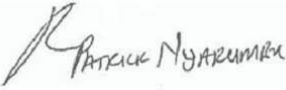




DISCIPLINARY POLICY

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Executive Director	Executive Director of Strategy, People and Partnerships	
Policy Lead	Head of People & Culture	
POLICY AUTHOR <i>(if different from above)</i>		
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 & Solihull Mental Health NHS Foundation Trust (here in after referred to as the Trust), when dealing with incidents and matters of alleged misconduct and to identify the most appropriate way of dealing with such matters, so that we encourage improvement and learn lessons.

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 and consistently and in a supportive manner.

This policy will apply to all Trust employees in respect of potential matters of misconduct, including medical employees.

POLICY REQUIREMENT: (see Section 2)

This policy outlines the procedures that must be followed to ensure that misconduct matters are dealt with in a fair and transparent way and provides practical guidance.

This policy:

- outlines the informal and formal procedure to be followed in respect of alleged misconduct
- outlines 'Just Culture' approach to Suspensions, Restrictions and Exclusion (Medical Staff)
- details disciplinary sanctions that can be applied and their duration
- makes clear the responsibilities of all employees in respect of this policy
- tell employees how to appeal a decision.

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1. Introduction

1.1 Rationale (why)

Birmingham & Solihull Mental Health NHS Foundation Trust (here in after referred to as the Trust), requires high standards of professional behaviours/conduct from everyone and is committed to helping people improve and learn from mistakes. This policy is designed to ensure a fair, systematic and consistent approach is taken when an employee's behaviour or action is considered to be in breach of workplace rules or falls short of the expected standards.

We believe that it is important that we have a 'just culture' of openness, trust, learning and accountability. A culture where we learn from things that go wrong and where we have the confidence to raise concerns and report in a psychological safe space. When things go wrong, it is important that we consider how we respond to colleagues involved in the incident and how we minimize the negative impact and maximize learning by enabling a culture that instinctively asks: "what was responsible, not who is responsible". There will of course be situations where we must hold people accountable for undesirable conduct or performance and where formal action in line with this policy will be appropriate.

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 and consistently and in a supportive manner.

An objective and prompt examination of the issues and circumstances should be carried out to establish whether there are truly grounds for a formal investigation and/or for formal action. Would training for the employee, support, guidance or informal management be more appropriate and productive?

Where an employee's ability to do their job is affected by a lack of skill or knowledge, or ill health, this will be managed by following the Working Better Together Capability Process.

The policy has been developed taking into consideration the Advisory Consolidation Arbitration Services (ACAS) Code of Practice on disciplinary procedures and the Guide on Discipline and Grievances at Work. As well as taking into consideration good practice, NHS England and NHS Improvement recommendations and other reference information outlined in the Bibliography.

1.2 Scope (when, where and who)

This policy will apply to all Trust employees in respect of potential matters of misconduct, including medical employees. For misconduct relating to medical employees the Maintaining High Professional Standards should be also considered and this process is detailed within the **Appendix 2 & 3**.

The policy does not apply to the following:

- Capability due to Performance Management Issues – Please refer to the Working Better Together Capability Process
- Capability due to Ill Health – Please refer to the Management of Sickness Absence Policy (HR03).
- Grievances - these should be addressed in accordance with the Trust's Grievance and Disputes Policy & Procedure (HR02)
- Bullying and Harassment concerns – these should be dealt with via the Trust's Dignity at Work Policy in the first instance. Where it is found that employees have breached the Dignity at Work Policy by using bullying, harassing or discriminatory behaviours these will then be addressed through the Disciplinary Policy, via a disciplinary hearing.
- Agency workers, work experience students, contractors and employees of other Organisations that are on site and volunteers.

1.3 Principles

We aim to treat all employees in a fair, effective, consistent and supportive way in relation to conduct matters and consider these matters promptly and impartially.

Our values, which will guide all of our actions and underpin our conduct are as follows:



It is the intention of this policy to support the delivery of these values by managers supporting our colleagues and applying these values in the application of this policy.

Treating people as individuals, based on their individual needs, is our commitment. Equality is not about treating everyone the same, as this will inadvertently disadvantage some, it is about being fair, creating an 'equal playing field' that supports individual needs going through this process. Employees who may fall under the criteria, legally defined under the Equality Act, 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

This policy outlines the procedures that must be followed to ensure that misconduct matters are dealt with in a fair and transparent way and provides practical guidance.

This policy:

- outlines the informal and formal procedure to be followed in respect of alleged misconduct
- details disciplinary sanctions that can be applied and their duration
- outlines 'Just Culture' approach to Suspensions, Restrictions and Exclusion (Medical Staff)
- makes clear the responsibilities of all employees in respect of this policy
- tell employees how to appeal a decision.

2.1 Policy Statement

Managers are responsible for ensuring their team is aware of the required standards of conduct and for bringing any concerns to the attention of employees at the earliest opportunity.

Managers should try to resolve minor matters of concern informally. If informal approaches do not bring about improvement or if misconduct is sufficiently serious, formal stages of this procedure should be followed.

Managers will ensure that all action taken under this policy and procedure is reasonable and proportionate. At an early stage, employees will be told why disciplinary action is being considered and they will be given the opportunity to respond to allegations before decisions about formal sanctions are taken.

Employees can be accompanied and represented, at a disciplinary hearing by a work colleague, trade union representative or other companion from any background, not acting in a legal capacity

Disciplinary cases will be treated sensitively and confidentially. 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. Standard Operating Procedures agreed between Human Resources and the Data Protection Office will be followed.

All managers who Chair or sit on hearing Panels must have appropriate and up to date training on

managing / chairing disciplinary cases. Such training should involve appropriate refreshers within three years of the hearing. A list of trained staff will be held centrally with the People Operations Team.

3. Procedure

The policy has 3 procedural stages:

- 1) Stage 1 – Informal
- 2) Stage 2 – Formal
- 3) Stage 3 - Appeal

In the implementation of this procedure there are also some factors which need to be considered and they are also outlined within this section of policy.

Handling of allegations of misconduct will be carefully assessed by the relevant manager, with HR advice, to decide if the matter can be managed informally where possible or whether there are grounds for further investigation and/or formal action

Managers/Decision-Making Group (DMG) should follow the steps in the 'Stop and Pause Decision Making Framework' **Appendix 4**, when considering whether the issue/incident needs to be handled formally or can it be dealt with informally?

The Trust recognises that cases of minor misconduct are best dealt with informally and quickly. A quiet word is often all that is needed.

Supportive guidance to facilitate application of the procedure will be included in the DMG Framework and Manager's Toolkit.

3.1 Stage 1 - Informal

The informal stage allows employees and managers to resolve issues of minor misconduct informally at the first stage if it is appropriate; as part of day-to-day management. In many cases additional training, coaching and advice may be needed.

As the manager, have you asked yourself the following questions before deciding on the next step/s or requesting a DMG:

- Have you done a preliminary fact finding investigation to understand the situation well
- Does the conduct of the employee sit within the list of gross misconduct stated in the non-exhaustive list (par. 3.4.3)
- Was there any noticeable impairment to their judgement of competence at the time of the incident.
- Did the employee knowingly and/or unreasonably increase risk by violating known safety operating procedures/protocols.
- Would another similarly trained and skilled employee act in a similar manner (the 'James Reason substitution test').
- Have you maintained consistency and equity in dealing with the situation regardless of the employee's banding and/or protected characteristics.

3.1.1 Informal Meeting

Issues should be raised confidentially, on a 1:1 basis and in a supportive manner at the earliest opportunity shortly after the event and dealt with informally. This will be a two-way discussion, aimed at talking through shortcomings and encouraging improvement.

The aim of an informal discussion is to:

- Discover why the behaviour is happening? What has changed?
- advise the employee how they are demonstrating poor conduct or standards
- confirm that the employee understands the behavioural standards we expect

(refer to *Everyday Behaviours Guide*)

- help the employee make the necessary changes by setting objectives/standards within an agreed timescale
- discuss any support or training that may be needed, including flexi starting hours etc.
- 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. Managers should keep brief notes of any informal action for reference purposes

3.1.2 Mediation

There are some minor conduct matters which may be resolved through mutual agreement of employees to mediation as part of informal resolution. This approach operates outside of any formal procedures and is voluntary. Mediation can be requested via the employee's line manager, HR, an Inclusion Advisor, Trade Union representative or via self-referral. The mediation self-referral form is Appendix 4 of the Dignity at Work Policy.

3.1.3 Restorative Just Culture

A restorative just culture aims to repair trust and relationships damaged following an incident. It allows all parties to discuss how they have been affected, and collaboratively decide what should be done to repair the harm. Incidents don't just harm the two parties involved. They also potentially harm/impact on are colleagues, teams, line managers, bystanders, families, and the Trust. Managers with support from HR should encourage staff to utilise the 'Restorative Just Culture Guide/Checklist' in **Appendix 5**, to support the conversations or process.

3.2 Stage 2 – Formal

For unresolved minor misconduct, serious or potential gross misconduct it will be appropriate to consider the formal procedure. For medical colleagues this should be considered alongside the process outlined in **Appendix 2 & 3**.

3.2.1 Fact Find

It is important that as soon as the line manager is made aware of a concern that is medium or high risk that there is a review undertaken of the whole of the incident 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. All staff on duty should be asked if they know anything about the incident/event so that a full picture is obtained. It is not an attempt to prove the concern.

3.2.2 Decision Making Group (DMG)

To determine the action required a Decision-Making Group (DMG) should be arranged to consider the initial concerns and review the fact find. 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 and Learning Principles and ensure swift and proportionate action is taken to address the identified concerns. The DMG should utilise the 'Stop and Pause Just Culture Checklist', **Appendix 6** before a decision to formally investigate an incident/individual is made.

This checklist supports a conversation about 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 patients or other staff/ the public. It stresses the importance of having informal conversations at the very beginning with a focus on fairness, openness and learning rather than formal investigations. The aim is to cultivate a culture of learning from an incident rather than seeking to blame or punish.

It offers a 'stop and pause' opportunity in which environmental, organisational, cultural and contextual factors can be considered.

The role, membership and process of the DMG is outlined within the DMG Framework in the Disciplinary Guidance and Toolkit.

3.2.3 48 Hour Holding Action

In exceptional circumstances it may need to be considered, if appropriate to send an employee home for up-to 48 hours. The employee's Staff Side/Union Representative will be advised, if applicable. This would enable an initial fact-finding to establish further information to provide fuller details for a DMG to assess and consider next steps.

All witness statements should be collated during this period, where possible to ensure the most appropriate and informed decision is made. This may also include seeking further guidance if suspension/exclusion or relocation should be applied.

This holding action may only be taken by an Associate Director or delegated Senior Manager and recorded to ensure that the necessary authority has been granted.

The 48-hour period may be extended further, in exceptional circumstances, to ensure we have obtained all of the initial fact-finding information required to make decisions on an informed basis. This also affords protection to the individual to ensure that we take the most appropriate action.

3.2.4 Suspension or Restriction of Practice (Referred to as Exclusion for Medical and Dental Employees – see Appendix 2)

Line managers can request employees to be suspended from duty, to be temporarily redeployed and/or placed on restricted duties, in order to safeguard individuals and/or the integrity of the potential disciplinary investigation. These interventions should be risk assessed and considered through a DMG, except where there is an immediate safety or security issue. Should the DMG come to view that they wish to suspend an employee the matter should be discussed and approved by the Deputy Director of People and Organisational Development, or by the Head of People and Culture. The employee's Staff Side/Union Representative will be advised, if applicable.

The DMG should utilise the 'Suspension Decision Tree', **Appendix 7** to inform discussions with the Deputy Director of People and OD on whether to suspended/exclude a member of staff.

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

Suspension is not a disciplinary measure or penalty; and is a neutral act without prejudice. This will be reviewed regularly (every 14 days) and the employee's personal well being will be a major 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 weeks reference period (leading up to the suspension), but will exclude pay for bank shifts. 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 (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. Workers on TSS/Bank contracts will receive an average pay for the duration of their suspension, based on the average weekly pay/hours worked in previous 12 weeks prior to the decision/date of suspension.

Suspension without pay should only be considered in exceptional circumstances and will require authorisation from the Deputy Director of People & OD or Executive Director People, Strategy 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 of right to work in the UK
- Failure to renew statutory professional registration
- They have lost their entitlement to work under the Immigration and Asylum Act 1999

3.2.5 Alternatives to Suspension

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.

3.2.6 Communicating the Decision to Suspend and Supporting Employees

Every effort will be made for the 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 a manager is considering the possible suspension of a member of staff prior to a DMG taking place, the manager should contact a trade union representative or an Inclusion Advisor via HR 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. See **Appendix 8**.

The letter will outline the requirements of the suspension including not attending work without prior agreement or discussing the case with any colleague other than their trade union representative or work colleague. Staff would be able to attend work to meet with their Staff Side/Union Representative, with prior agreement. Staff will not be able to take any voluntary, paid or unpaid employment with any other employer during suspension which your line manager has not already agreed to.

The manager communicating the decision to suspend 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.
- Give details about support from Employee Assistance Programme (EAP), including telephone counselling and Occupational Health. (PAM Assist, the Trust's confidential support service that can be contacted 24 hours a day on 0800 882 4102).
- If it is necessary to explain the employee's absence, the manager will discuss with the employee how they would like it to be explained to colleagues and/or patient
- 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.,
- 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.

3.2.7 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 manager to contact colleagues
- if they wish to contact witnesses to support their case, they should do this via their manager or, if different, the manager dealing with the matter or their Trade Union representative or fellow colleague
- except for medical appointments and meeting with their staff side/union representative they must not visit Trust premises unless given permission by the line manager or a named deputy to attend for a specific purpose, e.g. a meeting a representative, an investigation meeting, a counselling appointment, a medical consultation
- 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 before 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 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 manager and employee must agree alternative methods of keeping in contact.
- A suspended person must not undertake any paid work during the hours for which they are contracted to work.
- People suspended for clinical / professional reasons must not undertake any work, paid or unpaid, without prior permission from the appropriate manager.
- 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/patients.

3.2.8 Timescales for Suspension

Suspension will be for the minimum time necessary and will be reviewed every 14 days and lifted when the reason for suspension no longer exists. Most investigations should be concluded within *four weeks of suspension*. Where this is not possible people should be informed that they remain suspended and told when the investigation is likely to be completed. This should be followed up in writing. Managers 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 DMG, disciplinary meeting or hearing, where appropriate.

3.2.9 Investigation

If formal action is deemed necessary an investigation will be commissioned by the Commissioning Manager and *they* will identify an appropriate investigating officer/ manager, who has had no prior involvement and/or conflict of interest, in respect of the alleged incident/misconduct. The Commissioning Manager must ensure at the start of the process that the Investigating Manager will be available for the duration of the investigation, to avoid any delays in concluding the investigation. The Commissioning Manager will be responsible for drafting the terms of reference for the investigation and ensuring this is shared with the employee, their Staff Side/Trade Union Representative and Investigating Manager. *(See blank Terms of Reference Template in Toolkit)*

The People Operations Team will confirm an appropriate HR representative to support the investigation.

The investigation will involve interviewing the employee and all potential witnesses regarding the alleged misconduct and reviewing any other relevant information and documentation. The Investigating /Officer Manager will be responsible for writing an investigation report outlining the facts and findings of the investigation. The Investigating Officer/Manager is not responsible for reaching any decision/making any judgement on the evidence collected.

It is important to ascertain the investigating skills and experience that the potential Investigating Officer/ Manager has, prior to making the appointment. Commissioning Managers should seek to understand the previous experiences they may have of carrying out an investigation, and if they have received such training within the Trust or an alternative NHS organisation. An investigation *should ideally be completed within 40 workings* days of being commissioned and receipt of the terms of reference, however this may vary depending on the complexity of the case. *(See Sample Investigation Report incl. evidence matrix in Toolkit)*

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 taken to a further DMG to determine the outcome and whether further action is required. There are various outcomes that could be considered including:

- There is a case to answer, and a disciplinary meeting or hearing should be convened.
- There is no case to answer and no further action required
- The case is partially upheld – the outcome could be that the case proceeds to a disciplinary meeting or hearing or other recommendations are made

The outcomes may involve further recommendations and/or potentially referral to DBS and professional bodies. *The employee will be informed of the investigation outcome, and this will be followed up in writing within 1 week of the DMG.*

3.2.4 Disciplinary Meeting

After completion of an investigation a written warning (first or final written warning) may be offered to the employee, if deemed appropriate, outside of a disciplinary hearing. This will only be considered where the employee has taken full responsibility for their actions and has accepted and acknowledged the case/allegations against them. This offer can only be considered at a DMG when reviewing the investigation findings and determining the outcome and whether further action is required. If the employee chooses not to accept the offer outside of a disciplinary hearing, then the matter will proceed to a formal disciplinary hearing.

3.2.5 Disciplinary Hearing

The disciplinary hearing should be arranged for 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.

An independent panel will be arranged consisting of a senior manager who will chair the meeting (who has had no prior involvement and/or conflict of interest, in respect of the alleged incident/misconduct), a HR representative and (where it is deemed appropriate) it may be necessary to call upon the expertise of a specialist who has expertise in that particular subject matter.

The Commissioning Manager must write to the employee concerned to advise them of the hearing giving them a minimum of 10 working days' notice of the date. Where there has been a protracted investigation the employee could be awarded extra time to develop/prepare their case. This should be requested and agreed in advance.

The letter must include key information:

- The allegations to be considered at the hearing
- Date, time and venue of the hearing
- Names of disciplinary hearing panel members
- Name of investigating manager who may be supported by a HR Representative
- Inform the employee of their right to be accompanied by a trade union representative or Trust work colleague
- Witnesses who will be called to attend by management and the right to call witnesses to support their case.
- Disciplinary hearing pack of information that will be relied on or referred to at 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, which should be discussed with their Staff Side/Trade Union Representative prior to the letter being sent.

If after the disciplinary process has concluded it is established that the employee who is the subject of the disciplinary procedure has suffered any form of 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.

3.2.6 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

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 downgrading.

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. However, the Trust reserve the right to move immediately to any sanction within the procedure, dependent on the seriousness of the alleged misconduct.

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.

3.2.7 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. Refer to the Overarching Fitness to Practice Policy (HR21) for further information.

3.2.8 Right to be Represented

Employees always have the right to be accompanied at formal disciplinary interviews or hearings, either by an accredited Trade Union/full-time TU regional/national official or a Trust work colleague, not acting in a legal capacity (e.g., lawyer).

3.2.9 Formal Proceedings against 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.

3.2.10 Inclusion Advisors

An employee may request for an Inclusion Advisor to be appointed to support with the investigation process and advise the investigation team or disciplinary hearing panel on any potential equality, diversity and cultural bias issues, particularly where unfair bias (conscious or unconscious) may have been identified. It is the right of the employee as to whether they wish for an Inclusion Advisor to be involved throughout the process. This is currently a running as a pilot programme and under evaluation at present.

3.2.11 Counter Fraud

Where fraud is suspected advice should immediately be sought from the Trust's Counter Fraud Service (CFS); prior to any information being discussed with the employee so as not to potentially jeopardise an interview under caution if required. The CFS will determine if the internal Trust process should be deferred whilst Counter Fraud investigate the matter or whether both can be run concurrently. Regular communication will be maintained to ensure availability of information and to agree next steps to both the Trust and CFS. Please refer to the Trust's Counter Fraud and Anti-Bribery Policy (CG 22).

3.2.12 Speaking Up

All staff are encouraged to speak up and raise concerns when things go wrong and to not be subjected to detriment as a result of doing so. For example, treatment that is disadvantageous and/or demeaning and may include being ostracised, given unfavourable shifts, being overlooked for promotion. The Trusts Freedom to Speak Up Guardians 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 be viewed as serious misconduct if upheld.

3.2.13 Criminal Offences

Where an employee is arrested, cautioned, charged, convicted and/or subject to a police investigation they must inform their Line Manager as soon as practicable for whatever reason. Each case should be reviewed at a DMG and considered based on individual circumstances, including the nature of the offence, effect on the employee'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/s are subject to a Police investigation it may be necessary for us to defer following the Trust internal investigation process until the Police have completed their investigations.

3.2.14 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 (SI) 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).

3.2.15 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.

3.2.16 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 of all parties that the meeting/conversation is being recorded and their agreement. Covert/secret recording is not permitted and may be deemed gross misconduct.

3.3 Stage 3 - Appeal

Following the disciplinary hearing, an employee may wish to appeal, against the sanction and/or findings or that the Disciplinary Policy was not applied appropriately.

If an employee wishes to pursue an appeal this should be put in writing to the Deputy Director of Workforce & Organisational Development and received within 10 working days from the receipt of the Disciplinary Hearing outcome letter. The appeal must include the grounds for the appeal.

A Disciplinary Appeal hearing will be arranged (ideally within 15 working days), and the appeal panel members will have had no prior direct involvement with the matter to be considered. An appeal hearing panel can increase a sanction, up to and including dismissal. The decision of the appeal hearing will be final and there is no further right of appeal. For more information, please refer to the Trust's Appeal Procedure.

3.4 Disciplinary Categories

There are three main categories for disciplinary matters; minor, serious and gross misconduct, which are detailed below. It is not possible to detail all types of misconduct which could give rise to disciplinary action and therefore the lists set out below must not be regarded as exhaustive or fully inclusive.

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 and possible where additional learning would allow improved conduct.

3.4.1 Minor Misconduct

These are matters that affect the conduct or behaviour of the individual, for example poor timekeeping or a small infringement of working practices.

3.4.2 Serious Misconduct

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.

Misconduct should be dealt with at the most appropriate level. If the 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.

Examples of serious misconduct include the following:

- Persistent repeats of minor issues
- Unauthorised absence

- Negligent loss/damage/misuse to Trust property
- Failure to adhere to Trust policies and procedures
- Abusive/obscene behaviour or language or gestures
- Ineffective/negative behaviour or attitude towards a members 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 making personal comments or engaging in activities within or outside work which could bring the Trust into disrepute.

(Please note this list is illustrative and not exhaustive).

3.4.3 Gross Misconduct

Gross misconduct is a serious breach of terms and conditions (written statement of contract) and is serious enough in its own right 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:

- 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 HR Guidance)*
- Serious or persistent breach of terms and conditions of employment
- Serious insubordination
- 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 patient 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

(Please note this list is illustrative and not exhaustive).

3.5 Confidentiality

When a potential disciplinary issue arises, all managers and employees must treat information with

the strictest confidence, also taking into account information governance controls. Any breach of confidentiality should be reported as an incident and may be regarded as misconduct and subject to disciplinary action. Please refer to the Trust's Confidentiality policy for further information.

3.5.1 Personal Data

Personal data released to the Investigating Manager must be fit for the purpose, not disproportionate to the seriousness of the matter under investigation. The investigation team should be familiar with the guiding principles of the General Data Protection Regulations and Data Protection Act 2018.

3.5.2 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 Staff Support

3.6.1 Health & Wellbeing

It is paramount that employees' health and wellbeing is considered throughout their involvement with informal and formal disciplinary procedures, whether they are subject to the complaint, making the complaint or a witness. We have a breadth of staff support available and the options for employees need to be considered individually depending on their circumstances and level and type of support required. The use of stress risk assessments can also assist identifying areas for support to help inform reasonable adjustments and solutions.

Where a conduct matter is identified it would be appropriate for the DMG 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.

3.6.2 Psychological First Aiders/Mental Health First Aiders (MHFA)

Psychological First Aider support are available to support staff who have been impacted by stressful events, and could be feeling distressed or overwhelmed, anxious, disorientated and fearful as a result of being party/subject to a formal investigation process.

We have a number of staff who have been trained as psychological/Mental Health First Aiders across the Trust and other stakeholder organisations. This service is not provided by the HR Department and is a confidential and anonymous route for staff to access support.

Please contact the BSOL Staff Wellbeing Facilitator via e-mail paul.firth@nhs.net should you need support. You will be advised of the name and contact details of a MHFA or alternatively you may be contacted directly by the MHFA following receipt of your e-mail.

3.6.4 Communication

The Commissioning Manager will ensure a nominated point of contact is appointed for the employee during the procedure to address any issues or concerns. The point of contact and communication plan will be detailed within the investigation terms of reference (TOR).

Where there are delays in the investigation the Investigating Manager needs to advise the employee concerned in a timely, sensitive and compassionate manner.

4. Responsibilities

The following table outlines the responsibilities relevant to this policy.

Post(s)	Responsibilities
All Employees	<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. • Cooperating 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 Manager of anybody whom they wish to be interviewed as part of the investigation.
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
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
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.
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
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.
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
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 HR 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 & form of contact with employees going through the procedure. • Ensure recommendations regarding employees are

	implemented fully and in a timely manner
Trade Union Representatives	<ul style="list-style-type: none"> To work in partnership with management and HR 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. <i>(See IA role outline as part of toolkit for further information)</i>
Human Resources	<ul style="list-style-type: none"> Responsible for providing professional HR advice and support to managers on applying this policy and procedure. 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

5. Development and Consultation Process:

In the review of this policy the following key amendments have been made

Key Policy Amendments:		
DATE	KEY AMENDMENT	WHOM
June/July 2021	<ul style="list-style-type: none"> Complete review of the policy to condense it to be an overview policy which will be supported by thorough detailed guidance and a toolkit. All fraud matters to be referred to CFS in first instance and referenced the Trust's Counter Fraud and Anti-Bribery Policy (CG 22). Reviewed and updated EIA on the basis of employee relations casework data Reviewed misconduct categories following Trade unions feedback. Crossed referenced with recently reviewed Dignity at Work Policy Include reference to Restorative Just Culture, Guidance and Checklists Expand on Suspension/Exclusion from Work 	Rachel Morris (Senior HR Business Part)

This is an outline of who has been involved in developing the policy and procedure including Trust forums and service user and carer groups.

Consultation Summary		
Date policy issued for consultation	July 2021	
Number of versions produced for consultation	2	
Committees / meetings where policy formally discussed	Date(s)	
JOSC	14 July 2021 & 24 th August 2021	
PDMG	29 July 2021	
Transforming our Culture and Staff Experience	16 th September 2021	
People Committee	22 nd September 2021	
Trust Board	29 th September 2021	
Where else presented	Summary of feedback	Actions / Response

Policy Review Group	Feedback received from staff networks and key stakeholders	Included
Staff Side Consultation Meeting	Feedback provided post meeting by Staff Side Chair	Included

6. Reference Documents

- Managing Safeguarding Allegations Concerning People in a Position of Trust (PIPOT) (HR37)
- Birmingham and Solihull Mental Health NHS Foundation Trust Everyday Behaviours Guide
- Counter Fraud and Anti-Bribery Policy (CG 22).
- Confidentiality policy (IG 01) (March 2021)
- Data Protection Act 2018
- Dignity at Work Policy (HR07)
- Equality Act 2010
- Grievance and Disputes Policy & Procedure (HR02)
- Management of Sickness Absence Policy (HR03)
- Managing the effects of Substance Use in the Workplace (HR Guidance Note 18)
- Maintaining High Professional Standards in the Modern NHS (December 2003)
- Overarching Fitness to Practice Policy (HR21)
- Pay Progression Policy (*New Policy – Reference TBC*)
- Procedure for Appeal Hearings (May 2014)
- Trade Union Labour Relations (Consolidation) Act 1992
- Working Better Together Capability Process
- Restorative Just Culture Checklist (Public Domain. By Professor Sidney Dekker)

7. Bibliography

- Advisory Consolidation Arbitration Services (ACAS) Code of Practice on disciplinary and grievance procedures (11 March 2015)
- Audio and Visual Recording by Patients and Staff Policy (*New Policy – Reference TBC*)
- Baroness Dido Harding, Chair for NHS Improvement letter to Trust Chairs and Chief Executives (May 2019)
- Corporate Records Retention Schedule
- Discipline and Grievances at Work – The ACAS Guide (July 2020)
- Equality, Inclusion and Human Rights Policy (HR 28)
- Fair to Refer - Reducing disproportionality in fitness to practise concerns reported to the GMC (June 2019)
- Media Policy (CG10)
- NHS Counter Fraud Authority website (<https://cfa.nhs.uk/fraud-prevention/fraud-guidance>)
- NHS England & NHS Improvement '*Sharing good practice to improve our people practices*' - 1 December 2020
- Professional Registration Verification and Monitoring Policy (HR05)
- Relationships at Work Policy - HR34
- Restorative Just Culture Checklist (Public Domain. By Professor Sidney Dekker)

8. Glossary

Abbreviations	Definition &/or Explanation
ACAS	Advisory Consolidation Arbitration Services
BAME	Black, Asian, Minority or Ethnic

CFA	Counter Fraud Authority
CFS	Counter Fraud Specialist
EAP	Employee Assistance Programme
GDPR	General Data Protection Regulations
MHPS	Maintaining High Professional Standards
PPAS	Practitioner Performance Advice Service (formerly National Clinical Assessment Service, NCAS)
RMS	Regular Management Supervision
TOR	Terms of reference

9. Audit and Assurance

Managers will demonstrate their knowledge and understanding of how to apply the procedures when managing issues of conduct arising in their area of work.

Element to be monitored	Lead	Tool	Freq	Reporting Arrangements	Acting on Recommendations & Lead(S)	Change in Practice & Lessons to be shared
Employee Relations KPIs	Head of People and Culture	Employee Relations Casework Tracker & ESR Casework Tracker	Quarterly & Annually <i>(depending on KPI)</i>	People & OD Sub-Groups and People Committee	Senior People Partners (Operations)	Sharing lessons learned Feedback to Managers and People Team
Number of BAME staff involved in formal process and suspensions	Head of People and Culture	Employee Relations Casework Tracker & ESR Casework Tracker	Quarterly & Annually <i>(depending on KPI)</i>	People & OD Sub-Groups and People Committee	Senior People Partners (Operations)	Sharing lessons learned
WRES & WDES reporting	Head of Equality, Diversity & Inclusion	Employee Relations Casework Tracker & WRES & WDES reporting Templates	Quarterly & Annually <i>(depending on KPI)</i>	People & OD Sub-Groups and People Committee	HR & Equality, Diversity & Inclusion	Sharing lessons learned
Professional Lead Casework Reporting	Senior People Partners	Casework Tracker	Monthly	Monthly via email to Professional Leads (Medical, Nursing & PIPOT)	Senior People Partners (Operations)	Sharing lessons learned Feedback to Managers and People Team

Casework Review Meetings	Head of People & Culture or delegated to Senior People Partners	Casework Tracker	Weekly	HR Casework Review & Discussion	Senior People Partners (Operations)	Sharing lessons learned
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Monitoring

The Deputy Director of People & OD will monitor the effectiveness of the policy using information from the following sources:

- Exit Interviews & Staff Surveys
- Staff Support Questionnaires
- Feedback from Employee Tribunal Cases/Proceedings
- ER Casework
- Inclusion Advisors

This will be reported on a quarterly basis to People Committee

Appendix 1
Equality Analysis Screening Form

Title of Proposal		Disciplinary Policy		
Person Completing this proposal	Rachel Morris	Role or title	Senior HR Business Partner	
Division	Corporate	Service Area	People & Culture	
Date Started	March 2021	Date completed	July 2021	
Main purpose and aims of the proposal and how it fits in with the wider strategic aims and objectives of the organisation.				
<p>The Disciplinary policy outlines the approach to be taken by us when dealing with incidents and matters of alleged misconduct and to identify the most appropriate way of dealing with such matters, so that we encourage improvement and learn lessons.</p> <p>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 and consistently.</p> <p>The policy outlines responsibilities including those of Managers, employees and Trade Union Representatives and provides clear procedures and processes that are to be followed.</p>				
Who will benefit from the proposal?				
<p>This policy will apply to all Trust employees in respect of potential matters of misconduct, including medical employees.</p> <p>The policy will not apply to Temporary Staffing Solution (TSS) and agency workers, work experience students, contractors and employees of other Organisations that are on site and volunteers.</p>				
Impacts on different Personal Protected Characteristics – Helpful Questions:				
<i>Does this proposal promote equality of opportunity?</i> <i>Eliminate discrimination?</i> <i>Eliminate harassment?</i> <i>Eliminate victimisation?</i>		<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>		
Please click in the relevant impact box or leave blank if you feel there is no particular impact.				
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	X			Although this protected characteristic is not currently monitored, going forward it will be incorporated into the Employee Relations Casework Tracker. It is anticipated that there will be no impact on employees due to their age as the policy ensures that all employees should be treated in a fair,

				reasonable and consistent manner irrespective of age.
Including children and people over 65 Is it easy for someone of any age to find out about your service or access your proposal? Are you able to justify the legal or lawful reasons when your service excludes certain age groups				
Disability		X		Recent employee relations data shows 6.45% disabled colleagues have been subject to a formal disciplinary procedure in last 12 months (Jul'20 – Jun'21). The impact of the previous policy has been mitigated with the implementation of Decision-Making groups which mean that no one person makes a decision on how to proceed where a misconduct issue arises. Further investigation skills and Maintaining High Professional Standards (MHPS) training is being arranged across the Trust for 2021. In line with our ongoing commitment to ensure Inclusion principles are an integral part of any formal disciplinary process the use of the Inclusion Advisors will ensure continued review of equality, diversity and cultural bias issues is maintained throughout the entirety of the process. Therefore, it is anticipated this will reduce the impact on employees as a result of Disability as the policy ensures that all employees should be treated in a fair, reasonable and consistent manner.
Including those with physical or sensory impairments, those with learning disabilities and those with mental health issues Do you currently monitor who has a disability so that you know how well your service is being used by people with a disability? Are you making reasonable adjustment to meet the needs of the staff, service users, carers and families?				
Gender	X			Although this protected characteristic information is collated it is not currently reported on. It is anticipated that there will be no impact on employees due to their gender as the policy ensures that all employees should be treated in a fair, reasonable and consistent manner irrespective of gender.
This can include male and female or someone who has completed the gender reassignment process from one sex to another. Do you have flexible working arrangements for either sex? Is it easier for either men or women to access your proposal?				
Marriage or Civil Partnerships	X			Although this protected characteristic is not currently monitored, going forward it will be incorporated into the Employee Relations Casework Tracker. It is anticipated that there will be no impact on employees due to their marriage or civil partnership as the policy ensures that all employees should be treated in a fair, reasonable and consistent manner irrespective of their marriage or civil partnership.
People who are in a Civil Partnerships must be treated equally to married couples on a wide range of legal matters. Are the documents and information provided for your service reflecting the appropriate terminology for marriage and civil partnerships?				
Pregnancy or Maternity	X			Although this protected characteristic is not currently monitored, going forward it will be incorporated into the Employee Relations Casework

				Tracker. It is anticipated that there will be no impact on employees due to pregnancy or maternity as the policy ensures that all employees should be treated in a fair, reasonable and consistent manner irrespective of their pregnancy or maternity. The Trust will provide the necessary support and reasonable adjustments for any employee who is pregnant or on maternity, paternity or adoption leave and this may include pausing the procedure for a temporary period of time.
<p>This includes women having a baby and women just after they have had a baby.</p> <p>Does your service accommodate the needs of expectant and post-natal mothers both as staff and service users?</p> <p>Can your service treat staff and patients with dignity and respect in relation to pregnancy and maternity?</p>				
Race or Ethnicity		X		<p>Recent employee relations data shows that in the last 12 months (Jul'20 – Jun'21) out of 31 formal disciplinary cases, 14 cases related to colleagues from Black, Asian and Minority Ethnic background (45.16%). The impact of the previous policy has been mitigated with the implementation of Decision-Making groups which mean that no one person makes a decision on how to proceed where a misconduct issue arises. Further investigation skills and Maintaining High Professional Standards (MHPS) training is being arranged across the Trust for 2021.</p> <p>In line with our ongoing commitment to ensure Inclusion principles are an integral part of any formal disciplinary process the use of the Inclusion Advisors will ensure continued review of equality, diversity and cultural bias issues is maintained throughout the entirety of the process.</p> <p>Therefore, it is anticipated this will reduce the impact on employees as a result of Race or Ethnicity as the policy ensures that all employees should be treated in a fair, reasonable and consistent manner irrespective of Race or Ethnicity.</p>
<p>Including Gypsy or Roma people, Irish people, those of mixed heritage, asylum seekers and refugees</p> <p>What training do staff have to respond to the cultural needs of different ethnic groups?</p> <p>What arrangements are in place to communicate with people who do not have English as a first language?</p>				
Religion or Belief	X			<p>Although this protected characteristic is not currently monitored, going forward it will be incorporated into the Employee Relations Casework Tracker. It is anticipated that there will be no impact on employees as a result of their religion or belief as the policy applies to all employees irrespective of their religion or belief. The policy is written to ensure all employees are treated in a fair, reasonable and consistent manner. As required appropriate arrangements will be made to ensure that the religious or spiritual care needs of employees are met, and the necessary specialist advice sought with the support of the Operational Human Resources team where necessary.</p>

Including humanists and non-believers Is there easy access to a prayer or quiet room to your service delivery area? When organising events – Do you take necessary steps to make sure that spiritual requirements are met?				
Sexual Orientation	X			Although this protected characteristic is not currently monitored, going forward it will be incorporated into the Employee Relations Casework Tracker. It is anticipated that there will be no impact on employees as a result of sexual orientation as the policy applies to all employees irrespective of sexual orientation and is written to ensure all employees are treated in a fair, reasonable and consistent manner.
Including gay men, lesbians and bisexual people Does your service use visual images that could be people from any background or are the images mainly heterosexual couples? Does staff in your workplace feel comfortable about being 'out' or would office culture make them feel this might not be a good idea?				
Transgender or Gender Reassignment	X			This protected characteristic is not currently monitored, as the data is not currently collected in ESR. It is anticipated that there will be no impact on Trans employees or employees in Transition as a result of this policy as the policy applies to all employee and is written to ensure all employees are treated in a fair, reasonable and consistent manner.
This will include people who are in the process of or in a care pathway changing from one gender to another. Have you considered the possible needs of transgender staff and service users in the development of your proposal or service?				
Human Rights	X			The policy is written in a manner to ensure that an employee's rights to Dignity and Respect are reinforced and maintained during the Disciplinary process. It also ensures that the vulnerable people in our care are appropriately safeguarded from harm.
Affecting someone's right to Life, Dignity and Respect? Caring for other people or protecting them from danger? The detention of an individual inadvertently or placing someone in a humiliating situation or position?				
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)				
	Yes	No		
What do you consider the level of negative impact to be?	High Impact	Medium Impact	Low Impact	No Impact
		X		
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 proposal 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 human resources team regularly provides training and guidance for managers on the application of the Trust's Disciplinary policy and is arranging specialist MHPS training in 2021. For all training delivered we utilise formal evaluation mechanisms which help to inform future training decisions. Alongside this we 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 KPIs will be monitored through the Trust's People Committee which currently incorporate casework by ethnicity and disability.

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

All employees will be treated equally, and we will take into account and provide the appropriate adjustments for the protected characteristics of each individual.

The policy has been developed to ensure all employees are treated in a fair, reasonable and consistent manner. The policy ensures that an employee's 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 proposal to the Head of Equality, Diversity & Inclusion at bsmmhft.hrsupport@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 & Exclusion Procedure for Medical Staff

(In conjunction with Maintaining High Professional Standards in the Modern NHS)

1. INTRODUCTION

In December 2003, the Department of Health issued the document Maintaining High Professional Standards in the Modern NHS, a framework for the initial handling of concerns about doctors and dentists. This procedure is in line with the above document and describes the local procedures for handling concerns about a doctor's conduct and follows best practice guidance.

Concerns about a doctor's conduct can 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 i.e., Lapse in professional registration.
- ▶ Litigation following allegations of negligence.
- ▶ Information from the police or coroner and court judgments.

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 co-operation, 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 co-operate fully with all aspects of the procedure.

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 4 of the policy. 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 Deputy Director of Workforce and OD to receive the necessary HR advice. 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 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 Deputy Director of Workforce and OD prior to any final decisions being made.

The GMC will discuss with the PPAS whether any immediate action is needed by the GMC or whether the PPAS's consideration should continue.

At any stage of the handling of a case consideration should be given to the involvement of the 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 you have sufficient information 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 support you in considering 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.

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 Deputy Director of Workforce and OD.

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 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.
- ▶ Must 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.
- ▶ Must ensure that a written record is kept of the investigation, the conclusions reached, and the course of action agreed by the Deputy Director of Workforce and Inclusion with the Medical Director.
- ▶ Must 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 clinical 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 National Clinical Assessment 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.

1.1 Confidentiality

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.

2. RESTRICTION OF PRACTICE & 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 practise 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.

2.1 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.

2.2 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 on 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.
- Sick leave for the investigation of specific health problems.

3. 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.

3.1 Key features of Exclusion from Work

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

3.2 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 Deputy Director of Workforce and OD, 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 authority to exclude a member of staff must be authorised by the 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.

3.3 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.

3.4 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.

3.5 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;

- A) 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
- B) 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.

3.6 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.

3.7 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.

3.8 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 consider the issue of an alert letter.

3.9 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.

4. KEEPING EXCLUSIONS UNDER REVIEW

4.1 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 had been reviewed and extended.

4.2 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.

4.3 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

	<p>Executive and the Board.</p> <ul style="list-style-type: none"> • 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 of the practitioner concerned. The Trust and the PPAS should actively review those cases at least every 6 months.</p>

4.4 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 manager 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

5. 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.

6. PROCEDURES FOR DEALING WITH ISSUES OF CAPABILITY

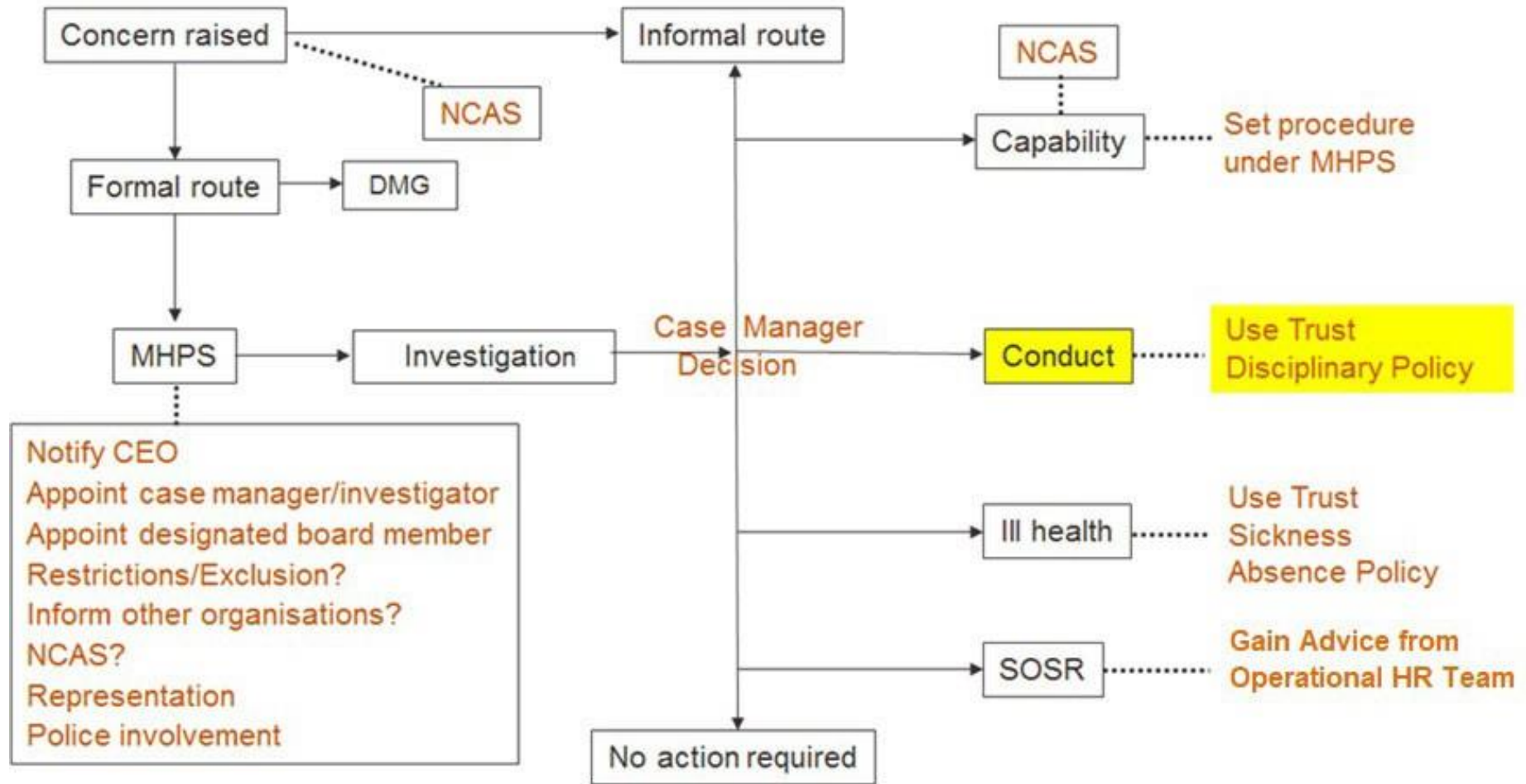
1. The causes of adverse events should not automatically be attributed to the actions, failings or unsafe acts of an individual alone. Root cause analyses of individual adverse events frequently show that these are more broadly based and can be attributed to systems or organisational failures or demonstrate 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.

2. The National Patient Safety Agency (NPSA) was established to coordinate the efforts of all those involved in healthcare to learn from adverse incidents occurring within the NHS. In particular, the NPSA 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.

3. 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 first instance advice should be obtained from the Operational Human Resources department about how to progress the management of any identified issues or concerns.

Appendix 3

Basic Process Flowchart of Maintaining High Professional Standards



**TEMPLATE FOR BRIEFINGS TO CASE MANAGER
(MEDICAL STAFF)**

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

'STOP AND PAUSE' DECISION-MAKING FRAMEWORK

- Decision Making Group (DMG) to consider: does this issue need to be handled formally or can it be dealt with informally?
- To decide: always follow the 'Stop and Pause' Checklist
- Also follow the Suspension Decision Tree (if suspension is being considered)

START HERE First, Informal actions (see below)



Work through the 'Stop and Pause' Checklist and involve key people:

Discussion: DMG (ie DoD, HoN, PBP, External link)

Discussion: may also include as above, plus ED&I Specialist Advisor (for certain incidents)

Discussion: May also include Cultural Ambassador (for allegations where employee is BAME staff member)

Involve staff member- if appropriate (Just Culture approach)



Potential outcomes:

Pause: further information required before decision can be made	Resolved: no action informal	Resolved: other actions (eg learning) informal	Resolved: via restorative conversation or action-informal	Resolved: via fast track process (TBA) Formal sanction awarded	Formal investigation needed: DMG sign off required. Move to complexity assessment
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Formal route*

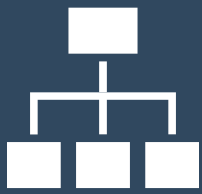
Complexity Assessment: Decision Making Group

<p>Green: less complex (scoring 1 or less)</p> <p>Appoint local/ Line Manager as IO and linked P&T support</p>	<p>Amber: moderately complex (scoring between 2-4)</p> <p>Appoint more experienced IO, possibly outside division and P&T linked support</p>	<p>Red: very complex (scoring 5 and above)</p> <p>Appoint experienced IO from outside division, enhanced P&T support. Consider paying/ resourcing via the bank</p>	<p>Extremely specialist or once-in-a-career type cases (eg involving senior medical staff)</p> <p>Consider appointing an external investigator</p>
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Next Steps:

- DMG to appoint Case Manager.
- Case Manager to draft Investigation Terms of reference in all cases (ie a contracting document which will include check-in points, milestones and timescales, similar to MHPS best practice)
- Terms of reference to be agreed with IO prior to investigation commencing.

*Cultural Ambassadors and EDI Advisors used whenever required, at any stage.



COMPLEXITY ASSESSMENT

Give 1 point for each question answered yes

Potential gross misconduct?	For yes - award 1 point
Member of staff is suspended?	For yes - award 1 point
Multiple witnesses, likely to have contradictory view points?	For yes - award 1 point
Links outside of the Trust?	For yes - award 1 point
Involves criminal allegations? App Problem	For yes - award 1 point
Potential breach of professional code of conduct	For yes - award 1 point
Extreme reputational damage?	For yes - award 1 point
Multiple, linked allegations?	For yes - award 1 point
Serious safeguarding issues or concerns? *	For yes - award 1 point
High likelihood of legal action	For yes - award 1 point
Timescale- likely to be a more lengthy investigation (more than 2 months)	For yes - award 1 point

* Refer to guidance on handling safeguarding allegations

RESTORATIVE JUST CULTURE CHECKLIST

Restorative Just Culture aims to repair trust and relationships damaged after an incident. It allows all parties to discuss how they have been affected, and collaboratively decide what should be done to repair the harm.

WHO IS HURT?

ACKNOWLEDGED:
NO YES

Have you acknowledged how the following parties have been hurt:

- First victim(s)** – patients, passengers, colleagues, consumers, clients
- Second victim(s)** – the practitioner(s) involved in the incident
- Organization(s)** – may have suffered reputational or other harm
- Community** – who witnessed or were affected by the incident
- Others** – please specify:.....

WHAT DO THEY NEED?

EXPLORED:
NO YES

Have you collaboratively explored the needs arising from harms done:

- First victim(s)** – information, access, restitution, reassurance of prevention
- Second victim(s)** – psychological first aid, compassion, reinstatement
- Organization(s)** – information, leverage for change, reputational repair
- Community** – information about incident and aftermath, reassurance
- Others** – please specify:.....

WHOSE OBLIGATION IS IT TO MEET THE NEED?

IDENTIFIED:
NO YES

Have you explored the needs arising from the harms above:

- First victim(s)** – tell their story and willing to participate in restorative process
- Second victim(s)** – willing to tell truth, express remorse, contribute to learning
- Organization(s)** – willing to participate, offered help, explored systemic fixes
- Community** – willing to participate in restorative process and forgiveness
- Others** – please specify:.....

READY TO FORGIVE?

NO YES

Forgiveness is not a simple act, but a process between people:

- Confession** – telling the truth of what happened and disclosing own role in it
- Remorse** – expressing regret for harms caused and how to put things right
- Forgiveness** – moving beyond event, reinvesting in trust and future together

ACHIEVED GOALS OF RESTORATIVE JUSTICE?

ACHIEVED:
NO YES

Your response is restorative if you have:

- Moral engagement** – engaged parties in considering the right thing to do now
- Emotional healing** – helped cope with guilt, humiliation; offered empathy
- Reintegrating practitioner** – done what is needed to get person back in job
- Organizational learning** – explored and addressed systemic causes of harm

'STOP AND PAUSE' JUST CULTURE CHECKLIST

This checklist supports a conversation between managers about 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 patients or other staff/ the public. It stresses the importance of having informal conversations at the very beginning with a focus on fairness, openness and learning rather than formal investigations. The aim is to cultivate a culture of learning from an incident rather than seeking to blame or punish.

It offers a 'stop and pause' opportunity in which environmental, organisational, cultural and contextual factors can be considered.

The checklist should be used by the Divisional Decision-making Group (DMG) BEFORE a decision to formally investigate an incident/ individual is made

Start HERE- Q1. Capability or Conduct test

- 1a. Are there indications that the individual can't, rather than won't, do or act in the way that is expected?
- 1b. Are there indications that the individual is struggling with aspects of the job, because they are new, have been away from work for a while or have failed to adapt to new systems/ ways of working?
- 1c. Are there other signs that the individual is struggling with the pace, complexity or demands of their job?



Yes to any?

Recommendation:

Follow the organisational guidance on supporting and addressing staff performance and capability – 'Working Better Together Capability Process'

END HERE

No go to next question - Q2. Deliberate harm test

- 2a. Was there any intention to cause harm?
- 2b. Was there any intention to knowingly and unreasonably increase risk by violating known procedures?



Yes to any?

Recommendation: Follow organisational guidance for appropriate management action. This could involve: contact relevant regulatory bodies, suspension of staff and referral to police and disciplinary processes. Wider investigation may also be needed to understand how and why patients or staff were not protected from the actions of the individual

END HERE

No go to next question - Q3. Health test

- 3a. Are there indications of substance abuse?



Yes

Recommendation: Follow organisational substance at work guidance. Wider investigation still needed to understand if substance abuse could have been recognised/ addressed earlier

END HERE

- 3b. Are there any indications of physical ill health?
3c. Are there any indications of mental ill health?



Yes

Recommendation: Follow organisational guidance for health issues affecting work, which is likely to include occupational health referral. Wider investigation still needed - to understand if health issue could have been recognised/ addressed earlier

END HERE

if No to all go to the next question- Q4. Foresight test

- 4a. Are there agreed protocols/ accepted practice/ standards in place that apply to the action/ omission in question?

- 4b. Were the protocols/ accepted practice/ standards workable and in routine use?

- 4c. Did the individual know these protocols/ standards and knowingly depart from them



if No to any

Recommendation: Action singling out the individual is unlikely to be appropriate. Follow up actions may include developing, sharing, promoting protocols and standards to the individual and the wider team

END HERE

if Yes to all go to next question - Q5. Substitution test

- 5a. Are there indications that other individuals from the same peer group, with similar experience and qualifications would behave in the same way?

- 5b. Was the individual missed out when training was provided to their peer group?

- 5c. Did more senior members of the team fail to provide supervision that normally is provided?



if Yes to any

Recommendation: Action singling out the individual is unlikely to be appropriate. Follow up actions may include offering further training, guidance and supervision to the individual and/ or the wider team

END HERE

if No to all go to next question - Q6. Mitigating circumstances

- 6a. Were there any significant mitigating circumstances



Yes

Recommendation: Action directed at the individual may not be appropriate. Consider what management action may be required.

END HERE

if No

Recommendation Discuss and agree the appropriate management action. This could involve individual training, performance management, restorative conversation, competency assessments, changes to role or increased supervision, and may require relevant regulatory bodies to be contacted, staff suspension and disciplinary processes.

END

QUESTIONS FOR THE LINE OR REPORTING MANAGER AND DMG TO CONSIDER

1. How open have they/ you been in taking an overview of the issue/ incident and its impact?
2. Have they/ you maintained consistency in considering this matter and demonstrated an awareness of any cultural issues or protected characteristics?
3. Have they/ you undertaken sufficient fact-finding/ preliminary investigation to understand the situation well enough to make a fair decision about next steps?
4. Has the manager spoken to the individual concerned and given them the chance to present their view on what has happened?
5. Have they/ you considered whether the individual has shown any remorse or understands the implication of their actions?
6. Have they/ you exhausted the informal route?
7. Have you/ they considered the individual's health and well-being and offered support (e.g. EAP, O/H, Staff Side/Unions etc.)
8. Have they/ you explained next steps to the individual?

NEXT STEPS

Is suspension being considered at this stage?	Yes	No
<p>If yes, refer to the Suspension Decision Tree and bear in mind that suspension is a measure of last resort. Please detail other alternatives explored but then discounted (eg removing specific duties, moving roles, departments, putting in additional measures or safeguards against any further risk of this behaviour).</p>		

Is formal investigation necessary?	Yes	No
<p>If yes, and taking into account all of the above factors please specify why the group believes a formal investigation is required as opposed to alternative action.</p>		

<p>If No, please outline the steps now needed to address this issue with the individual and any wider learning or actions resulting from this incident, eg system/ process redesign, re-training, reflective practice, enhanced supervision etc</p>
--

<p>If Not Sure, please outline what further information is required and who is responsible for seeking that information, and by when.</p>
--

Signed off:

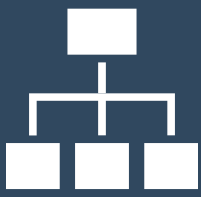
NAME
DATE

Signed off:

NAME
DATE

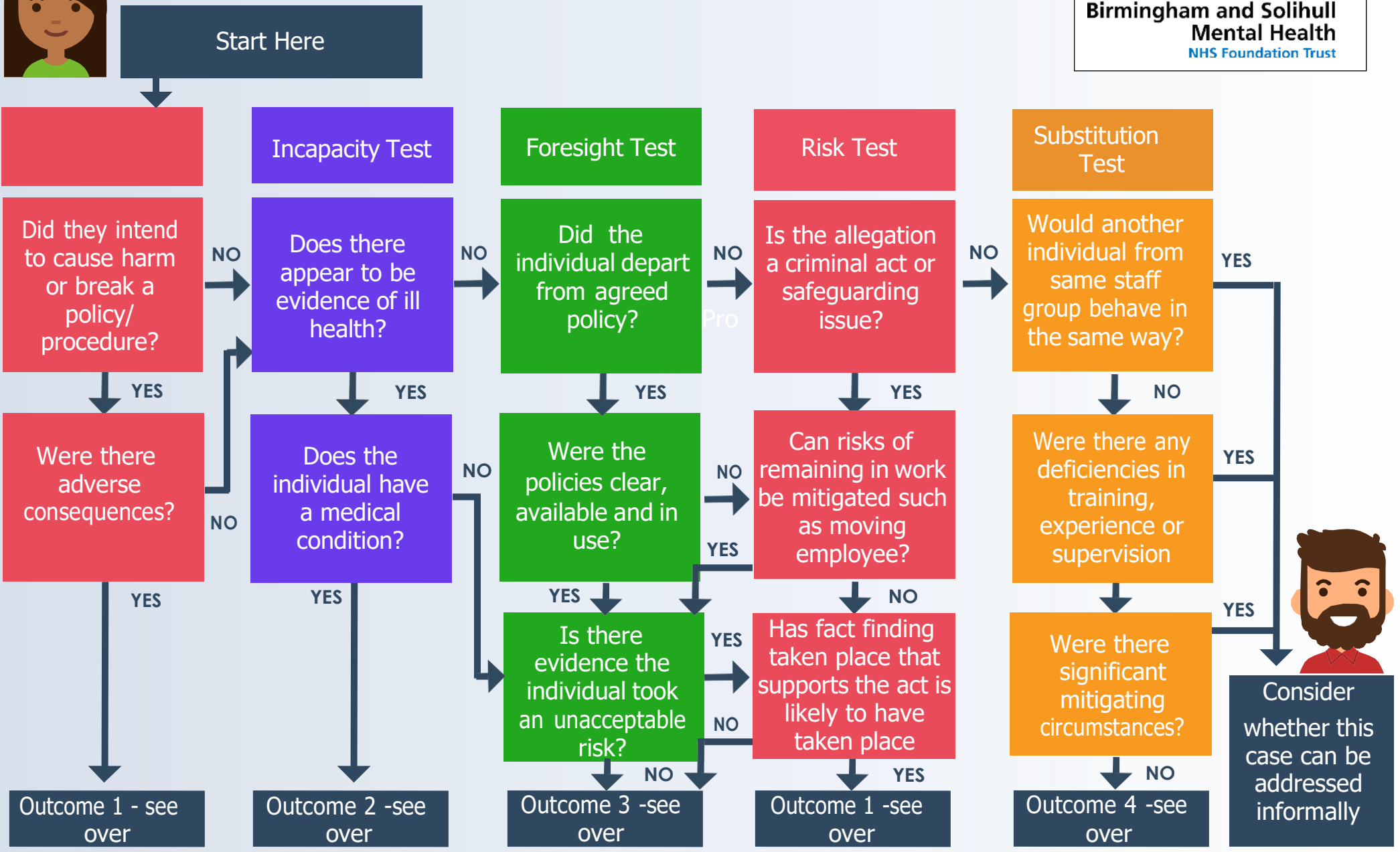
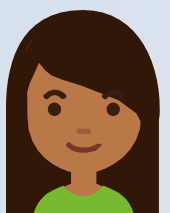
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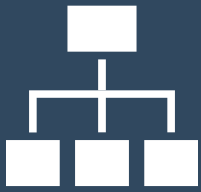
NAME
DATE



SUSPENSION DECISION TREE

To be used in conjunction with the Disciplinary Policy and User Guide





SUSPENSION DECISION TREE

To be used in conjunction with the Disciplinary Policy and User Guide



Outcome 1

Where there has been an intended action which has had serious adverse consequences or a criminal act it may be appropriate for a suspension to take place.

Cases of deliberate patient or colleague harm would fall into this category. Whilst some risk may be minimised it still may be felt that due to the deliberateness of such a serious alleged act or its criminal nature that a suspension is the preferred option.



Outcome 2

Here outcome 2 has been reached from the the incapacity test where the member of staff is alleged to have committed a serious act due to ill health. Note substance abuse such as being under the incapacity of alcohol or drugs may also fall into this outcome. It may be appropriate for the member of staff to take some time away from work as sick leave or where they do not agree for a medical suspension to take place whilst an assessment is made by the Occupational Health Team.



Outcome 3

Where there has been serious consequences from an action which has arisen from a member of staff allegedly taking an unacceptable risk it may be possible to avoid a suspension whilst it is investigated.

See our Alternatives to Suspension guide which has some examples where risk may be mitigated by making adjustments to work place and/ or duties.



Outcome 4

This Outcome is reached through the substitution test where a serious alleged act has been committed and there aren't any clear mitigating factors or training deficiencies.

Here a suspension may be considered but alternatives to suspension should also be reviewed to see if the risk posed can be mitigated.



Birmingham and Solihull Mental Health NHS
 Foundation Trust
 Trust Headquarters, Unit 1
 50 Summer Hill Road
 Birmingham
 B1 3RB

Date

**PRIVATE AND CONFIDENTIAL
 ADDRESSEE ONLY**

Tel: 0121 301 0000

Name

(Sent via email: ADD)

Dear Name,

Re: Suspension from Duty

Further to our meeting on [DATE] I am writing to confirm your suspension with effect from [DATE].

I have decided to suspend you from duty because it is alleged that [INSERT REASON].

I would like to reassure you that suspension is not a form of disciplinary action or an assumption of guilt, but is necessary to allow a full investigation to be carried out. You should however realise that once the investigation has been completed, the allegations may be considered at a disciplinary meeting.

I do not expect your suspension to last more than 2 weeks, but I will update you if the suspension needs to be extended.

I OR **** NAME/TITLE [DELETE AS APPROPRIATE] will carry out an investigation over the next few days. NAME/TITLE [Normally line manager] will keep in regular contact with you and update you on progress of the investigation.

EITHER

You are invited to a meeting on **** at *** in *** to discuss the allegations against you. If you find it helpful you can submit a written statement in advance of the meeting.

OR

Chair: **Danielle Oum** | Chief Executive: **Roísín Fallon-Williams** | Website: www.bsmhft.nhs.uk
 Customer Relations: Mon–Fri, 8am–6pm | Tel: 0800 953 0045 | Email: bsmhft.customerrelations@nhs.net

I OR **** NAME OF INVESTIGATOR will contact you shortly to invite you to a meeting to discuss the allegations against you. If you find it helpful you can submit a written statement in advance of the meeting

While you are suspended you should bear in mind the following conditions:

- You must not do anything that might interfere with the investigation.
- You are not allowed to contact your work area or approach anyone involved, or likely to be involved, in the case.
- If you would like to contact witnesses who may support their case you should contact me, ***** NAMED DEPUTY, or your trade union representative, in the first instance.
- Except for medical appointments you are required to remain off Trust premises unless you have my permission to attend a meeting with your trade union representative, an investigation meeting, a counselling appointment, a medical consultation etc
- You have to be available Monday to Friday from 9.00 am to 5.00pm to attend meetings, except during periods of annual leave already agreed
- If you would like to request annual leave or other types of leave during your period of suspension, you should do so in line with normal departmental procedures
- You must immediately notify me of any changes to your contact details
- You are not allowed to undertake any paid work during the hours for which you are contracted to work for the Trust.
- If you become ill, you must notify me and follow agreed reporting procedures.

While suspended you will receive normal pay / you will not receive pay [DELETE AS APPROPRIATE] – please see the section XX of the disciplinary procedure for more information.

With your agreement, I will ask the Staff Liaison Officer from the Trust's Contact Service to contact you to provide support.

I appreciate that this is a difficult time for you, and you may have accessed additional support, however I would like to remind you of support you are able to access, including support from an Inclusion Advisor, Mental Health First Aider (MHFA) and PAM assist, the Trust's confidential support service that can be contacted 24 hours a day on 0800 882 4102. There is also further wellbeing support available for you to access and I have provided a link to the guide - <https://view.pagetiger.com/staff-wellbeing-home>

I will endeavour to conclude the investigation within a reasonable timescale and ensure you are kept informed of progress.

Yours sincerely,

NAME OF MANAGER
JOB TITLE

Cc Name of Trade Union Representative if known



Birmingham and Solihull Mental Health NHS
 Foundation Trust
 Trust Headquarters, Unit 1
 50 Summer Hill Road
 Birmingham
 B1 3RB

Date

**PRIVATE AND CONFIDENTIAL
 ADDRESSEE ONLY**

Tel: 0121 301 0000

Name

(Sent via email: ADD)

Dear Name,

Re: Continued Suspension from duty

Further to my letter of [INSERT DATE], I am writing to advise you that the investigation has not yet been completed and it is therefore necessary for you to remain suspended from duty.

I appreciate that this is particularly stressful for you. I hope the investigation will be completed by [INSERT DATE].

In the meantime, should you wish to discuss the progress of the investigation I am happy for you to telephone me on the above number. Alternatively, we can meet if you would find this more helpful.

I appreciate that this is a difficult time for you, and you may have accessed additional support, however I would like to remind you of support you are able to access, including support from an Inclusion Advisor, Mental Health First Aider (MHFA) and PAM assist, the Trust's confidential support service that can be contacted 24 hours a day on 0800 882 4102. There is also further wellbeing support available for you to access and I have provided a link to the guide - <https://view.pagetiger.com/staff-wellbeing-home>

I will endeavour to conclude the investigation within a reasonable timescale and ensure you are kept informed of progress.

Yours sincerely,

Chair: **Danielle Oum** | Chief Executive: **Roísín Fallon-Williams** | Website: www.bsmhft.nhs.uk
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NAME OF MANAGER

JOB TITLE

Cc Name of Trade Union Representative if appropriate

DRAFT