

## Conduct and Expected Behaviours Procedure (including Sexual Misconduct)

**FOR OUH STAFF ONLY:** A supporting toolkit for this procedure is available – [Conduct and Expected Behaviours Procedure](#)

<b>Category:</b>	Procedure
<b>Summary:</b>	This document establishes the expected standards of behaviour for all employees and actions that should be taken when behaviours fall short of the expected standards.
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## Introduction

1. This procedure supports and promotes Oxford University Hospital NHS Foundation Trust's ("the Trust") values and the strategic aim to make OUH a great place to work by delivering the best staff experience and wellbeing for all Our People, supported by a sustainable workforce model and a compassionate culture.
2. The Trust's aim is to ensure that conduct matters are dealt with fairly and in a timely manner, and that steps are taken to establish the facts using the principles of a [Just and Learning Culture](#) together with the [Trust Values and Behaviours](#) to give employees an opportunity to reflect and learn from their behaviours before taking formal action wherever possible.
3. The fair treatment of our employees will support a culture of fairness, openness and learning in the NHS by making employees feel confident to speak up when things go wrong, rather than fearing blame. An objective and prompt examination of the issues and circumstances will be carried out to establish whether training for the employee, support, guidance and/or informal management may be more appropriate and productive or if there are truly grounds for a formal investigation and/or for formal action under this procedure.
4. This procedure sets out the Trust's expectation that both managers and employees always maintain acceptable standards of behaviour and conduct. The Trust is committed to supporting and encouraging its employees in achieving this.
5. Our Trust values guide everything we do, help us make decisions, and shape the way that we interact with patients and with each other. All staff are expected to behave in a way that brings these values to life.
6. For each value the Trust has defined three sets of behaviours:
  - 6.1. What we love to see – these are the practices and attitudes that will ensure we provide an outstanding level of patient care and service;
  - 6.2. What we expect to see – these are the practices and attitudes that we expect from everyone who works for us; and
  - 6.3. What we don't want to see – these are the practices and attitudes that are not acceptable and will not support the Trust to deliver the expected standards of patient care and services.

The Trust Values and Behaviours can be found on the [intranet](#).

7. Employees should have regular interaction with their line manager and should be made aware of any concerns about the standard of their behaviour and/or conduct at the earliest opportunity so that there can be prompt resolution. Advice should be sought from Divisional Workforce Teams before invoking the formal stages of this procedure.
8. Where an issue is one of both performance and conduct, then the matter will be dealt with under this procedure and the employee informed accordingly.
9. All information related to employees under this procedure is confidential. Any employees who do not maintain confidentiality may be subject to separate action under this procedure.

## Scope

10. This procedure applies to all employees of Oxford University Hospitals NHS Foundation Trust on substantive or fixed term contracts, and Retention of Employment (RoE) employees.
11. Employees on medical and dental contracts should be managed under the Trust's Handling Concerns Relating to the Conduct, Capability or Health of Medical and Dental Practitioners Procedure in the first instance. Where the issue is then determined to be related to misconduct and not related to clinical practice it may subsequently be heard under this procedure.

12. Where behaviour and/or conduct matters arise relating to an agency/NHS Professionals (NHSP) worker, the Trust will contact the agency/NHSP to inform them of the concern and ask that it is addressed through their procedures.
13. For conduct matters relating to honorary contract holders the Trust will work with the substantive employer to address the concerns through the agreed process.
14. This procedure does not form part of any employee's contract of employment and does not apply to employees during their probationary period.

## Aim

15. The purpose of this procedure is to ensure that:
  - 15.1. conduct cases are managed consistently across the Trust and in line with current legislation, employment case law and best practice;
  - 15.2. conduct issues are dealt with in a non-discriminatory, transparent, fair and timely manner; and
  - 15.3. conduct issues are managed in accordance with the principles of a just and learning culture.

## Definitions

16. The terms in use in this document are defined as follows:
  - 16.1. **Alternative to suspension** may occur where it is necessary to restrict an employee's normal duties due to concerns about their behaviour and/or conduct which may impact on the health, safety or wellbeing of patients, colleagues or the employee concerned.
  - 16.2. A **formal conduct hearing** is the meeting held under the formal stage of this procedure which has been convened to consider the findings of the investigation into alleged misconduct and determine whether any sanction is required.
  - 16.3. **Exclusion** from work may be required in certain circumstances and this term applies for Medical and Dental Staff only. Further information on exclusion can be found in the Trust's Handling Concerns Relating to Conduct, Capability or Ill Health of Medical and Dental Practitioners Procedure
  - 16.4. **Gross misconduct** is misconduct of such a serious nature that it fundamentally breaches and destroys the contractual relationship between employer and employee. It is an act (or an omission), which makes any further working relationship and mutual trust impossible. If on completion of the conduct process it is concluded gross misconduct has taken place, the result will normally be dismissal without notice (i.e. summary dismissal). Gross misconduct does not always automatically mean summary dismissal, this must be reasonable taking into account any mitigating factors.
  - 16.5. An **investigation** is an impartial and independent process by which information is gathered to determine the facts of the case.
  - 16.6. A **Just and Learning Culture** creates a culture of openness where the emphasis is on establishing the facts of an incident first before any decision is made to undertake a formal investigation. This approach allows for the setting of expectations and standards and supports the establishment of trust between employees and their managers.
  - 16.7. **Mediation** is a confidential and voluntary process which brings two or more employees together in the presence of a mediator to resolve problems, disputes or disagreements.
  - 16.8. **Misconduct** is unacceptable and improper behaviour which may breach the Trust's policies, procedures, values or behaviours but does not normally warrant dismissal unless repeated after due warning.

- 16.9. A **senior manager**, for the purposes of this procedure, is an employee who holds authority to dismiss (See Appendix 2).
- 16.10. A **statement** is the signed and dated written evidence of an individual given as part of an investigation.
- 16.11. **Suspension** from work may be required in certain circumstances (see paragraphs 53-71) whilst an investigation into allegations of misconduct is undertaken and will normally be on full pay. It should be made clear to the employee that suspension is not a disciplinary sanction and is not a presumption of guilt. Suspension will be for the shortest possible time and reviewed on a regular basis to ensure it remains appropriate.

## Responsibilities

- 17. The **Chief Executive Officer** has overall responsibility for this document.
- 18. The **Chief People Officer** has delegated responsibility for updates and implementation of this procedure.
- 19. **Line Managers** are responsible for:
  - 19.1. Exhibiting behaviour which meets the Trust's standards at all times and which is also in line with the Trust values and behaviours.
  - 19.2. Ensuring that their employees are aware of this procedure. Each employee should be informed of the conduct and standard of behaviour expected in their job.
  - 19.3. Referring new employees to this procedure as part of their local induction and encouraging them to familiarise themselves with the document.
  - 19.4. Ensuring that this procedure is applied fairly and consistently.
  - 19.5. Regularly reviewing the period of suspension or any restriction of duties, as appropriate; there may be occasions where this responsibility is undertaken by another senior manager.
  - 19.6. Ensuring that staff who are subject to this procedure are signposted to appropriate health and wellbeing support (see paragraph 41)
- 20. The **Workforce Directorate** is responsible for:
  - 20.1. Providing consistent, legally sound advice and guidance on the application of this procedure.
  - 20.2. Monitoring the application of the formal stages of this procedure to ensure that it is being applied in a consistent and non-discriminatory manner.
  - 20.3. Assigning HR support to the Case Manager and the Investigating Officer
  - 20.4. Providing advice and guidance to the Case Manager and Investigating Officer throughout the procedure.
  - 20.5. Reviewing and updating this procedure and associated guidance documents on a regular basis.
  - 20.6. Providing support and training for managers appointed as Case Manager and/or Chair of formal conduct hearings.
- 21. **Employees** are responsible for:
  - 21.1. Maintaining appropriate standards of conduct, acting within their level of competence, and seeking advice from their manager if they are unsure of what to do in a certain situation.
  - 21.2. Acting in accordance with Trust policies, procedures, values and behaviours and familiarising themselves with this procedure.

- 21.3. Providing a witness statement and/or attending an investigation meeting if requested to do so.
  - 21.4. Maintaining confidentiality throughout the conduct process and only discussing the facts of the case with their Trade Union Representative/Work Colleague, Welfare Officer, Case Manager, Investigating Officer or Divisional HR support.
  - 21.5. Attending formal conduct hearings and appeal hearings when required, unless there are extenuating circumstances which prevent attendance. Any extenuating circumstances must be reported to the Case Manager.
22. The **Case Manager** is responsible for:
- 22.1. Overseeing the formal conduct process.
  - 22.2. Preparing the terms of reference for the investigation and keeping these under review.
  - 22.3. Setting the timescales for completion of the investigation.
  - 22.4. Commissioning the Investigating Officer to investigate the allegations.
  - 22.5. Informing the employee of the allegations, the name of the Investigating Officer and the timescale for the investigation to be completed.
  - 22.6. Providing updates to the employee on case progression to ensure the employee receives regular and clear communication about the case. If the timescale for completion of the investigation is extended, the Case Manager should communicate this to the employee at the earliest opportunity.
  - 22.7. Receiving the final investigation report and determining whether the case needs to be referred to a formal conduct hearing.
  - 22.8. Making arrangements for formal conduct hearings including confirming who will present the management case.
  - 22.9. Where other agencies are involved, for example the police, Local Authority Representative (in the case of safeguarding issues) or the Local Counter Fraud Specialist/NHS Counter Fraud Authority, the Case Manager should ensure regular contact is maintained with the agency.
23. The **Chair** is responsible for:
- 23.1. Chairing a formal conduct hearing and determining the outcome, based on the evidence presented by all parties.
  - 23.2. Presenting the management response to any appeal hearing.
  - 23.3. Where a case relates to a matter of misconduct by a medical or dental practitioner, previously investigated under the Handling Concerns Related to Conduct, Capability or Health of Medical and Dental Practitioners Procedure the formal conduct hearing will be chaired by an appropriate manager in accordance with that procedure.
24. The **Investigating Officer** is responsible for:
- 24.1. Undertaking a full and thorough investigation, establishing the facts of the case and collecting all relevant evidence and information thoroughly and impartially.
  - 24.2. Undertaking investigation interviews with all witnesses and/or requesting statements from witnesses, as appropriate.
  - 24.3. Producing an investigation report that addresses the allegations detailed in the Terms of Reference, providing sufficient information, referenced to relevant policies/procedures, to enable the Case Manager to determine if there is a case to answer.
  - 24.4. Completing the investigation in a timely manner and without undue delay. Where necessary, liaising with the Case Manager regarding any potential delays in completing the investigation.

- 24.5. Attending a formal conduct hearing as a witness, to present, and answer questions on, the findings of the investigation, where appropriate.
25. The **Welfare Officer** is responsible for:
  - 25.1. Providing support to the employee once a formal conduct investigation begins; acting as the nominated individual for the employee to speak to about the conduct process and what to expect at each stage.
  - 25.2. Signposting the employee to wellbeing support and resources.
  - 25.3. Escalating concerns to the Case Manager in relation to employee wellbeing.
26. The **Chief Nursing Officer/Chief Medical Officer** is responsible for making a referral to any relevant professional regulator or professional body where the Trust considers there is an issue which breaches professional standards.
27. The **Designated Workforce Safeguarding Lead** is responsible for making a referral to the Disclosure and Barring Service following the completion of internal investigations and/or when the Trust has permanently removed an individual from regulated activity, either because that person has caused harm, or poses a future risk of harm to children or vulnerable groups.

## Conduct and Expected Behaviours Procedure

### Anonymous Information

28. Where a manager receives an anonymous letter, they should exercise caution before relying on the information for use under this procedure and make efforts to substantiate the information through other sources.
29. Managers receiving anonymous information by telephone should:
  - 29.1. record all details of the call, including the date, time and duration;
  - 29.2. ask for details and encourage the caller to put the complaint in writing, seeking an explanation if they decline; and
  - 29.3. ask how the caller knows the information, whether it is direct knowledge or hearsay, whether they know the employee personally and whether anyone else knows about the information.
30. The manager should then seek further advice from their Divisional Workforce Team before progressing to the Pre-Assessment stage of this procedure.
31. Where an issue is raised as a concern or a whistleblowing issue, reference should be made to the Trust Freedom to Speak Up Policy.

### Sexual Misconduct

32. The Trust has a zero-tolerance approach to sexual misconduct and violence in the workplace. There may be occasions where concerns about sexual misconduct are initially raised under the Trust's Respect and Dignity at Work Procedure. The Trust will give careful consideration to continuing to manage those concerns through that procedure, or if it is more appropriate to address them under this procedure.
33. Sexual misconduct covers a range of inappropriate sexual behaviour with different legal and operational definitions and processes. It includes language of a sexualised nature, sexual harassment, sexual assault, and rape. The supporting toolkit for this procedure includes definitions that are used when referring to acts of sexual misconduct.
34. If an employee has experienced sexual misconduct in the workplace, the Trust encourages them to use the contact details in the supporting toolkit, so that they can be supported confidentially, and necessary action can be taken.
35. If an employee has witnessed sexual misconduct, the Trust asks them to consider the following:



- 35.1. Offering support to anyone targeted or affected by the behaviour, and/or let them know that the behaviour witnessed is unacceptable.
  - 35.2. To speak to a colleague and/or consider reporting the behaviour to their line manager, Freedom to Speak up Guardian, Divisional HR Team, Workforce Safeguarding Team, or Trade Union. Before reporting the behaviour, employees should try and make sure that the employee who was targeted is aware of, and supports, the intention to report it. If they do not support the intention to report it and the employee is concerned, they should not disclose their identity, but can speak anonymously to our Freedom to Speak Up Guardian for advice and support.
  - 35.3. Challenge the behaviour by speaking to the person responsible either at the time or at an appropriate time and place, but only if the employee feels comfortable and it is safe to do so.
36. Some behaviour raised under this procedure will be unlawful and consequently there may be different, sometimes overlapping, legal and operational processes being followed, including safeguarding, employment and/or police. In these instances, advice must be sought from the Employee Relations team.

### **Pre-Assessment**

37. This is the first informal stage of any potential behaviour and/or conduct matter and should be undertaken by the employee's line manager (or the line manager's manager if the line manager is involved) within 2 working days of the incident becoming known.
38. The purpose of the pre-assessment is an informal process to establish facts when there is reasonable belief that Trust policies, procedures or guidelines have not been followed, and does not require terms of reference to be set.
39. The pre-assessment checklist (see toolkit) must be completed to inform and record the decision as to whether the matter can be resolved informally or if the formal conduct process should be initiated.
40. The Trust will advise the employee that the pre-assessment process is taking place but any meeting with the employee in this part of the process is informal.
41. At this stage, the employee must be offered a referral to the Centre for Occupational Health and Wellbeing and provided with details of the Employee Assistance Programme. In cases where there is significant concern for the employee's wellbeing, they should be signposted to the Trust's Staff Support Service.
42. Where the pre-assessment outcome indicates further formal investigation is not required the early resolution stage of this procedure should be followed.
43. Where the pre-assessment outcome indicates further formal investigation is required, this must be reviewed and signed off by a Chief Officer. This authority can be delegated if the sign off would cause undue delay. The Chief Officer must have had no previous involvement in the case and will provide independent oversight.

### **Early Resolution**

44. At the early resolution stage, it will not usually be necessary to involve Trade Union representatives or a member of the Divisional Workforce team. Where an employee requests support, or it is felt that the employee would benefit from support at this stage, it will be considered on a case-by-case basis.
45. Where the pre-assessment outcome identifies misconduct, but having considered this in line with the Just Culture checklist it does not warrant formal investigation, the manager should meet with the employee with the aim of providing a supportive environment which allows the employee and the Trust to learn from the incident and ensure appropriate standards of conduct and behaviour in the future as well as identifying any appropriate organisational procedural/policy changes needed.

46. Both managers and employees are responsible for ensuring that such discussions take place promptly when issues arise and that they are managed confidentially.
47. The manager should have a two-way open and honest discussion with the employee which may determine any underlying issue and/or identify potential solutions.
48. The manager will provide guidance on acceptable standards of conduct and behaviour and set targets and timescales for improvement where appropriate. The outcome of these meetings should be documented on the 'Letter of Early Resolution' (see toolkit), and a copy kept by both parties to ensure clarity of expectations and commitments.
49. The manager must make sure the employee is aware that if the issues resolved through early resolution reoccur then they may progress to the formal stage of the conduct procedure.
50. The timescales for any follow-up or review meetings will be by agreement by both parties but will usually be limited to a maximum 6-month timeframe.
51. The follow-up or review meeting(s) will involve the manager meeting with the employee to review whether the standards of conduct and behaviour have been met and any targets set have been achieved.
52. At the end of the agreed timescales, where the required improvement has been met, the manager will confirm that no further action will be taken. Where the required improvement(s) are not met, the manager will advise the employee that the formal stage of this procedure will be initiated.

## **Alternative to Suspension and Suspension**

### **Medical and Dental Staff**

53. The process for restricted practice and/or exclusion for Medical and Dental staff is set out in the Trust's Handling Concerns Relating to Conduct, Capability or Ill Health of Medical and Dental Practitioners Procedure. The following paragraphs 54 to 71 therefore **do not** apply to Medical and Dental staff.

### **Assessing the Risk**

54. The manager should assess if there is a significant risk to the organisation by using the Trust's suspension checklist (see toolkit) which should be completed at a meeting with the manager, HR support and a member of the Employee Relations team. Where these risks can be managed alternatives to suspension should be used. These will include temporarily moving the employee to another work area or considering other duties; the expectation is that the manager will work with colleagues in other Divisions where it is not possible to temporarily redeploy within the employee's own Division.
55. Should it not be possible for the member of staff to remain in their workplace due to the allegations made, every effort should be taken to consider a temporary move. This can be to another work area or for restrictions to be placed on their practice in order to avoid a suspension. Suspension should only be considered as a last resort and only at the point that all other options have been exhausted; or if it is deemed that it could be harmful to the investigation, the member of staff, patients or other staff for the employee to remain in the workplace.
56. Once completed the suspension decision must be approved by both a senior manager at the Trust (Divisional Director of Nursing/Divisional Director of Operations/Director or above) and a senior member of the Employee Relations Team/Director of Workforce/Chief People Officer.
57. If suspension/alternative to suspension is being considered for an employee who is a Trade Union representative, the relevant Full Time Officer should be notified first before confirming any decision to the employee.

### **Communicating the Decision to Suspend and Supporting Employees**

58. The Trust will make every effort to ensure that employees are informed of the decision to suspend in a face-to-face meeting; the outcome of which will be confirmed in writing to the employee within 5 calendar days of the meeting taking place.
59. The employee can be accompanied by a Trade Union representative or work colleague at the suspension meeting however the unavailability of a representative cannot prevent the suspension from taking place.
60. At the meeting the manager communicating the decision to suspend will:
  - 60.1. Clearly explain the reasons for suspension and how long it is expected to last;
  - 60.2. Provide details of a designated contact person (usually the employee's line manager) who the employee can contact with any concerns and a named point of contact in the Workforce Team;
  - 60.3. Agree how regular contact will be maintained with the employee while they are suspended;
  - 60.4. Confirm a referral will be made to the Centre for Occupational Health and Wellbeing and advise the employee of the support available to them while they are suspended e.g. Employee Assistance Programme, Centre for Occupational Health and Wellbeing, Staff Support Service, Welfare Officer;
  - 60.5. Explain that the employee may still contact work colleagues who they usually socialise with outside of work but must not discuss the investigation with them; and
  - 60.6. Agree with the employee how their absence will be explained to colleagues and/or patients should it be necessary to do so.
61. At the meeting the terms of the suspension will also be provided to the employee. These should include:
  - 61.1. Not doing anything that could interfere with the investigation;
  - 61.2. Treating the matter confidentially;
  - 61.3. How to contact witnesses to support their case;
  - 61.4. Any restrictions on visiting Trust premises unless given prior permission;
  - 61.5. Requirement to remain available during their normal working hours to attend meetings. In instances where these hours are outside normal working hours agreement should be sought as to how meetings will be arranged; and
  - 61.6. How to request periods of absence while suspended e.g. annual leave and sickness absence
62. If deemed necessary, the employee may be asked to hand in Trust property such as keys, ID card, Trust mobile phone etc. at the time of suspension. This should be considered on the basis of risk as opposed to being the norm.

### **Review and Ending of Suspension**

63. Suspension will be for the minimum time period. The first review by the Manager should be no later than 14 calendar days after the employee is informed of the suspension, with a second review after a further 14 calendar days if the suspension remains in place.
64. If, following the second review, the employee remains suspended for 4 weeks, the suspension review should move to weekly intervals to ensure the employee is supported and to determine whether ongoing suspension remains the most appropriate course of action.
65. After each suspension review, the Manager responsible for the suspension (usually the line manager) must write to the employee to confirm the outcome of the review.

66. Where the Manager considers that suspension is no longer necessary, they should meet with the employee to inform them of their decision and to discuss how they will be supported to return to the workplace. The Manager should also confirm to the employee whether there are any restrictions of duties and/or temporary redeployment when they return.

### **Pay During Suspension**

67. Employees who are suspended will be paid as if at work unless there are exceptional circumstances which warrant suspension without pay (See paragraph 71). This pay will be calculated on the basis of the employee's average pay in the 3 months prior to the suspension and will include overtime, enhancements and/or other regular allowances.
68. Where an employee is suspended and subsequently reports as being sick, whilst the terms of the suspension will remain in place, the employee will receive occupational sick pay (according to their entitlement) during the sickness absence period.
69. When an employee is suspended, they must not undertake any other paid work during the hours they are contracted to work for the Trust. Where a suspended employee usually works an irregular shift pattern and has secondary employment, they should discuss with the Manager responsible for the suspension how this can be undertaken during the period of suspension.
70. Where an employee has additional employment outside the Trust, details relating to their suspension may be shared with other employers if it is in the public interest, for example, where it is considered that there is a risk to patient safety.
71. Suspension without pay may be considered in some cases e.g. where an employee's professional registration has lapsed or been suspended/is subject to conditions of practice, because they have lost the right to work under the Immigration and Asylum Act or they are subject to criminal proceedings. Consideration will be given to the individual circumstances of employees in such cases before determining whether suspension without pay is a proportionate measure to be taken.

### **Right to be Accompanied**

72. An employee has the statutory right to be accompanied by a Trade Union Representative or accompanied by a work colleague at a formal conduct hearing under this procedure; in addition to this, the Trust allows an employee to be accompanied at other meetings under this procedure, including investigation interviews. In cases where an employee is an accredited Trade Union Representative, the Full-Time Officer may be involved as the employee's representative. The companion will not be permitted to act in a legal capacity.
73. Medical practitioners may have additional rights of representation as set out in the Handling Concerns Relating to the Conduct, Capability or Health of Medical and Dental Practitioners Procedure. A doctor can be represented by a friend, partner/spouse, work colleague, trade union/defence organisation representative, and also has a right to a legal representative instructed or employed by a defence organisation.
74. The Trust reserves the right to ask for identification of a Trade Union Representative, if they are not an employee of the Trust.
75. The Trade Union Representative/Work colleague may address the hearing in order to present and/or sum up the employee's case and respond on the employee's behalf to any view expressed at the hearing. They may also confer with the employee during the hearing. The Trade Union Representative/Work colleague cannot answer questions on the employee's behalf, address the hearing if the employee does not wish it or prevent the Trust from explaining its case.
76. In exceptional circumstances, and at the Trust's discretion, the employee may be permitted to be accompanied by a friend or partner, but this companion will not usually be allowed to represent the employee in any way.
77. It is the employee's responsibility to ensure their chosen Trade Union Representative/Work colleague is willing and able to attend a hearing. The employee must inform the Chair, at

- least five calendar days in advance of the hearing, who they will be accompanied by including the person's name and contact details.
78. It is not reasonable for an employee to insist on being accompanied by a person whose presence would prejudice the hearing or investigation or who might have a conflict of interest. The Trust reserves the right to refuse the attendance of such a person.
  79. If the employee cannot attend an investigation interview or conduct hearing because their Trade Union Representative/Work colleague is unavailable on the date given, the Trust will postpone the meeting or hearing to a time proposed by the employee, provided that is within seven calendar days of the original date and the alternative time and date is appropriate for all other parties involved. Only one attempt will usually be made to reschedule the meeting.
  80. If this is not possible to achieve within the timescale, the employee will be advised to seek alternative representation as the meeting will proceed as scheduled.
  81. Under no circumstances should employees be unreasonably refused the right to be accompanied by a Trade Union Representative or a work colleague.
  82. In cases where English is not the employee's first language, it may be necessary to involve the services of an interpreter. In such cases the interpreter will be sourced by the Trust, it is not appropriate to allow a colleague or family member to act as an interpreter.
  83. Where an employee may have a disability which could affect their understanding of the process, guidance should be sought from HR before proceeding.

## **Formal Conduct Process**

### **Investigation**

#### **Medical and Dental Staff**

84. The investigation process for conduct and/or behavioural concerns for Medical and Dental staff is set out in the Trust's Handling Concerns Relating to Conduct, Capability or Ill Health of Medical and Dental Practitioners Procedure. The following paragraphs 85 to 103 therefore **do not** apply to Medical and Dental staff.

#### **All Other Staff**

85. When the outcome of the pre-assessment is that the alleged behaviour requires investigation under the formal section of the Conduct Procedure, a Case Manager will be appointed by the Divisional Management Team. The Divisional Head of Workforce will then allocate HR support to the Case Manager and to the Investigating Officer.
86. The Employee Relations Team will assign an impartial Welfare Officer who will provide support to the employee throughout the formal process (see paragraph 25).
87. The Case Manager, together with their HR support, will produce the Terms of Reference setting out the scope of the investigation, ensuring the allegations to be investigated are clear and unambiguous.
88. The Case Manager will then refer the case to the Workforce Investigation Unit who will allocate an Investigating Officer to the case and confirm their details to the Case Manager.
89. The Case Manager will then inform the employee in writing of the allegations that have been made against them. The letter should include the Terms of Reference, inform the employee that they will be required to participate in a formal investigation and remind the employee of sources of support, which may include their Welfare Officer, Trade Union, the Employee Assistance Programme, Centre for Occupational Health and Wellbeing and the Chaplaincy team.
90. The purpose of the investigation is to gather relevant evidence to establish the facts to enable the Case Manager to determine if there is a case to answer and whether a formal conduct hearing is required. It is not the role of the Investigating Officer to make recommendations on the next steps of the case or to suggest what sanction may be appropriate.

91. If there is no disagreement concerning the facts because the employee admits the misconduct, a full investigation may not be necessary before a hearing is arranged. While there will always be a robust and comprehensive investigation the intention is that any formal investigation will be proportionate to the nature of the allegations being investigated.
92. Investigations must be undertaken with guidance and support from HR, and should be concluded thoroughly, impartially and in a timely manner.
93. A written record of the investigation interview will be made, and this record will form part of the investigation report. The employee will have the opportunity to review the notes of the interview to confirm it is an accurate record. If the employee considers any amendments to the interview notes are necessary, these can be submitted to the Investigating Officer.
94. If an employee does not attend an investigation interview without good reason the Investigating Officer should contact the employee to understand why they did not attend, and a second date should be offered for the interview. If an employee fails to attend for a second time without good reason, they should be given an opportunity to submit a written response to the allegations within a reasonable timeframe. If an employee fails to attend two scheduled interview times and to provide a written submission without good reason, the investigation may be concluded without their input.
95. When the investigation is complete, the Investigating Officer will produce an investigation report for the Case Manager's consideration, clearly setting out the evidence established by the investigation.

### **Witness Interviews**

96. During the investigation stage of this procedure the Investigating Officer should interview any witnesses who may have evidence related to the alleged misconduct. The notes from the interview with witnesses should be accurate and reflect the content of the interview but will not usually be verbatim. The interview notes will be typed up and sent for the witness to check, sign and date as an accurate record of the interview.
97. A witness may be asked to provide a written statement, either in addition to or instead of attending an investigation interview. If a written statement is required, the Investigating Officer should ask the witness to produce a written statement, taking account of the following guidance:
  - 97.1. Assume that the reader knows nothing about the facts of the matter.
  - 97.2. State the name and job title of the witness and, if appropriate, their qualifications and experience.
  - 97.3. Deal with events in the order in which they occurred, giving precise dates and times if known.
  - 97.4. Use plain English and where possible, avoid jargon or technical and complex language.
  - 97.5. If the allegation is in relation to protocols or procedures not being followed, the witness should explain what the agreed or usual procedure is and then describe the nature of the departure from this.
  - 97.6. Statements should be signed and dated as an accurate statement of facts.
98. Anonymous witness statements will not usually be accepted as part of a conduct investigation. If a witness is worried about suffering a reprisal or victimisation, they should be offered appropriate support and the employee against whom allegations have been made should be reminded that victimisation or harassment of a witness may be treated as a separate conduct matter.

## Investigation Outcome

99. Within 7 calendar days of receiving the report, the Case Manager, together with their HR support, must determine whether there is evidence which needs to be considered at a formal conduct hearing and inform the employee of their decision.
100. Where the decision is that a formal conduct hearing is necessary the Case Manager will make arrangements for the hearing to take place. This will usually be within 14 calendar days of informing the employee of their decision. Where this is not possible, for example, due to planned annual leave or sickness, the hearing will be arranged to take place as soon as possible.
101. The Case Manager, together with their nominated HR support, will be responsible for appointing a Chair of the conduct hearing. This will be a senior manager who has had no prior involvement in the case at any stage (including pre-assessment). Appendix 2 provides guidance on panel composition.
102. The Case Manager will write to the employee to advise them of the arrangements for the hearing including details of the allegations to be heard and names of the panel members hearing the case. A copy of the full investigation report, including all appendices, should be included with this letter, and it must also advise the employee of their right to be accompanied and the right to call witnesses in support of their case.
103. If the Case Manager concludes that there is no case to answer, all documentation relating to the case will be held on the Trust's Employee Relations case management system in accordance with GDPR regulations but will not be held on the employee's personal file. In these circumstances a copy of the investigation report will not be shared with the employee.

## Conduct Hearing

104. The conduct hearing panel will consist of a Chair and an HR representative. In matters of technical or clinical misconduct, it may be necessary to have an additional adviser to the panel. To ensure impartiality, panel members, including the Chair, must have had no prior involvement in the case. Information on the format for the hearing can be found in the toolkit.
105. If the case relates to a matter of misconduct by a medical or dental practitioner, previously investigated under the Handling Concerns Related to Conduct, Capability or Health of Medical and Dental Practitioners Procedure, the conduct hearing will be chaired by the appropriate manager in accordance with that procedure.
106. In cases involving allegations of gross misconduct, the employee must be advised that if gross misconduct is found then this could lead to their dismissal.
107. Medical and dental practitioners employed by the Trust on medical and dental contracts have the right to representation set out in the Trust's Handling Concerns Related to Conduct, Capability or Health of Medical and Dental Practitioners Procedure.
108. The employee will usually be given 14 calendar days' notice of any hearing date and will be provided with the management case and all associated documents at this point. In some circumstances and where both parties agree it may be beneficial to expedite the process less than 14 calendar days' notice may be agreed.
109. Where the employee or management intend to call witnesses to the hearing, names of the witnesses and any statements they will be giving must be provided to the Chair at least five calendar days before the hearing. Witnesses will only be present in the conduct hearing when giving their own evidence. It is the responsibility of any party calling witnesses to inform them of the arrangements for the hearing.
110. If the employee wishes to provide additional evidence, this should be submitted to the Chair of the conduct hearing no later than 5 calendar days before the hearing and will be shared with all other parties.
111. At the hearing an appropriate manager (usually the Case Manager) will be responsible for presenting the management case, and the Investigating Officer will be called as a witness

to present the investigation findings. The Investigating Officer will be accompanied by their HR support at the hearing.

112. A record of the meeting will be taken by a confidential note taker and/or a recording. A copy of the conduct hearing notes will be circulated to all parties in the case of an appeal.
113. If an employee is absent from work due to sickness at the time of the hearing, then an alternative date may be arranged for the hearing. Advice will be sought from the Centre for Occupational Health and Wellbeing about the employee's fitness to attend a formal hearing if it appears the employee will not be fit within a short period of time, usually within seven calendar days or depending on the reason for the sickness absence. If the employee is deemed not fit to attend a hearing within a reasonable time frame, then they may be invited to provide written submissions and the hearing will proceed in their absence.
114. Where an employee is not able to attend the hearing, without good reason, the Chair may decide to proceed in their absence and will make a decision on the evidence available.

### **Decision Following Formal Hearing**

115. Following the hearing the panel will adjourn to consider the case. The hearing will then be reconvened to inform the employee of the outcome and if appropriate, any sanction to be imposed. In cases considering allegations of gross misconduct, the Chair should advise the employee that a decision will not normally be reached on the same day, and instead, the hearing will be reconvened within 7 calendar days to provide the outcome. In exceptional circumstances, the decision may be communicated in writing only.
116. The Chair must come to a view on the facts. If the facts have been disputed, the Chair must decide on the version of events they believe to be correct on the balance of probabilities. The balance of probabilities means that the Chair is satisfied that the occurrence of the event was more likely than not.
117. Previously issued warnings which have expired must be disregarded. However, consideration may be given to circumstances where the background to such warnings demonstrates a repeated pattern of behaviour taking into account the time that has elapsed.
118. There are three potential outcomes of a conduct hearing:
  - the allegation is not upheld;
  - learning outcomes; and/or
  - formal conduct sanction.
119. The formal conduct sanctions available to the panel are as follows:
  - first written warning – 12 months
  - final written warning – 24 months
  - alternatives to dismissal
  - dismissal

### **Alternatives to dismissal**

120. In some cases, we may at our discretion consider alternatives to dismissal. These must be authorised by the Chief People Officer (or a deputy) and will usually be accompanied by a final written warning. Examples include:
  - 120.1. Demotion;
  - 120.2. Transfer to another department or job;
  - 120.3. A period of suspension without pay;
  - 120.4. Loss of seniority;
  - 120.5. Reduction in pay;



- 120.6. Loss of future pay increment or bonus;
- 120.7. Loss of overtime.
- 121. Any sanction applied by the conduct panel should take into account the seriousness of the allegations against the employee, the evidence presented and any mitigation which is offered. The Chair should also ensure the decision is consistent with similar previous cases.
- 122. In the case of warnings, the Chair will explain what improvement is expected, the timeframe for improvement, what training and support may be provided to achieve improvement, how long the warning will remain on file and the consequences of a failure to improve. At the end of the time period of the written warning, it will be removed from the employee's personal file.
- 123. All conduct hearing outcomes will be confirmed in writing to the employee and their representative within 7 calendar days following the hearing, informing of the right of appeal within 14 calendar days. The Chair will also confirm that as a result of the warning the employee's incremental point will be placed on hold for the duration of the formal warning, in accordance with the Pay on Appointment and Pay Progression Policy.
- 124. Outcome letters should be copied to the employee's manager. This ensures they are aware of the outcome and any matters that may need to be taken forward or implemented.
- 125. If the outcome of a conduct hearing relates to a registrant, there may be instances where it is necessary to refer them to their regulatory body. Employees in regulated work will also be referred to the Disclosure and Barring Service where they have been removed from regulated work. The referral will be made by the Designated Workforce Safeguarding Lead (see paragraph 27) and employees should be informed in advance that a referral will be made.

## **Dismissal**

- 126. Any decision to dismiss shall be confirmed in writing and shall:
  - 126.1. clearly state the reason for the dismissal;
  - 126.2. state the date on which the employment will terminate;
  - 126.3. specify whether the dismissal is with or without notice/pay in lieu of notice; and
  - 126.4. inform the employee of their right of appeal and how it might be exercised.
- 127. Dismissal as a result of repeated misconduct will be with notice. In cases of gross misconduct, there is no entitlement to notice, and the employee may be summarily dismissed with immediate effect and without notice or payment in lieu of notice. This will be confirmed in writing.
- 128. If an employee is dismissed with notice, the length of the notice period or payment in lieu of notice must be equivalent to their contractual or statutory notice period, whichever is greater.
- 129. Where dismissal is the outcome, the employee's final salary will be adjusted to reflect any under/overtaken annual leave at the date of the dismissal.

## **Conduct Outside Employment**

- 130. Conduct proceedings may be commenced where:
  - 130.1. conduct outside employment seriously impairs an employee's ability to undertake their duties;
  - 130.2. the conduct of an employee calls into question their integrity or suitability to carry out their duties; and/or
  - 130.3. the conduct of the employee is likely to bring the Trust into disrepute.

131. Action under this procedure should not be taken automatically against an employee because they have been charged with or convicted of a criminal offence committed outside their employment.
132. Each situation should be considered individually on the basis of whether the employee's conduct warrants action because of its employment implications or because of its impact on other employees. The manager should also consider information regarding any previous convictions.
133. In a situation where the employee refuses to co-operate, they should be advised in writing that unless further information is provided, a decision will be taken at the hearing, up to and including dismissal, on the basis of the information available.
134. In some cases, the nature of the offence may have no bearing on the employee's employment, but the employee may not be available for work because they are in custody or on remand. In these circumstances, the employer will need to decide whether, considering the needs of the service, the employee's job can be kept open.
135. The fact that an employee has been charged with a criminal offence should not be regarded as an indication of guilt. Conviction of an offence, however, is sufficient proof that an offence has been committed.
136. If criminal proceedings are ongoing, an interim option available to the manager is suspension without pay until such time as an informed decision can be taken. Advice should be taken from the Divisional Head of Workforce and any decision to suspend on nil pay authorised in accordance with paragraphs 53 to 71 of this procedure.
137. Criminal proceedings may take significant time to be concluded and the manager does not have to wait until the matter has been brought before the courts before proceeding with an investigation and if required a conduct hearing. However, it is essential to ensure that any investigation undertaken by the Trust does not interfere with or prejudice any police investigation. Interviews with staff should not usually take place until the member of staff has been interviewed by the police as this could interfere with the police investigation. Advice should be sought from the Employee Relations team before deciding upon a course of action.
138. A full investigation may not be necessary before convening a hearing, depending on the circumstances. It is usually necessary for the employee to be provided with an opportunity to respond to the allegations before any decision is made. Alleged breaches of the contract of employment may be considered at a conduct hearing before a court has decided whether the employee is guilty of an offence.

## **Fraud Allegations**

139. Where fraudulent activity is suspected, the manager should immediately refer the matter to the Trust's Anti-Crime Specialist for investigation. An investigation will be undertaken in accordance with the Trust's Counter Fraud and Bribery Policy.
140. Where an employee is a victim of an incidence of fraud or an allegation of fraud is reported to them, they should contact their line manager in the first instance. If their line manager is not available, they should report the incident to the next most senior person.
141. Investigations undertaken by the Counter Fraud Service may result in criminal or civil sanctions and redress.
142. This procedure does not detract from employee's right to raise a concern under the Trust's Freedom to Speak Up Policy.

## **Involvement of Other Agencies**

143. Occasionally a manager may be approached by another agency such as the police, Local Authority Representative for Child Protection Issues or the Anti-Crime Specialist / NHS Protect with concerns about the conduct of an employee. In such instances it may be necessary to put the internal conduct process on hold pending an external investigation, in

order to prevent a loss of evidence. Advice should be sought from the Employee Relations team before deciding upon a course of action.

144. Close liaison with the other agency will be required including, where appropriate, the coordination of arrangements to place the employee concerned on special leave. However, the fact that an external investigation is taking place will not in itself prevent the Trust from taking forward proceedings under this procedure. Advice should always be sought from HR. For safeguarding issues, the Trust's Managing Allegations Against Staff and Persons in a Position of Trust Policy should be referred to.
145. Where the allegations involve criminal activity, the police may need to become involved, and the Trust may be involved in the reporting process. The decision to refer the matter to the police should be made by a senior manager.

### **Some Other Substantial Reason**

146. An employee may, in certain circumstances, be dismissed for 'some other substantial reason' (SOSR). There is no legal definition of SOSR but it may be used in situations where there has been a fundamental breakdown of trust and confidence with an employee which is not as a result of a distinct conduct or performance issue but may occur where relationships with work colleagues have broken down irreparably, or where an employee's conduct has, or has the potential to, seriously damaged the reputation of the Trust.
147. It is essential that a fair, transparent and evidence-based process is followed, and that the employee is informed of the potential consequences of their conduct or behaviour. The Trust must act reasonably, taking into account the circumstances of each individual case, ensuring there is sufficient evidence to justify the dismissal.
148. If a manager is considering that the conduct or behaviour of an employee falls within this reason, then they should seek advice in the first instance from their Divisional Head of Workforce.
149. Before a hearing is convened to consider dismissal for SOSR a thorough and impartial investigation into the facts of the alleged behaviours should be undertaken, with an investigation report detailing the findings produced. This will follow the formal stages of this procedure, including the arrangements for convening a hearing.
150. A dismissal for SOSR would ordinarily be with paid notice, unlike dismissal for gross misconduct which would usually be summary, without notice.

### **Overlapping Conduct and Resolution Procedures**

151. Where an employee raises a concern under the Resolution Procedure during the conduct process, and where the resolution and conduct cases are related, both cases will be dealt with under this procedure and within the existing process.

### **Appeal**

152. Employees have a right to appeal against the outcome of a conduct hearing.
153. The employee may appeal in writing to the Director of Workforce, stating their full grounds of appeal (which must be one or more of the following: procedural correctness, conclusion in light of the evidence presented at the hearing, appropriateness of the penalty, extenuating circumstances, new evidence, some other substantial reason), within 7 calendar days of the date on which the decision was sent or given to them.
154. An appeal meeting will be arranged, normally within 14 calendar days of receiving the written appeal. Where practicable, the appeal meeting will be conducted by a manager more senior than the one who chaired the original meeting and who has not been previously involved in the case.
155. The chair of the appeal meeting may ask anyone previously involved to be present. The employee has the right to bring a colleague or trade union representative to the meeting (see paragraphs 72 to 73).

156. The Trust will confirm the final decision in writing, normally within 7 calendar days of the appeal meeting.
157. Once the final decision is made, this is the end of the process and there is no further right to appeal.

## Training

158. There is no mandatory training associated with this procedure.
159. Workshops on the Conduct Procedure and on undertaking specific roles within the Procedure are provided and managers should attend these as part of their management training. Ad hoc training sessions based on an individual's training needs may also be defined within their annual appraisal or job plan.

## Monitoring Compliance

160. Compliance with the document will be monitored in the following ways:

Aspect of compliance or effectiveness being monitored	Monitoring method	Responsibility for monitoring (job title)	Frequency of monitoring	Group or Committee that will review the findings and monitor completion of any resulting action plan
Number of formal conduct cases	Internal Audit	Chief People Officer	Quarterly	Trust Board
Protected characteristics of employees subject to the formal conduct procedure	Internal Audit	Chief People Officer	Quarterly	Trust Board
Protected characteristics of employees subject to the formal conduct procedure	Equality Delivery System 2 (EDS2) and Workforce Race Equality Standard (WRES)	Workforce E&D Lead	Annually	People and Communications Committee and Equality, Diversity and Inclusion Steering Group

161. In addition to the monitoring arrangements described above, the Trust may undertake additional monitoring of this procedure as a response to the identification of any gaps or because of the identification of risks arising from the procedure prompted by incident review, external reviews, or other sources of information and advice. This monitoring could include:
- 161.1. Commissioned audits and reviews
  - 161.2. Detailed data analysis
  - 161.3. Other focused studies
  - 161.4. Results of this monitoring will be reported to the nominated Committee.

## Review

162. This procedure will be reviewed in three years, as set out in the Developing and Managing Policies and Procedural Documents Policy.
163. Until such time as the review is completed and the successor document approved by the relevant committee this policy will remain valid.

## References

[ACAS Code of Practice](#)

[Agenda for Change Terms and Conditions Handbook](#)

[Maintaining High Professional Standards in the Modern NHS for Doctors and Dentists.](#)

[NHS Counter Fraud Authority](#)

[NHSE Sexual Safety in the Workplace – Resource and Support](#)

## Equality Impact Assessment

164. As part of its development, this procedure and its impact on equality has been reviewed. The purpose of the assessment is to minimise and if possible, remove any disproportionate impact on the grounds of race, gender, disability, age, sexual orientation, religion or belief, gender reassignment, marriage and civil partnership and pregnancy and maternity. The completed Equality Impact Assessment can be found in Appendix 1.

## List of Appendices

Appendix 1 – Equality Impact Assessment.

Appendix 2 - Guidance on Conduct Panel Composition.

Appendix 3 – Behaviours the Trust Considers to be Misconduct.

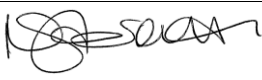

Appendix 4 – Behaviours the Trust Considers to be Gross Misconduct.

## Document History

Date of revision	Version number	Reason for review or update
May 2014	2.3	Review due in previous document
June 2015	4	Reference to Linking Pay Progression and Performance Policy added.
January 2016	4.1	Review of procedure
February 2016	4.2	Review of formatting
April 2016	4.3	Updated following consultation and feedback
November 2016	5.0	Review of procedure
June 2023	7.0	Minor amendment approved by People and Communications Committee to paragraph 10 of Appendix 7 to clarify if the employee is calling witness(es) management side will have the opportunity to ask questions.
October 2023	7.5	Review of procedure

## Appendix 1 – Equality Impact Assessment

### 1. Information about the policy, service or function

<b>What is being assessed</b>	<del>Delete as appropriate</del> <del>New Policy / Procedure</del> <del>New Service Function</del> Existing Policy / Procedure <del>Existing Service / Function</del>
<b>Job title of staff member completing assessment</b>	Assistant Director of Workforce – Employee Relations
<b>Name of policy / service / function:</b>	Conduct Procedure – Workforce Directorate
<b>Details about the policy / service / function</b>	Review of the Conduct Procedure
<b>Is this document compliant with the <a href="#">Web Content Accessibility Guidelines</a>?</b>	<del>Delete as appropriate</del> Yes / No / Not applicable for the following reason(s)
<b>Review Date</b>	3 years
<b>Date assessment completed</b>	16 October 2023
<b>Signature of staff member completing assessment</b>	
<b>Signature of staff member approving assessment</b>	

### 2. Screening Stage

**Who benefits from this policy, service or function? Who is the target audience?**

~~Delete as appropriate~~

- ~~• Patients~~
- Staff
- ~~• Family / Carers~~
- ~~• Other (please specify)~~
- Not applicable

**Does the policy, service or function involve direct engagement with the target audience?**

~~Delete as appropriate~~

Yes - continue with full equality impact assessment

~~No – full equality impact assessment not required~~

### 3. Research Stage

#### Notes:

- If there is a neutral impact for a particular group or characteristic, mention this in the 'Reasoning' column and refer to evidence where applicable.
- Where there may be more than one impact for a characteristic (e.g. both positive and negative impact), identify this in the relevant columns and explain why in the 'Reasoning' column.
- The Characteristics include a wide range of groupings and the breakdown within characteristics is not exhaustive, but is used to give an indication of groups that should be considered. Where applicable please detail in the 'Reasoning' column where specific groups within categories are affected, for example, under Race the impact may only be upon certain ethnic groups.

#### Impact Assessment

Characteristic	Positive Impact	Negative Impact	Neutral Impact	Not enough information	Reasoning
<b>Sex and Gender Re-assignment</b> – men (including trans men), women (including trans women) and non-binary people.			X		There is no differential treatment on the basis of this protected characteristic.
<b>Race</b> - Asian or Asian British; Black or Black British; Mixed Race; White British; White Other; and Other			X		There is no differential treatment on the basis of this protected characteristic. This procedure applies a 'Just Culture' approach and evidence demonstrates that this reduces the likelihood of staff from a BAME background being subject to conduct action to the same level as white colleagues. Further detail is included in the Outcome Measures in the Summary Stage of this assessment.
<b>Disability</b> - disabled people and carers			X		There is no differential treatment on the basis of this protected characteristic. As part of the Just Culture approach and the Trust's Pre-Assessment Process, consideration is given to whether any individual has any health conditions that need to be considered before formal management action is

Characteristic	Positive Impact	Negative Impact	Neutral Impact	Not enough information	Reasoning
					instigated (e.g. neurodiversity, mental health conditions or physical impairments).
<b>Age</b>			X		There is no differential treatment on the basis of this protected characteristic.
<b>Sexual Orientation</b>			X		There is no differential treatment on the basis of this protected characteristic.
<b>Religion or Belief</b>			X		There is no differential treatment on the basis of this protected characteristic.
<b>Pregnancy and Maternity</b>			X		There is no differential treatment on the basis of this protected characteristic.
<b>Marriage or Civil Partnership</b>			X		There is no differential treatment on the basis of this protected characteristic.
<b>Other Groups / Characteristics</b> - for example, homeless people, sex workers, rural isolation.			X		There is no differential treatment on the basis of this protected characteristic.



## Sources of information

*Imperial College Disciplinary Procedure  
Mersey Care NHS Foundation Trust  
NHS Resolution  
NHS Employers*

## Consultation with protected groups

*List any protected groups you will target during the consultation process, and give a summary of those consultations*

<b>Group</b>	<b>Summary of consultation</b>

## Consultation with others

*List any other individuals / groups that have been or will be consulted on this policy, service or function.*

- Staff Side
- Trust Alliance Committee Members
- Divisional HR teams
- Trust Management Executive members

## 4. Summary stage

### Outcome Measures

List the key benefits that are intended to be achieved through implementation of this policy, service or function and state whether or not you are assured that these will be equitably and fairly achieved for all protected groups. If not, state actions that will be taken to ensure this.

*The procedure places employee wellbeing at the centre of the procedure and ensures that this is properly considered at all stages. The procedure ensures that there is senior level oversight at all stages and includes a pre-assessment approach to ensure that all cases are reviewed formally reviewed and then signed off by a senior manager before formal conduct procedures can commence. The procedure also introduces an early resolution step which can be applied where the pre-assessment indicates that individual and/or organisational learning would be more appropriate than formal conduct action.*

*OUH WRES data has previously indicated that there is a disproportionate number of BAME staff entering into a formal disciplinary process. The increased level of senior authorisation required before formal action can commence ensures that there is a structured and consistent approach to our Conduct Procedure and should demonstrate a positive impact on our WRES data with all employees in protected groups receiving equitable treatment. This expectation is supported by evidence from other NHS Trusts (including Mersey Care NHS Foundation Trust, Imperial College NHS Foundation Trust and Barts Health NHS Trust) which has demonstrated that this formal structure and early assessment safeguards against a disproportionate impact of conduct procedures on staff with protected characteristics.*

*The revisions to this procedure are taking place within a wider programme of continuing activity to support the implementation of a Just Culture at OUH and the development and embedding of the best EDI initiatives, supported by evidence based research, to reduce and remove any disproportionality in our processes.*

### **Positive Impact**

List any positive impacts that this policy, service or function may have on protected groups as well as any actions to be taken that would increase positive impact.

*This procedure provides a transparent, fair and consistent approach for dealing with conduct issues. The Just Culture approach should ensure no adverse impact on employees with protected characteristics. As part of monitoring of the application of the procedure the protected characteristics of all staff subject to formal action is monitored and results of the monitoring reported quarterly to the Trust Board.*

### **Unjustifiable Adverse Effects**

List any identified unjustifiable adverse effects on protected groups along with actions that will be taken to rectify or mitigate them.

*None*

### **Justifiable Adverse Effects**

List any identified unjustifiable adverse effects on protected groups along with justifications and any actions that will be taken to mitigate them.

*None*

## **Equality Impact Assessment Action Plan**

Complete this action plan template with actions identified during the Research and Summary Stages

<b>Identified risk</b>	<b>Recommended actions</b>	<b>Lead</b>	<b>Resource implications</b>	<b>Review date</b>	<b>Completion date</b>

## Appendix 2 – Composition of the Hearing Panel

1. The panel to hear the evidence at a formal conduct hearing will consist of:
  - 1.1. the Chair (manager hearing the case);
  - 1.2. a Human Resources representative;
  - 1.3. a manager with relevant experience to advise the Chair, if the matter relates to a professional issue;
  - 1.4. a Non-Executive Director, where the hearing concerns staff directly accountable to the Chief Executive Officer.
2. Any member of the panel may ask questions throughout the conduct hearing.
3. The Trust views a decision to dismiss an employee as being exceptional. In cases where the hearing outcome may potentially result in dismissal, the role of the Chair will be restricted to those with the authority to act as dismissing officer. These are as follows:
  - 3.1. Chief Executive Officer
  - 3.2. Chief Officers
  - 3.3. Directors
  - 3.4. Deputy Directors
  - 3.5. Divisional Directors of Nursing
  - 3.6. Divisional Directors of Operations
4. If a hearing might be postponed as a result of a dismissing officer not being available to attend a hearing, the dismissing officer may ask a manager with an appropriate level of seniority to chair the hearing. Should the Chair decide that dismissal is the appropriate action, this decision must be ratified by the dismissing officer.
5. The dismissing officer should not normally be the employee's immediate manager.

## **Appendix 3 - Behaviours the Trust Considers to be Misconduct**

1. Misconduct is unacceptable and improper behaviour which may breach the Trust's policies but does not normally warrant dismissal unless repeated after due warning.
2. Examples of misconduct could include:
  - 2.1. Refusing or failing to carry out a reasonable management instruction.
  - 2.2. Unsatisfactory attendance at work, e.g. unauthorised absenteeism, lateness, leaving work without permission, overstaying breaks.
  - 2.3. Conduct, which disrupts the work of others.
  - 2.4. Failure to observe the Trust's procedures for recording of working time and attendance, reporting of sickness and time off work.
  - 2.5. Failure to conform to agreed working practices.
  - 2.6. Failure to take reasonable care of Trust property.
  - 2.7. Failure to act in accordance with the Trust's values.
  - 2.8. Using Trust property, equipment or transport for private use without authorisation.
  - 2.9. Failure to comply with the Trust's no smoking policy.
  - 2.10. Failure to comply with any other Trust policy.
  - 2.11. Misuse of the Internet, email, or other Trust facilities.
  - 2.12. Recording and/or personally storing recordings of conversations or meetings with colleagues, patients, or third parties without their knowledge and/or consent
3. Consistently failing to demonstrate the behaviours and/or values the Trust expects of its staff. The above are examples and are not exclusive or exhaustive.
4. Dependent upon the degree and circumstances of any of these examples, they might constitute gross misconduct.

## **Appendix 4 - Behaviours the Trust Considers to be Gross Misconduct**

1. Gross misconduct is misconduct of such a serious nature that it fundamentally breaches and destroys the contractual relationship between an employer and an employee. It is an act (or an omission), which makes any further working relationship and mutual trust impossible. If on completion of a disciplinary process, it is concluded gross misconduct has taken place, the result will normally be dismissal without notice (i.e. summary dismissal). Gross misconduct does not always automatically mean summary dismissal; this must be reasonable taking into account any mitigating factors.
2. If an employee is believed to have committed an act of gross misconduct, advice should be sought immediately from HR.
3. Examples of gross misconduct include, but are not limited to:
  - 3.1. A serious neglect of duty and responsibility.
  - 3.2. Harassment, bullying or any act of discrimination.
  - 3.3. Theft or unauthorised removal of property belonging to the Trust, patients or other members of the general public.
  - 3.4. Bringing the Trust into disrepute.
  - 3.5. Fraudulently obtaining money, property, confidential information or material advantage from the Trust.
  - 3.6. Use of false documents including identity document, qualifications and references.
  - 3.7. Unauthorised entry into computer records.
  - 3.8. Malicious and vexatious claims of bullying and harassment.
  - 3.9. Malicious and vexatious claims under the Freedom to Speak Up Policy.
  - 3.10. Deliberate falsification of official records.
  - 3.11. The submission of fit notes not genuinely issued by a General Practitioner (repayment of sick pay may also be sought and/or referral to the Local Counter Fraud Specialist/Anti-Crime Specialist for investigation).
  - 3.12. Sharing of smart cards, network login details or passwords with another individual where not permitted by Trust policy or procedure.
  - 3.13. Deliberate falsification of claims for earnings and expenses.
  - 3.14. Assault or attempted assault or physical/sexual violence.
  - 3.15. Abusive behaviour towards patients, visitors or colleagues.
  - 3.16. Falsification of timesheets and other pay-related documents.
  - 3.17. Malicious damage to Trust property.
  - 3.18. Failure to comply with departmental rules or regulatory body frameworks/codes of conduct.
  - 3.19. Serious breaches of confidentiality.
  - 3.20. Taking photos of patients in any setting, without obtaining prior informed consent, gained through completing a patient consent form.
  - 3.21. Inability to work due to being under the influence of alcohol and/or illegal substances.
  - 3.22. Negligence.

- 3.23. Serious breach of health and safety rules and procedures.
- 3.24. Fraudulent misuse of the Trust's name or property.
- 3.25. Serious failure to comply with any Trust procedure or policy.
- 4. The above examples are not exclusive or exhaustive and offences of a similar nature will be dealt with accordingly.
- 5. Where appropriate, disciplinary outcomes will be notified to the appropriate professional body, which may consider action in relation to its own professional code of conduct.