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Policy

Disciplinary Policy and Procedure

Key Points

Policy and Procedure relating to minor misconduct concerns through to gross misconduct concerns

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1 Introduction and scope

- 1.1 The purpose of this document is to provide policy principals and the process managers and their employees within Great Ormond Street Hospital for Children NHS Foundation must adhere to when dealing with conduct issues.
- 1.2 Issues caused by an employee's apparent lack of knowledge or skill in relation to their contracted job role should be managed in line with the Trust Performance Management Policy. Employee's capability to perform in their role due to ill health should be managed under the Sickness and Attendance policy depending on the circumstances.

2 Scope

2.1 This policy applies to:

- All GOSH employed staff – where the individual is directly employed by GOSH either on a fixed term or permanent contract, excluding the medical and dental staff group where separate terms and conditions apply;

2.2 This policy does not apply to:

- Board Members – Member of the Trust Board. Specifically the Chair Non-Executive Directors and Executive Directors
- Governors – Member of the Council of Governors
- Contractors – individuals on-site at GOSH, who are employed by an external contracting company including consultancy work;
- Agency staff – individuals on-site at GOSH who are employed via an agency on the NHS Agency Framework;
- Honorary contract holder – individuals engaged via a GOSH Honorary contract;
- Bank staff – individuals with a GOSH bank contract;
- Volunteers – individuals engaged via the GOSH volunteer programme.
- Students – students on placement within the Trust as part of their educational programme
- Observers – those over the age of 18 and wish to observe a department within GOSH
- Young visitors programme – those on placements in the different clinical areas of GOSH who are between 16-17 years of age
- Work experience candidates – students who are gaining work experience within the Trust
- Foundation Year 1 & Foundation Year 2 Placements – those doctors at Foundation Year 1 and 2 level, who wish to experience a Paediatric Hospital environment to help inform future career decisions
- Research Placements – those holding a research contract issued by the research and governance team or an Honorary contract if they are undertaking both Research and Clinical work

- 2.3 This policy does not form part of any employee's contract of employment and it may be amended from time to time in line with the Trust's policy approval processes.

3 Aims and Objectives

- 3.1 To set out the process for managing conduct that does not meet the Trust's expectations from informal through to formal management and action up to and including summary dismissal, where appropriate. This policy also details the process to follow and the grounds on which an employee who is subject to disciplinary action can appeal.

4 Duties and Responsibilities

4.1 Manager

- 4.1.1 To address and manage any conduct issues without delay
- 4.1.2 To address and manage any minor conduct issues informally in the first instance through setting expectations and agreeing any support or assistance with the employee, where appropriate.
- 4.1.3 To ensure that standards of behaviour expected are made clear early on in employment ideally during the induction period and that staff are aware of the Trust Disciplinary Policy
- 4.1.4 To ensure that the 'standard setting – informal management of minor misconduct concerns' is used wherever possible prior to any formal action being taken
- 4.1.5 To keep clear written records of discussions held and agreements reached with employees, ensuring the employee is provided with a copy of this record and that a further copy is held locally on the departmental employee file
- 4.1.6 To undertake the role of witness, investigating officer, commissioning manager, panel chair, advisor to the panel as required and as appropriate
- 4.1.7 To adhere to the Trust Values when managing staff in line with the Disciplinary Policy
- 4.1.8 To seek advice and guidance from an HR Adviser where potential misconduct has been identified, or where suspension is being considered
- 4.1.9 To regularly review any suspension decision they have made

4.2 Employee

- 4.2.1 To observe the terms and conditions of his/her contract and all Trust policies, procedures and regulations and to act at all times in good faith and in the best interests of the Trust, patients, their families and staff.

- 4.2.2 To adhere to the Trust Values during the course of carrying out their duties at work.
- 4.2.3 To engage with the manager as requested to address identified concerns and comply with all reasonable management instructions.
- 4.2.4 To engage with the disciplinary process as requested, responding in a timely way to requests to provide information and where appropriate attend investigatory meetings.
 - 4.2.4.1 To arrange their own representation/support for meetings. Where a particular representative is unavailable the employee should, in the first instance, seek an alternative. Where no representative is available the employee should offer alternative suitable meeting dates for consideration within 5 working days.
 - 4.2.4.2 To challenge and/or escalate to a manager (or managers manager) where another colleague is not acting in accordance with the Trust's Always Values or behaviours.

4.3 Human Resources & Organisational Development

- 4.3.1 To provide expert advice relating to manager and employees on individual conduct concerns
- 4.3.2 To assist managers in the fair and consistent application of the policy
- 4.3.3 To provide expert advice to the line manager, Commissioning Manager, Investigating officer and panel chair throughout all stages the process as appropriate
- 4.3.4 To provide training to managers involved in the Disciplinary procedure
- 4.3.5 To liaise with the Local Counter Fraud Service (LCFS) about allegations of potential fraud

5 Definitions

- 5.1 **Conduct:** behaviour within the workplace or outside of the workplace (where it affects the Trust or the employee's ability to carry out his/her role).
- 5.2 **Misconduct:** Inappropriate / unacceptable conduct. An act of misconduct that is not serious enough to be considered 'gross misconduct' but is more than minor. This may also be repeated minor misconduct that has not been resolved following informal action. Typically this is a result of failure to meet the expected standards of conduct as stipulated in the Trusts policies, procedures and reasonable management expectations (see examples listed in [appendix 1](#)). For research posts this may be action or behaviour that falls short of the standards of ethics, research and scholarship required to ensure that the integrity of research is upheld.

- 5.3 Minor Misconduct:** First offenses of misconduct that are straightforward and minor in nature e.g. poor attendance (not unrelated to the employee's health) and poor punctuality. Misconduct of this nature should be resolved informally in the first instance through standard setting.
- 5.4 Gross Misconduct:** Act(s) of misconduct that is serious enough on its own to justify the employee's summary dismissal (see examples listed in [appendix 1](#)).
- 5.5 Suspension:** Removal from the workplace.
- 5.5.1 When there is a substantial risk posed to patients, the individual, other employees or the Trust (including Trust reputation) based on the allegations or an investigation could be impeded by the individual remaining in work (e.g. theft, violence, malpractice, breaching confidentiality, serious patient complaints, lack of right to work visa, failure to obtain and/or renew professional registration(s) etc.); then it may be appropriate to suspend the individual. Suspension is a neutral act without prejudice, usually paid (except for visa/work permit concerns) whilst an investigation takes place and does not imply guilt. Where these risks can be mitigated by removing the individual from their normal place of work, by supervision or other restrictions, then measures such as temporary suitable alternative redeployment should be taken as a preferable course of action to suspension. Where an employee is suspended with pay they will receive an average of the preceding 3 months earnings (including any enhancements).
- 5.5.2 Whilst on suspension, employees are expected to remain available during their normal hours of work and are therefore, not authorised to work elsewhere during the period of suspension.
- 5.6 Commissioning Manager:** Manager who commissions the investigation into alleged misconduct.
- 5.6.1 This is normally the Line Manager of the individual(s) who may have committed the alleged misconduct except where they have witnessed or been involved in the events. Where this is the case, it will be a manager of no less seniority or a more senior manager, typically the line manager's manager who commissions the investigation
- 5.7 Investigating Officer:** Individual who investigates the alleged misconduct. This is an impartial person who has had no previous knowledge of or involvement with the conduct complaint or concern. This individual is normally separate to the department/ward/environment in which the alleged misconduct occurred, unless it is pivotal to the investigation, for example in the case of allegations of a technical nature which require knowledge of the subject matter.
- 5.8 Disciplinary hearing:** A formal meeting within which information relevant to the alleged misconduct are considered. At the conclusion, a decision is reached about whether to uphold the allegations and if relevant, what sanction to issue.
- 5.9 Adjournment:** A temporary break within the formal disciplinary hearing, this can be requested by management side, staff side or the panel.

- 5.10 **Sanction:** The outcome issued at the conclusion of a formal hearing where allegations are upheld. Not all hearings lead to sanctions being issued.
- 5.11 **Summary dismissal:** Where allegations of gross misconduct are upheld, following a formal disciplinary hearing, which leads to an employee's contract of employment being terminated without payment of statutory or contractual notice period.
- 5.12 **Dismissal:** A panel decision to terminate an employee's contract of employment with the payment of either statutory or contractual notice or payment in lieu of notice (PILON).
- 5.13 **Authorised Officer:** Individuals within the Trust who have the authorisation to suspend or dismiss an employee (See [appendix 2](#) for full list).
- 5.14 **Standard setting:** Informal management of minor misconduct concerns to set expectations and standards of appropriate behaviour/conduct.
- 5.15 **Working days:** Considered for the purposes of this policy as usual business working days, Monday to Friday, not including public holidays.

6 The Policy

- 6.1 **Counter fraud involvement** - Where there is a reasonable belief that fraud has been or may have been committed, or when fraud is proven or admitted during the course of any stage of the disciplinary process, the case will be referred to the local Counter Fraud Service, who will make their own investigations. This may in turn result in a referral to the Police. Any internal investigation into allegations of potential fraud should be deferred until a full and detailed discussion has taken place with the nominated local counter fraud specialist. This may result in a delay in commencing the internal investigation, where this is not the case, both investigations may run concurrently.
- 6.2 **Performance/Medical capability concerns** - Following exploration of a poor performance concern in line with the Performance Management Policy, it may be determined that the issue is not as a result of skill or training and is instead a conduct issue. Should this be the case, management of the issue will move in line with the appropriate stage of the Disciplinary Policy. Conversely, should it be determined that the misconduct issue is as a result of skill or training or medical capability concerns, management of the issue will move in line with the appropriate stage of the Performance Management Policy or Sickness and Attendance Policy as appropriate.
- 6.3 **The use of and accessing CCTV footage/Swipe Card/PC records** – it may be necessary as part of the fact finding stage or investigation stage to obtain CCTV/swipe card or computer (PC) records. The appropriate process in relation to the Data Protection Act 1998 must be followed when accessing CCTV footage and accessing and using the CCTV footage must be proportionate to the seriousness of the matter under investigation. For advice when obtaining CCTV footage, you will need to contact the Security department.

- 6.4 **Requirement to investigate** – in some circumstances it may not be necessary to conduct a full investigation into the alleged misconduct. For example, where the fact finding stage has established all the necessary facts or in cases where misconduct subsequent to standard setting has resulted (e.g. punctuality, timekeeping and unauthorised absence). An investigation may also not be required where a previous hearing has determined that future conduct of a similar nature should result in a referral back to a formal hearing.
- 6.5 **Admitting to the allegation(s)** – where the decision to proceed to a hearing has been made by the Commissioning Manager, the employee may be asked whether they admit or deny the allegation(s) via the letter confirming arrangements for the formal hearing. The Disciplinary Chair, may, in cases where the employee admits the allegations, inform the employee that a full hearing may not be required and the process can proceed to mitigation following which the panel will make their decision regarding which sanction (if any) to impose. This option will not be possible in cases of potential gross misconduct or misconduct of a repetitive nature where there is a live or recently expired final written warning on file.
- 6.6 **Representation** – whilst there is no legal entitlement for an employee to be accompanied at the investigation meeting, the Trust allows the employee to be accompanied by a recognised Trade Union representative or a current work colleague employed by the Trust, acting in a non legal capacity. Unavailability of the representative will not delay the investigation where a minimum of 5 working days notice of the meeting has been provided in writing. At the formal disciplinary hearing the employee has the right to be accompanied by a Trade Union representative or a current work colleague employed by the Trust, acting in a non legal capacity. At both the investigation meeting and hearing the representative may not respond to questions on the employees behalf.
- 6.7 **Grievances raised during the course of a disciplinary process** – In most cases, matters raised within a grievance can be appropriately dealt with as part of the disciplinary process itself (e.g. when they are complaints about the fairness of the disciplinary process). In these circumstances, the grievance will be treated as submissions and will be considered during the disciplinary hearing. The decision will be taken by the commissioning manager/chair of the panel regarding whether it is appropriate to adjourn the disciplinary process pending the resolution of the grievance or whether the process should run concurrently. In these circumstances, the grievance will be dealt with in line with the Trust Grievance policy. Employees should not assume that submitting a grievance will automatically put the disciplinary process on hold.
- 6.8 **Correspondence** – all written correspondence from the Trust to the employee should be sent via email where appropriate. This avoids delays with the post and the process. The employee, if suspended is therefore expected to make available to the authorised/commissioning manager or investigating officer their personal email address in order to facilitate this. In cases of employees without access to email when suspended, correspondence will be sent by post and/or special delivery. Hand delivery or Trust email will be most appropriate for staff not suspended. Employees should ensure that they read correspondence from the Trust as soon as they receive it.

7 The procedure

7.1 Suspension and suspension reviews

- 7.1.1 Apart from misconduct concerns arising out of hours which are determined by the Clinical Site Practitioner's (CSP), the decision to suspend should not normally be taken without first discussing the issue with a representative from the HR&OD team. The suspension checklist (available on the intranet) should be completed by the suspending manager prior to the suspension being carried out. Out of hours decisions to suspend should be reviewed by an appropriate manager during the next working day. It is the responsibility of the CSP to hand over this decision to the manager.
- 7.1.2 Alternatives to suspension should be considered first. Alternatives may include temporarily working within a different area or role; changed working pattern during the course of the investigation, restrictions to practice.
- 7.1.3 Suspension may occur part-way through an investigation if the Investigating Officer identifies additional serious concerns. It is the Investigation Officers responsibility to refer their additional serious concerns onto the Commissioning Manager in writing for consideration. Similarly suspension may be lifted during the course of an investigation.
- 7.1.4 Responsibility for deciding whether to suspend lies with the Commissioning Manager with approval from an authorised officer (Band 8a or above) if the Commissioning manager is not an authorised officer. It is the Commissioning Manager's responsibility for acquiring approval to suspend.
- 7.1.5 Suspension is not a disciplinary sanction or an indication that any decision has been taken about the allegations. It is a neutral act.
- 7.1.6 In the exceptional cases of suspension without pay, if following investigation and or the formal hearing the allegations are not upheld then back pay will be provided.
- 7.1.7 Every attempt will be made to ensure that the period of suspension is minimised. Suspension should be for a maximum period of 4 weeks in the first instance.

7.2 Suspension Review

- 7.2.1 Any suspension will be reviewed on a fortnightly basis by the Commissioning Manager and the employee will be kept regularly informed by the Commissioning Manager of any decisions that affect the length or conditions of the suspension.
- 7.2.2 It is the responsibility of the Investigating Officer to provide the Commissioning Manager with regular updates in order to assist in the review.
- 7.2.3 During suspension, employees are expected to remain available, to engage with or attend the Trust, to participate in the investigation or formal hearing during the course of their normal hours of work. Employees are therefore not authorised

to work elsewhere during the period of suspension. Should the employee wish to be unavailable during the period of suspension (to take annual leave to travel abroad for a holiday for example) authorisation must first be sought from the Commissioning Manager. Where the plans will cause a delay to the process concluding, the request will be declined.

7.2.4 Where an employee has a period of leave booked, which was authorised prior to suspension the line manager and employee must ensure the commissioning manager is made aware that they will be unavailable during the period of pre-booked leave.

7.2.5 In exceptional circumstances, an employee will not be available. In such instance, support and advice should be sought from HR.

7.3 Standard Setting – Informal management of minor misconduct concerns

7.3.1 In cases of minor misconduct first offences, the following informal action should take place. A standard setting meeting should take place without unnecessary delay.

7.3.2 There is no requirement to invite the employee to a standard setting meeting or provide them with notice of the meeting. There is also no entitlement to representation at the meeting. This meeting will take place on a one to one basis between the immediate line manager and the employee.

7.3.3 The standard setting meeting discussion will occur as soon as possible after the minor misconduct occurred and will:

7.3.3.1 Clearly outline to the employee the misconduct concern with the use of examples, where appropriate

7.3.3.2 Establish, as part of the discussion, whether there are any underlying problems or contributory factors which may have led to the employee's failure to maintain the required standard of conduct. The employee should be encouraged to make any mitigating circumstances known.

7.3.3.3 Ensure the employee is offered any assistance at their manager's disposal, which could support the employee to overcome any problem or difficulty they have in meeting the expected level of conduct.

7.3.3.4 Ensure the employee is informed of the level of conduct expected/required (referring to the Trust Values and behaviours, where necessary)

7.3.3.5 Ensure the employee is informed as to how the misconduct concerns will be managed in the future should there continue to be examples of the same or similar misconduct. This will include further action under the Disciplinary Policy.

7.3.3.6 The standard setting meeting should be summarised in writing by the manager, a copy provided to the employee along with a copy of the Trust Disciplinary Policy and a copy of the letter held locally on the employee file.

7.3.3.7 Standard setting meetings may also be the recommendation/outcome of a commissioned investigation as an alternative to a formal hearing being convened.

7.4 Fact-finding and Investigation

7.4.1 Where it has been determined that a standard setting meeting is not appropriate or in the case of continued minor misconduct following a standard setting meeting, the immediate line manager will complete a fact finding exercise in relation to their concerns. The detail of their findings will be recorded on the fact finding form and submitted to the Commissioning Manager (normally the line manager's manager) for their consideration to determine whether an investigation is appropriate or not and if so whether a full investigation is necessary

7.4.2 The fact finding process should normally be completed within 3 working days of the concern being raised. At the point this information is submitted to the Commissioning Manager, the employee should also be informed by the line manager who conducted the fact finding. The Commissioning Manager will then make a decision about whether to commission an investigation or not and if not what the alternative should be unless the view is taken there is no requirement for an investigation.

7.4.3 Decision not to commission an investigation

7.4.4 Where the Commissioning Manager determines that an investigation is not required, their decision must be recorded in writing with a rationale for why and how the concerns should be managed from that point onwards. This should be forwarded to the line manager and the employee.

7.5 Decision to commission an investigation

7.5.1 Where the decision has been made to commission an investigation, the Commissioning Manager (will then write to the employee to confirm an investigation will take place). Attached to this letter will be the terms of reference (TOR) for the investigation. The Commissioning Manager will identify an appropriate Investigating Officer (in most cases a manager outside of the department) and will write to them also informing them of the need to investigate. The TOR will also be attached to this letter. The Investigating Officer will be allocated an HR Representative who will advise and support the process.

7.5.2 Once the investigation is completed, the Investigating Officer will compile a management report in relation to the concerns and facts established. The report will include the Investigating Officers recommendation in relation to whether they believe there is a case to answer and if so, for what allegation(s) and whether the allegation(s) may constitute gross misconduct. This report will be submitted to the Commissioning Manager.

7.5.3 The Commissioning Manager will then make a decision about whether a formal hearing should be convened or not and if so make the necessary arrangements for this including sending out associated correspondence (notification of hearing letter, report plus appendices). Prior to any decision relating to formal proceedings taking place, advice should be sought from a representative of the HR&OD Department.

7.6 Formal Hearing

7.6.1 The Commissioning Manager will normally chair the hearing panel and identify additional panel members where required. In the case of allegations of potential gross misconduct the panel must have a minimum of 3 members including a representative of the HR&OD Department and the Chair. The third panel member may constitute a professional advisor if the chair is not of the same profession.

7.6.2 The employee will be provided with 5 working days' notice of the hearing date and time, along with the associated paperwork (report and appendices). By mutual agreement between the Chair and Employee, the hearing may be arranged with less notice.

7.7 Where an employee admits the allegations

7.7.1 The employee may be offered the opportunity to admit to the allegations and forgo the full disciplinary hearing process. The employee will be provided with a deadline by which to confirm their decision.

7.7.2 In this instance, the chair will provide the employee (or their union representative) with the opportunity to present any mitigating circumstances and allow for questions to be asked (if necessary) prior to deciding upon an appropriate sanction.

7.7.3 In the absence of a response from the employee either way, the formal hearing will proceed as scheduled. In these circumstances it is recommended that the employee seeks advice from their trade union representative, if they are a member of one.

7.7.4 An employee has a cooling off period of two weeks after confirming their decision in writing to the Chair of the Disciplinary panel, within which they can rescind the above process and a formal hearing will be re-scheduled.

7.7.5 A formal hearing will be rescheduled on one occasion only, thereafter the hearing will proceed in the employees absence with the panel considering the information they have available to them should they not attend and the outcome confirmed in writing to them. The employee will be advised of alternative ways of participating in the hearing via the correspondence confirming arrangements for the hearing.

7.7.6 Additional evidence from management and/or staff side should be forwarded to the panel members as early as possible in advance of the hearing. The staff side case must be received by the panel no less than 2 working days prior to the

scheduled hearing date. Only in exceptional circumstances will additional evidence be accepted with less than 2 working days prior to the scheduled hearing date at the discretion of the panel.

7.7.7 If it becomes apparent during the course of the formal hearing that further investigation is required, the Chair will adjourn the hearing and confirm this with all parties. It will be the responsibility of the Investigation Officer to conduct any further investigation.

7.7.8 The disciplinary panel will determine if the allegations are upheld or not. The level of proof required is “on the balance of probabilities”. In the event that the allegations are proven, the panel should consider what sanction, if any, is appropriate.

7.7.9 The disciplinary panel's decision can either be taken at the end of the hearing, in which case the decision can be given verbally with written confirmation to follow; or the panel may confirm the outcome by letter particularly where a large amount of information has been presented. The panel must consider all of the information presented and where appropriate, take time to reflect on the outcome. The outcome takes effect at the date it is first communicated to the individual, whether verbally or in writing. The outcome will be confirmed to the employee in writing within 5 working days of the decision being made.

7.7.10 In exceptional circumstances, if it is not possible to adhere to this timescale, the chair of the panel will advise the employee and their representative of the reason for the delay and the expected timescale for the decision to be communicated.

7.8 Sanctions

7.8.1 Where an employee has admitted to the allegations and made the decision to forgo the formal hearing process. The sanction issued could be either a first or final written warning in line with the below criteria. In cases of gross misconduct or where the case may lead to a dismissal the formal hearing must take place.

7.8.2 When allegations have been upheld at a formal hearing, the disciplinary panel will need to consider what sanction, if any, should be issued. Before coming to a decision about this, the panel chair must take into consideration the advice of the other panel members including that of the HR&OD representative.

7.8.3 In addition to any mitigating factors, the following should be considered when determining what sanction to issue:

- whether the employee has an existing live disciplinary warning
- whether the employee has had previous expired warnings for similar behaviour within 12 months
- the impact of the misconduct on the Trust and the degree to which further instances could be tolerated
- the employee's awareness of the standards required and any training received

- the employee's length of service, including whether there is a substantial period of work where no concerns have been raised
- action taken in similar cases in the past
- the degree to which the employee acknowledges their own wrongdoing and demonstrates that they are willing to learn from it

7.8.4 The sanctions available to issue are as follows:

7.8.4.1 **Verbal warning** – are not to be issued.

7.8.4.2 **First written warning** - may be issued in minor or first cases of misconduct. The duration of the warning is 12 months.

7.8.4.3 **Final written warning** – may be issued in cases where multiple allegations are upheld and merit disciplinary action; where there is already an active written warning on file or where an act(s) of misconduct is considered serious enough to merit a more severe warning than a first written warning. A final written warning may also be issued where significant mitigation has been accepted in relation to allegations of gross misconduct. The duration of the warning is 18 months, although in exceptional circumstances this may be reduced to 12 months.

7.8.4.4 **Dismissal** (with payment of contractual or statutory notice) – may be issued in cases where multiple allegations demonstrating a pattern of misconduct that cannot be tolerated is upheld and where a live final written warning is on file. Dismissal with notice may also be issued where considerable mitigation has been accepted in relation to allegations of gross misconduct. The employee will be paid in lieu of their notice in such circumstances.

7.8.4.5 **Summary Dismissal** (dismissal without payment of contractual or statutory notice) – this is the most severe sanction. Such an outcome may be fair if the upheld allegations relate to act(s) of gross misconduct and where accepted mitigation does not sufficiently warrant reducing the sanction.

7.8.4.6 **Alternatives to dismissal** – in some cases where dismissal would otherwise appear appropriate, the Trust may consider alternatives to dismissal including but not limited to:

- demotion,
- transfer to another department,
- reduction in pay,
- loss of overtime.

The employee would need to consent to these sanctions being imposed as an alternative to dismissal. If the employee refuses consent, the alternatives should not be applied and dismissal will be confirmed. These alternative sanctions will often be accompanied by a final written warning the duration of which is 18 months.

7.8.5 Multiple allegations: The disciplinary panel may be asked to consider multiple allegations. In this case, each allegation will be considered on its own merits. Due to the number and nature of allegations, there may be an accumulative

effect should each allegation be proven and the panel believe that sanctions should be given for each allegation. This may mean that an individual is dismissed for multiple acts of misconduct that each individually fall short of gross misconduct if taken cumulatively the misconduct is considered serious enough.

7.8.6 Live written warnings and salary incremental advancement: If a member of staff is issued with a final written warning or has two or more first written warnings, their salary pay point position will be frozen from the date they are advised of the warning until the date the warning expires. The incremental advancement date will be recalculated to ensure advancement does not occur until satisfactory service has been achieved throughout the duration of the warning. The employee's increment will only be frozen for one increment. Staff will be advised of this clearly within the outcome letter. On expiry of the warning incremental advancement will continue from the point it was frozen.

7.8.7 Expired warnings: Following the expiry of a written warning, a copy of the warning letter will remain on file. For the purposes of any future disciplinary proceedings, it will not be treated as a live warning leading to increased sanctions. However, where the warning has not expired within a recent (for example the last 12 months) timeframe for a similar allegation, it may be taken into account as background, for example if a pattern of misconduct can be seen.

7.8.8 Resignation: If an employee resigns during an investigation or whilst a formal hearing is being convened or is in adjournment a review should occur about how the matter will be concluded. For many professions, the Trust has a responsibility to conclude consideration of concerns about professional conduct and competence as they may refer the individual to the appropriate professional body and/or regulatory authority. Similarly in cases of potential gross misconduct it may be necessary to conclude the proceedings to determine whether the threshold for gross misconduct was met or not. A panel will review the evidence to determine the threshold.

8 Appeal

8.1 All employees issued with a sanction under this policy have the right to appeal within 10 working days of the date of the letter confirming the outcome of the hearing.

8.2 Appeals must be made in writing to the Deputy Director of HR&OD detailing the grounds for appeal. Employees can appeal where they believe the decision to be unjust or wrong.

The grounds may include:

8.2.1 Level of sanction issued.

8.2.2 The disciplinary policy/procedure was not correctly followed.

8.2.3 New evidence has come to light that was not available at the time of the original hearing. This does not include evidence that the employee did not disclose during the investigation or hearing process that was available at the time.

- 8.3 Where the employee has admitted to the allegations they may appeal on the grounds of the severity of the sanction (warning) issued only.
- 8.4 An appeal will only constitute a re-hearing where a procedural error in relation to the formal hearing has occurred.
- 8.5 The person hearing the appeal will not have been involved in the initial decision to take disciplinary action. An HR&OD representative will sit on the panel to provide advice on the application of policy, procedure and relevant current legislation.
- 8.6 On conclusion of the appeal process the decision of the appeal panel will be final and there will be no further right of appeal.
- 8.7 **7.7** The outcome of the appeal will be communicated in writing to the individual within 5 working days.
- 8.8 Where an appeal panel decide that the original disciplinary decision/sanction was not within the reasonable range of responses, they have the right to overturn the decision, remove the sanction imposed or to substitute a different sanction.

9 Training requirements

- 9.1 The HR & OD Directorate provide comprehensive training opportunities on all of the HR-related policies. This is primarily delivered through standalone training sessions (either centrally coordinated, or locally delivered).
- 9.2 HR & OD currently provide bitesize training on this policy through the Employee Relations team.
- 9.3 Coaching and support for managers will be offered from the HR & OD team utilising this policy to support staff within the workplace.

10 Communication and Consultation

- 10.1 Advice and guidance will be provided by the HR & OD team to ensure that staff and managers are given appropriate support and advice in dealing with all stages of the disciplinary process, as required.

11 Monitoring arrangements

11.1 Employee Relations activity is monitored by HR and OD on a regular basis and information relating to Disciplinary investigations and hearing outcomes will be examined in relation to equality and diversity data via monthly WRES submissions to NHS England. Additionally monitoring takes place during the Senior HR and OD monthly team meetings which are minuted.

Policy element to be monitored	Lead	Audit Tool	Frequency	Reporting arrangements (Committee or group)	Response required on any issues/recommendations identified
Number of cases resulting in formal sanctions and within the following groups: - Ethnic & national origin - gender - age - disability - sexual orientation - religion and/or belief - part/full time employees	Head of ER	Report	Annually	Senior HR & OD Team Staff Partnership forum	Actions will be identified when required and remedial work completed within an agreed timeframe. Any required changes in practice or lessons to be shared will be identified and actioned within a specific timeframe, with lead person for implementation identified.

12 Equality Impact Assessment

Title of Document:	Disciplinary Policy and Procedure
Completed By:	HR Business Partner / ER Manager
Date Completed:	September 2018

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Potential Equality Impacts and Issues Identified		
Protected Group	Potential Issues Identified	Actions to Mitigate / Opportunities to Promote
Age	Group will not be adversely affected by this policy	Any potential detriment may occur during implementation, which will be identified through monitoring
Disability (Including Learning Disability)	Provisions within policy ensure staff with disabilities are effectively supported within the workplace in relation to reasonable adjustments	Occupational Health provide guidance about adaptations and modifications that may be made to the workplace, access to work and other specialist agencies can also be contacted. Any potential detriment may occur during implementation, which will be identified through monitoring
Gender Re-Assignment	Group will not be adversely affected by this policy	Any potential detriment may occur during implementation, which will be identified through monitoring
Marriage or Civil Partnership	Group will not be adversely affected by this policy	Any potential detriment may occur during implementation, which will be identified through monitoring
Pregnancy and Maternity	Treated sensitively under remit of this policy	Occupational Health provide guidance about adaptations and modifications that may be made to the workplace. Any potential detriment may occur during implementation, which will be identified through monitoring
Race	Group will not be adversely affected by this policy	Any potential detriment may occur during implementation, which will be identified through monitoring
Religion or Belief	Provisions within this policy ensure all are treated fairly regardless of religion or belief	If meetings are arranged for a day or time, which the employee cannot attend because of religious reasons, a request to change the date or time of the meeting will be considered in line with this policy. Any potential detriment may occur during implementation, which will be identified through monitoring

Sex	Group will not be adversely affected by this policy	Any potential detriment may occur during implementation, which will be identified through monitoring
Sexual Orientation	Group will not be adversely affected by this policy	Any potential detriment may occur during implementation, which will be identified through monitoring

13 References

- 12.1 Equality Act 2010
- 12.2 Employment Rights Act 1996
- 12.3 Human Rights Act 1998
- 12.4 ACAS Code of Practice on Disciplinary and Grievance Procedures 2015
- 12.5 The concordat to support research integrity report 2012

14 Associated Documents (Procedures and Forms)

- 1.1. Template letters and documents – available on the intranet or via the HR&OD, employee relations team
- 1.2. List of Authorised Officers

15 Appendix 1 – Examples of misconduct and gross misconduct

15.1 Misconduct

The following are examples of misconduct that may lead to action under the remit of this policy. This is not intended as an exhaustive list:

- Failure to carry out reasonable management instructions
- Failing to adhere to Trust and local policies or procedures e.g. correct absence notification process, adhering to the Trust Uniform and dress code policy
- Persistent poor timekeeping/punctuality
- Causing unnecessary inconvenience to patients staff, or the public
- Poor attitude and behaviour
- Persistent failure to adhere to the Trust Values and/or Trust Behaviours
- Smelling of alcohol during the course of the working day
- Taking excessive leave/unplanned absence (not related to any health condition)
- Covert recording
- Failure to maintain proper records
- Failure to comply with health and safety requirements
- Any action or behaviour that falls short of the standards of ethics, research and scholarship required to ensure that the integrity of research is upheld.

15.2 Gross Misconduct

The following are examples of gross misconduct that may lead to summary dismissal. These examples relate to acts or failure to act on the employee's behalf which breaches mutual trust and confidence. This includes acts of dishonesty, disrespect and conduct that destroys or seriously damages the mutual relationship between employer and employee. This is not intended as an exhaustive list:

- Assault on a patient, employee or member of the public. This includes fighting, physical or serious verbal abuse.
- Threatening behaviour and/or language towards patient, employee or member of the public.
- Receipt of money, goods for pecuniary advantage in respect of any services rendered or obtained under false pretences
- Failure to obtain and / or renew professional registration(s) in line with the Professional Registration policy
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- Not behaving in a way that upholds the reputation and the standards and expectations of the Trust and or professional standards, includes repeated unprofessional behaviour

- Any deliberate attempt to defraud the Trust, a member of staff, patient or a member of the public for personal gain. This includes falsifying of time records, travel and expense claim forms, working outside of the Trust without authorisation whilst receiving sick pay from GOSH or during a period of suspension. This also includes intentionally retaining monies paid by the Trust which a staff member is not entitled to.
- Any material acts of dishonesty or lack of integrity which impact or might impact on the employee's role. This can include conduct by the employee outside of their employment providing it is relevant to their role.
- Deliberate and serious damage to Trust property
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- Incapacity to perform normal duties owing to the consumption of alcohol or the misuse of drugs or solvents.
- Negligence which includes any action or failure to act which has the potential to seriously or actually threaten the health and safety of a patient, member of staff or member of the public.
- Actions that cause damage to the property or reputation of the Trust, patients, members of staff or members of the public.
- Any unauthorised or unlawful possession of property of the NHS, patients or members of the public.
- Harassment, Intimidation or Bullying on the Grounds of relevant protected characteristics or for any other reason
- Failure to declare a conflict of interest in accordance with the Conflict of Interest Policy.
- Persistent and or wilful failure to carry out reasonable instructions or persistent or wilful disobedience of the written or oral instructions of a manager.
- Disclosure of confidential information to unauthorised persons in relation to a patient, member of a patient's family or a member of staff. Failing to safeguard confidential data for example, taking or transmitting unencrypted information out of the Trust, failing to encrypt information/data where required in accordance with Trust policy etc.
- Unauthorised acceptance of payment from visitors of patients, contractors or other parties.
- The unauthorised use or retention of any computer hardware or software belonging to the Trust or NHS.

- Inappropriate or excessive private use of the Email, Internet or telephone. This includes the transmitting or receiving of any offensive material, including material that could be deemed to be of a pornographic nature.
- Transmitting or receiving of any material that could bring the Trust into disrepute or open it to legal action. This includes making derogatory comments about the Trust or its business, or people who work for the Trust in emails, on social networking sites such as Facebook or on the internet.
- Failure to disclose information on applications for posts/employment with the Trust and during the course of employment. This includes failing to reveal on an application for a post within the Trust any information which has a direct bearing on the applicant's suitability for employment, including failure to accurately disclose reasons for leaving previous employment, and all previous convictions, bindovers etc, and any information required for pre-employment checks including Occupational Health clearance.
- Failure to hold appropriate level of DBS required for role
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- Unauthorised absence which includes taking leave for which permission has not been sought and granted by a duly authorised manager. Also, includes failure to communicate with management regarding on going absence
 - Fabrication, falsification, plagiarism and/or failure to meet ethical, legal or professional obligations.
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 - Any act or omission reasonably judged to have resulted in a serious breakdown in trust and confidence
- Any other act of misconduct of a similar gravity

16 Appendix 2 – Authorised Officers

The following employees have the **authority to suspend** staff:

- Chief Executive
- Deputy Chief Executive
- Executive Director
- Directors (includes Divisional, Group and, of Operations)
- Chief of Service
- Deputy / Assistant Chief Nurse
- Assistant / Deputy Director
- Deputy Chief of Service
- General Manager
- Head of Nursing and Patient Experience
- Head of Department/Service
- Speciality Lead
- Matron
- Service Manager
- Clinical Site Practitioner
- Any other member of staff at Band 8a or above

The following employees have the **authority to dismiss** staff:

- Chief Executive
- Deputy Chief Executive
- Executive Director
- Directors (includes Divisional, Group and, of Operations)
- Divisional Chair
- Chief of Service
- Deputy / Assistant Chief Nurse
- Assistant / Deputy Director
- Deputy Chief of Service
- General Manager
- Head of Nursing and Patient Experience
- Head of Department/Service

Where the disciplinary process is against the Chief Executive or an Executive Director, then it may not be practicable to involve a separate Commissioning Manager, investigating officer and dismissing officer from within the Trust. Conflicts will be avoided wherever possible and external investigators or officers may be used in consultation with the executive being disciplined. There may be applicable standing orders relevant to any dismissal or disciplinary of the Chief Executive or an Executive Director, the disciplinary procedure used will be compliant with such orders.