DISCIPLINARY PROCEDURE

General Statement of Policy

This policy will be kept up to date particularly to take account of future NHS legislative changes. To ensure this, the policy and the way in which it is operated will be reviewed regularly by the Head of Human Resources and any changes, following consultation with staff representatives, will be agreed by the Clinical Governance Committee.

This policy and procedure applies to all employees of The Queen Victoria Hospital NHS Foundation Trust and is intended to support staff to abide by their professional code of conduct where applicable.

In line with the Medical and Dental staff framework “Maintaining High Professional Standards in the Modern NHS”, this Disciplinary Procedure will apply to Medical and Dental staff in circumstances where misconduct is alleged. The framework will be adhered to during investigations and exclusions of doctors, but when conduct or behaviour that is not related to the professional capacity of the Medical and Dental employee in question (some examples would be theft, assault, bullying, harassment, vandalism of NHS property) is alleged, this would be dealt with under this Disciplinary procedure. Issues regarding the performance of professional or clinical duties would normally be dealt with under the “Maintaining High Professional Standards in the Modern NHS” framework. For non Medical and Dental staff, the capability procedure would be used in relation to professional, clinical or work performance.

On rare occasions, there may be instances when it is not clear which policy is appropriate. Under these circumstances, the case should be discussed with the Head of Human Resources to establish which policy is more appropriate.

<table>
<thead>
<tr>
<th>CLASSIFICATION</th>
<th>Human Resources</th>
</tr>
</thead>
<tbody>
<tr>
<td>TRUST POLICY NUMBER</td>
<td>HR.4001.1</td>
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<tr>
<td>APPROVING COMMITTEE</td>
<td>Trust Management Team</td>
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<tr>
<td>RATIFYING COMMITTEE</td>
<td>Trust Management Team (agreed by JCNC)</td>
</tr>
<tr>
<td>DATE APPROVED</td>
<td>December 2007</td>
</tr>
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<td>DATE FOR REVIEW</td>
<td>December 2009</td>
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<td>DISTRIBUTION</td>
<td>All Trust Staff</td>
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<tr>
<td>RELATED POLICIES</td>
<td>All Trust Policies</td>
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<tr>
<td>DIRECTOR LEAD</td>
<td>Sharon Colclough, Chief Executive</td>
</tr>
<tr>
<td>AUTHOR</td>
<td>Pauline Farrell, Head of Human Resources</td>
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<td>THIS DOCUMENT REPLACES</td>
<td>None</td>
</tr>
</tbody>
</table>
### DISCIPLINARY PROCEDURE

#### Contents

<table>
<thead>
<tr>
<th>Subject</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Summary Table</td>
<td>3</td>
</tr>
<tr>
<td>Introduction</td>
<td>4</td>
</tr>
<tr>
<td>Investigation</td>
<td>4</td>
</tr>
<tr>
<td>Procedure</td>
<td>5</td>
</tr>
<tr>
<td>The Disciplinary Hearing</td>
<td>6</td>
</tr>
<tr>
<td>Disciplinary Action</td>
<td>7</td>
</tr>
<tr>
<td>First Written Warning</td>
<td>7</td>
</tr>
<tr>
<td>Second Written Warning</td>
<td>7</td>
</tr>
<tr>
<td>Final Written Warning</td>
<td>7</td>
</tr>
<tr>
<td>Dismissal</td>
<td>8</td>
</tr>
<tr>
<td>Disciplinary Appeals Procedure</td>
<td>8</td>
</tr>
<tr>
<td>Gross Misconduct</td>
<td>8</td>
</tr>
<tr>
<td>Trade Union Representatives</td>
<td>9</td>
</tr>
<tr>
<td>Managers Empowered to Dismiss</td>
<td>9</td>
</tr>
<tr>
<td>General Rules</td>
<td>10</td>
</tr>
<tr>
<td>Standards of Conduct</td>
<td>10</td>
</tr>
<tr>
<td>Criminal Offences</td>
<td>11</td>
</tr>
<tr>
<td>Records of Disciplinary Hearings and Action</td>
<td>11</td>
</tr>
<tr>
<td>Review</td>
<td>11</td>
</tr>
<tr>
<td>Appendix 1 – Suspension</td>
<td>12</td>
</tr>
<tr>
<td>Appendix 2 – Guidance to the Panel</td>
<td>15</td>
</tr>
<tr>
<td>Appendix 3 – Appeals Procedure</td>
<td>18</td>
</tr>
<tr>
<td>Appendix 4 – List of accredited staff side Officers</td>
<td>22</td>
</tr>
<tr>
<td>Appendix 5 – Proforma to request Trade Union Steward inclusion in document distribution</td>
<td>23</td>
</tr>
</tbody>
</table>
### Summary Table for Disciplinary Policy

This is a guide only and is designed to provide managers with an overview of the policy content and provide information about where to find the relevant sections within the policy.

<table>
<thead>
<tr>
<th>Grounds for Formal Action</th>
<th>Action Considered</th>
<th>Action Taken By</th>
<th>Right of Appeal</th>
<th>Cross Reference to Policy</th>
</tr>
</thead>
<tbody>
<tr>
<td>Repeated minor problems or more serious performance or discipline problems</td>
<td>First Written Warning</td>
<td>Supervisor/Line Manager</td>
<td>Within 28 days of receipt of warning</td>
<td>Section 5.1.1 page 7</td>
</tr>
<tr>
<td>Failure to correct behaviour</td>
<td>Second Written Warning</td>
<td>Supervisor/Line Manager</td>
<td>Within 28 days of receipt of warning</td>
<td>Section 5.1.2 page 7</td>
</tr>
<tr>
<td>Failure to correct behaviour</td>
<td>Final Written Warning</td>
<td>Line Manager plus HR</td>
<td>Within 28 days of receipt of warning</td>
<td>Section 5.1.3 page 7</td>
</tr>
<tr>
<td>Performance or behaviour not improved despite previous warning(s)</td>
<td>Dismissal with Notice</td>
<td>Director plus one other appropriate Senior Manager plus HR</td>
<td>Within 28 days of communicated decision to dismiss</td>
<td>Section 5.1.4 page 8</td>
</tr>
<tr>
<td>Gross Misconduct</td>
<td>Summary Dismissal</td>
<td>Director plus one other appropriate Senior Manager plus HR</td>
<td>Within 28 days of communicated decision to dismiss</td>
<td>Section 6 page 8</td>
</tr>
<tr>
<td>Actions requiring suspension from duty</td>
<td>Suspension from duty on full pay pending further investigation and action</td>
<td>Authority from Chief Executive must be sought or from his or her designated authority</td>
<td>No right of appeal</td>
<td>Appendix 1 page 12</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Action Taken</th>
<th>Make up of Appeals Panel</th>
</tr>
</thead>
<tbody>
<tr>
<td>First Written Warning</td>
<td>Next Line Manager + Senior Manager</td>
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<tr>
<td>Second Written Warning</td>
<td>Next Line Manager + Senior Manager</td>
</tr>
<tr>
<td>Final Written Warning</td>
<td>3 panel members, to included 2 full members of Trust Board, one of whom is a Non Executive Director</td>
</tr>
<tr>
<td>Dismissal/Summary Dismissal</td>
<td>3 panel members, to include 2 full members of the Trust Board, one of whom is a Non Executive Director</td>
</tr>
</tbody>
</table>
1. Introduction

1.1 The aim of this disciplinary procedure is to help staff achieve and maintain acceptable standards of conduct and performance. The following procedure will be applied fairly in all instances where disciplinary action is regarded as necessary by the Trust.

1.2 A minor reprimand may be given for any minor act of misconduct committed by an employee that is not considered serious enough to warrant formal disciplinary action.

1.3 The procedure does not apply to:

- termination during or at the end of a probationary period of service (including any extended probationary period of employment) - where a basic procedure in line with the statutory dismissal and disciplinary procedure will apply instead;
- termination by mutual consent.

1.4 The Trust reserves the right to implement the procedure at any stage as set out below taking into account the alleged misconduct of an employee. Employees will not ordinarily be dismissed for a first disciplinary offence.

1.5 Where time limits are referred to in the course of this procedure they may be varied by consent between the employee and the Trust.

1.6 Employees have the right to be represented throughout the disciplinary process and at any disciplinary hearing, by a workplace colleague or trade union official if entitled by membership of that trade union.

2. Investigation

2.1 An employee's supervisor or manager, or someone to whom they have delegated authority, will promptly and thoroughly investigate any matter that is reasonably suspected or believed to contravene any of the Trust's policies or rules or may otherwise be a disciplinary matter. The employee will be informed as soon as possible as to the fact of an investigation and when it has been concluded. The investigation should be concluded, wherever possible, within 5 working days.

2.2 Investigative interview with employee – any employee facing possible disciplinary action is entitled to state his/her case prior to a disciplinary hearing. Therefore, the employee concerned will be invited, with at least 2 working day's notice, to a meeting to discuss the alleged infringement and will be notified of the purpose of the meeting to enable them to prepare for it.

2.3 In the course of a disciplinary case an employee may raise a concern about the behaviour of the manager investigating the case. Where this happens, depending on the circumstances, it may be appropriate to suspend the investigation for a short period to consider this.
2.4 Where it is believed that the matter to be investigated involves serious misconduct, the employee may be immediately suspended from work (known as ‘exclusion’ when referring to Doctors) on full pay. If serious misconduct is not initially suspected or believed to have occurred, but during the course of an investigation the person conducting it reasonably forms the opinion that a serious breach of discipline may have occurred, the employee who is the subject of the investigation may then be suspended (excluded). Authority to suspend (exclude) must be sought from the Chief Executive or his/her delegate. Any decision to suspend (exclude) will be confirmed in writing within two working days and such written confirmation will state that the nature of the suspension (exclusion) is precautionary, not disciplinary, pending the outcome of the disciplinary proceedings (see appendix 1).

2.5 Depending on the circumstances of the case, the employee may be invited to attend an investigatory interview (i.e. if the facts are not clear cut and an investigation is required.) If such an interview is held prior to a disciplinary hearing, the employee will be informed at the outset that the interview is an investigatory interview. The Trust reserves the right to dispense with an investigatory interview and to proceed directly to a formal disciplinary hearing.

3. Procedure

3.1 Formal disciplinary action will only be taken after a disciplinary hearing at which the employee has the right and is encouraged to be represented by a Trade Union, professional organisation or work colleague.

3.2 Where, upon completion of an investigation, there are reasonable grounds to believe that an employee has committed an act of misconduct, the employee will be invited to attend a disciplinary hearing. In the event of poor performance by an employee, disciplinary hearings will usually be undertaken only where counselling of the employee, further training (if appropriate) and warnings have failed to produce a satisfactory improvement to performance.

3.3 In the event of a disciplinary hearing taking place the Trust will:

(a) give the employee a minimum of one working weeks' advance notice of the hearing and issue a copy of this procedure;

(b) tell the employee the purpose of the hearing and that it will be held under the Trust's disciplinary procedure;

(c) give the employee written details of the nature of his/her alleged misconduct; and

(d) provide to the employee all relevant information (which should include statements taken from any fellow employees or other persons that the Trust intends to rely upon against the employee) not less than five working days in advance of the hearing.

3.4 All parties will make every effort to reach an agreement on a mutually convenient date within three weeks for the case to be heard. Where the employee is unable to attend a disciplinary hearing and provides a good reason for failing to attend, the hearing will be adjourned to another day. The
Trust will comply with (a) above in respect of giving notice of the rearranged hearing. Unless there are special circumstances mitigating against it, if the employee is unable to attend the rearranged hearing, the rearranged hearing will take place in the employee's absence. The employee's workplace colleague or trade union official may attend in such circumstances and will be allowed the opportunity to present the employee's case. The employee will also be allowed to make written submissions in such a situation.

4. **The Disciplinary Hearing**

4.1 The Investigating Manager, in conjunction with the HR Department, will inform the employee in writing of:

- the purpose of the hearing;
- the issues or allegations to be discussed;
- the right to be accompanied by a representative (list of accredited staff side representatives in the Trust is at appendix 4);
- the employee's right to state his/her case;
- the right to call witnesses at a disciplinary hearing;
- the possibility of dismissal in the most serious cases

4.2 The letter must enclose a copy of the disciplinary procedure and relevant written statements and supporting evidence.

4.3 At the hearing, both management and staff side will be given the opportunity to call and question witnesses. Requests for witnesses to be released from their duties for a hearing should be made (by which ever party is calling them) to the witnesses' line manager, who should make every attempt to ensure their attendance.

4.4 The disciplinary hearing panel will be constituted of a minimum of two people. Where possible, this could be a Trust manager together with a staff side representative. A representative from the HR department should always be present. Any member of management responsible for the investigation of the disciplinary offence(s), or staff side representative previously involved in the case, shall not be a member of the panel, save to the extent that such an individual may present any supporting facts and material to the disciplinary hearing. The Chair must have previous experience of Disciplinary Panels. The Staff Side Chair will be responsible for allocating staff side representatives for panel duties.

4.5 Only appropriately trained and experienced staff should sit on disciplinary panels to hear the case and decide on outcomes. This training could be provided by an appropriate body or the Trust.

4.6 The employee will be entitled to be given a full explanation of the case against him/her and be informed of the content of any statements provided by witnesses. The employee will also be entitled to state his/her case in response to the Trust's case and put forward an explanation of his/her conduct and/or mitigating factors.

4.7 The Trust may adjourn the disciplinary proceedings if it appears necessary or desirable to do so (including for the purpose of gathering further information). The employee will be informed of the period of any adjournment.
If further information is gathered, the employee will be allowed a mutually agreed reasonable period of time, together with his/her workplace colleague or trade union official, to consider the new information prior to the reconvening of the disciplinary proceedings.

4.8 In the event of summary dismissal for gross misconduct the panel, in conjunction with the dismissed person’s line manager, will make arrangements for a dignified exit from the Trust, whilst bearing in mind the seriousness of the case and any security arrangements which may be necessary, including retrieval of keys, swipe cards etc.

4.9 As soon as possible after the conclusion of the disciplinary proceedings, the panel chair will convey the decision of the panel to the employee and will also inform the employee what disciplinary action, if any, is to be taken. The decision will be confirmed in writing. The employee will be notified of his/her right of appeal under this procedure.

4.10 Guidance to Disciplinary panels can be found at appendix 2.

5. **Disciplinary action**

5.1 Where, following a disciplinary hearing, the Trust establishes that the employee has committed a disciplinary offence, the following disciplinary action may be taken:

5.1.1 **First Written Warning**

Where a minor offence or offences have been committed, a first written warning may be given. The warning will ordinarily state that any further misconduct will render the employee liable to further, more severe disciplinary action. The warning will remain 'live' for a 6 month period following the date of the disciplinary hearing. During this period, the Trust may rely on such a warning in the event of further misconduct on the part of the employee.

5.1.2 **Second Written Warning**

Where either a more serious disciplinary offence has been committed, or further minor offences have been committed by an employee following a first written warning that remains 'live', the employee will receive a second written warning. The warning will:

(i) set out the nature of the offence committed;

(ii) inform the employee that further misconduct is liable to result in further disciplinary action under this procedure;

(iii) specify that the warning will remain 'live' for a 12 month period, after such period the warning will automatically lapse.

5.1.3 **Final Written Warning**

Where a serious disciplinary offence has been committed
Or

an offence amounting to gross misconduct has been committed, thereby justifying summary dismissal, but the Trust decides, after taking into account all appropriate circumstances, that a lesser penalty is appropriate.

Or

where an employee commits further disciplinary offences, similar to the first, after a first written warning has been issued and remains 'live', a final (or combined second and final) written warning may be given. Such a warning will:

(i) set out the nature of the offence committed;

(ii) inform the employee that further misconduct is likely to result in his/her dismissal; and

(iii) specify that the warning will remain 'live' for a 2 year period, after such period the warning will automatically lapse and be removed from the Personnel File.

5.1.4 Lapsed Warnings

Lapsed warnings must be removed from the personnel files and destroyed. The Human Resources Department will be responsible for identifying when a live warning is due to expire.

5.1.5 Dismissal

a) Where the employee has committed further acts of misconduct (these being acts of misconduct other than gross misconduct) following a live final written warning given as above, the employee may be dismissed with notice or with pay in lieu of notice, subject to the normal disciplinary procedure.

b) Where the Trust establishes that an employee has committed an act of gross misconduct, the employee may be summarily dismissed.

(c) In considering the range of reasonable options when determining whether or not a dismissal is warranted, the Trust may give an employee a final written warning and demotion or transfer to a job of a lower status, as an alternative to dismissal.

6. Gross misconduct

6.1 Gross misconduct is misconduct of such a serious and fundamental nature that it breaches the contractual relationship between the employee and the Trust. In the event that an employee commits an act of gross misconduct, the Trust will be entitled to terminate summarily the employee's contract of employment without notice or pay in lieu of notice.

6.2 Matters that the Trust views as amounting to gross misconduct include (but are not limited to):
1) stealing from the Trust, staff, patients, the public or others;
2) other offences of dishonesty including corruption and fraud;
3) deliberate falsification of a qualification that is a stated requirement of the employee's employment or results in financial gain to the employee;
4) falsification of records, reports, accounts, expense claims or self-certification forms whether or not for personal gain;
5) racial abuse of staff, patients, the public and others;
6) Sexual offences against staff, patients, the public or others;
7) fighting with or physical assault on staff, patients, the public or others;
8) serious intentional or negligent damage to the Trust's property or mis-use of the Trust's property, or serious breach of the Trust's rules;
9) drunkenness or being under the influence of illegal drugs whilst at work (see the Trust’s “Drug and Alcohol Abuse” policy);
10) deliberate and unauthorised administration of drugs;
11) gross or wilful negligence that causes unacceptable loss damage or injury;
12) conviction of a criminal offence that is relevant to the employee's employment;
13) unauthorised disclosure of confidential information relating to a patient unless disclosure is made reluctantly in the public interest;
14) repeated discrimination or harassment without apology of a workplace colleague on the grounds of sex, sexual orientation, race, disability, age, religion or belief;
15) interference with or mis-use of anything provided in the interest of staff, patients, the public or others' health and safety;
16) victimisation or abuse of staff, patients, the public or others;
17) any action that results in a criminal conviction and could impact on the work or reputation of the Trust;

Other acts of misconduct may come within the general definition of gross misconduct.

7. Trade Union Representatives

7.1 If an employee who is an accredited representative of a trade union recognised by the Trust for collective bargaining purposes is suspected of having committed a disciplinary offence, the Trust will take no action under this procedure (with the exception of suspending the employee in a case of suspected or known gross misconduct) until the Trust has had a chance to discuss the matter with a full-time official of that trade union.

8. Managers empowered to Dismiss

8.1 Staff will be notified within their contracts of employment who is responsible for taking dismissal action against them. However, depending on circumstances such as re-organisations, the Trust reserves the right to vary the designation of dismissing officers.
9. **General Rules**

9.1 All employees are expected to behave in a manner that is conducive to good relations with the general public, their colleagues and managers. As employees of the Trust, all staff are required to be considerate and courteous towards each other and towards the general public, patients and their relatives, and to avoid any actions that might jeopardize the reputation of the Trust or its employees.

9.2 The following paragraphs set the standard of general conduct which are fundamental to employment with the Trust: The standards are applicable, and will be applied equally, to all staff holding contracts with the Trust and continued non-observance following reasonable advice, guidance and help may lead to disciplinary action.

10. **Standards of Conduct**

10.1 **Timekeeping**
Members of staff are required to attend for duty for the hours laid down in their Contracts or as agreed with management. Repeated failure to attend punctually or regularly could lead to disciplinary action, including dismissal if the offences continue after previous warnings. The distance of an employee’s home from the place of work cannot in itself be accepted as a reason for irregularity of attendance or timekeeping.

10.2 **Attendance**
Staff will be expected to present themselves for work unless they have prior permission to be absent. In cases of sickness, contact with infectious disease or sudden domestic emergency, the responsibility lies with the member of staff concerned to ensure that his/her manager is informed promptly and in accordance with the requirements of the department or ward.

10.3 **Work Standards**
Every National Health Service employee is expected to combine prompt and efficient service with a concern and respect for the feelings of others, especially patients and visitors. If the efficiency or conduct of a staff member is unsatisfactory, management will inform the staff member of his/her shortcomings, give guidance, training if appropriate and an opportunity to improve. Continuing failure to correct shortcomings may lead to disciplinary action in accordance with the agreed Disciplinary Procedure or action under the Capability procedure.

10.4 **Outside Employment and Interests**
Subject to the conditions stated in individual contracts of employment, staff in the employ of the Trust may accept other employment outside work hours (and for this purpose the definition of working hours includes such duties as “standby duty”).

In compliance with the Working Time Regulations 1998, managers should be informed when outside employment is undertaken. However, such employment must not in any way hinder or conflict with the interests of their employment with the Trust and must not involve unauthorised use of Trust premises, facilities or equipment.

It is possible for a contract to be terminated for an offence unrelated to the employment if, for example, someone is held in custody on remand for a period of time or given a prison sentence, as this may lead to frustration of contract (i.e they would be unable to fulfil the terms of their contract). It is also possible that the offence may bring the Trust into serious disrepute.
10.5 Instructions
Employees should always carry out the reasonable instructions of supervisors.

10.6 Harassment or Bullying
Proven cases of bullying, or instances of harassment on the grounds of ethnic origin, sexual orientation, disability, religious belief, gender or age will be treated as a disciplinary offence (see the Trust’s policies on equal opportunities, harassment and bullying). Discrimination of any kind against staff, patients, the public or others will not be tolerated.

10.7 Professional Codes of Conduct
Where an employee’s occupation is governed by a professional code of conduct, the employee must at all times abide by this code of conduct. Breaches of the code of conduct may lead to disciplinary action.

10.8 Criminal Offences
The fact that an employee has been charged, remanded in custody or convicted of a criminal offence outside of employment will not be regarded as an automatic reason for dismissal or other disciplinary action. However, employees have a duty to notify the manager of any pending or actual prosecution if charged and any impact on their employment will then be considered.

Having considered the facts and severity of the allegations it may be felt necessary to suspend the employee in the light of the individual circumstances of the case. If a criminal charge has been made against an employee, they will be presumed innocent unless found guilty.

11. Records of Disciplinary Hearings and associated action
One record of the Disciplinary hearing and any associated action (e.g. warnings) should be kept in the Trust. This should be held on the Personal File which is either in the HR department or in some cases is held by the Line Manager. However, it is accepted that if the individual has been represented by a Trade Union official, there may be a need for that official to retain a copy of their records of the case, and in these circumstances confidentiality must be preserved. HR or the Line Manager should diarise the date on which warnings must be removed from files.

12. Review
This procedure will be periodically reviewed in conjunction with the Trust’s trade union representatives. Any amendment to it will be advised to employees in writing by the Trust’s HR department and such written advice will inform employees as to the date when any amendment comes into effect.
Appendix 1

Suspension ('Exclusion')

1. The following is given as guidance on best practice.

2. The actual suspension (exclusion) should be carried out by the most senior person on duty at the time, but usually with the knowledge of the Chief Executive or Director (or senior on call manager if at night). Decisions to suspend should always be made after consideration by two or more people wherever possible, and usually with some input from HR. If, however, a serious incident occurs during the night and advice from HR is not available, suspension should not be unnecessarily delayed.

3. If an exclusion or suspension is being considered, the Chair of the LNC for Medical Staff and the Chair of the JCNC for other staff will normally be advised but suspension/exclusion should not be unnecessarily delayed.

4. Suspension (exclusion) should not be seen as a punishment. It is an opportunity to calm down a potentially volatile situation, to commence an investigation without the presence of the individual(s) or to minimise a potential serious risk to staff, patients, the public or others.

5. Suspension (exclusion) should usually be a last resort and consideration should be given to whether the same effect can be achieved in other ways, for example one or other of the people involved working on a temporary basis in a different role/department.

6. Although suspension (exclusion) in itself is not disciplinary action, it is important to understand that it is likely to be perceived that way by the person affected and they may find it a distressing experience.

7. At all times the suspension (exclusion) must be handled as sensitively as possible.

8. Anyone who is suspended (excluded) must be given every practicable support and offered the services of Occupational Health where possible and appropriate.

9. Both the authorising manager and the manager carrying out the suspension (exclusion) will need to reassure themselves that suspension (exclusion) is warranted. For example, suspension (exclusion) would be justified if it could be classified under any of the following (this is not an exhaustive list and should be used as a guide only; each situation will be different and will need considerable thought):

   - Suspected theft, assault or criminal damage;
   - Suspected mis-use of drugs or alcohol prior to coming on duty or while on duty;
   - Serious complaint or allegation made against a member of staff by another member of staff, patient, the public or others which needs investigation;
• Argument (and more seriously an actual fight) between one or more members of staff where offensive or inappropriate behaviour is exhibited;
• Gross negligence causing potential or actual harm to any other person;
• Gross insubordination;
• witness protection or perceived impediment to a free and fair investigation.

If the member of staff appears to be unwell but they do not accept this to be the case and there is a possibility that their work may be impaired causing a risk to themselves, to patients or to other staff, they may be suspended (excluded) on health grounds.

10. Action to be taken

i. Decide in discussion with other appropriate persons whether suspension (exclusion) is appropriate using the above guidance.

ii. Senior person on duty to meet with the member of staff concerned. Always have a witness present at the suspension (exclusion).

iii. Prepare what is to be said in advance:

• Reason for suspension (exclusion) – at no time should the member of staff be accused of anything. They can be informed of the details of what has been brought to the attention of management and of the need to investigate further and/or allow the situation to cool down;
• The suspension (exclusion) is not the time to discuss the incident(s) in detail. This will be done at a later stage. If the member of staff wants to provide any information voluntarily, this can be recorded, but they should not be required to without first seeking assistance from a colleague or a union representative;
• Suspension (exclusion) will be on full pay;
• Suspension (exclusion) means that the person is not permitted to attend for work or to return to work without permission unless it is for an agreed meeting; they are also not permitted to undertake bank or agency work within the Trust during the period of suspension (exclusion);
• Suspension (exclusion) will be confirmed in writing as soon as possible and usually the next working day;
• Indication of how long the suspension (exclusion) is likely to last, which in most cases should not be more than 2 working weeks, and that it will be reviewed; sometimes there are reasons why this period would need to be extended. If this becomes necessary, this will be done at a meeting with the affected staff member and their representative, or a further letter will be sent indicating why the extension is needed;
• Advice to the person that they can seek support from a work place colleague or trade union representative;
• Advice to the person that they may seek support from the Occupational Health department;
• Appointment of someone who will not be involved in the investigation or subsequent disciplinary action to be their point of contact for any
advice, guidance, support and communication pending any further action;

- Advice to the person that they are not allowed to make contact with other members of staff in connection with the suspension (exclusion) or related incidents (with the exception of their local trade union representative or designated support colleague) or to canvass support. Any contact with other staff for the purposes of developing a ‘defence’ must be done in agreement with HR and via their trade union representative or designated support colleague if they have one, or another nominated person;

- Advice to the person that their line manager will be in touch as soon as possible to inform them when they will be interviewed as part of any investigation or for the disciplinary interview;

iv. Ensure the person has all their belongings with them and are escorted to their car (or other means of getting home). This must be treated extremely sensitively and should be carried out wherever possible by the senior person on duty or the witness to minimise the number of people who are aware of the suspension.

v. More often than not the person will be very distressed and transport home should be arranged for them.

vi. Ensure any incident forms required are filled in by the appropriate people on duty.

vii. Ensure relevant line manager and HR are informed fully of the circumstances on the next working day and are asked to prepare the suspension (exclusion) letter (if not already done). The wording of this letter should be checked with the HR Department.
Appendix 2

Guidance to the Disciplinary panel

1. Introductions.

The chair of the panel should ensure all members of the panel and the person putting forward the management case are known to the person whose case is being heard.

2. The chair should explain the process to be followed:

2.1 Documentation review to ensure that everyone agreed about what is going to be included in the hearing.

2.2 Consideration if appropriate of late submissions of evidence.

2.3 Case put forward by management.

2.4 Panel may ask any questions and seek clarification about points within management case.

2.5 Chair invites person being disciplined or their representative to ask questions and seek clarification about points within the management case, but not to begin putting forward their case.

2.6 Witnesses for the management case are then called, asked to expand on their statements and asked specific questions by the person putting forward the management case. The chair then invites the person being disciplined or their representative to ask questions of the witnesses and to seek clarification or point out areas of disagreement. The panel will then ask questions of or seek clarification from the witnesses, who then leave.

2.7 The person being disciplined or their representative then puts forward their case.

2.8 The chair invites the person putting forward the management case to ask questions of or to seek clarification from the person being disciplined. The panel may also ask questions or seek clarification.

2.9 Witnesses for the person being disciplined are then called, asked to expand on their statements and asked specific questions by the person being disciplined or their representative. The chair then invites the person putting forward the management case to ask questions of the witnesses and to seek clarification or point out areas of disagreement. The panel will then ask questions of or seek clarification from the witnesses, who then leave.

2.10 The chair will then invite first the person putting the management case, and then the person being disciplined or their representative, to sum up their case.
2.11 The panel will then adjourn the hearing in order to make a decision. Ideally this will be made on the same day, but in more complex cases it can take longer.

2.12 The person making the management case is not part of the decision making process.

2.13 During the adjournment the panel will consider all the evidence and record the reasons for its conclusions.

2.14 If the panel require more investigating to be done on a particular issue, they may postpone their decision until the Investigating Officer has submitted further information. In these cases the person being disciplined will be able to see any new evidence of information to be submitted to the panel.

2.15 The panel will re-convene to deliver their decision verbally to the person being disciplined, which will be confirmed in writing with information regarding the right of appeal.

2.16 In the event of summary dismissal for gross misconduct the panel, in conjunction with the dismissed person’s line manager, will make arrangements for a dignified exit from the Trust, whilst bearing in mind the seriousness of the case and any security arrangements which may be necessary, including retrieval of keys, swipe cards etc.

3. Adjournments

Adjournments during the process can be requested at any time by the person being disciplined or his/her representative, or may be suggested by the panel in the event that anyone becomes distressed or upset.

4. Question Techniques

4.1 The panel and the person putting forward the management case should avoid asking leading questions wherever possible. These are questions which start with a statement usually about what the panel member thinks or their interpretation and are followed by “isn’t that true” or “isn’t that the case” or similar. They are quite slanted in the way they are posed and it is usually obvious in respect of the way the person is being led to answer. It is important to ask questions in such a way that the person being questioned can see some objectivity. It is better to use any or all of the following:

- Open questions – why, where, when, who etc.
- Closed questions requiring a yes or no answer – e.g. did you tell anyone?
- Multiple choice questions – e.g. in your opinion was it a, b or c?
- Hypothetical questions – e.g. what would you have done?
- Behavioural questions – e.g. how have you dealt with this type of situation in the past?
- Probing questions – e.g. that’s interesting, can you tell me more about that?
- Clarifying questions – e.g. my understanding is that you are saying x occurred, is that correct?
4.2 If any member of the panel feels that the questions being asked are inappropriate, illegal or contrary to Trust policy or to the principles of natural justice they should ask the chair for an adjournment to discuss a point of procedure. Their concern should be discussed and a decision reached. If it is agreed that the question asked was not acceptable the person being disciplined should be told that the question and their response to it will be disregarded for the purposes of the hearing.
Disciplinary Appeals Procedure

1. An appeal may be lodged against the outcome of a disciplinary hearing by writing to the Head of HR within 28 days of the date of the disciplinary hearing. The notice must set out full grounds on which issue is taken with the disciplinary decision.

2. In the event of an appeal against a first level or second level warning, the next level of management above the manager who has taken the action, will arrange an appeal hearing within five weeks of the receipt of the written appeal. Exceptionally this period may be extended after consulting the appellant and his/her representative. Appeals against final warnings, dismissals or summary dismissal are discussed at paragraph 6.15 to 6.17 below.

3. The Head of HR will notify the employee of the date, time and location of the hearing and will advise the employee that a representative of his/her trade union, professional or staff association or designated workplace colleague may represent him/her. At least 5 days notice will be given to the employee of the hearing so that representation can be arranged if required. The hearing will not be unreasonably delayed by the non-availability of the representative.

4. The manager will, at the time of the appeal hearing, have received the following:
   
   i. A copy of the letter confirming the issue of the warning, accompanied by all relevant correspondence and documentation, including any unspent warnings and witness statements.
   
   ii. Written details of the employee’s grounds for appeal, plus any supporting correspondence or documentation. This must include any new evidence that the employee wishes to present.

PROCEDURE AT APPEALS HEARING

FIRST AND SECOND-LEVEL WARNINGS

5. The make-up of appeals panels is shown at the bottom of the summary table on page 3.

6. The manager who issued the warning will present the circumstances of the case calling witnesses as appropriate, and the employee or his/her representative will be entitled to ask questions relating to the evidence given.

7. The chairman of the panel will also be entitled to ask questions of the manager presenting the case.

8. The employee or his/her representative will present the employee’s case and call witnesses as appropriate. The manager presenting the case will be entitled to ask questions relating to the evidence given.

9. Both parties must pay particular attention to any new evidence introduced at the hearing and allow for comment from either party.
10 The manager presenting the case and the employee or his/her representative respectively will have the opportunity of summing up their case, when no new evidence will be introduced.

11 Both parties will withdraw to enable the panel to consider the evidence.

12 The manager hearing the appeal will notify both parties of the results of the appeal and the reasons for the decision as soon as possible, and confirm it in writing within seven working days of the hearing.

13 The list of designated senior managers who can sit on an appeal panel will be maintained by the Human Resources Department, from which it will be available on request.

**TRUST BOARD APPEAL PROCEDURE**

**FINAL WARNINGS, DISMISSAL AND SUMMARY DISMISSAL**

14 In the event of an appeal against a final warning, dismissal or summary dismissal, the Trust will set up an appeal panel within 5 weeks that will consist of 3 members. The panel will comprise at least 2 full members of the Trust Board, one of who will be a non-executive Director.

15 If possible, at least one member of the appeal panel should have a special knowledge of the field of work of the employee where appropriate. Where this is not possible, in the case of an appeal against termination of appointment the Panel shall, at the request of the employee or his/her representative, appoint an assessor who is experienced in the particular discipline of the employee and who has not been directly involved in the circumstances leading to disciplinary action.

16 The members of the appeal panel should not include any person who has been directly involved in the circumstances that appeared to indicate the need for disciplinary action at an earlier stage in the disciplinary procedure.

**REPRESENTATION AT AN APPEAL PANEL HEARING**

17 The employee should have the right of appearing personally before the appeal panel either alone or represented by an official of his/her Trade Union, professional organisation or staff association, or designated support colleague employed by the Trust.

**NON-ATTENDANCE AT APPEALS**

18 If the management representative or the appellant fails to attend the hearing other than for circumstances beyond their control, the panel shall consider the appeal in the absence of that party. The exception is where there is an adjournment by consent, or the panel, at their discretion, decide that in all the circumstances it would be reasonable to adjourn the appeal.

19 A period of 30 minutes beyond the notified time of commencement shall elapse before either party is deemed not to have attended.
PROCEDURE AT TRUST BOARD APPEALS PANEL HEARINGS

20 It is important that appeals should be made and heard quickly and the hearing of an appeal by the appeal panel will normally take place within 5 weeks of the receipt of the appeal, and sooner whenever possible. In exceptional circumstances the timescale can be extended by mutual agreement.

21 The employee will be given at least 15 days notice of the date of the hearing.

22 The representative of the Trust and the representative of the appellant or the appellant shall produce written statements of case to be sent to the secretary of the appeal panel not later than one week before the hearing. Copies of the cases will be exchanged between the parties and sent to the members of the appeal panel via the Human Resources department not later than one week before the date of the hearing.

23 Any expert witness appointed at the request of the employee or his/her representative may only advise the panel on any matter arising during the course of the hearing which he/she feels may be related to the professional conduct or professional competence of the employee.

24 At the hearing of an appeal, the following procedure shall be observed:

a) The appellant or his/her representative shall put his/her case first in the presence of the management representative and may call witnesses.

b) The members of the appeal panel shall have the opportunity to ask questions of the appellant, his/her representative and his/her witnesses.

c) The management representative shall have the opportunity to ask questions of the appellant, his/her representative and his/her witnesses.

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

e) The management representative shall put his/her case in the presence of the appellant and his/her representative and may call witnesses.

f) The members of the appeal panel shall have the opportunity to ask questions of the management representative and witnesses.

g) The appellant or his/her representative shall have the opportunity to ask questions of the management representative and witnesses.

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

i) The members of the appeal panel shall have the opportunity to re-examine his/her witnesses on any matter referred to in their examination by members of the appeal panel, the appellant or his/her representative.
j) The management representative and the appellant or his/her representative shall have the opportunity to sum up their case if they so wish. The appellant or his/her representative shall have the right to speak last. In their summing up neither party may introduce any new matter.

25 Nothing in the foregoing procedure shall prevent the members of the panel from:

- inviting either party to elucidate or amplify any statement he/she may have made
- asking either party such questions as may be necessary to ascertain whether or not he/she proposes to call any evidence in respect of any part of his/her statement,
- or alternatively, whether they are in fact claiming that the matters are within his/her own knowledge, in which case he/she will be subject to examination as a witness.

26 The panel or appellant may, at their discretion, adjourn the appeal in order that either party to the dispute may produce further evidence, or for any other reason.

27 The management representative, the appellant and his/her representative and witnesses shall withdraw.

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

29 The decision of the appeal panel will be reported to the Trust Board for information only.

30 The employee should be informed of the decision as soon as possible after the appeal hearing and this should be confirmed in writing no later than 5 working days after the hearing date. It should be made clear that this constitutes the final stage of the organisation’s appeals procedure.
## List of Accredited Staff Side Officers

<table>
<thead>
<tr>
<th>Name</th>
<th>Union</th>
</tr>
</thead>
<tbody>
<tr>
<td>David Allen</td>
<td>Unison</td>
</tr>
<tr>
<td>Michele Aylward</td>
<td>Royal College of Nursing</td>
</tr>
<tr>
<td>Mike Bennett</td>
<td>Unison</td>
</tr>
<tr>
<td>Pascalle Crothers</td>
<td>Unison</td>
</tr>
<tr>
<td>Laura Harrison</td>
<td>Chartered Society of Physiotherapists</td>
</tr>
<tr>
<td>Sheila Kane</td>
<td>Unison</td>
</tr>
<tr>
<td>Graham Miles</td>
<td>Unison</td>
</tr>
<tr>
<td>Roger Morton</td>
<td>Health and Safety representative, Unison</td>
</tr>
<tr>
<td>Pearl Sexton</td>
<td>Unison</td>
</tr>
<tr>
<td>Gary Taylor</td>
<td>Royal College of Nursing</td>
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</tbody>
</table>

All staff side officers can be contacted through the staff side office on extn: 4401

### Local Negotiating Committee (LNC) for medical staff

<table>
<thead>
<tr>
<th>Name</th>
<th>Role</th>
<th>Contact</th>
</tr>
</thead>
<tbody>
<tr>
<td>Mark Pickford</td>
<td>Chair</td>
<td>Extn:4075/4282</td>
</tr>
<tr>
<td>Ken Lavery</td>
<td>Consultant member</td>
<td>Extn:4306</td>
</tr>
<tr>
<td>Paul Banwell</td>
<td>Consultant member</td>
<td>Extn:4233</td>
</tr>
<tr>
<td>Assad Bangash</td>
<td>SAS representative</td>
<td><a href="mailto:assad.bangash@qvh.nhs.uk">assad.bangash@qvh.nhs.uk</a></td>
</tr>
</tbody>
</table>

The junior doctors representative changes on a regular basis – please contact the Medical Staffing Manager on extn: 4207 to find out who the current representative is. The representative is accredited by the BMA.

<table>
<thead>
<tr>
<th>Name</th>
<th>Role</th>
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</tr>
</thead>
<tbody>
<tr>
<td>Peter Mitchell</td>
<td>BMA representative</td>
<td>020 8655 8804</td>
</tr>
</tbody>
</table>
Request for Steward/Staff Side Officer Inclusion in Document Distribution

Dear………………………………

I am a member of ………………………………….trade union/staff organisation and I would like my representative……………………………………………..to be included in the distribution of any documentation relevant to my case.

Thank you for your kind attention to this matter.

Signed…………………………………………………………………………………

Date…………………………………………………………………………………..