

Performance and Conduct Policy

Date	Version
May 2013	4

Purpose

The purpose of this policy is to provide a fair and consistent process for dealing with performance and conduct issues.

Who should read this document?

This Policy applies to all employees of Plymouth Hospitals NHS Trust with some exceptions for medical staff, as outlined below. Issues relating to an employee's health and attendance levels will be dealt with under the Managing Sickness Absence Policy. However, if after investigation it appears that there are no medical reasons for the absence and it is a misconduct issue, the matter may be treated under this Performance and Conduct Policy (after consultation with Staff Health & Well Being and Human Resources).

Medical and Dental Staff

For Medical and Dental Staff it is important that, before applying this Policy, that individuals first refer to the requirements as set out in the Trust's Maintaining High Professional Standards Policy, which gives further relevant advice and guidance for both the organisation and the employee concerned. In matters relating to capability, practice restrictions or exclusion from work and concerns about a practitioner's health, separate procedures will be applied as outlined in the Trust's policy for Maintaining High Professional Standards.

Key messages

This policy is designed to provide a framework for effective performance management by:

- providing a fair, consistent and objective method of dealing with performance and conduct issues;
- giving staff the opportunity to improve their performance or conduct to an acceptable standard by providing a means for them to be formally advised of the effects of their performance or conduct;
- outlining some examples of misconduct and gross misconduct

Accountabilities

Production	Director of HR & OD
Review and approval	JSNC
Ratification	Director of HR & OD and SMT
Dissemination	Director of HR & OD
Compliance	Director of HR & OD

Links to other policies and procedures

Equality Impact assessment Guidelines
 Appeal Procedure
 Sickness Absence Policy
 Maintaining High Professional Standards
 IM&T email/internet

Version History

1.1	June 2011	JSNC
1.2	June 2011	Ratified by JSNC
2.1	1 st March 2012	Minor amendments agreed with JSNC Policy Sub-group
3	May 2013	Minor amendments following review of policy

4	August 2019	Extended to February 2020 by Richard Maguire & Lisa White
Last Approval		Due for Review
March 2012		Extended to February 2020

PHNT is committed to creating a fully inclusive and accessible service.

Making equality and diversity an integral part of the business will enable us to enhance the services we deliver and better meet the needs of patients and staff.

We will treat people with dignity and respect, actively promote equality and diversity, and eliminate all forms of discrimination regardless of (but not limited to) age, disability, gender reassignment, race, religion or belief, sex, sexual orientation, marriage/civil partnership and pregnancy/maternity.

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

Plymouth Hospitals NHS Trust 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 and performance within the work environment, in order to:

- promote a capable and motivated workforce;
- ensure excellent service delivery; and
- support the Trust's values.

Communication and support methods such as staff induction, Appraisals, Personal Development Plans (PDPs), regular team and one-to-one meetings and clinical supervision should help ensure that all staff understand what is required of them in their role and what they need to do to develop and progress in order to ensure excellent service delivery. From time to time however, a member of staff's performance or conduct may be or fall below the required standard.

It will often be best for managers to deal with performance or conduct issues informally. Formal action is only appropriate where informal action has not led to the necessary improvement in performance or conduct, and in more serious cases.

Plymouth Hospitals NHS Trust undertakes to ensure that all managers who take disciplinary action, give priority consideration to the fair and rapid conclusion of such matters in the interests of both the individual and the organisation.

All aspects of the operation of the procedure are covered by the duty of confidentiality. The nature of the misconduct and issues raised in hearings must therefore be in confidence and only discussed where there is a legitimate interest.

2 Purpose, including legal or regulatory background

The purpose of this policy is to provide a fair and consistent process for dealing with performance and conduct issues.

This policy is designed to provide a framework for effective performance management by:

- providing a fair, consistent and objective method of dealing with performance and conduct issues;
- giving staff the opportunity to improve their performance or conduct to an acceptable standard by providing a means for them to be formally advised of the effects of their performance or conduct;
- outlining some examples of misconduct and gross misconduct.

3 Definitions

Performance – the accomplishment of a given task when measured against pre-set standards.

Conduct – the way in which someone behaves or acts.

Capability – the ability of someone to achieve in their role.

Formal action – action above an informal discussion and forming part of the formal procedure, usually including keeping a record of this on an employee’s personal file.

Disciplinary Action – action taken in recognition of an employee’s actions, usually in the form of issuing warnings (e.g. first formal warning) with a record of this being placed on an employee’s file.

Dismissal - the termination of an employee’s contract, with or without notice.

4 Duties

Responsibilities of the HR and OD Directorate:

- HR will advise managers on all performance and conduct matters and will help maintain consistency.
- Managers will discuss individual cases with a HR Advisor in the first instance.
- Staff representatives, equally, have recourse to the HR team for clarification, information and interpretation of the policy.
- If a case cannot be resolved through the support of HR Advisors, the case will be escalated to the appropriate HR Business Partner within that area.
- An HR representative will support the Hearing Chair in all formal Hearings.
- The HR Department will keep records of any performance or conduct outcomes reported to it detailing the nature of the issue, the action taken and the reasons for it, whether an appeal was lodged, its outcome and any subsequent developments. Non personal and statistical information may be used for monitoring or reporting purposes.
- The HR and OD Directorate will provide training and support as appropriate.

Responsibilities of Managers:

- To use effective recruitment and selection methods and implement a full induction programme which will include a departmental induction programme to help ensure the success of the postholder in the role.
- To endeavour to develop a relationship with their staff which allows for open discussion and feedback.
- All staff within their area will have an appraisal in accordance to the KSF for the role every 12 months to help identify any training or development needs, to ensure that they are equipped with the skills, knowledge and experience necessary to carry out their duties.
- To bring any shortcomings of staff in relation to the duties and/or responsibilities of their post or their behaviour to the employee’s attention at the earliest opportunity. Consideration should be given to whether any shortfall in performance is due to unreasonable expectations or lack of proper explanation, training or support on the part of management or problems with equipment.

- To operate this policy objectively and fairly, regardless of personal characteristics in line with the Equality Act 2010.
- To comply with the principles and procedures outlined in this document.
- To ensure the organisation's rules and standards of performance/conduct are conveyed and fully explained to their staff at their local induction. This will be in accordance to the continued professional development and registration body appropriate to the profession.
- Their staff have an opportunity to be acquainted with the policy and that employees are aware of their responsibilities under this policy.
- All staff attend the required mandatory courses.
- To obtain training, or support if they are unfamiliar with process.
- To remind staff of their right to be accompanied by Trade Union Representative or work colleague in advance of any formal process being commenced, and to notify employees in good time to ensure adequate notice can be given to representatives.

Responsibilities of Employees:

- To understand their role and perform their duties to the best of their ability and adhere to appropriate policies, procedures, guidelines and Trust values.
- To inform their line manager of any reason which would affect their ability to perform their duties.
- To take appropriate responsibility for their own personal development and identify and communicate areas of training and development needed to their manager through the one-to-one process and appraisal.
- To adhere to the Trust's and relevant professional codes of conduct as appropriate.
- To take responsibility for their own behaviour and performance.
- To notify their staff side representative where appropriate, of issues in good time to ensure adequate notice is given of meetings.

Responsibilities of Employee representatives:

- At all stages of the formal procedure and appeal process, staff have the right to be represented by their Trade Union or professional organisation representative or work colleague. Managers must remind staff of this right in advance of each stage.
- The organisation positively encourages the involvement of the representative as they will be able to advise and support the individual, to ensure that they fully understand their position. Employee representatives will require papers from management and staff five working days in advance of formal hearings.

- They will have access to the site and staff to ascertain the facts of a case from the employee's point of view, with or on behalf of the employee as appropriate.
- Trade Union representatives will have access to an appropriate full-time officer for guidance and may hand the case over to the full-time officer if necessary.
- Legal representation is not permitted at any stages of this internal procedure or at appeal hearings, with the exception of medical staff where permitted in accordance with medical and dental employment terms and conditions.
- Relatives (including those who work for the Trust) are not permitted to represent/accompany staff through all stages of this Policy.

5 Performance

In some cases, concern over an employee's performance may arise from a lack of ability, skill or experience. In cases where there is doubt about the capability of a member of staff to do their job, informal and formal meetings will be set at the appropriate level depending on the seriousness of the capability issue.

The manager should ensure that the member of staff whose performance is being managed under the remit of this policy has had the training, supervision, support and guidance needed, and that there is nothing else impeding adequate performance. A relevant professional advisor, if necessary, should be consulted over standards of performance involving professional staff. The information given to staff at each stage in capability cases will specify:

- the areas in which their performance is unsatisfactory and how it can be improved;
- the improvement in performance which is required and how it will be measured (minimum standards expected);
- training, support and guidance agreed;
- time in which improvement is expected to be reached (with a maximum 6 months review date);
- the action which may follow if the required improvement in performance is not achieved.

Medical staff should refer to the Trust's policy for Maintaining High Professional Standards and **not** this section of the procedure.

6 Informal Approach And Stage 1 - 'Conversation of Concern'

Regular line management contact and supervision should be used to identify and acknowledge good performance. Such regular contact should also be used to discuss concerns about an employee's level of performance or less serious cases of misconduct, at the earliest possible stage. Any discussion should refer to specific examples of unsatisfactory performance, provide coaching and identify ways of achieving an improvement.

If such approaches do not succeed or are inappropriate, the manager should hold a “conversation of concern” meeting with the member of staff to talk about the problem and action required. This may be in the form of an action plan to address the issue, which will be agreed by all parties involved. The discussion should be recorded on the form available from HR.

The “conversation of concern” is the informal stage in the procedure. The manager will document the reasons for and the outcome of the meeting, and give a copy to the member of staff, who may comment on it in writing if they wish.

The employee must be informed that the discussion constitutes a “conversation of concern” and that continued failure to meet the appropriate standards may result in formal action taken under the performance and conduct policy.

In the case of Medical Staff conduct cases: the Case Manager (appointed manager) will identify the nature of the problem or concern and assess the seriousness of the issue on the information available and make a decision as to whether an informal approach can be taken to address the problem, or whether a formal investigation will be needed. **This process is set out in the Maintaining High Professional Standards Policy.**

Only when the informal approach fails to deal with a performance and conduct issue or is inappropriate, in more serious conduct cases should the formal stages of this policy be implemented. A flow chart for managing performance and conduct is outlined in Appendix 4.

7 Mediation

In some situations, mediation may be considered as an appropriate intervention at the informal stages before any formal procedure is implemented. Mediation may also be recommended as part of the outcome of the formal stages of the procedure.

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.

If the situation is resolved at this stage, it will still be monitored to ensure that there are no further issues.

8 Suspension From Work

Guidance in this section **is applicable to non-medical employees only**. Separate guidance for the exclusion from work/restrictions on practice of medical employees is provided in the Trust’s policy for Maintaining High Professional Standards (see paragraph 2.2).

Suspension 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. It should be reserved for only the most exceptional circumstances.

Suspension from work may be used while investigations take place where:

- serious or gross misconduct is alleged;
- to deal with a potentially difficult or inflammatory situation;
- to help an investigation to proceed, where the continued presence of the individual could prejudice the conduct of the investigation;
- where there may be a risk to patients or staff.

Alternatively, the member of staff may continue to work under restricted practice which includes working under supervision or temporarily redeployed to other suitable employment within the organisation, by mutual agreement.

A member of staff may be suspended by a senior manager, (as specified at Appendix 7) at a meeting convened for that purpose in the presence of trade union representation if possible. The reasons for suspension, restricted practice including working under supervision or redeployment and any conditions which apply, will be communicated verbally at the point of suspension and confirmed in writing as soon as practicable (see below). Advice must be sought at the earliest opportunity from an HR Business Partner and any suspension will need to be approved by the Director of HR and OD, Deputy Director of HR, or in their absence, the On Call Executive Director.

A suspended employee is normally prohibited from entering the organisation's premises unless specific permission is sought and granted by the appropriate manager unless it is for a meeting called by management or for medical treatment as a patient.

A suspended employee must be available to attend any meeting or hearing under this policy therefore the employee on suspension must gain approval to go on holiday whether in the UK or abroad during the investigation process, where annual leave will be taken as normal.

Suspension will be on full pay (based on the average pay over the previous twelve weeks or the shift pattern, if more appropriate). However, it may be reasonable to suspend without pay in circumstances where an employee is not available for work. It needs to be made clear to the employee that the suspension is not a disciplinary sanction; it is a neutral act without prejudice pending formal investigation of the allegations and is not a presumption of guilt.

The reasons for suspension from work or redeployment and any conditions which apply will be confirmed in writing as soon as practicable by the appropriate manager. This letter will include:

- reason for suspension and effective date of commencement;
- expected duration of suspension;
- restrictions regarding access to the organisation's premises during suspension;
- proposed arrangements for handling the matter thereafter;
- the fact the suspension is on full pay (or not as applicable) and without prejudice pending formal investigation;

- that the employee will not undertake alternative work whilst on full pay suspension in any capacity within or outside the organisation unless with prior agreement;
- that they will be expected to be available for work during the hours normally expected to work or to attend meetings at management's request.

Communicating a suspension to others should be on a need to know basis and treated with the strictest confidentiality.

Investigations should be carried out in a timely manner in as short a time as is reasonably practicable, normally within four weeks.

The suspension will be reviewed in the light of the investigation at regular intervals and where the circumstances change, the employee will be contacted immediately. An update of the progress of the investigation will be sent to the individual every two weeks after the suspension.

9 Investigation

Where it is considered that an employee's performance or conduct, may result in formal action, a full investigation needs to be undertaken. Guidance notes are available from HR on how to undertake investigations. It may be appropriate depending on the nature and complexity of the case, for a member of the HR team to be present at the Investigation meetings.

The investigating manager will formally investigate the issues; they can be the line manager of the employee, however, where appropriate another manager will be appointed. The investigating manager will need to establish quickly where there are serious allegations / issues to be investigated whether exclusion from work (suspension) or restricted practice is necessary, see section 8. In the case of medical staff, where there are serious concerns, consideration should be given as to whether the case should be referred to the GMC Regulating/Professional bodies and if performance related, whether the case should be assessed by the National Clinical Assessment Service.

The employee will be made aware of the allegations or concerns raised and relevant information in order to respond to the allegations made. The employee will have the opportunity to put their view of events or their performance to the investigating manager at a meeting and be given the opportunity to be accompanied.

The investigating manager will carry out a fair and objective investigation in an unbiased manner, necessary to help decide whether a formal hearing is needed.

They will:

- ascertain and assess the facts e.g. interview member of staff and any witnesses; obtain written statements about what happened (these should be taken, signed and dated); with a timeframe of 5 working days or as soon as practicable.
- gather relevant information and data relating to performance and take all steps to verify or clarify issues raised by statements and information collected;
- ensure that safeguards are in place throughout the investigation so that breaches of confidentiality are avoided as far as possible. Patient confidentiality needs to be maintained;

- reach conclusions on what occurred / performance levels;
- identify the allegations supported by the facts.

The investigating manager should complete the investigation as soon as possible, preferably within 4 weeks wherever possible.

A note taker will be assigned where appropriate, to be agreed between the HR department and Directorate concerned. The investigating manager will, following the investigation meeting with the employee, adjourn to decide whether there is a case to answer or further investigation required. HR advice should be sought in all cases. The employee will be informed of the decision.

If the facts discovered during an investigation do not support the need for further action then the employee concerned will be informed verbally as soon as possible. Written confirmation will follow within 5 working days, signed by the appropriate manager.

10 Professional Advice in Performance and Conduct Cases

Where the alleged misconduct / poor performance relates to matters of a professional nature, the investigating manager may need to obtain appropriate professional advice from the professional body or other senior professionals. An independent professional may also be invited to sit on the panel at a formal hearing.

Any investigation, which may call into question the professional conduct of a member of staff, will be reported to the organisation's professional lead.

11 Formal Hearings

If it is decided that a formal hearing is necessary, at least 5 clear working days notice will be given of this hearing (unless mutually agreed that a shorter time limit is appropriate) to allow the individual to properly prepare a case. If the employee or their representative cannot attend on this date, an alternative date should normally be agreed within 5 working days of the previous date given. Only one change of date will be considered.

Once the date has been set, the investigating manager will write to the member of staff and if appropriate their representative. (Template letter is available from HR).

The member of staff or their representative must submit a written statement of their case at least five working days before the hearing, including the names of any witnesses they intend to call and copies of their statements.

In all cases the Chair of the hearing will not have been involved in the investigation or at previous formal stages of the procedure.

The Chair of the hearing will be assisted by an HR Representative at an appropriate level of seniority depending on the complexity of the case, who is there to provide advice on process. In cases where dismissal is a possibility, the Chair of the Hearing may invite an additional panel member to be present if they choose to.

The member of staff and their representative and the investigating manager, will be present throughout the hearing. Witnesses may only be present while they are

giving evidence or being questioned. For the hearing process please refer to Appendix 5 of this policy.

After the hearing, the Chair of the hearing and HR representative will adjourn to make a decision on the appropriate outcome. Consideration should be given to:

- whether the investigation process has followed the organisation's procedures;
- information presented;
- seriousness of allegations;
- 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 needed.

Failure to attend a hearing by a member of staff without a valid reason may result in the process being carried out in the individual's absence.

The time limits referred to in this Performance & Conduct Policy and Procedure may be varied by mutual agreement.

12 Warnings Outside of a Hearing and Action Following a Hearing

No employee will be dismissed for a first breach of discipline, except in the case of gross misconduct when the penalty may be dismissal without formal warnings, notice or payment in lieu of notice (see Appendix 6 for examples of misconduct and gross misconduct).

Where the manager finds that the employee has committed misconduct or serious misconduct and the disciplinary sanction is one other than dismissal, they may offer to give the warning without the employee having to attend a disciplinary panel hearing (the employee may also request this).

If the employee accepts, the investigating manager issues the appropriate warning after advice from HR and advises the employee that they have the right to appeal against the disciplinary sanction and to attend a disciplinary panel hearing instead if they wish. This should then be followed up in writing ([template letter available from HR](#)).

In cases of potential gross misconduct where the disciplinary sanction is potentially dismissal, the employee will **not** be offered the opportunity to receive a sanction outside of a formal disciplinary hearing.

The Chair of the hearing may invoke any level of warning if the employee's alleged misconduct warrants such action. This must be commensurate to the seriousness of the issue. In cases where there is a further but different breach of conduct or continued poor performance, when an employee already has a current warning on file this can result in progression to the next stage of the procedure.

Whilst consistency is important, it is also essential to take account of the circumstances and people involved.

In cases relating to performance, pay progression will be affected in accordance with NHS and Agenda for Change terms and conditions.

13 First Formal Warning (Stage 2)

Where a member of staff's performance or conduct has not improved sufficiently after an informal Conversation of Concern meeting and warning, and in cases of more serious misconduct or poor performance, a formal warning may be given in accordance with this policy.

The Chair of the hearing will explain at the hearing with the member of staff (and their representative) what is expected of them (with a review date where appropriate) and indicate the formal action which may follow if the required improvement is not made.

This will remain on the member of staff's record for up to twelve months at which time it will be removed.

The Chair of the hearing (at the required level of seniority as set out at Appendix 7) has the authority to issue this first formal warning.

There is a right of appeal against a first formal warning.

14 Final Formal Warning (Stage 3)

When a member of staff's performance or conduct has not improved sufficiently after a first formal warning and in cases of serious misconduct or poor performance (where it is deemed appropriate to exclude previous stages of the Performance and Conduct policy), the chair of the hearing may give them a final formal warning.

The Chair of the hearing will explain at the hearing with the member of staff (and their representative) what is expected of them (with a review date) and advise that further similar misconduct or poor performance may lead to the termination of their contract of employment.

This will remain on the member of staff's record for up to twelve months, except in some cases (eg relating to abuse or negligence of others or offences verging on gross misconduct) where the warning can be retained on file for a specified longer period to be determined by the hearing panel Chair, and with reference to relevant professional guidelines.

The level of management above the employee's immediate manager will normally have the authority to issue a final formal warning.

The member of staff has a right of appeal against a final warning.

Exceptionally, there may be circumstances where the misconduct is so serious, relating for example, to the care of vulnerable service users that it cannot be disregarded for future disciplinary purposes. In such circumstances, the written warning can never be disregarded and any recurrence may lead to dismissal.

Where an employee is absent during the course of a 'live' warning for a continuous period exceeding 4 weeks, the warning will be extended by the length of the period of any absence that exceeds 4 weeks and this will be confirmed in writing for the employee.

If the employee does not improve within the given time frame a further period to improve will be given. This will be in accordance to the severity of the situation.

15 Reduction in Grade/ Transfer to Suitable Alternative Employment

In exceptional circumstances as an alternative to dismissal (which will normally be to take into account mitigating circumstances), the employee may be transferred to another post. Managers must identify appropriate training and development in the alternative post. If the employee does not accept the decision then dismissal will be effective. This reduction in grade or formal warning transfer will normally take place in conjunction with a formal warning and pay protection will **not** apply.

16 Dismissal (Stage 4)

No employee will be dismissed for a first breach of discipline, except in the case of gross misconduct when the penalty may be dismissal without formal warnings, notice or payment in lieu of notice. (see 11.1)

A decision to dismiss should be a last resort and consideration should be given to the appropriateness of an alternative outcome.

Examples of gross misconduct can be found in Appendix 6 although this is not an exhaustive list.

Authority to dismiss rests with the Chair of the hearing panel.

17 Dismissal (With Notice)

When a member of staff's performance or conduct has not improved sufficiently after a final formal warning, grossly inadequate performance or due to unfulfilled statutory requirements for the job, they may be dismissed with the relevant notice or payment in lieu of notice.

18 Dismissal Without Notice (Summary Dismissal)

Summary dismissal will be used specifically where an investigation has established gross misconduct.

19 Notification of the Formal Hearing Decision

If disciplinary action has been taken, it will be confirmed in writing, within seven working days of the hearing. The letter may (depending on relevance) include:

- confirmation of the date and venue of the hearing;
- outline of the allegation;
- 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/improve performance with timescales;
- agreed support / training that will be given;
- the potential consequences of further misconduct or poor performance;
- the length of time the warning will stay on file;

- any referrals to professional bodies;
- right of appeal including to whom and timescale .

A copy will be sent to the employee's representative. In cases of dismissal, the following must 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.;
- right of appeal.

20 Appeals

Staff issued with a formal warning under this procedure will have a right of appeal. The member of staff must state compelling 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.

21 Witnesses

It is each side's responsibility to arrange for the attendance of any witnesses they wish to call at a formal interview or appeal hearing. Trust staff called as witnesses will be allowed paid time off to attend.

22 Criminal Offences

Where an investigation establishes a suspected criminal action, this must be reported to the police. The Trust can proceed with an investigation in advance of any outcome or court action but should only proceed in respect of those aspects of the case, which are not directly related to the police investigation underway. The police must be consulted to establish whether an investigation into any other matters would impede their investigation.

An employee should inform management as soon as possible of any criminal 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. The main consideration will be the extent to which the offence alleged or committed is connected with, or is likely to affect adversely, the employee's performance or their duties or to 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.

When the Trust has refrained from taking action pending the outcome of a court case and if the employee is then acquitted but the organisation feels that there is enough evidence to suggest a potential danger to patients or staff, or affects the reputation of the organisation then the Trust has a public duty to take action to ensure that the employee concerned does not pose a risk to patient/staff safety. 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.

23 Theft or Fraud

Cases involving potential theft and fraud may be investigated under the organisation's Counter Fraud policy and the NHS Counter Fraud & 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 Direct Team, who will involve the Local NHS Counter Fraud Specialist and refer where appropriate to an HR Business Partner.

24 Information Held on the Employee's File

A copy of all written warnings must be kept on the employee's personal file together with a written record of the formal hearings and, if applicable, the appeal hearing.

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

25 Notification to Professional Bodies

Plymouth Hospitals NHS Trust may report to the appropriate regulatory or professional body (including the Independent Safeguard Authority) any serious act of misconduct or poor performance.

26 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.

27 Disabilities

Those who are disabled in any way should also be supported through the process and reasonable adjustments should be put in place as appropriate.

28 Trade Union Officials

No formal action should be taken or formal meetings arranged in relation to concerns over a member of staff who is a Trade Union Representative until the circumstances of the case have been discussed with the full time (regional) official. An HR Business Partner should always be consulted prior to making the decision to exclude.

29 Communication

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

This policy will be actively promoted and distributed to contractors and agencies who provide staff to the Trust. This will be the responsibility of the manager who has engaged the contractor to undertake work in the Trust.

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

Monitoring data and other feedback relating to formal action taken as a result of managing performance and conduct will be regularly distributed to the relevant channels in appropriate formats.

30 Overall Responsibility for the document

The Director of Workforce and OD has overall responsibility for this document.

31 Consultation and Ratification

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

32 Dissemination and Implementation

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

Publication of this policy will be publicised in Vital Signs, the Trust's weekly staff news briefing and it will be available electronically on the TrustDocument Network Share Folder.

33 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 Staff Side 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 HR&OD and any necessary action taken. This Policy will be reviewed every 5 years or sooner if required by employment law changes or best practice.

The standards and Key Performance Indicators identified with the implementation of this policy are the NHSLA and Standards as determined by the Care Quality Commission.

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.

34 | References and associated documentation

The following documents have been referred to and have links to the Performance and Conduct Policy

- Equality Impact assessment Guidelines
- Appeals procedure
- Appraisal Policy

Further guidance on the application of this policy is available from the Workforce and 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 Workforce and OD Directorate.

The following websites are useful with regard to performance and conduct issues:

www.acas.org.uk

www.cipd.co.uk

www.dh.gov.uk

www.nhsemployers.co.uk

Core Information				
Document Title	Performance and Conduct Policy			
Date Finalised	March 2013			
Dissemination Lead	Martin Bamber, Deputy Director of Workforce			
Previous Documents				
Previous document in use?	Yes			
Action to retrieve old copies.	Remove from Trust Documents and replace			
Dissemination Plan				
Recipient(s)	When	How	Responsibility	Progress update
All Trust Staff	May 2013	Vital Signs	Workforce Department	

Review		
Title	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
Rationale	Are reasons for development of the document stated?	Yes
Development Process	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
Content	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
Evidence Base	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
Approval	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
Dissemination & Implementation	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
Document Control	Does the document identify where it will be held?	Yes
	Have archiving arrangements for superseded documents been addressed?	Yes
Monitoring Compliance & Effectiveness	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
Review Date	Is the review date identified?	Yes
	Is the frequency of review identified? If so is it acceptable?	Yes
Overall Responsibility	Is it clear who will be responsible for co-ordinating the dissemination, implementation and review of the document?	Yes

Core Information	
Manager	Martin Bamber, Deputy Director of Workforce
Directorate	Workforce and OD
Date	May 2013
Title	Performance and Conduct Policy
What are the aims, objectives & projected outcomes?	The purpose of this policy is to provide a fair and consistent process for dealing with performance and conduct issues.
Scope of the assessment	
Collecting data	
Race	<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.</p> <p>This area, will be monitored through workforce data reporting and analysis and any feedback from line managers/trade unions</p>
Religion	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
Disability	<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>
Sex	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
Gender Identity	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
Sexual Orientation	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
Age	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
Socio-Economic	There is currently no data collected to show whether there will be an impact in this area.
Human Rights	Staff have the right to representation within this process.
What are the overall trends/patterns in the above data?	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.

Specific issues and data gaps that may need to be addressed through consultation or further research	There is currently no data to monitor the impact on gender identity, socio-economic and human rights.			
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.</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>			
Action Plan				
Action	Owner	Risks	Completion Date	Progress update

Informal

Stage 1 - Conversation of Concern
Emphasis should be given to resolve issues at informal stage

Formal

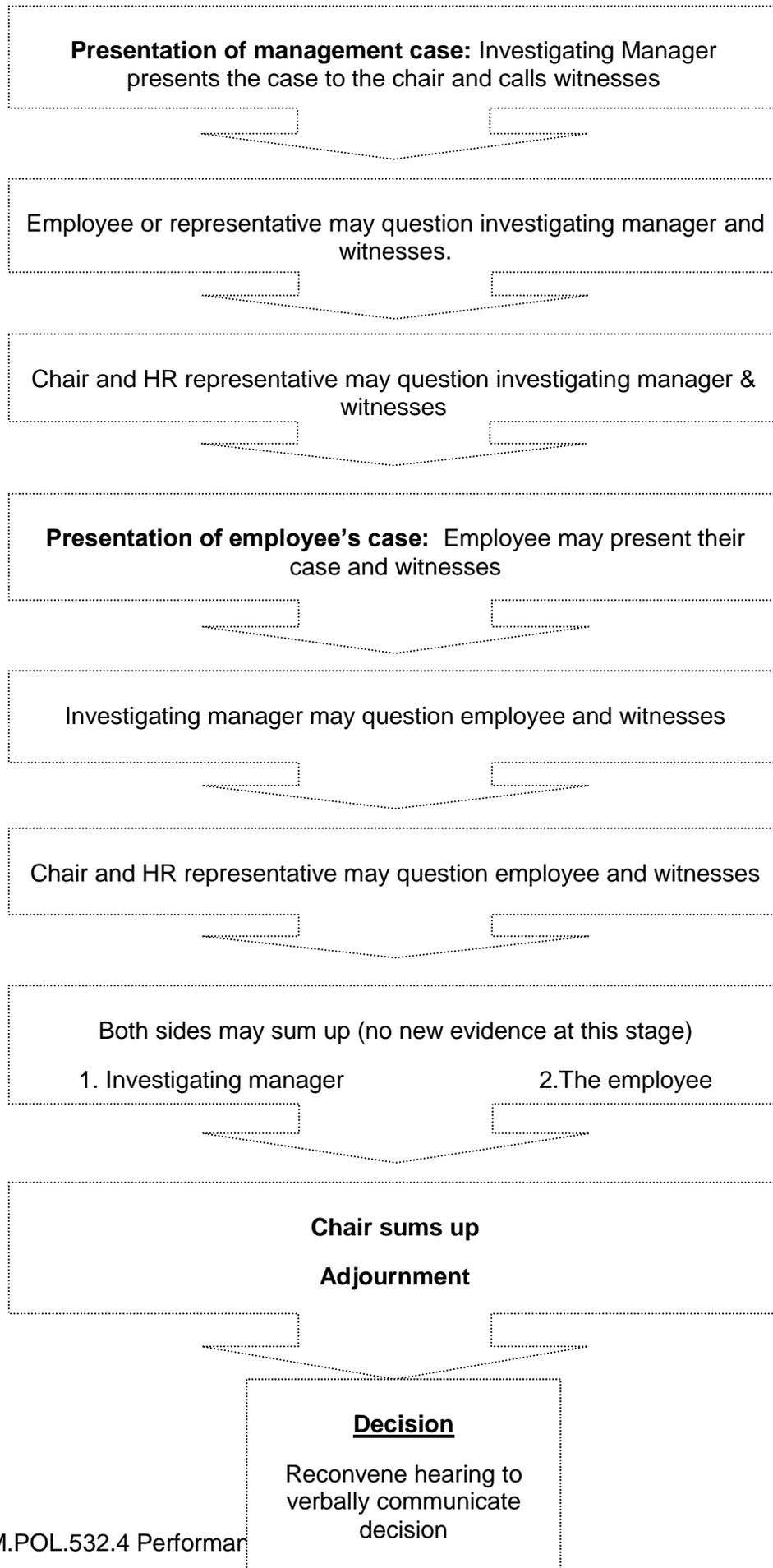
Formal Hearings Conducted

Stage 2 – First formal warning (warning on file for 12 months)
Misconduct case/ continued poor performance

Stage 3 – Final Formal Warning (warning on file for 12 months*)
Serious misconduct/ repeated misconduct/ continued poor performance

Stage 4 – Dismissal
Gross misconduct/ repeated misconduct/ continued poor performance

* A stage 3 warning can be retained on file for a specified longer period to be determined by the Hearing Panel Chair,



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 Investigating manager and employee are responsible for ensuring the availability of their respective witnesses.

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
- information is obtained about the sort of disciplinary action taken in similar circumstances in the past
- an interpreter is available if required

Examples Of Acts Of Misconduct & Gross Misconduct**Misconduct**

It is not possible to provide an exhaustive list of types of behaviour, conduct or performance that might lead to formal action.

Examples of the kind of behaviour that might lead to formal action or eventual dismissal include:

- Attendance
- Time-keeping
- Confidentiality
- Failure to follow reasonable management instructions
- offensive behaviour
- poor performance
- 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 in areas designated as no smoking
- 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.

Table of Delegated Authority for Disciplinary Action**Appendix 7**

(For medical staff refer to Trust local policy: Framework for Suspension and Disciplinary Procedures for Doctors and Dentists)

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

Category of Staff subject to disciplinary action	*Person authorised to take disciplinary action	Appeals heard by Provided they did not give disciplinary sanction
Chief Executive	Trust Chairperson Non Executive Director	Appropriate appeal panel
Executive Directors	Trust Chairperson Chief Executive Non Executive	Trust Chairperson Non Executive Director
All medical staff	Executive Director Medical/Clinical Director Assistant/Associate Medical Director Deputy /Associate Directors Directorate Managers	Executive Director Medical/Clinical Director Assistant/Associate Medical Director Clinical Director
Directorate Managers	Executive Directors Directors Clinical Director	Executive Director
All other grades of staff	Directorate Managers Line Managers	Executive Director Directorate Manager

- Only a Senior Manager at Directorate Manager level or equivalent are permitted to dismiss employees.
- In cases where dismissal is a possibility, it may be appropriate for an additional person, for example, in a professional advisory role, to join the panel
- Appeals against a warning short of dismissal will be heard by an HR Representative at an appropriate level of seniority depending on the complexity of the case, and Senior Manager as set out above.
- Appeals against dismissal will be heard by 2 Directors, one of which will be an Executive Director, and an HR Business Partner or Deputy Director of Workforce.