for Full Impact Assessment	Date:
Name of persons/group completing the full assessment.	
Date Initial Screening completed	

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