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South Tyneside **NHS**
NHS Foundation Trust

POLICIES AND PROCEDURES

DISCIPLINARY POLICY

**FINAL DRAFT
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1. INTRODUCTION

- 1.1 South Tyneside NHS Foundation Trust (The Trust) is committed to creating and maintaining a positive working environment and harmonious employee relations.
- 1.2 The Trust expects all employees to perform their duties safely, competently, trustworthy and act honestly.
- 1.3 This policy is designed to encourage all employees to achieve and maintain standards of conduct and aims to address any shortcomings in conduct and standards of work performance. In addition, the policy also ensures that, where disciplinary action is contemplated staff are treated fairly and reasonably.
- 1.4 Where allegations of misconduct or poor performance do arise, these should be handled fairly, consistently and promptly. Some potential disciplinary issues can be resolved informally. Where there is a minor breach of discipline, i.e. where there is a lower standard of conduct or performance than expected of an employee, e.g. lateness for work, however this is not persistent, the Trust would seek to encourage improvement in order to promote and maintain high standards of conduct and performance.
- 1.5 However, where such interventions have not achieved the required improvement and minor breaches are persistent, or more serious breaches are alleged to have occurred, the disciplinary procedure should be considered.

2 AIM OF THE POLICY

- 2.1 This policy has been written with a view to promoting fairness for all and avoiding any adverse impact it may have on any individual based on age, disability, gender, gender assignment, sexual orientation, religion or belief, ethnicity, marital status, pregnancy and maternity (Equality Act 2010). The Trust is committed to treating people with dignity and respect in accordance with the Equality Act 2010 and Human Rights Act 1998. Throughout the production of this policy due regard has been given to the elimination of unlawful discrimination, harassment and victimisation (as cited in the Equality Act 2010).
- 2.2 This policy follows guidance from the Advisory Conciliation and Arbitration Service (ACAS) with the emphasis on fair and thorough application of the guidance and procedure, the objective being to give staff the opportunity to improve their conduct, which is giving cause for concern.

2.3 The objectives of this policy are:

- To maintain high standards of conduct and performance across the Trust.
- To ensure that managers, trade union/professional organisation representatives and employees are aware of their rights and obligations in respect of the disciplinary process and appeals mechanisms.
- To ensure consistency of application of treatment for all employees.
- To uphold strict confidentiality at all stages of the process.
- To ensure compliance with relevant employment, health and safety and related legislation.
- To ensure staff side representatives have every opportunity to represent the interests of their members who may be involved.
- To ensure compliance with the ACAS code and accompanying best practice guidance.

3 SCOPE OF THE POLICY

3.1 This policy applies to all employees, employed under a contract of employment by the Trust. In relation to matters of professional conduct and competence by Dentists and Medical Staff Appendix 11 of this policy.

3.2 This policy does **not** apply to independent contractors working within the NHS on a contract for service. Any issues regarding conduct or performance should be referred to their substantive organisation.

3.3 This policy does **not** apply to employees on secondment to the Trust from other employers as they are subject to their own employer's disciplinary policy. However the Trust has the right to exclude a seconded employee *from the secondment* and undertake an investigation but pursuance of disciplinary action will be referred to the substantive employer. At all times the substantive employer must be advised of the course of the investigation process prior to exclusion from duty.

3.4 The responsibility for taking disciplinary action against any student lies with the relevant College/University/professional body. Any alleged breach of conduct or performance involving a student should therefore be reported immediately to the appropriate Tutor who will be responsible for investigating the matter and taking any necessary action. The Trust may exclude the student from the workplace if the circumstances are deemed necessary, however the manager concerned must notify the relevant College/University/professional body in writing on the same day.

3.5 No action under this policy will be taken against accredited representatives of recognised trade union/professional organisation until the circumstances of their case(s) have been reported to the manager empowered to take appropriate action as defined in Appendix 1 and the appropriate full time officer of the relevant trade union/professional organisation has been informed and engaged in the process.

4. PRINCIPLES

4.1 It is accepted by the Trust and by its employees (as represented by trade union/professional organisations) that a disciplinary policy is necessary to assist in maintaining standards of conduct and performance, and for promoting fairness in the treatment of employees.

4.2 It is the intention that this policy is interpreted and used by everyone concerned in a positive and supportive way. This policy has been agreed by management and trade union/professional organisations as providing a framework within which all disciplinary matters can be dealt with fairly, lawfully, and without delay. The policy has been designed to ensure that managers, trade unions/professional organisations and employees are aware of their rights and obligations in respect of the disciplinary and appeals process.

4.3 It is implicit in this policy that accredited trade unions/professional organisations will be afforded every opportunity to represent the interest of their members. Employees have the right to be accompanied by a trade union/professional organisation representative, or an individual/work colleague of their choice.

4.4 This policy is designed to encourage improvement in an employee's conduct where this is necessary and is not merely a method of applying disciplinary sanctions, in this respect:

- managers at all levels have an important role in seeking initially to rectify problems or minor lapses in behaviour through discussions using the counselling procedure as set out in Appendix 3.
- employees have a contractual and professional responsibility to perform at a satisfactory level and will be given every help and encouragement to do so.

4.5 The strictest confidentiality will be observed at all times throughout the application of this process by all individuals involved. Every effort should be made by all individuals involved not to discuss any aspects of the case outwith those directly involved in the process. Employee's must be advised that to discuss any aspects of the case with any colleagues directly involved in the issue other than their representative may be prejudicial to the investigation. Any contravention to these terms may be regarded as a breach of conduct itself.

4.6 Employee's must be advised to contact an accredited trade union/ professional organisation representative if appropriate. Advice and guidance on the interpretation and implementation of this policy should be sought from the Trust's Personnel department at **all** stages.

5 PROCEDURE

5.1 This procedure provides the following sanctions with an appeals procedure at each level. Examples of disciplinary sanctions are at Appendix 2:

- a) First level warning;
- b) Second level warning;
- c) Final level warning;
- d) Sanctions alternative to dismissal;
- e) Dismissal including summary dismissal.

5.2 This procedure requires a full investigation of the facts to be undertaken. No disciplinary action will be taken against an employee until the case has been fully investigated to establish the facts. All employees are entitled to the right to be dealt with in a fair and reasonable manner and a right of appeal against formal disciplinary action. Any disciplinary action imposed will depend upon the individual circumstances in each and every case.

5.3 At every stage in the formal procedure the employee will be advised of the nature of the complaint against them and will be given the opportunity to state their case before any decision is made.

5.4 At all stages of the formal procedure, the employee may exercise the right to be accompanied by a representative of their trade union / professional organisation representative, or work colleague.

5.5 No employee will be dismissed for a first breach of discipline except in a case of gross misconduct when the penalty will be summary dismissal without notice or payment in lieu of notice.

6. ROLES AND RESPONSIBILITIES

6.1 *Responsibilities of the Chief Executive*

The Chief Executive is accountable for ensuring the proper application of the policy through appropriate management arrangements.

6.2 *Responsibilities of the Board of Directors*

All Directors have corporate responsibility to provide a safe working environment. The Directors are responsible for exercising the Trust duty of care and shall ensure adequate arrangements are in place for implementing this policy.

6.3 ***Responsibilities of the Manager***

- Will deal with day to day minor conduct/performance issues informally through one to one discussions with their direct reports.
- Should ensure that any cases for concern within their area of responsibility are addressed appropriately through the disciplinary procedure to maintain appropriate standards of conduct (or performance) within the organisation.
- Ensuring that the Trust's protocols and standards of performance and conduct are fully explained to their staff.
- Ensuring their employees know whom they are accountable to and the extent to which they are authorised to act.
- Informing and seeking support from a senior member of the Personnel department prior to any formal meetings.
- Any suspected fraud or corruption should be reported to the Trust's nominated Local Counter Fraud Specialist.

6.4 ***Responsibilities of the Investigating Manager***

- Conducting a fair, impartial and timely investigation in order to determine whether there is a case to answer.
- Arranging and conducting interviews with any witnesses as appropriate. This will involve obtaining all the evidence as signed and dated factual statements from all those involved.
- Providing a report outlining the facts of the case and the evidence produced including copies of witness statements as appropriate.
- Presenting the management statement of case to the disciplinary panel if required.

6.5 ***Responsibilities of the Employee***

- Reading and understanding the protocols and procedures applicable to their particular employment.
- Attending any meetings as requested by the investigating manager and participating fully in the disciplinary process.
- Advising trade union/professional organisation of requirement for any representation/support required.
- Arranging representation if desired by a trade union/professional organisation representative, or a colleague at any formal meetings.
- Giving a full account of the circumstances of any case during the investigation and disciplinary hearing.
- Notifying the employer of any change in circumstance. This is a contractual requirement i.e. contact details. However during a disciplinary process, good communication is essential and the employee has the responsibility to ensure that any changes that might affect this process should be notified e.g. any pre-booked arrangements or change of address, phone number.

6.6 ***Responsibilities of the Personnel Department***

- Ensuring consistent application of the Trust disciplinary policy.
- Providing advice and guidance to the manager and clarification of this policy as required.

- Providing support and guidance to an investigating manager as part of the investigation process.
- Keeping an accurate record and timeline of communication and record of discussions taken place regarding investigatory/disciplinary process. (Appendix 9 and 10).
- Providing advice and guidance at formal hearings.
- Maintaining records of outcomes of formal disciplinarys for the purposes of ensuring a consistent approach.
- Providing support to an appeals panel and to the presenting manager in an appeal hearing.

6.7 ***Trade Union/Professional Organisation Representatives***

- Advising members on the policy and procedure as requested.
- Providing support to members at investigations, hearings and appeals if required to do so.

7. MANAGING ALLEGATIONS AGAINST ADULTS WHO WORK WITH CHILDREN AND OR ADULTS AT RISK OF HARM

7.1 Investigations carried out under child protection/adults at risk of harm procedures have different objectives from disciplinary procedures. Where an allegation of abuse involving a child or adult at risk of harm has been made against an employee the child protection/ adults at risk of harm procedures will take priority over any disciplinary procedure. The disciplinary procedure will be suspended pending the outcome of the child protection/ adults at risk of harm investigation, unless advice is given that these may run concurrently.

7.2 All allegations will be considered and a full investigation will be undertaken following the procedures set out in 'Working Together to Safeguard Children 2015' and 'The Care Act 2014' for Safeguarding Adults (Appendix 4).

7.3 Only if a decision is made that the allegation can be classed as inappropriate behaviour will this disciplinary policy come into force.

7.4 Should the disciplinary policy be invoked in relation to children access to relevant information will be sought from the Local Authority Designated Officer (LADO) and the relevant designated doctor or designated nurse for child protection.

7.5 Should the disciplinary policy be invoked in relation to adults access to relevant information will be sought from the locality Safeguarding Adults Unit 'Designated Adult Safeguarding Manager' (DASM).

8. ALLEGATIONS OF FRAUD, BRIBERY AND CORRUPTION

8.1 Any allegation of fraud, bribery or corruption must be reported immediately by either contacting the Trust's Local Counter Fraud Specialist,(LCFS) telephoning the Freephone NHS Protect Fraud and

Corruption Reporting Line on 0800 028 40 60 or contacting the Executive Director of Finance and Corporate Governance. The Trust's Local Counter Fraud Specialist will undertake and oversee the arrangements for investigating the allegation.

- 8.2 The fraud investigation shall as far as possible be undertaken prior to any disciplinary action being taken. However it may be possible to proceed with any criminal element in parallel with the disciplinary action. The LCFS must liaise with the Head of Personnel or Executive Director of Personnel and Development at all stages of the investigation and will discuss and agree with the Executive Director of Finance and Executive Director of Personnel and Development as to whether the case of fraud should be referred to the police.

9. CRIMINAL OFFENCES

- 9.1 Allegations of and/or convictions for criminal offences do not in themselves mean an employee should be dismissed or disciplined.
- 9.2 The Authorised manager must, after consulting the Personnel department, carry out an investigation and decide if the employee's conduct is serious enough to warrant a disciplinary interview.
- 9.3 If the conduct needs prompt attention, the Authorised manager does not need to wait for the outcome of the prosecution and does not need to prove beyond all reasonable doubt that the employee committed the offence, but whether on the balance of probabilities they did so (this equally applies to all cases of misconduct where dismissal is being considered).
- 9.4 When the alleged misconduct occurs outside the workplace whether there are to be criminal proceedings or not it is important to determine whether:
- the alleged misconduct is work related and adversely affects the continued performance of the employee's duties;
 - is potentially a breach of the employee's duties;
 - is potentially a breach of the employee's professional code of conduct or practice.
- 9.5 Before any action is taken in relation to cases that involve or are likely to involve criminal proceedings, the Personnel department must be consulted. It will usually be necessary to liaise with the Police to ensure that the Trust's investigation does not impede or compromise any police investigation.
- 9.6 In such circumstances and in the event that disciplinary action may be deemed appropriate, a full investigation will be carried out and a report will be prepared with recommendations and forwarded to the relevant manager with responsibility for disciplinary action for consideration. Any disciplinary action will be taken in accordance with this policy.

10. PROCESS

10.1 Fact Finding

10.1.1 Where an issue has come to light, a fact finding should be undertaken as soon as practicable to broadly establish the issue. This is not a formal process in itself and the form it takes should be appropriate to the incident. It is not intended for this to be an onerous time consuming process.

10.1.2 In the first instance the employee involved will be asked to provide a written record of their recollection of the incident to establish the facts. This will be provided to the line manager. The outcome will be to reach a decision on how to proceed:

- No further action
- Counselling
- Formal Investigation

10.2 Informal - Counselling

10.2.1 Minor cases of misconduct may best be dealt with by advice and counselling rather than through the disciplinary procedure. Counselling will normally be undertaken by the employee's line manager and should take the form of a discussion with the objective of encouraging and helping the employee to improve. (Appendix 3)

10.2.2 It is important that the employee understands what needs to be done, how their conduct will be reviewed, and over what period. Employees should also be made aware of what action will be taken if they fail to improve. A letter and agreed action plan will be given to the employee by the manager conducting the counselling session with a clear and accurate description of the standards to be expected in the future. A copy of this letter and action plan will be kept on the employee's personal file until a final review and all identified actions have been achieved. The letter and action plan will be disregarded for disciplinary action purposes following the final review and will be removed from the employees file and retained in the Personnel department for reference purposes.

10.3 Exclusion from Duty (Suspension)

10.3.1 Exclusion from duty does not constitute disciplinary action and should not be viewed as such. It simply provides time for a thorough investigation to take place. ***It should not be assumed that a decision to investigate an allegation always requires exclusion from duty.***

- 10.3.2 It is important that the manager does not exercise their right to exclude an employee without proper grounds and without full and proper consideration of whether there is an alternative to exclusion from duty.
- 10.3.3 The manager must consider carefully whether it is appropriate to exclude an employee. The reason for exclusion may include:
- patient safety, and to ensure any risk to patients, colleagues, and the employee is minimised.
 - in order to avoid an investigation being compromised, either through interference or intimidation.
 - where the allegation is considered to be potentially gross misconduct, which may result in the employee's dismissal from their post.
- 10.3.4 Alternatives to exclusion should be considered and discussed with a senior member of the Personnel department prior to a decision being made. Alternative action may include:
- continuing to work, under close supervision.
 - temporary transfer to another area of work or job.
 - restricted duties.
- 10.3.5 A decision to exclude an employee should be documented on the risk assessment at Appendix 5.
- 10.3.6 The manager must explain that exclusion in itself does not constitute disciplinary action. It is a precautionary measure, which protects all concerned by giving the opportunity to act quickly and effectively, whilst at the same time providing the opportunity for the facts of the matter to be examined calmly and fully.
- 10.3.7 Employees should have the opportunity to state their case before a decision to exclude is made, and if it is practical to be accompanied by a trade union/professional organisation representative if they so wish. This, however, may not be practical, for example if the incident or offence happens outside normal working hours, (e.g. on nights, at weekends or on Bank Holidays). In such circumstances the full procedure shall be carried out as soon as it becomes practical to do so. In cases of a serious nature in which immediate action is essential an employee may be excluded from duty pending further investigation or action. The managers authorised to take this action are shown in Appendix 1. Advice should always be sought from a senior member of the Personnel department prior to an exclusion, however in circumstances when this may not be practical, if the incident or offence happens outside normal working hours advice should be sought from the On-Call manager.
- 10.3.8 Exceptionally, it may be necessary for an exclusion to be exercised in a situation occurring at a time or place when the manager authorised action is unavailable. Consequently the arrangements outlined above may be

impracticable but the necessary steps to ensure that the intention of these arrangements is implemented shall be taken at the earliest opportunity. This would mean a nominated manager being vested with the authority to act on behalf of the authorised manager.

- 10.3.9 The employee will be informed by the appropriate manager in person, in private, that they are being excluded from duty and the reason for the exclusion. A trade union/professional organisation representative may attend if requested by the employee and if this is reasonably practicable. Additionally, a senior member of the Personnel department should be present where reasonably practicable. The exclusion from duty and the reasons for it should be confirmed to the employee in writing within 2 calendar days following the exclusion meeting.
- 10.3.10 Whilst excluded an employee must remain contactable during the times they would otherwise have been on duty and should not attend Trust premises without prior permission. Permission will be granted to attend pre-arranged meetings with trade union/professional organisation representatives. Employees must be available to attend for any investigation interview or disciplinary hearing during normal office hours unless there are specific circumstances which prevent this. The specific arrangements regarding contactability and availability must be agreed between the employee and the manager at the time of exclusion.
- 10.3.11 Exclusion from duty will be subject to the following conditions:
- employees who are excluded from duty shall continue to receive their full remuneration under normal rules unless the employee fails to comply with the requirements of paragraph 10.3.10 above. In such circumstances the Trust has a contractual right to withhold pay.
 - in normal circumstances, no employee who is an accredited representative of a trade union/professional organisation shall be excluded from duty until the full-time officer of the organisation has been consulted and given the opportunity of making representations. In exceptional circumstances this, may not be practical, for example if the incident or offence happens outside normal working hours, (e.g. on nights, at weekends or Bank Holidays). In such circumstances the authorised manager will exclude the employee in accordance with paragraphs 10.3.6 – 10.3.7 above. The full-time officer will be contacted as soon practicable following the exclusion meeting.
- 10.3.12 Any exclusion from duty should be for the minimum necessary period of time. If the exclusion continues beyond 42 calendar days the exclusion must be formally reviewed and recorded on Appendix 5. Any exclusion exceeding 42 calendar days must be agreed with the Head of Personnel. In the event of exclusion being necessary for a longer period the manager must undertake a review every 7 calendar days with the

outcome reported in writing to the employee and a copy sent to the Head of Personnel. Should an investigation not be carried out in a timely manner under all of the circumstances the employee may appeal against the continuation of exclusion.

- 10.3.13 As part of the exclusion process, the Trust may decide to notify the relevant professional body or other external organisations. In such cases advice should be sought from the Director of Nursing and Patient Safety.
- 10.3.15 If at any time during the exclusion the investigation indicates that either the allegations are without foundation or that further investigation can continue without the employee remaining away from the workplace, the exclusion should be lifted. Written confirmation of this decision should be provided to the employee.
- 10.3.16 The employee must be advised that the terms of their exclusion from duty will be lifted and the effective date of this at the outcome of the disciplinary process.
- 10.3.17 Employees should be advised of support facilities available during the exclusion. The Occupational Health department can provide assistance and a therapeutic counselling service is also available. In circumstances where exclusion is lifted, employees will be given a letter on return to their work setting out back to work advice of what support is available.

10.4 Formal Investigation

- 10.4.1 The employee accused of misconduct will be informed that an investigation will be undertaken. Where possible this should be face to face but if this is not practicable then it is appropriate for this information to be given over the telephone and in writing at the earliest opportunity.
- 10.4.2 All parties must be advised that the issue must remain confidential.
- 10.4.3 The investigating manager will arrange a meeting with the member of staff accused of the misconduct and any other witnesses as necessary. All parties must be advised that during the investigation the issue must remain confidential and they are not permitted to attempt to influence the opinions of other witnesses or individuals who are involved or could potentially be involved in the investigation.
- 10.4.4 Where the employee who is the subject of the investigation is invited to an investigatory meeting, they will be advised of their right to be accompanied by a trade union/professional organisation representative or Trust work based colleague. Wherever practicable to do so employee's will be given 7 calendar days notification of the meeting. The employee will inform the investigating manager or Personnel representative whether they belong to a recognised trade union/professional organisation and the name of the person they wish to accompany them at

such a meeting. If the member of staff is willing to meet without a trade union/professional organisation representative or workplace colleague this should be recorded.

10.5 Witnesses

- 10.5.1 Relevant employees who were witness to or involved in the alleged incident will be interviewed. The list of witnesses may expand during the course of the investigation, and if witnesses are suggested but not interviewed the investigating manager should provide reason for this decision.
- 10.5.2 If the investigating manager feels that they need to obtain further information from a witness it is appropriate for a further statement to be requested or another interview arranged in accordance with the above process.
- 10.5.3 A witness supplying a statement should be informed that it may be shared with the employee under investigation, and that they may be required to attend any subsequent disciplinary hearing if asked to do so.
- 10.5.4 It is far from ideal for witness statements to be anonymous, and this should only be considered in exceptional circumstances. It is possible to proceed where there is a real concern of reprisal or intimidation. Where there is a request for anonymity, the following factors should be considered:
- The seriousness of the allegation
 - Is there any other corroborative evidence
 - Is there any reason for the witness to fabricate evidence
 - If the witness's concern is sufficient to justify proceeding without divulging their identity

10.6 Record Keeping

- 10.6.1 It is important to ensure that every interview is fully and properly documented in order that a fair assessment of the facts can take place. It is usual for the investigation to be recorded and a transcript will be provided within 14 calendar days following the meeting by the Investigating manager / personnel representative. These notes will be used to form a record of the interview which should be forwarded to the employee for their agreement, amendments and comments. The employee will be requested to confirm the accuracy of the written record, sign and return it to the personnel representative within 14 calendar days of receipt of the notes. If the employee does not agree with the content of the written record, he/she must make notes on the document, amending the part(s) that are not agreed and sign and return the annotated document. Failure of the employee to agree and return the written record by the agreed date should not delay the investigation.

10.7 Right to Representation

10.7.1 The employee will be advised of the right to be accompanied by a trade union/professional organisation representative or a work colleague not involved in the case through all parts of the process.

10.8 Timescales

10.8.1 It is important that all investigations are carried out thoroughly and should be undertaken normally within 42 calendar days from the date of the initial investigatory interview. It is recognised however that in exceptional circumstances it may be necessary to extend this timescale by agreement. Any extension to the investigatory process must be agreed with the Head of Personnel. The investigating manager should inform the individual in writing if this timescale is not likely to be met and given a revised timescale for completion; outlining any reasons for the delays. The investigating manager must give weekly updates to the individual if the agreed timescales will not be met.

10.8.2 If the employee involved in the investigation does not consider that timeframes have been met this should be escalated to the Head of Personnel in the first instance.

10.9 Report

10.9.1 On completion of the investigation, the investigating manager will prepare a report for the manager who has responsibility for disciplinary action.

10.9.2 The report should include the employee's statement and any witness statements with a brief factual summary of the investigation, together with a recommendation on whether there appears to be a case to answer and concluding one of the following courses of action:

- there is no substance to the allegation and therefore no further action is necessary, or
- the allegation is of minor importance and can be dealt with by counselling, or
- the allegation appears to be well founded and a disciplinary hearing should be convened in line with this policy.

10.9.3 The investigating manager may reasonably gather other documentation relevant to the investigation. This could include information about the specific incident(s), patient records, time sheets as well as information about the employee(s) under investigation e.g. record of previous live disciplinary warnings, previous similar incident(s) and relevant employment history.

10.9.4 Appendix 7 provides a suggested template for this report.

10.10 Outcomes of the Investigation and Appropriate Action

- 10.10.1 Upon conclusion of the investigation and completion of the report the investigating manager will feedback to the employee and their representative the recommendations and outcome of the investigatory process. If the outcome of the investigation is the employee is to be referred to a disciplinary hearing, the investigation manager will confirm this in writing to the employee and their representative within 7 calendar days of the report being concluded. If the outcome of the investigation is formal counselling or no case to answer the investigating manager will arrange a feedback meeting with the employee and their representative to advise of the recommendations and outcome of the investigatory process. The feedback meeting should be arranged within 7 calendar days of the report being concluded.
- 10.10.2 If the recommendation of the investigation is the employee is to be referred to a disciplinary hearing, the manager with responsibility for disciplinary action will write to the employee concerned with the date, time and venue of the hearing, no later than 14 calendar days after receipt of the report. It is recognised however that in exceptional circumstances it may be necessary to extend this timescale by mutual agreement.
- 10.10.3 In order to ensure that accredited representatives of trade union/professional organisations have a similar opportunity for representation as other staff and in accordance with the ACAS Code of Practice, the full time officer of the trade union/professional organisation must be informed and engaged in all instances of disciplinary action.

10.11 Admission of Misconduct

- 10.11.1 Where during the formal investigation process an employee has admitted misconduct, the need to proceed to a disciplinary hearing may be avoided for minor misconduct. Any admission of misconduct must be confirmed in writing by the employee.
- 10.11.2 The investigating manager will be required to conclude the investigation process, complete the investigation report and feedback to the employee within the timescales detailed above.
- 10.11.3 Upon receipt of feedback of the investigatory process the employee or trade union/professional organisation representative may put a case in writing requesting that the misconduct is managed outside the disciplinary hearing process. This request must be agreed by the manager with responsibility for disciplinary action. The manager with responsibility for disciplinary action with support from a senior personnel representative will consider all elements of the case outlined in the investigation report and issue an appropriate sanction if necessary. This will be confirmed in writing to the employee and their trade union/professional organisation representative within 7 calendar days.

11. FORMAL DISCIPLINARY ACTION

- 11.1 An employee must be notified in writing of any disciplinary action being considered, at least 14 calendar days prior to the hearing to enable them to discuss the matter with, and arrange for appropriate representation at the hearing. Details of the alleged offence must be provided. This period may be shorter only with the express agreement of the employee and his/her representative (where appropriate). A list of managers with authority to undertake disciplinary action and/or dismiss is attached at Appendix 1.

12. WITNESSES AT DISCIPLINARY HEARING

- 12.1 Witnesses for either party may be called to support the case in a disciplinary hearing. The responsibility for arranging the attendance of witnesses ultimately rests with the party concerned. Witnesses may be accompanied by a trade union/professional organisation representative, or an individual/work colleague. Witnesses employed by the Trust and called on behalf of management side must attend the hearing as requested. Witnesses called on behalf of the employee which disciplinary action is being taken against may decline the invitation to attend the hearing. Advice and support is available for witnesses from the Personnel department on the process/procedures being followed.

13. LEVELS OF DISCIPLINARY ACTION

- 13.1 The different levels of disciplinary action which may be imposed after a formal disciplinary interview are shown below:-

- First written warning;
- Second written warning;
- Final written warning;
- Sanctions alternative to dismissal;
- Dismissal including summary dismissal.

- 13.2 The appropriate level of disciplinary action to be taken will be decided by the disciplinary manager. This will depend on the facts of the case as they arise, and any mitigating circumstances that need to be taken into account. Factors that might be relevant include, the extent to which standards have been breached, precedent, the employees general record, length of service and any special circumstances, which might make it appropriate to adjust the severity of the penalty.

First Written Warning

If after hearing all the evidence presented within the disciplinary hearing the manager with responsibility for disciplinary action is satisfied that an employee's performance and/or conduct is unsatisfactory, a first written warning may be issued by the manager with responsibility for disciplinary action.

An explanation that this is a first written warning which will be held on their personal file for a period of 6 months

Second Written Warning

If after hearing all the evidence presented within the disciplinary hearing the manager with responsibility for disciplinary action is:

- satisfied that an employee's performance and/or conduct has not improved within the review period following the issues of a current first level warning;
- or there is a recurrence of a misconduct which is subject to a first level warning;
- or the misconduct/performance is of a more serious nature.

A second written warning may be issued by the manager with responsibility for disciplinary action.

An explanation that this is a second written warning which will be held on their personal file for a period of 12 months

Final Written Warning

If after hearing all the evidence presented within the disciplinary hearing the manager with responsibility for disciplinary action is satisfied that:

- an employee's performance and/or conduct has not improved within the review period following the issues of a current second level warning;
- or there has been a recurrence of misconduct which is subject to a second written warning within the period;
- or the misconduct/performance is of a more serious nature.

A final written warning may be issued by the manager with responsibility for disciplinary action.

An explanation that this is a final written warning which will be held on their personal file for a period of 24 months

Implementing the decisions following a disciplinary hearing

Wherever possible, the employee will be verbally informed of the decision and any action to be taken on the day of the hearing, and will be advised that this will be confirmed in writing, as soon as possible but no later than 7 calendar days after the hearing. The employee must also be informed of the right to appeal, and should they wish to do so this must be done within 21 calendar days of receipt of their letter. A copy of the letter should be sent to the representative of the employee(s) and to the Personnel department.

Outcome of Warning

All warnings must be confirmed in writing and must include:

- a clear rationale of the outcome of the case;
- an explanation of the level of warning given and period to time the warning will be held on their personal file.
- the letter will advise what improvements are expected and how these can be made , in what timescale and what review arrangements will be implemented. The employee will also be advised that if there are any further acts of misconduct, which are the same or similar within this time period further disciplinary action may follow.
- this warning will be disregarded for disciplinary action purposes when no longer 'live' and will be removed from the employees file and retained in the Personnel department for reference purposes.
- the warning letter will advise of the right of appeal, and confirmation that such an appeal would need to be made to the Executive Director of Personnel and Development, in writing within 21 calendar days of their receipt of the letter confirming the level of the warning and giving clear reasons for appeal.

13.3 It will be necessary to ensure confirmation of receipt of the letter by the employee. All correspondence must be signed for by the employee concerned or sent by special delivery and signed for upon receipt.

13.8. Substantial absence of employee during existence of Disciplinary warnings

13.8.1 An employee with a live disciplinary warning who is absent from work e.g. sickness, maternity, career break, authorised/unauthorised absence) for a period of four weeks or more will have the equivalent length of absence during the live warning period added to the expirydate of the warning. This arrangement will not apply during periods of special leave, or annual leave.

14. DISMISSAL

14.1 Downgrading as an alternative to dismissal

14.1.1 There may be occasions when it is felt that the misconduct is such that the employee is considered unsuitable to continue performing at their current level. In circumstances where this arises and where this is an alternative to dismissal, the employee may be downgraded where it is practical to do so. A final written warning must also be given at the same time, which will be disregarded after a specified period of 24 months of satisfactory conduct.

- 14.1.2 If an employee refuses to work at a downgraded position then the alternative will be for the decision to change to a dismissal from their employment with the Trust.
- 14.1.3 An employee who agrees to work at the downgraded position will accept that the salary will be adjusted accordingly and that this action will not contravene the Employment Rights Act 2002.
- 14.1.4 In circumstances where downgrading is the decision taken, a clear action plan will be developed to support the employee concerned in their new role.

14.2 Dismissal with Notice

- 14.2.1 Dismissal with notice may be considered in the following circumstances:
- where there are allegations of a serious nature;
 - where a final written warning has been issued which is not time expired and has failed to secure the necessary improved conduct/performance from the employee;
 - where a serious breach of trust and confidence is deemed to have taken place.
- 14.2.2 Dismissal with notice is not precluded for certain situations where the preceding stages have not been undertaken. However, it is unusual to dismiss for a first breach of discipline.
- 14.2.3 Dismissal of an employee should only be considered by the manager authorised to dismiss and after consultation with the Executive Director of Personnel and Development or Head of Personnel.
- 14.2.4 Before a decision is taken as to whether to dismiss the manager with responsibility for disciplinary action will ensure that the allegations have been fully investigated and considered within a disciplinary hearing at which the employee has been given the opportunity to state their case.
- 14.2.5 It will be necessary at this stage to ensure confirmation of receipt of the letter by the employee. All correspondence must be signed for by the employee concerned or sent by special delivery and signed for upon receipt.

14.3 Summary Dismissal

- 14.3.1 Summary dismissal is the dismissal of an employee without notice. This will be appropriate in cases of gross misconduct where performance/conduct would be severely damaging to the viability or reputation of the Trust or loss of qualifications required for the post, however decisions will be based on the facts of individual cases.

- 14.3.2 The manager with responsibility for disciplinary action will ensure that the allegations have been fully investigated and considered within a disciplinary hearing at which the employee has been given the opportunity to state their case before a decision is taken as to whether to summarily dismiss.
- 14.3.3 It will be necessary at this stage to ensure confirmation of receipt of the letter by the employee. All correspondence must be signed for by the employee concerned or sent by special delivery and signed for upon receipt.

15. REPORTING TO PROFESSIONAL BODIES

- 15.1 Employee(s) who are subject to registration and discipline by a professional body are reminded that the Trust has a duty to report any incidents of possible professional misconduct to that body which may investigate the case. Any individual has the right to report someone to the relevant body, but it should be noted that only the Director with professional responsibility can report on behalf of the Trust.
- 15.2 The Trust's investigation into any alleged incident will be carried out under this Disciplinary policy, will be separate from, and will not depend on, the outcome of any investigations by a professional body.

16. APPEAL RIGHTS

- 16.1 Every employee who is disciplined has the right to appeal against the decision. An employee who is aggrieved by disciplinary action which results in a first or second written warning shall have the right of appeal to a manager at the next level of authority to the manager issuing the warning.
- 16.2 An employee who is dismissed, transferred, demoted or given a final warning will have a right of appeal to the Trust Appeals Panel, which will consist of one Executive Director, who has no direct involvement in the case and one Non Executive Director. The Executive Director of Personnel and Development or a senior member of the Personnel department will attend in an advisory capacity.
- 16.3 All appeals at whatever level should be made in writing to the appropriate manager within 21 days of receipt of the letter outlining the disciplinary sanction and stating clear grounds for appeal. The managers and/or committees to whom an employee can appeal are set out in Appendix 1.
- 16.4 Any appeal to a Trust Appeals panel should be sent to the Executive Director of Personnel and Development within 21 days of receipt of the letter outlining the disciplinary sanction and stating clear grounds for appeal.

- 16.5 Appeals will only be heard by managers who have had no direct involvement with either the circumstances of the case or the decision to take disciplinary action. This would not preclude those managers who have been notified of the alleged disciplinary offence, and who have then delegated the investigation and disciplinary decision to another person.
- 16.6 The employee will have the right of appearing personally at the appeal hearing either alone or accompanied by a trade union/professional organisation representative or an individual/work colleague who is not involved in the issue to be addressed. The employee must notify the Personnel department whether they are to be accompanied, in what capacity the person concerned and of any witnesses to be called to the appeal hearing.
- 16.7 Where the manager presenting the case is inexperienced in such matters they may, if they wish, be accompanied by the personnel representative who provided advice at the investigatory stage. Additionally, in cases where the employee has legal or full time officer representation the manager should, if they wish, be afforded the opportunity of being accompanied by a member of the personnel team.
- 16.8 With the agreement of management and the employee and/or their trade union/professional organisation representative a decision will be made as to whether a full or part re-hearing is to be conducted. The appeal hearing will assess the fairness of the decision made based upon the submissions originally presented by the management and staff representatives.
- 16.9 Particular attention will be paid to any new evidence which may be introduced and the appeal hearing will ensure that both management and staff side representatives have the opportunity to respond.
- 16.10 Both parties to the appeal will be required to submit written statements of case accompanied by any supporting documents, statements etc. to the Personnel representative attending the appeal hearing. These statements will be exchanged at least 7 calendar days prior to the hearing.
- 16.11 It will be the Personnel department's responsibility to make arrangements for the hearing. The procedure for the conduct of appeals is attached at Appendix 8.

17. WITHDRAWAL OF RECORDS

- 17.1 Following appeal should any disciplinary action be reconsidered and withdrawn at any stage of the procedure, all written reference will be removed from the employee's personal file.
- 17.2 Warnings issued under any of the appropriate stages will no longer be considered once the relevant time period has expired, unless a second

written warning for the same offence has been issued within the relevant period.

18. ALTERNATIVE FORMAT

18.1 This policy is available in alternative formats eg braille/large font as required by the staff. Requests for alternative formats should be made via the Personnel department.

19. EQUALITY IMPACT

19.1 In accordance with our equality duties an Equality impact Assessment has been carried out on this policy. There is no evidence to suggest that the policy would have an adverse impact in relation to race, disability, gender, age, sexual orientation, religion and belief or infringe individual's human rights.

SOUTH TYNESIDE NHS FOUNDATION TRUST

PP8 : DISCIPLINARY PROCEDURE - MANAGERS AUTHORISED TO TAKE DISCIPLINARY ACTION

(Minimum Levels)

COUNSELLING will be undertaken by the Immediate Line Manager.

EXCLUSION AND DISMISSAL can be undertaken by any Executive Board Member.

CATEGORY OF STAFF	FIRST AND SECOND WRITTEN WARNING/ EXCLUSION	FINAL WRITTEN WARNING	DISMISSAL
Chief Executive	Chairman	Chairman	Chairman
Executive Board Members	Chief Executive	Chief Executive	Chief Executive
Head of Service	Executive Board Member*	Executive Board Member*	Executive Board Member*
Locality Lead/Business Manager	Executive Board Member*	Executive Board Member*	Executive Board Member*
Senior Managers in Corporate areas who report to an Executive Director	Executive Board Member*	Executive Board Member*	Executive Board Member*
Head of Department (Community)	Locality Lead	Executive Board Member*	Executive Board Member*
Modern Matron (Community)	Locality Lead	Executive Board Member*	Executive Board Member*
Modern Matron (Acute)	Head of Nursing	Executive Board Member*	Executive Board Member*
Senior Nurse Managers/Specialists	CBM	Head of Service	Executive Board Member*
Sister/Charge Nurse/Ward Manager	CBM	Head of Service	Executive Board Member*
Clinical staff reporting to Modern Matron (Community)	CBM	Executive Board Member*	Executive Board Member*
Other Qualified Nursing Staff	Sister/Charge Nurse/ Ward Manager	CBM	Executive Board Member*
Unqualified Staff	Sister/Charge Nurse/ Ward Manager	CBM	Executive Board Member*
Medical & Dental & Career Grades	Medical Director / Executive Board Member	Medical Director / Executive Board Member	Chief Executive/ Medical Director
Training Grades	Consultant	Medical Director/ Executive Board Member	Medical Director/ Executive Board Member
Ancillary	Line Manager	Head of Department	Executive Board Member*
Admin & Clerical	Line Manager	Head of Department	Executive Board Member*
P&T / AHPs & Pharmacy Head of Department	CBM	Head of Service	Executive Board Member*
Qualified P & T Staff	CBM	Head of Service	Executive Board Member*
Helpers/Assistants	Head of Department	Head of Service	Executive Board Member*
Estates/Maintenance	Line Manager	Head of Department	Executive Board Member*
Other Senior Managers	Line Manager	Executive Board Member*	Executive Board Member*

* Chief Executive: Exec Director of Finance: Exec Director of Nursing: Exec Director of Clinical Services: Exec Director of Personnel: Exec Director of Community Services: Exec Director of Business Development: Exec Director of Estates and Facilities: Medical Director, Head of Clinical Services, Clinical Leads

CBM = Clinical Business Manager

March 2016

Examples of Disciplinary Sanctions

The following list provides examples of offences, which the Trust would normally regard as misconduct and could lead to disciplinary sanction. It is not an exhaustive list and should be used only as a guide.

The following examples may result in different levels of disciplinary sanctions depending upon the seriousness of the case.

- poor timekeeping;
- failure to carry out reasonable instructions;
- unexplained absence from work;
- misuse or unauthorised use of Trust property;
- unauthorised disclosure of confidential information;
- misuse of the internet;
- conduct liable to bring discredit to the employee and the Trust;
- negligent loss, misuse or abuse of public money and/or property of significant value for which the employee is responsible;
- serious, proven breach of confidentiality.

Summary Dismissal (Gross Misconduct)

The following list provides examples of offences, which the Trust would normally regard as Gross Misconduct and lead to Summary Dismissal. It is not an exhaustive list and should be used as a guide.

Theft

Any instance of theft from the Trust or from a patient or member of staff on Trust premises or whilst on Trust business.

Fraud

Any deliberate attempt to defraud the Trust or a member of the public in the course of official duties (this can include misuse of time clocks, falsification of travel/subsistence claims etc.)

Bribery and Corruption

Bribery is giving someone a financial or other advantage to encourage that person to perform their functions or activities improperly or to reward that person for having already done so. Corruption is the deliberate use of bribery or payment of benefit-in-kind to influence an individual to use their position in an unreasonable way to help gain advantage for another.

Assault

Any assault upon a patient or any assault upon a member of the public or a fellow employee that takes place on Trust premises or whilst on Trust business.

Negligence

Any action, or failure to act, which threatens the health or safety of a patient, a member of the public, or another member of staff, or any financial or material loss caused by neglect or duty or gross carelessness.

Malicious Damage

To Trust property, patient's property or staff's property.

Corruption

Receipt of money, goods, favours or excessive hospitality in respect of services rendered or information given.

Unfit for Duty

e.g. through drink, drugs or solvents.

Bullying / Harassment

Unwanted behaviour that is perceived by the recipient as being intimidating, embarrassing, humiliating or offensive and that affects their dignity at work or threatens their environment / security.

Misuse of the Internet

Such as excessive personal use during working hours, visiting inappropriate websites.

Misuse of Social Media

Such as derogatory comments bringing the Trust into disrepute, confidential information relating to patients, staff

COUNSELLING

Counselling should be undertaken in relation to conduct which is below the standard required but which is not serious enough to justify formal disciplinary action.

The purpose of counselling is to:

- explore the areas of concern; and
- clarify the standards required; and
- establish whether there are any contributory factors or additional problems facing the employee with which help can be offered; and
- provide support and training, if appropriate, to achieve the required standards.

A counselling discussion will always be held in private and will highlight the areas of concern in relation to conduct with specific examples and encourage improvement. Explanations will be listened to and where there is clearly no case to answer, this will be made clear to the employee.

Where an improvement is required, an action plan will be put in place and the manager will make sure that the employee understands what needs to be done, how their conduct will be reviewed and over what period of time. The employee will be told that if there is no improvement the next stage may be to move to the formal Disciplinary Procedure.

In circumstances where the employee or the manager feels that they need support or accompaniment during the counselling process, this will be acceptable. The employee may seek support from their trade union/professional organisation representative, or an individual/work colleague. The manager may seek support from a senior member of the Personnel department. It is recommended that in the event of either the employee or the manager choosing to be supported then, in the interests of balance, the other party is also supported. If an employee is concerned by the process undertaken they should seek advice from the Personnel department or their trade union/professional organisation representative.

At any time during a counselling discussion where it becomes clear that the matter is more serious, the discussion will be adjourned to allow the employee to access trade union /professional organisation representation if required, and the issue will be pursued under the formal Disciplinary Procedure.

A letter and agreed action plan will be given to the employee by the manager with a clear and accurate description of the standards to be expected in the future. A copy of this letter and action plan will be kept on the employee's personal file until a final review and all identified actions have been achieved. The letter and action plan will be disregarded for disciplinary action purposes following the final review and will be removed from the employees file and retained in the Personnel department for reference purposes.

Advice and support with all aspects of this process is available from the Personnel department.

MANAGER GUIDELINES ON CONDUCTING A COUNSELLING SESSION

Preliminary Steps

1. Ensure that all of the relevant facts relating to the employee's conduct are available with specific examples.
2. Arrange for the meeting to be held in a private setting, where interruptions are unlikely.
3. Notify the employee about the counselling session:
 - what it is about;
 - when and where it will take place;
 - confirm if you intend to be accompanied by a Personnel representative and, if so, that you are happy for the employee to be accompanied by an individual/ work colleague or trade union/professional organisation representative, if they so wish. It is recommended that in the event of either the employee or the manager choosing to be supported then, in the interests of balance, the other party is also supported.

(This can be either verbal or written notification)

At the Counselling Session

1. Reiterate to the employee the reason for the meeting.
2. Explain to the employee the reasons for your concern and give specific examples.
3. Ask the employee if he/she has any explanation to offer or whether there are any factors you need to take into consideration and encourage him/her to talk.
4. Consider the explanation put forward by the employee and take this into consideration:
 - whether there are any personal circumstances to take into account;
 - whether or not the explanation/factors put forward are reasonable and valid;
 - the personal file of the employee.
5. Discuss with the employee what improvements are expected and agree jointly how the concerns can be addressed. Establish a plan of action and set targets for improvement which should be signed by the employee as understood.

6. The manager should ensure the employee is aware they are being counselled in relation to their conduct and that failure to improve in line with the agreements reached could result in formal disciplinary action being taken.
7. The manager will write to the employee within 7 calendar days of the counselling session taking place. The letter and action plan will confirm the agreements reached, noting key action points and specify a date to meet with the employee to review progress. A copy of this letter and action plan will be kept on the employee's personal file until a final review and all identified actions have been achieved. Both the manager and employee should take joint ownership of the action plan.

Reviewing Progress

1. Ensure that you monitor the employee's conduct in line with the agreements reached.
2. Meet with him/her again at the specified date, (or earlier if you are dissatisfied with progress). The meeting should agree a remedial plan, with explicit achievable objectives including support and mentorship :
 - if progress has been satisfactory, agree another review with a potentially longer time-scale. Continue to meet to review progress until you are sure there is no longer a need to do so.
 - if progress is unsatisfactory, notify the employee of this together with the reasons for your concern. Encourage the employee to talk and consider any influencing factors/mitigating circumstances which may be affecting conduct;
 - consider the next steps which could include either an extension of the review period or, if appropriate, instigating a formal investigation prior to determining whether or not disciplinary action is required.

Advice and support with all aspects of this process is available from the Personnel department

PROCEDURE FOR MANAGING ALLEGATIONS AGAINST STAFF WHO WORK WITH CHILDREN AND ADULTS AT RISK OR HARM

1. CONCERNS OR ALLEGATIONS RAISED

- 1.1 Any concern or allegation should be raised with a Senior Manager (Executive) of the Trust (annex 1) where it is believed that a member of staff has:
- behaved in a way that has harmed, or may have harmed a child or adult at risk of harm;
 - possibly committed a criminal offence against, or related to, a child or adult at risk or harm;
 - behaved towards a child, children or adult at risk or harm in a way that would indicate they are unsuitable to work with children or adults.
- 1.2 If the allegation meets the criteria above; in respect of children, the matter will be reported immediately to the Local Authority Designated Officer (LADO) (Annex 3) and the relevant designated doctor or designated nurse for child protection.
- 1.3 If the allegation meets the criteria in respect of adults at risk of harm, reporting should be progressed via the Trust Safeguarding Adults lead who will refer the case to the locality Safeguarding Adults Unit 'Designated Adult Safeguarding Manager' (DASM).
- 1.4 The LADO/DASM will decide if the matter can be dealt with internally or if the matter fits the criteria for a Multi-Agency Incident Evaluation Meeting.
- 1.5 If an allegation is made to the police or through social services about a member of the Trusts' staff the Trust will be notified by the LADO/DASM.

2. INITIAL CONSIDERATION

- 2.1 The LADO/DASM will discuss the case with the Senior Manager (Executive) and the Senior Nominated Officer (Personnel) of the Trust (annex 2) who will manage the case.
- 2.2 Where there is sufficient cause to suspect a child or adult is suffering, or is likely to suffer significant harm a strategy discussion will be convened with Social Care representatives within the appropriate Local Authority area.
- 2.3 Where there is no cause to suspect 'significant harm' is an issue, but a criminal offence might have been committed the LADO/DASM will inform the police and a meeting convened to decide if police investigation is needed.

3. ACTION FOLLOWING CONSIDERATION

- 3.1 If a member of staff is convicted of an offence, the police will notify the Trust to allow appropriate action to be taken.
- 3.2 Where the allegation does not involve a possible criminal offence the Trust will decide if any action should be taken and this may include disciplinary action.
- 3.3 Any information gathered by the police that may be relevant to a disciplinary investigation will be passed to the Trust.
- 3.4 In certain circumstances it may be appropriate to have a disciplinary investigation carried out by an officer independent to the Trust. Should this be the case the investigating manager should provide their report to the Trust within 10 working days.
- 3.5 A decision on whether a disciplinary hearing will be convened should be made within 2 days of receipt of the investigation report.
- 3.6 If it is decided to convene a disciplinary hearing this should be done within 7 calendar days.

4. REFERRAL TO PoCA AND/OR PROFESSIONAL BODY

- 4.1 If an allegation is substantiated and the employee dismissed a decision on whether to refer to the staff members professional body will be made by the Trust leads in consultation with the LADO / DASM.
- 4.2 Any referral to a Professional Body will be in accordance with section 13 of the Trust's Disciplinary Procedure.

5. RESIGNATION PRIOR TO DISCIPLINARY HEARING

- 5.1 Compromise agreements where the employee resigns with an agreed reference in exchange for the Trust not pursuing disciplinary action will not be used in cases that fall into the categories listed in 1.1 above.
- 5.2 Where it is not possible to apply disciplinary sanctions because an employees notice expires before the process is complete a conclusion should be reached and recorded wherever possible.

6. RECORD KEEPING

- 6.1 Clear and comprehensive records should be kept of any allegations made how these were followed up and resolved together with details of decisions and any action taken.
- 6.2 All information relating to the case will be retained in an individual confidential case file.

- 6.3 A summary will be given to the employee and a copy retained on their personnel file.
- 6.4 All records will be kept until state retirement age, or where the employee remains employed by the Trust after this until actual retirement or 10 years if that is longer.

Annex 1

Responsibilities of the Senior Manager (Executive)

- Understand procedures for managing allegations or concerns against staff and volunteers;
- Notify the Local Authority Designated Officer (LADO) for children, or the Designated Adult Safeguarding Manager (DASM) for adults at risk of harm allegations or concerns fitting the criteria as laid down in 'Working Together to Safeguard Children 2015' and 'The Care Act 2014' for Safeguarding Adults;
- Attend and contribute effectively to strategy discussions and initial Incident Evaluations;
- Liaise with the LADO / DASM and gathers information relating to the allegation;
- Liaise with LADO / DASM and the Personnel Department regarding, suspension, risk assessments, support for accused person, progress of investigations; disciplinary processes, including information provided by police/children services, reports to the barring list or regulatory body; appropriate action regarding false allegations, including those with malicious intent; and record keeping;
- Liaise with LADO / DASM in respect of information to be provided to the child, parent, accused person and others;
- Provide reports and information to the Nominated Senior Officer (Personnel) to inform of any issues and any ongoing investigations and to ensure there is always cover for their role;
- Ensure the Trust's policy and procedures in relation to Safeguarding Children and Safeguarding Adults at Risk are updated and reviewed annually and work with the Nominated Senior Officer (Personnel) regarding this;
- Keep detailed, accurate, secure written records of allegations/concerns received and how resolved, including progress of external investigations.

Senior Manager (Executive)

Dr Bob Brown – Exec Director of Nursing & Clinical Governance
South Tyneside District Hospital,
Harton Lane,
South Shields,
Tyne & Wear NE34 0PL

Deputy Senior Manager

Miss Louise Burn,
Deputy Director of Nursing,
South Tyneside District Hospital,
Harton Lane,
South Shields,
Tyne & Wear NE34 0PL

Annex 2

Responsibilities of the Senior Nominated Officer (Personnel)

- Ensure the Local Safeguarding Children Board (LSCB) procedures for managing allegations with regards to children are implemented within the Trust;
- Ensure the Local Safeguarding Adults Board (SAB) Procedural Framework for managing allegations with regards to adults at risk of harm are implemented within the Trust;
- Ensure that the workforce is aware of and implements procedures in relation to all allegations against adults who work with or on behalf of children;
- Ensures the Trust has systems in place to review cases and identify and implement any changes;
- Resolve any inter-agency issues which impede the implementation of LSCB/ SAB procedures;
- Ensure that roles of the Senior Manager (Executive) and Senior Nominate Officer (Personnel) are included in Trust Policies and Procedures;
- Ensure the Local Authority Designated Officer (LADO) and Designated Adult Safeguarding Manager (DASM) contact details are included in Trust Policies and Procedures;
- Ensure effective reporting and recording arrangements are in place within the Trust.

Senior Nominated Officer (Personnel)
Mrs Sonia Atkinson, Head of Personnel
South Tyneside District Hospital,
Harton Lane,
South Shields,
Tyne & Wear NE34 0PL

EXCLUSION – RISK ASSESSMENT

Where possible, it is advisable to consult the Personnel Department prior to exclusion and to have a member of the Personnel Team present when notifying the employee of the allegation/exclusion/alternative action.

Please note there is no statutory requirement for an employee to be accompanied when notified of their exclusion from work, however, where possible the employee should be given the opportunity to be accompanied by a trade union/professional organisation representative.

Information to be completed by the Manager and a copy sent to the Link Divisional Personnel Manager

Employee name	
Post title	
Band	
Department	
Line manager	
Date of Incident /allegation received	
Nature of allegation	
Applicable policies	Disciplinary Policy/Bullying and Harrassment Policy /IT security policy /Information Governance Policy/ other Trust policy please state
Date employee informed of exclusion	
Name(s) of those present	
Reason for exclusion (tick all which apply)	For the protection of patient safety and to ensure any risk to patients, colleagues and the employee is minimised In order to avoid an investigation being compromised, either through interference or intimidation

	Where the allegation is considered to be potentially gross misconduct which may result in the employee's dismissal from their post Other reason – please state
Could an alternative to exclusion be considered?	YES/NO If Yes, what is the alternative offered? (tick all which apply) Transfer to other duties Transfer to another department Change of Working Hours Restriction on duties Allowed to work from home Other – please state:
Does the employee accept the alternative to exclusion?	YES/NO
Confirm contact details of employee i.e. address, phone number	
Date Personnel informed	
Excluding Manager's Name	
Date confirmation letter sent to employee	
Date of first review of exclusion/ alternative arrangements (normally within 42 calendar days)	

Information to be completed by the Manager:

First Review

(This should normally take place no later than 42 calendar days after date of exclusion).

<p>Date:</p> <p>Exclusion to Continue? YES/NO</p> <p>Outline reasons:</p> <p>Signed: Print Name:</p>

Second Review

(This should normally take place no later than two weeks after First Review).

<p>Date:</p> <p>Exclusion to Continue? YES/NO</p> <p>Outline reasons:</p> <p>Signed: Print Name:</p>

FORMAL INVESTIGATION PROCESS

General points

Where an issue has come to light, a fact finding should be undertaken as soon as practicable to broadly establish the issue. This is not a formal process in itself and the form it takes should be appropriate to the incident. It is not intended for this to be an onerous time consuming process.

In the first instance the employee involved will be asked to provide a written record of their recollection of the incident to establish the facts. This will be provided to the line manager. The outcome will be to reach a decision on how to proceed:

- No further action
- Counselling
- Formal Investigation

In order to support the principles of fairness and equity, the role of the investigating manager and disciplining manager should be kept entirely separate.

A manager or suitable senior member of staff will be identified as the investigating manager who will lead the investigation. The investigating manager can be the employee's line manager, if appropriate. The person carrying out the investigation will not normally have responsibility for taking disciplinary action against the individual involved. In cases relating to professional conduct, the investigating manager appointed will normally be from the relevant professional background.

It may be necessary in certain circumstances, to appoint an investigating manager from another Department or Division, however, the investigating manager should preferably have some knowledge of the service in which the individual is employed. Advice and guidance should be sought from the Head of Personnel.

Investigation managers and trade union/professional organisation representatives involved in the investigatory process, should wherever practicable be released from their normal duties to undertake the investigation as a priority in order to achieve a timely conclusion to the process for all concerned.

Planning the investigation

The employee accused of misconduct will be informed that an investigation will be undertaken. Where possible this should be face to face but if this is not practicable then it is appropriate for this information to be given over the telephone and in writing at the earliest opportunity.

The investigating manager will arrange a meeting with the member of staff accused of the misconduct and any other witnesses as deemed necessary. All parties must be advised that during the investigation the issue must remain confidential and they are not permitted to attempt to influence the opinions of other witnesses or individuals who are involved or could potentially be involved in the investigation

Where the employee who is the subject of the investigation is invited to an investigatory meeting, they will be advised of their right to be accompanied by a trade union/professional organisation representative or Trust work based colleague. Wherever practicable to do so employee's will be given 7 calendar days notification of the meeting. The employee will inform the investigating manager or Personnel representative whether they belong to a recognised trade union/professional organisation and the name of the person they wish to accompany them at such a meeting. If the member of staff is willing to meet without a trade union/professional organisation representative or workplace colleague this should be recorded.

Relevant employees who were witness to or involved in the alleged incident/misconduct will be interviewed. The list of witnesses may expand during the course of the investigation, and if witnesses are suggested but not interviewed the investigating manager should provide reason for this decision.

Non attendance at investigatory meetings

Investigatory meetings must be arranged promptly, and only deferred/postponed where the employee is deemed unfit by Occupational Health to attend an investigatory meeting or an employee's representative is unavailable. Where a staff representative is unavailable to attend the first scheduled meeting, an alternative date will be agreed within 5 working days of the original meeting date wherever possible. If an alternative date is not agreed, then the investigation may proceed without the attendance of either the employee or their representative.

If an employee whose conduct is being investigated is unable to attend investigation meetings due to sickness absence a member of the Personnel team will seek advice from Occupational Health as to whether the employee is fit to attend investigatory meetings.

Other, exceptional circumstances may include the employee is in police custody or potential criminal action becomes apparent. The Trust has certain obligations to inform the Police, however, this must be discussed with a senior member of the Personnel department who will refer the matter to the relevant Executive Director. In such circumstances, this does not preclude disciplinary procedures being followed, however, this should be conducted in consultation with the Police to ensure that the internal investigation does not prejudice the Police investigation.

Investigation Meeting

It is usual for the investigation to be recorded and a transcript will be provided to the witnesses within 14 calendar days following the meeting by the Investigating Manager / Personnel representative. These notes will be used to form a record of the interview which should be forwarded to the employee for their agreement, amendments and comments. The employee will be requested to confirm the accuracy of the written record, sign and return it to the Personnel representative within 14 calendar days of receipt of the notes. If the employee does not agree with the content of the written record, he/she must make notes on the document, amending the part(s) that are not agreed and sign and return the annotated

document. Failure of the employee to agree and return the written record by the given date should not delay the investigation.

The investigating manager may reasonably gather other documentation relevant to the investigation. This could include information about the specific incident(s), patient records, time sheets as well as information about the employee(s) under investigation e.g. record of previous live disciplinary warnings, previous similar incident(s) and relevant employment history.

If the investigating manager feels that they need to obtain further information from a witness it is appropriate for a further statement to be requested or another interview arranged in accordance with the above process. A witness supplying a statement or being interviewed should be informed that their information may be shared with the employee under investigation, and that they may be required to attend any subsequent disciplinary hearing as a witness if asked to do so.

It is far from ideal for witness statements to be anonymous, and this should only be considered in extreme or exceptional circumstances. It is possible to proceed, where there is a real concern of reprisal or intimidation. Where there is a request for anonymity, the following factors should be considered;

- The seriousness of the allegation
- Is there any other corroborative evidence?
- Is there any reason for the witness to fabricate evidence?
- Is the witness's fear genuinely sufficient to justify proceeding without divulging their identity?

The employee under investigation will be required to attend a disciplinary hearing, to give a verbal account of their involvement and questions may be asked. In exceptional circumstances written statements could be provided if the employee is unable to attend the hearing.

If a witness is someone from outside the Trust who is not prepared to attend any subsequent disciplinary hearing every effort will be made to obtain a written statement from them.

Concluding the Formal Investigation

On completion of the investigation, the investigating manager will prepare a report for the manager who has responsibility for disciplinary action. (Appendix 7).

Careful and thorough evaluation of statements and relevant documentation gathered during the investigation is essential.

The report should include the employee's statement and any witness statements with a brief factual summary of the investigation, together with a recommendation on whether there appears to be a case to answer and concluding one of the following courses of action:

- there is no substance to the allegation and therefore no further action is necessary, or
- the allegation is of minor importance and can be dealt with by counselling, or
- the allegation appears to be well founded and a disciplinary hearing should be convened in line with this policy.

Upon conclusion of the investigation and completion of the report the investigating manager will feedback to the employee and their representative the recommendations and outcome of the investigatory process. If the outcome of the investigation is the employee is to be referred to a disciplinary hearing, the investigation manager will confirm this in writing to the employee and their representative within 7 calendar days of the report being concluded. If the outcome of the investigation is formal counselling or no case to answer the investigating manager will arrange a feedback meeting with the employee and their representative to advise of the recommendations and outcome of the investigatory process. The feedback meeting should be arranged within 7 calendar days of the report being concluded.

If the recommendation of the investigation is the employee is to be referred to a disciplinary hearing, the manager with responsibility for disciplinary action will write to the employee concerned with the date, time and venue of the hearing, no later than 14 calendar days after receipt of the report. It is recognised however that in exceptional circumstances it may be necessary to extend this timescale by mutual agreement.

**Strictly Private and Confidential
Investigation Report
(STAFF NAME)**

**Investigating Manager
Personnel representative
Date**

It is critical that the investigation report is well presented, thorough and accurate. It is a key document used to determine whether a case should progress to a disciplinary hearing. Equally, it is a mechanism for preparing the ground for building up relationships again following a relationship dispute. Be aware of repetition – reports should be lean.

Reports should be structured to include:

1.0 Purpose of the Report

2.0 Introduction - to include investigation authorised by, name and role, Investigating Manager, name and role, personnel representative, date investigation began, terms of reference, if they were amended, how and why, background to the investigation, brief overview of the matter

3.0 Background – Information on local service or team, and any contextual factors that the reader should be aware of as background information to the case. This could include historical factors, custom and practice issues, team dynamics etc. Employee background must also be provided – i.e. post held, date of commencement with Trust, training and appraisal record, development and support issues, employment record.

4.0 Allegation(s) - The allegation(s) should be clear and unambiguous and should reflect the wording to be used to the employee in the event that it is referred to a disciplinary hearing.

5.0 Process undertaken - The relevant policy should be referenced, along with details of investigation meetings held, evidence collected, any evidence not collected and reasons why, any witnesses identified that were not interviewed and the reasons why. Information should also be provided on any anomalies in respect to the process adopted.

6.0 Investigation evidence (summary of interviews held) - name and summarise each witness statement, quote from statement where relevant, set out how the witness statement supported or did not support findings and why.

7.0 Investigation Findings – including any mitigating factors

The findings should be factual or based on reasonable belief, with supporting evidence and / or a plausible rationale for the finding. Personal, subjective judgements without the support of evidence should not be provided. All findings should be 'linked' to the source of evidence e.g. a witness statement, a written report or other form of documentation. It is useful for the relevant section of an appendice to be referenced in the finding, so that the reader can easily refer to the corresponding evidence.

When relying on reasonable belief on the grounds of probability (as opposed to proven fact), it is critical to explain very clearly why this is the case and reference any corresponding evidence to support the belief.

It is also important that the employee's mitigation is presented clearly in order to provide a rounded and balanced report. The Investigating manager must have demonstrated how they have taken into consideration everything that the employee has provided.

8.0 Conclusion - findings in summary format.

9.0 Recommendations – formal action/informal action/no action to be taken
The recommendations must always flow from the findings, and be cognisant of contextual and mitigating factors.

10.0 Appendices - list of documents collected as part of investigation and included in report. Consideration must always be given to the relevance of an appendice. If the report makes reference to a document then this must be included as an appendice. Care must be given to ensuring the accuracy and quality of the appendices used – e.g. correct policy, latest report etc. Care must also be given to not including non-relevant appendices or appendices that have no 'relationship' or link with the investigation or report.

MANAGING THE DISCIPLINARY PROCESS

KEY PRINCIPLES

- Disciplinary action should only be taken as a last resort. Every effort should be taken to resolve the matter informally first. However it is inevitable that occasions will arise when formal disciplinary action will have to be taken, in such circumstances this Disciplinary Policy must be strictly adhered to;
- Ensure that the investigating manager role is kept entirely separate from any persons who would be subsequently acting as a member of the disciplinary panel;
- Examine the allegation(s) and, where possible, separate them into specific points/themes;
- Ensure that the disciplinary process is conducted in a thorough, impartial and objective manner;
- Ensure that the strictest confidentiality is maintained at all times throughout the disciplinary process.

STEP 1: FIND OUT THE FACTS (what, where, when and who?)

- Carry out a thorough objective investigation;
- Identify any witnesses (ie colleagues, supervisor) that may be required to be interviewed to provide evidence and facts;
- Check relevant documentary evidence where relevant e.g. timesheets, expense claims, record of work completed;
- Inspect workplace and work samples where relevant;
- Check the employee's previous record including disciplinary warnings, training, appraisals, qualifications, experience etc.;
- Check whether there are any written rules or standards e.g. procedure manuals, job descriptions, codes of practice which may be used in the role to perform their job satisfactorily. Check if there are any rules or standards used by other employees doing the same or similar roles or those which have been developed informally e.g. by custom and practice.

STEP 2: FIND OUT THE REASONS (why?)

- Arrange to meet the employee concerned as soon as possible after the allegation has been made to ascertain their version of events. (NB it may be necessary on occasions where a particularly sensitive allegation has been made to withhold the identity of the person making the allegations during the initial stages of the investigation. It should be noted however that this information will need to be made known to the employee under investigation if it is determined that there is a case to answer);
- Ensure the employee concerned has been provided with a written record of the allegations made against them;
- Advise the employee of their rights to representation;
- Formally interview the employee in question who the allegations have been made against;
- Where appropriate, interview and obtain factual written statements from any witnesses/other relevant parties (ie colleagues, supervisor etc) who could provide information relevant to the investigation process;
- Check whether the employee concerned has received appropriate training and supervision;
- Check whether the employee concerned understands the requirements of their role;
- Check whether poor job design or materials could contribute to the shortcoming;
- Check whether there are any personal factors which could affect the employee's conduct.

STEP 3: CONCLUDING THE INVESTIGATION

- Once all statements/interviews have been completed, the investigating manager will prepare an objective written report.
- In deciding whether action is appropriate, take into account the strength of the evidence, the seriousness of the alleged offence, the employee's previous record, the degree of management responsibility for the offence and any mitigating circumstances.
- The report will recommend one of the following courses of action:
 - there is no substance to the allegation and therefore no further action is necessary; or

- the allegation is of minor importance and can be dealt with by counselling; or
 - the allegation appears to be well founded and a disciplinary hearing should be convened in line with this Disciplinary Policy.
- Inform the employee of the outcome.

STEP 4: CONVENING A DISCIPLINARY HEARING

- Where formal disciplinary action is identified as an outcome of the investigation:
 - as disciplining manager check your authority to take disciplinary action;
 - ensure you are familiar with the Disciplinary Policy;
 - if in doubt, seek advice from a member of the Personnel team.
- Written notification must be given to the employee outlining the following:
 - the alleged offence;
 - the date time and location of the disciplinary hearing;
 - the employees right to representation;
 - include a copy of the investigation report and other supporting information.
- Conduct a formal disciplinary hearing:
 - confirm the process to be followed as identified at Appendix 7 of this policy;
 - adjourn to consider the case carefully.
- In reaching your decision keep an open mind, consider each case on its merit and make a consistent, objective and fair decision. Consideration should be given to:
 - any mitigating circumstances affecting the severity of the penalty;
 - the employee's previous record;
 - the penalty imposed in similar previous cases;
 - whether the proposed penalty is reasonable in view of all the circumstances heard.
- Avoid unnecessary delays in making your decision, wherever possible advise the employee concerned verbally at the disciplinary hearing and follow this up in writing. If this is not possible you should reconvene within 2 to 3 days to advise of the outcome. Should it not be possible to do this in this timeframe you must write to advise the employee of the outcome.
- Whatever decision you take the letter confirming the outcome should specify the following detail:
 - the nature of the allegation and whether this has been upheld;
 - the reasons for reaching the decision;
 - any period of time given for improvement;
 - the precise action and how long it will remain on the employee's personal file;
 - the likely consequences of further misconduct;

- the right of appeal, the timescale and how and when it should be made.

STEP 5: FOLLOW UP

- Follow up any actions identified as an outcome of the disciplinary hearing and communicate these to the employee and the line manager.
- Ensure that any support/learning and development proposed by management is given.
- Arrange a programme of monitoring and review.
- Record progress.

INVESTIGATION PLAN

Case Reference:		Date Commenced:	
Investigating Manager:			
Personnel representative:			
Case Manager:			

Employee Details

Surname:	First Name:
Department:	Male / Female (*delete as appropriate)
Staff Group:	Job Title:

Case Type	Disciplinary/Grievance/Other
Stage	Investigation / Hearing / Appeal / Other
Case Overview:	
Time frame	
Sources of evidence to be collected	
Names of staff to be interviewed (including the planned order of interviews)	
Date of investigation meetings	

Date of investigation notes sent and returned by witnesses	
Investigation meetings concluded by	
Collection of evidence completed by	
Date case concluded	
Investigation report completed by	
Outcome of investigation	
Date of feedback given to staff involved	
Date of Investigation report submitted to Disciplinary Manager (if appropriate)	
Date of disciplinary hearing (if appropriate)	

HANDLING CONDUCT AND CAPABILITY ISSUES FOR DENTISTS AND MEDICAL STAFF

Introduction

This document applies to dentists and medical staff employed by South Tyneside NHS Foundation Trust. Dentists and medical staff employed by other organisations, for example: Deanery doctors, are covered by the relevant Deanery procedures.

This document supplements the information in the Trust Disciplinary Procedure and provides additional clarification on issues such as exclusion.

As a Foundation Trust we are not required to adopt the document 'Maintaining High Professional Standards in the Modern NHS' however we recognise the importance of having appropriate processes in place to manage conduct and capability issues for dentists and medical staff therefore we have, where appropriate, incorporated the underpinning principles of this document into our procedures.

HANDLING MISCONDUCT/CAPABILITY ISSUES FOR DENTISTS AND MEDICAL STAFF

The Trust Disciplinary Policy applies to all staff employed by the Trust and therefore this policy will be used for handling misconduct/capability issues for dentists and medical staff. A number of key processes/principles will be the same for all staff groups, for example:

- Informal options for resolving issues
- An investigation to be carried out before referral to a formal disciplinary hearing
- Employee to have right to be accompanied
- Employee to be given clear information about the allegations to enable them to respond fully to the allegations
- Right of appeal

However there are some elements of the standard process which will be modified for dentists and medical staff:

1. Suspension / Exclusion

Suspension will be referred to as exclusion in the case of dentists and medical staff (to avoid confusion with the term suspension used by GMC/GDC)

2. Exclusion of dentists and medical staff will be managed as follows:

Immediate/Temporary Exclusion

- Immediate, temporary, exclusion for up to 14 calendar days can be enforced by a Clinical Business Manager or the Head of Clinical Services with advice/support from a senior member of the Personnel department. The employee will be advised that they are required to attend a meeting and will be advised of the reason for the meeting. They will also have the opportunity to be accompanied if they wish.

- Immediate exclusion may be implemented in cases where it is believed that it is not appropriate for the member of staff to remain at work, for example: to protect patients, or to facilitate a disciplinary investigation.
- The temporary exclusion is not a form of penalty, and the employee receives full pay. It is a short term action to allow fuller consideration of the issues and a decision to be made regarding the way forward, for example: whether a formal investigation needs to take place.

Formal Exclusion

- Before determining that formal exclusion of an employee is appropriate, consideration will be given to whether full exclusion from the workplace is appropriate or whether the employee could undertake some elements of their role.
- The employee will be invited to attend a meeting with the Case manager / Personnel representative and will be given information about the concerns to be discussed and their right to be accompanied. (Note: in some cases it may be more appropriate for the investigating manager to hold the meeting, for example: if a temporary exclusion is in place and they have gathered further details to provide to the employee).
- At the conclusion of this meeting the employee will be advised whether they are to be excluded from work; this decision will be confirmed in writing along with any relevant information e.g. access to training etc.
- The exclusion will be reviewed before the end of the 4 week period and extended for a further 4 weeks if necessary
- Exclusions will be reviewed and monitored on a 4 weekly basis and all exclusions will be reported to the Board on a monthly basis.
- At each review it must be considered whether the situation has changed and it would be appropriate to lift or amend the exclusion.
- The employee will be kept informed in writing of the status of their exclusion from work and would be expected to be available to attend meetings etc during normal working hours.
- Employees may be able to attend the workplace to undertake CPD or other appropriate activities. This will be considered and managed on a case by case basis.

3. Roles / Responsibilities

- The Chairman of the Board and Chief Executive are required to be kept apprised of investigations / exclusions relating to dentists and medical staff to assure themselves and the board that due process is being followed. (Note: it would not be appropriate for the Chairman / Chief Executive / Board to be given details of the case as this would preclude them from chairing a hearing/appeal panel; rather they should be kept up to date on the process and broad progress in the case)
- The Medical Director / Executive Director of Personnel & Development will ensure that an appropriate Case manager is appointed along with a senior member of Personnel to advise on process. (Note: as above the Medical Director / Executive Director of Personnel & Development will remain outside of the case management to enable them to sit on hearing/appeal panels)
- The Case manager is required to manage the overall progress of the case, including making decisions regarding exclusion and the outcome of an investigation following the production of an investigation report by the

investigating manager. The Case manager is required to keep the Board up to date on progress in the case and ensure due process is being followed. The Case manager also appoints the investigating manager and a senior member of Personnel to support the investigation process.

- The investigating manager is required to conduct a fair and thorough investigation into the concerns/allegations and ensuring the employee has an opportunity to fully respond to the allegations before reaching a decision. The investigating manager will produce a report for the Case manager at the conclusion of the investigation setting out the findings and making a recommendation on the way forward.
- NCAS may be contacted at any time during the process if it is felt that their input would be helpful; the Medical Director / Executive Director of Personnel & Development would be the normal point of contact for NCAS.
- In some cases the Investigating Manager may feel they need some clinical input to enable them to fully understand the issues in a particular case. In this situation the Case manager / Medical Director / Executive Director of Personnel & Development would identify suitable clinicians within the Trust who could assist the Investigating Manager.

PROCEDURE SUMMARY FOR MISCONDUCT

1. Issue identified e.g. via complaint
2. Chief Executive/Chairman of the Board advised
3. Case manager / Personnel representative appointed
4. Case manager appoints investigating manager / Personnel representative
5. Exclusion considered and implemented if appropriate
6. Fair and thorough investigation undertaken in a timely manner
7. Investigating manager produces report following conclusion of investigation
8. Case manager reviews investigation report and decides on way forward, e.g. no further action, referral to GMC/GDC, referral to disciplinary hearing

DISCIPLINARY HEARINGS / APPEAL PANELS

- Hearings will be chaired by either the Chief Executive or Medical Director; the Executive Director of Personnel & Development (or nominated deputy) will also sit on the panel
- Appeal panels will be chaired by a Non-Executive Director; an Executive Director and the Executive Director of Personnel & Development (or nominated deputy) will also sit on the panel
- In both cases a senior clinician may be asked to sit on the panel if it is deemed appropriate to ensure that the panels have the necessary clinical input.

PROCEDURE SUMMARY FOR CAPABILITY ISSUES

1. Possible capability issue identified e.g. via appraisal / complaint
2. Appendix 6 of Trust Disciplinary Policy to be followed, if the outcome of the process is that the Manager feels it is necessary to consider disciplinary action the following steps will be taken:
 - a. Chief Executive/Chairman of the Board advised
 - b. Case manager / Personnel representative appointed
 - c. Case manager appoints investigating manager / Personnel representative
 - d. Exclusion considered and implemented if appropriate
 - e. Fair and thorough investigation undertaken in a timely manner - to investigate the steps taken to date and identify if referral to disciplinary hearing appears to be the appropriate outcome. (The investigating manager may take clinical advice to assist in completing this investigation and making a recommendation to the case manager).
 - f. Investigating manager produces report following conclusion of investigation
 - g. Case manager reviews investigation report and decides on way forward, e.g. no further action, referral to GMC/GDC, referral to disciplinary hearing

CAPABILITY HEARINGS / APPEAL PANELS

- Hearings will be chaired by either the Chief Executive or Medical Director; the Executive Director of Personnel & Development (or nominated deputy) will also sit on the panel
- Appeal panels will be chaired by a Non-Executive Director; an Executive Director and the Executive Director of Personnel & Development (or nominated deputy) will also sit on the panel
- In both cases a senior clinician may be asked to sit on the panel if it is deemed appropriate to ensure that the panels have the necessary clinical input.