

Disciplinary Policy

HWHR20

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1. Introduction

- 1.1.** The purpose of this document is to set down Herefordshire and Worcestershire CCG's disciplinary rules and procedures to be followed when standards of conduct give rise to problems which cannot be resolved by advice and encouragement, training, or increased support.
- 1.2.** The CCG is committed to the avoidance of formal disciplinary procedures wherever possible by addressing problems in a timely manner.
- 1.3.** This policy is intended to provide equity, transparency, and consistency in the treatment of staff and, to ensure matters are dealt with promptly.
- 1.4.** This policy is to be read in conjunction with the Management Guidance Document (available from the HR Team) which contains additional process and guidance for staff and managers.

2. Purpose of the Policy

- 2.1.** This policy applies to all staff employed by Herefordshire and Worcestershire CCG. This includes members of the Governing Body and any committees/sub-committees and persons working on behalf of the CCGs.
- 2.2.** This policy provides an agreed framework to enable disciplinary matters to be dealt with appropriately and fairly.
- 2.3.** This policy sets out how the CCG will manage employees in circumstances where their work performance or conduct has fallen below the recognised and acceptable standard. In each case the Line Manager will need to decide whether the issue is related to performance or conduct. A performance issue, also known as capability, will be managed in line with the CCG's Management of Performance at Work Policy and a conduct issue will be managed in line with this policy. An issue raised under one policy can be moved across to the other if, upon investigation, the other policy is more appropriate.
- 2.4.** It is the responsibility of managers to ensure that the employees for whom they are accountable know the standards of work and conduct required. It is also the manager's responsibility to ensure that each employee has received the appropriate induction and has been given adequate training and regular feedback to equip them to carry out the duties of their role.
- 2.5.** In cases of professional incompetence or misconduct, the CCG has a responsibility to notify the appropriate professional or statutory body where there is a potential of gross misconduct.
- 2.6.** If the allegation has criminal or safeguarding implications, there may also be a need to involve the Police and where appropriate the Safeguarding Lead.
- 2.7.** Where conduct is the subject of a criminal investigation, charge, or conviction the CCG will investigate the facts before deciding whether to take formal disciplinary action.

- 2.8. If the allegation concerns potential fraud the matter may be handed over to the local Anti-Fraud Specialist for investigation first and a view established as to whether any other investigation is required.

3. Equality Statement

- 3.1. Herefordshire and Worcestershire CCG aim to design and implement policy documents that meet the diverse needs of our services, population, and workforce, ensuring that none are placed at a disadvantage over others. It takes into account current UK legislative requirements, including the Equality Act 2010 and the Human Rights Act 1998, and promotes equal opportunities for all. This document has been designed to ensure that no-one receives less favourable treatment due to their personal circumstances, i.e. the protected characteristics of their age, disability, sex, gender reassignment, sexual orientation, marriage and civil partnership, race, religion or belief, pregnancy, and maternity. Appropriate consideration has also been given to gender identity, socio-economic status, immigration status and the principles of the Human Rights Act.
- 3.2. In carrying out its functions, Herefordshire and Worcestershire CCG must have due regard to the Public Sector Equality Duty (PSED). This applies to all the activities for which Herefordshire and Worcestershire CCGs are responsible, including policy development, review, and implementation.

4. Principles of the Policy

- 4.1. All staff are required to maintain certain standards of conduct. Any member of staff who fails to maintain acceptable standards of conduct in accordance with their contract of employment, job role requirements and/or the CCG's disciplinary standards, may be subject to disciplinary action. It is essential to handle disciplinary issues effectively to assist and encourage all staff to maintain high standards of conduct and provide a fair and consistent method of dealing with problems that individual staff may have in meeting these standards.
- 4.2. Where a disciplinary issue arises, these will be dealt with promptly and by the appropriate manager with the necessary authority. There should be no unreasonable delay to any part of the process.
- 4.3. Informal action on a one to one basis will be taken to resolve minor conduct issues or to set out standards of behaviour for first time offences where appropriate. For more serious issues or repeated disciplinary issues an investigation will be carried out to establish the facts of the case.
- 4.4. Employees will be informed of the nature of the allegations against them and they will be given the opportunity to state their case in response. No formal disciplinary action will be taken against a member of staff until an investigation has concluded.
- 4.5. At any point in cases of alleged misconduct or gross misconduct it may be necessary to consider suspension. Suspension is not a form of disciplinary action and does not imply any decision about the allegations. Suspension will be for no longer than necessary as set out below.

- 4.6. If other issues are found during the investigation the employee will be notified and if appropriate, they will form part of the same investigation.
- 4.7. Following conclusion of an investigation and where it has been determined that there may be a case to answer there are two potential routes where a disciplinary sanction can be issued: a fast track disciplinary meeting or a disciplinary hearing.
- 4.8. A fast track disciplinary meeting is a less formal disciplinary hearing attended by the member of staff, their representative, the disciplining manager, and a representative from Human Resources. At this meeting sanctions up to and including a final written warning can be issued.
- 4.9. Consideration will only be given to holding a fast track disciplinary meeting where the member of staff has taken responsibility for their actions and accepted the allegations made against them.

5. Roles and Responsibilities

5.1. Executive Leadership Team

The Executive Leadership Team is responsible for ensuring:

- All employees are informed of the terms of the policy and the procedures that apply to them.
- The policy is implemented and operated effectively
- Managerial action is fair and equitable and is monitored effectively

5.2. Employees

The employee is responsible for:

- Maintaining professional conduct at work.
- Ensuring they comply with all CCG policies and procedures.
- Attending meetings as required under this policy and participating in the investigation process.
- Arranging the attendance of their external Trade Union representative or workplace colleague.
- Notifying the manager conducting an investigation of who their representative is and detail of any witnesses prior to any meeting.
- Maintaining confidentiality during and after the application of this policy.

5.3. Line Managers

The line manager is responsible for:

- Ensuring staff are treated fairly and equitably.
- Employees are aware of the required standards of conduct and provided with the necessary training to undertake their roles effectively
- Ensuring the CCG policies and procedures are complied with.
- Ensuring all timescales within this policy are adhered to.
- Maintaining confidentiality during and after the application of this policy.
- Ensuring the employee's health and wellbeing are fully considered during any investigation and beyond and referrals made to occupational health as appropriate.

- To ensure that employees are made aware throughout of the Employee Assistance Programme.
- Ensuring the relevant referrals to the professional body are reported in line with professional guidelines.

5.4. Human Resources

The Human Resources team is responsible for:

- Providing appropriate advice and support to managers in the application of this policy and its supporting Management Guidance Document including relevant training and coaching.
- Ensuring the policy is followed in a fair and equitable manner.
- Ensuring the policy is adhered to and any trends are identified associated with the use of this policy and brought to the attention of the respective senior manager.
- Maintaining confidentiality during and after the application of this policy.
- Ensuring, through dialogue with the manager that the employee's health and wellbeing are fully considered and appropriate support (through Occupational Health and/or the Employee Assistance Programme) is provided to the employee throughout the application of this policy.

5.5. External Trade Union Representatives

The External Trade Union representatives are responsible for:

- External Trade Union representatives have an important role to play in providing advice and support to individual employees who are their members.
- A member of staff under investigation for alleged misconduct or facing formal disciplinary proceedings have the right to be accompanied by an accredited external Trade Union representative from their local branch/ Region or a workplace colleague. Their representative can present evidence on behalf of the employee during any investigation.

5.6. Case Manager

The Case Manager is responsible for:

- Commissioning an investigation into the allegation/s.
- Appointing an Investigating Officer in conjunction with the HR team.
- Determining the terms of reference for the investigation and the focus of the investigation
- Receiving the completed investigation report and reviewing the contents to determine if there is a case to answer.
- The case manager may also consider issues such as the suspension of the employee.
- Monitor progress with the investigation and ensure the timescales set out in this policy are adhered to.

5.7. Investigating Manager

The Investigating Manager is responsible for:

- The investigating manager will investigate the allegations and establish the facts in the case according to the terms of reference set by the Case Manager.
- To meet with the employee concerned and undertake the necessary investigatory interviews, gather statements and data as appropriate.

- The investigating manager will produce an investigation report for the case manager. The report will outline the facts of the case but not determine if there is case to answer.
- The investigating manager can request that they add to the Terms of Reference during the investigation should something significant come to light that is directly associated with the investigation.
- Should the matter proceed to a disciplinary hearing the investigating manager would present the investigation report to a disciplinary panel.

6. Disciplinary Procedures

6.1. Initiating Disciplinary Procedures for misconduct

- 6.1.1. Where an allegation is received by a Line Manager, before informing the employee, the Line Manager will need to be satisfied that the allegation is robust and warrants the use of the disciplinary procedure. This may involve an initial 'fact finding' exercise such as a brief interview with the employees involved, request initial statements and/or supporting documentation. This will not be regarded as a full investigation and will be used to determine whether a full investigation is necessary. The purpose of this is to ensure employees are not subjected to spurious allegations.
- 6.1.2. The findings should be discussed with the appropriate Senior Manager supported by HR Team, to consider if there are sufficient grounds to proceed to a formal investigation. If so, the Senior Manager will Commission a formal investigation and nominate an Investigating Officer. The investigation will be conducted in accordance with the Management Guidance Document associated with this policy.
- 6.1.3. If the facts of the allegation are not in dispute and the employee has accepted allegations made against them either immediately, during, or at the end of an investigation, it is possible for the level of sanction to be agreed without the need for a full disciplinary hearing. Please refer to section 10 of this policy.
- 6.1.4. If on testing the facts it is found that the allegation involve safeguarding or financial concerns then advice should be sought from the HR Team as well as other relevant parties i.e. the appropriate senior manager, the safeguarding team, or NHS Counter Fraud.

6.2. General Misconduct

- 6.2.1. Examples of actions that may be regarded as warranting disciplinary action include but are not limited to:
- a) Unwarranted insubordination by word or act, including failure or refusal to carry out a reasonable request or instruction.
 - b) Unacceptable behaviour including discrimination, bullying and harassment e.g. verbal abuse of colleagues, impoliteness etc.
 - c) Failure to cooperate with an internal investigation.
 - d) Failure to maintain the required standard of dress.
 - e) Poor standard of work where this relates to conduct rather than skill (which should be addressed through the individual performance management procedure).

- f) Unauthorised absence including persistent lateness and non-notification of absence or return to work.
- g) When an employee on sickness absence commits or undertakes an act likely to prejudice their recovery.
- h) Failure to follow the CCG's Management of Sickness Absence Policy.
- i) Misuse of CCG materials and equipment.
- j) Misuse of email, internet, telephone, and photocopying equipment.
- k) Non-attendance for training either mandatory, contractually, or legally required where opportunity to attend has been provided.

6.2.2. In certain circumstances, the examples described above may be sufficiently serious to be regarded as gross misconduct. In these circumstances the employee will be informed whether the allegation, if established, constitutes general or gross misconduct. In the absence of such a statement, alleged general misconduct will be assumed.

6.3. Gross Misconduct

6.3.1. Examples of behaviour that may constitute gross misconduct include but are not limited to:

- a) Theft – any instance of unauthorised possession of property belonging to the CCG, a patient, or employee on CCG premises.
- b) Fraud – any attempt to defraud (or aiding and abetting another person to defraud) the CCG, a patient, or a member of the public in the course of official duties e.g. falsifying time sheets or expenses sheets, making false expense claims, or working while signed off sick.
- c) Assault – any assault upon a patient, member of the public or another employee whilst at work.
- d) Negligence – any act, or failure to act, which threatens the health and safety of a patient, member of the public during the course of official duties including the maladministration of drugs or unauthorised sleeping on duty.
- e) Malicious damage – to property belonging to the CCG, patients, or other employees.
- f) Corruption – receipt of money, goods, favours, or excessive hospitality in respect of services rendered, deemed to improperly influence the duty of an employee.
- g) Being unfit for duty – e.g. through drugs (including alcohol) to be considered in line with the CCG's Substance Misuse policy.
- h) Breach of confidentiality – disclosure of confidential information relating to patients, employees or the CCG obtained directly or indirectly within the course of daily duties. Please refer to the CCG's Raising Concerns at Work Policy.
- i) Discrimination and / or victimisation – discriminating against or victimising a person because of race, colour, ethnic origin, religious belief, gender, sexual orientation, disability, or age.
- j) Bullying and/or harassment – any serious breach of the CCG's Dignity & Respect at Work Policy.
- k) Misuse and/or abuse of the internet / email – serious breaches of CCG's Information Security Policy or Internet and Email Access Policy or use of social networking sites where communications or content published that causes damage to the organisation, and to its employees or any third party's reputation.
- l) Breaches of health and safety regulations, policies, or practices – serious breaches of health and safety regulations, policies and practices that could or do endanger or cause harm to oneself or other people including damage to, neglect of, or misappropriation of safety equipment.

- m) Failure to declare safeguarding measures, arrests, cautions, and convictions obtained in the course of employment with the CCG in accordance with the terms and conditions of employment.

7. Informal Action

7.1. Informal Action

- 7.1.1. Where an employee appears to be failing to meet acceptable standards of work performance, conduct or behaviour, or for minor conduct or to set out standards of behaviour for a first offence, the Line Manager must endeavour to address this by raising the issue with the employee. This is known as a conversation of concern.
- 7.1.2. This approach is informal and is therefore on a **one to one** basis however the Line Manager should seek HR advice prior to instigating. The manager should meet with the employee and discuss concerns which have been identified, the standards which are required and agree how the improvement will be made over a defined period of time. The manager should ascertain if there is any reason for the employee's attitude or behaviour where appropriate support can be offered. Consideration may also be given to such things as personal problems, environment, and the need for further training.
- 7.1.3. Where the discussion identifies a lack of training or knowledge at the root cause, consideration should be given as to whether the matter may be more appropriately handled under the CCG's Management of Performance at Work Policy.
- 7.1.4. The Line Manager will confirm the outcome of the meeting in writing. This may include an agreed action plan with a clear set objectives and reasonable timescales for review. This meeting is not part of a formal process. The employee should, however, be made aware that the formal policy will be followed if the necessary improvement in behaviour, attitude, performance, or conduct is not forthcoming.
- 7.1.5. If the concerns identified are of a potentially serious nature and cannot be resolved by informal action, they will need further investigation in accordance with Section 8 - Formal Investigations.

8. Formal Action

8.1. Formal Investigation

- 8.1.1. In cases of general misconduct, it is accepted that the manager who receives the complaint or has evidence of misconduct may have to "test the facts" which may result in either informal or formal action being taken. Advice should be sought as referred to in Section 6.1 of this policy.
- 8.1.2. In instances involving allegations of serious or gross misconduct, the appropriate manager will commission a formal investigation and appoint an independent Investigating Officer. The Investigating Officer should refer to the Management Guidance Document associated with this policy for guidance on how to conduct an investigation.

- 8.1.3. As part of the investigation, witnesses will be interviewed and asked to provide a signed and dated statement. It will be made clear to witnesses at this stage that their signed statement will be used in the report and that they may be asked to attend a disciplinary hearing. A member of the HR Team will attend all formal investigation interviews.
- 8.1.4. All employees involved in such processes, including witnesses, will be advised that they can have an external Trade Union representative or workplace colleague present if they are asked to attend an investigation interview. The employee will be advised, in advance, of the issue(s) being investigated, including specific details where appropriate. Minutes of the interview will be taken, and a written statement will be provided to the employee who will be asked to sign and date the statement to confirm that it as an accurate record, amending where appropriate.
- 8.1.5. If it becomes necessary to search the work area of an employee during the course of an investigation, the HR Team will be consulted prior to any such action. The search will be restricted to that which is the property of the CCG. Where the employee under investigation is at work, they will be invited to remove all personal property from the area and a record of this will be retained (with a copy to the employee). Searches of the work area should be supervised by at least two members of staff in the presence of the employee and work colleague/ external Trade Union representative.
- 8.1.6. The Investigating Officer will be asked to submit their completed report to the Case Manager who will assess whether there is **a case to answer**. If the Case Manager determines there is no case to answer, the employee will be advised in writing that no further action is necessary.
- 8.1.7. Following the conclusion of the investigation, where it has been determined there is a case to answer there are 2 potential routes where a sanction can be issued – a Fast Track meeting or a disciplinary hearing. See sections 10 and 11 below.

9. Suspension

- 9.1. Where an allegation is of a serious nature (e.g. certain allegations of gross misconduct), it may be necessary to suspend the employee on full pay, including any contractual enhancements or allowances, while the investigation is carried out.
- 9.2. In cases of safeguarding issues guidance must be sought from the Safeguarding Lead and Human Resources team prior to any action being taken.
- 9.3. Suspension/exclusion is not a disciplinary measure and does not imply any decision about the allegations and it should only be used for the following:
- If it is necessary to defuse a particular situation in the workplace.
 - If the allegation is potentially one of serious or gross misconduct.
 - If the withdrawal of the individual will allow the investigation to proceed unhindered and it is not possible to redeploy the individual until the process is completed.
 - If it is decided by the suspending manager or the external Trade Union representative that it is in the best interests of the employee concerned.
 - If the employee's continued presence at work may constitute a risk.
 - If the allegation involves the ill treatment of patients/clients, harassment of workplace colleagues or unacceptable professional conduct.

- 9.4.** Suspension should only be considered after careful consideration of alternatives this may include removing the individual from the workplace e.g. redeployment to another area or to duties where the nature of the allegation is not relevant.
- 9.5.** The HR team shall be consulted whenever possible before an employee is suspended. If it is considered appropriate to suspend, HR guidance will be provided on conducting a suspension meeting. Normally the authority to act as “suspending manager” will be given to dismissing officers. However, a dismissing officer can delegate this authority.
- 9.6.** Where practicable, the employee will be requested to attend a meeting so the “suspending manager” can explain the reason(s) behind the decision to suspend. Where it is not possible to meet the employee prior to suspension, a letter confirming the suspension should be issued. This should only be done in exceptional circumstances.
- 9.7.** In all cases of suspension, written confirmation of the reasons and conditions for suspension will be sent to the employee and copied to their representative, where applicable.
- 9.8.** Whilst suspended, the employee shall not have access to any of the CCG premises, unless authorised by a senior manager. If authorised, access may be subject to certain conditions. The employee will be authorised to access Occupational Health for support.
- 9.9.** The employee will be asked not to contact colleagues at work; however, the CCG recognises that it cannot prevent any social contact with colleagues outside the workplace.
- 9.10.** All suspensions shall be for the minimum period possible. In all cases, the suspension should be regularly reviewed by the “suspending manager” and a HR representative. If the suspension lasts for more than 4 weeks, it must be reviewed on a monthly basis to ensure it is still appropriate. A review must also take place on the conclusion of the investigation. The employee must be informed of the decision after each review by the Case Manager.
- 9.11.** Whilst on suspension the employee should receive the pay, they would have received had they been at work. Managers must ensure they record the suspension on the relevant system (ESR).

10. Fast Track Procedure

- 10.1.** Once the investigation is concluded and the Case Manager has reviewed the case as appropriate for the fast track process. This applies where staff accept full responsibility for their actions and accepted the allegations against them and acknowledge that the behaviour or conduct should not be repeated. In this circumstance the employee can choose to take the fast track procedure.
- 10.2.** The fast track meeting is an option following the completion of the full investigation. This process is not suitable in cases of gross misconduct or where an employee is already subject to a final written warning or the allegations are denied.
- 10.3.** The fast track process will only be used where the member of staff and the Case Manager agree to the process being used.

10.4. If the process is considered suitable the member of staff will be informed that this is an option and if they agree they will be asked to attend a meeting. Their agreement will be required in writing.

10.5. The meeting will be chaired by the Case Manager, supported by a HR representative. The member of staff will attend the meeting and can be supported by an external Trade Union representative or workplace colleague. The Line Manager of the member of staff should also attend.

During the meeting, the following format will be applied:

- The Case Manager will feedback the outcome of the investigation.
- The employee will have the opportunity to respond to the allegations and raise any mitigation.
- The employee will reflect on the reasons for the issue/incident that occurred and share their learning gained from incident.

If no further issues come to light the Case Manager will consider the action to be taken which may be:

- No Warning issued
- First Written Warning issued
- Final Written Warning issued
- Referral into a disciplinary hearing panel if the action is considered to be at a gross misconduct level or further concerns not previously identified have been raised and require investigation.

When deciding on the level of action to be taken the Case Manager will take in to account the fact that the member of staff has accepted and taken responsibility for their actions. The warning will be placed on the personal file for the relevant period.

10.6. Individuals can appeal against the sanction issued by the panel as per the appeals process.

11. Disciplinary Hearings

11.1. Notification of Disciplinary Hearing

A disciplinary hearing will be convened as detailed in the management guidance document if the findings of an investigation are as follows:

- that the case is particularly complex or serious enough to be potentially serious or gross misconduct
- or if the member of staff has a final live warning
- or if the individual disputes the findings of the investigation
- or the individual has requested a formal hearing rather than accept a sanction through the fast track process
- or the member of staff rejects a sanction offered through the fast track process.

11.1.1. The disciplinary hearing will be heard by a 2-member panel who have not been previously involved in the case. The panel must include a Senior Manager and a HR representative.

- 11.1.2. The employee will be notified in writing of the disciplinary hearing, allowing at least 14 calendar days' notice unless there is mutual agreement to vary this. This letter should:
- State that the matter is to be considered under the Disciplinary Policy, and specify who will be hearing the case
 - Detail the allegations to be considered
 - Enclose the submitted Investigation Report and associated appendices
 - Detail any witnesses that management intend to call
 - Inform the employee of their right of accompaniment
 - Give the employee the opportunity to provide any supporting documentation prior to the hearing date
 - State that the outcome could be disciplinary action or dismissal, as appropriate
- 11.1.3. The documents will be sent by recorded delivery at least 14 calendar days prior to the hearing. It is the employee's responsibility to ensure that their manager is informed of a current address and contact details at all times.
- 11.1.4. If the employee (or representative) is unable to attend the hearing, the CCG will make every effort to work with the employee to rearrange to a mutually convenient date, allowing at least five working days' notice unless there is mutual agreement to vary this. This allowance will be made up to a maximum of two further times after the initial hearing date is set.

11.2. Procedure for Disciplinary Hearings

- 11.2.1. A disciplinary hearing will be convened as detailed above if the findings of an investigation are that the case is particularly complex or serious enough to potentially warrant dismissal (as in cases of gross misconduct) or in the following circumstances: -
- The member of staff has a live final warning.
 - The member of staff disputes the findings.
 - The member of staff has requested a formal hearing rather than accept a sanction through the fast track process.
 - The member of staff rejects a sanction offered through fast track.
- 11.2.2. The objective of any Disciplinary Hearing is to consider impartially both the management case and the employee's case in order to reach a decision on the appropriate action to take. Both sides should therefore have every opportunity to state their case.
- 11.2.3. Details of the procedure to be followed during the Hearing can be found in the Management Guidance Document. The Disciplinary Hearing will be recorded digitally, and the outcome of the hearing will always be confirmed in writing to the employee, and a copy retained on their personal file. The HR representative on the Panel will also retain the documentation used in the Hearing for appeal purposes.

11.3. Possible Outcomes

- 11.3.1. The outcome of a Disciplinary Hearing is intended to address the issues raised and therefore can be supportive rather than punitive. They can be designed to achieve an improvement in behaviour or performance and the panel will need to consider this.

11.3.2. The potential outcomes from a disciplinary hearing are as follows:

- No case to answer
- First written warning
- Final written warning
- Dismissal
- Action short of dismissal

11.3.3. Acts of misconduct vary in seriousness from minor breaches to serious and gross misconduct; section 6.2 and 6.3 gives illustrations of the categories of misconduct. Whilst the procedure is designed to be a series of progressive warnings to employees, it may be necessary in exceptional circumstances to proceed directly to the use of the final written warning, or even consideration of dismissal, without prior disciplinary warning in light of the seriousness of the offence.

11.3.4. The panel should also consider whether it is appropriate to make a referral to a Professional Body.

11.3.5. In cases where the outcome of a disciplinary hearing is dismissal on the grounds of gross misconduct staff may be dismissed without notice or payment in lieu of notice.

11.3.6. Staff will be given written explanation of any disciplinary action taken where recommendations have been made the letter must also give clarification of what actions are required to achieve the achieved and the time scales set.

11.4. First Written Warning

If a Disciplinary Panel decides that a first written warning should be given:

- The employee shall be advised of the reason for the warning and any additional recommendations and that it is the first stage of the formal disciplinary action. There must be a written statement of the aspects that are considered to be unsatisfactory together with the improvements required and appropriate timescales.
- A letter detailing the written warning and any recommendations, together with the right of appeal to the next level of management, must be issued to the employee and a copy sent to their representative. A copy should be placed on their personal file and a further copy should be retained by HR for information.
- The written warning will remain 'live' for 12 months. Any further recurrence of the same or similar offence may lead to further disciplinary action being taken. After 12 months the written warning will be regarded as spent and must be removed from the personal file. The employee should be notified by the manager when it has been removed.

11.5. Final Written Warning

- This follows the same procedure as set out above 'First Written Warning'. However, the warning must be clear that any recurrence of a similar serious offence may result in dismissal.

- The final written warning will remain 'live' for two years. Any further recurrence of the same or similar offence may lead to further disciplinary action being taken. After two years the written warning will be regarded as spent and must be removed from the personal file. The employee should be notified by the manager when it has been removed.
- Employees who are issued with a first or final written disciplinary warning will have any due increment/pay step deferred for the duration of the warning. See Appraisal Policy and Procedure for further detail

11.6. Dismissal or Dismissal for Gross Misconduct

- With the exception of gross misconduct this shall never be the first attempt to deal with any offence. It must be made clear to the individual at the start of the hearing if dismissal could be a possible outcome.
- Dismissal may be considered where:
 - The employee's conduct has not improved after a final written warning within the given time period.
 - The employee commits an offence constituting gross misconduct.

11.7. Action Short of Dismissal

11.7.1. Where under slightly different circumstances the panel would have dismissed the employee, they may choose to issue a final written warning and/or take other actions short of dismissal. This warning will remain 'live' for two years. After two years the final warning will be regarded as spent. Examples include:

- Downgrading (no salary protection payable)
- Transfer to another department or site (no excess mileage payable)
- Change of shift pattern (no salary protection available)
- Any action plans for the employee or the wider team must go to the appropriate Head of Department who will be responsible for its implementation and review.

11.7.2. A copy of the letter confirming the warning, action and the right of appeal must be issued to the individual within 7 calendar days and sent recorded delivery with a copy to the external Trade Union Representative involved, if appropriate. A copy should be placed on the personal file.

11.8. Dismissal

11.8.1. If the decision is taken to dismiss, the letter to the employee, with a copy to the external Trade Union representative, if appropriate, shall be issued within 7 calendar days stating:

- The reasons for the dismissal and the date on which the employment shall terminate.
- Confirmation of the pay in lieu of notice due under the terms of their contract if applicable

11.8.2. Please note that gross misconduct is behaviour that warrants summary dismissal. In such cases there will be no right to notice or pay in lieu of notice. The letter will be sent recorded delivery and a copy placed on the employee's personal file.

12. Appeals Procedure

- 12.1.** Employees have the right of appeal against any form of disciplinary action including dismissal.
- 12.2.** The appeal must be made in writing, stating the grounds of the appeal, to the Senior Manager as identified in the outcome letter within 14 calendar days of the date of the Disciplinary Hearing outcome letter. Appeals may be raised on a number of grounds, including:
- the procedure – a failure to follow procedure
 - the decision – the evidence did not support the conclusion reached
 - the penalty – this was too severe given the circumstances of the case inconsistency of the penalty
 - new evidence – which has genuinely come to light since the Disciplinary Hearing
- 12.3.** If an appeal is made against a decision to dismiss, the dismissal still stands until the appeal is heard. If on appeal, a decision is taken to re-instate the employee, any loss of pay shall be reimbursed. However, where dismissal is rescinded but replaced by a lower level of warning, there is no further appeal against this decision and the warning will remain on the employee's file for the appropriate period of time.
- 12.4.** Appeal hearings will be heard by a 2-member panel who have not been previously involved in the case. The panel must include a Senior Manager, one of which should be from the appellants own profession, where applicable, and the Head of HR & OD (or nominated deputy). If it is not possible to have a panel member from the profession a member from the profession may be invited to attend as adviser to the panel. For cases of appeal against dismissal the panel membership must include a Director status.
- 12.5.** The Chair of the original disciplinary panel will be expected to present their case to the appeal panel, supported by the HR representative who supported the panel of original disciplinary hearing.
- 12.6.** The employee will be expected to present their case to the appeal panel and will have the right to be represented by an external Trade Union representative or accompanied by a workplace colleague.
- 12.7.** Further details, including arrangements and the procedure to be followed during the appeal hearing can be found in the Management Guidance Document.
- 12.8.** Where an appeal is lodged and heard the following outcomes may result:
- The appeal is upheld, and the disciplinary action is rescinded.
 - The appeal is not upheld and the disciplinary action stands.
 - The appeal is not upheld but the disciplinary action is considered to be too severe and is reduced.

13. Referral to a Professional Body or Independent Safeguarding Authority (ISA)

- 13.1.** All disciplinary cases will be considered for referral to either a professional body or ISA/HPC. The decision to refer will be made to the Chief Nursing Officer, supported by a senior HR representative.
- 13.2.** For cases where the allegations are of a safeguarding nature or professional conduct and it has been decided to proceed to a formal disciplinary hearing, consideration must be given to making an initial referral to the Independent Safeguarding Authority (ISA) or the Health and Care Professions Council (HCPC) and where applicable the relevant professional body. In these circumstances the Case Manager must discuss this with the Chief Nursing Officer, supported by a senior HR representative.
- 13.3.** The outcome of an investigation/dismissal may result in the need to refer the case to ISA or another professional body e.g. Nursing & Midwifery Council, General Medical Council. All cases that result in dismissal due to either:
 - Inappropriate behaviour towards a child or vulnerable adult or
 - The nature of a criminal investigation leads to a conclusion that the employee is deemed unsuitable to continue in employment owing to concerns related to the safety of children and/or vulnerable adults must, under legislation laid out in the Safeguarding Vulnerable Groups Act, be referred to the Independent Safeguarding Authority (ISA).
- 13.4.** Referrals are required to be made to ISA for all staff that are dismissed in the above circumstances and include staff that may not be professionally qualified. This legislation also applies to voluntary workers.
- 13.5.** ISA will make decisions based upon the evidence they receive as to whether the member of staff should be barred from working with Children and/or vulnerable adults.

14. Fraud / Criminal issues

- 14.1.** Where there is suspicion of fraud or criminal activity the case will be referred to counter fraud and or police as required as per the relevant policy.

15. Fit and Proper Persons Requirement

- 15.1.** This policy supports the introduction of the new regulatory standards for the Fit & Proper Person Requirements of Directors, and their reports which came into force for all NHS bodies from 27 November 2014, in response to the Francis Report, and integrated into Care Quality Commission registration requirements.
- 15.2.** Guidance issued by the Care Quality Commission emphasises the importance of the Fit and Proper Person Requirements in ensuring the accountability of Directors, and their direct reports, of NHS bodies. NHS bodies have a responsibility to ensure the Requirements are met with the Care Quality Commission's role being to monitor and assess how well this responsibility is discharged.

- 15.3.** The CCG is responsible for ensuring the continued “fitness” of those persons to whom the Requirements apply. It is intended this requirement will be fulfilled through a number of processes including the application of this policy.
- 15.4.** If the CCG discovers information that suggests an individual Director is not of good character after they have been appointed to a role, the CCG will take appropriate and timely action to investigate the matter, and based on the findings take appropriate action in line with the process outlined in this policy.

16. Implementation and Dissemination of the Document

- 16.1.** This document has been fully ratified H&W CCG Clinical Commissioning and Executive Committee and will be published and made available to all employees via the CCG intranet and website.

17. Monitoring and Review

- 17.1.** The policy will be reviewed in line with the review date or before in the case of where there are legislative changes. Monitoring of the policy will be carried out by Corporate Governance.

APPENDIX 1

AUTHORITY TO DEAL WITH DISCIPLINARY MATTERS

Category	Line Manager	Senior Manager	Associate Director	Director	CEO	CCG Governing Body
Suspension	✓	✓	✓	✓	✓	✓
First Written Warning	x	✓	✓	✓	✓	✓
Final Written Warning	x	x	✓	✓	✓	✓
Dismissal	x	x	x	✓	✓	✓
Appeal Process	x	x	✓ (Recorded verbal warning when issued by Line Manager)	✓ (Up to Final Written Warning when issued by Director)	✓	✓

Please note Written Warnings and Dismissals will only be considered following a full investigation and hearing process.

DISCIPLINARY PROCESS FLOWCHART

