

## Disciplinary Policy and Procedure

<b>Approved By:</b>	Policy and Guideline Committee
<b>Date of Original Approval:</b>	10 June 2004
<b>Trust Reference:</b>	<b>A6/2004</b>
<b>Version:</b>	October 2021
<b>Supersedes:</b>	April 2020 (minor amendments process)
<b>Trust Lead:</b>	Roisin Ryan, Assistant HR Business Partner
<b>Board Director Lead:</b>	Hazel Wyton, Chief People Officer
<b>Date of Latest Approval</b>	15 October 2021 Policy and Guideline Committee
<b>Next Review Date:</b>	<b>March 2025</b>

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### REVIEW DATES AND DETAILS OF CHANGES MADE DURING THE REVIEW

#### AUGUST 2021

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- Clarification in section 5.8.2 to explain the difference between reinstatement and re-engagement following dismissal.

#### APRIL 2020

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- Includes the process for issuing sanctions under the Agreed Outcome process.
- Non-Smoking Policy now referenced under 'UHL Related Policies'
- Changes made to Appeals to Final Written warnings issued; now referred to as a review in line with other policies. Therefore Final Written Warnings now have a right of review rather than appeal.
- Extended times permitted for employees to request a review or appeal.
- Addition of Appendix (Appendix 6) - Grounds for Review/ Appeal form to be used to request reviews/ appeals
- Template letters no longer within policy document; now to be accessed via the Employee Relations Team.
- Review of Appendix 1, 2.8 of the Examples of Disciplinary Rules
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### KEY WORDS AND TERMS

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Conduct, Review, Appeal, Agreed Outcome process

## 1 INTRODUCTION AND OVERVIEW

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- 1.1 University Hospitals of Leicester NHS Trust (UHL) provides a wide range of specialist clinical services to people of all ages and backgrounds. We are also involved in a number of research projects. Working with other local hospitals and care bodies, our aim is to ensure the very best standards of patient care at all times. In order to ensure that we foster a culture of continuous improvement, it is also recognised that learning should take place in all circumstances. Therefore the aim is also to ensure that we support the provision of a consistent, constructive and fair evaluation of actions of staff involved in patient safety incidents.
- 1.2 We expect our staff, and all individuals working on any of the UHL sites, to be aware of and work to the principles laid out by the Trust's Values.
- 1.3 To achieve this objective we need to have the highest calibre of staff who are all supported and developed to perform to the best of their ability. However we have to have an agreed process for dealing with situations where an employee's conduct and behaviour are not appropriate and do not support this aim and the Trust's values. This policy is applied in line with the ACAS Code of Practice guidelines.
- 1.4 This Policy has been developed to ensure there is a clear, formal framework to follow when:
- Informal approaches have failed to resolve concerns relating to misconduct
  - Informal approaches are inappropriate because of the seriousness of any acts of misconduct.
- 1.5 University Hospitals of Leicester NHS Trust is committed to ensuring that it treats its employees fairly and with respect and that it does not discriminate against individuals or groups on the basis of their age, disability, gender, marital status, membership or non-membership of a trade union, race, religion, domestic circumstances, sexual orientation, ethnic or national origin, social and employment status, HIV status, or preferred gender. Additionally, the Trust recognises its responsibilities as a signatory to the Mindful Employer Charter which aims to increase awareness of mental health. The Charter is a demonstration of the Trust's commitment to being positive about mental health in the recruitment and retention of staff. Further information can be found here:
- <https://www.leicestershospitals.nhs.uk/aboutus/work-for-us/mindful-employer-charter/>

## 2 POLICY SCOPE

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- 2.1 This procedure applies to all employees of the University Hospitals of Leicester NHS Trust. This includes Medical and Dental staff in relation to matters of personal conduct. In matters relating to capability of Medical staff, a separate procedure exists which refers to this procedure in certain circumstances (see UHL's "Conduct Capability and Ill Health Policy for Medical Practitioners" and the national framework "Maintaining High Professional Standards in the NHS").
- 2.2 Separate procedures exist for the handling of incapacity for work through:
- Ill health [Sickness Absence Management Policy]
  - Capability [Performance Improvement (Capability) Policy and Procedure]

The Disciplinary Procedure should not be used for cases where poor or unacceptable performance is due to a genuine lack of skill or ability. For these cases the 'Improving Performance (Capability) Policy and Procedure' should be used. However, the Disciplinary Policy should be used where poor or unacceptable performance is due to 'misconduct or lack of application, care or attention' as well as other misconduct issues.

- 2.3 The principles and practices as set out in this policy may also be used in circumstances which fall within the definition of ‘some other substantial reason of a kind so as to justify dismissal’ (“SOSR”) or where an employee cannot continue to work in their position without contravention (either on their part or the Trust’s) of a duty or restriction imposed by or under an enactment (“Statutory Illegality”) as set out in section 98 Employment Rights Act 1996. In these specific circumstances the Trust reserves the right to adjust the policy as necessary and appropriate according to the specific circumstances. The allegations will still be shared with the employee. Examples would include the professional body suspending or ending the individual’s professional registration or if the individual no longer has the legal right to work in the UK.
- 2.4 The University Hospitals of Leicester NHS Trust also expects that any staff working at UHL, but contracted to another organisation, (e.g. Honorary staff, secondees, students on placement, work-experience students etc.) are subject to the principles of this Policy in terms of behaviour and conduct, such as the examples outlined in the Disciplinary Rules, Appendix 1, and living by the Trust’s values.
- 2.5 The issues described in Appendix 1 give examples of unacceptable conduct that are likely to lead to disciplinary action being taken. These Rules also describe breaches classed as gross misconduct, which are likely to lead to dismissal for a first offence. These are examples and are not intended to cover all circumstances or to be exhaustive.

### **3 DEFINITIONS AND ABBREVIATIONS**

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The following definitions are used in this policy:

A **Just Culture approach** means we will assess an issue when it arises to determine if there is other action, other than a formal disciplinary process, which is more appropriate. The aim is to learn from incidents and encourage people to speak up without fear of reprisal. This may be applicable when the issue was the result of a genuine mistake or a process error, or the individual involved was suffering from physical or mental ill-health at the time of the incident. The NHS Improvement Just Culture tool can be used to assess the most appropriate course of action (accessible here: <https://www.england.nhs.uk/patient-safety/a-just-culture-guide/> or Insite). Managers will be trained as part of the Disciplinary Investigations training on how to use this tool and apply this approach.

The **Agreed Outcome Process** can only apply where an employee acknowledges and accepts the allegation(s) made regarding their conduct; the investigating manager and/or disciplinary manager may, with the agreement of the member of staff (and their representative if they have one), proceed to issue a disciplinary sanction as an “Agreed Outcome Sanction” (AOS) without the need for a hearing. This applies only where the disciplinary sanction is up to and no more than a Final Written warning. This process does not apply to where the sanction is potentially a Dismissal or case of gross misconduct.

**Conduct** is the way employees behave and their actions.

**Case Investigator/Investigating Manager** is an independent manager who will be responsible, depending on the circumstances, with support from HR, for investigating the case to try to establish the facts of the matter, writing the investigation report, and presenting the management case should a disciplinary hearing be held.

**Disciplinary Manager** is a manager who will chair the panel at a disciplinary hearing and decide, with support from HR, what disciplinary sanction, if any, is to be given. In instances where a First Written Warning is the potential outcome of a formal Disciplinary process, the

Disciplinary Manager may be the same person as the Case Investigator, particularly in matters relating to the Agreed Outcome Process (see section 5.4 of this policy).

**Gross Misconduct** is conduct of such a serious nature that it indicates that the employee no longer intends to be bound by his or her duties or calls into question the confidence the Trust must have in an employee. Gross Misconduct may result in dismissal. Please refer to Appendix 1 (Section 3) of this policy for examples of actions which would constitute gross misconduct.

**Informal action** is advice, support and guidance which should precede formal action if possible and where appropriate, in order to rectify minor faults in conduct.

**Misconduct** is conduct which is unacceptable and which may result in disciplinary action being taken. This may initially be a warning, but if there is insufficient improvement, misconduct may ultimately result in dismissal. Please refer to Appendix 1 (Section 2) of this policy for examples of actions which would constitute misconduct.

**Some other Substantial Reason (“SOSR”)** is as set out in section 98 of the Employment Rights Act 1996, and means “some other substantial reason of a kind so as to justify dismissal”. Broadly this refers to circumstances that fall outside the definitions of redundancy, conduct, capability or breach of a statutory restriction but where dismissal may be justified.

## 4 ROLES

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**4.1 The Executive Lead** for this Policy and Procedure is the Chief People Officer.

**4.2 CMG and Directorate Management Teams** have responsibility for ensuring that appropriate and sufficient senior staff in their areas, are familiar with this Policy and Procedure, seek the relevant and appropriate support. The expectation is that managers have the relevant knowledge, expertise and support to be able to deal with issues that arise.

They also have responsibility for leading investigations and sitting on panels as required/appropriate.

**4.3 Line Managers** have responsibility for leading on disciplinary investigations. This includes ensuring that the employee/s is/are treated with dignity and respect throughout and that an investigation is fair and thorough and that cases are prioritised and brought to a conclusion as quickly as possible. Managers should seek the advice from the appropriate Employee Relations Team at all stages. It is expected that managers will attend appropriate training prior to commencing an investigation. Where this has not been possible, managers will be asked to book onto the next available training session.

**4.4 Staff** have a responsibility to co-operate with any investigation and disciplinary process. Staff must also maintain confidentiality throughout the process. This includes whether they are the subject of the investigation or as a witness. Many staff will also have a professional responsibility in this regard.

The employee must inform their manager of their Trade Union / Professional Organisation representative within 3 working days of being notified that a formal meeting / hearing will be arranged. The employee also has the option to attend the formal meeting / hearing unaccompanied or with a work colleague.

**4.5 The Employee Relations team** will support managers and staff with the disciplinary process and provide advice on the application of this policy and employment law.

## 4.6 RIGHTS TO REPRESENTATION

- 4.6.1 The employee will be advised of his/her right to representation. This can be by either an accredited Trade Union /Professional organisation (TU/PO), or by a work colleague (defined as an employee of the Trust) at any formal process within the procedure. Employees will be encouraged to seek advice and support from an accredited Trade Union/ Professional Organisation representative at any formal stage. If the employee declines representation this must be recorded.
- 4.6.2 TU/PO representatives or fellow workers acting in this capacity for an individual must not be otherwise involved in the matter being investigated, nor be acting for more than one individual if this compromises the investigation in any way or would present a conflict of interest.
- 4.6.3 Representative availability must not unreasonably delay the progress of the investigation. Where a representative is not able to attend a meeting on the first date offered, one further date will usually be offered.
- 4.6.4 Disciplinary action will not be taken against accredited representatives of recognised TUs/POs, until the circumstances have been discussed with the appropriate Full Time Officer.

## **5. POLICY IMPLEMENTATION AND ASSOCIATED DOCUMENTS**

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### **5.1 PROCEDURE**

- 5.1.1 The procedure follows the principles of both the ACAS Code of Practice April 2015 and the ACAS Advisory Handbook "Discipline and Grievances at Work – the ACAS Guide", and is in accordance with the relevant legislation.
- 5.1.2 The disciplinary procedure can be used in one of two ways:
- a series of progressive warnings to employees incorporating at each stage the opportunity to improve work and/or conduct.
  - in certain circumstances it may be necessary to commence proceedings at any of the levels of warning available and managers should seek advice from People Services. In circumstances of alleged gross misconduct, dismissal may be considered without the issue of prior formal warnings.
- 5.1.3 Further detail of what current Employment Law believes to be "fair" reasons for dismissal is outlined in Appendix 1, Disciplinary rule 3.25.
- 5.1.4 In determining the disciplinary action to be taken, managers should be aware of the need to satisfy the test of reasonableness and must ensure that each case is investigated thoroughly and all relevant facts are taken into account.
- 5.1.5 Any employee who is being investigated by their Professional Body or is referred to their Professional Body, even if this relates to work prior to or outside their employment at UHL, must immediately inform their manager. Failure to do so will be considered as Gross Misconduct and a potential breach of Appendix 1, Disciplinary Rule 3.12

## 5.2 INVESTIGATION

5.2.1 The purpose of investigation is to establish the facts as far as possible, before any decision is taken to determine whether a matter will be brought to a disciplinary hearing. Where appropriate, and once informed of the allegation, consideration should be given as to whether it is appropriate for the staff member to remain at work. This can also be a supportive measure for the staff member (s) concerned. This should ideally be no longer than two working days (see 5.3.5) to enable preliminary fact finding to take place. This could also be to try and evaluate the seriousness and implications of the allegation and therefore the appropriate way forward, to seek an alternative role/placement, or where the member of staff is distressed. The appropriateness of this will be considered on a case by case basis.

A Just Culture approach should be considered in the first instance. Using the NHS Improvement Just Culture tool (accessible here: <https://www.england.nhs.uk/patient-safety/a-just-culture-guide/> or Insite) it may be deemed appropriate to resolve the issue without formal disciplinary action, using a restorative learning approach which may include reflection. The aim should be to resolve issues at the lowest possible level and to ensure people are able to learn from genuine mistakes without fear of reprisal. This is not to say that disciplinary action will not be taken where this is appropriate.

5.2.2 Where an incident occurs which could be regarded as misconduct, the manager must as a minimum take the following steps (provided this does not interfere with potential allegations pertaining to safeguarding or fraud):

- Preliminary fact finding: the purpose of this stage is to determine the appropriate level at which to commence dealing with the concerns raised. This involves advising the staff member (s) of the nature of the allegation and obtaining written statements from parties involved and witnesses to the incident, at the earliest opportunity. This is a reasonable management request and should not be delayed by any parties involved.
- Obtain any other information/evidence that may help to establish the facts of the case
- Formal investigation: as appropriate (usually in more complex cases), the case investigator should interview the parties involved as appropriate and/or witness to the incident as soon as possible, noting in writing any evidence obtained. NB In cases relating to safeguarding matters it is usually appropriate to obtain a steer from the Safeguarding team as to when formal investigations can commence.
- In cases of suspected fraud and corruption however, the local Counter Fraud Specialist must be consulted prior to the commencement of investigations. Such investigations may subsequently need to be completed by the Counter Fraud Specialist team.
- Take copies of relevant documentation.

5.2.3 Where verbal or written evidence is obtained from witnesses (patients especially) who are not members of staff, and who are not likely to be available for examination and cross examination, the evidence should be taken in the presence of the employee's representative wherever possible, but this should not delay the investigation.

5.2.4 Employees will be advised that they may be accompanied and advised by an accredited TU/PO representative, or by a work colleague not otherwise involved in the investigation, at any stage of the investigation. Witnesses may also feel the need for support and

advice from accredited TU/PO representatives or a fellow worker. Managers will enable this wherever possible. However, such supporters/advisors:

- Must not present a conflict of interest (for example the same representative cannot represent the employee against whom an allegation is made, and a witness), and
- Must not unreasonably delay the progress of the investigation to allow matters to be dealt with in a timely way.

5.2.5 If the member of staff under investigation, or witnesses, request to be moved to another ward/department during the course of the investigation, consideration will be given to this wherever possible.

5.2.6 Following a full and fair investigation the decision regarding whether an investigation should proceed to a disciplinary hearing or not should be taken where possible by the investigation team, comprising the Case Investigator and HR representative. However, in certain circumstances, advice may be sought at a more senior level and/or in conjunction with a professional lead, by the case investigator.

5.2.7 If it is decided that no further action will be taken following the investigation, a letter to this effect will be sent to the employee concerned. No record of the investigation will be kept on the employee's personal file.

Where a member of staff who is already the subject of a disciplinary investigation wishes to raise concerns about any aspect of the disciplinary investigation or process this should be raised with the investigation team. Should a satisfactory response not be received this should then be directed to the Employee Relations Team Manager to determine the next steps to resolve.

### **5.3 SUSPENSION**

5.3.1 The Trust reserves the right to suspend an employee from work at any stage of the above procedure. It is also possible to bring an employee back to work from suspension at any stage of the procedure if this is deemed appropriate, as facts emerge. Where possible the employee would be able to have a representative from the Union/Professional Organisation they subscribe to to be present at any formal suspension meetings if they chose to.

5.3.2 For clarity, suspension from duty is not disciplinary action. Suspension will be considered when an employee needs to be immediately removed from the Trust premises, to protect the interests of the patient or the public or the staff (including him or herself), and to allow investigations to proceed where the continued presence of the individual may impede investigations.

5.3.3 Suspension is a neutral action and individuals are suspended as a last resort. As an alternative to suspension, individuals against whom an allegation has been made may be moved to a different role/department or have role modifications.

5.3.4 Where consideration is being given to the suspension of a doctor or dentist, reference must be made to UHL's "Conduct Capability and Ill Health Policy for Medical Practitioners" and the national framework "Maintaining High Professional Standards in the NHS".



- 5.3.5 Where an incident occurs and it is decided that suspension is the only option as outlined in 5.3.2, this must be discussed with a senior member of the CMG/Corporate Directorate and HR prior to action being taken. The appropriate Senior Manager or where this manager is not available, the next appropriate senior manager on site will immediately suspend the employee. This will normally be on full pay, subject to the terms of paragraph 5.3.15. If additional time is needed for further information to be obtained (e.g. out of hours) the employee should be sent home, ideally for no longer than two working days on full pay while the manager considers the matter. Please also see 5.2.1.
- 5.3.6 The employee will also be asked if they wish for an appropriate TU/PO representative to be present. If requested, every effort will be made to contact the relevant TU/PO.
- 5.3.7 Whilst every effort will be made to contact a TU/PO representative immediately, (or Full Time Officer if suspension of an accredited representative is being considered,) the circumstances of suspension mean that it will not always be possible to notify a TU/PO representative until after the event. In this situation the allegation will be outlined and the employee suspended, but there will be no discussion with the employee until they have the opportunity to be represented. Alternatively, the employee will be sent home on Special Leave for a period ideally no longer than two working days. (This is most likely to happen when an issue is identified out of hours.) Arrangements will then be made for the relevant parties to meet with the employee as soon as possible, in order to confirm (or otherwise), the suspension.
- 5.3.8 It will be made clear to the member of staff that the suspension does not constitute disciplinary action nor is it a presumption of guilt.
- 5.3.9 Suspension should be for the minimum amount of time that will enable an investigation to be completed. The individual should be given an estimate of the length of time that this is expected to take, which in usual circumstances would not be expected to exceed four weeks and could be a lesser period, depending on the complexity of the investigation.
- 5.3.10 Where the employee being suspended is an accredited representative of a recognised TU/PO, the Full Time Officer of the organisation concerned should be consulted at the earliest opportunity and prior to any formal disciplinary action.
- 5.3.11 In the suspension meeting the individual will be given a copy of the UHL Disciplinary Policy. (Medical Staff will also be given copies of the UHL Conduct, Capability and Ill Health for Medical Staff Policy and Maintaining High Professional Standards.) They will also be given a letter confirming their suspension clarifying the outline allegation/s and detailing the terms of the suspension. If further detail is needed this will be sent subsequently.
- 5.3.12 The letter of suspension will be copied to the individual's representative, if he/she has one.
- 5.3.13 Consideration should be given to whether the employee holds any other contracts of employment with the Trust e.g. Bank/agency contracts and, if this is the case, notification should be given by the suspending Manager to the appropriate People Services representative. Suspension from all Trust contracts should also be confirmed in the letter confirming suspension.
- 5.3.14 In some circumstances, the Trust may feel it is not appropriate for the employee to work at all during the suspension/investigation, including for any other employer, (for example following an allegation of child abuse). In this situation this will be made very clear to the employee at the point of suspension and included in the letter confirming the suspension. (UHL cannot "manage" this but can make it clear to the individual that they should not.)

5.3.15 Suspension will normally be paid at the rate of contractual pay, however where an individual becomes legally unable to continue to work in the role for which they were employed, suspension will be on no pay, for example:

5.3.16 Where a member of staff is employed in a role for which professional registration is mandatory (e.g. nurses, doctors, HPA staff etc.), it is the individual's responsibility to maintain their registration at all times. If a member of staff's professional registration lapses, (or is suspended by the professional body for any reason,) then the individual will either be asked to work in an unqualified role, (and have their pay reduced accordingly until their registration is re-established,) or if this is not deemed appropriate will be suspended on no pay. (See 'UHL Professional Registration Checks Policy and Procedure'.

5.3.17 Where a member of staff cannot fulfil their contractual obligations - for example:

- is legally unable to work in the UK – e.g. their Work Permit or Visa expires. (In this situation the individual will be suspended on no pay until the Home Office or other regulatory body confirms they are legally able to work in the UK again.
- Where a member of staff is imprisoned

5.3.18 Where the anticipated or actual period of investigation exceeds **four** weeks, the investigating manager will **review the suspension** and write to the suspended individual every four weeks, commencing with the first review, to confirm the anticipated timescale for completion of the investigation. The letter will be copied to the appropriate HR lead and TU/PO representative. This letter will be copied to the relevant CMG Clinical Director and CMG Manager/ Corporate Director.

5.3.19 Where a member of staff who is suspended on full pay becomes sick, their absence will be recorded as sickness absence in line with Statutory Sick Pay regulations. Such situations will be handled sensitively, but the terms of their suspension will remain in place. If their sickness absence continues then half pay and subsequently no pay will occur in line with their entitlement

#### 5.3.20 **Potential Outcomes Following Investigation**

1. No Case to Answer – this outcome will be appropriate where investigation finds it is not possible to uphold the allegation/s
2. Informal Handling – where some evidence has been found against the allegations but it is insufficient to warrant formal disciplinary action, the Investigating Manager may decide informal handling such as a behavioural agreement, further training, or a reflective piece of work may be most appropriate. This is not an exhaustive list.
3. Agreed Outcome Sanction (see section 5.4)
4. Progression to a formal disciplinary hearing

### 5.4 **AGREED OUTCOME SANCTION [AOS]**

5.4.1 Where it is believed an Agreed Outcome Sanction (AOS) may be appropriate, managers must follow the protocol included in the Agreed Outcome Sanction Protocol (Disciplinary Policy and Procedure: FAQs, available on Insite).

#### 5.4.2 Offer of an AOS

If, during or following an investigation, an employee acknowledges and accepts the allegation(s) made regarding their conduct, the investigating manager and/or disciplinary

manager may, with the agreement of the member of staff (and their representative if they have one), proceed to issue a disciplinary sanction as an 'Agreed Outcome Sanction' (AOS) without the need for a hearing. This applies only where the disciplinary sanction is up to and no more than a Final Written warning. This process does not apply to where the sanction is potentially a dismissal or case of gross misconduct.

5.4.3 The circumstance of a manager offering an AOS would only apply in cases where all three of the following apply:

1. the member of staff accepts, during the investigation, the allegation(s) regarding their conduct, to be substantiated
2. the Case Investigator and HR determine that the case should move forward to be considered for a formal disciplinary warning
3. where it is considered the level at which that hearing should be arranged is not at dismissal/ gross misconduct

5.4.4 Where all three of the above apply then the Case Investigator must ask the employee in writing whether they would be prepared to accept a sanction (clearly stating the level of the sanction), without the requirement for the hearing process (Disciplinary Policy and Procedure: FAQs, available on Insite). They must then be given five working days to consider this. If the employee agrees to this, then the Case Investigator will arrange to meet with the employee (and representative if requested) and issue the sanction in a face to face meeting, which would then subsequently be confirmed in writing. The meeting should also ensure the employee is advised of the rationale for the sanction and level

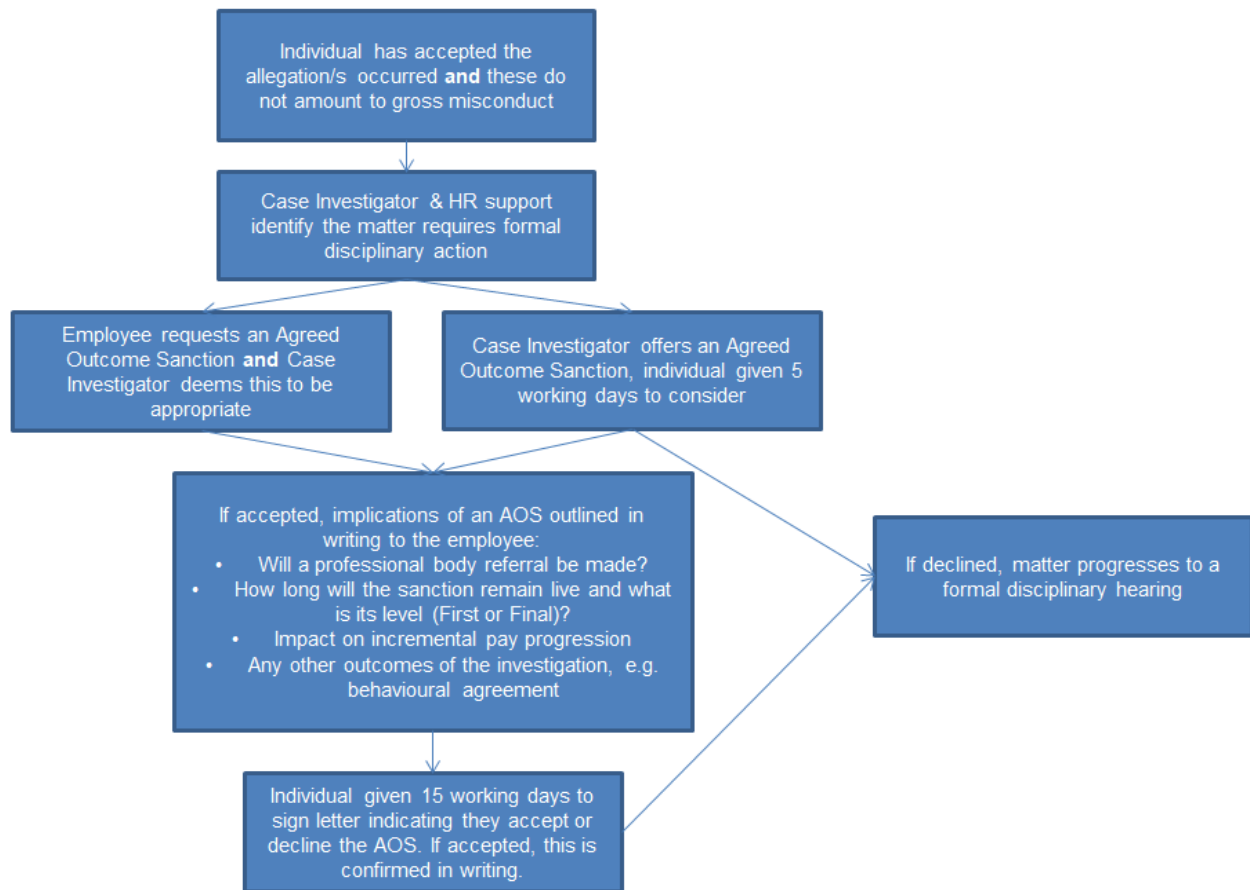
5.4.5 Alternatively the employee or their representative might approach either the Case Investigator or the individual's Manager (if different) and indicate that they accept the allegation (s) and understand that they must receive a disciplinary sanction and request an AOS instead of the need to undergo a disciplinary hearing. This can be done at any stage of the investigatory process before a formal hearing, including at the exploratory pre-investigation stage. The steps above would then be followed.

5.4.6 Following issue of the sanction under the Agreed Outcome Sanction Protocol, the employee will have 15 working days from the date of issue, to accept full agreement or decline. Should the sanction be accepted within the 15 working day period, the sanction would then stand from the date of issue for either one or two years depending on the level (see section 5.5.9). Should the sanction not be accepted within this period, progression to a panel hearing will take place.

Therefore the sanction must be mutually acceptable to all parties.

5.4.7 Where the allegations require a referral of information to a professional body such as the NMC or HCPC, then this should be clearly indicated to the member of staff, prior to their consenting to proceed with an AOS.

#### 5.4.8 **Agreed Outcome Sanction Flow Chart**



## 5.5 DISCIPLINARY ACTION

### Disciplinary Hearings

5.5.1 If, following an investigation it is determined that the matter needs to proceed to a formal disciplinary hearing\*, one will be arranged with an appropriate panel as per the table in Appendix 2. The members of the panel will not have been involved in the investigation except under the Agreed Outcome Process (See 5.4 and Disciplinary Policy and Procedure: FAQs, available on Insite). However consideration will be given to requests for an alternative independent manager to hear this and the reasonableness of the request.

\* This is determined by the Case Investigator with HR advice except in Medical Conduct cases, or in non-medical cases where a Case Manager has been appointed in which situation the decision will be made by the Case Manager with HR advice.

5.5.2 The individual will be given notice of the hearing and reminded of the allegations against them. These will be 'cross referenced' with the relevant sections of the Trust's Disciplinary Rules (See Appendix 1) which it is felt the employee has or may have breached if proven. This letter MUST outline the potential sanctions that could be applied to them in the Disciplinary Hearing, including summary dismissal where appropriate.

5.5.3 The individual will receive at least seven working days' notice of the hearing, unless otherwise agreed. Notice will be in writing and from the Case Investigator who will present the Management Case at the hearing.

5.5.4 When a disciplinary hearing is arranged, there is occasionally a reason why the employee cannot attend. They may therefore request an alternative date. If the reason

they cannot attend is considered to be “reasonable” then one further date will be arranged.

5.5.5 If the individual is unable to attend the Disciplinary Hearing they will be invited to send a written submission or to have their case presented by a representative (e.g. an appropriate colleague, or Trade Union/Professional Organisation representative if they are prepared and willing to do so) instead of attending in person so that the hearing can continue and the process be concluded.

5.5.6 In a hearing notes will be made of the discussions that have taken place. These notes will not be verbatim. The outcome letter, which will summarise the hearing, will be drafted based upon these notes. If the individual or their representative, wish to take notes, they may also do so.

5.5.7 However, if the employee, (or occasionally management or the panel) wish to make an audio recording of any meetings or hearings, this must be declared, agreed and then shared afterwards. Any such audio recordings must be kept confidential. Please note that explicit consent from all parties to the meeting or hearing must be obtained prior.

5.5.8 Covert recordings of any kind are prohibited from all stages of this procedure, including investigatory meetings, hearings and appeals.

#### 5.5.9 **Potential Outcomes of the Hearing**

1. No Case to Answer – this outcome will be appropriate where investigation finds it is not possible to uphold the allegation/s
2. Informal Handling – where some evidence has been found against the allegations but it is insufficient to warrant formal disciplinary action, the panel may decide informal handling such as a behavioural agreement, further training, or a reflective piece of work may be most appropriate. This is not an exhaustive list.
3. First Written Warning – Provided there have been no further incidents of misconduct or unsatisfactory performance, a First Written Warning will expire after a period of twelve calendar months from the date it was given.  
A First Written Warning may be appropriate where:
  - a. The alleged misconduct is sufficiently serious to warrant taking action at this level
4. Final Written Warning – Provided there have been no further incidences of misconduct or unsatisfactory performance, a Final Written warning will expire after a period of twenty-four calendar months from the date it was given.  
A Final Written Warning may be appropriate where:
  - a. A previously issued First Written Warning is still current and further disciplinary action is now warranted.
  - b. The misconduct is sufficiently serious to require action at this level.
  - c. In exceptional circumstances, (normally where there is mitigation which makes dismissal inappropriate), as an alternative to dismissal.
5. Dismissal may be appropriate where:
  - a. A previously issued Final Written Warning is still current and further disciplinary action is warranted (usually in this situation notice will be given)
  - b. A lesser warning is still valid and the misconduct is sufficiently serious to warrant immediate recourse to this level (i.e “Summary Dismissal” where the dismissal is immediate and neither is notice paid, nor payment in lieu of notice)
  - c. It is a case of Gross Misconduct (Summary Dismissal)

- d. Where it is found that there has been a fundamental breakdown in the mutual relationship of trust and confidence required between UHL (as the employer) and the employee (Summary Dismissal)

In certain situations, the Trust is obliged to advise certain bodies of the dismissal of individuals. This can be, for example, the NHS Pensions Agency, in situations of alleged fraud, the Child Protection Act List, in situations of alleged child abuse, and Professional Registration bodies in cases of serious relevant concern regarding the conduct or performance of registered individuals, and NHS Resolution in the case of doctors & dentists. If it is appropriate for the Trust to refer a case to these other bodies in addition to any action taken by the Trust, then the individual concerned will be informed of this.

#### **5.5.10 Sickness During an Investigation/Prior to a Hearing**

If an employee goes off sick during an investigation, management will review the individual's likely ability to participate in the investigation (e.g. attend an Investigatory Interview) and/or a Disciplinary Hearing. Consideration will be given to the length of time the individual is likely to be off sick so as not to delay progress. If the individual's absence on sick leave is likely to delay being able to conclude the process (and usually based on Occupational Health advice that the individual is not well enough to attend,) they will be sent structured questions to respond to instead of attending an Investigatory Interview.

#### **5.5.11 Finding Against the Disciplinary Rules (Appendix 1)**

If during a Disciplinary Hearing the panel feel that additional Trust rules beyond those cited are more relevant to the allegations under consideration, it will then be discussed and agreed whether the hearing will proceed or will be halted and reconvened.

The panel cannot however find against 'new' allegations – only those already outlined to the employee. If new allegations come to light during the hearing that the panel feel are significant enough to have a bearing on the outcome of the case, then the hearing will be adjourned, the individual informed of the new allegations and the hearing then reconvened at a later date.

#### **5.5.12 Pay Progression**

In line with the Pay Progression Policy, formal 'live' sanctions issued under both the Disciplinary and Capability Policies in the previous twelve month "appraisal" review period will be taken into consideration and not award incremental pay progression except in extenuating circumstances.

5.5.13 The employee will be informed of the decision in writing, within 7 working days of the hearing.

5.5.14 A copy of the letter will be sent to the employee's representative, and to all present at the hearing excluding witnesses and observers. A copy of the letter will be retained in the employee's personal file as appropriate for the duration of the sanction.

#### **5.5.15 Supplementary Action**

Dependent on the seriousness and circumstances of the case, the following additional action may also be taken by the panel and detailed in writing. (These will vary depending on the level of the sanction, and the more serious options for supplementary action will

be taken in conjunction with the higher levels of warning or as an alternative to dismissal):

- A requirement to undertake appropriate training (without any deduction of earnings)
- A permanent or temporary change of CMG/Specialty/Ward/Department, post and/or shift pattern. This may include a change of site.
- Permanent or temporary downbanding etc. This would result in a reduction in earnings without protection.

5.5.16 As an alternative to dismissal where the mitigation makes dismissal inappropriate, options include permanent downgrading, relocation or redeployment. In any case where alternatives to dismissal are proposed, in circumstances where it would otherwise be justified, a Final Written Warning would usually also be given. In these circumstances:

- The employee will not qualify for “salary protection”.
- A written statement of any changes in terms of employment of the employee will be given during the first month of starting in the new post.
- The employee will not be able to apply for a promotion within a period of six months of receipt of the downgrading.
- If the employee does not accept the downgrading or other terms as an alternative to dismissal, then dismissal will be the outcome.

## **5.6 RECORDS**

5.6.1 It is essential that a complete employment record for all members of staff is held. Therefore although disciplinary outcome letters will have a fixed period of “currency” and cannot be built upon outside their period of currency, or referred to in any references, copies of expired letters will remain on the ER Tracker and on the individual’s personal file.

5.6.2 All other information pertaining to performance and conduct issues relating to matters being considered or having been considered at a formal level, e.g. witness statements and other documentary evidence, will also be held on the ER Tracker.

## **5.7 THE SPECIAL APPLICANTS’ REGISTER (SAR)**

5.7.1 Employees who are dismissed, or leave whilst an investigation is in progress will be entered onto the Special Applicants’ Register, which is accessed by nominated individuals only, in the University Hospitals of Leicester NHS Trust. The purpose of the register is to ensure that all prospective employees to UHL are considered “suitable” to work within the environment for which they have applied. This does not mean that staff who are on the register will not be considered for any posts they choose to apply for in the future; however, it does mean that the Trust will have to evaluate their circumstances at that time, against the post applied for.

5.7.2 Every effort will be made to complete the disciplinary process even when the employee has left the employment of UHL to allow appropriate consideration to the matters raised. It will be made explicit to the individual when details have been added to the Register and the rationale. To comply with the Data Protection Act 2018, only limited information

will be held for a period of no more than 7 years, unless there are specific circumstances why this should be longer.

## **5.8 RIGHTS OF REVIEW/APPEAL**

### **5.8.1 Right of Review**

There is a right of Review against a First Written and Final Written Warning. Should the employee consider that they have a clear and considerable reason to request this, they should put their request for review in writing to the Chief People Officer, University Hospitals of Leicester NHS Trust, Level 3, Chief Executive's Department, Balmoral Building Leicester Royal Infirmary Hospital, Infirmary Square, Leicester, LE1 5WW. The outcome letter will be sent within 7 working days of the hearing, and any request for an review must be received within 15 working days of the outcome being heard.

The letter must set out in writing the grounds upon which the employee is requesting the review otherwise the review may not be allowed. This must be submitted via the proforma in Appendix 6. Once the review date has been set, if the individual is unable to attend, one further date will be arranged.

The Review will be undertaken by an appropriate manager with HR support. The depth and format of the review will be at the discretion of the reviewing officer, but will as a minimum include the following points:

- A thorough review of the evidence considered by the panel which issued the warning and an opportunity for the employee or their representative to explain the reasons in writing for dissatisfaction with the decision.
- There is no need for witnesses to be recalled unless the reviewing manager feels that it is necessary to clarify matters in dispute and this cannot be achieved from the information already available.
- While the review will usually be a table-top discussion, the individual, plus their representative, are able to request to attend. In these circumstances the manager who gave the outcome at that Level should also attend.
- There is no need for witnesses to be recalled unless the reviewing manager feels that it is necessary to clarify matters in dispute and this cannot be achieved from the information already available.
- The review will be complete when the reviewing manager is satisfied that all of the relevant information has been considered.
- The decision of the reviewing manager will be advised in writing to the employee, and his or her representative (where appropriate).

### **5.8.2 Right of Appeal**

Employees are advised that the outcome of an appeal could be a lesser or same sanction. There is a right of Appeal against a dismissal. Should the employee consider that they have a clear and considerable reason to request this, they should put their request for an Appeal in writing to the Chief People Officer, University Hospitals of Leicester NHS Trust, Level 3, Chief Executive's Department, Balmoral Building Leicester Royal Infirmary, Infirmary Square, Leicester, LE1 5WW. The outcome letter will be sent within 7 working days of the hearing, and any request for an appeal must be received within 15 working days of the outcome being heard.



The letter must set out in writing the grounds upon which the employee is requesting the appeal otherwise the appeal may not be allowed. This must be submitted via the proforma in Appendix 6. Once the review date has been set, if the individual is unable to attend, one further date will be arranged.

The Appeal will be undertaken by a panel of appropriate managers plus HR support, with the individual and their representative invited to attend. The process will be as outlined in Appendix 5.

In the cases of dismissal the lodging of an appeal will not suspend notice of dismissal, or in cases of summary dismissal, the actual dismissal. In the event of reinstatement following appeal, the employee will be compensated for loss of income between the date of dismissal and the date of reinstatement. In the event of re-engagement, the employee will not be compensated for loss of income, but will be given the chance to recommence employment with the Trust.

## **5.9 POLICE ENQUIRIES AND CRIMINAL OFFENCES**

- 5.9.1 If an employee is the subject of a criminal investigation for alleged offences or has been charged with alleged criminal offences, whether committed at or outside work, they must inform their manager immediately and in writing. Staff who are employed for all or part of their duty as a driver or for whom the requirement to drive is an essential part of their duties, must inform their manager in writing if charged with a driving offence. Failure to comply with this notification will be regarded as a breach of discipline.
- 5.9.2 This would include employees who are employed for all or part of their duty as a driver or for whom the requirement to drive is an essential part of their duties who must inform their Head of Department in writing if charged with a driving offence.
- 5.9.3 If a member of staff is the subject of a criminal investigation for alleged offences or has been charged with alleged criminal offences, the Trust will be entitled to consider the implications of the offence in relation to the individual's role and the Trust's reputation etc. Investigations and disciplinary action under this procedure will not necessarily await or be dependent upon police enquiries or legal proceedings. Criminal offences outside employment will not automatically be treated as reasons for disciplinary action or dismissal, but consideration will be given as to whether the offence is one which makes the member of staff unsuitable for their particular work or unacceptable to other employees.

## **5.10 PROCEDURE FOR DEALING WITH STAFF WHOSE EMPLOYMENT IS TERMINATED DURING TRAINING BECAUSE OF UNSATISFACTORY ATTAINMENT**

- 5.10.1 In the case of staff undertaking training, where there is a specific provision in the contract for termination on the ground of unsatisfactory attainment, there is no requirement to proceed through all of the stages of the above procedure. In such cases, the matter may be referred directly to the dismissal stage of the procedure.
- 5.10.2 Where there are no such provisions in the contract, unsatisfactory performance in training may be dealt with in accordance with the principles of this procedure.

## **5.11 SUBSTANTIAL ABSENCE OF EMPLOYEE DURING THE LIFETIME OF DISCIPLINARY WARNINGS**

5.11.1 If a member of staff is absent from work (e.g. for reasons of maternity leave, career break, long-term [i.e. over four weeks] sickness absence etc.) for an extensive period during the period when a disciplinary warning has been given and before the date on which it expires, the warning will be suspended during the absence and will recommence once the employee returns to work, except in extenuating circumstances which must be discussed with People Services. The employee will be informed of this in writing.

## **6 EDUCATION AND TRAINING REQUIREMENTS**

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6.1 This Policy and Procedure will be implemented via the HR Generalist Team and support provided to managers as required. Managers will be required to attend, or be booked to attend, Investigations training prior to commencing their first investigation since this version of the policy became live (April 2020).

## **7 PROCESS FOR MONITORING COMPLIANCE**

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- 7.1 Policy compliance, will be monitored with spot audits by the Employee Relations Team.
- 7.2 The spot audit will consist of reviewing the case documentation ensuring that the relevant procedure has been followed and an outcome recorded. All case documentation will be held on the E Tracker.
- 7.3 Monitoring for compliance will also take place against agreed KPIs, as defined within the ER Tracker. Lessons learned from individual cases and adherence to KPIs identified will be shared with the HR Generalist Team and appropriate management team.

<b>Element to be monitored</b>	<b>Lead</b>	<b>Tool</b>	<b>Frequency</b>	<b>Reporting arrangements Who or what committee will the completed report go to.</b>
Disciplinary Case KPIs	Employee Relations Team Manager. Cases requiring input are dealt with by managers with support from HR where necessary. HR Business Partners take appropriate data to CMG Boards, to ensure appropriate review	Reports from ER Tracker along defined parameters.	Monthly	CMG Boards, Managers, and People Services
Equality workforce data (as required)	Workforce	Workforce Absence Data / Trust Executive Summary	Monthly	Trust Board, CMG Boards, managers (as appropriate) and People Services

## **8 EQUALITY IMPACT ASSESSMENT**

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- 8.1 The Trust recognises the diversity of the local community it serves. Our aim therefore is to provide a safe environment free from discrimination and treat all individuals fairly with dignity and appropriately according to their needs.
- 8.2 As part of its development, this policy and its impact on equality have been reviewed and no detriment was identified.

## **9 SUPPORTING REFERENCES, EVIDENCE BASE AND RELATED POLICIES**

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### **9.1 National References**

- Employments Rights Act 1996
- Equality Act 2010
- ACAS Code of Practice 2015
- Professional /Regulatory Body Codes of Conduct (updated by professional body check relevant websites for up to date versions)
- Agenda for Change Terms and Conditions Handbook
- Maintaining High Professional Standards in the Modern NHS  
<https://resolution.nhs.uk/>
- <https://resolution.nhs.uk/services/practitioner-performance-advice/> formerly NCAS
- Code of Conduct for NHS Managers 2002

### **9.2 Related UHL Policies**

- Standing Financial Instructions
- Counter Fraud Policy
- Staff Information Governance Policy B4/2004
- Staff guidelines for use of Social Networking Media B26/2010
- Recruitment and Selection Policy and Procedure B43/2009
- Conflicts of Interests Policy 2017 A1/2017
- Anti- Bullying and Harassment Policy B5/2016
- Policy for Alcohol, Drug and other Substance Misuse in Employment Policy B6/2004
- Uniform and Dress Code Policy B30/2010
- Conduct, Capability, Ill Health and Appeals Policies and Procedures for Medical Practitioners A2/2005
- Staff Grievance and Disputes Policy and Procedure A7/2004
- Safeguarding Children Policy B1/2012
- Safeguarding Adults Policy and Procedure B26/2011
- Non Smoking Policy A1/2006

## **10 PROCESS FOR VERSION CONTROL, DOCUMENT ARCHIVING AND REVIEW**

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- 10.1 This policy will be reviewed every four years and it is the responsibility of the policy HR Lead to commence this process in a timely manner to ensure a revised version is approved by the review date.
- 10.2 All previous versions of this policy are archived on the HR shared drive and can be accessed by the HR policy Lead.
- 10.3 The updated version of the Policy will then be uploaded and available through INsite Documents and the Trust's externally-accessible Freedom of Information publication scheme. It will be archived through the Trusts PAGL system

**DISCIPLINARY RULES (this is not intended to be an exhaustive list)**

**1. INTRODUCTION**

- 1.1 These rules apply to all University Hospitals of Leicester NHS Trust employees.
- 1.2 They are to be read in conjunction with the Trust's Disciplinary Policy and Procedure.
- 1.3 These rules are not intended to be an exclusive, or an exhaustive list of types of misconduct which can result in disciplinary action against an employee, but are intended to spell out as clearly as possible to employees of the Trust the forms of disciplinary breaches which are likely to give rise to formal disciplinary action.
- 1.4 Employees should be aware that a breach of rules regarded as gross misconduct will normally result in summary dismissal without prior warning, notice or pay in lieu of notice.
- 1.5 Each employee of the Trust is responsible for reading and observing these rules. Anyone in doubt about his/her position must seek guidance from his/her manager or senior member of the People Services Directorate.
- 1.6 The University Hospitals of Leicester expects that all staff, (whether or not they are covered by a Professional Code) who believe or suspect that treatment or care provided by another staff member/ team/ process, to a patient, has caused or could have caused harm will report this to their line manager and/ or through the appropriate route.

All staff are expected to co-operate fully with any investigations that are being undertaken, such as writing statements.

Because patient safety is paramount, if it is identified that a staff member has knowingly avoided reporting a patient safety incident or concern, or fails to co-operate appropriately with an investigation, this in itself will initiate an investigation that may result in the instigation of disciplinary proceedings. The level of these proceedings will depend on the seriousness of the issue.

**2. EXAMPLES OF TYPES OF OFFENCE WHICH WILL JUSTIFY DISCIPLINARY ACTION**

- 2.1 Matters related to persistent poor attendance, including unauthorised absence, time keeping offences and failure to follow procedures for reporting absence. (Please note, sickness absence should be managed under the Sickness Absence Management policy).
- 2.2 Conduct and/or behaviour which is contrary to the Trust's values and those in the NHS Constitution.
- 2.3 Language and or behaviour offensive or harmful, (or likely to be so), to other employees, staff employed by contractors providing services to the Trust, to patients, visitors or other members of the public. This includes comments posted on Social Networking Sites. (See the Trust's Social Networking Guidance and Section 2.23)
- 2.4 Unreasonable appearance that is offensive or harmful (or likely to be so), to other employees, staff employed by contractors providing services to the Trust, to patients, visitors or other members of the public.

- 2.5 Impaired ability to perform the duties of the post due to alcohol, drugs or other substances. (See also the Alcohol and Substance Abuse Policy.)
- 2.6 Failure to obey a reasonable instruction without adequate explanation which is accepted by management.
- 2.7 Dishonesty. (Including giving evidence during an investigation process which is later found to be dishonest.)
- 2.8 Criminal offences committed at/or outside work or alleged criminal offences which, on the balance of probabilities have been committed and which make the employee unsuitable for his/her type of work or unacceptable to other employees. Where disciplinary action is contemplated in respect of a criminal offence committed by an employee in the course of his/her Trade Union/Staff Organisation interests, a senior member of the People Services Directorate should be consulted. This applies where UHL do not deem the criminal offence to be investigated as a possible gross misconduct matter.

An employee who is charged or being investigated with regard to any criminal offence must inform his/her Departmental Head immediately in writing. Failure to comply will be regarded as a breach of disciplinary rules.

This would include employees who are employed for all or part of their duty as a driver or for whom the requirement to drive is an essential part of their duties who must inform their Head of Department in writing if charged with a driving offence.

- 2.9 Negligence or other misconduct in respect of performance of duties which employees are employed to carry out.
- 2.10 Failure to exercise the duties of care encompassed by the Trust's Policy on Health and Safety at Work and the Health and Safety (etc.) Act 1974. This would include failure to inform management of any deterioration in health or faculties, which might impair the employee's ability to perform the duties of the post or comply with the provisions of the Health and Safety at Work Act.
- 2.11 Offences committed in breach of the 1983 Mental Health Act.
- 2.12 Falsification or failure to declare relevant information on medical questionnaires or application forms, child protection details, or any other forms fundamental to the contract.
- 2.13 Breaches of confidentiality relating to the interests of patients, staff or the Trust and which are not covered by the Public Interest Disclosure Act (See the Trust's 'Freedom to Speak Up' procedure.)

NB This includes accessing any computer-held records which there was not a job-required reason to access – such as access the records of friends, relatives or colleagues. (NB this is also a criminal offence). This applies whether or not this information was shared.

(Reference should be made to the Trust's policies on E-mail and Internet Access and Monitoring, and Information Security, which provide further details of standards expected.)

- 2.14 Knowingly being in unauthorised possession of Trust property whether on or off the premises.
- 2.15 Offences committed in breach of the Food Hygiene (General) Regulations, 1970 and the Food Safety, 1990 or any regulations made there under.

- 2.16 Professional conduct which falls short of the normally accepted professional standard but which is less serious than when such conduct arises from gross or wilful negligence, or misconduct which falls short of normally accepted standards for that role.
- 2.17 Smoking in areas of health premises designated as 'No Smoking'; this also includes vaping in such premises designated as 'No Smoking'. Please see the Non -Smoking Policy
- 2.18 Breaches of the Trust's conditions specified in contracts of employment in regard to the disclosure of potential or actual conflict of interests and other breaches of the Trust's Code of Business Conduct.
- 2.19 Using, (or allowing anyone else to use), the Trust's computer systems (including any hardware or portable equipment), to obtain, transmit or store material which is obscene, otherwise offensive, or illegal. (Reference should be made to the Trust's Policies on E-mail and internet Access and Monitoring, and Information Security which provide further details of standards expected.)
- 2.20 Misuse of the Trust's facilities, resources, equipment, premises or systems. This will include misuse of the Trust's e-mail system (Reference should be made to the Trust's Policies on E-mail and Internet Access and Monitoring, and Information Security, which provide further details of standards expected). This includes sending inappropriate or potentially offensive messages which are intended to be "private".
- 2.21 Collections of money (including organising raffles and similar money raising activities) within the Trust without prior management approval, and outwith the Trust's Standing Financial instructions or Code of Business Conduct. NB this does not include local, informal charitable activities for which no work time is used.

Approval will not normally be withheld for collections taken up between staff on behalf of colleagues (for example in the case of illness or retirement), but under no circumstances must staff seek contributions (either as gifts or donations) from patients, patients' relatives or visitors to the Trust.

- 2.22 Less serious action by an employee which is contrary to the Anti-Bullying and Harassment Policy or is discriminatory in terms of the Trust's Equality and Inclusion Policy, and specifically any act of racial, gender or disability discrimination or harassment.
- 2.23 Bringing the organisation or other staff members into disrepute. This can include by conduct and/or activities undertaken within work or out of work, and could include disrespectful or derogatory remarks made about colleagues or the organisation via social networking sites. (See the Trust's Social Networking Guidance) NB This in no way relates to the 'Freedom to Speak Up' procedure, and all members of staff's responsibility to raise issues of concern.

**3. THE FOLLOWING REPRESENT EXAMPLES OF THE TYPE OF OFFENCE THAT WILL BE REGARDED AS GROSS MISCONDUCT AND WILL NORMALLY LEAD TO DISMISSAL.**

- 3.1 Persistent/ Repeated or more serious conduct and/or behaviour which is contrary to the Trust's values and those in the NHS Constitution.
- 3.2 Fighting, violence or threats of violence on or off the Trust's premises, upon other employees, staff employed by contractors providing services to the Trust, patients, visitors or other members of the public.

- 3.3 The use of foul or abusive language, in verbal, written or other format including via computers, mobile telephones etc.
- 3.4 Being under the influence of alcohol, recreational (i.e. non-prescribed) drugs or other substances when on duty or on the Trust premises or property, when not on duty. It is entirely unacceptable to be under the influence of any substance during the normal working day. However, some staff who are on-call and/or work out of hours are on very intense (i.e. frequent) rotas and therefore, although a complete ban on alcohol is not mandated, staff must be able to perform their duties safely and to the level they would perform had they not had the alcohol. This must include being safely under the legal limit to drive in to the work when on call.
- 3.5 Gross insubordination or failure to obey a reasonable instruction without adequate and acceptable explanation, having been warned of the consequences of failure to do so.
- 3.6 Dishonesty. (Including giving evidence during an investigation process which is later found to be dishonest)
- 3.7 Actual or attempted theft, (including unauthorised borrowing), fraud, (including abuse of official time equipment or facilities and falsification of records and claims for personal gain or other purposes). This includes stealing items intended for patients e.g. food. Matters may be considered whether they took place at the work place (on or off duty), or external to the workplace (on or off duty).
- 3.8 Corruption ie receipt of any gift or consideration of any kind from contractors or their agents, or from any organisations, firms or individuals with whom the employee is brought into contact by reason of his/her official duties, as an inducement or reward for:
1. Doing or refraining from doing anything in the employee's official capacity, or
  2. Showing favour or disfavour to any person in the employee's official capacity.
- This will also include the failure to declare a pecuniary interest in contracts or a conflict of interest in any form of business or employment.
- The Trust's Code of Business Conduct provides further advice on this matter and other potential breaches of the Trust's Code. Managers should also see The "Code of Conduct for NHS Managers"
- 3.9 Criminal offences committed at/or outside work or alleged criminal offences which, on the balance of probabilities, have been committed, which make the employee unsuitable for his/her type of work or unacceptable to other employees. Where disciplinary action is contemplated in respect of criminal offences committed by an employee in the course of his/her Trade Union or Staff Organisation interests, the People Services Directorate should be consulted.
- An employee who is charged or being investigated for any criminal offence must inform his/her Departmental Head immediately in writing. Failure to comply will be regarded as a breach of discipline.
- This would include employees who are employed for all or part of their duty as a driver or for whom the requirement to drive is an essential part of their duties who must inform their Head of Department in writing if charged with a driving offence.
- 3.10 Offences which incorporate breach of the 1983 Mental Health Act.
- 3.11 Offences which incorporate breaches of the Food Hygiene (General) Regulations 1970 and the Food Safety Act, 1990.



- 3.12 Professional misconduct regarded as a gross breach of e.g. Professional Bodies' Codes of Practice/Conduct or serious misconduct of staff in any role.
- 3.13 Gross or wilful negligence or misconduct in respect of performance of duties, which employees are employed to carry out, including the duties of care encompassed by the Trust's policy on Health and Safety etc. Act 1974.
- 3.14 Causing deliberate damage to property, systems, information or other resources.
- 3.15 Serious misuse (or allowing of such misuse by others), of the hospital computer systems (including hardware or portable equipment), to obtain, transmit or store material which is obscene, otherwise offensive, or illegal.

NB This includes accessing any computer-held records which there was not a job-required reason to access – such as looking up a friend's or relative's records. (NB this is also a criminal offence) Please see also section 2.13.

(Reference should be made to the Trust's Policies on E-mail and Internet Access and Monitoring, and Information Security, which provide further details of standards expected

- 3.16 Falsification of, or failure to declare relevant information on medical questionnaires, application forms or any other forms that are fundamental to the contract. This would include the falsification of qualifications which are statutorily required for employment or which result in obtaining employment by deception, additional remuneration and/or the falsification of references.
- 3.17 Any disclosure of confidential information outside of the proper and recognised course of duty. This includes breaches of the Data Protection Act 1998 such as knowingly to attempt to gain unauthorised access to any programme or data held on a computer. This is whether with, or without intent to commit or facilitate the commission of further offences or to modify any programme or data in a computer without authorisation. NB Staff are particularly required to note that all information about patients is classified as confidential.

No statement should be made about UHL to representatives of the media or other bodies unless the employee has been given specific delegated or has professional responsibility (or unless this is within the provisions of the Public Interest Disclosure Act 1998, described within the Trust's 'Freedom to Speak Up' procedure.) This is not intended to apply to an official of a recognised Trade Union or Staff organisation while acting in that capacity within the particular organisation's rules and in connection with an industrial dispute.

Reference should also be made to the Trust's Policies on E-mail and Internet Access and Monitoring, and Information Security and the Trust's Social Networking Guidance which provide further details of standards expected.

- 3.18 Any serious action by an employee which is contrary to the Anti Bullying and Harassment Policy (B5/2016) or is discriminatory in terms of the Trust's Equality and Inclusion Policy and specifically any act of racial, sexual, gender, religious, disability or age discrimination or harassment .
- 3.19 Taking unofficial industrial action.
- 3.20 Bringing the organisation into disrepute This can include by conduct and/or activities within work or undertaken out of work, and could include disrespectful or derogatory remarks made about colleagues or the organisation via social networking sites. (See "Social Networking Policy"). NB This in no way relates to the 'Freedom to Speak Up' Policy, and all members of staff's responsibility to raise issues of concern.

- 3.21 Any other conduct or activity which undermines the fundamental bond of mutual trust and confidence that is required between employer and employee. (See Procedure section 6.7)
- 3.22 Matters related to persistent poor attendance, including unauthorised absence, time keeping offences and failure to follow procedures for reporting absence
- 3.23 Persistent smoking in areas of health premises designated as “No Smoking”.
- 3.24 Consuming alcohol in or on hospital premises, whether or not the individual is on duty, or being under the influence of alcohol during work or on work premises.
- 3.25 In terms of dismissal, under Employment Law, there are five fair reasons for a dismissal. Three of these are covered by this procedure and two by other procedures as detailed below:
1. Capability [Covered by the Performance Improvement (Capability) Procedure]
  2. Conduct [Covered by this Procedure].
  3. Redundancy [Covered by the Management of Change Policy]
  4. To avoid contravening a statutory provision\*
  5. Some other substantial reason\*

“Some other substantial reason” is defined as conduct which suggests that the bond of mutual trust and confidence which must exist between employer and employee has been called into question.

**LEVELS OF AUTHORITY WITHIN THE DISCIPLINARY POLICY AND PROCEDURE**

<b>Category of Staff</b>	<b>Level I First Written Warning (Hearing by two people including HR support)</b>	<b>Level II Final Written Warning (Panel of two people including HR support)</b>	<b>Level III Dismissal (Panel of two/three people including HR support)</b>
Chief Executive	Trust Chairman or Non-Executive Director	Trust Chairman or Non-Executive Director	Trust Chair and Non-Executive Director
Executive Directors and Other Directors	Chief Executive or one Non-Executive Director	Chief Executive or one Non-Executive Director	Chief Executive and Non-Executive Director
Managers second in line to Directors eg CMG Head of Operations, Assistant and Deputy Directors, Consultants and Specialty Doctors (* See below re medical staff)	CMG Director	Director /CMG Director	Director/CMG Director, Representative of CE and senior member of HR (decisions relating to CMG Head of Operations, Nurse/AHP must involve the Chief Operating Officer, Chief Nurse or other representative of the Chief Executive)
Managers third in line to Directors, eg General Managers	Line Manager	Second in line Manager to Director/ CMG Director / CMG Head of Operations	Director/CMG Director / CMG Head of Operations /CMG Head of Nursing
All other staff including Training and Trust Grade doctors (* See below re medical staff)	Line Manager	Second in line to CMG Head of Operations	Director/CMG Director / CMG Head of Operations/ CMG Head of Nursing

- Note 1** Action may be delegated to designated officers for all levels within grid, as appropriate.
- Note 2** A direct line manager can be substituted by a line manager from a different area (with authority given in advance by either the Director, CMG Director, CMG Head of Operations or CMG Lead Nurse).
- Note 3** The panel will comprise of one of the above. HR support for panels will include a post at an appropriate senior level.
- Note 4** At the higher levels it may be appropriate that the panel comprises managers from another area to ensure complete objectivity

\* In line with MHPS: “Where the alleged misconduct relates to matters of a professional nature, or where an investigation identifies issues of professional conduct, the case investigator must obtain appropriate independent professional advice. Similarly where a case involving issues of professional conduct proceeds to a hearing under the employer’s conduct procedures the panel must include a member who is medically qualified (in the case of doctors) or dentally qualified (in the case of dentists) and who is not currently employed by the organisation”

**LEVELS OF AUTHORITY FOR REVIEW/ APPEALS PROCESS**

**APPENDIX 3**

<b>Category of Staff</b>	<b>Level I First Written Warning Review (Hearing by two including HR support)</b>	<b>Level II Final Written Warning Appeal (Panel of two: one from the list below and HR support)</b>	<b>Level III Dismissal Appeal (Panel of three: two from the list below and HR support)</b>
Chief Executive	Non-Executive Director	Non-Executive Director	Panel of two Non-Executive Directors
Executive Directors and other Directors	Trust Chairman	Trust Chairman	Trust Chairman and Non-Executive Director
Managers second in line to Directors: CMG Directors/ CMG Managers Assistant and Deputy Directors, Consultants and Specialty Doctors (* See below re medical staff)	Director	One Director	Three Directors (one of whom may be the Chief People Officer, and if not, the Deputy Chief People Officer or CMG HR Lead must be present).
Managers third in line to Directors e.g. Service Managers	Next in line manager to the manager deciding on the warning	One Director	Three Directors (one of whom should be the Chief People Officer, or if not, the Deputy Chief People Officer, CMG HR Lead or an HR Business Partner must be present).
All other staff including Training and Trust Grade doctors (*See below re medical staff)	Next in line manager to the manager deciding on the warning	One Director	Three Directors (one of whom should be the Chief People Officer, or if not, the Deputy Chief People Officer, CMG HR Lead or an HR Business Partner must be present).

**Note 1** Appropriate senior staff may substitute for Directors where appropriate, and where delegated authority is given by the relevant Director

**Note 2** No person previously involved in the decision about or investigations into the matter previously will be a panel member

**Note 3** HR Support for panels will include a post at an appropriate senior level.

\* In line with MHPS: “Where the alleged misconduct relates to matters of a professional nature, or where an investigation identifies issues of professional conduct, the case investigator must obtain appropriate independent professional advice. Similarly where a case involving issues of professional conduct proceeds to a hearing under the employer’s conduct procedures the panel must include a member who is medically qualified (in the case of doctors) or dentally qualified (in the case of dentists) and who is not currently employed by the organisation”

**GUIDANCE ON ORDER OF EVENTS AT DISCIPLINARY HEARINGS**

1. Explain the purpose of the meeting and introduce those present.
2. Ensure all present understand the proceedings are confidential.
3. Explain the format of the hearing and ensure everyone has received relevant papers.
4. Ensure the individual understands the potential outcome from the hearing – especially if this could include their dismissal.
5. Invite Manager to present the case for Management and to call Witnesses (if required.)
6. Panel to question presenting Manager and Witnesses.
7. Individual/Trade Union/Professional Organisation representative to question presenting Manager and Witnesses
8. Each Witness to leave the room after giving evidence.
9. Trade Union/Professional Organisation representative/employee to present case in response and call any witnesses
10. Presenting Manager to question Trade Union/Professional Organisation representative/employee and witnesses
11. Panel to question Trade Union/Professional Organisation representative/Employee and witnesses.
12. Each witness to leave the room after giving evidence.
13. Presenting Manager asked to summarise case.
14. Trade Union/Professional Organisation representative/Employee asked to summarise case.
15. Panel to question Trade Union/Professional Organisation representative/employee as to whether there are any mitigating factors.
16. Adjourn for a decision (Presenting Manager and Trade Union/Professional Organisation representative/Employee asked to leave the room)
17. Reconvene (Panel, Trade Union/Professional Organisation representative/Employee and Presenting Manager) and announce decision.

**APPEALS PROCEDURE FOR APPEALS AGAINST DISMISSAL**

The appeal will be heard wherever possible within fifteen clear working days of the receipt of the request for appeal. The appellant will receive at least five clear working days' notice of the date of the hearing.

On receipt of the appeal, the Chief People Officer will advise the appropriate representative in People Services/ Employee Relations Team Manager set up the appropriate appeals panel as specified in Appendix B.

Where the dismissal concerns professional conduct or performance, and the Executive Directors are not of that professional group, it is likely to be appropriate for the Executive Director to be accompanied by an appropriate senior professional adviser.

Where appropriate, a suitable designated appropriate person may substitute for an Executive Director on an appeal panel.

No person previously involved in the decision or investigations into the matters to be considered will be a panel member.

The individual appealing will have the right of appearing personally before the appeal panel, either alone or accompanied by an accredited representative of a Trade Union or Professional organisation, or by a fellow work colleague.

Both parties must submit a summary of their case to the Chief People Officer, to be received at least five working days before the hearing. These cases will be distributed to the panel and to the other party.

If no case is received by the appellant at least five working days prior to the date of the appeal hearing (or as a minimum, confirmation that they do not intend to submit any further information beyond what was submitted as their grounds of appeal,) it will be assumed they no longer wish to appeal and the hearing will not proceed.

Witnesses whether for the appellant or management should be notified to the Chief People Officer at least five working days before the hearing.

The appeal procedure will be conducted in the following way. (Nothing in the following procedure will prevent the person hearing the appeal from inviting either party or their witnesses to clarify or amplify any statement made, or from asking him/her such questions, or to present such evidence as may be felt necessary in the interests of hearing all relevant information.)

- i The appellant or his/her representative will put his/her case in the presence of the management representative and may call witnesses.
- ii The Management representative will have the opportunity to ask questions of the appellant, his/her representative and his/her witnesses.
- iii The members of the appeal panel will have the opportunity to ask questions of the appellant, his/her representative and his/her witnesses.
- iv The appellant or his/her representative will have the opportunity to re-examine his/her witnesses on any matter referred to in their examination by members of the appeal panel or management's representative.

- v Witnesses leave.
- vi The management representative will state management's case in the presence of the appellant and his/her representative and may call witnesses.
- vii The appellant or his/her representative will have the opportunity to ask questions of the management representative and witnesses.
- viii Members of the Appeal Panel will have the opportunity to ask questions of the management representative and witnesses.
- ix Management's representative will have the opportunity to re-examine his/her witnesses on any matter referred to in their examination by members of the appeal panel, the appellant or his/her representative.
- x Witnesses leave.
- xi The appellant or his/her representative and the management representative will have the opportunity, if they wish, to sum up their case. The appellant or his/her representative will have the right to speak last. In their summing up, neither party may produce any new matter.
- xii Panel members may ask any party to clarify any matter on which they have questions.
- xiii New evidence will not normally be admissible on the day. If new evidence is produced on the day by either the management representative or the appellant, the panel may at their discretion adjourn the appeal in order to consider whether the new evidence is admissible and relevant to the allegations/appeal grounds. The panel may at their discretion adjourn the appeal for any other reason. Adjournments during the course of the appeal will not normally exceed 15 minutes except in exceptional circumstances as agreed by the panel.
- xiv The management representative, the appellant and his/her representative will withdraw.
- xv The panel (with any appropriate advisors), will reach their conclusions and make their decisions in private only recalling both parties to clear points of uncertainty on evidence already taken. If recall is necessary, both parties will return even if only one is concerned with the point.
- xvi The panel has the power to rescind or confirm management's decision, to refer the case back to management for further enquiries or reconsideration or to change management's decision in favour of a lesser penalty.

The decision will be confirmed in writing to both parties.

If the employee does not attend the first appeal hearing date, for reasons which the appeal panel accept as reasonable, a second date will be offered. However, if the employee declines the second date, the hearing may be held in their absence and he/she will be informed of this in writing.

**PRIVATE AND CONFIDENTIAL – GROUNDS FOR REVIEW/ APPEAL FORM**

BEFORE COMPLETING THIS FORM PLEASE READ THE NOTES BELOW IN CONJUNCTION WITH THE DISCIPLINARY POLICY AND PROCEDURE

<b>PART A</b>		<b>Employee(s) Details:</b>	
Name(s)			
Job Title		Band	
Department		Contact Email and Telephone	
<b>Details of Representative(s) (if applicable)</b>			
Name(s)		Organisation	
Telephone		Email Address	
Mobile			
<b>Details of Grounds for Review/ Appeal</b> (please continue on a separate sheet if necessary)			
<b>Desired Outcome</b>			
<b>Please send to: Chief People Officer, University Hospitals of Leicester NHS Trust, Level 3, Balmoral Building, Leicester Royal Infirmary, Infirmary Square, Leicester. LE1 5WW.</b> <b>The request must be received within 15 working days of the date of the outcome of the disciplinary hearing, or the date the employee was informed of the outcome if this is different.</b>			
Name		Title	Department
Signed:		Date:	
Employee Name:			
<b>PART B: To be completed by the Employee Relations Team representative only</b>			
Received by:		Date:	
<i>Contact Employee:</i>		<i>Date:</i>	
<i>Meeting Arranged:</i>		<i>Date:</i>	
<i>Follow Meeting with letter:</i>		<i>Date:</i>	



## **GROUNDNS FOR REVIEW/ APPEALS**

### **NOTES FOR COMPLETION**

#### **1.0 FOR THE EMPLOYEE/STAFF REPRESENTATIVE(S)**

- 1.1 Appendix 6 is to be completed by the employee/Staff Representative(s)
- 1.2 Before pursuing a review/ appeal, it is important that you read the Trust's Disciplinary Policy and Procedure which is available either from your manager, Human Resource Representative or Staff Representative. You are likely to have been provided a copy prior to this stage. It is also available on Insite.
- 1.3 Please write your details and those of your representative in BLOCK CAPITALS.
- 1.4 In order that full consideration can be given to your review/appeal it is important that you provide as much detail as possible continuing on a separate sheet if necessary.
- 1.5 Please ensure that this is sent to Chief People Officer, University Hospitals of Leicester NHS Trust, Level 3, Balmoral Building, Leicester Royal Infirmary, Infirmary Square, Leicester. LE1 5WW.
- 1.6 You must sign and date the form as indicated.

