

Trust-Wide Policy	
Version:	3.1
Policy Category:	People and Organisation Development
Target Audience:	All Trust Staff
Review Date:	29/03/2025

## Disciplinary Policy and Procedure

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## **Foreword by Professor Tim Orchard**

I am pleased to write the foreword for our updated Disciplinary Policy. The updates we've made represent a further step forward to us in developing a just and learning culture at Imperial, one where people feel able to speak up when things go wrong, and where we can own our mistakes and try to learn and grow from them.

Many of you will recall that we already made substantial changes and improvements to the way we investigate and deal with issues around alleged misconduct at Imperial. These changes were triggered by a set of very tragic circumstances; following his dismissal from the Trust in December 2015, nurse Amin Abdullah took his own life in February 2016. Mistakes were made with Amin's case, and how we treated him. We deeply regret this, and I made a personal commitment that we will act on all the learning from this case. This updated policy further builds on the progress we've made since then.

We've introduced new ways of working around how we manage misconduct. Our emphasis is on trying – wherever possible – to resolve problems that arise informally and/ or without an unnecessarily protracted process. Investigations are commissioned only when necessary, and our investigation outcomes are more solution-focused, with recommendations about how we can improve and learn from what's happened. There are multiple decision makers at every stage of the process, to make sure we're doing all we can to challenge and mitigate any individual bias.

Disciplinary processes are often unsettling and worrying for colleagues involved. Whatever the rights and wrongs of any particular case, we'll never forget that we're dealing with human beings and we'll handle things respectfully and sensitively. We've worked on the tone of our letters and other correspondence that we use when managing misconduct to make this simpler and more compassionate. We've also introduced a fast-track "warning by agreement" process, where in some circumstances colleagues can opt to accept a first warning without having to go through a longer, formal hearing process.

I am immensely grateful to Amin's partner Terry Skitmore, Dr Narinder Kapur and our staff side colleagues for their feedback and input into the updated policy. We have unapologetically high standards of conduct at Imperial to ensure that we deliver the very best care to our patients and service users, and those high standards apply to how we manage issues, too. We remain firmly committed to being an exemplar of good practice in this area.

**Professor Tim Orchard**  
**Chief Executive**  
**Imperial College Healthcare NHS Trust**

## **1. Introduction**

- 1.1 We have high standards of conduct at Imperial College Healthcare Trust to ensure that we deliver the very best care to our patients and service users.
- 1.2 Maintaining these standards also helps us to ensure that we have a workplace environment that's kind, collaborative and inclusive.
- 1.3 We are committed to having a just and learning culture, one where people feel able to speak up when things go wrong, and where we can own our mistakes and try to learn and grow from them.
- 1.4 This policy has been developed in partnership with our recognised trade unions and in accordance with the ACAS Code of Practice on workplace disciplinary procedures.

## **2. Purpose & Scope**

- 2.1 This policy provides a framework to manage concerns about someone's conduct in a fair, objective and compassionate way. Our aim is to help people to achieve and maintain the standards of conduct that are needed.
- 2.2 This policy applies to everyone employed at the Trust, although investigation procedures for doctors and dentists are handled slightly differently, with different governance processes. For more information about managing potential conduct issues with doctors and dentists, please see the Handling Concerns about Doctors and Dentists' Conduct, Performance and Health Policy.
- 2.3 A simplified quick reference guide to the procedure can be found at **appendix 1**.

## **3. Key messages**

- 3.1 We have a clear behavioural framework in place to help our colleagues identify the behaviours that we love to see, expect to see and don't want to see, and these behaviours are linked to our values:
  - **Kind** – we are considerate and thoughtful so everyone feels valued, respected and included
  - **Expert** – we draw on diverse skills, knowledge and experience so we provide the best possible care
  - **Collaborative** – we actively seek others' views and ideas so we achieve more together
  - **Aspirational** – we are receptive and responsive to new thinking, so we never stop learning, discovering and improving
- 3.2 We'll ensure that we manage concerns about conduct in a considered, proportionate way. We'll try to resolve things informally whenever we can.

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- 3.3 We'll act as promptly as we can when concerns arise, addressing minor issues to avoid things escalating.
- 3.4 We'll probe allegations of misconduct with an open mind, and decisions around what happens next will be based on evidence.
- 3.5 We'll keep things confidential, and only share information about disciplinary processes with those who absolutely need to know from management and the People & OD team.
- 3.6 We recognise that being involved in a conduct process can be unsettling and worrying, and we encourage colleagues to be accompanied and supported throughout the process by a colleague, trade union representative or someone else (other than a practicing lawyer). We also provide wellbeing support via our CONTACT service.
- 3.7 All colleagues who chair disciplinary hearings, or who sit on disciplinary panels, will have received appropriate ACAS (Advisory, Conciliation & Arbitration Service) training, and will be supported and advised by a colleague in the People & OD team.
- 3.8 We've put measures in place to ensure that we're doing all we can to prevent conscious and unconscious bias from influencing our decisions when we manage potential misconduct.
- 3.9 Whatever the rights and wrongs of a particular case are, we won't forget that we're dealing with human beings and we'll handle things respectfully and sensitively.

#### **4. Roles and responsibilities**

##### 4.1 Managers need to:

- Make sure team members know the standards of conduct and behaviour that we expect, and role model these.
- Encourage and support a culture where colleagues take ownership for mistakes and learn from them.
- Handle misconduct concerns fairly, promptly and with compassion, asking for advice and support along the way.

##### 4.2 People & OD colleagues will:

- Advise, support and coach managers to manage concerns confidently and effectively.
- Work in partnership with managers and trade union representatives to make sure we're implementing this policy in a fair and consistent way.
- Provide expertise with carrying out more complex and serious investigations.

##### 4.3 All of us need to:

- Make sure our conduct and behaviour is meeting the standards.
- Speak up if we have concerns about things at work.
- Reflect when something goes wrong, and do our best to learn and grow from the experience.

## **5. Misconduct definitions**

5.1 The following are examples of things that could potentially lead to conduct being managed under this policy. This list is not exhaustive and doesn't cover every eventuality.

- Being late, or coming in/ leaving at the wrong times for shifts
- Unauthorised absence
- Not following absence reporting procedures
- Refusal of a reasonable instruction from a manager
- Breach of confidentiality
- Breach of data security
- Bullying, unkindness or incivility towards colleagues or patients
- Other breaches of our policies, values or behaviour framework

5.2 Sometimes an act or behaviour may be so serious that it could potentially be classed as gross misconduct; something that could lead to the colleague being summarily dismissed (dismissed without notice or pay in lieu of notice). This includes:

- Theft
- Fraud
- Dishonesty
- Continued absence without leave (see section 16)
- Unauthorised access to information and systems
- Serious and/ or deliberate breach of confidentiality or data security
- Falsification of records or documents
- Making a false declaration during a recruitment or revalidation process
- Not declaring interests (such as gifts, hospitality, other work outside of the Trust)
- Not telling us about involvement in a criminal investigation that happens during employment with us
- Not telling us about a criminal charge or conviction
- Violence
- Verbal abuse
- Serious bullying
- Harassment (including sexual harassment, racism, sexism and homophobia)
- Behaviour that can (or does) cause significant reputational damage to us – this may include things that happen outside of work
- Criminal activity (inside or outside of work)
- Other serious breaches of our policies, values or behaviour framework, or the trust and confidence in our employment relationship

5.3 Again, this list is not exhaustive. It's important to emphasise that even where we think something has happened that's included above, we will always keep an open mind and fully probe the issue – and the context around it – before making any decisions.

5.4 Where it's alleged that there's been a serious lack of care to duties or other people – particularly our patients – and this could or does result in serious loss, damage, injury

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and/ or death, this may potentially constitute gross negligence, which we investigate and handle under this policy too.

5.5 Where the issues are around the colleague's ability to do their job, rather than their conduct or behaviour, this should be managed under our Performance and Capability Management Policy instead.

## **6. Support**

6.1 Whatever's happened, facing allegations of misconduct can be upsetting and frightening for colleagues, and others around them, including witnesses to alleged events.

6.2 It's important that throughout the process, line managers keep those involved up-to-date with what's happening, and give opportunities to ask questions and talk through how people are feeling.

6.3 Where investigations are carried out centrally by the central investigations team, the investigator will give regular progress updates to the colleague(s) facing the allegations, and their manager and divisional People & OD team.

6.4 Where we're concerned about colleagues' health or wellbeing, we may ask to make an Occupational Health referral to seek medical advice. Colleagues may also choose to self-refer to Occupational Health.

6.5 All colleagues at the Trust have access to our CONTACT service, who can offer counselling and support to anyone having a difficult time. Colleagues who are facing misconduct allegations will be allocated a Staff Liaison Officer that they can turn to for emotional support if they choose to.

## **7. Handling misconduct – informal management**

7.1 Most cases of misconduct are best dealt with informally and quickly. A quiet word, some constructive feedback, is often all that's needed.

7.2 It may be that things have gone wrong because training, coaching, guidance or advice is needed. Possibly something else is happening inside or outside of work that's affecting a colleague's behaviour – this is particularly worth considering when someone seems to be acting out of character. We encourage managers to talk to their team members about what else might be going on for them.

7.3 A manager should talk to the colleague privately as soon as possible, to talk through the issue together. This should be a two-way discussion, aimed at encouraging improvement. The manager needs to be clear about the standards that are expected, how these are measured and when improvement needs to be seen by. Any specific support that the colleague needs to improve – such as training – should be agreed.

7.4 It's a good idea to document this conversation. The manager may also choose to issue a "letter of concern" to the colleague to summarise the conversation where it's felt that a

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formal disciplinary process might be needed if there's further similar misconduct. A separate set of letter templates to support this policy can be found on the intranet, including the letter of concern.

7.5 If informal management doesn't sort the issue out, or the alleged misconduct appears to be too serious to be classed as minor, advice and support should be sought from the People & OD team to decide next steps.

## **8. Handling misconduct – triage**

8.1 When a potential problem comes to our attention, the first step in most cases will be to carry out a brief fact-finding exercise to clearly establish what the allegations are and who involved (including potential witnesses) is. This will usually include talking to the colleague that the allegations are against to hear their side of the story, unless it is not immediately clear who this is (such as where a theft has been alleged).

8.2 A manager in the team will normally carry out the initial fact-find – this person should be someone who wasn't involved in the events being probed (such as a witness). All conversations should be documented, even at this stage – notes should be written in transcript form to avoid any misunderstandings and agreed with the person spoken to.

8.3 Alternatively, witnesses/ respondents can be asked to write their own statements and send these via email, although further questions may need to be asked where a statement doesn't cover everything that it needs to.

8.4 Once the manager has a clear idea of what the allegations are, who is involved and how serious they may potentially be, the next step is to arrange a conversation with a colleague from the divisional People & OD team, who can give advice and arrange a triage call with a colleague from the central investigation team to decide what to do next. The options are:

- a. No further action
- b. Issue a letter of concern
- c. Other informal resolution, such as training, coaching, mediation (where there's evidence of problems in working relationships), modifying systems or protocols
- d. Commission a more in-depth investigation, either locally or from the central investigation team
- e. Proceed to a disciplinary process, if we have all the information that we need from the initial fact find

8.5 If option e is chosen, it's particularly important that we've made all reasonable efforts to speak to the colleague responding to the allegations during the fact-find to hear and consider their side of the story. We have the option of exploring a shortened disciplinary process ("warning by agreement") where the colleague has acknowledged what's gone wrong, and their part in it. See section 11 for more details.

8.6 Further information on the triage process is available in our toolkit for managing investigations. Once the triage conversation has happened, the manager will fill out the Misconduct Triage Form (see appendix 2) and ask a senior manager (band 8c or above) to approve the decision on next steps.



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8.7 The senior manager approver must be someone who has no previous involvement in the case to ensure there's no conflict of interest. The input and oversight of the central investigation team and senior manager respectively helps to ensure that we're proportionate and consistent in our handling of misconduct issues.

8.8 The central investigation team is a small team of expert investigators who will carry out independent investigations into more serious and/ or complex misconduct issues where these are needed. Our toolkit explains more about this. Allegations around fraud may need to be picked up by our counter fraud team; the central investigation team can advise on when this should happen.

## **9. Handling misconduct - investigation**

9.1 Our toolkit for managing investigations provides step-by-step guidance on how to conduct an investigation, and helpful templates to use.

9.2 Where an investigation is being carried out locally, the investigator should be someone with no previous involvement in the case.

9.3 The investigator will define the terms of reference of the investigation, in collaboration with the commissioning manager and divisional People & OD.

9.4 It's important that everyone involved prioritises the investigation so it's done without unreasonable delays, as these can be a source of unnecessary stress for everyone involved.

9.5 If colleagues involved in an investigation or disciplinary process are absent through sickness, this doesn't necessarily mean that they can't participate in the process before they come back to work, and colleagues may choose to do so if they feel able. We may also refer colleagues who are unwell to Occupational Health to check if they are fit to participate in the process, if there are concerns on either side that they may not be.

9.6 Once the investigation is finished, a detailed report will be produced. The report should say whether there is evidence to support some or all of the allegations, and may provide other options around resolution and learning from the matter. The commissioning manager will make the decision about what happens next.

9.7 The options for next steps are:

- No further action, if there is no case to answer – although informal resolution may be preferable as usually there are lessons we can learn from cases
- Issue a letter of concern
- Informal resolution
- Proceed to a formal disciplinary process on some or all of the allegations.

9.8 This decision again needs to be signed off by a senior manager (8c and above). This should be the same senior manager that approved the commissioning of the investigation.



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- 9.9 Where it's felt that a formal disciplinary process is needed, consideration can be given to whether "warning by agreement" is a potential option. See section 11 for more details.
- 9.10 Sometimes, we may commission more holistic reviews of teams or departments where it's been flagged to us that there are concerns about culture, behaviours or working relationships. If specific allegations around misconduct – such as bullying or harassment – arise out of this kind of review, we'll probe them as part of that review and may recommend that a formal disciplinary process is needed for one or more individuals.
- 9.11 Recommendations for this kind of review are subject to the same oversight/ approval as regular misconduct investigations.

## **10. Handling misconduct – formal disciplinary process**

- 10.1 If it's decided that allegations need to be considered at a formal disciplinary hearing, this should be set up as soon as reasonably possible, unless it's mutually agreed that our shortened "warning by agreement" process can be applied (see section 11). Managers, colleagues and representatives/ companions must do all they can to avoid unnecessarily delaying the process.
- 10.2 It's important, however, to make sure that everyone involved has the time and information that they need to prepare, so we will always ensure at least seven calendar days' written notice of the hearing is given electronically.
- 10.3 In the letter inviting the respondent to the hearing, we'll be clear about what the allegations are, and why they're an issue – the policies and other things that might have been breached. The letter will say what the potential outcome of the hearing might be – a formal warning and/ or dismissal.
- 10.4 We have template letters available for colleagues managing a disciplinary process. All letters drafted should be checked by a People & OD colleague before they're sent, to make sure the letter has everything in it that it needs to.
- 10.5 With the invite letter, we'll also send the colleague the documents that the panel will have access to in making their decision. In most cases, this will be the investigation report together with its appendices. The appendices will include relevant meeting notes and statements gathered by the investigator.
- 10.6 Where there the disciplinary is commissioned after the initial fact-find because no further investigation is needed, we'll still pull together a structured summary of the management case and share the documents gathered in the fact-finding process.
- 10.7 We'll be as transparent as we can about the evidence that's being considered, although we may on occasions have to redact some parts of documents, such as where they contain patient information.
- 10.8 Colleagues need to do all they can to attend the date that's been set for the disciplinary hearing, and tell the chair if they or their representative/ companion aren't able to be there on the date proposed. We will look to reschedule the hearing within five working days if

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that's the case, so the colleague will need to suggest an alternative date if the first one doesn't work.

- 10.9 If the colleague can't go to the rescheduled meeting, other than in exceptional circumstances the hearing won't be postponed again. The meeting may go ahead in their absence, but the colleague can choose for their representative/ companion to attend on their behalf and/ or can provide a written submission to be considered, as long as this is received before the hearing.
- 10.10 The disciplinary hearing can be held remotely via video conferencing, face-to-face in person or a hybrid approach can be taken, with some attendees in the room and others joining remotely.
- 10.11 All disciplinary hearings will have a hearing "panel" of two trained people, both of whom will be more senior to the colleague. One of the panel will chair the meeting, but the panel are joint decision makers, and will be advised by and supported at the hearing by someone from the People & OD team.
- 10.12 If the case could possibly result in a dismissal, the second panel member will be someone of appropriate seniority from outside of the Trust. Where possible, the external panel member will be someone who has a similar background and/ or speciality to the respondent.
- 10.13 Decision makers in disciplinary cases must be people who have had no previous involvement with the matter that's being discussed. This helps us to minimise the potential for any bias to affect the process, or the outcome.
- 10.14 We're doing what we can to make sure that our pool of panel members come from a range of backgrounds, specialities and levels of seniority, and reflect the diversity of our workforce.
- 10.15 However, anyone who is worried about possible bias from any panel member should raise this with the People & OD colleague, and escalate to the Divisional Director of People & OD if they don't feel this has been resolved after that conversation. We'll substitute panel members where it's agreed that there's a potential conflict of interest.
- 10.16 The colleague can arrange to bring a colleague, trade union representative or other companion (other than a practicing lawyer) with them to the hearing. Disabled colleagues can also bring a second person with them for support and advocacy, such as someone who has knowledge of their disability and its effects.
- 10.17 Someone will also be at the hearing to take notes of the meeting. Notes won't usually be verbatim, but we'll share them with everyone present after the meeting within a week of the meeting to check that nothing key has been missed or misrepresented.
- 10.18 Alternatively, we may audio or video record the hearing and make the recording available to you and your representative/ companion. We destroy recordings after a year. We can't permit you to make your own recording of the meeting, so please do not use any devices to do so.

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- 10.19 The roles and responsibilities of everyone involved in the hearing are included at **appendix 3**. We've included the usual agenda for a disciplinary hearing at **appendix 4**.
- 10.20 At the hearing, the chair will introduce the people present, confirm the purpose of the hearing, check everyone has received the same paperwork and will talk through the process.
- 10.21 The commissioning manager will present the case and answer questions from both sides. The commissioning manager may invite witnesses to the hearing for questioning too. Witnesses should be called if they've given key evidence that's been denied or disputed by the colleague answering the allegations.
- 10.22 The commissioning manager should let the panel know in advance if they want to call witnesses, so we can make sure there's enough time at the hearing.
- 10.23 The colleague will be given the chance to set out their case, answer the allegations, ask questions, share evidence, respond to questions and call their own witnesses, if they think this would be helpful. Again, the colleague should let the panel know in advance if they want to call witnesses. This helps us to factor in the time we need to cover everything in the hearing.
- 10.24 At the end of the hearing, both sides will get the opportunity to sum-up the key messages that they want the panel to take away when making their decision. The colleague will go last, so they have the final word.
- 10.25 The panel may be able to make a quick decision on the outcome, but it's more likely that they will need some time to consider this. The hearing will be adjourned until the decision has been made. The panel will clarify with the colleague how long they expect the adjournment to last before the meeting ends.
- 10.26 A disciplinary hearing doesn't necessarily mean that formal disciplinary action will be taken. It may be that the outcome is not to give a formal sanction this time, and instead we'll try to work together to improve things informally with training and/ or other recommendations.
- 10.27 If a formal sanction is given, the level of this will depend on how serious the misconduct is, and may be a more severe warning if the colleague already has a live disciplinary warning for something similar.
- 10.28 Formal sanctions are:
- **First written warning** – where informal attempts to resolve things haven't worked, or if the misconduct is serious enough to go straight to a formal warning. A first written warning is live for six months.
  - **Final written warning** – where more serious misconduct is found, or there's already a live first written warning on file. A final written warning is usually live for 12 months, although in exceptional circumstances we may issue it for 24 months instead. This might be where the behaviour could have been classed as gross misconduct, but we've chosen to give the colleague one more chance.

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- **Dismissal** – where gross misconduct or gross negligence is found, or there are one or more live warnings already on file. Cases of gross misconduct or gross negligence may result in summary dismissal, which means the dismissal is immediate and no notice is worked or paid. Otherwise, dismissal will be with notice.

10.29 Where a final written warning for 24 months has been issued, we may also consider taking other actions to reflect the severity of what's happened, and to try to ensure it doesn't happen again.

- Transfer the colleague to another department/ site.
- Demote or downgrade the colleague – no pay protection will apply in these circumstances
- Change shifts and/ or working patterns.

10.30 We'll deliver the disciplinary decision in person, unless this isn't possible within the timescales, or the colleague would prefer not to hear the outcome that way. We can instead share the outcome via video conference, on the phone, to the representative/ companion or in writing.

10.31 Anyone who is given a formal disciplinary sanction has the right to appeal this. Our Appeal Policy has details about how and when to do this, and the process.

10.32 We'll always confirm the decision in writing, and we'll normally do this within seven calendar days of the decision being made. If a formal sanction has been given, the time period to appeal will start from the date that the letter is issued electronically.

10.33 Any colleague who has a live, formal disciplinary sanction on file will not be eligible for pay progression within their grade until the sanction has expired.

## **11. Warning by agreement**

11.1 While recognising that sometimes misconduct needs to be addressed formally, we still try to do this collaboratively, where possible. Our shortened "warning by agreement" process is a way of doing this without the need for a full hearing.

11.2 "Warning by agreement" is where a colleague acknowledges what's gone wrong and their part in it, and agrees to accept a first written warning.

11.3 Warning by agreement isn't suitable where:

- The colleague already has a live disciplinary sanction on file;
- The alleged conduct could lead to a summary dismissal (taking into account any mitigation);
- There is dispute over what happened; and/ or
- The colleague disagrees with any improvements that are asked of them.

11.4 We need to understand the facts of a case before we can consider warning by agreement so the first opportunity to explore this is once the initial fact find has been done. In cases that are potentially more serious or complex, we may still need to carry out a more in-depth investigation before considering whether warning by agreement is an option.

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- 11.5 The colleague (or their representative) can express their interest in exploring warning by agreement at any stage of the process; equally, the manager can approach the colleague to see whether they are open to warning by agreement. This initial approach can be done either verbally or in writing, and can be followed up by a conversation if this is helpful.
- 11.6 If the colleague wants to go ahead with the warning by agreement process, the manager will meet with them to explain the reason for the first written warning, and the improvement that's expected of them. The colleague can arrange to bring a colleague, trade union representative or other companion (other than a practicing lawyer) with them to the meeting.
- 11.7 After the meeting, the manager will write to the colleague and confirm what's been discussed. The colleague will be asked to sign the letter to confirm their agreement.
- 11.8 At any stage before signing the letter, the colleague can choose to opt out of the warning by agreement process if they don't feel it is right for them. If this happens, the matter will go through the regular disciplinary hearing process instead. Exploring the warning by agreement process is "without prejudice" – it won't influence the outcome of any subsequent disciplinary hearing.
- 11.9 There is no right of appeal against a first written warning issued by agreement.

## **12. Concerns about the process**

- 12.1 If any colleague going through a disciplinary process has concerns that this policy isn't being applied properly, they should raise these as part of that disciplinary process, rather than a separate grievance.

## **13. Working during an investigation/ disciplinary process**

- 13.1 In most cases, a colleague can continue to do their normal job while they're going through this process. Sometimes, we might need to temporarily change some working arrangements until the process is concluded. We'll do this if we think it's necessary, such as where there's been a serious breakdown in working relationships, or where we have to restrict access to a particular system or area in order to manage risk.
- 13.2 Only in very rare cases will we need to suspend a colleague from their job. This will only be a decision we take if genuine risks have been identified and we've ruled out all other viable options. A risk assessment tool is available from the People & OD team that should be completed before making any decision to suspend.
- 13.3 Alternatives to suspension that should be considered include:
- Temporary redeployment
  - Physically working elsewhere/ working from home
  - Restricted or different duties
  - Working under more supervision

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- 13.4 Where a manager believes a suspension needs to happen, they will need to get the approval of a senior manager (8c or above) and a People Business Partner or higher from the People & OD team. If one or both isn't available at the time the decision needs to be made, the most senior person on duty can ask the colleague to go home, pending the decision being approved. The decision on whether to suspend or not should be agreed by the end of the next working day.
- 13.5 Any suspension will be managed sensitively and confidentially, and we'll work with the colleague that's been suspended wherever possible to agree messaging to colleagues and patients. Suspension is not a disciplinary sanction, and there's no assumption that if we suspend someone it's because we've decided that the allegations are true, or that they will be given a disciplinary sanction.
- 13.6 If we have to suspend someone, we'll try to do this in person wherever possible. We'll explain why we've taken the decision, and how long we think the suspension might last. We'll provide a point of contact that the colleague can talk to during the suspension – usually the manager – and reiterate the support that's available from CONTACT.
- 13.7 We'll also be clear about the terms of suspension. This will include the colleague not doing anything that could interfere with the process, such as contacting people who have made allegations. There should be a conversation about how the colleague can get access to what they need to respond to the allegations, such as accessing their email inbox or contacting any witnesses that might support their case.
- 13.8 Colleagues will not be allowed on our sites when they're suspended, unless it's to get medical care, or if they have permission from management for a specific reason, such as meetings around the process, or to see CONTACT.
- 13.9 We may ask the colleague to temporarily give back their ID card, keys or other property of ours while the process is ongoing, and/ or temporarily restrict their access to our systems.
- 13.10 We'll follow up any suspension in writing within three working days (sent electronically). A People Business Partner or other senior colleague in the People & OD team can provide a template for this letter and will review it before it's sent.
- 13.11 Suspensions will only ever be for the minimum time necessary, and will be reviewed weekly. Suspension will usually end once the disciplinary process is over, although may be lifted earlier if circumstances change.
- 13.12 A colleague who is suspended will usually carry on being paid as normal. We calculate "normal" as the average of what the colleague earned over the past twelve weeks, minus any bank shifts. If a colleague wants to go on holiday while they're suspended, they should request annual leave as they usually would.
- 13.13 The exception to the rule above is where someone is suspended because they can't work, either because their professional registration has lapsed, or they've lost their entitlement to work under the Immigration and Asylum Act. In these cases, suspension is unpaid.



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13.14 A colleague who is suspended must not do other paid work in the time that they would've been working for us. If the colleague is also employed elsewhere in the NHS, they must tell their other employer that they've been suspended.

13.15 People on zero hours contracts or bank contracts may be temporarily stopped from working if necessary during an investigation or disciplinary process. This isn't a suspension as there are no contracted hours, so will not be paid.

#### **14. Criminal investigations, charges and convictions**

14.1 If a colleague is the subject of a police and/ or criminal investigation, they must tell their manager. The manager may need to take action, depending on the type of allegations that the colleague is facing.

14.2 If the alleged offence relates to mistreatment of a child or an "at risk" adult, the manager must tell our safeguarding team who will consider whether we need to make a report to the Local Authority Designated Officer (LADO).

14.3 If a colleague is charged or convicted for a criminal offence – whether it happened inside or outside of work – we will need to consider whether we're able to continue the employment relationship and may take formal action.

14.4 Where the outcome of a police and/ or criminal investigation is that no further action is taken – or the colleague is not convicted of the alleged crime – this doesn't necessarily mean we won't continue with our own investigation, and potentially take formal action. Criminal courts have a high burden of proof ("beyond all reasonable doubt") and workplaces have to make their own decisions around events – and whether these events breach the trust and confidence between us.

#### **15. Referrals to professional bodies and other agencies**

15.1 Where there's been a serious breach of personal information – either colleague or patient data – we have a legal duty to report it to the Information Commissioner's Office (ICO) within 72 hours. Our Data Protection Office should be contacted immediately where there's been a breach so a colleague from that team can report this for us.

15.2 If the issue potentially involves safeguarding of children or vulnerable adults, the manager must get in touch with our safeguarding lead to discuss this as quickly as possible.

15.3 Depending on the allegations, if the colleague is registered with a professional body, such as a nurse or midwife, we might need to tell the professional body what's going on. The most senior professional lead in the directorate should take the decision on if and when to refer, if this is needed. Please see the Professional Registration Policy and Procedure for more guidance.



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## **16. Continued absence without leave**

- 16.1 If a colleague unexpectedly doesn't turn up to work, this is classed as unauthorised absence, but our first concern will be for their well-being. We'll try to get in touch with them on the first day of absence however we can, calling all contact numbers, leaving messages to call back, and/ or emailing them to find out what has happened.
- 16.2 If there is no response then the manager will try to get in touch with the colleague's emergency contact person or next of kin to make sure they're okay.
- 16.3 If we don't manage to make contact with the colleague from the methods above, the manager will reach out via a letter in the post the following day, asking the colleague to call them.
- 16.4 If the colleague still isn't contactable and hasn't returned after 5 working days or more, we'll convene a formal process and ask the colleague to a hearing to discuss the unauthorised absence.
- 16.5 If the colleague doesn't turn up to the meeting and doesn't provide an explanation then the meeting may go ahead in their absence.
- 16.6 If no acceptable reason is given for the absence, a decision could be made after the meeting to dismiss the colleague without notice. The absence days will also be unpaid.

## **17. Leaving during a disciplinary process**

- 17.1 Where a colleague resigns during any stage of this process, we may decide in discussion with them to conclude the process. This means finishing off any investigation and possibly holding a disciplinary hearing, if one is felt to be warranted. If the colleague leaves during the process, we'll make reasonable efforts to try to involve them in the process as we would usually.

## **18. Implementation and Dissemination**

- 18.1 We'll run briefing sessions across all supervisory levels of management to share the updates to this policy, and continue to encourage management to resolve issues in a proactive, collaborative and informal way wherever possible.
- 18.2 The existing policy and templates will be archived on the intranet and replaced by this one, and an updated set of letter templates that have been drafted to be clearer and more compassionately worded. Our toolkit for managing misconduct, which is already being widely used, will be published on the intranet.

## **19. Monitoring Arrangements**

- 19.1 We'll continue to monitor the application of this process on a quarterly basis by analysis of data from our centrally held ER tracker database, exploring and tackling any issues we identify. This includes:

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- Where disproportionate numbers of any particular groups of staff are subject to formal disciplinary processes.
- Where consistent themes around misconduct in a particular area suggest that a more in-depth, holistic review of what's happening is worthwhile.
- Inconsistencies in the outcomes of similar cases.

## 20. Supporting Information

Current Document Information	
Document Lead:	Fiona Percival, Divisional Director of People & OD
Responsible Executive Director:	Kevin Croft, Chief People Officer
Date Approved by Policy Approval Group:	14/03/2022
Date Ratified by Executive Management Board:	29/03/2022

Current Document Replaces	
Previous Document Name and Version:	Disciplinary Policy & Procedure v.3.0

Supporting References	
Keywords:	Resolution, misconduct, investigation, disciplinary.
Related Trust Documents:	Investigating Concerns About Misconduct – A Toolkit

Contributing Authors	
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Committees / Groups	Staff side

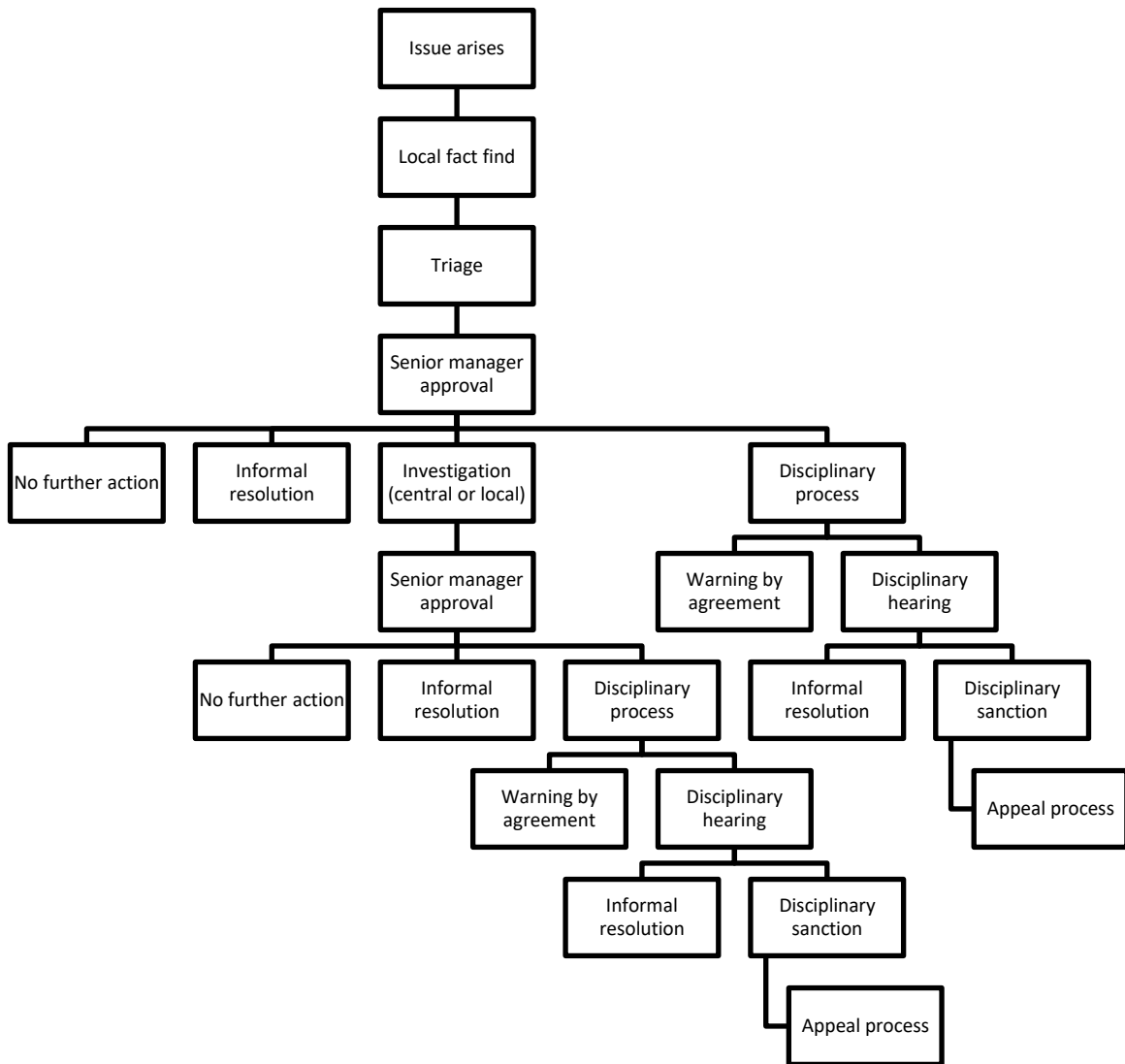
Consultation		
Policy Sent for Consultation?		Yes
Sent to		Date
Committee / Groups:	Divisional HR	15 November 2021
	Staff side	7 January 2022
Departments / Individual:	Terry Skitmore & Narinder Kapur (Amin Abdullah's partner and advocate)	18 February 2022
Equality Impact Assessment Sent for Consultation?		Yes
Sent to		Date
Committee / Groups:		
Departments / Individual:	EDI team – Olivia Cummins	28 February 2022

Version Control History			
Version	Date	Policy Lead	Changes
1.2	06.09.2010	Employee Relations	Approved
2.0	28.03.2017	Corporate Governance	Final ratified

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2.1	03.09.2018	Anita Niczyporuk	Amendments to process made
3.0	21.07.2020	Compliance Unit	Final ratified.
3.1	29.03.2022	Corporate Governance	Final Ratified

Quick Reference Guide



MISCONDUCT TRIAGE FORM

Manager's name:	Senior HR Advisor's name:
Department:	Division:

This document is for managers to use in identifying next steps when misconduct allegations arise. **Please discuss the matter with your Senior HR Advisor and an investigator from the Central Investigations Team before completing the form.**

The issue(s)

What's alleged to have happened?	
Who is allegedly involved, and in what way? Use names and job titles, and include any witnesses.	
What policies/ protocols may have been breached?	
Is there any mitigation or extenuating circumstances that we're aware of at the moment?	

Severity/ complexity – *see guidance notes below*

Is the matter potentially SERIOUS?	Y/N
Is the matter potentially COMPLEX?	Y/N
Comments	

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**Serious** is defined where either of the following applies:

- Where allegations include at least one issue which could – if true – potentially be gross misconduct or gross negligence. This includes any specific allegation that could reasonably be described as bullying, harassment or discrimination (including if raised via our resolution process). The Disciplinary Policy contains a list of other examples of potential gross misconduct.
- Where the individual who is responding to the allegations (the “respondent”) already has a live disciplinary warning for a related issue.

**Complex** is defined where any of the following applies:

- Where an investigation involves more than one potential respondent; or
- More than one person making allegations (“complainants”); or
- More than four witnesses to the alleged incidents; or
- Multiple themes to be investigated.

**Next steps – tick all that apply**

1. No further action needed	
2. Give an informal warning (“letter of concern”) to the employee(s)	
3. Other informal resolution (such as training, coaching, mediation, change to systems/ protocols)	
4. Continue the investigation locally and revisit whether a disciplinary hearing is warranted once concluded	
5. Commission an investigation from the CIT	
6. Proceed to a disciplinary hearing if no further investigation is needed	
7. Consider suspension or temporary redeployment of the employee	

**Further comments**

<b>If informal resolution is recommended, please make further comments here:</b>	
<b>Please confirm the name and job title of the approver of this decision (band 8c or above) here:</b>	
<b>Date completed:</b>	

## **Roles & responsibilities - the disciplinary hearing**

### **Staff liaison officer**

- Provides emotional support to the colleague going through the disciplinary process.

### **People & OD colleague**

- Checks if any adjustments should be made to the process to support the colleague (particularly where the colleague has a disability and/ or is unwell).
- Ensures the panel are suitably senior and impartial, and have had appropriate training.
- Briefs the panel in advance of the hearing.
- Checks the invitation letter before it's sent, offering advice on the draft if needed.
- Makes sure everyone has the (same) documentation at least seven days before the hearing.
- Makes sure our policy is followed in the hearing, and that everyone is treated fairly and impartially.
- Provides coaching, advice and challenge to the panel to ensure robust, consistent and considered decision-making.
- Support and coach the panel to make a consensus decision, if there is disagreement about the outcome.
- Talks through the options available to the panel, and the risks associated with each.
- Checks the outcome letter before it's sent, offering advice on the draft if needed.
- Ensures the outcome letter is sent within five days of the decision.
- If the outcome is a dismissal, works with the line manager to ensure that this is followed up and processed in a timely way.

### **Chair**

- Checks if any adjustments should be made to the process to support the colleague (particularly where the colleague has a disability and/ or is unwell).
- Sets out and follows the agenda for the hearing (appendix 4)
- Ensure that everyone has sufficient opportunity to state their case, and to ask and answer relevant questions.
- Check that the colleague feels that they have been heard.
- Together with the other panel member(s):
  - Make sure all relevant evidence and mitigation has been considered.
  - Weigh up the evidence, explanations and mitigation objectively before making a decision on a sanction (if any).
  - Consider any other relevant information, like live existing warnings.
  - Take advice from the People & OD colleague on options, risks and consistency with other relevant cases.



## **Agenda for a disciplinary hearing**

### **a. Welcome and introduction – chair**

- Introduce everyone present
- Reiterate the purpose of the meeting, and talk through the agenda/ process
- Check everyone present has the right documentation
- Check if the colleague wants to submit any further documents

### **b. Management case**

- Manager outlines findings of the fact-find/ investigation
- Colleague, representative, panel and People & OD support can ask the manager questions
- Manager calls any relevant witnesses
- Manager, colleague, representative, panel and People & OD support can ask the witnesses questions

### **c. Colleague response**

- Colleague and/ or their representative talk through their response to the management case, answering each of the allegations, offering explanations and any mitigation they feel should be taken into account
- Colleague calls any relevant witnesses
- Manager, colleague, representative, panel and People & OD support can ask the witnesses questions

### **d. Summing up**

- The manager gives a sum up of what they want the panel to consider
- The colleague does the same
- No new evidence can be presented at this stage

### **e. Adjournment**

- The chair to agree with everyone how and when the decision will be given

### **f. Share outcome with colleague**

- The panel will reconvene the meeting, unless the colleague prefers not to be told the decision verbally, and:
  - Share the decision, with a brief summary of the reasons for the decision
  - Reiterate the colleague's right of appeal, and the timescale for this
  - Communicate any other key information, such as warning duration, or last day of service (if dismissed)
- Confirm the outcome, reasons and other relevant information in writing within 5 days