

**Joint Policy for Cumbria Partnership Foundation Trust &  
North Cumbria University Hospitals NHS Trust**

**DISCIPLINARY POLICY & PROCEDURE**

|                             |  |
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| <b>Policy Author</b>        | HR Business Partners, HR Managers, HR Advisors |

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## Data Protection Legislation

The Trust(s) are committed fully to compliance with the requirements of the General Data Protection Regulations (GDPR) 2016 and the Data Protection Act (DPA) 2018. The GDPR and DPA legislation aims to balance the requirements of organisations to collect, store and manage various types of personal data in order to provide their services, with the privacy rights of the individual about whom the data is held.

The GDPR and DPA legislation covers both manual and computerised records in any format, where the record contains details that can identify, directly or indirectly data on a natural person or persons. The DPA sets out principles which must be followed by those who process data; it gives rights to those whose data is being processed.

## Policy On A Page

### **SUMMARY & AIM**

The Trusts are committed to encouraging and supporting their employees to achieve and maintain the high standards of conduct necessary for the efficient operation of the business and for the health, safety and welfare of their employees, patients and visitors.

The main purpose of operating this policy and procedure is to encourage improvement in an employee whose conduct is below acceptable standards.

### **TARGET AUDIENCE**

- All employees

### **TRAINING**

- Support and advice for managers regarding the application of this policy and procedure can be sought from the Human Resources Department
- Guidance notes for regarding the application of the policy and procedure can also be found in the Disciplinary Policy and Procedure Toolkit in the HR Section of the Trusts' intranets.
- People Management Training (PMP) is available to Line Managers.

### **KEY REQUIREMENTS**

1. All employees of the Trusts are covered by this policy and procedure.
2. Understand situations where suspension/exclusion or restriction to practice may be appropriate.
3. Understand the delegated authority and approval process before applying a suspension/exclusion or restriction to practice.
4. Employees have the right to be accompanied to formal disciplinary hearings by a recognised Trade Union representative or work colleague.
5. Employees will have the right to appeal against any formal disciplinary warning or dismissal.
6. The majority of cases of low level misconduct will be dealt with informally without recourse to this policy and procedure.
8. This policy may be used for medical staff in cases of misconduct, in conjunction with NCUH's Conduct, Capability, Ill Health and Appeals Policies and Procedures for Practitioners and CPFTs Responding to Concerns about Medical and Dental Staff Policy, which will be harmonised in due course.

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**SUMMARY FLOWCHART:**

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|--|---|--|
| <p><b>Allegation of Misconduct</b></p>   | <p>A Manager makes initial enquiry as to the nature of the allegation:</p> <ul style="list-style-type: none"> <li>• Manager informs the employee of the allegation(s) against them.</li> <li>• If the allegation is plausible, and of sufficient gravity, a disciplinary investigation must begin.</li> <li>• Low level misconduct can be handled informally</li> <li>• If there is an allegation of gross misconduct, consider suspension/exclusion.</li> </ul>  | <p><b>Key People:</b><br/>                 Manager<br/>                 HR advice</p>  |
| <p><b>Disciplinary Investigation</b></p> | <p>The Commissioning Manager appoints an Investigating Officer and agrees Terms of Reference for Investigation. Investigating Officer, advised by HR, gathers evidence, interviews witnesses, interviews the employee. Investigation report completed by the Investigating Officer.</p>   | <p><b>Key People:</b><br/>                 Commissioning Manager<br/>                 HR advice<br/>                 Investigating Officer</p>   |
| <p><b>Decision to Proceed</b></p>        | <p>The Commissioning Manager, with support from HR, reviews the Investigation report and determines if there should be a disciplinary hearing:</p> <ul style="list-style-type: none"> <li>• No further action</li> <li>• Address informally by line manager</li> <li>• Invite employee to Disciplinary Hearing</li> </ul>   | <p><b>Key People:</b><br/>                 Commissioning Manager<br/>                 HR advice<br/>                 Investigating Officer</p>   |
| <p><b>Disciplinary Hearing</b></p>       | <p>A Hearing Manager/Chair (decision maker) and HR hear disciplinary case. The Hearing Manager reserves the right to have an additional appropriate advisory manager as part of the Panel e.g. where there is a clinical issue and the Hearing Manager is non-clinical.</p> <ul style="list-style-type: none"> <li>• Panel Hearing Manager conducts Disciplinary hearing</li> <li>• Employee attends with TU rep or work colleague</li> <li>• Investigation Officer presents case</li> <li>• All evidence considered</li> <li>• Employee given opportunity to respond to allegations</li> </ul> <p>Hearing adjourns to consider the outcome:</p> <ul style="list-style-type: none"> <li>• Case not proven – No further action</li> <li>• Disciplinary Warning Issued/Dismissal</li> </ul> | <p><b>Key People:</b><br/>                 Hearing Manager<br/>                 HR Representative<br/>                 Employee<br/>                 Employee's Rep<br/>                 Witnesses<br/>                 Investigating Officer</p>                                      |
| <p><b>Disciplinary Appeal</b></p>        | <p>Appeal considered by Panel Chair (decision maker), and HR (Panel Chair to be more senior than original Hearing Manager). The Chair reserves the right to have an additional appropriate advisory manager as part of the Panel e.g. where there is a clinical issue and the Chair is non-clinical.</p> <ul style="list-style-type: none"> <li>• Employee's grounds for appeal presented</li> <li>• Original Hearing Manager presents to panel</li> </ul> <p>Hearing adjourns to consider outcome</p> <ul style="list-style-type: none"> <li>• Appeal Upheld/not Upheld</li> <li>• Warning Upheld/not upheld</li> <li>• Warning level changes</li> </ul>   | <p><b>Key People:</b><br/>                 Panel Chair<br/>                 Original Hearing Manager<br/>                 HR Representative<br/>                 Employee<br/>                 Employee's Rep<br/>                 Witnesses<br/>                 Advisory Manager</p> |

## **1. INTRODUCTION**

The main purpose of the Disciplinary Policy & Procedure is to encourage an employee whose conduct is unsatisfactory to improve.

The policy aims to give a clear and straightforward explanation of the standards of behaviour expected of all employees in the Trusts and what constitutes misconduct or gross misconduct and to set out the procedure for dealing with breaches of these standards.

This policy should be read in conjunction with other publications which reference the expected norms of behaviour and performance including the Trusts' Values and relevant professional codes of conduct.

The procedure and framework for dealing with breaches of these standards is set out below and takes into account the ACAS Code of Practice on Discipline and Grievance.

## **2. PURPOSE**

The purpose of the Disciplinary Policy and Procedure is to help promote good employment relations as well as ensuring that all employees are treated fairly and consistently.

It provides a method of dealing with any apparent shortcomings in conduct. The procedure will be fairly, effectively, and consistently applied.

## **3. POLICY DETAILS**

This policy applies to all employees of Cumbria Partnership NHS Foundation Trust and North Cumbria University Hospitals NHS Trust.

### **3.1 Principles**

- Informal action will be considered, where appropriate, to resolve problems promptly.
- No formal disciplinary action will be taken against an employee until the case has been investigated.
- Before any formal action is taken against the employee, they will be advised of the nature of the complaint against them and will be given the opportunity to state their case before any decision is made at a disciplinary hearing.
- Employees and their Trade Union representative will be provided with written copies of evidence and relevant witness statements 14 calendar days in advance of a disciplinary hearing, where possible.
- At all disciplinary hearings and investigation meetings employees can be accompanied by a Trade Union representative or work colleague.
- The Trusts will aim to: send all correspondence to employees by Recorded Delivery as well as by ordinary post; and will avoid sending out

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correspondence to employees which will arrive at a weekend, wherever possible.

- All employees' cases will be heard in good faith and there will be no pre-judgement of the issue. Any decision will be made upon the facts of the case.
- An employee will have the right to appeal against any disciplinary sanction.

### **3.2 Informal Action**

Informal action is to be used as a broad principle for informal handling of misconduct.

In the event of failure to improve standards of behaviour, it would usually be expected that the manager meets with the employee to discuss the following:

- Explain the issues;
- Discuss the standards required and what improvements are expected;
- Discuss the actions required to ensure that this happens;
- Set agreed timescales for improvement;
- Set dates when review(s) will take place;
- Advise the employee that failure to achieve the agreed standards may lead to formal disciplinary action;
- Make a record of the meeting and actions/improvements required.

The outcome must be confirmed to the employee in writing, setting out a summary of the discussions and steps required and to highlight that this is informal action. A copy should be placed on the employee's personal file and will remain active for a period of 6 months. If this fails to resolve the problem(s) then formal disciplinary action will be taken – see section 4.

### **3.3 Suspension**

Where there is a genuine belief that an employee may have committed, or has been implicated in, misconduct which could be considered as gross misconduct; suspension from work can allow some distance between employees, remove an unacceptable risk to patients, the public and employees and/or protect the employee from further allegations.

Suspension from work is not a disciplinary sanction, but is used to support the Trusts in meeting their duty of care to patients, the public and other employees.

Suspension does not in any way pre-determine the outcome of an investigation or any disciplinary action.

### **3.4 Serious Issues occurring Out of Hours**

If a serious issue occurs out of hours, a Senior Manager must be consulted prior to a decision to send an employee home from work. During the next working day the Senior Manager must consult with a senior member of the Human Resources team prior to a decision to suspend the employee – see paragraph 3.5 below.

### **3.5 Levels of Authority**

A decision to suspend an employee must be undertaken by a Senior Manager e.g. Head of Service. Prior to any suspension, this must be authorised by Senior HR Representative.

### **3.6 Meeting the Employee**

Where an employee is to be suspended, a meeting will be held by the appropriate manager with the employee to inform them of their suspension and give them the opportunity to respond to the decision. The discussion must be limited to the decision to suspend and not become an investigation meeting or a hearing. The employee can be accompanied by a recognised Trade Union representative or work colleague where one is available. The suspension must not be delayed to allow a representative to attend.

The decision to suspend must be confirmed in writing within 7 calendar days, outlining the reason for the suspension and the arrangements in place to review the suspension.

### **3.7 Reasons for Suspension**

Suspending employees from the workplace, or placing controls and restrictions upon their activities allows the Trusts to:

- Protect the interests, wellbeing and safety of patients, employees and other individuals;
- Assist the investigation process, where there is a risk that the presence of an individual may impede the gathering of evidence;
- Protect the financial or physical resources of the Trusts;
- Protect the reputation of the Trusts;
- Legal compliance;
- Medical concerns that could put the employee, their colleagues, patients or the public at risk.

Suspension should be used infrequently and, in all but the most exceptional circumstances, only where an employee has been implicated or accused of:

- An act of gross misconduct;
- An act which could be considered gross negligence or incompetence.

### **3.8 Alternatives to Suspension**

Although suspending an employee may not be avoidable, alternatives to suspension must be considered. Alternatives may include:

- Amending or restricting duties or practice in the employee's existing role;
- Temporary redeployment in a broadly similar role in another service or location;
- Assignment to a different role which is within the skills and knowledge of the employee;

- Revised supervision arrangements.

### **3.9 Review of Suspension**

Where an employee is suspended, a review will be carried out before the end of each four week period of the suspension. The decision to continue suspension must be authorised by the original authorising manager or an alternate manager at an equivalent level of seniority if the original manager is not available. The decision and reason to continue suspension must be confirmed in writing.

The investigating officer in disciplinary cases can call for the suspension to be reviewed if in the course of their investigation, evidence supports this.

### **3.10 Payment during Suspension**

Employees who are suspended will continue to receive their normal basic pay plus an average of any enhancements. However where the reason for suspension is statutory compliance e.g. failure to maintain professional registration, suspension will be unpaid (please see the Trusts' Professional Registration Policy which will be harmonised in due course to reflect this).

### **3.11 Ending a Period of Suspension**

A period of suspension will end when the reason for the suspension is no longer valid. This may include the following:

- An alternative to suspension is found;
- A review of suspension finds it is no longer needed;
- A disciplinary process ends, either with a warning, dismissal or there is no case to answer.

Where a period of suspension ends, this will be confirmed in writing to the employee. The letter must detail any special arrangements that have been made for the employee, e.g. restrictions or changes to their work, and the support provided for their return to work.

### **3.12 Conditions during Suspension**

Whilst on suspension the following conditions will usually apply (Note: this is by no means intended to prohibit or limit social contact between employees):

- The employee must not enter any premises of the Trust except for any other legitimate reason e.g. to receive any medical treatment, as a patient or visitor or for a meeting with their Trade Union representative. In these situations the employee must inform their manager in advance of the appointment.
- The employee must not contact any employees (other than their line manager, investigating team or employee representative) to discuss the content or detail of the allegations as this may prejudice the investigation. Failure to follow this instruction may result in further disciplinary action.

- Social contact with colleagues is permitted subject to the above condition.
- The employee must not access Trust documents or files using remote access. The employee must not access the Trust's email system. They will usually be asked to return Trust laptops and mobile phones.
- All Trust equipment must be returned if deemed necessary and appropriate.
- If the employee requests access to the workplace during the suspension, e.g. to retrieve personal property, the line manager or investigating officer should assess the request and the reason for it and decide whether or not it is reasonable to allow the employee access. It may be possible to allow the employee access to the workplace outside of working hours to avoid them coming into contact with colleagues.
- The line manager or investigating officer should also consider any requests by the employee to be allowed to contact colleagues if this is necessary in connection with preparing their response to the disciplinary case/investigation.
- The employee, whilst not required to attend work, should remain available to assist in the disciplinary investigation, attend investigation or disciplinary meetings, or deal with any work-related questions. Further, if the suspension is lifted earlier than anticipated, the employee would be expected to return to work.
- If the employee wishes to request annual leave via their line manager during the suspension period this should be considered in the usual way.

#### **4. FORMAL ACTION**

##### **Considerations before proceeding formally**

An HR representative must be consulted before proceeding on a formal basis.

Where it is felt that an internal investigation may prejudice the Protection of a Vulnerable Adult, Safeguarding Children regulations or fraud; theft; Police; IT or other enquiries, the investigation may not be able to commence until clearance has been given to do so. Reference should be made to the appropriate regulations or Information Governance Guidance.

The Counter Fraud Service must be informed before an investigation is instigated where there is an allegation of fraud, misuse of public funds or wilful damage. Reference should also be made to the Trusts' Policies on Fraud, Bribery and Corruption.

##### **4.1 Fact Finding Process**

In most circumstances, when an alleged breach of discipline occurs it will be necessary for the Line Manager of the person who is alleged to have committed the misconduct to establish whether a potential case exists, by carrying out a preliminary or 'fact finding' process.

This should be completed as soon as possible after the incident has occurred. It might also be necessary to consider redeploying one or both parties during this process.

#### 4.2 Informing the Employee of the Allegation(s) Against Them

The employee should be informed in a private meeting with a Manager and in the presence of their trade union representative if available of:

- The nature of the allegation or complaint;
- That there will be an appropriate investigation of the allegation(s) or alternatively the Manager will disclose information obtained from fact finding investigation;
- That the employee will be given sufficient opportunity to respond to the allegation(s);
- That no disciplinary action will be taken until after an investigation (as required) and disciplinary hearing are completed;
- That at all stages of the procedure the employee may be accompanied by a union representative or work colleague.

#### 4.3 Investigation

Before any disciplinary hearing is held, an investigation, appropriate to the circumstances, will take place to establish the facts of the case. The Commissioning Manager will provide the Investigating Officer with clear terms of reference, which detail:

- What is being alleged and investigated;
- What is within the scope of the investigation.

An Investigating Officer will manage the investigation and produce a written report on their findings. The purpose of the investigation is to establish the facts, not to prove or disprove an allegation.

The timescales for investigations will be agreed by the Commissioning Manager and Investigating Officer, following advice from the HR Team. The timescales will be reviewed throughout and extensions will be communicated to all parties. The investigation must not be unreasonably delayed.

NCUH [Guidance notes](#) on carrying out an investigation are available on the [HR section of the Trusts' Intranet](#).

[CPFT guidance notes](#) on carrying out an investigation are available [on the Workforce section of the Trust's Intranet](#).

The Investigating Officer will endeavour to complete the investigation within 6 weeks. The employee and their representative should be regularly kept informed of any delays and reasons for delay to the completion of the investigation and informed of likely timescales of completion.

At the conclusion of an investigation the Commissioning Manager will review the findings and decide whether there is sufficient evidence to progress to a

disciplinary hearing. This is not a decision to impose a disciplinary sanction, responsibility for that decision lies with the disciplinary Hearing Manager.

#### 4.4 Agreed Disciplinary Action (for Agenda for Change staff only)

In some circumstances where an allegation of misconduct is made and the employee fully accepts the misconduct, and/or following the investigation the facts of the case are not disputed by the employee, it may be possible following discussion between the employee, their representative (if they have one), the line manager and a member of the HR team, for a disciplinary sanction to be agreed between the employee and the manager concerned. This will avoid the need for a disciplinary hearing.

An agreed action would be appropriate if the misconduct is an isolated incident, the employee has a previous record of good conduct, and it is felt that this may be a fair way of dealing with the misconduct. This is not to be used in instances whereby the allegation could constitute gross misconduct or where the employee already has a live warning.

For consistency, managers must seek advice from the HR Department. If there is no agreement then the formal disciplinary hearing would go ahead.

Where a warning is agreed and issued, the details will be confirmed in writing (by recorded delivery if posted) to the employee who will be given up to 7 calendar days to decide if they wish to accept the warning. If the employee has agreed to this option, there will be no right of appeal. If the employee does not accept the warning and confirms this in writing within 7 calendar days, the matter will progress to a formal disciplinary hearing.

#### 4.5 Levels of Authority/Appeal

Disciplinary warnings or the decision to dismiss can be made by managers of the Trusts at the following levels:

| <b>Staff Group</b> | <b>Informal Action</b> | <b>First Written Warning</b> | <b>Final Written Warning</b>                               | <b>Dismissal</b>  |
|--------------------|------------------------|------------------------------|--|---|
| All Staff          | Immediate Line Manager | Immediate Line Manager       | Matron, Head of Service/General Manager/Associate Director | General Manager/Associate Director/Head of Service          |
| Senior Managers    | Immediate Line Manager | Immediate Line Manager       | Head of Service/General Manager/Associate Director         | Associate Director/Head of Service/Deputy Director/Director |
| Director           | Chief Executive        | Chief Executive              | Chief Executive  | As per Constitution   |

Appeals against a disciplinary warning or dismissal should be heard by a more senior manager, who has no previous direct involvement in the case, where this is possible.

#### **4.6 Disciplinary Hearing**

The Panel should consist of the Hearing Manager (decision maker) and an HR representative. The Hearing Manager reserves the right to have an additional appropriate advisory manager as part of the Panel e.g. where there is a clinical issue and the Hearing Manager is non-clinical.

[Guidance notes](#) on how to conduct a disciplinary hearing are available on the [HR section of the Trusts' Intranet](#).

#### **4.7 Informal Action following a Disciplinary Hearing**

The Hearing Manager may decide that informal action is an appropriate response to issues of minor misconduct as an outcome following a disciplinary hearing. Informal action must be confirmed in writing, identifying remedial actions to be taken by the employee including timescales and any support to be put in place. The employee must be advised that further incidents of the same nature may result in formal action being taken against them.

#### **4.8 First Written Warning**

If conduct does not meet acceptable standards, a first written warning for misconduct may be given to the employee. This warning will:

- Be confirmed in writing, within 7 calendar days and set out the nature of the misconduct;
- Detail the change of behaviour or conduct required;
- Detail the employee's right of appeal.

The warning will also inform the employee that a final written warning may be considered if there is no sustained satisfactory improvement or change.

A record of the warning will be kept on file, but it will be disregarded for disciplinary purposes after 12 months.

#### **4.9 Final Written Warning**

If the misconduct is sufficiently serious, or if there is further misconduct during the currency of a prior warning, a final written warning may be given to the employee. This warning will:

- Be confirmed in writing, within 7 calendar days and set out the nature of the misconduct;
- Detail the change of behaviour or conduct required;
- Detail the employee's right of appeal.

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It will also warn that failure to improve may lead to dismissal (or some other action short of dismissal). A copy of this written warning will be kept on file, but it will be disregarded for disciplinary purposes after 24 months.

#### **4.10 Dismissal**

After a sanction or penalty is issued, and if misconduct continues or there is further misconduct which is sufficiently serious, the final step in the policy and procedure may be dismissal, or some other action short of dismissal.

The decision will:

- Be confirmed in writing, within 7 calendar days and set out the nature of the misconduct;
- Detail the change of behaviour or conduct required, if not dismissed;
- Detail the employee's right of appeal.

Where an allegation of gross misconduct is upheld, summary dismissal, without notice could be the outcome.

If an employee is dismissed on disciplinary grounds and convicted of an offence involving crime, negligence or a fraudulent act or omission, which results in the loss to public funds, the Trusts will seek to recover any loss from any remaining pay due. If there is still an outstanding financial loss to the Trusts, the Trusts will seek recovery from the ex-employee and if necessary apply for a Court Order. Recovery can be considered from NHS Pension Scheme benefits if recovery of any loss from remaining pay due has not been possible.

#### **4.11 Action as an Alternative to Dismissal**

Certain exceptional circumstances may in cases of gross misconduct result in another enforced penalty as an alternative to dismissal, such as demotion, transfer or loss of seniority. In such cases the employee will also be issued with a final written warning. The employee will have a choice as to whether or not to accept this sanction as an alternative to dismissal. If they refuse, then dismissal will apply. An employee who agrees to work at the downgraded position will accept that their wages/salary will be adjusted accordingly (i.e. protection of salary will not apply). Any action as an alternative to dismissal will be subject to HR advice.

In certain circumstances consideration should be given to other forms of action and may include:

- Counselling for related parties;
- Mediation (either internal or external);
- Other work place action, such as redeployment.

#### **4.12 Extensions to Warnings due to Absence**

If the employee has in excess of 28 days sickness absence during the period of a disciplinary warning, the warning will be extended by the same period as the length of the sickness absence period. Absences relating to a disability will be considered on a case by case basis.

#### **4.13 Appeals**

An employee who wishes to appeal against a disciplinary decision must do so in writing to the Director of HR and OD within 14 calendar days of the date of the letter confirming a disciplinary warning or dismissal, clearly stating the grounds for their appeal.

The purpose of the appeal is to consider the case in light of the grounds for appeal and the presumption is that it is not a re-hearing (unless that is necessary). Where there is new evidence, this may be heard (adjournments may be appropriate to consider new evidence that comes to light in the hearing).

Any sanction or penalty applied as a result of the outcome of the disciplinary hearing can be reviewed by the Appeal Panel but the sanctions cannot be increased by the Appeal Panel.

An appeal will be heard wherever possible by a more senior manager not involved in the earlier decision to dismiss.

Wherever possible, appeals will be heard within 6 weeks of receipt of the application for appeal.

#### **4.14 Dismissal arising from action under other Procedures**

The principles outlined in this procedure regarding dismissal and appeals will apply where dismissal arises from action under the Trusts' Capability, Attendance Management and Probationary Period policies and procedures where appropriate and subject to harmonisation.

Where at the conclusion of the Trusts' Capability, Attendance Management and Probationary Period policies and procedures, dismissal is being considered, the employee will be invited to a dismissal hearing. The hearing will be conducted in line with Section 4 above.

The decision to dismiss will be considered by an appropriate manager as outlined in Section 4.

Appeals against dismissals arising from other policies and procedures will be considered in line with Section 4 of this procedure.

### **5. INVOLVING EXTERNAL AGENCIES OR ORGANISATIONS**

#### **5.1 Counter Fraud Specialist**

Investigations of suspected fraud will be undertaken by accredited members of the Counter Fraud Service with the authorisation of the Director of Finance. In such

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cases, interviews will be conducted under caution. The Trusts will ensure appropriate disciplinary, civil or criminal action is consistently applied where fraud is proven. It is the choice of the interviewee whether to have a Trade Union solicitor present under these circumstances, if they are a member of a Trade Union.

## **5.2 Local Safeguarding Children Board & Local Authority Designated Officer (LADO)**

Where allegations of misconduct are made against an employee relating to neglect or abuse of patients or their relatives, or in cases where breaches of confidentiality relating to patients are alleged, the investigation must be completed.

This requirement applies to all allegations of this nature, even where the employee resigns from Trust employment before completion of the investigation.

## **5.3 Disclosure & Barring Service**

The Safeguarding Vulnerable Groups Act 2006 places a duty on employers of people working with children or vulnerable adults to make a referral to the Disclosure & Barring Service in certain circumstances. This is when an employer has dismissed or removed a person from working with children or vulnerable adults (or would have done if the person had not left or resigned) because the person has:

- Been cautioned or convicted for a relevant offence;
- Engaged in relevant conduct in relation to children and/or vulnerable adults e.g. abuse, harm or neglect;
- Considered to present a risk of harm, abuse or neglect of children and/or vulnerable adults.

A referral should be made when the employer has completed an investigation and found evidence to support the allegation.

## **5.4 Police**

Cases involving assault, theft, or child or adult abuse would require the involvement of the police.

## **5.5 Referral to Professional Bodies**

A number of occupations within the Trusts are regulated by an external professional body. For some occupations, registration is compulsory and a contractual requirement of employment. Consequently the Trusts are duty bound to refer an individual to their professional body if there are concerns about their conduct. The decision to refer lies with the Trusts' Medical Directors for Doctors and Dentists, and Director of Nursing for nursing and allied health professions.

## **5.6 Sickness**

The Trusts' aim is to proceed with all disciplinary matters with the minimum of delay. The disciplinary process may therefore continue during an employee's sickness, which will not preclude the Trusts from starting or completing the process, including the collection of statements, conducting interviews or hearings. This action will depend on the nature of the illness and the likely length of the absence. Where appropriate, professional medical advice will be sought from Occupational Health.

## 6 RIGHT TO BE ACCOMPANIED

Employees have the right to be accompanied to formal disciplinary hearings by a work colleague or a recognised Trade Union Representative.

There is no statutory right for employees to be accompanied at a disciplinary investigation meeting however the Trusts will allow employees to be accompanied by a Trade Union Representative or work colleague. It is the responsibility of the employee to arrange their own representative or colleague at an investigation meeting and the availability of the employee's representative will not delay the investigation process.

### 6.1 Trade Union Representatives

Where formal disciplinary action is being considered against an employee who is a Trade Union representative, the normal disciplinary procedure will be followed. However the matter will be discussed with an official employed by the Trade Union, after receiving the employee's agreement, and prior to any disciplinary sanction being applied.

## 7. TRAINING AND SUPPORT

A Toolkit for Managers is available on the HR section of the Trusts' Intranets. Support will be provided by HR to managers implementing this policy and procedure where required. Also, training is available through the People Management Programme (PMP)

## 8. PROCESS FOR MONITORING COMPLIANCE

The process for monitoring compliance with the effectiveness of this policy is as follows:

| Aspect of compliance or effectiveness being monitored                          | Monitoring method  | Individual responsible for the monitoring | Frequency of the monitoring activity | Group/committee which will receive the finding / monitoring report | Group/committee/ individual responsible for ensuring that the actions are completed |
|--|--|---|--------------------------------------|--|---|
| The policy is being utilised to manage staff with conduct issues               | HR internal KPI reports on number of disciplinarians under investigation | Head of Human Resources                   | Monthly                              | Executive Directors  | Head of Human Resources   |
| Compliance with timescales for each stage of the Formal Disciplinary Procedure | Progress against timescales for each disciplinary under investigation    | Head of Human Resources                   | Quarterly                            | Workforce & OD Governance  | Head of Human Resources   |

|  |  |                         |           |                           |                         |
|--|--|-------------------------|-----------|---------------------------|-------------------------|
| Effectiveness of this policy in eliminating/keeping risks to a minimum | Anonymised reports on each disciplinary under investigation, including reasons, timescales, outcomes | Head of Human Resources | Quarterly | Workforce & OD Governance | Head of Human Resources |
|--|--|-------------------------|-----------|---------------------------|-------------------------|

Wherever the above monitoring has identified deficiencies, the following must be in place:

- Action plan
- Progress of action plan monitored by the Workforce Group minutes
- Risks will be considered for inclusion in the appropriate risk registers

## 9. REFERENCES

**Discipline and Grievances at Work: The ACAS Guide 2017**

<http://m.acas.org.uk/media/pdf/9/g/Discipline-and-grievances-Acas-guide.pdf>

**Code of Conduct for NHS Managers, NHS Employers 2002**

[http://www.nhsemployers.org/~media/Employers/Documents/Recruit/Code\\_of\\_conduct\\_for\\_NHS\\_managers\\_2002.pdf](http://www.nhsemployers.org/~media/Employers/Documents/Recruit/Code_of_conduct_for_NHS_managers_2002.pdf)

**Data Protection Act 2018**

<https://www.gov.uk/government/collections/data-protection-act-2018>

**Employment Rights Act 1996**

<https://www.legislation.gov.uk/ukpga/1996/18/contents>

**Equality Act 2010**

<http://www.legislation.gov.uk/ukpga/2010/15/contents>

**Safeguarding Vulnerable Groups Act 2006**

<https://www.legislation.gov.uk/ukpga/2006/47/contents>

**Dismissal Exit Code 02 factsheet (01.2017) V2 NHS Business Services Authority**

<https://www.nhsbsa.nhs.uk/sites/default/files/2017-03/Dismissal%20Exit%20Code%2002%20factsheet%20%2801.2017%29%20V2.pdf>

### Linked Processes

Where there is an allegation of misconduct against a Doctor or Dentist, the NCUH Conduct, Capability, Ill Health and Appeals Policies and Procedures for Practitioners or the CPFT Responding to Concerns about Medical and Dental Staff Policy must be read in conjunction with this Policy and Procedure until such time as these policies are harmonised.

## 10. CURRENT ASSOCIATED DOCUMENTATION

**NCUHT**

Capability Policy & Procedure

**CPFT**

Capability Policy

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|   |  |
|---|--|
| Attendance Management Policy & Procedure  | Sickness Absence Policy                                      |
| Drug & Alcohol Policy   | Drug & Alcohol Policy  |
| Probationary Period Policy & Procedure  | Counter-Fraud, Bribery & Corruption Policy                   |
| Conduct, Capability, Ill Health and Appeals Policies and Procedures For Practitioners | Responding to Concerns about Medical and Dental Staff Policy |
| Professional Registration Policy  |  |
| Counter-Fraud, Bribery & Corruption Policy  |  |

## **11. DUTIES (ROLES & RESPONSIBILITIES)**

### **11.1 Chief Executive/Trust Board Responsibilities**

The Chief Executive and Trust Board jointly have overall responsibility for the strategic and operational management of the Trusts, including ensuring that Trust policies comply with all legal, statutory and good practice requirements.

### **11.2 Executive Director Responsibilities – Director of Human Resources and Organisational Development**

All policies have a designated Executive Director and it is their responsibility to be involved in the development and sign off of the policies; this should ensure that Trust policies meet statutory legislation and guidance where appropriate. They must ensure the policies are kept up to date by the relevant author and approved at the appropriate committee.

### **11.3 Director of Workforce & and Organisational Development Responsibilities**

The Director of Workforce & OD has the responsibility for the policy and procedure and will delegate the day-to-day implementation of the policy and procedure to Trust Managers.

### **11.4 Line Managers Responsibilities**

Line managers are responsible for ensuring effective and consistent application of this policy and in supporting employees in its use. Line Managers must attempt to deal with issues sensitively and without undue delay.

### **11.5 Staff Responsibilities**

All staff are responsible for ensuring that they comply fully with this policy.

### **11.6 HR Responsibilities**

HR will provide advice and support on the application of this policy.

## 11.7 Approving Committee Responsibilities: Joint Partnership Forum

The Chair of the approving committee will ensure the policy approval is documented in the final section of the Checklist for Policy Changes. The committee will agree the approval of the final draft of the policy.

## 12. ABBREVIATIONS/DEFINITION OF TERMS USED

| ABBREVIATION | DEFINITION                                     |
|--------------|--|
| ACAS         | Advisory, Conciliation and Arbitration Service |
| HR           | Human Resources                                |
| IO           | Investigating Officer                          |
| OD           | Organisation Development                       |
| JPF          | Joint Partnership Forum                        |
|              |  |

| TERM USED             | DEFINITION  |
|-----------------------|---|
| Commissioning Manager | Manager who has Authority to instigate an Investigation |

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## APPENDIX 1 - EXAMPLES OF MISCONDUCT/GROSS MISCONDUCT

### Misconduct

General misconduct includes but is not limited to:

- a) Failure to carry out reasonable and lawful instructions or other acts of insubordination (which are not sufficiently severe to constitute gross misconduct – see below).
- b) Causing damage through carelessness to NHS or staff property.
- c) Failure to comply with safety, hygiene and security rules.
- d) Failure to work in a co-operative manner with colleagues.
- e) Failure to complete timesheets, records or other documents as required.
- f) Failure to comply with data protection and security procedures.
- g) Failure to report an incident or concern which may affect patient care or safety.
- h) Unauthorised absence.
- i) Smoking in Trust grounds, premises or Trust vehicles.
- j) Using abusive or offensive language or other offensive behaviour.
- k) Failure to observe Trust policies, procedures and protocols, professional Codes of Conduct or the Trust's Values and Behaviours.
- l) Persistent lateness or poor time keeping.
- m) Inappropriate or unprofessional communication, either verbal or written.
- n) Placing inappropriate or unprofessional photographs or recordings of activities undertaken during working hours on social networking sites that bring the individual's professionalism (and the Trust by association) into disrepute
- o) Temporary lapse in professional registration.
- p) Undertaking any other employment which adversely affects the performance of Trust duties.
- q) Personal misconduct which is sufficiently serious as to affect the performance of duties and/or relationship between the employee and the Trust.
- r) Unable to fulfil their contractual obligations.
- s) Security. Deliberate or negligent disregard of security will be treated as a disciplinary matter.

In addition, each department has certain standards of conduct relating to the work being carried out and managers are responsible for ensuring that employees are aware of the standards expected of them. A failure to observe these standards may be regarded as misconduct.

### Gross Misconduct

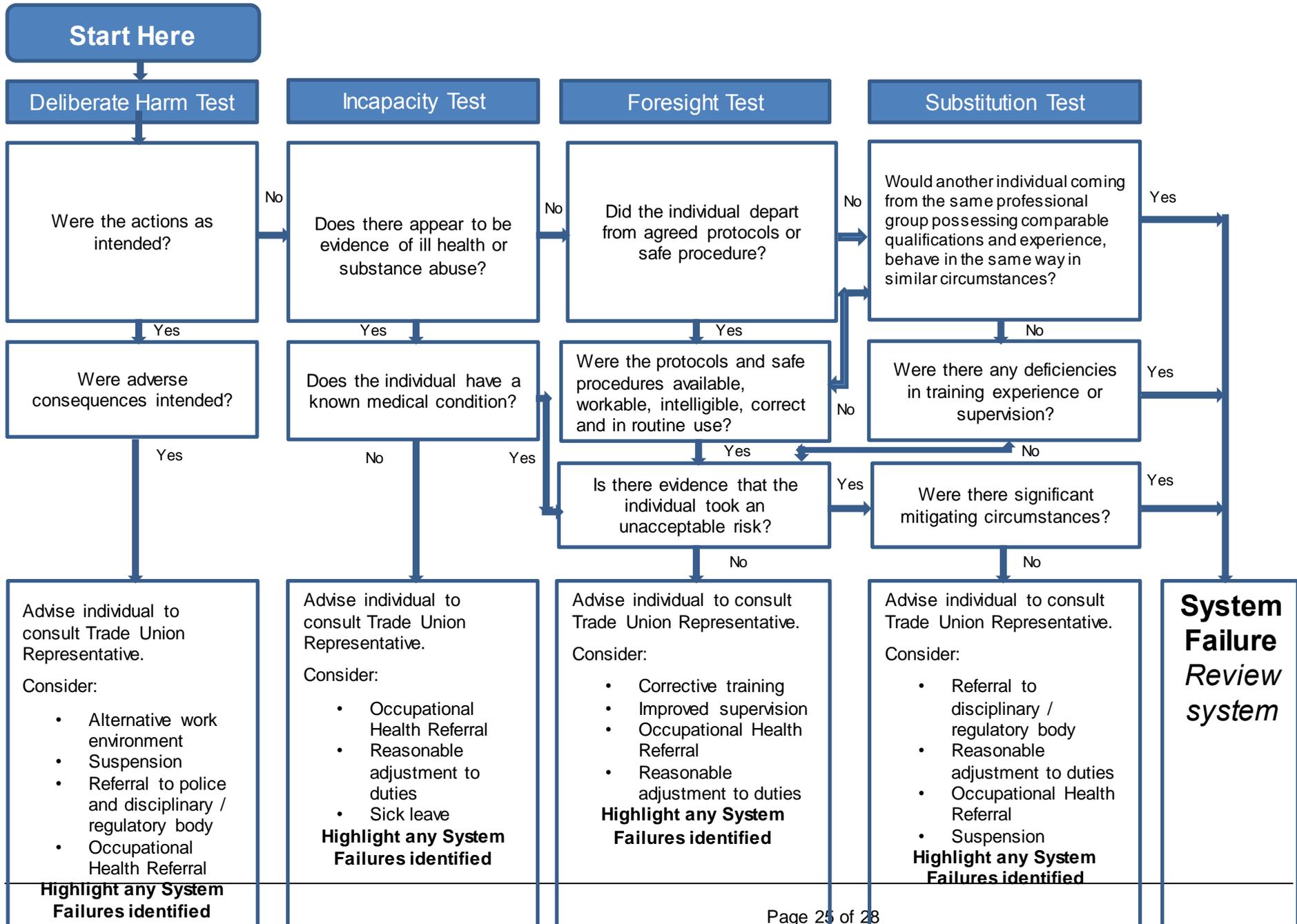
The following offences are among those regarded as serious enough to warrant summary dismissal (i.e. dismissal without notice), without any prior warnings, as constituting gross misconduct (the list is not exhaustive):

- a) **General** - Any breach of the rules outlined in the previous section, which is so serious that it amounts to gross misconduct (or gross, or wilful negligence) justifying dismissal without previous warning.
- b) **Theft** – Any instances of theft or attempted theft from the Trust or from patients, visitors or staff. This includes unauthorised personal use of NHS property or facilities.

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- c) **Fraud** – This includes any deliberate falsification of records or documents, such as the misrepresentation of entitlement to expenses or allowances or the falsification of timesheets. This may also include falsely claiming sick pay or engaging in outside employment during the hours when contracted to work for the Trust.
  - d) **Bribery & Corruption** - The deliberate acceptance or offer of gifts, loans, money, goods, favours or excessive hospitality which may influence the improper action of a person. The corrupt person may not benefit directly from their deeds but may be using their position to give an advantage to another person.
  - e) **Assault** – Any assault (verbal e.g. use of abusive or offensive language, physical or threatened) upon a member of the public or employee.
  - f) **Negligence** – Any action or failure to act which could result in serious loss, damage or injury to staff, visitors or patients. This includes failure to pass examinations/study modules essential for the fulfilment of the job as a result of misconduct/wilful neglect e.g. non-attendance.
  - g) **Ill treatment or wilful neglect of patients** – any serious or reoccurring ill treatment, either physical or verbal or wilful neglect of patients.
  - h) **Reckless Behaviour** – An act of recklessness or incompetence sufficiently severe to break down trust and confidence in the employee’s ability to undertake their job.
  - i) **Malicious Damage** – To health service property or equipment, or the property of members of the public or staff.
  - j) **Misuse of Equipment** – Including serious misuse of telephones, computer databases, e-mails and the internet (e.g. viewing inappropriate or offensive websites and/or other misuse as outlined in the Trust’s Internet Policy).
  - k) **Bringing the Trust into Disrepute** – Grossly unprofessional or unbecoming behaviour or other serious action likely to bring the Trust into disrepute; this includes making statements on social networking sites regarding the Trust, its staff, patients, visitors or contractors or making statements that bring the individual’s professionalism into disrepute.
  - l) **Being Unfit for Duty** – Through the effects of drink, non-prescribed drugs or other substances, or being asleep on duty. (Involvement of Occupational Health is likely in this scenario to rule out any ill health issues).
  - m) **Wilful Failure or Flagrant Refusal to Carry out Reasonable Instructions or Rules** – Or other major acts of insubordination.
  - n) **Breaches of Trust Policies, Procedures and Protocols, Professional Codes of Conduct or the Trust’s Values and Behaviours** – Serious malpractice in any of the above.
  - o) **Illegal or Criminal Activity in the Workplace** – Including selling and/or distribution of illegal goods, such as cigarettes, DVDs, CDs.
  - p) **Bullying, Harassment or Discrimination** – Including harassment and bullying of staff, contractors, volunteers or other non-directly employed members of the Trusts’ workforce, patients, patients’ families and visitors; this includes bullying or harassment conducted through electronic means such as e-mail, social media sites, etc.
  - q) **Breaches of Confidentiality** – Disclosure or misuse of confidential information or data about the Trust, Trust contractors, patients, visitors or members of staff, volunteers or staff from Contractor organisations (except for any protected disclosure brought under the Trusts’ Whistleblowing Policy).
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- r) **Being Convicted** – Of actions (even if outside of work) which in the opinion of the Trust renders the employee unsuitable to continue their duties or unlikely to retain the confidence of other stakeholders.
  - s) **Contravention of Corporate Compliance** – This includes failing to follow the Trusts' Financial Procedures and Instructions, or failing to act impartially or to declare an interest in a contract or business in which the Trust is engaged or considering.
  - t) **Wilfully omitting information from clinical records or entering false or misleading information into a clinical record.**
  - u) **Distributing or Displaying Offensive Material in the Workplace** – This includes passing onto others any offensive material via electronic or other forms of communication. It also includes the displaying of offensive material in the workplace.
  - v) **Breach of Sexual boundaries with a Service User** - any instances of criminal sexual acts, entering into a sexual relationship with a patient/service user or other sexually motivated actions toward patients/service users (professional bodies provide guidance for registrants on maintaining appropriate professional boundaries with patients/service users).

**APPENDIX 2 – INCIDENT DECISION TREE**



**DOCUMENT CONTROL**

|  |   |
|--|---|
| <b>Equality Impact Assessment Date</b>   | 12 September 2018                           |
| <b>Sub-Committee &amp; Approval Date</b> | Joint HR Policy Sub Group<br>23 August 2018 |
| <b>Joint Partnership Forum</b>           | 9 September 2018                            |

**History of previous published versions of this document**

| Trust               | Version | Ratified Date | Review Date | Date Published | Disposal Date |
|---------------------|---------|---------------|-------------|----------------|---------------|
| CPFT<br>POL/004/001 | Jun16   | June 2016     | May 2018    | June 2016      | n/a           |
| NCUH REF:<br>HR 40  | 6       | 25/05/2017    | 31/12/2019  | 02/06/2017     | n/a           |

**Statement of changes made from previous version – NCUH HR40 v6 and CPFT POL/004/001 vJune 2016**

| Version            | Date           | Section & Description of change  |
|--------------------|----------------|--|
| 1.0                | 05/11/2018     | <ul style="list-style-type: none"> <li>• Minor amendments that do not require new version number to be created (identified at policy management group): <ul style="list-style-type: none"> <li>○ Monitoring Section changed from Quality &amp; Safety Governance to Workforce &amp; OD Governance</li> <li>○ Section 4.3, Investigation – link to CPFT Investigation Guidance added, this is in addition to the existing link to NCUH guidance. The guidance documents will be aligned during 2019.</li> </ul> </li> </ul> |
| 1.0                | September 2018 | <ul style="list-style-type: none"> <li>• CPFT and NCUH policies combined into the Joint policy template</li> </ul>   |
| NCUH REF:<br>HR 40 | 25/05/2017     | <ul style="list-style-type: none"> <li>• Format changed in line with Joint Policy Template (i.e. as per Table of Contents</li> </ul>   |
|                    |                | <ul style="list-style-type: none"> <li>• GDPR guidance (new) included on second page</li> </ul>  |
|                    |                | <ul style="list-style-type: none"> <li>• Introduction section reworded – detail remains the same</li> </ul>  |
|                    |                | <ul style="list-style-type: none"> <li>• Section 2 Purpose reworded – detail remains the same</li> </ul>   |
|                    |                | <ul style="list-style-type: none"> <li>• Section 6 is moved to Section 3 however detail of process remains unchanged</li> </ul>  |
|                    |                | <ul style="list-style-type: none"> <li>• S3.10 – detail added re link to Professional Registration Policy</li> </ul>   |
|                    |                | <ul style="list-style-type: none"> <li>• S4 – new paragraph re consideration before proceeding formally</li> </ul>   |
|                    |                | <ul style="list-style-type: none"> <li>• S4.1 – Fact Finding section added</li> </ul>  |
|                    |                | <ul style="list-style-type: none"> <li>• S6.4.3 – detail moved into table at S4.4</li> </ul>   |
|                    |                | <ul style="list-style-type: none"> <li>• S6.4.8 – now 4.9 – more detail included here</li> </ul>   |

|  |  |  |
|--|--|--|
|  |  | <ul style="list-style-type: none"> <li>• S6.5 – misconduct – list of examples of misconduct moved to appendix and updated</li> </ul> |
|  |  | <ul style="list-style-type: none"> <li>• S6.6 – gross misconduct section moved to appendix and updated</li> </ul>                    |
|  |  | <ul style="list-style-type: none"> <li>• S5.5 of new policy – section added re referral to Professional Bodies</li> </ul>            |
|  |  | <ul style="list-style-type: none"> <li>• S8 – more detail added re monitoring compliance</li> </ul>                                  |

|                         |           |  |
|-------------------------|-----------|--|
| CPFT<br>POL/004/<br>001 | June 2016 | <ul style="list-style-type: none"> <li>• Format changed in line with Joint Policy Template (i.e. as per Table of Contents)</li> </ul>                          |
|                         |           | <ul style="list-style-type: none"> <li>• Policy on a Page – New</li> </ul>   |
|                         |           | <ul style="list-style-type: none"> <li>• Section on GDPR guidance (new) included on second page</li> </ul>   |
|                         |           | <ul style="list-style-type: none"> <li>• Summary flow chart now embedded at front of the Policy and not in appendices</li> </ul>                               |
|                         |           | <ul style="list-style-type: none"> <li>• Duties now at the back of the policy (section 11)</li> </ul>  |
|                         |           | <ul style="list-style-type: none"> <li>• Section 3 covers Informal Approach and reworded but details remain the same</li> </ul>                                |
|                         |           | <ul style="list-style-type: none"> <li>• Suspension and out of hours guidance brought forward to Section 3</li> </ul>  |
|                         |           | <ul style="list-style-type: none"> <li>• Investigation process covered in Section 4 (previously Section 9), reworded but details remain the same</li> </ul>    |
|                         |           | <ul style="list-style-type: none"> <li>• Medication Errors (previously 8.2) removed</li> </ul>   |
|                         |           | <ul style="list-style-type: none"> <li>• Formal Action – reworded but details remain the same</li> </ul>   |
|                         |           | <ul style="list-style-type: none"> <li>• Formal processes – all outcomes to be confirmed in writing within 7 calendar days</li> </ul>                          |
|                         |           | <ul style="list-style-type: none"> <li>• New Policy Section 4.8 Extensions to Warnings due to absence</li> </ul>   |
|                         |           | <ul style="list-style-type: none"> <li>• Section 5 includes new information on guidance involving external agencies</li> </ul>                                 |
|                         |           | <ul style="list-style-type: none"> <li>• Section 12.1 Complaints about the application of the policy – Removed</li> </ul>                                      |
|                         |           | <ul style="list-style-type: none"> <li>• Section 12.2 Criminal Charges or Convictions outside Employment – Removed</li> </ul>                                  |
|                         |           | <ul style="list-style-type: none"> <li>• Appendix 2 All template letters are now contained in the Toolkit</li> </ul>   |
|                         |           | <ul style="list-style-type: none"> <li>• Appendix 3 Disciplinary Rules Removed and Replaced with Appendix 1 Examples of Misconduct/Gross Misconduct</li> </ul> |
|                         |           | <ul style="list-style-type: none"> <li>• Appendix 5 How to conduct a Hearing – now in the Toolkit</li> </ul>   |

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**List of Stakeholders who have reviewed the document**

| <b>Name</b>                           | <b>Job Title</b>   | <b>Date</b>                  |
|---------------------------------------|--|------------------------------|
| CPFT Children and Families Care Group | Governance and Network Management Teams                            | Via email 8 August 2018      |
| CPFT Mental Health Care Group         | Senior Management Team   | Via email 8 August 2018      |
| CPFT Corporate Care Group             | To all Heads of Services   | Via email 8 August 2018      |
| CPFT Community North Care Group       | Senior Management Team   | Via email 8 August 2018      |
| CPFT Specialist Care Group            | Senior Management Team   | Via email 8 August 2018      |
| NCUH                                  | Senior Management Teams across Care Groups and Corporate functions | Via email during August 2018 |