

# Lead Employer policy for Handling Concerns in respect of Medical and Dental Staff in Training

(Ill Health, Capability and Conduct)

**Version 1**

This Policy Incorporates the framework set out in Maintaining High Standards in the Modern NHS (MHPS)

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<b>Policy author</b>	HR Business Partners
<b>Applies to</b>	All Specialty Trainees employed by St Helens and Knowsley Lead Employer Trust (StHK LE)
<b>Also for Use / Reference by:</b>	Host organisations and Health Education England.

The intranet version of this document is the only version that is maintained. Any printed copies should therefore be viewed as “uncontrolled”, as they may not contain the latest updates and amendments.

**Document Control**

<b>Section 1 – Document Information</b>	
<b>Title</b>	Lead Employer Policy for the Handling of Concerns about Specialty Trainees
<b>Directorate</b>	Human Resources
<b>Brief Description of amendments</b>	
Policy reviewed and revised in its entirety in conjunction with the TUPE-transferred Handling Concerns Policy from The Pennine Acute Hospitals NHS Trust, and Imperial recommendations. Policy redeveloped as a Handling Concerns Policy in line with MHPS Framework.	
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<b>Equality Analysis completed?</b>	Yes

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*Please remember to consult with all services provided by the Trust, including Community & Primary Care where applicable			
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<b>Version</b>	<b>Date Approved</b>	<b>Brief Summary of Changes</b>
1	September 2013	First version of the new policy therefore N/A
2	February 2016	Inclusion of Student Physician Associates
3	May 2016	Update HEE
4	April 2017	Update Annette Craghill contact details
5	June 2017	Amended 2 <sup>nd</sup> to last paragraph of appendix 5, extended review date to 01.10.17
6	Sep 2017	Extended review date to 31.12.17
7	Oct 2017	Extended review date to 31.03.18 and amended page numbers on Content list

8	May 2018	Policy revised to include Appendix 5 for AWOL process and Appendix 6 Fast Track Process.
9	June 2021	Policy reviewed and revised in its entirety. Policy Redeveloped as a Handling Concerns Policy in line with MHPS Framework.

<b>Section 4 – Approval</b> <i>To be completed by Document Control</i>			
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## SUMMARY

### 0.1 Scope

The provisions and procedures in this policy, which are intended to implement the requirements of the national Framework [Maintaining High Professional Standards in the Modern NHS \(MHPS\)](#) apply to all medical and dental trainees employed by St Helens and Knowsley NHS Trust (“the Trust”) Lead Employer (LE), including those training in Public Health employed under Agenda for Change Terms and Conditions (“Trainees”).

Trainees will be managed and/or supervised by relevant individuals at the Host Organisations at which they carry out their placements, and by Health Education England in respect of their medical and/or dental educational training, qualification and regulation. Therefore, those organisations have roles under this policy; accordingly, they will have access to it and should be familiar with it.

### 0.2 Introduction

This policy sets out the procedures within St Helens and Knowsley NHS Trust (StHK) for the handling of concerns about the conduct, performance or health of doctors and dentists in training. These procedures implement the “Maintaining High Professional Standards (MHPS) in the Modern NHS” Framework.

This policy is designed to ensure a fair, systematic and consistent approach is taken at all times in the management of concerns about the health, capability or conduct of a doctor or dentist in training, to which this policy applies. Our trainees should be treated with dignity and respect and in a culture of inclusivity where all colleagues are engaged, and this cannot be achieved if anyone feels excluded.

The Trust believes in a culture that puts equal emphasis on accountability and learning and in such a culture we ask how the incident happened, what it meant to those involved and what support is needed by those affected by the incident both directly and indirectly.

It’s a culture that instinctively asks in the case of an adverse incident: "what was responsible?" not “who is responsible?”. It’s not finger-pointing and it’s not blame-seeking. That said our culture is not the same as an uncritically tolerant culture where anything goes - that would be as inexcusable as a blame culture.

The fair treatment of colleagues supports a culture of fairness, openness and learning in the Trust by making colleagues feel confident to speak up when things go wrong, rather than fearing blame. We want to encourage improvement where necessary and ensure the practice of lessons learnt is embedded throughout the Trust. We are also committed to using supported processes such as 72-hour pause and fast-track to resolve appropriate concerns.

Formal processes to resolve issues may be needed where the informal processes do not resolve matters. An objective and prompt examination of the issues and circumstances should be carried out using the 72-hour pause process to establish whether there are genuine grounds for a formal investigation and/or potential for formal action, and ask the question would training be appropriate for the trainee , and / or would support, guidance or informal management be more productive.

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

This policy does not deal with attendance issues, which are dealt with in line with StHK LE's [Attendance Management Policy and Procedure](#)

Guidance on the determination and investigation of allegations, including informal processes is set out in **SECTION ONE** of this Policy.

Whilst every effort will be made to allow a Trainee to remain at work, in the unusual event that formal exclusion or restricted employment is required, this will be managed under the procedures set out in **SECTION TWO** of this Policy.

If the concern is designated as one of conduct, the Case Manager will direct that it be considered under **SECTION THREE** of this policy.

If the concern is designated one of serious capability unable to be dealt with under ARCP processes, the Case Manager will direct it to be considered under **SECTION FOUR** of this Policy.

If the concern is designated to be one relating to a Trainee's health, the Case Manager will direct it to be considered under **SECTION FIVE** of this Policy.

This Policy will also allow for the resolution of less serious conduct concerns via the Trust's Fast Track Process which is detailed in **Appendix 6**.

There will occasionally be issues that arise which do not concern misconduct, but where dismissal is being considered for "some other substantial reason of a kind as to justify the dismissal" ("SOSR") or a 'contravention (either on the Trainee's part or otherwise) of a duty or restriction imposed by or under an enactment' (Breach of a statutory restriction) as set out in the Employment Rights Act 1996. These are covered under **Appendix 7**.

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

### **0.3 Key principles:**

The key principles of this policy are to ensure that StHK LE:

- Ensures good working relationships and settles concerns promptly, fairly, and as close as possible to the point of origin.
- Supports moving on positively in a learning-culture and no-blame culture.
- Encourages managers, educators and trainees to seek an early resolution to concerns quickly and effectively.
- Provides support and resources to enable managers and trainees to resolve

concerns informally where possible through compassionate leadership.

- Applies a triage process using a set of objective criteria to assess the most effective route to resolve each case.
- Encourages all trainees to be open and honest when a mistake is made and for that to be taken into account when reaching a decision about next steps.
- Encourages managers and trainees to seek opportunities for a restorative outcome in disciplinary cases wherever possible.
- Ensures that all workplace issues are treated fairly and consistently.
- Encourages positive employee relations and helps resolve concerns constructively and effectively.
- Encourages open communication between trainees their colleagues and managers so that questions and problems can be aired and, where possible, resolved quickly and to the satisfaction of all concerned.
- Ensures trainees will not be dismissed for a first breach of discipline except in the case of serious conduct issues as defined in **Appendix 1** of this policy.

## 0.4 Equality Statement

The Trust is committed to promoting equality, and protecting Human Rights, eliminating discrimination against any individual on the grounds of age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex, and sexual orientation. The Trust values the diversity of all individuals and communities and is committed to ensuring that all our employees are treated with dignity and respect.

The Trust wants to ensure that reasonable adjustments are made to the process for disabled employees if required, and a referral to the Trusts HWWB service will be made to provide advice on any such adjustments as necessary. The policy provides an accessible process and level of support to underpin the Trust's commitment to equality and inclusion and to enable everyone to constructively resolve any issues that they have.

If trainees require further information on how they can be supported they can seek advice from the Trust's Workforce Equality, Diversity and Inclusion lead.

## 0.5 Accountability and Governance

To ensure that the policy is being used fairly, consistently, and appropriately, it is important to ensure that accountability and governance is in place. The Trust's measures to address this are:

- Cases reviewed will be treated sensitively and confidentially.

- All Case Investigators will be trained in how to conduct investigations.
- All managers who undertake the roles of Disciplinary Authority, Appeal Authority, Case Manager, Case Investigator, or sit in an advisory capacity at a Formal Disciplinary/Appeal meeting must have appropriate and up to date training on managing / chairing disciplinary cases.
- Provide Equality, Diversity and Inclusion (ED&I) awareness training to managers on areas such as bias relating to any of the grounds stated in the Equality Statement above that may be relevant to the processes detailed within this policy.
- Cases will be reviewed by an Employee Relations Scrutiny Panel consisting of StHK HR Director, StHK Director of Nursing, StHK Medical Director or Responsible Officer, Lead Employer Medical Director and Lead Employer HR to ensure timely progress, and appropriate and consistent approach to disciplinary matters in line with a just and learning culture.
- To ensure Trust Board assurance processes are being followed including the monitoring of protected characteristics and lessons are learned to improve the Trust's people practices in the future all formal disciplinary cases will be reviewed on a bi-monthly basis by an StHK Employee Relations Oversight Group, which is a panel consisting of Senior HR Representatives, Executive Directors, Responsible Officer, (or equivalent) and a Non-Executive Director. These meetings will ensure that timescales are met; employees' well-being is being supported. The Non-Executive Director will provide assurance to the Trust Board that disciplinary matters are being managed appropriately in line with national guidance.
- Information will only be shared with those who have a legitimate right to be informed in accordance with Data Protection Act 2018 and the common law duty of Confidentiality. Breaches of confidentiality by any party may result in disciplinary action. Standard Operating Procedures agreed between Human Resources and the Trusts Data Protection Office will be followed. Trainees may contact the Lead Employer if they have any questions/concerns in relation the sharing of their information whilst being managed under the handling concerns policy.
- The Head of HR and HR Business Partner team are responsible for the monitoring of compliance to ensure the effective use of the policy and enable action plans to be produced where trends or specific remedial steps are required e.g. where concerns are raised through the grievance procedure, at appeals or from Trade Unions that the processes are not being followed.



## 0.6 Definitions

**Trainees** - Specialty trainees employed by StHK LE which includes the following:

- Core Trainees
- Specialty Registrars
- Medical and Dental Public Health Specialty Registrars
- Non-medical Public Health Specialty Registrars

**Host** – the organisation with which the Trainee is undertaking their on-the-job training

**StHK Lead Employer (StHK LE)** – that part of St Helens and Knowsley Teaching Hospitals NHS Trust (“the Trust”) and its staff delegated to undertake duties on behalf of that Trust as Lead Employer for HEE medical and dental trainees and non-medical Public Health trainees.

**HEE** – Health Education England, with responsibility for the relevant Trainee’s educational training programme.

**Postgraduate Dean (PGD)** – Who is responsible for the Postgraduate programme of study for Doctors in training.

**Dean of Postgraduate Dental Education** – Who is responsible for the Postgraduate programme of study for Dentists in training.

**Case Manager** – the person appointed from StHK LE to manage the complaint or concern raised about the Trainee. This role is normally undertaken by StHK LE’s Medical Director who may delegate it to a senior manager (normally a senior clinician) to oversee the case on his or her behalf.

**Case Investigator** – the person appointed by the Case Manager to investigate an alleged incident or incidence of misconduct and establish the facts of the case. The appointment will normally be made with the assistance of the Host’s Medical Director or Primary Care Manager (see below) as, other than in exceptional circumstances, the Case Investigator will be from the Host or other organisation where the employee was placed / engaged when the alleged incident or issues arose.

**Clinical Advisor** - The Clinical Advisor is the clinician at the Host (or StHK LE) designated to provide clinical advice and guidance to the Case Investigator, if needed, where clinical issues arise. They will have appropriate specialist skills relevant to the issues under investigation. If during the course of the investigation it transpires that the case involves more complex clinical issues than first anticipated, the Case Manager should consider whether an independent medical practitioner from another NHS body should be asked to assist.

**StHK LE HR** - Part of the Trust’s HR service delegated to undertake duties on behalf of the Trust as Lead Employer for HEE medical and dental trainees.

**Appointed HR Support** – the StHK LE HR professional assigned to support the Case Manager in overseeing a case and who will, so far as possible, remain involved to organise any disciplinary and appeal meeting(s) that are required. They will also support the Case

Investigator and the appointed Host HR Support to the Case Investigator in carrying out their duties, and provide guidance and support in relation to the process.

**Disciplinary HR Support** - the HR professional, usually from StHK LE, assigned to support and advise the Disciplinary Authority at the disciplinary meeting.

**Appeal HR Support** - the HR professional, usually from StHK LE, assigned to support and advise the Appeal Authority at the appeal meeting.

**Host HR Support to Case Investigator** – the Host HR or Medical Staffing Representative appointed to support the Case Investigator. Under the direction of the Case Investigator and often in liaison with the Appointed HR Representative from StHK LE, they will usually assist with tasks such as drafting communications to the Trainee about the investigation, arranging meetings, typing up interview notes, assisting in the drafting of the investigation report.

**Disciplinary Authority** – StHK LE’s manager or director, with relevant authority (in accordance with StHK LE’s Scheme of Delegation (**Appendix 4**)) who conducts the disciplinary meeting. and who is responsible for the disciplinary decision.

**Appeal Authority** – StHK LE’s senior manager or director (no less senior than the Disciplinary Authority) with relevant authority (in accordance with StHK LE’s Scheme of Delegation (**Appendix 4**)) who conducts the disciplinary appeal meeting and who is responsible for the disciplinary appeal decision.

**Host Managers** - Consultants / GPs / nominated senior professionals / designated university managers from within the Host with responsibility for the day to day supervision and management of Trainees.

**Host Primary Manager** - The Host’s Medical Director, or, in the case of:

- a General Practitioner placement, the senior or other appointed GP partner at the GP practice;
- Public Health Trainees working within local authorities or third party organisations and Trainees working in Hospices, the Host’s nominated senior professional.

**Right to be accompanied** – Trade Unions have an important part to play in providing advice and or support to trainees and work constructively with the Lead Employer Human Resources team to achieve resolutions. In line with [ACAS Code of Practice](#) and [MHPS](#) Trainees have the right to be accompanied by a companion / representative as set out in Section one of this Policy when they are required or invited by their employer to attend disciplinary meetings. Under this policy, they may also be accompanied at formal investigation meetings.

**Acceptable Behaviours** - The Trust expects all employees to adopt the acceptable behaviours set out in **Appendix 1** and in relation to their conduct, if an employee does not comply with these rules or standards of behaviour in the expected way, this may constitute misconduct and may result in disciplinary action being taken.

**Gross Misconduct** – misconduct (failure to adopt the acceptable behaviours) serious enough to undermine or breach the contract between StHK LE and the Trainee, thus potentially justifying summary dismissal (ie dismissal without notice).

**Exclusion** – Exclusion should only be used where necessary, and whilst every effort will be made to allow a Trainee to remain at work, exclusion may be used as a temporary and precautionary measure if other measures/action short of exclusion cannot provide the assurances needed. Exclusion can be used where there has been an alleged failure to adopt the acceptable behaviours, to safeguard the interests of the Trainee, StHK LE, the Host(s), their patients and staff and / or any ongoing investigation / procedure.

**Restrictions** – Measures short of exclusion imposed on a temporary basis to safeguard the interests of the Trainee, StHK LE, the Host(s), their patients and staff and / or any ongoing investigation / procedure.

**Expectations Meeting** - An expectations meeting is a meeting at which expectations are set by a manager following discussion with a trainee who has failed to adopt acceptable behaviours in a minor way which does not warrant formal disciplinary action. When considering an expectations meeting the manager should seek advice from the HR Department

**72 hour pause (this is 3 working days)** - The 72 hour pause is the period of time the Lead Employer puts a case on pause after they are made aware of a potential adverse incident or a potential failure to adopt acceptable behaviours. The time is designed to enable a triage of the case to take place with input from the Host Organisation and HEE in order to identify the most appropriate route to resolve the concern(s) or issue(s), i.e. informal or formal. This period may be extended if required to gather more information to support the decision about the next step, including if an incident occurred prior to a weekend or bank holiday. On occasions it might mean that a trainee is required to undertake alternative duties, including exclusive working from home, during this 72 hour pause due to the nature of the specific issue.

This time should also be utilised to consider the protected characteristics of the individual as defined by the Equality Act 2010. An equality impact assessment will be completed to enable any reasonable adjustments to be put in place at the start of the process.

**Informal Fact Finding Meeting** - An informal fact finding meeting may take place during the 72 hour pause. This will usually be conducted by the host manager or a manager who is closest to the incident or person. Brief witness statements/evidence of the incident can be taken from the trainee and potential witnesses to help with the decision as to whether there has been a potential failure to adopt acceptable behaviours or involvement in an adverse incident that warrants a Formal or Informal Disciplinary process. This information can be used to contribute to a Formal Investigation if the case progresses

**Fast-track** - The Fast-track process is available when a trainee accepts that they have failed to adopt acceptable behaviours and the Case Manager determines that they are satisfied the issue is not serious enough to potentially warrant dismissal. If the trainee does not wish to contest the allegations and they agree with the potential sanction outcome they can opt to have their case dealt with by way of a fast-track meeting rather than a formal disciplinary meeting.

**Formal Investigation** - A formal Investigation takes place once a decision has been made by the Case Manager that a formal MHPS process should begin. At that point a Case Investigator is appointed to take statements and source evidence in accordance with the Terms of Reference set by the Case Manager. The investigation findings will be presented in a report to the Case Manager who will decide on the appropriate next steps.

**Disciplinary Meeting** - A disciplinary meeting (previously known as a Disciplinary Hearing) is the formal process to consider whether a trainee has failed to adopt acceptable behaviours which is potentially serious enough to warrant disciplinary action / sanction, including, in some cases, dismissal.

#### **Letters of Concern (previously known as disciplinary warnings).**

There are two levels of formal letters of concern:

- First letter of concern which was previously known as a First Written Warning
- Final letter of concern which was previously known as a Final Written Warning

These letters are issued as a sanction following a formal disciplinary meeting or as the agreed outcome / sanction resulting from of a fast-track process. They offer an opportunity for the Disciplinary Authority to outline in writing future expected behaviours when the trainee has failed to adopt acceptable behaviours. It is also a chance to draw out any learning and for the trainee and Disciplinary Authority to seek to understand the causes and the impact of the adverse incident or behaviours.

A letter of concern will set out the future expectations and record any learning about the causes and the impact of the non-acceptable behaviours, as well as any needs that the trainee may have to help them to resolve any issues and adopt acceptable behaviours in future. The letter of concern is also used to explain any consequences, should the issues arise again in the future. The letter of concern will remain “live” on a Trainee’s file for the duration of the warning before being considered spent. Once the warning is considered spent, the outcome letter will be retained confidentially but will not form part of the trainees personal employee file.

**PPA – Practitioner Performance Advice** – an independent, external service, formerly known as NCAS (the National Clinical Assessment Service), which is part of NHS Resolution- <https://resolution.nhs.uk/services/practitioner-performance-advice/> . It assists NHS employers and practitioners by providing advice and other support in cases where there are concerns about a practitioner’s conduct, performance or health.

**LNC – Local Negotiating Committee** – StHK LE’s joint working committee for workforce matters comprising Trust and staff side members.

**Workforce Council** – StHK’s committee for consideration of workforce matters including ratification of workforce policies.

## **0.7 Duties, Accountabilities and Responsibilities**

### **Chair of the Board**

The Chair of the Board must designate a non-executive member ("the Designated Member") to oversee each formal case to ensure that momentum is maintained.

### **The Chief Executive**

The ultimate responsibility in the areas of performance and legislative adherence lies with the Trust’s Chief Executive.

The Chief Executive will be informed of all serious concerns about Trainees.

The Chief Executive (or a designated deputy) will report to PPA and NHS England and NHS Improvement (NHSEI) in respect of extended exclusions as per section 2 of this policy

### **Trust Board**

The Trust’s Board has responsibility for overseeing compassionate and appropriate use of the procedures in this policy and for ensuring appropriate decision-making is taking place under them. It must also ensure that appropriate resources are allocated to enable those working under the policy to deliver efficient, sound and fair processes.

The Trust’s Board of Directors has specific obligations, as a result of the “Improving People Practices” guidance (2019) from The Baroness Harding of Winscombe, including having oversight, via board-level reporting mechanisms, of the Trust’s investigation and disciplinary procedures.

The monitoring of the impact of the policy will be overseen by a dedicated Non-Executive Director who will highlight any significant shortfalls identified to the Governance Board and Board.

### **StHK LE’s Medical Director**

StHK LE’s Medical Director is responsible for ensuring that the policy is being adhered to by management and Trainees and that action is carried out in line with this policy in a fair, compassionate, consistent and reasonable manner.

StHK LE’s Medical Director will normally act as Case Manager in respect of concerns addressed under this policy but can delegate the role of Case Manager, including the responsibility for liaising with PPA, to another senior manager within StHK.

### **The Host Primary Manager**

The Host Primary Manager is the Host's key / primary contact with StHK LE in relation to Trainees placed at the Host and must ensure that:

- Any concerns regarding Trainees are notified to StHK LE, and HEE, promptly including those which are being managed informally by the Host
- They assist StHK LE's Medical Director with the appointment of a Case Investigator from the Host, as appropriate.
- All matters to which a Case Investigator is appointed are properly investigated by the Case Investigator in line with this policy.
- If appropriate, Trainees are offered the opportunity to receive additional support from StHK LE Health, Work and Well Being Department and Health Education England.
- All those from within the Host involved in the management or supervision of Trainees, and particularly those dealing with a specific case, are aware of these procedures and their provisions and are suitably trained.
- They consult with StHK LE before excluding any trainee or taking any formal action.

### **Director of Human Resources**

The Trust's Director of Human Resources has a responsibility to ensure all relevant employment legislation including the [ACAS Code of Practice - Disciplinary and Grievance Procedures](#) and [MHPS](#) is adhered to.

Whilst specific responsibility for areas such as auditing and monitoring may be designated to particular individuals within StHK LE's HR function, the ultimate responsibility remains with the Director of HR.

The senior management team in StHK LE's HR department are responsible for escalating any areas of concern arising from monitoring or otherwise to the HR Director who, where necessary, will highlight them to the Board and responsible Non-Executive Director, where necessary.

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

### **Non-Executive Director as 'Designated Member'**

In line with [MHPS](#) a Non-Executive Director from StHK LE must be appointed as the 'Designated Member' to oversee each investigatory and disciplinary process and to ensure that momentum is maintained. They will also be the person to whom a Trainee may make representations in regard to their exclusion, or the investigation of their case or the classification of their case by the Case Manager.

### **Case Manager**

All serious concerns must be registered with the Chief Executive and he or she must ensure that a case manager is appointed.

The Case Manager is usually StHK LE's Medical Director (or another senior clinical manager employed by the Trust to whom StHK LE's Medical Director delegates the role). It is possible that the Case Manager will have some prior knowledge of / dealings with the Trainee and this will not necessarily mean they are partial or unsuitable to perform the role of Case Manager. If the Trainee has any concerns about potential conflicts of interest or impartiality of the Case Manager, these should be raised at the outset with the Case Manager in the first instance and then with the LE Medical Director (if the LE Medical Director is not the Case Manager on that particular case) or, finally, the Designated Member.

The Case Manager must:

- Identify the nature of the problem or concern and assess its seriousness on the information available and the likelihood that it can be resolved without resort to formal MHPS procedures. This should be undertaken in conjunction with the Appointed HR Support, the LE Medical Director, the Postgraduate Dean and, where required, PPA. If further information is required to enable the Case Manager to make this decision, they will commission a brief preliminary fact finding enquiry.
- Consult PPA where an immediate exclusion is being / has been put in place or a formal exclusion is being considered. **Please note** this does not apply to non-medical trainees employed in line with Agenda for Change Terms and Conditions.
- Consider, in consultation with the individuals specified below, whether it is necessary and / or there is reasonable and proper cause to impose restrictions or formally exclude the Trainee. Individuals: Postgraduate Dean, StHK LE's Deputy Chief Executive (and Executive Director of Human Resources) who has delegated authority from the Chief Executive in this respect, Medical Director, Director / Head of HR and any other interested parties.
- If a formal route is decided upon, in consultation with the Postgraduate Dean, StHK LE's Chief Executive and / or Director / Head of HR, appoint a Case Investigator.
- Inform the Trainee in writing as soon as it has been decided that an investigation is to be undertaken, providing the name of the Case Investigator and the specific allegations or concerns that have arisen.
- Make a decision on the next action to be taken, if any, once the investigation is complete including whether a formal disciplinary meeting is appropriate.
- Consult and liaise with the Postgraduate Dean throughout the process.
- As necessary, act as coordinator / liaison between the Case Investigator and the Trainee and / or potential witnesses or experts required to assist the investigation.
- If necessary, obtain any documentation required for the investigation.
  - . In most cases, present the management case to the disciplinary authority at a formal disciplinary meeting.
- Attend an appeal meeting if the Appeal Authority requires them to be present

### **Case Investigator**

The Case Investigator is usually employed by the Host but occasionally it may be necessary / appropriate to commission a suitable person from within the LE or another organisation.

All Case Investigators should be asked to confirm at the outset of a formal investigation that there are no real or perceived conflicts of interest which may disqualify them from doing the work in question. It may not be possible to identify a Case Investigator totally without knowledge of the Trainee in some capacity. Any concerns about potential impartiality should be raised at the outset with the Case Manager.

It should also be established that a Case Investigator:

- has had appropriate training in investigations, equality and diversity and other relevant aspects;
- Understands the work context of the Trainee;
- Has time identified to enable them to complete the investigation and report within the timescales required by this policy.

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

The Case Investigator is someone, who acts in an objective and impartial way, to investigate the complaints identified by the case manager to discover if there is a prima facie case of a capability issue and/or misconduct. The case investigator gathers relevant information by interviewing people and reading documents. The testimony of the interviewees is not tested by the trainee or their representative. In many cases the case investigator will not be able to resolve disputed issues of fact. They can only record the conflicting accounts of the interviewees and, where appropriate, express views on the issue. Where the trainee admits that they has behaved in a certain way or where there is otherwise undisputed evidence, the case investigator can more readily make findings of fact.

The Case Investigator must:

- Formally involve a senior member of medical or dental staff where a question of clinical judgement is raised during the investigation process.
- Where the alleged misconduct relates to matters of a professional nature, or where an investigation identifies issues of professional conduct, the Case Investigator must obtain appropriate external independent professional advice as to that classification.
- Formally involve a senior member of medical or dental staff where a question of clinical judgement is raised during the investigation process. Where no other suitable senior doctor or dentist is employed by the Host or StHK LE, a senior doctor or dentist from another NHS body should be involved.
- Allocate sufficient time to complete the investigation and report within the timeframe laid down by this policy.
- Ensure that safeguards are in place throughout the investigation so that breaches of confidentiality are avoided as far as possible.
- Judge what information needs to be gathered and how.
- Ensure that appropriate and sufficient written statements are collected.
- Ensure that a written record is kept of the investigation and the conclusions reached



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

## **Host Managers**

Host Managers must:

- Ensure that the standards of conduct and behaviour of the Trainees undertaking training in their department or section are at the required level.
- Ensure that Trainees are made aware of the required standards of behaviour required of them and this is actively managed.
- Ensure adequate advice and supervision is available to their Trainees.
- Ensure that Trainees are informed when they are not meeting required standards of conduct and behaviour as soon as reasonably practical after an issue has been identified. This discussion should be documented and shared with the Lead Employer, in order for a record to be held on the trainee's personal file.
- Act as a Case Investigator if required.

## **Trainees**

All Trainees must:

- Take personal responsibility for their own conduct and behaviour.
- Adopt acceptable behaviours in relation to conduct, performance and attendance ensuring they are in line with the Trusts ACE behavioural standards, which are explained in Appendix 8 to this Policy, and take personal responsibility if they fail to do so
- Cooperate with any investigation or disciplinary meeting held under this policy.
- Cooperate with any request to submit to an occupational health assessment including to assess their health, wellbeing, ability to work with or without adjustments and / or to establish their fitness to participate in an investigation or any other part of this process.
- Raise any concern about their and / or others' conduct and behaviour issues.
- Inform their Host Manager(s) / Primary Manager, StHK LE's HR Department, Health Education England and their professional body if they have been cautioned, charged or found guilty of a criminal offence or if their fitness to practise is impaired or is called into question and, if applicable, inform the NHS Commissioning Board under the [National Health Service \(Performers Lists\) \(England\) Regulations 2013 \(Reg 6\)](#)

## **StHK LE's Human Resources Staff and Management**

The StHK LE HR Service must:

- Ensure that Trainees are informed of this policy in their induction processes.

- Provide appropriate advice and guidance on this policy and MHPS, including training and coaching as required, to Case Manager(s), Host Managers (including Case Investigators) and Host HR Support.
- Be present in an advisory capacity at all formal disciplinary meetings (as Disciplinary HR Support) and at any subsequent appeal (as Appeal HR Support) as provided for in this policy.
- Review the workings of this policy when shortfalls are identified and escalate to their line manager where appropriate, including where cases are not processed in a timely manner.

The Appointed HR Support for each concern raised under this policy must:

- Liaise with the Case Manager and Host Manager / Host Lead Manager in the preliminary consideration of the concerns, including the completion of the 72 hour review, and, if it is decided a formal investigation is warranted, about the appointment of a Case Investigator.
- Ensure the Trainee receives pastoral / supportive (telephone) contact, as soon as possible after, and usually within 48 hours of the Trainee being notified that a concern is being considered under the policy. Also, to provide a point of contact for the Trainee in relation to any of the Trainee's queries or concerns about the process.
- Provide the Trainee with appropriate information and HWWB referrals as necessary to safeguard, as far as reasonably practicable, the Trainee's mental health.
- Guide the Case Investigator and Host HR Manager as necessary / appropriate in the conduct of the investigation including seeking to ensure they maintain momentum.
- Ensure the Designated Member is kept abreast of progress in all cases.
- Ensure that, as appropriate, Trainees are offered the opportunity to receive additional support from StHK LE's HWWB department and Health Education England.

### **Host Human Resources Management and Staff**

Host HR management and staff must:

- Ensure that Host Managers are provided with appropriate advice and guidance on this policy, including coaching as required.
- Provide support to Host Managers and Case Investigators in individual cases as necessary and as requested by StHK LE's Case Manager and HR Service usually through the Appointed HR Representative.
- Liaise with StHK LE's HR Service in individual cases as necessary.

### **Trade Union (TU) / Medical Defence Organisation (MDO) representatives**

TU / MDO representatives acting in accordance with this policy must:

- Familiarise themselves with this policy and procedure.
- Advise the Trainee in respect of this policy and procedure.

## **Health Education England / Post Graduate Dean / Responsible Officer**

The Dean of Postgraduate Medical Studies (“Postgraduate Dean”) is the Responsible Officer for doctors in training grades. He/she will be notified by the Trust of any concerns raised under this policy that relate to Trainees. Where appropriate, such concerns will initially be considered as matters of training.

Where appropriate, a Trainee’s RO is responsible for referring concerns about the Trainee to the GMC / other relevant regulator and/or the notification of any proposed investigation to the area team of the NHS Commissioning Board within NHS England.

Any other referrals of concerns regarding Trainees to external bodies or agencies (such as the police, DBS) will usually be undertaken by StHK LE’s Medical Director or StHK LE HR following consultation with the relevant Postgraduate Dean or Dental Dean.

## **Pastoral Support**

It is recognised that being involved in a formal process can be very upsetting and stressful for the trainee. To recognise the need for additional pastoral care, over and above that routinely provided by the Educational Supervisor during these proceedings, the Trainee may agree with HEE an individual who will be able to provide pastoral care, mentorship and personal support. The individual providing mentorship and support may be the Educational Supervisor, Clinical Supervisor in the Host Organisation or Training Programme Director or other appropriate person, but must not be connected in any way to the concerns raised and may not participate, or in any way influence, the investigation or subsequent proceedings.

The Trust recognises that any investigation process can affect a Trainee in a variety of ways and therefore support is available and encouraged.

## **Workforce Council and LNC**

The Workforce Council and LNC are responsible for monitoring the impact of the policy including any resulting equality issues on behalf of the Board. Any issues of significant concern and learning opportunities should be considered for escalation to the Quality Committee, which will decide whether to refer them on to the Board.

The Workforce Council has delegated authority from the Trust’s Quality Committee to investigate any issue. Specifically, its aim is to ensure the Trust complies with externally set standards and to establish, monitor and review content and methods of providing assurance to the Quality Committee in relation to all areas of people management. The Workforce Council will provide assurance to the Quality Committee on matters within its remit and escalate any issues or risks.

This policy, and any changes / revision to it, is consulted with the LNC and ratified by the Workforce Council under regular StHK LE governance procedures.

## SECTION ONE - Determination of allegation and Investigation

### 1.0 Establishing the Nature of the Concern / Preliminary Fact Finding

Concerns about a Trainee can come to light in a wide variety of ways, for example:

- From other NHS professionals, health care managers, students or non-clinical staff within the Host Organisation;
- Complaints regarding care by patient(s) or relative(s) including allegations or claims of negligence
- Information from the police or HM Coroner;
- Monitoring of data on performance and quality of care;
- Clinical governance, clinical audit or other quality improvement activities, risk reporting;
- Information from regulatory bodies;
- Court judgments;
- Concerns raised from within the Training Programme.

Having discussed the case with Practitioner Performance Advice (PPA), the LE Medical Director must decide whether an informal approach can be taken to address the problem and / or whether further preliminary fact finding enquiries are needed. Where an informal route is chosen PPA should still be involved until the problem is resolved.

Following a concern about a Trainee having been raised, the LE Medical Director may require further information to enable them to decide whether:

- a) there is no substance to the allegation(s) and therefore no further action is necessary;  
or
- b) the case is one which can be dealt with on an informal basis; or
- c) the case is potentially a “serious” concern where a more formal route needs to be followed that is required to enable the appointed Case Manager to make this decision,

If so, the LE Medical Director will commission a brief preliminary fact-finding enquiry to assist them in determining which course of action is appropriate.

The preliminary fact-finding enquiry may also address matters relevant to the considerations of the Case Manager and other senior colleagues regarding immediate or formal exclusion – see Section Two.

#### 1.1 Informal Process

The Trust believes the first and most important step in resolving concerns is for the relevant manager to have a prompt, informal conversation with the trainee to try to find an outcome that is acceptable to all parties. By focusing effort on initial resolution, the Trust aims to foster a culture where all parties engage with one another constructively. This will enable most issues to be resolved locally and without the need to escalate further.

The Trust therefore believes that many workplace issues can be resolved at the informal stage which provides an opportunity for managers and trainees to discuss issues in a supportive and constructive forum. Often, concerns can be addressed effectively and swiftly by having a structured discussion with the trainee regarding the acceptable behaviours required.

In many cases the reasonable response of a Host Manager to concerns raised about a Trainee will be to counsel them through an expectations meeting.

### **1.11 Expectations Meeting**

An expectation meeting is not regarded as disciplinary action, but as corrective guidance offered, usually by the Host Manager, to prevent a situation developing where recourse to disciplinary (or other) action may be necessary. This is usually either undertaken by the Host Manager or Health Education England as part of the ongoing training and management of the Trainee, or if specifically required by a Case Manager or LE Medical Director.

Trainees should clearly understand that an expectations meeting is taking place and that if the improvement required is not attained, then formal action may be taken in the future. An expectations meeting should, therefore, be regarded as a very important aspect of the Host Manager's role since it might well prevent future formal action, by highlighting, at an early stage, the need for corrective measures to be taken. Trainees are required to attend such meetings which will normally be undertaken on a one to one basis, between the Host Manager and the Trainee.

During this meeting the Host Manager should:

- Explain that the meeting is informal and is to discuss concerns raised in respect of a failure to adopt acceptable behaviours
- Provide an opportunity to reflect on the concerns raised. It will also be important to ensure that the reasons which have led to the concerns are adequately explored and any support that may be required is discussed.
- Remind the trainee of the standards of behaviours expected by the Trust and set out the level of improvement needed.
- Document the meeting, sharing a copy with the trainee and placing a copy on the trainee's personal file

Details of any informal discussions must be entered onto the Trainee's personal file kept at StHK LE HR department, and Health Education England must also be advised. In all cases where there is informal resolution the Trainee should complete and evidence appropriate reflection and learning in their e-portfolio and were recommended by their Clinical/Education Supervisor, Training Programme Director or Lead Employer Medical Director declare the matter on the Form R (Part B) for consideration at their next Annual Review of Competence Progression (ARCP).

Alternative to an expectations meeting, StHK LE's Medical Director may wish to issue a letter of expectation which fulfils the same function as the process above. This should also be recorded and addressed in the Trainee's e-portfolio and in their next Form R (Part B) following the issue of the letter as set out above.

### 1.12 72 Hour Pause

When the Lead Employer identifies or is made aware of a potential failure by a trainee to adopt acceptable behaviours, the issue will be put on pause for approximately 72 hours (this is not a strict timeframe as it will depend on the specific circumstances) enabling a triage of the case to take place.

During this period the most appropriate route to resolve the issue will be identified and the factors that should be taken into consideration are:

- The seriousness, frequency and complexity of the failure to adopt acceptable behaviours or the adverse incident.
- The impact of the situation on patients, the Trust, the manager, the relevant team and the trainee
- The needs and expectations of the Trust/Host, the manager, the relevant team and the trainee.
- Previous attempts to resolve the situation or similar issues.
- Any perceived risks to the trainee, patients, other colleagues and/or the Trust/Host.

During the 72 hour pause period, the Lead Employer working in conjunction with the Host Organisation and HEE may undertake informal fact finding by contacting the parties involved to gain additional information to assist them to establish the basic facts such as:

- **When** dates & times of any behaviour/incident(s) are said to have occurred
- **Who** the people involved were and who potentially witnessed the alleged behaviour/incident(s) (not just employees)

- **Where** the behaviour/incident(s) took place and if any other data may be available, for example CCTV
- **What** happened (for example, what the behaviour/incident was)
- **Why** the behaviour/incident is said to have taken place

This initial information will be recorded using a 72 hour pause form. This will include the completion of an equality impact assessment to ensure that any protected characteristics are considered in the handling of the case.

Depending on the nature of the concern, on occasions it might mean that a trainee is required to undertake alternative duties, including exclusive working from home during this 72 hour pause.

Following the 72 pause period, the LE Medical Director and Head of HR will review the information available and will decide upon the most appropriate route to resolve the issue. At this stage a concern might be classified as “serious” requiring formal action, which necessitates appointment of a Case Manager; in other cases the concern may not be classified as serious and may be closed down informally.

When a trainee has provided information at an initial informal fact finding meeting and the matter proceeds to a formal investigation, this information may be provided to the Case Investigator.

## 1.2 Investigation

In many cases, the full facts of an alleged incident will not be immediately apparent. Indeed, it may not be clear whether the alleged incident is serious enough to warrant formal disciplinary action or action under an alternative process. Where informal resolution has not been successful or is not appropriate, or where the outcome of the 72 hour pause process identifies that a formal investigation is required, a Case Manager will be appointed by StHK LE. The Case Manager will normally be StHK LE Medical Director; however they may delegate this role to a senior member of the medical staff in StHK.

The Case Manager, in conjunction with the Host’s Primary Manager, will identify a Case Investigator, usually from the Host Organisation, who should, if possible, be familiar with the relevant type of problem/area of work and this policy.

The Case Investigator should not be directly involved in the incident or issue(s) of concern. A Host HR Support to the Case Investigator will be identified to advise and support the Case Investigator and help coordinate the HR aspects of the investigation including liaising with the Appointed HR Representative from StHK LE.

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

The Case Investigator will be responsible for ascertaining the full facts of the case where possible, and for providing a report to the Case Manager. The Case Investigator’s role is not to seek evidence against the Trainee but to independently establish, where possible, all relevant facts relating to the concern(s) / incident(s) / allegation(s).

It is the responsibility of the case manager to exercise judgement as to the seriousness of the concerns, having regard to the evidence reported and findings made by the case investigator.

Where the case investigator's report makes findings of fact or records evidence capable of amounting to misconduct, the case manager may decide to convene a disciplinary meeting. The case manager can make his or her own assessment of the evidence which the case investigator records in the report.

### **1.21 Terms of Reference**

The Case Manager will be responsible for setting Terms of Reference for the investigation in consultation with the Appointed HR Representative. If possible, the Terms of Reference will usually outline:

- Basic factual background of the incident(s) / allegations(s) / concern(s)
- the specific concerns or allegations to be investigated
- preliminary list of relevant staff and others to be interviewed
- preliminary list of documentation relevant to the investigation
- planned timescales for completion

It should be noted, however, that these should be reviewed by the Case Manager and may be amended by the Case Manager during the investigatory process. Any amendment to the Terms of Reference must be notified to the Trainee in writing.

### **1.22 Investigation Meetings / Interviews**

In cases where an incident involves, or was witnessed by, several people, this is likely to involve obtaining statements from each individual. Witnesses should be advised that the matter must be treated in strictest confidence and must not be discussed with colleagues, and that, if the matter progresses to become a disciplinary matter, then the witness statements will be used as evidence. In exceptional circumstances, witness statements may be anonymised however before this is done or agreed to, advice should be sought from StHK LE HR as well as the Case Manager.

The Host HR Support to the Case Investigator will normally attend the investigation meetings as the role of HR is to advise on process.

Trainees are obliged to attend investigation meetings and formal meetings and must take all reasonable steps to attend when invited but it is reasonable that if a Trainee cannot attend such a meeting / meeting due to extenuating circumstances, a further meeting / meeting will be scheduled, usually within seven calendar days. The trainee should be released from other work activities in order to facilitate their attendance at the meeting.

If a trainee states they are too unwell to attend an investigation interview, and in circumstances whereby the absence exceeds 7 calendar days before making a decision as



to how to proceed, StHK LE will seek advice from its Health Work and Wellbeing Department, the Trainee's GP or another specialist health professional. The Trainee is required to cooperate with such reasonable steps.

### **1.23 Right to be Accompanied / Represented**

StHK LE recognises that Trainees may wish to seek advice and be represented by their trade union, professional body or a work based colleague. All Trainees being investigated under this policy have the right to be accompanied at all formal meetings (not when attending as a witness) by an accredited Trade Union (TU) or medical defence organisation (MDO) representative, or a workplace colleague, friend, partner or spouse.

Disabled employees may also wish to be accompanied by an additional person as a support worker, an advocate or someone with knowledge of the disability and its effects. The Trust may also agree to an employee being accompanied by an advocate as a reasonable adjustment if deemed appropriate to the circumstances.

At a disciplinary meeting at which allegations of potential gross misconduct / dismissal are being considered, the Trainee may be represented by a lawyer instructed or retained through a MDO or TU. The individual responsible for presenting StHK LE's case to the Disciplinary Authority may also be represented by a lawyer instructed or retained by StHK LE. Where a Trainee and / or StHK LE have been legally represented at a disciplinary meeting, they may be similarly represented at any subsequent appeal.

In line with the [ACAS Code of Practice – Disciplinary and Grievance Procedures](#), the Trainee's representative is permitted to address the meeting to put, and sum up, the Trainee's case, respond on behalf of the Trainee to any views expressed at the meeting and confer with the Trainee during the meeting (including having the right to seek an adjournment). The representative does not, however, have the right to answer questions on the Trainee's behalf put to them by the Disciplinary Authority, address the meeting if the Trainee does not wish it, or prevent the Disciplinary Authority, Case Investigator or other witness from explaining their case.

### **1.24 Timescales and Updates**

Any investigation should be completed in a timely manner. The length of time spent will depend on the nature and complexity of the allegation or incident, but in any case the case investigator should complete the investigation where possible within 4 weeks of appointment and submit their report to the case manager within a further 5 days. Circumstances may extend this period, for example, the involvement of the police and / or criminal proceedings (see paragraph 2.61) or allegations relating to the safeguarding of vulnerable people, which also involve separate policies.

Where any investigation continues beyond this period the management of the case should be reviewed by the Case Manager and Head of HR for StHK LE (or designated deputy) who will advise the Designated Member.

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

### **1.25 The Investigation Report**

The Investigation Report should include:

- Terms of Reference
- Background Information including trainees Specialty, Grade and start date of employment, timeframe of the stages of the investigation and any issues encountered during the investigation
- Allegation(s)
- Fact Finding if possible
- Conclusion
- Appendices including witness statements and other relevant documents

It should be paginated and contain headings and paragraph / section numbers for ease of reference.

All relevant evidence from the investigation should be included in numbered appendices to the report. Any physical evidence should be referenced and confirmation provided in the report of its secure storage location in case needed for any internal meetings. Similarly, electronic evidence / data should be securely stored and a link to its storage location embedded in the electronic version of the Investigation report so it can be accessed if necessary.

### **1.3 Professional Misconduct**

Where the alleged misconduct relates to matters of a professional nature, or where an investigation identifies issues of professional conduct, the case investigator must obtain appropriate independent professional advice as to that classification. Similarly, where a case involving issues of professional conduct proceeds to a Disciplinary Meeting, the Meeting will be chaired by the Disciplinary Authority, and the panel must also include a senior professional who is medically qualified (in the case of doctors) or dentally qualified (in the case of dentists) and who is not currently employed by the StHK or the Trainees Host placement., who will attend in an advisory capacity only.

Contravention of professional codes, standards, practice, laws or rules may lead to disciplinary action, including dismissal. Professional bodies may take regulatory action in addition to disciplinary / employment-related action taken by StHK LE, and findings by StHK LE of professional misconduct must be reported to the relevant professional / regulatory bodies (e.g. General Medical Council (GMC), General Dental Council (GDC), Health Professions Council (HPC), and /or the NHS Commissioning Board).

The Postgraduate Dean will be responsible for notifying the relevant professional body of

any disciplinary findings(s) of professional misconduct and the Trainee will be informed of such notification(s). Similarly if the Trainee is also employed by or works within a separate organisation, StHK LE may be required to inform that organisation, or request the issuing of an Alert notice by the regulatory body.

#### **1.4 Case Manager's review of the Investigation Report / Decision How to Proceed**

Once the investigation is complete, the Case Investigator will present their findings in a report, with all relevant evidence appended, to the Case Manager, which the Case Manager will review in full. This report will include all narrative and supporting evidence to enable the Case Manager to reach a decision as to how to proceed. The possible outcomes are:

- no further action is needed / no case to answer;
- there are concerns / issues about the Trainee's conduct but these are capable of being addressed informally by the Host in which case a letter of expectation / expectations meeting may be issued;
- there is a potential case of failure to adopt the Trust's acceptable behaviours that should be put to a conduct panel, which will be addressed under the further provisions of this policy;
- there are concerns / issues about the practitioner's health that should be considered by StHK LE's Health, Work and Well Being service;
- there are concerns about the practitioner's performance or capability that should be further explored, which the Case Manager will refer to the Postgraduate Dean / HEE to be addressed under their Educational processes including a letter of expectation/counselling being issued. The Case Manager or appointed HR Representative will also inform the PPA of this decision;
- restrictions on practice or exclusion from work should be considered, which will be addressed by the Case Manager / StHK LE's Medical Director with the Post Graduate Dean and, if appropriate, the Host Medical Director / Primary Manager;
- there are concerns that should be referred by the Post Graduate Dean (as Responsible Officer for Trainees) or Dental Dean to the GMC, GDC or other regulatory body, in which case the Case Manager will inform the Post Graduate Dean/Dental Dean of such.

The Case Manager will write to the Trainee, copying in the Host Medical Director / Primary Manager and the Post Graduate Dean with their decision

#### **1.5 Investigations involving external agencies**

Where external Agencies are involved (e.g. Safeguarding, Police, MIAA), a case review will be carried out by the Director of Finance/Medical Director as appropriate, along with the Director of HR in the early stages to decide the appropriate course of action in the internal investigation. Depending of the form of alleged breach in acceptable behaviour, preliminary investigation involving external agencies may initially be covert as it could relate to e.g. fraud or a criminal matter.

#### **1.6 Fraud and / or Criminal Issues**

## **Action when investigations identify possible criminal acts**

Where potential criminal issues come to light, the Appointed HR Support will take advice from the police. The investigation should only proceed in respect of those aspects which are not directly related to the police investigation. StHK LE will consult the police to establish whether an investigation into any other matters would impede their investigation.

In circumstances where fraud is alleged, StHK will contact the Local Counter Fraud Specialist (LCFS) for advice. Unless StHK is advised by LCFS to the contrary, any fraud investigation will usually be conducted jointly with the LCFS in accordance with this procedure and those procedures agreed to address allegations / incidents of fraud. There may be occasions where it is appropriate to conduct the LCFS investigation separately / prior to StHK LE's investigation process.

Once the internal investigation is fully completed, if a disciplinary meeting is required, this should be instituted without delay unless advised to the contrary by the police or LCFS.

## **Cases where criminal charges are brought not connected with an investigation by StHK LE**

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

Trainees are required to inform StHK LE's Head of HR, their Host Primary Manager, HEE, and their professional body immediately after an arrest, a caution or any criminal charge. Full information about the nature of the caution or the charge or the reasons for the arrest must be provided at the time. Further, following the initial notification, there is a continued requirement for a Trainee to keep StHK LE fully informed about all developments and to comply with any requirements of their professional body in relation to keeping them informed. This obligation remains in place whether or not any criminal proceedings are issued against a Trainee and whether or not a matter goes to court. Any breach of these requirements will be treated extremely seriously.

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

In all cases, having considered the facts, StHK LE will need to consider whether the Trainee poses a risk to patients or colleagues and whether their conduct warrants investigation and / or exclusion from the workplace and/ or other restrictions or adjusted duties. StHK LE will give serious consideration as to whether the trainee can continue with their role once criminal charges have been made, which will depend on the nature of the alleged offence.

Aside from any potential misconduct, where a Trainee is in custody, or subject to conditions, e.g. bail conditions, that makes performance of their duties impossible, the situation may

render the Trainee unable to fulfil their performance of their contract of employment and it may be that the contract of employment is frustrated. Similarly, if the GMC or Postgraduate Dean decides the Trainee is unable to fulfil their training contract and withdraws their National Training Number, StHK will need to consider terminating the employment contract for Some Other Substantial Reason – see Appendix 7.

## **Dropping of charges or no court conviction**

When STHK LE has refrained from taking action pending the outcome of a criminal investigation or court case, if the charges are dropped, court case withdrawn or the Trainee is acquitted, but STHK LE considers there is enough evidence to suggest an ongoing employment concern such as potential misconduct, impaired capability or any possible danger to patients, then StHK may appoint a Case Manager and Case Investigator and conduct its own investigation under this policy, including consideration of any available police evidence. In such cases, STHK LE will make clear to the police that any information they provide will have to be made available to the Trainee.

### **1.61 Safeguarding**

Similarly in circumstances where an allegation relating to a potential safeguarding issue arises (i.e. involving a child or vulnerable adult) StHK LE's Safeguarding team must be consulted initially by the Case Manager or appointed HR Representative prior to the commencement of the investigation - see StHK LE's [Policy for Dealing with Allegations of Abuse to Children and Vulnerable Adults by Trust Employees](#) for more details. StHK LE's Safeguarding team will advise on the need to involve the relevant Local Authority Designated Officer (LADO) or the appropriate equivalent individual / body where a child or vulnerable adult is involved. There may be occasions where investigations by the LADO or equivalent or by the police may have to be conducted prior to StHK LE's investigation process. In such circumstances, the eventual investigation undertaken by the Case Investigator may involve seeking information from such external bodies, but should not assume any information will be received from them.

In circumstances where a GP Trainee is involved, normally the investigation will continue as above but HEE will inform the NHS Commissioning Board regarding provisions of the Performers List under [the National Health Service \(Performers Lists\) \(England\) Regulations 2013 \(Reg 9\)](#). If the NHS Commissioning Board requests that no further action is taken by StHK LE until the NHS Commissioning Board has reviewed the matter, this request will be complied with. In exceptional circumstances if StHK LE is not best placed to investigate the matter or the matter is a sensitive one, referral to the National Performers List should be made earlier

## **SECTION TWO – Restrictions of practice and Exclusion from work**

### **2.0 Introduction**

When serious concerns are raised about a Trainee, to protect the interests of the individual, patients and colleagues, STHK LE will urgently need to consider whether it is necessary to place temporary restrictions on their practice, in consultation with the Postgraduate Dean or their designated deputy. This might be to amend or restrict their clinical duties, obtain undertakings or provide for the exclusion of the Trainee from the workplace.

## 2.1 Exclusion

In most cases, exclusion from work will not be necessary and the trainee will be able to continue doing their normal job while issues are investigated. Exclusion is not a sanction and, when it is used, there is no assumption of guilt.

Exclusion of Trainees from duty should be avoided where possible. It should only be imposed as a temporary and precautionary measure when other alternatives have been considered but are deemed not appropriate / sufficient in the circumstances.

The purpose of exclusion is:

- To protect the interests of patients or other staff; and/or
- To assist the investigative process when there is a clear risk that the practitioner's presence would impede the gathering of evidence, and/or
- To protect the interests of the trainee

The decision as to whether there is reasonable and proper cause to formally exclude the Trainee or impose restrictions is usually taken by the Case Manager in consultation with the Postgraduate Dean; and STHK LE's Chief Executive / Deputy Chief Executive, Medical Director, Director of HR; and the Primary Host Manager or another appropriate senior Host Manager and PPA. In some cases, where a Case Investigator has been appointed, there will be a preliminary report produced to assist the Case Manager to decide upon the next steps in consultation with those individuals identified in this paragraph.

## 2.2 Immediate Exclusion

In instances where it is necessary to consider immediate exclusion, the Host Primary Manager or other most senior Host Manager should contact STHK LE HR Department either directly or through the Host HR / Medical staffing team. This is to enable STHK LE HR to inform STHK LE's Medical Director and/or other relevant executives of the need to consider an immediate exclusion.

An immediate time limited exclusion may be necessary for the purposes identified in paragraph 6.1 above following:

- a critical incident when serious allegations have been made; or
- there has been a break down in relationships between a colleague and the rest of the team; or
- the presence of the trainee is likely to hinder the investigation.

Such exclusion will allow a more measured consideration to be undertaken. This period should be used to carry out a preliminary situation analysis, to contact the PPA for advice

and to convene a case conference if necessary. An immediate exclusion will be for a maximum period of two weeks, following which a further meeting will be held with the trainee to determine whether a formal exclusion is necessary.

In circumstances whereby an exclusion from the workplace is necessary, the Lead Employer will liaise directly with the Host Organisation so that appropriate rota cover can be arranged.

### **2.2.1 Immediate Exclusion outside of normal working hours**

If immediate exclusion is being considered out of normal working hours, the most senior on-call general manager from the Host must be consulted if he/she is available. However, the Host Primary Manager must then contact Human Resources at the first possible opportunity and StHK LE's Medical Director and / or Case Manager will then review the 'out of hours' decision in accordance with the appropriate consultation requirements set out above, including consulting PPA.

### **2.3 Alternatives to exclusion**

Alternatives to exclusion must always be considered before excluding a Trainee; some examples are:

- change of work location;
- more senior supervision of normal training clinical duties;
- restricting the Trainee to certain forms of clinical duties;
- restricting the Trainee to non-clinical duties, for example: administrative tasks, research / audit, teaching and other educational duties;
- medical leave for the investigation of health problems or concerns.

If practicable, the Trainee may be afforded the opportunity to be accompanied during the exclusion meeting or there may be a witness present, but accompaniment / a witness is not a pre-requisite to an exclusion.

### **2.4 Formal Exclusion**

If a Trainee is immediately excluded the decision whether there should be a formal exclusion or not must be made as soon as it is practicable to do so in conjunction with PPA but, in any case, within two weeks of the immediate exclusion.

If the decision is made to impose a formal exclusion, the Trainee should be informed of the following details, which will be confirmed in writing:

- The reason for the exclusion, what other measures have been considered and why those are not appropriate. The trainee should be given the opportunity to state their case and propose alternatives to exclusion. (If these are agreed by the Case Manager, there will not be an exclusion and the following will therefore not apply).

- The fact that it will be on full pay (unless, exceptionally, it is unpaid and, if so, why. This may arise if the Trainee became unavailable for work, for example, if they went abroad without permission for annual leave).
- The fact that the exclusion will be for a period of no longer than 4 weeks at a time, at which point it will be reviewed.
- That it is a temporary precautionary measure and is not a disciplinary sanction.
- That the Trainee must remain available for work upon at least 24 hours' notice, including but not limited to meetings relating to the ongoing process, and should book holiday or study leave and / or report sickness absence in the usual way but copied to the Case Manager.
- That the Trainee is expected to make themselves available for any meetings that may be arranged as part of the investigation / disciplinary / capability process.
- The arrangements for keeping in touch with colleagues on professional developments and taking part in teaching activities and clinical audit activities with the same level of educational and pastoral support as other doctors or dentists in training, if appropriate.
- The identity and contact details of the Trainee's key pastoral contact during the exclusion, usually the Training Programme Director and / or any other designated confidante colleague agreed between the Trainee and the Case Manager.
- Whether the terms of the exclusion include exclusion from the workplace premises including the Host Organisation, StHK LE and / or any other specified work-related premises.
- Any systems which they are not permitted to access without specific written permission from the Case Manager or the Primary Host Manager.
- That they must not undertake any bank, locum or agency work for StHK LE or the Host Organisation; nor must they undertake paid work for another organisation during their normal working hours under their employment with StHK LE.
- That they must not discuss or disclose any specific information relating directly to the case with anyone other than those managers / staff involved in the process (eg the Case Manager, Case Investigator and the Appointed HR Representative / any relevant HR supports, the Postgraduate Dean etc), the Trainee's representative(s), or any other individuals specified to be available to support the Trainee such as the Training Programme Director. Any breach of confidentiality may, in itself, be deemed potential misconduct or gross misconduct depending on the circumstances.
- The support available from StHK LE Health, Work and Well Being Department and Health Education England if required.
- A contact name and number for any queries, usually the Appointed HR Representative.
- The need for them to fulfil any obligation they have to inform their professional body or the NHS Commissioning Board regarding the Performers List of their exclusion.
- That the Trainee must also inform the Case Manager of any other organisation(s) for whom they undertake either voluntary or paid work. The Trainee must seek the Case Manager's consent if they wish to continue to undertake any such work, but should agree not to undertake any work for any organisation in an area of practice in respect of which the Trainee has been restricted by StHK.



- StHK LE and / or the Post Graduate Dean is / are obliged to inform any other such organisations of the exclusion or restrictions and a summary of the reasons for it if there is concern that the Trainee may be a potential danger to patients. .

Any exclusion is not to be regarded as pre-judging the case at any stage, including during or at the end of the investigation, or any stage of the disciplinary / capability process (if any such proceedings ensue).

In every case of exclusion, StHK LE Medical Director will, in conjunction with the Appointed HR Support and the Postgraduate Dean, consider whether to inform the GMC, Safeguarding colleagues and / or Local Counter Fraud dependent on the nature of the case; and whether to request the issuing of an alert notice based on the level of risk. An alert notice may need to be requested if it is believed the Trainee is practicing at such another organisation in defiance of an undertaking to refrain from restricted areas of practice.

## 2.5 Review, monitoring and reporting of exclusions

In line with the [ACAS Code of Practice - Disciplinary and Grievance Procedures](#) all periods of exclusion must be as brief as possible.

In cases involving a lengthy period of exclusion (i.e. in excess of four weeks) the case will be reviewed on a four-weekly basis by the Case Manager and Director of HR (or designated deputy) and PPA must be consulted. In such cases the Trainee will be advised in writing of the outcome of the review and if the outcome is an extension of the exclusion, the Chief Executive and Board will be advised of that fact in the Suspensions / Exclusion Board report. After three periods of exclusion the Chief Executive must be informed of the reasons for the ongoing exclusion and, if the investigation is ongoing, a timetable for its completion and she/he will advise PPA of this information and make a formal referral to PPA if this has not already been done. The Chief Executive (or designated deputy) must report again to NHSEI should the period of exclusion exceed 6 months.

If it is decided that the exclusion should come to an end, formal arrangements will be made for the trainees return to work. It will be made clear to the trainee whether clinical and other responsibilities are to remain unchanged or what the duties and restrictions are to be, including any monitoring arrangements to ensure patient safety.

## 2.6 Exclusion from Premises

Where exclusion includes an exclusion from premises, during the period of exclusion, the excluded Trainee must not attend their place of work i.e. Host, or any of StHK LE's sites unless specifically permitted in writing or required to do so by the Case Manager and / or StHK LE's HR Director.

The exceptions to this would be as follows:

- Where invited / required by the Case Investigator or Appointed HR Representative to attend a meeting.
- If the Trainee requires emergency medical treatment on site.

- For other health-related reasons i.e. to obtain treatment for themselves or their family, the Trainee should inform the Case Manager in writing well in advance (as appropriate).
- To attend StHK LE Health, Work and Well Being Department.
- To meet with their Trade Union representative or work based colleague, or designated pastoral support. The Trainee should inform the Case Manager in writing, usually within 3 working days if possible.
- It has been agreed by the Case Manager that the Trainee may undertake education or CPD.

## **2.7 Trainee Support**

The trainee will be given the name and contact details of the HR Support to the case who will keep in regular contact with them and update them on progress of the investigation.

The trainee will have full access to support services through HWWB and can obtain pastoral support via HEE as required.

## **SECTION THREE - Procedure for dealing with issues of conduct**

### **3.1 Introduction**

This section should only be followed once a formal investigation process (See **SECTION ONE** ) has concluded and the Case Manager has determined the concern to be one of potential misconduct.

It should be noted that, as all of StHK LE's employees are employed on a specialty training programme, and are therefore covered by this policy, there is no separate "local" disciplinary policy under which personal misconduct (as opposed to professional misconduct) will be considered. All relevant policy and procedural provisions for Trainees are within this document.

### **3.2 Informal resolution following formal investigation**

For minor conduct issues where the investigation process has identified relevant mitigation, the Case Manager may still consider these matters to be dealt with informally with their local Clinical Supervisor and/or Educational Supervisor.

In all cases where there is informal resolution the Trainee should be instructed to complete and evidence appropriate reflection and learning in their e-portfolio and declare the matter on the Form R (Part B) for consideration at their next ARCP.

### **3.3 Formal Disciplinary Meeting**

Following an investigation, if the Case Manager having considered the Case Investigators report categorised the concerns as matters of conduct and decides to apply the formal disciplinary procedure, and fast-track is not appropriate because an employee's contests any allegation(s) and / or where dismissal is a potential outcome, or it is appropriate for a formal disciplinary meeting to take place, arrangements will be made by the StHK LE's Appointed HR Support, for a disciplinary meeting to be convened as a matter of priority. The Schedule of Authority specifying the appropriate level of seniority of Disciplinary Authorities for potential warnings and dismissals is set out at Appendix 4.

The Disciplinary Authority at a disciplinary meeting, which may result in a letter of concern (warning), and not a dismissal, will normally be a Clinical Director, Associate or Deputy Medical Director.

The Disciplinary Authority at a disciplinary meeting, which may result in a dismissal, will be, Deputy or Assistant Medical Director or another designated director appointed by StHK LE's Medical Director or Deputy Medical Director with designated authority to dismiss.

#### **3.31 Personal Misconduct**

In cases of personal misconduct, the Disciplinary Authority will be solely responsible for the decision at the disciplinary meeting following discussion with the Disciplinary HR support.

### 3.32 Professional misconduct

Where a case involving issues of professional conduct proceeds to a meeting under the procedures detailed below, the Meeting will be chaired by the Disciplinary Authority, and the panel must also include a senior professional who is medically qualified (in the case of doctors) or dentally qualified (in the case of dentists) and who is not currently employed by the Trust, who will attend in an advisory capacity only.

### 3.33 General Provisions / Arrangements for Disciplinary Meetings

The trainee will be invited in writing by the Disciplinary Authority to attend the formal disciplinary meeting with their trade union representative or companion. The Trainee will be advised in writing by the Disciplinary Authority of the nature of the alleged misconduct and the potential consequences. The arrangements for the meeting shall be managed by StHK LE's Appointed HR Support.

The Disciplinary Authority, and advisers cannot hear or advise upon the appeal of the same case.

A minimum of fourteen calendar days' notice of the date of the meeting must be given to allow the Trainee to seek adequate representation and prepare their case, this may be extended by mutual consent. Prior notification of the meeting date can initially be given via email or by telephone to the trainee and, if known, the workplace colleague, companion or trade union representative supporting the employee ahead of the formal invitation letter in order to provide as much notice as possible.

Trainees are advised to inform StHK LE's Appointed HR Support of their companion / representative's contact details / availability as soon as possible to allow the Trust enough time to make the appropriate arrangements to accommodate the companion's availability (timeframes for informing the StHK LE's Appointed HR Support will be outlined in the disciplinary meeting invitation letter). If a Trainee's chosen companion will not be available on the proposed date of the formal disciplinary meeting, an alternative date may be considered providing that this is reasonable and not more than seven calendar days after the date originally proposed.

A copy of this policy and copies of any reports, statements or information that will be relied on or referred to at the meeting must be included, preferably with the invite letter. The following points must be included in the letter to the Trainee:

- The date, time and venue for the meeting;
- The names and post titles of the Disciplinary Authority, any other panel members (usually in professional misconduct cases only) and the HR Representative supporting the Disciplinary Authority ("Disciplinary HR Support");
- The nature of the allegations against the Trainee;
- details of the alleged failure to adopt the acceptable behaviours: The names and post titles (including any legal representative(s)) of the individuals presenting the management case;

- The names and positions of any witnesses including the Case Investigator;
- The fact that the meeting will be of a disciplinary nature and may result in disciplinary action being taken against the Trainee, including possible final warning, dismissal or summary dismissal if relevant;
- The right of the Trainee to be accompanied at the meeting as set out in this policy;
- The right of the Trainee to call relevant witnesses if they wish, including the requirement, if s/he does wish to do so, to request the permission of the Case Manager to contact the named potential witnesses, in advance of the meeting to request their attendance; and the requirement for the Trainee to make necessary arrangements for such witnesses to attend.
- Asking whether the employee has any requests for reasonable adjustments at the meeting, (consideration may be applied to all potential protected characteristics).

Any additional documentation that the trainee wishes to submit to the panel should then be submitted no later than 7 calendar days prior to the hearing.

The format for disciplinary meetings is attached as Appendix 2.

The Trainee has the right to be accompanied / represented at the meeting as set out in Section 1 of this Policy.

The Case Manager, or in some cases, the Case Investigator, will present the management case to the Disciplinary Authority. The Case Manager / Case Investigator will not be part of the decision-making process. The Case Investigator (if not already attending to present the management case) may be called to the meeting as a witness.

StHK's Appointed HR Support will arrange for someone who is not involved in the case to take a note (not verbatim) of the meeting. NHS staff should make every effort to attend formal disciplinary meetings as witnesses when required, although they cannot be compelled to do so.

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

If the Trainee is working/living remotely from StHK LE, the meeting will usually be held via video link.

Where a Trainee raises a grievance during a disciplinary process the disciplinary process may be temporarily suspended in order to deal with the grievance. Where the grievance and disciplinary cases are related it may often be appropriate to deal with both issues concurrently. If the grievance arises prior to a disciplinary meeting, the Case Manager will usually decide upon the appropriate course of action. In some cases however it may be necessary to delegate this decision to an alternative person. If the grievance occurs during the disciplinary / appeal meeting, the Disciplinary / Appeal Authority will make the decision as to how to proceed. In either case, the decision will be taken after appropriate HR advice / consultation with the Appointed HR Support or Disciplinary / Appeal HR Support respectively.

### 3.4 Proceeding in absence

There are many reasons why a Trainee might seek to postpone or avoid a meeting for example, some may want time to consider their position or seek advice. Others suffering from sickness may not feel capable of dealing with a disciplinary process until their condition improves. It may be that the Trainee's companion is unavailable to attend. Meetings should be rescheduled if the failure to attend is due to circumstances beyond the Trainee's control. However, if the cause of failure to attend is due to the stress of having disciplinary proceedings being brought it is often in the Trainee's best interests to proceed with the meeting so that a conclusion can be reached. In the event of sickness/stress being the cause for non-attendance, medical advice and guidance may be sought from STHK's Health Work and Wellbeing service as to the Trainee's fitness to participate in the meeting. A Trainee who is unfit for work may still be fit to participate in a disciplinary meeting. If the Trainee is delaying attendance at a disciplinary meeting without good cause or medical evidence indicates the Trainee is fit to participate but fails to, the meeting may proceed and a decision be reached in the Trainee's absence.

### 3.5 The Decision

The Disciplinary Authority must adjourn before a decision is taken. This allows time for reflection and proper consideration of all aspects. However, where possible the decision will be given to the Trainee orally on the day of the meeting.

When reaching a decision the Disciplinary Authority (taking advice from LE HR and the independent senior professional if applicable) shall determine whether any of the facts of the allegation(s) presented are found to be proved. If any of the allegations are found to be proved the Disciplinary Authority must then consider, using as a basis the standards of behaviour and conduct expected of StHK's Trainees whether any and/or all of the allegations singularly, collectively or cumulatively constitute misconduct or, if relevant, gross misconduct. The Disciplinary Authority will consider whether any allegations proved strike at the heart of the employee-employer relationship.

If it is determined that any or all of the allegations found proved, if any, constitute misconduct or gross misconduct then the Disciplinary Authority must decide what sanction, if any, to apply to the Trainee's employment.

The matter of which sanction, if any, to apply is a matter for the Disciplinary Authority, solely. The Disciplinary Authority must exercise their own judgement in coming to that decision. That is not a decision to be taken lightly and all of the circumstances of the case will be taken into consideration. It will often be helpful to consider, if misconduct has been found, whether that misconduct is easily remediable, whether it has been remedied and whether it is likely to be repeated.

When demonstrating insight and remediation a doctor needs to look at their conduct with a self-critical eye, acknowledge fault, apologise and convince the Disciplinary Authority that they have learned a lesson from the experience.

The Disciplinary Authority must consider all the circumstances and be mindful of the need for reasonableness in all aspects of the process, including the investigation, and their decision. In particular, the following factors will need to be considered:

- What facts have been determined, on the balance of probabilities;
- Whether it is determined on the basis of those facts, that the Trainee has committed the alleged act(s) of misconduct;
- The seriousness of the offence (s), taking into account Appendix 1 which provides details of behaviour which would be considered misconduct or gross misconduct;
- The potential sanctions available in light of the above.

In deciding the appropriate sanction, the following factors will to be considered:

- The Trainee's response to the incident / concerns / allegations and their conduct during the process. For example, did they reflect appropriately; and / or show remorse and / or apologise if appropriate?
- Any current disciplinary sanctions on the Trainee's file;
- Any other relevant conduct by the Trainee and / or previous relevant training or management input the Trainee has received including advice, counselling and / or expired disciplinary warnings (NB expired disciplinary warnings cannot to be relied upon by the Disciplinary Authority for the purposes of 'totting up' of warnings but only as relevant context as to the appropriate level of sanction for the current matter under consideration)
- How similar incidents have been treated within StHK LE;
- Any other mitigating factors in the Trainee's case including length of service, previous disciplinary record.

The formal sanctions available to a Disciplinary Authority are detailed later in this section.

Where possible, the outcome of the meeting will be notified to the Trainee in person on the day of the meeting and will be confirmed in writing within fourteen calendar days to the Trainee's email address(es). If this is not possible, the Disciplinary Authority will inform the Trainee of an alternative reasonable timescale for delivery of the decision (whether in person and subsequently confirmed in writing, or only in writing).

For letters of concern (previously known as formal warnings), the subsequent written confirmation of the disciplinary sanction must include reference to the following points:

- Details of the trainee's failure to adopt the Trust's acceptable behaviours
- The level of letter of concern (previously known as warning) and the period during which it will remain in force.
- Any improvement or correction of behaviour which is expected.
- The support which will be provided, if appropriate.
- The right of appeal against the warning, the deadline for submitting such an appeal and to whom it should be sent.

For a dismissal, the confirmation letter must include:

- Details of the trainee's failure to adopt the Trusts acceptable behaviours Confirmation of the dismissal including whether it was a summary dismissal or with notice and, in either case, confirmation of the effective date of dismissal / termination of the employment.
- Arrangements for finalising practical contractual issues such as the return of StHK LE's, the Host's and Trainee's respective property, to whom future reference requests and queries should be sent etc.
- The right of appeal, the deadline for submitting such an appeal and to whom it should be sent.
- Access to the Trust's Employee Assistance Programme
- Extended support from the HWWB arranged via the HR Department
- Contact details for other external support

Where, following the issue of a first or final letter of concern (previously known as first or final warning), a Trainee has achieved the required improvement and no re-occurrence or further failure to adopt the Trusts acceptable behaviours has taken place within the time limit of the warning, the disciplinary action will be regarded as 'spent'.

*NB Should any long-term absence occur (i.e. 4 weeks or longer) whilst a warning is on a Trainee's file, the expiry date of the warning will usually be adjusted to reflect the duration of the period away from work This will include absences such as sickness, maternity / paternity / adoption leave, shared parental leave Out of Programme etc.*

The Appointed HR Representative is responsible for informing the Postgraduate Dean and Case Manager of the outcome of the disciplinary process, by sending a copy of the outcome letter. If an appeal is subsequently received, the Appointed HR Representative should also inform the Postgraduate Dean of that fact and, ultimately, the outcome of that appeal process in the same way.

### **3.6 Disciplinary Sanctions**

The provisions in this section are guidance and are not binding on a Disciplinary Authority who may impose whatever reasonable sanction they consider fair and appropriate in all the circumstances of the particular case in question.

#### **3.6.1 Disciplinary Sanctions First letter of concern (First Written Warning)**

This level of sanction may be issued where there has been failure to adopt the Trusts acceptable behaviours which was not suitable to be, or successfully, addressed by informal measures A first letter of concern may be given in conjunction with an improvement action plan. The first letter of concern will normally remain 'live' / 'active' on the Trainee's personal file for 12 months, after which time it will be considered 'spent'. This may be extended in exceptional circumstances.

#### **3.6.2 Disciplinary Sanctions - Final letter of concern (Final Written Warning)**

The disciplining authority may issue a final letter of concern in cases of



- There has been a failure to adopt the Trusts acceptable behaviours which may not warrant dismissal but is serious enough not to be tolerated a second time.
- A Trainee has failed to adopt the Trust's acceptable behaviours, whilst subject to a 'live' / 'active' first letter of concern. A final letter of concern may be given in conjunction with an improvement action plan. The letter of concern will normally remain 'live' / 'active' on the Trainee's personal file for 12 months, after which time it will be considered 'spent'. This may be extended up to a maximum of 18 months in exceptional circumstances.

### **3.6.3 Disciplinary Sanctions - Dismissal**

Dismissal under this procedure is the ultimate and final sanction which can be imposed.

Dismissal will not usually take place for a first breach of discipline unless it is a case of gross misconduct, but may take place if a Trainee's conduct remains unsatisfactory following previous live warnings e.g. a final written warning, or warnings.

The Disciplinary Authority shall bear in mind the test of reasonableness which may be applied to their decision, following the meeting. A decision to dismiss should only be taken by the Deputy or Assistant Medical Director or another designated director appointed by StHK LE's Medical Director or Deputy Medical Director with designated authority to dismiss. The dismissal will normally be summary (ie without notice) if the Trainee is found to have committed an act of gross misconduct and will be effective from the date the decision is communicated to the Trainee i.e. usually in person at the disciplinary meeting.

If the dismissal is not a summary dismissal as a result of gross misconduct, the Trainee will be given and paid for notice in accordance with the contract of employment. Alternatively, and also in accordance with the contract of employment, there may, at the discretion of StHK LE, be a payment in lieu of notice.

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

If dismissal is to be imposed as a sanction, then the written confirmation sent to the Trainee within fourteen calendar days of the decision will state the reasons for that decision and will make clear:

- What the reason(s) for that dismissal is or are in accordance with Section 98 of the Employment Rights Act 1996;
- Why it is said that reason or those reasons is or are a reasonable action on the part of StHK LE;
- Why it is said that reason or those reasons is or are a sufficient reason for dismissing the Trainee; and
- Why that decision is a fair decision determined in accordance with equity and the substantial merits of the case.

## **3.7 Appeal Meeting**

Trainees have the right of appeal against formal disciplinary sanctions issued against them during a disciplinary meeting. They should appeal in writing to StHK LE Head of HR, stating their grounds for appeal, within ten calendar days of the date of the outcome letter confirming the sanction being received by the Trainee. The Trainee should submit any additional evidence which they wish the Appeal Authority to consider, with their appeal letter.

Appeals will be heard as soon as reasonably practicable but at least seven calendar days' written notice of the appeal meeting date will be given to the Trainee to allow for appropriate preparation. The Appeal HR Support will notify the Trainee of any possible delays in setting up the appeal meeting and the reasons for the delay.

The arrangements for the appeal meeting shall be managed by StHK LE's Appeal HR Support.

Guidance on the conduct of appeal meetings can be found at Appendix 3.

The Schedule of Authority specifying the appropriate level of seniority of Appeal Authorities for warnings and dismissals is set out at Appendix 4.

The purpose of the appeal meeting is to review the decision of the Disciplinary Authority. Its purpose is not to re-hear the original disciplinary meeting. The Appeal Authority has the authority to apply a lower sanction, or uphold the original management disciplinary decision.

The management appeal case documentation will include all the evidence presented by all parties at the original meeting, the notes from that meeting and the disciplinary outcome letter.

The Disciplinary Authority from the disciplinary meeting is responsible for presenting their case in response to the appeal of their decision but in exceptional circumstances this may be delegated to a legal representative and normally in cases whereby the trainee is also legally represented.. In any event, the Disciplinary Authority will usually attend the meeting to answer any questions from the Trainee (or, if represented, their representative) and the Appeal Authority about the disciplinary decision or process.

### **3.71 Personal misconduct**

In cases of personal misconduct the Appeal Authority will be solely responsible for the decision at the appeal meeting following discussion with the HR representative.

### **3.72 Professional Misconduct**

In cases of professional misconduct, the Appeal Meeting will be chaired by the Appeal Authority, the Appeal Authority will be the single decision maker and will be accompanied by a senior professional who is medically qualified (in the case of doctors) or dentally qualified (in the case of dentists) and who is not currently employed by the Trust. (N.B. This individual must not be the same senior professional who sat on the disciplinary meeting) and the Appeal HR Support, who will both attend in an advisory capacity.

### 3.73 General Provisions / Arrangements for Appeal Meetings

No one involved in the appeal decision making process, even in an advisory capacity, shall have had prior substantive involvement in the case. A StHK LE HR Representative will be present at an appeal meeting in an advisory capacity as the StHK LE Appeal HR Support, but this must be a different person than advised at the disciplinary meeting. Appeals should be held by a manager of a higher or equivalent seniority than that of the Disciplinary Authority.

Appeals against dismissal shall be heard by the Medical Director or a Trust Director who will be assisted by the Head of HR or other designated senior HR representative in an advisory capacity as the StHK LE Appeal HR Support. If the Medical Director made / chaired the original disciplinary decision or is otherwise unavailable, a nominated StHK LE Director will consider the appeal.

During the appeal, Trainees have the same right to representation as applied at their disciplinary meeting.

.Where possible the outcome will be delivered by the Appeal Authority on the day of hearing and will be confirmed in writing. Where it is not possible to deliver the outcome on the same day, the Appeal Authority will agree with the trainee how the outcome will be delivered. In any event the outcome will be confirmed in writing.

The HR support for the Appeal Authority will arrange for someone who is not involved in the case to take a non-verbatim note of the meeting. A copy of the brief notes of the meeting will be provided to the trainee after the meeting. This will normally follow on after confirmation of appeal outcome letter.

The StHK LE HR is responsible for informing the Postgraduate Dean and MHPS Case Manager of the outcome of the disciplinary appeal process, by sending a copy of the outcome letter.

## SECTION FOUR – Procedure for dealing with issues of capability

### 4.0 Introduction

This section should only be followed once a formal investigation process (See **SECTION ONE** has concluded, and the Case Manager has determined the concern to be one of potential capability that is critical and cannot be dealt with , and the relevant Postgraduate Dean has confirmed that potential capability matter cannot be dealt with in accordance with Annual Review of Competence Progression (ARCP) processes.

There will be occasions when a Trainee is considered not to be making satisfactory progression in their training. For doctors and Dentists in training, this shall almost always be considered to be an educational matter dealt with in accordance with ARCP processes.

In exceptional circumstances such matters may be required to be addressed as a capability issue under this section. This will be decided by the Case Manager in consultation with the PGD and StHK LE HR, and after consultation with the PPA.

#### 4.1 Alternatives to Formal Capability Hearing Process

The Case Investigator will produce a report for StHK's Case Manager as detailed in Section one of this Policy.

The report will be forwarded to the individual Trainee who will have 14 calendar days to comment in writing on the factual content of the report and provide any mitigation. Any extension to this deadline will need to be agreed by all parties.

The Case Manager will:

- Decide what further action is necessary based on the findings of the report, following comments from the Trainee and advice from the PPA.
- Consider whether action under Section Two of this policy is necessary to exclude the Trainee or place a temporary restriction on their duties.
- Consider with StHK LE's Medical Director, the Post Graduate Dean, [the Host Primary Manager, where appropriate] and Director of Human Resources whether the issue(s) can be resolved through local action, e.g. ARCP, retraining, counselling, etc.
- If the concerns about capability cannot be resolved routinely by ongoing "intra-training" support or counselling from the Trainee's supervisor, or via educational and ARCP processes, refer the case to PPA, which will consider whether an assessment should be carried out. If appropriate, PPA will also assist StHK LE to design an action plan, to be agreed by StHK, HEE and the Trainee, to remedy any lack of capability that has been identified during the assessment.
- Inform the Trainee of the decision about the next steps to take within 10 days.

#### 4.2 PPA

Critical concerns about the capability of a doctor or dentist may arise from a single incident or a series of events, reports or poor clinical outcomes. Advice from the PPA will help the Trust to come to a decision on whether the matter raises questions about the Trainee's capability as an individual (health problems, behavioural difficulties or lack of clinical competence) or whether there are other matters that need to be addressed. If the concerns about capability cannot be resolved routinely by ongoing "intra-training" support or counselling from the Trainee's supervisor, or via educational and ARCP processes, the matter must be investigated as per Section 1 above and must also be referred to PPA (unless the Trainee refuses to have his or her case referred) before it can be considered by a capability Panel.

#### **4.32 How to proceed where conduct and capability issues are involved**

It is inevitable that some cases will cover conduct and capability issues. It is recognised that these cases can be complex and difficult to manage. If a case covers more than one category of problem, they should usually be combined under a capability meeting although there may be occasions where it is necessary to pursue a conduct issue separately. It is for StHK LE to decide upon the most appropriate way forward having consulted. PPA.

#### **4.4 Conducting Capability Hearings**

In the exceptional event that capability concerns cannot be managed through HEE via the ARCP processes, the procedures set out in Part IV "Procedures for dealing with issues of capability" of Maintaining High Professional Standards in the NHS will be applied, this will include the pre-hearing process and the management of appeals.

The Case Manager may also need to consider whether action under section two of this policy is necessary to exclude the Trainee or place temporary restrictions on their clinical duties.

## **SECTION FIVE – Procedure for Handling Health-Related Concerns**

### **5.0 Introduction**

This section should only be followed once a formal investigation process (See **SECTION ONE** ) has concluded and the Case Manager has determined the concern to be potentially one of health.

A wide variety of health problems can have an impact on a Trainee's clinical performance. These conditions may arise spontaneously or be as a consequence of workplace factors such as stress.

This section should be read in conjunction with the Lead Employer Attendance Management Policy and Procedure which is available on the Lead Employer website.

### **5.1 Reasonable Adjustments**

Where a Trainee has health issues, the Trust will consider what reasonable adjustments could be made to a Trainee's workplace or other arrangements.

Some examples may include:

- Adjustments to their working environment.
- Adjusting the Trainee's duties where compatible with attainment of required experience to fulfil curriculum requirements.
- Altering a Trainee's working hours or pattern of work.
- Allowing absence for rehabilitation, assessment or treatment.
- Acquiring/modifying equipment.

This is not an exhaustive list.

### **5.2 Handling Health issues**

Where there is an incident that points to a possible concern with a Trainee's health or the Trainee raises this as an explanation for their behaviour or performance, this should be investigated by referring the Trainee to STHK LE's Health, Work and Well Being service. The Trainee should be informed of the referral and the reason for it and shall be provided with a copy upon request.

The Health, Work and Wellbeing Physician will send his/her assessment of the health issues and any consequent recommendations to the Lead Employer who shall co-ordinate discussions with relevant stakeholders from within HEE and the Host Organisation in line with the Lead Employer Attendance Management Policy.

If a Trainee's ill health makes them a potential danger to patients and they do not recognise that, or are not prepared to co-operate with measures to protect patients, then exclusion from work in line with Section two and referral to the professional regulatory body must be considered.

In those cases where there is impairment of behaviour or performance solely due to ill health, formal disciplinary or capability procedures will be considered only in the most exceptional of circumstances, for example, if the individual concerned refuses to co-operate with the employer to resolve the underlying situation, e.g. by repeatedly refusing a referral to StHK LE's Health, Work and Well Being service and / or PPA.

If a Trainee who is subject to disciplinary proceedings puts forward a case, on health grounds, that the proceedings should be delayed, modified or terminated, the Case Manager will refer the Trainee to the Health, Work and Well Being service for assessment as soon as possible.

### **5.3 Sickness absence management**

Sickness absence shall be managed in accordance with the Lead Employer of Attendance Management policy and procedure.

In some cases retirement due to ill health may be necessary. Trainees must be aware that eligibility for retirement under the NHS Pension Scheme is determined by the NHS Pensions Agency, not by the employing Trust. STHK LE will, where necessary, advise trainees of the mechanisms for application, please also refer to the Lead Employer Attendance Management policy and procedure.

## SECTION SIX – MONITORING TRAINING AND COMPLIANCE

### 6.1 Records

Records of informal disciplinary processes / measures and/or first and final letters of concerns must be kept on the Trainee's StHK LE personal file for the duration of the warning. Once the warning is considered spent, the outcome letter will be retained confidentially but will not form part of the trainees personal employee file.

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

Any written documents or records relating to proceedings under this policy (including those relating to appeals), must be stored confidentially. They will be retained for a period of up to ten years or longer at management direction, after which time they will be destroyed in line with the Trusts Records Management policy on the destruction of records

### 6.12 Data Protection of Patient Records

Where they relate to an identifiable person, patient records are special categories data under the General Data Protection Regulations (EU) 2016/679 and the Data Protection Act 2018 and must be processed in accordance with the relevant provisions of that legislation. Where such patient data is relevant to matters under investigation, it may be necessary for the Case Investigator, Case Manager, StHK LE and / or Host to take advice from StHK LE's Medical Director and / or Host's Caldicott Guardian and / or legal advisers.

It is StHK LE's understanding that an NHS organisation may access its patient records (subject to satisfying obligations such as privacy notices, data security measures etc) for the purposes of such investigations where it is relevant to the investigation, because under Article 6 and Article 9 of the General Data Protection Regulation (GDPR) such investigation is lawful processing of data as it is :

- done in compliance with StHK LE's and the Host's legal obligations (Article 6(c)); and / or
  - necessary for the performance of a task carried out in the public interest or in the exercise of official authority vested in StHK LE and /or the Host (Article 6(e)); and / or
  - necessary for the purposes of a legitimate interest of StHK LE (Article 6(f))
- and
- necessary for the purposes of performing or exercising obligations or rights imposed or conferred in connection with employment law (Article 9(2)(b)); and / or
  - necessary for reasons of substantial public interest (Article 9(2)(g)); and / or

Any copies used in the investigation and resulting report must be anonymised / redacted / pseudonomised to NHS standards and the Data Protection Legislation



## 6.2 Training

StHK LE's HR Representatives will provide training, coaching and mentoring as required for Host Organisations.

In specific cases when training issues are identified through a review of a case, an individual training needs analysis will be carried out by an appropriate senior manager within the Host Organisation, supported by StHK LE HR Representative as required. Any training needs identified will be included in the relevant individual's personal development plan and should be documented in the trainee's e-portfolio to be managed educationally via the trainee's educational team,

## 6.3 Monitoring Compliance

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

The StHK LE Board has responsibility for overseeing compassionate and appropriate use of the procedures in this policy and for ensuring appropriate decision-making is taking place under them. It must also ensure that appropriate resources are allocated to enable those working under the policy to deliver efficient, sound and fair processes.

### 6.31 Key Performance Indicators (KPIs) of the Policy

No	Key Performance Indicators (KPIs) Expected Outcomes
1	Procedural documents on the intranet are in date
2	Procedural documents on the intranet are in the correct style and format (according to approval date)
3	Procedural documents contain all the appropriate sections
4	All procedural documents are subject to analysis of the effects on equality
5	Consultation process is appropriate
6	Approval process is appropriate
7	Archive process is appropriate

### 6.32 Performance Management of the Policy

Minimum Requirement to be Monitored	Lead(s)	Tool	Frequency	Reporting Arrangements	Lead(s) for acting on Recommendations
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Audit of at least 3 procedural documents	Assistant Director of Governance / Policy Governance Group	Random review of procedural documents to be agreed by the Policy Governance Group	Monthly review of sample of 3 procedural documents	Policy Governance Group and Quality Committee	Author(s) Policy Governance Group Members
95% of procedural documents on the intranet are within review date	Quality & Risk Office Manager / Assistant Director of Governance	Monthly report to be submitted to Policy Governance Group showing compliance	Monthly	Policy Governance Group and Quality Committee (annually)	Author(s) Policy Governance Group Members Lead Executive Director(s)

#### 6.4. References/Bibliography

No.	Related Document
1	Gold Guide 7 Gold Guide 8 <sup>th</sup> Edition
2	<a href="#">NHS Digital guidance: Records Management Code of Practice for Health and Social Care 2016</a>
3	<a href="#">MHPS</a>

#### 6.5 Related Trust Documents

No.	Related Document
1	<a href="#">StHK LE's Attendance Management Policy</a>
2	Alcohol and Drugs misuse Policy
3	<a href="#">Policy for Dealing with Allegations of Abuse to Children and Vulnerable Adults by Trust Employees</a>
4	<a href="#">Fast Track Request Form</a>
5	<a href="#">Code of Confidentiality</a>

#### 6.6 Equality Analysis Form

The screening assessment must be carried out on all policies, procedures, organisational changes, service changes, cost improvement programmes and transformation projects at the earliest stage in the planning process to ascertain whether a full equality analysis is required. This assessment must be attached to all procedural documents prior to their submission to the appropriate approving body. A separate copy of the assessment must be forwarded to the Patient Inclusion and Experience Lead for monitoring purposes. [Cheryl.farmer@sthk.nhs.uk](mailto:Cheryl.farmer@sthk.nhs.uk).

If this screening assessment indicates that discrimination could potentially be introduced then seek advice from the Patient Inclusion and Experience Lead. A full equality analysis must be considered on any cost improvement schemes, organisational changes or service changes which could have an impact on patients or staff.

<b>Equality Analysis</b>			
<b>Title of Document/proposal /service/cost improvement plan etc:</b>		Lead Employer Policy for the Handling of Complaints about Specialty Trainees	
<b>Date of Assessment</b>	February 2021	<b>Name of Person completing assessment /job title:</b>	Natalie Villegas
<b>Lead Executive Director</b>	Director of Human Resources		HR Business Partner
<b>Does the proposal, service or document affect one group more or less favourably than other group(s) on the basis of their:</b>		<b>Yes / No</b>	<b>Justification/evidence and source</b>
1	Age	No	Click here to enter text.
2	Disability (including learning disability, physical, sensory or mental impairment)	No	Click here to enter text.
3	Gender reassignment	No	Click here to enter text.
4	Marriage or civil partnership	No	Click here to enter text.
5	Pregnancy or maternity	No	Click here to enter text.
6	Race	No	Click here to enter text.
7	Religion or belief	No	Click here to enter text.
8	Sex	No	Click here to enter text.
9	Sexual Orientation	No	Click here to enter text.
<b>Human Rights – are there any issues which might affect a person’s human rights?</b>		<b>Yes / No</b>	<b>Justification/evidence and source</b>
Right to life		No	Click here to enter text.
Right to freedom from degrading or humiliating treatment		No	Click here to enter text.
Right to privacy or family life		No	Click here to enter text.
Any other of the human rights?		No	
<b>Lead of Service Review &amp; Approval</b>			
<b>Service Manager completing review &amp; approval</b>		Debbie Livesey	
<b>Job Title:</b>		Head of Human Resources	

## Appendix 1

### Disciplinary Rules

This list, whilst giving some of the more common breaches of good practice or rules and the level of disciplinary action which may be taken, is not exhaustive. As each case will be considered on its individual merits and in the light of individual circumstances, the actual response to a breach of the rules may be different.

#### 1.0 Gross Misconduct

The following are examples of offences that may constitute gross misconduct, gross incompetence or gross negligence, which may result in summary dismissal (ie without notice or notice pay).

- Theft, or unauthorised possession of any property or facilities belonging to StHK LE, HEE, a Host or University or to any member of staff or any patient.
- Serious, deliberate, malicious or negligent damage to the premises, property or records of StHK LE, Health Education England or Host; or that of their staff, patients / service users or visitors
- Deliberate falsification of any documentation for / to StHK LE, HEE or a Host including about qualifications or other information used in support of an application for post or during the course of the employment such as patient records, reports, plagiarism, falsifying qualifications, failing to declare convictions etc.
- Bribery or corruption – unauthorised receipt of goods, money, favours or excessive hospitality in respect of services rendered. This does not apply to the receipt of authorised professional fees.
- Fraud – any deliberate attempt to defraud StHK LE, HEE, a Host, University or a member of the public. This includes for example: dishonest claims for expenses, falsely completing timesheets, or fraudulently procuring medication.
- Refusal or deliberate failure to carry out duties or reasonable instructions of StHK LE, HEE, a Host or University.
- Persistent failure to follow reasonable management instructions.
- Gross negligence or incompetence or any action or failure to act that compromises the health and safety of a service user, carer or another member of staff or a member of the public.
- Incapability at work as a result of being intoxicated by reason of alcohol or drugs.
- Being found to have traces (metabolytes) of illegal or inappropriately used drugs in their system (as found in a urine sample), as per the Trusts Alcohol and Drug Misuse Policy.
- Being found to be over the 'acceptable limit' for alcohol as defined within StHK Alcohol and Drug Misuse Policy.
- Misappropriation of work / NHS time (including that of StHK LE and Hosts)
- The use of foul language at work, e.g., language that is considered to be abusive, offensive, discriminatory etc Violent, dangerous, intimidating conduct or offensive behaviour, including assault.
- Serious breach of rules and procedures concerning health and safety at work.

- Serious breach of the Standing Financial Instructions of StHK LE, Health Education England or a Host or University.
- Act(s) of discrimination, victimisation or harassment against another member of staff, a patient or a third party relating to any protected characteristic.
- A criminal offence, which may (whether it is committed during or outside a Trainee's hours of work) adversely affect the reputation of StHK LE, Health Education England, a Host or University, or may affect the Trainee's suitability as a medical or dental trainee or their reasonable acceptability to other members of staff or to patients.
- A serious breach of confidentiality.
- Unauthorised, inappropriate or excessive use / access of computer, social media or other IT systems.
- Serious breach of the Trust's Code of Confidentiality, including downloading or transmission of material which is defamatory, offensive, obscene, malicious, discriminatory.
- Posting and or sharing of inappropriate material i.e. comments and or photographs about colleagues or patients or posting any material that could be considered explicit, offensive, defamatory, obscene, malicious, discriminatory on social networking and / or media sites such as Facebook, Instagram, Twitter etc.
- Ill treatment, abuse (whether physical, verbal, emotional or psychological) or wilful neglect of patients.
- Serious breach or failure to adhere to policies and procedures and protocols of StHK LE, HEE, Host or University
- Serious misconduct in research e.g. piracy, fabrication, falsification, fraud, wilful destruction of research materials, deception in proposing, carrying out or reporting the results of research, deliberate or negligent deviation from accepted practice in carrying out research.
- Serious breach of professional Codes of Practice and other associated national guidance including the Code of Private Practice.
- Failure to disclose a police arrest, warning, a caution, a criminal conviction.
- Failure to maintain registration with an appropriate professional body.
- Serious drug errors (where appropriate following review under Drug Incident procedure and/or the capability procedure).
- Any other substantial misconduct.
- Any breach of the rules outlined in the below section, which is so serious that it amounts to gross misconduct

## 2.0 General Misconduct

The following lists include examples of offences, which amount to misconduct falling short of gross misconduct, but may result in dismissal in some circumstances, or a final written warning. These lists are not exhaustive. The fact that an offence is included in this section does not prevent it being potentially capable of amounting to gross misconduct depending upon the seriousness of the circumstances. Similarly, offences in the General Misconduct list may, in certain circumstances, warrant a final written warning, if sufficiently serious or repeated.

- Repeated or persistent misconduct / behaviour offences.
- Serious or repeated drug errors.
- Disruptive or dysfunctional conduct or behaviour in the workplace.
- Unauthorised leave from work.
- Poor time keeping, irregular attendance at work, late arrival, early leaving and extended breaks when not part of authorised flexible working nor previously agreed with a line manager.
- Unauthorised absence or failure to comply with StHK LE's or a Host Trust's notification requirements for sickness absence, holiday booking, or any other type of absence.
- Drug Errors (where appropriate following review under StHK LE's or a Host Trust's Drug Incident procedure and/or capability procedure)
- Serious or repeated failure to carry out reasonable instructions or unreasonable non-co-operation with management activities.
- Failure to follow StHK LE's or a Host Trust's / policies and procedures, including health and safety policies, drug policies, equal opportunity policies.
- Conduct, which disrupts the work effort of others.
- Smoking in prohibited areas.
- The covert recording of meetings with StHK, Health Education England, a Host or during the course of work.
- Failure to work in a co-operative and respectful manner with colleagues.
- Inappropriate or unprofessional communication, either verbal or written.
- Misuse or lack of proper care of Host property, including computers and other equipment.
- Any matter listed under gross misconduct above whereby the circumstances in which the alleged offence is said to have occurred is considered to fall short of gross misconduct.

## Appendix 2

### Procedure at the Disciplinary Meeting

#### **N.B.**

- A . The Case Manager, or in some cases, the Case Investigator or a legal representative engaged by StHK LE for the purpose of presenting StHK LE's case at the disciplinary meeting, will present the management case to the Disciplinary Authority.
- B The disciplinary meeting will be chaired by the Disciplinary Authority. The Disciplinary Authority will be solely responsible for the disciplinary decision, after discussion with the Disciplinary HR Support, and in cases of potential professional misconduct, a senior professional not employed by StHK LE.
- C The Appointed HR Support will prepare and circulate sets of duplicate bundles of relevant papers in advance of the meeting so that the Disciplinary Authority / independent senior professional (in cases of potential professional misconduct), the Trainee / their companion / representative and Case Manager / Case Investigator and any witnesses have the same set of papers to prepare with and reference at the disciplinary meeting. The bundle(s) will usually include: the investigation report and appendices, relevant correspondence between the Case Manager, Case Investigator and the Trainee including the decision to proceed / invitation to disciplinary meeting, relevant policies and procedures, any additional documents provided by the Trainee.
1. The Disciplinary Authority will facilitate the introductions and state the complaint or allegation that has led to the need for the disciplinary meeting.
  2. The Case Manager (in most cases) will present the case outlining the issues and factual findings, referring where appropriate to the relevant papers or investigation report.
  3. If needed, witnesses may be called at this stage to give / confirm their evidence and then be questioned by the Disciplinary Authority, the independent senior professional (in cases of potential professional misconduct), the HR Support and the Trainee and/or their companion / representative. The Presenting Officer may also ask questions to clarify evidence given. Each witness shall withdraw after giving their evidence and answering questions but may be invited back into the meeting if required by the Disciplinary Authority.
  4. The Trainee and/or their companion/representative will have the opportunity to ask questions of the Case Manager.
  5. The Disciplinary Authority, the HR Support will have the opportunity to ask the Case Manager questions.

6. The Trainee and / or their companion / representative will present their case and call witnesses if they so wish.
7. The Case Manager , the Disciplinary Authority, the independent senior professional (in cases of potential professional misconduct), the HR Support will have the opportunity to ask questions of the Trainee and their witnesses. The Trainee and / or their companion / representative may also ask questions to clarify evidence given. Each witness shall withdraw after giving their evidence and answering questions but maybe invited back into the meeting if required by the Disciplinary Authority.
8. The Trainee or their companion / representative may sum up their case if they so wish without introducing any new matter. The Case Manager will also have the opportunity to sum up their case.
9. Nothing in the foregoing procedure shall prevent the Disciplinary Authority permitting those involved in the meeting to clarify or amplify any statement they may have made.
10. The Disciplinary Authority may, at his/her discretion if necessary, adjourn the meeting in order that further evidence may be produced or for any other reason.
11. Following completion of the submission of all evidence and summing-up, the Disciplinary Authority, the independent senior professional (in cases of potential professional misconduct), and the HR Support shall withdraw.
12. The Disciplinary Authority/ panel, supported by the HR Support and the senior professional if present shall deliberate in private, only recalling the meeting to clear up points of uncertainty on evidence already given. If recall is necessary, the Trainee and his / her companion / representative will be recalled, even where they are not concerned with the point in question. The final decision will be that of the Disciplinary Authority.
13. A decision will normally be announced immediately following the meeting. Whenever this is not possible, the Trainee will be advised of the decision by the Disciplinary Authority within seven calendar days.
14. The Disciplinary Authority shall normally write to the Trainee within fourteen calendar days of the decision to confirm their decision and the right to appeal.
15. The Trust recognises how difficult the above process can be, and so the trainee or their companion / representative may request an adjournment at any time during the disciplinary meeting.



## Appendix 3

### Procedure at the Appeal

The Disciplinary Authority may be represented at the appeal meeting by a legal representative engaged by StHK LE for the purpose of presenting StHK LE's response to the appeal at the appeal meeting.

The appeal meeting will be chaired by the Appeal Authority. The Appeal Authority will be solely responsible for the appeal decision, after discussion with the Appeal HR Support, and in cases of potential professional misconduct, a senior professional not employed by StHK LE (who will be different to the senior professional who sat on the disciplinary panel).

The Appointed Appeal HR Support will prepare and circulate sets of duplicate appeal bundles of relevant papers in advance of the appeal meeting so that the Appeal Authority, the independent senior professional (in cases of potential professional misconduct), the Trainee / their companion / representative, and the Disciplinary Authority / legal representative have the same set of papers to prepare with and reference at the appeal meeting. The appeal bundle(s) will usually include: the Trainee's letter / statement of appeal, the Disciplinary Authority's disciplinary decision letter, the disciplinary meeting bundle of papers, any disciplinary meeting transcript / notes, and any other relevant correspondence, including where appropriate the Disciplinary Authorities statement of case in response to the appeal.

1. The Appeal Authority will facilitate the introductions and state the findings, decision and sanction from the disciplinary meeting that are the subject of the appeal, and confirm the grounds of appeal. The Appeal Authority will confirm that they have considered the appeal bundle and make it clear that these documents will be taken as read. The Appeal Authority will also confirm that the appeal meeting is not a re-meeting
2. The Trainee and/or their companion/representative will present their case and call witnesses if necessary. NB Witnesses who attended the disciplinary meeting should only be called again if they can provide significant additional evidence to that which was presented at that meeting.
3. The Appeal Authority, Appeal HR Support and the Disciplinary Authority / their legal representative will have the opportunity to ask questions of the Trainee and any witnesses. Any witnesses shall withdraw after giving their evidence and answering questions but maybe invited back into the meeting if required by the Appeal Authority.
4. The Appeal Authority, Appeal HR Support and the Trainee / their legal representative will then have the opportunity to ask questions of the Disciplinary Authority. The Appeal Authority will consider whether it is necessary to call the Case Investigator to also answer questions.
5. Nothing in the foregoing procedure shall prevent the Appeal Authority from inviting / permitting any witness, the Trainee or their companion/representative, the

Disciplinary Authority or Case Investigator to clarify, expand upon or explain any statement they may have made.

6. The Trainee or their companion/representative may sum up their appeal if they so wish but the summary must not introduce any new matter. The Disciplinary Authority may also sum up their response to the grounds of appeal.
7. The Appeal Authority may, at their discretion, adjourn the meeting in order that further evidence may be produced or for any other reason.
8. Following completion of the submission of all evidence and summing-up, the Appeal Authority shall deliberate in private, accompanied by the Appeal HR Support and the independent senior professional (in cases of potential professional misconduct), who are available to give advice, only reconvening the meeting to clear points of uncertainty on evidence already given. If this is necessary, the Trainee and their companion / representative will be recalled, even where they are not concerned with the point in question. The final decision will be that of the Appeal Authority, and the HR Representative and the independent senior professional (in cases of potential professional misconduct) will act in advisory capacity.
10. A decision will normally be announced immediately following the meeting. Whenever this is not possible, the Trainee will be advised of the decision by the Appeal Authority within fourteen calendar days unless more extensive re-investigation is required.
11. The Appeal Authority shall normally write to the Trainee within fourteen calendar days of the appeal to confirm their decision enclosing a copy of the notes from the appeal.

## Appendix 4 Scheme of Delegation

Type of Meeting	Potential Outcome	Minimum level of Authority
Disciplinary Meeting	Warning	Clinical Director, Divisional Director, Assistant Medical Director
	Dismissal	StHK LE Medical Director or Deputy Medical Director, StHK Deputy or Assistant Medical Director, or another designated StHK director appointed by StHK LE's Medical Director or Deputy Medical Director with designated authority to dismiss.
SOSR		Non-clinical Senior Manager (AFC Band 8a or above)
Appeal	Warning	A person of a higher seniority or equivalent to that of the Disciplinary Authority
	Dismissal	StHK LE Medical Director, StHK Executive Medical Director, or nominated Director

## Appendix 5

### **AWOL Unauthorised absence including failure to submit a valid Statement of Fitness for Work (“fit note”)**

Unauthorised absence occurs when a Trainee does not report for work, and fails to make contact in accordance with StHK LE and Host reporting procedures, in line with the Trusts Attendance Management Policy. This includes failure to submit a valid fit note no later than 72 hours following the eighth day of absence and within 24 hours following the expiry of a current fit note.

If a Trainee does not attend work and makes no contact, the relevant Host Manager will then try to establish contact. This initial contact should be by telephone.

If contact cannot be made with the Trainee and / or there is serious concern for the wellbeing of the Trainee, their next of kin should be contacted by the StHK LE HR Service in the first instance. If no contact can be made, the Host in conjunction with StHK LE should consider contacting the Police, or visiting the Trainee’s address or that of their next of kin in person.

Visits to a Trainee’s house shall not be undertaken by a lone worker. They shall visit with an appropriate colleague.

If all reasonable efforts have been made to contact an absent Trainee and no satisfactory response has been received, the StHK LE’s HR Service will write to the Trainee by email and post asking them to contact StHK LE and Host to discuss their absence. This letter will state that pay will be withheld effective from the first date of non-attendance / non-submission of valid fit note. Pay will usually be withheld until the Trainee has returned to work and / or contacted StHK LE and / or the Host confirming the reason for their non-attendance. If this is due to ill health, pay will usually be withheld until a valid fit note has been submitted, if required, under StHK LE’s Attendance Management Policy.

If the Trainee remains absent and StHK LE does not receive a reply to their correspondence within 3 working days and no information comes to light from other sources e.g. HEE, the Host, work colleagues, relatives etc., then the Trainee will be sent a further letter and email to request that they make contact with StHK LE and their Host urgently and failure to do so within the required timeframe will result in a SOSR Meeting being convened under this Policy, the outcome of which may be dismissal.

If the Trainee fails to attend the meeting, the meeting Chair may proceed in their absence. If so, the decision / outcome will be confirmed in writing and also the Trainee’s right of appeal, proving that StHK has sent notification to the trainee of the potential outcome of the meeting.

If a Trainee does eventually make contact/ submits a valid fit note, StHK LE in conjunction with the Host will consider reinstating pay if there was a genuine reason why the Trainee could not make contact during the non-attendance. The Host in conjunction with StHK LE HR team should carry out an investigatory preliminary fact finding interview with the Trainee to establish the reasons for not reporting their non-attendance/ submitting a valid

fit note. Further to this meeting, it may be appropriate to investigate formally under this Policy following the findings of this initial informal investigation.

## Appendix 6 Disciplinary Fast Track Process

In cases of alleged misconduct where dismissal is not an option and where a Trainee does not wish to contest the allegations, they can opt to have their sanction decided by way of fast track process.

A fast-track meeting can take place in cases where:

- There is an alleged failure to adopt acceptable behaviours which is not so serious as to potentially warrant dismissal;
- The employee does not wish to contest the allegations;
- The employee agrees to the potential level of sanction outcome; and
- The Disciplinary Authority appointed agrees it is appropriate to deal with the case by way of the fast-track process.

In such cases the following process will apply once a Case Manager has been appointed:

1. In all cases where a Trainee admits the allegations of misconduct put to them in full, the Case Manager should consider offering them the opportunity to access the fast track process. Equally a trade union representative or work colleague supporting the Trainee may suggest this option to the Trainee.
2. If the Trainee wishes to take this route it is strongly recommended that advice is taken from a trade union representative or work colleague before reaching this decision.
3. The trainee should sign a statement to that effect on a fast-track request application form. The fast-track request application form requires the trainee to accept all the allegations and explain the circumstances in which they failed / were unable to adopt acceptable behaviours including any mitigating circumstances they wish to be taken into account.
4. The trainee must accept what they did was wrong and explain why. If an employee requests a fast-track meeting it is on the understanding that they are aware the following sanctions could be issued, up to and including that of a final letter of concern, the possible outcomes are:
  - No further action
  - Expectations meeting
  - First letter of concern (formally known as First Written Warning)
  - Final letter of concern (formally known as Final Written Warning)
5. The fast-track process is not applicable for matters of gross misconduct or where dismissal maybe appropriate. Nor can it be used if any one or more of the allegations is/are contested by the Trainee or if there is a connected disciplinary process

involving another Trainee. NB No Trainee with a current final letter of concern (final warning) may therefore request for their case to be held under the fast track process.

6. Cases can only be fast-tracked with the relevant Trainee's agreement that they do not wish to proceed with a full disciplinary meeting. The completed fast track request form will be reviewed by the Case Manager, and if the Case Manager feels that the fast track approach is appropriate, they must, within two working days of receipt of the fast track request form, discuss this with a member of the StHK LE's HR Service, before agreeing to invoke the process. There will only be agreement to proceed if sufficient facts about the case are known. The Case Manager will consider whether the Trainee's fast track request form, along the facts gathered to date, will be sufficient. If so, no further investigation will be necessary. If not, a Case Investigator will have been appointed and a further investigation will take place.
7. If / once sufficient facts are available to the Case Manager, they will only agree to a fast track process if the trainee agrees to the potential level of sanction that may be applied, up to and including that of a final letter of concern and if there is belief that the Trainee has learned from the experience and is unlikely to repeat the misconduct. If the detail of the allegations the Trainee considers are being levelled against them and/or the 'limited sanctions' suggested by the Trainee are not considered sufficient, but all other considerations are positive, the Case Manager can elect to discuss this with the individual. Following this discussion the Trainee has the option of resubmitting their request form (having taken advice from a trade union representative or a work colleague if applicable) with revised allegation details or 'limited sanctions' in line with the advice from the Case Manager.
8. If there is no agreement to proceed with the fast track process, then the Case Manager will proceed with the normal considerations and steps under MHPS.
9. If the fast track application is accepted there will be no need for a formal investigation report, although a sufficient and reasonable examination of the facts must have taken place in order to ensure that the Disciplinary Authority will be able to decide on what would be a reasonable disciplinary sanction in the circumstances.
10. The fast track process applies only if the trainee admits to the allegations. In this instance the purpose of the fast track meeting is to decide on the appropriate sanction. If at any time it appears that the allegations are disputed, the fast track process should be stopped.
11. Even if an investigation has progressed further than the initial stage, the Trainee may still elect at a later stage to complete and sign a fast track request form, requesting a fast track meeting. In this situation, the investigation will be stayed by the Case Manager pending a decision. If the fast-track process is agreed, any potential pending formal disciplinary meeting will be replaced with a 'fast-track meeting' unless counselling is agreed to (any counselling will be conducted in the usual manner).
12. Under the fast-track process there is one single Disciplinary Authority. No witnesses can be called, and if appointed, the Case Investigator will not normally be called to give additional evidence and HR attendance will not be required. The Trainee has the right to be accompanied at the Fast Track Meeting by a trade union representative or work colleague. Brief hand written notes of the meeting will be kept by the

Disciplinary Authority. The Disciplinary Authority will not be the manager who was involved with any of the previous direct discussions with the Trainee or with HR about the merits of the case being heard at as a fast tracking meeting.

13. The invitation to the fast track meeting will be in writing giving a minimum of seven calendar days' notice. This invitation will set out the allegations in line with those the Trainee has accepted on the fast track request form (enclosing the form), the right to be accompanied by a trade union representative or work colleague and the potential outcome(s). On receipt of this invitation the Trainee has a final opportunity to withdraw from the fast track process and request a full disciplinary meeting. A Trainee must not suffer any detriment if they choose to proceed with their right to revert to a full investigation and/or disciplinary meeting.
14. At a fast-track meeting, a Trainee has the opportunity to present any mitigating evidence to the allegations in the presence of the Disciplinary Authority who will consider this together with the statement of admission.
15. If a trainee is unwilling or unable to attend a fast-track meeting the Disciplinary Authority will inform them that one further date will be offered and if this is not attended the Disciplinary Authority will consider convening the fast-track meeting in their absence to make a decision in their absence on the evidence available if there is a clear unequivocal admission of guilt. The Disciplinary Authority should keep a careful record of the employee's failure to attend the meetings and the attempts to re-schedule/ reconvene them.
16. The process for a fast track meeting will be as follows:
  - Introductions
  - The Disciplining Authority outlines the nature of the allegation(s) accepted by the Trainee and advises that it (they) may result in disciplinary action up to and including the limited sanction confirmed on the Trainee's FastTrack request form.
  - The Disciplining Authority confirms with the Trainee that they accept the allegations previously stated.
  - The Trainee or their representative will have the right to put forward any comments or statements relating to the incident relevant to the appropriate level of sanction (including any mitigation).
  - The Disciplining Authority may wish to question the Trainee.
  - The Disciplining Authority will adjourn briefly to give consideration to the case. If more information is required to make a decision on the sanction the meeting may be adjourned to allow a further investigation to take place.
  - The Disciplining Authority will then communicate their decision to the Trainee and their representative. The penalty will not exceed the previously stated limited sanction but in exceptional circumstances (e.g. the Trainee denies some of the allegations) the Disciplinary Authority may decide that the matter should be referred for further investigation and/or to a full disciplinary meeting for potentially a higher sanction to be considered.
17. The Disciplining Authority will send a letter confirming the decision to the Trainee. The record of any warning will be kept on the personal file.



18. The disciplinary sanction imposed will be given in accordance with StHK LE's Handling Concerns policy.
19. It is not envisaged that there will be appeals against fast track decisions as, by requesting and proceeding with a fast track meeting, the Trainee has accepted the relevant allegations and any sanction imposed will not exceed the limited sanction level they identified as being acceptable to them on their fast track request form. However, if the Trainee is dissatisfied with how the fast track meeting / process has been conducted, they should inform the Case Manager who will decide if an appeal is needed or alternatively, what, if any, other action is appropriate.

## Appendix 7

### **Some Other Substantial Reason/ Contravention (either on the part of the Trainee or StHK LE, the Host or HEE) of a duty or restriction imposed by or under an enactment (Breach of Statutory Restriction)**

**This Appendix is included to explain how StHK LE may deal with issues that are not MHPS disciplinary or capability matters.**

#### **Some Other Substantial Reason**

Under the Employment Rights Act 1996, reasons for a potentially fair dismissal that do not fall within the other four reasons (Conduct, Capability or qualifications, Redundancy, and Breach of Statutory Restriction) are classed as “Some Other Substantial Reason” or “SOSR”. Such reasons are not insignificant or frivolous and they may justify the dismissal of a Trainee. Examples could include:

- Conflict of interest e.g. the Trainee’s close connection with another organisation putting the position or reputation of StHK LE, HEE or the Host in jeopardy.
- A decision by HEE that the Trainee’s place on an approved postgraduate training programme is withdrawn. This also applies to situations whereby a trainee is awarded an ARCP outcome 4, in such cases subsequent notification of termination of contract shall normally be issued via written confirmatory notice.
- Personality clashes or irreconcilable differences between the Trainee and their colleagues (including their trainers or supervisors). In such cases, before resorting to a formal meeting to consider dismissal, in conjunction with the Trainee and HEE, StHK LE will consider whether re-deployment of the Trainee to an alternative placement either within the Host or to another Host is possible, or whether mediation is a potential option. If no such solutions are found / are successful, and the issue is clearly not a matter of capability or a disciplinary, then an investigation will be carried out and a decision will be taken as to the appropriate way forward.
- A breakdown in trust and confidence. In such cases, if it is clearly not a matter of capability or a disciplinary matter then an investigation will be carried out and a decision will be taken as to the appropriate way forward when the investigation is complete.

**NB:** *This is an illustrative and not an exhaustive list.*

#### **Contravention (either on their part or on that of his employer) of a duty or restriction imposed by or under an enactment (Breach of Statutory Restriction)**

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

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

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

**NB:** *This is an illustrative not an exhaustive list.*

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

In all cases under this appendix, although these are not disciplinary matters, any meetings that take place will be conducted in line with the procedure outlined in paragraph 6.8 and appendix 2 of this policy albeit a senior member of StHK LE Staff can conduct the meeting. Any appeal will be conducted in line with the procedure outlined in paragraph 6.13 and appendix 2b of this policy. A more senior member of StHK's management team will conduct any Appeal.

The appeal process outlined in paragraph 6.13 and appendix 3 of this policy is also to be utilised if a Trainee wishes to appeal against the effluxion or termination of employment at the end of their fixed term of employment but nothing else in this policy (and nothing in this appendix) applies to the effluxion or termination of a Trainee's fixed term employment at the end of their period of training.

## Appendix 8 ACE Behavioral Standards

# ACE Behavioural Standards



## Attitudes

- We are all empowered to personally challenge inappropriate behaviours directly, or via escalation through management
- We must never underestimate the power of a sincere apology
- We will act professionally with patients/visitors/colleagues and treat them with respect, courtesy and kindness.
- We will show sensitivity to the needs of others, regardless of race, culture, ethnicity, religion, gender, sexual orientation, age or disability
- We will seek solutions to problems rather than ignoring them, complaining or blaming others
- If things go wrong, we will deal with it appropriately, seeking advice and accurately report the facts
- We will ensure our behaviour, attitude and appearance always create a positive image of the Trust and ensure we dress appropriately and in accordance with the uniform policy

## Communication

- We will readily provide regular explanation and information to patients/carers.
- We will avoid the use of jargon and explain medical terminology as simply as possible.
- We will introduce ourselves appropriately by name and job title/role both in person and on the telephone
- We will always wear our name badge so we are easily identifiable
- We will ask for confirmation that the patient/visitor/colleague has understood what we have said by giving them the opportunity to ask us questions
- We will not talk over patients, visitors or colleagues
- We will not have personal conversations near patients or visitors
- We will always listen respectfully to other peoples views and show we are working as a team
- We will explain delays in a polite manner, and ask the patient or visitor if they are able to wait

## Experiences

- We will never share our work problems or personal issues with patients and relatives as it is not conducive to provision of high quality care
- We will greet everyone in a welcoming way, even if we are not expecting them, don't know who they are, or are already occupied
- We will create a safe, calm, clean and quiet environment and take personal responsibility, to follow up on breakages/ malfunctions, ensuring signs are relevant, welcoming and useful
- We will not eat or drink in front of patients in clinical areas.
- We will not use the internet or mobile telephones for personal matters in front of patients/relatives. This should be limited to personal time and not during working hours
- We will not do anything that would bring the reputation of the Trust into disrepute, or cause a loss of confidence in its work
- We will welcome new employees and students, ensure they have the support they need to learn the job