



Disciplinary Policy (Managing Conduct and Performance)

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The Trust will not tolerate unlawful discrimination on the grounds of the protected characteristics of: age, disability, gender reassignment, race, religion/belief, gender, sexual orientation, marriage/civil partnership, pregnancy/maternity. The Trust will not tolerate unfair discrimination on the basis of spent criminal convictions, Trade Union membership or non-membership. In addition, the Trust will have due regard to advancing equality of opportunity between people from different groups and foster good relations between people from different groups.

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1. Policy Statement

- 1.1 This document outlines the Disciplinary Policy (Managing Conduct and Performance) (the Policy) and procedures for the East of England Ambulance Service NHS Trust (the Trust).
- 1.2 This policy observes current employment legislation, the ACAS Code of Practice on Disciplinary and Grievance procedures, and the ACAS guide to discipline and grievances at work which compliments the Code of Practice, to ensure fair and consistent treatment.
- 1.3 The policy aims to promote, encourage and support all employees to achieve and maintain high standards of conduct and work performance through the application of a fair, effective and consistent approach when managing staff conduct and performance issues.
- 1.4 This policy has been written in partnership by management and staff side, and in accordance with current employment legislation.

2. Scope

- 2.1 This policy applies to all staff employed by the Trust.
- 2.2 Secondees to the organisation are also subject to the Trust's policies and procedures. Any allegations in respect to breach of these or misconduct will be addressed in liaison with their statutory employer.
- 2.3 This policy does not apply to:
 - the management of ill health capability up to and including the final review meeting where the Trust's Sickness Absence Management/Disability Policy would apply;
 - ill health retirements where the individual's application for NHS ill health retirement has been successful prior to any decision by the Trust to dismiss the individual on the grounds of ill health capability;
 - the management of clinical issues where the Trust considers it more appropriate for the Variations in Clinical Practice and Clinical Competence Policy to apply in the first instance;
 - dismissals on the grounds of redundancy (where the Trust's Change Management Process, Redundancy and Redeployment Policy applies);
 - non-renewal of fixed term contracts on their expiry.

3. Access to the Procedure

- 3.1 All employees are entitled to access this policy which is located in the HR Policies and Procedures Folders and/or on the Trust's Intranet. However, if you require this policy in any other format please seek guidance from the Human Resources Department, your line management or trade union representative.
- 3.2 Employees and managers may also wish to consult related Trust policies such as Sickness Absence Management; Equality, Diversity and Human Rights Policy; Disability Policy; Secondment; Grievance; Collective Grievance; Dignity at Work; Change Management Process, Change Management, Redundancy and Redeployment Policy Variations in Clinical Practice and Clinical Competence; Professional

Registrations; Standards of Business Conduct, Conflicts of Interest and Secondary Employment; DBS Policies Working Together to Safeguard Children; A guide to inter-agency working to safeguard and promote the welfare of children (2010)”, Caldicott Guardian Principles/CSOP 2.2 Patient Confidentiality, Forfeiture or Reduction in NHS Pension Scheme Benefits, Driving Licence; No Smoking; Local Counter Fraud/HR Liaison Policy and the National Audit Office guidance and The Management of Suspensions of Clinical Staff in NHS Hospital and Ambulance Trusts in England.

4. Roles and Responsibilities

- 4.1 Managers should raise and deal with issues promptly and should not unreasonably delay meetings, decisions or confirmation of those decisions. Any decisions which are taken should be fully documented.
- 4.2 The full investigation must be concluded within 6 weeks from the date that the incident is known about by the Trust. If this has not happened this will be reported to the Chief Executive, with the rationale for the delay. The responsibility to generate this report lies with the investigating manager or Senior HR if the investigating manager has not been appointed or is out of the workplace.
- 4.3 Employees, and their companions, should co-operate fully with the operation of this policy including making every effort to attend investigatory meetings and disciplinary hearings/appeals and without causing unreasonable or unnecessary delay. This may necessitate attendance outside of the employee’s and/or the companion’s (where they are an employee of the Trust) rostered hours and/or normal working pattern (refer to Section 15.2 for a definition of ‘companion’). Where employees or their companions have any additional requirements due to disability they should make their line manager or the Human Resources Department aware.
- 4.4 Decisions on the composition of appeal panels (and decision relating to non-attending witnesses, as referred to in Sections 9.6 and 11.6) within the Trust will operate under the authority of the Trust’s Staff Partnership Forum (SPF). These decisions will be delegated to designated senior members of the Human Resources Department and staff-side members of the SPF. Appeal panel composition decisions and decisions relating to non-attending witness statements (as referred to in Sections 9.6 and 11.6) will therefore be made in partnership between one member of staff-side and one senior member of Operational Human Resources. Where mutual agreement cannot be reached, the final decision will rest with the Director of Business Transformation, or in their absence, the Chief Executive.
- 4.5 The Human Resources Department is responsible for keeping the provisions within this policy in line with employment legislation and best practice people management principles. They are also responsible for ensuring that any disciplinary venues provide suitable access for disabled staff.
- 4.6 Managers, HR staff and trade union representatives are responsible for providing advice and guidance to employees on the application of this policy and procedure.
- 4.7 Management and trade union representatives are responsible for bringing any mutually beneficial improvements to this policy to the attention of the Trust.
- 4.8 All Trust employee (regardless of position within the Trust), any volunteer, commissioned services or persons associated with delivering services on behalf of the Trust, must not act in a way that breaches any of the following:

- Behaviour that has harmed, or may harm, a child, young person or vulnerable adult
- Possibly committed a criminal offence against, or related to, a child, young person or vulnerable adult
- Behaved towards a child, young person or vulnerable adult in a way that indicates s/he is unsuitable to work in a position of Trust

Any employee identified either within their work or as a consequence of actions within their personal life will be subject to Trust disciplinary procedures, LADO investigation (child and young person cases), criminal investigation and as appropriate investigation from their registering body (examples such as the GMC or HCPC). Identification of such incidents can come from various different sources. The Trust will take due regard of all allegations and working within the required multiagency agreements considering recommendations and actions necessary from all safeguarding professional to protect vulnerable people. This can/may include an employee being suspended and dismissed from the Trust.

5. Principles

- 5.1 The following procedure will be applied in all instances where disciplinary action is regarded as necessary by the Trust's management, except where an informal reprimand is given for a minor act of misconduct, or minor performance concerns, committed by an employee (refer to Section 7).
- 5.2 Under this policy outcomes will range from there being 'no case to answer', informal measures being taken, through to formal sanctions by way of formal warnings, actions short of dismissal, dismissal with notice and summary dismissal. These outcomes do not have to run in sequence, but will take into account the alleged misconduct or performance in each specific case. Employees will not ordinarily be dismissed for a first disciplinary offence unless it is regarded as gross misconduct.
- 5.3 Where time limits are referred to in the course of this procedure they may be reasonably varied by mutual agreement between the employee and the Trust.
- 5.4 The Trust and employees will meet their requirements with regards to reporting matters to professional bodies e.g. HCPC, GMC and Nursing and Midwifery Council (NMC) (as per the Trust's Variations in Clinical Practice and Clinical Competence and Professional Registrations Policies).
- 5.5 The Trust will act in accordance with the Caldicott Guardian Principles (or CSOP 2.2 Patient Confidentiality).
- 5.6 The Trust will work within the principles of Appendix 1 which details the safeguarding of children and adults who may be vulnerable.
- 5.7 Complaints of an anonymous and potentially serious nature received by the Trust will be considered on an individual basis.

6. Grievance or Dignity at work complaints raised during Disciplinary Procedures

- 6.1 ACAS recommends employers consider suspending disciplinary procedures where a grievance (or dignity at work complaint) is raised at any point during the disciplinary process. It is particularly important in cases that could result in dismissal that serious consideration is given to suspending the disciplinary process until the grievance or dignity at work complaint is fully investigated and the outcome reached.

- 6.2 If a decision is made by the commissioning manager not to suspend the disciplinary process following a grievance, or dignity at work complaint being raised, the employee can request that the joint chairs of SPF review the decision and make a recommendation. Where the joint chairs are unable to reach an agreement, the decision will be made by the Chief Executive.

7. Informal Approach

- 7.1 The Trust recognises that minor cases of misconduct, minor performance concerns or an initial attempt to manage poor performance may best be dealt with by informal measures rather than through the formal disciplinary procedure. This is viewed as the day to day management of the employee.
- 7.2 Informal measures may include one or more of the following: an informal verbal warning, advice, coaching, counselling, mediation, mentoring, training and retraining
- 7.3 Informal measures are not part of the formal disciplinary procedure (see section 9 below) and therefore there is no right of appeal against informal outcomes.
- 7.4 Where an informal verbal warning is issued, paper copies will be held locally and recorded electronically.
- 7.5 There is no statutory right for the employee to be represented at informal meetings with their manager, which include for example; meetings aimed at addressing minor cases of misconduct and performance issues. However the Trust will allow an employee to have representation if they so wish.

8. Suspension

- 8.1 In certain circumstances, consideration should be given to a period of suspension. These would include, for example, potential cases of gross misconduct, fundamental breach of contract, potential concerns regarding patient care and safety, where there is a perceived risk(s) to Trust property or responsibilities to other parties, or to aid an unhindered investigation. This may include matters outside of work which have the potential to affect employee/patient relations or the reputation of the Trust.
- 8.2 All suspensions within the Trust will be managed in accordance with The National Audit Office guidance 'The Management of Suspensions of Clinical Staff in NHS Hospital and Ambulance Trusts in England'.
- 8.3 The decision to suspend should be taken after careful consideration and will not be used as a form of punishment. In order to justify the use of a suspension, the decision making process should be fully evidenced and recorded so that the practice is always used as a neutral and protective act. The Incident Decision Tree (Managing NHS Suspensions) is one such tool which can be used. The Tree is reproduced in appendix 4.
- 8.4 Suspension should be carried out by the most senior manager available at the time after discussion with prior agreement from a Senior Manager (Band 8c or above), Director or Associate Director. The decision to suspend must be fully documented to ensure the information known at the time of the decision is recorded. The use and

duration of suspensions will be monitored by the Chief Executive and Senior HR Manager to ensure consistency and fairness of application.

- 8.5 The decision to suspend is not restricted to the point in time that the matter of concern comes to light but can be made at any time, where it is deemed appropriate or necessary to do so.
- 8.6 The use of suspension within this procedure is a neutral act and is not considered as disciplinary action. All suspensions within the Trust will be with full pay except as follows:
- In cases of demonstrable unauthorised absence;
 - Where an individual has never held or no longer holds the right to work in the UK as to continue to do so would be illegal;
 - Where the individual has not met the requirements of their suspension in respect to remaining contactable.
- 8.7 Alternative duties must take into account the contractual hours, including rota patterns, particularly in the case of flexible working agreements. Any decision to offer alternative duties must be discussed and mutual agreement made if hours of work or base location need to be varied.
- 8.8 Any alternative duties must be acceptable to all parties and must not cause the employee any financial or reputational loss.
- 8.9 Any decision to suspend will be subsequently confirmed in writing to the employee within 4 calendar days (extended by any bank holiday's falling within that time period). This will outline the reason for the suspension and, where it has been possible to make arrangements, the details of their nominated welfare contact. The manager should contact Human Resources Department to obtain the standard format letter.
- 8.10 It is a condition of suspension that the employee does not undertake employment elsewhere, except where the Trust's prior written permission has been given as per the Secondary Employment Policy.
- 8.11 The employee must remain contactable throughout any period of suspension. This includes the requirement for the employee to notify the Human Resources Department of any change of address whether temporary or otherwise.
- 8.12 Employees under suspension must not enter Trust premises or use any Trust property without permission of the person who has suspended them or as otherwise advised in their suspension letter.
- 8.13 Should an employee wish to book annual leave whilst suspended then a request for annual leave must be made and approved by the person who has suspended them or as otherwise advised in their suspension letter.
- 8.14 Should an employee become ill whilst suspended then normal sickness absence rules will apply.

FORMAL APPROACH

9. Investigation

- 9.1 When a potential disciplinary or performance matter arises, the employee will be notified of this and an investigation will be carried out promptly to establish the facts of the case. Where deemed appropriate by the Trust, a thorough and prompt investigation will be undertaken by an investigator(s) operating outside their normal

area of responsibility/location, giving due consideration to any circumstances that may give rise to actual or potential conflict. However, in exceptional circumstances, the employee will not be notified of the investigation where it is being carried out under the LCF/HR Liaison Policy, at the request of the Police or as a result of a high level CRB notification. In these circumstances the investigation may also be delayed.

- 9.2 The methods of the investigation will vary depending on the circumstances. In some cases this will require the holding of an investigatory meeting with the employee and/or obtaining a written statement from them. In others, this may not be necessary and the investigatory stage will involve the collation of information. The Trust reserves the right to dispense with an investigatory interview and to proceed directly to a formal hearing where appropriate.
- 9.3 Where appropriate, statements will be obtained from, or interviews conducted with, any relevant available witnesses. Those making statements and/or being interviewed as part of the investigation will be told why, and that, they may be required to attend any formal hearing to give evidence.
- 9.4 Employees, and their companions, should co-operate fully with the operation of this policy including making every effort to attend investigatory meetings and doing so without causing unreasonable or unnecessary delay. This may necessitate attendance outside of the employee's and/or their companion's (where they are an employee of the Trust) rostered hours and/or normal working pattern.
- 9.5 The full investigation must be concluded within 6 weeks from the date that the incident is known about by the Trust. If this has not happened, this will be reported to the Chief Executive, with the rationale for the delay. The responsibility to generate this report lies with the investigating manager, or Senior HR if the investigating manager has not been appointed, or is out of the workplace.
- 9.6 If a witness or complainant has made a statement but is not available for questioning, or it would not be appropriate or reasonable in the circumstances to invite them for questioning, all such statements will be included as part of the investigation and should be considered in the context of the overall investigation. For instance, it may not be viable, appropriate or reasonable in the circumstances to undertake investigatory meetings with patients/clients, the relatives of patients/clients or members of the public. In such cases, written statements will be relied upon.
- 9.7 If a witness or complainant has requested that they remain anonymous, the Trust will attempt to maintain their anonymity where there is a reasonable belief that not to do so could cause them personal detriment or harm. Any such decisions will be made bearing in mind the Trust's obligations to the employee to complete a fair and reasonable investigation. This means that there may be occasions when, for example, only the investigator and their HR support are aware of their name(s) or alternatively where, the necessity to conduct a fair and reasonable investigation may mean that details need to be disclosed despite it being against the witness's or complainant's wishes.
- 9.8 The employee may, during the investigation, take the opportunity to accept responsibility for a breach of conduct, under a 'quick resolution.' A full investigation may be forestalled by the individual substituting a full and detailed explanation for their conduct. This approach could be via management, but most likely requested by the employee or their representative. A single disciplinary sanction may be applied, with the prior agreement of all parties, and conducted by the Line Manager,

upon advice of the commissioning Manager (where these two roles are separate), with a member of the Human Resources Department present. For certain conduct issues this option would not be appropriate and instead a hearing should be convened. This is of particular importance related to safeguarding concerns and where the potential for criminal convictions exists.

Disciplinary sanctions available under this paragraph 9.8 are oral warning up to and including a final written warning. Staff should be advised of the disciplinary sanction before a 9.8 is agreed. By their nature, 9.8 discussions are “without prejudice” and should not form part of the Investigation Pack, any other documentation, or be verbally referred to at a later date should the 9.8 not be accepted.

In the event that all parties do not agree as to whether this approach is appropriate, the joint chairs of SPF will review the decision and reach an agreement. Where the joint chairs are unable to reach an agreement, the final decision will be made by the Chief Executive.

10. Outcome After Investigation

10.1 Once the investigation has been completed, the investigator(s) will submit an Investigation Report to the manager from whom the request to investigate was made (e.g. commissioning manager). The role of the investigating manager is to present a comprehensive investigation report. It is not normally their role to make recommendations on any further disciplinary actions arising from the investigation itself. The commissioning manager, or other appropriate manager, will then take a view on whether there is no case to answer, deal with it informally, or arrange for it to proceed to a formal disciplinary hearing. A decision as to whether to proceed with the disciplinary procedure or not, will be made within 7 days by the commissioning manager, after receipt of the investigation report. It would normally be best practice to seek the advice of the Human Resources Department before proceeding.

10.2 No Case to Answer

10.2.1 Where the facts of the case indicate that there is no case to answer then no further action will be taken and the employee should be notified accordingly.

10.3 Informal Warnings, Coaching, Counselling, Mediation, Mentoring, Training and Retraining

10.3.1 When appropriate, matters can be dealt with by informal mechanisms. This informal approach can be adopted where it is considered that the employee will fully co-operate and respond positively with this less formal approach.

10.3.2 Where an informal approach is taken, the relevant manager tasked with dealing with the matter should ensure that problems are discussed with the objective of encouraging and helping employees to improve.

10.3.3 A note of any informal warning, coaching, counselling, mediation, mentoring, training or retraining should be kept. This may be done in the form of a file note and/or a letter to the employee, as appropriate. This should outline the details of the conduct or performance issue, the improvement and/or standard required, the time scale allowed for this and what action will be taken if they fail to improve either their performance or behaviour. Where informal verbal warnings are issued, a record of this will be stored

electronically.

10.4 Formal Disciplinary Procedure

10.4.1 Where informal measures have not been successful and/or the facts of the case deem it appropriate, the matter should progress to formal disciplinary hearing.

11. Formal Disciplinary Hearing

11.1 Where it is determined that the matter should be handled formally, a hearing will be arranged as soon as is reasonably practical, and in any case within 28 days of the decision.

11.2 The employee will be notified in writing of the arrangements for the hearing together with the nature of the allegation(s) which are to be considered by the disciplinary panel and what the possible outcomes could be. They will also be advised of how they can exercise their right to be accompanied at the hearing (see Section 15).

11.3 Where the Trust has knowledge of multiple allegations that have not been dealt with previously, prior to the disciplinary hearing, if these allegations are considered to come under the disciplinary policy, they need to be fully disclosed and considered by the disciplinary panel. Imposing a sanction and then retrospectively bringing further separate action would be deemed unreasonable, if the Trust had knowledge of outstanding allegations at the time of the formal hearing. Notwithstanding any allegations undergoing criminal, or NHS fraud investigations at the time of the hearing.

11.4 Management is required to provide the employee with a written statement of its case at least 14 calendar days prior to the hearing including copies of any witness statements upon which management intends to rely. The employee will provide a written statement of their case at least 7 calendar days prior to the hearing, together with any witness statement(s) upon which they intend to rely. Both parties will agree which communication route is best to circulate these statements. At these times both parties will identify in their statement of case the name(s) of any witness(es) they intend to call.

11.5 Employees, and their companions, should co-operate fully with the operation of this policy including making every effort to attend disciplinary hearings and do so without causing unreasonable or unnecessary delay. This may necessitate attendance outside of the employee's and/or their companion's (where they are an employee of the Trust) rostered hours and/or normal working pattern.

11.6 If a witness or complainant has made a statement but is not available to attend the disciplinary hearing, or it would not be viable, appropriate or reasonable in the circumstances to invite them to do so, all such statements will be submitted to the disciplinary panel and should be considered in the context of the overall hearing. It is not normal Trust policy to involve patients/clients, the relatives of patients/clients, or members of the public as witnesses at disciplinary hearings and thus where available, the written statement of any such individuals will be relied upon for evidence.

11.7 If a witness or complainant has requested that they remain anonymous, this will not preclude the Trust from taking matters forward. In such cases, the Trust will attempt to maintain their anonymity where, for instance, there is a reasonable belief that not to do so could cause them personal detriment or harm. Any such decisions will be made bearing in mind the Trust's obligations to the employee to undertake a fair and reasonable hearing and therefore the Trust can only provide anonymity where there

are fundamental grounds to do so. Decisions regarding the necessity to retain anonymity will be considered at each stage of the formal process. It may be that due to the potential risks, only the investigator and their HR support are aware of their name(s). If the matter proceeds to a formal hearing, these names may remain anonymous, be restricted to the panel or, the disciplinary panel may determine anonymity can not be maintained and that details will be disclosed despite it being against the witness's or complainant's wishes. If any of this paragraph applies, it will be noted within the management statement of case. The individual who raised the anonymous complaint will be advised by the panel that their anonymity cannot be maintained.

- 11.8 It is the responsibility of the parties concerned to arrange for the attendance of their witnesses. In the case where witnesses are employees of the organisation the respective managers should be informed. Time off with pay or time off in lieu will be granted for them to attend the hearing. Witnesses who are employees of the Trust are expected to attend outside of their rostered hours and/or normal working pattern where necessary.

12. Formal Disciplinary Hearing Outcomes

- 12.1 Following the hearing, the panel must decide whether disciplinary action is justified or not. The decision of the panel may initially be provided verbally in the first instance. In all cases, the employee will be provided with the outcome in writing normally within 7 calendar days unless advised by the panel that a longer time period is required.

- 12.2 In the event of a longer time period being required for the Panel to reach its decision, mutual agreement will be sought on the best way to deliver the outcome to the individual(s). Options may include either a face to face meeting or telephone conversation with the Panel Chair and the individual.

- 12.3 The Trust should not disclose previous disciplinary sanctions that have expired with the panel at any stage of the hearing or on deciding outcomes.

- 12.4 The Trust should only disclose current sanctions to the panel when they are considering the level of sanction to apply, and not during the hearing or prior to a decision being made over whether there is a case to answer.

- 12.5 The potential outcomes following the hearing could therefore be as follows:

12.6 No Case to Answer

Where the facts of the case indicate that there is no case to answer the individual will be notified in writing.

12.7 Outcomes Where There is a Case to Answer

- 12.7.1 Where it is found that there is a case to answer and disciplinary action is justified, the panel will consider what outcome is appropriate. The outcomes listed below do not need to be applied sequentially but should be determined based on the seriousness of the case.

- 12.7.2 Before making their decision, the panel will take account of the following when determining which of the potential outcomes available to them will be applied:

- the employee's current disciplinary and general record;
- actions taken in any previous similar case;

- the explanations or extenuating circumstances provided by the employee; and most importantly,
- whether the intended action is reasonable under the circumstances.

12.8 No Further Action

Applied exceptionally where the facts of the case indicate that there is a case to answer but where the panel determines that the existence of significant or fundamental contributory factors would make the issuing of a formal sanction or informal warning unwarranted and other informal measures would serve no purpose.

12.9 Informal Warnings, Coaching, Counselling, Mentoring, Training and Retraining

Where the facts of the case indicate that the matter should be handled informally, this may include use of informal warnings, coaching, counselling, mentoring, training and retraining (see Section 7).

12.10 Formal Disciplinary Action

Where the facts of a case call for formal action then the following may be imposed as outlined under Section 13 below:

- i) No Penalty
- ii) First Written Warning
- iii) Final Written Warning
- iv) Dismissal or Action Short of Dismissal
- v) Summary Dismissal

13. Formal Disciplinary Action Sanctions

13.1 First Written Warning

13.1.1 If the infringement or poor performance is regarded as more serious, or if following informal action the desired improvements have not been achieved, then the employee should be given a written warning. The employee should be advised in writing of the warning, the nature of the conduct or performance issue, the improvement and/or standard required, the time scale allowed for this and be notified of the period of time that the warning will remain 'live'. The employee will also be notified that failure to improve, modify behaviour or achieve the required standard of conduct may lead to further disciplinary action under this policy. The employee will also be advised of their right of appeal.

13.1.2 A copy of the letter notifying the employee of the First Written Warning will be kept by the Human Resources Department.

13.1.3 A first written warning will normally apply for a period of 12 months and be disregarded after that time provided there are no further and similar instances of misconduct or poor performance during this time.

13.2 Final Written Warning

13.2.1 Where there is a failure to improve or achieve/maintain the required standard of conduct despite having been subject to a prior warning, or where the infringement or poor performance is sufficiently serious, the employee should normally be given a final written warning.

13.2.2 The employee should be advised in writing of the warning, the nature of the conduct or

performance issue, the improvement and/or standard required, the time scale allowed for that and be notified of the period of time that the warning will remain 'live'. The employee will also be notified that failure to improve or modify behaviour may lead to further disciplinary action under this policy, including dismissal or action short of dismissal. The employee will also be advised of their right of appeal.

13.2.3 A copy of the letter notifying the employee of the Final Written Warning will be kept by the Human Resources Department.

13.2.4 A final written warning will normally apply for a period of 12 months and be disregarded after that time provided there are no further and similar instances of misconduct or poor performance during this time.

13.3 Dismissal or Action Short of Dismissal

13.3.1 Where there is a failure to improve or achieve/maintain the required standard of conduct or performance despite having been subject to a prior warning, or in cases where the infringement, conduct or poor performance is sufficiently serious, or where there has been a serious breach of contract, then the decision may be to dismiss with notice or issue another sanction amounting to 'action short of dismissal'.

13.3.2 Action short of dismissal may include,

- suspension without pay for a period of time
- a change in role either on a permanent or temporary basis (where a suitable role is available)
- demotion to a lower grade job either on a permanent or temporary basis (where a suitable role is available).

These would generally be issued as an alternative to dismissal and would normally be done in conjunction with the issuing of a formal warning. Where a change in role or demotion is sanctioned, the terms and conditions including salary for that post will apply.

13.3.3 A letter should be sent to the employee confirming the reasons for the dismissal or other sanction (including any relevant pay and/or terms and conditions changes) within 7 calendar days. An HR2 should be enclosed for the employee to accept the terms of action short of dismissal. If the employee does not agree to the action by signing and returning the HR2 within 7 calendar days of receipt or rejects a change of role then dismissal would apply. In the case of dismissal the letter should give the date of termination of employment, setting out the period of notice or payment in lieu of notice to which the employee is entitled and advise them of their right of appeal.

13.3.4 Authority to dismiss within the Trust falls within the responsibilities of persons;

- Substantive positions of Agenda for Change Band 8c or above
- Seconded managers in roles attracting AfC Band 8c or above (who have gone through the normal/full recruitment and selection process). This does not apply to those on development opportunities
- Substantive band 8b post holders with the agreement of the joint SPF chairs

For any manager that fall out of these parameters, the appropriateness of them being permitted to dismiss would need to be considered by the joint chairs on an individual basis.

Managers who may be undertaking these responsibilities for the first time would be

provided with the required level of HR support applicable to their developing skills set and experience.

13.4 Summary Dismissal

13.4.1 There are certain offences that are regarded as so serious that if they are committed by an employee then dismissal would normally follow. These offences are regarded as gross misconduct, and some examples of gross misconduct likely to result in dismissal are listed in Section 13.7. In the event that an employee commits an act of gross misconduct, the Trust will be entitled to terminate summarily the employee's contract of employment without notice or pay in lieu of notice.

13.4.2 In exceptional circumstances, where an employee is on long term sickness absence it may be deemed appropriate to continue with the disciplinary process after taking advice from the relevant department and having given due consideration to the individual circumstances.

13.4.3 A letter should be sent to the employee confirming the reasons for the dismissal, the date of termination of employment and their right of appeal within 7 calendar days. The line manager is responsible for ensuring the collection/return of all Trust property.

13.4.4 Authority to summarily dismiss within the Trust falls within the responsibilities of persons;

- Substantive positions of Agenda for Change Band 8c or above
- Seconded managers in roles attracting AfC Band 8c or above (who have gone through the normal/full recruitment and selection process). This does not apply to those on development opportunities
- Substantive band 8b post holders with the agreement of the joint SPF chairs

For any manager that fall out of these parameters, the appropriateness of them being permitted to dismiss would need to be considered by the joint chairs on an individual basis.

Managers who may be undertaking these responsibilities for the first time would be provided with the required level of HR support applicable to their developing skills set and experience.

13.5 Misconduct or Misdemeanours

The following non exhaustive list sets out examples of misconduct or misdemeanours:

- Unauthorised Absence;
- Poor standard of work;
- Poor or erratic time keeping;
- Provocative, abusive or turbulent behaviour including instances of insubordination;
- Minor breaches of procedure likely to undermine efficient management or jeopardise the safety of other employees, patients or members of the public;
- Failure to comply with requirements to declare interests, gifts and hospitality received;
- Minor occurrences of, misuse of, or failure to safeguard confidential information and/or patient data.

This list is neither exclusive nor exhaustive. Whether or not a particular action constitutes an offence, which falls into this category, will depend upon a number of factors including the degree of seriousness and the responsibilities of the employee. Management action following an offence will take into account any extenuating circumstances together with the employee's previous record.

13.6 Examples of Gross Misconduct

The following non exhaustive list sets out examples of gross misconduct

- theft, fraud and deliberate falsification of records
- inappropriate behaviour including physical violence or sexual misconduct at work
- serious bullying, harassment or unlawful discrimination
- deliberate and/or serious misuse or damage to Trust property or name
- bringing the Trust into serious disrepute
- serious incapability whilst on duty brought on by alcohol or illegal drugs
- serious negligence which causes or might cause unacceptable loss, damage or injury
- serious infringement of health and safety rules
- serious breach of confidence (subject to the Public Interest (Disclosure) Act 1998)
- serious act of insubordination
- criminal conviction outside work which could affect employee/patient relations or amount to a breach of trust
- misuse of Trust IT and/or communications equipment and systems for example deliberately accessing pornographic, offensive or obscene material liable to cause offence
- serious breach of confidentiality
- breach of contract of employment – any fundamental breach of contract or conduct which renders impracticable continuation of effective employment;
- misuse of or failure to safeguard confidential information and/or patient data.

This list is neither exclusive nor exhaustive. Whether or not a particular action constitutes an offence, which falls into this category, will depend upon a number of factors including the degree of seriousness and the responsibilities of the employee. Management action following an offence will take into account any extenuating circumstances together with the employee's previous record.

14. Disciplinary Appeals Procedure

14.1 An employee may appeal against any formal disciplinary sanction imposed.

14.2 How to Appeal

14.2.1 Appeals should be made in writing to Senior HR within 7 calendar days of receipt of the letter informing them of the outcome of the formal hearing.

14.2.2 When lodging an appeal, the employee should state the grounds of their appeal, which are likely to fall into three categories:

- 1) the outcome (finding that they have committed the alleged act(s) of misconduct or poor performance);

- 2) the level of the sanction imposed;
- 3) procedural issues

- 14.2.3 The grounds on which the employee chooses to appeal will be considered when determining how the appeal will be handled. For example, if the grounds for the appeal relate to the level of the sanction imposed, then the appeals panel may confine their deliberations to this issue. If it is claimed that there are procedural irregularities it may be necessary to conduct the appeal on the basis of a re-hearing to remedy any potential previous failings.
- 14.2.4 Any appeal will normally be heard within 28 calendar days of receipt of the appeal letter, unless exceptional circumstances arise including, for example, issues regarding the availability of the relevant parties. In such cases, the Human Resources Department will notify the employee of the delay, which will not normally be more than an additional 14 calendar days, and reason for it.
- 14.2.5 In cases where ACAS pre conciliation has been instigated following a formal disciplinary sanction being imposed, such as a dismissal, an appeal may be postponed pending the outcome of the conciliation only if agreeable to the employee instigating ACAS action.
- 14.2.6 The employee should provide management with a written statement of case at least 14 calendar days prior to the appeal hearing including copies of any witness statements upon which they intend to rely. Management will provide a written statement of their case at least 7 calendar days prior to the appeal hearing, together with any witness statement upon which they intend to rely. Both parties should identify in their statement of case any witnesses they intend to call. All statements will be submitted to the hearing(s) and where statements are not agreed this will be identified to the Chair, who will make the final decision regarding the validity of the content of the statement.
- 14.2.7 It is the responsibility of the parties concerned to arrange for the attendance of their witnesses. In the case where witnesses are employees of the organisation, time off with pay, or time off in lieu will be granted for them to attend the hearing. It is not normal Trust policy to involve patients/clients/relatives or members of the public as witnesses at the meeting and the written statement will be relied on for evidence.

14.3 Level of Appeal

14.3.1 Warning

An employee's appeal against a first or final warning will normally be heard by a more senior manager than the person who issued the warning.

14.3.2 Dismissal or Action Short of Dismissal

An employee's appeal against dismissal or action short of dismissal will be heard by a panel of two, one of which must be an Executive Director decided by the Joint Chairs SPF. There will also be support from the Human Resources Department where the Director responsible for Human Resources is not a panel member.

14.3.3 Appeals will be heard within 28 days of the request for an appeal being received.

14.4 Appeal Outcome

14.4.1 Upon completion of the appeal, and after adjournment, the Chair of the hearing will convey the decision to the employee. This decision is final. The decision will be

confirmed in writing within 7 calendar days from the receipt of the outcome letter. In exceptional circumstances, the Chair of the panel may extend this deadline and will provide written explanation for the delay to the employee.

14.4.2 The outcome of an appeal will be to confirm, decrease or cancel the disciplinary sanction imposed.

14.4.3 An appeal will never be used as an opportunity to punish the employee for appealing the original decision and will not result in any increase in sanction or penalty.

14.4.4 If the panel issues or upholds action short of dismissal the outcome letter should be sent to the employee confirming the reasons for the decision (including any relevant pay and/or terms and conditions changes) within 7 calendar days of the hearing. A HR2 should be enclosed for the employee to accept the terms of action short of dismissal. If the employee does not agree to the action by signing and returning the HR2 within 7 calendar days of receipt or rejects a change of role, then dismissal would apply. In the case of dismissal the letter should give the date of termination of employment, setting out the period of notice or payment in lieu of notice to which the employee is entitled.

15. Right to be Accompanied

15.1 All employees will have the right, if they wish, to be represented by a work colleague, Trade Union representative, or an official employed by a trade union at all stages of the policy/procedure. This right must be brought to the attention of the employee by the manager. A trade union representative who is not an employed official must have been certified by their union as being competent to accompany a worker.

15.2 Employees will not be entitled to bring a person acting in a legal capacity, unless exceptionally entitled to do so under the common law currently in force at the time of the hearing. Any such decision will be determined by the Human Resources Department whose decision will be final.

15.3 To exercise the right to be accompanied employees must make a reasonable request identifying who, from those in paragraph 15.2, they wish to attend as their companion. What is reasonable will depend on the circumstances of each individual case. However, it will not normally be considered reasonable, and therefore employees would not be eligible to exercise their right to be accompanied, when they:

- insist on being accompanied by a companion whose presence would prejudice the hearing;
- ask to be accompanied by a companion from a remote geographical location if someone suitable and willing was available on site;
- insist on being accompanied by a specific companion in situations where this would cause unreasonable or unnecessary delay.

15.4 In respect to bullet point 3 above (section 15.4), the Trust will however, permit the employee to provide an alternative date for a disciplinary hearing or appeal in situations where the chosen companion cannot attend on the hearing date initially proposed by the Trust. This will only be permitted on one occasion. In this situation, the alternative date provided by the employee should fall within 14 calendar days of the original planned date. Where the Trust is unable to facilitate the offered alternative date, the Trust will reschedule a date as soon after the 14 calendar day period as is possible.

15.5 At disciplinary hearings and appeals, the companion should be allowed to address the hearing to put and sum up the employee's case, respond on behalf of the employee to

any views expressed at the meeting and confer with the employee during the hearing. The companion does not, however, have the right to answer questions on the employee's behalf, address the hearing if the employee does not wish it or prevent the Trust from explaining the case.

16. Confidentiality

- 16.1 All information at any stage of this procedure, whether it is written or verbal information, must be treated as confidential information by all parties. Failure to do so may result in disciplinary action being taken.
- 16.2 All records should be kept by all parties in accordance with the Data Protection Act 1998. The Data Protection Act gives individuals the right to request and have access to certain personal data.

17. Dealing with Special Situations

Accredited Trade Union Representatives

- 17.1 Where disciplinary action is being considered against an employee who is a trade union representative the normal disciplinary procedure should be followed. In such cases the Human Resources Department will inform one of the staff side members of the Staff Partnership Forum and/or an official employed by the union after obtaining the employee's agreement.

Criminal Charges or Convictions Outside Employment

- 17.2 If an employee is charged with, or convicted of, a criminal offence consideration will be given to what effect it has, or will have, on the employee's suitability to work within the Trust, do their job, and the effect of the charge or conviction on their relationship with the Trust, work colleagues, customers and patients. In all cases managers, having considered the facts, will need to decide whether the conduct is sufficiently serious to warrant initiating the disciplinary procedure. The Trust's decision is independent of any criminal action. Charges or convictions should not be treated as automatic reasons for dismissal.
- 17.3 Where the police and/or Local Counter Fraud Specialist have to be involved in an investigation, (e.g. when an allegation of fraud or maltreatment of patients occurs), then advice from a member of the Human Resources Department should be sought.
- 17.4 Any employee who is being investigated has been charged with or is being prosecuted for **any** criminal or motoring offence relating to them must inform their line manager in writing of the relevant details at the outset or the earliest opportunity thereafter.
- 17.5 Under the Forfeiture or Reduction of NHS Pension Scheme Benefits employees should be aware that in certain circumstances convictions may have a negative impact on their pension.

18. Policy Review

- 18.1 This policy will be reviewed on an annual basis or amended in the light of new employment legislation and/or relevant case law.

EAST OF ENGLAND AMBULANCE SERVICE NHS TRUST

Safeguarding Children and Adults who may be Vulnerable

The role of the Trust and its responsibilities when there is an allegation against a member of staff¹ and also the role of Local Area Designated Officer (LADO)

1. Introduction
 - 1.1 Working Together to Safeguard Children (2013) Chapter 2 (Section 11) says that;

Organisations should have in place arrangements that reflect the importance of safeguarding and promoting the welfare of children: clear policies in line with those from the Local Safeguarding Children's Board (LSCB) for dealing with allegations against people who work with children.
 - 1.2 In clarifying the above point it is also given to apply in situations where an individual is deemed to have;
 - Behaved in a way that has harmed, or may harm, a child
 - Possibly committed a criminal offence against, or related to, a child; or
 - Behaved towards a child or children in a way that indicates they may pose a risk of harm to children
 - 1.3 *Working Together* also makes clear that the framework above applies to a wider range of allegations than direct abuse of a child. It also means that the process has to be followed where there is an allegation that might indicate that the alleged perpetrator is unsuitable to work with children in his or her present position, or in any capacity.
2. Local Area Designated Officer (LADO)
 - 2.1 Each county and unitary local authority should have a Local Area Designated Officer (LADO). Usually two or three cover each area. They are employed by the County Council or unitary local authority, and will normally come from either a social care or educational background.
 - 2.2 Their overarching role is to see that cases and their progress are monitored effectively and to ensure that they are dealt with in a timely fashion, and that the process is fair, consistent and thorough.
3. All references in this document to 'members of staff' and individuals should be interpreted as meaning all staff, whether they are in a paid or unpaid capacity
4. What does this mean to us?
 - 4.1 As mentioned above, *Working Together* makes clear that the framework above applies

to a wider range of allegations than direct abuse of a child. It also means that the process has to be followed where there is an allegation that might indicate that the alleged perpetrator is unsuitable to work with children in his or her present position, or in any capacity.

4.2 It must be remembered that there could be a number of strands to an investigation. These might include

- A police investigation of a possible criminal offence
- Consideration of the East of England Ambulance Service NHS Trust (EEAST) - as employer - of disciplinary action in respect of the individual
- Enquiries and assessment by children's social care about whether a child is in need of protection or in need of services.
- Serious Incident (SI) investigation
- Parallel investigations by other agencies

4.3 In practice there are a range of situations outside of obvious and direct abuse whereby procedures need to be instigated. This might include, for example where information comes to light that an individual is, or has been investigated by the police in relation to accessing inappropriate websites (involving children), and/or downloading inappropriate images or materials, or where that information comes to light from other sources, for example through whistleblowing.

4.4 It is also given to mean situations where, as an individual's employer we become aware that the individual may be implicated, or that there may be an allegation against the individual, in a situation – as listed above - outside of his employment with the EEAST. Again, our paramount concern will be around that individual's suitability to work with children at that time.

5. As a manager, how does this affect me?

5.1 Upon receipt of information regarding an allegation against an individual, action will be initiated as per the Trust's Disciplinary Policy (Managing Conduct and Performance).

5.2 If the allegation / investigation is in relation to any of the above mentioned points (see also extended list at Appendix 2) the Trust's Safeguarding leads should be contacted and advised (please see list at Appendix 3).

5.3 Equally, if you are not sure if the allegation is relevant to safeguarding then please contact one of the safeguarding leads for advice.

6. Safeguarding Lead

6.1 The Trust's Safeguarding lead will be able to provide advice on the specific processes involved in investigating an allegation against a member of staff, particularly in relation to the interaction with the relevant LADO.

6.2 The named professionals are also the designated senior managers with responsibility for ensuring that allegations against staff* are investigated, specifically in relation to the protection of children as per Working Together 2013, but equally the same applies to vulnerable adults. The designated senior manager also provides the link between the Trust, the LADO and any other relevant stakeholders to the investigation.

**(The Trust will appoint a local Investigating Officer / Manager as per the Trust's Disciplinary Policy (Managing Conduct and Performance))*

6.3 The Trust, normally through one of the named professionals should inform the relevant LADO – as per LSCB procedure – within 24 hours of initial notification. (The duty LADO can be accessed via the relevant children's services out of hours).

6.4 One of the named professionals, as designated senior managers with responsibility for allegations against staff will normally attend the initial strategy meeting and any subsequent strategy meetings convened by the LADO.

6.5 The named professionals will liaise between the following agencies and key people;

- Trust Human Resources Department and designated HR Business Partner for the investigation
- Trust Investigating Officer
- the Police
- Local Area Designated Officer
- other agencies – as appropriate

Further Information

Further information on our responsibilities can be found in the publication **Working Together to Safeguard Children; A guide to inter-agency working to safeguard and promote the welfare of children;** HM Government March 2013.

The relevant areas of the guide are Chapter 2 (Section 11) and Appendix 5.

This is also available on line at

<http://www.education.gov.uk/>

References:

HM Government (2013) *Working Together To Safeguard Children; A guide to inter-agency working to safeguard and promote the welfare of children*

Website:

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/281368/Working_together_to_safeguard_children.pdf

Department for Education and Skills (2009); *Guidance for safer working practice for adults who work with children and young people*

Website: www.dcsf.gov.uk/everychildmatters/resources-and-practice

Department for Education and Skills (2006); *Safeguarding Children and Safer Recruitment in Education*

Website: www.dcsf.gov.uk/everychildmatters/resources-and-practice

East of England Ambulance NHS Trust; *Disciplinary Policy (Managing Conduct and Performance); August 2009*

Additionally each of the Local Safeguarding Children Boards in the region will have specific protocols in relation to managing allegations against staff.

Situations where instigation of an investigation and sharing of information with a LADO should be considered

Where an individual¹;

- Behaved in a way that has harmed, or may harm, a child
- Possibly committed a criminal offence against, or related to, a child; or
- Behaved towards a child or children in a way that indicates s/he is unsuitable to work with children

Also situations where an allegation indicates that the alleged individual might be deemed unsuitable to continue to work with children, where;

- There is an allegation that they have accessed inappropriate materials, for example on the internet, an example being accessing websites which show children being abused
- Where there is an allegation that they have downloaded inappropriate images of a similar nature
- Where there have been allegations in relation to activities that an individual may have been involved in outside of their employment (this includes allegations of domestic violence).
- Having a sexual relationship with a person under the age of 18 if in a position of trust in respect of that child, even if consensual.
- Grooming, i.e. meeting a child under 16 with intent to commit a relevant offence
- Other 'grooming' behaviour giving rise to concerns of a broader child protection nature; e.g. inappropriate text / email messages or images, gifts, socialising etc.
- Possession of indecent photographs/pseudo-photographs of children

The above list is not exhaustive, and advice should always be sought if you are unsure.

¹. All references in this document to 'members of staff' should be interpreted as meaning all staff, whether they are in a paid or unpaid capacity

Trust Safeguarding Contact

	Dr Andy Carson Named Doctor for Safeguarding
	Caroline Sexby Named Professional for Safeguarding and Designated Senior Manager for Allegations against staff Telephone: 07917 657192 Email: caroline.sexby@eastamb.nhs.uk

The Incident Decision Tree flow chart

Please ensure you have read supporting guidance on using the tree.

