

## Northumbria Healthcare NHS Foundation Trust

### Human Resources Policies and Procedures

#### Disciplinary Procedure

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**This Policy has been Impact Assessed against the Equality Act 2010**

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## Statement of changes made from version 9.4

Version	Date	Description
10	Nov 2020	<p><b>Section 1: Operational Summary</b> Reference to 'organisation' amended to Trust.</p> <p>To ensure the efficient and smooth running of the organisation amended to include 'in relation to standards of conduct expected'</p> <p><b>Section 2: Introduction</b> Reference to 'organisation' amended to Trust.</p> <p><b>Section 3: Purpose</b> To ensure the efficient and smooth running of the organisation amended to include 'in relation to standards of conduct expected'</p> <p><b>4. Duties</b> <b>Case Manager</b> section amended to 'is responsible for agreeing the terms of reference for the investigation and ensuring timescales are adhered too. The case manager will review the full report including appendices once completed and will make the decision whether a fixed sanction would be appropriate or whether matters should be considered by an independent disciplinary hearing.'</p> <p><b>Disciplining Manager</b> – Amended from 'Leads to 'Chair of</p> <p><b>Human Resources section</b> – amended to include 'formal' meetings.</p> <p><b>Senior Manager</b> – it is the responsibility of the appropriate senior manager (e.g. Operational Services Manager, Service Manager or equivalent) to give full consideration to any concerns or issues regarding any member of their staff's conduct, and to make the decision as to whether the disciplinary procedure would be appropriate.</p> <p><b>Section 5 - Disciplinary hearing</b> amended to include 'which may result in disciplinary action.'</p> <p><b>Section 6</b> – Disciplinary Process flowchart updated to reflect new process of applying fixed sanctions following the COVID-19 pandemic.</p> <p><b>6.2 Exclusion</b> Section updated to include 'restrictions' and 'alternative'</p> <p>Alternative action/restrictions may include:</p> <ul style="list-style-type: none"> <li>• Continuing to work under close supervision</li> <li>• Temporary transfer to another area of work, location or job where reasonable</li> <li>• Restricted/alternative duties</li> </ul> <p>Paragraph below added: Where alternative action/restrictions are necessary, the employee will continue to receive full pay according to the duties to which they would have been rostered had they been at work, including enhancements etc.</p>

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Version	Date	Description
		<p>Last bullet point – ‘In circumstances where the allegation is potentially considered to be gross misconduct and could result ultimately in the employee’s dismissal from their post.’ removed following legal update.</p> <p><b>6.3.1 Investigation</b> Paragraph reworded to state: Once the investigation is completed, the investigating officer must arrange to present their findings in a report to the Case manager. The Case Manager will then decide with HR support whether it would be appropriate to issue a fixed sanction for the employee to consider or whether the case should be considered by an independent disciplinary panel.</p> <p>If the Case manager considers that a fixed sanction would be appropriate, the employee will be notified without delay and the decision and reasons for such will be confirmed in writing.</p> <p>If the case manager decides that matters need to be considered by an independent disciplinary panel, a copy of the investigating officer written report will be submitted to the disciplining manager. This report, which must include the employee’s statement and any witness statements, will give a factual summary of the investigation. A template report is available (Please refer to the Guidance Notes).</p> <p><b>6.3 Formal Disciplinary Procedure section</b></p> <p>6.3.1 updated to reflect ACAS Code of Conduct to state ‘Reasonable adjustment may be needed for a worker with a disability (and possibly for their companion if they are disabled). For example, the provision of a support worker or advocate with knowledge of the disability and its effects.’</p> <p><b>6.3.5 Professional Registrations</b> Reworded to state ‘sanction’ instead of penalty.</p> <p><b>6.5.1 Verbal Warning</b> Updated to include state: The verbal warning should not be a casual passing word, it is a formal sanction and a record should be made in writing, sent to the individual and placed on the employee’s personal file. The case manager may issue a verbal warning upon review of the prima facie information, or if the case should proceed to a disciplinary hearing, the disciplining managers may issue a verbal warning following a disciplinary hearing.</p> <p><b>6.5.2 First Written Warning</b> Reworded to ‘In the event of (a) a repetition of similar minor acts of misconduct which are subject to a current verbal warning; or (b) the misconduct is of a more serious nature; a first written warning may be issued by the case manager or following a hearing by a disciplining manager/panel.’</p>

Version	Date	Description
		<p>The employee will be sent a letter giving details of the misconduct which should include a warning that future misconduct may lead to further disciplinary action under this procedure.</p> <p><b>6.5.3 Final Written Warning</b> Update to include following the case managers meeting or disciplinary hearing, the employee will be sent a letter giving details of the misconduct which should include a warning that future misconduct may lead to further disciplinary action under this procedure.</p> <p><b>6.5.4 Dismissal/Summary Dismissal (Dismissal without notice)</b> Section updated to include 'gross' misconduct, the employee may be liable to summary dismissal.</p> <p>Safeguarding children flowchart, name updated from Jane Smyth to Paula Shandran and telephone number updated.</p> <p>Gross Misconduct examples amended to include examples- Discrimination, harassment or bullying (for example; racism, homophobia and transphobia)</p> <p><b>6.12 Contacting the Police or HSE after a Safety Incident at Work</b> Stephen Thompson added as Head of Support Services</p>

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# 1. Operational Summary

## Policy Aim

The aims of this policy/procedure are:-

- To ensure uniformity of treatment for all individual employees;
- To ensure the efficient and smooth running of the organisation in relation to standards of conduct expected;
- To ensure that management, unions and employees are aware of their rights and obligations in respect of disciplinary and appeals processes;
- To ensure that the strictest confidentiality is preserved at all stages of the process;
- To ensure compliance with relevant employment, and other relevant legislation.

The Disciplinary Policy and its procedures and guidance are designed to encourage improvement in an individual's performance or conduct. Line Managers are responsible for day-to-day support and supervision of employees.

## Policy Summary

The policy/procedure details informal and formal approaches to dealing with misconduct issues. Where formal action is required the policy/procedure details when exclusion should be considered and how it should be undertaken, how an investigation should be carried out and the possible outcomes of a formal disciplinary hearing. The policy/procedure details the categories of misconduct that are considered sufficiently serious as to warrant disciplinary action.

The Trust will ensure that every care is taken that the most appropriate procedure is followed, dependent on relevant circumstances. Please see section 10 for associated policies.

## What it Means for Staff

**General Managers/Ward and Department Managers** – are responsible for ensuring adequate dissemination and implementation of policies.

**All Employees** – are responsible for reading the revised policy to ensure they are aware of the standard of conduct the organisation expects from all its employees

## **2. Introduction**

The organisation endorses the following statement, taken from the ACAS Code of Practice 1 April 2009 Disciplinary and Grievance Procedures. Fairness and transparency are promoted by developing and using rules and procedures for handling disciplinary and grievance situations. These should be set down in writing, be specific and clear. Employees and, where appropriate, their representatives should be involved in the development of rules and procedures. It is also important to help employees and managers understand what the rules and procedures are, where they can be found and how they are to be used.

The Trust supports informal resolution of misconduct issues wherever possible and will use the principles of personal responsibility to achieve this.

It is the Trust's intention that this procedure should be interpreted and used by everyone concerned in a positive and supportive way in order to promote fairness in dealing with alleged disciplinary breaches.

It must be emphasised that (a) this procedure is designed to encourage improvement in employees' conduct where this is necessary and is not merely a method of applying disciplinary sanctions and (b) the rules of natural justice shall apply.

Appendix 1 gives examples of misconduct which the organisation considers to be sufficiently serious as to warrant disciplinary action.

## **3. Purpose**

The purpose of this policy/procedure is:-

- To ensure uniformity of treatment for all individual employees;
- To ensure the efficient and smooth running of the organisation in relation to standards of conduct expected;
- To ensure that management, unions and employees are aware of their rights and obligations in respect of disciplinary and appeals processes;
- To ensure that the strictest confidentiality is preserved at all stages of the process;
- To ensure compliance with relevant employment, and other relevant legislation.

## 4. Duties

**All Employees** – are responsible for adhering to the standards, as well as any codes of conduct, rules and organisational/professional/departmental policies and procedures applicable to their employment.

**Case Manager** – is responsible for agreeing the terms of reference for the investigation and ensuring timescales are adhered to. The case manager will review the full report including appendices once completed and will make the decision whether a fixed sanction would be appropriate or whether matters should be considered by an independent disciplinary hearing.

**Chairman** – is responsible for adhering to the guidance for NHS bodies on the fit and proper person requirement for directors.

**Companion** – an employee may invite a companion to any formal meeting, this may be a Trade Union Representative or an official employed by the Trade Union. Where an employee does not have Trade Union representation, they may invite a work colleague not acting in a professional capacity.

**Disciplining Manager** – Chair of disciplinary hearings. It is the responsibility of Disciplining Managers to ensure all facts are carefully considered in accordance with this procedure before any disciplinary action is taken.

**Human Resources** – are available to advise line managers and employees on all aspects of this policy. A member of human resources will be present at all formal meetings following the informal stage.

**Investigating Officer** – this is the individual identified by the Case Manager to undertake a disciplinary investigation and produce a report on their findings. It is the responsibility of Investigating Officers to carry out a full and fair investigation in accordance with this procedure. To act as Investigating Officer Handling Investigations training must be undertaken.

**Line Managers** – it is the responsibility of all line managers to ensure that their members of staff are aware of the required standard of conduct. Line managers also have responsibility to ensure that employees are supported in achieving the standards and that any breaches of these standards are addressed appropriately and in accordance with this procedure, where necessary.

**Senior Manager** – it is the responsibility of the appropriate senior manager (e.g. Operational Services Manager, Service Manager or equivalent) to give full consideration to any concerns or issues regarding any member of their staff's conduct, and to make the decision as to whether the disciplinary procedure would be appropriate.

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## 5. Definitions of Terms Used

**Procedure** – procedures are the practical ways in which policies are put into action.

**Informal action** - This is action taken to address concerns but which will not result in a disciplinary warning.

**Formal action** - This is action taken to address misconduct and which may result in a disciplinary warning or dismissal/alternative to dismissal.

**Exclusion** – is when an employee is temporarily not required to attend work to undertake their normal job role and duties following an incident which requires investigation through the formal disciplinary procedure. Exclusion of an employee is a precautionary measure and does not in itself constitute disciplinary action, or a presumption of guilt.

**Investigation** – is a process whereby all information relating to an incident or occurrence is compiled by the investigating officer and a report is created.

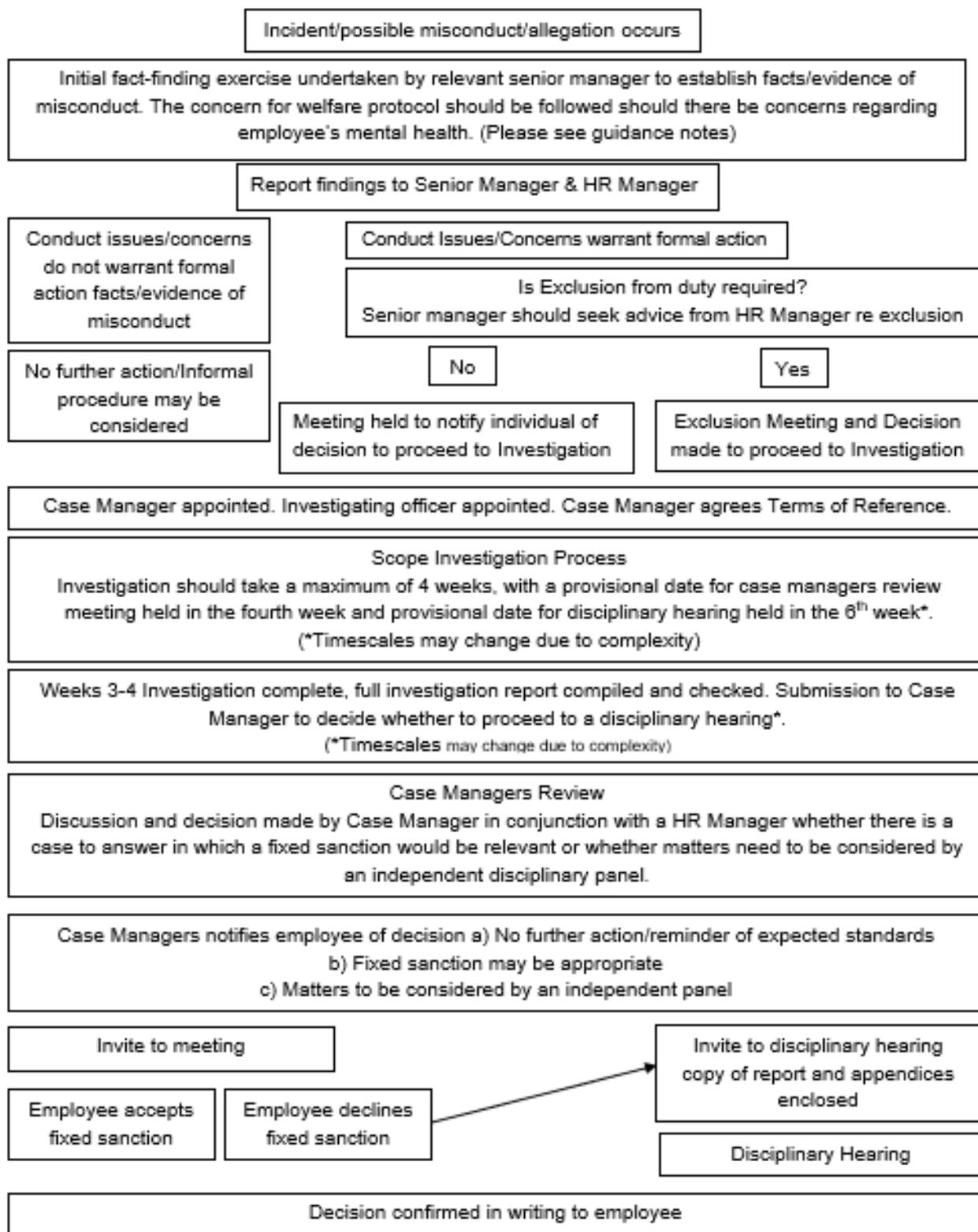
**Disciplinary hearing** – is a formal meeting which takes place upon completion of a full and fair investigation which may result in disciplinary action.

**Appeal hearing** – is a formal meeting which takes place upon an appeal made by an employee on receipt of disciplinary action.

**Disciplinary action** – includes various levels of formal warnings/sanctions issued to the employee under this policy.

## 6. Process

### Dealing with Conduct Issues – Flowchart



## 6.1 Informal Procedure

An informal procedure may often be a more appropriate method of resolving problems rather than instigating the formal disciplinary process as the need for improvements can be highlighted at an early stage. In many situations the right word, at the right time and in the right way may be all that is needed and will often be a more productive method of dealing with issues of discipline, rather than a formal process.

This is not formal disciplinary action. It should only be undertaken in relation to conduct below the standard required but which is not serious enough to justify formal procedural action.

Where the informal procedure is considered to be appropriate, the line manager will discuss the matter with the employee. The purpose will be to establish whether there are any problems with which the employee can be helped and to ensure that the employee is aware of the standards required.

The employee must be made aware of any improvement which is expected over a given period and that continued failure to meet the required standards may result in disciplinary action. The conversation should be constructive with emphasis placed on finding ways for the employee to improve. The informal procedure should be conducted in line with the guidance set out in the Guidance Notes for Managers which supports this policy.

Following the meeting, two copies of a letter or file note detailing the discussions and expectations for improvement outlined at the meeting, must be given to the employee. The employee should sign and return one copy of this document as an accurate account of the issues and this should be kept for reference purposes on the employee's personal file.

In circumstances where the employee refuses to sign the copy document, then they will be asked to give their reasons in writing. Both documents will then be held together on the employee's personal file. In some cases an action plan will be agreed to assist the employee in achieving the required improvement in conduct over a given period. If an action plan is developed the line manager will set a 2 month review period. The line manager will then meet with the employee after the period to review progress of the action plan.

If the line manager believes that the employee's conduct is such that formal disciplinary action should be considered, they should contact the Human Resources Department and their Senior Manager who will be able to give guidance and begin any appropriate investigation.

It will be necessary to conduct a fact finding exercise to establish whether or not there is any substance to an allegation of misconduct. This may involve preliminary discussions with employees as part of the normal remit of managerial duty.

In circumstances where HR is to be in attendance at the fact finding meeting, the employee will be given reasonable notice/opportunity to request and contact their Trade Union Representative or Companion to attend. However, should the Trade Union Representative or Companion be unavailable the fact finding meeting will go ahead. Please refer to the fact finding meeting pro forma in the guidance notes.

Where there are any concerns regarding the employee's mental health the concern for welfare protocol should be followed to ensure the situation is managed effectively and consistently. (Please see guidance notes for the concern of welfare protocol.)

The appropriate senior manager will designate an appropriate individual to conduct these preliminary enquiries. If the informal procedure is not applicable and it has been identified as a conduct issue a formal investigation will proceed. A case manager will be assigned to oversee the investigation (Please see guidance notes for roles and responsibilities of the Case Manager.)

No disciplinary action of any kind should be taken without a full and fair investigation of the facts and circumstances surrounding each case with professional advice being sought where appropriate.

## **6.2 Exclusion**

Exclusion of an employee is a precautionary measure and does not in itself constitute disciplinary action, or a presumption of guilt. Employees should normally have the opportunity to make an initial response before a decision to exclude is made.

In certain cases it may be necessary to exclude an employee immediately following an incident/complaint or after the preliminary discussion in order that an investigation can be carried out. In such cases the employee will be informed by the appropriate Senior Manager that, in the presence where possible of an HR Advisor or another manager, they are being excluded and be given the reasons for it.

It may not always be practicable for the employee who is a member of a Trade Union to be accompanied by a Trade Union representative at the time of exclusion, (i.e. night shift) however, wherever possible, a manager will make every effort to contact an appropriate local Trade Union Representative. Depending on the specific issue, there may be a number of reasons why exclusion from duty is necessary. Some examples include:

- To ensure the safety of patients or other members of employees who may be thought to be at risk because of the employee's alleged behaviour or actions.
- To avoid any investigation being compromised by the prospect of interference or intimidation.
- To protect the employee from feeling compromised or unjustly treated by others.

Senior Managers must consider carefully whether it is prudent to exclude an employee. Even where there appears to be a case to answer, an alternative to exclusion should be considered and discussed with a senior member of the Human Resources Department prior to a decision being made.

Alternative action/restrictions may include:

- Continuing to work under close supervision
- Temporary transfer to another area of work, location or job where reasonable
- Restricted/alternative duties

Where alternative action/restrictions are necessary, the employee will continue to receive full pay according to the duties to which they would have been rostered had they been at work, including enhancements etc.

The reasons for the exclusion must be confirmed to the employee in writing as soon as possible using a standard letter which is available in the Guidance Notes for Managers which supports this policy.

If a decision to exclude is taken out of office hours, the Manager on call will be responsible for the exclusion. This will take place following consultation with the General Manager/Director on-call. The Manager must then inform the Human Resources Department during the next available 'office hours' following the above decision to exclude.

Any employee excluded by the organisation must inform their manager of any other organisations with whom they undertake paid or unpaid duties. Depending upon nature of the alleged misconduct they should seek advice from their manager to continue to undertake such work whilst excluded.

As part of the exclusion process, the organisation may be required to notify any relevant professional bodies or external organisations of the relevant exclusion. In such cases advice should be sought from a senior member of the Human Resources Department or Professional Lead e.g. Director of Nursing.

Exclusion from work will be subject to the following conditions:

- Any employee who is excluded will receive full pay for the duration of the exclusion. They will be paid according to the duties to which they would have been rostered had they been at work, including enhancements etc. Employees excluded under the Professional Registration (PP09) Policy will be excluded without pay.
- Whilst excluded, an employee must remain contactable and must be available to attend for any investigatory/disciplinary interview or hearing during normal office hours unless there are specific circumstances which prevent this happening. Reasonable notice of investigatory meetings/disciplinary hearing needs to be given in order to allow for Trade Union representation.
- The alleged disciplinary matter should not be discussed with any work colleagues, other than their representative. Any breach of this may be prejudicial to the investigation and may be deemed as misconduct.
- Whilst excluded an employee must not visit any of the organisation's premises (other than for personal medical attention or for a pre-arranged appointment with a trade union representative or Occupational Health) or contact employees in relation to work unless specifically requested to do so.

These conditions will be contained within the exclusion letter and contravention of these terms may be regarded as misconduct.

Employees should be advised of support facilities available to them during their exclusion. For example the Occupational Health Department as well as the Chaplaincy Service may be able to provide support for employees during the period of exclusion.

If at any time after the employee has been excluded or alternative action/restrictions applied, the investigation shows that either the allegations are without foundation or that further investigation can continue with the employee working normally, the exclusion or restrictions should be lifted and the employee should be allowed to return to work as soon as practicable. Written confirmation of this decision should be provided to the employee concerned.

Any exclusion which lasts for 4 weeks or longer will be under regular review which may include contact meetings.

## 6.3 Formal Disciplinary Procedure

### 6.3.1 Investigation

In order to support the principles of fairness, the role of investigating officer, HR Support and disciplining managers must be kept entirely separate.

The person conducting the investigation, or who has been a witness to an alleged breach of conduct or performance, must also not act as the disciplining manager.

The investigation should take place immediately or as soon as possible after the alleged misconduct occurred.

The employee who has allegedly carried out the act of misconduct will be informed of the allegation in writing by the appropriate senior manager and must be interviewed to investigate the situation. They have the right to be accompanied by a companion during an investigation interview and would be advised on this in advance of the meeting.

Reasonable adjustment may be needed for a worker with a disability (and possibly for their companion if they are disabled). For example, the provision of a support worker or advocate with knowledge of the disability and its effects. It is not reasonable however, for an employee to be accompanied by someone whose presence could potentially prejudice the outcome of the hearing itself.

Copies of all relevant documentation, written evidence and witness statements to which the Investigating Officer or the employee (and their representative) wish to refer to should be provided, if available and appropriate at investigatory meetings.

The individual must be given the opportunity to provide a formal written statement recording the factual events or issues relating to the allegation. Wherever possible, statements should be taken at the investigatory meeting using the Statement pro forma (available in the Guidance Notes for Managers which supports this policy). A copy can be given to the employee at the end of the investigatory meeting or as soon as possible afterwards, if copying facilities are not available and a signature is required.

In exceptional circumstances it may not be possible for the employee involved to attend an investigatory meeting for example, the employee may be in police custody, on long term sick leave, on authorised preplanned annual leave, or fail to co-operate with the investigation or is otherwise non-contactable. If however, the delay is likely to be longer than 7 days from the proposed date of the investigatory meeting and following discussion with the Director of Human Resources and the appropriate companion or work colleague), it may be appropriate for the investigation to be progressed; the employee, will be given the opportunity to make representation either in writing, or through their companion or work colleague or both. The Occupational Health Department should be

approached for their advice or opinion as to whether the person is medically fit for the investigation.

Witness statements may be sought, if this is deemed relevant by the investigating officer, from other employees or patients directly involved in the alleged incident.

Evidence provided should be relevant to the investigation and any information which relates to patient information should be presented in an anonymised format. (Please refer to the Guidance Notes)

Once the investigation is completed, the investigating officer must arrange to present their findings in a report to the Case manager. The Case Manager will then decide with HR support whether it would be appropriate to issue a fixed sanction for the employee to consider or whether the case should be considered by an independent disciplinary panel.

If the Case manager considers that a fixed sanction would be appropriate, the employee will be notified without delay and the decision and reasons for such will be confirmed in writing.

If the case manager decides that matters need to be considered by an independent disciplinary panel, a copy of the investigating officer written report will be submitted to the disciplining manager. This report, which must include the employee's statement and any witness statements, will give a factual summary of the investigation. A template report is available (Please refer to the Guidance Notes).

If the decision is made by the Case Manager to progress to a disciplinary hearing, this will be arranged by the HR representative involved in the investigation stage in conjunction with the disciplining manager.

### *6.3.2 Allegations of Fraud/Criminal Action*

All allegations of fraud, bribery and or corruption must be reported immediately by the appropriate senior manager to the Local Counter Fraud Specialist or the Director of Finance who will oversee the arrangements for investigating the allegations of fraud.

The fraud/bribery investigation will take place independently of the internal disciplinary investigation. The organisation does not necessarily need to wait for the outcome of the fraud investigation before proceeding with disciplinary action. The Local Counter Fraud Specialist should liaise with a senior member of the Human Resources Department at all stages of the investigation, and will discuss and agree with the Director with responsibility for Human Resources and Director with responsibility for Finance whether a case of fraud should be referred to the police or any other body for investigation or action. Please refer to the Fraud Policy and Response Plan (PP 17).

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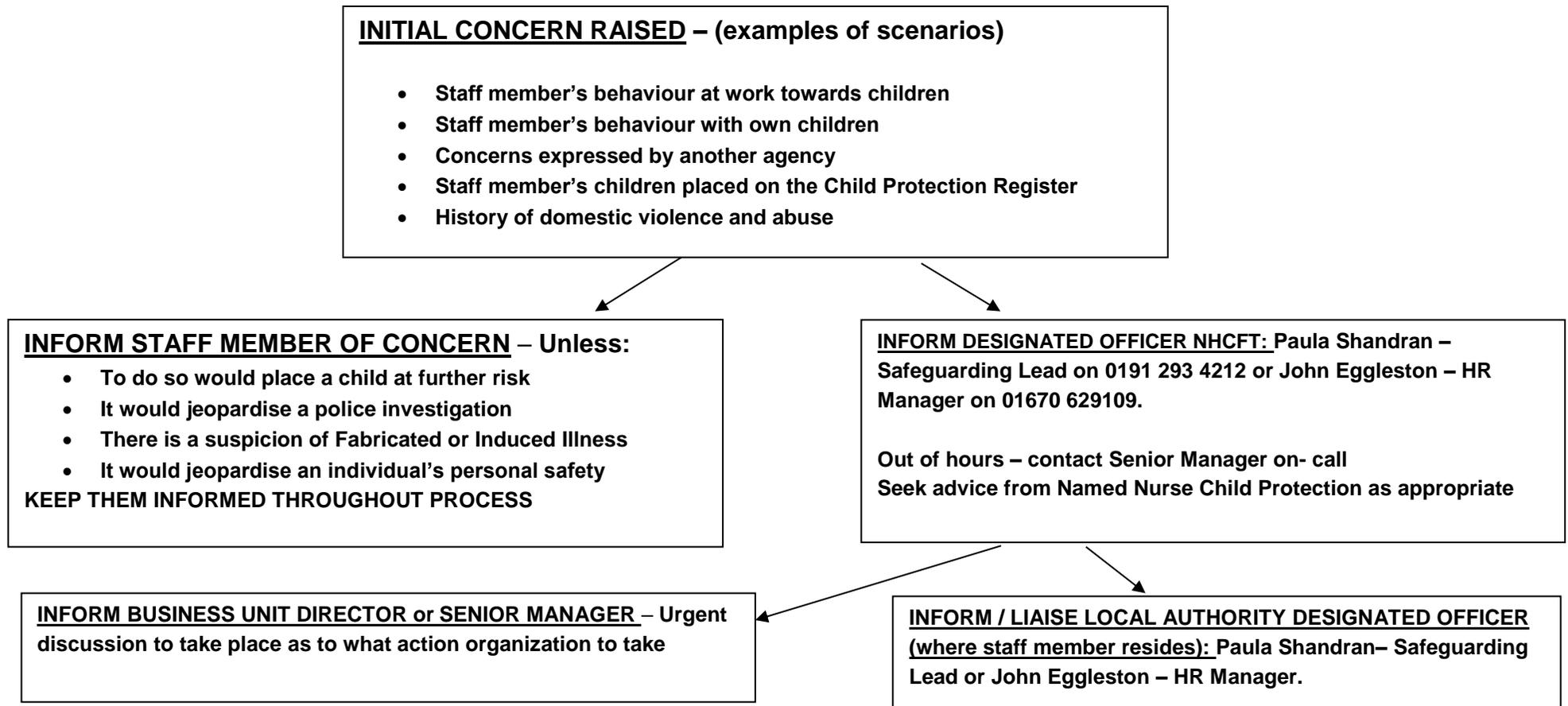
It may be necessary for the Investigating Officer to notify the police if they determine through their investigation that suspected criminal action has taken place. The investigation should only proceed in respect of those aspects of the case which are not directly related to any police investigation underway. The organisation must consult with the Police to establish whether an investigation into any other matters would impede their investigation.

The organisation will seek redress from the employees actions in cases where there is a financial loss arising from misconduct such as fraud or theft with the aim of recovering funds. Recovery of these losses should also consider investigation costs, requiring the use of criminal and civil law such as: Proceeds of Crime Act, Pension Seizure and Debtor Invoice.

### 6.3.3 Safeguarding Children and Adults – Dealing with Allegations against Other Employees

If, at any point, concerns are raised over an employee's behaviour towards children and/or vulnerable adults either at work or at home the concerns should be immediately addressed. The flowcharts included on the following pages gives guidance on appropriate actions to take in these situations, and further advice should be sought from Human Resources where necessary.

## Safeguarding Children Flowchart



If a concern is raised and is felt to relate to the abuse of a vulnerable adult then consideration of the Safeguarding Vulnerable Adults and adults at Risk Policy (CG 77) and process should be engaged alongside this procedure.

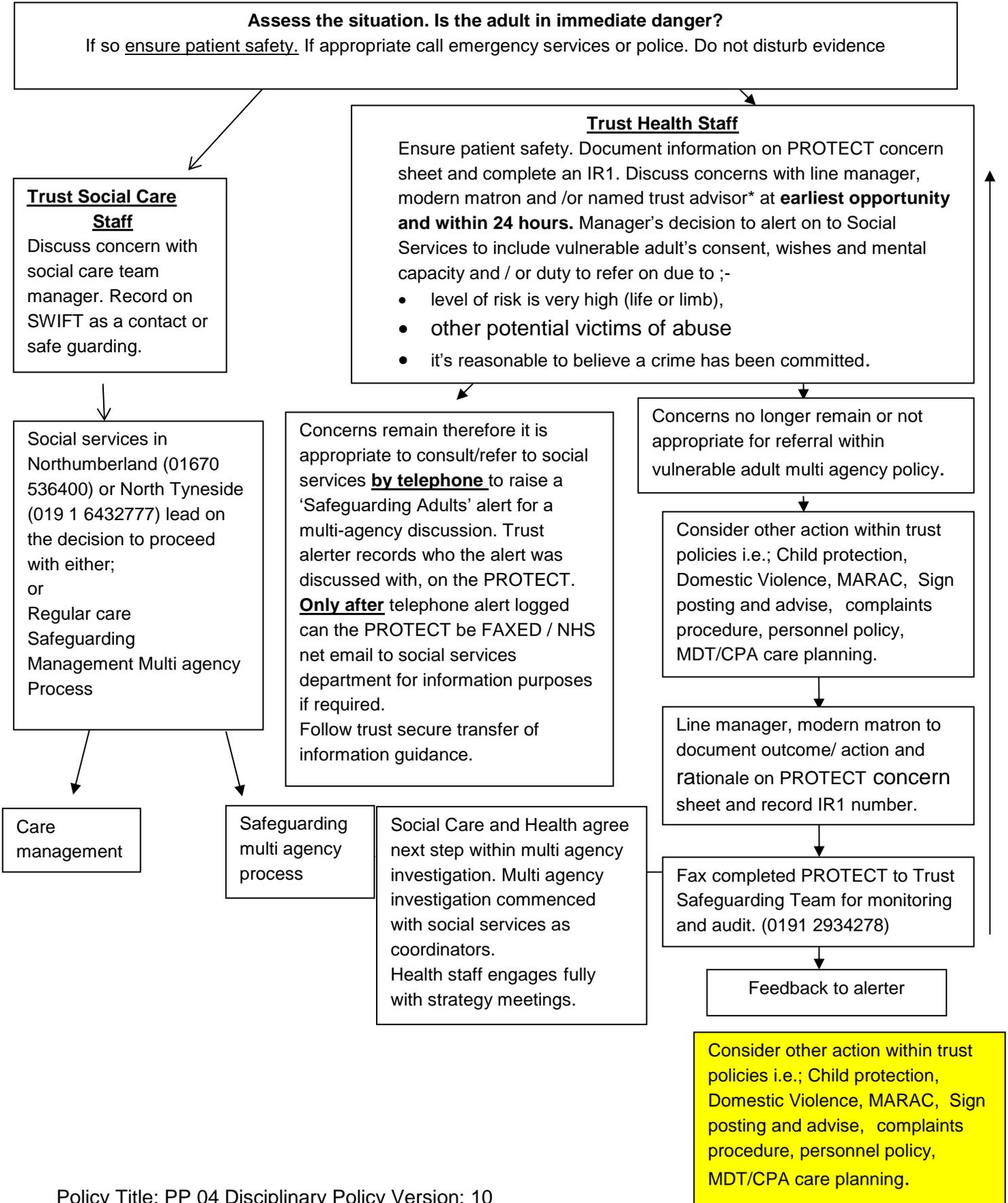
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# Safeguarding Vulnerable Adults at Risk Flowchart

Concern, suspicion or allegation of abuse of a vulnerable adult is suspected, disclosed or discovered.



Once the PROTECT Concern is completed and actioned, please ensure that it is placed on a confidential care record, not an end of bed pathway. Please record in the notes that a Safeguarding Adults alert has been made. Please forward a copy of the PROTECT for auditing purposes to the Trust Safeguarding Adults Team on Safe Haven Fax number: 0191 2934278

#### 6.3.4 *The Drug Matrix*

In cases where drug errors have been made, please refer to the Drug Matrix guidance in appendix 6 of this document. These guidelines have been produced to support employees and managers as to what actions and training should be given to all individual Healthcare Professionals when a drug incident, error or near miss has occurred. They are intended to ensure that all Healthcare Professionals are treated in a fair and equitable way using a single tool thus reducing the risk of subjective decision making and inconsistently applied outcomes.

#### 6.3.5 *Professional Registrations*

Please see Professional Registrations Policy PP 09.

Nurses and Midwives will need to submit a revalidation application online every three years to renew their registration with the Nursing and Midwifery Council.

In cases where there has been a lapse in registration and discussions have taken place as to whether exclusion is necessary in line with the Professional Registration Policy (PP09), a review panel should be set up to include the appropriate senior manager, HR, the individual and Companion if requested.

The panel will meet to consider the factors relating to the lapse of registration and will decide whether to apply a fixed sanction which is a first written warning. The panel reserves the right to move the case to be heard under this policy or alternatively the employee can opt out of the fixed sanction first written warning and ask for a full investigation to be undertaken.

#### 6.3.6 *Referral to Professional Bodies*

The Directors of Nursing will complete any referral to any regulatory/statutory professional bodies following the case being highlighted through the HR Manager. The Executive Director of Nursing will complete the referral in their absence. The Medical Director will complete any referral to the General Medical Council and/or NHS England.

For other professional bodies, such as the Health and Care Professionals Council and the General Pharmaceutical Council the Professional Lead will complete the referral.

### 6.3.7 *Salary Sacrifice*

Once an employee enters the formal disciplinary procedure they will not be able to purchase any new home electronics/lease cars/items under the Salary Sacrifice Scheme until the disciplinary process is concluded. Please see disciplinary guidance notes for form to complete.

### 6.3.8 *PREVENT*

PREVENT is 1 of the 4 elements of CONTEST, the government's counter-terrorism strategy. It aims to stop/identify people who are in danger of being radicalised to become terrorists or support terrorist behaviour. If you have concerns regarding a member of staff – e.g. in terms of their behaviour or views they are expressing you should relate your concerns to the Adult Safeguarding Lead or PREVENT HR Lead.

## 6.4 **Disciplinary Hearing**

Once the investigation is complete and the decision has been made to progress to a disciplinary hearing this will then be convened, notifying the employee concerned that this is related to the investigation which has taken place.

Only managers listed in Appendix 2 have the authority to take disciplinary action.

The employee concerned will be notified in writing of the specific complaint(s) against him or her and of the opportunity for preparing and stating a case.

The employee will be advised of their right to be accompanied, if so desired, by a companion, who is not involved in the issue to be addressed. They will be asked to confirm whether they intend to be accompanied, the capacity of the person concerned and of any witnesses they intend to call during the hearing.

The employee concerned should be given at least 7 days' notice in writing of the date and time set for the hearing. This timescale may be varied by mutual agreement of both parties. The timescale should enable the individual to discuss the matter with his/her representative and to have appropriate representation at the hearing if required. The disciplining manager should take into account the employee's circumstances to ensure the process is handled reasonably.

Copies of the investigation report and supporting documentation must be made available 7 days in advance of the disciplinary hearing. If any information is presented on the day of hearing, the disciplinary panel will determine whether it is appropriate to accept this information.

At the hearing, the disciplining manager must outline how the hearing is to be conducted (Appendix 3) and must ensure that the proceedings are undertaken impartially and confidentially.

A member of the Human Resources Department must be present at the disciplinary hearing and will provide advice to the disciplinary manager or panel on matters of procedure. The proceedings will be recorded by a HR Advisor. Managers should obtain the appropriate professional advice where professional conduct is an issue.

At the meeting the investigating officer must explain the findings of the investigation. The employee must be allowed to set out their case and answer any allegations that have been made. The employee and companion must also be given a reasonable opportunity to ask questions, present evidence and call relevant witnesses. They should also be given an opportunity to raise points about any information provided by witnesses. Where either party wish to call relevant witnesses they must give advance notice that they intend to do this.

The disciplining manager is required to consider and reflect on all of the evidence presented by both sides. The disciplining manager will take their decision on 'the balance of probabilities' and not on the basis of 'beyond reasonable doubt'.

Relevant information should be gathered prior to the hearing, however the hearing may be adjourned if it is found that further information is required.

#### *6.4.1 Non Attendance at Hearing*

Where, due to unavoidable circumstances, an employee or their companion is unable to attend, the hearing will be re-arranged. However in the event that the employee or their companion is unable to attend the re-arranged hearing it will go ahead and a decision will be taken in their absence. The decision to go ahead with the hearing or not will depend upon the reasons given by either the employee or the Trade Union representative acting on the employee's behalf.

If an employee does not attend the hearing and does not notify the panel that they are unable to attend, confirmation will be sought that the employee had received notification of the date of hearing.

The panel will also attempt to contact the employee and their representative, if known, to ascertain the circumstances of the non-attendance. If notification of the date of the hearing has been received by the employee and there is no known reason or the panel does not accept the reason for the absence as to why they have failed to attend then the hearing will proceed in absentia or with the representative participating with the authority of the employee involved.

In circumstances where the employee reports sick prior to, or on the day of the hearing, it may be appropriate to adjourn the hearing. Occupational Health advice may be sought if appropriate to determine the employee's fitness to attend a disciplinary hearing.

Alternatively, in exceptional circumstances where alleged misconduct requires prompt attention, the employee may agree to be represented by another colleague and his or her companion or be asked to submit his or her response in writing, which will be considered in absentia.

## **6.5 Disciplinary Action**

Examples of misconduct and the possible level of disciplinary action they may warrant are detailed in Appendix 1.

### *6.5.1 Verbal Warning*

The verbal warning should not be a casual passing word, it is a formal sanction and a record should be made in writing, sent to the individual and placed on the employee's personal file. The case manager may issue a verbal warning upon review of the prima facie information, or if the case should proceed to a disciplinary hearing, the disciplining managers may issue a verbal warning following a disciplinary hearing.

An explanation should be given in writing that the warning (template letters enclosed in guidance notes) will be entered on their personal file for a period of **6 months** and that future misconduct within this time could lead to further disciplinary action.

The employee has the right of appeal within 5 days of receipt of the verbal warning to the next level of authority within the organisation and advised that there will be no further appeal beyond this level.

### *6.5.2 First Written Warning*

In the event of (a) a repetition of similar minor acts of misconduct which are subject to a current verbal warning; or (b) the misconduct is of a more serious nature; a first written warning may be issued by the case manager or following a hearing by a disciplining manager/panel.

The employee will be sent a letter giving details of the misconduct which should include a warning that future misconduct may lead to further disciplinary action under this procedure. The first written warning will include:-

- A clear statement of the case against the employee.
- An explanation that the warning (template letters enclosed in guidance notes) will be entered on their personal file for a period of **12 months** and that future misconduct within this time could lead to further disciplinary action.
- An outline of the right of appeal within 5 days of receipt of the first written warning to the next level of Authority within the organisation and that there will be no further appeal beyond this level.

### 6.5.3 *Final Written Warning*

If there is a recurrence of misconduct of a similar nature following a current written warning or the misconduct is of a more serious nature, a final written warning should be given.

Following the case managers meeting or disciplinary hearing, the employee will be sent a letter giving details of the misconduct which should include a warning that future misconduct may lead to further disciplinary action under this procedure. The final written warning will include:-

- A clear statement of the case against the employee.
- An explanation that the warning will be entered on their personal file for a period of **24 months** and that future misconduct within this time could lead to dismissal.
- An outline of the right of appeal within 5 days of receipt of the final written warning to the Director of Human Resources & Organisational Development.

### 6.5.4 *Dismissal/Summary Dismissal (Dismissal without notice)*

If further misconduct has occurred, following a first or final written warning, the employee may be liable to dismissal. In cases of proven gross misconduct, the employee may be liable to summary dismissal.

Before a decision is taken as to whether to dismiss, the manager empowered to dismiss will ensure the allegations have been fully investigated, a hearing has been convened and the employee has been given an opportunity to state their case.

Following the disciplinary hearing the employee will be issued with a letter giving details of the events and facts leading to the dismissal and will include:-

- A clear statement of the case against the employee
- An outline of the right of appeal within 5 days of receipt of the dismissal to the Director of Human Resources & Organisational Development.

The Disciplining Manager should ensure that the employee receives the letter (i.e. recorded delivery post or hand delivery).

Only the Managers specified in Appendix 2 of this document have the authority to dismiss employees.

In cases of dismissal where notice is given the employee will either be given a period of paid notice or be given pay in lieu of notice.

In cases of summary dismissal no period of notice is payable and the employee shall be paid up to and including the date of the disciplinary hearing at which they were dismissed.

#### *6.5.5 Additional/Alternative Sanctions*

In certain cases the disciplining manager/panel may consider whether other sanctions may be warranted either in isolation of, or combined with any levels of the disciplinary action.

Some alternatives include:-

- Transfer to another post or work area in same band
- A permanent transfer to a post or area in a lower band
- Reduced or different responsibilities in same post
- Re-training and support in relation to the misconduct

Any specific conditions pertaining to the transfer offer must be specified in writing by the panel following the hearing. The individual will be expected to accept the full terms and conditions of the new appointment with no protection of any previous earnings.

Any alternative to dismissal would need to be agreed by the employee or the dismissal will take effect.

The employee must be sent a letter giving details of the reason for the transfer and that he or she has the right to appeal. (See 6.8)

In certain cases, such as where disciplinary action was as result of a grievance, mediation may be appropriate to help two or more people in dispute to attempt to reach an agreement. This maybe to rebuild relationships after a formal investigation has been completed. For more information please refer to the Dignity & Respect at Work Policy PP 10.

## **6.6 Fit and Proper Person Requirement**

From November 2014, in addition to the existing regulations, NHS bodies must meet and be guided by the fit and proper person requirement for directors. These regulations apply to all directors, including executive and non-executive directors. For further information please refer to the guidance for NHS bodies on the fit and proper person requirement for directors.

## **6.7 Spent Sanctions**

Confirmation of any disciplinary sanction will be issued in a letter to the employee who will be retained on the employee's personal file after expiry (template letter in guidance notes). Any spent sanction will not be referred to in future disciplinary investigations.

However, in exceptional circumstances after misconduct has been established a disciplining manager/panel may refer to spent sanctions when making a decision in relation to the level of warning/sanction to be given. It will only be in exceptional circumstances that a disciplining manager/panel can refer to a spent sanction and only if the previous sanction is for a similar offence.

Examples Include:

- When patient safety is compromised
- Adult/Children Safeguarding issues
- Threatening/Violent behaviour

It is expected that most "exceptional" circumstances will fall within the above categories.

If a case progresses to a hearing and the above spent sanction instructions are not adhered to (for example a spent sanction is referred to in the disciplinary investigation report and does not meet the requirements above) the hearing panel will be adjourned, the relevant information will be redacted and a new independent hearing panel will be convened.

It is for the disciplining manager/panel to decide on and reasonably justify the use of a spent sanction in any decision making process.

In any case when a disciplining manager is considering taking into account a spent sanction advice must be sought from the Human Resources department.

## 6.8 Appeals

The right to appeal against any formal disciplinary action is open to any employee regardless of length of service, whether full or part time, substantive or temporary, who is employed under a contract of employment who have been subject to formal disciplinary action. If an employee lodges an appeal against formal disciplinary action, the following timescales should be observed;

- The appeals panel should normally be convened within 4-6 weeks of receipt of the appeal.
- The hearing of the appeal normally to take place within 2 months of receipt of the appeal.

Appendix 4 summarises the right to appeal, the timescales and to whom.

An Appeal Panel will normally consist of one non-executive Director (Chair) and 2 Directors. The Appeal Panel will not include any member of the organisation who has been directly involved in the circumstances leading to the disciplinary action.

The role of the Appeal Panel is to determine whether the correct process was appropriately followed and whether the conclusion reached by the Disciplinary Panel was reasonable based on the facts known at the time. It is also an opportunity for the Appeals panel to remedy any decisions made by the original Disciplinary Panel. It should be noted that upon appeal the severity of the original disciplinary sanction can be increased or decreased.

The appellant will have the right of appearing personally before the Appeal Panel either alone or accompanied by a Trade Union representative or a work colleague not acting in a professional capacity.

Both parties to the appeal will be required to submit written statements of case to the PA for Director of Human Resources & Organisational Development 10 days prior to the date scheduled for the appeal. An exchange of these written statements will take place 7 days prior to the date scheduled for the appeal.

Witnesses for either party may be called to support the case. The responsibility for arranging the attendance of witnesses ultimately rests with the party concerned. On occasions where release proves difficult the Human Resources Department should be consulted. The procedure to be followed at appeal hearings can be found at Appendix 5.

Where, due to unavoidable circumstances, an employee or their companion is unable to attend, the appeal hearing will be re-arranged. The decision to rearrange will depend upon the reasons given by either the employee or the Trade Union representative acting

on the employee's behalf. In the event that the employee or their companion is unable to attend the re-arranged hearing it will go ahead and a decision will be taken in their absence.

If an employee does not attend the hearing and does not notify the appeal panel that they are unable to attend, confirmation will be sought that the employee had received notification of the date of hearing. The panel will also attempt to contact the employee and their representative, if known, to ascertain the circumstances of the non-attendance. If notification of the date of the hearing has been received by the employee and there is no known reason or the panel does not accept the reason for the absence as to why they have failed to attend then the hearing will proceed in absentia or with the representative participating with the authority of the employee involved.

## **6.9 Keeping Written Records**

Written records should be kept for all disciplinary or grievance cases and be treated as confidential in accordance with the DPA 18 (GDPR)

Records should include:

- The complaint against the employee
- The employee's defense
- Findings made and actions taken
- Whether an appeal was lodged
- The outcome of the appeal
- Any grievances raised during the disciplinary procedure, and
- Subsequent developments
- Notes of any formal meetings

Records of disciplinary and grievance cases must be kept for a period of 10 years in accordance with Disposal and Retention Standards. Ensure all identifiable data for patients is anonymised.

## **6.10 Criminal Offences Outside Employment**

An employee may not be dismissed solely because a police investigation is taking place or because criminal charges are pending or have been made, or because the employee is temporarily absent through being remanded in custody pending trial.

If it becomes known to the organisation that an employee is under police investigation or may be prosecuted by the police for an offence outside employment, the decision whether or not to exclude from duty pending internal investigation and/or a Court Case

will depend on the nature of the alleged offence and other facts associated with each particular case.

In such cases therefore, no general rules can be applied except that the manager concerned should discuss the situation with a senior member of the Human Resources department who will take legal advice if necessary.

The fact of an employee's conviction for an offence outside of work is not of itself a reason for disciplinary action. In considering such cases management have to consider whether the conduct leading to the criminal conviction justifies dismissal for gross misconduct because it is such as to destroy the basis of confidence which must exist in relationships between the organisation and the employee concerned, or between the employee and other employees or relationships affecting patients or the public at large.

Disciplinary action under this Policy may be taken if any misconduct in relation to an alleged criminal offence is established to the satisfaction of the Case Manager whether or not there is also a criminal prosecution.

The Appeal Procedure will apply in the normal way.

#### **6.11 Arrests/Charges Connected with a Criminal Offence**

Once employed by the organisation it is the responsibility of all employees to notify their Line Manager as soon as is practical after being arrested/charged/cautioned with any criminal offence in line with the employees contract of employment (except minor motoring offences such as parking fines). Failure to do so will result in the matter being dealt with in accordance with this procedure.

The circumstances of the case will be investigated in line with this policy and consideration will be given as to whether the offence has any relevance to the duties of the individual and whether it will affect their continued performance at work. Other factors to be considered will include the effect of the offence on the reputation of the Organisation, the risk to patients and the provision of health care services to the general public.

The Organisation will under normal circumstances report any act of misconduct suspected of being a criminal act to the Police. This may result in the investigation only proceeding in respect of those issues not directly related to any subsequent police investigation.

## **6.12 Contacting the Police or HSE after a Safety Incident at Work**

All incidents at work should be reported to the Head of Occupational Health who will ensure a RIDDOR report is completed where necessary. Stephen Thompson, Head of Support Services, should also be informed of any incidents which occur at work. There will be occasions when the organisation will need to refer matters to the police; and consideration must be given as to whether a safety incident should be reported to the police and/or Health and Safety Executive (HSE). In these circumstances, it is best practice to make early contact with the police and/or HSE to discuss concerns and to take their advice on further action. When such an incident occurs, the manager on duty must contact the organisation's Risk Manager or, if out of hours, the Senior Manager on call who will take the decision on how to act. Human Resources must be contacted as soon as possible.

## **6.13 Disciplinary Investigations and Recognised Major Incidents**

In cases where a recognised Major Incident such as a flu pandemic (as confirmed by the Department of Health) which affects what is considered to be a significant proportion of the workforce, any disciplinary investigation which is unlikely to be deemed as Gross Misconduct will be placed on hold. The decision to put disciplinary investigations on hold and to re-instate at an appropriate time will be at the discretion of the Executive Director of Human Resources and Organisational Development.

The Human Resources Department will inform the employee of the decision to hold the disciplinary investigation and, at the appropriate time, will advise them when the process will be reinstated.

## **6.14 Employees Resigning from Employment**

Where an employee voluntarily resigns from their post and leaves the organisation before a disciplinary matter is concluded, the organisation, in light of its public responsibilities, reserves the right to proceed with the process; reaching a decision in the absence of the individual should they choose not to attend the subsequent hearing in person.

The organisation also reserves the right to report the matter to the relevant professional/regulatory body (e.g. NMC, GMC, DBS) if appropriate or issue an Alert Letter.

In such situations the individual who has not been present at their hearing will be notified of the organisation's decision in writing, and made aware of any follow up action such as the reporting to the relevant professional body.

## 6.15 Employees Raising a Grievance during a Disciplinary Process

Where an employee raises a grievance during the disciplinary process the disciplinary process may be temporarily suspended in order to deal with the grievance. Where the grievance and disciplinary cases are related, it may be appropriate to deal with both issues concurrently.

For example when:

- The grievance relates to a conflict of interest that any person involved in the handling of the disciplinary process is alleged to have
- Bias is alleged in the conduct of the process
- Management has been selective in the evidence supplied during the process
- There is possible discrimination

## 7. Training and Support

The Human Resources Department will provide investigation training for managers required to conduct investigations. Support will be available from the Human Resources Department in the implementation of this policy.

## 8. Process for Monitoring and Audit

Monitoring/audit arrangements	Methodology	Reporting		
		Source	Committee	Frequency
Application of the disciplinary policy				
Monitoring	The application of the policy will be recorded on the incident report spreadsheet and cases reviewed every month at Workforce Committee.	HR Advisors/HR Managers	Workforce Committee	Monthly

## 9. References

- Department of Health (2006) In support of the Memorandum of Understanding Investigating patient safety incidents involving unexpected death or serious untoward harm: a protocol for liaison and effective communications between the National Health Service, Association of Chief Police Officers and the Health & Safety Executive
- ACAS: Code of Practice Discipline and grievances at work.
- Care Quality Commission: Guidance for NHS bodies on the fit and proper person requirement for directors and the duty of candour

## 10. Associated Documentation

- CG 29 Safeguarding and Promoting the Welfare of Children and Young People Policy
- CG 77 Safeguarding Adults Policy
- PP 09 Professional Registration Policy
- PP 10 Dignity and Respect at Work Policy
- PP 11 Whistle Blowing Policy
- PP 17 Fraud Policy and Response Plan
- PP 29 Staff Development and Review Policy
- PP 42 Employee Records
- PP 45 Conduct Capability Ill Health and Appeals Policies and Procedures for Practitioners
- PP 58 Pay Progression Policy
- RMP 47 Fundraising Policy
- Guidance for Managers and Template Documents – Dealing with Conduct Issues
- Guidance for Counter fraud guidance on investigations

## **Appendix 1 - Categories of Misconduct - Examples**

This appendix gives examples of misconduct which the organization considers to be sufficiently serious as to warrant disciplinary action. However, it must be noted that the following lists are purely illustrative and not exhaustive since employment will also be governed by local workplace rules, practices and procedures. Furthermore, these examples will not restrict the right of the organisation, or any of its authorised officers, to determine what disciplinary action is appropriate in light of the circumstances of each individual case.

Employees are responsible for reading and observing the rules and procedures applicable to their particular employment.

For the sake of brevity every type of misconduct referred to below is not necessarily repeated in every section. A particular type of misconduct, e.g. dishonesty, can be regarded as gross, serious or minor depending on the degree of seriousness of the particular offence.

### **MINOR MISCONDUCT**

The following are examples of misdemeanor which may be regarded, in respect of a first offence, as minor misconduct which will normally warrant a verbal warning.

- Poor timekeeping
- Private trading on premises without permission - whether or not for personal profit
- Unauthorised use of stationery or equipment
- Inappropriate and unreasonable presence on premises
- Breach of no smoking policies

### **SERIOUS MISCONDUCT**

The following are examples of serious misconduct which may usually warrant the issue of a first written warning or final written warning for a first offence

- Unauthorised absence
- Abuse or misuse of Study Leave provision
- Abuse or misuse of sickness pay/leave provisions
- Unauthorised collections on property (e.g. collections for charity) please refer to RMP 47 Fundraising Policy.
- Unauthorised disclosure of personal details or circumstances of a member of staff acquired during the course of, or for the purposes of employment
- Participating in other employment, paid or not, or the carrying out of any other trade or business or profession which is prejudicial to, or adversely affects, employment with the authority
- Deliberately not meeting the expected standards of the job role.
- Misuse or abuse of facilities or time off provisions

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- Threatening or provoking assault
- Failure to report incidents which could lead to patient harm
- Failure to declare a caution, arrest or a summons on a criminal charge.

## **GROSS MISCONDUCT**

The following are examples of gross misconduct, which may well warrant summary dismissal, even for a first offence.

- Breach of patient confidentiality
- Ill treatment, abuse, or mishandling of patients
- Fighting on premises or whilst on duty
- Discrimination, harassment or bullying (for example; racism, homophobia and transphobia)
- Victimisation, i.e. due to whistleblowing
- Committing assault whilst on premises or on duty
- Being unfit for duty through the use of alcohol or the misuse of drugs or solvents
- Consuming alcohol or recreational drugs whilst on duty
- Malicious or reckless damage to property, or the property of others, whilst on duty
- Gross insubordination (e.g. the persistent use of offensive language)
- Gross negligence
- Refusal to carry out a lawful instruction of a more senior officer
- Theft
- Fraud
- Bribery
- Serious non-compliance with policies and procedures
- Making covert recordings
- False claims for time off under the policies and procedures, i.e. parental leave, study leave, special leave
- Deliberately accessing internet sites containing pornographic, offensive or obscene material or the distribution of such material.
- Abuse or misuse of the e-mail system by receiving and sending pornographic, offensive or obscene material
- A serious breach of confidence
- Deliberate breach of Health and Safety rules and/or statutory regulations regarding Health and Safety
- Bringing the organisation into serious disrepute
- Failure to declare criminal record/arrest/criminal charges
- Working without valid entitlement to work in the UK
- Breach of safeguarding standards

## Appendix 2 - Managers with the Authority to Undertake Disciplinary Action

Authority to undertake disciplinary action at the disciplinary hearing up to and including dismissal is with the following:

- Chairman
- Chief Executive
- Medical Directors
- Director of Human Resources & Organisational Development
- Executive Directors
- Directors
- Business Unit Directors
- Clinical Directors
- Deputy Directors/Associate Directors
- General Managers/Heads of Service

However, the authority may be delegated to an appropriate Senior Manager (*please see guidance notes for template letter available on the intranet/extranet*)

### **Appendix 3 - Procedure at Disciplinary Hearing**

At the Disciplinary Hearing the following procedure shall be observed:-

1. The Disciplining Manager will introduce those present and ensure that the employee has a full understanding of the allegations against them and of the potential outcomes.
2. The Investigating Officer shall present the facts established during the investigation without interruption subject to point of order and call any witnesses.
3. The Disciplinary Panel and the employee or his/her representative shall be entitled to question the investigating officer and/or witnesses called.
4. The employee or his/her representative shall state their case without interruption subject to point of order and call any witnesses.
5. The Disciplinary Panel shall be entitled to question the employee and/or witnesses called.
6. The Investigating Officer shall be entitled to question the employee and/or witnesses called where there are discrepancies between information gained during the investigation and presented at the hearing.
7. The Investigating Officer will be given an opportunity to summarise the case.
8. The employee or his/her representative will be given an opportunity to summarise their case.
9. The Disciplinary Panel may, at their discretion, adjourn in order that further evidence may be obtained.
10. The Disciplinary Panel shall consider their decision in private and will then communicate this to the employee and his/her representative immediately, if this is not possible the decision will be communicated in writing.

## Appendix 4 - Summary of Warnings/Appeals

<b>Warning</b>	<b>Length of time remains live</b>	<b>Timescale for appeal</b>	<b>Appeal to whom</b>
Verbal Warning	6 months	5 days from receipt of written confirmation of warning	Next level of authority from disciplining manager
First Written Warning	12 months	5 days from receipt of written confirmation of warning	Next level of authority from disciplining manager
Final Written Warning	24 months	5 days from receipt of written confirmation of warning	Executive Director of Human Resources & Organisational Development
Dismissal/Summary Dismissal	N/A	5 days from receipt of written confirmation of dismissal	Executive Director of Human Resources & Organisational Development

## **Appendix 5 - Procedure at Appeal Hearing**

At the hearing of an appeal before an Appeal Panel, the following procedure shall be observed:-

1. The Chair of the panel will introduce all parties and confirm the reason for the appeal.
2. The appellant or his/her representative shall state their case and call any witnesses.
3. Members of the Appeal Panel and the management representative shall be entitled to question the appellant and/or witnesses called.
4. The appellant or his/her representative may re-examine their witnesses on any matters referred to in their questioning by members of the Appeal Panel or the management representative.
5. The management representative shall state their case and call any witnesses.
6. Members of the Appeal Panel and the appellant or his/her representative shall be entitled to question management representative and/or witnesses called.
7. The management representative may re-examine their witnesses on any matters referred to in their questioning by members of the Appeal Panel or appellant or his/her representative.
8. The appellant or his/her representative shall be entitled to reply to the management case.
9. Nothing in this procedure, however, shall prevent the members of the Appeal Panel from inviting either party to elucidate or amplify any statements they may have made; or from asking such questions as may be necessary to ascertain further information.
10. The Appeal Panel may, at their discretion, adjourn an appeal in order that further evidence may be produced by either party.
11. The Appeal Panel shall consider their decision in private and will then communicate this to both parties either immediately or within 5 working days of the Appeal Hearing in writing.

## Appendix 6 - Scoring Matrix for Drug Incidents/Errors and Near Misses

### GUIDELINES FOR MANAGERS AND EMPLOYEES

These guidelines have been produced to support employees and managers as to what actions and training should be given to individual Healthcare Professionals when a drug incident, error or near miss has occurred. They are intended to ensure that all Healthcare Professionals are treated in a fair and equitable way using a single tool thus reducing the risk of subjective decision making and inconsistently applied outcomes.

A points system has been developed whereby points are accumulated from Sections 1 - 4 on the scoring sheet. In section 5 headed "Mitigation" – the points should be subtracted from the figure that you arrive at.

It is important that all discussions with employees are documented and placed on the personal file.

Published evidence shows that errors/near misses involving medicines do occur with surprising frequency (EQUIP study 2009). On each occasion that an error occurs, the line manager should review all the facts to determine what action is appropriate for the individual(s) involved. This is a judgement based on assessment of a number of things including human factors, working environment, mitigating circumstances, whether the employee is a trainee, level of experience, assessment of attitude/behaviours and whether this has been reported as an issue previously and at what level.

Action may include reflection as part of a formative development process, retraining/competency assessment and/or action using the Disciplinary Policy PP04.

#### **Guidance for completing Matrix**

The following guidance should be used when completing the matrix for the first time, and as a reference point for future incident investigation.

**Section 1** – The majority of incidents reported are categorised as either prescribing, or administration; however there are other areas of the medicine journey where incidents can occur e.g., Storage, monitoring, dispensing (Pharmacy). If the incident is not a prescribing or administration error, then the 'other' section should be used, along with a description, of the stage in the process the error occurred. Please note that should a prescribing error lead to a medicine being administered by a nurse incorrectly, then the score for this section would still be 4. The nurse would score 4 for administration, and the prescriber would score 4 for their part in the error, which will be dealt with in an additional matrix form completed by their manager.

**Section 2** – Which medicine was involved in the incident, High risk medicines score 5 and all other medicines score 1. A list of which medicines are classed as high risk for the purposes of

this matrix can be found within the drug matrix and on the Safer Medication Practice page of the Pharmacy intranet page.

**Section 3** – Which route the medicine was administered via, for an incident where a medicine was administered via the incorrect route, the score should be calculated using the route actually used, e.g. Medicine administered IV instead of oral would score 2.

**Section 4** - Recognition of error, did the person involved in the incident spot the error themselves (score 0) or was it someone else (score 2)

**Section 5** – Any mitigation that could be used. If the correct action was taken at the time of the incident by the staff member involved a score of -2 is applied. Other circumstances could be staffing levels, distracted, busy working environment or any factors which could have led to a lapse of concentration, these would also score -2, and the validity of any environmental factors must be confirmed by the manager completing the matrix form.

Once sections 1-5 have been completed the scores for each should be placed in the total score column and an overall score calculated. This will identify which level the incident falls into.

#### **Level 1:**

A score of 9 or below indicates the error made is deemed a low level risk to the patient.

For all employees this will be dealt with by their line manager; for junior doctors and middle grades this will be dealt with by the consultant and for other health care professionals this will be dealt with by their line manager. For consultants this will be dealt with by the Medical Director. Escalate to a senior manager if this is the employee's second error.

In all cases the individual should be given an opportunity to reflect on the actions which led to the error they have made as part of formative development. It may be deemed appropriate for an individual to undertake retraining and/or be competency assessed. In all cases a record should be made in the individual's personal file/training record.

If the manager remains concerned about an individual e.g. further reported error despite reflection, training and consideration of mitigating circumstances, then it may be appropriate for the error to be dealt with under the Disciplinary Policy PP04 with a formal investigation being carried out.

Note: Progression through to the disciplinary process is not automatic and the circumstances of each error should be considered on their own merit.

## Level 2:

A score of 10 or above indicates that the error has been deemed as a greater risk to the patient. The incident will be referred to:-

- Nursing/Midwifery Staff - Modern Matron/Cluster Co- coordinator/Supervisor/Operational Services Manager
- Junior Doctors –Medical Director/Consultant/Educational Supervisor
- Consultants/Other Health Care Professionals - Clinical Director/Head of Service/Medical Director.
- Pharmacists – Clinical Director of Medicines Management

The actions as stated under Level 1 still apply.

It may be more likely that repeated Level 2 errors would be deemed as misconduct and dealt with under the Disciplinary Policy PP04 with a formal investigation being carried out. However, as with Level 1 errors, progression through to the disciplinary process is not automatic and the circumstances of each incident will be considered on their own merit.

### Failure to Report

If the person making an error has knowledge of it and fails to report it this will be referred to the relevant manager for appropriate action to be taken under the Disciplinary Policy (PP04)

### Exclusion from duty

Depending on circumstances (e.g. to protect patients from further harm) it may be determined as necessary to exclude staff from duty. This should be fairly exceptional but may be appropriate at any Level depending on circumstances.

### For Nursing/Midwifery staff

Where competency/conduct has been identified as the cause of error, employees should be suspended from medicine administration until retraining is complete. This should take no longer than one month to complete. Or if they have entered the disciplinary policy they will refrain from giving drugs until the investigation is complete or a senior manager deems the individual safe to continue to administer medicines.

Exclusion from duty altogether may be applicable for certain employees if they have the responsibility of advising junior employees on medicine administration, even if they are not carrying it out themselves. This will be decided once entering the disciplinary policy PP04 by the investigating manager and will also depend on the level of error.

If the employee is on night duty it is at the discretion of the manager whether they should be brought onto days immediately in order to complete the training necessary.

### Exclusions for Medical Staff / Pharmacy Staff/Other Healthcare Professionals

This would be managed by:

The Medical Director in the case of Consultants

Educational Supervisor/Clinical Director/Medical director in the case of non-consultant doctors

Consultant /Educational Supervisor in the case of junior doctors

This would be managed by the Head of Service in the case of Pharmacy staff and other Healthcare Professionals.

### **A combination of errors**

It may be that an employee makes an error, has received re-training and then within a 12 month period makes another error. In this case it is the organisation's view that the employee has had the opportunity after the first error to become competent again and therefore may be considered misconduct which requires further investigation in line with the disciplinary policy, the line manager should seek advice from an HR representative. If 12 months or more has elapsed since the initial error the employee will normally return to the beginning of the process unless other circumstances apply Factors contributing to the errors made will be taken into account.

Confirmation of any disciplinary sanction will be issued in a letter to the employee which will be retained on the employee's personal file after expiry (template letter in guidance notes). Any spent sanction will not be referred to in future disciplinary investigations. However in exceptional circumstances after misconduct has been established a disciplinary panel may refer to spent sanctions when making a decision in relation to the level of warning/sanction to be given. It will only be in exceptional circumstances that a disciplinary panel can refer to a spent sanction and only if the previous sanction is for a similar offence.

It is for the disciplinary panel to decide on and reasonably justify the use of a spent sanction in any decision making process.

In any case when a disciplining manager is considering taking into account a spent sanction advice must be sought from the Human Resources department.

## **Guidance concerning disciplinary procedures**

**Seriousness of the error** – This is an important factor and should be taken into account by the disciplinary panel. It should not be assumed that an error is the same in all cases and the panel will consider this when making a decision on the sanction applicable.

Most drug incidents do not have serious consequences for the patient and can initially be dealt with via competency training. However, if sufficient training has been given and other errors occur they should be dealt with as misconduct and a formal investigation carried out under the Disciplinary Policy (PP04).

The Staff Development and Review Policy will not be used solely for Drug Errors.

If you are a prescriber and your error has been treated as a competency based error you may want to refer to the [guidance](#) (please click on the link)

# Medication Error Reporting Form (IR2)

NHS Number:.....  
Trust Number:.....  
Surname: .....  
Forename:.....

**Part 1 Details of Error**

**Part 1 Details of Error**

Ward:  
  
Site:  
  
Reported by:  
  
Position:  
  
IR1 Number:  
  
Datix Number:

Drug(s) Involved	Explanation of rationale for any mitigation	Total score (using Matrix)	Level

**Part 2 Details of Staff Involved**

Name	Position/Grade (including medical staff)

**Part 3 Details of discussion with staff member**

Name of Investigator/Grade:  Details:
---

**Part 4 Recommendations/action plan (with time scales for completion)**

Patient/relative informed? (Circle appropriate response) <b>Yes / No</b>
--

**Signed (Investigator):**

**Date:**

**Signed (Staff member):**

**Date:**

**Part 5 Any follow up by matron/supervisor/operational service manager, consultant/educational supervisor/head of services**

**Comments;**

**Yes / No**

<b>Action Plan &amp; Time scales</b>
--------------------------------------

**Signed (Manager):**

**Date:**

**Signed (Staff Member):**

**Date:**

**Staff Member's Statement**

**Name:**

**Position/Grade:**

Summary of incident:

Any other relevant information:

Any further Actions Agreed:

**Signed (Staff member):** \_\_\_\_\_ **Date:** \_\_\_\_\_

**Datix Reference Number:**

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<b>Section 1: Type of Incident</b>			
<b>Prescribing Error</b> e.g. Incorrect Drug Incorrect Dose Known Allergy Incorrectly Written/Illegible	<b>Administration Error</b> e.g. Incorrect Drug Incorrect Dose Incorrect Route Known Allergy Omission Not Prescribed	<b>Other</b> Please Comment:	
<b>4</b>	<b>4</b>	<b>4</b>	<b>Total Score:</b>
<b>Section 2: Drug</b>			
<b>High Risk Prescribed Medicine</b> (See below for guidance) Insulin Anticoagulant/Thrombolytics Opioid Analgesics Concentrated Potassium Solution Injectable Sedatives Cytotoxic Medication		<b>Any other medicine</b>  Disease modifying Antirheumatic drugs Drugs used in Parkinson's Antibiotics Lithium Theophylline Immunosuppressant's Clozapine	
<b>What was it?</b>			
<b>5</b>		<b>1</b>	<b>Total Score:</b>
<b>Section 3: Route</b>			
IV/IM/Parental/Sub-Cutaneous	Oral/Sublingual Rectal NG/PEG Topical Creams/Lotions	<b>Other</b> Please Comment:	
<b>2</b>	<b>1</b>	<b>1</b>	<b>Total Score:</b>
<b>Section 4: Recognition of Error</b>			
Self	Other		
<b>0</b>	<b>2</b>		<b>Total Score:</b>
<b>Section 5: Mitigation</b>			
Correct Action Taken	Other Circumstances (Please Detail)		
<b>-2</b>	<b>-2</b>		<b>Total Score:</b>
<b>Total Overall Score (Combined score of sections 1-5): _____</b>			
(Please circle appropriate level below)			
<b>Level 1</b> <b>(9 or below)</b>		<b>Level 2</b> <b>(10 or above)</b>	

Manager Name:

Manager Signature:

Date:

Employee Name:

Employee Signature: \_

Date:

## Appendix 7 - Equality Impact Assessment (EIA)

***To be completed for all key policies. Cite specific data and consultation evidence wherever possible.***

### ***Duties which need to be considered:***

- Eliminate unlawful discrimination, harassment and victimisation and other conduct prohibited by the Act
- Advance equality of opportunity between people who share a protected characteristic and those who do not
- Foster good relations between people who share a protected characteristic and those who do not

### **PART 1 – Overview**

Date of equality impact assessment:

August 2019

Name(s) and role(s) of staff completing the assessment:

Claire Hope – HR Advisor Specialist

Overall, what are the outcomes of the policy?

To ensure that staff affected by disciplinary procedures are informed and treated in a fair and consistent manner and investigations and disciplinary outcomes are adhered to in accordance to the requirements of the organisation.

## PART 2 – Relevance to different Protected Characteristics

Answer these questions both in relation to people who use services and employees as appropriate

Protected Characteristic	Does this characteristic have specific relevance to this policy?	If No –	If Yes –						
		Please state why:	What do you know about usage of the services affected by this policy by people in this protected group, about their experiences of it, and about any current barriers to access?	Could people in this protected group be disproportionately advantaged or disadvantaged by the policy?	Could the policy affect the ability of people in this protected group participate in public life? (e.g. by affecting their ability to go to meetings, take up public appointments etc.)	Could the policy affect public attitudes towards people in this protected group? (e.g. by increasing or reducing their presence in the community)	Could the policy, change make it more or less likely that people in this protected group will be at risk of harassment or victimisation?	If there are risks that people in this protected group could be disproportionately disadvantaged by the policy are there reasonable steps or adjustments that could be taken to reduce these risks?	Are there opportunities to create positive impacts for people in this protected group linked to this policy?
<b>Disability</b> <i>Note: “disabled people” includes people with physical, learning and sensory disabilities, people with a long-term illness, and people with mental health problems.</i>	No	No specific impacts identified							
<b>Sex</b> <i>Note: all policies should be gender neutral and use pronouns such as them, their and they, not he/she; her/him</i>	No	No specific impacts identified							
<b>Age</b>	No	No specific impacts identified							

Policy Title: PP 04 Disciplinary Policy Version: 10

Policy Author: Claire Hope

Created: December 2020 Disposal date: December 2045

Protected Characteristic	Does this characteristic have specific relevance to this policy?	If No –	If Yes –						
		Please state why:	What do you know about usage of the services affected by this policy by people in this protected group, about their experiences of it, and about any current barriers to access?	Could people in this protected group be disproportionately advantaged or disadvantaged by the policy?	Could the policy affect the ability of people in this protected group participate in public life? (e.g. by affecting their ability to go to meetings, take up public appointments etc.)	Could the policy affect public attitudes towards people in this protected group? (e.g. by increasing or reducing their presence in the community)	Could the policy, change make it more or less likely that people in this protected group will be at risk of harassment or victimisation?	If there are risks that people in this protected group could be disproportionately disadvantaged by the policy are there reasonable steps or adjustments that could be taken to reduce these risks?	Are there opportunities to create positive impacts for people in this protected group linked to this policy?
<b>Race</b> <i>Note: For the purposes of the Act 'race' includes colour, nationality and ethnic or national origins.</i>	No	No specific impacts identified							
<b>Religion or belief</b> <i>Note: In the Equality Act, religion includes any religion. It also includes a lack of religion. Belief means any religious or philosophical belief or a lack of such belief.</i>	No	No specific impacts identified							
<b>Sexual Orientation</b> <i>Note: The Act protects bisexual, gay, heterosexual and lesbian people.</i>	No	No specific impacts identified							

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Protected Characteristic	Does this characteristic have specific relevance to this policy?	If No –	If Yes –						
		Please state why:	What do you know about usage of the services affected by this policy by people in this protected group, about their experiences of it, and about any current barriers to access?	Could people in this protected group be disproportionately advantaged or disadvantaged by the policy?	Could the policy affect the ability of people in this protected group participate in public life? (e.g. by affecting their ability to go to meetings, take up public appointments etc.)	Could the policy affect public attitudes towards people in this protected group? (e.g. by increasing or reducing their presence in the community)	Could the policy, change make it more or less likely that people in this protected group will be at risk of harassment or victimisation?	If there are risks that people in this protected group could be disproportionately disadvantaged by the policy are there reasonable steps or adjustments that could be taken to reduce these risks?	Are there opportunities to create positive impacts for people in this protected group linked to this policy?
<b>Gender Reassignment</b> <i>Note: The Act provides protection for transsexual people. A transsexual person is someone who proposes to, starts or has completed a process to change his or her gender.</i>	No	No specific impacts identified							
<b>Pregnancy and Maternity</b> <i>Note: the law covers pregnant women or those who have given birth within the last 26 weeks, and those who are breast feeding.</i>	No	No specific impacts identified							
<b>Marriage and Civil Partnership</b> <i>Note: This applies to changes, decisions or proposals</i>	No	No specific impacts identified							

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Protected Characteristic	Does this characteristic have specific relevance to this policy?	If No –	If Yes –						
		Please state why:	What do you know about usage of the services affected by this policy by people in this protected group, about their experiences of it, and about any current barriers to access?	Could people in this protected group be disproportionately advantaged or disadvantaged by the policy?	Could the policy affect the ability of people in this protected group participate in public life? (e.g. by affecting their ability to go to meetings, take up public appointments etc.)	Could the policy affect public attitudes towards people in this protected group? (e.g. by increasing or reducing their presence in the community)	Could the policy, change make it more or less likely that people in this protected group will be at risk of harassment or victimisation?	If there are risks that people in this protected group could be disproportionately disadvantaged by the policy are there reasonable steps or adjustments that could be taken to reduce these risks?	Are there opportunities to create positive impacts for people in this protected group linked to this policy?
<i>impacting on employees only. The Act protects employees who are married or in a civil partnership.</i>									
<i>Human Rights</i>	<b>Could the policy impact on human rights? (e.g. the right to life, the right to respect for private and family life, the right to a fair hearing)</b>								
	No specific impacts identified								

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Created: December 2020 Disposal date: December 2045

### **PART 3 - Course of Action**

Based on a consideration of all the potential impacts, tick one of the following as an overall summary of the outcome of this assessment:

<input checked="" type="checkbox"/>	The equality analysis has not identified any potential for discrimination or adverse impact and all opportunities to promote equality have been taken.
<input type="checkbox"/>	The equality analysis has identified risks to equality which will not be eliminated, and/or opportunities to promote better equality which will not be taken. Acceptance of these is reasonable and proportionate, given the objectives of the policy and its overall financial and policy context.

Policy Title: PP 04 Disciplinary Policy Version: 10

Policy Author: Claire Hope

Created: December 2020 - Disposal date: December 2045