

Disciplinary Policy

Policy number	HR
Version number	V.3
Responsible Executive Lead	Head of HR/OD
Author(s)	MLCSU HR Team
Date approved by Committee	Communications, Engagement, Equality & Employment Committee March 2021
Date ratified by Governing Body	30 September 2021
Date first issued	March 2021
Date issued	August 2024
Review date	August 2027
Target audience	All ICB staff including Governing Body Members and Clinical Leaders

CONSULTATION SCHEDULE

Name and Title of Individual	Groups consulted	Date Consulted
	Staff Engagement Group	December 2018
	Staff Side	January 2019
Staff Engagement Group	Staff Engagement Group	July 2024

RATIFICATION SCHEDULE

Name of Committee approving Policy	Date
Communications, Engagement, Equality & Employment Committee	2 nd March 2021
ICB People, Culture and Inclusion Committee	9 th August 2024

Version	Significant changes	Date	Author
V.1	<ul style="list-style-type: none"> • New policy • More detail included in all sections • Disciplinary rules included • Support for staff on suspension • Conduct at hearings included 	Mar 2021	Robert Downing, MLCSU
V.1.1	<ul style="list-style-type: none"> • Amendment of equal opportunities to reflect Diversity in Employment policy. • Insertion of virtual hearings 	Sept 2021	Zena Richards, MLCSU
V2.0	<ul style="list-style-type: none"> • Adapted for the ICB 	July 2022	Jane Chapman, CCG/ICB
V3.0	<ul style="list-style-type: none"> • Updated and reviewed as per review schedule 	April 2024	MLCSU HR Team

Impact Assessments – available on request

	Stage	Complete	Comments
Equality Impact Assessment			
Quality Impact Assessment			
Privacy Impact Assessment			

CONTENTS

1	Introduction	4
2	Scope	4
3	Policy Statement	5
4	Responsibilities	5
	4.1 Responsibility of the ICB	5
	4.2 Responsibility of Human Resources	5
	4.3 Responsibility of Managers	6
	4.4 Responsibility of Employees	6
	4.5 Responsibilities of Accredited Trade Union Representative	6
5	General Standards Of Conduct	6
6	Right to be accompanied	8
7	Accredited Staff Representatives	8
8	Time Limits	9
9	Criminal Offences	9
10	Fraud	10
11	Policy in Practice – Procedure	10
	11.1 Informal Approach	10
	11.2 Formal Stages of Disciplinary Procedure	11
	11.3 Suspension	13
	11.4 Arranging Disciplinary Hearing	15
	11.5 Departure from ICB employment Mid- Proceedings	18
	11.6 Grievances raised during the Disciplinary Process	18
12	Disciplinary Action	18
	12.1 Scheme of Delegation	18
	12.2 Written Warning	19
	12.3 Final Written Warning	19
	12.4 Formal Warnings and Pay Progression	19
	12.5 Dismissal	20
	12.6 Alternative Sanction to Dismissal	20
13	Right of Appeal	21
	13.1 Appeal Process	21
14	Monitoring	22
	Appendix 1 Disciplinary Rules	23
	Appendix 2 Conduct at Disciplinary Hearings	25
	Appendix 3 ICB Appeal Hearing	28

1 INTRODUCTION

The aim of this policy is to help correct inappropriate behaviour or conduct in a fair and consistent manner.

NHS Staffordshire & Stoke-on-Trent Integrated Care Board (the ICB) expects all employees to meet high standards of behaviour. It is important, therefore, that employees understand their obligations and rights regarding this aspect of their employment.

This document sets out the general standards of conduct expected of all employees (see Section 5), identifies the circumstances in which disciplinary action may be taken and explains the sanctions available to Managers.

This policy will apply where an employee's conduct is considered to be unsatisfactory. Where health and performance issues are identified, please refer to the ICB's Performance Management and Attendance Management Policies.

Breaches of discipline will be handled constructively, and disciplinary decisions should be taken in a consistent, fair and reasonable manner. The aim is always to encourage improvements in conduct.

The fair treatment of staff supports a culture of fairness, openness and learning in the NHS 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 truly grounds for a formal investigation and/or for formal action. Would training for the employee, support, guidance, or informal management be more appropriate and productive?

This policy was developed by the predecessor organisation in consultation with the recognised trade unions and is in accordance with the ACAS Code of Practice on disciplinary and grievance procedures.

Where an employee's ability to do their job is affected by a lack of skill, knowledge, or ill health, this will be managed by following the Performance Management and Attendance Management Policies.

This policy will be applied equally to all staff covered by the policy and in accordance with the ICB's Diversity in Employment Policy. The fair and equitable implementation of this policy will be monitored by Human Resources.

2 SCOPE

This policy will apply to all employees of the ICB, including Medical and Dental staff where a matter of personal conduct is concerned. Medical & Dental professional misconduct/competency issues will be investigated separately in line with Maintaining High Professional Standards.

3 POLICY STATEMENT

Employees will not normally be dismissed for a first offence except in cases of gross misconduct/negligence.

Employees will have the right of appeal against any disciplinary sanction applied.

The procedure may be implemented at any stage dependent upon the individual circumstances of each case. Sanctions need not be applied sequentially.

Disciplinary cases will be treated sensitively and confidentially. Information will only be shared with those who have a legitimate right to be informed in accordance with Data Protection Act and GDPR regulations 2018 and the Common Law Duty of Confidentiality. Breaches of confidentiality by any party may result in disciplinary action. Standard Operating Procedures agreed between Human Resources and the ICB Data Protection and GDPR Lead will be followed.

All managers who Chair or sit on hearing Panels must have appropriate and up to date knowledge and skills on managing / chairing disciplinary cases and this will be provided by the HR representative support at that point in time.

4 RESPONSIBILITIES

This policy and related procedures have been written and agreed through a partnership of managers, Trade Union representatives and Human Resources.

4.1 Responsibility of the ICB

The responsibility for the provision of an agreed Disciplinary Policy lies with the ICB's Senior Management Team.

The ICB accepts that they will have responsibility for the smooth running of the organisation and to ensure that any such disputes are settled in a fair and consistent manner.

4.2 Responsibility of Human Resources

To provide advice and support to managers in relation to the application of this policy.

To ensure that the Disciplinary procedure is applied fairly, equitably and consistently throughout the ICB.

Human Resources will monitor all formal disciplinary activity across the ICB and organise relevant training sessions.

To provide advice and support at all stages of the formal disciplinary process.

4.3 Responsibility of Managers

It is the responsibility of all managers employed within the ICB to make sure they are aware of the Disciplinary Policy and how to handle disciplinary issues, both informally and through a formal procedure.

Managers should ensure that they follow the guidelines of this policy, paying specific attention to the timescales set out under each stage.

Managers should try to resolve minor matters of concern informally. If informal approaches do not bring about improvement or if misconduct is sufficiently serious, formal stages of this procedure should be followed.

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.

4.4 Responsibility of Employees

Employees should ensure that they are aware of the general standards of conduct as outlined in this policy.

4.5 Responsibilities of Accredited Trade Union Representatives

Upon a member request, Trade Union representatives have a duty to advise and represent their members, if they are subject to disciplinary proceedings or required to provide information as part of a formal disciplinary investigation.

5 GENERAL STANDARDS OF CONDUCT

It is important that all employees are clear about the standards of conduct expected by the ICB. The following list, which is not intended to be exhaustive, outlines some specific examples of the standards required:

Employees are representatives of the ICB and, as such, it is important to present patients, their relatives, friends and other visitors with a professional and caring image that is reinforced with attitudes and behaviours demonstrating courtesy, responsiveness, friendliness and appropriate work attire.

Employees should attend work punctually and regularly.

Reasonable requests/instructions from the employee's Manager should be carried out promptly and efficiently to the required standard.

- Employees must not absent themselves from duty without first notifying or gaining appropriate authorisation from their Manager.

- All types of leave with the exception of sickness absence must be approved in advance by the appropriate authority, usually the employee's Manager.

- Regarding the notification of sickness absence, employees must comply with the Attendance Management Policy and should follow the local arrangements. Breaches in sickness reporting may result in payments being stopped and could lead to disciplinary action being taken.

- Employees must comply with all ICB policies and procedures, the principles of the NHS Constitution and adhere to professional body guidelines and codes of conduct, as appropriate. Senior managers should abide by the Code of Conduct for NHS Managers (October 2002). Governing body members are required to abide by the Professional standards authority 'Standards for members of NHS Boards and CCG Governing bodies in England'

- Health and Safety policies and guidelines must be observed at all times.

- Use of telephones, mobile phones, email and internet must comply with the ICB policies regarding the use of such equipment.

- Employees must comply with the ICB Diversity in Employment Policy and must treat other workers, patients, their relatives, friends and other visitors with dignity and respect, free from intimidation and harassment.

- Employees must treat confidential information responsibly in line with the principles of the Data Protection Act 1998 and the GDPR 2018 regulations. This includes no misuse or inappropriate access of patient/confidential information systems (such as information held on patient record keeping systems).

- Any work undertaken outside of the ICB employment must not adversely affect, hinder or conflict with the interests of the ICB.

6 RIGHT TO BE ACCOMPANIED

Employees have the right to be accompanied at any stage of the Formal Procedure by either an accredited Staff Representative(s) or full-time official(s) of a recognised staff organisation, or by a workplace colleague who must be an employee of the ICB. Where reference is made in the procedure to an “accredited Staff Representative” this should also be taken to mean full-time official as appropriate.

However, it would not normally be reasonable for employees to insist on being accompanied by a workplace colleague whose presence would prejudice the hearing or for an employee to ask to be accompanied by a workplace colleague from a remote geographical location if someone suitable and willing was available on site.

The workplace colleague should be allowed to address the hearing to present the employee’s case, respond on their behalf to any views expressed at the hearing and confer with them during the hearing. They do not however have the right to answer questions on the employee’s behalf, address the hearing if the employee does not wish it, or prevent the employee from explaining their case.

If an employee’s workplace colleague is unavailable, it is the responsibility of the employee to arrange a replacement or request to reschedule the meeting, so long as it is deemed reasonable to suggest another date which is not more than 5 working days after the original date of the Hearing or Appeal Hearing.

Employees have no right under this procedure to be accompanied by anyone else (e.g. a spouse, partner, other family member, or legal representative) other than those persons previously referred to.

If an employee has a Disability, reasonable adjustments will be considered to ensure that the employee has appropriate representation.

7 ACCREDITED STAFF REPRESENTATIVES

Disciplinary action against an accredited Staff Representative can lead to a serious dispute if it is seen as an attack on their functions. Whilst normal disciplinary standards apply to their conduct as employees, the relevant full-time official must be notified of any action (including suspension) which it is proposed to take. In any event, disciplinary action must not be taken against an accredited Staff Representative until the relevant full-time official can be present at any formal Disciplinary Hearing.

9 TIME LIMITS

It is acknowledged that all action outlined in this procedure should take place in a prompt and timely manner without unreasonable delay. The time limits set out in this procedure are based on working days and may only be varied by mutual agreement. Any investigation and subsequent hearing or

appeal should be actioned as soon as is reasonably practicable to ensure the accurate recording of events. Managers and employees should ensure that they take all reasonable steps to ensure that time delays do not occur.

10 CRIMINAL OFFENCES

An employee who is charged with a criminal offence (including a receipt of a summons) must inform their Manager as soon as possible. Notification about criminal proceedings, or a conviction (including being bound over and cautions), will not be treated as automatic reasons for dismissal, or for any other form of disciplinary action being taken. Following disclosure, the ICB will determine what action, if any, should be taken after the incident has been thoroughly investigated and facts of the case established.

The main consideration should be whether the charge/conviction is one that renders the employee unsuitable for their job and reference will be made to any reputational issues that may affect the ICB. Similarly, an employee should not be dismissed solely because they are absent from work as a result of being remanded in custody until sentenced. If an employee is in prison, it may be fair for the ICB to dismiss the employee by reason of their conduct, or because they are unable to perform the job.

The ICB should consider factors such as the nature of the offence, the length of the sentence, the nature of the employee's job, the effect of the employee's absence on the business and the damage (if any) to the employer's reputation.

If during an investigation, it becomes apparent that an incident needs reporting to the police it is important to maintain confidentiality and ensure that any evidence is made available to the relevant authority.

If an employee is subject of a police investigation, they are obliged to inform their manager so that the manager can consider whether any steps are required, e.g. to protect the safety of others.

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

In situations where the police or any other regulatory body e.g. Health and Safety Executive, Nursing and Midwifery Council, General Medical Council or General Dental Council is investigating an event, it is important that any internal investigation or disciplinary hearing should continue concurrently.

11 FRAUD

If a Manager suspects that fraudulent activity has taken place they should contact Human Resources in the first instance, who will be able to advise on the process for making contact with the Local Counter Fraud Team prior to any informal or formal disciplinary process taking place.

12 POLICY IN PRACTICE: Procedure for Handling Allegations and Investigating the Facts

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.

The manager will carry out some initial fact finding and meet the employee to establish their version of events. The manager may also meet with other relevant individuals to get a good understanding about what has happened

Where it is decided that further investigation and/or formal action is appropriate, this must be approved by a senior manager. The senior manager will have no previous involvement in the case and will provide independent oversight.

12.1 Informal Approach (Outside of Formal Procedure)

Whenever possible, an informal approach should be the first step taken to help, guide or advise employees in improving their conduct. Dealing with minor disciplinary breaches through the formal stages of the procedure should only be considered if misconduct continues.

When dealing with unauthorised absence from work, it is important to determine the reasons why the employee has not been at work. If there is no acceptable reason, the matter should be treated as a conduct issue and dealt with as a disciplinary matter.

If the absence is due to genuine (including medically certified) illness, the issue becomes one of incapacity and the Attendance Management Policy should be followed.

Where levels of performance are unsatisfactory for example poor quality of work, missed deadlines or low volume of work, this needs to be managed in a constructive and supportive framework and the Performance Management Policy should be followed.

11.2 Formal Stages of the Disciplinary

Procedure Investigation Process

Investigations will be carried out without unreasonable delay. All cases that could lead to dismissal will be investigated by a trained investigator. The manager will be responsible for commissioning the investigation and for clearly defining what is to be investigated.

The purpose of the investigation is to:

- Ascertain the facts as far as is reasonably practicable
- Give the employee an opportunity to offer an explanation
- Enquire into the circumstances surrounding the alleged misconduct

- Take a balanced view of the information that emerges
- To prepare an investigation report detailing the main findings

It is important and in the interests of both employer and employee to keep written records during the disciplinary process. These should include:

- The complaint against the employee
- The employee's explanation / defence
- Findings made and actions taken
- The reason for actions taken
- Whether an appeal was lodged

For the investigation to commence, a Commissioning Manager will be appointed to oversee the Investigation— this is usually a Head of Department or Director

The manager leading an investigation will be referred to as the Investigating Officer for the purposes of this procedure. The ICB will appoint an appropriate Investigating Officer with suitable authority who may be from within or external to the ICB. The Investigating Officer should not be directly or personally connected with the issues involved. The Investigating Officer will not sit on the Disciplinary panel but will be present at the Disciplinary Hearing to present the management case.

A record should be kept of either the date of receipt of a complaint/allegation, or the date when a complaint/allegation is identified as a potential breach of conduct.

An employee who has had a complaint/allegation made against them will, as part of the investigation, be invited to attend a fact-finding interview in order to clarify the circumstances and facts relating to the complaint/allegation. A letter detailing the complaint/allegation and the right to be accompanied should be sent to the employee giving them a minimum of five working days' notice of the meeting. Where known, this letter will be copied to the employee's representative.

It is important to ensure that the employee understands the allegations made against them for example, if there is a difficulty with reading or English is not their first language or if the employee has a Disability. Appropriate support should be put in place to remove any barriers which may prevent the employee from fully understanding the allegations made against them.

Confidentiality for all those involved must be respected at all times. However, when conducting an investigation resulting in possible disciplinary action, information must be provided to those involved (which might include non— employees) and employees are obliged to co-operate with these procedures. The investigation should only involve those people necessary in gathering sufficient information to make a decision on the correct course of action, whilst making it clear to those interviewed that a breach of the ICB's principles on confidentiality could be a disciplinary offence.

Copies of meeting records should be given to the employee including copies of any formal minutes that may have been taken. In certain circumstances, it may be permissible for the employer to withhold some information e.g. to protect a witness or at the reasonable request of a witness due to their concern.

The identity of the individual who has raised a concern will be protected upon request and will not be disclosed without consent. However, the employee must be made aware that they may be asked to present evidence to substantiate any allegations made and/or to provide a written statement, without which investigations may not be able to proceed.

Victimisation of staff who raise concerns reasonably and responsibly is prohibited under the Public Interest Disclosure Act and the ICB will ensure that staff are protected from victimisation in these circumstances. The ICB may be held vicariously liable for co-workers acts of bullying/harassment. Please refer to the Whistleblowing policy for further guidance.

Records should be kept no longer than is necessary in accordance with the Data Protection Act 1998 and GDPR 2018 regulations.

Wherever possible, investigations should be completed, including the fact-finding interview with the employee, within a span of twenty working days, unless otherwise mutually agreed and notified to the individual subject to disciplinary action. However, it is recognised that this timespan may need to be extended due to the availability of witnesses or others contributing to the investigation.

Statements from any witnesses and any other relevant documentary information should be obtained by the Investigating Officer without delay. Adequate time and notice, however, should be given to employees producing statements, which may include gaining any support/guidance from their accredited Staff Representative, as appropriate.

It is the Investigating Officer's responsibility to investigate and obtain all relevant information and take all reasonable steps to determine the validity and accuracy of the circumstances which have led to the investigation.

It is the Investigating Officer's responsibility to advise if there is any case to answer and recommend if the employee should be invited to a disciplinary hearing. The Investigating Officer will clarify the allegations and present the case against the employee at any disciplinary hearing.

The Commissioning Manager decides, based on the recommendations of the Investigating Officer, whether there is a case to answer and arranges for any further action in line with the Disciplinary Policy. The possible outcomes of the investigation listed below are intended as a guide and should not be seen as an exhaustive list:

- No case to answer, no further action required
- Case to answer, refer to a Disciplinary Hearing for further investigation
- Case to answer, refer to the Disciplinary Hearing for further investigation – Suspension if required
- Counselling/ supervision required
- Training needs identified
- Performance Management required
- Referral to Occupational Health
- Signposting employee to Support Groups/Charities

11.3 Suspension

In most cases, suspension from work will not be necessary and the employee will be able to continue doing their normal job while matters are investigated.

The decision to suspend an employee from duty should not be taken lightly or without careful consideration of all the circumstances and the nature of the circumstances that have led to the investigation. Suspension is not in itself a disciplinary measure; it is a means of carrying out further enquiries unimpeded.

When considering suspension, managers must assess the risks of the employee remaining at work and seek HR advice. Where a manager wishes to suspend an employee, they must seek approval from a senior manager (8c or above) and a HR Business Partner.

During suspension the employee will receive their normal pay in accordance with their usual working arrangements, providing they are otherwise available for work.

The following list, whilst not exhaustive, provides an indication of the types of situation when suspension may be appropriate:

- where gross misconduct is suspected or alleged
- where it would not be possible to carry out a thorough investigation with the employee still present in their normal workplace
- where there is a concern that further offences may occur
- where there is a high risk to the health and safety of individuals
- where a work permit has been suspended or expired
- where criminal proceedings are undertaken alongside internal investigations

Alternatives to suspension must be considered, with HR advice where appropriate and could include the employee temporarily:

- being moved to a different area of the workplace
- changing their working hours
- being placed on restricted duties including having reduced access to ICB systems where appropriate
- working under supervision
- being transferred to a different role within the organisation (the role should be of a similar status to their normal role, and with the same terms and conditions of employment).
- Other meaningful activities that the individual could do should be actively explored. This could include working remotely from home, carrying out activities such as audits, research or teaching.

Communicating the Decision to Suspend and Supporting Employees

The authority to suspend staff sits with any manager with line management responsibility. Whenever possible, a meeting should be held with the employee and their accredited Staff Representative to advise them of the decision to suspend them from duty. However, the unavailability of a representative will not prevent the suspension from taking place. When a manager is thinking of

suspending someone, they should advise the employee of their intent and allow them to contact their Trade Union. However, this should not unduly delay the suspension meeting.

- The manager communicating the decision to suspend will:
- Explain the reasons for the suspension and how long it is expected to last.
- Explain the employee's responsibilities during their suspension.
- Provide a point of contact (usually the line manager) that they can contact if they have any concerns
- Agree how they will keep in regular contact with the employee throughout
- Give details about support from the Occupational Health and Staff Support providers.
- If it is necessary to explain the employee's absence, the manager will discuss with the employee how they would like it to be explained to colleagues and/or patients.

The employee should also be advised that:

- they must remain contactable and available during their normal working hours in order that they can attend meetings as required and not work for any another employer during the working hours that they would normally work for the ICB;
- they must notify the ICB of any changes of address/telephone number;
- they must not, under any circumstances, have contact with, or seek to influence, anyone associated with the investigation, or enter any of the ICB premises without having gained authorisation from the Investigating Officer;
- the suspension will be reviewed every 10 working days by the Investigating Officer in conjunction with Human Resources and the outcome of the review will be confirmed in writing to the employee;
- they can contact a nominated HR representative for support and status updates as appropriate;
- Counselling services via Occupational Health are available.

Timescales for Suspension

Suspension will be for the minimum time necessary and will be reviewed every 10 working days and lifted when the reason for suspension no longer exists.

Most investigations should be concluded within two weeks of suspension. Where this is not possible, the employee should be informed that they remain suspended and told when the investigation is likely to be completed. This should be followed up in writing (see Appendix 3). Managers should make themselves available to meet employees to discuss the progress of the investigation.

If the employee wishes to go on holiday during their suspension, they must still make a request to take annual leave and advise the Investigating Officer of the dates as soon as possible. If the annual leave is approved, the suspension and the terms and conditions will continue and so the annual leave will be during the suspension period.

Suspension will cease in the following circumstances:

- where the Investigating Officer has decided that there is no case to answer and no requirement for the employee to attend a Disciplinary Hearing;
- where the investigation has been concluded and dismissal is not a possible outcome;
- where the Disciplinary procedure has been completed.

11.4 Arranging Disciplinary Hearings

Preparing for the Hearing

The ICB is committed to ensuring panels are diverse in representation, have appropriate seniority and have the knowledge, skills, experience and training that are relevant to the case in question and cater for the protected characteristics under the Equality Act such as BAME status, disability etc. Panel members will be reasonably selected to achieve this, and where appropriate taking into account the allegations, additional panel members will be recruited.

Panel members will have no previous involvement in the case or any conflict of interest that could influence decision making.

In order to ensure that meetings do not have to be delayed or postponed at short notice, the Manager hearing the case should agree a mutually convenient time and date for the hearing with the employee(s) and their accredited Staff Representative or workplace colleague in accordance with the time limits set out in this procedure.

If all those involved in the procedure can go to the workplace, the employer should firstly consider whether a face-to-face hearing can be safely arranged. If the employer goes ahead with a face-to-face meeting, it is important that the employee's chosen companion can also attend the meeting in person if the employee wishes. If a face-to-face meeting cannot be safely arranged, or if anyone has another reasonable objection to holding the meeting in person, it should be considered whether it is possible to carry out the procedure remotely in a fair way. If this is not possible, it may be appropriate to suspend the meeting.

Video meetings may need to be used for any investigation interviews and hearings if a procedure is carried out remotely, as long as the procedure is still fair and reasonable.

It is important to consider if:

- Everyone involved has access to the technology needed for video meetings, for example the necessary equipment and internet connection.
- Anyone involved has any disability or other accessibility issues that might affect their ability to use video technology, and whether any reasonable adjustments might be needed
- It is possible to obtain all the evidence needed for the investigation or hearing, for example records or files that are kept in the office.
- Any witness statements or other evidence can be seen clearly by everyone involved during an interview or hearing and provided in advance where appropriate.
- It will be possible to fairly assess, and question evidence given by people interviewed during a video meeting.
- Is it possible for the person under a disciplinary investigation, who raised a grievance or attending a hearing can be fairly accompanied during the hearing.

Employers should keep a written record of any disciplinary cases they deal with. Disciplinary or meetings held by video may be digitally recorded with the agreement of everyone involved.

If there's agreement by all parties to digitally record a meeting, this must be done in line with data protection law.

Where the accredited Staff Representative or workplace colleague cannot attend on the date proposed, the employee(s) can offer an alternative time and date so long as it is reasonable and falls before the end of a period of five days. In proposing an alternative date the employee(s) should have regard to the availability of the Manager. For instance it would not normally be reasonable to ask for a new date for the meeting where it was known the Manager was going to be absent on business or on leave.

A letter containing details of the complaint/allegation, enclosing copies of all statements and/or written material gathered during the investigation, should be sent to the employee at least five working days in advance of the date set for the Disciplinary Hearing, unless otherwise mutually agreed. The letter should also disclose the name of the Manager(s) who will be hearing the case and details of any witnesses who will be present to give evidence at the Hearing. It should also inform the employee that they have the right to be accompanied at the meeting by an accredited Staff Representative or workplace colleague and that a possible outcome of the meeting, after due consideration of all the facts and circumstances, may be disciplinary action. The employee should also make available copies of any statements and/or written material which they intend to refer to, along with details of any witnesses who will be present to give evidence, no later than 3 working days prior to the Hearing.

Failure by either party to disclose written material in accordance with the above guidelines may result in this information being inadmissible at the Disciplinary Hearing. The Manager hearing the presentations will decide whether to admit information following discussion with the individuals present and having assessed the reason(s) for the late disclosure, including the possible significance of the information.

If the employee fails to attend a disciplinary hearing following two re-arrangements at their request without reasonable reasons, the case will be heard in the employee's absence and the outcome of the hearing will be confirmed in writing to the employee.

Hearing Format - for Full Details See Appendix 1

At the hearing, the manager will present the case and where applicable invite any witnesses. Where an investigation has been carried out, the Investigating Officer will be invited to the hearing to present their findings and answer any questions.

The employee will be given the opportunity to set out their case, answer any allegations, ask questions, show evidence, call relevant witnesses (with good notice), respond to any information given by witnesses.

In considering the sanction, the hearing Chair/Panel will take account of the employee's previous work record and other mitigating factors.

Witnesses will be called if they have a significant contribution to make to the case. If statements from ICB employees are presented as evidence, every reasonable effort will be made to ensure that they attend the meeting, unless it is agreed with the member of staff that the facts are not in dispute and/or the presence of one or more witnesses would serve no material purpose.

The outcome of a hearing will be notified in person by the Chair of the hearing. Only where this is not possible or the individual requests otherwise, should notification be by phone or 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, the improvement required (if appropriate) 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.

Hearings may result in no formal sanctions being issued; however standard setting, training and/or departmental/individual recommendations may be put in place, if appropriate.

SUPPORTING EMPLOYEES

Being subject to allegations of misconduct can be very upsetting and stressful for the employee and other colleagues affected.

It is important throughout the procedure for the manager to keep talking with both the employee and any other staff affected. Clear, 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 mental health issues.

Managers are responsible for maintaining communications and will make every effort to ensure employees receive clear, timely, comprehensive and sensitive information about the allegations and regular progress updates on any investigation until the matter is concluded.

Where there are concerns about an employee's health or wellbeing, Occupational Health advice will be obtained.

Employees, including those who are witnesses, will be supported by an appropriate manager and will have access to the ICB Occupational Health and Staff Support services.

11.5 Departure from ICB employment Mid-Proceedings

Should the employee being investigated leave the ICB's employment midway through the process (either during or pending a full investigation or hearing), depending on the nature of the allegations, the investigation or hearing may be conducted in their absence and the outcome confirmed to the individual in writing, regardless of the date of leaving.

11.6 Grievances raised during the Disciplinary Process

Where an employee raises a Grievance during any stage of the formal Disciplinary Process, the disciplinary process may be temporarily suspended and the Grievance should be investigated in line with the ICB Grievance and Disputes Policy and Procedure. Where there is clear evidence to suggest that the Disciplinary and Grievance cases are related, it may be appropriate to deal with both issues concurrently.

12 DISCIPLINARY ACTION

Decisions relating to the level of disciplinary action to be taken, if any, will be a matter of judgement for the Manager(s) who has listened to the information presented during the Disciplinary Hearing. Managers will, however, need to consider:

- the seriousness of the disciplinary breach in question;
- the relevance and context of facts/information presented;
- the employee's previous employment record;
- issues relating to fairness, consistency and the substantial merits of the information presented;
- and
- whether any relevant disciplinary warnings are currently in existence.

12.1 Scheme of Delegation

The Scheme of Delegation as outlined in the table below will be applied during the formal stages of the disciplinary procedure. ICB Managers with appropriate authority to issue sanctions will be agreed and confirmed locally within the ICB.

All sanctions will be confirmed in writing following the Hearing.

PRIVATE DISCIPLINARY SANCTION	TYPE OF MEETING:	SANCTION ISSUED BY:	WHO TO APPEAL TO:
WRITTEN WARNING	Disciplinary hearing followed by warning	ICB Manager with appropriate authority to issue sanction	ICB Manager with appropriate authority to issue sanction who has not previously been involved in the case
FINAL WARNING	Disciplinary hearing followed by written warning	ICB Manager with appropriate authority to issue sanction	ICB Manager with appropriate authority to issue sanction who has not previously been involved in the case
DISMISSAL	Disciplinary hearing followed by dismissal	ICB Manager with delegated authority to dismiss	Chief Executive Officer or Chair of the ICB

It may be necessary for other managers to be present at disciplinary interviews in addition to the above. Individual members of staff and their representatives will be informed of this in the "Notification of Disciplinary Hearing" letter as appropriate.

12.2 Written Warning

Where an informal approach has failed to have the desired effect, or if the infringement is of a more serious nature, the employee should be issued with a Written Warning. The employee should be advised, in writing within five working days of the hearing, of the reason for the warning, the improvement or change in behaviour required, the consequences of any repetition or failure to improve and of their right of appeal. A copy of the Written Warning should be kept on file and disregarded for disciplinary purposes after twelve months from the date of issue.

12.3 Final Written Warning

Where a Written Warning has failed to have the desired effect, or where the infringement is sufficiently serious, the employee should be issued with a Final Written Warning. The employee should be advised, in writing within five working days of the date of the hearing, of the reason for the warning, the improvement or change in behaviour required, that any repetition or failure to improve or modify their behaviour may lead to dismissal and of their right of appeal. A copy of the Final Written Warning should be kept on file and disregarded for disciplinary purposes after two years from the date of issue.

12.4 Formal Warnings and Pay Progression

Employees who have a live formal warning will not be able to progress to their next pay step in line with the Agenda for Change Pay Progression standards. This does not include investigations, informal warnings, counselling or other informal activities. Employees should refer to the ICB Pay Progression Policy for the process on delaying a pay step due a live formal disciplinary sanction.

12.5 Dismissal

The decision to dismiss will only be taken by a Manager with delegated authority to dismiss. Notification of dismissal will be confirmed within five working days of the Disciplinary Hearing. Dismissal on the grounds of lack of capability through ill health will be conducted as per the Attendance Management Policy.

Dismissal is the ultimate sanction against employees and will only be invoked where an employee's record does not improve after reasonable warnings, in accordance with the Disciplinary Policy. Where a single offence of gross misconduct warrants dismissal, this may be immediate with no entitlement to notice. Incorporated in this procedure at Appendix 1 is a list of offences which could, in certain circumstances, lead to dismissal. It is not a fully comprehensive or exhaustive list but is provided as a guide for staff and managers.

Following a Final Written Warning, no employee will be dismissed for disciplinary reasons unless:

- a full investigation into the latest alleged incident(s) has been carried out
- the employee has been given the opportunity of stating their case at a disciplinary hearing.

Where the Final Written Warning has failed to have the desired effect, or where the infringement constitutes a breach of the ICB Disciplinary Directives (see Appendix 1), then the employee should be dismissed with appropriate notice and advised whether or not they are required to work their notice.

Where an employee is accused of an act of Gross Misconduct s/he may be suspended while the alleged offence is investigated. If, on completion of the investigation and the full disciplinary procedure, Management is satisfied that Gross Misconduct has occurred, the result will normally be summary dismissal without notice or payment in lieu of notice. Previous stages need not necessarily have been followed.

12.6 Alternative Sanctions to Dismissal

In exceptional circumstances and as an alternative to dismissal under this procedure, Managers may (depending on the offence) consider the following options:

- transfer to another available post within the ICB at the same band;
- demotion to another available post within the ICB at a lower band; and/or
- downgrading their substantive role

These sanctions would not attract any form of pay protection and each of these measures would be in addition to a Final Written Warning. The demotion / downgrading will last for a period of 2 years, after which time they will return to their previous band.

During this time the employee will not be eligible to apply for any post at the ICB above the pay banding of the post they are transferred to. After this period the employee will be eligible to apply for any post they choose to.

The Final Written Warning should advise the employee of the reason for the warning, the improvement or change in behaviour required, that any repetition or failure to improve or modify their behaviour may lead to dismissal and of their right of appeal. A copy of the Final Written Warning should be kept on file and disregarded for disciplinary purposes after two years from the date of issue.

The proposal to transfer the employee to another available post within the ICB when demotion or downgrading is involved must be with the full agreement of the employee.

Employees should be placed on the redeployment register by Human Resources for a period of 12 weeks and if no suitable alternative employment is found during this time period, the Employee will be dismissed from the ICB.

The Manager cannot impose this decision on the employee. Where the employee does not wish to consider an alternative sanction to dismissal then the Manager hearing the case should confirm the dismissal decision.

13 RIGHT OF APPEAL

An employee may choose to appeal because:

- they think a finding is unfair
- new evidence comes to light that may be significant enough to influence the decision/sanction issued
- they believe the process was not followed correctly

Appeals should be made to the relevant person as outlined in the scheme of delegation within ten working days of the date of receiving the letter confirming the disciplinary action clearly stating the grounds for appeal.

13.1 Appeal Process

As far as is reasonably practicable, the appeal will be heard within twenty working days of receipt of the appeal.

The employee will be given ten working days notice of the date of the hearing.

The documents used during the Disciplinary Hearing will be forwarded to the person hearing the appeal by the HR Team. Details of any witnesses the employee may wish to call and any additional documentation relating to the allegations that they would like the panel to consider should be forwarded at least five working days before the date of the Appeal Hearing.

The ICB Appeal Hearing will follow the procedure set out in Appendix 2.

The decision of the ICB Appeal Hearing will be final. Any sanction or penalty applied as a result of the outcome of the disciplinary hearing can be reviewed by the Appeal Panel but the sanctions cannot be increased by the Appeal Panel.

14 Monitoring

Human Resources will:

- Have responsibility to monitor the effectiveness of this policy on an annual basis.
- Make recommendations to the ICB Board.

Appendix 1 - DISCIPLINARY RULES

The purpose of this appendix is to give an indication of the standards of behaviour expected of all staff by the ICB. It is not possible to specify all standards and those listed here are intended as a guide and should not be seen as an exhaustive list.

1. Gross Misconduct

It is important that all staff understand that there are certain behaviours that are deemed so serious by the ICB that, if proven, may result in dismissal from the ICB. This dismissal may be summarily, that is without notice.

- Theft or attempted theft – unauthorised removal with the intent to steal of property or money belonging to the ICB or belonging to other employees, patients or members of the public.
- Fraud / Deception – any deliberate attempt to obtain money or goods belonging to the ICB, employees, patients or members of the public, through the falsification of any
- records or documents.
- Violence or assault – physical, verbal, sexual abuse or harm.
- Serious bullying and/or harassment of others.
- Indecency or sexual offences.
- Malicious damage – deliberate destruction or damage to ICB property.
- Corruption – including receipt of favours for contracts or information.
- Failure to disclose a criminal conviction - either at appointment or during employment.
- Giving false information and deliberate concealment at selection.
- Inappropriate use of computers – the use of computers to access inappropriate websites or the excessive use of computers inappropriately during working hours including accessing
- pornographic, offensive or abusive materials.
- Contravention of a statutory requirement - working while contravening an enactment, or breach of rules laid down by statutory bodies such as erasure from the General Medical Council register, or the United Kingdom Central Council register, or loss of driving licence where driving is an essential component of the duties of the post.
- Unauthorised employment with another organisation whilst on sick leave
- Wilful negligence – any action or failure to act that threatens the health and safety of any patient, member of staff or member of the public.
- Being unfit for duty – either due to alcohol or substance abuse.
- Deliberate disclosure of confidential information - this includes abuse/misuse of patient information systems.
- Health and Safety – disregarding safety rules and regulations or serious negligence that endangers self or others.
- Discrimination/harassment – actions or language of a discriminatory nature that infringes the ICB Equal Opportunities policy.
- Abusive and insulting behaviour – the use of threatening and abusive language or behaviour towards employees, patients and members of the public.
- Criminal convictions– convictions relating to activities outside work that have a direct bearing on an employee's employment with the ICB.
- Bringing the ICB into disrepute.
- Unauthorised use of ICB Property / Equipment
- Any other act of gross negligence – a failure to exercise a duty of care which adversely affects the welfare of others.
- Covert Recording of any meetings and/or discussions relating to or during the Disciplinary

Investigation and procedure may be deemed as Gross Misconduct.

2. **Examples of Misconduct**

- Poor timekeeping
- Being rude to colleagues, patients or members of the public
- Failure to follow a reasonable management request or instruction.
- Consistent and deliberate errors
- Unauthorised absence
- Minor breaches of health and safety
- Refusal to work with a colleague for an unacceptable or discriminatory reason
- Smoking in contravention of the ICB No Smoking Policy
- Engaging in employment outside the normal working hours of the ICB that adversely affects, hinders or conflicts with their work with the ICB and/or the interests of the ICB
- Failure to follow ICB policies and procedure

Appendix 2 - Conduct at Disciplinary Hearings

The Manager(s) hearing the presentations at the Disciplinary Hearing should not have had any prior involvement in the investigation.

The Hearing should be conducted in accordance with the following procedure:

Introductions: The Manager hearing the case should introduce all present and their role in the Hearing, explain the purpose of the meeting (i.e. to consider whether disciplinary action is necessary) and explain how the hearing will be conducted. If the employee is accompanied by a staff side representatives or workplace colleague it should be noted that they will be able to present and sum up the employees case but cannot answer direct questions made to the employee.

Statement Of Complaint/Allegation: The Manager hearing the case should establish precisely what the complaint/allegation is and invite the Investigating Officer to present their findings, including the tabling of all previously circulated statements and/or materials gathered during the investigation and the calling of any witnesses.

Employee's Reply: The employee should be given the opportunity to state their case and present evidence, including the tabling of all previously circulated statements and/or materials and the calling of any witnesses.

Summing Up: After general questioning and discussion, the Investigating Officer, followed by the employee (or their representative or workplace colleague) should be given the opportunity to summarise their main points..

Adjournment: The Manager(s) hearing the case should consider their decision in private. If it is necessary to recall one of the parties to clear any points of uncertainty on evidence already given, then both parties should be invited to return notwithstanding only one is concerned with the point giving rise to doubt.

The Decision: All appropriate parties (excluding witnesses) should be recalled and the Manager(s) hearing the case inform them of their decision. This will be confirmed in writing within five working days of the hearing.

Should a decision not be made on the day, the panel will recall and inform all appropriate parties (excluding witnesses) that a decision has not been made but will confirm the outcome in writing within five working days of the hearing.

The employee should be given a written copy of the notes of the hearing for information purposes only.

Civility: The Hearing should be conducted courteously and fairly, with the emphasis being to establish the facts. To this end, all parties should be free to ask questions politely and comment appropriately.

Procedure for Disciplinary Hearings

1. Introduction by manager chairing the hearing
 - Introduce those present
 - Confirm purpose of the hearing is 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. Investigating Officer presents their case
 - Investigating Officer outlines their findings
 - Investigating Officer calls any witnesses
 - Employee/representative/ accompanying person and chair/HR Adviser may question the witnesses
 - Investigating Manager may ask the witnesses any further questions
 - Employee/representative and Chair/HR Advisor may ask questions about the case in order to clarify facts

3. Employee/representative/ workplace colleague responds to the management case
 - Employee/representative/ workplace colleague responds to the allegation, offers an explanation for the alleged misconduct and/or raises any special or mitigating circumstances to be taken into account
 - Employee/representative/ workplace colleague calls any additional witnesses
 - Manager and chair/HR Adviser may question the witnesses
 - Employee/representative/ workplace colleague may ask the witnesses any further questions
 - Manager and chair/HR advisor may ask questions of the employee in order to clarify facts

4. Summing up – no new evidence can be presented at this stage
 - Investigating Officer sums up
 - Employee/representative/ accompanying person sums up

5. Adjournment for Chair/Panel to consider case
 - Agree with all parties how and when the decision will be notified to the employee / representative / workplace colleague if time does not permit the decision to be given in person following the adjournment. Where the conduct of more than one member of staff is being considered in relation to the same incident, the adjournment between the Disciplinary Hearing and the outcome letter may be a few days, until all the Disciplinary Hearings have been completed.

6. Reconvene for decision – Chair verbally informs employee/representative/ workplace colleague of
 - The outcome of the hearing/disciplinary action
 - The right of appeal
 - The outcome of the hearing to be confirmed in writing within five working days of the date of the hearing

Appendix 3 - ICB APPEAL HEARING

At the hearing of an appeal against dismissal the following procedure shall be observed: All appeal hearings will be heard by a ICB Appeal Panel as detailed below.

Complainant's Case:

- The **Complainant** or the **Complainant's** Representative will put their case in the presence of the Management Representative and may call witnesses.
- The Management Representative will have the opportunity to ask questions of the **Complainant** and the **Complainant's** Representative and witnesses.
- The members of the Appeal Panel will have the opportunity to ask questions of the **Complainant** and the **Complainant's** Representative and witnesses.
- The **Complainant** or the **Complainant's** Representative will have the opportunity to re-examine witnesses on any matter referred to in their examination by members of the Appeal Panel or the Management Representative.

Management's Case:

- The Management Representative will state Management's case in the presence of **Complainant** and the **Complainant's** Representative and may call witnesses.
- The **Complainant** or **Complainant's** Representative will have the opportunity to ask questions of the Management Representative and witnesses.
- The members of the Appeal Panel will have the opportunity to ask questions of the Management Representative and witnesses.
- The Management Representative will have the opportunity to re-examine witnesses on any matter referred to in their examination by members of the Appeal Panel, the **Complainant** or the **Complainant's** Representative.

Summing-Up:

Both parties will have the opportunity to sum up their respective cases, with the Complainant having the right to go last. No new information may be introduced or referred to at this point in the appeal procedure.

General: Notwithstanding the above procedure, members of the Appeal Panel may at any time invite either party or a representative to clarify or explain any statement they may have made, or may ask questions to ascertain whether or not they propose to call any evidence in respect of any part of their statement. Alternatively, if the parties concerned are in fact claiming that the matters are within their own knowledge, they will be subject to questions as witnesses as described above.

The Panel may, at its discretion, adjourn the appeal in order that further evidence may be produced by either party to the circumstances which led to the Investigation or for any other reason.

Adjournment: The Management Representative, the **Complainant**, the **Complainant's** Representative and witnesses will withdraw. The Appeal Panel will consider their decision in private only recalling both parties to clear points of uncertainty on evidence already given. If

recall is necessary both parties shall return even if only one party is concerned with the point giving rise to doubt.

The Decision: When the Appeal Panel has reached its decision both parties will be recalled and the Chair will inform them of their decision. The Chair will write to both parties to confirm the Panel's decision within five working days of the Appeal Hearing including a copy of the notes of the meeting for information purposes.