



Public – To be published on the Trust external website

Guidance on Managing Concerns of Potential Conduct (Disciplinary)

Ref HR-0043-001-v2

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Overarching Procedure: [Managing concerns of potential conduct \(Disciplinary\) Procedure](#)

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1 Introduction

This guidance should be read in conjunction with the Trust [Managing Concerns of Potential Conduct Procedure](#) and aims to guide managers through the initial stages and preliminary assessment/analysis process, when concerns of potential conduct arise.

This guidance provides the preliminary assessment group (PAG) with the necessary tools to make a decision as to whether the concerns raised warrant formal investigation in line with the Trust's Managing Concerns of Potential Conduct Procedure.

This guidance and framework for the management of the initial response, when concerns are raised is a key part of delivering Our Journey To Change

To co-create a great experience for our patients, carers and families, so you will experience:

- **Outstanding** and compassionate care, all of the time.
- **Access** to the care that is right for you.
- **Support** to achieve your goals.
- **Choice** and control.

To co-create a great experience for our colleagues, so you will be:

- **Proud**, because your work is meaningful.
- **Involved** in decisions that affect you.
- **Well led** and managed.
- That your workplace is **fit for purpose**.

To be a great partner, so we will:

- Have a **shared understanding** of the needs and the strengths of our communities
- Be **working innovatively** across organisational boundaries to improve services.
- Be **widely recognised** for what we have achieved together.

The Trust is committed to co-creating safe and personalised care that improves the lives of people by involving them as equal partners. The most important way we will get there is by living our values, all of the time.



Respect

- Listening
- Inclusive
- Working in partnership



Compassion

- Kind
- Supportive
- Recognising and Celebrating



Responsibility

- Honest
- Learning
- Ambitious

We aim to ensure that all staff are fully aware of the Trust values and feel comfortable in challenging individuals who are not living them, and are aware of mechanisms in place to raise their concerns and receive appropriate support in doing so.

2 Purpose

- 1.1 The purpose of this guidance is to provide a framework for the initial response and full consideration of a situation where concerns are made about a staff member.
- 1.2 Where concerns are raised by a service user, the immediate safety or well-being of the service user, and staff member involved in the alleged incident is paramount.
- 1.3 Where concerns are raised by a service user, the response to managing the alleged incident must be proportionate to the severity of allegations raised; ensuring that the service user and staff member involved are made safe and appropriate action is taken.

3 Related documents

- 3.1 This guidance must be read in conjunction with the Trust's Managing concerns of potential conduct Procedure.

4 Guidance on Managing Concerns of Potential Conduct



The Trust expects all of its employee to conduct themselves in a way that is in line with its values, policies and procedures and whilst the Trust promotes the fair treatment of staff and supports a culture of fairness, openness and learning, attempts will be made to understand how failings have occurred. However individuals will be held to account where there is substantiated evidence of behaviours that would warrant formal disciplinary action and in the cases that amount to gross misconduct, these may lead to dismissal.

Where minor lapses of conduct/inappropriate behavior is either observed by a manger or reported to a manager, these should be dealt with in a timely manner and can usually be dealt with either by conversation or in supervision or by counselling. **A manager has the discretion to address these concerns without the need for the information to go to a Preliminary Assessment Group (PAG)**

All conversations should be documented and signed by both parties. Advice can be sought from the People and Culture, Operational Team.

Where concerns of potential conduct are as a result of or outcome of another Trust process, i.e. Freedom to speak up review, Bullying and Harassment Formal Resolution meeting, Safeguarding investigation, Serious Incident Investigation or Information Governance investigation. All information gathered as part of the process should be made available to the relevant General Manager/Head of service for appropriate action to be taken.

Depending on the findings, this may result in the instigation of the formal process in line with this guidance. Where formal disciplinary action/investigation is a recommendation from another process (as outlined above), a PAG will review the recommendations prior to a final decision on the next course of action is taken.

When identified contributing factors may be as a result of a long or short term health condition, stress related reaction, previous trauma, personal experience/circumstances, cultural implications or as a result of any other protected characteristic, the impact of these on the potential conduct must be considered prior to a decision being made about the appropriate course of action.

4.1 Stabilise/Calm the Situation

4.1.1 The manager whom the concerns have been raised (normally the line manager), must consider the following in order to stabilise/calm the situation.

- Consider the immediate safety/wellbeing of anyone involved (e.g. staff members, service users etc.).
- Consider what support is required, including a clear communication plan that is regular and timely. Consider staff support, interventions, etc.
- Does the safety of patients or staff require any temporary support or adjustments to be made i.e. alternative place of work or restricted duties?

Steps 1 – 3 below should be considered. Advice from the People and Culture Operational Team must be sought when considering removing anyone from work, their role/base or restricting duties. Where required liaison with the relevant professional leads will take place to ensure any adjustments made are appropriate.



In the event that advice is unavailable from the People and Culture Operational Team for example when “out of hours” and where step 3 is necessary the appropriate manager/Nurse in Charge should send the staff member home on a period of paid authorised leave – **this should be for no longer than 72 hours.**

4.2 Temporary Support and Adjustments

4.2.1 Step one Assess whether the staff member could remain within their current role at their normal place of work subject to appropriate levels of supervision being available. (I.e. continue to work within a clinical environment)

4.2.2 Step two If step one is thought not to be appropriate the second step would be temporary transfer to another work place, this may be an alternative clinical area or if it is felt a non-clinical area to be more appropriate then if feasible, this should be facilitated.

4.2.3 Step three If the initial assessment identifies that the most appropriate course of action is for a period away from the workplace, then the staff member will be placed on a period of authorised absence.



The period of authorised absence **would** ideally last for no longer than 72 hours by when a preliminary analysis/assessment will have been completed.

The actions above do not constitute any formal disciplinary action.

5 Support for staff

- 5.1 It is recognised that having any concern raised against you can be a traumatic experience for staff. The Trust has in place a number of support mechanisms including support from Staffside Representatives, management support, Employee Support Services, Occupational Health and Counselling Services. Full details on staff support can be found on the Trust Intranet - Staff Support Wellbeing and Support Section [Staff Wellbeing and support information | TEWV Intranet](#)
- 5.2 When an individual(s) is being advised that concerns have been raised they will be provided with Information on the support available to them.
- 5.3 If the individual raising the concerns is either an employee or a service user then appropriate support will also be provided.
- 5.4 If required an extra nominated (suitably skilled) person will be identified to provide support to the individual throughout the process, the individual themselves may wish to identify who this may be.

6 Preliminary Assessment/Analysis:

- 6.1 Upon the receipt of concerns of potential conduct the manager themselves or a nominated person, must carry out a preliminary assessment/analysis (**this should ideally take no longer than 72 hours**).
- 6.2 **When a preliminary assessment/analysis commences, the manager must immediately inform the People and Culture HR Operational Team of the following:**
- **The name of the staff member**
 - **The date of the incident/concern**
 - **The name of the individual gathering the evidence as part of the preliminary assessment/analysis**
 - **Details of any temporary support or adjustments put in place**
- 6.3 The preliminary assessment/analysis should gather as much information as possible in order for an informed decision to be made in relation to the appropriate way forward to address the concerns. **Examples of key considerations: -**
- Is this a criminal offence, should the Police or the Local Counter Fraud Specialist be contacted? People and Culture Operational Team can advise if this is unclear. If the Police are involved then they may direct the next steps to prevent any impact on their investigation.
 - Are there any safeguarding issues to report or address? The Trust's Safeguarding Team can advise if unclear.
 - CCTV can be very important so ensure any footage of an incident is kept including suitable time either side of the actual incident. It may not be deemed initially important but might be later.
 - Make records of anything of relevance verbally disclosed by those involved.
 - Gather statements from witnesses including the person affected if appropriate, or details of all involved if this is not possible. All statements should be signed and dated and all staff must be advised that the statements will be shared including externally where appropriate e.g. with the NMC, ICO, LADO, DBS and Safeguarding etc.
 - Consider gathering statements from non-trust staff, patients or family if appropriate.

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- Secure/preserve any written records of incident, or provide copies of digital information including Paris notes.
 - Is this a potential Information Governance breach or misuse of computer issue? If so contact the IG team for advice. Computers may need to be examined or even seized in certain circumstances.
 - Are there any relevant policies/protocols of note especially clinical/technical?

6.4 In addition, the Manager themselves will need to: -

- Provide the individual whom the concerns have been raised against, the opportunity to respond to the issues, this will include providing them with a copy of the complaint and/or statements that have been produced.
- Ensure that in all cases involving bank staff, advice must be taken from the Temporary Staffing Team within the People and Culture Department.
- Be aware that the same standards of conduct apply to Accredited Representatives as to all other employees. Where investigation or suspension of an Accredited Representative is being considered, immediate advice should be sought from the People and Culture Operations Department. The case should be discussed with the Full Time Officer of the relevant Trade Union or Professional Organisation with the employee's permission.

7 Safeguarding Referrals:

7.1 Where the nature of the allegations raised (either internally or externally) results in a referral to the Local Authority (LADO), this may result in a serious case review, commissioned by the appropriate local authority. In some cases this will be in addition to the Trust's [Incident reporting and serious incident review policy](#).

- All Trust staff must engage fully in such reviews and seek advice from the Trust safeguarding team if involved in a SAR.
- The Trust will engage in these procedures, and ensure lessons learnt as a result will be disseminated.
- A senior nurse from the safeguarding team will attend the SAR meetings and coordinate the process. The relevant Human Resources Representative may also attend the meetings where appropriate.
- The Trust will present the findings of the preliminary investigation and what action/decisions have been taken to-date to remove any potential risk to either the service user/staff member.
- Where a safeguarding investigation identifies potential conduct concerns, all details should be provided to the relevant General Manager/Head of Service for appropriate action to be taken in line with this procedure and guidance.



Whilst all decisions taken in relation to the staff member are the responsibility of the Trust, it is acknowledged that there may be on some occasions, the requirement to place internal processes on hold, for example in the event of a criminal police investigation. The Trust will however, continue to work closely with the external body to avoid any unnecessary delays.

8 Deciding the appropriate way forward – decision tool

8.1 Upon receipt of all information obtained as part of the preliminary assessment/analysis, the findings will be provided to a Preliminary Assessment Group (PAG) consisting of a Professional Lead (Chair) a People & Culture representative and Staffside representative (excluding RCN Representatives) (acting in an advisory capacity). In the event where staffside's capacity limits their availability for panels, the panel can continue with two members. The PAG will consider the information and using the decision tool as outlined below will determine the appropriate way forward.



Please note upon receipt of all of the information obtained as part of the preliminary assessment/analysis if the manager feels counselling to be the appropriate course of action a PAG will not be required. Advice and guidance can be sought from the HR Operations Team.



A decision on the appropriate way forward will be made within **1 week of receipt** of the preliminary investigation/analysis information.

Questions for Consideration	Yes/No	Mitigation
Is there any guidance, policies or procedures, professional/Trust standards available?		
Is the guidance, policies or procedures, professional/ Trust standards workable?		
Were the guidance, policies or procedures, professional/Trust standards knowingly departed from? - Is there an awareness that people's actions were deviating from what is described?		
Is the behaviour very different to what colleagues/peers with comparable experience and skills would do in similar circumstances?		
Was training available? - Consider the quality and regularity of the training, and whether that was appropriate for our people and the situation.		



Formal investigation is only warranted if all of the above have been answered with yes (excluding N/A).

If this is not the case, TEWV will not formally investigate any individual nor pursue disciplinary action. example cultural implications, long or short term health conditions / disabilities or any other protected characteristics which may not be immediately obvious. When exploring this the manager should ensure they carry out these conversations as sensitively as possible.

When identified contributing factors may be as a result of a long or short term health condition, stress related reaction, previous trauma, personal experience/circumstances, cultural implications or any other protected characteristic, the impact of these on the potential conduct must be considered prior to a decision being made about the appropriate course of action. This may require additional advice being sought (for example Occupational Health) Advice can be sought from the People and Culture, Operational and or EDHR Team on completion of the referral.

There may be cases whereby the nature of the potential conduct is of such concern (for example where patient safety has been placed at significant risk) that the panel may require additional advice and support prior to making their decision. In these circumstances a case management meeting with appropriate individuals will be held. Advice can be sought from the People and Culture Operations Team

Recommended outcomes are outlined in Section 8 below.

9 Outcome of preliminary assessment/analysis

Organisational Learning	Organisational Learning 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
No further action required (with or without learning outcomes identified)	The manager will:- <ul style="list-style-type: none"> Meet with the individual and advise – no further action is required – if learning outcomes are identified these will be addressed via the line manager during supervision
Capability	The manager will:- <ul style="list-style-type: none"> Meet with the individual and advise of the decision that the case will be referred to the Trust's Managing Concerns of Potential Poor Performance (Capability) procedure

<p>Informal (counselling/lessons learnt)</p> <p>A PAG may not always be required to establish if Informal counselling is the appropriate way forward. A Manager may decide this upon receipt of all of the information gathered.</p>	<p>The manager will:</p> <ul style="list-style-type: none"> • Meet with the individual and advise that the case will be dealt with informally via counselling/lessons learnt. • A meeting will be held to address minor lapses of conduct including any reflective practice, lessons learnt • The record of the discussion will be formally recorded as “counselling in line with Trust’s Managing concerns of potential conduct procedure • Manager and individual will both sign the record of discussion • A copy of the Counselling discussion will be retained on the individuals personal file.
<p>Formal Investigation</p>	<p>Where all answers in section 7 are Yes, the case will be referred to formal investigation in line with section 4 of the Trust’s managing concerns of potential conduct procedure.</p> <p>Consideration may be given for any mitigating factors/rationale even when all answers to the questions are yes.</p>



It is the responsibility of the PAG Chair to ensure that the agreed outcome is appropriately addressed, this includes sharing of any Organisational Learning



If the employee resigns or is dismissed because of ill health, and the process has not been completed, then a decision will be taken on the basis of the individual case as to whether this should be concluded.

10 Document control (external)

To be recorded on the policy register by Policy Coordinator

Date of approval:	15 March 2022		
Next review date:	15 March 2025		
This document replaces:	Guidance on Managing Concerns of Potential Conduct (Disciplinary) Procedure Ref HR-0043-001-v1		
This document was approved by:	Name of committee/group	Date	
	PWG	January 2022	
This document was ratified by:	Name of committee/group	Date	
	JCC	15 March 2022	
This document was ratified by:	Name of committee/group	Date	
	n/a		
An equality analysis was completed on this document on:	04 May 2022		
Document type	Public		

Change record

Version	Date	Amendment details	Status
V1	06 July 2021	New Document	Withdrawn
V2	15 March 2022	<p>Change of Panel name to Preliminary Assessment Group (approved by JCC 10.8.2021)*</p> <p>Inclusion of additional information in decision tool (approved by JCC 10.8.2021)*</p> <p>Inclusion of additional information in decision tool bottom pg 7 (approved by JCC 16.11.2021)*</p> <p>Reference to Trauma Section 4 and Section 5 and 8 (approved by JCC Feb 2022)*</p> <p>Bullet point added Section 7 Safeguarding (approved by JCC Feb 2022)*</p> <p>8.1 blue box advising decisions on counselling can be made without the need for a PAG (approved by JCC Feb 2022)*</p>	Published

		<p>Format Amended in line with latest template</p> <p>New Paragraphs added to S4 – Paragraph's 1 and 3 4 and 5</p> <p>S5 hyperlink to all Staff support on Intranet</p> <p>S8.1 added sentence to read where staffside capacity limits their availability the PAG will go ahead with 2, the Chair and HR Rep.</p> <p>*note changes marked by asterisk were approved but not sent for publication at the time of approval.</p>	
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Appendix 1 - Equality Analysis Screening Form

Please note: The Equality Analysis Policy and Equality Analysis Guidance can be found on the policy pages of the intranet

Section 1	Scope
Name of service area/directorate/department	People and Culture
Title	Managing Concerns of Potential Conduct - Procedure and Accompanying Guidance
Type	Procedure and Accompanying Guidance
Geographical area covered	Trust Wide
Aims and objectives	To provide a procedure and guidance which complies with the ACAS Code of Practice for addressing cases of misconduct by staff. To ensure that all staff are aware of what is expected of them. To ensure that when concerns are raised they are addressed appropriately.
Start date of Equality Analysis Screening	January 2022
End date of Equality Analysis Screening	March 2022

Section 2	Impacts
Who does the Policy, Service, Function, Strategy, Code of practice, Guidance, Project or Business plan benefit?	All Trust Staff to comply with the procedure. Those responsible for the implementation of this procedure should ensure it is carried out in a fair and consistent way
Will the Policy, Service, Function, Strategy, Code of practice, Guidance, Project or Business plan impact negatively on any of the protected characteristic groups?	<ul style="list-style-type: none"> • Race (including Gypsy and Traveller) NO • Disability (includes physical, learning, mental health, sensory and medical disabilities) NO • Sex (Men, women and gender neutral etc.) NO • Gender reassignment (Transgender and gender identity) NO

	<ul style="list-style-type: none"> • Sexual Orientation (Lesbian, Gay, Bisexual and Heterosexual etc.) NO • Age (includes, young people, older people – people of all ages) NO • Religion or Belief (includes faith groups, atheism and philosophical beliefs) NO • Pregnancy and Maternity (includes pregnancy, women who are breastfeeding and women on maternity leave) NO • Marriage and Civil Partnership (includes opposite and same sex couples who are married or civil partners) NO • Veterans (includes serving armed forces personnel, reservists, veterans and their families) NO
Describe any negative impacts	
Describe any positive impacts	

Section 3	Research and involvement
What sources of information have you considered? (e.g. legislation, codes of practice, best practice, nice guidelines, CQC reports or feedback etc.)	ACAS Code of Practice, Employment Rights Act 1996 Focus groups The Big Conversation
Have you engaged or consulted with service users, carers, staff and other stakeholders including people from the protected groups?	Yes all staff were invited to attend a number of focus groups focussed on the HR Procedures. All staff were invited to comment on the Big Conversation – in relation to HR procedures.
If you answered Yes above, describe the engagement and involvement that has taken place	As above Policy working group and JCC
If you answered No above, describe future plans that you may have to engage and involve people from different groups	NA

Section 4	Training needs
As part of this equality analysis have any training needs/service needs been identified?	No formal training
Describe any training needs for Trust staff	Awareness information/sessions for existing managers. In-depth session for new managers (on all of the HR procedures) as part of their local induction.
Describe any training needs for patients	Na
Describe any training needs for contractors or other outside agencies	NA

Check the information you have provided and ensure additional evidence can be provided if asked

Appendix 2 – Approval checklist

To be completed by lead and attached to any document which guides practice when submitted to the appropriate committee/group for consideration and approval.

	Title of document being reviewed:	Yes / No / Not applicable	Comments
1.	Title		
	Is the title clear and unambiguous?	Yes	
	Is it clear whether the document is a guideline, policy, protocol or standard?	Yes	
2.	Rationale		
	Are reasons for development of the document stated?	Yes	
3.	Development Process		
	Are people involved in the development identified?	Yes	
	Has relevant expertise has been sought/used?	Yes	
	Is there evidence of consultation with stakeholders and users?	Yes	
	Have any related documents or documents that are impacted by this change been identified and updated?	Yes	
4.	Content		
	Is the objective of the document clear?	Yes	
	Is the target population clear and unambiguous?	Yes	
	Are the intended outcomes described?	Yes	
	Are the statements clear and unambiguous?	Yes	
5.	Evidence Base		
	Is the type of evidence to support the document identified explicitly?	Yes	
	Are key references cited?	Yes	
	Are supporting documents referenced?	Yes	
6.	Training		
	Have training needs been considered?	Yes	
	Are training needs included in the document?	Yes	
7.	Implementation and monitoring		

	Title of document being reviewed:	Yes / No / Not applicable	Comments
	Does the document identify how it will be implemented and monitored?	Yes	
8.	Equality analysis		
	Has an equality analysis been completed for the document?	Yes	
	Have Equality and Diversity reviewed and approved the equality analysis?	Yes	04 May 2022 approved by E&D
9.	Approval		
	Does the document identify which committee/group will approve it?	Yes	
10.	Publication		
	Has the policy been reviewed for harm?	Yes	
	Does the document identify whether it is private or public?	Yes	public
	If private, does the document identify which clause of the Freedom of Information Act 2000 applies?	n/a	