

# **Disciplinary Policy**

**NHS West Essex Clinical Commissioning Group Policy Reference Number: WECCG39**

## DOCUMENT CONTROL SHEET

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### Change History:

Version	Date	Reviewer(s)	Revision Description
V1.0	April 2017	Human Resources Business Partner Team	Adapted for use as the Shared Service Policy.

### Implementation Plan:

<b>Development and Consultation</b>	Developed in conjunction with the joint forum, and ratified by, the relevant committees of the Hertfordshire, Bedfordshire, West Essex and Luton CCGs.
<b>Dissemination</b>	This policy will be communicated to staff representatives. It will be communicated electronically to all staff and managers and will be published on the CCG's intranet.
<b>Training</b>	HR Masterclasses will be made available to all managers on HR Investigations. Managers will also be able to access advice from the HR and ODL Shared Service on the implementation and interpretation of this policy.
<b>Monitoring and Review</b>	The HR and ODL Shared Service proactively reports to managers: All staff who meet the trigger points set out in this policy and proactively advises managers and record

	management compliance with this policy, which is reported to the CCG.
<b>Equality and Diversity</b>	17/05/2017 - Equality Impact Assessment
<b>Associated Documents</b>	<ul style="list-style-type: none"><li>▪</li><li>▪</li><li>▪</li></ul>
<b>References</b>	<ul style="list-style-type: none"><li>▪</li></ul>

### Document Status:

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## **1.0 INTRODUCTION**

NHS Bedfordshire, NHS East and North Hertfordshire, NHS Herts Valleys, NHS West Essex and NHS Luton Clinical Commissioning Groups (respectively referred to as ‘the CCG’) primary aim is to commission high quality healthcare. To do this the CCG needs to promote high standards of behaviour and conduct for all employees and to take appropriate corrective action where those standards are not met.

This procedure describes the steps to be taken to deal with each situation reasonably and, wherever possible, help the person concerned to improve their standards of conduct and behaviour to reach acceptable standards. It is important that managers and employees understand these steps.

Managers must not discriminate in the application of this policy in respect of protected characteristics covered by the Equality Act, 2010; age, disability, gender reassignment, race, religion or belief, sex, sexual orientation, marriage and civil partnership and pregnancy and maternity.

This Policy conforms to the Fraud Act, 2006 and Bribery Act, 2010 and will be used in conjunction with the CCG’s fraud and corruption policies and Whistleblowing/Raising Concerns Policy when necessary.

## **2.0 SCOPE**

This policy applies to all CCG staff members, including Governing Body Members and Practice Representatives, whether permanent, temporary or contracted-in (either as an individual or through a third party supplier).

## **3.0 DEFINITIONS**

Discipline occurs where an alleged breach of conduct takes place. These alleged breaches can be deemed as minor misconduct or in severe cases gross misconduct. Conduct is distinct from capability, which relates to an individual’s ability to perform.

#### **4.0 POLICY STATEMENT**

Each member of staff will be informed of the standards of conduct and work as per their individual employment contract. A further explanation of this is set out in Appendix 1 - Acceptable Standards and Rules of Behaviour and also Appendix 2 - Code of Behaviour.

Managers will seek to advise employees of any failings or shortcomings in relation to their behaviour at the earliest opportunity. Managers have a duty to inform employees of the Disciplinary Policy.

In cases of alleged misconduct, no disciplinary action will be taken until the case has been thoroughly investigated. Any employee accused of misconduct will be fully informed of the nature of the allegation against them and be notified in writing of any subsequent disciplinary meeting.

It is the CCG's aim that investigations and disciplinary action will be dealt with within an 8 week period, to avoid long periods of uncertainty, and to lessen the anxiety for the employee. It is recognised, however, that there may be occasions due to the complexity of the investigation that the above timeframe will be extended. The investigating officer will notify the employee in writing of any extension. The employee will have the right to representation at all formal stages of the procedure.

In all cases where a formal disciplinary hearing is necessary, the disciplining officer will not have investigated the case to be heard. If professional issues are involved, an appropriate professional adviser may also sit on the disciplinary panel.

Where employees are accountable to a statutory professional or regulatory body for their conduct, managers should seek advice from the most relevant senior professional within the CCG, in conjunction with HR, with regards to a referral to the professional organisation.

Staff who are in receipt of a formal written warning under the CCG's Disciplinary Policy will be prevented from receiving their incremental pay increase during the year the warning is issued. This will only apply for a period of 12 months, regardless of the length of warning issued.

The employee will have the right of appeal against any formal disciplinary action taken against them.

Managers and staff should be mindful of the confidential nature of the suspension, with only employees who are crucial to the investigation being informed of the reason for suspension. Breaches of confidentiality will be treated as misconduct and will be dealt with under this policy.

## 5.0 RESPONSIBILITIES

### Chief Executive/Accountable Officer

The Chief Executive/Accountable Officer has overall responsibility for this policy.

### Line Manager

The Line Manager has a responsibility to:

- Establish whether the issue warrants a formal investigation
- Communicate with the employee
- Communicate with HR

### Investigating Officer (IO)

The IO must be someone who would not be potentially involved in the investigation e.g. a witness to the investigation. They have a responsibility to:

- Conduct a fair and thorough investigation in a timely manner
- Establish the facts of the case
- Produce a comprehensive report on the investigation findings
- Timetable the investigation as a priority and this must be agreed with their line manager.
- Keep those being investigated up to date with progress and provide an expected date by which the investigation will be completed.
- Have appropriate experience and or training regarding investigations.

### All Staff

In the interest of carrying out a fair and thorough investigation ALL employees of the CCG have a duty and responsibility to engage in all stages of a disciplinary investigation. This includes employees who may be deemed to be a witness to an incident/concern.

# HR and ODL Shared Service

Hertfordshire, West Essex,  
Bedfordshire & Luton  
CCGs

## 6.0 PROCEDURE

### 6.1 INFORMAL ACTION

All employees are responsible for ensuring that they undertake their duties in accordance with required standards. Cases of minor misconduct or unsatisfactory behaviour are usually best dealt with informally. This should be regarded as the informal, day-to-day, process of maintaining an acceptable standard of conduct within a workplace and, as such, outside the scope of the formal disciplinary procedure.

During the informal stage the manager and employee will meet to discuss any unsatisfactory behaviour or minor misconduct; the employee will not be entitled to be accompanied by an accredited trade union representative or workplace colleague at this stage, nor will they be able to appeal any outcomes at this stage as it is informal. At the meeting, the employee will be set clear targets of improvement and time scales on when these will be achieved. A file note of the discussion should be made and a copy given to the employee. This may take the form of an **“improvement notice”**.

If the employee does not meet their targets then the manager will proceed to the next stage (Formal Action).

Guidance for a manager on resolving matters informally:

- Explain the reason why a meeting has been arranged and provide evidence where appropriate
- Give the employee a full opportunity to respond
- Ask questions if required to establish the reasons for the employee’s action
- Make an assessment of what happened.
- Explain what the impact of the concern/action(s) discussed is to the service/department and to others within the department
- Explain what CCG’s policies and procedures are being breached
- Explain what standards are expected for the future
- What action(s) will be taken in the future, should a similar misconduct /concern occur again.
- Follow up the meeting by sending a letter of concern to the employee detailing what was discussed and that the letter will be placed on the employee’s personal file.

- Inform the employee that more formal action will be taken should the misconduct occur again.

## **6.2 Suspension**

Suspension is only to be invoked when an individual's continued presence at work places themselves/other person(s) at risk, or hampers any investigation. Suspension does not constitute disciplinary action or a disciplinary sanction. If appropriate, suspension should be affected as soon as possible after the matter to be investigated comes to light or a need for suspension is identified. Suspension will always be on full pay and should be for as brief a period as possible. It is expected that suspension will be no longer than 4 weeks, but may be extended in exceptional circumstances.

Employees who are suspended will be informed in writing of the reasons for the suspension. The necessity or otherwise for suspension, will be agreed between the manager and an HR Representative. Employees must be available to attend any investigatory meetings during their normal working hours unless prior approval for absence has been obtained from their manager.

Before suspending, managers may wish to consider transferring employees to another workplace, restricting duties, closer supervision or allowing them to work from home.

The suspension should be reviewed after 10 working days and at regular intervals thereafter. The manager should ensure that the employee is kept informed of progress of the case.

Should it be concluded that no further action is necessary following investigation the employee should be notified without delay to enable them to return to work.

## **6.3 Formal Stage: Investigation**

Once it has been determined that the matter warrants a formal investigation, an IO should be appointed by an appropriate senior manager (the manager commissioning the investigation). No formal action will be taken without an appropriate investigation and formal disciplinary hearing taking place. Any disciplinary hearing should take place as soon as possible.

The employee will be advised in writing of the alleged misconduct and will be invited to an investigation meeting. The letter should be sent at least five working days prior to

the meeting

The IO should collect all documentation, supporting evidence and/or statements from witnesses and any other individual in relation to the alleged misconduct/incident.

In order to carry out a thorough investigation arrangements should be made to interview witnesses as well as the person at the centre of the allegation to clarify the contents of their statements, where necessary, and to respond to any questions. This will allow the Investigating Officer to establish all the facts. Notes of these meetings should be documented and recorded and form part of the investigation report.

Witnesses should be advised that should the case proceed to a disciplinary hearing, any statement or information gathered may be used in a hearing in which case they will be given to the employee against whom the allegations have been made. All documentation needs to be signed and dated. Witnesses will be informed that they may be required to attend a hearing.

It should be noted that, where an employee of the CCG is asked to provide a witness statement, or to attend an investigation meeting as a witness, the CCG regards this as a reasonable management request, which should be complied with.

On completion of their investigation the IO should compile and complete the investigation report by reaching conclusions regarding the allegations based on the evidence collected and make recommendations. Normally the investigation should take no longer than 8 weeks; however, individuals must be kept informed about the status of the investigation and any reasons for any delay.

### **Criminal matters emerging as part of an investigation**

Where matters of a potentially criminal nature emerge in the course of an investigation, reference needs to be made to the Police, Counter Fraud or Health and Safety Executive as appropriate and advice should be sought through the Human Resources department.

Where someone is unable to attend due to being held by the authorities, the CCG may continue with the procedure. If an employee is unable to attend meetings and/or hearings, they may send a representative on their behalf or provide a written statement. Where this is the case, advice should also be sought from Human Resources as to whether the investigation should be suspended until such time as the

external agency investigating gives clearance to continue.

## Investigation report / management case

Following the investigation, the IO will produce a report and provide this to the manager who commissioned the investigation. The report should include statements and interview notes from the following as appropriate:

- Statement/notes of meeting concerning the employee against whom the allegations have been made.
- Any person who can offer relevant information, especially anyone who witnessed the alleged offence, or was present at the time the alleged offence took place.
- Documentation relevant to the investigation eg records.
- Local procedures/guidance in place that are of relevance to the case

The IO will in their report make recommendations with rationale to what they consider to be the most appropriate course of action to take; i.e. whether they recommend that a case proceeds to a hearing, no further action is taken or informal action is taken.

It would not be appropriate to proceed to a disciplinary hearing until an appropriate investigation is complete, regardless of how straightforward the case might appear.

The courses of action upon completion of the report may include:

- The IO recommends that no disciplinary action or informal action should be taken. If this is agreed by senior manager who commissioned the investigation, the employee must receive written confirmation that this is the case without delay.
- If the IO recommends that there is potential substance to the allegation(s) and that they are potentially serious enough to merit formal disciplinary action and this is agreed by senior manager who commissioned the investigation, a formal disciplinary hearing must be arranged as soon as is practicable. The investigation report will be used at a disciplinary hearing, which will be arranged by the HR and ODL Shared Service, taking into account any witnesses that will be required to attend.
- The employee should be notified in writing that the investigation has concluded and that a disciplinary hearing will be held.

#### **6.4. Formal Stage: Disciplinary Hearing**

The employee should be given a minimum of 5 working days' notice in writing of the date, time and location of the hearing and this should be accompanied by the investigation report. Where the member of staff is making submissions these should be with the panel and investigating officer at least 3 working days before the hearing. For further information and guidance on the disciplinary hearing, see appendix 3.

Arrangements for attendance of witnesses are the responsibility of those requiring them to attend. Witnesses called to attend a hearing or investigatory interview must be allowed time off with pay and managers will co-operate in ensuring that members of staff called as witnesses are released from their duties at the required time. It is the witness' responsibility to ensure that they have obtained their line manager's permission to attend a hearing, prior to the hearing date.

Witnesses who have provided signed statements as part of a case (of either side) should be on standby to be called to a hearing.

CCG employees will be expected to attend disciplinary hearings, whether as the employee under investigation or as a witness. If the employee under investigation fails to attend without good reason and does not nominate a representative to attend in their absence, the hearing may take place in their absence if they have failed to attend once before. If for any reason a witness is required but not available, the hearing panel chair will need to decide whether the hearing should be adjourned until the witness is available to be called. Appropriate weight shall be given to the evidence of any witness that fails to attend the hearing and their reasons for non-attendance will be taken into account, if known. If the employee is off work due to sickness absence Occupational Health may be asked to assess if the employee is fit to attend a meeting and if any reasonable adjustments are required.

In exceptional circumstances, arrangements may be necessary to protect witnesses whilst giving evidence, for example where there are genuine concerns regarding reprisal or recrimination.

The manager chairing the formal disciplinary hearing will consider all the evidence, including the case made by the employee, and determine an appropriate whether the allegations are upheld based on the balance of probability. If the Chair decides to

uphold the allegation/s, in deciding the sanction to be imposed, they should take into account:-

- the employee's disciplinary and general employment record
- the employee's length of service
- actions taken in any previous, similar cases and any rules that may exist
- the explanations given by the employee

The outcome of a formal disciplinary hearing will be confirmed in writing, within five working days of the hearing, stating the level of action to be taken and, where applicable, the duration of the warning and the consequences of continued misconduct. The employee will be advised of their right of appeal.

There are up to six levels of action in the formal disciplinary procedure for either unacceptable conduct or performance. These are:

- No Case to answer
- Informal action (a performance notice)
- First Written warning
- Final written warning
- Dismissal with notice
- Summary Dismissal

In addition the Chair may decide to impose any (or none) of the following:

- Redeployment of the employee to an alternative role/work base (no pay protection will apply)
- Appropriate training and development
- Some other intervention, for example, to improve working practice or the working environment
- Withholding of pay for a period of unauthorised absence

With regards to redeployment this will normally be as an alternative to dismissal where a role exists within the CCG and any proposed move will be subject to agreement by the employee and their representative. If the employee is not in agreement the Chair will need to reconsider the outcome of the hearing in light of this.

The CCG has a legal duty to refer employees to the DBS where an allegation of misconduct is upheld against a member of staff who has:

- Harmed or poses a risk of harm to a child or vulnerable adult;

- Satisfied the harm test; or
- Received a caution or conviction for a relevant offence.

Where disciplinary action has been taken against a professionally registered member of staff, consideration should be given to making a referral to the relevant professional body. In such cases HR will notify the relevant professional head who will then be responsible for authorising the referral to the professional body.

If a decision is taken to make a referral, this will be confirmed to the member of staff in writing.

The formal outcome will be retained on file at the end of the duration of the warning indefinitely, but ceases to be 'live'.

Staff who are in receipt of a formal written warning under the CCG's Disciplinary policy will be prevented from receiving their incremental pay increase during the year the warning is issued. This will only apply for a period of 12 months, regardless of the length of warning issued.

## **6.5 Possible outcome of a Disciplinary Hearing**

### **No case to answer**

The hearing chair concludes that the outcome of the investigation does not warrant any formal action being taken, for example, because the allegations are not substantiated or because of the employee's mitigating circumstances.

### **Informal Action (Improvement Notice)**

**(As outlined in 6.1)**

### **A First Written Warning**

A First Written Warning will be issued if there is repetition of a lesser offence where an informal approach has failed or where an informal approach is not appropriate. A letter will be issued by the Chair of the panel within five working days confirming the action and indicating:

- The nature of any misconduct

- Any previous discussion or informal warning still current
- That a repetition of the offence or a similar or related offence is liable to lead to further disciplinary action
- If appropriate, the period of time given for improvement and the necessary course of action
- That the warning will be live on the employee's personal file for 12 calendar months, after which it will become spent, unless further disciplinary action is taken
- The employee's right of appeal and guidance on how the right may be exercised

## Final Written Warning

Where a first written warning already exists and further misconduct occurs; or the level or nature of misconduct is sufficiently serious to warrant only one written warning but insufficiently serious to justify dismissal; or there are mitigating circumstances which have been taken into account which mean a dismissal would be harsh, an employee may be given a final written warning.

A letter will be issued by the Chair of the panel within five working days confirming the action and indicating:

- The nature of any misconduct
- Reference to previous warnings still current
- That dismissal or other disciplinary actions would normally follow further misconduct
- The course of action required to meet the standard of conduct expected
- Actions taken are short of dismissal and likely periods of review (e.g. demotion)
- That the warning will be retained on the personal file for a period of 24 calendar months, after which it will be removed, if no further disciplinary action is taken
- The employee's right of appeal and guidance on how the right may be exercised

## Dismissal

If, despite formal warnings, an employee's conduct remains unacceptable and/or the employee commits an act or acts of further misconduct whilst he or she is under a final written warning, the employee will be liable to dismissal with notice or pay in lieu of notice following a disciplinary hearing.

Except in cases of summary dismissal (see below), the employee is entitled to their statutory or contractual period of notice whichever is the longer to a maximum of 12

weeks. Any annual leave owed will be paid.

The employee will be notified of their right of appeal and guidance on how the right may be exercised.

Payment made in lieu of this entitlement is subject to usual deductions.

### **Summary Dismissal**

For matters of gross misconduct, the employee may be summarily dismissed – that is dismissed without notice or pay in lieu of notice. Any annual leave owed will be paid.

Written confirmation of the decision to dismiss, giving reasons, will be given following the hearing within five working days.

The employee will be notified of their right of appeal and guidance on how the right may be exercised

### **Scheme of Delegation**

**The following table sets out which managers have authority to take action**

Informal procedure	Line Manager or equivalent level manager from elsewhere within the CCG
Formal procedure – investigation and hearings	Line manager or equivalent level manager from elsewhere within the CCG or the line manager’s direct manager if the line manager has been previously involved or implicated and HR Representative
Appeal following formal procedure	Line manager’s manager or equivalent who has not previously been involved or implicated and HR representative
Dismissal Hearings	Chaired by a senior manager (equivalent to Assistant/Associate Director level or equivalent and HR representative
Appeal against dismissal	Chaired by a Director or equivalent and HR

	representative
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## 6.6 APPEAL PROCESS

Employees may appeal against formal action under this procedure.

The purpose of the appeal will be to determine:

- Whether the procedures were followed correctly
- Whether the decision to take disciplinary action was fair and reasonable
- Whether the action taken was within a band of reasonable in the circumstances.
- It may also be decided to consider new evidence where the appeal panel considers that the evidence is likely to be relevant to the decision made

All complaints or grievances arising in relation to an investigation or disciplinary process will be dealt with either at the initial disciplinary hearing itself and/or at the appeal hearing, rather than being dealt with through any separate procedure.

Any intention to appeal must be notified in writing to the Assistant Director of Human Resources and Organisation Development and Learning, within 14 days of the issue of the letter confirming the sanction. The appellant should use the Appeal Pro-forma at Appendix 5 and must state clearly the grounds for appeal.

The employee should be given a minimum of 10 working days' notice in writing of the date, time and location of the meeting.

Whenever possible an appeal will normally be heard within four weeks of the issue of the appeal to the CCG. Notification will be given if it is not possible to arrange a hearing within the four week timeframe.

A written statement of case will be prepared by the senior manager who took the decision to issue the written warning/dismiss, and the appellant or their representative will provide written reasons of their detailed grounds of appeal. There should be a simultaneous exchange of the statements of case, no later than five working days in advance of the panel hearing.

The appellant will be expected to attend the appeal hearing. If the appellant fails to attend without good reason and does not nominate a representative to attend in their absence, the hearing may take place in their absence if they have failed to attend once before. Appropriate weight shall be given to evidence of anyone that fails to attend the hearing and their reasons for non-attendance will be taken into account, if known.

The outcome of the appeal against formal disciplinary action may be one of the following:

- That the appeal is dismissed and the disciplinary decision is confirmed.
- That the penalty is reduced.
- That the appeal is allowed and a finding that no offence was committed is confirmed. The penalty imposed is therefore withdrawn and all records are removed from the file.

Following deliberation, the hearing chair may recall both parties and announce the decision verbally. If a decision cannot be made without further deliberation, it may be necessary to communicate the decision in writing at a later date. In either event, the outcome will be confirmed in writing to the appellant and their representative no later than five working days after the hearing date (see appendix 4 for the appeals hearing procedure).

Should the appellant not adhere to the appeals criteria as outlined in section 6.6.2, the panel may decide not to proceed with the appellant's appeal.

## **APPENDIX 1**

### **Acceptable Standards and Rules of Behaviour**

#### **1. Introduction**

- 1.1 In any organisation there is a need to regulate conduct and behaviour to acceptable standards in order to maintain the safety and wellbeing of staff and to ensure the efficient running of the organisation.
- 1.2 The purpose of this document is to:
  - 1.2.1 Set out the standards and rules expected of all employees;
  - 1.2.2 Give an indication of the general circumstances which could lead to disciplinary action;
  - 1.2.3 List offences which are among those regarded as gross misconduct and which may, if proven, normally lead to summary dismissal.

#### **2 General Rules**

- 2.1 These rules apply to all staff employed by the CCG and non-observance could lead to disciplinary action. However, no set of rules can cover all circumstances that may arise during the course of employment of staff. The following should not be regarded as exhaustive or complete.
- 2.2 Every employee is expected to combine prompt and efficient service and performance with a concern and respect for the feelings of others, particularly patients and members of the public.
- 2.3 Staff are required to attend work for the hours as specified in their contracts. Failure to attend punctually or regularly could lead to disciplinary action up to and including dismissal, if the offences continue after previous warnings. The distance of an employee's home from his/her place of work or any difficulties in getting to work, will not be accepted as justification for persistent unsatisfactory attendance or for warranting preferential hours. In the event of a temporary short term difficulty, the member of staff shall consult his/her manager without delay.
- 2.4 Staff will be expected to present themselves for work unless they have prior permission

to be absent. In case of sickness, contact with infectious disease or sudden domestic emergencies, the responsibility lies with the member of staff to inform their manager within a reasonable period. All un-notified absence will be monitored and investigated if necessary.

2.5 Arrangements for taking annual leave shall be approved by the appropriate manager.

Requests to take annual leave must be made in accordance with the Annual Leave Policy. A manager may reserve the right to decline a request to take leave at a specific time where, because of insufficient notice, existing authorised leave arrangements or other service needs, this would have an adverse effect on the service.

2.6 Employees should carry out the reasonable instructions of managers and supervisors efficiently and within acceptable time limits.

2.7 Staff employed by the CCG are not precluded by their contracts of employment from accepting other employment outside of their normal working hours. However, in line with their employment contracts and/or Working Time Regulations, staff should notify their managers of any such employment undertaken and seek permission to undertake this in order to ensure that it does not in any way hinder or conflict with the interests of the CCG or in the performance of their duties with the CCG.

2.8 Staff should abide by the CCG's Code of Behaviour (appendix 2).

2.9 All staff must adhere to the requirements of Health and Safety legislation. Certain departments may have special rules that will be brought to the attention of the staff concerned. A departure from those rules may lead to disciplinary action.

2.10 All staff must adhere to the requirements of the Equality Act and the CCG's Equality and Diversity Policy.

### **3 Examples of misconduct warranting disciplinary action**

3.1 The following is a list of disciplinary offences which may result in disciplinary action. Such action may be informal or formal depending on the nature and extent of the offence. There may be occasions when the level of the misconduct would constitute serious misconduct / gross misconduct.

3.2 This list is not exclusive or exhaustive and does not indicate any limitation upon the employer's right to exercise discretion in individual cases.

- a) General conduct and/or behaviour including behaviour offensive to others;
- b) Unauthorised absence;
- c) Poor timekeeping;
- d) Abuse or misuse of sickness pay/leave provisions;
- e) Absence from work without required authorisation or regard to the appropriate procedure e.g. sick leave compassionate leave
- f) Abuse or misuse of study leave provisions;
- g) Breach of contract/terms and conditions of employment;
- h) Breach of confidentiality – failure to safeguard or disclosure of privileged and confidential data or information (including patient information) to unauthorised persons;
- i) Participating without authority in other employment, trade, business or profession which is prejudicial to, or which adversely affects employment with the CCG;
- j) Failure to carry out reasonable instructions given by management effectively and in a timely manner;
- k) Unacceptable conduct contrary to any CCG or NHS policies, procedures, guidelines and standards;
- l) Any breach of the CCG's standing orders and financial standing instructions/specific financial policies;
- m) Breach of health and safety rules and/or statutory regulations regarding health and safety;
- n) Any breach of directorate, department or human resource policy rules, or procedures;
- o) Smoking on duty or in areas designated no smoking;
- p) Malicious complaints, untruths and lies made about colleagues;
- q) Misuse of CCG's facilities
- r) Failure to inform a senior officer to the CCG as soon as they are aware that they have a financial interest, either directly or indirectly, or through a spouse or close personal contact, in a contract which the CCG has entered into or proposes to enter into.
- s) Persistent or serious performance issues
- t) Misuse of information technology, including social media
- u) Breakdown in trust and confidence

#### **4.0 Serious offences – gross misconduct**

- 4.1 The following list, although by no means exhaustive, summarises examples of gross misconduct which may lead to summary dismissal i.e. immediate dismissal (without

notice). This would be conduct which is so serious that any further working relationship is impossible between the employer and employee. This list is not exhaustive or complete.

- a) Assault: assault on a fellow employee, or member of the public. This includes fighting, physical or serious verbal abuse.
- b) Fraud: Any person who dishonestly makes a false representation to make a gain for himself or another; or fails to disclose information which he is under a legal duty to disclose; or falsification of documentation during the recruitment process, or commits fraud by abuse of position, including any offence as defined in the Fraud Act 2006
- c) Bribery: bribery (as defined in the Bribery Act 2010) is an inducement for an action which is illegal, unethical or a breach of trust. Inducements can take the form of gifts, loans, fees, rewards or other privileges. Corruption is broadly defined as the offering or the acceptance of inducement of gifts or favours payments or benefit in kind which may influence the improper action of any person.
- d) Incapacity through alcohol and/or drugs: Incapacity to perform normal duties owing to the consumption of alcohol or misuse of drugs.
- e) Negligent behaviour: any action or failure to act which seriously threatens the health and safety of a patient, employee or member of the public.
- f) Unauthorised absence: prolonged or persistent periods of unauthorised absence where no attempt is made to contact the CCG.
- g) Malicious and/or negligent damage: intentionally or by negligence causing any damage to property, or to the CCG.
- h) Conduct that brings the CCG's reputation in to disrepute: through personal conduct or the provision of false information conduct that damages the CCG's reputation.
- i) Misuse of information systems: inappropriate or excessive private use of the email, internet including social media sites, telephone or EPR/ESR etc. Inappropriate use of these services may involve material or information of a sexual or racial nature which a colleague may find objectionable and offensive.
- j) Breach of confidentiality: any failure to treat sensitive CCG patient or employee information with the utmost confidence.
- k) Bullying and harassment: Harassment is defined as "unwanted conduct related to a relevant protected characteristic, which has the purpose or effect of violating an individual's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for that individual". Reference should also be made to the CCG's Harassment & Bullying policy on dealing with cases of sexual or racial harassment.
- l) Theft: This refers to any instance of theft of property from the CCG or from patients, visitors, or from other members of staff on CCG's premises.
- m) Standards of business conduct: this refers to staff who place themselves in a position

which risks, or appears to risk, conflict between their private interests and with their duties.

- n) Discrimination: Against other employees, patients and members of the general public on the basis of protected characteristics covered by the Equality Act, 2010; age, disability, gender reassignment, race, religion or belief, sex, sexual orientation, marriage and civil partnership and pregnancy and maternity.
- o) Health and safety: serious breaches of health and safety regulations or practices endangering other people and including the misuse of safety equipment
- p) Behaviour at work: substantiated complaints in respect of behaviour at work, rudeness or attitudes towards other members of staff, patients, visitors, members of the general public etc.
- q) Criminal activity: engaging in criminal activity either within or outside the workplace or aiding and abetting it. This includes failure to notify the CCG promptly if employees are charged by the police or receive any convictions, police cautions, reprimands or final warnings that occur during their employment.
- r) Breach of Professional Codes of Conduct: where breaches take place these may be considered as gross misconduct.
- s) Falsification of documentation

Summary dismissal may also be appropriate in cases where there is loss of legal authority to continue employment, e.g. qualifications, registration, ineligibility of work permit or DBS status.

## **APPENDIX 2**

### **Code of Behaviour**

Our attitude and the way in which we behave to patients, visitors and each other can greatly affect, both positively and negatively, the quality of service we provide, and our working lives.

Therefore each and every member of staff in the CCG has a responsibility to:

- Treat everyone with respect and dignity
- Be caring, compassionate and fair
- Be friendly, polite and courteous
- Be approachable
- Communicate clearly and thoughtfully
- Provide relevant information (or find someone who can)
- Use tact and tolerance when dealing with others
- Present a smart, professional image

Each and every member of staff also has the right to be treated in this manner. In order to do this, staff should:

- Take pride in what they do and in the environment in which they work
- Think about what others might be feeling
- Recognise their own limitations
- Accept responsibility for their actions
- Take responsibility for their own development and education
- Ask for help when they need it
- Be prepared to account for their actions

Remember that we are all striving for the same thing; a quality commissioning service for our patients, our local community and a good place to work.

## **APPENDIX 3**

### **Conducting a Disciplinary Hearing**

A disciplinary hearing will normally be held by a panel consisting of a manager, who has not been previously involved in the matter, who will act as the Panel Chair, they will be accompanied by an HR Representative. The HR Representative will be there to provide advice on Human Resources policies, precedent and employment legislation and to ask questions to obtain clarification on any issues that are discussed or new relevant information disclosed.

The disciplinary hearing follow the following stages:

1. Opening the meeting by Panel Chair
2. Management side present their case (summary of allegation by the investigating officer), including calling of any witnesses
3. Employee side, then the Disciplinary Panel, will have the opportunity to ask questions
4. Employee side to present their case, including calling of any witnesses
5. Management side, then the Disciplinary Panel, will have the opportunity to ask questions
6. Summing up by management side, then by employee side
7. Adjournment
8. Action to be taken (if any)
9. Establishment of a review date (if appropriate)

### **Opening the Disciplinary Hearing**

All employees are entitled to be accompanied by their accredited Trade Union representative or a workplace colleague. Where an employee is not accompanied, the employee must be reminded of this right, and if declined, this must be recorded.

The hearing chair should introduce those present and outline the reasons for the disciplinary meeting taking place (the reason/s outlined in the invite to

disciplinary letter) and the format the meeting will take.

### **Summary of Allegation**

At this stage the investigating officer(s) must summarise the case on behalf of management. The investigating officer(s) presenting the case should adhere to the facts and not introduce opinions, hearsay or issues that have not previously been mentioned. All documentation that will be used as evidence (including previous relevant warnings and witness statements where applicable) will already have been made available to the individual prior to the disciplinary hearing taking place (copies will have been sent with the invite to disciplinary meeting letter).

Should a new matter arise during the course of the disciplinary meeting or immediately beforehand, then the hearing chair should adjourn in order that consideration may be given to the appropriateness of the introduction of this new matter. To avoid unnecessary duplication of the process as well as ensuring fairness, it may be the hearing chair may consider it appropriate to adjourn the disciplinary meeting in order that further investigations may be carried out in relation to the new matter.

The aim of the disciplinary meeting is to seek verification and clarification about the issues of concern, through questions. Where it is appropriate to call witnesses, either party may call and question them.

After the investigating officer has stated their case the employee will be given the opportunity to ask questions and state their case. The employee's representative will be able to ask questions for clarification purposes.

If the disciplinary hearing is dealing with multiple issues, each issue should be addressed in turn and the employee and/or their representative be allowed to state their case in relation to each issue as it is addressed.

Exploration of any differences in facts, as they appear to the IO and employee should be carried out in a constructive manner in order to gain an understanding of the facts which are, as far as possible, acceptable to both the IO and the employee.

Both parties will be given the opportunity to sum up their case if they so wish. The summing up shall not introduce any new matter. If at any stage new facts are alleged or new evidence produced, the chair of eth disciplinary hearing may adjourn the meeting (of their own volition or at the request of one of the parties) for so long as they consider fit.

## **Adjournment**

Before any decision is taken, it is necessary to adjourn the disciplinary hearing to give adequate consideration to the facts as they have been presented and the responses that have been given to the allegations, including any mitigating circumstances. At this stage both parties will be asked to leave the room and the hearing chair must decide the facts of the case, and whether the behaviour requires disciplinary action to be taken and if so, at what level, with appropriate advice from an HR Representative.

Where possible, an indication of the length of time of the adjournment should be given. It may be beneficial to provide a written outcome, for example, in order to ensure appropriate consideration of all the circumstances of a matter, in which case, attendees should be advised that a decision will be confirmed within 5 working days.

The disciplinary hearing may also be adjourned to consider other issues, e.g. to direct further investigations to take place or to investigate new information/facts that have been brought to light.

There is no set time for an adjournment and adjournments can be called at any time during the disciplinary meeting, by any party.

Taking disciplinary action is not a matter to be taken lightly and should only be taken if it is to be constructive in attempting to produce the desired behaviour. Managers will also need to consider, if disciplinary action is to be taken, whether any other sanctions will be attached to the warning

The panel chair shall have absolute discretion to vary or amend the hearing proceedings as they consider appropriate in the circumstances.

## **APPENDIX 4**

### **APPEALS HEARING PROCEDURE**

Appeals for warnings will normally be heard by the next-in-line manager. Appeals for dismissals will be heard by a Director. All appeals will include a representative of the Human Resources Department, in an advisory capacity.

An employee may choose to appeal if, for example:

- They feel the procedures were not followed correctly
- That the decision to take disciplinary action was not fair and reasonable
- That the action taken was not within a band of reasonable responses
- That new evidence has come to light which they believe to be relevant to the decision made by the panel

Should either party require an adjournment then this request should be made to the Hearing Panel, with an indication of the length of time required.

The procedure for an appeal hearing is as follows:

1. The appellant will present their case first, detailing the grounds for their appeal including the calling of any witnesses.
2. The management side will then be able to ask any questions about the case the appellant has presented
3. The appeal panel members will also have an opportunity to ask any questions.
4. The management side will then be asked to present their case, explaining the reasons for the action taken, including the calling of any witnesses.
5. The appellant may then wish to ask management side any questions about the case.
6. The appeal panel members will also have the opportunity to ask any questions.
7. Both parties will have the chance to sum up their case.

8. There will then be an adjournment when both sides will be asked to leave the room while the appeal hearing chair considers the information they have heard and reach their decision.
9. Following an adjournment, the decision of the appeal hearing chair will be communicated to both parties verbally in writing. In any event, the decision will be confirmed in writing no later than 5 working days after the Appeal Hearing.

The panel chair shall have absolute discretion to vary or amend the hearing proceedings as they consider appropriate in the circumstances.

## Appendix 5 - Appeal Pro-forma

**Important:** You are required to complete this form and send it to the Assistant Director of HR and ODL within 14 days of the date of the letter confirming the outcome of the Disciplinary Hearing. You must include with this proforma your full grounds for appeal.

1. State the grounds of your Appeal (please refer to section 6.6 for appropriate grounds of appeal).

*Continue on a separate sheet if necessary, please turn over*

2. Please state your name, address and telephone number  
(BLOCK CAPITALS)

Name: .....

Address: .....

.....

Telephone No (work): ..... (home): .....

3. Please state your job title, grade and your department (BLOCK CAPITALS)

Job title and grade: .....

Department: .....

4. If a representative has agreed to act for you in this case, please give their name and address below (BLOCK CAPITALS)

Name of representative: .....

Union or Organisation: .....

Address: .....

.....

Telephone No: .....

You are advised to consult your representative before submitting this completed form.

Signed: .....Date: .....

*Once you have formally lodged your Appeal, it will be acknowledged in writing.*

**Appendix 6  
 Equality Impact Assessment Stage 1 Screening**

**Equality Analysis – Full Equality Impact Assessment**

<b>Title of policy, service, proposal etc being assessed:</b>
Disciplinary Policy

<p><b>What are the intended outcomes of this work?</b> Include outline of objectives and function aims          NHS Bedfordshire, NHS East and North Hertfordshire, NHS Herts Valleys, NHS West Essex and NHS Luton Clinical Commissioning Groups (respectively referred to as ‘the CCG’) primary aim is to commission high quality healthcare. To do this the CCG needs to promote high standards of behaviour and conduct for all employees and to take appropriate corrective action where those standards are not met.</p>
<p><b>How will these outcomes be achieved?</b> What is it that will actually be done?          This procedure describes the steps to be taken to deal with each situation reasonably and, wherever possible, help the person concerned to improve their standards of conduct and behaviour to reach acceptable standards. It is important that managers and employees understand these steps.</p>
<p><b>Who will be affected by this work?</b> e.g. staff, patients, service users, partner organisations etc. If you believe that there is no likely impact on people explain how you’ve reached that decision and send the form to the equality and diversity manager for agreement and sign off          Staff</p>

<p><b>Evidence</b></p> <p><b>What evidence have you considered?</b> Against each of the protected characteristics categories below list the main sources of data, research and other sources of evidence (including full references) reviewed to determine impact on each equality group (protected characteristic).</p> <p>This can include national research, surveys, reports, research interviews, focus groups, pilot activity evaluations or other Equality Analyses. If there are gaps in evidence, state what you will do to mitigate them in the Evidence based decision making section on page 9 of this template.</p> <p>If you are submitting no evidence against a protected characteristic, please explain why.</p>
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**Age** Consider and detail age related evidence. This can include safeguarding, consent and welfare issues.  
 No local assessment. Developed in conjunction with the joint forum, and ratified by, the relevant committees of the Hertfordshire, Bedfordshire, West Essex and Luton CCGs. Also considered was the relevant Luton And Dunstable University Hospital policy.

**Disability** Detail and consider disability related evidence. This can include attitudinal, physical and social barriers as well as mental health/ learning disabilities.  
 No local assessment. Developed in conjunction with the joint forum, and ratified by, the relevant committees of the Hertfordshire, Bedfordshire, West Essex and Luton CCGs. Also considered was the relevant Luton And Dunstable University Hospital policy.

**Gender reassignment (including transgender)** Detail and consider evidence on transgender people. This can include issues such as privacy of data and harassment.  
 No local assessment. Developed in conjunction with the joint forum, and ratified by, the relevant committees of the Hertfordshire, Bedfordshire, West Essex and Luton CCGs. Also considered was the relevant Luton And Dunstable University Hospital policy.

**Marriage and civil partnership** Detail and consider evidence on marriage and civil partnership. This can include working arrangements, part-time working, and caring responsibilities.  
 No local assessment. Developed in conjunction with the joint forum, and ratified by, the relevant committees of the Hertfordshire, Bedfordshire, West Essex and Luton CCGs. Also considered was the relevant Luton And Dunstable University Hospital policy.

**Pregnancy and maternity** Detail and consider evidence on pregnancy and maternity. This can include working arrangements, part-time working, and caring responsibilities.  
 No local assessment. Developed in conjunction with, and ratified by, the relevant committees of the Hertfordshire, Bedfordshire, West Essex and Luton CCGs. Also considered was the relevant Luton And Dunstable University Hospital policy.

**Race** Detail and consider race related evidence. This can include information on difference ethnic groups, Roma gypsies, Irish travellers, nationalities, cultures, and language barriers.

No local assessment. Developed in conjunction with the joint forum, and ratified by, the relevant committees of the Hertfordshire, Bedfordshire, West Essex and Luton CCGs. Also considered was the relevant Luton And Dunstable University Hospital policy.

**Religion or belief** Detail and consider evidence on people with different religions, beliefs or no belief. This can include consent and end of life issues.

No local assessment. Developed in conjunction with the joint forum, and ratified by, the relevant committees of the Hertfordshire, Bedfordshire, West Essex and Luton CCGs. Also considered was the relevant Luton And Dunstable University Hospital policy.

**Sex** Detail and consider evidence on men and women. This could include access to services and employment.

No local assessment. Developed in conjunction with the joint forum, and ratified by, the relevant committees of the Hertfordshire, Bedfordshire, West Essex and Luton CCGs. Also considered was the relevant Luton And Dunstable University Hospital policy.

**Sexual orientation** Detail and consider evidence on heterosexual people as well as lesbian, gay and bisexual people. This could include access to services and employment, attitudinal and social barriers.

No local assessment. Developed in conjunction with the joint forum, and ratified by, the relevant committees of the Hertfordshire, Bedfordshire, West Essex and Luton CCGs. Also considered was the relevant Luton And Dunstable University Hospital policy.

**Carers** Detail and consider evidence on part-time working, shift-patterns, general caring responsibilities.

No local assessment. Developed in conjunction with, and ratified by, the relevant committees of the Hertfordshire, Bedfordshire, West Essex and Luton CCGs. Also considered was the relevant Luton And Dunstable University Hospital policy.

**Other identified groups** Detail and consider evidence on groups experiencing disadvantage and barriers to access and outcomes. This can include different socio-economic groups, geographical area inequality, income, resident status (migrants, asylum seekers).

No local assessment. Developed in conjunction with the joint forum, and ratified by, the relevant committees of the Hertfordshire, Bedfordshire, West Essex and Luton CCGs. Also considered was the relevant Luton And Dunstable University Hospital policy.

### Engagement and involvement

How have you engaged stakeholders with an interest in protected characteristics in gathering evidence or testing the evidence available?

Policy Forum established. Members include representatives of CCGs and Trade Unions

How have you engaged stakeholders in testing the policy or programme proposals?

Policy Forum established. Members include representatives of CCGs and Trade Unions

For each engagement activity, please state who was involved, how and when they were engaged, and the key outputs:

Policy Forum established. Members include representatives of CCGs and Trade Unions

### Summary of Analysis

Considering the evidence and engagement activity you listed above, please summarise the impact of your work. Consider whether the evidence shows potential for differential impacts, if so state whether adverse or positive and for which groups and/or individuals. How you will mitigate any negative impacts? How you will include certain protected groups in services or expand their participation in public life?

No local assessment. Developed in conjunction with the joint forum, and ratified by, the relevant committees of the Hertfordshire, Bedfordshire, West Essex and Luton CCGs. Also considered was the relevant Luton And Dunstable University Hospital policy.

Now consider and detail below how the proposals could support the elimination of discrimination, harassment and victimisation, advance the equality of opportunity and promote good relations between groups (the General Duty of the Public Sector Equality Duty).

### Eliminate discrimination, harassment and victimisation

No local assessment. Developed in conjunction with the joint forum, and ratified by, the relevant committees of the Hertfordshire, Bedfordshire, West Essex and Luton CCGs. Also considered was the relevant Luton And Dunstable University Hospital policy.

### Advance equality of opportunity

No local assessment. Developed in conjunction with the joint forum, and ratified by, the relevant committees of the Hertfordshire, Bedfordshire, West Essex and Luton CCGs. Also considered was the relevant Luton And Dunstable University Hospital policy.

**Promote good relations between groups**

No local assessment. Developed in conjunction with the joint forum, and ratified by, the relevant committees of the Hertfordshire, Bedfordshire, West Essex and Luton CCGs. Also considered was the relevant Luton And Dunstable University Hospital policy.

**Next Steps**

Please give an outline of what you are going to do, based on the gaps, challenges and opportunities you have identified in the summary of analysis section. This might include action(s) to eliminate discrimination issues, partnership working with stakeholders and data gaps that need to be addressed through further consultation or research. This is your action plan and should be SMART.

New HR monitoring system being developed

How will you share the findings of the Equality analysis? This can include sharing through corporate governance or sharing with, for example, other directorates, partner organisations or the public.

Publication alongside the policy

**Health Inequalities Analysis**

**Evidence**

**1. What evidence have you considered to determine what health inequalities exist in relation to your work?** List the main sources of data, research and other sources of evidence (including full references) reviewed to determine impact on each equality group (protected characteristic). This can include national research, surveys, reports, research interviews, focus groups, pilot activity evaluations or other Equality Analyses. If there are gaps in evidence, state what you will do to mitigate them in the Evidence based decision making section on the last page of this template.

No local assessment. Developed in conjunction with the joint forum, and ratified by, the relevant committees of the Hertfordshire, Bedfordshire, West Essex and Luton CCGs. Also considered was the relevant Luton And Dunstable University Hospital policy.

**Impact**

**2. What is the potential impact of your work on health inequalities?** Can you demonstrate through evidenced based consideration how the health outcomes, experience and access to health care services differ across the population group and in different geographical locations that your work applies to?

No local assessment. Developed in conjunction with the forum, and ratified by, the

relevant committees of the Hertfordshire, Bedfordshire, West Essex and Luton CCGs. Also considered was the relevant Luton And Dunstable University Hospital policy.

**3. How can you make sure that your work has the best chance of reducing health inequalities?**

No local assessment. Developed in conjunction with the joint forum, and ratified by, the relevant committees of the Hertfordshire, Bedfordshire, West Essex and Luton CCGs. Also considered was the relevant Luton And Dunstable University Hospital policy.

**Monitor and Evaluation**

**4. How will you monitor and evaluate the effect of your work on health inequalities?**

New HR monitoring system being developed

**Quality Impact Initial Assessment.**

Quality can be defined as embracing three key components:

- Patient Safety – there will be no avoidable harm to patients from the healthcare they receive. This means ensuring that the environment is clean and safe at all times and that harmful events never happen.
- Effectiveness of care – the most appropriate treatments, interventions, support and services will be provided at the right time to those patients who will benefit.
- Patient Experience – the patient’s experience will be at the centre of the organisation’s approach to quality.

What is the impact on:

<b>Patient Safety?</b>	Positive <input type="checkbox"/>	Negative <input type="checkbox"/>	Neutral <input checked="" type="checkbox"/>
<b>Patient Experience?</b>	Positive <input type="checkbox"/>	Negative <input type="checkbox"/>	Neutral <input checked="" type="checkbox"/>
<b>Clinical Effectiveness?</b>	Positive <input type="checkbox"/>	Negative <input type="checkbox"/>	Neutral <input checked="" type="checkbox"/>

If any there is any negative impact please complete seek advice from the Nursing and Quality Team and a full Quality impact assessment will need to be completed.

<b>Name of person(s) who carried out these analyses: Paul Curry</b>
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<b>Date analyses were completed: 17 May 2017</b>
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