

## DISCIPLINARY POLICY AND PROCEDURE (LEAD EMPLOYER)

<b>Code:</b>	
<b>Policy Sponsor</b>	Deputy Director of HR
<b>Lead Executive</b>	Director of HR
<b>Approved by:</b>	Local Negotiating Committee
<b>Date Approved:</b>	December 2013
<b>Ratified by:</b>	Workforce Council
<b>Date Ratified :</b>	January 2014
<b>Author(s):</b>	HR Project Manager
<b>Date issued:</b>	10 <sup>th</sup> March 2014
<b>Review date:</b>	31 <sup>st</sup> January 2018
<b>Target audience:</b>	All management and Trainees, Host organisations and Health Education England.
<b>Document purpose:</b>	To set out the measures the Trust has put in place to try and ensure that all its Trainees maintain the requisite standards of conduct and behaviour at work.
<b>Training requirements:</b>	Managers will be guided, coached and where necessary trained in both encouraging and supporting their Trainees to maintain the required standard of conduct and behaviour at work and ensuring that the appropriate action is carried out in a fair, consistent and reasonable manner where a shortfall is identified. Trainees will also be made aware of this policy.
<b>Associated documents and Key References:</b>	<p><u>External</u></p> <p>Equality Act 2010 Ref 1.  ACAS Code of Practice – Disciplinary and Grievance Procedures Ref 2.  Maintaining High Professional Standards in the Modern NHS Ref 5.  The National Health Service (Performers Lists) (England) Regulations 2013 Ref 6.</p> <p><u>Internal</u></p> <p>Attendance Management Policy and Procedure Ref 3.  Policy for Dealing with Allegations of Abuse to Children and Vulnerable Adults by Trust Employees Ref 7.</p>
<b>Financial Resource Implications:</b>	No additional resources required

## Consultation, Communication and Implementation

Consultation Required	Authorised By	Date Authorised	Comments
Equality Impact Assessment	HR Project Manager	1 <sup>st</sup> November 2013	
External Stakeholders	Health Education England		
Trust Trainees Consultation	Start date: 10 <sup>th</sup> October 2013		End Date: December 2013

Describe the Implementation Plan for the Policy (and guideline if impacts upon policy) (Considerations include; launch event, awareness sessions, communication / training via Divisions and other management structures, etc)	By Whom will this be Delivered?
All Trainees will be provided with a copy of this policy and will be made available to Trainees on the Trust's internet site. The policy will be communicated in more detail to managers by the Lead Employer HR Service Managers who will also make the Hosts and Health Education England aware of the policy.	Lead Employer Head of HR, HR Service Managers.

## Monitoring Compliance with the Policy

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Describe Key Performance Indicators (KPIs)	Target	How will the KPI be Monitored?	Which Committee will Monitor this KPI?	Frequency of Review	Lead
Compliance with policy by line management	100%	Lead Employer HR management will monitor the conduct of individual cases and review the outcomes of any relevant employment tribunal cases and any concerns highlighted by appeal managers or trade union representatives.	Workforce Council & Local Negotiating Committee (LNC)	Annual	Deputy Director HR

### Performance Management of the Policy

Who is Responsible for Producing Action Plans if KPIs are not met?	Which committee will monitor these action plans?	Frequency of Review (To be agreed by Committee)
HR Service Managers	Workforce Council	Quarterly

How will Learning occur?	Who is responsible
Feedback from managers, staff and trade union representatives	HR

### Document Version History

Date		Author Designation	Summary of key changes
September 2013	1	HR Project Manager	First version of the new policy therefore N/A
February 2016	2	HR Project Manager	Inclusion of Student Physician Associates
May 2016	3	HR Project Administrator	Update HEE
April 2017	4	HR Project Administrator	Update Annette Craghill contact details
June 2017	5	HR Project Administrator	Amended 2 <sup>nd</sup> to last paragraph of appendix 5, extended review date to 01.10.17
Sep 2017	6	HR Project Administrator	Extended review date to 31.12.17
Oct 2017	7	HR Project Administrator	Extended review date to 31.01.18 and amended page numbers on Content list

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## Executive Summary

### 1. Policy Aim

The aim of this policy is both to engender a culture where high standards of conduct and behaviour are expected of Trainees and to lay down the action that will be taken where these standards are not adhered to.

### 2. Policy Description

The policy sets out the forms of conduct which may result in a breach of the Trust's disciplinary rules, the consequences of such breaches of discipline and the rights and responsibilities of managers and Trainees when handling disciplinary situations.

## SECTION 1

### 1. Introduction

This policy is designed to help ensure that Trainees are treated in a consistent, fair and reasonable manner during the disciplinary process and has been devised taking into account the statutory requirements of the [ACAS Code of Practice – Disciplinary and Grievance Procedures \(Ref 2\)](#) and [Maintaining High Professional Standards in the Modern NHS \(MHPS\) \(Ref 5\)](#).

This policy applies to all Trainees (including those subject to Agenda for Change Conditions of Employment) employed under a contract of employment with the Trust as Lead Employer.

It is recognised that Trainees are members of professional bodies which have professional standards of capability, conduct and competence. The Trust requires Trainees to abide by those standards.

Nothing in this policy applies to independent contractors or agency staff working for the Trust under a contract for services.

This policy does not deal with attendance issues which are dealt with in the Trust's [Attendance Management Policy and Procedure \(Ref 3\)](#) or capability matters which are dealt with by Health Education England as educational issues (under the Orange/Gold Guide as appropriate). However where a Trainee has been negligent for reasons other than capability or has refused to work satisfactorily this policy will apply.

There will occasionally be issues that arise which are not of misconduct but where dismissal is being considered for "some other substantial reason of a kind as to justify the

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dismissal” (“SOSR”) or ‘Breach of a statutory restriction’ as laid down in the Employment Rights Act 1996. These are covered under Appendix 5.

The Trust recognises its legal duty under the [Equality Act 2010 \(Ref 1\)](#) to make reasonable adjustments to working arrangements as appropriate in relation to the operation of this policy.

For avoidance of doubt this procedure does not form part of any Trainee’s contract of employment and will be amended in line with any statutory changes or changes to [MHPS \(Ref 5\)](#).

## 2. Policy Objectives

The objectives of this policy are to ensure that the Trust:

- Sets high standards of conduct and behaviour for its Trainees.
- Is legally compliant and adheres to the [ACAS Code of Practice- Disciplinary and Grievance Procedures \(Ref 2\)](#) and [MHPS \(Ref 5\)](#) which are applicable to this policy.
- Has a laid down procedure to be followed when individual Trainee’s conduct or behaviour drop below that required.
- Treats its Trainees in a consistent, fair and reasonable manner.
- Promotes the policy within the organisation and with the Hosts to improve performance management within the Trust.

## 3. Definitions

Trainees - Specialty Trainees which includes the following:

- Core Trainees
- Specialist Registrars
- Specialty Registrars
- Fixed Term Specialty Training Appointments
- Locum Appointments for Training
- SHO (Oral and Maxillo Facial Surgery)
- Medical and Dental Public Health Specialty Registrars
- Non-medical Public Health Specialty Registrars
- Student Physician Associates

Hereafter, referred to as the ‘Trainees’.

Host Organisation – the location where the Trainee is undertaking their on the job training  
NB where the term is used in this policy it should be regarded as including Sponsoring Organisations for Student Physician Associates.

Lead Employer – Refers to staff employed by St Helens and Knowsley Teaching Hospitals NHS Trust delegated to undertake duties on behalf of the Trust as Lead Employer.

Disciplinary Procedure - the means by which rules are observed and standards are maintained.

Case Manager – the person appointed from within the Lead Employer to manage the complaint or concern raised about the Trainee. The Medical Director may delegate this role to a senior manager (normally a senior clinician) to oversee the case on his or her behalf.

Case Investigator – the person appointed to investigate an alleged incident or incidence of misconduct and establish the facts of the case. The Medical Director is responsible for appointing a Case Investigator. This will normally be undertaken with the assistance of the Medical Director from the Host Trust (or the senior GP Partner from the Host GP practice or in the case of Student Physician Associates while on academic placements the University Programme Director) as except in very exceptional circumstances the Case Investigator will be from the Host or University where the alleged incident arose. It is best practice that the investigator will be trained to undertake investigations and in equality and diversity (where capability is involved the latter is an absolute requirement).

Disciplinary Authority – the manager or director, with delegated authority from the Trust’s Medical Director, who conducts the disciplinary hearing and who is responsible for making the decision at the end of that hearing after discussion with the HR representative (if present) and the senior professional not employed by the Trust (if present).

Appeal Authority – Trust’s Medical Director or the manager or director (more senior than the Disciplinary Authority) with delegated authority from the Trust’s Medical Director who conducts the appeal hearing and who is responsible for making the decision at the end of that hearing after discussion with the HR representative (if present) and the senior professional not employed by the Trust (if present).

Host Managers - in the context of this procedure are Supervising Consultants/GPs from within the Host organisations or in the case of Student Physician Associates while on academic placements in University those managers designated as such by the University Programme Director.

Right to be accompanied – in line with [ACAS Code of Practice- Disciplinary and Grievance Procedures \(Ref 2\)](#) and [MHPS \(Ref 5\)](#) Trainees have a right to be accompanied where they are required or invited by their employer to attend certain disciplinary or grievance meetings. The chosen companion may be a fellow worker, friend, partner or spouse a trade union representative (for Trainees on AfC conditions of employment only a fellow worker or trade union representative), or an official employed by a trade union or medical defence organisation. The companion should be allowed to

address the hearing to put and sum up the Trainee's case, respond on behalf of the Trainee to any views expressed at the meeting and confer with the worker during the hearing. The companion does not, however, have the right to answer questions on the Trainee's behalf, address the hearing if the Trainee does not wish it or prevent the employer from explaining their case.

Exclusion – a period of time (normally paid) when the Trainee subject to an investigation is required not to attend work. This is not a disciplinary sanction and is to be used for example when relationships have broken down, in potential gross misconduct cases, where there are risks to a Trainee's or the Trust/Host/University's property or there are concerns for other parties e.g. witnesses.

Gross Misconduct – misconduct serious enough to overturn the contract between the Lead Employer and the Trainee, thus potentially justifying summary dismissal.

## **SECTION 2**

### **4. Duties, Accountabilities and Responsibilities**

#### **4.1 Chairman of the Board**

The Chairman of the Board must designate a non-executive member "the designated member" to oversee all cases to ensure that momentum is maintained.

#### **4.2 The Chief Executive**

The ultimate responsibility in the area of performance and legislative adherence lies with the Chief Executive of the Trust as Lead Employer.

The Chief Executive will write to the NCAS (not applicable to Trainees on AfC conditions of employment) in the event that any exclusion goes beyond 3 periods of four week duration and again after six months of an exclusion to update them and explain the delay in concluding the matter.

#### **4.3 The Trust Medical Director**

The Trust's Medical Director is responsible for ensuring that the policy is being adhered to by management and Trainees and that disciplinary action is carried out in line with this policy in a fair, consistent and reasonable manner.

The Medical Director can delegate role of Case Manager to a senior manager (normally a senior clinician) within the Lead Employer Trust to oversee the case on his or her behalf and will appoint a Case Investigator.

#### 4.4 The Host Medical Director/GP Partners/University Programme Director

The Medical Director of the Trust or the GP Partners of the practice where the Trainee is undertaking the training (or in the case of Student Physician Associates while on academic placements the University Programme Director) when the matter of concern first arises must ensure that

- All shortfalls in the required standards of conduct and behaviour are properly investigated in line with this policy.
- If appropriate the Trainee is offered the opportunity to receive additional support from the Lead Employer Health, Work and Well Being Department and Health Education England.
- Assists the Lead Employer Medical Director with the appointment of a Case Investigator from the Host, as appropriate.
- All those involved with a case from within the Host are aware of these procedures.

#### 4.5 Director of Human Resources

The Director of Human Resources within the Trust as Lead Employer has a responsibility to ensure all legislation in this area and the [ACAS Code of Practice - Disciplinary and Grievance Procedures \(Ref 2\)](#) and [MHPS \(Ref 5\)](#) are adhered to at all times. Specific responsibility for areas such as auditing and monitoring may be delegated by the Director of HR to particular individuals within the Lead Employer HR function but the final responsibility remains with the Director. The senior management team in the Lead Employer HR department are responsible for escalating any areas of concern following monitoring to the HR Director who where necessary will highlight to the Board.

The monitoring of the impact of the policy will be delegated to the Workforce Council, the LNC and the auditing to the HR management team however the HR Director and Workforce Council will highlight any areas of significant shortfall identified to the Governance Board (a sub committee of the Board).

#### 4.6 Non-Executive Director as ‘Designated Member’

In line with [MHPS \(Ref 5\)](#) a Non-Executive Director from the Trust as Lead Employer must be appointed as the ‘designated member’ to oversee the investigatory and disciplinary process and to ensure that momentum is maintained. This Non-Executive Director will be from the Trust rather than the Host. This is not applicable for Trainees under AfC conditions of employment.

## 4.7 Case Manager

The Case Manager must:

- Identify the nature of the problem or concern in order to assess the seriousness of the issue on the information available and the likelihood that it can be resolved without resort to formal disciplinary procedures. This should be undertaken in conjunction with Lead Employer HR and where required NCAS (not applicable for Trainees under AfC conditions of employment). NB Where a formal exclusion is being considered an immediate exclusion has been put in place or there is a potential capability issue NCAS must be consulted (not applicable for Trainees under AfC conditions of employment).
- Inform the Trainee in writing as soon as it has been decided, that an investigation is to be undertaken, the name of the Case Investigator and made aware of the specific allegations or concerns that have been raised.
- Consider whether there is reasonable and proper cause to formally exclude the Trainee
- Refer a Trainee to the appropriate regulatory body once a clear judgement has been reached that the Trainee is a serious potential danger to patients or staff.
- Make a decision on the next action to be taken once the investigation is complete and if formal disciplinary action is to be taken following consultation with NCAS (not applicable for Trainees under AfC conditions of employment).
- Consult and liaise with the Postgraduate Dean throughout the process.

## 4.8 Case Investigator

The Case Investigator is responsible for leading the investigation into the allegations or concerns about a Trainee, establishing the facts and reporting the findings. The Case Investigator must

- Formally involve a senior member of the medical or dental staff where a question of clinical judgement is raised during the investigation process. Where the alleged misconduct relates to matters of a professional nature, or where an investigation identifies issues of professional conduct, the Case Investigator must obtain appropriate independent professional advice.
- Ensure that safeguards are in place throughout the investigation so that breaches of confidentiality are avoided as far as possible.
- Judge what information needs to be gathered and how.
- Ensure that there are sufficient written statements collected.
- Ensure that oral evidence is given sufficient weight in the investigation report.
- Ensure that a written record is kept of the investigation, the conclusions reached
- Assist the designated Board member in reviewing the progress of the case.

The Case Investigator does not make the final decision on what action should be taken nor whether the employee should be excluded from work and may not be a member of any disciplinary or appeal panel relating to the case.

## 4.9 Host/University Managers

Host/University managers must ensure that

- The standards of conduct and behaviour of the Trainees undertaking training in their department or section are at the required level.
- Adequate advice and supervision is available to their Trainees.
- Trainees are informed when they are not meeting required standards of conduct and behaviour as soon as reasonably practical after a shortfall has been identified.
- Act as a Case Investigator as required.

NB All references to 'Host Manager' from this point on in the policy also includes managers within the University for Student Physician Associates.

## 4.10 Trainees

All Trainees must:

- Take personal responsibility for their own conduct and behaviour.
- Cooperate with any investigation or disciplinary hearing held under this policy.
- Raise any concern about conduct and behaviour issues.
- Inform their Host manager, Lead Employer HR Department, Health Education England and their professional body if they have been cautioned, charged or found guilty of a criminal offence or if their fitness to practise is impaired or is called into question.
- If applicable inform the NHS Commissioning Board under the [National Health Service \(Performers Lists\) \(England\) Regulations 2013 \(Ref 6\)](#)

## 4.11 Lead Employer Human Resources Staff and Management

The Lead Employer HR Service Managers must:

- Ensure that managers (Host and Lead Employer) are provided with appropriate advice and guidance on this policy, including training and coaching as required.
- Provide support to managers in individual cases as necessary.
- Be present in an advisory capacity at all disciplinary hearings where there is the potentiality for a final warning or dismissal and at any subsequent appeal (for training and guidance purposes exceptions can be made at the discretion of the HR Service Manager).
- Review the workings of this policy when shortfalls are identified and escalated where appropriate, including where cases are not processed in a timely manner.
- Ensure the designated member (see 4.6) is kept abreast of progress in all cases.
- Ensure that Trainees are informed of this policy and its operation.
- Ensure that if appropriate the Trainees are offered the opportunity to receive additional support from the Health, Work and Well Being Department and Health Education England.

NB Job titles of HR staff may change over time and therefore applicable job titles will apply where appropriate.

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#### 4.12 Host Human Resources Management and Staff

Host HR management and staff must

- Ensure that Host/University managers are provided with appropriate advice and guidance on this policy, including coaching as required.
- Provide support to Host /University managers in individual cases as necessary.

#### 4.13 Companions and Representatives

The Trust recognises that Trainees may wish to seek advice and be represented by their trade union, professional body or a work based colleague. All Trainees have the right to be accompanied at all formal disciplinary hearings or investigation interviews (not as witnesses) by an accredited Trade Union representative or representative of a medical defence organisation or a workplace colleague. Where reference is made in the procedure to an accredited Trade Union Representative this should also be taken to mean full-time official or representative of a medical defence organisation as appropriate. The trade union representatives must therefore:

- Familiarise themselves with this policy and procedure.
- Advise members in accordance with this policy and procedure.
- Agree a reasonable amount of time off to fulfil their responsibility of Trainee representation.

#### 4.14 Health Education England

Health Education England is responsible for

- Providing advice and guidance to the Lead Employer particularly where the educational needs and concerns relating to the Trainee overlap the processes of this policy.
- Providing pastoral support to Trainees subject to this policy.

The Postgraduate Dean is 'responsible officer' on behalf of the GMC in relation to the performers list under [The National Health Service \(Performers Lists\) \(England\) Regulations 2013 \(Ref 6\)](#) including notification of any proposed investigation to the area team of the NHS Commissioning Board within NHS England.

#### 4.15 Workforce Council and LNC

The Workforce Council and LNC are responsible for monitoring the impact of the policy including any resulting equality issues on behalf of the Board. Any issues of significant concern must be escalated up to the Board.

## 5. Main Policy Information – Process and Procedure

### 5.1 Principles

- 5.1.1. At every stage in the procedure, the Trainee will be advised of the nature of the complaint against them, and will be given the opportunity to state his or her case before any decision is made.
- 5.1.2. At all formal stages the Trainee will have the right to be accompanied by a trade union representative or workplace colleague, friend, partner or spouse (trade union representative or work colleague only applicable to Trainees on AfC conditions of employment).
- 5.1.3. Trainees will not be dismissed for a first breach of discipline except in the case of gross misconduct as defined in this procedure. (See Appendix 1).
- 5.1.4. Trainees will have the right to appeal against any formal disciplinary sanction imposed.
- 5.1.5. Although normal disciplinary standards will apply to trade union representative's conduct, no disciplinary action should be taken until the circumstances of the case have been discussed with a full time officer.
- 5.1.6. Time frames in relation to the elements of this policy, i.e. exclusion, investigation and progression to a hearing are outlined within the various sections of this policy but as an overarching principle cases must be dealt without any unreasonable delay and in a timely manner. A designated member will be appointed by the Chairman to ensure that momentum is maintained (see 4.1) (not applicable to Trainees on AfC conditions of employment).
- 5.1.7. No formal disciplinary sanction will be imposed until the matter has been carefully investigated, and the facts established.

### 5.2 Informal Process

In many cases the reasonable response of a Host manager to instances of unsatisfactory conduct will be to counsel the Trainee.

Counselling is not regarded as disciplinary action, but as corrective guidance offered by the Host manager to prevent a situation developing where recourse to disciplinary action may be necessary. The Trainee should clearly understand that a counselling session is taking place and that if the improvement required is not attained, then formal disciplinary action may be taken in the future. Counselling should, therefore, be regarded as a very

important aspect of the Host manager's role since it might well prevent future formal disciplinary action, by highlighting, at an early stage, the need for corrective measures to be taken.

The Trainee will be required to attend such a meeting, at the request of the Host manager, and it will normally be undertaken on a one to one basis, between the Host manager and the Trainee.

When the outcome of a disciplinary investigation is that no hearing is to be convened, and the outcome required is a counselling, representation will not normally be afforded.

Details of any informal discussions/ counselling must be entered onto the Trainee's personal file kept at the Lead Employer HR department and the Health Education England must be advised.

### 5.3 Exclusion

Exclusion of a Trainee from duty should be avoided where possible and reviewed on a regular basis; however it may become necessary in certain circumstances (see also Appendix 3). These could include (but are not limited to) situations where

- The concern raised requires the immediate removal of the Trainee from their place of work pending a decision of what action, if any, is to be taken (e.g. if the Trainee appears to be under the influence of alcohol).
- The concern raised requires investigation and is of a potentially serious nature (e.g. potential gross misconduct) that it is undesirable for the Trainee concerned to remain on duty.
- It is necessary for the protection of other staff, a patient or the public.
- A full investigation is required and it is thought likely that a Trainee is likely or possibly could impede, influence or affect the investigation process.
- There is a need to protect the interests of the Trust, Health Education England, the Host or the University for Student Associate Physicians (including their property).
- In situations where the Trainee is the subject of an external investigation e.g. by the police

In instances where formal exclusion is being considered, the Case Manager should, if possible, contact the Lead Employer HR Department. If immediate exclusion is being considered out of normal working hours, the most senior on-call general manager from the Host must be consulted if he/she is available. However, the Host manager must then contact Human Resources at the first possible opportunity and NCAS should be consulted (not applicable to Trainees on AfC conditions of employment). There is no requirement for an HR representative to be present at an exclusion. The Lead Employer HR department must ensure that the Lead Employer Chairman, Chief Executive, Medical Director, Postgraduate Dean and the designated member (see 4.1) are kept abreast of progress.

Alternatives to exclusion must always be considered before excluding a Trainee (e.g. change of work location, duties or extra supervision).

If practicable, the Trust will allow the Trainee to be accompanied during the exclusion meeting, but accompaniment is not a pre-requisite to any exclusion.

If a Trainee is immediately excluded the decision whether there should be a formal exclusion or not must be made as soon as it is practical to do so in conjunction with the NCAS (not applicable to Trainees on AfC conditions of employment) but in any case within two weeks of the immediate exclusion. If the decision is made to make the exclusion formal written confirmation of exclusion must be sent to the Trainee within this timescale by the Lead Employer HR Department, and should include the following details:

- The reason for the exclusion.
- The fact that it will be on full pay (unless exceptionally it is unpaid).
- The fact that the exclusion will be for a period no longer than 4 weeks in duration.
- Any information required under the regulations for Maintaining High Professional Standards (not applicable to Trainees on AfC conditions of employment).
- That it is a neutral act, a precautionary measure and is not a disciplinary sanction.
- The terms of the exclusion e.g. not to enter the workplace other than to obtain treatment for themselves or their family.
- Not to access systems or undertake any bank or agency work.
- Not to discuss or disclose any specific information relating directly to the case. Any breaches of confidentiality may be deemed in itself misconduct.
- The support available from the Lead Employer Health, Work and Well Being Department and Health Education England if required.
- A contact name and number for any queries.
- The name and contact details of the individual in Health Education England who will provide pastoral support if this is required.
- Fulfil any obligation they have to inform their professional body or the NHS Commissioning Board regarding the Performers List

The exclusion is not to be regarded as pre-judging the case at any stage, during or at the end of the investigation, or any stage of the Disciplinary Procedure (if any Disciplinary proceedings ensue).

In line with the [ACAS Code of Practice - Disciplinary and Grievance Procedures \(Ref 2\)](#) all periods of exclusion must be as brief as possible. In cases involving a lengthy period of exclusion (i.e. in excess of four weeks) the case will be reviewed on a monthly basis by the Case Manager and the Head of HR and NCAS (not applicable to Trainees on AfC conditions of employment) must be consulted. In such cases the Trainee will be advised in writing of the outcome and if it is decided that the exclusion should be lifted, the Trainee will be informed immediately. The Trainee must be written to every four weeks by the Lead Employer HR Department to confirm any extension. After three periods of exclusion

the Chief Executive (Lead Employer) must be informed and she/he will write and inform NCAS (not applicable to Trainees on AfC conditions of employment). The Chief Executive must write again should any period of exclusion exceed 6 months.

During the period of exclusion, the excluded Trainee must not attend his or her place of work (including the University for Student Physician Associates), or any of the Trust's sites. The exceptions to this would be as follows:

- Where instructed by the Case Manager or the Case Investigator to attend. The Trainee is expected to make themselves available for any meetings that may be arranged as part of the investigation.
- Health related reasons to obtain treatment for themselves or their family.
- To attend the Lead Employer Health, Work and Well Being Department.
- To meet with their Trade Union representative or work based colleague. The member of Trainees will be met at reception by their representative, and accompanied by their representative at all times. The Trainee will not be allowed access to any part of the Trust's premises, other than the pre-booked meeting room.
- It has been agreed the Trainee may undertake education or CPD.

During the period of exclusion, the Trainee must not discuss any aspect of the case with any of the Trust's, Health Education England's or the Host's staff, University staff, agents or subcontractors, except their recognised trade union representative/workplace colleague, unless is given permission to do so by the Case Investigator or Case Manager. Any breach of confidentiality could in itself be deemed as misconduct or gross misconduct depending on the circumstances.

The individual who has been excluded must not undertake paid work for another employer during their normal working hours with the Trust. This includes bank, locum and private work.

The Lead Employer HR Service Manager in every case of exclusion will consider in liaison with the Lead Employer Medical Director and Health Education England (North West Office) whether to inform the GMC, Safeguarding and Local Counter Fraud dependent on the nature of the case NB NCAS must be informed (not applicable to Trainees on AfC conditions of employment). At the same time consideration must be given in conjunction with the above to request the issuing of an alert letter based on the level of risk.

In some instances it may be appropriate for the exclusion to continue 'without pay' e.g. the Trainee is no longer available for work (e.g. abroad without agreement) or the Trainee's own actions prohibit the Trust from concluding its internal procedures.

## 5.4 Investigation

In many cases, the full facts of an alleged incident relating to unacceptable standards of performance or conduct will not be immediately apparent. Indeed, it may not be clear whether the alleged incident is serious enough to warrant formal disciplinary action (see also Appendix 1) or action under an alternative process. Where concerns are raised which potentially could lead to action under this procedure, a Case Manager will be appointed by the Lead Employer Medical Director to manage the case. The Case Manager will normally be a senior member of the medical staff in the Lead Employer.

On behalf of the Lead Employer Medical Director the Case Manager in conjunction with the Host Medical Director/Senior GP Partner/University Programme Director will identify a Case Investigator who should be familiar with the type of problem/area of work. The Case Investigator should not be directly or indirectly involved in the incident. It should also be noted that a Case Investigator cannot subsequently be the Disciplinary Authority in the event that a formal hearing is required. At this stage, a HR Service Manager from the Host hospital/University (for Host organisations without HR support this individual will be from the Lead Employer HR department) will be identified to advise and help coordinate the HR aspects of the case.

Trainees will usually be made aware of the investigation in writing by the Case Manager as soon as is possible and practicable. However, there may be exceptional circumstances where it is not advisable to inform the Trainee straight away, (e.g. where the allegations are particularly sensitive or unclear).

The Case Investigator will be responsible for agreeing Terms of Reference for the case with the Case Manager which will outline:

- background of the incident/allegations
- the specific concerns or allegations to be investigated
- list of staff and others to be interviewed
- reference to documentation that will be used during the course of the investigation
- planned timescales for completion

It should be noted however that these may be amended as the facts are established.

The Case Investigator will be responsible for ascertaining the full facts of the case, including any potential mitigating circumstances and for providing a report to the Case Manager in an agreed format. In cases where an incident involves, or was witnessed by, a number of people, this is likely to involve obtaining statements from each individual. Witnesses should be advised that if the matter progresses to become a disciplinary matter, then the witness statements will be used as evidence however, in extreme circumstances witness statements may be anonymised. The HR representative managing the case will not normally attend the investigation meetings as the role of HR is to advise

on process. Where the alleged misconduct relates to matters of a professional nature, or where an investigation identifies issues of professional conduct, the Case Investigator must obtain appropriate independent professional advice.

If there is an investigatory meeting this should not by itself result in any disciplinary action. Under this procedure the Trainee can be accompanied by a union representative recognised by the Trust or a work colleague or friend, partner or spouse (trade union representative or work colleague only applicable to Trainees on AfC conditions of employment). The representative should play no active role in responding to the questions put to the Trainee and an investigation interview must not be unduly delayed awaiting a particular representative.

Any investigation should be completed in timely manner. The length of time spent will depend on the nature and complexity of the allegation or incident, but in any case it should be completed, where practicable, within a maximum of four weeks. Where any investigation continues beyond this period the management of the case should be reviewed by the Head of HR who will advise the designated member. Circumstances may exceptionally extend this period, for example, the involvement of the police, allegations relating to child protection or vulnerable adults, which involve separate policies. NB An investigation should continue relating to those aspects of the case not directly related to the police investigation if it will not impede the separate police or Counter Fraud investigation.

The Trainee must take all reasonable steps to attend the investigation meeting(s). Trainees are obliged to attend investigative meetings/disciplinary hearings but it is reasonable that if a Trainee cannot attend a hearing due to extenuating circumstances, a further meeting/hearing will be scheduled within 7 days.

During the course of any investigation the Trainee being investigated will be kept up to date by the Case Investigator of the progress of the investigation. Any extension of the investigation or exclusion beyond the guidelines outlined within this policy must be notified to the Trainee in writing, detailing the specific reasons for the delay or extension.

The Case Investigator will present their findings in a report to the Case Manager. This report will include all narrative and supporting evidence. If the Case Manager considers there is a case to answer in relation to misconduct then normally following consultation with NCAS (not applicable to Trainees on AfC conditions of employment) the matter should proceed to a formal hearing in which case the report will be provided to the Trainee.

Alternatives to a formal hearing may include an assessment that there is no case to answer, handling it informally by the Host, handling it by reference to the Trust's Health, Work and Well Being Service, further consideration is required from the NCAS (not

applicable to Trainees on AfC conditions of employment) or GMC/GDC (not applicable to Trainees on AfC conditions of employment) or handling the matter through the Educational process in conjunction with Health Education England. The Trainee will be advised of the decision.

In circumstances where fraud is alleged, the Trust will contact the Local Counter Fraud Specialist (LCFS) for advice. Unless advised to the contrary the investigation will be conducted, jointly with the LCFS, in accordance with this procedure and those procedures agreed to address allegations / incidents of fraud. There may be occasions where the LCFS or investigations by the police may have to be conducted prior to the Trust's investigation process (HR must take advice from the police and/or LCFS prior to the investigation commencing as the investigation cannot continue in relation to those aspects of the case directly relating to the police investigation until that investigation is completed). Once the internal management investigation is fully completed disciplinary action should be instituted if appropriate (i.e. the police investigation is completed or the matters under investigation do not relate directly to the police investigation) without delay unless advised to the contrary by the police or the LCFS.

Similarly in circumstances where an allegation relating to a potential safeguarding issue arises (i.e. involving a child or vulnerable adult) the Trust's Safeguarding team must be consulted initially by the Case Manager prior to the commencement of the investigation-see the Trust's [Policy for Dealing with Allegations of Abuse to Children and Vulnerable Adults by Trust Employees \(Ref 7\)](#) for more details. Where appropriate where children are implicated the Trust's Safeguarding team will advise on the involvement of the Local Authority Designated Officer (LADO) or the appropriate equivalent where a vulnerable adult is involved. There may be occasions where investigations by the LADO or equivalent or by the police may have to be conducted prior to the Trust's investigation process. In such circumstances the eventual investigation undertaken by the Case Investigator should not assume any information will be received from the police or the LADO or equivalent. However once the internal management investigation is fully completed disciplinary action should be instituted if appropriate (i.e. the police investigation is completed or the matters under investigation do not relate directly to the police investigation) without delay unless advised to the contrary by the police or the LADO or equivalent.

In circumstances where a GP Trainee is involved normally the investigation will continue as above but at the end of the investigation the Trust will inform the NHS Commissioning Board regarding provisions of the performers list under [the National Health Service \(Performers Lists\) \(England\) Regulations 2013 \(Ref 6\)](#). If the NHS Commissioning Board request that no further action is taken until they have reviewed the evidence this request will be complied with. In exceptional circumstances if the Trust as lead Employer is not best placed to investigate the matter or the matter is a sensitive one referral should be earlier (see also 4.10 and 4.14).

## 5.5 Arrangements for the Disciplinary Hearing

Following an investigation, once the Lead Employer Case Manager has decided (in conjunction with the Lead Employer HR representative supervising the case) to apply the formal disciplinary procedure, arrangements will be made for the disciplinary hearing as a matter of priority.

A disciplinary hearing, which may result in a warning, and not a dismissal, will normally be chaired by a Clinical Director, Associate or Deputy Medical Director, who will be designated as the Disciplinary Authority by the Medical Director. The Disciplinary Authority will be solely responsible for the decision at the disciplinary hearing after discussion with the HR representative (if present) and the senior professional not employed by the Trust (if present).

A disciplinary hearing, which may result in a dismissal, will be chaired by the Medical Director or Deputy Medical Director, who will be designated as the Disciplinary Authority by the Medical Director. The Disciplinary Authority will be solely responsible for the decision at the disciplinary hearing after discussion with the HR representative (if present) and the senior professional not employed by the Trust (if present).

The Trainee will be advised in writing by the Disciplinary Authority of the nature of the alleged misconduct outlined in the management case and the potential consequences and be invited to attend with his or her trade union representative (including a certificated full time official of a trade union not recognised by the Trust) or workplace colleague, friend, partner or spouse (trade union representative or work colleague only applicable to Trainees on AfC conditions of employment) at least seven days before the date of the hearing. The arrangements for the hearing shall be managed by Lead Employer HR.

It should also be noted that Disciplinary Hearing members cannot be on the Appeal for the same case. The HR representative coordinating the case may remain as consistent throughout providing they have not attended the disciplinary hearing.

A minimum of seven calendar day's notice of the date of the hearing must be given to allow the Trainee to seek adequate representation and prepare their defence. This may be extended by mutual consent. A copy of the disciplinary policy and copies of any reports, statements or information that will be relied on or referred to at the hearing must be included with the letter. The following points must be included in the letter to the Trainee:

- The date, time and venue for the hearing;
- The names and post titles of the Disciplinary Authority and any HR representative;
- The nature of the complaint against the Trainee;
- The alleged disciplinary rule(s) breached
- The names and positions of any witnesses including the Case Investigator;

- The fact that the hearing will be of a disciplinary nature and may result in disciplinary action being taken against the Trainee, including possible final warning, dismissal or summary dismissal if appropriate
- The right of the Trainee to be accompanied at the hearing by a trade union representative or work colleague, friend, partner or spouse (trade union representative or work colleague only applicable to Trainees on AfC conditions of employment).
- The right of the Trainee to call witnesses and to advise who these witnesses will be in advance to the Disciplinary Authority. The Trainee must make arrangements for this.

Where the Trainee is an accredited trade union representative, the case manager must contact the appropriate Full-Time Officer before arranging a disciplinary hearing.

Other than in exceptional circumstances (due to the complexity of the case or support), the HR Service Manager/Manager will only attend the hearing where the potential consequence of the hearing is identified as a final warning or dismissal. Where the HR Service Manager/Manager attends the hearing it is strictly in an advisory capacity and final decision will be that of chair of the hearing.

In cases involving allegations of professional misconduct, a senior professional from an appropriate discipline not employed by the Trust must be part of a hearing in an advisory capacity (the person who is chairing the hearing remains the Disciplinary Authority). The Trainee must be advised of the attendance of this individual in their invite letter.

If the Trainee is persistently unwilling or unable to attend a hearing the Disciplinary Authority will inform the Trainee that there is no alternative, but to make a decision in their absence on the evidence available. The Disciplinary Authority should keep a careful record of the Trainee's failure to attend the meetings and the attempts to reconvene those meetings.

## 5.6 The Formal Disciplinary Hearing

The format for disciplinary hearings is attached as Appendix 2a. In line with the [ACAS Code of Practice – Disciplinary and Grievance Procedures \(Ref 2\)](#) the Trainee's representative should be allowed to address the hearing to put and sum up the Trainee's case, respond on behalf of the Trainee to any views expressed at the meeting and confer with the Trainee during the hearing (including having the right to seek an adjournment). The representative does not, however, have the right to answer questions on the Trainee's behalf put to them by the Disciplinary Authority, address the hearing if the Trainee does not wish it or prevent the Disciplinary Authority, Case Investigator or other witnesses from explaining their case.

It is the responsibility of the Case Investigator to present the investigation report to the Disciplinary Authority during the hearing. The Case Investigator will not be part of the decision making process.

NHS staff have an obligation to attend formal disciplinary hearings as witnesses although it is accepted that in some circumstances the Trust may not be able to insist on staff working for other NHS organisations attending the hearing as witnesses. In this and other exceptional circumstances, and with the agreement of the Trust, staff not wishing to attend a formal hearing as a witness may be allowed to submit a witness statement.

Any witness requested to attend a disciplinary or appeal hearing shall not be afforded the right of representation unless it has been jointly pre-agreed that there are exceptional circumstances, for example, during some dignity at work cases.

The Disciplinary Authority or appeal manager where necessary can arrange for someone who is not involved in the case to take a note of the hearing. A copy of the notes (not verbatim) of the hearing will always be provided to the Trainee after the hearing, normally with the confirmation letter.

Where a Trainee raises a grievance during a disciplinary process the disciplinary process may be temporarily suspended in order to deal with the grievance. Where the grievance and disciplinary cases are related it may be appropriate to deal with both issues concurrently

## **5.7 The Decision**

The Disciplinary Authority must adjourn before a decision is taken about which if any disciplinary penalty is appropriate. This allows time for reflection and proper consideration. It also allows for any further checking of any matters raised, particularly if there is any dispute over facts.

The Disciplinary Authority must consider all the circumstances before deciding first, whether disciplinary action is warranted and secondly what level of disciplinary sanction to apply. When determining the disciplinary action to be taken, the Disciplinary Authority should bear in mind the need to satisfy the test of reasonableness in all circumstances. In particular, the following factors will need to be considered:

- Whether it is felt that on the balance of probability the Trainee has committed the alleged act of misconduct;
- The seriousness of the offence, in line with Appendix 1;
- Any relevant current disciplinary sanctions on the Trainee's file;
- How similar incidents have been treated within the Trust;
- Any mitigating factors.

The formal sanctions available to a Disciplinary Authority are detailed below (sections 5.8 to 5.11).

In almost all cases once the written warning time limits have been passed, they will be disregarded in any further disciplinary proceedings. These records should be kept confidential and retained in accordance with the disciplinary procedure and the Data Protection Act 1998, which requires the release of certain data to individuals at their request. However, in certain circumstances historical information may be called for if there is a succession of lapsed warnings.

The outcome of the hearing will normally be notified to the Trainee on the same day and will be confirmed in writing within five working days. The HR Service Manager/Manager should be consulted to ensure the policy as been applied correctly before the decision is communicated in writing.

For formal warnings, the subsequent written confirmation of the disciplinary sanction must include reference to the following points:

- Details of the misconduct in question.
- The level of warning and the period during which it will remain in force.
- The improvement or correction of behaviour which is expected.
- The support which will be provided, if appropriate.
- The right of appeal against the warning.

For a dismissal the confirmation letter must include

- Details of the misconduct in question.
- Details of the dismissal including whether summary dismissal or with notice.
- The effective date of the dismissal.
- The right of appeal.

A copy of the disciplinary letter will be prepared by the HR Service Manager/Manager and forwarded to the Disciplinary Authority for issue.

Where, following the issue of a first or final warning, a Trainee has reached the specified standard, and/or no re-occurrence or further breach of disciplinary rules has taken place within the time limit of the warning, the disciplinary action will be regarded as 'spent'. NB Should any long-term absence occur (i.e. 4 weeks or longer) whilst a warning is on a Trainee's file, the period of absence will not count towards the expiry of the warning.

## **5.8 Disciplinary Sanctions - First Written Warning**

This level of warning may be issued where there is a breach of the disciplinary rules or where counselling has failed to achieve the required improvement. A warning may be

given in conjunction with a development programme. The warning will normally be recorded on the Trainee's personal file for 12 months.

If the Host manager and subsequently the Case Manager are not satisfied that the Trainee's conduct has improved during the period of the sanction further disciplinary action may be taken in accordance with this procedure

## 5.9 Disciplinary Sanctions - Final Written Warning

The disciplining authority may issue a final warning in cases of

- Serious misconduct, for example, where an offence may not warrant dismissal but is serious enough not to be tolerated a second time.
- A Trainee has breached disciplinary rules, whilst currently subject to a previously issued first written warning.

A final written warning may be given in conjunction with a development programme. The warning will normally be recorded on the Trainee's personal file for 12 months. This may be extended in exceptional circumstances.

If the Host manager and subsequently the Case Manager are not satisfied that the Trainee's conduct has improved sufficiently at any time during the period of the sanction further disciplinary action may be taken in accordance with this procedure which could result in dismissal.

## 5.10 Disciplinary Sanctions - Dismissal

Dismissal under this procedure is the ultimate and final sanction which can be imposed. Dismissal will not take place for a first breach of discipline unless it is a case of gross misconduct, but may take place if a Trainee's conduct remains unsatisfactory, following a warning e.g. a final written warning, or warnings. The Disciplinary Authority shall bear in mind the test of reasonableness which may be applied to their decision, following the hearing. A decision to dismiss should only be taken by the Medical Director or Deputy Medical Director or a nominated deputy of equivalent seniority as the Disciplinary Authority.

The dismissal will normally be summary if the Trainee is found to have committed an act of gross misconduct and effective from the date of the disciplinary hearing. If the dismissal is not as a result of gross misconduct (e.g. where a Trainee has breached disciplinary rules, whilst currently subject to a previously issued final warning) the Trainee will be paid in lieu of notice.

The Trainee should be informed of the reason for dismissal, the date on which his or her employment contract will terminate, and their right of appeal. This decision will be

confirmed in writing within five calendar days and will be sent both recorded delivery and by 1<sup>st</sup> class post.

Attached in Appendix 1 is a non-exhaustive list of offences of gross misconduct, gross incompetence or gross negligence, which are normally regarded as grounds for summary dismissal.

## 5.11 Appeal Hearing

Trainees have the right of appeal against formal disciplinary sanctions issued against them. They should appeal in writing to the Lead Employer Head of HR, stating their grounds for appeal, within seven calendar days of the letter confirming the sanction being sent. Guidance on the conduct of appeals can be found at Appendix 2b. Appeals will be heard as soon as reasonably practicable but at least seven calendar days' written notice of the appeal hearing date will be given by the Appeal Authority.

The purpose of the appeal hearing is to review the decision of the Disciplinary Authority. The Appeal Authority has the authority to apply a lower sanction, or uphold the original management disciplinary decision. Its purpose is not to re-hear the original disciplinary hearing. The Appeal Authority will be solely responsible for the decision at the appeal hearing after discussion with the HR representative (if present) and the senior professional not employed by the Trust (if present). The Appeal Authority will confirm the outcome in writing enclosing the notes (not verbatim) from the hearing.

The arrangements for the appeal hearing shall be managed by the HR Service Manager/Manager. The management case will comprise of all the evidence presented by all parties at the original hearing, the notes from that hearing and the outcome letter. The Disciplinary Authority from the original hearing maybe invited to be present to explain their decision if the director holding the appeal considers it necessary. The Trainee should submit any additional evidence with their appeal letter.

No one involved in the appeal decision making process even in an advisory capacity shall have had prior direct involvement in the case, It will be normal practice for a Lead Employer HR Service Manager/Manager to be present at an appeal hearing in an advisory capacity where a final warning or dismissal has been applied (exceptions can be made see 5.5) but this must be a different person than attended the original hearing. Similarly if deemed necessary a senior professional from another Trust may attend in an advisory capacity but this must be a different person than attended the original hearing.

All appeals should be held by a manager of a higher seniority than that of the Disciplinary Authority. Appeals against dismissal shall be heard by the Medical Director and in attendance will be the Head of HR or other designated senior HR representative in an advisory capacity. In the case of dismissals if the Medical Director was involved in the original hearing or is unavailable a nominated Board Director will hold the appeal.

During the appeal, Trainees have the right to representation by a trade union representative (including a certificated full time official of a trade union not recognised by the Trust) or workplace colleague, friend, partner or spouse (Trade union representative or work colleague only applicable to Trainees on AfC conditions of employment).

Management will notify the Trainee's side of any possible delays in setting up the appeal hearing and the reasons for the delay.

## **5.12 Professional Misconduct**

Contravention of professional codes, standards, practice, laws or rules may lead to disciplinary action, including dismissal. The professional bodies may take action in addition to action taken by the Trust as Lead Employer, and the Trust has a duty to report incidents of professional misconduct to certain statutory bodies (e.g. General Medical Council (GMC), General Dental Council (GDC), Health Professions Council (HPC) and the NHS Commissioning Board). The Trust also reserves the right for Student Physician Associates to refer the matter to the Faculty of Physician Associates.

Following discussion between the HR Service Manager/Manager, Postgraduate Dean and the Medical Director a nominated Trust Manager will be responsible for notifying the relevant professional body and the Trainee will be informed of this decision. Similarly if the Trainee is also employed or works within a separate organisation, the Trust may be required to request the issuing of an Alert letter.

Where a matter of alleged professional misconduct proceeds to a disciplinary hearing a senior medically qualified (in the case of doctors) or a dentally qualified (in the case of dentists) professional (e.g. Consultant) who is not currently employed by the Trust must sit with the Disciplinary Authority when the case is heard.

## **5.13 Alleged or Actual Criminal Offences Outside of Employment.**

Criminal offences or alleged criminal offences committed outside the place of employment are not necessarily matters for disciplinary action.

Trainees are required to inform the Lead Employer Head of HR, their Host manager, Health Education England, and their professional body immediately after an arrest, a caution or a charge by the police. Full information about the nature of the caution or the charge or the reasons for the arrest must be provided at the time and following the initial notification there is a continued requirement for a Trainee to keep the Lead Employer Head of HR fully informed about all developments and to comply with any requirements of their professional body in relation to keeping them informed. This obligation remains in place whether or not any criminal proceedings are issued against a Trainee and whether

or not a matter goes to court. Any breach of these requirements will be treated extremely seriously.

The decision whether to take disciplinary action (or any other action), or not, will take into account whether the arrest, caution, charge or conviction is one that is relevant to the Trainee's employment, or makes them unsuitable for the type of work undertaken.

Where a Trainee is in custody or on remand, or subject to conditions, e.g. bail conditions, that makes performance of their duties impossible, the situation may render all performance of their contract of employment impossible and it may be argued that the contract of employment is frustrated.

#### **5.14 Records**

Records of informal discussions and/or formal and final warnings must be kept on the Trainee's personal file for the timescales specified.

All written documents/records (e.g. written statements, reports, minutes) and proceedings relating to matters dealt with under this policy are and must remain confidential. However, the Trust may be required to provide such information requested by the relevant professional body of the Trainee (i.e. GMC, GDC, HPC, FPA) or the NHS Commissioning Board regarding the Performers List.

Any written documents or records (including those relating to appeals), must be stored confidentially and separately from the Trainee's personal file by the Human Resources Department. They will be retained for a period of up to ten years, after which time they will be destroyed.

### **6. Monitoring & Compliance**

The Lead Employer HR Service Manager is responsible for the monitoring of compliance to ensure the effective use of the policy and enable action plans to be produced where are trends or specific remedial steps are required e.g. where concerns are raised through the grievance procedure, at appeals or from the trade unions that the processes are not being followed.

<b>7. Equality Analysis</b>
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<b>Equality Analysis Stage 1 Screening</b>		
1	Title of Policy:	Disciplinary Policy and Procedure (Lead Employer)
2	Policy Author(s):	HR Project Manager
3	Lead Executive:	Director of HR
4	Policy Sponsor	Deputy Director of HR
5	Target Audience	All management (Host and Lead Employer), Lead Employer and Host HR departments and Trainees.
6	Document Purpose:	To lay down processes and procedure to ensure that any disciplinary action is carried out legally, fairly and equitably.
7	Please state how the policy is relevant to the Trusts general equality duties to: <ul style="list-style-type: none"> <li>eliminate discrimination</li> <li>advance equality of opportunity</li> <li>foster good relations</li> </ul>	This policy is designed to ensure that Trainees are treated fairly, consistently and reasonable manner
8	List key groups involved or to be involved in policy development (e.g. Trainees side reps, service users, partner agencies) and how these groups will be engaged	HR professionals, managers and staff side representatives
<p><i>NB Having read the guidance notes provided when assessing the questions below you must consider;</i></p> <ul style="list-style-type: none"> <li>Be very conscious of any indirect or unintentional outcomes of a potentially discriminatory nature</li> <li>Will the policy create any problems or barriers to any protected group?</li> <li>Will any protected group be excluded because of the policy?</li> <li>Will the policy have a negative impact on community relations?</li> </ul> <p>If in any doubt please consult with the Patient and Workforce Equality Lead</p>		
9	Does the policy <b>significantly</b> affect one group <b>less</b> or <b>more</b> favourably than another on the basis of: answer 'Yes/No' (please add any qualification or explanation to your answer particularly if you answer yes)	

		Yes/No	Comments/ Rationale
	• Race/ethnicity	No	
	• Disability (includes Learning Disability, physical or mental disability and sensory impairment)	No	
	• Gender	No	
	• Religion/belief (including non-belief)	No	
	• Sexual orientation	No	
	• Age	No	
	• Gender reassignment	No	
	• Pregnancy and Maternity	No	
	• Marriage and Civil partnership	No	
	• Carer status	No	
10	Will the policy affect the Human Rights of any of the above protected groups?	No	
11	If you have identified potential discrimination, are there any exceptions valid, legal and/or justifiable?	No	
12	If you have identified a negative impact on any of the above protected groups can the impact be avoided or reduced by taking different action?	No	
13	How will the effect of the policy be reviewed after implementation?	Annually by HR management or sooner if concerns are highlighted by managers or trade union representatives.	

If you have entered yes in any of the above boxes you **must** contact the Patient and Workforce Equality Lead (0151 430 1042/ [Annette.craghill@sthk.nhs.uk](mailto:Annette.craghill@sthk.nhs.uk)) to discuss the outcome and ascertain whether a **Stage 2 Equality Analysis Assessment** must be completed.

<b>Name of manager completing assessment: (must be one of the authors)</b>	Jim Flynn
<b>Job Title of Manager completing assessment</b>	HR Project Manager
<b>Date of Completion:</b>	1 <sup>st</sup> November 2013

## 8. Training

The Lead Employer HR Service Managers will provide training, coaching and mentoring as required for managers.

In specific cases when training issues are identified through a review of a case an individual training needs analysis will be carried out by the manager's manager, supported by the Lead Employer HR Service Manager as required. Any training needs identified will be included in the manager's personal development plan.

## Appendix 1

### Disciplinary Rules

The following list of disciplinary rules are examples only and are not exhaustive.

#### 1.0 Gross Misconduct

The following are examples of offences of gross misconduct, gross incompetence or gross negligence, which may potentially be regarded as grounds for summary dismissal.

- Theft, or unauthorised possession of any property or facilities belonging to the Trust, Health Education England, Host or University or to any member of staff or any patient
- Serious, deliberate, malicious or negligent damage to the Trust, Health Education England, Host or University premises, property or records
- Deliberate falsification of any official Trust, Health Education England or Host documentation including qualifications or information used in support of an application or post
- Bribery or corruption – receipt of goods, money, favours or excessive hospitality in respect of services rendered. This does not apply to the receipt of authorised professional fees.
- Fraud – any deliberate attempt to defraud the Trust, Health Education England, Host, University or a member of the public in the course of their normal duties. This includes for example; dishonest claims for expenses (whether attempted or successful), falsely completing a timesheet, plagiarism, falsifying qualifications, failing to declare convictions or fraudulently procuring medication.
- Refusal to carry out duties or reasonable instructions or to comply with the rules, policy or procedures of the Trust, Health Education England, Host or University.
- Serious acts of insubordination
- Gross negligence or incompetence or any action or failure to act that threatens the health and safety of a service user, carer or another member of staff or a member of the public
- Serious incapability as a result of being intoxicated by reasons of alcohol misuse or the trainee/Student Physician Associate being found to have traces (metabolytes) of

illegal or inappropriately used drugs in their system (as found in a urine sample) such that health and safety may be jeopardised.

- Misappropriation of Trust time (including that of Hosts)
- Foul or abusive language.
- Violent, dangerous, intimidatory conduct or exceptionally offensive behaviour, including assault
- Violation of rules and procedures concerning health and safety at work
- Violation of the Standing Financial Instructions of the Trust, Health Education England or Host or University
- Deliberate act of discrimination, victimisation or harassment against another member of staff, a patient or a third party relating to race, ethnic origin, sex, sexual orientation, marital status, religion, age or disability
- A criminal offence, which may (whether it is committed during or outside a Trainee's hours of work) adversely affect the reputation of the Trust, Health Education England, the Host or University, or may affect the Trainee's suitability for the type of work he or she is employed by the Trust to perform or his or her acceptability to other members of staff or to patients.
- A serious breach of confidentiality (including failure to maintain confidentiality in an investigation relating to a complaint of harassment but subject to the Public Interest Disclosure Act 1998).
- Unauthorised use access or excessive use of computer, social media or other IT systems
- Breach of the Internet and/or e-mail Policy, including downloading or transmission of material which is defamatory, offensive, obscene, malicious, sexist or racist.
- Posting of inappropriate comments about colleagues or patients or posting any material that could be considered explicit on Social Networking sites such as Facebook.
- Ill treatment or wilful neglect of patients by Trainees.
- Breach or failure to adhere to policies and procedures and protocols of the Trust, Health Education England, Host or University

- Serious misconduct in research e.g. piracy, fabrication, falsification, fraud, wilful destruction of research materials, deception in proposing, carrying out or reporting the results of research, deliberate or negligent deviation from accepted practice in carrying out research.
- A serious breach of the Code of Private Practice.
- Serious breach of GMC Good Medical Practice.
- Serious breach of other associated documents and national guidance.
- Failure to disclose a police warning, a caution, a criminal conviction, or the falsification of an Occupational Health Declaration or employment application/CV (including falsely declaring a qualification is held).
- Action in breach of Professional Code of Practice including failure to maintain registration with an appropriate professional body
- Drug errors (where appropriate following review under Drug incident procedure)
- Any other substantial reason relating to conduct

## 2.0 General Misconduct

The following is a list of examples of offences, which amount to misconduct falling short of gross misconduct, but if repeated, may result in dismissal. This list is not exhaustive.

- Unauthorised leave from work.
- Poor time keeping, irregular attendance at work.
- Habitual uncertified absence, failure to notify sickness absence.
- Drug Errors (where appropriate following review under Drug incident procedure)
- Failure to carry out reasonable instructions or non-co-operation with Management Activities.
- Conduct, which disrupts the work effort of others.
- Smoking in prohibited areas.
- Any matter listed under Gross Misconduct which falls short of gross misconduct

## Appendix 2a

### Procedure at the Disciplinary Hearing

1. The Disciplinary Authority will facilitate the introductions and state the complaint or allegation that has led to the need for the disciplinary hearing.
2. The Case Investigator will present the case outlining the issues and outcomes referring where appropriate to the relevant papers or investigation report.
3. The Trainee and/or their companion/representative will have the opportunity to ask questions to the Case Investigator.
4. The Disciplinary Authority, the HR Representative if present and in cases involving allegations of professional misconduct, the senior professional from an appropriate discipline (NB not employed by the Trust) will have the opportunity to ask the Case Investigator questions. Following this the Case Investigator will withdraw but maybe invited back into the hearing if required by the Disciplinary Authority.
5. Witnesses may be called at this stage and questioned by the Disciplinary Authority, the HR Representative if present and the in cases involving allegations of professional misconduct, the senior professional from an appropriate discipline and the Trainee and/or their companion/representative will have the opportunity to ask the witnesses questions. Each witness shall withdraw after giving their evidence and answering questions but maybe invited back into the hearing if required by the Disciplinary Authority.
6. The Trainee and/or their companion/representative will present their case and call witnesses if they so wish.
7. The Disciplinary Authority, the HR Representative and the senior professional if present will have the opportunity to ask questions of the Trainee and their witnesses. Each witness shall withdraw after giving their evidence and answering questions but maybe invited back into the hearing if required by the Disciplinary Authority.
8. The Trainee or their companion/representative may sum up their case if they so wish without introducing any new matter.
9. Nothing in the foregoing procedure shall prevent the Disciplinary Authority, the HR Representative and senior professional if present from inviting any witness, the Case Investigator, the Trainee or their companion/representative to clarify or amplify any statement they may have made

10. The Disciplinary Authority may, at his/her discretion if necessary, adjourn the hearing in order that further evidence may be produced or for any other reason.
11. Following completion of the submission of all evidence and summing-up, the Trainee and their companion/representative shall withdraw.
12. The Disciplinary Authority, the HR Representative and the senior professional if present shall deliberate in private, only recalling the hearing to clear points of uncertainty on evidence already given. If recall is necessary, the Trainee and his/her companion/representative will be recalled, even where they are not concerned with the point in question. The final decision will be that of the Disciplinary Authority and the HR Representative and the senior professional if present will act in advisory capacity.
13. A decision will normally be announced immediately following the hearing. Whenever this is not possible, the Trainee will be advised of the decision by the Disciplinary Authority within five calendar days.
14. The Disciplinary Authority shall normally write to the Trainee within seven calendar days of the decision to confirm their decision and the right to appeal, enclosing a copy of the notes from the hearing.

## Appendix 2b

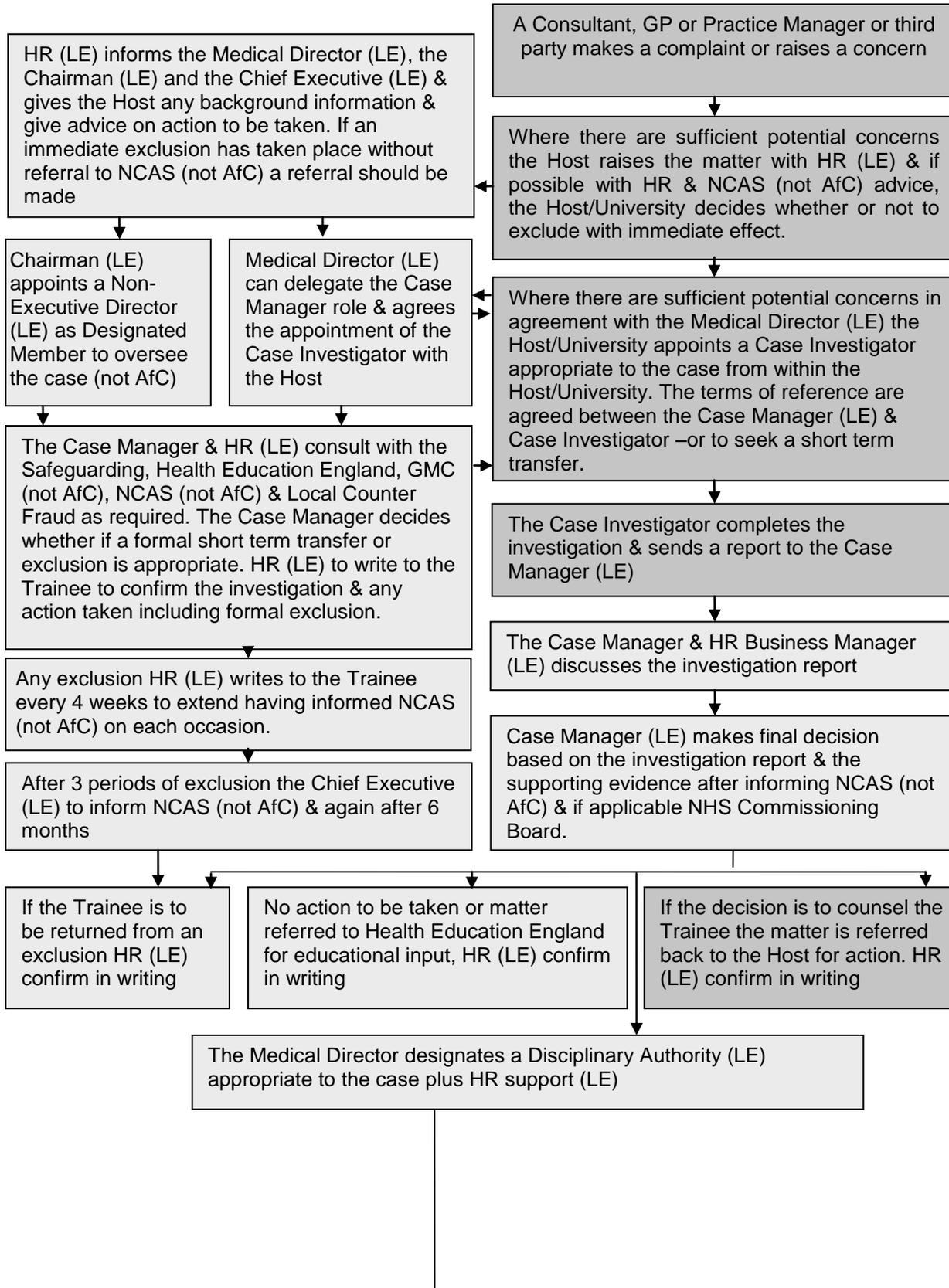
### Procedure at the Appeal

1. The Appeal Authority will facilitate the introductions and state the findings from the disciplinary hearing that have led to the appeal. The Appeal Authority, HR representative if present, the senior professional from an appropriate discipline if present, the Trainee and their representative will have had sight of the notes from the disciplinary hearing and copies of any reports, statements or information that were referred to at that hearing. The Appeal Authority will therefore make it clear that these will be taken as read.
2. The Trainee and/or their companion/representative will present their case and call witnesses if necessary. NB Witnesses who attended the disciplinary hearing should only be called again if they can provide significant additional evidence to that which was presented at that hearing.
3. The Appeal Authority, HR Representative if present and the senior professional from an appropriate discipline if present, will have the opportunity to ask questions of the Trainee and these witnesses. Each witness shall withdraw after giving their evidence and answering questions but maybe invited back into the hearing if required by the Appeal Authority.
4. The Appeal Authority will then consider whether it is necessary to call the Disciplinary Authority from the original hearing or the Case Investigator to seek clarification. They should therefore be on standby to be called if necessary. If they are called the Appeal Authority, the HR Representative if present, the senior professional from an appropriate discipline if present, Trainee and/or their companion/representative will all have the opportunity to ask questions.
5. The Trainee or their companion/representative may sum up their case if they so wish but the summary must not introduce any new matter.
6. Nothing in the foregoing procedure shall prevent the Appeal Authority, HR Representative if present and the senior professional from an appropriate discipline if present, from inviting any witness, the Trainee or their companion/representative, the Disciplinary Authority or Case Investigator to clarify or amplify any statement they may have made.
7. The Appeal Authority may, at his/her discretion, adjourn the hearing in order that further evidence may be produced or for any other reason.
8. Following completion of the submission of all evidence and summing-up, the Trainee and their companion/representative shall withdraw.

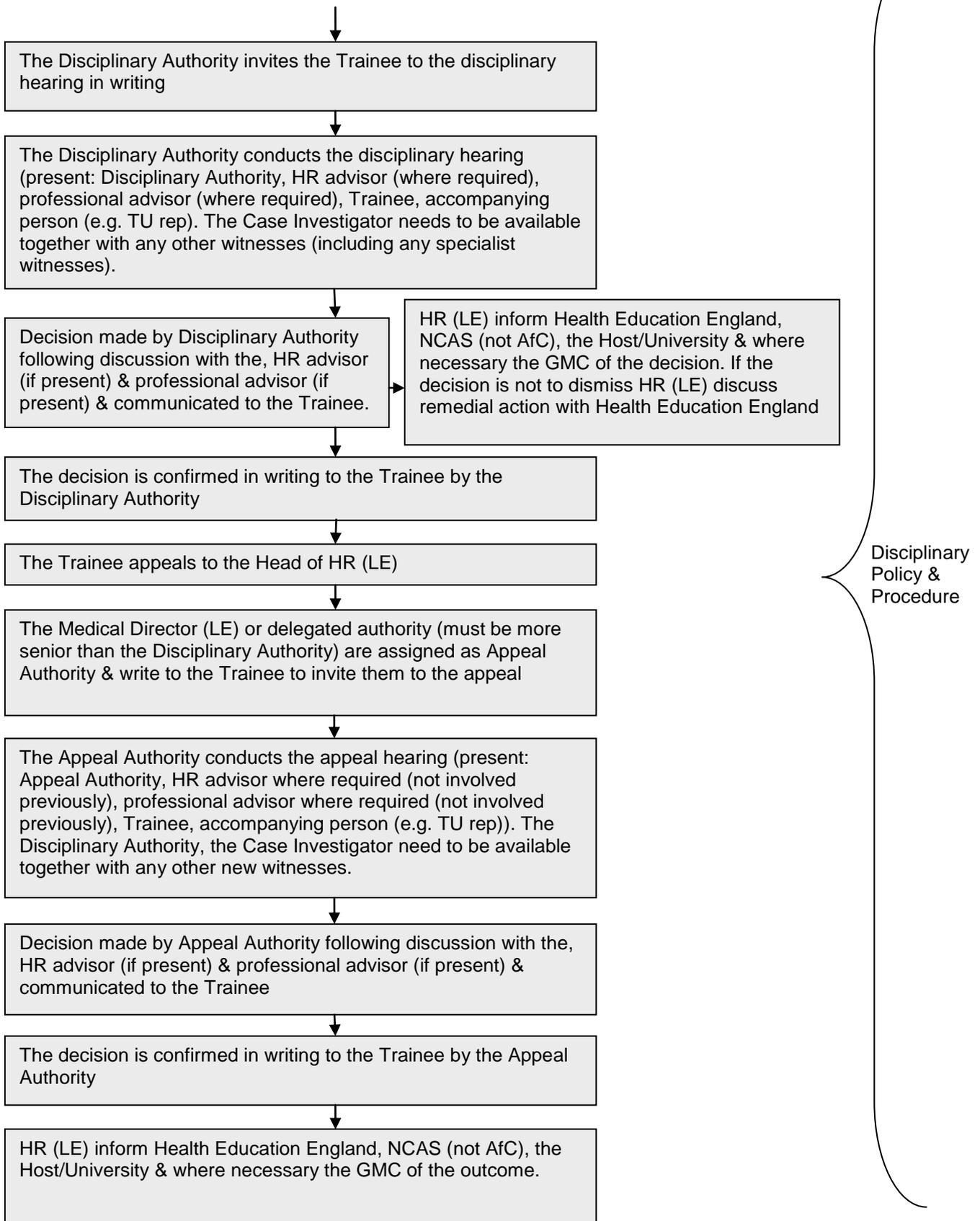
9. The Appeal Authority, the HR Representative if present and the senior professional from an appropriate discipline if present, shall deliberate in private, only recalling the hearing to clear points of uncertainty on evidence already given. If recall is necessary, the Trainee and their companion/representative will be recalled, even where they are not concerned with the point in question. The final decision will be that of the Appeal Authority and the HR Representative and the senior professional from an appropriate discipline if present will act in advisory capacity.
10. A decision will normally be announced immediately following the hearing. Whenever this is not possible, the Trainee will be advised of the decision by the Appeal Authority within 5 calendar days unless more extensive reinvestigation is required.
11. The Appeal Authority shall normally write to the Trainee within seven calendar days of the appeal to confirm their decision enclosing a copy of the notes from the appeal.

**Appendix 3**

**Disciplinary Flowchart**



Based on the Maintaining High Professional Standards in the Modern NHS



## Appendix 4

### Schedule of Authority

Type of Hearing	Potential Outcome	Authority
Disciplinary Hearing	Warning	Clinical Director, Associate or Deputy Medical Director
	Dismissal	Medical Director or Deputy Medical Director,
Appeal	Warning	A person of a higher seniority than that of the Disciplinary Authority
	Dismissal	Medical Director or nominated Board Director

## Appendix 5

### Some Other Substantial Reason/Breach of Statutory Restriction

**This Appendix is included to explain how the Lead Employer may deal with issues that are not disciplinary matters or capability matters. For the avoidance of doubt such matters are not dealt with in accordance with the Lead Employer disciplinary procedure or MHPS.**

### Some Other Substantial Reason

Reasons that do not fall within the other four potentially fair reasons for dismissal (Conduct, Capability, Redundancy, and Breach of Statutory Restriction) may amount to “Some Other Substantial Reason” or “SOSR” if it is not an insignificant or frivolous reason and it justifies the dismissal of a Trainee. Examples could include:

- Conflict of interest e.g. the Trainee’s close connection with another organisation putting the position or reputation of the Trust, Health Education England, the Host or University in jeopardy
- Personality clashes or irreconcilable differences between the Trainee and their colleagues (inclusive of the Trainers). In such cases before resorting to dismissal, in conjunction with Health Education England the Lead Employer will consider whether re-deployment of the Trainee to an alternative placement either within the Host/University or to another Host/University is possible, or whether mediation is a potential option. If neither present a solution and it is clearly not a matter of capability or a disciplinary matter then an investigation will be carried out and a decision will be taken as to the appropriate way forward when the investigation is complete.
- The withdrawal of the Trainee’s National Training Number by Health Education England through the ARCP or RITA processes prior to the end of their fixed term training period. In such circumstances, as advised to each Trainee at the start of their training contract, termination of employment is the likely outcome.
- A breakdown in trust and confidence. In such cases, if it is clearly not a matter of capability or a disciplinary matter then an investigation will be carried out and a decision will be taken as to the appropriate way forward when the investigation is complete.

This is an illustrative and not an exhaustive list.

### Breach of Statutory Restriction

This applies if the continued employment of the Trainee would breach a statutory duty or restriction. Examples could include:

- The Trainee does not have legal entitlement to work in the UK

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- The Trainee cannot legally practice as a doctor for any significant period of time. [this might also amount to some other substantial reason depending on the circumstances]

This is an illustrative not an exhaustive list.

In all such cases any alternative options should be explored before proceeding to dismissal e.g. agreeing with Health Education England to a transfer to an alternative position etc.

In all cases under this appendix, although these are not disciplinary matters, any hearings that take place will be conducted in line with the procedure outlined in paragraph 5.6 and appendix 2a of this policy. Any appeal will be conducted in line with the procedure outlined in paragraph 5.11 and appendix 2b of this policy. NB In cases where no medical knowledge is required e.g. withdrawal of the National Training Number the hearing of the case can be delegated to a senior member of the Lead Employer management team.

Nothing in this policy (and nothing in this appendix) applies to Trainees when they conclude their fixed term employment at the end of their period of training.