TRUST POLICY/PROCEDURE/STRATEGY
AMENDMENT SHEET

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SETS OUT THE TRUST POLICY AND PROCEDURE WHEN AN EMPLOYEE’S CONDUCT IS
CONSIDERED TO BE UNSATISFACTORY. CONDUCT ISSUES RELATING TO MEDICAL
STAFF MUST BE MANAGED IN ACCORDANCE WITH THE TRUSTS POLICY AND
PROCEDURE FOR HANDLING CONCERNS ABOUT DOCTORS AND DENTISTS CONDUCT
AND CAPABILITY.

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<tr>
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SIGNATURE

ASSOCIATE HR DIRECTOR

CHIEF EXECUTIVE

29 April 13

This Policy and Procedure has general application throughout Lancashire Teaching Hospital NHS Trust. It represents the governing principles outlined within the document which are fully supported in every respect by the Board of Directors.

All members of staff are required to adhere to the principles involved as outlined within this document, together with any related procedures.

This Policy and Procedure was produced in consultation with:

- Trust Negotiating & Consultative Committee (TJNCC)
- Local Negotiating Committee
- Sub Groups of the TJNCC/LNC
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DISCIPLINARY PROCEDURE

1. PROCEDURE AIM

The disciplinary process aims to ensure uniformity and fairness of treatment between individuals and staff groups. The policy and procedure provides a framework to enable effective management of unsatisfactory conduct. The procedures should not be viewed primarily as a means of imposing sanctions; rather they should be seen as a way of encouraging improvements amongst employees whose conduct is unsatisfactory. However, where problems continue, or a first instance of misconduct is ‘gross misconduct’, this may lead to termination of employment;

- to ensure that disciplinary matters are handled in accordance with the ACAS Code of Practice (2009).
- to ensure management, staff and staff organisations are aware of their rights and obligations in respect of disciplinary and appeals processes;
- to ensure fairness and consistency of treatment;
- to safeguard the quality and efficiency of services;
- to specify the disciplinary rules and the disciplinary action which may be taken and by whom.

2. SCOPE

The policy applies to all Trust employees. Conduct issues relating to doctors and dentists should initially be managed in accordance with the Policy and Procedure for Managing Doctors and Dentists Conduct and Capability.

3. PRINCIPLES

The procedure applies to all employees of Lancashire Teaching Hospitals NHS Trust where matters of misconduct are concerned. However, where there are allegations of misconduct against a doctor or dentist this should be referred to the Policy and Procedure for Handling Concerns about Doctors’ and Dentists’ Conduct and Capability.

No disciplinary action will be taken against an employee until the case has been fully investigated and it is concluded on the balance of probability that the employee committed the action in question.

At every stage in the procedure the employee will be advised of the nature of the complaint against them and will be given the opportunity to state their case before any decision is made.
Throughout this procedure, staff may be represented by a Trade Union accredited representative or by a fellow employee in accordance with the ACAS Code of Practice.

No employee will be dismissed for a first breach of discipline except in the case of gross misconduct when the penalty may be dismissal without notice or payment in lieu of notice.

An employee will have the right to appeal against any disciplinary action.

No disciplinary action will be taken against a trade union representative until the circumstances of the case have been discussed with a senior trade union representative or full time official.

All staff are expected to adhere to the principles of the Trust’s Codes of Conduct for Employees. In addition, in the case of those occupational groups for whom there is a national statutory body responsible for professional training and professional conduct, the requirements of such a statutory body must be followed.

Offences committed outside employment should not be treated as automatic reasons for disciplinary action. The main considerations should be whether the type of offence is one that makes the employee unsuitable for his or her continued employment.

It is for the Trust to decide upon the delegation of authority for administering the disciplinary procedure and this is identified within the attached Appendix B. The procedure will be made available to all employees on appointment and the responsible line manager for the employee will be identified within the post’s job description.

4. SUSPECTED FRAUD OR CORRUPTION

Upon receipt of an allegation any potential criminal investigation should take precedence. Internal investigation may run in parallel, however, advice from LCFS should be sought prior to the commencement of any internal investigation.

5. ACTION IN THE EVENT OF POLICE ENQUIRY, LEGAL OR PROFESSIONAL PROCEEDINGS

The Trust will consider whether it is necessary to invoke the disciplinary policy where a member of staff is charged with, or convicted of a criminal offence(s) related or unrelated to their employment. This decision will take into account whether the charge or conviction is one that is directly relevant to their employment or makes them unsuitable for the type of work.

Disciplinary proceedings, including dismissal, may take place in advance of any court hearing where the Trust has sufficient evidence to reach a conclusion in accordance with the normal standard(s) established.
6. REFERRAL TO INDEPENDENT SAFEGUARDING AUTHORITY AND/OR PROFESSIONAL REGULATORY BODY.

Anyone dismissed under this policy or suspected of causing harm or risk of harm to people using the services of the Trust will be referred to the Independent Safeguarding Authority and to the relevant professional regulatory body.

7. DUTIES AND RESPONSIBILITIES

**Board of Directors**

The Board of Directors hold overall responsibility for the management of the Policy and Procedure through its Executive Directors.

**Managers**

Are responsible for:

- Ensuring that the policy and procedure is applied consistently and in a way that does not unfairly discriminate.

- Ensuring that staff are aware of the policy and procedure and understand the rules relating to conduct and the likely consequences if these rules are broken.

- Ensuring that employee are provided with copies of any departmental rules

- Ensuring that appointed investigating officers have both the skills and capacity to conduct a thorough investigation in the specified timeframes.

- Ensuring that where Fraud or Corruption is suspected, matters are immediately reported to the Trusts Local Counter Fraud Specialist (LCFS) and not investigated further until directed by the LCFS.

**Human Resource Directorate**

Are responsible for:

- Ensuring that managers are provided with appropriate advice and guidance on the use of this procedure.

- Providing overall monitoring of disciplinary matters across the Trust.

- Providing support to investigating officers during the investigation and any subsequent disciplinary hearings.

- Providing HR advice and support to disciplinary panels.

- Ensuring that this policy complies with legislative requirements, the ACAS Code of Practice and good employment practice.
Employees

Are responsible for:

- Ensuring they understand the rules relating to conduct.
- Ensuring they abide by the Trusts Code of Conduct.
- Report to their line manager the facts of any criminal charges or cautions not related to work (with the exception of minor motoring offences) and advise on the outcome.
- Make themselves available either in relation to the ongoing investigation or, if appropriate, a formal hearing whether in work or when suspended.
- Advising the investigating/suspending officer or any other NHS duties they may have outside of the Trust.
- Co-operate fully with any investigation whether as a witness or the individual who the allegations have been made against.
- Fully comply with the terms of any suspension.

Investigating Officers

Are responsible for:

- Obtaining all the relevant information and taking all reasonable steps to determine the validity and accuracy of the complaint/allegation made against the employee, in accordance with the Trusts guidelines for conducting investigations. (Appendix C)
- To keep the employee informed throughout the process.
- Undertaking and completing the investigation in a timely and professional manner.
- Preparing a report with recommendation for the commissioning manager.
- Presenting at a hearing if appropriate.

8. COUNSELLING

All supervisors and managers are required to discuss informally with an employee all shortcomings, which they may have before taking action under this procedure, unless the matters causing concern are of a sufficiently serious nature to justify formal action. Such informal discussions may take place on more than one occasion and are not regarded as forming part of this procedure. The emphasis of informal action will be on agreeing corrective action without recourse to the formal procedure. The manager should keep a note of the meeting.
9. **POLICE INVOLVEMENT**

Where an alleged criminal incident has occurred, advice may be sought from the Chief Executive or nominated deputy, to determine whether the incident should be reported to the police on behalf of the Trust.

Where an incident has been reported to the police by a patient/relative/employee, etc. this should be brought to the attention of the relevant General Manager/Head of Service.

Any police investigation and the employer’s investigation are separate and the burden of proof in each, different. Where an employee is charged with a criminal offence the employer still has a responsibility to conduct its own investigation and take action accordingly. Each situation needs to be considered individually depending on the nature of the offence, whether or not it is related to work and the likely duration of the Police investigation.

In the case of allegations of fraud, the local counter fraud officer will be notified.

10. **A NO FAULT APPROACH TO CASES INVOLVING THE TREATMENT OF PATIENTS**

It is important for the Trust to minimise risk across all aspects of its activity. Incident reporting is a vital means of knowing where risks are occurring. Only by risks being reported can systems, equipment or training be received and measures put in place to prevent a recurrence. There is also provision for staff and officers to raise concerns under the *Whistleblowing Policy*. In this way a learning culture can be fostered within the organisation.

With the above principle in mind the following additional guidance is given as the Trust’s desired approach with regard to isolated or single untoward incidents.

All staff have a duty to report untoward incidents, which have occurred, both in respect of their own acts or omissions and also those of others, which come to an individual’s attention.

In cases involving allegations of personal negligence or errors of judgement in respect of a patient’s treatment and procedures arising there from, the manager shall assess, as potentially mitigating factors, the following: -

- action taken by an employee to alert his/her line manager that a ‘mistake’ or ‘error’ had occurred for the purpose of trying to initiate whatever remedial action is necessary for the patient;
- the nature of the incident;
- the relevant professional standards, codes of practice or general awareness of the normal standard of care in that case;
• the extent to which the incident could have been prevented, or checks done as to key elements of a decision by another person;

• any previous incident or pattern of behaviour on related matters.

• any action that the Trust could have taken to avoid the incident.

The above considerations shall apply when considering whether to initiate formal disciplinary action, or as mitigating factors within the normal operation of the disciplinary procedure.

11. PROCEDURE

SUSPENSION

Suspension should not be undertaken lightly and its impact on the individual should not be underestimated. Guidelines for managers involved in the suspension of staff are available on the HR Intranet site and are appended to this document.

In such instances where suspension is being considered, the authorised manager, should, where practical consult a Human Resource Manager for advice. Suspension on full pay shall only be implemented by an appropriate senior manager in accordance with Appendix B.

Suspension is not disciplinary action but a holding measure whilst an investigation is carried out. Consideration needs to be given firstly to the alternatives, which may be available, e.g. temporary transfer to another area or different duties. Suspension should be considered when it is necessary to protect the care of patients or service users, safeguard the employee against further allegations or protect the integrity of the investigation.

If suspension is required the authorised manager must advise the employee accordingly, outlining the context of the allegations/concerns. Wherever possible this should be done in the presence of the individual’s staff representative or work colleague. The suspension should be confirmed in writing immediately.

In such cases when it is necessary to suspend a representative of a recognised Trade Union/Staffing Organisation, the circumstances must be reported to the full-time officer immediately.

Every effort will be made to conduct and conclude the investigation within a time limit of no more than 28 working days. If suspension from duty lasts for twenty-eight days or more and no disciplinary charges have been made and communicated in writing, the employee shall have a right to appeal to the Chief Executive against continuation of suspension. The employee will be updated on any continuation of the suspension on a monthly basis.

The employee should be asked whether he/she undertakes paid professional work outside the Trust. If this is confirmed, he/she should be advised that this may be reported to the appropriate professional body and an alert letter may be requested.
12. **DISCIPLINARY HEARING**

A formal disciplinary hearing will not be convened until the manager/investigating officer is satisfied that, following thorough investigation, there is a prima facie case to be answered and the advice of the Human Resources Department has been sought. Guidance on investigations is included at Appendix C.

When it has been decided to hold a disciplinary hearing the employee will be notified by the designated manager in writing of the complaints/allegations against him/her and, where appropriate, what disciplinary rules appear to have been breached. He/she will be given at least 10 working days written notice of the date and time of the hearing, to enable full discussion with his/her representative. Any witness statements and evidence will also be forwarded at this time. The employee should notify the designated Human Resources Officer of any witnesses who will be attending on his/her behalf. Similarly, any copies of statements should also be forwarded. The employee will be advised of his/her right to representation by a staff representative, full-time officer or by a fellow employee of his/her choice. Witnesses may also choose to be accompanied at the hearing or at any part of the investigation. Where an employee has difficulty securing representation or preparing a defence to the case, the timescale may be extended with mutual agreement.

No disciplinary hearing shall be held or action taken against a recognised representative of a Trade Union/Staff Organisation until the circumstances of the case have been discussed with the full-time officer of the organisation concerned.

13. **CONDUCT OF FORMAL DISCIPLINARY HEARINGS**

The disciplinary hearing shall be chaired by the appropriate manager in accordance with the delegation of authority as set out in Appendix B. Disciplinary panels should consist of three panel members one of which should be an HR Officer who will also act as secretary to the panel. The manager will determine whether professional advice and/or another manager should be included on the panel in giving consideration to any circumstance.

In complex cases there will be the facility for both presenters to be supported. This will be agreed prior to the hearing.

The following procedure shall be observed at a disciplinary hearing.

13.1 **The management representative shall state the case in the presence of the alleged offender (the ‘employee’) and his/her representative and may call witnesses.**

13.2 **The ‘employee’ and his/her representative shall have the opportunity to ask questions of the management representative and his/her witnesses.**
13.3 The panel members shall have the opportunity to ask questions of the management representative and his/her witnesses.

13.4 The management representative shall have the opportunity to re-examine the witnesses on any matter referred to in the examination by members of the disciplinary panel, the ‘employee’ and/or his/her representative.

13.5 The ‘employee’ or his/her representative shall put his/her case in the presence of management’s representative and may call witnesses.

13.6 Management’s representative shall have the opportunity to ask questions of the ‘employee’, his/her representative and witnesses.

13.7 The panel members shall have the opportunity to ask questions of the ‘employee’, his/her representative and/or witnesses.

13.8 The ‘employee’ or their representative shall have the opportunity to examine the witnesses on any matter referred to in the examination of the disciplinary panel or management’s representative.

13.9 Management’s representative and the ‘employee’ or his/her representative shall have the opportunity to sum up their case if they so wish. The ‘employee’ or his/her representative shall have the right to speak last. In the summing up neither party may introduce any new evidence.

13.10 The panel may at their discretion adjourn the hearing in order that further evidence may be produced by either party.

13.11 The panel members will request both parties to withdraw so that they may consider the information placed before it. Whilst every effort will be made for the decision to be communicated on the day of the hearing, the panel may reserve the right to reconvene to discuss matters as soon as possible thereafter. The decision should be given face to face wherever possible.

13.12 The Chair of the Disciplinary Panel will confirm in writing the decision of the panel and will advise of the right to appeal.

**Removed from Previous issue:** The Chair of the Appeal panel will confirm in writing the decision of the Appeal Panel and that there is no further right of appeal.

14. **DETERMINING THE DISCIPLINARY OUTCOME**

When determining the disciplinary action to be taken, the Disciplinary Panel must bear in mind the need to satisfy the test of reasonableness in all the circumstances. As far as possible, account should be taken of mitigating circumstances.

In reaching a decision the panel should consider the following questions: -

- Has there been as much investigation as is reasonable in the circumstances?
- Have the requirements of the disciplinary procedure been complied with?
- Has sufficient regard been paid to any explanation put forward by the employee?
- Is there a case to answer?
- Are there reasonable grounds to sustain a prima facia case on the balance of probabilities?
- Is the misconduct sufficiently serious to justify the disciplinary action that is being considered?
- Is the decision free from bias?
- Has mitigation, put forward on the employee’s behalf, been considered?
- Is the decision within the band of reasonable responses of a reasonable employer, in the circumstances?

When it is established that an individual is blameworthy the following forms of disciplinary action are allowed for in the procedure:

- First written warning
- Final written warning
- Final written warning including downgrading and/or transfer
- Dismissal

The employee will be provided with a letter signed by the Chair of the Panel or authorised manager within 7 working days of the disciplinary hearing. The letter will detail the disciplinary action taken; contain a clear statement of the reasons for the action against the employee, together with details of his/her right to appeal. Formal disciplinary action can only be taken by a panel convened under the disciplinary procedure.

15. DISCIPLINARY ACTION

15.1 First Written Warning

A first breach of a general disciplinary rule should normally initially result in counselling. In cases of breaches of general disciplinary rules serious enough to require disciplinary action or where counselling has failed to secure the required improvement, formal disciplinary action may need to be taken which may result in a first written warning. Such a warning may only be issued by an authorised manager following a disciplinary hearing.

The warning shall include:

(a) A clear statement of the reasons for the action taken, an indication of what is expected in the future and details of the employee’s right of appeal.

(b) An explanation that it is a formal warning to be entered onto the employees record with the notification that further offences will result in more serious disciplinary action unless there are mitigating circumstances.
(c) Notification that the warning will remain current for a period of 12 months and will be disregarded for disciplinary purposes after this period.

Where an employee commits further misconduct within the above timescale then the panel will need to be aware of this and take into account the previous misconduct.

15.2 Final Written Warning

A repeated breach of the general disciplinary rules may result in a final written warning, where there is a current first written warning in force. Alternatively, a first and final written warning may be issued where an offence is serious enough not to be tolerated a second time, but does not justify dismissal. Such a warning may only be issued by a duly authorised manager.

A final written warning shall include: -

(a) A clear statement of the reasons for the action together with an indication of the right to appeal and where appropriate an indication of what is expected of the individual in the future.

(b) An explanation that it is a final written warning which will be entered on the employee’s record and notification that any further misconduct may result in dismissal.

(c) Notification that the warning will remain current for a period of 12 months and will normally be disregarded for disciplinary purposes after this period.

In exceptional circumstances, ie where the panel would have dismissed but for mitigation, the disciplinary panel may choose to issue a final written warning for 2 years.

Where an employee commits further misconduct within the above timescale the panel will need to be aware of and take into account the previous misconduct.

15.3 Dismissal or Other Penalty

Where an employee’s conduct still fails to improve or where an employee is found guilty of gross misconduct, dismissal or some other action such as downgrading or transferring with or without downgrading may be taken.
15.3.1 Dismissal Following a Written Warning

Except in cases of gross misconduct, where an employee has committed a further offence following the issue of a final warning, he/she shall not be dismissed unless:

(a) There has been a full investigation of the latest incident and there is a reasonable belief that the allegations are founded.

(b) The employee has been given an opportunity to state his/her case, accompanied if desired by his/her staff representative.

(c) The employee has been advised of their right to appeal.

15.3.2 Dismissal Following Gross Misconduct

In cases of gross misconduct leading to summary dismissal the following conditions must be satisfied:

(a) Following full investigation, the employee has been given the opportunity to state his/her case, accompanied if so desired by his/her representative and there is a genuine belief and reasonable grounds for that belief in the guilt of the employee of that misconduct at that time.

(b) The nature of the offence is such that it affects the relationship between the employee and the Trust or between the employee and the manager, colleague, patient, client or member of the public with whom he/she might have contact in the performance of his/her duties, to such an extent that the employee can no longer be reasonably retained in their present post or other suitable alternative employment within the organisation.

(c) The employee has been advised of their right to appeal.

16. RIGHT OF APPEAL AND CONDUCT OF APPEAL HEARING

An employee’s right to appeal against any disciplinary sanction is contained in the Acas Code of Practice and is essential to the principles of natural justice.

16.1 Appeals Process

Employees will be advised of their right to appeal in writing where appropriate and will be advised that they should lodge their appeal in writing to the Workforce Director within 14 days of written receipt of notification of the outcome of the disciplinary hearing. The employee should make clear his or her grounds of appeal (see below) and will be advised of their statutory right to be accompanied at the appeal meeting.
On receipt of the appeal the employee will be invited to attend an appeal hearing which should normally take place within 6 weeks of receipt of the appeal request. He or she will be given at least 10 working day’s notice of the date of the hearing. If the appellant is unable to attend the date arranged for the hearing and mitigating circumstances are offered then an alternative date will be arranged. Unless there are extenuating circumstances failure to attend a second arranged meeting will result in the employee forfeiting their rights to an appeal and the disciplinary sanction will stand.

16.2 Grounds for Appeal

There are three different grounds for appeal — the facts, the decision or the procedure.

i) Appeals against the facts

The appeal panel will re-evaluate all the evidence to see if the original decision can be substantiated.

If an appeal is against the facts and is brought because of new evidence arising since the original decision, the following options apply:

- hear the new evidence in the appeal applying the same principles as for a disciplinary hearing
- reconvene the original disciplinary panel to enable their consideration of the new evidence

The chair of the appeal panel will determine the route to be taken following receipt and assessment of the statement of case.

ii) Appeals against the decision

If the employee does not dispute the facts, but wishes to challenge the disciplinary penalty, the appeal panel must take into account all the comments of the employee, and explore all the relevant issues. The employee may introduce new surrounding or mitigating circumstances which could affect the decision. The appeal panel will not rehear the whole case again but will consider the outcome and sanction by the original panel, hear new mitigation and then make a decision.

iii) Appeals on procedural grounds

If the procedural fault is minor and does not affect the fairness of the decision, the Workforce Director may make the decision not to accept the appeal and consequently the appeal will not be heard. A significant procedural error will be corrected by referral to another disciplinary panel— not an appeal panel as defined below.
16.3 Appeal Panels

The appeal hearing will comprise of three members chaired by the next level of senior management above the manager and will include a HR representative. Where the appeal is against dismissal the panel will comprise of three Executive Directors of the Trust.

A secretary to the appeal panel will be appointed and will be in attendance to support the panel.

The members of the appeal panel must not have been directly involved in the circumstances leading to the disciplinary action. No officer of the Trust who has been directly involved in the case at any point shall be present at the appeal hearing as secretary to the appeals panel or in any other capacity, except as witness, or as the representative of management.

16.4 Preparation for Appeal

Management and the appellant (or their representative) must prepare a written statement of case based on the grounds of appeal (paragraph 16.2) prior to the hearing. This should include any relevant papers and should be sent to the Associate Workforce Director for circulation to all parties 5 working days prior to the hearing.

16.5 Procedure of Appeal Hearing

The procedure of the appeal hearing will be as follows:

The chair of the appeal panel will introduce those present and clarify that the meeting is an appeal hearing. The chair will confirm the nature of the appeal and explain that the purpose of the hearing is to evaluate whether the original decision was fair and reasonable based on all the circumstances of the case available at that time.

a) The appellant will state their grounds for appeal in accordance with paragraph 16.2. Witnesses will not be called unless the decision has been made by the chair of the panel to allow the appeal hearing to consider new facts.

b) Members of the appeal panel will have the opportunity to ask questions of the appellant and/or their representative. If witnesses are called the appeal panel will be able to ask questions.

c) Management will be able to ask questions of the appellant and/or their witnesses if present.

d) The appellant will be able re-examine their witnesses.
e) Management will state the management case. Witnesses will not be called unless the decision has been made by the chair of the panel to allow the appeal hearing to consider new facts.

f) Members of the appeal panel will have the opportunity to ask questions of management and witnesses if called.

g) The appellant will be able to ask questions of the management representative or their witnesses.

h) Management will be able to re-examine their witnesses.

i) The management representative and the appellant and/or their representative shall have the right to sum up. The appellant and/or their representative will have the right to speak last. In summing up neither party shall introduce any new matter.

j) The appeal panel will adjourn to consider the information heard. They may, as appropriate recall both parties to clarify points of uncertainty on evidence already given. If a recall is necessary, both parties shall return.

k) The decision of the panel may:

- uphold the original decision
- invoke a new sanction (of either higher or lower magnitude)
- allow the appeal and overturn the original decision

l) The outcome of the appeal hearing will be confirmed in writing within 7 days of the hearing.

Completely Removed:
The importance of having a thorough appeals process is sometimes underestimated. The purpose of the appeal is not merely to review the decision of the disciplinary panel and ensure they acted fairly and reasonably, but should take the form of a complete rehearing. Properly conducted, the appeals process can ‘cure’ mistakes or procedural errors made at an earlier stage in the disciplinary process. Therefore, the witnesses who appeared at the original disciplinary hearing and/or their statements must be presented to the Appeal Panel, in order for all the evidence to be considered. The appeal may address matters that are significant and relevant to the case and that the Disciplinary Panel should reasonably have known. If new evidence from either party is submitted prior to the appeal hearing, the Chair of the appeal hearing will decide whether new evidence is sufficient to warrant referral back to the original Disciplinary Panel for consideration. It is accepted that these procedures will in no way preclude an employee or a representative acting on his/her behalf, registering an appeal against dismissal with the appropriate Employment Tribunal within the appropriate statutory limits which is presently 3 months of the effective date of dismissal, although it may be that such action would carry with it a request for any hearing by the tribunal to be held in abeyance pending the hearing of an appeal by the Trust. In this way, if the appeal to the Trust is not successful the right of appeal to the Employment Tribunal is not prejudiced. It is important that appeals should be made and heard quickly. An employee who is the subject of disciplinary action, including dismissal, will be provided, within 7 working days, with a notice in writing stating the nature of the disciplinary action, the reasons for the disciplinary action together with a summary of the alleged facts on

Continued...
APPENDIX A

DEFINITIONS

1. ‘Trust’ means the Lancashire Teaching Hospitals NHS Trust.

2. ‘Chair’ refers to:
   - Chair of the Disciplinary Panel
   - Chair of the Appeal Panel

   depending on the level of staff and stage of the disciplinary process.

3. Where the term ‘staff organisation’ is used it is meant to apply to any Trade Union or professional organisation recognised nationally for negotiating purposes.

4. Recognised representative means a shop steward, branch official or representative appointed and accredited by a staff organisation and officially recognised by the Trust.

5. ‘Full time officer’ means any official employed by a staff organisation to represent its members. The term shall also mean some other official nominated by that body to act in place of a full time official.

6. ‘Suspension on full pay’ means the gross pay an employee would have received had he/she been working his/her normal hours during the period of suspension.
### APPENDIX B

#### DISCIPLINARY ACTION – DELEGATION OF AUTHORITY

<table>
<thead>
<tr>
<th>Group</th>
<th>Category of Staff</th>
<th>First Written Warning</th>
<th>Final Written Warning</th>
<th>Suspension</th>
<th>Dismissal</th>
<th>Appeals Against Dismissal</th>
</tr>
</thead>
<tbody>
<tr>
<td>A</td>
<td>Chief Executive</td>
<td>Chair</td>
<td>Chair</td>
<td>Chair</td>
<td>Panel of 3 Non Executive Directors</td>
<td>Trust Board (Non Executive Directors not previously involved)</td>
</tr>
<tr>
<td>B</td>
<td>Senior Staff as defined by ARTE</td>
<td>Chief Executive</td>
<td>Chief Executive</td>
<td>Chief Executive</td>
<td>Panel of 3 including Non Executive Directors, and Chief Executive</td>
<td>Trust Board (Non-Executive Directors not previously involved)</td>
</tr>
<tr>
<td>C</td>
<td>Staff reporting direct to Senior Staff (Group B)</td>
<td>Senior Staff Member (Group B)</td>
<td>Senior Staff Member (Group B)</td>
<td>Senior Staff Member (Group B)</td>
<td>Panel of 3 Senior Staff Members (Group B)</td>
<td>Panel of 3 Senior Staff Members (including Chief Executive as Chair)</td>
</tr>
<tr>
<td></td>
<td>e.g. Clinical Directors</td>
<td>Medical Director</td>
<td>Medical Director</td>
<td>Medical Director</td>
<td>Medical Director</td>
<td>Medical Director</td>
</tr>
<tr>
<td></td>
<td>Divisional Directors</td>
<td>Director of Service</td>
<td>Director of Service</td>
<td>Director of Service</td>
<td>Director of Service</td>
<td>Director of Service</td>
</tr>
<tr>
<td></td>
<td>Heads of Nursing</td>
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<td></td>
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<tr>
<td></td>
<td>Director of Pharmacy Associate/Deputy Directors</td>
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<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>D</td>
<td>Staff reporting to Senior Staff in Group C</td>
<td>Senior Staff Member (Group C)</td>
<td>Senior Staff Member (Group C)</td>
<td>Senior Staff Member (Group C)</td>
<td>Panel of 3 Senior Staff Members (Group C)</td>
<td>Panel of 3 Senior Staff Members (including Chief Executive as Chair)</td>
</tr>
<tr>
<td></td>
<td>e.g. General Manager</td>
<td>Clinical Director</td>
<td>Clinical Director</td>
<td>Medical Director</td>
<td>General Manager or Clinical Director or Director or Associate/Deputy Director (Group C/D)</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Head of Service</td>
<td>Director at Management</td>
<td>Director at Management</td>
<td>Board Executive</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>Consultants</td>
<td>Team Level</td>
<td>Team Level</td>
<td>Director</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>Medical Staff</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>E</td>
<td>All other staff</td>
<td>Clinical Manager/ Departmental Head</td>
<td>Clinical Manager/ Departmental Head</td>
<td>Clinical Manager/ Departmental Head</td>
<td>General Manager or Clinical Director or Director or Associate/Deputy Director (Group C/D)</td>
<td>Panel of 3 Senior Staff Members (including Chief Executive as Chair)</td>
</tr>
</tbody>
</table>

- **For all other appeals involving staff from lower grades, the Chief Executive will not be required to Chair the appeal panel. Such panels will consist of 3 Senior Staff as defined by the RATS Committee.**
- **Members of the appeal panels must have had no prior involvement in the case.**

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**Question:** What other appeals can take place as this current policy is NOW ONLY in relation to Disciplinary Hearing Decisions! All other appeal panels have been removed from access to employees including medical staff in this major re-write (With, according to the Chairman, Union approval)? So why is this left in?
NOTES REGARDING DELEGATION OF AUTHORITY

1. The Manager should take note of any procedure separately provided for in respect of a staff group, e.g. medical staff.

2. The Manager should determine whether professional advice is necessary in giving consideration to any circumstances.

3. The Medical Director has specific responsibility for proceeding in any allegations involving a lack of competence/conduct of Medical Staff.

4. A Human Resources Officer must be involved in the hearing.

5. In the absence of a Manager an issue can be heard by referring upwards (or at Director/General Manager/Head of Service level to another at Director/General Manager/Head of Service for the conduct of hearings).

6. The Manager conducting the hearing must play no part in the detailed investigation of the allegations.

7. The use of different terms to describe managerial levels, e.g. Supervisor, Departmental Head, Line Manager, Director, should be interpreted for each case and the appropriate Manager identified.

8. Appeal Hearings are provided for in the Trust’s Disciplinary Procedure.
APPENDIX C

GUIDANCE AND GOOD PRACTICE IN THE INVESTIGATION OF DISCIPLINARY ISSUES

THE ROLE OF THE INVESTIGATING OFFICER

- Obtain the facts surrounding the allegations.
- Establish whether there is a case to answer.
- Produce an investigation report with recommendations.
- Present at a hearing if appropriate.

KEY PRINCIPLES

- An audit trail should be established so that the process of the investigation and the documents and notes associated with it are fully catalogued and provide a suitable audit trail.
- The process of investigation and the discussion with all parties should remain confidential.
- The Investigating officer should remain neutral and objective throughout the investigation and at any subsequent hearing.
- The Investigating Officer should seek collaboration and negation.

WHY IS THE INVESTIGATION SO IMPORTANT?

As well as the basis of natural justice, a full and reasonable investigation is one of the key requirements that will need to be fulfilled to satisfy an Employment Tribunal that a dismissal has been fair. Similarly this will also be tested by an Appeal Panel established by the Trust, when considering any disciplinary action that has been taken, or in establishing whether a harassment complaint against an individual is justified.

WHAT ARE THE INVESTIGATING OFFICER'S RESPONSIBILITIES?

The investigating officer will normally be the line manager of the individual against whom the allegations have been made. The investigating officer should:-

- Seek advice at the beginning of the process from a Human Resources Manager.
- Not have had any prior, direct involvement in the issue being investigated.
- Access relevant documents, staff and, where appropriate, patients.
- Ensure the investigation is carried out fairly, within timescales and that contact is maintained with the individual whilst on suspension.
WHAT DOES THE INVESTIGATING OFFICER NEED TO DO?

The investigating officer first needs to consider who is going to support them in the investigation. This will clearly depend on their own experience and the nature of the issue being investigated.

A Human Resources Manager/Advisor would normally be available to assist in the investigation and if the matter proceeds to a hearing a different Human Resources representative will support the Panel.

INITIAL ACTION

Ascertain whether it is a possibility that the individual could have committed the misconduct. Check time/duty sheets, records, disciplinary procedure, etc. Identify who else was around and anyone else involved in the allegation that you may need to interview as a witness. It is important to logically plan the investigation process at the outset, as once underway it often becomes more involved and many other issues arise to detract form the actual incident being investigated.

If not already done so, consider whether it is necessary to suspend the individual. Suspension should never be undertaken lightly and alternatives such as temporary transfer should also be considered. Suspension may be necessary to protect the integrity of the investigation; protect patients or the service; or protect the individual from further allegations. Advice should be sought wherever possible before making a decision to suspend.

If the decision to suspend is made the individual should have the opportunity to be accompanied by a friend or trade union representative if available. They should be advised of the allegation and asked not to make contact with those staff or patients involved in the investigation.

They should also be advised not to undertake any other paid work during the period of suspension without first discussing this with the investigating officer as there may be a referral to his/her professional body. A condition of suspension is that the individual must be available for further discussions/interviews during the period of suspension. Contact telephone numbers and addresses therefore need to be confirmed.

The suspension interview is normally just that arrangements would need to be made subsequently to interview the individual about the circumstances surrounding the allegation.

The investigating officer could at this stage ask the witness/es to provide signed and dated statements about their involvement or actions at the time of the incident. However, this may not always be the most effective method of investigation as he/she may receive irrelevant statements, red herrings or selective accounts.

It is therefore essential that all relevant witnesses are actually interviewed as part of the investigation. Notes of the meeting will be taken and these will be sent to the witness to
agree as a correct record of the interview. (Information on carrying out investigation interviews is available from the Human Resources Directorate.)

Consider what documentary evidence may be needed, such as clinical notes, timesheets, financial records, consultant reports, etc.

Is there a need to gain specialist advice or opinion? This will depend on the nature of the allegation, but may include internal audit, pharmacy (on the impact or side effects of medication), consultant report or others.

It is usually pertinent to interview the individual, against whom the allegation has been made, at the outset of the process and again after the other witnesses have been seen. This enables any gaps or discrepancies to be raised and gives the individual the opportunity to state their perspective. They would have the right to be accompanied by a trade union representative at these meetings, but not represented. If the trade union representative advises the employee not to participate in the process at this stage, this will mean that the first opportunity the employee will be able to make his/her case will be at the disciplinary hearing.

ASSIMILATING INFORMATION

Once all the investigative interviews have been carried out, documentary evidence gathered and subsequent leads followed up, it will be necessary to assimilate all the information to build a picture of likely events.

A timeline should be drawn up a timeline to highlight the chronology or any contradictory evidence or gaps in the sequence of events.

Ensure as far as possible that any ambiguities have been addressed or considered.

Produce a report with recommendation to the commissioning manager.

The report may include the following elements:

- Background and Introduction
- Description of Complaint
- Terms of Reference
- Investigation Process
- Chronology
- Facts and Findings – evidence to back up or contradict the allegations
- Conclusions and Recommendations
- Appendices
APPENDIX D

DISCIPLINARY RULES

1. **INTRODUCTION**

   The Employment Rights Act 1996 requires employers to specify disciplinary rules applicable to employees. The code of practice produced by the Advisory Conciliation and Arbitration Service on ‘Disciplinary Practice and Procedures in Employment’ states that:

   ‘Employees should be made aware of the likely consequences of breaking rules and, in particular, they should be given a clear indication of the type of conduct which warrant a summary dismissal.’

   With this in mind the following disciplinary rules have been adopted by the Trust Board and are applicable to all employees. The rules should be read in conjunction with the disciplinary action, which details the actual procedure to be followed where it is necessary for disciplinary action to be taken against an employee.

   Disciplinary action may only be taken by the appropriate manager (Appendix D) for any breach of the following rules. The disciplinary rules are divided into 2 main groups:

   - General Disciplinary Rules
   - Rules Applicable in Cases of Gross Misconduct

   The rules listed below, whilst not exhaustive are an indication of the rules in relation to general and gross misconduct, but will depend on the severity and/or circumstances of each breach.

2. **GENERAL DISCIPLINARY RULES**

   The following deviations from the general standards of conduct and performance, if recurrent, could result in the dismissal, which would follow the full disciplinary procedure.

   2.1 Unjustified refusal of a lawful and reasonable instruction.

   2.2 Insubordination, or verbal assault, as an employee or on the Trust premises.

   2.3 Unauthorised absence including:

   - persistent lateness
   - persistent absence
   - being absent from the workplace during the working day for any unauthorised reason
2.4 Failure to observe health and safety instructions (including fire safety). For example, smoking in unauthorised areas, disobeying safety rules/instructions, etc.

2.5 Personal misconduct of a nature adjudged sufficiently serious to affect an employee’s position at work during the course of his/her employment.

2.6 Negligence in job performance not sufficiently serious enough to be considered gross misconduct.

3. RULES APPLICABLE IN CASES OF GROSS MISCONDUCT

An employee who commits any of the following offences will be dismissed unless the employee satisfies management that there are mitigating circumstances: -

3.1 Theft or attempted theft on the Trust premises or during the course of employment.

3.2 Fraudulent manipulation or falsification of accounts, financial statements or other official records (e.g. timesheets, clock cards, clocking in or signing in other staff).

3.3 Misappropriation or attempted misappropriation of Trust's funds, assets or resources.

3.4 Acceptance of gifts and hospitality in contravention of the Standards of Business for NHS staff as set out in HSG(93)5.

3.5 Failure to give notice of any pecuniary interest of which an employee is aware, in a contract which has been, or proposed to be entered into by the Trust.

3.6 Serious wilful misrepresentation at the time of appointment including: -

- previous position held
- qualifications held
- declaration of health
- failure, when a candidate for appointment, to disclose a relationship to any member of the Trust Board
- failure to disclose a criminal offence in accordance with the Rehabilitation of Offenders Act or the Children Act.

3.7 Serious wilful misrepresentation at any time during employment in connection with the qualifications held.

3.8 Consumption of alcohol and/or misuse of drugs.

3.9 Any physical or indecent assault or deliberate act of harassment, including acts motivated by gender, race, religion, sexual orientation or disability.
3.10 Verbal or physical assault of staff, patients or visitors or fighting.

3.11 Deliberate and unauthorised disclosure of privileged and confidential information to unauthorised people or a third party regarding the Trust.

3.12 Negligent or deliberate failure to comply with any legal requirements and/or the Trust's regulations especially those concerning medicines and hazardous substances.

3.13 Working whilst contravening an enactment, or breach of rules laid down by statutory bodies, for example, erasure from the General Medical Register, erasure from the Register or Roll of the General Nursing Council, loss of driving licence where driving on the public roads form part of the duties of the post, etc.

3.14 Convictions for a criminal offence, outside the working situation, which substantially affects the performance of, or relationship with, the employee in their employment.

3.15 Malicious or wilful damage perpetrated during the course of employment and/or on the Trust's premises.

3.16 Any wilful or reckless act of omission constituting a serious danger to the health and safety of any person.

3.17 The perpetration of wilful, deliberate and malicious allegations against another employee, which are found to be groundless, and without substance.


3.19 The perpetration of any act of gross misconduct and/or clinical incompetence.
   - Civil proceedings will be brought against any employee found to be in breach of unauthorised disclosure resulting in either personal gain for the employee or loss to the Trust.

3.20 Breaches of Information Governance Standards ie: security and confidentiality and record keeping.

3.21 Prolonged unauthorised absence

3.22 Breach of the Trusts Standing Financial Instructions and Codes of Conduct.

It is unlikely that any set of disciplinary rules could cover all the circumstances, which may lead to disciplinary action. The above list, however, is an indication of the main disciplinary rules applicable to employees of the Trust.
It is emphasised that there could be other offences/situations not specified in this document which involve a breakdown of trust or confidence between the individual and the employer and which may result in disciplinary action including dismissal.

In addition, disciplinary rules applicable to specific departments, disciplines or grades of staff will be agreed and issued from time to time. Copies of those rules will be issued to employees concerned. Reference will also be made as appropriate to established standards of professional conduct.

Nothing in the above rules prevents the Trust from reporting an individual employee to the appropriate professional body where this is necessary and, in such circumstances, the individual will be notified.
APPENDIX E

GUIDELINES FOR MANAGERS INVOLVED IN THE SUSPENSION OF STAFF

These guidelines are to be read in conjunction with the Trusts' Disciplinary Procedure

1.0 AIM

The Trusts recognise that due to the nature of the service, and in the interests of users and employees, investigations of complaints, incidents and allegations of misconduct need to be undertaken on various occasions. This may necessitate the need to suspend staff from duty in order to facilitate the process of investigation fairly, quickly and equitably in the interest of natural justice.

Suspension from duty is regarded as a holding action, a neutral measure - it is not regarded as disciplinary action and must not be seen as such. There is no assumption of guilt or culpability on any employee who is ‘suspended’.

Any employee who is suspended from duty, in order that an investigation may be carried out, should be treated courteously and equitably by the suspending/investigating officer. By following these guidelines, managers, staff and trade union representatives will ensure that employees are not placed under undue stress and anxiety.

2.0 PROCESS OF SUSPENSION

Prior to suspending a member of staff, investigating officers should first establish whether it is necessary and/or desirable for the individual to be suspended from duty. Consideration needs to be given firstly to the alternatives that may be available, eg temporary transfer to another area or different duties. Each case is different; however, suspension is necessary where there are allegations of serious misconduct - for example; theft, attempted theft, assault (patient or staff). There may be other circumstances that arise when managers feel it appropriate to suspend an employee from duty; advice is readily available from a Human Resource Manager.

When a decision has been made by a manager to suspend an employee, he/she should do so at the earliest opportunity.

The individual must be advised that his/her manager wishes to see him/her and that they have the right to be accompanied by their trade union representative or a colleague. The Manager may wish to consider helping to secure the services of an appropriate trade union representative. The Manager should also where possible be accompanied by a colleague.
In such cases where it is necessary to suspend a representative of a recognised Trade Union\Staff Organisation, the circumstances must be reported to the full-time officer immediately.

3.0 WHAT SHOULD THE SUSPENDED EMPLOYEE BE TOLD

- That an allegation has been made against them, and what that allegation is.

- That an investigation into the circumstances needs to be carried out and that it is in their own interests/the interest of the service/desirable to be suspended on full pay until such time as the allegation proves to be unsubstantiated, or the investigation is complete and a potential disciplinary hearing ensues, or that the allegation is not as serious as first considered and it is no longer necessary for them to remain suspended while the investigation continues, whichever is earliest.

- That suspension is not disciplinary action but a holding measure to allow time for an investigation to be carried out.

- That suspension is on full pay, full pay meaning the pay that they would have received had they attended for duty on their normal roistered hours.

- If the suspension lasts for 28 days or more, and no disciplinary charges have been made and communicated in writing, there is a right of appeal to the Trust Board against continuation of suspension.

- That they may be required to meet with the investigating officer at any time during the period of their suspension. They should therefore ensure that any change of address or telephone number is communicated to the investigating officer. They should also notify the investigating officer if they intend to take holidays during the period of suspension. If the individual does take annual leave during the period that they would be suspended, suspension will be lifted to facilitate such holiday.

- During the period of suspension, they should not enter any of the Trusts’ workplaces without the prior permission of the investigating officer or the Workforce Director. Nor should they attempt to interfere with the investigating officer’s investigation.

- The employee should be asked whether he/she undertakes paid professional work outside the Trust. If this is confirmed, he/she should be advised that this may be reported to the appropriate professional body and that an alert letter may be issued.

- In any event it may be necessary to issue an alert letter or report the suspension to the appropriate professional body, regardless of outside employment.
The suspended individual may require access to members of staff who may be required to act as a witness for them in any defence and/or they may require access to documentary evidence which they believe may assist them in their defence. Permission for such access must be obtained first from the investigating officer, which will not unreasonably be withheld.

Suspended staff should be offered the opportunity of support - this may be through their trade union representative, or any other individual within the unit could be approached to provide such support, including the services of Pastoral Care, Staff Counsellor or Occupational Health. Human Resources staff may be contacted to arrange such support.

Before the member of staff leaves the premises, they should be asked if they have any personal belongings which they need to collect. If so, they should be allowed to collect those belongings - but accompanied by either the investigating officer or their immediate line Manager. Additionally, the member of staff will be requested to return their ID card for the period. It should be noted that if the person being suspended is under the influence of drugs or alcohol or is distressed, consideration needs to be given to the fitness to drive or to safely reach home.

During the period of suspension, the employee should be kept informed, either by telephone or in writing by the investigating officer of the progress of the investigation regularly and at least on a fortnightly basis. This is because suspension is a traumatic experience for any individual and if they are aware that it may take some time to carry out the investigation, for example, due to the unavailability of key individuals to the investigation, they can more readily accept the need for continued suspension.

The reason for the suspension must be confirmed in writing, detailing all relevant aspects of the suspension, including expectations in relation to access to staff members and documentary evidence. The outcome of the investigation should also be confirmed in writing as soon as possible - this is particularly relevant when the investigation suggests there is no prima facie case for disciplinary action.