

**Conduct Policy**

Issue Date	Review Date	Version
July 2021	May 2023	1

**Purpose**

The purpose of this policy is to provide a fair and consistent process for managing issues of conduct. The Trust expects all employees to meet high standards of behaviours and it is important that employees understand their obligations and rights regarding this aspect of employment.

**Who should read this document?**

This policy applies to all employees of University Hospitals Plymouth NHS Trust.(UHP)

Where conduct cases relate to those employed under Medical and Dental Terms and Conditions, this policy should be used alongside the Trust's Maintaining High Professional Standards (MHPS) Policy. Where cases of conduct and capability overlap for these employees, the MHPS policy should be invoked.

Issues relating to an employee's health and attendance levels will be dealt with under the Managing Sickness Absence Policy, and issues relating to an employee's performance will be dealt with under the Improving Performance Policy.

**Key messages**

This policy is designed to provide a framework for managers to support employees in maintaining satisfactory standards of conduct. It helps guide managers in deciding what happens next after an unexpected event. The aim is to encourage improvement where necessary and ensure the practice of lessons learnt is embedded in the Trust. Any conduct matter will be dealt with fairly using Just and Learning Culture principles and to give employees the opportunity to respond before taking formal action.

**The Just and Learning Culture**

The Trust believes that a Just and Learning Culture exists where we put equal emphasis on accountability and learning. We ask those involved to give an account of how the event happened, what it meant to them and what support is needed by those affected by the event both directly and indirectly.

We ask 'what is responsible, not who is responsible' – that said it does not mean that all behaviour is tolerated, simply the approach to addressing issues is supportive in nature.

**Equality Diversity and Inclusivity**

Equality, diversity, and inclusion are at the heart of the NHS strategy. We also know that having a diverse workforce improves the experience of our patients and the working environment. Every colleague at UHP has an important part to play in ensuring our hospital has an inclusive working environment that provides services to meet the needs of our local and peninsula wide community.

Our inclusion agenda recognises that everyone matters as well as understanding that there are times when people, particularly those from protected groups (defined by the Equality Act 2010 - age; disability; gender reassignment; marriage and civil partnership; pregnancy and maternity; race; religion or belief; sex; sexual orientation), may face unfairness and discrimination.

We have a moral responsibility to work in a way that creates fairness as well as a legal and public sector duty which we take very seriously. We aim to always create policies and practices that eliminate workplace discrimination and health inequalities, as well as strengthening our relationships within the community and with our colleagues who may identify with any of the protected groups.

**Accountabilities**

<b>Production</b>	HR Business Partner - Richard Maguire
<b>Review and approval</b>	JSNC Policy Sub Group
<b>Ratification</b>	Assistant Director of People – Lisa White
<b>Dissemination</b>	HR Business Partner
<b>Compliance</b>	JSNC Policy Sub Group

**Links to other policies and procedures**

- Equality Impact Assessment Guidelines
- Appeal Procedure
- Sickness Absence Policy
- Improving Performance Policy
- Maintaining High Professional Standards Policy
- SIRI RCA Template/Incident Management Procedure

**Version History**

<b>1</b>	July 2021	Replaces Performance and Conduct Policy
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**An electronic version of this document is available on the Trust Documents Network Share Folder (G:\TrustDocuments). Larger text, Braille and Audio versions can be made available upon request.**

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**1 | Introduction**

University Hospitals Plymouth NHS Trust (UHP) appreciates the importance of all its employees' roles in the organisation and the contribution of those who carry them out. With this in mind, it is committed to helping and encouraging all staff to achieve and maintain standards of conduct that support the Trust's values.

In most case it will be appropriate for managers to deal with conduct issues informally. Formal action is only required where informal action has not led to necessary improvements, and in more serious cases.

All aspects of the operation of the procedure are covered by the duty of confidentiality.

## 2 Values and Behaviours

Values	Expected Employee behaviours	Expected Management supportive behaviours
<b>Put patients first</b>	Consistently adhere to professional and personal behavioural standards to ensure the best patient care is received.	Consider the impact of any incident on patient care and mitigate the risk of this happening again. Ensure employees are aware of the standards required.
<b>Take ownership</b>	Employees are required to maintain high professional standards towards patients and employees at all times. Should your behaviour fall outside of acceptable standards you are expected to acknowledge this and participate in helping the Trust to identify any causes and implement learning into future practice.	Approach all conduct related issues with a Just and Learning Culture approach. Role model expected behaviours. Address any conduct concerns as soon as they occur.
<b>Respect others</b>	We are one big team which functions best when we all practice civility and kindness. Maintain adult and professional behaviours in your interactions with patients and colleagues at all times.	Suspend your judgement on conduct issues until such time as all the facts have been explored using Just and Learning Culture principles. Role model respectful behaviour at all times.
<b>Be positive</b>	Employees need to remain positive even in adversity, however challenging. Where standards fall outside of those expected employees will be expected to engage with any support / feedback offered.	When providing employees with feedback and setting standards of behaviour act compassionately and supportively.
<b>Listening, learning and</b>	Be open to feedback on conduct issues and participate in any required improvements. Consider the Just and	Consider the Just and Learning Culture approach. When looking

<b>improving</b>	Learning Culture approach – what contributed to any conduct concerns? What are the possible learnings? What needs changing if anything?	in to conduct issues ask questions which help to understand the bigger picture (e.g. what factors could have contributed to the conduct, the root cause ) and on areas which require improvement.
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### 3 Definitions

**Misconduct** – Unacceptable conduct, e.g. continual lateness for work, inappropriate behaviour, failure to follow a policy or protocol etc.

**Serious Misconduct** – Misconduct serious enough to result in a Final Written Conduct Warning. This may include repeated breaches of misconduct.

**Gross Misconduct** – Refers to acts which are so serious as to justify possible dismissal, e.g. theft or fraud, acts of bribery, physical violence, bullying and harassment or gross negligence.

For a non-exhaustive list of examples of breaches of conduct, please refer to Appendix 6.

### 4 Duties

#### Responsibilities of the HR and OD Directorate:

- HR will provide specialist advice to managers following an adverse event to decide on next steps and support any fact finding and investigation required.
- HR will provide specialist advice to managers on all conduct matters to maintain consistency in approach and procedures
- HR will ensure liaison takes place with appropriate specialist areas such as Occupational Health and Wellbeing (OHWB), local fraud experts, safeguarding team, Disclosure and Barring Service etc where necessary.
- To be available to employees and their representatives for clarification, information and interpretation of the policy.
- To have undergone appropriate UHP training.
- To provide managers with appropriate training.

#### Responsibilities of Line Managers:

- To ensure the Trust’s policies and procedures, and standards of conduct are conveyed and fully explained to employees.

- To endeavour to develop a relationship with employees allowing for open discussion and feedback.
- To compassionately raise any concerns regarding conduct with employees at the earliest opportunity and that procedures are used to primarily help and encourage improvement.
- To ensure employee' wellbeing is supported e.g. referral to OHWB, counselling, online resources and external services, seeking OHWB advice and assessment if an employee feels they are unable to be interviewed as well as advise in relation to any underlying medical condition that may impact on behaviour.
- To maintain regular supportive communications with employees involved in the conduct process in order to check on wellbeing, provide updates, and keep a record of communications. If the line manager is involved in the incident then allocate another manager to support the employee.
- To remind employees of their right to be accompanied by a Trade Union Representative or work colleague (not family member or a person acting in a legal capacity) in advance of any formal process commencing, and to notify employees to ensure adequate notice can be given to representatives.
- To operate this policy objectively and fairly, regardless of personal characteristics in line with the Equality Act 2010.
- Where an accredited TU representative is subject to this policy a full time official of their organisation is notified prior to this policy being implemented.

#### **Responsibilities of Case Investigators:**

- To liaise with HR on all cases and appropriate next steps following an event.
- To investigate any issues thoroughly, fairly and in an objective manner by establishing the facts.
- To conduct investigations in a timely manner.
- Be aware of their own conscious and unconscious bias to ensure there is no adverse impact on establishing facts
- To follow the Terms of Reference wherever practicable.
- To provide the Case Manager with an Investigation Report.
- To allow employees to be represented at any investigation meeting.
- To operate this policy objectively and fairly, regardless of personal characteristics in line with the Equality Act 2010.
- To have undergone appropriate UHP training including looking for root cause.

#### **Responsibilities of Case Managers/Chairs:**

- To give consideration to the process followed.
- To give consideration to any mitigation an employee may present.
- To confirm any outcome in writing.
- To remind employees of their right of appeal.
- To operate this policy objectively and fairly, regardless of personal characteristics in line with the Equality Act 2010.
- Be aware of their own conscious and unconscious bias to ensure there is no adverse impact on the decision making process and avoid unfounded assumptions.
- To have undergone appropriate UHP training including looking for root cause.

- To ensure that where an accredited TU representative is subject to this policy a full time official of their organisation is notified prior to this policy being implemented.

### **Responsibilities of Employees:**

- To understand the expected standard of conduct to the best of their ability and adhere to appropriate policies, procedures, guidelines and Trust values.
- To take responsibility for their own conduct and to bring any issues impacting on their conduct to their manager's attention at the earliest opportunity.
- To inform their line manager of any criminal proceedings / charges they may be involved in.
- To notify their representative where appropriate of issues in good time to ensure adequate notice is given of meetings.
- To participate in OHWB assessments when absent due to sickness and within an investigation process.
- To attend a hearing when invited. If unable to attend after a second date is offered a hearing may be held in their absence. Alternatively a Union representative or work colleague may attend the hearing in an employee's absence. An employee may also choose to make a written representation. Exceptional circumstances will be taken into consideration when arranging hearings.
- To participate in the investigation process including fact finding, investigation meetings and hearing.

### **Responsibilities of Employee Representatives:**

- To ensure employees are appropriately supported at formal meetings. Where it is identified that a representative will be unable to attend a formal or investigation meeting, and a further date cannot be rearranged in-line with this policy, it is the responsibility of the individual or appropriate representative to make alternative arrangements for representation.
- To share information in-line with the timescales outlined in this policy.
- To ensure they are fully accredited via Union accredited training and notified UHP of that accreditation training. Representatives may request further relevant Trust training, via the HR department.

## **5 Representation**

Employees have the legal right to be represented by a Trade Union Representative or workplace colleague (not family member or person acting in a legal capacity), at all formal meetings where disciplinary action may be taken.

Trade Union Representatives have an important role to play in providing advice and /or support to individual employees, work in partnership with the Trust to ensure conduct and behaviour is in line with Trust values and Just and Learning Culture. The Trust positively encourages the involvement of representatives in the application of this policy.

It is the employee's responsibility to arrange suitable representation. Where a representative cannot attend the date given for a meeting, an alternative date can be agreed, usually within 5 working days and if not possible following discussion with all parties concerned this can be extended. Ordinarily, only one change of date will be considered in these situations.

## **6 Safety Concerns**

Where there is a serious quality or health and safety risk to patients, and/or staff, and/or the employee, it may be necessary to consider restricting practice, or suspending a member of staff, at any time during this process. Managers must seek guidance from HR in these cases.

If a conduct allegation is made that would constitute a safeguarding concern, this will be reported to the Trust's Safeguarding Lead, and suspension may be considered. This may result in a referral being made to the independent Safeguarding Authority.

The Trust may report any serious acts of misconduct to the Disclosure and Barring Service.

## **7 Occupational Health and Wellbeing Service**

If, through this process, an employee discloses information concerning any ill-health that may be contributable the issue, they should be referred to Occupational Health and Wellbeing for a full assessment.

A referral for mental health support can also be made if an employee exhibits symptoms of stress as a result of this process.

## **8 Mediation**

In some situations, mediation may be considered as an appropriate intervention at both formal and informal stages.

Mediation is a voluntary and confidential process in which a neutral third person(s) (internal or external) assists in resolving conflict, by helping the two parties to understand their current working relationship and agree future working relationships.

Prior to any mediation, the mediator will assess the likely success of a mediation meeting. If the mediator believes that either one or both parties are not fully committed to resolving the issue via mediation, they may recommend that mediation is not an appropriate intervention.

Following the mediation meeting, the mediator will report outcomes back to HR and the appropriate line managers in an appropriate manner.

## **9 Just and Learning Culture Approach**

The conduct policy and procedures should be applied using a Just and Learning approach. This is based on the principles that:

- Every member of staff has a valuable contribution to make to ensure the highest possible standards of patient care are delivered and sustained.

- The approach to improving and changing behaviour and practice within the Trust will be supportive with an aim of learning from experiences and prevention / reduction of mistakes or risks.
- A culture of openness is created by focusing on opportunities for improvement thereby building trust between staff and managers.
- Employees' involvement and contributions are recognised as making a positive difference
- Managers look for the root cause of a situation through gathering of facts and gaining understanding before making decisions. This includes making decisions on suspension or moving employees. Informed decisions need to include details of the issue from the individual's perspective, exploring any knock on effects, exploring the behaviours / actions
- In some situations early disciplinary processes will be required however all other circumstances will use a holistic approach looking at what went wrong rather than who was at fault
- A formal investigation should be a final resort, in line with Just Culture principles and only taking place after an initial triage with HR to ascertain that a formal investigation process is appropriate. The triage process helps to objectively consider whether the decision to take formal action is proportionate to and appropriate for the concern raised.

## **10 First Step – A Quiet Word**

Sometimes all it takes to ensure standards of behaviour are maintained is a supportive quiet word. The intent of this is to genuinely check in on an employee and raise the concern by bringing it to the employee's attention.

For minor concerns it is wholly appropriate for a manager to privately share any observations of poor standards of behaviour / conduct with an employee and ask for their thoughts/ response. The manager will consider the response and provide any support identified in order to meet the standard e.g. training, OHWB, sign post to services.

The manager should take the opportunity to verbally clarify the expected behaviour, and the employee will confirm that they understand and are able to deliver the required standard and will now do so. No more action is required.

## **11 Second Step - Conversation of Concern**

Most minor breaches of conduct can usually be resolved informally, which may include a Conversation of Concern (COC). A COC could be the next step if there is a repeat incident despite having had a quiet word. Also a manager may begin formal proceedings in the first instance, depending on the circumstances and severity of the case. Managers must seek advice from a member of the HR team in these cases.

Managers should recognise a COC is an informal approach, and hold it at the earliest opportunity to highlight any concerns to the employee. COCs are applicable to all staff (including those employed under Medical and Dental Terms and Conditions as set out in the MHSP policy).

COCs will normally be held by an employee's line manager and do not require a full investigation - although managers are encouraged to examine any information around the concerns before holding the discussion.

An employee will be made aware that the conversation does constitute a 'COC' at the beginning of the meeting, and that it will be documented. This will normally remain active for 6 months, unless stipulated otherwise.

During the COC the manager should ensure the employee is aware of the nature of the issue, and advise on expected standards of conduct. The manager should explain that if any further occurrences of poor conduct arise whilst an employee has an active COC, formal action may be taken in-line with this policy. The employee should provide their perspective of the situation and managers should progress any learnings from the event where appropriate.

It is not necessary for managers to wait until the end of the active COC period to escalate to formal proceedings if further breaches of conduct arise. However, please note that the root cause of any subsequent issue may be different from the original COC and this should be taken into account before deciding on escalating to the next stage.

A COC template is available the HR Operations Team.

## **12 Formal Approach - Terms of Reference**

If conduct concerns have not been resolved following a COC, or if concerns are deemed to be of a more serious nature, in line with the Just & Learning Culture there will be an initial review of the whole of the event. This step of the procedure is to ensure initial facts are established to enable decision makers to decide upon the next steps, for example was it a system or process that led to the event rather than an individual's conduct and whether the matter requires progression to formal investigation or not.

This will require initial facts to be established such as dates & times of incident, people involved or people who have potentially witnessed the incident (all parties' not just colleagues), where the incident took place and any other information available for example CCTV. To gather this initial information it may be that managers need to ask people involved for their account of the adverse event, this will not be an official investigation fact finding meeting and will be informal. A triage meeting will take place with the HR Operational senior manager, the referring manager and HR Business Partner/HR Advisor to determine the most appropriate way forward. Where it is deemed appropriate, a full formal investigation will be undertaken.

An employee's line manager will inform the employee of the nature of the conduct concerns being investigated, as soon as practically possible.

The line manager will discuss and agree within their line management chain, the roles of those involved in the investigation process. Specifically:

### **The Case Manager**

Ordinarily, a manager within the managerial chain of the employee would act as the Case Manager. This person is responsible for setting the Terms of Reference (TOR) for the investigation and after consideration of the investigation evidence, will decide whether there is a formal conduct case to answer. A member of the HR team will be assigned to provide professional advice.

### **The Case Investigator**

The Case Manager will identify a suitable Case Investigator, in line with HR advice. This person will undertake the full investigation process and will produce an investigation report to be shared with the Case Manager and employee concerned.

Both the Case Manager and Case Investigator may be required to participate in any subsequent formal conduct hearing.

### **The terms of reference for the investigation**

This is set by the Case Manager and must be agreed by the member of HR team assigned to the case and will provide a clear framework for the investigation. It will outline;

- Details of allegations / concerns.
- What information is intended to be investigated (e.g. witnesses, IT data, CCTV).
- Associated policies.
- Timeframes.
- Note taking procedures.
- Details and responsibilities of management involved.

The TOR will not routinely be shared with employees as it is an administrative document to provide the structure of the investigation; however, employees are able to make a specific request for a copy.

If during the course of the investigation, the Case Investigator feels the TOR needs to be amended, they must seek approval from the Case Manager, with HR's support, to make the changes.

Whilst management should make every effort to adhere to the timescales outlined in the TOR, the document is to be used as guidance only.

A TOR template will be available from the HR department, upon request.

Reference to the additional guidance document can be made for more information.

## **13 Formal Approach - Investigation**

A formal investigation should be a final resort, in line with Just Culture principles and only taking place after an initial triage with HR to ascertain that a formal investigation process is appropriate. The triage process helps to objectively consider whether the decision to take formal action is proportionate to and appropriate for the concern raised (see section 12).

The purpose of an investigation is to gather any relevant information about an adverse event, and establish the facts of the case in a fair and objective manner. This may include consideration of any clinical investigation already carried out by

way of an incident review (Root Cause Analysis – RCA), collecting witness statements, interviewing witnesses, holding investigation meetings with the employee and collating CCTV and IT reports (this list is not exhaustive).

An investigation will be undertaken by the Case Investigator (See section 11), who will be the most appropriate manager depending on the circumstances of the case. To minimise bias, the Case Investigator will not be the same member of staff as the Case Manager and will not have been involved in the adverse event. An HR representative will be available to support the Case Manager as needed.

The line manager (or equivalent) will sensitively inform the employee of the concern and what support is available to them. If an investigation meeting is to be held with the employee, they will be invited to attend in writing by the Case Investigator which will include the specific allegations and a named contact within HR who will provide further support, with at least 5 working days' notice, unless mutually agreed otherwise with the employee. The letter of invitation will include the <insert name of doc>. Information gathered as part of the investigation process will not normally be shared at investigation meetings unless it is appropriate to do so at the time.

Investigation meetings will not normally be attended by a member of the HR team, unless the case is of a complex or more serious nature, or the Case Investigator is inexperienced in conducting such a process. However, managers may request to be supported by an appropriate senior colleague at the meeting. **In all cases**, a member of the HR team will be assigned to provide professional advice. The Case Investigator should make notes of any discussions with the employee (including questions asked), or other witnesses and should collate other relevant evidence, to either support or refute the allegations. Notes of the investigation meeting (statements) should be confirmed with each individual participant so they have the opportunity to provide an accurate reflection of their information. These statements should be sent out within 5 working days and returned within 5 working days so as to not unreasonably protract the investigation.

Regular contact should be maintained with the employee by the Case Manager (at least every two weeks) to check in on their wellbeing and update them on the investigation status. Support should be offered to the employee throughout the process including OHWB assessment if required. The employee and Case Investigator should agree how to maintain contact (email, phone etc). If an employee fails to engage in agreed contact arrangements without reasonable explanation this in itself could become a conduct concern and subject to the conduct process.

Whilst there is no statutory right of representation at investigation meetings, the Trust appreciates the role of representatives and encourages employees to be accompanied by a Trade Union Representative or a workplace colleague.

Where an investigation calls into question the professional conduct of a member of staff, it may be reported to the organisation's professional lead and, where appropriate, referred to the relevant professional body.

Where an investigation concludes that the case relates to a performance issue, the matter will be dealt with under the Improving Performance Policy. The investigation under this policy may be used where performance concerns are identified and dealt with under the Improving Performance Policy.

Once an investigation has concluded, the Case Investigator will produce an investigation report. Please see Section 13 for more information.

Refer to the additional guidance document for more information on investigations, witness processes and investigation reports.

## 14 Investigation Report

Once the investigation is complete, the Case Investigator will produce an investigation report, with accompanying notes and evidence, to summarise findings. This will be passed to the Case Manager, normally within 5 working days after the investigation has concluded, who will decide on the next steps, with professional advice from the HR team.

The Case Manager will write to the employee to outline the next steps as either:

- A. There is no further action and the employee is offered the opportunity to meet with the Case Manager to discuss this.
- B. The employee and their representative are invited to a Conduct Meeting with the Case Manager which would result in either the conclusion of 'no case to answer', an informal or formal warning (up to a maximum of a written warning level) or referral to a Conduct Hearing\*.
- C. The employee is informed that the case will be referred to a Conduct Hearing.

**\*Option B**) should only take place where the investigation report indicates that the employee accepts the misconduct took place and there is no material dispute of the facts; plus, the level of misconduct is not regarded as gross misconduct or very serious misconduct which could result in a final written warning or dismissal (examples are contained in Appendix 6). If there is a material dispute of the facts the Case Manager may choose to seek further clarification from the Case Investigator before deciding on next steps.

If an employee already has an active First Written Warning for conduct, their case should automatically be referred to a Formal Conduct Hearing, unless the Case Manager decides that no action or informal action is required.

The employee should be given at least 7 working days' notice to attend the Conduct Meeting, unless mutually agreed otherwise by the employee. They will be given the right of representation.

Where an employee or their representative cannot attend the date given for this meeting, an alternative date can be agreed, usually within 7 working days of the original. Ordinarily, only one change of date will be considered in these situations.

A template to the investigation report is available from HR.

## 15 Formal Conduct Meeting

The Case Manager will meet with the employee and their representative (should they choose to be accompanied) to discuss the report and give the employee a further opportunity to contribute any further information. It is also an opportunity to check in on the employee's wellbeing and that they have the relevant support.

The investigation information pack will be shared at the meeting, to ensure the employee can make an informed decision regarding accepting or declining sanctions. As such, the employee may wish to request a reasonable adjournment.

Where the Case Manager feels that the case still meets the criteria as outlined in \*Option B, and the employee confirms they do not wish to present their case at a wider Conduct Panel/question witnesses, the Case Manager is able to issue an outcome up to a written warning level (See Section 17). A template is available from the HR team for completion by the Case Manager which will outline the reason for the warning/outcome and the employee will sign to acknowledge that warning. They will be given a copy of this, which also outlines their right to appeal against that warning should they later choose to do so.

Where it becomes clear during the meeting that the employee no longer meets the criteria outlined in \*Option B, the Case Manager should conclude the Conduct Meeting and refer the case to a Conduct Hearing, unless it is established there is no case to answer.

## **16 Formal Conduct Hearing**

The purpose of a Formal Conduct Hearing is to give an employee the opportunity to respond to the allegations raised and information collected during the investigation, and for an independent panel to decide on the most appropriate outcome in-line with this policy.

Witnesses may be called by the Case Manager or the individual to provide relevant information at the Hearing. Employees called as witnesses will be allowed paid time off to attend. Whilst it is the responsibility of each side to identify suitable witnesses, arrangements to attend must be made by the HR department to maintain confidentiality.

Formal Conduct Hearings will be heard by a panel. This panel will consist of the Chair and a HR representative. The Chair may also invite an additional panel member to be present – particularly when cases of a professional nature are concerned. Please see Appendix 7 for more information on which managers can take formal action.

Possible outcomes of the hearing are as follows;

- No formal action.
- Issuing a First Written Conduct Warning.
- Issuing a Final Written Conduct Warning.
- Any other outcome i.e. action short of dismissal.
- Dismissal.

If it is appropriate for a decision to be made on the day, the Chair of the Hearing will confer with colleagues during an adjournment to make a decision on the outcome. If it is not appropriate for a decision to be made on the day, the Chair may choose to reconvene the hearing at a later date. In these cases, the reconvened meeting will be arranged as soon as practically possible. When it is appropriate to decide on an outcome, consideration should be given to:

- Whether the process has followed the organisation's procedures;
- Information presented;
- Seriousness of misconduct;
- Outcomes and warnings imposed in similar cases in the past;
- Any mitigating circumstances;

- The employee's work record;
- Whether formal action has been taken previously;
- Whether other recommendations should be implemented;
- What further action (if any) is required.

Employees will be given at least 7 working days' notice of a hearing, where they will be invited in writing. Attached to this invitation will be all information management intend to present at the hearing.

The employee or their representative can submit a written statement to the Panel Chair of their case at least 2 working days before the hearing for consideration at the formal hearing.

The Case Investigator will present the management case, with support from HR in more complex cases.

If an employee does not attend a hearing without a valid reason, it may result in the process being carried out in the individual's absence. If an employee falls unwell before the hearing, they must inform their manager in the first instance. A second date may be arranged, where practicable, normally within 5 working days of the original date. Further episodes of sickness will be assessed on a case by case basis, but it may be appropriate to conduct the hearing in an employee's absence.

For the hearing procedure please refer to Appendix 5 of this policy.

For more information regarding Formal Conduct Hearings, please refer to the additional guidance document.

## 17 Formal Warnings

First Written Conduct Warnings will generally be issued where misconduct continues after a Conversation of Concern, or in more serious cases. They will normally remain active for 12 months.

Final Written Conduct Warnings will generally be issued where there is repeated misconduct or for serious misconduct which may include actions comparable to gross misconduct. They will normally remain active for [12-18 months in duration according to the seriousness of the allegations](#).

After a formal warning is issued, consideration should also be given to the development of an action plan which managers may review and store locally.

Where an employee already has an active warning for misconduct, and there are further and/or different breaches of conduct, they will normally progress onto the next level of warning or have their case referred to a hearing, where dismissal will be considered. See also Extended Warning Length (section 26).

As outlined in the incremental pay progression guidance, employees who are issued with a Formal Warning will not normally be entitled to incremental pay progression.

Although this policy outlines how long Formal warnings will normally remain active, there may be times where it is appropriate to extend these timescales. For example, where misconduct verges on gross misconduct, or where there has been a previous pattern of behaviour identified i.e. when an employee's conduct improves until the end of the active warning period, but lapses soon after. Warnings may be extended at the direction of the Case Manager or Chair.

There is a right of appeal against a Formal Warning. Please see section 21 for more information on appeals.

## **18 Action Short of Dismissal**

In exceptional circumstances, the Chair may choose to take action short of dismissal (which could include moving the employee to a lower banded role). This is an alternative to dismissal, and must be made in agreement with the employee. If the employee declines this action, dismissal will resume. The parameters around any action taken will be decided on a case by case basis, and will be communicated to the employee in writing.

## **19 Dismissal (with Notice)**

When an employee continues to breach standards of conduct after a Final Written Conduct Warning, they may be dismissed with the relevant notice or payment in lieu of notice.

The Trust recognises this may be appropriate in some cases; however, consideration should be given to all other alternative outcomes. Authority to dismiss only rests with the Chair of the hearing panel.

## **20 Summary Dismissal (without Notice)**

Summary dismissal will be used specifically where gross misconduct has been identified. Employees will not be given, or paid in lieu, of notice.

## **21 Notification of the Formal Hearing Outcome**

The outcome will be confirmed in writing by the Chair of the Conduct Hearing Panel, within 5 working days of the hearing. The letter will normally include:

- Confirmation of the date and venue of the hearing.
- Outline of the conduct issue.
- Confirmation of those present and their roles.
- Summary of the evidence presented by both parties/sides.
- Summary of mitigation, if any.
- A clear explanation of the findings.
- Action required to meet standards with timescales.
- Agreed support / training that will be given.
- The potential consequences of further misconduct.

- The length of time the warning will stay on file.
- Any referrals to professional bodies.
- The right of appeal including to whom and timescale.

In cases of dismissal, the following will always be included in the letter:

- Written reasons for the termination of employment.
- Reference where appropriate to any previous warnings issued (except where disregarded or irrelevant to the outcome).
- Date the employment is deemed to have ceased and a clear indication of notice periods (if appropriate), as defined in the employee's contract or statutory rights (whichever is the greater).
- Details of payment of outstanding monies and forwarding of the P45.
- An instruction to return any property of the organisation e.g. Trust identity card, mobile phone, laptop etc.
- The right of appeal.

A copy of the outcome will be shared with the Line Manager and Case Manager and will also be sent to the employee's Trade Union Representative, where agreement has been given.

## 22 Appeals

Employees issued with a Formal Warning under this policy will have a right of appeal. The employee must state reasons why they wish to appeal. Please refer to the Trust's Appeals Procedure for details of the process to be followed. An appeal is not a re-hearing but an opportunity to review the decision made.

## 23 Suspension or Restricted Practice

Suspension and restricted practice from work may only be taken as a precautionary measure; **it is not a form of disciplinary action and may not be used or regarded as such.**

Suspension should be reserved for only the most exceptional circumstances, after restricted practice has been considered.

Restricted practice will normally be appropriate to maintain professional and safe standards. Restricted practice may include working under supervision or being temporarily redeployed to other suitable employment within the organisation. .

Suspension from work may be appropriate:

- To deal with a potentially difficult or inflammatory situation.
- To help the process to proceed, where the continued presence of the individual could prejudice the conduct of the process.
- Where there may be a risk to patients or staff.

Whilst a senior manager is able to restrict an employee's practice, only an Executive Director may give authorisation to suspend. In all cases, managers should seek advice from a HR Business Partner at the earliest opportunity.

A decision to suspend or restrict practice will normally be communicated by means of a meeting. There will be occasions where it is appropriate to advise the individual over the telephone. The manager will make every attempt to convene a meeting in the presence of a Trade Union Representative if possible. The rationale for the decision, and any conditions which apply, will be communicated verbally and confirmed in writing as soon as possible.

Suspension will be on full pay (based on the average pay over the previous twelve weeks or the shift pattern, if more appropriate). However, if an employee on special paid leave due to suspension does not participate in agreed alternative employment or work related meetings when required it may then be reasonable to notify the employee that they will be suspended without receiving special pay.

Unless stipulated otherwise, suspension leave will normally be reviewed every 2 weeks and employees will be updated accordingly. Restricted practice will normally continue until the Formal Conduct Review Meeting or Hearing concludes, where the next steps will be confirmed.

Employees who are on special paid leave as a result of suspension are required to be available to attend any meeting under this policy.

## **24 Criminal Offences**

Where an investigation establishes a suspected criminal act, it must be reported to the police. The Trust can proceed with an investigation in advance of any outcome or court action however, the police must be consulted to establish whether an investigation into any other matters would impact on their investigation.

An employee should inform management as soon as possible of any criminal investigation, cautions, reprimands or court proceedings being taken against them. Where the employee is remanded in custody, they should arrange for the organisation to be informed at the earliest opportunity.

Criminal offences outside employment will not be treated as automatic reasons for formal action. This policy may be invoked however, if the offence alleged or committed is connected with, or is likely to adversely affect, the employee's performance or their duties or may compromise the Trust. If this is the case, then the organisation reserves the right to initiate its own separate internal proceedings at once and not as a consequence of criminal proceedings.

If the Trust refrains from taking action pending a court outcome, and the employee is subsequently acquitted, the organisation may still take action in-line with this policy. A decision to do so will be based on the potential risk to patients or staff, or where allegations or actions may bring the Trust into disrepute.

It must be made clear to the police that any evidence they provide, and is used in the organisation's case, will have to be made available to the employee concerned.

## **25 Theft or Fraud**

Cases involving potential theft and fraud may be investigated under the organisation's Counter Fraud policy and the NHS Counter Fraud and Security Management Service (the case may be referred to the police to investigate if appropriate). Managers should always discuss cases of suspected fraud with the HR

team, who will involve the Local NHS Counter Fraud Specialist and, where appropriate, refer to a HR Business Partner.

## **26 Timescales**

All timescales referred to in this policy may be varied, providing both management and employees are in agreement.

## **27 Information Held on the Employee's Record**

A copy of all formal warnings will be kept on the employee's personal file together with a written record of the formal hearings and, if applicable, the appeal hearing. Warnings will expire after the relevant specified period.

Any warnings or associated documents shall be archived appropriately after the stated period unless a further warning has been given which makes reference to the first

## **28 Notification to Professional Bodies**

In line with individuals professional code of practice, University Hospitals Plymouth NHS Trust may report any act of misconduct to the appropriate regulatory or professional body.

## **29 English as a Second Language**

Special attention must be paid to ensuring that employees for whom English is not their first language are supported through the process.

## **30 Equality Act**

Consideration should be given to employees covered by the Equality Act, whereby appropriate and reasonable adjustments are put in place, to ensure they are supported through the process.

## **31 Trade Union Officials**

No action should be taken or meetings arranged in relation to work related concerns over an employee who is a Trade Union Representative until the circumstances of the case have been discussed with the full time (regional) official. A HR Business Partner should always be consulted with in these cases.

## **32 Communication**

Information about this policy will be included in the induction training, and copies of the policy will be available via the intranet or sources of support and guidance outlined in this document.

The Trust's position regarding the management of conduct will be publicised through its trust wide communication channels, as appropriate. This will be in accordance with the Trust's Communication strategy.

Monitoring data and other feedback relating to formal action taken as a result of managing conduct will be regularly distributed to the relevant channels in appropriate formats. This data may also be shared with the HR & OD Committee.

### **33 Overall Responsibility for the document**

The Director of People has overall responsibility for this document.

### **34 Consultation and Ratification**

The Senior Management Team and the Director of People in conjunction with the JSNC Policy Group is responsible for ratifying this document. The Director of People has overall responsibility for the dissemination, implementation and review of this policy.

### **35 Dissemination and Implementation**

Following approval and ratification by the appropriate group, this policy is being rolled out across the Trust.

It will be available electronically on the TrustDocument Network Shared Folder.

### **36 Monitoring Compliance and Effectiveness**

Monitoring of the application of this policy and processes will be undertaken by the HR Business Partner Team in conjunction with Trade Union representatives through review of cases as they occur. This process will establish the effectiveness of the application of the policy, with any concerns raised with the Director of People and any necessary action taken. This policy will be reviewed every 5 years or sooner if required by employment law changes or best practice.

It should be noted that the responsibilities in this policy are legally enforceable and that managers (and employees where applicable) failing to uphold their responsibilities may find themselves in breach of internal disciplinary policies and legislation.

Information for equality monitoring will be recorded as required to ensure equality regulations are met in respect of any formal process commenced under this policy.

### **37 References and associated documentation**

The following documents have been referred to and have links to this policy:

- Equality Impact assessment Guidelines
- Appeals Procedure
- Redeployment Policy
- Managing Performance Concerns Policy
- Incremental Progression Guidance

- EDI Policy

Further guidance on the application of this policy is available from the HR & OD Directorate or professional organisation or trade union representative. All managers, who have responsibility for staff, should attend the appropriate training courses organised by the HR & OD Directorate.

The following websites are useful with regard to conduct issues:

[www.dh.gov.uk](http://www.dh.gov.uk)

[www.acas.org.uk](http://www.acas.org.uk)

[www.nhsemployers.co.uk](http://www.nhsemployers.co.uk)

[www.cipd.co.uk](http://www.cipd.co.uk)

Dissemination Plan		Appendix 1		
<b>Core Information</b>				
Document Title	Conduct Policy			
Date Finalised	July 2021			
Dissemination Lead	Lisa White, Assistant Director of People			
<b>Previous Documents</b>				
Previous document in use?	Yes			
Action to retrieve old copies.	Remove from Trust Documents and replace			
<b>Dissemination Plan</b>				
Recipient(s)	When	How	Responsibility	Progress update
All Trust Staff	July 2021	IG StaffNet Page	HR & OD Department	

Review		
<b>Title</b>	Is the title clear and unambiguous?	Yes
	Is it clear whether the document is a policy, procedure, protocol, framework, APN or SOP?	Yes
	Does the style & format comply?	Yes
<b>Rationale</b>	Are reasons for development of the document stated?	Yes
<b>Development Process</b>	Is the method described in brief?	Yes
	Are people involved in the development identified?	Yes
	Has a reasonable attempt has been made to ensure relevant expertise has been used?	Yes
	Is there evidence of consultation with stakeholders and users?	Yes
<b>Content</b>	Is the objective of the document clear?	Yes
	Is the target population clear and unambiguous?	Yes
	Are the intended outcomes described?	Yes
	Are the statements clear and unambiguous?	Yes
<b>Evidence Base</b>	Is the type of evidence to support the document identified explicitly?	Yes
	Are key references cited and in full?	Yes
	Are supporting documents referenced?	Yes
<b>Approval</b>	Does the document identify which committee/group will review it?	Yes

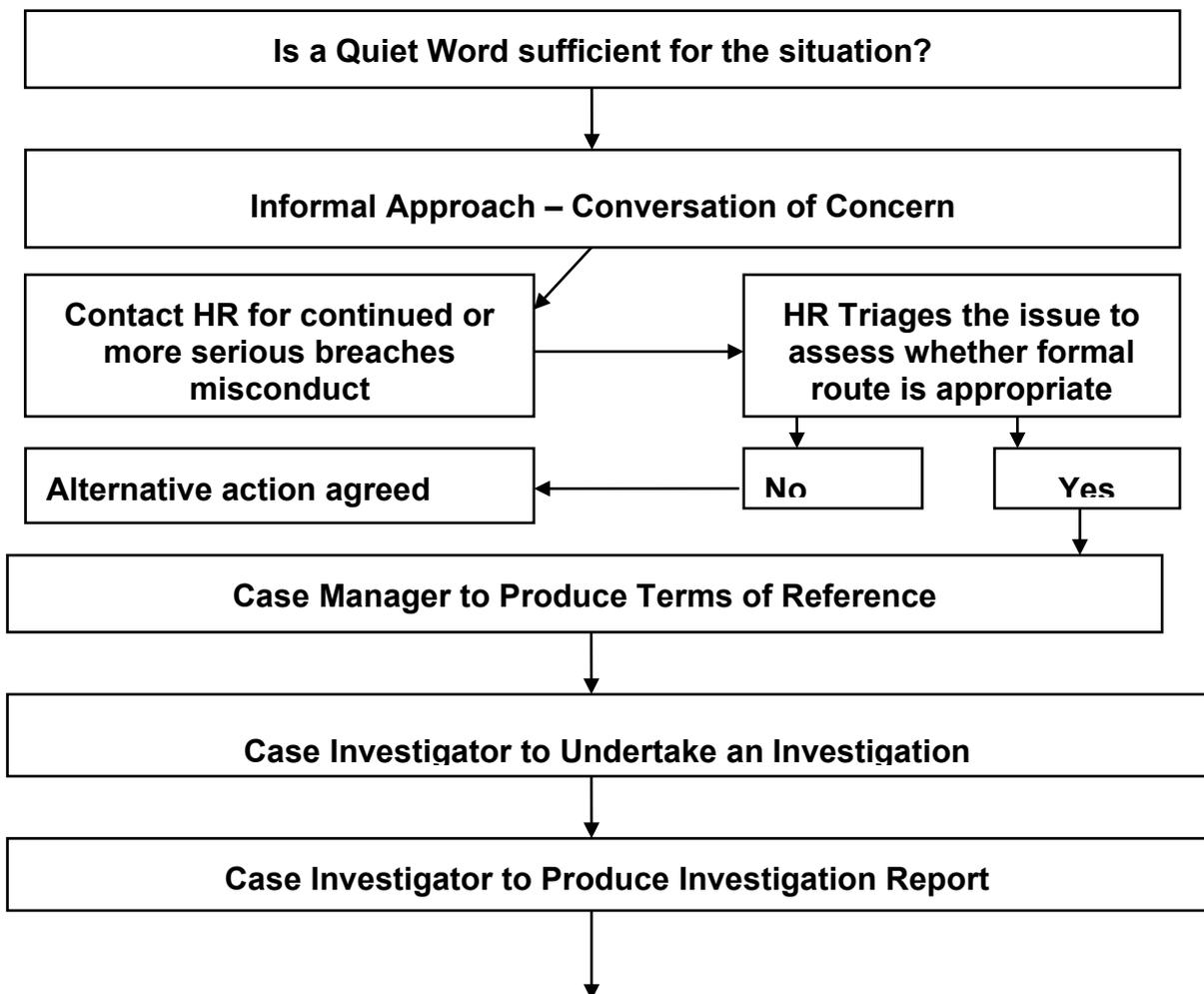
	If appropriate have the joint Human Resources/staff side committee (or equivalent) approved the document?	Yes
	Does the document identify which Executive Director will ratify it?	Yes
<b>Dissemination &amp; Implementation</b>	Is there an outline/plan to identify how this will be done?	Yes
	Does the plan include the necessary training/support to ensure compliance?	Yes
<b>Document Control</b>	Does the document identify where it will be held?	Yes
	Have archiving arrangements for superseded documents been addressed?	Yes
<b>Monitoring Compliance &amp; Effectiveness</b>	Are there measurable standards or KPIs to support the monitoring of compliance with and effectiveness of the document?	Yes
	Is there a plan to review or audit compliance with the document?	Yes
<b>Review Date</b>	Is the review date identified?	Yes
	Is the frequency of review identified? If so is it acceptable?	Yes
<b>Overall Responsibility</b>	Is it clear who will be responsible for co-ordinating the dissemination, implementation, and review of the document?	Yes

<b>Core Information</b>	
<b>Manager</b>	Lisa White, Assistant Director of People
<b>Directorate</b>	HR and OD
<b>Date</b>	June 2021
<b>Title</b>	Conduct Policy
<b>What are the aims, objectives &amp; projected outcomes?</b>	The purpose of this policy is to provide a fair and consistent process for dealing with conduct issues.
<b>Scope of the assessment</b>	
<b>Collecting data</b>	

<b>Race</b>	<p>There could potentially be an impact on staff whose first language isn't English. Special attention must be paid to ensuring that employees for whom English is not their first language are supported through the process. <b>National WRES data tells us that BAME employees are marginally more likely to enter the disciplinary process than white staff. This will be monitored and appropriate actions will be put in place.</b></p> <p>This area, will be monitored through workforce data reporting and analysis and any feedback from line managers/trade unions</p>
<b>Religion</b>	<p>There is currently no data collected to show whether there will be an impact in this area. However, data will be monitored through workforce data reporting and analysis</p>
<b>Disability</b>	<p>There is potentially an impact on people with a disability. Those who are disabled in any way should be supported through the process and reasonable adjustments should be put in place where appropriate.</p> <p>This area will be monitored through workforce data reporting and any feedback from line managers/trade unions</p>
<b>Sex</b>	<p>There is currently no data collected to show whether there will be an impact in this area. However, data will be monitored through workforce data reporting and analysis</p>
<b>Gender Identity</b>	<p>There is currently no data collected to show whether there will be an impact in this area. However, data will be monitored through workforce data reporting and analysis</p>
<b>Sexual Orientation</b>	<p>There is currently no data collected to show whether there will be an impact in this area. However, data will be monitored through workforce data reporting and analysis</p>
<b>Age</b>	<p>There is currently no data collected to show whether there will be an impact in this area. However, data will be monitored through workforce data reporting and analysis</p>
<b>Socio-Economic</b>	<p>There is currently no data collected to show whether there will be an impact in this area.</p>
<b>Human Rights</b>	<p>Staff have the right to representation within this process.</p>
<b>What are the overall trends/patterns in the above data?</b>	<p>No trends or patterns identified at this stage. However, workforce data will be monitored, and any trends or patterns will be identified and appropriate actions will be put in place.</p>
<b>Specific issues and data gaps that may need to be addressed through consultation or further research</b>	<p>There is currently no data to monitor the impact on gender identity, socio-economic and human rights.</p>

Involving and consulting stakeholders	
Internal involvement and consultation	HR Business Partners, Trust Senior Management Team, JSNC
External involvement and consultation	
Impact Assessment	
Overall assessment and analysis of the evidence	<p>There could potentially be an impact on staff whose first language isn't English. Special attention must be paid to ensuring that employees for whom English is not their first language are supported through the process. <b>WRES data tells us that BME staff are marginally more likely to enter the disciplinary process than white staff. This will be monitored and appropriate actions will be put in place.</b></p> <p>There is potentially an impact on people with a disability. Those who are disabled in any way should be supported through the process and reasonable adjustments should be put in place as appropriate.</p>

**Flow Chart for Addressing Conduct Concerns** | **Appendix 4**



**Refer to Case Manager**  
Case Manager to seek professional advice from HR

**Case Manager Holds a Formal Conduct Meeting**

**Case Manager confirms no action to be taken**

**Issue Informal or Formal Warning (up to First Written), or no action.**

**Refer to a Formal Conduct Hearing**  
For repeated concerns; potentially serious concerns; gross misconduct; or if an employee declines a First Formal warning.

**Procedure at a Formal Conduct Hearing** | **Appendix 5**

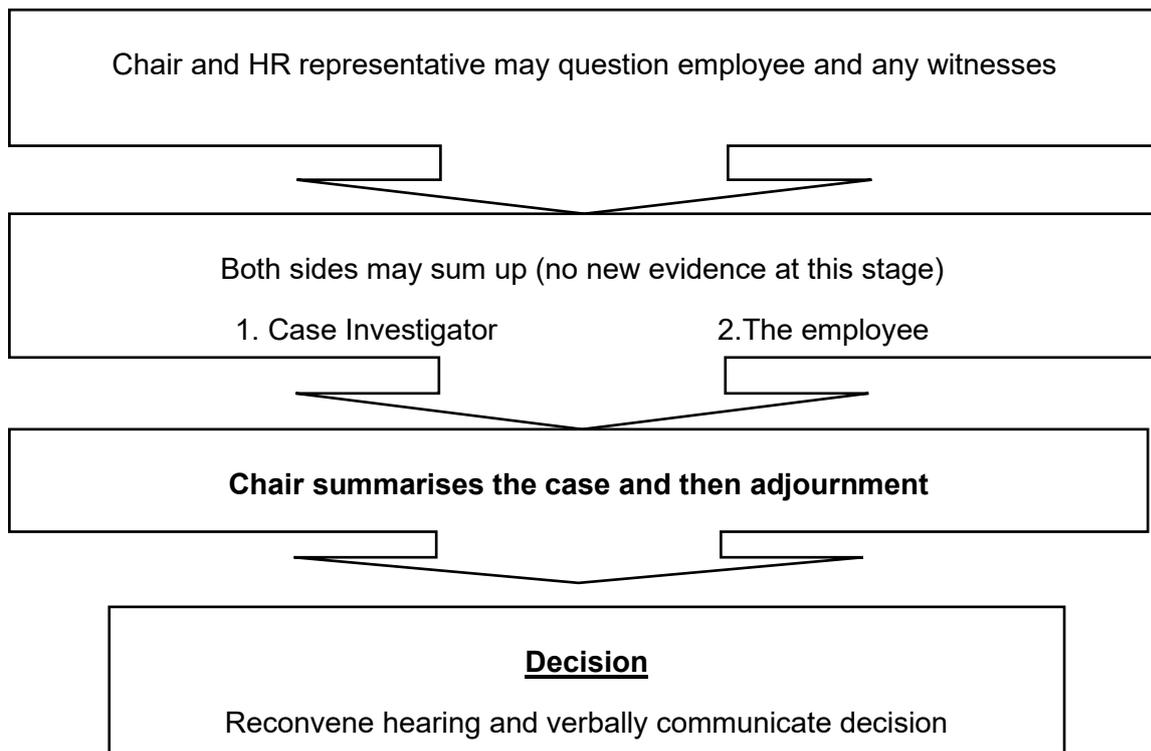
**Presentation of management case:** Case Investigator presents the case to the chair and calls witnesses

Employee or representative may question Case Investigator and any witnesses

Chair and HR representative may question Case Investigator and any witnesses

**Presentation of employee's case:** The employee may present their case and any witnesses

Case Investigator may question employee and any witnesses



**Note:**

The Chair may, at any stage during the hearing:

- Invite anyone involved to clarify or expand on anything they have said during the interview.
- Ask for additional witnesses to be called.
- Adjourn the interview to allow further evidence to be produced by either side, or for any other reason he/she believes necessary.

The Chair hearing the case will ensure:

- Formal seating and layout arrangements, room accessibility for those with disabilities and no interruptions.
- Adequate waiting areas for witnesses and Trade Union/Staff Side Representatives, and facilities for adjournment and discussions.
- Availability of all relevant information.
- They consider previous disciplinary action taken in similar circumstances in the past.
- An interpreter is available if required.

### Examples of Acts of Misconduct & Gross Misconduct

#### Misconduct / Serious Misconduct (depending on the severity)

Examples of the kind of behaviour that might lead to formal action or eventual dismissal include (*this list is not exhaustive*):

- Attendance;
- Time-keeping;
- Confidentiality;
- Failure to follow reasonable management instructions;
- Inappropriate behaviour;
- Failure to give proper support to other members of staff;
- Carelessness in the use of equipment;
- Malicious complaints against colleagues;
- Dishonesty of a wilful nature;
- Smoking near the oxygen areas;
- Failure to carry out a reasonable instruction;
- Failure to follow correct procedures and policies;
- Failure to wear correct uniform;
- Poor attendance where there is no underlying medical condition;
- Breaches of health and safety and other statutory obligations in accordance with the Health & Safety at Work Act 1974;
- Any personal incapacity that may be incompatible with the satisfactory discharge of the duties and responsibilities of the post or may put at risk the health and safety of themselves or other persons.

#### Gross misconduct:

- Theft;
- Fraud;
- Breach of Trust's standing orders or standing financial instructions;
- Serious misrepresentation;
- Assault;
- Harassment, bullying and discrimination;
- Negligence;
- Sleeping on duty;
- Malicious or wilful damage to Trust property;
- Corruption;
- Fitness for duty;
- Serious breach of confidentiality;
- Abuse of the internet or e-mail;

**Note:** Depending on circumstances, the above examples may vary in severity and therefore the level of action should be commensurate with the seriousness of the offence.

**ADVICE MUST BE SOUGHT IN ALL CASES FROM HR OVER PANEL COMPOSITION**

**This list is not exclusive**

<b>Category of Staff subject to disciplinary action</b>	<b>Persons authorised to take disciplinary action</b>	<b>Appeals heard by</b> (Provided they did not give disciplinary sanction)
Chief Executive	Trust Chairperson Non-Executive Directors	Appropriate appeal panel
Executive Directors	Trust Chairperson Chief Executive Non-Executive Directors	Trust Chairperson Non-Executive Directors
All medical staff	Executive Directors Assistant/Associate Medical Directors Deputy /Associate Directors Care Group Directors/Managers Service Line Directors/Managers	Executive Directors Medical/Clinical Directors Assistant/Associate Medical Directors Care Group Directors Service Line Directors
Service Line and Cluster Managers	Executive Directors Directors Care Group Directors/Managers	Executive Directors Non-Executive Directors Care Group Directors Directors
All other grades of staff	Service Line Managers Matron / Professional Leads Line Managers Designated Managers	Executive Directors Directors Care Group Managers Professional Leads (Band 8A and above) Service Line Managers

- A HR representative will support all panel compositions.
- Only a Senior Manager equivalent or higher than a Service Line Manager are permitted to dismiss employees.
- Disciplinary action may be taken, and appeals heard, by any equivalent or higher level of management outlined in the table above.

- Appeals against dismissal will be heard by 2 Directors, one of which will be an Executive Director, with support from a HR Business Partner, Assistant Director of People.