

# Managing Misconduct Policy

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<p>Dudley Integrated Health and Care NHS Trust requires high standards of conduct from all its staff, and is committed to supporting staff to learn and develop, and to learn from mistakes, working on a restorative basis. It aims to drive a culture where staff who make mistakes feel safe to own up to them in the knowledge that the organisation will work to avoid blame and focus on the circumstances.</p> <p>This policy and procedure is designed to ensure a fair, systematic and consistent approach is taken on the rare occasion that an employee's behaviours or actions breach workplace rules or falls short of the expected standards, and where it is not deemed appropriate to resolve through a more informal restorative and learning approach.</p> <p>A just and learning culture works to ensure fair, reasonable and proportionate treatment of staff and supports openness and learning in the NHS by making staff feel confident to speak up when things go wrong, rather than fearing blame.</p> <p>DIHC is also committed to supporting employees to resolve conflicts with each other / their managers through the use of a Resolution Framework, seeking to find ways to discuss the issues of concern. Unless the circumstances are severe and constitute clear misconduct, we will seek to support learning and change through resolution. Please see the Resolution Framework for further guidance.</p> <p>An objective and prompt examination of the issues and circumstances of any incident or event should be carried out, utilising the Trust's <b>four step decision making process (appendix 1)</b>, to establish whether there are truly grounds for a formal investigation and/or for formal action. The four step decision making process support objective examination of the situation and explores alternative options for dealing with the incident or event, avoiding formal processes wherever possible and appropriate.</p> <p>The Managing Misconduct Policy and Procedure provides a framework to manage concerns about</p>			

someone's conduct in a fair and timely way, in line with employment legislation and best practice guidance. It aims to help people achieve and maintain required standards of conduct. It is anticipated that this policy and procedure will only be used in the most serious cases where there is no alternative.

The Policy applies to all staff employed by Dudley Integrated Health and Care NHS Trust. It applies to all categories of misconduct. For further information about managing the conduct issues of Doctors see the Disciplinary Policy for Medical staff.

This policy replaces the following existing policies:

- Dudley and Walsall Mental Health Disciplinary Policy and Procedure
- CCG Disciplinary Policy and Procedure
- Shropshire Community Health Disciplinary Policy and Procedure

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## 1 KEY PRINCIPLES

### 1.1 Principles

Managers are responsible for ensuring their team are aware of the required standards of conduct and for bringing any concerns to the attention of employees at the earliest opportunity.

Managers should try to resolve minor matters of concern informally and through a learning approach. If concerns continue to exist following informal approaches, education and support, or if misconduct is sufficiently serious, formal stages of this procedure should be followed.

The Trust has developed a four step decision making process (appendix 1) to support managers in examining incidents or events in an objective way and to work to avoid formal processes wherever possible. This model is based on best practice from MerseyCare and a restorative just and learning culture.

Managers will ensure that all action taken under this policy and procedure is reasonable and proportionate. At an early stage, employees will be told why the policy is being enacted, and they will be given the opportunity to respond to allegations before decisions about formal sanctions are taken.

Employees can be accompanied and represented, at any stage of the formal procedure and at misconduct hearings by a work colleague, trade union representative or other companion from any background, not acting in a legal capacity.

Misconduct cases will be treated sensitively and confidentially. Information will only be shared with those who have a legitimate right to be informed in accordance with Data Protection Act 2018, General Data Protection Regulations and the Common Law Duty of Confidentiality. Breaches of confidentiality by any party may result in disciplinary action.

All managers who Chair or sit on hearing Panels must have appropriate and up to date training on managing / chairing misconduct cases or will be guided by the appropriate HR Professional until appropriate training has been undertaken. Such training should involve appropriate refresher training within three years of the hearing.

## 1.2 Handling Allegations of Misconduct and Investigating the Facts

- 1.2.1 Allegations of misconduct will be carefully assessed by the relevant manager, with HR advice, using the four step decision making framework, to decide if the matter can be managed informally, applying the principles of a just and learning restorative culture, where possible or whether there are grounds for further investigation and/or formal action.
- 1.2.2 Where the individual involved is of black, Asian or minority ethnic origin, the Trust is committed to working to involve a RCN trained Cultural Ambassador to ensure unconscious bias is appropriately challenged. People Team will seek the support of a CA from the trained pool within the Black Country.
- 1.2.3 The manager will carry out some initial fact finding and meet the employee to establish their version of events. The manager may also meet with other relevant individuals to get a good understanding about what has happened and use the Trust's decision making model.
- 1.2.3 Where the outcome of the decision making model is such that it indicates the need for more formal investigation then this must be approved by a senior manager (8c and above). The senior manager will have no previous involvement in the case and will provide independent oversight.
- 1.2.4 Investigations will be carried out within a maximum of a 6 week timeframe, it is recognised that this may lengthen in investigations that may be more complex or where circumstances of individuals within the investigation may cause delays. All cases that have the potential to lead to dismissal will be investigated by a trained investigator. The manager will be responsible for commissioning the investigation and for clearly defining what is to be investigated.
- 1.2.5 Employees can be accompanied at investigation meetings by a work colleague, trade union representative or other companion from whatever professional background but not acting in a legal capacity, where this does not unreasonably delay the investigation. Employees can seek trade union representation and advice at any time.
- 1.2.6 Once the investigation is complete, the manager will consider the findings and with HR advice decide if further action is required; whether the matter can be dealt with informally or whether formal action may be appropriate. Where the manager proposes to proceed to a formal misconduct hearing this must be approved by a senior manager (8c or above) and will take place within 4 weeks of the investigation being finalised.
- 1.2.7 If the manager believes there is a case to answer at a formal hearing, they will ensure a report is prepared setting out the case and the investigation findings. The manager should ensure all relevant information is presented at the hearing including background information about the employee, their work record and any mitigating factors to ensure a full and balanced case is presented for the hearing to consider.

### 1.3 Referrals to Professional Bodies

- 1.3.1 Depending on the allegations, where an employee is registered with a professional body, such as a registered nurse, midwife or nursing associate, the regulatory body may need to be notified. This decision will be taken by the most senior professional lead from the division, in conjunction with the relevant professional lead for the Trust such as the Director of Nursing and AHP's.
- 1.3.2 Where allegations concern the safeguarding of children or vulnerable adults, the Trust's Safeguarding lead must be notified without delay.
- 1.3.3 Unfortunately fraud, bribery and corruption, as well as theft, does occur throughout the NHS, and as such all NHS employees have a duty to ensure that public funds are protected. If an employee or manager suspects that there has been a potential act of fraud, bribery or corruption against the Trust or the wider NHS, or has seen any suspicious acts or events, they must report the matter to the Trust's Counter Fraud Team (contact details can be found on the Trust's public website and/or intranet) or report the matter to the NHS Fraud and Corruption Reporting Line on 0800 028 4060. Alternatively reports can be made through the online reporting tool at <https://cfa.nhs.uk/reportfraud>
- 1.3.4 Where appropriate, investigations by the counter fraud team, other agencies such as police or social services, may be carried out separately from investigations under this procedure. The Trust will give full cooperation to try to ensure any such external investigations are carried out to a high standard. In these circumstances the Trust will only delay carrying out internal investigations and following the misconduct procedure where absolutely necessary.
- 1.3.5 Where the Trusts Information Governance and Data Protection Policies have been breached which also results in a breach of Data Protection or Freedom of Information Legislation will be reported to the Information Commissioners Office within 72 hours.

### 1.4 Fair Blame statement

- 1.4.1 The Trust is committed to developing an open learning culture. It has endorsed the view that, wherever possible, formal misconduct action will not be taken against members of staff who report near misses and adverse incidents, although there may be occasions where misconduct action has to be taken. It is anticipated that these occasions will be rare. The Trust is committed to using a just and learning restorative approach to incidents and will use a robust decision making process to guide decisions.

## 2 PROCEDURE

### 2.1 Informal Management

- 2.1.1 The Trust recognises that cases of minor misconduct are best dealt with informally and quickly. A conversation about impact and expectations going forward may be all that is needed.
- 2.1.2 In many cases additional training, coaching and advice may be needed. When there are concerns about conduct, managers will talk to the person in private, normally within a few days, (maximum 5 working days). This will be a two-way discussion, aimed at

talking through the concerns, understanding perspectives, and working through ways to bring about change and improvement.

- 2.1.3 Feedback should be constructive and non-judgemental with an emphasis on finding ways to improve. The manager will make sure the employee understands the standards expected and the impact that the situation may have had on them, and others. They will explain how they expect behaviours or conduct to be different going forward and perhaps set a timescale for review. Managers will discuss with employees any support or training they may need to assist them to meet expectations. Managers should keep brief notes of any informal discussions and plans for reference purposes.
- 2.1.4 Where appropriate, managers may also summarise concerns and expectations in writing, a copy of which will be placed on the personal file. This should remain on file for a maximum of 6 months and check ins around expected improvement should take place during the period. If expectations are met, the note should be removed after the 6 month period. If informal support and discussion does not bring about the required improvement, then discussion should be held with the employee about next steps which may be moving into the formal procedure. In this circumstances, the manager should undertake the four step process again

## **2.2 Formal Procedure**

- 2.2.1 Once the matter has been investigated and it has been established that there is a case to answer, a misconduct 'hearing' will be arranged.
- 2.2.2 The hearing should be held within 4 weeks after the investigation has been finalised. Managers, employees and their representatives must make every effort not to unreasonably delay meetings.
- 2.2.3 To proceed to a hearing where dismissal may result, approval must be obtained from a People Partner after careful consideration of the evidence gathered to date.

## **3.3 Hearing Panel**

- 3.3.1 All misconduct cases will be heard by a trained manager (Chair).
- 3.3.2 Cases that may result in a formal warning will be heard by a Panel of two people: a trained manager (Chair) of appropriate seniority and an HR representative.
- 3.3.3 Cases that may result in dismissal will be heard by a Panel of three or more members. The Chair will normally be a member of the senior management team or an Executive Director where appropriate. If the employee is a senior manager the Panel will always be chaired by an Executive Director. The remaining two Panel members will consist of an HR representative from the Trust and another senior member of the management team member to the trust who has knowledge, skills and experience that reflect the background and/or specialty of the employee in question.
- 3.3.4 The Trust is committed to ensuring Panels are diverse in representation, have appropriate seniority and have knowledge, skills, experience and training that are relevant to the case in question and cater for factors such as ethnicity, disability, etc. Panel members will be selected to ensure there is appropriate insight, and where appropriate additional panel members will be recruited. If employees have any concerns in relation to diversity or possible bias of the Panel, they can raise this with

the Acting Director of People.

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

#### **4.0 Preparing for the Hearing**

- 4.1 People will be given at least seven calendar days' notice of the hearing in order to have time to prepare. The employee will be provided with two copies of the management report (investigation report) and any related documents including witness statements to be presented at the hearing. Any personal patient information will be redacted.
- 4.2 Prior to the hearing, the employee will be advised that the potential outcome could be a formal warning or dismissal.

#### **5.0 Who the Employee Can Bring with Them**

- 5.1 Employees are encouraged to attend formal hearings accompanied by an accredited trade union representative, colleague or other companion, of whatever professional background but not acting in a legal capacity. It is the responsibility of the employee to arrange their companion and to inform the Panel who they would like to attend.
- 5.2 Employees with disabilities or long term health needs, or where English is not the first language, may also wish to be accompanied by a second person to provide appropriate support.
- 5.3 Where action is proposed involving an accredited trade union representative, the appropriate full time officer will be contacted before action is taken.
- 5.4 When an allegation arises which might result in formal misconduct action managers should advise employees to seek trade union advice and ask the employee for the name and contact details of their trade union representative. When it is necessary to organise meetings at which people are entitled to representation, if the manager knows the name of the trade union representative, managers should liaise with the representative to try to agree a mutually convenient date.
- 5.5 Employees should make every effort to attend meetings and notify their manager as soon as possible if they cannot attend. If an employee or their companion/representative is unable to attend, they must suggest an alternative date so that the hearing takes place within five working days from the original date. If an employee is unable to attend a rescheduled meeting, alternative arrangements such as telephone conference, representative attending on their behalf or written submissions may be considered or the meeting may proceed in their absence.

#### **6.0 Hearing Format – for Full Details See Appendix 1**

- 6.1 At the hearing, the manager will present the case and where applicable invite any witnesses. Where an investigation has been carried out, the investigator will be invited to the hearing to present their findings and answer any questions.
- 6.2 The employee will be given the chance to set out their case, answer any allegations, ask questions, show evidence, call relevant witnesses (with good notice), respond to any information given by witnesses.

- 6.3 In considering the sanction, the hearing Chair/Panel will take account of the employee's previous work record and other mitigating factors.
- 6.4 Witnesses will be called if they have a significant contribution to make to the case. If statements from Trust employees are presented as evidence, every reasonable effort will be made to ensure that they attend the meeting, unless it is agreed with the member of staff that the facts are not in dispute and/or the presence of one or more witnesses would serve no material purpose.
- 6.5 The outcome of a hearing will be notified in person by the Chair of the hearing. Only where this is not possible or the individual requests otherwise, should notification be by phone or in writing.
- 6.6 The outcome of the meeting will also be confirmed in writing, normally within seven calendar days. If misconduct action is taken, the letter will include details of the allegations, the improvement required (if appropriate) and the right to appeal where a formal sanction is issued. It will also state that further misconduct action may be taken if there is not a satisfactory improvement.
- 6.7 Hearings may result in no formal sanctions being issued; however standard setting, training and/or departmental/individual recommendations may be put in place, if appropriate.
- 6.8 Template letters can be obtained from HR, managers are advised to seek HR advice when confirming formal disciplinary sanctions in writing.
- 6.9 It is the Trust's policy to audio record all formal hearings that may result in dismissal and appeal hearings. Audio recordings can be made available on request to employees who are subject to formal disciplinary/capability proceedings and, with their consent, to their representative. Audio recordings will be destroyed after one year.

## **7.0 Supporting Employees**

- 7.1 Being subject to allegations of misconduct can be very upsetting and stressful for the employee and other colleagues affected.
- 7.2 It is important throughout the procedure for the manager to keep talking with both the employee and any other staff affected. Clear, regular and confidential communication can help make sure employees are kept informed of what is happening, have the opportunity to ask questions and can avoid stress and other mental health issues.
- 7.3 Managers are responsible for maintaining communications and will make every effort to ensure employees receive clear, timely, comprehensive and sensitive information about the allegations and regular progress updates on any investigation until the matter is concluded.
- 7.4 Managers (or someone designated where appropriate depending upon the circumstances of the case) must ensure they check on the wellbeing of employees throughout the process. This applies to all involved. Regular check ins are advised (at least fortnightly throughout) and where there are concerns about an employee's health or wellbeing, seek advice from HR, the Trust's counselling provider or Occupational Health..

- 7.5 Employees, including those who are involved as witnesses, will be supported by an appropriate manager and will have access to the Trust's confidential counselling service. Staff should be made aware of how to raise concerns about their wellbeing during the process.
- 7.6 Confidential counselling service and staff support is available to any employee affected by the matters covered in this policy. Please ring 0330 380 0658 more information about the service is available on the intranet.

## 8.0 Formal Misconduct Sanctions

- 8.1 Once all the facts have been considered by the hearing Panel a decision will be taken on the appropriate action. Depending on the findings, this may result in no action being taken, informal management action or a misconduct sanction.
- 8.2 The seriousness of the misconduct will determine the level of misconduct action to be taken. The procedure may be entered at any stage.

8.2.1 **Stage 1 - First Written Warning:** If the employee fails to meet the required standards following informal action or if the offence is sufficiently serious to warrant moving straight to the formal stages, a First Written Warning may be given. First Written Warnings are confirmed in writing and apply for 6 months after which time they lapse and must be removed from personal files.

8.2.2 **Stage 2 - Final Written Warning:** If the failure to meet required standards continues or if the offence is one of sufficiently serious (but not gross) misconduct, a final written warning may be given. Final written warnings are confirmed in writing and apply for 12 months after which time they lapse. In exceptional circumstances, where a final written warning is an alternative to dismissal, final written warnings may be live for up to 24 months.

8.2.3 **Stage 3 – Dismissal:** If conduct remains unsatisfactory or if the offence constitutes gross misconduct, dismissal will normally result. Except in cases of gross misconduct, dismissal will be with notice. Cases of gross misconduct may result in summary dismissal, i.e. dismissal without notice. Dismissals may be reported to the relevant professional body as appropriate.

## 9.0 Additional action as a result of being issued with a misconduct sanction

- 9.1 If a first or final written warning is issued, the member of staff will not be awarded an annual pay increase on the pay step date in the twelve months after the issue of a warning. The Chair of a hearing will ask the line manager to action this via the ESR manager self-service function. In those situations, the manager should initiate a pay step review meeting before the expiry of the warning and if all other requirements have been met, the member of staff will progress to the next pay step effective from the date after the warning expires.
- 9.2 In addition, to the issue of a final written warning for up to 24 months as an alternative to dismissal, the following actions may be appropriate:
- Transfer to another department / site.
  - Demotion or downgrading (without pay protection).
  - Change of shift or working pattern.

## 10.00 Appeals

- 10.1 Everyone has the right to appeal against any formal misconduct action. Any appeal will need to be lodged within 10 days of the outcome of the disciplinary hearing and will not be a re hearing of the original case.
- 10.2 Appeals against dismissal will be heard by a Panel of at least three members. The Chair will be an Executive Director (CEO will hear appeals from Executive Directors and the Chairman for an appeal from the CEO). The remaining Panel members will include a member external to the trust who has appropriate training and experience and a senior member of the HR team.
- 10.3 The Trust is committed to ensuring Appeal Panels are appropriately diverse in representation, experienced and trained. Panel members will be selected to achieve this. If employees have any concerns in relation to bias or diversity of the Panel, they can raise with their Associate Director of People. The appeal will be held within 15 working days of the appeal being made and the outcome of the appeal notified within 5 working days of the hearing where possible.
- 10.4 Appeal Panel members will have no previous involvement in the case or any conflict of interest that could influence decision making.

## **11.0 Examples of Misconduct**

- 11.1 The following list gives examples of the circumstances that could lead to misconduct action (this list is not exhaustive, some of which could be classed as minor misconduct). The Trust anticipates that the majority of issues classed as misconduct could be dealt with outside of a formal process through a just and learning restorative approach.
- Employees are expected to combine prompt and efficient service with respect for the feelings of others, including patients, visitors and colleagues, whatever their background.
  - Bullying and harassment
  - Refusing to work
  - Employees must be honest, open and truthful in all their dealings with patients, colleagues and the public.
  - Employees are expected to attend for duty for the hours laid down in their contracts of employment and as agreed with their managers.
  - Being absent without permission. In cases of sickness or sudden domestic
    - emergency, employees must inform their manager in accordance with departmental notification rules.
  - During sickness absence, employees are expected to keep their manager informed of their progress and submit sickness certificates promptly.
  - Misuse of social media affecting the reputation of the Trust or causing colleagues distress/offence
  - Employees must carry out reasonable instructions.
  - Anyone undertaking other employment outside their contractual hours must ensure that it does not hinder or conflict with the interests of their employment with the Trust or their duty to abide by relevant professional codes of conduct or have any adverse effect upon their work performance. Employees should inform their managers of employment outside working hours.
  - Breach of confidentiality and data protection legislation

- Misuse of authorised access to information and systems, unauthorized access to information and systems, and any activity that could breach the security of the Trust ICT Infrastructure and any other breach of the Trust Information Security Policy
- Employees are expected to comply with health and safety requirements.
- Employees are expected to treat Trust facilities and property with respect.
- Employees must inform their managers of any charge, caution or conviction, relating to acts committed on or off duty, at the earliest possible opportunity.
- Failure to maintain professional registration where it is a requirement of the job (see requirements as per Trust Professional Registration policy)
- Employees should at all times undertake their work in accordance with Trust and departmental policies and procedures and, where appropriate, their professional codes of conduct.
- People are expected to display positive attitudes and supportive behaviours in line with Trust values in their interactions with other people
- Breaches of professional codes of conduct and Trust policies
- Behaviour outside of work that could affect the professional reputation of the individual or the reputation or operations of the Trust.

## 12.0 Gross Misconduct

12.1 Some acts count as 'gross misconduct' because they are very serious or have very serious effects.

12.2 Where there may have been gross misconduct, a full investigation must still be carried out and the full disciplinary procedure followed.

12.3 In cases of gross of misconduct a hearing Panel can decide to dismiss without notice or payment in lieu of notice.

12.4 Examples of gross misconduct could include (this list is not exhaustive):

- Serious lack of care to duties or other people which could result in serious loss, damage or injury ('gross negligence')
- Discrimination, racism or inciting hate
- Theft
- Bribery, fraud and corruption
- Deliberate falsification of records or documents
- Working without valid "Right to Work" documentation
- Working without statutorily required qualifications
- Working elsewhere whilst on sick leave
- False declarations made during the recruitment process
- Receipt of money, goods, favours or excessive hospitality in respect of services rendered while a Trust employee
- Physical violence
- Verbal abuse
- Harassment or bullying
- Unlawful discrimination
- Being unfit for duty through the effects of alcohol or drugs
- Abuse, misuse or deliberate damage of Trust property or equipment
- Serious breach of data security requirements, any activity that could breach security of the Trust ICT Infrastructure and any other serious breach of the Trust Information Security Policy including serious misuse of authorised access / unauthorized access to information and systems including knowingly and willingly breaching data protection

legislation

- Serious breach of Health and Safety and other statutory rules
- Serious breach of a professional code of conduct as determined by the professional body
- Failure to act impartially or to declare interest in a contract or business in which the Trust is engaged or considering
- Scientific Misconduct - Fabrication, falsification, plagiarism or deception in proposing, carrying out or reporting results of research
- Serious breach of trust and confidence - Any act which causes irreparable damage to the relationship of trust and confidence between the employee and the Trust.

### **13.0 Suspension (Exclusion)**

13.1 In most cases, suspension from work will not be necessary and the employee will be able to continue doing their normal job while matters are investigated.

13.2 Suspension is not a misconduct sanction and there is no assumption of guilt.

13.3 The decision to suspend will only be taken if genuine risks are identified and all alternative options have been ruled out.

13.4 Suspensions will be managed sensitively and confidentially.

13.5 When considering suspension, managers must assess the risks of the employee remaining at work and seek HR advice. Where a manager wishes to suspend an employee, they must seek approval from a senior manager and a People Partner.

13.6 If a sufficiently senior manager is not available when an incident occurs which appears to warrant suspension, the most senior member of staff on duty may ask the person to go home pending an appropriate manager taking charge of any subsequent action no later than the next working day.

13.7 Suspension will only normally be considered if there is a serious allegation of misconduct and:

- working relationships have severely broken down
- there is a risk of the employee tampering with evidence, influencing witnesses and investigation
- there is a risk to the employee themselves, other employees, property or patients
- the employee is the subject of criminal proceedings which may affect whether they can do their job.

13.8 Alternatives to suspension must be considered, with HR advice where appropriate and could include the employee temporarily:

- being moved to a different area of the workplace
- changing their working hours
- being placed on restricted duties including having reduced access to Trust systems where appropriate
- working under supervision
- being transferred to a different role within the organisation (the role should be of a similar status to their normal role, and with the same terms and conditions of employment).
- Other meaningful activities that the individual could do should be actively explored. This could include working remotely from home, carrying out activities such as audits,

research or teaching.

#### **14.0 Communicating the Decision to Suspend and Supporting Employees**

14.1 Every effort will be made for the manager to meet with the employee to inform them of the decision to suspend. This will be followed up in writing within three working days.

14.2 Employees can be accompanied by a trade union representative or companion when informed of suspension. However, the unavailability of a representative will not prevent suspension from taking place. When a manager is thinking of suspending someone, the manager should try to contact the on-call trade union representative or companion via the switchboard to notify them of the time and venue of the meeting.

14.3 The manager communicating the decision to suspend will:

- Explain the reasons for suspension and how long it is expected to last.
- Explain the employee's responsibilities during their suspension.
- Provide a point of contact (usually the line manager) that they can contact if they have any concerns.
- Agree how they will keep in regular contact with the employee throughout and the frequency of the contact
- Give details about support from the Staff Counselling service.
- If it is necessary to explain the employee's absence, the manager will discuss with the employee how they would like it to be explained to colleagues and/or patients.

14.4 The terms of the suspension and the employee's obligations will also be provided which includes:

- not doing anything that could interfere with the investigation
- treating the matter confidentially
- seeking permission from the manager to contact colleagues
- if they wish to contact witnesses to support their case, they should do this via their manager or, if different, the manager dealing with the matter or their Trade Union representative or companion
- except for medical appointments, they must not visit Trust premises unless given permission by the line manager or a named deputy to attend for a specific purpose, e.g. a meeting a representative, an investigation meeting, a counseling appointment, a medical consultation
- the requirement to remain available between 9.00 am to 5.00pm, Monday to Friday, excluding public holidays, to attend meetings. Permission for any periods of absence, e.g. annual leave, must be requested

14.5 If deemed necessary, the suspending manager may ask the employee to hand in Trust property such as keys, ID card, Trust mobile phone, bleep, laptop or any other mobile device at the time of exclusion. The manager may also temporarily revoke remote access if in use or remove / restrict access to Trust systems by referral to the Data Protection Office. In these circumstances, the manager and employee must agree alternative methods of keeping in contact.

14.6 The employee will be given the name and contact details of someone who will keep in regular contact with them and updated on progress of the investigation. This will normally be their line manager, or a second named individual if the line manager is unavailable

#### **15.0 Timescales for Suspension**

- 15.1 Suspension will be for the minimum time necessary and will be reviewed every 5 days and lifted when the reason for suspension no longer exists.
- 15.2 Most investigations should be concluded within two weeks of suspension. Where this is not possible people should be informed that they remain suspended and told when the investigation is likely to be completed. This should be followed up in writing. Managers should make themselves available to meet employees to discuss the progress of the investigation.
- 15.3 If the employee wants to go on holiday during their suspension, they must still make a request to take annual leave.

## **16.0 Pay during Periods of Suspension**

- 16.1 Suspension is on normal pay, i.e., the pay the person would have received if they had been at work based on a 12 week reference period (excluding pay for bank shifts). People receive no pay when they are suspended because they have allowed their professional registration to lapse or because they have lost their entitlement to work under the Immigration and Asylum Act. People on zero hours/bank contracts receive no pay during suspension.
- 16.2 If in receipt of pay on suspension from the trust, a suspended person must not undertake any paid work during the hours for which they are contracted to work. People suspended for clinical / professional reasons must not undertake any work, paid or unpaid, without prior permission from the appropriate manager. Where an employee holds employment outside of the Trust and is suspended from the Trust, the employee is obliged to declare their alternative place/s of work and the suspension information may be shared with another employer if it is in the public interest.

## **17.0 Criminal Offences and Offences Committed Outside Work**

- 17.1 If an employee is charged or convicted for an offence, whether committed on or off duty, the Trust will consider whether the offence renders the employee unsuitable for continued employment and may take formal action up to and including dismissal. The Trust reserves the right to take action independently of any legal proceedings.
- 17.2 Where the offence or police investigation relate to mistreatment of a child or an "at risk" adult, the manager should inform the trust safeguarding team who will consider whether it is necessary to make a report to the Local Authority Designated Officer (LADO).
- 17.3 If an employee is subject of a police investigation, they are obliged to inform their manager so that the manager can consider whether any steps are required, e.g. to protect the safety of others.
- 17.4 Where allegations that occur outside of the Trust are brought to the attention of the Trust by other agencies or professional bodies, and those allegations have the potential to bring the reputation of the Trust into disrepute or may affect the suitability of the employee to continue in Trust employment, the Trust will investigate as reasonably as is practical. If after a detailed investigation it is considered that the actions of the employee damage the relationship of trust and confidence with the Trust, action up to and including dismissal may be taken.

## 18.0 Roles and Responsibilities

This section outlines responsibilities for upholding standards of conduct.

- 18.1 **Managers** must ensure that their teams are aware of the required standards of conduct and handle misconduct concerns fairly and promptly in accordance with this policy and procedure. They are responsible for promoting a culture in which concerns are dealt with openly and fairly, with an emphasis on learning from mistakes. Managers must seek advice about formal misconduct issues from their HR team. Managers must not commission or commence any formal investigation without having sought advice and followed the Trusts decision making process.
- 18.2 **Employees** are required to maintain good standards of behaviour and work within the DIHC values, as well as within their relevant Code of Conduct (where applicable). Employees are expected to raise concerns about colleagues' behaviour to an appropriate manager, especially where there could be consequences for patient safety. DIHC expects staff to take on board feedback, and work with the Trust to improve any concerns about their behaviour or conduct to ensure we continuously improve and provide the best service to our patients.
- 18.3 **People Partners** will advise and coach managers to develop the skills necessary to deal with cases confidently and effectively. The HR team will, with trade union representatives, ensure that the policy is regularly reviewed and monitored.
- 18.4 **Trade Union representatives** will work in partnership with managers to ensure that the policy and procedure is applied in a fair and consistent manner. Where an allegation arises, trade union representatives will work with other stakeholders to ensure that decisions can be taken promptly, thereby minimising staff anxiety. If an accredited Trade Union representative's request for time off to attend a meeting under the Disciplinary Procedure is refused and they believe the refusal to be unreasonable, they should raise the matter with the Associate Director of People.

## 19.0 Misapplication of the Procedure

If an employee believes that the policy has not been applied properly, they can submit a statement of grievance. If the concern is related to an on-going disciplinary process, the concern should be raised and will be addressed as part of the disciplinary procedure.

## 20.0 Policy Implementation and Dissemination

- 20.1 The policy and procedure will be notified to all managers and cascaded to all supervisory levels of management, with instruction that it replaces all previous documents, via e-mail and the intranet. The existing policies and procedures will be archived on the intranet and replaced with this document. Induction and any relevant training courses will be updated accordingly.
- 20.2 Advice and support on the application of this policy and procedure can be obtained from the HR team and trade union representatives.
- 20.3 Managers will ensure that the misconduct procedure is applied fairly. The application of the formal procedure by ethnicity, gender, disability and age is monitored by the

Directorate of People. Data on the application of the procedure will be discussed at the People Committee and management team meetings and reported in the Trust's annual Workforce Equality Information Statistical Report.

### 3 REFERENCES

- Advisory, Conciliation and Arbitration Service (ACAS) <https://www.acas.org.uk>
- NHS Improvements Dido Harding letter 24 May 2019 with guidance relating to the management and oversight of local investigation and disciplinary procedures <https://www.england.nhs.uk/2019/06/provider-bulletin-5-june-2019/>
- Verita report <https://www.imperial.nhs.uk/about-us/news/investigation-disciplinary-process-actions-and-learning-for-trust>
- NHS Resolution "Being fair - Supporting a just and learning culture for staff and patients following incidents in the NHS" <https://resolution.nhs.uk/wp-content/uploads/2019/07/NHS-Resolution-Being-Fair-Report-2.pdf>

## APPENDIX 1: Four Step Decision Making Process

# Restorative Just and Learning Culture and Four Step Decision Making Process

A four step process for support and managing people practices in a supportive way...

**The aim of our Restorative Just and Learning approach** is to embed a culture of safety for all our people, staff and patients alike. We recognise that mistakes will happen, we are human, and how we respond to those mistakes is critical to our aspiration to deliver the best quality of care to our patients, whilst providing a truly great place to work for our staff.

Creating a Restorative Just and Learning Culture is a commitment to our workforce and to our patients that our organisation will take every opportunity to learn and improve.

Traditional type approaches to mistakes where we launch formal investigations and enter into a potential disciplinary have been recognised as often too punitive, harmful to the wellbeing of all involved and do not focus on the underlying cause of the incident.

There is an alternative! At DIHC we are committed to ensuring that we explore every avenue for improvement and change, rather than enter into a formal process. This is better for everyone.

Focussing on why what happened, happened, as opposed to 'who' might have got it wrong, means we can then look at the context and environment in which the incident or error occurred, seek to improve that environment, and focus on restoring individuals involved, not blaming them.

There will, of course, be occasions where this approach may not be appropriate, and our Managing Misconduct Policy is there for those rare occasions where the alternative can't be used.

### **Accountability**

Our staff will be responsible and accountable for performing their duties, behaving in accordance with our values and commitments, alongside the NHS constitution. We want our staff to feel safe to 'own' their errors, to feel safe

to talk about them, and to take personal responsibility and accountability, alongside organisational change, for making improvement, through understanding the impact.

***A Restorative Just Culture approach will help guide the organisational response in the aftermath of an incident or event.***

### **Just and Learning Culture**

Our view is that for the vast majority of incidents, the formal investigation route is neither appropriate nor helpful to reduce the probability of future incidents. It places a considerable strain on our people and can lead to creating more damage. Instead, we prefer to view incidents and events that didn't go as expected as learning opportunities to help us grow and improve as an organisation.

This is really important for psychological wellbeing and safety.

Staff involved in any incident or event will potentially suffer stress and we need to ensure we are supporting them, this could be through line management, access to therapeutic or counselling services, or Occupational Health.

Restorative Just Culture techniques will aid organisational learning and focus on distinguishing between causality v contributory factors. On occasions individual needs may also need to be identified, ranging from reflective practices, supervision, training or performance / behavioural needs. Indeed, a Just and Learning culture should embody both fairness and accountability, so formal action may still be required in exceptional cases but this is never our preferred or first choice.

Our Trust Board is fully supportive of this approach and have committed to ensuring that every incident is viewed through this lens in the first instance and that no formal investigation process is launched until this has taken place. The guidance below shows managers and teams how to review and manage events using a clear and consistent methodology

## Restorative Just Culture Guidance

### STEP 1 – TRIGGER POINT

#### The adverse event/incident (clinical or non-clinical)

An event that could have caused or did result in harm to people or groups of people. This can include psychological harm and feelings of hurt, or physical harm even or damage to property.

### STEP 2 – ALWAYS REMEMBER

Always remember	Comments
<p><b>Manage and evaluate the immediate situation</b> Are there any immediate actions or support needed? This does not include removing anyone from work, their workstation or restricting duties unless the safety of patients and staff require it, or it is best for the wellbeing of the individual in the circumstances.</p>	
<p><b>Who has this impacted?</b> This can include service users, service providers, other staff and/or people external to our organisation</p>	
<p><b>Do those impacted have any immediate needs and who will meet those needs?</b> Support, communications, interventions for team?</p>	
<p><b>What is the initial understanding of what happened?</b> Did it make sense?</p>	

## STEP 3 DECISION MAKING PROCESS ON APPROPRIATE MANAGEMENT OR ACTIONS

This process should be undertaken by appropriate individuals to the circumstances of the incident or event eg. The line manager of any individuals concerned, with HR input and other senior professional input. This process must be undertaken within 3 working days of the event or incident.

<p>Only if you answer YES to EVERY question should any matter proceed through to a formal investigation under the Managing Misconduct Policy Where the answer is NO – this will indicate the areas for improvement or further support</p>	Comments
<p><b>Are rules available?</b> Policies, procedures, guidelines or even ‘unwritten’ rules – that are known about, accepted, practiced routinely by the majority in the service/team/trust.</p>	
<p><b>If rules are available, are they practical and workable?</b> Do they make sense in the context, environment, in the routine. Consider work as done versus work imagined? Eg. Are there routinely ‘workarounds’ in practice because the rules/systems etc. are not working in practice?</p>	
<p><b>Were the rules knowingly departed from?</b> Is there an awareness that people’s actions were diverging from what is described? Is it the norm that the rules are followed and therefore the actions in this situation were a clear diversion from those?</p>	
<p><b>Exception to peers?</b> Is the behaviour very different to what colleagues/peers with comparable experience and skills would do in similar circumstances? If the answer is yes, then it is in exception to peers.</p>	
<p><b>Was training available?</b> Consider the quality and regularity of the training, and whether that was appropriate for our people and the situation. Have the individuals had appropriate access to the right training?</p>	
<p><b>Sufficient management guidance?</b> Was it provided? Take into consideration:</p> <ol style="list-style-type: none"> <li>Does the team leader or manager know the work as done?</li> <li>Does the team leader or manager know the work as done, but didn’t realise it was a departure from the rules?</li> <li>Does the team leader or manager know the work as done but hasn’t acted to improve or change it?</li> </ol>	

## STEP 4 – CONFIRM THAT THE RESTORATIVE JUST CULTURE GOALS HAVE BEEN ACHIEVED

Have we been successful in applying Restorative Just Culture?	Comments
<p><b>Moral Engagement</b> Were we able to engage all parties mentioned under Step 2 in considering the right thing to do?</p>	
<p><b>Emotional Healing</b> Were we able to help cope with guilt and humiliation; did we offer empathy?</p>	
<p><b>Reintegrating Practitioner</b> Were we able to do what was needed to get staff members back in their job?</p>	
<p><b>Organisational Learning</b> Explored and addressed systemic causes of harm (this is best enabled through a learning review process. It is an important step for every organisation to be able to identify systemic shortcomings</p>	

## APPENDIX 2: Procedure for Misconduct Hearings

### Procedure for Misconduct Hearings

#### 1. Introduction by manager chairing the hearing

- Introduce those present
- Confirm purpose of the hearing is to consider whether misconduct action should be taken in accordance with the Managing Misconduct Policy and Procedure
- Confirm that all parties have received the necessary paperwork
- Outline procedure for the hearing

#### 2. Manager or investigator presents case

- Manager outlines findings
- Manager calls any witnesses
- Employee/representative/ accompanying person and chair/HR Adviser may question the witnesses
- Manager may re-examine the witnesses
- Employee/representative and chair/HR Adviser may ask questions about the case in order to clarify facts

#### 3. Employee/representative responds to the management case

- Employee/representative/ accompanying person responds to the allegation, offers an explanation for the alleged misconduct and/or raises any special or mitigating circumstances to be taken into account
- Employee/representative calls any additional witnesses
- Manager and chair/HR Adviser may question the witnesses
- Employee/representative may re-examine the witnesses
- Manager and chair/HR adviser may ask questions of the employee in order to clarify facts

#### 4. Summing up – no new evidence presented at this stage

- Manager sums up
- Employee/representative/ accompanying person sums up

#### 5. Adjournment for manager to consider case

- Agree with all parties how and when the decision will be notified to the employee / representative if time does not permit decision to be given in person following the adjournment. [Where the conduct of more than one member of staff is being considered in relation to the same incident, the adjournment between the Misconduct Hearing and the outcome letter may be a few days, until all the Misconduct Hearings have been completed.

#### 6. Reconvene for decision – manager verbally informs employee/representative of

- The outcome of the hearing/misconduct action
- The right of appeal
- The outcome of the hearing to be confirmed in writing within five working days of the date of the hearing

## APPENDIX 3: Template Suspension Letter

### To be sent within 3 days following suspension

Name Address

Date

Dear \*\*\*\*\*

#### RE: Suspension from duty

Further to our meeting on [DATE] I am writing to confirm your suspension with effect from [DATE].

I have decided to suspend you from duty because it is alleged that [INSERT REASON].

I would like to reassure you that suspension is not a form of disciplinary action or an assumption of guilt, but is necessary to allow a full investigation to be carried out. You should however realise that once the investigation has been completed, the allegations may be considered at a misconduct meeting.

I do not expect your suspension to last more than 2 weeks but I will update you if the suspension needs to be extended.

I appreciate that the position is a stressful one and would recommend you seek support. If you would like support from the confidential counselling service, you should phone **0330 380 0658**

Alternatively, if you would like me to arrange for someone to contact you please let me know.

I OR \*\*\*\* NAME/TITLE [DELETE AS APPROPRIATE] will carry out an investigation over the next few days. NAME/TITLE [Normally line manager] will keep in regular contact with you and update you on progress of the investigation. As we discussed contact will take place every [FREQUENCY] and will be in the following format [EMAIL/TELEPHONE]

#### EITHER

You are invited to a meeting on \*\*\*\* at \*\*\* in \*\*\* to discuss the allegations against you. If you find it helpful you can submit a written statement in advance of the meeting.

#### OR

I OR \*\*\*\* NAME OF INVESTIGATOR will contact you shortly to invite you to a meeting to discuss the allegations against you. If you find it helpful you can submit a written statement in advance of the meeting

While you are suspended you should bear in mind the following conditions:

- You must not do anything that might interfere with the investigation.
- It is not expected you will speak to colleagues involved in the investigation but should you need to please seek my consent.
- If you would like to contact witnesses who may support your case you should contact me, \*\*\*\*\* NAMED DEPUTY, or your trade union representative, in the first instance.
- Except for medical appointments you are required to remain off Trust premises unless you have my permission to attend a meeting with your trade union

representative, an investigation meeting, a counselling appointment, a medical consultation etc

- You have to be available Monday to Friday from 9.00 am to 5.00pm to attend meetings, except during periods of annual leave already agreed
- If you would like to request annual leave or other types of leave during your period of suspension, you should do so in line with normal departmental procedures
- You must immediately notify me of any changes to your contact details
- You are not allowed to undertake any paid work during the hours for which you are contracted to work for the Trust.
- If you become ill, you must notify me and follow agreed reporting procedures.

While suspended you will receive normal pay / you will not receive pay [DELETE AS APPROPRIATE] – (please see the section of the disciplinary procedure for more information).

I will endeavour to conclude the investigation within a reasonable timescale and ensure you are kept informed of progress.

Yours sincerely,

**NAME OF MANAGER**

**JOB TITLE**

**Cc** Name of Trade Union Representative if known

## APPENDIX 4: Template Follow Up Suspension Letter

**To be sent if member of staff still suspended after two weeks**

Name  
Address

Date

Dear

### **RE: Suspension from Duty**

Further to my letter of [INSERT DATE], I am writing to advise you that the investigation has not yet been completed and it is therefore necessary for you to remain suspended from duty.

I appreciate that this is particularly stressful for you. I hope the investigation will be completed by [INSERT DATE].

In the meantime, should you wish to discuss the progress of the investigation I am happy for you to telephone me on the above number. Alternatively, we can meet if you would find this more helpful.

As previously agreed we will continue to maintain contact every [FREQUENCY] by [EMAIL/TELEPHONE].

I appreciate that the position is a stressful one. If you would like support from the confidential counselling service, you should phone **0330 380 0658** or let me know if you would like me to arrange for them to contact you.

Yours sincerely,

**NAME OF MANAGER**  
**JOB TITLE**

**Cc** Name of Trade Union Representative if appropriate

## APPENDIX 5: Equality Impact Statement

DIHC is committed to ensuring that the way we provide services and the way we recruit and treat staff reflects individual needs, promotes equality and does not discriminate unfairly against any particular individual or group. The Equality Impact Assessment for this policy has been completed and is readily available upon request. If you require this policy in a different format e.g. larger print, Braille, different languages or audio tape, please contact the HR Team or the Equality and Diversity lead. DIHC also monitors the impact of this policy through data review on a regular basis.

## APPENDIX 6: Data Protection and Freedom of Information Statement

This statement reflects legal requirements incorporated within the Data Protection Act and Freedom of Information Act that apply to staff who work within the public sector. All staff have a responsibility to ensure that they do not disclose information about the Trust's activities in respect of service users in its care to unauthorised individuals. This responsibility applies whether you are currently employed or after your employment ends and in certain aspects of your personal life e.g. use of social networking sites etc. The Trust seeks to ensure a high level of transparency in all its business activities but reserves the right not to disclose information where relevant legislation applies.

## APPENDIX 7: Monitoring effectiveness of this policy

<b>Monitoring Framework</b>		
<b>Auditable standard / KPI</b>	<b>Frequency / Method / Person Responsible</b>	<b>Where results and any associated action plan will be reported to and monitored</b>
<i>Briefly describe what you want to measure</i>	<i>How you will measure e.g. audit</i>	<i>e.g. Committee or group</i>

**APPENDIX 8: Amendment history**

Version	Date approved	Approved by	Date issued	Summary of change
1.0	dd/mm/yyyy	e.g. Quality & Safety Committee	dd/mm/yyyy	<i>e.g. new document, reflects new guidance</i>