



Policy:

HR 001 Disciplinary

(Second Extension to Review Date approved by Policy Governance Group – January 2021)

Executive or Associate Director lead	Director of Human Resources
Policy author / lead	HR Directorate Partner
Feedback on implementation to	HR Directorate Partner

Document type	Policy
Document status	V4.2
Date of initial draft	July 2017
Date of consultation	February 2017 – August 2017
Date of verification	JPG -23/08/2017
Date of ratification	21 September 2017
Ratified by	Executive Directors' Group
Date of issue	30 September 2017
Date for review	31/05/2021 <i>(Extended from 28 February 2021)</i>

Target audience	All staff employed by the Trust
-----------------	---------------------------------

Keywords	Disciplinary, Conduct, Suspension, Investigation
----------	--

This is Version 4.2 (*Second Extension to Review Date*) of the Policy and replaces Version 4.1.

This policy is stored and available through the Trust's intranet and website (www.shsc.nhs.uk)

This policy is based on ACAS Code of Practice on Disciplinary and Grievance Procedures and Employment Act 2002.

This policy replaces the previous Disciplinary Policy and Procedure dated April 2014.

In 2016, the policy was reviewed in consultation with Staff Side.

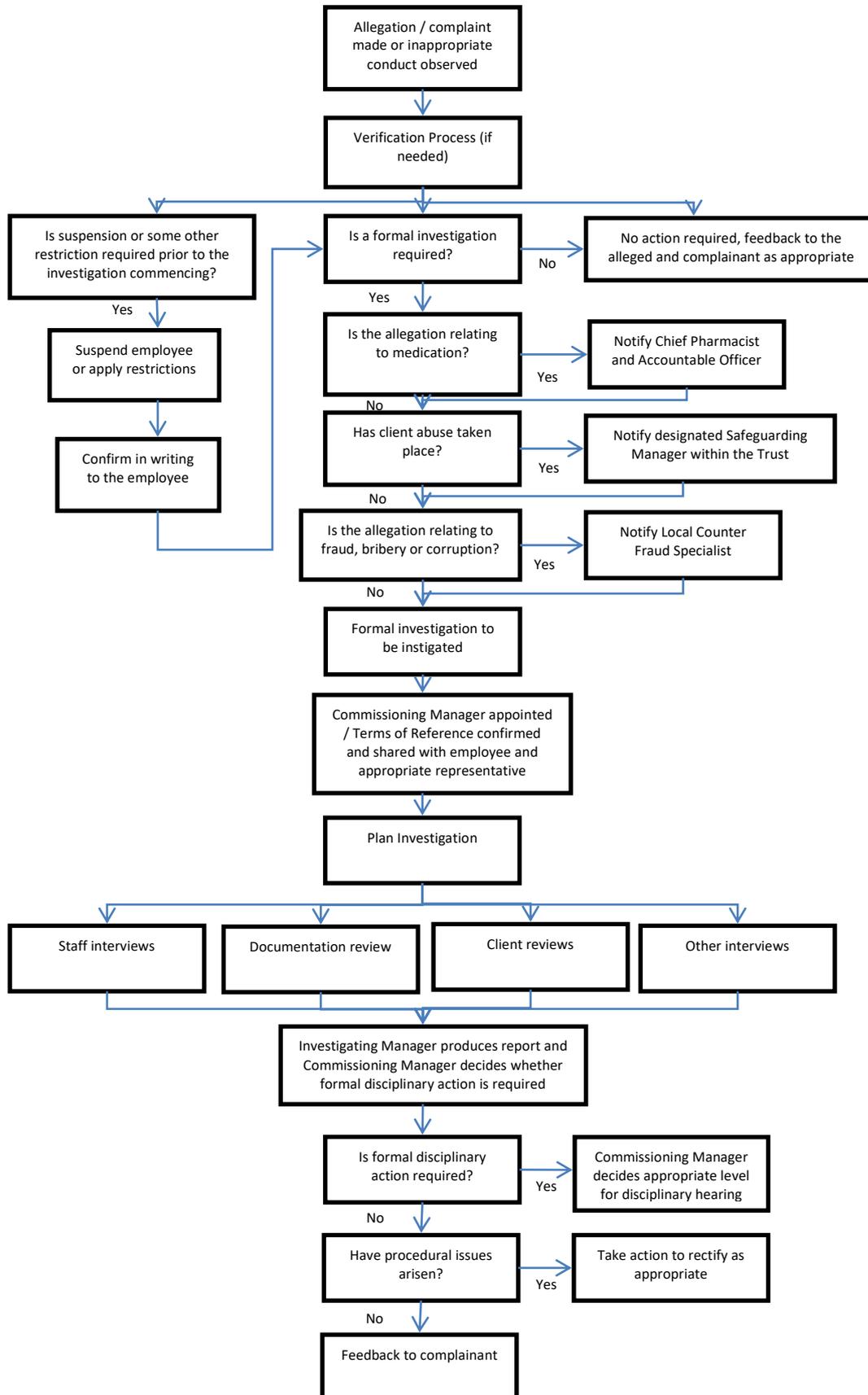
In 2017, the policy was reviewed following an audit and recommendations from 360 Assurance. The main amendments were introducing the role of Commissioning Manager and ensuring each investigation has a term of reference.

Contents

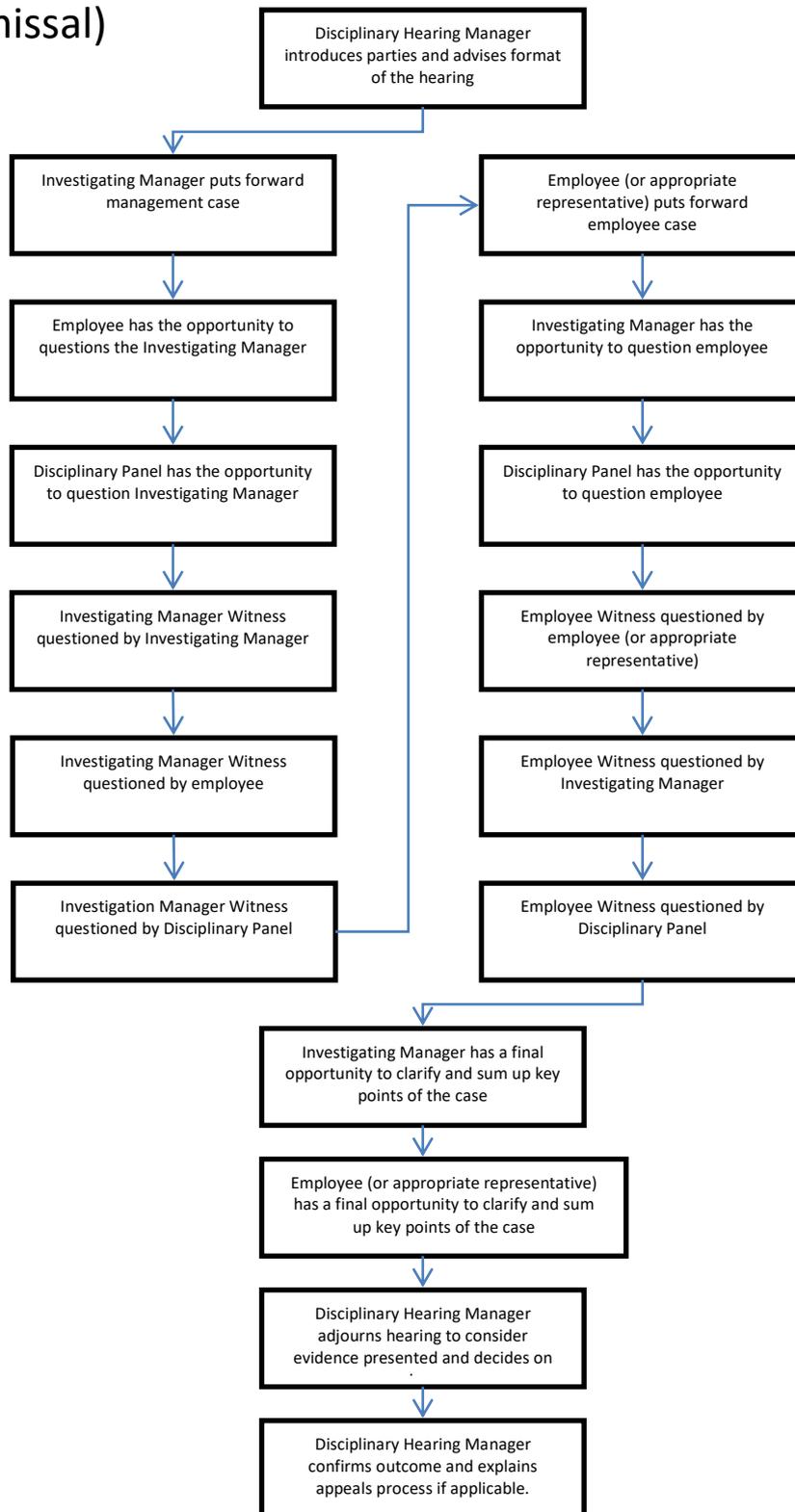
Section	Description	Page
	Disciplinary Investigation Process Flowchart	1
	Disciplinary Hearing Process Flowchart	2
	Appeal Hearing Process Flowchart	3
1	Introduction	4
2	Scope	4
3	Definitions	5
4	Purpose	6
5	Duties	8
6.1	Rights of Representation and Employee Support	8
6.2	Authority to Deal with Disciplinary Matters	10
6.3	Suspension from Duty	10
6.4	Verification Process	12
6.5	Commissioning Manager	12
6.6	Investigation	13
6.7	Informal Action	15
6.8	Formal Action	16
6.9	Stage 1 - Recorded Warning	16
6.10	Stage 2 - First Written Warning	17
6.11	Formal Stage 3 - Final Written Warning	17
6.12	Formal Stage 4 - Dismissal / Termination Hearing	17
6.13	Requesting Warnings Without a Formal Hearing	18
6.14	Disciplinary Hearing	19
6.15	Stage 1 - Recorded Warning	19
6.16	Formal Stage 2 - First Written, Formal Stage 3 - Final Written Warning and Formal Stage 4 Dismissal Hearing	19
6.17	Failure to Attend a Hearing	20
6.18	Deferment of Incremental Progression	20
6.19	Adult and Children's Safeguarding Team	21
6.20	Right to Appeal	22
6.21	Appeal Hearing	22
6.22	Disregarded Warnings	23
6.23	Right to Curtail Procedure	24
6.24	Timescales	24
6.25	Monitoring	26
7	Dissemination, Storage & Archiving	27
8	Training & Other Resource Implications	27
9	Audit, Monitoring & Review	28
10	Implementation Plan	28
11	Links to other policies, standards and legislation	29
12	Contact Details	29
13	References	29
Appendices	Appendix A – Version Control and Amendment Log	30
	Appendix B – Dissemination Record	31
	Appendix C – Equality Impact Assessment Form	32
	Appendix D – Human Rights Act Assessment Checklist	33
	Appendix E – Development, Consultation and Verification Record	35
	Appendix F – policy Checklist	36
	Appendix G – Guidance to Classification of Disciplinary Offences	38
	Appendix H – Authority to Deal with Disciplinary Matters	40
	* Appendix I – Managers Guide	-

* The Manager's Guide is too large a document to be added to this policy. It is attached separately and can be found on the Trust Intranet or contact Human Resources for details.

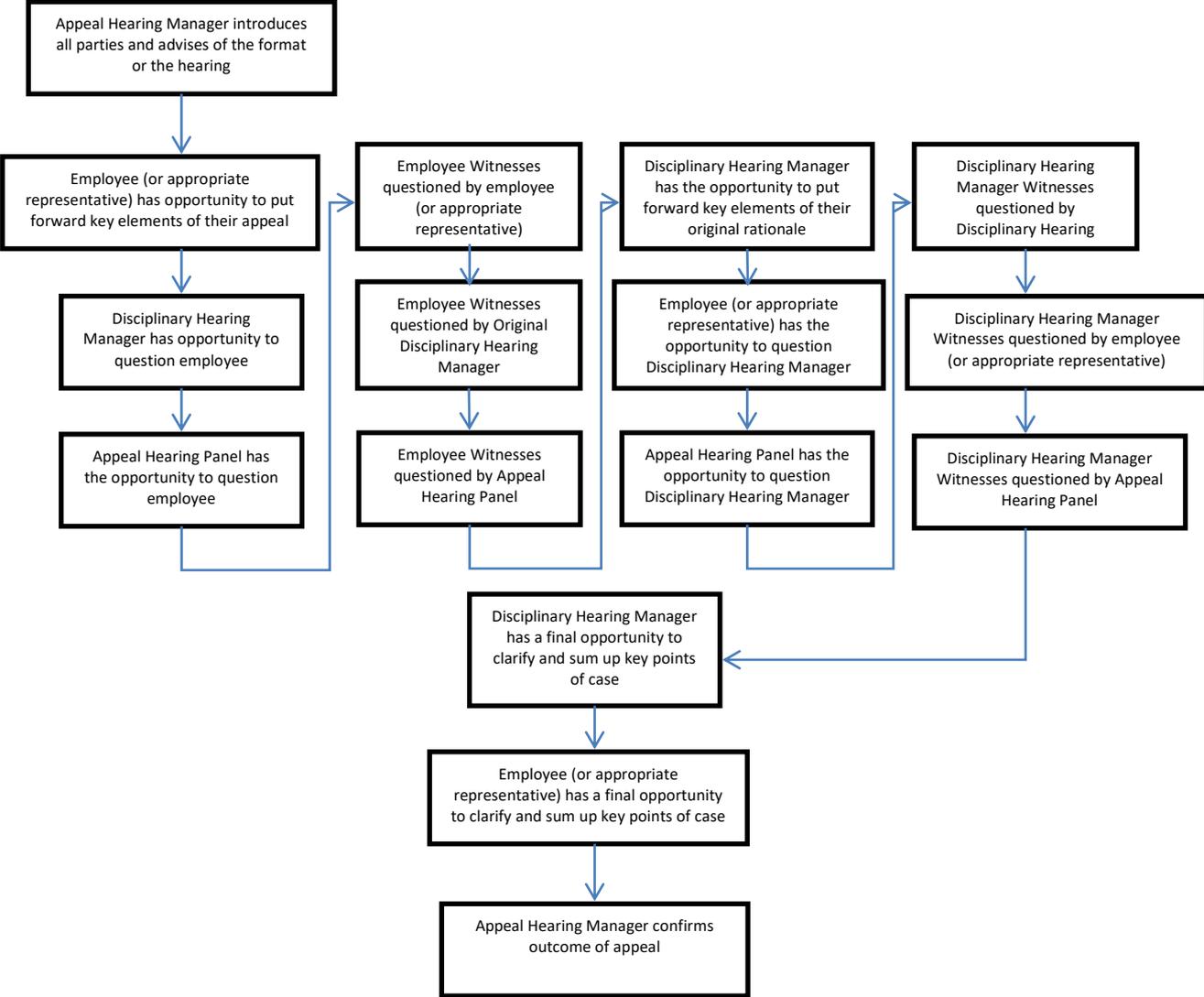
Disciplinary Investigation Process



Disciplinary Hearing (Written, Final Written and Dismissal)



Appeal Hearing



INTRODUCTION

- 1.1 The following procedure will be applied correctly and fairly in all instances where disciplinary action is regarded as necessary.
- 1.2 Where conduct of individual employees falls below the standards expected of them, the Trust may use the Disciplinary Policy to address issues at the lowest level required to make the necessary change in behaviour, but up to and including dismissal where appropriate. However, every effort should be made to deal with allegations informally in the first instance unless the severity of the allegations justifies formal action.
- 1.3 Cases will be handled as speedily as possible, and where there is a delay, the individual will be notified of the reason and anticipated date of conclusion. Cases will be handled sensitively and wherever practicable in confidence. Where an employee is subject to formal disciplinary action, they will be given the right to a fair hearing in line with this policy and taking account of ACAS guidelines.
- 1.4 All employees have the right to be accompanied at a formal disciplinary hearing by a work colleague or trade union representative of their choice.
- 1.5 All employees will be treated in line with Sheffield Health and Social Care NHS Foundation Trust values.
- 1.6 The key principle of these procedures is to take timely, corrective action and ensure that there is no recurrence of the issues.
- 1.7 It is important that the Disciplinary Policy is **not** used punitively, but is instead used to ensure that satisfactory conduct is maintained by all employees and the reputation of the Trust is maintained. In addition, the Disciplinary Policy should be used to reinforce the Trust's commitment to providing all service users with an excellent standard of care as well as ensuring this is done within a safe environment for employees, visitors and the general public.

2 SCOPE OF THIS POLICY

- 2.1 This Policy will be applied to all employees of the Trust except where allegations are made in respect of doctors. For doctors, there is a separate policy which sets out the processes involved (see section 10). This policy will apply to any areas not dealt with by that policy and with areas (such as conduct) which are for consideration under this policy subject to the appropriate modifications having been made to the procedural steps involved. Other individuals who contribute to the service of the Trust e.g. volunteers, students on placement, council employees may be subject to separate processes as appropriate.
- 2.2 In applying this Policy, the Trust will ensure that it does not discriminate directly or indirectly as set out in the Trust's Equal Opportunities and Dignity at Work Policy.
- 2.3 In respect of Pharmacists, where there are significant grounds for concern, advice from the National Clinical Assessment Service is available. HR should be contacted for any further details and contact with NCAS will be made via the Chief Pharmacist.

3. DEFINITIONS

Term	Definition
Investigation	The process of gathering information, checking documentation and drawing up a sequence of events, to establish if an allegation or complaint has any substance.
Commissioning Manager	The independent senior manager who oversees the investigation. The Commissioning Manager will set terms of reference for each investigation and will decide who acts as Investigating Manager. They will also review the finished investigation report and make a decision as to next steps, i.e. whether a formal disciplinary hearing needs to take place and at what level.
Investigating Manager	Where an investigation is required, an Investigating Manager will be appointed by the Commissioning Manager.. The Investigating Manager's role is to establish the facts around allegations in line with the investigations terms of reference. Investigations should be undertaken in a timely manner and will normally be supported by a HR Adviser. The Investigation Manager will also have responsibility for presenting evidence at any subsequent disciplinary hearing unless there are exceptional circumstances agreed by both sides.
Representative	This would either be a representative of the employee's Trade Union or a work colleague. This includes employees of the Trust or local authority who are part of a joint service.
Disciplinary Hearing	A meeting arranged where both parties (Investigating Manager and employee) have the opportunity to present their case calling relevant witnesses and detailing evidence. During this hearing the employee is entitled to be represented by a Union representative or work colleague.
Disciplinary Hearing Manager	An independent Manager or Director who has not commissioned or been involved in the investigation and who is authorised to hear the evidence put forward for consideration. He/she also has the authority to issue disciplinary sanctions and other recommendations, up to a stated level (please refer to appendix H).
Disciplinary Panel	This consists of the Disciplinary Hearing Manager, who may be supported by specialist advisors (who are present at the hearing), Human Resources or other supporting managers.
Advisers to the Disciplinary Panels / Appeals	Advisers will be drawn from HR or other relevant managers/specialists. Their role is described as advisory in order to make clear that they are not involved in decision-making. They are there to provide advice and guidance to the Disciplinary Hearing Manager. In order to fulfil this role they may ask questions of the parties involved in the hearing and otherwise participate as identified by the Disciplinary Hearing Manager (other than decision making).
Appeal Hearing	A meeting where the employee has the opportunity to present their reasons for appeal. The original Disciplinary Hearing Manager is also present to provide rationale for original disciplinary decision.
Appeal Hearing Manager	An independent Manager or Director who has not been involved in the investigation or disciplinary and who is authorised to hear the appeal and decide the outcome.

Appeal Hearing Panel	This consists of an Appeal Hearing Manager, who may be supported by specialist advisors, Human Resources or other supporting managers who were not involved in the investigation or original disciplinary hearing.
----------------------	--

4. PURPOSE OF THE POLICY

4.1 The purpose of the Disciplinary Policy is:

- to help and encourage employees to achieve and maintain acceptable standards of conduct,
- to ensure that fair, equitable and reasonable action is taken where acceptable standards of conduct are not maintained,
- to ensure that unacceptable conduct is addressed promptly and appropriately.

4.2 The Disciplinary Policy may be used where:

- previous support, advice or informal warnings have been ineffective,
- a number of minor complaints are made which, taken together, constitute a breach of discipline,
- there is a more serious breach of discipline.

4.3 For the purpose of this Policy, conduct issues (some of which would be classed as gross misconduct and as such would be a fundamental breach of contract as per appendix G) include:

- persistent poor time keeping,
- unauthorised absences,
- failure to observe the Trust's policies and procedures,
- bullying, victimisation or harassment,
- ill treatment, neglect or abusive behaviour toward colleagues or service users,
- unreasonable refusal to follow an instruction issued by a manager or supervisor.

This list is meant to guide application of the policy and is not meant to be exhaustive. Repeated certified sickness and long term sickness will not be the subject of the Disciplinary Policy, but will be dealt with under the appropriate Managing Sickness Absence Policy.

4.4 Employees will not normally be dismissed for a first breach of discipline except in the case of gross misconduct (see appendix G).

4.5 A separate policy covering capability issues should be utilised where issues relate to employee competence, or where standards of work have fallen below expected standards. Examples of capability issues include:-

- Inadequacy of skills.
- Inadequacy of professional insight.
- Inability to cope with reasonable workload.
- Lack of ability to distinguish appropriate work priorities.
- Poor performance

- 4.6 This policy recognises the central importance of taking action at an early stage to avoid dismissal from employment. Wherever possible, problems should be resolved through a less formal process. When such informal discussions do not succeed or where cases are relatively serious then the disciplinary policy will apply.
- 4.7 This policy aims to deal quickly but fairly with disciplinary issues, taking into account current employment law and wider legislation. It also recognises the central importance of a reasonable investigation, which allows for a reasonable belief of culpability to be established. This ultimately results in an outcome that can be justified as being reasonable.
- 4.8 When a potential disciplinary issue arises all managers and employees must treat information with the strictest confidence. It is not appropriate for there to be speculative gossip, or for the outcome of interviews and meetings to be freely discussed with colleagues, or senior managers. Failure to maintain confidentiality may in itself be a disciplinary issue.
- 4.9 The Trust will consider disciplinary action against an employee for actions inside or outside of work which may have a bearing on an employee's continued employment or on the reputation of the Trust. Employees must notify their manager immediately of any criminal charge, conviction or any restrictions imposed by a professional body relevant to their employment. Failure to do so may result in disciplinary action and potentially could constitute gross misconduct.

If they have additional employment (either within the Trust or elsewhere) then they must notify their line manager as soon as possible of any actual or potential disciplinary proceedings, which they have been aware of, taken against them (including any suspension or change in duties/location). Failure to do so may result in disciplinary action and potentially could constitute gross misconduct.

- 4.10 The Trust may refer any employee, who is required to hold professional registration for their role, to their professional body, i.e. NMC, HCPC etc. The Trust may be required to supply details of the disciplinary allegation to the professional body even before a hearing has concluded.
- 4.11 Employees are reminded of their obligation to comply with the Trust's procedures for reporting incidents. Failure to do so may result in disciplinary action and potentially could constitute gross misconduct.
- 4.12 It is important that in any disciplinary investigation/hearing consideration is given as to whether there are any significant factors relating to a protected characteristic under the Equality Act (link to policy) which need to be taken into account as part of the disciplinary process. In such cases the relevant manager should seek to establish whether the issue in question (where it is believed that it did take place) could be attributed to any personal characteristics under the Equality Act 2010, including such factors as:
- language or communication difficulties
 - differing cultural assumptions/attitudes

- discrimination by others

Where it is believed that they may have relevance then this should be set out in the investigation report and it should be specified:

- which factors were relevant
- why they were relevant
- the extent to which they are believed to have contributed to any of the issues under consideration.

5 DUTIES

5.1 All **employees** have a responsibility to:

- take full accountability for their actions and inactions,
- maintain expected and reasonable levels of attendance and performance at work,
- attend and participate in relevant meetings,
- be aware of and comply with all the Trust's policies and procedures,
- be aware of and conform with any relevant statutory rules or local agreements and practises applicable to their role,
- maintain a reasonable standard of behaviour acceptable to management and other employees,
- be aware of and maintain behaviours and standards in line with their respective professional code of practice.
- collaborate with any investigation/disciplinary process (i.e. attend interviews, provide statement, attend hearings etc.)

5.2 All **managers** have a responsibility to ensure that each employee is familiar with the standards of conduct expected of them by:

- explaining fully the requirements of the job in line with the employee's job description and making employees aware of relevant policies and procedures
- providing training as necessary to develop skills and knowledge required for the job
- providing regular appraisal and feedback on each individual's progress

5.3 Employees will be given the opportunity to improve conduct through encouragement, supervision and relevant training.

5.4 HR will provide advice and assistance to relevant managers on using the Policy and general guidance on the Policy to all employees.

6. SPECIFIC DETAILS

6.1 RIGHTS TO REPRESENTATION AND EMPLOYEE SUPPORT

6.1.1 The Trust recognises the right of all employees to be accompanied by a representative. A Trade Union representative who is not an employed official must have been certified by their union as being competent to accompany a

worker. It is the responsibility of the employee to organise their own representation.

- 6.1.2 To exercise this right to be accompanied, employees must make a reasonable request. What is reasonable will depend on the circumstances of each individual case. However, it would not be reasonable for employees to insist on being accompanied by a representative whose presence would prejudice the hearing. The disciplinary process will not be delayed unreasonably to accommodate the availability of the representative.

It is the responsibility of the employee to make arrangements for any such representation in good time. Where the employee notifies the manager who had convened the meeting that there is no representative available then consideration will be given to the provision of an alternative date which is mutually acceptable to all parties consistent with the legislative guidance and ensuring that the matter is dealt with promptly. In such cases the manager should contact HR for further advice.

- 6.1.3 The representative should be allowed to address the hearing to put forward and sum up the employee's case, respond on their behalf to any views expressed at the meeting and confer with the employee during the hearing. They do not, however, have the right to answer questions on the employee's behalf, address the hearing if the employee does not wish it or prevent the employee from explaining their case.

- 6.1.4 In circumstances where disciplinary action is being considered against a Trade Union representative, and although normal disciplinary standards apply to their conduct as employees, the full time official will be notified of any circumstances which may result in disciplinary action being taken against them. Discussions will then take place with the full time official as per ACAS code of conduct. However the disciplinary process will not be unreasonably delayed to accommodate discussion of the circumstances.

- 6.1.5 Employees are entitled to access Workplace Wellbeing for confidential counselling support. In addition, the Trust will consider where practicable identifying a suitable employee to give confidential support outside of the investigative process to someone who is subject to disciplinary action. The employee identified must be willing to undertake this role.

- 6.1.6 Employees have the right to be accompanied by a Union Officer / Certified Union Representative or work colleague. The right to question anyone at the hearing is reserved for a Union Officer / Certified Union Representative or work colleague as indicated in the SHSC Disciplinary Policy.

- 6.1.7 All employees involved with an investigation may need additional support. Employees are actively encouraged to seek support and guidance from:

- Trade Union Representative – as above
- Managers – available to give advice and offer guidance on possible resolutions. Where an approach is made to a manager involved in the disciplinary process, consideration should be given to directing the

employee to an independent manager to prevent any conflict of interest in completing the investigation.

- Human Resources – available to give advice on the procedure and offer guidance on possible resolutions. Human Resources may also be asked to support management representatives in the formal stages of the policy
- Occupational Health Services – can be accessed as a self-referral, or via a management referral.
- Workplace Wellbeing – is a self-referral counselling service for all employees of the Trust. Details of how to contact Workplace Wellbeing can be found on the Trust’s intranet page.
- Health and Wellbeing Intranet Pages – these can be found on the Trust’s Intranet

6.2 AUTHORITY TO DEAL WITH DISCIPLINARY MATTERS

6.2.1 Authority to deal with disciplinary matters is outlined in Appendix H.

6.2.2 Investigations and hearings will be conducted by appropriately skilled managers, who may be supported by a HR representative or specialist advisor, and will be kept at the lowest level possible to allow for appeals (refer to appendix H).

6.2.3 In certain circumstances, it may be necessary for a manager / director from another service area to carry out disciplinary investigations and duties. HR should be consulted at this point to give advice and agree who is the most suitable person to conduct the investigation.

6.3 SUSPENSION FROM DUTY

6.3.1 It is important to note that suspension is a neutral act, not a disciplinary sanction and shall be used only in appropriate circumstances e.g. where:

- alleged behaviour is so serious and is of such a nature that an individual could face the possibility of dismissal for gross misconduct and / or,
- it could endanger patient or employee safety / it would be impractical to continue to allow the individual to remain at work, and / or,
- there is a danger that the individual’s continuing presence at work may jeopardise investigations into the alleged misconduct(s).

6.3.2 Before suspending, managers should consider alternatives, such as transferring employees to another workplace, restricting duties or closer supervision. Any suspension should be lifted as soon as is practicably possible. There will be no time limit on the duration of the suspension; however it will be for as short a time period as possible and any suspension

will be reviewed by the Investigating Manager in conjunction with the Commissioning Manager.

- 6.3.3 It should be made clear to the employee that suspension is not a form of disciplinary action nor does it automatically follow that a disciplinary hearing will be called as a consequence of a suspension.
- 6.3.4 Where an employee has more than one job with the Trust, it may be possible to exclude them from one role for reasons mentioned above whilst allowing the employee to continue working in another part of the Trust. However, the manager of this additional role must be informed and provided with sufficient information to determine whether or not suspension is required.
- 6.3.5 An appropriate manager will have the authority to suspend (see Appendix H). Generally a meeting should be held with the employee to inform them of the suspension. There may be some circumstances where the availability of the employee may make this impractical. Where reasonably practicable, the employee should be offered the opportunity to have a representative present at the meeting and reasonable efforts to obtain support should be made, but this action should not be delayed unreasonably to accommodate the representative. If the employee is unwilling or unable to attend for whatever reason, they will be informed by letter of the decision to suspend and the reasons for this decision.
- 6.3.6 During suspension an employee will normally receive full pay (this will be calculated as the average earnings over the previous 12 weeks). In exceptional cases, the Trust may withhold the pay of an employee who is on unauthorised absence, e.g. an employee is held on remand for a lengthy period or who is not contactable during their suspension. Each case will be considered on its merits by the appropriate manager who should consult HR before such a decision is taken.

Where employees only have a bank contract with the Trust, specific provisions have been agreed to reflect their contract and the Bank Office should be contacted for further details. The Director of Human Resources and the Staff Side Chair will review each situation on a case by case basis.

- 6.3.7 The suspended employee(s) will receive a letter confirming their suspension and a summary of why they have been suspended, which will be copied to their representative if represented, and in agreement with the employee. They should also be informed that the suspension will be for as short a period as possible and that it will be reviewed regularly. The relevant representative will receive a copy of this notification. This will include which of the reasons specified in 6.3.1 are relevant to the suspension or temporary change in duties/location.
- 6.3.8 A suspension ends as a result of the outcome of the investigation recommending no further action, or as an outcome of a formal disciplinary hearing. However, management has the right to end the suspension and return the individual to work, at any time prior to a formal hearing.
- 6.3.9 Employees are required to be available during normal working hours (9.00am to 5.00pm) throughout the suspension period. Employees on suspension must

continue to request annual leave via their line manager as if the employee was still at work, in such cases, an annual leave payment would be made instead of paid suspension. Suspension criteria while on leave would still need to be observed such as remaining away from the place of work etc. All annual leave rules will continue to apply to employees on suspension.

- 6.3.10 For employees who are subject to suspension but are absent due to sickness, they will be classed as sick for pay purposes and sick pay will override the pay received under the terms of suspension.
- 6.3.11 Employees on suspension will not be entitled to access any of the Trust's premises or documents, including remotely, without the prior consent of their line manager. However the Trust will take account of the need for an employee to prepare any defence and make contact with any witnesses.

6.4 VERIFICATION PROCESS

- 6.4.1 In some situations 'Verification' may be required prior to any formal investigation. Verification is a process, normally undertaken by the employee's immediate line manager, whereby a decision should be made as soon as possible as to whether the allegations made against the employee could have happened?
- 6.4.2 Should a meeting be required with the employee as part of the verification process, then it should be very brief and focus on whether the allegations could have happened, for example, was the employee on a particular shift? Any such meeting should not go into detailed fact finding as this is for any subsequent formal investigation meeting.
- 6.4.3 The employee should be offered the opportunity to bring a union representative or work colleague to a verification meeting, however, this meeting should not be delayed unreasonably to accommodate the union representative.

In cases of alleged bullying and harassment which are being considered under the relevant procedure, the investigation carried out under that policy will be equivalent to a verification exercise. If disciplinary action is to be considered as a result of that exercise then this policy will apply subsequently.

- 6.4.4 Should the verification process require a brief meeting, any notes from this verification exercise must form part of the first formal meeting under the procedure. If there are any informal notes not used as part of the first formal meeting then if they are introduced subsequently at a Hearing they will be regarded as new information and the Hearing should be adjourned to enable all parties to assess the information and respond appropriately.

6.5 COMMISSIONING MANAGER

- 6.5.1 Once a decision has been made that a formal disciplinary investigation needs to be undertaken, the relevant senior manager for the Directorate should allocate a Commissioning Manager to oversee the investigation, commission

an Investigating Manager and provide terms of reference for the investigation. The Commissioning Manager should be at a level senior enough to successfully undertake this important role throughout the investigation process.

6.5.2 The Commissioning Manager will decide who is best to undertake the Investigating Manager role. Ideally the investigation manager should be objective and neutral to the employee who the allegation is against. However, in certain circumstances it may be deemed appropriate for the employee's line manager to also be the Investigating Manager, this will ultimately be a decision for the Commissioning Manager.

6.5.3 For each formal investigation, the Commissioning Manager should agree with the Investigating Manager a terms of reference which should identify the focus for the subsequent investigation. Once finalised, this terms of reference should then be shared with the employee and any appropriate representative. The terms of reference may be changed and amended as appropriate throughout the investigation process depending on what information comes to light. Should any changes or amendments be made to the terms of reference, these must again be shared with the employee and appropriate representative once confirmed.

It is the responsibility of the Commissioning Manager to ensure that the terms of reference is adhered to and any investigation is undertaken in a timely manner. The agreed terms of reference should also be shared with the employee and appropriate representative before the investigation begins.

6.5.4 Once the investigation is completed, the Commissioning Manager, in conjunction with the Investigating Manager, ultimately has to make a decision as to whether the evidence warrants a disciplinary hearing or whether there is no case to answer. If it is felt there is no case to answer, this should be fed back to the employee who the allegations were against, along with any recommendations. If the decision is to progress to a disciplinary hearing, the Commissioning Manager will decide at what level the hearing needs to be set in order to ensure the Disciplinary Hearing Panel is resourced properly and at the correct seniority level.

6.5.5 At any subsequent disciplinary hearing, the Investigating Manager would attend and present the management case. The Commissioning Manager would not be required to attend.

6.6 INVESTIGATION

6.6.1 No disciplinary action will be taken against an employee until the Trust has investigated the allegations against them.

6.6.2 An investigatory meeting is **not** a formal disciplinary hearing. If, following an investigation, it is felt by the Commissioning Manager and Investigating Manager that there may be a case to answer, a formal disciplinary hearing will be arranged in accordance with the Policy. During formal investigations employees may be accompanied by a representative.

- 6.6.3 The investigation will be conducted into the allegations of misconduct by a relevant manager assigned by the Commissioning Manager. The Commissioning Manager can consult with HR at this point to give advice and agree who is the most suitable person to conduct the investigation.
- 6.6.4 Employees will be kept apprised of the progress of any investigation(s). Should any additional allegations arise during the investigation the employee will be notified and the terms of reference for the investigation can be amended. Any changes to the terms of reference should also be shared with the employee and appropriate representative.
- 6.6.5 Should an employee resign during an investigation, the investigation should be completed and an inquiry held in order to reach a decision based on the evidence available. This will depend on the seriousness of the issue. It may be necessary for an inquiry to consider informing DBS and / or other appropriate regulatory / professional bodies.
- 6.6.6 If the alleged misconduct is of a clinical / professional nature, advice will be sought from the appropriate specialist within the Trust.
- 6.6.7 The investigating manager shall gather all relevant information and statements from any witnesses. It must be made clear to witnesses that their statements may be used as evidence and for employees, their obligation to attend a hearing should this be needed.
- 6.6.8 In order to conduct a thorough investigation it may be necessary for the investigating manager to liaise with other departmental / external agencies, e.g. Local Counter Fraud Specialist, the police, safeguarding, other external organisations. In each case it may be necessary to consult with the relevant agency before commencing the investigation.
- 6.6.9 Following the conclusion of the investigation and after discussion with the Commissioning Manager, one of the following outcomes will be communicated to the employee:
- No further action to be taken
 - Counselling, keep under review, management action, training etc.
 - A disciplinary hearing is required using the Trust's Disciplinary Policy

It is anticipated that in the vast majority of cases the communicated maximum level will be accepted by the Disciplinary Panel and the hearing will proceed on that basis. However, if the Disciplinary Hearing Manager, when reviewing the information provided prior to the hearing, believes that this is not the appropriate level then this should be discussed with HR. The outcome may be that the Hearing continues on the previously identified basis (i.e. the set maximum level of disciplinary action identified by the Investigating and Commissioning Manager) or that the parties are informed that the Hearing Manager has reviewed the appropriate level and those arrangements will then be adjusted to reflect this change.

If during the hearing, the Hearing Manager believes that the level of potential disciplinary action is not appropriate (possibly on the basis of new information)

then the hearing should be adjourned not only to enable assessment of the new information but also to reflect the change in the maximum level of potential outcome. If the potential outcome is a higher sanction then the Disciplinary Hearing Manager needs to commission a supplementary investigation of the new information with Staff Side being presented with the outcome and the right to respond.

- 6.6.10 Where somebody is reasonable suspected to have caused harm or there is a risk of harm to our clients, they will be referred to the DBS and / or other regulatory body where the requirements for referral are met. Referral may also be made to the relevant professional body as appropriate. This referral will generally occur after a disciplinary outcome has been decided including any appeal. However, in serious cases advice should always be sought from the Trust's Safeguarding Team.
- 6.6.11 Incidents involving controlled drugs or medication – where employees have been involved in incidents that relate to drugs controlled under the Misuse of Drugs Act the Trust's Accountable Officer must be informed. In all incidents involving medication, the investigating manager should seek the advice of the Trust's Chief Pharmacist (or deputy).
- 6.6.12 Incidents involving fraud, bribery and corruption – where employees have been involved in incidents that are potentially fraudulent, the Local Counter Fraud Specialist must be informed immediately who will provide advice on what next steps should be taken.
- 6.6.13 If an employee goes off sick during an investigation, the Trust will continue with aspects of the process/investigation that can be completed in the employee's absence, for example interviewing other witnesses and gathering relevant documents. If the absence is expected to be short-term, the process will be completed upon the employee's return. If the absence is likely to be long-term, the HR Adviser to the Investigating Manager will seek medical advice from occupational health as to whether or not the employee is well enough to take part in the process including advice on any reasonable adjustments that could be made to facilitate his or her attendance.

6.7 INFORMAL ACTION

- 6.7.1 Minor lapses from acceptable standards of conduct will usually be dealt with by the employee's line manager providing advice, counselling, guidance and support as required. This is a normal feature of the line manager's function and does not represent formal disciplinary action.
- 6.7.2 The above informal action is often a more satisfactory method of resolving problems than taking formal disciplinary action. Informal action represents an attempt to correct a situation and prevent it from becoming worse without using the Disciplinary Policy.
- 6.7.3 The line manager carrying out informal action should advise the employee what the problem is, identify what action needs to be taken and inform the employee of a reasonable timescale for action. Where necessary an informal warning may be given by the line manager with the aim of reinforcing the

advice. Informal action is not part of the formal Disciplinary Policy and the line manager doing this should inform the employee of this.

- 6.7.4 The line manager and employee will keep an accurate record of any advice, counselling, guidance or informal warnings on the employee's personal file which may be used in future proceedings and any action should be monitored via the supervisory / appraisal process.

6.8 FORMAL ACTION

- 6.8.1 The operation of this policy will include one or more of the four defined stages. The stage chosen will be determined by the seriousness of the alleged misconduct and / or by the existence of any previous relevant warnings. An employee will not normally be dismissed for a first breach of discipline except in the case of gross misconduct.

- 6.8.2 Other actions, which may be considered in conjunction with the Disciplinary Policy, include transfer of base, extending previous live warnings, instigation of structured supervision, downgrading or specific training programmes. In such cases pay protection and/or flexible allowances will not apply.

- 6.8.3 The action appropriate for each breach of discipline is a matter of judgement for managers, with consideration given to:

- the seriousness of the disciplinary breach in question,
- the circumstances and features of the particular case,
- the employee's current record,
- consideration of fairness, justice and consistency.

- 6.8.4 A requirement of employment legislation is that the employer acts reasonably, whilst having regard for equity and the substantial merits of the case.

- 6.8.5 Where the facts of a case appear to call for formal action, a hearing will be called as soon as possible. The hearing should comprise of a Panel of at least two, one of whom should be a member of HR to support the Disciplinary Hearing Manager. The role of the HR member of the Panel will be advisory and other advisory panel members may also be appointed. The Disciplinary Hearing Manager will determine the extent of such additional support depending on factors such as the complexity and/or seriousness of the issues. As a general rule, the disciplinary hearing panel should **not** include either the Commissioning Manager or the Investigating Manager

There is one decision-maker (the Disciplinary Hearing Manager) although two additional members of the panel may assist with deliberations.

6.9 FORMAL STAGE 1 - RECORDED WARNING

- 6.9.1 If conduct does not meet acceptable standards and is considered by the line manager to be minor, it should be dealt with at the lowest formal level with the employee being issued with a Recorded Warning. Wherever possible, this approach should be considered in order to resolve concerns speedily and reduce escalation of minor incidents.

6.9.2 The outcome of the formal disciplinary action will be notified to the employee in writing stating the reason for the action being taken. The level of action and any recommendations will also be communicated to the employee. At this stage the warning will remain live for 6 months.

6.9.3 Employees will also be advised of their right to appeal and be provided with the details of the manager that an appeal should be addressed to in line with the levels of responsibility outlined in Appendix H.

6.10 FORMAL STAGE 2 - FIRST WRITTEN WARNING

6.10.1 If the first disciplinary offence is of a more serious nature, or if a further offence occurs, consideration shall be given to issuing a First Written Warning to the employee. The outcome of the formal disciplinary action will be notified to the employee in writing stating the reason for the action being taken. The level of action and any recommendations will also be communicated to the employee. At this stage the warning will remain live for 12 months.

6.10.2 It will also incorporate advice that further disciplinary action will be considered if there is no satisfactory improvement.

6.10.3 Employees will also be advised of their right to appeal and be provided with the details of the manager that an appeal should be addressed to in line with the levels of responsibility outlined in Appendix H.

6.11 FORMAL STAGE 3 - FINAL WRITTEN WARNING

6.11.1 In cases where action at the first written warning stage has been undertaken, and conduct is still unsatisfactory or in serious cases, consideration shall be given to issuing a Final Written Warning to the employee. This will give details of the rationale around the decision and will warn that dismissal may result if there is no satisfactory improvement.

6.11.2 The outcome of the formal disciplinary action will be notified to the employee in writing stating the reason for the action being taken. The level of action and any recommendations will also be communicated to the employee. At this stage the warning will remain live for 18 months.

6.11.3 Employees will also be advised of their right to appeal and be provided with the details of the manager that an appeal should be addressed to in line with the levels of responsibility outlined in Appendix H.

6.12 FORMAL STAGE 4 - DISMISSAL / TERMINATION HEARING

6.12.1 If action has been taken and conduct is still unsatisfactory or where the issue is proven to be that of gross misconduct (see Appendix G) then consideration will be given to dismissing the employee.

6.12.2 In the case of unsatisfactory conduct notice will be given. However, in the case of gross misconduct dismissal may be without notice (also known as summary dismissal).

- 6.12.3 The outcome of any formal disciplinary action will be notified to the employee in writing, stating the reason for the action being taken. The level of action, the length any documentation will remain live on file and any recommendations required.
- 6.12.4 The employee will be provided with a written reason for dismissal, the appropriate period of notice (or pay in lieu of notice), and the date on which employment was terminated.
- 6.12.5 Where appropriate the employee's relevant professional/governing body will also be notified of any decision to dismiss.
- 6.12.6 Employees will be advised of their right to appeal and be provided with the details of the manager that an appeal should be addressed to in line with the levels of responsibility outlined in Appendix H.

6.13 REQUESTING WARNINGS WITHOUT A FORMAL HEARING

6.13.1 Warnings up to and including Stage 3, Final Written Warning – without a Disciplinary Hearing

Many employees find attending a Disciplinary Hearing a distressing experience. Often it is unavoidable and support is available, however, employees are entitled to accept formal warning(s) for actions which are considered short of dismissal without proceeding with a full Disciplinary Hearing where:

- Responsibility for the misconduct is accepted
- That the level of warning issued is accepted by the employee as fair and consistent

Employees have an option to request that the Commissioning Manager conclude the disciplinary process by issuing a warning outside of a formal hearing (see Appendix H for Authority to Deal with Disciplinary Matters). This request may be made at any stage during the investigation. Where possible the request should be before a Disciplinary Hearing is arranged and the information packs have been sent out. A colleague or Trade Union Representative may make the request on the employee's behalf.

- 6.13.2 In these circumstances, the Commissioning Manager may issue the warning without holding a full hearing and confirm the warning in writing. The warning will remain live on record as if it had been issued at a Disciplinary Hearing.
- 6.13.3 The Commissioning Manager will inform the employee of the level of the warning to be applied and give the employee **five working days** to confirm they agree to this course of action.
- 6.13.4 Should the employee reject the level of warning the matter will revert to a formal Disciplinary Hearing.

6.14 DISCIPLINARY HEARING

- 6.14.1 The formal documentation required at a disciplinary hearing will be dependent upon specific relevant information collated via the investigation process.
- 6.14.2 The employee will be informed by the Commissioning Manager of a decision to hold a formal disciplinary hearing in writing, which will detail the allegations, the maximum sanction available, date and place of the hearing and when the management report will be received.
- 6.14.3 An employee will be advised of their right to be accompanied by a representative of their choice at all stages of the process. This will be a Trade Union Representative or work colleague. If in particular circumstances these arrangements are not appropriate, the employee may request that alternative representation be allowed. Disciplinary processes will not, however, be unreasonably delayed to accommodate representation.

6.15 FORMAL STAGE 1 - RECORDED WARNING

- 6.15.1 At this level the investigation and any subsequent disciplinary hearing would be conducted by the Investigating Manager after agreement with the Commissioning Manager.
- 6.15.2 The Investigating Manager will share with the employee 5 working days in advance of the hearing, a brief written statement focusing on the main points of his/her case along with any documentary evidence to be presented in the hearing.
- 6.15.3 The employee along with their representative has the opportunity to submit a summary of defence/mitigating circumstances to be considered at least 3 working days before the hearing.
- 6.15.4 At the hearing, the Investigating Manager will put forward the details from the investigation. The employee or their representative will have the opportunity to put forward the employee's case including mitigating circumstances.
- 6.15.5 Either party can ask questions during the hearing to clarify any points raised.
- 6.15.6 The need for witnesses at this level should be kept to an absolute minimum, and only used in exceptional circumstances where their evidence is clearly material to the case.
- 6.15.7 The Investigating Manager will adjourn the hearing to consider the details of the case. Following an adjournment to give full consideration to the evidence presented, the Manager will reconvene the meeting to give his / her decision. The outcome could be a disciplinary recorded warning or no formal action to be taken.

6.16 FORMAL STAGE 2 - FIRST WRITTEN, FORMAL STAGE 3 - FINAL WRITTEN WARNING AND FORMAL STAGE 4 - DISMISSAL HEARINGS

- 6.16.1 At this level it is necessary for a full management report giving details of the investigation, statements and copies of appropriate documentation to be

submitted by the Investigating Manager to the Disciplinary Hearing Manager and the employee (and their representative if appropriate) at least 20 working days prior to the hearing at stages 1 and 2, and 30 working days prior to the hearing at stages 3 and 4..

- 6.16.2 The employee and their representative, if appropriate have the opportunity to submit a full report outlining their case to the Disciplinary Hearing Manager and the Investigating Manager at least 5 working days prior to the hearing.
- 6.16.3 The Disciplinary Hearing Manager will have the opportunity to review both reports prior to the hearing and request additional information if this is felt appropriate, advising both parties that this has been done.
- 6.16.4 Each party will have the opportunity to present a summary of the key points of the case before having the opportunity to ask questions.
- 6.16.5 Witnesses should be kept to a minimum and only be called if their evidence is clearly material to the case. Both parties along with the hearing panel will have the opportunity to question the witnesses.
- 6.16.6 Both sides will then have an opportunity to summarise their case before the hearing panel adjourns.
- 6.16.7 The hearing panel will then adjourn to consider the details of the case. Following an adjournment to give full consideration to the evidence presented, the Disciplinary Hearing Manager will reconvene the meeting to give his / her decision. The outcome could be a disciplinary sanction up to dismissal if appropriate or no formal action to be taken.

6.17 FAILURE TO ATTEND A HEARING

- 6.17.1 The employee should inform the Disciplinary Hearing Manager if they are unable to attend their disciplinary hearing on the arranged date and give reasons for this.
- 6.17.2 If the employee is unable to attend the disciplinary hearing as arranged it may, depending on the circumstances, be postponed at the discretion of the Disciplinary Hearing Manager. The hearing will be reconvened, normally within 10 working days, or as soon as is practicably possible.
- 6.17.3 If the employee fails to attend the hearing without informing the panel, the Disciplinary Hearing Manager may choose to continue with the hearing in the employee's absence.

6.18 DEFERMENT OF INCREMENTAL PROGRESSION

- 6.18.1 Salary increments will be withheld during any period of a live formal warning in accordance with Agenda for Change and Trust Policy. Where an employee is awaiting a decision regarding a disciplinary issue, either on suspension, or in work during the investigation, no action will be taken to withhold the increment.
- 6.18.2 Where an employee has a live, unspent warning, their pay increment will be withheld until either the following year or when the formal warnings are spent,

whichever is the latest. The employee's line manager must contact payroll to stop the incremental payment.

6.19 ADULT AND CHILDREN'S SAFEGUARDING TEAM

6.19.1 Where it is alleged that an employee has behaved in a way that has harmed or may have harmed a child or vulnerable adult or may have behaved in a way that indicates he/she may be unsuitable to work with children or vulnerable adults, then the Trust's Safeguarding Team must be informed. The Safeguarding Team may wish to undertake their own procedures in this regard and it may be appropriate for a member of the safeguarding team to be involved in the investigation or be on any subsequent disciplinary panel. This should be taken into consideration when undertaking disciplinary action to ensure that both processes work harmoniously.

6.19.2 Concerns must be reported to the **Disclosure and Barring Service (DBS)** formally the Independent Safeguarding Authority (ISA). The Investigating Manager (with support from the relevant HR Adviser) and the Assistant Director of Nursing are responsible for making the referral to DBS and for informing the HR Director and Chief Nurse.

6.19.3 Referral to Disclosure and Barring Services (DBS) (formerly Independent Safeguarding Authority (ISA))

6.19.4 The Trust has a duty to refer matters to the DBS in certain circumstances for consideration for the inclusion of an individual on the Barred List.

6.19.5 There are two conditions; both of which must be met to trigger a referral to the DBS. A referral must be made to the DBS when the Trust:

1. Withdraws permission for an individual to engage in regulated or controlled activity* or would have done so had that individual not resigned, retired, been made redundant or been transferred to a position which is not regulated or controlled activity, because
2. They think that the individual has:
 - Engaged in relevant conduct;
 - Satisfied the harm test; or
 - Received a caution or conviction for a relevant offence

6.19.6 (*Regulated Activity as defined by the Safeguarding Vulnerable Groups Act 2006). The referral to the DBS, if needed, should under normal circumstances be made following the outcome of the disciplinary hearing. The disciplinary outcome will dictate whether a referral is needed, i.e. did the Trust dismiss or remove the person from working in a regulated activity.

6.19.7 The Safeguarding Vulnerable Groups Act 2006 has extended the definition of vulnerable adults to include all patients' receiving treatment within a health setting.

6.19.8 '**Relevant Conduct**' is any conduct:

- That endangers a child or vulnerable adult or is likely to endanger a child or vulnerable adult;
- If repeated against or in relation to a child or vulnerable adult, would endanger them or would be likely to endanger them
- That involves sexual material relating to children (including possession such material)
- That involves sexually explicit images depicting violence against human beings (including possession of such images) if it appears to DBS that the conduct is inappropriate; or
- Of a sexual nature involving a child or vulnerable adult, if it appears to the DBS that the conduct is inappropriate.

6.19.9 The **‘harm test’** is satisfied if the relevant person believes that an individual may;

- Harm a child or vulnerable adult;
- Cause a child or vulnerable adult to be harmed;
- Put a child or vulnerable adult at risk of harm
- Attempt to harm a child of vulnerable adult; or
- Incite another to harm a child or vulnerable adult.

6.20 RIGHT TO APPEAL

6.20.1 Employees have the right to appeal action taken at any level. Appeals should be in writing and sent to the Disciplinary Hearing Manager who will acknowledge receipt and then provide the appeal notification to whoever is identified as the Appeal Hearing Manager. (This will normally be the line manager of the Hearing Manager but this may not always be the case). In cases of appeals against dismissal, the notification should be sent to the Director of Human Resources in the first instance. The timescales for appealing are set out below.

6.20.2 The Investigating Manager cannot appeal against the outcome.

6.20.3 The appeals panel is empowered to make one of two decisions:

- to uphold the decision made by the Disciplinary Panel,
- to review the level of warning action taken at the hearing

6.20.4 Appeals cannot be heard by Managers / Directors who have had previous involvement in the case.

6.20.5 The original Disciplining Hearing Manager will have the opportunity to put forward the rationale for why a particular disciplinary sanction was issued and submit further information to support the original disciplinary decision. This should be submitted to the Appeal Hearing Manager and the employee and their representative at least 5 working days prior to the appeal hearing.

6.21 APPEAL HEARING

6.21.1 Appeals should be heard by the lowest appropriate level manager. However, appeals against dismissal must be heard at Director level or above. The hearing should comprise of a Panel of at least two, one of whom should be a

member of HR to support the hearing manager. It is recommended that consideration is given to having more than one decision-maker on the Panel. The basis for decision-making in such cases must be identified and shared with all relevant parties in advance of the hearing and it is important that providing for such arrangements should not unduly delay the appeal date. For example, it will normally be appropriate for whoever is the Appeal Hearing Manager to make the ultimate decisions where the two decision-makers on the Panel do not share the same view of what the outcome should be. The role of the HR member of the Panel will be advisory and other advisory Panel members may also be appointed. The manager who is to chair the appeal will determine the extent of such additional support depending on factors such as the complexity and/or seriousness of the issues.

6.21.2 The Appeal Hearing Manager will review both summaries prior to the hearing.

Each party will have the opportunity to put forward any additional comments at the appeal hearing.

6.21.3 Both the employee and the original Disciplining Hearing Manager will have the opportunity to ask questions about the details submitted.

6.21.4 The need for witnesses at an appeal should be kept to an absolute minimum and only used in exceptional circumstances where their evidence is essential to the case.

6.21.5 Where new information comes to light, the Appeal Hearing Manager has the right to adjourn the appeal hearing and request this is verified / investigated before making a decision on the outcome of the appeal.

6.21.6 The Appeal Hearing Manager will adjourn the hearing to consider the details of the case, and will also outline when a decision will be announced.

The Appeal Hearing will not involve a re-hearing of the disciplinary hearing unless the Appeal Hearing Manager identifies issues which they believe would require a re-hearing in order to ensure a fair process. Where this is the case all parties will be notified in advance that there will be a re-hearing of the case either in full or part depending on the circumstances e.g. it may be that a key witness is required to be recalled rather than all the witness who attended the disciplinary hearing.

6.22 DISREGARDED WARNINGS

6.22.1 A warning will remain live on an employee's personal file for the following periods from the date of confirmation of the warning. Following these periods, warnings will still remain on an employee's file but will be considered spent. These periods are for guidance only and may be varied:

- Formal Stage 1 - Recorded Warning – 6 months
- Formal Stage 2 - First Written Warning - 12 months
- Formal Stage 3 - Final Written Warning - 18 months

6.22.2 Where the issue involved concerns safeguarding, the Trust reserves the right to consider such prior warnings whether or not they would have normally

expired. This specifically refers to determining the level of any disciplinary sanction should the employee be found to have committed a further offence concerned with safeguarding issues. This will not apply to issues which have no relevance to safeguarding.

6.22.3 **Extension of Warning Periods**

Specified periods of time are given during which warnings remain live, e.g. a first written warning usually remains live on file for 12 months. However, if the employee has been notified that a subsequent offence is under investigation then the 12 month timescale is effectively extended.

The warning will continue to be live until either it is spent naturally, or until the outcome of the hearing for the second misconduct has been determined, if this is the later date. This allows for a manager to consider the first warning in determining the appropriate level for the second hearing and for the first warning to be part of the evidence presented at the hearing if this is appropriate. This should be presented only after a decision has been arrived at regarding the proof of an allegation.

6.23 **RIGHT TO CURTAIL PROCEDURE**

6.23.1 In exceptional circumstances, there may be cases in which it will be fair and reasonable to decide to curtail the procedure in full. Examples of circumstances in which the procedure may be curtailed are:

- when an employee is remanded in custody or in prison,
- when an employee refuses or fails to attend a disciplinary hearing without good reason.
- when an employee is unable to attend for health reasons over a prolonged period.

6.23.2 In such circumstances all reasonable attempts to ensure the involvement of the individual will be made in conjunction with any appropriate union representatives.

6.24 **TIMESCALES**

6.24.1 It is important that, as far as possible, the disciplinary process is concluded in a timely manner and within the timescales set out below.

6.24.2 An investigation will be conducted without undue delay of the allegation coming to light.

6.24.3 The Trust will seek to normally complete investigations within 3 months. If the investigation is not completed within the time-frame then the Commissioning Manager will write to the employee and their representatives setting out the reasons for the delay and the time-scale by which the investigation will be completed. The Commissioning Manager will then provide monthly progress updates to the employee and appropriate representative.

6.24.4 Involvement in an investigation at the request of the police, adult / child protection agency or Counter Fraud Services will inevitably cause a delay in the process. Such delays will be communicated to the employee and their relevant representative as soon as is practicably possible. The Trust reserves the right to proceed with a disciplinary investigation and any subsequent hearing even if another body is involved. This decision will depend on the particularly circumstances of the case and the potential length of time involved in awaiting the outcome of the deliberations of any other body.

6.24.5 The employee and their representative shall be informed by letter giving at least 30 working days' notice that a hearing is to be held in cases where it has been identified by the case investigator that the allegations, if upheld, could potentially result in a final written warning or dismissal. This notification should include details of the allegations, included within a management report. In cases of lesser potential sanctions, the time period for notification shall be at least 20 working days. Where a case is able to be sent earlier then this should occur.

The employee may request an alternative date, which is reasonable and not more than 5 working days later, if their representative is unable to attend. This needs to be done as soon as possible and the employee needs to seek availability of their representative at the earliest opportunity. If this date is not appropriate then a mutually agreed date should be sought which is consistent with ensuring the matter can be dealt with as promptly as possible. If agreement cannot be reached then the Hearing Manager may specify a further date for the hearing which will take place no sooner than 5 days after the date which was originally specified. It will be the responsibility of the employee to arrange any appropriate representation to accommodate this date and, if none is available, the Hearing Manager can decide to proceed with the hearing on the specified date.

The employee or their representative will need to submit their statement of case 5 working days before the date of the hearing in cases of potential final written warning or dismissal. This means that they will have 25 working days in which to submit a response. In cases of lesser potential sanctions this means that there will be 15 working days in which to submit a response.

6.24.6 Where an appropriate manager is not available within the directorate, a manager from another directorate, with appropriate authority (as per Appendix H) will be sought to try and minimise any delay in the process.

6.24.7 Where possible the Disciplinary Hearing Manager will give a decision on the same day as the hearing which will normally be confirmed in writing within 5 working days. However it is important that matters are considered fully and the Disciplinary Hearing Managers may require further time to deliberate. In such cases the Hearing Manager will indicate to the employee/representative the timeframe which will apply and seek to agree the arrangements which will apply e.g. when the decision will be communicated in writing (normally within 5 working days).

In some cases the Hearing Manager may decide that a decision cannot be made until further information is obtained. If this is the case the Hearing Manager can adjourn the hearing and specify the arrangements which will be

made to obtain such further information including ensuring that all parties have an ability to receive and comment/challenge any such additional information. This will normally be accomplished by the information being made available prior to resumption and then considered in line with normal procedure on resumption (e.g. if there is a need to recall a witness).

6.24.8 Any appeal must be submitted within 5 working days after receiving the decision in writing. The appeal must outline the basis on which the appeal is being sought i.e.

- the evidence is contested
- the sanction is not appropriate
- there is a procedural issue which makes the outcome unfair
- insufficient account has been taken of mitigating factors
- new substantial evidence has become available

The employee or their representative must submit a full case within a further 10 working days to the Appeal Hearing Manager (if identified) and the Hearing Manager. This case must relate to the points identified. It will not be appropriate for this case to specify reasons which have not been set out in the original appeal notification. If this is the situation then the reason why this has changed should be set out. It will also not be appropriate for the appeal notification to set out any reason which is then not supported by the full case. If this occurs then the reason must be specified.

Where the basis of the appeal relates to new evidence becoming available, the statement of case must specify why the evidence was not made available prior to the decision. Depending on the reason, why it was not provided earlier and the nature of the evidence (i.e. whether its omission would prevent a fair outcome being reached) the Appeal Hearing Manager may determine whether to hear the new evidence or not. The Hearing manager will have the opportunity to put forward the rationale for why a particular sanction was issued and submit further information to support the decision in response to any points put forward in the appeal case. This should be submitted to the Appeal Hearing Manager and the employee and their representative at least 5 working days prior to the hearing.

6.24.9 An appeal hearing will normally be held within 25 working days of the full case. In cases of unavailability of the relevant parties a mutually convenient date will be set.

6.24.10 The appeal decision will be given within 2 working days of the appeal hearing, but in exceptional circumstances, no later than 1 week after the case has been heard.

6.25 MONITORING

6.25.1 Human Resources will monitor all reported disciplinary cases for timescales, consistency and equal opportunities information.

6.25.2 The Policy will be reviewed annually, or following the introduction of new or amended legislation and any changes will be made with the agreement of recognised trade unions under the Trust Recognition Agreement.

7 DISSEMINATION, STORAGE AND ARCHIVING

- 7.1 Human Resources Policies are referred to in employees' contracts of employment and statement of terms and conditions.
- 7.2 Policies are available through the Human Resources portal on the Trust intranet and, if necessary, a paper copy can be provided by the Human Resources Department.
- 7.3 Policies are agreed with recognised trade unions under the Trust Recognition Agreement in the first instance.
- 7.4 Archive policies are available in the Human Resources Department.

8 TRAINING AND OTHER RESOURCE IMPLICATIONS

- 8.1 The Human Resources Department offers training and support to managers in the implementation of Human Resources Policies.

9 AUDIT, MONITORING AND REVIEW

- 9.1 Human Resources will monitor the application of the Policy via the case management system.
- 9.2 Human Resources Policies are subject to joint monitoring and review between management and staff side in the Joint Consultative Forum.
- 9.3 This Policy will be reviewed annually or when new legislation appropriate to the Policy is introduced.

Monitoring Compliance Template						
Minimum Requirement	Process for Monitoring	Responsible Individual/group/committee	Frequency of Monitoring	Review of Results process (e.g. who does this?)	Responsible Individual/group/committee for action plan development	Responsible Individual/group/committee for action plan monitoring and implementation
Policy to be reviewed in line with Trust's normal review process and in line with employment legislation	To be reviewed after any relevant employment law changes	HR Management Team	Whenever there are any changes to relevant employment law	HR Management Team	JPG and PGG	HR Management Team

10 Implementation Plan

Action / Task	Responsible Person	Deadline	Progress update
<i>Once ratified, upload new policy onto intranet and remove old version</i>	<i>Communications Manager</i>	<i>End of Sept 2017</i>	<i>TBC</i>
<i>Agree communication to be sent from HR Director to all employees informing them of the new policy. NOTE - Communications plan should also explain that any on-going investigations/disciplinaries would continue to use old Disciplinary Policy.</i>	<i>HR Director</i>	<i>TBC</i>	<i>TBC</i>

11 LINKS TO OTHER POLICIES

Safeguarding Adults Policy
Safeguarding Children Policy
Equal Opportunities and Dignity at Work Policy
Bullying and Harassment Policy
Grievance Policy
Capability Policy
Managing Sickness Absence Policy
Disciplinary, Capability, Ill Health and Appeals Policies and Procedures for Medical Practitioners
Relationships between Service Users and Staff Policy
Fraud, Bribery and Corruption Policy

11 CONTACT DETAILS

Human Resources are available for support and advice. The contact details are available through the Human Resources portal on the Trust intranet.

12 REFERENCES

ACAS Code of Practice on Disciplinary and Grievance Procedures
(www.acas.org.uk)
DBS Referral Process

Appendix A – Version Control and Amendment Log

Version No.	Type of Change	Date	Description of change(s)
1.0	Disciplinary Policy Reviewed and amended	June 2017	A number of amendments introduced
2.0	A number of suggested changes from JPG	August 2017	Amendments made during consultation with staff side.
3.0	Changes from PGG	Sept 2017	Changes suggested by Trust Counter-Fraud Specialist
4.0	Approved by EDG	Sept 2017	Approved
4.1	Extension to review date	Sept 2020	An extension to the review date was ratified by the People Committee on 23 September 2020. New review date is 28 February 2021.
4.2	Second extension to review date	Jan 2021	A second extension to the review date was approved by Policy Governance Group on 11 January 2021. The new review date is 31/05/2021 <i>(Initially HR had requested the review date to be extended to 30/04/2021 but PGG extended this further to 31/05/2021).</i>

Appendix B – Dissemination Record

Version	Date on website (intranet and internet)	Date of “all SHSC staff” email	Any other promotion/ dissemination (include dates)
4	Sept/Oct 2017	October 2017	N/A
4.1	September 2020	September 2020	N/A
4.2	January 2021	January 2021	N/A

Appendix C – Stage One Equality Impact Assessment Form

Supplementary Section A – Stage One Equality Impact Assessment

Equality Impact Assessment Process for Policies Developed Under the Policy on Policies

Stage 1 – Complete draft policy

Stage 2 – Relevance - Is the policy potentially relevant to equality i.e. will this policy potentially impact on staff, patients or the public? If **NO** – No further action required – please sign and date the following statement. If **YES** – proceed to stage 3

This policy does not impact on staff, patients or the public (insert name and date)

See below.

Stage 3 – Policy Screening - Public authorities are legally required to have 'due regard' to eliminating discrimination, advancing equal opportunity and fostering good relations, in relation to people who share certain 'protected characteristics' and those that do not. The following table should be used to consider this and inform changes to the policy (indicate yes/no/ don't know and note reasons). Please see the SHSC Guidance on equality impact assessment for examples and detailed advice this can be found at <http://www.shsc.nhs.uk/about-us/equality--human-rights>

	Does any aspect of this policy actually or potentially discriminate against this group?	Can equality of opportunity for this group be improved through this policy or changes to this policy?	Can this policy be amended so that it works to enhance relations between people in this group and people not in this group?
AGE	No	N/A	N/A
DISABILITY	No	N/A	N/A
GENDER REASSIGNMENT	No	N/A	N/A
PREGNANCY AND MATERNITY	No	N/A	N/A
RACE	No	N/A	N/A
RELIGION OR BELIEF	No	N/A	N/A
SEX	No	N/A	N/A
SEXUAL ORIENTATION	No	N/A	N/A

Stage 4 – Policy Revision - Make amendments to the policy or identify any remedial action required (action should be noted in the policy implementation plan section) Please delete as appropriate: Policy Amended / Action Identified / no changes made.

Impact Assessment Completed by (insert name and date)

Ian Hall, 22-07-16

Appendix D - Human Rights Act Assessment Form and Flowchart

You need to be confident that no aspect of this policy breaches a person's Human Rights. You can assume that if a policy is directly based on a law or national policy it will not therefore breach Human Rights.

If the policy or any procedures in the policy, are based on a local decision which impact on individuals, then you will need to make sure their human rights are not breached. To do this, you will need to refer to the more detailed guidance that is available on the SHSC web site

<http://www.justice.gov.uk/downloads/human-rights/act-studyguide.pdf>

(relevant sections numbers are referenced in grey boxes on diagram) and work through the flow chart on the next page.

1. Is your policy based on and in line with the current law (including case law) or policy?

Yes. No further action needed.

No. Work through the flow diagram over the page and then answer questions 2 and 3 below.

2. On completion of flow diagram – is further action needed?

No, no further action needed.

Yes, go to question 3

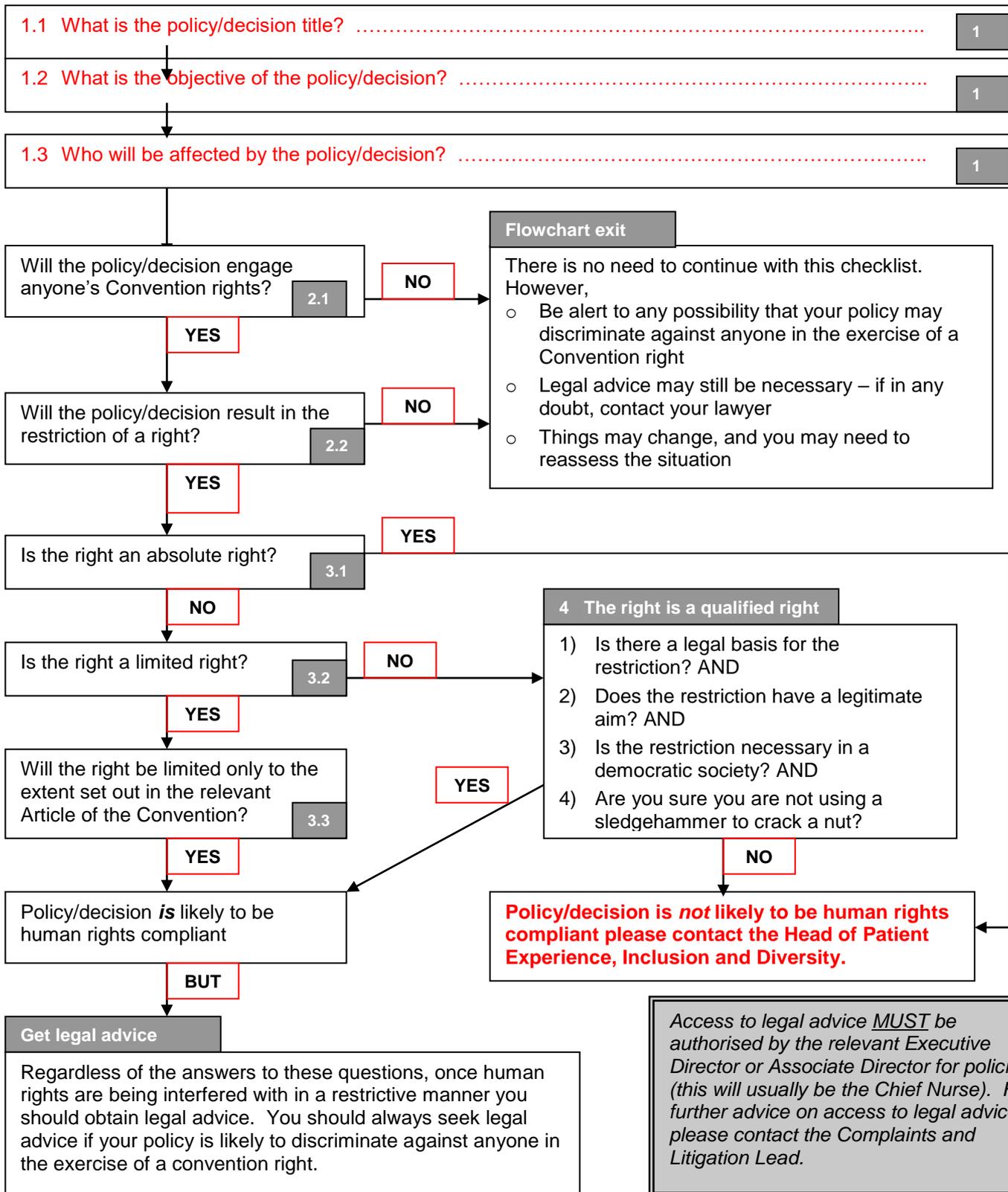
3. Complete the table below to provide details of the actions required

Action required	By what date	Responsible Person

Human Rights Assessment Flow Chart

Complete text answers in boxes 1.1 – 1.3 and highlight your path through the flowchart by filling the YES/NO boxes red (do this by clicking on the YES/NO text boxes and then from the Format menu on the toolbar, choose 'Format Text Box' and choose red from the Fill colour option).

Once the flowchart is completed, return to the previous page to complete the Human Rights Act Assessment Form.



Appendix E – Development, Consultation and Verification

This policy was reviewed within HR throughout June and July 2017. A number of suggested amendments were made. The policy was then sent onto staff side and PGG management for comments.

Feedback on the policy was considered and where appropriate included during July 2017

The Policy was formally taken to JPG on 31st July and 24th August 2017 where a number of amendments were made following negotiation with staff side.

The policy was formally taken to PGG on 6th September 2017 for management review. Feedback was provided by the Trust's Counter-Fraud Specialist and amendments made.

Appendix F – Policies Checklist

Please use this as a checklist for policy completion. The style and format of policies should follow the Policy template which can be downloaded on the intranet (also shown at Appendix G within the Policy).

1. Cover sheet



All policies must have a cover sheet which includes:

- The Trust name and logo
- The title of the policy (in large font size as detailed in the template)
- Executive or Associate Director lead for the policy
- The policy author and lead
- The implementation lead (to receive feedback on the implementation)
- Date of initial draft policy
- Date of consultation
- Date of verification
- Date of ratification
- Date of issue
- Ratifying body
- Date for review
- Target audience
- Document type
- Document status
- Keywords
- Policy version and advice on availability and storage

2. Contents page

3. Flowchart



4. Introduction



5. Scope



6. Definitions



7. Purpose



8. Duties



9. Process



10. Dissemination, storage and archiving (control)



11. Training and other resource implications



12. Audit, monitoring and review



This section should describe how the implementation and impact of the policy will be monitored and audited and when it will be reviewed. It should include timescales and frequency of audits. It must include the monitoring template as shown in the policy template (example below).

Monitoring Compliance Template						
Minimum Requirement	Process for Monitoring	Responsible Individual/group/committee	Frequency of Monitoring	Review of Results process (e.g. who does this?)	Responsible Individual/group/committee for action plan development	Responsible Individual/group/committee for action plan monitoring and implementation
A) Describe which aspect this is monitoring?	e.g. Review, audit	e.g. Education & Training Steering Group	e.g. Annual	e.g. Quality Assurance Committee	e.g. Education & Training Steering Group	e.g. Quality Assurance Committee

- 13. Implementation plan
- 14. Links to other policies (associated documents)
- 15. Contact details
- 16. References
- 17. Version control and amendment log (Appendix A)
- 18. Dissemination Record (Appendix B)
- 19. Equality Impact Assessment Form (Appendix C)
- 20. Human Rights Act Assessment Checklist (Appendix D)
- 21. Policy development and consultation process (Appendix E)
- 22. Policy Checklist (Appendix F)

Appendix G - Guidance to Classification of Disciplinary Offences

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

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

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

1. Unauthorised removal, use or theft of property belonging to the Trust, another employee, a patient or visitor.
2. Fraud or dishonesty, e.g. signing in for another employee or allowing such an arrangement to occur. Defrauding the Trust of resources by wilfully falsifying records or booking of work or defrauding patients or employees (NB further guidance on this issue is contained in the Trust's Fraud, Bribery and Corruption Policy).
3. Markedly irresponsible and inappropriate behaviour including sleeping on duty and/or being under the influence of alcohol, or non-prescribed drugs whilst at work or on-call.
4. Negligent and/or reckless acts, or omissions which endanger the safety of employees, patients or members of the public.
5. Gross insubordination, for example wilful failure to carry out reasonable instructions, or wilful disobedience of the written or oral instructions of a manager or supervisor.
6. A criminal offence either at work or outside of work where the latter is liable to bring the Trust into disrepute or which necessitates the removal of the employee from the post to which they had been appointed.
7. Wilful damage to Trust premises or property.
8. Disclosure of confidential information to unauthorised persons, particularly in relation to a patient or employee.

9. The illegal possession of drugs and/or the administration of such drugs to oneself or others on Trust premises, or allowing such a practice to take place.
10. Non-compliance with safety, health or fire rules where such non-compliance could pose a serious risk to themselves or others, and where the rules are reasonably believed to have been known.
11. Unauthorised acceptance of payment from patients, visitors, contractors or other parties having dealings with the Trust, which might be interpreted as seeking to exert influence to obtain preferential consideration.
12. Physical, verbal or other bullying, or harassment or discrimination including harassment on the grounds of race, religion, sexual orientation, sex, disability or age, religious belief.
13. Physical or verbal abuse, including abuse of position of power, towards a patient, employee or visitor.
14. Falsification of a qualification which is a stated requirement of the Trust, or which might result in additional remuneration.
15. Non-declaration of a criminal offence.
16. Unauthorised absence from work.
17. An act sufficiently serious to cause substantial damage to the Trust's reputation.

Appendix H - Authority To Deal with Disciplinary Matters

CATEGORY	SHIFT MANAGER	FIRST LINE MANAGER e.g. Ward Manager, Admin Manager etc	SECOND LINE MANAGER e.g. Assistant Service or Clinical Director	SERVICE / CLINICAL DIRECTOR OR HEAD OF SERVICE WHO MAY DELEGATE TO SENIOR MANAGER 8A OR ABOVE e.g. Assistant Service or Clinical Director	EXECUTIVE DIRECTOR WHO MAY DELEGATE TO MANAGER ABLE TO ISSUE A FINAL WRITTEN WARNING	CHIEF EXECUTIVE OR DESIGNATED DEPUTY	CHAIR OF TRUST BOARD
SUSPENSION	√	√	√	√	√	√	√
STAGE 1 - RECORDED WARNING		√	√	√	√	√	√
STAGE 2 - FIRST WRITTEN WARNING		√	√	√	√	√	√
STAGE 3 - FINAL WRITTEN WARNING			√	√	√	√	√
STAGE 4 - DISMISSAL				√	√	√	√
APPEAL PROCESS			√ (RECORDED WARNING, 1 ST WRITTEN WARNING ISSUED BY FIRST LINE MANAGER)	√ (UP TO FINAL WARNING ISSUED BY FIRST OR SECOND LINE MANAGER)	√ (ALL DISMISSALS)	√	√