Disciplinary Policy

This document can only be considered current when viewed via the Trust intranet/internet. If this document is printed or saved to another location, you are advised to check that the version you use remains current and valid, with reference to the review due date.
1.0 FLOW DIAGRAM

Manager / Commissioning Manager utilise the attached ‘Just Culture Guide’ and seeks advice/guidance/support from the HR advisory team.

The manager must discuss the allegation with the Local Counter Fraud Manager or Counter Fraud Authority if any element of possible fraud, corruption or bribery is alleged.

Learning outcomes
Ensure right of representation offered throughout

Formal
Ensure right of representation offered throughout

Commissioning manager decides a full investigation is required.

Commissioning manager decides that information gained from fact finding is sufficient to proceed to a hearing

Learning outcomes
Ensure right of representation offered throughout

Arrange meeting with relevant parties to review findings and share learning outcomes

No further action required unless the issue or similar issue reoccurs. Possible meeting to share learning outcomes.

Commissioning manager makes decision on next step & notifies relevant parties

IO conducts investigation & produces report for commissioning manager

Decision on suspension / redeployment with appropriate authorisation (see guidance 4)

Disciplinary Hearing

Sanction Notice issued

Appeal

No case to answer
No further action
2.0 INTRODUCTION

2.1 This policy has been produced and agreed in partnership between management and Trade Union representatives of both Taunton and Somerset NHS Foundation Trust and Somerset Partnership NHS Foundation Trust to ensure all colleagues are treated fairly if a complaint or concern is raised against them. It is acknowledged that not all situations will necessitate the need to implement this policy and in assessing whether a formal approach is required, many factors will need to be considered.

2.2 Taunton and Somerset NHS Foundation Trust and Somerset Partnership NHS Foundation Trust have embraced a culture of supporting colleagues to be open about mistakes and allowing valuable lessons to be learnt. This will help prevent the same errors from being repeated in the future. Inadvertent human error, freely admitted, will not normally be subject to a formal disciplinary process, in order to encourage reporting of safety issues. This will allow the Trust to fully learn how systems and processes can be improved for the future and support the cultural alignment with Trust values and behaviours.

2.3 Investigators will principally attempt to understand why failings occurred and how systems/processes led to behaviours not in keeping with our values and behaviours. However, this culture also holds people appropriately to account where there is evidence of gross negligence or deliberate acts of misconduct.

2.4 Taunton and Somerset NHS Foundation Trust and Somerset Partnership NHS Foundation Trust believe that fairness and transparency are promoted by developing clear and transparent policies and procedures and ensuring all colleagues regardless of role understand their content.

2.5 The Trusts recognise that some sections of society experience prejudice and discrimination. The Equality Act of 2010 recognises protected characteristics and gives consideration to socio-economic factors including pregnancy/maternity and marriage/civil partnership.

2.6 The Trusts are committed to equality of opportunity and inclusive practices in both the provision of services and our role as an employer. All people have the right to be treated with dignity and respect and the Trusts are committed to the elimination of unfair and unlawful discriminatory practices.

2.7 Investigators will principally attempt to understand why failings occurred and how systems/processes led to behaviours not in keeping with our values and behaviours. However, this culture also holds people appropriately to account where there is evidence of gross negligence or deliberate acts of misconduct.

2.8 Taunton and Somerset NHS Foundation Trust and Somerset Partnership NHS Foundation Trust believe that fairness and transparency are promoted by
developing clear and transparent policies and procedures and ensuring all colleagues regardless of role understand their content.

2.9 The disciplinary policy has been written in accordance with the Advisory Conciliation and Arbitary Service (ACAS) Guide and is designed to assist line managers, colleagues and trade union representatives to deal with disciplinary situations in the workplace in a fair and consistent manner. This policy will apply to any successor organisation of the two Trusts. It may be reviewed at the request of management or staff side and will remain in force until its renewal. We may also vary this procedure, including any time limits, as appropriate, to support any case.

2.10 There are a series of helpful guides referenced in this policy and these are available in the People Toolkit on the Intranet.

2.11 **Purpose and scope**

2.12 The purpose of this policy is to set out a process which ensures colleagues are clearly aware of the approach to be taken and agreed accepted standards.

2.13 The policy does not apply to issues of capability or attendance due to sickness, which will be dealt with in accordance with the capability policy or supporting attendance policy respectively. If you are unsure which policy applies, please contact the HR advisory team for advice and guidance.

2.14 This policy does not apply to the professional conduct, performance or capability of doctors and dentists. It will apply to allegations relating to the personal misconduct of doctors and dentists at the point that the investigation has been concluded under the Trust’s Policy for Maintaining High Professional Standards/Managing Performance Concerns, if a formal hearing is considered to be necessary.

3.0 **DEFINITIONS**

3.1 **Fact finding** – this is the initial enquiries / investigations undertaken by a line manager to enable them to make an informed decision as to their next course of action.

3.2 **Commissioning Manager** – the manager to whom the conduct has been raised

3.3 **Investigation** – If deemed necessary following the initial fact finding exercise, a line manager may commission an independent detailed investigation before concluding how best to proceed.

3.4 **Investigating Officer** – the person appointed by the commissioning manager, to objectively investigate the allegation/s. They may be from within the same directorate, from another part of the Trust or occasionally, they may come from outside the Trust.

3.5 **Right to representation/support** – a colleague has the right to be represented, if they wish, by either a recognised Trade Union Representative or a Trust employed work colleague.
3.6 **ACAS** - The Advisory, Conciliation and Arbitration Service (ACAS) provides free and impartial information and advice to employers and employees on all aspects of workplace relations and employment law.

3.7 **Never Event** – where a colleague who is the subject of an investigation suffers serious mental or physical harm. An immediate independent investigation will be commissioned and its findings presented to the Board.

4.0 **ROLES and RESPONSIBILITIES**

4.1 It is the responsibility of **all colleagues** to:

- familiarise themselves with the policies and procedures applying to their employment and areas of work.
- participate fully in any processes, in a timely and constructive manner, whether this concerns them personally or a work colleague.
- act professionally in line with our Trust values, behaviours and the NHS Constitution
- to take the required action under this policy if their conduct is not meeting the standards required

4.2 **The Director Of People and Organisational Development** has overall responsibility for:

- the implementation of this policy
- providing the Board with a regular update on any suspensions

4.3 **The Commissioning Manager** has responsibility for:

- applying the processes outlined in the policy
- deciding the appropriate investigation option
- providing clear and unambiguous terms of reference to an investigating officer including the method and time intervals for communicating and updating a colleague who is subject of an investigation.
- ensuring that the investigating officer is independent, properly trained and has the appropriate resources and time to complete the investigation
- making a decision following receipt of any investigation report
- ensuring that the makeup of the panel is appropriate in terms of knowledge, skills, experience and impartiality
- where appropriate chairing hearing panels that are convened
- arranging a note taker for hearings
- feedback any areas of concern relating to safeguarding

4.4 **Managers** have responsibility for:

- ensuring all colleagues are aware of this policy and its contents
- ensuring colleagues understand the standards of conduct required.
- ensuring that high standards are maintained
- bringing any concerns they may have about a particular colleague to their attention in a timely and sensitive manner
• providing support to individuals/parties during the disciplinary procedures/process
• maintain regular contact and support, in line with the terms of reference, especially with any suspended, redeployed or absent colleague to ensure they remain informed and updated on developments within their case
• feedback any areas of concern relating to safeguarding
• keeping full and accurate records

4.5 The HR Advisor Team has responsibility for:

• providing support and guidance on the process
• ensuring a fair and consistent process is followed.
• advising on the application of this policy.
• supporting resolution of any issues through providing advice and guidance.
• providing support to individuals/parties during disciplinary procedures
• to liaise promptly with the Local Counter Fraud Manager/NHS Counter Fraud Authority regarding any suspected fraud, bribery or corruption concerns
• providing updates on suspensions and disciplinary hearing outcomes to the Board

4.6 Trade Unions are responsible for:

• acting as a representative/advocate to their members
• providing their members with advice and support on matters relating to colleague conduct
• representing members at informal and formal stages of the process.
• ensuring that this policy is applied fairly and consistently on an individual and organisational level.

4.7 The Local Counter Fraud Manager is responsible for:

• establishing the facts in relation to suspected criminal offences
• compiling background information in relation to individuals concerned upon receipt of any referral.
• advising HR advisors and the commissioning manager as to the priority of criminal investigations over disciplinary investigations to ensure that processes are not compromised

5.0 PROCESS DESCRIPTION

5.1 Disciplinary standards

5.2 No set of disciplinary standards can cover all circumstances that may arise during the course of employment; therefore, the following list should not be regarded as exhaustive or complete. It has been drawn up to enable colleagues to know and understand the types of conduct that will warrant disciplinary action and describe the Trust’s approach to issues of colleague misconduct.

5.3 Commitment to Support
5.4 The Trust recognises that when allegations, complaints or issues are raised this can be a stressful period for everyone involved. The Trust is therefore committed to support colleagues in any reasonable way in order to mitigate this. Supportive actions may include, but are not limited to:

- recognising that it is not always necessary to invoke formal management action, considering the context and prevailing factors of the allegation.
- continuing to review the necessity for formal action throughout the process.
- appointing an impartial individual who is aligned to support the welfare of the colleague under investigation and feedback any areas of concern relating to safeguarding.
- occupational Health referrals if appropriate.
- promoting the Trust's Employee Assistance Programme (EAP).
- reviewing the role, responsibilities and hours of work and identify changes where appropriate.
- giving the colleague under investigation the opportunity to comment on who the investigating officer may be prior to confirmation of their appointment.
- ensuring the process is concluded as swiftly as reasonably possible without detriment to the integrity of the process or learning that may be gained.

5.5 Initial Investigation Principles

5.6 At the outset of any allegation, complaint or issue raised all managers must read the attached guide to consider the wider context of where things may have gone wrong (A Just Culture Guide). Managers should seek advice from the HR Advisory Team if they are unsure how to progress.

Investigators will principally attempt to understand why failings occurred and how the system led to behaviours not in keeping with the Trust values and behaviours. The focus will be on the context, not the individual involved.

Whilst the guide itself is aimed specifically at patient safety issues, we believe the same principles can and should be applied in any allegation, complaint or issue raised that could result in disciplinary action. Shared learning outcomes may be appropriate rather than formal disciplinary action.

5.7 Formal action

5.8 With the exception of any proven act of gross misconduct (see 5.11), no colleague will be dismissed for a first offence.

5.9 Examples of conduct warranting a disciplinary sanction if proven:

- intentional failure to provide an efficient, safe and high quality service with concern and respect for the feelings and wellbeing of other colleagues, patients and visitors.
- Failure to observe the Trust internal policies and procedures.

5.10 Examples of conduct that could warrant dismissal
5.11 There are certain types of conduct which could be considered, if proven, so serious as to constitute 'gross misconduct' and to warrant dismissal with no previous warnings and no notice or pay in lieu of notice. These include but are not limited to:

- Discrimination or act of hate towards any colleague, patient or service user
- Dishonest or fraudulent act
- Failure to disclose an interest that is contrary to Trust’s Standards of Business Conduct, Standing Orders or Standing Financial Instructions
- Physical or verbal assault
- Safeguarding Concerns
- Malicious damage to property
- Being unfit or unsafe for duty
- Failure to fulfil contract
- Gross negligence or incompetence
- Unauthorised Access and/or Disclosure of Information
  - Notwithstanding the disclosure of information in regards to the Raising Concerns/Whistleblowing policy where any individual has the right to speak out when they believe there is good cause to do so under the protection of this policy

5.12 **Suspension / Redeployment**

5.13 Suspension does not in itself constitute disciplinary action. Managers and investigators should not underestimate the psychological distress that a prolonged suspension can have on a colleague and should do everything to mitigate this by offering support and regular communication. In some cases there may be the justification to suspend a colleague whilst undertaking a full investigation, although this must only be as a last resort. This will always be on full pay including any usual paid allowances.

Where there is an allegation of fraud, bribery or corruption, the Local Counter Fraud Manager must be consulted before any decision to suspend is made.

5.14 Managers should assess the risks associated with the individual remaining in their role and consider temporary redeployment ahead of suspension. This will not impact on the individual’s pay, which will be protected during this period. The suspension risk assessment must be used in assessing whether suspension is necessary and this document can be found in the supporting documentation.

5.15 All suspensions are reported to the Board and anonymised to ensure they are reviewed on a regular basis and kept as short as possible. This will be communicated to the individual by the manager or nominated Trust contact (if applicable). The terms of the suspension will be agreed on a case by case basis.

5.16 Where there is an allegation of fraud, bribery or corruption, the Local Counter Fraud Manager must be consulted before any decision to suspend is made.
5.17 **Investigation options**

5.18 After performing an initial fact finding exercise, management can consider the following two options:
- Independent investigation
- No formal action required

5.19 **Investigating Officer (IO)**

5.20 In order to conduct a full independent and objective investigation the commissioning manager will need to identify a suitably trained and independent person to do so. An IO must be given the appropriate time and resources to conduct a thorough investigation.

Any actual or perceived conflicts of interest should be made known to the commissioning manager who will take a view on whether a different IO should be appointed to ensure impartiality and independence.

5.21 **Investigation Report**

5.22 The instigation of an independent investigation does not constitute formal disciplinary action. It is for the commissioning manager to decide, on receipt of the investigating officer’s report, how to proceed:
- No case to answer and no action required
- To be managed outside of a formal disciplinary hearing e.g. through training or shared learning
- Proceed to a disciplinary hearing

5.23 **Disciplinary Hearing Outcomes**

5.24 Formal disciplinary action may only be taken by an appropriate manager in line with the authority levels required (see Appendix 1). The following are the options available for the disciplinary panel to agree as the outcome of the hearing. Disciplinary action should only be considered when the panel feels that expected standards of conduct have been breached.

5.25 Where agreed by all parties, formal disciplinary hearings may be recorded digitally in addition to transcripts being taken.

5.26 **No Case to Answer**

5.27 This is appropriate when on the balance of probabilities the panel agrees that the colleague did not behave in the way alleged, or when the mitigation put forward is deemed sufficient to excuse the conduct on this occasion. In this case there will be no record of the investigation or hearing on the colleague’s personal file.
5.28 **Stage One: Formal Warning**

5.29 Appropriate in cases involving offences of minor misconduct or where attempts of counselling/informal action has failed to secure improvement. To remain effective for 12 months.

It is the HR advisory team’s responsibility to inform the line manager to remove details of the investigation report and warnings from the personal file when expired.

5.30 **Stage Two: Final Warning**

5.31 Appropriate where there is a live formal warning on file or where serious misconduct is proven. To remain effective for 12 months.

5.32 **Stage Three: Dismissal**

5.33 Appropriate in cases of gross misconduct or where there is currently a final live warning on file. A colleague may be summarily dismissed only in the event of gross misconduct. This is instant dismissal with no previous live warnings, without notice or a payment in lieu of notice. Any mitigation must be considered when deciding the sanction and it should be remembered that dismissal is not always the appropriate sanction for gross misconduct.

5.34 **Alternatives to dismissal**

5.35 Where an allegation is upheld and as an alternative to dismissal and where there is a justifiable need to move a colleague out of their existing base or role then a disciplinary transfer may be applied.

This would normally be at the colleague’s existing grade and hours and be accompanied by a written warning. In exceptional circumstances, this result in a reduction in band. Pay protection will not apply.

5.36 **Referrals to professional bodies**

5.37 Concerns regarding colleagues whose practice is covered by a professional body will be brought to the attention of the clinical lead to decide if a referral is required.

5.38 **Appeals**

5.39 **Right to Appeal**

5.40 Appeals may be raised by colleagues on any number of grounds, for instance new evidence, undue severity or inconsistency of the penalty. The appeal may either be a review of the disciplinary sanction or a re-hearing, depending on the grounds of the appeal. An appeal must never be used as an opportunity to punish the employee for appealing the original decision, and it should not result in any increase in penalty as this may deter individuals from appealing.

5.41 The right of appeal should be heard by the next appropriate Line Manager for Stage 1 and 2 warnings and disciplinary transfers. Appeals against dismissal should be heard by a more senior manager independent from the original hearing manager with
the relevant authority for dismissal. The grounds for appeal should be received within 14 calendar days from the date of the outcome letter.

5.42 **Appeal Submission**

The appeal should be submitted to the next in line manager, with a copy sent to the HR Advisor Team, within 14 calendar days of the date of the written notice of the disciplinary outcome. Where possible, notes from the meeting should accompany this letter. Any appeal must state the grounds upon which it is based. Any new evidence that the individual wishes to present to the Appeal Hearing Panel should be provided to the chair of the panel at least 5 working days prior to the appeal meeting.

5.44 **Timescales**

An appeal hearing will be convened for the earliest available opportunity. The full circumstances of the case will be considered and a decision will be made and confirmed to the colleague in writing, usually within 7 days of the hearing. There is no further right of appeal. For expediency, the appeal may be heard by an appropriate senior manager.

5.46 **Outcomes**

Appeal panels may decide that:

- that the appeal is not upheld
- that the appeal is partially upheld and the outcome or improvement notice is reduced;
- that the appeal is completely upheld and the outcome quashed. All relevant records would be removed from the colleague’s file and a review would be held in order to understand why this has happened and if any additional learning could be applied.

5.48 **Debrief and Learning**

It is important to ensure that colleagues are fully supported following the outcome of the hearing. This support will need to be tailored to meet the needs of colleagues and the situation. At the conclusion of the process those involved will be asked to feedback on any learning from the case, in order to identify any process improvements or learning that the organisation can take forward.

6.0 **TRAINING/COMPETENCE REQUIREMENTS**

6.1 All appointed Investigators, Chairs and Panel Members must have received appropriate training relating to the requirements of their role.
## 7.0 MONITORING

<table>
<thead>
<tr>
<th>Element of policy for monitoring</th>
<th>Monitoring method - Information source (eg audit)/ Measure / performance standard</th>
<th>Item Lead</th>
<th>Monitoring frequency / reporting frequency and route</th>
<th>Arrangements for responding to shortcomings and tracking delivery of planned actions</th>
</tr>
</thead>
<tbody>
<tr>
<td>Staged process as set out in the disciplinary flowcharts</td>
<td>A case tracker will track all cases of disciplinary investigations and outcomes.</td>
<td>The nominated lead within the HR Advisor team</td>
<td>Monitoring reported to the People Governance Committee on a six monthly basis.</td>
<td>If the People Governance Committee identifies a concern they will oversee the development of an action plan or escalate as appropriate to the Director of People</td>
</tr>
<tr>
<td></td>
<td>On a six-monthly basis the HR Advisor team will carry out a review of all the cases to identify any key organisational themes, including training issues</td>
<td></td>
<td>Six monthly</td>
<td></td>
</tr>
<tr>
<td></td>
<td>On a six monthly basis, the HR Advisor team will carry out a review of all the cases that have reached a hearing or being awarded a formal outcome to determine whether there are indications of any potential bias in terms of equality, or over-representation of any protected characteristic.</td>
<td></td>
<td>Six monthly</td>
<td></td>
</tr>
<tr>
<td></td>
<td>After every case, a debrief session will be held to identify any flaws in process, including timeliness of progress through stages, evaluating support and exploring appropriate decision making in accordance with the template document.</td>
<td></td>
<td>After each case</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Suspension periods will be recorded on the Monitoring Database by the HR Advisor leading on the case, commenting on the use of the suspension tool and a review period of the suspension. Monthly Board Reports regarding suspensions.</td>
<td></td>
<td>Monthly</td>
<td></td>
</tr>
</tbody>
</table>

### 8.0 REFERENCES

- Employment Act 2008
- Employment Tribunals (Constitution and Rules of Procedure) (Amendment) Regulations 2008
- Employment Rights Dispute Resolution Act 1998
- Employment Relations Act 1999
- Employment Rights Act 2004
- Equality Act 2010
- Anti Fraud, Bribery and Corruption Policy
- Standards of Business Conduct
- Advisory Group Recommendations May 2019 Amin Abdullah
- CIPD – Good Practice Guidelines for Disciplinary and Grievance Procedures

### 9.0 DOCUMENT CONTROL

<table>
<thead>
<tr>
<th>Document Author</th>
<th>Elaine Edwards, HR Specialist</th>
</tr>
</thead>
<tbody>
<tr>
<td>Lead Owner</td>
<td>Isobel Clements, Director of People and OD</td>
</tr>
<tr>
<td>This Version</td>
<td>Final</td>
</tr>
<tr>
<td>Replaces</td>
<td>Disciplinary policies for TST and Sompar</td>
</tr>
<tr>
<td>Status</td>
<td>Final</td>
</tr>
<tr>
<td>Approval date</td>
<td>13 November 2019</td>
</tr>
<tr>
<td>Where</td>
<td>Somerset Operational Partnership</td>
</tr>
<tr>
<td>Ratification date</td>
<td>December 2019</td>
</tr>
<tr>
<td>Where</td>
<td>Policy Review Group</td>
</tr>
<tr>
<td>Date of issue</td>
<td>6 January 2020</td>
</tr>
<tr>
<td>Review date</td>
<td>6 January 2023</td>
</tr>
<tr>
<td>Applies to</td>
<td>All colleagues (see exclusion). It will also apply to allegations relating to the personal misconduct of doctors and dentists at the point that the investigation has been concluded under the Trust’s Policy for Maintaining High Professional Standards/Managing Performance Concerns, if a formal hearing is considered to be necessary.</td>
</tr>
<tr>
<td>Exclusions</td>
<td>Professional conduct, performance or capability of doctors or dentists.</td>
</tr>
</tbody>
</table>
### Appendix 1 - Level of authority for dismissal and dismissal appeal panels

<table>
<thead>
<tr>
<th>Colleague under Investigation</th>
<th>Commissioning Manager / Chair of Disciplinary Hearing / Authority to Suspend</th>
<th>Appeal stage</th>
<th>HR support</th>
</tr>
</thead>
<tbody>
<tr>
<td>Executive Director</td>
<td>Chief Executive</td>
<td>Trust Chair</td>
<td>Executive Director of People and OD</td>
</tr>
<tr>
<td>Direct reports to Executive Directors</td>
<td>Relevant Executive Director</td>
<td>Chief Executive</td>
<td>Executive Director of People and OD</td>
</tr>
<tr>
<td>Clinical Director</td>
<td>Medical Director</td>
<td>Chief Executive</td>
<td>HR Advisor and Head of Medical Workforce</td>
</tr>
<tr>
<td>Direct reports to Clinical Manager / Directorate Manager</td>
<td>Relevant Clinical Director / Directorate Manager</td>
<td>Executive Director or Director from another function</td>
<td>HR Advisor</td>
</tr>
<tr>
<td>Nursing Staff</td>
<td>Assistant Director of Nursing / Matron / Clinical Service Manager</td>
<td>Director of Nursing or Deputy Director of Nursing</td>
<td>HR Advisor</td>
</tr>
<tr>
<td>Non Nursing Staff</td>
<td>Head of Department / Service</td>
<td>Directorate Manager / Assistant Director of Service</td>
<td>HR Advisor</td>
</tr>
</tbody>
</table>

The Chair of the panel would usually be the manager with the authority to dismiss the colleague if dismissal is a likely outcome. This responsibility can be handed to a designated deputy who is formally acting in the role of another manager at the same/equivalent level.

Delegated authority will be given in writing ahead of any hearing. It may be appropriate to involve a “professional/specialist” panel member for certain hearings, who may be external to the Trust.