

DISCIPLINARY POLICY AND PROCEDURE (1)

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Executive Summary

This policy details the procedure for managing employee conduct. This policy applies to all Trust staff but for medical staff will be used alongside Maintaining High Professional Standards.

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1. Introduction

This Policy sets out a consistent approach to be taken for all disciplinary cases. However, staff should be aware that, within this framework, the circumstances surrounding each disciplinary case are different and that managers will take the course of action they judge most appropriate to those circumstances.

Where an employee is incapable of performing their job due to illness, the case will be dealt with under the Trust's Sickness Absence Policy. Issues of poor performance (for any reason other than ill health) will be dealt with through the Trust's Capability Policy.

2. Scope

- 2.1. This agreement applies to all staff employed under a contract of employment by The Walton Centre NHS Foundation Trust including Medical Staff.
- 2.2. For Medical Staff, the policy is to be read in conjunction with the Maintaining High Professional Standards document, which should always be followed as the overarching policy if an issue arises regarding a Doctor.
- 2.3. Junior medical staff will be subject to their Lead Employer's disciplinary processes. A decision will be made between the respective organisations as to the details and handling of any subsequent investigation.
- 2.4. Staff who are employed on the basis of 'student', 'trainee', or 'pupil' status are entitled to the protection of this procedure in respect of termination of training, or of the student, trainee, or pupil status.
- 2.5. No disciplinary action will be taken against an accredited representative of a nationally recognised NHS Trade Union negotiating Body until the circumstances of the case have been discussed with a full time official of the organisation concerned. There may however be occasions when this is not practical and it may be necessary to suspend a representative of such an organisation on full pay, without having first discussed the matter with a full time official. In such cases, the circumstances will be reported at the earliest opportunity to the organisation.
- 2.6. Staff on secondment to the Trust will be expected to observe the standards of conduct identified in this policy. A decision will be made between the respective organisations as to the details and handling of any subsequent investigation.
- 2.7. In cases where a serious untoward incident (SUI), patient/public complaint or a safeguarding vulnerable adults/children's matter is reported, the Trust will determine whether the disciplinary policy will operate in parallel with other processes. Investigations progressed, or steps taken by the Trust as a result of a SUI, complaint or safeguarding procedures do not preclude further action arising under this policy.

3. Definitions

- "The Trust"- The Walton Centre NHS Foundation Trust
- "Employee"- anyone employed by The Walton Centre NHS Foundation Trust. This definition includes Doctors, who will fall under this policy for non clinical issues.
- "Trade Union/Staff Association" - nationally recognised NHS negotiating body
- "Representative" - an accredited representative of a recognised Trade Union/Staff Association or a workplace colleague.

- “Full Pay” - the pay the employee would have received had he/she been at work, other than for casual overtime i.e. not rostered or contractual

4. Duties

4.1. The Trust Board

4.1.1 Overall responsibility for ensuring that the Disciplinary Policy is operated in a fair, consistent and reasonable manner.

4.2. Case Manager

4.2.1 The Case Manager has responsibility for:

- commissioning an investigation of the allegation/s
- appointing an Investigating Officer in conjunction with the HR department
- determining the terms of reference for the investigation in conjunction with the HR department
- on conclusion of the investigation deciding if there is further information required in order to make a decision as to whether there is a disciplinary case to answer
- upon receipt of the final report, deciding whether they agree with the recommendations as to whether there is a case to answer which should proceed to a disciplinary hearing, or not.
- Presenting the case at a disciplinary hearing or delegating this responsibility to the Investigating Officer

4.2.2 The Case Manager may also consider issues such as the suspension of the employee

4.3. Investigating Officer

4.3.1 The Investigating Officer will investigate and establish the facts in the case by holding investigatory interviews and gathering statements, documents, information and the relevant data as appropriate.

4.3.2 The Investigating Officer will produce an Investigation Report for the Case Manager. The report will outline the facts of the case together with any recommendations. The report will indicate whether the employee has a case to answer.

4.3.3 The Investigating Officer can request amendments/additions to the Terms of Reference during the investigation should something significant come to light that is directly associated with the investigation. Any changes should be agreed with the Case Manager.

4.3.4 Should the matter proceed to a disciplinary hearing the Investigating Officer will attend and will present the Investigation Report to the disciplinary panel.

4.3.5 In cases involving suspension, the Investigating Officer must maintain regular contact with the suspended employee, in order to keep the employee informed of any progress/delays in the investigation.

4.3.6 The Investigating Officer will investigate and establish the facts in the case by holding investigatory interviews and gathering statements, documents, information and the relevant data as appropriate.

4.4. Role of Human Resources

4.4.1 A member of the HR Team will advise and support the Case Manager and another member of the HR Team will support the Investigating Officer in all disciplinary matters.

- 4.4.2 The HR Team should be consulted before any action is taken in relation to the formal stages of this procedure including the decision to suspend.
- 4.4.3 On conclusion of the case HR will ensure appropriate retention of all records pertaining to the case.
- 4.5. Role of Employee
- 4.5.1 Employees have an obligation to co-operate with disciplinary investigations and in particular to attend meetings and answer questions regarding the matter raised and/or being investigated. This is deemed to be a reasonable management instruction. Where the employee is unable or unwilling to attend, the Trust can make decisions on the evidence available. Occupational Health advice will be sought before taking this step, if appropriate.
- 4.5.2 Employees are reminded that disciplinary action, including dismissal, can be taken in their absence providing reasonable attempts have been made to obtain their co-operation or attendance at a disciplinary hearing.
- 4.6. Witnesses
- 4.6.1 Once an investigation has been commissioned the Investigating Officer will determine, from the information they have received, who they need to interview as a 'witness' to events pertaining to the case. If these identified witnesses are members of staff they have a contractual obligation to attend meetings as requested.
- 4.6.2 On occasion, disciplinary panels may feel that it would be helpful to hear the details of a disciplinary case from other individuals who participated in the investigation. Therefore employees also have an obligation to attend formal disciplinary meetings as witnesses if required. The Trust recognises that being a witness in a disciplinary case, for either the management case or employee's case can be difficult and sometimes an emotional undertaking. Support will be provided to any staff who are asked to be a witness if required.
- 4.6.3 Any witness requested to attend an investigatory meeting, disciplinary hearing or appeal hearing, shall be afforded the right of representation by a Union Representative or workplace colleague.

5. Process

- 5.1. Informal Resolution
- 5.1.1 Informal action should be taken as a method to avoid the need to resort to formal procedures in cases of minor misconduct examples of which can be found at Appendix 1. Such action is known as informal counselling.
- 5.1.2 A meeting will take place between the employee and their Line Manager. Employees do not require notice to attend an informal counselling meeting and do not have the right to be represented.
- 5.1.3 Such action should only be taken for matters causing concern that are not sufficiently serious in nature to justify formal disciplinary action.
- 5.1.4 During this meeting the Manager should;
- Explain that the meeting is an informal counselling discussion as per the Trust Disciplinary Policy.
 - Discuss the concerns that have come to light with the employee and explain that the reason for informal counselling is to reflect on the concerns and take any corrective action necessary in given timelines.

- Inform the employee of the standards expected by the Trust and the level of improvement needed.
 - Inform the employee that if further instances of a similar nature occur within the review period following the informal counselling, formal disciplinary action may be taken
 - Explain that the content of the informal counselling meeting will be provided to the employee in writing (a template letter can be found on the HR page of the Intranet) and that it will remain live on their file for a period of 12 months.
- 5.1.5 Such informal discussions may take place on more than one occasion, however, it may be appropriate to escalate to the formal disciplinary process were such misconduct is repeated or an acceptable level of improvement is not achieved.
- 5.1.6 An informal counselling discussion may be recommended as an outcome of a formal investigation.
- 5.2. Carrying out Investigation
- 5.2.1 A Case Manager will take the decision to instigate a formal investigation. This would usually be a Divisional or Executive Director or deputy (depending upon which directorate the member of staff sits within). The Case Manager should work with a member of HR to draw up terms of reference for the investigation. Please see Appendix 1 for examples of misconduct. A decision will also be taken at this stage as to whether the employee concerned should be suspended (see section 7).
- 5.2.2 The Trust should then make the necessary arrangements to establish the facts promptly before memories of events fade. Wherever possible the investigation should be conducted by a person (the Investigating Officer) of sufficiently senior status who will not subsequently be responsible for determining the appropriate action. A HR representative will be assigned to support the Investigating Officer. The Investigating Officer should not have been directly or indirectly involved in the incident.
- 5.2.3 If the investigation relates to a clinical incident, then a clinical manager should refer to the Incident Decision Tree (National Patient Safety Agency) primarily to determine whether a disciplinary investigation is still required or if some other action is appropriate.
- 5.2.4 Employees who are the subject of an investigation should be made aware of this, in person wherever possible, as soon as is practical following the alleged incident. The details of the investigation should be confirmed in writing and should inform the employee of what it is that they are alleged to have done wrong, and the reasons this may breach Trust policy. The letter will be sent by the Case Manager. There may be exceptional circumstances, such as when external bodies e.g. the Police or Counter Fraud Services are involved, where it may not be appropriate or practicable to inform the employee straight away, (e.g. where the allegations are particularly sensitive, confidential or unclear). Any internal investigation may be suspended whilst a police or counter fraud investigation is conducted.
- 5.2.5 As part of the investigation, the Investigating Officer will write to the employee to invite them to meet to discuss the allegations at an investigatory interview. The HR representative supporting the investigation will be present and the employee is entitled to be represented at this meeting by a Trade Union representative or workplace colleague. During this meeting a transcript must be taken making a note of the questions asked and the responses given. The transcript will be sent to the employee (and their representative if they so request) for them to sign and confirm if they are happy with the content, or if they wish to make any corrections to the record of what was said at the meeting. The transcript must then be returned to the HR representative within 10 days. Failure to return will result in the notes being submitted as they stand.

Investigatory meetings will not be recorded unless in exceptional circumstances to be determined by the Director of Workforce.

- 5.2.6 In cases where an incident involves, or was witnessed by, a number of employees the Investigating Officer must also interview these individuals to discuss the matter. Again a transcript must be taken recording the questions asked and the responses given and subsequently sent to the individual (and their representative if they so request) and returned as per section 5.2.5 above. Witnesses should be advised that their transcripts will be used as evidence however; in extreme circumstances witness statements may be anonymous. This would need to be discussed with HR. As stated in 4.6.1 above witnesses have an obligation to attend meetings as requested. It may be helpful for employees who witness an incident to write notes of what happened at the time in order to help them remember the facts at a later date when interviewed.
- 5.2.7 An employee or witness who cannot attend a meeting should inform the Investigating Officer in advance whenever possible. If the employee fails to attend through circumstances outside their control and unforeseeable at the time the meeting was arranged (e.g. illness) the Investigating Officer should arrange another meeting. A decision may be taken in the employee's absence if they fail to attend the re-arranged meeting without good reason. If an employee's companion (Trade Union representative or colleague) cannot attend on a proposed date, another date should be proposed by the individual within 5 working days of the original date. This 5 day time limit may be extended by mutual agreement.
- 5.2.8 If a member of staff becomes medically unfit during an investigation he/she may be referred to Occupational Health to determine whether they are sufficiently fit to attend future meetings. Absence will be managed in line with the Sickness Absence Policy. The Trust reserves the right to make decisions on the evidence available in the employees' absence.
- 5.3. **Deciding if there is a case to answer**
- 5.3.1 Once all relevant personnel have been spoken to and all additional documentation collated, the Investigating Officer will produce a report outlining the findings from the investigation.
- 5.3.2 The completed report is then sent to the Case Manager with a deadline date (usually one week). By that date the Case Manager will decide whether or not the case is to proceed to a disciplinary hearing. In some instances the Case Manager may decide they require further information in order to make a decision. In which case the investigatory team will conduct the necessary further investigation and will amend and resubmit the report.
- 5.3.3 If the decision is that there is no case to answer the HR representative will write to the individual employee advising them of this. The case will then be closed unless there are outstanding actions that need to be addressed.
- 5.3.4 If it is decided there is a case to answer, a disciplinary hearing will be arranged. The panel will consist of an appropriate senior manager and a HR representative. If the case involves a clinical member of staff, a member of the senior clinical team will also be on the panel where the senior manager is not clinical themselves. If the case involves a doctor then there will be a member of medical personnel on the panel in accordance with MHPS.
- 5.3.5 The employee will be written to advising them that a hearing is to be convened. A reasonable amount of notice should be given to enable the employee to prepare and arrange to be accompanied. A copy of the disciplinary report will be sent to the employee at least five working days before the hearing. The full report should be sent to

the employee including all statements agreed as part of the investigation which will be used at the hearing. If the misconduct is potentially gross misconduct the employee must be informed that dismissal is a possible outcome of the disciplinary hearing in writing prior to the hearing taking place.

- 5.3.6 As previously described (section 5.1) as an alternative to a formal disciplinary hearing, informal resolution may be recommended where this is felt to be appropriate.

6. Formal Disciplinary Hearing

- 6.1. Appendix two outlines the format a disciplinary hearing will take.
- 6.2. In summary the Case Manager (or the Investigating Officer if delegated by the Case Manager) will present their findings and the employee will have the opportunity to ask questions of the investigation team and put forward their case with regard to the allegations against them. Witnesses may also be called to the hearing, by either side, if necessary. The panel hearing the case will decide if the allegations concerning the employee have been substantiated. Where it is decided that no action is justified, the employee will be informed. If action is to be taken, a disciplinary sanction may be applied to the employee (see section 9). When determining the disciplinary sanction to be taken, the panel should bear in mind the need to satisfy the test of reasonableness in all circumstances, considering any mitigating factors before determining the appropriate sanction.

In the event of failure to attend a formal hearing, particularly if it has been rescheduled previously at the employees' request, the decision may be taken to proceed with the hearing and to reach a conclusion in the absence of the employee.

Summary notes will be taken during disciplinary hearings. These should be transcribed as soon as possible as a copy may be required for an appeal hearing and any subsequent external proceedings. Hearings will not be recorded unless in exceptional circumstances to be determined by the Director of Workforce.

- 6.3. An individual accompanying or representing the employee at a hearing will be allowed to carry out the following;
- address the hearing to put forward the employee's case
 - sum up the employee's case
 - present any information provided by the individual, on their behalf, but not answer any direct questions regarding the case
 - ask questions of witnesses
 - ask questions of the Investigating Officer

The companion/representative has no right to answer questions on the employee's behalf, to address the hearing if the worker does not wish it, or prevent the Investigating Officer from explaining their case.

In exceptional circumstances, and with the employees' written agreement, a companion/representative can attend a hearing in the absence of the employee facing the allegations to act, and speak, on their behalf.

7. Removal from Duties/Suspension

- 7.1. Removal from duties is a precautionary measure. It is not disciplinary action and does not carry any implication of guilt. Removal from duties covers suspension or any alternatives to formal suspension such as a temporary change or restriction to duties, or relocation to another part of the Trust.
- 7.2. Any suspension should be for the minimum amount of time and will be with full pay. It should continue only for so long as one or more of the circumstances outlined below continue to exist:
- Where a full investigation is necessary and where the presence of the employee at the workplace is likely to impede, influence or affect the investigation process
 - It would be inappropriate for the employee to remain at work as doing so is likely to cause a danger to patients, other staff, the public or themselves.
 - The alleged action is of such a serious nature (i.e. potentially dismissible) that it is undesirable for the employee concerned to remain on duty.
 - Where, because of the need to protect the interests of the Trust, the staff, patients or the public, suspension is the only reasonable course of action to take.
 - In situations where the employee is the subject of an external investigation e.g. by the Police or counter fraud which may mean that it is not appropriate for the employee to be in the workplace.

Please note a member of staff does not automatically have to be suspended if the allegations against them are categorised as gross misconduct i.e. dismissal can still be given as a sanction whether the individual concerned has been suspended or not.

- 7.3. An employee may be suspended without pay in the following circumstances:
- Cases of lapsed professional registration
 - Where it is deemed that an individual is failing to co-operate with reasonable management requests to resolve the disciplinary issues. Such action will not be taken without all reasonable steps being taken to resolve the issues. HR advice must be sought.
 - When external legal proceedings, lodged by an employee, with an Employment Tribunal prohibits the Trust from concluding its internal procedures.
- 7.4. In instances where suspension is being considered, the appropriate manager should, if possible, contact the Human Resource Department in the first instance. If suspension is being considered out of normal hours, the senior manager on-call must be consulted. However, the manager must then contact Human Resources at the first possible or reasonable opportunity.
- 7.5. Where it can be accommodated, alternatives to suspension must always be considered before suspending an employee (e.g. change of work location, duties or extra supervision).
- 7.6. If the decision is taken to suspend the employee he/she will be advised, in person, wherever possible, to this effect. The reason for the suspension will be confirmed in writing to the employee at the time or at the latest within 3 calendar days. It should be noted that any exclusion, or restriction of practice, of medical staff should be dealt with using the Maintaining High Professional Standards document.
- 7.7. Throughout the period of suspension the Investigating Officer/HR must maintain regular contact with the suspended employee, in order to keep the employee informed of any progress in the investigation.

- 7.8. During a period of suspension, the suspended employee must not attend his or her place of work, or any of The Walton Centre NHS Foundation Trust's sites. The following exceptions to this apply:
- Unless instructed by management or the Investigating Officer to attend
 - Health related reasons to obtain treatment for themselves or their family
 - To attend the Occupational Health Department
 - To meet with their Trade Union Representative. In this situation a pre-booked meeting room must be arranged and the suspended employee must be met at reception by their Trade Union Representative and accompanied at all times. The employee will not be allowed access to any part of the Trust's premises, other than the pre-booked meeting room.
- 7.9. During a period of suspension, the employee suspended must not discuss any aspect of the case with any of The Walton Centre NHS Foundation Trust's staff, agents or subcontractors, except their recognised Trade Union representative/workplace colleague, unless given permission to do so by their manager. Any breaches of confidentiality could in itself be regarded as misconduct.
- 7.10. If a member of staff becomes medically unfit during their suspension period, they must report this to HR and provide medical certificates to support this. Whilst the conditions of the suspension remain, sickness absence will override the suspension for pay and absence management purposes. In such circumstances the member of staff may be referred to Occupational Health.
- 7.11. The Trust reserves the right to remove any remote access rights during a period of suspension.
- 7.12. There is no right of appeal against suspension as this is not disciplinary sanction.

8. Police/Counter Fraud Investigations

- 8.1. Criminal or Counter Fraud investigations may be given precedence over a disciplinary investigation if there is a risk of serious prejudice to the former from running the two processes concurrently. However, there may be a compelling public interest in suspending or removing an individual from his/her post before the conclusion of a criminal investigation or proceedings.
- 8.2. In some cases where formal disciplinary action is considered necessary it may be taken irrespective of any on-going police/counter fraud investigation

9. Formal Disciplinary Measures

- 9.1. Formal action in accordance with this Procedure can only be taken by Managers with powers to do so, as identified in Appendix 3.
- 9.2. Formal action will encompass one of the following:
- First Written Warning (duration of 12 months from date of hearing)
 - Final Written Warning (duration of 2 – 3 years from date of hearing, see paragraph below)
 - Dismissal
 - Action short of dismissal e.g. demotion

- 9.3. For formal warnings, the following points should be articulated at the end of the hearing and followed up in writing in an outcome letter;
- Details of the incident in question
 - The level of warning and the period during which it will remain in force
 - The support which will be provided, if necessary/appropriate
 - Any procedural or departmental recommendations arising as a result of the case
 - The right of appeal against the warning and the process for doing so
- 9.4. Where, following the issue of a first or final warning, an employee has reached the specified standard, and/or no re-occurrence or further breach of disciplinary rules has taken place within the time limit of the warning, the disciplinary action will be regarded as 'spent'. However, in certain circumstances i.e. repeat of a similar offence, a 'spent' warning may still be considered when deciding upon an outcome. Advice should be sought from HR prior to this course of action.
- 9.5. **First Written Warning;**
- Where an offence has been committed that is not serious enough to require a final written warning or dismissal, or where there has been repetition of minor acts of misconduct which have been the subject of Informal Counselling within the preceding 12 months, the employee may be issued with a first written warning.
- 9.6. **Final Written Warning;**
- Where there has been repetition of acts of misconduct already the subject of a first warning, or instances of misconduct sufficiently serious not to be tolerated a second time, or where an employee commits unrelated misconduct when already the subject of a first warning, a final warning may be issued. A final written warning will usually remain on the employee's record for a period of two years from the date of the hearing. However, in cases relating to the direct care of patients the warning will remain for three years from the date of the hearing. Cases involving malicious intent/harm to patients may be one of the instances where a 'spent' warning may be reconsidered as per paragraph 9.4 above, as may repeated cases of bullying and harassment.
- 9.7. **Action Short of Dismissal;**
- 9.7.1 In some cases of gross misconduct, with the employees' agreement, alternatives to dismissal may be considered as follows:
- Downgrading (without pay protection)
 - Redeployment
 - Extension of the warning period
- 9.7.2 In such circumstances, these alternatives should be accompanied by a disciplinary sanction, usually a final written warning, and a development/action plan.
- 9.8. **Dismissal**
- Except in cases of gross misconduct no employee will be dismissed unless:
- The employee on a former occasion has been issued with a final written warning and that warning is currently on the employee's record. In this instance the dismissal will be with payment in lieu of notice.
 - An employee with a 'live' first written warning on file, may still be dismissed if the subsequent allegations are sufficiently serious in nature.
 - A full investigation of the latest incident has been carried out in order to establish the facts.

- The employee has been given the opportunity to state their case, accompanied, if so desired, by a representative.

9.8.1 Employees who are the subject of any formal action, including dismissal, will be provided with a written explanation within 7 calendar days, if practicable.

9.8.2 In the case of gross misconduct, this will be a summary dismissal without entitlement to notice. However, the individual will be entitled to be paid for any accrued outstanding annual leave (if annual leave taken exceeds the accrued entitlement to this point this will be reclaimed from the final salary).

9.8.3 The disciplinary panel will bear in mind the test of reasonableness which may be applied to their decision, when determining what sanction to apply.

10. Appeals against Disciplinary Action

10.1. It is recognised that an employee has the right of appeal against any formal disciplinary action as specified in this policy. It is important that appeals should be made and heard as quickly as possible.

10.2. Any appeal by the employee must be lodged in writing within 14 (calendar) days of the date of the outcome letter with the Director of Workforce. The employee will be given at least 7 calendar days' notice of the date of the appeal hearing.

10.3. Appeals to the Trust will be heard by an appeal panel. An appeal panel will be chaired by a Manager of a more senior grade to the Chair of the original hearing. A HR representative must also be present on all appeal panels.

10.4. The purpose of the appeal hearing shall be to review the decision of the original disciplinary panel. It is not to re-hear the original case. However if pertinent information, that was relevant but not available at the time of the original hearing, is provided, the panel should consider said information.

10.5. In the event of the withdrawal of a disciplinary action on appeal, all references to the original action will be expunged from the employees record.

10.6. Documentation to be utilised in an appeal by all sides will be exchanged at least 7 calendar days prior to the hearing.

10.7. Summary notes will be taken during appeal hearings and should be retained. A copy will be provided to the individual employee only upon request. Hearings will not be recorded unless in exceptional circumstances to be determined by the Director of Workforce.

10.8. The decision of the appeal hearing will be confirmed in writing to the employee along with confirmation that the decision concludes internal proceedings.

11. Where a Grievance is raised

Where an employee raises a grievance during a disciplinary process the disciplinary process may be temporarily suspended in order to deal with the grievance. However, where the grievance and disciplinary cases are related it may be appropriate to deal with both issues concurrently.

12. Confidentiality

- 12.1. The Trust will make all reasonable efforts to ensure the confidentiality of those employees who undergo the processes detailed in this procedure.
- 12.2. During an investigation employees must not discuss any aspect of the case with any of The Walton Centre NHS Foundation Trust's staff, agents or subcontractors, except their recognised Trade Union representative / workplace colleague, unless given permission to do so by their manager. Any breach of confidentiality could in itself be deemed as misconduct. This also applies to members of staff not directly involved in the proceedings.

13. Professional Misconduct

- 13.1. Within certain occupations, contravention of professional codes, standards, practice, laws or rules may lead to disciplinary action, including dismissal. The professional bodies may take action in addition to action taken by The Walton Centre NHS Foundation Trust, and the Trust has a duty to report incidents of professional misconduct to certain statutory bodies (e.g. General Medical Council (GMC), Nursing and Midwifery Council (NMC), Health and Care Professions Council (HCPC).
- 13.2. Following discussion with HR and relevant Director, the Medical Director/Director of Nursing and Governance will be responsible for notifying the relevant professional body.
- 13.3. If the employee is also employed or works for a separate organisation and the Trust has knowledge of this, it may be required to notify the other organisation of the disciplinary action taken.
- 13.4. Where the Trust believe that a healthcare professional poses a significant risk of harm to patients and there is a need to alert other organisations, or when they have reason to believe that a person will falsely present themselves as a healthcare professional, an Alert Notice should be raised. To request an Alert Notice, the Director of Nursing and Governance (for clinical staff) or Medical Director (for medical staff) should notify the National Clinical Assessment Service (NCAS), an operating division of the National Health Service Litigation Authority (NHS LA), who will then determine whether to issue an Alert Notice.

14. Cultural Ambassadors

- 14.1. The Trust is working in conjunction with the Royal College of Nursing (RCN) to incorporate the role of cultural ambassadors as part of its HR processes.
- 14.2. Research evidence demonstrates that Black and Minority Ethnic (BME) staff are more likely to be investigated or disciplined than white staff. Therefore the RCN has developed the cultural ambassador's programme in order to challenge unconscious bias and discrimination to ensure that our processes are fairly and consistently applied to meet the needs of our diverse staff
- 14.3. The Trust has trained a number of its staff to be cultural ambassadors and therefore where a BME member of staff is the subject of an investigation or formal hearing, wherever possible, a cultural ambassador will be assigned to the investigation team and formal hearing panel.

15. References

- ACAS code of conduct

16. Supporting Policies

- Sickness Absence Policy
- Capability Policy
- Maintaining High Professional Standards
- Grievance Policy
- Professional Registration Policy

Appendix 1 - Examples of misconduct

1. The breaches of conduct covered by this procedure fall into three main categories:
 - Minor misconduct
 - Serious misconduct
 - Gross misconduct
2. The following examples are wide-ranging to provide guidance to managers and staff but each of the lists are not exhaustive. Behaviour not specifically mentioned which is a clear breach of the established standard of conduct or Walton Way values and behaviours expected may still lead to formal action and the level of sanctions will always need to be determined based on the specific facts and circumstances of each individual case.

3. Minor Misconduct

A conversation with the employee will often result in an improvement in the employee's conduct (See Section 5.1 for Informal Resolution). If, however, informal action does not bring about the required improvement in the employee's conduct the employer can then take formal action.

Examples of minor misconduct where formal or informal action may be taken include:

- 3.1 Poor time-keeping
- 3.2 Poor attitude
- 3.3 Minor unauthorised absence
- 3.4 Minor insubordination
- 3.5 Minor infringement of rules/procedures, failure to follow policy
- 3.6 Failure to adhere to The Walton Way values and behaviours

4. Serious Misconduct

This is misconduct which, is not so severe as to warrant summarily dismissal, but is too serious to be considered as minor misconduct. Such offences may result in disciplinary action being taken:

- 4.1 Repetition of minor misconduct
- 4.2 Serious failure to follow Trust policies and procedures
- 4.3 Excessive or inappropriate use of a mobile phone
- 4.4 Disobeying reasonable instructions or non-cooperation with reasonable management activities or requests.
- 4.5 Neglect of duty/carelessness when carrying out assigned duties
- 4.6 Engaging in employment outside normal working hours which adversely affects work with the Trust
- 4.7 Being an accessory to a disciplinary offence
- 4.8 Persistent unauthorised absence from duty and/or poor timekeeping or being absent from the workplace during the working shift for an unauthorised reason
- 4.9 Unauthorised sleeping whilst on duty
- 4.10 Abusive, objectionable or insulting behaviour
- 4.11 Foul, abusive or aggressive behaviour
- 4.12 Disorderly conduct
- 4.13 Failure to maintain the required standard of dress or presentation

- 4.14 Making false allegations in bad faith against another employee
- 4.15 Repeated failure to attend mandatory training despite instruction
- 4.16 Failure of line management to ensure staff attend mandatory training
- 4.17 Serious failure to adhere to The Walton Way values and behaviours
- 4.18 Selling goods and services on Trust premises without prior permission
- 4.19 Accessing own health record

5. Gross Misconduct

Such offences may warrant summary dismissal without notice and without previous warnings:

- 5.1 Serious professional misconduct
- 5.2 The concealment or destruction of evidence of malpractice
- 5.3 Disorderly/offensive behaviour (including racist, sexist remarks or actions or other abusive comments)
- 5.4 Discrimination against staff, contractors or the public on the grounds of age, sex, ethnicity, disability, religion and belief, sexual orientation, gender reassignment, marital status or pregnancy and maternity
- 5.5 Repetition of serious misconduct
- 5.6 Breach of departmental rules resulting in actual or potential harm to self and others
- 5.7 Misuse or failure to safeguard confidential information and/or patient data
- 5.8 Deliberate misuse of Trust property or equipment
- 5.9 Wilful damage to Trust property
- 5.10 Unauthorised removal or possession of Trust property
- 5.11 Stealing from the Trust, its staff, contractors, patients or public or any other offence of dishonesty or deceit
- 5.12 Causing actual or potential harm to patients, visitors or colleagues
- 5.13 Ill treatment or wilful neglect of patients by staff
- 5.14 Deliberate or serious breach of confidentiality
- 5.15 Fraud, falsification of records, unauthorised access to records
- 5.16 Falsification of qualifications or information used in support of an application for any post
- 5.17 Assault (verbal or physical) or fighting, deliberate damage
- 5.18 Selling or supplying of alcohol or illegal drugs.
- 5.19 Consumption of alcohol or substances (which may or not be illicit), either prior to reporting for duty or whilst on duty, which may impair ability to undertake duties
- 5.20 Serious negligence causing loss, injury, or damage
- 5.21 Serious breach of security
- 5.22 Deliberately withholding information about criminal charges gained whilst in employment
- 5.23 Deliberate or serious breaches of Trust policies and procedures including failure to follow
- 5.24 Unprofessional relationship with patients
- 5.25 Serious breaches of the NHS Code of Conduct
- 5.26 Serious cases of bullying, harassment or victimisation of an employee or others including through the use of the internet and/or social networking sites
- 5.27 Failure to register with the appropriate professional body if mandatory or contractual
- 5.28 Loss of registration with professional body
- 5.29 Criminal conduct at work, or outside, which may have relevance to the duties and tasks the employee is required to perform

- 5.30 Misuse of e-mail/internet
- 5.31 Bringing the organisation into disrepute as a consequence of personal behaviour
- 5.32 Posting of derogatory or offensive comments that may bring the Trust into disrepute on any internet or social networking site
- 5.33 Sexual misconduct at work
- 5.34 Abuse of authority
- 5.35 Serious insubordination, such as refusal to undertake any duties as outlined in job description and/or follow a reasonable instruction from line manager. To be classified as serious insubordination there must be a significant impact of such a refusal.
- 5.36 Disobeying lawful and reasonable instructions or repeated refusal to undertake reasonable orders which could result in immediate serious consequences
- 5.37 Repeated breach of the smoking policy
- 5.38 Knowingly taking carers/parental/paternity/adoption leave for purposes other than supporting a child/dependant
- 5.39 Victimisation and/or maltreatment of an individual who has raised a whistleblowing concern
- 5.40 Unapproved external (non Trust) working during a period of sickness absence
- 5.41 Breach of trust and confidence
- 5.42 Gross or repeated breach of The Walton Way values and behaviours

6. Please note that some of the examples listed above may be upgraded or downgraded depending on the nature, extent, and severity of each case. The lists in 3, 4 and 5 above are not exhaustive.

Appendix 2 - Format for Disciplinary Hearing

1. Chair or HR representative to instigate introductions and explain format of hearing
 - a. Clarify regarding representation if necessary
 - b. Advise regarding note taking
 - c. Advise opportunity to take a break if required
2. Management side to present case
3. Panel to ask questions of Management side
4. Staff side to ask questions of Management side
5. Staff side to present case
6. Panel to ask questions of Staff side
7. Management side to ask questions of Staff side
8. Management side to sum up
9. Staff side to sum up
10. Advise whether decision to be made following adjournment or whether participants to be allowed to leave and outcome will follow in writing
11. Adjournment
12. If decision to be made following adjournment – all parties to return to hear outcome
13. Outcome given including notification of right of appeal
14. Follow up decision in writing

If applicable, witnesses will be called at either point 2 if they are being called by management, or point 5 if being called by staff side.

Format for Appeal Hearing

The format for an appeal hearing is as above, however Staff side present their case first and there will be no further internal right of appeal following the outcome

Appendix 3 - Scheme of delegation

LEVEL	POST(S)	LEVEL OF SANCTION
A	Chairperson	All warnings up to, and including, termination for employees managed in Category B and below
B	Chief Executive	All warnings up to, and including, termination for all employees managed in Category C and below
C	Directors/Medical Director (or equivalent level)	All warnings up to, and including, termination for all employees managed in Category D (including medical consultants)* and/or E (direct reports) and below
D	Deputy Directors and Divisional Directors (or equivalent level)	All warnings up to, and including, termination for all employees managed in Category level E (including all other medical staff) and below
E	Heads of Service and Assistant Divisional General Managers (or equivalent level)	All warnings up to, and including, termination for employees managed below Category E

N.B.

- i) Management may, in certain circumstances determine that it is necessary for the panel Chair to be at a higher level than is specified above
- ii) Conversely, there may be circumstances when the Chair needs to give delegated authority to a less senior member of staff e.g. Divisional Director to Assistant Divisional General Manager. An example of this would be if the original Chair is unable to participate in a hearing at short notice

***In the case of hearings for Consultants the panel is likely to include an external member of the medical profession.**

Appendix 4 - Equality Impact Assessment (EIA) Form

This section must be completed at the development stage i.e. before ratification or approval. For further support please refer to the EIA Guidance on the Equality and Diversity section of the Intranet.

Part 1

1. Person(s) Responsible for Assessment: Tracey Martin
2. Contact Number: 0151 556 3118
3. Department(s): Human Resources
4. Date of Assessment: 01/06/2018
5. Name of the policy/procedure being assessed: Disciplinary Policy
6. Is the policy new or existing?
- New Existing
7. Who will be affected by the policy (*please tick all that apply*)?
- Staff Patients Visitors Public
8. How will these groups/key stakeholders be consulted with? Staff Partnership Committee/Local Negotiating Committee
9. What is the main purpose of the policy? This policy details the procedure for managing employee conduct.
10. What are the benefits of the policy and how will these be measured?
- This Policy sets out a consistent approach to be taken for all disciplinary cases
11. Is the policy associated with any other policies, procedures, guidelines, projects or services?
- Sickness Absence Policy
 - Capability Policy
 - Maintaining High Professional Standards
 - Grievance Policy
 - Professional Registration Policy
12. What is the potential for discrimination or disproportionate treatment of any of the protected characteristics?

Protected Characteristic	Positive Impact (benefit)	Negative (disadvantage or potential disadvantage)	No Impact	Reasons to support your decision and evidence sought	Mitigation/adjustments already put in place
Age			None		
Sex			As above		
Race		Research evidence demonstrates that Black and Minority Ethnic (BME) staff are more likely to be investigated or disciplined than white staff		Nationally conducted research	Working with RCN on their Cultural Ambassador programme. A Cultural Ambassador will be assigned to each case that involves a BME member of staff
Religion or Belief			No impact		
Disability			As above		
Sexual Orientation			As above		
Pregnancy/maternity			As above		
Gender Reassignment			As above		
Marriage & Civil Partnership			As above		
Other			As above		
<p>If you have identified no negative impact for all please explain how you reached that decision and provide reference to any evidence (e.g. reviews undertaken, surveys, feedback, patient data etc.)</p> <p>13. Does the policy raise any issues in relation to Human Rights as set out in the Human Rights Act 1998? No.</p>					

If you have identified negative impact for any of the above characteristics, and have not been able to identify any mitigation, you **MUST** complete Part 2, please see the full EIA document on the Equality and Diversity section of the Intranet and speak to Hannah Sumner, HR Manager or Clare Duckworth, Matron for further support.

Action	Lead	Timescales	Review Date
<p><u>Declaration</u></p> <p>I am satisfied this document/activity has been satisfactorily equality impact assessed and the outcome is:</p> <p>No major change needed – EIA has not identified any potential for discrimination/adverse impact, or where it has this can be mitigated & all opportunities to promote equality have been taken <input checked="" type="checkbox"/></p> <p>Adjust the policy – EIA has identified a need amend the policy in order to remove barriers or to better promote equality <i>You must ensure the policy has been amended before it can be ratified.</i> <input type="checkbox"/></p> <p>Adverse impact but continue with policy – EIA has identified an adverse impact but it is felt the policy cannot be amended. <i>You must complete Part 2 of the EIA before this policy can be ratified.</i> <input type="checkbox"/></p> <p>Stop and remove the policy – EIA has shown actual or potential unlawful discrimination and the policy has been removed <input type="checkbox"/></p> <p>Name: Tracey Martin Date: 01/06/18</p> <p>Signed:</p>			

Appendix 5 - Policy approval checklist

The Disciplinary Policy is presented to the SPC / LNC for Approval.

In order for this policy to be approved, the reviewing group must confirm in table 1 below that the following criteria is included within the policy. Any policy which does not meet these criterion should not be submitted to an approving group/committee, the policy author must be asked to make the necessary changes prior to resubmission.

Policy review stage

Table 1

The reviewing group should ensure the following has been undertaken:	Approved?
The author has consulted relevant people as necessary including relevant service users and stakeholders.	Yes
The objectives and reasons for developing the documents are clearly stated in the minutes and have been considered by the reviewing group.	Yes
Duties and responsibilities are clearly defined and can be fulfilled within the relevant divisions and teams.	Yes
The policy fits within the wider organisational context and does not duplicate other documents.	Yes
An Equality Impact Assessment has been completed and approved by the HR Team.	Yes
A Training Needs Analysis has been undertaken (as applicable) and T&D have been consulted and support the implementation	Yes
The document clearly details how compliance will be monitored, by who and how often.	Yes
The timescale for reviewing the policy has been set and are realistic.	Yes
The reviewing group has signed off that the policy has met the requirements above.	Yes
Reviewing group chairs name: M. Gibney	Date: June 18

Policy approval stage

<input checked="" type="checkbox"/> The approving committee/group approves this policy.	
<input type="checkbox"/> The approving committee/group does not approve the policy.	
Actions to be taken by the policy author:	
Approving committee/group chairs name: M. Gibney	Date: July 18

Translation Service

This information can be translated on request or if preferred an interpreter can be arranged. For additional information regarding these services please contact The Walton centre on 0151 525 3611

Gellir gofyn am gael cyfieithiad o'r deunydd hwn neu gellir trefnu cyfieithydd ar y pryd os yw hynny'n well gennych. I wybod rhagor am y gwasanaethau hyn cysylltwch â chanolfan Walton ar 0151 525 3611.

هذه المعلومات يمكن أن تُترجم عند الطلب أو إذا فضّل المترجم يمكن أن يُرثب للمعلومة الإضافية بخصوص هذه الخدمات من فضلك اتصل بالمركز ولتوّن على
0151 5253611

نهم زانياريه دهكریت وهرگیپردریت كاتیک كه داوا بكریت یان نهگه بهباش زاندره دهكریت وهرگیپریت ناماده بكریت (رینك بخریت) ، بو زانيارى زیاتر ده باره ی نهم خزمه تگوزاریانه تكایه په یوهندی بکه به Walton Centre به ژماره تهلهفونى ۰۱۵۱۵۲۵۳۶۱۱ .

一经要求，可对此信息进行翻译，或者如果愿意的话，可以安排口译员。如需这些服务的额外信息，请联络Walton中心，电话是：0151 525 3611。