



Disciplinary Policy

Inmind Reference:	HR18
Category:	Human Resources
Version Number:	1.3
Reviewed on:	February 2018
Next review date:	February 2020
Lead Officer:	HR Manager
Equality Impact Assessment completed:	Yes

Applicable Legislation/Regulations:
The Equality Act 2010; The Human Rights Act 1998; The Public Interest Disclosure Act 1998 The Employment Rights Act 1996; The Employment Act 2008; The Data Protection Act 1998 The Care Act 2014
Codes of Practice:
ACAS Code of Practice: Disciplinary and Grievance Procedures
Purpose:
The purpose of this policy is to: <ul style="list-style-type: none"> • Ensure that all disciplinary matters across Inmind Healthcare Group are dealt with in a fair and consistent manner and in accordance with statutory requirements. • Advise staff of the kinds of acts and forms of behaviour that constitute breaches of discipline and the consequential sanctions. • Ensure that proper consideration is given to any alleged offence or breach of discipline and to any mitigating circumstances before a sanction is imposed.

Version Control Table		
Date Ratified	Version Number	Status
	1.3	Live

Date	Key Revision
10/02/18	Change made to the composition of the formal Disciplinary Panel.

Please check to ensure this is the most current electronic copy of this document as it is updated and published in electronic format only (hard copies may become out of date).

1.0 The Policy

- a) Inmind Healthcare Group aims to provide the highest standards of care to its service users and understands that every employee has a role to play in achieving and sustaining high standards of conduct at all times.
- b) For this reason, the Company has a responsibility to ensure that there are safeguards and controls in place so that fair and appropriate action can be taken if an employee's conduct falls below the required standard.
- c) Inmind also understands that it has a responsibility to encourage and help all employees to achieve and maintain standards of conduct and to ensure that all employees receive adequate training and guidance to carry out their roles.
- d) This procedure applies only to conduct issues. Where Inmind identifies any issues related to performance of an individual employee, these will be addressed in accordance with the Company's Performance Management Policy.
- e) This procedure does not apply to employees within their probationary period, as any conduct concerns during this period will be addressed in accordance with the Probationary Period Policy.
- f) Where appropriate, Inmind will attempt to address deficiencies in conduct via informal procedures. However, there will be occasions when deficits in an employee's performance or conduct are of a nature whereby formal action is required.
- g) In such cases, Inmind will ensure that all disciplinary matters are dealt with in a fair and equitable manner.
- h) No disciplinary action will be taken against an employee until steps are taken to establish the facts and the employee has been given an opportunity to respond.
- i) An employee will have the right to appeal against any disciplinary sanction imposed.
- j) At every stage in the procedure, the employee will be advised of the nature of the allegation against him or her and will be given the opportunity to state his or her case before any decision is made.
- k) At all formal disciplinary hearings, the employee will have the right to be accompanied by a companion who is either an accredited trade union official or a work colleague.
- l) No employee will be dismissed for a first breach of discipline except in the case of gross misconduct when the sanction may be dismissal without notice.
- m) Where dismissal follows a series of breaches of conduct, dismissal is with notice as per the individual's Terms and Conditions of Employment.

- n) In all cases any mitigating circumstances will be taken into account when deciding whether a sanction should occur.
- o) No employee will receive less favourable treatment on the grounds of gender, gender reassignment, sexual orientation, civil partnership/marital status, colour, race, nationality, ethnic or national origins, creed, religion/belief, disability, age or trade union membership, or be disadvantaged by conditions or requirements which are not justified by their role.
- p) Confidentiality of the issues and staff involved in any investigatory and disciplinary process is paramount. No information relating to action taken will be divulged to members of staff who are not involved in the process. Those involved will be made aware of their responsibility to maintain confidentiality in line with the Data Protection Act.
- q) The Data Protection Act 1998 applies to any personal information processed in relation to the disciplinary process and there are key points that need to be adhered to. All managers involved in the investigatory and disciplinary process must be aware that:
 - No information must be gathered by deception
 - Unsubstantiated allegations should be removed from an individual's record unless there are exceptional reasons for their retention.
 - Staff conducting investigations do not have unrestricted right of access to all information held about the employee under investigation.

2.0 The Procedure

2.1 Reporting of concerns relating to conduct or performance

- a) It is the responsibility of all staff to report any concerns they have relating to conduct or performance issues within the service.
- b) For clinical staff all such reports should be made initially to the Nurse in Charge of their ward.
- c) Dependent on the nature of the issue reported, the Nurse in Charge should make a decision of whether the issue is one that they are able to manage and take appropriate action, or whether it is of a severity which needs reporting to an appropriate Manager.
- d) All staff are advised to utilise guidance given in Inmind's Freedom to Speak Up (Raising Concerns) Policy.
- e) For all other staff groups, reports of any concerns relating to conduct or performance should be made to their direct line manager. If unsure as to what action to take, the line manager should consult the Group Operations Director or a member of the Executive Team if legal advice is required.

2.2 The Informal Procedure

- a) All line managers must discuss informally with employees all shortcomings in their conduct before taking action under the formal procedure, unless the matters causing concern are of a sufficiently serious nature to justify formal action.
- b) In many situations minor breaches of conduct at work, for example, lateness, carelessness or lack of effort, can be dealt with successfully by the employee's line manager discussing the issue(s) with them at an early stage.
- c) Prior to the informal meeting with the employee the line manager should gather facts about the situation.
- d) Within the meeting the line manager should:
 - Outline that the aim is to resolve the matter informally
 - Discuss what needs to be done to address the issue
 - Remind the employee of their responsibilities and encourage improved/positive behaviour.
 - Offer any appropriate support, for example, training, supervision
 - Outline what could happen if the issue is not resolved informally
 - Set a date to informally review the issue
- e) However, if informal action does not bring about improvement of the unsatisfactory conduct, then the formal disciplinary procedure should be applied.
- f) If the issue relates to the employee's performance/capability to fulfil their role, the Performance Management Policy should be followed.

2.3 The Disciplinary Process

- a) If the informal process has failed to bring about the required improvement of an employee's conduct or performance, or the matter causing concern is of a sufficiently serious nature, then the disciplinary procedure must be applied.
- b) The implementation of the disciplinary procedure will not necessarily result in disciplinary action being taken against the employee, and no disciplinary sanction will be decided until a thorough investigation into the facts of the case has been completed and a formal disciplinary hearing held.

2.4 The investigatory process

- a) The purpose of the investigatory process is to objectively gather all relevant facts and evidence relating to the case. This is an informal process. Any investigation into a conduct concern should be undertaken as quickly as possible after an alleged incident/issue is raised so that investigatory interviews can be conducted before memories fade. It is the responsibility of the Registered Manager, Hospital Director, or Executive Team Member to appoint an impartial Investigating Officer. This individual will conduct a fact-finding investigation to clarify the nature of the alleged incident/concern and ensure that any initial witness interviews are conducted without undue delay.
- b) This fact-finding should include reviewing any relevant documentation and speaking to any immediate witnesses. An investigation will normally involve at least one interview with the employee against whom the allegation is made, to allow them to answer questions and offer an explanation. It must be made clear to the employee during this process that this is a fact-finding investigative interview and not a formal disciplinary hearing.
- c) The investigating officer will normally be of a higher grade than the person being investigated. They will be deemed to have the necessary experience and knowledge to conduct such an investigation and will usually be a member of the hospital or service management team or a senior nurse.
- d) In the event of the person under investigation being a senior member of staff it may be appropriate to appoint a senior investigating officer from another part of the company. In very rare situations an investigating officer may be appointed from outside the business.
- e) The individual undertaking the fact-finding investigation must have with them an appropriate note taker to ensure that thorough records are made of any witness interviews, and signed by all parties present.
- f) At all investigatory meetings, attendees should be made aware that they must not discuss the investigation with any potential witness as this could impede the process.

- g) The Investigating Manager should confirm, in writing, to the individual(s) against whom the allegation/concern has been raised that an investigation is commencing. This letter should detail:
- The specific nature of the allegation
 - The name and contact details of the investigating manager
 - Any other relevant information
- h) It is the responsibility of the Investigating Manager to ensure that the investigation is conducted in a fair, thorough and timely manner.

2.5 Documentation

- a) It is the responsibility of the Investigatory Lead to ensure that all records used or made in the course of the investigation are of good enough quality to support any conclusion drawn from them.

2.6 Attendance of Investigatory Meetings

- a) All employees are required to co-operate in the investigation process as a reasonable request, including participating as witnesses when requested by an investigatory panel.
- b) There is an expectation that staff will also participate fully in external investigations, particularly where the investigation involves safeguarding.
- b) It is the responsibility of the investigating managers to inform witnesses of the possibility of their statements and/or presence being required at a disciplinary hearing and possibly an Employment Tribunal.

2.7 Conclusion of Investigations

- a) Once an investigation has been concluded, a full report based on factual information only and including all relevant documentation should be completed. The report should make recommendations as to what, if any, further actions should be taken in relation to the issue.
- b) If at any time through the process the Investigating Manager is unclear about any element of the process or decision they should seek the immediate advice of the Group Operations Director or a member of the Executive Team who may then take legal advice.
- c) If no further formal action is required the investigatory lead should then confirm this in writing to the employee.

2.8 Notifications of disciplinary action being considered

- a) If the outcome of the investigation is that formal disciplinary action be considered, a separate panel should be nominated for the hearing, including a nominated Chair.
- b) The Hearing Panel Chair will inform the employee in writing of the planned disciplinary hearing. The letter must detail:
 - The exact nature of the allegation
 - The names of the disciplinary panel
 - The date, time and venue of the meeting
 - The contact details of the panel Chair
 - The individual's rights during the disciplinary process, including rights regarding representation and re-arrangements
 - Copies of all documentation being relied upon by the panel to make their decision.
 - The opportunity for the individual against whom the allegation has been made to submit a written statement to the Chair prior to the hearing if they wish to do so
 - The opportunity for the individual against whom the allegation has been made to call witnesses to support their case.
 - That the outcome of the meeting could result in disciplinary action being taken against the employee.
 - Whether a potential outcome of the meeting could be dismissal from employment
- c) If any further communication is required with the employee prior to the meeting date, this should be conducted by the Chair of the hearing.

2.9 The Right to Representation

- a) During the formal hearing stage of the disciplinary procedure an employee has a right to be accompanied by a companion or representative. This may be:
 - a work colleague
 - a trade union official
- b) Where either the employee or their companion/representative has access needs (e.g. level access), these will be met.
- c) Before any formal hearing, the employee must inform the Chair of the identity of their chosen companion. If the Company has reason to believe that the presence of the chosen companion will cause a conflict of interest, the employee will be informed of this and given opportunity to seek an alternative companion.
- d) If a companion cannot attend on the proposed date, the employee can suggest an alternative date and time so long as it is reasonable and is not more than five working days after the original date.

- e) Where the companion is an employee of Inmind, they are entitled to paid time off to attend a meeting that takes place within their normal working hours. The companion must inform their line manager of this no later than three days prior to the meeting so that cover can be arranged, if appropriate, whilst they attend the meeting.
- f) There may be occasions whereby an employee is suspended from duty for the course of the investigation, and therefore requested not to make contact with their work colleagues. In such circumstances the suspended individual should contact their Manager to request consent to contact a named colleague to accompany them to the formal hearing as part of the process.
- g) A companion is allowed to address the meeting, to put forward and sum up the employee's case, respond on behalf of the employee to any views expressed at the meeting, and confer with the employee during the meeting. The companion does not however have the right to answer questions on the employee's behalf, address the meeting if the employee does not wish it, or prevent the Company from explaining their case.

2.10 Disciplinary Hearings

- a) The disciplinary hearing panel will comprise of a minimum of two appropriate managers who have not been involved with the process at an earlier stage. All disciplinary hearings follow the same standard procedure. This procedure can be found in Appendix 2 of this policy.
- b) The role of the disciplinary panel is to consider all aspects of the case in order to make a decision as to what, if any, disciplinary sanction should be issued to the employee regarding the specific allegation(s) being heard.
- c) It is the responsibility of the employee to arrange for the attendance at the hearing of any witnesses to support their case. The employee must inform the Chair of the hearing of the names of any witnesses to be attending no later than three working days prior to the hearing.
- d) There may be occasions whereby an employee is suspended from duty for the course of the investigation, and therefore requested not to make contact with their work colleagues. In such circumstances the individual should contact the Disciplinary Panel Chair to request consent to contact any work colleagues whom they wish to call as witnesses to support their case.
- e) A summary of written minutes will be taken of the disciplinary hearing, to which the individual is entitled to a copy. However, there may be occasions when the Hearing Chair requests permission from the individual to make an audio recording of the Hearing. In such circumstances, the Chair will advise the employee of this prior to the Hearing and request that they give their written consent to this (Appendix 4). If the individual does not wish the hearing to be recorded, written minutes will be taken.

- f) Once the hearing has been concluded, the Chair of the hearing must confirm in writing to the employee, within three working days, the outcome of the hearing. This letter must be sent via recorded delivery service to enable its receipt by the employee to be confirmed.
- g) If an employee wishes for the outcome of the Hearing to be sent to them electronically (i.e. to a personal email address), they must put this request in writing (including the address to which they wish correspondence to be sent) to the Chair. The Company will not ordinarily correspond via email in relation to disciplinary matters.

2.11 Attendance of Hearings

- a) All employees are required to co-operate in the disciplinary process as a reasonable request, including participating as witnesses when requested by a disciplinary panel.
- b) It is the responsibility of the employee to attend any disciplinary hearing to which they are invited. If an employee is unable to attend a disciplinary hearing, it is their responsibility to contact the Chair of the hearing so that an alternative date and time can be scheduled. This re-arranged date must be within five days of the original date.
- c) Employees are expected to take all reasonable steps to attend disciplinary hearings and failure to attend without good reason could result in the hearing being held and a decision being taken in the individual's absence. If an employee fails to attend a disciplinary hearing, the decision as to whether or not to proceed in their absence will be taken by the Panel on the date of the Hearing. In making this decision the Panel will take into account any mitigating factors of which they have been made aware.
- d) If an employee fails to attend through circumstances completely outside their control and which are unforeseen, the Chair will arrange another hearing. However if the employee fails to attend for a second time, the hearing will be held, and a decision will be taken, in their absence.

2.12 Levels of Disciplinary Sanctions

- a) When deciding whether a disciplinary sanction is appropriate and what form it should take, it is important to bear in mind the need to act reasonably in all circumstances. Factors which might be relevant include the extent to which standards are breached, precedent, the worker's general record, position, length of service and mitigating circumstances which make it appropriate to adjust the severity of the penalty.
- b) Stage 1 – First Written Warning

This may be issued after informal action has failed to achieve the necessary improvement and there is a recurrence of breach of policy or conduct lapses, or where there has been an offence constituting a more serious matter.

The written warning will advise the employee of the following:-

- The reason for the warning
- A clear statement to say if further conduct offences occur, further disciplinary action will be taken.
- A statement to say a copy of the written warning will remain on their file for 12 months.
- A clear statement of their right to appeal within 7 normal office working days of receiving written confirmation of the warning.

The Chair of the disciplinary hearing must send out the written warning letter within 3 normal working office days of the hearing.

Once a record of disciplinary action has been removed from an employee's record, the action may not be taken into account in any subsequent disciplinary procedure.

c) Stage 2 – Second Written Warning

For a more serious offence, or the repetition of a previous offence for which the employee has been disciplined, a Stage Two Formal Warning will be given.

The written warning will advise the employee of the following:-

- The reason for the warning
- A clear statement to say if further conduct offences occur, further disciplinary action will be taken.
- A statement to say a copy of the written warning will remain on their file for 12 months.
- A clear statement of their right to appeal within 7 normal office working days of receiving written confirmation of the warning.

The Chair of the disciplinary hearing must send out the written warning letter within 3 normal working office days of the hearing.

Once a record of disciplinary action has been removed from an employee's record, the action may not be taken into account in any subsequent disciplinary procedure.

d) Stage 3 – Final Written Warning

In serious cases where informal or Stage 1 action would be inappropriate, or if there is a recurrence of a breach of policy or conduct lapse where the employee currently has on their file a First Written Warning, a Final Written Warning will be advised.

A Final Written Warning will advise the employee of the following:-

- The reason for the warning
- A clear statement to say if further conduct offences occur further disciplinary action will be taken which could lead to dismissal
- A statement to say a copy of the final written warning will remain on their file for 12 months.
- A clear statement of their right to appeal within 7 normal office working days of receiving written confirmation of the warning.

The Chair of the disciplinary hearing must send out the written warning letter within 3 normal working office days of the hearing.

Once a disciplinary sanction has expired from an employee's record, this sanction may not be taken directly into account in decision making on any subsequent disciplinary sanctions. However, a disciplinary panel may, where appropriate, take into account an employee's complete employment history when reaching a decision on an appropriate level of sanction to be issued.

e) Action Short of Dismissal

In cases of gross misconduct where dismissal is a clear possibility but significant mitigating circumstances are presented to and accepted by the panel, alternative sanctions may be considered as follows:-

- Downgrading and associated loss of pay to a more suitable job if available.
- A transfer as an alternative to dismissal may be considered if a suitable post is available, provided that the employee, after full consultation with their representative agrees to this exceptional course of action. The written confirmation of a decision to transfer will normally be accompanied by an appropriate level of written warning.

f) Suspending a Written Warning

The purpose of issuing a Written Warning is to allow the opportunity for the individual to improve their performance or conduct within the period of the warning, and in their continuing employment.

If an employee is absent from work due to illness or special leave of any length, the warning will be suspended until the individual returns to work.

This will be detailed in the warning letter to ensure that the individual understands this issue.

g) Stage 4 – Dismissal

In cases of gross misconduct, where action at either Stages 1 or 2 would be inappropriate, or where there is a recurrence of a breach of policy or misconduct previously dealt with under Stage 2, dismissal will take place and the employee's contract will be terminated.

Dismissal for gross misconduct offences will normally be without notice i.e. summary dismissal.

Dismissal that follows a previous Final Written Warning at Stage 2 will normally be with the appropriate period of notice or payment in lieu of notice.

In the event of dismissal, the Chair of the disciplinary hearing must confirm the dismissal in writing within 3 normal working office days of the hearing, advising the employee of the following:-

- The reason for dismissal
- The date on which employment has been/will be terminated.
- A clear statement of their right to appeal within 7 normal office working days.

2.13 Referral to Professional Bodies

- a) If the Company believes that the individual's misconduct is such that they have breached their Professional Code of Conduct or Practice, Inmind has a duty to refer the individual to their professional body so that their own regulatory procedures can be followed. If the misconduct is related to a safeguarding issue, there may also be a requirement to refer individuals to the Disclosing and Barring Service.
- b) If an employee resigns their employment with the Company following an allegation but prior to any disciplinary hearing taking place, the Company has a responsibility to continue with the referral process, despite the individual's resignation, should the allegation be founded in their absence.

2.14 Training Requirements

- a) Disciplinary action may be accompanied by a requirement to undergo appropriate training to meet the expected standards and/or to undertake relevant competency assessments. This may involve a change in normal working patterns but there should be no loss of earnings and training costs will be covered in line with the Training Policy. Review periods must be agreed and communicated to the employee's Registered Manager.

2.15 Supplementary Action

- a) Supplementary action may be needed in exceptional cases e.g. to overcome operational difficulties, where further training has failed, or where working relationships have irreversibly broken down.
- b) This may include permanent or temporary transfer to another service, post, shift pattern etc., with or without loss of earnings and with or without excess travel costs. This supplementary action would be determined by the disciplinary hearing panel and is part of the disciplinary sanctions process at Stages 1 and 2 only.

2.16 Disciplinary Appeals

- a) Employees have the right of appeal against written warnings and dismissal action. An employee may choose to appeal because:
 - He/ she feels that the finding is unfair.
 - New evidence has come to light
 - He/ she think that the disciplinary procedure was not applied correctly.

- b) If an employee wishes to appeal against disciplinary action, they must put their appeal in writing as directed on their disciplinary outcome letter.
- c) The letter from the employee should outline the reason for the appeal and should be received within seven normal office working days from the date of the notification of the disciplinary action to be applied.
- d) The Disciplinary Appeal Panel will comprise of a minimum of two senior managers within the Company who have not been previously involved in the case. The Hearing Chair will write to the employee inviting them to attend an appeal meeting and inform them of their statutory right to be accompanied at the appeal meeting.
- e) This appeal should normally be held within twenty working days of receipt of the Appeal Form.
- f) The procedure for conducting Appeal Hearings can be found in Appendix 3.
- g) The Chair of the Appeal Panel must confirm in writing with the employee the outcome of the Appeal Hearing within five working days of the meeting.
- h) The decision of the Appeal Panel on a disciplinary hearing is the final part of the process.

2.17 List of Misconduct/Gross Misconduct Offences

- a) Whilst it is not possible to compile a list which contains every possible behaviour and action which may be classed as misconduct, the following list contains examples of general matters which will be classed as such. This list is not exhaustive.
- b) **Misconduct**
 - i. Failure to comply with a reasonable request
 - ii. Insubordination
 - iii. Wilful or persistent poor performance
 - iv. Infringement of policies/procedures which are serious but do not constitute gross misconduct.
 - v. Abusive, objectionable or insulting behaviour
 - vi. Foul or abusive language
 - vii. Disorderly conduct
 - viii. Unauthorised distribution of written material
 - ix. Failure to maintain the required standard of dress/presentation
 - x. Persistent minor breaches of employment contract or negligent performance e.g. punctuality, unauthorised absence.
 - xi. Neglect of safety standards
 - xii. Persistent minor breaches of Health & Safety policy.
 - xiii. Breach of the Smoking Policy.
 - xiv. Sleeping whilst on duty where there is no risk to staff, service users or members of the public.

c) **Gross Misconduct**

Gross misconduct is an offence so serious that it fundamentally breaches the employment contract and will normally lead to dismissal without notice for the first breach. The following behaviours/actions are examples of offences that are classed as gross misconduct. This list is not exhaustive.

- i. Theft/Misappropriation – any instance of unauthorised removal of property from the Company or from a service user, carer or member of staff.
- ii. Fraud – any attempt to defraud the Company or a member of the public in the course of official duties (this can include working for another organisation whilst off sick, dishonest claims for expenses and on time sheets/off duties, deliberate falsification of records).
- iii. Physical Assault – Physical assault upon a service user, carer, a fellow employee or member of the public.
- iv. Bullying/Harassing/Threatening/Menacing Behaviour towards a service user, carer, a fellow colleague or a member of the public.
- v. Recklessness/Negligence in work – any action, or failure to act, which threatens the health and safety of a service user, carer, member of the public or another member of staff.
- vi. Serious Damage – to company property, property of service users or carers, or other members of staff.
- vii. Corruption – receipt of money, goods, favours or excessive hospitality in respect of services rendered.
- viii. Confidentiality – loss of confidential information, unauthorised access to confidential information, disclosure or breach of confidence in relation to information regarding a service user, carer or member of staff, except where such a breach constitutes a protected disclosure under the Public Interest Disclosure Act 1998 in line with the Company's Raising Concerns Policy and the Social Media Policy.
- ix. Deception – giving false information including qualifications, health, or immigration status, failure to disclose a criminal conviction or caution in order to gain employment or other benefits.
- x. Unlawful discrimination or harassment.
- xi. Action in Breach of Professional Code of Conduct including failure to maintain registration with an appropriate professional body.
- xii. The concealment or destruction of evidence of malpractice.
- xiii. Inappropriate or unprofessional relationships with any service user.
- xiv. Deliberately accessing or downloading material from any site that is of a pornographic, discriminatory, illegal or offensive nature
- xv. Sleeping whilst on duty where the offence may result in serious risk to service users, staff or members of the public.
- xvi. Possession or supply of alcohol or illegal drugs.
- xvii. Consumption of alcohol or substances (which may or may not be illicit) either prior to reporting for duty or whilst on duty, which may impair ability to undertake duties.
- xviii. Inappropriately accessing the internet during working hours
- xix. Propagating the activity of any organisation or views which goes against the ethos of the Company's Equality Policy.

- xx. Committing a serious act which is deemed to be prejudicial to the interests of the Company or its employees.
- xxi. Continuous breach of the Smoking Free Policy.
- xxii. Knowingly taking carers/parental/paternity/adoption leave/rights for purposes other than supporting a child/dependent (See policies Leave for Personal, Family and Other Reasons Policy and Maternity, Paternity and Adoption Leave Policy).
- xxiii. Victimising an employee who has raised concerns under the Bullying and Harassment Policy, Raising Concerns Policy and Grievance Policy.
- xxiv. Raising concerns or allegations which are deemed to be malicious in intent against colleagues or the organisation (this applies only to malicious allegations, and not to genuine concerns raised via the Raising Concerns Policy)
- xxv. Unauthorised entry into prohibited areas.
- xxvi. Failure to maintain the professional registration required to fulfil the role for which the individual is employed
- xxvii. Failure to disclose information relating to fitness to practice concerns or investigations by professional regulatory bodies

2.18 Suspension from Duty

- a) There will be certain allegations of disciplinary offences or concerns raised about individuals that are of a nature whereby it is not appropriate for the individual to continue to carry out their role (or aspects of their role) whilst the allegations are being investigated.
- b) In such circumstances, the Registered Manager must consider what, if any, alternative arrangements can be made to ensure that all parties are safeguarded for the duration of the investigation into the allegation. This may include arrangements such as, if practicable, the individual working under supervision, undertaking alternative duties or temporarily working at a different location.
- c) If no reasonable alternative measures can be found, the individual may need to be suspended from duty with immediate effect.
- d) All suspensions from duty are with full payment of the employee's contracted hours.
- e) Although it is not expected that suspension from duty be a matter of course, it may be considered in the following circumstances:
 - When the allegation lodged against an employee falls into the category of gross misconduct.
 - Where the allegation requires investigation and the employee's presence at work might interfere with the investigation.
 - When the employee's behaviour is such that he/she may be a danger to him/herself or other employees.
- f) If the allegations/concerns are regarding a safeguarding issue, then the Safeguarding Policy must be followed.

- g) Suspension from duty should not be viewed as a punitive measure and is not an indication of guilt. The purpose of suspension is to protect all parties involved whilst an investigation is being conducted. The duration of any suspension should be for the shortest time possible to permit a thorough investigation to have been carried out.
- h) An employee does not have the right to prior notice that they are to be suspended.
- i) The decision to suspend should normally be taken by the Registered Manager. However, circumstances may arise, for example, on night duty, at weekends or during periods of leave, when the Registered Manager is not available. In these cases, the On-Call Manager must be contacted and should make the decision, reporting it to the Registered Manager at the earliest opportunity.
- j) If it is decided that suspension is required, the Suspending Manager, where possible in the presence of another appropriate manager, should advise the employee of the following:
- The exact nature of the allegation(s) and the reason for suspension.
 - That the suspension is with full pay.
 - That the suspension is without prejudice, does not indicate guilt in any way, and is not a form of disciplinary action.
 - That the allegations will be fully investigated and they will be required to attend an investigatory meeting as part of this process.
 - That during their suspension they must comply with the following conditions:
 - They should not make contact with any Inmind employees (or service users) to discuss details of the case as this may impede the investigation.
 - They must not enter any Inmind premises without prior authorisation.
 - They must make themselves available during normal office working hours so they can be contacted by the investigatory team.
 - They must make themselves available at a minimum of 12 hours' notice, to attend investigatory meetings during normal office working hours.
 - They must inform the investigatory panel of any change of contact details.
 - They must return all company property, including any swipe cards, keys, mobile phone and confidential information, to the Company.
 - They must report any sickness to their Manager.
 - If they need to make any annual leave requests during their period of suspension, these must be made to their Manager.
 - That the details of the suspension will be confirmed in writing to them.
- k) At this time, the Suspending Manager should also discuss and agree with the suspended employee what support they feel they may need from the Company during their suspension, the appropriate person to provide this and that individual's contact details.

- l) All the above details and arrangements regarding the suspension should be confirmed in writing to the employee by the Investigating Manager as soon as possible, and no later than three working days after the decision is taken.
- m) The letter should outline the allegations/concerns, the date the suspension took effect, the conditions of suspension and state that a full investigation will follow, giving the name and contact details of the Investigatory Lead.
- n) Arrangements should be made by the Registered Manager for the employee's payslip and any other information relating to their role, for example the minutes of any staff meetings that take place during their suspension, to be sent to their home address during their period of suspension.
- o) During the course of the suspension, the Registered Manager (or nominated deputy) should make weekly contact with the suspended employee, by telephone, to offer continuing support.
- p) Once the investigation has been concluded, the investigatory lead should contact the employee to inform them what, if any further action, is going to be taken in relation to the allegation.
- q) If no further formal action is required the investigatory lead should then confirm this in writing to the employee.
- r) If the outcome of the investigation is that there is a case to answer, the appropriate disciplinary process will be followed (please refer to the Formal Disciplinary Procedure section of this policy).
- s) In all cases where the employee is to resume duty following the conclusion of the process, the Registered Manager will meet with the employee to arrange for this and offer any support they may need to do this.

2.19 Police/Criminal Enquiries

- a) An employee who is arrested on any charge or served with a summons on a criminal charge must inform their Registered Manager as soon as possible. If the Company consider the charge/conviction relevant to the individual's employment, disciplinary action may be taken.
- b) Disciplinary action may be taken if there are reasonable grounds to believe that a criminal offence has been committed, whether or not there is also a court prosecution.
- c) If, as a result of the Company's own investigations, there are reasonable grounds to believe that the alleged criminal offense took place and public confidence in the Company could be undermined by that person's continued employment, then the employee may be dismissed.

- d) Following a full investigation and hearing, there is a right to dismiss an employee without awaiting the outcome of criminal proceedings whenever the Company is satisfied on the evidence available that it is appropriate. If an employee is advised not to discuss the case or comment, then a decision may be made by the disciplining manager based on the evidence/information available.

- e) If an employee is prevented from working by reason of bail conditions, or if remanded in custody, then they may be subject to disciplinary action if they are unable to fulfil their contract of employment.

Appendix 1

Equality Impact Assessment for this policy

Protected Characteristic (domain)	Area of conflict	Resolution
Age	Nil	N/A
Disability	Nil	N/A
Gender Reassignment	Nil	N/A
Pregnancy & Maternity	Nil	N/A
Race	Nil	N/A
Religion or Belief	Nil	N/A
Sex	Nil	N/A
Sexual Orientation	Nil	N/A
Marriage and Civil Partnership	Nil	N/A

All relevant persons are required to comply with this policy and must demonstrate sensitivity and competence in relation to diversity in race, faith, age, gender, disability and sexual orientation. If you feel you are disadvantaged by this policy, please contact the Registered Manager and the service will actively respond to the enquiry.

Appendix 2

Procedure for Conducting a Disciplinary Hearing

This process describes how a disciplinary hearing will be conducted.

All hearings should be straightforward and not intimidating or quasi-legal.

1. Chairs Introduction

The Hearing Chair will start by introducing those present and the purpose of the hearing including the process of the hearing.

2. Investigation presentation

The Hearing Chair will then ask the Investigatory Lead to state the nature of the complaint and to present the investigatory report and supporting evidence, e.g. duty rotas, drug records, statements by other people involved. The statements may be written and/or presented personally by witnesses.

The Investigatory Lead can, if appropriate, bring witnesses to support the statements but their decision to do this will have regard to the benefit to the case, and the possible impact on the future working relationships.

The individual or their representative can then question the Investigatory Lead and their witnesses.

3. Individual Concerned presentation

The Hearing Chair will then invite the individual or their representative to state their case and will consider any explanations put forward and any statements by other people involved. These may be written or presented personally by witnesses.

The Investigatory Lead can then question the individual, their representative, and their witnesses.

4. Panel's response

The Disciplinary Panel may choose to ask questions after each or any stage of the above. Whilst every effort should be made to ensure continuity of case presentation, the Hearing Chair may question the individual, Investigatory Lead or witnesses at any time during the hearing for further information or clarification.

5. Chairs review

The Hearing Chair will then ask if any party wishes to say anything further in response to or for clarification of issues already being raised. If so the Hearing Chair will hear what has to be said, beginning with the Investigatory Lead and may question either party.

6. Panels consideration

The Hearing Chair will call an adjournment to consider the facts.

7. Panel to consider

Before deciding the outcome (if a disciplinary sanction), consideration should be given to the gravity of the offence, the penalty applied in similar cases in the past, the individual's record of conduct and performance, any mitigating circumstances and whether the proposed penalty is reasonable in all the circumstances.

The panel should be mindful that disciplinary process (outcome) is on 'balance of probability' not 'beyond reasonable doubt'.

8. Chair reconvenes

The Hearing Chair will then reconvene the disciplinary hearing to clearly inform the individual and the investigating manager of:

- i) the decision
- ii) the penalty (if any)
- iii) explain any rights of appeal and how they operate.
- iv) in the case of a written warning, explain what improvement is expected, how long the warning will last and what the consequences of failure to improve may be.

9.. Record of outcome

Following the hearing the Hearing Chair will confirm in writing with the individual the outcome of the Hearing, including the areas raised in point 8.

Appendix 3

Disciplinary Appeal Hearing Procedure

- 1) The Appeal Panel Chair makes introductions and opens the meeting.
- 2) The individual presents their case and calls witnesses. New evidence not able to have been considered at the Disciplinary Hearing may be introduced at this stage.
- 3) The Appeal Panel Members have the opportunity to ask questions of the individual and any witnesses.
- 4) The individual may sum up their case. No new evidence can be introduced at this point.
- 5) The Appeal Panel will adjourn to make their decision in private.
- 6) The Appeal Panel seek clarity on any points if necessary.
- 7) The Appeal Panel reconvenes the meeting and informs the employee of their decision.

Nothing in this procedure shall prevent an individual's representative from fulfilling their statutory role. The panel may at their discretion adjourn an appeal at any time in order that further evidence may be produced by either party.

Appendix 4

I confirm that I consent to an audio recording being made of my disciplinary hearing scheduled to take place at [insert time and date] for the purpose of an accurate record of the hearing being produced.

Name (print)

Signature

Date

Once completed, this recording will be stored confidentially in accordance with The Data Protection Act 1998 and only be accessed by appropriate personnel directly involved in this disciplinary process, or otherwise approved by a senior manager.

A copy of this audio recording will be available to you on request.

Please return this form in the envelope provided.