

Managing Conduct Policy

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| FORMS AND DOCUMENTS LINKED or ADDED AS APPENDIX IN THIS POLICY | Forms of Misconduct List Examples of Gross Misconduct List Informal Conversation of Concern Flowchart Formal Conversation of Concern Flowchart Formal Meeting (Hearing) Flowchart |
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Executive Summary

The Managing Conduct policy is aimed at ensuring the issues of misconduct are managed and dealt with in a fair and consistent manner.

The Trust expects high standards of behaviour and conduct of all employees and takes appropriate corrective action where those standards are not met.

The Managing Conduct process is not intended to be punitive in nature. This document describes the steps to be taken to manage each situation reasonably and, wherever possible, help improve standards of conduct or behaviour to reach acceptable standards.

The policy also sets out to review each case under a system of shared accountability, identifying the systems the organisation has designed and ensuring the response to the behaviours of its employees is handled in a fair and just manner.

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1. Introduction

- 1.1 Queen Victoria Hospital NHS Foundation Trust, referred to as 'the Trust', is striving to create a culture where everyone is passionate about patients being at the centre of our care.
- 1.2 In order to deliver a high quality standard of service, all employees are expected to conduct themselves in line with the Trust's Key Strategic Objectives (KSOs). The standards expected are laid down in the Trust's Code of Conduct issued on commencement of employment (available from the Resourcing team) and the Trust's values; Pride, Humanity, Continuous Improvement and Quality.
- 1.3 This policy aims to set out a framework whereby the employee will be held to account for their actions and supported to seek improvement in their standards where these are below what is expected. The Trust recognises that some failures in standards are caused by the faults of the systems and processes, and will therefore ensure that these are continually improved upon.
- 1.4 The Trust is committed to seeking informal solutions to issues wherever possible. The employee should be informed of issues, and given an opportunity and encouraged to make improvements to their conduct before formal action is taken. However, some concerns may be deemed so serious that formal action must be considered in the first instance.
- 1.5 This policy and procedure are designed to comply with best practice, the ACAS Code of Practice and current legislation.
- 1.6 The policy should be read in conjunction with the Managing Performance Policy and Maintaining High Professional Standards: Conduct, Capability, Ill Health and Appeals Policies and Procedures for Medical and Dental Practitioners (MHPS).

2. Scope

- 2.1 This policy applies to all employees of the Trust who have successfully completed their probation period, with the exception of medical and dental staff, and establishes guidance for managers and employees in relation to the management of conduct and ensuring correct behaviours are demonstrated. Agency workers or contractors should give regard to this policy, however separate conduct management/ disciplinary policies will exist with their respective employers.
- 2.2 Issues of conduct for medical and dental staff should be addressed in accordance with the Maintaining High Professional Standards – Conduct, Capability, Ill-Health and Appeals for Medical and Dental Practitioners.
- 2.3 Should a manager identify an issue with the performance of a bank worker this must be addressed with the individual and the improvements required agreed. In the event that the required standards are not reached within a reasonable period the Trust has the right to cease offering the individual any further work. Advice should be sought from the Advisory Team.
- 2.4 Suspected fraud or financial irregularity may need to be investigated outside this policy in compliance with the Trust's Counter Fraud Policy. In these cases a referral will be made to the Local Counter Fraud Specialist. Staff should be aware that any evidence gathered in an internal investigation, and the outcome of it will be shared with the counter fraud team and may be used as evidence in their investigation.

- 2.5 Where a patient, relative or a member of the public raises a concern regarding an employee's conduct, this shall be managed in conjunction with the Trust's Managing Allegations Against Staff Guidance.

3. Aim of the Policy

- 3.1 This policy is designed to ensure that cases of misconduct are managed equitably and fairly, with the prime objective of improving an employee's conduct in line with the expected standards. It is to be applied consistently, promptly, reasonably and without discrimination.
- 3.2 It is expected concerns are brought to the attention of the employees manager or a senior member of staff the actions of a person or persons which might jeopardise the health, safety or welfare of a patient, a member of the public or a member of staff.
- 3.3 Information relating to allegations of misconduct will not be divulged to any parties not involved in the conduct management process, including statements, letters and other communication will be strictly confidential to those involved and records will be kept in accordance with the General Data Protection Regulations (GDPR).
- 3.4 At all formal stages of the conduct management process, the employee will be advised of the nature of the issue(s)/ allegation(s) being made against them and given the opportunity to state their case/ respond to the allegation(s).
- 3.5 Where a sanction is issued, the employee will be given appropriate support to improve their conduct/ behaviour.
- 3.6 In certain circumstances, it may be necessary to either consider relocation to an alternative role or suspend an employee from duty pending investigation into allegations made. The act of suspension is not a disciplinary act nor does it imply that there is any suggestion of guilt. Full details are contained within the Trust's Investigation Policy.

4. Just Culture

The Trust will take a system approach to all potential conduct management cases brought under this policy, to allow for employees to learn without fear of retribution. This approach will review cases, taking the following into consideration:

- 4.1 What behaviour has been displayed by an employee;
- 4.2 Wider systemic issues when things have gone wrong, and whether this impacted upon the behaviour displayed;
- 4.3 Whether the concern is related to inadvertent human error, freely admitted by the employee.

A just culture enables cases to be investigated to principally attempt to understand what went wrong and how the system potentially led to poor quality behaviours being demonstrated. However, it also holds employees appropriately to account where evidence of gross negligence or deliberate acts has been found.

5. Responsibilities

The table below outlines the roles and responsibilities of the parties involved in the process as well as what they are required to do:

| Staff Group | Responsibilities |
|----------------------|--|
| Employees | <ul style="list-style-type: none"> • All members of staff have a responsibility to conduct themselves at all times in line with the Trust's Values and relevant professional Code of Conduct. • Ensure that they understand the policy and their obligations. • Engage with management where misconduct is identified. • Participate fully as required in any investigation in order to fully establish the facts as quickly as possible. • Arrange if they wish to be accompanied or represented by a Trade Union/ Staff Side Representative, or workplace colleague, at any formal meeting. • Engage with any appropriate support given to improve their conduct/ behaviour. |
| Line Managers | <ul style="list-style-type: none"> • Fully understand the policy and procedure, and ensure that it is applied fairly and consistently at all times. • Setting a clear example of expected conduct and behaviours at all times in line with the Trust's Values and relevant professional Code of Conduct. • Ensure that any concern raised with them is taken seriously and is dealt with in fair, timely, supportive and confidential manner. • Ensure that an investigating manager is given the appropriate time to undertake and complete a thorough investigation. • Ensure that any concerns raised are resolved as quickly as possible, and particularly where there has been an investigation. • Ensure the actions on any agreed action plan are carried out, and appropriate support is given to the employee to improve their conduct / behaviour. |
| Advisory Team | <ul style="list-style-type: none"> • To advise and support managers and employees in the application of this policy. • Support managers in appointing the investigating manager and throughout the investigation process. • Monitor the application of this policy to ensure that it is applied fairly and consistently across the Trust. |

6. Forms of Misconduct

It is not possible to produce an exhaustive list of concerns that fit within each classification of misconduct. However, the Forms of Misconduct list and Examples of Gross Misconduct list in **Appendices 1 and 2** provide some guidance, although these will be dependent upon individual circumstances.

7. Conduct Management Procedure

There are three stages to the Conduct Management procedure and these are shown in the flowcharts in **Appendices 3, 4 and 5**, and as outlined below:

| | |
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| Informal Conversation | This is the informal stage and is managed by the line manager. Discussions and actions implemented during the informal stage must be recorded to demonstrate that the informal action has been taken. A monitoring period is set at this stage. |
| Formal Conversation | This is the formal stage and is usually instigated where informal action has failed to bring about the levels of conduct / behaviour required, there is a |

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|---------------------------------|--|
| | <p>potential risk to Trust and/or patient safety or where informal action is unlikely to resolve the concerns.</p> <p>A formal conversation is held to discuss the conduct / behaviour issues, set the standards/ expectations required, and decide whether any sanctions are required. A monitoring period is set at this stage.</p> <p>A member of the Advisory Team should be present at this meeting and the individual has the right to be accompanied by a workplace colleague or Trade Union representative.</p> |
| Formal Meeting (Hearing) | <p>This is the final formal stage of the procedure and is usually instigated where prior formal action has failed to bring about the levels of conduct / behaviour required or there is a potential risk to Trust and/or patient safety.</p> <p>A panel is arranged to hear the case and decide whether any sanctions are required.</p> <p>A member of the Advisory Team will be present to support the manager at this meeting, and the individual has the right to be accompanied by a workplace colleague or Trade Union / Staff Side representative.</p> |

7.1 Informal Conversation of Concern

- 7.1.1 Where it is considered that there is an issue of misconduct and informal action is likely to quickly resolve or correct those concerns, the manager will arrange to discuss these with the employee at the earliest opportunity to minimise the impact for patients and colleagues.
- 7.1.2 The informal nature of the conversation means that advance written notification of the meeting is not required.
- 7.1.3 Whilst an Informal Conversation should not require the employee to be accompanied by a Trade Union/ Staff Side Representative or workplace colleague/ companion who is an employee of the Trust, a line manager should not unreasonably refuse such a request if the employee feels they need additional support. It is the responsibility of the employee to inform the line manager that they wish to be accompanied and by whom. It should be noted that in some circumstances it may not be appropriate for a member of the same team to accompany the employee. Where an employee is accompanied, the line manager may also wish to be accompanied by a member of the Advisory team and should inform the employee ahead of the meeting.
- 7.1.4 Informal action can provide a valuable opportunity to clarify expected standards of conduct and identify any support required to achieve these. This support could include:
- Education, training or development intervention
 - Management / clinical supervision
 - Identifying a coach or mentor
 - Accessing staff support to gain assistance from trained professionals, for example to provide coping mechanisms etc.
- 7.1.5 A confidential informal conversation of concern with the employee's line manager will be held with the intention of gaining sustained improvement of their conduct / behaviour. The conversation will be an opportunity for the line manager to provide constructive feedback and confirm the employees understanding of the standards of behaviour expected of them. The employee will be given the opportunity to respond to the concerns raised, agree actions and timescales required, and how improvement will be monitored.

7.1.6 The line manager should follow up the informal conversation of concern in writing, by letter or email, within 5 working days of the meeting.

7.1.7 Informal conversations of concern may be referred to at a later date if there are repeated incidents of a similar concern or there is evidence of multiple informal conversations of concern which contribute to a pattern of behaviour that is not in accordance with the Trust Code of Conduct or Values.

7.1.8 If the concerns continue, a formal conversation of concern or a formal investigation may be required.

7.2 Prior to Formal Conversation of Concern

7.2.1 Where a formal conversation or a formal investigation may be required, the Head of Employee Relations and Wellbeing will review all cases to make a decision.

7.2.2 In instances of a breakdown in a working relationship, both parties will be encouraged to participate in a facilitated conversation or mediation at the earliest opportunity. Advice on a facilitation conversation can be provided by the Advisory Team.

7.3 Formal Conversation of Concern

7.3.1 In some circumstances it may not be appropriate to resolve the issue informally and therefore formal action is required. These circumstances could include:

- Where there has not been an improvement identified in the informal stage
- Where there is a potential risk to the Trust and/or patient safety
- Where informal action is unlikely to resolve the concerns when the member of staff refuses to meet with their manager informally.

7.3.2 The line manager should give the employee at least 5 working days' notice of the formal conversation.

7.3.3 The employee is entitled to be accompanied by a Trade Union / Staff Side Representative or workplace colleague who is an employee of the Trust, not acting in a legal capacity or a relative. It is their responsibility to inform their manager that they wish to be accompanied and by whom. It should be noted that in some circumstances it may not be appropriate for a member of the same team to accompany the employee. The line manager will be accompanied and should inform the employee ahead of the meeting the name of the Advisory team member.

7.3.4 During the conversation the employee will have the opportunity to make their case in relation to the conduct / behaviour concerns that have been raised. They will be reminded of previous informal conversations (where these have occurred) and the steps take to support improvement in their conduct / behaviour.

7.3.5 During the formal process the line manager will consider whether there is evidence to substantiate the misconduct, the level of misconduct that has been substantiated and whether a disciplinary sanction should be issued as detailed in section 7.

7.3.6 The line manager will agree any further training, development and support that will be given to the employee to improve their conduct / behaviour.

- 7.3.7 The line manager should follow up the formal conversation of concern in writing, by letter within 5 working days of the meeting.
- 7.3.8 Formal conversations of concern may be referred to at a later date if there are repeated incidents of a similar concern or there is evidence of multiple formal conversations of concern which contribute to a pattern of behaviour that is not in accordance with the Trust Code of Conduct or Values.
- 7.3.9 If the concerns continue, a formal meeting (hearing) may be required.

7.4 Formal Meeting (Hearing)

- 7.4.1 In circumstances where misconduct has continued following a formal conversation of concern, or the employees behaviour could be found to be gross misconduct, it may be required for the line manager to escalate the concerns to a Formal Meeting (hearing).
- 7.4.2 Where a Formal Meeting (hearing) may be required, the Director of Workforce and Organisational Development (or Deputy Director of Workforce) will review all cases to make a decision.
- 7.4.3 It is expected that a formal investigation would have been carried out, in line with the Trust’s Investigation Policy, before a Formal Meeting (hearing) takes place, if required.
- 7.4.4 Outlined below are the levels of management that are authorised to Chair a Formal Meeting (hearing) depending on the charge, or agree to a request for a disciplinary sanction to be applied.

| Level of Misconduct | Level of Management / Chair of the Panel |
|---|---|
| Minor misconduct / Informal Conversation of Concern | Manager (Band 6 and above) |
| Misconduct | Head of Service / Deputy |
| Serious misconduct | Head of Service / Business Unit Manager |
| Gross misconduct | Director / Associate Director / Deputy Director / Business Unit Manager |

- 7.4.5 The employee will be notified in writing and advised of the possible outcomes, which could include dismissal, this would normally be no later than 10 working days before the date of the Formal Meeting.
- 7.4.6 The employee has the right to be accompanied by a Trade Union / Staff Side Representative or workplace colleague/companion who is an employee of the Trust, not acting in a legal capacity or a relative. It is the employees responsibility to inform the Chair that they wish to be accompanied and by whom. It should be noted that in some circumstances it may not be appropriate for a member of the same team to accompany the employee.
- 7.4.7 With the amount of notice given, it is deemed that there is sufficient time for the employee to organise appropriate representation and arrange to be available to attend the formal meeting (hearing). However should they wish to request a postponement, they can do so in writing (by email or letter) to the Chair of the Formal Meeting with the reason for the request, and if deemed reasonable, the Chair should not unnecessarily refuse on one occasion.

- 7.4.8 The Formal Meeting will not be further rescheduled and may proceed in the employee's absence and a decision made on available evidence; the Chair may consider any exceptional circumstances. In these circumstances written submissions can be considered in event of any absence, and a suitable representative can be present on the employee's behalf if required.
- 7.4.9 No later than 8 working days before the date of the hearing, management should advise whether they will be calling any witnesses and provide their name(s) to the HR representative supporting the Chair. It will be the responsibility of management to arrange for their witnesses to attend the hearing including providing them with relevant details. Further information regarding this can be sought from the Advisory Team.
- 7.4.10 No later than 5 working days before the date of the hearing, the employee should advise whether they intend to call any witnesses and provide their name(s) to the HR representative supporting the Chair. The HR representative will confirm the appropriateness in line with this policy to ensure there is no conflict of interest. It is then the employees responsibility to arrange for their witnesses to attend the hearing including providing them with relevant details. Further information regarding this can be sought from the Advisory Team.
- 7.4.11 The Formal Meeting (hearing) will be chaired by a senior manager, who has not previously been involved in the formal conversation(s), and who has authority / delegated authority to dismiss. The Chair will be supported by a member of the Advisory Team or a suitable HR representative.
- 7.4.12 The manager, who managed the employees previous informal and/or formal conversation(s) of the procedure, will normally present the management case and will be supported by a member of the Advisory Team or a suitable HR representative.
- 7.4.13 The Chair of the meeting will review the employees conduct management case and the actions taken to determine that every reasonable effort has been made to support them to improve upon their conduct / behaviour.
- 7.4.14 The employee will be given the opportunity to present their view and ask any questions they feel are appropriate.
- 7.4.15 The Chair will then review all of the information provided in the meeting, and consider whether there is evidence to substantiate the misconduct, the level of misconduct that has been substantiated and whether a disciplinary sanction should be issued as detailed in section 7. The Chair should notify the employee of the decision from the Formal Meeting (hearing) verbally within 48 hours of the hearing, unless it is agreed that further evidence is required and therefore additional time will be granted.
- 7.4.16 The Chair should then confirm the decision in writing within 10 working days of the hearing, unless it is agreed that this timeframe will be extended as appropriate. The employee will be informed of their right of appeal with reference to the Trust's Appeals Policy.

8. Disciplinary Sanctions

- 8.1 At any time during the investigation or Formal Meeting (hearing) stages of the managing conduct process, the employee may elect to receive a disciplinary sanction in line with section 7.3 in order to expedite the process. If they would like to pursue this course of action, they must write to the General Manager, or Chair if known, and a decision will be

made as to whether this is appropriate in the circumstances. Where it is agreed in conjunction with the Advisory Team that the process can be expedited in this manner, the employee will be informed of the proposed outcome and the level of sanction which will be issued. If they do not agree to the proposed outcome and sanction, the process as outline above will resume.

8.2 The decision for a disciplinary sanction should be made on the basis of all relevant facts and information available. These may include:

- Current warnings for a related misconduct
- The employees length of service
- Consideration of the alternatives to the course of action proposed
- What action has already been taken to resolve the issue
- The likely effect of the proposed action on the prognosis of the issue being resolved successfully
- The needs of the service.

8.3 The disciplinary sanction must satisfy the test of reasonableness. The levels of sanction that can be issued are:

| Disciplinary Sanction | Details |
|-------------------------------------|---|
| No further action to be taken | N/A |
| Informal Conversation of Concern | A copy of the outcome letter will be held on the employee file by the Advisory Team. There is no right of appeal against an informal conversation of concern. Any response however will be recorded on the employee file. |
| First written warning | A first written warning will normally lapse 12 months after issue, providing no further concerns arise. This will be held on the employee file by the Advisory Team. |
| Final written warning | A final written warning will normally lapse 24 months after issue, providing no further concerns arise. This will be held on the employee file by the Advisory Team. |
| Extension to written warning | Where an existing warning for the same related misconduct exists, the Chair hearing the case shall be at liberty to provide the employee with a further period of time to improve by extending the original warning for a further period not exceeding 12 months or demotion to a lower banded role within the Trust. |
| Action short of dismissal | For example, demotion, change of working pattern, redeployment etc. |
| Dismissal (with contractual notice) | Except in cases of gross misconduct, dismissal with notice will be with the appropriate period of notice. At the discretion of the Chair of the Formal Meeting, employees may be excluded from working their notice period with appropriate payment; the Trust reserves the right to pay in lieu of notice. |

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| Summary dismissal (without contractual notice) | Summary dismissal should only be used in cases of gross misconduct, examples of which are in Appendix 2. |
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- 8.4 In exceptional circumstances the Chair hearing the case has the right to issue formal warnings for a longer duration than that outlined above.
- 8.5 Where the employee is issued with a formal warning including First Written Warning, Final Written Warning, Extension to Warning, and Action Short of Dismissal, pay progression to the next point of the pay scale will be delayed for the duration of the warning.
- 8.6 Where the employee is issued with a sanction of Action Short of Dismissal there is no entitlement to pay protection for a resultant reduction in pay.
- 8.7 Where Action Short of Dismissal is issued and the Chair hearing the case reaches a decision that the employee cannot continue in their current role and gives them the opportunity of alternative work in the Trust, redeployment will only be sought for a specified period as agreed by the Chair, typically up to four weeks. If no suitable alternative roles can be found within the timeframe, the Chair may grant an extension to the maximum timeframe given within the Trust's Redeployment Policy, or the dismissal will proceed. The process detailed in Redeployment Policy shall be used as a guide.
- 8.8 A record of all current and expired disciplinary actions will be maintained by the Advisory Team and held on both the employee file and the electronic staff record system.
- 8.9 If the employee has a current sanction on file for reasons of conduct and further action is then warranted under the Managing Conduct Policy, the outcome could lead to dismissal even if the incidents / reasons are not connected.
- 8.10 Further reference will not be made to expired sanctions unless further concerns have been raised of a similar nature.
- 8.11 Where a sanction is issued, the Trust reserves the right to advise the employee's professional body or the appropriate external body of the decision.
- 8.12 Where the employee has been dismissed and/or removed from regulated activity, the Trust has a legal obligation to inform the Disclosure and Barring Service (DBS).

9. Right of Appeal

- 9.1 If an employee wishes to appeal the panel decision, this should be made in line with the Trust's Appeals Policy which is available on Qnet

10. Sickness Absence during the Managing Conduct Process

- 10.1 Where an employee does not attend work due to sickness absence during the conduct management or investigation process, it will be necessary to reach a timely resolution with the full involvement of relevant parties. This may mean decisions may be made based on the evidence available and on the balance of probabilities. The weight of the evidence will be adjusted accordingly in any decisions that are made.
- 10.2 It should be noted that reasons for absence, whether in relation to the process or not, will not cease the conduct management or investigation process, as the process may be a

contributing factor to the absence and conclusion of the process could resolve the reason for absence.

- 10.3 Repeated or long-term absence during the managing conduct or investigation process should be managed in accordance with the Trust's Supporting Health in the Workplace Policy.

11. Raising a Grievance or Dignity and Respect at Work Complaint

- 11.1 Where a grievance or dignity and respect at work complaint is raised during an investigation or conduct management process, and this is related to the case, it may be appropriate to consider the complaint as part of the procedure as this may form part of the mitigation in response to the allegations.
- 11.2 Alternatively it may be appropriate to consider both conduct management and grievance or dignity and respect at work complaint concurrently.
- 11.3 In some circumstances the investigation or conduct management process may be temporarily suspended in order to deal with the complaint.
- 11.4 In the event an allegation of dignity and respect at work (bullying and/or harassment) is made during an investigation or managing performance process, a decision will be taken as to whether the process is suspended whilst the matter is considered in line with the appropriate policy. Where the decision is taken to proceed with the investigation or managing performance process, the allegations may be heard and considered as evidence or mitigation.
- 11.5 The Head of Employee Relations and Wellbeing, or Director of Workforce and Organisational Development, will normally decide the most appropriate course of action in the circumstances.

12. Resignation

- 12.1 Should the employee decide to resign whilst an investigation or conduct management process is still in progress, a decision will be made as to whether sufficient evidence has been gathered and what the most appropriate way forward is to bring the matter to a conclusion.
- 12.2 Referral to the employee's professional body or the appropriate external body may be made by the Trust.
- 12.3 Should a reference request be received whilst an investigation process is ongoing, then it may be declared.

13. Training and Awareness

This policy will be held on Qnet, the Trust Intranet, under Trust Policies and Procedures/Human Resources. Training is also available, and can be booked via Education and Learning Centre.

Further information and support for both employees and managers on managing conduct is available from the Advisory team.

14. Equality

This policy and protocol has been equality due regard assessed in accordance with the Trust's Equality Due Regard Assessment Guidance. Completed assessments are available upon request from gvh.edra@nhs.net.

15. Freedom of Information

Any information that belongs to the Trust may be subject to disclosure under the Freedom of Information Act 2000. This act allows anyone, anywhere to ask for information held by the Trust to be disclosed (subject to limited exemptions). Further information is available in the Freedom of Information Act Trust Procedure which can be viewed on the Trust Intranet.

16. Records Management

Records of conduct management meetings will be kept in the individual personal files by the line manager and within the Human Resources records.

17. Review

This policy will be reviewed in 3 years' time. Earlier reviews may be required in response to exceptional circumstances, organisational change or relevant changes in legislation or guidance.

18. Discipline

Breaches of this policy will be investigated and may result in the matter being treated as a disciplinary offence under the Trust's Managing Conduct Policy.

19. Monitoring Compliance with this Policy

| Activity being monitored | Methodology to be used for monitoring | Responsibility for monitoring | Frequency of monitoring and reporting | Process for review and improvement |
|---|--|-------------------------------|---------------------------------------|---|
| Decision to place staff through the formal conduct management process | Review of cases | Advisory Team | Annually | Annual report, using robust information on each case to discern any systemic weaknesses, biases or underlying drivers of adverse treatment of any staff group |
| Outcomes of cases under this policy | Review outcomes of cases under this policy | Advisory Team | Annually | Annual report |

20. References

- ACAS Code of Practice on Disciplinary and Grievance Procedures (2015)
- NHS England and NHS Improvement – learning lessons to improve our people practices (letter of 23rd May 2019 and Advisory Group Final Recommendations April 2019)
- NHS England and NHS Improvement – a fair experience for all: closing the ethnicity gap in rates of disciplinary action across the NHS workforce (July 2019)

21. Associated Documentation

- Appendix 1: Forms of Misconduct List
- Appendix 2: Examples of Gross Misconduct List
- Appendix 3: Informal Conversation of Concern Flowchart
- Appendix 4: Formal Conversation of Concern Flowchart
- Appendix 5: Formal Meeting (Hearing) Flowchart

Appendix 1: Forms of Misconduct List

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|---------------------------|---|
| Minor Misconduct | <ul style="list-style-type: none"> • Poor time keeping • Short term unauthorised or uncertified absences • Failure to adhere to Trust policies/procedures/protocols, for example; failure to wear an ID badge, failure to comply with Trust's Dress Code Policy • Breach of rules applying to the particular department or building, provided no danger or unsafe practice is involved • Breach of expected standards set within each department or area of the Trust relating to the work being carried out which should be known to the employee |
| Serious Misconduct | <ul style="list-style-type: none"> • Repeated offences of minor misconduct • Conduct of such a degree that it seriously interferes with the smooth running of the service or affects the health and safety of any person • Behaving in a disorderly manner • Using offensive language on health service premises • Failure to carry out reasonable instructions • Dangerous or wilful breach of safety rules • Serious breach of professional standards or neglect of duties • Serious breach of Trust policies/procedures/protocols • Failure to comply with infection control measures, for example; hand washing • Bringing the Trust into disrepute |
| Gross Misconduct | <ul style="list-style-type: none"> • Theft • Fraud or bribery • Physical violence • Bullying and/or harassment • Physical or verbal abuse of patients or staff • Poor treatment of patients, staff and/or colleagues or demonstrations of behaviours that are not consistent with the Trust values or expected standards of behaviour (including behaviours towards others demonstrated on social networking sites) • Deliberate and serious damage to property • Absence without leave (AWOL) • Serious misuse of the Trust's property or name • Deliberately accessing internet sites containing pornographic, offensive or obscene material • Serious insubordination • Unlawful discrimination, including bullying and harassment of any kind, for example; on the grounds of race, gender, disability, age, religion, sexual orientation, pregnancy and maternity, marriage and civil partnership and gender reassignment • Bringing the Trust into serious disrepute |

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| | <ul style="list-style-type: none">• Breach of contract including lapse of professional registration• Brining alcohol or illegal drugs onto Trust property and/or serious incapability at work brought on by alcohol or illegal drugs• Causing loss, damage or injury through serious negligence• A serious breach of health and safety rules• Serious breaches of confidentiality including the misuse of or failure to safeguard confidential informal and/or patient data• Using social networking sites and making reference to the Trust, patients, the employees work, making personal comments that could cause offence or distress to an individual, making remarks that bring the Trust or the NHS as a whole into disrepute, breaching confidentiality and sharing inappropriate comments and pictures• An offence committed in the course of or outside of employment which reflects on the employees suitability to continue in the post or which undermines the reputation and credibility of the Trust |
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Appendix 2: Examples of Gross Misconduct List

| Type | Detail |
|---|--|
| Assault | Unlawful assault on a patient, fellow employee or a member of the public, including fighting |
| Corrupt Practices | Receipt of money, goods or pecuniary advantage in respect of any service rendered |
| Defrauding the Trust | Any deliberate attempt to defraud the Trust or a member of staff or a patient or a member of the public, this includes falsification of timesheets |
| Incapacity through Drink or Drugs | Incapacity to perform normal duties owing to the consumption of alcohol or misuse of drugs |
| Negligent Behaviour | Any action or failure to act which seriously threatens the health or safety of a patient, employee or member of the public |
| Malicious Damage | Intentionally causing damage to the property of the National Health Service, patients, employees, or member of the public |
| Unauthorised or Unlawful Possession of Property | Any unauthorised or unlawful possession of property of the National Health Service, patients or members of the public |
| Breach of Confidentiality of any Confidential Information | Any breach of confidentiality and/or confidential information |

Appendix 3: Informal Conversation of Concern Flowchart

Line manager has identified an issue of misconduct and informal action is likely to resolve or correct the concerns. The manager arranges to meet with employee at the earliest opportunity.

Advanced notification of the meeting is not required.



The Informal Conversation of Concern meeting should clarify expected standards of conduct and identify any support required to achieve these.

These could be:

Education, training or development intervention

Management / clinical supervision

Identifying a coach or mentor

Accessing staff support to gain assistance from trained professionals, for example to provide coping mechanisms etc.

The meeting should be held with the intention of gaining sustained improvement of the employees conduct / behaviour.



The line manager should follow up the meeting in writing, by letter or email, within 5 working days of the meeting.



Informal Conversations of Concern may be referred to at a later date if their are repeated incidents of a similar concerns or evidence of multiple concerns which contricute to a pattern in behaviours.

If concerns continue, a Formal Conversation of Concern or a formal investigation may be required.

Appendix 4: Formal Conversation of Concern Flowchart

If the individual has continued to behave/conduct themselves in a way that not in line with Trust Values or expected standards, the manager invites them to a Formal Conversation of Concern.



The employee is given at least 5 working days notice of the conversation in writing, with detail of the misconduct.
The employee is entitled to be accompanied if they wish to be. A member of the Advisory Team will also be present.



At the meeting the manager explains the process so far and what support has been put in place.
They then explain the continued areas of concern, and provide further examples as evidence.
A discussion is then had with the individual to agree what further steps can be taken to support them to improve their behaviour/conduct.
If appropriate, a disciplinary sanction may be issued.



An outcome letter will be sent within 5 working days to the individual to confirm:

1. A summary of the discussion
2. Specific areas of concern
3. Support that will be provided
4. Detail of any sanction issued (if appropriate)
5. Details of the consequences if similar issues continue to occur
6. The length of review period set



The manager will review the Formal Conversation at the end of the set review period.
If further issues of a similar nature or other serious misconduct concerns occur within this review period, the manager may consider further action in the form of a Formal Meeting (Hearing) or a formal investigation may be required.

Appendix 5: Formal Meeting (Hearing) Flowchart

If the misconduct of the individual continues to be unsatisfactory the manager can move to a **Formal Meeting (Hearing)**.

This meeting must be Chaired by a manager who is authorised to terminate the employment of an employee.



The employee is given at least ten working days notice of the meeting in writing, with detail of the misconduct.

The employee is entitled to be accompanied to this meeting if they wish to be. The name of the senior manager Chairing the meeting and the name of the Advisory Team member will also be provided.

The employee is informed of the opportunity to submit any documentation supporting them ahead of the Hearing.



The line manager will present the history of the case including all steps that have been taken to support the individual.



The employee is then given an opportunity to respond to this case and explain the reasons for their misconduct.



Both parties summarise their points to the Chair for consideration (*no new evidence should be raised at this point*).



The Chair of the meeting makes a decision, and sends a letter within 10 working days to the individual to confirm the outcome of the meeting.



The employee has the right to appeal against any decision made and should do so in line with the Appeals Policy.