

CITY HOSPITALS SUNDERLAND NHS FOUNDATION TRUST

DEPARTMENT OF HUMAN RESOURCES

BOARD OF DIRECTORS

JANUARY 2006

REVISED DISCIPLINARY PROCEDURE – EXECUTIVE SUMMARY

INTRODUCTION

Following the publication of the joint DoH/BMA framework for handling capability and conduct issues with doctors and dentists, the Trust's Disciplinary Procedure has been reviewed and revised.

A summary of those revisions is set out below.

SUMMARY OF REVISIONS

- Para 1.2 now includes a statement about seeking advice from the NPSA in cases involving the alleged professional misconduct of doctors/dentists.
- Para 7.2.4 now included to ensure that where a case involves allegations of professional misconduct, the disciplinary panel will include a member who is medically/dentally qualified and not employed by the Trust.
- Para 7.5.1 now included which sets out which acts of misconduct, under normal circumstances, the Trust will regard as gross misconduct and which will normally lead to summary dismissal. This paragraph is also to be incorporated into the current Trust contract of employment template.
- Para 10.5 now included which clarifies that where acts of misconduct are suspected of being criminal acts, these will be reported to the Police by the Head of Human Resources.
- Para 16 – Reference to the new DoH guidance has been included in the 'other related policies/documents'.

RECOMMENDATIONS

Directors are asked to approve the changes to the Trust's Disciplinary Procedure as outlined above.

Kath Griffin
Head of Human Resources

Ken Bremner
Chief Executive

CITY HOSPITALS SUNDERLAND NHS FOUNDATION TRUST

DISCIPLINARY PROCEDURE

1 Introduction and Scope

- 1.1 City Hospitals Disciplinary Procedure applies to all employees of the Trust.
- 1.2 Both personal and professional misconduct issues will be addressed through this policy, with the involvement where appropriate of relevant independent professional advice for both investigating managers and disciplinary panels. In addition the Trust reserves the right to seek advice from the National Patient Safety Agency in matters involving the alleged professional misconduct of doctors and dentists.
- 1.3 This procedure does not deal with the following issues:
 - a. Absenteeism due to sickness (covered by the Trust's Sickness Absence Policy).
 - b. Adverse untoward incident investigation (covered by the Trust's Investigation of Untoward Incidents Procedure).
 - c. Disciplinary issues involving staff not employed by City Hospitals but who are providing services for the Trust/on Trust premises.
 - d. Disciplinary issues involving Specialist Registrars, who are currently employed by South Tyneside NHS Trust.

2 Principles

- 2.1 All employees should be made aware of the Trust's Disciplinary Procedure, as well as any departmental and/or professional rules to be observed, by their Line Manager during induction and thereafter. The disciplinary procedure will also form part of the Contract Pack issued on commencement of employment.
- 2.2 Alleged breaches of discipline will normally be investigated by the employee's Line Manager and, in all cases, by a manager who will not subsequently be involved in the disciplinary decision making process i.e. the investigating manager and Chair of the disciplinary panel will be different people.
- 2.3 In all cases, the employee will be informed of the nature of the alleged misconduct, normally in writing, before any disciplinary hearing is held.
- 2.4 Under normal circumstances, no employee will be dismissed for a first breach of disciplinary rules, except in cases of gross misconduct (see paragraph 7.5.2).
- 2.5 Employees will be given the opportunity to respond to the allegations made against them, in person, both at the investigating stage and at any subsequent disciplinary hearing. In exceptional circumstances it may not be possible for the member of staff involved to attend the investigatory meeting, for example, if the individual is in police custody, on long-term sick leave or "missing".

In such instances an estimate of the likely delay before the person may be available should be made. Wherever possible any investigation should be postponed until the member of staff can participate personally in the process. However, if the delay is likely to be unreasonably prolonged e.g. longer than four weeks, following discussion with the Head of Human Resources

and the appropriate Representative or work colleague, it may be decided to progress the investigation giving the employee the opportunity to make representation in writing, or through their Representative/work colleague.

- 2.6 Copies of all relevant documentation, written evidence and witness statements to which the investigating manager or the employee and his/her Representative wish to refer together with details of the basis for the grounds on which action is being considered will be sent to the employee in advance of any disciplinary hearing held in line with this Procedure. Prior to the hearing the employee will be given a reasonable opportunity to consider his/her response to the information supplied and to provide a written submission for the panel's consideration.
- 2.7 Evidence provided in confidence, or which relates, to personal/patient information will be presented in an anonymised or summarised format. In such instances the individual and/or the appropriate Representative will be advised of the situation.
- 2.8 Where documents have not been provided in advance of the meeting in question, time will be allocated prior to, or during, the meeting to allow those present to read or discuss the information.
- 2.9 City Hospitals Disciplinary Procedure should not be implemented in isolation of other Trust Policies and Procedures. Appropriate guidance, policies or protocols should be referred to and made available to all parties involved, with the aim of allowing the correct decision to be reached.

3 Informal Action

- 3.1 As part of the normal supervisory process, it is important that employees are aware of the standards of behaviour/conduct required and the consequence of any failure to meet them.
- 3.2 In circumstances where a manager considers an employee's behaviour/conduct to be inappropriate it is important to highlight this at an early stage, as this can sometimes lessen the need for formal disciplinary action in the future.
- 3.3 In cases of very minor misconduct it is important for the appropriate manager to advise the employee of their concerns and offer the employee the opportunity to explain his/her actions.
- 3.4 The appropriate manager should then counsel the member of staff to make sure he/she understands the standard of conduct/behaviour expected and identify whether there are any underlying reasons for the misconduct.
- 3.5 It may be necessary for the Line Manager, at this point, to issue written instructions/guidance to the employee(s), or even the whole department, to clarify standards of behaviour required.
- 3.6 Where mitigating circumstances for the misconduct are established, appropriate support, guidance and/or training should be offered to help the employee meet the required standards in future.
- 3.7 Where no, or insufficient reasons are established, an informal caution may be issued. It should be made clear to the employee at this point, that more formal disciplinary action may be taken in future should he/she fail to behave appropriately or demonstrate achievement of required standards. This should be confirmed in writing.
- 3.8 In cases where the alleged misconduct is considered to be more serious, some or all parts of the procedure outlined in the following sections may be implemented.

- 3.9 A file note of any discussion at this stage should be made and held on the individual's personal file, which may be referred to at some point in the future, should misconduct reoccur.
- 3.10 The file note should identify the issue/misconduct, briefly outline the discussion which took place with particular emphasis on the standards required and action necessary to achieve these, and be signed and dated by the Manager and the Employee.

4 Suspension From Work

- 4.1 In cases of a serious nature an employee may be suspended from work pending further investigation or action. Managers authorised to take this action are shown in Appendix 1. However responsibility for suspension may be delegated following discussion with the Head of Human Resources.
- 4.2 Suspension is a precautionary measure, and does not constitute formal disciplinary action.
- 4.3 The appropriate Divisional Personnel Manager should always be consulted before a member of staff is suspended. (See paragraph 4.9 for suspensions out of normal working hours).
- 4.4 Depending on the specific issue, there may be a number of reasons why suspension from work may be necessary e.g.
- a. To avoid any investigation being compromised either through interference or intimidation.
 - b. To safeguard the successful/continued operation of daily activities.
 - c. To protect the employee from feeling compromised or unjustly treated by others.
 - d. In circumstances where the allegation is potentially considered to be gross misconduct and could result ultimately in the individual's dismissal from employment.
 - e. To ensure the safety of patients or other members of staff who may be thought to be at risk because of the individual's alleged behaviour/actions.
- 4.5 Suspension from work will be subject to the following conditions:
- a. The employee who is suspended will continue to receive their full wage/salary, under normal rules, until the matter is resolved.
 - b. The employee will normally have the right to appear personally before the suspending manager, to be advised of the reasons for suspension. Where possible, he/she should be accompanied by a Representative or work colleague (not acting in a legal capacity).
 - c. The employee on suspension should be advised not to return to/visit Trust premises or contact employees/colleagues to discuss the allegation without prior permission of the investigating manager.
 - d. An employee who is an accredited staff/union representative will not be suspended for carrying out the instructions of their staff organisation, until the full-time official has been consulted and given the opportunity to be present.
 - e. Every effort will be made to ensure that any suspension from work is for the minimum period of time necessary and is kept constantly under regular review.
- 4.6 The decision to suspend an employee in accordance with this procedure, will be confirmed in writing to the employee, normally within 2 working days, providing reasons for the decision to suspend.

- 4.7 Exceptionally, it may be necessary to suspend an employee at a time or place when the usual consultation is impractical e.g. through the night. In such circumstances action will not be delayed but the appropriate Representative will be contacted at the earliest opportunity.
- 4.8 Out of hours, the Duty Business Manager will be responsible for the suspension of staff following consultation with the "second on-call Manager". The Head of Human Resources should be informed as soon as practicable.
- 4.9 In extreme circumstances, it may be appropriate to carry out a suspension over the telephone. This should only happen to avoid an unacceptable time delay/unnecessary reporting for work/inability to attend a meeting. The suspension will always be confirmed in writing, and where reasonable/practical the employee's Representative will be advised, in advance of the telephone conversation taking place.
- 4.10 In all circumstances, the suspended employee will be made aware of the various support available through the Trust e.g. Occupational Health, Chaplaincy, Employee Assistance Programme. Contact details for each of these will be included in the letter confirming suspension.
- 4.11 The Chief Executive or in their absence the Deputy Chief Executive, & Head of Human Resources should be advised of any suspension normally within 1 working day.
- 4.12 Investigating Managers, HR staff and staff representatives will endeavor to ensure that all investigations are conducted speedily and completed as soon as is practicably possible to ensure there is no unreasonable delay or distress caused to any individual involved.
- 4.13 Exclusions from work and restrictions of practice of doctors and dentists will be dealt with in accordance with the Trust's Framework For Handling Concerns About Doctors and Dentists.

5 The Right To Be Accompanied

- 5.1 Employees have a statutory right to be accompanied by a work colleague or trade union official where they are required or invited by the Trust, to attend any formal meetings convened under this procedure.
- 5.2 A Trade Union Representative or an employee who has agreed to accompany a colleague is entitled to a reasonable amount of paid time off to fulfill that responsibility, including time to familiarize themselves with the case and confer with the colleague before and after any formal meeting.
- 5.3 Employees acting as a 'companion' under such circumstances must consult with their manager regarding the amount of paid time off required prior to the event.

6 Accredited Representatives of Staff Organisations/Trade Unions

- 6.1 In order to ensure that accredited representatives of Staff Organisations/Trade Unions have a similar opportunity for representation as other staff, the full-time officer of the Staff Organisation/Trade Union must be informed in all instances of possible disciplinary action or suspension being taken against their Representative.

7 Formal Action

7.1 The Investigation

- 7.1.1 Prior to reaching a decision to proceed to a formal disciplinary hearing which may result in the issuing of a formal disciplinary warning or dismissal, the Trust must ensure that a full and fair investigation of the circumstances and the facts available is completed. This may require professional (non-legal) advice being taken, depending upon the issue.
- 7.1.2 Any investigation will be undertaken by a manager with appropriate knowledge and experience. A representative from the Personnel Department should also be present at all meetings to ensure the process is followed appropriately.
- 7.1.3 At all meetings held in line with this procedure, the employee will be entitled to be accompanied by a Trade Union representative or work colleague (not acting in a legal capacity).
- 7.1.4 Any difficulties in obtaining representation should be communicated by the individual to the Investigating Manager as soon as possible.
- 7.1.5 All parties involved in the investigation have a responsibility to make themselves available to attend the meetings necessary to conclude this part of the process as quickly as possible. Line Managers will be expected to release those involved in the case.
- 7.1.6 The following steps will be followed at this stage:

Step 1 The Investigating Manager will contact the member of staff and advise him/her of the reason(s) for carrying out the investigation.

Step 2 The Investigating Manager will gather appropriate statements, documentation and other evidence, as far as is practically possible, prior to the investigatory meeting. This may include interviewing other people relevant to the situation e.g. colleagues, supervisors, witnesses and so on.

Step 3 The Investigating Manager will confirm the arrangements for the fact-finding investigatory meeting in writing, which will be at a reasonable place and time.

Step 4 The investigatory meeting will be used to discuss the allegation(s) made against the employee, including any factual evidence/statements, and to give the opportunity to respond to the allegation(s), offer explanations/mitigation or dispute the allegation(s).

Step 5 The Investigating Manager will decide whether there is a disciplinary case to answer. If the Investigating Manager considers there is a case to answer, then the disciplinary charges and the basis for the charges will be detailed in a letter to the employee(s) concerned.

Step 6 Where the Investigating Manager considers there is no disciplinary case to answer, this will be communicated in writing to the employee. Where the Investigating Manager considers that there are issues which need to be addressed via an alternate route, this may be advised e.g. training, re-training for the employee(s) in question.

Note: As part of the investigation, employees including witnesses may be required to provide and sign a written statement using a standard proforma provided by the Personnel Department.

7.2 Disciplinary Hearing

- 7.2.1 Where the Investigating Manager considers that misconduct has occurred which warrants disciplinary action a formal disciplinary hearing will be convened.

- 7.2.2 At all such hearings the employee will have the right to be accompanied by a Trade Union Representative or work colleague (not acting in a legal capacity).
- 7.2.3 The Chair of the Disciplinary Panel will be a different manager to the Investigating Manager. The Panel will be supported by a Personnel Representative, and if required a professional (non legal) advisor.
- 7.2.4 Where a case involves allegations regarding a doctor's or dentist's professional misconduct, the disciplinary panel will include a member who is medically/dentally qualified and who is not employed by the Trust.
- 7.2.5 The Investigating Manager will also be in attendance, usually supported by a Personnel Representative.

7.2.6 The following steps will be followed:

Step 1 Prior to the hearing the Chair of the Disciplinary Panel will confirm, in writing, the arrangements for the Disciplinary Hearing. Copies of statements, documents, policies/protocols which will be referred to during the course of the hearing by either party, will be circulated to the panel, employee and representatives and management representatives. The employee will be given reasonable notice of any meeting to allow adequate time to prepare a written response.

Step 2 If witnesses are required the relevant party will ensure that their witness(es) is/are advised of appropriate details and is/are available to attend the hearing. Details of witnesses will be requested by the Chair of the panel in advance.

Step 3 At the disciplinary hearing the procedure outlined at Appendix 2 will be followed.

Step 4 In normal circumstances the employee (and representative) will be recalled to the hearing after an adjournment and the decision of the Panel will be confirmed. Where this is not possible the Chair of the Disciplinary Panel will confirm the decision to the employee within two working days.

Step 5 The decision of the Panel and, where appropriate, right of appeal will be confirmed in writing within two working days of the hearing. This also applies in cases of a decision to take no disciplinary action.

7.3 Non Attendance At Hearing

- 7.3.1 Where an employee or his/her representative is unable to attend, the hearing will be rearranged. However in the event that the employee or his/her representative is unable to attend the rearranged hearing it will go ahead and a decision will be taken in their absence.

7.4 Levels of Disciplinary Action and Duration of Warnings

- 7.4.1 If the decision of the Panel is that a formal disciplinary warning is necessary one of the levels identified in paragraph 7.4.8 will be implemented.
- 7.4.2 These levels need not be followed progressively and should be determined taking into account the seriousness of the offence and the disciplinary record of the employee involved.
- 7.4.3 The Schedule of Managerial Authority within this procedure (Appendix 1) specifies the managers who have authority to take each level of disciplinary action. In certain circumstances

authority may be delegated to another manager to issue the appropriate level of action. However, a more senior manager than the person who conducted the hearing at which the disciplinary sanction was imposed will Chair any disciplinary appeal. Any delegation of authority will be made clear to all present before the hearing.

7.4.4 When deciding whether formal disciplinary action is appropriate the panel will bear in mind the need to satisfy the test of reasonableness in all circumstances. Relevant factors to be considered will under normal circumstances include:

- Precedent.
- Consistency in like circumstances.
- General employment record of the employee(s).
- Any previous disciplinary record of the employee(s)
- Position in the organisation.
- Length of service.
- Experience in the post
- Any mitigating factors which might make it appropriate to increase or decrease the normal penalty applicable in the circumstances.
- Risk to patients, staff or members of the public.

7.4.5 The duration of a warning remaining current will be specified in a letter to the employee(s).

7.4.6 Written management instructions may be issued along side the warning outlining the required standards of conduct to be sustained to try to prevent breaches of conduct reoccurring.

7.4.7 Formal warnings will normally be disregarded for disciplinary purposes after the warning has expired. The time period, as shown below, will run from the date of the letter confirming the action.

7.4.8 Level 1 - Verbal Warning

- May be applied in cases of minor misconduct.
- Warning will be confirmed in writing and a copy kept on the employee's personal file and disregarded for disciplinary purposes after a maximum period of six months.

Level 2 - Written Warning

- May be applied in cases of a further, similar offence to that previously dealt with at Level 1 being committed or a more serious offence which does not justify a final written warning or dismissal.
- Warning will be confirmed in writing and a copy kept on the employee's personal file, and disregarded for disciplinary purposes after a maximum period of twelve months.

Level 3 - Final Written Warning

- May be applied in cases of a further, similar offence to that previously dealt with at Levels 1 and/or 2 being committed.
- or*
- A more serious offence, which does not justify dismissal.
 - Warning will be confirmed in writing and a copy kept on the employee's personal file, and disregarded for disciplinary purposes after a maximum period of two years.

Level 4 – Dismissal

- May be applied in cases of:

A further, similar offence being committed to that previously dealt with at Levels 1, 2 or 3

or

Gross misconduct (See Section 7.5)

Note: For cases other than gross misconduct the employee will, on dismissal, receive payment in lieu of notice and any pro rata outstanding annual leave in accordance with their contract of employment.

7.4.9 In some instances, it may be appropriate to consider an alternative/combination of sanctions, within any of the levels of disciplinary action listed above. These may include:

- Transfer to another post/work area in same grade
- A permanent transfer to a post/area in a lower grade
- A temporary period of downgrading
- Reduced/different responsibilities in same post
- A period of training/retraining and support.

7.5 Gross Misconduct

7.5.1 The following list provides examples of offences which the Trust will, under normal circumstances, be regarded as gross misconduct.

- Theft, fraud or deliberate falsification of records.
- Physical violence, fighting or assault on another person
- Deliberate damage to Trust property
- Serious misuse of Trust property or name.
- Deliberately accessing internet sites containing pornographic, offensive or obscene material.
- Serious incapability at work brought on by alcohol or drugs
- Serious insubordination
- Unlawful discrimination or harassment
- Bringing the Trust into serious disrepute
- Causing loss, damage, injury or death through serious negligence
- A serious breach of health and safety rules
- A serious breach of trust and confidence
- Unauthorised entry to computer records
- Breach of patient confidentiality
- Failure to declare criminal convictions

7.5.2 Where, following investigation and a formal hearing, the disciplinary panel is satisfied that an act of gross misconduct has occurred, employees will normally be summarily dismissed.

7.5.3 A written statement of the reasons for the summary dismissal will be provided and a right of appeal offered.

7.5.4 An employee dismissed for gross misconduct will not be entitled to a period of notice, or payment in lieu of notice, but may receive payment for untaken annual leave (pro-rata to the completed months employed in any leave year).

8 Appeal

- 8.1 Employees will have the right to appeal to the next level of management against a disciplinary warning/sanction imposed against them. Details of any right of appeal will be included in the letter confirming the outcome of the hearing.
- 8.2 Appeals must be submitted in writing, within 14 calendar days of the date of the letter confirming the disciplinary sanction, stating the specific reasons/grounds for the appeal and addressed to the manager named in the letter.
- 8.3 The appeal panel will determine whether the correct process was appropriately followed, and whether the finding or penalty determined by the previous manager was reasonable. The appeal panel may also consider any new evidence which the employee feels is relevant and should be taken into account and may rehear cases in appropriate circumstances where there may have been a procedural defect earlier in the procedure.

8.4 Hearing of Appeal below Trust Appeals Panel Level

- 8.4.1 Appeals can only be heard by managers who have not had any direct involvement with either the circumstances of the case, or the decision to take disciplinary action.
- 8.4.2 The employee has the right to appear personally before the manager hearing the appeal, either alone, or accompanied by a Trade Union Representative or work colleague not acting in a legal capacity.
- 8.4.3 The appeal will be conducted at a reasonable time and location.
- 8.4.4 At the hearing of an appeal by a manager of the Trust the procedure outlined in Appendix 3 will be followed.
- 8.4.5 The decision of the appeal panel will be final and there will be no further right of internal appeal.

8.5 Hearing of Appeal by a Trust Appeals Panel

- 8.5.1 Employees issued with a final written warning or who are dismissed will have a right to appeal to a Trust Appeals Panel. The appeal must be in writing and lodged with the Chief Executive within 14 days of the date of the letter confirming the disciplinary action, stating the reasons for the appeal.
- 8.5.2 The Trust Appeals Panel will, consist of at least three members of the Board of Directors, one of whom will be a Non-Executive Director.
- 8.5.3 The appeal hearing will be conducted at a reasonable time and location and will be held in accordance with the procedure outlined in Appendix 3.
- 8.5.4 The employee will have the right of appearing personally before the Trust Appeals Panel either alone or accompanied by a Trade Union representative or a work colleague not acting in a legal capacity.
- 8.5.5 The Trust Appeals Panel shall not include any member of the Trust who has been directly involved in the circumstances leading to disciplinary action or the decision to take disciplinary action. No manager of the Trust who has been directly involved in the circumstances that appeared to indicate the need for disciplinary action at an earlier stage of the disciplinary

procedure shall be present at the appeal hearing, except as a witness or as the management representative of the Trust.

- 8.5.6 Prior to the appeal, both parties should prepare a case which will then be used to highlight the main areas of disagreement with the original disciplinary decision. All appropriate information will be made available to the panel in advance of the meeting, and under normal circumstances at least five working days prior to the appeal meeting.
- 8.5.7 The decision of the Trust Appeals Panel will be final, and there will be no further right of internal appeal.

9 Suspected Fraud

- 9.1 HSC 1999/062 "Countering Fraud In The NHS" requires Trusts to notify the Directorate of Counter Fraud and Security Management Service as soon as the Trust believes that fraud has taken place and before a decision is made on the disciplinary, civil or criminal action to be taken.
- 9.2 Therefore, as soon as a manager highlights a suspected fraud the Director of Finance and City Hospitals Local Counter Fraud Specialist must be contacted before action of any sort (disciplinary/criminal/civil) commences.
- 9.3 Any employee suspected of involvement in fraud may be suspended from work with immediate effect.
- 9.4 The Trust's Director of Finance will liaise and reach agreement with the Counter Fraud and Security Management Service before reaching a decision on the referral of the case to the police or any other body for investigation/action.

10 Allegations of Criminal Acts & Criminal Convictions Outside Employment

- 10.1 Criminal convictions outside employment will not be seen as automatic reasons for dismissal.
- 10.2 However, once employed by the Trust it is the responsibility of all employees to notify the Head of Human Resources as soon as is practical after being charged with any criminal offence (except minor motoring offences such as parking fines). Failure to do so will result in the matter being dealt with in accordance with this procedure.
- 10.3 The Head of Human Resources will appoint an appropriate manager to investigate the circumstances of the case and consider whether the offence has any relevance to the duties of the individual and whether it will affect their continued performance at work.
- 10.4 Other factors to be considered will include the effect of the offence on the reputation of the Trust, the risk to patients and the provision of health care services to the general public.
- 10.5 Any act of misconduct suspected of being a criminal act will under normal circumstances be reported to the Police by the Head of Human Resources. This may result in the investigation only proceeding in respect of those issues not directly related to any subsequent police investigation.
- 10.6 Depending on the seriousness of the offence, the employee may be suspended from work and a formal investigation carried out before a decision is made as to continued employment. (See Sections 4 and 6.1)

- 10.7 Candidates for interview are requested to declare any criminal convictions, cautions and/or bindovers/supervision orders on applying for employment with the Trust. Failure to do so could result in disciplinary or criminal action against the successful candidate at some point in the future.

11 Standards set by Professional Bodies

- 11.1 Professional health care staff are responsible for complying with the relevant standards set by their regulatory or professional bodies (e.g. GMC's Good Medical Practice, NMC's Code of Professional Conduct).
- 11.2 Where the alleged misconduct concerns a professional matter, the appropriate professional Head must be consulted e.g. Medical Director in the case of medical staff.
- 11.3 In addition to any action taken by relevant professional bodies with regard to a breach of such standards, the Trust reserves the right to investigate and take appropriate action in line with this procedure to prevent a reoccurrence of failure to adhere to professional codes of conduct/practice.
- 11.4 In cases of dismissal/gross misconduct the Trust reserves the right to report any failures to comply with professional codes of conduct/practice to the relevant professional body e.g. GMC/NMC. Any report will be made by the relevant professional lead person e.g. Executive Director of Nursing, Medical Director.

12 Allegations or Suspicions of Child Abuse by Health Professionals

- 12.1 Allegations of child abuse by health professionals will be dealt with in line with this policy.
- 12.2 In line with the requirements of the Areas Child Protection Committee and relevant procedures, all allegations will be reported to the Duty Social Worker as with any other alleged abuse. The Child Protection Co-ordinator from the Social Services Department will also be informed.
- 12.3 An appropriate internal investigation will then follow with involvement of the police and the Social Services Department as appropriate.

13 Sickness Absence

- 13.1 From time to time employees report absent/sick during the course of an investigation or prior to a hearing.
- 13.2 In cases of long-term absence, the Occupational Health Department will be consulted as to the employee's ability to participate in the process and a decision taken on the way forward based on their advice and other circumstances related to the case.
- 13.3 Employees who are absent for a short period will be given the opportunity to attend a rearranged investigatory meeting or hearing. Failure to attend a second meeting or hearing may mean that it proceeds in their absence. However, this will not, be without the employee being given the opportunity to make alternative representation either in writing or through a Representative or work colleague not acting in a legal capacity.

14 Employees Resigning from Employment

- 14.1 Where an employee voluntarily resigns their post and leaves the organisation before a disciplinary matter is concluded, the Trust, in light of its public responsibilities, reserves the right

to proceed with the disciplinary process. In the event that the ex-employee or their representative fails to attend the hearing, then it will be rearranged. In the event that the ex-employee or their representative fails to attend a second time, then it will go ahead and a decision will be taken in their absence.

- 14.2 The Trust also reserves the right to report the matter to the relevant professional body (e.g. NMC, GMC) if appropriate, or issue an alert letter in accordance with HSC 1999/212 Children's Safeguard Review: Choosing With Care, other health service circulars.
- 14.3 In such situations the individual who has not been present at his/her disciplinary hearing will be notified of the Trust's decision in writing, including a right of appeal and made aware of any follow up action such as reporting to the relevant professional body.

15 Record Keeping

- 15.1 A chronological record will be kept by the relevant investigating Manager of all discussions (including telephone calls) and correspondence relating to a case.
- 15.2 Records will be kept specifically detailing the nature of any disciplinary breach, the employee's defence or mitigation, the action taken and the reasons for it, whether an appeal was lodged, its outcome and any subsequent developments. These records will remain confidential and be retained in accordance with this procedure and the Data Protection Act 1998.
- 15.3 Copies of meeting records will normally be given to employees. However in certain circumstances (e.g. to protect a witness) the Trust reserves the right to withhold some information.
- 15.4 The Trust reserves the right to introduce an individual not involved in the investigation/disciplinary hearing to assist any panel with the taking of notes or to provide professional (not legal) advice as required. Any such person(s) will be subject to the confidentiality requirements of the Trust in such circumstances.

16 Other Related Policies/Documents

Sickness Absence Procedure
Grievance Procedure
Data Protection Act 1998
Alcohol and Drug Policy
Capability Procedure
HSC 1999/062 Countering Fraud In The NHS
HSC 1999/212 Childrens Safeguard Review: Choosing With Care
Human Rights Act
Professional Registration Policy
Criminal Records Policy
HSC Alert Letters
Department of Health. "Maintaining High Professional Standards in the Modern NHS"

17 Date Last Reviewed

December 2005

DISCIPLINARY PROCEDURE - SCHEDULE OF MANAGERIAL AUTHORITY

	Manager To Suspend From Duty/Investigating Officer	Manager(s) to Chair Disciplinary Hearing	Appeals Against Verbal Or Written Warning	Appeals Against Final Written Warning Or Dismissal
Chief Executive	Trust Chair	Trust Chair	Trust Appeal Panel*	Trust Appeal Panel *
Executive Directors	Chief Executive	Chief Executive	Trust Appeal Panel*	Trust Appeal Panel *
Executive Board Members/Divisional Directors	Chief Executive	Chief Executive	Trust Appeal Panel*	Trust Appeal Panel *
Clinical Directors	Divisional Director	Divisional Director	Chief Executive	Trust Appeal Panel *
Trust HQ Heads of Service, Asst Directors of Finance, Business Managers, Deputy Head HR, Estate Support Services Manager	Executive Board Member	Executive Board Member	Chief Executive	Trust Appeal Panel *
Clinical Support Head of Department/AHP & Nurse Consultants, Matrons, Department Manager/Head of Department	Business Manager	Divisional Director	Chief Executive	Trust Appeal Panel *
Consultant Medical & Dental Staff	Clinical Director	Divisional Director	Chief Executive	Trust Appeal Panel *
Other Medical & Dental Staff (i.e. Associate Specialists/SPRs)	Clinical Director	Divisional Director	Chief Executive	Trust Appeal Panel *
Other Directorate staff	Department Manager	Business Manager	Divisional Director	Trust Appeal Panel *
Trust Headquarters & Site Support Staff	Department Manager	Business Manager/Head of Department	Divisional Director/ Executive Board Member	Trust Appeal Panel *

- Notes** - To avoid delays within the procedure, Managers may specifically delegate authority to an immediate subordinate at any stage of the procedure. Where this occurs it will be brought to the attention of the employee at the time. In other cases a more senior manager than specified may take action.
- Where the alleged misconduct concerns a professional matter, the appropriate Professional Head should be consulted
 - Responsibility for suspension may be delegated in discussion with the Head of Human Resources
 - * Trust Appeals Panel will consist of three members of the Board of Directors at least one of whom will be a Non Executive Director and will not include the Chief Executive if he/she issued the formal written warning or dismissal decision

DISCIPLINARY HEARING PROCEDURE

- a. The Chair of the panel shall introduce those present at the hearing, confirm it is being held in line with City Hospitals Disciplinary Procedure, briefly outline the allegation(s) made against the employee, and confirm the procedure, which is outlined below.
- b. The investigating manager shall state the case in the presence of the employee (and representative). The manager may call witnesses at any time during the presentation of the case.
- c. The employee (and representative) may ask questions of the investigating manager.
- d. In circumstances where the employee and/or their representative wishes to ask questions of any witnesses these should be directed through the Chair of the panel. This is to avoid the witness feeling harassed or intimidated by cross questioning. It is for the Chair of the panel to decide whether questions can be allowed.
- e. The panel members shall have the opportunity to question both the investigating manager and/or witnesses.
- f. The manager may re-question the witnesses on any matter referred to in the employee (or representative) or panel's questions.
- g. The employee (or representative) shall outline his/her case in the presence of the manager and may call witnesses at any time during this presentation.
- h. The investigating team shall have the opportunity to question the employee or the representative.
- i. In circumstances where the investigating manager wishes to question the employees' witness, this should again be done through the Chair of the Panel (see point d above).
- j. The panel members shall have the opportunity to ask questions.
- k. The employee (or representative) may re-question the witnesses on any matter referred to in the manager or the panel's questions.
- l. Witnesses will be present only when required to be and shall withdraw immediately afterwards. However, they must be readily available for recall until the hearing is concluded.
- m. The manager and the employee (or representative) shall have the opportunity to sum up with the employee (or representative) having the right to speak last. In summing up, neither party will be allowed to introduce new facts/information.
- n. The panel may at its discretion adjourn the appeal, normally in order that further evidence may be produced by either party.
- o. The manager and the employee (and representative) shall withdraw and the panel shall consider the case in private.

- p. No previous acts of misconduct by the employee or formal warning/warnings unrelated to the alleged offence(s) on which disciplinary action is being considered shall be made available until after the panel has reached a decision.
- q. The Chair of the panel shall reconvene the hearing and advise the employee and management representative of the decision having taken reasonable time to consider the cases presented. Alternatively the Chair will confirm why a decision cannot be reached and when the decision will therefore be communicated.
- r. The decision of the Disciplinary Panel will be confirmed in writing within two working days of the hearing.
- s. If the employee chooses not to return to hear the decision, this shall be communicated in writing within two working days of the hearing.

APPEAL HEARING PROCEDURE

- a. The Chair of the panel shall introduce those present at the appeal hearing, confirm it is being held in line with City Hospitals Disciplinary Procedure, briefly outline the reasons for the appeal and confirm the procedure as outlined below.
- b. The appellant or representative shall outline his/her reasons for appealing in the presence of the management representative and may call witnesses.
- c. The management representative shall have the opportunity to ask questions of the appellant and/or representative.
- d. Any questions to be asked of the appellant's witness(es) should be directed through the Chair of the Appeal to avoid the witness feeling harassed or intimidated by cross questioning. It is for the Chair to determine whether the questions can be allowed.
- e. Members of the Appeal Panel shall have the opportunity to ask questions of the appellant, representative and witnesses.
- f. The appellant or representative shall have the opportunity to re-question his/her witnesses on any matter referred to in the appeal panel or management representative's questions.
- g. The management representative(s) shall summarise their case in the presence of the appellant and their representative and may call witnesses.
- h. The appellant or their representative shall have the opportunity to ask questions of the management representative.
- i. Any questions to be asked of the management witnesses should be directed through the Chair of the Appeal as in point (d) above.
- j. Members of the Appeal Panel shall have the opportunity to ask questions of the management, representative and witnesses.
- k. The management representative shall have the opportunity to re-questions his/her witnesses on any matter referred to in the Appeal Panel, the appellant or his/her representative's questions.
- l. The management representative and the appellant (or his/her representative) shall have the opportunity to sum up their cases. The appellant (or his/her representative) shall have the right to speak last. In summing up neither party may introduce any new information.
- m. The panel may at its discretion adjourn the appeal, normally in order that further evidence may be produced by either party.
- n. The management representative(s), the appellant (and representative), and witnesses shall withdraw and the panel shall consider the case in private.
- o. On reconvening the Chair shall advise the employee and management representative of the Panel's decision, or if this is not possible confirm reasons why a decision has not been made and when the decision will therefore be communicated.

- p. The decision of the Appeal Panel will be confirmed in writing within five working days of the appeal.