

Agenda item 4.ii

Report to:	Trust Board	Date: 2 December 2021
Report from:	Director of Workforce and OD Deputy Director of Workforce and OD	
Principal Objective/Strategy:	The purpose of this paper is to present the revised disciplinary policy [renamed the “Your Behaviour Matters policy” to the Committee for approval.	
Title:	Your Behaviour Matters (Disciplinary Procedure – DN117)	
Board Assurance Framework Entries:	n/a	
Regulatory Requirement:	Well-Led	
Equality Considerations:	n/a	
Key Risks:	<ul style="list-style-type: none"> • Poor implementation resulting in failure to properly follow a contractual process creating a risk of a legal challenge. 	
For:	Approval	

1. Purpose

The purpose of this paper is to introduce the revised disciplinary policy for approval and to provide assurance that the NHSEI recommendations of 2019 have been fully and properly addressed.

2. Background

The Board will recall that in 2019 the NHSI published its response to an independent inquiry into a disciplinary case conducted by a Trust that resulted in a member of staff taking their own life. The inquiry concluded that there had been serious procedural errors made throughout both the investigation and disciplinary process and that the member of staff had been treated very poorly, to the extent that his mental health had been severely impacted.

The response set out a number of recommendations to improve such processes, these recommendations are commonly referred to as the “Dido Harding recommendations”. NHI/E issued guidance relating to the management and oversight of local investigation and disciplinary procedures and required employers to review them and assess their current procedures and processes in comparison and make adjustments where required to bring the organisation in line with this best practice. This guidance is attached as Appendix 1 to this paper.

Earlier this year (July 2021) the Workforce Director’s report set out the actions that the Trust had taken to date in response to the Dido Harding recommendations and the further actions still to be taken. These were specifically that the Trust would review its employment policies starting with its disciplinary policy and in doing so it would ensure

that the revision was consistent with the Trust's newly published values and behaviours and significantly that, notwithstanding the often difficult matters to be considered, the process would always be fair and just and would be handled compassionately throughout with as close attention as reasonably possible to the wellbeing of all parties involved.

3. Our Disciplinary Policy going forward

The review of our policies commenced with the disciplinary policy and as part of this review it was discussed with members of the CCL team, the BAME network and the JSC. The prevalent view of all parties was the existing policy, whilst necessarily formal in its language was nonetheless not drafted in a way that was consistent with our aim to deal with, even the most challenging of behaviours, in a way that is fair, just and compassionate. The team therefore set about reviewing and updating not only the content and format of the document but also its intent and tone.

The result is the attached policy, retitled "Your Behaviour Matters (Disciplinary Procedure)". This policy and our approach now adheres to the NHSEI recommendation in that it:-

1. adheres to best practice, incorporates just culture principle and the Trust's values and behaviours and crucially looks to treat individuals with dignity and respect and safeguard their health and wellbeing
2. applies a rigorous decision-making methodology and in particular incorporates the duty to consider a range of options and alternatives to standard formal sanctions
3. ensures that investigators and decision makers are trained and competent to carry out their role
4. assigns sufficient resources to ensure a full, proper and fair process
5. provides sufficient senior oversight of decisions relating to suspensions/exclusions
6. ensures Board-level oversight of case information and trends

This revised policy has been formally approved by the Joint Staff Council at the 18 November 2021 meeting. It has also been discussed and approved by the Quality and Risk Committee.

4. Implementation

Once approved, this policy will be published on the intranet and intranet (as required by NHSI) with communications going in the weekly briefing and in Newsbites. It will also be flagged as part of the induction process to ensure that new starters are aware of it and its content. We will in addition to this include the policy and how to apply compassionately and fairly as part of the Compassionate and Collective Line Managers Development Programme.

Recommendation:

The Trust Board is requested:

- **to discuss and approve this policy**

Additional guidance relating to the management and oversight of local investigation and disciplinary procedures

1. Adhering to best practice

a) The development and application of local investigation and disciplinary procedures should be informed and underpinned by the provisions of current best practice, principally that which is detailed in the Acas 'code of practice on disciplinary and grievance procedures' and other non-statutory Acas guidance; the GMC's 'principles of a good investigation'; and the NMC's 'best practice guidance on local investigations' (when published).

b) All measures should be taken to ensure that complete independence and objectivity is maintained at every stage of an investigation and disciplinary procedure, and that identified or perceived conflicts of interest are acknowledged and appropriately mitigated (this may require the sourcing of independent external advice and expertise).

2. Applying a rigorous decision-making methodology

a) Consistent with the application of 'just culture' principles, which recognise that it is not always appropriate or necessary to invoke formal management action in response to a concern or incident, a comprehensive and consistent decision-making methodology should be applied that provides for full and careful consideration of context and prevailing factors when determining next steps.

b) In all decision-making that relates to the application of sanctions, the principle of plurality should be adopted, such that important decisions which have potentially serious consequences are very well informed, reviewed from multiple perspectives, and never taken by one person alone.

3. Ensuring people are fully trained and competent to carry out their role

Individuals should not be appointed as case managers, case investigators or panel members unless they have received related up to date training and, through such training, are able to demonstrate the aptitude and competencies (in areas such as awareness of relevant aspects of best practice and principles of natural justice, and appreciation of race and cultural considerations) required to undertake these roles.

4. Assigning sufficient resources

Before commencing investigation and disciplinary procedures, appointed case managers, case investigators and other individuals charged with specific responsibilities should be provided with the resources that will fully support the timely and thorough completion of these procedures. Within the overall context of 'resourcing', the extent to which individuals charged with such responsibilities (especially members of disciplinary panels) are truly independent should also be considered.

5. Decisions relating to the implementation of suspensions/exclusions

Any decision to suspend/exclude an individual should not be taken by one person alone, or by anyone who has an identified or perceived conflict of interest. Except where immediate safety or security issues prevail, any decision to suspend/exclude should be a measure of last resort that is proportionate, timebound and only applied when there is full justification for doing so. The continued suspension/exclusion of any individual should be subject to appropriate senior-level oversight and sanction.

6. Safeguarding people's health and wellbeing

a) Concern for the health and welfare of people involved in investigation and disciplinary procedures should be paramount and continually assessed. Appropriate professional occupational health assessments and intervention should be made available to any person who either requests or is identified as requiring such support.

b) A communication plan should be established with people who are the subject of an investigation or disciplinary procedure, with the plan forming part of the associated terms of

reference. The underlying principle should be that all communication, in whatever form it takes, is timely; comprehensive; unambiguous; sensitive; and compassionate.

c) Where a person who is the subject of an investigation or disciplinary procedure suffers any form of serious harm, whether physical or mental, this should be treated as a 'never event' which therefore is the subject of an immediate independent investigation commissioned and received by the board. Further, prompt action should be taken in response to the identified harm and its causes.

7. Board-level oversight

Mechanisms should be established by which comprehensive data relating to investigation and disciplinary procedures is collated, recorded, and regularly and openly reported at board level. Associated data collation and reporting should include, for example: numbers of procedures; reasons for those procedures; adherence to process; justification for any suspensions/exclusions; decision-making relating to outcomes; impact on patient care and employees; and lessons learnt.