

Disciplinary Policy and Procedure

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Approving Committee	Corporate Partnership Forum
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Applicable Statutory, Legal or National Best Practice Requirements	NHSLA Risk Management Standards. Equality Act 2010 ACAS Code of Practice on Discipline and Grievance Human Rights Act 1998 Employee Relations Act 1999 General Data Protection Regulations 2016 The Bribery Act 2010
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The Trust is committed to an environment that promotes equality, embraces diversity and respects human rights both within our workforce and in service delivery. This document should be implemented with due regard to this commitment.

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Version Control Sheet

Version	Date	Reviewed By	Comment
1	May 2012	Policy Assurance Sub Group	Minor amendments to wording. Approved by Policy Assurance Sub Group
2	October 2017	S. Arkwright	Approved by chair action
2.1	July 2018	Policy Approval Group	Agreed the policy should be updated to include the procedure element
2.2	August 2018	T. Strong	Updated to include procedure element
2.3	August 2018	S. Arkwright	Approved by chair action
2.4	February 2020	Sandra Cunliffe	Minor change at 7.3.2 to include inappropriate access to health/patient records is considered gross misconduct
2.5	March 2020	K. Field	Refresh of policy
3.0	September 2020		Corporate Partnership Forum approved

Equality impact Assessment completed	By: Ruth Besford	Date: 25 September 2020
Does this policy impact/potentially impact on: <ul style="list-style-type: none"> • Staff • Patients • Family Members • Carers • Communities 	Yes	Please contact the Trust's Equality & Inclusion Manager at: Email:
	No	Please sign and date below: Name: Email Address: Date:

Education & Professional Development Question

In order to ensure that any training requirements are discussed and resources planned and allocated to meet the needs of the service, you must consider whether this document has additional training requirements.

Please answer the following question by entering a cross in the box below:

	Yes	No
Does this document have any additional training requirements or implications?		x

No further action is required if you have answered NO.

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1 Introduction

Bridgewater Community Healthcare NHS Foundation Trust (herein referred to as the Trust) believes that to promote good employee relations and practices it is necessary to demonstrate that employees will be treated fairly, reasonably and consistently in matters relating to discipline. The Trust needs to promote high standards of behaviour and conduct for all employees and to take appropriate corrective action where those standards are not met.

The Trust believes that employees are motivated more by their responsibilities and involvement than by any fear of disciplinary action. It also believes that the majority of employees fully accept the need for high standards of behaviour and conduct and the need to take appropriate corrective action where those standards are not met.

Some minor misconduct issues may be resolved informally, as often a discussion stating the expectations are enough to resolve the situation. Addressing an issue at an early stage may prevent the situation escalating, leading to the need for more serious disciplinary action later.

The maintenance of discipline is the responsibility of managerial staff at all levels. If minor misconduct is not dealt with appropriately, an opportunity to improve employees' attitude or behaviour may be lost. Additionally, overlooking an opportunity at an early stage may result in the situation escalating, leading to the need for more serious disciplinary action later.

When following this policy and procedure it may become apparent that another policy is more applicable. Where this occurs advice from the Human Resources (HR) Department should be sought and the relevant policy applied.

1.1 Objective

The aim of this policy and procedure is to:

- Ensure managers and staff are aware of their roles and responsibilities in respect of conduct at work.
- Ensure that all disciplinary matters are handled with fairness, promptness and consistency.
- Help and encourage all employees to achieve and maintain standards of conduct at work.
- Provide a clear framework for the redress of any inappropriate behavior in the course of an employee's work.

1.2 Scope

The policy and procedure applies to all employees of the Trust, except Medical and Dental Staff whose concerns should be addressed using 'Maintaining High Professional Standards in the Modern NHS' (2005) and the Trusts Conduct, Capability, Ill Health and Appeals Policy and Procedures for Medical and Dental Staff.

This policy and procedure does not cover situations to be dealt with under the Capability and Performance Management Policy where an unacceptable level of performance is due to a lack of capability rather than to an employee deliberately/wilfully ignoring instructions or producing sub-standard work.

2 Definitions

The definitions applicable to this policy and procedure are as follows:

Professional Advisor – people with the appropriate expertise in a relevant area – for example information governance, finance, medicines management, clinical practice etc. who are invited to provide a professional view at either the investigatory stage or disciplinary hearing stage of the procedure.

Prima Facie - sufficient to establish a fact or case unless disproved.

Repudiatory breach - a breach so fundamental that it permits the distressed party to terminate performance of the contract in addition to entitling that party to sue for damages.

Investigation - a careful examination or search in order to discover facts or gain information.

3 Abbreviations

The abbreviations applicable to this policy and procedure are as follows:

NMC - Nursing and Midwifery Council

HCPC - Health and Care Professions Council

GMC - General Medical Council

GDC - General Dental Council

HR - Human Resources

LCFS - Local Counter Fraud

MIAA - Mersey Internal Audit Agency

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4 Other Relevant Procedural Documents

This policy and procedure should be read in conjunction with the following documents:

- Employee Code of Conduct
- Grievance Policy
- Capability Policy
- Disciplinary Fast Track Procedure
- Dignity and Respect at Work Policy
- Absence Management Policy
- Conduct, Capability, Ill Health and Appeals Policy and Procedure for Medical and Dental Staff
- Uniform and Dress Code Policy
- Managing Allegations of Abuse Policy
- Safeguarding Adults Policy
- Equal Opportunities Policy

This list is not exhaustive.

5 Roles and Responsibilities

5.1 Trust Board

The responsibility for the provision of this policy and procedure for the management of disciplinary issues rests initially with the Trust Board.

The Trust Board will ensure through the line management structure that this policy is applied fairly and equitably and that staff are aware of their rights and obligations in dealing with a disciplinary issue.

It is the responsibility of the Trust Board to develop a culture and create a climate in which employees feel able to raise a disciplinary allegation without fear of victimisation or detriment.

The Trust Board is committed to ensuring that all disciplinary allegations are taken seriously and are investigated and managed appropriately.

5.2 Human Resources

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Human resources will:

- Oversee the introduction, operation and monitoring of the policy
- Provide advice and guidance to managers and employees on the Disciplinary Policy and Procedure
- Provide advice and support to managers in the event of potential disciplinary investigations and/or suspensions
- Undertake regular reviews on the progress of investigations and ensure that updates are provided to the member of staff, line manager and service manager as appropriate
- Escalate any issues with the progression of the investigation to the appropriate senior manager for their attention and action
- Review changes in employment law to ensure that the policy and procedure is relevant and up to date.

5.3 Investigating Officer

See appendix G.

5.4 Senior Managers/Managers

Managers will:

- Be responsible for ensuring that this policy and procedure is applied fairly and consistently within their own area
- Ensure that employees are aware of and understand the code of conduct, standards and behaviour required by the Trust
- Ensure that conduct agreements and formal warnings are removed from personal files after the appropriate length of time
- Ensure that if a member of their staff is under investigation, regular updates and support is provided to them
- Participate in hearing panels as appropriate

5.5 Staff

Staff will:

- Act within their relevant codes of conduct at all times
- Report issues within the workplace to their line manager in a timely manner

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- Act with integrity and professionalism
- When requested, cooperate with disciplinary investigations as required
- Keep HR informed as to whom their staff side representative is, should they wish to have one
- Take responsibility for ensuring that their staff side representative or work colleague is kept up to date with meetings and / or hearings.

6 Equipment list

Not applicable.

7 Confidentiality

The application of this policy and procedure will be undertaken in a manner that ensures confidentiality of the issues and of the members of staff and management involved. No information relating to action being taken in this procedure will be divulged to other members of staff who are not involved.

This confidentiality is there to ensure that those not involved are unaware that disciplinary action (including an investigation) is ongoing. Potential witnesses will only be made aware of information that is necessary for the investigation to continue. They will not be automatically notified of any developments, if the matter is progressing to a disciplinary hearing or the outcome. Their statements will however, be released to the alleged perpetrator as part of the pack inviting them to a disciplinary hearing. If it is deemed that the alleged witnesses safety would be compromised by releasing their identity it may be possible to release statements anonymously however it cannot be guaranteed that this anonymity would be maintained should the case develop further e.g. to appeal or tribunal.

Witnesses should not confer on the investigation, or discuss or share their witness statements with anyone other than the Investigating Officer, their Staff Side Representative or selected workplace colleague.

7.1 Maintaining Anonymity

Where Information is received anonymously the Trust will carry out an assessment as to whether to investigate. In extreme circumstances, it may be necessary to maintain the anonymity of persons making complaints against members of staff or informants or witnesses involved in disciplinary procedures. This will only be done if it is felt that an employee's safety would be compromised by their identity being revealed. It is a natural principle of justice and a requirement to ensure a fair hearing that employees who are subject to investigation or disciplinary action can see the evidence on which a decision is to be based. In cases whereby it is agreed for the safety of those involved that anonymity is maintained it cannot be guaranteed during any subsequent stages of the process.

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7.2 Malicious Allegations

If, following a thorough investigation, it is found that the allegations are of malicious intent then disciplinary action may be taken against the employee who raised the allegations initially.

7.3 Types of Misconduct

7.3.1 Misconduct

Misconduct is of a less serious nature than gross misconduct and a first offence will therefore not warrant dismissal. However, disciplinary action can be taken only after a disciplinary hearing has been held. Persistent misconduct may result in dismissal, with notice, following the issue of a final written warning, unless there are mitigating circumstances.

Examples of Misconduct:

- Failure to carry out reasonable instructions, or insubordination
- Causing damage to property
- Persistent bad timekeeping
- Persistent poor record keeping
- Unauthorised or frequent and persistent absence without good reason - absence relating to sickness absence should be dealt with via the Absence Management Policy and Procedure
- Unauthorised use of NHS property
- Other actions which are a breach of good conduct and/or likely to bring the Trust into disrepute.

This list is not exhaustive.

7.3.2 Gross Misconduct

Gross misconduct is defined as any fundamental breach of a rule contained within or outside of the Trust's or Professional Codes of Conduct, but which has the effect of a repudiatory breach of the employment contract. These are offences which affect the relationship between the employee and the Trust or between the individual and a manager, colleague, patient, client or member of the public with whom they have contact in the performance of their duties, to such an extent that the employee cannot any longer reasonably be retained in their post with the Trust.

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Managers should consider the following to be examples of the type of conduct, which may constitute gross misconduct and which would normally warrant summary dismissal. In order to achieve equity and reasonableness each case should be determined on its individual merits.

This list is not exhaustive.

- Theft or attempted theft from the Trust's premises or property.
- Fraudulent manipulation or falsification of accounts, financial statements or other official records (including time sheets/clock cards, clocking or signing for other staff).
- Misappropriation or attempted misappropriation of the Trust's funds or resources.
- Acceptance of gifts and hospitality in contravention of the Bribery Act 2010, and the Trust's Anti-fraud, bribery and corruption policy.
- Failure by an employee to give notice of any pecuniary or conflict of interest of which they are aware in a contract which has been or is proposed to be entered into by the Trust.
- Wilful misrepresentation at the time of appointment including:
 - Previous positions held
 - Qualifications held
 - Falsification of date of birth
 - Declaration of health
 - Failure to disclose a criminal offence in accordance with the provisions of the Rehabilitation of Offenders Act.
- Wilful misrepresentation at any time during employment in connection with qualifications held.
- Misuse of substances.
- Physical or indecent assault on any person whilst on duty and/or on the Trust's premises.
- Ill-treatment of and/or sexual offence against patients.

- Deliberate disclosure of privileged and confidential information to unauthorised people.
- Negligent or deliberate failure to comply with the legal requirements and/or the Trust's regulations concerning medicines.
- Working whilst contravening an enactment or breach of rules laid down by statutory bodies. For example removal or suspension from the GMC, GDC, NMC, HCPC Register or any other registered body.
- Criminal offences outside the working situation, which substantially affects the employee's capacity to work or clearly indicates their unsuitability for the kind of work that they are employed to do.
- Malicious or wilful damage perpetrated whilst on duty and/or dereliction of duty. This includes the introduction of malicious software (viruses) onto the Trust's systems or personal computers.
- Any wilful or reckless act or omission constituting a serious danger to the health and safety of any person, including any such act or omission taking place outside contracted hours of work.
- Unjustified refusal to follow a lawful and reasonable instruction, which could result in serious consequences.
- Acts of discrimination in accordance with the Trust's Equal Opportunity Policy.
- Engage in any form of physical or verbal abuse, threatening behaviour or harassment/bullying on the Trust's premises as detailed in the Dignity and Respect at Work Policy.
- Bringing the organisation into disrepute based on actions within and/or outside work.
- A breakdown of trust and confidence between employer and employee.
- Inappropriate comments made on social media sites relating to the Trust, patients and/or staff.
- Inappropriate access to health records, staff records, data and systems

7.4 Informal Procedure - (Conduct Agreement)

The Disciplinary procedure is not intended to replace normal workplace communications between manager and employee. Where appropriate cases of minor misconduct should be resolved through informal discussion, advice or coaching and in these circumstances it may be appropriate for a line manager to meet informally with the employee to discuss their conduct with the aim of improving their conduct.

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The purpose of this meeting is to ensure that the employee clearly understands what is expected of them by the Trust, the acceptable standards of behaviour, and the potential consequences, including disciplinary action up to and including dismissal, for failure to comply. It is also to help the employee rectify faults by discussing problems with the manager and thereby avoiding using the formal disciplinary procedure wherever possible. These meetings are part of the normal workplace line management relationship and do not constitute part of the formal disciplinary procedure.

If it becomes clear during the course of issuing a conduct agreement that disciplinary action may be required, the meeting should be ended and the formal disciplinary procedure should be followed.

The written conduct agreement must be given to the individual concerned by the line manager within 5 working days of the agreement being issued. The employee will be required to sign a statement of understanding and acceptance and return a duplicate copy of the letter. Line managers should also ensure that a conduct agreement is removed from a personal file after 6 months.

If the conduct agreement has not accomplished the desired effect or if the offence warrants more serious action then formal disciplinary procedures should be immediately invoked.

A template Conduct Agreement can be found in Appendix A.

7.5 Investigations

Once a potential misconduct or gross misconduct issue has been identified, HR in conjunction with the Service Director will identify an Investigating Officer and facilitate generation of the terms of reference for the investigation ensuring professional advisory input is sought where appropriate. Within the terms of reference a deadline for completion of the investigation will be agreed with the investigating officer, and when and to whom updates should be provided.

The investigating officer will be asked to establish if there are any findings of potential misconduct or potential gross misconduct. Their report once concluded will stipulate either:

- The requirement to progress to a disciplinary hearing for further consideration as to whether misconduct or gross misconduct has taken place and sanctions issued if appropriate.
- No progression to disciplinary hearing, with the options of putting forward recommendations as necessary, for example – management use of the

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informal stage of the disciplinary policy (conduct agreement), service or system improvement, training plans, supervision arrangements etc (this list is not exhaustive).

Prior to any formal disciplinary action being considered, a reasonable and thorough investigation into the circumstances of the allegation(s) should be conducted.

Any matter which raises suspicion of fraud or corruption must be reported to the Director of Finance or the Local Counter Fraud Specialist as soon as is reasonably practicable and prior to any internal investigation. For further information on the procedure relating to fraudulent activity please refer to Appendix B.

For further information on the roles and responsibilities of the investigating officer please refer to Appendix H.

The purpose of the investigation is to elicit the facts regarding the alleged misconduct/gross misconduct. At any point during the investigation it may become appropriate to action a precautionary suspension of an employee to allow a full and thorough investigation to take place (see section 7.9). The suspending manager may be the person who undertakes the investigation.

The investigating officer must obtain evidence/information from all parties' who may be in a position to supply information concerning the allegation. Access to patients or their advocate, in order to obtain statements should only be allowed once it has been deemed that the health of the patient is not at risk and they have agreed to give the statement. Safeguarding the patient must be a priority.

Potential witnesses who are interviewed as part of the investigation process will be offered the opportunity to be accompanied by a work colleague or by their staff side representative. In the first instance they should discuss any concerns or issues regarding this process with their HR representative. Any refusal to be a witness will be investigated to understand the reasons why. As an employee of the Trust you will be expected to cooperate fully with any investigation for which you are a potential witness. For many employees this will be a professional obligation as part of the code of conduct of your statutory regulatory body.

Notes will be kept of any investigatory meetings although these need not be verbatim accounts. Interviews may not be tape recorded. Copies of these notes will be circulated after the meeting and signed by the person supplying the information as their agreement to their accuracy. On occasions, it may not be necessary to hold a meeting with a potential witness and it may be sufficient enough to ask for a written statement which should be signed and dated as a true recollection of events. This would ordinarily be for additional witnesses as opposed to key witnesses in the case.

During the investigation other supporting documentation may need to be collected during the investigation. This may include, for example, records, photographs, reports, Trust policies and procedures.

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Employees against whom allegations of misconduct have been made must have at least one opportunity to respond to the allegation as part of the investigation. The employee will be offered the opportunity to be accompanied by a work colleague or by their Staff Side representative at an investigation meeting.

The investigating officer will summarise their findings in the form of an Investigation Report for submission to HR. HR will then facilitate the next steps dependent on the report content (see options above). Advice should be sought from HR and as appropriate from a relevant professional adviser in relation to pulling together recommendations and conclusions. A brief summary of what an investigation report should contain is included in Appendix H.

The employee concerned will be informed of the outcome of the investigation in writing. Where a disciplinary hearing is to be arranged this will be as detailed in Appendix C.

Copies of all information gathered during the investigation, including any witness statements will be provided to the employee alleged of misconduct prior to any disciplinary hearing.

7.6 Formal Disciplinary Procedure (Disciplinary Hearing)

Where a conduct agreement has not affected the required change or where the offence warrants moving directly to the formal procedure.. In this event the employee will be required to attend a disciplinary hearing where they will have the right to be accompanied by a work colleague or a Staff Side Representative.

The manager conducting the hearing will have the appropriate level of disciplinary authority as outlined in Appendix D. They will be accompanied by a member of the HR Department. This constitutes the disciplinary panel. A relevant professional advisor may also be in attendance where appropriate. There may be times when delegated authority can be given to another level of management should this be necessary; however this should be considered carefully to ensure the appropriate level of management is on the panel to have the authority to make the appropriate decision – advice should be sought from HR should delegated permission be required.

Where practicable at least 10 working days' notice of the hearing will be given. This will take the form of a letter and will include details of the hearing and, if appropriate, that a possible outcome of the hearing may be dismissal. It will also advise on the right to representation (Appendix F). This letter will be sent recorded delivery. Additional methods of communication may be agreed between the parties involved in the investigation. The employee should submit any papers they wish to refer to during the hearing within 5 working days of the hearing.

The manager chairing the hearing will confirm the outcome and the right of appeal, to the employee in writing, within 5 working days of the hearing having taken place. This letter will be sent recorded delivery as above.

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If a warning is necessary the employee will be informed in writing that performance and/or conduct is expected to improve to an acceptable standard within a specified time scale. As far as possible, specific objectives will be given to establish the accepted standard.

The potential outcomes from a disciplinary hearing are as follows:

- No action
- Conduct agreement
- Formal Disciplinary Sanction
- Any learning recommendations (Individual/Service related)
- Transfer / Demotion
- Dismissal

Where recommendations are made by the chair of the disciplinary hearing panel a person should be identified by the chair to implement the recommendations and a follow up meeting take place to ensure the recommendations have been fully implemented, whether they be individual or service recommendations.

There will be three stages to formal disciplinary action as outlined below:

7.6.1 Stage One – First Written Warning

It is appropriate to issue a first written warning if the employee already has a current conduct agreement for misconduct or if it is a first more serious misconduct.

The employee will be warned that a repetition or other subsequent misconduct may lead to further disciplinary action being taken against them, not excluding dismissal. They will also be informed that the warning will remain on their personal file for 6 months.

7.6.2 Stage Two – Final Written Warning

It is appropriate to issue a final written warning following a repetition or other subsequent misconduct and the employee already has a first written warning, or in the case of serious misconduct.

The employee will be warned that a repetition or other subsequent misconduct may lead to further disciplinary action being taken against them, not excluding dismissal. They will also be informed that the warning will remain on their personal file for 12 months.

7.6.3 Stage Three – Dismissal

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It will be appropriate to dismiss someone on the grounds of misconduct following a repetition or other subsequent misconduct and the employee already has a final written warning or in the case of gross misconduct¹. In the case of gross misconduct, the dismissal will be without notice.

7.7 Other Formal Disciplinary Penalties

As an alternative to dismissal there may be exceptional circumstances, which warrant other penalties. These include sanctions such as disciplinary transfer and demotion i.e. reduction of band. In these circumstances protection of pay will not apply.

7.8 Appeals Process

Any employee who is dissatisfied with the outcome of any stage of the formal disciplinary procedure may appeal to the appropriate member of management based on the scheme of authority in Appendix D. This must be done within 10 working days of the disciplinary decision being communicated to the employee in writing and must set out clearly the grounds of appeal. Where no grounds are provided the employee will be asked to provide these within 5 working days of the appeal notification being received. Appeals can only be made on the following grounds-:

A procedural defect

New evidence

On a point of fact

The sanction was inappropriate

One appeal will be allowed at each stage of the formal disciplinary procedure.

For an appeal the employee will be required to attend an appeal hearing where they will have the right to be accompanied by a work colleague or Staff Side Representative. This invitation will be confirmed in writing a minimum of 10 working days prior to the appeal hearing date. Any documentation the employee wishes to submit for consideration at the hearing should be submitted 5 working days before the hearing.

Appeals against written warnings will be heard by the member of management immediately senior to the manager who took the original decision and a senior member of the HR Department present. These managers will not have been previously involved with the case (please refer to appendix D for levels of authority).

Appeals against dismissal will in all cases for staff, other than those reporting to Directors, be heard by an Executive Director. This Executive Director will not have been previously involved with the case. The decision will be final. In cases of

¹ Gross misconduct is defined as any fundamental breach of a rule contained within or outside of the Code of Conduct, but which has the effect of a repudiatory breach of the employment contract. These are offences which affect the relationship between the employee and the Trust or between the individual and a manager, colleague, patient, client or member of the public with whom they have contact in the performance of their duties, to such an extent that the employee cannot any longer reasonably be retained in their post with the Trust. Please refer to Appendix H.

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appeal against dismissal the employee will not be permitted to resume working until the matter has been decided (please refer to appendix D for levels of authority).

The process to be followed at the hearing is as detailed in Appendix E.

7.9 Precautionary Suspension

It may be necessary to remove an employee from their workplace whilst a full and proper investigation takes place into the allegations. This removal from the workplace may take the form of a precautionary suspension on full contractual pay, relocation to another work area or an employee may be asked to work under the direct supervision of another manager/person as appropriate. It should be made clear to the employee that the suspension is not part of any disciplinary action and does not involve any prejudgement.

Suspension should only take place where there is a risk to patient safety, the employee or colleagues and/or to ensure the investigation can be completed unhindered and re-deployment is not a reasonable alternative.

Those responsible for and with the level of authority to make a decision to suspend an employee from their workplace are outlined in Appendix D. Where possible, such decisions should be made with input from the Director of Workforce and Organisational Development.

For matters relating to doctors and dentists where exclusion rather than suspension applies, the decision will rest with the Medical Director and associated Executive Directors - see 'Maintaining High Professional Standards in the Modern NHS' (2005) and the Trusts Conduct, Capability, Ill Health and Appeals Policy and Procedures for Medical and Dental Staff.

For all other clinical matters input should be sought from the Chief Nurse or a member of the Quality Governance Team.

The suspending manager, should wherever possible, be accompanied in an advisory capacity by a member of HR. It is recognised that circumstances may arise for example where there is a need to suspend a person on night duty or at weekends when a member of the HR Department is not available to accompany the suspending manager.

At the end of the suspension meeting the suspended employee will be provided with two copies of the Suspension Notification form and asked to sign one copy and give it to the suspending manager. The employee will also be asked to sign the Inventory form. An employee's suspension will be confirmed in writing within three working days of the commencement of the suspension.

It should be noted that every attempt will be made to facilitate representation, but where this is not possible, the suspension process will be carried out.

Precautionary suspension should be for the shortest practicable time in order for the investigation to be completed and for the employee to prepare their case. After 10

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working days, the employee will be contacted and provided with an update on progression of the investigation.

Employees on precautionary suspension will not be allowed into any areas of work or to contact Trust employees throughout the investigation with the exception of their staff side representative. If employees are required to come onto Trust property for specific reasons other than to attend investigatory meetings or attend for health appointments they must first contact their line manager and/or HR.

The member may, with permission attend Trust premises to meet with their Staff Side Representative, who must accept responsibility for the member of staff whilst they are on the premises.

Staff will not be permitted access to records, systems and/or equipment whilst meeting with their Representative. Requests must be channelled through either the HR Department, their line manager or the investigating officer.

7.10 Disciplining Accredited Trade Union Representatives

In the event that allegations are made against an employee who is also an accredited trade union representative, a Full Time Officer from the appropriate trade union will be informed as soon as the allegation(s) are raised and may represent the employee at any stage of the formal disciplinary procedure and/or during the preceding investigation.

7.11 Professional Bodies

Professional healthcare staff are responsible for complying with the relevant standards set by their regulatory or professional bodies for example, the NMC's Code of Professional Conduct.

Where allegations have been made which relate to a professional or regulatory matter or to professional misconduct, it may be appropriate to inform the regulating relevant professional body. All matters associated with referrals to regulatory or professional bodies should be dealt with by the Chief Nurse or a member of the Quality Governance Senior Nursing Team.

The Trust's Disciplinary Policy and procedure applies to all employees of the Trust. Issues of professional conduct and professional competence of medical and dental staff (non-training grades) will be handled in accordance with terms of condition of service under 'Maintaining High Professional Standards in the Modern NHS' (2005) and the Trusts Conduct, Capability, Ill Health and Appeals Policy and Procedures for Medical and Dental Staff. Matters relating to referrals to professional or regulatory bodies for medical and dental staff will be overseen by the Trust's Medical Director.

7.12 Grievance Procedure

If in the course of the disciplinary process an employee raises a grievance related to the case, HR where appropriate, in conjunction with the Investigating Officer, should

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consider suspending the disciplinary process for a short period whilst the grievance is dealt with.² If the grievance is not deemed to be related to the case the disciplinary process will continue alongside the grievance.

Depending on the nature of the grievance consideration will be given to bringing another manager to deal with the disciplinary process. If an employee raises a grievance in relation to the disciplinary process this will normally be dealt with via the disciplinary appeal, however it may be appropriate in some circumstance to be dealt with via the grievance process. Once a disciplinary appeal process has been exhausted no further grievance relating to this disciplinary will be investigated.

7.13 Rights to be Accompanied

All employees have the right to be accompanied by a colleague or Staff Side Representative where they are required or invited to attend formal meetings or hearings, employees who wish to be accompanied by another individual must get express permission from the HR Department to allow them to attend any formal meeting. This is normally only allowed in specific circumstances when it is deemed to be a reasonable adjustment. Legal representation is not permitted.

7.14 Failing to Follow Statutory Dismissal and Disciplinary Procedures

It is expected that normal statutory dismissal and disciplinary procedures will be followed, unless there are grounds to believe that by doing so the Trust and its employees or the employee being subject to the procedures, may be exposed to a significant threat, such as violence, abusive or intimidating behaviour, or will be harassed.

The service manager, investigating officer, employee, staff side representative and Deputy Director of Workforce (as applicable) need to agree the procedure that will be followed in these circumstances.

7.15 Resignation of the Employee during Disciplinary Procedures

If an employee resigns during a disciplinary procedure, the investigation should be completed and a Disciplinary Hearing should still take place as per appendix C.

The employee will be invited to attend the hearing and informed that if they choose not to attend a decision will be made in their absence. Completing the investigation will allow the Disciplinary Panel to make a judgement on whether further action is required, e.g. a referral to the regulatory body or issuing an alert letter to protect the public. Any findings should also be reflected in any future work or professional references.

² Where gross misconduct is alleged the statutory grievance procedure does not apply, unless the grievance amounts to unlawful discrimination

Refer to the Recruitment and Selection policy for further details relating to provision of references.

7.16 Counter Fraud Specialists

To report a suspected fraud matter you can contact the Trust's Local Counter Fraud Specialist on 0151 285 4531 or via the Fraud Hotline number 08000 151628. Please be aware that you do not have to leave your details.

8 Consultation Process

Key individuals/groups involved in the development of the document to ensure it is fit for purpose once approved.

Name	Designation
HR Department	Workforce Managers, Business Partners, Head of HR and Director of Workforce & Organisational Development
HR Policy Development and Review Group	Trade Unions (Staff Side), HR and Operational Manager
Corporate Partnership Forum	Trade Unions (Staff Side), HR and Managers
Kristine Brayford-West	Director of Safeguarding
Amanda Gregory	HR Business Partner

9 Dissemination and Implementation

9.1 Dissemination

The HR Business Partner will disseminate this policy to all staff using the Trust bulletin. The policy will be published on the Trust's intranet site.

Managers are responsible for raising awareness of this policy as part of team meetings.

9.2 Implementation

Appropriate training, identified at Directorate level, will be provided to managers to support the implementation of the policy.

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HR Business Partners/HR Managers will continue to provide advice on disciplinary issues as per the policy.

Appropriate training will be provided to investigating officers where needed.

10 Process for Monitoring Compliance and Effectiveness

Compliance with this policy will be monitored by the HR Department through analysis of incidents reported, complaints received and queries raised.

Disciplinary figures are monitored and reported in the mandatory annual Public Sector Equality Duty Report and the NHS Workforce Race Equality Standards.

11 Standards/ Key Performance Indicators

Not applicable.

12 References

Advisory, Conciliation and Arbitration Service (ACAS) (2015) ACAS Code of Practice on Discipline and Grievance [online]. Available at:
<http://www.acas.org.uk/index.aspx?articleid=2174>

Department for Health (2005) Maintaining high professional standards in the modern NHS [online]. Available at:
http://webarchive.nationalarchives.gov.uk/20130124065523/http://www.dh.gov.uk/pr od_consum_dh/groups/dh_digitalassets/@dh/@en/documents/digitalasset/dh_4103344.pdf

Equality Act 2010, c.15 [online]. Available at:
<http://www.legislation.gov.uk/ukpga/2010/15/contents>

Rehabilitation of Offenders Act 1974 Available at:
<http://www.legislation.gov.uk/ukpga/1974/53>

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Appendix A – Conduct Agreement

Employee Name	
Employee Job Title	
Manager Name	
Manager Job Title	
Date of Meeting	
Review Date of Conduct Agreement	

Issue(s)	Action to be Taken	By Whom	Review Date

Employee Signature: _____

Manager Signature: _____

- Criminal Prosecution – where a prima facie case is established against an individual it may be decided that criminal prosecution is the most appropriate sanction.

- Civil Action – in some instance it may be decided that civil action is the most appropriate sanction in order to recoup some of the costs of the fraudulent activity.

- Internal Disciplinary Process – in some cases it may be decided to follow the organisations disciplinary process. In these cases the LCFS will provide information and act as a witness to present their findings. In some instances a member of the HR department may be jointly involved in the interview process however the LCFS officer will not be appointed as the internal investigating officer.

11. The decision as of the most appropriate course of action will be taken following consultation between the LCFS, the Director of Finance and HR.

12. A decision may be made to pursue parallel actions for example the LCFS may continue to pursue criminal sanctions whilst the Trust will conduct an internal disciplinary action. This may result in the internal process being completed prior to criminal sanctions being taken.

In such circumstances the LCFS will provide sufficient copies of evidence in order to allow an internal investigation to commence.

The decision will be made on a case by case basis and the emphasis will be on criminal sanctions.

13. Irrespective of the sanctions pursued the Trust will use all measures available to recover any monies lost to fraudulent activity.

Appendix C

Disciplinary Hearing

1. Where a full disciplinary hearing is required all relevant parties should be notified by letter giving a minimum of 10 working days' notice for the employee to arrange representation.
2. Employees required to attend a disciplinary hearing are entitled to be accompanied by either a Staff Side Representative or a work colleague during the hearing. Hearings may be rescheduled once. When rescheduling a hearing all parties should try to work together to reschedule the hearing as soon as possible, however it is the employees responsibility to ensure that their representatives are fully informed at the earliest opportunity as to when hearings are proposed. Failure to attend subsequent agreed dates may lead to a decision being made in their absence. The reason for this is that we acknowledge that the disciplinary process is a difficult time for employees and we therefore will endeavour to complete the process as soon as possible.

If an employee is unable to attend a disciplinary hearing due to ill health the hearing may be rescheduled once. Should the health issue be long term advice will be sought from occupational health as to whether the employee is fit to attend. If occupational health believe that the employee is either fit enough or it is in their best interest to attend a hearing will be scheduled. Failure to attend may lead to a decision being made in their absence on the information available.

An employee does have the right to request that their representative speaks on their behalf or that they produce a written submission to be taken into account at a hearing. For further advice please speak to the HR department.

3. Where witnesses are required to attend, they will be entitled to be accompanied and supported by either their Staff Side representative or a work colleague during the hearing.
4. Copies of all information gathered during the investigation, including witness statements, will be provided to the employee alleged of misconduct prior to any formal disciplinary hearing. In exceptional circumstance, it may be necessary to maintain the anonymity of complainants or witnesses.
5. Prior to the hearing HR will ask the Investigating Officer and Staff Side Representative/Employee and Chair of the panel whether witnesses will be required to attend the hearing and for what reason.
6. It will be the Investigating Officer and Staff Side Representative/Employees responsibility to invite and brief the witnesses prior to the hearing, supported by HR as necessary.

7. The Chair of the panel will be supported at the disciplinary hearing by a member of the HR Department and a relevant professional advisor (as appropriate). Hereafter, these will be referred to as the Disciplinary Panel. A note taker will also be in attendance in order to ensure that the hearing is fully documented.
8. The members of the panel must not have been directly involved in the circumstances leading to the disciplinary action. No officer of the Trust who has been directly involved in the case at any point shall be present at the hearing in any other capacity, except as a witness, or as the representative of management.
9. Investigating Officers and Members of the panel must not be in a close personal relationship with any party in the procedure.
10. The Disciplinary Panel will have the right, throughout the disciplinary hearing to ask questions to either party for the purposes of clarification. If any new facts emerge during the hearing, the Disciplinary Panel should decide if these require further investigation and whether the disciplinary hearing needs to be adjourned and reconvened when the further investigation is completed.
11. The Disciplinary Hearing should, ideally, take place away from the workplace. The format will be as follows:
 - 11.1 The Chair of the Disciplinary Panel will introduce those present and clarify that the meeting is a Disciplinary Hearing. The Chair will explain the nature of the complaint/allegation and explain that the purpose of the hearing is to elicit the facts of the case and to offer a further opportunity for the employee and their representative to state their case and offer any mitigating circumstances prior to a disciplinary decision being taken.

The Chair will ask the Investigating Officer to present their report to the Disciplinary Panel or take the report as having been read and understood. In doing so, they will have the opportunity to call witnesses as appropriate and as agreed in advance of the hearing.

The employee or their representative will have the opportunity to ask questions of the Investigating Officer and of the witnesses.

The Disciplinary Panel will then have the opportunity to ask questions of the Investigating Officer and of the witnesses.
 - 11.2 The employee or their representative will then be given the opportunity to state their case. In doing so, they will have the opportunity to call witnesses as appropriate and as agreed (See 5. above).
 - 11.3 The Investigating Officer will have the opportunity to ask questions of the employee, their representative or the witnesses.

- 11.4 The Disciplinary Panel will then have the opportunity to ask questions of the employee, their representative or the witnesses.
- 11.5 There will be a short adjournment to allow both parties the opportunity to consider how they would wish to sum up their case.
- 11.6 The Investigating Officer will then be given the opportunity to sum up their case.
- 11.7 The employee or their representative will then be given the opportunity to sum up their case.
- 11.8 The meeting will be adjourned so that the Disciplinary Panel can consider what disciplinary action to take as appropriate, taking into account:
- All of the information gathered during the investigation and presented at the disciplinary hearing
 - The seriousness of the offence
 - The individual's record
 - Consistency (how have similar offences been dealt with in the past)
 - Any mitigating circumstances
- 11.9 The hearing will be re-convened and the employee will be informed of the decision and the nature of the disciplinary sanction applied.
- 11.10 In the case of a written warning, the employee will be warned that a repetition or other subsequent misconduct may lead to further disciplinary action being taken against them, not excluding dismissal. They will also be informed of the period of time the warning will remain on their personal file. The right of appeal will be explained.
- 11.11 In the case of a dismissal, the employee will be issued with appropriate notice¹, except in the case of a dismissal for gross misconduct, which will be summary (i.e. without notice). They will be advised of the reason for the dismissal and of their right of appeal.
- 11.12 The outcome of this hearing should be confirmed in writing within 5 working days of the hearing, including the right to appeal. If the employee has communication difficulties, the Chair of the panel should explain the content of the letter to them orally.
- 11.13 Notes of the hearing should be sent to the individual within 5 working days of the date of the hearing.

¹ Contractual or statutory notice, whichever is greater

12. All documentation should be retained on the employee's personal file for the duration of the warning or in perpetuity if the outcome is dismissal.
13. Any actions or recommendations made at the hearing stage will be communicated to the employee and line manager/service manager. It will be the line/service managers' responsibility to ensure that the actions are carried out within the agreed timescales.
14. It will be line manager's responsibility to ensure that all those involved in the process are appropriately supported by ensuring that there is appropriate debriefing in place. In the case of gross misconduct where there is a dismissal of an employee, the line manager of the department will arrange a meeting with their senior manager and a member of the HR department to discuss how the matter should be dealt with.
15. At the end of the disciplinary process it is best practice that a case review is held by the Chair of the disciplinary hearing or that lessons learned are disseminated. The purpose of this is for the Trust to review the process and identify any lessons learnt and take appropriate action to ensure that the disciplinary process continues to run in a professional manner.

Appendix D

Levels of Authority to Take Disciplinary Action

Management levels identified below are authorised to take the following actions in connection with the Disciplinary Policy however please bear in mind that they can not necessarily do all actions in one disciplinary e.g. the investigating officer cannot hear the disciplinary, please seek further clarification from HR. On occasions it may be necessary for managers to delegate the authority to another manager and this should be considered in conjunction with HR. Decisions to suspend should, where possible, be taken in agreement with the Director of Workforce and Organisational Development with appropriate professional input where necessary.

All issues relating to professional/clinical matters should have the appropriate professional input onto the disciplinary panel, and a professional advisory should form part of the panel.

Category of Staff	Suspensions	Investigations	1 st Warnings	Final Warnings	Dismissal	Appeal Panel
Chief Executive	Trust Chairman	Trust Chairman	Trust Chairman	Trust Chairman	Trust Chairman & Non Executive Trust Board	Non-Executive Members of the Trust Board
Executive Directors	Chief Executive	Chief Executive	Chief Executive	Chief Executive	Chief Executive Trust Chairman/ Non Executive members of Trust Board	Non-Executive Members of the Trust Board
Staff directly reporting to Executive Directors	Executive Director	Executive Director/ Deputy Director	Executive Director	Executive Director	Executive Director	Chief Executive, Trust Chairman/ Non Executive Members of the Trust Board
All other staff	Team Leader/Clinical Manager/Assistant Director as appropriate.	To be appointed	Clinical Manager/Head of Service or Assistant Director as appropriate	Clinical Manager/Head of Service or Assistant Director as appropriate	Directorate Director	Executive Director

Appendix E

Appeal Hearing

1. This procedure will be applied to all appeals against disciplinary action.
2. Any employee who is dissatisfied with the outcome of any stage of the formal disciplinary procedure may appeal to a member of management immediately senior to the manager who has taken the decision. This must be done within 10 working days of the disciplinary decision being communicated to the employee in writing, must be made in writing and should clearly state the basis on which the appeal is to be made.
3. The date of the appeal hearing will be confirmed in writing a least 10 working days in advance of the hearing.
4. Any documentation that the employee wishes to submit for consideration at the appeal hearing should be submitted at least 5 working days before the hearing.
5. The appeal hearing will be chaired by the member of management immediately senior to the manager or at the same level to the manager who took the original decision with a member of the HR Department present. These managers will not have been previously involved, directly or indirectly, with the case. A relevant professional advisor, who is experienced in the particular area of work of the employee, and who has not been directly involved in the circumstances leading to the disciplinary action may also be required. Hereafter they will be referred to as the Appeal Panel.
6. Appeals against dismissal will in all cases be heard by a Trust Director. In cases of appeal against dismissal the employee will not be permitted to resume working until the matter has been decided.
7. The members of the panel must not have been directly involved in the circumstances leading to the disciplinary action. No officer of the Trust who has been directly involved in the case at any point shall be present at the appeal hearing in any other capacity, except as a witness, or as the representative of management.
8. An appeal hearing should take place for one of the following reasons:
 - A procedural defect
 - New evidence
 - On a point of fact
 - The sanction was inappropriate
9. The member of staff/representative must provide details on the grounds of their appeal prior to the hearing. This should include any relevant papers and should be available to all parties at least 5 working days prior to the hearing.

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- 10 The original investigatory paperwork and any letter of appeal/grounds of appeal, management response will be circulated to all parties in advance of the hearing.
- 11 Only one appeal is allowed at each stage of the formal disciplinary procedure. The decision of the Appeal Panel will be final.
- 12 At the appeal hearing the employee has the right to be accompanied by a work colleague or represented by their Staff Side Representative.
- 13 Management representatives at the appeal hearing will include the chair of the original disciplinary hearing panel and the investigating officer.
14. The procedure at the hearing will be as follows:
 14. The Chair of the Appeal Panel will introduce those present and clarify that the meeting is an Appeal Hearing. The Chair will explain the nature of the appeal and explain that the purpose of the hearing is to evaluate whether the original decision was fair and reasonable based on all the circumstances of the case available at that time.
 - 14.2 The employee will state their grounds for appeal and shall present their case to the Appeal Panel in the presence of the management representative(s) and may call witnesses.
 - 14.3 Management and the members of the appeal panel shall have the opportunity to ask questions of the employee, and any witnesses.
 - 14.4 The members of the appeal panel shall have the opportunity to ask questions of the employee, the management representative and any witnesses.
 - 14.5 The management representative shall have the opportunity to ask questions of the employee and/or their representative and any witnesses.
 - 14.7 Management will present their response to the appeal and may call witnesses.
 - 14.9 The members of the appeal panel shall have the opportunity to ask questions of the employee, the management representative and any witnesses.
 - 14.10 The management representative and the employee and/or their representative shall have the opportunity to sum up their case if they do so wish. In summing-up neither party may introduce any new matter.
 - 14.11 The Appeal Panel may at their discretion adjourn the appeal in order that either party may produce further evidence, or investigate point of facts.
 - 14.12 The Appeal Panel will adjourn to consider the information heard. They may, as appropriate, recall both parties to clarify points of uncertainty on evidence already given.

- 14.13 The decision of the Appeal Panel may uphold or overturn the original decision, or can invoke a new penalty if so required (of either a higher or lower magnitude).
- 14.14 The outcome of this hearing should be confirmed in writing within 5 working days of the hearing.
- 14.15 Notes of the hearing should be sent to the individual within 21 days of the date of the hearing.
15. All documentation should be retained on the employee's Personal File.
16. Once the appeal process is complete, a debriefing session may be required for other staff involved directly or indirectly in the process, ensuring that confidentiality is maintained.

Right of Representation

All employees going through the disciplinary process are entitled to either a workplace colleague or a staff side representative. The workplace colleague cannot be someone that is to be called as a witness to the same investigation.

Investigating officers need to consider making reasonable adjustments for both employees who request it when arranging formal meetings.

Employees should inform the investigating officer who they have chosen as a representative.

Colleagues do not have to accept a request to accompany and should not be pressurised to do so. If you are requested to be a workplace colleague and would like to discuss this further before reaching a decision please contact the HR department.

Appendix G

Investigation Officer Role & Responsibility

The person conducting the investigation should:

- Be objective and impartial
- Work within the scope of the Terms of Reference
- Listen to the employees version
- Interview witnesses
- Seek and verify the evidence
- Challenge any discrepancies
- Draw conclusions and write a report
- Be aware of the need to periodically update all those concerned in the investigation

Review

Take time to review all the initial information that you have available. Find out as much as possible by looking at

- Correspondence
- Notes of meetings and phone calls
- Emails and diary events
- Background information e.g. policies and procedures
- Look for evidence to either support or contradict the allegations
- Look at the past history of those involved – are there any underlying issues, previous conflicts etc.
- Be aware that your report will be the basis of further action which may or may not end up in dismissal, which may or may not end in an employment tribunal. It must show that the investigation was thorough and reasonable.

Plan

This is a vital part of any investigation and you need to understand what the purpose of the interview is to ensure that you plan appropriately.

The interview takes place to:

- Gain a fuller picture of the situation
- Establish the facts
- Gain evidence which either supports or refutes the allegations
- Gain the interviewees reaction and comments to documents or statements which contradict their account.

It is important to make clear that this is about fact finding and their desired outcome may not be possible.

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Following consideration of the above points you must now ensure that you:

- Allow adequate time to conduct interviews
- Have an appropriate venue
- Arrange for a note taker
- Consider the order that you will interview.
- Plan the structure of the interview
- Print off and have enough of the attached interview note sheets
- Prepare yourself and be fully familiar with the whole case and all the information re the allegations.

The general order is:

1. Complainant
2. Witnesses
3. Accused
4. Further witnesses – if any identified
5. 2nd interviews if necessary

This order is not necessarily fixed as new witnesses may be mentioned as part of the investigation that you were not previously aware of.

Who are the witnesses:

- Those implicated initially
- Names that arise during the investigation
- Names mentioned by the complainant/accused.

Interview Structure:

Opening

- Explain the roles of those present
- Describe context of interview
- Explain how the interview will be conducted
- Establish rapport
- Explain that the conversation is confidential and should not be discussed further with anyone outside the meeting.
- Explain that should the matter progress to a disciplinary hearing then the notes from this investigation will be supplied to the alleged perpetrator as part of the evidence

Main Body

- Explain the Terms of Reference
- Obtain the facts
- Ask the witness to follow events through in chronological order
- Keep control of the discussion
- Use questioning techniques effectively – probe and challenge to seek clarification of points

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- Take accurate notes that reflect the conversation although not necessarily verbatim. These notes will be passed to the relevant parties in advance of any disciplinary or grievance hearing. Accuracy is therefore vital. Encourage your note taker to take a break / pause / ask the witnesses to repeat etc. to ensure the notes are accurate.
- Answer any questions.

Close

- Summarise
- Explain what happens next – inform them that their statement could be used and disclosed to other parties involved.
- answer any final questions
- Thank witness for their time.

Once all your investigations have been completed you now need to review the information and see if you have any gaps or whether you feel you are now able to write the report. Your report should summarise your findings based on the facts and **NOT** be your opinion. It is up to the disciplinary / grievance manager to form opinions.

Once you have fully investigated you can go ahead and produce your report. A template report is available from HR and the final report will depend on the individual investigation however there are some basic details that should be included in all reports.

Report

Executive Summary

This gives a brief overview of what is included in the report in terms of background, findings, conclusions and recommendations.

Findings

This should be the largest section of the report. It is in this section that you will describe what you found out and what you believe may be contributing factors. If there are any mitigating circumstances this should be detailed here along with how you believe these contribute to the situation.

If the evidence was conflicting it is in this section that you need to explain why you chose to believe a particular version of events

Conclusions and Recommendations

It is in this section that you should detail what your conclusions are, but remember these are based on fact and not opinion. If the statements all indicate that fault can be attributed to a particular party then this should be outlined here. If a particular policy or procedure was not followed or someone behaved inappropriately it is now that you need to outline what went wrong and what should have happened.

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However it is also important to remember that this needs to be backed up by the evidence and not just your personal opinion.

Recommendations are not strictly necessary but will help to draw the report to its natural conclusion. This could include things such as:

- Recommend disciplinary action – but not what the outcome of disciplinary action should be
- Review of policy / procedure - but not what it should say
- Training plan – but not the detail of what that should be

Appendices

These should all be attached at the end and clearly labelled so where they are referred to in the report the reader can easily find them, examples of appendices include:

- Signed witness statements
- Copies of any documentation (policies/ procedures etc.)
- Copies of interview questions and the guidance that was provided.

Once the report is completed it should be forwarded to the appropriate manager that will be taking the next steps and HR.

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