

Cambridgeshire Primary Care Trust Disciplinary Policy and Procedures

Adopted by Trust JCNP: January 2007
Adopted by Trust Board: February 2007
Revised:
Reviewed:

Disciplinary Policy and Procedures

1. Introduction

- 1.1 The procedure applies to all employees of the Cambridgeshire PCT (hereinafter called the Trust), subject to the following:
- 1.2 Matters relating to the professional conduct/competence of Medical and Dental staff employed by the Trust shall be dealt with in accordance with the arrangements set out in the Trust's Disciplinary Procedures for Career Grade Medical Staff.
- 1.3 The terms and conditions of service (as revised) for both Medical and Dental staff make special provisions, including the 'Three Wise Men' procedure for representations against dismissal in respect of certain grades of medical and dental staff. These rights which apply only to Medical and Dental staff appointed before 1 April 1992 are unaffected by this procedure.
- 1.4 Although not a formal procedure, the importance of the informal/counselling process, prior to formal procedures being instigated is essential to ensure that the objectives of the procedure are being fulfilled.
- 1.5 If the allegation potentially relates to the possible abuse of vulnerable adults, the Trust's policy on Protection of Vulnerable Adults must be adhered to.

2. Objective

- 2.1. The objective of this policy and procedure is to ensure that fair, effective and consistent arrangements exist for dealing with disciplinary matters and that common standards are observed throughout the Trust. It is considered that observance of an agreed procedure is in the mutual interest of both management and staff.
- 2.2. Set clear standards of behaviour at work and provide a mechanism for enforcing these.
- 2.3. Emphasise that disciplinary issues should be approached constructively and positively, wherever possible, with the aim of helping the employee to change their behaviour, rather than merely punishing them.

3. General Principles

- 3.1. The principle of the procedure is that issues of performance/capability will be dealt with under the Trust's Capability Procedure, which deals with Work Performance. The issues must be explained to the employee, the necessary advice and assistance arranged and the opportunity for improvement given unless it is agreed that the situation is serious enough to warrant entry to the formal procedure straight away.

- 3.2. Disciplinary action should only be taken after careful investigation of all the facts, after an employee has had the opportunity to present his/her case, and the allegations proven to the satisfaction of the manager.
- 3.3. The underlying principles of the procedure can be set out as follows:
- i) To assist the Trust and employees in ensuring that standards of conduct and performance are maintained and set clear standards of behaviour at work.
 - ii) To deal effectively with issues of misconduct.
 - iii) To provide an employee with the right of appeal against disciplinary sanctions.
- 3.4 The procedure complies with the ACAS Code of Practice on 'Disciplinary and Grievance Procedures' (October 2004) and The Dispute Resolution Act (October 2004), but is subject to review in the light of future legislation. Any review will be in negotiation with the Trust's Joint Staff Council.
- 3.5 In cases involving professional issues the appropriate professional manager, advisor or officer to whom they are accountable must be a member of the disciplinary panel which will be chaired by the appropriate line manager. If no such person is available, the Trust has discretion to appoint an external assessor to advise the disciplinary panel.
- 3.6 No employee will be dismissed for a first offence of misconduct except where the offence is deemed to be gross misconduct.
- 3.7 All proceedings conducted within the remit of the Trust, witness statements and records will be kept confidential. However, in exceptional cases, there may be circumstances in which disclosure is desirable, but only with the agreement of the employee and management. Where proceedings are beyond the remit of the Trust eg. Employment Tribunals, the confidentiality of these documents will be beyond the Trust's control.
- 3.8 Managers will not discriminate in the application of this policy and procedure in respect of age, disability, race, nationality, ethnic or national origin, gender, religion, beliefs, sexual orientation, domestic circumstances, social and employment status, HIV status, gender reassignment, political affiliation or trade union membership.
- 3.9 When staff normally work at nights or weekends, disciplinary hearings and appeals will be held at mutually convenient times. If this involves the employee being available at times when they would not otherwise have been on duty, consideration will be given to an appropriate compensation for the time off or expense incurred.

- 3.10 In the course of a disciplinary case an employee might sometimes raise a grievance about the behaviour of the manager handling the case. Where this happens, and depending on the circumstances, it may be appropriate to suspend the disciplinary procedure for a short period until the grievance can be considered. Consideration might also be given, where possible, to bringing in another manager to deal with the disciplinary issue.
- 3.11 The Human Resources Department can give advice on any matter relating to the interpretation of the procedure and advice must be sought in cases considered to merit formal disciplinary action, suspension from duty or dismissal.

4. Authority to Discipline

- 4.1 Except in cases involving dismissal (with or without notice) the authority to take disciplinary action against an employee rests with the immediate line manager. Oral warnings can be given by the immediate supervisor. The choice of 'immediate' supervisor or line manager will depend on the management structure and nature of the Department or service.
- 4.2 The authority to dismiss an employee rests with the appropriate Senior Manager at Senior Management Team level, in line with the general principle that such a decision can be taken by the appropriate Manager's Manager.
- 4.3 Circumstances may arise, for example during periods of leave, when the authorised officer is not available. In these cases another officer of appropriate seniority shall have the authority to take disciplinary action or dismiss, and report to the authorised officer at the earliest opportunity. If the case involves specialist professional issues then the Trust' has discretion to call in an external assessor in line with 3.5 above.

5. Principles of the Procedure

5.1 Stages of the Procedure

If any employee fails to respond to the informal counselling the *formal* disciplinary procedure will be invoked, although the procedure may be invoked at any stage depending on the seriousness of the case. At all stages of the procedure, the requirements of Section 3, General Principles set out above must be followed.

In cases where the capability of the individual employee is in question the Trust's Capability Policy must be applied before instigating any disciplinary action.

Where a manager suspects that the individual's physical or mental health may be a cause of the alleged misconduct, the individual must initially be referred to Occupational Health for assessment. Following the assessment

and Occupational Health report, the manager should decide (in consultation with Human Resources), whether to proceed with disciplinary action or to pursue other policies/procedures as appropriate eg. the Trust's Substance Misuse Policy.

The stages of the procedure are as follows:

5.2 Informal Process

Counselling by the Line Manager

In many situations minor breaches of conduct at work, e.g. lateness, carelessness or lack of effort, can be dealt with successfully by the line manager discussing the issue(s) with the employee at an early stage i.e.

- When expected standards are not being met;
- Exploring together the reasons why;
- Reminding employees of their responsibilities and encouraging improved behaviour; and
- Where appropriate, ensuring employees understand that if there is no improvements in their conduct the issue may be considered under the formal disciplinary process.

A manager or supervisor is required, as part of their day-to-day responsibility, to ensure that their staff maintain an acceptable standard of work performance and conduct. Failure of required standards will normally result, in the first instance, in a counselling interview between the employee and their immediate supervisor. This is not regarded as part of the disciplinary procedure and has been included for clarification only. Dependant on the circumstances of the case, more than one unsuccessful counselling interview may take place before the formal disciplinary procedure begins. For reference purposes a brief record should be kept of these discussions on the employees supervision/personal file.

5.3 Formal Process

The formal process will be applied where:

- the employee does not respond to informal action; or
- the line manager believes that a breach of conduct may have occurred that is too serious to be dealt with informally.

The process has a number of stages:

- Investigation (to elicit the facts);
- Suspension (normally only required in cases of gross misconduct);
- Disciplinary hearing (where sufficient evidence is found); and
- Appeal.

5.4 Investigation

Whenever there are grounds for a manager or supervisor to believe that misconduct has occurred or a complaint has made been made against an

employee, a full investigation of all the relevant facts must be undertaken. The authorised manager (this is normally a manager at Senior Management Team level or the Manager/Director to whom they report) will decide who is the appropriate person to carry out the investigation.

This is a key stage of the disciplinary process and should be carried out with the minimum delay by the appointed manager.

The purpose is to establish all the relevant facts of the case and gather evidence that may be needed should a disciplinary hearing be convened.

The investigation will normally involve at least one interview with the employee against whom the allegation is made to allow them to answer questions and offer an explanation. It must be made clear to the employee that this is an investigative interview and not a disciplinary hearing.

5.5 Representation

An employee requested to attend an investigation interview or disciplinary hearing, whether or not he or she has been suspended from duty, has the right to be accompanied by his/her Union Representative or a work colleague in accordance with the ACAS Code of Practice on Disciplinary and Grievance Procedures (October 2004).

5.6 Recognised Staff Representatives

No formal disciplinary action may be taken against a recognised Staff Representative until the circumstances of the case have been discussed with the full-time official of the union concerned. However, in cases of gross misconduct, involving suspension from duty, the full-time official will be informed at the earliest opportunity.

5.7 Suspension from Duty

Suspension from duty is not considered to be a disciplinary sanction. Employees will be suspended from duty, on full pay in one or more of the following circumstances:

- a) When a complaint is lodged against an employee, which is within the list of serious offences as detailed in Section 3 of the Disciplinary Rules (Appendix 1).
- b) When the action complained of requires the immediate removal of the employee from the work place pending investigation and decision concerning action to be taken.
- c) Where the action complained of requires investigation and the employee's presence at work might interfere with the investigation.

- d) When the employee's behaviour is such that he/she is a danger to him/herself or other employees.

A decision to suspend an employee will be taken by officers as authorised by the Trust in accordance with Section 4 above.

However, circumstances may arise, for example, on night duty, at weekends or during periods of leave, when the authorised officer is not available. In these cases, the most senior officer on duty should make the decision and report it to the authorised officer and the Human Resources Department at the earliest opportunity.

Employees, for whom suspension from duty is considered necessary, will be suspended from duty immediately. Payment for the remainder of the shift being worked will be made on full pay. An employee suspended from duty will, when so informed, be escorted to his/her desk/locker, to remove any personal belongings and must hand back any property of the PCT, e.g. ID/entry Card, keys, client files or working papers.

An employee does not have the right to prior notice that they are to be suspended or to be represented when being suspended.

All cases of suspension from duty must be confirmed in writing by the authorised officer as soon as practicably possible, and in any event, within 3 working days of the decision being taken. The letter must confirm the reason for the suspension.

At any point during the suspension, the employee may raise an informal grievance to consider the circumstances of the suspension. No details of the investigation will be made available as part of the grievance. Please also refer to the Restriction of Practice and Exclusion from Work Directions 2003 which replace HSG(94)49 for the suspension of Medical and Dental staff. The employee must inform his/her manager of any change of address during the period of suspension.

A member of staff suspended from duty must:

- not enter either their own workplace or other Trusts' premises except with the permission of management to receive medical treatment, or as a bona-fide visitor of a Hospital patient, until the date of the disciplinary hearing.
- report sickness and request annual leave, in writing to their line manager.
- make themselves available for contact or recall to work.
- not contact colleagues at the employees workplace unless via a nominated person.

Staff on suspension will be offered the support of the Occupational Health Department and the Trust's Counselling Service on a completely confidential basis.

Suspensions should only be imposed after careful consideration and reviewed every 21 working days, to ensure that they are not unnecessarily protracted.

If an employee who is suspended is subsequently certified as unwell, advice should be sought from the Occupational Health Department before proceeding with the investigation or disciplinary hearing.

5.8 Disciplinary Hearing

Following an investigation by the investigating Officer (this is normally the employee's manager or supervisor) it is for the Authorised Manager to decide:

- a) There is a disciplinary case to answer and therefore a disciplinary hearing must be convened or;
- b) The matter does not warrant disciplinary action and the employee's manager or supervisor is asked to counsel the employee, identifying objectives and personal development needs as appropriate or;
- c) The matter is resolved to the Authorised Managers satisfaction and no further action is needed. A letter to this effect is sent to the employee.

The employee must be informed in writing of the substance of the case against him/her and advised of his/her right to representation at the hearing at least 10 working days before the hearing unless mutually agreed otherwise by both parties, subject to the rules on postponement of meetings set out in the ACAS Code of Practice on Disciplinary and Grievance Procedures (October 2004). Any documentation relevant to the hearing must be provided to the employee with the written notification. The employee should be informed in the notification that the outcome of the hearing could include formal disciplinary action taken against him/her. If the potential outcome could include dismissal, this should be stated.

The employee will confirm to the appropriate manager his/her attendance at the disciplinary hearing stating whether or not he/she will be accompanied by his/her union representative or a colleague and whether he/she is calling any witnesses 3 days prior to the hearing.

A representative of the Human Resources Department will normally be present at the disciplinary hearing particularly where the outcome could include formal disciplinary action or dismissal.

Arrangements for attendance of any witnesses are the responsibility of those requiring them to attend. Prior notification of witnesses to be called must be given to the Manager. NHS Witnesses called to attend the hearing must be allowed time off with pay and managers will co-operate in ensuring that members of staff, called as witnesses, are released from their duties at the required time.

5.9 Failure to Attend

An employee, for whatever reason, may fail to attend a disciplinary hearing. The employee may give the Trust notice that he/she will not be attending or may simply fail to attend on the day of the hearing. The general principles in such cases are that:

- an employee has a contractual right to a disciplinary hearing under the disciplinary procedure; and
- the rules of natural justice require that the employee must have the opportunity to be heard.

If the employee is unable to attend the disciplinary hearing as arranged it may, depending on the circumstances, be postponed. If the employee is unable to attend the reconvened hearing it will normally proceed in his/her absence but with his/her representative being given the opportunity to present the employee's case on his/her behalf. In such cases it will also be possible for the Chair of the hearing to accept for consideration a written statement from either the employee or his/her representative.

5.10 Outcome of the Hearing

The decision of the manager conducting the hearing will normally be given to the employee orally at the end of the hearing. The decision will be confirmed in writing within 5 working days.

The possible conclusions are that there has been:

- no breach of conduct and that the disciplinary procedure should be dropped - a note recording brief details of this outcome, to be retained on the employee's personal file; OR
- a breach of conduct, but it is not serious enough to warrant formal disciplinary action and/or mitigating circumstances have been taken into account and it can be dealt with appropriately by informal action, e.g. by counselling and/or by issuing written instructions to clarify expected future conduct; OR
- a breach of conduct considered being sufficiently serious to warrant formal disciplinary action (outlined in section 7.0 – 7.4).

6. Disciplinary Rules

- 6.1 The Disciplinary Rules of the Trust, as set out in Appendix 1, specify the standards required by all staff.

- 6.2 The rules as specified under Section 3, Appendix 1 – Serious offences, are classed as gross misconduct for which special provision is made within this procedure.
- 6.3 The Trust's Standards of Conduct/Practice Policy sets down the basic rules and principles that govern the way all staff work.
- 6.4 The list of standards outlined in Appendix 1 or within the Standards of Conduct/Practice Policy is not exhaustive.

7. Formal Disciplinary Action

7.1 Stage 1 – Oral Warning

The immediate supervisor/manager will investigate any issues prior to informing the employee of his/her shortcomings and give the employee an opportunity to offer an explanation. The employee will be advised of the improvement required, how this could be achieved and that failure to improve to the required standard within the required period will result in further action being taken. A record of the oral warning will be made on the employee's personal file and confirmation of the warning in writing will be sent to the employee.

7.2 Stage 2 – First Written Warning

If an employee fails to improve following an oral warning, or commits an offence of greater magnitude warranting a higher level of warning, a disciplinary hearing will be convened.

If, at the hearing, the manager is of the belief that a written warning is warranted, the employee will be advised of this at the end of the hearing wherever possible. The manager will confirm this in writing within five working days of the hearing. The written warning must state the following:

- a) The reason for the warning;
- b) The improvement that is required within any defined period, any action taken by the management to facilitate the improvement and the consequences of failure to improve to the required standard within the defined period;
- c) The duration of the warning remaining on the file; and
- d) The right of appeal against the warning.

Formal notification of written warnings must be sent to the employee. A copy will in normal circumstances be sent to the appropriate representative.

7.3 Stage 3 – Second or Final Written Warning

Final Warnings may be given if:

- a) An employee is subject to a first written warning and has failed to respond to the required standard within the defined period, or
- b) If it is a sufficiently serious offence which may warrant an immediate final written warning, or
- c) When, after investigation under the rules of Gross Misconduct, dismissal is not recommended but a final written warning is considered appropriate, without previous warnings having been given.

Following full investigation a disciplinary hearing will be convened, as under Stage 2.

The Chair of the Panel will send formal confirmation of the final warning within 5 working days of the hearing and the employee must be advised as under Stage 2.

Notwithstanding the stages in the procedure, circumstances relating to individual cases may be such that, dependant upon the seriousness of an offence, a written warning or final written warning may be given in the first instance. Human Resources advice must be sought if this action is considered appropriate.

Note: In determining the level of warning necessary to correct the behaviour of an employee, a manager should apply the minimum warning necessary to bring about the required improvement.

7.4 Dismissal

An employee may be dismissed if:

- a) It is established that there is a breach of discipline after a final written warning, unless there are exceptional mitigating circumstances, or
- b) He/she is found guilty of gross misconduct in accordance with the disciplinary rules.

An employee for whom dismissal is under consideration will be informed in writing of the date of the disciplinary hearing, the reason for the hearing, the right to representation and that the outcome of the hearing could lead to dismissal. Notice of the hearing should be given in accordance with section 5.8.

The disciplinary hearing will be conducted by the relevant Senior Manager. The investigating manager should also be present at the hearing. In cases

involving professional issues, paragraph 1.3 applies. If following the investigation and the disciplinary hearing it is decided that dismissal should take place, the employee must be informed in writing of the following:

- a) The reason for the dismissal, with reference to previous warnings;
- b) The period of notice, if any, or payment in lieu of notice, if appropriate;
- c) The effective date of dismissal;
- d) The right of appeal against dismissal.

A copy will in normal circumstances be sent to the appropriate staff representative in accordance with section 7.2 above.

All employees must be advised on their statement of terms and conditions to whom the authority to dismiss them is delegated.

7.5 Review Procedure

Disciplinary action other than dismissal should not count against an employee indefinitely. Except in special circumstances disciplinary action taken should be disregarded after a specified period of time of satisfactory conduct. Disciplinary warnings that are disregarded will be placed in a sealed envelope separate from the personal file and shall only be accessed by the Chief Executive and Board of Directors under exceptional circumstances. As guidelines formal reviews will normally take place as follows:

Oral warnings	– 6 months
First written warning	– 12 months
Final written warning	– 12 months

However, in accordance with the ACAS Code of Practice (October 2004) and Dispute Resolution Act (October 2004), different periods may be more appropriate dependant upon the offence and disciplinary action imposed.

The manager who gave the original warning will initiate a formal review of the warning with the employee and his/her representative. Human Resources advice should be sought as appropriate.

Employees will receive written notification arising from the review process.

8. Gross Misconduct

In the event of any employee being suspected of an offence as set out in the Disciplinary Rules, Appendix 1, Section 3 – Serious Offences, the following procedure will be followed:

- 8.1 The employee will normally be suspended from duty on full pay pending an investigation.
- 8.2 A disciplinary hearing will normally be convened within a reasonable time limit, at which the employee and his/her representative will be afforded the opportunity to explain the case.
- 8.3 The outcome of the hearing will be confirmed in writing to the employee as soon as possible and in any event within 5 working days of the hearing.
- 8.4 Gross misconduct will normally result in summary dismissal, i.e. instant dismissal without notice or payment in lieu of notice and the employee will be advised in writing in accordance with the paragraph on dismissal above.

9. Appeals Procedure

Employees have the right of appeal against written warnings and dismissal.

9.1 First Written Warnings

An employee who wished to appeal against a first written warning should inform either verbally or in writing, the manager of the person who issued the warning within 14 calendar days of the disciplinary hearing.

The notice of appeal should indicate the reason for the appeal stating whether or not the employee will be represented by a union representative or a work colleague, identifying their name and location. The notice of appeal should also state the names and locations of any witnesses the employee or his /her representative intends to call.

9.2 Final Written Warning and dismissal

An appeal by an employee against final written warnings or dismissal should be lodged to the Strategic Lead HR and Development within 21 calendar days of the disciplinary hearing, a reasonable extension to this time frame can be agreed depending on individual circumstances. The appeal can be lodged verbally or will be accepted in writing. An appeals panel will be convened.

9.3 Appeals Panel

9.3.1 First Written Warnings - the issuing manager's manager and a member of the Human Resources Team will meet with the employee.

9.4.2 Final Written Warnings - the panel shall consist of 3 members of the Trust's Management Team.

9.4.3 Dismissal - the panel shall consist of 3 members of the Trust's Board and would normally follow the pattern of at least one Non Executive Director

being on the panel. The appeals panel is authorised by the Trust to act on its behalf. A report of the panel's findings will be submitted to the Senior Management Team. No member of the panel will hear an appeal raised by a peer or senior officer.

- 9.4 Appeals panels will be convened within 5 calendar weeks of receipt of notice of appeal by the Strategic Lead HR and Development. He/she will appoint a secretary to the appeal panel who has not previously been involved in the case. The employee and his/her representative will receive at least 14 calendar days notice of the date of the hearing. Members of the panel and the manager presenting the case will receive a similar period of notice.
- 9.5 Statements of case from the employee or his/her representative and the management representative must be submitted to the Strategic Lead HR and Development at least 5 working days prior to the hearing. Papers will be distributed on receipt of both sets. The employee and his/her representative and the management representative will notify the Strategic Lead HR and Development no later than 10 working days before the date of the appeal hearing the names of any witnesses they intend to call. Failure to meet with these requirements may mean the arrangements will be cancelled.
- 9.6 Where possible at least one member of the panel should have specialist knowledge of the field of work of the employee. Where this is not possible in the cases of an appeal against dismissal, the panel shall at the request of the employee or employee's representative appoint an assessor to advise the panel who is experienced in the particular discipline of the employee, and who has not been directly involved in the circumstances leading to dismissal.
- 9.7 The appeal panel shall not include as a member of the panel a member who has been directly involved in the circumstances leading to disciplinary action or dismissal.
- 9.8 The procedure to be followed at appeal hearings involving Appeals Panels is set out in Appendix 3.
- 9.9 The decision of the appeals panel is final.
- 9.10 Under the Employment Act (Dispute Resolution) Regulations October 2004, it may be that an employee may have recourse to use the Trust's grievance procedure following appeal.

9.11 Modified Procedure – Dismissals only

The modified procedure allows for a 2-stage process without the need for a meeting. This procedure applies when employment has ended and either:

- The Trust and the employee agree to a modified procedure to be followed or

- The Trust and the employee are unable to complete a step in the standard grievance procedure (e.g. the employee has moved away and cannot reasonably attend meetings)

10. Union Representation

Full-time Union Officials may exercise the right to attend disciplinary hearings in respect of their members in accordance with the ACAS Code of Practice on Disciplinary and Grievance Procedures (October 2004), although it would be normal practice for local staff side representatives to attend. Accredited representatives, when subject to formal disciplinary action themselves, have the right to full time officer representation in accordance with section 5.6.

11. Definitions

- a) 'Supervisor' is the person to whom the employee is directly responsible for the purpose of his/her duties.
- b) 'Line Manager' is the officer to whom the supervisor is directly accountable.
- c) 'Senior Manager' is the officer to whom the line manager is directly accountable.
- d) 'Union' is used to mean Trade Union, Staff Association or Professional Organisation which is afforded recognition and facilities by the Trust.
- e) 'Professional Advisor' eg Nurse Director.
- f) 'Trade Union Staff Representative' is a person elected or appointed in accordance with the rules of a Union to represent its members and who is accredited as such by the Trust.
- g) 'Suspension on full pay' means the pay an employee would have received in accordance with his/her duty roster, had he/she been at work during the periods of suspension.
- h) In an investigation situation "represented" is defined as answering for or making specific responses to actual questions addressed to the employee. "Accompanied" is defined as being present in a supportive role but not taking part in the questioning or ascertaining of facts.

12. Review of Policy

This procedure will be reviewed by the Trust Joint Consultative and Negotiating Partnership at 2 yearly intervals, unless and earlier review is required e.g. due to changes in legislation, NHS directions or in the Trust.

Appendix 1 – Disciplinary Rules

1. Introduction

The procedure to be followed when disciplinary action has to be taken is laid down in the Disciplinary Procedure agreed by the Trust.

The purpose of this document is to:

- a) set out the standards and rules expected of all employees
- b) give an indication of the general circumstances which could lead to disciplinary action.
- c) list offences which are among those regarded as very serious and which will normally lead to dismissal, without previous warnings being given.

2. General Rules

These rules are of general application to all staff employed in the Trust and non-observance could lead to disciplinary action. Staff should also refer to the Standards of Business Conduct.

- 2.1 Members of staff are required to attend for duty for the hours as specified in their contracts, work rosters, or as determined by management. Failure to attend punctually or regularly could lead to disciplinary action, including dismissal, if the offences continue after previous warnings. The distance of an employee's home from the place of work, or any difficulty of access cannot be accepted as a reason for irregular attendance. In exceptional circumstances managers have discretion to vary the hours of attendance to meet individual difficulties, but this may only be done on an exceptional and reasonable basis and not as a regular occurrence.
- 2.2 Staff will be expected to present themselves for work unless they have prior permission to be absent. In cases of sickness, contact with infectious diseases or sudden domestic emergencies the responsibility lies with the member of staff concerned to inform his/her manager within a reasonable period and preferably before the normal starting time of the shift. This condition will only be waived in the most exceptional circumstances.
- 2.3 Employees absent due to sickness must produce a self certificate from the first day. Subsequent doctor's certificates shall be submitted to cover any absences extending beyond the first 7 calendar days. Frequent periods of sickness absence will be investigated by management, who may choose to

refer the employee to the Occupational Health Service. Please refer to the Trust's Management of Attendance Policy.

- 2.4 All absences which are not notified will be investigated and may be unpaid.
- 2.5 Employees who are accredited staff representatives will be allowed reasonable time off to fulfil their duties in accordance with the Trust's policy on 'Facilities and Time Off for Accredited Representatives'.
- 2.6 Every Trust employee is expected to combine prompt and efficient service with a concern and respect for the feelings of others, especially patients and visitors in accordance with policies and procedures of the Trust. If the efficiency or conduct of an employee fails to produce such service, they will first be advised by management of the shortcomings, given advice on how to improve and be given an opportunity to correct deficiencies. Continuing failure to correct shortcomings will lead to further disciplinary action in accordance with the agreed Disciplinary Procedure.
- 2.7 Employees should carry out the reasonable instructions of supervisors quickly and efficiently.
- 2.8 Staff in the employ of the Trust are not precluded by their contracts of employment from accepting other employment outside their normal working hours. However, such employment must not in any way hinder or conflict with the interests of their employment with the Trust and must comply with relevant employment legislation, e.g. Working Time Regulations - rest periods and the 48 hour week within the 17 week reference period. Staff should seek permission from their line manager before undertaking additional work. Staff cannot work for clients they care for in a private capacity (see Private Working below).

3. Serious Offences

The following offences are regarded as very serious and will be treated as Gross Misconduct. The procedure for such cases is identified specifically in the Disciplinary Procedure.

Theft

Any instance of theft from the Trust, or from patients/clients, visitors or other members of staff.

Trust property must not be removed from the Trust's premises for personal use, nor used for private purposes within the premises without prior written approval of the employee's manager. Property issued for personal use in Trust residential accommodation must not be removed from there.

Fraud

Any deliberate attempt to defraud the Trust or members of the public in the course of official duties. This includes misrepresentation of time sheets or

entitlements to expenses or allowances and deliberate falsification of records.

Transaction with Patients

Employees are not permitted to enter into financial transactions with patients/clients or their relatives relating to goods or property or payment for services, which could be to the pecuniary advantage of the employee.

Corruption

The Trust's Policy on gratuities sets out provisions regarding the acceptance of gifts and hospitality. The conduct of staff in the public service must be scrupulously impartial and honest.

Private working

Any employee must not knowingly undertake additional work that conflicts with the PCT's interests, or adversely affects his/her work for the PCT. Therefore, an employee must not carry out private work for, or supply goods and services to:

- the PCT;
- PCT contractors;
- PCT suppliers; or
- individuals/organisations receiving services from the PCT.

And must not undertake private work for financial or other reward during the normal agreed working hours for the PCT;

Failure to Disclose an Interest of Self/Family/Associate in a Contract

Contrary to the Standing Orders of the Trust (this rule is only applicable to officers specifically involved in this type of work). Advice on the Trust's policy is available on request.

Assault

Any assault on a patient/client, visitor, member of the public or fellow employee whilst on duty or on Trust premises.

Negligence

Any action or failure to act, which threatens the health or safety of a patient/client, visitor, member of the public or another member of staff.

Health and Safety

A serious failure to co-operate with management and other employees under the terms of the Health and Safety at Work Act or regulations made thereunder.

Malicious Damage

To Trust property or the property of patients/clients, visitors or staff.

Being Unfit for Duty

Through the effect of drink or illegal drugs: or by being asleep on duty (unless authorised to be so, eg on stand by duty). NB. On duty does not include permitted rest breaks.

Refusal to Carry out a Reasonable Management Instruction

This includes insubordination to a senior officer or supervisor.

Loss of Legal Authority to Continue Employment

The loss of legal authority to carry out the duties for which employed.

Breach of Confidentiality

Any matters of a confidential nature in particular any information relating to patients/clients, individual staff records and details of contract prices and terms must, under no circumstances be divulged or passed on to any unauthorised person or persons subject to the Trust's Raising Issues of Serious Concern at Work (Whistleblowing) Policy, paragraph 330 of the Hospital Red Book for Medical and Dental staff and the Public Interest (Disclosure) Act 1998.

Misrepresentation

A misrepresentation of details required on application for employment with the Trust with special reference to a failure to disclose conviction as required under the Rehabilitation of Offenders Act 1974 (Exemptions) Order 1975.

Bullying, Harassment and Victimisation

Serious bullying, harassment or victimisation of patients/clients, members of the public or members of staff.

Misuse of Trust Facilities

Including computer facilities (eg Email and internet, in accordance with Trust policies on email and internet use).

Bringing the Trust into Serious Disrepute

Including misuse of the Trust's names.

Note:

This list takes into account the main categories of likely serious offences: the list cannot however be considered exhaustive and the Human Resources department should be consulted in respect of any cases considered to be classified as Gross Misconduct or misconduct which do not fall within the categories listed.

4. Off Duty Offences

- 4.1 In the case of an employee being arrested or charged with an offence off duty, the Trust will consider whether or not the alleged offence has any

implications for the person's employment with the Trust. Any such employee who is arrested on any charge or served with a summons on a criminal charge must inform his/her manager as soon as possible.

- 4.2 If the Trust considers that the alleged offence has implications for the employee's employment it may
- a) immediately suspend the employee from duty with pay pending the outcome of the proceedings and /or
 - b) take such disciplinary action as may seem appropriate either prior to or following the determination of the proceedings whether or not the employee is convicted of the offence. Such disciplinary action may include dismissal.

5. Statutory Regulating Bodies

- 5.1 The Trust reserves the right to report such matters of a serious nature as it sees fit to the individual's statutory regulating body where appropriate.
- 5.2.1 The employee will be notified of this action in the letter confirming disciplinary action or dismissal.

6. Special Rules

- 6.1 Certain departments have special rules (e.g. concerning safe handling of dangerous substances), that will be brought to the attention of staff concerned. A departure from these rules will invoke the disciplinary procedures.
- 6.2 Trust staff who may be required to work at premises other than those belonging to the Trust are expected to observe local procedures pertaining to that area.

Appendix 2 – Procedure to be followed at Disciplinary Hearings

1. The manager conducting the hearing (the Chair) will introduce all present and outline the purpose of the hearing and its format.
2. If the employee is not accompanied/represented, the Chair will check that he/she is aware of his/her right to be accompanied/represented and whether or not he/she is happy to proceed without accompaniment/representation.
3. The Chair will ask the investigating manager to outline the nature of the allegation(s) and to present the evidence from the investigation, using written information and/or witnesses in support if necessary.
4. The employee or his/her representative will be able to ask questions of the investigating manager and/or witnesses in turn.
5. The employee, or his/her representative, will then be given the opportunity to state his/her case, presenting written information and/or witnesses in support if necessary.
6. The investigating manager will be able to ask questions of the employee, his/her representative and/or witnesses in turn.
7. The Panel may question the employee, his/her representative, the Investigating manager and witness(es) if necessary to clarify points or to probe unclear responses.
8. The Investigating manager will be given the opportunity to sum up his/her case - by highlighting the key points of his/her case and responding briefly to any key points raised by the employee and/or his/her representative.
9. The employee or his/her representative will then be given the opportunity to sum up his/her case and to put forward any mitigating circumstances not mentioned previously.
10. The Chair will adjourn the hearing to consider the information and to reach a decision as to whether the case is proven, on the balance of probabilities, what level of misconduct has taken place and what, if any, disciplinary action is reasonable in the circumstances.
11. If the Panel wishes to clarify any point with either party and/or witnesses before making a decision, both parties will be recalled whilst the point is clarified, even if the question applies only to one party.
12. Once a decision is made the hearing will be reconvened and the Chair will advise the employee of his/her decision. This will be confirmed in writing to the employee within 5 working days.

13. Please note:

- Witnesses will be present at the hearing only when giving their accounts and answering questions.
- Either party may ask the Chair for an adjournment if necessary, or the Chair may decide to adjourn the hearing if he/she feels it is appropriate.
- If the employee is represented at the hearing the Chair will request that the employee directs any question he/she may want to ask the witnesses and/or investigating manager through his/her representative. The employee will, however, be given the opportunity to make any final comments direct in addition to his/her representative's 'summing up' if he/she wishes.

Appendix 3 – Procedure to be followed at Disciplinary Appeal Hearings

At the hearing of an appeal before the Appeal Panel the following procedure shall be observed.

- a) The Trust's representative shall state the Trust's case in the presence of the appellant and his/her representative and may call witnesses.
- b) The appellant and his/her representative shall have the opportunity to ask questions of the Trust's representative and witnesses.
- c) The members of the Appeal Panel shall have the opportunity to ask questions of the Trust's representative and witnesses.
- d) The Trust's representative shall have the opportunity to re-examine his/her witnesses on any matter referred to in their examination by members of the Appeal Panel, the employee or his/her representative.
- e) The employee or his/her representative shall put his/her case in the presence of the Trust's representative and may call witnesses.
- f) The Trust's representative shall have the opportunity to ask questions of the employee, his/her representative and witnesses.
- g) The members of the Appeal Panel shall have the opportunity to ask questions of the employee, his/her representative and witnesses.
- h) The employee or his/her representative shall have the opportunity to re-examine his/her witnesses on any matter referred to in their examination by members of the Appeal Panel or the Trust's representative.
- i) The Trust's representative and the employee or his/her representative shall have the opportunity to sum up their cases if they wish. The employee or his/her representative shall have the right to speak last in summing up. Neither party may introduce any new matter.
- j) Nothing in the foregoing procedure shall prevent the members of the Panel from inviting either party to elucidate or amplify any statement he/she may have made, or from asking him/her such question as may be necessary to ascertain whether or not he/she proposes to call any evidence in respect of any part of his/her statement, or alternatively, whether he/she is in fact claiming that the matters are within his/her own knowledge, in which case he/she will be subject to examination as a witness under (b) or (f) above.
- k) The Panel may at its discretion adjourn the appeal in order that further evidence may be produced by either party to the dispute or for any other reason.

- l) The Trust's representative, the employee and his/her representative and witnesses shall withdraw.
- m) The Panel with the officer appointed as Secretary to the Panel and where appropriate the assessor, shall deliberate in private, only recalling both parties to clear points of uncertainty on evidence already given. If recall is necessary, both parties shall return notwithstanding only one is concerned with the point giving rise to the doubt.
- n) No statement of previous acts of misconduct by the employee or the issue of a formal warning or warnings unrelated to the alleged offence(s) on which the disciplinary action is based shall be made until after the Panel has reached a decision on the appeal.
- o) The decision of the Panel shall be communicated in writing within 7 working days of the appeal hearing by the Chair of the Panel.