Disciplinary Policy & Procedure

Review Date: September 2006

Review by: Head of Employment Services

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1. **Introduction**

The object of this procedure is to ensure that all disciplinary matters are dealt with in a fair and consistent manner throughout the Trust. Where disciplinary issues affecting medical staff relate to professional competence or conduct, the disciplinary framework under “Maintaining High Professional Standards in the Modern NHS” will apply.

It is the responsibility of all managers to ensure that staff have the opportunity to be acquainted with the procedure and that they themselves are aware of the procedure and of their delegated responsibilities.

This procedure is designed to state clearly the method and the circumstances in which a manager may take disciplinary action against an employee. It aims to protect the employee against unfair disciplinary action.

Employees who require support during suspension and where appropriate, during the ongoing disciplinary process, may wish to contact the Occupational Health Department.

Employees are reminded of their rights as employees referred to under paragraph 4.7.

2. **Capability (Poor Performance)**

The Trust recognises that there may be instances when unsatisfactory performance by an employee relates to a lack of skill or aptitude and is attributable to incapability rather than to any wilful disinclination by the employee to carry out his/her duties efficiently and effectively. For situations of this sort, reference should be made to paragraphs 12 to 16.

3. **Counselling**

An important part of a manager's job is to monitor the standard of work and conduct of his/her staff and to point out shortcomings as they occur. Such informal discussion should have the aim of solving problems at an early stage so that use of the formal disciplinary procedure is unnecessary. The discussion is confidential and oral rather than written, although the manager should keep a brief note of any counselling. The note is for reference purposes only and should be disregarded after a reasonable period if the necessary improvement is made and sustained.

4. **Disciplinary Procedure**

4.1 **Investigation**

In cases where there are concerns regarding the conduct of any employee, the first stage will be for the facts surrounding the complaint to be established (if necessary taking into account the statements of any available witnesses). However, there may be cases where the allegation that has lead to the disciplinary hearing will be examined at the disciplinary hearing itself.

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Where a case is likely to be complex and may lead to serious disciplinary action, an investigating officer will be appointed who is not the employee’s line manager. Investigators should refer to Appendix 1, which outlines the key points to note when undertaking an investigation.

All investigations should be carried out promptly in order to ensure that the period of suspension is as short as possible. If the investigatory report finds that there is a case to answer the following procedure will then apply, but depending upon the seriousness of the offence, may be invoked at any level including summary dismissal.

4.2 Stage I Formal Oral Warning

If, following informal discussion, an employee’s conduct is not of the required standard; the employee’s immediate manager will convene a disciplinary hearing, giving the employee the right of representation and an oral warning will be given. A representative from the Human Resources Department will be available to attend the hearing if required to do so by the employee’s immediate manager.

The employee will be informed that if he/she fails to respond to the oral warning by improving his/her conduct, further disciplinary action will follow. The manager will also indicate how long the warning will remain in force (see paragraph 4.9). A note should be made by the manager in the personal file and a copy given to the employee.

The employee should be given the right of appeal against an oral warning to the manager who has the power to issue written warnings as detailed in Appendix II, except where that manager issued the oral warning, in which case the right of appeal will be to the officer who has the power to dismiss the employee or to the Trust, as appropriate.

At the end of the agreed period the situation will be reviewed by the manager and either the file note removed or further action taken.

4.3 Stage II First Written Warning

If an oral warning has been given and there is insufficient improvement in conduct, or in the case of more serious offences, a written warning may be given by the employee’s manager. The necessary elements of a written warning are:

a) A manager will investigate, interview the employee, allowing him/her to state his/her case, and review the evidence. Any statements relating to the alleged misconduct will be made available to the employee and his/her representative before the hearing.

b) A manager will confirm in writing the warning to the employee, stating the nature of the offence and that a recurrence of the offence, other misconduct or a failure to improve may lead to further disciplinary action. A copy will be sent to the employee’s representative and one copy will be filed in the personal file.

c) The employee will be informed of his/her right of appeal and the means of exercising the right, which should be within twenty-one days from the date of
issue of the letter of warning (see paragraph 9).

d) The employee will be informed in writing that the warning will be disregarded for disciplinary purposes after a specified period of satisfactory conduct (see paragraph 4.9). It is the manager's responsibility to ensure that review(s) take place as necessary to ascertain that the required improvement is achieved and sustained.

An employee shall have the right of appeal through the Grievance Procedure if he/she feels that a warning is being kept in force unreasonably.

4.4 Stage III Final Written Warning

If a first written warning has been given and there is insufficient improvement in conduct, or in the case of serious offences that the Trust considers may merit the issue of a final warning, the procedures outlined in paragraph 4.3 a, b, c and d will apply except that the employee will be informed that any further recurrence of the offence, other misconduct or failure to improve may result in termination of employment.

4.5 Stage IV Termination of Employment

The decision to dismiss will be made by the manager, as indicated in Appendix II, who will also issue the dismissal notice to the employee. The necessary elements of dismissal are:

a) A manager will investigate, interview the employee, allowing him/her to state his/her case, and will review the evidence. Any statements relating to the alleged misconduct will be made available to the employee and his/her representative before the hearing. The letter requiring the employee to attend a disciplinary hearing, will state that the matter is regarded as serious and could result in dismissal.

b) A manager will confirm the dismissal in writing to the employee. A copy will be sent to the employee's representative and one copy will be filed in the personal file.

c) The appropriate period of notice will be given.

d) The reason for dismissal will be stated.

e) The employee will be informed of his/her right of appeal to the Trust and the means of exercising this right which must be within twenty-one days of the issue of the dismissal notice (see paragraph 9).

4.6 Criminal Action

Where events giving rise to disciplinary action are the subject of police investigation or legal process, management reserves the right to take disciplinary action.

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A criminal offence outside employment will not automatically be a reason for dismissal. The main consideration will be whether the offence is one that makes the individual unsuitable for his/her type of work.
4.7 Rights of Employee

In all cases of disciplinary action taken under stages I, II, III or IV of the disciplinary procedure, the employee must be informed of his/her right to representation. He/she shall have the right either to appear alone or to arrange to be accompanied by a local representative or official of his/her trade union, professional organisation or staff association or a work colleague.

4.8 Rights of Accredited Representatives of Staff Organisations

The disciplinary procedure will not be invoked beyond suspension until a full time official of the organisation concerned has been informed.

4.9 Time Limits for Warnings

In general, warnings for minor offences may be valid for up to six months whilst warnings, including final warnings, for more serious offences will normally be valid for up to twelve months. Warnings should cease to be 'live' following the specified period of satisfactory performance/conduct and must be disregarded for future disciplinary purposes.

Exceptionally, there may be circumstances serious enough to warrant dismissal but the manager decides, taking account of the particular circumstances and mitigation that a final written warning may be issued for a period of up to two years.

4.10 More Serious Cases

It should be recognised that there will be occasions when it will be necessary, because of the seriousness of the offence, for the first stage of the disciplinary procedure to be a first/ final warning written warning or summary dismissal.

5. Suspension

5.1 Suspension does not in itself constitute disciplinary action. It should be used in cases which appear to involve serious misconduct and/or when the investigation is best carried out without the presence of the employee in the workplace.

Suspension may continue until the results of enquiries are known or until the completion of disciplinary proceedings.

Under normal circumstances, prior to a decision being made to suspend an employee, managers should consult with Employment Services to ensure that suspension is appropriate and that there is consistency throughout the Trust. However, in exceptional circumstances, for example, out of normal office hours, this may not be possible. In these circumstances the manager concerned should contact Employment Services to review the decision to suspend at the earliest opportunity.

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5.2 As an alternative to suspension, an employee may be redeployed on a temporary basis in accordance with their contract of employment.

5.3 Suspension will be on full pay and the member of staff will receive the pay he/she would have received had he/she been at work, but excluding casual overtime.
5.4 Whilst it is acknowledged that there is no legal right for an employee to be accompanied by a representative or work place colleague during a fact finding meeting that leads to suspension, managers will endeavour to contact a local steward or work place colleague to attend if the employee so wishes. However, should managers experience difficulty in contacting an appropriate person, the proceedings should not be delayed. In these circumstances or if an employee would prefer to proceed unaccompanied, he/she will be advised that the local representative of the trade union or staff organisation or work colleague will be contacted as soon as practicable, if he/she so wishes.

5.5 In the absence of the manager, as defined in Appendix II, the most senior manager available may suspend an employee (on full pay), as exemplified in paragraph 7.

Such action must be reported at the earliest opportunity to the employee’s manager and suspension must be confirmed in writing to the employee as soon as possible, but no later than 7 days after the event, with the reason stated. The letter will include two named managers and their contact numbers, who may sanction the employee’s attendance on Trust premises if, for example, he/she wishes to meet with a representative.

Suspension from duty does not normally entail removal of a resident employee from the place of residence.

5.6 Any period of suspension which has continued for 4 weeks will be subject to review by the next-in-line manager in conjunction with Employment Services to ensure that no unnecessary delays have taken place. If necessary, subsequent reviews will be conducted every four weeks.

5.7 In the case of medical or dental staff, regard shall be given to the guidance set out in “Maintaining High Professional Standards in the Modern NHS”.

6. **Delegation of the authority to deal with Suspension, Written Warnings and Dismissals**

Authority to suspend, issue warnings and dismiss is delegated in accordance with Appendix II.

7. **Summary Dismissal (i.e. Dismissal without Notice)**

Summary dismissal should be used only in cases of gross misconduct. The following is a non-exhaustive list of examples of such cases:

a) Serious neglect of duty, or a wilful act which is prejudicial to the well-being of a patient;

b) Falsifying a time sheet or making a false expenses claim with intent to deceive;

c) Other forms of dishonesty, for example, theft;

d) The use of physical violence;

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e) Wilful damage to the Trust’s premises or property;

f) Harassment or bullying;

g) Unlawful possession of property belonging to the Trust;

h) Criminal offences outside employment if likely to affect adversely the employee's work or working relationships with his/her employer or other employees;

i) Wilfully failing to comply with the Trust's Standing Orders or Standing Financial Instructions;

j) Wilfully failing to comply with the Trust's Data Security Policy;

k) Wilfully breaching patient confidentiality;

i) Other behaviour that may destroy the relationship of trust and confidence between employer and employee.

The necessary elements of a summary dismissal are as outlined in paragraph 4.5 a, b, d and e. No period of notice will be given.

8. The Disciplinary Hearing

The hearing will be conducted by the appropriate senior manager, as described in Appendix II, accompanied by a representative from the Human Resources Department. In cases where dismissal is a possible outcome, there should be a panel of three persons. It may also be necessary for there to be a third panel member in cases where professional advice is required (e.g. nursing).

In many cases the allegations which have led to the disciplinary hearing will be examined at the hearing. However, where there has been the need for an investigation, which requires an investigating officer, that officer will not conduct the disciplinary hearing but will be asked to present the supporting facts and material. Copies of statements will be made available to the employee and his/her representative ten working days in advance of the hearing.

The employee, or his/her representative, and the panel members will be entitled to question the investigating officer and also any witnesses who may attend. The employee will be entitled to give any explanation he/she wishes and to put forward any mitigating factor(s) which he/she wishes to have considered. He/she, together with any witnesses called, may be questioned by the investigating officer as well as the panel members. The investigating officer and the employee or his/her representative will both be given the opportunity to summarise and conclude their case before the panel members.

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An adjournment by the panel members allows proper consideration of all the details of the case. When the hearing resumes the manager conducting it will give his/her decision on the disciplinary action, if any, to be taken. He/she will also give an explanation for that action; the time limits involved and will explain to the employee his/her right of appeal.
9. **Right of Appeal**

9.1 An employee who is aggrieved by disciplinary action, which results in the issue of a warning, has the right of appeal against such action to the manager who has the power to dismiss the employee as detailed in Appendix II (except where that manager issued the written warning, in which case the right of appeal is to the Trust).

It should be noted that there is nothing to prevent the next stage of the Disciplinary Rules & Procedure being invoked whilst an appeal against an earlier warning is still extant.

An appeal should be notified in writing to the Director of Human Resources within twenty-one days of the date of the written notice of disciplinary action, stating the grounds of appeal.

The procedure to be followed at the appeal shall be as described under 10.2, 10.3, 10.4, 10.5 and 10.6 below.

9.2 An employee who is aggrieved by disciplinary action which results in dismissal has the right of appeal against such action to a Trust Appeal Panel. An appeal should be notified in writing to the Director of Human Resources within twenty-one days of the date of the letter of dismissal, stating the grounds of appeal.

10. **Trust Appeal Panel**

10.1.1 An appeal panel shall consist of not less than three members of the Trust Board. If possible, at least one member of the Panel should have a special knowledge of the field of work of the employee where such knowledge is particularly important to the case. Where this is not possible the panel shall at the request of the employee or the employee’s representative appoint an agreed assessor, who is experienced in the particular discipline of the employee, and who has not been directly involved in the circumstances leading to disciplinary action. The assessor may only advise the panel on any matter arising during the course of the hearing which the assessor feels may be related to the professional conduct or professional competence of the employee. The Director of Human Resources will act as Secretary to this Panel unless he/she has been involved previously (see paragraph 10.1.3).

10.1.2 The members of the Appeal Panel shall not include any members of the Trust who have been directly involved in the circumstances leading to disciplinary action.

10.1.3 No manager of the Trust who has been involved at an earlier stage of the disciplinary procedure or in the circumstances that appeared to indicate the need for disciplinary action will be present at the appeal hearing as Secretary of the Appeal Panel or in any capacity other than as a witness or as the representative of the Trust.

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10.2 **Procedure**

10.2.1 The appropriate manager will submit a written statement setting out the reason for the action taken with supporting evidence. The statement will be available to the appellant and should be sufficiently detailed to enable an employee to understand the reason for the action taken and to be able to present his/her case.
10.2.2 The appellant or his/her representative will submit a written statement of case describing the grounds on which the appellant is contesting the manager’s action.

10.2.3 The statements, together with other relevant correspondence, will be circulated to the Appeal Panel, the manager, the appellant and his/her representative (where applicable), ten working days before the hearing. Nothing shall prevent either side from presenting further information to the Appeals panel after the initial statement of case has been submitted. However, unless agreed by both parties only evidence heard or presented during the disciplinary hearing will be acceptable at the appeal hearing. A copy of the procedure to be followed at an appeal hearing is attached (Appendix III).

10.3 Witnesses

Witnesses for either party may be called to support the case. The responsibility for arranging the attendance of a witness will fall upon the party concerned. Members of staff called as witnesses must be allowed time off to attend; they must be paid the appropriate travelling expenses by the Trust. Witnesses for the respective parties must wait in separate waiting rooms if possible and must not be present at the hearing of the appeal except for the purpose of giving evidence. Arrangements must be made to avoid contact between witnesses who have been heard and those who have not yet given evidence. It is usual for witnesses to be questioned by both parties and by members of the Trust Appeal Panel and this is made clear in the procedure laid down for the hearing. The Chairperson should rule on the admissibility of questions, evidence and admissibility of observers. All questions must be put formally through the Chairperson.

10.4 Representation

An employee who exercises their right of appeal may be accompanied by a representative of his/her trade union, professional organisation or staff association, or by a work colleague. It should not be necessary for the manager to be represented by a trade union but there may occasionally be circumstances in which his/her trade union representative or other person of their choosing could attend in support.

10.5 Hearings

The hearing of an appeal by the Appeal Panel shall normally take place within 5 weeks of the receipt of the appeal to the Trust, although there may be exceptional circumstances when by agreement this period would be extended. The employee shall be given at least 7 days’ notice of the date of the hearing.

At the hearing of the appeal before the Appeal Panel, the procedure detailed in Appendix III shall be observed.

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10.6 Findings of an Appeal Panel

A record of proceedings should be made and kept on file. The final decision will be notified to the appellant and the trade union within 7 working days and reported to the Trust. If the Trust Panel orders the reinstatement of a dismissed employee the employee shall be treated as if he/she had not been dismissed and any back pay due will be calculated as if the employee had been at work, but excluding casual overtime.
11. Nothing in the above procedure precludes an employee taking his/her case to the Employment Tribunal.

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CAPABILITY (SKILLS/APTITUDE)

12. General Principles

Employees have a responsibility to achieve a satisfactory level of performance and should be given help and encouragement to achieve the standards set. It is recognised that individual employees may have responsibilities and duties to their
own statutory/governing bodies. Full account will be taken of the need to adhere to statutory requirements in any case of disciplinary action.

Standards of performance and objectives provide a means of measuring what is acceptable. They should be realistic and achievable and understood by the employee.

The aim is to identify shortcomings and improve performance with appropriate support, training and development.

In identifying poor performance, information about the employee’s shortfalls should be collected.

Where appropriate, managers should rule out poor performance which is a consequence of a health problem. This should be achieved by seeking advice from the Occupational Health Department via a referral.

Conduct and capability may overlap, for example, where the employee is not doing the job properly it may be something which is within his/her power to improve that is causing the deficiency, or it may be that he/she is incapable of performing to the required standard. In the former case conduct may play a part – in the latter case there may be nothing which can be done by the employee. Matters relating to poor performance where the deficiency of the employee stems from lack of aptitude or skill, rather than any wilful refusal to carry out the duties of the job, will be dealt with sensitively, fairly and in a timely fashion.

Initially, capability issues will normally be dealt with informally on a one to one basis between the employee and his/her line manager.

During the formal stages of the procedure, the employee will have the right to be accompanied as outlined under paragraph 4.7.

In some cases of poor performance, it may be appropriate for a professional adviser to assist in the provision of performance advice.

A representative from Employment Services should be in attendance once the matter has progressed beyond a formal oral warning.

13. Procedural Steps

- Counselling (at least two informal meetings should normally be held before proceeding to formal action.

- Formal oral warning.

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- First written warning.

- Final written warning.

- Dismissal

If the matter is very serious, it may be necessary to bypass one or more of the above stages. In cases of irredeemable incapability, where there is a single incident of
gross incompetence, summary dismissal may be justified. However, the nature of the work and the degree of risk in continued employment would be important considerations.

Whilst disciplinary action does suggest punishment, the emphasis will be on advising and assisting the employee to improve to an acceptable level within an acceptable timeframe.

14. **Guidance as to what should be included when discussing performance problems with an employee**

An overview of the employee’s performance, including evidence of poor performance, effects on service provision and work colleagues. Documentation from appraisal and NHS KSF development review should also be available. The employee should be given an opportunity to respond.

Identify reasons for poor performance including any constraints, difficulties with working relationships or personal issues at home that may have an impact on the employee’s performance.

Clarify what is expected, set measurable objectives which are reasonable in the circumstances and agree a timescale for improvement and review, which should normally be no less than eight weeks.

Identify training/coaching and other support that may assist in bridging the gap.

Consider if mentorship would be beneficial.

Advise the employee of the next step if there is no improvement in performance.

A file note should be placed on the employee’s personal file in respect of any informal action taken and a copy should be given to the employee. Any formal process should be followed up in writing and the employee should be given the right of appeal.

15. **Redeployment**

In the event of the employee receiving a final written warning, it may be appropriate to consider redeployment opportunities at this stage. The Trust is under no obligation to create a post and alternative employment may not be on the same pay band. The employee will be provided with a copy of the Trust’s weekly vacancy bulletin and encouraged to identify vacancies for which he/she is interested in applying. Those which the Human Resources Department and the individual agree may be suitable will be pursued and the individual will be given a guaranteed interview for the post. If the employee is successful in their application he/she will be given a 12 week trial period in the new post. At the end of this period the individual’s suitability will be jointly assessed.
If the employee does not wish to explore alternative work, he/she will be advised that continued poor performance in the role will result in the termination of his/her employment. If the matter gets to this stage and the employee wishes to reconsider alternative employment, a search can be conducted during the notice period and notice rescinded if a suitable post is found within the timescale.

16. Improved performance

If the employee's performance improves during either the informal or formal stages of the procedure, he/she should be praised for his/her effort and advised that any improvement must be sustained in the long term.

Agreed by the Joint Staff Council (24 January 2006)
Approved by the Trust Board (insert date)

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APPENDIX I

KEY POINTS TO NOTE WHEN UNDERTAKING AN INVESTIGATION

Introduction
Prior to taking disciplinary action a prompt investigation should be conducted in accordance with the Trust’s Disciplinary Rules & Procedure, which incorporates the principles of the Statutory Dismissal & Disciplinary Procedures.

An investigation is not a disciplinary hearing and this should be made clear to the employee. If, for example, an employee admits guilt during an investigatory interview, this will not remove the need for a disciplinary hearing where the employee can state his/her case and possibly explain any mitigating factors.

It may be the case that during the investigation, plausible explanations emerge and consequently there is no need for a disciplinary hearing, hence the importance of conducting an investigation. However, this need not be a formal process, for example, conduct relating to poor time keeping.

It is difficult to give hard and fast guidelines as to how much investigation is required. The legal test is that an employer must hold such investigation as is reasonable in all the circumstances. It is important to ensure that the relevant facts have been established so that the management case can be put to the employee in a manner that makes it clear what is being alleged, in order to enable a meaningful response. The allegations are set out in a statement of case.

Confidentiality is important and applies to the person conducting the investigation and to any person such as a witness who is involved in the investigation and this should be made clear from the outset.

When undertaking interviews as part of an investigation, the investigator should consider the need for reasonable adjustments to cater for disabilities, for example, organising a venue for interviews on the ground floor where there is no lift and wheelchair access is required.

**Selecting an Investigator**

In some cases, the employee’s immediate line manager will be the appropriate person. As previously stated under paragraph 4.1 of the Disciplinary Rules & Procedure, where a case is likely to be complex and may lead to serious disciplinary action, an investigating officer will be appointed who is not the employee’s line manager.

The investigation must be undertaken by a different person than the one who may hear the case if it proceeds to a disciplinary hearing. It may on occasions be appropriate to have more than one investigating officer.

In cases where fraud or corruption is suspected, an auditor may be selected to undertake the investigation in accordance with the Fraud Policy & Response Plan.

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**Right to be accompanied**

Although there is no statutory right to be accompanied at an investigatory meeting, if the employee who is the subject of the allegations or a witness makes a request to be accompanied, the investigator will endeavour to arrange this provided it does not unduly delay the proceedings.
Obtaining Evidence

The investigation should be an objective and non-judgemental inquiry into the facts of the case. The purpose is not to build a case against the employee, but to search for evidence which confirms or denies the allegations. The employee will be required to co-operate with the investigating officer and it is mandatory for him/her to produce a written statement, briefly outlining his/her version of events.

The evidence provided by witnesses (where appropriate) is important to the investigation, particularly in cases of misconduct. Witnesses should be interviewed and either notes or a statement taken of their recollection of events before memories fade. Statements must be signed and dated as a true and accurate record of events.

Where a witness is reluctant to co-operate, the investigator should try to establish the reason for any reluctance and if the person concerned is an employee, he/she should be reminded of the obligation of good faith or fidelity owed towards the employer and if relevant, the profession (e.g. NMC), patients and colleagues.

Where a witness is genuinely in fear of reprisals, various steps can be taken to protect the person’s identity, such as deleting any references in his/her statement which may lead to identification of the source in addition to their actual name. However, no guarantee of complete confidentiality can be given.

The investigator may need to examine documents such as time sheets, rotas, claim forms, patient notes, policies/procedures/guidelines etc. as appropriate. On occasions it will be necessary for an investigator to seek assistance from specialists in their field, for example, IM&T to conduct an internal audit of Internet usage.

Sometimes an incident is identified following a patient complaint. Consequently, there may have been a preliminary investigation into the circumstances which may have resulted in a formal letter of complaint having been obtained from the patient, which will need to be considered in the light of any further investigation. Patients are not normally asked to attend as witnesses at disciplinary hearings.

Having interviewed all relevant witnesses, the investigator should consider whether any individuals need to be interviewed again. This may be necessary where witness accounts differ or to corroborate information obtained after the original interview.

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Statement of Case

When the investigation is complete, the investigating officer should prepare a management statement of case, which is submitted to the manager who commissioned the investigation. This is written in the form of a report and should include for example, witness statements and documentation/records as appendixes.
The report should summarise the investigator’s findings and include a recommendation concerning whether or not a disciplinary hearing should be convened.

If the matter is to proceed to a hearing, the investigating officer will be responsible for co-ordinating a date for the hearing, ensuring the availability of panel members, witnesses, the employee and their representative.

The statement of case will be forwarded the Human Resources Department so that the relevant paperwork can be sent out to all concerned, ten working days prior to the date of the hearing. This must be taking into account when the investigating officer is co-ordinating the date for the hearing.

The investigating officer will present the case to the panel during the disciplinary hearing, with the assistance of witnesses as appropriate. Having sought advice from the Human Resource Department (if necessary), the investigating officer will be responsible for briefing witnesses in respect of their role at a disciplinary hearing.

APPENDIX II

POWERS OF MANAGEMENT

Advice should be sought from the Human Resources Department prior to any formal disciplinary action being taken against an employee. Copies of all written warnings and letters of dismissal must be forwarded to Employment Services.
The power to suspend and take disciplinary action under this procedure is vested in the person to whom the employee reports as specified in his/her job description, with the proviso that no one on band 6 or below is so empowered (other than in cases of counselling), in which case the power will be vested in the next senior person in the organisational structure.

- In an emergency situation, for example, outside normal working hours, the most senior person available has the right to suspend, for example, Night Matron.

**Where a disciplinary hearing is convened in respect of:**

- a nurse, disciplinary action should only be taken with nursing advice;
- medical staff, the disciplinary framework “Maintaining High Professional Standards in the Modern NHS” will apply;
- Executive Directors and the Secretary to the Board shall be dealt with in accordance with the Standing Orders of the Trust Board.

### APPENDIX III

**PROCEDURE AT THE HEARING OF AN APPEAL**

At the hearing of an appeal before an Appeal Panel the following procedure shall be observed:

1. The Trust's representative shall state the Trust's case in the presence of the appellant and his/her representative and may call witnesses.
2. The appellant or his/her representative shall have the opportunity to ask questions of the Trust's representative and witnesses.

3. The members of the Appeal Panel shall have the opportunity to ask questions of the Trust's representative and witnesses.

4. The Trust's representative shall have the opportunity to re-examine his witnesses on any matter referred to in their examination by members of the Appeal Panel, the appellant or his representative.

5. The appellant or his/her representative shall put his/her case in the presence of the Trust's representative and may call witnesses.

6. The Trust's representative shall have the opportunity to ask questions of the appellant, his representative and his witnesses.

7. The members of the Appeal Panel shall have the opportunity to ask questions of the appellant, his representative and his/her witnesses.

8. The appellant or his/her representative shall have the opportunity to re-examine his/her witnesses on any matter referred to in their examination by members of the appeal panel or the Trust's representative.

9. The Trust's representative and the appellant or his/her representative shall have the opportunity to sum up their cases if they so wish. The appellant or his/her representative shall have the right to speak last. In his/her summing up neither party may introduce any new matter.

10. Nothing in the foregoing procedure shall prevent the members of the Panel from inviting either party to elucidate or amplify any statement he/she may have made, or from asking him/her such questions as may be necessary to ascertain whether or not he/she proposes to call any evidence in respect of any part of his/her statement, or alternatively, whether he/she is in fact claiming that the matters are within his/her own knowledge, in which case he/she will be subject to examination as a witness under (2) or (6) above.

11. The panel may at its discretion adjourn the appeal in order that further evidence may be produced by either party to the dispute or for any other reason.

12. The Trust's representative, the appellant and his/her representative, and witnesses shall withdraw.

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13. The Panel with the officer appointed as secretary to the Panel and where appropriate the assessor shall deliberate in private only recalling both parties to clear points of uncertainty on evidence already given. If recall is necessary both parties shall return notwithstanding only one is concerned with the point giving rise to doubt.

14. The Panel will announce its decision to both parties to the appeal at the close of the hearing, except that it shall be open to the Panel to elect to convey its decision in writing (in which case this shall be conveyed to both parties within seven working days of the hearing by the Secretary to the Panel).
Notes

(a) Witnesses

Paragraphs 2, 3, 6 and 7 refer to the calling and questioning of witnesses. If either party proposes to call more than one witness, the witness so called should be questioned by both parties of the Appeal Panel if appropriate before the next witness is called. Witnesses must leave the room after they have been questioned.

(b) Role of Chairperson

The Chairperson shall rule on the admissibility of questions, evidence and the admissibility of observers.

All questions shall be put formally through the Chairperson.