

Trust Headquarters  
Russell's Hall Hospital  
Dudley  
West Midlands  
DY1 2HQ

**Ref:** FOI-000258

**Date:** 11/8/23

**Address / Email:**

Dear

**Request Under Freedom of Information Act 2000**

Thank you for requesting information under the Freedom of Information Act 2000, please see response below

I am writing to request copies of the following HR policies from the Human Resources.

Recruitment and Selection Policy - in development so not able to share until policy has been ratified and published

Disclosure and Barring Service Policy – Please see attached policy

Disciplinary Policy – Please see attached.

Record Management Policy (Employee records, storage and disposal of information relating to DBS checks or recruitment checks) - in development so not able to share until policy has been ratified and published

Please note names have been redacted from the policies and also any links to the Trust's internal systems.

If you are dissatisfied with our response, you have the right to appeal in line with guidance from the Information Commissioner. In the first instance you may contact the Information Governance Manager of the Trust.

Information Governance Manager

Trust Headquarters  
Russell's Hall Hospital  
Dudley  
West Midlands  
DY1 2HQ  
Email: [dgft.dpo@nhs.net](mailto:dgft.dpo@nhs.net)

Should you disagree with the contents of our response to your appeal, you have the right to appeal to the Information Commissioners Office at.

Information Commissioners Office  
Wycliffe House  
Water Lane  
Wilmslow  
Cheshire  
SK9 5AF  
Tel: 0303 123 1113  
[www.ico.org.uk](http://www.ico.org.uk)

FOI/REF FOI-

If you require further clarification, please do not hesitate to contact us.

Yours sincerely

**Freedom of Information Team**  
**The Dudley Group NHS Foundation Trust**

DISCIPLINARY POLICY	<b>DOCUMENT TITLE:</b>	<b>DISCIPLINARY POLICY</b>
	<b>Name of Originator/Author /Designation &amp; Specialty:</b>	██████████, HR Policy and Governance Lead
	<b>Director Lead:</b>	██████████, Chief People Officer
	<b>Target Audience:</b>	Dudley Group NHS Foundation Trust employees
	<b>Version:</b>	5.1
	<b>Date of Final Ratification:</b>	March 2022
	<b>Name of Ratifying Committee:</b>	Workforce & Staff Engagement Committee
	<b>Review Date:</b>	31/06/2024
	<b>Registration Requirements Outcome Number(s) (CQC)</b>	Responsive. Well led. Safe and competent staff
	<b>Relevant Documents /Legislation/Standards</b>	The Employment Rights Act 1996 Equality Act 2010 Protection from Harassment Act 1997 ACAS Code of Practice on Disciplinary and Grievance Procedures Natural justice and Just Culture principles
	<b>Contributors:</b>	<b>Designation:</b> HR Operations Team Staff Side Representatives Equality, Diversity and Inclusion Team Equality Forums Head of Safeguarding
<b>The electronic version of this document is the definitive version</b>		

### CHANGE HISTORY

Version	Date	Reason
1.0	November 2011	New Document.
2.0	October 2013	Review and replacement of previous policy dated November 2011.
3.0	December 2014	Full Review.
4.0	October 2017	HR Project Manager review.
5.0	June 2021	Full review and updating in line with best practice including suspension practice. Development of practice and strengthening of support arrangements. Improved clarification of roles and responsibilities.
5.1	March 2022	Minor amendment regarding informal management (Sections 6.4. and 6.5). Agreed between the Joint Local Negotiating Committee and the Workforce and Staff Engagement Committee.

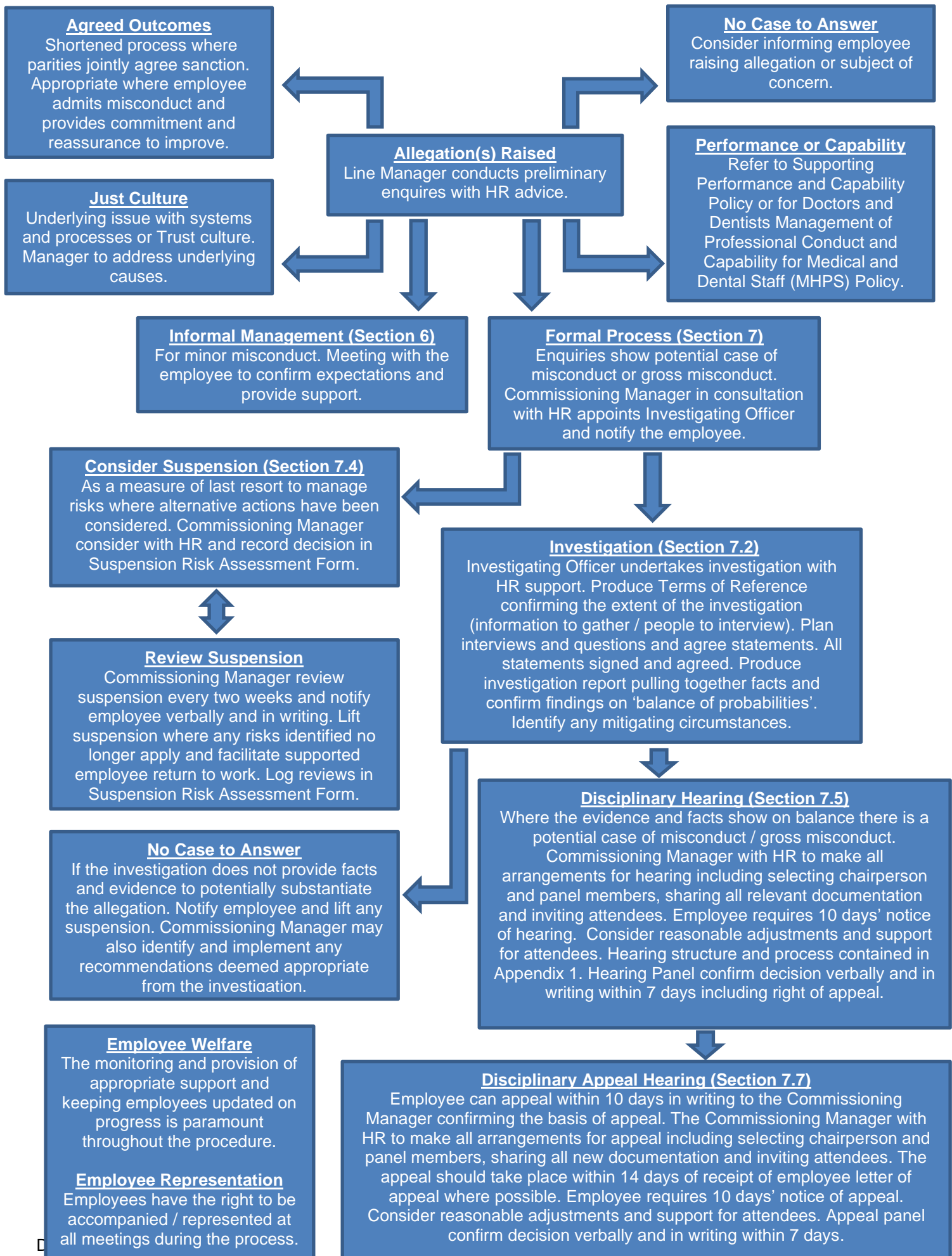
**A translation service is available for this document. The Interpretation/Translation Policy, Guidance for Staff is located on the intranet under Trust-wide Policies.**

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## Disciplinary Policy Summary Process Diagram



# THE DUDLEY GROUP NHS FOUNDATION TRUST

## DISCIPLINARY POLICY

### 1 INTRODUCTION

- 1.1 The Dudley Group NHS Foundation Trust expects high standards of conduct from all its employees. The Trust expects employees to follow all of its rules, policies and procedures at all times. This policy and procedure is designed to ensure a fair, systematic and consistent approach is taken when an employee's behaviour or conduct is in breach of workplace rules or falls short of the expected standards.
- 1.2 The fair treatment of employees supports a culture of fairness, openness and learning within the Trust by making staff 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 grounds for a formal investigation and/or for formal action. Consideration should be given to training or informal management.
- 1.3 The Trust recognises that the procedure can be a source of anxiety for all parties involved. Support for all employees is paramount and the policy confirms management responsibilities and help available to ensure the health and wellbeing of employees. It is expected that employees are kept informed and updated on the process.

### 2 STATEMENT OF INTENT/PURPOSE

- 2.1 The purpose of this policy and procedure is to set out the standards of conduct expected of all employees. The Disciplinary Policy and Procedure provides a framework to manage concerns about someone's conduct and behaviour in a fair and timely way. It aims to help people achieve and maintain required standards of conduct. The policy is supported and should be read in conjunction with the HR Management Toolkit containing additional guidance and templates available on the Trust's Hub at [REDACTED] for the Disciplinary Policy.
- 2.2 Managers are responsible for ensuring that employees are aware of the required standards of conduct and for bringing any concerns to the attention of employees at the earliest opportunity.
- 2.3 Managers should try to resolve minor conduct issues informally. If informal approaches do not bring about improvement or if misconduct is sufficiently serious, formal stages of this procedure should be followed.
- 2.4 Managers will ensure that all action taken under this policy and procedure is reasonable and proportionate. At an early stage, employees will be told why disciplinary action is being considered and they will be given the opportunity to respond to allegations before decisions about formal sanctions are taken.
- 2.5 At all stages of the disciplinary policy and process concern for the health and wellbeing of all those involved in investigation and disciplinary procedures should be paramount and continually assessed. Appropriate professional occupational health assessments and support interventions through the Trust's employee assistance

program should be made available to any person who either requests or is identified as requiring such support.

- 2.6 Throughout the procedure those involved should be informed and updated on progress and timescales by the Commissioning Manager and Investigating Officer. The nature and frequency of communication should be agreed with those involved. A communication plan should be established in all cases confirming details of contact and updates provided. Regular and confidential communication can help make sure employees are kept informed of what is happening, have the opportunity to ask questions and can avoid stress and other welfare and health issues.
- 2.7 Where an employee's ability to do their job is affected by a lack of skill or knowledge, or ill health, this will be managed with appropriate support provided in accordance with the Trust's Performance and Capability Management or Sickness Absence Policy.
- 2.8 Concerns in respect of allegations against staff of a safeguarding nature, relating to children or vulnerable adults, should be referred immediately to either the Medical Director, Chief Nurse or the Head of Human Resources, and no attempt should be made to investigate the concern until advice has been provided. Concerns must be managed in accordance with the [REDACTED].
- 2.9 Allegations relating to domestic abuse should be considered in conjunction with the [REDACTED]. The policy outlines the support in place for staff and others affected by domestic abuse, providing guidance for the management of such issues and details of support agencies.
- 2.10 Where allegations relate to the professional standards of doctors and dentists they should be referred to the Medical Director, Deputy Medical Director or Medical Concerns Decision Making Group and be considered under the Trust's Management of Professional Conduct and Capability for Medical and Dental Staff (MHPS) Policy. The policy is available on the Trust's Hub at [REDACTED].
- 2.11 The values and underlying principles of a Just Culture approach must also be considered in assessing allegations. A just culture examines the underlying cause of the issue and recognises that these can be due to organisational and systemic failures. The process does not focus on allocating blame and seeks to identify learning opportunities to ensure similar issues are not repeated and that everyone in the process is supported and treated fairly and with respect. Conducting preliminary enquiries and an incident decision tree at the outset, in consultation with Human Resources, can help to determine whether procedural and organisational factors have contributed to the incident and a fair and consistent course of action in managing allegations.
- 2.12 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. The policy and procedure and its application and use are underpinned by the Dudley NHS Foundation Trust Values and Behaviour Framework.
- 2.13 The policy applies to everyone employed by the Trust. It applies to all categories of misconduct by non-medical and medical staff.



### 3 DEFINITIONS

**Terms of Reference;** Is a scoping exercise for clearly defining the extent of a disciplinary investigation including those that should provide investigative interview statements and what information should be gathered.

**Preliminary Enquiries;** Is a brief fact finding exercise following receipt of an allegation, usually conducted by the Line Manager, to provide clarification on what has happened to help decide the most appropriate course of action to appropriately manage the allegation.

**Disciplinary Investigation;** An impartial fact finding exercise conducted by the Investigating Officer into an allegation where it is assessed that there may be reasonable grounds of potential misconduct or gross misconduct.

**Jointly Agreed Outcomes;** Is a potential outcome following either preliminary enquiries or a disciplinary investigation where, depending on the circumstances, an employee can agree to accept a disciplinary sanction without recourse to the full procedure.

**Misconduct;** An allegation which is substantiated on the balance of probability which constitutes inappropriate conduct / behaviour or a breach of workplace rules by the employee and can result in either a first or final written warning. Examples of behaviours likely to constitute misconduct are clarified in Appendix 1.

**Gross misconduct;** An allegation which is substantiated on the balance of probability which is serious enough to potentially break the trust and confidence in the relationship between an employer and employee. The conduct represents a serious breach of workplace rules and standards and can lead to dismissal of the employee without any period of notice. Examples of behaviours likely to constitute gross misconduct are clarified in Appendix 2.

### 4 DUTIES (RESPONSIBILITIES)

#### 4.1 Trust Directors / Senior Managers

Directors and Senior Managers have overall responsibility for ensuring the implementation and consistent application of the Disciplinary Policy and Procedure. Senior leaders should ensure that expectations for conduct and behaviour are communicated to all employees.

#### 4.2 Line Managers

Line Managers are responsible for:

- Making sure employees are aware of the required standards of conduct and handling disciplinary concerns fairly and promptly in accordance with this policy and procedure;
- Promoting a culture in which concerns are dealt with openly and fairly, with an emphasis on learning. Managers must seek advice on receiving an allegation about an employee's conduct from Human Resources;
- Conducting initial preliminary enquiries with advice from Human Resources within three days of being informed of the allegation and taking notes / keeping accurate records;

- Acting as a named contact for those involved in the disciplinary process for support and welfare, seeking advice from Staff Health and Wellbeing (SHAW) where appropriate;
- Providing support to disciplinary procedures as required by the Commissioning Manager and Investigating Officer;
- Implementing recommendations made by the hearing or appeal panel;
- Maintaining confidentiality.

#### **4.3 Employees**

Employees are responsible for:

- Maintaining standards of behaviour in accordance with this policy and the Dudley NHS Foundation Trust Values and Behaviour Framework and adhering to workplace rules and procedures, and professional standards;
- Seeking clarification from their Line Manager about expected standards of conduct and behaviour where required;
- Raising concerns about the conduct or behaviour of staff to an appropriate manager;
- Acting in accordance with the policy and procedure; participating fully in the process, responding in a timely manner to communications, making every effort to attend meetings and maintaining open communication with the Investigating Officer and Commissioning Manager;
- Seeking support and asking questions when unsure;
- If suspended to adhere to the conditions of any decision to suspend, which will be confirmed in writing, and seek clarification from the Commissioning Manager about expectations during suspension where needed;
- Maintaining confidentiality.

#### **4.4 Human Resources**

Human Resources are responsible for:

- Providing advice and guidance on the procedure ensuring the Trust's disciplinary procedures are followed and those involved are treated fairly and impartially;
- Ensuring matters are progressed in a timely way, providing timely advice throughout the handling of misconduct and that misconduct is handled consistently and proportionately across the Trust;
- Providing challenge and to monitor cases to ensure no biases or conflicts of interest exist;
- Ensuring that adequate support is in place for all employees and referrals are made to Staff Health and Wellbeing (SHAW) where appropriate;
- Advising and support to Line Managers in conducting preliminary enquiries when an allegation is made;
- Supporting the Commissioning Manager in considering preliminary enquiries including the range of options available and whether informal or formal action is appropriate in the circumstances;
- Supporting the Commissioning Manager in confirming the allegation in writing and selecting the Investigating Officer;
- Advice and guidance to the Commissioning Manager in making suspension decisions ensuring alternatives to suspension are considered and decisions are recorded and reviewed;
- Supporting the consideration of investigation findings and advising the Commissioning Manager on the options available including whether formal or informal action is appropriate;

- Assisting and advising the Commissioning Manager in preparing for formal hearings, ensuring all documentation is distributed, and any witnesses are invited and briefed;
- Advising on the selection of panels and attending and advising panel members on proceedings and in reaching a consistent and proportionate decision;
- Advising and coaching managers to develop the skills necessary to deal with cases confidently and effectively;
- Ensuring that the policy is monitored and reviewed and updated as necessary.

#### **4.5 Trade Unions**

Trade unions are responsible for:

- Working in partnership with managers to ensure that the policy and procedure is applied in a fair and consistent manner;
- Where an allegation arises, trade union representatives will work with other stakeholders to ensure that decisions can be taken promptly, thereby minimising staff anxiety;
- Advising employees during all stages of the procedure and ensuring they receive appropriate support during the process;
- Accompanying and providing representation to employees at meetings as part of the process.

#### **4.6 Commissioning Manager**

The Commissioning Manager is responsible for:

- Providing impartiality and oversight throughout the process with advice from Human Resources to ensure cases are compliant with the procedure and that decisions are well informed and the welfare of employees is given priority;
- Considering information gathered as part of the preliminary enquiries being clear about what has happened to support the proposed course of action. That all options have been explored to ensure the allegation is being dealt with in the most constructive way and in accordance with just culture principles;
- Notifying the employee of the allegation and process at the outset and confirming this in writing;
- Considering suspension where necessary with advice from Human Resources assessing and recording all alternative options and managing identified risks. Reviewing the suspension decision and informing the employee;
- Commissioning the formal investigation appointing an appropriately trained and experienced Investigating Officer;
- Maintaining regular contact with the Investigating Officer to get updates on progress and ensure the investigation is running promptly;
- Considering the disciplinary investigative report findings in consultation with Human Resources. That there are sufficient grounds and understanding of the issues and circumstances to conclude if there is a case to answer and if necessary request further investigation is carried out by the Investigating Officer;
- Ensuring all decisions and actions are necessary, proportionate and justifiable in the circumstances and consistent with similar cases, and that no biases or conflicts of interest are potentially influencing the proposed actions;
- Making all necessary preparations and arrangements for the disciplinary hearing or appeal hearing as required;

- Identifying if any reasonable adjustments should be made to proceedings to support employees and particularly for disabled employees or those with health conditions;
- Making sure that the welfare of the employee and anyone else affected by the allegation has been properly considered and adequate support has been provided;
- Providing the subject of the allegation with updates on the procedure and timescales.

#### **4.7 Investigating Officer**

The Investigating Officer is responsible for:

- Agreeing the terms of reference and communication plan for the disciplinary investigation with Human Resources, setting out what needs to be investigated and who should be interviewed, and establishing timescales for completion of the investigation;
- Keeping the Commissioning Manager updated on progress and timescales and any delays in respect of the disciplinary investigation;
- Ensuring reasonable adjustments are made throughout proceedings to support any employees with a disability or long term condition and those with particular needs;
- Conducting the disciplinary investigation thoroughly and impartially and in a timely manner;
- Conducting investigation interviews, writing interview statements and getting the interviewee to sign and agree statements;
- Informing witnesses if they need to be interviewed as part of the investigation and ensuring they are properly supported throughout;
- Ensuring details of the investigation are only shared on a strictly need to know basis and that any staff involved in the investigation are aware of the duty of confidentiality;
- Producing an investigation report into the allegations pulling together the evidence gathered as part of the investigation to confirm the findings. Briefing the Commissioning Manager on the investigation findings;
- Presenting the findings of the investigation at any subsequent disciplinary hearing;
- Escalating any additional allegations or concerns that emerge during the investigation to the Commissioning Manager.

#### **4.8 Hearing and Appeal Panel Members**

The chairperson and panel members are responsible for:

- Conducting disciplinary hearings and appeal hearings fairly and in accordance with the policy and procedure;
- Explaining the procedure to be followed, introducing all parties taking part, checking they have received all relevant documents and that the subject of the allegation has opportunity to state their case;
- Ensures reasonable adjustments are made to proceedings to support employees who have a disability or long term condition and those with particular needs;
- Asking questions and objectively considering the facts and evidence presented to decide on the balance of probability whether allegations are proven;

- Adjourning to consider the decision and in doing so assessing all of the evidence presented. Taking account of mitigating factors and any 'live' warnings in reaching a decision;
- Deciding on an appropriate sanction and / or recommendations with advice from other panel members and Human Resources acting consistently with previous decisions;
- Considering whether further investigation is required if new matters arise;
- Informing the employee of the decision and the reasons including the employees of right of appeal and confirming this in writing;
- In the case of the chair of the hearing panel, to attend any subsequent disciplinary appeal hearing where required;
- For appeal hearing members, to make a decision on whether to uphold or overturn the decision of the hearing panel with or without recommendations, and confirm this in writing.

## **5. INITIAL HANDLING OF ALLEGATIONS**

- 5.1 When an allegation is made it should be referred to the employee's Line Manger unless it is in relation to the Line Manager in which case it should be passed to the next tier of management. Consideration can also be given for referral to a more senior manager or a manager within a different division or department where deemed appropriate.
- 5.2 Human Resources should be contacted for advice as soon as an allegation is received. Allegations of misconduct will be carefully assessed by the relevant manager, with HR advice, to decide if the matter can be managed informally where possible or whether there are grounds for further investigation and/or formal action.
- 5.3 The Line Manager will carry out initial preliminary enquiries with support from Human Resources which should be undertaken within three days of receiving the allegation. In the absence of the Line Manager, the next tier of management may be required to undertake the preliminary enquires with support and advice from Human Resources. The purpose of the preliminary enquiries is to establish and get a good understanding about what has happened. This could involve checking staffing rota's, policy and / or procedures and meeting with employees to be clear on the circumstances and nature of the alleged issue and events.
- 5.4 The Commissioning Manager should consider the initial preliminary enquiries with Human Resources to agree the best way of managing the allegation. As part of this an incident decision tree should be completed to support a fair and consistent decision as to the most appropriate way to manage the incident. There are a number of potential outcomes following the preliminary enquiries:
- 5.4.1 No case to answer**  
If there is no evidence to potentially substantiate the allegation, depending on the circumstances, the Commissioning Manager may notify the person who made the allegation and / or the subject of the allegation.
- 5.4.2 Just culture assessment**  
Where the preliminary enquires identify that the allegation are a result of organisational or systemic failings for example a lack of training or management support or procedural shortcomings the Commissioning Manager should take the

appropriate action to address any failings in consultation with relevant stakeholders. Organisational and / or systemic failings may also be identified as the primary reason underlying the allegation following any formal disciplinary investigation carried out. The incident decision tree will help to identify if systemic, procedural or organisational factors contributed to the allegation and whether alternative action to the disciplinary procedure should be considered to prevent a reoccurrence of similar issues.

#### **5.4.3 Capability and Performance**

If preliminary enquires identify allegations are attributable to the employees performance, they should be referred to the Trusts Supporting Performance and Capability Policy. As part of this process expected standards should be confirmed and support and training provided. In the case of doctors and dentists where allegations relate to their professional standards the concern should be referred to the Medical Director or Deputy Medical Director or Medical Concerns Decision Making Group and considered under the Trust's Initial Handling of Concerns about Doctors and Dentists (MHPS) Policy.

#### **5.4.4 Jointly Agreed Outcome**

It may be appropriate in certain circumstances where the subject of the allegation admits them and provides appropriate reassurances. The subject of the allegation can agree to accept a disciplinary sanction (not including dismissal) without recourse to the formal procedure or a hearing. Depending on the circumstances the employee may also be required to attend any relevant training deemed necessary. The decision should be confirmed in writing and employee would be required to sign and confirm agreement to the sanction and to waiver the full process. A jointly agreed outcome may also be a potential option following a formal disciplinary investigation.

#### **5.4.5 Informal Management (Section 6)**

This approach should be considered for cases of minor misconduct.

#### **5.4.6 Formal Procedure (Section 7)**

Where preliminary enquiries identify reasonable grounds of potential misconduct or gross misconduct consideration may be given to the formal disciplinary procedure. A decision to invoke the formal procedure should be made with advice from Human Resources.

## **6 INFORMAL MANAGEMENT**

- 6.1 The Trust recognises that cases of minor misconduct are best dealt with informally and quickly. An informal discussion about the issue and clarifying of expectations is often all that is needed.
- 6.2 In many cases additional training, coaching and advice may be needed. When there are concerns about conduct, managers will talk to the person in private as soon as possible, normally within a few days. This will be a two-way discussion, aimed at talking through shortcomings and encouraging improvement.
- 6.3 Feedback should be constructive with a focus on identifying ways to improve and consistently maintaining appropriate standards. The Line Manager will ensure the employee understands the standards expected and will explain how their conduct will be monitored and set a clear timescale for improvement. Managers will discuss with employees any support or training they may need.

- 6.4 Line Managers will also summarise concerns and expectations in writing, a copy of which will be placed on the personal file. If informal management does not bring about the required improvement, or the misconduct is too serious to be classed as minor, formal disciplinary action may be considered.
- 6.5 Should the employee be subject to a disciplinary process in the future the record of informal discussions should not be referred to unless relevant to the disciplinary process, in ascertaining the relevance attention will be given to both the allegations and the timescales of the informal discussion. The Trust will not refer to the informal discussion automatically but will reserve the right to refer to this if in doing so, they are able to fulfil their obligations and duty of care in respect of safeguarding its patients and service users and to all its employees, including both the employee under investigation and any complainant.

## **7 FORMAL DISCIPLINARY PROCESS**

### **7.1 Right to be Represented / Accompanied**

All employees have the right to be accompanied by a fellow worker or a trade union representative at all meetings required by the procedure. The employee should notify the Commissioning Manager of any representative. It is the employee's responsibility to inform and make arrangement for their representatives' attendance at meetings.

Employees can be accompanied at investigation meetings by a work colleague, trade union representative or other companion from whatever professional background but not acting in a legal capacity, where this does not unreasonably delay the investigation. Employees can seek trade union representation and advice at any time.

In the case of a disciplinary hearing or appeal hearing, the employee's representative is permitted to address the meeting and ask questions, and to present and sum up on the employee's behalf. The representative is not allowed to answer questions on behalf of the employee.

### **7.2 Investigation**

The Commissioning Manager has responsibility for considering the allegation and preliminary enquiries with advice from Human Resources to decide on the best option for managing them. They will have no previous involvement in the case and will provide independent impartial oversight throughout the process ensuring those involved are kept up to date on timescales.

Where it is decided by the Commissioning Manager following consideration of the initial preliminary enquiries that an investigation is required, they are responsible for confirming the allegation, wherever possible face to face, and in writing to the subject of the allegation. In consultation with Human Resources they should also appoint an appropriately trained and experienced Investigating Officer with sufficient capacity to undertake an investigation and ensure they are updated and briefed on the allegation. If the subject of the allegation has concerns about the impartiality or professional knowledge of the Investigating Officer they can raise this with the Commissioning Manager.

Investigations will be carried out without unreasonable delay. Disciplinary investigations should be concluded as soon as is reasonably practicable and will not normally last more than 28 days.

The Investigating Officer is responsible with support and advice from Human Resources for conducting the investigation. Before an investigation commences the Investigating Officer and Human Resources should agree the 'Terms of Reference' for the investigation. This is a scoping exercise for clearly defining what is to be investigated, the extent of the investigation including those that should provide investigative interview statements and what information should be gathered for example, policies, procedures, contracts or terms and conditions, staff communications, staffing timetables and rotas. The Commissioning Manager will consider and agree the investigation Terms of Reference prior to the Investigating Officer's commencing of the formal investigation.

The Investigating Officer will also agree a communication plan with the Commissioning Manager to confirm the likely timescales for the investigation and how those involved in the process will be updated on progress.

Where appropriate, investigations being undertaken by the counter fraud team, the police or social services, may be carried out separately from investigations under this procedure. The Trust will give full cooperation to try to ensure any such external investigations are carried out to a high standard. In these circumstances the Trust will only delay carrying out internal investigations and following the disciplinary procedure where absolutely necessary.

The Investigating Officer should contact the representative or employee to agree the time and venue for the investigative meeting and confirm this in writing. Employees may be accompanied at investigation meetings by a work colleague, trade union representative or other companion from whatever professional background but not acting in a legal capacity, where this does not unreasonably delay the investigation. Employees can seek trade union representation and advice at any time.

The Investigating Officer must maintain regular contact with the Commissioning Manager and those involved in the procedure to provide updates on progress and timescales. The Commissioning Manager should make themselves available to discuss the progress of the investigation to those who are involved in it and ensure the subject of the allegation is updated on progress and timescales.

On completion of the investigation the Investigating Officer will produce an investigation report pulling together all information gathered as part of the investigation to confirm the findings. All relevant supporting statements and information should be contained in an appendix to the report. The report should include background information about the employee, their work record and any mitigating factors to ensure a full and balanced case is presented.

The Commissioning Manager will consider the findings within the investigative report with HR advice to decide if further action is required. Whether the matter can be dealt with informally or whether formal disciplinary action may be appropriate.

Where the Commissioning Manager concludes that on balance there is a case to answer of potentially misconduct or gross misconduct they should, with support from Human Resources, make arrangements for a formal disciplinary hearing. As part of



this, they should ensure all relevant documents from the investigation and provided by the employee in support of their case, be shared with all parties prior to the hearing.

### **7.3 Referral to Professional Bodies and Other Agencies**

#### **7.3.1 Professional Bodies**

Depending on the nature of allegations, where an employee is registered with a professional body, such as the Nursing and Midwifery Council (NMC) or the General Medical Council (GMC), the regulatory body may be notified. This decision will be taken by a senior professional lead from the directorate, in conjunction with the relevant professional lead for the Trust. All referrals to the NMC will be recorded by the Commissioning Manager and overseen by the Chief Nurse or other appropriate delated professional.

#### **7.3.2 Safeguarding of Children and Vulnerable Adults**

Where allegations concern the safeguarding of children or vulnerable adults, these must be notified without delay to either the Medical Director, Chief Nurse or Head of Human Resources. In consultation with the Head of Safeguarding, a decision will be made as to whether it is necessary to report the matter to the Local Authority Designated Officer (LADO) for the safeguarding of children or the Position of Trust Manager in the case the safeguarding of vulnerable adults.

No action should be taken without advice from the Head of Safeguarding, Chief Nurse, Medical Director or Head of Human Resources. Any Investigation into a safeguarding concern must be in accordance with the Trust's Managing Allegations Against Staff Policy.

#### **7.3.3 Criminal Offences and Fraud**

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

The Trust operates a zero tolerance approach to both fraud and bribery and will always take action against those who have committed fraud. The Trust's Hub provide further information, including the most common frauds, prevention and detection guidance and what you should do if you suspect fraud or bribery within the Trust.

Employees are obliged to inform their Line Manager if they are the charged with a criminal offense or are the subject of a police investigation. The Line Manager must seek advice from Human Resources to consider whether any steps are required and consider any risks for example to the safety of others.

Where allegations that occur outside of the Trust are brought to the attention of the Trust by other agencies or professional bodies, and those allegations have the potential to bring the reputation of the Trust into disrepute or may affect the suitability of the employee to continue in Trust employment, the Trust will investigate as reasonably as is practical. If following investigation it is considered that the actions of the employee damage the relationship of trust and confidence with the Trust, action up to and including dismissal may be taken.

## **7.4 Suspension**

### **7.4.1 General**

All suspension decisions should be made by the Commissioning Manager sensitively and confidentially. Suspension is a measure of last resort to manage risk and is not a disciplinary sanction and there is no assumption of guilt.

In most cases, suspension from work will not be necessary and the employee will be able to continue doing their normal job while the concern is investigated. The decision to suspend should only be taken where genuine risks have been identified (e.g. to the integrity of the investigation, the health and wellbeing of employees, the security of data or safety of patients) and all alternatives to suspension have been considered and ruled out as a reasonable and adequate way of managing risks.

When considering suspension, the Commissioning Manager must seek advice from HR in assessing the risks of the employee remaining at work. Consideration of suspension and decisions to suspend an employee must be recorded in the Suspension Risk Assessment and Review Log available from Human Resources. All decisions must be agreed and signed off by the Commissioning Manager, HR Business Partner and the Head of Human Resources. The Commissioning Manager must be a Senior Manager and should be a Head of Service or equivalent seniority.

If the Commissioning Manager is unavailable or has not yet been appointed when an incident occurs which appears to warrant suspension, the most senior member of staff on duty may ask the person to go home pending an appropriate manager taking charge of any subsequent action normally no later than the next working day.

Templates for considering and recording suspension decisions, and standard letters for confirming and reviewing suspension, are available from Human Resources. These must be agreed with HR before any decision to suspend is taken or confirmed in writing.

### **7.4.2 Circumstances and Alternatives to Suspension**

Suspension will only generally be considered if there is a potentially serious allegation of misconduct and where:

- Working relationships have severely broken down;
- There is a risk of the employee interfering with evidence or influencing witnesses and the investigation;
- There is a health and safety risk to the employee, other employees, Trust property or patients;
- The employee is the subject of criminal or safeguarding proceedings.

Alternatives to suspension must be considered and recorded by the Commissioning Manager with HR advice prior to any decision to suspend an employee. Alternatives to suspension must mitigate any potential risks and could include:

- Making adjustments or changes to duties and responsibilities;
- Being moved to a different area of the workplace. This could include working remotely from home;
- Temporary re-scheduling of rota's or working patterns or working hours;
- Being placed on restricted duties including having reduced access to Trust systems where appropriate;

- Changes in Line Management reporting arrangements or working under supervision;
- Being transferred to a different role within the organisation (the role should be similar to the substantive role, and with the same terms and conditions of employment).

### **7.4.3 Informing the Employee of Suspension**

Every effort will be made by the Commissioning Manager to meet with the employee to inform them of the decision to suspend. Employees and their representatives can agree other means for notification of suspension with the Commissioning Manager for example through the representative or by email or telephone.

An employee may be accompanied when being notified of suspension, however, the unavailability of a representative will not prevent a meeting from taking place. It is good practice for meetings to be jointly arranged. The Commissioning Manager should try to contact the representative or employee to agree the time and venue for the meeting, or to agree other means to inform the employee.

The Commissioning Manager will confirm the suspension decision in writing within three working days of informing the employee setting down the conditions and employee obligations during the period of suspension.

The Commissioning Manager should explain and confirm the following information when communicating the decision to suspend:

- The reasons for suspension and how long it is expected to last;
- A named contact, usually the Line Manager, who will be available for support and if they have any concerns;
- How they will maintain regular contact with the employee throughout the process to update them on progress and timescales;
- Details of the Trust's employee assistance programme (EAP) from BHSF called 'Rise';
- Agree an explanation or reasons for the employee's absence for colleagues and/or patients.

The employee's responsibilities and terms of the suspension should also be confirmed which include:

- Maintaining confidentially;
- To maintain regular contact with the Commissioning Manager for process updates and where relevant suspension reviews, and raise any concerns or support needs with them or the named contact;
- Not doing anything that could obstruct or interfere with the impartiality of the investigation;
- Seeking prior permission from the Commissioning Manager if the employee needs to contact colleagues or if they wish to contact witnesses to support their case;
- With the exception of medical appointments and meetings required as part of the process, to not visit any of the Trust premises unless given permission by the Commissioning Manager;
- To remain available during the employee's contractual working hours, excluding public holidays, to attend meetings required as part of the process;
- To seek authorisation from their Line Manager for any periods of absence during normal working hours for example annual leave;

- To not undertake any paid work during the hours for which they are contracted to work for the Trust, or undertake any other contracted work with the Trust or any organisation which provides a service to the Trust.

In some circumstances it may be necessary for the Commissioning Manager to request the employee to provide Trust property for example keys or their ID card, electronic equipment such as their Trust laptop, mobile phone or bleep as a condition of suspension. It may also be deemed necessary to withdraw remote access or remove / restrict access to Trust ICT and data systems. Advice and guidance is available through the Information Governance Teams Data Protection Officer.

The employee will be given the name and contact details of someone, normally their Line Manager, who will act as a point of contact for support in addition to the employee's representative.

#### **7.4.4 Duration of Suspension**

The period of suspension will be for the minimum time period necessary and be rescinded as soon as the reasons for the suspension are no longer prevailing. The Commissioning Manager should keep suspension under review every two weeks or as required. Where circumstances change, which reduce potential risks, consideration should be given to lifting suspension either with or without alternative measures to suspension.

The Commissioning Manager will keep in regular contact with the employee to review the suspension and provide updates on the progress of the investigation and timescales for completion. Disciplinary investigations should be concluded as soon as is reasonably practicable and will not normally last more than 28 days. The Commissioning Manager should follow up the review of suspension in writing by email or other agreed means.

If an employee wishes to take annual leave during their period of suspension they should seek permission from their Line Manager in consultation with the Commissioning Manager.

#### **7.4.5 Pay During Suspension**

Suspension will be with normal contractual full pay. Where the employee receives variable pay, it will be based on a 12 week reference period. Employees will not receive pay during suspension if they have allowed their professional registration to lapse or because they have lost their entitlement to work in the UK under the Immigration and Asylum Act. Staff employed on bank or zero hours contracts will not receive any pay during periods of suspension.

A suspended employee must not undertake any paid work during the hours for which they are normally contracted to work. Employees who are suspended for clinical or professional reasons must not undertake any paid or voluntary work without prior permission from an appropriate relevant professional lead.

Where an employee holds employment outside of the Trust and is suspended from employment with the Trust, the employee must inform the Commissioning Manager of their alternative employer and place of work. The Trust may inform the employer

of suspension information if the circumstances warrant for example for the appropriate management of risk or if it is in the public interest.

#### **7.4.6 Medical and Dental Staff**

Suspension arrangements for doctors and dental staff are referred to as exclusion. Arrangements for the exclusion of doctors and medical staff are outlined in the Management of Professional Conduct and Capability for Medical and Dental Staff (MHPS) Policy.

### **7.5 Disciplinary Hearing**

Once the allegation has been investigated and it has been established that there is a potential case to answer on the balance of probabilities, a disciplinary meeting or hearing will be arranged. The hearing should be held as soon as possible after the investigation. Managers, employees and their representatives must make every effort not to unreasonably delay the hearing.

#### **7.5.1 Preparing for the Hearing**

The Commissioning Manager with support from Human Resources will make all necessary arrangements for the disciplinary hearing. This will include selecting hearing panel members, inviting attendees and ensuring all relevant documentation is shared in advance of the hearing.

Employees will be provided with 10 calendar days' notice of the disciplinary hearing in order to have time to prepare. The employee will be provided with the disciplinary investigation report and supporting documents including witness statements to be presented at the hearing. All personal patient information will be redacted.

The employee should be contacted to agree the date and time and location for the hearing. Where the employee has arranged trade union representation, the manager may liaise directly with them to agree a mutually convenient date.

The employee will be advised of the hearing and potential outcome such as a formal warning or dismissal by the Commissioning Manager in advance of the hearing.

Employees should be advised to seek representation and advice from a recognised trade union for allegations which might result in formal disciplinary action. The employee should inform the Commissioning Manager of the name and contact details of their trade union representative.

Employees are encouraged to attend formal hearings accompanied or represented by a trade union representative, colleague or other companion, of whatever professional background but not acting in a legal capacity. It is the responsibility of the employee to arrange their companion and to notify the Commissioning Manager who they would like to attend.

The employee should make every effort to attend the hearing and notify the Commissioning Manager as soon as possible if they cannot attend. If an employee or their companion or representative is unable to attend, they must suggest an alternative date so that the hearing takes place within five days from the original date proposed.

If an employee is unable to attend a rescheduled meeting the meeting may proceed in their absence. Alternative arrangements should be discussed and considered, the employee may provide a written submission, allow their representative to attend on their behalf or agree or attend through a video meeting or telephone conference.

Where a hearing involves an accredited trade union representative, the trade union will be informed prior to the hearing and any action being taken.

Where an employee has a disability as defined within the Equality Act 2010 the Commissioning Manager will consider any reasonable adjustments that need to be made. Disabled employees may also wish to be accompanied by a second person as a support worker or someone with knowledge of the disability and its effects.

### **7.5.2 Hearing Panel**

All disciplinary hearings will be heard and considered by a trained Chairperson. Panels will generally be supported by a HR advisor and / or other relevant professional.

Disciplinary hearings that may result in a formal warning will be heard by a panel of two members, a chairperson with relevant training and or professional knowledge and experience and generally a HR Advisor. Cases that may result in dismissal will be heard by a panel of three or more members. The chairperson will normally be a member of the divisional or directorate management team or an Executive Director where appropriate. If the employee is a senior divisional manager or consultant-level appointment, the panel will be chaired by an Executive Director or other appropriate delated senior post. The remaining two panel members will typically consist of a HR advisor and a member with relevant training, skills, experience and professional knowledge that reflect the background and/or specialty of the employee.

The Trust is committed to ensuring that hearing panels are diverse in representation, have appropriate seniority and have the knowledge, skills, experience and training that are relevant to the circumstances of the case and cater for factors such as BAME, gender or disability status. Panel members will be selected by the Commissioning Manager with advice from HR to achieve this, and where appropriate additional panel members will be selected.

Hearing panel members will have no previous involvement in the case or any conflict of interest that could influence decision making. If employees have any concerns in relation to the impartiality or diversity of the panel they can raise these with the Commissioning Manager.

### **7.5.3 Disciplinary Hearing Structure**

At the hearing, in most cases the Investigating Officer will present the case and invite witnesses through the Commissioning Manager. The Investigating Officer will present the findings and answer any questions. A structure for the hearing is contained in Appendix Three to the policy.

The employee will be provided with the opportunity to present their case and any evidence in response to the allegations under consideration. The employee may ask questions and respond to any information given by the Investigating Officer or witnesses. The representative is permitted to present the case and sum up, and to

ask questions but not to answer questions on behalf of the employee. Evidence and witnesses relied upon should be arranged with the Commissioning Manager in advance of the hearing.

Witnesses will be called if they have a significant contribution to make to the case. Witnesses will not need to attend if it agreed with the employee that the facts are not in dispute and/or the presence of one or more witnesses would serve no material purpose.

Where it is considered by the hearing panel on the balance of probabilities that the allegations are substantiated, they will take account of the employee's previous work record and other mitigating factors in deciding on an appropriate sanction.

The decision of the hearing panel will be notified to the employee, following an adjournment to consider the evidence, at the conclusion of the hearing. Only where this is not possible or the employee requests otherwise, should notification be by phone or solely in writing.

The outcome of the meeting will also be confirmed in writing, normally within seven calendar days. If disciplinary action is taken, the letter will include details of the complaint and the right to appeal where a formal sanction is issued. It will also state that further disciplinary action may be taken if there is not a satisfactory improvement.

Whether hearings result in a formal sanction being issued or not, the panel may also make recommendations if appropriate to ensure that standards can be maintained moving forward for example training and / or reviews or changes to policies or procedures. The Commissioning Manager will work in conjunction with the Line Manager to ensure any recommendations are implemented.

## **7.6 Disciplinary Sanctions**

Once all the facts have been considered by the hearing panel a decision will be taken on the appropriate action. Depending on the findings, this may result in no action being taken, informal management or a disciplinary sanction. The seriousness of the misconduct will determine the level of disciplinary action to be taken. Examples of misconduct that may merit either a warning in the case of misconduct, of dismissal in the case of gross misconduct, are contained in Appendix One and Two respectively.

### **7.6.1 First Written Warning**

Should an employee fail to meet required standards following informal action or if the offence is sufficiently serious a first written warning may be issued. First written warnings must be confirmed in writing and will apply for 12 months after which time they will lapse.

### **7.6.2 Final Written Warning**

If the failure to meet acceptable standards continues or if the offence is sufficiently serious but does not amount to gross misconduct, a final written warning may be given. A final written warning must be confirmed in writing and will apply for 18 months after which time it will lapse.

In exceptional circumstances, where a final written warning is an alternative to dismissal, final written warnings may apply for up to 24 months before lapsing. In addition to issuing a final written warning the following actions may be appropriate:

- Transfer to another department / work location;
- Demotion or downgrading (pay protection in these circumstances does not apply);
- Amendments to shift or working patterns.

### **7.6.3 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.

### **7.6.4 Pay Progression and Disciplinary Sanctions**

If a first or final written warning is issued, the member of staff will not be awarded an annual pay increase on the pay step date in the twelve months after the issuing of a warning. The chairperson of the hearing will ask the Line Manager to action this with payroll via a change form. For staff commencing NHS employment or those who moved to a higher banded role on or after 1 April 2019, if a first or final written warning is issued, the member of staff will not progress to the next pay step point if the warning is live on their pay step date. In those situations, the Manager should initiate a pay step review meeting before the expiry of the warning and if all other requirements have been met, the member of staff will progress to the next pay step effective from the date after the warning expires.

## **7.7 Disciplinary Appeal Hearing**

An employee has the right of appeal against the decision of the hearing panel where a disciplinary sanction has been issued. The member of staff must submit their grounds for appeal to the Commissioning Manager in writing, within 10 calendar days of receipt of the written notification of the outcome of the disciplinary hearing. The notification of appeal should also include, where relevant, the name and contact details of their companion or trade union representative.

An appeal may be based on the following grounds:

- That new evidence has come to light since the decision was made;
- That the disciplinary procedure was not followed;
- The disciplinary sanction was unreasonable in the circumstances known at the time of the disciplinary hearing.

As with a disciplinary hearing, the Commissioning Manager with support from Human Resources will make all necessary arrangements for the appeal hearing. This includes agreeing appeal panel members, inviting attendees and distributing documentation in advance of the appeal.

The appeal hearing should take place normally within 14 calendar days of receipt of the letter of appeal by the Commissioning Manager, if practicably possible. The employee should be provided with 10 days written notice of the appeal.

In the case of appeals against a dismissal decision, the panel will consist of at least three members. The chairperson will be an Executive Director or adequately trained and qualified senior manager as delegated by the Executive Director. The remaining panel members will be selected with consideration for delegated responsibility and relevant training and / or professional knowledge and experience. Appeals against warnings will be heard by a panel of two members.



Appeal panel members will have no previous involvement in the case or any conflict of interest that could influence decision making. If employees have any concerns in relation to the impartiality or diversity of the panel they can raise these with the Commissioning Manager.

The Trust is committed to ensuring that hearing panels are diverse in representation, have appropriate seniority and have the knowledge, skills, experience and training that are relevant to the circumstances of the case and cater for factors such as BAME, gender or disability status. Panel members will be selected by the Commissioning Manager with advice from HR to achieve this, and where appropriate additional panel members will be selected.

The appeal panel may decide to uphold, or to overturn the original decision of the hearing panel. This can be both accounting for new evidence or as a result of further investigation. Where an appeal panel decides to overturn the original decision they can increase or reduce the sanction applied. The outcome of the appeal will normally be confirmed verbally following the appeal hearing wherever possible, or unless the employee requests otherwise. The outcome of the meeting will also be confirmed in writing, normally within seven calendar days.

## **8 EMPLOYEE WELFARE AND SUPPORT**

- 8.1 Managers should recognise that allegations of misconduct can be upsetting and a source anxiety for the employee and other colleagues affected. The Trust has a duty of care to all employees and therefore the monitoring and provision of support for employee welfare is paramount. Employees are encouraged to raise any support or welfare needs through support channels at the earliest opportunity.
- 8.2 It is important that throughout the procedure the Commissioning Manager provides open communication with both the employee and any other staff affected, and keep all parties updated on progress and timescales. The Investigating Officer will provide updates and timescales to all employees involved in the investigation and will develop and agree a communication plan with the Commissioning Manager and those involved in the procedure. Regular and confidential communication can help make sure employees are kept informed of what is happening, have the opportunity to ask questions and can avoid stress and other welfare and health issues.
- 8.3 Where there are concerns about an employee's health or wellbeing, they can be referred to the Staff Health and Wellbeing (SHAW) for advice and support. If an employee prefers they can seek advice from their GP.
- 8.4 The subject of the allegations will be provided with a named contact for support, this will normally be their Line Manager. Other employees involved in the procedure, including those who are involved as witnesses, will also be supported where required, by their Line Manager or other appropriate Manager. Welfare and routes of support should be discussed with all parties and managers should ensure employees receive appropriate support where needed. In addition employees can seek advice and support from their trade union.

- 8.5 The Trust also offers an employee assistance programme (EAP) from BHSF called 'Rise'. The BHSF Rise EAP provides confidential advice and counselling. Details of the service and contact information can be accessed on the [REDACTED]

## **9 LINKS TO OTHER TRUST POLICIES**

### **9.1 Performance and Capability Management Policy**

Where the underlying reason for the allegation has been identified as a performance issue, for example because an employee's ability to do their job is affected by a lack of skill or knowledge, it should be referred to the Performance and Capability Management Policy and appropriate support provided.

### **9.2 Management of Professional Conduct and Capability for Medical and Dental Staff (MHPS) Policy**

Where allegations relate to the professional standards of doctors and dentists they should be referred to the Medical Director, Deputy Medical Director or Medical Concerns Decision Making Group and be considered under the Trust's Management of Professional Conduct and Capability for Medical and Dental Staff (MHPS) Policy.

### **9.3 Helping Resolve Problems Policy**

If an employee raises a concern (also referred to as a grievance) whilst they are subject to disciplinary proceedings, which is unrelated to the ongoing disciplinary matter, it should be made to their Line Manager. The concern will be managed separately and concurrently with the Disciplinary Policy under the Helping Resolve Problems Policy.

Where the employee raises a concern which is connected to the disciplinary issue, it should be raised with the Commissioning Manager. The employee should provide the Manager with full details and supporting information in respect of the concern. The concern should be considered, and if necessary further enquiries made, by the Commissioning Manager or the hearing or appeal panel.

Each issue will be considered on its individual merits, however a disciplinary process would only be 'put on hold' in exceptional circumstances.

### **9.4 Sickness Absence Policy**

Where ever possible with consideration of the circumstances and where appropriate medical advice, the absence of an employee due to ill health who is subject to disciplinary procedure, should not delay the disciplinary process. The process will only be postponed where the ill health is linked to the disciplinary procedure and advice from Staff Health and Wellbeing (SHAW) or the employees GP advises that attendance would be detrimental to the employees' health. Medical advice should be sought on options to enable the continuation of the disciplinary process including providing a written statement or allowing a representative to attend meetings on the employees behalf.

## **10 INFORMATION AND RECORD KEEPING**

- 10.1 It is the Commissioning Manager and Line Manager's responsibility to securely maintain adequate records of all documents, reports, evidence, discussions, emails, notes of telephone calls and letters pertaining to the process, and ensure that these

are kept secure and are stored on the employee's personnel file on conclusion of the matter.

## 10.2 Data Protection

The Dudley Group NHS Foundation Trust processes personal data collected during all stages of this procedure in accordance with the Data Protection Act. Information will only be shared with those who have a legitimate right to be informed in accordance with the principles of the Data Protection Act.

Information collected as part of this process is held securely and accessed by, and disclosed to, individuals with responsibility for investigating and considering allegations and their advisors, as well as those who are the subject of allegations and their representatives.

Inappropriate access or disclosure of employee information constitutes a data breach and should be reported in accordance with the Trust's data protection procedures as soon as is reasonably practicable. Breaches of confidentiality will be considered under this policy and may lead to formal disciplinary action.

The Trust has a legal duty to report serious personal data breaches that are likely to result in a risk to the rights and freedoms of data subjects to the Information Commissioner's Office through the Information Governance Data Protection Officer.

## 11 CONFIDENTIALITY

- 11.1 All information recorded as part of this procedure will only be provided to those who have involvement in the procedure and a legitimate right to be informed. Information will be provided to third parties where it is deemed there are potential criminal connotations, serious safety implications or the issue may lead to legal proceedings. Any breaches of confidentiality will be treated seriously under the Trust's Disciplinary Policy and may lead to formal disciplinary action.

## 12 TRAINING SUPPORT

- 12.1 Training for the disciplinary procedure and investigations is available either directly through the Human Resources Team, or as part of the Developing Leaders Programme which can be arranged with the Learning and Development Team through [REDACTED]

## 13 PROCESS FOR MONITORING COMPLIANCE

- 13.1 Monitoring of Compliance Chart

Elements to be Monitored	Lead	Tool	Frequency	Reporting arrangements	Acting on recommendations and Lead(s)	Change in practice and lessons to be shared
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Details of disciplinary cases including suspension.	Head of Operational HR and HR Business Partners.	HR Case Tracker and ESR.	Monthly monitoring.	As required for the Chief Executive and Executive Directors, Divisional Management Meetings and the Workforce and Staff Engagement Committee.	Depending on the analysis; Directors, Heads of Service, Directorate Managers and HR.	Data is used to ensure procedure is being followed and timescales are kept to a minimum. It also informs HR and management practice and policy development.
Data relating to the ethnicity of those involved in disciplinary cases.	Equality Diversity and Inclusion (EDI) Team	Reports generated from ESR.	Monthly	To Workforce and Staff Engagement Committee. Shared with Service / Departmental Teams as required.	Service Leads and Divisional Managers with Support from EDI and Human Resources Teams.	Service Leads to implement any practice changes. HR Policy and Governance Lead address any policy implications.

## 14 EQUALITY

- 14.1 The Dudley Group NHS Foundation Trust is committed to ensuring that, as far as is reasonably practicable, the way we provide services to the public and the way we treat our staff reflects their individual needs and does not discriminate against individuals or groups on any grounds.
- 14.2 An equality impact assessment has been undertaken in regards to this policy and procedure to assess and ensure there is no disproportionate impact upon individuals or groups in respect of a protected characteristic.

## 15 REFERENCES

### 15.1 Web Pages

ACAS Disciplinary Procedure: Step by step

[Step 1: Understanding the options: Disciplinary procedure: step by step - Acas](#)  
[accessed 4 January 2021]

ACAS Code of Practice on Disciplinary and Grievance Procedures

[Acas Code of Practice on disciplinary and grievance procedures | Acas](#)  
[accessed 4 January 2021]

CIPD Discipline and Grievance at Work

[Discipline & Grievance at Work | Factsheets | CIPD](#)  
[accessed 4 January 2021]

Gov.uk Disciplinary Procedures and Action Against You at Work

[Disciplinary procedures and action against you at work - GOV.UK \(www.gov.uk\)](#)  
[accessed 4 January 2021]

NHS Resolution Being Fair : Supporting a just and learning culture for staff and patients following incidents in the NHS

[Being fair report - NHS Resolution](#)

[accessed 5 January 2021]

NHS England Learning Lessons to Improve our People Practices

[NHS England » Provider bulletin: 5 June 2019](#)

[accessed 11 January 2021]

## 16 APPENDICIES

### 16.1 Appendix 1

#### Examples of Misconduct

The following list gives examples of the circumstances that could lead to disciplinary action (this list is not exhaustive):

- Employees are expected to combine prompt and efficient service with respect for the feelings of others, including patients, visitors and colleagues, whatever their background;
- Bullying and harassment;
- Unreasonably refusing to work;
- Employees must be honest, open and truthful in all their dealings with patients, colleagues and the public;
- Employees are expected to attend for duty for the hours laid down in their contracts of employment and as agreed with their managers;
- Being absent without permission. In cases of sickness or domestic emergency, employees must inform their manager in accordance with departmental notification rules;
- During sickness absence, employees are expected to keep their manager informed of their health and submit sickness certificates promptly;
- Misuse of social media affecting the reputation of the Trust or causing colleagues distress/offence;
- Employees must follow reasonable instructions;
- Anyone undertaking other employment outside their contractual hours must ensure that it does not hinder or conflict with the interests of their employment with the Trust or their duty to abide by relevant professional codes of conduct or have any adverse effect upon their work performance. Employees should inform their managers of employment outside working hours;
- Breaches of confidentiality;
- Misuse of authorised access to information and systems, unauthorised access to information and systems, and any activity that could breach the security of the Trust ICT Infrastructure and any other breach of the Trust's information security;
- Sleeping whilst on duty;
- Employees are expected to comply with health and safety requirements;
- Employees are expected to treat Trust facilities and property with respect;
- Employees must inform their Managers of any charge, caution or conviction, relating to acts committed on or off duty, at the earliest possible opportunity;
- Failure to maintain professional registration where it is a requirement of the job;
- Breaches of professional codes of conduct and Trust policies. Employees should at all times undertake their work in accordance with Trust and departmental policies and procedures and, where appropriate, their professional codes of conduct;
- People are expected to display positive attitudes and supportive behaviours in line with Trust values and the Behaviour Framework in their interactions with other people;
- Behaviour outside of work that could affect the professional reputation of the employee or the reputation or operations of the Trust.

## 16.2 Appendix 2

### **Examples of Gross Misconduct**

Some acts are considered gross misconduct because they are very serious or have very serious effects. Where there may have been gross misconduct, a full investigation must be carried out and the disciplinary procedure followed. In cases of gross of misconduct a disciplinary hearing panel can decide to dismiss without notice or payment in lieu of notice. Examples of gross misconduct could include (this list is not exhaustive):

- Serious lack of care to duties or other people which could result in serious loss, damage or injury (negligence);
- Theft;
- Fraud;
- Deliberate falsification of records or documents;
- Working without valid 'right to work' documentation;
- Working without statutorily required qualifications;
- Working elsewhere whilst on sick leave;
- False declarations made during the recruitment process;
- Receipt of money, goods, favours or excessive hospitality in respect of services rendered while a Trust employee;
- Physical violence;
- Verbal abuse;
- Harassment or bullying;
- Unlawful discrimination;
- Being unfit for duty through the effects of alcohol or drugs;
- Abuse, misuse or deliberate damage of Trust property or equipment;
- Serious breach of data security requirements, any activity that could breach security of the Trust ICT infrastructure and any other serious breach of the Trust Information Security Policy including serious misuse of authorised access or unauthorised access to information and systems;
- Serious breach of Health and Safety and other statutory rules;
- Serious breach of a professional code of conduct as determined by the professional body;
- Failure to act impartially or to declare interest in a contract or business in which the Trust is engaged or considering;
- Scientific Misconduct - Fabrication, falsification, plagiarism or deception in proposing, carrying out or reporting results of research;
- Serious breach of trust and confidence, an act which causes irreparable damage to the relationship of trust and confidence between the employee and the Trust.

## 16.3 Appendix 3

### Procedure for Disciplinary Hearings

#### **1. Introduction by Chairperson for the hearing**

- Introduce those present
- Confirm the purpose of the hearing to consider whether disciplinary action should be taken in accordance with the Disciplinary Policy and Procedure
- Confirm that all parties have received the necessary paperwork
- Outline procedure for the hearing

#### **2. Manager or Investigating Officer presents the management case**

- Manager outlines findings
- Manager calls any witnesses
- Employee or their representative / accompanying person and panel may question the witnesses
- Manager may re-examine the witnesses
- Employee / representative and chair / HR Adviser may ask questions about the case in order to clarify facts

#### **3. Employee / representative respond to the management case**

- Employee or their representative / accompanying person responds to the allegation, offers an explanation for the alleged misconduct and /or raises any mitigating circumstances to be taken into account
- Employee / representative calls any additional witnesses
- Manager and panel may question the witnesses
- Employee / representative may re-examine the witnesses
- Manager and panel may ask questions of the employee in order to clarify facts

#### **4. Summing up – no new evidence presented at this stage**

- Manager sums up
- Employee's representative / accompanying person sums up

#### **5. Adjournment for manager to consider case**

- Agree with all parties how and when the decision will be notified to the employee / representative if time does not permit decision to be given in person following the adjournment

#### **6. Reconvene for decision – manager verbally informs employee/representative of**

- The outcome of the hearing; any disciplinary action and / or recommendations
- The right of appeal
- The outcome of the hearing to be confirmed in writing within seven days of the date of the hearing



EMPLOYMENT CHECKS POLICY	<b>DOCUMENT TITLE:</b>	<b>EMPLOYMENT CHECKS POLICY</b>
	<b>Name of Originator/Author /Designation &amp; Specialty:</b>	, HR Policy and Governance Lead. ██████████, Resourcing Team Manager
	<b>Director Lead:</b>	██████████, Chief People Officer
	<b>Target Audience:</b>	Managers and employees involved in the recruitment process and staff with responsibility for the monitoring and maintenance of on going employment checks.
	<b>Version:</b>	3.0
	<b>Date of Final Ratification:</b>	December 2022
	<b>Name of Ratifying Committee/Group:</b>	Workforce & Staff Engagement Committee
	<b>Review Date:</b>	December 2025
	<b>Registration Requirements Outcome Number(s) (CQC)</b>	Responsive. Well Led. Safe and competent staff.
	<b>Relevant Documents /Legislation/Standards</b>	Health & Social Care Act 2012. Ministry Of Justice (2014). New Guidance on the Rehabilitation of Offenders Act 1974. NHS Employment Check Standards. Rehabilitation of Offenders Act 1974.
	<b>Contributors:</b>	<b>Designation:</b> Resourcing and HR Operational Team Staff Side Representatives Equalities Forums
	<b>The electronic version of this document is the definitive version</b>	

#### CHANGE HISTORY

Version	Date	Reason
1.0	November 2015	This is a new document replacing the Validation Policy, Pre-employment Checks Policy and Disclosure and Barring Service Checks Policy.
2.0	November 2018	Revised policy to incorporate guidance and supporting information.
3.0	November 2022	Full policy review incorporating recent statutory changes.

**A translation service is available for this document. The Interpretation/Translation Policy, Guidance for Staff is located on the intranet under Trust-wide Policies.**

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# DUDLEY GROUP NHS FOUNDATION TRUST

## EMPLOYMENT CHECKS POLICY

### 1. INTRODUCTION

The Dudley Group NHS Foundation Trust is committed to having a transparent and fair recruitment and selection process. An important part of this is pre employment recruitment checks. Thorough employment checks are essential to ensure patient safety and confidence in the staff that provide services to them. Employment checks are also important in ensuring that employees are appropriately qualified and professional registration is maintained during employment.

The Employment Checks Policy ensures compliance with best practice and relevant statutory requirements set down by the Department of Health and NHS Employers. It is the Recruiting Manager's responsibility to ensure all employment checks required by the post are undertaken prior to appointment, and the Line Managers responsibility to monitor and maintain relevant checks during employment as confirmed within this policy.

### 2. STATEMENT OF INTENT/PURPOSE

The policy sets out the Trust's commitment to the protection of its patients and employees by ensuring robust employment checks are in place. This document provides clear guidance on the type and frequency of checks that are required upon joining the Trust and those that must be maintained during employment. The policy confirms Trust practice for where standards within this policy are not met.

In order to safeguard patients and maintain public confidence, a professional registration check is included in employment checks to ensure that all staff appointed or working in positions requiring professional registration are appropriately qualified, registered and have not been removed or cautioned by their professional body.

Disclosure and Barring Service checks are an important tool in ensuring safer recruitment practices and patient safety. Although a criminal conviction does not preclude anyone from working in the NHS, certain offences may indicate an applicant's unsuitability for employment within the Trust. The Trust will not unfairly discriminate against candidates with a criminal conviction but will consider the nature of any conviction in relation to the post applied.

This policy ensures compliance with relevant national and statutory requirements. In the case of Trust Director appointments [or appointments for those performing the functions of, or functions equivalent or similar to the functions of such a director] additional checks are required which are confirmed within the Fit and Proper Persons Requirements Policy available on the Trust's Hub at **(INSERT LINK)** which should be read in conjunction with this policy for senior level appointments.

### 3. DEFINITIONS

**Pre-Employment Meeting:** This is a meeting arranged by the Resourcing Team with the successful candidate to gather evidence and documentation in respect of the six key pre-employment checks needed by all candidates prior to employment. Documents to be provided by the successful candidates must be original certificates or documents and not photocopies.

**Lead Signatory:** A responsibility held by one employee in the Trust who acts as the lead for all matters relating to the Disclosure Barring Service (DBS) on behalf of the Trust.

**Trust Disclosure and Baring Service (DBS) List:** This is a list held centrally on the Trust's Hub which details the level of DBS check required for all posts within the Trust upon appointment and during employment.

### 4. DUTIES (RESPONSIBILITIES)

#### 4.1 Trust Directors and Senior Managers

The Trust's Executive Board have overall responsibility for ensuring the implementation and consistent application of this policy and procedure in accordance with statutory requirements and national terms and conditions.

Directors and senior managers have responsibility for communicating policy requirements and monitoring adherence to the Employment Checks Policy within their respective directorates and service areas.

#### 4.2 Recruiting and Line Managers

Recruiting and Line Managers are responsible for:

- Ensuring all checks both before and during employment are undertaken and up to date in accordance with this policy ensuring records of checks are securely maintained.
- Conducting an initial identification, qualification and professional registration check during the candidate interview.
- Checking and approving references are satisfactory consulting HR if necessary.
- Ensuring recruitment documents reflect the correct level of professional registration required to complete the role.
- Notifying the preferred candidate or employee if any of the employment checks required by this policy are unsatisfactory or outstanding.
- Monitoring professional registration checks are current and leading the process for out of date registration checks as is necessary.
- Ensuring Disclosure and Barring Service (DBS) re-checks are carried out in accordance with the Trust's DBS List and taking appropriate action if a DBS check or re-check highlights any criminal conviction.
- Providing factual references using the reference templates available on the Recruitment pages on the Trust's Hub .

### **4.3 Departmental Administrators**

Departmental administrators are responsible for:

- Carrying out on-going checks during employment required for professional registration and DBS checks in line with this policy and the Trust's DBS List.
- Carrying out employment checks for internal transfers where appropriate.
- Verifying and maintaining a record of employees' professional registration on an on-going basis during employment.
- Notifying the Workforce Information Team of current and up to date registration details for all employees.
- Notifying managers where an employee's professional registration has expired.
- Notifying the Trust DBS Lead when they no longer require access to the system for undertaking DBS checks.

### **4.4 Successful Candidates and Employees**

All successful candidates and employees are responsible for:

- Maintaining compliance with the Employment Checks Policy and process.
- Providing evidence and original documentation for all required checks and those needed on an on-going basis during employment.
- Providing evidence of their eligibility or 'right to work' in the United Kingdom.
- Maintaining professional registration with the relevant body and eligibility to practice. This applies even during period when employees are not at work for example maternity leave or due to ill health.
- Maintain a record of their PIN, registration documentation and certificate.
- Providing evidence of professional registration and re-registration.
- Notifying the Line Manager of timescales and the reasons for any delays in renewing their professional registration. For agency and locum staff not directly engaged by the Trust they must notify the relevant agency.
- Ensuring that the professional body and Line Manager have an up to date personal record and contact details and are notified immediately of any changes in registration status. For agency and locum staff not directly engaged by the Trust they must notify the relevant agency and their professional body.
- Notifying their Line Manager immediately of any material facts that may impact on their registration and notify the professional body as required. For agency and locum staff not directly engaged by the Trust they must notify the relevant agency and their professional body.
- Paying any fee charged by their professional body to maintain profession registration.
- Refraining from practice within a role that requires professional registration during any period in which registration has lapsed or is otherwise invalid.
- Informing the Trust in writing, of any criminal convictions acquired during their employment with the Trust.
- Engaging positively and honestly in DBS checking processes where requested.
- Engaging fully in meetings to discuss issues in relation to employment checks and in the event of non-disclosure of a criminal conviction.

## 4.5 Resourcing Team

The Resourcing Team are responsible for:

- Carrying out pre-employment checks for new permanent and temporary employees, including Trust Appointed Doctors, satisfying the NHS Employers Employment Checks Standards. Any suspicion relating to fraud or bribery should be notified to the Local Counter Fraud Specialist for example falsification of documentation or a conflict of interest.
- Recording employment checks data in ESR for audit and reporting purposes.
- Supporting the new starter form process to ensure employees are fully compliant with pre-employment checks prior to commencing to work.
- Carrying out on-going checks during employment for all employees and bank workers for the eligibility or right to work in the UK as required.
- Maintaining the 'Right to Work' Register for staff and bank workers who are subject to UK Borders Agency Rules.
- Checking and verifying professional registration on appointment for all staff and bank workers (for Junior Doctors in Training see section 4.6 below).
- Ensuring that all job adverts confirm if a DBS check is required for the post.
- Ensuring prospective employees complete a [REDACTED] (available on the Trust's Hub).
- Completing DBS applications with prospective employees as part of the pre-employment checks process.
- Ensuring that DBS disclosures received indicating a conviction are brought to the immediate attention of the Trust DBS Lead.
- Recording completed DBS checks in ESR against the employee record.
- Ensuring departments receive DBS information to place on the employee's personnel files, only stating the minimum data outlined by NHS employers.
- Undertaking regular spot checks for pre-employment checks and those required during employment to ensure compliance with NHS standards.

## 4.6 Medical Workforce Team

The Medical Workforce Team are responsible for:

- Undertaking pre-employment checks for Junior Doctors in Training and Trust Appointed Doctors in accordance with NHS Employers Employment Checks Standards.
- Recording employment check information in ESR for audit and reporting purposes.
- Processing new starter forms to ensure employees are fully compliant with pre-employment checks prior to commencing to work..
- Checking and verifying professional registration for doctors upon appointment.
- Carrying out professional registration, 'right to work' and Disclosure & Barring Service Checks as needed during employment for all medical and dental staff.
- Maintaining the 'Right to Work' Register for medical and dental staff who are subject to UK Borders Agency Rules.
- Ensuring that all job adverts include a reference to DBS disclosure checks.
- Ensuring all doctors complete a [REDACTED] (available on the Trust's Hub).
- Completing DBS applications with prospective employees as part of pre-employment checks.

- Ensuring that DBS disclosures received indicating a conviction are brought to the immediate attention of the Trust DBS Lead.
- Recording completed DBS checks in ESR against the employee record.
- Recording DBS information on the employee's personnel files in accordance with minimum data standards outlined by NHS employers.

#### **4.7 Staff Bank Team**

The Staff Bank Team are responsible for:

- Ensuring external agencies adhere to the NHS Standard Framework Standards.
- Ensuring agency staff have appropriate professional registration prior to commencing any bank assignment.
- Checking and verifying professional registration information for bank workers on an on-going basis.
- Undertake spot checks on agency staff employment checks twice a year.
- Following processes detailed in this policy related to out of date professional registration as is necessary.
- Ensuring external agencies provide assurance that the necessary employment checks including professional registration checks are complete and satisfactory prior to the commencement of any bank work.

#### **4.8 Human Resources**

The Human Resources Team are responsible for:

- Reviewing and updating the Employment Checks Policy and process in conjunction with the Resourcing Team as required.
- Providing advice to managers when deciding whether references are satisfactory.
- Providing support and advice to managers when staff are not compliant with required employment checks standards.
- For advising and supporting individual teams and departments in response to recommendations and issues resulting from Workforce Information Team reports and audits.

#### **4.9 Disclosure and Barring Service (DBS) Lead**

The Trust's DBS Lead is responsible for:

- Arranging DBS Risk Assessment panels as required and with appropriate representation.
- Ensuring the provision of accurate statistical information to inform compliance.
- Keeping an up to date list of Capita Users.
- Performing DBS risk assessments and taking decisions in consultation with the Recruiting Manager on the suitability of employment for individuals awaiting DBS clearance or with disclosure for a criminal conviction.
- Maintaining an accurate and update Trust DBS List confirming DBS checks required upon and during employment by job role.
- Publishing the Trust's DBS List on the Trust's Hub.

#### **4.10 DBS Risk Assessment Panel**

The DBS risk assessment panel is responsible for undertaking risk assessments and making decisions about the suitability of employment for individuals with criminal convictions.

## **5. EMPLOYMENT CHECKS POLICY**

### **5.1 Employment Checks Prior to Appointment**

All successful candidates must satisfactorily complete six mandatory pre-employment checks. Offers of employment can only be made on a conditional basis, prior and subject to the satisfactory completion of all checks required for the post.

A conditional offer letter will be issued making it clear to the successful candidate that the offer is subject to the satisfactory completion of pre-employment checks and that the offer may be withdrawn if unsatisfactory or false information is received.

If at any point during the recruitment process an individual fails to provide the appropriate evidence to satisfy checking arrangements they should be excluded from the selection process. If a conditional offer of employment has been made to an individual, the offer should be withdrawn in writing, outlining the reason for withdrawal. Advice should be sought from the Resourcing Team or Human Resources prior to withdrawing an offer of employment on these grounds.

Trust practice adheres to national guidance provided by NHS Employees which can be accessed at [NHS Employers Employment Standards and Regulation](#). The following confirms the six mandatory pre-employment checks for all roles prior to employment.

#### **5.1.1 Verification of Identity**

All successful candidates will have to verify their identity at their pre-employment checks meeting arranged by the Resourcing Team by providing a combination of both photographic and non-photographic identification documents as per the NHS Employment Identity Check Guidance. This guidance can be found at [NHS Employers Identity Check Guidance](#). Original documents must be provided at this meeting.

#### **5.1.2 Eligibility to Work in the UK**

All successful candidates will have to verify their right to work in the UK by providing a number of documents as specified within the NHS Employers Right to Work Checks Guidance which can be found at [NHS Employers Right to Work Checks](#). Original documents must be provided at the pre-employments checks meeting arranged by the Resourcing Team.

All new employees will be asked for evidence of eligibility to work in the UK. If the successful candidate is not a UK citizen and does not have the original documents because they are part of an on-going application with the UK Visas & Immigrations Department, the Resourcing Team will carry out a check using the Employer Checking Service to verify their right to work in the UK. This check has to be repeated every 6 months until the Biometric Residence Permit or Share Code is received.

If you are unsure about a candidate's eligibility and right to work in the UK, please speak to the Resourcing or Human Resources Teams for further advice.



Employees with time limited eligibility to work in the UK will be recorded on the Trust's Right to Work Database by the Resourcing Team who will send a reminder to the Line Manager when the employees right to work in the UK is coming to an end. Further checks will be carried out by the Resourcing Team in line with current guidance from NHS Employers.

### **5.1.3 Professional Registration and Qualifications**

All successful candidates must verify their qualifications and professional registration as appropriate to the role, at the pre-employment checks meeting. Prospective employees must provide original qualification certificates or a certified statement of results in accordance with the NHS Employers Professional Registration and Qualifications Checks Guidance available at [NHS Employers Professional Registration and Qualification Checks](#). The Resourcing Team will ask to see evidence of any qualifications detailed on the person specification.

The Resourcing Team will also check the Alert Register (HPAN) for all professional bodies to ensure that the successful candidate is not on the register. They will also check the relevant professional body's website to obtain verification of registration and to ensure that there are no restrictions or investigation into their fitness to practice.

On appointment the Resourcing Team will check the employee's professional registration with the relevant professional on-line register to identify:

- Whether the registration covers the duties to be undertaken, clarifying the relevant sections of the register that applies.
- Whether the registration is subject to any current restrictions.
- Whether the applicant is the subject of any fitness to practice investigation that the regulatory body has a duty to disclose.
- That verification of registration is supported by checks to verify that the identity of the individual is that to whom the PIN and registration has been assigned.
- A screen print of the registration which will be stored electronically.

If a successful candidate is registered with a professional body, it is not necessary to see their original qualification certificate as their qualifications will have been checked by the regulatory body as part of the registration process. However, a check on the register should be made to ensure that the candidate is actually registered with that regulatory body.

### **5.1.4 Employment References**

The Resourcing Team will request references for the successful candidates through the Trac System based on the reference details provided by the candidate in their application form.

It is Trust policy to request one reference from the most appropriate referee, which should be the current or most recent employer. If the candidate has been in education an educational reference will be sought. If the candidate has not been in employment during the previous three years, a character reference will be sought. References should not be from a colleague of the same or a lower grade, or from a relative or friend.

Where a candidate is transferring from another NHS organisation, a reference from the applicant's current NHS employer will be required.

References obtained by the Resourcing Team must be approved by the Recruiting Manager either within Trac or via email. Where a Recruiting Manager has concerns about the suitability of a reference this must be discussed with their HR representative prior to any withdrawal of a conditional offer.

Further guidance on employment references can be found at [NHS Employers Employment History and Reference Checks](#).

### **5.1.5 Pre-Employment Health Checks**

The purpose of a pre-employment health check is to confirm that the employee is fit and well enough to carry out the full duties and responsibilities of the post. The successful candidate will be required to fully complete a pre-employment health questionnaire (PEHQ) which will be reviewed by the Trust's Staff Health and Wellbeing Team.

Information provided by the candidate on the PEHQ is confidential. Successful candidates should be encouraged to disclose details of a disability as defined within the Equalities Act 2010.

It is the Line Manager's responsibility to discuss any health issues identified with the successful candidate, and that any reasonable adjustments or wellbeing support identified are actioned. The Line Manager must also check and ensure that any vaccination(s) required by the post have been completed and are not due for renewal.

Where a Recruiting Manager has concerns about the candidate's ability to undertake the full duties and responsibilities of the post due to a medical or wellbeing issue, advice must be sought from Human Resources before any decision is taken to reject the preferred candidates on health grounds.

Trust pre-employment health check practice is in accordance with the NHS Employers Work Health Assessment Guidance available at [NHS Employers Work Health Assessments](#).

### **5.1.6 Disclosure and Barring Service (DBS) Checks**

All external applicants who are applying for a post that requires a DBS check as identified in the Trust DBS List) must undertake a DBS check. Prospective employees should not commence employment with the Trust until a satisfactory DBS disclosure has been received. In certain circumstances, a DBS waiver risk assessment may be carried out by the Trust DBS Lead and Recruiting Manager to allow an applicant to commence employment before receipt of the disclosure. This does not apply to posts in services which involve working with children or adolescents.

The Rehabilitation of Offenders Act 1974 provides for anyone who has been convicted of a criminal offence and has been sentenced to less than two and a half years in prison, to be regarded as rehabilitated after a specified period of time

provided there has been no further convictions. After this period of rehabilitation, the conviction is considered as 'spent'.

Generally, once a conviction is spent, the convicted person does not have to disclose this to a future employer when applying for a job. However, in order to protect the vulnerable, the Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975, provides exemption for some professions within the health and care sectors approach. Posts not exempt from this provision must disclose all previous convictions regardless as to whether they are spent.

Trust Disclosure and Barring Service checks are done in accordance with the NHS Employers Criminal Record Check Standards available at [Criminal record check standards | NHS Employers](#).

### **DBS Update Service**

Where a potential employee has registered with the DBS Update Service, the Trust may conduct an on-line check to gain assurance that nothing has changed in respect of the Disclosure & Barring Service record since the last disclosure was issued.

A prospective employee must provide the original copy of the latest DBS Certificate issued, which may have been carried out by another organisation, and give consent for the on-line update service check to be made.

If the current DBS Certificate contain a criminal conviction and the update service check reveals that the information has not changed since the date of the last check, no further action is required. If the update service check reveals that the information has changed since the last check then a repeat DBS check must be carried out by the Trust before appointment.

### **DBS Checks for Agency Staff and Contractors**

The Trust uses employment agencies which affiliated to the 'National Approved Framework' in order to provide assurance that satisfactory pre-employment checks have been undertaken before staff are permitted to work.

### **Staff Recruited from Overseas**

Where an applicant is being recruited from overseas, NHS employment checks standards should be followed, and a copy of the appropriate overseas police check sought. This should also have been provided to the UKVI as part of the visa application. Once in the UK, a DBS check should be undertaken after two months of employment.

### **DBS checks for Doctors in Training**

Doctors on educationally approved rotational training programmes will be regarded as being in continuous employment during the term of their training and are therefore required to have a DBS check, as a minimum, once every three years, rather than each time they change rotation.

The Medical Workforce Team will request a copy of the most recent DBS disclosure undertaken by the doctor to be produced at the pre-employment meeting to check that the DBS disclosure is satisfactory. Where a DBS check is older than three years, a new check should be undertaken. A risk assessment should be completed by the

Lead Signatory to ascertain whether it is appropriate for the Doctor to start work before a disclosure is received.

### **Portability of DBS Checks**

The Trust does not accept DBS checks for non-medical staff roles which have been completed by a different organisation.

Whilst an application is being processed the Trust will accept DBS checks completed by another organisation for medical staff, provided the individual is able to provide an original DBS disclosure dated within the last three years. Should the DBS disclosure indicate a criminal conviction, the member of staff will not be permitted to start until a satisfactory risk assessment has been completed. Offers of employment remain conditional until evidence of a satisfactory DBS disclosure has been received.

### **Level of DBS Check Required**

There are three levels of DBS checks available for positions, these being a basic, standard and enhanced level check.

The level of disclosure required for each post will be assessed primarily by the degree of contact with patients. Employees who deliver regulated activity to patients are required to undertake an enhanced level disclosure.

There is a DBS checking tool available from NHS Employers which can be used to check the level of DBS check required for a post. [Find out which DBS check is right for your employee - GOV.UK \(www.gov.uk\)](https://www.gov.uk/guidance/how-to-check-the-level-of-dbs-check-required-for-a-post)

### **Non-disclosure of criminal convictions**

The Trust expects honesty and integrity from all its employees and prospective employees. Consequently, those individuals who fail to disclose convictions may be considered by the Trust to have compromised this element of the employment relationship.

All employees are required to inform their Line Manager of any criminal convictions, cautions or warnings received during employment with the Trust. The Line Manager with advice from the Trust DBS Lead and / or Human Resources will determine any action necessary according to individual circumstances.

Where concerns arise regarding the possible non-reporting of a conviction the Trust will require the employee to undergo a DBS check. If the DBS disclosure reveals that the employee has an undeclared criminal conviction, this will be managed with under the Trust's [REDACTED]. Similarly, if an undeclared conviction comes to light during recruitment to an internal post, this will also be dealt with under the Trust's Disciplinary Policy.

Failure to disclose criminal convictions, cautions or warnings is an offence under the [Fraud Act 2006](#) and as such the employee maybe subject to a criminal investigation.

## **Risk Assessment**

A risk assessment will be completed when considering whether to allow an employee or prospective employee to work when either:

- A DBS check has not yet been completed or returned or the latest DBS check is more than 3 years old.
- An employee has declared a conviction, either as part of a routine re-check or at the point of the offence, and a decision should be made on whether it is appropriate for the employee to continue working.
- A criminal conviction is detailed in a DBS disclosure.

When completing a risk assessment, the following points should be taken into consideration:


- Any legal or regulatory requirements.
- The nature of the offence and relevance to the position being applied.
- The length and type of sentence issued.
- The length of time passed since the conviction.
- The age of the individual at the point the conviction was obtained.
- Whether the applicant has a pattern of offending behaviour, for example, if there are multiple offences.
- Whether an applicant's circumstances have changed since the offending behaviour.
- Employment references.
- Employment history in the case of current employees.
- The circumstances surrounding the offending behaviour and the explanation offered by the individual.

A file note will be placed on the individual's personnel file to show a risk assessment has taken place but will not include any details of the conviction.

In the event the DBS Risk Assessment Panel assess that a prospective employee is unsuitable for employment based on the outcome of a risk assessment, the Resourcing Team will notify the Recruiting Manager to consider withdrawing the employment offer.

## **5.2 Employment Checks During Employment**

In addition to pre-employment checks, employees will be required to comply with the following checks during their employment on an on-going basis:

- Disclosure & Barring Service Checks, every 3 years if required by the post. Please click on this link to view the Trust DBS list. 
- Renewal of Professional Registration Checks usually on an annual basis.
- Verification of their right to work in the UK upon the expiry of their current right.

All current employees will be required to verify their legal right to work in the UK during employment with the Trust in line with the [NHS Employment Checks Standard](#). Matters in the event of non-compliance or a lapsed check will be referred to the Trust's [Disciplinary Policy](#).

Non directly engaged staff, for example through an agency, who are not compliant with checks during employment are not permitted to work for the Trust and will be referred back to the third party provider.

### **5.2.1 Disclosure and Barring Service**

Where an existing employee is appointed to a new post within the Trust, a DBS disclosure at the appropriate level will be obtained where this is a requirement for the new post (see [REDACTED]).

Existing employees will not normally be required to have a DBS disclosure check if they are moving to a new post within three years of a previous DBS disclosure being issued and where the existing DBS disclosure is at the same level required for the new post.

Where an employee is moving internally within the Trust to a position or area that involves working with children or vulnerable adults, which is not required in their current role, a DBS check must be undertaken.

Some roles within the Trust, as confirmed within the [REDACTED], require a DBS disclosure check to be updated every three years.

### **5.2.2 Professional Registration**

The verification of registration status of clinical staff is essential to ensure that the Trust, and the public, can be confident that all clinical staff are appropriately qualified, registered with the relevant professional body and meet statutory registration requirements.

It is the personal responsibility of individual members of staff to ensure they are registered with their professional body and where a statutory obligation for registration exists, to ensure compliance with this. It is the responsibility of the Trust to ensure that anyone practising on behalf of the Trust, in a profession that requires statutory registration, is registered appropriately.

The Trust's Professional Registration Policy sets out the responsibilities of both the Trust and individual members of staff and the process by which both parties will ensure all relevant clinical practitioners are registered with the relevant professional body and that their registration is current. Managers should refer to the Trust's Professional Registration Policy for policy, process and guidance in respect of maintaining professional registration which is available on the Trust's Hub at **(INSERT LINK)**.

### **5.2.3 Eligibility to Work in the UK**

Where an employee's 'right to work' in the United Kingdom is time limited (e.g. skilled worker visa), the employee will be checked regarding their right to work in the UK in line with the guidance provided by the UK Borders Agency.

All employees who have a fixed term of stay to work in the UK have the responsibility for taking the appropriate action to renew their 'right to work' and remain eligible to

work in this country. The individual will be required to provide evidence that they continue to have eligibility to work in the UK.

It is illegal for the Trust to continue to offer work to employees or workers whose right and eligibility to work in the UK has expired, therefore their employment or bank registration will be terminated.

The Resourcing Team, or Medical Workforce Team in the case of medical and dental staff, will notify the employee one month in advance of the date their right to work in the UK expires. This will allow sufficient time for the individual to extend or renew their right to work in the UK.

Where evidence of eligibility to remain working in the UK has not been received one week prior to the expiry date the Line Manager should escalate the issue to their nominated HR advisor or the Resourcing Team. If no evidence of the continued right to work in the UK is received prior to expiry it is illegal to continue to employ the individual and the matter should be raised with Human Resources.

Where necessary the Trust can with the employee's consent, use the Employer Checking Service with the UK Borders Agency, if they do not have the evidence required (for example a passport or biometric residence permit) to verify their on-going right to work in the UK.

### **5.3 Internal Transfer Process**

The Recruiting Manager and departmental administrator are responsible for verifying the employee's employment checks when transferring internally within the Trust. Where any of the six key checks (confirmed in 5.1.1 to 5.1.6 inclusive) are missing, unsatisfactory or require updating the Recruiting Manager and departmental administrator are responsible for obtaining the outstanding employment checks.

These checks can be done retrospectively, at the discretion of the new Line Manager, providing a risk assessment has been undertaken for the outstanding checks from the date of the employee transfer into the new role. Guidance on the management of internal transfers can be found on the Trust's Hub at [\[REDACTED\]](#).

## **6. INFORMATION AND RECORD KEEPING**

### **6.1 Recording and Retention of DBS Checks**

An electronic record of completed DBS checks will be maintained on ESR against an employee's individual record. When a new employee has satisfactorily completed all employment checks required for the role, the Resourcing Team, or Medical Workforce Team in the case of doctors and dentists, will record the checks against the employee's personal record in ESR.

A hard copy record must also be held on the employees personnel file confirming only the minimum data set out below;

- The issue date of the DBS.
- The name of the individual.
- The level of check requested.
- The position for which the check was requested.
- The unique reference number of the certificate.

Original DBS disclosure certificates should not be retained any longer than six months in line with the [REDACTED]. Self-disclosure information should be handled, stored and destroyed in the same way as DBS disclosure certificates and should not be kept on file any longer than necessary.

- 6.2 The Medical Workforce Team in the case of doctors and dentists, will file completed clearances together with the new starter form on the new employee's personnel file.

Details of the employment checks carried out should be retained on an employee's personnel file in line with the Business and Corporate (non-health) Record Retention Schedule, published by the Department of Health.

Details of right to work checks are also recorded within the Trust's Right to Work Spreadsheet by the Resourcing and Medical Workforce Teams.

- 6.3 For non-medical staff It is the Recruiting Manager's responsibility to securely maintain adequate records of all recruitment check documentation provided by successful candidates on the employee's personnel file. The employee's Line Manager is responsible for monitoring and maintaining documentation in respect of checks during employment on the employee's personnel file. For Medical Staff this is held by Medical Resourcing Team.

#### **6.4 Data Protection**

The Dudley Group NHS Foundation Trust processes personal data collected during the course of this policy in accordance with the Data Protection Act. Information will only be shared with those who have a legitimate right to be informed in accordance with the principles of the Data Protection Act.

Inappropriate access or disclosure of employee information constitutes a data breach and should be reported in accordance with the Trust's data protection procedures as soon as is reasonably practicable. Breaches of confidentiality will be considered under the Trust's Disciplinary Policy and may lead to formal disciplinary action.

### **7. CONFIDENTIALITY**

- 7.1 All information gathered and held as part of the Trust's Employment Checks Policy will only be provided to those who are involved in the process and have a legitimate right to be informed. Information will be provided to third parties where it is deemed there are potential criminal connotations, serious safety implications or the issue may lead to legal proceedings. Any breaches of confidentiality will be treated seriously under the Trust's Disciplinary Policy and may lead to formal disciplinary action.



## 8. TRAINING / SUPPORT

Training for employees responsible for undertaking and verifying employment checks is available upon request to the Resourcing Team Manager.

Training for Recruiting Managers is available through the Learning and Development Team and is delivered by the Resourcing Team Manager. Details can be found on either the Recruitment or the Learning and Development sections of the Trust's Hub.

Training for employees who have responsibility of the processing of DBS checks re-checks is available through the Trust's DBS Lead.

Training is available for employees who have responsibility for the monitoring and updating of professional registration can be organised through the Workforce Information Team by contacting them directly.

## 9. PROCESS FOR MONITORING COMPLIANCE

### 9.1 Monitoring of Compliance Chart

Elements to be Monitored	Lead	Tool	Frequency	Reporting arrangements	Acting on recommendations and Lead(s)	Change in practice and lessons to be shared
Compliance with policy	Head of Human Resources	Data provided by the Workforce Information Team. Periodic audit.	Monthly. Audits as required	To HR Business Partners and Head of Human Resources	As identified based on the findings.	Within policy and with relevant stakeholders.

## 10. EQUALITY

10.1 The Dudley Group NHS Foundation Trust is committed to ensuring that, as far as is reasonably practicable the way we provide services to the public and the way we treat our staff reflects their individual needs and does not discriminate against individuals or groups on any grounds.

10.2 An equality impact assessment has been undertaken in regard to this policy and procedure to assess and ensure there is no disproportionate impact upon individuals or groups in respect of a protected characteristic.

## 11. REFERENCES

NHS Employers April 2019. Background Information on the Employment Checks Standards [NHS Employers Background information](#)  
[Accessed 02 September 2022]

NHS Employers Employment Standards and Regulation  
[NHS Employers Employment Standards and Regulation](#)  
[Accessed 02 September 2022]