

Brighton and Sussex University Hospitals
Disciplinary Policy and Procedure

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This policy is supported by Appendices that can be accessed via the Disciplinary Policy Page on the info-net or from your line manager or HR (via email or paper copy).

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Appendices (available to download from the *Disciplinary Policy Info-net* page or by email or hard copy from HR or your manager)

- 1 Examples of misconduct and gross misconduct
- 2 Due Regard Assessment Screening

1. Introduction

Through its Patients First approach Brighton & Sussex University Hospitals NHS Trust (the Trust) strives to be the caregiver of choice for patients and the employer of choice for staff. In order to deliver this it is important that we establish and maintain high standards of conduct and behaviour from our workforce.

All Trust staff are personally responsible for ensuring that at all times they act in accordance with the standards of conduct and behaviour expected by the Trust, as set out in the BSUH Expected Standards at Work, their job description, contract of employment and professional code of conduct (where applicable).

In the majority of cases, where a staff member has failed to adhere to the required standards these are best managed quickly and informally. Managers are therefore expected to resolve such cases through informal discussion with the staff member concerned at the earliest opportunity. If informal management does not bring about the required improvement or if the misconduct is sufficiently serious or repeated, the formal stages of this policy and procedure shall apply.

Where a failure in standards of conduct or performance may be attributable to issues with Trust systems or processes these must be reviewed and resolved, and learnings shared as appropriate across the Trust. This will occur at a number of different levels; individual, departmental, divisional and Trust-wide. In this way the Trust seeks to continually improve systems and processes in the light of operational practice and experience.

This Policy should not be used in circumstances where a staff member's performance in a job role or training programme is unsatisfactory due to a lack of knowledge, aptitude or skills. Instead this should be dealt with as a capability issue and managed under the Trust's Capability Policy and Procedure (HR012). If, however, it is established that the unsatisfactory performance is attributable to the staff member's wilful disinclination to carry out their duties effectively then this policy will apply.

Poor attendance at work due to sickness must be managed in accordance with the separate procedures set out in the Trust's Health, Wellbeing and Attendance Policy and Procedure (HR013).

This policy has been drafted in line with the requirements of the *Acas Code of Practice 1 on Disciplinary and Grievance Procedures* and the guidance contained in *Discipline and Grievances at Work: The ACAS Guide*.

2. Purpose

The purpose of this policy is to ensure that all Trust staff have a clear understanding of the standards of conduct and behaviour expected of them and the overarching principles they are required to adhere to.

The policy sets out a framework which is designed to ensure that where formal disciplinary action is necessary it is managed in a fair, timely and consistent manner, and that the action taken is proportionate and reasonable in the circumstances.

It is also designed to assist managers in supporting staff to improve their conduct or behaviour where this falls below the expected standards.

The Trust recognises that some failures in standards of conduct and behaviour may be attributable to failures in the Trust's systems or processes, or underlying personal or other contributory factors including bullying and harassment in the workplace. This policy is therefore also intended to ensure that where these factors exist they are taken into account when considering disciplinary action.

3. Scope

This policy applies to all Trust staff including fixed term and part time staff. A separate procedure applies to bank contract only staff.

A separate policy incorporating Maintaining High Professional Standards in the NHS 2003 (MHPS) applies when managing concerns relating to medical staff. However, where it is established through an MHPS investigation that there is a case for a disciplinary panel to consider, the provisions of this policy and procedure will apply.

Agency workers, self-employed and contracted staff are required to adhere to the principles, provisions and standards of this policy and failure to do so may result in a referral being made to their substantive employer and/or their Trust contract being terminated.

4. Definitions

For the purpose of this policy, the following definitions apply:

- 4.1 **Investigation:** is a systematic and thorough process undertaken to establish the relevant facts surrounding a complaint or concern raised by or about a staff member (for further information see the Trust's Investigation Policy (HR036)).
- 4.2 **Support Services:** include a management referral to the Health Employee Learning and Psychotherapy (HELP) Service, or by accessing the advice and guidance available from the Equality, Diversity and Inclusion Team, staff networks and forums, the Connections Team, and through the Health and Wellbeing portal on the Info-net; www.bsuhwellbeing.nhs.uk.
- 4.3 **Staff Side Representative** is a representative from one of the 14 trade unions and professional organisations that are recognised by the Trust.
- 4.4. **Companion:** A staff member may choose to be accompanied at any formal meeting by a fellow worker, network or forum colleague, Staff Side

representative or an approved official employed by a Staff Side organisation. They must be independent to the matters under investigation and should not be a relative.

4.5 Sanction is a penalty imposed by a disciplinary panel as a result of an act of misconduct. Sanctions range from a first written warning for minor/first incidences of concern, a final written warning for serious and/or repeated acts of misconduct and dismissal for gross misconduct. In cases where the allegation(s) is admitted then in appropriate circumstances the staff member may be offered acceptance of the appropriate sanction without the need to attend a disciplinary hearing. This will not usually be appropriate in cases of serious or gross misconduct.

5. Responsibilities, accountabilities and duties

5.1 Committee with overarching responsibility

The Trust Executive Committee is the committee with overarching responsibility for approving and upholding the requirements set out in this policy.

5.2 Accountable director

The Accountable Director is the Human Resources Director who has overarching responsibility for ensuring that:

- 5.2.1 Necessary management systems are in place to enable the effective implementation and monitoring of this policy.
- 5.2.2 Appropriate advice, training and updates are available for staff and managers.

5.3 Responsibilities of managers

Managers are required to:

- 5.3.1 Ensure that team/departmental systems and processes are designed to support good conduct and performance and review these when concerns arise.
- 5.3.2 Ensure that staff members are aware of the principles and expected standards of conduct and behaviour required by the Trust.
- 5.3.3 Deal with all conduct and behaviour concerns in a proactive and timely manner and resolve minor misconduct issues informally where appropriate.
- 5.3.4 Ensure that any recommendations arising from the investigation and/or disciplinary hearing process are implemented in a timely manner. If a particular recommendation is not implemented the manager must ensure that they record the reasons why.

- 5.3.5 Maintain confidentiality of any disciplinary process they may become involved in/aware of and not discuss the matter with anyone other than HR and, where appropriate, their own manager.
- 5.3.6 Deal with formal matters in a timely manner, carrying out any necessary fact finding and/or formal investigations as directed and in line with the Trust's Investigations Policy.
- 5.3.7 Attend relevant training and taking personal responsibility to ensure they have the knowledge and skills to appropriately manage conduct and behaviour issues in line with this policy.
- 5.3.8 Arrange for staff including Companions to be released from duties in order to attend investigation meetings and hearings.
- 5.3.9 Make referrals to Occupational Health (OH) where advice on fitness for work is needed and consider implementing any adjustments that may be recommended.
- 5.3.10 Encourage staff involved in an investigation and/or disciplinary process (whether a complainant, witness or staff member under investigation), to seek support for their health and wellbeing, for example by signposting to any of the Trust's Support Services (see section 4.2 above).
- 5.3.11 Where appropriate chair hearings as directed.

5.4 Responsibilities of staff

Staff are responsible for:

- 5.4.1 Carrying out their duties as a Trust staff member to the best of their ability and in accordance with the Trust's core standards of conduct and behaviour (see section 6.2.2 below).
- 5.4.2 Where there is a concern that a staff member's health issue may affect their ability to attend a meeting or hearing they may be required to attend an OH appointment as arranged in order for their fitness to be assessed. Where a staff member refuses or fails to attend an OH appointment for this purpose a decision may be taken to proceed with the meeting/hearing in the absence of any OH guidance and/or in the staff member's absence.
- 5.4.3 Where a formal investigation has been commenced, arranging their Companion's attendance at meetings and any subsequent hearings. Unreasonable delays must not be caused by a chosen Companion's lack of availability and alternative representation must be sought if this situation arises.
- 5.4.4 Arranging for witnesses they wish to call to attend a hearing, confirming the names of their witnesses to HR in advance of the hearing.

- 5.4.5 Maintaining the confidentiality of any investigation they become involved in or are aware of, and not discussing the matter with anyone other than their representative, the investigating officer, or HR.

5.5 Responsibilities of Human Resources (HR)

HR is responsible for:

- 5.5.1 Ensuring the application of this policy and procedure is fair, transparent, consistently applied and proactively addresses workforce issues such as systems/process failures, bullying and harassment and other contributory factors.
- 5.5.2 Advising managers on relevant Trust policy and legislation and supporting them in carrying out investigations and presenting/chairing hearings, including the provision of template letters and report formats.
- 5.5.3 Keeping records of formal investigations and hearings and using the data for monitoring and reporting purposes.

5.6 Responsibilities of Staff Side Representatives

Staff Side Representatives are responsible for:

- 5.6.1 Ensuring they have undertaken the necessary training to the appropriate standards set out by their Staff Side organisation, in order to be confident and competent in carrying out their duties.
- 5.6.2 Making every reasonable effort to attend meetings and hearings on the scheduled date, or where a rearrangement cannot be agreed within a reasonable timeframe, arrange for alternative representation so as to avoid unnecessary delay at any stage of the disciplinary process.
- 5.6.3 Maintaining confidentiality of any investigation they may become involved in and not discuss the matter with anyone other than the staff member they are supporting, the investigating officer/hearing panel and HR.

5.7 Responsibilities of witnesses

Witnesses are required to:

- 5.7.1 Fully cooperate in the disciplinary process and attend meetings and appeal hearings as requested.
- 5.7.2 Be truthful and helpful at all times throughout the disciplinary process.
- 5.7.3 Maintain the confidentiality of any investigation they may become involved in or aware of and not discuss the matter with anyone other than the investigating officer, hearing panel or HR.

6. Policy

6.1 General principles

In handling concerns about staff members conduct or behaviour the following guiding principles will always apply:

- 6.1.1 Patient safety matters: safeguarding the welfare and safety of our patients is absolutely paramount and is the primary purpose for ensuring that the Trust's principles are upheld.
- 6.1.2 Partnership approach with joint responsibility for resolution: staff will be treated as an equal partner in the resolution of concerns, particularly in the informal stages. This will mean working together constructively and positively to identify solutions and resolve problems.
- 6.1.3 Openness and transparency: concerns will be addressed with staff members directly and supporting evidence will be shared where appropriate. Accurate records will be maintained throughout all stages of managing concerns.
- 6.1.4 Fairness and equity: staff members will be treated fairly and equitably as an individual, recognising that we are all unique.
- 6.1.5 Resolution of issues as informally as possible: where such issues are not deemed to be of a serious nature an informal approach to concerns will be adopted wherever possible.
- 6.1.6 Consistency of approach: the Trust will monitor any formal action to ensure that it is consistent with action taken in comparable circumstances.
- 6.1.7 Timely resolution: concerns will be dealt with as quickly as possible and investigations carried out in line with the required timescales (see the Trust's Investigation Policy). Where there are any unavoidable delays these will be communicated to all involved and reasons given.
- 6.1.8 Confidentiality: any concerns will be addressed directly with the relevant staff and managed in line with the Trust's obligations under data protection legislation (see Section 8 below).
- 6.1.9 Staged actions: in less serious cases of failing to maintain standards informal action will be appropriate to resolve the concern. Where no improvement is made or sustained, action will be progressed in stages, becoming more serious with each stage.
- 6.1.10 Organisational learning: the Trust will continually seek to learn from and find ways to improve on matters relating to staff discipline.
- 6.1.11 Criminal offences: criminal offences committed outside employment will not automatically be treated as a reason for disciplinary action. The matter

should be investigated internally as far as possible and/or appropriate, and disciplinary action should be considered if:

- the offence brings into question the staff members suitability for their job role and/or
- their continued presence at work would be unacceptable to other staff, patients or service users on reasonable grounds and/or
- their continued presence in the workplace would be likely to cause harm to the Trust's reputation and standing in the local community.

6.1.12 Staff Side/accredited health and safety representation: although the same disciplinary standards will apply to their conduct and behaviour as staff, disciplinary action against a trade union representative/health and safety representative can be misconstrued as an attack on the union. Accordingly, no formal disciplinary action shall be taken against a Staff Side or accredited health and safety representative until the full time official of their organisation has been informed of the circumstances of the case. Managers must consult with HR in these circumstances. An up to date list of the representatives can be found on the Info-net.

6.2 Initial action

6.2.1 Concerns about a staff member's conduct or behaviour can arise in a number of ways, from a specific incident to a gradual decline in standards. However the concerns arise, the manager will:

- Carry out an initial fact finding exercise as soon as possible. Please refer to the Trust's Investigations Policy for information and guidance on what this should entail.
- Undertake a risk assessment – this will determine whether there is any impact on patients, the service, other staff and/or the staff member concerned, the likelihood of recurrence and whether exclusion from work may be appropriate. Please refer to the Trust's Exclusion Policy for information and guidance around this.
- Determine which policy should apply – i.e. whether the concerns relate to conduct and behaviour where this policy will apply or whether they are, for example, capability issues (Capability Policy), poor attendance due to sickness (Health, Wellbeing and Attendance Policy) or Dignity at Work concerns (Resolution Policy).

6.2.2 The manager will then decide in consultation with HR and the relevant Senior Manager whether the concern requires formal investigation or whether it can be resolved informally.

6.2.3 From time to time staff may also have concerns about their own conduct or behaviour. This can occur for example on return from a long period of absence or when significant events occur in their life. Staff are encouraged to discuss such concerns with their manager as soon as possible in order that appropriate support can be identified and put in place.

6.3 Informal action

6.3.1 If the manager deems that informal action is appropriate to resolve or correct concerns, they will arrange to discuss them with the staff member at the earliest opportunity. The informal nature of the discussion means that written notification of the meeting is not required. It is also expected at this informal level that the discussion will be able to take place between the staff member and their line manager alone without a Companion or HR present.

6.3.2 The focus of the informal discussion should be on identifying appropriate support measures to assist the staff member in improving and sustaining the required standards of conduct and behaviour. In the spirit of partnership and joint responsibility for resolution, the manager and staff member will be expected to contribute constructively to discuss and resolve the concerns.

6.3.3 The purpose of the discussion will be for:

- The manager to clearly set out the issues of concern including giving examples where the staff member's conduct or behaviour has fallen below expected standards and remind the staff member of the standards to be maintained.
- For the staff member to provide a response including any reasons why they believe this has happened.
- For both to agree actions and timescales to resolve or correct the concerns. These may include identifying and arranging appropriate education, training or development; addressing any contributory factors such as workplace bullying and harassment; referring or signposting to the Trust's Support Services; changes to working method or pattern of working; management supervision or identifying a coach or mentor.
- Agree how improvement will be monitored - this should include regular feedback meetings and a reasonable review period.

6.3.4 Written confirmation of the informal discussion will be sent to the staff member within seven days of the meeting detailing the concerns and confirming agreed actions and timescales for improvement. It will also be made clear that if any further concerns are raised of a similar nature or the required improvement is not achieved and sustained then formal disciplinary action may follow.

6.4 Investigation

6.4.1 Depending upon the circumstances of the case it may be necessary for a formal investigation to take place, for example where there are allegations of potential serious or gross misconduct and/or where the issues are complex and/or the facts unclear. Any formal investigation will be carried out in line with the Trust's Investigation Policy and Procedure.

6.4.2 The nature and scope of any investigation will vary from case to case, depending on the concerns raised and the seriousness of the matter. However in cases where misconduct is admitted and/or where the facts are

unarguable and clearly evidenced the Trust reserves the right to dispense with an investigation and proceed directly to hold a disciplinary hearing.

6.4.3 When a formal investigation is required, the manager will arrange to discuss this with the staff member at the earliest opportunity. The manager will advise the staff member of the nature of the concerns and that they will be formally investigated. The manager will advise the staff member that a case investigator will be appointed who will invite the staff member to an investigation meeting as part of the investigation process. The manager will explain that they may be accompanied to the meeting by their chosen Companion (see 5.2 below). It is the staff member's responsibility to arrange for their Companion to attend and confirm attendance with the investigating officer.

6.5 Formal disciplinary action

6.5.1 The Trust will take formal disciplinary action against a staff member in a range of circumstances including where:

- An investigation has concluded that there is sufficient evidence to substantiate the allegations and the concerns are sufficiently serious (see Appendix 1 - Examples of misconduct and gross misconduct).
- There is a potential risk of harm to the Trust, its patients or staff, or where harm has occurred.
- There has not been a sufficient and sustained improvement following informal action.
- Informal action is not appropriate to resolve the concerns or the staff member refuses to meet with their manager informally.

6.5.2 Unless the concerns amount to gross misconduct it is expected that formal disciplinary action will be progressive i.e. where the required improvement in standards is not achieved or sustained, further disciplinary action will be taken.

6.5.3 Where a member of staff subject to formal disciplinary action raises a grievance during the disciplinary process, consideration will be given as to how to proceed in consultation with HR. In such circumstances the Trust will not automatically suspend the disciplinary proceedings as it may be appropriate to deal with the grievance as part of the disciplinary process, for example where concerns are raised about the process followed, the investigating officer or hearing panel.

6.5.4 All those involved in the application of this policy will take account of any specific needs of any staff involved in the investigation and/or disciplinary process, including in relation to any disability, impairment or language barrier, and make reasonable adjustments as appropriate. Advice should be sought from the Equality, Diversity and Inclusion team and/or HR as appropriate.

6.6 Right to be accompanied

6.6.1 Staff members will normally be advised of the proposed hearing date and their right to be accompanied at least seven calendar days in advance.

6.6.2 Staff may be accompanied at disciplinary and appeal hearings by a Companion who may be a workplace colleague or trade union representative not acting in a legal capacity.

6.6.3 Staff discipline is an issue for internal resolution and staff members may not have legal representation at any stage of this process.

6.6.4 Family members will often be emotionally involved in matters of staff discipline and it will usually not be appropriate for them to attend any internal meetings with staff members. An exception to this may be made, for example, as a reasonable adjustment for a disabled staff member.

6.6.5 Companions may:

- Address the hearing
- Present and sum up the staff member's case
- Respond on behalf of the staff member to any views expressed at the meeting; and
- Confer with the staff member during the hearing.

6.6.6 Companions must not:

- Answer questions on the staff member's behalf;
- Address the hearing if the staff member does not wish it; or
- Prevent the employer from explaining their case or the disciplinary panel from performing their role.

6.6.7 Where a staff member's companion cannot attend on the date proposed, an alternative Companion should be sought. If the member of staff is unable to secure a Companion on the date scheduled then the Trust may agree to one rearrangement (see 5.4.1 below).

6.7 Rights of accredited representatives of staff organisations

6.7.1 Where disciplinary action is being considered against a staff member who is a trade union representative in relation to their role as representative, the matter will be discussed at an early stage with an official employed by the trade union. However, if the disciplinary action being considered relates to their substantive post, contact with the union will not occur except with the agreement of the staff member.

6.7.2 Where exclusion is being considered, the same will apply. If contact is unable to be made before the exclusion takes place, a record should be made of the efforts made to contact the official.

6.8 Attendance at formal meetings and hearings

- 6.8.1 Staff and their representatives must ensure that they attend all formal investigation meetings and disciplinary and appeal hearings as scheduled by the Trust. If staff are unable to attend due to circumstances outside of their control they must inform the investigating officer/hearing manager and HR as soon as possible. Where appropriate, and with agreement of all parties, the meeting or hearing may be rescheduled, however, only one rearrangement will usually be permitted. If staff do not advise of their inability to attend the initial date offered or do not make sufficient attempt to attend or do not attend the rearranged hearing a decision may be made in their absence.
- 6.8.2 Where it is deemed that a health issue may prevent a member of staff from attending formal investigation or disciplinary meetings OH advice may be sought as to their fitness to attend. Where staff are considered unfit to attend following an OH review consideration will be given as to how to proceed in consultation with HR.

6.9 Witnesses

- 6.9.1 Staff who are required to provide evidence to an investigation may be asked to attend any subsequent disciplinary and/or appeal hearing. Unless there is a compelling reason for them not to attend then staff must cooperate and make every effort to attend as required.
- 6.9.2 If the hearing is a disciplinary hearing arising from a dignity at work complaint, i.e. a complaint of discrimination, victimisation, bullying or harassment, witnesses are encouraged to attend the hearing in order for the panel to fully understand the context and the impact of the alleged treatment on the complainant. However staff may not be compelled to attend a hearing as a witness if this is reasonably likely to cause them undue distress. They may however be required to meet with the panel alone or respond to questions outside of the hearing.

6.10 Disciplinary outcomes and sanctions

- 6.10.1 No further action: If the disciplining manager decides that no further action should be taken, the staff member should be informed orally and provided with written confirmation to this effect. This decision does not preclude other recommendations from being made by the panel, such as a requirement for the staff member to undergo training or the manager to review systems or processes.
- 6.10.2 First Written Warning: This is usually appropriate in cases where there has either been a minor breach in conduct which remains unresolved by informal action, or first offences of a more serious nature. First written warnings will remain current for a period of twelve months.
- 6.10.3 Final Written Warning: A final written warning will be issued in cases of a first offence of a very serious nature, or where the staff member has a current first

written warning. Final written warnings will remain current for a period of eighteen months. This may be extended in certain circumstances, for example where a warning for the same or a related offence exists, the disciplining manager may provide the staff member with a further period to improve by extending the final written warning for a period not exceeding twelve months.

6.10.4 Dismissal: Dismissal from the Trust (with notice) may be applied in cases where:

- a final written warning is current or recently expired for related misconduct;
- there has been a cumulative failure to demonstrate a sustained improvement in standards of conduct or behaviour; or
- the misconduct amounts to gross misconduct but summary dismissal is not deemed appropriate.

6.10.5 Summary dismissal: This is dismissal without notice or payment in lieu of notice and is usually only applicable in cases of gross misconduct. Please refer to Appendix A for examples of the types of misconduct where summary dismissal is likely to be considered.

6.10.6 Referral to professional body: In certain circumstances it may be appropriate for the disciplining manager to advise the staff member's professional body of the outcome to any disciplinary action.

6.10.7 References: Where appropriate the Trust may be obliged to disclose any unexpired disciplinary sanction and relevant circumstances surrounding it to a prospective new employer.

6.11 Pay progression

6.11.1 The 2018 Framework Agreement on the reform of Agenda for Change ("the New Pay Deal") introduced provisions from 1 April 2019 for a new pay system with faster progression to the top of pay bands through fewer pay step points.

6.11.2 Staff are required to adhere to the Trust's Values and Behaviours and expected standards of conduct and behaviour at all times whilst working for the Trust (see BSUH Expected Standards at Work) in order to progress through their pay band whilst making the greatest possible contribution to patient care (see section 5.3 above).

6.11.3 The expectation is that staff will meet the required standards and will be able to progress on their pay step date. However where a staff member fails to do so and receives a disciplinary sanction (short of summary dismissal), the 2018 Framework Agreement requires that any pay step progression date that falls whilst the disciplinary sanction is "live" must be postponed until after the sanction expires.

6.11.4 This provision comes into force for all staff across the Trust on 1 April 2021 but transitional arrangements bring this into effect on 1 April 2019 for staff joining the NHS or promoted on or after that date.

6.11.5 For further advice and information on how these provisions may affect you please refer to the Trust's Pay Progression Policy and/or contact your line manager, Union rep, Staff Network or HR.

6.12 Written confirmation of disciplinary action

6.12.1 All decisions on disciplinary action must be confirmed in writing to the staff member and normally within ten working days (two weeks) of the hearing. Where an extension to this timeframe is necessary, for example in order to consider information provided at or following the hearing, the staff member will be advised of the delay and the new date by which they will receive the decision.

6.12.2 The written confirmation should include the reasons for the decision as well as setting out the right of appeal.

6.12.3 All warnings will expire at 23:59 hours on the date stated in the letter of confirmation. Expired warnings will remain on file and will ordinarily be disregarded for disciplinary purposes after the specified period. A decision to dismiss should not be based on an expired warning but the fact that there is an expired warning may explain why a lesser sanction is not substituted.

6.13 Authority to dismiss

Any Trust manager of Band 8A or above has authority to dismiss a more junior staff member.

6.14 Appeals

Staff members have the right to appeal against a disciplinary decision and should refer to the Trust's Appeals Process available on the staff Info-net for information and guidance on how to appeal and the process to be followed.

6.15 Criminal charges or convictions

6.15.1 If during the course of their employment with the Trust a member of staff is charged with or convicted of a criminal offence this will not in itself be considered a disciplinary offence. However the Trust will need to consider the nature of any such arrest, police investigation, charge or conviction and the effect or likely effect of this on:

- Their suitability to carry out their role;
- Their relationship with the Trust, colleagues and patients; and
- Whether the arrest, investigation, charge or conviction brings or has the potential to bring the Trust into disrepute.

6.15.2 Staff are required to disclose any criminal charges or convictions to their line manager as soon as they become aware of these. Any failure to do so will usually be considered a disciplinary offence.

6.15.3 The Trust's Investigation and Disciplinary Policies and Procedures are separate from any police enquiries or investigations, legal proceedings or convictions and the Trust will (subject to police or social services authorisation) carry out its own investigation into any allegations that are also being concurrently investigated or pursued externally. Trust may ultimately take a decision to dismiss the staff member if it considers that the allegations render their continuing employment with the Trust unsustainable.

6.15.4 The Trust reserves the right to exclude the staff member from duty, normally on full pay, or to place them on a period of authorised unpaid leave, pending the outcome of any legal proceedings. The Trust may take disciplinary action before any judgement of the courts takes place, depending on the circumstances of the case.

7. Informing other bodies

The Trust has a responsibility to report any incidence of alleged professional misconduct to the appropriate professional body who may investigate the case, for example:

- Where misconduct relates to children or vulnerable adults the Trust will inform the Disclosure and Barring Service.
- Where the allegations involve fraud, the Trust's Local Counter Fraud Specialist will be informed.
- Where criminal activity is alleged, the Trust has a responsibility to inform the police.

8. The Freedom to Speak Up (FTSU) Guardian

The FTSU Guardian provides an impartial service for staff to discuss concerns confidentially. The Guardian will then support the member of staff to raise the concern and ensure there are no recriminations from doing so. The data collected by the Guardians helps to ensure lessons are learned from staff raising concerns through the FTSU process. There is an executive and a non-executive lead for FTSU at the Trust and the Guardians have direct access to the Chief Executive if necessary. The Raising Concerns/Freedom to Speak Up policy and guidance is available on the Staff info-net.

9. Data protection

Brighton and Sussex Universities Hospitals NHS Trust is committed to preserving the confidentiality, integrity and availability of the information it holds and is bound by the provisions of a number of laws and regulations including:

- UK Data Protection Act 2018;
- General Data Protection Regulations;
- Human Rights Act 1998;
- DoH Records Management: Code of Practice 2016;
- NHS Digital – Data Security & Protection Toolkit – National Data Security Standards; and
- Care Quality Commission Standards.

10. Training implications

HR is responsible for ensuring that appropriate training is provided to managers on the content of this policy and updates as required. All such training records will be held by HR.

In the case of a serious incident of staff discipline, the appropriate Directorate Lead will co-ordinate a case review including the lessons that have been learnt from all those involved, including staff side representatives. This will be shared in an appropriate format at Divisional meetings and if appropriate across Divisions.

11. Monitoring arrangements

The table below demonstrates how this policy will be monitored for compliance.

Measurable Policy Objective	Monitoring / Audit Method	Frequency	Responsibility for performing monitoring	Where is monitoring reported and which groups / committees will be responsible for progressing and reviewing action plans
To record formal proceedings and use for reporting purposes.	HR to report on disciplinary data via the HR Dashboard and at Divisional Performance Reviews.	Monthly	HR Relationship Managers and Head of Employee Relations and Medical HR	Divisional Performance Review Meetings HR Director
To record formal proceedings and use for reporting purposes.	HR to provide disciplinary data to Equality, Diversity and Inclusion	Annually	Head of Employee Relations and Medical HR	Equality, Diversity and Inclusion Lead HR Director TEC

	team for annual workforce report			
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12. Due Regard Assessment Screening

The Trust recognises the diversity of its staff and expects managers to adopt a sensible but sensitive approach when considering disciplinary issues. Advice should be sought from HR and Equality, Diversity and Inclusion team at both informal and formal stages.

The Due Regard Assessment is at Appendix 3 available on the Info-net or in hard copy/by email from HR or line manager.

If you have identified a potential discriminatory impact of this policy, please refer it to the Human Resources Director together with any suggestions as to the action required to avoid/reduce this impact.

13. Associated documentation

This policy should be read in conjunction with the:

1. Investigations Policy
2. Exclusion Policy
3. Capability Policy and Procedure
4. Resolution Policy and Procedure
5. Health, Wellbeing and Attendance Policy and Procedure
6. Equality, Diversity and Inclusion Policy
7. Trust policy incorporating MHPS

14. References

ACAS Code of Practice 1 - Disciplinary and Grievance Procedures available at www.acas.org.uk

Agenda for Change Terms and Conditions of Service Handbook available at www.nhsemployers.co.uk