



London Ambulance Service **NHS**
NHS Trust

Disciplinary Policy and Procedure

DOCUMENT PROFILE and CONTROL

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This document sets out the policy and procedure for disciplinary matters.

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HR014	Grievance Policy	
HR015	Alcohol, drugs and solvent misuse policy	
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HR039	Policy and Procedure on the Management of Safeguarding Allegations Against Staff	

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1 Introduction

- 1.1 It is vital that the London Ambulance Service NHS Trust is held in high regard by the community. Everyone has a responsibility to maintain high standards of performance and integrity.
- 1.2 This Policy outlines the Trust's expected standards of conduct for all employees and its approach to dealing with disciplinary matters when these standards are alleged to have been breached.
- 1.3 The Disciplinary Policy is to help staff maintain and improve the levels of performance and conduct expected by the public. The primary function of the Policy is not to impose warnings but to ensure that all staff are dealt with fairly and constructively. Training and/or guidance should be used to help the employee achieve the required levels of conduct and performance.
- 1.4 When appropriate, informal resolution of issues may be used where the parties agree in advance to this. This may be particularly suitable in circumstances such as there being specific difficulties in a working relationship or a clash of personalities. Informal resolution should not be used as a substitute for investigation and possible disciplinary action in circumstances of alleged misconduct.
- 1.5 Informal resolution may also be considered following disciplinary action as a means of helping those involved to 'move on' in regards to their working relationships.
- 1.6 The Policy is intended to cover all cases of misconduct and those instances of poor work performance which do not result from a genuine lack of capability on the part of the employee. Where capability is an issue that needs addressing then the Managing Performance Capability Policy should be used.

2 Scope

- 2.1 This Policy and Procedure applies to all employees.

3 Objectives

- 3.1 To outline the standards of conduct and performance expected of all employees.
- 3.2 To advise on how allegations of misconduct may be investigated and, as necessary addressed.
- 3.3 To provide advice to help ensure the fairness and consistency of decisions regarding disciplinary matters.

4 Responsibilities

- 4.1 All employees have a responsibility to work within the standards of conduct identified in this document.
- 4.2 Managers have a responsibility to monitor standards of conduct and to address misconduct as necessary.

5 Legal

- 5.1 This policy is in line with the ACAS Code of Practice on Disciplinary and Grievance Procedures as well as the ACAS Guide – Discipline and Grievance at Work.

6 Standards of conduct and performance

6.1 Context

- 6.2 The nature of the work of the London Ambulance Service NHS Trust is that most employees are either delivering an urgent care and emergency service or directly support those delivering this service. Key objectives are both the saving of life, and preservation of the quality of individual's lives. The Service is both geographically spread and dependent on the autonomy of small teams and individuals – hence a high level of trust both between management and staff as well as between colleagues is essential. It is essential that everyone who works for the Trust takes personal responsibility for their conduct and performance.

6.3 Purpose and values

- 6.4 Purpose:

- 6.5 The London Ambulance Service is here to care for people in London: saving lives; providing care; and making sure they get the help they need.

6.6 Values

- 6.7 In everything we do, we will provide:

- 6.8 **Clinical excellence:** giving our patients the best possible care; leading and sharing best clinical practice; using staff and patient feedback and experience to improve our care.

- 6.9 **Care:** helping people when they need us; treating people with compassion, dignity and respect; having pride in our work and our organisation.
- 6.10 **Commitment:** setting high standards and delivering against them; supporting our staff to grow, develop and thrive; Learning and growing to deliver continual improvement.
- 6.11 These values are communicated to all staff with the expectation that they become integrated into the way everyone does their job.
- 6.12 Other standards of conduct and performance
- 6.13 Other standards of conduct and performance apply either service-wide or to specific staff groups and individuals. These include: National standards of professionalism for example those laid out by the Health and Care Professions Council (HCPC); legislation and Trust policies concerning Equalities and Health and Safety, LAS policies such as the Policy Statement of Duties to Patients, TP/065 - Conduct on the Road Procedure, Alcohol, Drug and Solvent Misuse Policy as well as dress codes, job descriptions and job competencies.
- 6.14 Standards of conduct and performance are communicated both at the recruitment and induction stage and on an ongoing basis including via formal training, National clinical practice guidelines as well as appraisal systems, briefings, and conferences.
- 6.15 Documents setting out expected standards are made available on the Pulse via the weekly Routine Information Bulletin and ad hoc specialist bulletins.
- 6.16 Employees' terms and conditions of service are provided in their contract of employment/statement of particulars and associated paperwork. Alongside the standards expected of employees, this also details the support that is available. These are reinforced by the HR policies and procedures which are available on The Pulse. Wilful breaking of contractual rules and standards, or abuse of contractual provisions may be a disciplinary offence.

7 Principles

- 7.1 The following outlines some of the key principles around the Disciplinary Policy:
- 7.2 The Disciplinary Policy outlines the standards of performance and conduct expected of all employees and details the procedure to follow where these standards may have been breached. The Policy is a means to help and encourage improvement amongst employees whose conduct or standard of work is regarded as unsatisfactory.

- 7.3 In aiming to modify behaviour, all staff should be dealt with fairly and constructively throughout the process and that there should be no discrimination on the grounds of gender, transgender, marital or civil partnership status, racial group, sexual orientation, religion or belief, disability or age.
- 7.4 When a disciplinary sanction short of dismissal is given then the chair of the hearing should ensure, as necessary that an appropriate manager monitors and supports the employee during the period of sanction. The chair will also be responsible for sharing any broader learning from the disciplinary matter.
- 7.5 All managers have a responsibility to advise, train and guide staff. The Disciplinary Policy does not replace this obligation.
- 7.6 It is expected that employees maintain high standards of performance and conduct and that managers address without delay any behaviour that could potentially lead to disciplinary action.
- 7.7 The Disciplinary Policy should be used when someone's poor performance is due to misconduct. Performance issues that are clearly due to the capability of the employee, i.e. the member of staff "can't" rather than "won't" do something, should be addressed via the Performance Capability Policy.
- 7.8 When appropriate, investigations will be carried out. These will be conducted in a timely and objective manner, with the aim, as far as possible, to establish facts.

8 Breaking disciplinary rules or failing to meet standards

- 8.1 Employees who break disciplinary rules or fail to meet performance standards (see Section 6) may, unless it is due to the employee's capability, be subject to disciplinary processes.
- 8.2 Gross Misconduct
- 8.3 Those issues that fall into gross misconduct and may lead to a serious breach of trust and confidence and possible dismissal without notice include the following:
- Theft, fraud and deliberate falsification of records;
 - Physical violence and serious verbal abuse;
 - Bullying and harassment;
 - Unlawful discrimination or harassment;
 - Deliberate damage to property;
 - Serious insubordination;
 - Serious misuse of the Trust's property or name,

- Serious misuse of email, social media or other internet facilities either within or outside of work time. Prohibited use within work-time includes excessive personal use of email/the internet so that it impacts upon the employee's work performance as well as viewing/downloading images or text including pornography or other inappropriate material that may be reasonably considered to be obscene or offensive;
- The intention of bringing and or bringing the Trust into serious disrepute;
- Incapability on duty brought about by alcohol or drug misuse;
- Serious negligence which causes or might cause unacceptable loss, damage or injury;
- Serious breach of health and safety rules;
- Avoidance of, or non-response to, calls or not acting once a call has been accepted;
- Deliberate failure to take key clinical equipment or medication appropriate to the call as given into a call;
- Breaches in patient confidentiality.

8.4 The above list should not be regarded as exhaustive.

8.5 Drink driving / Loss of driving licence

8.6 Any employee who is convicted with driving (either a Trust or private vehicle) with excess alcohol in their blood or under the influence of drugs will be subject to a disciplinary investigation and potential hearing. For those for whom this is a contractual issue i.e. they drive as a key part of their job then it will be considered as matter of gross misconduct and therefore potential dismissal.

8.7 For those who are not required to drive as part of their job then consideration, subject to due investigation, will be given to dismissal. This consideration will take into account factors such as the individual's role and seniority within the Trust i.e. there are higher expectations of the conduct for those in senior positions.

8.8 Separate provisions exist for those who voluntarily come forward to their managers and report that they have a substance misuse issue (and there are no issues of driving with excess alcohol in their blood or under the influence of drugs). Further information is included in the Alcohol, drug and solvent misuse policy (HR 015)

8.9 Reporting of criminal charges/convictions

8.10 It is the employee's contractual duty to inform his or her manager of any police cautions, conditional discharges, criminal charges and/or convictions whether or not these are related to alcohol, drug and solvent abuse.

8.11 Whistleblowing

8.12 Employees should note that that they are encouraged to report concerns about malpractice, illegal actions or omissions at work and that this will not be considered a breach of confidence provided that the disclosure is made in good faith. Concerns need not necessarily be made via the Trust's Whistleblowing Policy but this Policy does provide further information and a framework to help protect the employee.

9 Procedure

9.1 Introduction

9.2 Although the procedure sets out progressive stages, which may lead ultimately to dismissal, it can be commenced at any stage should the circumstances warrant. The procedure should be read alongside the Guidance notes appendices 1 – 11.

9.3 Disciplinary processes should proceed in the expectation that staff will offer reasonable co-operation both in their own interests and those of the Trust. If employees do not reasonably co-operate in investigations or hearings then decisions will continue to be made on the balance of information available. Similarly, if an employee does not attend a hearing and does not provide a good reason for her or his absence then the hearing may take place and a decision will be made in his or her absence.

9.4 Timescales

9.5 It is in all parties interests that matters are dealt with promptly and whilst memories are fresh; the following timescales are set to assist with this:

- Disciplinary investigations – completed and report done in 28 days. This specific timescale is for guidance only – it is recognised that some investigations will take longer than others e.g. due to its complexity or both the availability of, and number of witnesses to be interviewed.
- Letter from Investigation Manager to be sent to employee on completion of investigation report within seven working days of completion;
- Potential Chair of hearing to write to employee regarding outcome of investigation/next stage within 14 days of the above letter;
- Letter following hearing to be sent within 7 days of hearing date;
- Any appeal letter to be submitted within 14 days of receipt of disciplinary warning letter. N.B. This specific timescale is mandatory.
- Employee to be contacted to acknowledge the receipt of appeal letter within 7 days of receipt and for the appeal hearing to be arranged as soon as possible thereafter.

- 9.6 Informally addressing issues of misconduct
- 9.7 Minor cases of misconduct and poor performance may best be initially dealt with informally rather than through the Disciplinary Policy. Managers should ensure that any issues are promptly and directly addressed with the member of staff.
- 9.8 This should be a two-way discussion aimed at discussing shortcomings in conduct and encouraging improvement. Criticism, as far as possible, should be constructive being on finding ways for the member of staff to improve their conduct and for that conduct to be sustained. In some cases additional coaching or training may be required.
- 9.9 The individual needs to understand how performance or conduct needs to be improved and over what period as well as what action will be taken if they fail to improve. When it is believed necessary that this is recorded in writing this will be done in either a letter to the individual or using the Advice and Guidance pro forma (Appendix 7).
- 9.10 Informal advice and guidance, coaching or counselling does not form part of the formal disciplinary procedure and employees should be informed of this.
- 9.11 If, during informal advice and guidance, coaching or counselling, it becomes clear that any matter is more serious than first thought then the manager should adjourn the meeting and the member of staff told that the matter will be considered under the disciplinary procedure. The manager should also be clear that it is a disciplinary rather than a capability issue.
- 9.12 Investigation
- 9.13 Most allegations will require some investigation to, as far as possible, establish facts. It is essential that this is carried out promptly as soon as possible after the incident.
- 9.14 In the first instance it may be appropriate to speak to the complainant to find out the details of the issue concerned – this may determine whether there is an issue that requires further investigation.
- 9.15 It may also be helpful that an initial informal fact-finding meeting be held between the member of staff and line manager - this may also indicate whether an issue requires further investigation.
- 9.16 When a matter requires further investigation then an Investigation Manager should be appointed as soon as possible. The manager who commissions the investigation should set out the scope of what needs to be investigated – the draft letter at appendix 6 may help in this regard.

- 9.17 A failure to appoint an Investigation Manager immediately should not preclude the relevant line manager from initially gathering information concerning the matter. This may involve interviewing the member(s) of staff concerned and/or requesting written statements from those potentially involved and/or as a witness to an incident. It may also involve the gathering of any formal documentation e.g. call logs. All relevant documentation should subsequently be passed to the Investigation Manager and should form part of the investigation report.
- 9.18 Consideration of standing down from duty or suspension from duty may also be appropriate (see 10.4).
- 9.19 Investigations into a disciplinary matter may-or-may-not be carried out by the employee's manager – consideration will be given, as appropriate to matters such as the nature of any allegations, a manager's capacity and/or specialist knowledge (a template letter is included at appendix 6). The Investigation Manager will be supported by an HR manager.
- 9.20 The Investigation Manager should establish all relevant details and facts surrounding the matter. This may include collating forms and documents as well as any recordings or transcripts.
- 9.21 It is also likely to involve interviewing witnesses and obtaining statements as necessary as well as interviewing any individual(s) against whom allegations have been made.
- 9.22 Care should be taken to engage with the member of staff in a fair and reasonable manner. It is important to keep an open mind and objectively gather evidence.
- 9.23 When requesting an interview with the member of staff against whom an allegation have been made, he or she should be informed that the interview relates to a potential disciplinary issue and nature of that issue and that he or she may be accompanied by a Trade Union representative or workplace colleague. He/she should also be advised that, depending on the outcome of the investigation, disciplinary action may follow.
- 9.24 The member of staff against whom an allegation is made should be given reasonable notice of the interview in order to liaise with his or her chosen representative - there is no minimum notice period of notice. All reasonable efforts should be made to accommodate the attendance of their chosen representative however no interview should be unreasonably delayed.
- 9.25 Advice concerning investigation interviews is included at Appendix 1.

- 9.26 The Investigation Manager should satisfy him or herself that all relevant people have been interviewed and all documentation collated prior to completion of the investigation report and any recommendations.
- 9.27 The Investigation Manager in drafting the report should attempt to identify what has happened as well as the motivation or reason for what has happened.
- 9.28 All documentation relating to the investigation should be kept including handwritten and typed interview notes and should be included in the investigation report.
- 9.29 Following the investigation the Investigation Manager will make a recommendation to the manager who commissioned the investigation. This may include:
- Advising that there is no case to answer;
 - Advising that informal advice and guidance, coaching or counselling is necessary;
 - Advising that there is a case to answer at a Disciplinary Hearing.
- 9.30 The Investigation Manager should also do a short note to the person being investigated – see Appendix 3 – stating that the investigation is complete and that a recommendation is being made in relation to the allegations. This letter should not provide detail of the recommendation.
- 9.31 If the matter is progressed to a disciplinary hearing then the Investigation Manager, who will normally be the presenting manager, will be responsible for arranging the attendance of her/his witness(es).
- 9.32 Decision on whether to hold a disciplinary hearing
- 9.33 If, having considered the investigation report and advice of the Investigation Manager, the manager who commissioned the investigation decides that a disciplinary hearing is deemed necessary, then a letter by the Chair notifying the employee of the hearing details will be sent out within 14 days of the end of the investigation (i.e. the date of the letter cited in paragraph 9.41).
- 9.34 If the manager who commissioned the investigation decides that a hearing is not necessary then this decision should be confirmed in writing to the employee setting out the reasons/rationale for this decision. This letter would, if appropriate, inform the employee if any separate action is required.
- 9.35 The Disciplinary Hearing
- 9.36 Possible disciplinary sanctions will fall into one of the following categories:
- First written warning

- Final written warning
 - Dismissal or other sanction
- 9.37 Depending on the seriousness of the alleged offence consideration should be given to the seniority of the Chair of the hearing. Guidance on relevant levels of authority is summarised in Appendix 8.
- 9.38 Chairing a disciplinary hearing
- 9.39 Generally there should be a separate Chair and Investigation Manager, particularly in more serious disciplinary matters. However in some cases the manager may carry out both roles or there may be no need for an Investigation Manager, for example in cases of persistent lateness.
- 9.40 See Appendix 2 for full guidance on managing a disciplinary hearing.
- 9.41 First written warning
- 9.42 A First written warning may be given in cases of misconduct.
- 9.43 A formal hearing with the employee and representative will be arranged See Appendix 2 on the preparation for and conducting of disciplinary hearings.
- 9.44 The manager considering the matter will be accompanied by an HR manager.
- 9.45 Following the hearing and if the manager considering the matter deems it to be appropriate, the employee will be advised that a First written warning has been given.
- 9.46 The First written warning should specify:
- The nature of the misconduct;
 - The reasons for the decision made;
 - The period of time given for improvement and the improvement expected;
 - The disciplinary penalty and for how long it will last;
 - The likely consequences of further misconduct i.e. that a final warning may be considered at the next stage;
 - The timescale for lodging an appeal and how it should be made.
- 9.47 The letter confirming the written warning should be sent within 7 days of the hearing.
- 9.48 It is recommended that this warning should remain active for 6 -12 Months from the date of decision. The employee should be informed that the written warning will be kept on file but will be disregarded for

escalating the disciplinary matter after the specified period of the warning.

9.49 The employee should be sent two copies of the disciplinary letter. One should be signed and returned to the manager confirming that it has been received, read and understood. If a response is not forthcoming the manager should satisfy her/himself that the employee has received the letter and a note is included on the employee's file to this effect.

9.50 Final written warning

9.51 A Final written warning will be given in circumstances that a First written warning has not resulted in improved conduct or when misconduct is deemed to be most serious but to fall short of warranting dismissal.

9.52 A formal disciplinary hearing will be arranged. This should be Chaired by a manager accompanied by an HR manager. See appendix 2 on the preparation for and conducting of disciplinary hearings.

9.53 If, having considered the information presented to her/him, the Chair is of the opinion that the alleged serious misconduct occurred or that conduct has failed to improve sufficiently, then the employee will be given a Final Written Warning.

9.54 This will state:

- The nature of the misconduct;
- The reasons for the decision made;
- The period of time given for improvement and the improvement expected;
- The disciplinary penalty and for how long it will last;
- The likely consequences of further misconduct i.e. that dismissal may be considered at the next stage;
- The timescale for lodging an appeal and how it should be made.

9.55 The Final Written warning will be sent within 7 days of the hearing.

9.56 It will clearly advise the employee that further instances of misconduct will normally lead to dismissal from the Service.

9.57 The letter of confirmation must specify the length of time that the warning will remain on the employee's record. It is recommended that the warning remain active on file for a period of between 12 and 18 months from the date of decision. This letter must also include details of the right of appeal.

9.58 The employee should be informed that the final written warning will be kept but will be disregarded for escalating matters once the period of warning has elapsed.

- 9.59 The employee should be sent two copies of the disciplinary letter. One should be signed and returned to the manager confirming that it has been received, read and understood. If a response is not forthcoming, the manager should satisfy her/himself that the employee has received the letter and a note is included on the employee's file to this effect.
- 9.60 Dismissal or other sanction
- 9.61 Dismissal is the extreme sanction that can be used by the employer against an employee. Proper application of this procedure should prevent the need for action in most cases by providing the advice, support and encouragement to enable staff to modify their behaviour or work performance in accordance with the needs of the Trust.
- 9.62 Dismissal may, however, be the remaining option in cases of gross misconduct or when earlier warnings may have failed to bring about the desired improvement. Dismissal must be reasonable in all circumstances of the case.
- 9.63 In all cases where dismissal is a potential consideration, this will be made clear to the employee in the letter requesting his or her presence at hearing.
- 9.64 A formal disciplinary hearing will be arranged, and the matter considered by the panel. (See Appendix 2 on the preparation for and conducting of disciplinary hearings.)
- 9.65 The chair must be of assistant director level or above who will be advised by an HR manager. N.B. Separate dismissal provisions exist for trainees.
- 9.66 Depending on the outcome of the Disciplinary hearing, the Chair may or may not decide that the allegations are upheld. Further, he or she should decide whether dismissal is appropriate.
- 9.67 Dismissal with notice
- 9.68 Unless the employee is being dismissed for reasons of gross misconduct, he or she should receive the appropriate period of notice in line with his or her contract of employment.
- 9.69 Dismissal without notice
- 9.70 Matters which may be considered gross misconduct are outlined in paragraph 8.3. This list is not exhaustive.
- 9.71 A finding of gross misconduct will lead to dismissal without notice. Such action in repudiating the contract of employment and dismissing without observing the appropriate period of notice or payment in lieu of

notice reflects the absolute breakdown in trust between the Service and the staff member. As with all disciplinary matters, this must be the subject of a full and thorough investigation.

9.72 Appeals

- 9.73 Employees have the right to one appeal against the management decision at any stage of the disciplinary procedure. N.B Informal Advice and Guidance, Coaching and Counselling falls outside the procedure.
- 9.74 In general a manager at a more senior level to the manager who issued the original warning will consider any appeal and will be advised on procedural issues by an HR manager of appropriate seniority.
- 9.75 The employee or her/his representative must notify in writing the intention to appeal against a disciplinary warning, and the grounds for that appeal, within 14 days of receiving written confirmation of the warning.
- 9.76 Grounds for appeal may include:
- The perceived unfairness of the judgement;
 - The severity or inconsistency of the disciplinary sanction;
 - New evidence coming to light;
 - Procedural irregularities.
- 9.77 The letter of appeal should be submitted to the manager next-in-line to the person who made the initial decision. In the case of an appeal against dismissal the letter should be submitted to the Head of Human Resources.
- 9.78 When an appeal is submitted, the employee should be contacted within 7 days to confirm receipt and the date of appeal hearing should be confirmed as soon as possible thereafter.
- 9.79 Appeals will not normally involve a re-hearing of the case but should focus on the grounds of appeal.
- 9.80 Appeals should not result in any increase in the disciplinary sanction already given.
- 9.81 In cases of dismissal, the appeal will be to the Assistant Director of Human Resources, who will arrange for an appeal panel to consider the matter. The appeal panel will consist of an external advisor (agreed by management and staff side) a Non-Executive member of the Trust Board and a Senior HR manager.
- 9.82 Further advice on conducting appeal hearings are attached at Appendix 11.

10 Other matters

10.1 Suspension from duty

10.2 A brief period of suspension with pay may be considered in certain circumstances. This will generally be that the alleged act or omission is sufficiently serious to potentially constitute gross misconduct or that an employee may already be on a disciplinary sanction (e.g. a final written warning) and the alleged misconduct may potentially lead to dismissal..

10.3 Suspension may also be considered in other circumstances e.g. when it is believed that the employee's presence at work may inhibit an investigation. In deciding whether someone should be suspended from duty then consideration should be given to as to whether alternative duties or a change in work location or shift pattern would be appropriate.

10.4 The senior manager on site is able to stand an employee down for example to allow a 'cooling off' period for up to three working days.

10.5 The decision to suspend over and above the three day stand down period is restricted to assistant director level or above.

10.6 Whilst a decision to suspend from duty may be taken at any stage of an investigation, if it is clear that a matter warrants suspension then this should be done as soon as possible following the alleged incident.

10.7 It should be made clear that the suspension is not considered as disciplinary action.

10.8 It is essential that any suspension is actively managed and that regular and frequent contact is maintained with the suspended employee. The suspension must not be unnecessarily protracted and should be reviewed by the manager who approved the suspension from duty every 14 days or sooner if appropriate. This review may involve seeking the views of the investigation manager.

10.9 Suspension will be on full pay.

10.10 Guidelines on the management of suspensions are included at Appendix 10.

10.11 Involvement of Police

10.12 In cases where the actions of the employee are the subject of Police Investigation, it may be expedient to suspend the employee from duty to allow for the matter will be investigated thoroughly and efficiently by

the LAS and for any decision made on how to progress the matter. Whilst due regard must be given to the police investigation, it is not a requirement to await its conclusion before deciding on disciplinary action.

10.13 Criminal charges or convictions outside employment will not be treated as automatic reasons for disciplinary action. Consideration needs to be given to what effect any charge or conviction has on the employee's suitability to do the job. Employees must not be dismissed solely because a charge against them is pending or because they are absent as a result of being remanded in custody.

10.14 Fraud

10.15 If an employee is suspected of fraud at any stage in the procedure, whether at the point that any allegation is made, or during the investigation or hearing stage then the disciplinary procedure should be suspended immediately.

10.16 The matter should be referred to the Trust's Local Counter Fraud Specialist (LCFS). It is essential that no contact is made with the individual regarding the matter until the views of the LCFS have been sought.

10.17 It is the LCFS's role to ensure that, where appropriate, allegations of theft and fraud are pursued through the criminal courts. To this end it is vital that any evidence obtained during the course of the investigation is recovered in line with the necessary legal rules.

10.18 The involvement of the LCFS is not intended to hinder the disciplinary process – the LCFS will work with the Trust to ensure that any disruption to internal processes are kept to a minimum.

10.19 Contact details for the LCFS are on the Pulse at <http://thepulse/managing/1074608862.html>

10.20 Intimidation related to the Disciplinary process

10.21 Any attempt to intimidate parties involved in the Disciplinary process will be regarded as a disciplinary offence and will be addressed in any subsequent disciplinary hearing. If a hearing is already taking place, the Chair may wish to call an adjournment to enable her/him to consider all disciplinary matters.

10.22 Witnesses from outside the Service

10.23 Particular care should be taken to protect witnesses from outside the Service from inconvenience or potential intimidation. It is often important for external witnesses to attend hearings to present their view of the facts and to be asked questions about them as necessary.

However there will be situations when the facts of a matter are not in dispute and there is nothing that an individual can add to a written statement by appearing before a disciplinary hearing. In such cases an external witness should not be called.

10.24 Confidentiality

10.25 All those involved in disciplinary matters should maintain confidentiality throughout the investigation and hearing period and once any decision has been made. Clearly there may be circumstances where colleagues need to be briefed about a final decision, e.g. in dismissal cases, but this should be done formally in order that the message may be managed appropriately and in order to minimise individuals hearing decisions through rumour.

10.26 Anyone breaching confidences may be subject to disciplinary sanction.

10.27 Reinstatement of pay

10.28 Should a decision to dismiss (with or without notice) be subject to appeal then if the appeal is successful and the decision to dismiss overturned, pay will be reinstated and backdated to the last day of service.

10.29 The right to be accompanied

10.30 Employees have the right be accompanied by a TU representative or work colleague throughout the formal investigation and any disciplinary hearing and/or appeal.

10.31 The representative may present and/or amplify the employee's case, respond on behalf of the employee to any views expressed, ask questions, confer with and provide advice to the employee. The representative must not answer questions on the employee's behalf.

10.32 Application of the Policy to trade union representatives

10.33 Where disciplinary action is being considered against an employee who is a trade union representative then the normal disciplinary procedure should be followed. Depending on the circumstances, however, it is advisable to notify an official employed by the union at an early stage after first obtaining the employee's agreement.

10.34 Grievances

10.35 In the course of the disciplinary process, an employee may raise a grievance that is related to the case. If this occurs then the manager should consider suspending the process for a short period whilst the grievance is dealt with.

- 10.36 Where the grievance and disciplinary cases are related it is usually appropriate to deal with both issues concurrently at the disciplinary hearing and/or the appeal.
- 10.37 When addressing grievances in these circumstances either within or separate to a disciplinary hearing, then it is essential that the following stages are followed and fully documented: (a) That the member of staff provides management with a copy of the grievance in writing; (b) That the member of staff is invited to the hearing to discuss the grievance where the right to be accompanied will apply and be notified of the decision; and (c) that the member of staff is given the right to an appeal hearing if they feel that the grievance has not been satisfactorily resolved and be notified of the final decision. As stated above, it is expected that in the vast majority of cases the grievance should be dealt with at hearings and/or appeals within the disciplinary process.
- 10.38 Further details are included in the Grievance Policy <http://thepulse/managing/1118400660784.html>
- 10.39 Records
- 10.40 Records (including any 'rough' written notes) should be kept detailing investigations leading up to hearings and of any hearings and appeals. These records should be kept in line with the Data Protection Act 1998 and should be made available to the employee at their request. The Service retains the right to withhold records in exceptional circumstances, for example to protect the personal details of a witness.
- 10.41 Duration of warnings and retention of records
- 10.42 A disciplinary warning will cover the period from the date the warning is issued.
- 10.43 In general, warnings should be valid for the following periods:
- Written warning 6 - 12 months
 - Final written warning 12 – 18 months.
- 10.44 Disciplinary warnings will continue to be held on an employee's file but disregarded for escalating a disciplinary matter following the expiry of the warning period. The reasons for this are recorded in Appendix 9.
- 10.45 Managing employees during periods of warning
- 10.46 Particular care should be taken to actively manage employees during any warning periods set under the disciplinary policy. Additional levels of support, advice and guidance may be required to ensure an improvement in the employee's conduct.

10.47 Informal resolution may also be considered following disciplinary action as a means of helping those involved to 'move on' with their working relationships. The agreement of all parties would be a prerequisite for this.

10.48 Human Resources

10.49 HR is available to provide advice to all involved in a disciplinary matter. This will include advice and support to an Investigation Manager during investigations and to the Chair in any hearings or appeals. HR will also provide advice and support to the presenting manager at any appeal stage when HR has previously advised him or her as chair at the disciplinary hearing.

10.50 HR's role is to help ensure fairness and consistency and in particular to advise on legislative requirements and good practice.

10.51 Health and Care Professions Council and other professional bodies

10.52 Many employees are registered with professional bodies and subject to a Code of Conduct or similar as part of their registration. Generally a requirement of a professional body is that they are informed of a registrant's suspension from duty or disciplinary sanction. Similarly, there may be occasions when a sanction given by the professional body to a member of staff may initiate disciplinary or capability considerations by the Trust.

10.53 The Health and Care Professions Council (HCPC) which regulates Paramedics alongside other healthcare professions states in its Standards of conduct, performance and ethics that it is a registrant's responsibility to inform the HCPC in the following circumstances:

- An individual has important information about his/her own conduct or competence;
- He or she is either convicted of a criminal offence, receives a conditional discharge for an offence, or accepts a police caution;
- Is disciplined by any organisation responsible for regulating or licensing a health or social care profession; or
- Is suspended or placed under a practice restriction by an employer or similar organisation because of concerns about his or her conduct or competence.

10.54 The full Standards are available at <http://www.hcpc-uk.org/assets/documents/10003B6EStandardsofconduct,performanceandethics.pdf>

10.55 Similar requirements are set out for nursing staff and midwives - further information is available at <http://www.nmc-uk.org/Employers-and-managers/Making-a-referral/>

10.56 In circumstances when an employee fails or appears to fail to inform their professional body of any of the above circumstances then HR will report the employee on behalf of the Service.

10.57 Removal of personal items

10.58 On occasion, it may be necessary as part of a disciplinary investigation to remove an employee's personal items e.g. from his or her locker. In such circumstances it is recommended that the employee is present to log and agree an inventory of any removed items. In circumstances when it is not practical to have the employee present then an independent person (e.g. a trade union representative), must be present to assist and witness this task.

10.59 Return of Service equipment

10.60 In the case of dismissal, the line manager should arrange for the normal processes to take place when someone leaves the Trust, including the return of any uniform and other Service-issued equipment. If the individual intends to appeal the decision to dismiss, then all issued uniform and equipment will be stored by the Trust pending the decision of the appeal hearing.

10.61 The Trust reserves the right at an earlier stage of an investigation to retrieve Service issued equipment, such as a laptop, if it is deemed necessary..

10.62 References

10.63 Reference requests received in regards to an employee or ex-employee either subject to investigation or with a disciplinary sanction up to and including dismissal will be dealt with in line with the Trust's Policy on references. There are specific provisions concerning references in relation to safeguarding (see Policy and Procedure on the Management of Safeguarding Allegations Against Staff).
http://thepulse/uploaded_files/HR%20Policies%20and%20Procedures/2014-11-18_hr039_p_p_on_the_mgt_of_safeguarding_allegations_against_staff_v1.2.pdf

10.64 Safeguarding

10.65 If an investigation involves allegations concerning safeguarding (i.e. concerning a child up to his or her 18th birthday or a vulnerable adult) then the Trust's Safeguarding Lead (currently the Director of Nursing) needs to be informed - see link to Policy and Procedure on the Management of Safeguarding Allegations Against Staff (above) for further information.

10.66 Covert recording

10.67 Covert recording by anybody of an investigation interview or the formal meetings such as a hearing or appeal will be considered as potential gross misconduct.

10.68 Sickness absence

10.69 Any sickness absence during the course of an investigation or pending a hearing will generally be managed by the employee's management team in the usual way. Occupational Health advice will be sought as appropriate.

10.70 Whilst each matter needs to be judged on a case-by-case basis care should be taken to ensure that the absence of anyone involved in a disciplinary matter does not unreasonably delay proceedings. In some cases it may be necessary to proceed in the absence of any individual.

10.71 Drug, alcohol and substance misuse

10.72 Advice on the above issues including related misconduct issues is included in the HR Policy available on the Pulse at:
http://thepulse/uploaded_files/Managing/alcohol_drugs_and_solvent_misuse_policy_-_final.pdf

IMPLEMENTATION PLAN				
Intended Audience	For all LAS employees			
Dissemination	Available to all staff on the Pulse			
Communications	Revised Procedure to be announced in the RIB and a link provided to the document			
Training	Briefing provided to relevant HR staff. Specialist training as appropriate to managers.			
Monitoring:				
Aspect to be monitored	Frequency of monitoring AND Tool used	Individual/ team responsible for carrying out monitoring AND Committee/ group where results are reported	Committee/ group responsible for monitoring outcomes/ recommendations	How learning will take place
Numbers and profile of staff addressed under policy.	Ongoing – HR database	HR Senior Team.	Workforce Committee	Via analysis of figures

Guidance note - Investigation interviews

1. Any investigation is likely to involve some interviews. Most will be formal 'sit down' meetings whilst some may be a quick telephone conversation to clarify a piece of information. All interviews of whatever form should be documented.
2. Any formal interview should be approached with the intention of gathering all relevant information concerning a matter.
3. It is essential that in interviewing an individual against whom any allegation has been made that the allegation is clearly put to him or her during the course of the interview and that he or she is given the opportunity to respond.
4. Both written and typed interview notes should be maintained and be included as part of any investigation pack that is submitted to the manager who commissioned the investigation. A copy of the typed interview notes should subsequently be provided to the interviewee in hard copy and he or she should be invited to make any amendments in writing to correct any inaccuracies and/or to add any further relevant information. The interviewee should be invited to sign and date the notes to confirm he or she has had an opportunity to review the notes.
5. In circumstances where an employee makes significant amendments/submits a separate version of the interview notes both the original and the interviewee's versions should be included as part of the final investigation report.
6. The following, using the PEACE model, provides a brief guide to for the Investigation Manager in regards to interviews:

Preparation

- Ensure that all the relevant documentation is available;
- Generally, it is useful to have HR or another colleague present to assist at an interview – he or she can usually act as note-taker;
- Create an environment when someone is most likely to recall events – ensure that enough time is set aside for the interview.
- Ensure that the interview is held in a confidential setting and will not be disturbed.

Engage and explain

- Approach in an open-minded way. Establish eye contact; be professional but friendly - it should be a cooperative process;
- Do introductions, confirm purpose of interview;
- Ground rules should be clear - confidentiality, not interrupted, phones off etc.
- If the interview is with someone against whom misconduct is alleged then confirm his or her right to representation. If the individual doesn't have a representative, confirm that they are happy to continue without one. Ensure that this is recorded in the notes.

- Encourage the interviewee to recount all they know about an issue in his or her own words and to provide as much detail as possible.

Account, Clarification and Challenge

- Create an environment when someone is most likely to recall events – try not to contaminate the interviewee’s memory with your issues. For example use the same techniques that someone uses to when they have lost something - ‘what was I doing at the time’. Try to get the interviewee into the right context e.g. what stage in a shift was it, was it busy etc.
- To prompt memory, questions such as ‘what were you doing at the time’ or ‘how were you feeling?’ may be asked.
- Gently lead up to any incident, get the interviewee into the habit of talking, the mind links one thing to another.
- It is often useful for the person involved to recount events over the relevant time period

Clarification

- Once the interviewee has run through events from beginning to end, he or she may be asked to repeat their account of events to ensure that nothing has been omitted;
- Allow for silences – the interviewer should avoid ‘jumping in’ with specific questions;
- In asking the interviewee to repeat, the Investigation Manager should thank them for what they have said and use phrases such as ‘Just so I’m clear in my own mind please can you go over what happened between x and y’;
- Once the Investigation Manager has an understanding of the overall sequence of events, he or she may wish to break it down into episodes and ask questions as necessary;
- More detail may be requested as necessary;
- The Investigation Manager should repeat each episode back to the interviewee, in order to clarify that there is a mutual understanding before going on to address the next episode;
- Prompts may be used concerning the different senses, ‘what did you see’, ‘what did you hear?’
- It is sometimes useful to ask the interviewee to draw a picture. If so the interviewee should be asked to sign and date this.
- Narrow down as necessary and use techniques such as echoing and reflecting back. Use the interviewee’s own words to help them recall;
- Continue to ask open questions and be careful not to plant images. For example rather than asking ‘did he have a bag?’ ask ‘was the person carrying anything?’

Challenge

1. Challenge – without being confrontational the Investigation Manager should challenge any inconsistencies and contradictions e.g. ‘I’ve got this information, you have told me this, can you say why you believe this to be so?’

(Review)

2. The Investigation Manager should allow time before closing the interview to review what he or she has been told and to decide

whether there any further questions that need answering. It may be necessary to take a break in the interview to do this.

Closure

Impress upon the interviewee that his or her contribution has been valued. Check with the interviewee whether there is anything further he or she wishes to say that has not previously been covered. Explain that the interview notes will be sent to them to allow them to amend in writing if they wish and that these should be returned. Explain that another interview may be required.

Evaluation

The Investigation Manager should evaluate both:

- The information provided;
- What impact it has on the overall investigation e.g. any further issues to explore, additional witnesses.

Appendix 2

Guidance note – Disciplinary Hearings

1 Before a Disciplinary Hearing

- 1.1 Any employee required to attend a formal Disciplinary Hearing will receive a letter from the Chair setting out the allegations. Whilst the detail of individual allegations will differ, every effort should be made to make the allegations as clear and as specific as possible e.g. by stating the nature of the misconduct and the date, time etc. when any misconduct is said to have taken place. .
- 1.2 The letter will include the date, time and venue of the hearing, and confirm arrangements for any witnesses to be called.
- 1.3 In instances where dismissal from the Service is a potential consideration this will be stated.
- 1.4 The letter will advise the individual that he or she may be accompanied by a trade union representative or workplace colleague.
- 1.5 At least seven calendar days' notice of the hearing will be given and the notice period will give the employee an opportunity to consult with her/his representative before the hearing. If reasonably possible a greater period of notice should be given to the employee.
- 1.6 The letter will enclose two copies of the investigation report of which one copy will be for the employee's representative. The report will include, where appropriate, items such as Service forms, any letter of complaint, recording transcripts and witness statements. A copy of the Disciplinary Policy should also be sent to the employee.
- 1.7 The employee will be requested to provide in advance of the hearing; the names of any witnesses that he/she wishes to call as well any documentation that they wish to submit and should be given a deadline in advance of the hearing date by which to provide this information. On occasion, some information e.g. an individual's name or address may be redacted in order to protect a witness. If CCTV or other recordings exist of any alleged incidents, then the employee and her/his representative should be given an opportunity to also view/listen to these in advance of the hearing.
- 1.8 The individual or representative should formally respond by accepting the date of the hearing or giving a reason for a requested postponement. This response should also include details of any witnesses he/she wishes to call, and copies of any documents to be presented. It is the responsibility of the employee to approach her/his own witnesses. If another employee is to be called, he/she should formally request release to attend if otherwise rostered to work.
- 1.9 If circumstances necessitate, the employee can request one postponement of up to seven calendar days, or more by mutual agreement. All hearings should be held as soon as practicably possible. Disciplinary issues should not be unreasonably delayed due to the non-availability of a specific representative.

1.10 Once the papers are exchanged, neither side shall seek to re-investigate the disclosed findings. However, in the interests of equity, all parties reserve the right to investigate new information of relevance prior to the completion of the hearing. Where the hearing has already begun, this may require an adjournment.

1.11 If either side wish to submit new documentation or call a new witness immediately prior to or during the hearing then the Chair will consider the relevance of the witnesses/documentation and take a decision on whether to accept it – this may involve asking both parties for their views on the material and/or an adjournment to consider the additional matters.

2 Conducting a Disciplinary Hearing

2.1 Disciplinary panels will comprise a manager of appropriate seniority, who will chair the hearing, supported and accompanied by an HR manager.

2.2 The Chair will ensure that the hearing takes place in a fair and orderly way. Whilst by nature many disciplinary matters are contentious, the Chair should ensure that all participants behave in a responsible and non-intimidatory manner.

2.3 The Chair should open the Hearing by:

- Confirming those present and their respective roles;
- Outlining the process that will be followed ;
- Ensuring that everyone has the same documentation;
- Ensuring that everyone is aware of which (if any) witnesses are giving evidence.

2.4 The Chair will then ask the employee whether an allegation is accepted or denied. In circumstances when there is more than one allegation then the Chair should take care to ensure that the employee be asked to provide a response to each allegation.

2.5 The employee may, as an alternative to simply accepting or denying an allegation, to respond that he or she accepts an allegation 'with mitigation' and then go on to expand upon any mitigation during the course of the disciplinary hearing

2.6 If dismissal from the Service is a possible outcome of the hearing then the chair will confirm that the employee is aware of this fact.

2.7 The Chair will invite the Investigation manager to make the management presentation, calling and questioning witnesses as appropriate. The employee and/or representative may also question the witnesses.

2.8 The employee and their representative may ask questions of the Investigation manager.

2.8 The employee, or the representative on behalf of the employee, will then make a presentation calling and questioning witnesses if appropriate. The Investigation manager will have the opportunity to ask questions of the employee and of any witnesses.

2.9 The panel members may question the Investigation manager, witnesses and/or employee at any time.

- 2.10 Once all the information has been presented each party will be invited to make a final submission, this should summarise the key points. No new matters should be raised. A short adjournment may be made before each party makes their submission.
- 2.11 The Investigation manager will present his/her final submission first before the employee and/or their representative present their submission.
- 2.12 If the representative has presented the summing up on behalf of the employee it is good practice for the chair to check with the employee whether he or she has anything additional that he or she wishes to say.
- 2.13 The employee, representative and the Investigation manager will be asked to withdraw to allow the Chair time for reflection and proper consideration. Whilst it may be that a decision will be made on the same day as the hearing circumstances may dictate that further time will be required
- 2.14 When the Chair is required to make a decision on whether an allegation is proven or not then this will be done first. The decision on this will be made on the 'balance of probabilities' i.e. was it more likely than not that something has happened.
- 2.15 Depending on whether or not an allegation is proven, the Chair will then go on to consider what, if any, disciplinary sanction is appropriate and will provide supporting rationale for this decision..
- 2.16 When deciding whether a disciplinary sanction is appropriate and what form it should take, the Chair should bear in mind the need to act reasonably in all the circumstances. Factors which might be relevant include the extent to which standards have been breached, action in similar cases, the employee's general record, position, length of service and special circumstances that might make it appropriate to adjust the severity of the penalty. The HR manager will provide guidance as necessary.
- 2.17 The employee, representative and the Investigation manager will be recalled and advised of the decision of the Chair, along with the right of appeal if necessary.
- 2.18 Follow up action to actively manage and support employees during warning periods should be taken (see paragraph 8.31).

Model letter for completion of investigation

Dear Mr//Ms

Investigation under the Disciplinary Policy

I am writing to you to inform you that my investigation into the allegation that is now complete.

I will be reporting my findings to

Mr/Ms... will be contacting you in due course to inform you as to what he/she proposes will be the next course of action

Yours faithfully,

Investigation Manager

cc: ...

Cases of alleged bullying or harassment

1 Introduction

- 1.1 The Trust's Policy on Bullying and Harassment sets out the approach to dealing with alleged incidences of this kind. Employees are advised to consult this in the first instance.
- 1.2 There are many definitions of bullying and harassment. Bullying may be characterised as offensive, intimidating, malicious, or insulting behaviour, an abuse or misuse of power through means intended to undermine, humiliate, denigrate or injure the recipient.
- 1.3 Harassment, in general terms, is unwanted conduct affecting the dignity of men and women in the workplace. It may be related to age, gender, race, disability, religion or belief, nationality or any personal characteristic of the individual, and may be persistent or an isolated incident. The key is that the actions or comments are viewed by the recipient as demeaning and unacceptable.
- 1.4 There may be times when following investigation into cases of bullying and harassment that it is decided to consider the matter at a disciplinary hearing.

2 Amendments to Disciplinary Policy

- 2.1 In cases where harassment is claimed, the following modifications to the disciplinary procedure should be made:
 - If the immediate manager is the person accused of harassment an alternative Investigation Manager and/or Chair will be appointed.
 - If, following investigation, the matter is to be considered at a disciplinary hearing, then it is essential that at least one panel member should have an understanding and knowledge of the issues of discrimination and harassment. Consideration should be given to have a panel that is reflective of the diversity of the organisation and of any specialist knowledge that can be brought to the matter.
 - It is essential, as far as possible, in cases of alleged bullying or harassment, that the time-frames as set out in the Disciplinary Policy are met.
 - A contact point for the complainant should be established at the start of the process and that the person must be kept informed throughout.

3 Subsequent action following any disciplinary hearing

- 3.1 If a complaint of harassment/discrimination is upheld but falls short of a dismissal, the responsible manager should ensure that the harassment/discrimination has ceased and that there is no victimisation of the complainant. In such cases, the decision of the Disciplinary hearing may

include the relocation of the harasser or other measures such as counselling and/or training for the harasser.

- 3.2 If the complaint of harassment/discrimination is not upheld, the manager may wish to consider informal resolution.
- 3.3 Counselling and/or training for the victim and/or the harasser could be offered. Counselling may be arranged through the Trust's Occupational Health Service.

4 Support available

- 4.1 Support available to staff is listed on the Pulse at <http://thepulse/about/1047977610.html>

Complaints

1 Introduction

- 1.1 This appendix outlines the process when a complaint raised via the Trust's Complaints Procedure leads to investigation under the Disciplinary Policy.
- 1.2 Whilst the Trust's Complaints Procedure is separate from the Disciplinary Policy, it is important that, when a complaint requires disciplinary investigation and/or disciplinary action, this is carried out efficiently and that the complainant is kept apprised of any progress in dealing with her/his complaint.

2 Definition

- 2.1 A complaint is defined as 'an expression of dissatisfaction which requires a response'.

3 The procedure

- 3.1 The Investigation Manager decides, on the basis of her/his investigations into a complaint, that disciplinary investigation and/or action may be required, then they will advise the employee's senior manager to this effect.
- 3.1 The same process will be followed should repeated complaints be identified about the same or similar behaviour by a member of staff.
- 3.2 If it is decided that the matter should be dealt with under the Disciplinary Policy then the member of staff should be informed of this and investigations and or hearings should be arranged in line with the Disciplinary Policy.
- 3.3 The Investigation Manager (as defined in the Disciplinary Policy) and will present her/his findings at any hearing as necessary. This role will be carried out in line with the requirements of the Disciplinary Policy.
- 3.4 If the complainant is asked to attend any Disciplinary hearing, then particular care should be taken by the Chair to ensure that the person is not subject to unreasonable questioning or cross-examination.
- 3.5 The Investigation Manager will be responsible throughout any Disciplinary processes for managing all liaison and other matters relating to the complaint

4 Outcomes

- 4.1 If disciplinary action is one of the eventual outcomes of a complaint then the Trust reserves the right to report this outcome to the complainant.

(to be sent by manager who commissions the investigation – to be amended as necessary)

Date

Confidential

Investigation manager
Complex

Investigation assigned (Staff member(s)...)

Thank you for agreeing to undertake the above investigation. It is to be carried out in line with the Trust's Disciplinary Policy which can be found on the Pulse at <http://thepulse/managing/1048002246.html>. I would recommend that you review your responsibilities under the Policy.

The matter which you are requested to investigate is...and related matters.

(delete following paragraph as necessary) ... is currently suspended from duty pending investigation (suspended by xxx on xxx). A copy of the letter of suspension is attached. ...'s allocated staff support officer is xx. Please contact him/her and agree regular contact and record keeping.

The Human Resource Manager, who will support you in the investigation, is xxx, and has been copied into this letter.

Please complete this investigation as promptly as possible. The aim of the Disciplinary Policy is for the investigation and report to be completed within 28 days. Whilst this time span is suggested, your overriding aim should be to ensure that the matter is thoroughly investigated and that all relevant information and related documentation is included as part of the final report.

I am happy to discuss the prioritisation of your work to enable this investigation to be managed as effectively as possible.

You are reminded that the matter is confidential and should not be discussed other than with those having a direct involvement in the investigation or its support. Please update the ... Area Investigation tracker via the Area Staff Officer with progress at least once every week.

Once your investigation is completed and you and your HR support are satisfied with its contents, please will you send me your report so that I can consider any recommendations.

Yours sincerely

cc. HR Manager

Advice and guidance, coaching or counselling -pro-forma

Record of advice and guidance given to an employee.

Manager _____ Job title _____

Employee _____ Job title _____

Representative (if present) _____

T.U.Status (if any) _____

1. Reason for meeting
2. Summary of advice given
3. Any follow up action required and timescales

Signed _____ (Manager) date _____

Levels of authority

Because of the size and varied nature of the Trust, specific levels of responsibility or job titles for dealing with disciplinary matters are not listed. The person who deals with a matter should be at the level most appropriate for dealing with the management of the particular employee. The potential seriousness of a matter will also affect the decision on who should chair a hearing. Guidance is included within the Policy.

There are however clear levels of authority for suspension and dismissal:

Suspension

The senior manager on site is able to stand an employee down for example to allow a 'cooling off' period for up to three working days.

For any longer periods, the decision to suspend is limited to assistant director level or above.

Dismissal

If a hearing may potentially lead to dismissal then the hearing should be chaired by a manager of assistant director level or above.

Reasons for keeping records

- Patterns of misconduct - There may be circumstances where an employee's conduct is satisfactory throughout the period when the warning is in force, only for it to lapse soon after. Where a pattern emerges and there is evidence of abuse, the employee's disciplinary record should be borne in mind in deciding how long a warning should last.
- Assessing the credibility of an explanation – To be able to identify whether or not an employee has been warned previously regarding misconduct.
- Assessing the appropriate penalty. Previous good conduct may be cited as a consideration to a chair in disciplinary cases. Retained records will help with the objectivity in such situations.

Guidelines on the management of suspensions

Introduction

The following provides guidance in regards to suspending members of staff. It is intended to supplement the guidance included in the Disciplinary Policy.

When to suspend

Suspension should generally only be considered when there is an allegation of gross misconduct or when someone has received previous warnings under the Disciplinary Policy and following further allegations dismissal is now a possibility. Suspension may also be considered in other circumstances e.g. when it is believed that the employee's presence at work may inhibit an investigation.

Who can suspend

The disciplinary policy sets out those managers who are able to suspend an employee from duty; in addition the senior manager on site is able to stand an employee down e.g. to allow a 'cooling off' period for up to three working days.

When possible, a senior trade union representative should be present at the point of suspension from duty, this however should not significantly delay the suspension of the employee. If a senior TU representative is not available, then, if practicable, a more junior representative should be asked to attend. The senior TU representative should subsequently be informed that the individual has been suspended.

Length of suspensions

Every reasonable effort should be made to limit the period of time that an employee is suspended from duty. Suspensions should be reviewed every 14 days. Pending the conclusion of the investigation and any disciplinary hearing, consideration may be given at any stage to ending the period of suspension and instructing the employee to return to work. Depending upon the circumstances of the case, the employee may be required to undertake alternative duties pending any disciplinary hearing. The final decision on continued employment will be made at the hearing.

The suspension meeting

The employee should be advised as to the issue that has led to the intention to suspend and should be given the opportunity to respond to the central allegation if he or she wishes. All notes taken at the meeting should be subsequently passed on to the Investigation Manager. The suspending officer must inform the employee of the following:

- The reason for suspension and on whose authority the decision to suspend is being made.
- Advise that suspension is not a disciplinary sanction and is designed to enable a rapid conclusion to the investigative process.
- The process that will be followed i.e. what arrangements are in place for the investigation
- Inform who the Staff Liaison Officer is and briefly explain their role.
- Confirm that services such as occupational health are available as usual, and that the employee may also wish to contact their HR Officer if they wish.

- That the employee should not work for another employer during their period of suspension and must make themselves available for interviews as requested.
- During this period of suspension the employee may not enter any Trust premises, except in the case of emergency, without management permission or by request of the investigations officer. If the employee wishes to meet with their representative on Trust premises then they should first receive the permission of their manager.
- During the period of suspension the employee will receive normal pay, calculated in the same way as holiday pay.
- That the investigation will be carried out as quickly as possible. That the employee will be informed when the investigation is complete.
- Inform the employee that he/she should not discuss this matter and/or any particulars relating to the allegation with anyone outside those involved in the investigative process.
- Confirm that the employee will be able to discuss matters with her/his chosen union representative. Confirm also that LAS will also be keeping all matters confidential and not sharing information with anyone not involved in the investigatory process.
- Check whether the employee has any questions.
- Check that the employee feels able to get home.

The above points will be confirmed in writing to the employee.

Investigation officer

One of the responsibilities of the investigation officer to keep the employee and the Staff Liaison Officer informed of the progress of the investigation.

Staff Liaison officer

A Staff Liaison Officer (SLO) will be appointed for all employees who are suspended from duty as a contact point within the organisation. Their role is also to keep the employee informed on the progress of the investigation.

On initially contacting the suspended employee, the following should be confirmed:

- Contact details and the method of communication that the person would wish to use e.g. landline, mobile, letter and/or email;
- The frequency and timing of contact;
- And, the type of contact e.g. personal visit or by phone.

The SLO should ensure that the employee has been offered appropriate support whilst suspended. Examples of this may include the Occupational Health Department, the Human Resource Officer, the Employee Assistance Programme, Counselling Service, Linc worker or Trade Union representative. The SLO, if necessary, should advise the employee regarding how he or she may access such services.

The SLO should also check whether the employee needs any further information or support.

These arrangements should be confirmed in writing to the suspended employee, with a copy of the letter signed, and returned to the SLO.

Other SLO responsibilities include:

- To keep the line manager informed of the employee's welfare

- To ensure that the member of staff receives appropriate bulletins/Rib/LAS News and other relevant items such as his or her payslip – and that the arrangements for the sending of these are agreed with the HR Officer.

All contact by the SLO with the employee should be recorded on a contact sheet.

Staffside Secretary

Human Resources will undertake to provide a listing to the Staffside Secretary of suspended staff on a regular basis.

Appendix 11

Guidance note on appeals (to be read in conjunction with Paragraph 9.71 – 9.81)

1. Appeals follow broadly the same pattern as that laid out in Appendix 2 regarding conducting a disciplinary hearing.
2. Appeals will not normally involve a re-hearing of the case but should focus on the grounds of appeal.
3. The appeal will review the process, and considerations which led to the decision taken at the disciplinary hearing and consider whether the decision was within the band of reasonable responses;
4. If new evidence is presented then this may be considered within the appeal hearing or the decision may be taken, depending on the circumstances, to refer the matter back to a separate disciplinary hearing;
5. In general, the order of an appeal hearing will be the reverse of that of a disciplinary hearing with the employee/former employee setting out the grounds for appeal and the manager then responding to each of these grounds. The manager presenting at the appeal will generally be the person who chaired the disciplinary hearing.
6. Each party will be given the opportunity to make a final submission. This should summarise the key facts and not raise any new matters. In making the final submission, the manager will present first and then the employee.
7. Particular attention should be given to any new evidence that has been introduced and the employee should be given the opportunity to comment upon it. Witnesses may also be requested to give evidence.