1. Introduction

It is accepted by the Trust and its employees (as represented by Staff Representatives on the Employment Partnership Forum) that a disciplinary policy and procedure is necessary to assist in maintaining standards of conduct and performance, and for promoting a fair and systematic approach in handling such matters.

Both the Trust and employees should act consistently. The following procedure is intended to provide a framework within which all disciplinary matters can be dealt with fairly and without unreasonable delay. The procedure has been designed in accordance with the ACAS Code of Practice 2009 and is to ensure that all staff are aware of their rights and obligations in respect of disciplinary and appeals machinery.

It must be emphasised that this procedure is designed to encourage improvement in an employee’s conduct and performance where this is necessary and is not merely a method of applying disciplinary sanctions. In this respect managers at all levels have an important role in seeking initially to rectify problems or minor lapses in behaviour through internal discussions (more commonly known as counselling), without using the formal procedure. However, if this does not resolve the problem or the matter is more serious, there may be a need to use the formal Disciplinary Procedure.

2. Policy Scope

The procedure applies to all employees including Medical and Dental Staff except for any matters concerning the professional competence of Medical and Dental Staff, for which a separate procedure has been agreed.

3. Aims of the Policy

This policy is designed to encourage improvement in an employee’s conduct and performance and is not merely a method of applying disciplinary sanctions.
4. **Duties – roles and responsibilities**

4.1 The Executive Team is accountable to the Trust Board for ensuring Trust-wide compliance with policy.

4.2 Directorate Managers and Heads of Service are responsible to the Executive Team for ensuring policy implementation.

4.3 Managers are responsible for ensuring policy implementation and compliance in their area(s).

4.4 Staff are responsible for complying with policy.

4.5 Managers with Authority to Discipline

A list of managers with authority to discipline and/or dismiss is attached at Appendix A.

5. **Disciplinary Rules**

Disciplinary Rules have been laid down to give an indication of the standards of conduct and behaviour expected of all employees – see Appendix B. These rules should be read in association with the procedure, as failure to observe them may lead to disciplinary action. It is not possible to record all incidents and, therefore, the list of examples should not be regarded as exhaustive.

5.1 Disciplinary / Appeal Procedure

An example procedure for the conduct of a Disciplinary Hearing is outlined in Appendix C.

An example procedure for the conduct of a Disciplinary Appeal is outlined in Appendix D

5.2 Standard of Work/Poor Performance

There are examples from time to time where employees fail to achieve an acceptable standard of work. Such an issue should be dealt with under the Trust’s Capability Policy and Procedure.

5.3 Counselling

On some occasions, it may be considered by the manager or supervisor that an employee is not behaving appropriately (e.g. continued lateness) or when a minor breach of discipline has occurred. In such cases, the manager may guide, advise and support the employee with a view to resolving the issue. A record of this counselling discussion will be maintained. However, if counselling is considered inappropriate, or when following counselling an
employee fails to improve, then the formal disciplinary procedure will be invoked. Advice on this can be obtained from the Human Resources Department.

6. **General Points**

These general points should be noted in conjunction with the procedure outlined below:

6.1 **Right of Knowledge of Offences(s)**

No action should be taken without an employee having the fullest opportunity to know of the offence against which disciplinary action is proposed to be taken.

6.2 **Right to State Case**

Every employee who is subject to a disciplinary investigation/hearing shall be given the fullest opportunity to state his/her case before a decision is taken.

6.3 **Right to be Accompanied/Represented**

*Employees shall have the right to be accompanied at every stage in the formal procedure, including appeal, by a companion who is either a representative of his/her recognised staff organisation/trade union or a work colleague. (*Only the employee subject to the action has the right to be accompanied at every stage in the formal procedure).

The companion will be allowed to address any hearing to put and sum up the employee’s case, respond on behalf of the employee to any views expressed and confer during the hearing. The companion does not have the right to answer questions on behalf of the employee, address the hearing if the employee does not wish it, or prevent the Trust from explaining their case.

Where the chosen companion is unable to attend the meeting on the date proposed, then an alternative date and time may be offered as long as it is reasonable and falls within five working days of the originally proposed date. If the alternative date is not agreed then the meeting will go ahead without the attendance of either the employee or the representative.

6.4 **Level of Disciplinary Action**

Except in cases of gross misconduct which will normally lead to summary dismissal, the level of disciplinary action to be taken will depend upon the seriousness of the offence and may commence at any stage.

6.5 **Rights of Accredited Staff Organisation Representative**

Where disciplinary action is being considered against an employee who is a
Trade Union or Staff Representative, the normal disciplinary procedure should be followed. Depending on circumstances however, the matter will first be discussed with a senior trade union representative (e.g. Branch Secretary) or a Full Time Officer after obtaining the employee’s agreement.

6.6 Written Statements and the Issue of Anonymity

6.6.1 Employees facing disciplinary action have the right to know what the allegations that are being brought against them at the disciplinary hearing are. Copies of any evidence/statements which are to form part of the allegations against the employee at a disciplinary hearing must be supplied to the employee and/or his/her representative if practical at the time of notifying the employee of the hearing. Such statements do not have to be disclosed at an initial investigation. All statements must be signed and dated by the person making them and any individual supplying a statement should be informed that he/she may be required to attend any subsequent disciplinary hearing if asked to do so. Any act of harassment, intimidation or victimisation towards the person(s) supplying information within the statement(s) will lead to disciplinary action against the perpetrator.

6.6.2 There may be exceptional circumstances (for example, in harassment cases or victimisation, or where the disciplinary hearing refers to allegations concerning patients) where an employee has made complaints/allegations against another employee and wishes to remain anonymous, or is not prepared to be named in any written statement if the statement may be seen by the employee against whom the accusation/complaint was made, or that employee’s representative, or where the complainant does not wish to attend any subsequent disciplinary hearing due to fear of intimidation.

In such cases, the manager handling the disciplinary issue will discuss the matter fully with the employee who has made the allegations. If he/she still objects to being named, or to sign a written statement which may be passed on to the employee concerned, the manager will have to judge whether or not to proceed without divulging the identity of the person, bearing in mind the seriousness of the complaint or allegation, and the rights of natural justice for the employee accused.

If it is proposed to proceed with the matter and the employee or his/her representative feel their case would be seriously prejudiced without having sight of the written statement(s), then they will have the right to refer the matter to the Head of Human Resource Services or nominated deputy, for consideration before proceeding any further.

(If the matter concerns patient complaints or untoward incidents - see Patients’ Complaints procedure and Whistleblowing policy).
6.7 Establishing the facts of the case

In most cases, it will be necessary for an investigatory meeting to be held before proceeding to any disciplinary action. It may also be necessary to consider suspension (see section 6.10). In those other cases, the investigatory stage will be the collation of evidence by the Trust for use at a disciplinary hearing.

6.7.1 If a meeting is required the employee(s) concerned shall be informed that an investigation is being carried out, the reasons for the investigation, and have it confirmed that it is not a disciplinary hearing. The allegations against the employee shall be confirmed in writing prior to the meeting. The employee may be informed of the allegations verbally or via email prior to receipt of confirmation in writing prior to the meeting.

6.7.2 An investigation is not part of the formal disciplinary procedure and, therefore, there is no statutory right to be accompanied. However, if accompaniment is requested, the request will be considered.

6.7.3 The manager will decide who should carry out the investigation in conjunction with the Directorate Manager / Head of Department / Medical Director / Nursing and Patient Services Director. Different people will carry out the investigation and any disciplinary hearing which may result.

6.7.4 In all cases where professional inadequacy is alleged (except for Medical and Dental staff as previously stated), the investigation will normally be led by a senior professional officer from within the Directorate, who will report his/her findings to the manager who is to consider disciplinary action.

6.7.5 In more serious cases, the investigating officer may be appointed from outside the Directorate. The Human Resources Department can provide advice on such matters.

6.7.6 If it is concluded by the manager conducting the investigation that there has been deliberate malicious accusation(s) made, then the manager has the right to submit the ‘complainant’ to disciplinary action.

6.7.7 The investigating manager will produce a report including the allegations and findings to be submitted to the Directorate Manager / Head of Department / Medical Director. If the investigation concerns an allegation or complaint against an employee and the manager concerned concludes there is no case to answer, then the employee who is the subject of the complaint/allegation shall be informed in writing of this outcome, as should any complainant. If the manager concludes there is a case to answer the employee shall be notified in writing that the matter will be referred to a disciplinary hearing and the
disciplinary process will proceed. Any such communication will take place at the earliest opportunity.

6.8 Disciplinary Hearings

If, as a result of the investigation, it is concluded that there is a disciplinary case to answer and that the matter will be referred to a disciplinary hearing, the employee(s) will be notified in writing of the time, place and date of the hearing at least 15 working days before any formal disciplinary hearing takes place. However, where there is mutual agreement, the hearing may follow within a shorter time scale.

The letter of invitation to the hearing will include a copy of the investigatory report and any other documentary evidence relevant to the subject matter of the hearing which is to be used as part of the case. The letter will clearly state the allegations made against the employee, a summary of the findings of the investigation, the seriousness of the matter and potential consequences, the details of any witnesses to be called and any mitigation e.g. admission of the allegation(s). The letter will also advise the employee of their right to be accompanied at the hearing.

The employee will be required to provide a statement of case no later than five working days before the date of the hearing.

The hearing will be conducted in accordance with appendix C

6.9 Non-Attendance of Employee(s) at Disciplinary Hearings/Investigation

6.9.1 If an employee who is the subject of a complaint or accusation refuses to attend a disciplinary hearing/investigation and gives no acceptable reason to the manager concerned, the employee concerned may be suspended without pay. He/she will not be allowed to return to work unless the permission of the manager is given.

If the employee is persistently unable or unwilling to attend a disciplinary hearing/investigatory meeting without good cause, the Trust will make a decision on the evidence available.

6.9.2 If the manager wishes to see other employees who may be able to give relevant information concerning the complaint or accusation, and they refuse to attend, then unless they can give a satisfactory reason they may be suspended without pay. If a witness is no longer an employee of the Trust they will be positively encouraged to make themselves available to attend the hearing, where required and where possible.

6.9.3 Where such employees are absent from work they should be given the opportunity to attend. If they choose not to then the manager has the right to hold the investigation/hearing in their absence subject to
If an employee refuses to attend a disciplinary hearing because the person he/she has chosen to accompany him/her cannot attend, then he may propose an alternative time which must be within five working days after the original date and time. If the alternative date is not agreed then the meeting will go ahead without the attendance of either the employee or the representative.

6.10 Suspension

Employee(s) may be suspended from duty if it is felt that the alleged misconduct means that the suitability of the employee remaining on duty is undesirable, both in the interests of the employer and/or the employee(s); or that his/her presence will inhibit investigations; or will make working arrangements with colleagues impossible to sustain.

Suspension does not in itself constitute disciplinary action or make any presumption of guilt.

6.10.1 All employee(s) should normally have the opportunity to state his/her case before a decision to suspend is made. In all cases the manager will adjourn to consider the facts before the decision to suspend is made. If it is practical, to be accompanied by a staff representative or work colleague if he/she wishes it. However, this may not be practical if, for example, the incident or misdeed happens outside normal working hours such as at night, or the weekend or on a Bank Holiday. In such circumstances, the manager will have to determine what is the best form of immediate action at the time and allow the employee to state his/her case at the earliest practicable opportunity if formal suspension from duty is contemplated.

6.10.2 Suspension will normally be on full pay but may exceptionally be without pay in certain cases of gross misconduct and with the approval of the Director of Human Resources (as defined by the Employment Rights Act) (see 6.10.6 below) and the employee will be given the reason(s) for suspension. A letter confirming this and informing the employee they will be required to return to site for an investigatory meeting will be sent by the manager with a copy to the Human Resources Department and the staff representative (where involved).

6.10.3 The letter will inform the employee of the likely length of suspension. This should be as brief as possible, but allow sufficient time for investigations to be completed.

6.10.4 Suspension whilst an investigation is carried out should normally last no more than three weeks. Where a longer period is required and/or unavoidable, the employee (and their representative where involved) shall be informed.
6.10.5 The persons who have the authority to suspend shall be those who have the right to take disciplinary action as defined in Appendix A. In carrying out this right they should make it clear to the employee(s) that suspension in itself does not form part of any disciplinary action or make any presumption of guilt.

6.10.6 The only exception to suspension on full pay is when 6.10.2 above applies and/or where an employee refuses to carry out part or all of his/her duties as laid down in his/her contract of employment, or where he/she leaves his/her place of employment without the authority of his/her manager. In both these circumstances, suspension shall be without pay. The employee shall only be allowed to return to work with the permission of the manager concerned.

6.10.7 The Director of Human Resources must be informed of all cases which result in an employee being suspended, pending an investigation into a disciplinary matter.

6.10.8 During a period of suspension, the employee must not attend work or carry out any of their duties and responsibilities unless requested to do so by their line manager. He/she must remain available to assist in the disciplinary investigation and attend investigation or disciplinary meetings. If suspension is lifted earlier than anticipated, then the employee is expected to return to work immediately. If the employee wishes to go on holiday during a period of suspension, he or she must request annual leave in the normal way. Whilst suspended an employee is not permitted to undertake any other alternative employment unless appropriate and agreed with the Trust.

6.11 Child Protection or Vulnerable Adults

Where an allegation has been made that suggests an employee who works with children or vulnerable adults has behaved in an unsuitable way, has harmed a child or vulnerable adult, or possibly committed a criminal offence, the matter must be reported immediately to the Head of Human Resource Services who will invoke the Child Protection/Vulnerable Adult policy.

If any employee is dismissed as a result of a child protection or vulnerable adult issue, the Trust is obliged to report the matter to the Independent Safeguarding Authority (ISA) (see Appendix E) and, where applicable, the employee’s relevant professional body.

6.12 Role of the Human Resources Department

The Investigating Officer can request the assistance of a representative from the Human Resources Department in carrying out an investigation. Where assistance is not required, the manager must inform the department that it is taking place. A representative from the Human Resources Department must be present at any subsequent disciplinary hearing.
6.13 Matters Concerning Fraud

The Trust's Fraud Policy sets out the procedure for handling allegations of fraud by employees. This should be followed in association with this disciplinary procedure.

7. Level of Disciplinary Action

Disciplinary issues may progress to any appropriate stage of the procedure, including a Final Written Warning or dismissal where the matter is of a serious nature and it would be inappropriate to use an Oral or First Written Warning. Disciplinary issues may also progress straight to a recommendation to dismiss if such a recommendation is deemed to be in the Trust's best interests or the employee is within their probationary period.

The level of disciplinary action which may be imposed will be determined by the circumstances of the case as follows.

Oral Warning – the minimum duration for any formal warning period is six months

- First Written Warning – for 12 months
- Final Written Warning – for 24 months
- Demotion or Transfer of Employment
- Dismissal

The exception to this will be in cases of gross misconduct where summary dismissal will apply.

There may be rare occasions where an employee has problems both in his/her performance and in his/her conduct. In such cases, separate warnings may be given for each issue.

Where formal disciplinary action is taken and a warning is issued, the employee’s next salary increment will be deferred by the equivalent duration of the warning (6, 12 or 24 months). This must be communicated to the employee in writing when their warning is confirmed.

7.1 Oral Warning

Where the misconduct is confirmed the manager will determine the time period within which it is reasonable for improvement to be made. A note of the warning will be placed on the employee's personal file and provided the requisite improvement has been made it will be disregarded for disciplinary purposes after a maximum period of 6 months. A review date may be set to review progress against required improvements and either no further action will be taken, a further review date set, or progress to the next stage of the disciplinary procedure will be actioned.
7.2 First Written Warning

In the case of more serious offences, or where there is a recurrence of or accumulation of minor offences, a First Written Warning will be issued.

A copy of the letter of warning will be placed on the personal file of the employee. This will be disregarded for disciplinary purposes after 12 months provided there are not instances of further similar offences occurring during that period.

7.3 Final Written Warning

In the event of further similar offences occurring during the existence of a First Written Warning and there is a failure to improve, or the actions have had or are liable to have a serious or harmful impact on the Trust, or where the offence is of a serious enough nature to warrant immediate recourse at this stage, a Final Written Warning may be issued.

A copy of the letter or warning will be put on the personal file of the employee. This will be disregarded for disciplinary purposes after 24 months provided there are no instances of similar offences during that period. The letter of warning will contain the statement that failure to improve or modify behaviour as required or any further similar offences whilst the warning is in existence may lead to dismissal or some other action short of dismissal.

7.4 Time Limits for Warnings

Warnings will remain active on the personal file of an employee for the time periods set out above. However, there may be occasions where the employee’s conduct/performance has been satisfactory throughout the period the warning is in force only for it to lapse thereafter. Where this happens the employee’s previous disciplinary record will be borne in mind in deciding what subsequent form of disciplinary action to take.

7.5 Demotion or Transfer of Employment

As an alternative to dismissal or in addition to a Final Written Warning, the decision might be disciplinary demotion (either temporary or permanent) and/or temporary/permanent change to another shift or post. Depending on the circumstances, the demotion/transfer may or may not be accompanied by a written warning. An employee who is demoted or asked to change shift will not receive any protection of salary or other conditions of service.

7.6 Dismissal

It is not expected that an employee will normally be dismissed following a first breach of discipline or without previous warnings – except in the case of gross misconduct. Before this happens a thorough investigation of the alleged incident(s) will be undertaken. The employee shall be entitled to a formal disciplinary hearing, except in cases where this is impractical, for example,
because of criminal proceedings or imprisonment.

In every case the employee will be given full written reasons for dismissal. The letter will confirm the date on which the employment contract will terminate (normally the date on which the final meeting took place), the appropriate period of notice, and information on the right to appeal. In the case of gross misconduct, dismissal will normally be immediate and without pay or notice.

8. Retention of Information

Statistical information on disciplinary warnings that have ceased to be ‘live’ will be retained centrally within the Human Resources Department. This information will be entirely anonymised, will be kept in strict confidence, and will be used for audit purposes only.

9. Implementing the Decision Following a Disciplinary Hearing

The decision on whether or not disciplinary action is to be imposed will be taken after the hearing has concluded and at the earliest opportunity. The decision, where possible, should be given in person. This must be confirmed in writing by the manager concerned within five working days and a copy placed on the employee’s personal file with the Human Resources Department. A copy should be sent to the staff representative involved (where applicable). The letter should contain:

a) A summary of the alleged facts and events leading up to the misconduct/poor performance.

b) The precise nature of the misconduct/poor performance

c) A statement, if appropriate, of the period of time given for improvement and the improvement which is expected

d) The level of disciplinary action being taken and, where appropriate, how long the action will remain live

e) Inform the employee of the right to appeal, how it should be made and to whom

f) Indicate the likely consequence of further misconduct

10. Substantial Absence of Employee during Existence of Disciplinary Warnings

An employee with a live disciplinary warning who is absent from work (e.g. sickness, maternity, career break, authorised/unauthorised absence) for a period of four weeks or more will have the equivalent length of absence during the live warning period added to the expiry date of the warning.

This arrangement will not apply during periods of special leave, annual leave,
suspension, study leave, or secondment/or training.

11. **Monitoring of an Employee subject to Disciplinary Action**

The Line Manager or nominated deputy is responsible for making appropriate arrangements to monitor the conduct of an employee in receipt of a disciplinary warning. It is particularly important that before the end of any specified period of warning a meeting is held with the employee to provide feedback on their conduct, and inform them that subject to meeting the necessary standards, the warning will expire on the nominated date.

12. **Appeals Process**

12.1 If an employee considers that the decision taken against them is wrong or unjust, they may appeal against the decision.

To exercise this right s/he or their representative should write to the Director of Human Resources within 14 calendar days of receipt of the disciplinary letter. The appeal letter must identify the reason for the appeal i.e. perceived procedural errors, availability of new evidence, why the sanction imposed is considered to be inappropriate.

12.2 The list at Appendix A sets out who will hear appeals. For appeals against dismissal or demotion (as an alternative to dismissal), this will be an Appeals Panel of the Trust Board. The panel shall consist of two members of the Board (at least one of whom will be a Non-Executive Director), and will be serviced by a Human Resources Adviser. None of the above should have had any prior involvement in the case. The appeal hearing must be held without unreasonable delay.

12.3 Appeals against other levels of disciplinary action shall be heard by a manager of higher authority than that of the manager issuing the warning, who has not had a prior involvement in the case. Where the officer issuing the warning was the Chief Executive, the appeal shall be to the Chairman.

12.4 No later than five working days prior to the meeting the employee will be provided with all documentation produced at the hearing i.e. this will include the notes of the hearing.

12.5 If new evidence emerges, and it is felt this may have affected the original decision, the case may be referred back to the original Disciplining Manager to convene another disciplinary hearing. (It will be for the Disciplining Manager to determine whether any further investigation is required before the disciplinary hearing is held).

13. **Professionally Registered Employees**

Professionally registered employees who are subject to investigation and/or disciplinary action are reminded that the Trust has a duty to report, or take advice on reporting, certain incidents to the relevant professional body who may separately
investigate and decide each case.

14. **Equality and Diversity**

The Trust is committed to ensuring that, as far as is reasonably practicable, the way we provide services to the public and the way we treat our staff reflects their individual needs and does not discriminate against individuals or groups on any grounds. This policy has been properly assessed.

15. **Monitoring Compliance with the Policy**

<table>
<thead>
<tr>
<th>Standard / Process / Issue</th>
<th>Monitoring and Audit</th>
<th>Method</th>
<th>By</th>
<th>Committee</th>
<th>Frequency</th>
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<tbody>
<tr>
<td></td>
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<tr>
<td>The following will be audited;</td>
<td>Reporting of information held in ESR and file audits</td>
<td></td>
<td></td>
<td>Director of Human Resources</td>
<td>Heads of Human Resources Meeting</td>
</tr>
<tr>
<td>a. Categorisation of allegations</td>
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<tr>
<td>b. The number of Tribunal cases, and</td>
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<tr>
<td>c. The timeliness of process start and end dates</td>
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</tbody>
</table>

16. **Consultation and review of this policy**

This policy has been reviewed in consultation with the Employment Policies and Procedures Consultation Group

17. **Implementation of the policy (including raising awareness)**

A summary of the key changes will be notified to managers following implementation. Further advice and guidance will be available from the Human Resource Department.

18. **References**

1) ACAS Code of Practice 2009

2) Employment Rights Act 1996

3) Safeguarding Vulnerable Groups Act 2006

19. **Associated documents**

- Capability Procedure to address concerns regarding competence of medical and dental staff
- Capability Procedure
- Concerns and Complaints Policy
- Whistleblowing Policy

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• Child Protection: Policies and Guidelines
• Safeguarding Policy and Guidelines
• Fraud Policy and Response Plan
• Corporate Governance Framework
## Levels of Responsibility

<table>
<thead>
<tr>
<th>Category of Employee</th>
<th>Oral Warning</th>
<th>Appeal</th>
<th>Written Warning</th>
<th>Appeal</th>
<th>Dismissal</th>
<th>Appeal</th>
<th>Suspension</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 Chief Executive</td>
<td>Trust Chairman</td>
<td>Trust Board</td>
<td>Trust Chairman</td>
<td>Trust Board</td>
<td>Trust Chairman</td>
<td>Trust Board</td>
<td>Trust Chairman</td>
</tr>
<tr>
<td>2 Executive Directors</td>
<td>Chief Executive</td>
<td>Trust Chairman</td>
<td>Chief Executive</td>
<td>Trust Chairman</td>
<td>Trust Chairman</td>
<td>Trust Board Panel</td>
<td>Chief Executive</td>
</tr>
<tr>
<td>3 Members of Executive Team, Heads of Service, Directorate Managers and others who are directly accountable to Chief Executive</td>
<td>Chief Executive</td>
<td>Trust Chairman</td>
<td>Chief Executive</td>
<td>Trust Chairman</td>
<td>Trust Chairman</td>
<td>Trust Board Panel</td>
<td>Chief Executive</td>
</tr>
<tr>
<td>4 Own immediate subordinates of 2/3 above</td>
<td>Executive Director/Head of Service, Directorate Managers, etc.</td>
<td>Chief Executive</td>
<td>Executive Director/Head of Service/ Directorate Manager</td>
<td>Chief Executive</td>
<td>Chief Executive</td>
<td>Trust Board Panel</td>
<td>Executive Director/Head of Service</td>
</tr>
<tr>
<td>5 Consultant Medical &amp; Dental Staff (Personal Conduct only)</td>
<td>Medical Director</td>
<td>Chief Executive</td>
<td>Medical Director</td>
<td>Chief Executive</td>
<td>Trust Chairman</td>
<td>Trust Board Panel</td>
<td>Medical Director or Chief Executive</td>
</tr>
<tr>
<td>6 Other Medical Staff (Personal Conduct only)</td>
<td>Clinical Director</td>
<td>Medical Director</td>
<td>Clinical Director</td>
<td>Medical Director</td>
<td>Medical Director</td>
<td>Trust Board Panel</td>
<td>Medical Director</td>
</tr>
<tr>
<td>7 All other staff</td>
<td>Departmental Manager/Ward Manager. Immediate subordinates of employees in 2/3 above</td>
<td>The next level of Management above the manager issuing the warning e.g. Directorate Manager</td>
<td>Department Manager/ Directorate Manager/ Heads of Service</td>
<td>The next level of Management above the manager issuing the warning</td>
<td>Members of the Executive Team</td>
<td>Trust Board Panel</td>
<td>Department Manager/ Directorate Manager/Head of Service/ Executive Team</td>
</tr>
</tbody>
</table>
NOTES:

1. Mutual terminations of employment on grounds of sickness may be delegated to Head of Service and Department Managers within Estates and Facilities/Directorate Manager.

2. Termination of employment on the grounds of unsatisfactory probationary period may be designated to Head of Service/Directorate Manager.

3. Action short of dismissal may be delegated to designated officers if and when required.

4. Dismissal can only be authorised by the officer specified in this procedure or, in his/her absence, an officer with specific delegated authority.

5. No officer may dismiss his/her subordinate.

6. Particular care needs to be taken that there is appropriate professional input into the disciplinary process. See also Section 6.7.3 of the procedure.

Members of the Executive Team in the context of this procedure include: Business and Development Director; Nursing and Patient Services Director; Finance Director; Medical Director.

Heads of Service/Directorate Managers will include: Director of Human Resources, Head of Estates and Facilities, Directorate Managers: Peri-Operative and Critical Care Manager, Therapy Services Manager, Laboratory Managers.

Departmental Managers include those within Domestic Services, Portering, Catering, Linen Services, Sterile Services, Clinical Directors and out of hours this includes a Patient Service Co-ordinator acting with delegated authority.
Disciplinary Rules

1. Introduction

1.1 The objective in setting out these disciplinary rules is to promote fairness and consistency in the treatment of all employees.

1.2 The rules specified below give an indication of the standards of conduct and behaviour expected of all employees. Failure to observe these standards, or the committing of an offence or offences or other misconduct, may lead to disciplinary action. They are not intended to be an exclusive or an exhaustive list of types of misconduct which can result in disciplinary action against an employee.

1.3 These rules have to be used by managers in association with the Disciplinary Procedure.

2 Categories of Misconduct

The categories are divided into those which constitute 'gross misconduct' (and carry a penalty of summary dismissal) and those which constitute 'misconduct' where an employee has failed to follow the rules, policies or procedures, or may have demonstrated unacceptable behaviour, performance or attendance, and in the initial stages carry a lesser disciplinary penalty.

2.1 Gross Misconduct

The list which follows is not exhaustive, but the offences and circumstances mentioned represent gross misconduct and as such normally warrant summary dismissal. The action may be taken irrespective of whether a previous warning has been given.

a) **Theft:** Any theft, or attempted theft, on or from NHS premises. This may include the use of NHS property or facilities for private purposes. Borrowing NHS property without permission, may constitute theft.

b) **Fraud:** Any deliberate attempt to defraud the Trust. This can include the misuse of time clocks e.g. clocking another employee’s cards, or making false entries on time sheets/time clocks; falsifying security passes or making false travel entries and travel subsistence expense claims; or to defraud a member of the public, patient, visitor or contractor in the course of official duties; working for another employer whilst on sick leave from the Trust. This includes misuse of the Trust’s Occupational Sick Pay Scheme. (see also Corporate Governance Manual of the Trust).

c) **Ill Treatment:** Ill treatment of any persons on Trust premises including patients and visitors.
d) **Serious Unacceptable Behaviour:** (Managers will need to exercise care in relation to incidents which occur off the Trust’s premises where due regard must be paid to the prevailing circumstances particularly where the Trust’s good name and reputation is compromised)

- **Violence** - threatening behaviour or physical threats of violence, fighting or assault on another person on or off the Trust premises upon other employees, patients, visitors, members of the public or contractors.

- **Gross Insubordination** – failure to carry out reasonable instructions; insubordination to manager’s supervision where consequences have been made clear.

- **Action – which discredits the name and reputation of the Trust** whether on or off the premises (e.g. actions offensive to the general public) This may include criminal offences (whether committed during or outside the employee’s hours of work for the Trust which may adversely affect the employees suitability for the type of work for which they are employed to perform, or their acceptability to other employees or patients. (ref note 3).

- **Offering, giving, receiving or requesting of bribes.** This includes a financial advantage or other reward that is offered to, promised to, given to, or received by an individual or company to induce or influence that individual or company to perform its public or corporate functions or duties in an improper manner (i.e. not in good faith, not impartially, or not in accordance with a position of trust). The Trust operates a zero-tolerance approach to any attempts at bribery by, or of, its employees.

- **Accessing pornographic, offensive or obscene material.** Deliberately accessing internet sites whilst at work or on work premises (by any means) containing pornographic, offensive or obscene material

- **Misuse of Social Networking Sites including Cyber Bullying.** This includes:
  - sharing confidential information online
  - posting inappropriate comments about colleagues or patients
  - using social networking sites to bully or intimidate colleagues
  - pursuing personal relationships with patients or service users
  - distributing sexually explicit material
  - using social networking sites in any way which is unlawful.

This list is not intended to be exhaustive

e) **Unfit for Duty:** Being under the influence of alcohol, drugs or other substances
• to such an extent as to put at risk either him/herself or others, or
• to such an extent that the individual cannot carry out his/her duties effectively, or
• sufficiently to cause disquiet and remove the confidence of patients, staff or the public.

f) **Malicious Damage**: Deliberate or reckless damage to NHS property or the property of others on NHS premises.

g) **Corruption**: Receipt of money, goods, favours etc in respect of services rendered to the Trust.

h) **Gross or Wilful Negligence**: Gross or wilful negligence or reckless abuse of rules designed to produce safe working practices which could include, in more serious cases, non-adherence to safety rules, food hygiene regulations, and to any advice – either general or specific – issued by the Occupational Health Department.

i) **Failure to Declare Information**: Falsification of, or failure to declare, relevant information on medical questionnaires or application forms that is fundamental to the contract. This would include the falsification of qualifications which are statutorily required for employment or which result in additional remuneration. Failure to declare business interests; falsification of sick certificates.

j) **Severe Breach of Confidential Information**: Especially any breach of information relating to patients (See note 2.2a below).

k) **Prolonged Absence without Acceptable Notified Reason**

l) **Harassment/Intimidation**: To include severe cases of racial and sexual harassment, bullying and verbal abuse (See note 2.2e below)

m) **The consumption (unless medically prescribed or over the counter drugs), sale or distribution of drugs** on Trust premises or in the course of employment.

n) **Gross or serious misuse of the Trust's IT systems** as outlined in the Email and Electronic Communications Policy.

o) A serious breach of trust and confidence.

p) A serious breach of the rules, regulations, policies and procedures of the Trust.

q) **Serious unacceptable behaviour** that would be offensive to patients, staff and public.

2.2 Other Penalties
All employees are expected to achieve, and maintain high standards of behaviour and attendance. If this falls short of the standard required, an employee may first of all be advised of the problem, and given an opportunity to rectify it but dependent on the facts related to the individual case, the employee may have formal action taken against them.

Some specific examples (though not exhaustive) of unsatisfactory behaviour for which disciplinary action (which could lead to dismissal) is justified are as follows:

a)  **Breach of Confidences** – including a breach of information governance standards and responsibilities with regard to data protection, confidentiality and information security, including protecting information and information systems from unauthorised access, use, disclosure, disruption, modification or destruction (severe cases of a breach of confidence may result in dismissal).

b)  **Failure to follow the rules, regulations, policies and procedures of the Trust.**

c)  **Delivering below the standard expected work.** (See Capability Procedure).

d)  **Negligence**

e)  **Unreasonable behaviour, appearance and/or language** offensive or harmful to other employees, staff employed by contractors providing services to the Trust, to patients, visitors or other members of the public.

f)  **Any action by an employee of the Trust which is discriminatory** in terms of the Trust’s Equal Opportunities and Diversity Policy and specifically any act of racial or sexual discrimination or bullying. (Extreme cases of harassment or discrimination may result in dismissal, demotion or transfer).

g)  **Falsification or failure to declare relevant information** properly requested by the Trust.

h)  **Smoking** on any of the Trust sites.

i)  **Breaches of the Trust’s conditions specified in contracts of employment**

j)  **Failure to maintain an acceptable standard of attendance or punctuality**

k)  **Misuse of NHS premises and/or facilities** – including the use of telephones for personal calls; use of NHS equipment (e.g. computers) for personal use without permission.

l)  **Breach of conditions of use of a contract hire car** including wilful neglect of a contract hire car and failure to inform the Trust of changes to their circumstances which may impact on their car insurance or their driving license.
3. **Action in the Event of Allegations of and/or Convictions for Criminal Offences**

3.1 **General**

The Trust, as a public body whose role is to provide health care to the general public, must have regard to the extent to which any offence or alleged offence committed by an employee might affect the duties and responsibilities of that employee i.e. to his/her relationship with colleagues, or patients or with other members of the general public.

Criminal offences, police enquiries and convictions, do not themselves constitute a reason for disciplinary action, but managers are expected to carry out a reasonable investigation to establish whether there is a case for taking such action. Managers are not expected to establish whether or not the employee committed an offence beyond all reasonable doubt, but rather whether the employee(s) committed the offence on the balance of probability. The Human Resources Department will provide advice and support in this regard.

3.2 **Alleged Offences or Convictions Arising from or having a bearing on Employees Duties**

In all cases managers have the right to institute disciplinary investigations/interviews (which may themselves lead to disciplinary action) before any police enquiries are completed, or before any sentence of criminal conviction is known. The main consideration should be whether the offence is one which makes the employee unsuitable for his/her work, or unacceptable to colleagues, or the patients/general public.

3.3 **Alleged Offence or Convictions Unconnected with Employment**

An alleged or proven criminal act by an employee shall not be treated as an automatic reason for dismissal. The main consideration should be whether the offence is one which makes the employee unsuitable for his/her work, or unacceptable to colleagues, or the patients/general public.

3.4 **Imprisonment of Employees**

In the event of imprisonment or detention where the employee is unable to return to their employment within a reasonable amount of time (e.g. normal period of notice which by his/her contract of employment he/she is so entitled), then the employee’s contract will be deemed to have been frustrated and his/her employment will be terminated.

3.5 **Notification to the Manager**

An employee who is charged, bound over, cautioned, or subject to police investigation with any criminal offence or has action taken which may impact on employment or professional registration must inform his/her manager immediately (this would include employees charged with a driving offence where driving is an essential part of the employee’s duties) and it is incumbent upon the manager to
determine whether this is relevant to the employee’s duties. This includes informing the Trust if it is the secondary employer e.g. if disciplinary action is taken against the employee by their primary employer.
The Newcastle upon Tyne Hospitals NHS Foundation Trust

Example Procedure for the Conduct of a Disciplinary Hearing

1. Where an employee’s conduct, performance, alleged act or omission (which might have occurred on or off duty, and has a bearing on the job/duties of the employee) is considered to be sufficiently serious to warrant formal action (which may or may not be after counselling or an investigation), the following procedure shall apply.

2. The person conducting the hearing will introduce those present and outline the process for the hearing, including the use of adjournments. This person will also ask whether any new evidence has been made available that has not be circulated prior to the meeting and will make a judgement on whether or not to allow such evidence to be considered.

3. The Formal Procedure:

3.1 Disciplinary Hearing

3.1.1 At the hearing the manager will introduce those present and explain the purpose of the hearing, the role of the Representative and explain how the meeting will be conducted.

3.1.2 Management shall state their case first in the presence of the appellant and his/her representative and may call witnesses. The employee or his/her representative shall then put his/her case in the presence of management and may call witnesses.

3.1.3 Witnesses may be present only for their evidence. At the hearing the employee(s) or his/her representative is entitled to question the Trust representative, or any witness(es) called by the Trust, and to ask for additional witnesses to be called. The person conducting the hearing may also question the witnesses. Such witnesses may be fellow employees provided they are relevant to the subject matter. If witnesses are to be called, advance notice should be given of this intention by the Trust or the employee.

3.1.4 The person chairing the meeting may ask questions of the employee.

If more time is needed to consider the matter, or new facts emerge, or further investigations are necessary it may be appropriate to adjourn the meeting and reconvene. Either side may request an adjournment during the meeting.

3.1.5 The investigating manager will sum up the case against the employee, introducing no new evidence, and the employee or his/her representative will sum up the case on their behalf, introducing no new evidence.

3.1.6 The decision on whether or not disciplinary action is imposed will be taken after the hearing has concluded and at the earliest opportunity. The decision,
where possible, should be given in person. This must be confirmed in writing by the manager concerned within five working days and a copy placed on the employee’s personal file with the Human Resources Department. A copy should be sent to the staff representative involved (where applicable). If in the opinion of the manager hearing the case misconduct has occurred, the following factors should be taken into account before determining the level of disciplinary sanction:

a) any mitigating factors
b) current disciplinary record (if appropriate) of the employee
c) seniority of the post holder
d) length of service
e) nature of the misconduct
f) evidence produced by either party at the hearing
g) any sanctions imposed in the past for similar offences.

The written confirmation of decision will also include information about the right of appeal.

3.1.7 A member of the Human Resources Department must attend a hearing in an advisory capacity which will involve giving advice on procedural matters and on other appropriate issues, and to make a written record of the proceedings.

3.1.8 The manager will need to ensure that where professional inadequacy is alleged and/or where the employee is from a different profession to the manager, there has been appropriate professional input and advice into the disciplinary process (see also 2.7.4 above).

3.1.9 If following the hearing the manager decides there is no case to answer he/she shall notify all concerned in writing.
Appendix D

The Newcastle upon Tyne Hospitals NHS Trust

Example Procedure for the Conduct of a Disciplinary Appeal

The person conducting the appeal hearing will introduce those present and outline the process for the hearing, including the use of adjournments. This person will also ask whether any new evidence has been made available that has not be circulated prior to the meeting and will make a judgement on whether or not to allow such evidence to be considered.

The Case Against the Employee:

a) Management shall state their case in the presence of the appellant and his/her representative and may call witnesses.

b) The appellant or his/her representative shall have the opportunity to ask questions of management and their witnesses.

c) The person or persons hearing the appeal shall have the opportunity to ask questions of the management or their witnesses.

d) Management shall have the opportunity to re-examine their witnesses on any matter referred to in their examination by the person or persons hearing the appeal, the appellant or his/her representative.

The Case for the Employee:

e) The appellant or his/her representative shall put his/her case in the presence of management explaining their grounds for appeal and may call witnesses. Any evidence to support the appeal, including witness statements that are relevant, should be provided a minimum three working days before the Appeal hearing.

f) Management shall have the opportunity to ask questions of the appellant, his/her representative and his/her witnesses.

g) The person or persons hearing the appeal shall have the opportunity to ask questions of the appellant, his/her representative and his/her witnesses.

h) The appellant or his/her representative shall have the opportunity to re-examine his/her witnesses on any matter referred to in their examination by the person or persons hearing the appeal or management.

Summing Up the Case:

i) Management and the appellant or his/her representative shall have the opportunity to sum up their case if they so wish, the appellant or his/her representative shall have the right to speak last. In their summing up, neither party may introduce any
new matters.

j) Nothing in the foregoing procedure shall prevent the person or persons hearing the appeal from inviting either party to elucidate or amplify any statement he/she may have made; or from asking him/her such questions as may be necessary to ascertain whether or not he/she proposes to call any evidence in respect of any part of his/her statement, or alternatively whether he/she is in fact claiming that the matters are within his/her own knowledge, in which case he/she will be subject to examination as a witness under (b) or (f) above.

k) The person or persons hearing the appeal may at their discretion adjourn the appeal in order that further evidence may be produced by either party to the dispute or for any other reason.

l) Management, the appellant and his/her representative shall withdraw.

m) The person or persons hearing the appeal with the officer who has been charged with providing secretarial and procedural assistance shall deliberate in private, only recalling both parties to clear points of uncertainty on evidence already given. If recall is necessary, both parties shall return notwithstanding only one is concerned with the point giving rise to doubt.

Communicating the Decision

n) No statement of previous acts of misconduct by the employee or the issue of a formal warning or warnings unrelated to the alleged offence(s) on which the disciplinary action is based shall be made until after the person or persons hearing the appeal have reached a decision on the appeal.

o) The employee will be informed in writing of the results of the appeal hearing as soon as possible, after the meeting. The person (s) hearing the appeal will advise those present of the timescale. The decision reached at this stage will be final.

IMPORTANT NOTE

Management in the context of this procedure may be the ‘disciplining officer’ i.e. the officer who was authorised to take disciplinary action. Alternatively, the case may be presented by the Human Resources Adviser involved and he/she will call the ‘disciplining officer’ as a witness at the appeal hearing; where this occurs, the ‘disciplining officer’ will have no additional rights and privileges as a witness in the context of the appeals hearing procedure.
Appendix E

The Newcastle upon Tyne Hospitals NHS Foundation Trust

Referral to Independent Safeguarding Authority

1. The Trust’s responsibilities

1.1 The Trust has a legal duty to notify the Independent Safeguarding Authority (ISA) (under the Safeguarding Vulnerable Groups Act 2006 (2006 Act)) of relevant information to ensure that individuals who pose a threat to vulnerable groups can be identified.

1.2 The ISA will receive referrals when:

- there is harm or risk of harm to children or vulnerable adults,
- relevant conduct has occurred or
- an individual has received a caution or conviction for a relevant offence.

1.3 The following conditions must be met before a referral can be made;

a. the Trust 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, or because;

b. the Trust has reason to believe the individual has;
   - engaged in relevant conduct
   - satisfied the ‘harm test’; or
   - received a caution or conviction for a relevant offence

1.4 Subject to the above, a referral should be made on the ISA referral form which can be obtained from http://www.isa.homeoffice.gov.uk.

1.5 In all cases the individual should be informed of the Trust’s intention to make a referral to the ISA.

1.6 Further information can be obtained via the ISA referral guidance (found at http://www.isa.homeoffice.gov.uk). The guidance sets out in greater detail the:

a) referral process
b) circumstances under which a referral should be made
c) legal responsibilities of the Trust
d) main points of law.

1.7 The ISA will consider all information referred in relation to whether an individual should be included in a barred list, a referral may also be made in the following circumstances;
a) where following an internal investigation there is insufficient evidence to show relevant conduct occurred, but concerns about that individual remain
b) where there are concerns about an individual who has left employment

1.8 For the purposes of a referral relevant conduct is any conduct:

a) That endangers a child or vulnerable adult or is likely to endanger a child or vulnerable adult;

b) If repeated against or in relation to a child or vulnerable adult, would endanger them or would be likely to endanger them;

c) That involves sexual material relating to children (including possession of such material);

d) That involves sexually explicit images depicting violence against human beings (including possession of such images), if it appears to ISA that the conduct is inappropriate; or

e) Of a sexual nature involving a child or vulnerable adult, if it appears to ISA that the conduct is inappropriate.

2. Referral process

2.1 Once the Trust is satisfied that the relevant conditions for referral have been met the disciplining manager must complete the ISA referral form available at http://www.isa.homeoffice.gov.uk. Referral at this point will help to ensure that the ISA has sufficient evidence to commence its decision making process while providing adequate safeguarding for vulnerable groups.

2.2 The completed form, along with the supporting documentation must be posted to the ISA. The ISA address is contained within the referral form. Where applicable and at the same time the Trust should also report the matter to the relevant regulatory body i.e. GMC, RCN.

2.3 The ISA are required to acknowledge the referral by post within three working days of receipt. The ISA may request further information if required.

2.4 The ISA will then consider the referral and any decisions to bar an individual will be communicated to the individual and any legitimately interested parties in writing. The ISA will inform the Trust of the outcome if the individual remains an employee. The Trust will not be informed if the individual is no longer an employee.

2.5 Copies of all correspondence with the ISA must be kept on the individual’s personal file.
**THE NEWCASTLE UPON TYNE HOSPITALS NHS FOUNDATION TRUST**  
**IMPACT ASSESSMENT – SCREENING FORM A**

This form must be completed and attached to any procedural document when submitted to the appropriate committee for consideration and approval.

<table>
<thead>
<tr>
<th>Policy Title: Disciplinary Policy and Procedure</th>
<th>Policy Author: Ms K Pearce Senior HR Manager (Projects)</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>1.</strong> Does the policy/guidance affect one group less or more favourably than another on the basis of the following: (* denotes protected characteristics under the Equality Act 2010)</td>
<td>Policy applies to all employees of the Trust. It is underpinned by the Trust’s overriding policy on equal opportunities</td>
</tr>
<tr>
<td>• Race *</td>
<td>)</td>
</tr>
<tr>
<td>• Ethnic origins (including gypsies and travellers)</td>
<td>)</td>
</tr>
<tr>
<td>• Nationality</td>
<td>)</td>
</tr>
<tr>
<td>• Gender *</td>
<td>) see above</td>
</tr>
<tr>
<td>• Culture</td>
<td>)</td>
</tr>
<tr>
<td>• Religion or belief *</td>
<td>)</td>
</tr>
<tr>
<td>• Sexual orientation including lesbian, gay and bisexual people *</td>
<td>)</td>
</tr>
<tr>
<td>• Age *</td>
<td>)</td>
</tr>
<tr>
<td>• Disability – learning difficulties, physical disability, sensory impairment and mental health problems *</td>
<td>)</td>
</tr>
<tr>
<td>• Gender reassignment *</td>
<td>)</td>
</tr>
<tr>
<td>• Marriage and civil partnership *</td>
<td>)</td>
</tr>
<tr>
<td><strong>2.</strong> Is there any evidence that some groups are affected differently?</td>
<td>There is no evidence to support any group was affected differently</td>
</tr>
<tr>
<td><strong>3.</strong> If you have identified potential discrimination which can include associative discrimination i.e. direct discrimination against someone because they associate with another person who possesses a protected characteristic, are any exceptions valid, legal and/or justifiable?</td>
<td>n/a</td>
</tr>
<tr>
<td>4(a). Is the impact of the policy/guidance likely to be negative? (If “yes”, please answer sections 4(b) to 4(d)).</td>
<td>No</td>
</tr>
<tr>
<td>4(b). If so can the impact be avoided?</td>
<td>n/a</td>
</tr>
<tr>
<td>4(c). What alternatives are there to achieving the policy/guidance without the impact?</td>
<td>n/a</td>
</tr>
<tr>
<td>4(d). Can we reduce the impact by taking different action?</td>
<td>n/a</td>
</tr>
</tbody>
</table>

**Comments:**

**Action Plan due (or Not Applicable):**

Name and Designation of Person responsible for completion of this form: Ms K Pearce Senior HR Manager (Projects)  
Date: 4 January 2012

Names & Designations of those involved in the impact assessment screening process: Employment Policies and Procedures Consultation Group

(If any reader of this procedural document identifies a potential discriminatory impact that has not been identified on this form, please refer to the Policy Author identified above, together with any suggestions for the actions required to avoid/reduce this impact.)

For advice on answering the above questions please contact Frances Blackburn, Head of Nursing, Freeman/Walkergate, or, Christine Holland, Senior HR Manager. On completion this form must be forwarded electronically to Steven Stoker, Clinical Effectiveness Manager, (Ext. 24963) steven.stoker@nuth.nhs.uk together with the procedural document. If you have identified a potential discriminatory impact of this procedural document, please ensure that you arrange for a full consultation, with relevant stakeholders, to complete a Full Impact Assessment (Form B) and to develop an Action Plan to avoid/reduce this impact, both Form B and the Action Plan should also be sent electronically to Steven Stoker within six weeks of the completion of this form.

IMPACT ASSESSMENT FORM A  
October 2010