

Disciplinary Policy and Procedure

Policy reference – HR004

SUMMARY	To provide a process and framework to manage employee issues of misconduct at the workplace in a fair and consistent manner in line with employment law and good HR practice.
AUTHOR	Human Resources
VERSION	3.0 FINAL
EFFECTIVE DATE	February 2018
APPLIES TO	Applicable to all CCG employees, and those engaged under contracts for service, honorary contracts, or on work experience whilst on duties undertaken for the CCG.
APPROVAL COMMITTEE	Remuneration Committee
REVIEW DATE	February 2021

This policy has been aligned to Greater Huddersfield and North Kirklees CCGs in light of shared staff working across the CCGs.

THIS POLICY HAS BEEN SUBJECT TO AN EQUALITY IMPACT ASSESSMENT

VERSION CONTROL SHEET

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2.1	22.01.2018	Tazeem Hanif	Draft	Revised policy aligned to GH/NK CCGs submitted to SMT for comment – policy approved.
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1. POLICY STATEMENT

- 1.1. This policy aims to help and encourage all employees to achieve and maintain satisfactory standards of conduct to ensure consistent and fair treatment for all.
- 1.2. This policy should be used after consideration of or in conjunction with the Clinical Commissioning Group's (the "CCG") policies and procedures.
- 1.3. The CCG has a Freedom to Speak Up (Whistleblowing Policy), which enables workers to make a whistleblowing disclosure in good faith and they will not suffer reprisals as a result of their disclosure. As such, the Disciplinary Policy must not be used to manage a worker who has made a whistleblowing disclosure. The exception to this is where a worker makes a malicious disclosure, which they know to be untrue. The Freedom to Speak Up (Whistleblowing Policy), should be referred to for more detail.
- 1.4. The level of Human Resources (HR) involvement will depend upon the severity of the alleged breach of discipline. In all cases HR will act in an advisory capacity. Employees must seek advice from HR in any case likely to involve an exclusion from work, formal warning or dismissal. Both employees and Line Managers should refer to appendix 3 for the standards of conduct, with specific examples of misconduct and gross misconduct in appendices 4 and 5.
- 1.5. This policy:
 - Sets out the responsibilities of Line Managers, employees, Staff Side and HR;
 - Ensures a robust, consistent and effective procedure for managing breaches of discipline;
 - Defines the scheme of delegation associated with disciplinary hearings and appeal hearings;
 - Satisfies legislative requirements.

2. PRINCIPLES

- 2.1. This policy applies to those members of staff that are directly employed by the CCG and for whom the CCG has legal responsibility. For those staff covered by an honorary contract / contract for service or on work experience this policy is also applicable whilst undertaking duties on behalf of the CCG or working on organisation's premises and forms part of their arrangements with the CCG. As part of good employment practice, agency workers are also required to abide by CCG policies and procedures, as appropriate, to ensure their health, safety and welfare whilst undertaking work for the CCG.

3. RESPONSIBILITY

- 3.1. Good working relations are vital for the organisation to operate successfully and provide service. There is a joint responsibility for management, trade unions and employees to accept the responsibility of working together on issues in good faith and with the shared intention of facilitating good working relations. It is expected that all parties involved in disciplinary matters in any context will maintain confidentiality as appropriate to their role in the disciplinary matter.

3.2. **Line Managers**

The key responsibilities for Line Managers include:

- Ensure employees are aware of the Disciplinary Policy and Procedure, of the disciplinary rules and issues relating to misconduct and gross misconduct which will result in disciplinary action;
- Make clear the rules, regulations and standards of conduct which employees are expected to observe / achieve;
- Use the informal stage wherever possible prior to any formal action being taken;
- Deal appropriately with employees whose conduct falls short of that required by the organisation;
- Involve the appropriate HR representative where potential misconduct has been identified;
- Keep appropriate written documentation relating to incidents of alleged misconduct in line with the requirements of information governance;
- Treat all employees fairly by applying the policy consistently and ensuring that any personal information is kept in complete confidence.

3.3. **Employees**

It is the responsibility of the employee to ensure that they:

- Read, understand and comply with the policy;
- Attend investigation meetings as required;
- Submit statements when requested in a timely manner;
- Employees must be familiar with the rules of the CCG and of their professional codes of conduct (where applicable) and comply with them. Where professional registration is a requirement of the job this must be maintained at all times. Please see 10.3 and appendix 6 for further information.

3.4. **Human Resources**

The HR representative will provide advice and support on all aspects of this policy to ensure fair, consistent application and support.

4. **EQUALITY STATEMENT**

- 4.1 In applying this policy, the CCG will have due regard for the need to eliminate unlawful discrimination, promote equality of opportunity, and provide for good relations between people of diverse groups, in particular on the grounds of the following characteristics protected by the Equality Act (2010); age, disability, sex, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, carers and sexual orientation. A consistent Equality Impact Assessment is used for all policies and procedures.

5. **ACCOUNTABILITY AND RESPONSIBILITIES**

- 5.1 Overall accountability for ensuring that there are systems and processes to effectively manage breaches of discipline lies with the Chief Officer, and may be delegated in line with Appendix 7.

6. IMPLEMENTATION AND MONITORING

- 6.1 The Remuneration Committee is responsible for the formal approval of this policy. Following approval, the policy will be disseminated to staff via internal communication methods and available through the staff intranet.
- 6.2 The policy and procedure will be reviewed periodically by Human Resources in conjunction with managers and Trade Union representatives. Where review is necessary due to legislative change, this will happen immediately.

7. PROCEDURE - General Principles

- 7.1 Before any action is taken it is necessary to establish all the facts. Where it is deemed that a potential disciplinary issue has arisen, the necessary investigations must be carried out to gather the facts promptly and these must be recorded in writing.
- 7.2 Following establishment of the facts, it will be decided whether any further action is required and whether this should be informal or formal. Where an investigatory meeting is convened to solely establish the facts of a case, it should be made clear to the employee(s) involved that the meeting is not a disciplinary meeting.
- 7.3 Where fraud is suspected, advice should be sought from the Chief Finance Officer and the Local Counter Fraud Specialist.
- 7.4 Unsatisfactory performance will be managed under the Performance Management Policy. This will provide the opportunity to inform the employee of the improvement required, the support that will be given, and how performance will be reviewed.
- 7.5 When dealing with absences from work, the reasons for the absence should be ascertained prior to deciding what action to take. Unless it is established that there is a conduct issue, sickness absence should be managed under the Managing Sickness Absence Policy.
- 7.6 The employee must be informed in writing (or electronically) about any alleged misconduct.
- 7.7 If an employee is invited to a meeting as part of the disciplinary procedure they should be advised of their right to representation by their Line Manager or another manager supporting the meeting.
- 7.8 If a disciplinary hearing results in action short of dismissal, the employee should be informed by their Line Manager of why and how they need to improve, the consequences of failing to improve and that they have a right to appeal.
- 7.9 If an employee is dismissed they must be informed of the reasons by their Line Manager, of when their contract of employment will cease and of their right to appeal.
- 7.10 If an employee wishes to appeal they should be invited to a hearing and informed of their right to representation by the Line Manager or another manager.
- 7.11 An appeal must be dealt with by a more senior manager not previously involved in the earlier decision, where possible. Where this is not possible an appropriate manager at the same level will be identified by the HR representative.
- 7.12 The employee should be informed in writing of the outcome of the appeal and the reasons for the decision made.

- 7.13 Written records should be maintained during all stages of the investigation, disciplinary and appeal processes.
- 7.14 The CCG will consider referral to the appropriate professional/registration body where matters raised during a disciplinary investigation, hearing or appeal warrant this action.
- 7.15 In many cases, disciplinary matters present an opportunity for organisational learning. Consideration will be given in any recommendations resulting from a disciplinary hearing and whether there is any organisational learning. Any learning and recommendations will be managed sensitively, working with the parties involved and with a clear focus on the need to maintain confidence and confidentiality.

8. RIGHT TO REPRESENTATION

- 8.1 At every stage of the procedure, the employee is entitled to be accompanied at all by a Trade Union representative or a work colleague (not acting in a legal capacity).
- 8.2 The employee should let their Line Manager know if they are being supported or represented by a Trade Union representative or work colleague, including their name and role. The employee is responsible for involving their representative and ensuring that dates of any hearings are passed to them. Once a representative is identified, they should be included in all correspondence unless it is agreed by exception that this will not be the case.
- 8.3 If the representative is unavailable at the date and time of the hearing, the employee and representative can suggest an alternative date and time and explain the reasons for not being available. In exceptional circumstances this can be extended by mutual agreement. Should a representative be unable to attend a rearranged meeting, the employee may be asked to arrange with an alternative representative, if possible and reasonable.
- 8.4 The role of the representative in any hearing is to assist and support the employee. The representative is allowed to present the employee's case, sum up the case and respond to any views expressed on behalf of the employee. They should also be given the opportunity to ask questions of presenting managers and witnesses on the employee's behalf. The representative is also entitled to time out to confer with the employee during the hearing if required. The representative may not answer questions on behalf of the employee, disrupt the process or prevent the CCG from explaining their case. The representative is not allowed to address the panel if the employee does not wish them to do so.

9. ALLEGED BREACHES OF DISCIPLINE RELATING TO EMPLOYEES WHO ARE ACCREDITED TRADE UNION REPRESENTATIVES

- 9.1 Normal disciplinary standards apply to all accredited trade union representatives, however no disciplinary proceedings should commence until the circumstances of the case have been discussed by the relevant CCG Line Manager with a full-time official of the union concerned.

10. EXCLUSION FROM WORK (also referred to as suspension from duty)

- 10.1 Careful consideration should be given to alternatives to exclusion, where circumstances permit. These may include allowing the employee to continue working on limited or alternative duties and/or working in a different location. Where alternative arrangements cannot be made, or are not suitable, the decision to exclude from work can be taken as described below.
- 10.2 Exclusion from work should only be considered as an arrangement pending investigation of an allegation of a serious offence, including those where:
- The alleged offence is considered gross misconduct;
 - The employee's presence constitutes a serious risk to themselves, patients, staff or NHS property;
 - The employee is under charge or suspicion of a criminal offence which significantly affects their status, role or responsibilities within the CCG
 - The employee's presence would hinder a full and proper investigation taking place.
- 10.3 The period of exclusion is not a disciplinary sanction, or a presumption of guilt. The period of exclusion will be on full pay and should be kept to a minimum. The exception to this is lapsed professional registrations where, if a decision to exclude is made, this will be without pay– see appendix 6 for further guidance. The employee should be kept informed of the likely timescales of the exclusion and this should be reviewed regularly. All communication should be confirmed in writing and sent to the employee's home address, or elsewhere by agreement
- 10.4 Authority to exclude will normally rest with the Chief Officer or nominated Deputy. In some circumstances delegated responsibility can be given to the most senior manager on duty at the time. In these circumstances the senior manager taking the decision to exclude must notify the Chief Officer or nominated deputy as soon as possible, who will be required to review the decision and, if deemed necessary, revoke the exclusion.
- 10.5 An exclusion interview will be arranged to advise an employee of their exclusion, they should be advised of their right to be accompanied. Where there is no work colleague or trade union representative available, a further meeting should take place with the representative present, at a later date, if the employee requests this. If an employee is off duty and all reasonable attempts to contact them are unsuccessful, they should be informed in writing not to commence duty but to contact a named officer as a matter of urgency.
- 10.6 Any decision to exclude an employee will be confirmed in writing within 24 hours of the exclusion interview. The correspondence must include the reasons for the exclusion and advise the employee that they are only authorised to enter CCG premises with prior permission. If the employee feels they have a legitimate reason to enter CCG premises, they should contact the Investigating Officers at the earliest opportunity. They should also be notified of their right to hold an exclusion meeting with a representative/colleague if one was not available at the time of the original interview.
- 10.7 An employee must make themselves available during normal working hours throughout the exclusion period, unless this coincides with planned annual or other leave, in which case the employee should seek permission to take leave and this should not be unreasonably withheld. Should the employee fall ill during a period of exclusion, they must report via the normal sickness absence reporting procedures and in addition should inform the Investigating Officers.

- 10.8 The excluded employee must not enter into any discussion with any other CCG employee involved in the investigation other than their Trade Union representative or the work colleague who is representing them. They must not approach any witnesses until the investigation is concluded. It is the manager's responsibility to advise the employee that the management side investigation has been concluded and that they are free to contact witnesses. It is also the manager's responsibility to advise work colleagues as appropriate, regarding the exclusion of an employee. Communication of the reason for their absence would normally be agreed between the Line Manager and the employee, taking into account the need for confidentiality.
- 10.9 The excluded employee must notify their Line Manager of any change in personal circumstances, for example change of home address, contact telephone numbers, health status.
- 10.10 Whilst excluded from work an employee will receive the pay they would have received had they been at work. This is with the exception of a lapse in professional registration, where exclusion will be without pay (see appendix 6). Where an employee does not have a regular working pattern, payment will be based on the average weekly/monthly earnings for the three month period prior to the date of exclusion.
- 10.11 During the exclusion period the employee should not work in any other posts they may hold within the CCG. Where the work they undertake for the CCG may be related to a post they hold with another employer, the CCG may take the decision to inform the other employer of the exclusion. Under a duty of care, in certain exceptional circumstances, it could be necessary for the CCG to inform other agencies including professional and regulatory bodies for instance where there may be an impact on patient/client care, financial probity or health and safety, or serious fraud is suspected. The employee is obliged to advise the CCG if they are employed in any other posts with other organisations, as detailed in the Conflict of Interest Policy and the Working Time Regulations Policy.

11. DELEGATION OF AUTHORITY TO DEAL WITH DISCIPLINARY PROCEDURES

- 11.1 Authority to deal with disciplinary matters including appeals is delegated in accordance with the schedule attached at appendix 7 of this document.
- 11.2 Normally no manager may dismiss a member of staff who directly reports to them.
- 11.3 Managers must seek advice from Human Resources at all stages of the Disciplinary Policy and Procedure.
- 11.4 Advice may be sought from NHS England Area Team in relation to disciplinary issues involving the Clinical Chair, Chief Officer or Governing Body Members

12. INVESTIGATORY PROCESS

- 12.1 Where misconduct is alleged to have occurred, an Investigating Officer will be appointed to gather all the facts of the case promptly. The Investigating Officer will normally be a nominated manager and a Human Resources representative will be appointed to support the Investigating Officer.
- 12.2 The employee will be informed in writing that the matter is to be investigated and provided with the name of the Investigating Officer and the HR representative. The letter should confirm the likely timescale for the investigation and of the right to representation. Regular communication should take place with the employee to ensure they are kept up to date. Normally the employee will be advised of the nature of the allegations. Exceptions to this may include for example, issues concerning fraud or patient safety where criminal investigations are to be considered.
- 12.3 The investigation may include:
- Giving the employee an opportunity to provide evidence to the Investigating Officer or interviewing the employee against whom the allegation has been made. They have the right to be accompanied by a work colleague or trade union representative in this meeting;
 - Interviewing any witnesses and taking written statements, making it clear that the statements may be used as evidence and they are obliged to attend a disciplinary hearing should this be required;
 - Gathering documentary evidence, including medical advice, records, electronic files and communications, diaries, worksheets etc.
- 12.4 The Investigating Officer and HR representative will ensure confidentiality is maintained as far as is practicable during the investigation. Managers and individuals involved in the investigation will be informed they must not discuss the issue outside of the formal meeting, with colleagues or third parties other than with their representative.
- 12.5 Notes of any meetings should be shared in writing (or by email) with the employee, and file notes given to any witnesses to confirm accuracy and content. These notes would usually be in summary form.
- 12.6 Once the investigation is concluded, the Investigating Officers shall recommend via a written report to the next level of management, whether or not to take further action. Further action may include formal non disciplinary action such as coaching or counselling. It may also include a recommendation to proceed to a formal disciplinary hearing. This may either be a formal disciplinary meeting or a formal disciplinary panel. These types of hearings are described in sections 13 and 14. The employee will be informed of the recommendation in writing.
- 12.7 Should any employee be found to be deliberately attempting to interfere with a CCG investigation, for instance through intimidation, harassment or bullying of any employee, they may be subject to disciplinary proceedings, including disciplinary action being taken against them.

13. FORMAL NON DISCIPLINARY ACTION

- 13.1 There will be, in some cases, opportunities to resolve issues of a minor nature without the need to impose formal disciplinary action. For example where an employee did not realise the full importance of complying with particular parts of their terms and conditions of employment, and the non-compliance is not significant. These opportunities can generally be referred to as supportive meetings.
- 13.2 Supportive meetings will be regarded as corrective guidance rather than part of the disciplinary procedure and should take the form of supportive conversations between the employee and their line manager. The meetings should identify whether the employee is facing particular problems either at work or at home which have a bearing on their situation, if there are any training needs or if a review of working arrangements is required as a means to resolving the problem informally. It may also be appropriate to cover other areas as required by the situation.
- 13.3 The employee should not need to be accompanied at supportive meetings, however if they are dissatisfied with the conduct of the meetings they can raise this with their Trade Union Representative or work colleague.
- 13.4 Supportive meetings should be recorded on the employee's personal file to safeguard the employee's rights and to act as a record of the action agreed. This should be followed up with written records of the formal action planning process. Copies should be provided to the employee.

14. FORMAL DISCIPLINARY ACTION

- 14.1 Where it is established, following an investigation, that there are reasonable grounds to believe that the employee has committed the alleged act(s) of misconduct which are not suitable for formal non disciplinary action, the matter will proceed to a formal disciplinary hearing.
- 14.2 Where the investigation has not found there to be gross misconduct or serious misconduct, the misconduct is isolated, and the employee fully admits the misconduct, the Investigating Officer can agree with the employee and their representative, to hold a formal disciplinary meeting where the Investigating Officer, supported by a HR representative, will issue a disciplinary warning (delivered by letter or electronically). The highest level of warning that may be issued in this meeting is a first written warning.
- 14.3 If the investigation deems that:
- a. the nature of the misconduct is or may be sufficiently serious;
 - b. the misconduct is not isolated;
 - c. the employee does not admit the misconduct;
 - d. the employee and their representative wish the matter to be heard by a panel;
or
 - e. the Investigating Officer wishes the matter to be heard by a panel,
 - f. the matter will proceed to a full disciplinary panel, as described in point 14.4 and in appendix 2.
- 14.4 The same rights and requirements detailed in this policy apply to the formal disciplinary meeting, as apply to a matter heard by a disciplinary panel. For instance, the right to notice of a meeting, the right to representation and the right of appeal. The meeting will be chaired by the Investigating Officer, who will be supported by a HR representative.

- 14.5 The aim of providing an option to hold a formal disciplinary meeting rather than progressing to a full disciplinary panel, is to enable misconduct which is less serious, and is acknowledged by the employee, to be managed through a process, which is less onerous for the individual and the organisation, and which is still robust and safeguards the interests of the employee and the organisation.
- 14.6 A formal disciplinary hearing panel will be convened which will comprise of the appropriately skilled manager (Hearing Officer) and a Human Resources representative. An additional person may be present to advise on professional matters or financial procedures where required. In most cases the Hearing Officer will be the next level of management from the Investigating Officer. Appendix 1 sets out the process of the hearing.
- 14.7 The employee must be notified in writing that the disciplinary hearing has been scheduled, the purpose of the hearing, the date and time of the hearing and of their right to be accompanied/represented. The letter should contain sufficient information for the employee to understand both what the allegations are and the reasons why the actions associated with the allegations are unacceptable. Copies of any documents that will be used during the hearing must be provided to the employee. The employee must be given at least 5 working days' notice of the hearing to enable them to consider their response to the allegations and to arrange for representation from a trade union representative or support from a colleague, if desired. Documents to be used in the hearing should also be provided 5 working days in advance. If by exception this is not possible, the employee will be advised of this, and will have the opportunity to request that the meeting is delayed, or to request an adjournment during the meeting if they feel they have not had sufficient time to consider the documents.
- 14.8 If the employee cannot attend the hearing they should inform the Hearing Officer in advance wherever possible. If they fail to attend through unforeseen circumstances outside their control another hearing should be arranged. The employee should be advised of the rearranged date and advised if the employee fails to attend the rearranged hearing without good reason, the hearing will be held in their absence.
- 14.9 If the employee's representative cannot attend the hearing the employee can suggest another date providing that is reasonable and not more than 5 working days after the original hearing date.
- 14.10 If an employee informs the Hearing Officer that they are unable to attend the hearing due to sickness, the employee should normally be referred to Occupational Health to ascertain when they are likely to be fit to attend.
- 14.11 At the hearing the Investigating Officer will go through the allegation(s) and the evidence gathered. The employee will set out their case and answer any allegations that have been made. Questions may be posed by each party. Witnesses may be called by either party and they will be required to answer questions. The employee's work colleague or representative is permitted to present the employee's case and can be questioned. Both parties will have an opportunity to summarise. If any employee chooses to submit evidence on the day of the hearing an adjournment should be allowed in order to allow the Investigating Officer to consider this evidence. Where additional evidence is presented during the hearing, copies should be provided to all parties.
- 14.12 Detailed notes of the disciplinary hearing should be taken. This duty will normally be fulfilled by the Human Resources representative. In exceptional circumstances, for example a lengthy hearing, administrative support may be sought.

- 14.13 After hearing all the evidence and considering any mitigating or extenuating circumstances, the employee should be informed that a decision will be made in private and the hearing will be adjourned. The panel should reconvene to communicate the outcome to the employee on the same day or in exceptional circumstances the next day. If the Hearing Officers consider it appropriate to request any further clarification on evidence heard, the panel may reconvene at a later date, however this must be within one calendar month. If there is any exceptional reason for a delay to these timescales, the reasons for any delay will be confirmed in writing. The decision should be communicated to all parties.
- 14.14 The following disciplinary penalties may be adopted within the scope of this procedure:
- Stage 1:** Written Warning – to remain on the disciplinary record for 12 months from the date of the letter confirming the disciplinary outcome
- Stage 2:** Final Written Warning – to remain on the disciplinary record for 12 – 24 months from the date of the letter confirming the disciplinary outcome.
- Stage 3:** Dismissal
- 14.15 Once a decision has been made, the employee should be notified of it in writing. The letter should detail the evidence taken into account, how the decision was arrived at and of the right to appeal against the decision.
- 14.16 As outlined in the CCGs Pay Progression Policy, a live disciplinary warning would impact on the employee's eligibility for pay progression.

15. WRITTEN WARNING

- 15.1 If the misconduct is serious enough that it cannot be resolved by taking formal disciplinary action, a formal written warning may be issued by the Hearing Officer.
- 15.2 The written warning letter must detail to the employee:
- The misconduct concerned
 - The reasons for the action against the employee
 - The improvements that are required of the employee including the timescale for the improvement
 - How long the warning will remain extant and what action will follow if there is no improvement (e.g. final written warning)
 - A named person will be responsible for overseeing the agreed actions.
- 15.3 The warning letter should be sent to the employee within 7 working days of the date of the hearing. It is recommended that the letter is sent by recorded delivery or a method that ensures delivery to the employee's home address. A copy should be sent to the employee's representative (where applicable).

16. FINAL WRITTEN WARNING

- 16.1 Where there is failure to improve or change conduct in the timescale set in a written warning issued previously, or where the misconduct is sufficiently serious, a final written warning may be issued by the Hearing Officer.
- 16.2 The final warning letter must contain the same level of detail as set out in paragraph 15.2 with the exception of the action to follow if there is no improvement as in this case the further action will be dismissal.

- 16.3 The final warning letter should be sent in accordance with paragraph 15.3.
- 16.4 A final written warning will remain live on the employees' personal file for 12 to 24 months from the date of the warning. The length of the sanction will be determined by the panel at the time of the hearing.

17. DISMISSAL

- 17.1 Where misconduct is very serious, or where misconduct persists, dismissal will normally result. Dismissal will normally be without notice, and without pay in lieu of notice.
- 17.2 In the event of gross misconduct the employee will be dismissed with immediate effect and normally without prior notice. Examples of gross misconduct are contained in Appendix 4.
- 17.3 The dismissal will be confirmed in writing by the Hearing Officer. The letter will state the full reason for the dismissal, a summary of the facts leading to the decision and the date the employment will end.
- 17.4 The dismissal letter should be sent in accordance with paragraph 16.3.
- 17.5 No employee will be dismissed without the full involvement of Human Resources.
- 17.6 The employee should be advised that they must return all property belonging to the CCG e.g. keys, equipment, mobile phone, laptop etc. Access to CCG systems, email addresses and CCG premises will also be prohibited.

18. APPEALS

- 18.1 An employee has the right to appeal against disciplinary action taken at any stage of this procedure. For written and final written warnings the intention to appeal must be made to the next level of management not previously involved in the procedure.
- 18.2 Appeals against dismissal will be referred to the Governing Body and the Appeal Hearing panel will comprise of the Chief Officer or nominated deputy, a Governing Body Member and a Senior HR representative. External expert advice such as financial or technical advice should be sought where appropriate.
- 18.3 If an appeal against a dismissal is upheld, the employee would normally be reinstated, and would retain their continuous service date, and any pay that would have been due would be backdated.
- 18.4 Any appeal must be made in writing and within 14 calendar days of the date of the warning/dismissal letter and should include a full statement of the case of appeal.
- 18.5 The appeal will normally be heard within 21 calendar days of the receipt of the employee's written notice of appeal and any extension to this timescale should be mutually agreed and confirmed in writing.
- 18.6 A letter confirming the time and date of the Appeal Hearing should be sent to the employee. The letter should instruct the employee to submit their statement of case prior to the Appeal Hearing. The Investigating Officer will also be asked to submit a statement of case on behalf of the management side representatives.

- 18.7 At the appeal, the manager hearing the appeal will consider representations made by the employee and/or their representative and information from the Investigating Officer/Hearing Officer who imposed the disciplinary sanction. Appendix 1 sets out the process for the appeal hearing.
- 18.8 The appeal may result in one of four decisions:
- To uphold the decision of the Hearing Officer
 - To review the decision of the Hearing Officer
 - To uphold the employee's appeal and remove any action imposed
 - If new evidence is presented at the Appeal Hearing with potential serious consequences, the Appeal Hearing Officer may make the decision to reconvene the Disciplinary Hearing stage for further investigation.
- 18.9 The manager hearing the appeal must inform the employee of the appeal decision within 7 working days of the appeal and the correspondence should be sent to the employee's home address. It is recommended that this is sent by recorded delivery. A copy should also be sent to the employee's representative if applicable.
- 18.10 Employees must be made aware that the decision of the appeal is final.
- 18.11 Timescales in the appeal procedure should normally only be extended where agreement has been reached by both parties. However in the cases of fraud, theft, pending criminal convictions or where large numbers of witnesses are involved, timescales may be extended and the employee should be notified accordingly.

19. CONDUCT OR ALLEGATIONS OUTSIDE WORK

- 19.1 In order to safeguard the interests of the CCG, its employees, service users and partners, the CCG needs to be aware of any conduct by its employees that may adversely affect the CCG's reputation or integrity, even if that conduct occurs outside of working hours or away from CCG premises.
- 19.2 Employees are required to notify their Line Manager of any conviction or caution given, or if they are notified of any pending prosecution, or if they are arrested, detained or placed on police bail. Employees who are registered members of a professional body are advised to consult the relevant professional body. All employees' are advised to seek Trade Union advice. Any action taken will be dependent on the nature of the offence or alleged offence, and how it relates to the type of work undertaken by the individual. Failure to notify their Line Manager, or other appropriate manager in their absence may result in disciplinary action being taken.
- 19.3 In some circumstances, conduct outside work may call into question an employee's suitability to hold their position of employment with the CCG. When such circumstances arise, they will be dealt with in accordance with this procedure on a case by case basis. This includes use of social media, in particular where the information published may be detrimental to the organisation, its employees, services users or partners, or is in breach of confidentiality requirements. Please see the CCGs Social Media Policy.

Appendix 1 - Conduct of Formal Disciplinary Meeting

1. The Investigating Officer will chair the meeting. The Chair will introduce all parties and the employee will be reminded of the purpose of the hearing and the stage at which the hearing is being held.
2. The Investigating Officer will present the outcome of the investigation, and will confirm that the employee has admitted the disciplinary matter. This may include reference to witness statements, but witnesses will not be called to the meeting.
3. The employee and their representative will have the opportunity ask questions or clarify points.
4. The Investigating Officer and the HR representative will have the opportunity to ask questions or clarify points.
5. The meeting will be adjourned to allow the Investigating Officer to reach a decision about whether a disciplinary warning will be issued, and the level of any warning. The Investigating Officer may also reach a decision that it is necessary for the matter to be referred to a formal disciplinary panel. The employee will be advised when they can expect the decision to be communicated to them. This would normally be immediately following the adjournment.
6. The meeting will be reconvened to confirm the outcome to the employee.
7. The outcome will be confirmed to the employee in writing.
8. Notes will be taken of the meeting.

N.B. At any point during the hearing either party can request an adjournment via the Chair.

Appendix 2 - Conduct of Formal Disciplinary Panel Hearing

1. The Chair of the panel will introduce the panel and all parties and the employee will be reminded of the purpose of the hearing and the stage at which the hearing is being held.
2. The management case will be presented and any witnesses will be called to provide evidence, or witness statements will be presented.
3. The employee and/or the representative will be given an opportunity to question or clarify any points in the management case and to question any witnesses.
4. The Panel and Chair will be given an opportunity to question or clarify any points in the management case and to question any witnesses.
5. The employee and/or the representative will be given an opportunity to state their case, which may include bringing witnesses and/or presenting supporting statements.
6. The management side will have the opportunity to question the employee, the employee's representative and any witnesses.
7. The panel members may question the employee, employee representative and witnesses as appropriate.
8. Management side will summarise their case based upon the evidence already presented.
9. Staff side will summarise their case based upon the evidence already presented.
10. The panel will adjourn to consider their decision and will advise the employee of when the decision will be communicated to them.
11. The panel will reconvene the hearing to communicate the decision to the employee.

N.B. At any point during the hearing either party can request an adjournment via the Chair.

Appendix 3 - Standards of Performance and Conduct

1. Introduction

- 1.1 The spirit and the intention of producing written standards of performance and conduct is to promote fairness and consistency in the treatment of individuals and in the conduct of the CCGs employee relations, and not merely to fulfil legal obligations. In addition to these standards of performance and conduct, employees may also be governed by a code of professional conduct from their regulatory body.
- 1.2 These standards of performance and conduct apply to those identified in scope of the CCGs Disciplinary Policy and Procedure, and in other CCG policies, and will be regarded as part of each employee's contract of employment. Concerns with performance will be managed under the Performance Management Policy.
- 1.3 It is impossible to cover all situations that may arise therefore the examples which follow are purely illustrative. These examples are included in order to clarify the forms of disciplinary breaches which are likely to give rise to formal disciplinary action. Appendix 4 gives examples of gross misconduct which will lead to dismissal unless there are mitigating circumstances accepted by Hearing Officers. In dealing with breaches of rules or gross misconduct there will be consideration of specific circumstances of individual cases.

2. General Standards of Conduct

- 2.1 In fulfilling their contract of employment, all employees are expected to attend for duty regularly and punctually, not to absent themselves from duty without permission and to conduct themselves and perform their duties in a manner which combines prompt and efficient service with a concern for the feelings of others, including colleagues, managers, patients and public. The following sets out some specific examples of standards expected of employees' in their conduct and performance at work but does not aim to be comprehensive:
 - All employees are required to maintain confidentiality of any information they may acquire in the course of, or arising from, their employment/association with the CCG, in accordance with the CCG policy on disclosure of information. Any unauthorised disclosure or misuse of information will be treated as a serious breach of discipline, possibly leading to dismissal. All employees are required to sign a confidentiality code of conduct.
 - Health and Safety policies and procedures must be observed at all times.
 - Security requirements must be observed at all times.
 - Conduct must be professional and acceptable to the CCG in line with the values.
 - Managers are expected to abide by the NHS Managers Code of Conduct.
 - All employees are expected to comply with the Nolan Principles.
 - Reasonable duties and instructions given by line managers should be undertaken promptly and efficiently to the required standard. Duties should be commensurate with the level of knowledge and skills associated with the employee's job description.

- Employees must comply with the Managing Sickness Absence Policy, including reporting procedures and compliance with statutory sick pay requirements. Sickness absence will be managed in accordance with the Managing Sickness Absence Policy. However, if there is a concern in relation to non-compliance with the Managing Sickness Absence policy, fraudulent claiming of sick pay, or any other conduct issues in relation to sickness absence, this will be dealt with under the Disciplinary Policy and Procedure. Employees must not engage in other employment or activity, whether paid or unpaid, that may adversely affect their CCG employment, or in any way hinder or conflict with the interests of the CCG or the Working Time Regulations. Employees must declare other employment or activity in line with the Conflict Of Interest and Working Time Regulations Policies.
- Conducting private business on the CCG premises is forbidden unless official permission is obtained from the appropriate manager.
- Standards of business conduct must be adhered to, including acceptance of gifts and hospitality must comply with relevant CCG policies and be declared?.
- Employees must declare any financial interest in contracts which the CCG is or is likely to be involved with.
- Employees must declare any other interests in accordance with the CCGs Conflicts of Interest Policy.
- Employees are expected to comply with all CCGs policies and procedures.

3. Gross Misconduct

- 3.1 Offences that constitute gross misconduct will result in dismissal unless mitigating circumstances are accepted. Appendix 4 illustrates examples of offences which in management's view constitute gross misconduct. The examples given are not an exhaustive list.
- 3.2 An example of where an offence may fall short of gross misconduct may include a situation where there are extenuating circumstances.

4. Duty to Inform Employer

- 4.1 Employees are required to notify their line manager of any conviction or caution given, or if they are notified of any pending prosecution, or if they are arrested, detained or placed on police bail. Employees who are registered members of a professional body are advised to consult the relevant professional body. All employees are advised to seek Trade Union advice. Any action taken will be dependent on the nature of the offence or alleged offence, to the type of work undertaken by the individual. Failure to notify their line manager may result in disciplinary action being taken.
- 4.2 Employees for whom driving is an essential part of their duties must inform their head of department if formally charged with any driving offence or if they become ineligible to drive due to a new or pre-existing medical condition. In the case of a medical condition, Occupational Health advice will be sought.

5. Codes of Conduct

- 5.1 All employees of the CCG are expected to comply with their relevant professional codes of conduct and notify the organisation if their regulatory body is considering taking/has taken any action against them. The above also includes managerial codes of conduct.

Appendix 4- Offences That May Constitute Gross Misconduct

In accordance with ACAS guidance, examples of gross misconduct may include:

- Theft or fraud
- Physical violence, aggressive behaviour or bullying
- Deliberate and serious damage to property
- Serious misuse of an organisation's property or name
- Deliberately accessing internet sites containing pornographic, offensive or obscene material
- Serious insubordination
- Unlawful discrimination or harassment
- Serious incapability at work brought on by alcohol or illegal drugs
- Causing loss, damage or injury through serious negligence
- A serious breach of health and safety rules
- Breach of confidentiality including misuse, mishandling and / or misuse of sensitive personal data
- Conduct likely to bring the CCG into disrepute
- Breach of contract
- Serious, deliberate, or continued breach of CCG policy
- A serious breach of the behaviours deemed inappropriate
- Inappropriate use of social media, which may also link to any of the above

N.B. The list above provides examples of those offences which in management's view may constitute gross misconduct and is not intended as an exhaustive list.

Criminal convictions or charges outside of employment:

The main consideration should be whether the offence is one that makes the worker unsuitable for the type of work contracted to undertake. In all cases, employers having considered the effects will need to consider whether the conduct is serious enough to warrant instigating disciplinary procedures. For example, employees should not be dismissed solely because a charge against them has been made, or because they are absent as a result of being remanded in custody.

Appendix 5 - Offences That May Constitute Misconduct

Examples of misconduct are:

- Breach of any of the CCGs policies and procedures
- Unauthorised absence from work
- Failure to comply with a reasonable management instruction
- Failure to observe department rules, procedures or protocols
- Unprofessional or unreasonable behaviour
- Failure to wear a uniform or ID badges where required
- Poor standard of work
- Failure to maintain professional registration where required. In some cases this may result in a breach of contract and be treated as gross misconduct.
- Conduct which is deemed unacceptable.

N.B. The list above provides examples of those offences which in managements view may constitute misconduct and is not intended as an exhaustive list.

Appendix 6 - Procedure For Dealing with Lapsed Registrations

Employees

Employees for whom professional registration is a requirement of their role, are personally responsible for ensuring they maintain this registration at all times. Failure to do so is deemed a serious matter and may be deemed as gross misconduct.

Employees who recognise that their registration has lapsed must take immediate action. This includes:

- Informing their Line Manager immediately
- Re-registering with the professional body within 1 to 2 days or as soon as practicably possible
- Withdrawing from clinical/professional practice with immediate effect in discussion with their manager
- Provide proof of renewal to the manager as soon as this is confirmed

Line Managers

Line Managers who identify a lapsed registration must take immediate action. This will include:

- Contacting the employee immediately
- Ensuring the employee is withdrawn from undertaking the duties of a qualified clinician or a professional with immediate effect.
- Discussing the options with the employee and a HR representative
- Checking re-registration with the relevant regulatory body; receiving proof of renewal and evidence in the personnel file. Or confirming once the employee informs them it is done.

When considering actions to be taken, managers will take account of the following factors:

- Length of time since registration has lapsed.
- Reason (s) put forward for non-renewal.
- Whether the individual has knowingly continued to practice without registration and has failed to notify management.
- Any previous occasions when the individual has allowed their registration to lapse
- Whether the individual has attempted to conceal the fact that their registration has lapsed.

The Line Manager in consultation with a HR Representative should consider the following options; the response will depend on the individual circumstances:

- Allow the individual to take annual leave or time owing until their registration is renewed, within an agreed time frame
- Allow the individual to take unpaid leave if no annual leave is available, or leave is planned
- Where feasible, consider transferring the individual member of staff to another area within the organisation that offers a role that is of equal value, where professional registration is not required.
- Where feasible, temporary downgrade into a non-qualified post specific to service need

If no reasonable mitigation is forthcoming and registration is not in place

- Invoke disciplinary process, which may lead to suspending the individual from duty without pay

Appendix 7 - Scheme of Delegation and Authority

The following scheme of delegation has been developed pertaining to the management of disciplinary issues and settling grievances.

The following table details the lowest grade of officer who will normally have delegated authority to take the specified action/disciplinary action. This will be subject to change in the event of revised managerial arrangements. Exceptionally there may be circumstances where a deputy is given delegated authority to act in place of the designated officer. The designated officer shall consult with Human Resources and may arrange to be accompanied by another senior manager or representative. In exceptional circumstances, the CCG may appoint an officer at an equivalent level to those detailed below, from a partner organisation, such as another local CCG. For instance, where there are no officers of the appropriate level internally, who have not previously been involved in a case.

CATEGORY OF STAFF	WRITTEN WARNING	FINAL WRITTEN WARNING	DISMISSAL	EXCLUSION FROM DUTY
Chief Officer	Clinical Chair or nominated deputy in consultation with NHS England	Clinical Chair or nominated deputy in consultation with NHS England	Governing Body	Clinical Chair or nominated deputy in consultation with NHS England and Human Resources
Governing Body	Clinical Chair or nominated deputy	Clinical Chair or nominated deputy	Sub Committee of Governing Body	Clinical Chair or nominated deputy in consultation with NHS England and Human Resources
Head Of Service	Chief Officer or nominated deputy	Chief Officer or nominated deputy	Sub Committee of Governing Body	Chief Officer or nominated deputy in consultation with Human Resources
Employees directly reporting to a Head Of Service	Head Of Service or nominated deputy	Head Of Service or nominated deputy	Chief Officer or nominated deputy	Chief Officer or nominated deputy in consultation with Human Resources
All other staff	Line Manager (band 4 and above) or nominated deputy	Line Manager (band 4 and above) or nominated deputy	Head Of Service or nominated deputy	Head Of Service or nominated deputy in consultation with Human Resources

Appendix 8 - Equality Impact Assessment

Title of policy	Disciplinary Policy and Procedure		
Names and roles of people completing the assessment	Tazeem Hanif – HR Business Partner Kate Bell – Equality Lead Sarah MacKenzie-Cooper – Equality Manager		
Date assessment started/completed	28.02.2018	01.03.2018	
1. Outline			
Give a brief summary of the policy	To provide a process and framework to manage employee issues of misconduct at the workplace in a fair and consistent manner in line with employment law and good HR practice.		
What outcomes do you want to achieve	To set standards of conduct and manage issues in a timely equitable manner.		
2. Analysis of impact			
This is the core of the assessment, using the information above detail the actual or likely impact on protected groups, with consideration of the general duty to; eliminate unlawful discrimination; advance equality of opportunity; foster good relations			
	Are there any likely impacts? Are any groups going to be affected differently? Please describe.	Are these negative or positive?	What action will be taken to address any negative impacts or enhance positive ones?
General	Some equality groups have been found to be more likely to be subject to disciplinary actions by employers, including BME and disabled staff. As research grows in this area other groups may be found to be affected.	Negative	Annually the number of disciplinary actions should be collated including all equality monitoring. Due to the small numbers expected they may have to be collated and analysis undertaken every 3 years to note any trends, unless they become apparent sooner.
Age	No		
Carers	No		
Disability	Yes - Yes evidence exists within the NHS that disabled staff may be more likely to be subject to action.	Negative	There have been no cases of disabled staff going through a disciplinary process given that the CCG are relatively small organisations. The CCG will monitor disciplinary cases by protected characteristics to identify any trends.
Sex	Yes as the CCG employs a majority of women there may be expected to be more women subject to actions		Data should be reviewed for proportionality

Race	Yes, there is evidence national evidence to suggest that people with a BME background are more likely to be involved in disciplinary investigations.	Negative	Ensure CCG managers are trained in equality and diversity awareness. Monitor disciplinary cases by protected characteristics to identify any trends.
Religion or belief	Yes, there is evidence national evidence to suggest that people with a BME background are more likely to be involved in disciplinary investigations.	Negative	Ensure CCG managers are trained in equality and diversity awareness and are advised by HR before establishing disciplinary actions,
Sexual orientation	No		
Gender reassignment	No		
Pregnancy and maternity	No		
Marriage and civil partnership	No		
Other relevant group	No		
If any negative/positive impacts were identified are they valid, legal and/or justifiable? Please detail.	The policy is applicable to all employees and adheres to the NHS Litigation Authority Standards, statutory requirements and best practice. Makes all reasonable provision to ensure equity of access to all employees.		
4. Monitoring, Review and Publication			
How will you review/monitor the impact and effectiveness of your actions	Monitoring of disciplinary cases and action taken in the workplace on the caseload analysis by protected characteristic will be undertaken as necessary as part of the annual Workplace Race Equality Standards (WRES) and monthly workforce reports.		
Lead Officer	Tazeem Hanif	Review date:	01.02.2021
5. Sign off			
Lead Officer	Kate Bell		
	Date approved:	01.03.2018	