

WORKFORCE & ORGANISATIONAL DEVELOPMENT POLICY

DISCIPLINARY POLICY AND PROCEDURE

**DOCUMENT REF: PHRJDISC
(Version No. 7.1)**

Name and designation of policy author(s)	Tricia Beck - HR Business Advisor
Approved by (committee, group, manager)	Jayne Shaw - Director of Workforce and OD
Approving signature	Electronic approval received
Date approved	15 th May 2019
Review date	May 2022
Review type (annual, three yearly)	Three Yearly
Target audience	All Employees
Links to other strategies, policies, procedures	<ul style="list-style-type: none"> • Grievance Policy & Procedure • Bullying and Harassment Policy & Procedure • Substance Misuse Policy & Procedure • Anti-Fraud, Bribery & Corruption Policy & Response Plan • Attendance Management Policy • Managing Performance Policy and Procedure • Employment Checks Policy • Receipt of Gifts and Hospitality Policy • General Health and Safety Policy • Uniform & Dress Policy • Driving at Work Policy • Freedom to Speak up Policy • Probation Period Policy • Social Media Policy • Maintaining High Professional Standards • Mediation Leaflet • Smoke Free Policy • Appeals Policy & Procedure
Protective Marking Classification	Internal
This policy replaces...	Version 7.0

Issue Date: 15 th May 2019	Page 1 of 30	Filename: PHRJDISC	Version No: 7.1
Author: Tricia Beck	Authorised by: Jayne Shaw	Copy No:	

Consultation:

	Authorised by	Date Authorised	Comments
Impact Assessment	N/A	N/A	N/A
Fraud Assessment	Claire Smallman, Anti-Fraud Manager, MIAA	17 th May 2019	No changes made.

Circulation/Dissemination:

Date added into Q-Pulse	24 th May 2019
Date notice posted in the Team Brief	24 th May 2019
Date document posted on the intranet	24 th May 2019

Version History:

Date	Version	Author name and	Summary of main changes
06/08/2008	4.0	Liz Kinvig – Human Resources Manager	
13/08/2009	5.0	Liz Kinvig – Human Resources Manager	Re-formatted into new policy template. Addition to section 6.3 by MIAA.
October 2011	6.0	Colette Jordan - HR Business Advisor	Full Review
February 2014	6.1	Catrin Wilde – HR Business Partner	Update legislation and related policy list.
June 2016	7.0	Helen Lowery – HR Business Advisor	Full Review
March 2019	7.1	Tricia Beck – Senior HR Business Advisor	Full Review- minor changes

Issue Date: 15 th May 2019	Page 2 of 30	Filename: PHRJDISC	Version No: 7.1
Author: Tricia Beck	Authorised by: Jayne Shaw		Copy No:

Contents

1.0	Introduction	5
2.0	Purpose	5
2.1	Organisational Values & Behaviours	5
3.0	Scope	6
4.0	Responsibilities	6
4.1	Chief Executive	6
4.2	Directorate of Workforce and Organisational Development	6
4.3	Line Managers:	6
4.4	All Employees	7
4.5	Trade Union Representatives.....	7
5.0	Laws & Regulations	8
6.0	Definitions.....	8
7.0	Process, Consideration and Stages.....	9
7.1	Resolve discipline issues informally	11
7.2	Representation	12
7.3	Suspension/ Exclusion	12
7.4	Investigation	12
7.5	Formal Hearing.....	14
7.6	Formal action.....	15
7.7	Appeals against formal action	17
7.8	Grievances raised during the disciplinary process	17
7.9	Sickness During Disciplinary	17
7.10	Support.....	18
8.0	Training.....	19
9.0	Audit	19
10.0	References	19
11.0	Appendices.....	19
	APPENDIX 1- Examples of Minor Misconduct, Serious Misconduct and Gross Misconduct	20
	APPENDIX 2 - Criminal Charges/Convictions.....	22
	APPENDIX 3 - Suspension/Exclusion.....	23

Issue Date: 15 th May 2019	Page 3 of 30	Filename: PHRJDISC	Version No: 7.1
Author: Tricia Beck	Authorised by: Jayne Shaw		Copy No:

APPENDIX 4 - CCC Values and Behaviours25
APPENDIX 5 - Informal Meeting Notes Template30

Issue Date: 15 th May 2019	Page 4 of 30	Filename: PHRJDISC	Version No: 7.1
Author: Tricia Beck	Authorised by: Jayne Shaw		Copy No:

1.0 Introduction

The aim of this policy is to ensure that the handling of conduct matters is managed through a fair process that provides for uniformity of treatment, consistency, justice for individual employees, protection of patient safety and protection of the efficiency and smooth running of the Trust. The Policy is also intended to ensure that management, trade unions and employees are aware of their rights and obligations in respect of the disciplinary rules, the disciplinary process and the associated appeals policy.

2.0 Purpose

The policy is intended to help promote good employment relations with the underlying aim being to encourage improvement in conduct/behaviour. Standards of conduct and behaviour are identified within Trust and departmental policies and procedures, and include those set out in the NHS Constitution, Trust Values & Behaviours (**Appendix 4**) and Professional Codes of Conduct, as well as the standards identified in this policy. This Policy will be used in cases where there is an alleged breach of the standards of conduct and behaviour and/or a breach of rules/policy requirements.

2.1 Organisational Values & Behaviours

The Trust's Values and Behaviours support the Vision *'to provide the best cancer care to the people we serve'* and our Mission *'To improve health and wellbeing through compassionate, safe and effective cancer care'*.

In order to deliver the Vision and the Mission the Trust has set out the Values & Behaviours that it will demonstrate which are:

- Putting People First
- Passionate about what we do
- Achieving Excellence
- Looking to the future
- Always improving our care

These values and behaviours need to be at the heart of everything we do and have been incorporated into the development of this policy (**Appendix 4**).

Issue Date: 15 th May 2019	Page 5 of 30	Filename: PHRJDISC	Version No: 7.1
Author: Tricia Beck	Authorised by: Jayne Shaw		Copy No:

3.0 Scope

This policy applies to all staff of The Clatterbridge Cancer Centre NHS Foundation Trust. In cases where the conduct and/or competence of medical staff are in question, reference will be made to 'Maintaining High Professional Standards in Modern NHS' published in (2005), in order to determine which Policy should be followed according to the circumstances of the case in question.

This Policy is supported by 3 guidance documents:

- Guide to Conducting an Investigations
- Guide to Conducting a Formal Hearing
- Guide to Undertaking the Role of Case Manager

The documents are available on the Trust Extranet.

4.0 Responsibilities

4.1 Chief Executive

The Chief Executive has overall responsibility to ensure the content of this policy is applied consistently and fairly across the Trust via the Executive Management Team.

4.2 Directorate of Workforce and Organisational Development

Are responsible for:

- Developing, implementing and communicating policy and procedural frameworks to apply this policy consistently and fairly across the Trust
- Ensuring that effective monitoring information is routinely provided for Executive Directors, Trust Board, Line Managers and the Strategic Partnership Forum (SPF)
- Ensuring the provision of Workforce & Organisational Development (WOD) support and advice to line managers in the application of this Policy and associated procedures
- Ensuring the provision of appropriate training for managers
- Review of the continued relevance/appropriateness of this Policy on a regular basis

4.3 Line Managers:

Are responsible for:

- Ensuring that this Policy is applied fairly and consistently and in a way that does not discriminate

Issue Date: 15 th May 2019	Page 6 of 30	Filename: PHRJDISC	Version No: 7.1
Author: Tricia Beck	Authorised by: Jayne Shaw		Copy No:

- Ensuring that all aspects of the Policy are followed as failure to follow this Policy could lead to a claim of unfair dismissal
- Keeping written records and ensuring confidentiality
- Ensuring that all staff are aware of this Policy and understand the rules relating to conduct and the likely consequences if these rules are broken
- Consulting a HR Business Partner/Advisor before taking any formal action
- Ensuring that staff are informed of the nature of any allegations made against them and the seriousness of the allegations, that staff are given the opportunity to respond to any such allegations and are given the right to be accompanied at formal meetings
- Ensure that staff involved in any way in a disciplinary process are supported appropriately
- Ensuring that investigations are completed within determined timescales
- Ensuring notification of disciplinary meetings and outcomes of meetings are made in accordance with this policy.

4.4 All Employees

Are responsible for:

- Ensuring they understand the Trust's Values & Behaviours and the rules relating to behaviour and conduct
- Performing their duties in accordance with contractual obligations
- Exercising care in the performance of duties
- Treating colleagues, patients, visitors and relatives with honesty, respect, care, compassion & dignity
- Being honest and trustworthy
- Being co-operative and acting reasonably
- Following policies & procedures and abiding by rules
- Raising concerns appropriately

4.5 Trade Union Representatives

Are responsible for:

- Providing support to their members throughout the process, accompanying them at formal meetings and appeals.
- Assisting their members in preparing their case.

Issue Date: 15 th May 2019	Page 7 of 30	Filename: PHRJDISC	Version No: 7.1
Author: Tricia Beck	Authorised by: Jayne Shaw		Copy No:

5.0 Laws & Regulations

- Trade Union and Labour Relations (Consolidation) Act (1992)
- Employment Act (2008)
- ACAS Code of Practice (2009)
- Maintaining High Professional Standards in the Modern NHS (2005)
- Healthcare Professionals Alert Notices Directions (2006)
- Working together to Safeguard Children (2006)
- Equality Act (2010)
- Data Protection Act (1998)

6.0 Definitions

Case Manager

Person responsible for managing the issue concerned including identification of Investigator(s) in conjunction with WOD, monitoring the progress of the investigation, reaching a decision whether further action is appropriate following the completion of an investigation. Also responsible for confirming any decision to suspend / exclude or restricted duties and monitor such actions in accordance with policy requirements. In most cases the Case Manager will act as the Chair for any Disciplinary Hearing required.

Case Investigator

Person appointed to investigate the issue and report back to the Case Manager.

Companion

The employee concerned is entitled, at all stages of the process, to be accompanied by a Trade Union Representative or workplace colleague (and in the case of medical staff only, this also extends to a friend, partner/spouse, defence organisation and, if dismissal is a potential outcome, a solicitor or barrister).

Investigation

A process for establishing the exact nature of the incident/complaint including collation and analysis of evidence, production of a report and presenting findings at any associated

Issue Date: 15 th May 2019	Page 8 of 30	Filename: PHRJDISC	Version No: 7.1
Author: Tricia Beck	Authorised by: Jayne Shaw		Copy No:

hearings.

NCAS

National Clinical Assessment Service – a service providing advice and support to managers in relation to concerns about the performance of doctors, dentists and advice on local investigation and suspension / exclusion or restriction of duties.

Suspension / Exclusion Suspending / excluding an employee may be necessary whilst an investigation is underway to protect the interests of both the employee and the Trust, such action is only a holding measure, not a formal punitive action, and the employee remains on full pay. The Case Manager or a more senior manager will be responsible for taking such a decision, in accordance with the relevant policy. Such action for medical staff is referred to as exclusion.

7.0 Process, Consideration and Stages

When dealing with a problem of conduct/performance, managers need to consider whether the employee has a problem which would be more appropriately dealt with under the Trust's Attendance Management Policy, Substance Misuse Policy and Procedure or Managing Performance Policy and Procedure in the first instance.

For anonymous allegations received, refer to the Freedom to Speak up Policy.

The manager dealing with a case under this Policy should familiarise themselves with the requirements and responsibilities set out in the 'Guide to undertaking the role of Case Manager'

7.0.1 Conduct

Breaches of conduct covered by this policy fall into three main categories: minor, serious and gross. Examples of misconduct that may be considered to be minor, serious or gross misconduct are listed in **Appendix 1**. These examples are wide-ranging to provide guidance to managers and staff but the list is not exhaustive. Behaviour not specifically mentioned which is a clear breach of established standards of conduct/policy may still lead to formal action and the level of sanction will always need to be determined based on the specific facts and circumstances of each individual case.

Issue Date: 15 th May 2019	Page 9 of 30	Filename: PHRJDISC	Version No: 7.1
Author: Tricia Beck	Authorised by: Jayne Shaw		Copy No:

7.0.2 Minor Misconduct

This is misconduct which may result in informal or formal action being taken depending on the frequency and previous actions taken to address such instances. **(See Appendix 1a)**

7.0.3 Serious Misconduct

This is misconduct which is not so severe as to warrant summary dismissal but is behaviour that could not be tolerated further. Such misconduct would normally result in formal action being taken. **(See Appendix 1b)**

7.0.4 Gross Misconduct

This is misconduct so serious that it makes any further relationship between the Trust and the employee potentially untenable which might result in dismissal. **(See Appendix 1c)**

7.0.5 Summary Dismissal

Summary dismissal is the immediate dismissal of an employee without payment for the appropriate statutory or contractual period of notice.

7.0.6 Allegations against adults who work with children and young people

Reference should be made to Safeguarding Adults and Children & Prevent Policy.

7.0.7 Fraud & other illegal actions

In cases of fraud it will be necessary to consider sanctions in addition to disciplinary action e.g. civil action or criminal prosecution. The local NHS Counter Fraud Specialists may need to be contacted for advice and it may also be necessary for the Trust to notify the Police.

Fraud is described as 'any deliberate intent to deprive an employer of money or goods through the falsification of any records or documents for example, submission of false invoices, inflated time records, inflated travel claims or the use of orders to obtain goods for personal use'.

The management of allegations of Fraud should be dealt with under this policy and in line with the Trusts' Anti-Fraud, Bribery & Corruption Policy.

Issue Date: 15 th May 2019	Page 10 of 30	Filename: PHRJDISC	Version No: 7.1
Author: Tricia Beck	Authorised by: Jayne Shaw		Copy No:

7.0.8 Criminal charges or convictions

Employees who are charged with a criminal offence not related to work (with the exception of minor motoring offences) must formally report the facts to their manager and subsequently advise them of the outcome. The nature of the charge/conviction in relation to the employee's position with the Trust will be given careful consideration to determine if action is appropriate under this Policy (**See Appendix 2**).

7.0.9 Patient Safety Incidents

Reference should be made to the Incident Reporting Policy and the Being Open and Duty of Candour: Communicating Patient Safety Incidents with Patients and their Carers Policy.

7.1 Resolve discipline issues informally

Cases of minor misconduct or unsatisfactory performance are usually best dealt with informally. A quiet word is often all that is required to improve an employee's conduct or performance. In some cases additional training, coaching and advice may be what is needed. There will be situations where matters are more serious or where an informal approach has been tried but is not working.

The manager should talk to the employee in private. This should be a two-way discussion, aimed at discussing possible shortcomings in conduct or performance and encouraging improvement. Criticism should be constructive, with emphasis being on finding ways for the employee and for the improvement to be sustained. Listen to whatever the employee has to say about the issue. It may become evident there is no problem – if so make this clear to the employee.

Where improvement is required make sure the employee understands what to be done, how their performance or conduct will be reviewed, and over what period. It may be useful to confirm in writing what has been decided (**See Appendix 5**), however this will be stored locally by the line manager.

The manager should be careful that any informal action does not turn into formal disciplinary action, as this may unintentionally deny certain rights, such as the right to be accompanied. If, during the discussion, it becomes obvious that the matter may be more serious, the meeting should be adjourned. The employee should be told that the matter will

Issue Date: 15 th May 2019	Page 11 of 30	Filename: PHRJDISC	Version No: 7.1
Author: Tricia Beck	Authorised by: Jayne Shaw		Copy No:

be continued under the formal disciplinary procedure.

Managers should keep brief notes of any agree informal action for reference purposes. There should be reviews of progress over specified periods.

Consideration at any stage by the manager should be given to accessing Mediation if appropriate.

If informal action does not bring about an improvement, or the misconduct or unsatisfactory performance is considered too serious to be classed as minor, employers should provide employees with a clear signal of their dissatisfaction by taking formal action.

7.2 Representation

At formal stages in this policy the employee has the right to be accompanied by a trade union representative or a workplace colleague to provide advice and support on formal and informal process and action.

7.3 Suspension/ Exclusion

In certain circumstances it may be appropriate to suspend/exclude an employee where there is potentially an issue about their conduct. Such suspension/exclusion will be on full pay (unless it relates to loss of registration, work permit or other statutory requirement) and will not be regarded as a disciplinary sanction. The circumstances in which suspension may be applied, considerations and the process to be followed are set out at **Appendix 3**.

Before considering suspending an employee, the appropriate HR Business Partner for the department should be consulted. Once suspension has occurred the Director of Workforce and Organisational Development should be informed, who will in turn notify the Executive Team.

7.4 Investigation

Prior to any action there will likely be a need for initial enquiries or “fact finding” simply to establish/clarify sufficient information so that a decision can be made whether a formal investigation is required.

Issue Date: 15 th May 2019	Page 12 of 30	Filename: PHRJDISC	Version No: 7.1
Author: Tricia Beck	Authorised by: Jayne Shaw		Copy No:

7.4.1 In circumstances where the facts are immediately evident and straight forward, in conjunction with the HR Business Partner/Advisor, the Case Manager should gather the relevant information and evidence which will then be presented at a formal hearing. This information and evidence will be shared with the employee before the hearing. In this situation the Case Manager will not take the role of the Chair at the formal hearing, this will be the relevant senior manager. Arranging a formal hearing is set out in the 'Guide to Conducting a Formal Hearing'.

Examples where this might be appropriate/where no formal investigation is needed would be persistent lateness or use of inappropriate language.

7.4.2 Where a formal investigation is deemed necessary the process to be followed is as set out in the 'Guide to Conducting Investigations'. The aim of the investigation will be to establish the facts.

Investigations will normally be carried out by an employee operating outside of their usual area of responsibility and should have undergone investigation skills training at the Trustor alternatively have experience of disciplinary procedures. The investigating officer(s) will be appointed by the Case Manager in conjunction with the HR Business Partner/Advisor.

In certain circumstances, it may be considered appropriate for the Trust to engage the services of an independent person to undertake the investigation (in accordance with Trust process) and a management representative of the Trust would be responsible for overseeing the arrangements for the investigation.

The Trust is committed to ensuring that all potential disciplinary actions/sanctions are fully investigated where appropriate. Any employee(s) who is subject to an investigation will be informed in writing of the allegations and the remit of the investigation will be clearly outlined.

Where an employee leaves the Trust prior to the completion of an investigation, the investigation will be completed as far as possible to ensure issues of patient and/or staff safety are followed through. For professional staff, consideration will be given to the issue of a professional alert notice where the regulator will be informed. In all cases a file note

Issue Date: 15 th May 2019	Page 13 of 30	Filename: PHRJDISC	Version No: 7.1
Author: Tricia Beck	Authorised by: Jayne Shaw		Copy No:

will be kept so that future referees are able to inform potential employers that there is an unresolved investigation into the practitioner's performance/behaviour. References will be accurate and fair, stating that procedures have not been completed and reflecting the current position. The employee will be informed in writing of the actions taken.

Upon conclusion of the investigation, the investigation report will be submitted to the Case Manager and he/she will decide whether there is a case to answer and proceed accordingly. There are potentially 4 decisions:-

- No case to answer - this should be confirmed in writing to the employee and the letter retained on their personal file.
- Appropriate for the matter to be dealt with informally (See 7.1) or through mediation
- The matter should be dealt with under another Policy/procedure
- The matter should be dealt with under this Policy in accordance with the process outlined in 7.5 Formal hearing, below.

7.5 Formal Hearing

Where it is decided that there should be a formal hearing to consider the case in question the employee will be notified in writing that a hearing will be arranged under this policy at which he/she will be given an opportunity for stating their case, accompanied, if so desired, by a trade union representative or a workplace colleague. The arrangements for the conduct of the hearing will be in accordance with the Trust's 'Guide to Conducting a Formal Hearing'. Employees should be given 7 calendar days' notice of the hearing.

Where an employee leaves the Trust prior to the date of a hearing taking place, the employee will be advised that the hearing will take place and if they do not attend, the panel will review the evidence in their absence and will determine on face value if a disciplinary sanction would have been applied. This will be noted on their personal record and reflected in future references. For professional staff, consideration will be given to the issue of a professional alert notice through the NCAS and the regulator will be informed.

If an employee's companion cannot attend the hearing on the proposed date, the employee or their representative can suggest another date as long as it is reasonable and is not more than 7 calendar days after the date originally proposed by the manager

Issue Date: 15 th May 2019	Page 14 of 30	Filename: PHRJDISC	Version No: 7.1
Author: Tricia Beck	Authorised by: Jayne Shaw		Copy No:

(the 7-day limit may be extended by mutual agreement). Where an employee/representative requests the postponement of a disciplinary hearing this will be considered on its own merits. If there is a good reason for non-attendance the hearing will be re-arranged but if the employee/representative does not attend the second hearing there is no obligation on the Trust to re-arrange it again. Where a request from the employee/representative to re-arrange the hearing is judged to be unreasonable, the manager may decide to proceed with the hearing as arranged and the employee/representative will be informed to this effect and advised that it will proceed in their absence if they fail to attend.

7.6 Formal action

When deciding whether formal action is appropriate and the level of action, consideration will be given to:

- The categories of conduct breaches as defined throughout section 7 of this policy
- The decisions applied in similar cases in the past
- How the conduct compares with that of other employees
- The employees disciplinary record (including current warnings), general work record, work experience, position and length of service
- Any special circumstances in the case in question
- Whether the proposed action is reasonable in view of all the circumstances
- Whether any training, additional support or adjustments to the work are necessary.

Levels of action are as follows:

7.6.1 No Action - where it is determined that there is no case to answer

7.6.2 Informal Action– will normally apply where formal action is not considered necessary/appropriate but it is necessary to raise awareness of the concerns, offer advice and guidance and ensure the employee understands what needs to be done and how their conduct will be reviewed and over what period.

7.6.3 First Written Warning - will normally apply where the issue is serious enough to warrant more than informal action and where a more significant sanction is not appropriate. It will also apply in cases of repetition by the employee of minor acts of misconduct which have been the subject of an informal action within the preceding 6

Issue Date: 15 th May 2019	Page 15 of 30	Filename: PHRJDISC	Version No: 7.1
Author: Tricia Beck	Authorised by: Jayne Shaw		Copy No:

months. The length of time for which a warning is retained on an employee's file will reflect the seriousness of the circumstances concerned as determined by the Case Manager. Warnings will normally be for no less than 6 months and no more than 12 months.

7.6.4 Final Written Warning - Will normally apply in cases where there is a repetition of acts of misconduct already the subject of a written warning or instance(s) of misconduct sufficiently serious not to be tolerated a second time. The warning will remain on the employee's record for 12 months from the date of the meeting.

No formal action will be taken against a union representative of a nationally recognised National Health Service negotiating body until the circumstances of the case have been discussed with a full time official of the organisation concerned, provided that this is with the employee's consent. There may be occasions when it will be necessary to suspend a union representative without having first discussed the matter with a full time official because of the delay this could cause. In such cases the circumstances will be reported forthwith to that organisation.

7.6.5 Action Short of Dismissal - Where appropriate, alternative action short of dismissal may be considered. The disciplinary sanction in this instance may include demotion (and subsequent decrease in pay), transfer to an alternative position or reduction of pay. The sanctions may not be time limited dependant on the circumstances however the employee would be able to apply for alternative posts in the normal way once the record of the action is removed in line with the policy. Where the penalty is one short of dismissal the record would be retained as if it were a final written warning for 12 months. Such sanctions will only be applied as an alternative to dismissal in specific cases after due consideration of all of the facts. If the employee chooses not to accept such action, dismissal could apply.

7.6.6 Dismissal - Will normally apply in cases of gross misconduct, where the employee has a current final written warning or there is an accumulation of live warnings. In cases of gross misconduct, the dismissal will be without notice or payment in lieu of notice but any outstanding holiday entitlement or salary payments owed at the date of dismissal will be paid. For other dismissals e.g. cumulative warnings, payment in lieu of notice will normally apply in accordance with the contract of employment.

Issue Date: 15 th May 2019	Page 16 of 30	Filename: PHRJDISC	Version No: 7.1
Author: Tricia Beck	Authorised by: Jayne Shaw		Copy No:

Employees who are the subject of formal action will receive confirmation in writing, summarising the discussion at the meeting, stating the reasons for the action, the nature of the sanction, how long it will remain on their record and what the likely consequences of further misconduct could be (where appropriate). The letter will also include confirmation of the right to appeal against the decisions in line with the Trusts' Appeals Policy and Procedure

7.7 Appeals against formal action

Employees' have the right to appeal against any form of formal action taken under this Policy in accordance with the Appeals Policy and Procedure.

The process for lodging Appeals and for the conduct of the appeal is set out in the Trust's Appeal Policy and Procedure.

Any formal action may, on appeal, be upheld, revoked or reduced.

7.8 Grievances raised during the disciplinary process

Where an employee raises a grievance during the disciplinary process, the process may be temporarily suspended in order to deal with the grievance but where the grievance and the disciplinary cases are related it may be appropriate to deal with both issues concurrently. The employee and their representative will be consulted in this respect.

7.9 Sickness During Disciplinary

The ill health of an employee will not usually be grounds for stopping on-going disciplinary procedures.

Where the absence is likely to be short, the Trust will usually wait until the employee recovers and is able to fully participate.

When the absence is on-going and it appears that the employee is likely to remain off sick for an extended period, the Trust will refer the employee to the Occupational Health Department to determine if they are sufficiently fit to participate in the disciplinary process.

Following consultation with the Occupational Health Department it appears that the employee is fit to participate the process will continue. Where it appears that the employee

Issue Date: 15 th May 2019	Page 17 of 30	Filename: PHRJDISC	Version No: 7.1
Author: Tricia Beck	Authorised by: Jayne Shaw		Copy No:

is not fit to take a full part in the disciplinary procedure, the Trust will consider the following measures to enable the employee to participate effectively:

- Venue – Consider holding at a venue other than Trust premises
- Representation – May be allowed an expanded role in the process where this would assist the employee in ensuring that his/her case is fully explained
- Written Representations – Where the employee may have difficulty in explaining his/her case, consideration will be given to allowing the employee to rely on written representations
- Timings – While being committed to the principle that matters are dealt with promptly the Trust may allow extra time for any stage of the disciplinary process to ensure that the employee can participate effectively.

It should be possible by using the special measures above to conduct a fair disciplinary process in which the employee can participate. There may be exceptional circumstances when the employee will not be able to attend a disciplinary hearing. In such circumstances the Trust reserves the right to proceed with the disciplinary hearing in the employees' absence. Where this is the case the employee will be informed of the date, time and location of the hearing and remain free to attend. The representative may also attend in the absence of the employee, with the employees' prior authorisation.

The outcome of the hearing will be communicated in writing and the employee will be given the opportunity to appeal against any decision in line with the Trust's Appeals Policy and Procedure.

7.10 Support

It is recognised that employees who are the subject of conduct proceedings are likely to find the situation stressful, as will other staff who may become involved because they are a victim of or witnesses to the event. Managers are responsible for ensuring that all staff involved are appropriately supported at all stages. Support is also available from trade union representatives.

For staff suspended from duty whilst an investigation is conducted, a member of staff will be allocated as a point for communication and support for the employee. The employee can also be referred to Occupational Health via the WOD or by their line manager.

Issue Date: 15 th May 2019	Page 18 of 30	Filename: PHRJDISC	Version No: 7.1
Author: Tricia Beck	Authorised by: Jayne Shaw		Copy No:

The Trust provides an Employee Assistance Provision for all employees which is available any time 27/7, 365 days a year. Employees are free to access this service as they choose by logging onto vivup.co.uk or telephone, (calls charged at local rate) 03303 800658.

8.0 Training

Training will be provided for all employees who are responsible for the management of staff.

9.0 Audit

This policy will be audited periodically by WOD and a report from this including recommendations, action plans and changes implemented if applicable will be provided to WOD Committee.

10.0 References

Useful Links:

- www.acas.org.uk
- Employee Assistance Provision vivup.co.uk 03303 800658'
- Appeals Policy and Procedure
- Raising Concerns Policy

11.0 Appendices

Issue Date: 15 th May 2019	Page 19 of 30	Filename: PHRJDISC	Version No: 7.1
Author: Tricia Beck	Authorised by: Jayne Shaw		Copy No:

APPENDIX 1- Examples of Minor Misconduct, Serious Misconduct and Gross Misconduct

Set out below are some examples of conduct and behaviour that would be treated as misconduct, serious misconduct and gross misconduct under the Disciplinary Policy. **This list is not exhaustive.**

a) Minor Misconduct

- Lateness without reasonable explanation
- Failure to report to work without reasonable explanation
- Abuse of privileges of NHS organisation
- Minor instances of discourtesy/rudeness to patients, visitors or other employees
- Failure to wear protective clothing as prescribed and issued
- Failure to adhere to the Trust's Uniform and Dress Code Policy
- Poor attendance record or performance, when the Attendance Management and/or Managing Performance Policy and Procedure is not appropriate
- Minor examples of professional misconduct

b) Serious Misconduct

- Failure to respond to minor misconduct warnings
- Unauthorised absence without reasonable cause whilst purporting to be on duty
- Failure to comply with conditions of service or working procedures
- Refusal to carry out reasonable instructions given by an authorised person
- Failure to maintain registration with relevant mandatory professional body
- Serious instances of professional misconduct
- Personal behaviour conducted either inside or outside of the workplace or working hours that results in bringing the Trust or any of its employees into disrepute

c) Gross Misconduct

- Theft, fraud, bribery (giving and receiving)
- Repeated unauthorised absence without reasonable cause whilst purporting to be on

Issue Date: 15 th May 2019	Page 20 of 30	Filename: PHRJDISC	Version No: 7.1
Author: Tricia Beck	Authorised by: Jayne Shaw		Copy No:

duty

- Unauthorised entry to computer records or deliberate falsification of records
- Misuse of the Trust’s computer system including the misuse of email and internet access
- Fighting or assault
- Deliberate or reckless damage to Trust property
- An inability to perform job duties through being under the influence of alcohol or drugs
- A serious breach of Trusts’ safety rules or a single error due to negligence which causes or could have caused significant loss, damage or injury to the Trust, its employees, patients or visitors
- Conviction of a criminal offence that makes the employee unsuitable or unable to carry out his/her duties
- Criminal conduct inside or outside work including non-disclosure of criminal convictions, cautions, reprimands and/or criminal investigation at appointment or during employment
- Repeated refusal to carry out a reasonable request
- Acts of bullying, harassment, victimisation or discrimination
- Falsification of remuneration such as timesheets and expense forms
- Falsification of qualifications
- Falsification of documents
- Engaging in outside employment during hours contracted or (reasonably expected to be) working for the Trust
- A serious breach of trust or confidentiality
- Acts of insubordination or personal behaviour that results in bringing the Trust into disrepute (including statements made on social networking sites)
- Unauthorised use or misuse of Trust facilities, equipment or property
- Breach of Data Protection

Issue Date: 15 th May 2019	Page 21 of 30	Filename: PHRJDISC	Version No: 7.1
Author: Tricia Beck	Authorised by: Jayne Shaw		Copy No:

APPENDIX 2 - Criminal Charges/Convictions

Where the conduct concerned requires prompt attention there is no requirement on the Trust to await the outcome of any prosecution before taking action although it may be necessary to delay the internal investigation whilst the police are carrying out their own investigations.

An employee will not normally be dismissed solely because they are absent from work as a result of being remanded in custody or the subject of restrictive bail conditions. However, the Trust will need to take into account the nature of the offence, the nature of any bail conditions, the length of time the employee is likely to be on remand and consider the implications in relation to service needs so as to reach a decision whether the employees job can be held open.

Where an employee charged with or convicted of a criminal offence is unable to co-operate in person with the investigation and proceedings, the employee will be afforded the opportunity to have a representative attend for them or alternatively submit written representations. Where an employee refuses to co-operate they will be advised in writing that unless further information is provided a disciplinary decision will be taken on the basis of the information available, which could result in dismissal.

Managers must consult their HR Business Partner/Advisor when criminal charges or convictions are reported.

Where formal action is considered necessary it may be taken irrespective of any on-going police investigation into the offence concerned or outstanding criminal proceedings.

Issue Date: 15 th May 2019	Page 22 of 30	Filename: PHRJDISC	Version No: 7.1
Author: Tricia Beck	Authorised by: Jayne Shaw		Copy No:

APPENDIX 3 - Suspension/Exclusion

Suspension is a holding action pending the completion of enquiries, investigation or other measures. In circumstances warranting suspension, an employee will only be suspended by a senior member of staff.

Suspension will only be carried out in one or more of the circumstances set out below:

- Where a full investigation is necessary and where the presence of the employee at the workplace is likely to impede this process.
- The employee is incapable of remaining at work because of an incapacity, which renders the employee incapable or is likely to cause a danger to patients, other staff, the public or themselves.
- The alleged offence is of a nature which if found to have occurred is likely to result in dismissal.
- Where because of the need to protect the interests of the Trust, the staff, patients or the public, suspension is the only reasonable course of action to take.

Before deciding to suspend, consideration should be given to altering the duties of the employee or temporarily locating them whilst the investigation takes place as an alternative to suspension.

In considering suspension, advice from WOD should always be obtained. A period of suspension should only be imposed after careful consideration and must be regularly reviewed to ensure that it is limited to the minimum practical time and continues only for so long as any or all of the circumstances outlined above continue to exist. Suspension may be initiated before an investigation or at any time during an investigation at a point where it becomes appropriate to do so. Suspension can be lifted at any point during the investigation/disciplinary process as it becomes appropriate to do so.

Where the Manager/Head of Department has come to the conclusion that suspension is appropriate, the Manager will, wherever possible or appropriate, see the employee personally to outline the nature of the situation/allegation and be advised of the decision to suspend. The Manager should advise the employee that he/she does not have to say anything at this stage but they can choose to make an initial response, whether verbally or in writing. If a response

Issue Date: 15 th May 2019	Page 23 of 30	Filename: PHRJDISC	Version No: 7.1
Author: Tricia Beck	Authorised by: Jayne Shaw	Copy No:	

is made at this stage, a full and detailed note should be taken of their response and the employee should be asked to sign and verify the accuracy of the note and be provided with a copy. These notes should be made available to the Case Investigator.

The suspension should be immediately confirmed in writing using the template letter included in the 'Guide to The Role of the Case Manager' which sets out the terms of the suspension.

Support during suspension

It is recognised that being suspended will be a stressful event for the employee and it is also recognised that there is a need for the employee to be kept up to date with regard to general issues and events in their workplace. In this respect the Manager, in consultation with the suspended employee, will seek to identify a member of staff from the work area, who is not involved in the matter being investigated, who can act as a point of contact with the suspended employee during this period and provide impartial moral support. Support will also be available from the Occupational Health Department as necessary.

Issue Date: 15 th May 2019	Page 24 of 30	Filename: PHRJDISC	Version No: 7.1
Author: Tricia Beck	Authorised by: Jayne Shaw	Copy No:	

APPENDIX 4 - CCC Values and Behaviours

Examples of Good Values Based Behaviours and Poor Values Based Behaviours

Example	Putting people first		Example
<p>Being polite & considerate</p> <p>Treating everyone as an equal</p> <p>Considerate to the feelings of others and consider impact of my actions</p> <p>Caring, kind & compassionate to others</p> <p>Saying thank you to colleagues for a job well done, or for their support</p>	<p>How we behave</p> <p>We are caring and compassionate</p> <p>We treat people as individuals and take time to understand their needs</p> <p>We communicate clearly and honestly</p> <p>We treat everyone with dignity and respect</p> <p>We develop services around the needs of patients</p> <p>We are open, friendly and welcoming</p> <p>We value other people's time by being punctual and professional</p>	<p>What we shouldn't do</p> <p>Assume we know what's best and ignore other's views</p> <p>Develop services around the needs of staff</p> <p>Accept a culture of waiting</p> <p>Accept inappropriate behaviour by ignoring it</p> <p>Behave selfishly towards others</p>	<p>Communicates inappropriately i.e. rude, aggressive, sarcastic, divisive, judgemental</p> <p>Intolerant or uninterested of the differences within their team.</p> <p>Treats people differently because of their professional/social/personal background</p> <p>Communicates in a way which undermines positive, constructive relationships e.g. critical emails shared with others, openly critical of others in meetings.</p> <p>Uncaring, insensitive, unhelpful to others</p> <p>Lacks interest in the successes or achievements of others</p>

Example	Passionate about what we do		Example
<p>Supports colleagues across the Trust to work together</p> <p>Positive attitude towards their work, colleagues and CCC</p> <p>Work in partnership inside and outside the Trust</p> <p>Contributes to a positive working environment, making CCC a happier, more enjoyable place to be for everyone</p> <p>Empowers colleagues to take responsibility for their work</p>	<p>How we behave</p> <p>We are motivated to make a positive difference</p> <p>We develop our skills to keep improving our performance</p> <p>We take personal responsibility for doing the best we can</p> <p>We listen to and value the contribution of others</p> <p>We work closely together to overcome challenges and achieve success</p> <p>We work in partnership</p>	<p>What we shouldn't do</p> <p>Blame others</p> <p>Not learn from mistakes</p> <p>Focus on own work to the detriment of others</p> <p>Express cynicism</p> <p>Work in silos</p> <p>“Pull rank” inappropriately</p>	<p>More inclined to identify differences in working practices and reasons why things won't work, than identify areas of common ground</p> <p>Negative about their job, colleagues and management, focusing on what is wrong as opposed to what works well and what has been achieved</p> <p>Focuses too much on internal issues (own job/work area), not taking opportunities to engage outside their work area</p> <p>Focuses on problems, not solutions</p> <p>Does not encourage others to take responsibility for their work, unwilling to trust others</p>

Example	Achieving excellence		Example
<p>Consistently works to the highest quality standards</p> <p>Deliver a standard of service I would expect myself</p> <p>Positively promotes CCC, taking pride in working at CCC</p> <p>Honest, open and respectful in giving and receiving feedback</p> <p>If things go wrong, will give prompt apologies and explanations, with a reassurance that they will not reoccur</p>	<p>How we behave</p> <p>We put patient safety first at all times</p> <p>We are open and transparent about our performance and where we can improve</p> <p>We challenge poor standards to deliver high quality care</p> <p>We share knowledge and expertise</p> <p>We go the extra mile</p> <p>We are open and honest in giving and receiving feedback</p> <p>We work to continuously to improve and make positive changes</p>	<p>What we shouldn't do</p> <p>Cover up poor quality</p> <p>Ignore the contribution of others</p> <p>Take the easy option</p> <p>Accept we have always done it this way</p>	<p>Does not deliver a consistent standard of service</p> <p>Takes little or no responsibility for the service they provide</p> <p>Being negative about their team or other teams when interacting with colleagues, patients etc</p> <p>Defensive when receiving feedback</p> <p>Delivers difficult feedback without considering the impact on the individual</p> <p>Avoids delivering difficult feedback</p> <p>Unwilling to take personal responsibility or offer apologies, when things go wrong</p>

Looking to the future			
<p>Takes personal responsibility for continually improving the services provided</p> <p>Keeps an open mind to new idea and accepts when change is necessary</p>	<p>How we behave</p> <p>We provide services that are value for money</p> <p>We encourage and embrace new ways of working</p> <p>We lead by example</p> <p>We actively seek opportunities to invest in our future success</p> <p>We build pride in our reputation</p>	<p>What we shouldn't do</p> <p>Waste resources and ignore costs</p> <p>Undermine partnerships</p> <p>Constrain the development of others</p> <p>Sit on the side lines and observe</p>	<p>Displays little or no interest in helping to find improvements; does not deliver a consistent standard of service</p> <p>Takes little or no responsibility for improving services, sees it as someone else's job</p> <p>Approaches change with a negative outlook, not prepared to try new ways of doing things</p> <p>Uninterested or resistant to new ideas or initiatives, holds things up or persuades others not to get involved</p> <p>Blocks change, does not see the need for change</p>

Example	Always improving our care		Example
	How we behave	What we shouldn't do	
Encourages personal growth and professional development in others	We put forward and try out new ideas	Settle for low standards	Shows little interest in supporting others with their learning or development, gives little or no feedback or encouragement
Suggests improvements that could be made to the way we do things	We give praise and say thank you	Take credit for others work	
Encourages innovation and creativity in their area of work	We seek out learning opportunities to develop ourselves and others	Stick to the status quo	Uninterested or resistant to new ideas or initiatives, holds things up or persuades others not to get involved
Takes opportunities for creative improvement	We strive to find new and innovative ways to improve quality	Be overly risk averse	
Shares skills and knowledge, encourages and supports others in applying their ideas to work	We are not afraid to do things differently	Ignore inappropriate behaviour	
	We are empowered to take decisions	Consider ourselves more important than others	

APPENDIX 5 - Informal Meeting Notes Template



Outcome of Informal Disciplinary Meeting in line with the Trust's Disciplinary Policy and Procedure

In attendance:

Managers Name:
Member of Staff's Title:

Member of Staff's Name:
Managers Title:

Date of Meeting:
Time of Meeting:
Location of Meeting:

Managers notes:

I advised you that:

<LIST OF IMPROVEMENTS>

ADD HOW THEIR PERFORMANCE OR CONDUCT WILL BE REVIEWED REGULARLY AND OVER WHAT TIME PERIOD

Staff support available:

I would like to remind you of the support available to you in terms of the Trust's Occupational Health Services. If this is something that you feel would be of benefit please do not hesitate to contact me and I will arrange for a referral to be made. Alternatively you can contact the Employee Assistance Provision help and advice line available 24/7/365 days a year via a local call rate number 03303 800658 .This is a free confidential service for staff. There is also website where employees can access a range of supportive information www.vivup.co.uk

Signed by Manager:

Title:

On Date:

CC: Member of Staff
CC: Staff's locally held file

Issue Date: 15 th May 2019	Page 30 of 30	Filename: PHRJDISC	Version No: 7.1
Author: Tricia Beck	Authorised by: Jayne Shaw	Copy No:	