

Lead Employer policy for Handling Concerns Policy

Version No: 2

Document Summary:

This policy incorporates the framework set out in *Maintaining High Professional Standards in the Modern NHS (MHPS)* and outlines both informal and formal processes for addressing concerns about colleagues' behaviour at work. Its purpose is to promote constructive and lasting solutions to issues of conduct, capability and ill health and to address behaviours that fall outside the Trust's expected behavioural standards.

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| Policy Author | Chelsea Houghton | |
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Document Control

[Author to complete all sections apart from Section 4 & 5]

| Section 1 – Document Information | |
|--|---|
| Title | Lead Employer policy for Handling Concerns Policy |
| Directorate | Corporate |
| Brief Description of amendments | |
| Change to terminology - Trainees to Colleagues in Training St Helens and Knowsley Teaching Hospital NHS Trust (StHK) to Mersey and West Lancashire Teaching Hospital NHS Trust (MWL) HR Director (HRD) to Chief People Officer (CPO) Letter of concern to Warning Updates to governance arrangements from Workforce Council to Commercial Service Council Addition of fast-track process Additional information added regarding Fraud and / or Criminal Issues Grounds of appeal defined Please state if a document has been superseded. | |
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| Does the document outline clearly the monitoring compliance and performance management? | Yes |
| Equality Analysis completed? | Yes |
| Data Protection Impact Analysis completed? | Yes |

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| Consultation Completed | <input type="checkbox"/> Trust wide <input type="checkbox"/> Local <input checked="" type="checkbox"/> Specific staff |
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| Version | Date Approved | Brief Summary of Changes |
| 1 | 01/09/2013 | First version of the new policy therefore N/A |
| 2 | 01/02/2016 | Inclusion of Student Physician Associates |
| 3 | 01/05/2016 | Update HEE |
| 4 | 01/04/2017 | Update Annette Craghill contact details |

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| 5 | 01/06/2017 | Amended 2 nd to last paragraph of appendix 5, extended review date to 01.10.17 |
| 6 | 01/09/2017 | Extended review date to 31.12.17 |
| 7 | 01/10/2017 | Extended review date to 31.03.18 and amended page numbers on Content list |
| 8 | 01/05/2018 | Policy revised to include Appendix 5 for AWOL process and Appendix 6 Fast Track Process. |
| 9 | 01/06/2021 | Policy reviewed and revised in its entirety. Policy Redeveloped as a Handling Concerns Policy in line with MHPS Framework. |
| 10 | 01/09/2025 | <p>Change to terminology - Trainees to Colleagues in Training St Helens and Knowsley Teaching Hospital NHS Trust (StHK) to Mersey and West Lancashire Teaching Hospital NHS Trust (MWL) HR Director (HRD) to Chief People Officer (CPO) Letter of concern to Warning</p> <p>Updates to governance arrangements from Workforce Council to Commercial Service Council</p> <p>Addition of fast track process</p> <p>Additional information added regarding Fraud and / or Criminal Issues</p> <p>Grounds of appeal defined</p> |
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Section 4 – Approval – To be completed by Document Control

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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 Colleagues in Training employed by Mersey and West Lancashire Teaching Hospital NHS Trust (“the Trust”) Lead Employer (“LE”), including those training in Public Health employed under Agenda for Change Terms and Conditions (“Colleague in Training”).

Colleagues in Training will be managed and supervised by relevant individuals at the Host Organisations at which they carry out their placements; and by NHS England (Workforce and Training) (“NHS E”) in respect of their postgraduate educational training, qualification and regulation. Therefore, those organisations have roles under this policy; accordingly, they will have access to it and must ensure that they are familiar with it.

2. Introduction

This policy sets out the procedures within Mersey and West Lancashire Teaching Hospital (MWL) for the handling of concerns about the conduct, performance (capability) and/or health of MWL LE employees. These include doctors, dentists and public health non-medics in specialty training. These procedures implement the MHPS 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 and/or conduct of a colleague in training, to whom this policy applies. Our Colleagues in Training 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 does not feel part of the team.

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

It is a culture that instinctively asks, in the case of an adverse incident, "what was responsible?" not "who is responsible?". It is not finger-pointing and it is 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 just 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, where appropriate, such as 72-hour pause and fast-track to resolve concerns.

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Formal processes to resolve issues may be needed where the informal processes do not resolve matters, or where a matter is so serious that an informal process would be inappropriate. 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 determine whether concerns can be managed educationally, and / or would support, guidance or informal management be more productive.

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

This policy does not deal with attendance issues, which are dealt with in line with MWL LE's Attendance Management Policy and Procedure

For avoidance of doubt this procedure does not form part of any Colleague in Training's contract of employment and this policy will be amended in line with any statutory changes or national changes to MHPS.

3. Statement of Intent

MWL LE is committed to maintaining high standards of conduct and positive working relationships within a supportive learning environment. This policy sets out a fair, proportionate, and consistent approach to managing conduct concerns, with the aim of resolving issues promptly, constructively, and as close as possible to the point of origin.

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

- Promotes good working relationships by settling and resolving concerns promptly, fairly, and, wherever possible, at an early stage and close to where they arise.
- Supports individuals to move on positively from concerns through a learning culture and a no-blame approach, recognising that mistakes can provide opportunities for development and improvement.
- Encourages managers, educators, and Colleagues in Training to seek early resolution of concerns quickly and effectively.
- Provides appropriate support, guidance, and resources to enable managers and Colleagues in Training to resolve concerns informally wherever possible, underpinned by compassionate leadership.
- Applies a triage process, using a clear set of objective criteria, to assess and determine the most effective and proportionate route for resolving each case.

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- Encourages Colleagues in Training to be open and honest when a mistake is made and ensures that such openness is taken into account when decisions are made about next steps.
- Encourages managers and Colleagues in Training to seek restorative outcomes in disciplinary cases wherever possible, with a focus on repairing relationships, rebuilding trust, and supporting improvement.
- Ensures that all workplace issues are handled fairly, consistently, and transparently.
- Encourages positive employee relations and supports the constructive and effective resolution of concerns.
- Promotes open communication between Colleagues in Training, their colleagues, and managers, so that questions and concerns can be raised and, where possible, resolved quickly and to the satisfaction of all parties.
- Confirms that Colleagues in Training will not be dismissed for a first breach of discipline, except in cases of serious conduct issues. Examples of serious conduct are defined in Appendix 1 of this policy.

This policy is not intended to be punitive. Its purpose is to support high standards of conduct while enabling individuals to learn, develop, and succeed in a respectful and inclusive environment. Formal disciplinary action will be taken only where appropriate and as a last resort.

The Trust is committed to promoting equality, and protecting Human Rights, eliminating discrimination against any individual on the grounds of any protected characteristic (age, gender reassignment, being married or in a civil partnership, being pregnant or on maternity leave, disability, race [including colour, nationality, ethnic or national origin], religion or belief, sex, and/or disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex, and sexual orientation) either directly, indirectly, by association, or by complaint. 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 processes set out in this policy for disabled employees if required, and a referral to the Trust’s Health, Work, and Wellbeing (HWWB) service will be made to request advice on any such adjustments when necessary, and in the usual way the Trust will make a decision about whether these adjustments are reasonable. 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.

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4. Definitions

| Term/Abbreviation | Definition/meaning |
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| Colleagues in Training (CiT) | Specialty Colleagues in Training employed by MWL LE, including the following: <ul style="list-style-type: none"> ➤ Core Resident Doctors and Dentists ➤ Specialty Resident Doctors ➤ Dental Foundation Colleagues in Training ➤ Medical and Dental Public Health Specialty Registrars ➤ Non-medical Public Health Specialty Registrars |
| Host | The organisation at which the Colleague in Training is undertaking their day-to-day training. |
| MWL Lead Employer (MWL LE) | The part of Mersey and West Lancashire Teaching Hospital NHS Trust and its staff delegated to undertake duties on behalf of the Trust as Lead Employer for NHS E medical and dental Colleagues in Training and non-medical Public Health Colleagues in Training. |
| NHS E | NHS England Workforce, training and education, with responsibility for the relevant Colleague in Training's educational training programme. |
| Postgraduate Dean (PGD) | The person who is responsible for the postgraduate programme of study for resident doctors. |
| Dean of Postgraduate Dental Education | The person who is responsible for the postgraduate programme of study for dentists. |
| Case Manager | The person appointed from MWL to manage complaints or concerns raised about the Colleague in Training that are deemed to be serious. |
| Case Investigator | The person appointed by the Case Manager to investigate concerns that have arisen and which are to be managed under this policy. The Case Manager delegates the appointment process to a senior HR professional within the LE case management team. The appointment will normally be made with the assistance of the Host's Medical Director, Senior HR Professional 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 concerns arose. |
| Clinical Advisor | The Clinical Advisor is the clinician at the Host (or MWL 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 investigation it transpires that the case involves more complex clinical issues than first anticipated, the Case Manager should consider whether an independent medical or dental practitioner from another NHS body should be asked to assist. |
| MWL LE HR | Part of the Trust's HR service delegated to undertake duties on behalf of the Trust as Lead Employer for NHS E medical and dental Colleagues in Training. |

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| Appointed HR Support | The MWL 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 usually assist with tasks such as drafting communications for the case manager and 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 MWL LE, assigned to support and advise the Disciplinary Authority at the disciplinary meeting. |
| Appeal HR Support | The HR professional, usually from MWL 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 MWL LE, they will usually assist with tasks such as drafting communications to the Colleague in Training about the investigation, arranging meetings, taking notes at investigation meetings and assisting in the drafting of the investigation report. |
| Disciplinary Authority | MWL's manager or director, with relevant authority (in accordance with MWL LE's Scheme of Delegation (Appendix 4)) who conducts the disciplinary meeting. and who is responsible for the disciplinary decision. |
| Appeal Authority | MWL senior manager or director (no less senior than the Disciplinary Authority) with relevant authority (in accordance with MWL 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, or designated university managers from within the Host with responsibility for the day-to-day supervision and management of Colleagues in Training. |
| Host Primary Manager | The Host's Medical Director, or, in the case of: <ul style="list-style-type: none"> ➤ a General Practitioner placement: the senior or other appointed GP partner at the GP practice; ➤ Public Health Colleagues in Training working within local authorities or third-party organisations and Colleagues in Training 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 support to Colleagues in Training and work constructively with the LE HR team to achieve resolutions. In line with ACAS Code of Practice and MHPS Colleagues in Training have the right to be accompanied by a companion or representative as set out in SECTION ONE of this Policy when they are required or invited by their employer to attend disciplinary and capability meetings. Under this policy, they may also be accompanied at formal investigation meetings. |

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| Acceptable Behaviours | The Trust expects all employees to adopt the acceptable behaviours. Non-exhaustive examples of unacceptable behaviours are set out in Appendix 1 and in relation to their conduct, if an employee does not comply with the 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 MWL LE and the Colleague in Training, thus potentially justifying summary dismissal (ie dismissal without notice) from employment. |
| Exclusion from work | Exclusion should only be used where there is reasonable and proper cause to do so. Whilst every effort will be made to allow a Colleague in Training 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 to protect the interests of patients; to protect the interests of colleagues and other staff; to protect the interests of the Colleague in Training; and/or to protect the integrity of an investigation or other process. |
| Restrictions | Measures short of exclusion, or as an alternative to exclusion where this is practicable, imposed on a temporary basis to protect the interests of the Colleague in Training, MWL LE, the Host(s), their patients and/or staff and/or any ongoing investigation or process. |
| Expectations Meeting | An expectations meeting is a meeting at which expectations are set by a manager following discussion with a Colleague in Training who has failed to adopt acceptable behaviours in a minor way which does not warrant formal disciplinary action. When considering an expectation meeting the manager should seek advice from the LE HR Department. |
| Letter of Advice | A letter of advice fulfils the same purpose of an Expectations meeting and will be issued by the LE HR team or the LE Medical Director. |
| 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 to gather enough information to determine the appropriate course of action. The time is designed to enable a triage of the case to take place with input from the Host Organisation and NHS E 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 steps, including if an incident occurred prior to a weekend or bank holiday. On occasions it might mean that a Colleague in Training is required to undertake alternative duties, potentially including exclusive working from home, during this 72 hour pause due to the nature of the specific issue. |

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| | 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 ensure that appropriate support is made available and 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 Colleague in Training 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 to a formal process. |
| Fast-track | The Fast-track process is available when a Colleague in Training 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 from employment. If the Colleague in Training does not wish to contest the allegations and they agree with a sanction up to and including a final written warning, they can opt to have their case dealt with by way of a fast-track meeting rather than a formal disciplinary process. |
| Formal Investigation | A formal investigation takes place once a decision has been made by the Case Manager that a formal 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. In the case of medical and dental staff, the formal investigation will be completed in accordance with MHPS. |
| Disciplinary Hearing | A disciplinary hearing is the formal hearing to consider whether a Colleague in Training has failed to adopt acceptable behaviours which is potentially serious enough to warrant disciplinary action / sanction, including, in some cases, dismissal. |
| Disciplinary Warnings | <p>There are two levels of formal disciplinary warning:</p> <ul style="list-style-type: none"> ➤ First Written Warning ➤ Final Written Warning <p>These warnings are issued as a sanction following a formal disciplinary hearing or as an outcome sanction resulting from a fast-track process. They offer an opportunity for the Disciplinary Authority to outline in writing future expected behaviours when the Colleague in Training has failed to adopt acceptable behaviours. It is also a chance to draw out any learning and for the Colleague in Training and Disciplinary Authority to seek to understand the causes and the impact of the adverse incident or behaviours.</p> |

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| | A warning 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 Colleague in Training may have to help them to resolve any issues and adopt acceptable behaviours in future. The warning is also used to explain any consequences, should the issues arise again in the future. The warning will remain “live” on a Colleague in Training’s file for the duration of the warning, usually 12 months from the date of issue, before being considered spent. Once the warning is considered spent, the outcome letter will be retained confidentially but will not form part of the Colleagues in Training personal employee file. |
| PPA – Practitioner Performance Advice | An independent, external 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 | MWL LE’s joint working committee for workforce matters comprising Trust and staff side members. |
| Commercial Services Council | MWL’s committee for consideration of commercial services matters including ratification of workforce policies. |

5. Duties, Accountabilities and Responsibilities

5.1 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 Colleagues in Training.

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

5.2 Trust Board

The Trust’s Board of Directors (“Trust 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.

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The Trust Board 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.

5.3 MWL LE’s Medical Director

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

MWL LE’s Medical Director will normally act as Case Manager in respect of serious 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 MWL.

5.4 The Host Primary Manager

The Host Primary Manager is the Host’s primary contact with MWL LE in relation to Colleagues in Training placed at the Host and must ensure that:

- Any concerns regarding Colleagues in Training are notified to MWL LE, and NHS E, promptly including those which are being managed informally by the Host
- They assist with the appointment of a Case Investigator from the Host, when required by the Case Manager.
- All matters in which a Case Investigator is appointed are properly investigated by the Case Investigator in line with this policy.
- If appropriate, Colleagues in Training are offered the opportunity to receive additional support from MWL LE Health, Work and Wellbeing Department and NHS E.
- All those from within the Host involved in the management or supervision of Colleagues in Training, and particularly those dealing with a specific case, are aware of these procedures, their provisions and are suitably trained.
- They consult with MWL LE before excluding any Colleague in Training or taking any formal action.

5.5 Chief People Officer (CPO)

The Trust’s Chief People Officer 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 MWL LE’s HR function, the ultimate responsibility remains with the Chief People Officer.

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The senior management team in MWL 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 Commercial Services Council, the LNC and the auditing to the HR management team, however the Chief People Officer and Commercial Services Council will highlight any areas of significant shortfall identified to the Governance Board (a subcommittee of the Board).

5.6 Non-Executive Director as 'Designated Member'

In line with MHPS a Non-Executive Director from MWL 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 Colleague in Training may make representations in regard to their exclusion, restrictions to practice or the investigation of their case or the classification of their case by the Case Manager.

5.7 Case Manager

Under this policy, serious concerns are registered with the Chief Executive by way of the report provided by the Chief People Officer. The Case Manager is appointed to oversee the case and is a senior manager employed by the Trust.

It is possible that the Case Manager will have some prior knowledge of or dealings with the Colleague in Training and this will not necessarily mean they are partial or unsuitable to perform the role of Case Manager. If the Colleague in Training 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 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, or has been, put in place or a formal exclusion is being considered. Please note this does not apply to non-medical Colleagues in Training employed in line with Agenda for Change Terms and Conditions.
- Consider, whether there is reasonable and proper cause to impose restrictions or formally exclude the Colleague in Training. Where restrictions or formal exclusion

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are considered, advice must be sought from the Postgraduate Dean, MWL 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, appoint a Case Investigator.
- Inform the Colleague in Training 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 hearing is appropriate.
- Consult and liaise with the Postgraduate Dean throughout the process.
- As necessary, act as coordinator / liaison between the Case Investigator and the Colleague in Training 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.

5.8 Case Investigator

The Case Investigator is usually employed by the Host but occasionally it may be necessary or 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 actual 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 Colleague in Training 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;
- Where appropriate, understands the work context of the Colleague in Training;
- 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 Colleague in Training, 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

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information by interviewing people and reading documents. The testimony of the interviewees is not tested by the Colleague in Training 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 Colleague in Training admits that they have 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:

- 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 MWL 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.

5.9 Host Managers

Host Managers must:

- Ensure that the standards of conduct and behaviour of the Colleague in Training undertaking training in their department or section are at the required level.
- Ensure that Colleagues in Training are made aware of the required standards of conduct and behaviour required of them and that this is actively managed.
- Ensure adequate advice and supervision is available to Colleagues in Training.
- Ensure that Colleagues in Training are informed when they are not meeting the 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, for a record to be held on the Colleague in Training's personal file.
- Act as a Case Investigator if required.

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5.10 Colleagues in Training

All Colleagues in Training 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 Trust values and 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 hearing 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 behaviours.
- Inform MWL LE's HR Department, if:
 - They are subject to any police investigations or criminal proceedings (including any police arrest and for alleged traffic offences);
 - They have accepted a police caution.
 - They have been charged with or found guilty of a criminal offence; or
 - Their fitness to practise is impaired or is called into question.
 - They are subject to any GMC/GDC proceedings, including any initial referral, as soon as they become aware of these.
 - They are subject to any proceedings commenced by foreign regulatory bodies comparable to the GMC/GDC, if they have worked abroad, including any initial referral, as soon as they become aware of these.
- if applicable, inform the NHS Commissioning Board under the [National Health Service \(Performers Lists\) \(England\) Regulations 2013 \(Reg 6\)](#)

5.11 MWL LE's Human Resources Staff and Management

The MWL LE HR Service must:

- Ensure that Colleagues in Training are informed of this policy from the outset of their employment.
- 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 hearings (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:

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- Liaise with the Host Manager or 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.
 - Where a concern is identified as serious, liaise with the appointed Case Manager to provide details of the concern and HR Advice in relation to proposed next steps to manage the concern.
 - Ensure the Colleague in Training receives pastoral / supportive (telephone) contact, as soon as possible after, and usually within 48 hours of, the Colleague in Training being notified that a concern is being considered under the policy.
 - Provide a point of contact for the Colleague in Training in relation to any of the Colleague in Training’s queries or concerns about the process.
 - Provide the Colleague in Training with appropriate wellbeing resources and information regarding HWWB referrals as necessary to safeguard, as far as reasonably practicable, the Colleague in Training’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 Non-Executive Designated Member is kept abreast of progress in all cases.
- Ensure that, as appropriate, Colleagues in Training are offered the opportunity to receive additional support from MWL LE’s HWWB department and NHS E.

5.12 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 MWL LE’s Case Manager and HR Service usually through the appointed HR Representative.
- Liaise with MWL LE’s HR Service in individual cases as necessary.

5.13 Trade Union (TU) / Medical Defence Organisation (MDO) representatives

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

- Familiarise themselves with this policy and procedure.
- Advise the Colleague in Training in respect of this policy and procedure.
- Adhere to MWL’s Values as described in **Appendix 8** of this policy.

5.14 NHS E / Postgraduate Dean / Responsible Officer (“RO”) / Postgraduate Dental Dean

The Dean of Postgraduate Medical Studies (“Postgraduate Dean”) is the Responsible Officer for registered medical practitioners (“doctors”) in training grades.

The Postgraduate Dental Dean is responsible for the delivery of postgraduate dental and medical education and training for dental practitioners.

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They will be notified by the Trust of any concerns raised under this policy that relate to Colleagues in Training, including non-medics. Where appropriate, such concerns will initially be considered as matters of training.

Where appropriate, a Colleague in Training's RO / Postgraduate Dental Dean is responsible for referring concerns about the Colleague in Training to the GMC / GDC or other relevant regulator and/or where applicable, the notification of any proposed investigation to the area team of the NHS Commissioning Board within NHS England.

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

5.15 Pastoral Support

It is recognised that being involved in a formal process can be very upsetting and stressful for the Colleague in Training. To recognise the need for additional pastoral care, over and above that routinely provided by the Educational Supervisor during these proceedings, the Colleague in Training may agree with NHS E 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 in, or in any way influence, the investigation or subsequent proceedings.

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

5.16 HR Commercial Service Council and LNC

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

The HR Commercial Services Council has delegated authority from the Trust's Strategic People 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 Strategic People Committee in relation to all areas of people management. The HR Commercial Services Council will provide assurance to the Strategic People 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 HR Commercial Services Council under regular MWL LE governance procedures.

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6. Section One - Determination of allegation and Investigation

6.1 Establishing the Nature of the Concern / Preliminary Fact Finding

Concerns about a Colleague in Training 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.

Following a concern about a Colleague in Training having been raised, the LE HR team will complete a 72-hour review to determine if the matter is serious and requires the appointment of a case manager. The LE HR Team 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 requires a Case Manager to be appointed to determine whether a more formal route is needed,

If so, a brief preliminary fact-finding enquiry may be required to assist them in determining which course of action is appropriate. The brief preliminary fact-finding enquiry may involve a member of the HR team seeking advice from PPA.

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

6.2 72-Hour Pause

When the Lead Employer identifies or is made aware of concerns regarding a Colleague in Training, the issue will be considered through a 72-hour pause and review process. This means, except in serious cases where immediate action must be taken, for example to protect patient safety or colleague safety, the MWL LE team will use a period of approximately 72 hours (this is not a strict timeframe as it will depend on the specific circumstances) to enable triage of the case to take place. During this period the most

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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 of the adverse incident itself.
- The impact of the situation on patients, colleagues, the Trust, the Host Organisation, the manager, the relevant team and/or the Colleague in Training
- The needs and expectations of the Trust and/or Host, the manager, the relevant team and/or the Colleague in Training.
- Previous attempts to resolve the situation or similar issues.
- Any perceived risks to the Colleague in Training, patients, other colleagues and/or the Trust or Host.

During the 72-hour pause period, the Lead Employer, working in conjunction with the Host Organisation and NHS E, 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(s), incident(s) and/or concern(s) (“the concerns”) are said to have occurred
- **Who** the people involved were including whether there may be witnesses (internal or external) to the circumstances
- **Where** the concerns arose and if any other data or information may be available, for example CCTV
- **What** happened (for example, what led to the concerns being raised)
- **Why** the concerns are 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 Colleague in Training is required to undertake alternative duties, potentially including exclusive working from home, during this 72-hour pause.

Following the 72-pause period, the Head of HR, or nominated deputy, will review the information available and determine whether the 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 informally. Where the concern is deemed to be serious, a Case Manager will be appointed and the completed 72-hour pause will be shared with the appointed Case Manager with HR advice regarding appropriate next steps.

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When a Colleague in Training 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.

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

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

6.4 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 NHS E as part of the ongoing training and management of the Colleague in Training, or if specifically required by the LE HR Team.

Colleagues in Training 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. Colleagues in Training are required to attend such meetings which will normally be undertaken on a one- to-one basis, between the Host Manager and the Colleague in Training.

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 Colleague in Training of the standards of behaviours expected by the Trust and set out the level of improvement needed.

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- Document the meeting, sharing a copy with the Colleague in Training and the LE HR team to ensure that a copy is placed on the Colleague in Training's personal file

Details of any informal discussions must be entered onto the Colleague in Training's personal file kept at MWL LE HR department, and NHS E must also be advised. In all cases where there is informal resolution the Colleague in Training should complete and evidence appropriate reflection and learning in their e-portfolio and discuss with their Responsible Officer (or delegate) whether these matters need to be declared on the Form R (Part B) for consideration at their next Annual Review of Competence Progression (ARCP).

As an alternative to an expectations meeting, the MWL LE HR 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 Colleague in Training's e-portfolio and advice should be sought, in accordance with the process in the paragraph above, about declaration on Form R (Part B).

6.5 The Fast-Track Process

The fast-track process can be utilised when a Colleague in Training accepts, they have failed to adopt acceptable behaviours and the LE HR team, following review of the 72-hour document determines that the issue is not serious enough to potentially warrant dismissal. The Colleague in Training can have their case dealt with by way of a fast-track meeting rather than a formal disciplinary meeting.

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

- There is an alleged failure to adopt acceptable behaviours which is not serious enough to warrant potential dismissal; and
- The Colleague in Training does not wish to contest the allegations; and
- The Colleague in Training agrees to the potential level of sanction outcome
- The LE HR Team and where applicable, appointed Case Manager, agrees it is appropriate to deal with the case by way of the fast-track process.

If a Colleague in Training wishes to take this route (it is strongly suggested that advice is taken from a trade union representative or work colleague before reaching this decision), they will be required to complete a fast-track request application form.

The fast-track request application form requires the Colleague in Training 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 considered. The Colleague in Training must accept what they did was wrong and explain why.

If a Colleague in Training requests a fast-track meeting it is on the understanding that 'limited sanction(s)' could be applied, they are:

- Expectations meeting
- First written warning

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- Final written warning (which would not result in dismissal i.e. no previous “live” warnings remain in place).

The fast-track process cannot be used if any one of the allegations is contested by the Colleague in Training or if there is a disciplinary process involving another colleague that is connected to the employee’s case. The process will also not be suitable if the Colleague in Training already has a live warning on their file or if a letter of expectation has been issued on the same matter.

The LE HR team will only agree to proceed if:

- Sufficient facts about the case are known
- The Colleague in Training has agreed to accept a sanction up to and including a final written warning.
- The LE HR team believes that the Colleague in Training has learnt from the experience and is unlikely to repeat the failure to adopt acceptable behaviours or contribute to an adverse incident.
- The case is not serious enough to warrant dismissal.

If the LE HR team are satisfied that these criteria are met, they should discuss the fast-track request with the Colleague in Training.

Following receipt of a completed fast track request form, confirmation of the outcome will be shared with the Colleague in Training within 5 working days.

6.6 The Fast-Track Hearing

At a fast-track hearing there will be no need for a formal investigation report or witnesses, HR support will not be present and only brief handwritten notes of the meeting will be kept.

The fast-track disciplinary hearing will be chaired by a manager with the appropriate level of authority and who has not been involved with any of the previous dealings with the Colleague in Training in relation to the case nor with the HR representative who advised about the merits of the case being heard as a fast-track matter.

The purpose of a fast-track hearing is to decide upon appropriate disciplinary action. Therefore, the manager chairing the fast-track hearing should be provided with enough information on the fast-track form to make a sufficient and reasonable examination of the facts so that they are able to decide on what would be a reasonable disciplinary action in the circumstances. If at any time it appears that the allegations are disputed the fast-track process should stop.

If a full investigation has commenced, a Colleague in Training 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 suspended pending a management decision on the fast-track request.

The invitation to the fast-track meeting will be in writing giving 5 working days’ notice. This invitation will set out the allegations in line with those the Colleague in Training has

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accepted on the fast-track request form (a copy of which will be enclosed), the right to be accompanied by a trade union representative or work colleague and the potential outcome.

On receipt of this invitation the Colleague in Training has a final opportunity to withdraw from the fast-track process and request a formal disciplinary hearing. The Colleague in Training will not suffer any detriment if they choose to proceed with their right to a formal disciplinary hearing.

At the fast-track hearing, the Colleague in Training can present any mitigating evidence to the manager chairing the meeting who will consider this together with the Colleague in Training's reflective statement of admission and any other information on the fast-track request form.

If a Colleague in Training is unwilling or unable to attend a fast-track hearing the manager will inform them that one further date will be offered and if this is not attended the manager will consider convening the hearing in their absence to decide on the evidence available if there is a clear unequivocal admission of responsibility.

The manager should keep a record of the Colleague in Training's failure to attend the hearings and the attempts to re-schedule/ reconvene them. The format for fast-track hearing is attached as Appendix 6.

If there is no agreement to fast-track the case, then formal investigation process will proceed if required and thereafter the matter may proceed to a Formal Disciplinary Hearing. The colleague in training will not suffer any detriment for having requested the fast-track. If the colleague in training considers that the detail of the allegations and/or the 'limited sanctions' suggested by the LE HR Team are not appropriate, but the Colleague in Training would otherwise consider requesting a fast-track hearing, the Colleague in Training can elect to discuss the relevant concerns with the LE HR Team.

Following this discussion the LE HR Team may agree to amend the form to include the revised details or allegations in line with the discussions with the Colleague in Training or, if they do not agree, the case will revert to the formal process in the usual way. The Colleague in Training will not suffer any detriment for having requested the Fast-Track or for having discussed possible amendment of the Fast Track request form with the LE HR Team.

6.7 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 MWL LE (see Case Manager definition earlier in this policy and procedure).

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A Case Investigator will be identified in accordance with the process set out earlier in this policy and procedure. The Case Investigator 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 MWL LE.

The Colleague in Training 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 Colleague in Training straight away, (e.g. allegations of fraud or other criminal offence(s)).

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 Colleague in Training but to independently establish, where possible, all relevant facts relating to the concern(s), incident(s), and/or 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 any 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 refer the concerns to a disciplinary hearing. The Case Manager can make their own assessment of the evidence which the case investigator records in the report.

6.8 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:

- 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 Colleague in Training in writing.

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6.9 Investigation Meetings / Interviews

In cases where an incident involves, or was witnessed by, others (several people) this is likely to involve obtaining statements from everyone. 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 MWL 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.

Colleagues in Training 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 Colleague in Training cannot attend such a meeting due to extenuating circumstances, a further meeting will be scheduled, usually within seven calendar days. The Colleague in Training must be released from other work activities to facilitate their attendance at the meeting.

If a Colleague in Training states they are too unwell to attend an investigation meeting, and if the absence exceeds seven calendar days, before making a decision as to how to proceed, MWL LE will seek advice from its Health Work and Wellbeing Department, the Colleague in Training's GP or another specialist health professional. This is to seek advice on what adjustments can be made to the process to support a colleague in training to engage in meetings, whilst also considering a reasonable delay to the investigation. The Colleague in Training is required to cooperate with such reasonable steps.

6.10 Right to be Accompanied / Represented

MWL LE recognises that Colleagues in Training may wish to seek advice and be accompanied / represented by their trade union, professional body or a work-based colleague. All Colleagues in Training being investigated under this policy have the right to be accompanied at all formal investigation meetings and have the right to be represented at any formal hearing 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, as an advocate or as someone with knowledge of the disability and its effects. The Trust may agree to an employee being accompanied by one of these additional categories of people if deemed appropriate to the circumstances. All requests for adjustments will be considered by the Case Manager, with support from the LE HR Team, to support the colleague in training through the process.

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At a disciplinary hearing at which allegations of potential gross misconduct are being considered, the Colleague in Training may be represented by a legal representative instructed or retained through a medical defence organisation or trade union. The individual responsible for presenting MWL LE’s case to the Disciplinary Authority may also be represented by a lawyer instructed or retained by MWL LE. Where a Colleague in Training and/or MWL LE have been legally represented at a disciplinary hearing, they may be similarly represented at any subsequent appeal.

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

All representatives are required to adhere to the Trusts Values and Behaviours at all times. MWL reserves the right to remove any representative who does not adhere to the Trust’s Values and Behaviours as outlined in Appendix 8, from any meetings held under this policy.

6.11 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 practicable within four weeks of appointment and submit their report to the case manager within a further five days. Circumstances may extend this period, for example, the involvement of the police and / or criminal proceedings (see paragraph 6.16.1.2) 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 MWL LE (or designated deputy) who will advise the Designated Member.

During the investigation the Colleague in Training will be kept up to date by the designated HR support to 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 Colleague in Training in writing, detailing the specific reasons for the delay or extension.

6.12 The Investigation Report

The Investigation Report should include:

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- Terms of Reference
- Background Information including the Colleague in Training's specialty, grade and start date of employment
- timeframe of the stages of the investigation
- any issues encountered during the investigation
- concern(s)
- Fact Finding, if possible
- Conclusion
- Appendices including signed witness statements, meeting notes 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.

6.13 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 Hearing, the Hearing 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 MWL or the Colleague in Training's Host placement. This senior professional will attend in an advisory capacity only; the decision-maker remains the Disciplinary Authority alone.

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 MWL LE, and findings by MWL 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 Colleague in Training will be informed of such notification(s). Similarly, if the Colleague in Training is also employed by or works within a separate organisation, MWL LE may be required to inform that organisation, or request the issuing of an Alert notice by NHS Resolution.

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6.14 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 Colleague in Training'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 hearing, 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 MWL 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/NHS E 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.
- (Further) restrictions to practice or exclusion from work should be considered, which will be addressed by the Case Manager in accordance with the procedure set out in this policy;
- there are concerns that should be referred by the Postgraduate Dean (as Responsible Officer for medically qualified Colleagues in Training) or Dental Dean to the GMC, GDC or other regulatory body, in which case the Case Manager will inform the Postgraduate Dean/Dental Dean of such.

The Case Manager will write to the Colleague in Training, copying in the Host Medical Director / Host Manager and the Postgraduate Dean / Dental Dean with their decision.

6.15 Investigations involving external agencies

Where external Agencies are involved (e.g. Safeguarding, Police, Local Counter Fraud Specialists (LCFS)), a case review will be carried out by the LE Medical Director as appropriate, along with the Chief People Officer, or nominated deputy, in the early stages to decide the appropriate course of action in the internal investigation. Depending on 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.

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6.16 Fraud and / or Criminal Issues

6.16.1.1 Action when investigations identify possible criminal acts

All NHS employees are expected to always be honest and act with integrity and probity, not making, permitting or knowingly allowing to be made, any untrue or misleading statement or information relating to your duties or functions of the Trust.

The Trust takes the issues of fraud, bribery and corruption very seriously and any suspicious activity will be referred to the Local Counter Fraud Specialist and the results of any investigation could lead to disciplinary action being taken up to and including dismissal and/or civil, criminal prosecution proceedings being instigated against the appropriate person/persons involved.

Depending on the allegations, it may be necessary to make a referral to a relevant body, such as:

- For an employee registered with a professional body, e.g. Registered Nurses, Allied Health Professionals or Doctors, the regulatory body may be notified.
- For all staff, it may be necessary to inform other agencies, such as the Police, Counter Fraud, the Disclosure and Barring Service.
- In cases relating to personal data breaches, the Trust has a legal duty to report to the Information Commissioners Office within 72 hours, so these need to be raised with our Information Governance Team without delay.

The Trust will provide full co-operation to any such bodies with their investigations and be in regular contact.

The Trust will aim to continue with internal investigations and only delay if instructed by an external body.

The employee will be informed if any such referral is made and provided with details of the referral.

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. MWL LE will consult the police to establish whether an investigation into any other matters would impede their investigation.

In circumstances where fraud is alleged, MWL will contact the Local Counter Fraud Specialist (LCFS) for advice. Unless MWL 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 MWL LE's investigation process.

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Once the internal investigation is fully completed, if a disciplinary hearing is required, this should be instituted without delay unless advised to the contrary by the police or LCFS. In all cases where there is a quantifiable financial loss to the Trust that is proven to be attributable to an individual's actions, then the LCFS or the Responsible Manager at the disciplinary hearing must consider the process for the recovery of losses incurred to fraud. This is particularly relevant where a decision to dismiss is considered so that the Trust can recover losses from any final salary payments.

6.16.1.2 Cases involving alleged criminal offences

Criminal offences or alleged criminal offences committed outside the place of employment may be matters for disciplinary action.

Colleagues in Training are required to inform MWL LE's Head of HR, their Host Primary Manager, and NHS E of any relevant police matters. For example, colleagues in training are required to inform MWL LE's Head of HR, their Host Primary Manager, and NHS E immediately after an arrest, acceptance of a police caution, or any criminal charge or conviction, anywhere in the world. Full information about the police matter, nature of the caution, or the charge, or conviction, or the reasons for the arrest must be provided at the time of notification. Colleagues in Training are also required to inform their regulator if they have accepted a caution or been charged with or convicted of any criminal offence, anywhere in the world. Further, following the initial notification, there is a continued requirement for a Colleague in Training to keep MWL 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 Colleague in Training and whether or not a matter goes to court.

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 Colleague in Training's employment, or makes them unsuitable for the type of work undertaken and / or for employment by MWL.

In all cases, having considered the facts, MWL LE will need to consider whether the Colleague in Training 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. MWL LE will give serious consideration as to whether the Colleague in Training 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 Colleague in Training is in custody, or subject to conditions, e.g. bail conditions, that makes performance of their duties impossible, the situation may render the Colleague in Training unable to fulfil their

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performance of their contract of employment and it may be that the contract of employment is frustrated.

Similarly, if NHS E decides the Colleague in Training is unable to fulfil their training contract and withdraws their National Training Number, MWL will need to consider terminating the employment contract for Some Other Substantial Reason – see Appendix 7.

6.16.1.3 Dropping of charges or no court conviction

When MWL 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 Colleague in Training is acquitted, but MWL 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 MWL may conduct its own investigation under this policy, including consideration of any available police evidence. In such cases, MWL LE will make clear to the police that any information they provide will have to be made available to the Colleague in Training.

6.17 Safeguarding

Similarly in circumstances where an allegation relating to a potential safeguarding issue arises (i.e. involving a child or vulnerable adult) MWL LE's Safeguarding team must be consulted initially by the Case Manager or appointed HR Representative prior to the commencement of the investigation - see MWL LE's [Policy for Dealing with Allegations of Abuse to Children and Vulnerable Adults by Trust Employees](#) for more details. MWL 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 MWL LE considering whether or not an investigation process in line with this policy is required. In such circumstances, where an employment investigation under this policy is deemed necessary, the 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 Dental Colleague in Training is involved, normally the investigation will continue as above but NHS E 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 MWL LE until the NHS Commissioning Board has reviewed the matter, this request will be complied with. In exceptional circumstances if MWL 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.

7. Section Two - Restrictions of practice and Exclusion from work

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7.1 Introduction

When serious concerns are raised about a Colleague in Training, to protect the interests of the individual, patients and/or colleagues, MWL 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 Colleague in Training from the workplace.

7.2 Exclusion

In most cases, exclusion from work will not be necessary and the Colleague in Training will be able to continue working while issues are investigated. Exclusion is not a sanction and, when it is used, there is no assumption of guilt.

Exclusion of a Colleague in Training 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 Colleague in Training

The decision as to whether there is reasonable and proper cause to formally exclude the Colleague in Training or impose restrictions is usually taken by the Case Manager in consultation with the Postgraduate Dean; and MWL LE's Chief Executive / Deputy Chief Executive/Medical Director and/or Chief People Officer; 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.

7.3 Immediate Exclusion

In instances where it is necessary to consider immediate exclusion, the Host Manager or other senior Host Manager should contact MWL LE HR Department either directly or through the Host HR / Medical staffing team. This is to enable MWL LE HR to inform MWL 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 2.1 above following:

- a critical incident when serious allegations have been made; or

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- there has been a break down in relationships between a colleague and the rest of the team; or
- the presence of the Colleague in Training is likely to hinder the investigation.

Such exclusion will allow a more measured consideration of the situation 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 Colleague in Training to determine whether a formal exclusion is necessary.

If practicable, the Colleague in Training 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.

In circumstances whereby an exclusion from the workplace is necessary, the Lead Employer will ensure that the Host Organisation are aware.

7.4 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 immediately consulted. However, the Host Manager must then contact MWL LE HR at the first possible opportunity and MWL 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.

7.5 Alternatives to Exclusion

Alternatives to exclusion must always be considered before excluding a Colleague in Training; some examples are:

- change of work location;
- more senior supervision of normal training clinical duties;
- restricting the Colleague in Training to certain forms of clinical duties;
- restricting the Colleague in Training 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.

In instances where it is determined that there is a suitable alternative to exclusion, this will be communicated to the Colleague in Training in writing from the Case Manager, confirming the details of the restrictions to practice. The restrictions will be reviewed every four-weeks, and should any changes be made to the restrictions to practice, this will be communicated to the Resident Doctor in writing from the Case Manager.

7.6 Formal Exclusion

If a Colleague in Training 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.

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If the decision is made to impose a formal exclusion, the Colleague in Training 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 Colleague in Training 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 bullet points 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 Colleague in Training 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 Colleague in Training 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 annual leave or study leave and/or report sickness absence in the usual way but copied to LE HR.
- That the Colleague in Training 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 Colleague in Training's key pastoral contact during the exclusion. This is usually the Training Programme Director and/or any other designated colleague agreed between the Colleague in Training and the Case Manager.
- Whether the terms of the exclusion include exclusion from the workplace premises including the Host Organisation, MWL 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 MWL LE or the Host Organisation; nor must they undertake paid work for another organisation during their normal working hours under their employment with MWL 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 support, the Postgraduate Dean etc), the Colleague in Training's representative(s), or any other individuals specified to be available to support the Colleague in Training such as the Training Programme Director. Any breach of confidentiality may, in and of itself, be subject to investigation and may ultimately

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be deemed potential misconduct or gross misconduct depending on the circumstances.

- The support available from MWL LE Health, Work and Well Being Department and NHS E 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 Colleague in Training must also inform the Case Manager of any other organisation(s) for whom they undertake either voluntary or paid work. The Colleague in Training 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 Colleague in Training has been restricted by MWL.
- MWL LE and/or the Postgraduate 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 Colleague in Training 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, the MWL LE Medical Director or appointed MWL Medical Director will, in conjunction with the appointed HR Support and the Postgraduate Dean, consider whether to inform the individual's regulator, 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 Colleague in Training is practicing at such another organisation in defiance of an undertaking to refrain from restricted areas of practice.

7.7 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 period of exclusion in excess of four weeks, the case will be reviewed on a four-weekly basis by the Case Manager and Chief People Officer (or designated deputy) and PPA will also be consulted. In such cases the Colleague in Training 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 they will advise PPA of this information and make a formal

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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 return of the Colleague in Trainings to work. It will be made clear to the Colleague in Training 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.

7.8 Exclusion from Premises

Where exclusion includes an exclusion from premises, during the period of exclusion, the excluded Colleague in Training must not attend their place of work i.e. Host, or any of MWL LE's sites unless specifically permitted in writing or required to do so by the Case Manager and / or MWL 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 Colleague in Training, or a member of their immediate family, requires emergency medical treatment on site.
- For other non-emergency health-related reasons i.e. to obtain treatment for themselves or their family, the Colleague in Training should inform the Case Manager in writing as far in advance as possible.
- To attend MWL LE Health, Work and Well Being Department.
- To meet with their Trade Union representative or work-based colleague, or designated pastoral support. The Colleague in Training should inform the Case Manager in writing, ordinarily giving 72 hours' notice.
- It has been agreed by the Case Manager that the Colleague in Training may undertake education or CPD sessions.

7.9 Colleague in Training Support

The Colleague in Training 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 their case through to conclusion.

The Colleague in Training will have full access to support services through HWWB and can obtain pastoral support via NHS E if required.

8. Section Three - Procedure for dealing with issues of conduct

8.1 Introduction

This section should only be followed once a formal investigation process (See **SECTION ONE**) has concluded and the Case Manager has classified the concern(s) as potential misconduct.

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As all of MWL 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 Colleagues in Training are within this document.

8.2 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 can be dealt with informally with their local Clinical Supervisor and/or Educational Supervisor.

In all cases where there is informal resolution the Colleague in Training 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.

8.3 Formal Disciplinary Hearing

Following the Case Manager considering the Case Investigator's report, if they classify the case as potential misconduct which cannot be handled informally or via a fast track process, a formal disciplinary hearing will take place. The Schedule of Authority specifying the appropriate level of seniority of Disciplinary Authorities for potential warnings and dismissals is set out at **Appendix 4**.

8.4 General Provisions / Arrangements for Disciplinary Hearings

The Colleague in Training will be invited in writing by the Disciplinary Authority or designated HR Support, to attend the formal disciplinary hearing with their trade union representative or companion. The Colleague in Training will be advised in writing by the Disciplinary Authority of the nature of the alleged misconduct, which is being put to the hearing by the Case Manager, and the potential consequences. The arrangements for the hearing shall be managed by MWL LE's Appointed HR Support.

In cases of personal misconduct, the HR support to the Disciplinary Authority, sits on the panel in an advisory capacity and the final decision will be that of the Disciplinary Authority, who chairs the meeting.

In cases involving allegations of professional misconduct, the Disciplinary Authority will be accompanied on the panel by a senior professional from the colleague's / appropriate discipline (who is not currently employed by the Trust) and HR support, both of whom attend in an advisory capacity only. Any expert advice relating to the speciality or profession that is relied on during the hearing should be documented separately in the form of a witness statement. The Disciplinary Authority will chair the hearing and, again, has sole responsibility for the final decision.

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

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A minimum of fourteen calendar days' formal (written) notice of the date of the hearing must be given to allow the Colleague in Training sufficient time to seek adequate representation and prepare their case. This may be extended by mutual consent. Prior notification of the hearing date can initially be given by email or by telephone to the Colleague in Training and, if known, the workplace colleague, companion or trade union representative supporting the employee ahead of the formal (written) notice in order to provide as much notice as possible.

Colleagues in Training are advised to inform the MWL LE's Appointed HR Support of their chosen companion or representative's contact details and availability as early as possible. This allows the Trust sufficient time to consider arrangements that may accommodate the companion's availability. The timeframe for providing this information will be outlined in the disciplinary hearing invitation letter.

While reasonable efforts will be made to accommodate the availability of a representative, the scheduling of the formal disciplinary hearing will not be unreasonably delayed. If the chosen representative is unavailable on the proposed hearing date, one request to reschedule may be considered, provided the alternative date is within seven calendar days of the original date and does not cause undue delay to the process.

A copy of this policy and copies of any reports, statements or information that will be relied on or referred to at the hearing must be included with the formal notice (ie the invite letter).

The following points must be included in the letter to the Colleague in Training:

- The date, time and venue for the hearing.
- 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 Colleague in Training.
- Details of the alleged failure(s) to adopt the acceptable behaviours, as being put forward by the Case Manager.
- The names and post titles (including any legal representative(s)) of the individuals presenting the management case.
- The names and positions of any witnesses being called by the Case Manager including the Case Investigator.
- The fact that the hearing will be of a disciplinary nature and may result in disciplinary action being taken against the Colleague in Training, including possible level of warning, dismissal or summary dismissal if relevant.
- The right of the Colleague in Training to be accompanied at the hearing as set out in this policy.
- The right of the Colleague in Training to call relevant witnesses if they wish, in advance of the hearing to request their attendance; and the requirement for the Colleague in Training to make necessary arrangements for such witnesses to attend.
- Asking whether the employee has any requests for adjustments at the hearing. This consideration may be applied to all potential protected characteristics.

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Any additional documentation that the Colleague in Training wishes to submit to the panel should then be submitted no later than seven calendar days prior to the hearing.

The format for disciplinary hearings is detailed in **Appendix 2**.

The Colleague in Training has the right to be accompanied / represented at the hearing as set out in section one 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 hearing as a witness.

MWL's Appointed HR Support will arrange for someone who is not involved in the case to take a note (not verbatim) of the hearing.

NHS staff should make every effort to attend formal disciplinary hearings as witnesses when required, although they cannot be compelled to do so.

Any witness requested to attend a disciplinary or appeal hearing 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.

The Disciplinary Hearing will normally take place remotely, any requests for the Disciplinary Hearing to take place face to face will be considered by the LE HR team.

Where a Colleague in Training raises a grievance during a disciplinary process the disciplinary process may be suspended 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 hearing, 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 or appeal hearing, 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.

8.5 Proceeding in absence

If a colleague in training is unwilling or unable to attend a formal disciplinary hearing, the Disciplinary Authority will inform them that one further date for a hearing will be offered and if this is not attended the Disciplinary Authority will consider convening the hearing in their absence to make a decision (in their absence) on the evidence available. The Disciplinary

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Authority should keep a record of the colleague in trainings failure to attend the hearings and the attempts to reconvene the hearing(s).

If a colleague in training or witness has been unwell or is unsure if they will be fit to attend the hearing, the Trust may seek advice from any of the following before deciding whether to proceed with the hearing: HWWB, the GP or another health professional. The decision relating to the next step to be taken will take into consideration the likelihood of a sufficient improvement in the health of the colleague to attend the hearing within a reasonable timeframe. If the cause of failure to attend is due to the stress of having disciplinary proceedings being brought it is often in the Colleague in Training's best interests to proceed with the hearing so that a conclusion can be reached. It is recognised that a Colleague in Training who is unfit for work may still be fit to participate in a disciplinary hearing. If the Colleague in Training is delaying attendance at a disciplinary hearing without good cause or medical evidence indicates the Colleague in Training is fit to participate but fails to, the hearing may proceed, and a decision be reached in the Colleague in Training's absence.

8.6 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 Colleague in Training orally on the day of the hearing.

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 MWL's Colleagues in Training whether any and/or all of the allegations singularly, collectively or cumulatively constitute misconduct or, if relevant, gross misconduct. In doing so, the Disciplinary Authority will also consider whether the nature of the proven allegation(s) fundamentally undermines the trust and confidence inherent in the employee-employer relationship. If it is determined that any or all of the allegations found proved constitute misconduct or gross misconduct then the Disciplinary Authority must decide what sanction, if any, to apply to the Colleague in Training'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 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.

In demonstrating insight and remediation, a Colleague in Training is expected to reflect critically on their conduct, acknowledge any failings, offer a sincere apology where

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appropriate, and provide clear evidence to the Disciplinary Authority that they have learned from the experience. This process should show a genuine commitment to personal and professional development, and to preventing recurrence. 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 Colleague in Training has committed misconduct or gross misconduct.
- The seriousness of the offence(s), considering **Appendix 1** which provides examples 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 seriousness of the offence, in line with Appendix 1 which provides examples of behaviour which would be considered misconduct or gross misconduct.
- The Colleague in Training’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 Colleague in Training’s file.
- Any other relevant conduct by the Colleague in Training and/or previous relevant training or management input the Colleague in Training has received including advice, counselling and/or expired disciplinary warnings (NB expired disciplinary warnings cannot 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 MWL LE.
- Any other mitigating factors in the Colleague in Training’s case including, for example, length of service and previous disciplinary record.

The outcome of the hearing will be confirmed in writing to the Colleague in Training within fourteen calendar days of the hearing to the Colleague in Training’s email address(es). If this is not possible, the Disciplinary Authority will inform the Colleague in Training of an alternative reasonable timescale for delivery of the decision (whether in person and subsequently confirmed in writing, or only in writing).

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

- Details of the Colleague in Training’s failure to adopt the Trust’s acceptable behaviours
- The level of warning and the period during which it will remain in force.
- Any improvement or correction of behaviour which is expected.

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- 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 Colleague in Training'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 MWL LE's, the Host's and Colleague in Training'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 warning, a Colleague in Training 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 Colleague in Training'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.

8.7 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 case in question.

8.7.1 Disciplinary Sanctions - First Written Warning

This level of sanction may be issued where there has been failure to adopt the Trust's acceptable behaviours which was not suitable to be, or successfully, addressed by informal measures. A first written warning may be given in conjunction with an improvement action

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plan. The first written warning will normally remain 'live'/'active' on the Colleague in Training's personal file for 12 months, after which time it will be considered 'spent'. This may be extended in exceptional circumstances.

8.7.2 Disciplinary Sanctions - Final Written Warning

The disciplining authority may issue a final written warning in cases where

- There has been a failure to adopt the Trust's acceptable behaviours which may not warrant dismissal but is serious enough not to be tolerated a second time.
- A Colleague in Training has failed to adopt the Trust's acceptable behaviours, whilst subject to a 'live' / 'active' first written warning. A final written warning may be given in conjunction with an improvement action plan. The final written warning will normally remain 'live'/'active' on the Colleague in Training'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.

8.7.3 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 Colleague in Training's conduct remains unsatisfactory following previous live warning(s) e.g. a final written warning, or warnings.

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

If the dismissal is not a summary dismissal as a result of gross misconduct, the Colleague in Training will be given and paid for notice in accordance with the contract of employment.

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 Colleague in Training 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 MWL LE.

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- Why it is said that reason or those reasons is or are a sufficient reason for dismissing the Colleague in Training; and
- Why that decision is a fair decision determined in accordance with equity and the substantial merits of the case.

8.8 Appeal Hearing

Colleagues in Training have the right of appeal against formal disciplinary sanctions issued against them during a disciplinary hearing. They should appeal in writing to MWL 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 Colleague in Training. The Colleague in Training should submit any additional evidence which they wish the Appeal Authority to consider, with their appeal letter.

An appeal may be submitted on one of more the following grounds and the Colleague in Training must state on what basis they are submitting their appeal:

- The disciplinary outcome was disproportionate or unjust.
- There were procedural flaws in the original hearing.
- New evidence has come to light that was not available during the initial hearing.
- The decision was based on incorrect or incomplete information.

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

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

Guidance on the conduct of appeal hearings 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 hearing is to review the decision of the Disciplinary Authority. Its purpose is not to re-hear the original disciplinary hearing. The Appeal Authority has the authority to revoke the sanction, to apply a lower sanction, or to uphold the original disciplinary decision.

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

The Disciplinary Authority from the disciplinary hearing 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 Colleague in

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Training is also legally represented. In any event, the Disciplinary Authority will usually attend the hearing to answer any questions from the Colleague in Training (or, if represented, their representative) and the Appeal Authority about the disciplinary decision or process.

In cases of personal misconduct, the HR support to the Appeal Disciplinary Authority, sits on the panel in an advisory capacity and the final decision will be that of the Appeal Disciplinary Authority, who chairs the hearing.

In cases involving allegations of professional misconduct, the Appeal Disciplinary Authority will be accompanied on the panel by a senior professional from the colleague's / appropriate discipline (who is not currently employed by the Trust) and HR support, both of whom attend in an advisory capacity only. Any expert advice relating to the speciality or profession that is relied on during the appeal hearing should be documented separately in the form of a witness statement. The Appeal Disciplinary Authority will chair the hearing and, again, has sole responsibility for the final decision.

8.9 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 MWL LE HR Representative will be present at an appeal hearing in an advisory capacity as the MWL LE Appeal HR Support, but this must be a different person than advised at the disciplinary hearing. 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 an individual of appropriate seniority (as outlined in the scheme of delegation, Appendix 4) who will be assisted by the Head of HR or other designated senior HR representative in an advisory capacity as the MWL LE Appeal HR Support. If the Medical Director made / chaired the original disciplinary decision or is otherwise unavailable, a nominated MWL Director will consider the appeal.

During the appeal, Colleagues in Training have the same right to representation as applied at their disciplinary hearing.

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 Colleague in Training 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 hearing. A copy of the brief notes of the hearing will be provided to the Colleague in Training after the hearing. This will normally follow on after confirmation of appeal outcome letter.

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

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9. Section Four - Procedure for dealing with issues of capability

9.1 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 capability that is critical and cannot be dealt with informally, and the relevant Postgraduate Dean has confirmed that the potential capability matter cannot be dealt with in accordance with Annual Review of Competence Progression (ARCP) processes.

There will be occasions when a Colleague in Training is considered not to be making satisfactory progression in their training. For doctors and dentists in training, this shall almost always 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 Postgraduate Dean and MWL LE HR, and after consultation with the PPA.

9.2 Alternatives to Formal Capability Hearing Process

The Case Investigator will produce a report for MWL's Case Manager as detailed in **SECTION ONE** of this Policy.

The report will be forwarded to the individual Colleague in Training 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 Colleague in Training and advice from the PPA.
- Consider whether action under **SECTION TWO** of this policy is necessary to exclude the Colleague in Training or place a temporary restriction on their duties.
- Consider with MWL LE's Medical Director, the Postgraduate Dean, [the Host Manager, where appropriate] and Chief People Officer 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 Colleague in Training'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 MWL LE to design an action plan, to be agreed by MWL, NHS E and the Colleague in Training, to remedy any lack of capability that has been identified during the assessment.
- Inform the Colleague in Training of the decision about the next steps to take within 10 days.

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9.3 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 Colleague in Training'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 Colleague in Training's supervisor, or via educational and ARCP processes, the matter must be investigated as per SECTION ONE above and must also be referred to PPA (unless the Colleague in Training refuses to have their case referred) before it can be considered by a capability panel.

9.4 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 concern, 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 MWL LE to decide upon the most appropriate way forward having consulted with PPA.

9.5 Conducting Capability Hearings

In the exceptional event that capability concerns cannot be managed through NHS E 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 Modern NHS (MHPS) 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 Colleague in Training or place temporary restrictions on their clinical duties.

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10. Section Five - Procedure for Handling Health-Related Concerns

10.1 Introduction

A wide variety of health problems can have an impact on a Colleague in Training'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.

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

10.2 Reasonable Adjustments

Where a Colleague in Training has health concerns, the Trust will consider what reasonable adjustments could be made to a Colleague in Training's workplace or other arrangements.

Some examples may include:

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

This is not an exhaustive list.

10.3 Handling Health issues

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

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

If a Colleague in Training's ill health makes them a potential danger to patients and/or colleagues and/or themselves and they do not recognise that, or are not prepared to co-operate with measures to protect patients and/or colleagues and/or themselves, then exclusion from work in line with **SECTION TWO** and referral to the professional regulatory body must be considered.

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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 MWL LE's Health, Work and Well Being service and/or PPA.

If a Colleague in Training 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 Colleague in Training to the Health, Work and Well Being service for assessment as soon as possible.

10.4 Sickness absence management

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

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

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11. Section Six – Monitoring Training and Compliance

11.1 Records

Records of informal disciplinary processes / measures and/or first and final warnings must be kept on the Colleague in Training's MWL 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 Colleague in Training's 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, MWL LE may be required to provide such information requested by the relevant professional body of the Colleague in Training (i.e. GMC, GDC, HCPC,) 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 Trust's Records Management policy on the destruction of records.

11.2 Data Protection of Patient Records

Where records 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, MWL LE and / or Host to take advice from MWL LE's Medical Director and / or Host's Caldicott Guardian and / or legal advisers.

It is MWL 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 MWL 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 MWL LE and /or the Host (Article 6(e)); and / or
- necessary for the purposes of a legitimate interest of MWL 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));

Any copies of patient records used in the investigation and resulting report must be anonymised / redacted / pseudonymised to NHS standards and the Data Protection Legislation.

12. Training

MWL LE's HR Representatives will provide training, and advice 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

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Organisation, supported by MWL 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 Colleague in Training's e-portfolio to be managed educationally via the Colleague in Training's educational team.

| What aspect/s of this policy will require staff training? | Which staff groups require this training? | Is this training covered in the Trust's Statutory & Mandatory Training Policy? | If no, how will the training be delivered? | Who will deliver the training? | How often will staff require training | Who will ensure and monitor that staff have this training |
|---|--|--|--|--|---------------------------------------|---|
| Operational processes that are associated with this policy. | HR Advisors, Assistant HR Business Partners and HR Business Partners | No | Teams/Face to Face | Arranged by Head of HR and delegated where appropriate | Every 4 years. | HR Commercial Services Council |
| Expected behaviors | All | No | Via induction | Via induction video circulated for individual inductions | N/A | HR Commercial Services Council |
| Investigations | Case investigators appointed under this policy | No | Teams/Face to face | Arranged by Head of HR and delegated where appropriate | Every 4 years | HR Commercial Services Council |
| How to raise a concern | Host Organisations/NHSE | No | Teams | Arranged by Head of HR and delegated where appropriate | Annual events available online | HR Commercial Services Council |

13. Monitoring Compliance

13.1 Key Performance Indicators (KPIs) of the Policy

| No | Key Performance Indicators (KPIs) Expected Outcomes |
|----|---|
| 1. | Procedural documents on the intranet are in date |

| | | | | | |
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| | |
|----|---|
| 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 |

13.2 Performance Management of the Policy

| Minimum Requirement to be Monitored | Lead(s) | Tool | Frequency | Reporting Arrangements | Lead(s) for acting on Recommendations |
|--|--|---|--|--|--|
| 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) |

14. References/Bibliography/Relevant Legislation/National Guidelines

| No | Reference |
|----|--|
| 1. | A Reference Guide for Postgraduate Foundation and Specialty Training in the UK: The Gold Guide 10th Edition |
| 2. | NHS Digital guidance: Records Management Code of Practice for Health and Social Care 2016 |
| 3. | MHPS |
| 4. | |
| 5. | |

15. Related Trust Documents

[List any procedural documents which are referenced within the text.]

| | | | | | |
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| No | Related Document |
|----|--|
| 1. | MWL Attendance Management Policy |
| 2. | Alcohol and Drugs misuse Policy |
| 3. | <u>Policy for Dealing with Allegations of Abuse to Children and Vulnerable Adults by Trust Employees</u> |
| 4. | <u>Fast Track Request Form</u> |
| 5. | <u>Code of Confidentiality</u> |

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16. Equality Analysis Screening Tool

The EIA screening 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. Where the screening identifies that a full EIA needs to be completed, please use the full EIA template.

The completed EIA screening form 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 Head of Patient Inclusion and Experience for monitoring purposes via the following email, cheryl.farmer@sthk.nhs.uk. If the assessment is related to workforce a copy should be sent to the workforce Head of Equality, Diversity and Inclusion for workforce equality&diversity@sthk.nhs.uk.

If this screening assessment indicates that discrimination could potentially be introduced then seek advice from either the Head of Patient Inclusion and Experience or Head of Equality, Diversity (Workforce) and Inclusion.

A full equality impact assessment must be considered on any cost improvement schemes, organisational changes or service changes that could have an impact on patients or staff.

| | |
|---|---|
| Title of function | Lead Employer Handling Concerns Policy and Procedure |
| Brief description of function to be assessed | Process and procedures for the handling of concerns about the conduct, performance (capability) and/or health of MWL LE employees |
| Date of assessment | 30/01/2026 |
| Lead Executive Director | Malise Szpakowska |
| Name of assessor | Chelsea Houghton |
| Job title of assessor | Head of HR |

Equality, Diversity & Inclusion

Does the policy/proposal:

- 1) Have the potential to or will in practice, discriminate against equality groups
- 2) Promote equality of opportunity, or foster good relations between equality groups?
- 3) Where there is potential unlawful discrimination, is this justifiable?

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| | Negative Impact | Positive Impact | Justification/ evidence and data source |
|------------------------|------------------------|------------------------|--|
| Age | No | No | |
| Disability | No | No | |
| Gender reassignment | No | No | |
| Pregnancy or maternity | No | No | |
| Race | No | No | |
| Religion or belief | No | No | |
| Sex | No | No | |
| Sexual orientation | No | No | |

Human Rights

Is the policy/proposal infringing on the Human Rights of individuals or groups?

| | Negative Impact | Positive Impact | Justification/ evidence and data source |
|---|------------------------|------------------------|--|
| Right to life | No | No | |
| Right to be free from inhumane or degrading treatment | No | No | |
| Right to Liberty/security | No | No | |
| Right to privacy/family life, home and correspondence | No | No | |
| Right to freedom of Thought/conscience | No | No | |
| Right to Freedom of expression | No | No | |
| Right to a fair trial | No | No | |

Health Inequalities

Is the policy/proposal addressing health inequalities and are there potential or actual negative impact on health inequality groups, or positive impacts? Where there is potential unlawful impacts is this justifiable.

| | Negative Impact | Positive Impact | Justification/ evidence and data source |
|-------------------------|-----------------|-----------------|--|
| Deprived Populations | No | No | Policy manages concerns regarding staff behaviours |
| Inclusion health groups | No | No | Policy manages concerns regarding staff behaviours |
| 5 child clinical areas | No | No | Policy manages concerns regarding staff behaviours |
| 5 adult clinical areas | No | No | Policy manages concerns regarding staff behaviours |

Outcome

After completing all of the above sections, please review the responses and consider the outcome.

| | |
|--------------------------------|--|
| Is a full EIA required? | Yes <input type="checkbox"/> No <input checked="" type="checkbox"/> Please include rationale: |
|--------------------------------|--|

Sign off

| | |
|---------------------------------------|--------------------------------------|
| Name of approving manager | Claire Scrafton |
| Job title of approving manager | Deputy Director of HR and Governance |
| Date approved | 10/03/2026 |

17. Data Protection Impact Assessment Screening Tool

If you answer **YES** or **UNSURE** to any of the questions below a full Data Protection Impact Assessment will need to be completed in line with Trust policy.

| | Yes | No | Unsure | Comments - Document initial comments on the issue and the privacy impacts or clarification why it is not an issue |
|--|-----|----|--------|---|
| Is the information about individuals likely to raise privacy concerns or expectations e.g. health records, criminal records or other information people would consider particularly private? | | X | | |
| Will the procedural document lead to the collection of new information about individuals? | | X | | |
| Are you using information about individuals for a purpose it is not currently used for, or in a way it is not currently used? | | X | | |
| Will the implementation of the procedural document require you to contact individuals in ways which they may find intrusive? | | X | | |
| Will the information about individuals be disclosed to organisations or people who have not previously had routine access to the information? | | X | | |
| Does the procedural document involve you using new technology which might be perceived as being intrusive? e.g. biometrics or facial recognition | | X | | |
| Will the procedural document result in you making decisions or taking action against individuals in ways which can have a significant impact on them? | | X | | |
| Will the implementation of the procedural document compel individuals to provide information about themselves? | | X | | |

Sign off if no requirement to continue with Data Protection Impact Assessment:
Confirmation that the responses to the above questions are all NO and therefore there is no requirement to continue with the Data Protection Impact Assessment

Policy author Chelsea Houghton

Date 09/02/2026

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18. 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.

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 MWL LE, NHS E, 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 MWL LE, NHS E or Host; or that of their staff, patients / service users or visitors
- Deliberate falsification of any documentation for / to MWL LE, NHS E 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 MWL LE, NHS E, 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 MWL LE, NHS E, 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 MWL Alcohol and Drug Misuse Policy.
- Misappropriation of work / NHS time (including that of MWL 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 MWL LE, NHS E 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 Colleague in Training's hours of work) adversely affect the reputation of MWL LE, NHS E, a Host or

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University, or may affect the Colleague in Training's suitability as a Colleague in Training 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 MWL LE, NHS E, 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

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 MWL LE's or a Host Organisations notification requirements for sickness absence, holiday booking, or any other type of absence.
- Drug Errors (where appropriate following review under MWL LE's or a Host Organisations Drug Incident procedure and/or capability procedure)

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- Serious or repeated failure to carry out reasonable instructions or unreasonable non-co-operation with management activities.
- Failure to follow MWL LE's or a Host Organisations / 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 MWL, NHS E, 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.

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19. Appendix 2 – Procedure at the Disciplinary Meeting

The Case Manager, or in some cases, the Case Investigator or a legal representative engaged by MWL LE for the purpose of presenting MWL LE's case at the disciplinary meeting, will present the management case to the Disciplinary Authority.

The disciplinary hearing 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 MWL LE.

The Appointed HR Support will prepare and circulate sets of duplicate bundles of relevant papers in advance of the hearing so that the Disciplinary Authority / independent senior professional (in cases of potential professional misconduct), the Colleague in Training / 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 hearing. The bundle(s) will usually include: the investigation report and appendices, relevant correspondence between the Case Manager, Case Investigator and the Colleague in Training including the decision to proceed / invitation to disciplinary hearing, relevant policies and procedures, any additional documents provided by the Colleague in Training.

1. The Disciplinary Authority will facilitate the introductions and state the complaint(s) or allegation(s) that has led to the need for the disciplinary hearing.
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 Colleague in Training 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 maybe invited back into the hearing if required by the Disciplinary Authority.
4. The Colleague in Training 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 Colleague in Training 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 Colleague in Training and their witnesses. The Colleague in Training and / or their companion / representative may also ask questions to clarify evidence given. Each

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witness shall withdraw after giving their evidence and answering questions but maybe invited back into the hearing if required by the Disciplinary Authority.

8. The Colleague in Training 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 hearing to clarify or amplify any statement they may have made.
10. The Disciplinary Authority may, at his/her discretion if necessary, adjourn the hearing in order that further evidence may be produced or for any other reason.
11. Following completion of the submission of all evidence and summing-up, the 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 hearing to clear up points of uncertainty on evidence already given. If recall is necessary, the Colleague in Training 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 Disciplinary Authority.
13. A decision will normally be announced immediately following the hearing. Whenever this is not possible, the Colleague in Training will be advised of the decision by the Disciplinary Authority within seven calendar days.
14. The Disciplinary Authority shall normally write to the Colleague in Training 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 Colleague in Training or their companion / representative may request an adjournment at any time during the disciplinary hearing.

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20. Appendix 3 – Procedure at the Appeal

The Disciplinary Authority may be represented at the appeal hearing by a legal representative engaged by MWL LE for the purpose of presenting MWL LE’s response to the appeal at the appeal hearing.

The appeal hearing 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 MWL 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 hearing so that the Appeal Authority, the independent senior professional (in cases of potential professional misconduct), the Colleague in Training / their companion / representative, and the Disciplinary Authority / legal representative have the same set of papers to prepare with and reference at the appeal hearing. The appeal bundle(s) will usually include: the Colleague in Training’s letter / statement of appeal, the Disciplinary Authority’s disciplinary decision letter, the disciplinary hearing bundle of papers, any disciplinary hearing 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 hearing 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 hearing is not a re-hearing
2. The Colleague in Training and/or their companion/representative will present their case and call witnesses if necessary. NB Witnesses who attended the disciplinary hearing should only be called again if they can provide significant additional evidence to that which was presented at that hearing.
3. The Appeal Authority, Appeal HR Support and the Disciplinary Authority / their legal representative will have the opportunity to ask questions of the Colleague in Training and any witnesses. Any witnesses shall withdraw after giving their evidence and answering questions but maybe invited back into the hearing if required by the Appeal Authority.
4. The Appeal Authority, Appeal HR Support and the Colleague in Training / 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 Colleague in Training or their companion/representative, the Disciplinary Authority or Case Investigator to clarify, expand upon or explain any statement they may have made.

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6. The Colleague in Training 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 hearing in order that further evidence may be produced or for any other reason.
8. Following completion of the submission of all evidence and summing-up, the 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 hearing to clear points of uncertainty on evidence already given. If this is necessary, the Colleague in Training 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.
9. A decision will normally be announced immediately following the hearing. Whenever this is not possible, the Colleague in Training will be advised of the decision by the Appeal Authority within fourteen calendar days unless more extensive re-investigation is required.
10. The Appeal Authority shall normally write to the Colleague in Training within fourteen calendar days of the appeal to confirm their decision enclosing a copy of the notes from the appeal.

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21. Appendix 4 – Scheme of Delegation

| Type of Meeting | Potential Outcome | Minimum level of Authority |
|-----------------------------|--------------------------|---|
| Disciplinary Meeting | Warning | Non-clinical or clinical Senior Manager (AFC Band 8a or above) |
| | Dismissal | Non-clinical or Senior Manager (AFC Band 8a or above) with designated authority to dismiss. |
| SOSR | | Non-clinical Senior Manager (AFC Band 8a or above) |
| Appeal | | |
| Appeal | Warning | A person of a higher seniority or equivalent to that of the Disciplinary Authority |
| | Dismissal | A person of a higher seniority or equivalent to that of the Disciplinary Authority |

22. Appendix 5 – AWOL Unauthorised absence including failure to submit a valid Statement of Fitness for Work (“fit note”)

Unauthorised absence occurs when a Colleague in Training does not report for work and fails to make contact in accordance with MWL 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 Colleague in Training 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 Colleague in Training and / or there is serious concern for the wellbeing of the Colleague in Training, their next of kin should be contacted by MWL LE HR in the first instance. If no contact can be made, the Host, following discussion with MWL LE should consider contacting the Police or visiting the Colleague in Training’s address or that of their next of kin in person.

Visits to a Colleague in Training’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 Colleague in Training and no satisfactory response has been received, MWL LE HR will write to the Colleague in Training by email and post asking them to contact MWL LE and their 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 Colleague in Training has returned to work and / or contacted MWL 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 MWL LE’s Attendance Management Policy.

If the Colleague in Training remains absent and MWL LE does not receive a reply to their correspondence within 3 working days and no information comes to light from other sources e.g. NHS E, the Host, work colleagues, relatives etc, then the Colleague in Training will be sent a further letter and email to request that they make contact with MWL LE and their Host urgently and within three working days. The letter will set out that failure to make contact by the date specified within the letter will result in a SOSR Meeting being convened under this Policy, the outcome of which may be dismissal.

If the Colleague in Training fails to make contact and fails to attend the meeting, the meeting Chair will, in most cases proceed in their absence. If so, the decision / outcome and the Colleague in Trainings right to appeal will be confirmed in writing via email and post.

If a Colleague in Training does eventually make contact or submits a valid fit note and they have not been dismissed under this process, MWL LE in conjunction with the Host will consider reinstating pay if there was a genuine reason why the Colleague in Training could not make contact during the non-attendance. The Host in conjunction with MWL LE HR team should carry out an investigatory preliminary fact-finding interview with the Colleague in Training to establish the reasons for not reporting their non-attendance/ submitting a valid fit note. Further to this

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

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23. Appendix 6 – Disciplinary Fast Track Process

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

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 process for a fast-track meeting will be as follows:

1. Introductions
2. The Disciplining Authority outlines the nature of the allegation(s) accepted by the Colleague in Training and advises that they may result in disciplinary action up to and including a final written warning.
3. The Disciplining Authority confirms with the Colleague in Training that they accept the allegations previously stated.
4. The Colleague in Training or their representative will have the right to put forward any comments or statements relating to the incident.
5. The Disciplining Authority may wish to question the Colleague in Training.
6. 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.
7. The Disciplining Authority will then communicate their decision to the Colleague in Training and their representative. The sanction will not exceed a final written warning. In exceptional circumstances (e.g. the Colleague in Training 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 hearing for potentially a higher sanction to be considered.
8. The Disciplining Authority will send a letter confirming the decision to the Colleague in Training. The record of any warning will be kept on the personal file within fourteen calendar days of the hearing.
9. The disciplinary sanction imposed will be given in accordance with MWL LE's Handling Concerns policy.
10. It is not envisaged that there will be appeals against fast-track decisions as, by requesting and proceeding with a fast-track hearing, the Colleague in Training 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 Colleague in Training is dissatisfied with how the fast-track hearing / process has been conducted, they should inform the LE HR Team/Case Manager who will decide if an appeal is needed or alternatively, what, if any, other action is appropriate.

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24. Appendix 7 – Some Other Substantial Reason / Breach of Statutory Restriction

This Appendix is included to explain how MWL LE may deal with issues that are not 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 Colleague in Training. Examples could include:

- Conflict of interest e.g. the Colleague in Training’s close connection with another organisation putting the position or reputation of MWL LE, NHS E or the Host in jeopardy.
- A decision by NHS E that the Colleague in Training’s place on an approved postgraduate training programme is withdrawn. This also applies to situations whereby a Colleague in Training 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 Colleague in Training and their colleagues (including their trainers or supervisors). In such cases, before resorting to a formal meeting to consider dismissal, in conjunction with the Colleague in Training and NHS E, MWL LE will consider whether re-deployment of the Colleague in Training 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.*

Breach of Statutory Restriction

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

- The Colleague in Training does not have legal entitlement to work in the UK
- The Colleague in Training 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 NHS E 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 8.3 and Appendix 2 of this policy albeit a senior member of MWL LE Staff can conduct the meeting. There will be cases where a decision is made without the requirement for a meeting with the colleague in training. In such circumstances the decision, along with the rationale for not requiring a meeting to discuss the matter, will be communicated in writing by the decision maker to the colleague in training.

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Any appeal will be conducted in line with the procedure outlined in paragraph 8.8 and Appendix 3 of this policy. A more senior member of MWL's management team will conduct any Appeal.

The appeal process outlined in paragraph 8.8 and Appendix 3 of this policy is also to be utilised if a Colleague in Training 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 Colleague in Training's fixed term employment at the end of their period of training.

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25. Appendix 8 – Trust Values



We are KIND

We:

- Treat every individual with respect
- Are compassionate in our support of patients and colleagues
- Are friendly and welcoming and always introduce ourselves
- Care for each other as we care for our patients
- Are polite and value each other's thoughts and ideas



We are OPEN

We:

- Are always listening and learning
- Encourage and support two-way communication
- Are honest, fair and open with others
- Take responsibility for our actions and always aim to improve
- Develop our services in the best interests of our communities



We are INCLUSIVE

We:

- Value everyone's cultural, social and personal needs
- Celebrate our differences and support each other
- Listen to all voices
- Work as a team and learn from each other
- Challenge prejudice and promote acceptance

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