

	Document Title		Effective From
	INVESTIGATION AND DISCIPLINARY		21.07.2021
POLICY	Approval Body	Version No.	Review Due Date
	EXECUTIVE MANAGEMENT GROUP	4.0	20.07.2024
	Owner	Department	
	HEAD OF HR & OD	PEOPLE AND DEVELOPMENT	
<ul style="list-style-type: none"> • This policy supersedes all previous issues. • Printed copies of this document are valid only until midnight of the day it was printed. • This policy covers the Trust (NEAS). 			

DOCUMENT TYPE	Organisational <input checked="" type="checkbox"/> Departmental <input type="checkbox"/>
PURPOSE	<p>The purpose of this policy is to Highlight our disciplinary rules. The standards of conduct expected of all employees are set out in the Disciplinary Rules, which are at Appendix 1 of this document; and</p> <p>Provide a framework within which managers can work with employees to maintain satisfactory standards of conduct and to encourage improvement where necessary.</p> <p>It is our policy to ensure that any disciplinary matter is dealt with fairly and that steps are taken to establish the facts and to give employees the opportunity to respond before taking any formal action. The framework allows managers to deal fairly, openly and sensitively with all disciplinary matters whilst maintaining confidentiality and adhering to the provisions of the Equality Act (2010).</p>
APPLICABLE TO	All NEAS employees, as well as consultants, vendors, agency workers, contractors, service users, apprentices, volunteers and/or any other parties who have a business relationship with NEAS. It does not apply to casual workers, agency workers or the self-employed. Additional steps may be required for medical staff.
KEY THINGS TO KNOW ABOUT THIS POLICY	<ol style="list-style-type: none"> 1. This policy is to explain when an investigation is needed and to outline the disciplinary process. 2. It details the different stages of the disciplinary process as well as possible outcomes. 3. It also includes the disciplinary rules and some examples of unsatisfactory conduct
EXPECTED OUTCOME	Readers are expected to understand the organisational position on [insert as relevant], know their responsibilities in relation to the policy and comply with the terms of the policy.

POLICY STATEMENT

1. GENERAL POLICY STATEMENT

- 1.1. This document is used to deal with misconduct. It does not apply to cases involving genuine sickness absence, proposed redundancies or poor performance. In those cases, reference should be made to the appropriate policy or procedure.
- 1.2. This policy is contractual.

2. DISCIPLINARY POLICY

2.1. Disciplinary Rules

- 2.1.1 If an employee is in any doubt as to their responsibilities or the standards of conduct expected, they should speak to their line manager.
- 2.1.2 While working for us, employees should at all times maintain professional and responsible standards of conduct. In particular they should observe the terms and conditions of their employment contract, particularly with regard to:
 - Hours of work;
 - Confidentiality;
 - DBS and safeguarding requirements;
 - Professional registration and driving licence requirements;
- 2.1.3 Observe all our policies, procedures and regulations as notified to them from time to time by means of notice boards, e-mail, the intranet or otherwise.
- 2.1.4 Take reasonable care in respect of the health and safety of colleagues and service users and act in a manner that is consistent with their health and safety training.
- 2.1.5 Comply with all reasonable instructions given by managers; and
- 2.1.6 Act at all times in good faith and in the best interests of our business, service users and staff.
- 2.1.7 Our disciplinary rules, and examples of the conduct that we will deem to be misconduct and gross misconduct, are contained at Appendix 1.
- 2.1.8 Failure to maintain satisfactory standards of conduct may result in action being taken under the Investigation and Disciplinary Policy as set out later in this document.

2.2. Informal Stage

2.2.1 Minor conduct Issues

- Minor conduct issues can often be resolved informally between employees and their line manager. These discussions should be held in private, without undue delay whenever there is cause for concern and the meeting can be arranged via telephone or in person by the line manager. Employees have the right to be accompanied by a trade union representative.
- The discussion should ensure the employee is clear what standards of behavior/conduct is required of them in the future and the impact of further reoccurrence. Further training or other supportive measures may also be identified as a result of these discussions.
- Where appropriate, a follow-up letter/email should be sent to the individual or a note of any such informal discussions should be placed on an employee's personal file for the purpose of recording that the discussion has taken place. The member of staff should be given a copy of this as an accurate record of the discussion. We may refer to it in

formal proceedings where we are concerned that the employee is failing to improve their conduct or where there is repetition of the same misconduct on more than one occasion. It will be relevant in determining whether a formal process is required.

- Managers are advised to seek guidance from their HR representative throughout this process.

2.2.2 Disabilities & Reasonable Adjustments

- If an employee has difficulty at any stage of the procedure because of a disability or an underlying condition affecting their ability to engage in this process, they should discuss the situation with their line manager and/or the person with whom they are raising the appeal as soon as possible, so that the appropriate Occupational Health advice can be obtained, and consideration given to any reasonable adjustments required.

2.2.3 Confidentiality

- Our aim is to deal with disciplinary matters sensitively and with due respect for the privacy of any individuals involved. All employees must treat as confidential any information communicated to them in connection with an investigation or disciplinary matter. Any employee who breaches this rule may be subject to disciplinary action.
- Employees, and anyone accompanying employees (including witnesses and note takers), must not make electronic recordings of any meetings or hearings conducted under this procedure. This rule helps us to comply with the Data Protection Act 1998. Any employee who breaches this rule may be subject to disciplinary action.
- Employees will normally be told the names of any witnesses whose evidence is relevant to disciplinary proceedings against them, unless we believe that a witness' identity should remain confidential.

3.3 Formal Stage

3.3.1 Investigations

- The purpose of an investigation is for us to establish a fair and balanced view of the facts relating to any disciplinary allegations against employees, before deciding whether to proceed with a disciplinary hearing. The scope of investigation required will depend on the nature of the allegations and will vary from case to case. It may involve interviewing and taking statements from employees and any witnesses, and/or reviewing relevant documents. The Human Resources Department will appoint an Investigating Officer to carry out the investigation. Investigation meetings are solely for the purpose of gathering facts and no decision on disciplinary action will be taken until after a disciplinary hearing has been held.
- Individuals will be invited to attend an investigation meeting, ordinarily with a minimum of 7 days' notice of the meeting.
- In so far as possible, we will allow an employee to bring a companion (i.e., a Trade Union representative or colleague) to an investigation meeting (please note that the statutory right to be accompanied does not extend to having a companion at any investigation). If there is a need to conduct an urgent investigation and an employee wishes to be accompanied, we may insist that they are accompanied by a colleague instead of a Trade Union representative. This is because investigation meetings need to take place promptly when a disciplinary allegation comes to light, and a Trade Union representative may not be available at short notice. We may also make special arrangements to allow

an employee to bring a companion if it helps them to overcome any disadvantage in the procedure arising from a disability, or where an employee has any difficulty in understanding English.

- Employees must co-operate fully and promptly in any investigation. This will include informing us of the names of any relevant witnesses, disclosing any relevant documents to us and attending investigative interviews if required.
- Employees will be reminded of their duty of confidentiality and of the rules under this procedure. Employees must not tip off or collude with any other person implicated in the allegation and must not contact or interfere with any witnesses. This rule helps us to ensure that our investigations are thorough and are not compromised. It also ensures the fairness of our procedure. Witnesses to any wrong doing must be protected from any threats or detriment. This is an important principle in ensuring that employees feel able to speak up in the best interests of the Trust and is connected with the Trust's duty of candour. The rule set out within this paragraph must not be breached. Any employee who breaches it may be subject to disciplinary action and may also be required to answer allegations of bullying or harassment falling under the Trust's Dignity at Work Policy.
- Investigations will be carried out promptly and completed within a reasonable period of time. Where an investigation is likely to take longer than two weeks, we will notify the employee and keep them regularly updated on progress and timescales at intervals to be agreed.

3.4 Resignation during investigation

- 3.4.1 Where an employee voluntarily resigns from their post and leaves the organisation before a disciplinary matter is concluded, the Trust may conclude the process on the information available, dependent upon the severity of the allegations. The Trust may also in line with its public responsibilities, reserve the right to proceed with the process; reaching a decision in the absence of the individual should they choose not to attend the subsequent hearing in person.
- 3.4.2 Where an employee has not been present at the hearing notification of the Trust's decision will be forwarded in writing. The employee will be made aware of any follow up action including the reporting of appropriate information to the relevant professional body.

3.5 Safeguarding Allegations against Staff

- 3.5.1 There may be occasions where allegations are made in relation to staff which indicate that they have behaved in a way that demonstrates unsuitability for working with vulnerable children or adults at risk.
- 3.5.2 The allegation or issue may arise either in the employee's professional work or private life. Examples include:
- Commitment of a criminal offence against, or related to, children, young people or vulnerable adults.
 - Behaving towards children, young people or adults in a manner that indicates they are unsuitable to work with children, young people, or adults at risk of harm or abuse.
 - Where an allegation or concern arises about a member of staff from their private life such as perpetration of domestic violence or where inadequate steps have been taken to protect vulnerable individuals from the impact of violence or abuse.
 - Where an allegation of abuse is made against someone closely associated with a member of staff such as a partner, member of the family or other household member.

3.5.3 The concerns may also relate to inappropriate relationships between those who work with children or young people as outlined in the Sexual Offences Act 2003, namely:

- Having a sexual relationship with a child under 18 if in a position of trust in respect of that child, even if consensual (section 16-19 Sexual Offences Act 2003);
- 'Grooming', i.e. meeting a child under 16 with intent to commit a relevant offence (section 15 Sexual Offences Act 2003);
- Other 'grooming' behaviour giving rise to concerns of a broader child protection nature (e.g inappropriate text/e-mail messages or images, gifts, socialising, use of social media etc);
- Possession of indecent images of children or use of the internet to access indecent images of children.

3.5.4 Although managing safeguarding allegations against staff is a requirement under the Children Acts (1989 and 2004), this also applies to adults at risk of harm or abuse as defined by the Care Act (2014). Working Together to Safeguard Children and Young People (2018, page 55) sets out expectations that all statutory organisations will have a procedure for managing allegations against staff.

3.5.5 For further information on the procedure for management of allegations of this nature, staff should consult the Standard Operating Procedure: Management of Safeguarding Allegations against Staff.

3.6 Sexual Safety in the Ambulance Service

3.6.1 The Trust is committed to promoting the sexual safety of all patients and service users as well as supporting staff members where there are concerns regarding sexual related behaviours that may have an impact on patients, colleagues, and others. This follows the report into sexual safety commissioned by the CQC: *Sexual Safety on Mental Health Wards (2018)*; CQC have defined sexual safety as:

'Being and feeling psychologically and physically safe, including being free of, and feeling safe from, behaviour of a sexual nature that is unwanted, or makes another person feel uncomfortable, afraid or unsafe. This includes:

- *sexual assault and harassment*
- *it also extends to being spoken to using sexualised language.*
- *observing other people behaving in a sexually disinhibited manner, including nakedness and exposure or masturbation*
- *being made to watch, participate in or being shown intimate images.*
- *lacking privacy and dignity when naked*
- *specific sexualized comments or behaviours in relation to gender identity or sexual orientation*

3.6.2 Any staff member who is the subject of sexual safety concerns or allegations, as defined above, can expect to receive the same level of welfare support and fair/ thorough investigation as defined throughout the remainder of this policy.

3.6.3 It is expected that, given the sensitive nature of such concerns, where a formal investigation is required, an independent Investigating Officer will be allocated from outside of the immediate team or department.

3.7 Criminal Allegations

3.7.1 Where an employee's conduct is the subject of a criminal investigation, charge, or conviction we will investigate the facts before deciding whether to take formal disciplinary action.

3.7.2 We will not usually wait for the outcome of any prosecution before deciding what action, if any, to take in relation to any breach of contract or Trust rules. Where employees are unable or have been advised not to attend a disciplinary hearing or say anything about a pending criminal matter, we may have to take a decision based on the evidence available to us.

3.7.3 A criminal investigation, charge or conviction relating to conduct outside work may be treated as a disciplinary matter if we consider that it is relevant to an employee's employment.

3.7.4 Where a criminal charge or conviction is enough to amount to gross misconduct capable of dismissal, we may await the outcome of a police investigation before deciding whether to dismiss and the factors we will take into account are (by way of example and without limitation):

- Whether we have any evidence that the offence was committed;
- Whether in all the circumstances, we have a genuine belief in the employee's guilt;
- How long the police investigation is likely to take;
- Whether any information can be shared with us by the employee and/or the police;
- Whether the employee has been detained;
- How long it will take for the case to go to trial;
- Business need, size of capacity of our resources and ability (financial and operational) to hold the post open until the conclusion of the criminal process.

3.7.5 It is important to note that any internal disciplinary investigation is undertaken on the civil burden of proof (on the balance of probabilities), and not the criminal burden of proof (beyond all reasonable doubt). In the event that a criminal investigation does not result in a formal conviction, the Trust will review the facts of the case, and may ultimately still proceed with the disciplinary investigation, which may still result in a formal sanction being applied.

3.8 Suspension

3.8.1 In some circumstances, we may need to suspend an employee from work. The suspension will be for no longer than is necessary to investigate the allegations and we will confirm the arrangements to the employee in writing. While suspended, employees should not visit our premises or contact any of our clients, customers, suppliers, contractors, or staff, unless they have been authorised to do so by their line manager. Line managers should seek advice from HR before authorising.

3.8.2 Suspension of this kind is not a disciplinary sanction and does not imply that any decision has already been made about the allegation(s). Employees will continue to receive their full salary and benefits during the period of suspension.

3.8.3 We will confirm any decision to suspend and the terms of the suspension in writing to the employee. Suspensions will be reviewed on a fortnightly basis by the Investigating Officer, who will be responsible for communicating the outcome of their review to the suspended employee. Regular reviews will ensure that any information obtained during the course of the investigation, which may impact on the need for continued suspension, is acted on promptly.

3.9 Communicating with suspended employees

- 3.9.1 During suspension an employee must remain contactable and must be available to attend any investigatory meetings within normal working hours unless there are specific circumstances which prevent this.
- 3.9.2 We will keep in touch with suspended employees by telephone and in writing to their home address. For this and other reasons, employees must keep their personnel records up to date (via HR) at all times.
- 3.9.3 Employees will usually be permitted to maintain access to their Trust email account and should monitor it for (i) urgent communications from us during their suspension and (ii) any work that needs to be forwarded to a colleague to action in their absence. The Trust will only suspend email access if the circumstances warrant it. Employees must not use their Trust email account to breach the rules set out within this policy or to breach any other instructions that we may give to them. Trust email accounts are generally monitored and will be specifically monitored during any period of suspension. If any employee is found to have breached the rule set out within this paragraph or the rules within this document, they will be subject to disciplinary action.

3.10 Support for Employees going through a Disciplinary Process.

- 3.10.1 Employees can self-refer themselves to occupational health for support at any time. Occupational health is able to offer a range of external services, including counselling.
- 3.10.2 If allegations are raised against an employee under the disciplinary procedure, including any allegations which may be linked to sexual safety concerns, we will appoint a Welfare Officer to stay in touch with the employee to enquire about their welfare and offer support during any period of suspension.
- 3.10.3 The role of the Welfare Officer is to provide independent, impartial welfare support during the course of the investigation, however the Welfare Officer should not be present at formal investigation meetings as their role does not include providing procedural advice. Such advice can be provided by the individual's nominated staff side/ trade union representative or chosen workplace colleague.

3.11 Notification of a Hearing

- 3.11.1 Promptly upon completion of any investigation, if we consider there are grounds for disciplinary action, the employee will be required to attend a disciplinary hearing. The Investigating Officer is responsible for communicating this to the employee, which will allow the employee to begin preparations for the hearing.
- 3.11.2 We will inform the employees in writing of the allegations against them, the basis for those allegations, and what the likely range of consequences will be if we decide after the hearing that the allegations are true. We will also include the following where appropriate:
- 3.11.3 a summary of relevant information gathered during the investigation;
- 3.11.4 a copy of any relevant documents which will be used at the disciplinary hearing;
- 3.11.5 a copy of any relevant witness statements, except where a witness' identity is to be kept confidential, in which case we will give employees as much information as possible while maintaining confidentiality.
- 3.11.6 We will give an employee written notice of the date, time and place of the disciplinary hearing. The hearing will be held as soon as reasonably practicable, but employees will be given a reasonable amount of time, at least 7 days, to prepare their case, based on the information we have given them. In exceptional circumstances, and in the spirit of the Partnership Agreement between the Trust and recognised Trade Unions, the Trust may extend this timescale to allow appropriate representation and preparation (for the Trade

Union Representative).

3.12 Sickness absence during any stage of the procedure

- 3.12.1 If an employee becomes ill during any part of the procedure and feels unable to participate in the investigation or disciplinary process, we will contact them to understand the reason for their sickness and the prognosis.
- 3.12.2 The Trust's absence management procedure will be followed in the usual way, with a view to getting the employee back into work so that the disciplinary proceedings can be concluded with their participation.
- 3.12.3 If an employee becomes ill during suspension, they must follow the usual protocols regarding sickness absence, reporting and certification, and the individual will be supported in line with the Sickness Absence Policy, however the suspension remains in place.
- 3.12.4 We will take a decision on whether to postpone the investigation meeting or disciplinary hearing. If we feel that it would be detrimental to the successful operation of the Trust, our reputation, any safeguarding matter, or any criminal matter to postpone any part of an investigation or a hearing, we may decide to hold it in an employee's absence. In any such situation, we will liaise with the employee to ensure, as far as possible, that we can offset any potential unfairness in any such decision. For example, if an absence is expected to be lengthy, we may ask an employee to submit representations in writing.
- 3.12.5 Disciplinary situations can inevitably cause an employee to feel worried or concerned. The Trust is committed to resolving disciplinary situations promptly in order to reduce the period of time that an employee needs to feel worried or concerned about a disciplinary process.
- 3.12.6 Employees are encouraged to engage with us in doing so, so that the situation can be promptly addressed, and they can start to feel better. Employees are asked to remember that investigations need to be thorough and can be time consuming. Where there are any delays between an investigation and a hearing, we will keep employees informed, either by telephone or e-mail as appropriate.
- 3.12.7 In the event that the investigation finds no further action is required upon conclusion of the investigation, this should be communicated to the employee by the Investigating Officer as soon as reasonably practicable and should be confirmed in writing.

3.13 Referral to Professional Bodies or Disclosure to Other Agencies

- 3.13.1 Depending on the allegations, where an employee is registered with a professional body, the regulatory body may be notified. This decision will be taken in line with the Trust's Professional Registration Policy.
- 3.13.2 Where allegations concern the safeguarding of children or vulnerable adults, the Trust's Safeguarding lead must be notified without delay. Where appropriate, investigations by the counter fraud team, other agencies such as police or social services, may be carried out separately from investigations under this procedure.
- 3.13.3 Where the employee is employed in a regulated activity and there are substantiated concerns and/or disciplinary action regarding child protection or vulnerable adults, the Trust is required to notify the Disclosure and Barring Service and potentially secondary employers.
- 3.13.4 Generally, a referral will not be made until a formal Disciplinary process is completed, unless it is agreed that public protection would be at risk. Further guidance is available in the Trust's Professional Registration Policy
- 3.13.5 Where cases include serious personal data breaches likely to result in a risk to the rights and freedoms of data subjects, the Trust has a legal duty to report such cases to the

Information Commissioner's Office within 72 hours via the Trust's Information Governance Manager.

3.14 The Right to be accompanied at Disciplinary Hearings

- 3.14.1 Employees may bring a companion to any disciplinary hearing or appeal hearing under this procedure. The companion may be either a trade union representative or a colleague. Employees must inform us of the identity of their chosen companion in good time before the hearing and in accordance with the instructions that they are given in the written invitation to disciplinary hearing/ appeal.
- 3.14.2 A companion is allowed reasonable time off from duties without loss of pay, but no-one is obliged to act as a companion if they do not wish to do so.
- 3.14.3 If an employee's chosen companion is unavailable at the time a meeting is scheduled and will not be available for more than 5 working days afterwards, we may ask the employee to choose someone else.
- 3.14.4 We may, at our discretion, allow an employee to bring a companion who is not a colleague or union representative (for example, a member of the employee's family) if this will help overcome a disability, or if an employee has difficulty understanding English. In the event of any such request, managers and/or members of the Disciplinary Panel should seek advice from HR.

3.15 Procedure at Disciplinary Hearings

- 3.15.1 Disciplinary hearings will be held by two appropriately trained managers, accompanied by an HR representative. An employee and the Trust can agree to proceed with one manager and an HR representative where it is in the interests of expediency to do so (for example, where delays would be caused by unavailability).
- 3.15.2 Employees may bring a companion with them to the disciplinary hearing.
- 3.15.3 If an employee or their companion cannot attend the hearing, the employee should inform us immediately and we will arrange an alternative time. Employees must make every effort to attend the hearing, and failure to attend without good reason may be treated as misconduct in itself. If an employee fails to attend without good reason, or is persistently unable to do so (for example for health reasons), we may have to take a decision based on the available evidence.
- 3.15.4 At the disciplinary hearing, we will go through the allegations against an employee and the evidence that has been gathered. The employee will be able to respond and present any evidence of their own (a copy of this will be asked for in advance). A companion may make representations to us and ask questions but should not answer questions on employee's behalf. Employees may confer privately with their companion at any time during the hearing.
- 3.15.5 Employees may ask relevant witnesses to appear at the hearing, provided they give us sufficient advance notice to arrange their attendance. Employees will be given the opportunity to respond to any information given by a witness. A panel member, the employee, or the Trade Union Representative may ask appropriate questions of a witness subject always to the discretion of the chair. This arrangement seeks to ensure that any questions are asked of witnesses in an appropriate manner.
- 3.15.6 We may adjourn the disciplinary hearing if the panel needs to carry out any further investigations such as re-interviewing witnesses in the light of any new points that the employee may have raised at the hearing. The employee will be given a reasonable opportunity to consider any new information obtained before the hearing is reconvened.
- 3.15.7 We will inform the employee in writing of our decision and our reasons for it, usually within

one week of the disciplinary hearing. Where possible we will also explain this information to the employee in person and where there is no disciplinary sanction this should be communicated to the employee as soon as reasonably practicable.

3.16 Disciplinary Sanctions

3.16.1 The usual penalties for misconduct are set out below. No sanction should be imposed without a hearing. We aim to treat all employees fairly and consistently, and a penalty imposed on another employee for similar misconduct will usually be taken into account but should not be treated as a precedent. Each case will be assessed on its own merits.

3.16.2 If, following a disciplinary hearing, the panel is satisfied that there is no further action required, the individual will be notified of this at the hearing if possible, and in writing within one week of the hearing.

3.16.3 Employees will not normally be dismissed for a first act of misconduct, unless we decide it amounts to gross misconduct or for some other substantial reason or employees have not yet completed their probationary period.

3.16.4 **Stage 1 - First written warning.** A first written warning may be imposed where an employee's conduct is considered to be unsatisfactory and of a minor nature, first act of misconduct or where there are no other active written warnings on employee's disciplinary record.

3.16.5 **Stage 2 - Final written warning.** A final written warning may be considered appropriate where there is:

- misconduct where there is already an active written warning on an employee's record;
- misconduct that we consider sufficiently serious to warrant a final written warning even though there are no other active warnings on an employee's record;
- or
- gross misconduct where there are mitigating circumstances or where dismissal is not appropriate.

3.16.6 **Stage 3 - Dismissal.** Dismissal may be considered appropriate for:

- any misconduct during an employee's probationary period;
- further misconduct where there is an active final written warning on an employee's record; or
- any gross misconduct regardless of whether there are active warnings on employee's record. Gross misconduct will usually result in immediate dismissal without notice or payment in lieu of notice (summary dismissal). Examples of gross misconduct are set out in our Disciplinary Rules, which are at Appendix 1 of this document.

Alternatives to dismissal.

In some cases we may at our discretion consider an alternative to dismissal.. Examples include:

- Demotion (either on a temporary, but usually on a permanent basis).
- Transfer to another department or job.

- Loss of seniority.
- Reduction in pay.
- A period of further training or retraining and support.

3.17 The Effect of a Warning

- 3.17.1 Written warnings will set out the nature of the misconduct, the change in behaviour required, the period for which the warning will remain active, and the likely consequences of further misconduct in that active period.
- 3.17.2 A first written warning will usually remain active for 6 months and a final written warning will usually remain active for 12 months. In cases of gross misconduct or exceptional cases verging on gross misconduct, a final written warning may be extended to 24 months. This is most likely where an employee has a history of allowing their conduct to lapse just after the expiry of previous warnings.
- 3.17.3 An employee's conduct will be reviewed during the life of a warning and if it has not improved sufficiently, we may decide to extend the active period or take further disciplinary action.
- 3.17.4 After the active period, the warning will remain permanently on an employee's personal file but will be disregarded in deciding the outcome of future disciplinary proceedings. This does not mean that they will be irrelevant to future proceedings.

4 APPEALS

- 4.1 An employee has the right of appeal in line with the Trust's Appeal Procedure. An appeal should be made in writing within 14 days of receipt of the outcome letter.

5 STATEMENT ON POLICY IMPLEMENTATION [REQUIRED, DO NOT DELETE]

- 5.1 Upon approval, this policy will be uploaded to the policy portal and communicated to staff via The Update on Siren.
- 5.2 All managers involved in using this policy – whether informal or formal stages (up to and including participation on disciplinary panels) must attend appropriate training to ensure they are aware of the policy and their role and responsibilities.
- 5.3 Training will also be provided to trade union colleagues who are involved in supporting employees through this policy.
- 5.4 Refresher training will be provided at regular intervals to ensure all individuals involved remain up to date with any legislative changes on an on- going basis.
- 5.5 Any questions or requests for further training should be addressed to the Head of HR in the first instance.

6 STATEMENT ON EQUALITY AND DIVERSITY [REQUIRED, DO NOT DELETE]

- 6.1 The Trust is committed to providing equality of opportunity. Further details of our aims and objectives are outlined in our Equality Plan – One Service for All.
- 6.2 This policy has been assessed to identify any potential for adverse or positive impact on specific groups of people protected by the Equality Act 2010 and does not discriminate either directly or indirectly. In applying this policy, we have considered eliminating unlawful discrimination, promoting equality of opportunity and promoting good relations between people from diverse

groups. Any issues highlighted in the assessment have been considered and incorporated into the policy and approved by the Lead Director and relevant committee.

7 STATEMENT ON CONSULTATION [REQUIRED, DO NOT DELETE]

- 7.1 This policy has been reviewed in consultation with [list here any individuals or groups who were consulted during the drafting of this policy]
- 7.2 A summary of the consultation output and any subsequent amendments to the policy content was shared with the Policy Review Group as part of the policy approval process.

8 STATEMENT ON POLICY IMPLEMENTATION [REQUIRED, DO NOT DELETE]

- 8.1 Upon approval, this policy will be uploaded to the policy portal and communicated to staff via The Update on Siren.
- 8.2 List any additional measures needed to ensure the policy is implemented and any training that may be available.

9 STATEMENT ON EQUALITY AND DIVERSITY [REQUIRED, DO NOT DELETE]

- 9.1 The Trust is committed to providing equality of opportunity. Further details of our aims and objectives are outlined in our Equality Plan – One Service for All.
- 9.2 This policy has been assessed to identify any potential for adverse or positive impact on specific groups of people protected by the Equality Act 2010 and does not discriminate either directly or indirectly. In applying this policy, we have considered eliminating unlawful discrimination, promoting equality of opportunity and promoting good relations between people from diverse groups. Any issues highlighted in the assessment have been considered and incorporated into the policy and approved by the Lead Director and relevant committee.

10 STATEMENT ON CONSULTATION [REQUIRED, DO NOT DELETE]

- 10.1 This policy has been reviewed in consultation with JCCPSG, JCC and EMG
- 10.2 A summary of the consultation output and any subsequent amendments to the policy content was shared with the Policy Review Group/JCC as part of the policy approval process.

RESPONSIBILITIES	
EXECUTIVE MANAGEMENT GROUP (EMG)	EMG approves all organisational policy.
POLICY REVIEW GROUP (PRG)	PRG reviews all organisational policies (except people-related policies) and departmental procedures. PRG recommends all organisational policies to EMG for approval.
JOINT CONSULTATIVE COMMITTEE (JCC)	JCC reviews all <i>people-related</i> policies and procedures. JCC recommends people-related policies to EMG for approval.
EXECUTIVE DIRECTORS	Executive Directors are responsible for ensuring policies are communicated and implemented within their functions. They also

	approve departmental procedures once assurance is received from the Policy Review Group that the procedure is robust and fit for purpose.
MANAGERS	Managers have a responsibility to ensure their teams are aware of and comply with all organisational policy.
EXECUTIVE TEAM	Our Executive Team has delegated day to day responsibility for the implementation of this policy and for the regular review of the policy to the Head of Human Resources and Organisational Development.
TRADE UNION COLLEAGUES	Trade Union colleagues are expected to collaborate on the development of people-related policies and procedures via the JCC policy sub-group and upon approval, support their implementation among trade union members.
ALL COLLEAGUES	All colleagues are expected to be familiar with and comply with the provisions of this policy. Colleagues have a responsibility to conduct themselves in a manner which reflects the NEAS values of Compassion, Accountability and Responsibility, Respect and Excellence and Innovation and to speak up where they see non-compliance with policy.

GLOSSARY OF KEY TERMS/DEFINITIONS	
SSP	Statutory Sick Pay
DBS	Disclosure and Barring Service

MISCELLANEOUS	
REFERENCES	<p>This document refers to the following guidance, including national and international standards:</p> <ul style="list-style-type: none"> • General Data Protection Regulations (GDPR) 2018 • UK General Data Protection Regulations (GDPR) 2021 • ACAS: http://www.acas.or.uk/disciplinary-and-grievance-procedures • Dignity at Work Policy (POL-CE-ED-6) • Professional Registration Policy (POL-WOD-HR-2)
RELATED DOCUMENTS	•
KEYWORDS	<ul style="list-style-type: none"> • Conduct • Gross Misconduct • Warning • Suspension • Dismissal • Disciplinary • Investigation • Support • Confidentiality • Allegations

MONITORING OF POLICY COMPLIANCE					
Policy Statement	KPI	Method	Who By	Committee/Group	Frequency
Investigation and Disciplinary process.	Volume and timeliness of cases.	Metrics Report	HR Team	People and Development Committee	Bi Monthly
Whole Disciplinary Policy	Fair and robust application of this policy.	Case Reviews	HR Team, Managers and Trade Union representatives	N/A	As necessary

VERSION CONTROL				
Version No.	Documentation Section/Page No.	Description of Change and Rationale	Author/Reviewer	Date Revised
02	Whole Document	Full Review	K Forsyth	October 2015
03	Appendix 1 Gross Misconduct	Appendix 1 – new point 5.28 to include a stand- alone act of gross misconduct to enable disciplinary action to be taken against those who subject whistle-blowers' to a detriment (builds upon the existing provision which enables the Trust to discipline an individual who victimises a whistle-blower). Amendment to section 5.29 to complement new section 5.28.	K Forsyth	November 2016
04	All	Full review completed. Minor amendments to match current organisational structure/governance.	L.Cowan	Sep-20
05	All	Clarification of informal step of the process, that an outcome can be no sanction, the process should a Trade Union representative be subject to investigation, and timescales.	J.Brown	Jun-21

Appendix 2

Disciplinary Rules and Examples of Unsatisfactory Conduct

Employees are required to be aware of the staff Code of Conduct, breach of which will lead to either discussions with a line manager under the informal stage of this policy or potentially give rise to more serious misconduct or gross misconduct as set out within the Code.

The following are examples matters that will normally be regarded as minor (informal) breaches of conduct which will be dealt with via a discussion with the line manager in the first instance:

- Regular lateness
- Failing to comply with uniform requirements (where a uniform is to be worn)
- Minor cases of disruptive behaviour towards colleagues or within the office environment, e.g. being overly loud in a shared office or frequent, disruptive chatting

This list is intended as a guide and is not exhaustive

The following are examples of matters that will normally be regarded as **misconduct** and will be dealt with under our Disciplinary Procedure:

- Minor breaches of our policies and procedures, including the Sickness Absence Reporting Procedure and Social Networking Policy;
- Minor breaches of the employment contract;
- Failure to follow a reasonable instruction;
- Damage to, or unauthorised use of, our property;
- Poor timekeeping;
- Minor cases of inappropriate patient care (for example, where a service user complains about the service and an employee is found to have been at fault in respect of conduct that is not so serious to be gross misconduct);
- Minor breaches of health and safety and hygiene rules, protocols or regulations;
- Actions that bring the Trust into disrepute, where there is a risk of reputational damage or the damage is minor;
- Time wasting;
- Breaches of our rules, protocols or procedures on driving;
- Unauthorised absence from work;
- Excessive use of our telephones for personal calls;
- Excessive personal e-mail or internet usage;
- Obscene language or other offensive behaviour;
- Negligence in the performance of duties; or
- Smoking in no-smoking areas, while on duty or on Trust premises.

This list is intended as a guide and is not exhaustive.

Gross misconduct is a serious breach of contract and includes misconduct which, in our opinion, is likely to prejudice our business or reputation or irreparably damage the working relationship and trust between us. Gross misconduct will be dealt with under our Disciplinary Procedure and will normally lead to dismissal without notice or pay in lieu of notice (summary dismissal).

The following are examples of matters that are normally regarded as **gross misconduct**:

Any misconduct that appears on the list of misconduct set above (or is of a similar nature to that which appears on the list above) but is more repetitive,

- serious or aggravating in nature to the extent that it cannot be described as 'minor';
- Gross disregard for patient care;
- Theft, or fraud, forgery or other dishonesty, including fabrication of expense claims and time sheets and dishonest occasions of absence;
- Physical violence or bullying;
- Deliberate damage to our buildings, fittings, property, equipment or vehicles or the property of a colleague, service user or visitor;
- Serious misuse of our property or name;
- Deliberately accessing internet sites to access inappropriate and/or offensive material, for example pornographic, offensive or obscene material, while at work or on any of our sites;
- Repeated or serious failure to obey instructions, or any other serious act of insubordination
- Unlawful discrimination or harassment;
- Bringing the Trust into serious disrepute;
- Being under the influence of alcohol, illegal drugs or other substances during working hours, or outside of working hours in circumstances in which we deem it appropriate to treat the behaviour as gross misconduct;
- Causing loss, damage or injury through serious negligence;
- Serious or repeated breach of health and safety rules or serious misuse of safety equipment
- Unauthorised use or disclosure of confidential information or failure to ensure that confidential information in your possession is kept secure;
- Accepting or offering a bribe or other secret payment or other breach of our Anti-corruption and bribery policy;
- Accepting a gift from a service user, supplier, contractor or other third party in connection with your employment without prior consent from your line manager;
- Conviction of a criminal offence that in our opinion may affect our reputation or our relationships with our staff, customers or the public, or otherwise affects your suitability to continue to work for us;
- Possession, use, supply or attempted supply of illegal drugs;
- Serious neglect of duties, or a serious or deliberate breach of your contract, professional obligations or operating procedures
- Knowing breach of statutory rules affecting your work;
- Unauthorised use, processing or disclosure of personal data contrary to our Data Protection Policy;
- Harassment of, or discrimination against employees, contractors, service users or members of the public, related to a protected characteristic under the Equality Act (i.e.,

maternity, gender, marital or civil partner status, gender identity, race, disability, religion or belief, or age)

- Refusal to disclose any of the information required by your employment or any other information that may have a bearing on the performance of your duties or fitness to practice;
- Giving false information as to qualifications or entitlement to work (including immigration status) in order to gain employment or other benefits;
- Knowingly taking parental, shared parental, paternity or adoption leave when not eligible to do so or for a purpose other than supporting a child;
- Making a disclosure of false or misleading information under our Whistleblowing Policy maliciously, for personal gain, or otherwise in bad faith;
- Making untrue allegations in bad faith against a colleague;
- Victimising any colleague who works or has worked in the NHS, or for an independent organisation that provides NHS services (including agency workers, temporary workers, students, volunteers and governors) or subjecting any of those persons to a detriment for raising concerns under our Whistleblowing Policy;
- Victimising a colleague who has made a complaint or given evidence or information under, Anti-corruption and Bribery Policy, Dignity at Work Policy, Whistleblowing Policy, Grievance Policy & Procedure, Disciplinary Policy & Procedure or otherwise;
- Serious misuse of our information technology systems (including misuse of developed or licensed software, use of unauthorised software and misuse of e- mail and the internet);
- Undertaking unauthorised paid or unpaid employment during your working hours or while absent on sick leave;
- Unauthorised entry into an area of the premises to which access is prohibited.

Appendix 2

Disciplinary Hearing Procedure Flowchart



