



**Norfolk and Waveney**  
Clinical Commissioning Group

**Norfolk and Waveney CCG**

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# **Disciplinary Policy**

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## Document Control Sheet

This document can only be considered valid when viewed via the CCG's intranet. If this document is printed into hard copy or saved to another location, you must check that the version number on your copy matches that of the one online.

Approved documents are valid for use after their approval date and remain in force beyond any expiry of their review date until a new version is available.

<b>Name of document:</b>	<b>Disciplinary Policy</b>
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<b>Produced by:</b>	This Policy has been prepared and reviewed by the CCG Corporate Affairs team and the Arden & GEM CSU HR Team.
<b>What is it for?</b>	This document is an amended version of the Business Service Authorities (BSA) Policy. The policy aims to encourage employees to achieve and maintain the required standards of conduct, performance and attendance. It ensures fairness and consistency in the treatment of individuals. In cases where an employee fails to attain the required standard the disciplinary policy will be instigated, this may result in disciplinary action.
<b>Evidence base:</b>	Not applicable.
<b>Who is it aimed at and which settings?</b>	The Policy is for use by all CCG staff.
<b>Impact Assessment:</b>	Completed.
<b>Other relevant approved documents:</b>	<a href="#">Managing Performance Policy</a> <a href="#">Absence Management Policy</a> <a href="#">Counter Fraud, Bribery and Corruption Policy</a> <a href="#">Grievance Policy</a> <a href="#">Dignity at Work Policy</a>
<b>References:</b>	<a href="#">Insight the Employee Assistance Programme</a> <a href="#">Data Protection Act 1998</a> <a href="#">Equality Act (2010)</a> <a href="#">ACAS</a> <a href="#">The Nursing and Midwifery Council</a> <a href="#">GMC</a>
<b>Monitoring and Evaluation:</b>	This policy will be monitored and reviewed for effectiveness by the Corporate Affairs team on a regular basis.
<b>Training and competences</b>	The Investigating Officer, panel members and the Welfare Officer should be competent and trained to perform their role
<b>Consultation:</b>	This is an internal document that does not need further engagement or involvement at this time.
<b>Reviewed by:</b>	Staff Involvement Group Senior Management Team Remuneration Committee
<b>Approved by:</b>	Governing Body and Executive Management TEAM
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## Version Control

Revision History	Summary of changes	Author(s)	Version Number
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July 2021	Updated with NHS Improvement and NHS England Guidance - <i>Learning lessons to improve our people practices</i>	Laura Norton AGEM CSU	2
September 2021	Review by SIG and Unison	HR Team	3

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## 1. POLICY STATEMENT

- 1.1 Norfolk and Waveney CCG (hereafter referred to as the CCG) has a Disciplinary Policy which applies to all staff and is in accordance with all legal requirements and ACAS guidance. The policy aims to encourage employees to achieve and maintain the required standards of conduct, behaviour and attendance and is committed to helping people improve and learn from mistakes. It ensures fairness and consistency in the treatment of employees and recognises that in following this guidance we are a caring employer and reflects our organisational and NHS values. In cases where an employee fails to attain the required standard the disciplinary policy will be instigated, this may result in disciplinary action.
- 1.2 The fair treatment of staff supports a culture of fairness, openness and learning in the NHS by creating the conditions where 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? [Appendix B](#) and [Appendix C](#) should be used when deciding to proceed with an investigation or formal process.
- 1.3 The implementation of this policy & procedure must be clear and transparent and not subject to any unfair discriminatory practices; therefore, the CCG seeks to promote and ensure equality and prevent discrimination. Managers should ensure that the disciplinary procedure is applied fairly and consistently. If employees have any concerns in relation to diversity or possible bias they should raise this in writing to the Chair of the CCG Equality, Diversity and Inclusion Group
- 1.4 Decision makers must be mindful of Groupthink. This is a phenomenon that occurs when a group of individuals reaches a consensus without critical reasoning or evaluation of the consequences or alternatives. Groupthink is based on a common desire not to upset the balance of a group of people. This creates a dynamic whereby creativity and individuality tend to be stifled in order to avoid conflict. This policy aims to reduce the likelihood of this.
- 1.5 Disciplinary issues concerning the Chief Executive or Executive Directors will be referred to the Governing Body of the NHS Clinical Commissioning Group (the "CCG"). Cases will be progressed by the Governing Body in accordance with the principles and procedures set out in this policy.
- 1.6 Where an employee's ability to do their job is affected by a lack of skill or knowledge, or ill health, this will be managed by following the [Managing Performance Policy](#) and /or [Absence Management Policy](#).

## 2. PRINCIPLES

- 2.1 Alleged breaches of conduct, behaviour or attendance will be fully investigated before any disciplinary action is taken and wherever possible, the manager will attempt to resolve the matter through informal discussion with the employee.
- 2.2 Managers considering whether an issue should be progressed to a disciplinary hearing should discuss the matter with the Commissioning Support Unit (CSU) Human Resources (HR) Team. Before taking the decision to progress the matter via the formal route managers must follow the Pre-Investigation Checklist at [Appendix B](#).
- 2.3 All cases of suspected fraud within the CCG must initially be referred to the Chief

Finance Officer (CFO) and Anti-Crime Specialist prior to a full investigation being initiated as required under the Standing Financial Instructions. This is to assess the case and exercise discretion as to the need to involve others or whether to allow the matter to be dealt with internally. If the latter is preferred, the following procedure will apply (Please refer to the [Counter Fraud, Bribery and Corruption Policy](#)).

- 2.4 No disciplinary action will be taken against a trade union representative without firstly discussing with the relevant full time branch officer where applicable.
- 2.5 Employees will be informed in writing of the issues causing concern and will be given the opportunity to present their views before any decision is made at a disciplinary hearing.
- 2.6 Employees are entitled to be accompanied at all formal meetings by a Trade Union Representative or work colleague note this right does not extend to being represented by a qualified legal professional.
- 2.7 If the employee has been requested to attend a disciplinary hearing, they must inform the Chair of the Disciplinary Panel of their chosen companion, at least 2 working days in advance of the meeting.
- 2.8 The employee may not insist on being accompanied by a colleague whose presence would prejudice the meeting or who might have a conflict of interest. It would also be unreasonable for an employee to ask to be accompanied by a colleague from a remote location when someone suitably qualified was available on site. Should there be any dispute regarding the chosen companion that cannot be resolved, the matter will be escalated to the CSU HR Team and where a Trade Union is involved contact the relevant regional office/branch officer.
- 2.9 Employees are required to attend all meetings relating to the disciplinary process. If they, or their companion, are unable to attend the arranged meeting, they must give notice and reasons why they are unable to attend. The meeting will then be rescheduled to a mutually convenient time, within 10 working days of the original date wherever possible. However, where an employee fails to attend such meetings without reasonable grounds and the CCG has linked in with the chosen representative/employee to try and arrange an alternative time, then the meeting may be held in the employees absence. The employee will be informed of this in writing.
- 2.10 If an employee has a valid objection to the person appointed to undertake the investigation or to hear the case, they must raise this objection in writing, clearly stating their reasons, to the CSU HR Team.
- 2.11 The level of disciplinary action to be taken will be determined according to the seriousness and nature of the alleged misconduct. Once the formal disciplinary procedure has been initiated subsequent misconduct within the warning period may lead to further, and perhaps more serious, disciplinary action, which may ultimately lead to dismissal.
- 2.12 Warnings are active from the date of issue for the periods detailed in [Part 2](#), Section 7.1, except in exceptional circumstances.
- 2.13 No employee will be dismissed for a first instance of misconduct: summary dismissal may occur in the case of Gross Misconduct.
- 2.14 The employee will have the right of appeal against any disciplinary warning or sanction issued in the formal stages of the procedure. (Please refer to [Part 2](#), Section 6 of the procedure – Appeals).

- 2.15 The CCG will ensure that all managers who are responsible for disciplinary issues are suitably trained and have the necessary knowledge and skills.
- 2.16 Should an employee raise a complaint either under the [Grievance Policy](#) or [the Dignity at Work Policy](#) whilst subject to action under this policy, the disciplinary process may be temporarily suspended in order to deal with the grievance. Where an initial investigation into the complaint, conducted by another manager, finds that the grievance and disciplinary cases are related, it may be appropriate to deal with both issues concurrently. If the grievance complaint is found to have no bearing on the matters being investigated under this policy, then the disciplinary proceedings will continue from the point at which they were suspended. In any event, advice should be sought from the CSU HR Team.
- 2.17 Data is held and destroyed in accordance with the provisions of the [Data Protection Act 1998](#) and any CCG policy which derives from that Act.
- 2.18 All matters relating to any part of this procedure will be treated in strict confidence. Any breach of this confidentiality may render those responsible liable to disciplinary action. However, it must be remembered that legislation requires the accused to be made aware of the allegations against them and the name(s) of those making the allegations, along with witnesses.

### 3. [PROCEDURE](#)

- 3.1 This procedure is detailed in [PART 2](#).

### 4. [SCHEME OF DELEGATION](#)

<b>Informal procedure</b>	Line Manager or equivalent level manager from elsewhere within the organisation.
<b>Formal procedure</b>	Line manager or equivalent level manager from elsewhere within the organisation or the line manager's direct manager if the line manager has been previously involved or implicated (plus CSU HR representative)
<b>Appeal following formal procedure</b>	Line manager's manager or equivalent who has not previously been involved or implicated (plus CSU HR representative)
<b>Dismissal Disciplinary hearings</b>	Chaired by an Associate Director or equivalent plus one other manager and CSU HR representative. (For a hearing where gross misconduct is a possible outcome the panel must have the authority to dismiss)
<b>Appeal against dismissal</b>	Chaired by a Director plus one other manager and CSU HR representative.

## 5. EQUAL OPPORTUNITIES

- 5.1 In applying this policy, the CCG will have due regard for the need to eliminate unlawful discrimination, promote equality of opportunity, and provide for good relations between people of diverse groups, in particular on the grounds of the following characteristics protected by the [Equality Act \(2010\)](#); age, disability, gender, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, and sexual orientation, in addition to offending background, trade union membership, or any other personal characteristic.
- 5.2 As part of the CCG's equal opportunities monitoring, all disciplinary hearings are monitored on a rolling annual basis. Subsequently information may be held on the disciplinary monitoring register longer than the duration of the warning itself. Disciplinary letters/records are removed from a personnel file at their expiry.

## 6. MONITORING AND REVIEW

- 6.1 The policy and procedure will be reviewed periodically by the CSU HR Team in conjunction with operational managers and Trade Union representatives. Where review is necessary due to legislative change, this will happen immediately.
- 6.2 The implementation of this policy will be audited on an annual basis by the Audit Committee and reported to the Governing Body as appropriate.
- 6.3 Board-level oversight mechanisms should be established by which comprehensive data relating to investigation and disciplinary procedures is collated, recorded, and regularly and openly reported at board level. Associated data collation and reporting should include, for example: numbers of procedures; reasons for those procedures; adherence to process; justification for any suspensions/exclusions; decision-making relating to outcomes; impact on patient care and employees. The HR Team will keep an Employee Relations Tracker for this data.

## 7. DATA PROTECTION

- 7.1 In applying this policy, the Organisation will have due regard for the General Data Protection Regulations 2018 and the requirement to process personal data fairly and lawfully and in accordance with the data protection principles. Data Subject Rights and freedoms will be respected, and measures will be in place to enable employees to exercise those rights. Appropriate technical and organisational measures have been designed and implemented to ensure an appropriate level of security is applied to the processing of personal information. Employees will have access to a Data Protection Officer for advice in relation to the processing of their personal information and data protection issues.

## 8. ASSOCIATED LOCAL DOCUMENTATION

- [Managing Stress in the Workplace Policy](#)
- [Grievance Policy](#)
- [Internet and Social Media Policy](#)
- [Substance Misuse Policy](#)



## PART 2 – DISCIPLINE PROCEDURE

### 1. PROCEDURE

1.1 If an employee fails to meet the required standards of behaviour, conduct or attendance, they may be subject to this disciplinary procedure. At all stages the employee will be told of the reason for using the procedure. Management will ensure that the changes in behaviour, conduct or attendance required and the timescales involved are reasonable, achievable and where possible agreed by all parties. Further misconduct, or expiry of the review period without improvement, may lead to progressive disciplinary action which may ultimately result in dismissal. This procedure may also apply where cases of unacceptable conduct take place outside the working environment.

### 2. WELFARE

2.1 Concern for the health and welfare of individuals involved in investigation and disciplinary procedures should be paramount and continually assessed. Appropriate professional occupational health assessments and intervention should be made available to any person who either requests or is identified as requiring such support. Employees should be made aware of [Insight the Employee Assistance Programme](#).

2.2 A Welfare Officer should be allocated to an employee as soon as an issue has been identified and raised with them or the individual has been suspended. The Welfare Officer should be competent and trained to undertake the role and impartial. They must be an employee of the CCG and can be a higher or lower band and someone the employees is comfortable with and not imposed. The employee can suggest who they would like as a Welfare Officer however the suitability can be denied if this person is likely to be involved in later proceedings i.e. chairing a panel, called as a witness or deemed not competent or suitable. In which case an alternative should be agreed upon.

2.3 A Welfare Officer should;

- Be able to act as a first point of contact, keeping the employee in touch with the CCG and checking on their general wellbeing
- Have excellent communications skills, be a good listener who can be supportive, non-judgemental, and removed from the process as far as possible.
- Have time to undertake the role effectively.
- Be able to manage expectations
- Be discrete and respectful of employees right to confidentiality (unless highlighting risk/harm)
- Know how to spot signs of stress and distress and how to escalate
- Be compassionate, having a clinical qualification is useful but not essential

2.4 Where a person who is the subject of an investigation or disciplinary procedure suffers any form of serious harm, whether physical or mental, this should be treated as a 'never event' which therefore is the subject of an immediate independent external investigation commissioned and received by Executive Management Team (EMT). Further, prompt action should be taken in response to the identified harm and its causes.

### **3. COMMUNICATION**

- 3.1 The underlying principle should be that all communication, in whatever form it takes, is timely; comprehensive; unambiguous; sensitive; and compassionate. The Welfare Officer, Investigation Officer, Line Manager and Supporting Manager should establish a process for communicating with the employee. An agreed communication plan should be held and regularly updated by all parties.

### **4. INFORMAL STAGES**

- 4.1 Incidents of potential misconduct will be carefully assessed by the relevant manager, with HR advice, to decide if the matter can be managed informally or whether there are grounds for further investigation and/or formal action.
- 4.2 Where there is an identified failure in performance, the procedure in the [Managing Work Performance Policy](#) will be implemented.
- 4.3 Where levels of attendance are a cause for concern, the procedure in the [Attendance Management Policy](#) will be implemented.
- 4.4 In cases of suspected minor misconduct in relation to conduct or behaviour, the following process will be followed:
- The employee's line manager will speak to the individual, in private, as soon as possible after an issue comes to light. This will be a two-way discussion aimed at establishing the circumstances and encouraging improvement.
  - If, during the discussion, it becomes evident that there is no problem the manager will confirm to the employee that no formal disciplinary action will be taken.
  - Where an improvement in conduct is required, the manager will make sure the employee understands what needs to be done, and over what period of time. The required improvement, the length of the review period and any conditions imposed, will be confirmed in writing following the meeting and the letter will also include the consequences of a failure to improve and how long it will be kept on their personal file. An improvement notice would normally not exceed a 6 month duration.
  - Further meetings will be held to review progress during, and at the end of, the review period. Notes of all meetings will be taken and agreed.
  - If, during the initial discussion, it becomes obvious that the matter may be more serious, the meeting will be adjourned and the employee advised that an investigation may be instigated ([See Appendix B](#)) under the formal stages of the disciplinary procedure.
  - If managed informally there is no right to be accompanied by a trade union representative or workplace colleague to the meeting with the line manager.

### **5. FORMAL STAGES**

- 5.1 The decision to follow a formal procedure must be proportionate and justifiable. Therefore, the checklists at [Appendix B](#) must be completed and followed to commence an investigation and [Appendix C](#) must be completed and followed to consider the recommendations from the investigation and potentially move to a disciplinary hearing.
- 5.2 Before any disciplinary hearing is held, an investigation will take place to establish the facts of the case. This will normally be in the form of fact find meetings where notes will be taken. However, in exceptional circumstances and with advice from the CSU HR Team, other forms of evidence may be sufficient.

## Investigating Officer

- 5.3 The investigating Officer should be selected as per [Appendix B](#). They should be competent and trained to undertake the role, impartial and able to be independent, this does not mean they have to be external to the organisation although in certain situations this may be required.
- 5.4 Any identified or perceived conflicts of interest should be acknowledged and appropriately mitigated within [Appendix B](#).
- 5.5 The Investigating Officer will be supported by a Human Resources Business Partner (HRBP) who will provide an ACAS based template to guide them through the investigation process.
- 5.6 The investigator should follow best practice as detailed by the following organisations;
- [ACAS](#)
  - [The Nursing and Midwifery Council](#) (NMC) has guidance to apply for nurses registered with the NMC
  - Although the guidance below relates to doctors the principles within the [GMC](#) document are useful and should always be adhered to when dealing with a doctor registered with the GMC.
- 5.7 The Investigating Officer should be provided with the resources to enable them to fully support the timely and thorough completion of their role.
- 5.8 Normally the investigation process should take no longer than 4 weeks. Where it is not possible to complete the process within this timescale, the reasons for the delay will be recorded and the expected date for completion of the investigation process communicated in writing to all parties involved.
- 5.9 An employee is entitled to be accompanied at the investigation meeting by a Trade Union Representative or a workplace colleague note this right does not extend to being accompanied by a qualified legal professional.

## Managers Authorised to Take Disciplinary Action

- 5.10 To ensure fairness and impartiality, where reasonably practicable, the disciplinary panel should consist of no less than two members. The meeting will be chaired by a manager who has not been previously involved in the matter, and either another impartial manager and a CSU HR representative. Panel members should be assessed as competent and trained to fulfil their role and any conflicts of interest thoroughly considered ([See Appendix C](#)). Where dismissal is a possibility the disciplinary hearing will be conducted by a manager authorised to dismiss and a CSU HR representative. (Please refer to [Part 1](#), Section 4 of the Policy – Scheme of Delegation).
- 5.11 The outcome of a disciplinary hearing will generally fall into one of the following categories: -
- Case dismissed
  - No action required
  - First written warning
  - Final written warning
  - Recommend Dismissal

At all stages a panel should consider whether an employee is required to attend counselling or retraining

Also see 5.19 of the procedure for Potential Additional Sanctions.

### **First Written Warning**

5.12 If the issue is serious, a First Written Warning will normally be issued and will be kept on the employee's personal file for 12 months. A copy of the written warning will be kept on file but should be disregarded for disciplinary purposes after 12 months from the date of issue.

### **Final Written Warning**

5.13 If the issue is more serious or if there is still an active First Written Warning in place and insufficient improvement has been made or further misconduct occurs, a Final Written Warning will normally be issued and will be kept on the employee's personal file for 24 months. A copy of the written warning will be kept on file but should be disregarded for disciplinary purposes after 24 months from the date of issue.

### **Dismissal with Notice**

5.14 If, within 12 months of the issue of a Final Written Warning, further misconduct occurs or insufficient improvement has been made, the employee will normally be dismissed with notice.

5.15 The employee will be provided with written reasons for dismissal, the date on which the employment will terminate, their entitlement to pay, and the right of appeal. (Please refer to Part 2, Section 6 of the procedure – Appeals).

5.16 The CCG reserves the right to make a payment in lieu of notice.

### **Summary Dismissal**

5.17 Where behaviour or misconduct is sufficiently serious to constitute gross misconduct ([See examples in Appendix A](#)) the employee could be summarily dismissed - i.e. without notice. In exceptional cases an alternative sanction may be applied. (Please refer to section 5.19 of the procedure).

5.18 The employee will be provided with written reasons for dismissal, the date on which the employment will terminate and the right of appeal. ([Please refer to Part 2, Section 8 of the procedure – Appeals](#))

### **Potential Additional Sanctions**

5.19 Additional sanctions may be included after full discussion with the CSU HR Team who will be able to advise on the appropriateness, equity and viability of any further sanction. These can include, but are not limited to:

- Demotion or transfer to another job or location
- Deferred increment
- Loss of privileges (e.g. removal of working from home)

## **6. [SUSPENSION](#)**

6.1 This does not constitute disciplinary action or sanction. Suspension is only to be invoked when an individual's continued presence at workplaces themselves/other

person(s) at risk or hampers any investigation. The necessity or otherwise for suspension, will be agreed between the line manager, Associate Director and the CSU HR Team. If an Associate Director is the line manager, they need they require a second Director and HR to support the suspension.

- 6.2 If appropriate, suspension should be effected as soon as possible after the matter to be investigated comes to light or a need for suspension is identified. Suspension will always be on full pay and should be for as brief a period as possible.
- 6.3 We aim to keep suspensions to the smallest time period, preferably no longer than 4 weeks but may be extended in exceptional circumstances. The continued suspension/exclusion of any individual should be subject to regular review/approval from the relevant Director. Employees who are suspended will be informed in writing of the reasons for the suspension.
- 6.4 A Welfare Officer should be provided as soon as an employee is suspended and appropriate support offered see Section 2.
- 6.5 Should it be concluded that no further action is necessary following investigation See Appendix C, a briefing session should be held between the individual, their trade union representative or work colleague if required, and their manager prior to a return to work and appropriate support offered.

## 7. THE DISCIPLINARY HEARING

- 7.1 A disciplinary hearing ([See Appendix D](#)) will normally be held by a panel face to face (virtual meetings should only be in exceptional circumstances) consisting of a manager, who has not been previously involved in the matter, who will act as the Panel Chair. They will be accompanied by another appropriate manager and a CSU HR Representative. The role of a CSU HR Representative will be to provide advice on Human Resources policies and employment legislation and to ask questions to obtain clarification on any issues that are discussed, or new relevant information disclosed. (Please refer to Part 1, Section 4 of the Policy – [Scheme of Delegation](#)).
- 7.2 Before the disciplinary hearing the employee will be advised in writing of the purpose of the meeting and details of the complaint or allegation being considered, covering all issues to be discussed. The individual will be given a minimum of 5 working days notice of the disciplinary hearing. If the individual, or their chosen companion, is not available to attend on the date proposed, the CCG will endeavour to offer an alternative reasonable date within 10 working days of the original date wherever possible. Note: This meeting should normally only be re-arranged once, however circumstances may dictate further re-arrangements up to 3 revised dates (this is the exception and based on individual circumstances)
- 7.3 Should either party wish to call any witnesses to the disciplinary hearing they must give at least 2 working days notice to the disciplinary panel The employee should share the name of any witnesses they wish to attend with HR at the earliest opportunity so they can be advised of the hearing date.
- 7.4 All relevant facts and evidence will be made available to the employee at 10 working days prior to the disciplinary hearing. Additional information gathered by the employee, that they wish to present at the meeting, must also be made available to the disciplinary panel at least 2 working days prior to the meeting.
- 7.5 Either party may present evidence including details of previous relevant warnings, witness statements, call witnesses and have the opportunity to ask questions.

- 7.6 Adjournments may be called by the panel at any time during the hearing should new facts emerge which require investigation or clarification. If the employee becomes distressed an adjournment may be called in order for them to regain their composure. Should the employee be unable to continue, the meeting will be adjourned to a later date.
- 7.7 An adjournment must be held in order that there can be a period of dispassionate reflection by the disciplinary panel to consider what action, if any, is to be taken. Where possible, both parties will be verbally informed of the outcome after the adjournment.
- 7.8 The employee will be advised in writing of the outcome of the disciplinary hearing within 7 working days unless a longer period is specified and can be justified. If disciplinary action is taken, the employee will be informed of the required improvements which are necessary and if applicable details of timescales for achievement, the duration of the warning and the consequence of a failure to improve performance as required, in line with Section 5.11 The letter must include the date of the disciplinary hearing, the reason for issuing the warning as well as details of any sanctions which may be imposed. It should also be noted whether the employee invoked their right to be accompanied. The right of appeal will also be included.

## 8. APPEALS

- 8.1 An employee in receipt of a disciplinary warning or notice of dismissal has the right of appeal.
- 8.2 Appeals, outlining the grounds on which the appeal is being made, must be lodged in writing to the person specified in the notification letter within 5 working days of the receipt of the written notice of disciplinary action or dismissal. The letter must include details of their grounds for appeal. In exceptional circumstances this period may be extended.
- 8.3 The employee must submit details of their grounds for appeal, plus any new evidence they wish to present, to the appeal hearing panel at least 2 working days prior to the appeal meeting.
- 8.4 Appeals will be heard within 5 weeks of receipt of the letter requesting the appeal but either party may, with the consent of the other and in exceptional circumstances, be entitled to extend this period.
- 8.5 The employee must be given at least 5 working day's notice of the date of the appeal hearing.
- 8.6 The Appeals Hearing Procedure ([Appendix E](#)) must be followed.
- 8.7 Appeals will normally be heard by a more senior manager to the person taking the first instance disciplinary action unless directed otherwise by the Chief Officer. All appeals will include a representative from the CSU HR Team wherever possible.
- 8.8 The employee will have the right to be accompanied at the appeal hearing by either a trade union representative or workplace colleague.
- 8.9 Both parties must provide to the Appeal Hearing Panel, a full written statement of case including the grounds upon which the appeal is presented/resisted, with copies of any documents the party concerned intends to use in evidence, and, the identities of any witnesses the party concerned intends to call, at least 2 working days prior to the

Appeal Hearing.

8.10 The decision of the panel will be communicated to both parties verbally, following the adjournment wherever possible, and in any case will be confirmed later in writing (again to either party), no later than 5 working days after the Appeal Hearing.

8.11 The decision of the appeal panel is final.

## **9. DURATION OF WARNING / RECORDS**

9.1 The duration of warnings will normally be as follows:

- First written warning           between 6 - 12 months
- Final written warning           12 months

9.2 A copy of the warnings will be kept on file but should be disregarded for disciplinary purposes after 12/24 months from the date of issue.

## **10. RECORDING OF MEETINGS**

10.1 Only in certain limited circumstances may meetings be electronically recorded, and only with the prior express agreement of all parties.

## APPENDIX A: EXAMPLES OF GROSS MISCONDUCT

Please note: this list is not exhaustive and simply gives examples. There may be other examples of gross misconduct.

- Behaviour bringing the CCG into disrepute
- Physical violence or intimidating conduct or behaviour
- Contravention of the organisations Equality and Diversity policy, including bullying and harassment
- Fraud or falsification of records (e.g. application forms, CVs, sickness forms, overtime and expenses claims)
- Theft or fraudulent misuse of the organisation's property or name (e.g. phones, cars or computers)
- Deliberate damage to organisations property
- Incapability to work through substance/alcohol/non -prescription drug misuse Substance Misuse Policy
- Negligence which causes loss or damage to organisations property or injury to other personnel
- Illegal activity on the organisation's premises or with the organisation's property
- Significant breach of health and safety regulations
- Significant breaches of confidentiality or information governance
- Soliciting or accepting a bribe or secret commission
- Abuse of email or internet facilities and/or other methods of communication and contravention of internal divisional policies in place this includes gambling at work see Internet and Social Media Policy
- Sharing commercially sensitive business data/intellectual property rights outside of the Organisation
- Serious breach of CCG policy or procedures



## APPENDIX B: PRE - INVESTIGATION CHECKLIST

<b>Employee Name:</b>		<b>Job Title</b>	
<b>Department:</b>		<b>Job Band</b>	
<b>Line Manager Name:</b>			
<b>Name of Supporting HR Business Partner:</b>			
<b>Details of incident (including date)</b>			
<b>How did you become aware of the incident?</b>			

### 1. Have you asked the following questions before deciding to investigate?

a. Is it a serious allegation (see Disciplinary Policy Appendix A for examples)	Yes / No
b. Does the application of a formal procedure represent a proportionate and justifiable response (i.e. have other potential responses and remedies, short of formal intervention, been fully assessed before being discounted)?	Yes / No Provide rationale below for either answer
Rationale:	
c. Why do you consider this a serious allegation? (impact on service user, policy breach, code breach, impacts standard/team etc)	
Rationale:	
d. Did the employee knowingly or unreasonably cause the incident/breach the policy	Yes / No / Unsure
Rationale:	
e. Would another employee (in the same situation/at similar level) act in similar manner?	Yes / No / Unsure Provide rationale below for either answer
Rationale:	
f. How are you ensuring that independence and objectivity is maintained at this stage of the process?	
Rationale:	
g. Is there sufficient understanding of the issues or concerns, and the circumstances relating to them, to justify the initiation of formal action	Yes / No
Rationale:	

h. For any current case that is concluding, where it is possible that a sanction will be applied, are similar questions being considered? Contact HR before answering	Yes / No current cases

**2. Have you considered how the employee will be impacted and supported?**

i. Have you considered the likely impact on the health and wellbeing of the individual(s) concerned and on their respective teams and services?
Rationale:
j. What immediate and ongoing direct support will be provided to them and who will be their Welfare Officer? (see Welfare section in the Disciplinary Policy)
Rationale:
Name of Welfare Officer:
k. How will you ensure the dignity of the individual(s) is respected at all times and in all communications, and that your duty of care is not compromised in any way, at any stage? (See Welfare Section and Investigation Officer section in the Disciplinary Policy)
Rationale:

**3. Have you reviewed the employee's knowledge against the behaviour (skills) and determined if they knew of the standards expected?**

	Select an option ✓
The employee does <b>not</b> have the knowledge of standards expected	
The employee <b>does have</b> the knowledge of standards expected	
Rationale:	

**4. How well have you reacted to this situation? Have you as a manager:**

Read and understood the situation well?	Yes / No
Sought to have informal discussions with the employee about this issue or similar issues leading up to this issue and prior to considering disciplinary action?	Yes / No
Raised the concern informally with the member of staff in the same way you would with any other employee?	Yes / No
Rationale:	

**OUTCOME**

**5. If evidence is strong then select one of the following:**

	Select an option ✓
a. If the employee does not have the knowledge of standards expected of them consider a development plan and other recommendations	
b. If the employee has knowledge of standards expected of them but 'has potentially' knowingly/unreasonably caused the incident/breached policy then continue with formal investigation	

**6. Does your Associate Director agree with your recommendation (point 5)?**

<b>Recommendation is supported:</b>	Yes / No
<b>Associate Director/Director Name:</b>	
<b>Signature</b>	
<b>Date:</b>	
<b>Rationale:</b>	

**7. Review Panel: An investigation cannot commence without the Chair and Governance Lead approval.**

<b>Date &amp; Time of Review Panel</b>			
<b>Panel Members</b> <i>(Consider race and diversity of the panel)</i>			
<b>REVIEW PANEL CHAIR: Unrelated Associate Director/Director</b>	<b>Name:</b>	<b>Have any conflicts of interest been acknowledged</b>	Yes / No Provide rationale for either answer
Rationale:			
<b>CCG Governance Lead:</b>	<b>Name:</b>	<b>Have any conflicts of interest been acknowledged</b>	Yes / No Provide rationale for either answer
Rationale:			
<b>HR Business Partner:</b>	<b>Name:</b>	<b>Have any conflicts of interest been acknowledged</b>	Yes / No Provide rationale for either answer
Rationale:			

<b>Is the employee suspended?</b>	Yes / No
<b>Should the suspension status be ended / or applied / re-deployed?</b>	Yes / No

Rationale:

8. What is the review panels outcome?

	<b>Select an option</b> ✓
<b>Progress to formal investigation</b>	
<b>Rationale:</b>	
<b>Have you determined that by carrying out a formal investigation to consider formal disciplinary action against this employee it is consistent with how other employees have been treated for the same or similar misconduct/action?</b>	<b>Yes</b>
<b>Do not progress to formal investigation</b>	
<b>Recommendations:</b>	

**Only complete section 9 if moving to an investigation is supported**

9. What are the terms of reference for the Investigating Officer?

<b>List the terms of reference for the Investigating Officer?</b>	<ul style="list-style-type: none"> <li>•</li> <li>•</li> <li>•</li> </ul>		
<b>Name of Investigating Officer:</b>		<b>Have any conflicts of interest been acknowledged</b>	Yes / No Provide rationale for either answer
<b>Rationale:</b>			
<b>Is the Investigating Officer competent and trained to carry out this role?</b>	Yes / No		
<b>Is the Investigating Officer up to date with their Equality, Diversity and Human Rights training?</b>	Yes / No		
<b>What resources will be allocated to ensure the investigation is conducted fairly and efficiently? (i.e protected time for investigating Officer, admin support etc)</b>			

<b>Name of Welfare Officer: (should have been allocated as soon as issue was raised to the employee)</b>	
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**Please return the completed form to the line manager and supporting HR Business Partner to feedback outcome to the employee with next steps**

<b>To be completed by HR</b>	
<b>Date received</b>	
<b>Logged on employee tracker</b>	
<b>Filed</b>	

## APPENDIX C: POST - INVESTIGATION CHECKLIST

<b>Employee Name:</b>		<b>Job Title</b>	
<b>Department:</b>		<b>Job Band</b>	
<b>Line Manager Name:</b>			
<b>Investigating Officer:</b>			
<b>Name of Supporting HR Business Partner:</b>			
<b>Details of incident: (including date)</b>			
<b>Date Investigation started:</b>		<b>Date Investigation was completed:</b>	

<b>1. What is the outcome of the investigation?</b>		
a. Attach the completed 'Investigation Report'. (Based on ACAS guidance)	Yes / No	
b. Attach the 'Pre-Investigation Checklist'	Yes / No	
c. Are there any welfare issues regarding the named employee? (check with the Welfare Officer before responding)	Yes / No Provide comments below for either answer	
Comments		
d. What is the Investigating Officers recommendation? Select one option		
Informal action	Formal action	No further action
e. What are the specific recommendations against point d (i.e. be specific if a face to face hearing is not appropriate?)		
Informal (i.e. training, coaching, mediation etc)		
Formal action (i.e. initiate a disciplinary hearing, change to policy, further investigation etc)		
No further action (i.e. counselling, mediation, further support)		
f. Is there anything else the review panel should know before they decide on the recommendation?	Yes / No If yes provide comments	
Comments:		

<b>2. Review Panel: Formal Proceedings cannot commence without the following approval.</b>	
<b>(The review panel should have the same Chair and HR as the Pre-Investigation Stage – consider conflicts of interest if panel has changed note in comments*)</b>	
<b>Date &amp; Time of Review Panel</b>	
<b>Panel Members</b> <i>(Consider race and diversity of the panel)</i>	
<b>REVIEW PANEL CHAIR: Associate Director</b>	<b>Name:</b>
<b>Line Manager:</b>	<b>Name:</b>
<b>CCG Governance Lead:</b>	<b>Name:</b>
<b>HR Business Partner:</b>	<b>Name:</b>
<b>Have you determined that by carrying out formal disciplinary action against this employee it is consistent with how other employees have been treated for the same or similar misconduct/action?</b>	<b>Yes</b>
<b>Comments*:</b>	

## OUTCOME

<b>3. If evidence is strong then select one of the following:</b>	
	<b>Select an option</b> ✓
a. <b>Support</b> Investigation Recommendation	
b. <b>Do not support</b> investigation Recommendation	
c. <b>Suggest a variation</b> to the Investigation Recommendation (list variation below) • •	
<b>Is the employee suspended?</b>	
<b>Should the suspension status be ended / or applied / redeployed?</b>	
<b>Rationale:</b>	

**Only complete section 4 if formal action is being taken**

<b>4. Who will be on the disciplinary hearing panel?</b> <i>(Consider race and diversity of the panel)</i>		
<b>Disciplinary Panel Chair</b>	Name:	
	Band:	
	Job Title:	
<b>Disciplinary Panel HR</b>	Name:	
	Job Title:	
<b>Rationale:</b>		
<b>Is the Chair competent and trained to carry out this role?</b>	Yes / No	
<b>Is the Chair up to date with their Equality, Diversity and Human Rights training?</b>	Yes / No	
<b>Is the HR representative competent and trained to carry out this role?</b>	Yes / No	
<b>Is the HR Representative up to date with their Equality, Diversity and Human Rights training?</b>	Yes / No	
<b>Is the Chair able to be independent and objective with any perceived conflicts of interest acknowledged and appropriately mitigated?</b>	Yes / No Provide rationale for either answer	Comments:
<b>Is the HR representative able to be independent and objective with any perceived conflicts of interest acknowledged and appropriately mitigated?</b>	Yes / No Provide rationale for either answer	Comments:
<b>What resources will be allocated to ensure the hearing is conducted fairly and efficiently?</b>	Comments:	
<b>Name of Welfare Officer:</b>		

**Please return the completed form to the line manager and Supporting HRBP to feedback outcome to the employee and next steps**

<b>To be completed by HR</b>	
<b>Date received</b>	
<b>Logged on employee tracker</b>	
<b>Filed</b>	



## **APPENDIX D: CONDUCTING A DISCIPLINARY HEARING**

A disciplinary hearing will normally be held by a panel consisting of a manager, who has not been previously involved in the matter, who will act as the Panel Chair. They will either be accompanied by another appropriate manager or a CSU HR Representative, or in some cases both. Should the attendance of a CSU HR Representative be required, their role will be to provide advice on Human Resources policies and employment legislation and to ask questions to obtain clarification on any issues that are discussed or new relevant information disclosed.

The Disciplinary hearing follow the following stages:

1. Opening the meeting by panel chair.
2. Management side present their case (summary of allegation by the investigating officer), including calling of any witnesses.
3. Employee side, then the disciplinary panel, will have the opportunity to ask questions.
4. Employee side to present their case, including calling of any witnesses.
5. Management side, then the disciplinary panel, will have the opportunity to ask questions.
6. Summing up by management side, then by employee side.
7. Adjournment.
8. Action to be taken (if any).
9. Establishment of a review date (if appropriate).

### **Opening the Disciplinary Hearing**

All employees are entitled to be accompanied by their Trade Union representative or a work colleague note this right does not extend to being accompanied by a qualified legal professional. Where an employee is not accompanied, the employee must be reminded of this right, and if declined, this must be recorded.

Those 'hearing' the disciplinary must introduce those present and outline the reasons for the disciplinary meeting taking place (the reason/s outlined in the invite to disciplinary letter) and the format the meeting will take.

### **Summary of Allegation**

At this stage the investigating officer(s) must summarise the case on behalf of management. The investigating officer presenting the case must adhere to the facts and not introduce opinions, hearsay or issues that have not previously been mentioned. All documentation that will be used as evidence (including previous relevant warnings and witness statements where applicable) will already have been made available to the individual prior to the disciplinary hearing taking place (copies will have been sent with the invite to disciplinary meeting letter).

Should a new matter arise during the course of the disciplinary meeting then the disciplinary panel should adjourn in order that consideration may be given to the appropriateness of the introduction of this new matter. To avoid unnecessary duplication of the process as well as ensuring fairness, it may be more beneficial to adjourn the disciplinary meeting in order that further investigations may be carried out in relation to the new matter.

The aim of the disciplinary meeting is to seek verification and clarification about the issues of concern, through questions. Where it is appropriate to call witnesses, either party may call and question them.

After the employee's line manager/appropriate CCG representative has stated their case the employee will be given the opportunity to ask questions and state their case. The employee's representative will be able to ask questions for clarification purposes.

If the disciplinary hearing is dealing with multiple issues, each issue should be addressed in turn and the employee and/or their representative be allowed to state their case in relation to each issue as it is addressed.

Exploration of any differences in facts, as they appear to the manager and employee should be carried out in a constructive manner in order to gain an understanding of the facts which are, as far as possible, acceptable to both manager and employee.

The investigating officer should remain present during the disciplinary hearing to allow for any questions.

Both parties will be given the opportunity to sum up their case if they so wish. The summing up shall not introduce any new matter. If at any stage new facts are alleged or new evidence produced, the Disciplinary Panel may adjourn the meeting (of its own volition or at the request of one of the parties) for so long as it thinks fit.

### **Adjournment**

Before any decision is taken, it is necessary to adjourn the disciplinary hearing to give adequate consideration to the facts as they have been presented and the responses that have been given to the allegations, including any mitigating circumstances. At this stage both parties will be asked to leave the room and the panel must decide the facts of the case, with advice from an HR representative, where appropriate, and whether the behaviour requires disciplinary action to be taken and if so, at what level.

Where possible, an indication of the length of time of the adjournment should be given, including the reasons for the adjournment, i.e. to consider what action to take, if any.

The disciplinary hearing may also be adjourned to consider other issues, e.g. to direct further investigations to take place or to investigate new information/facts that have been brought to light.

There is no set time for an adjournment and adjournments can be called at any time during the disciplinary meeting, by either party.

Taking disciplinary action is not a matter to be taken lightly and should only be taken if it is to be constructive in attempting to produce the desired behaviour. Managers will also need to consider, if disciplinary action is to be taken, whether any other sanctions will be attached to the warning (see Section 3.13).

### **Action**

When the disciplinary hearing is reconvened the Panel Chair should explain that consideration has been given to all of the issues raised at the beginning of the hearing, and all of the facts and issues raised during the course of the hearing. The Panel Chair must then outline what action, if any, will be taken including any sanctions.

It is important that where a warning/sanction is given, the employee is informed of the length of time it will remain on their record, their right of appeal, the procedure that will be followed in relation to confirming the action in writing and any arrangements for the review of sanctions imposed.

## **APPENDIX E: APPEALS HEARING PROCEDURE**

Appeals will normally be heard by a more senior manager to the person taking the first instance disciplinary action. In cases of dismissal of a Director, the appeal will be heard by a panel of CCG members. All appeals will include a representative of the CSU HR team, in an advisory capacity, wherever possible.

An employee may choose to appeal if, for example:

- They think a finding or penalty is unfair
- New evidence comes to light
- They think the disciplinary procedure was not used correctly

Should either party require an adjournment then this request should be made to the hearing panel, with an indication of the length of time required.

The procedure for an appeal hearing is as follows:

1. The appellant will present their case first, detailing the grounds for their appeal including the calling of any witnesses.
2. The management side will then be able to ask any questions about the case the appellant has presented.
3. The appeal panel members will also have an opportunity to ask any questions.
4. The management side will then be asked to present their case, explaining the reasons for the action taken, including the calling of any witnesses.
5. The appellant may then wish to ask management side any questions about the case.
6. The appeal panel members will also have the opportunity to ask any questions.
7. Both parties will have the chance to sum up their case.
8. There will then be an adjournment when both sides will be asked to leave the room while the appeal panel consider the information they have heard and reach their decision.
9. The decision of the panel will be communicated to both parties verbally, following the adjournment wherever possible, and in any case will be confirmed later in writing (again to either party), no later than 5 working days after the Appeal Hearing.

**APPENDIX F: Equality Impact Assessment for HR07 Disciplinary Policy**

<b>HR Policy</b>	<b>Equality Impact Assessment</b>
<b>Date completed</b>	<b>July 2021</b>

**Step 1: Aims and purpose of the proposal / policy being assessed**  
 (This should reflect what the policy is intending to achieve and how it seeks to achieve, it is this intention that the assessment seeks to measure, consider who benefits and how and who doesn't and why, also consider the impact of associated aims).

The overall purpose of the Disciplinary Policy is to set out the CCG's approach to alleged breaches of conduct, behaviour or attendance. The policy also sets out guidance to staff and managers about their responsibilities in relation to disciplinary management.

<b>Step 2: Screening process for relevance to equality &amp; diversity issues</b>		
<b>Does this proposal / policy have any equality &amp; diversity relevance in the following areas? (This should be considered in relation to the formulation and application of the policy. As far as possible engagement with the relevant staff network groups should take place to identify any potential areas of relevance).</b>	<b>Internally, i.e. relevant to staff or working practices</b>	<b>Externally, i.e. relevant to service delivery</b>
<b>A Age</b>	No Although possible impact for older employees who are more prone to long term conditions and illness	
<b>B Disability</b>	No – adjustments would need to be considered under the Equality Act	
<b>C Gender reassignment</b>	No	
<b>D Marriage and Civil Partnership</b>	No	
<b>E Pregnancy and maternity</b>	No	
<b>F Race</b>	No	
<b>G Religion or belief</b>	No	
<b>H Sex</b>	No	
<b>I Sexual orientation</b>	No	
<b>J Other issues</b>	No	

**Step 3: If you have answered, “Yes”, to any of the protected characteristic boxes in Step 2, a full impact assessment is required**

<b>Are any of the protected characteristic boxes in Step 2 marked “Yes”?</b>	No.
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**Step 4: Examination of available information (sources can include but are not restricted to – ESR data; MI relating to Recruitment /Employee Relations/Attrition; Industry best practice; legal overview; research articles; matters arising from judgements tested during consultation; consider four-fifths rule to assess difference).**

**Step 5: Full Impact Assessment Process**

Step 5a: Consultation Log			
Where are the consultation records stored?			
Step 5a: Consultation Log	Step 5a: Consultation Log	Step 5a: Consultation Log	Step 5a: Consultation Log

**Step 5b: EIA Action Plan: Workforce Impacts (internal)**

Potential issues or impacts (positive and negative)	Activity	Lead	Target date for action	Progress / timescale / monitoring
Age				
Race				
Other issues				

**Step 5c: EIA Action Plan: Service Delivery Impacts (external)**

Potential issues or impacts (positive and negative)	Activity	Lead	Target date for action	Progress/ timescale/ monitoring

**Step 6: Monitoring and review arrangements**

**How will the implementation of the proposal / policy be monitored, and by whom?**  
 The Policy will be monitored by the CCG and HR.

**What is the timetable for monitoring, with dates?**

**Step 7: Public availability of reports / result**

