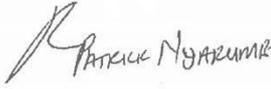




Disciplinary Policy

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Exec Sign off Signature (electronic)		
Disclosable under Freedom of Information Act 2000	Yes	

Policy Context

This policy outlines the approach to be taken by Birmingham and Solihull Mental Health NHS Foundation Trust in the management of alleged misconduct, with a focus on maintaining a culture that is Just, Restorative and focused upon Learning.

Policy Requirement

The Trust has a statutory duty to ensure fair, reasonable, and timely management of staff conduct concerns. This policy sets out the responsibilities, procedures, and principles for addressing misconduct, supporting a culture of learning, accountability, and psychological safety in line with NHS values and legal obligations.

Change Record

Date	Version	Author (Name and Role)	Reasons for review / Changes incorporated	Ratifying Committee
06.25	12.2	Scott Allcock, Assistant People Partner	Substantive review and update of policy in line with legal requirements and changing operating environment of the Trust.	TCSE

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1. Introduction

1.1. Rationale

The staff community at Birmingham and Solihull Mental Health NHS Foundation Trust are expected to behave professionally and with the highest level of integrity. In support of this, the Trust is committed to applying Just, Restorative and Learning principles.

It is important to our people that we have a culture of openness, trust, learning and accountability; a culture where people can learn from things that go wrong and where they have the confidence that concerns can be raised and addressed productively. This culture supports our people to focus on 'what' rather than 'who' is responsible when a situation arises, minimising harm and maximising individual and organisational learning. However, it may be that harm has been caused and as such a matter will need to be explored under the Disciplinary Policy.

This policy ensures a fair, systematic and consistent approach is taken when a colleague's behaviour or conduct is alleged or found to be in breach of workplace rules or to have fallen short of the expected standards.

This online version is the definitive version of our Disciplinary Policy. In addition to statutory updates, which will be reviewed as they arise, this policy will be reviewed every three years.

The policy provides clarification of the considerations which managers should give to an event and, if appropriate, what processes and employee's rights are applicable when dealing with such matters, to ensure matters are dealt with fairly, confidentially and consistently and in a supportive manner.

1.2. Scope

This policy applies equally to all BSMHFT people including those working in a fixed-term, honorary or any other capacity in which they are acting for and on behalf of the Trust.

This policy does not apply to workers engaged via Temporary Staffing Solutions or via external agencies or those engaged on a voluntary basis with the Trust, nor does this policy apply to employees of organisations contracted to the Trust. Similarly, this policy does not apply to ex-employees of the Trust, however if an ex-employee is involved in serious concerns the Trust may choose to investigate these.

Where a concern is raised involving an employee from another organisation, the People Team will liaise with the Human Resources/People department of the other organisation involved, to agree a way forward within the policy framework of each organisation.

Any concerns raised under this policy should be raised at the earliest opportunity and within 3 months of the incident/behaviour taking place in order that it can be addressed in a timely manner. However, it is acknowledged that in some cases, some issues can happen over a period of time, therefore any exception to this should be discussed and agreed in conjunction with the People Team.

For misconduct relating to medical employees, the Maintaining High Professional Standards (MHPS) framework should be followed, and this process is detailed within Appendix 2 and 3.

This policy may not apply in the following circumstances:

- **Ill Health Capability:** Please refer to the Health, Wellbeing and Attendance Policy (HR03) or the MHPS framework if the employee is a doctor.
- **Grievances:** should be addressed in accordance with the Resolution of Grievances Policy (HR02)
- **Bullying and Harassment:** Such matters should be addressed in accordance with the Dignity at Work Policy (HR07) in the first instance. Where it is found that an employee's behaviour has not met Trust expectations under the Dignity at Work Policy then such concerns may be progressed through the Disciplinary Policy.
- **Sexual Misconduct:** Such matters should be addressed in accordance with the Sexual Safety Policy (HR41) in the first instance. Where it is found that an employee's behaviour has not met Trust expectations under the Sexual Safety Policy then such concerns would be progressed through the Disciplinary Policy.

1.3 Principles

The Trust wishes to create a positive workplace culture where all colleagues take an individual responsibility for our own behaviour and role in our community. The Trust aims to treat all colleagues in a fair, effective, consistent and supportive way in relation to conduct matters and consider these matters promptly and impartially.

Our values, which guide the actions our people and underpin our conduct are as follows:

Compassionate

- Supporting recovery for all and maintaining hope for the future.
- Being kind to ourselves and others.
- Showing empathy for others and appreciating vulnerability in each of us.

Inclusive

- Treating people fairly, with dignity and respect.
- Challenging all forms of discrimination.
- Valuing all voices so we all feel we belong.

Committed

- Striving to deliver the best work and keeping service users at the heart.
- Taking responsibility for our work and doing what we say we will.
- Courage to question to help us learn, improve and grow together.

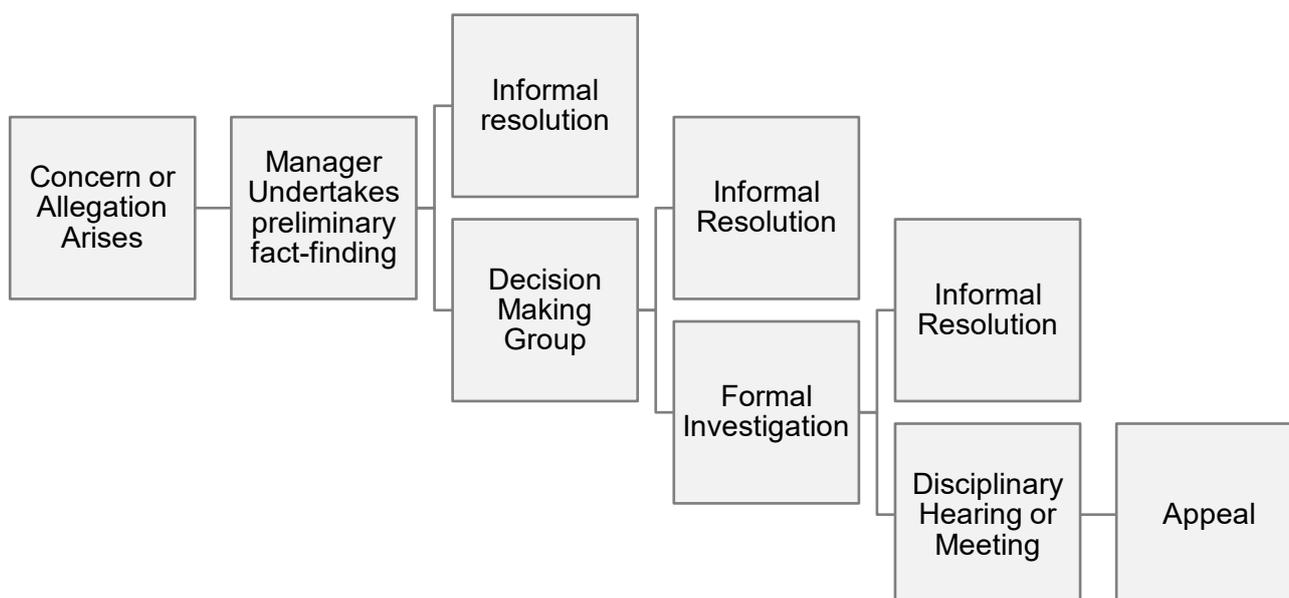
Employees who may fall under the criteria legally defined under the Equality Act 2010, will be particularly protected by our commitment to inclusion, diversity and equality, and in line with legislative requirements. All appropriate and reasonable steps will be taken to ensure that any individual who is subject to this Policy is treated in accordance with their specific needs.

2. The Policy

The Trust has a statutory duty to ensure fair, reasonable, and timely management of staff conduct concerns. This policy sets out the responsibilities, procedures, and principles for addressing misconduct, supporting a culture of learning, accountability, and psychological safety in line with NHS values and legal obligations.

3. The Procedure

Figure 1, below, shows the fundamental stages of the disciplinary process.



Following proportionate fact-finding, allegations of misconduct or inappropriate behaviour will be carefully assessed by a relevant manager, with the support of the People and Culture Team was necessary, to decide if the matter can be managed informally or whether there is sufficient reason to progress into the formal stages.

Most concerns can be addressed through timely and compassionate informal action. A concise manager-led conversation with an employee can resolve matters of minor misconduct and ensure that individuals are connected with appropriate support (for example, wellbeing services, training or coaching etc.)

All matters will be managed confidentially and information stored in line with information governance.

Colleagues are required to attend meetings and comply with this policy. Where non-compliance is apparent, the manager will consider what action is required in consultation with the People and Culture Team.

3.1. Whistleblowing and Speaking Up

All staff are encouraged to speak up and raise concerns when things go wrong and must not to be disadvantaged as a consequence of doing so.

The Trust encourages colleagues to speak up in a number of ways. To their manager, in a clinical team meeting, during supervision or with a Freedom to Speak Up Guardian who can offer advice and guidance in their local area. As well as concerns about patient safety and quality our colleagues can also speak up about something which doesn't feel right, for example a way of working or a process which isn't being followed or the behaviour of others which is contrary to our values of compassion, inclusivity and commitment.

When the concern needs to be investigated further, the Freedom to Speak Up Guardians will raise this with the relevant leader or service. The Freedom to Speak Up Guardians should be kept informed of progress and the case development.

Where a colleague experiences disadvantage as a result of raising a concern, for example, being ostracised, being given unfavourable shifts or being overlooked for promotion. The Freedom to Speak Up Guardian Team must be informed of any perceived or actual cases of detriment as a result of speaking up. Incidents will be escalated to the Lead Executive for Freedom to Speak Up (FTSU) and, if upheld, be viewed as serious misconduct. The Non-Executive Director for FTSU will also oversee how allegations of detriment are reviewed.

For more details, please see the Freedom to Speak Up: Raising Concerns Policy (HR20).

3.2. Classifying Misconduct

In considering misconduct and possible outcomes including sanctions, there are various factors which need to be thoroughly considered to ensure a just culture, including the context of the situation, as well as the employee's intent and mitigation. Therefore, an act of gross misconduct may not result in summary dismissal due to the circumstances surrounding the incident where additional learning would allow improved conduct.

Misconduct should be dealt with at the most appropriate level. If the line manager identifies the required improvements are not reached within the agreed processes and timescales, then further disciplinary consideration may be given and discussed via a DMG.

The categories of misconduct are:

- **Misconduct:** Refers to low-level breaches of workplace rules or standards that may not warrant formal disciplinary action on first occurrence. Examples include poor timekeeping, minor breaches of policy, or inappropriate tone. Such issues are typically addressed informally through discussion, support, and standard setting.
- **Serious Misconduct:** Are often matters where misconduct is confirmed or where the employee's conduct has not improved after either informal or formal action has been previously taken. For example, if the employee has received a previous first written warning, which is still in force further misconduct may lead to further disciplinary consideration.
- **Gross Misconduct:** These matters are serious breaches of terms and conditions (written statement of contract) and are serious enough to irreparably and irrevocably damage the relationship of mutual trust and confidence that exists between an employee and employer. If the allegations that have been made, when investigated are substantiated and upheld at a disciplinary hearing, this will normally lead to dismissal without notice or pay in lieu of notice (summary dismissal).

Examples of misconduct in each classification can be found as Appendix 8, noting that these lists are not exhaustive.

3.3. Confidentiality and Information Governance

When a potential disciplinary issue arises, all involved persons must treat information with the strictest confidence, with due regard to information governance controls. This requirement extends, but is not limited to, managers, employees, employee companions, Trade Union representatives, Freedom to Speak Up Guardians and Inclusion Advisors.

Information will only be shared with those who have a legitimate right to be informed in accordance with Data Protection Act 2018 and the common law duty of confidentiality. Breaches of confidentiality by any party may result in disciplinary action.

Any breach of confidentiality should be reported as an incident and may be regarded as misconduct and subject to disciplinary action.

Personal or organisational data released to the Investigating Officer must be fit for the purpose and proportionate to the seriousness of the matter under investigation.

Please refer to the Trust Confidentiality Policy (IG01) for further information.

3.4. Employment References

There may also be times where an employee under investigation or who has been dismissed, requires a reference from the Trust. References will be factual and if asked by those requiring the reference, a statement on the factual position will be provided and managers should work in consultation with the People and Culture Team in such cases.

3.5. Patient Identifiable Information

Any documentation used or obtained to support a disciplinary investigation that contains patient identifiable information must be partially redacted. This includes personal data such as names, date of birth, RIO or NHS patient numbers. This is not an exhaustive list.

3.6. Electronic Recording

No employee at any time may record a meeting or conversation without the expressed permission of all parties involved. In the event of either management or an employee wishing to record a meeting or conversation, the minutes or recording must include informing all parties that the meeting/conversation is being recorded and their agreement.

Covert or secret recording is not permitted and may be deemed gross misconduct.

3.7. Management Training

All Commissioning Managers, Investigating Officers, Chairs for hearings, or managers who sit on hearing panels will have access to appropriate and up to date training on how to investigate, manage or Chair disciplinary cases. A list of trained staff will be held centrally with the People and Culture Team.

3.8. Conflict of Interest

It is the responsibility of all employees involved in the procedure to identify if they believe they have, or someone may have a conflict of interest in undertaking or participating in the procedure.

3.9. Health and Wellbeing

It is paramount that the health and wellbeing of all colleagues involved in an informal or formal disciplinary process is considered. The detail of the current support offering is available via the Health and Wellbeing pages of the BSMHFT Connect staff intranet.

Where a conduct matter is identified and progresses to the formal stage it would be appropriate for the Decision-Making Group to consider appointing a colleague to take on the role of being a wellbeing contact to provide support to employees who are going through these processes; checking on their welfare and to signpost them to the support

available appropriately and confidentially (e.g., Employee Assistance Programme (EAP) including telephone counselling, Occupational Health) for the duration of the process e.g. investigation and up to the hearing if required.

3.10. Communication

The Trust will take every reasonable measure to support compassionate communication through sensitive matters within the Disciplinary Policy.

Due consideration will always be given as to the support available for the employee upon receiving a sensitive or potentially distressing communication, for example, the avoidance of sensitive communications being sent immediately before a weekend, where wellbeing and process support may not be readily available.

However, where a significant risk of harm exists, it may be necessary to proceed to communicate a sensitive message with appropriate temporary support in place.

During the informal stages up to and including the Decision-Making Group (DMG), line managers will act as the primary point of contact for the affected colleagues they manage.

From the point that the formal process is commissioned by a DMG, the Commissioning Manager will act as point of contact for affected colleagues during the procedure to address any questions, issues or concerns the employee may have. The point of contact and communication plan will be detailed within the investigation terms of reference (TOR).

Where there are delays in the investigation, following discussion with the Commissioning Manager, the Investigating Officer will advise the relevant colleagues concerned in a timely, sensitive and compassionate manner.

3.11. Right to be Accompanied

The role of the employee companion through the Disciplinary Process is important in supporting colleagues to engage fully and meaningfully.

Employees can be accompanied and represented at a formal investigation meeting and disciplinary hearing by a work colleague, trade union representative or other companion from any background, not acting in a legal capacity. Any companion should not be a direct relation of the employee.

Where reasonable efforts will be taken to support an employee to be accompanied by their preferred companion or representative, the availability of an employee's companion must not unduly delay the process.

3.12. Counter Fraud

Following managed-led fact-finding, if fraud is suspected advice should immediately be sought from the People and Culture team and Local Counter Fraud Specialist (LCFS) before any detail of the concern is discussed with the colleague so as not to compromise any potential criminal investigation and to identify whether concurrent action is appropriate.

Close liaison with the LCFS will be maintained by the People and Culture Team to ensure availability of information and to agree next steps to both the Trust and LCFS.

For further information, please refer to the Anti-Fraud, Bribery and Corruption Policy (CG22).

3.13. Criminal Offences

Where a colleague is subject to criminal action, they must inform their Line Manager as soon as is practicable. This could include being arrested, cautioned, charged, convicted or subject to a criminal investigation for any reason.

Following proportionate fact-finding, each case should be reviewed at a Decision-Making Group (DMG) and considered based on individual circumstances, including the nature of the offence, impact on the colleague's suitability to do the job and their relationship with the Trust, colleagues, service users and those external to Trust and any sentence incurred.

In the event that an employee is subject to a criminal investigation it may be necessary for the Trust investigation process to be deferred until the Police or other criminal investigation team have completed their investigations.

3.14. Safeguarding

All employees must ensure that all cases of actual or potential abuse are reported immediately to their Line Manager, in addition to the Trust's Safeguarding Team. The incident must be reported using the Serious Incident form through the Eclipse system.

If there is a safeguarding concern/s relating to another investigation (a complaint, disciplinary, or serious incident) such investigations may only occur once the concern has been confirmed by the safeguarding team. This process may involve the Local Authority Designated Officer (LADO) if it relates to a young person, or they are deemed to be a Person in a Position of Trust (PIPOT).

Please refer to Managing Safeguarding Allegations Concerning People in a Position of Trust Policy (HR37) for further information.

3.15. Stage 1: Manager-Led Fact Finding

Regardless of the severity of an allegation or incident, all matters considered under the Disciplinary Policy will begin with manager-led proportionate fact finding.

To assess the level of harm and risk involved in a situation, it is important that the line manager undertakes a prompt review of the matter through a fact find. This is an exploratory exercise to gather facts and gain an understanding of the situation that has occurred before making any decisions.

Fact-finding must be proportionate to support safe decision making.

- For potential matters of **minor misconduct**, a fact-find will most often be informal. A manager may speak with relevant parties and review relevant basic documentary evidence. Informal fact-finds do not need to be recorded beyond the record created of the discussions held during the informal meeting.
- For potential matters of **unresolved minor misconduct, serious or gross misconduct** or where a matter is **complex**, a fact-find will be structured and will be recorded using the template found in Appendix 5. The colleague to whom the concern relates should be made aware that there is a concern, either verbally or in writing, and a statement should be obtained from them. All relevant staff on duty should be asked if they know anything about the matter so that a full picture is obtained.
- For potential matters of **criminal behaviour**, advice must be sought from the People and Culture Team before the fact-find commences. This is to ensure that appropriate measures are taken to escalate the concern to the relevant authority and to protect evidence.

Meetings convened as part of a fact find are part of everyday management of the Trust and as such, People Team representatives, Trade Union representatives or employee companions will not routinely be present. However, advice may be sought from such representatives outside of the meeting.

3.16. Temporary Suspension (48 Hour Holding Action)

In exceptional circumstances it may be appropriate to remove an employee from a situation for up to 48 hours to manage risks to service users, the employee or the Trust whilst an initial fact-find process is undertaken. Where possible, the employee will be moved to alternative duties or an alternative location by their line manager to achieve this but may require the individual to be sent away from the workplace entirely. This is, in effect, a temporary suspension of that employee.

All forms of suspension, including holding action, are intended as neutral acts and do not imply blame. Colleagues will receive pay as normal during any period of holding action.

Holding action can only be approved by an Associate Director or delegated Senior Manager. Before confirming this decision, the Associate Director or Senior Manager must send this request in writing to the People and Culture Team for approval. Requested can be sent directly to the named People Partner for the Division/Service or to bsmhft.hrsupport@nhs.net. Any request will be considered by a People Partner or the Head of People and Culture, and the outcome must be recorded to ensure that the necessary authority has been granted.

In exceptional circumstances, for example an incident occurring during a night shift, holding action can be approved by contacting the on-call senior leader.

With the consent of the individual, the employee's Trade Union Representative or Employee Companion will be advised, where possible.

Where holding action is approved, all witness statements should be collated during this period, to ensure the most appropriate and informed decision is made. This may also include seeking further guidance if suspension or restriction of practice should be considered.

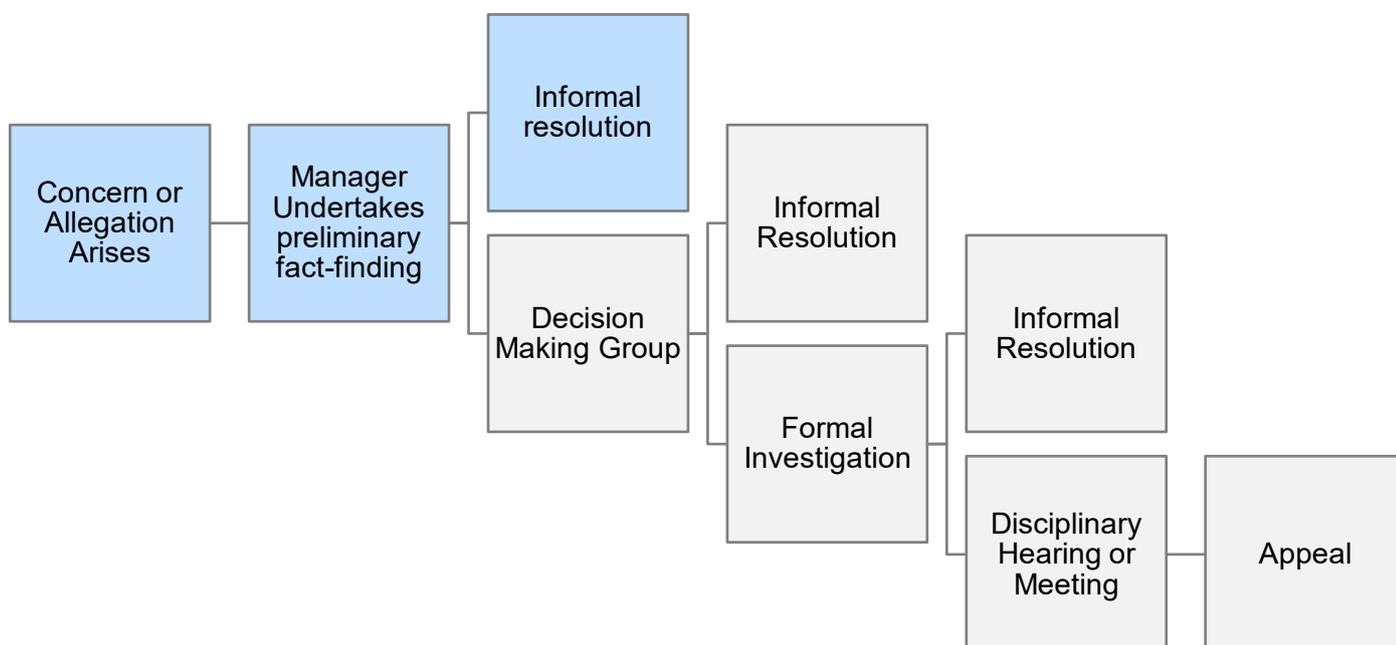
In exceptional circumstances, it may not be possible to complete a fact find within the initial period of holding. In such cases, the 48-hour period may be extended further, to ensure all information required has been obtained to enable informed decision making. This also affords protection to the individual to ensure that the Trust takes the most appropriate action. Each extension of the holding period must be approved fully by the Associate Director or delegated Senior Manager, following the review of the People and Culture Team.

Holding action cannot be extended beyond 7 calendar days in total, any further extension would be considered a suspension in full and would be subject to the approval process outlined under the Suspension or Restriction of Practice section of the Formal Stage.

Where a holding action is approved, and within the boundaries of reasonable confidentiality, the Associate Director or delegated senior manager will identify with the employee what information will be shared in relation to the holding action and with whom that information will be shared.

3.17. Stage 2: Informal Resolution

Figure 2, below, shows the fundamental stages of the disciplinary process. The informal stages of the process are highlighted in blue:



Restorative, Just and Learning Culture (RJLC)

From the moment an allegation or a concern is raised, there is the potential for harm. Service users and carers, colleagues, teams, and the wider Trust may be affected. Acting quickly and supportively helps reduce harm and promotes learning.

The informal stage of the Disciplinary Policy is an opportunity for employees and line managers to restore trust, confidence and relationships following issues of minor misconduct by applying the principles of the Trust's Restorative, Just and Learning Culture.

Stop and Pause

Once a sufficient basis of fact has been established, it is important that the line manager takes an opportunity to reflect carefully on the findings of the fact-find process to identify the appropriate next steps.

Informal action, in a way that promotes safety and does not risk further harm, can provide prompt resolution through a fair, open and learning approach. In identifying whether a matter is suitable for informal action, a line manager should 'stop and pause' to consider the following elements:

- Intent:** Did the colleague intend to cause harm?
- Health:** Was the individual's ability to meet the expectation limited by ill health?
- Foresight:** Did the individual know what was expected and are those expectations clear and consistently applied?

Substitution: What would another colleague with similar experience, qualifications and instruction have done in the circumstance?

Mitigation: Were there any significant circumstances that contributed to the situation arising?

It may be that, following consideration of these elements, support is required under a different policy of the Trust (for example Health, Wellbeing and Attendance or Managing Employee Performance). This support may be needed concurrent to exploration under the Disciplinary Policy or in place of and managers are encouraged to seek the support of the People and Culture Team for advice.

Consideration of these elements forms a core part of the Manager-Led Fact-Find record (see Appendix 5)

3.18. Informal Meeting

Following a stop and pause, if the matter is assessed as being minor, then the concern should be raised confidentially, on a 1:1 basis with the employee. This is an informal, supportive meeting between manager and employee, and will focus on two-way discussion to explore opportunities for learning and reflection. This should take place as soon as is practicably possible.

The aim of an informal discussion is to:

- Discuss, in summary, the findings of the fact-find process, identifying whether conduct or standards have not met expectations.
- Confirm that the employee understands the behavioural standards we expect (refer to Everyday Behaviours Guide)
- Explore what changes may have led to the employee to behave in the way observed.
- Help the employee make the necessary changes by setting objectives/standards within an agreed timescale
- Discuss any support, adjustment or development that may be needed
- Agree how progress will be reviewed (no more than 6 months)
- Set out the consequences of continued poor conduct or standards.

The meeting should be recorded using the Regular Management Supervision (RMS) form and a copy of the RMS form should be shared with the employee. Line managers should keep brief notes of any informal action for reference purposes.

In exceptional circumstances, at this informal stage a member of the People Team may be in attendance. In these circumstances, the staff member will be notified in advance of this, and that they have the right to bring a Trade Union representative or an ordinary work colleague with them.

3.19. Mediation

There are some minor conduct matters which may be resolved through mutual agreement of employees to participate in mediation as part of informal resolution. This approach operates outside of any formal procedures and is voluntary.

Mediation can be requested by:

- Self-referral
- The employee's manager
- People team
- Inclusion advisor
- Trade Union Representative
- Freedom to Speak Up Guardians

Mediation is a confidential process where an impartial non-judgmental mediator brings people in conflict together in a safe environment to facilitate an open and honest conversation. It helps people explore their differences and arrive at mutually agreed solutions. The mediators are trained, assessed and accredited and inclusive practices form a significant part of the training.

This approach operates outside of any formal dispute or grievance procedures and is voluntary. If any formal procedure occurs involving the two people who attend mediation, the contents of the mediation discussion cannot be used as part of the formal process.

Mediation can be re-entered at any stage of the policy, even after pursuing the formal route, should both parties agree. This is with the intention of enabling relationships that support effective workplace practice.

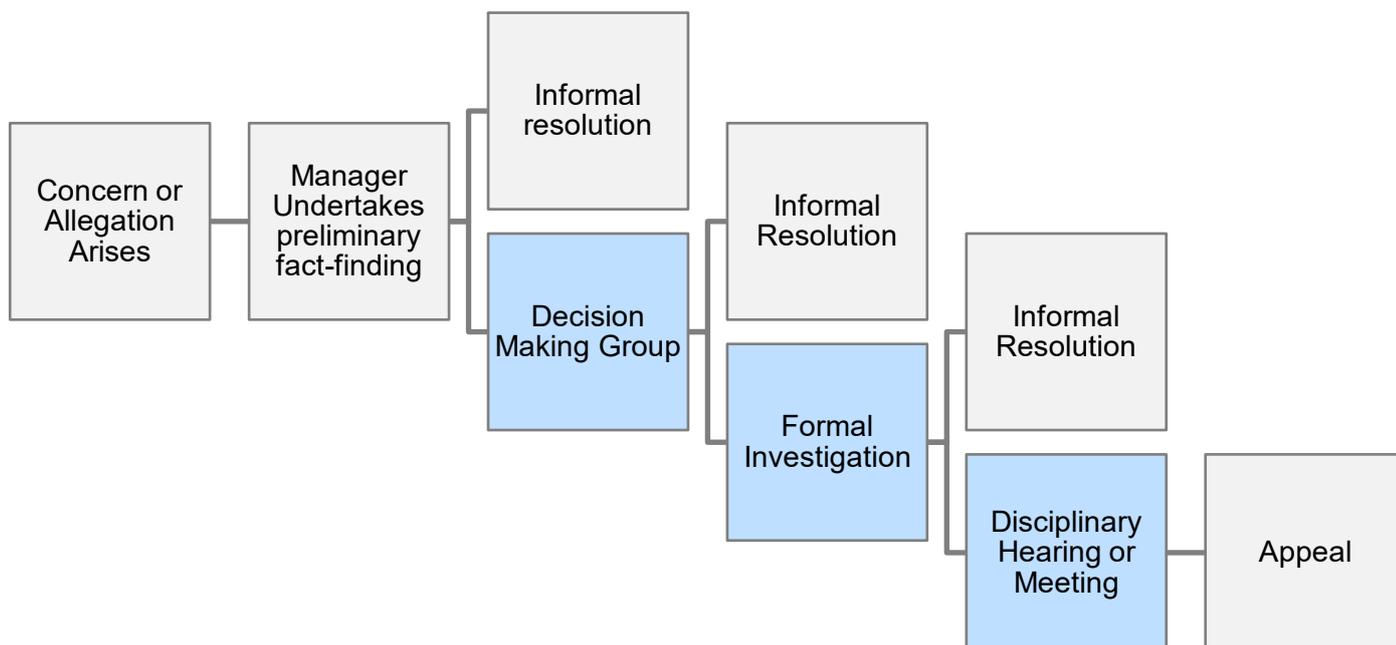
The following referral process applies:

- The referral is submitted to the Organisational Development team (OD) and is sent to the mediation leads to assess if mediation is suitable.
- The OD team arrange the appointments between mediator and the individuals.
- Initial contact will be made within 2 weeks, and the intention is to have the mediation begin within 4 weeks, dependent on all parties involved fully engaging in the process.
- The mediation will be completed over 2 days (day 1 – individual sessions – each party to allow half a day. Day 2 – joint session – all parties to allow a full day).
- The parties involved will conclude whether the mediation has been successful or not. This is the only communication recorded and reported back to the commissioning manager.

Please see the Dignity at Work Policy (HR07) for more detail, and to access the self-referral form.

3.20. Stage 3: Formal Resolution

Figure 3, below, shows the fundamental stages of the disciplinary process. The formal stages of the process are highlighted in blue:



Upon the completion of the fact-find, a manager may identify that a matter relates to potential unresolved minor misconduct, serious misconduct or gross misconduct. In these cases, a Decision-Making Group (DMG) may be requested to decide if formal action is appropriate or to return the matter for informal resolution.

3.21. Decision-Making Groups (DMG)

A case can only progress beyond the informal stages through the decision of a Decision-Making Group.

A Decision-Making Group is a structured, formal meeting with a quorate attendance in accordance with the standard Terms of Reference (Appendix 7). The purpose of the meeting is to carefully review the facts of the matter, as identified by the manager-led fact find, to identify appropriate actions to support the Just, Restorative and Learning culture of the Trust.

Any meeting of a similar topic or focus but not convened in accordance with the Terms of Reference for Decision-Making Groups, does not hold the authority of a Decision-Making Group under this policy. This includes meetings between managers, managers and HR or managers and external bodies to explore or seek advice.

For medical colleagues this should be considered alongside the process outlined in Appendix 2 and 3.

Before proceeding to request a DMG, the line manager is responsible for ensuring that all relevant preparatory action has been completed. This includes:

- Completing a fact-find and preparing a fact-find report, using the template available in the Disciplinary toolkit.

- Attempting to resolve the matter informally, unless it is either unresolved minor, serious or gross misconduct.
- Addressing immediate risks, identifying appropriate measures with the support of a Senior Manager, People and Culture team representative or Subject Matter Expert.

To request a Decision-Making Group, the line manager, in agreement with their line manager and the People and Culture Team will contact the Associate Director (AD) or equivalent Senior Leader to request that a DMG be arranged.

3.22. Operating a Decision-Making Group

In convening a DMG, the Associate Director will ensure that the completed fact find documentation is sent to all members of the Decision-Making Group (DMG) in advance.

The DMG should convene within 48 hours where possible to review the fact find and consider the initial concerns. The purpose of the DMG is to ensure that all relevant matters are dealt with in a fair and consistent manner in line with Just Culture Principles and ensure swift and proportionate action is taken to address the identified concerns.

The core membership of a DMG will be as follows;

Role	Responsibilities
<p>Associate Director or Equivalent Senior Leader</p> <p>(In cases where someone at Associate Director level or above is involved in the concern, a Trust Executive Director must lead the process of agreeing the membership of the DMG)</p>	<p>Is the chair of the meeting.</p> <p>The Chair in liaison with a People Partner, will arrange a DMG to determine the nature of the concern and how best to proceed. This will involve using this guidance as well as the relevant appendices and policies and procedures to fully consider the correct route to manage the concern.</p> <p>The chair is responsible for appointing the commissioning manager (CM), the Investigating Officer (IO) for formal investigations and the Health Wellbeing support officer.</p> <p>The decision, process used, and outcome will be recorded using Appendix 6, which will be filled by the People Partner to ensure there is a record of any decisions taken.</p>
<p>Senior Representation of the People and Culture Team</p>	<p>The People and Culture Team representative will provide advice and guide the DMG in line with HR policies.</p> <p>They will support the line manager/relevant manager, the DMG Chair, the Commissioning Manager by both attending the DMG meeting and ensure the outcomes of the meeting are recorded and are retained.</p> <p>There may be separate People Team representatives supporting the DMG and Commissioning Managers.</p>

Role	Responsibilities
Relevant Lead Professional (where the individual is a registered professional)	The relevant Lead Professional will consider and implications for individuals from a professional perspective. Offer advice on learning, support and liaise with professional bodies if required.
Clinical Nurse Manager (CNM) Clinical Service manager (CSM)	The CNM will support the line manager in collating the fact-finding information and provide an independent overview of the concerns. They will also support the service in events of redeployment and impact on staffing levels as a result of any decision making through the DMG.

In order to share best practices or address a conflict of interest, it may be necessary for an equivalent representative from a service outside the DMG—such as a Head of Nursing from another division—to participate instead of the divisional post-holder.

The chair of the DMG is responsible for assigning the responsibility of taking notes. This attendee will hold no other responsibilities within the meeting than to complete the DMG record form, capturing the notes of the discussion.

Depending on the circumstances the membership can be extended to the following to allow for the input of the necessary experts (not an exhaustive list):

- Inclusion Advisor
- Counter Fraud
- Freedom to Speak Up Guardian
- Member of the Safeguarding team

The Associate Director, as chair of the DMG, will use the DMG Record Form (Appendix 6) to explore whether a staff member involved in an incident requires specific individual support or some other intervention in order to work in a way that is safe and does not cause harm to service users.

The DMG can implement a range of actions, including (but not limited to):

- Returning the matter to the line manager for further fact-finding
- Returning the matter to the line manager for informal resolution
- Progress the case to a disciplinary meeting, where appropriate
- Progressing the case to formal investigation, through the appointment of a Commissioning Manager and producing a draft Terms of Reference.
- Requesting approval for a suspension or restriction of practice
- Deferring to a further DMG with additional specialist membership (for example, safeguarding attendance)

Upon conclusion of the DMG, the notetaker must prepare a final draft of the notes of the meeting using the template DMG Record (Appendix 6) within 7 calendar days of the date of the DMG. These notes should be forwarded to the chair for approval and submitted to the People and Culture Team representative. Actions identified by the DMG, particularly those relating to risk or security, must proceed in a timely manner and it is not required that the notes be authorised before action is taken.

3.23. Suspension or Restriction of Practice

For Medical colleagues this is referred to as Exclusion and the guidance within Appendix 2 should be followed.

Line managers or Decision-Making Groups can request employees to be suspended from duty, to be temporarily redeployed and/or placed on restricted duties, in order to safeguard involved colleagues, service-users, the Trust or the integrity of any fact-finding or investigation. These interventions will most often be risk assessed and considered through a DMG.

Should the DMG come to the view that they wish to suspend or restrict an employee the matter should be discussed and approved by a First Tier Approver, who will seek approval from the relevant Second Tier Approver:

First Tier Approval	Head of People and Culture
Second Tier Approval	Executive Director of Strategy, People and Partnerships (Non-Clinical Colleagues) Relevant Lead Professional (Clinical Colleagues) Medical Director (Medical Colleagues)

Suspension would only normally be considered if there is a serious allegation of misconduct and will occur for the following reasons:

- To defuse a situation
- To prevent interference with the investigation, tampering with evidence or influencing witnesses and investigation
- To protect the employees concerned and the Trust
- To prevent causing a risk to the welfare of the service users or colleagues
- There is a risk to the employee themselves, property or service users
- The employee is the subject of criminal proceedings which may affect whether they can do their job.

Suspension is not a punishment. It is a neutral action and does not imply blame. This will be reviewed regularly every 14 days, and the employee's personal wellbeing will be a primary consideration.

The employee will not be subject to any financial detriment during suspension; and will usually be paid based on 'normal' pay i.e. the pay the person would have received if they

had been at work based on a 12-week reference period (leading up to the date of suspension) but will exclude pay for bankshifts. This will also include an average of the 12 previous week's enhancements and allowances.

If an employee is suspended from their substantive post/role they will automatically cease to work on the Trust's Temporary Staffing Solutions (TSS) bank until the suspension is lifted and to maintain confidentiality the information regarding the suspension will be given to TSS by the Suspending Manager.

Suspension without pay should only be considered in exceptional circumstances and will require authorisation from the Head of People and Culture or Executive Director of Strategy, People and Partnerships. Suspension without pay may occur for the following reasons (these are examples, and this list is not exhaustive):

- Frustration of contract – imprisonment
- Expiry or revocation of entitlement to work under the Immigration and Asylum Act 1999
- Failure to renew statutory professional registration

Alternatives to suspension must be considered by the DMG, and could include the employee temporarily:

- being moved to a different area of the workplace
- changing their working hours
- being placed on restricted duties including having reduced access to Trust systems, where appropriate
- working under supervision
- being transferred to a different role within the organisation (the role should be of a similar status to their normal role, and with the same terms and conditions of employment).
- other meaningful activities that the individual could do should be actively explored. This could include working remotely from home, carrying out activities such as audits, supporting administrative duties, review/writing of policies and or procedures, research or teaching.

If the DMG decides to partially restrict the employee, then the DMG Chair must send this information to the Head of People and Culture for approval.

3.24. Communicating the Decision to Suspend and Supporting Employees

Every effort will be made for an appropriate manager (herein described as the suspending manager) to meet with the employee to inform them of the decision to suspend. Employees can be accompanied by a trade union representative or companion when informed of suspension, however, the unavailability of a representative will not prevent suspension from taking place.

When the suspending manager is communicating the decision to suspend, there should be consideration for the employee's emotional wellbeing. This includes:

- Considering the venue where the suspension is taking place, ensuring privacy, access to rest facilities and access to drinking water.

- If the employee is presenting as unwell, then the manager should ensure that they are asked during the meeting if they want an immediate referral to Occupational Health for support.
- The employee should also be given the opportunity to have breaks during the meeting if they are distressed.

If a manager is considering the suspension of a member of staff prior to a DMG taking place (due to exceptional safety or security risks), following discussion with a senior manager, the line manager should contact a trade union representative or an Inclusion Advisor via the People and Culture Team to advise them of the potential suspension.

The employee will be informed verbally of the suspension, and this will be followed up in writing within 3 working days.

The letter will outline the requirements of the suspension including not attending work premises without prior agreement and not discussing the case with any colleague other than their Trade Union representative or work colleague.

The suspending manager will:

- Explain the reason/s for suspension and how long it is expected to last.
- Explain the employee's responsibilities during their suspension.
- Provide a point of contact (usually the line manager) that they can contact if they have any concerns.
- Agree how and how often they will keep in regular contact with the employee throughout, establishing up to date contact details (including telephone number, email address and postal address).
- Give details about support from Employee Assistance Programme (EAP), including telephone counselling and Occupational Health.
- If it is necessary to explain the employee's absence, the suspending manager will discuss with the employee how to explain the matter to relevant colleagues and/or service users
- Remind the employee that the suspension will be reviewed every 14 days and advise that the employee will receive an e-letter (or alternative) advising the outcome of the review, at the end of each 14-day period.,
- Should a suspended colleague become unfit to work due to sickness, they will be managed appropriately under the Health, Wellbeing and Attendance Policy and recorded as on sick leave. Pay will be in line with sick pay entitlements. The normal procedure concerning absence management apply (as outlined in the Health, Wellbeing and Attendance Policy), with wellbeing meetings expected to occur during long-term sickness.
- Make the employee aware that if they are on sick leave during their suspension, then the investigation will continue. Investigation meetings/hearings will only be delayed if Occupational Health advises that the employee is not fit to participate.
- Check if the employee has any personal possessions remaining on the Trust premises. If so, the suspending manager should inform the employee's line

manager that this must be given to the employee's Trade Union representative or their allocated wellbeing support to return to the employee.

- **If the meeting is to confirm that a suspension is to be extended:** It is important to advise the employee of the evolving reasons for extending the suspension e.g. Investigating Officer carrying out investigation; Investigating Officer writing the investigation report.

3.25. Terms of the Suspension

The terms of the suspension, restrictions during suspension/exclusion and employee obligations will also include:

- not doing anything that could interfere with the investigation
- treating the matter confidentially
- seeking permission from the suspending manager to contact colleagues
- not making direct contact with witnesses in support of their case; this should be done via their manager, the Investigating Officer, or their Trade Union Representative/supportive work colleague
- not attend any Trust premises, unless they have been given permission by an appropriate manager to attend for a specific purpose, e.g. meeting a Trade Union representative, an investigation meeting, a counselling appointment, a medical consultation.
- If the staff member is also a service user of the Trust, they have the right to attend Trust premises for treatment. They must inform their line manager of this.
- the requirement to remain available between 9.00 am to 5.00pm, Monday to Friday, excluding public holidays, to attend meetings.
- Permission for any periods of absence, e.g. annual leave, must be requested in advance ~~of~~ annual leave is taken.

If deemed necessary, the suspending manager may ask the employee to hand in Trust property such as keys, ID card, Trust mobile phone, bleep, laptop or any other mobile device at the time of exclusion. These will be listed and a copy given to the employee.

The suspending manager may also temporarily revoke remote access if in use or remove / restrict access to Trust systems by referral to the Data Protection Office. In these circumstances, the suspending manager and employee must agree alternative methods of keeping in contact. The suspending manager must make sure the employee is still able to access required information, such as pay slips, staff discounts etc.

A suspended person must not undertake any paid work during the hours for which they are contracted to work. The employee will not be able to take any voluntary, paid or unpaid employment with any other employer during suspension which their line manager has not already agreed to.

People suspended for clinical / professional reasons must not undertake any work, paid or unpaid, without prior permission from the appropriate manager.

Professional bodies may need to be informed, and the employee will be notified

Where an employee holds employment outside of the Trust and is suspended from the Trust, the employee is obliged to declare their alternative place/s of work and the suspension information may be shared with another employer, to safeguard service users. Advice will be taken from IG/Safeguarding etc. regarding this and when considering passing information on outside of the organisation.

3.26. Timescales for Suspension

Suspension will be for the minimum time necessary and will be reviewed by the Commissioning Manager, with support from the People and Culture Team, every 14 days. Suspension will be lifted when the reason for suspension no longer exists.

Should the Commissioning Manager, with due regard to advice from the People and Culture Team, decide to lift the suspension, this should be approved by a First Tier Approver, who will seek approval from the relevant Second Tier Approver:

First Tier Approval	Head of People and Culture
Second Tier Approval	Executive Director of Strategy, People and Partnerships (Non-Clinical Colleagues) Relevant Lead Professional (Clinical Colleagues) Medical Director (Medical Colleagues)

Most investigations should be concluded within 30 working days of suspension. Where this is not possible the individual should be informed that they remain suspended and told when the investigation is likely to be completed.

Where any concerns are raised, the suspension can be reviewed by the Head of People and Culture and the Executive Director of Strategy, People and Partnerships who will work with employees and their representatives collaboratively and will only consider the suspension requirements.

The employee will be written to and notified of the decision to extend or end the period of suspension by letter, which is sent by the Commissioning Manager. The investigation team should make themselves available to meet employees to discuss the progress of the investigation.

Suspension and restrictions will be reviewed on a regular basis and amended and/or lifted via a suspension review, Disciplinary Meeting or Hearing, where appropriate.

3.27. Investigation

In the event that an allegation or concern relates to a medical colleague, then the guidance outlined in Appendix 2 must be followed.

Commissioning

If formal action is deemed necessary, the Chair of the DMG in liaison with the People and Culture Team will appoint a Commissioning Manager (CM). The commissioning manager will hold overall responsibility and oversight for the case from the point of appointment as a delegate for the chair of the Decision-Making Group.

The Commissioning Manager (CM) will be responsible for drafting the Terms of reference (ToR) for the investigation and ensuring this is shared with the employee, their Trade Union Representative/Employee Companion and Investigating Officer. The ToR should be sent out as soon as possible following completion of the DMG to avoid delays

In cases involving a Freedom to Speak Up Guardian, it may be appropriate for the Terms of Reference to be developed collaboratively with the guardian.

The Commissioning Manager will appoint an Investigating Officer and will provide line management support for that person in that capacity. The individual must be supported to maintain suitable levels of workload capacity to support the entirety of the investigation.

The People and Culture Team will confirm an appropriate People Team representative to support the Commissioning Manager and another member of the People Team to support the Investigating Officer.

The Investigating Officer (IO) must have had no prior involvement and/or conflict of interest, in respect of the alleged incident/misconduct. It must be confirmed that the Investigating Officer will be available for the duration of the investigation to avoid any delays in concluding the investigation. It is important to ascertain the investigating skills and experience that the potential Investigating Officer has, prior to making the appointment.

An investigation is deemed as having been commissioned when both the employee and the investigating officer have been issued a copy of the Terms of Reference.

Investigating

The investigation will involve interviewing the employee and all potential witnesses regarding the alleged misconduct and may include reviewing any other relevant information, visiting the site and reviewing documentary evidence.

The progression of each investigation will depend upon a range of factors including the complexity of the case, the availability of witnesses and employees and any involvement of outside agencies.

While an employee is under investigation this policy permits the review of personal items and a search of the workspace if this is integral to the investigation. Any requirement to do this will be taken following discussion with the People Team and other relevant support such as Information Governance etc. The employee should be informed of this before a review where possible.

Employees are required to partake in the process, attend meetings and hearings as required. Where employees do not attend or comply with the policy, further action may have to be taken on the basis of the information available to the Trust. This could include

further sanctions, hearings taking place without their attendance and decisions being made without their input.

The Trust reserves the right to revoke permission to undertake secondary employment, where the circumstances indicate that this is an appropriate course of action.

Concluding

The Investigating Officer will be responsible for writing an investigation report outlining the facts and findings of the investigation. The Investigating Officer can make recommendations but is not responsible for reaching any final decision/making and judgement on the evidence collected.

The report should be sent to the Commissioning Manager within 10 working days following completion of the investigation (from date of last witness interviewed) and the Commissioning Manager and their HR support must meet to determine the outcome and whether further action is required.

There are various outcomes that the Commissioning Manager may decide upon, including:

- The investigation has identified that there is a case to answer, and a Disciplinary Meeting or Hearing should be convened.
- The investigation has shown that there is no case to answer and no further action is required
- In exceptional cases, convening a follow-up Decision Making Group (DMG), in the event that an investigation has highlighted significant harm, risks or complexities that were not fully understood at the initial DMG.

The outcomes may involve further recommendations and/or potentially referral to DBS and professional bodies.

The Commissioning Manager is responsible for sending a letter to the employee informing them of the investigation outcome. This should be sent within 10 working days of receipt of the report, unless there are exceptional circumstances, for example sickness or annual leave.

3.28. Leavers during Disciplinary Processes

If the employee resigns whilst an active investigation is underway, then the investigation may continue whilst they are serving their notice period, dependent on the circumstances of the case. For instance, it may be appropriate to continue to conclude the investigation and progress to a disciplinary hearing.

When providing references for employees who have left whilst under an active investigation, each case will be judged on its own merits as to what is disclosed to future employers. However, when the case involved misconduct that warranted a referral to the DBS or a professional registration body, then these bodies should be informed that the employee left before an outcome was determined.

In all cases where the employee has resigned under these circumstances, if a reference is subsequently requested, the factual reference must state that the employee was the subject of a disciplinary investigation, and that the employee chose to resign before the completion of the investigation or before the disciplinary hearing could take place.

3.29. Disciplinary Meeting

During an investigation an employee may admit the misconduct and be prepared to accept full responsibility for their actions including the option to accept disciplinary action in a Disciplinary Meeting.

A Disciplinary Meeting does not have the authority to dismiss an employee. However, in all other ways has the same authority as a Disciplinary and can therefore apply disciplinary outcomes up to and including a final written warning. Where an investigation has identified severe misconduct or harm, a full disciplinary hearing must be arranged, regardless of any acceptance of responsibility.

If the Commissioning Manager and their People and Culture Team support decide that the matter can be managed at a Disciplinary Meeting, they will notify the relevant Associate Director (AD) of this decision, providing the investigation report.

The Associate Director and relevant divisional People Partner will then identify a panel. A panel will usually consist of:

- An appropriately senior manager with authority to undertake such a role and apply sanctions under this policy.
- A second appropriately senior manager or subject matter expert.
- A senior member of the People and Culture Team.

Once a Panel is identified, the People and Culture Team will then coordinate a date and venue for the Disciplinary Meeting. A formal invitation will be issued, and a copy of the investigation summary report will be shared in advance of the meeting.

The investigating officer and their people team support will not attend the meeting to present their findings, as the report will have been sent in advance of the meeting.

The panel will identify a suitable disciplinary outcome. The highest sanction available to a Disciplinary Meeting is a Final Written Warning. This will follow guidance in this policy on authority to undertake such a role and apply any sanction.

The employee will have the right to be accompanied to the Disciplinary Meeting. The employee has the right to appeal the decision made at the meeting, see Section X: Appeal Stage.

3.30. Disciplinary Hearing

If the Commissioning Manager and their People Team support decide to progress to a hearing, then they must notify the relevant Associate Director and divisional People Partner who will then identify an independent diverse panel.

A disciplinary hearing panel will consist of:

- An appropriate senior manager with authority to undertake such a role and apply sanctions under this policy, who will act as chair (see appendix 4)
- A senior member of the People and Culture Team.
- **For complex cases or where a potential outcome may include dismissal**, a Subject Matter Expert (such as the Head of Allied Health Professionals, Chief Nurse, a Buildings Engineer, a senior IT professional etc.)
- **Where an employees' first language is not English**, they have the right to an interpreter. A BSL interpreter will also be provided for employees who require this.
- **Where it may be necessary**, an Inclusion Advisor may be appointed to the Panel.

The Disciplinary Hearing should be arranged as soon as possible after the completion of the investigation so as not to protract the timescale unnecessarily and taking into consideration the impact to the employee's wellbeing of the ongoing process.

When an appropriate panel is identified, the Associate Director and People Partner must notify the People and Culture Team, who will coordinate a date and venue for the hearing. The People and Culture Team will draft an invite letter to the employee and send this letter to the Chair and their HR support for approval and distribution. This letter must be sent to the employee giving them a minimum of 14 calendar days' notice of the date. Where there has been a protracted investigation the employee can be awarded extra time to develop/prepare their case. This should be requested and agreed in advance including agreement with representatives to find fair and reasonable timescales.

The letter must include key information:

- The allegations to be considered at the Hearing
- Date, time and venue of the Hearing. The Hearing should be scheduled in for a full day to ensure there is sufficient time. If the case involves gross misconduct, the Hearing should be held face to face where possible, except in exceptional circumstances.
- If there was no attendance or there has been a request to cancel or reschedule the Hearing by the member of staff or their representative without reasonable justification, then the member of staff will be informed that the Hearing may take place in their absence. Reasonable justification includes but is not limited to sickness, or unforeseen transport difficulties.
- Names of Disciplinary Hearing Panel members

- Name of Investigating Officer who may be supported by a People Team representative
- Inform the employee of their right to be accompanied by a Trade Union representative or Trust work colleague
- Management has the right to call witnesses to support their case. (The Trust will support employees and their representatives with witnesses required and work collaboratively). Service users should only be called as witnesses in exceptional circumstances – advice should be sought from the People Team before deciding on the involvement of service users in an investigation, and the decision must be supported by the service user’s consultant.
- Disciplinary Hearing pack of information that will be relied on or referred to at the Hearing
- The employee can submit a written report for consideration if they wish to do so. This must be submitted to the Panel at least five working days before the Hearing.
- The potential outcome e.g., whether gross misconduct leading to dismissal is a possible outcome
- Any reasonable adjustments that may need to be considered should be discussed with their Trade Union representative or employee companion prior to the letter being sent.

Where possible a decision on the matter will be made on the day of the hearing. When this is not possible the employee will be informed when the decision is likely to be made. The outcome will be confirmed in a letter from the Chair, no more than 14 calendar days after the Hearing. These 14 calendar days do not include bank holidays or weekends. The letter will not take longer than 10 working days unless there are exceptional circumstances and in which case the employee will be informed of any delay.

The Hearing Panel will make a judgement based on the balance of probabilities and the evidence presented. If a sanction is deemed appropriate, this will take account of the seriousness of the misconduct, any mitigation, the substantial merits of the information presented, issues relating to fairness and consistency, and any ‘live’ written warnings on the member of staff’s file. Only then will the Panel determine what sanction, if any, should be issued. The decision will be presented on a face-to-face basis unless it is impracticable to do this. Consideration should be given to the impact of delivering the decision, the timing and support in place for those being sanctioned.

If after the disciplinary process has concluded it is established that the employee who is the subject of the disciplinary procedure has suffered serious harm, whether physical or mental, this should be treated as a ‘never event’ and an immediate independent investigation should be commissioned and received by the Trust Board. This decision should be made by the Panel. Discussion should be held between all those involved in the process to consider what has been harmful and professional advice taken where required.

3.31. Disciplinary Sanctions

There are 3 levels of formal sanction that can be the outcome from the formal disciplinary process:

- First Written warning (Live for up to 12 months)

- Final written warning (Live for up to 24 months)
- Dismissal or Summary Dismissal

Any sanction will be confirmed in a letter from the Chair summarising the Hearing and its conclusions and will advise the member of staff of any improvement/recommendations required, the period for which a warning will be 'live' and the likely consequences of further misconduct in that warning period.

Employees need to be aware that a disciplinary sanction will impact their pay progression if they are approaching a pay step during the length of their disciplinary sanction.

The Panel's People Team representative will inform the member of staff's Line Manager of the outcome of any Disciplinary Hearing and outcomes to be implemented. In cases of dismissal, if the employee holds a role with Temporary Staffing Service (TSS) they will also be informed.

There are circumstances where it is considered appropriate to take action short of dismissal and this will involve issuing a sanction of a final written warning alongside other actions for example redeployment to an appropriate post as identified by the Associate Director equivalent senior leader, downgrading/down banding. Pay protection will not apply in these circumstances.

All outcomes need to be achievable, realistic and manageable and involve other relevant departments where necessary.

The disciplinary warnings are intended to provide the employee with an opportunity to improve at each stage. The procedure should, therefore, usually be implemented in a sequential manner.

3.32. Professional Bodies

Employees who are members of professional bodies are reminded that the Trust has a duty to report any incidence of possible professional misconduct and dismissals to the appropriate body who may investigate the case.

For further information please refer to the Fitness to Practice and Professional Registration Policy.

3.33. Right to be Represented

Employees have the right to be accompanied at formal disciplinary interviews or Hearings by:

- A Trade Union representative.
- A full-time Trade Union official, or;
- A Trust work colleague, not acting in a legal capacity (e.g. lawyer).

In exceptional circumstances, the Trust will consider other types of support.

The representative may present on behalf of the employee but is not permitted to answer questions directly made to the employee.

3.34. Formal Proceedings against a Trade Union Representative

Trade Union representatives are protected by the Trade Union Labour Relations (Consolidation) Act 1992 against any discrimination/unfair treatment that may arise due to their official duties.

Before commencing any formal proceedings against a Trade Union Representative there is a requirement to discuss the matter with a Regional Full Time Officer with regard to any allegation. This will include establishing if the Trade Union Representative was undertaking their role responsibilities and duties as an accredited Trade Union Representative.

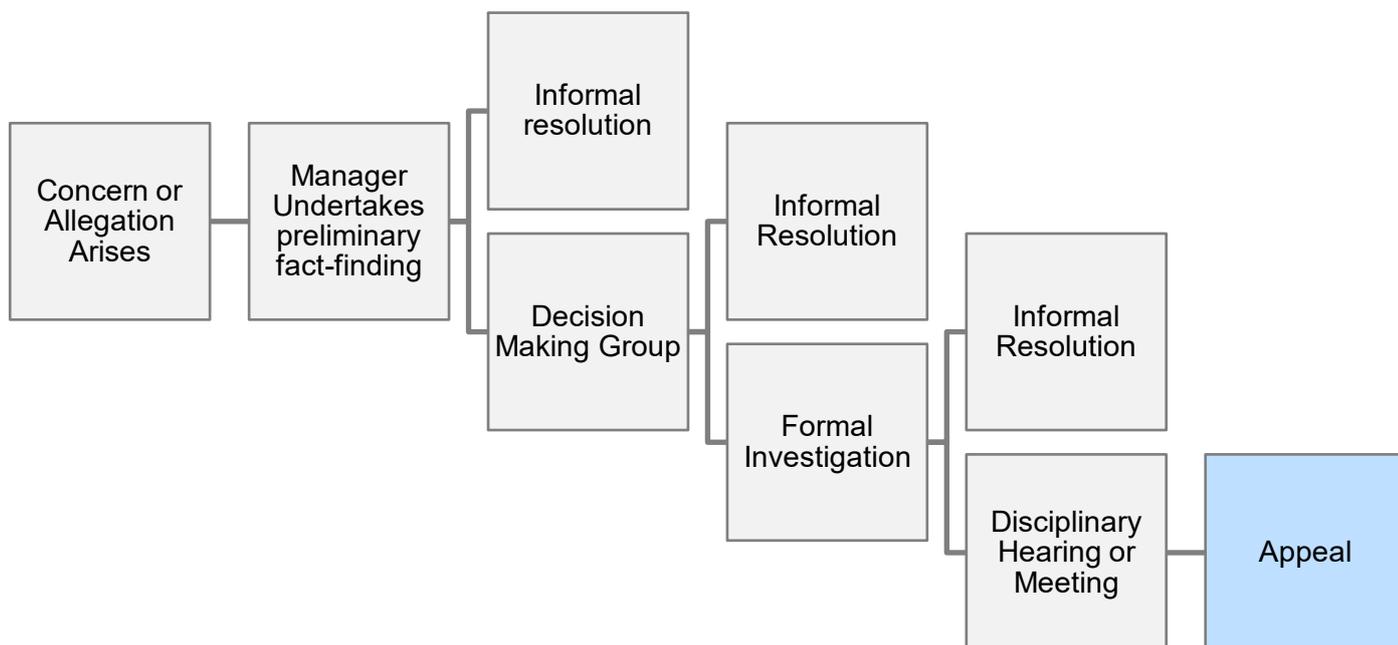
3.35. Inclusion Advisors

An employee may request for an Inclusion Advisor to be appointed, where an Inclusion Advisor is available.

Inclusion Advisors support the formal stages of the disciplinary process, advising on any potential equality, diversity or cultural bias issues, especially where unfair bias (conscious or unconscious) may have been identified.

3.36. Stage 4: Appeal

Figure 3, below, shows the fundamental stages of the disciplinary process. The formal stages of the process are highlighted in blue:



An employee may appeal a decision made in relation to this policy or an outcome that has resulted from it.

The employee must set out in writing the detailed grounds for their appeal within 14 calendar days of the outcome letter from the Commissioning Manager or Meeting/Hearing Chair.

The written outcome letter will contain the details of who the employee should address their appeal to, this will routinely be the relevant Associate Director or delegated senior manager.

The grounds for appeal are:

- Any procedural errors that were so substantial that they undermined the fairness of the decision.
- Any errors of fact that were fundamental to the decision made.
- The reasonableness of the decision.

Once an appeal has been received, an acknowledgement letter must be sent to the employee by the Associate Director or delegated senior manager within 7 calendar days of receipt of the appeal. The Associate Director or delegated senior manager will then nominate an appropriate senior manager, who has not otherwise been involved in the case, to chair an appeal hearing.

The chair will arrange for a panel to convene to hear the appeal without undue delay. The employee should be notified of the hearing arrangements within 14 calendar days of the appeal being acknowledged.

The appeal panel will consist of:

- A senior manager, who has not previously been involved in the case and has no conflict of interest.
- A senior People and Culture Team representative, to provide advice and support.

The employee has a statutory right to be accompanied at the Appeal Hearing by a Trade Union representative, full time Trade Union official, or an ordinary work colleague.

The chair will send an invite letter to the employee including all relevant paperwork and copies to the appeal panel members. All parties involved at the appeal stage will be provided with all paperwork that was presented to the Commissioning Manager. The employee will also be informed that no new evidence will be accepted as part of the appeal.

The appeal will not take the form of a rehearing of the matter. No new evidence will be accepted as part of the appeal. It will take the form of a review of the decision made. The review will consider the appeal in relation to the grounds for appeal, to determine whether the decision/s in question were appropriate.

At the Appeal Hearing the employee will be notified that the appeal outcome will be final and that there is no further right of appeal.

The appeal outcome must be communicated to the employee within 14 calendar days of the Appeal Hearing taking place, in the form of a letter from the chair of the appeal hearing. If this is not possible, then the employee should be informed and told when a response is to be expected.

4. Responsibilities

Post(s)	Responsibilities
All Colleagues	<ul style="list-style-type: none"> • Ensure they are fully aware with the requirements of their role, standards of conduct, behaviours and policies aligned to their role. • Ensure that their conduct is aligned with Trust values and behaviours. • Cooperate in any investigations • Employees who are absent from duty due to sickness whilst involved in a fact finding/investigation have a responsibility to attend Occupational Health to assess fitness to attend an interview. • Informing the Investigating Officer of anybody whom they wish to be interviewed as part of the investigation.
Line Managers	<ul style="list-style-type: none"> • To ensure that all new and existing employees are aware and understand the requirements for their job role, Trust values and the standards expected of them in relation to their conduct and behaviour at work. • Reviewing the incident, error or allegation and speak to the People Team to decide if informal resolution can be undertaken. • To ensure the employee's Health and Wellbeing is considered, reviewed and the correct support put in place. • Agree amount and form of contact with employees going through the procedure. • Ensure recommendations regarding employees are implemented fully and in a timely manner
The People and Culture Team	<ul style="list-style-type: none"> • Responsible for providing professional People Team advice and support to managers on applying this policy and procedure and DMGs. • Involved in all formal stages of the disciplinary procedure. • To ensure the policy is reviewed regularly & updated in line with good practice and changes in legislation
Trade Union Representatives	<ul style="list-style-type: none"> • To work in partnership with management and the People Team to ensure conduct and behaviour is in line with our values and behaviours and employees are treated fairly and managed appropriately in line with the policy.
Inclusion Advisors	<ul style="list-style-type: none"> • Advise the disciplinary investigation team or Hearing Panels on any potential equality, diversity and cultural bias issues, particularly where unfair bias (conscious or unconscious) may have been identified. (See IA role outline as part of the toolkit for further information)

Post(s)	Responsibilities
Freedom to Speak Up Guardians	<ul style="list-style-type: none"> • Responsible for the monitoring and reporting of perceived or actual detriment as a result of speaking up • Responsible for providing an alternative route for workers to speak up when they feel that they are unable to do so by other routes. • Ensure that people who speak up are thanked, that the issues they raise are responded to, and make sure that the person speaking up receives feedback on the actions taken.
Service, Clinical and Corporate Directors	<ul style="list-style-type: none"> • To ensure the policy and procedure are implemented consistently within their services. • To ensure reporting Managers within their services comply with the requirements and follow the suspension process. • To ensure appropriate monitoring takes place and where necessary take accountability for ensuring that external agencies or professional bodies are notified in line with Trust responsibilities e.g., counter fraud, GMC
Executive Directors	<ul style="list-style-type: none"> • Strategic accountability for ensuring there is compliance with this Policy and that it is applied in a fair and consistent manner. • To ensure the policy is implemented and cascaded throughout the Trust.
Medical Director	<ul style="list-style-type: none"> • Responsible (or a nominated deputy/senior manager) for acting as Case Manager in cases involving clinical directors and consultants • Responsible for appointing a case investigator for investigations involving doctors
Chief Executive	<ul style="list-style-type: none"> • Responsible for ensuring that a case manager is appointed for investigations into serious concerns involving doctors.
Non-Executive Director	<ul style="list-style-type: none"> • Where identified as ‘the designated member’ to oversee a doctor’s case and ensure that momentum is maintained Has oversight for how allegations of detriment are reviewed
Chair of the Trust	<ul style="list-style-type: none"> • Responsible for designating a Non-Executive Director ‘the designated member’ to oversee a doctor’s case
Trust Board	<ul style="list-style-type: none"> • Overall responsibility for developing and maintaining an open, fair and consistent culture throughout the Trust, where disciplinary issues are dealt with fairly. • Awareness of employee relations KPI data reported via the Trust’s People Committee • Review independent investigations into employees who have suffered any form of serious harm

5. Development and Consultation Process

Consultation summary		
Date policy issued for consultation	2 May 2025	
Number of versions produced for consultation		
Committees or meetings where this policy was formally discussed		
Joint Operational Staffing Committee JOSOC	16 April 2025	
Policy Development Management Group PDMG		
Where else presented	Summary of feedback	Actions / Response
People and Culture Team	<p>Fact-finding responsibilities and scope was misunderstood by managers.</p> <p>DMG meetings did not consistently record findings and quoracy</p>	<p>Template documents added, deprecating the original guidance illustrations included as appendices.</p>
External Auditors	<p>Need identified to formalise the training requirements for managers leading processes and decisions under the policy.</p> <p>Whistleblowing Section to be added to policy.</p> <p>Need identified for an employee alleged to be involved in a case to be notified during fact-find and asked for a statement.</p> <p>Clarity recommended on action to be taken where an individual becomes unwell whilst suspended.</p> <p>Authority to revoke permission to undertake secondary employment permissions to be added.</p> <p>Appeal processes not clearly stated in the policy.</p>	<p>Policy sections added and clarity given on points raised.</p>
Kraft HR Consultancy	<p>Need to add the opportunity for an inclusion advisor to join a DMG where a matter relates to discrimination</p>	<p>Clarification on this added to the DMG guidance section.</p>
Staff Consultation	<p>The purpose and timeliness of post-investigation DMG meetings was questioned.</p>	<p>Post-investigation DMG made optional for complex cases, but</p>

	<p>The purpose of Disciplinary Meetings versus Hearings was not clearly understood.</p> <p>Clarification on the nature of references to be issued during or after a formal process was requested.</p> <p>Guidance on compassionate communication requested.</p> <p>Feedback given on technical language in the policy needed to be made more accessible.</p> <p>It was suggested that it would be inappropriate to signpost colleagues to Mental Health First Aiders, and that this instead should generically signpost to the Wellbeing Pages that provide a wider range of support and resources.</p> <p>It was highlighted that reference was made to escalate via Associate Directors, which all areas of the Trust do not have.</p>	<p>the decision to progress moved to the commissioning manager.</p> <p>Section on disciplinary meetings added.</p> <p>References section added.</p> <p>Compassionate communication section added.</p> <p>Technical language adjusted to be easier to read.</p> <p>MHFA section withdrawn and signposting to the CONNECT page made.</p> <p>Clarity on equivalent senior leader provided</p>
Equality, Diversity and Inclusion Team	Further detail added on the nature and role of Mediation and processes involved.	Mediation section strengthened.

6. Reference Documents

The following internal documents were considered in the development of this policy and can be accessed via CONNECT (<https://bsmhftnhsuk.sharepoint.com/sites/connect-policies/SitePages/All-Policies.aspx>):

- Anti-Fraud Bribery and Corruption Policy (CG 22).
- Birmingham and Solihull Mental Health NHS Foundation Trust Everyday Behaviours Guide (October 2021)
- Dignity at Work Policy (HR07)
- Freedom to Speak Up: Raising Concerns Policy (HR20)
- Procedure on the Resolutions of Workplace Grievances (HR02)
- Health, Wellbeing & Attendance Policy (HR03)
- Managing Safeguarding Allegations Concerning People in a Position of Trust (PIPOT) (HR37)
- Fitness to Practice Policy (HR21)

The following external documents were considered and can be accessed externally:

- Restorative Just Culture Checklist (Public Domain. By Professor Sidney Dekker, April 2022). <https://sidneydekker.com/wp-content/uploads/2022/04/RestorativeJustCultureChecklist.pdf>.
- Maintaining High Professional Standards in the Modern NHS (February 2005) https://webarchive.nationalarchives.gov.uk/ukgwa/20130123204228/http://www.dh.gov.uk/en/Publicationsandstatistics/Publications/PublicationsPolicyAndGuidance/DH_4103586.
- Equality Act 2010. <https://www.legislation.gov.uk/ukpga/2010/15/contents>.

7. Bibliography

- The Care Act 2014
- NHS England - Safeguarding Vulnerable People in the NHS – Accountability and Assurance Framework, July 2015

8. Glossary

Term	Definition
ACAS	Advisory Consolidation Arbitration Services
BAME	Black, Asian and Minority Ethnic (more appropriately described as persons of a Global Majority)
CFA	Counter Fraud Authority
LCFS	Local Counter Fraud Specialist
EAP	Employee Assistance Programme
FTSU	Freedom to Speak up
GDPR	General Data Protection Regulations
MHPS	Maintaining High Professional Standards
PPAS	Practitioner Performance Advice Service
RMS	Regular Management Supervision
TOR	Terms of reference
TSS	Temporary Staffing Solutions
CFA	Counter Fraud Authority

9. Audit and Assurance

Element to be monitored	Lead	Tool	Frequency	Reporting Arrangements
Characteristics of Colleagues involved in Formal Casework	People Partnering Team	Casework Tracker and ESR	Quarterly and Annual Reporting (Dependent on People Goal)	People and OD Sub-Groups and People Committee
WRES and WDES reporting	Head of Equality, Diversity, and Inclusion	Employee Relations Casework Tracker and WRES and WDES reporting Templates	Quarterly and Annual Reporting (Dependent on People Goal)	People and OD Sub-Groups and People Committee
Involvement of Registered Professionals in Formal Casework	People Partnering Team	Casework Tracker	Monthly	Monthly Casework Reports to Professional Leads
Case Review Meetings	People Partners	Casework Tracker Case Review Record Forms	As required for cases of emergent risk	People Team Casework Review and Discussion
Allegation of perceived or actual detriment	Lead Freedom to Speak Up Guardian	Casework Tracker National Guardian reporting	Weekly Quarterly	Trust Board People Committee
Application and Review of Suspensions and Restrictions	People Partnering Team	Casework Tracker	Ongoing Monitoring Monthly Compliance	People Operations SMT TCSE

10. Appendices

- Appendix 1: Equality Impact Assessment
- Appendix 2: (Medical Workforce) Discipline, Investigation and Exclusion Procedure
- Appendix 3: (Medical Workforce) Process Flowchart for MHPS
- Appendix 4: List of Authorised Disciplinary Officers
- Appendix 5: Manager-Led Fact-Finding Record Form
- Appendix 6: DMG Record Form

Appendix 1: Equality Analysis Screening Form

Title of Policy		Disciplinary Policy	
Person Completing this policy	Scott Allcock	Role or title	Assistant People Partner
Division	Strategy, People and Partnerships	Service Area	People and Culture
Date Started	January 2025	Date completed	March 2025
Main purpose and aims of the policy and how it fits in with the wider strategic aims and objectives of the organisation.			
<p>With a focus on supporting the Restorative, Just and Learning Culture of BSMHFT, this Disciplinary Policy details the consistent approach to be taken by our people in reporting, cooperating with or managing the processes relating to a matter of conduct or behaviour. Establishing and maintaining this culture across the Trust will support the achievement of our key people priorities; Modernizing our People Practice, Shaping our Future Workforce and Transforming Culture and Staff Experience.</p>			
Who will benefit from the proposal?			
<p>This policy and associated resources will apply to all Trust employees in respect of potential matters of misconduct, including medical employees. The policy will not apply to Temporary Staffing Solution (TSS) and agency workers, work experience students, contractors and employees of other organisations and volunteers.</p>			
Does the policy affect service users, employees or the wider community?			
<p>A restorative, just and learning culture will benefit Trust employees, service users and carers and the communities in which we operate by supporting our people to develop our Trust and the services we deliver. The Disciplinary Policy provides a framework upon which to build this culture, ensuring that we maintain accountability whilst maximizing opportunities for growth and restoration.</p> <p>Employee relations data for the year to date (March 2025) demonstrates that there were high levels of formal employee relations matters in Acute and Urgent Care and in Secure and Offender Health (peaking at 30 active cases in 2024). In these areas of the Trust, colleagues who are from a global majority background, have a declared disability, are male or are aged 46-50 and 56-60 were disproportionately involved in formal cases when considered against the demographics of the department. The Trust is committed to providing and creating a positive and safe working environment where every individual can work without fear of discrimination.</p>			

Does the policy significantly affect service delivery, business processes or policy? How will these reduce inequality?

From the moment an allegation is raised, there is a potential for harm. The level of harm may increase over time and could affect individual colleagues, service users, our Trust and our wider staff community. Support managers and colleagues to bring to life RJLC principles in our everyday work will promote the reduction of formal employee relations matters, increase informal and timely resolution and minimize the opportunities for harm to occur. Where this benefits all employees, this approach may also directly reduce inequalities as outlined above by addressing disproportionalities.

Does it involve a significant commitment of resources? How will these reduce inequality?

The management of Discipline requires a significant commitment of resources across our Trust from all colleagues, the return from which is the development of a culture that supports our people and guides everyday decision making consistently.

Does the policy relate to an area where there are known inequalities? (e.g. seclusion, accessibility, recruitment & progression)

As outlined above, there are a range of disproportionalities known in relation to the formal employee relations environment – however the wider proportionality of informal, everyday management of discipline are not measured. This policy provides the consistent structure to ensure fair, inclusive and compassionate treatment of our people in all settings.

Impacts on different Personal Protected Characteristics				
<p><i>Does this policy promote equality of opportunity?</i> <i>Eliminate discrimination?</i> <i>Eliminate harassment?</i> <i>Eliminate victimisation?</i></p>		<p><i>Promote good community relations?</i> <i>Promote positive attitudes towards disabled people?</i> <i>Consider more favourable treatment of disabled people?</i> <i>Promote involvement and consultation?</i> <i>Protect and promote human rights?</i></p>		
Please click in the relevant impact box and include relevant data				
Personal Protected Characteristic	No/Minimum Impact	Negative Impact	Positive Impact	Please list details or evidence of why there might be a positive, negative or no impact on protected characteristics.
Age	✓			<p>Over the previous three financial years (April 2022 to March 2025) the distribution of age ranges of employees involved in formal disciplinary matters has been proportionate, on average, to the age profile of the workforce. This suggests that age is not directly or indirectly influencing the likelihood of a colleague to become involved in a formal process under this policy.</p> <p>This iteration of the disciplinary policy builds upon the principles of the previous version, strengthening the consistency of informal resolution and decision-making stages. Where it is likely that this will further the positive trends observed, no further impact is expected.</p>
<p><i>Including children and people over 65</i> <i>Is it easy for someone of any age to find out about your service or access your policy?</i> <i>Are you able to justify the legal or lawful reasons when your service excludes certain age groups</i></p>				
Disability	✓			<p>Over the previous three financial years (April 2022 to March 2025) fewer colleagues with a disability have been involved in a formal disciplinary matter than those without. This suggests that having a health ability is not directly or indirectly influencing the likelihood of a colleague to become involved in formal process under this policy.</p>

				This iteration of the disciplinary policy builds upon the principles of the previous version, strengthening the consistency of informal resolution and decision-making stages. Where it is likely that this will further the positive trends observed, no further impact is expected.
<p><i>Including those with physical or sensory impairments, those with learning disabilities and those with mental health issues</i></p> <p><i>Do you currently monitor who has a disability so that you know how well your service is being used by people with a disability?</i></p> <p><i>Are you making reasonable adjustment to meet the needs of the staff, service users, carers and families?</i></p>				
Gender			✓	<p>Over the previous three financial years (April 2022 to March 2025) more colleagues who identify as male have been involved in formal disciplinary matters than those who identify as female. This suggests that gender does influence the likelihood of a colleague to become involved in formal process under this policy.</p> <p>Consistent decision-making groups, based on complete fact-finding, will provide assurance that where a formal process is initiated it is done so safely and following due attempts to resolve the matter informally. It is anticipated that this consistency will support Trust management to address this disproportionality and positively impacting colleague experiences of this process.</p>
<p><i>This can include male and female or someone who has completed the gender reassignment process from one sex to another</i></p> <p><i>Do you have flexible working arrangements for either sex?</i></p> <p><i>Is it easier for either men or women to access your policy?</i></p>				
Marriage or Civil Partnerships	✓			This data is not used for analysis against disciplinary casework data and so a commentary on Trust-wide trends cannot be provided. Analysis of this case data does not suggest that any case over the past 3 financial years has involved or related to the characteristic of marriage or partnership status. Therefore, it is not anticipated that this policy will bring any negative or positive impact on colleagues in relation to this characteristic.
<p><i>People who are in a Civil Partnerships must be treated equally to married couples on a wide range of legal matters</i></p> <p><i>Are the documents and information provided for your service reflecting the appropriate terminology for marriage and civil partnerships?</i></p>				

Pregnancy or Maternity	✓			This data is not used for analysis against disciplinary casework data and so a commentary on Trust-wide trends cannot be provided. Analysis of this case data does not suggest that any case over the past 3 financial years has involved or related to the characteristic of marriage or partnership status. Therefore, it is not anticipated that this policy will bring any negative or positive impact on colleagues in relation to this characteristic.
<p><i>This includes women having a baby and women just after they have had a baby</i></p> <p><i>Does your service accommodate the needs of expectant and post-natal mothers both as staff and service users?</i></p> <p><i>Can your service treat staff and patients with dignity and respect relation into pregnancy and maternity?</i></p>				
Race or Ethnicity			✓	<p>Over the previous three financial years (April 2022 to March 2025) more colleagues who identify as originating from a Global Majority have been more frequently involved in formal disciplinary cases than other colleagues by approximately 5%.</p> <p>Consistent decision-making groups, based on complete fact-finding, will provide assurance that where a formal process is initiated it is done so safely and following due attempts to resolve the matter informally. It is anticipated that this consistency will support Trust management to address this disproportionality and positively impacting colleague experiences of this process.</p>
<p><i>Including Gypsy or Roma people, Irish people, those of mixed heritage, asylum seekers and refugees</i></p> <p><i>What training do staff have to respond to the cultural needs of different ethnic groups?</i></p> <p><i>What arrangements are in place to communicate with people who do not have English as a first language?</i></p>				
Religion or Belief	✓			This data is not used for analysis against disciplinary casework data and so a commentary on Trust-wide trends cannot be provided. Analysis of this case data does not suggest that any case over the past 3 financial years has involved or related to the characteristic of religion or belief. Therefore, it is not anticipated that this policy will bring any negative or positive impact on colleagues in relation to this characteristic.
<p><i>Including humanists and non-believers</i></p> <p><i>Is there easy access to a prayer or quiet room to your service delivery area?</i></p>				

<i>When organising events – Do you take necessary steps to make sure that spiritual requirements are met?</i>				
Sexual Orientation	✓			This data is not used for analysis against disciplinary casework data and so a commentary on Trust-wide trends cannot be provided. Analysis of this case data does not suggest that any case over the past 3 financial years has involved or related to the characteristic of sexual orientation. Therefore, it is not anticipated that this policy will bring any negative or positive impact on colleagues in relation to this characteristic.
<i>Including gay men, lesbians and bisexual people</i> <i>Does your service use visual images that could be people from any background or are the images mainly heterosexual couples?</i> <i>Does staff in your workplace feel comfortable about being ‘out’ or would office culture make them feel this might not be a good idea?</i>				
Transgender or Gender Reassignment	✓			This data is not used for analysis against disciplinary casework data and so a commentary on Trust-wide trends cannot be provided. Analysis of this case data does not suggest that any case over the past 3 financial years has involved or related to the characteristic of gender identity. Therefore, it is not anticipated that this policy will bring any negative or positive impact on colleagues in relation to this characteristic.
<i>This will include people who are in the process of or in a care pathway changing from one gender to another</i> <i>Have you considered the possible needs of transgender staff and service users in the development of your policy or service?</i>				
Human Rights	✓			This policy is written to promote equality and remove any discrimination to ensure that everyone can fulfil their full potential within a Trust that is inclusive, compassionate, and committed. This is keeping in line with our Trust values, the NHS People’s Plan commitment to equality, diversity and inclusion and reflects the provisions of the Equality Act 2010.
<i>Affecting someone’s right to Life, Dignity and Respect?</i> <i>Caring for other people or protecting them from danger?</i> <i>The detention of an individual inadvertently or placing someone in a humiliating situation or position?</i>				

If a negative or disproportionate impact has been identified in any of the key areas would this difference be illegal / unlawful? I.e. Would it be discriminatory under anti-discrimination legislation. (The Equality Act 2010, Human Rights Act 1998)

		No		
What do you consider the level of negative impact to be?	High Impact	Medium Impact	Low Impact	No Impact
				✓

If the impact could be discriminatory in law, please contact the **Equality and Diversity Lead** immediately to determine the next course of action. If the negative impact is high a Full Equality Analysis will be required.

If you are unsure how to answer the above questions, or if you have assessed the impact as medium, please seek further guidance from the **Equality and Diversity Lead** before proceeding.

If the policy does not have a negative impact or the impact is considered low, reasonable or justifiable, then please complete the rest of the form below with any required redial actions, and forward to the **Equality and Diversity Lead**.

Action Planning:

How could you minimise or remove any negative impact identified even if this is of low significance?

The operational People Team will regularly provide training and guidance for managers on the application of the Trust's Disciplinary Policy. For all training delivered we will utilise formal evaluation mechanisms which help to inform future training decisions. Alongside this we will actively encourage and promote this training amongst managers who are new to their role, less experienced or for whom we believe there may be an issue in relation to confidence, proficiency or a requirement for knowledge refresh.

How will any impact or planned actions be monitored and reviewed?

Review formal evaluation feedback and revise training offer accordingly. Employee Relations casework will be monitored through the Trust's People Committee which currently incorporates casework by ethnicity and disability.

How will you promote equal opportunity and advance equality by sharing good practice to have a positive impact other people as a result of their personal protected characteristic.

All colleagues will be treated equally, and we will consider and provide the appropriate adjustments for the protected characteristics of each individual.

The policy has been developed to ensure all colleagues are treated in a fair, reasonable and consistent manner. The policy ensures that rights to equality of opportunity and treatment are reinforced and maintained during the disciplinary process. It also ensures that the vulnerable people in our care are appropriately safeguarded from harm.

Please save and keep one copy and then send a copy with a copy of the policy to the Senior Equality and Diversity Lead at bsmhft.edi.queries@nhs.net. The results will then be published on the Trust's website. Please ensure that any resulting actions are incorporated into Divisional or Service planning and monitored on a regular basis

Appendix 2: Disciplinary Investigation and Exclusion Procedure for Medical Staff

1. Introduction

Maintaining High Professional Standards in the Modern NHS, is the framework for the initial handling of concerns about doctors and dentists. This procedure is in line with MHPS and describes the local procedures for handling concerns about a doctor's conduct and follows best practice guidance.

All Doctors who are involved in a disciplinary procedure, whether as case managers, investigators, hearing officer, the doctor being investigated or being called upon to give information, have a responsibility to ensure that they work in a spirit of cooperation, and comply with the requirements of the Equality, Inclusion and Human Rights policy, to support and assist in a timely investigation. Employees have a responsibility to ensure that they cooperate fully with all aspects of the procedure.

2. Action when a Concern Arises

Concerns about a doctor's conduct or capability may come to light in a wide variety of ways, for example:

- Concerns expressed by other NHS professionals, health care managers, students and non-clinical staff.
- Review of performance against job plans, annual appraisal, revalidation Monitoring of data on quality of care.
- Complaints about care by patients or relatives of patients.
- Information from the regulatory bodies
- Litigation following allegations of negligence.
- Information from the police or coroner and court judgments.

Any allegation/concern has the potential to cause lasting damage to a doctor's reputation, career prospects and a potential loss of confidence in the care provided by the Trust.

Therefore, the Trust has a duty to take any concerns relating to a doctor's practice seriously and manage them consistency, fairly and in line with MHPS requirements to ensure these are effectively resolved. A clear audit route must be established for initiating and tracking progress of the investigation, its costs and resulting action.

Informal resolution should be considered in the first instance for less serious problems. Concerns about the capability of doctors in training should be considered initially as training issues and the Postgraduate Dean should be involved from the outset.

For all serious concerns the Chief Executive, Chair of the Trust and Medical Director have responsibilities which are outlined in section 3.2 of this document. All serious concerns relating to the practice of a doctor must be brought to the attention of the Medical Director who will be required to work with the Head of People and Culture to receive the necessary advice from the People Team. There will be a requirement to convene a multi professional Decision-Making Group in order to support the decision-making process regarding the appropriate course of action.

When serious concerns are raised about a practitioner, the Trust must urgently consider whether it is necessary to place temporary restrictions on their practice. This might be to

amend or restrict their clinical duties, obtain undertakings or provide for the exclusion of the practitioner from the workplace. There is an opportunity to engage with the local GMC Liaison Officer for the Trust on an early basis regarding any initial concerns to establish whether these potentially meet the threshold for referral and/or receive additional advice about any other relevant considerations.

At any stage of the handling of a case consideration should be given to the involvement of the Practitioner Performance Advisory Service PPAS. PPAS is an assessment and advisory support service whose role is to assist in the management of concerns relating to a doctor's practice. They offer a range of services which include the below

- Immediate telephone advice, available 24 hours
- Advice, then detailed supported local case management
- Advice, then supported local clinical performance assessment
- Advice, then detailed PPAS clinical performance assessment
- Support with implementation of recommendations arising from assessment
- Understanding the issue and investigation

Upon making contact with PPAS it is important to ensure that sufficient information is available to clarify what has happened, the nature of the problem or concern and outline the potential impact on service delivery or patient care of the concerns which have been highlighted and the options available to manage this risk which may include movement to an alternative role, restricted duties, temporary exclusion or other relevant action as appropriate.

PPAS will then be able to offer advice and support on what the way forward should be and provide support to consider whether restriction of practice or exclusion is required. There will be an ongoing requirement to keep PPAS regularly informed of progress in relation to the management of concerns where an issue has been notified to them relating to a doctor's practice.

When it is decided that a formal investigation should take place, the Medical Director must appoint an appropriately experienced or trained person as case investigator.

The case investigator is responsible for leading the investigation into any allegations or concerns about a practitioner, establishing the facts and reporting the findings. The case investigator must:

- Formally involve a senior member of the medical staff where a question of clinical judgement is raised during the investigation process, must ensure that safeguards are in place throughout the investigation so that breaches of confidentiality are avoided as far as possible.
- Patient confidentiality needs to be maintained but the disciplinary panel will need to know the details of the allegations. It is the responsibility of the case investigator to judge what information needs to be gathered and how, within the boundaries of the law, that information should be gathered.
- Ensure that there are sufficient written statements collected to establish a case prior to a decision to convene a disciplinary panel, and on aspects of the case not

covered by a written statement, ensure that oral evidence is given sufficient weight in the investigation report.

- Ensure that a written record is kept of the investigation, the conclusions reached, and the course of action agreed by the Head of People and Culture with the Medical Director.
- Assist the designated Board member in reviewing the progress of the case.

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.

The practitioner concerned must be informed in writing by the case manager, as soon as it has been decided, that an investigation is to be undertaken, the name of the case investigator and made aware of the specific allegations or concerns that have been raised. The practitioner must be given the opportunity to see any correspondence relating to the case together with a list of the people that the case investigator will interview. The practitioner must also be afforded the opportunity to put their view of events to the case investigator and given the opportunity to be accompanied.

At any stage of this process, or subsequent disciplinary action the practitioner may be accompanied in any interview or hearing by a companion. In addition to statutory rights under the Employment Act 1999, the companion may be another employee of the NHS body; an official or lay representative of the British Medical Association, British Dental Association or defence organisation; or a friend, partner or spouse. The companion may be legally qualified but he or she will not be acting in a legal capacity.

The case investigator has wide discretion on how the investigation is carried out but in all cases the purpose of the investigation is to ascertain the facts in an unbiased manner.

Investigations are not intended to secure evidence against the practitioner as information gathered in the course of an investigation may clearly exonerate the practitioner or provide a sound basis for effective resolution of the matter.

If during the course of the investigation it transpires that the case involves more complex issues than first anticipated, the case manager should consider whether an independent practitioner from another NHS body should be invited to assist. The case manager has the right to request for a further DMG to be convened if they require any professional advice to assist them in making this decision and/or whether they require support in identifying a suitable external professional advisor. There may be other discrete circumstances in which the case manager may require further support. In the event this is the case there may be a need to convene an additional DMG process as appropriate to be determined under the direction of the Medical Director and associated Non-Executive Director.

The case investigator should complete the investigation within 4 weeks of appointment and submit their report to the case manager within a further 5 days. The report of the investigation should give the case manager sufficient information to make a decision whether:

- There is a case of misconduct that should be put to a conduct panel.
- There are concerns about the practitioner's health that should be considered by the Trusts relevant occupational health service.

- There are concerns about the practitioner's performance that should be further explored by the Practitioner Performance Advisory Service
- Restrictions on practice or exclusion from work should be considered.
- There are serious concerns that should be referred to the GMC
- There are intractable problems, and the matter should be put before a capability panel
- No further action is needed.

At any point in the process where the case manager has reached the clear judgement that a practitioner is considered to be a serious potential danger to patients or staff, that practitioner must be referred to the regulatory body,

whether or not the case has been referred to the Practitioner Performance Advisory Service (PPAS). Consideration should also be given to whether the issue of an alert letter should be requested. In such circumstances the Case Manager must liaise with the Medical Director and the Head of People and Culture prior to any final decisions being made.

Once the investigating report is received there may be a requirement for PPAS support in matters relating to a doctor's performance. This may be where there are difficulties which are serious and/or repetitive. That means performance falling well short of what doctors could be expected to do in similar circumstances and which, if repeated, would put patients seriously at risk. Alternatively, or additionally, problems that are ongoing or (depending on severity) have been encountered on at least two occasions. In cases where it becomes clear that the matters at issue focus on fraud, specific patient complaints or organisational governance, their further management may warrant a different local process. PPAS may advise on this, but further direction should be taken from the Head of People and Culture.

A practitioner undergoing assessment by PPAS must co-operate with any request to give an undertaking not to practise in the NHS or private sector other than their main place of NHS employment until the PPAS assessment is complete. Failure to co-operate with a referral to the PPAS may be seen as evidence of a lack of willingness on the part of the doctor to work with the Trust on resolving performance difficulties. If the practitioner chooses not to co-operate with such a referral, that may limit the options open to the parties and may necessitate disciplinary action and consideration of referral to the GMC.

The Trust must maintain confidentiality at all times. No press notice should be issued, nor the name of the practitioner released, in regard to any investigation or hearing into disciplinary matters. The Trust should only confirm that an investigation or disciplinary hearing is underway.

3. Restriction of Practice and Exclusion from Work

In this part of the framework, the phrase "exclusion from work" has been used to replace the word "suspension" which can be confused with action taken by the GMC to suspend the practitioner from the register pending a hearing of their case or as an outcome of the fitness to practice hearing.

The Trust must ensure that:

- Exclusion from work is used only as an interim measure whilst action to resolve a problem is being considered.

- Where a practitioner is excluded, it is for the minimum necessary period of time: this can be up to but no more than 4 weeks at a time.
- All extensions of exclusion are reviewed, and a brief report provided to the Chief Executive and the Board.
- A detailed report is provided when requested to a single non-executive member of the Board (the "Designated Board Member") who will be responsible for monitoring the situation until the exclusion has been lifted.

4. Managing the Risk to Patients

When serious concerns are raised about a practitioner, the Trust must urgently consider whether it is necessary to place temporary restrictions on their practice. This might be to amend or restrict their clinical duties, obtain undertakings or provide for the exclusion of the practitioner from the workplace. Where there are concerns about a doctor in training the postgraduate dean should be involved as soon as possible.

Exclusion of clinical staff from the workplace is a temporary, precautionary measure and not a disciplinary sanction. Exclusion from work ("suspension") should be reserved for only the most exceptional circumstances.

5. Purpose of Exclusion

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.

It is imperative that exclusion from work is not misused or seen as the only course of action that could be taken. The degree of action must depend on the nature and seriousness of the concerns and on the need to protect patients, the practitioner concerned and/or their colleagues.

Alternative ways to manage risks, avoiding exclusion, include:

- Medical or Clinical Director supervision of normal contractual clinical duties.
- Restricting the practitioner to certain forms of clinical duties.
- Restricting activities to administrative, research/audit, teaching and other educational duties. By mutual agreement the latter might include some formal retraining or re-skilling.

6. Sick leave for the investigation of specific health problems.

The Exclusion Process

Under the Direction, The Trust cannot require the exclusion of a practitioner for more than 4 weeks at a time. The justification for continued exclusion must be reviewed on a regular basis and before any further 4-week period of exclusion is imposed. Under the framework the Trust Board have responsibilities for ensuring that the process is carried out quickly and fairly, kept under review and that the total period of exclusion is not prolonged.

7. Key features of Exclusion from Work:

- An initial "immediate" exclusion of no more than 2 weeks if warranted.

- Notification to the PPAS before formal exclusion.
- Formal exclusion (if necessary) for periods up to 4 weeks.
- Advice on the case management plan from the PPAS.
- Appointment of a Board member to monitor the exclusion and subsequent action.
- Referral to PPAS for formal assessment, if part of case management plan.
- Active review to decide renewal or cessation of exclusion.
- A right to return to work if review not carried out.
- Performance reporting on the management of the case.
- Programme for return to work if not referred to disciplinary procedures or performance assessment.

8. Roles of Officers

The Chief Executive of the Trust has overall responsibility for managing exclusion procedures and for ensuring that cases are properly managed. The case should be discussed fully with the Chief Executive, the Medical Director, the Head of People and Culture, the PPAS and other interested parties (such as the police where there are serious criminal allegations or the Local Counter Fraud Specialist (LCFS)) prior to the decision to exclude a practitioner. In the rare cases where immediate exclusion is required, the above parties must discuss the case at the earliest opportunity following exclusion, preferably at a DMG.

The Medical Director, Non-Executive Director and Chief Executive will need to ensure they are satisfied that any exclusion and/or restriction to practice is absolutely necessary and has been regularly reviewed and in place for the minimum period of time.

9. Role of Designated Board Member

Representations may be made to the designated Board member in regard to exclusion, or investigation of a case. The designated Board member must also ensure that time frames for investigation or exclusion are adhered to.

10. Immediate Exclusion

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

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

Such an exclusion will allow a more measured consideration to be undertaken. This period should be used to carry out a preliminary situation analysis, to contact the PPAS for advice and to convene a case conference.

The manager making the exclusion must explain why the exclusion is being made in broad terms (there may be no formal allegation at this stage) and agree a date up to a maximum of 2 weeks away at which the practitioner should return to the workplace for a further

meeting. The case manager must advise the practitioner of their rights, including rights of representation.

11. Formal Exclusion

A formal exclusion may only take place after the case manager has first considered whether there is a case to answer and then considered, at a DMG, whether there is reasonable and proper cause to exclude. PPAS must be consulted where formal exclusion is being considered. If a case investigator has been appointed, he or she must produce a preliminary report as soon as is possible to be available for the DMG. This preliminary report is advisory to enable the case manager to decide on the next steps as appropriate.

The report should provide sufficient information for a decision to be made as to whether:

- The allegation appears unfounded; or
- There is a misconduct issue; or
- There is a concern about the practitioner's capability; or
- The complexity of the case warrants further detailed investigation before advice can be given on the way forward and what needs to be inquired into.

Formal exclusion of one or more clinicians must only be used where there is a need to protect;

- The interests of patients or other staff pending the outcome of a full investigation of:
- Allegations of misconduct,
- Concerns about serious dysfunctions in the operation of a clinical service,
- Concerns about lack of capability or poor performance of sufficient seriousness that it is warranted to protect patients; or
- The presence of the practitioner in the workplace is likely to hinder the investigation.

Full consideration should be given to whether the practitioner could continue in or (in cases of an immediate exclusion) return to work in a limited capacity or in an alternative, possibly non-clinical role, pending the resolution of the case.

When the practitioner is informed of the exclusion, there should where practical, be a witness present and the nature of the allegations or areas of concern should be conveyed to the practitioner. The practitioner should be told of the reason(s) why formal exclusion is regarded as the only way to deal with the case. At this stage the practitioner should be given the opportunity to state their case and propose alternatives to exclusion (e.g., further training, referral to occupational health, referral to the PPAS with voluntary restriction).

The formal exclusion must be confirmed in writing as soon as is reasonably practicable. The letter should state the effective date and time, duration (up to 4 weeks), the content of the allegations, the terms of the exclusion (e.g., exclusion from the premises and the need to remain available for work) and that a full investigation or what other action will follow. The practitioner and their companion should be advised that they may make representations about the exclusion to the designated board member at any time after receipt of the letter confirming the exclusion.

In cases when disciplinary procedures are being followed, exclusion may be extended for 4- week renewable periods until the completion of disciplinary procedures if a return to work

is considered inappropriate. The exclusion should still only last for 4 weeks at a time and be subject to review. The exclusion should usually be lifted, and the practitioner allowed back to work, with or without conditions placed upon the employment, as soon as the original reasons for exclusion no longer apply.

If the case manager considers that the exclusion will need to be extended over a prolonged period outside of his or her control (for example because of a police investigation), the case must be referred to the PPAS for advice as to whether the case is being handled in the most effective way and suggestions as to possible ways forward. However, even during this prolonged period the principle of 4 week "renewability" must be adhered to.

If at any time after the practitioner has been excluded from work, investigation reveals that either the allegations are without foundation or that further investigation can continue with the practitioner working normally or with restrictions, the case manager must lift the exclusion, inform Health Education England in relation to doctors in training and make arrangements for the practitioner to return to work with any appropriate support as soon as practicable.

12. Exclusion from Premises

Practitioners should not be automatically barred from the premises upon exclusion from work. Case managers must always consider whether a bar from the premises is absolutely necessary. There are certain circumstances, however, where the practitioner should be excluded from the premises. This could be, for example, where there may be a danger of tampering with evidence, or where the practitioner may be a serious potential danger to patients or other staff. In other circumstances, however, there may be no reason to exclude the practitioner from the premises. The practitioner may want to retain contact with colleagues, take part in clinical audit and to remain up to date with developments in their field of practice or to undertake research or training.

13. Keeping in contact and availability for work

As exclusion under this framework should usually be on full pay, the practitioner must remain available for work with their employer during their normal contracted hours. The practitioner must inform the case manager of any other organisation(s) with whom they undertake either voluntary or paid work and seek their case manager's consent to continue to undertake such work or to take annual leave or study leave. The practitioner should be reminded of these contractual obligations but would be given 24 hours' notice to return to work. In exceptional circumstances the case manager may decide that payment is not justified because the practitioner is no longer available for work (e.g., abroad without agreement).

The case manager should make arrangements to ensure that the practitioner can keep in contact with colleagues on professional developments and take part in Continuing Professional development (CPD) and clinical audit activities with the same level of support as other doctors in their employment. A mentor could be appointed for this purpose if a colleague is willing to undertake this role.

14. Informing other Organisations

In cases where there is concern that the practitioner may be a danger to patients, the Trust has an obligation to inform such other organisations including the private sector, of any restriction on practice or exclusion and provide a summary of the reasons for it. Details of other employers (NHS and non-NHS) may be readily available from job plans and where

appropriate in a declaration of interests' form. If there is no information available through this route the Case Manager must ascertain whether the individual is working in any other capacity outside of the Trust and there is an obligation for the individual practitioner to provide this information. Failure to do so may result in further disciplinary action or referral to the relevant regulatory body, as the paramount interest is the safety of patients. Where the Trust has placed restrictions on practice, the practitioner should agree not to undertake any work in that area of practice with any other employer.

Where the case manager believes that the practitioner is practising in other parts of the NHS or in the private sector in breach or defiance of an undertaking not to do so, they should contact the professional regulatory body and the Director of Public Health or Medical Director of NHS England to consider the issue of an alert letter.

15. Informal Exclusion

No practitioner should be excluded from work other than through this procedure. Informal exclusions, such as 'gardening leave' must not be used by the Trust as a means of resolving a problem covered by this framework.

16. Keeping Exclusions Under Review

Informing the Board

The Board must be informed about an exclusion at the earliest opportunity. The Board has a responsibility to ensure that the Trust's internal procedures are being followed. It should, therefore:

- Require a summary of the progress of each case at the end of each period of exclusion, demonstrating that procedures are being correctly followed and that all reasonable efforts are being made to bring the situation to an end as quickly as possible.
- Receive a monthly statistical summary showing all exclusions with their duration and number of times the exclusion has been reviewed and extended.

Regular Review

The case manager must review the exclusion before the end of each 4-week period and report the outcome to the Chief Executive and the Board. This report is advisory, and it would be for the case manager to decide on the next steps as appropriate. The exclusion should usually be lifted, and the practitioner allowed back to work, with or without conditions placed upon the employment, at any time the original reasons for exclusion no longer apply and there are no other reasons for exclusion. The exclusion will lapse, and the practitioner will be entitled to return to work at the end of the 4-week period if the exclusion is not actively reviewed.

It is important to recognise that Board members might be required to sit as members of a future disciplinary or appeal panel. Therefore, information to the Board should only be sufficient to enable the Board to satisfy itself that the procedures are being followed.

Only the designated Board member should be involved to any significant degree in each review. Careful consideration must be given as to whether the interests of patients, other staff, the practitioner, and/or the needs of the investigative process continue to necessitate exclusion and give full consideration to the option of the practitioner returning to limited or alternative duties where practicable.

The Trust must take review action before the end of each 4-week period. After 3 exclusions, the PPAS must be called in. The information below outlines the various activities that must be undertaken at different stages of exclusion.

17. Exclusion Review Process

Stage	Activity
First & second reviews (& reviews after the third review)	<p>Before the end of each exclusion period (of up to 4 weeks) the Case Manager reviews the position.</p> <ul style="list-style-type: none"> • The Case Manager decides on the next steps as appropriate. Further renewal may be for up to 4 weeks at a time. Case Manager submits advisory report of outcome to Chief Executive and the Board. • Each renewal is a formal matter and must be documented as such. • The doctor must be sent written notification on each occasion.
Third review	<p>If the doctor has been excluded for 3 periods:</p> <ul style="list-style-type: none"> • A report must be made to the Chief Executive: <ul style="list-style-type: none"> ➢ Outlining the reasons for the continued exclusion and why restrictions on practice would not be an appropriate alternative. ➢ And if the investigation has not been completed a timetable for completion of the investigation. • The case must formally be referred to PPAS explaining: <ul style="list-style-type: none"> ➢ Why continued exclusion is appropriate. ➢ What steps are being taken to conclude the exclusion at the earliest opportunity? • PPAS will review the case and advise the NHS body on the handling of the case until it is concluded.
6 months review	<p>If the exclusion has been extended over 6 months,</p> <ul style="list-style-type: none"> • A further position report must be made by the by the Chief Executive to NHS England indicating: <ul style="list-style-type: none"> ▪ The reason for continuing the exclusion. ▪ Anticipated time scale for completing the process. ▪ Actual and anticipated costs of the exclusion <p>PPAS and NHS England will form a view as to whether the case is proceeding at an appropriate pace and in the most effective manner and whether there is any advice they can offer to the Board.</p> <p>Normally there should be a maximum limit of 6 months exclusion, except for those cases involving criminal investigations by the practitioner concerned. The Trust and the PPAS should actively review those cases at least every 6 months.</p>

18. The Role of the Board and Designated Member

The Trust Board has a responsibility for ensuring that these procedures are established and followed. It is also responsible for ensuring the proper corporate governance of the Trust, and for this purpose reports must be made to the Board under these procedures.

Board members may be required to sit as members of a disciplinary or appeal panel. Therefore, information given to the Board should only be sufficient to enable the Board to satisfy itself that the procedures are being followed. Only the designated Board member should be involved to any significant degree in each review.

The Trust Board is responsible for designating one of its non-executive members as a "designated Board member" under these procedures. The designated Board member is the person who oversees the case manager and Investigating Officer during the investigation process and maintains momentum of the process.

- This member's responsibilities include:
- Receiving reports and reviewing the continued exclusion from work of the practitioner
- Considering any representations from the practitioner about his or her exclusion
- Considering any representations about the investigation

19. Return to Work

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

20. Procedures For Dealing with Issues of Capability

The causes of adverse events should not automatically be attributed to the actions, failings or unsafe acts of an individual alone. Root cause analyses of individual adverse events frequently show that these are more broadly based and can be attributed to systems or organisational failures or demonstrate that they are untoward outcomes which could not have been predicted and are not the result of any individual or systems failure. Each will require appropriate investigation and remedial actions.

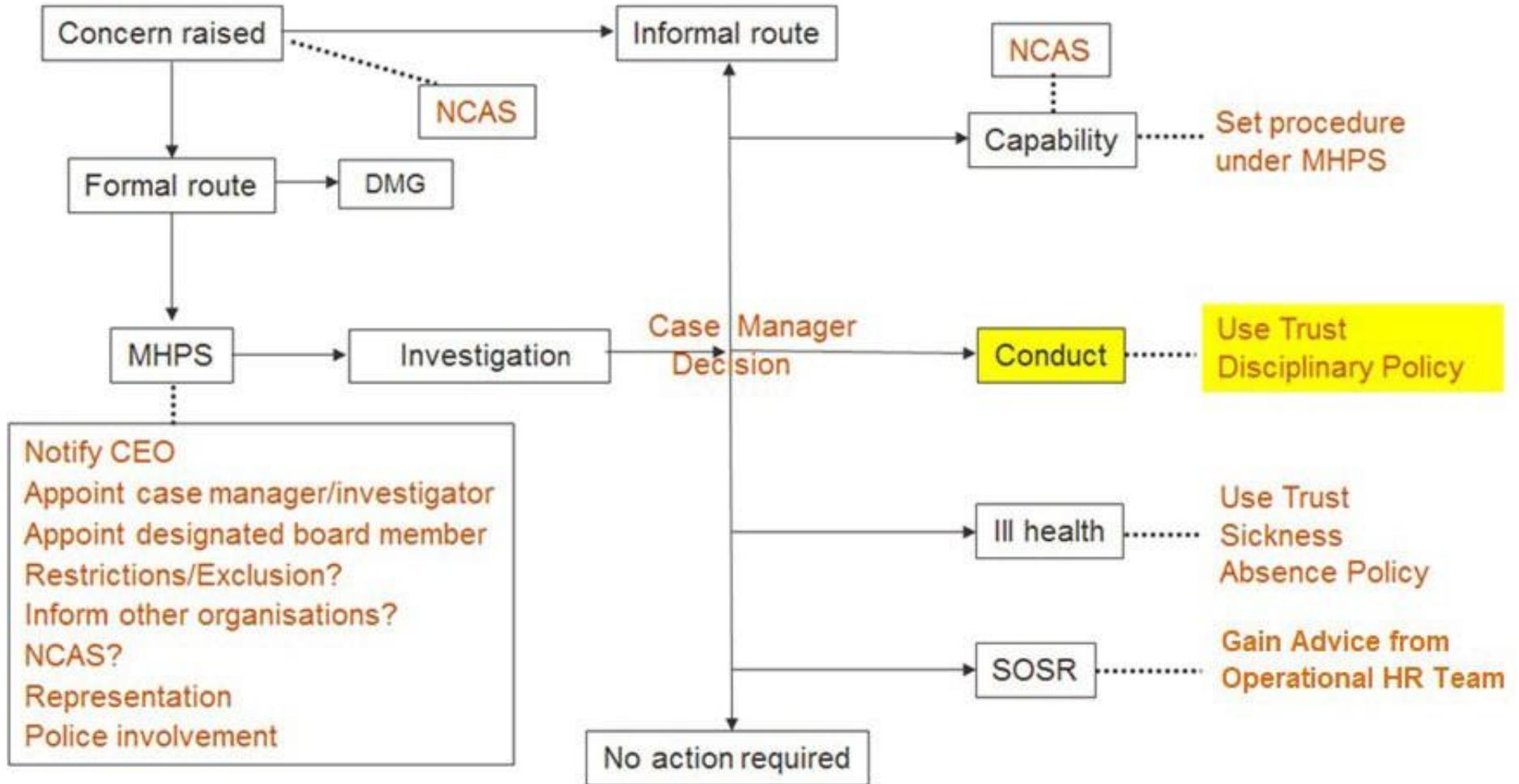
The Practitioner Performance Advisory Service was established to coordinate the efforts of all those involved in healthcare to learn from adverse incidents occurring within the NHS. In particular, the PPAS aims to facilitate the development of an open and fair culture, which encourages doctors, dentists and other NHS staff to report adverse incidents and other near misses in a climate free from fear of personal reprimand, where the sharing of experience helps others to learn lessons and in turn improve patient safety.

However, there will be occasions where an employer considers that there has been a clear failure by an individual to deliver an adequate standard of care, or standard of management, through lack of knowledge, ability or consistently poor performance. These are described as capability issues and should be dealt with in line with Part 4 of MHPS which provides specific guidance on how to apply this. In the first instance advice should be obtained from the Operational Human Resources department about how to progress the management of any identified issues or concerns.

Template for Briefings to Case Manager (Medical Staff)

To:	(Case Manager)
From:	(Case Investigator)
Date:	(Date)
Name of Doctor under Investigation:	(Name of Doctor)
Update No:	(Reports to be submitted 2 weekly)

Appendix 3: (Medical Workforce) Flowchart for Maintain High Professional Standards (MHPS)



Appendix 4: Authorised Decision Makers

Set out below are lists of those roles authorised to Chair disciplinary hearings and appeals up to and including the sanctions stated:

Role	First Written Warning	Final Written Warning	Dismissal
Chief Executive	✓	✓	✓
Board Chief Officers and Directors	✓	✓	✓
Directors	✓	✓	✓
Associate and Deputy Directors	✓	✓	✓
Chief Pharmacist	✓	✓	✓
Chief Nurse	✓	✓	✓
Chief Psychological Professions Officer	✓	✓	✓
Chief Allied Health Professional	✓	✓	✓
Senior Managers (Band 8b and above)	✓	✓	✓
Clinical Nurse / Service Managers	✓	✓	
Senior People Partners	✓	✓	

Appendix 5: Manager-Led Fact-Finding Record Form

Details of the Employee

Employee Name:	
Team:	
Directorate:	

Details of the Fact Finder

Name:	
Job Role:	
Service:	

Situation and Context

In bullet point form, please list the allegations raised against the employee	
Please provide a summary of the matter, identifying what happened, when and what may have caused the concern.	
Date of Incident:	
How did the incident come to light?	

Has holding action been required and approved in accordance with the Disciplinary Policy?	<input type="checkbox"/> Yes	<input type="checkbox"/> No
Does the incident involve service users/carers?	<input type="checkbox"/> Yes	<input type="checkbox"/> No
Does the incident involve external organisations?	<input type="checkbox"/> Yes	<input type="checkbox"/> No
Please detail the full names of all persons involved and any witnesses		
What documentary evidence was reviewed or is available to support this fact-find? (Please attached any documents used)		
Has this issue occurred previously, are there any historical issues or trends, mitigating factors or systemic issues within the team/service/Trust to consider?		

Additional Information

Where individual action may have resulted in the incident, consider the individual's and line manager's perspective:

Did the colleague knowingly and unreasonably increase risk by not following known safe operating procedures?	<input type="checkbox"/> Yes		<input type="checkbox"/> No	
Would another similarly trained and skilled employee in the same situation act in a similar manner?	<input type="checkbox"/> Yes		<input type="checkbox"/> No	
Has the colleague's knowledge been reviewed against their skills and determined if they knew of the rule or performance standard? If so, which of these applies?	<input type="checkbox"/> The colleague does not have the knowledge of what to do and so can't in practice	<input type="checkbox"/> The colleague knows in theory but can't in practice	<input type="checkbox"/> The colleague knows how to and can in practice, but isn't	
Has the line manager previously raised similar concerns informally with the colleague?	<input type="checkbox"/> Yes		<input type="checkbox"/> No	
Has the line the manager has maintained consistency in dealing with this situation?	<input type="checkbox"/> Yes		<input type="checkbox"/> No	

Just, Restorative and Learning Cultural Principles

<p>Deliberate harm test Was there any intention to cause harm?</p>	
<p>Health test Are there indications of substance abuse? Are there indications of mental ill health?</p>	
<p>Foresight test Are there agreed protocols/accepted practice in place that apply to the action/omission in question? Were the protocols/accepted practice workable and in routine use? Did the colleague knowingly depart from these protocols?</p>	
<p>Substitution test Are there indications that other colleagues from the same peer group, with comparable experience and qualifications, would behave in the same way in similar circumstances?</p>	
<p>Mitigating circumstances Were there any significant mitigating circumstances?</p>	

Wellbeing Support

<p>In all cases, the wellbeing of the involved colleague must be a priority.</p> <p>Please detail what support is in place for this employee:</p> <p>Where support has been offered but declined, please detail this here.</p>	
<p>Which of the following resources have you signposted to or considered?</p> <p>For detail on these resources, please see the People and Culture Knowledge Base.</p>	<p><input type="checkbox"/> Occupational Health</p> <p><input type="checkbox"/> Employee Assistance Programme</p> <p><input type="checkbox"/> Workplace Wellbeing Platform</p> <p><input type="checkbox"/> Staff Mental Health Hub</p> <p><input type="checkbox"/> GP or other NHS Services</p> <p><input type="checkbox"/> Spiritual Care Team</p>

Outcome of Fact Finding

Please select one outcome from the list below:

There is no evidence of a conduct or behaviour concern, and the matter is to be considered closed.	<input type="checkbox"/> Yes
There is evidence of minor misconduct, and an informal meeting will be arranged to review this with the employee and to close this matter.	<input type="checkbox"/> Yes
There is evidence of unresolved minor, serious or gross misconduct and this matter may need to be explored formally. This is to be referred to a Decision-Making Group.	<input type="checkbox"/> Yes

Decision Making-Group Referral

If you have indicated that you will be referring this matter to a Decision Making-Group, please outline the reason for your referral.

Consider:

- Informal action has been taken so far
- Other informal actions could be taken
- Risks to the individual, service users or the Trust
- Any other substantial reason for your referral
- Other key considerations for the DMG

Safe Referrals to Decision Making Groups

Before submitting this to your Associate Director for consideration, please ensure that the following elements have been considered:

Has informal action been considered and there are no suitable alternatives than to progress this matter formally?	<input type="checkbox"/> Yes
Is this form completed in full, with all relevant evidence and statements collected by the Fact-Find provided?	<input type="checkbox"/> Yes
Is the individual aware of the allegations against them and been given an opportunity to provide their view of events and is that statement included as part of your fact-find?	<input type="checkbox"/> Yes
Have you discussed this with your line manager or a senior manager, as appropriate?	<input type="checkbox"/> Yes
Have you discussed this with a representative of the People and Culture Team (Operations) and has a signature been provided?	<input type="checkbox"/> Yes

If the answer to all the above questions is yes, then please forward this and the relevant documentary evidence to your Associate Director or relevant Executive Director.

Fact Finder Review:

I confirm that this is a complete fact-find and can be considered a true and full reflection of the fact-find undertaken.

Fact Finder:	
Job Title:	
Date:	
Signature:	

People Team Review

I confirm that this fact-find is complete and has been reviewed by the People and Culture Team for readiness to refer to DMG.

People Team Member:	
Job Title:	
Date:	
Signature:	

Appendix 6: Examples of Misconduct

Minor Misconduct

Are matters that affect the conduct or behavior of the individual, for example poor timekeeping or a small infringement of working practices. Issues of this nature are often best suited to informal resolution and present opportunities for organizational and individual learning.

Serious Misconduct

Are often matters where misconduct is confirmed or where the employee's conduct has not improved after either informal or formal action has been previously taken. For example, if the employee has received a previous first written warning, which is still in force further misconduct may lead to further disciplinary consideration. Examples of serious misconduct include the following (this list is illustrative and not exhaustive):

- Persistent minor issues
- Unauthorised absence
- Negligence resulting in loss, damage or misuse of Trust property
- Failure to adhere to Trust policies and procedures
- Abusive/obscene behaviour or language or gestures
- Ineffective/negative behaviour or attitude towards a member of staff as a result of 'speaking up' and/or 'raising concerns'
- Failure to follow a reasonable management request
- Failure to maintain professional registration
- Breach of financial regulations
- Breach of confidentiality and data protection
- Health and Safety issues with the potential to cause harm to others
- Social Media posts making personal comments or engaging in activities within or outside work, which could bring the Trust into disrepute.
- Social Media posts that share confidential Trust information, and breach data protection.

Gross Misconduct

These matters are serious breaches of terms and conditions (written statement of contract) and are serious enough to irreparably and irrevocably damage the relationship of mutual trust and confidence that exists between an employee and employer. If the allegations that have been made, when investigated are substantiated and upheld at a disciplinary hearing, this will normally lead to dismissal without notice or pay in lieu of notice (summary dismissal). This means the contract of employment will be terminated with immediate effect and the employee will no longer work for the Trust. Examples of Gross Misconduct include the following (Please note this list is illustrative and not exhaustive).

- Persistent, serious or deliberate discrimination, harassment or incitement to discriminate (e.g., racism, homophobia etc.)
- Harassment, sexual assault/indecency, physical violence/assault, verbal abuse or the threat of violence or bullying and harassment of any person by any means.
- Professional misconduct
- Theft, unauthorised removal of Trust property or unauthorised use, including the use of Smart Cards, ICT equipment, including any information obtained by such means
- Fraud or deliberate falsification of records or trust documents
- Malicious damage to Trust property
- Misuse of an employee's official position for personal gain. Significant breach of Standing Orders or Standing Financial Instructions
- Serious breaches or deliberate disregard of Health and Safety rules
- Being under the influence of alcohol or drugs whilst on duty (Please refer to Managing the effects of Substance use in the Workplace People Team Guidance)
- Serious or persistent breach of terms and conditions of employment
- Serious failure to follow reasonable requests
- Failure to disclose relevant information concerning past employment, including not declaring previous convictions, an accurate previous employment history, a personal relationship that may cause a conflict of interest within the workplace.
- Activities that bring the Trust into disrepute causing loss of faith in the employee including serious misconduct outside work
- Serious or gross negligence resulting in unacceptable loss, damage or injury; including compromising service users and/or public safety or significant financial material losses
- Frustration of contract, such as imprisonment (please note this will impact on pay)
- Vexatious allegation/s against a fellow employee or Trust Service User.
- Serious breaches of confidentiality and data protection
- Intentional serious breach of Trust policy or regulations or improper conduct in relation to job responsibilities