

“NHS Organisation”

Disciplinary Policy and Procedure

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1. Policy Statement

1.1 The Core Principles of NHS Wales are:

- **We put patients and users of our services first:** We work with the public and patients/service users through co-production, doing only what is needed, no more, no less and trying to avoid harm. We are honest, open, empathetic and compassionate. We ensure quality and safety above all else by providing the best care at all times.
- **We seek to improve our care:** We care for those with the greatest health need first, making the most effective use of all skills and resources and constantly seeking to fit the care and services we provide to users' needs. We integrate improvement into everyday working, by being open to change in all that we do, which also reduces harm and waste.
- **We focus on wellbeing and prevention:** We strive to improve health and remove inequities by working together with the people of Wales so as to ensure their wellbeing now and in future years and generations.
- **We reflect on our experiences and learn:** We invest in our learning and development. We make decisions that benefit patients and users of our services by appropriate use of the tools, systems and environments which enable us to work competently, safely and effectively. We actively innovate, adapt and reduce inappropriate variation whilst being mindful of the appropriate evidence base to guide us.
- **We work in partnership and as a team:** We work with individuals including patients, colleagues, and other organisations; taking pride in all that we do, valuing and respecting each other, being honest and open and listening to the contribution of others. We aim to resolve disagreements effectively and promptly and we have a zero tolerance of bullying or victimization of any patient, service user or member of staff.
- **We value all who work for the NHS:** We support all our colleagues in doing the jobs they have agreed to do. We will regularly ask about what they need to do their work better and seek to provide the facilities they need to excel in the care they give. We will listen to our colleagues and act on their feedback and concerns.

They have been developed to help and support staff working in NHS Wales.

NHS Wales is about people, working with people, to care for people. These Core Principles describe how we can work together to make sure that what we do and how we do it is underpinned by a strong common sense of purpose which we all share and understand.

The NHS is continually under pressure to deliver more services, with better outcomes and maintain and increase quality against the backdrop of significant financial challenge, high levels of public expectation and with a population which is getting older and with increased levels of chronic conditions.

These principles have been developed to help address some of the pressures felt by staff in responding to these demands. They will re-balance the way we work together so we are less reliant on process and are supported to do the right thing by being guided by these principles when applying policies and procedures to the workforce.

As people working within the health service, we will all use them to support us to carry out our work with continued dedicated commitment to those using our services, during times of constant change.

The Principles are part of an ongoing commitment to strengthen the national and local values and behaviour frameworks already established across Health Boards and Trusts.

They have been developed in partnership with representatives from employers and staff side.

The Principles will be used to create a simpler and consistent approach when it comes to managing workplace employment issues.

2. Aims and Objectives

The principal aims of this policy are to:

- 2.1** Improve and protect standards of care by providing an orderly means of correcting inadequate standards of conduct, attendance or behaviour at work.
- 2.2** Provide a mechanism for dealing with any disciplinary issues that arise in a way that is fair, consistent, without discrimination and as quickly as possible.
- 2.3** Ensure that managers, employees and their representatives are aware of their rights, responsibilities and obligations within the disciplinary process.
- 2.4** Maintain the relationship between the employee and their manager.
- 2.5** Ensure that no disciplinary action against an employee is taken until the case has been appropriately investigated.
- 2.6** Ensure that all cases of suspected fraud or corruption are reported at the earliest opportunity to the “*NHS Organisation*” Local Counter Fraud Specialist (LCFS) or to the NHS Counter Fraud Service Team (CFS Wales).
- 2.7** Ensure that where an issue is identified that relates to the protection of vulnerable adults (POVA) or the protection of children (POCA) it will be dealt with in accordance with inter-agency protocols and any relevant external and/or regulatory bodies as appropriate.

3. Scope

- 3.1.** This is the disciplinary policy and procedure to be used for all employees within NHS Wales unless specific alternative contractual arrangements are in place.
- 3.2.** All staff, students, trainees, volunteers and other employees who work on “*NHS Organisation*” premises but are not directly employed by the organisation will be subject to the “*NHS Organisation*” standards of conduct and behaviour at work but will be dealt with under the scope of their own employer’s Disciplinary Policy.

- 3.3. Where disciplinary action is being contemplated against a Trade Union Official, the appropriate full time officer or senior lay official will be notified, prior to any action being taken.
- 3.4. The policy does not apply in cases of absence attributed to sickness which will be addressed through the relevant Sickness Policy or in cases of poor performance which can be attributed to capability and which will be addressed through different mechanisms, except where there is evidence of a wilful breach of the relevant procedures.
- 3.5. In accordance with the principles of clinical governance, disciplinary action would not normally result from reporting incidents, mistakes or near misses, but other procedures may apply. However, issues which may lead to disciplinary action would include criminal or malicious activities (including malicious reporting), acts of gross misconduct or gross negligence, and repeated unreported errors or violations of procedure.
- 3.6 All disciplinary matters relating to the protection of vulnerable adults (POVA) and the protection of children (POCA) are covered by this policy, but will be dealt with in accordance with inter-agency protocols and any relevant external and/or regulatory bodies as appropriate.
- 3.7 This policy should be supported by the ACAS Guide to Conducting Workplace Investigations (Oct 15).

4. **General Principles**

The following principles will be taken into account in the application of this policy:

- The right of all employees subject to this policy to be treated fairly and with dignity and respect.
- The process is based on a series of escalating and linked responses to disciplinary matters. The appropriate levels of response will be determined by the circumstances of the case and the seriousness of the alleged offence(s). It is a fundamental principle that all cases are examined on their merits and no prejudgement is made at any stage of the process. Equally the principle of the policy and the manner in which it is applied must be consistent and show no differential for grade/ band or position.
- No disciplinary action will be taken against an employee until the case has been appropriately investigated.
- Each step of the disciplinary process will be taken as quickly as possible on the part of the *"NHS Organisation"*.
- The timing and location of meetings will be reasonable and accessible.
- All parties will be given the opportunity to explain their position during meetings arranged as part of the investigation process.
- There is a commitment to implementing the policy in a way which promotes the fair and equal treatment of all employees and eliminates discrimination

on the grounds of race, disability, gender, gender reassignment, age, sexual orientation, pregnancy and maternity religion and belief, language, human rights, trade union membership and whistleblowing. It is the responsibility of managers and employees to ensure that they implement this policy/procedure in a manner that recognises and respects the diversity of the workforce and the different needs of all employees.

- When a disabled employee is involved in this process, the “*NHS Organisation*” and the employee will work together to identify any reasonable adjustments that may be put in place to ensure the employee is not disadvantaged in any way.
- Other access issues, such as the need for linguistic support will be addressed to ensure that all employees are able to fully participate in the process.
- At every stage in the process the employee will be advised of the nature of the allegations made against them and will be given the opportunity to state their case before any decision is made.
- No employee will be dismissed for a first breach of discipline except in the case of gross misconduct, where the penalty could be dismissal without notice or payment in lieu of notice.
- Disciplinary warnings cannot be issued to an employee outside of this policy and procedure.
- Staff should adhere to strict standards of confidentiality at all times and should not discuss the investigation or its nature with anyone other than the Investigating Officer, their Trade Union representative or the Workforce and OD Department. This applies to all parties including any party that has made a complaint, any party that is the subject of an investigation and any witness.
- An employee may respond in Welsh to any allegations made against them and they should be advised of this at the beginning of any proceedings.

5. **Awareness**

Employees will be made aware of the disciplinary rules and of the expected standards of conduct and behaviour when they join the organisation. They will be made aware of how they may access information on any subsequent changes. Every employee is encouraged to familiarise themselves with the detailed content of the policy and to ensure that they understand their responsibilities under it.

6. **Right to be Accompanied**

6.1 This policy allows all employees to be accompanied at formal investigation meetings. However, as long as a suitable alternative representative is available, unavailability of a preferred representative or workplace colleague should not delay the investigation meeting taking place.

- 6.2** All employees have the right to be accompanied by a Trade Union representative or a *NHS Organisation* workplace colleague, at all formal hearing stages of the procedure. However, as long as a suitable alternative representative is available, unavailability of a preferred representative or workplace colleague should not delay the hearing taking place.

Where reference is made in this policy to the employee's "representative", this will refer to the Trade Union representative or work place colleague.

- 6.3** At an investigation meeting the representative will be allowed to:

- confer with the employee
- request an adjournment
- seek clarification of the questions

The representative does not, however, have the right to:

- answer questions on behalf of the employee,
- address the meeting if the employee does not wish it, or
- prevent the employee from explaining their case.

- 6.4** At the disciplinary or appeal hearing the representative will be allowed to:

- address the hearing
- put or sum up the employee's case
- respond on behalf of the employee to any views expressed at the meeting
- confer with the employee during the hearing
- question witnesses
- request an adjournment
- seek clarification of the panel

The representative does not, however, have the right to:

- answer questions on behalf of the employee,
- address the hearing if the employee does not wish it, or
- prevent the employee from explaining their case.

7. Informal Discussions

- 7.1** The immediate manager should deal with minor conduct/standards of behaviour issues on an informal basis as appropriate. This may involve advising the employee as to expected standards of behaviour or conduct.
- 7.2** This is not part of the disciplinary process, but may be used to improve performance and prevent the need for future disciplinary action. It should be a two-way discussion, undertaken in a constructive manner, clarifying the standard of future conduct/behaviour expected of the employee, together with the way in which improvement will be monitored.
- 7.3** The employee should be advised that failure to improve may lead to action being taken under the Disciplinary Policy. A note of the discussion may be placed on an employee's personal file and a copy should be given to the

employee for their records. Such a note should only be used as confirmation of the discussion and/or outcome and managers should ensure that such notes are not routinely retained on an employee's personal file. They should be removed following noted improvement which should not be longer than 12 months. Where there is no such improvement, then the note may form part of a discussion regarding the matter being escalated to the formal process.

- 7.4** Where more serious or continued concerns arise on conduct/standards of behaviour the appropriate manager must consider, having taken advice from (W&OD/HR), whether the Disciplinary Policy should be invoked.
- 7.5** If, at any stage during the informal discussion process, additional information comes to light and the manager believes it is no longer appropriate to deal with the matter by informal discussion, the meeting must be adjourned and the formal disciplinary process must be instigated.

8. Potential Criminal Offences including Fraud, Corruption and Bribery

- 8.1** Where there is a reasonable suspicion that fraud or corruption may have occurred, the Local Counter Fraud Specialist (LCFS) or the NHS Counter Fraud Service Team (CFS Wales) must be notified immediately.
- 8.2** Where the initial assessment indicates that other criminal offences may have been committed, these matters should be discussed with the appropriate senior manager and reported to the Police.
- 8.3** In such circumstances, the "*NHS Organisation*" shall not be precluded from taking disciplinary action in accordance with this policy so long as it is not prejudicial to any potential criminal investigation.
- 8.4** The "*NHS Organisation*" is not required to wait until after a criminal trial to proceed with its own investigation, though on occasion it may be prudent to do so. Where a criminal offence has been allegedly committed by an employee inside or outside work, an investigation of the facts and circumstances surrounding the case as it relates to their employment will be conducted, unless a request from the Police or LCFS/CFS Wales has been made that to do so may be detrimental to a criminal investigation. The investigation will seek to establish whether, on the balance of probability, the incident/misconduct occurred. There is a need for close co-operation with the person taking forward the parallel criminal investigation.
- 8.5** Where an investigation appears to indicate that an incident or misconduct has occurred, the suitability of the employee for continued employment must be considered. Disciplinary action may be appropriate, but will depend on a number of factors. These include:
 - 8.5.1** The relevance of the offence to the job for which the employee is employed, whether or not it impinges upon the contract of employment.
 - 8.5.2** Whether there is the potential of risk to patients, public, and other employees or to the employee themselves.
 - 8.5.3** The risk of serious damage to the reputation of/or public confidence in the organisation.

8.5.4 Whether the alleged offence will be required to be reported to a professional and/or regulatory body.

8.6 Following the outcome of any criminal investigations and prosecutions, and subsequent criminal proceedings, an employee, subsequently found not guilty, has no further right of appeal in respect of any internal disciplinary action. However, in very exceptional circumstances, a former employee may wish to make representation to the NHS Organisation if they have evidence that the outcome of the criminal case has a material impact on the original decision. There is no automatic right to reinstatement but the NHS Organisation will give full consideration to the representation made.

9. Procedure for Dealing with Alleged Misconduct

9.1 Where the manager becomes aware that an incident or misconduct has apparently occurred, the following procedure should be followed. It is expected that the employee will be afforded due courtesy and sensitivity at all stages, and that the procedure will be followed with appropriate promptness.

9.2 Initial Assessment

The purpose of the initial assessment is for the manager to determine, on the information available at that time, what the next appropriate course of action might be. This fact finding assessment will involve discussing the alleged incident/misconduct with the employee as well as obtaining other preliminary pieces of information as necessary. A request for representation will not normally be refused. Following the assessment, the manager may decide that:

- No further action is necessary because there is no evidence to support the allegation that an incident or misconduct occurred.
- Given the minor nature of the misconduct, informal discussion is a more appropriate measure than formal disciplinary action. (Paras 7.1 to 7.5 refer).
- The fast track Disciplinary process may be appropriate because the employee has admitted misconduct or where prima facie evidence exists. Fast tracking can only occur in incidents where it appears that the nature of the misconduct would only warrant a verbal or first written warning as a maximum. A letter will be issued to advise the employee of this decision and outline the allegation.
- A formal investigation will be required, with due consideration given to the need to suspend the employee without prejudice or deploy him/her whilst the investigation is ongoing. A letter will be issued to advise the employee of this decision and outline the allegations (see appendix 3).
- Application of a different policy may be more appropriate, e.g. capability.

9.3 Fast Track Disciplinary Process

9.3.1 The fast track disciplinary process allows for cases to be dealt with in a timely manner, within one month of the initial assessment, unless there are exceptional circumstances. There will not be any need for a formal investigation report although a thorough examination of the known facts will take place. An investigating officer will not, therefore need to be appointed.

9.3.2 Those situations where fast track may be suitable are as follows:-

- Incidents that are regarded as 'Misconduct' which would normally result in either a verbal or first written warning.
- The employee against whom the allegations are made has admitted to them in full.

9.3.3 If the manager feels that the fast track approach is appropriate, they must, in the first instance, discuss this with an (W&OD/HR) advisor. A review of the information will be undertaken in conjunction with the manager, the employee and his/her representative and a decision taken as to whether the fast track process should be adopted. **This must be agreed by all parties in writing.**

9.3.4 If the decision has been made to fast track then the following process should be followed:

- The Disciplining Officer will ensure (if not done already) that there is a written statement from the individual who reported the incident and also from the employee involved, together with any supporting information gathered.
- The Disciplining Officer will write to the employee involved asking them to attend the fast track disciplinary hearing, and will provide a copy of all information gathered plus the date, time and venue of the hearing (this should be sent no less than 7 calendar days before the hearing). The employee will be given the right to be accompanied if they so wish.
- The Disciplining Officer will be supported by a (W&OD/HR) Advisor and professional advisor, where appropriate (The Hearing Panel). The employee and their representative will also be present. No witnesses will be called.

9.4 The procedure for the fast track hearing is as follows:

- Introductions are made.
- The Disciplining Officer outlines the nature of the allegation(s) and advises that it (they) may result in disciplinary action up to and including a written warning.
- The Disciplining Officer confirms with the employee that they admit to the allegations previously stated or confirms the evidence available.
- The employee or their representative will have the right to put forward any comments or statements relating to the incident (including any mitigation).

- The Hearing Panel may wish to question the employee.
- The Hearing Panel will adjourn briefly to give full consideration to the case.
- After reaching a decision the Hearing Panel will reconvene.
- The Disciplining Officer will then communicate their decision to the employee and their representative. The penalty, if any, will not exceed a verbal or first written warning.
- The Disciplining Officer will send a letter confirming the decision of the Hearing to the employee, advising them of their right of appeal. The record of any warning will be kept on the employee's personal file.

9.5 If an issue arises as part of the fast track process, which warrants a full investigation, a full investigation will be instigated.

10. Formal Investigation (see flowchart at appendix 3)

10.1 Where the case is not suitable for a fast track hearing, an Investigating Officer should be appointed to undertake a full investigation.

The Manager must ensure that the Investigating Officer is provided with sufficient support in terms of time, administrative facilities and reallocation of their work responsibilities, and adequately trained to be able to demonstrate the necessary competencies to be able to carry out a careful and thorough investigation in a timely manner.

Regular verbal or written updates on progress will be provided by the Investigating Officer to the manager and the employee and their representative.

10.2 The investigation is commissioned by and conducted on behalf of the employee's manager.

10.3 It is not the role of the Investigating Officer to make any judgement about the case but only to produce a factual report. The investigation should limit itself to evidence in respect of the charges being placed before the Disciplining Officer and should not include references to previous allegations, related to these allegations or otherwise.

10.4 The report will be considered by the Disciplining Officer who will make a decision about the appropriate course of action. Once the report is accepted by the Disciplining Officer this decision will be made within 10 days. Any delay should be communicated to the employee with reasons.

10.5 The Investigating Officer should normally be appointed from a different department to that in which the employee works. The Investigating Officer should have the specialist skills and/or knowledge relevant to the case being investigated. In exceptional circumstances, this may be an individual from another NHS Organisation, or where appropriate an independent external investigator may be commissioned, who will be expected to familiarise themselves with the content of the policy.

10.6 The employee must be made aware of all the allegations made against them and be interviewed as part of the investigation process. They may be

accompanied by their representative at this meeting, the aim of which is to establish, impartially, all the key points pertinent to the investigation that can be provided by the employee. The employee should be allowed to offer any information that they feel is relevant during this interview as it may affect the decision about whether to proceed with a disciplinary hearing. A written record of the interview should be made and signed by the employee as an accurate record.

The investigation will also make enquiries of relevant witnesses and collect documentary evidence as necessary. Such evidence must be copied to the employee and their representative, as part of the investigation report.

Should the Investigating Officer establish evidence which would suggest that the terms of reference for investigation and/or the allegations against the employee need to be widened, they should draw this to the attention of the Disciplining Officer. If the Disciplining Officer concludes that further allegations need to be investigated, the terms of reference issued to the Investigating Officer will be re-issued and the employee will be formally notified that additional/amended allegations are to be considered.

- 10.7** If an employee becomes unwell during the disciplinary process, the investigation may continue, albeit in a sensitive and considerate manner. Advice from the occupational health department may be sought, if appropriate.
- 10.8** The Investigating Officer will be given advice on the process by a (W&OD/HR) Advisor who would not then be part of a disciplinary panel. Where the Investigating Officer requires secretarial support, then the Manager must take this into account when instigating the investigation.
- 10.9** Once the investigation is complete the Investigating Officer will prepare a report of their findings, providing documentary evidence of the facts, and all witness statements.

On receiving the Investigating Officer's report and if satisfied with the content, the Disciplining Officer will determine, within 10 calendar days what further action should be taken. i.e.

- no case to answer
- to proceed via informal discussion as outlined in 7.1 to 7.5
- to proceed to a disciplinary hearing
- to proceed through an alternative procedure (e.g. capability)

If, on receipt of the report, the Disciplining Officer decides further work is needed, the Investigating Officer will be asked to revisit the report, e.g. reference an additional policy, and resubmit.

Where a decision is made to proceed to a disciplinary hearing, this should take place as soon as possible after the decision is made.

- 10.10** The Investigating Officer will attend the disciplinary hearing to present an overview of their report and to answer any points of clarification required.

10.11 Where the allegation is of a potentially serious nature, in the interests of minimising unnecessary delay it may be advantageous to arrange, a provisional date for a disciplinary hearing at the outset of an investigation. This is a practical measure that does not, in any way, attempt to prejudge whether such a disciplinary hearing will be deemed necessary.

10.12 Witnesses

10.12.1 All employees of the “*NHS Organisation*” have a duty to co-operate with management in disciplinary proceedings. Witnesses who have provided statements should be advised of the fact that a hearing may take place and of their being required to attend, that their statement will form part of the investigation report, and that if a hearing is necessary, the panel and the employee will have sight of them.

10.12.2 The employee or their representative must make the Disciplining Officer aware of those staff they wish to call as witnesses.

10.12.3 The Disciplining Officer will arrange to call all witnesses required after having discussed and agreed these with the employee and his/her representative.

10.12.4 Witnesses who are employees of “*NHS Organisation*” are obliged to attend if requested to do so by the Disciplining Officer.

10.12.5 Arrangements will be made for witnesses to be released from their duties to enable them to attend the hearing. They may bring a representative or workplace colleague with them for personal support if desired.

10.12.6 People not directly employed by “*NHS Organisation*” may be called to attend the hearing as a witness but cannot be compelled to do so.

11. Alternatives to Suspension / Temporary Deployment During Period of Investigation

11.1 In some circumstances it may be appropriate to suspend the employee or to deploy the employee to another post/work pattern or to another work place on a temporary basis. Where alternatives to suspension are being considered, this would only be done following a discussion with the employee and their Representative and would take into account its reasonableness in all the circumstances. LCFS / CFS Wales should always be advised of any decision to suspend or deploy an employee when the employee is under investigation by the LCFS/ CFS Wales.

11.2 If an employee, as an alternative to suspension, is deployed to another post / work pattern or to another workplace there should be no loss of earnings i.e. night allowance, weekend allowance and regular overtime. Excess travel and parking fees will apply where additional mileage is incurred as a result of a change n base.

11.3 If suitable temporary deployment is offered, the employee will be expected to accept.

12. Suspension from the Workplace

- 12.1** Suspension is not a disciplinary penalty and is without prejudice. Suspension from the workplace will be with pay, in accordance with Paragraph 12.3.2 of this Policy. Suspension may be considered appropriate where keeping the employee in the workplace after the incident/ misconduct may:
- Compound the offence.
 - Interfere with or prejudice the investigation.
 - Jeopardise the safety or well being of patients and / or employees.
- 12.2** If the decision to suspend is taken by the manager (in consultation with a senior (W& OD/HR) Advisor or, where not available, another manager of equivalent seniority) the employee should be told of this decision immediately. The employee should be asked about any other organisation that they are engaged by, paid or voluntary, and these organisations will be advised of the suspension accordingly. Where possible the employee should be given the opportunity to be accompanied at the meeting when they are informed of their suspension if they so wish.
- 12.2.1** Unavailability of a preferred representative or workplace colleague will not, however, delay the meeting from taking place.
- 12.2.2** The employee should be given information regarding the support available to them e.g. Occupational Health.
- 12.3** During suspension the employee must not (unless as a patient or to access sources of help e.g. to meet with their Representative) enter “*NHS Organisation*” premises or their normal place of work without the express permission of their manager. Details of the suspension will be confirmed in writing giving the reason(s) for this course of action by the manager.
- 12.3.1** An employee who is suspended from duty should not undertake any other work, within or outside the NHS, without consulting their line manager beforehand and receiving authorisation to do so. It is the responsibility of NHS organisations to advise other employers (where known) of the suspension.
- 12.3.2** Pay during suspension will be calculated according to the normal duty roster worked by the employee and during this period the employee will be recorded as on authorised paid leave in order to maintain confidentiality.
- 12.3.3** Employees who are suspended must make themselves available to attend meetings and interviews as part of the disciplinary process.
- 12.4** If an incident occurs, or is reported out of hours and an employee’s manager or an appropriate member of the (W&OD/HR) Department is not available, an appropriate senior member of staff can make a decision to send an employee home on the basis that there is a risk to themselves and/or others if they were to stay in work. The employee will be asked to report to their manager on a specified day. This decision will not constitute suspension but is required in order that the facts of the case are reviewed as soon as reasonably possible. The employee will be recorded as on authorised paid leave and paid as per their normal shift.

- 12.5** The manager must ensure that the period of suspension is kept to a minimum and that the investigation takes place as swiftly as possible. The manager should review the suspension regularly but at least monthly, this should be recorded and any cases that continue beyond four months should be reported to the Board of the “*NHS Organisation*”, together with information on the expected completion of the investigation. Regular summary reports should be made to Board meetings or an appropriate Board committee detailing the number of current suspensions and their duration. Information identifying individual employees should not, however, be presented in open Board meetings.
- 12.6** If an employee wishes to book annual leave during the period of their suspension they must apply to the manager giving due notice. Such applications will be considered sympathetically but may reasonably be refused if the leave would delay the resolution of the disciplinary matter. Annual leave booked prior to the suspension will be honoured and will be deducted from the employees total annual leave entitlement.
- 12.7** If the employee is on sick leave this does not preclude the Investigating Officer from continuing with the investigation. However, advice may need to be sought from Occupational Health if there are concerns about the employee’s ability to continue to participate in the process.

13. Procedure for Reporting to Disclosure and Barring Service (DBS)

- 13.1** All organisations have a legal duty to refer any information about employees who could pose a risk of harm to children and vulnerable adults to the DBS who will assess the information and make a barring decision.

A referral should not be made when an allegation is first made. An investigation and evidence gathering should be first undertaken by the person or organisation that would normally refer to the DBS. This is in order to establish if the allegation has foundation, for example as part of an internal disciplinary process. Without evidence or substance to the claims many allegations will quickly be identified as unjust as there will be no foundation on which the DBS can proceed.

- 13.2** ‘Harm’ is stated as being physical, sexual, emotional, neglect or financial. Neglect could include a failure to act or an omission.
- 13.3** Where a person / organisation has a legal duty to refer, there are two main conditions which should be met for a referral to be made, these are;
- 1) They have permanently removed a person from ‘regulated activity’ through dismissal or permanent transfer from ‘regulated activity’ (or would have if the person had not left, resigned, retired or been made redundant); and
 - 2) They believe the person has
 - a. Engaged in ‘relevant conduct’, or
 - b. Satisfied the ‘harm test’ (i.e. no action or inaction occurred but the present risk that it could was significant), or

c. Received a caution or conviction for a 'relevant offence' (a list of these offences is available on the DBS website, or from calling the helpline for advice).

14. Procedure for Reporting to Professional Regulatory Bodies

14.1 It will be the responsibility of the Head of Profession to contact the appropriate professional regulatory body at the point at which it is decided that there is evidence of a concern relating to fitness to practice. The decision on when this occurs should be taken in discussion with the appropriate body.

15. Arrangements for the Disciplinary Hearing

15.1 Once the investigation has been completed and the report with all the appendices is submitted, the Disciplining Officer will then decide if the investigation has established that there is sufficient evidence to support the allegations.

15.2 The Disciplining Officer will determine within 10 days of accepting the report what further action should be taken. Where a hearing is being convened the employee must be informed in writing confirming the allegations and that they have the right to be accompanied at the hearing and will have the right to state their case; where the allegation(s) are considered gross misconduct the letter must also outline that disciplinary action may include dismissal.

15.3 The Disciplining Officer conducts the hearing and makes the decision as to whether the allegations are proven. All members of the disciplinary panel will act with neutrality and objectivity at all times. In the event that the employee has any concerns over the composition of the panel, they should make their concerns known, with evidence, to the W&OD/HR adviser. The Disciplinary Panel will comprise:

15.3.1 The Disciplining Officer

It is important that the Disciplining Officer is of sufficient seniority to make the decision on the appropriate penalty. This is critical in those cases where dismissal is a possible outcome.

15.3.2 W&OD (HR) Advisor

An appropriate member of the (W&OD/HR) Department, (with no previous involvement in the case), who advises the hearing on procedure and employment issues and can assist the Disciplining Officer in establishing the facts of the case.

15.3.3 Panel Member

When appropriate, the Disciplining Officer may also be supported by a senior manager from outside the line management chain of the employee who is able to provide specialist, professional or technical expertise.

15.4 Practical arrangements for holding the Disciplinary Hearing will be made as soon as possible. Notes must be taken at all hearings. Electronic recordings should only be made with the prior consent of all participants. Also, anyone

attending the hearing including anyone accompanying the employee (including witnesses) must not make covert electronic recordings of any meetings or hearings conducted under the procedure.

- 15.5** The employee must attend a disciplinary hearing when requested to do so. Where he/she is unable to attend for any reason they must notify the manager in order that the meeting can be rearranged.

Where an employee has a justifiable reason for failing to attend a disciplinary hearing, such as an accident or personal emergency, the hearing should be adjourned in the first instance and rearranged as soon as possible. The employee must be warned if they fail to attend for a second time, the hearing will be held in their absence and a decision may therefore be made on the information available to the panel at that time.

- 15.6** All documentation supporting the allegation/s will be passed to the employee as soon as possible but no later than 21 calendar days prior to a disciplinary hearing. This will include the investigation report which will contain interview notes, any witness statements and all other documentary evidence that is to be considered. Any additional information which the employee wishes to rely upon should be submitted to the Disciplining Officer as soon as possible but no later than 10 calendar days prior to the hearing. In exceptional circumstances, the employee may request to make a submission which has not been made available within the above timescale.

- 15.7** At the same time, the list of agreed witnesses will be provided no later than 14 calendar days before the hearing date.

- 15.8** The Disciplining Officer will make arrangements for the attendance of all appropriate witnesses required at the hearing.

16. The Disciplinary Hearing

- 16.1** The Hearing is an opportunity to examine the evidence and allows the employee concerned the proper opportunity to comment on the evidence and make any representations or offer their views concerning the allegations. The Hearing must consider all the evidence and give the employee a fair opportunity to make their views known whilst at the same time ensuring that all evidence is examined thoroughly so that an appropriate decision can be reached. No new written evidence may be produced by either party after the exchange of case papers without the agreement of all parties.

- 16.2** The Disciplinary Hearing itself should normally follow the sequence described below, requiring the designated Disciplining Officer to:

16.2.1 Introduce those present

16.2.2 Explain the purpose of the Hearing, i.e. indicate that it is a disciplinary hearing convened in accordance with the "*NHS Organisation's*" Disciplinary Policy to address the allegation(s) as detailed and (where applicable and appropriate) to consider a report concerning the issue(s), together with all other documentation to be relied upon as evidence.

16.2.3 Outline the nature of the Hearing, i.e. that the allegation(s) is/are viewed most seriously and may result in disciplinary action, including dismissal, where appropriate.

16.2.4 Refer to the principles which govern the hearing:

- that full and fair consideration will be given to all issues pertinent to the case.
- that all evidence will be considered, and
- that the employee or their representative will have the opportunity to deny, or to defend themselves/the employee against the allegation(s).

16.2.5 Describe the procedure to be followed at the Hearing (and ensure this is understood by the employee).

16.2.6 A (W&OD/HR) Advisor is available to attend the disciplinary hearing to support and advise the investigating officer but will not answer questions directly on their behalf.

16.3 Order of proceedings

- In the first instance, the Investigating Officer will present an overview of their report and clarify any points raised.
- Witnesses shall be asked by the panel to clarify any issues as appropriate. The witness(es) will then answer questions from the employee or his representative.
- The employee or their representative will then be invited to make statements and present evidence, whether oral and/or written, to explain, deny, and offer mitigating circumstances or otherwise comment upon the allegations made against them.
- The employee will then answer questions from members of the disciplinary panel.
- Witnesses called by the employee or his representative shall first be questioned by the employee or their representative and thereafter may be questioned by members of the disciplinary panel.
- An opportunity will then be given to the Investigating Officer to restate the key points if the panel deems it necessary, and the employee or their representative to sum up their case and make any final comments or ask any final questions. The employee and/or their representative will speak last. No new information may be introduced at this stage.

16.4 General Principles

- The Disciplinary Panel members shall have the right to ask questions of anyone present, at any time during the proceedings.
- The employee or their representative shall have the right to ask questions of any witness.
- The Investigating Officer shall remain in attendance throughout the hearing. Their role will be to present an overview of their report and to clarify points as required by the Disciplining Officer, the employee, or their representative. They will not have the right to ask questions.
- No witnesses called either by the Disciplining Officer or the employee may be present at the hearing before giving evidence. After giving evidence witnesses may be asked to remain available for clarification purposes, but shall not remain in attendance.

16.5 Once the hearing has examined all the evidence provided for in the report or presented at the hearing the panel will adjourn, to give full consideration to the case.

16.6 At this stage, further information may be requested if appropriate, in which case the hearing will reconvene once the additional investigations have been completed.

16.7 The Disciplining Officer with the advice of the panel then reaches a conclusion as to whether the evidence supports the allegation based on the balance of probabilities. They must be satisfied that the investigation and hearing have been conducted in accordance with this policy, that the disciplinary rules have been appropriately considered and applied and that the penalty is reasonable, and reflects the seriousness of the offence.

16.8 After reaching a decision the Hearing will reconvene and the employee will be advised of the Disciplining Officer's decision as to whether the allegations have been proven, on the balance of probability, and the nature of the penalty imposed, if any.

16.9 The decision should be conveyed to the employee verbally on the same day; or, if a decision cannot be made on the day of the hearing, the employee should be informed of the decision within 7 calendar days. If the decision is likely to take longer for some reason, then the employee must be contacted by the Disciplining Officer and informed of this fact, along with the reasons for the delay.

16.10 The letter to the employee confirming the outcome of the case and any disciplinary action should be sent to the employee no later than 7 calendar days after the notification of the outcome of the hearing. The letter should confirm the date, time, and place of the disciplinary meeting and of those present. If the employee declined to be accompanied this should be noted in the letter.

16.11 The letter should also:

- Confirm the allegations that were considered and specify those found unproven and, on the balance of probability, those that were found proven.
- State clearly the nature of misconduct or failure to reach the required standards.
- State the rationale for the decision.
- Specify the disciplinary action being taken and, if a warning is being imposed, state how long the warning will remain “live“.
- Outline any recommendations, training or support that must be actioned, within a reasonable timeframe, to improve conduct or behaviours in future or any management recommendations as appropriate.
- Where a warning is imposed, confirm that committing any further related offences or, failing to improve performance, could result in more serious disciplinary action, up to and including dismissal.
- Remind the employee that they have the right of appeal within 14 calendar days of receipt of written notification of the disciplinary action and state to whom the appeal should be made.
- Reference that the appeal should be directed to the manager one level above the manager taking the disciplinary action.

All such letters should be sent out by a recorded method of delivery.

16.12 Where the investigation arises from a recent series of different incidents or a recent series of minor incidents of the same nature, they may be accumulated and taken into account at the same disciplinary hearing and dealt with by the same disciplinary action. The employee must have been informed of this in the original letter confirming the disciplinary hearing date.

16.13 Where the incident that leads to disciplinary action being taken occurs during a period when a warning is already in operation, this warning may be taken into consideration in deciding the appropriate action, so long as the most recent incident is of a similar nature to that for which the warning was imposed.

16.14 Where appropriate, the Disciplining Officer shall, in discussion with the Professional Advisor on the Panel inform the employee’s professional body and/or the DBS of the outcome of the hearing.

17. Notification of Disciplinary Action

Below is a summary of the possible penalties resulting from a disciplinary hearing. They are not necessarily sequential and their application will depend on the particular circumstances of the case.

Formal Disciplinary Process Begins	
Verbal Warning	Minor Misconduct

First Written Warning	Misconduct or further offence
Final Written Warning	Serious misconduct or further offence
Dismissal*	Gross misconduct or further offence
Other formal action, short of dismissal	There may be a situation where dismissal is justified, but where the disciplining officer believes the circumstances are such that he/she wishes to offer alternative employment, in conjunction with a final written warning, as an alternative to dismissal. This may be to a lower pay band (to the top of the band provided this does not lead to an increase in salary) and/or to another area and would not attract protection of salary or excess travel. The employee would have the opportunity to consider this option and respond in writing within 7 calendar days accepting this variation in their terms and conditions as an alternative to dismissal. Accepting alternative employment does not remove the employee's right of appeal against the original decision to dismiss.

17.1 Verbal Warning

17.1.1 If conduct or performance does not meet acceptable standards, the employee can be issued with a verbal warning. The employee will be told of the reason for the warning and that it is the first stage of the formal procedure.

17.1.2 Where, a verbal warning is considered necessary, this will be active for 6 months. The record of the hearing (as provided to the employee) will be placed on the employee's personal file, and confirmation that a warning has been issued will be forwarded to the employee (and their representative if requested by the employee).

17.1.3 Provided that no further verbal warnings have been issued during the specified period, the verbal warning is considered to be spent and cannot be used in order to warrant an escalation in the penalty. All subsequent offences whether or not they are identical to the 'spent' offence are considered entirely on their own merits and the process starts from the beginning again.

17.2 First Written Warning

17.2.1 If the offence is of a more serious nature, or if conduct has not improved as a result of a verbal warning, the Disciplining Officer may decide that a formal written warning is appropriate.

17.2.2 The written warning will be active for a period of 12 months. The record of the hearing (as provided to the employee) will be placed on the employee's personal file, and confirmation that a warning has been issued will be forwarded to the employee (and their representative if requested by the employee).

17.2.3 Provided that no further written warnings have been issued during the warning period, the written warning will then be considered to be spent and cannot be used in order to warrant an escalation in the penalty. All subsequent offences whether or not they are identical to the 'spent' offence are considered entirely on their own merits and the process starts from the beginning again.

17.3 Final Written Warning

17.3.1 A final written warning will be issued where:

- There is a failure to reach the required standards, which normally will have been set out in previous warnings.
- Serious misconduct has taken place.

17.3.2 Written notification will be as outlined above, but in addition, the letter to the employee confirming the final written warning should also indicate:

- Reference to previous relevant disciplinary action, where appropriate.
- Confirmation that further misconduct of a similar nature will lead to dismissal. The written warning is considered active for 24 months.

17.3.3 If the misconduct or failure to meet standards is of a serious nature then a final written warning may be implemented without previous warnings having been issued.

17.3.4 The record of the hearing (as provided to the employee) will be placed on the employee's personal file, and confirmation that a final written warning has been issued will be forwarded to the employee (and their representative if requested).

17.4 Dismissal

17.4.1 Dismissal is normally considered to be the appropriate action:-

- Following an act of gross misconduct or a serious continued failure to meet required standards.
- Where there is a failure to reach the required standards which have been specified in previous warning(s).

17.4.2 Where an employee is dismissed for continued failure to reach the required standard the appropriate period of notice or pay in lieu of notice

along with other entitlements should be made. In cases of gross misconduct, the employee will be summarily dismissed without payment in lieu of notice and without notice (right of appeal and reinstatement if found to be justified still apply).

17.4.3 A letter must be given to the employee in person or sent by a method of recorded delivery within 7 calendar days confirming the dismissal and should also state:

- Date, time, place of disciplinary meeting and those present
- The reason(s) for dismissal and effective date of termination
- The appropriate period of notice or pay in lieu of notice or in cases of summary dismissal, that no notice will be paid. Any other rights, for example, annual leave due should be included in the final pay arrangements
- Where appropriate, that the relevant professional body and/or the DBS will be informed
- The right of appeal, including time limits, and that the appeal should be made to the manager one level above the manager taking the disciplinary action.

Dismissal where there has been no previous warning regarding conduct is a penalty only applicable in cases of gross misconduct or breach of contract as outlined in the Disciplinary Rules. No employee will be dismissed for a first offence outside those categorised as gross misconduct or breach of contract.

18. Expiry of Warnings

18.1 The warning becomes “spent” following the specified period of the warning. The NHS Organisation will put in place a system to ensure the employee is informed when the warning is “spent”. There may be occasions, however, when an employee’s conduct is satisfactory throughout the period the warning is in force only to lapse soon thereafter. In these circumstances, where a pattern of behaviour emerges, the Disciplining Officer can take the employee’s full disciplinary record into account when deciding the length of any new warning that is to be imposed.

18.2 Periods for which warnings will be active may be extended if an employee is absent from work for an extended period, whereby performance/conduct cannot be monitored, to cover the length of the absence.

19. Debrief/Lessons Learnt

19.1 Following the completion of the internal disciplinary process, a formal debriefing session may be convened by the Disciplining Officer to review the case, any lessons learnt and any further agreed action required, e.g. training needs, policy or procedural issues emerging, relationships have been affected

and mediation or redeployment may be necessary. Present at the discussion should be the Investigating Officer, other panel members as appropriate and staff side representatives.

20. Employment Monitoring

An accurate record of all disciplinary events should be maintained on the Electronic Staff Record (ESR), to enable the organisation to consider whether there are any issues that may be contributing to unintended discrimination. This information must be capable of being disaggregated by each of the protected characteristics and routinely collected, analysed and reported on to ensure that disciplinary processes are fair and equitable for all employees and groups, and to demonstrate that the “*NHS Organisation*” is meeting its employment equality monitoring duties.

21. Appeals

21.1 All employees have the right to appeal against disciplinary action or dismissal.

21.2 The person to whom an appeal is made must be specified in the letter informing the employee of the outcome of the disciplinary hearing and/or the disciplinary action to be taken.

21.2.1 An employee who wishes to appeal (appellant) against disciplinary action or dismissal must lodge their intention to appeal within 14 calendar days of receiving written notification of the disciplinary action taken.

21.2.2 This notification of intention to appeal should indicate the grounds on which this appeal is based. The employee should be explicit as to whether this is an appeal against the judgement of the disciplining officer, against the disciplinary penalty imposed, or against the process of the disciplinary investigation and hearing itself.

21.3 An Appeal Officer will be appointed and the administrative arrangements put in place within 14 calendar and wherever possible the appeal heard within 28 calendar days of the notification of appeal being received. The appeal panel will consist of an Appeal Officer and (W & OD/HR) Advisor and where appropriate a further panel member. In exceptional circumstances it may be necessary to extend this deadline with the agreement of both parties but every effort should be made to hear the appeal promptly.

21.4 At least 7 calendar days before the Appeal Hearing the Appeal Officer must receive the nature of the appeal and all documentary evidence in support of it. Failure to comply may result in either the appeal being postponed or the appeal going ahead without this information.

21.5 There will be two levels of constitution of appeal hearings.

21.5.1 For appeals against disciplinary warnings short of dismissal, the appeal will normally be heard by a manager one level above the manager who imposed the penalty. If organisational structures allow, the Appeal

Officer should be from a separate directorate/locality in line with best practice.

21.5.2 The (W & OD/HR) Advisor will be in attendance in order to give advice and to support the Appeal Officer in ensuring that all aspects of the appeal are fully explored. The Appeal Officer must ensure they have access to appropriate professional advice, where necessary.

21.5.3 In cases of appeals against dismissal, the Appeal Officer will be a senior officer nominated (by the Director of Workforce and Organisational Development), in line with the organisation's scheme of delegated authority. Where appropriate, the Appeals Officer may be supported by a second senior manager who will provide any necessary professional advice.

21.6 The officers nominated to hear an appeal must not have been involved in the disciplinary process at any earlier point.

21.7 The purpose of the appeal is to establish if the decision taken at the disciplinary hearing was reasonable in light of the grounds raised by the employee. The appeal is not a re-hearing of the original evidence.

21.8 The appeal hearing must restrict itself to looking at the grounds of appeal made by the employee and ensuring that these grounds are adequately examined in order to reach a proper judgement on whether the appeal should be upheld.

21.9 The appeal hearing will consider specifically whether the disciplinary action decided upon by the disciplining officer was fair and reasonable at the time that the action was taken. The appeal hearing may look at whether the procedure was applied correctly when deciding on the disciplinary action.

21.10 The appeal will take account of any substantial new information cited in the grounds for appeal.

21.11 The decision reached by any level of appeal hearing is considered final. No further appeal mechanism will operate within the *"NHS Organisation."*

21.12 Conduct of the appeal

The Appeal Officer will act as Chair of the appeal hearing and will introduce those present and state the order of proceedings which is as follows:

21.12.1 Both the disciplining officer and the appellant and his/her representative will remain present throughout the proceedings until the panel adjourn to deliberate in private.

21.12.2 The appellant or his/her representative shall confirm their grounds of appeal and provide information supporting their case.

21.12.3 The disciplining officer will have the opportunity to ask questions of the appellant.

- 21.12.4** The members of the appeal panel shall have the opportunity to ask questions of the appellant.
- 21.12.5** The disciplining officer will present the justification for the decision that they took at the disciplinary hearing.
- 21.12.6** The appellant or representative shall have the opportunity to ask questions of the disciplining officer.
- 21.12.7** The members of the appeals panel shall have the opportunity to ask questions of the disciplining officer.
- 21.12.8** The disciplining officer will have the opportunity to sum up. New information must not be introduced at this stage.
- 21.12.9** The appellant or representative will have opportunity to sum up. New information must not be introduced at this stage.
- 21.12.10** The appeal panel may, at its discretion, adjourn the appeal hearing in order that further information may be sought and reviewed.
- 21.12.11** The appeal panel shall deliberate in private only, recalling both parties to clarify any points of uncertainty on evidence already given. If a recall is necessary both parties shall return.
- 21.12.12** When a decision is reached by the Appeal Officer they should inform the appellant and disciplining officer of the outcome immediately or within 7 calendar days. In either case, the decision will be notified to all parties in writing within 7 calendar days of the appeal.

The decision of the Appeal Officer is final.

22. Authority to Dismiss

The level of manager with the authority to dismiss will be determined by the “*NHS Organisation*” in its scheme of delegation.

23. Equality

The NHS Organisation recognises the diversity of its workforce. Our aim is to provide a safe environment where all employees are treated fairly and equally and with dignity and respect. The NHS Organisation recognises that the promotion of equality and human rights is central to its work both as a provider of healthcare and as an employer. This policy has been impact assessed to ensure that it promotes equality and human rights.

24. Policy Review

All policies are subject to ongoing review to ensure they are entirely compliant with all aspects of equalities and human rights legislation, best practice and the ACAS Code. This policy will be subject to full review at intervals to be determined by the Welsh Partnership Forum.

25. Help and Advice

Help and advice on the application of this policy and procedure can be obtained from the (W&OD/HR) Department.

26. Agreement

The policy and procedure has been agreed in partnership and has been ratified by the Welsh Partnership Forum.

Appendix 1 - Disciplinary Rules

Introduction

The aim of the “*NHS Organisation*” is to provide first class healthcare to the general public. In order to maintain high standards it is essential that all employees conform to the standards set by the “*NHS Organisation*” to ensure an efficient and safe environment for staff, patients and visitors and to maintain good relations within the workplace.

Whilst it is acknowledged that the vast majority of staff conform to these required standards, it is important that all employees are made aware of the standards expected of them and the consequence of failing to adhere to them and clearly understand their rights and obligations.

The Disciplinary Policy is written in accordance with the principles set out in the policy which include:

- The employee is treated consistently and fairly
- The organisation, other employees, patients and members of the public are protected
- The employee understands the standards/behaviour expected of them

The lists provided below should not be regarded as exhaustive or comprehensive and can only serve as a guide as it is impossible to cover every eventuality. In addition many departments /directorates have specific rules and failure to observe these could result in disciplinary action.

Every case will be considered on its own merit, including the particular circumstances of the case and its seriousness but will also have full regard for the principle of consistent treatment of every employee. Due consideration will therefore be given to any mitigating circumstances in each case.

Repeated minor misconduct or misconduct offences can accumulate and employees may be dismissed if it is clear that warnings have had no effect on the employee’s behaviour. In these cases, it is not the nature of the offences that is held to be of primary concern, rather that the employee has shown themselves to be incapable of responding appropriately to the warnings and to have failed to improve their behaviour accordingly.

Examples of Misconduct

Misconduct (including minor misconduct)

This list is not exhaustive, but examples of offences which might lead to recorded verbal or first written warning warnings, would include:

1. Lateness for duty without reasonable explanation.
2. Failure to report for duty without reasonable explanation.

3. Minor instances of discourtesy/rudeness to patients, visitors or other members of staff.
4. Failure to wear correct uniform or protective clothing where provided or unsatisfactory condition or appearance related to personal hygiene.
5. Poor attendance record/capabilities, but only where the use of the NHS Organisation's staff performance policy is inappropriate.
6. Failure to meet required standards of performance and behaviour as expected within the employee's role and responsibilities.
7. Minor insubordination and /or failure to carry out a reasonable instruction.
8. Failure to comply with local or department rules relating to performance, safety or conduct.
9. Smoking in areas designated as 'No Smoking'.
10. Outside employment- employees engaging in employment in off duty hours must ensure that such employment does not adversely affect their work in the "*NHS Organisation*". The disciplinary procedure may be used if the "*NHS Organisation*" feels that the employee's performance is thereby affected.

Serious Misconduct

Failure to respond to previous warnings could result in a final warning, but additionally certain types of conduct could lead directly to this form of disciplinary action. Included in this category might be:

1. Failure to respond to minor misconduct warnings.
2. Unauthorised absence without reasonable cause whilst purporting to be on duty.
3. Failure to comply with conditions of service or working procedures.
4. Refusal to carry out reasonable instructions given by an authorised person.
5. Failure to maintain registration with relevant mandatory professional body.
6. Serious instances of professional misconduct.
7. Personal behaviour conducted either inside or outside of work or working hours that, results in bringing the NHS Organisation or any of its employees into disrepute.
8. Serious failure to meet required standards of performance and behaviour as expected within the employee's role and responsibilities.

Gross Misconduct

It is misconduct that strikes at the root of the employment relationship with "*NHS Organisation*" and confidence that must exist for the contract of employment to be effective. In most cases the result will normally be summary dismissal without notice or payment in lieu of notice.

An employee who commits such an offence will therefore be regarded as having fundamentally breached his or her contract of employment and can expect to be

summarily dismissed in accordance with the “*NHS Organisation*” Disciplinary policy. Summary dismissal, will be the normal action taken against an employee on the first occasion on which any of these offences is committed.

The action taken will reflect the seriousness of the offence. The seriousness of the offence (and therefore the culpability of the employee) will depend on the individual circumstances and consequences of each case, but particular consideration will be given to the implications or resultant consequences of the offence; whether the offence is persistent; or whether a previous warning has been issued for the same or related offence(s), for example negligent performance in respect of safety as a first offence may result in a final written warning but where this jeopardises patient care or places others at risk, dismissal may result.

Examples of what might lead to summary dismissal for gross misconduct are as follows:

1. **Disclosure Of Confidential Information** - to unauthorised persons particularly in relation to a member of staff or patient.
2. **Assault** – any assault, fighting or threatening behaviour directed at a patient, member of the public or fellow employee.
3. **Theft** – unauthorised or unlawful possession of property of “*NHS Organisation*” (including patient related documents), fellow employees or members of the public.
4. **Fraud** – any deliberate attempt to defraud the employer, fellow employees or members of the public.
5. **Corruption** – this refers to any receipt of money, goods, favours in respect of services rendered.
6. **Wilful Or Malicious Damage** – the intentional causing of damage to the “*NHS Organisations*” property or property of fellow employees, patients or members of the public.
7. **Unfit For Duty** – this could result from being under the influence of alcohol or drugs which have been self inflicted and not prescribed by a person qualified to do so.
8. **Gross Negligence** – any action or failure to act which could result in serious damage to property or equipment, or endanger the health and safety of others. Failure to give appropriate care and protection to patients within the “*NHS Organisations*” care.
9. **Gross Insubordination** - including wilful refusal to carry out a reasonable instruction or behaviour or other display of attitude which seriously undermines management’s authority.
10. **Misrepresentation** - falsification or failure to declare relevant information on medical questionnaires, application or enrolment forms that is fundamental to the contract. This may also constitute a criminal offence.

11. **Sexual, Racial Or Other Forms Of Harassment** - serious cases of racial or sexual harassment or bullying against other employees, patients or visitors either as an offender, or manager failing to take appropriate action after an incident is brought to his/her attention. N.B. Issues of this nature will be dealt with in accordance with the “*NHS Organisation’s*” Dignity at Work policy.
12. **Unacceptable Behaviour** - towards, staff, patients, visitors or public in the course of work or on “*NHS Organisation*” premises.
13. **Misuse Of Information Technology** - unauthorised and improper use “*NHS Organisation*” information technology systems.
14. **Destroying/Concealing Evidence Of Malpractice** – the intentional destruction or concealment of evidence of malpractice.
15. **Victimisation Of Whistleblowers** - where employees raising concerns under the Whistle blowing Policy (Public Interest Disclosure Act 1998) are subject to victimisation by managers, colleagues or other “*NHS Organisation*” staff.
16. **Non Compliance With The Declaration Of Interest** - Unauthorised possession of property belonging to the NHS Organisation (or its contractors), patients, members of the public or staff.
17. **Unauthorised Use or Misuse of NHS Organisation Facilities or Property-** Use of NHS Organisation vehicles, plant machinery, tools facilities, or property. Misuse of telephones or internal / external post.
18. **Serious Acts Of Insubordination Or Personal Behaviour That Results In Bringing The “NHS Organisation” Into Disrepute** - Wilful acts which seriously undermine the “*NHS Organisation’s*” professional standing or that of its employees.
19. **Failure to Meet Required Standards** - Gross failure to meet required standards of performance and behaviour as expected within the employee’s role and responsibilities.
20. **Gross Areas of Professional Misconduct**
21. **Withdrawal of DBS registration** – withdrawal of an individual’s DBS registration can be considered gross misconduct
22. **Breach of Contract of Employment** - Any fundamental breach of the Contract of Employment which makes continuation of employment impossible. This category may include:
 - Failure to meet statutes concerning Professional Registration.

- It may also apply to the removal of a driving licence from staff for whom driving is an essential part of their work, or wilful failure to obtain a DBS check, or work permit.
- Withholding information which has a serious bearing on the offer of or continuation of employment, e.g. a conviction or dismissal from a previous employer that the employee fails to disclose
- Conviction for a criminal offence committed in or out of work which renders the employee inappropriate or unavailable for continued employment
- Where information comes to light that would render the employee inappropriate for the post they occupy

Appendix 2 – Equality Act 2010

The Equality Act 2010 came into force on 1 October 2010. The Act brings together a number of existing anti discrimination laws and introduces changes that give employees greater protection from unfair discrimination. It sets out the characteristics that are protected by law and the behaviour that is unlawful. The protected characteristics under the Act are (in alphabetical order):

- Age
- Disability
- Gender reassignment
- Marriage and civil partnership
- Pregnancy and maternity
- Race
- Religion and belief
- Sex
- Sexual orientation

Under the Act people are not allowed to discriminate, harass or victimise another person because they have any of the protected characteristics. There is also protection against discrimination where someone is perceived to have one of the protected characteristics or where they are associated with someone who has a protected characteristic. The Act recognises 6 forms of discrimination: direct; indirect, discrimination by perception; discrimination by association; harassment and victimisation. The Act changes and extends certain concepts and definitions and introduces new forms of unlawful discrimination including:

Association Discrimination

This means that employers cannot directly discriminate against someone because they are associated with another person who possesses a protected characteristic. Employers need to be mindful of this extension to the law when dealing with employees who are carers of elderly relatives or disabled children as they will be protected against discrimination or harassment in relation to the person they care for. Consideration is particularly relevant when dealing with flexible working applications from carers, or when subjecting an employee to a disciplinary procedure because of their persistent lateness where the employee may have a caring responsibility.

The Equality and Human Rights Commission has prepared Codes of Practice on employment, services, public functions and associations and equal pay. The purpose of these Codes is to explain the new statutory provisions of the Act. The Codes were laid before Parliament on 12 October 2010 and will remain in draft form until the Government makes the Order bringing them into force. The Codes will be available to download from the Equality and Human Rights Commission at www.equalityhumanrights.com

2. The Duty to Make Reasonable Adjustments

Equality law recognises that bringing about equality for disabled people may mean changing the way in which employment is structured; the removal of physical barriers and/or providing additional support for a disabled employee. This is the duty to make reasonable adjustments. The duty aims to make sure that a disabled person has the same access to everything that is involved in getting and doing a job as a non-disabled person, as far as is reasonable.

When the duty arises, employers are under a positive and proactive duty to take steps to remove or reduce or prevent the obstacles a disabled worker or job applicant faces. In particular the need to make reasonable adjustments for an individual employee or job applicant must:

- not be a reason not to appoint someone to a job or promote them if they are the best person for the job with the adjustments in place
- be considered in relation to every aspect of a person's job
- not be a reason to dismiss an employee.

Less favourable treatment of a disabled person for a reason related to their disability cannot be justified where the reason for the treatment can be removed or made less than substantial by a reasonable adjustment.

Where a disabled employee is subject to the disciplinary policy, advice on the duty to consider reasonable adjustments may be sought at any stage of the process from a human resources advisor, the Occupational Health Department or from trade union or professional organisation representatives.

The Disability Advisory Service (Access to Work) can advise on work place adjustments and where necessary possible alternative employment options and in certain cases will contribute to the purchase of specific equipment or other workplace adjustments, which will enable the person to continue in employment. The employee will be involved in all of the above processes.

Only equality law is referenced above. There are other laws which you need to comply with to ensure that the disciplinary process is fair. You can find out more from the ACAS Code of Practice on Disciplinary Procedures at www.acas.org.uk

Appendix 3 – Disciplinary and Appeals Process Flowchart

