

## Sexual Misconduct Reporting System

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Reference Number: RDF1260-23

Date of Response: 20/02/2023

Further to your Freedom of Information Act request, please find the Trust's response(s) below:

1. Do all hospitals in your Trust have a reporting system for sexual misconduct?.  
Yes.
2. If the answer is 'no', please share how many hospitals within your Trust do have a reporting system for sexual misconduct and how many do not. This question Is not applicable.
3. If some or all of the hospitals in your Trust have a reporting system for sexual misconduct, please outline the reporting system. Trust staff report the complaint in line with our new Promoting a Positive Working Environment Policy- attached and launched today via the staff HUB.
4. If none or not all of the hospitals in your Trust have a reporting system for sexual misconduct please outline what a Trust staff member should do if they are a victim of sexual misconduct and another Trust staff member is the perpetrator. This question Is not applicable.

# Promoting a Positive Working Environment Policy

(incorporating concerns raised relating to harassment and bullying, grievances, disciplinary/conduct and performance capability).

## Policy description

Our mission is to work together to help you to stay healthy and to care for you expertly and compassionately when you are not. We aim to make the Royal Devon a Great Place to Work so that we can improve the quality of care and life for the people we serve.

This policy promotes a restorative, just and learning culture that ensures constructive and lasting solutions, supports staff performance and resolves workplace disagreements, conflicts, and complaints involving our staff.

If you require this document in a different format or language please speak to a member of HR staff.

This policy has a series of [resource toolkits](#) providing further information, guidance, forms and templates.

## Overarching principles to be followed

- We treat the people who use our services with civility, integrity, inclusion, respect and compassion. We expect the same behaviours from all colleagues in order to create and protect a culture where everyone feels safe and included, heard, valued and respected. [Our Charter](#) sets out the expectations, requirements and behaviours that apply to each and every one of us whilst at work in line with our [values and behaviours](#)
- The Four Step Process at Appendix 2 must be considered before formal management action is taken with an individual colleague
- Fairness, accountability and learning are underpinning principles that we are all responsible for. A restorative culture accepts nobody's account as right and another's as wrong, instead it accepts the value of multiple perspectives and uses them to encourage both accountability and learning
- We are committed to ensuring that all colleagues have an equitable



opportunity to benefit from a fair and inclusive process which is in line with our values and behaviours.

## Contents

1. Introduction.....	4
2. Purpose.....	5
3. Who this policy applies to.....	5
4. Definitions.....	6
5. Responsibilities.....	6
6. Learning from experience.....	7
7. Restorative practices.....	7
8. Mediation.....	8
9. Support for colleagues.....	9
10. Concerns raised by colleagues.....	9
10.1. Handling things informally.....	9
10.2. Formal request for resolution.....	10
10.3. Collective request for resolution.....	13
11. Management initiated conduct and capability concerns.....	14
11.1. Handling things as part of every-day working (ie informally).....	14
11.2. Supporting performance and/or behaviour concerns.....	14
11.3. Handling repeating and/or serious performance and/or conduct concerns...	16
12. Formal Concern Meeting.....	17
12.1 Formal Performance Concern Meeting.....	17
12.2 Conduct / behaviour Concerns Meeting.....	19
12.3 Witnesses.....	20
13. Considering outcomes.....	20
13.1 Impact of disciplinary sanctions on pay and career progression.....	22
14. Decision and outcome from a Concern Meeting.....	23
15. Overlapping requests.....	23
16. Requests not to attend work (Suspensions)/temporary transfers.....	23
17. Fact-finding exercise.....	26
17.1 Outcome from a fact-finding exercise.....	26

### Our values



18. Being accompanied.....	26
19. Request a Review (Appeal).....	27
20. Confidentiality.....	27
21. References.....	28
22. Equality Impact Assessment, Document Review and Approval, Communication Plan.....	28
Appendix 1 - Devon Integrated Care System.....	29
<b>Appendix 2 – FOUR STEP PROCESS.....</b>	<b>30</b>
<b>Appendix 2b Four Step Process - Memory Capture Form.....</b>	<b>33</b>
<b>Appendix 3 – Goal Setting Plan and Improvement Record.....</b>	<b>35</b>
<b>Appendix 4 – Assessment following serious concern raised.....</b>	<b>37</b>
Appendix 5 – definitions.....	40
1. Bullying.....	40
2. Harassment.....	40
3. Gross misconduct.....	40



## 1. Introduction

The [NHS People Plan](#) and our corporate strategy set an ambition that we create and protect a culture where everyone feels safe and included, heard, valued and respected. To achieve this, we will:

- Commit to an open, just, psychologically safe culture
- Make sure everyone feels free to speak up
- Focus on learning and improvement rather than blame should things go wrong
- Place safe and effective care as the basis of everything we do
- Always do the right thing
- Speak out when we see bias, discrimination or bullying of any kind
- Use our Freedom to Speak Up Guardians.

This policy aims to support us all so that we can raise and resolve any work-related concerns fairly, constructively and without unreasonable delay.

We want everyone to feel free to speak up about any concern they have at work. Speaking up is essential because it helps us improve the services we provide and ensure that the Royal Devon is a great place to work. You may feel unsure about raising a concern, and we understand this. But please don't be put off.

We are committed to an open and honest culture. We will investigate what you say, and you will always have access to the support you need. Alternatively, you are able to raise concerns with the confidential [Freedom to Speak up Guardian Service](#).

We encourage fairness and positive relationships within the workplace. Every workplace in our Trust should be free from bullying, victimisation, and harassment.

We are committed to ensuring you are treated, and treat others, with civility and respect. Where work relationships may have broken down we are committed to supporting everyone to work together to restore those relationships, to seek their own resolution as far as possible and to rebuild trust and learn to prevent future incidents.

We recognise difficult situations involving conflict and disagreements in the workplace happen, but these should not always be viewed negatively. When conflict is managed well it leads to healthy, resilient, and positive working relationships.

This document constitutes the Trust's disciplinary, harassment and bullying, grievance and capability policies. This document replaces all previous versions.



## 2. Purpose

This policy aims to at achieve constructive and lasting solutions to support staff performance and resolve workplace disagreements, conflicts, and complaints. Concerns that could cause disagreements, conflicts or complaints may include but are not limited to:

- Terms and conditions of employment
- Health and safety
- Relationships with others
- Bullying, harassment or victimisation
- New working practices
- Working environment
- Discrimination
- Conduct and behaviour
- Capability and performance

Everyone should ensure that concerns are dealt with in a fair and consistent way, quickly and supportively.

This policy covers disagreements, conflicts, and complaints which occur at work and out of the workplace, such as on business trips, at work-related events or online. It also covers situations which involve contractors, agency workers or third parties such as patients and visitors to our premises.

There are separate policies and procedures which apply if there are concerns relating to ill health, whistleblowing, safeguarding, serious incidents, performance or concerns of a clinical nature.

## 3. Who this policy applies to

- This policy applies to all employees of the Trust with the **exception** of Medical and Dental colleagues where the following applies:
  - for medical staff employed by the Trust cases which involve the professional conduct or professional competence of Medical and Dental staff must be dealt with in accordance with the Trust's Policy for [Maintaining High Professional Standards for Medical and Dental Staff](#).
  - cases which solely involve allegations of personal misconduct against medical and dental staff will be dealt with in accordance with the Promoting a Positive Working Environment Policy after the procedure for investigating allegations of personal misconduct referred to in the Trust's



Policy for Maintaining High Professional Standards for Medical and Dental Staff has been completed

- where cases cover both performance and personal conduct concerns of medical staff it will be for the Medical Director to decide which is the most appropriate procedure to use, having consulted the NHS Resolution Service and a Director of People.
- This policy does not apply to volunteers, agency or bank workers (not already employed by the Trust)
- When a complaint or suspicion has been made relating to **Fraud or Corruption** the Line Manager should ensure that the suspected colleague is NOT informed and that it is reported to either a Director of Finance or the local Counter Fraud Specialist in line with the [Counter Fraud process](#).

## 4. Definitions

Definitions for bullying, harassment and gross misconduct are set out in Appendix 5 of this document. Definitions of harm in relations to safeguarding can be found in the respective safeguarding policies.

This policy is written using words and phrases that support a just and learning culture, which may differ from traditional words/terms. Therefore, a glossary of terms is also set out in Appendix 5.

## 5. Responsibilities

Our Board is fully committed to adopting and promoting the key principles within this policy, modelling the principles of restorative, just and learning culture. Our Chief People Officer will be responsible for ensuring any work-related matters raised and resolved through this policy will be dealt with promptly and effectively.

All managers are responsible for ensuring the practical application of this policy and they are expected to model compassionate and kind behaviour and contribute to building a psychologically safe working environment.

All managers will ensure processes are conducted in a timely manner and will not unreasonably delay meetings, decisions, or confirmation of those decisions.

Every colleague is responsible for:

- contributing towards a positive working environment by upholding our values and treating everyone with civility and respect



- complying with their terms and conditions of employment, [Our Charter](#) as well as Trust policies and procedures whenever possible, and speaking to their manager or otherwise reporting in a timely manner when this is not possible
- performing to the very best of their abilities and taking personal responsibility for their performance and behaviour
- maintaining professional links such as membership of professional organisations and continuous professional development requirements, and keeping up to date with knowledge in their field. The People Function (HR) is responsible for providing professional advice and support to managers on applying this policy and associated procedures
- safeguarding adults and children is **everybody's** responsibility whatever role you may have within work or outside of work.

## 6. Learning from experience

We will reflect and continuously learn from the resolution process.

Learning from experience must promote inclusivity and be approached in partnership, with a view to developing and supporting a positive working environment for everyone.

## 7. Restorative practices

At the Royal Devon we will use restorative practice to resolve and ensure healthy levels of conflict in the workplace so that teams and individuals are able to work well together, to rebuild relationships and minimise uncivil and disrespectful behaviour.

A restorative, just and learning working environment/culture promotes fairness, civility, learning and taking responsibility for actions. It is not about seeking to blame an individual when behaviours or actions fall short of expectations or goes wrong.

The principles of restorative practice involve:

- honesty and inclusion
- a focus on the situation, its consequences and causes
- bringing together all those affected by conflict or disagreement
- providing a safe environment for the expression of emotion
- providing support to everyone involved, looking at who has been impacted and how this can be resolved
- allowing collaboration to achieve a shared understanding and identify what needs to be done to repair harm





- opportunities to rebuild relationships and strengthen teams
- a focus on what people need
- mediation – See section below on mediation.

Restorative practice is encouraged in everything we do to build strong, positive relationships and improve quality and safety. Staff meetings, for example, can be restorative, focused on learning from experience, building relationships and a foundation of trust and respect.

While processes such as facilitated meetings and mediation have their place, they have a fairly narrow focus on a particular situation and its resolution, restorative practice has a wider focus and by embracing restorative practices, we will create a safer, happier, and more effective workplace for you and the wider community.

## 8. Mediation

We are all encouraged to follow the above principles of restorative practice so that we work well together and create a positive workplace environment.

Mediation is one approach which can be used in an informal or formal restorative practice and is a process where a neutral third party is invited to be involved into a workplace situation and assists with the constructive resolution of a specific event or incident or ongoing situation.

There are no hard-and-fast rules for when mediation is appropriate, however you are encouraged to consider mediation where initial attempts to restore relationships haven't been successful or where the situation is likely to need high levels of support to ensure a safe and open environment for you to discuss perspectives and focus on collaboratively deciding what needs to be done.

The key features of mediation are that:

- it is independent and impartial
- it is voluntary
- it offers a safe, confidential, and constructive forum
- the outcomes are self-determined, and solution focused.
- it helps the participants to seek a new understanding and new ways of working together
- it gives all participants access to a fair and equitable form of resolution and restoration which encourages sustainable, realistic, and shared outcomes.

The aim of workplace mediation is to restore and maintain relationships wherever possible. This means the focus is on working together to go forward, not determining



who was right or wrong in the past. To request mediation please contact the [Workplace Mediation Service](#).

## 9. Support for colleagues

We recognise that speaking up or being involved, either as a witness or the subject, of a fact-finding exercise can be challenging and difficult and may impact on your health and wellbeing.

In addition to your Line Manager, further support is available through our health and wellbeing services. It is important to us that you look after yourself and you will be encouraged to take advantage of the services available to you.

<https://ndht.ndevon.swest.nhs.uk/staff-health-and-well-being/>

<https://hub.exe.nhs.uk/a-z/staff-support-counselling/>

Information and guidance for colleagues who find themselves involved in a process relating to a concern is [here](#).

A Welfare Officer is normally provided to support colleagues through formal processes and they will be aware of and can direct colleagues to the relevant support services that are available. Further information for Welfare Officers can be found [here](#).

In addition, reasonable adjustments or alternative support (ie an interpreter to support language differences) should be discussed and where appropriate, provided.

## 10. Concerns raised by colleagues

### 10.1. Handling things informally

When seeking resolution for the concern you have, you are encouraged to raise your concern or complaint as soon as possible. Concerns may relate to procedural matters or may relate to behaviours and relationships with colleagues. Where your concern relates to other colleagues, you are encouraged to speak up openly and honestly about your concern or complaint, share your views about what happened and be focussed on how things can improve. To help you with this, you may find the following approaches useful:

- raise your concern with the relevant service if to the issue is procedural



- if you feel able to, raise your concern directly with your colleague(s) or appropriate service (ie for concerns such as pay, rosters, parking, processes etc)
- raise your concern with your colleague using a restorative approach
- ask your Line Manager to raise the concern with your colleague(s) or relevant service on your behalf
- consider team support from the [Devon Wellbeing Hub](#)
- raise the concern informally with a more Senior Manager or the Employee Support and Resolution Team
- talk it through with our [Freedom to Speak Up Guardians](#)
- take part in a joint or facilitated conversation
- request mediation – see section above on mediation.

Regardless of the approach you decide to take it is important that you and your colleague(s) can continue to work well together without discomfort going forward.

Your line manager, HR or trade union representative, depending on the circumstances, can provide support during this time and may be available for you to have a facilitated conversation with your colleague(s) to enable the restoration of your relationship(s).

Managers should try to understand colleague's work concerns by giving careful consideration of the issues raised and the impact it has on all colleagues, exploring possible resolutions or ways to support colleagues in resolving their issues or concerns.

More than one discussion is likely to be needed to resolve a concern/issue effectively.

## **10.2. Formal request for resolution**

This section of the policy sets out our formal grievance process.

If your concern(s) cannot be resolved informally by using the resources outlined above, you should put your request for resolution in writing and submit it to your line manager (or a more senior manager if the concern involves your line manager) or a member of the [HR Helpdesk](#).

There may be instances where it will not be appropriate to consider a formal request for resolution, for example where you have not fully explored informal resolution options or where there has been significant unexplained delay before receiving your formal request.



Usually within 10 working days of receiving the request, a colleague who is impartial and of sufficient seniority will be appointed to act as the Resolution Manager. The Resolution Manager will consider and decide on the outcome of your request.

Your written request for resolution should contain:

- a description of the nature of your concern
- the steps you have taken to informally resolve the concern
- any relevant facts, dates, names of individuals involved
- the desired resolution you hope to achieve.

In some situations, you may be asked to provide more information.

The Resolution Manager will meet with you to listen to the concerns raised and the desired resolution you hope to achieve, before a decision is reached and communicated to you in writing. Where resolution is sought between colleagues it is recommended that the Resolution Manager meets with both the individual(s) raising concerns and the person/ people who are the subject of those concerns before reaching a decision.

The Resolution Manager may need to appoint a Fact-finder to complete a fact-finding exercise into the concerns raised. See section below for more information on the Fact-Finding process.

The outcome(s) a Resolution Manager will reach may include:

- No action required
- Agreed resolution
- Concerns meeting is required.

If you raise a concern that, through review or a fact-finding exercise, proves to be vexatious or malicious, you may find yourself the subject of a Conduct Concerns Meeting.

You have a right to request a review of the decision and outcome (ie an appeal) provided by the Resolution Manager, see section below on Request a Review.

Once a concern or grievance has been considered fully, you cannot submit a further request for resolution on the same issue. However, this doesn't preclude you from raising further concerns if subsequent issues or concerns arise later.

Neither is it appropriate to submit a counter complaint where you do not agree with outcomes from a formal process brought about by another colleague.



*Raising and resolving a concern flow chart*

<b>Step 1</b>	A colleague(s) raises a concern that cannot be resolved informally. This is in writing to their line manager or a Senior Manager or the Employee Support & Resolution Team)
<b>Step 2</b>	A Resolution Manager is identified to consider and decide on the outcome of the formal concern
<b>Step 3</b>	The Resolution Manager may request a Fact-find / investigation exercise to consider the concerns raised.
<b>Step 4</b>	The Resolution Manager or Fact-finding Manager meets with the colleague(s) raising the concern to listen and understand the concern as well as the desired resolution hoped for.
<b>Step 5</b>	Resolution Manager or Fact-finder may also need to meet with colleague(s) who are subject of the concern/s as well as any other relevant colleague.
<b>Step 6</b>	The Resolution Manager may determine that 1) No action is required; 2) Resolution can be offered/agreed; 3) A Formal Concerns Meeting is required
<b>Step 7</b>	The decision is explained to the colleague in person and their needs are discussed. All actions are confirmed in writing with support for colleagues explored.
<b>Step 8</b>	If the colleague raising the concern isnt satisfied with the outcome, they may Request a Review (appeal) within 10 calendars days.

**Our values**



**Compassion**



**Inclusion**



**Integrity**



**Empowerment**

### 10.3. Collective request for resolution

This part of the policy applies where more than one colleague wishes to seek resolution on the same concern. If the collective concern(s) cannot be resolved informally by using the resources outlined above, a request for resolution should be made in writing and submitted to your line manager (or a more senior manager if the concern involves your line manager) or the Employee Support & Resolution team.

This would constitute a collective grievance.

If resolution is required for a collective concern the same stages set out in section 10.2 of this policy will be followed and all colleagues who are in support of the collective request for resolution will need to be identified on the submission.

The number of colleagues attending a meeting with the Resolution Manager to represent the collective group will be agreed at the outset (but should not normally exceed three colleagues plus their union representative or workplace companion).

#### Our values



## 11. Management initiated conduct and capability concerns

We aim to balance accountability, learning and fairness for all situations and follow a Four Step Process to ensure concerns are consistently considered (Appendix 2).

The Four Step Process will highlight important principles that need to be considered and submitted to a [Case Management Decisions Panel](#) before formal management action in relation to behavioural or conduct concerns is taken with an individual colleague.

Where the concern relates to safeguarding it is essential that the concerns are appropriately reported and responded to in accordance with Trust policies. Please refer to the Safeguarding team for further advice and support.

### 11.1. Handling things as part of every-day working (ie informally)

We actively encourage resolving minor lapses in conduct and capability as part of every-day working, particularly where there are often mitigating factors involved. If a situation is of a minor nature, then it will be considered in a timely manner and at the appropriate level; approached with restoration, learning, support, and training in the first instance, with a further review of improvement wherever appropriate.

### 11.2. Supporting performance and/or behaviour concerns

The Trust aims to provide a clear, fair, and consistent framework for supporting performance and/or behaviour concerns in the workplace and to provide a fair opportunity for everyone to achieve and maintain the standards their role requires.

We understand that discussions about performance or behaviour can be worrying, so this policy looks to balance the requirement for a supportive process with the Trust's need to deliver services effectively.

We recognise that there may be other factors, both internal and external that can affect performance at work. Taking responsibility for our own performance and behaviour is an important element in resolution. Often, we know that things may not be going as well as we would like and it can be uncomfortable to discuss these concerns, so where possible, we encourage you to be open and honest and seek feedback from your line manager.

Few employees choose to perform or behave badly, make mistakes, or fail to complete tasks. Where there are concerns that are potentially impacted by health, medical advice will need to be sought (ie Occupational Health) and taken in to account when developing objectives or a goal setting plan to include relevant support and/or adjustments.



Your line manager will encourage, support, develop and provide feedback as part of every-day working practice to enable you to perform your role and meet the expected behaviours and conduct. As such, if your line manager has concerns about your performance and/or behaviour, they will explain and discuss with you at the earliest opportunity:

- the task(s) or aspect(s) of your role that need improving
- the reasons for or conditions contributing to this situation
- any problems you are experiencing at work
- any factors outside of work that are impacting you at work
- what needs to improve, by when and how you can be supported to succeed (e.g. additional supervision, a review of workload, training, guidance, mediation, coaching).

In order to support your performance and behaviour, it is important that any expectations or requirements together with any relevant support will be clearly set out in line with discussions between you and your line manager. A goal setting plan may be useful or appropriate (see Appendix 3).

Regular and timely review meetings should take place. The number of review meetings will depend upon the nature of the concern and the timeframe within which relevant support, development and/or improvements can realistically be expected.

At a review meeting, you and your line manager will discuss whether you are making sufficient progress and update the action plan.

As part of this process your line manager will ensure:

- you have an opportunity for regular supervision
- you are clear about what the expectations are of your role
- you have had a reasonable level of training, advice and support to help you carry out your role
- you have had reasonable time to improve following feedback
- you are supported with any health concerns/medical conditions which may be contributing to your performance and behaviour
- a goal setting plan has been undertaken with agreed regular reviews
- outline the standards you need to achieve ensuring they are realistically achievable within the specified time frame.

Following these discussions, the majority of concerns can be resolved promptly and informally. However, for some concerns (ie performance in your role), this may take a little more time.

Where concerns continue, before considering any formal process, it may be appropriate for your line manager to issue a warning to improve.





Once required improvement have been achieved, it is important that improvements continue to be maintained. If you are having difficulties again speak with your line manager at the earliest opportunity.

If a reasonable attempt has been made to resolve a performance and/or behaviour concern with no significant or sustained improvement and/or there is a serious concern about your behaviour or ability to perform your role, moving to a formal process may be considered to try and resolve the concern. Where this is the case, your line manager will explain this during the review meeting.

### **11.3. Handling repeating and/or serious performance and/or conduct concerns**

We aim to balance accountability, learning and fairness for all situations.

For conduct concerns, managers must follow a Four Step Process to ensure issues are consistently considered ([Appendix 2](#)).

If an informal process does not resolve the identified concerns within a reasonable timeframe or where there is more serious alleged poor performance or misconduct, a formal process may be appropriate.

For conduct concerns, the Four Step Process must be completed ([Appendix 2](#)) to stabilise and assess the situation, the line manager may then decide to refer the matter to the Case Management Decisions Panel. The independent Case Management Decisions panel will come to a conclusion as to whether the case should progress formally or take an alternative route.

If it is determined a formal process is needed, a Commissioning Manager will be identified. They will request an impartial fact-finding exercise be completed to establish the facts, and a report produced which will then inform the Commissioning Manager's decision.

The manager will ensure the process is conducted in a timely manner and will not unreasonably delay meetings, decisions, or confirmation of those decisions. They will also ensure you are informed of the nature and seriousness of the concern(s) and the intention to progress the matter and the possible implications.

When concerns are raised you are encouraged to speak up openly and honestly about the situation, any things that may not have gone as expected and focus on how things can improve to prevent the situation from reoccurring.



## 12. Formal Concern Meeting

Concern Meetings should be held without unreasonable delay and you will be provided with details of the meeting with at least 7 calendar days' notice. You should make every effort to attend. You have the right to bring a work colleague or trade union rep.

Further information about the framework of a Formal Concern Meeting is [here](#).

Notes will be taken during formal Concern meetings and these will be made available should a point need clarification at a later stage.

### 12.1 Formal Performance Concern Meeting

During the Performance Concern Meeting, your line manager will:

- go through examples where performance isn't meeting the required standard
- give you the opportunity to respond and identify factors you believe are affecting your ability to perform
- identify whether any measures such as additional training, support or supervision that hasn't already been considered, could improve your performance.

After the meeting, your manager will write to you within 5 working days to confirm the content and outcome of the meeting which could be:

- restorative practices are recommended
- first written warning
- final written warning.

Where warnings have been given, review meetings and a Goal Setting Plan (Appendix 3) will be completed. Your manager will feedback on your progress and tell you if you have made sufficient improvement. Progress will be recorded on the Goal Setting Plan.

If, following the agreed review meetings, performance concerns continue, you will be informed that a further Performance Concerns Meeting will be held and chaired by an appropriate senior manager who hasn't previously been involved. The possible outcomes of this are outlined in section 13.



*Handling performance / capability concerns flow chart*

<b>Step 1</b>	Your Line Manager discusses concerns about your performance in your job, possible reasons, how you can meet the required performance and what support or training you may need.
<b>Step 2</b>	Your Line Manager meets with you over an agreed period to review any agreed actions, your progress and support requirements.
<b>Step 3</b>	If performance expectations are met and maintained, no further steps are required.
<b>Step 4</b>	If you are not achieving the required performance, your Line Manager will confirm this and arrange a formal Performance Concerns meeting.
<b>Step 5</b>	Following the Concerns Meeting, your Line Manager will decide: * restorative practices * First written warning
<b>Step 6</b>	You and your Line Manager will complete another Goal Setting Plan which is then monitored and reviewed over an agreed period. Progress and actions are recorded within the Plan. You and your Line Manager will retain a copy.
<b>Step 7</b>	If concerns continue, a Further Performance Concern Meeting will be held. A senior manager, not involved so far, will Chair the meeting who may decide: * Final warning * End employment (ref Redeployment policy) Where a final written warning is given but where performance does not subsequently improve, a 'Further Performance Concerns Meeting' may be required at which ending of employment may apply (see section 13).
<b>Step 8</b>	You can Request a Review (appeal) against an outcome of a warning or dismissal from a formal Performance Concerns meeting within 10 calendar days of the date the decision was communicated in writing.

**Our values**



**Compassion**



**Inclusion**



**Integrity**



**Empowerment**

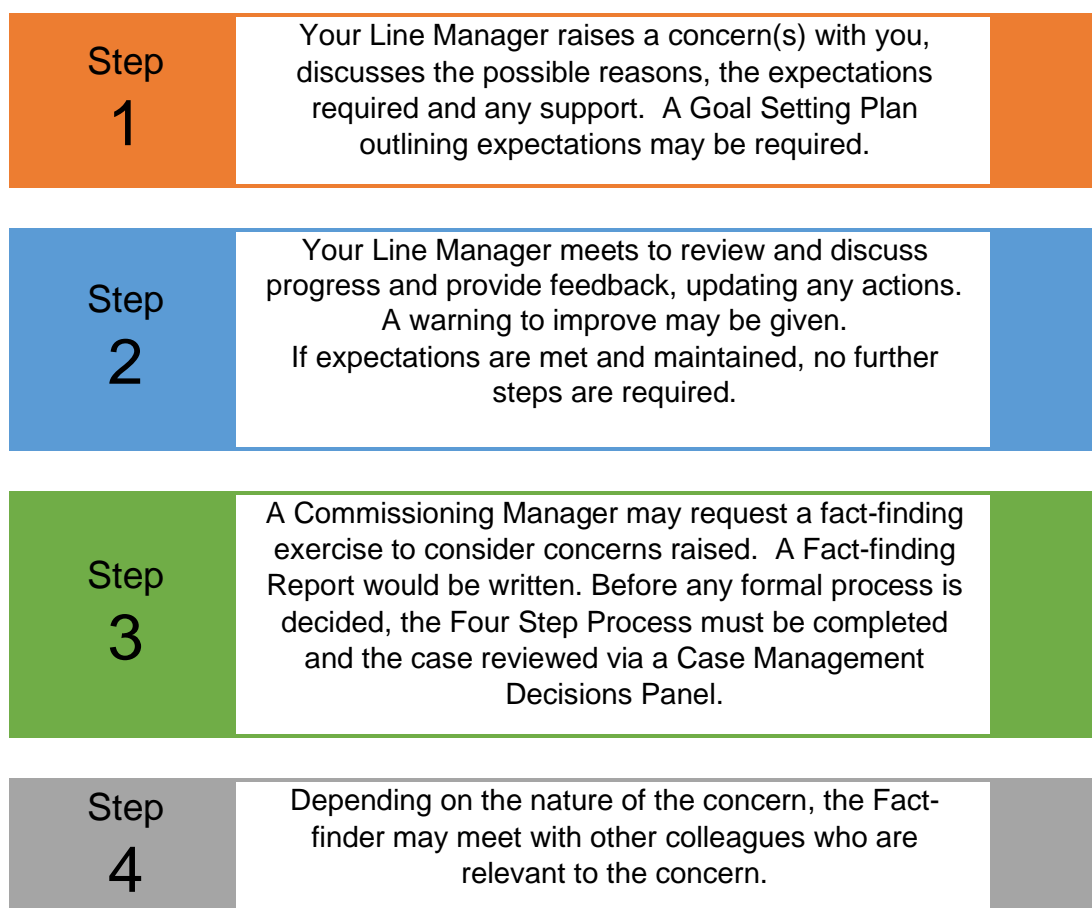
## 12.2 Conduct / behaviour Concerns Meeting

Where a formal Conduct Concerns Meeting is recommended because there is a potential case for disciplinary action, the Manager may consider it appropriate for the matter to be dealt with through an agreed alternative mechanism as set out in the [Alternative Options to a Disciplinary Meeting guide](#).

If this is offered to you, an alternative option to a formal Conduct Concerns Meeting can only take place if you agree with this proposed option.

The Employee Support & Resolution team will appoint an impartial meeting Chair, of sufficient seniority and experience, to consider the case. During the meeting there will be an opportunity to listen to the concerns, go through the evidence and an opportunity for you to respond and put your views across to the meeting Chair.

*Handling Conduct / Behaviour concerns flow chart*



<b>Step 5</b>	The Commissioning Manager will determine if: <ul style="list-style-type: none"> <li>* No Action is required;</li> <li>* A concerns meeting is required.</li> <li>* Alternative options to a Formal Concerns Meeting is appropriate.</li> </ul> The decision is explained to the colleague in person.
<b>Step 6</b>	Formal Conduct Concerns Meeting takes place (if required).  All actions taken are confirmed in writing and options for supporting colleagues' wellbeing are explored and provided. Possible outcomes listed at section 13
<b>Step 7</b>	Colleagues dissatisfied with the outcome of a formal Concerns Meeting, can Request a Review (appeal) within 10 calendar days of the date the decision was communicated in writing.

### 12.3 Witnesses

It is not normally necessary to ask a witness to attend a Conduct Concern meeting. Where this is required, the name, role, and reason for the request to attend will be given to and agreed by the meeting Chair in advance, and everyone involved will be informed of their attendance before the meeting.

There is no right for colleagues to question witnesses directly at a Conduct Concerns Meeting. In the first instance, therefore, statements taken during the fact-finding exercise, will be included in the Report.

Information and guidance for witnesses can be found [here](#).

### 13. Considering outcomes

Should the Concerns Meeting identify a reasonable probability that misconduct has occurred and/ or sustained performance / capability is unlikely to be achieved, consideration will be given to the following to determine a fair and appropriate outcome:

- the seriousness of the concern and any explanation given or any mitigation
- any records of previous concerns
- actions taken in a similar case(s)



- whether the action considered is proportionate and reasonable in the circumstances.

The outcomes and requirements available are shown in the table below, although this list is not exhaustive. We will also consider any wider actions, implications or learning for the Trust.

Outcomes / requirements	
No specific outcome although restorative practice may be required	Where conduct or performance has fallen below acceptable standards yet clear mitigations relating to this situation are accepted by the Line Manager / Meeting Chair.
Warning to Improve	This warning is used at informal stages. It signals that if sufficient improvement isn't made within the next review period, a Concerns Meeting is likely to take place.
First Written Warning For 12 months	Where conduct or performance has fallen below acceptable standards and reasonable attempts for informal restoration have not resulted in sufficient improvement and all other approaches have been exhausted or where the incident is sufficiently serious to justify a formal measure.
Final Written Warning For 12 months	Where conduct or performance falls significantly below acceptable standards and previous measures have not resulted in sufficient improvement or where the incident is so serious that a final written notice is the only appropriate outcome. Ending Employment is a clear possibility, however mitigating circumstances have been accepted.
Alternative Option to ending employment for Conduct and/or Behaviour Concerns (Action short of dismissal)	There may, exceptionally, be situations where management take the view that whilst dismissal or summary dismissal may be warranted, organisational and colleague circumstances may best be served by considering an alternative option to ending employment. In these circumstances, one of the following actions short of dismissal may be considered as an alternative to dismissal/summary dismissal only. These actions will be applied immediately, on a substantive basis, and will not attract any pay protection. You do not have to agree with this course of action as an alternative to dismissal or summary dismissal:



	<ul style="list-style-type: none"> <li>Final written warning with demotion and job transfer</li> <li>Final written warning and job transfer</li> </ul> <p><b>Note:</b> The Trust cannot create posts to accommodate demotion or disciplinary transfers, and consideration of such a course of action will only be possible where a suitable vacancy exists at the time of the Concern meeting.</p>
Ending Employment	<p>Considered where conduct or performance falls significantly below acceptable standards and previous measures have not resulted in sufficient improvement the Trust may end employment with the appropriate contractual notice, other measures such as redeployment, and changes to work patterns may also be considered. Where a single incident is considered as very serious, except in the most exceptional circumstances, employment will be ended without contractual notice (Summary Dismissal).</p>

Where a warning outcome is given, it will be effective for a period of time (ie 12 months). During this time, if further concerns are raised, the warning will be taken into account in any further formal process. Once the warning time has passed, the warning will remain on your employee file, but will not be taken into account if any further formal process takes place.

### 13.1 Impact of disciplinary sanctions on pay and career progression

When disciplinary sanctions/warning have been put in place, colleagues will not be eligible to receive pay progression whilst the warning is live (refer to Appraisal / PDR policy). Also, there will not normally be an opportunity for the individual to gain promotion to any other post until the warning period has ended. However, depending upon the circumstances and seriousness of the case and/or the improvements achieved, there may be circumstances where career development can be achieved. The line manager will therefore be responsible for reviewing progress within the disciplinary warning in liaison with the appropriate representative from the Employee Resolution and Support team.

According to the circumstances of the situation, other actions may be considered as an alternative. This may involve redeployment, or a change of work pattern.



You have a right to request a review against any measures that are applied as an outcome of a Concerns Meeting, see below on Request a Review (appeal).

## 14. Decision and outcome from a Concern Meeting

Following adjournment, as far as possible, the outcome of the formal Concern Meeting will be given verbally and confirmed in writing, including the Right to Request a Review (appeal), within 10 calendar days.

If the Concerns Meeting is adjourned (ie to consider further evidence before reaching a decision), you will be asked whether you want to receive the outcome in writing. Alternatively, a further outcome meeting can be arranged. If you did not attend the meeting, the outcome will be confirmed in writing. Where appropriate, we may notify your professional body of the decision and outcome.

## 15. Overlapping requests

If you raise a Request for Resolution that is related to a management-initiated concern, it is likely to be considered at the same time, but separately. However, a management-initiated concern may be temporarily paused where they are not related, whilst the Request for Resolution is considered.

## 16. Requests not to attend work (Suspensions)/temporary transfers

If you are the subject of a fact-finding exercise as a result of allegations made by a colleague or a potential act of misconduct it is important to ensure your safety and wellbeing, the safety of colleagues and of our patients.

In most cases you will be able to carry on working as normal but depending on the nature of the allegations, it may be necessary for you to be away from the workplace whilst we determine whether a formal request not to attend work will be necessary (alternatively referred to as suspension from work). This review period would not normally exceed 5 working days.

Before asking that you do not attend work, we will consider whether it may be appropriate to transfer you to a different area of work on a temporary basis or for you to work under closer supervision and support rather than asking you not to attend work while the fact-finding exercise is completed.

If you are formally asked not to attend work the decision will be explained to you, confirmed in writing and regularly reviewed, with all other options ruled out. A full review of the facts available will be undertaken and a risk assessment completed





before any decisions are taken (Appendix 4). This is likely to be a difficult time and support options that the Trust can give you are encouraged, as is regular contact with your line manager.

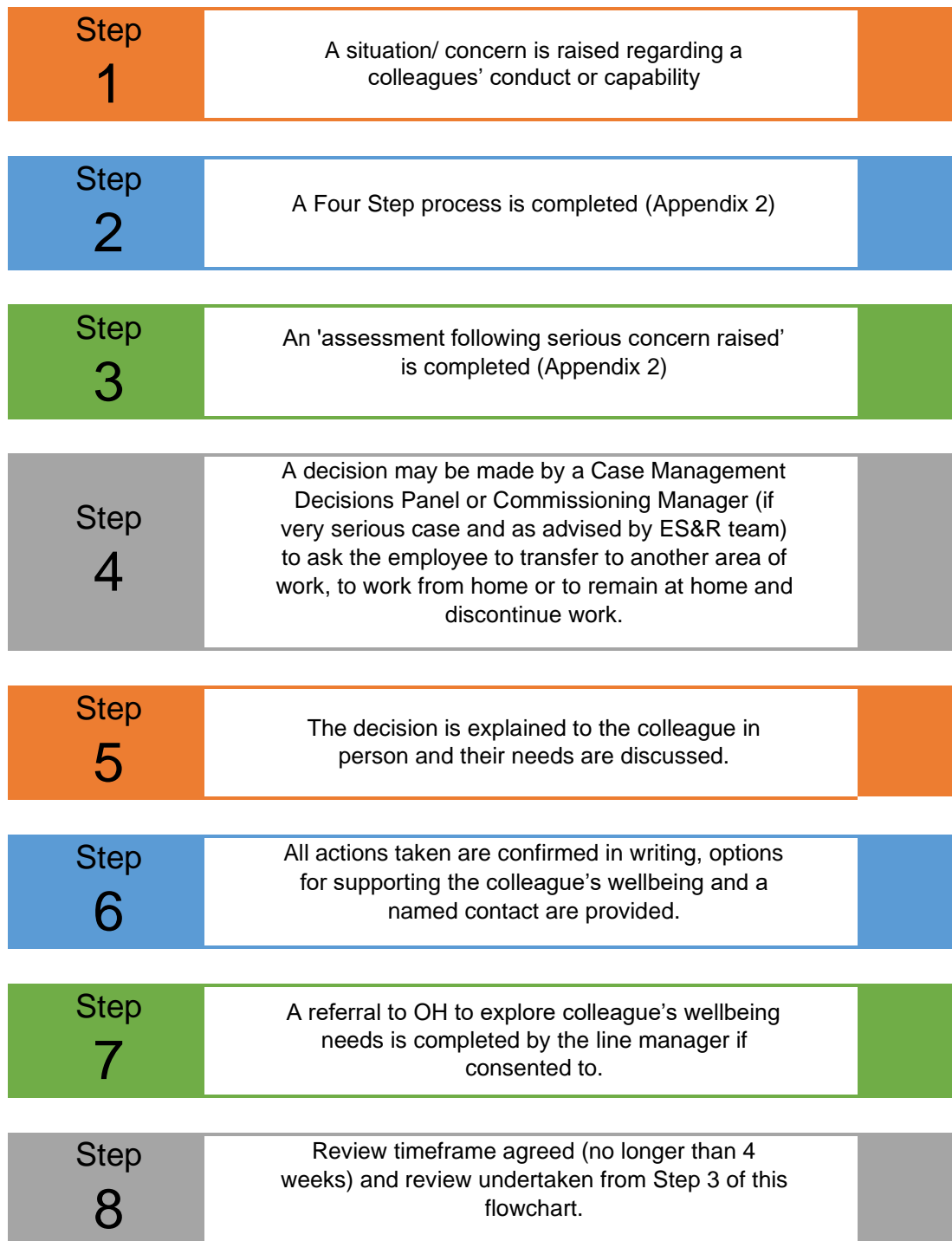
During any time you are requested not to be at work, you will continue to receive your normal pay and we will regularly review the risk assessment and maintain regular contact with you. We will always aim to keep any periods of absence from work as short as possible.

Being asked not to attend work focuses on the welfare of everyone involved and aims to support a fair and timely fact-finding exercise; it does not constitute a formal measure or any assumption of guilt.

### Our values



*Request not to attend work/temporary transfers flowchart*



**Our values**



**Compassion**



**Inclusion**



**Integrity**



**Empowerment**

## 17. Fact-finding exercise

When further information is recommended in order to seek resolution to a concern raised or concern of behaviour or performance a fact-finding exercise may be required.

The objectives of a fact-finding exercise will be to:

- establish the facts
- establish dates, times, and sequence of events
- identify who was involved and who observed the events (and their lead-up)
- take statements that may support in establishing the facts
- review documentation and evidence as appropriate
- produce a fact-finding report to support next steps.

Please refer to the [Fact-finding Guide](#) for further information and support through this process.

### 17.1 Outcome from a fact-finding exercise

The fact-finder will present their findings in a fact-finding report.

Recommendations may include:

- organisational and/or team learning
- individual or team support to change behaviours or practice
- restorative practice
- need for a Concerns Meeting

When a fact-finding exercise is completed, your line manager will meet you and go through the recommendations of the fact-finding report and next steps.

Your views and responses will be heard, and the focus will be on supporting you to help make improvements to reach an acceptable standard, which may include a goal setting plan, restorative practice or the need for a Concern Meeting. More importantly we will work with you to restore relationships, repair the harm, rebuild trust, and learn to prevent future incidents.

## 18. Being accompanied

You may bring a companion to any formal fact-finding, resolution, concern, or review meeting to help and support you. Your companion may be either a trade union representative or a work colleague. If your companion is not available on the proposed date or time of the meeting, we'll talk to you about an alternative date and time, as long as this is reasonable and as soon as possible.



All witnesses will also have the right to be accompanied at any meetings.

At any time during the meeting, you may request a break to allow you to talk privately with your companion.

An HR representative will also attend these formal meetings.

## 19. Request a Review (Appeal)

This step of the policy sets out the process for an appeal.

If your concern has not been resolved to your satisfaction or you are not happy with the formal outcome given at a Concerns Meeting, you may request a review. You should set out your reasons for requesting a review in writing within 10 calendar days of the date on which the decision was communicated to you in writing. It will not be sufficient grounds to request a review because you are unhappy, you will need to explain the reasons you believe the outcome was not right.

A review meeting will be organised as soon as practically possible. This will be dealt with impartially and a Review Chair, of appropriate seniority, will be appointed by the HR team. Whilst those who participated in the original meetings will not be appointed as Review Chair, they may be requested to attend where there are points requiring clarification.

The outcome of the Review Meeting will be shared in writing within 5 working days of the meeting. This is the end of the procedure and there is no further level of Review/ Appeal or opportunity to seek further resolution on the same matter under this Policy.

Information on Requesting a Review and the Framework for the formal Review meeting is [here](#).

## 20. Confidentiality

We will keep the matters relating to resolution requests and conduct and capability concerns as confidential as possible, limiting both the number of people who are aware of the nature of the concern and the amount of information they have access to. We will ask all participants to ensure that confidentiality is maintained by everyone during any part of the process.

**Please understand that due to the nature of some fact-finding exercises we may be unable to guarantee anonymity to witnesses in relation to the evidence they provide. Please discuss any concerns you have regarding this with the fact-finder.**



## 21. References

The Four Step Process (appendix 2) has been prepared by and is the intellectual property of Mersey Care NHS Foundation Trust (the “**Creator**”). The Four Step Process was developed using NHS Improvement’s Just Culture Guide (see <https://improvement.nhs.uk/resources/just-culture-guide>) and Professor Sidney Decker’s Restorative Just Culture Checklist (see <http://sidneydekker.com/wpcontent/uploads/2018/12/RestorativeJustCultureChecklist.pdf>) with input from University of Northumbria at Newcastle (“**Northumbria**”).

## 22. Equality Impact Assessment, Document Review and Approval, Communication Plan

To view this information relevant to this policy, please link [here](#).



## Appendix 1 - Devon Integrated Care System

### Just and Learning Culture Guiding Principles

- Everyone should be encouraged to live the values of compassion and kindness with colleagues, every day
- Colleagues should be able to work in an environment where they feel supported and empowered to learn when things don't go as expected, through restorative practice
- Colleagues should be encouraged to speak the truth about something which didn't go to plan, without fear of punitive individual repercussions
- In the case of an adverse event, employers should not instinctively ask 'who' was to blame but 'what' led the event to occur
- Formal disciplinary processes and suspensions should be avoided wherever possible, in favour of explorative conversations, to include discussions about all personal responsibility processes, which are informal and fair, adhering to just and learning principles
- When there is a need for formal processes, they should be undertaken compassionately, begin with an investigation of the facts around what went wrong and be undertaken in a timely manner
- Just and learning culture should not be mistaken for an uncritical culture where 'anything goes' – which can be as harmful and inexcusable as a 'blame culture'
- Whilst the concept of just and learning culture pre-dates the pandemic, COVID-19 has only further emphasised the importance of treating people as human beings, and a just culture naturally aligns with this mindset
- In addition to creating the culture we aspire to for the good of our colleagues; employers should recognise the potential to save time and money that can be reinvested, as a result of reduced disciplinarys, suspensions and workforce turnover
- Wherever possible, the natural links and alignment should be drawn between the development of just and learning restorative culture locally, and the national expectations around culture as directed by NHS Chief People Officer Prerana Issar.

Whilst the stakeholders are hopeful that all employers will consider embedding a local policy reflective of the above, the principles also outline a broader attitude/mindset, constructive for all to reflect on in their day to day work at a time when the NHS is at its most challenged.

***Agreed across Devon ICS in 2021.***



## Appendix 2 – FOUR STEP PROCESS

- to be completed by line manager and /or Commissioning manager

STEP 1 – Understanding the issue or incident that has occurred
<p><b>The adverse event / incident</b>            An event that could have caused or did result in harm to people or groups of people. This can include psychological harm and feelings of hurt, or physical harm even or damage to property. Collate any preliminary information available about the extent of harm.</p>

STEP 2 – Putting provisions in place	
Always remember	Comments
<p><b>Stabilise the situation</b> – this should only involve removing the employee from work or restricting duties if there is a significant risk to the service, patients, staff or the integrity of any subsequent investigation (use risk assessment at Appendix 4). Link with Safeguarding team, counter fraud and/ or external body/ partner as needed.</p>	
<p><b>Ask, who is impacted/ hurt?</b> This can include care users, service providers, other staff and / or people external to the organisation.</p>	
<p><b>What is their need?</b> Support, include clear communication plan, regular and timely. Consider wellbeing offer, supportive discussions, reasonable adjustments, provide information about <a href="#">safeguarding rights</a> and more.</p>	

<p><b>Whose obligation is it to meet that need?</b> List key names of persons providing welfare support etc</p>	
<p><b>What is the understanding of what happened</b> (use memory capture form, Appendix 2b, to gather information from persons present if applicable).</p>	

<b>STEP 3 – Assessing the need for a formal investigation-points to consider</b>	
<p>A fact-finding investigation into anyone’s individual actions is only warranted if all of the below have been considered. If the Commissioning manager still believes this should progress to a formal investigation, the final decision will be made by a case management decision panel.</p>	<p>Comments</p>
<p>Are rules available? Accepted practice in place?</p>	<p>Yes/No</p>
<p>Are the rules workable? Do they make sense in the context, environment, in the routine, consider work done versus work imagined?</p>	<p>Yes/No</p>
<p>Were the rules knowingly departed from? Is there an awareness that people’s actions were diverging from what is described?</p>	<p>Yes/No</p>
<p>Exception to peers? Is the behaviour very different to what colleagues / peers with comparable experience and skills would do in similar circumstances? If the answer is yes, then it is in exception to peers.</p>	<p>Yes/No</p>
<p>Was training available? Consider the quality and regularity of the training, and whether that was appropriate for our people and the situation.</p>	<p>Yes/No</p>
<p>Sufficient Supervision – Was it provided adequately?</p>	<p>Yes/No/Not applicable</p>
<p>If not would it have potentially made a difference to this matter?</p>	<p>Yes/No</p>



STEP 4 – Confirm that the restorative just culture goals have been achieved	
Have we been successful in applying a restorative just learning culture?	Comments
<b>Moral engagement</b> Were we able to engage all parties mentioned under Step 2 in considering the right thing to do?	
<b>Emotional healing</b> Were we able to help cope with guilt and humiliation, did we offer empathy?	
<b>Reintegrating practitioner</b> Were we able to do what was needed to get staff members back in their job?	
<b>Organisational learning</b> Explored and addressed systemic causes of harm (this is best enabled through a learning review process). It is an important step for every organisation to be able to identify systemic shortcomings.	

## Appendix 2b Four Step Process - Memory Capture Form

### Memory Capture Form

This form has been designed to capture immediate memories following a situation and step 2 of the Four Step Process. It is designed to support any subsequent factfinding/ enquiry and has been developed in the acknowledgement that memory of events can change over time.

<b>Staff Name</b>		<b>Staff Role</b>		<b>Date of Incident</b>	
<b>Name of Patient(s) involved (if relevant)</b>				<b>ID of Patient(s) involved (if relevant)</b>	
<b>Summary of Incident</b>				<b>No of Incident</b>	
<b>Who completed the</b>				<b>Time of incident</b>	
<b>Location of Incident</b>					
<b>Where were you when the incident occurred?</b>					
<b>What did you observe / witness / hear? Please distinguish between fact and opinion - eg I saw bruising on P's right fore-arm. I had not noticed this earlier. It was my opinion this was finger-tip bruising. P was in his bedroom when I saw the bruising</b> <i>Please add as much detail as possible</i>					

<b>Was anything said to you about the incident - whether by a patient or another staff member</b>	
---	--

<b>Was anyone else involved in incident apart from the patient(s) - if so who</b>	
---	--

<b>Is there any immediate learning you wish to raise</b>	
--	--

<b>Any other comments</b>	
---------------------------	--

<b>Date of completion of this form</b>		<b>Date received; by whom.</b>
<b>Signature of individual completing this form, confirming this is an accurate summary.</b>		

## Appendix 3 – Goal Setting Plan and Improvement Record

### Goal setting plan

Focussing on what we do and how we do it.

This template goal setting plan aims to support good performance and behaviour in the workplace. It may be used at any time to help a person prioritise their work and set achievable goals to ensure that they positively contribute to the aims for a team, department or the Trust as a whole.

It is important that we take ownership for our work and our contribution. Colleagues are encouraged to complete this template and share a version with their line manager for review and agreement.

Areas of focus – set out specific area of work that needs focus	What we are setting out to do – specific details of the work that needs to be done	How we do it – what actions are needed to achieve the work that needs to be done	How we do it – what approach will we take to demonstrate the <a href="#">Trust values</a>	Support – what support has been agreed to facilitate this goal?	Review date	Achievement date



### Improvement Progress Record

Date of review	Progress made	Continuing requirements (if any)

## Appendix 4 – Assessment following serious concern raised

This assessment tool aims to support management decision making when a concern is raised to ensure that appropriate next steps are agreed and consideration is given to everyone involved.

Ultimately, a decision to request that a colleague temporarily does not attend work or transfers to a different role sits with a Manager with appropriate authority and the Line Manager.

<b>Date:</b>	
<b>Manager:</b>	
<b>HR lead:</b>	

<b>Name of employee:</b>	
<b>Employee number:</b>	
<b>Department/Directorate:</b>	
<b>A description of the concern – consider what could happen and how and why?</b>	
<b>Who or what would be affected or compromised?</b>	
<b>Would the investigation be compromised by the employee remaining in work?</b>	
<b>What are you already doing / or are able to do to prevent this from happening or reduce the consequences if it does?</b>	
<b>Evidence obtained prior to risk assessment:</b>	

**Risk Assessment**

Risks	Yes/ No	Explanation (include potential impact)	Risk Likelihood (1= Rare, 5=Almost Certain)
Risk of harm to patients			
Risk of harm to employees			
Risk of harm to self			
Risk of harm to Trust			
Risk of continued fraud			

**Outcome – select one**

Risk options	Reason for risk option and details
No requirement to take action	
Manage the risk and allow the employee to remain within their role under close supervision	

Reduce the risk and limit duties and/or role under supervision within the same workplace	
Reduce the risk and transfer the employee temporarily to alternative role within the Trust	
Avoid the risk and request that they temporarily do not attend work.	

**Outcome – next steps**

**Date for review of agreed outcome:**

If a request to not attend work or temporary transfer is agreed option –

Name of 'key contact' for staff member:

Name of person responsible for completing a management referral to Occupational Health to review wellbeing support for staff member:

**Assessment completed by:**

**Date:**



## Appendix 5 – definitions

### 1. Bullying

Bullying is persistent, offensive, abusive, intimidating or insulting behaviour, which makes people feel upset, threatened, humiliated or vulnerable. Bullying can be a form of harassment and it can undermine someone's self-confidence and esteem. Bullying can be physical, verbal or non-verbal and it can take place inside or outside the Trust at work related events.

Examples of bullying include:

- shouting at or humiliating others
- high handed or oppressive levels of supervision
- unjustified, offensive and/or insulting remarks about performance
- excluding employees from meetings, events or communications without good cause
- physical or emotional threats.

### 2. Harassment

Harassment is any unwanted physical, verbal or nonverbal conduct based on sex, sexual orientation, marital or civil partnership status, gender reassignment, religion or belief, age, race, pregnancy/maternity or disability that affects your dignity at work or creates an intimidating, hostile, degrading, humiliating or offensive environment. One incident of unwanted or offensive behaviour can amount to harassment.

Examples of harassment include:

- physical conduct, ranging from touching, pushing or grabbing to punching or serious assault
- verbal or written harassment through jokes, offensive language, defamatory remarks, gossip, threats, letters or emails
- unwelcome sexual behaviour, including unwanted suggestions, propositions or advances
- sending or displaying material that is pornographic or obscene, including emails, text messages, video clips, photographs, posters, emblems or other offensive material

“Bullying and harassment make working environments less productive and they can impact on the health, confidence, morale and performance of those affected”

### 3. Gross misconduct

Gross misconduct is misconduct that is so serious that it fundamentally breaches the contractual relationship between the employee and organisation. When an employee commits an act of gross misconduct, the employer can dismiss them without notice.

Examples of gross misconduct include:

- theft, fraud or deliberate falsification of records or Trust documents
- serious or gross negligence resulting in unacceptable loss, damage or injury

- intentional serious breach of Trust policy or regulations or improper conduct in relation to job responsibilities
- malicious damage to Trust property
- intentional misuse of confidential information
- fraudulent misuse of Trust’s property or name
- unauthorised entry to computer records or inappropriate use of Trust data or computing equipment, including social media
- serious breaches of health and safety rules
- serious insubordination
- continued failure to follow reasonable management instructions
- bringing Trust into disrepute including serious misconduct outside work
- physical violence or bullying
- unlawful discrimination or harassment.

Traditional word	New J&LC Word
Grievance	Complaint, concern, disagreement
Hearing	Concern Meeting
Employee / staff	Colleague
Suspension	Request not to attend work
Appeal	Request for review
Informal grievance	Concerns raised by colleagues – handling things informally
Appendix B	Alternative Options to Disciplinary Action
Capability	Concerns about performance
Disciplinary	Concerns about conduct or behaviour
Disciplinary action / sanctions	Outcomes
Investigation, Investigating Manager	Fact-finding exercise, fact-finder