DISCIPLINARY POLICY AND PROCEDURE

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1 Purpose

1.1 It is to the mutual benefit of both the staff and the management of the Trust that an agreed procedure is available for achieving and maintaining standards of conduct. This procedure observes current employment legislation and the ACAS Code of Practice on Disciplinary and Grievance, to ensure fair and consistent treatment.

1.2 This procedure has three main objectives, the first is, when necessary, to improve the conduct of staff, the second is that management endeavor to take corrective rather than punitive action, and the third objective is to ensure that poor conduct is dealt with equitably across the Trust by a system of warnings.

1.3 All employees will have the right, if they wish, to be represented by a work colleague, Trade Union representative, at all stages of the policy / procedure. This right must be brought to the attention of the employee by the manager. However, the person accompanying the employee may not act in a legal capacity during any hearing.

1.4 A full-time official of the appropriate recognised staff organisation shall be informed, in advance of any action, where the member of staff is an accredited representative.

1.5 It is the responsibility of management to ensure staff are aware of this policy and procedure and that it is fairly and impartially applied.

1.6 The Human Resources Department will provide advice and guidance concerning the procedure. Matters, which might have legal implications, will be referred to the Legal Advisor and those, which have financial implications to the Director of Finance.

2 Scope

2.1 The Policy & Procedure applies to all staff of the West Midlands Ambulance Service NHS Trust (hereinafter known as “the Trust”), and supersedes any other Disciplinary Policy & Procedures currently in place in the Trust.

2.2 This document would not normally apply to issues of capability sickness absence or clinical competence. These are dealt with in separate procedures.

2.3 Specific measures are in place to counter potential fraud and these are detailed in the appropriate Trust Policy (Fraud Redress Policy and Guidance).
2.4 It is expected that the time taken to resolve matters within the context of this procedure will be as brief as possible. This will normally be resolved within 3 months, accepting that some case may extend beyond this timeline.

2.5 Conduct issues referred from the Investigation Policy related to misconduct will be dealt with through this Policy and Procedure. Any Investigation that commenced under the Investigation Policy will continue, and will form part of the investigation process in this Policy and Procedure.

2.6 Instigating Managers may consider the use of a Root Cause Analysis, in line with the agreed mechanisms within the Trust, either before, during or after an investigation.

2.7 This Policy should not usually be used for matters of Clinical Competence. However, it is noted that in cases of Clinical Misconduct, an Investigation under the Disciplinary Policy May be necessary.

3 **Counselling**

3.1 Neither informal nor formal counselling are part of the formal Disciplinary Policy and Procedure. However, staff have the right to representation if they so wish.

3.2 The Trust recognises that employees may require support at different stages of their career. This support may be in the form of mentoring, coaching, support, general guidance, ad hoc training, counselling, or such like managerial tasks. These should be dealt with outside of this policy, and do not constitute counselling. This is known as informal counselling, and should be considered outside of the formal Disciplinary Policy and Procedure.

Informal counselling may occur where minor difficulties, not considered worthy of formal disciplinary action, could be resolved through informal advice and/or coaching. Although this is normally a private matter between the manager/supervisor and the employee, the employee should clearly understand that an informal counselling interview is being held.

3.3 Formal counselling may occur where the level of conduct warrants a more formal response, or where the informal counselling has not achieved its objectives. Essentially, this will follow the same format as an informal counselling interview, although it will be confirmed in writing to the employee.
3.4 In cases of formal counselling, the record will be kept on the station/departmental personal file for a minimum of 3 months, which may be extended to 6 months depending on the circumstances. Where there is no further repetition of the conduct within the specified timeframe the record will be considered spent and removed from file.

3.5 When the Counselling has failed or where the level of conduct warrants a more formal response, a move to the formal Disciplinary Procedure may be necessary.

4 Investigation

All matters investigated within this procedure will use the following principles:

4.1 The manager who commissions the investigation will be known as the Instigating Manager who will appoint an Investigation Team.

4.2 The Investigation team shall comprise:

- The individual who will investigate the allegation, will be known as the “Investigating Officer”. This will be a person with sufficient seniority and experience to deliver a competent Investigation.

- An Independent Person, supporting the Investigating Officer.

- Any other specialist who could assist in the Investigation.

4.3 The member of staff will be informed of the investigation meeting in writing, providing a minimum of 48 hours notice, together with a copy of the complaint/allegation letter and, where appropriate, PRF, both anonymised.

4.4 Reasonable time will be allocated to members of staff and their representative prior to the interview for preparation.

4.5 The purpose of the investigation meeting is to gain factual information relating to the case.

4.6 During the meeting, the Investigating Officer will take into account all staff rights and expectations. For example, staff have the right to be represented at all interviews; informed of the allegation(s) – time, date; to have an impartial investigation within a reasonable period of time.

4.7 Questions will be directed through the Investigating Officer.

4.8 The use of the PALS Manager should be considered as an adviser during external investigation meetings.
4.9 Records will be made of all investigation meetings and of statements made by the employee. These will be issued to the employee to check for accuracy, signed, dated and returned. A copy will be made available to the employee. This process should be completed on the same day wherever reasonably practicable.

4.10 Where appropriate the Investigating Officer may request a statement from a witness to the event without physically having to interview them. This statement should be signed and dated by the witness. This does not negate the need to interview the witness if required.

4.11 At the conclusion of the investigation, the Investigation Team will produce a report and issue it to the Instigating Manager. Advice will be sought from the Human Resource Directorate.

4.12 In all possible circumstances, all agreed National and Local quality standards for dealing with complaints and PALs issues will be followed as determined within the Complaints Policy.

4.13 In the course of a disciplinary case an employee may sometimes raise a grievance about the behaviour of the Investigation Team handling the case. Where this happens, and depending on the circumstances, it may be appropriate to suspend the disciplinary procedure for a short period until the grievance can be considered. Consideration may also be given, where possible, to bringing in another manager to deal with the case. The Instigating Officer, in conjunction with HR, decide how to manage the grievance.

4.14 The employee may, during the investigation, take the opportunity to accept responsibility for a breach of conduct, under a “quick resolution”. A full investigation may be forestalled by the individual substituting a full, and detailed, explanation for their conduct. This approach could be via management, but most likely requested by the employee or their representative. A single disciplinary sanction may be applied, with the prior agreement of all parties, and conducted by the Line Manager, upon advice of the Instigating Manager (where these two roles are separate), with a member of the Human Resources Department present. Disciplinary sanctions available under this paragraph 4.14 are oral warning up to and including a final written warning. Staff should be advised of the disciplinary sanction before a 4.14 is agreed. By their nature, 4.14 discussions are “without prejudice” and should not form part of the Investigation Pack, any other documentation, or be verbally referred to at a later date should the 4.14 not be accepted.
5 Suspension

5.1 Suspension will only be taken:

- in cases of alleged gross misconduct;
- to protect patient / staff safety, or Trust property; or
- to allow for an unbiased investigation, where there are concerns this may not otherwise be facilitated.

5.2 Suspension is a non-punitive neutral act, and at full pay (in line with the individuals contract i.e as per Agenda for Change Terms and Conditions.)

5.3 Suspension will be considered as a “last resort” action following consideration of any other alternatives, which may be available. When it occurs, the length of suspension will be kept to the minimum period necessary.

5.4 Any decision to suspend will be sanctioned by a General Manager / equivalent / above, although the action may be delegated to a manager, and formally confirmed in writing within 3 working days. The standard format for notification is attached at Appendix 1, which is handed to the member of staff at the time of suspension. Every effort will be made to ensure a TU Representative is available at the time of suspension.

5.5 Suspension may occur during investigation, therefore, if during the course of an investigation the manager conducting it is of the view that a gross breach of discipline may have occurred. Suspension must be sanctioned by a General Manager/equivalent/above, although the action may be delegated to a manager.

5.6 The individual may be reinstated at any point during the investigation if the manager initiating the suspension is of the view that the reasons for suspension are no longer appropriate.

5.7 Suspension is precautionary, pending the outcome of the investigation. No record will be kept on the personal file, of any suspension, which does not lead to disciplinary action.

5.8 An employee who is suspended for longer than 4 weeks shall have the right to request a review of their suspension through the General Manager in conjunction with the Head of Human Resources; a reply will be given to the employee and/or Representative.
6  Context

6.1 Due to the serious implications of any disciplinary action, especially dismissal, and in particular, summary dismissal, it will be the Trust’s policy to ensure that consideration is given to the employee’s circumstances with regard to length of service, past performance, and other mitigating factors which may be relevant.

7  Counter Fraud and Security Management Service

7.1 It is important for all staff to be aware that some forms of misconduct could potentially be considered ‘fraudulent’ under criminal law, and could lead to criminal prosecution as well as disciplinary or civil action. Examples could include (but are not limited to) deliberately making false or exaggerated mileage claims on travel expenses forms; making false claims on timesheets for hours not actually worked; making false statements about, or forging documentation relating to, qualifications/references when applying for a particular job; working elsewhere whilst off sick; or obtaining financial or other property/services of the Trust by deception.

7.2 Where a disciplinary issue of possible fraud of this nature is being considered, the matter should be discussed in the first instance with Trust’s Local Counter Fraud Specialist (LCFS). Depending on the exact nature and scale of the possible misconduct, it may be that a criminal investigation into the activities of the employee is considered necessary. In such cases, commencing disciplinary action at the outset may not always be appropriate, especially if it would alert the employee to any criminal investigation and lead to the possible altering or destruction of evidence of potentially criminal activity. In any such situation, decisions on the way to proceed should only be taken after consultation with the LCFS, the Director of Finance and the Director of Workforce and Organisational Development.

8  Police Investigation

8.1 All cases referred by the Trust for Police investigation will be considered on an individual basis

8.2 Conviction for an offence, which is not connected with, and is of no relevance to / has no impact on the employment relationship may not imply a disciplinary action.

8.3 However, if an employee is sentenced to a period of imprisonment or detention and will be unable to return to employment within a reasonable period of time they may be dismissed.
8.4 If remanded in custody, the employee shall be suspended pending resolution of the issues under this Policy and Procedure (see 5 above regarding Suspension). This does not stop the right of an employer to investigate the issue for any implications on the employment of the member of staff.

9 Record Keeping

9.1 Careful and comprehensive records must be made and retained of all action taken at every stage of this procedure. It is emphasised that the procedure is incomplete without this documentation, which can be either handwritten or typed, but which must be accurate and contemporaneous, dated and signed by the person making the notes.

9.2 At any meeting at which the employee under investigation is present, they will be asked to sign and date the statement or copies of the notes.

10 The Formal Procedure

10.1 On completion of the investigation a report detailing the Investigating Officer’s findings is submitted to the Instigating Manager. A decision as to whether to proceed with the disciplinary procedure or not, will be made by the Initiating Manager, who cannot “participate” on the Disciplinary Panel.

10.2 The employee must be given a minimum of 14 days advance notice that they are attending a formal disciplinary hearing. Two copies of specific details of the allegations made, including copies of any witness statements, must be provided at this time to allow the employee to consider it. At the same time the employee is requested to submit to the Human Resources department any paperwork they wish to be considered, and the names of any witnesses they will be calling, 3 days in advance of the hearing. Any documentation not submitted within these timeframes will be considered by the Panel at their discretion.

10.3 Patient details, or those of employees named by association, but not directly related to the case, will be anonymised in the documentation issued to the Disciplinary Hearing. Further appropriate details may be made available to the employee during the investigation meetings so that the employee can identify the incident/patient in question.

10.4 Every effort will be made to ensure that employees and their representatives are able to attend hearings as per the Recognition Agreement. In the event of any employee, or their representative being unable to attend, the hearing will be re-arranged, providing the employee 5 days notice, or rearranged as mutually agreed.
10.5 The hearing will be chaired by an appropriate manager not directly involved with the management of the employee. The Investigating Officer will present the supporting facts and material. The procedure to be followed appears at Appendix 2.

10.6 Whilst the procedure is designed to be a series of progressive warnings it may be necessary to proceed directly to the use of a written or final written warning, or even consideration of dismissal, depending upon the seriousness of the offence.

11 Outcome of Disciplinary Sanction

11.1 With the exception of a 4.14 a formal hearing will precede the award of a disciplinary sanction. Panel membership will be a minimum of two persons with a member of Human Resources department being present.

11.2 Formal Verbal Warnings: For a minor offence or offences a formal verbal warning may be given. This warning will make it clear that further misconduct will render the employee liable for further disciplinary action involving more serious consequences.

11.3 First Written Warnings: For a more serious offence a first written warning may be given for a first offence, or for the repetition of a lesser offence after a formal verbal warning has previously been given and remains current, a first written warning may be given. This will set out the nature of the offence and informs the employee that further misconduct is liable to result in further disciplinary action under this procedure.

11.4 Final Written Warnings: A final written warning may be given for first offences of a serious nature or for an offence after a first written warning has been given and is still current. This warning will set out the nature of the offence and informs the employee that further misconduct of any sort would render him/her liable to further action under this procedure and could result in dismissal.

11.5 Time Limits: The length of time a warning remains active on an employee’s record will be determined by the Manager after considering all relevant facts, but will normally fall within the following guidelines:

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<tr>
<td>Verbal Warning</td>
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<tr>
<td>Written Warning</td>
<td>6 Months but maybe extended to 12 months</td>
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<tr>
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11.6 **Level of Authority:**
A General Manager / equivalent / above will chair the Disciplinary panel. A General Manager / equivalent / above has the authority to dismiss.

12 **Dismissal**

12.1 Where an employee who has an active final written warning and a further act or acts of misconduct occurs, the employee will be liable to dismissal with pay in lieu of notice.

12.2 The Chief Executive and Executive Directors may only be dismissed by a sub-committee of the Trust Board, chaired by the Chairman of the Trust.

12.3 The result of the hearing, and details of the right of appeal, will be confirmed in writing within five days.

12.4 In circumstances where there is evidence indicating that a registered individual’s fitness to practice has been impaired, the Trust has a duty to notify the matter to the relevant professional body, e.g HPC

13 ** Appeals**

13.1 An appeal may be made after any stage of the disciplinary procedure, to the next level of management. Normally the appeal will involve full consideration of the entire case, presented by the Chair of the original Disciplinary Panel.

13.2 The employee is required to appeal in writing, citing the grounds for the appeal. These could include a perceived unfairness of the judgment, the severity of the penalty, new evidence coming to light, or procedural irregularities.

13.3 In all cases of dismissal, the appeal will be heard by a sub-committee of the Trust Board. Appeals against other sanctions will be dealt with under 13.1.

13.4 Any appeal should be made within 7 days, 14 days for dismissal, of the employee receiving written notification of disciplinary action. All appeals should be addressed to the Director of Workforce and OD.

13.5 The employee shall have the right of appearing personally before the appeal committee either alone or represented by a work colleague or Trade Union representative. However, the person accompanying the employee may not act in a legal capacity during any hearing. The procedure to be followed is detailed in Appendix 3.
13.6 At appeal the panel may decide to uphold, reduce the penalty or dismiss the penalty.

13.7 Where substantial new evidence is presented, prior to the appeal hearing either by Management or employee the Panel, the appeal panel, in consultation with staff side where appropriate, will determine how best to proceed.

13.8 The Procedure to be followed at a Disciplinary Appeal Hearing is attached at Appendix 3.

14 Gross Misconduct

14.1 This is regarded as misconduct of such a nature that it fundamentally breaches the contractual relationship between the employee and the employer and justifies management in no longer accepting the continued presence of the employee at the place of work.

14.2 The following list provides examples of offences which are normally regarded as gross misconduct:

- Theft, fraud, deliberate falsification of record
- Fighting, assault on another person
- Deliberate damage to organisational property
- Serious incapability through alcohol or being under the influence of illegal drugs
- Serious negligence which causes unacceptable loss, damage or injury
- Serious act of insubordination
- Unauthorised entry to computer records.
- Other acts of misconduct may come within the general definition of gross misconduct
- Bringing the Trust into disrepute
- Bribery

14.3 This list is neither exclusive nor exhaustive. Whether or not a particular action constitutes an offence, which falls into this category, will depend upon a number of factors including the degree of seriousness and the responsibilities of the employee. Management action following an offence will take into account any extenuating circumstances together with the employee’s previous record.
15 **Action Short of Dismissal**

**Decision to offer a downgraded post:**
In some cases, the downgrading of an individual may be considered as an alternative to dismissal following a Disciplinary Hearing. However, a post of a more suitable grade would have to be available. In such circumstances, the employee should be informed that as an alternative to dismissal there is the option of alternative employment which would be subject to the following conditions:—

- That the individual agrees to a variation to their contract of employment.
- That if the post offered is of a lower grade and with altered conditions of employment, protection arrangements would not apply.
- Where the employee accepts the alternative offer of employment there is no reason for appeal consequently the right of appeal would be waived.
- A final written warning would automatically be issued and remain on the employees file for 12 months, and as a condition of the warning the employee will not apply for any higher graded posts in the Trust during the time of the warning.
- That the employee be given time to consider their decision on the offer of alternative employment and has 24 hours in which to respond.

16 **Training**

The Trust, as part of its ongoing process, has developed a Training Needs Analysis (TNA) which identifies statutory and mandatory training. This training may be in a variety of formats (e.g. in-house, external, work-based, briefing, e-learning etc).

The Trust’s TNA for statutory and mandatory training is the source document. Any requirement for training to deliver this policy will be notified to the Regional Head of Education and Training, so as to be included in the TNA.

The Director Workforce and OD will provide expert advice to inform the TNA.

Signed:

On behalf of West Midlands Ambulance Service NHS Trust

Signed:

On behalf of the Recognised Trade Unions
Appendix 1 – Notification of Suspension Standard Format

As of 0000 hours on dd mm yy you were informed that you had been suspended from duty on full pay.

The reason for this suspension is …

(date and location of incident and / or brief outline of complaint.)

Manager authorising suspension:

Signed: [if by phone, indicate this]
Print Name & Designation:
Date & Time:

Manager(s) delivering suspension:

Name(s):
Designation(s):
Date & Time of Notification:

Was a colleague or TU representative present? YES / NO

YES – insert name of person
NO – give reason why not

You should not return to your place of work other than to collect any personal belongings you may need from your locker. This visit must be pre arranged, you will be accompanied during your visit. Thereafter you will not be allowed to enter any Service property until you hear from a manager of the Service.

The investigation into this matter will be carried out as soon and as quickly as possible and you will have the opportunity to participate in this.

If you require any help or advice you should contact your Union or staff side association
Appendix 2 - Procedures to be adopted at Disciplinary Hearings

Management papers relevant to the disciplinary matter will be provided, two weeks in advance of the hearing. The member of staff may also provide papers if they wish. The Chair of the panel will outline the procedure to be observed and detail the allegations to be heard. The procedure is as follows:

1. The presenting officer shall state the management case and call any witnesses.
2. The panel hearing the matter and the employee or employee’s representative shall be entitled to question the presenting officer, and witnesses, in relation to their evidence.
3. The presenting officer may re-examine their witnesses on any matter referred to in the examination by the panel hearing the matter, the employee or employee’s representative.
4. The employee or employee’s representative shall be entitled to reply to management’s case.
5. The employee or employee’s representative shall state the case for the employee and call any witnesses.
6. The panel hearing the matter and the presenting officer(s) shall be entitled to question the employee, their representative and any witnesses called in relation to their evidence.
7. The employee or employee’s representative may re-examine their witnesses on any matters referred to in the examination by the panel hearing the matter or the presenting officer.
8. The presenting officer and the employee or their representative may sum up their cases if they so wish. When this occurs, the employee or their representative has the right to speak last. No new matter or evidence may be introduced at this stage.
9. Nothing in the foregoing procedure shall prevent the panel hearing the matter from inviting the representative of either party to elucidate or amplify any statement they may have made; or from asking them questions as may be necessary.
10. The panel hearing the matter may at their discretion adjourn a hearing in order that further evidence may be produced by either party, or to allow for a more appropriate panel to be assembled.
11. No statement of previous acts of misconduct by the employee or the issue of a formal warning or warnings unrelated to the alleged offence(s) on which the disciplinary action is based shall be made until after the committee has reached a decision.
12. Having heard the matter in full, the panel shall consider the merits of the case and make their decision in private. The decision of this panel will be made known at the earliest opportunity, to be confirmed in writing within 5 working days.
Appendix 3 - Procedures to be adopted at Disciplinary Appeal Hearings

Management papers relevant to the disciplinary matter will be provided, two weeks in advance of the hearing. The member of staff may also provide papers if they wish. The Chair of the panel will outline the procedure to be observed and detail the allegations to be heard. The procedure is as follows:

1. The employee or employee’s representative shall state their case and call any witnesses.
2. The panel hearing the matter and the presenting officer(s) shall be entitled to question the employee, their representative and any witnesses called in relation to their evidence.
3. The presenting officer shall state the management case and call any witnesses.
4. The panel hearing the matter and the employee or employee’s representative shall be entitled to question the presenting officer, and witnesses, in relation to their evidence.
5. The presenting officer may re-examine their witnesses on any matter referred to in the examination by the panel hearing the matter, the employee or employee’s representative.
6. The employee or employee’s representative may re-examine their witnesses on any matters referred to in the examination by the panel hearing the matter or the presenting officer.
7. The presenting officer and the employee or their representative may sum up their cases if they so wish. No new matter or evidence may be introduced at this stage.
8. Nothing in the foregoing procedure shall prevent the panel hearing the matter from inviting the representative of either party to elucidate or amplify any statement they may have made; or from asking them questions as may be necessary.
9. The panel hearing the matter may at their discretion adjourn a hearing in order that further evidence may be produced by either party, or to allow for a more appropriate panel to be assembled.
10. No statement of previous acts of misconduct by the employee or the issue of a formal warning or warnings unrelated to the alleged offence(s) on which the disciplinary action is based shall be made until after the committee has reached a decision.
11. Having heard the matter in full, the panel shall consider the merits of the case and make their decision in private. The decision of this panel will be made known at the earliest opportunity, to be confirmed in writing within 5 working days.