

**Overarching Disciplinary of Medical and Dental Staff**  
**Policy for University Hospitals of Derby and Burton NHS**  
**Foundation Trust**

**Policy name: Disciplinary of Medical and Dental Staff**

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<p><b>Signature:</b></p>          <p><b>Date :</b></p>	<p>..... Executive Director of Workforce  .....</p>
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## REVIEW AND AMENDMENT LOG

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**TRUST POLICY AND PROCEDURE FOR  
DISCIPLINARY OF MEDICAL AND DENTAL STAFF**

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# TRUST POLICY AND PROCEDURE FOR DISCIPLINARY OF MEDICAL AND DENTAL STAFF

## 1.0 Introduction

The Trust aims to provide the highest standards of patient care and every employee has a significant role to play in delivering this. The Trust recognizes that employees are its most valuable asset and anticipates that they will play an active role in its future.

The values and behaviors of our employees are central to achieving this. Employees represent the Trust to our patients and the public, and as such the highest standards of conduct, both professional and personal, are required at all times to ensure that the organisation maintains and retains an excellent reputation.

This Policy applies to all staff, including Doctors and Dentists in Training. However for medical and dental trainees, the Director of Postgraduate Medical Education should be informed of any issues as soon as possible. The Director of Postgraduate Medical Education will inform the Postgraduate Dean at HEE-EM.

Outlined in the Trust's Standards for C.A.R.E. (Compassion, Attitude, Respect and Equality) Guidance employees can find the Trust's required standards of conduct for recognized values and behaviors. The General Medical Council's (GMC) *Good Medical Practice 2013* describes the standards expected of all registered doctors. The General Dental Council's *Standards for the Dental Team 2013* includes the standards of conduct that govern dental professionals.

This Policy provides a clear formal framework for taking disciplinary action when it is alleged that an employee has fallen below the required standard in an aspect relating to their employment and is designed to ensure consistent, equitable and fair treatment for all medical and dental employees.

This Policy and its supporting procedures should be applied when:

- informal approaches have failed to resolve conduct, or
- formal approaches are appropriate because of the seriousness of the situation.

Key principles include that employers and employees should deal with issues promptly (source: ACAS).

This Policy complies with the overarching legislative framework and key NCAS documents, including '*Maintaining High Professional Standards in the Modern NHS: A Framework for the handling of concerns about doctors and dentists in the NHS, November 2005*'.

## 2.0 Purpose and outcome

This Policy will apply to issues that are deemed to be related to conduct. Issues deemed as capability for medical and dental practitioners should be managed in accordance with the Trust's *Policy for Remediation and/or Rehabilitation of Medical and Dental Staff*. If concerns about clinical performance cannot be resolved through the *Remediation and/or Rehabilitation of Medical and Dental Staff Policy*, the matter must be referred to the Trust's Responsible Officer who will seek advice from the Executive Director of Workforce and the National Clinical Assessment Service (NCAS) on the best course of action.

Some cases involve both conduct and clinical performance issues. If a case involving a medical and dental practitioner covers more than one category the Trust's Responsible Officer, in consultation with the Responsible Officer's Forum and Executive Director of

Workforce will determine which Trust policy will be followed.

This Policy does not cover health issues, which will be dealt with in accordance with the Trust's *Health & Attendance Policy*.

This Policy and its supporting Procedures have been developed in line with '*Maintaining High Professional Standards in the Modern HPSS: A framework for the handling of concerns about doctors and dentists in the HPSS, November 2005*', to ensure that all medical and dental employees are aware of:

- The standard of conduct required of them
- The process which will be followed by the Trust when dealing with misconduct and gross misconduct issues, and the action which will be taken.

This Policy and Procedure have been designed to establish the facts quickly and deal consistently with matters of concern and ensure improvements are implemented.

### **3.0 Procedural responsibilities**

For Procedural Responsibilities under this Policy and Procedure see *Appendix 1*.

### **4.0 Policy definitions**

For Policy definitions see *Appendix 2*.

### **5.0 Implementation of the Disciplinary Policy and Procedure**

Advice from the Employee Relations Team on the application of this Policy will be available to ensure fairness and consistency. When managing issues that may lead to disciplinary action, clinical managers must seek Human Resources advice at the earliest opportunity.

This Policy includes action under both informal and formal action and provides for sanctions where appropriate ranging from outlining standards for improvement to dismissal.

### **6.0 Informal action**

The purpose of informal action is to:

- Explore the extent to which a problem exists by citing specific examples, facts or incidents
- Outline the standards of satisfactory conduct required and clarify the shortcomings in reaching these standards
- Explore possible reasons for the shortcomings by listening to any explanations or statements made by the employee
- Discuss how the employee should seek to improve
- Consider what training or support may be provided
- Agree the time period in which to achieve the standard required, how this will be monitored and the period at which reviews will take place
- Explain to the employee that failure to meet the established reasonable standards will lead to formal disciplinary action if their conduct persists.

Informal action will comprise a one to one discussion between the practitioner and their immediate clinical line manager i.e. Associate Clinical Director, Clinical Director or Divisional Medical Director unless they are unavailable. In the case of a concern relating to a Divisional Medical Director the meeting will be held with the Executive Medical Director. Concerns relating to the Executive Medical Director will be discussed with the Chief Executive Office. A written record of the meeting, together with agreed action will be sent to the employee, with a copy retained by the manager.

At this point mediation may be appropriate. Please see the Trust's *Grievance &*

*Disputes Resolution Policy and/or the Dignity at Work Policy.*

Counselling may also be recommended at any point of the process.

## **7.0 Formal action**

The aim of taking formal action is to enable and encourage employees to behave at the standard required wherever possible.

Disciplinary action will not be taken against a practitioner until the allegation(s) has been investigated. This will require an investigatory meeting with the employee and any relevant witnesses before a decision is made to proceed to any disciplinary hearing.

The Responsible Officer in consultation with the Responsible Officer's Forum and the Executive Director of Workforce will appoint a Case Manager and a designated non-Executive Board member.

The Case Manager will appoint the Case Investigator whose seniority will differ depending on the grade of practitioner involved in the allegation.

The precise disciplinary action to be taken will depend on the facts of the case, the seriousness of the misconduct, whether the employee has any disciplinary warnings that are still current, and any mitigating factors raised by the employee. Certain cases may be so serious as to warrant dismissal.

At all stages of the formal disciplinary and appeals process the practitioner will have the right to be represented by a companion. The companion may be another employee of the Trust, an official or lay representative of the BMA/ BDA or other defense organization, friend, work or professional colleague, partner or spouse. The companion may be legally qualified, but s/he will not be acting in a legal capacity.

Disciplinary action will not be taken until an investigation has been completed and the Case Manager has presented their preliminary findings to the Responsible Officer's Forum who will determine, based on the evidence provided, whether there is a case to answer requiring a Disciplinary hearing to be convened. The Responsible Officer will take advice from NCAS where necessary.

## **8.0 Restrictions to practice**

When significant issues are identified which may affect patient safety, the Trust will urgently consider whether it is necessary to place temporary restrictions on an individual's practice. Where the Trust is considering restriction from practice NCAS must be notified.

Temporary restrictions may include:

- introducing appropriate medical supervision of normal contractual clinical duties
- a change of working hours to allow for increased levels of supervision
- restricting the practitioner to certain forms of clinical duties
- restricting activities to administrative, research/audit, teaching and other educational duties. By mutual agreement between the parties the latter may include some formal retraining or re-skilling
- suitable temporary redeployment i.e. working in an alternative, possibly non-clinical role by mutual agreement
- re-distributing the 'team's' clinical and non-clinical duties by agreement with the relevant parties
- sick leave / medical exclusion for the investigation of specific health concern

## 9.0 Exclusion process

Exclusion is a neutral act and does not presume guilt, it is not a disciplinary measure, but an arrangement whereby the employee is excluded from their duties with the employment relationship continuing, pending an investigation/ outcome under this Policy and Procedure. Exclusion is a precautionary measure, not a disciplinary sanction. Any decision to suspend must not be taken lightly and must be discussed with the Executive Medical Director (Responsible Officer), Director of Workforce or other nominated managers of the Trust, or if taking place out of hours, with the Senior Manager on-call, before a decision to exclude is taken.

NCAS must be notified in cases where the Trust is considering exclusion or restriction from practice. In addition, at any point where the RO/ROF has reached a judgment that a practitioner is to be the subject of an exclusion, the GMC/GDC will also be notified.

Before a final decision is taken to exclude, alternative options should be considered See *Section 8.0 above*. This will be in cases where there is a perceived risk to employees, patients or the Trust, or where an investigation may be prejudiced if the employee remained at work.

An individual will be only be excluded after consideration of the above and will be in exceptional cases.

No disciplinary action or decision to exclude a Professional Organisation/Trade Union Representative will be taken until the matter has been discussed with the Trust's Responsible Officer and in his/her absence, the Deputy Responsible Officer, or a nominee and the full time official, or where this is not possible the Lead Partnership Facilitator will be contacted.

Exclusion will normally be with full pay. Exclusion without pay will be considered in circumstances where the Trust has established a reasonable belief that the employee is precluded from lawfully fulfilling the terms of their contract of employment. The practitioner must inform the Case Manager of any other organisation(s) with whom they undertake either voluntary or paid work and seek their Case Manager's consent to continuing to undertake such work or to take annual leave or, if applicable, study leave.

To summarise, circumstances in which exclusion may apply will include:

- Where the alleged offence is thought to be in the nature of gross misconduct.
- Where the employee's presence constitutes a serious risk to themselves, patients, other employees, potential tampering of evidence or defiling of Trust property.
- Where the employee is under charge or suspicion of a criminal offence that significantly affects their status, role or responsibilities within the Trust
- Where the employee's presence would preclude a full and proper investigation from taking place.

A decision to exclude an employee should be confirmed in writing by the Case Manager within **3 working days** and should specify the exact nature of the allegation(s), the reason for exclusion, the expected length of exclusion, the name of the Case Investigator and the conditions under which the exclusion shall continue.

The letter will also confirm that the employee must leave and stay away from Trust premises and must not come onto the Trust's premises or return without prior approval unless at the direct request of management. The employee must also hand over their Trust ID badge and any other Trust property e.g. office keys at the point of exclusion (or as soon as possible thereafter).

Excluded employees may visit the Trust for hospital treatment, as a visitor to a patient, to attend an appointment with the Occupational Health Department or to attend a planned meeting with their Companion, subject to prior notification to the Case Manager.

In cases where patient safety is of concern, the employee will be advised that they must inform any other organisation they work for that they are excluded.

Any breach of these conditions may, in itself, constitute a disciplinary offence. During the period of exclusion the employee must be available during normal working hours. Employees must advise their manager of their whereabouts if they cannot be contacted at their home address or on their home telephone number.

During a period of exclusion an employee may request to take annual leave in accordance with normal procedures. If the period of exclusion coincides with the practitioner's agreed annual leave arrangements, permission to take leave should be obtained prior to the leave. Agreement by the clinical line manager to continue to take the agreed annual leave will not be unreasonably withheld and will form part of the practitioner's annual leave entitlement. Where a practitioner is excluded the usual provisions regarding carryover of annual leave will apply.

The practitioner should be afforded fair access to information for composition of their case, whether they are excluded or not. If there is risk associated with access then the practitioner should be accompanied by the Case Investigator and their Companion and relevant expert i.e. access to IT data.

If an employee becomes ill during the exclusion period they must follow the *Health and Attendance* reporting procedures.

Any exclusion period will be initially reviewed within **7 working days** and subsequently every **10 working days** by the Case Manager. A letter will be sent by the Case Manager to the practitioner at each of these check points confirming the current status of exclusion. See *Appendix 5 for review periods*.

#### **10.0 Keeping in contact and availability for work during an exclusion**

The practitioner must not engage in any medical or dental duties consistent with the terms of the exclusion. In case of doubt the advice of the Responsible Officer should be sought.

The practitioner should be given 24 hours' notice to return to work.

The Case Manager should make arrangements to ensure the practitioner may keep in contact with colleagues on professional developments, take part in CPD and clinical audit activities with the same level of support as other doctors or dentists in their employment. A mentor may be appointed for this purpose if a colleague is willing to undertake this role. In appropriate circumstances the Trust should offer the practitioner a referral to Occupational Health.

#### **11.0 Informing other organisations regarding an exclusion/restriction**

Where there is a danger to patients, the Trust has an obligation to inform other NHS organisations, including the private sector, of any restriction on practice or exclusion and provide a summary of the reasons for it. If details of other employers are not readily available the practitioner should supply them; failure to do so may result in further disciplinary action or referral to the relevant regulatory body. If the Trust has placed restrictions on their practice the practitioner must agree not to undertake any work in that area of practice with any other employer.

Where the Case Manager and/or the Responsible Officer have good grounds to believe

that the practitioner is practicing in other part of the NHS, or in the private sector in breach or defiance of an undertaking not to do so, they will contact the professional regulatory body and the Chief Medical Officer of the Department of Health to consider the issue of an alert letter.

## **12.0 Informal Exclusions (Gardening Leave)**

No practitioner will be excluded from work other than through this Policy and Procedure. Informal exclusions, previously referred to as 'gardening leave' may not be used as a means of resolving a problem covered by this Policy.

## **13.0 Keeping an exclusion under review**

### **13.1 Informing Trust Board**

Trust Board has a responsibility to ensure procedures are being followed and must be informed of an exclusion as soon as possible. Details of individual exclusions will not be discussed at Board level as Board members may be required to sit on a disciplinary or appeals panel. However Trust Board should receive:

- A monthly statistical summary identifying all exclusions, their duration and number of times the exclusion has been reviewed and extended. A copy must also be sent to the Director of Human Resources at the Department of Health.
- Assurance from the Responsible Officer and Designed Board member that this Policy and Procedure is being followed.

### **13.2 Regular Review**

The Case Manager must review the exclusion before the end of each 4 week period and report the outcome to the Responsible Officer and Director of Workforce. The exclusion will normally be lifted and the practitioner allowed back to work with, or without, conditions placed upon their employment at any time provided the original reasons for exclusion no longer apply. The exclusion will lapse however and the practitioner will be entitled to return to work at the end of the 4-week period if the exclusion is not actively reviewed. *See Appendix 5.*

When an exclusion has been extended twice and is on the third review, the Trust's Responsible Officer will inform the Department of Health what action is proposed to resolve the situation.

## **14.0 Return to work after an exclusion**

Once the exclusion ceases formal arrangements for the practitioner's return to work must be put in place. Clarity on whether clinical and other responsibilities are to remain unchanged, what duties and restrictions will apply and any monitoring arrangements necessary to ensure patient safety must be provided.

## **15.0 Investigation process**

Prior to commencing a formal investigation a preliminary investigation will take place to help determine the Terms of Reference.

The Case Manager will set the Terms of Reference for the investigation and appoint the Case Investigator. Appropriate HR support will be identified for both the Case Manager and Case Investigator. Once the issue under investigation is assigned it is imperative that it comes to a swift conclusion. Where allegations of abuse against children or vulnerable adults have been made then reference to the Trust's *Safeguarding Policies and Procedures* must be made.

The practitioner will be informed in writing of the allegation and informed of any further allegations made against them throughout the investigation process. These may either be added to the original Terms of Reference or may result in a separate investigation. Where appropriate the swim lane diagram will be used as part of the investigation, see

## Trust *Guidance for Managing Disciplinary Investigations*

As part of the investigation the practitioner will be interviewed and is entitled to be accompanied by a companion. The practitioner will be expected to co-operate with the Trust to enable a timely and thorough investigation.

Notes of an investigation interview meeting will be taken and staff will be given the opportunity to check the notes for accuracy, and are also able to submit additional written statements should they wish to. The individual will be given the opportunity to amend and sign the interview notes as an accurate record within a set timescale. If the signed notes are not received by the deadline, they will be deemed to be an accurate record.

A decision or action will only be taken after a thorough investigation has concluded. The practitioner will be informed of the investigation outcome in writing.

Confidentiality and the rights of the employee will be upheld throughout the process. A breach of confidentiality may result in further action in accordance with the Disciplinary procedure. For further details of the investigation process the *Guidance for Managing Disciplinary Investigations* must be referred to. The investigation must be completed between **4 – 8 weeks** which is to be determined from the outset of the investigation.

The report should give the Case Manager sufficient information to make a decision on whether:

- no further action is needed
- restrictions on practice or exclusion from work should be considered
- there is a case of misconduct that should be put to a Disciplinary Hearing
- there are concerns about the practitioner's health that should be considered by the Trust's Occupational Health Service and managed under the Trust's *Health & Attendance Policy*
- there are concerns about the practitioner's clinical performance which require further formal consideration by NCAS
- there are serious concerns that fall into the criteria for referral to the GMC or GDC
- there are intractable problems and the matter should be put before a Clinical Performance Panel. See *Trust's Remediation and/or Rehabilitation of Medical & Dental Staff Policy & Procedure for Clinical Performance Panels process*.

### **16.0 Witnesses**

In order to establish the facts of a case it may be necessary to interview witnesses. Interview notes will always state the individual's name, post title, grade/band and the date they were interviewed. The individual will be given the opportunity to amend and sign the interview notes as an accurate record within a set timescale. If the signed notes are not received by the deadline, they will be deemed to be an accurate record.

Employees who are witnesses have a right to refuse to write a statement or for any statement they have given to be used as evidence as part of the investigation process and/or as evidence at a Disciplinary hearing.

In normal circumstances, witnesses whose statements are put forward as part of a Disciplinary case will be expected to attend Disciplinary hearings to provide evidence, unless:

1. the witness is too ill to attend the Disciplinary hearing;
2. the statement is provided by a patient or a member of the public who cannot be required to attend the hearing and who has failed to agree to attend voluntarily.

The witness may have someone, a companion, attend the hearing with them if they wish

(Trade union representative or work colleague). The companion may be another employee of the Trust, an official or lay representative of the BMA/ BDA or other defense organisation, friend, work or professional colleague, partner or spouse. The companion may be legally qualified, but s/he will not be acting in a legal capacity.

All employees involved in an investigation will be informed of their continuing duty to maintain confidentiality.

Employees will be supported and encouraged to raise issues or concerns regarding the behavior of other employees by utilizing a number of Trust Policies and Procedures.

Employees will be able to call on witnesses in their defense, and in response to allegations made and the witnesses will be given reasonable paid time to attend.

#### **17.0 Investigations involving external bodies**

If an allegation against an employee potentially involves criminal behaviour, the Trust has the right to inform the Police or other Statutory Body. This will depend upon the evidence available and the circumstances of the case.

Where an employee is subject to an investigation by the Police or other statutory body, e.g Counter Fraud Team, the Trust may still pursue its own or complementary investigation unless specifically instructed not to. Where the Police or other Statutory Body instructs the Trust to halt an investigation arrangements will be suspended until the Trust is advised the internal investigation may proceed. However, disciplinary action under this procedure will not necessarily await, or be dependent upon, the outcome of an external investigation nor any subsequent legal proceedings.

#### **18.0 Investigation conclusion**

Following the conclusion of the investigation the Case Manager will present their recommendation to the Responsible Officer's Forum who, based on the findings of the investigation, will decide whether or not it is appropriate for the case to proceed to either a Fast Track disciplinary meeting, a disciplinary hearing or there is no case to answer.

#### **19.0 Fast Track Disciplinary meeting**

If the concern is not medical profession related and all parties concerned agree, and the employee has taken full responsibility for their actions during the investigation and accepted the allegations against them, the Responsible Officer's Forum may determine that a fast track disciplinary meeting is appropriate. The outcome of which may be a written warning of 6 months or no further formal action. However, a fast track disciplinary meeting is not suitable in cases of gross misconduct or where an employee is already subject to a final written warning or the allegations are denied.

##### **19.1 Fast Track Disciplinary Process**

If the Responsible Officer's Forum deem Fast Track to be appropriate, the Case Manager will meet with the individual to discuss the investigation outcome, the reasons for proposing the Fast Track disciplinary meeting, and will explain the process. The practitioner must agree to the Fast Track disciplinary meeting route being followed before it can proceed. The Case Manager should then allow the practitioner a period of time to consider this outcome, usually no more than 72 hours. If the practitioner fails to respond in this timeframe by default the case will proceed to a disciplinary hearing.

A fast track disciplinary meeting is a less formal meeting than a disciplinary hearing consisting of the Case Manager, HR representative, the practitioner and their representative (where applicable). There may be no need to submit a management case for this meeting. The appropriate level of clinical manager should be present if a sanction is being issued, in accordance with the schedule in *Appendix 6*. The

Investigating Team i.e. Case Investigator and their HR Support do not attend a fast track disciplinary meeting.

At the Fast Track disciplinary meeting:

- The Case Manager will detail the nature of the allegation to the practitioner and feedback the outcome of the case review.
- The practitioner will have the opportunity to give a response to the allegations and raise any mitigation.
- If no further issues come to light the Case Manager will consider outcomes which may be a written warning of 6 months, and the reasons for the warning together with the improvement required, or no further formal action, however this could include actions or improvements to be dealt with through the appraisal system as stipulated by the Case Manager.

The Case Manager will inform the practitioner this is the first stage of the formal Disciplinary Procedure and state the likely consequences of further similar or related offences during the required period.

Where the practitioner accepts the warning, this will be confirmed in writing, with a copy placed on their personal file. The practitioner will have the right to appeal and will have 10 working days from receipt of the letter to do so.

## **20.0 Disciplinary Hearing**

It is essential that Disciplinary hearings are handled effectively and conducted in a fair and systematic manner. The purpose of Disciplinary hearings is to establish whether or not there is a case to answer by looking at the evidence. The Disciplinary Hearing Procedure is contained in *Appendix 4*.

If the case is to proceed to a hearing the Case Manager will write to the practitioner informing them of the decision to proceed to a Disciplinary Hearing. The letter will include details of the composition of the Panel including the name of the Panel Chair, the name of the Professional Advisor (if necessary in cases of Professional Code of Conduct) and HR Support, and advise that the Chair will write to them informing them of the arrangements for the Disciplinary Hearing. The Disciplinary Hearing will be arranged within **10 working days** of completion of the investigation.

The membership of the Disciplinary Panel should comprise of a Chair, Professional Advisor (if necessary in cases of Professional Code of Conduct) and HR Support. The Panel with the authority to take suitable disciplinary action, as required, is outlined in Appendix 6. For cases involving professional misconduct, the Panel must include a member who is medically qualified (in the case of doctors) or dentally qualified (in the case of dentists) and who is not currently employed by the organisation.

The Trust will ensure that jointly agreed procedures are in place with the University of Nottingham for dealing with any concerns about practitioners with honorary contracts.

The Panel Chair will make the necessary arrangements for the Disciplinary Hearing and will write to the employee **10 working days** before the Disciplinary hearing clearly stating the following:

- a. the nature of the allegation and the conduct that has been allegedly breached
- b. the date, time and place of the Hearing, as well as the other Panel Members and details of any note takers who will be present, any special requirements
- c. right to have a companion
- d. right to call witnesses to the Hearing
- e. that disciplinary action may be an outcome

- f. that summary dismissal may be an outcome where there is a clear possibility of a finding of gross misconduct
- g. names of all witnesses already confirmed to be called by the Case Manager or practitioner
- h. enclose a copy of the Trust's Disciplinary Policy and Procedure

The practitioner will receive the full Management Case at least **10 working days** prior to the date of the Hearing. The practitioner will respond to the Management Case and return their response to the Chair on the **3<sup>rd</sup> working day** prior to the Hearing.

The Disciplinary Hearing will normally take place within **3 working days** after the practitioner's response period; however in exceptional circumstances this may be extended. The Chair will arrange for documents to be copied and circulated as appropriate. Requests for additional information to be supplied will not be unreasonably refused.

The practitioner must confirm the name of the companion they wish to accompany them at a hearing at least **5 days** prior to the date that has been set. If the companion cannot attend on the proposed date, the practitioner may suggest an alternative date that must suit everyone involved and must not be more than **5 working days** after the original date.

If all reasonable attempts to ensure the employee's attendance at the Disciplinary Hearing have been exhausted, the case may be heard in the employee's absence with the employee having an opportunity to forward written representations. Although if an employee cannot attend due to exceptional and unforeseen circumstances on the day, the Hearing would normally be rearranged. The Hearing would be rearranged only once.

Practitioners are required to take all reasonable steps to attend a Disciplinary Hearing. In the event that they are unable to attend due to ill health then any Disciplinary meetings/hearings will only be delayed for a reasonable period of time and only where a medical opinion advises that attendance at a Hearing would be detrimental to their health.

Occupational Health/other medical advice may be involved to assist with this decision. However, if the practitioner is too ill to attend a Disciplinary Hearing, i.e. in the case of long-term absence, it may be necessary to proceed in the practitioner's absence. If the decision is made to do this, the practitioner will be invited to submit a written statement for his/her case.

Practitioners will be requested to confirm their attendance at a Disciplinary Hearing. If they do not do this, management should make reasonable efforts to contact the individual and/or companion if known. When this has been done, if the reason for non-attendance is not reasonable, or if the practitioner states an intention of not attending then the Hearing should proceed in the practitioner's absence. If the practitioner states an intention of not attending then the practitioner should be notified that the Hearing is likely to proceed in their absence.

The party wishing to call any of their witnesses should contact them and inform them of the date and time of the Disciplinary Hearing.

The party wishing to call a witness referenced in the other party's case should inform the Hearing Panel Chair of their wish.

All witnesses requested at a Hearing will be housed and called independently by the Panel to attend to ensure confidentiality is maintained.

The outcome of the Hearing should never be pre-empted.

The Disciplinary Hearing should be conducted in accordance with *Appendix 4*, and in such a way that all present have the opportunity to say what they wish to say in regards to the Case, raise any questions and receive a response to issues that they consider to be appropriate.

The companion has a right to address the hearing, but does not have the right to answer questions on the behalf of the employee.

The Panel will decide whether or not, on the balance of probabilities, the allegations are found proven on the basis of the evidence presented and representations made.

The Disciplinary Hearing will concern itself with whatever sanction, if any, should be applied, taking into account all evidence presented and any plea in mitigation.

The outcome of a Disciplinary Hearing will, wherever possible, be given verbally at the conclusion of the Hearing. It will always be confirmed in writing (within **5 working days** of the Hearing unless an alternative date is mutually agreed).

The letter confirming a disciplinary sanction should include the following:

20.1 Written and Final Written warnings

- a. The precise nature of the (gross) misconduct and why it is considered so serious.
- b. Other points that were considered as alternatives to dismissal if relevant.
- c. The level of improvement required.
- d. The time limit for achieving the improvements.
- e. Review periods during the time period of the warning.
- f. The consequences of failure to achieve or maintain improvements, in particular that any repetition of the misconduct or similar within the specified timescale could lead to the next level of warning.
- g. Confirmation that any repetition of the misconduct, or further misconduct on related issues within the specified timescale, could lead to dismissal.
- h. Confirmation of the length of the disciplinary warning and that a copy will be maintained on the employee's personal file throughout this period.
- i. Deferment of incremental pay progression; and
- j. Procedure for appeal against the decision.

20.2 Dismissal

- a. Reasons for the decision.
- b. The date the contract of employment is to be terminated.
- c. Whether the dismissal is considered to be gross misconduct.
- d. Details of actions short of dismissal (See section 22.0); and
- e. Procedure for appeal against the decision.

It is important in the interests of both the practitioner and the Trust that written records are maintained during the disciplinary process by the clinical line manager. Records will include, where appropriate:-

- a. Details of the complaint against the practitioner.
- b. The practitioner's defense.
- c. Findings made and action(s) taken.
- d. The reason for the action(s) taken.
- e. Whether an appeal was lodged.

- f. The outcome of the appeal.
- g. Any report to a professional registration body.

## **21.0 Sanctions**

Where the allegations are proven, in deciding the sanction the Disciplinary Panel must take into account this Policy and Procedure, the practitioner's current and disciplinary general record, together with actions taken in any previous unspent similar cases within the Trust, the explanations given by the practitioner and, most importantly, the level of disciplinary sanction that is reasonable under the circumstances presented to them.

Where more than one allegation has been made against a practitioner, the manager should confirm the allegation(s) that have been upheld and that have contributed to a decision to award a disciplinary sanction.

The Responsible Officer will consider whether it is necessary to report the individual to the GMC/GDC.

The following sanctions may be implemented at any stage if the practitioner's misconduct warrants such action, after consideration at a disciplinary hearing.

### **21.1 Written Warning – 6-12 months**

If conduct does not meet acceptable standards the practitioner will normally be given a written warning. This will include the reason for the warning, improvement required, notification of deferment of any incremental pay progression due and the appropriate timescales. A further act of misconduct or failure to improve within a set period would normally result in a final written warning.

A record of the written warning and clarified expectations will be kept for the length of the warning, but will then be considered spent and removed from personnel records – subject to achieving and sustaining satisfactory improvement.

A shorter warning of 6 months may be more appropriate as a corrective measure in line with HR advice based on agreed criteria.

### **21.2 Final Written Warning – 18 months**

If the offence is sufficiently serious, or if a further misconduct of a similar kind occurs, or there is no improvement or insufficient improvement in standards or standards are not maintained, a final written warning and a performance improvement plan will be given if appropriate. This will include the reason for the warning, improvement required, notification of deferment of any incremental pay progression due and the appropriate timescales. It will also warn that if no improvements result, dismissal or other appropriate action will be taken at a third stage.

A record of the warning and clarified expectations will be kept for the length of the warning, but will then be considered spent and removed from personnel records – subject to achieving and sustaining satisfactory improvement.

## **22.0 Sanctions short of dismissal**

Alternatives to dismissal should always be considered. As an alternative to dismissal a final written warning with the following options may be considered:

- transfer to another department
- transfer to an alternative post at the same grade
- transfer to an alternative post at a lower grade
- The terms and conditions relevant to the alternative available post will apply and the employee will not be entitled to any protection of pay or existing terms and

conditions of employment under any Trust policy or procedure. Any such offer of employment must be voluntarily accepted by the employee.

A final written warning will accompany the offer of alternative employment. If the offer of alternative employment coupled with a final written warning is rejected, the employee shall be dismissed. The employee shall have a period of 5 working days from the Hearing in which to accept this offer; the period may only be extended by the employer. If this is declined the outcome will automatically be dismissal.

A copy of the accompanying final written warning and clarified expectations will be kept for the length of the warning, but will then be considered spent and removed from personnel records – subject to achieving and sustaining satisfactory improvement.

## **23.0 Dismissal**

### **23.1 Dismissal with Notice**

If there is still a failure to make improvements or sufficient improvement is not made, or the improvement is not maintained, or further matters of misconduct occur, the practitioner will normally be dismissed with pay in lieu of notice.

### **23.2 Dismissal without Notice**

Some acts, termed *gross misconduct*, are so serious in themselves or have such serious consequences that they may call for dismissal without notice, known as summary dismissal.

Dismissal decisions can only be taken by the appropriate senior manager (*see Appendix 6*). Practitioners will be reported to the GMC/GCD for cases of serious or gross misconduct. This will be confirmed in the outcome letter.

## **24.0 Appeals**

The opportunity to appeal against a disciplinary decision is essential to natural justice. However, it is important to set out grounds under which an appeal will be heard, which are as follows:

- the failure to follow Policy; or
- the decision reached was not reasonable in all of the circumstances

The membership of an appeal panel (see Appendix 4) will comprise of a Chair, Professional Advisor (if necessary in cases of Professional Code of Conduct) and HR Support. The Panel with the authority to take suitable disciplinary action, as required, is outlined in Appendix 6. The Chair should be more senior than the manager who chaired the original panel. Neither person on the Appeal Panel must have had any involvement in the case previously.

To lodge an appeal the individual should give written notice confirming the grounds of the appeal to the appropriate senior manager within **10 working days** from receipt of the written confirmation of the disciplinary decision.

All reasonable steps will be taken to ensure that an appeal hearing is normally heard within **10 working days** of the appeal being lodged.

It is the responsibility of the Appeal Panel Chair to arrange the time, date and location of the Appeal Hearing and inform all parties of this. The practitioner and their companion will be given at least **5 working days** written notice of the date and time of the Appeal Hearing and will be expected to take all reasonable steps to attend.

If the companion cannot attend on the proposed date, the practitioner may suggest an alternative date that must suit everyone involved and must not be more than **5 working days** after the original date.

At least **5 days** before the Appeal, the individual lodging the appeal will submit any further details of their appeal to the Chair. Both sides must also name any witnesses they wish to recall.

Documents from both the practitioner and management sides must be submitted to the Chair by the date provided. Documentation will then be exchanged and copies sent to all parties involved in the appeal on the same date.

An Appeal Hearing will have the authority to uphold, rescind, or reduce the original disciplinary decision. How the appeal should be run is covered in Appendix 4.

The outcome of the Appeal Hearing will be confirmed in writing within **5 working days** of the Hearing.

The decision of an Appeal Hearing will be final (there is no further internal right of appeal or challenge).

## **25.0 Grievance**

If a grievance is lodged relating to an on-going disciplinary matter, advice on the most appropriate course of action should be requested from the Director of Workforce.

Normally a grievance relating to a current matter should be addressed during the course of a disciplinary hearing or appeal and should not be subject to separate *Trust Grievance procedures*.

If during the course of a disciplinary hearing process a practitioner raises a grievance or concern that is related to the matter, the Chair of the Panel, following advice from the Executive Director of Workforce, may consider whether it is appropriate to adjourn the hearing for a short period while the matter is reviewed. Notwithstanding this, it may also be appropriate to hear the grievance or concern after a disciplinary or appeal hearing has taken place.

## **26.0 Resignation of a practitioner**

Prior to the completion of an investigation or prior to a disciplinary hearing taking place, if a practitioner resigns who is the subject of an investigation the investigation must be completed and the Case Manager will discuss with the Responsible Officer's Forum whether any further action is required.

If the outcome of the investigation is to proceed to a disciplinary meeting or disciplinary hearing, this will proceed in most cases.

If a reference is subsequently requested in relation to an employee who has resigned and matters remain outstanding, the investigation outcome and nature of the allegations will be disclosed in the reference.

Where a disciplinary action has been taken and the employee has subsequently resigned any response to a request for a reference will include the unspent time remaining on the disciplinary sanction.

## **27.0 Monitoring compliance and effectiveness**

Wherever possible the fact that a practitioner is subject to action under this Policy and its Procedures, any information released during the course of an investigatory process or Disciplinary hearing and the outcome will remain confidential to those involved. This does not restrict the Trust's reporting and governance obligations.

The key requirements will be monitored in a composite report presented on the Trusts Monitoring Report Template:

Monitoring Requirement :	Monitoring compliance with the requirements of: Process for handling issues of allegations of misconduct / gross misconduct Process to be followed once action is required to investigate allegations of misconduct / gross misconduct Monitoring outcomes of disciplinary / appeal cases including suspensions
Monitoring Method:	Current and retrospective review of cases to determine compliance with the process for handling and dealing with cases. Recommendations and action plans will be developed from the analysis and will be part of the annual reporting mechanism.
Report Prepared by:	Executive Medical Director
Monitoring Report presented to:	Trust Board
Frequency of Report:	Bi-Annually

## 28.0 References

Employment Rights Act 1996

The Equality Act 2010

ACAS Code of Practice on disciplinary and grievance procedures Disciplinary and grievances at work: the ACAS Guide March 2015

Maintaining High Professional Standards in the Modern HPSS: A Framework for the handling of concerns about doctors and dentists in the HPSS November 2005

**Procedural Responsibilities**

**1. Employees**

Employees have a responsibility to perform their duties and conduct themselves to the standards required, ensuring good practice is maintained.

Employees are responsible for raising with their manager any genuine concerns they may have. This includes concerns about the conduct of a colleague. Employees may raise issues with their manager, the Responsible Officer, seek advice from HR or a Trade Union / Professional Association representative, or use the *Freedom to Speak Up Trust Policy and Procedures for Raising Concerns at Work, Grievance & Disputes Resolution Policy or Dignity at Work Policy*, as appropriate.

A practitioner undergoing assessment by NCAS must co-operate with any request from NCAS to give an undertaking not to practice in a Health and Personal Social Services organisation or in the private sector other than their main place of employment until the NCAS assessment is complete.

Failure on the part of the clinician to co-operate with a referral to NCAS may be seen as evidence of a lack of willingness to resolve performance difficulties. If the practitioner chooses not to co-operate with such a referral, and an underlying health problem is not the reason, disciplinary action may be needed.

**2. Managers**

Clinical Managers will participate in any Trust training deemed necessary to ensure that they have the necessary skills to undertake their responsibilities appropriately.

Clinical Managers are responsible for making their practitioners aware of the policy requirements and the standards required of them by the Trust.

Clinical Managers are responsible for ensuring systems are in place to minimize the need for the use of this policy, e.g. effective communication, compliance with workplace rules and procedures, performance appraisal.

Clinical Managers are also responsible for providing guidance in HR investigations. Reasonable adjustments to the policy, for example due to someone's disability, will be considered where appropriate.

**3. Case Manager**

The Case Manager is appointed by the Responsible Officer's Forum and is the individual who will lead the formal investigation. The Case Manager will be independent of the investigation and should be medically qualified in appropriate cases. The Case Manager will appoint the Case Investigator. S/he will set the Terms of Reference for the case.

The Case Manager is responsible for informing the practitioner that an investigation is to be undertaken, the name of the Case Investigator and the specific allegations or concerns that have been raised. The practitioner must be given the opportunity to see any correspondence relating to the case together with a list of the people whom the Case Investigator will interview. Once the Case Investigator has concluded their investigation, the Case Manager will receive the investigation report and is responsible with support from HR, for considering the report conclusions, discussing these with the Responsible Officer's Forum and subsequently implementing any appropriate action. The outcome of the investigation may be a fast track disciplinary meeting, formal disciplinary hearing or that there is no case to answer.

If during the course of the investigation it transpires that the case involves more complex clinical issues (which cannot be addressed in the Trust) the Case Manager should consider whether an independent practitioner from another Trust should be invited to assist.

Should a fast track disciplinary meeting take place the Case Manager is responsible for managing this process, as outlined in *Section 20*.

Should a disciplinary hearing be held, the Case Manager is responsible for collating the management report and presenting the management case to the Hearing Panel.

#### **4. Case Investigator**

The Case investigator is an independent manager appointed by the Case Manager, who is responsible for conducting the investigation into any allegations made against the practitioner or concerns about the conduct of the practitioner in line with the Terms of Reference. They are responsible for establishing the facts, writing the investigation report (with support from HR) and presenting the findings to the Case Manager.

The Case Investigator has wide discretion on how the investigation is carried out, but in all cases, the purpose of the investigation is to ascertain the facts in an unbiased manner. Information gathered in the course of an investigation may clearly exonerate the practitioner or provide a sound basis for effective resolution of the matter. The practitioner must be given the opportunity to see any correspondence relating to the case and must be afforded the opportunity to put their view of events to the Case Investigator.

The Case Investigator should be medically qualified with relevant experience where a question of clinical judgement is raised during the investigation process. Where no other suitable senior doctor or dentist is employed by the Trust, a senior doctor or dentist from another HSS body should be involved.

The Case Investigator is also responsible for ensuring that safeguards are in place throughout the investigation so that breaches of confidentiality are avoided. It is the responsibility of the Case Investigator to judge what information needs to be gathered and how (within the boundaries of the law) to meet the terms of reference.

The Case Investigator must ensure that sufficient written statements are collected to establish the facts of the case, and on aspects of the case not covered by a written statement should ensure there is an appropriate mechanism for oral evidence to be considered where relevant. In addition, they must ensure that a written record is kept of the investigation, the conclusions reached, and the course of action agreed by the Responsible Officer's Forum with advice from the Director of Workforce.

The Case Investigator must assist the designated Board member in reviewing the progress of the case.

The Case Investigator does not make the decision on what action should, or should not, be taken, nor whether the employee should be excluded from work. They may not be a member of any disciplinary or appeal panel relating to the case.

#### **5. Responsible Officer**

The Responsible Officer role at Derby Teaching Hospitals is held by the Executive Medical Director. S/he is responsible for ensuring the safe practice of medical practitioners working for the Trust. This includes ensuring that doctors are properly supported and managed in sustaining, and where necessary, raising their professional standards. For the very small minority of doctors who fall short of the high professional standards expected, the Responsible Officer will ensure that there is a fair and effective

local system to identify them and ensure appropriate action to safeguard patients is taken.

6. **The Responsible Officer's Forum** is convened by the Trust to support the Responsible Officer with making decisions around concerns management. The purpose of the ROF is to discuss, advise and agree on actions required in response to concerns raised about an individual doctor, or group of doctors, or where there may be a need for support.

The Responsible Officer's Forum will review information available relating to quality performance and benchmarking data, audits, patient safety incidents and serious incidents (SUIs), patient feedback, complaints and litigation. This breadth of information will help to inform the decision on further action and determine the category of the concern, decide the seriousness of the issue based on the information available, and consider whether the practitioner can continue to work without conditions, whether their duties need to be restricted, if exclusion is required or whether immediate dismissal is needed.

If the Responsible Officer's Forum determine an investigation is required, they are responsible for appointing the Case Manager. Following the investigation, the ROF will consider the recommendations from the Case Manager and decide on further action.

The ROF takes place on alternate weeks. However, where a decision to restrict or exclude a practitioner has been reached an extraordinary ROF discussion comprising the minimum quorum of the RO (or their Deputy), Divisional Medical Director and Executive Director of Workforce will be convened within 48 hours. For expediency this may take the form of a teleconference, face to face meeting or via e-mail.

7. **Chief Executive Officer**

The Chief Executive Officer (CEO) has overall responsibility for managing exclusion procedures and for ensuring that cases are properly managed. However, the CEO has delegated authority to the Executive Medical Director and the Responsible Officer's Forum on a day to day basis to consider and determine the most appropriate course of action to be taken when concerns are raised about the conduct of medical staff in the Trust.

8. **Board Member**

The Board member is a non-executive member of the Board appointed by the Responsible Officer/Responsible Officer's Forum to oversee the case to ensure that momentum is maintained, consider any representations from the practitioner about his/her exclusion or any representations about the investigation and review any continued exclusion from work.

9. **Companion**

At any stage of the procedure an individual may be accompanied by a companion. The companion cannot be someone who is part of the investigation, but may be either an official or lay representative of the BMA, BDA, defence organisation, or friend, work or professional colleague, partner or spouse. The companion may be legally qualified but he/she will not be acting in a legal capacity.

The companion has a right to state and summarise the practitioner's case, confer with the practitioner and ask the witnesses, Case Manager and management any questions. The companion does not have the right to answer questions on behalf of the practitioner, address the hearing against the practitioner's wishes or prevent the Trust from putting their side of the case across.

A fellow staff member who has agreed to accompany a colleague will be entitled to a reasonable amount of paid time off to fulfil that responsibility. Fellow practitioners or other staff members are not obliged to accept a request to accompany an individual, and should not be pressurised to do so.

If the practitioner under disciplinary investigation or action is an accredited Trade Union representative, the Director of Workforce Management will be informed and the full time official contacted in the first instance prior to the procedure commencing. Where this is not possible the Lead Partnership Facilitator will be contacted.

Practitioners do not have the right to be accompanied to informal meetings.

**10. Director of Workforce Management**

The Director of Workforce Management is responsible for ensuring that this Policy is implemented appropriately and for supporting the Responsible Officer and Responsible Officer's Forum. They are also responsible for ensuring that disciplinary appeal outcomes are monitored to ensure there is no bias in accordance with the Trust's *Equality, Diversity and Human Rights Policy* and reporting to Trust Board.

**11. Workforce Management**

Workforce Management are responsible for providing advice and support to ensure that this Policy is applied fairly and consistently. Workforce Management will regularly review and revise this Policy and assist with the training, communication and dissemination of this Policy.

**12. National Clinical Assessment Service (NCAS)**

NCAS provides expert impartial advice and support, clinical assessment and training to the NHS. See <http://www.ncas.nhs.uk> for details.

Where the Trust is considering exclusion or restriction from practice NCAS must be notified.

**13. The Workforce Policy Review & Approval Process**

The recognised formal committees and forums are responsible for the review, approval and monitoring of this Policy are as follows:

- Medical Advisory Committee
- Joint Local Negotiating Committee
- Trust Decision? Group

**Policy Definitions**

<b>Conduct</b>	The way employees behave, their actions and attitudes.
<b>Informal action</b>	Advice, support and guidance which should precede formal action, in order to rectify minor faults in conduct, other than in cases of gross misconduct, or minor failure to perform at the required standard.
<b>Misconduct</b>	Conduct which is unacceptable and which will result in disciplinary action being taken. This will initially be a warning; however, if there is insufficient improvement, misconduct could ultimately result in dismissal.
<b>Gross misconduct</b>	Conduct which is such that it indicates that the employee no longer intends to be bound by his or her duties or destroys the trust and confidence the Trust must have in an employee. Gross misconduct will normally result in summary dismissal.
<b>Capability</b>	A practitioner's ability to perform their work to the required standard.
<b>Sanction</b>	A level of disciplinary warning issued by a disciplining manager which may include dismissal.
<b>Exclusion</b>	is a neutral act and does not presume guilt, it is not in itself a disciplinary measure but an arrangement whereby the employee is suspended from their duties with the employment relationship continuing, pending an investigation/outcome under the disciplinary procedure

**Misconduct and Gross Misconduct Examples**

**1.0 MISCONDUCT**

Examples of **misconduct** include (this list is not exhaustive):

**1.2 Failure to follow reasonable management instruction**

Employees must carry out the reasonable instructions of managers and those designated in charge. Employees have a duty not to undertake any procedure or action that they do not feel competent, trained or capable of doing, and must raise this with their manager.

**1.3 Non attendance for duty**

Employees are expected to attend for duty at the correct time and work their contracted hours.

In cases of sickness, sudden domestic emergency, or other good reason(s) which prevents an employee from reporting for duty, it is the responsibility of the employee to inform their ward/department in accordance with appropriate departmental procedures and the guidance in the Health and Attendance Policy/Flexible Working.

**1.4 Smoking, in contravention of the non-smoking policy**

Employees are reminded that the Trust has a policy for non-smoking on NHS premises and smoking is therefore not permitted in Trust premises, buildings, grounds, properties and vehicles.

**1.5 Dressing inappropriately**

Special attention should be paid to laundering, grooming and personal hygiene. Employees who wear their own clothes to work should ensure that they present a professional image at all times, and that clothing worn at work could not be considered “casual” or “revealing”. Those Employees required to wear uniform should ensure that it is complete and not worn with non-essential “extras”. Employees must, at all times, display their ID badge for security purposes.

Where relevant, the Dress Code Policy should be referred to.

**1.6 Conducting private business**

Conducting private business arrangements in paid time is forbidden. Private business arrangements are when an employee undertakes other paid work during paid time, the result of which provide additional personal income by way of cash and goods.

**1.7 Negligence of security**

All employees have a general responsibility for the security of the property of the Trust, for avoiding loss.

Departmental rules and procedures within the Trust policy will, as appropriate, deal with security arrangements. Deliberate or negligent disregards or security will be treated as a disciplinary matter.

**1.8 Bringing the Trust into disrepute**

Employees should behave in a way that will not bring the Trust into disrepute. If they do, disciplinary action may be taken, even though the behaviour may occur outside of work.

### **1.9 General misconduct**

Non adherence to the required standards laid down by Derby Hospitals NHS Foundation Trust for recognised values and behaviour as outlined in the Standards for CARE Guidance.

### **1.10 Breaching Trust policies, procedures and rules**

Employees must follow relevant Trust policies and procedures.

### **1.11 Non maintenance of Professional Registration**

An employee who has not taken appropriate steps to maintain professional registration.

## **2.0 GROSS MISCONDUCT**

Examples of **gross misconduct** include (this list is not exhaustive):

### **2.1 Mutual trust and confidence**

Any incident where an employee has acted in such a way as to fundamentally undermine the relationship of mutual trust and confidence between the employer and employee.

### **2.2 Unauthorised removal/use of property**

Any instance of unauthorised removal/use of property from the Trust, or from patients, visitors, or other employees on Trust premises. For this purpose, unauthorised removal/use of property also includes consumption of food provided for patients, making private telephone calls and passing personal letters through the (paid) official mailing system.

The Trust's property must not be removed from the premises for personal use, or used for private purposes without prior written approval of the appropriate manager.

### **2.3 Damage to Property**

Deliberate or negligent damage to Trust, patients', visitors' or colleagues' property.

### **2.4 Fraud or corruption**

All employees are expected to comply with the Trust's Fraud and Corruption Policy.

Fraud or corruption, for example;

- a) Failure to declare a financial interest in contracts deemed a conflict of interest.
- b) Making false declarations on applications for employment in the Trust which could lead to gaining employment by deception. Examples include false declarations of previous employment, referees or qualifications.
- c) Making false declarations or failing to disclose required information on a DBS check.
- d) In accordance with the financial regulations, the Director of Finance or their nominated representative must be informed where the alleged offence involves possible financial irregularities or a breach of the Trusts' financial regulations. This investigation may involve Internal Audit and / or Counter Fraud and Security Services.
- e) Receipt of expenses and sick pay where not entitled. All cases will be referred to the NHS Counter Fraud team for thorough investigation which could lead to criminal prosecution.

## **2.5 Breaching confidentiality**

Employees must respect the confidentiality of patients, other service users and colleagues at all times. No information concerning these groups of people should be divulged to anybody who is not directly concerned with their care or management in the normal course of work. If in doubt please refer the matter to your line manager.

## **2.6 Gross negligence**

Negligently acting or failing to act, especially when this results or could result in injury to persons, or loss of or damage to property.

## **2.7 Gross non adherence of Professional Code of Conduct**

Registered professional health care staff must also comply with the relevant standards set by their regulatory or professional bodies. A non-adherence of such standards may lead to action by the Trust - independent of any action taken by the regulatory or professional body concerned. The alleged non adherence will be investigated and appropriate steps taken to prevent a recurrence and address any wider causes.

## **2.8 Safeguarding of children or vulnerable adults**

Where an employee is alleged to have abused a vulnerable adult/child then it is important that any disciplinary investigation is conducted alongside the Safeguarding Policies and Procedures. Appropriate advice needs to be taken from the appropriate senior leads.

## **18.2 Verbal or physical abuse, assault, threatening behaviour, harassment or bullying and discrimination**

The Trust wishes to provide a caring environment in which Employees feel valued and where differences are recognised and utilised fully in delivering effective care to patients. All patients, employees and members of the public should therefore be valued as individuals. They should be treated fairly and with respect, regardless of age, disability, gender, marital status, membership or non-membership of a trade union, race, religion, domestic circumstances, sexual orientation, ethnic or national origin, social & employment status, HIV status, or gender re-assignment. Bullying, harassment and victimisation are viewed with great concern and may be considered gross misconduct.

The *Bullying and Harassment Policy* should also be referred to.

## **2.10 Using drugs, alcohol or other abusive substances**

Employees must not arrive at work under the influence of alcohol or drugs/narcotics, nor should they consume alcohol or non-medically required drugs whilst on duty or during designated breaks. An employee's ability to carry out their duties, including on-call commitments, must not be impaired in any way because of alcohol, drug or substance abuse. Breach of these guidelines is potentially gross misconduct unless recognised as an underlying health issue.

## **2.11 Breaching Health and Safety**

Any reasonable action or failure to act which threatens the health and safety of a patient, member of public or another employee or contractor working on the Trust premises. Employees are expected to familiarise themselves with and observe any reasonable instructions issued by the Trust on the safe performance of their work.

### **2.12 Conviction of certain criminal offences**

Employees charged with or convicted of a criminal offence must disclose criminal offences on application. When a conviction (including caution) happens during employment employees are required to report this to their manager at the earliest opportunity. The Trust will consider the implications on the employee's continued employment on a case by case basis.

### **2.13 Breaching Data Protection and use of IT**

The internet, intranet and e-mail are provided to enable employees to perform their duties in the most effective way. Employees should only access systems or software programmes which they are authorised to use as part of their duties. Access to inappropriate web sites including social networking sites or use of email/internet facilities for private purposes is forbidden. Computer passwords should not be revealed, shared or falsely used under any circumstances. Systems must not be used to breach confidentiality or to send or access illegal, harmful or inappropriate material, which includes obscene language, pornography or other degrading or demeaning material.

The following must be adhered to by employees in terms of their use of the internet outside of work:

- a. Employees must not discuss work related information (including photographs on any social networking or internet sites).
- b. Employees must not make any comments about patients, visitors or carers as patient and employees' confidentiality must be maintained at all times.
- c. Employees must not make any inappropriate comments about other employees and must not give views on behalf of the Trust or any other NHS departments unless authorised to do so by their line manager.
- d. Employees must not join a chat group in the name of an NHS organisation.
- e. Employees must not set up a website or online group for Derby Teaching Hospitals' services outside the main Trust website.
- f. Employees must not design a website from their home computer and publish under the name of an NHS organisation or department.

The copying of software from any source on to any computer owned by the Trust, which is not authorised by the Trust, is strictly forbidden. See Information Management Technology Policy and the Internet and Email Policy.

### **2.14 Information Governance**

Failure to comply with the Trust Information Governance Policy.

### **2.15 Failure to disclose a Personal Financial Interest**

Employees must declare any personal financial interest in:

- Outside companies, firms, or
- Other agencies

with which the Trust deals with, as soon as such interest becomes known to the employee.

See *Declaration of Financial Interest Policy*.

### **2.15 Misrepresentation**

Employees must not make a false or deliberately misleading statement in a job application, health declaration or other employment context.

**Disciplinary and Appeal Hearing Procedure**

1. Hearings will be chaired and all persons present will be given the opportunity at the appropriate time to ask any questions they consider relevant. Hearings will follow the order set out below.
2. Introductions and process will be explained by the Chair to both parties. Adjournments can be requested throughout or agreed at the beginning of the hearing by either party.
3. The management side will state their case and accept questions of fact or detail from the employee or companion, and from the Chair and any other panel members.
4. Management case witnesses may be called. Witnesses to first take questions from the management side, followed by the employee or companion and lastly the Chair and any other panel members. The management side may re-examine their witnesses if necessary.
5. The employee to state their case and accept questions of fact or detail from the management side and from the Chair and any other panel members.
6. Employee case witnesses may be called. Witnesses to first take questions from the employee or employee representative followed by the management side and lastly the Chair and others present. The employee or employee representative may re-examine their witnesses if necessary.
7. The management side to present their summary of case, followed by the employee or companion to present their summary of case.
8. The Chair may ask questions or request points of clarification at any time. Both management side and employee or companion may be asked to clarify or enlarge any statement made.
9. Companion and management representatives may be questioned.
10. If information, additional to that supplied in the written submissions, is presented at the hearing then either side may seek an adjournment. The Chair may adjourn the hearing to allow further investigation to be conducted.
11. The Chair will adjourn the hearing to consider all matters and will only recall both parties to clarify points of uncertainty on evidence already presented. If recall is necessary then both parties will be recalled notwithstanding only one is concerned with the issue.
12. The outcome of the hearing will be confirmed in writing within 5 working days of the hearing and where possible the outcome will be communicated at the end of the hearing
13. In cases of an appeal the employee will present their case first. The process of questioning, adjournments and presentations of case will remain the same as at the Disciplinary hearing.

**REVIEWING AN EXCLUSION - STAGES**

Stage	Activity
<p><b>First and second reviews (and reviews after the third review)</b></p>	<p>The Case Manager will review the first exclusion period within 7 working days and subsequently every 10 working days.</p> <p>Before the end of each exclusion (of up to 4 weeks) the Case Manager reviews the position and</p> <ul style="list-style-type: none"> <li>• The Case Manager decides on the next steps as appropriate further renewal may be for up to 4 weeks at a time.</li> <li>• Case Manager submits advisory report of outcome to Responsible Officer’s Forum, CEO and Trust Board.</li> <li>• Each review is a formal matter and must be documented as such.</li> <li>• The practitioner must be sent written notification of the outcome of the review on each occasion.</li> </ul>
<p><b>Third review</b></p>	<p>If the practitioner has been excluded for three periods:</p> <ul style="list-style-type: none"> <li>• A report must be made by the Executive Medical Director to the Chief Executive: <ul style="list-style-type: none"> <li>- outlining the reasons for the continued exclusion and why restrictions on practice would not be an appropriate alternative;</li> <li>and, if the investigation has not been completed</li> <li>- a timeline for completion of the investigation.</li> </ul> </li> <li>• The Executive Medical Director on behalf of the Chief Executive Officer will report to the Director of Human Resources at the Department of Health, who will involve the Chief Medical Officer if appropriate.</li> <li>• The case must be formally referred back to NCAS explaining: <ul style="list-style-type: none"> <li>- Why continued exclusion is thought to be appropriate;</li> <li>- What steps are being taken to complete the investigation at the earliest opportunity.</li> </ul> </li> <li>• NCAS will review the case and advise the Trust on the handling of the case until it is concluded.</li> </ul>
<p><b>6 month review</b></p>	<p>If the exclusion has been extended over 6 months,</p> <ul style="list-style-type: none"> <li>• A further position report must be made by the Executive Medical Director on behalf of the Chief Executive Officer to the Department of Health indicating: <ul style="list-style-type: none"> <li>• The reason for continuing the exclusion;</li> <li>• Anticipated time scale for completing the process;</li> <li>• Actual and anticipated costs of the exclusion.</li> </ul> </li> </ul> <p>The Department of Health will consider the report and provide advice to the Chief Executive if appropriate.</p>

Normally there should be maximum limit of six months exclusion, except for those cases involving criminal investigations of the practitioner concerned. The employer and NCAS should actively review those cases at least every six months.

**Levels of authority to take Disciplinary action and Appeals**

Category of Doctor	Level of manager issuing disciplinary sanction		HR Support	Professional Issues
	Sanction up to final written warning (dismissal not anticipated)	Where the outcome of the hearing may be dismissal (or an alternative to dismissal)		
Executive Medical Director	Chief Executive and Chair	Chief Executive and Chair	Executive Director of Workforce Management	In cases of alleged Professional misconduct, the appropriate Professional Lead must be involved as soon as the issue is identified.  Any disciplinary panel convened to hear a case of alleged professional misconduct must include a professional representative
Consultant	Executive Medical Director or Executive Director	Executive Medical Director or Executive Director	Executive Director of Workforce Management	
All other grades of doctor	Divisional Medical Director of Clinical Director	Divisional Medical Director of Clinical Director	Senior HR Advisor	
<b>Doctor in Training</b>	An appropriately graded clinical manager i.e. ACD / CD to present the level of sanction.  The Postgraduate Dean at Health Education East Midlands must be informed in writing.	An appropriately graded clinical manager i.e. ACD / CD.  The Postgraduate Dean at Health Education Midlands must be informed in writing.	Divisional HR Advice Team	

**Appeals Procedure**

Level of Warning	Appeal to
<b>Written</b>	<b>A manager senior to the person who issued the sanction.</b>
Final written warning, dismissal, or any other action in lieu of dismissal	<p>A manager senior to the person issuing the sanction and appropriate HR support (see above) (plus professional representation if appropriate) In some circumstances an Executive Director may be involved for example in cases of Professional Misconduct.</p> <p>In the cases of Senior Managers the appeal would be to another Executive Director and their appropriate HR Manager.</p> <p>Divisional Directors and Executive Directors seeking an appeal would need involvement of a Non Executive Director and the Chair of the Trust</p>

When an alternative to immediate exclusion is possible the clinician should be dealt with using an informal approach. Only where a resolution cannot be reached informally will a formal investigation be instigated. This will depend on the individual's agreement to the solutions offered. All action must be carried out without undue delay.

**Immediate Exclusion - Process**

An immediate time limited exclusion (no more than 2 weeks) may be necessary

- to protect the interest of patients or other staff
- where there has been a breakdown in relationships within a team which has the potential to significantly endanger patient care.

Where immediate exclusion is being considered this must be discussed with the Trust's Responsible Officer (Executive Medical Director) or, in his/her absence, the Deputy Responsible Officer, before any action is taken. If taking place out of hours, the consideration must be discussed with the Executive or Senior Manager on-call. NCAS must, where possible, be informed prior to the implementation of an immediate exclusion.

The clinical manager must explain to the practitioner why the exclusion is justified (there may be no formal allegations at this stage) and agree a date, up to a **maximum of 2 weeks** at which the practitioner should return to the workplace for a further meeting. They must also advise the practitioner of their rights, including rights of representation.

The exclusion period will enable a preliminary situation analysis to be undertaken and a case conference to take place involving the clinical manager, the Responsible Officer or his/her Deputy and appropriate representation from HR to determine a clear course of action, including the need for formal exclusion.

During this period the practitioner will be given the opportunity to state their case and propose alternatives to exclusion eg further training, referral to occupational health, referral to NCAS with voluntary restriction.

All discussions should be minuted, recorded and documented, and a copy given to the practitioner.

At any point in the process where the Responsible Officer has reached a judgment that a practitioner is to be the subject of an exclusion, the regulatory body should be notified. Guidance on the process for issuing alert letters is available through NCAS.

**Formal Exclusion - Process**

The purpose of formal exclusion (in periods of 4 weeks) 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 practitioner's presence would impede the gathering of evidence.

Formal exclusion will only take be enacted as part of a formal investigation after the Case Manager has considered whether there is a case to answer and reasonable and proper cause identified and in addition, consulted with the Responsible Officer's Forum and the Executive Director of Workforce.

NCAS must be consulted where formal exclusion is being considered.

The Case Investigator will produce a preliminary report as soon as is possible for the Case Manager to consider and decide on the next steps in consultation with the Responsible Officer's Forum.

The report should provide sufficient information for a decision to be made as to whether:

- the allegation appears unfounded, or
- there is a misconduct issue, or
- there is a concern about the practitioner's clinical performance, or
- the complexity of the case warrants further detailed investigation before advice can be given.

Formal exclusion will only be used where:

- A) there is a need to protect the safety of patients or other staff pending the outcome of a full investigation of:
- allegations of misconduct,
  - concerns around the functioning of a clinical team which are likely to adversely affect patients,
  - concerns about poor clinical performance, or
  - where the employee is under charge or suspicion of a criminal offence that significantly affects their status, role or responsibilities within the Trust.
- B) the presence of the practitioner(s) in the workplace is likely to hinder the investigation.

The Responsible Officer's Forum will consider whether the practitioner could continue or, where there has been an immediate exclusion can return to work in a limited capacity or in an alternative, possibly non-clinical role, pending the resolution of the case.

When the practitioner is informed of the exclusion there should, where practical, be a witness present. The practitioner should be told the reason(s) why formal exclusion is regarded as the only way to deal with the case and given the opportunity to state their case and propose alternatives to exclusion, eg further training, referral to Occupational Health, referral to NCAS with voluntary restriction.

The practitioner may be accompanied to any interview or hearing by a companion.

The formal exclusion must be confirmed in writing immediately. The letter should state the effective date and time, duration (up to 4 weeks) the content of the allegations, the terms of the exclusion, eg exclusion from the premises and the need to remain available for work, and that a full investigation or other action will follow. The practitioner and their companion should be informed they may make representations about the exclusion to the designated Board member at any time after receipt of the letter confirming the exclusion.

Exclusion may be extended for 4-week reviewable periods until the completion of the disciplinary procedures if a return to work is considered inappropriate. As soon as the original reason(s) for exclusion no longer apply the exclusion should usually be lifted and the practitioner allowed back to work, with or without conditions placed upon the employment, *See Appendix 5*.

If the Case Manager, in consultation with the Responsible Officer's Forum, considers the exclusion will need to be extended over a prolonged period due to reasons outside of their control, eg because of a Police investigation, the case must be referred back to NCAS for advice. The principle of a 4-week review will still be adhered to.

If the investigation reveals at any time either the allegations are without foundation or further investigation can continue with the practitioner working normally or with restrictions, the Case Manager, in consultation with the Responsible Officer's Forum, must lift the exclusion and notify the appropriate regulatory authorities.

Arrangements will be put in place for the practitioner to return to work with appropriate support, including retraining after prolonged exclusion, as soon as practicable.

Where allegations raised by a fellow healthcare professional are shown to be malicious, that employee should be subject to the relevant disciplinary procedures.

