

**DISCIPLINARY POLICY FOR MEDICAL AND DENTAL STAFF**

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## DOCUMENT CONTROL

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## 1. INTRODUCTION

1.1 In December 2003, the Department of Health issued the document 'High Professional Standards in the Modern NHS; a framework for the initial handling of concerns about doctors and dentists in the NHS', under cover of HSC 2003/012. The framework consisted of two parts:

- Part I: Action when a concern arises; and
- Part II: Restriction of practice and exclusion

1.2 The Department of Health then agreed with the British Medical Association and British Dental Association the remaining three parts of the framework covering disciplinary procedures for doctors and dentists employed in the NHS.

These are:

- **Conduct** hearings and disciplinary matters;
- Procedures for dealing with issues of **capability**; and
- Handling concerns about a practitioner's **health**.

1.3 This framework was drafted in close collaboration with NHS Employers and the National Clinical Assessment Service.

1.4 The Directions on Disciplinary Procedures 2005 require all NHS bodies in England to implement the framework within their local procedures. It has also been agreed with Monitor that the framework should be issued to NHS Foundation Trusts as advice.

## 2. PURPOSE & SCOPE

2.1 This disciplinary policy sets out the management of poor performance, formal conduct and capability procedures together with handling concerns about a practitioner's health. It is an agreement between the Trust and the Local Negotiating Committee (LNC) and implements the framework set out in 'Maintaining High Professional Standards in the Modern NHS' issued under the direction of the Secretary of State for Health in February 2005.

2.2 The purpose of this policy is to ensure that all Medical Staff are aware of:

- the expectation to perform their duties in adherence to Trust policies and procedures
- the standards of performance required including the requirement to follow all reasonable management instructions
- the requirement to ensure their conduct is at all time appropriate
- how they will be helped to achieve improvements in their conduct or performance if necessary

2.3 The Policy also provides a clear formal framework for managers to apply when:

- informal approaches have failed to resolve unacceptable conduct or performance

- informal approaches are inappropriate because of the seriousness of the situation.
- 2.4 This policy and procedure applies to all Trust Medical and Dental employees (referred to as “you” or “your” hereinafter) regardless of grade. All medical staff including agency and other locum doctors are expected to abide by the Standards of Personal Conduct (**Appendix 1**) and the rules of the Trust.
- 2.5 Under certain circumstances, extensions to the time scales given in this policy may be agreed between you and your medical manager. However, it is expected that every effort should be made to ensure that timescales are reasonably complied with.

### 3. DUTIES AND RESPONSIBILITIES

3.1 Duties in respect of the requirements of this document are as follows:

- The **Trust Board** has overall responsibility for procedural documents and delegates responsibility as appropriate.
- The **Chief Executive** is accountable to the Trust Board for the procedures set out in this policy, including ensuring adequate resources are available to support the process. Responsibility for this role is delegated to the **Medical Director** who is also the Responsible Officer.
- The **Identified Lead (Author)** is the Senior Clinical Investigator and he will be responsible for producing written drafts of the document and for consulting with others and amending the draft as appropriate.
- The **Medical Director** is responsible for implementing the policy.
- The **Head of Corporate Governance** has responsibility for holding the central database of procedural documents including this policy and for providing review reminders. The team also has responsibility for dissemination of the final document and archiving old versions.
- **All Medical and Dental staff** within the scope of this policy are individually responsible for their actions including adhering to this policy.

3.2 **The Trust will:**

- ensure those authorised to take disciplinary action at the appropriate stages are trained and competent
- differentiate between matters of performance and conduct wherever possible
- ensure proper adherence to policy throughout the procedure by involving a Human Resources (HR) Business Partner / Deputy Director of HR.

3.3 **The medical manager will:**

- deal with disciplinary matters in a sensitive manner which does not discriminate and in accordance with this policy and procedure.
- seek the advice of a HR Business Partner / Deputy Director of HR.

- at the earliest stages (including any informal processes)
- agree with HR the most appropriate person to conduct an investigation and where necessary a disciplinary hearing
- make sure their staff are aware of this policy and the procedures contained within
- ensure written records are kept confidential

#### 3.4 **All Medical and Dental staff** are responsible for:

- performing their duties in accordance with rules and contractual obligations
- treating colleagues, patients and visitors with honesty, respect and dignity
- being honest and trustworthy
- being co-operative and acting reasonably
- formally reporting the facts of any criminal charges not related to work (with the exception of minor motoring offences) to their medical manager and subsequently advising them of the outcome i.e. charges dropped, conviction or discharge (absolute or conditional)

## 4. **EXPLANATIONS OF TERMS**

**Conduct** – Standards of Personal Conduct are included in **Appendix 1** and examples of Gross Misconduct are given in **Appendix 2**. The broader meaning of conduct means the way you behave at work, your attitude, and how you go about your work in accordance with the rules of the Trust and reasonable requests made by your medical manager

**Performance** – Relates to how capable you are of doing your job and how well you are performing to the required standards / quality agreed by you and your medical manager.

**National Clinical Assessment Service.** NCAS works to resolve concerns about the practice of doctors, dentists and pharmacists by providing case management services to health care organisations and to individual practitioners. NCAS was known as the National Clinical Assessment Authority until 1 April 2005. Contact details for NCAS are as follows: NCAS, Area 1C, Skipton House, 80 London Road, London SE1 6LH Tel: 020 7972 8170, Fax: 020 7972 8200.

**GMC.** General Medical Council.

**GDC.** General Dental Council.

**LNC.** Local Negotiating Committee of the British Medical Association

**NHS.** National Health Service.

**SMSA Group:** Senior Medical Staff Advisory Group

## **5. ACTION WHEN A CONCERN ARISES**

- 5.1 The management of performance is a continuous process which is intended to anticipate and prevent problems. Identifying and dealing with performance issues promptly and efficiently can reduce potential risk for patients and practitioners. Numerous ways exist in which concerns about a practitioner's performance can be identified and through which remedial and supportive action can be quickly taken before problems become serious or patients are harmed. These approaches need not necessarily require formal investigation or the resort to disciplinary action. Medical appraisal and revalidation is an important component of this process (See Appraisal Policy for Medical Staff), both to provide an opportunity for assessment of clinical practice and also to ensure measures are in place to prevent problems emerging, for example through Continuing Professional Development.
- 5.2 Concerns about a doctor or dentist's conduct or capability can come to light in a wide variety of ways, for example:
- Concerns expressed by other NHS professionals, health care managers, students and non-clinical staff;
  - Review of performance against job plans, annual appraisal, revalidation;
  - Monitoring of data on performance and quality of care;
  - Clinical governance, clinical audit and other quality improvement activities;
  - Complaints about care by patients or relatives of patients;
  - Serious Incident Requiring Investigation (SIRI) reports;
  - Information from the regulatory bodies;
  - Litigation following allegations of negligence;
  - Information from the police or coroner;
  - Court judgements.
- 5.3. Unfounded and malicious allegations can cause lasting damage to a doctor's reputation and career prospects. Allegations, including those made by relatives of patients, or concerns raised by colleagues, must therefore be properly investigated to verify the facts so that the allegations can be shown to be true or false.
- 5.4 Concerns about the capability of doctors and dentists in training should be considered initially as training issues and the Clinical Tutor / Director of Medical Education and also the trainees' education supervisor should be informed in the first instance. The Clinical Tutor will then be responsible for informing the Postgraduate Dean (Severn Postgraduate Medical Education) of any confirmed concerns at the outset.
- 5.5 All serious concerns must be registered with the Chief Executive and he or she must ensure that a case manager is appointed. The Chairman of the Board must designate a Non-Executive Director "the Designated Board Member" to oversee the case and ensure that momentum is maintained. All

concerns should be investigated quickly and appropriately. The Designated Board Member should ensure that the investigation is completed in a timely manner consistent with this policy and should also monitor the situation until any exclusion has been lifted to ensure the total period of exclusion is not unnecessarily prolonged. A clear audit route must be established for initiating and tracking progress of the investigation, its costs and resulting action. However the issue is raised, the Medical Director will need to work with the Director of Human Resources to decide the appropriate course of action in each case. The Medical Director will act as the case manager in cases involving Associate Medical Directors and consultants but may delegate this role to a senior medical manager to oversee the case on his or her behalf in other cases. The Medical Director is responsible for appointing a case investigator.

## **5.6 Right to be accompanied**

- 5.6.1 At all stages of the disciplinary procedure the practitioner is entitled to be accompanied by a recognised full-time or local Trade Union / professional organisation representative or by a colleague. If this companion is an employee of the Trust, they will be given reasonable time off with pay in accordance with their duties.

## **5.7 Exclusion**

- 5.7.1 When serious concerns are raised about a practitioner, the Trust will urgently consider whether it is necessary to place temporary restrictions on their practice. This might be to amend or restrict their clinical duties, obtain undertakings or provide for the exclusion of the practitioner from the workplace. Section 6 of this document sets out the procedures for this action.
- 5.7.2 At any point in the process where the case manager has reached the clear judgement that a practitioner is considered to be a serious potential danger to patients or staff, that practitioner must be referred to the GMC / GDC, whether or not the case has been referred to NCAS. Consideration should also be given to whether the issue of an alert letter should be requested.
- 5.7.3 NCAS has a responsibility for reporting and monitoring exclusions and suspensions and publishes the annual statistics on behalf of the Department of Health The Trust therefore has an obligation to inform NCAS when it excludes a doctor or dentist.

## **5.8 Identifying if there is a problem**

- 5.8.1 The first task of the case manager is to identify the nature of the problem or concern and to assess the seriousness of the issue on the information available and the likelihood that it can be resolved without resort to formal disciplinary procedures. This is a difficult decision and should not be taken alone but in consultation with the Director of Human Resources, the Medical Director and the National Clinical Assessment Service. NCAS asks that the first approach to them should be made by the Chief Executive or Medical Director.
- 5.8.2 The case manager should not automatically attribute an incident to the actions, failings or acts of an individual alone. Root-cause analyses of



adverse events should be conducted as these frequently show that causes are more broadly based and can be attributed to systems or organisational failures, or demonstrate that they are untoward outcomes which could not have been predicted and are not the result of any individual failure. Each will require appropriate investigation and remedial actions. The Trust is committed to maintaining an open and fair culture, which encourages doctors, dentists and other NHS staff to report adverse incidents and other near misses.

- 5.8.3 Having discussed the case with NCAS, the case manager must decide whether an informal approach can be taken to address the problem, or whether a formal investigation will be needed. Where an informal route is chosen NCAS should still be involved until the problem is resolved.
- 5.8.4 Where there are potential health issues consideration should be given at an early stage to involvement of the occupational health service and this may include a request for advice on whether adopting a more formal route may have an adverse effect on a practitioner's health.
- 5.8.5 Where it is decided that a formal route needs to be followed (perhaps leading to conduct or capability proceedings) the Medical Director must, after discussion between the Chief Executive and Director of Human Resources, appoint an appropriately experienced or trained person as case investigator.
- 5.8.6 The seniority of the case investigator should reflect the grade of the practitioner involved in the allegation and the nature of the allegation.

## **5.9 The case investigator:**

- Is responsible for leading the investigation into any allegations or concerns about a practitioner, establishing the facts and reporting the findings;
- If not themselves a Consultant, must formally involve a senior member of the medical or dental staff nominated by the Chair of the Senior Medical Staff Advisory Group where a question of clinical judgement is raised during the investigation process. Where no suitable senior doctor or dentist is employed by the Trust a senior doctor or dentist from another NHS body should be approached;
- Must ensure that safeguards are in place throughout the investigation so that breaches of confidentiality are avoided as far as possible. Patient confidentiality needs to be maintained but any disciplinary panel will need to know the details of the allegations. It is the responsibility of the case investigator to judge what information needs to be gathered and how - within the boundaries of the law - that information should be gathered. The investigator will approach the practitioner concerned to seek views on information that should be collected;
- Must ensure that there are sufficient written statements collected to establish a case prior to a decision to convene any disciplinary panel, and on aspects of the case not covered by a written statement, ensure that oral evidence is given sufficient weight in the investigation report;

- Must ensure that a detailed written record (including a timeline) is kept of the investigation, the conclusions reached and the course of action agreed by the Director of Human Resources with the Medical Director;
- Must assist the Designated Board Member in reviewing the progress of the case.

## **5.10 The Investigation**

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

5.10.2 The practitioner concerned must be informed in writing by the case manager, as soon as it has been decided, that an investigation is to be undertaken, of the name of the case investigator and of 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 that the case investigator will interview. The practitioner must also be afforded the opportunity to put their view of events to the case manager, suggest individuals who they feel should be interviewed as part of the investigation and be given the opportunity to be accompanied.

5.10.3 The case investigator has 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. Investigations are not intended simply to secure evidence against the practitioner as information gathered in the course of an investigation may clearly exonerate the practitioner or provide a sound basis for effective resolution of the matter.

5.10.4 If during the course of the investigation it transpires that the case involves more complex clinical issues than first anticipated, the case manager should consider the need for a practitioner in the same specialty and / or grade from another NHS body to assist, bearing in mind the need to proceed speedily through the process.

5.10.5 The case investigator should complete the investigation within 4 weeks of appointment and submit their report to the case manager within a further 5 days. In exceptional circumstances, it may be necessary to extend this timescale. In such a case this would be in consultation with the practitioner concerned and his / her companion. The report of the investigation should give the case manager sufficient information to make a decision on whether:

- There is a case of misconduct that should be put to a conduct panel;
- There are concerns about the practitioner's health that should be considered by the occupational health service;
- There are concerns about the practitioner's performance that should be further explored by NCAS;
- Restrictions on practice or exclusion from work should be considered;
- There are serious concerns that should be referred to the GMC or GDC;

- There are intractable problems and the matter should be put before a capability panel;
- No further action is needed.

## **5.11 Involvement of NCAS following local investigation**

- 5.11.1 Medical under-performance can have a number of causes including health problems, difficulties in the work environment, behaviour or a lack of clinical capability. These may occur in isolation or in a combination. NCAS's processes are aimed at addressing all of these, particularly where local action has not been able to take matters forward successfully. NCAS's methods of working therefore assume commitment by all parties to take part constructively in a referral to NCAS. For example, its assessors work to formal terms of reference, decided on after input from the doctor and the referring body.
- 5.11.2 The focus of NCAS's work is therefore likely to involve performance difficulties which are serious and/or repetitive. That means:
- Performance falling well short of what doctors and dentists could be expected to do in similar circumstances and which, if repeated, would put patients seriously at risk;
  - Alternatively or additionally, problems that are ongoing or (depending on severity) have been encountered on at least two occasions.
- 5.11.3 In cases where it becomes clear that the matters at issue focus on fraud, specific patient complaints or organisational governance, their further management may warrant a different local process. NCAS may advise on this.
- 5.11.4 Where the Trust is considering excluding a doctor or dentist (whether or not his or her performance is under discussion with NCAS), the Trust will inform NCAS of this at an early stage, so that alternatives to exclusion are considered. Procedures for exclusion are covered in section 6 of this policy. It is particularly desirable to find an alternative when NCAS is likely to be involved, because it is much more difficult to assess a doctor who is excluded from practice than one who is working.
- 5.11.5 A practitioner undergoing assessment by NCAS must cooperate with any request to give an undertaking not to practise in the NHS or private sector other than their main place of NHS employment until the NCAS assessment is complete (Circular HSC 2002/011, Annex 1, paragraph 3).
- 5.11.6 Failure to co-operate with a referral to NCAS may be seen as evidence of a lack of willingness on the part of the doctor or dentist to work with the employer on resolving performance difficulties. If the practitioner chooses not to co-operate with such a referral, that may limit the options open to the parties and may necessitate disciplinary action and consideration of referral to the GMC or GDC.

## **5.12 Confidentiality**

- 5.12.1 The Trust and its employees will maintain confidentiality at all times. No press notice will be issued, nor the name of the practitioner released, in regard to any investigation or hearing into disciplinary matters. The

employer will only confirm publicly that an investigation or disciplinary hearing is underway.

- 5.12.2 Personal data released to the case investigator for the purposes of the investigation must be fit for the purpose and not disproportionate to the seriousness of the matter under investigation. The trust will operate consistently with the guiding principles of the Data Protection Act.

## **6. RESTRICTION OF PRACTICE & EXCLUSION FROM WORK**

6.1 This part of the procedure replaces the guidance in HSG (94)49.

6.2 In this part of the procedure, the phrase "exclusion from work" has been used to replace the word "suspension" which can be confused with action taken by the GMC or GDC to suspend the practitioner from the register pending a hearing of their case or as an outcome of a fitness to practise hearing.

6.3 The Trust will ensure that:

- Exclusion from work is used only as an interim measure whilst action to resolve a problem is being considered;
- Where a practitioner is excluded, it is for the minimum necessary period of time: this can be up to but no more than four weeks at a time;
- All extensions of exclusion are reviewed and a brief report provided to the Chief Executive and the Board;
- A detailed report is provided when requested to a single non-executive member of the Board (the "Designated Board Member") who will be responsible for monitoring the situation until the exclusion has been lifted.

### **6.4 Managing the risk to patients**

6.4.1 When serious concerns are raised about a practitioner, the Trust will urgently consider whether it is necessary to place temporary restrictions on their practice. This might be to amend or restrict their clinical duties, obtain undertakings or provide for the exclusion of the practitioner from the workplace. Exclusion will be considered as a last resort when alternative courses of action are not feasible.

6.4.2 Exclusion of Medical and Dental staff from the workplace is a temporary expedient. Exclusion is a precautionary measure and not a disciplinary sanction. It will be reserved for only the most exceptional circumstances.

6.4.3 Exclusion will only be used:

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

- 6.4.4 Alternative ways to manage risks, avoiding exclusion, include:
- Medical or Associate Medical Director supervision of normal contractual clinical duties;
  - Restricting the practitioner to certain forms of clinical duties;
  - Restricting activities to administrative, research / audit, teaching and other educational duties. By mutual agreement the latter might include some formal retraining or re-skilling;
  - Sick leave for the investigation of specific health problems. In cases where sick leave is the most appropriate option this must be with the mutual agreement of the practitioner and must be supported by the provision of Fit Notes for the full period of leave. There should be clarity for both parties in all cases about the nature of the leave (i.e. there should be no confusion about sick leave versus exclusion). This mutual agreement must therefore be confirmed in writing by both the Trust and the practitioner.
- 6.4.5 In cases relating to the capability of a practitioner, consideration will be given to whether an action plan to resolve the problem can be agreed with the practitioner. Advice on the practicality of this approach will be sought from NCAS. If the nature of the problem and a workable remedy cannot be determined in this way, the case manager will seek to agree with the practitioner to refer the case to NCAS, which can assess the problem in more depth and give advice on any action necessary. The case manager will seek immediate telephone advice from NCAS when considering restriction of practise or exclusion.

## **6.6 The Exclusion Process**

- 6.6.1 The Trust will not exclude a practitioner for more than four weeks at a time. The justification for continued exclusion must be reviewed on a regular basis and before any further four-week period of exclusion is imposed. Key officers and the Trust Board have responsibilities for ensuring that the process is carried out quickly and fairly, kept under review and that the total period of exclusion is not prolonged.

## **6.7 Roles of officers**

- 6.7.1 The Trust Chief Executive has overall responsibility for managing exclusion procedures and for ensuring that cases are properly managed. The decision to exclude a practitioner must be taken only by persons nominated under paragraph 5.8.1. The case will be discussed fully with the Chief Executive, the Medical Director, the Director of Human Resources, NCAS and other interested parties (such as the police where there are serious criminal allegations or the Counter Fraud & Security Management Service) prior to the decision to exclude a practitioner. In the rare cases where immediate exclusion is required, the above parties must discuss the case at the earliest opportunity following exclusion, preferably at a case conference.
- 6.7.2 The authority to exclude a member of staff is vested in Executive Directors of the Trust.

6.7.3 The Medical Director will act as the case manager in the case of consultant staff, or delegate this role to a senior medical manager to oversee the case, and appoint a case investigator to explore and report on the circumstances that have led to the need to exclude the staff member. The investigating officer will provide factual information to assist the case manager in reviewing the need for exclusion and making progress reports to the Chief Executive and Designated Board Member.

## **6.8 Role of the Designated Board Member**

6.8.1 The Designated Board Member must also ensure, among other matters, that time frames for investigation or exclusion are consistent with the principles of Article 6 of the European Convention on Human Rights.

## **6.9 Immediate exclusion**

6.9.1 In exceptional circumstances, an immediate time-limited exclusion may be necessary for the purposes identified in paragraph 6.4.3 above following:

- A critical incident when serious allegations have been made; or
- There has been a major break down in relationships between the practitioner and the rest of the team; or
- The presence of the practitioner is likely to hinder the investigation.

6.9.2 Such an exclusion will allow a more measured consideration to be undertaken. NCAS should be contacted before the immediate exclusion takes place. This period should be used to carry out a preliminary analysis, to seek further advice from NCAS and to convene a case conference. The medical manager making the exclusion must explain to the practitioner why the exclusion is being made in broad terms (there may be no formal allegation at this stage) and agree a date up to a **maximum of two weeks** away at which the practitioner should return to the workplace for a further meeting. The case manager must advise the practitioner of their rights, including the right to be accompanied (see section 5.6.1).

## **6.10 Formal exclusion**

6.10.1 A formal exclusion may only take place after the case manager has first considered whether there is a case to answer and then considered, at a case conference, whether there is reasonable and proper cause to exclude. NCAS must be consulted where formal exclusion is being considered. If a case investigator has been appointed he or she must produce a preliminary report as soon as is possible to be available for the case conference. This preliminary report is advisory to enable the case manager to decide on the next steps as appropriate.

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

- The allegation appears unfounded; or
- There is a potential misconduct issue; or
- There is a concern about the practitioner's capability; or

- The complexity of the case warrants further detailed investigation before advice can be given on the way forward and what needs to be inquired into.
- 6.10.3 Formal exclusion of one or more clinicians must only be used where:
- (a) There is a need to protect the interests of patients or other staff pending the outcome of a full investigation of:
    - allegations of misconduct,
    - concerns about serious dysfunctions in the operation of a clinical service,
    - concerns about capability or poor performance of sufficient severity; or
  - (b) The presence of the practitioner in the workplace is likely to hinder the investigation.
- 6.10.4 Full consideration should be given to whether the practitioner could continue in or (in cases of an immediate exclusion) return to work in a limited capacity or in an alternative, possibly non-clinical role, pending the resolution of the case.
- 6.10.5 When the practitioner is informed of the exclusion, there should be a witness present and the nature of the allegations or areas of concern should be conveyed to the practitioner. The practitioner should be told of the reason(s) why formal exclusion is regarded as the only way to deal with the case. At this stage the practitioner should be given the opportunity to state their case and propose alternatives to exclusion (e.g. further training, referral to occupational health, referral to NCAS with voluntary restriction).
- 6.10.6 The formal exclusion must be confirmed in writing as soon as is reasonably practical. The letter should state the effective date and time, duration (up to 4 weeks), the content of the allegations, the terms of the exclusion (e.g. exclusion from the premises, see paragraph 6.3, and the need to remain available for work paragraph 6.12.2) and that a full investigation will follow. The practitioner and their companion should be advised that they may make representations about the exclusion to the Designated Board Member at any time after receipt of the letter confirming the exclusion.
- 6.10.7 In cases where disciplinary procedures are being followed, exclusion may be extended for four-week renewable periods until the completion of disciplinary procedures if a return to work is considered inappropriate. The exclusion will still only last for four weeks at a time and be subject to review. The exclusion will usually be lifted and the practitioner allowed back to work, with or without conditions placed upon the employment, as soon as the original reasons for exclusion no longer apply.
- 6.10.8 If the case manager considers that the exclusion will need to be extended over a prolonged period outside of his or her control (for example because of a police investigation), the case must be referred to NCAS for advice as to whether the case is being handled in the most effective way and suggestions as to possible ways forward. However, even during this prolonged period the principle of four-week "renewability" must be adhered to.

6.10.9 If at any time after the practitioner has been excluded from work, investigation reveals that either the allegations are without foundation or that further investigation can continue with the practitioner working normally or with restrictions, the case manager must lift the exclusion, inform NCAS and make arrangements for the practitioner to return to work with appropriate support as soon as practicable.

## **6.11 Exclusion from premises**

6.11.1 Practitioners will not be automatically barred from the premises upon exclusion from work. The case manager must always consider whether a bar from the premises is absolutely necessary. There are certain circumstances, however, where the practitioner should be excluded from the premises. This could be, for example, where there may be a danger of tampering with evidence, or where the practitioner may be a serious potential danger to patients or other staff. In other circumstances, however, there may be no reason to exclude the practitioner from the premises.

## **6.12 Keeping in contact and availability for work**

6.12.1 The practitioner should be allowed to retain contact with colleagues, take part in clinical audit and to remain up to date with developments in their field of practice or to undertake research or training.

6.12.2 Exclusion under this procedure will be on full pay, therefore the practitioner must remain available for work with the Trust during their normal contracted hours. 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 study leave. The practitioner should be reminded of these contractual obligations but would be given 24 hours notice to return to work. In exceptional circumstances the case manager may decide that payment is not justified because the practitioner is no longer available for work (e.g. abroad without agreement).

6.12.3 The case manager should make arrangements to ensure that the practitioner can keep in contact with colleagues, for example to take part in Continuing Professional Development (CPD) and clinical audit activities with the same level of support as other doctors or dentists in their employment. A mentor could be appointed for this purpose if a colleague is willing to undertake this role.

## **6.13 Informing other organisations**

6.13.1 In cases where there is concern that the practitioner may be a danger to patients, the Trust may consider that it has an obligation to inform such other organisations including the private sector, of any restriction on practice or exclusion and provide a summary of the reasons for it. Details of other employers (NHS and non-NHS) may be readily available from job plans, but where it is not the practitioner should supply them. Failure to do so may result in further disciplinary action or referral to the relevant regulatory body, as the paramount interest is the safety of patients. Where the Trust has placed restrictions on practice, the practitioner should agree not to undertake any work in that area of practice with any other employer.



6.13.2 Where the case manager believes that the practitioner is practising in other parts of the NHS or in the private sector in breach or defiance of an undertaking not to do so, he or she should contact the professional regulatory body and other relevant bodies to consider the issue of an 'Alert Letter'.

#### **6.14 Informal exclusion**

6.14.1 No practitioner will be excluded from work other than through the procedure in Section 6. The Trust will not use "gardening leave" or other informal arrangements as a means of resolving a problem covered by this policy.

#### **6.15 Keeping Exclusions Under Review: Informing the Board**

6.15.1 The Board must be informed about an exclusion at the earliest opportunity. The Board has a responsibility to ensure that the organisation's internal procedures are being followed. Therefore a summary of the progress of each case at the end of each period of exclusion will be provided to the Board, demonstrating that procedures are being correctly followed and that all reasonable efforts are being made to bring the situation to an end as quickly as possible.

#### **6.16 Regular review**

6.16.1 The case manager must review the exclusion before the end of each four week period and report the outcome to the Chief Executive and the Board. The exclusion should usually be lifted and the practitioner allowed back to work, with or without conditions placed upon their employment, as soon as the original reasons for exclusion no longer apply and there are no other reasons for exclusion. The exclusion will lapse and the practitioner will be entitled to return to work at the end of the four-week period if the exclusion is not actively reviewed. It is important to recognise that Board members might be required to sit as members of a future disciplinary or appeal panel. Therefore, information to the Board should only be sufficient to enable the Board to satisfy itself that the procedures are being followed. Only the Designated Board Member should be involved to any significant degree in each review; the Designated Board Member will not sit as a member of any future disciplinary or appeal panel. Careful consideration must be given as to whether the interests of patients, other staff, the practitioner, and / or the needs of the investigative process continue to necessitate exclusion and give full consideration to the option of the practitioner returning to limited or alternative duties where practicable.

6.16.2 The Trust will take review action before the end of each four-week period. After three exclusions, NCAS will be notified. The information below outlines the activities that must be undertaken at different stages of exclusion.

6.16.3 The Trust will use the same timeframes and procedures to review any restrictions on practice.

#### **6.17 First and second reviews (and reviews after the third review)**

6.17.1 Before the end of each exclusion period (of up to 4 weeks) the case manager must review the position.

- The case manager decides on next steps as appropriate, taking into account the views of the practitioner. Further renewal may be for up to 4 weeks;
- The case manager submits an advisory report of outcome to the Chief Executive and the Trust Board;
- Each renewal is a formal matter and must be documented as such;
- The practitioner must be sent written notification on each occasion.

## **6.18 Third review**

6.18.1 If the practitioner has been excluded for three periods:

- A report must be made to the Chief Executive outlining the reasons for the continued exclusion, why restrictions on practice would not be an appropriate alternative, and if the investigation has not been completed, a timetable for completion of the investigation;
- The Chief Executive must report to the Designated Board Member (see paragraphs 6.3);
- The case must be reported to NCAS (see paragraph 5.7.3) explaining why continued exclusion is appropriate and what steps are being taken to conclude the exclusion, at the earliest opportunity;
- NCAS will advise the Trust on the handling of the case until it is concluded.

## **6.19 Six months review**

6.19.1 If the exclusion has been extended over six months:

- A further position report must be made by the Chief Executive to NCAS indicating the reason for continuing the exclusion, the anticipated time scale for completing the process and the actual and anticipated costs of exclusion;
- NCAS will form a view as to whether the case is proceeding at an appropriate pace and in the most effective manner and whether there is any advice they can offer to the Board.

6.19.2 There will be a normal maximum limit of six months exclusion, except for those cases involving criminal investigations of the practitioner concerned. The employer and NCAS will actively review such cases at least every six months.

## **6.20 The role of the Board**

6.20.1 Board members may be required to sit as members of a disciplinary or appeal panel. Therefore, information given to the Board should only be sufficient to enable the Board to satisfy itself that the procedures are being followed. Only the Designated Board Member should be involved to any significant degree in each review.

6.20.2 The Board is responsible for designating one of its non-executive members as a "Designated Board Member" under these procedures. The Designated Board Member is the person who oversees the case manager and

investigating manager during the investigation process and maintains momentum of the process.

6.20.3 This Designated Board Member's responsibilities include:

- Receiving reports and reviewing the continued exclusion from work;
- Considering representations from the practitioner about his or her exclusion;
- Considering any representations about the investigation;

## **6.21 Return to Work**

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

## **7. CONDUCT AND DISCIPLINARY MATTERS**

7.1 Misconduct matters for doctors and dentists, as for all other staff groups, are dealt with under the Trust Disciplinary Policy. However, where any concerns about the performance or conduct of a medical practitioner are raised, the Trust will contact NCAS for advice before proceeding.

7.2 Where the alleged misconduct being investigated relates to matters of a professional nature, or where an investigation identifies issues of professional conduct, the case investigator must obtain appropriate independent professional advice. Similarly where a case involving issues of professional conduct proceeds to a hearing under the employer's conduct procedures 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 Trust. The Trust will agree the selection of the medical or dental panel member with the Local Negotiating Committee chair.

7.3 Appendix 1 sets out acceptable standards of conduct and behaviour expected of all its employees. Breaches of these rules are considered to be "misconduct" and examples are set out in the procedure. Appendix 2 gives examples of gross misconduct.

7.4 Any allegation of misconduct against a doctor or dentist in recognised training grades should be considered initially as a training issue and dealt with via the educational supervisor and Clinical Tutor / Director of Medical Education with close involvement of the Postgraduate Dean from the outset.

7.5 Although It is for the Trust to decide upon the most appropriate way forward having consulted NCAS and their own employment law specialist, the Trust will also consult the chair of the Senior Medical Staff Advisory Group and the chair of the Local Negotiating Committee to determine which procedure (conduct vs capability), if any, should be followed, in the event of a dispute.

7.6 If a practitioner considers that the case has been wrongly classified as misconduct, he or she (or his/her representative) is entitled to use the

employer's grievance procedure. Alternatively or in addition he or she may make representations to the Designated Board Member.

## **7.7 Action when investigations identify possible criminal acts**

7.7.1 Where an investigation establishes a suspected criminal action in the UK or abroad, this will be reported to the police and a referral made to the GMC / GDC. The Trust investigation (under either its Conduct or Capability Procedure) will only proceed in respect of those aspects of the case which are not directly related to the police investigation underway. The Trust will consult the police to establish whether an investigation into any other matters would impede their investigation. In cases of fraud, the Counter Fraud & Security Management Service will be contacted.

## **7.8 Cases where criminal charges are brought not connected with an investigation by Somerset Partnership NHS Foundation Trust**

7.8.1 There are some criminal offences that, if proven, could render a doctor or dentist unsuitable for employment. In all cases, the Trust, having considered the facts, will need to consider whether the employee poses a risk to patients or colleagues and whether their conduct warrants instigating an investigation and the exclusion of the practitioner. The Trust will have to give serious consideration to whether the employee can continue in their job once criminal charges have been made. Bearing in mind the presumption of innocence, the Trust will consider whether the offence, if proven, is one that makes the doctor or dentist unsuitable for their type of work and whether, pending the trial, the employee can continue in their present job, should be allocated to other duties or should be excluded from work. This will depend on the nature of the offence and advice will be sought from the Trust's legal adviser. The Trust will explain the reasons for taking any such action to the practitioner concerned. The matter will also be referred to the GMC / GDC.

## **7.9 Dropping of charges or no court conviction**

7.9.1 When the Trust has refrained from taking action pending the outcome of a court case, if the practitioner is acquitted but the employer feels there is enough evidence to suggest a potential danger to patients, then the Trust has a public duty to take action to ensure that the individual concerned does not pose a risk to patient safety. Again, this will include referral to the GMC / GDC. Similarly where there are insufficient grounds for bringing charges or the court case is withdrawn there may be grounds for considering police evidence where the allegations would, if proved, constitute misconduct, bearing in mind that the evidence has not been tested in court. It must be made clear to the police that any evidence they provide and is used in the Trust's case will have to be made available to the doctor or dentist concerned. Where charges are dropped, the presumption is that the employee will be reinstated.

## **7.10 Terms of Settlement on Termination of Employment**

7.10.1 In some circumstances, terms of settlement may be agreed with a doctor or dentist if their employment is to be terminated. The following principles will be used by the Trust in such circumstances:

- Settlement agreements must not be to the detriment of patient safety.

- It is not acceptable to agree any settlement that precludes either appropriate investigations being carried out and reports made or referral to the appropriate regulatory body.
- Payment will not normally be made when a member of staff's employment is terminated on disciplinary grounds or following the resignation of the member of staff.
- Expenditure on termination payments must represent value for money. For example, The Trust will be able to defend the settlement on the basis that it could conclude the matter at less cost than other options. A clear record must be kept, setting out the calculations, assumptions and rationale of all decisions taken, to show that the Trust or authority has taken into account all relevant factors, including legal advice. The audit trail must also show that the matter has been considered and approved by the remuneration committee and the Board. It must also be agreed by Monitor and HM Treasury and be able to stand up to district auditor and public scrutiny.
- Offers of compensation, as an inducement to secure the voluntary resignation of an individual, must not be used as an alternative to the disciplinary process.
- All job references must be accurate, realistic and comprehensive and under no circumstance may they be misleading.
- Where a termination settlement is agreed, details may be confirmed in a Deed of Compromise that should set out what each party may say in public or write about the settlement. The Deed of Compromise is for the protection of each party, but it must not include clauses intended to cover up inappropriate behaviour, inadequate services, or prevent former employees from raising public interest concerns and should not include the provision of an open reference. For the purposes of this paragraph, an open reference is one that is prepared in advance of a request by a prospective employer.

## **8. PROCEDURE FOR DEALING WITH ISSUES OF CAPABILITY**

### **8.1 Introduction and General Principles**

- 8.1.1 There will be occasions where The Trust considers that there has been a clear failure by an individual to deliver an adequate standard of care, or standard of management, through lack of knowledge, ability or consistently poor performance. These are described as capability issues. Matters that should be described and dealt with as misconduct issues are covered in part 7 of this procedure.
- 8.1.2 Concerns about the capability of a doctor or dentist may arise from a single incident or a series of events, reports or poor clinical outcomes. Initial advice will always be sought from NCAS as an integral part of the process to help the Trust to come to a decision on whether the matter raises questions about the practitioner's capability as an individual (health problems, behavioural difficulties or lack of clinical competence) or whether there are other matters that need to be addressed. If the concerns about capability cannot be resolved routinely by management, the case must be discussed

with NCAS and consideration given to referral for further assessment by NCAS (unless the practitioner refuses to have his or her case referred in this way). The Trust will also involve NCAS in all other potential disciplinary cases.

8.1.3 Matters which fall under The Trust's capability procedures include:

- Out of date clinical practice;
- Inappropriate clinical practice arising from a lack of knowledge or skills that puts patients at risk;
- Incompetent clinical practice;
- Inability to communicate effectively with colleagues and/or patients;
- Inappropriate delegation of clinical responsibility;
- Inadequate supervision of delegated clinical tasks;
- Ineffective clinical team working skills.

This is not an exhaustive list.

8.1.4 Wherever possible, The Trust will aim to resolve issues of capability (including clinical competence and health) through ongoing assessment and support. Early identification of problems is essential to reduce the risk of serious harm to patients. NCAS will be consulted for advice to support the remediation of a doctor or dentist.

## **8.2 How to proceed where conduct and capability issues are involved**

8.2.1 It is inevitable that some cases will cover conduct and capability issues. It is recognised that these cases can be complex and difficult to manage. If a case covers more than one category of problem, they should usually be combined under a capability hearing although there may be occasions where it is necessary to pursue a conduct issue separately. Although it is for The Trust to decide upon the most appropriate way forward having consulted NCAS and their own employment law specialist, the Trust will also consult with the Chair of the Senior Medical Staff Advisory Group and the Chair of the Local Negotiating Committee to determine which procedure, if any, should be followed, in the event of a dispute. The practitioner is also entitled to use the Trust's grievance procedure if they consider that the case has been incorrectly classified. Alternatively, or in addition, he or she may make representations to the Designated Board Member.

## **8.3 Duties of Employers**

8.3.1 The procedures set out below are designed to cover situations where a doctor's or dentist's *capability* to practise is in question. Prior to instigating these procedures, the employer will consider the scope for resolving the issue through counselling or retraining and will take advice from NCAS.

8.3.2 Capability may be affected by ill health and this will be considered in any investigation. Arrangements for handling concerns about a practitioner's health are described in part 9 of this procedure.

8.3.3 The Trust will ensure that investigations and capability procedures are conducted in a way that does not discriminate on the grounds of disability,

sensory impairment, faith or belief, ethnicity, gender, sexual orientation, transgender status or age.

- 8.3.4 The Trust will ensure that medical managers and case investigators receive appropriate and effective training in the operation of this procedure. Those undertaking investigations or sitting on capability or appeals panels must have had formal Equality and Diversity training before undertaking such duties. The Trust Board will agree what training staff and Board members must have completed before they can take a part in these proceedings.

#### **8.4 The pre-hearing process**

- 8.4.1 When a report of the Trust investigation under Section 5 (above) has been received, the case manager must give the practitioner the opportunity to comment in writing on the factual content of the report produced by the case investigator. Comments in writing from the practitioner, including any mitigation, must normally be submitted to the case manager within 10 working days of the date of receipt of the request for comments. In exceptional circumstances, for example in complex cases or due to annual leave, the deadline for comments from the practitioner can be extended.

- 8.4.2 Where the investigation report identifies a capability issue, the case manager should decide what further action is necessary, taking into account the findings of the report, any comments that the practitioner has made and the advice of NCAS. The case manager will need to consider urgently:

- Whether action under Section 6 of the procedure is necessary to exclude the practitioner; or
- To place temporary restrictions on their clinical duties.

The case manager will also need to consider with the Medical Director and Director of Human Resources whether the issues of capability can be resolved through local action (such as retraining, counselling, performance review). If this action is not practicable for any reason the matter must be referred to the NCAS for it to consider whether an assessment should be carried out and to provide assistance in drawing up an action plan. The case manager will inform the practitioner concerned of the decision immediately and normally within 10 working days of receiving the practitioner's comments.

- 8.4.3 NCAS will assist The Trust in drawing up an action plan designed to enable the practitioner to remedy any lack of capability that has been identified during the assessment. The Trust will facilitate the agreed action plan (which has to be agreed by the Trust and the practitioner before it can be implemented). There may be occasions when a case has been considered by NCAS, but the advice of its assessment panel is that the practitioner's performance is so fundamentally flawed that no educational and/or organisational action plan has a realistic chance of success. In these circumstances, the case manager must make a decision, based upon the completed investigation report and informed by NCAS advice, whether the case should be determined under the capability procedure. If so, a panel hearing will be necessary.

- 8.4.4 If the practitioner does not agree to the case being referred to NCAS, a panel hearing will normally be necessary.

8.4.5 If a capability hearing is to be held, the following procedure will be followed beforehand:

- The case manager must notify the practitioner in writing of the decision to arrange a capability hearing. This notification should be made at least 20 working days before the hearing and include details of the allegations and the stage the hearing represents in the disciplinary process, the date, time and venue of the hearing, the names and job titles of those hearing and assisting at the disciplinary hearing, the arrangements for proceeding including the practitioner's rights to be accompanied and to present evidence/ call witnesses, the names of any witnesses to be summoned and copies of any documentation and / or evidence that will be made available to the capability panel. This period will give the practitioner sufficient notice to allow them to arrange for a companion to accompany them to the hearing if they so choose;
- All parties must exchange any documentation, including witness statements, on which they wish to rely in the proceedings no later than 10 working days before the hearing. In the event of late evidence being presented, the employer should consider whether a new date should be set for the hearing;
- Should either party request a postponement to the hearing the case manager is responsible for ensuring that a reasonable response is made and that time extensions to the process are kept to a minimum. The Trust retains the right, after a reasonable period (not less than 30 working days), to proceed with the hearing in the practitioner's absence, although the Trust will act reasonably in deciding to do so, taking into account any comments made by the practitioner;
- Should the practitioner's ill health prevent the hearing taking place The Trust will implement its usual absence procedures and involve the Occupational Health Service as necessary;
- Witnesses who have made written statements at the inquiry stage may, but will not necessarily, be required to attend the capability hearing. Following representations from either side contesting a witness statement, which is to be relied upon in the hearing, the Chairman will invite the witness to attend. The Chairman cannot require anyone other than an employee to attend. However, if evidence is contested and the witness is unable or unwilling to attend, the panel will reduce the weight given to the evidence as there will not be the opportunity to challenge it properly. A final list of witnesses to be called must be given to both parties not less than two working days in advance of the hearing;
- If witnesses who are required to attend the hearing choose to be accompanied, the accompanying person cannot participate in the hearing.

## **8.5 The hearing framework**

8.5.1 The capability hearing will be chaired by an Executive Director of Somerset Partnership NHS Foundation Trust. The panel will comprise a total of three



people, normally two members of the Trust Board, or senior staff appointed by the Board for the purpose of the hearing. At least one member of the panel must be a medical or dental practitioner who is not employed by the Trust. The Trust will agree the external medical or dental member with the Chair of the Senior Medical Staff Advisory Group and the Chair of the Local Negotiating Committee.

- 8.5.2 No member of the panel or advisers to the panel should have been previously involved in carrying out the investigation.
- 8.5.3 Arrangements must be made for the panel to be advised by:
- A senior member of staff from Human Resources, and
  - A senior clinician (medical or dental practitioner, as appropriate) from the same or similar clinical specialty as the practitioner concerned, but from another NHS employer.
- 8.5.4 It is important that the panel is aware of the typical standard of competence required of the grade of doctor in question. If for any reason the senior clinician is unable to advise on the appropriate level of competence, a doctor from another NHS employer in the same grade as the practitioner in question will be asked to provide advice.
- 8.5.5 The practitioner may raise an objection to the choice of any panel member within 5 working days of notification. Somerset Partnership NHS Foundation Trust will review the situation and take reasonable measures to ensure that the membership of the panel is acceptable to the practitioner. It may be necessary to postpone the hearing while this matter is resolved. Somerset Partnership NHS Foundation Trust will provide the practitioner with the reasons for reaching its decision in writing before the hearing can take place.

## **8.6 Representation at capability hearings**

- 8.6.1 The practitioner will be given every reasonable opportunity to present his or her case, although the hearing should not be conducted in a legalistic or excessively formal manner.
- 8.6.2 The practitioner may be represented in the process by a friend, partner or spouse, colleague, or a representative who may be from or retained by a trade union or defence organisation. Such a representative may be legally qualified but they will not be representing the practitioner formally in a legal capacity. The representative will be entitled to present a case on behalf of the practitioner, address the panel and question the management case and any witness evidence.

## **8.7 Conduct of the capability hearing**

- 8.7.1 The hearing should be conducted as follows:
- The panel and its advisers (see paragraph 8.5.1 – 8.5.4), the practitioner, his or her representative and the case manager will be present at all times during the hearing. Witnesses will be admitted only to give their evidence and answer questions and will then retire;
  - The Chairman of the panel will be responsible for the proper conduct of the proceedings. The Chairman should introduce all persons

present and announce which witnesses are available to attend the hearing;

- The procedure for dealing with any witnesses attending the hearing shall be the same and shall reflect the following:
  - The witness to confirm any written statement and give any supplementary evidence;
  - The side calling the witness can question the witness;
  - The other side can then question the witness;
  - The panel may question the witness;
  - The side that called the witness may seek to clarify any points, which have arisen during questioning but may not at this point raise new evidence.

8.7.2 The order of presentation shall be:

- The Case Manager presents the management case including calling any witnesses. The above procedure for dealing with witnesses shall be undertaken for each witness in turn, at the end of which each witness shall be allowed to leave;
- The Chairman shall invite the Case Manager to clarify any matters arising from the management case on which the panel requires further clarification.
- The practitioner and / or their representative shall present the practitioner's case, calling any witnesses. The above procedure for dealing with witnesses shall be undertaken for each witness in turn, at the end of which each witness shall be allowed to leave;
- The Chairman shall invite the practitioner and / or representative to clarify any matters arising from the practitioner's case on which the panel requires further clarification;
- The Chairman shall invite the Case Manager to make a brief closing statement summarising the key points of the case;
- The Chairman shall invite the practitioner and/or representative to make a brief closing statement summarising the key points of the practitioner's case. Where appropriate this statement may also introduce any grounds for mitigation;
- The panel shall then retire to consider its decision.

## **8.8 Decisions**

8.8.1 The panel will have the power to make a range of decisions including the following:

- No action required;
- Oral agreement that there must be an improvement in clinical performance within a specified time scale with a written statement of what is required and how it might be achieved (stays on the employee's record for 6 months);

- Written warning (for concerns not addressed by an oral agreement or of a more serious nature) that there must be an improvement in clinical performance within a specified time scale with a statement of what is required and how it might be achieved (stays on the employees' record for 1 year);
- Final written warning (for concerns not addressed by a first written warning or of a more serious nature) that there must be an improvement in clinical performance within a specified time scale with a statement of what is required and how it might be achieved (stays on the employee's record for 1 year);
- Termination of contract (for concerns not addressed by a final written warning or of a more serious nature).

8.8.2 It is also reasonable for the panel to make comments and recommendations on issues other than the competence of the practitioner, where these issues are relevant to the case. For example, there may be issues concerning the systems and procedures operated by the employer that the panel wishes to comment upon.

8.8.3 A record of oral agreements and written warnings should be kept on the practitioner's personnel file. The length of time the warning remains "live" on the practitioner's personnel file, and can be referred to in subsequent disciplinary action, is as stated in 8.8.7.

8.8.4 The decision of the panel will be communicated to the parties as soon as possible and normally within 5 working days of the hearing. Because of the complexities of the issues under deliberation and the need for detailed consideration, the parties should not necessarily expect a decision on the day of the hearing.

8.8.5 The decision must be confirmed in writing to the practitioner. This notification must include reasons for the decision, clarification of the practitioner's right of appeal and notification of any intent to make a referral to the GMC / GDC or any other external / professional body.

## **8.9 Appeals in Capability Cases**

8.9.1 The appeals procedure provides a mechanism for practitioners who disagree with the outcome of a decision to have an opportunity for the case to be reviewed. The appeal panel will need to establish whether Somerset Partnership NHS Foundation Trust's procedures have been adhered to and that the panel in arriving at their decision acted fairly and reasonably based on:

- A fair and thorough investigation of the issue;
- Sufficient evidence arising from the investigation or assessment on which to base the decision;
- Whether in the circumstances the decision was fair and reasonable, and commensurate with the evidence heard.

8.9.2 It can also hear new evidence submitted by the practitioner and consider whether it might have significantly altered the decision of the original hearing. The appeal panel, however, should not re-hear the case in its

entirety (but in certain circumstances it may order a new hearing see 8.10.2).

- 8.9.3 A dismissed practitioner will potentially be able to take their case to an Employment Tribunal where the reasonableness of the Trust's actions can be tested.

## **8.10 The appeal process**

- 8.10.1 The predominant purpose of the appeal is to ensure that a fair hearing was given to the original case and a fair and reasonable decision reached by the hearing panel. The appeal panel has the power to confirm or vary the decision made at the capability hearing, or order that the case is re-heard. Where it is clear in the course of the appeal hearing that the proper procedures have not been followed and the appeal panel determines that the case needs to be fully re-heard, the Chairman of the panel shall have the power to instruct a new capability hearing.
- 8.10.2 Where the appeal is against dismissal, the practitioner should not be paid during the appeal, if it is heard after the date of termination of employment. Should the appeal be upheld, the practitioner should be reinstated and have their pay backdated to the date of termination of employment. Where the decision is to re-hear the case, the practitioner should also be reinstated, subject to any conditions or restrictions in place at the time of the original hearing, and pay backdated to the date of termination of employment.

## **8.11 The appeal panel**

- 8.11.1 The panel will consist of three members. The members of appeal panel must not have had any previous direct involvement in the matters that are the subject of the appeal, for example they must not have acted as the Designated Board Member. These members will be:
- An independent member (trained in legal aspects of appeals) from an approved pool. This person will be appointed from the national list held by NHS Employers for this purpose (see Annex A to 'Maintaining High Professional Standards in the Modern NHS'). This person is designated Chairman;
  - The Chairman (or other Non-Executive Director) of the employing organisation who must have the appropriate training for hearing an appeal;
  - A medically qualified member (or dentally qualified if appropriate) who is not employed by The Trust who must also have the appropriate training for hearing an appeal. The Trust will agree the external medical or dental member with the Chair of the Senior Medical Staff Advisory Group / Local Negotiating Committee.
- 8.11.2 The panel should call on others to provide specialist advice. This will include:
- A senior clinician from the same specialty or subspecialty as the appellant, but from another NHS employer. Where the case involves a dentist this may be a consultant or an appropriate senior practitioner;

- A senior human resources specialist who may be from another NHS organisation.
- 8.11.3 It is important that the panel is aware of the typical standard of competence required of the grade of doctor in question. If for any reason the senior clinician is unable to advise on the appropriate level of competence, a doctor from another NHS employer in the same grade as the practitioner in question will be asked to provide advice.
- 8.11.4 The Trust will make the arrangements for the panel and notify the appellant as soon as possible and in any event within the recommended timetable in paragraph 8.11.6. This notification should include the date, time and venue of the hearing, the names and job titles of those hearing and assisting at the appeal, the arrangements for proceeding including the practitioner's rights to be accompanied and copies of any documentation and / or evidence that will be made available to the appeal panel.
- 8.11.5 The practitioner may raise an objection to the choice of any panel member within 5 working days of notification. The Trust will review the situation and take reasonable measures to ensure that the membership of the panel is acceptable to the practitioner. It may be necessary to postpone the hearing while this matter is resolved. The Trust must provide the practitioner with the reasons for reaching its decision in writing before the hearing can take place.
- 8.11.6 It is in the interests of all concerned that appeals are heard speedily and as soon as possible after the original capability hearing. The following timetable will apply in all cases:
- Appeal by written statement to be submitted to the designated appeal point (normally the Director of Human Resources) within 25 working days of the date of the written confirmation of the original decision;
  - Hearing to take place within 25 working days of date of lodging appeal;
  - Decision reported to the appellant and the Trust within 5 working days of the conclusion of the hearing.
- 8.11.7 The timetable will be agreed between Somerset Partnership NHS Foundation Trust and the appellant and thereafter varied only by mutual agreement. The case manager should be informed and is responsible for ensuring that extensions are absolutely necessary and kept to a minimum.

## **8.12 Powers of the appeal panel**

- 8.12.1 The appeal panel has the right to call witnesses of its own volition, but must notify both parties at least 10 working days in advance of the hearing and provide them with a written statement from any such witness at the same time.
- 8.12.2 Exceptionally, where during the course of the hearing the appeal panel determines that it needs to hear the evidence of a witness not called by either party, then it shall have the power to adjourn the hearing to allow for a written statement to be obtained from the witness and made available to both parties before the hearing reassembles.

8.12.3 If, during the course of the hearing, the appeal panel determines that new evidence needs to be presented, it should consider whether an adjournment is appropriate. Much will depend on the weight of the new evidence and its relevance. The appeal panel has the power to determine whether to consider the new evidence as relevant to the appeal, or whether the case should be re-heard, on the basis of the new evidence, by a capability hearing panel.

### **8.13 Conduct of appeal hearing**

8.13.1 All parties should have all documents, including witness statements, from the previous capability hearing together with any new evidence.

8.13.2 The practitioner may be represented in the process by a friend, partner or spouse, colleague or a representative who may be from or retained by a trade union or defence organisation. Such a representative may be legally qualified but they will not be representing the practitioner formally in a legal capacity. The representative will be entitled to present a case on behalf of the practitioner, address the panel and question the management case and any written evidence.

8.13.3 Both parties will present full statements of fact to the appeal panel and will be subject to questioning by either party, as well as the panel. When all the evidence has been presented, both parties shall briefly sum up. At this stage, no new information can be introduced. The appellant (or his/her companion) can at this stage make a statement in mitigation.

8.13.4 The panel, after receiving the views of both parties, shall consider and make its decision in private.

### **8.14 Decision**

8.14.1 The decision of the appeal panel shall be made in writing to the appellant and shall be copied to The Trust's case manager such that it is received within 5 working days of the conclusion of the hearing. The decision of the appeal panel is final and binding. There shall be no correspondence on the decision of the panel, except and unless clarification is required on what has been decided (but not on the merits of the case), in which case it should be sought in writing from the Chairman of the appeal panel.

### **8.15 Action following hearing**

8.15.1 Clear written records must be kept, including a report detailing the capability issues, the practitioner's defence or mitigation, the action taken and the reasons for it. These records must be kept confidential and retained in accordance with the capability procedure and the Data Protection Act 1998. These records need to be made available to those with a legitimate call upon them, such as the practitioner, the Regulatory Body, or in response to a Direction from an Employment Tribunal.

### **8.16 Termination of Employment with Performance Issue Unresolved**

8.16.1 Where an employee leaves employment before disciplinary procedures have been completed, any outstanding disciplinary investigation will be concluded and capability proceedings will be completed where possible.

- 8.16.2 Where employment ends before investigation or proceedings have been concluded, every reasonable effort will be made to ensure the former employee remains involved in the process. If contact with the employee has been lost, the Trust will invite them to attend any hearing by writing to both their last known home address and their registered address (the two will often be the same). Somerset Partnership NHS Foundation Trust will make a judgement, based on the evidence available, as to whether the allegations about the practitioner's capability are upheld. If the allegations are upheld, the Trust will take appropriate action, such as requesting the issue of an 'Alert Letter' and referral to the professional regulatory body, referral to the police, or the Protection of Children Act List (held by the Department for Education and Skills).
- 8.16.3 If an excluded employee or an employee facing capability proceedings becomes ill, they will be subject to Somerset Partnership NHS Foundation Trust's Managing Sickness Absence Policy. The sickness absence procedures take precedence over the capability procedures and Somerset Partnership NHS Foundation Trust will take reasonable steps to give the employee time to recover and attend any hearing. Where the employee's illness exceeds 4 weeks, they must be referred to the Occupational Health Service. The Occupational Health Service will advise the Trust on the expected duration of the illness and any consequences it may have for the capability process and will also be able to advise on the employee's capacity for future work, as a result of which The Trust may wish to consider retirement on health grounds. Should employment be terminated as a result of ill health, the investigation should still be taken to a conclusion and the Trust form a judgement as to whether the allegations are upheld.
- 8.16.4 If, in exceptional circumstances, a hearing proceeds in the absence of the practitioner, for reasons of ill-health, the practitioner will have the opportunity to submit written submissions and/or have a representative attend in his or her absence.
- 8.16.5 Where a case involves allegations of abuse against a child, the guidance issued to the NHS in September 2000, called "The Protection of Children Act 1999 – A Practical Guide to the Act for all Organisations Working with Children" gives more detailed information. A copy can be found on the Department of Health website [www.dh.gov.uk/PublicationsAndStatistics](http://www.dh.gov.uk/PublicationsAndStatistics)).

## **9. HANDLING CONCERNS ABOUT A PRACTITIONER'S HEALTH**

- 9.1 A wide variety of health problems can have an impact on an individual's clinical performance. These conditions may arise spontaneously or be as a consequence of work place factors such as stress.
- 9.2 The Trust's key principle for dealing with individuals with health problems is that, wherever possible and consistent with reasonable public protection, they should be treated, rehabilitated or re-trained (for example if they cannot undertake exposure prone procedures) and kept in employment, rather than be lost from the NHS.

### **9.3 Retaining the services of individuals with health problems**

9.3.1 Wherever possible The Trust will attempt to continue to employ individuals provided this does not place patients or colleagues at risk. In particular, the Trust will consider the following actions for staff with ill-health problems:

- Sick leave for the practitioner (the practitioner to be contacted frequently on a pastoral basis to stop them feeling isolated);
- Remove the practitioner from certain duties;
- Reassign them to a different area of work;
- Arrange re-training or adjustments to their working environment, with appropriate advice from NCAS and/or Deanery. Under the Equality Act 2010 an employer has a duty to make reasonable adjustments.
- This is not an exhaustive list

### **9.4 Reasonable adjustment**

9.4.1 At all times the practitioner will be supported by the Trust and the Occupational Health Service which will ensure that the practitioner is offered every available resource to get back to practise where appropriate. The Trust will consider what reasonable adjustments could be made to their workplace or other arrangements, in line with the Equality Act (2010). In particular, it will consider:

- Making adjustments to the premises;
- Re-allocating some of a disabled person's duties to another;
- Transferring an employee to an existing vacancy;
- Altering an employee's working hours or pattern of work;
- Assigning the employee to a different workplace;
- Allowing absence for rehabilitation, assessment or treatment;
- Providing additional training or retraining;
- Acquiring / modifying equipment;
- Modifying procedures for testing or assessment;
- Providing a reader or interpreter;
- Establishing mentoring arrangements.

9.4.2 In some cases retirement due to ill health may be necessary. Ill health retirement should be approached in a reasonable and considerate manner, in line with NHS Pensions Agency advice. However, any issues relating to conduct or capability that have arisen will be resolved, using the appropriate agreed procedures.

### **9.5 Handling Health Issues**

9.5.1 Where there is an incident that points to a problem with the practitioner's health, the incident may need to be investigated to determine a health problem. If the report recommends Occupational Health Service



involvement, the nominated medical manager must immediately refer the practitioner to the Occupational Health Service.

- 9.5.2 NCAS should be approached to offer advice on any situation and at any point where the employer is concerned about a doctor or dentist. Even apparently simple or early concerns should be referred, as these are easier to deal with before they escalate.
- 9.5.3 The occupational health physician should agree a course of action with the practitioner, send his / her recommendations to the Medical Director and a meeting should be convened with the Director of Human Resources, the Medical Director or case manager, the practitioner and case worker from the Occupational Health Service to agree a timetable of action and rehabilitation (where appropriate). The practitioner may wish to be accompanied at this meeting. This could be a family member, a colleague or a trade union or defence association representative. Confidentiality must be maintained by all parties at all times.
- 9.5.4 If a doctor or dentist's ill health makes them a danger to patients and they do not recognise that, or are not prepared to co-operate with measures to protect patients, then exclusion from work and referral to the professional regulatory body must be considered (irrespective of whether or not they have retired on the grounds of ill health).
- 9.5.5 In those cases where there is impairment of performance solely due to ill health, disciplinary procedures will be considered only in the most exceptional of circumstances, for example if the individual concerned refuses to co-operate with the employer to resolve the underlying situation e.g. by repeatedly refusing a referral to the Occupational Health Service or NCAS. In these circumstances the procedures in Section 8 should be followed.
- 9.5.6 There will be circumstances where an employee who is subject to disciplinary proceedings puts forward a case, on health grounds, that the proceedings should be delayed, modified or terminated. In such cases Somerset Partnership NHS Foundation Trust will refer the doctor or dentist to the Occupational Health Service for assessment as soon as possible. Unreasonable refusal to accept a referral to, or to co-operate with, the Occupational Health Service under these circumstances, may give separate grounds for pursuing disciplinary action.

## **10. TRAINING REQUIREMENTS**

- 10.1 The Trust will work towards all staff being appropriately trained in line with the organisation's Staff Training Matrix (training needs analysis).
- Trust Mandatory Equality and Diversity Training.
  - Trust Mandatory Safeguarding Adults and Children Training.
- 10.2 Those authorised to undertake the procedures set out in this policy will be trained and competent. The Trust will ensure that medical managers and case investigators receive appropriate and effective training in the operation of this Policy. Those undertaking investigations or sitting on capability or appeals panels must have had formal equal opportunities training before undertaking such duties. The Trust Board will agree what training staff and

Board members must have completed before they can take a part in these proceedings.

## **11. EQUALITY IMPACT ASSESSMENT**

11.1 All relevant persons are required to comply with this document and must demonstrate sensitivity and competence in relation to the nine protected characteristics as defined by the Equality Act 2010. In addition, the Trust has identified Learning Disabilities as an additional tenth protected characteristic. If you, or any other groups, believe you are disadvantaged by anything contained in this document please contact the Equality and Diversity Lead who will then actively respond to the enquiry.

## **12. MONITORING COMPLIANCE AND EFFECTIVENESS**

12.1 The Policy will be regularly reviewed and maintained by the Senior Clinical Investigator.

12.2 The application of this policy will be monitored through the Medical Director's office. Adherence to the policy will be monitored through audit and also through feedback from all those involved in the process.

12.3 The HR team will provide data identifying the number of doctors currently excluded. Information will be extracted from the HR Disciplinary investigation log

12.4 Reports identifying excluded doctors are required by NCAS

12.5 Quarterly reports will be submitted to the Board giving the number of doctors excluded pending investigation.

## **13. COUNTER FRAUD**

13.1 The Trust is committed to the NHS Protect Counter Fraud Policy – to reduce fraud in the NHS to a minimum, keep it at that level and put funds stolen by fraud back into patient care. Therefore, consideration has been given to the inclusion of guidance with regard to the potential for fraud and corruption to occur and what action should be taken in such circumstances during the development of this procedural document.

## **14. RELEVANT CARE QUALITY COMMISSION (CQC) REGISTRATION STANDARDS**

14.1 Under the **Health and Social Care Act 2008 (Regulated Activities) Regulations 2014 (Part 3)**, the **fundamental standards** which inform this procedural document, are set out in the following regulations:

|                |  |
|----------------|--|
| Regulation 12: | Safe care and treatment                                      |
| Regulation 13: | Safeguarding service users from abuse and improper treatment |
| Regulation 16: | Receiving and acting on complaints                           |
| Regulation 17: | Good governance  |
| Regulation 18: | Staffing   |
| Regulation 19: | Fit and proper persons employed                              |
| Regulation 20: | Duty of candour  |

14.2 Under the **CQC (Registration) Regulations 2009 (Part 4)** the requirements which inform this procedural document are set out in the following regulations:

Regulation 18: Notification of other incidents

- 14.3 Detailed guidance on meeting the requirements can be found at <http://www.cqc.org.uk/sites/default/files/20150311%20Guidance%20for%20providers%20on%20meeting%20the%20regulations%20FINAL%20FOR%20PUBLISHING.pdf>

## 15. REFERENCES

### 15.1 References

*High Professional Standards in the Modern NHS; a framework for the initial handling of concerns about doctors and dentists in the NHS*, under cover of HSC 2003/012.

### 15.2 Cross reference to other procedural documents

Allegations Against Staff (Managing) Policy

Anti-Bullying and Harassment Policy

Appraisal Policy for Medical Staff

Counter Fraud Policy

Disciplinary Policy

Equality and Diversity Policy

Ethical Standards and Code of Conduct Policy

Sickness and Absence Management Policy

All current policies and procedures are accessible in the policy section of the public website (on the home page, click on 'Policies and Procedures'). Trust Guidance is accessible to staff on the Trust Intranet.

## 16. APPENDICES

- 16.1 For the avoidance of any doubt the appendices in this policy are to constitute part of the body of this policy and shall be treated as such.

Appendix 1 - Standards of personal conduct

Appendix 2 – Gross Misconduct

**Signed:** DR ANDREW DAYANI    **Date:** May 2015

*(on behalf of Somerset Partnership NHS Foundation Trust)*

**Signed:** DR PETER PARK    **Date:** May 2015

*(on behalf of the LNC)*

**To be reviewed jointly by the Trust and LNC in March 2018**

Somerset Partnership NHS Foundation Trust

**STANDARDS OF PERSONAL CONDUCT**

**1. INTRODUCTION**

- 1.1 This document indicates the standards of personal conduct expected of all staff employed by the Trust.
- 1.2 The Trust recognises that these guidelines cannot cover every situation which arises and that the guidelines or rules may vary according to the type of work, working conditions and size of any department. This Appendix is therefore **not** intended to provide an exhaustive list of the expectations of standards of performance and is therefore provided by way of guidance only.
- 1.3 A serious (or wilfully negligent) breach of any of the standards of conduct as set out in this document could result in the dismissal of the member of staff committing the breach.

**2. GENERAL STANDARDS**

**GENERAL CONDUCT**

- 2.1 A high standard of conduct is expected of staff at all times. All staff are required to combine prompt and efficient service with concern and respect for the feelings of other people, including colleagues.
- 2.2 All staff are required to adhere to Trust policies and procedures
- 2.3 Staff governed by Trust and/or professional Codes of Conduct are required to know, understand and adhere to those Codes.
- 2.4 Staff should follow the reasonable instructions of their line manager or of others with authority to issue instructions.
- 2.5 Staff must engage with colleagues in a positive, courteous and collaborative manner.

**ATTENDANCE**

- 2.6 Staff are required to be punctual; to work their contracted hours; and to be engaged on work for the Trust during those hours. Staff who work flexibly must do so within the local rules and guidelines for flexible working.
- 2.7 In the case of sickness, sudden domestic emergency or other reason preventing a member of staff from reporting for work, the responsibility lies with the member of staff to inform the nominated person in accordance with the Managing Sickness and Absence Policy.

## **SMOKING**

- 2.8 Whilst on duty, staff are prohibited from smoking whilst on Trust premises, including Trust grounds; and NHS premises and surrounding grounds. Staff are required to adhere to the smoking policies of other organisations which they visit in the course of their work. Staff may not smoke in Trust vehicles, including lease cars and may not smoke in their own vehicles, when these are parked in Trust car parks or on Trust grounds. Community staff or others visiting patients in their own homes or other community based premises are prohibited from smoking during such visits.

## **PRIVATE BUSINESS**

- 2.9 *Conducting private business arrangements in Trust paid time, including whilst on leave due to sickness, is not permitted. Private business arrangements are where an individual undertakes other paid work during time during which the individual is being paid to work for the Trust, the results of which provide additional personal income by way of cash or goods received by any third party (please note that medical staff have an exemption and can see private patients on Trust premises according to arrangements specified in consultant job plans).*
- 2.10 Staff employed by the Trust are not prevented by their contract of employment from accepting other work outside their contracted working hours (which include stand-by or on-call) but any such employment must accord with the Standing Financial Instructions; must not in any way hinder or conflict with the interests of the employee's employment with the Trust; contravene the Trust's Flexible Working Policy; or, in conjunction with the hours worked for the Trust, render the employee and/or the Trust in breach of the European Working Time Directive.

## **SECURITY AND HEALTH AND SAFETY**

- 2.11 The relevant policies of the Trust set out the security and Health and Safety requirements respectively. Deliberate or negligent disregard of these requirements will normally be treated as a disciplinary matter.
- 2.12 The unauthorised cutting of keys is not permitted.
- 2.13 Lending Trust keys and staff passes to any other person.

## **DISCRIMINATION, HARASSMENT AND BULLYING**

- 2.14 The Equality and Diversity Policy and Anti-Bullying and Harassment Policy of the Trust set out clear expectations of the conduct required by staff.
- 2.15 All staff have a duty not to act in a way which is discriminatory, abusive or which constitutes harassment. This requirement applies to interactions with all people, with whom the employee comes into contact during the course of employment, including service users, their carers and their families and the staff of other organisations as well as those of the Trust.

### **PRIVATE TELEPHONE CALLS, MAIL AND E-MAIL**

- 2.16 Occasional urgent and brief private telephone calls are acceptable. However, excessive use of the telephone and overseas calls are not allowed.
- 2.17 Occasional urgent and brief private e-mails are acceptable, but must not include any attachments, language or images, which could be deemed to be offensive in any way.
- 2.18 Small amounts of stamped mail may be sent through the mail collection facilities of the Trust. Use, for private mail, of the franking system or of stamps provided by the Trust will be regarded as theft unless arrangements are being made to pay for this.

### **FITNESS TO WORK**

- 2.19 Staff are expected to be fit for work at all times and their attendance and should not be affected by alcohol, drugs or excessive tiredness. Where there is a medical reason for any less than optimum performance, the line manager must be advised and the employee submit to examination by Occupational Health and/or other medical specialists as required by the Trust.

### **ACCEPTANCE OF GIFTS AND HOSPITALITY**

- 2.20 Staff must adhere to the rules regarding the acceptance of gifts and hospitality as set out in the Trust Ethical Standards and Code of Conduct Policy. The Prevention of Corruption Acts prohibit staff from soliciting or receiving any gift or considerations of any kind from contractors or their agents, or from any organisations, firms or individuals with whom they are brought into contact by reason of their official duties; subject to the terms of HSG(93)5. Gifts or offers of hospitality should be registered in the Register of Hospitality/Sponsorship as set out in the Trust Ethical Standards and Code of Conduct Policy.

### **USE OF TRUST'S IT SYSTEMS**

- 2.21 Staff must adhere to the Trust's policies and guidelines for the use of computers, laptops, PowerPoint presentations and the use of e-mail.

**Somerset Partnership NHS Foundation Trust****GROSS MISCONDUCT**

Gross misconduct is misconduct of such a nature that the Trust is justified, having considered any mitigating circumstances, in no longer tolerating the continued employment of a member of staff who commits such an offence. Gross misconduct is misconduct, which, if substantiated, will normally lead to summary dismissal without notice.

The following offences are amongst those regarded as gross misconduct and will normally lead to dismissal without prior warning and without pay or paid notice. This list is not exhaustive and other examples of misconduct may be defined as gross misconduct dependent upon the circumstances.

**THEFT / FRAUD / MALICIOUS DAMAGE**

Removal of property from the premises of the Trust without prior approval of an appropriate person, may be considered as gross mis-conduct.

- any attempt to defraud the Trust, the wider NHS, Trust employees, contractors, patients or visitors may be regarded as gross mis-conduct. This includes but is not exclusive to:
- misrepresentation of entitlement to expenses, allowances or other payments by the Trust
- falsification of, or misrepresentation on, a flexi-time sheet or other pay roll related or similar document
- deliberate disregard of the Standing Financial Instructions of the Trust.

**CORRUPTION/PERSONAL FINANCIAL INTERESTS**

The receipt of money, goods, favours or excessive hospitality in respect of services rendered, for example, from contactors in anticipation or recognition of receiving orders for goods or services. This does not include trivial items clearly intended for advertising but all such items received should be advised to the line manager of the employee.

Failure to disclose any personal financial interest in outside companies, firms or other agencies with which the Trust deals, as soon as such an interest becomes known to the employee.

**ASSAULT AND FIGHTING**

Any verbal or physical assault on any person (be they in the employ or care of the Trust or otherwise) which takes place on or off the premises of the Trust, and regardless of whether the assault takes place during working time.

Any fighting on premises of the Trust, regardless of any comment between the parties in such an altercation.

Malicious damage to any property of the Trust, including computer equipment and information, or to the property of visitors or staff.

## **PERSISTENT OR SEVERE BULLYING AND/OR HARASSMENT**

Persistent or severe bullying and/or harassment; or unlawful discrimination.

## **INAPPROPRIATE MATERIAL**

Deliberately accessing Internet sites or other sources containing pornographic, obscene or offensive material, and/or transmitting such material to others (including the employee's own e-mail etc systems) inside or outside the Trust via the work systems of the Trust.

## **SECURITY AND HEALTH AND SAFETY**

Any serious and/or deliberate contravention of the safety or security regulations and the Trust policies and procedures governing health and security.

## **CONFIDENTIAL INFORMATION**

Any unauthorised acquisition and/or disclosure of confidential information, in breach of employees obligations of confidentiality whether contractual, statutory or otherwise.

Much of the information to which staff have access is highly confidential. Certain actions and breaches of confidentiality may be regarded gross misconduct, which could result in disciplinary action being taken, up to and including summary dismissal. These include:

- accessing and/or reading confidential patient or Trust information without a legitimate work related reason
- communicating confidential information relating to patients/clients and staff without authority;
- failing to adhere to the provisions of the Data Protection Act 1998;
- communicating contract terms and prices; business forecasts; or information relating to tenders for/of services without authority or to unauthorised persons;
- communicating confidential information relating to other organisations;
- failing to safeguard information held on paper / moveable systems (such as lap tops and memory sticks) so that it does or may fall into the hands of unauthorised persons;
- failing to use properly the systems provided by the Trust for the confidentiality of information (Filing; key systems; visitor arrangements etc.)
- Failure to comply with the Trust's IT Policies and Procedures regarding confidentiality

## **BRINGING THE TRUST INTO DISREPUTE**

Any deliberate action, which brings the Trust into disrepute - this could include any actions outside work which damage the Trust's trust in the employee, damage the good standing of the Trust or threaten the health, safety or welfare of others  
*(Examples might include conviction for accessing/downloading illegal material on*



*own computer; conviction for theft or acting as a 'fence' for stolen goods; other criminal convictions).*

### **FAILURE TO FOLLOW REASONABLE HEALTH & SAFETY INSTRUCTIONS**

Failure to follow reasonable instructions, which relate to the health and safety of others, including the clinical and non clinical treatment and care of patients.

### **OTHER MISCONDUCT**

Attending work in a state of inebriation or under the influence of recreational and/or illegal drugs and other substances.

Breach of any statutory requirement for continuation of the employment (*Examples might include loss of driving licence, loss of registration to practise*).