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**AT ALL TIMES, STAFF MUST TREAT PATIENTS WITH RESPECT
AND UPHOLD THEIR RIGHT TO PRIVACY AND DIGNITY.**

1 INTRODUCTION

- 1.1 Wrightington Wigan and Leigh Teaching NHS Trust requires high standards of conduct from everyone and is committed to helping people improve and learn from mistakes. This policy and procedure is designed to ensure a fair, systematic and consistent approach is taken when an employee's behaviour or action is in breach of workplace rules or falls short of the expected standards.
- 1.2 Inevitably, as a large employer responsible for upholding standards for our patients, there are times when we need to follow formal procedures, but in these circumstances it is essential that we treat people with dignity and kindness in line with our values, regardless of the circumstances.
- 1.3 We are also committed to combatting any bias or discrimination in our employment and management practices. As part of our commitment to developing a just and learning culture cases are thoroughly assessed to ensure there is sufficient understanding of the issues or concerns, and the circumstances relating to them, to justify the initiation of formal action. We should always be asking ourselves whether our actions are proportionate and justifiable and whether managing situations informally achieves a more productive outcome.

2 POLICY STATEMENT

- 2.1 This policy and procedure reflects the recommendations from the NHS Improvement group convened in response to the Verita Report (outcome from the review into the death of Nurse Amin Abdullah in 2016) and communicated to NHS Trusts in 2019 by Baroness Dido Harding, Chair of NHS Improvement.
- 2.2 The fair treatment of staff supports a culture of fairness, openness and learning in the NHS by helping staff feel confident to speak up when things go wrong, rather than fearing blame. An objective and prompt examination of the issues and circumstances should be carried out to establish whether there are truly grounds for a formal investigation and/or for formal action. Would training for the employee, support, guidance or informal management be more appropriate and productive?
- 2.3 This policy has been developed in consultation with the Trust's recognised trade unions and is in accordance with the ACAS Code of Practice on disciplinary and grievance procedures.
- 2.4 This policy applies to everyone employed by the Trust on a permanent or temporary basis. Issues relating to professional misconduct of Medical and Dental staff should be managed under the Trust's Maintaining High Professional Standards Policy.

3 KEY PRINCIPLES

- 3.1 The Trust expects all employees to behave appropriately and professionally. Everyone has the right to be treated fairly, with dignity and respect in the application of the disciplinary process.
- 3.2 Consistent with the application of 'just culture' principles, which recognise that it is not always appropriate or necessary to invoke formal management action in response to a concern or incident, a comprehensive and consistent decision-making methodology should be applied that provides for full and careful consideration of context and prevailing factors when determining next steps.

- 3.3 A member of staff who is subject to the disciplinary process can be represented at all formal stages of the process by a recognised trade union/professional body representative. Alternatively, they can be accompanied by a work colleague, who is not involved in the disciplinary investigation process. In the event of the colleague being legally qualified, they will not act in this capacity during the disciplinary process. Further alternative and/or additional support/representation will be considered in exceptional circumstances and should be discussed at the earliest interval. Refer to section 22 for further details.
- 3.4 Consideration should be given to those staff who have any additional requirements and require reasonable adjustments in order to participate under this process.
- 3.5 Audio or visual recording of any meeting held under this process is not permitted. Any person caught covertly recording any meetings under this process may be subject to disciplinary action.
- 3.6 Virtual meetings will be considered by the chairs of the meetings and relevant trade union representatives and if deemed appropriate, given relevant current circumstances, will be a viable meeting method at all stages, inclusive of hearings.
- 3.7 Those subject to this policy and team members affected by its application will be offered a personalised support and communication arrangement at each stage. Please refer to the support framework associated to this policy. This can be found in the Trust intranet policy library or via the HR team.
- 3.8 All measures should be taken to ensure that complete independence and objectivity is maintained at every stage of an investigation and disciplinary procedure, and that identified or perceived conflicts of interest are acknowledged and appropriately mitigated (this may require the sourcing of independent external advice and expertise).
- 3.9 The Trust aims to ensure all managers who investigate concerns or chair/sit on hearing panels must have appropriate and up to date training on workforce investigations/managing/chairing disciplinary cases. Such training should involve appropriate refreshers within three years of the initial training.

4 RESPONSIBILITIES

4.1 Trust Board

- 4.1.1 Responsible for the initiation of this policy under its commitment and to promote a culture of fairness, openness and learning in the Trust by helping staff feel confident to speak up when things go wrong, rather than fearing blame.
- 4.1.2 To receive reports and have assurance that conduct matters are handled within the organisation by competent managers who operate in a consistent, fair and respectful manner towards all employees involved in conduct procedures.
- 4.1.3 Ensure all managers who undertake actions within the disciplinary process are able to access training and maintain their competency.

4.2 Responsibility of Executive Led Disciplinary Scrutiny Panel

- 4.2.1 Review all potential formal disciplinary cases prior to commencement and where appropriate, utilise a series of questions and the 'just culture' decision tree to decide whether there is an appropriate basis to invoke formal management.
- 4.2.2 Act in accordance with the published triage process and terms of reference.
- 4.2.3 Consider all human factors that may have been a contributory factor, whether the issue is one of capability rather than conduct and whether there are early indications of system failings.

- 4.2.4 Review all non-medical exclusions risk assessments at each panel to ensure the exclusion remains essential.
- 4.2.5 Seek assurance that a personalised support and communication arrangement has been agreed between the relevant manager and the employee for all cases that progress formally.

4.3 **Responsibility of Managers**

- 4.3.1 Ensure staff are made aware of the disciplinary policy and associated rules (Appendix 2).
- 4.3.2 Managers should try to resolve minor matters of concern informally. If informal approaches do not bring about improvement or if misconduct is sufficiently serious, formal stages of this procedure should be followed.
- 4.3.3 Managers will ensure that all action taken under this policy and procedure is reasonable and proportionate. At an early stage, employees will be told why disciplinary action is being considered and they will be given the opportunity to respond to allegations before decisions about formal sanctions are taken.
- 4.3.4 Undertake training/mentoring in the application of this policy.
- 4.3.5 Inform Human Resources (HR) when allegations are received.
- 4.3.6 Any suspected fraud, corruption or bribery should be reported to the Trust's nominated Fraud Specialist Manager.
- 4.3.7 Managers must ensure they maintain their duty of care towards any employee (inclusive of any alleged victim and/or perpetrator) who is subject to a conduct process by ensuring a personalised support and communication arrangement is in place.
- 4.3.8 Ensure any concerns to be considered under a formal route are referred to the Executive Scrutiny Panel for approval ahead of any formal process commencing.

4.4 **Responsibility of HR**

- 4.4.1 Ensure the policy is compliant with current legislation.
- 4.4.2 Ensure appropriate training/mentoring is provided to managers regarding the application of this policy.
- 4.4.3 Liaise with appropriate stakeholders to determine appropriate process to be applied such as informal resolution or investigation required.
- 4.4.4 Facilitate support with stakeholders at any meeting where exclusion is considered.
- 4.4.5 Ensure managers have initiated a personalised support and communication arrangement.
- 4.4.6 Co-ordinate hearings as required.
- 4.4.7 Manage the list of appropriately skilled panel members, case managers and investigators in conjunction with staff side.
- 4.4.8 Support management representatives in the disciplinary process.
- 4.4.9 Ensure that accurate but non verbatim written records are maintained and provided to relevant stakeholders as soon as possible.
- 4.4.10 Refer any incident of suspected fraud to the Fraud Specialist Manager or the Chief Finance Officer prior to the commencement of any investigation. The Fraud Specialist Manager will agree with the Chief Finance Officer and the HR Department the method of approach to the investigation of any allegation.
- 4.4.11 Ensure any concerns to be considered under a formal route are referred to the Executive Scrutiny Panel for approval ahead of the commencement of a formal process.
- 4.4.12 Within 4 weeks of the conclusion of any formal conduct/disciplinary matter the relevant HR representatives from the investigation and any panels, alongside staff side colleagues should review the case and evaluate any learning to drive continuous improvements of the disciplinary process.
- 4.4.13 Ensure relevant mechanisms are in place to provide assurance to the Board that the statement and principles of this policy are upheld.

4.5 Responsibility of Employees

- 4.5.1 Behave appropriately and in accordance with the Trust's values.
- 4.5.2 Ensure that they are aware of the disciplinary policy, the associated rules and its implications (See Appendix 2).
- 4.5.3 Engage appropriately with each stage of the process.

4.6 Responsibility of Case Manager

- 4.6.1 Undertake appropriate training to ensure complete independence and objectivity can be delivered throughout their oversight of the matter.
- 4.6.2 Undertake the role in accordance with the principles of this policy.
- 4.6.3 Use a comprehensive and consistent decision-making methodology, such as the workplace incident 'decision tree' to ensure fair application of the process.
- 4.6.4 Consider, offer and enact the fast track procedure if appropriate, following discussion with the HR representative.
- 4.6.5 Develop and issue terms of reference for investigations.
- 4.6.6 Manage the pace of the investigation within agreed time scales.
- 4.6.7 Review the progress of the investigation at regular intervals, being openminded to consider if the investigator confirms there is evidence to support the formal process continuing. Consider would training for the employee, support, guidance or informal management be more appropriate and productive?
- 4.6.8 Where evidence is not identified, take action at the earliest interval to close the case and communicate this outcome to all parties.
- 4.6.9 Receive the investigation report and refer any further investigation requirements to the investigating officer.
- 4.6.10 Once the investigation report is received a case manager may determine an informal route is a more appropriate resolution.
- 4.6.11 Ensure a personalised support and communication arrangement is in place and reviewed at regular intervals for any employee subject to the case they are managing.
- 4.6.12 Fraudulent/Corrupt Activities. Managers who have been informed of a potential fraud must promptly report it to the Chief Finance Officer and the Trust's Counter Fraud Officer before taking any action, including suspension, which could potentially alert the member of staff. Further guidance is contained in the Trust's Counter Fraud and Corruption Policy, which must be carefully followed.
- 4.6.13 It is recommended that a different senior manager will act as any panel chair to ensure independence is evident however the case manager may act as panel chair for any case that proceeds to a formal hearing providing they have had no direct involvement within the investigation aside from issuing the terms of reference and updates on any investigation progress only, therefore objectivity and independence is maintained and there is no identified conflict of interest. Consideration for the membership of the panel should be reflective of paragraph 12.2.

4.7 Responsibility of Investigating Officer

- 4.7.1 Undertake appropriate training to ensure complete independence and objectivity can be delivered throughout their investigation.
- 4.7.2 Complete a fact-finding investigation in accordance with terms of reference (Appendix 6).
- 4.7.3 Where evidence is not identified, take action at the earliest interval to highlight this to the case manager so consideration to close the case and communicate this outcome to all parties.
- 4.7.4 Compile a balanced and robust report on completion of the investigation.
- 4.7.5 Determine if there appears to be a case to answer that should be heard at a disciplinary hearing.

4.7.6 Present the management case at disciplinary hearings.

4.7.7 Refer any incident of suspected fraud to HR.

4.7.8 All incidences of suspected fraud must be referred to the Fraud Specialist Manager or the Chief Finance Officer before any investigation takes place. Normally notification will be the responsibility of a senior member of the HR Department. The Fraud Specialist Manager will agree with the Chief Finance Officer and a senior member of the HR Department the method of approach to the investigation of the allegation.

5 CONFIDENTIALITY

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.

6 WORKPLACE/JUST CULTURE DECISION TREE

6.1 In accordance with the principles of this policy, in response to any workplace concern or incident, a comprehensive and consistent decision-making methodology should be applied that provides for full and careful consideration of context and prevailing factors when determining next steps. The Trust's 'decision tree' is the agreed framework for considering any concerns and should be utilised by any manager/case manager and the outcome discussed with the relevant HR representative.

6.2 Managers should consider carefully all mitigation such as staffing levels, health issues or other human or workplace factors as part of using the decision tree and ahead of determining a formal route is the most appropriate action.

6.3 If the outcome from the decision tree methodology is that a formal route is the most appropriate step, the HR representative will refer the matter to the Executive Scrutiny Panel for consideration and approval.

7 SUPPORT FOR THOSE AFFECTED BY FORMAL PROCEDURES

7.1 It is the responsibility of all managers and HR representatives that manage, facilitate and support a conduct/disciplinary matter to consider - What will be the likely impact on the health and wellbeing of the individual(s) concerned and on their respective teams and services, and what immediate and ongoing direct support will be provided to them? Furthermore, how will you ensure the dignity of the individual(s) is respected at all times and in all communications, and that your duty of care is not compromised in any way, at any stage?

7.2 Managers must ensure that a personalised support and communication arrangement is in place and reviewed at regular intervals for any employee subject to the case they are managing. To support the discussion and arrangements managers should refer to the accompanying guidance and template available on the Trust's policy library or via the HR team.

7.3 Depending on the discussion with the relevant individual, a Health and Wellbeing Staff Liaison Officer may be appointed to directly support and assist the individual in accessing internal health and wellbeing support mechanisms.

7.4 Managers of any member of staff who is subject to being excluded or redeployed from their substantive role whilst an investigation proceeds must ensure that support and communication arrangements are immediately agreed with the employee before they leave

the department or are redeployed, unless an alternative time to discuss is requested by the employee or their representative.

8 FAST-TRACK DISCIPLINARY

- 8.1 In cases of alleged misconduct where dismissal is not an option and where an employee does not wish to contest the allegations, they can opt to have their case dealt with by way of the fast-track process. This formal route should be a quicker and far less stressful process for all those involved.
- 8.2 The Trust's Fast-Track Disciplinary process is defined within the associated protocol, available via the HR Department.
- 8.3 The protocol can be applied to all conduct matters, where the available facts of the case and any known mitigation are determined by a manager and their HR advisor as leading to a resolution or disciplinary sanction that is likely to be more than an informal route but less than a dismissal. This protocol does not preclude managers resolving matters via informal routes if at all possible.
- 8.4 There is no obligation for managers or employees to offer or apply for this route in conduct matters; however, consideration should be given to the facts of the conduct matter, the potential outcome and any benefit identified to reducing the time and any detrimental impact on all those involved in the case.
- 8.5 Any manager contemplating offering this route for employee consideration should seek the advice of their HR advisor.
- 8.6 Any employee considering this route in resolution of a conduct matter and the associated allegations against them should seek advice via their union representative, a workplace colleague or a member of the HR team.

9 EXCLUSION/RESTRICTIONS/REDEPLOYMENT

- 9.1 Exclusion is not a disciplinary sanction, it is a holding measure on full pay whilst an investigation is completed and is implemented to safeguard the employee, patients and the Trust. The excluding manager and those supporting an exclusion or redeployment should ensure any employee subject to exclusion is fully supported at this time and not treat them as 'guilty' in any way as this is not the aim of this action. Managers should consider the exclusion or redeployment as a temporary step and prepare as though the employee will return to their substantive role and act accordingly.
- 9.2 The matter of exclusion should be discussed between the relevant manager and HR contact, with the exclusion risk assessment document (available on the Trust intranet or via HR) being completed and consideration being given to interim alternatives such as restriction or alternative duties. Except where immediate safety or security issues prevail, any decision to exclude should be a last resort that is proportionate, time-bound and only applied where there is full justification for doing so.
- 9.3 An employee subject to this discussion will be entitled to representation in accordance with section 22. However given the often immediate or urgent requirement for any meeting to take place, if representation is not available this will not prevent the meeting going ahead.
- 9.4 If possible, the decision to exclude should be supported by the Executive Scrutiny Panel ahead of the exclusion taking place however due to the nature of exclusion, it is unlikely to be the case that this decision on whether or not to proceed can wait for the panel to meet. Therefore, efforts should be made by the HR contact to discuss with either the Strategic HR

Lead, Deputy Director of HR or Director of Workforce in these situations as an alternative. In any event, the views of as many panel members as possible will be sought by the Director of Workforce / Deputy Director of HR/ Strategic HR Lead, recognising the immediacy of the situation.

- 9.5 The panel will review the documented exclusion risk assessment and any further information that has become available at the next panel meeting, in order that any corrective action can be taken quickly, where required. The panel will review the status of all exclusions at each meeting to ensure their continuation remains proportionate and necessary.
- 9.6 Ideally the excluding manager should meet with the employee to advise of their decision to exclude them from work, move them to another area or restrict their duties whilst the investigation is completed. In all instances, their decision will be confirmed in writing within 2 working days.
- 9.7 If the employee is excluded from work, they should not attend any Trust premises unless requested by the case manager/investigating officer. The employee may attend medical appointments at Trust premises but must not speak to any witnesses involved in the investigation. Meetings with trade union/professional body representative on Trust premises are permitted.
- 9.8 Excluded employees should be advised of their entitlement to contact the Freedom to Speak Up Guardian at any time on SpeakUp@wvl.nhs.uk or 01942 822662 to discuss any concerns they might have in relation to patient safety or care.
- 9.9 Employees who are excluded from the Trust must not work for another employer during their normal working hours.
- 9.10 The excluding manager must ensure that support and arrangements for the employee in accordance with section 7 is agreed with the employee.
- 9.11 Immediate support and assistance should be given to any excluded or redeployed member of staff to ensure they are able to obtain any personal property from their substantive working area, they may wish to take with them whilst excluded/redeployed. Managers and support staff should consider if the staff member needs to be accompanied whilst obtaining their belongings and leaving their department. The overriding aim should be one of support and assistance with the dignity and respect of the individual in mind; and only where there may be a risk to any employee or investigation should any employee be accompanied unless the employee themselves wishes to be accompanied. Employees should not feel ostracised or prejudged by the exclusion/redeployment process.
- 9.12 Excluding managers should consider **with** the employee any communications that may be appropriate and should be provided to colleagues to explain their absence or redeployment from the department during the relevant period.
- 9.13 Excluding managers should not request the return of Trust Identification or remove any other Trust access unless they are able to identify a clear risk to the investigation and/or any staff or patients with the employee maintaining this during the relevant period.

10 ILL HEALTH DURING EXCLUSION

- 10.1 Occupational Health in the first instance, so the relevant manager/HR support is able to seek advice and determine if any support or reasonable adjustments can be made to enable the conduct process to be concluded.
- 10.2 Advice will be sought by Occupational Health and consideration will be given to reasonable adjustments such as an employee participating within any stage of the process in writing or if representations are able to be made on the employees behalf.
- 10.3 If reasonable adjustments or support is not identified and extended sickness absence occurs which prevents the continuation or conclusion of the conduct process, consideration will be given to pausing the conduct process.
- 10.4 Should the conduct process be paused, the Trust's Attendance Management process will be commenced by the employees' line manager, or other appropriate manager depending on the circumstances. This process will include the exploration of supportive measures with the employee to determine if and when they are able to participate within the conduct process again.
- 10.5 In this instance the employee will no longer be considered as excluded but absent due to sickness and they will be recorded on the ESR system accordingly. Once the period of sickness absence has ended, consideration will be given to the status of the exclusion, which is likely to be reinstated.
- 10.6 Employees will need to provide the Trust with a relevant 'Fitness to Work' Statement to support the period of sickness absence in accordance with the Trust's Attendance Management Policy.
- 10.7 Should the employee be dismissed for reason of ill health incapability, consideration will be given to the conduct matter and process and a satisfactory conclusion will be defined by management with HR advice and support, which may include but not be limited to a disciplinary hearing.
- 10.8 Any subsequent employment reference requested by a potential employer to the Trust for an employee dismissed due to ill health incapability, but with a live conduct matter at the date of the dismissal will include factual information based on how the conduct matter was concluded by the Trust.

11 MANAGEMENT OF MISCONDUCT

- 11.1 The Trust recognises that cases of minor misconduct are best dealt with informally and quickly. A quiet word is often all that is needed. Cases of minor misconduct should initially be dealt with through a recorded file note, which will remain live for 6 months but may be retained within the personal file for information purposes. Any recorded information should be shared with the employee and a copy issued.
- 11.2 If conduct does not improve, or an act of serious misconduct occurs, a formal disciplinary investigation may be commissioned by the case manager following approval from the Executive Scrutiny Panel.
- 11.3 Any recommendation for a formal disciplinary investigation will be forwarded to the Trust's Executive Led Disciplinary Scrutiny Panel to ensure that fairness and consistency of reason is applied to commencing a formal investigation and assurance that an informal resolution would not be appropriate.

- 11.4 Managers should remain openminded and consider if an informal resolution is a viable route at all stages, including during any formal process. A formal process should be stopped at the earliest point if an informal route or no case to answer would be more appropriate as a resolution to the matter.
- 11.5 Managers, with the advice and support from HR, can consider if any conduct matter is eligible to be resolved via the Trust's Fast-Track Disciplinary process. If managers believe the facts of the case may be resolved by this method, they will inform an employee of their entitlement to apply. If the application is approved there will be no further requirement for a formal investigation to be undertaken whilst the case proceeds to resolution via the fast-track route. Should the fast-track route not conclude to resolution there may be a requirement for the matter to revert to the formal investigation under this policy.
- 11.6 For matters that proceed to a formal investigation, where possible, the investigating officer should complete their investigation within 8 weeks. If this is not possible, this should be referred to the case manager who will arrange to contact the employee with an update. This will include a review of the exclusion or restricted practice, if applicable.
- 11.7 Where evidence is not identified, investigators and case managers must take action at the earliest interval to close the case and communicate this outcome to all parties, which includes advising the Executive Scrutiny Panel there is no case to answer.
- 11.8 Where the evidence suggests there may be an appropriate informal resolution route, this should be highlighted to the case manager at the earliest interval for consideration and any relevant action. Where an informal outcome has been agreed this outcome should be confirmed with the Executive Scrutiny Panel.
- 11.9 On completion of the investigation, the investigating officer should complete an investigation report and provide this to the case manager within 4 weeks.
- 11.10 The case manager will write to the employee to confirm if they are to be referred to a disciplinary hearing.

12 DISCIPLINARY HEARINGS

- 12.1 If the decision is made that a formal disciplinary hearing is necessary, it will be chaired by a manager who has not been involved within the investigation. A representative from the HR Department will support the chair of the panel and a professional advisor may also be in attendance.
- 12.2 The consistency of the panel will include a minimum of 2 panel members (inclusive of the HR representative) and should be representative of both the profession and demographics relevant to the case and employee. Where a professional conduct matter is under consideration then a professional advisor will be on the panel in advisory, but non-decision-making capacity.
- 12.3 When a decision is taken to proceed to a disciplinary hearing, all relevant information gathered during the investigation process will be provided to the member of staff.
- 12.4 The employee will be invited in writing to attend the hearing, providing at least 5 working days' notice. The letter will also include:
 - 12.4.1 Allegations which are to be considered;
 - 12.4.2 Disciplinary rules which are alleged to have been broken;
 - 12.4.3 Whether the allegations are classified as gross or general misconduct and possible outcome/sanction;

- 12.4.4 Date, time & venue of the hearing;
- 12.4.5 Panel members, including the HR representative and professional advisor (if applicable);
- 12.4.6 The employee's right to representation;
- 12.4.7 The employee's right to call witnesses;
- 12.4.8 The employee's right to provide a written statement of case.

- 12.5 Where a clinical recommendation via Occupational Health or a GP has been made, or a recommendation by a Health and Wellbeing Staff Liaison Officer has been received which confirms that any party (such as a witness) within the hearing may be subject to psychological damage by attending a panel in person, arrangements can be made for video conferencing to take place and input into the proceedings via this methodology.

13 LEVELS OF AUTHORITY

- 13.1 Gross misconduct cases – Executive Director, Deputy Director, Divisional Director of Nursing or Head of Department.
- 13.2 General misconduct cases – Those listed in 13.1 plus Matrons, Ward Managers, Directorate Managers or equivalent.

14 SANCTIONS

- 14.1 The panel will take all of the evidence presented at the disciplinary hearing into consideration when making their decision. In all decision-making that relates to the application of sanctions, the principle of plurality should be adopted, such that important decisions which have potentially serious consequences are very well informed, reviewed from multiple perspectives, and never taken by one person alone.
- 14.2 The possible decisions are:
 - 14.2.1 No case to answer.
 - 14.2.2 Recorded file note.
 - 14.2.3 Informal measures.
 - 14.2.4 First written warning.
 - 14.2.5 Final written warning.
 - 14.2.6 Dismissal.
- 14.3 In addition, consideration will be given to transfer and/or demotion.
- 14.4 Additional action as a result of being issued with a disciplinary warning: In accordance with the Trust's Pay Progression Policy and procedure - If a first or final written warning is issued, the member of staff will not be awarded an annual pay increase on the pay step date whilst the warning remains 'live'. The Chair of a hearing will request the line manager action this via the ESR system. The manager should initiate a pay step review meeting before the expiry of the warning and if all other requirements have been met, the member of staff will progress to the next pay step effective from the date after the warning expires.
- 14.5 In the first six months of employment with the Trust, any act of misconduct may result in dismissal.
- 14.6 Formal written warnings should last for 12 months unless exceptional circumstances apply.
- 14.7 Cases of gross misconduct which result in dismissal will be implemented with immediate effect without notice.

- 14.8 The outcome of any disciplinary hearing or appeal hearing will be confirmed in writing within 14 days of the hearing.

15 APPEALS

- 15.1 All appeals must be lodged on the appeal form (Appendix 3) and submitted to the Deputy Director of HR within 14 calendar days of the disciplinary outcome being confirmed.
- 15.2 The acceptable grounds of appeal are:-
- 15.2.1 Procedure was not adhered to;
 - 15.2.2 An inappropriate sanction was applied;
 - 15.2.3 Additional information / evidence has become available.
- 15.3 Appeals will normally be chaired by a manager of higher seniority than the initial disciplinary hearing. The panel should not have had any prior involvement in the case. The panel will receive advice and support from a member of the HR Department. The consistency of the panel will include a minimum of 2 panel members (inclusive of the HR representative) and should be representative of both the profession and demographics relevant to the case and employee. Where a professional conduct matter is under consideration then a professional advisor will be on the panel, in an advisory but non-decision-making capacity.
- 15.4 Appeals against dismissal will be heard by a minimum of 2 senior managers with the authority to consider cases of gross misconduct. At least 1 of the panel members will be a Director of the Trust.
- 15.5 If the grounds of appeal are that additional evidence has become available, the chair of the panel may consider running the appeal as a complete re-hearing. In such instance there would be no further right of appeal.

16 HEARING FORMATS

16.1 Disciplinary hearing

Disciplinary hearings are held in the following format:-

- 16.1.1 The management side will present their case;
- 16.1.2 The employee (and/or their trade union representative) can ask questions of the management side;
- 16.1.3 The panel can ask questions of the management side;
- 16.1.4 Questions are asked of witnesses called by the management side;
- 16.1.5 The employee (and/or their trade union representative) present their case;
- 16.1.6 The management can ask questions regarding the employee's case;
- 16.1.7 The panel can ask questions regarding the employee's case;
- 16.1.8 Questions are asked of any witnesses the employee has called;
- 16.1.9 Summary presented by the management side;
- 16.1.10 Summary presented by the member of staff (and/or their trade union representative);
- 16.1.11 The hearing is adjourned whilst the panel considers their decision;
- 16.1.12 The hearing is reconvened, and the chair confirms their decision;
- 16.1.13 The outcome is confirmed in writing.

16.2 Appeal hearing

Appeal hearings are held in the following format:

- 16.2.1 The employee (and / or their trade union representative) will present their case;
- 16.2.2 The management can ask questions regarding the employee's case;
- 16.2.3 The panel can ask questions regarding the employee's case;

- 16.2.4 Questions are asked of any witnesses the employee has called;
- 16.2.5 The management side will present their case;
- 16.2.6 The employee (and/or their trade union representative) can ask questions of the management side;
- 16.2.7 The panel can ask questions of the management side;
- 16.2.8 Questions are asked of witnesses called by the management side;
- 16.2.9 Summary presented by the member of staff (and / or their trade union representative);
- 16.2.10 Summary presented by the management side;
- 16.2.11 The hearing is adjourned whilst the panel considers their decision;
- 16.2.12 The hearing is reconvened and the chair confirms their decision;
- 16.2.13 The outcome is confirmed in writing.

17 RE-SCHEDULING HEARINGS

- 17.1 If the employee, or their representative, is unable to attend a hearing and a good reason for failing to attend is provided, the hearing may be adjourned to another date which will be mutually agreed. All efforts should be made for this to be rearranged within no more than 4 weeks.
- 17.2 If the employee is unable to attend the re-arranged hearing, it may take place in the employee's absence unless an acceptable explanation is provided. The employee will also be provided with the opportunity to make a written submission. In cases where the delay is caused through ill health the advice of the occupational health and well-being department will be sought.

18 SAFEGUARDING AND CHILD PROTECTION ISSUES

- 18.1 Allegations of safeguarding in relation to children or vulnerable adults against employees should be dealt with in accordance with the Trust's Safeguarding Policies. A Safeguarding representative should be allocated to support the case to provide professional advice around this.
- 18.2 Any allegations against an employee or volunteer should be reported to the relevant safeguarding lead/Medical Director who will determine whether referral to the LADO is necessary in relation to the national guidelines. Any referral to the LADO must be completed within 24 hours of the incident being reported.

19 POLICE INVOLVEMENT

- 19.1 If an employee is interviewed by the police for a suspected criminal matter, including motoring offences, they must complete the declaration form (Appendix 4). Any subsequent arrest, caution or conviction must be declared on this form. The relevant HR Business Partner will confirm in writing what action, if any, is necessary following receipt of the completed form.
- 19.2 If an employee is convicted of a criminal offence during the course of their employment, inside or outside of working hours, the Trust may need to investigate and take disciplinary action.
- 19.3 The Trust will take into consideration the nature of the offence, its effect on employment and any other relevant factors.
- 19.4 It may be necessary for the Trust to liaise with the relevant police force. It may not be necessary for the Trust to wait for the outcome of legal proceedings, and if the member of staff refuses to co-operate, the Trust may take action based on the information available.

- 19.5 If a member of staff is detained in custody prior to conviction, they will be regarded as absent from duty and no payment made.
- 19.6 All employees are contractually obliged to inform the Trust if they receive a criminal conviction during employment with the Trust. If the Trust is made aware that an employee has failed to notify the Trust, the Trust may consider notifying the Fraud Specialist Manager who may investigate and take further action.

20 CORRUPTION AND BRIBERY

- 20.1 In accordance with the Trust's Fraud, Corruption and Bribery Policy & Response Plan, any suspicious activity, within the scope of this policy, will be referred to and subsequently investigated by the Trust's Fraud Specialist Manager. The results of any such investigation could lead to internal disciplinary and/or civil/criminal prosecution proceedings being instigated against the appropriate person/persons involved.
- 20.2 The Fraud Act 2006 states that a person is guilty of fraud if he/she is in breach of the sections listed below:-
- 20.2.1 Fraud by false representation;
- 20.2.2 Fraud by failing to disclose information; and
- 20.2.3 Fraud by abuse of position.
- 20.3 The Bribery Act 2010 repeals existing legislation. It is a criminal offence to give, promise or offer a bribe, and to request, agree to receive or accept a bribe, either at home or abroad, from UK or Non-UK businesses or individuals.
- 20.4 It also places specific responsibility on organisations to have in place sufficient and adequate procedures to prevent bribery taking place. Under the act, bribery is defined as "inducement for an action which is illegal unethical or a breach of the Trust's SFI's". (Standard Financial Instructions) Inducements can take the form of gifts, loans, fees, rewards or other privileges. Bribery is broadly defined as the offering or acceptance of inducements, gifts or favours, payments or benefit in kind which may influence the improper action of any person. Bribery does not always result in a loss. The corrupt person may not benefit directly from their deeds; however, they may be unreasonably using their position to give advantage to another.
- 20.5 It is a long established principle that public sector bodies, including the NHS, must be impartial and honest in the conduct of their business and their employees should remain beyond suspicion. It is also an offence under the Bribery Act 2010 for an employee to accept any inducement or reward for doing, or refraining from doing, anything in her/his official capacity. A breach of the provisions of these Acts renders employees liable to prosecution and may also lead to loss of their employment and pension rights in the NHS.
- 20.6 All staff should be aware that disciplinary action may be taken in cases where a member of staff fails to declare a relevant interest, or is found to have abused his or her official position or knowledge, for the purposes of self-benefit, or that of family and/or friends. Disciplinary action may lead to dismissal.
- 20.7 It is a mandatory requirement for all staff Band 8 and above to complete and submit the Declaration of Interests form to confirm the accuracy of information they have previously provided and provide details of any changes to that information. The form is available on the Trust intranet via the Finance page or from the Company Secretary/Director of Corporate Affairs or the Head of Financial Services and Payroll, alternatively email financial.services@wwl.nhs.uk

20.8 Examples where a declaration is required include:

- 20.8.1 Directorships, including Non-Executive directorships, held in private companies or PLCs (with the exception of those of dormant companies);
- 20.8.2 Ownership or part-ownership of private companies, businesses or consultancies likely or possibly seeking to do business with the NHS;
- 20.8.3 Shareholdings in organisations likely or possibly seeking to do business with the NHS;
- 20.8.4 A position of authority in a charity or voluntary organisation in the field of health and social care;
- 20.8.5 Any connection with a voluntary or other organisation contracting for NHS services;
- 20.8.6 The interests of spouses and cohabiting partners should also be declared.

20.9 This list is not exhaustive and constitutes key examples; if there is any doubt with regard to declaration of interests these should be discussed with the Company Secretary/Director of Corporate Affairs, Head of Financial Services and Payroll and/or the LCFS.

20.10 Where no interest exists a nil return must be submitted.

20.11 The Trust has an accredited Fraud Specialist Manager who is responsible for investigating all suspected cases of fraud, corruption and bribery. If you wish to contact the Trust's Fraud Specialist Manager, please contact the Fraud Specialist Manager by phone on ext. 6204 (01257 256204), 07827 835979 (mobile) or e-mail; collette.ryan@nhs.net or collette.ryan@wwl.nhs.uk.

20.12 Alternatively staff can report their suspicions by using the NHS Counter Fraud Authority (NHS CFA) Service National Fraud Hotline on 0800 028 40 60 or online at www.cfa.nhs.uk/reportfraud (this number/link can be used to report such matters anonymously if required).

20.13 Staff need to be aware that a breach of these Acts renders them liable to prosecution and may also lead to loss of their employment and superannuation rights in the NHS.

21 REFERRAL TO EXTERNAL BODIES/ORGANISATIONS

21.1 In cases where there is concern that an employee may be a danger to patients, the Trust may consider that it has an obligation to inform other organisations, including the private sector, of any restriction on practice or exclusion and provide a summary of the reasons for it. Details of other employers (NHS and non-NHS) may be readily available via the relevant declaration form but, where it is not, the employee should supply them. Failure to do so may result in further disciplinary action or, where applicable, referral to any relevant regulatory body, as the paramount interest is the safety of patients.

21.2 Where a NHS employer has placed restrictions on practice, the practitioner should agree not to undertake any work in that area of practice with any other employer.

21.3 Where allegations have been made which relate to a professional matter or to professional misconduct, it may be appropriate to inform the regulating professional body. Before doing so, the line manager/excluding manager should seek advice from the appropriate professional head to ascertain if notification is appropriate.

21.4 The Safeguarding Vulnerable Groups Act 2006 (SVGA) places a legal duty on employers and personnel suppliers to refer any person who has:

- 21.4.1 Harmed or poses a risk of harm to a child or vulnerable adult;

- 21.4.2 Satisfied the harm test; or
- 21.4.3 Received a caution or conviction for a relevant offence

21.5 In this regard a referral will be made to the Disclosure and Barring Service (DBS) should any individual who is, or was, employed within the Trust in a regulated activity and, as an outcome of a disciplinary process, been found to comply with any of the aforementioned criteria.

22 RIGHT TO BE ACCOMPANIED

22.1 An employee, who has allegations or concerns raised against them may be accompanied by a trade union / staff side representative or workplace colleague (not otherwise involved or likely to be involved in the process) to any formal meeting or hearing under this procedure. For the avoidance of doubt, this does not include if an employee is invited to attend an investigation meeting as a witness to a concern or allegation against another employee. In the event of the colleague being legally qualified, they will not act in this capacity during the disciplinary process. An exception to this however would be in cases of suspected fraud or theft where the employee is required to be interviewed under caution by the Trust Counter Fraud Officer, legal representation would be allowed in this example.

22.2 If the employee's choice of representative is inappropriate management may request the employee to choose someone else, for example:-

22.2.1 It is identified that there may be a conflict of interest or may prejudice the meeting;
or

22.2.2 If the representative is unavailable or cannot be released from work at the time a meeting is scheduled and will not be available for more than five working days afterwards.

22.3 Alternative and/or additional support/representation will be considered in exceptional circumstances and should be discussed at the earliest interval.

22.4 The employee and their representative should make every effort to attend any formal meeting/hearing(s) arranged.

22.5 One postponement may be permitted for representation purposes.

22.6 It is the employee's responsibility to arrange their own representation.

23 LEAVING EMPLOYMENT DURING ACTIVE DISCIPLINARY PROCESS

23.1 Where an individual leaves their employment following any concerns having been raised and where a resolution or conclusion has not been determined, the Human Resources department will consider the most appropriate, fair and consistent method of concluding the case and support a manager to take forwards. This may include continuing with any investigation and/or hearing as appropriate.

23.2 The employee subject to the concerns will be invited to continue to participate and/or respond whilst they remain employed and after they have ceased their employment until the matter has been resolved.

23.3 Any request from any subsequent employer for a reference will be provided with factual information in relation to the matter and any conclusion.

23.4 Consideration will be given in accordance with paragraph 21 in relation to any appropriate referral to an external body/organisation.

24 GRIEVANCES

The grievance procedure does not apply to issues relating to disciplinary cases. Any concerns regarding the disciplinary process should be raised during the investigation and/or during hearings.

25 FREEDOM TO SPEAK UP (RAISING CONCERNS)

- 25.1 The Trust will not tolerate harassment/victimisation nor any attempt to apply an unwarranted sanction or any other detriment to a person who has reported a genuine concern.
- 25.2 Investigations into the alleged conduct of employees who have previously spoken up should also seek to identify whether such allegations are motivated by a desire to cause detriment to that individual.
- 25.3 If evidence is found to confirm that allegations were made maliciously, appropriate action will be taken.

26 HUMAN RIGHTS ACT

Implications of the Human Rights Act have been taken into account in the formulation of this document and they have, where appropriate, been fully reflected in its wording.

27 INCLUSION AND DIVERSITY

The document has been assessed against the Equality Impact Assessment Form from the Trust's Equality Impact Assessment Guidance and, as far as we are aware, there is no impact on any protected characteristics.

28 MONITORING AND REVIEW

- 28.1 This policy will be reviewed periodically in partnership with staff side and monitored by the Trust's People Committee.
- 28.2 The application and outcomes of this policy and employment relations cases associated with this policy are reviewed periodically and reported within the Workforce Governance framework and as part of regular Employee Relations Review Panels.

29 ACCESSIBILITY STATEMENT

This document can be made available in a range of alternative formats e.g. large print, Braille and audio cd.

For more details, please contact the HR Department on 01942 77 3766 or email equalityanddiversity@wvl.nhs.uk

Appendix 1

REFERENCES

Employment Rights Act 1996
Employment Relations Act 1999
Employment Act 2002 & 2008
Employment Act 2002 (Dispute Resolution) Regulations 2004
Fraud Act 2006
Bribery Act 2010
ACAS Code of Practice – Disciplinary and Grievance Procedures
Policy for maintaining high professional standards
Grievance Procedure
Safeguarding Policies
Fraud Corruption and Bribery Policy & Response Plan
Managing safeguarding allegations against staff (National Guidelines)
The Code of Conduct for NHS Staff
The Human Rights Act 1998
The Equality Act 2010
Public Interest Disclosure Act 1998.
Public Concern at Work Guidance
Standing Financial Instructions (SFI's)
NHS Anti-Fraud Manual (NHS CFA) 2019
Standards of Business Conduct for NHS Staff HSG (93) 5
www.nhsemployers.org/EmploymentPolicyAndPractice/UKEmploymentPractice/Pages/Core-Standards-For-NHS-Managers.aspx

Misconduct Breaches / Rules

The Trust considers the following to be examples of the type of offences which constitute general and gross misconduct. Managers will have the discretion to determine the seriousness of the conduct and identify if the offence falls under 'general' rather than 'gross' misconduct where appropriate. The list is not exhaustive.

No	General Misconduct	Gross Misconduct
1		Ill treatment, wilful neglect and / or sexual offences against patients.
2		Theft or Embezzlement of Fraud, Corruption and Bribery including any breach of Trust Standing Financial Instructions
3		Fraud or falsification of records (e.g. application forms, CVs, sickness forms, overtime, qualifications, employment references and expenses claims)
4		Failure to give notice of any financial interest of which they are aware, in a contract which has been or is proposed to be, entered into by the Trust.
5		Fraudulent misuse of the Trust's property or name (e.g. phones, cars or computers)
6		Physical or indecent assault during the course of employment and / or on Trust premises.
7		Serious verbal abuse of a patient, member of the public during the course of employment or on the Trust premises
8		Behaviour inclusive of words or acts that seriously breach the Trust values and Behaviour Framework, including any form of discrimination, victimisation or harassment on the grounds of sex, race, sexual orientation, disability, age belief or religion.
9	Disclosure of privileged and confidential information to any unauthorised persons outside the provisions the Trust's Freedom to Speak Up Policy.	Deliberate disclosure of privileged and confidential information to any unauthorised persons outside the provisions of the Trust's Freedom to Speak Up Policy.
10	Failure to comply with the legal requirement and / or Trust regulations concerning medicines.	Negligent or deliberate failure to comply with the legal requirement and / or Trust regulations concerning medicines.
11	Practising without a professional registration in a profession where there is a requirement to obtain and maintain professional registration.	Deliberately practising without a professional registration in a profession where there is a requirement to obtain and maintain professional registration.
12		Serious and/or deliberate breach or failure to adhere to standard operating procedures and codes of conduct applicable to specific departments, professions or grades of staff, or any explicit term of his/her contract.
13	Failure to observe Health & Safety and Fire Regulations or instructions.	Any act or omission constituting serious danger to the Health & Safety of any person during the course of employment or on the Trust premises.
14		Theft or attempted theft on the Trust premises or during employment by the Trust including Trust assets

No	General Misconduct	Gross Misconduct
15	Misrepresentation at the time of appointment or at any time during employment (e.g. previous employment; qualifications held).	Falsification of any official documentation, qualifications or information used in support of an application for any post.
16		Consumption of alcohol and / or misuse of drugs and / or other substances to an extent which seriously affects the satisfactory performance of the employee's duties and / or jeopardises the safety and welfare of a patient(s), member(s) of the public or member(s) of staff.
17	Negligence in job performance.	Any act or omission constituting serious and/or deliberate negligence in an employee's performance of their duties.
18		Criminal offences outside of the working relationship which substantially affect the performance of duties, or the relationship between the employee and the Trust.
19		Failure to disclose to the Trust any criminal action inclusive of arrest, cautions, convictions and bind overs.
20		Maliciously making or assisting someone else to make an unfounded complaint.
21	Unjustified refusal of a lawful and reasonable instruction without reasonable grounds, or to wear any uniform or protective clothing provided by the Trust.	Serious act(s) of insubordination or unjustified refusal of a lawful and reasonable instruction which could result in immediate serious consequences.
22		Breach of the Trust's IT Policies/ unauthorised access of IT systems and /or inappropriate use of the internet or email system.
23		Inappropriate words or acts (including social networking) which brings the Trust's / employee's reputation into disrepute.
24		Deliberate misappropriation or attempted misappropriation of Trust funds or resources; fraudulent manipulations of accounts financial statements, timesheets, expense claims or other official records; or breach of the Trust Standing Financial Instructions.
25		Unauthorised absence from work.
		Undertaking any other employment while unable to attend for duty for reason of ill-health while in receipt of sick pay, that may amount to fraud (PERS 12) including employees who are excluded who work for another employer during their normal working hours
26		Culpable damage caused by an employee during the course of their employment or on the Trust premises.
27		Acceptance of gifts or hospitality in contravention of 'Standards of business conduct for NHS staff'. The Department of Health Circular HSG (93) 5, The Code of Conduct for NHS Staff
28		Failure to inform the Trust of any pecuniary interest of which the employee is aware in a contract which has been or is proposed to be entered into by the Trust in accordance with 'Standards of business conduct for NHS staff'.

No	General Misconduct	Gross Misconduct
29	Failure to comply with the Trust's no-smoking policy.	
30		Personal misconduct which seriously affects his / her performance of duties and / or relationship between the member of staff and the Trust.
31		Unauthorised use of the Trust's resources or of information obtained during the course of his / her employment, or for personal reasons not connected with his / her duties.
32	Undertaking any other employment which adversely affects the performance of his / her duties.	
33	Failure, without reasonable grounds, to comply with the requirements of Trust Policies and Procedures.	
34		Any breach of an explicit term of his / her contract of employment.
35		Failure to comply with fit and proper persons test (Directors and those within interim Directors posts only)
36		Failure to comply with duty of candour

Appendix 3

Disciplinary Appeal Form	
Name	
Department	
Job Title	
Pay Band	
Date of disciplinary hearing	
Disciplinary sanction	
Grounds of appeal	
<input type="checkbox"/>	An inappropriate sanction was implemented
<input type="checkbox"/>	Process was not followed
<input type="checkbox"/>	New evidence is to be considered
Reasons for appeal	
Signature	
Date	

Completed forms should be sent to Deputy Director of HR, Suite 7, Buckingham Row

Appendix 4

Notification of involvement of the Police / Criminal Conviction / Caution	
Employee Name	
Ward / Department	
Date of incident	
Date of police interview	
Date of arrest	
Date of Bail	
Conditions of Bail	
Date of caution / charge	
Date of conviction	
Details of incident and outcome	
Name of Manager	
Signature of Manager	
Date Information Received	
HR Business Partner	
HR use only - Follow up action required	

Completed forms should be returned to the HR Department, Suite 7, Buckingham Row

Appendix 5

Investigation Terms of Reference	
Employee Name	
Employee Job Title	
Employee Department	
Case Manager	
Case Investigator	
HR Support	
Date investigation commissioned	
Initial source of information	
Concerns to be investigated	•
Witnesses to be interviewed	•
Additional documentation to be reviewed	•
Supplementary Information	
External review required	
Professional clinical advice required	
Target completion date	
Exclusion or restricted practice	
Terms of Reference Author	
Date Agreed	

Equality Impact Assessment Form

STAGE 1 - INITIAL ASSESSMENT

For each of the protected characteristics listed answer the questions below using Y to indicate Yes and N to indicate No	Sex (male / female / transgender)	Age (18 years+)	Race / Ethnicity	Disability (hearing / visual / physical / learning disability / mental health)	Religion / Belief	Sexual Orientation (Gay/Lesbian/)	Gender Re-Assignment	Marriage / Civil Partnership	Pregnancy & Maternity	Carers	Other Group	List Negative / Positive Impacts Below
Does the policy have the potential to affect individuals or communities differently in a negative way?	n	n	n	n	n	n	n	n	n	n	n	
Is there potential for the policy to promote equality of opportunity for all / promote good relations with different groups – Have a positive impact on individuals and communities.	y	y	y	y	y	y	y	y	y	y	y	
In relation to each protected characteristic, are there any areas where you are unsure about the impact and more information is needed?	n	n	n	n	n	n	n	n	n	n	n	If Yes: Please state how you are going to gather this information.

Job Title	Strategic HR Lead			Date	March 2021
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IF 'YES an NEGATIVE IMPACT' IS IDENTIFIED - A Full Equality Impact Assessment STAGE 2 Form must be completed. This can be accessed via <http://intranet/Departments/Equality Diversity/Equality Impact Assessment Guidance.asp>

Please note: As a member of Trust staff carrying out a review of an existing or proposal for a new service, policy or function you are required to complete an Equality Impact Assessment. By stating that you have **NOT** identified a negative impact, you are agreeing that the organisation has **NOT** discriminated against any of the protected characteristics. Please ensure that you have the evidence to support this decision as the Trust will be liable for any breaches in Equality Legislation.

Appendix 7

POLICY MONITORING AND REVIEW ARRANGEMENTS

Para	Audit / Monitoring requirement	Method of Audit / Monitoring	Responsible person	Frequency of Audit	Monitoring committee	Type of Evidence	Location where evidence is held
	Rolling monthly review of compliance of in date documents	Project Officer to advise author 6 months in advance of review date and advise CQEC of overall Trust compliance	Project Officer	Monthly rolling programme	CQEC	Monthly compliance report	Team Drive: Director of Nursing/Corporate QEC
26	Equality Assessment	Equality Duty report	HR Business Partner	Annual	People Committee	Report against protected characteristics	Employee relations case files & ESR
27	Application and outcomes of this policy	Employee Relations Case Review	Director of Workforce/DD of HR	6 monthly/Quarterly	Employee Relations Review Panel	Case files and associated documents	Employee relations case files
27	Application and outcomes of this policy	Summary report	Director of Workforce/DD of HR	Quarterly	People Committee	HR Case tracker information and Case files	Employee relations case files