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# MANAGING CONDUCT AND EXPECTED STANDARDS POLICY & PROCEDURE

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| **For use in:** | **All Areas of the Trust** |
| **For use by:** | **All Staff** |
| **For use for:** | **In the Managing Conduct and Expected Standards Process** |
| **Document owner:** | Executive Director of Workforce & Communications |
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## Purpose of this Document

To provide a framework to enable the Trust to appropriately, fairly and compassionately manage and support colleagues who do not meet the expected standards of conduct required by the Trust

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## 1. Introduction and Scope

1.1 The West Suffolk NHS Foundation Trust Managing Conduct and Expected Standards Policy is based on the principles of a 'Just Culture', where we will look to ask 'What went wrong' rather than placing blame on the individual. The aim of this policy and process is to ensure that conduct concerns are properly assessed to ensure a full and thorough understanding of the issues raised. The process is also designed to help and encourage all colleagues to achieve and maintain acceptable standards of conduct. This Policy aims to provide consistent and fair treatment for all, and demonstrates our commitment to helping colleagues improve and learn from mistakes and incidents that may occur.

1.2 This policy has been developed in consultation with the Trust's recognised trade unions and is in accordance with the ACAS Code of Practice on disciplinary and grievance procedures.

1.3 The West Suffolk NHS Foundation Trust supports a culture of fairness, openness and learning and this policy is designed to ensure colleagues feel confident to speak up when things go wrong, rather than fearing blame. An objective and prompt examination of the issues and circumstances should be carried out to establish whether there are truly grounds for a formal investigation and/or for formal action. Where support, guidance or informal management would be a more appropriate and productive outcome, this should be pursued. Mediation should always be considered for early resolution, where appropriate.

1.4 It is the intention of this policy to ensure that the trust deals with all conduct issues compassionately and appropriately. The trust will seek restorative action wherever possible, rather than seeking to blame individuals or issue punitive sanctions.

1.5 Managers will ensure that all action taken under this policy and procedure is reasonable and proportionate. At an early stage, colleagues will be told why action is being considered and they will be given the opportunity to respond to allegations before decisions about formal sanctions are taken.

1.6 A learning review (Appendix C) will be carried out following any action under this policy, whether informal or formal. This will be to ensure recommendations regarding improvement of internal processes or mitigation of risk are acted on and implemented promptly.

1.7 The procedure applies to all colleagues employed under a Contract of Service by the West Suffolk NHS Foundation Trust, (hereinafter referred to as the Trust).

Nothing in this agreement affects the rights of Medical and Dental colleagues under their terms and conditions of employment, in particular, the procedures relating to "Maintaining High Professional Standards in the NHS" Please see PP019 Disciplinary Framework for Doctors and Dentists.

Matters relating to personal misconduct of Medical and Dental colleagues will be dealt with in accordance with the Managing Conduct and Expected Standards Policy and Procedure please see PP019 Section III.

1.8 Employment in certain professions, which are regulated by statutory bodies, is conditional upon continuing registration (e.g. GMC; NMC: HPC). The Trust has a duty to report *appropriate* incidents of serious misconduct or serious performance issues, involving such colleagues, to the relevant regulatory body. This duty shall be exercised quite separately to any action by the Trust and as with criminal charges; the Trust is not obliged to await the outcome of any processes undertaken by the Regulatory Bodies, before taking its own action, where this is deemed appropriate

1.9 A formal conduct review under these procedures against an accredited Union Steward or Branch Official will not take place before a full time official of the union concerned has been advised of the circumstances and has had reasonable opportunity to make representation on behalf of the steward. If an accredited Health and Safety representative has breached Health and Safety regulations a full time official of the union should be advised and given opportunity to make representation before action is taken.

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

1.11 No formal action will be taken against a colleague until the case has been investigated in accordance with this policy.

1.12 At all stages of formal procedure a colleague will have the right to be accompanied by a representative of a union, colleague organisation, professional organisation (hereinafter referred to as "Union") or by a colleague acting in a non-professional capacity. The colleague/Union Representative will be entitled to paid time off to attend any meetings under this procedure. If the Union Representative is not employed by the Trust they must provide evidence from their trade union that they have been certified as competent to accompany a colleague. The companion/Union Representative will be allowed to address the hearing/meeting in order to:

- put the colleague's case
- sum up the colleague's case
- respond on the colleague's behalf to any view expressed at the hearing.

1.13 In exceptional circumstances, and with the prior agreement of the HR representative supporting the process, the colleague will not be required to be present at meetings/hearings which are part of the formal Managing Conduct and Expected Standards procedure. The colleague would still have an opportunity to provide a written submission or send a delegate, where this is deemed appropriate.

1.14 No colleague will be dismissed for a first incident, where expected standards have not been met, except in the case of gross misconduct, when the penalty may be dismissal without either notice or payment in lieu of notice (i.e. summary dismissal). This would only be in the case where no other sanction can be considered reasonable.

1.15 This procedure may be implemented at any stage if the colleague's alleged misconduct warrants such action, but in all cases must be preceded by a pre action review and investigation.

1.16 This procedure does not form part of any colleague's contract of employment and it may be amended at any time. We may also vary this procedure, including any time limits, as appropriate in any case.

1.17 Where a colleague's ability to do their job is affected by a lack of skill or knowledge, or ill health, this will be managed by following the Supporting Performance Improvement policy PP094 or the Supporting Attendance policy PP034.

1.18 Proactive consideration must be given as to whether the subject of any informal or formal conduct action has previously spoken up or raised concerns relating to the allegations, and whether this has any impact on the process. Colleagues must not be negatively impacted for speaking up and honest feedback should be encouraged so the Trust can learn from incidents and improve our processes.

## 2. Examples of expected standards

### 2.1. Absence

2.1.1. All colleagues are required to give constant and regular attendance within the terms of their Contract of Employment. The distance of a colleague's home from their place of work or any difficulty of access cannot be accepted as a reason for irregularity of attendance.

2.1.2. Colleagues may not be absent from work, nor leave their place of work or duties, without specific permission from their supervisor or manager. This includes the taking of holidays, study leave or special leave. This would be considered unauthorised absence.

2.1.3. If colleagues are unable to work due to sickness, they must follow the Sickness Absence Notification Procedure outlined in the section 6 of Supporting Attendance PP036.

### 2.2. Timekeeping

2.2.1. Colleagues are expected to be at work on time and not to leave early unless prior permission is given by the responsible manager.

2.2.2. Some colleagues are required to record the time they commence work in a book, or on a timecard, or to use a time clock machine.

2.2.3. If incorrect times or claims are recorded by accident the colleague must report it to their supervisor or head of department. Persistent failure to work contracted hours will be treated as a breach of the Trusts expected standards.

2.2.4. Premeditated misuse of the time clocks/machines or making false entries in time books or on timecards, etc will be viewed as fraud and treated seriously.

2.2.5. Where Flexi-time agreements are in operation specific expected standards are laid down. Failure to follow these standards will be treated seriously and formal action may be taken.

2.2.6. In order to facilitate compliance with the Working Time Regulations 1998, colleagues are required to inform the Trust if they have any other employment with another organization.

2.3. **Behaviour**

2.3.1. Colleagues are expected to uphold high behavioural standards at all times treating patients, members of the public and other colleagues with respect, courtesy and consideration.

*Patient First Standard*
*Colleagues are expected to be respectful of peoples' individuality, privacy and dignity*

2.4. **Performance**

2.4.1. Colleagues are expected to consistently meet or exceed the expectation of their role. If performance falls short of the required standard the individual will be advised of this by the responsible supervisor/manager and be given the opportunity to improve. In cases where the manager identifies a capability issue, they should consider using the Trusts' Supporting performance improvement PP094.

*Patient First Standard*

*Colleagues are expected to look and behave professionally, acting as an ambassador for the Trust.*

2.4.2. Colleagues are expected to follow Trust policies and procedures; professional codes of conduct/practice; accepted standards statutory requirements and regulations

2.5. **Appearance and personal hygiene**

2.5.1. Colleagues are expected, as far as is possible, to be clean and tidy at work and to dress appropriate to their role. Some colleagues are required to wear a uniform and they should wear it in accordance with ward or departmental standards and the Dress code/Uniform Policy PP215.

*Patient First Standard*
*Colleagues are expected to look smart and create a professional impression*

2.6. **Following instructions**

2.6.1. Managers and supervisors are responsible for ensuring effective service delivery and effective running of the organisation; therefore, colleagues are expected to follow their instructions accurately, promptly and efficiently.

2.6.2. If a colleague is concerned about the practicality, legality or safety of an instruction, as well as your capability to do the task, they should raise it with their supervisor or manager, or alternatively another suitably qualified manager. If they

do not feel comfortable doing this there are other routes to escalate concerns e.g. through Freedom to speak up.

2.7. **Data Protection and confidentiality (see also NHS Code of Conduct on Confidentiality)**

2.7.1. Colleagues have access to information in the normal course of their duties and it is their responsibility to ensure that both the Data Protection Act is adhered to, and that confidentiality is upheld, at all times. All information relating to patients, individual colleagues, salaries and wages, tenders and contract prices and terms, is to be regarded as confidential. This includes both digital and physical paper records, and data. Unauthorised access to these is not permitted. Breach of confidentiality is regarded as a serious violation, as is deliberate unauthorised access to confidential information. Colleagues should take care not to allow unauthorised access to information by patients, members of the public, or other colleagues who do not permission to access particular information.

*Patient First Standard*
*Colleagues should not hold confidential conversations in areas where they may be overheard.*

2.7.2. Further information is available in the Data Protection Policy PP110, the Information Security Policy PP060 and the Internet and Intranet Policy PP323, or from the Caldicott Guardian. (See also NHS Department of Health Code of Conduct on Confidentiality).

2.8. **Non-declaration of relationship**

2.8.1. Although the existence of a personal relationship does not constitute a bar to employment, or promotion, all colleagues are required to declare any relationships to their line manager.

2.9. **Social Media**

2.9.1. Colleagues are expected to use social media responsibly and in a manner that upholds the organisation's values; inappropriate use—including sharing confidential information, posting discriminatory or offensive content, or misrepresenting the organisation are not acceptable. See the Social Media Policy PP325 for further information.

2.10. **Contracts**

2.10.1. Any colleague, whilst carrying out their duties and engaging in the business of the Trust, shall declare any self-interest either direct or indirect.

2.10.2. If any colleague becomes aware of any contract being entered into by the Trust in which they might have a pecuniary interest, they should notify the Trust in writing.

2.10.3. In the case of persons living together the interest of one partner, if known to the other, will be deemed to be also the interest of that partner. Please read Trust Policy on Standards of Business Conduct PP054.

2.11. **Discrimination**

2.11.1. Discrimination occurs when someone is treated less favourably, by law this is protected by the Equality Act 2010 and would be linked to a protected characteristic e.g. age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex or sexual orientation. However, discrimination can go beyond this and extends to non-legal or everyday contexts such as making distinctions or judgements, or unfair treatment that does not meet the legal threshold for the Equality Act 2010, for example, a manager favouring one team member over another, without a protected characteristic being involved, could still be regarded as unfair and discriminatory.

2.11.2. For more information see the Trust's Equal Opportunities and Developing a Culture of Inclusion Policy No. PP021.

2.12. **Use of Trust facilities, property or resources**

2.12.1. Colleagues may only use Trust facilities or property with the permission of their manager. If colleagues wish to use Trust property off site or at home this must be done with prior permission from an appropriate manager.

2.12.2. For further information refer to the Trust Email and Internet Policy PP109 and the Social Media Policy PP325.

2.13. **Health and Safety**

2.13.1. Colleagues have a duty to take care of their own health and safety and that of others who may be affected by their acts or omissions at work". See Trust Health, Welfare and Safety Policy PP018.

2.13.2. Colleagues are expected to complete all relevant mandatory health and safety training, to wear any required protective clothing, and to use any safety devices provided.

2.13.3. Colleagues are expected to comply with the Trusts' infection control guidelines, SOPs and Policies, including the Hand Hygiene Policy PP 225.

2.14. **Bullying and Harassment**

2.14.1. Colleagues are expected to treat each other with respect and dignity and any form of bullying will be dealt with as a serious matter.

2.14.2. Bullying is defined as 'stress or anguish caused by attitudes, innuendo, derogatory comments, ridicule, deliberate exclusion, undermining status or authority by either direct or indirect means.' This includes (but is not limited to) offensive, derogatory or demeaning verbal, written or electronic communications or telephone calls/texts (please see the Trust's Respect for others Policy – PP080).

2.14.3. Harassment is defined as 'any uninvited, unwelcome and unreciprocated comments, suggestions, jokes or attention which are offensive to the person concerned and causes them to feel humiliated, embarrassed, patronized or threatened.' Such behaviour does not have to be repeated to constitute harassment and a single incident of sufficient gravity can constitute harassment.

See the Trust's Respect for others policy – PP080. Sexual Misconduct Policy Sexual Misconduct Policy.

2.15. Theft

2.15.1. Any instance of theft (or attempted theft) from the Trust, a patient, a colleague or a member of the public arising out of employment with the West Suffolk l NHS Foundation Trust.

2.15.2. *For the purposes of these standards Theft is defined as dishonestly appropriating property/resources belonging to another with the intention of permanently depriving the other of it.*

2.15.3. On occasion, items that are considered obsolete and no longer of use to the Trust can be sold to colleagues via the process outlined in the Disposal of obsolete (non-medical) items PP391. They can not be taken under any other circumstance, to do so will be treated as theft.

2.16. **Assault**

2.16.1. Any act of physical violence or threat of violence that takes place in a work setting. Assault includes intentionally or recklessly causing another person to fear immediate force, or the actual the application of that force. This includes both physical and verbal assault. Refer also to the Sexual Misconduct Policy Sexual Misconduct Policy.

2.17. **Negligence**

2.17.1. Negligence refers to the failure to exercise the level of care that a reasonably prudent person would exercise in similar circumstances, resulting in harm or risk to individuals, property, or the organization. It includes acts of omission or commission that demonstrate a disregard for established procedures, safety standards, or professional responsibilities.

2.18. **Malicious Damage**

2.18.1. Any deliberate damage to the Trust's property or patients' property, or that of a member of the public or another colleague.

2.19. **Fraud, Bribery and Corruption**

2.19.1. Definitions for bribery and corruption vary are listed below:

**Bribery** -Inducement for an action which is illegal, unethical or a breach of trust; Inducements can take the form of gifts, loans, fees, rewards or other advantages. See Anti-fraud, Financial Irregularities and Anti-bribery Policy PP 349.

**Corruption** - This can be broadly defined as the offering or acceptance of inducements, gifts, favours, payment or benefit-in-kind which may influence the action of any person. Corruption does not always result in a loss. The corrupt person may not benefit directly from their deeds; however, they may be unreasonably using their position to give some advantage to another.

Ward or Department colleagues should not accept personal gifts from patients except for general gifts or appreciation to the ward, e.g. boxes of chocolates. If

colleagues have any queries about whether a gift can be accepted seek advice should be sought from the relevant manager.

**Fraud -** Any deliberate attempt to defraud the Trust, a patient, a colleague, or a member of the public arising out of employment with the West Suffolk NHS Foundation Trust.

Examples of Fraud include (but are not limited to):

- Colleagues are not allowed to work for another employer whilst on duty, on call or standby or on suspension from duty with this Trust, or whilst off sick, or on a phased return without written permission from their manager
- The misuse of time clocks or machines or the falsification of time sheets, overtime claims, travel claims etc. This also includes colleagues who persistently fail to work the contracted hours for which they are paid, or who access non work-related internet sites during paid working hours.
- The falsification or forging of car parking permits/tickets.

2.19.2. See Trust Policy on Standards of Business Conduct PP054 and NHS Code of Conduct for Private Practice and NHS Code of Conduct for Senior Managers.

2.20. **Being Unfit for Duty – for other than a medical reason**

2.20.1. Serious incapability on duty due to being under the influence of alcohol or abuse of drugs.

2.20.2. See also see workplace policy on Substance Misuse No PP068.

2.21. **Criminal Action and 'Off Duty' Misconduct**

2.21.1. Any colleague arrested and/or charged with a criminal offence must advise their manager immediately so that an assessment can be made by about whether or not it affects the job. This includes serious motoring offences which impact on a colleagues ability to undertake their duties or bring the Trust into disrepute.

2.21.2. Allegations of Child Abuse, where substantiated, will be treated as a formal matter and could lead to dismissal.

2.22. **Serious Breach of Trust and Confidence**

2.22.1. Conduct serious enough to destroy the employment contract and make further working relationships and trust impossible. This might include sexual and racial harassment, unlawful discrimination, victimisation, bullying and bringing the Trust into serious disrepute or failure to follow NHS or professional codes of practice, accepted standards, laws or rules.

2.23. **Statutory requirement - Legal dismissal**

2.23.1. Colleagues are required to meet the statutory requirements arising from their duties, for example, registration with the appropriate professional body, meeting the requirements of the Borders and Immigration Authority or holding a current driving license. Colleagues may be suspended without pay immediately for failure to meet these requirements. Such failure could lead to termination of employment.

2.24. This list above is not exhaustive, and depending on the severity of the issue, disciplinary action may include dismissal. Some behaviour or conduct is considered by the Trust to be gross misconduct, i.e. very serious breaches of expected standards or contractual terms (express or implied) and can lead to Summary Dismissal. In these cases, dismissal can take place without a previous formal warning having been given.

## 3. Informal Stage

3.1. Where at all possible, and where appropriate, allegations where expected standards have not been met should be dealt with informally by the Supervisor/Head of Department. The Pre incident review form must be used to assess the circumstances and to determine the appropriate course of action. This will be carried out by HR and a relevant manager, in line with the principles of our just and learning culture.

3.2. If it is determined that the allegations can be managed informally, the manager will carry out some initial fact finding and meet the colleague to establish their version of events. The manager may also meet with other relevant individuals to get a thorough understanding about what has happened. Once the facts of the situation are understood, restorative action should be taken to ensure conduct does not fall below expected standards again, and also to address any organisational processes that may have led to the incident occurring in the first place.

3.3. This may involve a range of action from counselling, mediation and additional training/ re-training. This may also include firmer action to advise that if conduct falls below the expected standards again, more formal action may have to be considered.

3.4. The colleague may request a Union Representative or Work colleague who is not acting in a legal capacity to be present. The employee should be encouraged to request support and this should not be unreasonably refused. Managers are reminded that the early involvement of a Union Representative can help with the prompt resolution of any complaint or concern

3.5. Following this process, a learning review will be undertaken by the manager with support from HR, to make recommendations on why the incident happened and how we can review our processes to ensure that we can mitigate against it happening in the future. (Appendix B)

3.6. Learning recommendations will be shared with the colleagues involved in the case, and possibly shared and implemented with the wider organisation where appropriate and where this would result in service improvements.

3.7. In some cases, where the Trust considers that formal action is not appropriate, it may decide instead that a jointly agreed independent mediator may help solve disagreements over conduct issues. An independent mediator, for example trained colleagues or external support from ACAS, will not take sides or judge who is right, but can help the parties reach their own agreement where the colleague and the Trust are unable to solve the disagreement alone. The mediator may also recommend a way forward, if both parties agree that they want this.

## 4. FORMAL PROCEDURE

There may be situations where informal action has not brought the required improvement, where expected standards are repeatedly not met, or where the nature of the allegation is so serious it can't be considered for informal action. In these circumstances, it may be appropriate for the formal procedure to be implemented. This should only be considered where all appropriate informal action has been explored and there are still concerns regarding a colleagues conduct. Where it is decided that further investigation and/or formal action is appropriate, this must be approved by the Deputy Director of Workforce, or a nominated deputy if they have previously been involved in the case. This decision will be based on the information submitted on the pre incident review form. Formal action must only be taken where there is no other alternative, and this will be continuously reviewed throughout any formal process. In the event of formal action being deemed necessary, it is essential that affected colleagues are treated with dignity, kindness and compassion, regardless of the circumstances of the case

Appropriate managers designated to take formal action may be seen at Appendix 'A'.

### 4.1. Action to be taken prior to a Conduct Hearing

#### 4.1.1. Investigation

Prior to formal action being taken the facts of the case must be investigated. Terms of reference will be agreed by the commissioning manager to support the learning reviewer. Where possible an agreed set of statements and minutes should be available following the investigatory process.

Investigations should be conducted by an appropriate, neutral manager who has been trained in undertaking investigations, supported by an HR representative. This manager will be known as the learning reviewer. For the purpose of minute taking, an investigatory interview may include secretarial support. In some cases the secretary may use a digital recorder to capture the full detail of the interview and destroy the recording once the transcribed minutes have been agreed.

Any investigation should:

(a) Obtain all available information about the allegation, including written statements, using Incident Forms and Written Statements wherever possible.
(b) Advise the colleague concerned, at the earliest possible stage, of what is happening and the reasons. The point at which this occurs will depend on a number of factors, including the amount of information available. Some investigations will be kept confidential, e.g. where the police are conducting a criminal investigation. The colleague should also be advised of all support available to them at this earliest stage
(c) Managers, colleagues and their representatives must make every effort not to unreasonably delay meetings.

### 4.2.2. Agreed Outcome

At any stage during an investigation or prior to a conduct hearing, the colleague may accept fair accountability and insight for the allegations against them and propose a discussion of an agreed outcome instead of continuing the conduct investigation and/or hearing.
The Trust may agree to, or if appropriate offer, any such discussion wholly at its discretion. Any such agreement or offer to discuss shall be wholly without prejudice to the right to proceed to a conduct hearing and any sanction at that hearing.
At such a discussion, an outcome will only be agreed if the colleague accepts fair accountability and insight for the allegations and proposes a sanction and/or other arrangements for example, an improvement/development action plan to be signed by all parties which the Trust is willing to agree to.

4.2.3. Action if Colleague is a Union Representative

If the colleague concerned is a Trade Union Steward or Branch Official or, in the case of a breach of Health and Safety Rules, a Health and Safety Representative, there is a requirement to inform the full time officer of the relevant Union that the formal procedure is to be implemented. (See paragraphs 1.6 and 1.11). This will normally be undertaken by the Human Resources Department.

4.2.4. Involvement of Union Representative during Investigation

During investigations and investigatory interviews, colleagues may request a Union Representative or work colleague to be present. Managers are reminded that the early involvement of a Union Representative or work colleague can help with the solution of the problems. The representative/ work colleague should be allowed the opportunity to confer with the colleague during any investigatory meeting, but has no right to answer questions on the colleague's behalf.

4.2.5. Informing Colleague of Allegations and Date of Conduct Hearing

(a) Once the investigation is completed, the learning reviewer will produce a factual investigation report for submission to the commissioning manager, outlining whether they feel there is a case to answer based on the evidence collated. At this stage, the decision to proceed to a formal investigation will be reviewed by the commissioning manger, with support from the HR representative, to ensure that this is still appropriate, and whether informal interventions would be more suitable. If it is decided to proceed formally the colleague must be informed of the allegations in writing, detailing the following as appropriate:

(i) Nature of allegations
(i) Date and time of alleged incident(s).
(ii) Location of incident(s).

(iii) Other colleagues or patient(s) involved in the incident(s). (n.b. It will not be appropriate to detail the full names of patients as initials will normally suffice)
(iv) West Suffolk NHS Foundation Trust property involved.
(v) West Suffolk NHS Foundation Trust Expected Standard(s) not met.
(vi) Date, time and location of conduct hearing.
(vii) Their right to bring a representative and witnesses to the conduct Hearing.
(viii) Copies of statements. (See (d) and (e) below).

(b) The colleague must be given a minimum of 14 calendar day's notice of the conduct Hearing to allow time for consultation with any representative or witnesses that have been requested to be present at the hearing.
(c) The formal notice to the colleague of conduct allegations should be issued by the Hearing Chair.
(d) Statements and other papers relevant to the case should be given to the colleague with the notice of allegations or as soon as possible after its issue in order to allow the colleague maximum time to prepare their explanation.
(e) If the issue of documents would involve a potential breach of confidentiality, a copy of the relevant records may be given to the colleague or a named representative, redacted if required, who would carry personal responsibility for the maintenance of confidentiality. These documents must be returned at the end of the formal procedure if the colleague is not appealing or, if there is an appeal, at the end of the appeal procedure. When the documents are issued the responsibilities involved will be made clear.
(f) The colleague or the Union Representative (if applicable) should submit Staff Side witness statements, with the names of witnesses who will be in attendance at the conduct hearing, to Hearing Chair, prior to the conduct hearings.
(g) None of the above prevents new information arising during the course of the conduct hearing being considered, though this may necessitate an adjournment for an appropriate period.

4.2.6. The amount of time between identification of the alleged breach of expected standards, the preliminary investigation and notification to the colleague must be kept to a minimum. The HR support for the learning reviewer will be given responsibility for ensuring that there are no avoidable delays in the process.

4.2.7. A separate member of the HR department will be assigned as additional support for the colleague who is facing conduct allegations, to provide support and guidance on the process.

4.2.8. If the colleague takes sick leave as a result of the formal process the HR representative supporting the process should make a referral to Occupational Health to determine if the colleague is well enough to attend a conduct hearing.

### 4.3. The Conduct Hearing

The aim of the Conduct Hearing is to establish all the facts available regarding the allegations, giving every opportunity for the colleague to state their case.

Different circumstances will determine how conduct hearings are run but the following guidelines should be considered:

4.3.1. Arrange a quiet place with adequate seating for the hearing where there will be no interruptions.

4.3.2. Allow sufficient time to hear all the facts.

4.3.3. An HR representative should be present on the hearing panel to provide professional advice, assist and facilitate the proceedings.

4.3.4. Confidential arrangements, acceptable to all parties, should be made for notes to be taken.

4.3.5. Allegations involving professional matters
If the allegations involve Professional or procedural matters about which the Hearing Chair is not qualified to judge, a senior member of that profession or expert in the procedures involved should be requested to attend the Conduct Hearing and provide professional advice to the Hearing Chair

4.3.6. Witnesses
Ensure witnesses are available at the hearing wherever possible. Attendance in person is preferred, but where this is not possible, alternatives should be considered. Witnesses will be required to make written statements, prior to the conduct hearing. Statements may be submitted by a witness unable to attend the Conduct Hearing, but it must be accepted that they are documents which have not been subject to challenge.

4.3.7. Procedure at Hearing

(a) At the commencement of the Conduct Hearing, introduce those present to the colleague and explain why they are there.
Explain the purpose of the hearing, how it will be conducted and the possible outcomes.
If the colleague and/or their representative does not attend the Conduct Hearing the reason must be ascertained if at all possible. If the circumstances were beyond the colleague's control, e.g. illness, the Hearing Chair must arrange another meeting. If the meeting is rearranged and the colleague fails to attend a second time, without good reason, the Hearing Chair is entitled to make a decision in the colleague's absence. Occupational Health may at this point be asked to assess whether the colleague is fit to attend the meeting, if concerns have been raised.

(b) The learning reviewer who conducted the preliminary investigation will normally present the management case and asked to detail the allegations and present the evidence, including the calling of witnesses. The colleague and/or their representative, the Hearing Chair and others advising them must be given the opportunity to question the witnesses and manager presenting the case.

(c) The colleague and/or their representative must be given an opportunity to present their case and call relevant witnesses. The Manager who presented the allegations, the Hearing Chair and others advising him/her, must be given opportunity to question the colleague and the witnesses.

(d) The manager presenting the allegations should summarise the Management case.

(e) The colleague or their representative should summarise their case.

(f) Inform the colleague the Hearing will be adjourned to consider all the information given before a decision is reached. If there is need to check certain facts, explain how this will be done and that if new facts emerge a decision will be made after discussion with the individual or their representative as to whether the hearing needs to be reconvened.

(g) During the hearing be prepared to adjourn to allow consideration of new documentation or to allow an emotionally distressed colleague a short time to recover.

4.4. Support for the Colleague

Being subject to allegations of misconduct can be very upsetting and stressful for any affected colleagues. It is important throughout the procedure for the colleagues line manager to keep talking with both the colleague and any other colleagues affected. Clear, regular and confidential communication can help make sure colleagues are kept informed of what is happening, have the opportunity to ask questions and can avoid stress and other mental health issues. The following additional support is also available where appropriate

(i) Where there are concerns about a colleague's health or wellbeing, Occupational Health advice will be obtained.
(ii) Care First are available to offer counselling and emotional support to any colleague affected by matters covered by this policy, and they can be contacted on 0800 174 319 (Freephone)
(iii) Any colleagues under investigation will be able to contact a designated HR support, should they need any additional support during the course of the investigation. This will be a separate HR representative to the one who will be supporting the learning reviewer with the investigation.
(iv) Counselling and support from the colleague wellbeing service

Further details on support available for colleagues can be found on the intranet or by contacting HR or your line manager. Please see Appendix D for further information.

## 5. FORMAL ACTION

5.1. The Hearing Chair should decide if a conduct sanction is appropriate taking the following into consideration.

(i) whether the Managing Conduct and Expected Standards Policy indicates what action will result from the particular misconduct;
(ii) Whether informal or restorative action is appropriate.
(iii) the action taken in similar cases in the past;
(iv) any special circumstances which might make it appropriate to lessen the severity of action which should be taken;
(v) whether the behaviour was deliberate or accidental;
(vi) the colleague's conduct record, general employment record, position and length of service;
(vii) whether the action proposed is reasonable in view of all the circumstances.
(viii) To proceed to a hearing where dismissal may result, approval must be obtained from a HR Representative after careful consideration of the evidence gathered to date.

5.2. Conduct Sanctions

5.2.2. Stage 1 - First Written Warning

In the case of a serious breach of expected standards, or if a further offence occurs similar to or for which informal action is still current, a **First Written Warning** will be given. The warning will be confirmed in writing and kept on the colleague's personal file but will be disregarded after 12 months subject to satisfactory conduct and performance.
The colleague will be informed of the standards expected and action to be taken by the colleague and employer to achieve and monitor the improvement required. Failure to achieve the standard required may result in further action.

5.2.3. Stage 2

(a) Final Written Warning

This stage may be imposed in the following circumstances:

(i) where a colleague has received a previous written warning for a similar offence which is still current;
(ii) where misconduct is considered not to be serious enough to justify dismissal but serious enough to warrant only one written warning which will be both the first and final.

The warning will be confirmed in writing and kept on the colleagues personal file for a minimum of 12 months, up to a maximum of 24 months, at the discretion of the hearing panel. The warning will be disregarded after this time period has expired, subject to satisfactory conduct and performance. The colleague will be informed of the standards expected and action to be taken by the colleague and employer to achieve and monitor the improvement required. Failure to achieve the standard required may result in dismissal.

(b) Reduction in Pay Band or Transfer to Suitable Alternative Employment

In certain circumstances and as an alternative to dismissal, it may be appropriate to reduce a colleague's pay band or transfer them to suitable alternative employment either on a permanent basis or a specified period during which retraining would be given and then the position reviewed. In such cases the colleague would receive the salary and conditions of the new post, without protection.

5.2.4. Stage 3 - Dismissal

If conduct remains unsatisfactory or if the offence constitutes gross misconduct, dismissal will normally result. Except in cases of gross misconduct, dismissal will be with notice. Cases of gross misconduct may result in summary dismissal, i.e. dismissal without notice. Dismissals may be reported to the relevant professional body as appropriate.

5.2.5. Referral to a Professional Body

If the outcome is likely or proposed to be referred to a professional body, this must be discussed with the relevant professional lead prior to making the referral.

5.2.6. Time Limits

The above sanctions specify time limits where appropriate. There may exceptionally be occasions where the periods specified are not suitable.

When a colleague's conduct is satisfactory throughout the period the warning is in force, only to fall below expected standards very soon after, a pattern may emerge that there is evidence of abuse. In such cases the colleague's previous conduct record should be borne in mind when deciding if a longer time limit should be applied.

Exceptionally there may be circumstances where the misconduct is so serious, verging on gross misconduct, that it cannot realistically be disregarded for future conduct purposes. In such circumstances it should be made very clear that the final written warning can never be removed and that any recurrence will lead to dismissal.

5.2.7. Action taken at end of Time Limit

Records of formal action taken will be disregarded after the specified period but will not be removed from the colleague's personal file.

5.3. Failure to Attend the Hearing

In the circumstances where the colleague fails to attend the Conduct Hearing, the Hearing Chair will arrange an alternative date (if appropriate). However, if the colleague fails to attend the second hearing, without reasonable justification, the Hearing Chair will have the authority to hold the hearing in the colleagues absence, and consider a retrospective dismissal date or any other formal action. The dismissal or any other form of formal action therefore would be effective from the date of the original hearing.

5.4. Notifying the Decision

The colleague should, whenever possible, be informed verbally of any action to be taken. This should be done as quickly as possible. If further investigations have taken place during an adjournment, the colleague should be told of the outcome of these and the Conduct Hearing re-convened, in order to allow the colleague the opportunity to challenge any new evidence.
In cases of Formal Written Warning/Final Written Warning, Reduction in Pay Band/Transfer to Suitable Alternative Employment, Dismissal with notice and Summary Dismissal, the decision will be put in writing to the colleague within seven calendar days of the Conduct Hearing, together with notification of their rights of Appeal. Mediation should be considered following any formal action, where appropriate

## 6. Precautionary Suspension (With Pay)

Precautionary suspension is not a conduct sanction and should only be used where necessary and where alternative options, e.g. temporary suspension from specific duties are not feasible. It may be appropriate in the following circumstances:

(a) Apparent serious misconduct requires investigation and the suspension is required for the period of investigation if it is felt that the colleague's continued presence at work would interfere with the investigation process.

(b) The action complained of, if substantiated, would constitute gross misconduct and it is considered inappropriate for the colleague to remain on West Suffolk Hospital premises pending a Conduct Hearing.
The colleague should be suspended on full pay by a senior manager for the shortest period possible. This should be reviewed every 30 days as a minimum. The colleague should be told the reason for suspension. Written confirmation of suspension must be sent within 5 calendar days.

NB. Suspension due to failure to be registered or have a licence is normally without pay, as it is the individual's responsibility to register or hold a qualification. In such

cases, there must be a meeting with the colleague concerned (and representative) to allow full consideration of the facts and the colleagues explanation.

## 7. Appeal Procedure

7.2.3. Colleagues may appeal against any formal action. Possible grounds for an appeal include the following:

- 7.2.3.1. New evidence coming to light;
- 7.2.3.2. The reasonableness of the penalty imposed; and/or
- 7.2.3.3. Procedural irregularities during the investigation or hearing which had a material impact on the outcome of the case.

7.2.4. Depending on the circumstances, the Trust may choose to entirely re-hear the matter at appeal, or simply review of the fairness of the original decision in light of the appeal.

Lodging an Appeal

7.2.5. An appeal must be lodged within **14 calendar days** of receiving the written decision. The letter from the colleague should state the ground(s) of appeal relied upon and the specific reasons for this.

Notification of an Appeal Hearing

7.2.6. An appeal hearing should usually be heard within **four weeks** of receipt of the appeal. If this is not possible due to panel availability, or further investigation is required, the colleague should be notified and a new date set as soon as possible.

7.2.7. The colleague should normally be given **14 calendar days** notice in writing of the date of the appeal hearing. The letter should confirm the date, time and venue of the hearing and the names of the panel. The colleague should also be reminded of their right to be accompanied. If the colleague or representative is not available on the appeal hearing date a new date will be agreed as soon as possible.

7.2.8. Any statements of case or documents relevant to the appeal or names of witnesses should be exchanged and provided to the appeal Chair not less than **nine calendar days** before the appeal hearing.

Procedure at the Appeal Hearing

7.2.9. The appeal panel should comprise of a senior manager as Chair, an HR Representative and a Professional Adviser/Clinical Lead if appropriate. The Chair should have authority to decide the appeal as per Appendix A. The chair of the original conduct hearing will also attend to present the management case.

7.2.10. The procedure of the appeal should be similar to the procedure at a Conduct Hearing above.

7.2.11. The decision of the Appeal panel will be final and may:
7.2.11.1. Confirm the original decision;
7.2.11.2. Revoke the original decision; or
7.2.11.3. Substitute a different penalty.

### 7.3. Criminal Allegations

7.3.3. Where an colleague 's conduct is the subject of a criminal investigation, charge or conviction, the Trust will investigate the facts before deciding whether to take formal action and put the colleague on suspension.

7.3.4. The Trust will not usually wait for the outcome of any criminal prosecution before deciding what action, if any, to take. Where the colleague is unable or has been advised not to attend a conduct hearing or say anything about a pending criminal matter, the Trust may have to take a decision based on the available evidence.

7.3.5. A criminal investigation, charge or conviction relating to conduct outside work may be treated as a formal conduct matter if the Trust considers that it is relevant to the colleague's employment.

## 8. MONITORING AND REVIEW

This policy and procedure will be monitored and reviewed annually by the Executive Director of Workforce and Communications, and where necessary, changes will be made in consultation with the Policy Working Group and Trust Council.

| | |
|---|---|
| Author(s): | HR & Communications |
| Other contributors: | Union Representatives |
| Approvals and endorsements: | Trust Council |
| Consultation: | Trust Council |
| Issue no: | 7 |
| File name: | |
| Supercedes: | Disciplinary policy and procedure PP(23)040. |
| Equality Assessed | |
| Implementation | |
| Monitoring: (give brief details how this will be done) | Implementation, compliance and effectiveness of this policy will be monitored by Trust Council. 100% of any requests received into the HR Directorate will be handled in line with the policy and will be recorded by the on the HR database. |
| Other relevant policies/documents & references: | PP053 Expected Standards<br>PP019 Disciplinary Framework for Doctors and Dentists. |
| Additional Information: | None |

**APPENDIX A**

## LEVELS OF AUTHORITY TO AWARD FORMAL SANCTIONS AND HEAR APPEALS

| Formal Sanction | Minimum Level of Manager Authorised to Award Sanction | Appeal To |
|---|---|---|
| **First Written Warning** | Service Managers<br>Head of Department<br>Local Area Managers<br>Integrated Therapies Manager<br>Integrated Community Paediatric Services Leads | Senior Operations Managers<br>Head of Department<br>Local Area Managers<br>Heads of Nursing<br>Integrated Therapies Manager<br>Integrated Community Paediatric Services Leads |
| **Final Written Warning** | Senior Operations Managers<br>Assistant Directors<br>Associate Director of Operations<br>Deputy Directors<br>Business Manager Estates and Facilities<br>Head of Facilities<br>Local Area Managers<br>Deputy Chief Operating Officer<br>Associate Director of Integrated Community Paediatric Services<br>Integrated Therapies Manager | Assistant Directors<br>Associate Director of Operations<br>Deputy Directors<br>Business Manager Estates and Facilities<br>Head of Facilities<br>Local Area Managers<br>Deputy Chief Operating Officer<br>Associate Director of Integrated Community Paediatric Services<br>Integrated Therapies Manager |
| **Dismissal** | Senior Operations Managers<br>Assistant Directors<br>Associate Director of Operations<br>Deputy Directors<br>Business Manager Estates and Facilities<br>Head of Facilities<br>Local Area Managers<br>Deputy Chief Operating Officer<br>Associate Director of Integrated Community Paediatric Services<br>Integrated Therapies Manager<br>All Directors and CEO | Assistant Directors<br>Associate Director of Operations<br>Deputy Directors<br>Business Manager Estates and Facilities<br>Head of Facilities<br>Local Area Managers<br>Deputy Chief Operating Officer<br>Associate Director of Integrated Community Paediatric Services<br>All Directors and CEO |

| | | |
|---|---|---|
| **Reduction in Grade/Transfer to SAE** | Senior Operations Managers<br>Assistant Directors<br>Deputy Directors<br>Business Manager Estates and Facilities<br>Head of Facilities<br>Associate Director of Integrated Community Paediatric Services<br>Local Area Managers<br>Deputy Chief Operating Officer<br>Integrated Therapies Manager<br>All Directors and CEO | Assistant Directors<br>Deputy Directors<br>Business Manager Estates and Facilities<br>Head of Facilities<br>Local Area Managers<br>Associate Director of Integrated Community Paediatric Services<br>Integrated Therapies Manager<br>Deputy Chief Operating Officer<br>All Directors and CEO |

**Notes; -**

- Directors and the Chief Executive have the authority to award formal sanctions and hear appeal at all levels

Where the Chief Executive is the dismissing officer then an appeal would be heard by the Chairman.

West Suffolk
NHS Foundation Trust

**APPENDIX C**

**Learnings & Recommendations following Investigations and/or Hearings**

**Please detail any learnings, recommendations or feedback below following the completion of each investigation/hearing:**

**Colleagues Name:** _____

**Job Title:** _____

**Department:** _____

**Case Reference Number:** _____

**Individual:**

| |
|---|
| |

**Relevant Department/Team:**

**Investigation Manager and Commissioning Manager:**

**HR:**

**Wider Organisation:**

**Completed by:** _____ **Review Date:** _____

Employee Relations Database updated ☐

Appendix D

## Colleague Support

There are many sources of support and advice available whatever the difficulty you are facing, whether it's at work or at home. Please visit http://staff.wsha.local/Intranet/Documents/Q-Z/StaffSupporters/Staffsupporters.aspx to find out more about the support each service can offer

**Your line manager**

Support with personal issues, grievance, bullying and harassment, whistleblowing, and equality and diversity queries.

**Anonymous reporting**

Fill in an online form or call the anonymous reporting line to leave a message.

**Health and wellbeing**

Support for emotional, mental and physical health and wellbeing.

**Freedom to speak up guardian**

Unsafe working conditions or patient care, inadequate training or induction, insufficient response to safety incidents, highlighting bullying culture.

**Trade unions**

Health and safety advice, educational support and member support for disciplinary issues.

**Chaplaincy**

Pastoral support in times of need, spiritual support, faith issues.

**Staff governors**

Your governors represent the staff perspective in strategic discussions.

**HR**

Help and advice with employment matters, pay and terms and conditions, Trust policies and procedures.

**Guardian of safe working**

Ensuring rotas and working conditions are safe for doctors and patients, and addressing concerns relating to working hours and access to training.

**Trusted partners**

Equality and diversity issues, bullying and harassment, independent advice.

**Trust executive open door**

Executive directors are available in Time Out from 8.00am until 9.00am every Wednesday. Any member of staff can raise an issue with them - just drop by if there's something you'd like to talk about.

**Senior independent director**

Acts as non-executive director lead for whistleblowing and links with the freedom to speak up guardian.

Further information can be found on the Trust intranets. Expert advice and information is also available from other Trust teams including the health, safety and risk office, postgraduate medical education team and governance support. The HR and people services team can also provide information about all staff supporters - call a member of the team on 01284 713528 (ext. 3528) or visit the department at Quince House, West Suffolk Hospital.