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1. INTRODUCTION

1.1 This guidance is designed to be read in conjunction with the Disciplinary Policy. For conduct issues involving medical employees please refer to the Trust’s Conduct, Capability, Ill Health and Appeals Policy and Procedure for Practitioners.

1.2 These notes seek to clarify procedural points and provide further guidance to support managers in handling disciplinary matters. Further advice is available from Human Resources (HR) on handling particular cases and complex issues. If there is any doubt please speak to HR who will be able to offer support.

1.3 In order to provide a fair process for all employees, it is important that all managers across the Trust follow the guidance set out in the enclosed document and that detailed records are kept of the process, actions and any meetings for future reference.
Disciplinary Investigation Process

1. Allegation/complaint made or inappropriate conduct observed
   - Carry out verification of allegation (if applicable)

2. Is suspension or some other restriction required prior to the investigation commencing?
   - Yes: Suspend employee or apply restrictions
   - No: Confirm in writing to employee

3. Is a formal investigation required?
   - Yes: Is the allegation relating to medication?
     - Yes: Notify Chief Pharmacist & Accountable Officer
     - No: Has client abuse taken place?
       - Yes: Notify designated Safeguarding Manager within Trust
       - No: Is the allegation of fraud or theft?
         - Yes: Notify Local Counter Fraud Specialist who will lead the fraud investigation
         - No: Formal investigation to be instigated

4. Formal investigation to be instigated
   - Plan investigation
     - Staff interviews
     - Documentation review
     - Client reviews
     - Other interviews

5. Compile a summary of the investigation and recommend actions
   - Is formal disciplinary action required?
     - Yes: Decide the appropriate level and move into procedure
     - No: Have procedural issues arisen?
       - Yes: Take action to rectify as appropriate
       - No: Feedback to complainant
Disciplinary Hearing
(Written, Final Written and Dismissal)

Disciplining manager introduces parties and advises format of the hearing

Line manager puts forward management case

Employee has opportunity to question line manager

Disciplinary panel has opportunity to question line manager

Line manager witnesses questioned by line manager

Line manager witnesses questioned by employee

Line manager witnesses questioned by disciplinary panel

Employee (or representative) puts forward employee case

Line manager has opportunity to question employee

Disciplinary panel has opportunity to question employee

Employee witnesses questioned by employee

Employee witnesses questioned by line manager

Employee witnesses questioned by disciplinary panel

Line manager has a final opportunity to clarify points raised and sum up key points of case

Employee (or representative) has a final opportunity to clarify points raised and sum up key points of case

Disciplining manager adjourns hearing to consider evidence presented and decides on outcome

Disciplining manager confirms timescales and appeals process if applicable
Appeal Hearing

Appeal Manager introduces parties and advises format of appeal

Employee has opportunity to put forward key elements of appeal

Disciplining manager has opportunity to question employee

Appeal panel has opportunity to question employee

Employee witnesses questioned by employee

Employee witnesses questioned by disciplining manager

Employee witnesses questioned by appeal panel

Disciplining manager has opportunity to question disciplining manager

Employee has opportunity to question disciplining manager

Appeal panel has opportunity to question disciplining manager

Disciplining manager witnesses questioned by disciplining manager

Disciplining manager witnesses questioned by employee

Disciplining manager witnesses questioned by appeal panel

Appeal manager summarises case

Employee has a final opportunity to submit information/clarify points raised

Disciplining manager has a final opportunity to submit information/clarify points raised

Appeal manager confirms timescales and communication method of the outcome
2. WHAT TO DO WHEN ALLEGATIONS/COMPLAINTS ARE MADE OR CONDUCT HAS BEEN OBSERVED.

2.1 The process highlighted below should be considered whenever an allegation is made about an employee’s conduct or you have directly observed inappropriate conduct by an employee.

2.2 Action in the context of alleged conduct outside of work should be considered if the conduct/offence is likely to seriously undermine the employment relationship and trust/confidence in the employee given their role in the Trust e.g. theft of money would have implications for an employee's continued employment in a post handling cash or violent behaviour would impact on an employee’s suitability to continue in a role working with vulnerable people.

2.3 At this point you should start to investigate the incident and record details of the allegation, witness statements and subsequent actions that you take. This includes phone calls and other informal communications.

2.4 If the allegation is related to patient abuse or a serious patient safety issue, local Safeguarding should be notified. The investigating manager will also need to evaluate whether or not the employee should be suspended or have their duties restricted until the investigation is completed. These measures should not be used as a disciplinary sanction and the employee will always be suspended on full pay (please refer to section 6 for more information).

2.5 If the allegation is related to fraud, the Local Counter Fraud Specialist (LCFS) should be notified immediately before any investigation takes place. Advice should then be taken as to how to progress the investigation. No action to inform the police should be taken until the issue has been discussed with the LCFS and HR.

2.6 If the allegation is related to controlled drugs or medication – where employees have been involved in incidents that relate to drugs controlled under the Misuse of Drugs Act, the Trust’s Accountable Officer must be informed. In all incidents involving medication, the investigating manager should seek the advice of the Trust’s Chief Pharmacist (or deputy).

3. INFORMING THE EMPLOYEE

3.1 Where you have determined that further investigation/action is necessary, this should be communicated to the employee.

3.2 Ensure that you have offered the opportunity to be accompanied by a trade union representative or work colleague for the Trust, in line with the requirements of the Disciplinary Policy. This should be offered in writing, the letter should also give details of the allegation, date, time,
venue and attendees of the investigation. A draft invite letter is included in appendix 4.

3.3 If the allegation relates to a trade union representative, you must contact HR as soon as possible. HR will then notify the full-time officer or branch secretary of the relevant trade union at an early stage, before you notify/interview the employee/trade union representative. Disciplinary action against a trade union official can lead to serious disputes if it is seen as an attack on the Union’s functions, although normal disciplinary standards apply to their conduct as workers.

3.4 In cases where criminal investigations are being pursued it may not be appropriate to provide full details of the allegations as this could impact on the criminal investigation. Advice should always be sought from HR in the first instance. The Counter Fraud Team and/or the Police may then be involved before pursuing an investigation of this type.

3.5 Where appropriate consider suspension or alternatives as per the guidelines on section 6 of this document.

3.6 Advise the employee that the allegation/complaint will be investigated and that when the investigation is complete a decision will be made about whether disciplinary action will be pursued.

3.7 Following the investigation meeting with the employee, confirm whether further investigation is necessary, how this will proceed, time-scales, possible outcomes (e.g. formal disciplinary action), the need to interview the employee formally during the investigation etc.

3.8 Confirm contact details for the employee and trade union representative to enable you to inform them of progress, particularly if timescales lapse.

3.9 It is always recommended that managers keep the employee and trade union representative informed of the progress of an investigation.

4. VERIFICATION EXERCISE

4.1 Where you have concerns about an employee’s conduct, you should consider whether you need to verify the initial details given by the complainant before initiating an investigation.

4.2 You may need to consider the support needs of an internal complainant particularly where the incident may have been disturbing or traumatic to an employee or the service users.

4.3 The purpose of verification is:

- To check that the matter is legitimate and has some substance in fact.
To confirm the issues e.g. using documentation such as rota or leave records to establish if the employee was present at the times that correspond with the allegations. If the alleged conduct relates to the care or medication of a service user, use appropriate records to verify the information.

A limited amount of investigation and/or verification may be necessary before it is apparent that there is a case of alleged gross misconduct justifying suspension.

To explain how you intend to deal with the matter.

Check the detail of the allegation/complaint, gathering additional details as appropriate.

5. CONDUCTING A VERIFICATION MEETING WITH THE EMPLOYEE

5.1 Arrange to meet with the employee as soon as possible. This should be in a room where other staff will not disturb or interrupt or overhear any conversations.

5.2 If the conduct is related to fraud, do not contact the employee or police until you have contacted the Counter Fraud Team and HR and they have confirmed that you can do so.

5.3 The employee should be offered the opportunity to bring a union representative or Trust colleague to this meeting however, the meeting should not be delayed if this is not practical.

5.4 Outline to the employee the allegations/complaint, as appropriate, that has been made and that further verification is required. If allegations relate to possible criminal investigations, it may not be possible to give full details at this point. If it is anticipated the investigation is a criminal one, advice from the police should always be sought before continuing.

5.5 Explain that the verification meeting is not a form of disciplinary action but has been instigated to allow for further verification/confirmation to be made and/or arrangements for suspension to be instigated.

5.6 Provide the employee with a copy of the Disciplinary Policy.

5.7 Advise the employee that they are entitled to a union representative or Trust colleague to accompany them and support them during any subsequent meetings.

5.8 Take a note after the meeting of what you have informed the employee of. Also note whether a representative was present, or if not the reasons why this was not practical. Take notes of the meeting with regards to the questions asked and the employee’s responses. Also
provide a copy of the notes to the employee after the meeting, which should be signed.

6. CONSIDERING SUSPENSION FROM DUTY

6.1 In most circumstances suspension will be where alleged behaviour is so serious and is of such a nature that an individual could face the possibility of summary dismissal.

6.2 Suspension may also occur where:

- It would be dangerous/impractical to continue to allow the individual to remain at work, and/or
- There is a danger that the individual’s continuing presence at work would jeopardise investigations into the alleged misconduct(s).

6.3 If the issue is one of alleged gross misconduct (refer to appendix 1) then suspension must be considered. However if there are circumstances where the employee could work in another area or perform reduced duties this should be explored. Such options could include:

- Removing/restricting some duties from the employee’s current role
- Temporarily moving the employee to an alternative work site/job role

Please contact Human Resources for further guidance.

6.4 A limited amount of investigation and/or verification may be necessary before it is apparent that there is a case of potential gross misconduct justifying suspension.

6.5 Clearly suspension must be handled appropriately and sensitively given the circumstances of the case, it is important to stress that it is not a form of punishment and suspension is a neutral act.

6.6 When considering allegations relating to patient abuse or safety, the incident should always be referred to local Safeguarding.

6.7 When considering suspension from duty, consideration should also be given to alternative options, which would minimise the need for full suspension.

6.8 When considering these options, you must also take into account the impact on the employee and their colleagues, and ensure appropriate communication and arrangements are planned.
6.9 The overriding principle in any investigation, but particularly important in suspension, is that an employee is presumed innocent until the case is established at disciplinary hearing.

6.10 You should note the issues you have considered when deciding whether or not to suspend an employee, as this could form part of the management case at the disciplinary hearing.

7. **AUTHORITY TO SUSPEND / RESTRICT DUTIES**

7.1 Appendix 2 outlines those who have the authority to suspend an employee. If you require clarity as to whether you are able to suspend, contact HR for advice.

7.2 If fraud is suspected then the employee should not be contacted until the position has been clarified with the Local Counter Fraud Specialist team. In other cases of alleged criminal activity contact HR before notifying the police.

8. **ARRANGING THE SUSPENSION MEETING**

8.1 If dealing with suspension, you should invite the employee to a short meeting and advise him/her of the general nature, as appropriate, of the alleged misconduct (refer to appendix 3). Plus, that suspension from all or part of their duties is to be considered or a move to a temporary location is appropriate.

8.2 If an employee is off duty and you are unable to contact them at home, then they should be informed in writing not to commence duty, but to contact a named manager as a matter of urgency. The manager should then inform them of the suspension / restriction to their role.

8.3 When notifying the employee of the meeting, you should advise them that they are entitled to bring a union representative or Trust colleague with them for support. However, the meeting should not be delayed if a union representative is unable to attend for whatever reason.

8.4 The meeting should be held in a room where you will not be disturbed and where the conversation cannot be overheard.

8.5 If you are aware the employee is a member of a recognised Union, it is advisable to notify the union of the reason, date and time of the meeting as soon as possible. Generally a meeting should be held with the employee to inform them of the suspension. There may be some circumstances where the availability of the member of staff may make this impractical, e.g. if they are in police custody. Where reasonably practicable, the employee should be offered the opportunity to have a trade union representative or work colleague present at the meeting and reasonable efforts to obtain support should be made, but this
action should not be delayed unreasonably to accommodate the representative.

8.6 The prospect of suspension may lead an employee to take sickness absence (e.g. stress reasons). However, a subsequent dismissal may be unsafe procedurally if action is not taken immediately to suspend in appropriate cases. You are therefore advised that if the employee does not respond to the suspension meeting, and you are satisfied that this action is appropriate, you should suspend by letter.

8.7 The suspension should always be confirmed in writing following the suspension meeting (refer to appendix 3)

9. SUSPENSION MEETING

9.1 Confirm at the start of the meeting the employee can have a union representative or Trust colleague present if available.

9.2 Outline the reason for the meeting and the allegations, where appropriate, that have been made.

9.3 You should not enter into discussions of the evidence but establish in principle the employee’s initial response to the allegation. You should also discuss whether it is reasonable in the circumstances to proceed with suspension, or whether a temporary restriction of duties or temporary re-location would be sufficient. You may adjourn the meeting briefly to consider this or seek advice before continuing.

9.4 In cases where suspension from work is being applied; you should also advise that until the investigation is concluded, they should refrain from undertaking flexi staffing shifts. The manager should also contact the Flexible Staffing manager to inform them that the employee has been suspended and will not be able to undertake flexi staffing shifts until further notice.

9.5 Where restrictions on duties are applied or alternative duties are to be allocated, you should consider whether it is appropriate for the employee to undertake flexi shifts and advise them accordingly.

9.6 Advise the employee that they will receive full pay whilst on suspension. Where the employee does not have a substantive contract, they will receive pay based on an average of their previous earnings for a specified period, however in cases such as this please contact the Flexible Staffing Manager.

9.7 Inform the employee that a full investigation into the allegations will be conducted, during which they will be invited to attend a formal investigation interview.
9.8 Ensure that the employee provides a contact telephone number and address. Also advise that the employee should remain contactable during normal working hours (Mon – Fri, 9.00 am – 5.00 pm) and be available to attend duty or an interview during these hours.

9.9 Check if the employee has any training or annual leave scheduled over the next 4 weeks. In most cases where annual leave has been booked, this should be honoured and the investigating officer(s) advised accordingly. Consideration of any training courses should be made and the employee advised whether it is appropriate for them to attend.

9.10 Provide the employee with a copy of the Disciplinary Policy.

9.11 Advise the employee that they are entitled to a union representative or Trust colleague to accompany them and support them during any subsequent meetings.

9.12 Where possible, an indication as to the timescale of the investigation should be outlined; which the employee will be kept informed of should this change.

9.13 In cases where allegations of abuse have been made, the employee should be made aware that the details will be notified to local Safeguarding.

9.14 Any period of suspension can be stressful for an employee and offering confidential support from Occupational Health/Work Place Well being may be appropriate during this time.

9.15 Alternatively employees may prefer to have an independent mentor during this time. If the employee wishes to take this option up, they should be involved in identifying a suitable mentor. You will then have responsibility for contacting the mentor and confirming their willingness to undertake this role. The mentor should not be connected to the investigation.

9.16 A letter confirming the suspension should be sent directly to the employee’s home address within 2 days of the suspension meeting taking place. A sample letter is contained in Appendix 3.

9.17 Advise the Flexible Staffing Manager in writing if the employee is restricted from undertaking flexi shifts, to enable them to make the appropriate arrangements.

9.18 If the suspension is ultimately lifted, and the employee returns to work. You will need to consider carefully how the employee can best be re-integrated into the team/department.
10. ALLEGATIONS OF ABUSE

10.1 In cases where an allegation of adult or child abuse has taken place, you will need to refer the allegation via local Safeguarding procedures and discuss how the investigation should proceed. The Trust Safeguarding Lead should also be notified.

11. ALLEGATIONS OF THEFT AND FRAUD

11.1 In the case of potential fraud, theft and matters with financial implications for the Trust, advice should be sought from the Counter Fraud Officer before the employee is contacted or any formal investigation is carried out.

11.2 If you are unsure as to whether the Counter Fraud Officer needs to be informed, please speak to HR who will be able to advise you.

11.3 Information gathered by the Counter Fraud Officer will be used in the investigation and any subsequent disciplinary hearings if appropriate.

12 ALLEGATIONS OF MISCONDUCT THAT RELATE TO MISUSE OF CONTROLLED DRUGS

12.1 In the case of allegations of misconduct that relate to misuse of controlled drugs, advice must be sought from the Trust’s Accountable Officer.

12.2 If you are unsure as to whether the Accountable Officer needs to be informed, please speak to HR who will be able to advise you.

12.3 Information gathered by the Accountable Officer may be used in the investigation and any subsequent disciplinary hearings if appropriate.

12.4 If the allegations of misconduct regarding the misuse of controlled drugs relates to the Accountable Officer, the Medical Director should be informed who will arrange for an Accountable Officer from another Trust to be involved in the investigation.

13. WHERE CRIMINAL PROCEEDINGS ARE BEING PURSUED

13.1 In the event of misconduct coming to light, which may also be the subject of criminal proceedings, it is still for the Trust to investigate the employment matter. The courts will consider the criminal matter separately under a different burden of proof. In employment, the burden of proof is "the balance of probability", i.e. based on reasonable belief and a reasonable investigation, not proof beyond reasonable doubt.

13.2 As far as possible, internal investigation and appropriate decisions should take place internally without reliance on police proceedings,
because the criminal process is different. However, before you carry out formal investigations you should always talk to HR first who may need to seek approval from the relevant police officer. There may be situations where the internal disciplinary investigation or aspects of it may need to be postponed.

13.3 However, it is acknowledged that this may be difficult given the rules of sub judice, and you should seek advice from HR.

13.4 Therefore please bear in mind that Investigation timescales may have to be put on hold to allow the criminal proceedings to be concluded without the Trust’s actions influencing or impacting on these.

14. FORMAL INVESTIGATION

14.1 If you are the employee’s line manager you will need to consider whether there is a case to be answered at a disciplinary hearing following completion of you investigation, the level of any subsequent hearing based on the allegation and ensure that appropriate arrangements for undertaking an investigation are made. In most cases the employee’s line manager will undertake the investigation. However in some cases, it will be inappropriate for the line manager to undertake the investigation and therefore you will be required to commission an investigation and seek suitable investigative officer(s). HR should be consulted at this point to give advice and agree who is the most suitable person to conduct the investigation.

14.2 Ensure the employee subject to the allegation(s) is:

- Kept informed during the investigation
- Informed when the investigation is complete
- Notified of the next steps in the investigation

Also ensure any complainant is kept informed of the progress of the matter and the outcomes to be pursued. (This should not breach any employee’s rights to confidentiality).

15. IDENTIFYING AN INVESTIGATION TEAM

15.1 In very complex and potentially serious cases, it may be appropriate to set up a formal investigation team. Advise should be sought from HR should you feel this to be appropriate. In other circumstances it may be quite adequate for one manager to investigate the matter. Where a formal team is to be set up it should:

- Consist of an Investigating Manager, supported by a HR Adviser/Directorate Partner.
- Have a lead officer who is responsible for planning, co-ordinating the process and the outcome.
- Be appropriate to the nature of the issue(s) to be investigated.
• Consist of officers who have relevant knowledge/experience and who will investigate objectively.
• If possible, reflect diversity balance as appropriate to the case, e.g. gender
• Have access to specialists (e.g. clinical expertise, financial expertise) advice as appropriate.
• Have a tight but realistic timescale to work to.

16. **PLANNING THE INVESTIGATION**

16.1 Any investigation should be planned and have clear parameters. Only information relevant to the matter and which will aid the decision making should be gathered.

16.2 When planning the investigation, you will need to identify the following:

• Which staff you will need to interview and their availability.

• The documentation to be reviewed.

• If any Clients require interviewing, do you have the skills and knowledge to do this? If you do not, you need to arrange for a suitable person to undertake this.

• Any other relevant interviews such as external witnesses and their availability.

• The timescales for completion and how the interviews, and associated work needs to be scheduled in.

17. **WHERE SICKNESS OCCURS DURING THE PROCESS**

17.1 When an employee becomes aware of the allegations or is asked to provide a witness statement/give evidence at a hearing the employee may react in different ways, for example by commencing a period of sickness absence.

17.2 Witnesses or the alleged employee's sickness should continue to be managed in the normal way, in line with the appropriate Trust policies.

17.3 Where witnesses are off sick, managers will need to establish the importance that the witness has in providing statements/evidence. If alternative sources of information are available or witnesses, it may not be necessary to delay the process.

17.4 Where the witness is essential to the process, an occupational health appointment should be made to establish if the investigating officers can proceed with the investigation. In many circumstances, the speedy resolution of the investigation may resolve the sickness absence.
17.5 If Occupational Health advise that the witness is well enough to be interviewed, arrangements should be made in line with the normal process. However, consideration of the location of the interview may need to be made.

17.6 If Occupational Health advice that a witness is not well enough to proceed, the investigation may need to be delayed and the situation reviewed on at least a monthly basis. This will depend on individual circumstances.

17.7 Advice should be sought from Human Resources.

18. **WHERE RESIGNATION OCCURS DURING THE PROCESS**

18.1 Witnesses or the person against whom the allegation is made may submit a resignation at any point during the process.

18.2 The line manager should manage the resignation in the normal way including offering an exit interview.

18.3 If the resignation comes into effect during the investigation process, witnesses can be invited to attend an investigation interview. However, they are not obliged to attend. During their notice period however, they are required to attend.

18.4 If the resignation is prior to any formal disciplinary hearings, witnesses can be invited to attend, but again are not obliged to if they have left the Trust by the date of the hearing.

18.5 If the person against whom the allegation is made resigns the management documentation and letter inviting the employee to the hearing should still be sent out.

18.6 Although the person against whom the allegation has been made is not obliged to attend the hearing, this should continue in its normal manner to consider the information. The hearing should still decide whether the former employee would have been subject to formal disciplinary sanctions and at what level.

18.7 The outcome of the hearing should be notified to the former employee along with the appeal processes.

18.8 Consideration should also be made regarding the appropriateness of referral to other bodies (e.g. Safeguarding or professional bodies such as NMC or HCPC). Normal reporting procedures should be followed and the employee advised. Any outcome such as dismissal will also have to be reflected in any future employment references.
19. **INTERVIEWING**

19.1 Use of witness/witnesses in disciplinary matters will be appropriate where:-

- The disciplinary matter arises from a complaint from an employee, and/or other party (the complainant is in effect a witness).
- A person saw, heard events or has information directly relevant to the matter.
- A person has detailed and relevant knowledge to offer (e.g. expert witness).

19.2 Interviewing a complainant and other relevant witnesses will be part of the investigation of alleged misconduct.

20. **PREPARATION BEFORE INTERVIEW**

20.1 It is important that in your planning you have considered the order in which you need to interview witnesses to limit the amount of re-interviewing upon new information coming to light.

20.2 Prepare a list of key questions/issues to raise. To get the most information from the witness you should use open questions such as who, what, where, when, how, why. Where an investigation team has been commissioned, all parties should be involved in preparing the questions to ensure all aspects are covered.

20.3 Consider what information you can share so in order not to breach an individual’s confidentiality.

20.4 Book an appropriate time and venue. This should be in a room where you will not be disturbed or the conversation can not be overheard.

20.5 Prepare a brief explanation of the reason for meeting/interviewing witness.

20.6 Contact the witness to advise the date, time and venue for the investigation interview and their right to have a union representative or colleague in attendance. In some cases this will be by phone to ensure timescales are maintained. However, this should also be confirmed in writing as per the sample letter in appendix 4. Ensure that the witness is aware that there are no allegations against them.

20.7 For service user/carer interviews or external witnesses, they may wish a friend to be with them for support. If this is appropriate, you should ensure when arranging the interview, the support person is aware that they will not be able to contribute or answer questions but will be there purely to support the witness.
21. THE INTERVIEW MEETING

21.1 If an investigation team comprises of more than 1 person, the whole team must be present at each witness interview.

21.2 Put the witness at ease. It is likely that the witness will be nervous and to ensure you are able to gain a full detailed response, the rapport you build during the introduction is key.

21.3 Explain the purpose and context of the interview within the investigation process.

21.4 Explain how the meeting will be conducted. Where appropriate, outline that some of the questions relate to background information to enable the investigating officers to be able to put any allegations into context.

21.5 As far as is possible, ensure confidentiality of information. Remind witnesses of their responsibilities to maintain confidentiality and not discuss the interview or its content with others. Advise witnesses that should any issues arise, they must contact the investigation manager.

21.6 Explain that notes will be taken and that you will prepare a summary statement (not a verbatim statement), which you will agree with the witness and he/she will sign.

21.7 Inform of potential outcomes e.g. use of information or statement in the course of the investigation, and in any disciplinary proceedings arising from it.

21.8 Ask open ended questions to encourage the witness opens up; use follow-up questions as appropriate. (Who, What, Where, When, Why, How)

21.9 Clarify your understanding by summarising what the witness has said. This will prevent any confusion arising and the need to amend statements at a later date.

21.10 As well as prepared questions, ask if the witness can provide any further information, assistance or is aware of anyone else who should be interviewed.

21.11 If the witness is a service user, it may not be appropriate for the investigating officer(s) to interview them directly. In such cases, the investigating officer should liaise with an appropriate manager to identify a suitable person to interview, such as a carer. This should not be an employee who is also required to provide witness information during the investigation process.
22. PRODUCING STATEMENTS

22.1 Draft and agree a statement of the interview with the witness.

22.2 The statement should include:

- Witness name
- Interviewer(s) name
- Record of other people present
- Data and time of the interview (including any adjournments)

22.3 The content of the statement should be a factual record of the investigation interview. This does not have to be verbatim.

22.5 Send a copy of this statement to the Witness to consider and amend if appropriate. If the witness wishes to change the statement, dependant upon the extent of the changes, it may be appropriate to meet the witness again and clarify any points. This should be recorded either as an additional attachment to the original statement or an amendment of the original statement. Both statements should be submitted and considered as part of the investigation or any future disciplinary action.

22.6 Request that the statement is signed and dated. Retain a copy as part of the investigation and give a copy to the witness.

22.7 If the witness is unwilling to sign the statement, note this on the statement. You can still sign and date it personally but you will need to decide how useful the statement will be as evidence.

22.8 If there is a dispute as to what is said during an interview, the area of uncertainty should be identified, i.e. what the witness believes was said and what the manager believes was said.

22.9 Witness statements are the property of the investigation: if a witness wishes to withdraw/change a statement(s). The original statement should be presented alongside any new statement, which the witness may wish to make.

22.10 Detailed notes of any interview should be made and sent to the individual for their understanding. The notes should then be signed and returned by the employee to ensure they accurately reflect what was discussed. If an employee disagrees with the notes they should contact the investigating manager to highlight the relevant sections. A decision will then need to be made by the investigating manager as to whether they are included as an amendment to the notes or in cases of dispute provided separately to the notes.
23. RELUCTANT WITNESSES/CONFLICTS OF INTEREST

23.1 External witnesses cannot be required to co-operate; internal witnesses (i.e. employees) can.

23.2 Where a witness appears to be hostile/reluctant, find out why: is he/she being put under pressure, or is reluctant to get an employee into trouble.

23.3 If conflicts of interest come to light during the investigation. These should be recorded and statements/information provided, considered for its relevance and appropriateness.

24. TRADE UNION ACCESS TO WITNESSES

24.1 An investigation into employee conduct is a management process. Internal (employee) witnesses are required to co-operate.

24.2 Staff side may wish to collect its own evidence in support of its member. However, employees are not under a duty to co-operate with a Trade Union investigation.

24.3 If staff side wish to interview witnesses they must seek permission from management, who must check that the witness is willing to co-operate.

24.4 You will need to consider reasonable time-off requests for employee witnesses on the employee/Trade Union side to attend interviews/a hearing.

25. SHARING WITNESS INFORMATION

25.1 Witness statements are likely to be part of the evidence referenced to in your Statement of Case. Should disciplinary action be recommended the statements will be shared with the employee at this time.

In very exceptional circumstances, it may be necessary to keep the identity of the witness anonymous because of legitimate fears for personal safety. In such cases, you should seek HR advice.

25.2 Where the investigation arises as a result of a written complaint, it is appropriate for a copy of this to be shared with the employee potentially facing disciplinary action. In relation to natural justice, the employee needs to have adequate details of the misconduct of which he/she is accused. However, it is not necessary at the investigation stage to make all witness statements available to the employee (however for Medical staff the provisions of the 'Disciplinary, Capability, Ill Health and Appeals Policies and Procedures for Medical Practitioners' needs to be referred to)
26. **THE INVESTIGATION REPORT**

26.1 Once a formal investigation is complete the investigation team will prepare a report detailing their findings (refer to appendix 6).

26.2 The investigation report will ideally include:

- **Background information** - the nature of the complaint or management concerns, dates and initial action taken such as verification, suspension etc.

- **Process followed** - how you conducted the investigation and who you interviewed and when. Any issues you encountered along the way.

- **Summary of main findings** - on balance did the investigation support or refute the complaint or management concerns?

- You should note that the 'burden of proof relating to misconduct is not proof beyond reasonable doubt. The test is whether you reasonably believe following a reasonable investigation, that 'on the balance of probabilities' misconduct occurred such as to merit disciplinary action where appropriate. You should make reference to this in your recommendations.

- Recommendations including for example:
  - Disciplinary action or not
  - Management interventions/supervision/support/training
  - Systems improvements
  - Wider service implications

26.3 An Investigation Report template is included in appendix 5.

26.4 A template Management Statement of Case is included in appendix 6.

27. **INVESTIGATION RECOMMENDATIONS**

27.1 The recommendations should be based on a balanced investigation taking into account evidence that both support the allegation, but also any which supports the employee.

27.2 Recommendations should be drawn from the conclusions to indicate if an employee has acted inappropriately based on the circumstances of the situation.

27.3 Recommendations concerning the level of any disciplinary action are permitted within the statement of case of both staff side and
management; the panel will then impartially make a decision based on
the evidence presented. However, it should be clearly stated by the
management case whether or not the issue is one of potential gross
misconduct.

27.4 Recommendations should also indicate if any policies or procedures
are unclear, require amending or are not being followed in general.

27.5 Other considerations should relate to training required both for the
individual subject to the allegations and any witnesses/team cited in the
investigation.

27.6 In order to meet our responsibilities relating to equal opportunities, it is
important that the investigating manager considers if there are any
factors relating to someone who has a protected characteristic under
the Equality Act which needs to be taken into account as part of the
disciplinary process. In such cases therefore, the manager should seek
to establish whether the nature of the issue could be related to such
matters as:

- language or communication difficulties
- culture or background
- discrimination by others

Where it is believed that these factors have been or may have been
relevant to the issue having arisen then this should be specified in the
investigation report and any subsequent recommendations. The report
should also say what the factors are and explain how they could have
contributed to the issues.

28. PURSUING DISCIPLINARY ACTION

28.1 Following completion of the investigation report, a decision must be
made as soon as possible about whether disciplinary action is to be
pursued.

28.2 Once the investigation has concluded, the investigation manager
should review the process to ensure that a balanced investigation has
been carried out on which to base any proposed disciplinary action.

28.3 It is important at this stage to ensure time is allocated to prepare the
Management Statement of Case and set up a disciplinary hearing.

28.4 A review of the timescales should be made to ensure that this can be
done within the timescale. If not, the employee and their representative
should be informed of the delay and the reasons for it (as per section
6.19.3 of the Trust’s Disciplinary Policy). Where possible an agreement
on the timescales going forward should be made.
29. **PREPARING THE MANAGEMENT STATEMENT OF CASE**

29.1 Where disciplinary action has been recommended, a management statement of case should be prepared appropriate to the allegation and the level of proposed action.

29.2 This will utilise the information gained during the investigation that is relevant to the disciplinary action of the individual employee. In some cases, there may have been a number of employees’ actions being investigated. However, only the elements relevant to this particular hearing should be included, and it may be appropriate to reference other employee’s actions to put the allegation into context.

29.3 You should be aware that your written case will provide the basis on which the employee will prepare their response to the allegations. In terms of natural justice an employee should have sufficient information about the allegations of which they are accused.

29.4 Additionally, in the case of subsequent dismissal, the Management Statement of Case will be part of the evidence considered by an internal appeal and possibly by an Employment Tribunal in determining whether dismissal has been reasonable in all the circumstances. Thorough preparation and well structured documentation are therefore essential.

29.5 The management statement of case should:

- Be clearly structured.
- Use clear language.
- Provide adequate contextual information.
- Concentrate on key relevant issues and demonstrate how the evidence supports your case.
- Make the link between the misconduct, its implications and its effect on the individual’s employment if the disciplinary is upheld
- Make use of appendices for supporting evidence referred to in the text (e.g. witness statements, investigation report etc)

29.6 Where the consequence of the hearing could be dismissal, as the manager bringing the case you should be aware of the legal tests for fair dismissal:

- What would be the reason (or principal reason) for dismissal?
• Would the manager making the decision to dismiss have a reasonable belief, based on reasonable grounds (i.e. adequate investigation) that the employee committed the alleged misconduct?

• In all the circumstances of the case, (including the size and resources of the Trust) would the decision to dismiss be reasonable?

29.7 In your statement you must make the allegations as precise as possible e.g. if the issue is relating to money going missing, is the allegation one of negligence or fraud/theft? It is also particularly important that there has been sufficient investigation into the matter particularly where the allegations are disputed.

29.8 A Management Statement of Case template is included in Appendix 3.

30. DISCIPLINARY HEARINGS FOR RECORDED WARNINGS

30.1 RECORDED VERBAL WARNING

30.2 A recorded verbal warning should be issued where it is the first minor offence of misconduct.

30.3 Verbal Warnings should be conducted by the employee’s line manager (or second line manager where there is a clear conflict of interest).

30.4 A hearing to discuss the employee’s conduct should be scheduled once the outcome of the investigation is known. The hearing would not involve a full independent panel but can be conducted by the relevant line manager with support from HR.

30.5 Details of the hearing should be advised to the employee (and their representative) along with a clear outline of the misconduct in question. The Management Statement of Case template (appendix 6) can be used for these purposes.

30.6 There is no requirement for the employee and their representative to submit papers prior to the meeting. However, these will be required for the meeting itself should any mitigating circumstances or defence be provided.

30.7 The line manager should arrange for a note taker to be present at the meeting, to record the content of the meeting and provide a record should this be needed at a later date.

30.8 Recorded Verbal Warning Meeting

The agenda for the meeting should be as follows:
• Introductions and purpose of the meeting (line manager)

• Overview of the allegations and key points supporting verbal warning

• Employee puts forward their view, points of clarification and mitigating circumstances

Because of the nature of this meeting, rather than a strict agenda, it is suggested that a less formal dialogue between both parties is used.

30.9 The line manager should ensure the employee has no further information to put forward or issues to be raised prior to adjourning the meeting to fully consider the facts and information from the meeting. Refer to section when considering the information and deciding the outcome.

30.10 The outcome of the meeting should be communicated verbally to the employee in the first instance. Along with advising they have the right to appeal the decision, before written confirmation is sent in the form of the notes from the meeting.

31. ARRANGING DISCIPLINARY HEARINGS OTHER THAN FOR A RECORDED VERBAL WARNING

31.1 The line manager recommending formal disciplinary action has the responsibility for arranging a disciplinary hearing. This will include:

• Identifying an appropriate disciplining manager to chair the panel (refer to appendix 2)

• Send a copy of the Management Case to the Employee, their representative if appropriate and the disciplining manager within the appropriate timescales.

• Set a date for the hearing in line with the policy timescales and in liaison with the Disciplining Manager, Employee and their representative if appropriate.

• Confirm the witness attendance and prepare Management witnesses for hearing.

• Arrange a room for the disciplinary hearing and breakout rooms for employee/witnesses as appropriate.

31.2 The Disciplining Manager has the responsibilities for:
31.3 When arranging the hearing, it is appropriate to check all parties availability including representative if appropriate.

31.4 Where the disciplining manager is unable to chair the disciplinary hearing within the timescales, an alternative manager/director should be sourced as per appendix 2.

31.5 The Hearing should be booked for an adequate period of time which will be dependant upon the level and detail put forward. It is advisable to book at least half day, however if there are a number of witnesses being called or there are a number of complexities, a full day will be necessary.

31.6 The Hearing should be held at a Trust site suitable to the circumstances.

31.7 Dependant upon the location of the Hearing, it may also be necessary to book breakout rooms for witnesses and/or the presenting parties (employee and line manager)

32. PANEL PREPARATION

32.1 The Investigation Manager should arrange for all panel members to have a copy of both the Management Statement of Case and the Employee Statement of Case.

32.2 Prior to the hearing, the disciplinary panel should review the content of both the Management Case and Employees Case.

32.3 If additional information is required or any points need clarification, the Disciplining Hearing Manager has the right to request this information prior to the hearing.

32.4 Please refer to appendix X ‘Managers Resource Pack for Disciplinary Hearings’

33. DISCIPLINARY HEARING

33.1 Please refer to the flowchart at the beginning of this manager’s guide
33.2 The Disciplinary Hearing Manager should open the meeting by covering the following:

- Introductions/housekeeping as appropriate to the location.
- Outline the role of the note taker.
- Confirm a summary of the reason for the disciplinary hearing.
- Outline the procedure and format of the hearing
- Confirm at what level of the Trust’s Disciplinary Policy the hearing is being held
- Advise timescales/breaks.

33.3 Investigating Manager’s Presentation

- The Manager will be required to present a summary of the case, detailing any key elements relevant to the case.

33.4 Employee Presentation

- The Employee (and their representative) will have the opportunity to present their case. This should outline the main points and details relevant to the case.

33.5 Witnesses

- Both parties have the opportunity to invite any witness(s) to be questioned.
- Witnesses should be relevant to the case and provide key information.
- The questioning of the witnesses should follow the sequence below:
  - Manager
  - Employee (or their representative)
  - Hearing Panel
- The employee should be offered the opportunity to invite any witness(s) to be questioned.
- Any witnesses will only attend the hearing to give their evidence and answer any questions, they will then leaving the hearing.
34. CONSIDERING THE OUTCOME

34.1 When considering the outcome, three key elements must be considered:

- Belief that the alleged misconduct has taken place.
- Reasonable grounds for the belief.
- Ensure a reasonable investigation has been carried out.

These elements are widely applied by employment tribunals.

35 DETERMINING THE FACTS

35.1 The burden of proof is based on the balance of probabilities, not the criminal burden of beyond all reasonable doubt even if there are criminal elements.

The Disciplinary Hearing Manager has to be reasonably convinced that the employee is guilty of misconduct otherwise no disciplinary action can be taken.

The decision should be based on the facts of the case which were established through a fair and thorough investigation.

The procedure followed through the investigation should also be considered to ensure it was fair. If there are aspects of the investigation or disciplinary procedure which were not followed, the Disciplinary Hearing Manager must consider if this has implications for the outcome of the hearing.

36 TAKING INTO ACCOUNT THE SURROUNDING CIRCUMSTANCES AND ANY MITIGATION

36.1 The law requires the decision to be fair and equitable in accordance with the substantial merits of the case. This allows deviation from the normal sanction to apply a different one based on the circumstances.

Mitigating circumstances to consider may include:

- Health
- Family problems
- Work pressure
- Inexperience
• Long service

36.2 Rationale for the outcome

A rationale for the outcome should be recorded to outline what considerations have been made.

This will be required for both the confirmation letter to be sent to the employee, along with any future appeal/tribunal if appropriate.

36.3 Alternative sanctions or actions

It may not always be appropriate to issue formal disciplinary warnings or the level as recommended in the management case. The Disciplinary Hearing Manager has the right to consider other actions in the form of identifying training/development needs, review of workloads or pressures, suitability of the employee to work in their current role/location.

Alternative sanctions could include demotions, moves or restriction to the role. When alternative sanctions are being applied, it is important to ensure these can be accommodated by the Trust prior to any communication or recommendations to the employee. For example we should not be recommending the employee works days instead of nights as an alternative to disciplinary action if the service does not operate in the day.

37. ADVISING THE OUTCOME OF A DISCIPLINARY HEARING

37.1 Where practicable, the Disciplining Manager should ideally communicate the outcome verbally at the end of the hearing to all parties once all the evidence has been heard. In certain circumstance it may be that this is not appropriate, in which case the outcome can be communicated in writing.

37.2 The outcome should be confirmed in writing to the employee and a copy sent to the Disciplining Manager. A sample letter is included in appendix 10; however the rationale for the decision will be case specific

37.3 It is important to ensure any actions/recommendations that form part of the outcome of the disciplinary hearing are communicated and carried through. Failure to do so could impact on the ability to issue subsequent warnings relating to the same or similar conduct issues.

38. APPEALS PROCEDURE

38.1 Please refer to the flowchart at the beginning of this guide
38.1 Upon receipt of a letter from an employee exercising their right to appeal, the Appeal Manager should ensure the employee has submitted details outlining their basis of the appeal.

38.2 If this is not clear, the Appeal Manager should contact the employee and confirm the details required, and set a timescale for them to be received.

38.3 The Appeal Manager, in conjunction with HR, has the responsibility for arranging an appeal hearing. This will include:

- Send a copy of the appeal letter to the original disciplinary panel chair.
- Arrange an appropriate panel, consider if specialist advisers are required.
- Set a date for the hearing in line with the policy timescales.
- Request the original disciplinary panel chair submits a detailed rationale to the appeal panel chair and employee (and their representative if appropriate).
- Circulate copies of the appeal letter and disciplinary rationale to members of the appeal panel.
- Arrange a room for the appeal hearing and breakout rooms for employee/witnesses as appropriate.
- Arrange for an appropriate note taker for the appeal hearing.

38.4 Prior to the hearing, the appeal panel should review the content of both the letter of appeal and the disciplinary panel rationale.

38.5 If additional information is required or any points need clarification, the appeal manager has the right to request this information prior to the hearing.

39. APPEAL HEARING

39.1 Please refer to the flow chart at the beginning of this guide

39.2 The appeal hearing manager should open the meeting by covering the following:

- Introductions/housekeeping as appropriate to the location.
- Outline the role of the note taker.
• Confirm a summary of the reason for the appeal.
• Outline the procedure and format of the hearing.
• Advise timescales/breaks.

39.3 **Employee Presentation**
• The employee (and their representative) will have the opportunity to present their case. This should outline the main points and details relevant to the case.

39.4 **Disciplining Manager Presentation**
• The disciplining manager will be required to present a summary of the rational and detail any key elements relevant to the case and justification for the original disciplinary outcome.

39.5 **Witnesses**
• Both parties have the opportunity to invite any witness(s) to be questioned.

• Witnesses should be relevant to the case and provide key information.

• The questioning of the witnesses should follow the sequence below:
  - Employee (or their representative)
  - Disciplining Manager
  - Appeal Panel

40. **CONSIDERING THE OUTCOME OF AN APPEAL**

40.1 When considering the outcome, three key elements must be considered (which should have also been considered by the disciplining manager):

• Belief that the alleged misconduct has taken place

• Reasonable grounds for the belief

• Ensure a reasonable investigation has been carried out.

These elements are widely applied by employment tribunals.

40.2 When considering the appeal, it is necessary to consider if the disciplining manager made a fair and reasonable decision, based on the information.
40.3 The outcome of the appeal can be one of three as outlined below:

- To uphold the decision given at the hearing
- To review the level of warning or action taken at the hearing
- To uphold the staff appeal and remove any action imposed

41. ADVISING THE OUTCOME OF AN APPEAL HEARING

41.1 Where practicable, the Appeal Hearing Manager should ideally communicate the outcome verbally at the hearing to all parties once all the evidence has been heard. In certain circumstances it may be that this is not appropriate, in which case the outcome can be communicated in writing.

41.2 The outcome should be confirmed in writing to the employee and a copy sent to the Disciplinary Hearing Manager and the employee's line manager. A sample letter is included in appendix 10.

41.3 The letter should clearly outline the outcome of the appeal hearing and provide a comprehensive summary of the considerations made.

41.4 In cases where a dismissal has been overturned, the appeal manager should liaise with the employee's line manager to ensure they are re-instated and supported back into the workplace.

41.5 Where recommendations are made relating to training/supervision or alternative work location, the Appeal Hearing Manager should discuss this with the line manager. Who then has the responsibility for implementing the recommendation.

41.6 It is important to ensure any actions that form part of the outcome of the appeal hearing are communicated and carried through. Failure to do so could impact on the ability to issue subsequent warnings relating to the same or similar issues.

42. IMPACT ON TEAM

42.1 It is important to remember that there is likely to be an impact on the team during and after the disciplinary process.

42.3 Where employees have been suspended, consideration should be made on how to support both the employee returning to work along with the concerns of the team.

42.4 Where colleagues have provided witness statements against the employee, there will be a need to monitor the work relationships to ensure neither party is subject to bullying or harassment.
42.3 Colleagues do not have a right to know that an employee has been suspended or are the subject of disciplinary action.

43. **EMPLOYMENT TRIBUNAL**

43.1 The employee has the right to submit a claim through an employment tribunal. Any such claims should be directed immediately to the HR department as essential timescales must be met.

43.2 A HR Representative will be nominated to liaise with solicitors and appropriate managers during the process.

43.3 Witnesses, including the disciplining manager and appeal manager may be required to provide statements to the tribunal. HR will liaise with the Solicitor to co-ordinate this.

43.4 Support through this process will be available via the HR department.

44. **PROFESSIONAL CODE OF CONDUCT**

44.1 Where disciplinary action is taken which indicates an employee has breached their Professional Code of Conduct, a referral will need to be made to the appropriate Professional Body.

44.2 Where referrals to a Professional Body are made, you should advise the employee in writing, detailing when the referral is to be made, what is being included and the area of their Professional Code that is in breach.

44.3 Referrals to the NMC should be made via the Lead Nurse for the Trust.

44.4 Referrals to the HCPC should be made via the Director of the relevant professions. These are: Director of Psychological Services for Clinical Psychologists, Director of Therapy Services for Allied Health Professions and Lead Social Worker for Social Workers.

44.5 Disciplinary action against the Accountable Officer for Controlled Drugs should be reported directly to the Health Care Commission. This should be made via the Medical Director.

45. **DISCIPLINARY RECORDS**

45.1 A copy of the outcome letter to the employee should be held on the employee’s personal file.

45.2 A disciplinary warning will remain live on an employee’s personal file for the following periods from the date of confirmation of the warning. Following these periods, warnings will still remain on an employee’s file but will be considered spent.
Verbal Warning – 6 months
First Written Warning - 12 months
Final Written Warning - 18 months

46.3 ADULT / CHILD PROTECTION ISSUES
Reference can be made to spent warnings in cases that relate to client abuse.

This was introduced into the Disciplinary Policy for the purpose of client protection. By retaining all disciplinary warnings on file the Trust will be in a position, in specific circumstances, to consider spent warnings where it is relevant and reasonable to do so.

Emphasis must be placed on the reasonableness and relevance of taking such warnings into account. Authorised managers so doing will be advised by HR staff on the decision they are to make and its reasonableness and relevance.

Whilst a spent warning will remain on the employee’s personal file it will never be taken into account unless it can be demonstrated that it is relevant and reasonable to do so in the context of the Trust’s responsibility for client protection. The object is not to put these employees into a worse position than other employees but to accommodate where their particular role and responsibilities mean that client protection is paramount.

When the investigation has been completed the investigation manager taking forward the case will be able to consider previous warnings in order to identify whether a particular pattern of behaviour exists, which gives rise to serious concerns about someone’s employment, given the specific nature of their role with vulnerable clients. In using this information in their case, the investigating manager presenting the case would need to justify within a hearing why previous behaviour/warnings should be considered.

Disciplinary Hearing Managers will also be able to consider such warnings in their decision where they form part of the investigating manager’s case. In most cases the fact there are previous warnings on file should not influence a decision upon the 'guilt' of the employee in respect of the specific allegations in question.

However there may be exceptional circumstances where the presence of previous warnings may be legitimately used in forming a view upon the balance of probabilities. Advice will be provided by an HR Advisor. Again, the reasonableness and relevance of taking such warnings into
account in any employment or disciplinary decision must be justified in these circumstances

46.4 Spent disciplinary records will not be used during the investigation process. It is the responsibility of the investigating manager taking forward the case to a disciplinary hearing to consider the relevance as outlined above.

46.5 Disciplinary Hearing Managers will also have the right to request details of any live disciplinary warnings, or warnings where adult or child protection issues have been cited.
Appendix 1

Guidance to Classification of Disciplinary Offences

Gross misconduct is essentially a fundamental breach of contract. Within this appendix there is guidance on what classifies as an offence which may constitute gross misconduct. However, if a disciplinary allegation does not fall into one of the below categories, a decision as to whether it should be classified as gross misconduct would be made based on whether a fundamental breach of contract has occurred or whether it involves one of the below underlying principles:

- fraud or dishonesty
- service user safety
- staff safety
- illegal acts
- breaching Trust values
- contravening professional standards

It is not possible to prescribe, classify and list every possible circumstance, which would require disciplinary action. However, the following list gives a sample of the most obvious serious offences which may be classified as gross misconduct, and in which will justify summary dismissal (dismissal without notice). The list is not exhaustive or exclusive, and is intended as guidance only.

1. Unauthorised removal, use or theft of property belonging to the Trust, another employee, a patient or visitor.

2. Fraud or dishonesty, e.g. signing in for another employee or allowing such an arrangement to occur. Defrauding the Trust of resources by wilfully falsifying records or booking of work or defrauding patients or employees (NB further guidance on this issue is contained in the Trust’s fraud policy and response plan).

3. Markedly irresponsible and inappropriate behaviour including sleeping on duty and/or being under the influence of alcohol, or non-prescribed drugs whilst at work or on-call.

4. Negligent and/or reckless acts, or omissions which endanger the safety of employees, patients or members of the public.

5. Gross insubordination, for example wilful failure to carry out reasonable instructions, or wilful disobedience of the written or oral instructions of a manager or supervisor.

6. A criminal offence either at work or outside of work where the latter is liable to bring the Trust into disrepute or which necessitates the removal of the employee from the post to which they had been appointed.
7. Wilful damage to Trust premises or property.

8. Disclosure of confidential information to unauthorised persons, particularly in relation to a patient or employee.

9. The illegal possession of drugs and/or the administration of such drugs to oneself or others on Trust premises, or allowing such a practice to take place.

10. Non-compliance with safety, health or fire rules where such non-compliance could pose a serious risk to themselves or others, and where the rules are reasonably believed to have been known.

11. Unauthorised acceptance of payment from patients, visitors, contractors or other parties having dealings with the Trust, which might be interpreted as seeking to exert influence to obtain preferential consideration.

12. Physical, verbal or other bullying, or harassment or discrimination including harassment on the grounds of race, religion, sexual orientation, sex, disability or age, religious belief.

13. Physical or verbal abuse, including abuse of position of power, towards a patient, employee or visitor.

14. Falsification of a qualification which is a stated requirement of the Trust, or which might result in additional remuneration.

15. Non-declaration of a criminal offence.

16. Unauthorised absence from work.

17. An act sufficiently serious to cause substantial damage to the Trust’s reputation.
### Appendix 2

**AUTHORITY TO DEAL WITH DISCIPLINARY MATTERS**

<table>
<thead>
<tr>
<th>CATEGORY</th>
<th>SHIFT MANAGER</th>
<th>FIRST LINE MANAGER e.g. Ward Manager, Admin Manager etc</th>
<th>SECOND LINE MANAGER</th>
<th>SENIOR MANAGER 8A OR ABOVE WITH DELEGATED RESPONSIBLE BY DIRECTOR e.g. Assistant Service or Clinical Director</th>
<th>EXECUTIVE DIRECTOR</th>
<th>CHIEF EXECUTIVE</th>
<th>CHAIR OF TRUST BOARD</th>
</tr>
</thead>
<tbody>
<tr>
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<td>√</td>
<td>√</td>
</tr>
<tr>
<td>APPEAL PROCESS</td>
<td></td>
<td>√ (1ST FORMAL WARNING ISSUED BY FIRST LINE MANAGER)</td>
<td>√ (1ST AND FINAL WARNINGS ISSUED BY FIRST OR SECOND LINE MANAGER)</td>
<td>√</td>
<td>√</td>
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<td>√</td>
</tr>
</tbody>
</table>
Appendix 3

SUSPENSION FROM DUTY

Dear

Re: Suspension from Duty

I am writing to confirm that you have been suspended from duty pending further investigation under the Trust’s Disciplinary Policy, as discussed at our meeting on ……………. Also present at the meeting was your union representative, ……………

The suspension is effective from ………………… and the reason for your suspension relates to an allegation …………………..

Whilst on suspension you will receive full pay. The suspension is not a disciplinary action and does not, in any way, imply guilt. A full investigation will now take place (including consideration of any criminal proceedings which may also be relevant). I will let you know if there are any undue delays beyond my control, e.g. someone’s annual leave.

The investigation will be conducted by ………………… and you will be invited to attend a formal investigation meeting during this process. You will be entitled to be supported by a union representation or a colleague from the Trust at this meeting. An HR Adviser may also be attending. I will send you a time and date for the investigation meeting by separate letter.

Please inform me of any changes to your contact details and ensure you remain contactable during normal office hours (Monday to Friday 9.00 am to 5.00 pm).

During your suspension, any annual leave already booked will be honoured and will still be classed as annual leave. You are able to request annual leave giving as much notice as possible, but in suspension situations only, a minimum of one week’s notice period will be considered. Whilst any request will be considered, it cannot be guaranteed that the request for annual leave will be granted.

In the event that a suspension goes into the following annual leave period, you would only be able to carry over five days, subject to your service area’s practice and procedures. It is important, therefore, that you still plan the taking of your annual leave during your suspension.

Whilst you are suspended please do not enter any Trust buildings or sites unless formally invited to do so, e.g. attend a formal meeting.

Paragraph to be included where the employee undertakes flexible staffing shifts - [Your suspension includes refraining from working any flexible shifts anywhere within the Trust and I will be asking the Flexible Staffing Manager to deactivate your flexible staffing account. In the event of a manager contacting you directly to work a flexible staffing shift, you must decline that shift].

Your period of suspension will be ended by me requesting you to either return to work or following the outcome of any meeting/hearing. If you have any queries, or require any further information, please do not hesitate to contact me on the above telephone number.

Yours sincerely
Appendix 4

SAMPLE LETTER TO REQUEST TO ATTEND INVESTIGATION INTERVIEW

Dear

Re: Investigation Meeting to Discuss Allegations of Misconduct/Gross Misconduct

As part of the investigation into allegations of your misconduct/gross misconduct, a formal investigation interview has been arranged for (date) at (time). This will be held at (location).

You are entitled to have a union representative or Trust colleague present at the meeting.

The interview will be conducted by (name of interviewers). Formal notes will be taken by (name of note taker) and a copy will be sent out for you to review and sign. This procedure will be outlined at the investigation interview.

If you are unable to attend this for any reason, please contact me as soon as possible.

Yours sincerely
### Appendix 5

**INVESTIGATION REPORT TEMPLATE**

<table>
<thead>
<tr>
<th>Title:</th>
<th>………………………………………………………………………………………………………</th>
</tr>
</thead>
<tbody>
<tr>
<td>Names of Investigating Officers:</td>
<td>……………………………………………………………………………………………………</td>
</tr>
<tr>
<td>Date Investigation Concluded:</td>
<td>……………………………………………………………………………………………………</td>
</tr>
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</table>

#### Introduction

This should outline what the initial allegations were, when they came to light and when the investigation started.

#### Investigation Process

Details of what actions have been taken and why documentation has been referred to and witnesses questioned. This can be put into sub-sections relating to each action e.g.

- Documents
- Interviews

#### Conclusion

This section should bring together the findings of the investigation giving a balanced view of the information collected. In complex cases, it may be necessary to break this down into subsection to ensure all points are covered.

#### Recommendation

Include all recommendations including:

- Employee disciplinary action
- Training needs
- Procedural Issues

#### Appendix (documentation/statements/interview notes)
MANAGEMENT STATEMENT OF CASE

[Date]

Investigation conducted and compiled by [name, job title, location].
[Date].
Contents       Page Number

Appendices

1.0 Allegations

2.0 Background Information – site

3.0 Background Information – client or co-respondent if applicable

4.0 Background Information – employee

5.0 Investigation

6.0 Chronology of events

7.0 Conclusions

8.0 Recommendations

Appendices

Appendix 1

Appendix 2

Appendix 3

Appendix 4

[include copy of letter inviting employee to disciplinary in these appendices]
1.0 Allegations

1.1 It is alleged that XXXX

1.2 These allegations if founded have the potential to create a high risk for the XXXX and the Trust.

1.3 Based on the balance of probabilities, if the allegations are founded they amount to gross misconduct and have the potential to result in dismissal under the Sheffield Health and Social Care Disciplinary Policy.
2.0 Background – [location]

2.1 [background to unit and anything that is relevant particularly in this case e.g. how medication is recorded]
3.0 Background – [client or co-respondent if applicable]

3.1 The service user has been a resident at UNIT since DATE

3.2 DOB etc

3.3 Diagnosis.

3.4 Comprehension and communication etc.
4.0 Background – [employee]

[Include information on relevant training, supervision dates, and employment record to date if relevant]

4.1 EMPLOYEE works as a JOB TITLE at LOCATION. EMPLOYEE has worked for the Trust since DATE.

4.2 EMPLOYEE’S role in brief is XXX. A full job description is attached at appendix XX.

4.3 Previous work history at Trust.

4.4 Detailed below is EMPLOYEE’S full employment history:

4.5 EMPLOYEE has attended the following training courses whilst employed at the trust:

- DATE - Understanding People With Dementia
5.0 Investigation

Background to the incident and verification

[Use chronology of events as a basis for this section. Include information about any meetings, suspension, obtaining of statements, changes in investigation manager, etc. where relevant. Extract main findings from statements and refer to full statement in appendices]

5.1 Met with the employee, verified incident etc XXXXX

Suspension of EMPLOYEE

5.2 A suspension meeting was held on XXX.

Statement obtained from witness – EMPLOYEE NAME

5.3 Met X to obtain formal statement
5.4 Draw out relevant extracts from statement in bullet points.

Statement obtained from witness – EMPLOYEE NAME

5.5 Met X to obtain formal statement
5.6 Draw out relevant extracts from statement in bullet points.

Referral to Safeguarding / ISA

5.7 Referral to safeguarding / ISA made

Statement obtained from WITNESSES

5.8 A meeting was arranged for DATE to obtain a formal statement from EMPLOYEE as attached at appendix XX.
5.9 Draw out relevant extracts from statement in bullet points.

Statement obtained from ALLEGED

5.10 A meeting was arranged for DATE to obtain a formal statement from EMPLOYEE as attached at appendix XX.
5.11 Draw out relevant extracts from statement in bullet points.
### 6.0 Chronology of Events

<table>
<thead>
<tr>
<th>DATE</th>
<th>EVENT</th>
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</table>
7.0 Conclusions

7.1

7.2 If these allegations are founded they amount to gross/misconduct under the Trust disciplinary policy.
8.0 Recommendations

(Include level of disciplinary action and recommendations for the unit)

8.1 I recommend that disciplinary action be taken @ stage 3 (Final Written Warning) of the Trust's Disciplinary Policy.

8.2 Should the panel conclude that employee returns to work I would recommend that employee would not to return to work as a JOB TITLE at UNIT.

8.3 I recommend that EMPLOYEE should work elsewhere in the Trust in an environment that consistently and permanently provides the support of a nursing team.

8.4 I recommend that EMPLOYEE should not be allowed to provide one to one care to Service User’s should he/she return to work at the Trust.

8.5 I recommend that the Trust would need to find alternative work for EMPLOYEE to enable the above recommendations.
Appendix 7

SAMPLE LETTER TO INVITE TO DISCIPLINARY HEARING

Dear

Re: Level X Disciplinary Hearing

The investigation into your alleged misconduct/gross misconduct has now been completed and formal disciplinary action has been recommended. I am therefore writing to advise that you are required to attend a disciplinary hearing, which will be held at (location) in room (room) on (date) at (time).

The hearing will be in relation to the following misconduct/gross misconduct: allegations:

- (allegations)

You are advised that the disciplinary hearing will be held at Stage X of the Trust’s Disciplinary Policy. This means that the maximum outcome of this hearing is (maximum outcome); however no final decision as to the outcome will be made prior to the full hearing of the facts and evidence.

The disciplinary panel will comprise of (disciplinary panel chair) and (other reps). I will be presenting the management case supported by (name) and (title). The management case will be forwarded at least 20 working days before the hearing. You should submit your statement of case at least 5 working days before the hearing date.

You have the right to be accompanied by your trade union representative or a colleague from the Trust. I have taken liberty of forwarding a copy of the management case to (union rep) who has supported you previously.

I would be grateful if you could confirm your attendance at this hearing as soon as possible along with if you require any witnesses to be made available.

Please contact me if you require any further information prior to the hearing.

Yours sincerely
### INFORMATION TEMPLATE FOR ORGANISING DISCIPLINARY/GREIVANCE HEARINGS

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<th>Type of hearing and level:</th>
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<tr>
<td>Date to be convened by:</td>
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**EMPLOYEE**

<table>
<thead>
<tr>
<th>Name of staff member(s) concerned:</th>
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<tr>
<td>Available dates of Staff Member:</td>
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<tr>
<td>Available dates of Representative:</td>
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**PRESENTING MANAGER**

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<td>Available dates for Presenting Manager:</td>
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<th>Name of HR Officer supporting above:</th>
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<tbody>
<tr>
<td>Available dates for HR Officer:</td>
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**HEARING PANEL**

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<table>
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<th>Name of panel adviser:</th>
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<td>Available dates for panel adviser:</td>
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Date Management Case sent out:
Date Employee Case received

<table>
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<tr>
<th>Room Booked</th>
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<td>Breakout Room(s) booked</td>
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<table>
<thead>
<tr>
<th>Name of hearing organiser</th>
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</thead>
<tbody>
<tr>
<td>Contact Number of organiser</td>
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</table>
Appendix 9

DISCIPLINARY HEARING CHECKLIST

1. Introductions and Housekeeping
2. Manager presents summary of key points of case
3. Employee Questions Manager
4. Disciplinary Panel Questions Manager
5. Employee presents summary of key points of case
6. Manager Questions Employee
7. Disciplinary Panel Questions Manager
8. Managers Witnesses
   Questioned by Manager, Employee, Panel
9. Employees Witnesses
   Questioned by Employee, Manager, Panel
10. Managers opportunity to make final summing up statement
11. Employees opportunity to make final summing up statement
12. Adjournment for panel to consider evidence and reach decision
12. Disciplining Manager confirms when the outcome will be communicated. This ideally should be given at the meeting.
13. Meeting closes
Appendix 10

CHECKLIST OF CONSIDERATIONS FOR DISCIPLINARY PANEL

• Are you clear what the allegations are?

• Have you heard sufficient evidence, based on the balance of probability, to make a decision on the allegations?

• Is the presented evidence based on a reasonable investigation?

• What are you findings on each allegation?

• Have you considered all relevant mitigation, for example:
  - previous conduct record,
  - circumstances which mean employee is less at fault, e.g. lack of training

• What impact does mitigation have on the disciplinary level?

• What is the final sanction for the employee, if any? What are your reasons for this level of sanction?

• Are there any recommendations that you wish to make in regards to:
  - Employee, e.g. training
  - Team/directorate, e.g. best practise
  - Trust as a whole, e.g. policy/procedure amendments
Appendix 11

SAMPLE LETTER - OUTCOME OF DISCIPLINARY HEARING

Dear

Re: Outcome of Level X Disciplinary Hearing held on (date of hearing)

I am writing to you with the outcome of the Level X Disciplinary Hearing held on (DATE) at (VENUE). The hearing was chaired by me with support from (HR NAME), (JOB TITLE). (NAME) presented the Management Case and was supported by (HR NAME), (JOB TITLE). You were supported by Unison Representative (NAME).

The Disciplinary Panel considered the below allegations:

- (allegations)

After listening and taking into account all the information provided at the hearing, I arrived at the below decision with regards to the allegation(s) (outline the main points considered for each allegation in the hearing, say whether allegation(s) were upheld or not and justification for the level of sanction).

Based on the disciplinary hearing I can therefore confirm the decision has been taken to issue you with a level X (type of warning) warning under the Trust’s Disciplinary Policy. This warning will be placed in your personal file and will remain live for (length of warning). (If final written warning - Please be aware that further incidents addressed under the Disciplinary Policy may result in your dismissal).

You do have a right to appeal this decision. Should you wish to do so you must write to (APPEAL MANAGER DETAILS) within five working days of receipt of this letter stating clear and specific reasons for your appeal.

Along with the disciplinary action mentioned above, it has also been recommended that (details of training, supervision, role change…..). (Name of person) will make the appropriate arrangements.

If you require any clarification regarding the outcome of the hearing, please contact me.

Yours sincerely
Appendix 12

SAMPLE LETTER TO INVITE TO APPEAL HEARING

Dear

Re: Appeal Hearing

Following your letter of appeal dated (date of appeal letter), an Appeal Hearing has been arranged for (time), (date) at (location).

The appeal panel will consist of (names of panel members) and (disciplining manager) will put forward the considerations made at the disciplinary hearing and the response to any issues raised in your appeal letter.

You have the right to be accompanied by your Trade Union Representative or colleague from the Trust.

If you have any difficulty attending the appeal hearing, please contact me as soon as possible.

Yours sincerely
Appendix 13

SAMPLE LETTER - OUTCOME OF APPEAL HEARING

Dear

Re: Outcome of Appeal Hearing held on (date of appeal hearing)

Following the appeal hearing held on (date), I can confirm the decision has been taken to uphold/not uphold/partially uphold your appeal.

The appeal panel reviewed all the evidence and information put forward and a summary of the considerations is outlined below (outline what was discussed in disciplinary hearing).

This appeal concludes the Trusts disciplinary process.

If you require any clarification regarding the outcome of the appeal hearing, please contact me.

Yours sincerely