

## Misconduct Policy

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|--|------|---|---|
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|--|------|---|---|

### Previous Titles for this Document:

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| None                              | Not applicable |

### Distribution Control

Printed copies of this document should be considered out of date. The most up to date version is available from the Trust Intranet.

### Consultation

The following were consulted during the development of this document:

- Not applicable to this version - policy transferred onto new policy template and wording updated in line with HR Policy Review Process.

### Monitoring and Review of Procedural Document

The document owner is responsible for monitoring and reviewing the effectiveness of this Procedural Document. This review is continuous however as a minimum will be achieved at the point this procedural document requires a review e.g. changes in legislation, findings from incidents or document expiry.

### Relationship of this document to other procedural documents

This document is a policy applicable to the Norfolk & Norwich University Hospitals NHS Foundation Trust; please refer to local Trust's procedural documents for further guidance, as noted in Section 4.

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# Misconduct Policy

## 1. Introduction

### 1.1. Rationale

The misconduct rules in this document are provided to set out the standards of performance and behaviour at work that can be reasonably expected by the Trust. Whilst it is not possible to list all acts that could warrant misconduct action, these rules serve as a guide but are not limited to the examples given.

We expect high professional standards of conduct and behaviour (in line with our [PRIDE values](#)) to ensure excellent healthcare and maintain trust and confidence.

The Trust embraces the principles of a Just and Learning Culture which provides an environment where we put equal emphasis on accountability and learning. It is where we ask our colleagues to give an account of how an event happened, what it meant to them and what support is needed by those affected by the event both directly and indirectly.

We commit to a culture that instinctively asks in the case of an adverse event: "what was responsible, not who is responsible". It is a culture that is not finger-pointing and is not blame-seeking. That said, a Just and Learning Culture is not the same as an uncritically tolerant culture where there are no standards - that would be as inexcusable as a blame culture.

Generally, in a just culture inadvertent human error, freely admitted, is not normally subject to sanction to encourage reporting of safety issues. In a just culture, investigators principally attempt to understand why failings occurred and how the system led to sub-optimal behaviours. However, a just culture also holds people appropriately to account where there is evidence of gross negligence or deliberate acts.

All Trust colleagues are reminded of the contents of the [Data Protection & Confidentiality Policy](#) and the guidance within Appendix 5 regarding the collection, holding and use of employment records. Attention is also drawn to the [Employee Privacy Notice](#).

### 1.2. Objective

The objective of the policy is to:

- outline the approach to be taken by the Trust when it is necessary to take action in respect of misconduct.

### 1.3. Scope

This policy applies to all Norfolk and Norwich University Hospital Foundation Trust colleagues. This policy does not apply to workers engaged via Temporary Staffing (bank / locum) or agency workers.

This document can be made available in different formats to ensure a consistent and compliant approach under the Equality Act 2010. For further information, please contact the Head of Human Resources Enquiries and Policy Development via [HREnquiries@nnuh.nhs.uk](mailto:HREnquiries@nnuh.nhs.uk).

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## 1.4. Glossary

The following terms and abbreviations have been used within this document:

| Term | Definition  |
|------|---|
| CM   | Commissioning line manager  |
| IO   | Investigation Officer   |
| CoD  | Chief of Division   |
| DoD  | Divisional Operations Director  |
| DND  | Divisional Nursing Director   |
| HoT  | Head of Therapies   |
| MHPS | Maintaining High Professional Standards in the Modern NHS – this is a framework for the initial handling of concerns about doctors and dentists |
| NMC  | Nursing and Midwifery Council   |
| GMC  | General Medical Council   |

## 2. Responsibilities

### 2.1. Colleagues

Colleagues must familiarise themselves with this Policy, the [misconduct rules](#) and any applicable standards of expected conduct, along with the possible consequences of not adhering to such standards. This includes codes of conduct related to their professional body or job role.

All colleagues are expected to provide efficient and courteous service and to co-operate generally in accordance with the Terms and Conditions of employment, Professional Codes of Conduct (where applicable), the Trust and any other agreed local policies and procedures.

All colleagues are expected to attend work regularly and punctually and to seek approval for any leave in advance, or, in the case of special leave, as soon as reasonably practicable.

Failure to comply with these misconduct rules and standards may result in misconduct action being taken in accordance with this policy.

### 2.2. Line managers

Where a line manager considers a member of their team may not have met the standards of conduct expected, early action is vital. The Trust supports the principles of a Just and Learning Culture, which puts an equal emphasis on accountability and learning and line managers should follow the provisions of this policy to ensure appropriate action is taken, seeking advice from the HR Enquiries Team ([hrenquiries@nnuh.nhs.uk](mailto:hrenquiries@nnuh.nhs.uk)) at the earliest opportunity to ensure appropriate support.

Managers should follow 'Know Your Staff' principles which encourage our line managers to:

- Have an outcome focus

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- Think about the person before the process
- Have no surprises
- Apply discretion appropriately
- Provide clarity, have ownership and be accountable
  - Maintain positive relations and engagement

In 'knowing their staff', line managers will understand when to apply discretion. However, 'Know Your Staff' should not be used as an excuse to avoid having open, honest and transparent conversations.



### 2.3. Commissioning Manager / Case Manager

The commissioning manager or case manager (in MHPS cases) is usually the line manager. The line manager becomes known as the commissioning manager / case manager when a decision is made that there is sufficient concern for the allegation / concern to be investigated formally.

Commissioning managers / case managers have a responsibility to write the Terms of Reference for the investigation, ensure the investigation progresses in a timely matter and regularly meet with the Investigating Officer to ensure the investigation is kept on-track. They also have responsibility for reviewing the investigation report, considering the evidence presented in the report and deciding the next appropriate step, which may be whether a misconduct hearing is to be convened.

The commissioning manager / case manager will participate in the misconduct hearing.

The commissioning manager / case manager usually is the point of contact for the colleague under investigation, e.g. regular check-ins and support as required. If support is not to be provided by the commissioning manager / case manager, they must designate a point of contact to act as a "buddy" for the colleague and inform them of who this will be.

The colleague must be kept informed by the commissioning manager / case manager if a referral to their professional body is being considered and they will be informed of the decision in writing.

Following completion of any formal misconduct, a Lessons Learned Review will be completed by the commissioning manager / case manager and

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submitted to the Divisional Triumvirate / Head of Department (for Corporate Departments) to consider any actions required.

### 2.4. Executive Directors / Divisional Triumvirate

Executive Directors / Divisional Triumvirate will be expected to hold the commissioning manager to account for progress of the misconduct processes.

Executive Directors have the responsibility of authorising suspension where warranted. Any decision to suspend should be a measure of last resort that is proportionate, time bound and only applied when there is full justification for doing so.

### 2.5. Investigating Officers

Investigating Officers will be expected to complete the investigation as quickly as possible, proportionately and in accordance with the Terms of Reference provided by the Commissioning Manager / Case Manager. They should regularly meet with the Commissioning Manager / Case Manager to ensure the investigation is kept on-track and will attend any formal hearing to discuss their findings.

### 2.6. Misconduct Panel

Members of the misconduct panel will have had no previous involvement in the case or any conflict of interest that could influence decision making.

### 2.7. Representatives

The representative will be entitled to present a case on behalf of the colleague / appellant; address the Panel; question the manager who made the original decision and any witness. Any questions directed to the colleague / appellant must be answered by the colleague / appellant and not their representative.

### 2.8. Human Resources

Human Resources will ensure Investigation Officers, commissioning managers / case managers and panel members have access to appropriate guidance and training (in the form of master classes / accreditation) to enable them to carry out their roles effectively.

Human Resources will not normally attend investigation meetings but will provide guidance and toolkits to Investigation Officers, as required.

Human Resources representatives will act as advisors to the Chair / Panel at both Misconduct and Appeal panels as required; they will not act as a member of the Misconduct or Appeal Panel.

Human Resources will provide advice, guidance and support to line managers in the use of this procedure as appropriate.



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## 3. Policy Principles

### 3.1. Policy Overview

3.1.1 The intention is that potential cases of misconduct are dealt with:

- At an early stage.
- With a view to resolving problems as quickly and fairly as possible.
- Proportionately.
- With the intention of helping colleagues to learn, improve and to prevent recurrences.
- In accordance with the principles of a [Just and Learning Culture](#).

3.1.2 The Trust expects both colleagues and line managers to behave in accordance with our [PRIDE values](#).

3.1.3 It is recognised that the various professional bodies, of which many health care colleagues are required to have membership, may also have professional standards of capability, conduct and competence. The Trust requires colleagues in those professions to adhere to these standards. In any case where there is a case involving a colleague with a professional registration, the Trust may be required to report this to the appropriate professional body.

3.1.4 At all stages of the misconduct process, management consideration will be given to whether the allegations and facts ascertained indicate that a professional body's code of conduct may have been breached. Decisions regarding referral to a professional body will be kept under review throughout the misconduct process. The commissioning manager or case manager (in MHPS cases) should discuss the case with the Divisional professional lead. The Divisional professional lead should discuss the case with the appropriate Executive Lead, e.g. Medical Director / Responsible Officer, Chief Nurse (or their nominated deputies) or Chief Executive, for their decision.

3.1.5 The colleague must be kept informed by the commissioning manager if a referral to their professional body is being considered and they will be informed of the decision in writing. The colleague can raise any concern with the commissioning manager about any such referral.

3.1.6 Any referral to a professional body is separate to the Trust misconduct process and will follow the appropriate processes for a referral.

3.1.7 Where the reason for poor performance is found to be a lack of the required skills, the Trust's [Capability Policy](#) should be followed.

3.1.8 The Trust has a 'no blame' culture (see Incident Reporting Policy) to reassure colleagues that incident, accident and near-miss reporting will rarely attract misconduct action. Both the Incident Reporting Policy and the Misconduct Policy seek to ensure individual and organisational learning and improvement to prevent recurrence of harmful incidents and poor conduct.

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3.1.9 Following completion of any formal misconduct, a [Lessons Learned Review](#) will be completed by the commissioning manager and submitted to the Divisional Triumvirate / Head of Department (for Corporate Departments) to consider whether further management intervention is required to address the lessons learnt.

3.1.10 Where a colleague who is the subject of a formal investigation or misconduct procedure suffers any form of serious harm, whether physical or mental, this should be treated as a 'never event' which therefore is the subject of an immediate independent investigation commissioned and received by the Board. Further, prompt action should be taken in response to the identified harm and its causes. The Divisional Triumvirate / Head of Department (for Corporate Departments) will be responsible to take the necessary action in such circumstances.

3.1.11 A disability (as defined by the Equality Act 2010) must be considered in all instances. If a colleague is likely to meet the definition, in respect of the disability the Trust will:

- Consult with the individual.
- Deal with the matter confidentially and sensitively.
- Consider everything that is relevant.
- Consider all possible options and outcomes.
- Implement the options where they are considered to be reasonable adjustments.

3.1.12 If a colleague is employed on NHS Terms and Conditions of Service (Agenda for Change) and is due a pay step during a misconduct warning period, the pay step will be deferred until such time that the warning has expired, in accordance with the [Starting Salaries and Pay Progression Policy](#). At the end of the warning period, the pay step will be actioned, dependent on the colleague meeting all the required standards as set out in the Starting Salaries and Pay Progression Policy. The pay step will not be backdated and the pay step date will remain unchanged.

### 3.2. Just and Learning Culture principles

3.2.1 Every colleague has a valuable role to play and a unique contribution to make that will ensure the highest possible standards of care are delivered and sustained. We therefore provide a supportive approach to improving and changing behaviour and practice within the Trust.

3.2.2 Encompass a more proactive approach to acting on improvements either at a personal or organisational level in order to learn from experience and prevent or reduce mistakes or risk.

3.2.3 We recognise that creation of a culture of openness with an emphasis on improvements, leads to the establishment of trust between colleagues and line managers.

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3.2.4 Colleagues will need to feel confidence in the Trust, be able to see their involvement / contribution recognised and making a difference in the service provided.

3.2.5 Immediate gathering of facts and gain understanding of the situation that has occurred before making any decisions on suspension / action short of suspension or formal investigation:

- Details of the issue from the individual's perspective.
- Explore the knock-on effects (where applicable) of the incident / issue / practice.
- Explore the behaviours/actions.

3.2.6 There will be some situations where the Misconduct Policy will clearly be appropriate; however this framework seeks in all other circumstances to provide an alternative and supportive mechanism.

### 3.3. The role of investigation / preliminary fact finding / review of adverse event

3.3.1 In accordance with our Just & Learning Culture approach, as soon as management are made aware of an adverse event then there should be a review of the whole of the event. This step of the procedure is to ensure initial facts are established to enable decision makers to decide upon the next steps, e.g., was it a system or process that led to the event rather than an individual's conduct and whether the matter requires progression to formal investigation or not.

3.3.2 This will require initial facts to be established such as dates and times of incident, people involved or people who have potentially witnessed the incident, where the incident took place and any other relevant information available e.g. CCTV. To gather this initial information, it may be that line managers need to ask people involved for their account of the adverse event, this will not be an official investigation fact finding meeting and will be informal. The [Misconduct Preliminary Fact Finding/Review of Adverse Event](#) document should be completed which will support with gathering this information and will enable a decision to be made on any next step, e.g. was it a system or process that led to the event rather than a colleague's conduct and whether the matter requires progression to formal investigation or not. This document will be made available to the colleague prior to, or at the beginning of, any formal meeting if the matter moves to formal processes, including Fast Track. The document will be reviewed with the colleague and any necessary amendments will be made in agreement before being used for the formal process.

3.3.3 The review of an incident / issue should be completed as quickly as possible with management treating this as a high priority. As a guideline this should not normally take any longer than seven days, and sooner if possible, depending on the specific circumstances. If the facts cannot be established within a timescale in which other action may need to be implemented, e.g. suspension / a move / alternative duties, this may have to commence for the

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protection of service users or preservation of evidence, however if the initial facts provide enough information for any action already taken to be reversed then this will be done. In terms of who will carry out the review of an incident, the senior line managers in each Division / department (for corporate departments) will decide upon this on a case-by-case basis dependent on the circumstances.

3.3.1 In the majority of cases, the line manager will carry out the initial Misconduct Preliminary Fact Finding/Review of Adverse Event to establish the essential facts. This step is with the aim of reducing disruption and undue stress to anyone involved in an adverse event and ensures the necessary considerations are made prior to deciding whether to progress to a formal investigation / process.

3.3.2 Before the decision is made to progress to a formal investigation or process the following considerations will be made by the line manager:

- Is there sufficient understanding of the issues or concerns, and the circumstances relating to them, to justify the initiation of formal action?
- Considering the circumstances, in the eyes of the Trust and others external to it, would the application of a formal procedure represent a proportionate and justifiable response (i.e. have other potential responses and remedies, short of formal intervention, been fully assessed before being discounted)?
- If formal action is being or has been taken, how will appropriate resources be allocated and maintained to ensure it is conducted fairly and efficiently; how will it be ensured that independence and objectivity is maintained at every stage of the process?
- What will be the likely impact on the health and wellbeing of the colleague(s) concerned and on their respective teams and services, and what immediate and ongoing direct support will be provided to them?
- Further, consider how the dignity of the colleague(s) will be respected at all times and in all communications, and how duty of care is not compromised in any way.

3.3.3 Where it is decided that further formal investigation and / or formal action is appropriate, this must be approved by a senior manager (8b and above). The senior manager will have no previous involvement in the case and will provide independent oversight.

### 3.4. The role of informal discussion

3.4.1 On most occasions, it will not be necessary and / or appropriate for line managers to use the formal stage of the Misconduct Policy.

3.4.2 Informal discussions are normally between the colleague and the immediate line manager only. Whilst they do not include the automatic right to be accompanied, line managers should not unreasonably refuse requests to bring a work

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colleague or representative for support at this stage, but this should not cause delay for the meeting to proceed in doing so.

- 3.4.3 Where a performance concern is due to a lack of competency, knowledge or skill, this is likely to be a capability concern and the [Capability Policy](#) should be referred to. Where there is poor conduct which breaches a policy or demonstrates poor behaviours, for example, wilful misconduct, poor effort, attendance, wilful negligence, lack of application or where serious errors have been made to the detriment of the patient or the Trust, this is likely to be a [misconduct matter](#).
- 3.4.4 At the informal stage, line managers are expected to discuss with the colleague concerned why the expected standard of performance or conduct is not being met. The conversation should be constructive, with the emphasis being on finding ways for the colleague to improve and for the improvement to be sustained.
- 3.4.5 The aim of the meeting should be to clarify the standards expected and plan improvement over an agreed timescale where appropriate. Any agreed training / development required to facilitate improved performance should also be identified. There should be reviews of progress over specified periods.
- 3.4.6 During the course of an informal discussion, it may appear to the line manager that a more formal approach is necessary. This might be because the facts remain unclear and need further investigation and / or that the matter appears serious enough to warrant a formal Misconduct Hearing. In this scenario, line managers must refer to Section 3.3 of this policy.
- 3.4.7 Where a concern is managed via informal discussion and paragraph 3.2.6 does not apply, line managers should make a file note of the discussion using the [Informal Discussion Template](#). A copy of this must be given to the colleague and they should be informed that a copy will be kept on the personal file and for how long. Such file notes must be clearly marked "informal discussion" and identify the date of the discussion and the names of parties to it and what action, if any, is agreed. They should be removed from the personal file once the period has expired (no longer than 12 months) unless there are exceptional reasons for keeping it, e.g. concerns regarding safeguarding.
- 3.4.8 Where informal discussion fails to address the issue, or it involves more serious allegations, it may be appropriate to follow the formal misconduct processes. For further guidance on what such issues / incidents include, see [Appendix 1](#).

### 3.5. Formal investigations

- 3.5.1 Following the review of the adverse event, the line manager may commission a formal investigation in order to establish the full facts of alleged misconduct (this is when the line manager becomes what is known as the 'commissioning manager').

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- 3.5.2 Before commencing formal investigation and misconduct procedures, appointed commissioning managers, investigating officers and other colleagues charged with specific responsibilities should be provided with the necessary time and resources that will fully support the timely and thorough completion of these procedures. They should also be trained appropriately to be able to carry out these roles.
- 3.5.3 The length of the investigation will depend on the nature of the allegation or incident. However, investigations should be conducted speedily and normally be completed within 28 days.
- 3.5.4 Before proceeding to a full investigation, the line manager may consider the [Fast Track option](#) (see Section 3.6).
- 3.5.5 An Investigation Toolkit is available to support formal investigations.

### 3.5.1. Roles and responsibilities for colleagues within formal investigations

- 3.5.1.1 The extent to which colleagues charged with responsibilities (investigating officer, commissioning managers and members of misconduct panels) are truly independent must also be considered. Independence and objectivity must be maintained. Set out in the table below are the headline responsibilities for colleagues involved in formal investigations:

|                                |   |
|--------------------------------|---|
| The Commissioning Manager (CM) | The commissioning manager (CM) is usually the line manager of the colleague in question   |
|                                | The CM sets out very clear but simple terms of reference for the person who will undertake the investigation  |
|                                | The CM will need to identify an Investigation Officer (IO)  |
|                                | The CM should identify a capable and competent investigator that has the time to be dedicated to the task. CMs may need to consult with more senior line managers within their Division / department in order to identify a suitable person.  |
|                                | Colleagues should not be appointed as commissioning managers, investigating officers or chair of panels unless they have received training and, through such training, have the skills and competencies (in areas such as awareness of relevant aspects of best practice and principles of natural justice, and appreciation of equality and diversity considerations) required to undertake these roles. |
|                                | The CM should meet with the Investigating Officer (IO) and ensure the terms of reference and expectations for the investigation are clear. This will include the timeframes for reporting back to the CM. The CM must also identify and agree administration resources with the IO i.e. arrangements for letter invites, note taking at meetings, typing of statements etc.                               |



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|                                |  |
|--------------------------------|--|
|                                | <p>The CM should expect to meet with the IO weekly to gain feedback on the investigation and help keep the investigation focused and proportionate.</p>  |
|                                | <p>The CM may seek advice from an HR professional in respect of the investigation, including guidance on how to ensure that the investigation is conducted in a timely fashion and proportionately.</p>  |
| The Investigation Officer (IO) | <p>The IO should not be directly or indirectly involved in the incident. It should also be noted that an IO cannot subsequently be a member of the Misconduct Panel in the event that a formal hearing is required.</p>  |
|                                | <p>The IO will be responsible for ascertaining the full facts of the case and for providing a report to the CM.</p>  |
|                                | <p>The investigation should be proportionate. The IO should seek guidance from the CM with regard to the scale of interviews.</p>  |
| The commissioning manager      | <p>The CM should keep the colleague under investigation updated regularly (if verbally follow in writing / email) with regards to timescales of the investigation and progress of the matter. The underlying principle should be that all communication, in whatever form it takes is timely; comprehensive; unambiguous; sensitive; and compassionate.</p>  |
| The Investigation Officer      | <p>The IO will present their findings to the CM in a report outlining the full circumstances (the facts) of the case, including statements and evidence submitted.</p>   |
| The commissioning manager      | <p>If a decision is made to progress to a Misconduct Hearing, the report will be provided to the colleague in question. If the matter does not proceed to a Misconduct Hearing, they need to consider what information is fed back to the colleague(s) involved in the investigation process. This is to ensure that colleagues have confidence that the full facts have been carefully considered, whilst maintaining confidentiality and sensitivity of the case.</p>  |
|                                | <p>The CM may seek clarification from the IO regarding the facts emerging at any stage of the investigation.</p>   |
|                                | <p>Based on the report submitted, the CM will make a decision on the next steps - the options include:</p> <ul style="list-style-type: none"> <li>• No further action</li> <li>• Informal action (improvement notice)</li> <li>• Progressing to a Misconduct Hearing</li> </ul> <p>The CM should consider whether there is organisational learning that should be implemented either alongside or instead of proceeding to the Misconduct Hearing. At this stage, it may become apparent that the use of other Trust policies may be more appropriate.</p> |
| The colleague under            | <p>Colleagues have a duty to provide information connected with an employment concern and must cooperate with any</p>  |

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investigation process or formal meeting(s) as either the subject investigation and or potential witnesses. This includes attending formal meetings and checking, signing and returning statements in a timely manner.

### 3.6. Fast Track, agreed outcome option

3.6.1 In instances where formal misconduct procedures are necessary, the Fast Track option is a consideration intended to be mutually beneficial to both the colleague and the line manager.

3.6.2 The Fast Track option may be agreed at any stage of the Misconduct Policy (with the exception of allegations that could constitute gross misconduct) but is more likely to be adopted at the earlier stages of alleged misconduct.

3.6.3 Fast Track may be appropriate when:

- the colleague has admitted the allegation(s).
- there is broad agreement on the circumstances surrounding the allegations.
- the colleague is able to reflect, improve and/or learn from the matters arising.
- the colleague expressly agrees to their case being handled under this 'Fast Track' option.
- the colleague does not have a live misconduct warning.

3.6.4 The benefits of the 'Fast Track' option include:

- Alleviating the stress that may be experienced by the colleague subject to the misconduct action and also possibly the stress of others that may be involved in the process.
- A speedier resolution.
- A pragmatic outcome.
- Mutually agreed.

3.6.5 The Fast Track agreed outcome option cannot be used for allegations of potential gross misconduct.

3.6.6 Advice should be sought from the HR Enquiries Team ([hrenquiries@nnuh.nhs.uk](mailto:hrenquiries@nnuh.nhs.uk)) on a case-by-case basis to discuss the allegations, the facts established, suitability for a Fast Track agreed outcome and potential level of sanction, and the process to be followed. The HR Enquiries Team will provide guidance and the supporting documentation (i.e. to the template letters and Fast Track Form) to the line manager.

3.6.7 In discussing the potential use of a Fast Track Warning with the colleague, if the colleague is employed on NHS Terms and Conditions of Service (Agenda for Change), they should be made aware that if they are due a pay step during a misconduct warning period, the pay step will be deferred until such time that the warning has expired, in accordance with the [Starting Salaries](#)



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[and Pay Progression Policy](#). At the end of the warning period, the pay step will be actioned, dependent on the colleague meeting all the required standards as set out in the Starting Salaries and Pay Progression Policy. The pay step will not be backdated, and the pay step date will remain unchanged.

### 3.6.8 In the circumstances where Fast Track is a consideration:

- The line manager must have discussed the concerns with the colleague, followed Section 3.3 of this policy, completed the [Misconduct Preliminary Fact Finding/Review of Adverse Event](#) document, discussed the findings from this with the colleague concerned and amended the document as necessary and agreed.
- The line manager may suggest the option to the colleague, advising them to take advice from their union representative (if any).
- The colleague, possibly with the involvement of their union representative, may suggest the option to the line manager.
- If the Fast Track option is to be considered, the line manager must invite the colleague to a Fast Track Meeting, using the template letter. The colleague may be accompanied by a work colleague or trade union representative not acting in a legal capacity. If, as part of this meeting, a Fast Track Misconduct Warning is an appropriate consideration / outcome, the Fast Track Misconduct Form, will need to be completed by both parties – firstly by the line manager and then by the colleague. On the form:
  - a.a. ALLEGATION - The line manager will set out the allegation and basic facts/ circumstances and level of sanction being considered,
  - a.b. COLLEAGUE RESPONSE - The colleague will either confirm, or provide clarification of, the basic facts / circumstances. The colleague may state any mitigation or other information which they might consider to be relevant,
  - a.c. SANCTION - Where facts are mutually agreed and colleague is able to reflect, improve and / or learn from the matters arising and misconduct sanction would appear to be appropriate the mutually agreed sanction is:
  - a.d. MUTUAL CONFIRMATION FROM COLLEAGUE AND LINE MANAGER TO APPLY FAST TRACK - The colleague must confirm whether they are prepared to accept the sanction noted above.
- To benefit from the Fast Track approach, the colleague must acknowledge the misconduct, show appropriate reflection and demonstrate that they can learn / improve.

3.6.9 The completed Fast Track Misconduct Form will be issued by the line manager, with a covering letter, confirming the 'agreement'. Given the mutuality of any 'agreement' reached through the Fast Track Misconduct route, this is likely to be the conclusion of the matter, therefore there is no formal right of appeal against a sanction applied

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via the Fast Track route. However, the covering letter will offer the colleague an opportunity to change their mind within seven days of receipt of the letter, should they wish. The alternative options to accepting the Fast Track option are:

- a. To not accept the Fast Track option. This will require the original line manager to reflect and consider whether to follow other routes available through the Misconduct Policy.
- b. To query aspects of the Fast Track 'agreement' with the original line manager and seek mutually agreed modifications to the Fast Track agreed outcome with the original line manager. If the original line manager accepts the proposed variation / suggestions, the Fast Track form should be revised and reissued. However, if agreement cannot be reached, this will require the original line manager to reflect and consider whether to follow other routes available through the Misconduct Policy.

3.6.10 If, during the course of the Fast Track meeting, other information comes to light which was not apparent when Fast Track was agreed, the line manager will need to consider whether the Fast Track option remains appropriate or whether a formal investigation is required if not previously undertaken, or to progress to a misconduct hearing.

### 3.7. Temporary removal from the workplace

3.7.1 On occasion of a misconduct allegation, the line manager may deem it appropriate for the immediate removal of the colleague from their place of work on a temporary basis, at full pay, for as long as is necessary. This would not normally be for any period longer than a few days and may be appropriate as follows:

- For the purpose of "cooling off".
- If the colleague appears to be under the influence of drugs or alcohol.
- To seek appropriate advice.

3.7.2 In such circumstances, temporary removal from the workplace allows the line manager time to decide whether formal suspension, or other alternatives, is necessary.

### 3.8. Suspension

3.8.1 The Trust reserves the right, as a last resort, to suspend a colleague from duty under this policy. Suspended colleagues will remain on their normal full pay. Suspension may only be considered where the allegation is one of gross misconduct and where the presence of the colleague on site presents a real and significant risk to either:

- The operations, reputation and safety of the Trust.
- A colleague, patient or the public.
- The quality and integrity of the investigation.

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- 3.8.2 Suspension is a neutral, precautionary act that does not imply any assumption of guilt.
- 3.8.3 Despite this, the absence from work can cause intense stress to the colleague and may bring damaging speculation. Therefore, suspension should only ever be used as a last resort and should not be used simply to mark the seriousness of the offence.
- 3.8.4 Where suspension might be considered a justifiable precaution, alternatives should always be considered first. Since the colleague remains on their original full normal pay, where such alternatives can be accommodated the colleague should not unreasonably refuse them.
- 3.8.5 Alternatives to suspension might include:
- Restricted or alternative duties.
  - Alternative work patterns.
  - Working in a different work area or site.
- 3.8.6 Where such an alternative to suspension is being considered, the senior manager must still follow the same authorisation and management process as in the case of full suspension, as below.
- 3.8.7 When considering exclusion from work for Medical and Dental colleagues, refer to the “MHPS Restriction of Practice and Exclusion from Work Directions”.
- 3.8.8 Where a line manager considers, in the light of the above principles, that suspension may be appropriate, they should discuss this with their senior manager (a member of the Divisional Triumvirate or Head of Department (for Corporate Departments)).
- 3.8.9 Given the seriousness of the decision to suspend a colleague and the need for appropriate scrutiny and consistency, suspension can only be authorised by an Executive Director. Any decision to suspend should be a measure of last resort that is proportionate, time bound and only applied when there is full justification for doing so. The continued suspension of any colleague should be subject to appropriate senior management oversight and sanction.
- 3.8.10 Where the senior manager supports the case in favour of suspension, they should first present a [suspension risk assessment](#), written assessment and recommendations to the relevant Executive Director. If the Executive Director authorises suspension, the senior manager will progress the decision.
- 3.8.11 The senior manager (or their nominated line manager) should meet with the colleague to inform them of their suspension (or alternative) and should advise:
- The reason for the suspension (or alternative).

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- That they will continue to receive their full normal pay.
- That the suspension (or alternative) will be regularly reviewed and should be for no longer than 28 days.
- That it is a precautionary measure and not a misconduct measure or sanction.
- That suspension normally applies to all contracts of employment with the Trust, including temporary staffing roles.
- That they must not undertake paid work for another employer during their normal working hours with the Trust.
- The terms of the suspension (or alternative) (e.g. which would normally be not to contact colleagues or potential witnesses, access the workplace or the Trust's IT systems without permission etc.).
- Whether they must return any Trusts property during their suspension (e.g. ID badges, smart cards, mobile phones etc.).
- Whether their IT accounts will be closed during their suspension.
- The support available from Workplace Health and Wellbeing.
- A designated named contact in the Trust for regular check-ins and support as required, which would usually be the commissioning manager.
- Who to contact in the event of any queries, including requests to access the workplace, colleagues, personal property, work documents, or other information necessary to respond to the allegation/s.
- Check the colleague requires any assistance i.e. safety for travelling home and / or whether contacting a friend / relative for support prior to leaving the workplace is required.

3.8.12 In all cases, the senior manager must confirm the suspension in writing within five calendar days, confirming all of the above details.

3.8.13 A copy of the letter should be sent to the HR Enquiries Team to update corporate records and for the awareness of the relevant HR Business Partner.

3.8.14 Periods of suspension should be kept to a minimum and should not exceed 28 calendar days. All suspensions will be reported to the Workforce and Education Sub Board on a monthly basis and where they exceed 28 days they will be escalated to the Divisional Triumvirate / Head of Department (for Corporate Departments).

3.8.15 The Executive Director will be expected to hold the commissioning manager to account for progress of the case and keeping the length of suspension to a minimum.

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3.8.16 Suspensions should only be extended in exceptional circumstances. Extensions may only be approved by an Executive Director. The commissioning manager responsible for the misconduct case must therefore provide evidence justifying the need for an extension and provide an update on progress.

3.8.17 If approval is granted to extend the suspension period, the commissioning manager is responsible for writing to the colleague to advise them of the period of extension and the reasons.

### 3.9. Misconduct Hearing Panels and arrangements

3.9.1 Should a commissioning manager decide to progress a case for consideration at a Misconduct Hearing, this must be approved by a senior manager (8c or above) who is not involved in the process. The arrangements should be progressed in a timely manner, noting the responsibilities and roles listed below:

|                              |   |
|------------------------------|---|
| Human Resources professional | A Human Resources professional may be requested by the Chair of the Panel to act as an advisor to the Panel but will not act as a member of the Panel.  |
| Chair of the Panel           | <p>The commissioning manager will refer to the management team (Divisional triumvirate CoD, DoD, DND or HoT or Head of Department for Corporate areas) to appoint the Chair of the Panel. They will appoint a line manager who has not been involved in the case and has the appropriate level of authority to hear the case.</p> <p>The Chair of a Misconduct Panel should be competent and capable of discharging their duties.</p> |
| Membership of the Panel      | <p>There should be a minimum of two managers on a Panel.</p> <p>The commissioning manager may not be a member of a Panel.</p> <p>The Investigating Officer may not be a member of a Panel.</p> <p>Panel members will have no previous involvement in the case or any conflict of interest that could influence decision making.</p>   |
| Panel decision making        | <p>In all decision-making that relates to the application of sanctions, the principle of plurality should be adopted, such that important decisions which have potentially serious consequences are very well informed, reviewed from multiple perspectives, and never taken by one person alone.</p> <p>However, where decisions are required of a Panel and no majority decision can be reached (e.g. when there are two</p>        |

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|  | Panel members), the Chair of the Panel has the final decision.   |
| Arrangements for the Panel / Hearing                         | Arrangements for the Panel is the responsibility of the commissioning manager. Such arrangements include invitations, logistics for the day, organising an appropriate note taker / recording equipment and post-hearing correspondence. |
| Presenting the Investigation/ Management Case to the Hearing | The commissioning manager will normally be expected to present the 'management case' and investigation to the Panel. The Investigating Officer will be expected to be present.   |
| Witness  | Persons who provide a statement must be prepared to attend a hearing or formal meeting associated with the misconduct, if requested.   |
| Note Taker   | To take notes and type an accurate account the meeting. This will not be verbatim notes.<br><br>Recording equipment may be used to support these processes and colleagues will be informed in advance.                                   |

### 3.10. Administration of the Misconduct Hearing

3.10.1 There are three main parts to the Misconduct Hearing: the arrangements for the Misconduct Hearing, the procedure at the Misconduct Hearing and the decision resulting from the Misconduct Hearing. For the purposes of clarifying these arrangements, each of the stages identified above are considered separately.

3.10.2 All line managers are responsible for applying the Misconduct Policy in line with these procedures. Decisions to initiate misconduct action should be consistently applied and be based on objective facts in line with what the Trust has outlined as its misconduct rules.

### 3.11. Arrangements for the Misconduct Hearing

3.11.1 Once a commissioning manager has decided to apply the formal misconduct procedure, arrangements should be made for the Misconduct Hearing.

3.11.2 The Misconduct Hearing will be chaired by the appropriate level of management. Appropriate level of management means a colleague / line manager who:

- Has been instructed by the Divisional Triumvirate to Chair the misconduct panel.
- Panel members will have no previous involvement in the case or any conflict of interest that could influence decision making.

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- Has received appropriate training in Charing Misconduct Hearings / appeal hearings.
- Has the technical competence to decide on the alleged misconduct e.g. nursing, medical experience.
- Is of a more senior level of authority or banding than the subject of the alleged misconduct.
- In cases involving allegations of professional misconduct, a senior professional from the appropriate discipline must also be in attendance.

3.11.3 Misconduct Hearing Panel members cannot be on the Appeal Panel for the same case.

3.11.4 A minimum of five working days' notice must be given to allow the colleague to seek adequate representation and prepare their case, and to make the organiser aware of any adjustments required to support the colleague regarding a disability. This may be extended by mutual consent. A copy of the Misconduct Policy must be included with the letter. The letter to the colleague must include the following:

- The date, time and venue of the Misconduct Hearing.
- The names and post titles of the Panel Members.
- Which Panel member will act as the Chair.
- Any others who will be present at the Misconduct Hearing, and their roles – e.g. Human Resources professional advising the Panel.
- The nature of the allegation against the colleague.
- Copies of any reports, statements or information that will be relied on or referred to at the Misconduct Hearing.
- Highlight the sequence of events for the Misconduct Hearing (as detailed within this policy).
- The names and positions of any witnesses who will be present.
- The colleague's right to call witnesses and how to go about this.
- That the Misconduct Hearing will be of a disciplinary nature and may result in misconduct action being taken against the colleague.
- The right of the colleague to be accompanied at the Misconduct Hearing by a trade union representative or work colleague not acting in a legal capacity.

3.11.5 Where the colleague is an accredited trade union representative, the commissioning manager must contact the appropriate Full Time Officer of the relevant union before arranging a Misconduct Hearing.

3.11.6 Misconduct Hearings can be re-arranged a maximum of two times if the colleague or their representative / companion is unable to attend. At the third



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attempt, a decision will be made to proceed in their absence unless there are extenuating circumstances, which will be at the discretion of the Chair of the Hearing Panel.

### 3.12. Procedure at the Misconduct Hearing

#### 3.12.1. Sequence of Events

- The Chair of the Misconduct Hearing will facilitate the introductions and state the complaint or allegation that has led to the need for the Misconduct Hearing.
- If the colleague presents any new information or evidence during the proceedings which requires further investigation, the Chair of the Panel will consider whether to proceed with the hearing or to adjourn the Hearing pending further investigation.

#### 3.12.2. Management

- The commissioning manager, supported by the Investigating Officer, will present the case outlining the issues of alleged misconduct and conclusions reached, referring where appropriate to the relevant papers within the investigation report. Any witnesses may be called by the commissioning manager where the contents of the witness statements are disputed or to question the witness. Questions will be limited to clarifying any matters that appear to be in dispute in their statement.
- Witnesses may not be required to attend a Misconduct Hearing by mutual agreement, especially where the colleague does not dispute the content of witness statement(s).
- The commissioning manager will have the opportunity to question the witness/es and the colleague.

#### 3.12.3. Colleague

- The colleague and / or their representative will present their case and call their witness/es if they so wish.
- The colleague or their representative will have the opportunity to question the commissioning manager, investigating officer and any of management's witness/es.

#### 3.12.4. The Panel

- The Panel will have the opportunity to ask the commissioning manager / Investigating Officer or witnesses questions. The witness will then be asked to leave but may be asked to remain available for the duration of the hearing.

#### 3.12.5. Summing Up



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- The commissioning manager will be given the opportunity to provide a final summary / statement of their case.
- The colleague and / or their representative will be given the opportunity to provide a final summary / statement of their case.
- The Panel will have the opportunity to ask any final questions of the commissioning manager / Investigation Officer and the colleague.
- The commissioning manager / Investigation Officer, colleague, representatives and any witnesses will be asked to leave the proceedings at this stage, so the Panel can consider their decision and any sanction (see below).
- Where the hearing has a Human Resources professional offering advice to the Panel, the Human Resources professional may remain with the Panel. However, their role is to advise the Panel and is not to reach any conclusions on the case, e.g., if the panel should have questions regarding process and appropriate use of sanctions.

### 3.13. The decision of the Misconduct Hearing

3.13.1 In deliberating, the Panel must carefully consider all the facts, evidence circumstances presented, before deciding first whether there is reasonable belief that misconduct has been found for each of the points / allegations, and secondly, the level of sanction to apply, if any, is appropriate. In considering the sanction, the following factors will need to be considered:

- The seriousness of the offence.
- Any relevant current misconduct sanctions.
- How similar incidents have been treated.
- Any mitigating factors.

3.13.2 The decision of the Panel will normally be notified to the colleague on the same day and must be confirmed in writing within five working days and should include notifying the colleague of their right of appeal.

3.13.3 The different levels of warnings, together with a guide to the period of time each warning should normally remain in force from the date of the hearing, are set out in this policy. Warnings may run concurrently if they are for different reasons, e.g. one for inappropriate dress and another for unauthorised absence.

### 3.14. Misconduct sanctions

3.14.1 Having considered the factors above, the following levels of sanctions are available:

| Sanction              | Duration of sanction               |
|-----------------------|------------------------------------|
| No action             | n/a                                |
| Informal              | An Improvement Notice to be issued |
| First written warning | Up to six months                   |
| Final written warning | Up to 12 months                    |

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| Other action short of dismissal (which may be in conjunction with final written warning) | Sanction duration extended up to a maximum of 24 months.<br><br>This could also include a transfer and/or demotion/ downgrade to a different role and/or department and/or location and/or shift pattern |
| Dismissal, with notice   | Immediate but with notice  |
| Summary dismissal, without notice  | Immediate  |

3.14.2 When a colleague acknowledges during the course of an investigation or during a misconduct meeting that they have such a problem or addiction, which has been the cause of the incident, line managers must ensure that they are given support via Workplace Health and Wellbeing. Action short of dismissal may be appropriate in these circumstances, allowing time for the colleague to obtain the help needed. Continued offences, despite having been offered help, could then result in dismissal.

### 3.15. Formal written warnings

3.15.1 If a decision is taken at the hearing to issue a formal written warning, the colleague should be verbally notified, and this should be followed up in writing. If a decision cannot be reached at the Hearing, but a formal written warning is subsequently issued, this decision must be confirmed in writing. Both the initial verbal and following written confirmation must include reference to these points for all levels of warnings:

- Details of the misconduct in question.
- The level of warning and the period during which it will remain in force.
- The improvement or correction of behaviour / conduct, which is expected, and the period of time given for this to occur.
- The support which will be provided, where appropriate.
- The timing of review hearings, if appropriate.
- Notification that the consequence of failure to correct behaviour / conduct could result in a final warning (if not already issued) and ultimately dismissal.
- The right of appeal against the formal written warning.

3.15.2 A copy of the letter must be sent to the HR Enquiries Team to update record keeping and for awareness of the HR Business Partner. A copy of the letter will not be retained by Human Resources.

3.15.3 A first written warning can be issued for a specified period of up to six months. The guidance in paragraph 3.15 must be applied.

3.15.4 A final written warning can be issued for a specified period of up to 12 months. This will normally be issued where there has been further misconduct or a

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failure to improve or change behaviour in the timescale set in a first written warning or, on a first occasion, where the offence is sufficiently serious to warrant it (e.g. serious misconduct, or gross misconduct). The guidance in paragraph 3.15 must be applied.

3.15.5 Where, following misconduct action, a colleague has reached the specified standard and / or no recurrence has taken place within the time limit of the warning, the misconduct action will be regarded as “spent” and the colleague notified accordingly in writing. The record of the misconduct warning will be removed from the colleague’s file.

3.15.6 In exceptional circumstances, relating to criminal / safeguarding issues, the details of the sanction may be retained on the personal file, beyond the expiry date of the sanction.

### 3.16. Other action short of dismissal – extension of final written warning

3.16.1 In exceptional circumstances, a 12-month final written warning may be extended to a maximum of 24 months. This will generally be where the offence constitutes gross misconduct and a decision on action short of dismissal is made.

### 3.17. Other action short of dismissal – other options

3.17.1 According to the circumstances of the case, other action may be considered as an alternative to dismissal and a final written warning may run concurrently. This may involve a transfer and / or demotion / downgrade to a different role and / or department and / or location and / or shift pattern. However, where the colleague does not agree to this permanent change, dismissal will follow.

3.17.2 The full details of the transfer or downgrading must be with the agreement of the colleague and confirmed in writing in line with the provisions in paragraph 3.15. It will be necessary to issue a revised contract where the sanction is permanent.

3.17.3 The colleague is obliged to raise any issues of concern and identify any support required to enable the necessary improvement. If mutual agreement to action short of dismissal is not possible, dismissal will follow.

### 3.18. Dismissal

3.18.1 Dismissal under the Misconduct Policy is the ultimate and final sanction which can be imposed. It is usually applicable where the behaviour or conduct constitutes Gross Misconduct or where there have been a number of instances of less serious offences, which are the subject of current misconduct warnings.

3.18.2 In considering dismissal as an option, the following must be examined:

- The misconduct procedure has been complied with and where it has not, there are exceptional, sound and justifiable reason(s) for departing from it.

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- Other available courses of action have been considered and discounted.
- The dismissal (where appropriate) is consistent with previous practice within the Trust and is a reasonable course of action.
- All the evidence relied upon is available and sufficiently clear to justify the decision.

3.18.3 Where dismissal is a potential outcome, the Chair of the Panel must be a senior manager with the authority to dismiss (see [Appendix 2](#)).

3.18.4 The dismissal decision should be communicated to the colleague within five working days and must contain the following information:

- The reasons for their dismissal.
- The effective date of termination of employment.
- Notification that the dismissal will be reported to the relevant professional body (where appropriate).
- Their entitlement to contractual notice or pay in lieu of notice.
- Confirmation of any outstanding/accrued annual leave.
- Confirmation of any deductions or repayments to be made from their final salary.
- Details of their right of appeal.

3.18.5 In the event of Gross Misconduct or gross neglect of duty, employment may be terminated immediately without notice.

### 3.19. Dismissal - without notice (summary dismissal)

3.19.1 There are statutory provisions for summary dismissal in circumstances of Gross Misconduct and the dismissal decision should be communicated as above (with the only difference being without contractual or pay in lieu of notice).

3.19.2 The Trust does not apply immediate dismissals at the time the allegation occurs, and will always consider suspension in the first instance, followed by Misconduct Hearing and right of appeal in line with this policy.

### 3.20. Right of appeal

3.20.1 There is a right of appeal against any formal warnings, demotions, redeployment, transfer or dismissal under the misconduct policy, including warnings issued under the Fast Track option.

3.20.2 The purpose of the appeal is to review the original decision ensuring the appropriate procedures have been observed, reviewing the facts with a consideration of whether the findings are fair and reasonable in all the circumstances. It is not an opportunity to re-hear the original case.

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3.20.3 An appeal can result in any of the following outcomes:

- Confirmation of the original decision (in whole or part).
- The original decision may be revoked (in whole or part).
- A lesser sanction may be applied in place of the original one.

3.20.4 Lodging an appeal will not prevent the sanction set at the original hearing taking effect.

3.20.5 A colleague may base their appeal on one or more of the following reasons, though this is not an exhaustive list.

- Facts of the case – identifying where these are disputed and / or not taken appropriately into account.
- New evidence has come to light.
- Fairness of the decision/s - colleagues feel the finding or sanction is unfair or unreasonable.
- Procedure followed – colleagues feel the misconduct policy / procedure was not properly applied.
- The action was based on discriminatory reasons.

3.20.6 All rights of appeal must be lodged in writing and addressed to the HR Enquiries Team either by email ([hrenquiries@nnuh.nhs.uk](mailto:hrenquiries@nnuh.nhs.uk)) or via internal mail (Misconduct Appeals), Level 5, 20 Rouen Road, Norwich, NR1 1QQ, within 14 calendar days of the date of the outcome letter. The colleague must detail the grounds on which the appeal is made.

3.20.7 The HR Enquiries Team will:

- Acknowledge safe receipt of the appeal within two calendar days.
- Record the appeal in order to monitor, report and track progress.

3.20.8 The arrangements for the appeal meeting will:

- Normally be confirmed within seven calendar days of receipt of the appeal letter.
- Be held within 21 calendar days of receipt, unless extended with mutual agreement.
- Be scheduled to allow the colleague notice of no less than seven calendar days of the date of the meeting.

3.20.9 The colleague has the right to be accompanied at the Appeal Hearing by a work colleague or trade union representative not acting in a legal capacity.

3.20.10 Colleagues who exercise their right of appeal will be treated fairly and will not be subject to any detriment as a result.

3.20.11 Additional documentation will not normally be accepted on the day of the

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Appeal Hearing unless the Chair of the Panel agrees that it is relevant to the case or could not be presented earlier.

3.20.12 If either the line manager who made the original decision or colleague / appellant wishes to call a witness, the Chair will have the final decision as to whether they should attend based on the relevance to the appeal case. This should be agreed and arranged prior to the Appeal Hearing. At the appropriate time the witness will be called to present their evidence and answer any questions. Witnesses will not remain present for the entire hearing.

### 3.21. Appeal Hearing panels and arrangements

3.21.1 An Appeal Hearing should be conducted with the following roles and responsibilities:

|   |   |
|---|---|
| Human Resources professional role           | A Human Resources professional may be requested by the Chair of the Panel to act as an advisor to the Appeal Panel, but will not be acting as a member of the Appeal Panel  |
| Chair of the Appeal Panel                   | <p>The commissioning manager (CM) will refer to the DoD, DND or HoT or Head of Department (for Corporate areas) to appoint the Chair of the Appeal Panel. They will appoint a manager who has not been involved in the case and has the appropriate level of authority to hear the case.</p> <p>The Chair of a Misconduct Appeal Panel should be competent and capable of discharging their duties.</p> |
| Membership of the Appeal Panel              | <p>A minimum of two managers on a Panel.</p> <p>The CM may not be a member of an Appeal Panel.</p> <p>The Investigating Officer (IO) may not be a member of an Appeal Panel.</p>  |
| Appeal Panel decision making                | Where decisions are required of an Appeal Panel and no majority decision can be reached (e.g. when there are two Panel members), the Chair of the Appeal Panel has the final decision.  |
| Arrangements for the Appeal Panel / Hearing | Arrangements for the Appeal Panel is the responsibility of the CM. Such arrangements include invitations, logistics for the day, organising appropriate note taker / recording equipment and post-Appeal Hearing correspondence.  |
| Chair of the Misconduct Panel               | The Chair of the Misconduct Panel will be expected to be present at the Appeal Hearing to respond to the appeal case.   |
| Witness                                     | Persons who provide a statement must be prepared to attend an Appeal Hearing or formal meeting associated   |

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|            |   |
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|            | with the misconduct, if requested.  |
| Note Taker | To take notes and type an accurate account of the meeting. This will not be verbatim notes.<br><br>Recording equipment may be used to support these processes and colleagues will be informed in advance. |

### 3.22. Conduct of the Appeal Hearing

3.22.1 The Appeal Panel will be chaired by a colleague / manager with the appropriate level of authority. The appropriate level of authority means a colleague / manager who:

- Has been instructed by the Divisional Triumvirate to Chair the Appeal panel.
- Has not previously been involved with the case either as CM, IO or at the Misconduct Hearing stage.
- Has received appropriate training in Chairing Misconduct Hearings/Appeal Hearings.
- Has the technical competence to decide on the alleged Misconduct Appeal e.g. nursing, medical experience.
- Is of a more senior level of authority or banding than the subject of the alleged misconduct.
- In cases involving allegations of professional misconduct, a senior professional from the appropriate discipline must also be in attendance.

The panel will also consist of another senior manager. A Human Resources representative may attend to provide support and advice.

3.22.2 The manager whose decision is being appealed will be required to attend the meeting. They should be prepared to justify and explain their decision and reasoning in response to questioning from the appellant and the Appeal Panel.

3.22.3 At the meeting, the colleague / appellant and their representative will be given the opportunity to present their grounds of appeal. The colleague / appellant presenting their case may be subject to questioning by the Appeal Panel.

3.22.4 The representative will be entitled to present a case on behalf of the colleague / appellant; address the Appeal Panel; question the manager who made the original decision and any witness. Any questions directed to the colleague / appellant must be answered by the colleague / appellant and not their representative.

3.22.5 The line manager who made the original decision will be given the opportunity to respond to the appeal presented. They will in turn be subject to questioning by the panel and / or the colleague / appellant and their representative.



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3.22.6 The colleague / appellant and / or their representative will be given the opportunity to provide a final summary / statement. The manager who made the original decision will be given the opportunity to provide a final summary / statement.

3.22.7 The Appeal Panel will have the opportunity to ask any final questions of the colleague / appellant and the manager.

### 3.23. The appeal decision

3.23.1 The Appeal Panel must take into account and carefully consider the representations made by the colleague / appellant / representative and the manager.

3.23.2 Following the statements and summaries from both parties, the Chair of the Appeal Panel will adjourn the Appeal Hearing to allow the panel to consider all the evidence and make their decision. During the adjournment or associated discussion, only members of the Appeal Panel should be present. If any clarification is sought, all parties should be present.

3.23.3 The decision may be conveyed to the appellant / colleague on the day and must be confirmed in writing as soon as possible, usually within seven calendar days of the Appeal Hearing. A copy of the outcome letter will be retained in the personal file and Human Resources will record the outcome.

3.23.4 The decision will be recorded in writing by the Chair of the Panel indicating the reason(s) for upholding or rejecting the appeal and recording any agreement reached regarding a lesser sanction.

3.23.5 The decision made at this stage will be the final decision of the Trust and there will be no further right of appeal under this policy.

### 3.24. Professional misconduct

3.24.1 Within certain occupations, contravention of professional codes, standards, practice, laws or rules may lead to misconduct action, including dismissal. The professional bodies may take action in addition to action taken by the Trust, and the Trust has a duty to report incidents of professional misconduct to certain statutory bodies (e.g. NMC, GMC).

### 3.25. Action in the event of police enquiry, legal or professional proceedings

3.25.1 The Trust will consider whether it is necessary to invoke the Misconduct Policy where a colleague is charged with, or is convicted of a criminal offence(s) related or unrelated to their employment.

3.25.2 This decision will take into account whether the charge or conviction is one that is directly relevant to their employment or makes them unsuitable for the type of work. In such instances, it is likely that the line manager will want to seek advice from a Human Resources professional, the Safeguarding Team



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(where appropriate), or the relevant Executive Director in order to make a decision.

3.25.3 Misconduct proceedings, including dismissal, may take place in advance of any court hearing where the Trust has sufficient evidence to reach a conclusion in accordance with the normal standard(s) established.

### 3.26. Record keeping

3.26.1 Records of informal discussions and / or first and final written warnings must be kept on the colleague's personal file for the timescales specified. The head of each department should maintain a list of unspent warnings. Once the warning is "spent", the commissioning manager will write to the colleague to confirm this and to remove the warning from the personal file, unless the colleague has been advised that there are safeguarding concerns in relation to this matter, in which case the warning will remain on their personal file but will no longer be 'live' for misconduct purposes.

3.26.2 All written documents / records (e.g. written statements, reports, minutes) and proceedings relating to matters dealt with under this policy are and must remain confidential.

3.26.3 Any written documents or records (including those relating to appeals), must be stored confidentially and separately from the colleague's personal file by the Head of the Service. Information should not be kept for longer than is necessary.

3.26.4 If following an investigation, no action is taken (i.e. allegations are not substantiated or no misconduct action is taken) the information gathered should not be retained, unless there are exceptional reasons for keeping it.

3.26.5 In certain circumstances, where a doctor or other registered health professional colleague is dismissed from the Trust, the provisions set out in circular HSC 2002/011 (*The Issue of Alert Letters for Health Professional in England*) will be applied.

### 3.27. Supporting colleagues

3.6.1 Concern for the health and welfare of people involved in investigation and misconduct procedures should be paramount and continually assessed by the commissioning manager. Appropriate professional workplace health and wellbeing assessments and intervention should be made available to any person who either requests or is identified as requiring such support.

3.6.2 Being subject to allegations of misconduct can be very upsetting and stressful for the colleague and other colleagues affected.

3.6.3 Where there are concerns about a colleague's health or wellbeing, Workplace Health and Wellbeing advice will be obtained.

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3.6.4 Additionally, we have an [employee assistance programme](#) offering free, open access to a 24/7 helpline for structured counselling and support. All calls are confidential and colleagues can self-refer.

**3.28. Review, variation and termination**

3.27.1 Management or staff side may give notice to terminate this collective agreement by lodging six months' notice via the respective secretaries.

**4. Related Documents**

- [Informal Discussion Template](#)
- [Misconduct Preliminary Fact Finding/Review of Adverse Event](#)
- [Suspension risk assessment](#)
- [Lessons Learned Review](#)

**5. Monitoring Compliance**

Compliance with the process will be monitored through the following:

| Key elements   | Process for Monitoring    | By Whom (Individual / group /committee) | Responsible Governance Committee / dept | Frequency of monitoring |
|--|---------------------------|---|---|-------------------------|
| Review of the policy every three years (or sooner if required) to ensure compliance with legislation, good practice and the terms and conditions of service.   | Via the HR Enquiries Team | HR Enquiries Team                       | Pay and Conditions of Service Committee | Every 3 years           |
| Progress of formal misconduct cases will be reported and highlight the number and length of suspensions, length of formal investigations and highlight where a case has been escalated to the Divisional Triumvirate / Head of | Via the HR Enquiries Team | HR Enquiries Team                       | Workforce and Education Sub- Board      | Monthly                 |

## Misconduct Policy

|   |  |  |  |  |
|---|--|--|--|--|
| Department (for Corporate Departments) to consider whether further management intervention is required. |  |  |  |  |
|---|--|--|--|--|

The audit results are to be discussed at the Pay and Conditions of Service Committee to review the results and recommendations for further action. Then sent to the Workforce and Education Sub-Board who will ensure that the actions and recommendations are suitable and sufficient.

### 6. Appendices

- [Appendix 1 – General rules](#)
- [Appendix 2 – Panel hearing structure](#)

## General rules

### Misconduct

The following are examples of actions which may be regarded as warranting misconduct action where the required standards are not achieved. Such examples include but are not limited to:

- **Unauthorised absence** – including non-notification of absence or return to work.
- **Poor timekeeping** – every colleague is required to give constant regular attendance within the terms of their contract of employment.
- **Poor standard of dress** – in relation to agreed uniform and dress requirements for each department and/or the uniform policy.
- **Insubordination** – e.g. non-cooperation, insolence, refusing to obey reasonable instructions from a line manager or other line manager.
- **Poor standard of work** – where this cannot be rectified through the Capability Procedure.
- **Generally unacceptable behaviour** – e.g. verbal abuse of colleagues or patients, impoliteness etc.
- **Non-attendance for training** - Failure to attend mandatory, contractual, or legally required training.
- **Smoking on Trust premises.**
- **Accessing information not required in the course of duties.**
- **Any conduct or performance likely to bring the Trust into disrepute** – which could include inappropriate use of social media or use of the Trust's name.

### Serious Misconduct

Certain types of misconduct may lead directly to the issue of a higher-level warning such as a final written warning. Such examples include but are not limited to:

- Repeated and/or wilful failure to carry out safe working practices and procedures.
- Wilful failure or refusal to comply with established operational, legal, or other the Trust procedures which could result in serious error, risk, or offence to others or to the Trust property / premises.

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- Repeated breaches of less serious offences e.g. those categorised under misconduct.
- Serious verbal assault.
- Misuse of the Trust facilities, including serious contravention of the Trust Cyber Code of Conduct, i.e. deliberately accessing internet sites containing obscene, pornographic, or offensive material.
- Serious insubordination - e.g., failure to obey a reasonable instruction where this failure could result in loss, damage, or injury.
- Breach of confidentiality.

### Gross Misconduct

Where an offence is so serious as to breach the basis of the employment contract, then this will be regarded as Gross Misconduct and will normally lead to summary dismissal, unless there are sound mitigating circumstances.

The following are examples of behaviour which may constitute Gross Misconduct, and include but are not limited to:

- **Indecency** - any act of indecency against a patient, colleague or member of the public which is related to employment with the Trust.
- **Theft** – any instances of theft from the Trust or from a patient, colleague or member of the public and related to employment with the Trust.
- **Fraud** – and / or any deliberate falsification of records, or attempt to defraud the Trust, patient, colleague or member of the public and being related to employment with the Trust. Fraud may include the deliberate falsification of time sheets and travel claims and obtaining employment by deception.
- **Assault** – any physical violence or extreme verbal assault upon a patient, colleague or member of the public which is related to employment with the Trust.
- **Sexual, racial or other harassment or bullying** – including any deliberate act of discrimination on any of the nine protected characteristics, physical abuse, intimidation or other turbulent behaviour causing serious offence or leading to humiliation or embarrassment.
- **Malicious damage** – to the Trust property, patient property or property belonging to a member of the public or another colleague.

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- **Corruption** – including any breach of the Trust Standing Orders / Standing Financial Instructions and the Trust's policy on Standards of Business Conduct. Matters relating to receiving gifts, hospitality and declaration of interests are also viewed as serious misconduct.
- **Gross carelessness / negligence** – any action or failure to act which threatens the health or safety of patients, members of the public or other colleague.
- **Being unfit for duty** – other than for a medical reason (e.g. through abuse of alcohol or drugs where the colleague does not claim to have a drink or drugs problem).
- **Serious breach of confidentiality** – including matters relating to patients and confidential colleague matters, including breaches of the Trust Whistleblowing and Openness and Data Protection Policies (e.g. disclosure of personal or sensitive information without appropriate permission from the owner of that information).
- **Deliberate infringement of health and safety policy or legislation.**
- **Serious misuse of Trust's name or property.**

**NOTE:** With regard to allegations/offences committed outside the Trust, the relevance of the case to the Trust and the colleague's employment will be considered on a case-by-case basis.

### **Colleagues with a Drink, Drug or Substance Misuse Problem**

When a colleague acknowledges during the course of an investigation or during a misconduct meeting that they have such a problem or addiction, which has been the cause of the incident, line managers must ensure that they are given support via Workplace Health and Wellbeing. Action short of dismissal may be appropriate in these circumstances, allowing time for the colleague to obtain the help needed. Continued offences, despite having been offered help, could then result in dismissal.

#### **Other events which could lead to dismissal**

Other events, which may be outside of the control of the Trust and/or the individual colleague, may make continuing employment impractical or impossible. Examples of this may include a colleague's actions outside of work not commensurate with continued employment, e.g. harm to another person when the role involves care to vulnerable persons.

## Misconduct Policy

Appendix 2

### Panel Hearing Structure

| Colleague  | Chair of Formal Misconduct Hearing   | Chair of Appeal Hearing   | Consult  |
|--|--|---|--|
| Executive Director   | Chief Executive  | Trust Chairman  | Chief People Officer   |
| Divisional Operations Directors /<br>Divisional Nursing Directors /<br>Divisional Clinical Support Directors | Executive Director   | Executive Director / Chief Executive  | Human Resources Business Partner / Deputy Director of Workforce                                |
| All Medical and Dental colleagues  | In accordance with Maintaining High Professional Standards   | In accordance with Maintaining High Professional Standards  | In accordance with Maintaining High Professional Standards                                     |
| Head of Department/ Service /<br>Operational Managers /<br>Matrons or equivalent level                       | Divisional Operations Director /<br>Divisional Nurse Director,<br>Divisional Clinical Support Director | Chief of Service / Chief Operating Officer  | Deputy Director of Workforce /<br>Human Resources Business Partner/<br>Human Resources Advisor |
| All other colleagues   | Head of Department /<br>Service /<br>Operations Manager /<br>Matron / Sister or Charge Nurse           | Divisional Operations Director /<br>Divisional Nursing Director /<br>Divisional Clinical Support Director /<br>Senior Matron / Matron | Human Resources Business Partner /<br>Human Resources Manager /<br>Human Resources Advisor     |

The 'Chair' of the Panel would usually be the manager with the authority to dismiss and with appropriate training, if dismissal is a likely outcome. This responsibility can be handed to a designated deputy who is formally acting in the role or another manager at the same / equivalent level.

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### 7. Equality Impact Assessment (EIA)

|                                   |          |
|-----------------------------------|----------|
| <b>Type of function or policy</b> | Existing |
|-----------------------------------|----------|

|                                       |                       |                   |                 |
|---------------------------------------|-----------------------|-------------------|-----------------|
| <b>Division</b>                       | Corporate - Workforce | <b>Department</b> | Human Resources |
| <b>Name of person completing form</b> | Emma Clark            | <b>Date</b>       | July 2018       |

| Equality Area  | Potential Negative Impact | Impact Positive Impact  | Which groups are affected   | Full Impact Assessment Required YES/NO |
|--|---------------------------|---|---|--|
| Race   | None                      | None  | N/A   | No                                     |
| Pregnancy & Maternity  | None                      | None  | N/A   | No                                     |
| Disability   | None                      | The policy ensures managers consider disability at all stages | Employees with a disability as defined under the Equality Act 2010. | No                                     |
| Religion and beliefs   | None                      | None  | N/A   | No                                     |
| Sex  | None                      | None  | N/A   | No                                     |
| Gender reassignment  | None                      | None  | N/A   | No                                     |
| Sexual Orientation   | None                      | None  | N/A   | No                                     |
| Age  | None                      | None  | N/A   | No                                     |
| Marriage & Civil Partnership   | None                      | None  | N/A   | No                                     |
| <b>EDS2 – How does this change impact the Equality and Diversity Strategic plan (contact HR or see EDS2 plan)?</b> | n/a                       |   |   |  |

- **A full assessment will only be required if: The impact is potentially discriminatory under the general equality duty**
- **Any groups of patients/colleagues/visitors or communities could be potentially disadvantaged by the policy or function/service**
- **The policy or function/service is assessed to be of high significance**

**IF IN DOUBT A FULL IMPACT ASSESSMENT FORM IS REQUIRED**

**The review of the existing policy re-affirms the rights of all groups and clarifies the individual, line managerial and organisational responsibilities in line with statutory and best practice guidance.**