



Disciplinary Policy and Procedure

Version:	V5.0
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Ratified by:	Joint Partnership Forum
Date ratified:	27.04.18

Date issued:	
Date next review due:	26.04.21
Target audience:	All employees
Replaces:	V4.0

Equality Analysis Record

Approved EA submitted	Dated: 14 September 2016
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Equality Analysis Record

1 Objectives

- 1.1. The purpose of the Disciplinary Policy and Procedure is to help employees achieve and maintain acceptable standards of conduct. To achieve this aim it is vital that a culture exists within the South East Coast Ambulance Service NHS Foundation (The Trust) whereby employees know and understand what is expected of them and that concerns about conduct are addressed promptly and effectively.
- 1.2. The Disciplinary Policy and Procedure aims to provide a robust, fair and objective framework for dealing with minor infringements of conduct through to serious instances of potential gross misconduct that arise within the Trust in accordance with the statutory employment legislation.

2 Scope

- 2.1. All employees of the Trust are covered by this policy and procedure
- 2.2. Although not employees of the Trusts, bank staff, agency staff and outside contractors will be required to comply with the policy. Bank staff will be managed in line with Trust's Bank Workers Agreement.
- 2.3. It is advisable to distinguish at an early stage between misconduct, which would be managed through this Disciplinary Policy and unsatisfactory performance, which should be dealt with through the Capability Policy. This is because unsatisfactory performance may be due to many factors outside the employee's control for example lack of training, personal problems and not because of an unwillingness to perform.
- 2.4. This document would not normally apply to issues of ill health capability, clinical competence or where a Serious Incident investigation is required; these are dealt with in separate procedures. However, it is noted that in cases of Clinical Misconduct, an investigation under this Disciplinary Policy may be necessary.
- 2.5. The policy and procedure applies to standards within the workplace. It may apply to conduct outside of the workplace and working time, should

such conduct have a demonstrable bearing on the duties and obligations of the employee, or bring the Trust into disrepute.

3 Principles

- 3.1. The Trust seeks to eliminate unlawful discrimination against colleagues, potential employees, patients or clients on the grounds of sex, marital status, disability, sexual orientation, gender identity, age, race, ethnic or national origin, religion, pregnancy/ maternity, political opinion, or trade union membership and to promote equality of opportunity and good relations between employees and clients.
- 3.2. Employees must at all times indicate an acceptance of these principles and fulfil their responsibilities with regard to equality legislation and the Trust's Equality Diversity and Human Rights Policy and protocols.
- 3.3. Reasonable adjustments or arrangements may be made for example for an employee or companion with a disability or for employees whose first language is not English.
- 3.4. It is expected that the vast majority of minor incidents of misconduct will be dealt with in an informal manner through effective communication and support between managers and employees.
- 3.5. The formal process will be used where informal resolution has failed or where matters are of a more serious nature.
- 3.6. No member of staff has formal disciplinary action against them without:
 - Being advised of the substance and nature of the issue.
 - Full exploration of the issues being undertaken, with the opportunity to put their case forward.
- 3.7. No staff member is dismissed for a first offence except in response to cases of a reasonable belief of gross misconduct.
- 3.8. Where appropriate, the disciplinary issue may be referred to the Disclosure and Barring Service (DBS), Independent Safeguarding Authority (ISA) or relevant professional body.
- 3.9. All managers involved in disciplinary action must be appropriately trained.

4.0 Definitions

Disciplinary action: applies to formal action that may be taken against an employee from formal warnings and dismissal where there is reasonable belief that misconduct has occurred.

Reasonable belief: Any disciplinary action taken will be based on the evidence obtained, on the balance of probabilities that misconduct has occurred. This is significantly different to a criminal investigation whereby the onus is to prove an occurrence 'beyond reasonable doubt.

Misconduct can be defined broadly as inappropriate actions taken by an individual that contradict the rules, principles and policies of the Trust. Examples of what constitutes misconduct are included in Appendix A.

Gross misconduct can be defined as misconduct so serious that it destroys the employment relationship and justifies dismissal. Examples of what constitutes gross misconduct are included in Appendix A.

Summary dismissal – dismissal without pay or pay in lieu of notice.

5.0 Roles and Responsibilities

5.1. The Chief Executive Officer has delegated responsibility for the development and application of this procedure to the HR Director.

5.2. Employees

5.2.1. Acting as role models in terms of their own conduct, and behaving in a way that is not offensive to others and upholds the Trust Values.

5.2.2. Upholding expected standards as set by their own professional bodies.

5.2.3. Challenging and reporting inappropriate behaviour.

5.2.4. Attending meetings and hearings, to ensure that all relevant evidence and facts are presented for consideration.

5.2.5. Informing their manager of any arrest, police cautions, conditional discharges, criminal charges and/or convictions, as they become aware of them and prior to the start of the next work shift.

5.3. Managers

5.3.1. Use their judgement in correcting conduct or behaviour which is not consistent with the Trust's Vision, Values and Behaviours;

- 5.3.2. Addressing any problems at the earliest opportunity and using informal action in the first instance, where appropriate.
- 5.3.3. Treating individuals in a manner that promotes fairness and respect and acting in a way that does not demean, devalue, or intimidate.
- 5.3.4. Communicating and reinforcing to staff the standards of conduct expected by the Trust.
- 5.3.5. Monitoring standards of conduct and to address misconduct as necessary.
- 5.3.6. To ensure accurate documentation is recorded throughout the informal and formal stages of this procedure.
- 5.3.7. Ensuring that in all instances disciplinary issues are dealt with in a fair, consistent and timely manner.

5.4. **Human Resources**

- 5.4.1. To provide support, advice, and guidance to staff and managers on issues of conduct.
- 5.4.2. Help to ensure consistency of sound disciplinary practice across the Trust.
- 5.4.3. To support the setting up of disciplinary and appeal hearings.
- 5.4.4. To maintain a central, confidential record of disciplinary investigations, hearings and appeals.
- 5.4.5. Provide relevant data for internal audits and other analyses, ensuring adherence to the Trust's policies on data protection and information governance.

5.5. **Commissioning Manager**

- 5.5.1. In accordance with the Trust's Investigation Guidelines, the Commissioning Manager will ensure the appointment of an Investigating Manager who has not been involved in the matter previously, either informally or formally.
- 5.5.2. The Commissioning Manager will make the decision, based on the findings of the investigation, whether or not disciplinary action should be taken, advising HR and the employee accordingly.

5.6. Investigating Manager

- 5.6.1. To investigate allegations and concerns with conduct fairly and objectively and in accordance with the Trust's Investigation Guidelines.
- 5.6.2. To advise the Commissioning Manager where they feel they are unable to consider a disciplinary matter on an impartial basis.
- 5.6.3. Produce a balanced report setting out their findings to the Commissioning Manager.
- 5.6.4. It is not the Investigating Manager's role to prove the guilt or innocence of any party but to investigate if there is a case to answer.
- 5.6.5. Keep the Commissioning Manager, HR and the individual under investigation, fully informed of the progress of the investigation including any delays.
- 5.6.6. To discuss any available wellbeing support.
- 5.6.7. Present findings at a hearing.

6.0 Representation

- 6.1. Employees have the right to seek guidance from, and be accompanied by, their recognised trade union, or a workplace colleague/friend (acting in a non-professional capacity) at any/all formal stages.
- 6.2. Although there is no right to be accompanied at informal meetings the Trust may allow this. However, this should not unduly delay the meeting taking place.
- 6.3. Employees are responsible for arranging their representation.
- 6.4. If suspension or alternative to suspension is being considered, the employee has the right to Trade Union representation at all times.
- 6.5. An accredited representative may choose to be represented by a full-time trade union officer, at all formal stages in this procedure.
- 6.6. If the employee agrees, their companion will be able to address a hearing, question witnesses, confer with the employee, put forward the employee's case, sum up the case, respond on the employee's behalf to any view expressed at the hearing, but does not have the right to answer questions on the employee's behalf.

7 Minor Misconduct

- 7.1. Minor breaches of the rules or required standards, but not of a nature serious enough to warrant dismissal or formal action initially.
- 7.2. Cases of minor misconduct are usually best dealt with informally. Examples of minor misconduct can be found in Appendix A.

8 Misconduct (Including Serious Allegations or Serious Concerns with Conduct)

- 8.1. Cases of misconduct, where breaches of the rules or required standards may result in disciplinary action, unless there are mitigating circumstances. Examples of misconduct and serious misconduct can be found in Appendix A.

9 Gross Misconduct

- 9.1. Gross Misconduct is behaviour considered to be very serious because of its nature and consequences and that it fundamentally breaches and destroys the contractual relationship between employer and employee. It makes any further working relationship and mutual trust impossible and justifies the Trust in no longer continuing with the employment of that individual.
- 9.2. Those issues that fall into gross misconduct and may lead to a serious breach of trust and confidence and possible dismissal without notice can be found in Appendix A.

10 Informal Management of Minor Misconduct Procedure

- 10.1. Informal action should be taken in all cases of minor misconduct, usually by the line manager. A one-to-one confidential discussion should aim to make the employee aware that his or her conduct falls short of expected standards with the intention of agreeing a way forward so that acceptable working standards can be achieved and sustained to avoid relatively minor difficulties becoming a major problem.

- 10.2. In cases of serious allegations and/ or serious concerns with conduct or where the informal approach has been tried but is not working, the issue should be dealt with under the formal procedure.
- 10.3. It is important that the following principles are applied when dealing with conduct issues informally:
 - 10.3.1. The use of an informal procedure is consistently and fairly applied, to avoid allegations of discrimination, victimisation or preferential treatment, which could occur if similar misconduct issues are addressed differently from one employee to another.
 - 10.3.2. Both parties to understand that it is not formal disciplinary action.
 - 10.3.3. Bring to the employee's attention the conduct that is falling short of the required standards.
 - 10.3.4. The discussion should enable the manager to provide constructive feedback and the employee to express views on the issue.
 - 10.3.5. To discuss what support can be offered through additional training, advice, wellbeing support or support through other Trust policies.
 - 10.3.6. Where the need for improvement is identified, the manager should explain to the employee what needs to be done and how the conduct will be reviewed in a given period. It is essential that brief confidential notes of the discussion(s) are kept by the manager on any agreed informal action. A template form to record advice and guidance can be found at Appendix B.
 - 10.3.7. The employee should receive a copy to confirm what was agreed during the discussion within 10 working days.
 - 10.3.8. The goal should be to bring about improvements in conduct.
 - 10.3.9. It is important that any informal guidance does not turn into formal disciplinary action, as this may unintentionally deny the employee certain rights, such as the right to be accompanied or to appeal.
 - 10.3.10. The employee will be advised that if the conduct is repeated formal disciplinary action may be taken.
 - 10.3.11. Where there is no evidence that a minor misconduct has been managed informally, this may prevent the manager from proceeding to the formal stage of the process. This does not apply for matters which are considered as serious or gross misconduct.
 - 10.3.12. If, during informal discussions about a disciplinary issue, it becomes apparent that the matter may be more serious than first envisaged, the

employer should terminate the informal proceedings and commence the formal management of misconduct procedure below.

11 Suspension from Duty, Restriction in Practice, Work Pattern and/or Work Location

- 11.1. The Trust recognises there will be occasions where, as a result of a serious allegation made about an employee, it may be necessary to urgently and temporarily consider adjustments to duties, work pattern and/or work location or suspension, pending an investigation of the allegation(s). Please refer to Appendices C and D.

12 Formal Management of Misconduct Procedure

12.1. Investigations

- 12.1.1. Prior to any formal disciplinary action, where it is alleged that accepted standards of conduct or behaviour have been breached, a manager with appropriate authority (the Commissioning Manager), will appoint an Investigating Manager who will undertake to establish, as far as possible, the facts of the situation in line with Trust's Investigation Guidelines.
- 12.1.2. During an investigation, consideration may need to be given to a change in duties, restriction on clinical practice, a change in work location or working pattern or suspension of the employee as detailed in section 11 and Appendices C and D.

12.2. Allegations of Abuse

- 12.2.1. In cases where an allegation of adult or child abuse has been made, you will need to refer the allegation to the Trust's Safeguarding Lead.

12.3. Allegations of Misconduct that Relate to Misuse of Controlled Drugs

- 12.3.1. In the case of allegations of misconduct that relate to misuse of controlled drugs, advice must be sought from the Trust's Controlled Drugs Accountable Officer.
- 12.3.2. Information gathered by the Controlled Drugs Accountable Officer may be used in the investigation and any subsequent disciplinary hearings if appropriate.
- 12.3.3. If the allegations of misconduct regarding the misuse of controlled drugs relates to the Controlled Drugs Accountable Officer, the Chief Executive Officer should be informed who will arrange for an Accountable Officer from another Trust to be involved in the investigation.

12.4. Allegations of Theft or Fraud

- 12.4.1. In the case of potential fraud, theft and matters with financial implications for the Trust, advice should be sought from the Local Counter Fraud Specialist (LCFS) before the employee is contacted or any formal investigation is carried out. If you are unsure as to whether the LCFS needs to be informed, please speak to your HR representative who will be able to advise you.
- 12.4.2. Information gathered by the Counter Fraud Officer will be used in the investigation and any subsequent disciplinary hearings if appropriate.

12.5. Where Criminal Proceedings are Being Pursued

- 12.5.1. In the event of misconduct coming to light, which may also be the subject of criminal proceedings, it is still for the Trust to investigate the employment matter. The courts will consider the criminal matter separately under a different burden of proof. In employment, the burden of proof is "the balance of probability", i.e. based on reasonable belief and a reasonable investigation, not proof beyond reasonable doubt.
- 12.5.2. As far as possible, internal investigation and appropriate decisions should take place internally without reliance on police proceedings. However, before you carry out formal investigations you should always talk to HR first who may need to seek approval from the relevant police officer. There may be situations where the internal disciplinary investigation or aspects of it may need to be postponed.
- 12.5.3. Please bear in mind that Investigation timescales may have to be put on hold to allow the criminal proceedings to be concluded without the Trust's actions influencing or impacting on these.

13 Accelerated Hearing

- 13.1. There may be situations where the facts of the case are very clear and not disputed by any party. In these circumstances the employee may, during the investigation, take the opportunity to accept responsibility for a breach of conduct, and may request an accelerated hearing. This approach could be via the Investigating Manager, but most likely requested by the employee or their representative.
- 13.2. The facts of the situation must still be established, but a full investigation may be forestalled by the individual submitting a full, and detailed, explanation for their conduct, which will form part of the manager's investigation report.

- 13.3. Disciplinary sanctions available under the accelerated hearing are up to and including a final written warning and will not apply to any conduct considered as gross misconduct.
- 13.4. For certain conduct issues this option would not be appropriate This is of particular importance in relation to safeguarding concerns and where the potential for criminal convictions exists.
- 13.5. With the prior agreement of all parties, an accelerated hearing may be conducted by the Commissioning Manager, giving a shorter notice period, (no less than 2 days), than for a full hearing
- 13.6. The employee will be given written information about the facts that have been established and will have the right to be accompanied, a HR Representative will be present.
- 13.7. They will have the opportunity at the meeting to present their case and any mitigating circumstances.
- 13.8. The manager will make a decision on the appropriate action, taking into account the information provided and the guidance from HR.
- 13.9. The employee will be advised of their right to appeal the outcome.

14 Formal Action

14.1. Disciplinary Hearing Arrangements

- 14.1.1. Where there is believed to be a disciplinary case to answer, the Commissioning Manager/ Investigating Manager will provide the investigation pack to the Human Resources Team at hremployeerelations@secamb.nhs.uk, who upon receipt, will arrange a disciplinary pack and disciplinary hearing.
- 14.1.2. The Panel Chair will advise the employee, in writing providing at least 7 days' notice that they are required to attend a disciplinary hearing, detailing the date, time, venue and allegations to be considered, including a copy of the Investigation Report and its possible consequences. The employee will be advised that they have the right to be accompanied at the hearing and will be provided with a copy of this policy and procedure. The employee must be given all relevant documentation gathered in relation to the alleged misconduct and names of any witnesses who will be called at the hearing to enable them to prepare. Disciplinary Hearing Invite Letter Appendix H.
- 14.1.3 The employee should inform HR in writing (an email is acceptable) of the name of their colleague/ representative, where applicable. All accredited

Union Representatives will be sent the Investigation Pack at least 7 days in advance of the hearing.

- 14.1.4. The employee should inform HR in writing (an email is acceptable) of the names of witnesses they wish to call. The employee is responsible for providing written statements by their witnesses in advance of the hearing. If there are difficulties with the release of staff to attend the hearing as witnesses, HR should be informed so they can assist with these arrangements. It is the responsibility of parties to arrange for the attendance of their respective witnesses.
- 14.1.5. In exceptional circumstances where it is not practical for witnesses to attend, the Panel Chair may continue to proceed with the hearing if they are of the view that verbal evidence from the witnesses will not affect the consideration of the complaint.
- 14.1.6. If the employee wishes to present any additional documentation in response to the allegation, it must be presented to the Panel Chair, no later than 2 working days prior to the hearing, in order that it can be distributed to all parties.
- 14.1.7. If the employee's companion is unable to attend the date originally proposed, the employee must contact the relevant HR representative to request an extension to the meeting date and to arrange an alternative date, usually within the next 14 working days. Consideration will be given to all parties' work patterns and the ability to change rotas and shifts.
- 14.1.8. If there is a repeated failure, by the individual, to attend a hearing, without good reason, the Trust has the option, with HR advice, to make a decision in the employee's absence on the evidence available.

14.2. Disciplinary Hearings

- 14.2.1. The procedure for disciplinary hearings is set out in Appendix F.
- 14.2.2. Disciplinary hearings must be conducted with a minimum of two individuals to include where necessary a professional technical expert. One of the panel members will be a HR representative. Where dismissal is considered a possibility a manager with authority to dismiss must conduct the hearing. See Table 1.

Table 1

Disciplinary Sanctions*	Hearing Manager
<p>Misconduct</p> <p>First Written Warning (6-12 months)</p>	<p>Manager Band 6+, as appropriate to case.</p>

<p>Misconduct (including Serious Misconduct)</p> <p>Up to and including Final Written Warning (12-18 months)</p>	<p>Substantive Manager Band 8+, as appropriate to case.</p>
<p>Gross Misconduct</p> <p>Up to and including Dismissal (with or without notice) / final written warning or other agreed alternative action (18 or 24 months)</p>	<p>Substantive Manager Band 8b+ as appropriate to case</p>

14.2.3. The purpose of the hearing is to consider all the facts. A decision will not be made until all parties have had a full opportunity to put forward everything they wish to raise and the hearing has been concluded.

14.2.4. The chair of the hearing panel will ensure professional and respectful behaviour is maintained throughout.

14.2.5 Where the panel find the allegations proven they will turn their attention to an appropriate sanction. This decision will be made by the Chair taking into account advice from the HR representative.

14.3. First Written Warning

14.3.1. Where a previous informal warning does not result in improved behaviour, or where the issue is more serious, a formal written warning may be appropriate.

14.3.2. A copy of the warning will be kept on the individual's personal file but will be marked as spent and disregarded for disciplinary purposes after the specified period.

14.3.3. The warning will give details of:

- The complaint/allegation.
- Why this sanction is appropriate based on the evidence presented.
- The improvement or change in behaviour required
- Any points of mitigation that were taken into consideration
- The individual has the right to appeal, who the appeal should be addressed to, and the timescale for its receipt.
- That the warning will be kept on file for the period specified.

- 14.3.4. The warning will also inform the individual that a final written warning may be considered if there is not a satisfactory improvement or change.
- 14.3.5. The written confirmation of the written warning shall be dispatched to the individual within 7 working days from the conclusion of the hearing.
- 14.3.6. Where appropriate the issue may be referred to the Disclosure and Barring Service (DBS) or relevant professional body. (Appendix E)

14.4. **Final Written Warning**

- 14.4.1. Where there is a failure to improve or change behaviour during the currency of a prior written warning, or where the infringement is sufficiently serious, the individual will normally be given a final written warning.
- 14.4.2. A copy of the final written warning will be kept on the individual's personal file but be marked as spent and disregarded for disciplinary purposes after the specified period.
- 14.4.3. The confirmation of the final written warning should give details of:
- The complaint/allegation.
 - The reasons for the decision.
 - The training or support that may be given (if appropriate) and the timescale allowed for this.
 - The points of mitigation that were taken into consideration; and warn the individual that failure to improve or modify behaviour may lead to dismissal.
 - That the individual has the right to appeal, who the appeal should be addressed to, and the timescale for its receipt.
 - That the warning will be kept on file for the period specified.
- 14.4.4. Confirmation of the final written warning will be sent out within 7 workings days from the conclusion of the hearing.
- 14.4.5. Where appropriate the issue may be referred to the Disclosure and Barring Service (DBS) or relevant professional body. (Appendix E)

14.5. **Alternative Action**

- 14.5.1. If an individual has reached the stage where termination of employment would normally be appropriate, it may be possible to consider alternative action if it is appropriate. As an alternative to dismissal, the following penalties may be agreed:
- Downgrading (without pay protection), with a ban on promotion, temporary promotion or development opportunity for a period of 18 to 24 months, see table 1.
- 14.5.2. In deciding whether the alternative action is appropriate, the severity of the allegation, mitigating circumstances, including length of service and previous employment history, will be taken into account.
- 14.5.3. Action taken will be clearly stated during the hearing, and subsequently in writing, in line with the guidance of a final written warning above.
- 14.5.4. The demotion will be effective from the date of the disciplinary decision and will be confirmed in the outcome letter above.
- 14.5.5. Where appropriate the issue may be referred to the Disclosure and Barring Service (DBS) or relevant professional body. (Appendix E).

14.6. **Dismissal**

- 14.6.1. Dismissal will occur where a lesser sanction is not appropriate. The panel must have, and be able to demonstrate through the evidence presented that:
- They have a reasonable belief that the allegation is true.
 - That a fair and robust investigation was commissioned and carried out.
 - That dismissal is a reasonable response to the allegation in question.
- 14.6.2. Where there is a continuation of a situation, which is already the subject of a final written warning, or where there is gross misconduct, the panel hearing the case may decide that dismissal with/without payment in lieu of notice (as appropriate) is the only appropriate remedy.
- 14.6.3. Dismissal without notice is usually appropriate in cases of gross misconduct.
- 14.6.4. An authorised manager (see table) may only take such action.
- 14.6.5. The period of notice, where applicable, will run from the date of the notification of the disciplinary decision, and will be in line with the individuals' contractual notice period.

14.6.6. The panel will inform the employee verbally of the decision at the close of the hearing, however in some circumstances, the panel may need to take a reasonable time to further deliberate the case and a decision may not be made on the day of the hearing. Confirmation will be sent in writing and will be dispatched to the individual and his/her representative in the form of a registered letter within 7 working days of the decision being taken. The letter will contain:

- The complaint/allegation.
- The evidence that has been heard by the panel.
- Why the panel has a reasonable belief that the allegation is true
- The reasons for the dismissal and the type (With or Without Notice).
- The points of mitigation that were taken into consideration.
- Arrangements for return of uniform / badge and other Trust property.
- That the individual has the right to appeal, who the appeal should be addressed to, and the timescale for its receipt.

14.6.7. Where appropriate the issue may be referred to the Disclosure and Barring Service (DBS) or relevant professional body, Appendix E.

14.6.8. Any outstanding annual leave due up to the date of dismissal will be paid.

15 Grievance During Disciplinary

15.1. Where a grievance is raised in direct response to the disciplinary procedure, the disciplinary procedure should be expanded to include the grievance issue, dealt with during the investigation and/or at the appeal hearing.

15.2. A senior manager may decide to suspend the disciplinary procedure if for example:

- the disciplinary procedure itself is flawed
- there is a conflict of interest for anyone conducting or advising on the process
- there may be bias in the conduct of the disciplinary hearing
- there has been selective evidence supplied by the Investigating Manager

- there is possible discrimination against the employee
- 15.3. If for any of the above reasons, it is found that the grievance should “stand alone” then the grievance procedure will be undertaken first. Otherwise, the disciplinary procedure takes priority.

16 Appeals

- 16.1. Disciplinary action taken under this procedure may be subject to appeal on grounds of:
- a failure in procedure detrimental to the employee’s case
 - conflict of evidence or new evidence
 - the imposition of a penalty disproportionate to the offence
- 16.2. An employee who wishes to appeal against a disciplinary decision must do so in writing, including any supporting material/ evidence within 14 calendar days of receiving the outcome in writing. Appeals should be sent to the Head of HR Business Partnering and Employee Relations. The appeal must state the grounds on which the disciplinary decision should be reviewed.
- 16.3. The appeal hearing will normally be held within 28 calendar days of receipt of the appeal and will be conducted by a manager at a higher level than the manager who took the original disciplinary decision. The hearing manager must not have been previously involved in the case.
- 16.4. An appropriate HR representative may attend as an advisor to the presenting manager. A separate HR representative will attend as a panel member.
- 16.5. At least 7 calendar days’ notice will be given to the employee of the hearing so that a companion can be arranged if required. The hearing will not be unreasonably delayed by the non-availability of the companion.
- 16.6. If without reasonable explanation either party fails to attend within fifteen minutes of the specified start time, the chair of the panel has absolute discretion to adjourn or determine the appeal based on the evidence before them and any further representations from the party in attendance.
- 16.7. The appeal panel, wherever possible will be chaired by someone in a more senior position than the person who took the disciplinary decision and someone who was not involved in the original hearing/decision.
- 16.8. The role of the appeal panel is to consider the appropriateness of the decision made, based upon the information that was available to the original disciplinary panel. In doing so the panel will need to determine whether in the circumstances the disciplinary sanction applied was

appropriate given the evidence presented, organisational precedent and in consideration of any mitigation that was presented.

- 16.9 The panel will need to consider whether it is appropriate to consider any new evidence, as the appeal process is not a re-hearing but a validation process of the original decision. In exceptional circumstances, e.g. where new evidence needs to be considered or there appear to be procedure defects, it may be appropriate for the appeal panel to consider the evidence or to remit it back to the original panel for a re-hearing to take place. This will depend on the reason as to why this new evidence was not made available to the original panel and the appeal panels' ability to appropriately review and consider it.
- 16.10 The original papers together with the individuals appeal, including any supporting material will be circulated to all parties 7 days in advance of the appeal hearing.
- 16.11 The appeal hearing will be conducted in a similar manner to a disciplinary hearing, as detailed in Appendix G.
- 16.12 The Appeal panel will adjourn the meeting to consider the evidence heard. They may decide to make their decision that day or may wish to confirm their decision in writing. The panel should ensure that the individual is informed of the outcome as soon as possible. The panel can:
- confirm the original decision
 - substitute it with a lesser sanction
 - overturn it completely
- 16.13 In all cases, the employee has no further right to appeal the decision.
- 16.14 After the conclusion of the hearing or if this is not possible, within 7 calendar days, the chair of the panel will give all parties a decision which will be followed up in writing.

17 Competence

- 17.1. Advice on the application of this policy to both line managers and staff will be provided by the HR department.

18 Monitoring

- 18.1. The number and period of suspensions will be reported monthly to the Board by the Director of HR.

TIMESCALE	REVIEW BY
Monthly	Relevant Director, manager and representative of HR

At three months	Relevant Director, Director of HR and manager
At three months Meeting with employee*	Manager, representative of HR and Employee to provide an update of progress with the investigation and ensure the employee is receiving adequate support
At six months	Relevant Director, Director of HR and manager
At six months Meeting with employee*	Relevant Director, Manager and representative of HR to provide an update of progress with the investigation and ensure the employee is receiving adequate support
At nine months	Relevant Director, Director of HR and manager
At nine months Meeting with employee*	Relevant Director, Manager and representative of HR to provide an update of progress with the investigation and ensure the employee is receiving adequate support
At twelve months	CEO, relevant Director, Director of HR to discuss next step
At twelve months Meeting with employee*	Relevant Director, director of HR to discuss next step

19 Audit and Review

The policy and procedures contained within these documents will be in place for three years following approval of a review and amendments. An earlier review can take place should exceptional circumstances arise resulting from this policy in whole or in part, being insufficient for the purpose and/or if there are legislative changes.

20 Associated Documentation

- Investigation Guidelines
- Capability Policy and Procedure
- Grievance Policy and Procedure
- Sickness Absence Management Policy and Procedure
- Raising Concerns at Work (Whistleblowing) Policy
- Serious Incident Policy
- Anti-Fraud and Bribery Policy
- Bank Workers Agreement

21 References

- ACAS Code of Practice on Disciplinary and Grievance Procedures (March 2015)
- Discipline and grievance at work: the ACAS guide (March 2015)

Examples of Misconduct

Minor Misconduct

- Poor Timekeeping/lateness
- Failure to comply with Absence Notification and Certification Procedure
- Minor breach of safety/hygiene/security/ IT/ uniform rules
- Misuse of telephone
- Misuse of personal mobile phone
- Failure to wear protective clothing/equipment provided
- Smoking [or use of an e-cigarette] in non-designated areas of the Trust's premises

This list is not exhaustive.

Misconduct (Including Serious Allegations or Serious Concerns with Conduct)

- Repeated incidents of minor misconduct
- Insubordination
- Unwillingness or failure to carry out a reasonable instruction from a manager or supervisor
- Disrespectful behaviour toward a manager or supervisor
- Discourtesy to patients, the public or colleagues
- Bringing the Trust into disrepute
- Misuse of Trust Property
- Misuse of computers of other equipment
- Minor breach of confidentiality
- Failure to report any loss or damage to company property

- Unauthorised absence from duty
- Serious neglect of safety/hygiene/security/ IT/ uniform rules
- Neglect causing damage to or loss of Trust or others property/equipment/tools
- Participation in other employment without Trust permission
- Failure to adhere to policies and procedures

This list is not exhaustive

Gross Misconduct

- Failure to respond to a final written warning.
- Acts of theft, fraud or other dishonesty whether committed in the course of the employee's duties or not.
- Possession of, or being under the influence of, alcohol or drugs on company premises save for any drugs prescribed by a qualified medical practitioner.
- Serious neglect of the employee's duties resulting in actual or likely loss, damage or injury.
- Physical violence and serious verbal abuse including the use or threat of violence towards a patient, member of the public or colleague.
- Bullying and harassment.
- Failure to disclose a criminal conviction.
- Wilful damage to or gross neglect of the Trust's, patients, client's or other employee's property.
- Serious insubordination.
- Serious misuse of the Trust's property or name.
- Serious misuse of Trust email/ internet system.
- The intention of bringing and or bringing the Trust into serious disrepute.
- Serious breach of health and safety rules.
- Serious safeguarding concern.

- Serious breaches in patient confidentiality.
- Undertaking work in competition or where there is a where conflict of interest.
- Breach of contract, including actions leading to statutory bar on continuation of contracted role (e.g. loss of professional registration or loss of driving licence).
- Unauthorised use of Trust vehicle.

This list is not exhaustive

Appendix B

Record of Advice and Guidance			
This does not constitute formal disciplinary action. If you have concerns, however, you are entitled to discuss this with your staff representative This record will be kept at Local level			
Employee's Name		Employees Job Title	
Employees Work Base		Date	
Reason for Meeting			
Improvements Required			
Support Required			
Any follow up action required and timescales			
Signature of Manager		Name & Job Title	
Employee's Comments			
Please sign below to indicate that the above represents an accurate accounts of the discussions at the meeting			
Signature of Employee			

Suspension from Duty, Restriction in Practice, Work Pattern and/or Work Location

1. The Trust recognises there will be occasions where, as a result of a serious allegation made about an employee, it may be necessary to urgently and temporarily consider adjustments to duties, work pattern and/or work location or suspension from duty, pending an investigation of the allegation(s). On the grounds that:

- there is alleged gross misconduct
- serious criminal charges have been brought against the employee, or there are allegations of criminal activity
- there is a risk to an employee's health or safety
- the employee, patients, colleagues, the public or the Trust's interests are at risk
- remaining on duty may inhibit a fair and objective investigation, and no alternative employment is practicable

2. If the suspension/ restriction in practice relates to a registered professional, and where there is a fitness to practice concern, the employee will be required to self-refer to their registering body and the suspending manager will inform the employee to refrain from clinical responsibilities outside the Trust. If any employee fails to self-refer as required, the Trust may make the referral on their behalf.

3. Temporary Adjustments

3.1 Where a serious allegation is made and a manager believes it is appropriate and reasonable to urgently and temporarily remove an employee from their current place(s) of work or adjust their duties, the following options, as alternatives to suspension, should be fully explored. Where temporary adjustments are considered, a Risk Assessment, Appendix D must be completed.

3.2 Consideration should be given to alternatives to suspension, such as:

- Transfer to an alternative location
- Adjustment to duties
- Alternative duties
- Limiting contact with patients, colleagues or others
- Increased supervision
- Proposals put forward by the employee

- Other measures deemed appropriate after discussion with the Director of HR.
- 3.3 As this action is a result of a serious allegation, adjustments should be made immediately but with due regard to the employees personal circumstance e.g. travel, child care etc.
 - 3.4 In all cases these are temporary measures pending the outcome of an investigation and not an assumption of guilt or a disciplinary sanction.
 - 3.5 During the temporary adjustment an employee must not be disadvantaged financially.
 - 3.6 Where an employee is transferred to an alternative location and/or to the supervision of another person any adjustments (but not the reasons for the adjustments) must be made known to the relevant new supervising manager.
 - 3.7 In conjunction with HR the employee's current manager will review the adjustment monthly and remains responsible (other than for day to day performance) for the employee during any temporary adjustment.
 - 3.9 The arrangements can be reviewed at any time e.g. where new evidence emerges or there are difficulties with the adjustments.
 - 3.10 All temporary adjustments must be notified to HR at hremployee.relations@secamb.nhs.uk.

4. Suspension from Duty

- 4.1 Suspension should only be used after careful consideration and as a last resort. Alternatives should firstly be thoroughly contemplated. Where adjustments are not regarded as appropriate or possible then suspension must be considered. Suspension must be as brief as possible.
- 4.1 Where suspension is considered a Risk Assessment, Appendix D must be completed by the suspending manager.
- 4.2 Suspension will be authorised jointly by the Director of Operations and Director of HR. Should the incident occur overnight or at the weekend, the Executive on call will have the delegated authority to suspend, but is required to inform the Director of Operations and Director of HR at the first available opportunity.
- 4.3 If the allegation relates to a clinical incident, then confirmation of suspension will be agreed with the Medical Director and/or the Director of Nursing and Quality.
- 4.4 Where new evidence emerges suggesting, the allegation may not be as serious as originally thought the suspension may be lifted.

- 4.5 During the suspension, an employee must not be disadvantaged financially. The employee may request annual leave, which will not be unreasonably refused.
- 4.7 During the period of suspension, the employee must not visit Trust property or locations unless with the prior agreement of their line manager or to seek medical help e.g. Occupational Health, Wellbeing support or as an emergency.
- 4.8 The Employee should remain available to the Trust over the period of the suspension and should therefore, not undertake any secondary employment during their normal working hours. Where necessary or in order to meet its responsibilities, the Trust will make the secondary employer aware of the suspension/ restriction in practice.
- 4.19 All suspensions must be notified to HR at hremployee.relations@secamb.nhs.uk
- 4.10 The Director of Operations and Director of HR will monitor the suspension at least every 14 calendar days and wherever possible the investigation should be completed within 28 calendar days, please refer to the Trust's Investigation Guidelines.

5. Communications

- 5.1 The decision to adjust duties and/or work location or suspend from duty must be confirmed by letter by the manager within 5 working days. This letter should include a summary of:
- Details of the allegation
 - The reasoning for the adjustment or suspension
 - The right to appeal against the decision
 - The offer of support from Wellbeing Hub, Employee Assistance Programme and Occupational Health
 - Details of any restrictions
 - The next steps
- 5.2 Regular contact must be maintained with the employee by their manager (or other designated manager). The manager is obliged to make contact directly (by telephone, letter, email) every 14 days and if necessary more frequently. Contact must include informing the employee of progress with the investigation and departmental and Trust news.

6. Return to work

- 6.1 Where suspension or adjustments are lifted, the employee's manager must arrange to meet with the employee and put in place an appropriate and agreed programme of re-orientation and support before the employee returns to their duties.

Appendix D

Risk Assessment - Consideration of Restriction of Practice/ Suspension					
To be completed in all instances of consideration of restriction of practice/suspension to record the decision making process. This form should be completed immediately and sent to HRemployee.relations@secamb.nhs.uk					
Employee's name:		Employees Role:			
Form Completed by:		Other staff present:			
Date:		Time:			
Summary of Issue: (allegation)					
Reaction of employee:					
Questions Considered and Summary of Discussion					
Is there a risk to patients and if so what is this risk?		How can this be mitigated?			
Is there a risk to colleagues and if so what is this risk?		How can this be mitigated?			
Is there a risk to the organisation and if so what is this risk?		How can this be mitigated?			
Is there a risk to the individual and if so what is this risk?		How can this be mitigated?			
Decision					
Actions put in place and who	Investigating officer		welfare officer		letter confirming

will be responsible for each				suspension/ restriction	
Any concerns about the wellbeing or mental health of the employee					
Home/Personal support					
Travel home plans					
Recommendation / to obtain/ offer of support e.g. GP, Trade Union, Wellbeing Hub, Counselling Service, Chaplains, Occupational Health					
Relevant line manager informed		Relevant Director Informed			
Suspension Review Date					

Referring to Professional Bodies Including Health and Care Professions Council (HCPC), Nursing and Midwifery Council (NMC), Care Quality Commission (CQC) and Disclosure and Barring Service (DBS)

As a NHS Trust, SECamb has a duty of care, not only to its patients, but also to its employees and members of the general public. Therefore, as a Trust we are obliged to report any relevant disciplinary findings to various registration bodies for registered professionals.

The Trust has a legal duty to make a referral to the Disclosure and Barring Service (DBS), where they have dismissed a member of staff, bank worker or volunteer, (or where they would have been dismissed had they not left of their own accord), from working in regulated activity, or might in future be working in regulated activity, because they have harmed, or posed a risk of harm, to a child or a vulnerable adult. This includes situations when they would have taken the above action, but the person was re-deployed, resigned, retired, or left.

The relevant HR Business Partner for the case will fill in and complete the DBS Employer Referral form and append any relevant attachments from the disciplinary pack and post via recorded delivery to:

Disclosure and Barring Service
PO Box 3963
Royal Wootton Bassett
SN4 4HH

Upon receipt, the DBS will post a letter addressed to the HR Business Partner who sent the referral. This letter will then be scanned into the employee's electronic personnel file. The physical copy of the letter can then be destroyed.

The HR Business Partner for the case will then notify the internal Safeguarding Team that the DBS Referral has been received by the DBS and the internal process for reporting will be complete.

Following the disciplinary hearing, where any action has been taken against a professional within the Trust who is registered with the HCPC, NMC, CQC or any other relevant professional registration body (including positive action, i.e. decisions of 'no case to answer', the following steps for referral will apply.

For all referrals above the HR team member assigned to the case will collate all relevant information about the case and forward it via email and recorded delivery to the respective body (in cases where a self-referral has been made this will be sent to the named contact)

The HR team member for the case will then notify the internal Safeguarding Team that the Referral has been received by the relevant professional body and the internal process for reporting will be complete.

Conducting a Disciplinary Hearing

- A1 The Chair will ensure that the hearing takes place in a fair and orderly way. Whilst by nature many disciplinary matters are contentious, the Chair should ensure that all participants behave in a responsible and non-intimidatory manner.
- A2 The Chair should open the Hearing by:
- Confirming those present and their respective roles;
 - Outlining the process that will be followed ;
 - Ensuring that everyone has the same documentation;
 - Ensuring that everyone is aware of which (if any) witnesses are giving evidence.
- A3 The Chair will then ask the employee whether an allegation is accepted or denied. In circumstances when there is more than one allegation then the Chair should take care to ensure that the employee be asked to provide a response to each allegation.
- A4 The employee may, as an alternative to simply accepting or denying an allegation, respond that they accept an allegation "with mitigation" and then go on to expand upon any mitigation during the course of the disciplinary hearing.
- A5 If dismissal from the Trust is a possible outcome of the hearing then the chair will confirm that the employee is aware of this fact.
- A6 The Chair will invite the Presenting manager to make the management presentation, calling and questioning witnesses as appropriate. The employee and/or representative may also question the witnesses.
- A7 The employee and their representative may ask questions of the Presenting manager.
- A8 The employee, or the representative on behalf of the employee, will then make a presentation calling and questioning witnesses if appropriate. The Investigation manager will have the opportunity to ask questions of the employee and of any witnesses.
- A9 The panel members may question the Presenting manager, witnesses and/or employee at any time.
- A10 Once all the information has been presented each party will be invited to make a final submission, this should summarise the key points. No new matters should be raised. A short adjournment may be made before each party makes their submission.
- A11 The Presenting manager will present their final submission first before the employee and/or their representative present their submission.

- A12 If the representative has presented the summing up on behalf of the employee it is good practice for the chair to check with the employee whether he or she has anything additional that he or she wishes to say.
- A13 The employee, representative and the Presenting manager will be asked to withdraw to allow the Chair time for reflection and proper consideration. Whilst it may be that a decision will be made on the same day as the hearing circumstances may dictate that further time will be required.
- A14 When the Chair is required to make a decision on whether an allegation is proven or not then, this will be done first. The decision on this will be made on the "balance of probabilities" i.e. was it more likely than not that something has happened.
- A15 Depending on whether or not an allegation is proven, the Chair will then go on to consider what, if any, disciplinary sanction is appropriate and will provide supporting rationale for this decision.
- A16 When deciding whether a disciplinary sanction is appropriate and what form it should take, the Chair should bear in mind the need to act reasonably in all the circumstances. Factors which might be relevant include the extent to which standards have been breached, action in similar cases, the employee's general record, position, length of service and special circumstances that might make it appropriate to adjust the severity of the penalty. The HR representative will provide guidance as necessary.
- A17 The employee, representative and the Presenting manager will be recalled and advised of the decision of the Chair, along with the right of appeal if necessary.
- A18 Follow up action to actively manage and support employees during warning periods should be taken.

Conducting an Appeal Hearing

- B1 Appeals follow broadly the same pattern as that laid out in Appendix F regarding conducting a disciplinary hearing.
- B2 Appeals will not normally involve a re-hearing of the case but should focus on the grounds of appeal.
- B2 The appeal will review the process, and considerations which led to the decision taken at the disciplinary hearing and consider whether the decision was within the band of reasonable responses.
- B3 If new evidence is presented then this may be considered within the appeal hearing or the decision may be taken, depending on the circumstances, to refer the matter back to a separate disciplinary hearing.
- B4 In general, the order of an appeal hearing will be the reverse of that of a disciplinary hearing with the employee/former employee setting out the grounds for appeal and the manager then responding to each of these grounds. The manager presenting at the appeal will generally be the person who chaired the disciplinary hearing.
- B5 Each party will be given the opportunity to make a final submission. This should summarise the key facts and not raise any new matters. In making the final submission, the manager will present first and then the employee.
- B6 Particular attention should be given to any new evidence that has been introduced and the employee should be given the opportunity to comment upon it. Witnesses may also be requested to give evidence.



Nexus House
Gatwick Road
Crawley
RH10 9BG
www.secamb.nhs.uk

Date

Private and Confidential

[Recipient's name]
[Recipient's address]
[Recipient's town]
[Recipient's postcode]

Dear []

This letter confirms that we would like you to attend a disciplinary hearing at [time] on [date] at [place]. The hearing will be chaired by [name] [and [names] will also be present].

The purpose of the hearing will be to discuss your alleged misconduct, as set out in the attached document. We also enclose a copy of the Disciplinary Policy and Procedure [include any other relevant documents, including relevant policies].

The presenting manager intends to call the following witnesses to the hearing (give names of witnesses) or (presenting manager does not intend to call any witnesses to the hearing).

If you wish to call any relevant witness or provide any further information please provide these details as soon as possible and no later than..... to hremployee.relations@secamb.nhs.uk

You have the right to be accompanied at the hearing by a colleague, a trade union official or a trade union representative (who has been certified by their union as being competent to accompany a worker) if you so wish. Your companion will, if you wish, be able to put your case; sum up your case; and respond on your behalf to any view expressed at the hearing. They will also be allowed to confer with you during the hearing. However, they will not be able to answer questions on your behalf.

(your suspension/ amended duties on full pay will continue pending the outcome of the disciplinary hearing).

Depending on the facts established at the hearing, the outcome could be [state potential action], but a decision on this will not be made until you have had a full opportunity to put forward everything that you wish to raise and the hearing has been concluded.

Please confirm your attendance, who will be accompanying you (if anyone) and if you require any reasonable adjustments by emailing hremployee.relations@secamb.nhs.uk.

If for any unavoidable reason you or your companion cannot attend at that time please contact me as soon as possible. Please note that under our Disciplinary Policy and Procedure we expect you to make your best efforts to attend this meeting. If you and/ or your companion is not available on the date suggested, we expect you to propose a further date within 14 working days of the date suggested.

I fully appreciate that this may be a stressful period and wanted to remind you of the Trust's wellbeing provisions. The Wellbeing Hub provides quick and easy access to an array of support in just one email or phone call. This support includes mental and emotional wellbeing. The wellbeing team will assess and refer, or signpost you to the most appropriate service for your needs.

Opening hours for the Hub are Monday to Friday 0900 to 1700. An emergency out of hours number is given when you telephone the Hub out of hours. This number is purely for use in a life threatening situation.* You can also call the EAP counselling service on 0800 1116 387 (*Life threatening situations means any staff member that is feeling suicidal or likely to self-harm).

Yours sincerely

Chair

Pp Line Manager
HR Representative

Document Control

Manager Responsible

Name:	Karen Lavender
Job Title:	HR Policy & ER Manager
Directorate:	HR Directorate

Committee/Working Group to ratify	JPF		
Version No. 5.0	Final	Date: 27/04/2018	

Draft/Evaluation/Approval (Insert stage of process)

Person/Committee	Comments	Version	Date
Joint Partnership Forum	For Approval	V5.0	27/04/2018
Joint Partnership Forum	For approval	V4.02	21/11/2017
Joint Partnership Forum	For approval	V4.01	30/10/2017
Joint Partnership Forum	For approval	V3.04	23/09/2016
Senior HR & P Manager	Incorporating changes	V3.04	19/08/2016
Extraordinary JPF	For approval	V3.03	18/08/2016
Snr HR & Policy Manager	Incorporating input and changes	V3.03	12/08/2016
PPS (TU/Ops/HR)	For review	V3.02	25/07/2016
Subject Matter Experts (HR)	For review	V3.01	20/07/2016
JPF	For sign-off	V3.00	02/01/2013

Circulation

Records Management Database	Date:
Internal Stakeholders	
External Stakeholders	N/A
Active from (30 days after above signature):	Date:

Review Due

Manager	HR Business Partner	
Period	Every three years or sooner if new legislation, codes of practice or national standards are introduced	Date: October 2019

Record Information

Security Access/Sensitivity	
Publication Scheme	
Where Held	Records Management database
Disposal Method and date:	

Supports Standard(s)/KLOE

	NHS Litigation Authority (NHSLA)	Care Quality Commission (CQC)	Auditors Local Evaluation (ALE)	IG Toolkit	Other
Criteria/KLOE:					

Equality Analysis Record

<p>1. Trust policies, procedures and guidelines must not be contrary to the requirements of the Equality Duty within the Equality Act:</p> <p><input type="checkbox"/> Eliminate discrimination, harassment and victimisation;</p>	<ul style="list-style-type: none"> • Advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it; • Foster good relations between persons who share a relevant protected characteristic and persons who do not share it. 	<p>When designing the processes in your document, have you taken care not to contravene the Equality Act?</p> <p>Yes. The principles of this policy and procedure include mandatory fair treatment of all employees and responsibilities for this are clearly set out.</p>
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<p>2. When considering whether the processes outlined in your document may adversely impact on anyone, is there any existing research or information that you have taken into account?</p>	<p>For example:</p> <ul style="list-style-type: none"> • Local or national research • National health data • Local demographics • SECamb race equality data • Work undertaken for previous EAs 	<p>Negative: evidence from the Workforce Race Equality Standard demonstrates there is a disproportionate number of BME employees likely to be involved in disciplinary processes in the Trust: non-white .65% compared to white .50%. The Trust will mitigate this through dissemination and training. Guidance was taken from ACAS and CIPD and input considered from consultation and engagement with equality advice, and user groups consisting of Operational Managers and representatives from Trade Unions and HR.</p>
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<p>3. Do the processes described have an impact on anyone's human rights?</p>	<p>If so, please describe how (positive/negative etc): No impact</p>
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<p>4. What are the outcomes of the EA in relation to people with protected characteristics?</p>			
<p>Protected Characteristic</p>	<p>Impact Positive/Neutral/Negative</p>	<p>Protected Characteristic</p>	<p>Impact Positive/Neutral/Negative</p>
Age	Neutral	Race	Neutral
Disability	Neutral. The duty to make reasonable adjustments for employees with disabilities is reflected in this document.	Religion or belief	Neutral. An alternative date for a meeting/hearing may be proposed to allow for religious observance.
Gender reassignment	Neutral.	Sex	Neutral
Marriage and civil partnership	Neutral	Sexual orientation	Neutral
Pregnancy and maternity	Neutral	<p>Date the EA was undertaken: 14 September 2016</p>	

<p>5. Mitigating negative impacts:</p> <p>If any negative impacts have been identified, an Equality Analysis Action Plan must be completed and attached to the EA Record. A template for the action plan is available in the Equality Analysis Guidance on the Trust's website. Please contact inclusion@secamb.nhs.uk for support and guidance.</p>
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