

Workforce & Organisational Development Policy

DISCIPLINARY POLICY AND PROCEDURE

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July 2020	8.0	Stephanie Spencer – Senior HR Business Advisor	<ul style="list-style-type: none"> Addition of Just and Learning principles when dealing with disciplinary matters Change to Case Manager responsibilities Addition of the definition of a Hearing Manager Addition of requirement to complete the Trust's Preliminary Investigation Checklist Timescales for investigations added Statement added regarding declaring criminal investigations Addition of Suspension Decision Rationale

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1.0 INTRODUCTION

The aim of this policy is to ensure that the handling of conduct matters is managed through a fair process that provides for uniformity of treatment, consistency, justice for individual employees, protection of patient safety and protection of the efficiency and smooth running of the Trust. The Policy is also intended to ensure that management, trade unions and employees are aware of their rights and obligations in respect of the disciplinary rules, the disciplinary process and the associated appeals policy.

2.0 PURPOSE

The policy is intended to help promote good employment relations with the underlying aim being to encourage improvement in conduct/behaviour. Standards of conduct and behaviour are identified within Trust and departmental policies and procedures, and include those set out in the NHS Constitution, Trust Values & Behaviours (Appendix 6) and Professional Codes of Conduct, as well as the standards identified in this policy. This Policy will be used in cases where there is an alleged breach of the standards of conduct and behaviour and/or a breach of rules/policy requirements.

It is the Trust's policy to ensure that any disciplinary matter is dealt with fairly and that steps are taken to establish the facts using 'Just and Learning Culture' principles and to give employees the opportunity to respond before taking formal action.

2.1 Organisational Values & Behaviours

The Trust's Values and Behaviours support the Vision 'to provide the best cancer care to the people we serve' and our Mission 'To improve health and wellbeing through compassionate, safe and effective cancer care'.

In order to deliver the Vision and the Mission the Trust has set out the Values & Behaviours that it will demonstrate which are:

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- Putting People First
- Passionate about what we do
- Achieving Excellence
- Looking to the future
- Always improving our care

These values and behaviours need to be at the heart of everything we do and have been incorporated into the development of this policy (Appendix 6).

3.0 SCOPE

This policy applies to all staff of The Clatterbridge Cancer Centre NHS Foundation Trust. In cases where the conduct and/or competence of medical staff are in question, reference will be made to 'Maintaining High Professional Standards in Modern NHS' published in (2005), in order to determine which Policy should be followed according to the circumstances of the case in question.

This Policy is supported by 3 guidance documents:

- Guide to Conducting an Investigations
- Guide to Conducting a Formal Hearing
- Guide to Undertaking the Role of Case Manager

The documents are available on the Trust Extranet.

4.0 DEFINITIONS

Case Manager Person responsible for managing the issue concerned including identification of Investigator(s) in conjunction with WOD, monitoring the progress of the investigation, reaching a decision whether further action is appropriate following the completion of an investigation. Also responsible for confirming any decision to suspend/exclude or restricted

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duties and monitor such actions in accordance with policy requirements.

Case Investigator Person appointed to investigate the issue and report back to the Case Manager.

Hearing Manager The manager appointed who acts as Chair for any disciplinary hearing required and who is responsible for making the decision on any sanction at the hearing.

Companion The employee concerned is entitled, at all stages of the process, to be accompanied by a Trade Union Representative or Workplace Colleague (and in the case of medical staff this also extends to a friend, partner/spouse, defence organisation, the companion may be legally qualified but will not be acting in a legal capacity).

Preliminary Investigation Checklist The Trust process in line with Just Culture Principles to identify if when an individual is involved in an incident they require individual support or intervention to support appropriate changes in performance/behaviour. The checklist highlights important principles that need to be considered before formal management action is undertaken.

Investigation A process for establishing the exact nature of the incident/complaint including collation and analysis of evidence, production of a report and presenting findings at any associated hearings.

NCAS National Clinical Assessment Service – a service providing advice and support to managers in relation to concerns about the performance of doctors, dentists and advice on local investigation and suspension/exclusion or restriction of duties.

Suspension/Exclusion Suspending/excluding an employee may be necessary whilst an investigation is underway to protect the interests of

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both the employee and the Trust, such action is only a holding measure, not a formal punitive action, and the employee remains on full pay. The Case Manager or a more senior manager will be responsible for taking such a decision, in accordance with the relevant policy. Such action for medical staff is referred to as exclusion.

NCAS

Breaches of conduct covered by this policy fall into three main categories: minor, serious and gross misconduct. Examples of misconduct that may be considered minor, serious or gross are listed in Appendix 1. These examples are wide ranging to provide guidance to managers and staff but the list is not exhaustive. Behaviour not specifically mentioned which is a clear breach of established standards of conduct/ policy may still lead to formal action and the level of sanction will also need to be determined based on the specific facts and circumstances of each individual case.

Minor

Misconduct

This is misconduct which may result in informal or formal action being taken depending on the nature of the issue and frequency and previous actions taken to address such instances (see Appendix 1a).

Serious

Misconduct

This is misconduct which is no so severe as to warrant summary dismissal but is behaviour that could not be tolerated further. Such misconduct would normal result in formal action being taken (see Appendix 1b).

Gross

Misconduct

This is misconduct so serious that it makes any further relationship between the Trust and the employee potentially untenable which might result in dismissal (Appendix 1c).

Summary

Dismissal

Summary dismissal is the immediate dismissal of an employee without payment for the appropriate statutory or contractual period of notice.

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5.0 RESPONSIBILITIES

5.1 Chief Executive

The Chief Executive has overall responsibility to ensure the content of this policy is applied consistently and fairly across the Trust via the Executive Management Team.

5.2 Directorate of Workforce and Organisational Development

Are responsible for:

- Developing, implementing and communicating policy and procedural frameworks to apply this policy consistently and fairly across the Trust.
- Ensuring that effective monitoring information is routinely provided for Executive Directors, Trust Board, Line Managers and the Strategic Partnership Forum (SPF).
- Ensuring the provision of Workforce & Organisational Development (WOD) support and advice to line managers in the application of this Policy and associated procedures.
- Ensuring the provision of appropriate training for managers
- Review of the continued relevance/appropriateness of this Policy on a regular basis.

5.3 Line Managers

Are responsible for:

- Ensuring that this policy is applied fairly and consistency and in a way that does not discriminate.
- Ensuring that all aspects of the policy are followed as failure to follow this policy could lead to a claim of unfair dismissal.
- Keeping written records and ensuring confidentially.
- Ensuring that all staff are aware of this policy and understand the rules relating to conduct and the likely consequences if these rules are broken.

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- Consulting a HR Business Partner/Advisor before taking any formal action.
- Ensuring that staff are informed of the nature of any allegations made against them and the seriousness of the allegation, that staff are given the opportunity to respond to any such allegations and are given the right to be accompanied at formal meetings.
- Ensuring that staff involved in any way in a disciplinary process are supported appropriately.
- Ensuring that investigations are completed within determined timescales.
- Ensuring notification of disciplinary meetings and outcomes of meetings are made in accordance with this policy.

5.4 All Employees

Are responsible for:

- Ensuring they understand the Trust's Values and Behaviours and the rules relating to behavior and conduct.
- Performing their duties in accordance with contractual obligations.
- Exercising care in the performance of duties.
- Treating colleagues, patients, visitors and relatives with honesty, respect, care, compassion and dignity.
- Being honest and trustworthy.
- Being co-operative and acting reasonably.
- Following policies & procedures and abiding by rules.
- Raising concerns appropriately.
- Informing the Trust if they are subject to a criminal investigation (see section 7.0.4).
- Informing the Trust if they are subject to a professional misconduct investigation via their professional body (see section 7.0.5).
- Inform their professional body if they are subject to a formal investigation under this policy (see section 7.0.5).

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5.5 Trade Union Representatives

Are responsible for:

- Providing support to their members throughout the process, accompanying them at formal meetings and appeals.
- Assisting their members in preparing their case.

6.0 LAWS & REGULATIONS

- Trade Union and Labour Relations (Consolidation) Act (1992)
- Employment Act (2008)
- ACAS Code of Practice (2009)
- Maintaining High Professional Standards in the Modern NHS (2005)
- Healthcare Professionals Alert Notices Directions (2006)
- Working together to Safeguard Children (2006)
- Equality Act (2010)
- Data Protection Act (1998)

6.1 Just Culture

It is the Trust's policy to ensure that any disciplinary matter is dealt with fairly and that steps are taken to establish the facts using 'Just and Learning Culture' principles and to give employees the opportunity to respond before taking formal action.

7.0 MAIN BODY OF POLICY

It is the Trust's policy to ensure that any disciplinary matter is dealt with fairly and that steps are taken to establish the facts using 'Just and Learning Culture' principles and to give employees the opportunity to respond before taking formal action.

When dealing with a problem of conduct/performance, managers need to consider whether the employee has a problem which would be more appropriately dealt with under the Trust's Attendance Management Policy, Substance Misuse Policy and

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Procedure or Managing Performance Policy and Procedure in the first instance. For anonymous allegations received, refer to the Freedom to Speak up Policy.

The manager dealing with a case under this Policy should familiarise themselves with the requirements and responsibilities set out in the 'Guide to undertaking the role of Case Manager'.

7.1 Suspension/ Exclusion/ Restriction of duties

In certain circumstances it may be appropriate to suspend/exclude an employee where there is potentially an issue about their conduct. Such suspension/exclusion will be on full pay (unless it relates to loss of registration, work permit or other statutory requirement). Suspension/exclusion is not regarded as a punitive or disciplinary measure but merely a holding action pending the completion of any investigation. The circumstances in which suspension may be applied, considerations and the process to be followed are set out in Appendix 3.

Before considering suspending an employee, the appropriate HR Lead for the department should be consulted and the Suspension/Exclusion Decision Rationale (Appendix 4) must be completed.

Once suspension has occurred the Director of Workforce and Organisational Development should be informed, who will in turn notify the Executive Team.

All cases of suspension/ exclusion must be reviewed regularly.

7.1.1 Allegations against adults who work with children and young people

Reference should be made to Safeguarding Adults and Children & Prevent Policy.

7.1.2 Fraud, Bribery & Corruption

In cases of fraud, bribery and corruption, it will be necessary to consider sanctions in addition to disciplinary action e.g. civil action or criminal prosecution. The local

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NHS Counter Fraud Specialists may need to be contacted for advice and it may also be necessary for the Trust to notify the Police.

Fraud is described as ‘any deliberate intent to deprive an employer of money or goods through the falsification of any records or documents for example, submission of false invoices, inflated time records, inflated travel claims or the use of orders to obtain goods for personal use’.

Corruption is generally considered to be an ‘umbrella’ term covering such various activities as bribery, corrupt preferential treatment, theft of embezzlement.

Generally bribery is defined as: an inducement or reward offered, promised or provided to someone to perform their functions or activities improperly in order to gain a personal, commercial, regulatory and/ or contractual advantage.

The management of allegations of Fraud should be dealt with under this policy and in line with the Trusts’ Anti-Fraud, Bribery & Corruption Policy.

7.1.3 Criminal charges or convictions

Employees who are charged with a criminal offence, or who are subject to a criminal investigation, not related to work (with the exception of minor motoring offences) should formally report the facts to their manager and subsequently advise them of the outcome i.e. whether they are convicted, cautioned or exonerated as soon as the information is known to them. The nature of the charge/conviction in relation to the employee’s position with the Trust will be given careful consideration to determine if action is appropriate under this Policy (See Appendix 2). In some instances criminal convictions, even though unconnected to work, may lead to dismissal.

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7.1.4 Professional Bodies

Employees who are subject to an investigation via their professional body must formally report the facts to their manager as soon as the information is known to them and subsequently advise them of the outcome.

Similarly, where an incident has occurred in or outside of the workplace or the Trust are in receipt of information relating to professional practice/patient safety it may be appropriate for the matter to be referred to the appropriate professional body.

7.1.5 Temporary Staff

If any member of temporary staff is being investigated, arrested, or have allegations brought against them by an external organisation or agency e.g. the police, social services, or their professional body; they must notify their line manager immediately. The Workforce and OD Department must be notified as soon as possible.

External Agency or Bank Providers have a responsibility to inform CCC at the earliest opportunity if they are aware of any allegations are made in relation to workers placed at CCC.

7.1.6 Patient Safety Incidents

Reference should be made to the Incident Reporting Policy, the Being Open and Duty of Candour: Communicating Patient Safety Incidents with Patients and their Carers Policy and A Just Culture Guide (Appendix 5).

7.2 Resolve discipline issues informally

Cases of minor misconduct or unsatisfactory performance are usually best dealt with informally. A quiet word is often all that is required to improve an employee's conduct or performance. In some cases additional training, coaching and advice may be what is needed. There will be situations where matters are more serious or where an informal approach has been tried but is not working.

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The manager should talk to the employee in private. This should be a two-way discussion, aimed at discussing possible shortcomings in conduct or performance and encouraging improvement. Criticism should be constructive, with emphasis being on finding ways for the employee and for the improvement to be sustained. Listen to whatever the employee has to say about the issue. It may become evident there is no problem – if so make this clear to the employee.

Where improvement is required make sure the employee understands what to be done, how their performance or conduct will be reviewed, and over what period. It may be useful to confirm in writing what has been decided (however this will be stored locally by the line manager).

The manager should be careful that any informal action does not turn into formal disciplinary action, as this may unintentionally deny certain rights, such as the right to be accompanied. If, during the discussion, it becomes obvious that the matter may be more serious, the meeting should be adjourned. The employee should be told that the matter will be continued under the formal disciplinary procedure.

Managers should keep brief notes of any agreed informal action for reference purposes. There should be reviews of progress over specified periods.

Consideration at any stage by the manager should be given to accessing Mediation if appropriate.

If informal action does not bring about an improvement, or the misconduct or unsatisfactory performance is considered too serious to be classed as minor, employers should provide employees with a clear signal of their dissatisfaction by taking formal action.

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7.3 Representation

At formal stages in this policy the employee has the right to be accompanied by a trade union representative or a workplace colleague to provide advice and support on formal and informal process and action.

7.4 Investigation

Where it is decided following the completion of the Preliminary Investigation Checklist that there should be a formal investigation to consider the case in question the employee will be notified verbally if possible and followed up in writing that an investigation will take place under this policy at which he/she will be given an opportunity for stating their case, accompanied, if so desired, by a trade union representative or a workplace colleague.

In circumstances where the facts are immediately evident and straight forward, in conjunction with the HR Business Partner/Advisor, the Case Manager should gather the relevant information and evidence which will then be presented at a formal hearing. This information and evidence will be shared with the employee before the hearing. In this situation the Manager who gathered the information will not take the role of the Chair at the formal hearing, this will be the relevant next level line manager/ senior manager. Arranging a formal hearing is set out in the 'Guide to Conducting a Formal Hearing'.

Examples where this might be appropriate/where no formal investigation is needed would be persistent lateness or use of inappropriate language.

Where a formal investigation is deemed necessary the process to be followed is as set out in the 'Guide to Conducting Investigations'. The aim of the investigation will be to establish the facts.

Investigations will normally be carried out by an employee operating outside of their usual area of responsibility and should have undergone investigation skills training at the Trust or alternatively have experience of disciplinary procedures. The

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investigating officer(s) will be appointed by the Case Manager in conjunction with the HR Business Partner/Advisor.

In certain circumstances, it may be considered appropriate for the Trust to engage the services of an independent person to undertake the investigation (in accordance with Trust process) and a management representative of the Trust would be responsible for overseeing the arrangements for the investigation.

The Trust is committed to ensuring that all potential disciplinary actions/sanctions are fully investigated where appropriate. Any employee(s) who is subject to an investigation will be informed in writing of the allegations and the remit of the investigation will be clearly outlined.

Where an employee leaves the Trust prior to the completion of an investigation, the investigation will be completed as far as possible to ensure issues of patient and/or staff safety are followed through. For professional staff, consideration will be given to the issue of a professional alert notice where the regulator will be informed. In all cases a file note will be kept so that future referees are able to inform potential employers that there is an unresolved investigation into the practitioner's performance/behaviour. References will be accurate and fair, stating that procedures have not been completed and reflecting the current position. The employee will be informed in writing of the actions taken.

Upon conclusion of the investigation, the investigation report will be submitted to the Case Manager and he/she will decide whether there is a case to answer and proceed accordingly. There are potentially 4 decisions:-

- No case to answer - this should be confirmed in writing to the employee and the letter retained on their personal file.
- Appropriate for the matter to be dealt with informally see 7.1) or through mediation
- The matter should be dealt with under another Policy/procedure

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- The matter should be dealt with under this Policy in accordance with the process outlined in 7.5 formal action, below.

7.4.1 Timescales

Wherever possible investigations should be completed within 4 weeks of appointment of an investigating officer. For complex cases, this may be extended further up to a maximum of 8 weeks. Employees must be notified in writing if timescales need to be extended detailing the reasons why. Investigating officers must submit their report to the case manager within 10 working days of completion of the investigation.

7.5 Formal Hearing

Where it is decided that there should be a formal hearing to consider the case in question the employee will be notified in writing that a hearing will be arranged under this policy at which he/she will be given an opportunity for stating their case, accompanied, if so desired, by a trade union representative or a workplace colleague. The arrangements for the conduct of the hearing will be in accordance with the Trust's 'Guide to Conducting a Formal Hearing'. Employees should be given 7 calendar days' notice of the hearing.

Where an employee leaves the Trust prior to the date of a hearing taking place, the employee will be advised that the hearing will take place and if they do not attend, the panel will review the evidence in their absence and will determine on face value if a disciplinary sanction would have been applied. This will be noted on their personal record and reflected in future references. For professional staff, consideration will be given to the issue of a professional alert notice through the NCAS and the regulator will be informed.

If an employee's companion cannot attend the hearing on the proposed date, the employee or their representative can suggest another date as long as it is reasonable. Where an employee/representative requests the postponement of a

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disciplinary hearing this will be considered on its own merits. If there is a good reason for non-attendance the hearing will be re-arranged but if the employee/representative does not attend the second hearing there is no obligation on the Trust to re-arrange it again. Where a request from the employee/representative to re-arrange the hearing is judged to be unreasonable, the manager may decide to proceed with the hearing as arranged and the employee/representative will be informed to this effect and advised that it will proceed in their absence if they fail to attend.

7.6 Formal Action

When deciding whether formal action is appropriate and the level of action, consideration will be given to:

- The categories of conduct breaches as defined throughout section 7 of this policy.
- The decisions applied in similar cases in the past.
- How the conduct compares with that of other employees.
- The employee's disciplinary record (including current warnings), general work record, work experience, position and length of service.
- Any special circumstances in the case in question.
- Whether the proposed action is reasonable in view of all the circumstances.
- Whether any training, additional support or adjustments to the work are necessary.

Levels of action are as follows:

- No action – where it is determined that there is no case to answer.
- Informal action – will normally apply where formal action is not considered necessary/appropriate but it is necessary to raise awareness of the concerns, offer advice and guidance and ensure the employee understands what needs to be done and how their conduct will be reviewed and over what period.

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- First written warning - will normally apply where the issue is serious enough to warrant more than informal action and where a more significant sanction is not appropriate. It will also apply in cases of repetition by the employee of minor acts of misconduct which have been the subject of an informal action within the preceding 6 months. The length of time for which a warning is retained on an employee's file will reflect the seriousness of the circumstances concerned as determined by the Hearing Manager. Warnings will normally be for no less than 6 months and no more than 12 months.
- Final written warning – will normally apply in cases where there is a repetition of acts of misconduct already the subject of a written warning or instance(s) of misconduct sufficiently serious not to be tolerated a second time. The warning will remain on the employee's record for 12 months from the date of the hearing.
- Action short of dismissal - where appropriate, alternative action short of dismissal may be considered. The disciplinary sanction in this instance may include demotion (and subsequent decrease in pay), transfer to an alternative position or reduction of pay. The sanctions may not be time limited dependent on the circumstances however the employee would be able to apply for alternative posts in the normal way once the record of the action is removed in line with the policy. Where the penalty is one short of dismissal the record would be retained as if it were a final written warning for 12 months. Such sanctions will only be applied as an alternative to dismissal in specific cases after due consideration of all of the facts. If the employee chooses not to accept such action, dismissal could apply.
- Dismissal - will normally apply in cases of gross misconduct, where the employee has a current final written warning or there is an accumulation of live warnings. In cases of gross misconduct, the dismissal will be without notice or payment in lieu of notice but any outstanding holiday entitlement or salary payments owed at the date

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of dismissal will be paid. For other dismissals e.g. cumulative warnings, payment in lieu of notice will normally apply in accordance with the contract of employment.

No formal action will be taken against a union representative of a nationally recognised National Health Service negotiating body until the circumstances of the case have been discussed with a full time official of the organisation concerned, provided that this is with the employee's consent. There may be occasions when it will be necessary to suspend a union representative without having first discussed the matter with a full time official because of the delay this could cause. In such cases the circumstances will be reported forthwith to that organisation.

Employees who are the subject of formal action will receive confirmation in writing, summarising the discussion at the meeting, stating the reasons for the action, the nature of the sanction, how long it will remain on their record and what the likely consequences of further misconduct could be (where appropriate). The letter will also include confirmation of the right to appeal against the decisions in line with the Trusts' Appeals Policy and Procedure.

7.7 Appeals against formal action

Employees' have the right to appeal against any form of formal action taken under this Policy in accordance with the Appeals Policy and Procedure.

The process for lodging Appeals and for the conduct of the appeal is set out in the Trust's Appeal Policy and Procedure.

Any formal action may, on appeal, be upheld, revoked or reduced.

7.8 Grievances raised during the disciplinary process

Where an employee raises a grievance during the disciplinary process, the process may be temporarily suspended in order to deal with the grievance but where the

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grievance and the disciplinary cases are related it may be appropriate to deal with both issues concurrently. The employee and their representative will be consulted in this respect.

7.9 Sickness during the disciplinary process

The ill health of an employee will not usually be grounds for stopping on-going disciplinary procedures.

Where the absence is likely to be short, the Trust will usually wait until the employee recovers and is able to fully participate.

When the absence is on-going and it appears that the employee is likely to remain off sick for an extended period, the Trust will refer the employee to the Occupational Health Department to determine if they are sufficiently fit to participate in the disciplinary process.

Following consultation with the Occupational Health Department it appears that the employee is fit to participate the process will continue. Where it appears that the employee is not fit to take a full part in the disciplinary procedure, the Trust will consider the following measures to enable the employee to participate effectively:

- Venue – Consider holding at a venue other than Trust premises.
- Representation – May be allowed an expanded role in the process where this would assist the employee in ensuring that his/her case is fully explained.
- Written Representations – Where the employee may have difficulty in explaining his/her case, consideration will be given to allowing the employee to rely on written representations.
- Timings – While being committed to the principle that matters are dealt with promptly the Trust may allow extra time for any stage of the disciplinary process to ensure that the employee can participate effectively.

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It should be possible by using the special measures above to conduct a fair disciplinary process in which the employee can participate. There may be exceptional circumstances when the employee will not be able to attend a disciplinary hearing. In such circumstances the Trust reserves the right to proceed with the disciplinary hearing in the employees' absence. Where this is the case the employee will be informed of the date, time and location of the hearing and remain free to attend. The representative may also attend in the absence of the employee, with the employees' prior authorisation.

The outcome of the hearing will be communicated in writing and the employee will be given the opportunity to appeal against any decision in line with the Trust's Appeals Policy and Procedure.

7.10 Support

It is recognised that employees who are the subject of conduct proceedings are likely to find the situation stressful, as will other staff who may become involved because they are a victim of or witnesses to the event. Managers are responsible for ensuring that all staff involved are appropriately supported at all stages. Support is also available from trade union representatives.

At the outset of a formal investigation process a communications plan should be developed and an appropriate contact allocated in order to ensure employees are accessing appropriate support should they require it. This should be communicated at the beginning of the investigation process along with the details of the investigation.

The employee can also be referred to Occupational Health via WOD or by their line manager.

The Trust provides an Employee Assistance Provision for all employees which is available any time 27/7, 365 days a year. Employees are free to access this service

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as they choose by logging onto vivup.co.uk or telephone, (calls charged at local rate) 03303 800658.

8.0 TRAINING

Training will be provided for all employees who are responsible for the management of staff.

9.0 AUDIT

This policy will be audited periodically by WOD and a report from this including recommendations, action plans and changes implemented if applicable will be provided to Workforce Transformation Group.

10.0 REFERENCES

Trust Policies

- Grievance Policy & Procedure
- Bullying and Harassment Policy & Procedure
- Substance Misuse Policy & Procedure
- Anti-Fraud, Bribery & Corruption Policy &
- Response Plan
- Attendance Management Policy
- Managing Performance Policy and Procedure
- Employment Checks Policy
- Receipt of Gifts and Hospitality Policy
- General Health and Safety Policy
- Uniform & Dress Policy
- Driving at Work Policy
- Freedom to Speak up Policy
- Probation Period Policy
- Social Media Policy
- Maintaining High Professional Standards
- Mediation Leaflet

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- Smoke Free Policy
- Appeals Policy & Procedure

Useful Links:

- www.acas.org.uk
- Employee Assistance Provision www.vivup.co.uk 03303 800658'
- Appeals Policy and Procedure
- Raising Concerns Policy

11.0 APPENDICES

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Appendix 1 – Examples of minor/serious/gross misconduct

Set out below are some examples of conduct and behaviour that would be treated as misconduct, serious misconduct and gross misconduct under the Disciplinary Policy. This list is not exhaustive.

a) Minor Misconduct

- Lateness without reasonable explanation
- Failure to report to work without reasonable explanation
- Abuse of privileges of NHS organisation
- Minor instances of discourtesy/rudeness to patients, visitors or other employees
- Failure to wear protective clothing as prescribed and issued
- Failure to adhere to the Trust's Uniform and Dress Code Policy
- Poor attendance record or performance, when the Attendance Management and/or Managing Performance Policy and Procedure is not appropriate
- Minor examples of professional misconduct

b) Serious Misconduct

- Failure to respond to minor misconduct warnings
- Unauthorised absence without reasonable cause whilst purporting to be on duty
- Failure to comply with conditions of service or working procedures
- Refusal to carry out reasonable instructions given by an authorised person
- Failure to maintain registration with relevant mandatory professional body
- Serious instances of professional misconduct

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- Personal behaviour conducted either inside or outside of the workplace or working hours that results in bringing the Trust or any of its employees into disrepute

c) Gross Misconduct

- Theft, fraud, bribery (giving and receiving)
- Repeated unauthorised absence without reasonable cause whilst purporting to be on duty
- Unauthorised entry to computer records or deliberate falsification of records
- Misuse of the Trust's computer system including the misuse of email and internet access
- Fighting or assault
- Deliberate or reckless damage to Trust property
- An inability to perform job duties through being under the influence of alcohol or drugs
- A serious breach of Trusts' safety rules or a single error due to negligence which causes or could have caused significant loss, damage or injury to the Trust, its employees, patients or visitors
- Conviction of a criminal offence that makes the employee unsuitable or unable to carry out his/her duties
- Criminal conduct inside or outside work including non-disclosure of criminal convictions, cautions, reprimands and/or criminal investigation at appointment or during employment
- Repeated refusal to carry out a reasonable request
- Acts of bullying, harassment, victimisation or discrimination
- Falsification of remuneration such as timesheets and expense forms
- Falsification of qualifications
- Falsification of documents

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- Engaging in outside employment during hours contracted or (reasonably expected to be) working for the Trust
- A serious breach of trust or confidentiality
- Acts of insubordination or personal behaviour that results in bringing the Trust into disrepute (including statements made on social networking sites)
- Unauthorised use or misuse of Trust facilities, equipment or property
- Breach of Data Protection

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Appendix 2 – Criminal charges/ convictions

Where the conduct concerned requires prompt attention there is no requirement on the Trust to await the outcome of any prosecution before taking action although it may be necessary to delay the internal investigation whilst the police are carrying out their own investigations.

An employee will not normally be dismissed solely because they are absent from work as a result of being remanded in custody or the subject of restrictive bail conditions. However, the Trust will need to take into account the nature of the offence, the nature of any bail conditions, the length of time the employee is likely to be on remand and consider the implications in relation to service needs so as to reach a decision whether the employees job can be held open.

Where an employee charged with or convicted of a criminal offence is unable to co-operate in person with the investigation and proceedings, the employee will be afforded the opportunity to have a representative attend for them or alternatively submit written representations. Where an employee refuses to co-operate they will be advised in writing that unless further information is provided a disciplinary decision will be taken on the basis of the information available, which could result in dismissal.

Managers must consult their HR Business Partner/Advisor when criminal charges or convictions are reported. If, subsequent to an employee's appointment, they are subject to a criminal investigation and/or charged with any criminal offence (other than a motoring offence which does not carry the penalty of disqualification) they must immediately advise their line manager of this fact. In addition, they must also inform their line manager of the outcome of the police action i.e. whether they are convicted, cautioned or exonerated as soon as the information is known to them. In some instances criminal convictions, even though unconnected to work, may lead to dismissal.

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POLICY

Where formal action is considered necessary it may be taken irrespective of any on-going police investigation into the offence concerned or outstanding criminal proceedings.

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Appendix 3 – Suspension/Exclusion

Suspension is a holding action pending the completion of enquiries, investigation or other measures. In circumstances warranting suspension, an employee will only be suspended by a senior manager.

Suspension will only be carried out in one or more of the circumstances set out below:

- Where a full investigation is necessary and where the presence of the employee at the workplace is likely to impede this process.
- To prevent the loss, destruction or concealment of evidence
- The employee is incapable of remaining at work because of an incapacity, which renders the employee incapable or is likely to cause a danger to patients, other staff, the public or themselves.
- The alleged offence is of a nature which if found to have occurred is likely to result in dismissal.
- Where because of the need to protect the interests of the Trust, the staff, patients or the public, suspension is the only reasonable course of action to take.

Before deciding to suspend, consideration should be given to altering the duties of the employee or temporarily locating them whilst the investigation takes place as an alternative to suspension.

In considering suspension, advice from WOD should always be obtained. A period of suspension should only be imposed after careful consideration and must be regularly reviewed to ensure that it is limited to the minimum practical time and continues only for so long as any or all of the circumstances outlined above continue to exist. Suspension may be initiated before an investigation or at any time during an investigation at a point where it becomes appropriate to do so. Suspension can be lifted at any point during the investigation/disciplinary process as it becomes appropriate to do so.

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Where the Manager/Head of Department has come to the conclusion that suspension is appropriate, the Manager will, wherever possible or appropriate, see the employee personally to outline the nature of the situation/allegation and be advised of the decision to suspend. The Manager should advise the employee that he/she does not have to say anything at this stage but they can choose to make an initial response, whether verbally or in writing. If a response is made at this stage, a full and detailed note should be taken of their response and the employee should be asked to sign and verify the accuracy of the note and be provided with a copy. These notes should be made available to the Case Investigator.

The suspension should be immediately confirmed in writing using the template letter included in the 'Guide to The Role of the Case Manager' which sets out the terms of the suspension.

Support during suspension

It is recognised that being suspended will be a stressful event for the employee and it is also recognised that there is a need for the employee to be kept up to date with regard to general issues and events in their workplace. In this respect the Manager, in consultation with the suspended employee, will seek to identify a member of staff from the work area, who is not involved in the matter being investigated, who can act as a point of contact with the suspended employee during this period and provide impartial moral support. Support will also be available from the Occupational Health Department as necessary.

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Appendix 4 – Suspension/Exclusion Decision Rationale

In cases where suspension is deemed necessary, the below document must be completed.

Suspension/Exclusion Decision Rationale

Senior Manager:		HR Support:	
Member of Staff:		Job Title:	
Nature of Allegation:			

	Considerations	Indicator	Rationale / Evidence
1	Have you contacted Workforce & OD to discuss the possibility of suspension?	Yes / No	
2	Is Gross Misconduct alleged or suspected	Yes / No	
3	Is it possible to carry out a thorough investigation with the employee still present on duty? Consider: <ul style="list-style-type: none"> • Have working relationships severely broken down? • Could the employee tamper with evidence/influence witnesses or influence the investigation? • Would remaining/leaving work be detrimental to their H&WB 	Yes / No	
4	Is there concern further incidents may occur?	Yes / No	
5	Does the individual need safeguarding from further allegations?	Yes / No	
6	Is there a risk to staff/visitors/patients/property/reputation etc.?	Yes / No	
7	Is it possible to temporarily move the individual to another area until the outcome of the investigation?	Yes / No	

8	Is it possible to limit/restrict/supervise the employee's duties or practice whilst the investigation is carried out? i.e. partially suspend	Yes / No	
9	Are there criminal proceedings underway or a legal statutory bar or contractual / professional body bar preventing the employee from carrying out their duties? E.g. NMC, HPC, Work Permit	Yes / No	
Please complete all questions in the 'just culture guide' attached below and note findings here:			
If suspension/ASOS is being considered please continue to work through the checklist:			
10	Have you consulted with the respective Director about the possibility of suspension?	Yes / No	
11	Do you need to notify the individual's professional body at this stage (where applicable)?	Yes / No	
12	Do you need to contact the Local Counter Fraud team? If so, this must be undertaken before any further action is taken.	Yes / No	
13	Do you need to contact the Trust Safeguarding Team?		
14	Do you need to contact any other outside agency? e.g. Police		
15	Does the individual work on the Bank? Do you need to liaise with NHS Professionals to prevent the worker from working bank shifts for the Trust during the period of suspension?	Yes / No	
16	Do you need to contact the Communications Team to discuss a Trust response in the event that the case attracts publicity?		

Decision:	Full suspension	Yes / No	Action short of suspension	Yes / No
Senior Manager Signature			Date	
HR Representative Signature			Date	
Director Signature			Date	

Suspension/Action Short of Suspension Review Dates

NOTE: The outcome of the suspension review should be confirmed to the employee in writing.

Date of Review	Comments	Review of suspension letter sent
e.g. 26/06/17	<i>Reviewed ward off duty / NHSP shifts for w/c 12/06/17 and evidence to show that XX was not on the ward at the time of the alleged incident.</i> Delay: Investigation meeting on 20/06/17 with witness XX rearranged to 30/06/17 due to annual leave.	<i>Suspension lifted and XX to return to work on 28/06/17. (Commissioning manager and Line manager informed)</i>

Appendix 5 – A Just Culture Guide



A just culture guide

Supporting consistent, constructive and fair evaluation of the actions of staff involved in patient safety incidents

This guide supports a conversation between managers about whether a staff member involved in a patient safety incident requires specific individual support or intervention to work safely. Action singling out an individual is rarely appropriate - most patient safety issues have deeper causes and require wider action.

The actions of staff involved in an incident should **not** automatically be examined using this just culture guide, but it can be useful if the investigation of an incident begins to suggest a concern about an individual action. The guide highlights important principles that need to be considered before formal management action is directed at an individual staff member.

An important part of a just culture is being able to explain the approach that will be taken if an incident occurs. A just culture guide can be used by all parties to explain how they will respond to incidents, as a reference point for organisational HR and incident reporting policies, and as a communication tool to help staff, patients and families understand how the appropriate response to a member of staff involved in an incident can and should differ according to the circumstances in which an error was made. As well as protecting staff from unfair targeting, using the guide helps protect patients by removing the tendency to treat wider patient safety issues as individual issues.

Please note:

- A just culture guide is not a replacement for an investigation of a patient safety incident. Only a full investigation can identify the underlying causes that need to be acted on to reduce the risk of future incidents.
- A just culture guide can be used at any point of an investigation, but the guide may need to be revisited as more information becomes available.
- A just culture guide does not replace HR advice and should be used in conjunction with organisational policy.
- The guide can only be used to take one action (or failure to act) through the guide at a time. If multiple actions are involved in an incident they must be considered separately.

Start here - Q1. deliberate harm test

1a. Was there any intention to cause harm?



Yes

Recommendation: Follow organisational guidance for appropriate management action. This could involve: contact relevant regulatory bodies, suspension of staff, and referral to police and disciplinary processes. Wider investigation is still needed to understand how and why patients were not protected from the actions of the individual.

END HERE

No go to next question - Q2. health test

2a. Are there indications of substance abuse?



Yes

Recommendation: Follow organisational substance abuse at work guidance. Wider investigation is still needed to understand if substance abuse could have been recognised and addressed earlier.

END HERE

2b. Are there indications of physical ill health?



Yes

Recommendation: Follow organisational guidance for health issues affecting work, which is likely to include occupational health referral. Wider investigation is still needed to understand if health issues could have been recognised and addressed earlier.

END HERE

2c. Are there indications of mental ill health?

if No to all go to next question - Q3. foresight test

3a. Are there agreed protocols/accepted practice in place that apply to the action/omission in question?

3b. Were the protocols/accepted practice workable and in routine use?

3c. Did the individual knowingly depart from these protocols?



If No to any

Recommendation: Action singling out the individual is unlikely to be appropriate; the patient safety incident investigation should indicate the wider actions needed to improve safety for future patients. These actions may include, but not be limited to, the individual.

END HERE

if Yes to all go to next question - Q4. substitution test

4a. Are there indications that other individuals from the same peer group, with comparable experience and qualifications, would behave in the same way in similar circumstances?

4b. Was the individual missed out when relevant training was provided to their peer group?

4c. Did more senior members of the team fail to provide supervision that normally should be provided?



If Yes to any

Recommendation: Action singling out the individual is unlikely to be appropriate; the patient safety incident investigation should indicate the wider actions needed to improve safety for future patients. These actions may include, but not be limited to, the individual.

END HERE

if No to all go to next question - Q5. mitigating circumstances

5a. Were there any significant mitigating circumstances?



Yes

Recommendation: Action directed at the individual may not be appropriate; follow organisational guidance, which is likely to include senior HR advice on what degree of mitigation applies. The patient safety incident investigation should indicate the wider actions needed to improve safety for future patients.

END HERE

if No

Recommendation: Follow organisational guidance for appropriate management action. This could involve individual training, performance management, competency assessments, changes to role or increased supervision, and may require relevant regulatory bodies to be contacted, staff suspension and disciplinary processes. The patient safety incident investigation should indicate the wider actions needed to improve safety for future patients.

END HERE

Improvement.nhs.uk

Based on the work of Professor James Reason and the National Patient Safety Agency's Incident Decision Tree

Supported by:



NHS England and NHS Improvement

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Appendix 6 – CCC Values & Behaviours

Example	Putting people first		Example
<p>Being polite & considerate</p> <p>Treating everyone as an equal</p> <p>Considerate to the feelings of others and consider impact of my actions</p> <p>Caring, kind & compassionate to others</p> <p>Saying thank you to colleagues for a job well done, or for their support</p>	<p>How we behave</p> <p>We are caring and compassionate</p> <p>We treat people as individuals and take time to understand their needs</p> <p>We communicate clearly and honestly</p> <p>We treat everyone with dignity and respect</p> <p>We develop services around the needs of patients</p> <p>We are open, friendly and welcoming</p> <p>We value other people's time by being punctual and professional</p>	<p>What we shouldn't do</p> <p>Assume we know what's best and ignore other's views</p> <p>Develop services around the needs of staff</p> <p>Accept a culture of waiting</p> <p>Accept inappropriate behaviour by ignoring it</p> <p>Behave selfishly towards others</p>	<p>Communicates inappropriately i.e. rude, aggressive, sarcastic, divisive, judgemental</p> <p>Intolerant or uninterested of the differences within their team.</p> <p>Treats people differently because of their professional/social/personal background</p> <p>Communicates in a way which undermines positive, constructive relationships e.g. critical emails shared with others, openly critical of others in meetings.</p> <p>Uncaring, insensitive, unhelpful to others</p> <p>Lacks interest in the successes or achievements of others</p>

Example	Passionate about what we do		Example
<p>Supports colleagues across the Trust to work together</p> <p>Positive attitude towards their work, colleagues and CCC</p> <p>Work in partnership inside and outside the Trust</p> <p>Contributes to a positive working environment, making CCC a happier, more enjoyable place to be for everyone</p> <p>Empowers colleagues to take responsibility for their work</p>	<p>How we behave</p> <p>We are motivated to make a positive difference</p> <p>We develop our skills to keep improving our performance</p> <p>We take personal responsibility for doing the best we can</p> <p>We listen to and value the contribution of others</p> <p>We work closely together to overcome challenges and achieve success</p> <p>We work in partnership</p>	<p>What we shouldn't do</p> <p>Blame others</p> <p>Not learn from mistakes</p> <p>Focus on own work to the detriment of others</p> <p>Express cynicism</p> <p>Work in silos</p> <p>"Pull rank" inappropriately</p>	<p>More inclined to identify differences in working practices and reasons why things won't work, than identify areas of common ground</p> <p>Negative about their job, colleagues and management, focusing on what is wrong as opposed to what works well and what has been achieved</p> <p>Focuses too much on internal issues (own job/work area), not taking opportunities to engage outside their work area</p> <p>Focuses on problems, not solutions</p> <p>Does not encourage others to take responsibility for their work, unwilling to trust others</p>

Example	Achieving excellence		Example
	How we behave	What we shouldn't do	
<p>Consistently works to the highest quality standards</p> <p>Deliver a standard of service I would expect myself</p> <p>Positively promotes CCC, taking pride in working at CCC</p> <p>Honest, open and respectful in giving and receiving feedback</p> <p>If things go wrong, will give prompt apologies and explanations, with a reassurance that they will not reoccur</p>	<p>We put patient safety first at all times</p> <p>We are open and transparent about our performance and where we can improve</p> <p>We challenge poor standards to deliver high quality care</p> <p>We share knowledge and expertise</p> <p>We go the extra mile</p> <p>We are open and honest in giving and receiving feedback</p> <p>We work to continuously to improve and make positive changes</p>	<p>Cover up poor quality</p> <p>Ignore the contribution of others</p> <p>Take the easy option</p> <p>Accept we have always done it this way</p>	<p>Does not deliver a consistent standard of service</p> <p>Takes little or no responsibility for the service they provide</p> <p>Being negative about their team or other teams when interacting with colleagues, patients etc</p> <p>Defensive when receiving feedback</p> <p>Delivers difficult feedback without considering the impact on the individual</p> <p>Avoids delivering difficult feedback</p> <p>Unwilling to take personal responsibility or offer apologies, when things go wrong</p>

Example	Looking to the future		Example
<p>Takes personal responsibility for continually improving the services provided</p> <p>Keeps an open mind to new idea and accepts when change is necessary</p>	<p>How we behave</p> <p>We provide services that are value for money</p> <p>We encourage and embrace new ways of working</p> <p>We lead by example</p> <p>We actively seek opportunities to invest in our future success</p> <p>We build pride in our reputation</p>	<p>What we shouldn't do</p> <p>Waste resources and ignore costs</p> <p>Undermine partnerships</p> <p>Constrain the development of others</p> <p>Sit on the side lines and observe</p>	<p>Displays little or no interest in helping to find improvements; does not deliver a consistent standard of service</p> <p>Takes little or no responsibility for improving services, sees it as someone else's job</p> <p>Approaches change with a negative outlook, not prepared to try new ways of doing things</p> <p>Uninterested or resistant to new ideas or initiatives, holds things up or persuades others not to get involved</p> <p>Blocks change, does not see the need for change</p>

Example	Always improving our care		Example
	How we behave	What we shouldn't do	
Encourages personal growth and professional development in others	We put forward and try out new ideas	Settle for low standards	Shows little interest in supporting others with their learning or development, gives little or no feedback or encouragement
Suggests improvements that could be made to the way we do things	We give praise and say thank you	Take credit for others work	Uninterested or resistant to new ideas or initiatives, holds things up or persuades others not to get involved
Encourages innovation and creativity in their area of work	We seek out learning opportunities to develop ourselves and others	Stick to the status quo	
Takes opportunities for creative improvement	We strive to find new and innovative ways to improve quality	Be overly risk averse	
Shares skills and knowledge, encourages and supports others in applying their ideas to work	We are not afraid to do things differently	Ignore inappropriate behaviour	
	We are empowered to take decisions	Consider ourselves more important than others	

Appendix 7- Preliminary Investigation Checklist

Supporting consistent, constructive & fair evaluation of the actions of staff involved in incidents (i.e. disciplinary or bullying & harassment allegations)


This checklist supports a conversation between managers about whether a staff member involved in an incident requires specific individual support or intervention to support appropriate changes in performance/behaviour. The checklist highlights important principles that need to be considered before formal management action is undertaken.

Staff Name:		Department:	
Job Title:		Staff Group:	
Manager:		HR Advisor contacted:	Y <input type="checkbox"/> N <input type="checkbox"/> Name.....
Incident (s) details:			
Date of incident:		Date brought to manager's attention:	
Meeting with member(s) of staff for initial response:	Y <input type="checkbox"/> N <input type="checkbox"/> Date.....	DATIX completed if applicable	Y <input type="checkbox"/> N <input type="checkbox"/> N/A <input type="checkbox"/> Date..... DATIX number:
Witnesses identified and met with for initial response	Y <input type="checkbox"/> N <input type="checkbox"/> Date(s).....	Names of witnesses:	




POLICY

Member(s) of staff and witnesses statements requested	Y <input type="checkbox"/> N <input type="checkbox"/> Date	Member(s) of staff and witnesses offered counselling	Y <input type="checkbox"/> N <input type="checkbox"/> Date.....
Supporting information provided	<u>List:</u>		
Additional comments:			



'Just Culture' Decision Tree

Q1. Deliberate harm test			YES / NO / COMMENTS
1a. Was there any intention to cause harm?		Yes	Recommendation: Follow organisational guidance for appropriate management action. This could involve: contact relevant regulatory bodies, suspension of staff, and referral to police and disciplinary processes. Wider investigation is still needed to understand how and why patients were not protected from the actions of the individual.
Q2. Health test			YES / NO / COMMENTS

POLICY

2a. Are there indications of substance abuse?		Yes	Recommendation: Follow organisational substance abuse at work guidance. Wider investigation is still needed to understand if substance abuse could have been recognised and addressed earlier.	
2b. Are there indications of physical ill health?		Yes	Recommendation: Follow organisational guidance for health issues affecting work which is likely to include occupational health referral. Wider investigation is still needed, to understand if health issues could have been recognised and addressed earlier.	
2c. Are there indications of mental ill health?				
Q3. Foresight test				YES / NO / COMMENTS
3a. Are there agreed protocols / accepted practice in place that apply to the action/omission in question?		If No to any	Recommendation: Action singling out the individual is unlikely to be appropriate; the patient safety incident investigation should indicate the wider actions needed to improve safety for future patients. These actions may include, but not be limited to, the individual.	
3b. Were the protocols/accepted practice workable and in routine use?				
3c. Did the individual knowingly depart from these protocols?				
Q4. Substitution test				YES / NO / COMMENTS

POLICY

4a. Are there indications that other individuals from the same peer group, with comparable experience and qualifications would behave in the same way in similar circumstances?		Yes to any	<p>Recommendation: Action singling out the individual is unlikely to be appropriate; the patient safety incident investigation should indicate the wider actions needed to improve safety for future patients. These actions may include, but not be limited to, the individual.</p>	
4b. Was the individual missed out when relevant training was provided to their peer group?				
4c. Did more senior members of the team fail to provide supervision that normally should be provided?				
Q5. Mitigating circumstances				YES / NO / COMMENTS
5a. Were there any significant mitigating circumstances?		Yes	<p>Recommendation: Action directed at the individual may not be appropriate; follow organisational guidance, which is likely to include senior HR advice on what degree of mitigation applies. The patient safety incident investigation should indicate the wider actions needed to improve safety for future patients</p>	
				YES / NO / COMMENTS

POLICY

<p>Recommendation: Follow organisational guidance for appropriate management action. This could involve individual training, performance management, competency assessments, changes to role or increased supervision, and may require relevant regulatory bodies to be contacted, staff suspension and disciplinary processes. The patient safety incident investigation should indicate the wider actions needed to improve safety for future patients.</p>		
<p>Outcome: (tick as appropriate)</p>	<p>Employee Capability Policy to be followed</p>	
	<p>Informal action taken</p>	
	<p>Formal investigation needed (refer to Head of Service AND Director)</p>	
<p>Additional comments:</p>		
<p>Signed:</p>		<p>Date:</p>