



Disciplinary Policy

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V2.1	22 December 2011	Revised authority to dismiss level to go to SPF (6Jan12)

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Version	Date	Comments (i.e. viewed, or reviewed, amended approved by person or committee)
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V4.0	Approved	
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V8.0	04 November 2014	Minor amendment to demotion sections.
V9.0	10 th November 2014	Revisions to encourage informal resolution, provide clarity and reduce timescales for investigations and hearings.
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Version	Date	Comments (i.e. viewed, or reviewed, amended approved by person or committee)
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V12	09 July 2018	Amendment to numbering
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V12.3	25 November 2020	Sent to ELT
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V13.0	23 June 2021	Approved by ELT
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Version	Date	Comments (i.e. viewed, or reviewed, amended approved by person or committee)
V13.2	9 February 2022	Replaced Expedited Hearing section 12.8 with Fast Track (Agreed Outcome) Process section 19. Inserted Fast Track (Agreed Outcome) Form at Appendix 14 Updated content and appendix page numbers
V13.3	4 March 2022	Policy sent to Browne Jacobson for external review
V13.4	25 May 2022	Reviewed by The People Services team, HR Policy Subgroup including Ops managers

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V13.5	4 August 2022	Sent to Unison Regional Branch
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V14.0	23 August 2022	Approved at ELT
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Part of Trust's publication scheme	All Trust employees by Intranet Public- To be published on the Trust's website

The East of England Ambulance Service NHS Trust (the Trust) has made every effort to ensure this policy does not have the effect of unlawful discrimination on the grounds of the protected characteristics of: age, disability, gender reassignment, race, religion/belief, sex, sexual orientation, marriage/civil partnership and pregnancy/maternity. The Trust will not tolerate unlawful discrimination on the basis of, spent criminal convictions, Trade union membership or non-membership. In addition, the Trust will have due regard to advancing equality of opportunity for and fostering good relations between; people from different groups and people with protected characteristics.

All Trust policies can be provided in alternative formats if required. Please contact the Human Resources Department if you require an alternative format.

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1. Policy Statement

- 1.1 This document outlines the Disciplinary Policy and procedures for the East of England Ambulance Service NHS Trust (the Trust).
- 1.2 This policy observes current employment legislation, the ACAS Code of Practice on Disciplinary and Grievance procedures, and the ACAS guide to discipline and grievances at work which compliments the Code of Practice, to ensure fair and consistent treatment.
- 1.3 The policy aims to promote, encourage and support all employees, to achieve and maintain high standards of conduct through the application of a fair, effective and consistent approach to conduct issues.
- 1.4 This policy has been written in partnership by management and staff side, and in accordance with current employment legislation.
- 1.5 In circumstances where a complaint raised is of a significant concern, it may be necessary for the Trust to raise or refer the concern with a regulatory body if this is applicable, such as HCPC, NMC, CIPD, AAT/MAAT or any other relevant regulatory body.

2. Scope

- 2.1 This policy applies to all staff substantively employed by the Trust. It does not apply to bank staff, agency staff, secondees, workers on honorary contracts or independent contractors. Allegations and concerns made against these individuals may be dealt with using an approach aligned to that outlined in this policy depending on the circumstances. Where the Trust is not the employer of the individual, the Trust will consider the approach it takes and the scope of any investigation to be undertaken, and will, in appropriate circumstances, discuss these with the worker's employer/agency. In cases involving medical staff, the Maintaining High Professional Standards (MHPS) guidelines will apply.

- 2.2 Employees, and their representatives, should co-operate fully with the operation of this policy including making every effort to attend investigatory meetings and disciplinary/appeal hearings and without causing unreasonable or unnecessary delay. This may necessitate attendance outside of the employee's and/or the companion's (where they are an employee of the Trust) rostered hours and/or normal working pattern (refer to Section 14. for "right to be accompanied")

3. Roles and Responsibilities

Managers, HR staff and trade union representatives are responsible for providing advice and guidance to employees on the application of this policy and procedure. They are responsible for bringing any mutually beneficial improvements to this policy to the attention of the Trust.

- Executive Directors: Our executive directors are responsible for ensuring the fair and equitable implementation of this policy. A member of the executive team will chair a Pre-Action Review Meeting (P-ARM) following an allegation of misconduct. The executive team may also be involved in making suspension decisions and chairing disciplinary/appeal hearing panels.
- Managers: Managers have a responsibility to manage conduct effectively in accordance with this policy and to offer support during and after this process, where it may be necessary and useful. Managers are expected to take and retain notes of conversations and meetings with employees and should always be able to justify their decision-making process. Managers should ensure that an employee is kept regularly updated about their suspension, the ongoing reasons for it, and how much longer it is likely to last. They should also ensure an employee is kept regularly updated about the length of the investigation process.

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- Employees and companions: Employees and their companions are expected to co-operate with the Trust to ensure the successful operation of this policy and procedure.
- Trade Union (TU) representative: The role of a TU representative is wide ranging and includes giving advice to an employee and representing and accompanying an employee at disciplinary investigation meetings and hearings, and appeal hearings.
- A workplace representative: All employees have a statutory right to be accompanied at a disciplinary hearing by a trade union representative or workplace colleague. A representative can address a disciplinary hearing on an employee's behalf. A representative cannot answer questions on behalf of the employee however they can present and fully explain an employee's response to any allegation made against them.
- Employee Relations (ER) representative: The role of an ER representative, or senior member of Operational Human Resources, is to provide advice and guidance at all stages of the operation of this policy. An ER representative will be present at a Pre-Action Review Meeting. The Human Resources Department is responsible for keeping the provisions within this policy in line with employment legislation and best practice people management principles. The ER representative in conjunction with the line manager are responsible for ensuring that any disciplinary venues provide suitable access and facilities for staff with disabilities.
- Commissioning Manager (CM): The Commissioning Manager appoints the Investigation Officer. On conclusion of the investigation, the CM will decide, with advice from the ER representative, what, if any further action will be taken, which may include convening a disciplinary hearing. If the employee is suspended, by a senior manager, the Commissioning Manager

needs to confirm that the suspension and rules pertaining to it will continue and will write to the employee confirming this as soon as possible.

- Investigating Officer (IO): The role of the IO is to investigate the alleged misconduct in a fair and objective way to establish the essential facts of the matter and reach a conclusion on what did or did not happen, or what is likely to have happened or not happened, on the balance of probability. The IO should do this by looking for facts and evidence that supports the allegation and also for evidence that contradicts the allegation. It is not the IO's role to prove the guilt of any party but to investigate, make findings of fact, and make a recommendation based on those findings for the CM's consideration as to whether there is a case to answer or not. The IO must be impartial, not linked to the case and with no vested interest.
- Welfare Officer: The welfare of the complainant and of the accused need to be considered, especially in harassment cases. A Welfare Officer will be nominated to support and maintain regular contact as agreed with affected employees. The Welfare Officer will not be involved in the details of the disciplinary process but will be available to signpost employees to available support, if required during the process.
- Cultural Ambassador (CA): The Cultural Ambassador's role is a supplementary role within the Trust. They will provide independent advice and guidance to investigating teams and disciplinary panels when they are investigating or considering allegations for or against members of staff from ethnic minority background and staff with a disability. The CA will identify any issues of unconscious bias, conscious bias, or discrimination. They will bring these to the attention of the other members of the team and ensure that they

are taken into consideration in the decision-making process. A CA may be present at a Pre-Action Review Meeting, if applicable. Further information on the Cultural Ambassador programme is available in the Cultural Ambassador Standard Operating Procedure (SOP).

4. Timescales

- 4.1 All parties should endeavour to progress formal conduct cases in a timely manner in accordance with the timescales set out below. However, timescales may sometimes be varied to assist either with ensuring that employee wellbeing issues can be addressed appropriately and / or appropriate fact finding, and investigations can take place. In addition, as an employer of Persons in Positions of Trust, there may be some cases where the timescale parameters sit outside of our jurisdiction to manage e.g. cases where safeguarding, fraud or criminal matters have been identified and need to be investigated. Where a timescale is varied, the employee and their representative should be advised of the variation, the reasons for the variation and a new timescale or review date confirmed and recorded (if possible).
- 4.2 Following an allegation of misconduct, there should be an initial fact-finding investigation, by a manager. This should be, concluded within 7 calendar days from the date that the Trust becomes aware of the incident. The result of the fact-finding investigation should be in the Pre-Action Review Meeting (P-ARM).
- 4.3 If the Pre-Action Review Meeting determines that a full formal investigation is required, it should aim to be concluded within 6 weeks of the Pre-Action Review Meeting. Following the investigation, a report must be generated by the investigating officer.
- 4.4 Where employees or their representative have any additional needs or adjustments, they should make their line manager or the Human

Resources Operation team aware so that suitable adjustments to this procedure can be made if necessary.

- 4.5 Decisions on the composition of appeal panels (and decision relating to non-attending witnesses, as referred to in Sections 10.4 and 12.7) will be made by one member of staff-side and one senior member of Operational Human Resources. Where mutual agreement cannot be reached, the final decision will rest with the Director of People Services or in their absence, the Chief Executive.
- 4.6 If the employee who raised the complaint, allegation or concern or the employee subject to the complaint, allegation or concern leaves the Trust prior to the formal investigation process commencing or the formal disciplinary process finishing, the Commissioning Manager will make a decision regarding what processes should continue (i.e. complete investigation, proceed to disciplinary hearing, referrals to LADO (see Appendix 2), professional bodies, lessons learnt exercises etc). Each case will be considered on a case-by-case basis.
- 4.7 A case management meeting must be set up to agree a way forward and next step, where breaches of case timescales which exceed 3 months. The case management team should be made up of senior management including an Executive Director, Staff side representative and a Senior HR representative

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

- 5.1 In line with ACAS guidance, where an employee raises a grievance during a disciplinary process, the disciplinary process may be temporarily suspended in order to deal with the grievance. Where the grievance and disciplinary cases are related, it may be appropriate to deal with both issues concurrently.

PAUSE AND REVIEW

6. Pre-Action Review Meeting (P-ARM)

- 6.1 The Trust has introduced “Pause and Review” prior to any formal investigation is undertaken.
- 6.2 To reduce inequalities, the Trust needs to ensure that there is no differential experience for any staff working at EEAST and that regardless of any protected characteristic, no staff member is treated less favourably than another.
- 6.3 A P-ARM has been developed in order to mitigate any risk of ‘rush to judgement’ in deciding whether an complaint, allegation or concern warrants investigation under this policy. Once aware of a complaint, allegation or concern which relates to misconduct, the relevant line manager should initiate a request for a P-ARM by completing section 1 of Appendix 4 and submitting it to the P-ARM panel 48 hours before the P-ARM is scheduled.
- 6.4 At the P-ARM a checklist (Appendix 4) should be completed by the Executive Director (or Sector Head, if Executive Director is not available), before a decision to formally investigate an allegation is made.

The outcome of the P-ARM, should be fed back to the employee by their Line Manager and should include one of the following:

- Informal action (Section 10) and can be best resolved via a management instruction as below.
- Formal action (Section 12) and to be investigated further

7. Informal Action

- 7.1 The Trust recognises that minor cases of misconduct, may be best dealt with by informal measures rather than through the formal disciplinary

procedure. This should be viewed as the day-to-day management of the employee.

- 7.2 Informal measures may include one or a combination of the following: a management instruction regarding future acceptable conduct, advice, coaching, mediation, mentoring, training, and retraining, if appropriate.
- 7.3 Informal measures are not part of the formal disciplinary procedure (see Section 10 below) and therefore there is no right of appeal against informal outcomes.

8. Suspension

- 8.1 In certain circumstances, it may be necessary to suspend an employee, for example, where there is a risk, or a perceived risk, to colleagues, patients, service users, Trust property and/or third parties if the employee remains in the workplace, or to aid an unhindered investigation that cannot be mitigated with the employee remaining in the workplace. All suspensions will be considered by a multi-disciplinary panel (a panel with a diverse range of expertise) and a Risk Matrix (Appendix 7) will be completed before the decision to suspend is made. Where an employee is involved in a patient safety incident, the NHS confederation Incident Decision Tree (Managing NHS Suspensions) (Appendix 5) should be used to inform the decision.
- 8.2 As the employee continues to be employed and paid by the Trust throughout their suspension, they remain bound by The Trust's NHS terms and conditions of employment. However, they must not attend work or do any work, unless agreed, as per the secondary employment policy
- 8.3 Any decision to suspend will be subsequently confirmed in writing to the employee no longer than 4 working days (extended by any bank holiday's falling within that time period), from the date of the P-ARM.

This will outline the reason for the suspension and the details of their nominated welfare contact. The period of suspension will be for no longer than is necessary to investigate the allegations of misconduct against the employee and/or to protect the interests of staff, patients or the organisation.

- 8.4 All suspensions within the Trust will be managed in accordance with the ACAS guide to Discipline and Grievances at Work: <https://www.acas.org.uk/acas-guide-to-discipline-and-grievances-at-work>
- 8.5 Whilst it is recognised there will be specific instances where suspension is required, the Trust is committed to following good management principles by regularly reviewing individual suspension cases circumstances and duration and will seek to identify alternatives to suspension where it is appropriate to do so, such as consideration to alternative working duties, hours or location (Appendix 7).
- 8.6 Alternative duties must take into account the contractual hours, including rota patterns, particularly in the case of flexible working agreements. Any decision to offer alternative duties must be discussed and mutual agreement made between the Trust and employee and new manager, if hours of work or base location need to be varied. The Trust may require employees to undertake alternative duties at a lower band, as an alternative to suspension. Employees will continue to be paid at their substantive band during the period of investigation if the alternative duty they are re-deployed into is a lower banded role.
- 8.7 The decision to suspend is not restricted to the point in time that an allegation is raised, but can be made at any time, where it is deemed appropriate or necessary to do so
- 8.8 It is a condition of suspension that the employee does not undertake employment elsewhere, except where the Trust's prior written

permission has been requested and given as per the Secondary Employment Policy.

- 8.9 The employee must remain contactable throughout any period of suspension. This includes the requirement for the employee to notify their welfare officer of any change of address whether temporary or otherwise.
- 8.10 Employees under suspension must not enter Trust premises or use any Trust property without permission of an appropriate level manager or unless specifically mentioned in the suspension letter. It is the suspending manager's responsibility to ensure access cards are held securely and that the employee is informed of this provision. The employee's access to the Trust's sites will be monitored and breaching this condition could lead to further disciplinary action.
- 8.11 Suspended employees should still be able to book annual leave whilst suspended.
- 8.12 Should an employee become ill whilst suspended then the Trust's normal sickness absence process will apply.
- 8.13 Where an employee has been suspended and under investigation, and subsequently resigns from the Trust during the investigatory process, notes will be kept so that any reference provided for that employee will indicate that there is an unresolved investigation into alleged misconduct. Such references must be fair and accurate, but will state that procedures have not been completed. In some cases, it may be appropriate to conclude the process following the resignation of an employee, and referral to an external agency such as DBS or a professional body may also be necessary. Advice should be sought from an HR representative in all cases involving resignation of an employee during a live process.

- 8.14 Where employees have been suspended, while under criminal or police investigation, the Trust will not necessarily pause an internal investigation pending the outcome of a police investigation and may decide to continue its internal investigation and processes depending on the particulars and facts of each case.

9. Formal Investigation Approach

9.1. Formal Investigation

When the decision has been made that a formal investigation is required, the Commissioning Manager must appoint an Investigation Officer (IO). The employee will be notified of the appointment and identity of the investigating officer as soon as practicable after this appointment.

- 9.2 Once a fact-finding investigation has been conducted and formal proceedings instigated, the employee will be notified of this, and an investigation will be carried out. Where deemed appropriate by the Trust, a thorough and prompt investigation will be undertaken by an independent Trust trained investigating officer. The Trust also reserves the right to appoint an external investigating officer should the facts of a case warrant an external IO. [Any external IO will be overseen by a representative of the Trust's management]. In exceptional circumstances, the employee will not be notified of the investigation where it is being carried out under the Local Counter Fraud/HR Liaison Policy, at the request of the Police, serious safeguarding allegations or as a result of a high-level DBS notification.
- 9.3 The methods of the investigation will vary depending on the circumstances. In some cases, this will require the holding of an investigatory meeting with the employee and/or obtaining a written statement from them. In others, this may not be necessary, and the investigatory stage will involve the collation of information.
- 9.4 Where appropriate, statements will be obtained from, or interviews conducted with, any relevant witnesses. Those making statements

and/or being interviewed as part of the investigation will be told why they are being interviewed, and that they may be required to attend any formal hearing to give evidence.

- 9.5 If a witness or complainant has made a statement that is being used for the disciplinary investigation or for the purposes of the disciplinary investigation, but is not available for an interview or for attendance at a disciplinary hearing, or it would not be appropriate or reasonable in the circumstances to invite them for questioning, all such statements will be included as part of the investigation and should be considered in the context of the overall investigation. For instance, in some circumstances it may not be viable, appropriate, or reasonable to undertake investigatory meetings with patients/clients, the relatives of patients/clients or members of the public. In such cases, written statements may be relied upon.
- 9.6 If a witness or complainant has requested that they remain anonymous, e.g. following the raising of concerns under the Trust's [whistleblowing policy or Raising Concerns policy, the Trust will endeavour to maintain their anonymity. Any such decisions will be made bearing in mind the Trust's obligations to the employee accused to complete a fair and reasonable investigation and to know the allegations against them. This means that there may be occasions when, for example, only the investigator and their HR support are aware of their name(s) or alternatively where, the necessity to conduct a fair and reasonable investigation and adhere to the principles of natural justice may mean that details need to be disclosed despite it being against the witness's or complainant's wishes. This possibility should be outlined to witnesses and complainants at the beginning of the investigatory process.
- 9.7 The Trust and employees will be expected to meet their requirements with regards to reporting disciplinary matters to professional bodies e.g. HCPC, GMC and Nursing and Midwifery Council (NMC) (as per the Trust's Variations in Clinical Practice and Clinical Competence and Professional

Registrations Policies). Failure to do so may in itself may lead to further disciplinary action in line with the principles of this policy.

10. Outcome After Investigation

- 10.1 Once the investigation has been completed, the IO will submit an Investigation Report to the CM.
- . The CM will then take a view on whether or not there is a case to answer, and/or whether it should be dealt with informally, or formally. A decision on whether to proceed with the formal disciplinary procedure or not, will be made within 7 calendar days of receipt of the investigation report. It would normally be best practice for the IO to seek the advice of the ER Services Team before proceeding.

No Case to Answer

- 10.2 Where the evidence collated by the IO indicates that there is no case to answer, then no further action will be taken, and the employee should be notified in writing accordingly and a note for their file made.
- 10.3 Alternatively, the CM may decide that matters should be dealt with using an informal approach. For example, a CM may find there is a case to answer but make a recommendation for a reasonable management instruction to be issued, coaching, mentoring, mediation or training to be offered to the employee rather than proceeding to a disciplinary hearing.
- 10.4 A note of any management instruction, coaching, mediation, mentoring, training or retraining as a result of informal action should be kept. This may be done in the form of a 'letter of expectation' to the employee, as appropriate. This should outline the details of the misconduct, the improvement and/or standard required, the time scale allowed for this and what action will be taken, if they fail to improve behaviour. Where management instructions are issued, a record of this will be stored electronically.

11. Right to be Accompanied

- 11.1 All employees will have the right, if they wish, to be represented by a work colleague, trade union representative, or an official employed by a trade union at all stages of the policy/procedure. This right must be brought to the attention of the employee by the manager. A trade union representative who is not an employed official must have been certified by their union as being competent to accompany a worker. Acting as a companion is voluntary and colleagues are under no obligation to do so. If they agree to do so they will be allowed reasonable time off from duties without loss of pay to act as a companion.
- 11.2 The Trust may, , allow a companion who is not a colleague or union representative (for example, a member of family) if this will help overcome a disability, or the employees has difficulty understanding English. However, employees will not be entitled to bring a person acting in a legal capacity.
- 11.3 To exercise the right to be accompanied employees must make a reasonable request identifying who, from those in paragraph 14.1 they wish to attend as their representative. What is reasonable will depend on the circumstances of each individual case. However, it will not normally be considered reasonable, and therefore employees would not be eligible to exercise their right to be accompanied, when they:
- insist on being accompanied by a representative whose presence would prejudice the hearing.
 - ask to be accompanied by a representative from a remote geographical location if someone suitable and willing was available on site.
 - insist on being accompanied by a specific representative in situations where this would cause unreasonable or unnecessary delay.
- 11.4 In respect to bullet point 3 above (section 14.3), the Trust will however, permit the employee to provide an alternative date for a disciplinary hearing or appeal hearing in situations where the chosen representative

cannot attend on the hearing date initially proposed by the Trust. This will only be permitted on one occasion. In this situation, the alternative date provided by the employee should fall within 14 calendar days of the original planned date. Where the Trust is unable to facilitate the offered alternative date, the Trust will reschedule a date within or as soon after the 14-calendar day period.

- 11.5 At disciplinary hearings and appeal hearings, the representative is allowed to address the hearing, to put forward and sum up the employee's case, respond on behalf of the employee to any views expressed at the meeting and confer with the employee during the hearing. The representative does not, however, have the right to answer questions on the employee's behalf, address the hearing if the employee does not wish them to or prevent the Trust from explaining the case.

12. Formal Disciplinary Hearing

- 12.1 A formal disciplinary hearing panel will be made up of:
- The Chair,
 - Senior manager supporting the Chair.
 - HR or other appropriate professional advisory Support to the panel and proceedings
 - Cultural Ambassador (where applicable)
 - Safeguarding representative (for all safeguarding allegations and where else applicable)
- 12.2 Where it is determined that the matter should proceed to a formal disciplinary hearing, a hearing will be arranged as soon as is reasonably practical, and in any case between 21 - 28 calendar days of the CM's decision to proceed to one.
- 12.3 The employee will be notified in writing of the arrangements for the hearing together with the nature of the allegation(s) which are to be considered by the disciplinary panel and what the possible outcomes

could be. They will also be advised of how they can exercise their right to be accompanied at the hearing (see Section 14).

- 12.4 Management is required to provide the employee with a written statement of its case, prepared by the IO at the time they are invited to a disciplinary hearing including copies of any witness statements and evidence upon which management intends to rely. The employee may provide a written statement of their case at least 7 calendar days prior to the disciplinary hearing, together with any witness statement(s) and evidence upon which they intend to rely. Both parties will agree which communication route is best to circulate these statements. At the same time both parties should identify in their statement of case the name(s) of any witness(es) they intend to call.
- 12.5 It is the responsibility of the parties concerned to arrange for the attendance of their witnesses. Where this is not possible, parties may contact HR may assist with the arrangement of witnesses. In the case where witnesses are employees of the organisation the respective managers should be informed. Time off with pay or time off in lieu will be granted for them to attend the hearing.
- 12.6 At the request of the employee an alternative arrangement to Panel members hearing attire may be agreed by the panel Chair, each request will be considered on a case-by-case basis.
- 12.7 Employees must take all reasonable steps to attend a disciplinary hearing. Failure to attend without good reason could result in the hearing being held, and a decision being taken, in the employee's absence. However, if the employee fails to attend through circumstances completely outside of their control and which are unforeseeable, the Trust will arrange another hearing. Thereafter, if the employee fails to attend for a second time, the hearing will be held, and a decision will be taken, in the employee's absence.

- 12.8 Employees, and anyone accompanying employees (including witnesses and note takers), must not make electronic recordings of any meetings or hearings conducted under this procedure without express authorisation. This rule helps us to comply with the Data Protection Act 2018. Any employee who breaches this rule will be subject to disciplinary action.

13. Formal Disciplinary Hearing Outcomes

- 13.1 Following the disciplinary hearing, the panel will decide whether the conduct complained of has been made out or not. It will then need to consider, if the allegation, complaint, or concern has been upheld, whether any disciplinary sanction is justified or not. The decision of the panel may initially be provided verbally in the first instance. In all cases, the employee will be provided with the outcome in writing normally within 7 calendar days unless advised by the panel that a longer time period is required.
- 13.2 In the event of a longer time period being required for the panel to reach its decision, discussions between panel members and all parties will take place on the best way to deliver the outcome to the individual(s). Options may include either a face-to-face meeting, videocall or telephone conversation with the Chair and the employee and their representative.
- 13.3 The Trust should not disclose previous disciplinary sanctions that have expired with the panel at any stage of the hearing before a decision has been made. This does not apply to allegations relating to safeguarding concerns.
- 13.4 Where a case has been upheld and a panel are considering a sanction, it may be appropriate for a panel to consider previous sanctions (including expired). These sanctions would initially be identified initially by HR support to the chair identifying previous relevant sanctions. This would only be in cases where there is a clear pattern of behaviour that has not

been addressed. Where the HR support the Chair identifies previous, potentially relevant sanctions, these must not be shared with the Chair, but an adjournment called. It would be the decision of the Director of People Services (or deputy in their absence) to determine if these historical sanctions should be considered by the panel for the purpose of determining the level of sanction, and they should refer to current case law examples to determine the reasonableness of the inclusion.

- 13.5 Where the facts of the case indicate that there is no case to answer the individual will be notified either at the end of the disciplinary hearing or in writing when the outcome letter is issued.
- 13.6 Where there is a case to answer and a disciplinary sanction is justified, the panel will consider what outcome is appropriate. The outcomes listed below do not need to be applied sequentially but should be determined based on the seriousness of the misconduct. Before making their decision, the panel should take account of the following when determining which of the potential outcomes available to them will be applied:
- the employee's current disciplinary and general record.
 - actions taken in any previous similar case.
 - the explanations, mitigation or extenuating circumstances provided by the employee or the complainant; and
 - whether the intended action is reasonable under the circumstances.

The potential outcomes following a hearing could be as follows:

13.7 No Further Action

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

13.8 Alternatively, where the facts of the case indicate that the matter should now be handled informally, this may include use of management instructions, coaching, mentoring, training and re-training.

13.9 Formal Disciplinary Action

Where the facts of a case call for formal action then the following may be imposed as outlined under Section 14 below:

- ii) First Written Warning
- iii) Final Written Warning
- iv) Dismissal or Action Short of Dismissal
- v) Summary Dismissal.

14. **Formal Disciplinary Action Sanctions**

14.1 First Written Warning:

- A first written warning will usually be appropriate for a first act of misconduct where there are no other active written warnings on an employee's disciplinary record. The employee should be advised in writing of the warning, the nature of the misconduct, the improvement and/or standards required, the time scale allowed for this and be notified of the period of time that the warning will remain live. The employee will also be notified that failure to improve, modify behaviour or achieve the required standard of conduct may lead to further disciplinary action under this policy. The employee will also be advised of their right of appeal.
- A copy of the letter notifying the employee of the first written warning will be kept on the employee's personnel file and recorded by the HR Operational Team.
- A first written warning will usually apply for a period of no longer than 12 months in line with data protection guidelines and be disregarded after

that time, provided there are no further and similar instances of misconduct ~~or~~ during that time.

14.2 Final Written Warning

- Where a previous written warning exists, or where the misconduct is sufficiently serious to warrant a final written warning despite no other active warnings, the employee should normally be given a final written warning.
- The employee should be advised in writing of the warning, the nature of the conduct issue, the improvement and/or standard required, the time scale allowed for that and be notified of the period of time that the warning will remain live. The employee will also be notified that failure to improve or modify behaviour may lead to further disciplinary action under this policy, including dismissal or action short of dismissal. The employee will also be advised of their right of appeal.
- A copy of the letter notifying the employee of the final written warning will be kept on the employee's personal file and recorded by the HR Operational Team.
- A final written warning will usually apply for a period of no longer than 12 months and be disregarded after that time provided there are no further and similar instances of misconduct during this time.

14.3 Dismissal with notice or Action Short of Dismissal

- Where there is a failure to improve or achieve/maintain the required standard of conduct despite having been subject to a prior final warning which remains live, or in cases where the misconduct is sufficiently serious, then the panel may make the decision to dismiss the employee with notice or issue another sanction amounting to an 'action short of dismissal'.

- Action short of dismissal may include;
 - a change in role either on a permanent or temporary basis (where a suitable role is available)
 - demotion to a lower grade job either on a permanent or temporary basis (where a suitable role is available).
- These would generally be issued as an alternative to dismissal and would normally be done in conjunction with the issuing of a final written warning. Where a change in role or demotion is sanctioned, the terms and conditions including salary for that post will apply.
- A letter should be sent to the employee confirming the reasons for the dismissal or other sanction (including any relevant pay and/or terms and conditions changes) within 7 calendar days. An HR2 should be enclosed for the employee to accept the terms of any new role as an action short of dismissal. In the case of dismissal, the letter should give the date of termination of employment, setting out the period of notice or payment in lieu of notice to which the employee is entitled and advise them of their right of appeal.
- Authority to dismiss (with or without notice) within the Trust falls within the responsibilities of the following persons.
 - Substantive positions of Agenda for Change Band 8c or above
 - Seconded managers in roles attracting AfC Band 8c or above (who have gone through the normal/full recruitment and selection process). This does not apply to those on development opportunities.
 - Substantive band 8b post holders with the agreement of the joint SPF chairs

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

Managers undertaking these responsibilities will be supported by a member of the HR Operational Team.

14.4 Summary Dismissal

- Certain types of misconduct are regarded as so serious that if they are committed by an employee then dismissal without notice will follow. These offences are regarded as gross misconduct, and a non-exhaustive list of examples of gross misconduct is at Appendix 13. Gross misconduct is conduct that is so serious that it undermines and irreparably damages the relationship of trust and confidence between employer and employee, rendering the employment relationship no longer possible with immediate effect. As a result, in the event that an employee commits an act of gross misconduct, the Trust will be entitled to terminate summarily the employee's contract of employment without notice or pay in lieu of notice.
- A letter should be sent to the employee confirming the reasons for the dismissal, the date of termination of employment and their right of appeal within 7 calendar days. The line manager is responsible for ensuring the collection/return of all Trust property.

15. Disciplinary Appeals Procedure

A formal disciplinary appeal hearing panel will be made up of:

- The Chair,
- Senior manager supporting the Chair.
- HR Support to the panel and proceedings.
- Cultural Ambassador or Safeguarding Official (where applicable).

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

15.2 How to Appeal.

- Appeals should be made in writing to the Director of People Services within 7 calendar days of receipt of the letter informing them of the outcome of the formal disciplinary hearing.
- When lodging an appeal, the employee should state the grounds of their appeal, which are likely to fall into three categories:
 - the outcome (finding that they have committed the alleged act(s) of misconduct
 - the level of the sanction imposed.
 - procedural issues.
- The grounds on which the employee chooses to appeal will be considered when determining how the appeal will be handled. For example, if the grounds for the appeal relate to the level of the sanction imposed, then the appeals panel may confine their deliberations to this issue. If it is claimed that there are procedural irregularities, it may be necessary to conduct the appeal on the basis of a re-hearing to remedy any potential previous failings.
- Any appeal will normally be heard within 28 calendar days of receipt of the appeal letter, unless circumstances arise including, for example, issues regarding the availability of the relevant parties. In such cases, the ER Team will notify the employee of the delay, which will not normally be more than an additional 14 calendar days, and reason for it.
- The employee may provide management with a written statement of the grounds of their appeal at least 14 calendar days prior to the appeal hearing including copies of any information or evidence upon which they intend to rely. Management will provide a written statement of response at least 7 calendar days prior to the appeal hearing, together with any information and evidence in response upon which they intend to rely. Both parties should identify in their statement of case if there are any witnesses they intend to call. All statements will be submitted to the panel and where statements are not agreed this will be identified to the Chair, who will make the final decision regarding the validity of the content of the statement.

- It is the responsibility of the parties concerned to arrange for the attendance of their witnesses. Where this is not possible, HR may assist with the arrangement of witnesses. In the case where witnesses are employees of the organisation, time off with pay, or time off in lieu will be granted for them to attend the hearing. It is not normal Trust policy to involve patients/clients/relatives or members of the public as witnesses at the meeting and the written statement will be relied on for evidence.
- There is the expectation that the employee takes all reasonable steps to attend the appeal hearing. Failure to attend without good reason could result in the appeal hearing being held, and a decision being taken, in the employee's absence. However, if the employee fails to attend through circumstances completely outside of their control and which are unforeseeable, the Trust will arrange another appeal hearing. Thereafter, if the employee fails to attend for a second time, the appeal hearing may be held, and a decision will be taken, in the employee's absence.

15.3 Level of Manager to hear an Appeal.

- Written warning

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

- Dismissal or Action Short of Dismissal

An employee's appeal against dismissal or action short of dismissal will be heard by a panel of two, one of which must be a substantive position of Agenda for Change Band 9 or above decided by the Joint Chairs of SPF. In addition, there will also be support from the ER Team. Where the Executive Director on the panel is the Director of People Services, support from the ER team would not be required by the panel members.

15.4 Appeal Outcome

- Upon completion of the appeal hearing, the Chair of the hearing will usually convey the decision to the employee orally. This decision is final

and there is no further right of appeal. The decision will be confirmed (or if not given orally, will be sent) in writing within 7 calendar days from the date of appeal hearing. In exceptional circumstances, the Chair of the panel may extend this deadline and will provide written explanation for the delay to the employee.

- The outcome of an appeal will be to confirm, change or remove the disciplinary sanction imposed.
- An appeal will never be used as an opportunity to punish the employee for appealing the original decision and will not result in any increase in sanction or penalty.

16. Fast Track (Agreed Outcome) Process

16.1 In cases where an employee admits the allegation(s) in full (or provides mitigation for some allegations to be amended) and accepts an agreed outcome that a limited sanction (up to and including a final written warning) will apply, the option of the Fast Track process may be considered for the benefit of both the employee and the Trust.

16.2 The benefits of the Fast Track process include:

- Alleviate stress that may be experienced by the individual undergoing disciplinary proceedings and stress of others that may be involved in the process
- Mutually agreed
- A pragmatic outcome
- A speedier resolution

16.3 The employee, their line manager, a staff side representative or work colleague supporting the employee may suggest this option and the Trust will give due consideration to it.

16.4 Prior to the Fast Track option being adopted, sufficient and reasonable examination of the facts must have taken place to determine if the Fast Track process is appropriate and so that the manager will be able to decide on what would be a reasonable disciplinary sanction in the circumstances.

16.5 The Fast Track process does NOT apply:

- In cases of misconduct, where there are sexual harassment or safeguarding, criminal allegations/charges/convictions, or
- In cases of potential gross misconduct, or
- Where a live disciplinary warning is on file, or
- If any one of the allegations is contested by the employee which the commissioner is not prepared to amend.

16.6 If the employee or their representative are not in agreement with the Fast Track option, the normal disciplinary process must be followed. There may be instances where a round table discussion may still be of benefit, even where the circumstances exclude the use of the Fast Track process.

16.7 In cases where a full formal investigation has already commenced the employee may still request the option of the Fast Track process. In this situation the investigation may be paused pending a decision on this option. If the Fast Track option is agreed, the full investigation and investigation report can be forestalled for the benefit of all parties on the basis the Fast Track (Agreed Outcome) Form (Appendix 14) is completed as evidence the process was opted for and approved by the employee and the manager.

16.8 Fast Track (Agreed Outcome) Form:

16.9 In cases where the Fast Track process is agreed the Fast Track (Agreed Outcome) Form (Appendix 14) must be completed by the line manager and the employee at the Fast Track (Agreed Outcome) Meeting.

16.10 Fast Track (Agreed Outcome) Meeting:

- A Fast Track (Agreed Outcome) invite letter will be issued to the employee ensuring they are fully informed of the conditions of the Fast Track (Agreed Outcome) process prior to the meeting.
- The manager will meet with the employee (who may be accompanied by a staff side representative or work colleague). Advice will be sought from the HR Department in all cases before proceeding to a Fast Track (Agreed Outcome) meeting and HR support will be in attendance at the meeting.

16.11 The process for the Fast Track (Agreed Outcome) meeting will be as follows:

- a. Allegation(s): The manager will open the meeting by confirming those present, outline the nature of the allegation(s), confirm these are accepted by the employee or discuss contested elements and that a limited sanction is to be issued up to and including a final written warning.
- b. Employee response: The employee or their representative will have the opportunity to explain the circumstances in which the misconduct occurred including any mitigating circumstances they wish to be taken into account.
- c. Outcome: Where there is broad agreement on circumstances surrounding the matters arising, the employee has admitted to the allegation(s) and can demonstrate learnings and improvements, the manager will communicate the sanction decision and /or other course of management as appropriate.

16.12 Such sanctions may include management action up to a final written warning. Additional conditions, such as reflective practice or training,

may be applied to support the employee to maintain the standards required.

16.13 Any disciplinary sanction issued in this way has the same status as one issued at a full disciplinary hearing.

16.14 If at any time it appears the allegations are disputed the Fast Track process must be stopped.

16.15 If, during the course of the Fast Track meeting, other information comes to light which was not apparent when the Fast Track option was adopted, the manager will consider whether the Fast Track option is appropriate to progress. The alternative would be for the manager to consider whether the formal investigation and/or disciplinary hearing process should proceed.

16.16 The completed Fast Track (Agreed Outcome) Form will be issued by the manager confirming the 'agreed outcome'. Given the mutuality of any 'agreement' reached through the Fast Track process, this is considered to be the conclusion of the matter and there would be no right of appeal under Section 15 of this policy.

16.17 In the event that all parties do not agree as to whether this approach is appropriate, then the case should go back to the P-ARM stage for next steps.

17. Confidentiality

17.1 All information at any stage of this procedure, whether it is written or verbal information, must be treated as confidential information by all parties. Failure to do so may result in disciplinary action being taken.

17.2 All records should be kept by all parties in accordance with current data protection legislation.

18. Dealing with Special Situations

18.1 Accredited Trade Union Representatives

Where disciplinary action is being considered against an employee who is a recognised trade union representative the normal disciplinary procedure should be followed. In such cases the ER team will inform one of the staff side members of the Staff Partnership Forum and/or an official employed by the union after obtaining the employee's agreement. In these cases, circumstances considered unreasonable within section 14.3 may not apply.

18.2 Criminal Charges or Convictions Outside Employment

If an employee is charged with, or convicted of, a criminal offence consideration will be given to what effect it has, or will have, on the employee's suitability to work within the Trust, do their job, and the effect of the charge or conviction on their relationship with the Trust, work colleagues, customers and patients. In all cases the employee's line manager after consulting with their Employee Relations representative and senior manager having considered the facts, will need to decide whether the conduct is sufficiently serious in relation to the employee's suitability to do their job to warrant initiating the disciplinary procedure. The Trust's decision is independent of any criminal action. Charges or convictions are not automatic reasons for dismissal and likewise acquittals or charges being dropped do not mean that internal disciplinary action will not be taken. If criminal charges or investigations are underway against a Trust member covered by this policy then the Trust may undertake its own investigation and may not wait for the outcome of any police investigation or prosecution before deciding what action to take. In addition, the Trust may continue to follow its disciplinary procedure notwithstanding an employee not being charged or convicted. Any internal disciplinary procedure is separate from any police investigation.

18.3 If a police investigation needs to take place prior to an internal investigation, the time frame for the investigation will begin at the end of the police investigation. However, in some serious circumstances, it may

be appropriate to begin the investigation alongside the police investigation

- 18.4 Where the police and/or Local Counter Fraud Specialist have to be involved in an investigation, (e.g. when an allegation of fraud or maltreatment of patients occurs), then advice from a member of the Employee Relations Representative should be sought before an investigation commences.
- 18.5 Any employee who is being investigated, has been charged with or is being prosecuted for any criminal or motoring offences relating to them must inform their line manager in writing of the relevant details at the outset or the earliest opportunity.
- 18.6 Under the Forfeiture or Reduction of NHS Pension Scheme Benefits employees should be aware that in certain circumstances convictions may have a negative impact on their pension.

19. Vexatious and Malicious complaints

- a) The presumption should be that a complaint is made in good faith. If the CM becomes aware that a complaint is made with vexatious or malicious intent, they may make a decision and recommendations for further action on that basis.
- b) A vexatious complaint is one that is pursued, regardless of its merits, solely to harass, annoy or subdue somebody; something that is unreasonable, without foundation, frivolous, repetitive, burdensome or unwarranted.
- c) A complaint may be regarded as vexatious where the employee:
- Persists in pursuing a complaint which has already been investigated by another or the same manager and provides no new or material information.

- Seeks to prolong contact by continually changing the substance of a complaint or by continually raising further concerns or questions whilst the complaint is being addressed.
 - Fails to clearly identify the substance of a complaint, or the precise issues which may need to be investigated despite reasonable efforts by the manager to assist them.
 - Complains solely about trivial matters to an extent which is out of proportion to their significance.
 - Makes excessive contact with the manager or seeks to impose unreasonable demands or expectations on resources, such as responses being provided more urgently than is reasonable or necessary.
- d) A malicious complaint is one that is made with the intention of causing harm, for example:
- deliberately seeking to defame a colleague or manager and raising a complaint with this intent;
 - through lying about an issue or incident in the knowledge that this will cause harm;
 - through knowingly basing a complaint on rumour and gossip with the intention of causing harm.
- e) Vexatious or malicious use of the grievance or dignity at work procedures is not an acceptable way to deal with underlying concerns. If there is evidence that an employee is making vexatious or malicious use of the grievance procedure, the matter may be investigated under this policy.

20. Subject Access Requests (SARs)

If the employee has submitted a subject access request (SAR) to the Trust, the SARs team will prioritise the aspects of the SAR that relate to the disciplinary process (if any) to ensure the proceedings can continue as soon as possible. The employee is required to indicate to the SARs team what parts of the SAR are required to progress their case. All aspects of the SAR will still be completed; however the disciplinary-related parts will be prioritised to assist the timeliness of the disciplinary process.

21. Governance Process

This policy has been written by the Trust's policy subgroup and approved by the Trust's Executive Directors.

22. Policy Review

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

Appendix 1

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

Where an individual*:

- Behaved in a way that has harmed, or may harm, a child
- Possibly committed a criminal offence against, or related to, a child; or
- Behaved towards a child or children in a way that indicates they are unsuitable to work with children.

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

- There is an allegation that they have accessed inappropriate materials, for example on the internet, an example being accessing websites which show children being abused.
- Where there is an allegation that they have downloaded inappropriate images of a similar nature
 - Where there have been allegations in relation to activities that an individual may have been involved in outside of their employment (this includes allegations of domestic violence).
 - Having a sexual relationship with a person under the age of 18 if in a position of trust in respect of that child, even if consensual.
 - Grooming, i.e., meeting a child under 16 with intent to commit a relevant offence

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- Other ‘grooming’ behaviours giving rise to concerns of a broader child protection nature, e.g., inappropriate text / email messages or images, gifts, socialising etc.
- Possession of indecent photographs/pseudo-photographs of children

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

*All references in this document to ‘members of staff’ should be interpreted as meaning all staff, whether they are in a paid or voluntary employment

Appendix 2

Trust Safeguarding Contacts

<p>Melissa Dowdeswell Director of Nursing, Quality and Safety (Executive Lead for Safeguarding) Email: Melissa.dowdeswell@eastamb.nhs.uk</p>
<p>Ben Wayland Safeguarding Lead and Senior Manager for Safeguarding Phone: 07395 851034 Email: ben.wayland@eastamb.nhs.uk</p> <p>Named Professional for Safeguarding / Designated Manager for Allegations against staff Email: safeguardingallegations@eastamb.nhs.uk</p> <p>Safeguarding Team Email: safeguardingteam@eastamb.nhs.uk</p>

Appendix 3

Pre-Action Review Meeting (P-ARM) – Pro-forma V0.12

Instructions:

[To be used in Formal ER cases (Disciplinary and Dignity at Work cases)]

Only complete this form if allegations may potentially lead to a **Safeguarding, Suspension or Formal process**.

- At least one Executive Director must be present for all 3 potential scenarios above.
- The Line Manager commences this process by completing **section 1** and **section 4** if suspension is being considered.
The Line Manager should also indicate the case type and indicate whether allegations relate to safeguarding concerns.
- If there are safeguarding concerns, a Safeguarding Representative should complete **sections 2 and 3**.
- If there are no safeguarding/suspension implications, please follow the rest of the P-ARM process, for all Formal ER cases.
- If a decision has been made to suspend and the employee is on Section 2 Enhancements, a HR2a needs to be raised to ensure these continue to be paid
- All TOR for investigation to include consideration of patterns of behaviour and arising concerns
- Email to ERCaseRegistration@eastamb.nhs.uk at least 48 hours before P-ARM call is to be held. Subject title in email to include ER Tracker number & employee initials

Section 1 – Case Details

(To be completed by the Line Manager)

Requested date of P-ARM meeting:	
ER Tracker no:	
Name and job title of manager completing this form:	
HR Support:	
Case Type:	Disciplinary <input type="checkbox"/> Dignity at Work <input type="checkbox"/>
Are there Safeguarding concerns in this case? (If YES, Safeguarding rep to complete section 2)	YES <input type="checkbox"/> NO <input type="checkbox"/>
Is a LADO investigation required in this case? (If YES, Safeguarding rep to complete section 3)	YES <input type="checkbox"/> NO <input type="checkbox"/>
Is Suspension being considered as part of this case? (If YES, Line manager or Manager presenting at P-ARM also completes section 4)	YES <input type="checkbox"/> NO <input type="checkbox"/>

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Does this case need to be reported to the police ?	YES <input type="checkbox"/> NO <input type="checkbox"/>
Staff Member name:	
Job Title:	
Department:	
Continuous service start date:	
Banding:	
Professional registration escalation:	Yes/No <i>Please specify</i>
Welfare Officer name: Frequency of welfare contact:	
Manager:	
Reason for possible investigation: <i>(All TOR for investigation to include consideration of patterns of behaviour and arising concerns)</i>	
Date of incident/issue:	

Question	Yes/No	Executive authorisation
Is the staff member from a BAME background	Yes/No	
Does the staff member have a disability and require reasonable adjustments? If YES, please outline adjustments required	Yes/No	
Is Safeguarding an issue. If YES do the allegations include sexual inappropriateness (please state)	Yes/No	

Have you asked yourself the following questions before seeking?

P-ARM call?

Question	Answer
a. Did the employee intend to cause harm?	Yes/No/Unsure
b. Are there indications of substance misuse including alcohol?	Yes/No/Unsure
c. Are there indications of physical ill health?	Yes/No/Unsure
d. Are there indications of mental ill health?	Yes/No/Unsure
e. Is the employee aware of the relevant safe operating procedures (where applicable)?	Yes/No/Unsure
f. Were the protocols/accepted practice workable and in routine use?	Yes/No/Unsure
g. Has the employee had the relevant training to perform their roles and responsibilities?	Yes/No/Unsure

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Question	Answer
h. Would another similar trained and skilled employee in the same situation act in a similar manner?	Yes/No/Unsure
i. Any cultural points to consider? (<i>be prepared to expand</i>)	Yes/No/Unsure
j. Informal discussions with the employee about this issue/incident under review?	Yes/No/Unsure
k. Similar issues discussed in the past, formally or informally which add to the consideration of a formal disciplinary investigation?	Yes/No/Unsure
Comments:	

Section 2- Safeguarding

To be completed by line manager

	Yes	No
Is the person directly patient facing?		
Is the person patient facing via telephone?		
Is the person a registrant?		
Has the individual been stood down?		
Has a welfare officer been allocated?		
Does the person have children of their own?		
Is the person a carer (informal or formal) for another adult or child?		

To be completed by line manager

Do you have reason to believe that the person has acted in a way that meets the following: - (If the answer is yes to any, please provide a brief explanation)

	Yes	No
Behaved in a way that has harmed a child or may have harmed a child?		
Possibly committed a criminal offence against or related to a child?		
Behaved towards a child or children in a way that indicates they may pose a risk of harm to children?		
Behaved or may have behaved in a way that indicates they may not be		

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suitable to work with children?		
Behaved in a way that has harmed an adult who has care and support needs?		
Possibly committed a criminal offence against or related to an adult?		

To be completed by line manager, where relevant

Completion of the table below is only required if any of the answers above are 'Yes', as it is likely a discussion with the LADO will be required and a possible referral will need to be completed.

Date of allegation	
LADO area	
Position held within the Trust	
HR contact name	
Police involved - If so please provide contact details	
Date of last DBS Check	
Address	
Date of birth	

Once the relevant parts have been completed, please send to the Safeguarding Team for consideration prior to the Pre Arm

To be completed by Safeguarding.

The following decision has been made based on the information provided at the time of referral. Should additional information be discovered or change,

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please ensure the Safeguarding team are updated, so further consideration can be given to our involvement.

	Yes	No
Is representation from Safeguarding required?		

Reason for decision

--

Details of Safeguarding lead

Name:

Date:

Section 3 – Complete if a LADO investigation is required

(To be completed by the Safeguarding representative)

This document will section out the responsibilities when an allegation has been received to ensure the procedures are adhered to and we have a full and transparent audit trail. Once the process is completed this document will be peer reviewed and signed off by the Head of Safeguarding. If the LADO/DASM investigation is completed by the Head of Safeguarding this will be signed off by the Deputy Clinical Director.

Task	Comments	Person completing
Date of allegation		
Date of referral		
Time of referral		
LADO name		
LADO contact number		
LADO area		
Name of person alerting the LADO (it is EEAST responsibility to inform the LADO within 24 hours of the allegation being made)		
Area of work for the member of staff		

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Task	Comments	Person completing
Position held within the Trust		
Brief description of allegation (keep factual)		
CAD reference if applicable		
HR contact name		
HR contact number		
Date and time of contact to HR		
Police involved?		
Name, collar number and contact details		
Date, and time that the staff members Senior Locality Manager or Silver on call was informed and by whom?		

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Task	Comments	Person completing
(please also put the name and contact details of this person)		
Date and time that a Senior Member of Human Resources was informed and by whom? (please also put the name and contact details of this person)		
Does this incident have the potential to be an SI? If yes has this been placed on Datix?		
Has the member of staff been removed from duties? If yes by whom, date and time?		
Has a welfare officer been appointed? If yes by whom? Name and contact details of the WO		
Do the Media team need to be informed? If yes name and contact details		

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Task	Comments	Person completing
Referral to regulatory body required?		
Referral to Disclosure & Barring services?		
Date of last DBS		
Reference number		
Clear/not clear?		
Upon completion of this LADO case final sign off.		

Chronology

<u>Date</u>	<u>Time</u>	<u>Comments</u>	<u>Person completing</u>

1032B Section 4 - Risk Matrix for Considering Suspension

(To be completed by the Line manager or Manager presenting at P-ARM)

Suspension should only be considered if one or more of the conditions outlined in section 11.4.			
<i>(Policies this could apply to: Disciplinary, Safeguarding, Dignity at Work, Freedom to Speak Up and Grievance)</i>			
Date:			
Name of Individual:			
Criteria	No	Yes	Comments
Is there an allegation of serious misconduct?			
Is there a requirement to work with a victim/complainant of an alleged sexual harassment?			
Is there a workplace risk to the employee, if you do not suspend?			
Is the employee subject of criminal proceedings which may affect whether they can do their job?			
Have working relationships severely broken down?			
Is the individual able to continue doing their normal role while the matter is investigated.			
Criteria	No	Yes	Comments

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Could a temporary adjustment to the employee's working arrangements remove the need to suspend?			
Could the employee hamper or affect an investigation?			
Is the individual able to move to a different area of the workplace			
Can working from home be considered as an alternative?			
Can changing their working hours be considered as an alternative?			
Is the individual able to be placed on restricted duties?			
Could working under supervision be considered as an option?			
Are there medical grounds to suspend?			
Are there risks to the employee's safety if they remain at work?			
Is there a risk to other employees, property, or patients if they remain at work?			
Are there external factors that may impact on the individual remaining in the workplace?			
	No	Yes	Comments

<i>(If a decision has been made to suspend and the employee is on Section 2 enhancements, a HR2a needs to be raised to ensure these continue to be paid)</i>			
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Section 5 - Pre-Action Review Checklist

(To be completed by the review panel)

The panel should use Pro-Forma section 1 - submitted by the Line Manager.
Complete the following sections:

P-ARM review date:	
Name:	Job role:
	Executive Director
	SMG member
	Deputy Director/Head of Service
	ER Lead
	Safeguarding (If applicable)
	Cultural Ambassador (If applicable)
	Note taker (where possible)

Ensure conflict of interest and unconscious bias has been considered.

Given that the Trust emphasises on improvement and learning and ‘no blame’, has there been:

Question	Yes/No
Informal discussions with the employee about this issue/incident under review?	Yes/No
Similar issues discussed in the past, formally or informally which add to the consideration of a formal disciplinary investigation?	Yes/No

Issues previously discussed:	
-------------------------------------	--

OUTCOME MEASURES:

Question	Yes/No
a. If, based on the above, it is clear that there is a training or learning deficiency, is a period of supervision or more training required rather than formal disciplinary action?	Yes/No
Comments:	
Outcome agreed additional Training/Development (go to section 7)	

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Question		Yes/No
<p>b. Based on the above, Informal support to be looked at could include:</p> <ul style="list-style-type: none"> • Line management support/supervision • Coaching / development plan • Review of department practice • Health Issues • OH/Health Assured • Other (please specify) <p>Confirmed in a management letter/ file note/1:1.</p>		Yes/No
Comments:		
Outcome agreed - Informal Management (go to section 7)		
<p>c. If based on the review, the issue has reached the threshold for a formal investigation what are the reasons for this?</p>		
Comments:		
Outcome agreed - Formal Investigation (go to section 6)		

1216B Section 6 – Formal Investigation:**(To be completed by the review panel)**

Question		Yes/No
Before commencing an investigation, consider if Fast Track (Agreed outcome) is an appropriate route to follow?		Yes/No
Comments:		
Does the above action require discussion/advice from the relevant professional body, safeguarding?		Yes/No
Comments:		
Does the information known at this time require discussion in regard to potential suspension?		Yes/No
<i>*Involve the Workforce Directorate</i>		
Comments:		

Question		Yes/No
Discussion who maybe suitable as an Investigating Officer, ensuring conflict of interest and unconscious bias is considered		Yes/No
Comments:		

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Question		Yes/No
Ensure employee has support and contact details been shared for example, OH, Health Assured, Union etc.		
Comments:		

Section 7 – Sign Off:

(To be completed by the review panel)

Executive Director (Name):	
Signed:	
Date:	
Comments/Action:	

If required:

Cultural Ambassador:	
Signed:	
Date:	
Comments/Action:	

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Action	By whom
Outcome of pre-action tool review meeting and next steps communicated to relevant line manager.	
Outcome of pre-action review meeting and next steps communicated to member of staff who is the subject of the review.	

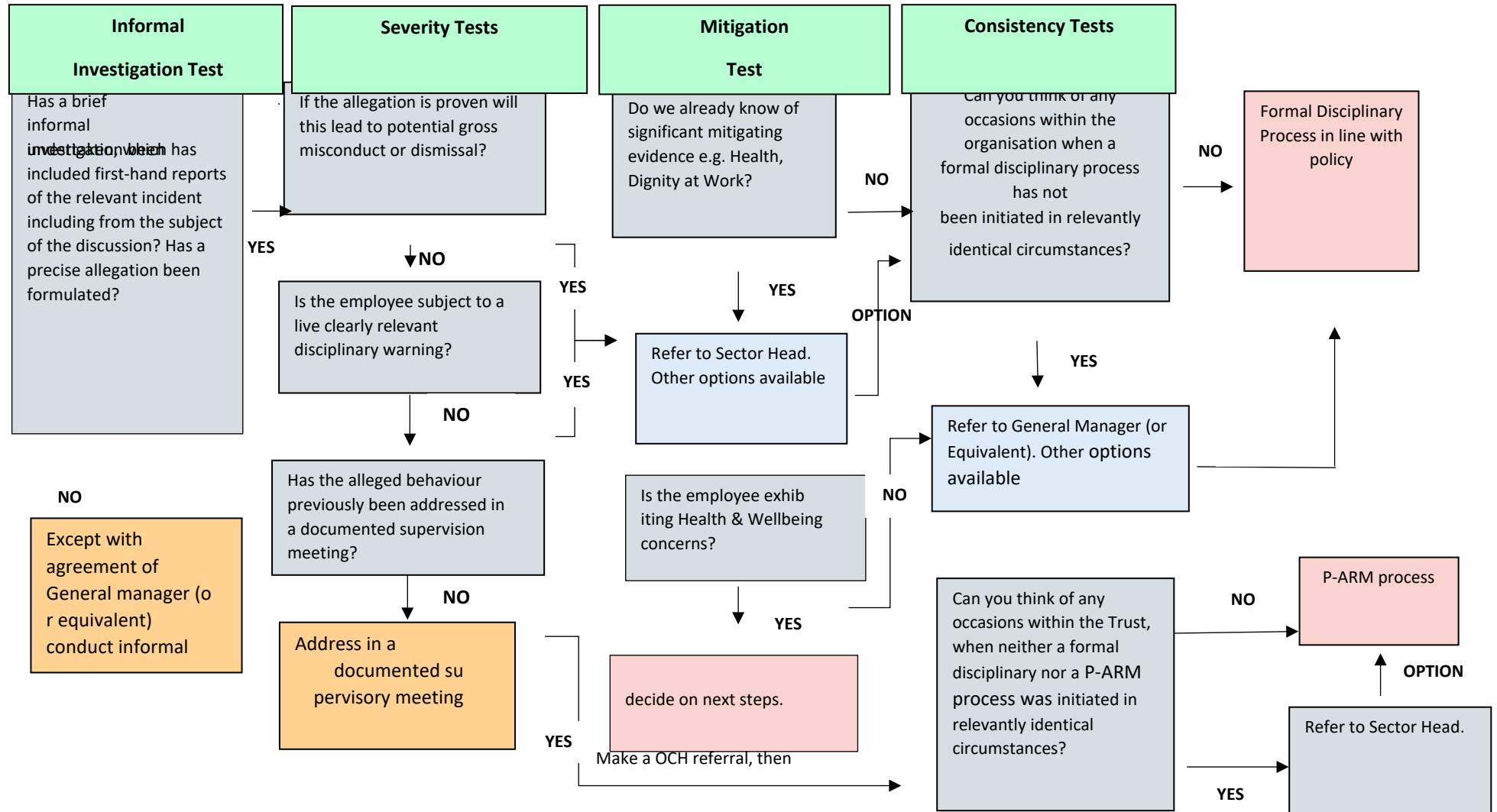
(To be completed by the ER Lead)

FOR ADMIN USE ONLY:	
Employee Relations representative to log and file	Actioned by:
Date case logged:	

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Appendix 4

Disciplinary Decision Tree [To be used in the P-ARM meeting, by the Commissioning Manager, HR and CA (where applicable)]



Appendix 5 - Initial Suspension Pro-forma

Initial Decision to Suspension Pro-forma			
Date of Suspension Decision Meeting		Members Presenting the case & Required at Meeting:	
Employee		Suspended By: Date of Suspension	
Job Role			
Banding			
Line Manager		Work Base/Location	
Commissioning Manager		HR Representative	
Investigating Officer		Professional Registration Escalation	
Reason- Suspension or other action			
Summary: Allegations			
Any other information			
Risks of maintaining in the workplace			
UNION Rep			

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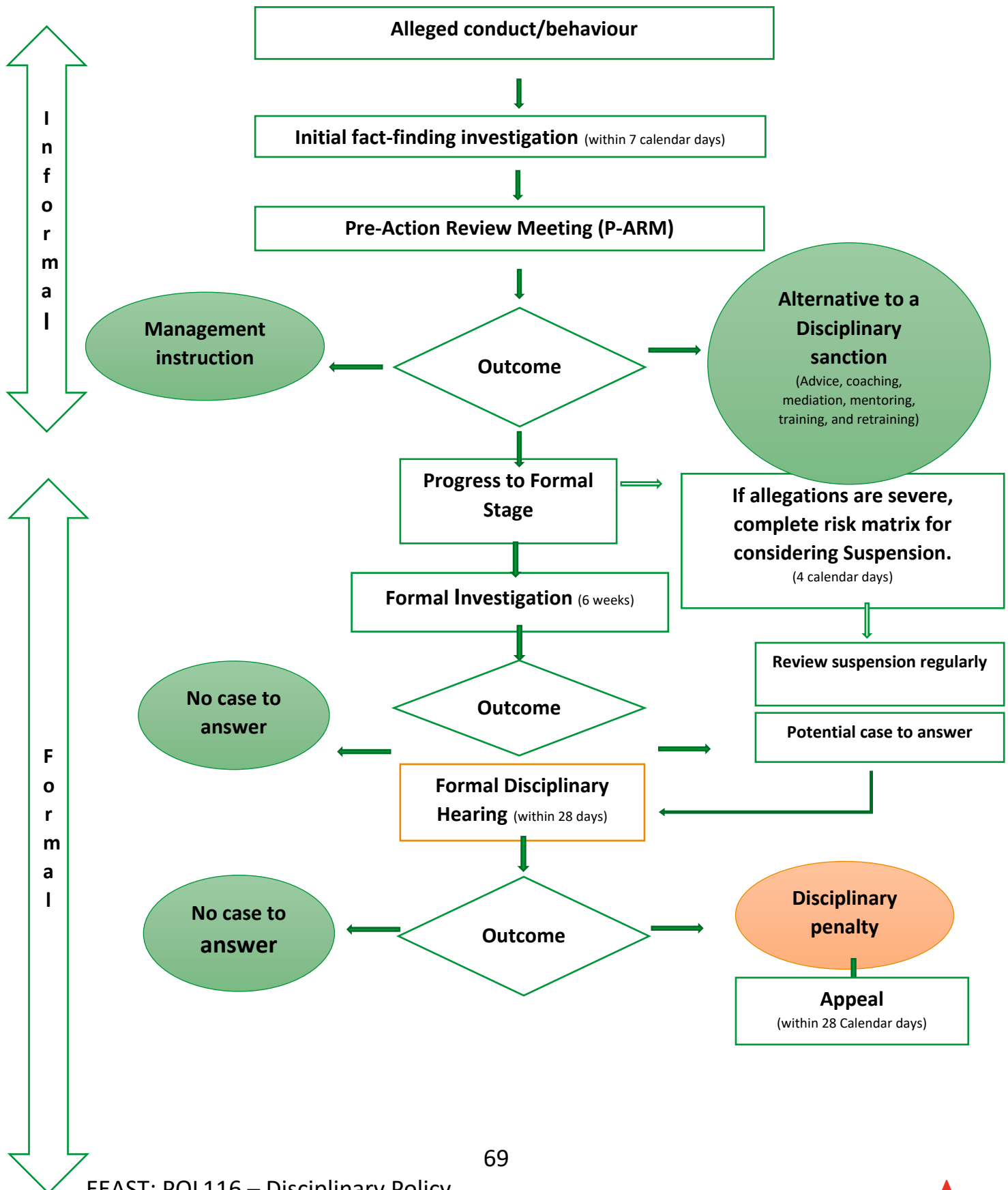
Initial Decision to Suspension Pro-forma			
Safeguarding Referral required?			
Decision & Rationale for decision			
Agreed Next Steps			
Wellbeing and mental health information			
Date of Next Suspension Review Meeting			

Appendix 6 - Suspension Review Meeting Pro-forma

Suspension Review Meeting Pro-forma			
Date of Suspension Review Meeting		Members Presenting the case & Required at Meeting:	
Employee		Suspended By:	
Job Role			
Banding			Date of Suspension
Line Manager		Work Base/Location	
Commissioning Manager		HR Representative	
Investigating Officer		Professional Registration Escalation	
Reason for Suspension			
Summary: Allegations			
Welfare Officer		Frequency of Contact With Welfare Officer	
Name of Union Representative /Colleague		Is the post being back-filled	Yes/No
	OH Referral	Yes/No	

Suspension Review Meeting Pro-forma			
Health & Well-Being	Last OH Referral		
	OH Outcome		
Safeguarding Referral	Yes / No *[If no please state reason]	Date of Last Safeguarding Review	
Case Update			
Agreed Next Steps			
Anticipated Date - Completing Investigation			
Anticipated Date Report Submission to Commissioning Manager			
Third party involvement. Police etc			
Date of Next Suspension Review Meeting			

Appendix 7 - DISCIPLINARY PROCEDURE FLOWCHART



Appendix 8

Examples of Misconduct and Gross Misconduct

These lists are neither exclusive nor exhaustive and are intended as a guide only.

Examples of Misconduct

The following non exhaustive list sets out examples of misconduct:

- Unauthorised Absence.
- Poor or erratic time keeping.
- Failure to follow a reasonable management instruction.
- Minor breaches of procedure likely to undermine efficient management or jeopardise the safety of other employees, patients or members of the public.
- Failure to comply with requirements to declare interests, gifts and hospitality received.
- Minor occurrences of, misuse of, or failure to safeguard confidential information and/or patient data.
- Failure to follow Trust policies and/or procedures.
- Minor breaches of your contract.
- Damage to, or unauthorised use of, our property.
- Unauthorised absence from work.
- Wilful negligence in the performance of your duties.

Examples of Gross Misconduct

The following non exhaustive list sets out examples of gross misconduct:

- theft, fraud, forgery or deliberate falsification of records,
- inappropriate behaviour including physical violence or sexual misconduct.
- serious bullying, harassment or unlawful discrimination
- deliberate and/or serious misuse or damage to Trust property or its name.
- bringing the Trust into serious disrepute

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- incapability whilst on duty brought on by alcohol or illegal drugs.
- serious negligence which causes or might cause unacceptable loss, damage or injury.
- serious infringement of health and safety rules
- serious breach of confidence (subject to the Public Interest (Disclosure) Act 1998)
- serious act of insubordination
- criminal conviction that in the Trust's opinion may affect the Trust's reputation or its relationships with staff, patients, service users or the public, or otherwise affects your suitability to continue to work for us .
- misuse of Trust IT and/or communications equipment and systems for example deliberately accessing pornographic, offensive or obscene material liable to cause offence.
- serious breach of confidentiality
- serious breach of contract of employment.
- misuse of or failure to safeguard confidential information and/or patient data.
- serious or repeated breaches of Trust policies and procedures.
- possession, use, supply or attempted supply of illegal drugs within the workplace.
- serious willful neglect of duties, or a serious or deliberate breach of your contract or our procedures.
- repeatedly or seriously failing to comply with any reasonable management instruction.
- making untrue allegations in bad faith against a colleague.

Appendix 9

Disciplinary Fast Track (Agreed Outcome) Form	
<p>To be used in line with the processes set out in the Disciplinary Policy in cases where an employee admits the allegation(s) in full and accepts an agreed outcome that a limited sanction (up to and including final written warning) will apply.</p> <p>This process must not be used in cases of misconduct, where are sexual harassment or safeguarding concerns, criminal allegations/charges/convictions, or in cases of potential gross misconduct, or where a live disciplinary warning is on file. Nor can it be used if any one of the allegations is contested by the employee.</p>	
Managers Name:	
Employees Name:	
Fast-Track Meeting Date:	
<p>a) Allegation(s):</p> <p>The manager will set out the allegation(s) and relating facts/circumstances that warrant a limited level disciplinary sanction up to and including a final written warning.</p> <p>Details to be recorded below:</p>	
<p>b) Employee Response:</p> <p>The employee will set out their explanation of the circumstances in which the misconduct occurred.</p> <p>The employee may also state any mitigation or other information such as learnings and / or improvements made which they might consider to be relevant.</p> <p>Details to be recorded below:</p>	
<p>c) Outcome:</p> <p>Where facts are mutually agreed, and a sanction decision is an agreed outcome, the manager will issue the appropriate level sanction stating the factors they have taken into consideration in making their decision.</p> <p>The manager will also set out any other course of management action as appropriate.</p> <p>Details to be recorded below:</p>	

Disciplinary sanction expiry date:	
Manager's Signature:	
Employee's Signature:	

Appendix 10

List of Linked Documents

Employees and managers may also wish to consult related Trust policies and National guidance documents, such as:

- Pre-Action Review Standard Operating Procedure
- Sickness Absence Management Policy.
- Cultural Ambassador Standard Operating Procedure
- Equality, Diversity and Inclusion Policy.
- Disability Policy.
- Secondment Policy.
- Grievance and Collective Grievance Policy
- Dignity at Work Policy.
- Change Management Policy,
- Variations in Clinical Practice and Clinical Competence Policy.
- Professional Registrations Policy.
- Standards of Business Conduct Policy.
- Conflicts of Interest and Secondary Employment Policy.
- DBS Policies Working Together to Safeguard Children Policy.
- A guide to inter-agency working to safeguard and promote the welfare of children (2010)",
- Caldicott Guardian Principles/CSOP 2.2 Patient Confidentiality,
- Forfeiture or Reduction in NHS Pension Scheme Benefits,
- Driving Licence Policy.
- No Smoking policy.
- Local Counter Fraud/HR Liaison Policy
- The National Audit Office guidance and The Management of Suspensions of Clinical Staff in NHS Hospital and Ambulance Trusts in England.
- Safeguarding Adults/Children's Policy,

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- Social Media Policy & Persons in a position of Trust Policy.
- Line Manager Working Guide on Supporting Hybrid Working.
- Managing Safeguarding Allegations Policy

Appendix 11

Disciplinary Process Timeframes

	Process	Timeline within
	Informal process	
1.	Initial fact-finding investigation	7 calendar days
2	Inform the employee of the outcome of the initial fact-finding investigation.	Immediately following the Fact-finding investigation
3	Pre-Action Review Meeting (P-ARM)	Immediately following the Fact-finding investigation
4	Inform the employee of the outcome of the P-ARM	Immediately following the P-ARM
	Formal process	
5	Decision to suspend (if applicable)	4 working days
6	Expediated Formal Hearing Process (if applicable)	
6	IO commissioned to undertake full formal investigation including submission of Investigation Report to the CM .	6 weeks
7	CM considers appropriate action following receipt of IO's report and notifies the employee of the outcome.	7 calendar days
8	If decision of CM is to refer the case to a disciplinary panel under a disciplinary hearing process timescale for arranging any hearing is	28 calendar days
9	Should original date for disciplinary hearing need to be rescheduled the rescheduled disciplinary hearing will be	within 14 days
10	Management provides the employee with copy of management statement of case	In sufficient time for the employee to consider

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	Process	Timeline within
		before the hearing (at least 14 calendar days prior to hearing)
11	Employee provides a written statement of their case and names of witnesses to the management side and panel	7 calendar days prior to the hearing
	Disciplinary hearing	
12	Outcome of formal disciplinary hearing written and sent out within	7 calendar days of the hearing
	Appeal Process	
13	Appeal application stating on what grounds appeal is made should be filed by the employee within	7 calendar days of the notification of the outcome of the disciplinary hearing
14	Employee provides a written statement of their case of appeal and names of witnesses (if relevant)	14 calendar days prior to appeal hearing
15	Management provides the employee with copy of management response and names of witnesses (if relevant)	7 calendar days prior to the hearing
16	Appeal hearing	8 calendar days
17	Should original date for appeal hearing need to be rescheduled the rescheduled appeal hearing will be	within 14 days
17.	Outcome of appeal hearing written and sent out to the employee	Within 7 calendar days of the end of the hearing

Appendix 12

Equality Impact Assessment

EIA Cover Sheet																	
Name of process/policy	Disciplinary Policy																
Is the process new or existing? If existing, state policy reference number	Existing V13.3																
Person responsible for process/policy	Human Resources																
Directorate and department/section	Workforce Directorate																
Name of assessment lead or EIA assessment team members	EQIA Panel Members																
Has consultation taken place? Was consultation internal or external? (please state below):	<p>INTERNAL CONSULTATION</p> <p>This policy has been written in partnership by management and staff side, and in accordance with current employment legislation.</p>																
The assessment is being made on:	<table border="1"> <tbody> <tr> <td>Guidelines</td> <td></td> </tr> <tr> <td>Written policy involving staff and patients</td> <td>x</td> </tr> <tr> <td>Strategy</td> <td></td> </tr> <tr> <td>Changes in practice</td> <td></td> </tr> <tr> <td>Department changes</td> <td></td> </tr> <tr> <td>Project plan</td> <td></td> </tr> <tr> <td>Action plan</td> <td></td> </tr> <tr> <td colspan="2">Other (please state)</td> </tr> </tbody> </table>	Guidelines		Written policy involving staff and patients	x	Strategy		Changes in practice		Department changes		Project plan		Action plan		Other (please state)	
Guidelines																	
Written policy involving staff and patients	x																
Strategy																	
Changes in practice																	
Department changes																	
Project plan																	
Action plan																	
Other (please state)																	

Equality Analysis

What is the aim of the policy/procedure/practice/event?

The Disciplinary policy outlines procedures for the East England Ambulance service trust. The Policy aims to promote, encourage, and support all employers to achieve and maintain high standards of conduct through the application of a fair, effective and consistent approach to conduct issues. This policy applies to all staff substantively employed by the Trust. It does not apply to bank staff, agency staff, secondees, workers on honorary contracts or independent contractors. Allegations and concerns made against these individuals may be dealt with using an approach aligned to that outlined in this policy depending on the circumstances. Where the Trust is not the employer of the individual, the Trust will consider the approach it takes and the scope of any investigation to be undertaken, and will, in appropriate circumstances, discuss these with the worker's employer/agency.

In cases involving medical staff, the maintaining High Professional Standards (MHPS) guidelines will apply.

Who does the policy/procedure/practice/event impact on?

Race	×	Religion/belief	×	Marriage/Civil Partnership	×
Sex	×	Disability	×	Sexual orientation	×
Age	×	Gender re-assignment	×	Pregnancy/maternity	×

Who is responsible for monitoring the policy/procedure/practice/event?

Human Resources

What information is currently available on the impact of this policy/procedure/practice/event?

Equality Analysis

This policy links into the following and has been updated taking into consideration the current legislation:

- Maternity Leave Policy
- Special Leave Policy
- Adoption Leave Policy
- Business Travel Policy
- Standards of Business Conduct Policy (Conflicts of Interest)
- Secondary Employment Policy
- Flexible Working Arrangements Policy
- Paternity Policy
- Annual Leave Policy
- Professional Registrations Policy
- Recruitment and Selection Policy
- Driving Standards Policy and Procedure
- Sickness Absence Management Policy
- Policy for Complaints and Compliments
- Freedom to speak up: Raising Concerns (Whistleblowing) Policy

Do you need more guidance before you can make an assessment about this policy/procedure/ practice/event? Yes/No

No

Do you have any examples that show that this policy/procedure/practice/event is having a positive impact on any of the following protected characteristics? Yes/No, If yes please provide evidence/examples:

Race	×	Religion/belief	×	Marriage/Civil Partnership	×
Sex	×	Disability	×	Sexual orientation	×
Age	×	Gender re-assignment	×	Pregnancy/maternity	×

Equality Analysis

Please provide evidence:

The policy is designed to have a positive impact on all the protected characteristics and has been produced in consultation with the Union and staff representative groups.

Are there any concerns that this policy/procedure/practice/event could have a negative impact on any of the following characteristics? Yes/No, if so please provide evidence/examples:

Race <input type="checkbox"/>	Religion/belief <input type="checkbox"/>	Marriage/Civil Partnership <input type="checkbox"/>
Sex <input type="checkbox"/>	Disability <input type="checkbox"/>	Sexual orientation <input type="checkbox"/>
Age <input type="checkbox"/>	Gender re-assignment <input type="checkbox"/>	Pregnancy/maternity <input type="checkbox"/>

Please provide evidence:

At present no negative impact has been identified.

Action Plan/Plans - SMART

Specific

Measurable

Achievable

Relevant

Time Limited