

	<b>Policy</b>
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<b>LEAD EXECUTIVE DIRECTOR DGM</b>	<b>Director of HR &amp; OD</b>
<b>AUTHOR(S): Note should <u>not</u> include names</b>	<b>Human Resources Department / Staff Side / Staff Guardians</b>

<b>TARGET AUDIENCE:</b>	All Trust Personnel
<b>DOCUMENT PURPOSE:</b>	<p>The aim of the Disciplinary Policy is to provide a fair process for dealing with alleged misconduct; ensure appropriate and compassionate treatment of individuals and staff groups; ensure that the health and wellbeing of all involved in disciplinary processes is safeguarded; safeguard the efficiency and smooth running of the organisation; and ensure that management, Trade Unions and staff are aware of their rights and obligations in respect of disciplinary and appeals processes.</p> <p>All policies will be non-discriminatory and personal confidentiality will be maintained where reasonable and practical.</p>
<b>To be read in conjunction with</b>	<ul style="list-style-type: none"> <li>• Policy for Responding to Concerns about Clinical Performance (HR39 V4)</li> </ul>

<b>SUPPORTING REFERENCES</b>	<input type="checkbox"/> Agenda for Change Terms and Conditions <input type="checkbox"/> Maintaining High Professional Standards in the Modern NHS (Department of Health, 2003) <input type="checkbox"/> ACAS Code of Practice <input type="checkbox"/> Employment Rights Act 1996 <input type="checkbox"/> Employment Relations Act 1999 <input type="checkbox"/> Employment Act 2002 <input type="checkbox"/> Recommendations following the independent inquiry into the tragic death of Amin Abdullah at Imperial College Healthcare NHS Trust
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<b>CONSULTATION</b>		
	<b>Committee/Group</b>	<b>Date</b>
<b>Consultation</b>	HR Policy Group	1.4.21
<b>Approval Committee</b>	JNCC	8.4.21
<b>Ratification date at Policy Council:</b>	<b>27.4.21</b>	
<b>NEXT REVIEW DATE:</b>	March 2022	
<b>AMENDMENTS:</b>	Significant changes throughout the policy, reflecting 'Just Culture' principles and providing a greater focus on informal remedy and the health and wellbeing of those involved in the process.	

# Disciplinary Policy on a Page

## What do I need to know?

- Where possible every effort should be made to resolve issues without using the formal procedure.
- Matters should be dealt with promptly, avoiding any unnecessary delay
- Employees should be informed of the allegations against them, in person and in writing, and given full opportunity to state their case before any decision is reached
- There is no presumption that a disciplinary procedure will result in a disciplinary outcome
- Disciplinary outcomes are based on balance of probability with regard to the evidence, not what has been proved beyond reasonable doubt
- Confidentiality and privacy must be respected at all times
- Individuals have the right to consult with their trade union representative at any stage
- Please refer to the Disciplinary Policy for full details

## Informal Stage

### **Actions required:**

- A conversation with the individual at the earliest opportunity concerned to understand what has occurred and why.
- If it is felt appropriate to handle the concern informally the conversation/reflection should be recorded in a *Record of Supportive Coaching Conversation*, with a copy retained by the individual with a copy kept on file.
- This record should detail - the standards of behaviour expected and that a continuation/repeat of the behaviour may lead to formal action.
- Formal action may be required following this discussion.

## Formal Stage 1

If following an initial conversation, or due to the serious nature of the allegation, it is deemed that formal action is appropriate, the individual should be notified without delay and an investigation will be undertaken.

The purpose of an investigation is to establish the facts relevant to the concerns or allegation(s). An Investigating Officer will be appointed by a Senior Manager who will define the Scope of the Investigation. Investigations are supported by a member of the HR Team.

Where a member of staff does not deny the allegation, the investigating officer should complete the investigation with a statement from the individual and pass the completed report to the Manager (expedited procedure).

## Precautionary Suspension

### **This should be exception not the rule**

Precautionary suspension should be a last resort and only apply in cases where there is a concern that the individual will pose a risk to themselves, the investigation, patients, colleagues, visitors or Trust property.

This is not a formal sanction and is with full pay.

Restricted duties or moving the individual to another area may be appropriate.

Before precautionary suspension takes place, advice should be taken from the HR team.

## Sanctions

### **Levels of disciplinary action following a hearing:**

- Allegation not substantiated and/or no evidence
- Informal remedy – reflection, coaching, action plan, learning and development
- First Written Warning – live for 12 months
- Final Written Warning – live for minimum 12 months
- Action short of Dismissal e.g. downgrading
- Dismissal

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## **1. INTRODUCTION**

- 1.1 East Lancashire Hospitals NHS Trust require high standards of conduct, attitude and behaviour from all our staff in ensuring that we provide Safe, Personal and Effective care to all our patients.
- 1.2 The Trust is committed to enabling people to improve and learn from mistakes and this policy is designed to ensure a fair and consistent approach is taken when an employee's conduct, behaviour or actions fall short of our expected standards.
- 1.3 The fair treatment of staff supports a culture of fairness, openness and learning in the NHS and makes staff confident to speak up when things go wrong.
- 1.4 The policy has been developed in partnership with the Trust's recognised trade unions and the Staff Guardians Office and is in accordance with the ACAS Code of Practice.
- 1.5 This policy is not appropriate where an employee's ability to do their job is affected by a lack of skill or knowledge (HR17 Managing Performance Policy) or ill health/attendance (HR07 Attendance at Work Policy).
- 1.6 For matters involving disagreement, conflict or complaints, refer to HR07 Early Resolution Policy to enable quick, fair and constructive resolution of issues.

## **2. POLICY STATEMENT**

- 2.1 The primary goal of this policy is to achieve improvement in employee conduct, attitude and behaviour.
- 2.2 The health and wellbeing of anyone involved in the disciplinary process will be safeguarded at all times.
- 2.3 All Trust employees must be aware of the standards of conduct, attitude and behaviour that are required of them at work.
- 2.4 Managers must bring concerns of this nature to the attention of employees at the earliest opportunity, giving them opportunity to respond before any further decisions are taken.
- 2.5 Line Managers should try to resolve minor matters or concerns relating to conduct, attitude or behaviour informally. Consideration should be given to whether further training, support, guidance, informal management or a supportive coaching conversation would be more appropriate.
- 2.6 If informal approaches do not bring about the required improvement, or the misconduct is sufficiently serious, formal stages of the procedure should be followed.
- 2.7 If an individual admits to the misconduct and shows reflection, the expedited procedure can be used, where all parties agree to this as a way forward.
- 2.8 Managers will ensure that any and all action under this policy is reasonable and proportionate.

- 2.9 The decision made following any disciplinary hearing will be taken on the balance of probability, based on the evidence presented, not what is proven beyond reasonable doubt.
- 2.10 Employees can be accompanied and represented at formal stages of this policy (formal investigation onwards) by a recognised trade union representative or work colleague.
- 2.11 In the event that allegations are made against an employee who is also an accredited trade union representative, a Full Time Officer with the appropriate trade union will be informed as soon as the allegation(s) are raised and may represent the employee at any stage of the formal disciplinary process and/or during the preceding investigation.
- 2.12 All managers who investigate allegations, commission investigations or are part of a disciplinary panel will be appropriately trained, with refresher training every three years. For existing managers, there will be a 12 month period from the launch of this policy to access the training.
- 2.13 All disciplinary cases will be treated sensitively and confidentially, in line with the Data Protection Act 2018 and the Common Law Duty of Confidentiality. Breaches of confidentiality by any party will be investigated and may result in disciplinary action up to and including dismissal.

### **3. SCOPE**

- 3.1 The Policy applies to all non-medical & dental staff employed by East Lancashire Hospitals NHS Trust.
- 3.2 For medical and dental practitioners, refer to HR39 Policy for Responding to Concerns about Clinical Performance.

### **4. ROLES AND RESPONSIBILITIES**

#### 4.1 Trust Board

4.1.1 Ensure adherence with the policy

4.1.2 Receive and scrutinise annual reports on disciplinary activity

4.1.3 Overall responsibility for the wellbeing of employees involved within the disciplinary process

#### 4.2 Employees

4.2.1 Be familiar with and adhere to this policy

4.2.2 Always act within the values and behavioural standards of the Trust

4.2.3 Speak up, raise concerns

4.2.4 Engage with the disciplinary process in an open and honest way

#### 4.2.5 Access wellbeing support as appropriate

### 4.3 Line Managers

4.3.1 Ensure that all employees are aware of the expected standards of conduct, attitude and behaviour

4.3.2 Inform the employee who is alleged to have committed misconduct of the issues and request a statement from them and anyone else who may have witnessed

4.3.3 Inform the employee of the health and wellbeing support that is available to them

4.3.4 Aim to resolve minor issues informally, where the required improvement could be achieved through further training, support, guidance, informal management or a supportive coaching conversation

### 4.4 Commissioning Manager

4.4.1 Ensure that all options to resolve without the need for a formal investigation have been exhausted

4.4.2 Where an investigation is necessary, draw up the terms of reference using the Trust template

4.4.3 Identify a suitable investigating manager, ensuring that they have capacity to undertake a timely investigation, has no prior knowledge of the issues and can provide a balanced, objective report

4.4.4 Monitor progress of the investigation to ensure that it commences in a timely manner and is concluded as quickly as possible

4.4.5 Review the investigation report and, alongside HR, make a decision as to next steps (again reviewing whether informal action is more appropriate than a formal hearing)

### 4.5 Investigating Manager

4.5.1 Must be independent and no potential conflict of interest.

4.5.2 Work with HR support to plan the investigation, including timetable and evidence that will be required (eg, statements, interviews, systems, documents)

4.5.3 Commence the investigation in a timely manner and conclude as quickly as possible, while ensuring a thorough investigation

4.5.4 Ensure that employees involved in the process are kept informed at all stages and on a regular basis

4.5.5 On conclusion of the investigation, write up a balanced report, based on the evidence received and using the Trust template

4.5.6 It is not the Investigating Manager's role to make recommendations as to next steps, simply to outline the evidence in a balanced manner

4.5.7 Provide the investigation report to the Commissioning Manager

#### 4.6 Human Resources

4.6.1 Oversee the introduction, operation and monitoring of this policy to ensure fair and consistent application

4.6.2 Provide support and advice for the Investigating and Commissioning Managers

4.6.3 Being a point of contact for employees involved in the disciplinary process and ensuring that support is being offered at each stage

#### 4.7 Trade Union Representatives/Work Colleagues

4.7.1 Support employees during the formal stages of this policy

4.7.2 Raise any concerns around procedure to the relevant manager and/or HR representative

#### 4.8 Disciplinary Case Review Group

4.8.1 Reviews new, ongoing and closed disciplinary cases on a monthly basis

4.8.2 Oversight and scrutiny of cases and overall processes and procedures

4.8.3 Ensuring that cases are being managed in line with this policy

4.8.4 Overseen monthly by an allocated Non-Executive Director

4.8.5 Report annually to the Trust Board via an Assurance Report

### **5. SUPPORTING EMPLOYEES**

5.1 Being subject to allegations of misconduct can be very upsetting and stressful for the employee, as well as for potential witnesses and other work colleagues.

5.2 It is important throughout the procedure for managers to keep talking with both the employee subject to allegations and any other staff affected. Clear, regular and confidential communication can help keep those involved informed and enable them to ask questions and request support, potentially avoiding or mitigating stress or other mental health issues.

5.3 Any staff involved in a disciplinary process, at any stage, can access support from a range of sources, including (but not limited to):

5.3.1 Line Manager

5.3.2 Occupational Health (either self or manager referral)

5.3.3 Employee Assistance Programme – Vivup – 03303 800658

5.3.4 Staff Guardian – [staffguardianoffice@elht.nhs.uk](mailto:staffguardianoffice@elht.nhs.uk)

5.3.5 Trade Union Representative

5.3.6 Human Resources



## **6. PRECAUTIONARY SUSPENSION**

- 6.1 Where serious concerns are raised it may be appropriate for the employee to be suspended from work or have their professional practice restricted. This can only be authorised by a manager at Grade 8b or above, with Director or Deputy Director of HR & OD approval.
- 6.2 Suspension or restriction is a precautionary act not a disciplinary one and will be for the minimum period possible.
- 6.3 A review of continuation of suspension will take place every four weeks and the employee informed of the reason for a further suspension. Suspension will be on full pay with no loss of earnings.
- 6.4 During suspension employees must not contact their work area or approach anyone involved or likely to be involved in the case. If they wish to contact witnesses to support their case this should be done via their representative or the investigation manager.
- 6.5 For clarity, employees who have been suspended or have had their practice restricted can contact their staff side representatives, HR, Staff Guardians or Occupational Health and discuss, confidentially, the disciplinary issues. This is to ensure that appropriate support can be provided.
- 6.6 Except in medical emergencies they are required to remain off Trust premises unless given express permission by the investigating manager or nominated deputy to attend for a specific purposes eg: medical appointment, meeting the representative.
- 6.6 Employees must be reasonably available between 9am – 5pm Monday to Friday to attend meetings. Pre-booked annual leave will be honoured.

## **7. INFORMAL PROCEDURE**

- 7.1 Managers should always discuss conduct issues with their employee at the earliest opportunity and where appropriate should first attempt to deal with any minor misconduct informally before resorting to the formal procedure.
- 7.2 In many cases, further training, support, guidance, informal management or a supportive coaching conversation would be more appropriate.
- 7.3 A file note summarising the informal action will be placed on the employee's personal file for reference purposes. The file note will summarise the concerns raised, standards of behaviour expected and that a repeat of the behaviour may lead to formal action.
- 7.4 If informal action does not bring about the required improvement, or the misconduct is too serious to be classed as minor, formal disciplinary action will be considered.

## **8. INVESTIGATION**

- 8.1 An investigation will only commence once the Commissioning Manager is satisfied that all options of informal management have been exhausted
- 8.2 A competent and impartial investigating manager will be appointed by the Commissioning Manager to carry out the investigation.
- 8.3 The Commissioning Manager will define the scope of the investigation and an outline of the related issues.
- 8.4 The aim of the investigation is to ascertain the staff member's account of the allegation and allow the staff member to comment freely on the allegation.
- 8.5 Statements should be obtained or investigation meetings held with relevant witnesses as determined by the investigation manager.
- 8.6 Employees have the right to be accompanied to any formal meetings by a recognised trade union representative or work colleague.
- 8.7 The investigating manager should liaise with the employee and their trade union representative/work colleague (where they have one) to arrange a mutually convenient date/time and at the earliest opportunity and giving at least 5 days notice.
- 8.8 The investigation manager will produce a summary report of their findings and the Commissioning Manager will use the report to decide the next course of action.
- 8.9 In the case of formal disciplinary action being taken, this report will form basis of the Management Statement of Case and the Investigating Manager will present this to the panel.
- 8.9 Investigations should be comprehensive, balanced and concluded in a timely manner.
- 8.10 Those involved in the investigation must be regularly communicated with and kept up to date with progress, especially where there are delays.

## **9. FORMAL PROCEDURE**

- 9.1 At all formal stages of the disciplinary process, once the matter has been fairly and thoroughly investigated and it has been established that there is a case to answer, a disciplinary hearing will be arranged with minimum delay.
- 9.2 Reasonable notice will be given of the arrangements for the meeting - normally 10 working days from the point that the member (and representative where applicable) receive the letter, including who will be present at the hearing. This notice will be confirmed in writing, including the management statement of case (MSOC) detailing the allegation/s, any witness statements and supporting documents will be distributed to all relevant parties. Where the Manager presenting the case intends to call witnesses, these details should also be shared with all parties in advance of the hearing. Where the employee is represented, a copy of all the relevant information should also be sent to their representative.
- 9.3 The employee must be advised if a formal warning or dismissal is a potential

outcome. Employees, managers and representatives must make all reasonable steps to attend.

- 9.4 The investigating manager/HR should liaise with the employee and their trade union representative/work colleague (where they have one) to arrange a mutually convenient date/time.
- 9.5 The employee will be given the opportunity to respond to the MSOC and may provide a written or verbal submission. In the case of a written submission, this should be provided to the panel members and management at least 3 days prior to the hearing, to allow reasonable time to review prior to the hearing.
- 9.6 All information/evidence should have been provided by this stage, as part of the investigation and there should be no surprises at the hearing. If anything new does come to light in the period between the investigation concluding and the hearing taking place, this should be provided to the Investigating Manager and panel at the earliest opportunity and ideally at least 3 days prior to the hearing.
- 9.7 If the employee or the representative wishes to call witnesses to the hearing, it is the responsibility of the employee/Trade Union Representative to arrange their attendance. Any issues with release of the employee to attend should be raised with the investigation manager or HR.
- 9.8 Where the employee or their representative feels that management witnesses are not being called that they believe are material to their own case, they should raise this matter formally with the chair of the hearing, preferably in advance. Alternatively they can seek to call these witnesses themselves.
- 9.9 The manager hearing the allegation may be accompanied by a professional advisor if considered necessary. A HR representative will always attend hearings at which dismissal is a potential outcome.
- 9.10 If dismissal is a potential outcome, the chair of the meeting must be a Senior Manager Grade 8b and above.
- 9.11 At the meeting the investigating manager will state the nature of the allegations and outline the case by going through the MSOC. The employee will be given full opportunity to respond to the allegations.
- 9.12 In considering any sanction, the manager will take account of the employee's previous work record and any other mitigating factors.
- 9.13 Witnesses will be called in to the meeting at appropriate times as agreed with the Chair.
- 9.14 The outcome of the meeting will be delivered verbally on the day of hearing where possible and confirmed in writing within 7 days of the conclusion of the hearing. If disciplinary action is to be taken the letter will include details of the complaint, the improvement required (if appropriate) and the right to appeal. It will also state that further disciplinary action may be taken if there is not a satisfactory improvement.
- 9.15 Where a decision cannot be reached on the day, it will be clearly communicated when a decision is expected to be delivered and this must be as soon as possible

after the hearing. A date/time should be agreed to reconvene to deliver the outcome, liaising with representatives where applicable.

9.16 Summary notes of the hearing will be taken and are available on request.

## **10. Pre-Agreement/Expedited Procedure**

10.1 Following an investigation an agreement can be reached by both parties in relation to not proceeding to a formal hearing, but considering the acceptance of a sanction.

10.2 This can only apply where the relevant facts are not in dispute, where an employee is not already subject to a live sanction and both sides are in agreement about the outcome of the process.

10.3 In these circumstances, the process should include:

- Letter confirming the allegation and the admittance
- Meeting to discuss and agree the sanction
- Right of appeal

10.4 This approach will not apply to allegations of gross misconduct or where dismissal is a possible outcome.

## **11. Formal Disciplinary Sanctions**

11.1 The seriousness of the misconduct will determine the level of disciplinary action to be taken and are as follows:

- First written warning – to remain live for a 12 month period
- Final written warning – to remain live for a minimum 12 month period
- Dismissal with contractual notice
- Dismissal and the offer of re-employment in another role
- Redeployment to another position (potentially alongside a final written warning)
- Summary dismissal (without contractual notice) – gross misconduct cases only

## **12. Pay Progression – Impact of a Live Warning**

12.1 Under Annex 23 of the Agenda for Change Handbook, from 1 April 2021, a live disciplinary warning on an employee's file will mean that they cannot progress should they reach a pay step, so pay progression would be withheld until the warning expires.

12.2 In the event of a disciplinary warning being overturned at appeal, the pay step would need to be backdated (AFC Handbook, Annex 23, Para 22).

## **13. Appeals**

13.1 Any employee has the right of appeal against a formal disciplinary sanction.

13.2 A more senior level of manager than heard the original case, will hear the appeal with the exception of appeals against dismissal.

- 13.3 Appeals against dismissal will be heard by a Panel of 2 Directors, one of whom may be a non-Executive Director. A senior member of HR will also be present to support the Panel.
- 13.4 An appeal must be made in writing to the Director of HR&OD within 14 days of receipt of the disciplinary outcome letter
- 13.5 The appeal letter must include clear grounds upon which the appeal is made, such as:
- 13.5.1 the outcome was too severe or disproportionate
- 13.5.2 the outcome was inconsistent with one imposed for similar misconduct committed by another employee
- 13.5.3 there was unfairness or bias shown by the panel
- 13.5.4 mitigation was not sufficiently taken into account
- 13.6 The Chair of the disciplinary panel will respond to the grounds of appeal in writing and provide copies to the appeal panel and employee, ensuring reasonable time for all parties to review prior to the hearing.

## **14. Disciplinary Rules**

### **14.1 General Misconduct**

General Misconduct is conduct or behaviour which does not merit immediate dismissal but is of an unacceptable standard for the efficient functioning of the Trust. A list of offences that constitute General Misconduct is contained in Appendix 1 but this list is not exhaustive.

### **14.2 Gross Misconduct**

Gross misconduct is behaviour or an offence that so undermines the trust and confidence the Trust has in an employee that he/she cannot be retained in employment in any capacity with the Trust.

These are offences which affect the relationship between the employees and the Trust to such an extent that the member of staff cannot any longer reasonably be retained in his/her post by the Trust. Any member of staff who commits any act of gross misconduct will be dismissed without notice unless there are sufficient mitigating circumstances. A list of offences that constitute gross misconduct is contained in Appendix 2 but this list is not exhaustive.

### **14.3 Criminal Offences and Offences Committed Outside of Work**

If an employee is charged or convicted of an offence, whether committed on or off duty, the Trust will consider whether the offence renders the employee unsuitable for continued employment and may take disciplinary action up to and including dismissal. The Trust reserves the right to take action independently of any legal proceedings.

#### **14.4 Fraud, Bribery and Corruption**

All NHS employees are expected to be honest and act with integrity and probity at all times, not making, permitting or knowingly allowing to be made any untrue or misleading statement or information relating to your duties or functions of the Trust.

The trust takes the issues of fraud, bribery and corruption very seriously and any suspicious activity will be referred to the Local Counter Fraud Specialist and the results of any investigation could lead to disciplinary action being taken up to and including dismissal and/or civil, criminal prosecution proceedings being instigated against the appropriate person/persons involved.

#### **15. Referrals to Professional Bodies and Other Agencies**

15.1 Depending on the allegations, it may be necessary to make a referral to a relevant body, such as:

15.1.1 For an employee registered with a professional body, eg Registered Nurses or Allied Health Professionals, the regulatory body may be notified.

15.1.2 For all staff, it may be necessary to inform other agencies, such as the Police, Counter Fraud, the Disclosure and Barring Service.

15.2 Where allegations concern the safeguarding of children or vulnerable adults, the Trust's Safeguarding Lead must be notified without delay.

15.3 In cases relating to personal data breaches, the Trust has a legal duty to report to the Information Commissioners Office within 72 hours, so these need to be raised with our Information Governance Team without delay.

15.4 The Trust will give full co-operation with any such bodies with their investigations and be in regular contact.

15.5 The Trust will aim to continue with internal investigations and only delay if instructed by an external body.

15.6 The employee will be informed if any such referral is made and provided with details of the referral.

15.7 Where an individual resigns during a disciplinary investigation, it may still be necessary to proceed with a referral.

## 16. MONITORING MECHANISMS

Aspect of compliance being measured or monitored.	Individual responsible for the monitoring	Tool and method of monitoring	Frequency of monitoring	Responsible Group or Committee for monitoring
Case numbers by Division	HR team	Report from Case Management System	Bi – monthly	JNCC
Time taken for investigations	HR team	Report from Case Management system	Bi – monthly	JNCC
Number of suspensions	HR team	Report from Case Management System	Bi – monthly	JNCC
Full case details	Head of HR	Full scrutiny of new, ongoing and closed cases	Monthly	Disciplinary Case Review Group
Overall assurance	Head of HR	Assurance Report	Annual	Trust Board

## Appendix 1: Types of offences considered to be General Misconduct

- |     |  |
|-----|--|
| B1  | Unauthorised absence from his/her place of work, including extended or unauthorised breaks during working hours  |
| B2  | Sleeping whilst on duty which could have an adverse effect on one's fitness for work   |
| B3  | Failure to observe Health and Safety, and/or Fire regulations or related instructions.   |
| B4  | Insubordination  |
| B5  | Personal misconduct of a sufficiently serious nature as to affect his/her performance of duties and/or relationship between the member of staff and the Trust. |
| B6  | Negligence in job performance.   |
| B7  | Unauthorised use of the Trust's resources or of information obtained during the course of his/her employment.  |
| B8  | Refusal, without reasonable grounds, to wear any uniform or protective clothing provided by the Trust.   |
| B9  | Undertaking any other employment which adversely affects the performance of his/her duties.  |
| B10 | Failure, without reasonable grounds, to comply with the requirements of the Trust's Policies and Procedures and Codes of Conduct.                              |
| B11 | Behaviour, which exposes the Trust to justifiable complaints arising out of legislation such as Equality Act, or the like.                                     |
| B12 | Any act or omission committed by an employee that results in a financial loss to the Trust;  |
| B13 | Devalues public opinion of the Trust or its customers  |
| B14 | Unauthorised use of RA smartcards and systems, including inappropriate access to clinical/staff records  |



## Appendix 2: Types of offences considered to be Gross Misconduct

A1	Theft or attempted theft
A2	Fraud
A3	Acceptance of gifts or hospitality in contravention of the Bribery Act 2010, and, HSG (93)5 "Standards of Business Conduct for NHS staff".
A4	Failure to inform the Trust of any pecuniary interest of which the employees is aware in a contract which has been; or is proposed to be, entered into by the Trust in accordance with the provision of HSG (93)5 "Standards of Business Conduct for NHS staff."
A5	Serious misrepresentation at the time of appointment and/or at any time during employment
A6	Serious incapability at work brought on by alcohol or illegal drugs including consumption during working time
A7	Physical or indecent assault
A8	Ill-treatment of and/or sexual offences against patients.
A9	Any form of bullying and/or harassment, coercion or intimidation of a fellow employee, a patient, contractor and/or a member of the public;
A10	Loss, damage, negligent, misuse or unauthorised use of Trust property or assets;
A11	Deliberate disclosure of privileged and confidential information to any unauthorized persons
A12	Negligent or deliberate failure to comply with the legal requirement and/or the Trust's regulations concerning medicines.
A13	Working whilst contravening an enactment or breach of rules laid down by any relevant statutory bodies including practising without a professional registration in a profession where there is a requirement to obtain and maintain registration.
A14	Criminal offence(s) outside of the working situation, which substantially affect the performance of duties, or relationship between the member of staff and the Trust.
A15	deliberate and serious damage to property
A16	a serious breach of health and safety rules
A17	Any act or omission constituting serious negligence in a member of staff's performance of his/her duties.
A18	Unjustified refusal of a lawful and reasonable instruction (gross insubordination)
A19	Undertaking any other employment while unable to attend for duty for reason of ill-health and being in receipt of sick pay.

## **Appendix 2: Types of offences considered to be Gross Misconduct**

- |     |   |
|-----|---|
| A20 | Any breach of an explicit term of his/her contract of employment with the Trust; and/or any disregard of common law practice.                         |
| A21 | Verbal abuse of a patient(s), member(s) of the public or member(s) of staff during the course of employment or on the Trust's premises.               |
| A22 | Bringing the Trust into serious disrepute   |
| A23 | Deliberately accessing internet sites containing pornographic, offensive or obscene material  |
| A24 | Maliciously making or assisting someone else to make an unfounded complaint.  |
| A25 | Displaying of a dangerous weapon on Trust property or in a Trust vehicle; assault, or an attempt to assault any person(s), patient(s) or employee(s). |
| A26 | Unlawful discrimination or harassment   |
| A27 | A breach or failure to meet one of the standards as outlined in the Care Quality Commission Regulations e.g. Fit and Proper Persons, Duty of Candour  |
| A28 | Any action/omission, which can reasonably be judged to have resulted in a complete lack of confidence/trust in the individual by the Trust.           |

### Appendix 3: Disciplinary Flowchart

