

DISCIPLINARY POLICY (H1)

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Date of Issue:	September 2017	Next Review Date:	July 2028
Version:	2.7	Last Review Date:	July 2026
Author:	Employee Relations Team		
Director(s) responsible:	People and Education Directorate		
Approval Route			
Approved By:		Date Approved:	
JCNC/LCNC		18 th July 2013/18 th September 2013	
JCNC/LCNC		August 2014	
Cost Improvement Meeting		10 December 2015	
Links or overlaps with other policies:			
Bullying and Harassment at Work Policy (H4)			
Attendance Policy (H33)			
Improving Performance Policy (H17)			
Exclusion from Work Guidance			
Maintaining High Professional Standards in the NHS (No.11)			

Amendment History

<u>Issue</u>	<u>Status</u>	<u>Date</u>	<u>Reason for Change</u>	<u>Authorised</u>
1	Approved	September 2013	Harmonised policy	JCNC and LCNC
2	Approved	August 2014	Deletion of last sentence 11.3 and addition of reason for gross misconduct	JCNC & LCNC
2.1	Approved	December 2015	Amendment to Appeal Panel – Exec no longer required to chair and min panel 2 senior managers	Cost Improvement
2.2	Approved	Sept 2017	Remove reference to ICare & Contact in para 10.5 and replace with ICON	HR Manager
2.3	Approved	15 Jan 2019	General review and audit	HR Advisor
2.4	Approved	6 April 2022	Extension to review date	Staffside chair
2.5	Approved	26 October 2022	Extension to review date	Associate Director of People
2.6	Approved	January 2025	General review - updated wording around Employee Relations Team & People Directorate and clearer cross-referencing to the management guidance.	Employee Relations Team Lead
2.7	Approved	July 2026	Fixed broken links, amended ER contact details, EAP details and general minor review.	ER Team Lead

Rapid (E)quality Impact Assessment (EqIA) *(for use when writing policies)*

Please contact the Equalities team for guidance: For Torbay and South Devon NHS Trusts, please call 01803 656676 or email pdf.sdhct@nhs.net This form should be published with the policy and a signed copy sent to your relevant organisation.

Policy Title (and number)	Disciplinary Policy (H1)	Version and Date	v2.7 – July 2026
Policy Author	Employee Relations Team		
An (e)quality impact assessment is a process designed to ensure that policies do not discriminate or disadvantage people whilst advancing equality. Consider the nature and extent of the impact, not the number of people affected.			
Who may be affected by this document?			
Patients/ Service Users ☐	Staff ☒	Other, please state... ☐	
Could the policy treat people from protected groups less favourably than the general population?			
<i>PLEASE NOTE: Any 'Yes' answers may trigger a full EIA and must be referred to the equality leads below</i>			
Age	Yes ☐ No ☒	Gender Reassignment	Yes ☐ No ☒
Race	Yes ☐ No ☒	Disability	Yes ☐ No ☒
Gender	Yes ☐ No ☒	Pregnancy/Maternity	Yes ☐ No ☒
Sexual Orientation			Yes ☐ No ☒
Religion/Belief (non)			Yes ☐ No ☒
Marriage/ Civil Partnership			Yes ☐ No ☒
Is it likely that the policy could affect particular 'Inclusion Health' groups less favourably than the general population? (substance misuse; teenage mums; carers ¹ ; travellers ² ; homeless ³ ; convictions; social isolation ⁴ ; refugees)			Yes ☐ No ☒
Please provide details for each protected group where you have indicated 'Yes'.			
VISION AND VALUES: Policies must aim to remove unintentional barriers and promote inclusion			
Is inclusive language ⁵ used throughout?			Yes ☒ No ☐ NA ☐
Are the services outlined in the policy fully accessible ⁶ ?			Yes ☒ No ☐ NA ☐
Does the policy encourage individualised and person-centered care?			Yes ☒ No ☐ NA ☐
Could there be an adverse impact on an individual's independence or autonomy ⁷ ?			Yes ☐ No ☐ NA ☒
EXTERNAL FACTORS			
Is the policy a result of national legislation which cannot be modified in any way?			Yes ☒ No ☐
What is the reason for writing this policy? (Is it a result in a change of legislation/ national research?) To ensure that there is a fair, non-discriminatory, consistent, effective and prompt approach to disciplinary matters throughout the organisation.			
Who was consulted when drafting this policy?			
Patients/ Service Users ☐	Trade Unions ☒	Protected Groups (including Trust Equality Groups) ☐	
Staff ☒	General Public ☐	Other, please state... ☐	
What were the recommendations/suggestions?			
Does this document require a service redesign or substantial amendments to an existing process?			Yes ☐ No ☒
<i>PLEASE NOTE: 'Yes' may trigger a full EIA, please refer to the equality leads below</i>			
ACTION PLAN: Please list all actions identified to address any impacts			
Action	Person responsible	Completion date	
None required			
AUTHORISATION:			
By signing below, I confirm that the named person responsible above is aware of the actions assigned to them			
Name of person completing the form	ER Team Lead		
Validated by (line manager)	ER Service Manager		

¹ Consider any additional needs of carers/ parents/ advocates etc, in addition to the service user

² Travelers may not be registered with a GP - consider how they may access/ be aware of services available to them

³ Consider any provisions for those with no fixed abode, particularly relating to impact on discharge⁴ Consider how someone will be aware of (or access) a service if socially or geographically isolated

⁵ Language must be relevant and appropriate, for example referring to partners, not husbands or wives

⁶ Consider both physical access to services and how information/ communication is available in an accessible format

⁷ Example: a telephone-based service may discriminate against people who are d/Deaf. Whilst someone may be able to act on their behalf, this does not promote independence or autonomy

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1 Policy statement

- 1.1 Torbay and South Devon NHS Foundation NHS Trust (hereafter referred to as the Trust) supports the following statement, taken from the ACAS Code of Practice on Disciplinary Practice and Procedures:

“Many potential disciplinary issues can be resolved informally. However, where an issue cannot be resolved informally then it may be pursued formally. This [policy] sets out the basic requirements of fairness that will be applicable in most cases.”

2 Purpose

- 2.1 The purpose of this policy is to ensure that there is a fair, non-discriminatory, consistent, effective and prompt approach to disciplinary matters throughout the organisation.

3 Scope

- 3.1 This policy applies to all those employed by the Trust, together with those on a joint contract with the organisation and another employer.
- 3.2 Those with honorary contracts from the organisation who are students at the University of Plymouth are subject to the University’s Disciplinary Procedures. However, the organisation retains the right to suspend and/or expel such staff in appropriate circumstances.
- 3.3 This policy does not apply to temporary staff, Bank staff and independent contractors (including agency staff) working on a Contract for Services basis.
- 3.4 Where an incident involves the professional conduct or competence of:
- Medical or Dental staff the matter will be dealt with by the Medical HR Team, in accordance with the Maintaining High Professional Standards in the NHS Policy (No.29).
 - In situations where there is an issue of personal misconduct, Medical and Dental staff may be subject to this disciplinary policy, as well as the Maintaining High Professional Standards in the NHS Policy.
 - Clinical staff are also subject to the provisions of the relevant statutory bodies.

4 Equality and diversity statement

- 4.1 The Trust is committed to preventing discrimination, valuing diversity and achieving equality of opportunity. No person (staff, patient or public) will receive less favourable treatment on the grounds of the nine protected characteristics (as governed by the Equality Act 2010): sexual orientation; gender; age; gender re-assignment; pregnancy and maternity; disability; religion or belief; race; marriage and civil partnership. In addition to these nine, the Trusts will not discriminate on the grounds of domestic circumstances, social-economic status, political affiliation or trade union membership.
- 4.2 The Trust is committed to ensuring all services, policies, projects and strategies undergo equality analysis.

5 Flexibility in employee relations procedures

- 5.1 Normally this procedure will apply as set out. However, in some circumstances, two or more policies may apply to a situation, e.g. where a member of staff is taken through the disciplinary procedure and a grievance is raised. In these circumstances the most appropriate procedures will be determined by the manager/the Employee Relations team using the principles of ACAS, best practice and employment law. This decision will be reached following discussion with the employee and/or their representative, the final decision of the most appropriate process will remain with management. The aim should be to incorporate the essential elements from each procedure but minimise the number of meetings and correspondence to the benefit of all parties to resolve and manage issues promptly.

6 Capability and disciplinary procedures

- 6.1 When dealing with disciplinary issues, managers, with the assistance of the Employee Relations team should, at the earliest opportunity differentiate between issues of conduct and issues of capability. Issues of conduct and capability need to be addressed differently; therefore separate policies/procedures have been produced on how each should be handled.
- 6.2 In dealing with questions of an employee's ability to perform a job, negligence should be distinguished from incapability. Negligence normally involves a measure of personal blame for which some form of action under the disciplinary policy will be appropriate.
- 6.3 Incapability, in this context, is due to lack of ability, skills or experience and dealt with in accordance with the Improving Performance Policy (H17).
- 6.4 Questions of capability due to sickness absence and ill health should be dealt with through the organisation's Attendance Policy (H33).
- 6.5 Examples of potential misconduct is detailed at appendix 1 This is not an exhaustive list and should be used as guidance.

7 Counter fraud procedure

- 7.1 When an allegation has been made against an employee of the Trust relating to fraud or corruption the line manager should ensure that the alleged employee is **NOT** informed, and that the process detailed in the separate Management Guidance found [here](#) is followed.

8 Right of accompaniment

- 8.1 All employees have the right to be accompanied and/or represented by a Trade Union representative (or workplace colleague) during formal meetings. Neither may act in a legal capacity. It is the employee's responsibility to arrange accompaniment promptly, so that the matter can be resolved without unnecessary delay.
- 8.2 If the employee's representative/workplace colleague is unable to attend the date originally proposed, the employee must contact the Investigating Manager and agree another date for the meeting to convene within five working days of the originally proposed date. This five day limit will only be extended in exceptional circumstances. Employees therefore may need to be accompanied by an alternative representative/workplace colleague or attend without representation.

8.3 The representative may address the investigation and hearing, ask questions and confer privately with the employee, but has no legal right to answer questions on behalf of the employee.

8.4 Employee guidance on the disciplinary process is available under the “Employment Policies and Guidance” on ICON [here](#)

9 Timeframes and availability

9.1 The disciplinary process can be lengthy and therefore it is important that everyone involved - management, employees, Employee Relations team and staff-side make every effort to prioritise this process, to ensure a prompt conclusion.

9.2 It is an expectation that all involved will make themselves available for meetings and ensure correspondence is dealt with promptly. Where individuals cannot accommodate the process in a timely manner and this may result in a delay of two weeks or more, for example due to sickness, annual leave or other work commitments, consideration should be given to providing alternative representation, employee relations support or an alternative investigating manager.

10 Disciplinary procedure

10.1 Incident decision tree

10.1.1 Consideration should be given to the incident decision tree (appendix 2) as soon as a concern has been raised, to assist in deciding the most appropriate course of action, based on the individual circumstances of the situation.

10.1.2 The incident decision tree (appendix 2) supports colleagues to feel able to report issues and incidents without undue fear of consequences or sanctions. It enables organisational learning without necessarily having to hold an individual to account. However, there will be times when a formal investigation process will need to be followed.

10.1.3 To help determine the most appropriate organisational response, a manager is taken through a series of questions to establish whether an individual intended an action or incident to happen. It looks at the extent to which systems and practices contributed to the actions and for those to be reviewed in light of the findings. It also explores other factors such as an individual’s health, whether peers would have behaved in the same way or any mitigating circumstances which may have impacted on the action or incident.

10.1.4 Advice should be sought from the ER team regarding the outcome of the incident decision tree regarding appropriate next steps.

10.1.5 The incident decision tree should be used at all stages of an investigation, from initial concern being raised to consideration of an investigation report and should be re-visited as more information becomes available to support decision-making with regard to next steps.

10.2 Informal action

10.2.1 In the interests of good management and employee relations, minor disciplinary matters should wherever possible, be resolved informally. It should be regarded as a means of avoiding formal disciplinary action rather than as an early stage of the disciplinary procedure.

- 10.2.2 This process should always take place in a private and confidential setting and should be undertaken on a one-to-one basis between the manager and employee concerned.
- 10.2.3 The aim should be to establish the facts and remind the employee of the standards of conduct required of them. Notes of the key points discussed must be made and issued to the employee, including acknowledgement that the conversation has taken place and the date. This should be saved on the employee's file.
- 10.2.4 The employee must be informed that if there is no improvement or if further misconduct occurs, the next stage may be to invoke the formal disciplinary procedure.

10.3 Initial fact-finding exercise

- 10.3.1 Where a potential disciplinary matter arises and following appropriate informal action, the manager should carry out an initial fact-finding exercise before decisions on next steps can be taken. This will involve establishing the facts of the incident and may involve a brief discussion with a complainant, a witness, a patient and the employee concerned. Whenever possible an initial written account of the events should be obtained. If it is necessary to discuss the incident with the employee, they should be advised that it is not a formal disciplinary meeting and is solely to establish the facts and their viewpoint. There is no statutory right to representation at this meeting. The employee must also be advised that an outcome of the initial fact-finding exercise could be a requirement for them to attend a further formal meeting under this policy.
- 10.3.2 Where the matter appears to be of a minor, low risk and straightforward nature the manager should deal with the issue informally, as in accordance with section 10.2.
- 10.3.3 If, following the initial fact-finding exercise, it is felt that the matter is considered serious enough to require further investigation, a formal investigation should be commissioned.

10.4 Exclusion from work and temporary reassignment

- 10.4.1 Exclusion from work (suspension) is not a disciplinary sanction but may be appropriate in potentially serious circumstances where it is considered that allowing the employee to continue working could place the safety and/or well-being of patients, employees or the employee at risk, or where it is felt that the continued presence of the employee may impair the investigation. It can also be considered to protect the organisation and/or in certain cases where police investigations are ongoing.
- 10.3.2 In certain circumstances it may be appropriate for the line manager to consider and arrange temporary reassignment to an alternative work area or duties whilst the formal investigation takes place.
- 10.4.3 At any point during the investigation, dependent on the information gathered, it may be necessary to reconsider a decision to exclude from work or to temporarily reassign an individual.
- 10.4.4 Refer to the Exclusion from Work Guidance, found on ICON [here](#)

10.5 Formal investigation

- 10.5.1 An investigating manager will be identified by a commissioning manager, to conduct a formal investigation, supported by a member of the Employee Relations team. This should start as soon as possible after the alleged incident has occurred and/or complaint received.
- 10.5.2 The investigation will gather information and establish the facts of a complaint, incident or allegation.
- 10.5.3 When the investigation is complete, the investigating manager will complete an investigation report to include their findings as a result of the investigation.
- 10.5.4 The investigation report should be sent to the commissioning manager to make a decision, with advice from Employee Relations, as to whether the matter is referred to a disciplinary hearing, an informal one-to-one meeting is appropriate or there is no case to answer. The investigating manager, the employee and their nominated representative will receive written confirmation of the decision and any next steps.
- 10.5.5 Guidance on the investigation process and report can be found in the Management Guidance on the Disciplinary Policy available on ICON [here](#)

11 Disciplinary hearing

- 11.1 If there appears to be a case to answer and the conduct potentially warrants disciplinary action, a disciplinary hearing will be arranged without unreasonable delay, taking into account the availability of all parties.
- 11.2 At least 14 calendar days prior to the meeting the investigating manager and employee will be written to, to confirm:
 - The meeting is being held in accordance with the organisation's disciplinary procedure and who will be present;
 - The alleged misconduct, the classification of the misconduct, i.e. minor, serious, gross and pending the outcome of the meeting, disciplinary action up to and including what level may be taken;
 - The date, time and location of the meeting;
 - The names and roles of the disciplinary panel, confirmation of the name of the manager presenting the management case, the representative presenting the employee case.
 - Reference to any previous disciplinary action;
 - Confirmation of the employees of the right of representation at the meeting by a Trade Union representative or workplace colleague;
 - Requirement and timescales in which to exchange cases and confirm witnesses.
- 11.3 Details of who is authorised to chair and make decisions at disciplinary and appeal hearings is detailed in appendix 3.

12 Prior to a disciplinary hearing

- 12.1 The confidential nature of witness statements, records and reports must be respected by all parties and must not be disclosed to anyone not directly involved in the case. Any breach of confidentiality may be the subject of further disciplinary action.

- 12.2 All evidence should be submitted to the chair of the panel prior to the disciplinary hearing at least seven calendar days prior date of the hearing. Only in exceptional circumstances and at the discretion of the chair will new evidence be permitted at the meeting itself.
- 12.3 It is not a requirement to call all witnesses who have been party to the investigation. Their statement will normally be included within the investigation report. It will be the responsibility of management and the employee to call and brief their own witnesses as required.
- 12.4 Whilst both management and the employee will have the opportunity to decide which witnesses they may wish to call to the hearing. The panel will in addition have the authority to request the attendance at the hearing of any witnesses they deem to be relevant to the case. The anonymity of witnesses will be considered in exceptional circumstances where there is a genuine belief of intimidation.

13 Composition of the panel for disciplinary hearings:

- 13.1 **Chairperson** - the manager hearing the appeal should be of at least the same or a higher level than the manager that issued the sanction and should not have been previously involved in the case.
- 13.2 **Second panel member or professional advisor** (appropriate as required for any level of hearing but required for all dismissal appeals) – an appropriate senior manager or in cases which concern a professional matter, at least one panel member should have specialist knowledge of the employee's field of work. Where this is not so, a professional advisor should be appointed. The professional advisor should advise the panel only on matters relating to the employee's professional conduct or competence. Any objections to the professional advisor proposed must be based on reasonable grounds.
- 13.3 **Employee relations** – an employee relations team member will support the panel and will be responsible for providing advice and guidance to the panel regarding policy and process and providing support and advice during the decision-making process.

14 Conducting a disciplinary hearing

- 14.1 The disciplinary hearing will be conducted as described in appendix 4.
- 14.2 During the hearing the employee will be fully reminded of the nature of the alleged offence and the established facts.
- 14.3 The employee will be provided with every opportunity to question the investigating manager, management witnesses, put forward their case, call witnesses in their defence and offer mitigating circumstances.
- 14.4 When all the evidence has been presented the hearing should be adjourned for the panel to reach a decision.
- 14.5 In certain circumstances the hearing may have to be adjourned pending a specialist report, e.g. additional information or medical assessment before a final decision can be reached.
- 14.6 Where appropriate the employee, their representative and the manager presenting the case should be recalled and informed of the chairperson's decision. Where this is not possible or should the employee wish the outcome of the disciplinary hearing can be communicated in

writing. If disciplinary action is the result, the employee should be informed of the salient points of the decision, which should be confirmed in writing within five working days.

14.6 The levels of warning are set out below.

Outcome	Given for	Life of warning
First written warning	Minor misconduct	12 months
Final written warning	Serious misconduct or further offence	24 months, reducing to a first written warning after 12 months
Dismissal and Summary Dismissal	Gross misconduct or further offence	Not applicable

14.7 Alternatives to dismissal

14.7.1 Where there are mitigating circumstances, alternatives to dismissal may be considered.

14.7.2 This may apply where an employee who has a current final written warning on file for misconduct has a further allegation of misconduct against them proven, but where there are very strong factors which mitigate against dismissing the employee. Or alternatively it could be where an employee commits an offence, which is classed as gross misconduct and would normally lead to summary dismissal, but where very exceptional circumstances warrant consideration of action short of dismissal but more than simply issuing a final written warning.

14.7.3 Action short of dismissal may include extending an existing final written warning, issuing a final written warning for a period longer than 24 months, redeployment, down-banding or changing shift pattern. In such circumstances protection of salary will not be applicable.

14.7.4 The employee must be advised that the proposed action is offered as an alternative to dismissal. The employee may, if they wish, opt for dismissal/summary dismissal rather than accept the alternative to dismissal.

14.7.5 In the event of continued failure to meet the required standards in a case where an alternative to dismissal has been applied, further disciplinary action may be taken depending on the circumstances.

14.7.6 The employee's right of appeal is not affected and remains in accordance with the disciplinary policy and they must be advised, in writing, of their right to appeal against any formal disciplinary action.

14.8 Non-attendance

14.8.1 Employees whether the subject of an investigation/meeting or as a witness, are obliged to attend investigative meetings and disciplinary meetings as a requirement of their contract of employment and must take all reasonable steps to do so. Failure to do so may result in disciplinary action, including dismissal, being taken in their absence.

- 14.8.2 Every effort will be made to convene a meeting date that is suitable for all parties; however, it is the employee's responsibility to ensure that they have Trade Union representative or workplace colleague available. A meeting date will not be delayed unnecessarily due to the availability of representation. This may mean the employee making arrangements to be accompanied by an alternative representative.
- 14.8.3 If the employee is unable to attend the disciplinary hearing, they should notify the chair of the panel and give the reason for non-attendance as soon as possible and in advance of the meeting. If no prior notice of non-attendance is provided the disciplinary hearing will proceed in the employee's absence and they will be notified of the outcome in writing.
- 14.8.4 Where an employee fails to attend because of extenuating circumstances, they will be invited to another disciplinary hearing, where possible within five days of the original hearing. Where there is no valid reason for non-attendance, the meeting will proceed and a decision made in the employee's absence.
- 14.9 Resignation prior to a disciplinary hearing
- 14.9.1 In cases where an employee resigns prior to a disciplinary hearing, the chairperson, with support from employee relations, will decide whether it is appropriate for the disciplinary hearing to proceed. This decision will be communicated to the individual in writing.
- 14.9.2 In circumstances, where a decision is reached that it is necessary to proceed with the disciplinary hearing the individual will be given the right to be in attendance at the hearing. If the individual declines this opportunity or fails to attend the hearing, it will proceed, and a decision made in the individual's absence. A written outcome will be provided to the ex-employee.

15 Professional misconduct

- 15.1 Employees who are subject to disciplinary proceedings due to professional misconduct are reminded that where the organisation has investigated the circumstances and has taken disciplinary action, it may be reported to the appropriate professional body. These bodies may then choose to investigate the case further.
- 15.2 The organisation also has a legal duty to make a referral to the Disclosure and Barring (DBS) when an individual has harmed or poses a risk of harm to a child or vulnerable adult.
- 15.3 Where an employee is subject to disciplinary proceedings and also registered with the NHS Professionals any suspension or disciplinary action will also apply to their Bank work. Therefore where an employee has restrictions placed on their practice or is dismissed this will also be applicable to their work with NHS Professionals, who will be notified accordingly. Their contact details are TSD@NHSPProfessionals.nhs.uk or call 0333 014 3662.

16 Appeals procedure

- 16.1 An employee who wishes to lodge an appeal against the outcome of a disciplinary hearing must do so in writing to the designated manager within 14 calendar days of the date of the letter confirming the outcome and clearly state the grounds for the appeal.
- 16.2 The employee must include details of the grounds for their appeal when lodging their appeal as follows:

- **New evidence comes to light** - the grounds of the appeal must detail the nature of new evidence.
- **They believe the disciplinary procedure was not followed correctly** – a summary of why the process was not followed correctly must be provided as part of the appeal.
- **They believe the manager was incorrect in reaching their decision** - details concerning the reason(s) why there is a belief the decision(s) were incorrect.

16.3 Failure to include details of the grounds for appeal when lodging the appeal as described above may lead the Trust to decline the appeal.

16.4 The appeal hearing will be conducted as described in appendix 5.

16.5 Unless agreed otherwise, a request for an appeal hearing which is received later than the 14 calendar days' timeframe allowed will not be accepted, and the employee written to explaining that this is because they were out of time with their request. This will include circumstances where, following a meeting where a sanction or warning was issued, the employee takes leave from the Trust. For clarity this will include annual leave, sick leave, maternity or a career break/sabbatical.

17 Contact details and further support

17.1 Any queries regarding this policy should be directed to the Employee Relations team within the People and Education Directorate. Please submit your request via our Employee Virtual Assistant (EVA) using the link below. You should be logged in automatically via your NHS credentials - [Employee Centre Pro Homepage - EVA Portal](#)

17.2 Our Employee Assistance Programme (EAP) is a resource available to all of our staff members. Offering a wide range of support, the EAP offers a free, impartial and confidential support and counselling service. They can be contacted directly on 03303 800658 (or 0800 023 9324 free from any standard UK Landline or mobile)

Login or register at [Vivup](#) or use this QR code:



18 Training and awareness

18.1 Advice and support will be provided by the Employee Relations team to support staff and managers in adhering to this policy and their understanding of dealing with disciplinary matters.

18.2 The Employee Relations team will raise awareness of this policy through the publication of information on ICON and to advise staff of changes to the policy through the staff bulletin and ratification processes.

19 References

- 19.1 ACAS Code of Practice

20 Monitoring and review

- 20.1 This policy will be monitored and audited on a regular basis. A full review will take place every two years by the People and Education Directorate unless legislative changes determine otherwise.

21 Appendix 1 – Examples of potential misconduct

The examples below have been grouped into categories, however depending on the severity of the incident it may fall within another category.

The lists below are not exhaustive and judgement should be exercised on a case-by-case basis.

Minor misconduct

- Lateness without reasonable explanation;
- Failure to report for duty;
- Failure to follow a reasonable management instruction;
- Discourtesy to patients, visitors or other members of staff;
- Failure to wear protective clothing as prescribed and issued;
- Abuse of privileges;
- Professional misconduct;
- Personal behaviour that results in bringing the organisation into disrepute.

Serious misconduct

- Failure to respond to minor misconduct warnings;
- Unauthorised absence;
- Unacceptable behaviour;
- Failure to comply with conditions of service or working procedures;
- Refusal to carry out reasonable instructions given by an authorised person;
- Removal of the organisation's property without authorisation;
- Failure to maintain registration with relevant mandatory professional bodies;
- Failure to follow a reasonable management instruction;
- Professional misconduct;
- Personal behaviour that results in bringing the organisation into disrepute;
- Making a false allegation or spurious claim against other members of staff.

Gross misconduct

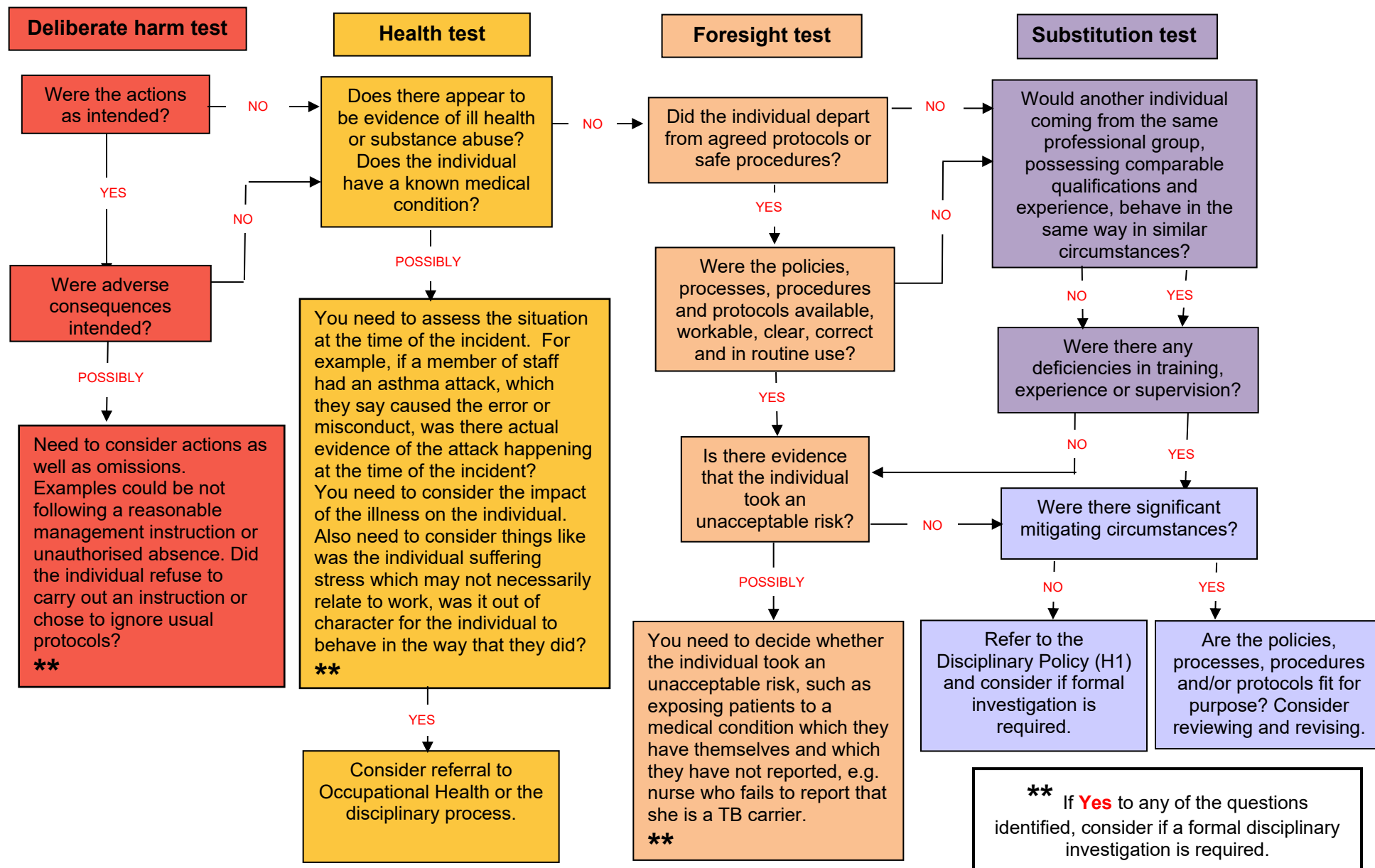
The following actions are amongst those regarded as gross misconduct and which may result in summary dismissal.

- **Assault** - this refers to any assault or menacing behaviour directed at a patient/client, member of the public or colleague that takes place on the organisation's premises or whilst on duty. This includes fighting.
- **Corruption** - corruption is defined as the "offering, giving, soliciting or acceptance of an inducement or reward, which may influence a person to act against the interest of the organisation". Examples include receipt of money, goods, favours or excessive hospitality in respect of services rendered, e.g. from contractors in anticipation of receiving orders for goods or work.

- **Conviction** - committing an act outside of work or being convicted of a criminal offence which is liable to affect the performance of the employment contract and the relationship between the organisation and the employee.
- **Failure to carry out reasonable instructions** - this refers to wilful failure or refusal to carry out or to follow reasonable instructions/rules in accordance with the organisation's policies, procedures and terms of employment.
- **Fraud** - fraud is defined as the "intentional distortion of financial statements or other records by persons internal or external to the Trust which is carried out to conceal the misappropriation of assets or otherwise for gain". Examples include the misrepresentation of entitlement to expenses or allowances, falsification of records, including personal or health, or misrepresentation on timesheets, including unauthorised completion of timesheets for another member of staff.
- **Illegal use of a mobile phone** - using a mobile phone whilst driving, when not using hands free equipment, where such use of equipment has been authorised by the Trust.
- **Information Governance – breach of confidentiality** - legislation and common law duty of confidentiality explicitly requires that personal information is handled in a secure, confidential and ethical way. Personal information is provided by patients and staff with an expectation that a duty of confidence applies and that information cannot normally be disclosed or shared without their consent. All employees are required to abide by the Data Protection Act 2018 and the Trust's confidentiality guidelines. This also applies to information held on memory sticks.
- **Internet and email use** - deliberately accessing internet sites or sending or retrieving emails containing pornographic, offensive or obscene material.
Excessive use of a computer or tablet, e.g. iPad, for personal use during work time.
Social networking sites - all staff are reminded that photographs should not be taken within the workplace without Trust permission and the appropriate consent from individuals. The posting of unauthorised photographs taken on NHS premises, or any information about any aspect of the Trust's work, or inappropriate comments relating to colleagues or patients on social networking sites, e.g. Twitter, Facebook or blogs, or personal websites could be subject to disciplinary action.
- **Malicious damage** - this is intentional damage to the organisation's property or the property of patients/clients, visitors or employees.
- **Negligence** - this refers to any action or failure to act which could result in serious damage to health, safety, property or equipment. It includes failure to give appropriate care and attention to patients/clients in the organisation's care.
- **Theft** - theft is defined as the dishonest taking of property belonging to another person with the intention of depriving the owner permanently of its possession.
This refers to any instance of theft of property from the organisation, patients/clients, visitors, from other employees on the organisation's premises, or a patient's home. This also refers to the theft of time.
The organisation's property must not be removed from the premises for personal use, nor used for private purposes within the premises, without prior approval of the appropriate manager.

- **Unauthorised absence** - where an employee absents themselves from the workplace for no apparent reason and fails to communicate their absence and the reason for it within a reasonable period of time. Not all instances of unauthorised absence will automatically be regarded as gross misconduct.
- **Unacceptable Behaviour** – when an employee demonstrates unacceptable behaviour that is persistent, repetitive and part of an overall pattern, where that behaviour has previously been brought to the attention of the individual and there has been no change or improvement. Alternatively, some forms may be serious enough to be recognised even if the behaviour has occurred only once. Whatever form it takes the behaviour is unwarranted and unwelcome to the individual. Not all instances of unacceptable behaviour will automatically be regarded as gross misconduct.
- **Unfit for duty** - this refers to where an employee is deemed to be unfit to carry out their duties, e.g. through the effects of drink and drugs, or by being asleep on duty (unless on stand-by).
Where an employee has alcohol or drug abuse difficulties these may be recognised as health issues and any incident will be considered in this context before deciding on the appropriate action.
- **Unlawful discrimination or harassment** - is treating someone less favourably because of their sexual orientation; gender; age; gender re-assignment; pregnancy and maternity; disability; religion or belief; race; marriage and civil partnership.
Harassment is when a person engages in unwanted conduct, which has the purpose or effect of violating another person's dignity and/or creating an intimidating, hostile, degrading, humiliating or offensive environment for them.
- **Working whilst on sickness absence** - while purporting to be absent from work due to sickness, working or indulging in activities which are likely to be inconsistent with the reason for absence and/or which are unlikely to be conducive to recovery.
- **Serious breaches of the organisations policies and procedures.**
- **Any action which may threaten the health and safety of a patient, member of the public or a colleague.**

22 Appendix 2 – Incident decision tree



23 Appendix 3 - People authorised to take disciplinary action and hear appeals

Disciplinary action	Taken by	Appeal
First written warning	Manager not previously involved in the case.	• Higher level of management; • Professional advisor (if applicable) • Employee Relations representative providing advice and guidance to the panel.
Final written warning	Manager not previously involved in the case	• Higher level of management; • Professional advisor (if applicable); • Employee Relations representative providing advice and guidance to the panel.
Dismissal	• Chief Executive • Executive Directors • Other Directors • Clinical Directors • Care Group Directors • Heads of Service • Matrons • Associate Directors • Deputy Directors • Assistant Directors • Chief Pharmacist	Higher level of management, not previously involved in the case to include a minimum of two individuals from the list opposite. In addition: • Professional Advisor (if applicable); • Employee Relations representative providing advice and guidance to the panel.

In exceptional circumstances the authority to dismiss may be delegated to a manager who is not on the above list, however they will have been appointed by a manager on the above list in discussion with the Employee Relations team.

24 Appendix 4 – Framework for a disciplinary hearing

Prior to a hearing

- The employee will be given at least 14 calendar days' written notice of the date, time and venue of the hearing.
- The employee has the right to appear personally before the panel, either alone or be accompanied by a union representative or workplace colleague. If the employee so wishes the representative need not be the same person who acted at the time action was taken.
- The employee and manager will be required to submit written statements of the case, together with any supporting evidence at least seven calendar days before the hearing is due to take place.
- The management case should include the investigation report and any relevant supporting information and it should be sufficiently detailed to enable the employee to prepare their own case.
- The employee's case should include relevant information in response to the allegations.
- As soon as both cases have been received they will be simultaneously circulated to:
 - Panel members hearing the case
 - Manager presenting the case
 - Employee
 - Employee's representative (if applicable)
- Both parties should provide details of any witnesses they intend to call. It will be the responsibility of the employee and management representative to call and brief their own witnesses. Witnesses will not normally be required to be in attendance for the whole of the hearing. Each witness will be called to give evidence and will then leave the room. Wherever possible, the witness will be told at this point whether they are free to leave or are likely to be recalled.

Composition of the panel for hearings

Chairperson - the manager hearing the appeal should be of at least the same or a higher level than the manager that issued the sanction and should not have been previously involved in the case.

Second panel member or professional advisor (appropriate as required for any level of hearing but required for all dismissal appeals) – an appropriate senior manager or in cases which concern a professional matter, at least one panel member should have specialist knowledge of the employee's field of work. Where this is not so, a professional advisor should be appointed. The professional advisor should advise the panel only on matters relating to the employee's professional conduct or competence. Any objections to the professional advisor proposed must be based on reasonable grounds.

Employee relations – an employee relations team member will support the panel and will be responsible for providing advice and guidance to the panel regarding policy and process and providing support and advice during the decision-making process.

Observers - observers may be present only with the permission of the chairperson and both parties. They must withdraw immediately at the direction of the chairperson.

No one who has previously been involved in the case should sit on the panel.

Conducting a hearing

The Chair of the panel will:

- Introduce those present;
- Explain the purpose of the meeting;
- Advise all present of the order of the procedure which will be followed at the hearing and to ensure that it is understood by all present.

The following framework should be adopted:

- The management representative will present their case.
- The management representative may call witnesses.
- The employee may question the management representative and their witnesses.
- The panel members may question the management representative and their witnesses.
- The management representative panel may re-examine their witnesses.

- The employee will state their case.
- The employee may call witnesses.
- The management representative may question the employee and their witnesses.
- The panel members may question the employee and their witnesses.
- The employee may re-examine their witnesses.

- The management representative may sum up their case.
- The employee may sum up their case.

It should be noted that the panel members:

- May ask for clarification of any statements made during the course of the proceedings;
- May decide to adjourn at any stage, or at the request of either party. The duration of the adjournment will be made clear and a decision reached on the time the meeting is to be reconvened;
- When all the information has been presented the hearing should be adjourned for the panel, with employee relations support in attendance, to reach a decision on the case. Both parties may be recalled if points of uncertainty need to be clarified.

Once a decision has been reached the employee, their representative and the management representative should be recalled and informed of the panel's decision.

Principles which govern the hearing

- That full and fair consideration will be given to all issues pertinent to the case;
- That all relevant evidence will be considered;
- That the employee will have the opportunity to answer, deny, or defend themselves against the allegation(s).

When considering the need for disciplinary action the panel must be satisfied that:

- The investigation and hearing have been conducted in accordance with the Trust's Disciplinary Policy (H1);
- It is concluded that on the balance of probability, based on the evidence presented, that the employee did or did commit the act in question;
- The principles governing the hearing have been considered and applied;
- The action contemplated is reasonable in the circumstances and reflects the seriousness of the offence.

Whenever possible, a decision will be made immediately following the hearing and the outcome relayed verbally in the first instance and then followed in writing. If verbal feedback is not possible then a written response will be sent to the employee no later than seven calendar days after the date of the hearing. The letter will also set out the procedure to be followed by the employee if they wish to exercise their right of appeal against the decision.

25 Appendix 5 – Framework for a disciplinary appeal hearing

Prior to an appeal hearing

- The employee will be given at least 14 calendar days' written notice of the date, time and venue of the appeal hearing.
- The employee has the right to appear personally before the panel, either alone or be accompanied by a union representative or workplace colleague. If the employee so wishes the representative need not be the same person who acted at the time action was taken.
- The employee and manager will be required to submit written statements of the case, together with any supporting evidence at least seven calendar days before the appeal hearing is due to take place.
- The management case should set out the reasons for the decision. It should be sufficiently detailed to enable the employee to understand on what basis the decision was reached, and to finalise their own case for appeal.
- The employee's case should set out clearly the grounds on which they are appealing the decision.
- As soon as both cases have been received they will be simultaneously circulated to:
 - Panel members hearing the appeal
 - Manager presenting the case
 - Employee
 - Employee's representative (if applicable)
- Both parties should provide details of any witnesses they intend to call. It will be the responsibility of the employee and management representative to call and brief their own witnesses. Witnesses will not normally be required to be in attendance for the whole of the hearing. Each witness will be called to give evidence and will then leave the room. Wherever possible, the witness will be told at this point whether they are free to leave or are likely to be recalled.

Composition of the panel for appeal hearings

Chairperson - the manager hearing the appeal should be of at least the same or a higher level than the manager that issued the sanction and should not have been previously involved in the case.

Second panel member or professional advisor (appropriate as required for any level of appeals but required for all dismissal appeals) – an appropriate senior manager or in cases which concern a professional matter, at least one panel member should have specialist knowledge of the employee's field of work. Where this is not so, a professional advisor should be appointed. The professional advisor should advise the panel only on matters relating to the employee's professional conduct or competence. Any objections to the professional advisor proposed must be based on reasonable grounds.

Employee relations – an employee relations team member will support the panel and will be responsible for providing advice and guidance to the panel regarding policy and process and providing support and advice during the decision-making process.

Observers - observers may be present only with the permission of the chairperson and both parties. They must withdraw immediately at the direction of the chairperson.

No one who has previously been involved in the case should sit on the panel.

Conducting an appeal hearing

The Chair of the panel will:

- Introduce those present;
- Explain the purpose of the meeting;
- Advise all present of the order of the procedure which will be followed at the hearing and to ensure that it is understood by all present.

The following framework should be adopted:

- The employee will state their case.
- The employee may call witnesses.
- The management representative may question the employee and their witnesses.
- The panel members may question the employee and their witnesses.
- The employee may re-examine their witnesses.

- The management representative will present their case.
- The management representative may call witnesses.
- The employee may question the management representative and their witnesses.
- The panel members may question the management representative and their witnesses.
- The management representative panel may re-examine their witnesses.

- The employee may sum up their case.
- The management representative may sum up their case.

It should be noted that the panel members:

- May ask for clarification of any statements made during the course of the proceedings;
- May decide to adjourn at any stage, or at the request of either party. The duration of the adjournment will be made clear and a decision reached on the time the meeting is to be reconvened;
- When all the information has been presented the hearing should be adjourned for the panel, with employee relations support in attendance, to reach a decision on the case. Both parties may be recalled if points of uncertainty need to be clarified.

Once a decision has been reached the employee, their representative and the management representative should be recalled and informed of the panel's decision.

One of three decisions will be made:

- To dismiss the appeal and endorse the original decision/sanction given.
- To uphold the appeal and have the sanction removed from the employee's file and reinstate the employee if they were dismissed.

- To uphold the appeal but provide other recommendation(s) and/or substitute a less serious sanction.

The panel's decision will be confirmed in writing within seven calendar days.

Principles which govern the appeal hearing

- That full and fair consideration will be given to all issues pertinent to the case;
- That all relevant information will be considered;
- That the employee will have the opportunity to fully explain the grounds of their appeal against the previous decision.

Whenever possible, a decision will be made immediately following the appeal hearing and the outcome relayed verbally in the first instance and then followed in writing. If verbal feedback is not possible then a written response will be sent to the employee no later than seven calendar days after the date of the appeal hearing.

Salary arrangements following a successful appeal against dismissal

Where an employee is reinstated following a successful appeal against dismissal, reimbursement shall be based on the normal rate of pay the employee would have received if they had been working. Employment will be viewed as unbroken from the date of the original effective date of dismissal for purposes of calculating continuous employment.