Torbay and South Devon NHS
NHS Foundation Trust

EXCLUSION FROM WORK GUIDANCE

Version 1.2 (October 2015)

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Date of Issue:	October 2015	**Next Review Date:**	January 2023
Version:	1.2	**Last Review Date:**	October 2015
Author:	People Hub		
Directorate:	Workforce and Organisational Development		
Links or overlaps with other policies:			
Disciplinary Policy H1			
Procedure for the issue and receipt of alert notices			

Amendment History

Issue	Status	Date	Reason for Change	Authorised
1.1	Approved	6 April 2022	Extension of review date	Staffside chair
1.2	Approved	26 October 2022	Extension of review date	Associate Director of People

Rapid Equality Impact Assessment *(for use when writing policies and procedures)*

Title (and number)	Exclusion from Work Guidance
Author	People Hub
Version and Date (of EIA)	1.2 - October 2015
Associated documents (if applicable)	

RELEVANCE: Does the aim/purpose of the policy relate to each of the aims of the Public Sector Equality Duty?	
• Eliminate unlawful discrimination or other conduct prohibited by the Equality Act 2010	Yes ☒ No☐
• Advance equality of opportunity between people from different groups	Yes ☒ No☐
• Foster good relations between people from different groups	Yes ☒ No☐
SIGNIFICANCE AND IMPACT: Consider the nature and extent of the impact, not the number of people affected.	
Does the policy affect service users, employees or the wider community? (if no, proceed to sign off)	Yes ☒ No☐
Does the policy affect service delivery or business processes?	Yes ☐ No☒
Does the policy relate to an area with known inequalities (deprivation/unemployed/homeless)?	Yes ☐ No☒

EQUALITY ANALYSIS: How well do people from protected groups fare in relation to the general population?
PLEASE NOTE: Any 'Yes' answers may trigger a full EIA and must be referred to the equality leads below

Is it likely that the policy/procedure could treat people from protected groups less favorably than the general population? (see below)

Age	Yes ☐ No☒	Disability	Yes ☐ No ☒	Sexual Orientation	Yes ☐ No☒
Race	Yes ☐ No☒	Gender	Yes ☐ No ☒	Religion/Belief (non)	Yes ☐ No☒
Gender Reassignment	Yes ☐ No☒	Pregnancy/ Maternity	Yes ☐ No ☒	Marriage/ Civil Partnership	Yes ☐ No☒

Is it likely that the policy/procedure could affect particular 'Inclusion Health' groups less favorably than the general population? (substance misuse; teenage mums; carers; travellers; homeless; convictions; social isolation; refugees)	Yes ☐ No☒

Please provide details for each protected group where you have indicated 'Yes'.

What if any, is the potential for interference with individual human rights?
(consider the FREDA principles of Fairness/ Respect/ Equality/ Dignity/ Autonomy)

RESEARCH AND CONSULTATION

What is the reason for writing this policy? (What evidence/ legislation is there?)

To improve the management and employee welfare of individuals excluded from work. To ensure that informed decisions are made when reaching a decision to exclude.

Who was consulted when drafting this policy/procedure? What were the recommendations/suggestions?

ACTION PLAN: Please list all actions identified to address any impacts

Action	Person responsible	Completion date

AUTHORISATION

Name of person completing the form	HR Advisor	**Signature**	HR Advisor
Validated by (line manager)	People Hub Service Manager	**Signature**	People Hub Service Manager

This form should be published with the policy and a signed copy sent to your relevant organisation.

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1. Introduction

1.1 When serious concerns are raised about a member of staff, the Trust will urgently consider whether it is necessary to place temporary restrictions on their duties. This might be to amend or restrict their duties, obtain undertakings or provide for the exclusion of the individual from the workplace.

1.2 Exclusion from work should be with pay and will only be instigated after careful consideration and will be reviewed to ensure it does not become unnecessarily protracted. It is not an assumption of guilt or a disciplinary penalty in itself. Appendix 1 provides a risk assessment to assist in the decision making process.

1.3 At any point in the process where the investigating manager has reached the clear judgment that a clinical practitioner is considered to be a serious potential danger to patients or staff, that practitioner must be referred to their relevant professional body e.g. NMC. Consideration should also be given to whether the issue of an alert notice should be requested. An alert notice is a way for an NHS employer to make other bodies aware that a healthcare professional may pose a threat to patients or staff. Issue of an alert notice should be discussed with the Director of Professional Practice, Nursing & People's Experience and the "Procedure for the issue and receipt of alert notices" should be referred to.

2. Restriction of Duties and Exclusion from Work

2.1. The phrase "exclusion from work" has been used to replace the word "suspension".

2.2. The Trust will ensure that:

- Exclusion from work is used only as an interim measure whilst action to resolve a problem is being considered;
- Where an individual is excluded, it is for the minimum necessary period of time: this can be up to but no more than four weeks at a time (except in exceptional circumstances;
- All extensions of exclusion are reviewed by the investigating manager.

2.3 The individual will have the right to discuss and seek advice from their trade union representative or a work place colleague.

2.4 Exclusion of staff from the workplace is a temporary and precautionary measure. It is not and cannot be used as a disciplinary sanction.

2.5 The purpose of exclusion is:

- To protect the interests of patients or other staff; and/or
- To assist the investigative process when there is a clear risk that the individual's presence would impede the gathering of evidence.
- A safeguard measure in the interests of the individual

It is imperative that exclusion from work is not misused or seen as the only course of action that could be taken. The degree of action must depend on the nature and seriousness on the concerns and on the need to protect patients, the individual concerned and/or their colleagues.

2.6 Alternative ways to manage risks, avoiding exclusion, include:

- Restricting an individual to certain forms of duties;
- Restricting a clinical practitioner's activities to administrative, research/audit, teaching and other educational duties.
- Temporary redeployment
- Sick leave for the investigation of specific health problems.

3. The Exclusion Process

3.1 The Trust will not exclude an individual for more than four weeks at a time. The justification for continued exclusion must be reviewed on a regular basis and before any further four-week period of exclusion is imposed. The Investigating Manager has responsibility for ensuring that the process is carried out quickly and fairly, kept under review and that the total period of exclusion is not prolonged.

3.2 The Senior Manager of the Division/Service to which the excluded employee is directly employed has overall responsibility for managing exclusion procedures and for ensuring that cases are properly managed.

3.3 The authority to exclude a member of staff is vested in those posts that have the authority to dismiss:

- Chief Executive
- Executive Directors
- Other Directors
- Clinical Directors
- Divisional General Managers/Zone Managers
- Heads of Service
- Associate & Assistant Directors
- Deputy Directors
- Chief Pharmacist

3.4 During out of hours this authority will be with the most Senior Manager on duty.

3.5 In exceptional circumstances the authority may be delegated to a manager who is not on the above list.

3.6 <u>Immediate exclusion</u>

3.6.1 An immediate time-limited exclusion may be necessary for the purposes identified in paragraph 2.5

Such exclusion will allow a more measured consideration to be undertaken. The manager making the exclusion must explain why the exclusion is being made in broad terms (there may be no formal allegation at this stage).

3.7 Formal exclusion

3.7.1 A formal exclusion may only take place after the 'suspending' manager has been advised of the information available and considered whether there is reasonable and proper cause to exclude. Where possible, management should seek advice from the Human Resources department prior to making a decision to suspend.

3.7.2 Full consideration should be given to whether the individual could continue in or (in cases of an immediate exclusion) return to work in a limited capacity or in an alternative role, pending the resolution of the case.

3.7.3 When the individual is informed of the exclusion, the nature of the allegations or areas of concern should be conveyed to them. The individual should be told of the reason(s) why formal exclusion is regarded as the only way to deal with the case.

3.7.4 The individual should also be advised to contact their trade union representative for advice and support.

3.7.5 The formal exclusion must be confirmed in writing as soon as is reasonably practicable. The letter should state the effective date and time, duration (up to 4 weeks), the content of the allegations, the terms of the exclusion (e.g. exclusion from the premises and the need to remain available for work) and that a full investigation or what other action will follow.

3.7.6 In cases when disciplinary procedures are being followed, exclusion may be extended for four-week renewable periods until the completion of the disciplinary process if a return to work is considered inappropriate. The exclusion will still only last for four weeks at a time and be subject to review. The exclusion will usually be lifted and the individual allowed back to work, with or without conditions placed upon the employment, as soon as the original reasons for exclusion no longer apply.

3.7.7 If the Investigating manager considers that the exclusion will need to be extended over a prolonged period outside of his or her control (for example because of a police investigation), there is the ability to extend the exclusion beyond the four-week renewable periods. Although there will still be a requirement to keep in regular contact with the individual.

3.7.8 If at any time after the individual has been excluded from work, investigation reveals that either the allegations are without foundation or that further investigation can continue with the individual working normally or with restrictions, the exclusion should be lifted and arrangements made for the individual to return to work with any appropriate support as soon as practicable.

3.9 Terms of Exclusion

3.9.1 Under the terms of exclusion from work an individual is bound by all their terms and conditions of employment, but they are not required to carry out any of their duties. It is a condition of the exclusion that they do not enter any premises owned by the Trust prior to obtaining permission. They must not divulge details of their case or communicate about it with any other Trust employees involved with the investigation processes, contractors or patients unless authorised to do so. It is also a condition of exclusion that the individual be available to attend any meetings that may be convened as part of the investigation process.

3.9.2 If the individual or a family-member need to receive treatment on Trust premises or if they wish to visit a friend or relative who is an inpatient in hospital on Trust premises

they are able to attend. The individual should contact and inform either the suspending or investigating manger of their intentions.

3.10 Availability for Work

3.10.1 The individual will be on full pay; therefore they must remain available for work with their employer during their normal contracted hours. The individual must inform the manager of any other organization(s) with whom they undertake either voluntary or paid work and seek their consent to continuing to undertake such work or to take annual leave or study leave. The individual should be reminded of these contractual obligations but would be given 24 hours' notice to return to work. In exceptional circumstances the manager may decide that payment is not justified because the practitioner is no longer available for work (e.g. abroad without agreement).

3.11 Sick leave and annual leave during exclusion

3.11.1 Where an individual is sick and/or medically certified whilst excluded from work the individual will be placed on sick leave and paid appropriate sick pay with the terms of exclusion remaining in force.

3.11.2 Where an individual has pre-arranged annual leave and is not available for work during exclusion, the annual leave will be honored and the individual will be deemed to have taken their leave and will be return to exclusion at the end of their leave period.

3.12 Keeping in Touch

3.12.1 It is recognized that exclusion from work can be isolating it is therefore important that the investigating manager should ensure that the excluded individual is regularly updated with the progress of the investigation and advised of any delays. This should be in writing either by letter or email.

3.12.2 The excluded individual may keep in contact with friends who are also work colleagues as a support system but should not discuss the reason for exclusion or details of the investigation.

3.13 Informing other Organisations

3.13.1 In cases where there is concern that an individual may be a danger to patients, the Trust may consider that it has an obligation to inform such other organizations including the private sector, of any restriction on practice or exclusion and provide a summary of the reasons for it. Where a NHS employer has placed restrictions on practice, the practitioner should agree not to undertake any work in that area of practice with any other employer.

3.13.2 Where the investigating manager believes that the individual is working in other parts of the NHS or in the private sector in breach or defiance of an undertaking not to do so, he or she should contact the professional regulatory body and consider the issue of an alert notice as per section 1.3.

4. Keeping Exclusions under Review:

4.1 The Director of Workforce & Organisational Development and in the case of a registered nurse/midwife, the Director of Professional Practice, Nursing & People's Experience must be informed about exclusion at the earliest opportunity. The Trust has a responsibility to ensure that its internal procedures are being followed. Therefore:

- A summary of the progress of each case at the end of each period of exclusion will be provided to the Senior Manager of the Division/Service to which the excluded employee is directly employed and the Deputy Director of HR, demonstrating that procedures are being correctly followed and that all reasonable efforts are being made to bring the situation to an end as quickly as possible;

Regular review

4.2 The Investigating manager must review the exclusion before the end of each four week period. The exclusion should usually be lifted and the individual allowed back to work, with or without conditions placed upon the employment, at any time the original reasons for exclusion no longer apply and there are no other reasons for exclusion. Careful consideration must be given as to whether the interests of patients, other staff, the individual, and/or the needs of the investigative process continue to necessitate exclusion and give full consideration to the option of the individual returning to limited or alternative duties where practicable. Further renewal may be for up to 4 weeks;

4.3 If the individual has been excluded for three periods:

- A report must be made to the Senior Manager of the Division/Service to which the excluded employee is directly employed and the Deputy Director of HR, outlining the reasons for the continued exclusion, why restrictions on practice would not be an appropriate alternative, and if the investigation has not been completed, a timetable for completion of the investigation;

Return to Work

4.4 If it is decided that the exclusion should come to an end, there must be formal arrangements for the return to work of the individual. It must be clear whether clinical and other responsibilities are to remain unchanged or what the duties and restrictions are to be and any monitoring arrangements to ensure patient safety.

4.5 Consideration should be given to obtaining Occupational Health advice on supporting the individual in their return to work. Arrangements for their return could include a phased return with a reduction in hours and/or duties, mentor support and regular management contact.

4.6 It may be appropriate to return the individual to a temporary role as described in 2.6

5. Appendix 1 - Risk Assessment for Exclusion from Work

Details of Case Under Consideration	
Date:	
Exclusion Manager	
HR Representative	
Nature of allegation against employee assessed for exclusion	
Name of Employee & Work place	

ASSESSMENT:

Risk	Likelihood		
	Unlikely	Likely	Highly Likely
Is there a risk to the individual (i.e. physical or emotional well-being?)			
Is there a risk to other employees (i.e. physical or emotional well-being?)			
Is there a risk to patients, service users, members of the public? E.g. Safeguarding			
Would the individual's continued presence in work impede the investigation?			
If NOT suspended would this pose a risk to the Trust's reputation?			
Would suspension be in the public interest?			
Is the allegation one that may lead or involve significant legal action i.e. fine, community service, and imprisonment?			
Is the allegation one that impacts on a Clinical Practitioner's ability to practice?			
Other Risks(please specify)			

ADDRESSING THE RISK

Have alternatives to exclusion been considered:

1. Restricting an individual to certain forms of duties. **YES** **NO**
2. Restricting a clinical practitioner's activities to administrative, research/audit, teaching and other educational duties. YES NO
3. Temporary redeployment **YES** **NO**
4. Sick leave for the investigation of specific health problems. **YES** **NO**

OVERALL ASSESSMENT:

This is a value judgment based upon the evidence presented and the professional judgment of the manager.

Very Low	Low	High	Very High
Suspension not required			

Do Not Exclude ☐ **Exclude** ☐ **Review Date:**

Name of Manager Excluding individual: **Job Title:**

Signature: