

# Report to the Meeting of the

**RR/App 30/2021**

(Agenda item: 15)

# Oxford Health NHS Foundation Trust

# Board of Directors

**June 2021**

**People Practices in the NHS**

**For: Information**

**Situation**

Prerana Issar (NHS Chief People Officer) wrote to all NHS HR Directors in December 2020 requesting that HR Departments:

1. Undertook a review of their disciplinary procedures against a number of recommendations issued by NHS Improvement in May 2019;
2. Compared their disciplinary procedures against Imperial College NHS Trust’s policy as this is and considered an example of good practice;
3. Considered undertaking an annual review of disciplinary policies and procedures;
4. Presented such reviews formally at a Public Board meeting.

Prerana’s letter reminded NHS organisations that the shared learning from an incident at Imperial College NHS Trust demonstrated the need to ensure that people practices are inclusive, compassionate and person-centered with an overriding objective as to the safety and wellbeing of our people. These values are central to the NHS People Plan and People Promise.

The Oxford Health NHS FT HR Department has taken the recommended actions and this paper summarises the findings of the review.

**Background**

Prerana Issar’s December 2020 letter was preceded by a letter in May 2019 relating to findings and recommendations made by NHS Improvement following a detailed review of disciplinary processes in Imperial College Healthcare NHS Trust. The review was commissioned following the suicide of a nurse employed by Imperial College Healthcare NHS Trust following disciplinary action.

As a result of NHS Improvement’s recommendations, amendments were made to Oxford Health’s disciplinary processes. Further enhancements have been added since. These were incorporated into the most recent review of the Trust’s disciplinary policy in December 2020.

**Assessment**

Our assessment is that , overall, Oxford Health NHS FT’s (OHFT) disciplinary policy and its associated processes compare favourably to the principles in the Imperial policy. In some respects OHFT’s policy and processes go beyond those detailed in the Imperial document.

Some time ago NHS England issued guidelines to support NHS organisations in the introduction of a “Just Culture”. OHFT’s HR Department implemented this guidance in the form of enhanced factfinding processes which provides managers with a decision tree to establish at the earliest possible stage what has occurred and why. This is then used to consider whether full investigation under a formal disciplinary procedure is proportionate. Over the past 2 years, this enhanced factfinding stage has reduced the number of formal investigations and the number of cases concluding with “no case to answer” both by approx. 50%.

“Restorative Just Culture” would take the current approach further by creating a culture of psychological safety, applying to processes beyond the disciplinary procedure, engage all parties to help cope with feelings of guilt / humiliation, reintegrate practitioners back to their job and enable organisational learning. This review of the disciplinary procedure has taken place at a time when OHFT is embarking on a journey towards implementing a Restorative Just Culture.

A small number of staff have received training in the Restorative Just Culture approach and a working group has been established under the sponsorship of the Chief Nurse to take this forward. Further Restorative Just Culture training sessions are planned for later in 2021.

The table below provides a detailed comparison of the main features of the Imperial policy with the OHFT policy:

|  |  |  |
| --- | --- | --- |
| **Theme** | **Imperial** | **OHFT** |
| Open & learning culture | States that the fair treatment of staff supports a culture of fairness, openness and learning by making staff feel confident to speak-up if things go wrong rather than fear blame. | OHFT’s policy does not currently include such a statement.  Whilst it would be easy to add such a statement, creating the conditions for a culture of psychological safety requires a programme of change. OHFT is at the beginning of such a journey in relation to understanding and implementing a “Restorative Just Culture”. A number of other NHS trusts have adopted this approach, or are in the process of doing so. |
| ACAS Code | Is in accordance with ACAS Code | Is in accordance with ACAS Code |
| Resolving issues informally where possible | Managers should try to resolve minor matters of concern informally. | Provides for informal resolution where initial factfinding indicates this would be appropriate. |
| Resolving issues informally where possible | The manager will carry out initial fact finding and meet the employee to establish their version of events. The manager may also meet with other relevant individuals to get a good understanding about what has happened. | Preliminary factfinding process is in place. This reflects the NHS Improvement decision making tree. Through this process managers are encouraged to consider key questions at the earliest stages of concerns about a staff member’s conduct. Consideration of these questions helps managers to determine whether issues could be dealt with informally, through supportive interventions or whether full investigation is appropriate and proportionate. |
| Training | Managers who Chair or sit on formal panels undertake regular training specifically on disciplinary panels. | This is an area for further development in OHFT. Training was provided in 2020 for panel members and was well received. We have asked for quotes for the cost to run such training annually. |
| Oversight | Requires approval from a senior manager (Band 8c or above) before proceeding with formal disciplinary process. | Policy document is less prescriptive. However the well-established preliminary factfinding and decision making processes in place require input from Clinical Professional Leads, Case Managers, Human Resources and, where suspension or redeployment are considered, discussion at Executive level. |
| Formal process | Provides for different panel constitution where outcome is likely to be dismissal / less than dismissal. | OHFT used to operate this approach but decided some time ago that a single process is preferrable. |
| Formal process | Requires that panels are diverse. | Whilst the OHFT policy does not detail this, the HR staff advise that diverse panels should be convened where possible. |
| Support for staff | Provides that employees with a disability may be accompanied by a 2nd companion acting as a support worker or advisor on the particular disability. | Whilst the OHFT policy does not detail this, the HR staff advise that reasonable adjustments should be considered on a case-by-case basis. |
| Support for staff | Details sources of support available to staff. | Whilst the OHFT policy does not detail this, the template documentation available from HR staff signposts staff to a variety of sources of support. |
| Support for staff | Provides clarity about the role of witnesses. | The policy refers to witnesses. However a future review of the policy could provide greater clarity on this subject.  The HR Department has recently reviewed the support and guidance available to witnesses. |
| Support for staff | Provides for formal “suspension meetings” at which staff members may be accompanied by a companion or trade union representative when informed of suspension. | The policy does not provide for this. However a future review of the policy could consider this. |

In the process of conducting this review, some other trusts in the region shared their disciplinary policies and procedures. Most organisations have a broadly similar approach although there is scope to learn and consider some options. For example, Royal Berkshire NHS FT have introduced an “early resolution” process where misconduct is not disputed. Such approaches could be considered when the disciplinary policy is next reviewed.

**Recommendations**

1. The Trust should continue to consider how it can take forward the principles of psychological safety and Restorative Just Culture through the Chief Nurse’s working group;
2. A small working group to review the OHFT disciplinary policy in line with the developments in Restorative Just Culture best practice. This will include a review of language used in the disciplinary procedure and its supporting documentation. This should be completed by 31st August 2021 with a view to reporting back to the People, Leadership & Culture Committee;
3. Work collaboratively with other HR Departments in the ICS to further develop best practice;
4. HR Department to develop a programme of annual training for managers involved in various stages of the disciplinary procedure;
5. HR Department to maintain a list of appropriately senior staff who have been trained to sit on formal HR panels.

**Author and Title:**

Simon Denton (Head of HR Operations)

**Executive Director:**

Mark Warner (Interim HR Director)

May 2021