

Human Resources

Employee Conduct Policy

Policy Manager Jackie Bayne/Jenny Alexander	Policy Group Employee Conduct PIN Group
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Policy Established Previously Staff Discipline Policy	Policy Review Period/Expiry February 2018	Last Updated February 2016
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This policy applies to all non-medical staff and to Medical/Dental Staff for cases of personal misconduct

UNCONTROLLED WHEN PRINTED

Employee Conduct Policy

Version Control

Version Control

Version Number	Purpose/Change	Author	Date
1.0	Previously Disciplinary Policy, this is a New Policy	J Bayne	July 2010
1.1	Updated with Bribery Act 2010	J Golden	March 2014
1.2	Policy reviewed in accordance with Management of Employee Conduct PIN Policy April 2012 retaining existing levels of appeal	J Bayne/J Alexander	February 2016

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Bribery Act 2010

NHS Tayside is committed to the highest standards of ethical conduct and integrity in its business activities in the UK and overseas. NHS Tayside has introduced an Anti-Bribery Programme to outline its position on preventing and prohibiting bribery, in accordance with the Bribery Act 2010. NHS Tayside will not tolerate any form of bribery by, or of, its employees, agents or consultants or any person or body acting on its behalf. Senior management is committed to implementing effective measures to prevent, monitor and eliminate bribery and every employee and associated person is responsible for maintaining the highest standards of business conduct.

Under the Bribery Act 2010, a bribe is a financial or other type of advantage that is offered or requested with the:

- Intention of inducing or rewarding improper performance of a function or activity; or
- Knowledge or belief that accepting such a reward would constitute the improper performance of such a function or activity

All employees and associated persons (including temporary workers, consultants, contractors, agents and subsidiaries acting for, or on behalf of, NHS Tayside are required to comply in accordance with the Bribery Act 2010 and certain actions detailed in that can result in criminal offences being committed.

Any incident determined under the Bribery Act 2010 will be regarded as gross misconduct and will be investigated in accordance with the NHS Tayside Employee Conduct Policy.

Any breach of this policy is likely to constitute a serious disciplinary, contractual and criminal matter for the individual concerned and may cause serious damage to the reputation and standing of NHS Tayside.

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NHS TAYSIDE

EMPLOYEE CONDUCT POLICY

1. PURPOSE AND SCOPE

The purpose of this document is to address where concerns arise over potential misconduct and where action is required in the interests of both NHS Tayside and the employee. A failure to deal with it may adversely affect colleagues and standards of patient care, and as a result other staff may become disillusioned and dissatisfied. Some may even look elsewhere for employment. In this way, the efficiency and the quality of the service can quickly deteriorate.

This policy applies to all directly employed staff, including bank/temporary staff and NHS Tayside staff on secondment. It applies to all employed medical and dental staff in cases of personal misconduct. However, it does not apply to matters concerning the professional conduct of medical and dental staff.

In the case of conduct issues relating to staff groups who require to be professionally registered, NHS Tayside has in place a mechanism to ensure that relevant statutory regulatory bodies are informed, as appropriate, where such issues arise through the appropriate Executive Director. Employees must be advised in advance of any such referral being made. Decisions in relation to ongoing professional registration as a result of such issues will be for the relevant statutory regulatory body to determine. However, this policy will apply in relation to those conduct issues in so far as they relate to an individual's employment within NHS Tayside.

2. STATEMENT OF POLICY

It is the aim of NHS Tayside to ensure that all employees are treated in a fair and equitable manner. Employees are expected to adhere to acceptable standards of conduct in the course of their employment. Where such standards are not met, a formal process should only be followed where there is no other alternative. In all cases, the primary objective must be to assist and support the employee to improve to the required standard. Dismissal on grounds of conduct should only be considered as a last resort.

This policy has been developed in partnership with trade unions/professional organisations. It reflects the best practice identified in, and meets the minimum standards set out in, the Management of Employee Conduct Partnership Information Network (PIN) Policy. The policy also reflects relevant current employment legislation.

This policy will ensure that conduct issues are dealt with in a fair and consistent manner.

The policy provides:

- Assistance to employees to improve wherever possible when such issues arise;
- Firm but fair and consistent means of dealing with conduct issues; and
- A means of resolving conduct issues where improvement is unachievable.

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In order to achieve these aims, the following principles and values apply:

- This policy will be appropriately communicated to all employees and will be made readily accessible to them;
- All employees will be made aware of acceptable standards of conduct, and of the need to adhere to such standards;
- Good standards of conduct, and special effort by individuals and teams, will be acknowledged, encouraged and reinforced;
- Issues of conduct will be addressed at the earliest opportunity and (except in more serious cases) on an informal basis in the first instance before resorting to the formal procedure;
- Issues of conduct will be addressed fairly, consistently and confidentially, irrespective of the position/level within NHS Tayside of employees with whom such matters arise;
- Issues of conduct will be addressed in a supportive manner, with every opportunity to improve being offered. Termination of employment on grounds of conduct will only ever be as a last resort;
- Joint training on the policy will be provided for managers and trade union/professional organisation representatives using a partnership model, in order to ensure that relevant staff are sufficiently skilled and competent in implementing the process;
- Specialist HR advice will be available to managers involved in implementing the process;
- At all stages of the formal procedure, an employee will be entitled to be accompanied by a trade union/professional organisation representative or work colleague; and
- This policy will be subject to ongoing monitoring to ensure that it is being fairly and consistently applied and that the stated principles and values are being met. The policy will be subject to regular review, in partnership, to ensure that any new standards and/or structures are incorporated when necessary and that it remains fit for purpose.

3. RESPONSIBILITIES

Employees will:

- Ensure that they are aware of the standards of conduct expected of them, and that they seek further guidance if unclear;
- Adhere to the expected standards of conduct;
- Work with managers on any agreed supported improvement plan;
- Comply with any support/monitoring mechanisms put in place; and
- Raise concerns with the appropriate manager where they perceive others not to be adhering to expected standards of conduct.

Managers will:

- Ensure that all employees for whom they are responsible are made aware of the standards of conduct required;
- Ensure that such employees are made aware of and have access to this policy;

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- Ensure that good standards of conduct, and special effort by individuals and teams, is acknowledged, encouraged and reinforced;
- Ensure that they are fully aware of and comply with the provisions of this policy, identifying and dealing with issues which arise in a fair, consistent, confidential, timely and supportive manner; and
- Ensure that they seek HR advice where necessary and appropriate when dealing with conduct issues.

Trade union/professional organisation representatives will:

- Work in partnership with NHS Tayside to develop joint training as part of the implementation of this policy and participate in such joint training;
- Work in partnership with NHS Tayside to raise awareness of the benefits of, and the approach to, the management of employee conduct as outlined in this policy;
- Support their members, including providing representation throughout the formal stages of the procedure, ensuring that their members are aware of their rights and responsibilities under this and other relevant policies; and
- Participate in partnership monitoring, evaluation and review of this policy.

Human Resources will:

- Develop and deliver, in partnership, training on this policy for managers and trade union/professional organisation representatives;
- Advise managers on the correct implementation of this policy; and
- Support employees by providing advice on this policy.

Occupational Health will:

- Provide timely and comprehensive guidance to managers and support to employees following any referral which requires to be made in the course of managing conduct issues

4. DISCIPLINARY RULES

Disciplinary rules are established to promote fairness in the treatment of employees, and order in the conduct of employee relations throughout NHS Tayside. They also set standards, and enable employees to understand what is expected of them - and the consequences of failure to observe those standards.

NHS Tayside has agreed rules necessary for the maintenance of satisfactory standards of conduct through its Code of Positive Behaviour, Visions and Values and Code of Corporate Governance. In addition to the above, all those who are appointed as members to the board of NHS Tayside must abide by the Standards of Conduct, Accountability and Openness of NHSScotland (2001). All employees within NHS Tayside, as well as board members, must abide by the principles of these standards.

Any type of behaviour or conduct at work which falls below the standard required by NHS Tayside or is in breach of NHS Tayside policy may be deemed to be a form of misconduct. Where such behaviour or conduct is so serious in itself, or has such serious consequences that the relationship of trust and confidence which is needed between NHS Tayside and an employee has been damaged irreparably, this may be deemed to be a form of gross misconduct.

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5. DISCIPLINARY PROCEDURE

5.1 Informal Approach

It is recommended that, prior to invoking the formal procedure, managers need to reflect on whether there are ways of dealing with alleged misconduct in a more supportive way.

The emphasis should be on a two-way, open and honest discussion, with a view to determining the underlying issues and identifying potential remedies, resulting in a series of commitments on the part of the employee and their manager, with the aim of providing a supportive working environment for employees which seeks to achieve continuous improvement rather than punish mistakes. Managers are responsible for ensuring that such discussions take place promptly where such issues arise, and that they are managed confidentially.

If the issues continue, the manager will meet regularly with the employee, providing guidance on what is unacceptable, reinforcing what is acceptable and setting targets and timescales for improvement. These meetings should be recorded and a copy kept by both parties in accordance with standard record-keeping procedures, in order to ensure clarity of expectations and commitments.

Where the manager has followed the principles of fair and reasonable management, providing support to the employee and monitoring improvement over a reasonable time period, and where there is still insufficient improvement, the manager will advise the employee that the formal procedure may need to be invoked.

5.2 Formal Procedure

Where there has been inadequate improvement, despite having been given initial, informal guidance and support, or in more serious cases, a more formal approach will be required.

5.2.1 Right to Be Accompanied

Employees have a right to be represented by a trade union/professional organisation representative or accompanied by a work colleague at any investigatory meeting or disciplinary (or appeal) hearing being held under this policy.

While there is no right to be accompanied at a meeting to confirm suspension, employees should (where practicable) be given reasonable notice to organise representation.

Specific to any resulting disciplinary (or appeal) hearing, the role of such a representative will be as follows:

- To prepare, present and sum up the employee's case on their behalf; and
- To provide further information after the employee's response or to respond on behalf of the employee to any views expressed, with a view to providing additional clarity to the case.
- The representative is not permitted to answer questions on the employee's behalf, with the employee being required to personally respond to any specific questions directly.

Where the employee is a trade union/professional organisation representative, no disciplinary action should be taken without discussion with a full time official of the appropriate organisation.

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If the representative chosen by the employee is not available at the time proposed for any investigatory meeting or subsequent disciplinary (or appeal) hearing, the meeting/hearing must be postponed. The employee may offer a reasonable alternative time within five working days after the original date proposed.

In the case of witnesses, they must be offered the opportunity to be supported by a trade union/professional organisation representative or work colleague at any investigatory interview or subsequent disciplinary (or appeal) hearing which they are asked to attend.

5.2.2 Suspension

A manager should consider all alternatives before making a decision to suspend. Careful consideration needs to be given to appropriate circumstances for its use in situations where the allegation poses a risk to clinical, financial or staff governance, and in all cases consideration should be given to alternatives to suspension, including temporarily moving the employee to another work area, or considering other duties, where such an alternative removes the identified risk. The use of suspension is not a form of disciplinary action in its own right but does form part of this policy. Managers must follow the guidelines for suspension as contained in Appendix A of this policy.

Suspension related to disciplinary investigations will be on full pay and for as short a time as possible. However, where an individual is suspended and subsequently reports as being sick, while the suspension will remain in place, the employee will receive occupational sick pay (according to their entitlement) during the sickness absence period.

- Suspensions should be reviewed every 4 weeks
- If the suspension lasts more than 6 weeks, the employee has the right of appeal against the length of suspension to the next appropriate manager as detailed within the scheme of delegation.
- The appeal should be made in writing up to 4 weeks from receipt of the letter following the sixth week of suspension.
- The manager may extend the period of suspension or order the employee to return to duty.

5.2.3 Undertaking Investigations

As soon as an employee's manager is aware of alleged misconduct, they should contact the HR department to discuss the matter. This is to ensure that all appropriate informal steps have been taken and to provide guidance on the fair application of this policy.

Prior to any disciplinary process a full and thorough investigation must be carried out timeously in order to establish the facts of the case.

The manager will inform the employee of the alleged misconduct and advise that there will be an investigation.

The manager will be responsible for the investigation and will undertake it personally as the investigating officer (except where they are implicated or involved in any aspect of the allegation, in which case they will nominate a representative to act as investigating officer). The investigating officer may be supported by a representative of HR in undertaking the investigation (and in any formal hearings which subsequently result).

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The investigating officer will seek to compile sufficient information and evidence for a management decision to be reached on whether a disciplinary hearing is necessary (i.e. sufficient supporting evidence regarding the allegations).

The investigation will involve interviewing the individual who is the subject of the investigation and any potential witnesses, and the gathering of any other relevant material.

The investigating officer will write to individuals at least 14 days in advance of the investigatory interview, setting out:

- The date, time and location of the meeting;
- Who will be attending the meeting;
- The purpose of the meeting; and
- The right to be accompanied.
- An outline of the allegations to be investigated

They must also ensure that all those interviewed have been provided with a copy of the local policy in advance of the meeting.

All those interviewed should be asked, following the meeting, to provide a written statement (which must be signed and dated) and be given the opportunity to consult with their representative regarding the content of this statement. Individuals may alternatively choose to sign and date the notes of the meeting produced by the investigating officer, where they agree that these are an accurate reflection of the discussion.

All those interviewed should be advised that meeting notes and any written statements may require to be shared with the individual under investigation and their representative, and other witnesses, as appropriate.

In the case of witnesses, they should additionally be advised that such meeting notes and written statements may be used as evidence should the issue proceed to a disciplinary hearing (or subsequent appeal) and that they may be asked, by either party, to attend. Where the evidence of a witness is to be used at a subsequent hearing, they must be available to attend (although this could be waived following agreement of all parties), except in cases where such witnesses are not employed by NHS Tayside and are not prepared, or are unable, to attend (in which case all effort must be made to obtain a written statement or signed, dated confirmation of any investigatory meeting notes as an accurate reflection of the discussion).

At the conclusion of the investigation, the investigating officer will make a recommendation as to whether the matter requires to be progressed. In some cases, following investigation, it might be determined that, while the matter does not require to be progressed to a formal disciplinary hearing, the findings of the investigation suggest that sufficient concerns remain which require informal action to be undertaken.

The employee who is the subject of the case must be advised of any recommendation to progress matters to a disciplinary hearing prior to such recommendation being made.

5.2.4 Attendance at Disciplinary and Appeal Hearings

Disciplinary hearings (including appeals) will comprise a Chair (according to the scheme of delegation), and two other panel members (one of whom will normally be a member of the HR department). To ensure impartiality, panel members, including the Chair, must have had

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no prior involvement in the case. In addition to the employee and their representative, the investigating officer (or disciplinary panel Chair in the case of appeals) will also be in attendance (who may themselves be supported by a member of the HR department). Any witnesses called, by either party, to a disciplinary or appeal hearing will additionally have the right to be accompanied.

5.2.5 Disciplinary Hearing

According to the scheme of delegation, the Chair will be notified of the need to convene a disciplinary hearing. They will be responsible for identifying membership of the disciplinary hearing panel.

The Chair will also be responsible for ensuring that the employee and their representative are advised in writing, at least 14 calendar days prior to the hearing, of the following:

- The date, time and location of the hearing;
- The allegations to be considered;
- The potential outcomes. Where the potential outcome may be dismissal (either summary dismissal due to the severity of the allegations or dismissal with notice, where the allegations are less serious, but there is a relevant live final/first and final written warning on file) this must be stated;
- Who will be attending the hearing;
- The right to be accompanied;
- Arrangements for the exchange of cases; and
- A copy of the policy.

Thereafter, and 10 calendar days in advance of the hearing, the management case will be shared with the panel and Chair, and with the employee and their representative. Similarly, should the employee wish to provide a written statement in support of their case, this should be submitted within 5 calendar days following receipt of the investigatory report, and will be shared with the panel and Chair and those presenting the investigatory report. Such cases must include details of any witnesses which either party is calling to the hearing. It is the responsibility of the party calling the witness to inform them of the arrangements for the hearing.

5.2.6 Disciplinary Hearing Outcome

Following the hearing, the panel will adjourn to consider the case.

There are three potential outcomes:

- No case to answer;
- Informal action required; or
- Formal disciplinary sanction required.

The formal disciplinary sanctions available to the panel are as follows:

- First Written Warning - 6 months;
- Final/First and Final Written Warning - 12 months;
- Alternatives to Dismissal; or

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- Dismissal (with notice, as a result of repeated misconduct, or without notice in the case of summary dismissal on grounds of gross misconduct).

The sanction applied by the disciplinary panel should take into account the seriousness of the allegations against the employee and any mitigation which is offered.

Previously issued warnings must be disregarded for disciplinary purposes after their expiry. However, consideration may be given to the circumstances which resulted in such warnings being issued where subsequent allegations of misconduct arise, where this can be shown to demonstrate a repeated pattern (although any such reference must be reasonable and appropriate, considering the severity of the earlier matter and the period of time which has since elapsed).

Where the outcome of the disciplinary hearing is such that dismissal would be an appropriate action, it may be that, following clarity around mitigating circumstances, some form of disciplinary action other than dismissal may be deemed appropriate. Any such alternatives should be based on the general principles of equity and consistency and may be subject to review, and will normally be in conjunction with an appropriate level of warning. Alternatives to dismissal may include a permanent or temporary demotion (protection of earnings would not apply in such cases), relocation to another suitable post/location or a period of re-training. Movement into another post (including demotion) will only be an option where it is identified that such a post exists. A post will not be created to facilitate such a move.

Some acts, termed 'gross misconduct', are so serious in themselves or have such serious consequences that the relationship of trust and confidence which is needed between NHS Tayside and the employee is damaged irreparably, and therefore call for summary dismissal without notice for a first offence.

All disciplinary hearing outcomes must be confirmed in writing to the employee and their representative within 7 calendar days following the hearing. The letter should confirm the following:

- Details of who was present at the disciplinary hearing;
- The allegations considered;
- The hearing outcome (including any disciplinary sanctions issued) and the reason such a decision was taken;
- The date on which any issued warning will expire* or, in the case of dismissal, the date on which employment will terminate (recognising, except in the case of dismissal on grounds of gross misconduct, the employee's contractual notice); * the timescale for any warning will exclude any period of authorised absence lasting more than 4 weeks during the period of the warning
- In the case of warnings, the potential consequences of further misconduct prior to expiry of the warning (particularly the potential for consideration of dismissal prior to expiry of a final/first and final written warning);
- In the case of dismissal, any necessary administrative or financial arrangements; and
- Details of the right of appeal.

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5.2.7 Appeals

a. First Written Warning/ Final Written Warning

An employee, who is aggrieved at being issued a first written/final written warning, has the right to appeal to the next appropriate manager. In certain circumstances where the next appropriate manager has been directly involved in the disciplinary action, the appeal should be to the next successive level of management. Any appeal should be made in writing and should be received within 10 calendar days of receipt of the letter. This employee will have a final right of appeal to a NHS Tayside Appeals Panel.

b. First and Final Written Warning

An employee, who is aggrieved at receiving a first and final written warning, has the right to appeal to the next appropriate manager as detailed in the scheme of delegation. Any appeal should be in writing and should be received within 10 calendar days of receipt of the letter. In certain circumstances where the next appropriate manager has been directly involved in the disciplinary action, the appeal should be to the next successive level of management. This employee will also have a right of appeal to a NHS Tayside Panel with a final right of appeal to a panel which will include an Executive Director.

c. Dismissal

An employee who is aggrieved at being dismissed has the right of appeal to the next appropriate manager. Any appeal, which should be in writing, should be received within 10 calendar days of receipt of the letter. This employee will also have a right of appeal to a NHS Tayside Appeals Panel which will include an Executive Director.

An employee who is dismissed shall have a final right of appeal to the Chief Executive. A panel will be convened, which will include a Non-Executive member of the Board and a senior member of the Human Resources team to hear the appeal against dismissal. No member of the panel will have had any previous knowledge of the case.

d. Arrangements for Appeals

- The identified Chair, in accordance with the scheme of delegation, will be responsible for identifying membership of the appeal hearing panel.
- The appeal hearing will be held on the next available date on the panel calendar or as soon as possible thereafter;
- The employee and their representative will be informed in writing of the date, venue and time of the appeal hearing, no later than 14 calendar days prior to the hearing. They will also be advised of the names of those who will hear the appeal;
- The employee will be advised of their right to be accompanied by their trade union/professional organisation representative or fellow employee;
- Thereafter, and 10 calendar days in advance of the hearing, the employee's case will be shared with the appeal panel and Chair and with the manager who issued the disciplinary sanction against which the employee is appealing. Similarly, 5 calendar days following receipt of the employee's appeal case, the written case produced by the manager will be shared with the appeal panel and Chair and the employee and their representative. Such cases will include details of any witnesses which either party is calling to the appeal hearing.

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- It will be the responsibility of the party calling the witness to inform them of the arrangements for the appeal hearing.
- An appeal cannot result in any increase in penalty as this may deter individuals from appealing.
- Failure to meet the timescales for submission of cases may lead to the appeal hearing being postponed.
- Following the hearing, the Chair will be responsible for ensuring that the employee and their representative are advised, in writing of the outcome of the appeal hearing. This should include the rationale behind any decisions taken in response to the employee's grounds for appeal. Such a letter must be issued within 14 calendar days following the appeal hearing.

5.2.8 Grievances/Bullying and Harassment complaints

Where an employee raises a grievance or dignity at work complaint during a disciplinary process, the disciplinary process may be temporarily suspended in order to deal with the grievance/complaint. Where the grievance/complaint and disciplinary case are related, however, it may equally be appropriate to deal with both issues concurrently.

5.2.9 Failure to Engage

There may be occasions when an employee is repeatedly unable or unwilling to attend a meeting/hearing. This may be for various reasons, including illness or a refusal to face up to the issue. In such cases, consideration will require to be given to all the facts before coming to a reasonable decision on how to proceed. Considerations will include:

- The seriousness of the disciplinary issue under consideration;
- The employee's disciplinary record (including current warnings), general work record, work experience, position and length of service;
- Medical opinion on whether the employee is fit to attend the meeting/hearing;
- How similar cases in the past have been dealt with; and
- Whether, therefore, it is considered fair and reasonable in the particular circumstances to proceed in the absence of the employee.

Where an employee continues to be unavailable to attend a meeting/hearing, it may be concluded that a decision in their absence will need to be made based on the evidence available. The employee must be informed where this is to be the case.

6. DEBRIEF & REINTEGRATION

Regardless of whether or not a matter progresses to a disciplinary hearing, it may be appropriate to undertake a debrief in order to review the case, any lessons learned and agree any further general organisational improvement actions identified during the investigation/hearing process. Involvement in such a discussion will be determined on a case-by-case basis.

In addition to the duty of care, referred to below, it is also critical to ensure that, where the outcome does not involve dismissal, the employee is supported in being reintegrated back into their job role and within their team (or within any new job role/team, into which they are placed as a hearing outcome). Managers should liaise with HR and staff-side representatives to discuss measures which might help to support reintegration.

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7. DUTY OF CARE

In line with current health and safety legislation, NHS Tayside has a duty of care to its employees. In the context of this policy, this means that NHS Tayside needs to be mindful of the potential risks to health and safety associated with individuals who are involved (primarily the individual who is the subject of the case and any witnesses).

Where it is suspected that an individual's health and safety may be at risk, at any stage of the procedure, contact should be made with Occupational Health as a matter of priority. Trade union/professional organisation representatives, where they perceive any potential concerns in this regard should advise their member to seek Occupational Health support, as well as advising management accordingly.

Particular consideration needs to be given in circumstances where the decision of the disciplinary panel is to dismiss an employee (or where an appeal hearing panel has upheld a decision to dismiss). Where concerns around the individual's health and safety exist, it may be helpful to arrange for the individual to meet with Occupational Health following verbal confirmation of the outcome or, where the outcome is to be conveyed solely in writing, invite the employee to attend to receive the written confirmation, with Occupational Health on-hand for immediate support.

8. RETENTION OF RECORDS

All records pertaining to management of an employee under this policy must be held in accordance with both the Data Protection Act 1998 and the *Scottish Government Records Management: NHS Code of Practice (Scotland) Version 2. 1 (January 2012)*.

9. KEY CONTACTS

Joint Policy Leads

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The membership of the Employee Conduct Policy Working Group was:

Christopher Smith	Head of Human Resources
John Boland	Unite Branch Secretary
Alan Pattinson	General Manager - Access
Judith Golden	Employee Director

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GUIDANCE ON SUSPENSION

1. Suspension is an emotive term and, although it is not of itself disciplinary action, it can be seen by both the individual and others as having negative connotations, including implied guilt. Before deciding to suspend an employee, the manager should assess the degree of risk involved (i.e. whether the employee poses a risk to clinical, financial or staff governance). As an alternative, in some situations, it might be appropriate to arrange a temporary redeployment to another work area or role during the course of the investigation, to limit the duties of the individual or to put in place additional supervision of work. Such considerations should always be given in terms of how to mitigate risk during the course of the investigation, with such options having been exhausted before determining the need to suspend as a last resort. This does not preclude circumstances as set out below where the purpose of the suspension is to take the heat out of the immediate situation.
2. If the purpose of the suspension is to take the heat out of a situation, it may not be necessary for the individual to remain on suspension until the whole investigation is complete.
3. The following situations provide examples where suspension might be used:
 - Where a disciplinary offence is alleged to have taken place and an investigation is required. It may be that a person against whom allegations have been made could be seen to either interfere with or influence an investigation if they were at work;
 - Where it is suspected that an individual is under the influence of either alcohol or drugs;
 - Where there is a need to remove an employee from the premises to cool down (e.g. where staff have been fighting, although it may be necessary to suspend both employees in this example);
 - Where allegations are made of bullying or harassment and it is considered necessary for whatever reason that neither the accuser nor the accused attends work; or
 - Where there is an allegation of abuse of patients, especially children or vulnerable adults.
4. Where there is to be an investigation by Counter Fraud Services, CFS should normally be consulted before suspending an employee. CFS may wish to make recommendations regarding the timing of the suspension in the interests of securing the integrity of any potential evidence.
5. A designated Contact Officer (a neutral person) should be identified in the case of employees who are suspended. The Contact Officer is a named individual with responsibility to act as a recognised point of contact for any issues the employee may wish to raise. The nature of suspension is such that the individual should not enter the premises unless requested by management or their trade union/professional organisation (subject to agreement by management), or contact others within the Board. This can isolate individuals from their normal organisational support mechanisms. Not all employees will be a member of a trade union/professional organisation and therefore receive support through such channels.

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6. The following guidelines should apply to suspension:

- Where possible, advice should be sought prior to suspension from the HR department;
- An individual's line manager, or the responsible manager onsite, will normally carry out suspension. Where practicable, another manager or an HR representative should be present to act as a witness to the suspension;
- Where practicable, employees should be given reasonable notice to organise representation;
- Written confirmation should be given within two working days, stating the reasons for the suspension, the designated Contact Officer and any particular restrictions on access to Board premises, return of keys and parking permits etc.;
- Suspension will always be on full pay when related to matters of alleged employee misconduct (i.e. pay the employee would have received if at work, including the average of enhancements, if applicable);
- Suspension will always be for as short a period as is possible. The investigation should be completed, and if relevant the disciplinary hearing held, within an agreed timescale. Only in exceptional circumstances (e.g. where there has been a Critical Incident) should an employee be suspended for more than four calendar weeks, and this must be discussed with HR;
- *In exceptional circumstances, where an employee has to be suspended for more than four calendar weeks, there must be regular communication with the employee regarding progress and the likely timescale for completion of the investigation;*
- Suspensions should be reviewed every 4 weeks
- If the suspension lasts more than 6 weeks, the employee has the right of appeal against the length of suspension to the next appropriate manager as detailed within the scheme of delegation.
- The appeal should be made in writing up to 4 weeks from receipt of the letter following the sixth week of suspension.
- The manager may extend the period of suspension or advise the employee to return to duty at any time and confirm this in writing.
- If the individual subsequently becomes sick, then sick pay will apply;
- Employees who are suspended should be available to attend an interview at short notice if required during normal working hours, subject to the availability of support and taking into account pre-arranged leave;
- Where an employee is suspended, suspension should similarly apply to other posts held within the Board and to out of hours work (e.g. bank or locum) where the risk of clinical, financial or staff governance being compromised also exists;
- There may be occasions where the above risk is so great that it would be appropriate to inform another employer (e.g. alleged patient abuse) where it is known that the employee also works on the bank of another Board; and
- Suspended employees must not work for another employer during their normal working hours.

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INVESTIGATION - HOW TO GET IT RIGHT

1. When to Investigate?

While this section relates to investigation of allegations of misconduct, internal investigations may also require to be carried out in other circumstances (i.e. in relation to grievances, dignity at work complaints or matters of capability). While the corresponding locally developed policies which cover these other areas should detail the procedure to be following in undertaking any necessary investigation, the following general principles will apply in all cases.

2. Why Investigate?

A fair, consistent, impartial and thorough investigation will ensure that the facts can be established and will allow managers to make appropriate informed decisions about the next steps.

3. Who Investigates?

It is normal for the employee's manager to investigate allegations (or nominate a representative to act as an investigating officer where the manager is implicated or involved in any aspect of the allegation). In the interests of natural justice the same person conducting the investigation cannot hear the disciplinary complaint against the employee if it proceeds to a formal hearing.

The investigating officer will seek to compile sufficient information and evidence for a management decision to be reached on whether a disciplinary hearing is necessary (i.e. sufficient supporting evidence regarding the allegations). The investigation is likely to include interviews with the key people involved and the gathering of written statements and other relevant material.

4. How to Investigate?

4.1 Before you start, have a review meeting with HR to ensure consistent application of the policy and then identify:

- Details of the precise issue to be investigated (e.g. details of allegations made etc.);
- Suggested methodology for conducting the investigation (e.g. identification of initial witnesses, copies of relevant policy under which investigation is being held);
- For what purpose and by whom any subsequent investigation report produced would be used; and
- Techniques, such as root cause analysis, which might be helpful.

4.2 Investigatory Interviews

- As part of the investigation, it will be necessary to interview the individual who is the subject of the investigation, as well as any potential witnesses.
- It may be necessary to carry out additional subsequent interviews in order to clarify details where, for example, conflicting accounts are received or where new information comes to light in the course of the investigation.

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- The order in which investigatory interviews take place should, where possible, follow a logical order, in order to minimise the likely need to undertake such additional subsequent interviews. However, it is appreciated that this may not always be possible and that, indeed, further witnesses may be identified during the course of the investigation.
- Individuals should receive written notice of a request to attend an investigatory interview, which should set out the purpose of the interview and confirm the individual's right to be accompanied, and include a copy of the Board's Employee Conduct Policy.
- In the case of the individual who is the subject of the investigation, it is important that they are made aware of the allegations being investigated at an early stage (although it is recognised that these may change during the course of the investigation).
- The investigating officer should identify what needs to be established from each investigatory interview and prepare accordingly.
- Those being interviewed should be encouraged to recall their version of events in their own words, with the use of open, rather than closed, questions being used to gain information, clarify the issues and to check understanding of what has been said.
- In the case of witnesses, they should be informed that their statement may be shared with the individual who is the subject of the investigation, that the statement may be used if further action is taken and that they may be required to give evidence if matters subsequently proceed to a disciplinary hearing. If a witness refuses to participate it is important that the investigating officer meets with them to understand their reasons and to discuss any means by which such refusal might be overcome. Witnesses should also be made aware that any evidence or information they share, may in itself be subject to an investigation.
- The investigating officer should make full notes of the investigatory meeting. While those interviewed may subsequently be invited to sign and date those notes as an accurate reflection of the discussion, there is no obligation on the part of interviewees to do so. However, in such cases, a separate signed and dated written statement would be required from the individual.

4.3 Gathering Other Evidence

- Do not just rely on witness statements, as this may result in other crucial evidence being overlooked.
- Files, documents, computer records, policy documents and training records can all be produced as evidence where relevant.
- If any evidence is likely to perish or be removed, gather it as a priority.

5. Preparing the Investigation Report

5.1 Review and evaluate the evidence. Particular attention should be given to the following:

- Direct witness evidence (which will usually be stronger than indirect information relating to the incident/allegation);
- Evidence which is inconsistent with documents produced at the time;
- Evidence which is vague, omits significant details or contains inherent contradictions; and
- Any bias or influence individual witnesses may have.

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5.2 The Report

The report should be structured in a logical format.

- *Introduction* - a brief introduction to the report clarifying the allegations/incidents which have been investigated, details of the person against whom the allegation has been made and the name of the investigating officer (and the member of the HR department who supported the investigating officer, if applicable).
- *Methodology* - detail the process of the investigation including a list of the people interviewed, specifying if written statements/notes from meetings have been taken, details of Board policies reviewed and details of any other activities undertaken as part of the investigation.
- *Findings* - detail the findings from the investigation, including the facts and evidence presented; any inconsistencies found, with explanations where applicable; any mitigating circumstances; and any risks identified. Where information from written statements/notes from meetings is cited, note must be made of the relevant appendices where these can be found.
- *Conclusions* - this section should include the conclusions drawn by the investigating officer.
- *Appendices* - all written statements/notes from meetings, copies of correspondence, policies cited during the report and any other relevant information should be included.

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FLOWCHART OF THE FORMAT OF AN INVESTIGATION PROCESS

An Officer should be identified to be responsible for carrying out the investigation

A member of the Human Resources Team will be identified to support the Investigating Officer

Investigating Manager would interview those individuals who can provide information and allegations/complaints should be presented to employees against whom these have been made

Follow Appendix B
Investigation – how to get it right

Investigating Officer decides if there is substance to the complaint

- If there is, they will advise individual that matter will be considered at a disciplinary hearing.
- If not, the individual will be advised in writing and reason for decision (investigating officer can make recommendations such as further training of support/input from Occupational Health).

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MISCONDUCT AND GROSS MISCONDUCT

1. Misconduct

There is no legal definition of misconduct. However, it is recognised that misconduct is any type of behaviour or conduct at work that falls below the standard required by the employer or is in breach of organisational policy.

2. Gross Misconduct

If, after investigation, the offence is considered by a disciplinary hearing panel to constitute gross misconduct, it could lead to summary dismissal without notice for a first offence. Acts of gross misconduct are those which are so serious in themselves, or have such serious consequences, that the relationship of trust and confidence, which is needed between the employer and employee, has been damaged irreparably.

Examples of gross misconduct may include:

- Assault;
- Theft or unauthorised removal of NHS property;
- Abuse of a fellow employee or any other person;
- The falsification of pay sheets, clock cards or other wages or financial data; fraud or attempted fraud; or fraudulently claiming expenses or other benefits;
- Conduct likely to lead to a breach of peace, threatening behaviour, gross indecency;
- Inability to perform duties due to the influence of drink or drugs (other than those taken under medical direction), or unauthorised consumption of alcohol or drugs while on duty;
- Criminal offences committed outside working hours which affect the employee's ability to perform their duties, particularly where there is an element of trust involved or it is felt there could be danger to staff, patients, or visitors;
- Wilful failure to adhere to safety rules where this would create a measurable risk of danger to others or damage to machinery etc.; tampering with safety, fire or first aid equipment;
- Gross negligence or irresponsibility;
- Wilful or grossly negligent damage to NHS property or equipment;
- Persistent wilful refusal to perform to the required standards of the job role;
- Breaches of confidentiality;
- Unprofessional conduct as defined by reference to generally accepted standards of conduct or ethics within a staff group;
- Persistent unauthorised absence;
- Inappropriate access and use of IT systems, software or the internet/intranet;
- Wilful disregard of equality and diversity policies;
- Significant or persistent bullying or harassment of a fellow employee or any other person; or

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- Wilful failure to adhere to clinical governance/infection control policies

This list is intended only to outline the types of gross misconduct which would be found unacceptable. It is not an exhaustive list of offences for which dismissal without previous warning may take place.

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GUIDANCE FOR DISCIPLINARY/APPEAL HEARING CHAIRS

While this section relates to guidance for disciplinary hearing Chairs, individuals may also be involved in chairing hearings in other circumstances (i.e. in relation to grievances, dignity at work complaints or matters of capability). While the corresponding locally developed policies which cover these other areas should detail the procedure to be following in undertaking such a role, the following general principles will apply in all cases.

1. Who is attending?

Explain who is attending and why - please remember that although you may be familiar with all those who are attending, the employee or their representative may not.

Ensure that the person accompanying the employee is acceptable in terms of the local policy (i.e. a work colleague or trade union/professional organisation representative).

2. Why are they attending?

Explain the reasons for the hearing, ensuring that the employee understands the allegations which have been made and what policy you are following.

Establish at the outset if witnesses are to be called and who is responsible for ensuring that they attend.

If you have a note taker explain this and what will happen in relation to the management notes (i.e. that they are management notes, not approved minutes). It is important that a note of the hearing is kept, so that it can be referred to in any subsequent appeal or employment tribunal hearing. It is recommended that arrangements are made for someone who is not involved in the case to take a note of the hearing.

3. What Process is to be followed?

If you have to deviate from the policy (e.g. the order in which the hearing is to proceed or who is hearing the case), explain this at the beginning and seek agreement to this.

Explain the order in which the information will be presented, i.e.:

- The investigating officer will present their case, with the opportunity for questions from the employee and/or their representative, and then from the panel;
- The employee and/or their representative will present their case, with the opportunity for questions from the investigating officer, and then from the panel;
- Either party will call identified witnesses in the course of presenting their respective cases, with the opportunity for the other parties to ask questions of those witnesses; and
- Both parties will have the opportunity to provide a closing statement in summary (at which point no new evidence can be introduced by either party), with the employee and/or their representative having the last word prior to the hearing being adjourned to allow the panel to consider their decision.

Consider the setting and have appropriate breaks if necessary.

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4. When to Intervene?

- You need to ensure that all the relevant evidence is heard.
- You may need to intervene if you feel that relevant questions have not been asked.
- You should intervene where it is considered that statements made by either party are irrelevant or unsubstantiated. They should be asked to explain why the statement is relevant or provide evidence to substantiate it. Where such explanation/evidence is not satisfactorily provided, it should be confirmed to all in attendance that it will not be considered when determining the outcome of the hearing.
- You should intervene if the conduct of either party during the hearing is inappropriate.

5. What must you establish?

- The facts as you find them.
- You should form a **reasonable belief** as to whether the allegations are substantiated. It is not necessary for the employer to have conclusive proof of the employee's misconduct - only a genuine and reasonable belief.
- This must be on the basis that you are satisfied that a thorough investigation was undertaken and you have sufficient evidence to reach a conclusion.

6. What must you ensure?

That there has been a fair hearing - i.e.:

- Both parties have had reasonable advance opportunity to see the case to which they are responding;
- Both parties have had the opportunity to present their case;
- Both parties have had the opportunity to ask questions of the other's case; and
- Both parties have had the opportunity to sum up, at which point they cannot introduce any new material.

7. What to do if there are Facts/Witnesses Missing

- Seek to agree with the parties how you are going to deal with the situation (i.e. a short recess to consider information, to call a witness, or to determine if the facts/witnesses are fundamental to proceeding).
- If another witness is to be called, agree who will organise this.
- As the hearing forms a fundamental part of the overall process, you should ensure that you have sufficient information on which to make a decision.

8. What is your Role once you have Established all the Facts?

- Determine whether, having ensured that there has been a reasonable investigation, and following full and thorough consideration of the evidence presented at the hearing, a reasonable belief can be formed as to whether or not some or all of the allegations are substantiated.
- Where such a reasonable belief exists, and should you decide that there should be a disciplinary sanction, consider what is appropriate in terms of the policy, the employee's role, and fairness and consistency of application.

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- Abide by your policy.
- Consider if the conduct amounts to gross misconduct - this occurs in the case of acts which are so serious in themselves or have such serious consequences that the relationship of trust and confidence which is needed between the employer and employee has been damaged irreparably.
- A decision about the above involves more than just seeing if the type of conduct falls within the list of examples of possible misconduct. Therefore you should seek the advice of HR.

9. When to Hear About any Mitigating Factors?

- Where conduct has been admitted, you should consider all factors put before you which are relevant as to why the conduct has taken place.
- You should ask about mitigating factors, if they have not otherwise been put before you.
- Mitigating factors may include previous work record, work pressure, health, domestic circumstances, dependency issues or team dynamics.

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FLOWCHART OF THE FORMAT OF A DISCIPLINARY HEARING

The Chair of the Disciplinary Panel will introduce those present and confirm that the hearing is of a disciplinary nature in accordance with the Employee Conduct Policy, which could lead to disciplinary action being taken, and outline the nature of the allegations.

The Chair or Human Resources Representative will then explain the procedure to be followed at the hearing.

The Investigating Manager will present the findings of their investigation and call any witness. The employee (or their representative) and the panel can question each witness.

The Employee will then present their response to the Management Investigation, including any mitigating circumstances. The employee can also call any witnesses. The investigating officer and panel can question each witness.

The Panel hearing the case may then ask supplementary questions

Both the employee and/or their representative and the Investigating Manager will be given the opportunity to sum up. The Management Representative will sum up first followed by the Employee and/or their representative

Adjournment for the Panel to consider the evidence following which the outcome will be communicated to the employee either in writing or in person and confirmed in writing

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FLOWCHART OF THE FORMAT OF AN APPEAL HEARING

The Chair of the Appeal Hearing Panel will introduce those present and confirm that the hearing is an appeal as a result of a disciplinary action being taken against the employee.

The Chair or the Human Resources Representative will then explain the procedure to be followed at the hearing.

The Management Representative (Chair of the Disciplinary Panel) will present the findings of the disciplinary hearing and the rationale for taking disciplinary action and call any witnesses. The employee (or their representative) and the panel can question each witness.

The Employee will then present their response, including any mitigating circumstances and call any witnesses. The investigating officer and panel can question each witness.

The Panel hearing the case may then ask supplementary questions

Both the employee and/or their representative and the Management Representative will be given the opportunity to sum up. The Management Representative will sum up first followed by the Employee and/or their representative

Adjournment for the Panel to consider the evidence

Employee advised of the decision either in writing or in person and confirmed in writing or conveyed in writing.

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SCHEME OF DELEGATION

1. Formal Warnings

The authority to issue a formal warning to an employee is vested in the employee's next-in-line manager or above.

2. Dismissal

The authority to dismiss an employee is vested in direct reports to General Managers or Directors.

If an employee is a direct report of the Chief Executive and the Chief Executive made the decision to dismiss, the Appeal Panel will consist of 3 non-executive Directors of the Board.

3. Appeals

Appeals against a formal warning will be heard by a line manager at least one level above the manager who issued the formal warning.

In instances of dismissal, the right to appeal will be to a panel which should consist of senior managers and a non-executive director of the Board - e.g.:

- Chief Executive
- Other Executive or Corporate Director
- Directors/Senior Managers

(A senior member of the Human Resources function will be in attendance to provide advice and support to the panel)

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NHS TAYSIDE – POLICY APPROVAL CHECKLIST

This form must be completed by the Policy Manager and this checklist must be completed and forwarded with the policy to the Executive Team, Clinical Quality Forum or Area Partnership Forum for approval and to the appropriate Committee for adoption.

POLICY AREA: HUMAN RESOURCES
 POLICY TITLE: EMPLOYEE CONDUCT
 POLICY LEADS: JACKIE BAYNE/JENNY ALEXANDER
 DATE: FEBRUARY 2015

Why has this policy been developed?		In response to the PIN Guideline on Employee Conduct and to ensure that staff are treated equitably across the organisation	
Has the policy been developed in accordance with or related to legislation? – Please give details of applicable legislation.		Yes as contained in the ACAS Code of Practice and Employment Legislation	
Has a risk control plan been developed and who is the owner of the risk? If not, why not?		N/A	
Who has been involved/consulted in the development of the policy?		Previously through the Employee Conduct Group, CLO, Corporate Distribution and reviewed by the Employee Conduct Group.	
Has the policy been Equality Impact Assessed in relation to:-		Has the policy been Equality Impact Assessed not to disadvantage the following groups:-	
Age Disability Gender Reassignment Pregnancy/Maternity Race/Ethnicity Religion/Belief Sex (men and women) Sexual Orientation	Please indicate Yes/No for the following: Yes to all	People with Mental Health Problems Homeless People People involved in the Criminal Justice System Staff Socio Economic Deprivation Groups Carers Literacy Rural Language/Social Origins	Please indicate Yes/No for the following: Yes to all
Does the policy contain evidence of the Equality Impact Assessment Process?		Yes – attached with policy	
Is there an implementation plan?		Yes	
Which officers are responsible for implementation?		Joint Leads of Policy	
When will the policy take effect?		Immediately following approval of Area Partnership Forum	
Who must comply with the policy/strategy?		All NHS Tayside staff	
How will they be informed of their responsibilities?		Human Resources Policies page on staffnet/Line Managers	
Is any training required?		Yes – as detailed in attached plan	
If yes, attach training plan		Attached Plans will be rolled out following policy approval	
Are there any cost implications?		Internal training therefore no costs	
If yes, please detail costs and note source of funding		N/A	
Who is responsible for auditing the implementation of the policy?		Area Partnership Forum	
What is the audit interval?		Annual review	
Who will receive the audit reports?		Area Partnership Forum	
When will the policy be reviewed and provide details of policy review period (up to 5 years)			

POLICY MANAGER: Jackie Bayne and Jenny Alexander DATE: February 2015
 ADOPTION COMMITTEE TO CONFIRM: Staff Governance Committee

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EQUALITY IMPACT ASSESSMENT

Name of Policy, Service Improvement, Redesign or Strategy:

Employee Conduct Policy

Lead Director of Manager:

HR Director

What are the main aims of the Policy, Service Improvement, Redesign or Strategy?

To ensure that NHS Tayside complies with PIN Guidelines, Employment Legislation and that staff are treated equitably

**Description of the Policy, Service Improvement, Redesign or Strategy –
What is it? What does it do? Who does it? And who is it for?**

The policy clarifies the rights and responsibilities of Management, employees and recognised Trade Union/Professional Organisation Representatives in respect of employees who may become subject to disciplinary action resulting from a failure to meet the required standard of performance or conduct relating to their work or profession. A failure to deal with such issues may adversely affect colleagues and standards of patient care.

What are the intended outcomes from the proposed Policy, Service Improvement, Redesign or strategy? – What will happen as a result of it?- Who benefits from it and how?

This policy will ensure that managers have the correct information in relation to the management of employee conduct and that employees and their representatives are aware of the same information. Employees should benefit from having the opportunity to improve conduct, with support, where there are concerns. Managers should have the ability to deal with concerns appropriately using sanctions where necessary. Appeal process are also included where employees do not agree with outcomes.

Name of the group responsible for assessing or considering the equality impact assessment? This should be the Policy Working Group or the Project team for Service Improvement, Redesign or Strategy.

Employee Conduct Policy Group

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SECTION 1 Part B – Equality and Diversity Impacts**Which equality group or Protected Characteristics do you think will be affected**

Item	Considerations of impact	Explain the answer and if applicable detail the impact	Document any Evidence/Research/Data to support the consideration of impact	Further actions required
1.1	Will it impact on the whole population? Yes or No. If yes will it have a differential impact on any of the groups identified in 1.2. If no go to 1.2 to identify which groups	No – for NHST Employees only	This policy applies to all NHST employees with the exception of Medical and Dental staff except for matters of personal misconduct.	None

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Tem	Considerations of impact	Explain the answer and if applicable detail the impact	Document any Evidence/Research/Data to support the consideration of impact	Further actions required
1.2	<p>Which of the protected characteristic(s) or groups will be affected?</p> <ul style="list-style-type: none"> • Minority ethnic population (including refugees, asylum seekers & gypsies/travellers) • Women and men • People in religious/faith groups • Disabled people • Older people, children and young people • Lesbian, gay, bisexual and transgender people • People with mental health problems • Homeless people • People involved in criminal justice system • Staff • Socio- economically deprived groups 	Staff who are covered by any of the protected characteristics	Policy reviewed by Staff Side, HR Staff and Management	None

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Item	Considerations of impact	Explain the answer and if applicable detail the impact	Document any Evidence/Research/Data to support the consideration of impact	Further actions required
1.3	<p>Will the development of the policy, strategy or service improvement/redesign lead to</p> <ul style="list-style-type: none"> • Discrimination • Unequal opportunities • Poor relations between equality groups and other groups • Other 	This policy will apply equally to all staff employed by NHS Tayside.	This policy has been developed to comply with PIN Guidelines, Employment legislation and the ACAS Code of Practice – Disciplinary and Grievance Procedures and has been reviewed by the Employee Conduct Group.	None

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SECTION 2 – Human Rights and Health Impact.

Which Human Rights could be affected in relation to article 2, 3, 5, 6, 9 and 11. (ECHR: European Convention on Human Rights)

Item	Considerations of impact	Explain the answer and if applicable detail the impact	Document any Evidence/Research/Data to support the consideration of impact	Further actions required
2.1	On Life (Article 2, ECHR) <ul style="list-style-type: none">• Basic necessities such as adequate nutrition, and safe drinking water• Suicide• Risk to life of / from others• Duties to protect life from risks by self / others• End of life questions	No impact	N/A	None
2.2	On Freedom from ill-treatment (Article 3, ECHR) <ul style="list-style-type: none">• Fear, humiliation• Intense physical or mental suffering or anguish• Prevention of ill-treatment,• Investigation of reasonably substantiated allegations of serious ill-treatment• Dignified living conditions	No impact	N/A	None

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Item	Considerations of impact	Explain the answer and if applicable detail the impact	Document any Evidence/Research/Data to support the consideration of impact	Further actions required
2.3	On Liberty (Article 5, ECHR) <ul style="list-style-type: none"> • Detention under mental health law • Review of continued justification of detention • Informing reasons for detention 	No impact	N/A	None
2.4	On a Fair Hearing (Article 6, ECHR) <ul style="list-style-type: none"> • Staff disciplinary proceedings • Malpractice • Right to be heard • Procedural fairness • Effective participation in proceedings that determine rights such as employment, damages / compensation 	This policy supports the rights of employees in respect of fair hearings.	Policy developed in accordance with Employment legislation, ACAS Code of Practice and PIN Guidelines	None

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Item	Considerations of impact	Explain the answer and if applicable detail the impact	Document any Evidence/Research/Data to support the consideration of impact	Further actions required
2.5	On Private and family life (Article 6, ECHR) <ul style="list-style-type: none"> • Private and Family life • Physical and moral integrity (e.g. freedom from non-consensual treatment, harassment or abuse) • Personal data, privacy and confidentiality • Sexual identity • Autonomy and self-determination • Relations with family, community • Participation in decisions that affect rights • Legal capacity in decision making supported participation and decision making, accessible information and communication to support decision making • Clean and healthy environment 	None	N/A	None

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Item	Considerations of impact	Explain the answer and if applicable detail the impact	Document any Evidence/Research/Data to support the consideration of impact	Further actions required
2.6	On Freedom of thought, conscience and religion (Article 9, ECHR) <ul style="list-style-type: none"> To express opinions and receive and impart information and ideas without interference 	None	N/A	None
2.7	On Freedom of assembly and association (Article 11, ECHR) <ul style="list-style-type: none"> Choosing whether to belong to a trade union 	None	N/A	None
2.8	On Marriage and founding a family <ul style="list-style-type: none"> Capacity Age 	None	N/A	None
2.9	Protocol 1 (Article 1, 2, 3 ECHR) <ul style="list-style-type: none"> Peaceful enjoyment of possessions 	None	N/A	None

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SECTION 3 – Health Inequalities Impact
Which health and lifestyle changes will be affected?

Item	Considerations of impact	Explain the answer and if applicable detail the impact	Document any Evidence/Research/Data to support the consideration of impact	Further actions required
3.1	<p>What impact will the function, policy/strategy or service change have on lifestyles?</p> <p>For example will the changes affect:</p> <ul style="list-style-type: none"> • Diet & nutrition • Exercise & physical activity • Substance use: tobacco, alcohol or drugs • Risk taking behaviours • Education & learning or skills • Other 	<p>This policy will not have a direct impact on any of the stated lifestyles, however, the impact of a disciplinary investigation and subsequent action on an employee may result in an indirect impact on an employee's lifestyle e.g. alcohol, drug and other substance misuse etc</p>	<p>NHS Tayside Alcohol, Drug and Other Substance Misuse Policy and Procedures</p>	<p>Referral to OHSAS where there are signs of lifestyle impact.</p>
3.2.	<p>Does your function, policy or service change consider the impact on the communities?</p> <p>Things that might be affected include:</p> <ul style="list-style-type: none"> • Social status • Employment (paid/unpaid) • Social/family support • Stress • Income 	<p>This policy will have no direct impact on communities as outlined, however, depending on the disciplinary action, this could have a direct impact on an employee's income (Occupational Sick Pay entitlements), social and family support and stress</p>	<p>NHS Tayside Promoting Attendance at Work Policy.</p>	<p>Links with HR Advisers and Occupational Health for appropriate support and management.</p>

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Item	Considerations of impact	Explain the answer and if applicable detail the impact	Document any Evidence/Research/Data to support the consideration of impact	Further actions required
3.3	<p>Will the function, policy or service change have an impact on the physical environment?</p> <p>For example will there be impacts on:</p> <ul style="list-style-type: none"> • Living conditions • Working conditions • Pollution or climate change • Accidental injuries/public safety • Transmission of infectious diseases • Other 	<p>This policy would have a positive impact on working conditions as it should address any deficits in relation to an employee's conduct whilst undertaking their duties.</p>		None
3.4	<p>Will the function, policy or service change affect access to and experience of services?</p> <p>For example</p> <ul style="list-style-type: none"> • Healthcare • Social services • Education • Transport • Housing 	<p>This policy may enhance the access to and experience of services as deficits in conduct would be addressed by this policy.</p>		None

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Item	Considerations of impact	Explain the answer and if applicable detail the impact	Document any Evidence/Research/Data to support the consideration of impact	Further actions required
3.5	<p>In relation to the protected characteristics and groups identified:</p> <ul style="list-style-type: none"> • What are the potential impacts on health? • Will the function, policy or service change impact on access to health care? If yes - in what way? • Will the function or policy or service change impact on the experience of health care? If yes – in what way? 	<p>There may be a negative impact on the health of those employees who may be subject to a disciplinary sanction.</p> <p>There may be a positive impact on the experience of healthcare as any deficits in performance or conduct should be addressed through this policy.</p>		None

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SECTION 4 – Financial Decisions Impact

How will it affect the financial decision or proposal?

Item	Considerations of impact	Explain the answer and if applicable detail the impact	Document any Evidence/Research/Data to support the consideration of impact	Further actions required
4.1	<ul style="list-style-type: none">Is the purpose of the financial decision for service improvement/redesign clearly set outHas the impact of your financial proposals on equality groups been thoroughly considered before any decisions are arrived at	N/A		
4.2	<ul style="list-style-type: none">Is there sufficient information to show that “due regard” has been paid to the equality duties in the financial decision makingHave you identified methods for mitigating or avoiding any adverse impacts on equality groupsHave those likely to be affected by the financial proposal been consulted and involved	N/A		

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Item	Considerations of impact	Explain the answer and if applicable detail the impact	Document any Evidence/Research/Data to support the consideration of impact	Further actions required
5.	<p>Involvement, Consultation and Engagement (IEC)</p> <p>1) What existing IEC data do we have?</p> <ul style="list-style-type: none"> Existing IEC sources Original IEC Key learning <p>2) What further IEC, if any, do you need to undertake?</p>	N/A		

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Item	Considerations of impact	Explain the answer and if applicable detail the impact	Document any Evidence/Research/Data to support the consideration of impact	Further actions required
6.	<p>Have any potential negative impacts been identified?</p> <ul style="list-style-type: none"> If so, what action has been proposed to counteract the negative impacts? (if yes state how) <p>For example:</p> <ul style="list-style-type: none"> Is there any unlawful discrimination? Could any community get an adverse outcome? Could any group be excluded from the benefits of the function/policy? <p>(consider groups outlined in 1.2)</p> <ul style="list-style-type: none"> Does it reinforce negative stereotypes? <p>(For example, are any of the groups identified in 1.2 being disadvantaged due to perception rather than factual information?)</p>	None	N/A	None

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Item	Considerations of impact	Explain the answer and if applicable detail the impact	Document any Evidence/Research/Data to support the consideration of impact	Further actions required
7.	Data & Research <ul style="list-style-type: none"> Is there need to gather further evidence/data? Are there any apparent gaps in knowledge/skills? 	No		
8.	Monitoring of outcomes <ul style="list-style-type: none"> How will the outcomes be monitored? Who will monitor? What criteria will you use to measure progress towards the outcomes? 	The Human Resources Directorate Employment Tracker. Staff Governance Committee		
9..	Recommendations State the conclusion of the Impact Assessment			
10.	Completed function/policy <ul style="list-style-type: none"> Who will sign this off? When? 	Workforce and Governance Committee and Area Partnership Forum will approve and sent to Staff Governance Committee for adoption		None
11.	Publication	Staffnet	N/A	None

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Conclusion Sheet for Equality Impact Assessment	
<p>Positive Impacts (Note the groups affected)</p> <p>This policy will have a positive impact on all employees in that it will demonstrate processes to be adhered to and equity of treatment of staff across all groups.</p>	<p>Negative Impacts (Note the groups affected)</p> <p>There should be no negative impacts resulting from the implementation of this policy. However, individuals to whom sanctions are applied may feel differently.</p>
<p>What if any additional information and evidence is required</p> <p>This policy will be monitored through the Human Resources Tracker System.</p>	
<p>From the outcome of the Equality Impact Assessment what are your recommendations? (refer to questions 5 - 10)</p> <p>That the review of this policy should be approved</p>	

This conclusion sheet should be attached to the relevant committee report.

Manager's Signature: Jackie Bayne/Jenny Alexander

Date: February 2015

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POLICY TRAINING PLAN

<u>Level of Delivery/ Training</u>	<u>Format of Delivery</u>	<u>Target Groups</u>
Level 1	eLearning	All staff
Level 2	General raising awareness	All staff
Level 3	'Behavioural skills' toolkit training / Detailed training programme	Line Managers
Level 4	Consultancy/Values based reflective practice / Coaching support from HR / OD Team	Identified as required

Future course dates and availability are published on the Tayside Training Database and via electronic noticeboard, both accessed via Staffnet.

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TOPIC	Level of training	Frequency / Dates of Training	Format of Delivery	Target Group	Quantifiable Resources	Links to eKSF Dimensions
Policy Awareness	2	Under development – on demand when available	elearning	All staff		C2
Information sheet on changes to current policy	1	Available on staffnet at all times	Information sheet	All staff		C2
Conducting an Investigation	3	Monthly. Dates to be confirmed from October 2016	Direct Delivery Training Programme	Staff who are/will be investigatory officers. HR Business Staff/Staff Side Representatives	HR Staff Time	C2, C6, G6, C1
Conducting a disciplinary hearing/appeal	3	Monthly. Dates to be confirmed from October 2016	Direct Delivery Training Programme	Staff who sit on or chair disciplinary/appeals panels. HR Staff/Staff Side Representatives	HR Staff Time	C2, C6, C1, G6
Attending an Employment Tribunal	3	As and when required	Short Information Session	Staff who will require to attend an Employment Tribunal as a witness	HR Staff Time	C2, C1, C6, G6

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