



**Central London  
Community Healthcare  
Trust  
Policies A-G**

## **Trade Union Recognition & Joint Partnership Agreement**

This Agreement commences on 2 December 2021

### **BETWEEN**

Central London Community Healthcare NHS Trust (“CLCH”)

### **AND**

the following organisations (“the Trade Unions”):

- British Dental Association (BDA – Dentists)
- British Dietetics Association (BDA – Dieticians)
- British Medical Association (BMA)
- Chartered Society of Physiotherapy (CSP)
- General Municipal Boilermakers Union (GMB)
- Managers in Partnership (MiP)
- Royal College of Nursing (RCN)
- Society of Chiropractors and Podiatrists (SCP)
- Unison (includes Royal College of Occupational Therapists - RCOT)
- Unite the Union (includes Community Practitioners’ and Health Visitors’ Association - CPHVA)

as independent Trade Unions or professional organisations recognised by CLCH to the extent and for the purposes set out in this Agreement.

This Agreement supersedes previous agreements and comprises:

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## **1. Purpose and Scope**

1.1 The purpose of this Agreement is to:

- create a framework for effective joint partnership working
- determine Trade Union recognition and the framework for consultation and negotiation within CLCH in respect of matters specified in the Trade Union and Labour Relations (Consolidation) Act 1992 (TULRCA)
- identify how management and the Trade Unions work together in partnership, maintaining harmonious, constructive and effective employee relations, in respect of partnership working

1.2 Excluded from collective bargaining within this Agreement are executive directors and very senior managers (VSMs). Medical and dental staff are included in the collective bargaining within this Agreement in respect of pay, and terms and conditions of service, as long as it enhances and does not contradict or undermine the nationally agreed terms and conditions of doctors and dentists.

## **2. Principles**

2.1 CLCH and the Trade Unions recognise that good partnership working and employee relations are essential to the smooth running of the Trust.

2.2 This Agreement recognises that it is to the mutual benefit of CLCH and its people, for staff to be fully consulted and to have the opportunity to be represented in discussions relating to pay and other terms and conditions of employment.

2.3 The general principles of this Agreement are to:

- commit to a partnership engagement, and a culture of openness and transparency - both CLCH and the Trade Unions will continue to work collaboratively and in partnership, as a central mechanism for a strong employee voice in policy and strategy development
- add value through a shared understanding that the partnership is delivering measurable improvements for the CLCH, the Trade Unions and staff, in line with our values and behaviours
- have a common objective in ensuring the effective delivery of health services and to work together for the benefit of patients, service users and staff

- recognise the importance of good industrial relations. It is management's responsibility to plan, organise and manage the activities of the Trust according to the objectives set by CLCH. Both CLCH and the Trade Unions accept the need for, and benefits of, partnership working in achieving these objectives and recognise the important role of both parties
- ensure that communication between CLCH and the Trade Unions is open, transparent and effective, and to treat all parties with trust and mutual respect
- recognise the other party's independence, the legitimacy of their interests, and agree that matters affecting their interests will be considered jointly through consultation and negotiation through the JSCC
- agree that every attempt will be made to resolve issues raised at each stage of the appropriate procedure and that until such procedures have been exhausted, there will be no stoppage of work or other unconstitutional action (see Schedule 1, section 8)
- recognise the benefit of belonging to a recognised Trade Union and to provide the opportunity for Staff Side to encourage colleagues to become members
- agree that CLCH's values and behaviours will underpin the partnership working relationship between CLCH and the Trade Unions

### 3. Definitions

For the purposes of this Agreement, the following definitions will apply:

- 3.1 **ACAS:** the Advisory, Conciliation and Arbitration Service.
- 3.2 **Collective agreement and collective bargaining:** has the same definition provided under section 178 of TULRCA, as set out at Schedule 6.
- 3.3 **Consultation:** unless otherwise stated, has the meaning as defined by ACAS: "The process by which management and employees or their representatives jointly examine and discuss issues of mutual concern. It involves seeking acceptable solutions to problems through a genuine exchange of views and information. Consultation does not remove the right of managers to manage – they must still make the final decision – but it does impose an obligation that the views of employees will be sought and considered before decisions are taken. Indeed, in certain circumstances consultation with independent recognised trade unions is a legal requirement."
- 3.4 **Dispute:** a specific complaint in writing covering a matter related to the employment of staff by CLCH, raised not by an individual or a group of individuals, but by Trade Unions and professional organisations collectively on behalf of their members.

- 3.5 **Full Time Officer:** a paid official of a recognised Trade Union.
- 3.6 **JSCC: Joint Staff Consultative Committee:** the forum for formal consultation and, where allowed by the NHS Staff Council, negotiation between management and staff within CLCH on strategic issues of concern and interest to either party, as set out in Schedule 1 of this Agreement.
- 3.7 **Management:** the management side of JSCC.
- 3.8 **Managers:** staff with line management responsibility of one or more staff.
- 3.9 **Negotiation:** the process of joint discussion between the parties with a view to reaching agreement or resolving a dispute on an issue that is subject to collective bargaining.
- 3.10 **NHS Staff Council:** one of the key forums where engagement and negotiations take place between NHS employers and the Trade Unions.
- 3.11 **Recognition:** the recognition by CLCH of Trade Unions for the purposes of collective bargaining to the extent set out in this Agreement (refer to Schedule 6 for TULCRA definition).
- 3.12 **Single table bargaining unit:** a form of collective bargaining where all the recognised Trade Unions sit together in negotiation with CLCH over pay and conditions of employment.
- 3.13 **Staff:** all staff with a contract of employment with CLCH.
- 3.14 **Staff Side:** the Trade Union side of JSCC.
- 3.15 **Trade Union representative:** CLCH employees and any strategic partners' employees (e.g. Capita) who deliver core support services to CLCH and who are elected or appointed (accredited) in accordance with their Trade Union rules to represent Trade Union members and CLCH staff, and where the Trade Union is recognised by CLCH.

#### 4. **Partnership Working**

- 4.1 To deliver partnership working successfully it is important to develop good formal and informal working relations that build trust and share responsibility, whilst respecting differences. To facilitate this, all parties commit to adopt the following principles in their dealings with each other as currently set out in Annex 27, NHS Terms and Conditions of Service Handbook:

- building trust and a mutual respect for each other's roles and responsibilities
- openness, honesty and transparency in communications
- top level commitment
- a positive and constructive approach

- commitment to work with and learn from each other
- early discussion of emerging issues and maintaining dialogue on policy and priorities
- commitment to ensuring high quality outcomes
- where appropriate, confidentiality and agreed external positions
- making the best use of resources
- ensuring a “no surprise” culture

## **5. Joint Staff Consultative Committee**

- 5.1 This section should be read in conjunction with the JSCC Terms of Reference at Schedule 1.
- 5.2 The JSCC will be the forum for formal consultation and, where allowed by the NHS Staff Council, negotiation between management and staff within CLCH on strategic issues of concern and interest to either party. This does not replace the need for regular engagement between managers, staff, and their representatives on local workplace issues as these arise.
- 5.3 The JSCC will provide a “single table bargaining unit” between CLCH and the Trade Unions, except for those matters decided legitimately at national level. This includes information sharing, negotiation and consultation.
- 5.4 Regional or National Full Time Officers may attend JSCC meetings in an advisory capacity.

## **6. HR Policy Group**

The HR Policy Group is a sub-group of the JSCC and is responsible for ensuring CLCH’s Human Resources policies and procedures are up to date, in line with employment legislation, reflect good practice and are fit for purpose. Policies reviewed and agreed by the HR Policy Group will be sent to the CLCH Policy Ratification Group (PRG) for ratification (see Schedule 2 for HR Policy Group terms of reference).

## **7. Change Management**

- 7.1 CLCH recognises the need to engage Trade Union representatives in any change management procedure. Both parties acknowledge the importance of early informal discussions with Trade Union representatives and staff to ensure that views and suggestions are taken into account at the pre-consultation stage.
- 7.2 Trade Union representatives will play a vital role in advising and representing staff undergoing organisational change and in working with managers to ensure that organisational change is managed with the least disruption to services to patients, and in accordance with the principle of identifying suitable alternative employment wherever possible.

- 7.3 CLCH will formally notify the Trade Union and staff representatives of any proposed organisational changes and will undertake consultation with them in line with legal requirements.
- 7.4 CLCH will ensure that all consultation papers on proposed organisational changes are fit for purpose, i.e. that they include the minimum necessary information to facilitate meaningful consultation, before they are issued to the affected staff, in accordance with CLCH's Change Management Policy and use of the Consultation Checklist therein.

## **8. Recognition**

- 8.1 CLCH will only consult and negotiate with the Trade Unions recognised by this Agreement. It is acknowledged that the list of recognised Trade Unions at Page 1 may change with development of the workforce within CLCH.
- 8.2 Staff Side and the recognised Trade Unions will be notified of any Trade Union or organisation that requests recognition in the future. CLCH will not extend recognition to any other Trade Union or organisation for staff employed within CLCH, without prior consultation with the recognised Trade Unions and Staff Side. The final decision rests with CLCH.

## **9. Trade Union Representatives**

- 9.1 CLCH acknowledges the right of the recognised Trade Unions / professional organisations and their members to elect representatives to act on their behalf in line with this Agreement.
- 9.2 Trade Union representatives are defined under Section 3 above, however the following employees are not eligible: members of the Executive and senior managers with decision-making authority over changes in organisation and employment contracts.
- 9.3 Trade Union representatives will be entitled to reasonable:
- paid time off to carry out their duties
  - paid time off for training and conferences
  - provision of facilities to help them perform their duties
- 9.4 Staff Side shall notify the Director of People or their deputy, in writing, when Trade Union representatives are appointed, and when their period of office expires.
- 9.5 The People Directorate team will receive a register of accredited Trade Union representatives from Staff Side and Staff Side will ensure the register is uploaded and maintained on the Trade Union pages on the CLCH intranet hub.
- 9.6 Facilities will be withdrawn from a Trade Union representative if:

- the representative resigns from the Trade Union appointment for which recognition had been granted; or
- the Trade Union notifies CLCH in writing that the person has ceased to be a representative of the Trade Union; or
- the person ceases to be an employee of CLCH

## **10. Time off for Trade Union Representatives**

- 10.1 CLCH recognises that it is in the best interest of staff for Trade Union representatives (including learning, and health and safety representatives) to be trained by their organisations and to have adequate time off work to carry out their duties.
- 10.2 Consideration will be given where possible, to the provision of cover or the reduction of workloads where appropriate and available in line with legislation and the ACAS guidance.
- 10.3 See Schedule 3 for detailed information regarding time off for Trade Union representatives.

## **11. Facilities for Trade Union Representatives**

Facilities will be provided for Trade Union representatives where necessary and reasonable to perform their duties efficiently and to communicate effectively with their members, other representatives and Full Time Officers in line with legislation and ACAS guidance. See Schedule 4 for more information.

## **12. Elections**

CLCH will provide reasonable facilities on site for the election of local and Branch Trade Union Representatives, during working hours, subject to the requirements of the service. Elections will take place at such times which will cause the least disruption to the service.

## **13. Responsibilities**

13.1 CLCH will ensure that:

- managers and staff are committed to an open, transparent, participative and fair working style
- managers are familiar with agreements and arrangements relating to partnership working and staff engagement and will support Trade Union representatives' involvement as far as practically possible
- staff involvement at all levels is encouraged and facilitated
- Trade Union representatives have access to all appropriate information other than confidential or sensitive information about staff and patients



- the JSCC and local change management consultations are used to ensure that meaningful consultation occurs, as set out in CLCH's Change Management Policy and Section 7 above
- action taken by representatives or others in undertaking their duties under this Agreement shall not in any way affect their employment with CLCH

### 13.2 **Trade Union Representatives** will:

- give staff an independent voice and will work with CLCH to identify key issues and work out solutions together
- use the time and resources provided in the context of this Agreement appropriately and cost effectively
- undertake employee relations duties, including consultation and negotiation on behalf of Trade Union members
- communicate with members, CLCH management, the JSCC and relevant Trade Union bodies; meet with other representatives or Full Time Officers regarding matters covered by this Agreement; organise meetings of members
- attend meetings of the Trade Union of which the person is a representative or official (e.g. Branch meeting) in accordance with Schedule 3 of this Agreement
- seek to ensure that local and relevant regional or national agreements are adhered to at member, departmental and Trust level
- provide information to staff regarding the role of the Trade Union and benefits of membership
- represent the interests of their Trade Union
- represent individual members in accordance with the relevant CLCH policies

## 14. **Joint Negotiation and Consultation**

### 14.1 CLCH will consult the Trade Unions on:

- the strategic direction of CLCH including the allocation of resources which have staffing implications
- operational decisions, especially those likely to affect the job prospects or job security of particular groups or occupations

- measures affecting the health, safety and welfare of the CLCH staff
- measures which may have financial implications for CLCH and staff

14.2 Consultations and negotiations between CLCH and the Trade Unions will be limited to those matters that are allowed by the National Staff Council to be consulted or negotiated at local (Trust or system) level, as referenced in clauses 3.6 and 5.2 and Schedule 1 of this Agreement.

14.3 Subject to that limitation, the parties recognise the importance of local consultations and, where allowed, local negotiations in making CLCH a great place to work for everyone. In that context consultations and negotiations may include the following matters in so far as they relate to staff and staff groups covered by this Agreement, subject to the provisions of both Agenda for Change and locally negotiated agreements permitted by the National Staff Council:

- terms and conditions of employment
- pay awards
- job descriptions
- job grading and job evaluation
- hours of work
- holiday and sickness arrangements
- pensions
- overall salary structure
- health and safety in the workplace
- equal opportunities policies
- new technology which will impact on working hours and/or conditions
- working practices, new equipment and techniques
- training
- recruitment
- staff amenities
- redundancy and redeployment
- disciplinary and grievance policies
- contracting out arrangements
- reorganisation of staff and relocation of offices
- any other item which both sides agree to refer

## **15. Disclosure of Information**

15.1 CLCH accepts the general duty placed on employers by TULRCA to disclose to recognised Trade Unions all information:

- without which the trade union would be to a material extent impeded in bargaining, and
- which it would be in accordance with good industrial relations practice to disclose.

15.2 CLCH will aim to be as open and helpful as possible in meeting requests for information. Where a request is refused the reasons for the refusal will be explained to the relevant representatives.

15.3 Any information requested must be in CLCH's possession and relate to the services provided by the CLCH. CLCH may not disclose any information which:

- contravenes any prohibition imposed by or under enactment
- is given to CLCH in confidence
- is obtained by CLCH in consequence of the confidence given by another person
- relates specifically to an individual unless that individual has consented to that disclosure
- may cause substantial injury to CLCH for reasons other than its effect on collective bargaining
- is obtained for the purpose of any legal proceeding

## 16. Termination

This Agreement may be terminated by either side giving three months' notice of termination in writing to the Director of People or Chair of Staff Side.

### Signed on behalf of CLCH:



Andrew Ridley  
Chief Executive, CLCH

Date: 2/12/2021

### Signed on behalf of the Trade Unions:



Sujata Mahendran  
Chair, Staff Side

Date: 2/12/2021

## **Schedule 1: Joint Staff Consultative Committee – Terms of Reference**

### **Role**

The Joint Staff Consultative Committee (JSCC) will be the forum for formal consultation and, where allowed by the NHS Staff Council, negotiation between management and staff within CLCH on strategic issues of concern and interest to either party. This does not replace the need for regular engagement between managers, staff and their representatives on local workplace issues as these arise.

### **1. Membership**

1.1 Membership of the JSCC may change over time to reflect emerging organisational arrangements, but will include:

#### **Management:**

- Chief Executive
- Executive Directors
- Operational Directors
- Director of People
- Deputy Director of Workforce
- Head of Employee Relations and Policy
- Senior HR Business Partners
- Employee Relations Advisor (JSCC Coordinator)

#### **Trade Union Representatives:**

- Staff Side will comprise of accredited representatives of recognised Trade Unions who are nominated by the Trade Union concerned. All members will be current employees of CLCH.
- Staff Side shall elect a Chair from amongst the Staff Side of JSCC.
- Trade Union representatives should be representative of the geography of CLCH, its services and Trade Unions.

1.2 Full Time Officers of recognised Trade Unions/professional organisations may attend meetings in an advisory capacity but are not core members of the JSCC.

### **2. Group Administration**

The Employee Relations Advisor shall act as the coordinator to the group and as a member of JSCC.

### **3. Quorum**

3.1 The quorum necessary for the transaction of business will be a minimum of:

From the Management side, 5 representatives including:

- Chief Executive or Executive Director
- Director of Operations
- Director of People or nominated deputy

From Staff Side, 5 representatives including:

- The Staff Side Chair, Vice Chair and Secretary, and
- Representatives from at least 3 Trade Unions / professional organisations.

3.2 Nominated deputies may attend in the absence of the above members.

3.3 The Chief Nurse and other senior managers will attend by invitation.

3.4 Chairing of the JSCC will rotate each meeting between the Director of People and the Chair of Staff Side.

#### **4. Frequency of meetings**

The group will normally meet bi-monthly and otherwise as required.

#### **5. Notice of meetings**

5.1 Meetings of the JSCC may be called by the Director of People or nominated deputy at the request of any of its members.

5.2 Unless otherwise agreed, notice of each meeting confirming the venue, time and date, together with an agenda of items to be discussed, will be forwarded to each member of the JSCC and any other person required to attend, at least 5 working days before the date of the meeting. Supporting papers shall be sent to JSCC members and to other attendees at the same time.

5.3 Trade Union representatives will be released from their normal work, with pay, to attend JSCC and monthly Staff Side meetings in accordance with the facilities arrangements detailed in this Agreement.

#### **6. Minutes of meetings and reporting responsibilities**

6.1 The Employee Relations Advisor, or a nominee of the Director of People, will minute the proceedings of all meetings of the group, including recording the names of those in attendance.

6.2 Minutes of JSCC meetings will be shared with the People Committee as required.

6.3 Briefing papers will be provided on request to the People Committee and the Executive Leadership Team.

#### **7. Duties**

7.1 The JSCC will provide a forum for:

- meaningful consultation of any issues of interest to the workforce in CLCH
- acting as a reference group for the development of good practice

- dealing with the full range of strategic human resources issues, including consultation and negotiation on the matters set out at section 14.3 above, subject to the provisions of both Agenda for Change and locally negotiated agreements permitted by the National Staff Council
  - exchanging views and ideas that promote good employee relations
  - partnership working with regard to strategic developments, workforce planning and organisational development
- 7.2 Staff Side will bring to the attention of managers any issues which cannot be resolved at a lower managerial level, unless these are being dealt with through other CLCH procedures
- 7.3 Working parties and sub-groups will be established as necessary to deal effectively with matters.

## **8. Failure to agree / dispute**

- 8.1. Every effort will be made to reach agreement through the JSCC. If a satisfactory conclusion is not reached, a special meeting of the JSCC will be convened within 14 calendar days. Full Time Officers of the relevant recognised Trade Union(s) will automatically be invited to attend the meeting in order to provide specialist advice.
- 8.2. If the special meeting of the JSCC fails to secure an agreement, with the agreement of both sides, the issue may be referred to ACAS for mediation, conciliation or arbitration.
- 8.3. Neither party shall take pre-emptive action and the status quo shall remain until the special meeting of the JSCC has taken place. If both parties have agreed to refer the matter to ACAS for mediation, conciliation or arbitration, neither party shall take any pre-emptive action until these steps have been carried out.

## **9. Monitoring and Review**

- 9.1 The People Committee will monitor the effectiveness of the JSCC through receipt of the JSCC minutes and such written or verbal reports that the Director of People might provide.
- 9.2 The agenda items will be determined by the Director of People and the Chair of Staff Side, or nominated deputies in their absence.
- 9.3 The Deputy Director of Workforce or their nominated deputy will monitor the frequency of the JSCC meetings and the attendance records to ensure attendance figures are complied with.
- 9.4 These terms of reference will be reviewed at least annually by the Director of People and the Chair of Staff Side.

## **Schedule 2: Human Resources Policy Group - Terms of Reference**

### **Role**

The Human Resources (HR) Policy Group is a sub-group of the JSCC and is responsible for ensuring CLCH's Human Resources policies and procedures are up to date, in line with employment legislation, reflect good practice and are fit for purpose.

#### **1. Membership**

Members of the HR Policy Group are as follows:

- Deputy Director of Workforce (Chair)
- Head of Employee Relations and Policy
- Senior HR Business Partner
- Accredited Trade Union representatives mandated by Staff Side

#### **2. Group administration**

The Employee Relations Advisor will act as the coordinator to the group.

#### **3. Quorum**

3.1 The quorum necessary for the transaction of business will be a minimum of:

- 2 management side representatives and
- 2 Staff Side representatives from different Trade Unions

3.2 Nominated deputies will be acceptable.

3.3 The Chair of the meeting will be the Deputy Director of Workforce or their nominated deputy.

#### **4. Frequency of Meetings**

4.1 The HR Policy Group will usually meet monthly. The Group may meet on additional occasions in exceptional circumstances.

4.2 The Deputy Director of Workforce or their nominated deputy will schedule the work of the group so that policies and procedures are reviewed and updated to ensure that they remain in date and relevant.

#### **5. Notice of Meetings**

5.1 Meetings of the Group may be called by the Deputy Director of Workforce or their nominated deputy at the request of any of its members.

- 5.2 Unless otherwise agreed, notice of each meeting confirming the venue, time and date, together with an agenda of items to be discussed, will be forwarded to each member of the Group and any other person required to attend, at least 5 working days before the date of the meeting wherever possible.

## **6. Scheduling**

- 6.1 The Employee Relations Advisor, or a nominee of the Director of People, will take minutes of the proceedings of all meetings of the group, including recording the names of those in attendance.
- 6.2 The minutes will be shared with the Policy Ratification Group on request.
- 6.3 An update on development of policies through the HR Policy Group will be provided at JSCC meetings.

## **7. Duties**

- 7.1. Develop and agree new, or review existing HR policies, procedures and guidance in partnership.
- 7.2. Liaise and/or consult with stakeholders as necessary during the process, e.g. staff, managers, Counter Fraud, Health and Safety Committee, Policy Ratification Group.
- 7.3. Ensure governance is maintained by progressing documents through the appropriate channels.
- 7.4. Send policies reviewed and agreed by the HR Policy Group to the CLCH Policy Ratification Group for ratification.

## **8. Responsibilities**

To ensure that documents:

- are in line with and support CLCH's strategic goals, priorities, values and behaviours
- reflect and comply with existing or new legislation and relevant codes of practice
- provide managers and staff with support and guidance that reflects the legal framework for handling issues that arise
- reflect good practice, are consistent with other policies, and practical to implement and apply
- promote fair and consistent approaches to people management and CLCH's Equality and Diversity – Staff Policy, practices and principles



## **9. Monitoring and Review**

- 9.1 The JSCC will monitor the effectiveness of the HR Policy Group through receipt of regular updates that the Deputy Director of Workforce or their nominated deputy will provide.
- 9.2 The Deputy Director of Workforce, along with the Staff Side Chair as necessary, or their nominated deputies, will assess agenda items to ensure that they comply with the HR Policy Group's responsibilities.
- 9.3 The Deputy Director of Workforce or their nominated deputy will monitor the frequency of the HR Policy Group meetings and the attendance records to ensure minimum attendance figures are complied with.

## **Schedule 3: Time off for Accredited Trade Union Representatives**

### **1. Benefits of Trade Union Representation**

Trade Union representatives undertake a variety of roles in collective bargaining and in working with management, communicating with union members, liaising with their Trade Union and in handling individual disciplinary and grievance matters on behalf of staff. There are positive benefits for the CLCH, its staff and for union members in encouraging the efficient performance of Trade Union representatives' work, for example in aiding the resolution of problems and conflicts at work. The role can be both demanding and complex. In order to perform effectively, Trade Union representatives need to have reasonable paid time off from their normal job in appropriate circumstances.

### **2. Trade Union Recognition**

A Trade Union is recognised by CLCH when it is recognised to any extent for the purposes of collective bargaining. Where a Trade Union is not so recognised by CLCH, employees have no statutory right to time off to undertake any duties except that of accompanying a member of staff at a disciplinary or grievance hearing.

### **3. Time Off: Staff Side Officers**

3.1 The three Staff Side officer roles (Staff Side Chair, Secretary, and Vice Chair) will receive in total, backfilled paid time off for Staff Side duties (in addition to employee relations duties) of up to the equivalent of 2 full-time posts.

- The Staff Side Chair role is entitled to 2 days per week paid time-off.
- The Staff Side Secretary and the Staff Side Vice Chair roles are each entitled to 1 day per week paid time-off.

3.2 The remainder of the 2 whole time equivalent (WTE) time will be allocated by Staff Side and agreed with the Director of People. This will be reviewed on an annual basis.

### **4. Time Off: Accredited Trade Union representatives for employee relations duties**

4.1 Accredited Trade Union representatives will be permitted to take reasonable time off with pay for employee relations duties. The form set out in Schedule 5 should be used to request time off. A Word format version will be provided on the Staff Side pages of the CLCH intranet hub.

4.2 CLCH and Staff Side agree that some employee relation duties may require 3.5 hours per week as reasonable paid time off (for example, for preparation for and attendance at a disciplinary hearing). This time is not guaranteed time off per week and depends on the circumstances.

- 4.3 Trade Union representatives should always seek permission from their line manager using the form at Schedule 5 to this Agreement, provide as much notice as possible and consider business needs of the department/service. Subject to the needs of the service, permission for such time off should not be unreasonably withheld. See section 5 of this Schedule 3 for further information.
- 4.4 Employee relations duties may cover:
- terms and conditions of employment or physical conditions in which staff are required to work
  - termination or suspension of employment or duties of employment, of one or more employees
  - allocation of work, for example job grading and work practices
  - representing individual members in accordance with the relevant CLCH procedure
  - informal involvement in any complaint or difficulty raised by members arising from employment with the aim of achieving informal resolution and avoiding formal complaints
  - Trade Union membership, for example in the induction of new staff
  - meetings with management for the purposes of negotiation, consultation and other relevant procedures
  - matters relating to Learning Representatives
  - matters relating to Health and Safety Representatives
  - negotiating provision of facilities for Trade Union representatives
- 4.5 Where there is an acknowledged heavy commitment of staff representative time, e.g. for negotiation, additional time off may be allocated at the discretion of the Director of People in consultation with Staff Side and the Full Time Officers of the relevant Trade Unions.
- 4.6 The duties of a Trade Union representative must be connected with or related to negotiations or the performance of functions both in time and subject matter. Reasonable time off may be sought, for example, to:
- inform members of progress and outcomes
  - prepare for negotiations, including attending relevant meetings, and

- prepare for meetings with CLCH about matters for which the Trade Union has only representational rights

## **5. Time Off for Trade Union activities not directly relevant to CLCH**

5.1 Accredited Trade Union representatives will be permitted to take reasonable time off with pay, dependent on the needs of the service, to participate in Trade Union activities not directly relevant to CLCH business, but which may have an effect on CLCH business.

5.2 Such activities include:

- attendance at executive or similar committees of the Trade Union e.g. national service groups, regional council and sub committees, and
- meetings with Full Time Officers.

5.3 If a Trade Union representative attends a meeting on official Trade Union business when they are off duty, the Trade Union representative will not be paid. However, time in lieu may be granted at the discretion of the Director of People in discussion with the relevant manager. The Trade Union representative must provide written details of the time off in lieu being requested (see Schedule 5 to this Agreement) and a written response will be given.

## **5.4 Conferences and training**

5.4.1 CLCH will grant reasonable time off with pay but not expenses, to Trade Union representatives for their:

- attendance at approved/appropriate Trade Union training courses. If requested representatives should provide their manager with the details of the training. The Trade Union involved will be responsible for payment of the course fees and expenses unless otherwise agreed
- attendance at their Trade Union annual conference. CLCH will grant time off with pay but not expenses, for a maximum of two accredited Trade Union representatives of each recognised Trade Union to attend their annual conference. All requests for such time off must be made at least one month before the conference in writing
- representing their Trade Union on appropriate external bodies
- any other Trade Union activities not specified above as agreed in advance by the Staff Side officers and the management leads in JSCC

## **6. Withholding permission to grant time off to Trade Union representatives**

- 6.1 Whilst consideration must be given to the needs of the service, it must be recognised that staff shortages or heavy workloads cannot be unreasonably or routinely used to deny time off.
- 6.2 If a manager is unable to grant time off for a Trade Union representative following a request, the manager must complete the form in Schedule 5 and provide a copy to the Trade Union representative.
- 6.3 Should a Trade Union representative consider that the manager has unreasonably withheld permission for time off, the matter must be referred to the Director of People and Chair of Staff Side through the JSCC.
- 6.4 Managers should record all time off work for Trade Union activities on the positive returns on a monthly basis.
- 6.5 There is no right to time off for trade union activities which themselves consist of industrial action.

#### **Schedule 4: Facilities for Accredited Trade Union representatives**

CLCH agrees to provide facilities to accredited Trade Union representatives to enable them to discharge their duties in relation to their members employed by CLCH including:

- secure office space at the main operational hubs, which provides reasonable accommodation for meetings, trade union education and lockable storage
- access to room booking facility to meet with individual members in privacy
- notice boards at all operational hubs and a Staff Side webpage on the Intranet; CLCH will not remove information published by the Staff Side without notice
- access to confidential telephone, internal mail, email and the internet
- reasonable use of telephones, franking machines, photocopiers and PCs
- reasonable access to administrative support
- the reimbursement of reasonable travel expenses for representatives carrying out their duties, i.e. travel to and from formal and informal meetings as agreed by management
- access to all documents, as appropriate, which are necessary for the effective operation of Staff Side or which are necessary for the conduct of meaningful negotiations, subject to the Data Protection Act 2018 and Section 15 of this Agreement: Disclosure of Information

The JSCC will review facilities for Trade Union representatives on a yearly basis.

### Schedule 5: Request for Facilitated Time

Name	
Union/Organisation	
Date and time	
Duration	
Location	
Purpose – please provide a copy of any training or course details/ syllabus on request	
Dated Requested	
Signed (Representative)	
Date Received by Manager	
Manager's comments - any cost incurred e.g. back fill/overtime, and reasons if refused. If refused, were other options or alternatives explored? (Specify)	
Date Approved/ Not approved	
Signed (Manager)	
Service/Division	

**One copy of this form should be retained by the trade union representative and one by the line manager. Please also send a copy to [clcht.employee.relations@nhs.net](mailto:clcht.employee.relations@nhs.net) for data collection and analysis.**

## **Schedule 6: TULRCA Section 178 (1)-(3)**

### **Section 178 (1) – (3) of the Trade Union and Labour Relations (Consolidation) Act 1992, states:**

- (1) In this Act "collective agreement" means any agreement or arrangement made by or on behalf of one or more trade unions and one or more employers or employers' associations and relating to one or more of the matters specified below; and "collective bargaining" means negotiations relating to or connected with one or more of those matters.
- (2) The matters referred to above are –
  - (a) terms and conditions of employment, or the physical conditions in which any workers are required to work
  - (b) engagement or non engagement, or termination or suspension of employment or the duties of employment, of one or more workers
  - (c) allocation of work or the duties of employment as between workers or groups of workers
  - (d) matters of discipline
  - (e) a worker's membership or non membership of a trade union
  - (f) facilities for officials of trade unions, and
  - (g) machinery for negotiation or consultation, and other procedures, relating to any of the above matters, including the recognition by employers or employers' associations of the right of a trade union to represent workers in such negotiation or consultation or in the carrying out of such procedures.
- (3) In this Act "recognition", in relation to a trade union, means the recognition of the union by an employer, or two or more associated employers, to any extent, for the purpose of collective bargaining; and "recognised" and other related expressions shall be construed accordingly.





**TITLE: ADDRESSING BULLYING AND HARASSMENT -  
A FRAMEWORK FOR MANAGING UNWANTED BEHAVIOUR**

**VALID FROM: SEPTEMBER 2018**

**EXPIRES: AUGUST 2021**

**REFERENCE WFC05**

This procedural document supersedes the previous procedural document, Addressing Bullying and Harassment, version 4.0.

<b>Version:</b>	5.0
<b>Policy reference and description of where held.</b>	<i>WFC05</i> Intranet – Policies
<b>Title, name and contact details for author:</b>	Kate Hollingworth, HR Graduate Management Trainee For advice, contact your Workforce Business Partner or HR Advisor.
<b>Title, name and contact details for responsible director:</b>	Louella Johnson, Director of People and Communications
<b>Approved by originating committee, executive or departmental management group</b>	HR Policy Group on 06/08/18.
<b>Ratified by Policy Ratification Group:</b>	The policy was ratified by the meeting of the PRG held on the 13 <sup>th</sup> August 2018
<b>Review date:</b> 2 years maximum for clinical guidelines 3 years maximum for other documents	February 2021
<b>Target audience</b>	All Staff

### Version Control Sheet

Version	Date	Author	Status	Comments
1.0	Dec 2010	Afusat Abdulkadir-Ayo	Archived	Amalgamated policy from policies of legacy organisations.
2.0	16 Jan 2012	Afusat Abdulkadir-Ayo	Archived	Integration of CLCH and Barnet policies and update to take account of legal and organisation changes.
3.0	April 2015	Liz Lubbock	Final	Only essential changes made plus additional information added to appendix C. Agreed to review the policy again in 12 months' time.
4.0	May 2015	Kate Wilkins	Final	Approved at May 2015 PRG.
5.0	August 2018	Kate Hollingworth	Final	New title to reflect the inclusion of domestic violence, cyber bullying and stalking, reflects the process in the Resolving Differences policy.

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## **1. Introduction**

Central London Community Healthcare Trust (CLCH) is fully committed to promoting a harmonious and supportive working environment where every employee is treated with consideration, respect and dignity. We commit to the protection of employees from unwanted behaviour at work.

This policy covers a variety of unwanted behaviours, including bullying, harassment, sexual harassment, cyber bullying, domestic abuse, stalking and victimisation. It advises around how to manage unwanted behaviour, and then guides you through the process if the behaviour persists. This policy also serves as a guide to think about your own behaviour and the impact you have on others.

CLCH believes that any member of staff who has experienced domestic abuse, sexual violence or stalking should be able to disclose. We are committed to dealing with this disclosure in a supportive manner and aim to maintain your dignity and protect your health and safety at work.

This policy will apply to all employees of CLCH, interim, bank and agency workers. In respect of private contractors and service level agreements with other employers, their employees will be expected to comply with the principles of this policy while working on Trust business or on Trust sites.

## **2. Aims and Objectives**

The purpose of this policy is to highlight the options available to employees if they feel they are subject to unwanted behaviour and points towards areas of support. This policy aims to:

- promote the dignity at work of all our employees and positive relationships;
- support a working environment and culture in which there is a zero tolerance to all kinds of unwanted harassment behaviour;
- give employees and managers tools on how support themselves and their teams to address issues of unwanted conduct and signpost to further support;
- set out a procedure at both informal and formal levels to deal with expressions of concern, complaints and disputes, including an option for mediation and restorative conversations;
- prevent the incidences of unwanted behaviour within the organisation and, where incidences do occur, to ensure that they are promptly and effectively dealt with and recurrence prevented;
- encourage an environment where all staff reflect on their behaviour and the impact it may have on other staff.

This policy aims to ensure that all employees are treated with respect and dignity. Harassment, bullying and all kinds of unwanted behaviours are unacceptable. The Trust values and code of conduct are a set of guiding principles, developed through extensive consultation that help staff to consistently deliver high quality care and they are used alongside Trust policies. The Trust values and code of conduct are:

- We put quality at the heart of everything we do
- We value our relationships with others
- We deliver services we are proud of
- We make a positive difference in our communities.

See appendix C for further details of the key principles of the policy.

This policy considers the behaviour of CLCH staff towards one another; concerns involving the unwanted behaviour of patients/service users, relatives and general public towards CLCH staff will be managed through the provisions of the Zero Tolerance Policy.

### **3. Definitions and explanation of any terms used**

This policy makes reference to a variety of unwanted behaviours. It is important to note these terms relate to the way the behaviour makes the recipient or others feel. Perceptions of behaviour and the impact it has may differ from person to person.

#### **3.1 Bullying**

Bullying is defined as “persistent offensive, abusive, intimidating, malicious, or insulting behaviour which makes the recipient feel upset, threatened, humiliated or vulnerable, undermines their self-confidence and which may cause them to suffer stress.” This may be a one off incident or ongoing behaviour.

Appendix B explains the difference between healthy conflict and firm but fair behaviours as opposed to bullying and harassment (unlawful) behaviours.

#### **3.2 Cyber bullying**

Cyber bullying is any form of unwanted behaviour online that takes place over digital devices like mobile phones, computers, and tablets. Cyber bullying can occur through email, text, and apps, or online in social media, forums, or gaming where people can view, participate in, or share content. Some cyber bullying crosses the line into unlawful or criminal behaviour. This policy also covers employee to employee cyber bullying that takes place outside of the workplace and on personal pages e.g. social media sites, online games.

Appendix C details examples of cyber bullying behaviour.

#### **3.3 Harassment**

Harassment is defined as “unwanted conduct affecting the dignity of people in the workplace. This includes unwelcome physical, verbal or nonverbal conduct which causes the individual to feel threatened, humiliated, patronised, offended, embarrassed, unwelcome or frightened. Harassment may be directed at individuals or particular groups and can refer to an isolated incident or repeated actions.”

The unwanted conduct towards an individual or group is based on ‘grounds’ that distinguish the person(s) e.g age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex or sexual orientation and is unlawful under the

Equality Act 2010. The key is that the actions or comments are viewed as demeaning and impact negatively upon the recipient. Please refer to the Equality and Diversity Policy and Disability Policies for further information.

Appendix F sets out in further detail examples of harassment based upon a person's background.

### **3.4 Sexual harassment**

Sexual harassment is a form of harassment which is designated unlawful under the Equality Act 2010. It is defined as unwanted conduct of a sexual nature that creates an intimidating, hostile or offensive working environment. All workers are protected from sexual harassment in the workplace. This applies to one-off incidents and on-going incidents. This protection comes from both employment law and criminal law in the Protection from Harassment Act 1997.

### **3.5 Stalking**

Stalking is repeated, unwanted contact from one person to another which causes the victim to feel distressed or fearful. It differs from harassment in that a perpetrator of stalking will have an obsession with or fixation on the individual(s) they are targeting. Stalking is a criminal offence under the Protection of Freedoms Act 2012, Harassment Act 1997 and the Criminal Justice and Public Order Act 1994.

### **3.6 Victimisation**

Victimisation is where an employee is treated lesser to others because they have made a complaint about discrimination has helped someone who has been discriminated against or is suspected of doing so. Victimisation is unlawful under the Equality Act 2010.

## **4. Duties**

### **4.1 Board Level and Executive**

- The Board has overall responsibility for ensuring the policy is effectively implemented and that incidences of unwanted behaviour within CLCH are prevented and reduced.
- Board Directors will ensure that they demonstrate leadership in tackling unwanted behaviour at work through their own personal example including reflecting on their behaviour towards others.
- The Board is committed to addressing any organisational factors that have been identified as leading to higher incidents of potential unwanted behaviour e.g. excessive workloads, inappropriate management styles, job insecurity.

### **4.2 Human Resources Department**

Human Resources has a key role in supporting and advising all parties on how to effectively implement the policy and how to address complaints using CLCH's procedures. The Human Resources Department are responsible for:

- Advising line managers on the application of the policy.

- Providing interpretation, advice and guidance of the policy and procedure to staff and their representatives. This includes attending formal and appeal stages of the procedure.
- Ensuring all staff are aware of the Addressing Bullying, Harassment and Unwanted Behaviour policy and the procedure in the induction or otherwise and the support available to them.
- Reporting to the CLCH board on the frequency and nature of formal complaints of unwanted behaviour within CLCH.

### **4.3 Line Managers**

Line Managers have a key role in implementing this policy by:

- Explaining the policy to their staff and ensuring staff are aware of their responsibilities and behaviour in order to establish and maintain a work environment free from unwanted behaviour.
- Promoting a working environment where harassment is unacceptable and having zero tolerance, including setting a positive example by treating others with respect and dignity.
- Treating a concern/complaint seriously and dealing with it promptly and confidentially giving both parties full support during the whole process including appropriate after care measures (e.g. counselling, mediation).
- Working with trade union representatives to allow facilitation of informal resolution, consulting with Human Resources for advice and guidance.
- Ensuring no further harassment or victimisation occurs after a concern/complaint has been raised or resolved.
- Address concerns of strained working relationships early on to minimise harm.
- Continue to support and 'temperature check' with employees who have been through this process, either as the defendant or the claimant. Although a case is closed this does not necessarily mean feelings will have dramatically changed. Staff that have been through this process may need further support.
- Be aware of staff changes in behaviour, such as coming in late, being quiet or poor work performance. They may be experiencing unwanted behaviour at home or at work. Have a conversation with them to see how they can be supported. This should be approached in a supportive, understanding way and do not try to force disclosure.
- The management task of supporting an employee who feels they have experienced unwanted behaviour should be seen as a distinct task, separate from reaching a decision about the validity of his/her complaint of harassment.

### **4.4 Employees**

All employees have a personal responsibility for their own behaviour and for contributing to a working environment in which the dignity of others is respected. In particular it is expected that individuals will:

- Comply with this policy and co-operate with any measures aimed at reducing incidences of unwanted behaviour at work.
- Set a positive example by treating others with respect and refrain from unwanted behaviour.
- Not accept behaviour that may be offensive when directed towards them or colleagues and take proactive steps to ensure that it is challenged and/or reported.
- Be supportive of colleagues who may be subject to unwanted behaviour.



- Reflect other own behaviour towards others.
- Not intentionally raise formal claims of unwanted behaviour where the claim is malicious.

#### **4.5 Freedom to Speak up Guardians**

Freedom to Speak up (FTSU) Guardians:

- are staff members who have been trained through the National Guardian's Office;
- act as an independent source of advice to staff at any stage of raising a concern, including unwanted behaviour, with access to anyone in the Trust, including the Chief Executive or, if necessary, outside the Trust;
- and help to raise the profile of speaking up / raising concerns within the Trust.

The generic Freedom to Speak Up email address is [clcht.ftsus.email@nhs.net](mailto:clcht.ftsus.email@nhs.net) Please see the [Freedom to Speak Up: Raising Concerns Policy](#) for more information or their [Hub page](#).

Appendix G details further sources of support for employees who may be experiencing unwanted behaviour.

#### **4.6 Employee Health**

Any member of staff who experiences or is involved in a claim of unwanted behaviour may find it helpful to talk to the Employee Health Service. Employee Health can:

- Aid staff in the awareness and management of stress.
- Provide domestic violence advice and mediation service.
- Early intervention health services such as psychology and counselling.  
Provide advice on outside support agencies.

All employees can self-refer to Employee Health and/or can access the confidential counselling services. Further details can be found in appendix G.

#### **4.7 Trade Union Representation and Support**

All staff have a right to seek advice and support from their trade union representative, this includes at any stage of the procedure (informal or formal) and anyone who is being interviewed. They also have the right to be accompanied by, or represented by, a trade union representative or work colleague employed by this Trust at hearings.

### **5. Managing Unwanted Behaviour**

Employees are encouraged to discuss any concerns about unwanted behaviour as detailed in the policy with their line manager where possible, Workforce Business Partners, HR Advisors, Freedom to Speak Up Guardians, Employee Health or their trade union representative. This support is also available to staff concerned about unwanted behaviour towards others. Informal action may not be appropriate for incidents involving sexual harassment, domestic abuse or stalking.

Employee should consider keeping a record of incidents, noting the dates and times of the unwanted behaviour, any witnesses and the action you took to resolve the issue informally.

### 5.1 Domestic violence

In addition to supporting staff that experience unwanted workplace behaviour, the Trust is committed to heightening awareness of domestic violence and providing guidance for employees and management to address minimise the effects of domestic violence on the workplace. Please see appendix H for further information.

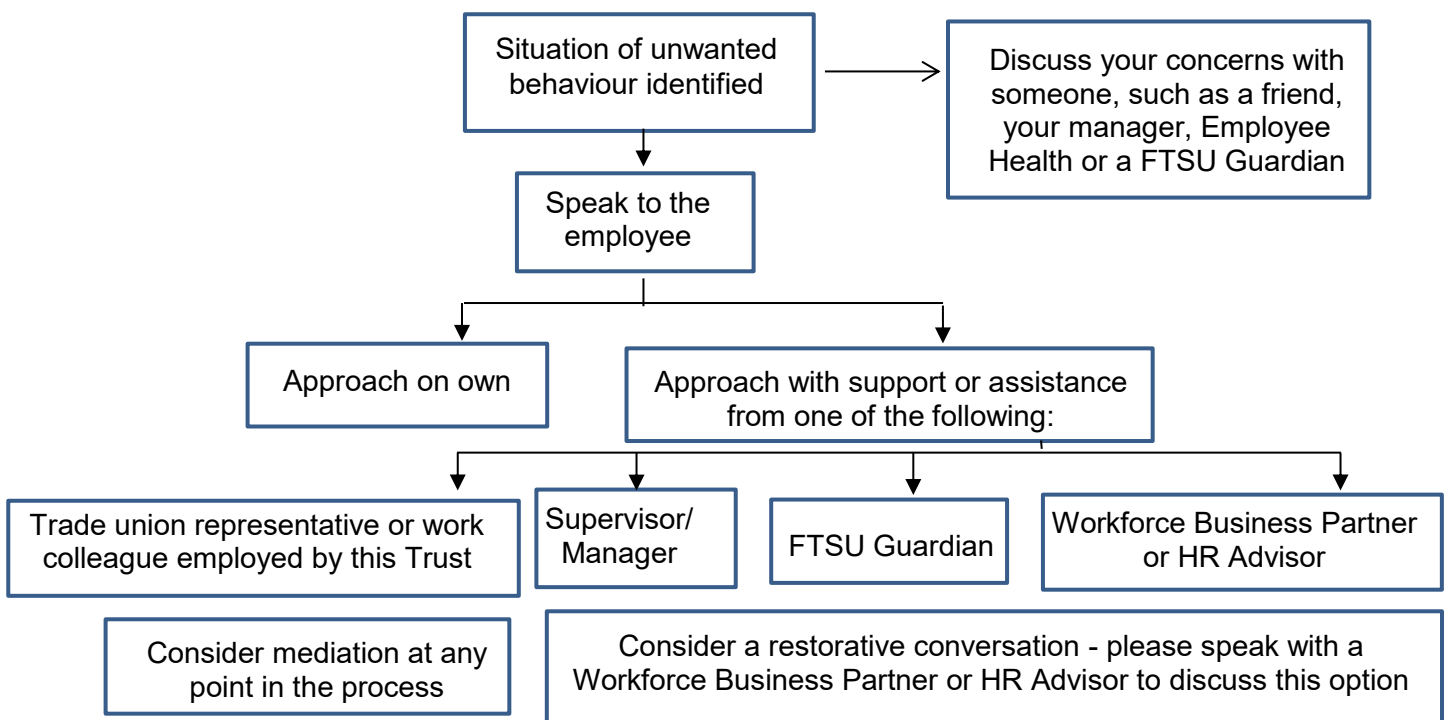
### 5.2 Stalking

CLCH understands that stalking can have a huge impact on the victims and that stalking behaviours can occur in both domestic and workplace situations. CLCH has a duty to protect our employees from harm and we can support individuals in a variety of ways. Further information can be found in appendix I or the domestic violence policies available on the hub.

### 5.3 Informal process for Managing Unwanted Behaviour

CLCH encourages speaking to the person at the earliest opportunity. Sometimes people are not aware of how their behaviour has made another person feel. Speak to the person, explaining what their behaviour was, how it made you feel and that you want it to stop.

Make it clear that if the behaviour continues a formal complaint will be made. If you do not wish to meet them on your own, then support can be arranged. This may be HR, a manager, FTSU guardian, a trade union rep or a colleague. The person supporting you will need to be aware that their input should be one of supporting or assistance only. Although there are no timescales for informal resolution, the earlier it is addressed the easier the behaviour can be managed.



Mediation and restorative conversations can be a useful process to help rebuild relationships and help find solutions that suit both parties in a way that causes the least harm. Please consider mediation at any point during the formal or informal process. Other forms of support such as guidance on emotional regulation, 360 degree feedback, restorative conversations and mentoring can be found in appendix G.

## **5.4 Mediation**

Mediation can be useful for addressing a range of issues including:

- Work relationship problems;
- Personality clashes;
- Communication problems;
- Where there is perceived bullying, discrimination or harassment;
- Following an investigation or other formal procedure;

It is particularly suited to complaints surrounding relationships and behavioural issues in moving forward. The process offers a way for participants to resolve their concerns through collaborative problem solving facilitated by a CLCH trained mediator. Mediation can be used not only as an alternative to pursuing a formal grievance but also as a rapid first intervention to prevent escalation of a dispute or even to repair the working relationship after formal procedures have been concluded. Please see the Trust's ['Mediation: Workplace Guide'](#) which can be found on the hub.

Mediation is not appropriate when one or both parties do not want to take part or where there has been serious bullying, victimisation or physical violence.

## **5.5 Redeployment**

In circumstances where it is appropriate, consideration may be given to transferring either party for a temporary period. In serious cases, and in line with the disciplinary procedure, suspension from work with pay will be considered.

## **5.6 Formal process for Managing Unwanted Behaviour**

The aim should be to resolve an issue formally wherever possible. Where this has proved unsuccessful, the formal grievance/dispute procedure may be applied and the 'issue' will become known as a grievance, or where it involved a group of staff, a 'dispute'. A formal hearing should be initiated if:

- Informal action does not result in the behaviour ceasing;
- Where it is considered that the behaviour might potentially constitute a disciplinary offence.

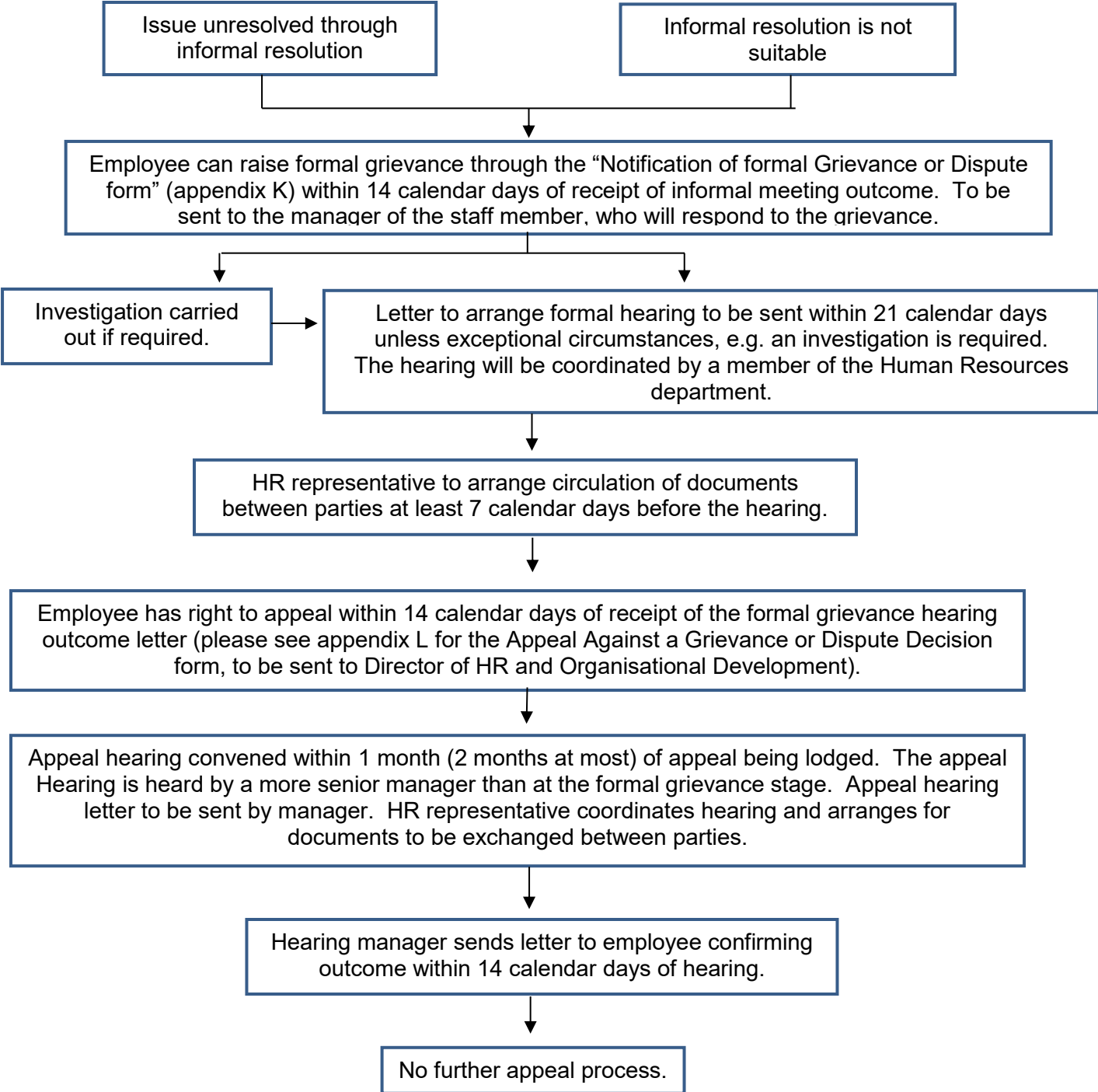
Please see section 5.2 of the Resolving Differences Policy regarding the formal resolution procedure for grievances and disputes.

An employee who believes that they have been the subject of unwanted behaviour should report the alleged act to management, their Workforce Business Partner or a FTSU Guardian. The manager should inform the complainant that a formal hearing and possible disciplinary

action can only take place if the complaint is heard under the formal procedure. Employees may raise a formal grievance or dispute by completing a “Notification of Formal Grievance or Dispute” form (appendix K).

Where facts of the grievance are under dispute, then it may be necessary to adjourn the meeting and conduct an investigation to find the facts.

A grievance is an occasion where discussion and dialogue may lead to an amicable solution (ACAS).



## **5.7 Actions following Hearings**

The hearing manager, upon the conclusion of the hearing, will make recommendations to:

- take no further action
- take any other appropriate management course of action, e.g. the provision of training, counselling, mediation or a period of monitoring/ supervision
- pursue the matter in accordance with CLCH's Disciplinary Policy.

If the hearing reveals that the complaint is upheld, prompt action designed to stop the unwanted behaviour immediately and prevent its recurrence will be taken. Some of the following considerations may need to be addressed at the completion of the hearing:

- Redeployment of either party.
- Pursue the matter in accordance with CLCH's Disciplinary Policy.
- Training and/or counselling for either or both the complainant and the harasser as appropriate; this could be an opportunity for training for the whole team.
- Advising the complainant that action has been taken.
- Further follow up meetings with the complainant to offer support and to ensure that no further harassment or victimisation has occurred.
- Follow up meetings with the harasser to ensure that they receive appropriate support and reflection, including a reflective account which may be shared with the complainant.
- The manager of the harasser will be responsible for ensuring that the harasser is made fully aware of CLCH's policies on equal opportunities, bullying and harassment/dignity at work and of the law relating to these matters.
- Ensure that no victimisation takes place (for having spoken out).
- Mediation or Restorative conversations arranged.
- Counselling can be offered via Employee Health.
- Spurious or vindictive allegations are dealt with appropriately. Where disciplinary action is considered necessary, the CLCH Disciplinary Policy process will be followed.

Where it is decided to pursue this matter through a disciplinary process, the hearing outcome letter will be used as part of the evidence.

## **5.8 Appeals**

Both parties have the right to appeal against the processing of a complaint (but not against any disciplinary action) in accordance with CLCH's Resolving Differences Policy using the "Appeal Against a Grievance or Dispute Decision" form (see appendix K) to the Director of People and Communications within 14 calendar days of receiving the outcome letter. The right of appeal against any disciplinary action will be in accordance with CLCH's Appeals Policy.

## **5.9 Malicious complaints**

Making a malicious allegation of harassment or bullying is regarded as a serious matter. When a complaint is deliberately fabricated with malicious intent and has the intention of getting someone into trouble, the hearing manager should advise if they believe the disciplinary procedure should be invoked. This decision is then made by the senior person who commissioned the investigation/hearing and HR representative.

CLCH recognises the difficulties facing a complainant around providing evidence and acknowledges that, just because allegations cannot be proven, does not automatically mean that they are vexatious.

## **6. Consultation**

The following stakeholders were consulted in the creation of this policy and comments incorporated as appropriate.

- Workforce Business Partners and HR Advisors
- Staff representatives
- Employee Health
- Managers

## **7. Approval and Ratification**

The initial draft of this procedural document was sent to HR Policy Group on 09/04/2018 and this was signed off by the HR policy group on the 6/08/18. It was ratified by the PRG at its meeting of the 13<sup>th</sup> August 2018.

## **8. Dissemination and Implementation**

This document will be placed on the intranet by the HR/OD team who will provide a reference number for the policy.

It will be therefore be available to all staff via the CLCH NHS Trust intranet. Furthermore the document will be circulated to all managers who will be required to cascade the information to members of their teams and to confirm receipt of the procedure and destruction of previous procedures/policies which this supersedes. Managers will ensure that all staff are briefed on its contents and on what it means for them.

## **9. Archiving**

The HR/OD team will undertake the archiving arrangements.

## **10. Training requirements**

Relevant training, guidance and support will be made available to ensure the successful implementation of this policy. This policy is supplemented with a training module for all staff and managers. More information is available from the Learning and Development Team and the HR team. This training covers:

- Unconscious bias
- Resilience
- Diversity and inclusion
- Difficult conversations
- Conflict resolution
- Reflection
- Mental health awareness
- Complaints
- CLCH values and code of conduct

Additionally staff with specialist roles e.g. FTSU Guardians and investigating/case managers will be provided with the appropriate training to enable them to fulfil their duties effectively. New staff will be made aware of the policy during induction programmes.

## **11. Monitoring and Auditing Compliance with the Procedural Document**

Please see the Compliance Monitoring Table in appendix K.

## **12. Expiry and review dates**

This policy document will be reviewed in September 2020. It will be reviewed by the Human Resources lead for policy development.

## **13. Associated Documentation**

- Resolving Differences Policy
- Zero Tolerance Policy
- Social Media Policy
- Freedom to Speak Up: Raising Concerns Policy
- Mediation: Workplace Guide
- Disciplinary Policy
- Equality and Diversity Policy
- Domestic Violence Policy
- Conflict Resolution (Statutory and Mandatory Training Booklet)
- Grievance Policy
- Appeals Policy
- Disability Policy
- Trans Equality Policy

## **14. References**

The following relevant legislation and statutory requirements, national standards have been considered when developing this policy:

- ACAS Code of Practice on Discipline and Grievance
- NHS Employers Tackling cyberbullying in the NHS, Feb 2017
- Equality Act 2010
- Protection from Harassment Act 1997
- Protection of Freedoms Act 2012
- Criminal Justice and Public Order Act 1994.
- Employment Rights Act 1996
- Crime and Disorder Act 1998
- Employment Act 2002
- Health and Safety at Work Act 1974

## **15. Appendices**

Appendix A: Key Principles

Appendix B: Difference between Healthy Conflict and Bullying Situations

Appendix C: Cyber Bullying

Appendix D: Harassment and Bullying: Definitions and Examples

Appendix E: Sources of Support

Appendix F: Domestic Violence

Appendix G: Stalking

Appendix H: Unconscious Bias

Appendix I: Notification of Formal Grievance or Dispute Form

Appendix J: Appeal Against a Grievance or Dispute Decision Form

Appendix K: Compliance Monitoring Table

Appendix L: Equality Impact Assessment Pro Forma



## **Appendix A: Key Principles**

The following key principles underpin this policy:

All employees have a right to be treated with consideration, dignity and respect at work.

CLCH promotes an organisational culture which respects and values diversity and provides an inclusive work environment.

CLCH is committed to open and constructive communications.

Any complaints of any type of harassment or bullying will be taken seriously and dealt with promptly and confidentially.

Harassment or bullying will not be tolerated at any level within CLCH and senior managers are expected to lead by example.

Employees will not be expected to put up with unacceptable behaviour and should be supported appropriately by management.

Intimidation, retaliation or victimisation of anyone making a complaint or supporting a complaint through the Equality Act is unlawful and will be regarded as a disciplinary offence.

Bullying and harassment may be treated as a disciplinary offence and, where allegations are founded, could lead to disciplinary action being taken including, where appropriate, summary dismissal.

Disciplinary action may also be taken if a complaint is found to have been submitted maliciously or in bad faith.

“At work” includes any place where the occasion can be identified with either the requirements of the employer, or with social events linked to the same employment.

In cases of alleged assault or behaviour that is considered a criminal offence, the Trust may, where appropriate, contact the police or support an employee in contacting the police if they wish to do so.

Employees should be reflecting on their behaviour and the impact it may have on others.

## Appendix B: Difference between Healthy Conflict and Bullying Situations

### NHS EMPLOYERS' GUIDANCE – BULLYING AND HARASSMENT (APRIL 2006)

<b>Firm but fair manager</b>	<b>Bullying or harassment</b>
Consistent and fair	Aggressive, inconsistent and unfair
Determined to achieve the best results, but reasonable and flexible	Unreasonable and inflexible
Know their own mind and is clear about their own ideas, but willing to consult with colleagues and staff before drawing up proposals	Believes that they are always right, has fixed opinions, believes they know best and not prepared to value other people's opinions
Insists upon high standards of service in quality or and behaviour in the team	Insists upon high standards of service and behaviour but blames others if things go wrong
Will discuss in private any perceived deterioration before forming views or taking action and does not apportion blame on others when things go wrong	Loses temper, regularly degrades people in front of others, threatens official warnings without listening to any explanation
Asks for people's views, listens and assimilates feedback	Tells people what is happening, does not listen

#### **WORLD HEALTH ORGANISATION (2003):**

It is also important to recognise that a certain amount of conflict is normal and important in working life. However bullying is different from normal conflicts because it involves unfair and unethical behaviours that cause extreme distress and disruption to the individual, groups and ultimately the whole organisation. The World Health Organisation (2003) produced a guide to raise awareness of bullying and psychological harassment at work in which they chart the contrasts between healthy conflict and bullying situations.

<b>Healthy conflict</b>	<b>Bullying situations</b>
Clear roles and tasks	Role ambiguity
Collaborative relations	Uncooperative behaviour/boycott
Common and shared objectives	Lack of foresight
Explicit interpersonal relations	Ambiguous interpersonal relations
Healthy organization	Organizational flaws
Occasional clashes and confrontation	Long lasting and systematic unethical actions
Open and frank strategies	Equivocal strategies
Open conflict and discussion	Covert actions and denial of conflict
Straightforward communication	Oblique and evasive communication

One of the most important ways to distinguish between healthy conflicts and destructive situations that may lead to bullying is to identify the type of issue involved. Conflicts can be related to an issue, an idea or task or a personal value or belief. The resolution of issue-related conflicts is generally easier to achieve than a conflict related to strongly held values or beliefs. Personal conflict involves issues that threaten the individual's identity or values system and are characterised by intensely negative interpersonal clashes.

## **Appendix C: Cyber bullying**

Cyber bullying includes, but is not limited to:

- Sending an offensive email, even if this was not intended to be offensive.
- Sending, posting, or sharing negative, harmful or false content about someone else.
- Posting inappropriate photographs.
- Making offensive or threatening comments.
- Revealing sensitive personal information.
- Sending viruses that can damage another person's computer.

For further information on appropriate conduct online please refer to the Social Media Policy, in particular section 5 around behaviour on social media.

## Appendix D: Harassment Definitions and Examples

### Sexual Harassment

Unsolicited, unwelcome and unreciprocated behaviour with a sexual connotation, which patronises, humiliates, victimises, offends or oppresses on the basis of an individual's actual or perceived gender, gender identity or gender expression e.g.:

- Verbal
- a) Insensitive jokes and pranks.
  - b) Requests for sexual favours.
  - c) Unwanted comments about dress or appearance.
  - d) Gossip, ridiculing and speculation about someone's private life, gender identity and sexual activities.
  - e) Threat of dismissal, loss of promotion, etc., for refusal of sexual favours.
  - f) Innuendos.
  - g) Expressing assumptions that gender dysphoria or transgender status is a mental illness.
- Pictorial
- a) Graffiti.
  - b) Pornographic material.
  - c) Calendars and pin-ups.
- Physical
- a) Unnecessary body contact ranging from unnecessary touching to sexual assault or rape.
  - b) Suggestive gestures, looks or noises.

### Harassment on the Basis of Sexual Orientation

The harassment of employees because of their sexual orientation perceived or otherwise is unacceptable and will be treated seriously in accordance with this Policy. Types of negative behaviours include:

- a) Homophobic or transphobic comments or jokes.
- b) The asking of intimate questions about someone's personal or sexual life.
- c) Expressing their views that heterosexuality is the accepted norm.
- d) Gossip, ridiculing and speculation about someone's sexuality.
- e) Excluding people because of their sexuality.
- f) Homophobic graffiti or displaying/ circulating of anti-gay or anti-lesbian material.
- g) Offensive actions or physical attack.
- h) Expressing assumptions that any illness experienced by gay men/women is HIV related.
- e) Unfair work allocation.

### Racial Harassment

Behaviour of a racial nature, which is offensive to the recipient and creates a stressful or intimidating environment and / or threatens job security or job promotion: e.g.:

- a) Racist, jokes, banter, insults and taunts.
- b) Racist literature and graffiti – far right emblems, flags, posters etc.
- c) Excluding people because of their race, colour, ethnic origin, cultural differences, creed, caste or tribal affiliation and/or nationality.
- d) Making racist insinuations, including someone's right to be within the UK or working within the NHS on the basis of their racial or ethnic identity or nationality
- e) Unfair work allocation.

- f) Physical attacks on co-workers, because of their race, colour, cultural differences, creed, caste or tribal affiliation and/or nationality.
- g) Xenophobic behaviour.

### **Harassment of Disabled People (Please refer to the Disability Policy)**

Discrimination occurs when a disabled person is treated less favourably than someone else and the treatment is given for a reason relating to the person's disability and that reason does not apply to another person and this treatment cannot be justified e.g.:

- a) Staring and/or uninvited touching.
- b) Exclusion from social events.
- c) Speaking to others rather than to the disabled person directly.
- d) Asking intimate questions about a person's impairment.
- e) Making assumptions about disabled people for example, that they do not have a social, sexual or private life.
- f) Physical abuse or intimidation.
- g) Questioning a disabled person's work capability and / or ability by making inappropriate demands or requirements, e.g. unfair scrutiny of sickness records.
- h) Unfair work allocation.

### **Harassment due to real or Suspected Infection with HIV/AIDS**

The harassment of employees because of real or suspected infection with HIV/AIDS is Unlawful as direct discrimination under the Equality Act 2010 and will be treated seriously in accordance with this Policy. Types of negative behaviours include e.g.

- a) Isolation or non co-operation at work.
- b) Exclusion from social activities.

### **Harassment based upon Age**

The harassment of employees because of their age is unlawful under the Equality Act 2010 and will be treated seriously in accordance with this Policy. Negative behaviours include e.g.

- a) Ridiculing or demeaning behaviour focused at people because of age, youth, and experiences such as insensitive jokes and pranks.
- b) Isolation or non co-operation at work, exclusion from social activities.

### **Harassment on the Basis of Religion / Belief**

The harassment of employees because of their religion or belief perceived or otherwise is unlawful under the Equality Act 2010 and will be treated seriously in accordance with this Policy. Negative behaviour includes unacceptable comments or behaviour failing to tolerate/ acknowledge the rights/needs of people with different religious/political beliefs/ practices.

### **Harassment on Parenthood**

The harassment of employees because of their parental responsibilities is potentially unlawful under the Equality Act which protects those who are pregnant or within one year of the child's birth. and will be treated seriously in accordance with this Policy. Negative behaviour includes making comments or threats if childcare needs arise during the working day, childcare policy entitlements or making unwarranted comments about a parent's perceived commitment to work.

\* PLEASE NOTE THESE ARE NOT EXHAUSTIVE LISTS.

**Please refer to the Refer to the Equality, Diversity & Inclusion Policy for more information**

## Appendix E: Sources of Support

Details and contact numbers of sources of contact. Employees can also speak to their manager around their concerns.

Human Resources	HR Advisors
Trade Union Representatives	Contact Jean Lewis, Chair of Staff Side, in the first instance <a href="mailto:jean.lewis5@nhs.net">jean.lewis5@nhs.net</a>
Employee Health and their Counselling Services	St Charles' Centre for Health and Wellbeing Tel: 020 8962 4355 or 020 8102 5144
Information regarding access to trained mediators	<a href="mailto:clcht.mediation@nhs.net">clcht.mediation@nhs.net</a>
Freedom to Speak Up Guardian	<a href="mailto:clcht.ftsus.email@nhs.net">clcht.ftsus.email@nhs.net</a> Further details can be found in the Freedom to Speak up: Raising Concerns policy.

### Training

This policy is supplemented with a training module for all staff and managers. This training covers:

- Unconscious bias
- Resilience
- Diversity and inclusion
- Difficult conversations
- Conflict resolution
- Reflection
- Mental health awareness
- Complaints

### Other sources of support

- Mentoring - Many people find having a mentor very useful in developing their responses to situations arising in their work role. A mentor can help diffuse situations and help the mentee to think through issues and approaches discuss the issues/ challenges in a rational and pragmatic way. Please contact the OD department for further help.
- 360 degree feedback – this can be a useful tool in understanding your behaviour and the impact you have on others. The OD team can assist with tools and advice around 360 degree feedback.
- Restorative conversations – contact your Workforce BP or Employee health
- Emotional regulation is the mental and behavioural processes by which people influence their own feelings and the feelings of other people. Emotion regulation affects us all in our everyday lives. If we do it well, it can enhance our well-being, our performance, and our relationships. For example, the ability to regulate one's own feelings can influence sports performance, and the ability to regulate how others feel is vital to building good relationships with colleagues and customers. To find out more please visit [www.erosresearch.org/index.php/emotion\\_regulation/an%20easy%20guide/](http://www.erosresearch.org/index.php/emotion_regulation/an%20easy%20guide/)

## Appendix F: Domestic Violence

### Domestic Violence

(to be read in conjunction with the Trust's Domestic Violence and Abuse Policy)

The Trust is committed to heightening awareness of domestic violence and providing guidance for employees and management to address the effects of domestic violence on the workplace.

It is important to promote the understanding that everyone has the right to a life free from abuse in any form. Domestic violence is wholly unacceptable and inexcusable behaviour, and responsibility for domestic violence lies with the perpetrator. CLCH strives to create a working environment that promotes the view that violence against people is unacceptable and that such violence will not be excused or made the subject of jokes or graphics.

CLCH respects an employee's right to confidentiality and respects an employee's right to privacy in the event they do not wish to inform the organisation that they have experienced domestic violence. In responding to domestic violence, the Trust will maintain appropriate confidentiality and respect for the rights of the employee involved.

CLCH will make assistance available to employees involved in domestic violence to minimise the risk to their safety while at work if they make it known to the Trust that they are experiencing domestic violence. This assistance may include: confidential means for coming forward for help; resource and referral information; special considerations at the workplace for employee safety; limiting/monitoring access to staff location or contact information, work schedule adjustments or leave necessary to obtain medical, counselling or legal assistance; and workplace relocation (if available).

The Trust is aware that domestic violence may result in problems such as chronic absenteeism or lower productivity. When addressing performance and safety issues CLCH will make reasonable efforts to consider all aspects of the employee's situation and / or safety problems.

If an employee needs to be absent from work due to domestic violence, the length of the absence will be determined by the individual's situation in discussion with the employee and their line manager. Advice can be sought from Human Resources.

Staff can also access support through Employee Health or get advice of other relevant agencies by calling 0808 200 0247, the Freephone National Domestic Violence Helpline, run in partnership between Women's Aid and Refuge. The Trust recognises that perpetrators of domestic violence may wish to seek help and support voluntarily. They will have access, when appropriate, to help and support as set out above.

Advice can also be sought through CLCH's [Safeguarding Team](#), your Workforce Business Partner or [Employee Health Services](#). Please look on the hub for more information.

- [Here](#), you will find a briefing with practical tips on how to recognise the problem; respond; provide support; and refer to the appropriate help.
- [Here](#), you will find information on what to do if someone discloses domestic
- [Here](#), you will find a page on the hub with contact details of various organisations and charities that offer support and/or advice.

## Appendix G: Stalking

### Stalking

CLCH is fully committed to protecting its employees from harm and promoting an environment where all employees are treated with consideration, respect and dignity. This includes protecting employees from stalking. Stalking is repeated, unwanted contact from one person to another which causes the victim to feel distressed or fearful. Stalking is a specific criminal offence in England as covered by the Protection of Freedoms Act 2012. As with any concerns of unwanted behaviour, all complaints of stalking will be taken very seriously and confidentiality maintained. We aim to minimise the risk of those who are involved or potentially involved with being stalked regardless of whether the perpetrator works for CLCH or not.

Employees who are being stalked or at risk of being stalked must first raise this with their manager. Once they have disclosed this, a conversation in a private space must take place to understand how the employee could be supported.

This will include completing a risk assessment for both the employee and other employees who may be exposed to harm, for which more information can be found on the hub under "Risk Assessment". Managers should endeavour to support the employee so they can continue working, but understand they may need time of work for a variety of reasons. There are a number of measures that can be implemented to support the individual and keep them safe, such as:

- improving security, lighting and the general ergonomic safety of the workplace
- provision of personal attack alarms
- flexi-time working and varied start/finish times
- close escorting of staff to vehicles/transport
- Making other staff aware of the situation, where necessary, to aid increased vigilance and ensure they do not give out any information such as days or hours of work, or personal phone numbers.
- ensuring the victim knows to immediately report any stalking phone calls to management and document them

Employees who engage in stalking behaviours themselves will be investigated, and disciplinary action will be taken against any such employee if criminal procedures are initiated. The Trust, as the employer will fully co-operate with any requests from the Police regarding employees who are being investigated for stalking offences.

#### Responding to a disclosure of stalking

- If there is concern that an employee is being stalked it is imperative that the subject is raised in a private location and that the line manager/senior member of staff asks using non-threatening/indirect questioning, such as 'Could you tell me about your concerns?' or 'Can you describe the effect that this is having on you?'
- If an employee discloses information about experiencing stalking, their experience must be believed. We know that this is important as many victims are reluctant to share with others what is happening to them through fear of not being believed.
- Employers should respond to a disclosure of stalking by reassuring the employee of confidentiality but highlight the circumstances where confidentiality may be broken and information shared with external agencies. (Source: the National Stalking Helpline)



## Appendix H: Unconscious Bias

### Unconscious Bias

Everyone has individual biases, which are determined by factors such as their social environment, upbringing and culture. Unconscious biases are simply our natural people preferences. Biologically we are hard-wired to prefer people who look like us, sound like us and share our interests. Social psychologists call this phenomenon "social categorisation" whereby we routinely and rapidly sort people into groups. This preference bypasses our normal, rational and logical thinking.

Unconscious bias operates at a very subtle level, below our awareness. It results in almost unnoticeable behaviours (micro behaviours) such as paying a little less attention to what the other person says, addressing them less warmly or talking less to them. We tend to be less empathetic towards people who are not like us and this is normal.

However in the workplace it is important that one keeps ones unconscious biases in check to ensure that your decision making in investigations and hearings is fair, objective and consistent:

**Do** recognise that candidates from different racial backgrounds may have different ways of communicating. For example, employees from certain ethnic backgrounds may, on account of their racial or cultural background, be relatively reserved and not request help with understanding their tasks and responsibilities or raise issues. This should be taken into account and they made need more support to understand that asking for help is acceptable and necessary.

**Do** guard against the 'halo effect'. This occurs when something about an employee creates favouritism and influences their perception of people who do not fit into the favoured groups. This could result in a line manager becoming unable to view their performance objectively.

**Do** recognise your own general personal attitudes, views and likes/dislikes with regard to people, and learn to put these to one side when managing performance.

**Don't** allow your perceptions of an employee influence your decision-making, for example by making negative assumptions about someone's performance if they are not promoting their achievements.

**Don't** rule out the informal process for addressing poor performance for fear of being accused of discrimination.

**Appendix I: Notification of formal Grievance or Dispute form**

<b>NOTIFICATION OF FORMAL/INFORMAL* GRIEVANCE OR DISPUTE</b>	
* Delete as appropriate	
<b>Strictly Confidential</b>	
<b>To:</b>  <i>(name of appropriate manager, or manager of the manager who heard the informal grievance)</i>	<b>Copy:</b>  (name of Human Resources Business Partner)
<b>From:</b>	<b>Job Title:</b>
<b>Department:</b>	<b>Line Manager:</b>
<b>Trade Union Representative (if applicable):</b>	
<p><b>Where the grievance/dispute is being made by more than one employee, a list of employees making the grievance, signed and dated by all, should be attached to this form.</b></p> <p style="text-align: center;"><b>ATTACHED: YES / NO (please delete as applicable)</b></p>	
<p><b>SUBSTANCE OF GRIEVANCE</b></p> <p>Please detail the substance of your grievance and attach any related correspondence, if appropriate. This should include dates, times and location of events; relevant background information (you may attach additional sheets if necessary).</p>	

**Names and contact details of any people involved in the grievance, including witnesses.**

**What steps have already been taken to resolve the grievance?**

**What would be your preferred outcome and why do you believe this will resolve the issue?**

**I confirm that the above information, and attached documents, are true to the best of my knowledge. I understand that making any false, malicious or untrue allegations may result in disciplinary action being taken against me in line with the Trust's Disciplinary Policy.**

**Signed:** \_\_\_\_\_ **Date:** \_\_\_\_\_

Please send this form to your manager's manager and a copy to your Workforce Business Partner or the HR Advisor.

This grievance will be acknowledged by the Human Resources Department upon receipt, after which it will be dealt with in accordance with the procedures outlined in the CLCH Grievance Policy. A copy of the policy will be sent to the employee for information.

**Appendix J: Appeal against a grievance or dispute decision form**

<b>APPEAL AGAINST A GRIEVANCE OR DISPUTE DECISION</b>	
<b>Strictly Confidential</b>	
<b>To:</b>  (name of manager of the manager who heard the formal grievance)	<b>Copy:</b>  (name of Human Resources Business Partner)
<b>From:</b>	<b>Job Title:</b>
<b>Department:</b>	<b>Line Manager:</b>
<b>Trade Union Representative (if applicable):</b>	
<b>Where the appeal against the grievance/dispute decision is being made by more than one employee, a list of employees appealing, signed and dated by all, should be attached to this form.</b> <b>ATTACHED: YES / NO (please delete as applicable)</b>	
<b>SUBSTANCE OF APPEAL</b> This should include the grounds of your appeal, providing as much detail as possible, for example, grounds for considering the grievance procedure flawed; misinterpretation or lack of evidence and why you consider the outcome to have been incorrect in the circumstances (you may attach additional sheets if necessary).	

--

<p><b>Names and contact details of any people involved in the appeal, including witnesses.</b></p>
--

<p><b>What would be your preferred outcome and why do you believe this will resolve the issue?</b></p>
--

<p><b>I confirm that the above information, and attached documents, are true to the best of my knowledge. I understand that making any false, malicious or untrue allegations may result in disciplinary action being taken against me in line with the Trust's Disciplinary Policy.</b></p> <p><b>Signed:</b> _____ <b>Date:</b> _____</p>
---

Please send this form to your manager's manager and a copy to your Workforce Business Partner or the HR Advisor.

This grievance will be acknowledged by the Human Resources Department upon receipt, after which it will be dealt with in accordance with the procedures outlined in the CLCH Grievance Policy. A copy of the policy will be sent to the employee for information.

## Appendix K: Compliance monitoring table

Policy lead	Element(s) to be monitored	How will you ensure that the policy is being implemented (E.g. via an audit, KPIs )	How often will you monitor that the policy is being implemented	Reporting arrangements (Which committee or group will the monitoring of the policy be reported to?)
Head of Human Resources	How concerns about harassment or bullying can be raised.	Through comparison of proportion of staff who have reported bullying and harassment through the staff survey with number of concerns raised through the Addressing Bullying and Harassment Policy. If an issue is identified, it will be included in the staff survey action plan.	Annually	Workforce committee
Head of Human Resources; Head of Equality and Diversity	What should be done once a concern has been raised?	<ol style="list-style-type: none"> <li>1. Follow up of concerns supported by HR.</li> <li>2. Cases will be monitored by the number of cases, the race, gender and disability of the complainant, the level of the staff affected and the outcome.</li> </ol>	<ol style="list-style-type: none"> <li>1. As necessary</li> <li>2. Annually</li> </ol>	

## Appendix L: Equalities Impact Assessment Pro Forma

### Equality Analysis for Policies – Screening form

CLCH as a public authority has a legal requirement to analyse the impact of the policy on the protected characteristics of staff and patients. This helps us to check if there is a negative impact, how we can reduce that impact.

Protected characteristic	Positive impact	Neutral Impact	Negative Impact	Reason for impact and action required.
People of different ages (e.g. Children, young or older people).	X			The policy and its application will protect employees against bullying and harassment due to their age. We will analyse annually the protected characteristics of the employees formally reporting bullying and harassment.
People of different religions / beliefs	X			The policy and its application will protect employees against bullying and harassment due to their religion / belief.
People with disabilities (physical, sensory or learning).	X			The policy and its application will protect employees against bullying and harassment due to their disability.
People from different ethnic groups	X			The policy and its application will protect employees against bullying and harassment due to their ethnicity.
Men or women	X			The policy and its application will protect employees against bullying and harassment due to their gender.
Transgendered people	X			The policy and its application will protect employees against bullying and harassment if they have undergone gender reassignment.
People who are gay, lesbian, and bi-sexual	X			The policy and its application will protect employees against bullying and harassment due to their age. We will analyse annually the protected characteristics of the employees formally reporting bullying and harassment.
<i>Refugees and asylum seekers</i>	X			The policy and its application will protect employees against bullying and harassment on the grounds of nationality. This should reduce xenophobia against refugees and asylum seekers.
2	Please describe engagement and consultation process and the key feedback. E.g. with teams, unions. We have worked with staff side and occupational health on ways to prevent bullying and harassment and support those experiencing unwanted			

	behaviour.
3.	<p>If there are negative impacts upon people's protected characteristics. Does the policy in its current form need a full Equality Analysis Assessment to be completed?</p> <p>There is no negative impact upon people's protected characteristics. The policy refers to protecting staff from discrimination, harassment and bullying due to their protected characteristic. Therefore there is only positive impact. We will analyse annually the protected characteristics of the employees formally reporting bullying and harassment as part of our duties under the Equality Act 2010.</p>
4.	<p>Have you signed this off with the Equality and Diversity team?</p> <p>Yes.</p>

Signed for team / working group: HR Policy Group, 06/08/18

Signed by Equality and Diversity team:

Name: Yasmine Mahmood, Diversity and Inclusion Lead

Date: 10/07/18



**TITLE:** ALCOHOL AND SUBSTANCE MISUSE POLICY

**VALID FROM:** November 2019

**EXPIRES:** November 2022

**REFERENCE** WFC11

This procedural document supersedes the previous procedural document, Alcohol and Substance Misuse Policy, version 5.0.

<b>Version:</b>	5.0
<b>Policy reference and description of where held.</b>	WFC11 Intranet – Policies
<b>Title, name and contact details for author:</b>	Bukky Marquis, HR Adviser <a href="mailto:olubukunola.marquis@nhs.net">olubukunola.marquis@nhs.net</a>
<b>Title, name and contact details for responsible director:</b>	Louella Johnson, Director of People & Communication
<b>Approved by originating committee, executive or departmental management group and date.</b>	HR Policy Group, 27 <sup>th</sup> August 2019.
<b>Ratified by Policy Ratification Group:</b>	11 November 2019
<b>Review date:</b> 2 years maximum for clinical guidelines 3 years maximum for other documents	May 2022
<b>Target audience</b>	All staff employed by, or working on behalf of, CLCH, including contractors.

## Version Control Sheet

Version	Date	Author	Status	Comments
1.0	4 <sup>th</sup> Jan 2011	Liz Lubbock	Final	Original inner London policy.
2.0	16 <sup>th</sup> Jan 2014	Liz Lubbock	Final	Integration of the CLCH and Barnet policies.
3.0		Liz Lubbock	Final	Policy reviewed. Minor changes only made.
4.0	December 2016	Liz Lubbock	Final	Regular 3 yearly update.
5.0	November 2019	Bukky Marquis	Final	Regular 3 yearly update

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## 1. Introduction

The Trust has an ambition reflected in its People Strategy to boost staff engagement and improve staff wellbeing.

Alcohol and other drugs (*see section 3.1 for definition for the purpose of this policy*) can be powerful substances with a potential to cause harm to users and their use can on occasions lead to dependency. As a result, the Trust is committed to providing support at an early stage, where possible, to staff who identify they have a problem with alcohol or substance misuse. It should also be noted that misuse can interfere with the safe and efficient functioning or performance of a staff member's duties.

All staff should be aware that under section 7 of the Health and Safety at Work Act 1974 "it shall be the duty of every employee while at work to take reasonable care for the health and safety of himself/herself and of other persons who may be affected by his/her acts or omissions at work."

## 2. Aims and objectives

This policy aims to:

- Promote the wellbeing of all staff, to avoid stress, unnecessary illness, absence and accidents and to provide a work environment which ensures, as far as possible, the health and safety of staff and patients;
- Increase staff awareness of the effects of alcohol and substance misuse on health;
- Create an environment that encourages all staff to seek early appropriate help;
- Increase employee confidence in seeking help for alcohol/substance problem;
- Provide a sensitive and confidential procedure which enables managers to initiate an appropriate response to staff who either request help or who are identified as having, or potentially having, alcohol or substance misuse problems.
- Set out the rules regarding the use of intoxicating substances so that employees are aware of the likely consequences for their employment if they misuse them
- Help protect employees by raising awareness of the problems of alcohol and substance misuse and to encourage those with a problem to seek help
- Ensure that employees' use of either alcohol or substance does not impair the safe and efficient running of the Trust, or result in risks to the health and safety of themselves, other employees, patients and general public.
- Comply with all relevant legislation in this area.

### 3. Definitions

**Substances and drugs:** Any substance regardless of whether it is a prescription medicine or not which can lead to negative health or wellbeing impact and/or dependency.

**Alcohol misuse:** where the consumption of alcohol leads to deterioration in an individual's health, conduct, attendance or work performance.

**Substance misuse:** refers to inappropriate or problematic use of 'substances and drugs' as defined above.

**Social Event:** refers to events where CLCH staff gather together are enjoying themselves and the event may not be directly related to the role they hold for CLCH. This may include events like a staff picnic, staff awards, Christmas get together etc. Drinking is permitted at this event but staff should be respectful to their colleagues at all times.

**Social Function** is an event where CLCH staff may be representing CLCH and so the member of staff is an ambassador for CLCH. Staff at such function may drink sensibly remembering that they represent CLCH.

### 4. Duties

#### 4.1 Staff

- will take reasonable care of themselves and others who could be affected by what they do (Health and Safety at Work Act 1974);
- will present themselves at work not under the influence and be aware of the effects of drinking alcohol or substance misuse. This will include any residual effects from the previous drinking;
- who suspect, or know, that they have an alcohol, or substance-related problem should seek professional help at an early stage to avoid the problem becoming worse. They may also choose to confidentially refer themselves to the Employee Health service
- must not bring or use illegal substances on Trust's premises under any circumstances.
- should notify their line manager if they are taking prescribed medication that could affect their ability to work safely
- comply with this policy.

#### **4.2 Managers will:**

- explore issues with staff with the intention to support quickly and effectively using the framework in this policy.

#### **4.3 Human Resources will:**

- provide support and advice to managers;
- provide clarification, information and interpretation of the policy and procedure to staff and their representatives where appropriate.

#### **4.4 Employee Health Department will:**

- accept self-referrals from staff who are worried about their own alcohol/ substance misuse/abuse and advise them of appropriate sources of help.
- accept management referrals for staff who are suspected of having an alcohol/substance problem
- monitor the health and welfare of a staff member during this period, arrange with the line manager concerned the necessary leave of absence where appropriate and cooperate with offering other types of support and assistance in the workplace as required.
- accept management referrals for staff who are suspected of having an alcohol/substance problem.
- assess self-referred or referred staff under the policy in strict confidence.
- advise management and the Human Resources Department in matters relating to the continued care of an employee at work, whilst maintaining confidentiality.
- treat any discussion between a member of staff and Employee Health as strictly confidential. Any subsequent disclosures will be with the staff member's consent.

#### **4.5 Trade union/staff representatives will:**

- encourage staff who may have an alcohol/substance misuse problem to seek help voluntarily;
- support and represent members, if requested, at any stage of the procedure.



## 5. Dealing with alcohol and substance misuse

### 5.1 General principles

Staff, who drink alcohol or use drugs, should be aware of the effects that may have on their bodies and conduct. Staff should ensure that when they present for work they are not under the influence.

Alcohol will not be consumed during working hours, including any breaks and other rest periods.

Any social event organised by CLCH is an 'extension' of the workplace, regardless of the place or time of the event. Therefore staff must conduct themselves in professional and responsibly manner. Furthermore, where CLCH staff attends social functions related to their work, they are expected to remain ambassadors of CLCH and behave appropriately in accordance with CLCH policies as above.

If staffs are expected to return to work on the same day, they must not consume alcohol.

It is the responsibility of staff and managers participating in an on-call rota not to consume alcohol that could limit their availability to drive to work or affect their ability to carry out their duties.

### 5.2 Alcohol and substance misuse procedure

The Trust has a responsibility to ensure that standards of work and conduct are maintained in the workplace and will support and help staff identified as having alcohol and substance misuse problem where possible. Manager will lead on balancing the needs of the Trust while supporting the member of staff.

Wherever possible, managers should ensure that staff retains their present job with no detriment to promotion opportunities or other benefits. In cases where it is not considered feasible for the staff member to retain their present job and where doing so might undermine their rehabilitation, the Trust will make every effort, where appropriate, to find suitable alternative employment on a temporary or permanent basis.

However, the Trust will be obliged to deal with the following situations in accordance with the CLCH Disciplinary Policy and procedure:

- **Dealing in drugs** by a member of staff on NHS premises or other designated work areas will be classed as gross misconduct and the staff member will be liable to summary dismissal and the circumstances will be referred to the police.
- Where offers of **help and support have been rejected** by the staff member and where their conduct and/or standards of work performance continue to be unacceptable.
- Where the manager considers that a staff member may be **putting at risk**, themselves, other staff, patients/clients or members of the public.

- Where excessive consumption on isolated or random occasions leads to **unacceptable behaviour** with regard to appropriate standards of safety and conduct.
- Where a staff member **reports for work having consumed alcohol, drugs or illegal substances** and is considered to be a risk to health, safety or professional standards.

### 5.3 Identification of an alcohol or substance misuse issue:

#### 5.3.1 Identified by the member of staff

Staff who suspect, or know, that they have an alcohol or substance-related problem are encouraged to seek assistance as soon as possible, voluntarily, either via their manager, Employee Health Services or trade union/staff representative, or through any agency of the staff member's own choice. A list of organisation and agencies are included in appendix A.

#### 5.3.2 Identified by the manager

It may be very difficult for staff to admit to themselves or others that their alcohol/substance misuse problem is out of control. **Staff need to know that any problems will be treated as a health problem rather than a cause for immediate disciplinary action, unless in circumstances listed in section 5.2.**

A manager may suspect the presence of a drinking or drug problem, for example, on the basis of:

- poor work performance,
- uncharacteristic and unacceptable behaviour,
- increased absence,
- accidents at work or
- the smell of alcohol.

Additional information is included in appendix B.

Managers should:

- find out if there is a problem;
- recognise that alcohol and substance misuse are treatable;
- consider how they can ensure the staff member is contacted and offered help, e.g. through Employee Health Services or another appropriate source of help (see appendix A);
- recognise relapses are not uncommon when attempting to change behaviour.

The manager is not responsible of the diagnosis of the problem. It should be identified by the staff member, their GP or through the Employee Health Department. Any interview should be undertaken in the context of trying to rectify work-related difficulties and the exploration of potential reasons for this.

Advice should be sought from Employee Health Services or from an HR Advisor or Workforce Business Partner.

### **5.3.3 Identified by a colleague**

If a work colleague suspects a staff member may have an issue with, or be under the influence of, alcohol, drugs or other substances, they can discuss the issue with the staff member if the circumstances permit and suggest sources of help.

If the colleague is unable or reluctant to do this, e.g. if a staff member appears to be 'under the influence' at that time, they should discuss the matter with their manager, contact the HR Department, Employee Health Services, trade union/staff representative, or a Wellbeing Champion.

Any discussion must be dealt with in strictest confidence. The colleague should not take sole responsibility for deciding whether the problem is serious or not.

## **5.4 Period of support and/or treatment**

It is the responsibility of the staff member to decide whether or not to receive specialised counselling and/or treatment. See section 5.2 for more information on refusing help and support.

During a period of intervention agreed by Employee Health Services, the staff member will be entitled to:

- certificated sick leave,
- time off work; and
- redeployment,

if possible and appropriate.

In cases where a staff member is receiving, or wishes to receive, specialised counselling and treatment, not through Employee Health Services, they may be granted sick leave under the Trust's sick pay scheme. It should be appreciated that treatment interventions in the management of problems are rarely time related and it is usual for an individual to need a period of intensive counselling and support, followed by a period of probation or gradual return to work. The staff member may also need to attend sessions of counselling or follow-up care. This approach ensures that a staff member may return to work as quickly as possible as well as continuing to receive support during the first few months after the problem has been identified, which is when the chances of a relapse are the highest.

CLCH may at any time, with good reason, request a staff member to undergo a medical assessment by a registered medical practitioner nominated by CLCH, ordinarily referred through the Employee Health Department. CLCH will pay any expense incurred in connection with such an examination. Although alcohol and drug dependency is in most instances specifically excluded from the scope of the Equality Act 2010, it may still be the case that a staff member's drug or alcohol problem is a symptom of an underlying medical condition which may amount to a disability.

## **5.5 Relapse**

In the event of a relapse after treatment, a further opportunity of help and treatment will be offered in cases where the staff member's circumstances indicate that this is likely to be successful. Advice from Employee Health should be sought at this stage.

## **5.6 Denial**

If a staff member denies having an alcohol/substance problem and gives no reason or explanation for their poor performance or refuses to seek help or follow advice and exhibit unacceptable behaviour, the matter will be managed through:

- the Capability Policy and procedure, where performance is diminished coupled with long bouts of certified sickness, or
- the Disciplinary Policy and procedure where an isolated act is committed related to drink or drugs such as on-duty drinking or stealing drugs.

## **5.7 Confidentiality**

The confidential nature of any records of staff with alcohol or substance misuse/abuse problems will be strictly preserved. However, staff who possess, transfer or sell illegal drugs or substances on CLCH premises will automatically be referred to the police and relevant professional body.

## **6. Consultation Process**

The following stakeholders were consulted in the creation of this policy and comments incorporated as appropriate.

Employee Health Services

Resilience

Head of Equality and Diversity

Directors

Managers

Workforce Business Partners and HR Advisors

Staff representatives

## **7. Approval and Ratification Process**

This updated policy was sent to staff representatives for comments on 19 August 2019. Comments received were discussed at the HR Policy Group meeting on 27 August 2019 and this meeting approved the policy.

The policy was ratified by the Policy Ratification Group on 11<sup>th</sup> November 2019.

## **8. Dissemination and Implementation**

This document will be placed on the intranet by the QLD team. The QLD team will provide a reference number for the policy.

It will therefore be available to all staff via the CLCH NHS Trust intranet. Furthermore, the document will be circulated to all managers who will be required to cascade the information to members of their teams and to confirm receipt of the procedure and destruction of previous procedures/policies which this supersedes. Managers will ensure that all staff are briefed on its contents and on what it means for them.

## **9. Archiving**

The QLD team will undertake the archiving arrangements.

## **10. Training requirements**

None.

## **11. Monitoring and Auditing Compliance with the Procedural Document**

The effectiveness of this policy will be monitored in the following way:

- as part of sickness absence management work, alcohol and substance misuse will be monitored where it is related to sickness and absence.
- Feedback from instances where the Alcohol and Substance Misuse Policy has been utilised will be assessed and areas for learning noted so that we can ensure improvements are monitored and met. Areas of good practice will also be identified and shared.

## **12. Review**

This policy will be reviewed in 2½ years' time, in May 2022. It will be reviewed by the lead for HR policies.

## **13. Associated Documentation**

This policy should be read in conjunction with other policies where appropriate, e.g.:

- Sickness and Absence Policy
- Disciplinary Policy
- Code of Conduct and Conflict of Interest Policy
- Capability Policy
- Stress Management Policy
- Equality and Diversity Policy – staff
- Safeguarding allegations made against CLCH staff (LADO) - policy

## **14. References**

The following relevant legislation and statutory requirements, national standards, etc., have been considered when developing this policy:

- Health and Safety at Work Act, 1974
- The Misuse of Drugs Act, 1971
- ACAS guidance on “Health, Work and Wellbeing”

## **15. Appendices**

Appendix A: Sources of help

Appendix B: Identifying signs of alcohol and drug misuse

Appendix C: Effects of alcohol and substance misuse

Appendix D: Guidance for managers: meeting with staff under this policy

Appendix E: Compliance monitoring table

Appendix F: Equality impact assessment

## Appendix A:

### Sources of help

**Addaction:** a UK-wide treatment agency that helps individuals, families and communities to manage the effects of drug and alcohol misuse.

Telephone: 020 7251 5860

[www.addaction.org.uk](http://www.addaction.org.uk)

**Al-Anon Family Groups:** offers support and understanding to the families and friends of problem drinkers, whether they are still drinking or not.

Confidential helpline: 020 7403 0888

<http://www.al-anonuk.org.uk/>

**Alcoholics Anonymous (Great Britain) Limited,** a free self-help group. Its “12-step” programme involves getting sober with the help of regular support groups:

National telephone helpline: 0800 9177 650

<http://www.alcoholics-anonymous.org.uk/>

**Alcohol Concern:**

Telephone: 020 7566 9800 or Freephone number: 0300123 1110

[www.alcoholconcern.org.uk](http://www.alcoholconcern.org.uk)

**Drinkline** for a confidential conversation:

Call free on 0300 123 1110

**FRANK:** drugs advice

Telephone: 0300 123 6600

<http://www.talktofrank.com/>

**NHS Practitioner Health Programme:** free confidential NHS service for doctors and dentists with issues relating to a mental or physical health concern or addiction problem, in particular where these might affect their work.

For confidential advice, call: 020 3049 4505

<http://php.nhs.uk>

**Turning Point:** providers of substance misuse services to help people recover from addiction and gain control of their lives.

<http://www.turning-point.co.uk/>

## Appendix B:

### Identifying signs of alcohol or drug/substance misuse

If a manager suspects that there may be an alcohol or substance misuse problem with a member of staff, it is recommended that they seek advice from Employee Health.

The following may provide an indication that a problem exists, especially when a number of the factors occur in combination:

- Increased or excessive absenteeism with a variety, if inconsistent explanations, some of which may be unusual.
- A pattern of absenteeism, e.g. frequent Monday and Fridays.
- Poor time keeping, including excessive lateness, over long lunch breaks and early departure from work.
- Frequent absences from place of work, e.g. overlong coffee breaks, excessive number of trips to the cloakroom.
- Higher than usual accident or error rate.
- Inefficiency at work e.g. tasks take more time than usual, instructions are forgotten or concentration is lacking.
- Unreliability, e.g. in meeting deadlines, making decisions, avoiding wastage, achieving quality of work.
- Mood swings, including signs of irritability confusion or depression.
- Deteriorating work relationships, including over-reaction to real or imaginary criticism, unreasonable resentments, complaints from patients, other staff or isolation from colleagues.
- Personal condition e.g. being inebriated at work, smelling of alcohol, suffering from hand tremors, lack of attention to personal appearance.



## Appendix C:

### Effects of alcohol and substance misuse

Alcohol and other drugs are powerful substances with a potential to harm users or to tempt them to over-indulge.

Whether using them:

- on an impulsive, unpredictable basis, or
- it has become a significant and important part of the person's life-style to the extent that stopping would not be easy; or
- where there is a high degree of physical and psychological addiction where usage disrupts or rules the person's life and stopping is not possible without considerable support;

it is important that people appreciate the potential consequences to enable them to assess the risks.

If you think that you may have a problem, it is important to seek help as early as possible.

#### Psychologically

- Alcohol and other drugs can influence a person's characteristics, for example, by increasing shyness, anxiety, depression, unhappiness, etc., rather than dealing with the underlying issue.
- They can provide a person with temporary confidence or happiness, but their usual feelings will return when the effects have worn off, often more strongly.
- Alcohol can cause depression.
- Drugs can cause depression, trigger anxiety or even a loss of reality (psychosis).

#### Socially

- Buying alcohol and other drugs may lead to financial hardship, e.g. they are very costly; many people lose personal items whilst under their influence such as their wallet or mobile phone.
- Financial hardship may lead to homelessness.

- They can affect behaviour to the extent that the person may damage their relationships, lose their job and/or break the law. Any conviction for drink or drug related offences may severely limit opportunities available for the person in the future, e.g. drink driving; antisocial behaviour; violence.
- Excessive use may affect a user's friendships and social groups.
- They may affect a person's sex life.

### Physically

- Alcohol and drugs may reduce the person's ability to resist harming themselves and/or others.
- They can affect people's ability to say "no" to something that they would have refused had they been sober, e.g. a sexual experience.
- Numerous serious accidents are drink and/or drug-related.
- There are significant potential long term health risks:

Alcohol: examples include high blood pressure; stroke; pancreatitis; liver disease; liver cancer; mouth cancer; head and neck cancer; breast cancer; bowel cancer; depression; dementia; sexual problems such as impotence; infertility.

Drugs: examples include mental health problems such as schizophrenia, depression, anxiety, paranoia; loss of/damage to memory, concentration and ability to learn; negative effect on fertility; harming a person's unborn child or causing a miscarriage; damage to the cartilage of a person's nose, their veins and body tissues; heart attacks and, in rare cases, death;

## **Appendix D:**

### **Guidance for managers: meeting with staff under this policy**

#### **Suspicion of alcohol or substance misuse problem**

Managers who believe or suspect that a member of staff may have an alcohol or drug related problem should seek advice from Employee Health Services and Human Resources before discussing the matter with the member of staff. Managers may draw conclusions about a member of staff as a result of observations made by them or a colleague of deteriorating work performance, erratic time-keeping and/or behavioural problems (*see appendix B*). Such observations provide a manager with legitimate grounds to enter into private discussions with the member of staff about the problem.

#### **Appearing under the influence of alcohol or drugs whilst on duty**

If a manager suspects that a member of staff has reported for duty under the influence of alcohol/drugs, they should ask a colleague to accompany them to witness the behaviour as well. If a manager suspects that a member of staff is under the influence of alcohol/drugs, they should send the member of staff home as they are unfit for duty. The manager should explain that they will interview the member of staff regarding their behaviour when they are fit to return to work.

#### **Preparing for the meeting**

When preparing for the meeting, managers should:

- ensure the meeting will be private.
- have all the documentation ready which is relevant to the member of staff's deteriorating work performance.
- have information on referral agencies prepared.
- plan the structure of the interview in advance.
- inform the member of staff of their right to be accompanied by a trade union representative or work colleague employed by this Trust and encourage them to do so.

## In the meeting

- Explain the reason for the interview.
- Restrict the discussion to issues concerning work attitude and performance if alcohol/drugs are a factor – describe the behaviour/actions you have noted remaining as factual as possible.
- Ask the member of staff directly if they have a drug/alcohol problem and whether they acknowledge this as an offer of support. In this case, the matter will be managed as outlined in this policy.
- Arrange for the member of staff to be seen in the Employee Health Department and complete the appropriate referral documentation.
- Agree a plan of action with the member of staff – this may include time off for medical treatment, counselling or rehabilitation.
- If the member of staff denies there is a drug/alcohol problem, then make him/her aware that further unsatisfactory behaviour may be managed as a performance/misconduct issue under CLCH's Disciplinary Policy.

This will also apply if a person's capability or performance is affected and:

- the individual accepts that there is a problem but refuses to accept or seek help;
- when the individual fails to complete a programme of medical treatment and rehabilitation;
- where an individual who has undertaken a course of treatment shows evidence of recurrence of the problem and a lack of commitment addressing the issue;
- End the interview with an agreement on specific action:
  - An Employee Health referral
  - An understanding of what to improve
  - An understanding of what the next step is
  - A reasonable time limit for improvement
  - A detailed written record of the interview
- Reassure the member of staff that discussion of the nature of the problem will be kept strictly confidential and confined to the individual, their manager, Human Resources and Employee Health (as appropriate).

## Appendix E: Compliance monitoring table

### Monitoring table

Policy lead	Element(s) to be monitored	How will you ensure that the policy is being implemented	How often will you monitor that the policy is being implemented For example will the KPIs be looked at annually/quarterly	Reporting arrangements (Which committee or group will the monitoring of the policy be reported to?)	Results of monitoring?
Director of People and Communications	Number of times the policy is applied within the organisation	Audit	12 months	Workforce Committee	Guidance to managers, training (if required) communications to all staff through internal channels and amendments to the procedural document in 2022.
Human Resources	Reviewing the effectiveness of the policy	Audit	12 months	Workforce Committee	Incorporating any required amendment to the procedural document in 2022

**Appendix F:**

**EQUALITIES IMPACT ASSESSMENT PRO FORMA**

**Alcohol and Substance Misuse Policy**

CLCH as a public authority has a legal requirement to analyse the impact of the policy on the protected characteristics of staff and patients. This helps us to check if there is a negative impact, how we can reduce that impact.

Does the policy affect groups of people based upon their protected characteristic?

<b>1. Protected characteristic</b>	<b>Positive impact</b>	<b>Neutral Impact</b>	<b>Negative Impact</b>	<b>Reason for impact and action required.</b>
People of different ages (e.g. Children, young or older people).		X		This policy will support all staff regardless of their age.
People of different religions / beliefs		X		This policy will support all staff regardless of their different religions/beliefs.
People with disabilities (physical, sensory or learning).	X			This policy will support all staff regardless of their disability.
People from different ethnic groups		X		This policy will support all staff regardless of their ethnicity.
Men or women		X		This policy will support all staff regardless of their gender.
Transgendered people		X		This policy will support all staff and provide an inclusive environment.
People who are gay, lesbian, and bi-sexual	X			Lesbian, Gay and Bi-sexual people have a higher level of alcohol and substance misuse (Stonewall 2012). This policy will provide a sensitive and confidential procedure.
Refugees and asylum seekers		X		This policy will support all staff regardless of their background.

2	<p>Please describe engagement and consultation process and the key feedback. E.g. with teams, unions. See sections 6 and 7 in the policy.</p> <p>We have used national research from Stonewall for the statistics on LGB people.</p>
3.	<p>If there are negative impacts upon people's protected characteristics. Does the policy in its current form need a full Equality Analysis Assessment to be completed?</p> <p>There is no negative impact on staff's protected characteristics.</p>
4.	<p>Have you signed this off with the Equality and Diversity team? Yes</p>

Signed for team / working group:

Date:

Signed by:

Date:



**Central London  
Community Healthcare**

**NHS Trust**

**TITLE: ANNUAL LEAVE POLICY**

**VALID FROM: JANUARY 2022**

**EXPIRES: JANUARY 2025**

This procedural document supersedes the previous procedural document, Annual Leave Policy, version 3.0



<b>Version:</b>	4.0
<b>Policy reference and description of where held.</b>	WFC38 Intranet – Policies
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<b>Review date:</b> 2 years maximum for clinical guidelines 3 years maximum for other documents	January 2025
<b>Target audience</b>	All staff

### Version Control Sheet

<b>Version</b>	<b>Date</b>	<b>Author</b>	<b>Status</b>	<b>Comments</b>
2.1	April 2018	Bill Davies	Archive	Query relating to working of bank holidays and fairness.
2.2	June 2018	Mark Handley	Archive	Additional wording incorporated.
3.0	October 2018	Kate Wilkins	Archive	Minor changes made post 11 <sup>th</sup> June 2018 PRG including updated EIA information.
4.0	December 2021	Anisha Ghosh	Final	Minor changes, updated wording to reflect changes in HR systems and processes.

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## **1. Introduction**

- 1.1 It is the policy of Central London Community Healthcare NHS Trust (CLCH) to ensure all employees take their allocation of annual leave to ensure that they derive full benefit from rest and relaxation away from the workplace.
- 1.2 Annual leave is an essential part of supporting a healthy work-life balance. Good management of annual leave by the individual and the manager is essential for the health and safety of employees, supporting the Trust's key objectives; especially the quality campaign to ensure staff are Here, Happy, Healthy and Heard, and to ensure we deploy staff as efficiently and effectively as possible to provide the best possible care to our patients.
- 1.3 Please refer to the flow chart at Appendix E for the process for booking annual leave.
- 1.4 Managers and staff should refer to separate Trust guidance on use of annual leave, carry over of annual leave and buying/selling annual leave during emergencies and situations such as the Covid pandemic.

## **2. Aims and Objectives**

- 2.1 The principles underlying the policy are to:
  - support a positive and healthy work-life balance for employees
  - promote consistency and equity across the Trust
  - ensure that annual leave is accrued and taken in line with this policy
  - ensure that employee needs are balanced with service needs
- 2.2 The Trust policy is to calculate annual leave in hours, not days. This ensures fairness in that employees who work variable hours/shifts do not receive either more or less leave than colleagues who work to a standard pattern. Only employees who work 7.5 hours per day, Monday to Friday, should use days as a means of calculation.
- 2.3 The policy will apply to all employees employed by the Trust with the exception of Doctors and Dentists with regard to specific entitlements.
- 2.4 The general principles of the Annual Leave Policy will apply to Doctors and Dentists. For further information about Doctors, refer to the National Health Service Hospital Medical and Dental Staff and Doctors in Public Health Medicine and the Community Health Service (England and Wales) Terms and Conditions of Service. For further information about Dentists, refer to the 'Salaried Primary Dental Care Services (England) Terms and Conditions of Service' January 2008.

### 3. Definitions

**Annual leave:** a paid number of days or hours each year that an employee is entitled to be away from work.

**Leave year:** 1 April and 31 March.

**Reckonable service:** for the purpose of annual leave, is defined as aggregated NHS employment, regardless of any breaks in service.

**Standard work pattern:** 37.5 hours per week, 7.5 hours a day, Monday to Friday.

**Non-Standard work pattern:** Not a standard work pattern. For example, part time employee working 4 hours a day or working long days (12 ½ hours a day for three days).

**Entitlement:** the total amount of leave that an individual employee is entitled to during a specified period.

### 4. Duties

#### 4.1 Line managers are responsible for:

- finalising leave entitlement for a new starter during their local induction and ensuring the new member of staff is clear on this
- agreeing annual leave entitlement with their employee for the annual leave year
- asking an employee to provide evidence of previous service and sending it to the HR Administration team ([hradmin@clch.zendesk.com](mailto:hradmin@clch.zendesk.com)) where the record from previous Trusts is not correct according to the employee
- ensuring fairness when considering annual leave and ensuring that employees are taking annual leave at regular intervals to support their wellbeing unless there are exceptional circumstances (see Section 5.12 below)
- ensuring the needs of their service are met with sufficient permanent staff. This will include considering not approving requests, particularly at busy times of the year or where the frequency of requested annual leave is high such as Christmas, school holidays etc. In addition to this, it may include having to request staff to take leave when insufficient leave has been taken.

- when using e-rostering; to ensure regular review that the set weekly annual leave allocation is being used
- keeping their own records of the leave position for all employees for whom they are responsible and entering all annual leave taken on the electronic e-rostering system (Allocate) and reporting any undertaken annual leave to the Finance Department

**4.2 Employees** are responsible for:

- ensuring that their annual leave is planned and taken at regular intervals throughout the leave year to support their wellbeing
- keeping a clear record of the leave they have taken
- agreeing with their manager the annual leave they are entitled to for that leave year
- planning their annual leave with the team and in agreement with their line manager

**5. Annual Leave**

**5.1 Overall entitlement**

Annual leave entitlement is determined by the length of aggregated NHS service, with leave entitlements increasing on the completion of 5 and 10 whole years' aggregated NHS service (see table below). A table with the breakdown of entitlement of annual leave hours pro rata to part time contractual hours is available in the HR area of the Trust's intranet hub.

Length of Service	Full Time Employee in Post from the start of the financial year	
	Base Entitlement	Bank Holiday Entitlement
On appointment to NHS	27 days (202.50 hours )	7.5 hours for every bank holiday as they fall within 1 April – 31 March
After 5 years' NHS service	29 days (217.50 hours)	
After 10 years' NHS service	33 days (247.50 hours)	

## **5.2 Planning of annual leave across the year**

- 5.2.1 It is important to ensure business as usual and planning annual leave takes place across the year and that staff are healthy and the level of service is consistent. It is advisable that annual leave is booked across the year to ensure all staff are given consistent breaks from work and to effectively support staffing the service at all times. As part of this, it is essential that allocated leave on the e-rostering system is effectively planned and managed.
- 5.2.2 Staff and managers need to ensure leave is planned across the year to avoid a build-up of leave at the end of the calendar year (December) to ensure staff take annual leave across the year whilst maintaining the service. All remaining leave should be booked and approved for the last three months of the leave year. Only in exceptional circumstances can additional leave above this level be agreed for the rest of the annual leave year.
- 5.2.3 All staff should also aim to take equal amounts of leave across each quarter of the leave year, i.e. every three months. Managers and staff are responsible for quarterly reviews of leave requested and taken, to adhere to the principle of supporting staff to take a break and effectively managing the service.
- 5.2.4 Please also refer to the Trust's Rostering Policy (Section 5) for further detail regarding the effective management of leave on an ongoing basis using the e-rostering system.
- 5.2.5 If for any reason an employee takes annual leave in excess of their contractual entitlement this will be discussed with their manager, with advice from HR as appropriate. An arrangement will be made to reconcile the time taken off, for example deduction from pay (over a short period if necessary) or deduction from the following leave year entitlement. For help with calculations, contact the HR Administration team [hadmin@clch.zendesk.com](mailto:hadmin@clch.zendesk.com)

## **5.3 Entitlement on joining**

- 5.3.1 All new employees will be entitled to annual leave plus general bank and public holidays in the year of joining the Trust, on a pro-rata basis based on their contractual hours.
- 5.3.2 The entitlement for employees in the first year will be calculated in hours on a pro rata basis on the date of joining and before the end of the annual leave year.
- 5.3.3 Where an employee starts part way through a month, the entitlement will be calculated in hours on a pro rata basis for the first month.
- 5.3.4 To calculate entitlement to annual leave, refer to the annual leave calculator and guidance on the CLCH HR [Helpdesk](#) or email [hadmin@clch.zendesk.com](mailto:hadmin@clch.zendesk.com)

5.3.5 Alternatively, refer to the electronic e-rostering system (Allocate) to determine entitlement. Any queries on entitlement should be taken up with the line manager in the first instance.

#### **5.4 Change of entitlement during the leave year**

5.4.1 Where an employee's leave entitlement changes during the annual leave year, leave allowance will be calculated pro-rata to the number of hours before and after the change of entitlement.

#### **5.5 Entitlement on leaving**

5.5.1 Employees and managers should ensure that, where possible, employees take their outstanding allocation of annual leave before they leave the Trust. Where this is not possible, the termination date can be extended to allow for payment for outstanding annual leave. Where annual leave taken exceeds the entitlement, an appropriate deduction will be made from the final monies.

5.5.2 The entitlement for employees on leaving the Trust will be calculated in hours on a pro rata basis based on the date of leaving. Accrued bank/public holidays will not be included in any leave entitlement paid.

5.5.3 If excess leave has been taken, it will be deducted from final pay. To help with calculation, refer to the annual leave calculator and guidance on the CLCH HR [Helpdesk](#) or email [hradmin@clch.zendesk.com](mailto:hradmin@clch.zendesk.com)

#### **5.6 Death during service**

5.6.1 Where an employee dies in service, an allowance equivalent to the balance of the annual leave entitlement on the date of death, calculated on a pro rata basis, shall be paid. No deduction from the final salary payment should be made in respect of annual leave taken in excess of entitlement as at the date of death.

#### **5.7 Entitlement for employees with Term-Time Only contracts**

5.7.1 The salary for this type of contract is based on:

- the number of weeks actually worked, plus
- a pro-rata of the annual leave and general bank and public holiday entitlement

5.7.2 This salary will be paid in 12 equal payments. The formula for calculating the salary for term-time is given in Appendix D.

5.7.3 The calculation for this is to divide the annual salary by the number of weeks in a year, and then to multiply this by the number of weeks that the term-time employee will be working, including an entitlement to annual leave and bank

and public holidays. This will be divided into 12 equal payments, ensuring a monthly payment at a steady rate for the employee.

- 5.7.4 Although a payment is made for pro-rata annual leave plus bank and public holidays, the leave must be taken during school holidays. In very exceptional circumstances, where an unexpected leave need arises, it may be possible to take annual leave during school term time if agreed with the manager. In these circumstances, the employee would need to make this time up during school holidays.
- 5.7.5 Of the 8 bank and public holidays, only one (the first May bank holiday) falls during term-time. All the other bank and public holidays fall within the school holidays when a term-time employee would not normally be working. Therefore, a payment for the 7 additional bank and public holidays has been built into the salary payment calculation for employees who work term-time.
- 5.7.6 All of the above arrangements would be calculated on a pro-rata basis for part-time employees.

## **5.8 Annualised hours**

- 5.8.1 The annual leave entitlement for employees on annualised hours forms part of the total number of contracted hours. The employee will therefore book annual leave on the basis of either an average working week or average working day. For further guidance, see Appendix C of the Trust's Annualised Hours Policy for annualised hours conversion examples.

## **5.9 Buying additional annual leave**

- 5.9.1 All employees can apply to buy additional annual leave but approval will depend upon service requirements. Employees may increase their annual leave entitlement by up to a maximum of one week's contracted hours. Annual salary will be reduced accordingly by purchasing the additional annual leave hours/days.
- 5.9.2 Prior to making the request, the employee should discuss the financial impact with the Trust Payroll team.
- 5.9.3 Managers and staff should refer to separate Trust guidance on buying/selling annual leave during emergencies and situations such as the Covid pandemic.
- 5.9.4 A request for additional annual leave must be agreed by the employee and line manager a month before the start of a new leave year so that the necessary salary adjustment can be made and overpayment of salary is avoided. The employee is responsible for complete the 'Purchasing of Additional Annual Leave' form which can be found at Appendix C.



5.9.5 When deciding whether to approve an additional annual leave request, the manager's decision will be based on whether the request can be accommodated within the needs of the service.

## **5.10 Carry over of leave**

5.10.1 It is the position of CLCH that leave will not be carried over into the new leave year, but managers and staff should refer to separate Trust guidance during emergencies and situations such as the Covid pandemic.

5.10.2 In exceptional circumstances (for example service needs have prevented the employee from taking the full allocation of annual leave), where it has been identified in advance by the employee and manager, that the employee will not be able to take sufficient annual leave, agreement for a maximum of one working week pro rata (i.e. contracted hours) can be carried over. The carried over leave must be taken by 31 May, i.e. in the first two months of the new leave year.

5.10.3 If annual leave is not taken in the leave year, or within 2 months in the case of exceptional circumstances, the leave will be lost

5.10.4 Please also refer to the Trust's Rostering Policy (Section 5) for further detail regarding the effective management of leave on an ongoing basis using the e-rostering system.

5.10.5 Under no circumstances will any accrued and untaken annual leave be paid unless the employee is leaving the Trust.

5.10.6 Please refer to the Trust's Sickness Absence Management Policy ("Annual leave following sickness absence) for guidance on leave for an employee who returns to work in the following annual leave year after a period of sick leave, and they have not taken their full entitlement of annual leave.

5.10.7 Accrued leave from a period of sickness can be used during the initial four-week phased return to work period and can support extension of any phased return to work. Please refer to the Trust's Sickness Absence Management Policy for guidance (Phased return to work after a period of long term absence).

5.10.8 Please refer to the Trust's Maternity and New Parents Policy in relation to maternity, paternity, adoptive or related leave.

## **5.11 Unpaid leave**

5.11.1 All employees are eligible to apply for unpaid leave regardless of their length of service. Requests for unpaid leave will normally only be considered when an

employee has used up all of their annual leave for the relevant leave year. When deciding on whether to agree to an unpaid leave request, the manager's decision will be based on whether the request can be accommodated within the needs of the service.

5.11.2 Examples of situations where managers may grant unpaid leave are as follows:

- a special holiday of several weeks, perhaps to visit family or friends who live a long distance away
- if an employee has just started with the Trust and has pre-booked holiday for which they would not have enough annual leave
- training and/or development reasons, e.g. additional study leave is required, over and above what is available under the Trust's policies, to complete a large piece of work or prepare for exams

5.11.3 If a period of leave is required in excess of three months, the request should be dealt with under the Trust's Special Leave Policy (Employment (Career) Break Scheme).

5.11.4 Employees should note that while they are on unpaid leave, they will not be paid for work and rest days and will not accrue annual leave for any unpaid period in a month. It is strongly advised that employees who wish to take a long period of unpaid leave, discuss the financial implications with an HR Advisor, Pensions Officer and/or Payroll Clerk before applying for the leave.

## **5.12 Bank and public holidays**

5.12.1 The standard 8 bank and public holidays in the year are:

- Christmas Day
- Boxing Day
- New Year's Day
- Good Friday
- Easter Monday
- May Day (generally 1<sup>st</sup> Monday in May)
- Spring Bank Holiday (generally the last Monday in May)
- Late Summer Bank Holiday (usually the last Monday in August)

5.12.2 This may change with additional special bank holidays. Sometimes Easter will fall in March. This will mean that there will, in effect, be two Easter holidays in the same 12-month period. In this case, employees would be allocated the leave entitlement according to the number of bank holidays in that financial year. The following year would then have less bank holiday entitlement. When a bank

or public holiday falls on a Saturday or Sunday, the following Monday or Tuesday is usually designated as a bank or public holiday for leave purposes.

- 5.12.3 Employees required to work or be on-call on bank or public holidays, will be entitled to payment and time off in accordance with NHS Terms and Conditions.
- 5.12.4 All part-time employees are entitled to bank/public holidays pro-rata to the full-time allowance, which will be added to the pro-rata annual leave entitlement (refer to annual leave calculator) and they shall take bank/public holidays they would normally work as annual leave. Managers should record these bank/public holidays taken as annual leave or the employee should book the leave on the e-rostering system. The number of hours deducted should be the number of hours that the employee would normally work on that day.
- 5.12.5 Where staff work standard shifts, other than 7.5 hours excluding meal breaks, annual leave and general public holiday entitlements should be calculated on an hourly basis, to prevent staff on these shifts receiving greater or less leave than colleagues on standard shifts
- 5.12.6 This means that on each and every occasion an employee takes paid time off on a bank/public holiday as part of their basic week, the appropriate deduction of their normal basic working hours for that day will be made from their overall entitlement.
- 5.12.7 In certain circumstances where staff work non-standard shifts (for example, Monday to Thursday) this can place the employee at a disadvantage in relation to their bank/public holiday entitlement as the majority of bank/public holidays fall on a Monday (and by working a Monday, in order to take the day off as a bank/public holiday, the member of staff would deduct from their leave entitlement the hours they would ordinarily work on that Monday).
- 5.12.8 Where operationally possible and subject to mutual agreement, an employee may change their days of working during a bank/public holiday week and therefore retain their leave entitlement in respect of the bank/public holiday. This can then be taken as time off at another time. Alternatively, and again where operationally possible and subject to mutual agreement, an employee may work an extra day at another time and retain their leave entitlement in respect of the bank/public holiday.
- 5.12.9 Where a job share arrangement exists, bank and public holidays will be divided between the job sharers in such a way as to ensure that neither is disadvantaged by the days of the week on which they regularly work. The number of hours should be calculated on a pro rata basis.

### **5.13 Annual leave requests**

- 5.13.1 Employees are required to give notice if they wish to request annual leave. It is the responsibility of all employees to advise their manager of proposed annual leave dates as early as possible in order to reach agreement and ensure that management action can be taken to maintain service levels.
- 5.13.2 To support effective roster planning, requests should be submitted 6 weeks prior to the roster being worked, at the latest.
- 5.13.3 It is acknowledged that at times unforeseen or short-term requests arise. All employees must bring these to their manager's attention as soon as the requirement for the request is known. Each short-term request outside of the rostering period will be assessed against service needs.
- 5.13.4 No temporary staffing cover may be sought to cover gaps in services created by approval of annual leave. As a last resort, only bank staff should be used to cover service gaps.
- 5.13.5 It is the manager's responsibility to ensure that a fair and consistently applied leave application system is in operation in their department. Employees should be informed of the system for the booking and allocation of leave on commencement and must follow this to ensure minimal disruption to service provision.
- 5.13.6 Under no circumstances should employees be absent from work without permission. If an employee takes unauthorised leave, this will be investigated under the Trust's Disciplinary Policy and may result in action being taken up to and including dismissal.
- 5.13.7 An employee should not make arrangements until leave is confirmed, e.g. book travel or accommodation. If the employee incurs any expenses and subsequently leave cannot be granted, the employee is not entitled to compensation from the Trust.
- 5.13.8 All annual leave requests should be submitted on the electronic e-rostering system (Allocate) and only considered authorised when the manager has approved the request.
- 5.13.9 In exceptional circumstances, a manager may ask a member of staff to reschedule their annual leave. This would only be put into effect through discussion and with the agreement of the employee.
- 5.13.10 If an employee wishes to cancel their annual leave, they must request agreement for this from their manager as early as possible. If they wish to

reschedule it, they should discuss the feasibility of their new proposed dates with their manager.

5.13.11 Pay during annual leave will include regularly paid supplements, including any recruitment and retention premia, payments for work outside normal hours and high cost area supplements. Pay is calculated on the basis of what the individual would have received had they been at work.

5.13.12 For staff who have regular hours the reference period is based on the previous three months at work or any other reference period that may be locally agreed.

5.13.13 For staff who have irregular hours the reference period will be based on the last 52 weeks. When calculating the 52 full weeks of pay, employers are limited to referencing the previous 104 weeks from the date the leave begins.

#### **5.14 Extended period of annual leave**

5.14.1 There are occasions when an employee may wish to, or needs to, take extended periods of annual leave. This is any leave over 3 weeks. Any such request should be submitted with as much notice as possible. The manager will consider the needs of the service as well as the needs of the employee when making a decision.

5.14.2 However, the employee and the manager should seek to ensure that the employee has regular planned annual leave/time out throughout the rest of the annual leave year to allow for breaks and/or to meet any unexpected leave needs.

#### **5.15 Sickness and annual leave**

5.15.1 For sickness occurring during annual leave, refer to the Trust's Sickness Absence Management Policy (Holidays/leave during sickness absence). For information about taking annual leave during sick leave, refer to the Trust's Sickness Absence Management Policy (Annual leave following sickness absence).

#### **5.16 Appeal process**

5.16.1 Where an employee feels their request for annual leave has not been considered in a fair or equitable manner, they have the right to raise their concerns formally via the Trust's Grievance Policy.

### **6. Consultation Process**

6.1 The following stakeholders were consulted in the creation of this policy and comments incorporated as appropriate:

Head of Employee Relations & Policy  
E-Rostering Manager  
HR Transformation Team  
Staff Side Representatives

**7. Approval and Ratification Process:**

This policy was approved by the HR Policy Group on 15 December 2021 and ratified by the Policy Ratification Group on 10 January 2022.

**8. Dissemination and Implementation**

8.1 This document will be placed on the Trust intranet by the QLD team and will therefore be available to all staff. The QLD team will provide a reference number for the policy.

8.2 Furthermore the document will be circulated to all managers who will be required to cascade the information to members of their teams and to confirm receipt of the procedure and destruction of previous procedures/policies which this supersedes. Managers will ensure that all staff are briefed on its contents and on what it means for them.

**9. Archiving**

The QLD team will undertake the archiving arrangements.

**10. Training Requirements**

No training is required.

**11. Monitoring and Auditing Compliance**

Please see appendix A.

**12. Review**

This procedural document will be reviewed in 3 years' time in January 2025. It will be reviewed by the HR Policy Group, including HR and Staff Side representatives.

**13. Associated Documentation**

Rostering Policy  
Sickness Absence Management Policy  
Special Leave Policy  
Flexible Working Policy  
Disciplinary Policy  
Grievance Policy

**14. References**

NHS Terms and Conditions of Service  
Working Time Regulations 1998  
Working Time (Amendment) Regulations 2007  
Employment Rights Act 1996

**15. Appendices**

Appendix A: Compliance Monitoring Table  
Appendix B: Equality Impact Assessment  
Appendix C: Purchase of Additional Annual Leave  
Appendix D: Calculation for Term Time Only Employees  
Appendix E: Annual Leave Process

## Appendix A: Compliance Monitoring Table

<b>Policy lead</b>	<b>Element(s) to be monitored</b>	<b>How will you ensure that the policy is being implemented</b> (E.g. via an audit, KPIs )	<b>How often will you monitor that the policy is being implemented</b>	<b>Reporting arrangements</b> (Which committee or group will the monitoring of the policy be reported to?)	<b>Results of Monitoring</b>
Director of People	Staffs ability to take leave during the leave year	Audit	Annually	Zero Agency Group (ZAG)	Increased over the last 24 months, no data prior due to payroll enablement
	The number of days leave carried over each year	Audit	Annually		Decreased - Limited data due to pandemic over the last 24 months.
	Percentage of leave taken as reported by e-roster against the required percentage of leave which should have been taken	Audit	Annually		91% of staff have taken annual leave (21/22) in line with expectations as at March 2022. Of which 70% having taken/ booked over $\frac{3}{4}$ of their leave entitlement; 30% of staff have not yet either booked/ taken $\frac{3}{4}$ of their leave, as might be expected.



## Appendix B: Equality Impact Assessment

### Annual Leave Policy

CLCH as a public authority has a legal requirement to analyse the impact of the policy on the protected characteristics of staff and patients. This helps us to check if there is a negative impact, how we can reduce that impact.

1. Protected characteristic	Positive impact	Neutral Impact	Negative Impact	Reason for impact and action required.
People of different ages (e.g. Children, young or older people).		X		The policy will not have a negative impact upon people of different ages but rather people of different length of service within the NHS. The organisation will review the application of this Policy on at least an annual basis and will consider the action needed to address any adverse impacts.
People of different religions / beliefs			X	There could be a negative impact of the application of this Policy on employees of different beliefs. The policy allows employees to request extended periods of annual leave and such requests should not be unreasonably refused by the manager. However, if the service needs may limit opportunities, there could be a negative impact if a manager is not sympathetic to employees who request extended leave for religious festivals or during times of fasting. This element of discretion needs to be monitored and there should be process for employees to challenge their annual leave requests if they are refused. The organisation will review the application of this policy on at least an annual basis and will consider the action needed to address any adverse impacts.

<p>People with disabilities (physical, sensory or learning).</p>			<p>X</p>	<p>There may be times where staff with long term conditions will need to use their annual leave to attend hospital appointments. A number of factors will be taken into consideration when deciding if annual leave should be used for hospital appointments related to the member of staffs long term conditions (disability). One would be the number of appointments required during the year, whether these appointments are indefinite or a fixed number and the ability to use alternative flexible working options (TOIL, working time back, unpaid leave).</p> <p>The organisation will review the application of this Policy, on at least an annual basis, and will consider the action needed to address any adverse impacts.</p>
<p>People from different ethnic groups</p>			<p>X</p>	<p>There may be an adverse impact of the application of this Policy on employees from black and minority ethnic backgrounds. This policy allows employees to request extended periods of annual leave and such requests should not be unreasonably refused by the manager. However, if the service needs may limit opportunities, there could be a negative impact if a manager is not sympathetic to employees who request extended leave to visit their families in their country of origin. This element of discretion needs to be monitored and there should be process for employees to challenge their annual leave requests if they are refused. The organisation will review the application of this policy on at least an annual basis and will consider the action needed to address any adverse impacts.</p>
<p>Men or women</p>			<p>X</p>	<p>The policy is likely to have an unfair advantage against women or people with caring responsibilities as they would ordinarily have caring responsibilities that means they will need to allocate a proportion of their leave in emergencies. This may have an impact particularly if requesting leave at short notice which</p>

				may not be granted if the needs of the service cannot be met.
Transgender people		X		The organisation will review the application of this Policy, on at least an annual basis, and will consider the action needed to address any adverse impacts.
People who are gay, lesbian, and bi-sexual		X		The organisation will review the application of this Policy, on at least an annual basis, and will consider the action needed to address any adverse impacts.
Refugees and asylum seekers				Not applicable.
2	<p>Please describe engagement and consultation process and the key feedback. E.g. with teams, unions.</p> <p>The policy has been presented at the HR policy group and the Policy Ratification Group</p>			
3.	<p>If there are negative impacts upon people's protected characteristics. Does the policy in its current form need a full Equality Analysis Assessment to be completed?</p> <p>There is no requirement to complete a full Equality Analysis Assessment. Further engagement is required with these groups where there is an adverse impact based on their protected characteristic in order to establish mitigation which should be monitored</p> <p>Further engagement with these groups will need to be undertaken to mitigate negative impacts– these would be monitored on an annual basis to identify patterns.</p>			
4.	<p>Have you signed this off with the Equality and Diversity Lead</p> <p>Yes</p>			

Signed for team / working group:

Name: Mark Handley

Date: 8 October 2018

Signed by Equality and Diversity team:

Name: Yasmin Mahmood

Date: 8 October 2018

## Appendix C: Purchase of Additional Annual Leave

PURCHASE OF ADDITIONAL ANNUAL LEAVE		
<b>Employee Details:</b>		
<b>Name:</b>		
<b>Employee Number:</b>	<b>Service:</b>	
<b>Normal Working Hours:</b> (per week)		
<b>Number of HOURS of additional annual leave I wish to purchase:</b> (Maximum 37.5 hours per day, pro rata for part time staff)		
<b>Number of months over which I would like to make payments:</b> (i.e. number of months left in the annual leave year*)		
<b>Declaration:</b>		
<p>I would like to apply to purchase the additional amount of annual leave I have specified above.</p> <p>I understand and agree to the following: -</p> <ul style="list-style-type: none"> <li>the decision to allow me to purchase additional annual leave is at the discretion of CLCH</li> <li>once the additional annual leave is booked and purchased I will lose it if I don't use it</li> <li>this purchase constitutes a change to my statement of terms and conditions of employment for this annual leave year</li> <li>that I have opted to purchase additional annual leave and that this will result in a reduction in my salary for the relevant leave year</li> </ul> <p>I understand that CLCH will make deductions to my pay of the correct amount for my purchase of the annual leave specified above.</p> <p>I am aware and accept that any deductions will be based on current salary scales.</p>		
<b>Employee's Signature:</b>		<b>Date:</b>
<b>Manager's Signature (if approved**):</b>		<b>Date:</b>
<b>For HR Admin Use ONLY</b>		
<b>Total Salary</b> (full-time salary plus HCA if applicable):		
<b>Deduction Starting Month:</b>		
<b>Monthly Deduction:</b>		
<b>Admin Name and Signature:</b>		

\*Forms will be processed on the next available pay run, which may be the month *after* the form is received.

\*\*If this application is not approved, managers should provide the reason to the employee.

## **Appendix D: Calculation for Term Time Only Employees**

An employee on a standard Term Time Only contract works 39 weeks per year minus one day (early May bank holiday). This equates to 38.8 weeks per year.

### **Calculation for an employee working full-time (37.5 hours per week)**

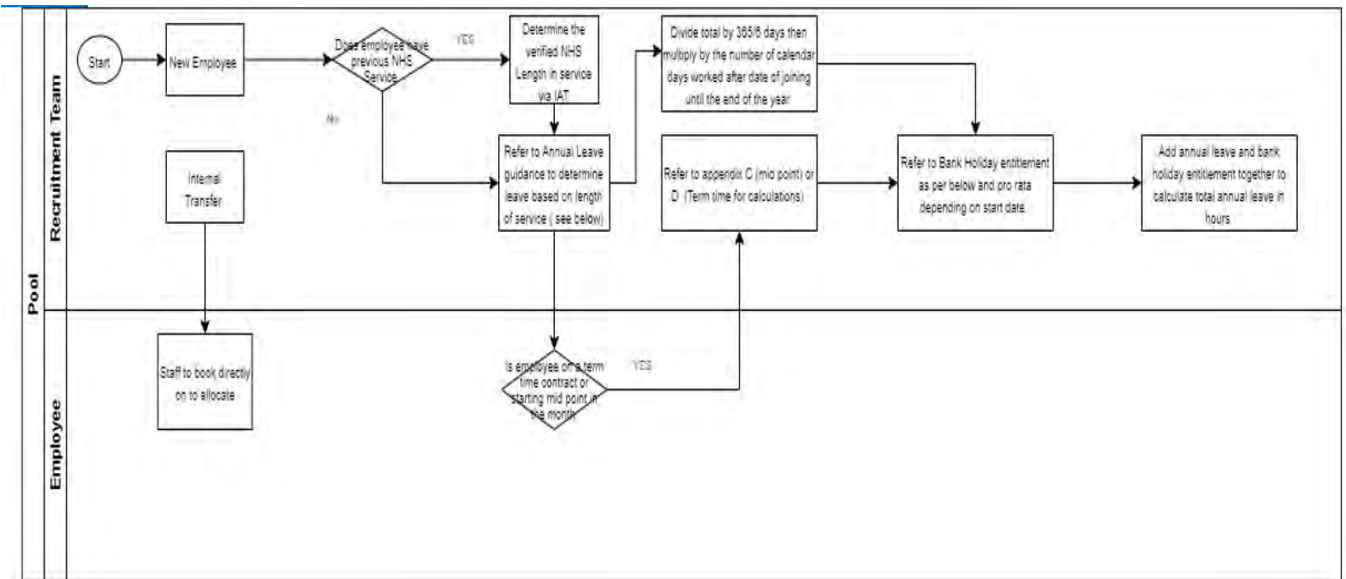
0 – 4 years' service:	works 45 weeks per year (52 weeks – 5.4 weeks annual leave - 1.6 bank and public holidays)
5 – 9 years' service:	works 44.6 weeks (52 weeks – 5.8 weeks annual leave - 1.6 weeks bank and public holidays)
10 + years' service:	works 43.8 weeks (52 weeks – 6.6 weeks annual leave - 1.6 weeks bank and public holidays)

An employee on working term time only should be paid as follows:

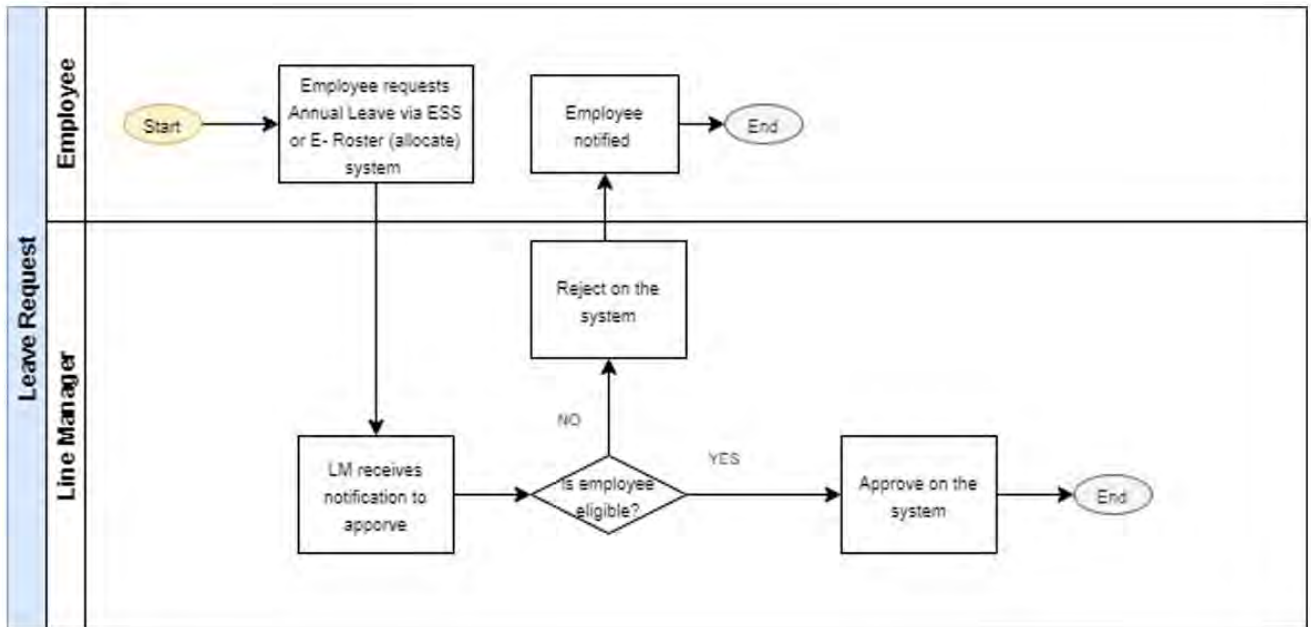
0 – 4 years' service:	38.8 weeks divided by 45 weeks = 86% of a full-time salary
5 – 9 years' service:	38.8 weeks divided by 44.6 weeks = 87% of a full-time salary
10 + years' service:	38.8 weeks divided by 43.8 weeks = 88% of a full-time salary

## Appendix E: Annual Leave Process

For new starters:



Annual leave process booked 6 weeks in advance (if leave is required within 6 weeks, please contact your line manager):



# LEAVE CARD

NAME: \_\_\_\_\_

DESIGNATION: \_\_\_\_\_

ROOM/CENTRE: \_\_\_\_\_

ADDRESS: \_\_\_\_\_

ANNUAL LEAVE ENTITLEMENT  
 .....DAYS

STUDY LEAVE ENTITLEMENT 5 DAYS\*

This card is to be used for recording any authorised leave  
 \*See Central London Community Healthcare Learning and  
 Development policy for definition of study leave

OTHER LEAVE			
LEAVE APPLIED FOR:			
	FROM	TO	AUTH BY

<b>ANNUAL LEAVE</b>				
LEAVE APPLIED FOR:	NO. OF DAYS	TYPE OF LEAVE	BAL.	AUTH. BY
	FROM	TO		

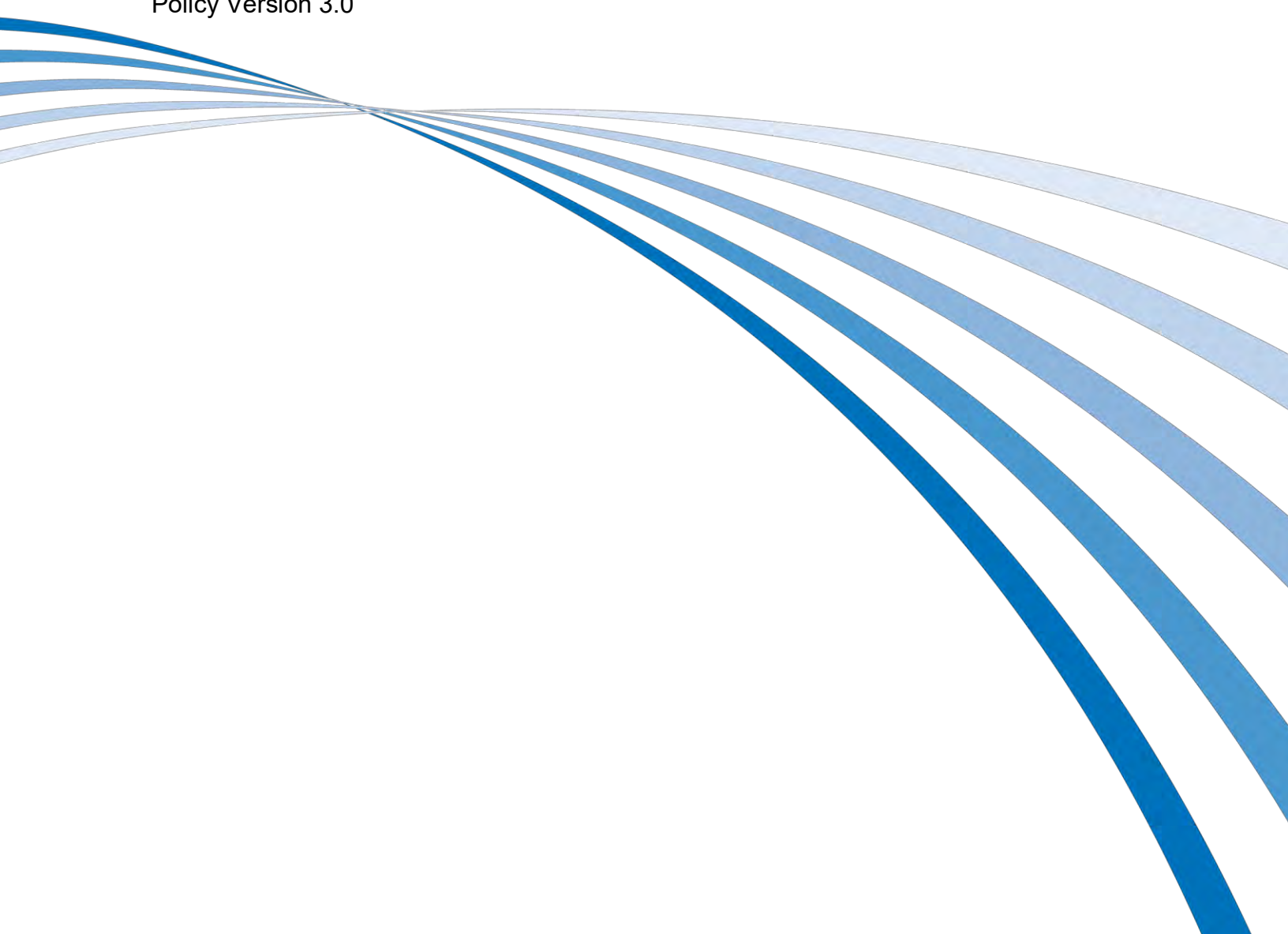
<b>STUDY LEAVE</b>				
Central London Community Healthcare NHS Trust is committed to all staff receiving a minimum of 5 days study leave per year. A review of your learning and development needs and discussion about future needs is an essential part of your annual IDR				
Learning and Development course/activity	FROM	TO	NO OF DAYS	AUTH BY
Refresher Training			1	





**TITLE: CAPABILITY POLICY**  
**VALID FROM: SEPTEMBER 2021**  
**EXPIRES: SEPTEMBER 2024**  
**REFERENCE WFC13**

This procedural document supersedes the previous procedural document, Capability Policy Version 3.0



<b>Version:</b>	4.0
<b>Policy reference and description of where held.</b>	WFC13 Intranet – Policies
<b>Title, name and contact details for author</b>	Pete Couchman, HR Business Partner <a href="mailto:p.couchman@nhs.net">p.couchman@nhs.net</a>
<b>Title, name and contact details for responsible director</b>	Louella Johnson, Director of People <a href="mailto:louella.johnson@nhs.net">louella.johnson@nhs.net</a>
<b>Approved by originating committee, executive or departmental management group</b>	HR Policy Group (sub group of the Joint Staff Consultative Committee) on 24 August 2021
<b>Ratified by Policy Ratification Group</b>	20 September 2021
<b>Review date:</b> 3 years maximum for non-clinical documents	Review: April 2024 Expires: September 2024
<b>Target audience</b>	All substantive Trust staff except where issues relate to doctors' and dentists' clinical practice, for which there are separate procedures. This policy does not apply to temporary, bank and agency staff.

### Version Control

Version	Date	Author	Status	Comments
1.0	Jan 2011	Mark Handley	Archived	First integrated Capability Policy following amalgamation of K&C, H&F, & Westminster
2.0	Jan 2012	Mark Handley	Archived	Updated following integration of Barnet Community Services
3.0	Oct 2013	Liz Lubbock	Archived	Full review undertaken. Policy later extended to September 2017
4.0	Oct 2017	Liz Lubbock	Archived	Review undertaken. Minor changes made.
5.0	Jun 2021	Pete Couchman, Yolanda Alleyne, Rena Nunes	Current	Review undertaken including clarification of procedure for review meetings, and addition of Principles section and appeal procedure appendix.

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## **1 Introduction and Scope**

- 1.1 This policy supports staff to help them improve and perform to the required standards of their role in line with the principles of compassionate leadership and collaborative teamwork.
- 1.2 CLCH recognises that it is dependent on the skill and dedication of its staff to provide high quality services to its patients, service users and partner organisations. CLCH is committed to the development of its staff to enable them to make the best possible contribution to health and patient care.
- 1.3 This procedure applies to all substantive Trust staff. Concerns about the professional and personal conduct and capability of practitioners employed by the Trust will be addressed in accordance with the Trust's Doctors, Dentists, Psychologists and Pharmacists: Managing Concerns Policy and Procedure.
- 1.4 This policy does not apply to temporary, bank and agency staff. For advice on issues in relation to temporary staff, please contact the relevant HR Business Partner or the Temporary Staffing service provider.
- 1.5 Managers have a responsibility to ensure that staff are aware of the standards expected of them and staff have a responsibility to achieve and maintain these. Performance is normally measured against a person's job description, annual objectives, and relevant organisational or professional guidelines. However, an individual's capacity to perform may not always meet the requirements of the post.
- 1.6 When applying this policy, a clear distinction should be made between:
  - sub-standard work performance which is within a person's control and choice, and
  - poor performance that is due to lack of ability, skill, knowledge, experience or aptitude.
- 1.7 Poor performance which is related to conduct will normally mean that a member of staff had control over their actions and they are capable of doing their job to the required standards. Issues of this nature should be handled through the Disciplinary Policy.
- 1.8 A lack of skill, knowledge, experience or aptitude should be treated using a fundamentally different approach, as set out in this policy and procedure. The most common causes of poor performance are:
  - poor selection procedures
  - inadequate training or lack of local induction

- insufficient understanding of the role which the member of staff is expected to perform
- the role is understood and training has been provided but there is a lack of capacity; this may occur for example where a member of staff has been promoted but is unable to cope with the demands of the new role
- due to sickness or other incapacity which may be more appropriately dealt with through the Sickness Absence Management Policy or other relevant policies. Ill health retirement would also be explored through this route
- inability to carry out day-to-day duties due to a disability or long term condition where reasonable adjustments to enable staff to reach their full potential may need to be established

1.9 Performance issues that are identified and managed during the probationary period are managed under the Trust's Orientation (Induction & Probation) Policy prior to the member of staff being confirmed in role. Advice can be sought from the HR Business Partner.

## 2 Aims and Objectives

2.1 This policy has been developed to help and encourage all members of staff to achieve and maintain the highest possible standards of performance. It sets out the process for managers to follow when dealing with issues of poor performance resulting from lack of ability, skill, knowledge, experience or aptitude. Appendix A sets out the Capability flow chart.

2.2 This policy supports the Trust values of quality, valuing relationships, delivering services we are proud of, and making a positive difference to our communities, by:

- ensuring staff have a clear understanding of what is expected of them and the process to be used if performance falls short of the standards required
- providing a fair, objective and consistent method of dealing with capability matters and ensuring staff and managers are supported appropriately
- helping to create good employee relations within the Trust

## 3 Definitions

**(In)capability:** poor performance resulting from lack of ability, skill, knowledge, experience or aptitude.

**Informal stage:** initial stage of providing advice, guidance and support to improve performance, setting smart objectives and providing any training needed, in a private, supportive conversation.

**Stage One - First review meeting:** formal meeting arranged where improvements in performance have not been made or to address more serious poor performance.

**Stage Two - Second review meeting:** formal meeting held where improvements have not been made or maintained at the first review stage or where new issues arise. If there has been a substantial period of monitoring and support provided and documented at the informal stage, the formal procedure can be entered at this second review meeting stage.

**Stage Three: Final review meeting:** formal meeting held where there has been further evidence of poor performance after an agreed review period, or where the member of staff presents a high risk to the organisation or service if they were to continue in their role.

**Dismissal (with notice):** a possible outcome where further evidence of poor performance is presented after the final review meeting.

**Appeal:** a hearing held when a member of staff feels the initial decision made was incorrect e.g. too harsh or where they felt the capability procedure was not implemented appropriately.

## **4 Duties**

### **4.1 Managers are responsible for:**

- providing a comprehensive local induction programme for all new members of staff in their service. The opportunity should be taken to discuss their job description, ensuring it accurately reflects the main purpose and scope of the job, setting standards from the outset and providing constructive and regular feedback on their performance
- agreeing annual work objectives with the member of staff, discussing what training and advice should be given to help meet their objectives and continually reviewing performance against the agreed objectives. Arranging supervision and yearly appraisal is mandatory for all staff
- considering, where staff do not meet the required standard, whether this is an isolated matter best dealt with informally or is indicative of the need for more in depth action. It is vitally important that potential problems are detected and raised with staff at an early stage, seeking support from Employee Health if appropriate
- not waiting for the next performance appraisal before taking action to find out why the problem is developing, and identifying the most appropriate way of encouraging the member of staff to remedy the situation

- maintaining records of any informal or formal action undertaken under this procedure, detailing the capability issues raised, the action taken and the reason for it, and including whether an appeal was lodged, and the outcome of any appeal
- providing support to the member of staff whilst the capability process is being undertaken and providing signposts to other sources of help, for example:
  - an accredited Trade Union representative [Link](#)
  - an HR Business Partner or HR Advisor [Link](#)
  - the Freedom to Speak Up (FTSU) Guardian or a FTSU Champion about any concern: [intranet hub](#) or [clcht.ftsusupport@nhs.net](mailto:clcht.ftsusupport@nhs.net)
  - for counselling and advice on health and well being: an Employee Health professional [clcht.employeehealthstcharles@nhs.net](mailto:clcht.employeehealthstcharles@nhs.net)
  - Health and Wellbeing Champions [Link](#)
  - Mental Health Minders [Link](#) or [clcht.mentalhealthminders@nhs.net](mailto:clcht.mentalhealthminders@nhs.net)
- making reasonable adjustments where it is identified that staff are affected by a disability or other protected characteristic which may impact upon their ability to meet the requirements of the role

#### 4.2 **Members of Staff:**

- are encouraged to reflect on their own performance to assist in identifying hurdles to satisfactory performance, and to work with their manager in seeking resolution to any problems
- should be open and flexible about changes to working practices, where appropriate
- should inform their manager of any difficulties they are experiencing, whether these are related to work, personal circumstances, underlying health issues or domestic issues
- if they feel uncomfortable raising such concerns directly with their manager, should seek support from HR, Staff Side or the FTSU Guardian who can help to facilitate a conversation with their manager, so that appropriate support can be given
- if reasons affecting performance are for example of a personal nature and they do not wish to discuss this directly with their manager, or prefer to discuss this with someone of the same gender, should raise this through HR or via Employee Health so that recommendations for appropriate support can be given

- should attend Employee Health Service appointments when requested to do so as part of overall action to support the management of capability issues
- should raise any issues which may arise out of a disability or other protected characteristics to their manager or Employee Health

#### 4.3 **Human Resources** will:

- provide advice to any manager taking a member of staff through the capability process, as well as any manager authorised to dismiss a member of staff on account of lack of capability to perform their role
- provide advice to staff and their representatives relating to clarification, information and interpretation of the procedure at any time
- maintain equal opportunities data for the purpose of monitoring the Trust's Equality and Diversity Policy

4.4 **Trade Union and Staff representatives:** are able to provide advice to their members throughout the capability process and accompany them at formal meetings and appeals.

## 5 **Policy**

### 5.1 **Principles**

5.1.1 It is expected that issues of performance will normally be dealt with through supervision and performance counselling in the first instance. Members of staff must be given help, advice, and the opportunity and time to improve their performance throughout this process.

5.1.2 It is reasonable to expect that before any capability process is commenced either formally or informally, the appropriate training has been put into place, SMART work objectives have been set, shadowing opportunities explored as necessary, and the reasons for poor performance discussed clearly, in private and in a compassionate and supportive way with the member of staff.

5.1.3 In cases where sickness prevents finalisation of any stage of the procedure, the case will resume at a suitable time once the member of staff is fit and able to continue, taking into account reasonable adjustments and phased returns to work. The member of staff should be referred to the Employee Health Service to determine whether they are able to attend meetings/continue with the procedure.

5.1.4 Reasonable adjustments or arrangements for meetings and appeals may be made e.g. for a member of staff or companion with a disability or for staff whose first language is not English.



- 5.1.5 If meetings or appeals are conducted virtually, participants should not have anyone physically with them who has not been invited or declared as a participant in the meeting. Participants' cameras should remain on for the duration of the meeting.
- 5.1.6 An electronic recording may be made during meetings or appeal hearings under this procedure, if agreed by all parties or where this may be required as a reasonable adjustment.
- 5.1.7 Members of staff may be accompanied at meetings or appeals under this policy. The companion must be a work colleague employed by the Trust, a Trade Union representative or an official employed by a Trade Union. A Trade Union representative who is not an employed official must have been certified by their union as being competent to accompany the member of staff.
- 5.1.8 If the member of staff agrees, their companion will be able to address a meeting or appeal hearing, question witnesses, confer with the member of staff, put forward their case, sum up the case, respond on their behalf to any view expressed, but does not have a right to answer questions on their behalf.
- 5.1.9 If a member of staff fails to attend for a properly convened meeting or appeal hearing, and has no acceptable reason for their failure to attend, such as certificated sickness, pre-booked annual leave or significant domestic crisis, the manager may, as a last resort, decide to proceed in their absence.
- 5.1.10 The manager has reasonable discretion to come to a decision based on information to hand and action taken to support improvement, and can consider any written statement submitted by the member of staff. A Trade Union representative or work colleague can attend a formal meeting in the absence of the member of staff.
- 5.1.11 Members of staff should be given a minimum of 14 calendar days' notice of any formal meetings. If there is a delay in arranging a companion, and it holds up an urgent meeting, negotiation needs to take place between the manager, HR and the member of staff and their companion. This could result in a change of date, or a suitable replacement for the unavailable companion. It is essential the process is not unduly delayed.
- 5.1.12 The Trust will ensure that all members of staff, managers and staff representatives are made aware of their rights and obligations in matters of capability, dismissal and appeal. Additionally, training in this procedure will be provided for all managers who have responsibility for the supervision and management of staff.
- 5.1.13 If the principles of objective setting and reviewing performance has occurred at regular intervals over a reasonable period of time, and these have been carried

out fairly and are very well documented at the informal stage, the formal procedure can be entered at the second review meeting stage.

- 5.1.14 Under normal circumstances, a member of staff will not be dismissed on capability grounds without each stage of this procedure being followed and concluded. However, there may be some exceptions where a final review meeting takes place without completing previous stages, for example where the member of staff presents a high risk to the organisation or service if they were allowed to continue in their role. Advice must be sought from the HR Business Partner and the relevant senior manager/director in these exceptional circumstances.

## **5.2 Informal Stage**

- 5.2.1 When the manager has identified that a member of staff's performance has fallen below the required standard, an informal, supportive discussion will be held to discuss the performance concerns and to establish the reasons for the shortcoming.
- 5.2.2 It is reasonable to expect that before any process is commenced formally, the appropriate training has been put in place, SMART work objectives have been set, shadowing opportunities explored as necessary and the reasons for poor performance discussed clearly, in private and in a supportive fashion with the member of staff.
- 5.2.3 The required standards will be confirmed and realistic targets set and agreed for improvement and review. Performance should be reviewed between 4-12 weeks dependent on the complexity of the issues and for example whether a period of training is required. The manager will use their discretion to set a reasonable timeframe.
- 5.2.4 If it is found that standards and targets set are not reasonably attainable, for example due to changing circumstances or workload, the requirements will be reviewed and modified as necessary.
- 5.2.5 If it is established that the performance problems are related to the member of staff's personal life and/or work relationships, appropriate counselling and support will be identified and offered as part of the review. In the case of working relationships, this may include a restorative conversation or mediation. More information is available from the HR Business Partner or HR Advisor.
- 5.2.6 During the initial review period, the manager will consider whether the member of staff's performance has improved against the clear goals and objectives set at the beginning of the process. Dialogue should be maintained with the member of staff to acknowledge progress or otherwise. Regular, constructive feedback will be provided on progress.

- 5.2.7 If a sustained improvement has been made to the extent that no further action is necessary, the manager will ensure this is communicated to the member of staff and a record of this outcome placed on file. If a sustained improvement has not been achieved, arrangements will be made to meet with the member of staff in accordance with the formal procedure.
- 5.2.8 Managers should seek advice from the HR Business Partner or HR Advisor, but the manager is responsible for regularly reviewing the member of staff's performance and for carrying out meetings as and when necessary.
- 5.2.9 Written confirmation of discussions should be sent to the member of staff within 7 calendar days of the informal meetings. It is important that managers continue to provide the usual day to day management and support members of staff to meet the required standards.
- 5.2.10 If the principles of objective setting and reviewing performance has occurred at regular intervals over a reasonable period of time, and these have been carried out fairly and are very well documented at the informal stage, the formal procedure can be entered at the second review meeting stage.

## **5.1 Stage One: First Review Meeting**

- 5.1.1 A first formal review meeting may be appropriate where improvements have not been made or where shortcomings occur for the first time that are considered sufficiently serious to omit the informal stage of the process. Advice can be taken from the HR Business Partner or HR Advisor in this regard.
- 5.1.2 The manager must inform the member of staff that a formal meeting will be held and provide a copy of this procedure. The manager will provide written notification of the meeting, giving a minimum of 14 calendar days' notice, to:
- confirm the time, date and venue for the meeting
  - summarise the reason for the meeting and provide details of the poor performance
  - include any written documentation being taken into account
  - note action taken so far to support the member of staff
  - highlight the impact the poor performance is having on the service/team
  - advise the right to be accompanied at the meeting by a Trade Union representative or work colleague
  - advise that an HR representative will be in attendance
- 5.1.3 During the meeting, the manager will state the details of the poor performance with specific examples and the member of staff will have the opportunity to give an explanation and any mitigating circumstances.

- 5.1.4 The manager will discuss and agree an appropriate way forward with the member of staff and ensure that a plan of action is drawn up, including specific, measurable and achievable targets with appropriate review date(s) and any necessary training.
- 5.1.5 The manager will closely monitor the member of staff's progress and keep them updated regularly. The manager must explain that failure to reach the required standard during the review period may lead to further formal action being taken, and could ultimately result in demotion, dismissal or a capability transfer at the hearing stage.
- 5.1.6 The review period is normally between 4-12 weeks depending on the complexity of the case and for example if the need for a period of training has been identified. Guidance can be sought from the HR Business Partner or HR Advisor.
- 5.1.7 The manager should write to the member of staff within 7 calendar days of the meeting to confirm the area(s) where improvement is required or the required standard that must be achieved, the timescales within which there should be an improvement and any support that will be available.
- 5.1.8 If performance is assessed as satisfactory at the end of the review period, the manager will inform the member of staff of the outcome of the review and confirm this in writing, advising no further action is required under this procedure.
- 5.1.9 If good performance is not sustained for three months following the initial review period, the manager can resume the procedure at Stage Two.
- 5.1.10 If performance has not reached the required level at the end of the Stage One review period, the manager can either:
- extend the first formal review period for between 4-12 weeks as appropriate
  - progress to Stage 2 of this procedure
  - in exceptional circumstances, progress to Stage 3 of this procedure, for example where the member of staff presents a high risk to the organisation or service if they were to continue in their role

Advice can be sought from the HR Business Partner or HR Advisor in this regard.

- 5.1.11 Written confirmation of the outcome of Stage One should be sent to the member of staff within 7 calendar days of the review meeting and a copy sent to the HR Department for the file.

## **5.2 Stage Two: Second Review Meeting**

- 5.2.1 The procedure followed at this stage should mirror Stage One: first review meeting.
- 5.2.2 The manager is required to draw up a suitable plan for performance improvement. The member of staff will be given a caution at this stage and advised that failure to reach a satisfactory level within the specified time frame could ultimately result in demotion, dismissal or a capability transfer/ redeployment at the final review meeting stage.
- 5.2.3 Exceptionally, it may be agreed between the parties at this stage that the member of staff is in an unsuitable post and that another role/location would be more appropriate, for example due to ill health or injury. In seeking alternative work, the manager should be sure that the member of staff will be able to perform the duties of the new job satisfactorily.
- 5.2.4 To avoid the risk that an underlying capability problem will be transferred to the new area of work, an appropriate trial period will apply. Where alternative work is found, offered and accepted, the new rate of pay, band and other conditions are then applicable to the new post being offered. For the avoidance of doubt, there is no right to pay protection.
- 5.2.5 Written confirmation of the details of the formal Stage 2 process will be sent to the member of staff within 14 calendar days of the second review meeting and a copy sent to the HR Department for the file.
- 5.2.6 If no improvements are made within the set reasonable period of time, the manager will notify the member of staff in writing and will refer the case to a Stage Three final review meeting.

## **5.3 Stage Three: Final Review Meeting**

- 5.3.1 Although not pre-empting the outcome of the final review meeting, as there is a possibility that the result could be dismissal, a manager with the authority to dismiss must chair the meeting. Managers with the authority to dismiss are the Chief Executive, Executive Directors, and senior managers who report to Executive Directors. A senior HR representative will also be present at the meeting.
- 5.3.2 The chair of the final review meeting will arrange the meeting and may delegate this task as appropriate. The chair will write to the member of staff concerned, giving a minimum of 14 calendar days' notice of the meeting and provide:
- the date, time and venue
  - details of who will be present at the meeting

- notification that they have the right to be accompanied by a trade union representative or a work colleague

5.3.3 The line manager will prepare a management statement of case for the final review meeting to include:

- details of the poor performance
- objectives set and details of how the member of staff failed to meet the objectives
- action taken to date by the manager to support the member of staff, including any training provided
- the impact the poor performance is having on service delivery or other staff
- a summary of any options explored with the member of staff
- an outline of the timeframe of the process

5.3.4 The management statement of case and copies of any relevant documents will be submitted to the person arranging the final review meeting no less than 7 calendar days before the meeting.

5.3.5 The member of staff is required to provide the person arranging the meeting with copies of any relevant documents they will be referring to during the meeting, no less than 7 calendar days before the meeting.

5.3.6 During the meeting, the member of staff will be given every opportunity to respond to the management case and to explain the underperformance and what can be done to rectify it.

5.3.7 The member of staff should receive verbal notification of the outcome at the conclusion of the meeting, but where this is not possible, confirmation in writing within 7 calendar days of the meeting, including confirmation of their right to appeal. A copy of the letter will be sent to the HR Department for the file.

5.3.8 If a decision is taken to dismiss, the confirmation letter will also be sent to the individual by recorded delivery to their home address on file.

## **5.4 Appeal**

5.4.1 A member of staff has the right to appeal against decisions taken at any formal stage of this procedure.

5.4.2 Appeals may be raised by a member of staff on a number of grounds, for instance failure to give adequate support to improve, failure to give feedback on performance, inappropriate use or inconsistent application of the policy.

5.4.3 The appeal may either be a review of the capability sanction or a re-hearing, depending on the grounds of the appeal.

- 5.4.4 A member of staff wishing to appeal against a capability decision must do so in writing within 14 calendar days of the date the formal capability outcome letter was sent, to the Head of Employee Relations & Policy via [clcht.employee.relations@nhs.net](mailto:clcht.employee.relations@nhs.net) stating the grounds on which the capability outcome should be reviewed.
- 5.4.5 The procedure for an appeal hearing can be found at Appendix B.
- 5.4.6 The appeal panel will normally be chaired by a manager at a higher level than the manager who chaired the final review meeting. They will have not been previously involved in the case or have any conflict of interest that could influence decision making.
- 5.4.7 The appeal hearing should be held within 28 calendar days of receipt of the appeal but if this is not possible, the reasons will be explained to all parties in writing. Managers, members of staff and their companions must make every effort not to unreasonably delay the hearing.
- 5.4.8 The chair of the panel will arrange the hearing and may delegate this task as appropriate. The chair will write to the member of staff concerned, giving a minimum of 14 calendar days' notice of the hearing and providing:
- the date, time and venue
  - details of who will comprise the hearing panel, and others in attendance
  - copies of relevant documentation
  - notification that they have the right to be accompanied by a trade union representative or a work colleague
- 5.4.9 An appeal must not be used as an opportunity to punish the member of staff for appealing the original decision, and it should not result in any increase in penalty as this may deter staff from appealing capability decisions.
- 5.4.10 The appeal panel can take the following action:
- uphold the decision taken at the formal capability review meeting
  - uphold the member of staff's appeal
  - partially uphold the decision taken at the formal capability review meeting
  - substitute a difference course of action, for example a further review period
- 5.4.11 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 within 14 calendar days of the hearing. The panel's decision will be final.

## **6 Consultation Process**

This procedural document was reviewed by the HR Policy Group comprising HR Business Partners, HR Advisors and Staff Side representatives. Input and comments from the group and from the Local Counter Fraud Specialist were incorporated as appropriate.

## **7 Approval and Ratification Process**

This version of the procedural document was reviewed by the HR Policy Group on 24 May 2021 and after further updates, approved on 24 August 2021. It was ratified at the Policy Ratification Group meeting on 20 September 2021.

## **8 Dissemination and Implementation**

This document will be placed on the intranet by the QLD team. It will be therefore be available to all staff via the Trust intranet hub.

Furthermore the document and hub link will be highlighted to all managers who will be required to cascade the information to members of their teams and to confirm receipt of the procedure and destruction of previous procedures/policies which this supersedes. Managers will ensure that all staff are briefed on its contents and on what it means for them.

## **9 Archiving**

The QLD team will undertake the archiving arrangements.

## **10 Training Requirements**

There will be an on-going programme of training to support the policy for all managers who have responsibility for the supervision and management of staff as well as team leaders. Information on accessing the training is available on the intranet or by contacting the HR Business Partner or HR Advisor, or directly with the CLCH Academy.

## **11 Monitoring and Auditing Compliance**

See Appendix C

## **12 Review Date**

This procedural document will be reviewed in 2.5 years' time in April 2024 arranged by the HR Policy Group.



### **13 Associated Documentation**

- Counter Fraud and Corruption Policy and Response Plan
- Disciplinary Policy
- Doctors, Dentists, Psychologists and Pharmacists: Managing Concerns Policy and Procedure
- Equality and Diversity Policy
- Flexible Working Policy
- Orientation (Induction & Probation) Policy
- Sickness Management Policy
- Stress Management Policy

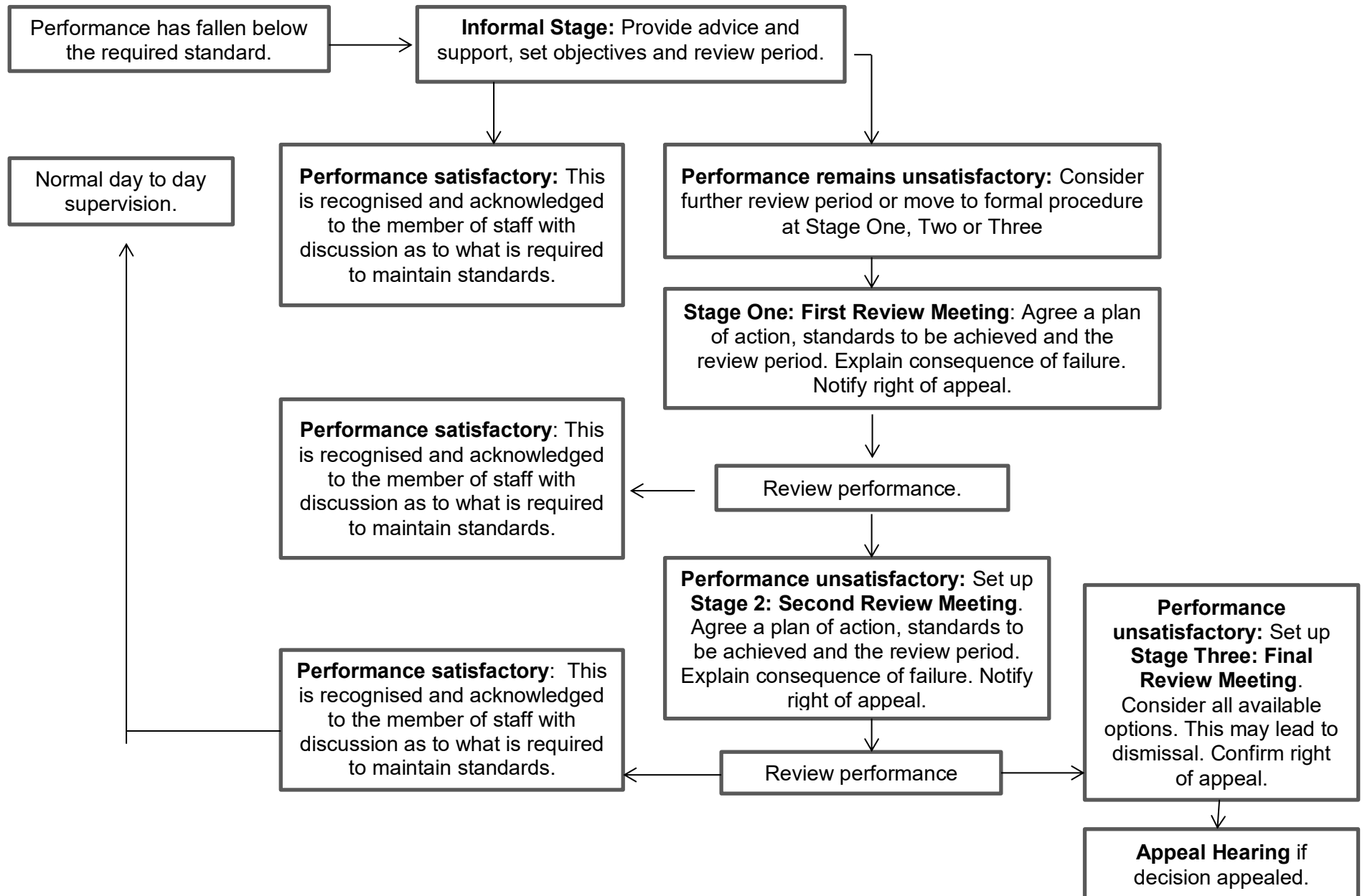
### **14 References**

ACAS: Capability Procedure  
Employment Act 2002  
Equality Act 2010  
Maintaining High Professional Standards in the Modern NHS

### **15 Appendices**

Appendix A: Capability Flow Chart  
Appendix B: Appeal Hearing Procedure  
Appendix C: Compliance Monitoring Table  
Appendix D: Equality Impact Assessment

## Appendix A: Capability Flow Chart



## **Appendix B: Appeal Hearing Procedure**

This procedure should be read in conjunction with the Trust's Capability Policy.

The panel, the member of staff and their companion, the responding manager presenting the management case and the HR representative supporting them, must be present throughout the hearing.

If the hearing is conducted virtually, participants should not have anyone physically with them who has not been invited or declared as a participant in the hearing. Participants' cameras should remain on for the duration of the hearing.

A record will be kept of the proceedings of the appeal hearing. An electronic recording may be made of the hearing if agreed by all parties or where this may be required as a reasonable adjustment.

### **1. Introduction - the Chair:**

- 1.1 Welcomes attendees and makes introductions, explains this is an appeal hearing conducted in line with the Trust's capability procedure.
- 1.2 If the member of staff is not accompanied, notes for the record that they have been advised of their right to be accompanied but has chosen to attend unaccompanied.
- 1.3 Confirms with the member of staff, the responding manager and panel members that they have received all the documentation relating to the appeal hearing.
- 1.4 Emphasises the need for confidentiality (i.e. all parties must treat as confidential any information pertaining to the case) and explains the procedure:

### **2. Procedure:**

- 2.1 The appellant and/or their companion put their case for the appeal to the panel, citing the grounds for appeal, and take questions from the responding manager and panel members.
- 2.2 Any permitted witnesses called by the appellant are invited individually into the hearing and will take questions from the responding manager and panel members, and will then depart.
- 2.3 The responding manager presents the management case and the reasons they made the formal capability decision and will take questions from the appellant, their companion and panel members.
- 2.4 Any permitted witnesses called by the responding manager are invited individually into the hearing and will take questions from the appellant, their companion and panel members, and will then depart.
- 2.5 The responding manager will sum up their case.
- 2.6 The appellant will sum up their case.

### **3. Adjourn**

- 3.1 The panel then adjourns to consider the appeal and reaches a decision. In a virtual hearing, the panel can leave the hearing and discuss the outcome via telephone or stay on the virtual hearing and ask attendees to log back into the hearing at a particular time.
- 3.2 The panel may recall any party, in the presence of the other parties, to clarify points of uncertainty on evidence already given.
- 3.3 The appeal panel can take the following action:
  - uphold the decision taken at the formal capability review meeting
  - uphold the member of staff's appeal
  - partially uphold the decision taken at the formal capability review meeting
  - substitute a difference course of action, for example a further review period

### **4. Reconvene**

- 4.1 Where possible, the Chair informs the parties verbally at the conclusion of the hearing, of the panel's decision and the reasons for the decision. This should be confirmed in writing within 7 calendar days.
- 4.1 Otherwise, the parties are informed if the panel's decision is to be delayed, and when the decision will be reached (this will normally be within 7 calendar days of the appeal hearing and written confirmation given within 14 calendar days of the appeal hearing).
- 4.2 The Chair advises that the panel's decision is final and there is no further opportunity for recourse within the Trust's internal procedures.

In conclusion, the Chair thanks those in attendance for their time and co-operation.

## Appendix C: Compliance Monitoring Table

<b>Policy lead</b>	<b>Element(s) to be monitored</b>	<b>How will you ensure that the policy is being implemented</b> (E.g. via an audit, KPIs )	<b>How often will you monitor that the policy is being implemented</b>	<b>Reporting arrangements</b> (Which committee or group will the monitoring of the policy be reported to?)	<b>Results of monitoring</b>
Director of People	Summary of capability cases	KPIs	Quarterly	People Committee	Increased use of support and review, however increase in time to conclude due to lack of capacity and sickness absence.
Director of People	Equality & Diversity	Information is collected where available and analysed to identify possible inequalities and is also included in the Trust's Equality, Diversity and Inclusion reports.	Quarterly	People Committee	Disproportionate number of cases involving BAME staff is reducing.

## Appendix D: Equality Impact Assessment

### Capability Policy

CLCH as a public authority has a legal requirement to analyse the impact of the policy on the protected characteristics of staff and patients. This helps us to check if there is a negative impact, how we can reduce that impact.

1. Protected characteristic	Positive impact	Neutral Impact	Negative Impact	Reason for impact and action required.
People of different ages (e.g. Children, young or older people).		X		Each case should be looked at on its own individual merits whilst ensuring consistency of application.
People of different religions / beliefs		X		Each case should be looked at on its own individual merits whilst ensuring consistency of application.
People with disabilities (physical, sensory or learning).		X		Each case should be looked at on its own individual merits whilst ensuring consistency of application.
People from different ethnic groups		X		Each case should be looked at on its own individual merits whilst ensuring consistency of application.
Men or women		X		Each case should be looked at on its own individual merits whilst ensuring consistency of application.
Transgendered people		X		Each case should be looked at on its own individual merits whilst ensuring consistency of application.
People who are gay, lesbian, and bi-sexual		X		Each case should be looked at on its own individual merits whilst ensuring consistency of application.
Refugees and asylum seekers		X		Each case should be looked at on its own individual merits whilst ensuring consistency of application.
2	Please describe engagement and consultation process and the key feedback. E.g. with teams, unions. See section 6 in the policy			
3.	If there are negative impacts upon people's protected characteristics. Does the policy in its current form need a full Equality Analysis Assessment to be completed? No			
4.	Have you signed this off with the Equality and Diversity Lead? Yes			

Signed for the HR Policy Group:

Name: Pete Couchman, HR Business Partner

Date: 30 April 2021

Name: Yasmin Mahmood, Equality & Diversity Lead

Date: 30 April 2021


**TITLE: CHANGE MANAGEMENT POLICY: PRINCIPLES AND PROCEDURES**

**VALID FROM: FEBRUARY 2021**

**EXPIRES: FEBRUARY 2024**

**REFERENCE WFC 20**

This procedural document supersedes the previous procedural document “Change Management Policy: Principles and Procedure”, Version 5.0

A decorative graphic consisting of several thick, curved blue lines that originate from the left side of the page and sweep downwards and to the right, creating a sense of movement and depth.

<b>Version:</b>	6.0
<b>Policy reference and description of where held.</b>	WFC20 Intranet – Policies
<b>Title, name and contact details for author:</b>	Jackie Hughes, Senior HR Business Partner <a href="mailto:jackie.hughes10@nhs.net">jackie.hughes10@nhs.net</a>
<b>Title, name and contact details for responsible director:</b>	Louella Johnson, Director of People <a href="mailto:louella.johnson@nhs.net">louella.johnson@nhs.net</a>
<b>Approved by originating committee, executive or departmental management group and date.</b>	Agreed at the HR Policy Group (sub group of Joint Staff Consultative Committee) on 25 January 2021
<b>Ratified by Policy Ratification Group:</b>	19 February 2021
<b>Review date:</b> 2 years maximum for clinical guidelines 3 years maximum for other documents	August 2023
<b>Target audience</b>	All staff

### Version Control Sheet

Version	Date	Author	Status	Comments
1.0	April 2010	A Gotts	Draft	First draft based on legacy PCT policies updated to reflect the London Change Management Framework.
2.0	February 2011	A Gotts	Archived	First agreed Change Management Policy for the Trust.
3.0	November 2011	A Gotts	Archived	CLCH and Barnet policies integrated.
4.0	August 2014	Liz Lubbock	Archived	Updated to reflect changes in legislation. Equality and diversity and values and behaviours incorporated.
5.0	October 2017	Liz Lubbock	Archived	Incorporated changes to the London NHS Partnership “London Model Change Management Policy – Principles and Procedures”
6.0	February 2021	Jackie Hughes	Current	Streamlined the flow of the document to improve clarity and understanding and incorporated new national terms and conditions and government bodies’ terminology



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## **1. Introduction**

Central London Community Healthcare (“the Trust”) actively manages its services so as to provide the most effective healthcare for people in their homes and the community within its resources. It recognises that changes may need to be made to the Trust’s organisational requirements which may affect staffing needs.

This policy is based on the London NHS Partnership (2016) ‘London Change Management Policy – Principles and Procedures’. The document has been developed so as to provide a unified and agreed approach to the issue of major organisational change by NHS organisations in London. “Major organisational changes” will include the reorganisation, relocation, merger, expansion or closure of a service, competitive tendering or outsourcing, or a major change in working practice. A major change in working practice may include significant changes to the working hours of staff, location or duties. All such changes will be conducted in accordance with this document which incorporates best practice and legal requirements and aims to provide a framework for common understanding for managers, trade union and staff representatives and staff.

This document applies to all NHS staff employed by the Trust and will be applied consistently and equitably to all staff. Individuals on secondment or temporarily acting up to a more senior post will be treated on the basis of their substantive post (unless they have no substantive post to return to).

## **2. Aims and Objectives**

The purpose of this document is to set out the Trust’s approach to the management of organisational change and the procedures that must be followed by managers wishing to implement major change.

The principles and procedures support the aim of managing strategic and operational change in a way that is both supportive to staff and enhances the provision of the highest quality provision of patient care.

This policy aims to ensure that, in line with the Equality Act 2010 and the Trust’s Equality and Diversity Policy, no member of staff receives less favourable treatment on the grounds of age, disability, race, gender, pregnancy and maternity status, religion and spiritual belief, sexual orientation, gender reassignment, marriage and civil partnership status.

## **3. Definitions**

For the purpose of applying the provisions in this document, the following definitions apply:

- **Continuous Service:** means full or part-time employment with the Trust or any previous NHS employer provided there has not been a break of more than one week (Sunday to Saturday) between employments. This reflects the provisions of the Employment Rights Act 1996 and NHS Terms and Conditions handbook (where applicable) on continuous employment.
- **Reckonable Service:** means Continuous Service plus any service with a previous NHS employer where there has been a break of 12 months or less. At the Trust's discretion any period of employment outside the NHS which is relevant to NHS employment may be counted as Reckonable Service.
- **Redeployment:** means the transferring or recruitment of staff 'at risk' into a suitable alternative post.
- **Redeployment Register:** is a list of staff 'at risk' and therefore entitled to priority consideration for vacant posts.
- **Ring Fencing:** means the process by which staff 'at risk' will be considered for a post in a new staffing or management structure which is similar to their current post and where there is more than one contender for that post. These posts are reserved for consideration for those staff 'at risk'.
- **Slotting In:** means the process by which staff 'at risk' are confirmed into a post in a new staffing or management structure which is similar to their current post and where that individual is the only contender for that post. Slotting in may occur where a post is in the same band as the individual's current post or where it remains substantially the same with regard to job content, responsibility, grade status and requirements for skills, knowledge and experience.
- **Staff "At Risk":** means staff whose posts may potentially be redundant as a result of organisational change if suitable alternative employment cannot be found.
- **Suitable alternative employment:** is any post which an individual can reasonably be redeployed into. Suitable alternative employment should be determined by reference to the Employment Rights Act 1996. In assessing whether a post is a potential suitable alternative role, the organisation will consider factors such as job content, responsibility, grade, status and requirements for skills, knowledge and experience. Regard should be given to the personal circumstances of the member of staff including consideration of factors such as hours and location. A member of staff will, however, be expected to show some flexibility by adapting their personal arrangements, where possible.

- **TUPE:** means the Transfer of Undertaking (Protection of Employment) Regulations 2006. All staff engaged wholly or almost wholly with a service transferring from one employing organisation to another, retain their existing terms and conditions in accordance with the TUPE regulations.

#### 4. Duties

Staff are central to the achievement and success of organisational change. The Trust acknowledges that change can cause concern and uncertainty and should therefore be managed fairly and consistently in accordance with established good practice. The Trust will adopt a transparent approach when facing change.

The Trust recognises the need to engage trade union and staff representatives in any change management procedure.

- 4.1 Managers** are critical to the change management process and shall therefore be regularly briefed so that they are in a position to respond to the concerns of staff in their teams. In turn, managers must provide information to trade union and staff representatives (see section 5.4) so that they are able to make meaningful contributions to the consultation process. Managers must ensure that no member of staff is discriminated against on the grounds of ethnic origin, nationality, race, disability, gender, marital or partnership status, pregnancy or maternity status, age, religion or belief, sexual orientation or transgender status, when applying this policy. Managers should liaise with HR to ensure the Trust is not open to claims of discrimination as a result of a change management process.
- 4.2 Staff** are expected to play an active role during the pre-consultation and consultation stages, in the further processes of implementation and in identifying new career opportunities.
- 4.3 Trade union and staff representatives** play a vital role in both the consultation stage and any pre-consultation stage (see sections 5.3 and 5.4), advising and representing staff undergoing organisational change and in working with managers to ensure that organisational change is managed with the least disruption to services to patients, and in accordance with the principle of avoiding compulsory redundancies wherever possible. The Trust will formally notify the trade union and staff representatives of any proposed organisational changes and will undertake consultation with them in-line with legal requirements.

So as to ensure staff representatives are able to fully participate in the process, which may require frequent meetings with management and, in particular, affected staff, the Trust will arrange paid time off facilities for agreed staff representatives, over and above existing arrangements where appropriate.

## **5. Change Management Policy**

### **5.1 Statement and principles**

5.1.1 Organisational change is driven by the business needs of the Trust. Change can be triggered either by the external environment or by an internal review of service requirements. Examples of significant organisational change include the reorganisation, relocation, merger, expansion or closure of a service, competitive tendering or outsourcing, or a major change in working practice as set out in section 1.

5.1.2 In order to meet changing business needs more effectively, there may be occasions when managers need to implement relatively minor changes. Reasonable minor changes and adjustments to duties and working practices may be implemented without recourse to the formal procedures in this document but will require reasonable consultation with staff affected. Any situation which may lead to redundancy will not be deemed to be a minor change.

5.1.3 The Trust is responsible for deciding the size and most efficient use of the workforce but, in doing so, is committed to the following principles for managing organisational change:

- the Trust will conduct equality impact and risk assessments relating to proposed organisational change, doing so at the earliest opportunity and updating these as appropriate.
- the Trust will provide such information about the proposed organisational change, at the earliest opportunity, as it would be in accordance with good industrial relations practice to disclose to trade union and staff representatives;
- staff will receive notice of any organisational change which may affect their futures at the earliest opportunity;
- staff will be treated as individuals with due regard to their personal and employment circumstances and their career aspirations at all stages of the change management procedure;
- staff will have the right to be accompanied by a trade union representative or workplace colleague employed by this Trust at meetings to discuss the organisational change;
- the Trust will consider all reasonably practicable steps to avoid compulsory redundancies and minimise the impact of change, such as:
  - natural wastage and restrictions on recruitment and overtime, where reasonable and practicable;

- the use of short fixed-term contracts to provide cover for temporary fluctuations in workforce needs;
- operation of a ring-fencing arrangement of vacant posts within and external to the organisation for those staff 'at risk' or under notice of redundancy;
- consideration of reasonable possibilities for retraining of staff;
- consideration of voluntary redundancy or premature retirement, subject to the needs of the service;
- redeployment to other parts of the organisation where practicable;
- encouraging secondments and opportunities for joint posts with stakeholder and other organisations;
- staff will receive training and development, as appropriate, including, potentially, coaching and mentoring to meet new skill requirements and where appropriate to identify new career opportunities, with funding and time to attend training and development activities provided; and
- staff will have access to the Trust's counselling services and career support will be available as appropriate

## **5.2 Purpose and meaning of consultation**

5.2.1 The purpose of consultation is to provide as early an opportunity as practicable for all concerned to share the issues and explore the options. It can stimulate better co-operation between managers and staff, reduce uncertainty and lead to better decision making. The Trust is committed to utilising the knowledge of trade union and staff representatives to make better decisions. The Trust will consult as soon as practicable and as fully as possible.

5.2.2 When faced with a redundancy situation, trade union and staff representatives or individual members of staff may be able to suggest acceptable, alternative ways of tackling the issues or if redundancies are inevitable, ways of minimising their impact. The employer will then be in a better position to decide whether the needs of the business can be met in other ways.

5.2.3 In accordance with legislation, ACAS guidance and the partnership working principles of the NHS, the Trust commits itself to meaningful and appropriate consultation with trade union and staff representatives and staff affected by the organisational change, with a view to reaching agreement on the way forward. However, there will be times when organisational change will need to proceed without a consensus being reached on all issues. The timing and extent of

consultation will be proportionate to the degree of proposed change, the number of staff affected and the impact on individuals.

- 5.2.4 Consultation involves taking account of as well as listening to the views of staff and must therefore take place before final decisions are made. Making pretence of consulting on issues that have already been decided is unproductive and engenders suspicion and mistrust about the process amongst staff.
- 5.2.5 Consultation does not mean that views of staff can or will always be acted on since there may be good practical or financial reasons for not doing so. However, whenever staff views are rejected the reasons for doing so should be carefully explained. Equally, where the views and ideas of staff help to improve a decision due credit and recognition should be given.
- 5.2.6 Consultation requires a free exchange of ideas and views affecting the interests of staff and the organisation (7.2 and 7.3 from ACAS guidance).
- 5.2.7 The purpose of the consultation meetings with trade union and staff representatives and staff will be:
- to receive and, where possible, address any questions on the proposals for change (as set out in a formal consultation document once formal consultation has commenced)
  - to consider any comments or views on the consultation document, including any alternative proposals and/or business cases and costing (which the Trust shall as far as practicable make available) before determining any final decision to proceed; and
  - to clarify any change processes and timeframes specific to the proposed organisational change exercise under discussion

### **5.3 Informal/Pre consultation with Staff and Representatives**

- 5.3.1 Early informal consultation with the trade union and staff representatives and staff is important and should be used to ensure that views and suggestions are taken into account at the formative engagement and decision stage. This is also known as pre-consultation. Meaningful pre-consultation can lead to an agreed shorter formal consultation time and greater staff satisfaction with the process.

### **5.4 Formal Consultation**

- 5.4.1 Formal consultation with the trade union and staff representatives will commence once any informal comments have been considered and a formal consultation document has been finalised. This will take the form of:



- ongoing discussions with the local accredited representatives; and
- trade union and staff representatives representing staff affected by the change should be invited to the first meeting with all affected staff and given reasonable notice to attend

5.4.2 In a redundancy scenario, the information must be provided in writing to trade union and staff representatives as soon as is reasonably possible and shall include the following:

- the numbers and descriptions of staff whom it is proposed to dismiss as redundant
- the total number of staff of any such description employed by the Trust at the establishment in question
- the proposed method of selecting staff who may be made redundant
- the proposed method of carrying out the dismissals, with due regard to any agreed procedure, including the period over which the dismissals are to take effect
- the proposed method of calculating the amount of any redundancy payments to be made (over and above the statutory redundancy payment) to staff who may be dismissed
- the number of agency workers working temporarily for and under the supervision of the Trust
- the parts of the Trust in which these agency workers are working
- the type of work these agency workers are carrying out

5.4.3 During a period of change, management will ensure that trade union and staff representatives are kept informed of developments and will meet with them as appropriate.

5.4.4 Managers shall prepare a consultation document on the proposed organisational change, having gathered information to support the need for change and consulted with HR as appropriate on the content of the paper. They will also have completed any informal pre consultation appropriate and ensure the paper is shared with staff representatives.

5.4.5 The consultation document will typically include details of the following, as appropriate:

- current situation analysis including staffing structure
- an equality impact assessment which must be completed and appended
- impact on patient care
- impact on supplementary and ancillary services
- consideration of any relevant health and safety and risk assessment
- the need for change and the rationale behind the change
- the options that have been considered
- the proposals for change including the proposed staffing structure(s) and any location change
- the financial, staffing and workload implications of the proposals
- the number and grades/bands of staff who may be at risk of redundancy as a result of the proposal
- proposed timescale for consultation and implementation of the proposed change
- the way in which staff will be selected for posts within the new structure or transferred
- if necessary, the selection criteria for redundancy
- the measures to be taken to avoid compulsory redundancies may include natural wastage, redeployment with retraining, voluntary early retirement or voluntary redundancy
- details of any suitable alternative employment which may exist
- details of how this information will be disseminated to staff
- description of the consultation process, including planned meetings, timetable, how staff and representatives can respond and the deadline

## **5.5 Time periods for consultation**

- 5.5.1 In all cases the Trust will allow sufficient time for meaningful consultation with staff and their representatives. In exceptional circumstances, where changes need to be made very quickly, the trade union and staff representatives will be briefed immediately and the verbal briefing will be followed by a written brief.
- 5.5.2 In a collective redundancy scenario, consultation will continue for a period of no less than the statutory time scales:
- where 20-99 redundancies are proposed, consultation should commence at least 30 days before the first redundancy takes place
  - where 100 or more redundancies are proposed, then consultation should commence at least 45 days before the first redundancy takes place
- 5.5.3 Trade union and staff representatives and staff may request additional information, or an extension of time if this is necessary, to enable them to understand and contribute to an informed discussion on the merits of the proposal. Such requests will not unreasonably be refused, and where they cannot be accommodated a reason will be given.
- 5.5.4 In practice, most consultation exercises will require a 30-day consultation period. However, in the event of large scale change requiring a 45-day consultation process, the Trust and the trade union and staff representatives should consider the pros and cons of extending the consultation. Factors to be considered will be as follows:
- Reasons put forward by either party for an extension beyond 45 days, particularly in relation to the extent to which original proposals have been revised as a result of the 45-day consultation – for example, changes from the original proposals may require a further short period of consultation.
  - The impact of delaying the process on the staff affected.
  - Any extension to the 45 days consultation period must be agreed by both parties (i.e. staff representatives and management).

## **5.6 Formal consultation with individual staff**

- 5.6.1 A meeting will be held with all staff affected by the organisational change to announce the proposed change and explain the consultation process which will follow. The appropriate union representative(s) will be advised of the meeting and invited to attend.

- 5.6.2 Each member of staff affected by the organisational change will be provided with a copy of the consultation document. Staff who are absent from work for any reason, including career breaks, will be sent a copy of the consultation document at their home address, or other suitable address, so that they can participate in the consultation process.
- 5.6.3 Each member of staff will be offered the opportunity of at least one individual meeting with their manager, at which they have the right to be accompanied by a trade union representative or workplace colleague employed by this Trust. HR advisory support will also be offered. In a redundancy scenario, the meeting will be to discuss the issues as detailed in paragraph 5.10.3.
- 5.6.4 At the meeting, each member of staff will be invited to comment and respond to the proposals, including how they may impact on their personal circumstances. It is recognised that staff may require time to respond and may not be able to do so at that particular meeting.
- 5.6.5 A written record of the individual meetings will be kept and provided to the member of staff and their trade union or staff representative, where applicable. The record will be a note of the main points discussed at the meeting, not verbatim notes.
- 5.6.6 Regular updates and frequently asked questions may be circulated to staff throughout the formal consultation period. Throughout this period staff should be encouraged to discuss their concerns and queries with their line manager and staff or trade union representative.
- 5.6.7 In addition to the individual consultation meetings, staff can be kept informed by management, team meetings, trade union meetings, email and other written communication and information supplied by the trade union and staff representatives.

## **5.7 End of consultation**

- 5.7.1 At the end of the consultation period the manager will give full consideration to all comments received from staff and the trade union and staff representatives and will make a decision on the way forward. A written report, responding to themes raised through staff comments, will be provided to the trade union and staff representatives and staff and this will confirm the change process to be followed and the timeframe. The report will typically include:
- the reasons for the decision
  - an equality impact assessment
  - any relevant health and safety risk assessments

- an explanation where the management decision is in conflict with the views of the trade union and staff representatives and staff, or where the proposal has changed as a result of consultation
- identification of posts which are the same, or substantially the same, in the old and new structures
- arrangements for filling posts via 'slotting-in' or 'ring fencing'
- selection arrangements for posts within the new structure
- measures that will be taken to avoid compulsory redundancies
- arrangements for seeking suitable alternative employment
- reference to the Trust's Pay Protection and Excess Travel Policy and how these will apply
- support for staff who are affected by the change, including career counselling and reasonable time off to seek other employment or undertake training
- proposed timescales for each stage of the change process.

5.7.2 Where redundancies are inevitable, the Trust will set selection criteria for inclusion in the conclusions to consultation. These criteria should be objective, clearly defined, measurable and non-discriminatory. Managers should seek advice from HR on the selection criteria to be used, to ensure the Trust is not open to legal challenge. Selection criteria will be discussed, and, where possible, agreed, with trade union and staff representatives.

5.7.3 In considering any measures to avoid compulsory redundancies, including requests for voluntary redundancy or early retirement, operational efficiency and service needs must be taken into consideration. If a member of staff volunteers for redundancy/early retirement, approval of the request will be subject to the needs of the service and the cost implications. Care must be taken to ensure that decisions are based on sound organisational reasons and do not breach equality legislation.

## **5.8 Support for staff**

5.8.1 All staff affected by the organisational change will be encouraged to seek the advice and support of their trade union and staff representatives. Relevant support will be provided by the Trust and may include:

- help with the production of CVs/application forms (including assistance with NHS Jobs)

- help with preparation for interviews
- confidential careers advice
- support in developing coping strategies and stress management, with support of the Trust's counselling services and Employee Health Services
- time to meet with recognised trade union and staff representatives to discuss the change
- further assistance to staff who are at risk of redundancy will include reasonable time off to seek other employment or undertake training
- placement on the Trust's redeployment register

5.8.2 Even after the change has taken place, the Trust acknowledges that staff may take some time to adjust to the change itself. Managers should remain available to staff to manage any issues that arise and support staff through the transition.

## **5.9 The process for filling posts in the new structure**

5.9.1 There will be two stages in the process for filling posts in a new structure:

- **Stage One** takes place amongst the staff that are affected by the change. Posts in the new structure are filled either by slotting-in or by ring fencing. Staff eligible for ring fencing should only be unsuccessful in obtaining a post where they fail to meet the essential selection criteria or where others in the 'at risk' pool are considered to meet the requirements more fully.
- **Stage Two** is where wider competition takes place for any posts that remain vacant in the new structure following slotting-in or ring fencing. The post can then be opened up to access by any staff 'at risk', for whom the post is considered suitable alternative employment' or to open competition, internally and externally, in line with the normal recruitment process, where there are no such applicants. The two stages may run in parallel but all reasonably practicable steps will be taken to avoid compulsory redundancies.

5.9.2 Job descriptions and person specifications will be produced for new posts and included in consultation papers for comments. Jobs will be matched or evaluated in partnership, in accordance with the Trust's Job Evaluation and Banding Procedure. This provides an opportunity for comments on proposed job descriptions to be made in relation to service changes being proposed.

- 5.9.3 Selection criteria for all posts in the new structure (whether or not there is competition) must be non-discriminatory, fair, objective, clearly defined and based on the skills and competency requirements of the post. The selection criteria must be made available with the consultation document.
- 5.9.4 The process of seeking suitable alternative employment will be informed by the suitable alternative employment definition detailed in section 3.
- 5.9.5 Staff who are offered posts during Stage One will be deemed to have been offered suitable alternative employment by the Trust. This will be confirmed in writing by the manager. This is on the basis that if staff are slotted-in, or offered ring-fenced posts, it will be assumed that the posts offered are suitable alternative employment, in line with the definition set out in section 3. The consequences of unreasonably refusing to accept these posts will be as per refusing suitable alternative employment as set out in section 5.12.
- 5.9.6 Any member of staff who is not appointed to a post in the new structure will be offered post-interview feedback, coaching or training, where appropriate, and has the right of appeal (see section 5.18 below).

## **5.10 Staff 'at risk'**

- 5.10.1 When changes in staffing levels or skill mix are proposed, which will lead to a reduction in the numbers of staff employed in particular grades, occupational groups or specialties, management will identify the positions, individual staff or pool of staff who are at risk of redundancy as a result of the changes.
- 5.10.2 The identification of being 'at risk' of redundancy is not a notice of redundancy.
- 5.10.3 Staff 'at risk' will be invited to a meeting(s) with their manager and trade union or staff representative or work colleague employed by this Trust to:
- discuss how the proposed changes affect the individual
  - explain why the individual is 'at risk' of redundancy
  - discuss ideas for avoiding redundancy dismissals, with the aim of reducing the number of staff 'at risk' who are made redundant, and mitigating the consequences of any redundancy dismissals
  - explore the possibility of redeployment
  - explain the process for redeployment
  - explain the arrangements for protection of pay and terms and conditions, where applicable

- offer support and assistance
  - discuss any other relevant issues and processes, which may include providing a redundancy payment estimate if requested
- 5.10.4 Following the meeting, the aim is to give staff 'at risk' a letter, within seven calendar days, to confirm their at risk status and the key points discussed at the meeting, including answers, wherever possible, to questions raised at the meeting for which there were no immediate answers available at the time.
- 5.10.5 Staff 'at risk' will be given prior consideration for posts within the new structure where they meet the selection criteria under Stage One of the process. Where they are selected for a new post they will normally be given the offer in writing, within seven working days of the interview. Any training required will be discussed with the member of staff as part of the offer process. The appointment will be subject to a trial period. The trial period will normally be for a period of four weeks, but may be extended, by mutual agreement, where a member of staff requires additional training and development.
- 5.10.6 In the case of significant change which spans a number of NHS organisations, The Trust will endeavour to reach an agreement with those organisations regarding the establishment of job redeployment opportunities. The agreement will contain a commitment to equality of opportunity for all staff who will then have the same access to opportunities and vacant posts with any of the organisations.
- 5.10.7 Staff who are not selected for a post in the new structure will be formally declared at risk of redundancy and given notice of redundancy in accordance with their contract of employment. They will continue to be listed on the Trust's 'at risk' redeployment register.
- 5.10.8 There may be situations where it is necessary to give notice of redundancy in accordance with the contract of employment at the end of the consultation process.
- 5.10.9 Staff 'at risk' will be required to register with NHS Jobs and apply for posts via that medium. In addition, the Trust's HR Department will notify staff of potential opportunities arising within the organisation. The HR Department will use the full functionality of NHS Jobs/TRAC (including "internal only" and "restricted vacancy" functionality) to support redeployment of staff 'at risk'.
- 5.10.10 Staff 'at risk' will be given prior consideration for other posts that are, or become, vacant in the Trust during a specific organisational change, and, subject to the arrangements regarding suitable alternative employment and trial periods, they will remain on the register until their last day of service.



## 5.11 Definition of 'redundancy'

- 5.11.1 A member of staff may become redundant if they are dismissed and the reason for the dismissal is wholly, or mainly, due to:
- the fact that the Trust has ceased, or intends to cease, to carry on the activity for the purposes of which the individual was employed, or has ceased, or intends to cease, to carry out the activity in the place where the individual was employed; **OR**
  - the fact that the requirements of the Trust for staff to carry out work of a particular kind in the place where they were so employed, have ceased or diminished or are expected to cease or diminish.
- 5.11.2 The place of work referred to above should not be confused with the specific site or unit in which an individual works.
- 5.11.3 The HR Department is responsible for notifying the relevant Department (currently the Department for Business, Innovation and Skills (BIS)), in writing, if the Trust proposes to make 20 or more staff redundant, within the terms of the legislation in force at the time. A copy of the notification form will be sent to the trade union or staff representatives concerned. Advance notification to the relevant Department does not bind the Trust to make the staff redundant.

## 5.12 Suitable alternative employment

- 5.12.1 The definition of suitable alternative employment to be applied in this policy is set out in section 3. It may be on any site operated by the Trust subject to travel considerations. Staff 'at risk' will be given prior consideration for suitable posts in line with their skills, experience and capabilities and where appropriate will receive protection of pay as outlined in the Trust Pay Protection and Excess Travel Policy.
- 5.12.2 A post may be considered as suitable alternative employment if it is banded on the same band as the staff member's current post, or the next higher or lower band.
- 5.12.3 Following identification of potentially suitable posts at either Stage One or Stage Two, individual staff 'at risk' will be offered the position, in writing, and be given a copy of the job description/person specification, and a deadline of at least five working days within which to apply. In some circumstances e.g. annual leave and other types of leave, this period may be appropriately extended. During this period the individual may meet with the appropriate manager informally to discuss their interest.

- 5.12.4 If the individual is offered the post, this will be treated as an offer of suitable alternative employment and a trial period will apply.
- 5.12.5 Where in the opinion of management, an offer of suitable alternative employment has been made and unreasonably turned down, or where there is an unreasonable refusal to apply for suitable alternative employment with the Trust or another NHS organisation, the staff member may forfeit their right to redundancy payments. Decisions on the suitability of alternative employment will be made in full consultation with the staff member and his/her representative.
- 5.12.6 Redeployment to reasonable, suitable alternative employment as agreed by the individual and the organisation will continue to be considered throughout redundancy notice periods with a view to retracting redundancy notices if possible
- 5.12.7 A member of staff who disagrees with a management decision on suitable alternative employment will be entitled to submit an appeal (see section 5.18).

### **5.13 Trial periods and training**

- 5.13.1 A trial period will only apply to staff 'at risk' and where a formal offer of suitable alternative employment has been made.
- 5.13.2 The purpose of a trial period is for both the manager and the individual to assess the suitability of the post as alternative employment.
- 5.13.3 Where staff have the potential ability but not the immediate experience to undertake full duties of the role, they will be provided with appropriate skills development/training. This will be provided when it is reasonable, practical and cost effective, and where the member of staff demonstrates a willingness to learn and can apply the new skills within an agreed timeframe.
- 5.13.4 The trial period will normally last for four weeks, but may be extended by mutual agreement where a member of staff requires additional training and development. Where this situation arises there will be no loss of rights as a result of the extension of the initial trial period.
- 5.13.5 If the trial period is unsuccessful, as determined by the individual and/or the manager concerned, redundancy arrangements will apply as from the date when the original contract of employment will terminate. Until the end of their notice period, staff 'at risk' will be considered for other suitable alternative employment if available which will be subject to the same arrangements, including a 4 week trial period.

## **5.14 Change of location**

5.14.1 If, as a result of organisational change, there is a requirement to move staff from their normal place of work to another location within the Trust, then the consultation process should be implemented as detailed in section 2.1. If this results in increased travel costs to and from work, staff will be reimbursed their extra daily travelling expenses in accordance with the Trust's Pay Protection and Excess Travel Policy.

## **5.15 Redundancy arrangements**

5.15.1 A member of staff will have their contract of employment terminated on the grounds of redundancy if no suitable alternative employment can be found or if a trial period is unsuccessful.

5.15.2 The terms under which a redundancy payment and/or early retirement benefit are payable are summarised below:

- To qualify for a redundancy payment/early retirement benefit the individual must have:
  - a contract of employment with the Trust; and
  - at least 2 years' (104 weeks) continuous service within the NHS
- A redundancy payment takes the form of a lump sum, dependent on the member of staff's reckonable service at the date of termination of employment.
- The lump sum is calculated on the basis of one month's pay for each complete year of reckonable service, subject to a minimum of 2 years' continuous service and a maximum of 24 years reckonable service (i.e. the maximum payable is 24 months)
  - for those earning less than £23,000 per year (full time equivalent), the redundancy payment will be calculated using notional full-time annual earnings of £23,000, pro-rated for staff working less than full time
  - for those earning over £80,000 per year (full time equivalent) the redundancy payment will be calculated using notional full-time annual earnings of £80,000, pro-rated for staff working less than full time. No redundancy payment will exceed £160,000 (pro-rata)
- Fractions of a year of reckonable service will not be taken into account.
- Early retirement on the grounds of redundancy is available, subject to the member of staff:

- being a member of the NHS Pension Scheme;
  - having at least 2 years' Continuous Service and 2 years' pensionable membership; and
  - having reached the minimum pension age in accordance with the relevant NHS Pension Scheme arrangements.
- Some staff may be subject to locally-agreed contractual arrangements in respect of redundancy which will need to be honoured.
  - If a retrospective pay award is notified after the date of termination of employment, then the redundancy payment and/or pension will be recalculated, and any arrears due paid.

5.15.3 Staff will not be entitled to redundancy payments/early retirement on the grounds of redundancy if they:

- are dismissed for reasons of misconduct;
- at the date of the termination of the contract have obtained without a break, or with a break not exceeding four weeks, suitable alternative employment with the Trust or other NHS employer;
- unreasonably refuse to accept suitable alternative employment with the Trust or another NHS employer;
- leave their employment before expiry of notice, **except** if they are being released early;
- are offered a renewal of contract with the substitution of a new employer for the Trust

5.15.4 Staff whose employment is subject to TUPE or a Retention of Employment Model (ROE) transfer (see section 5.17) will not be redundant, and, therefore, will not be entitled to redundancy payments/early retirement on the grounds of redundancy.

5.15.5 For further information please refer to Part 3, Section 16, of NHS Terms and Conditions of Service Handbook and the NHS Pension Scheme early retirement booklet, or seek further advice from the Trust's HR Department or your trade union.

5.15.6 The manager will liaise with HR in order to obtain details of redundancy entitlements and other aspects of the redundancy process. The manager will

provide, in writing, to the individual and their trade union or staff representative the following details:

- the number of weeks' notice, in accordance with the contractual notice period
- the effective date of the redundancy, which will also be the last day of service
- the number of days' outstanding annual leave, where applicable, to be paid in lieu
- the amount of redundancy payment/enhanced pension benefits that will be paid, where applicable
- what efforts will be made to assist the individual in seeking suitable alternative employment during the notice period
- what support is offered during the notice period e.g. help with job search, CV and interview preparation
- what work the individual will be expected to undertake during their notice period
- that reasonable time off with pay will be given to seek and prepare for alternative work
- that early release will normally be given, unless there are compelling service reasons to the contrary, if the individual is successful in obtaining other employment outside the NHS and wishes to take this up during the notice period: the date of early release will then become the revised date of redundancy for the purpose of calculating any entitlement to a redundancy payment
- the right of appeal against selection for redundancy or the terms of the redundancy.

## **5.16 Protection arrangements**

5.16.1 The Pay Protection and Excess Travel Policy is in place in order to support staff who, as a result of organisational change, are required to move to a new post which would entail a reduction of earnings and certain terms and conditions of employment.

5.16.2 Pay protection will apply for the agreed periods as set out in the Pay Protection and Excess Travel Policy or until the member of staff moves voluntarily to a new post within the Trust.

5.16.3 Where individuals are required to change their base as a consequence of organisational change, they may be reimbursed their extra daily travelling expenses for the period set out in the Pay Protection and Excess Travel Policy. The excess will be calculated on the basis of the bus fares or standard rail travel or if the member of staff travels by private motor vehicle on the basis of NHS Terms and Conditions of Service reserve rate.

## **5.17 Transfer of services and staff (TUPE)**

5.17.1 Where there is a proposal to transfer services and staff to a different employer, there will be consultation with the trade union and staff representatives at the earliest opportunity. This will be a minimum of 30 days (unless otherwise agreed) and where 100 or more staff are affected will be 45 days, where reasonably practicable.

5.17.2 When services are transferred from one organisation to another in line with TUPE, or by virtue of a Transfer Order under the relevant NHS legislation which mirrors TUPE, the employment of staff who are assigned to the services which are being transferred will transfer to the new organisation. TUPE applies in contracting out scenarios, retendering and where the services are brought back into the NHS.

5.17.3 All the terms and conditions within the transferring member of staff's contract of employment (including relevant policies and procedures) will transfer with them and should not be changed as a consequence of the transfer.

5.17.4 In some limited circumstances, the supervision and management responsibility of staff (but not their employment) may be transferred to another organisation under what is known as the Retention of Employment (ROE) model. This model applies particularly in relation to the PFI Scheme where catering, security, portering, cleaning and laundry services are affected. Under this model, staff will be seconded from the NHS (under the auspices of the Community Care Act 1990) to work for the Private Service Provider. The terms of the secondment agreement will be reviewed and agreed with the staff who will be affected.

5.17.5 Where staff have responsibilities spanning more than one NHS organisation or more than one service, discussions will take place with the individual, their trade union or representative and the organisations concerned to determine if their employment should transfer. The options in this situation might be that the individual will transfer to one organisation with an agreement to provide services to the other(s), or have more than one contract of employment, or, in exceptional circumstances, to be declared 'at risk'.

5.17.6 In all of these circumstances, for the purposes of the consultation that will be carried out, the manager will identify the services, posts and individual staff that

will transfer or be affected in accordance with the obligations of TUPE or under the ROE (secondment) model, and shall write to the staff affected and the trade unions informing them of the intention that staff will transfer, the implications of the transfer and any measures which will be taken in connection with the transfer.

- 5.17.7 The manager will then hold one-to-one meetings with individual staff and their trade union or staff representative to discuss the implications of the transfer, measures to be taken in connection with the transfer, answer any concerns or queries, discuss possible options, if appropriate, and consider personal circumstances. These discussions will be documented and confirmed in writing. Every possible support will be given to staff to understand the reasons for, and implications of, the transfer and to ensure they have the necessary information with which to prepare themselves.
- 5.17.8 Formal notice of a transfer will be issued as long before the date of the transfer as possible in order to comply with the obligations of TUPE and this policy. The Trust will make every effort to give up to three months' notice of a transfer, where possible. Where three months' notice is not possible because, for example, the timing of external announcements or decisions of approval, a shorter notice period will be provided after consultation with the JSCC with a view to reaching agreement. If agreement cannot be reached, a meeting of the JSCC will be convened.
- 5.17.9 In certain circumstances, a receiving organisation may elect to carry out pre-transfer consultation in respect of proposed post-transfer redundancies. In those circumstances, the best practice principles of this policy, as well as statutory requirements (as set out in s198A TURLCA), shall apply. The key principles of a pre-transfer redundancy consultation will be as follows:
- there is to be, or likely to be, a TUPE transfer
  - the receiving organisation is proposing to dismiss as redundant 20 or more staff members at one establishment within a period of 90 days or less
  - the staff who are to be transferred to the receiving organisation include one or more members of staff who may be affected by the proposed dismissals or by measures taken in connection with the proposed dismissals
  - the current employer and the receiving organisation must agree in writing to the consultation commencing pre-transfer
  - unions at both the receiving and transferring employer should be engaged in the consultation throughout the course of the consultation and following the TUPE transfer

## 5.18 Appeals

- 5.18.1 Appeals against the selection criteria for redundancy or the decision to dismiss a member of staff by reason of redundancy, will be heard in accordance with the procedure set out in Appendix 7.
- 5.18.2 The appeal must be made in writing to the Director of People, copying in [clcht.employee.relations@nhs.net](mailto:clcht.employee.relations@nhs.net) within 14 calendar days of the date of the “at risk” notification to the member of staff.
- 5.18.3 The member of staff should clearly state the grounds on which the appeal is being made, include any evidence they wish to be considered, and indicate the outcome they are seeking. The member of staff’s notice of appeal should be acknowledged within 7 calendar days of receipt.
- 5.18.4 The appeal hearing will normally be held within one calendar month of receipt of the appeal and will comprise of a manager at Assistant Director level and above who has not been involved with the case, and a senior HR representative: an HR Business Partner, Head of Employee Relations and Policy, Deputy Director of Workforce or Director of People.
- 5.18.5 The member of staff has a right to be accompanied at the appeal hearing. The companion must be a work colleague employed by the Trust, or a trade union representative. There is no right to legal representation.
- 5.18.6 At least 7 calendar days’ written notice of the appeal hearing will be given to the member of staff so that they can make arrangements for a companion, if required. The appeal hearing will not be unreasonably delayed by the non-availability of the companion.
- 5.18.7 If without reasonable explanation either party fails to attend within 30 minutes of the specified start time, the panel has absolute discretion to adjourn or to determine the appeal on the basis of the evidence before the panel and any further representations from any party in attendance.
- 5.18.8 If the member of staff agrees, their companion will be able to address the hearing, question any witnesses, confer with the member of staff, put forward their case, sum up the case, respond on their behalf to any view expressed at the hearing, but does not have the right to answer questions on behalf of the member of staff.
- 5.18.9 In considering the appeal against the redundancy dismissal, the appeal panel will satisfy itself on the following points:
- whether there was a genuine redundancy
  - whether meaningful consultation had taken place



- whether the procedure was correctly and fairly implemented
- whether the dismissal was reasonable in all the circumstances

5.18.10 After the conclusion of the hearing or if this is not possible, within 7 calendar days, the chair of the panel will give a decision to the member of staff, which will be followed up in writing.

5.18.11 If the appeal is successful, the member of staff will be re-instated and entitlements backdated to the end of the notice period if necessary.

5.18.12 The decision of the appeal panel will be final and there will be no further opportunity for recourse within the Trust's internal procedures. However, in the event of a complaint about misapplication of the Change Management Policy which is not covered in this section 5.18, this will be dealt with in accordance with the Trust's Grievance Policy.

## **6. Approval and Ratification Process**

The review of this procedural document was discussed with Staff Side and HR representatives at the HR Policy Review Group meetings on 28 January 2021 and 10 February 2021. Final approval was given by the Policy Ratification Group on 19 February 2021.

## **7. Dissemination and Implementation**

This document will be placed on the intranet by the QLD team. It will therefore be available to all staff via the Trust's intranet hub. Furthermore the document link will be circulated to all managers who will be required to cascade the information to members of their teams and to confirm receipt of the procedure and destruction of copies of previous procedures/policies which this supersedes. Managers will ensure that all staff are briefed on its contents and on what it means for them.

The QLD team will provide a reference number for the policy.

## **8. Archiving**

The QLD team will undertake the archiving arrangements.

## **9. Training Requirements**

None required.

## **10. Monitoring and Auditing Compliance**

This policy will be monitored on an ongoing basis by Human Resources/Joint Staff Consultative Committee to ensure effectiveness and compliance across the organisation. On an annual basis, HR/JSCC will review the change exercises undertaken over the previous 12 months using the policy and consider any lessons learnt to improve the policy/practice. The policy will be amended as appropriate to reflect any changes in legislation. The policy will be reviewed every 3 years.

Equality impact and risk assessments will be undertaken relating to proposed organisational change, doing so at the earliest opportunity and updating these as appropriate.

The Change Management Log is updated on a monthly basis to monitor planned or possible consultations; consultations in progress; provide an update on implementation stages; and show activities concluded. This is shared with JSCC members, including staff representatives, and opportunities to test these consultations will be provided through the JSCC and the Special Managers' and Staff Representatives' meetings.

## **11. Review**

This procedural document will be reviewed in 3 years' time in August 2023. It will be reviewed by the HR Policy Group.

## **12. Associated Documentation**

- Pay Protection and Excess Travel Policy
- Appeals Policy
- Grievance Policy
- Equality and Diversity Policy
- Employment Checks Procedure

## **13. References**

- Employment Rights Act 1996
- Equality Act 2010
- The Transfer of Undertakings (Protection of Employment) Regulations 2006
- The Trade Union and Labour Relations (Consolidation) Act 1992 (TURLCA) (as amended).

## **14. Appendices**

Appendix 1: Best Practice Guidance on Consultation

Appendix 2: Consultation Checklist

Appendix 3: Pre-consultation Planner

Appendix 4: Pre-consultation Checklist

Appendix 5: Template Consultation Document

Appendix 6: Consultation Flow Chart

Appendix 7: Appeal Hearing Procedure – Change Management

Appendix 8: Equality Impact Assessment

## **Appendix 1: Best Practice Guidance on Consultation**

The purpose of this document is to provide guidance on the content of organisational change consultation documents as well as planning the process of consultation and pre-consultation by working in partnership with the Trade Unions and staff representatives.

The document includes:

- a consultation checklist of best practice
- pre consultation planner and checklist
- a template for developing a consultation document (managers are encouraged to amend the template to suit particular circumstances)
- a best practice flow chart

Managers are encouraged to discuss draft proposals with staff as part of a staff engagement process. This is not part of a formal consultation process but can help prepare the staff for the changes planned. This stage should help address concerns for both parties e.g. the most common complaint from trade union and staff representatives and staff is that they are not kept abreast of the general issues their employer is dealing with and are not consulted at the very first formative stages of proposals. For employers, the obligation to consult in enough detail and have some form of proposal upon which staff can be consulted, can inhibit them from entering discussions at the early formative stage. The need for a detailed proposal can also drive a narrowing of the options that can be presented for formal consultation.

To implement change, however, it will be necessary to develop a formal consultation document and consult on that change. Change which would lead to redundancies is covered by statutory requirements and is laid out in this policy

A formal consultation process needs clear proposals that are meaningful and should be shared with staff representatives in advance of a final launch in order that they can prepare for supporting their members.

Staff representatives will maintain appropriate confidentiality during this process prior to final launch, so that staff communication can be consistent and well managed.

Consultation should be launched in a way that involves staff representatives at the initial meeting which will then be followed by individual meetings.

## Appendix 2: Consultation Checklist

<p>Develop change proposal – new structure plus process of filling new posts</p>	<ul style="list-style-type: none"> <li>• Get advice from your HR Business Partner from the start. Remember a redundancy is a reduction in posts. Make sure the consultation document is checked by HR to ensure it complies with the Trust’s policies and contracts.</li> <li>• Involve all relevant stakeholders.</li> <li>• Prepare your team for change. Wherever possible, develop the proposal with people affected by change.</li> <li>• Discuss proposal with trade union and staff representatives 2 days ahead.</li> <li>• Involve your Finance Business Partner. Find out the recurrent costs for the current and proposed structure. Get approval for the cost of any potential redundancy.</li> <li>• Plan the consultation, implementation and selection process – get the dates sorted out before consultation starts.</li> </ul>
<p>Write the consultation document</p>	<ul style="list-style-type: none"> <li>• Use template at appendix 2 or write a letter if less than 10 people are affected.</li> <li>• Append new job descriptions, rotas etc. to the consultation paper. Ideally get job descriptions evaluated. These do not need to be finalised documents as this is still a consultation process. They need to contain enough information for the staff affected to be able to consider what these changes will mean for them and what their options will be, so that their individual consultation is meaningful to them.</li> </ul>
<p>Notify trade union and staff representatives</p>	<ul style="list-style-type: none"> <li>• At least 5 working days before the planned start of formal consultation, send the consultation document and list of affected staff to the Chair of JSCC, the lead representative for any relevant TU and the Head of ER.</li> <li>• Revise consultation document in the light of TU comments as appropriate.</li> <li>• Offer meeting with trade union and staff representatives to discuss the proposal.</li> </ul>
<p>Consult</p>	<ul style="list-style-type: none"> <li>• If less than 20 staff affected, agree the timescale for the consultation.</li> <li>• Hold group consultation meeting where there are general issues that apply to all or most people affected by the change. Invite trade union and staff representative(s) to the meeting.</li> <li>• Individual meetings. People can be accompanied by a Trade Union representative or work colleague employed by the Trust.</li> <li>• Encourage people to comment on the proposal throughout the consultation period.</li> </ul>

	<ul style="list-style-type: none"> <li>• Keep notes to ensure these points can be considered at the end of the consultation.</li> </ul>
Confirm decision in writing	<ul style="list-style-type: none"> <li>• Confirm decision and highlight modifications to original proposal.</li> <li>• Respond to comments and alternative proposals.</li> <li>• Set out next steps, e.g. meetings to confirm impact on people of change, selection activities.</li> </ul>
Selection activities, as appropriate	
Give notice, if appropriate	<ul style="list-style-type: none"> <li>• Meet affected people to give notice of redundancy or change of grade.</li> <li>• Right to be accompanied.</li> <li>• Confirm in writing.</li> <li>• Organise appeals if necessary.</li> </ul>

### Appendix 3: Pre-consultation Planner

This planner and checklist have been developed as a guide to support managers in preparing consultation documents.

#### Timescales for planning

Action	Minimum timescale	Date
Consultation Lead to discuss planned change with HR Business Partner and draft consultation paper and job descriptions (if applicable).	6 weeks before launch	
Amended or new job descriptions to be submitted for job matching (if applicable). If large scale, more notice may be required.	4 weeks before launch	
Banding of amended or new job descriptions confirmed.	2 weeks before launch	
Consultation lead to meet with affected staff informally to advise of planned consultation (pre-consultation).	2 weeks before launch	
Consultation document reviewed against checklist by consultation lead, WBP/Assoc. WBP and staff representatives.	2 weeks before launch	
Any amendments made and pre-consultation checklist signed off.	1½ weeks before launch	
Final consultation document shared with staff representatives.	1 week before launch	
Affected staff invited to launch meeting.	1 week before launch	
Consultation launch (group meeting and distribution of document).		

## Appendix 4: Pre-consultation Checklist

<b><u>ALL</u> consultation documents should include:</b>	<b>Checklist of actions</b>		
	<b>Yes</b>	<b>No</b>	<b>N/A</b>
The driver/catalyst and rationale for change and the aims or objectives of making the proposed changes.			
Risks involved if aims of consultation are not achieved.			
An outline of the options available for achieving the aim of the proposal, including options considered by not taken forward.			
Identify the expected benefits for stakeholders such as patients, staff and the Trust, including any risks, plus how those risks are to be mitigated.			
Assessment of the impact on other services across different sites. Would the proposal prove difficult or have a positive effect on the delivery of other services across the Trust.			
All relevant health and safety assessments, if applicable.			
An explanation of how the proposed action differs from what currently exists, including how and why this proposal will be more effective than the current operational situation.			
Outline of the current situation, including current structure, work patterns or practices and terms and conditions.			
The impact of the proposals on staff, including any impact on work patterns, practices or terms and conditions, plus the current and proposed structures (if structural changes are proposed).			
Where job roles are being reviewed or new roles are being identified, relevant job descriptions should be produced by the consultation lead and checked by the HR Business Partnering team. The appendices should detail: the posts affected, whether these are new jobs or changed jobs.			
In the event of some responsibilities being taken over by another team or department, details of the old department's structure alongside with the new department's structure should be provided to clearly indicate lines of accountability pre and post consultation.			
Detail the number and grades/bands of staff who may be at risk of redundancy as a result of the proposal.			
Outline and explain the way in which staff will be selected for or slotted into posts within the new structure.			



Describe the measures to be taken to avoid compulsory redundancies. These may include natural wastage, redeployment with retraining, or voluntary early retirement.			
Include the proposed timetable and process for consultation and implementation.			
Provide details of how the consultation information will be disseminated to those affected by the change, and Trade Union and staff representatives. It should be made clear to representatives if there are any restrictions on when the information should be discussed with others.			
Equality impact assessment			
Where there would be financial costs/implications, ensure that costings for the current and proposed service are provided within the consultation document.			
Confirmation that the new structure has been approved by Finance.			
Confirmation that the potential for redundancy, including bands and WTEs, has been discussed with the Director of Human Resources and Organisational Development (does not need to be explicit in document).			

Confirmation that consultation can proceed to launch

**Consultation Lead**

Name:

Job title:

Signed:

Date:

**HR Business Partner**

Name:

Job title:

Signed:

Date:

**Staff Representative:**

Name:

Job title:

Signed:

Date:

## Appendix 5: Template Consultation Document

Name of division/directorate and department

### CONSULTATION ON PROPOSAL TO XXXXXX

#### 1. Executive Summary

The aim of this paper is to initiate formal consultation on the proposed organisational changes for the XXXX. In accordance with the Trust's Change Management Policy it is proposed that (*outline proposal very briefly*) in order to (*outline rationale very briefly*). It is proposed that the new structure is implemented from (*add in date if appropriate*).

#### 2. Current Structure

Organisation chart, table form.

#### 3. The Case for Change (Rationale)

E.g. effectiveness, cost, role clarification, new technology, increase in demand, commissioning decision to change service, legal.

#### 4. Proposed Structure

- Proposed structure – org chart, table form
- Proposed roles
- Arrangements to support new structure, e.g. training, rota changes
- Any transitional arrangements

#### 5. Financial impact (if cost reduction is part of the case for change)

#### 6. Impact on the quality of care for people using our clinical services

- Please complete

#### 6a Equality impact for people using our clinical services

If the equality impact is judged to be low, it will be sufficient to write: This proposal is judged to have a low impact on service users. It is anticipated that most organisational change proposals will have a low impact for service users.

If the impact is medium the manager will need to state what the impact is likely to be in terms of race, gender, disability, sexual orientation, age or religion. If the potential impact is negative, they will need to state how, if possible, the impact can be mitigated.

If the impact is high, a full Equality Impact Assessment needs to be carried out as per Equality Impact Guidance (link to template). The EIA should be attached to the consultation document or summarised in the consultation document.

## 7. Impact upon staff affected by the proposal

- Slotting-in arrangements, ring-fencing
- Criteria for selection, as appropriate
- Impact, e.g. redundancy, changes to shift, on-call, banding
- Pay protection

### 7a Equality impact for staff

If the impact is judged to be low, it will be sufficient to write: This proposal is judged to have a low impact on staff. If however the proposal entails one or more of the types of change:

- Staff at risk as a result of a proposal to disestablish posts
- Changes that potentially impact disproportionately on staff with caring responsibilities e.g. changes to rotas
- Changes that potentially impact disproportionately on staff with access or mobility problem e.g. relocation of work base

The following information should be presented in this section:

**Headcount of staff in posts at risk of being disestablished** or transferred to another organisation - by race, gender, disability and age. Information to be presented in table format. Distribution restricted to the people in 'at risk' posts and their representatives.

ETHNICITY		GENDER		DISABILITY			AGE			
BME	White	Male	Female	Disabled	Not disabled	Not known	<25	25-34	44-55	55+

## 8. Proposed Timetable

Date	Action
	Consultation document sent to Chair of JSCC and any relevant TU representative.
	Start of consultation. Consultation document given to affected staff.
	Group meeting to discuss proposals.
	Consultation meetings with individuals, as required.
	Responses to consultation from staff representatives, individual Trade Unions or staff submitted to management (it is a matter for those responding to decide who should be copied into their response)
	End of consultation period.
	Management consider all responses and discuss their response with Trade Union and staff representatives. At this stage any need for further consultation or an extension can be considered.
	Written notification of decision following consultation, including timetable for implementation of changes.
	Selection activities – e.g. interviews.
	Meeting to confirm impact on affected people.

## 9. Trade Union and Staff Representatives

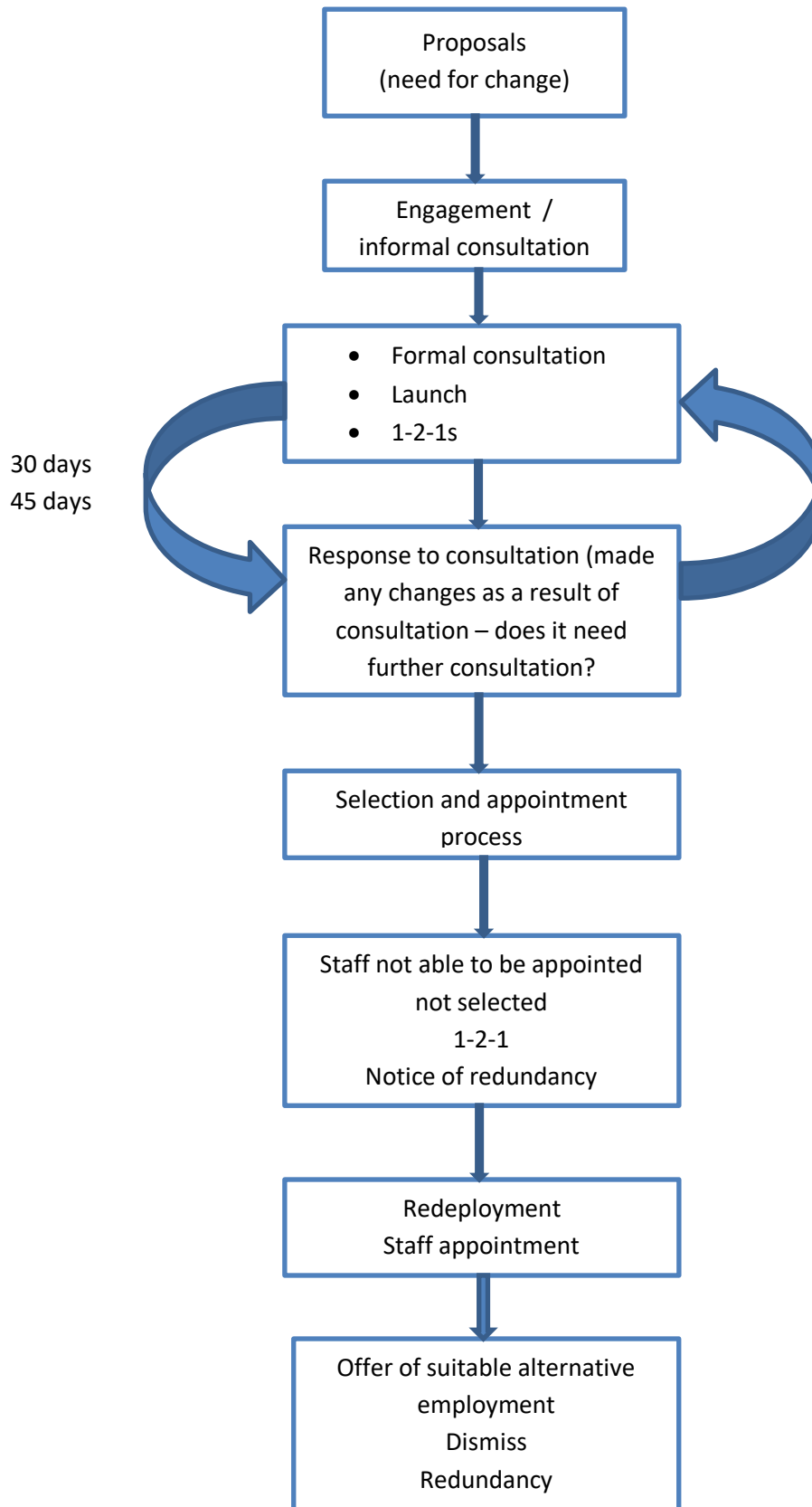
For a full list of Trade Union and staff representatives and their contact details, please go to XXXX.

## 10. Contact and Support

If you feel very anxious about the proposed change, you can speak to your trade union or staff representative or your manager. Alternatively, you can get advice from XXXX the Trust's confidential counselling service.

If redundancies (voluntary or compulsory) are being considered then explain any staff support arrangements that have been put in place to assist staff affected – e.g. pensions advice, outplacement services, e.t.c.

**Appendix 6: Consultation Best Practice Flow Chart**



## **Appendix 7: Appeal Hearing Procedure – Change Management**

The purpose of the appeal hearing is to determine whether the selection criteria for redundancy or the decision to dismiss a member of staff by reason of redundancy was fair in all the circumstances.

The panel, the member of staff and their companion, the senior manager who took the decision to dismiss and presents the management case (“senior manager”) and the HR representative supporting the senior manager, must be present throughout the appeal hearing.

If meetings or hearings are conducted virtually, participants should not have anyone physically with them who has not been invited or declared as a member/participant in the meeting. Participants’ cameras should remain on for the duration of the meeting

A record will be kept of the proceedings of the appeal hearing. An electronic recording may be made of the hearing if agreed by all parties or where this may be required as a reasonable adjustment.

### **1. Introduction - the Chair:**

1.1 Welcomes attendees and makes introductions, explains this is an appeal hearing conducted in line with the Trust’s change management policy. In considering the appeal against the selection criteria or redundancy dismissal, the appeal panel will satisfy itself on the following points:

- whether there was a genuine redundancy
- whether meaningful consultation had taken place
- whether the procedure was correctly and fairly implemented
- whether the dismissal was reasonable in all the circumstances

1.2 If the member of staff is not accompanied, notes for the record that the member of staff has been advised of their right to be accompanied but has chosen to attend unaccompanied.

1.3 Confirms with the member of staff, the senior manager and panel members that they have received all the documentation relating to the appeal hearing.

1.4 Emphasises the need for confidentiality (i.e. all parties must treat as confidential any information pertaining to the case).

1.5 Explains the procedure:

### **2. Procedure:**

2.1 The appellant and/or their companion will put their case for the appeal to the panel, citing the grounds for appeal, and will take questions from the senior manager and panel members.

- 2.2 Any permitted witnesses called by the appellant will be invited individually into the hearing to make a statement, and will take questions from the senior manager and panel members.
- 2.3 The senior manager will set out the management case and the reasons they made the decision to select and/or dismiss and will take questions from the appellant, their companion and panel members.
- 2.4 Any permitted witnesses called by the senior manager will be invited individually into the hearing to make a statement, and will take questions from the appellant, their companion and panel members.
- 2.5 The senior manager will sum up their case.
- 2.6 The appellant will sum up their case.

### **3. Adjourn**

- 3.1 The panel will then adjourn to consider the appeal and come to a decision. In a virtual hearing, the panel can leave the meeting and discuss the outcome via telephone or ask attendees to log back into the meeting at a particular time.
- 3.2 The panel considers their decision in private, only recalling both parties to clarify points of uncertainty on evidence already given.
- 3.3 The appeal panel can take the following action:
  - uphold the appeal
  - uphold the decision on selection criteria and/or redundancy

### **4. Reconvene**

- 4.1 Where possible, the Chair of the panel will inform the parties verbally at the conclusion of the hearing, of the panel's decision and the reasons for the decision.
- 4.1 If the panel's decision is to be delayed, for example if further evidence is required, the parties are informed and told when it is likely the decision will be reached. Otherwise the decision will normally be given in writing to the appellant, copying relevant parties, within 7 calendar days of the appeal hearing.
- 4.2 If the appeal is successful, the member of staff will be re-instated and entitlements backdated to the end of the notice period if necessary.
- 4.3 The Chair of the panel will confirm that the decision of the appeal panel is final and there will be no further opportunity for recourse within the Trust's internal procedures. However, in the event of a complaint about misapplication of the Change Management Policy which is not covered in Section 5.18 of the Change Management Policy, this will be dealt with in accordance with the Trust's Grievance Policy.

In conclusion, the Chair thanks those in attendance for their time and co-operation.

## Appendix 8: Equality Impact Assessment

### Change Management Policy: Principles and Procedures

The Trust as a public authority has a legal requirement to analyse the impact of the policy on the protected characteristics of staff and patients. This helps us to check if there is a negative impact and how we can reduce that impact.

1. Protected characteristic	Positive impact	Neutral Impact	Negative Impact	Reason for impact and action required.
People of different ages (e.g. Children, young or older people).		X		It is possible that change management proposals could potentially have a negative impact on staff in the 50-65 age group if assumptions are made regarding early retirement or redundancy. An Equality Impact Assessment (EIA) will be completed on the consultation papers to ensure that no staff are disproportionately affected due to their age.
People of different religions / beliefs		X		Any changes to hours or location should consider the reasonable adjustment needs of people with different religious beliefs. Any change management proposals should discuss impact upon staff and actions put in place to minimise any potential negative impact.
People with disabilities (physical, sensory or learning).		X		Any changes to hours or location should consider the needs of staff with disabilities. For example, transportation or physical access issues. Any change management should discuss changes individually with staff with disabilities and the EIA should detail the actions to minimise any potential negative impact.
People from different ethnic groups		X		For all change management process, an EIA will be completed before proposals are implemented and after decisions taken. This EIA will ensure that ethnic minority staff are not disproportionately affected.
Men or women		X		It is possible that proposals will impact on more female staff than male as 85% of the workforce is female. In particular, those with caring responsibilities, on maternity leave or working flexible hours. An EIA will monitor the impact of proposals on female staff and negative impacts will be assessed and a mitigation plan put into place. Any changes to hours or location consider the needs of



				those with caring responsibility and one to one discussions will take place.
Transgender people		X		If a change of team or service affects people who have undergone or are undergoing gender reassignment, the Employee Relations Team will work with managers and teams to ensure the Equality Policy is followed. (e.g. not disclosing a transgender staff member's birth gender).
People who are gay, lesbian, and bi-sexual		X		For any change management proposals, an EIA will be completed before implementation and after the changes have occurred to assess any potential negative impact on people who are lesbian, gay or bisexual.
Refugees and asylum seekers		X		Not applicable.
2	Please describe engagement and consultation process and the key feedback. E.g. with teams, unions. The evidence is based upon national research and recommendations from equality support organisations.			
3.	If there are negative impacts upon people's protected characteristics. Does the policy in its current form need a full Equality Analysis Assessment to be completed? No			
4.	Have you signed this off with the Equality Diversity and Inclusion Lead? Yes			

Signed for team / working group:

Name: Jackie Hughes

Date: 17 February 2021

Signed by Equality Diversity and Inclusion Lead:

Name: Yasmin Mahmood

Date: 19 February 2021

**TITLE: CODE OF CONDUCT and CONFLICT OF INTEREST POLICY**

**VALID FROM: November 2020**

**EXPIRES: October 2023**

This procedural document supersedes the previous procedural document (V6),

Conflict of Interest Policy and Code of Conduct, version 7.0

<b>Version:</b>	6.0
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<b>Target audience</b>	All staff

## Version Control Sheet

Version	Date	Author	Status	Comments
3.0		Liz Lubbock	Final	Policy reviewed and updated.
4.0	May 2016	Jayne Walbridge	Final	Policy reviewed and updated to meet the requirements of the 2016/17 standard NHS contract.
5.0		Jayne Walbridge	Final	Policy reviewed and updated to meet the requirements on Managing Conflicts of Interest in the NHS guidance that came into force 1 June 2017
6.0	Mar 2019	Jayne Walbridge	Final	Updated to ensure references to non-executive directors are comprehensive, to include 'nil' returns in line with guidance and best practice and recommendations from the counter fraud team
7.0	September 2020	Jayne Walbridge	Draft for Audit Committee consideration	Updated to address recommendations of the counter fraud team, including defining decision making staff and the move to using the electronic staff record (ESR).

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## 1. Introduction

Providing the best healthcare for people in their homes and the community whilst endeavouring to keep people as well and healthy as possible are core to the Trust's values.

Conflict of interests in the NHS - guidance for staff and organisations, published in February 2017 which came into force on 1 June 2017 supersedes and extinguishes the Standards of Business Conduct for NHS staff (HSG(93)5). This applies to all employees. NHS staff are expected to ensure that the interests of patients remain paramount, that they are impartial and honest in the conduct of their business and that public funds are utilised to the best advantage of the service. In addition, employees must ensure that they do not abuse their position for personal gain to the benefit of family, friends or their private business interests.

This is consistent with the Nolan principles; which are the basis of the ethical standards expected of public office holders (selflessness, integrity, objectivity, accountability, openness, honesty and leadership).

If a member of staff has a personal, financial or other problem, s/he may be more vulnerable to offers of inducement than they would otherwise be. Counselling advice is available to all staff. It is in all staff's interest to discuss such matters in confidence with their manager or with a senior representative of the human resources function when such a problem is identified, both to secure assistance and advice and to avoid unwarranted suspicion. It is recognised that staff may also wish to access trade union advice and representation.

A number of additional resources to aid the implementation process of this policy have been published by NHS England, including 'Frequently Asked Questions' – you can access this information here: [www.england.nhs.uk/ourwork/coi](http://www.england.nhs.uk/ourwork/coi)

**Breach of this policy may lead to further formal action under CLCH's Disciplinary Policy where a sanction may be provided up to and including dismissal. Further action may be pursued through the Local Counter Fraud Specialist in the event that it is established that the individual(s) have benefited from their failure to disclose information to the Trust.**

## 2. Aims, objectives and scope

This policy aims to ensure that, in line with the Equality Act 2010 and CLCH's Equality and Diversity Policy, no employee receives less favourable treatment on the grounds of age, disability, race, gender, pregnancy and maternity status, religion and spiritual belief, sexual orientation, gender reassignment, marriage and civil partnership status<sup>1</sup>.

At CLCH we use the skills of many different people. This includes people on differing employment terms, who for the purposes of this policy we refer to as 'staff' and are listed below:

- All salaried employees
- Apprentices and students
- Bank staff
- Non-executive directors (NEDS) , associate NEDS
- Staff working within CLCH whose contract is held by any other NHS employer or non-NHS employer, for example Capita staff.

## 3. Definitions

**Code of conduct:** a set of common rules outlining the responsibilities of, or proper practices for, an individual or group. Note – clinical and non-clinical groups will also have their own ethical/professional standards with which they are also required to comply.

**Conflict of interest:**

A set of circumstances by which a reasonable person would consider that an individual's ability to apply judgement or act, in the context of delivering, commissioning, or assuring taxpayer funded health and care services is, or could be, impaired or influenced by another interest they hold.

A conflict of interest may be:

- Actual - there is a material conflict between one or more interests
- Potential – there is the possibility of a material conflict between one or more interests in the future.

Staff may hold interests for which they cannot see potential conflict. However, caution is always advisable because others may see it differently and perceived conflicts of interest can be damaging. All interests should be declared where there is a risk of perceived improper conduct.

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<sup>1</sup>Note – not all of these requirements are covered in the attached EIA – completed in 2013 but there are no issues identified



Interests fall into the following categories / definitions (aligned to the Electronic Staff Record [ESR]):

### **Financial interests**

Where an individual may get direct financial benefit from the consequences of a decision they are involved in making.

This could include:

- A director (including a non-executive director) or senior employee in another organisation which is doing, or is likely to do business with an organisation in receipt of NHS funding
- A shareholder, partner or owner of an organisation which is doing, or is likely to do business with an organisation in receipt of NHS funding
- Someone in outside employment
- Someone in receipt of secondary income
- Someone in receipt of a grant
- Someone in receipt of other payments (e.g. honoraria, day allowances, travel or subsistence)
- Someone in receipt of sponsored research

### **Non-financial professional interests:**

Where an individual may obtain a non-financial professional benefit from the consequences of a decision they are involved in making, such as increasing their professional reputation or promoting their professional career.

This could include situations where the individual is:

- An advocate for a particular group of patients
- A clinician with a special interest
- An active member of a particular specialist body
- An advisor for the Care Quality Commission or National Institute of Health and Care Excellence
- A research role

### **Non-financial personal interests:**

Where an individual may benefit personally in ways which are not directly linked to their professional career and do not give rise to a direct financial benefit, because of decisions they are involved in making in their professional career.

This could include, for example, where the individual is:

- A member of a voluntary sector board or has a position of authority within a voluntary sector organisation.
- A member of a lobbying or pressure group with an interest in health and care.

**Indirect interests:**

Where an individual has a close association<sup>2</sup> with another individual who has a financial interest, a non-financial professional interest or a non-financial personal interest and could stand to benefit from a decision they are involved in making.

This would include:

- Close family members and relatives
- Close friends and associates
- Business partners

**Gift:**

A benefit (for example goods or a discount) provided in relation to performance or non-performance of CLCH business. This does not include prizes, for example those given at conferences.

**Hospitality:** a benefit (for example a business lunch or event) provided in relation to performance or non-performance of CLCH business.

**Nil returns:** a return made by an individual (see 4.5 below) confirming that they have no interests to declare in any current year.

## 4. Duties

**4.1 Audit Committee** is responsible for:

- reviewing the adequacy and effectiveness of policies for ensuring compliance with code of conduct requirements, supported by internal audit.

**4.2 Trust Secretary** (or a person delegated by the Chief Executive) is responsible for:

- maintaining and publishing the registers in liaison with leads – see appendix B.

**4.3 Line Manager** is responsible for:

- ensuring that employees understand the requirements of the policy and discuss the registered interests as appropriate, for example 'working elsewhere'. In the case of non-executive directors, appointed by NHS Improvement (who are not employees); the line manager is the Trust Chair.

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<sup>2</sup> A common sense approach should be applied to the term 'close association'. Such an association might arise, depending on the circumstances, through relationships with close family members and relatives, close friends and associates, and business partners.

#### **4.4 Staff** are responsible for:

- ensuring that they are compliant with Trust policies and their professional standards guidance, for example the General Medical Council.
- Discussing declarations with their line manager and confirming this in the free text field on ESR.

#### **4.5 Decision making staff** (see list at 5.2 and appendix D) are responsible for:

- ensuring they provide an annual return, including any nil returns if they have nothing to declare, this will be facilitated through reminders in December annually.

### **5. Procedural document relating to the code of conduct and conflict of interest**

#### **5.1 Conflict of interest – standard of conduct**

CLCH is a public body which is subject to public scrutiny and accountability for all of its actions. As such it has a duty to ensure that all its dealings are conducted to the highest standards of integrity and probity and that its employees, non-executive directors, agents and contractors or others, when acting for CLCH in their official capacities meet these standards.

When employees have other interests (either financial, non-financial professional, non-financial personal or indirect), these should not conflict with their duties, nor impair their ability faithfully to carry out those duties or to make decisions.

An employee who has a personal interest in an outside organisation (or has previously worked for such an outside organisation) with which CLCH has a business relationship is vulnerable to allegations of impropriety. This applies equally if the employee has close relatives who have a personal interest in an external organisation with which CLCH has dealings.

If a personal interest might influence or be reasonably seen by others as likely to influence CLCH's business relationship with the external organisation it must be declared and registered. There are separate rules governing the disclosure and registration of such interests and these are set out in more detail below.

All staff should identify and declare interests at the earliest opportunity – from October 2020; this will be incorporated into the appointment process (and in any event within 28 days). If staff are in any doubt as to whether an interest is material then they should declare it, so that it can be considered.

Declarations should be made:

- On appointment with the organisation in consultation with appointing manager
- When staff move to a new role or their responsibilities change significantly
- At the beginning of new, / major projects of work, for example procurement
- In response to proactive reminders (annually in December)
- If an interest is identified when a requisition is raised or approved
- As soon as circumstances change and new interests arise (for instance, in a meeting when interests staff hold are relevant to the matters in discussion).

All CLCH staff have a duty to make absolutely certain that their conduct does not impact detrimentally in any manner whatsoever upon their contracted NHS duties and relevant regulations.

## **5.2 Identification and declaration of interests**

Some staff are more likely than others to have a decision making influence on the use of taxpayers' money, because of the requirements of their role. For the purpose of this guidance these people are referred to as 'decision making staff'

Decision making staff in CLCH are (see appendix D):

**Executive and non-executive directors**

**All staff at band 8C and above**

**All staff who have expenditure approval authorisation**

**Those who have payroll responsibilities**

**Members of the commercial and procurement team**

**Medical staff**

## **5.3 Assessment of employee's declaration and registration of interest**

Employees declaring an interest will arrange to have the significance of their interest assessed by their manager – and to confirm the outcome and date of the discussion in the free text on ESR.

If a material interest is declared then the general management actions that could be applied include:

- restricting staff involvement in associated discussions and excluding them from decision making
- removing staff from the whole decision making process
- removing staff responsibility for an entire area of work
- removing staff from their role altogether if they are unable to operate effectively in it because the conflict is so significant.

All interests declared will be recorded on ESR - unless this is not possible (see appendix C).

**Note – Board members’ declaration of interests is reviewed at a board meeting in public twice annually. This Board register and all other registers listed at appendix B will be published twice annually (normally in January and July).**

If staff have substantial grounds for believing that publication of their interests should not take place then they should contact the Trust Secretary by email at [clcht.trust.secretary@nhs.net](mailto:clcht.trust.secretary@nhs.net) to explain why. In exceptional circumstances, for instance where publication of information might put a member of staff at risk of harm, information may be withheld or redacted on public registers. However, this would be the exception and information will not be withheld or redacted merely because of a personal preference.

## **5.4 Gifts, loans or benefits**

**5.4.1** As employees of CLCH, all staff are required to exercise high standards of honesty and probity in the course of their dealings on behalf of CLCH, in order to avoid corrupt practice. Additional requirements are also placed on all staff by criminal law under The Bribery Act 2010 and the 2016/17 standard NHS contract.

Under The Bribery Act 2010, there are two general offences of bribery:

- offering or giving a bribe to induce someone to behave, or to reward someone for behaving, improperly; and
- requesting or accepting a bribe either in exchange for acting improperly or where the request or acceptance is itself improper;

It is therefore a criminal offence to:

- solicit any gift or benefit whatsoever from any other person;
- as an inducement to all staff to do, or to refrain from doing, anything at all in relation to CLCH business;
- accept or to solicit any gift or benefit from anyone after the event as a reward for having done, or having refrained from doing, anything at all in relation to CLCH business; and
- offer or to give any gift or benefit to another employee of CLCH or to any employee of any other person or company who has or even may have a business relationship with CLCH, as an inducement to do or to refrain from doing anything in relation to CLCH business or as a reward after the event for having done so.

Any member of staff who has concerns about bribery or other corrupt activities, should refer to the Trust’s counter fraud and corruption policy and response plan for details on how to report them (available on the Hub).

The transparency, or “sunshine”, rule requiring organisations to keep the records has been written into the 2016-17 NHS standard contract and beyond. The move follows Lord Carter’s review into NHS productivity that an English equivalent to the US “Sunshine Act” be introduced.

NHS staff who fail to disclose payments and hospitality received from pharmaceutical companies / drug suppliers and medical device makers will be investigated under the Trust’s Disciplinary Policy and action may be taken up to and including dismissal. Additional action may be taken externally under new regulations and could lead to criminal proceedings.

Relevant staff are strongly encouraged to give their consent for payments they receive from the pharmaceutical industry to be disclosed as part of the Association of British Pharmaceutical Industry (ABPI) Disclosure UK initiative.

These “transfers of value” include payments relating to:

- Speaking at and chairing meetings;
- Training services;
- Advisory board meetings;
- Fees and expenses paid to healthcare professionals;
- Sponsorship of attendance at meetings, which includes registration fees and the costs of accommodation and travel, both inside and outside the UK; and
- Donations, grants and benefits in kind provided to healthcare organisations.

Further information about the scheme can be found on the ABPI website:  
<http://www.abpi.org.uk/our-work/disclosure/about/Pages/default.aspx>

The granting of consent for disclosure does not negate the requirement to declare these payments to the Trust in accordance with this policy.

#### **5.4.2 Employees should conform to the following**

Staff should not accept gifts that may affect, or be seen to affect, their professional judgement, including: money, goods, services, holidays, travel, accommodation, alcoholic beverages, tobacco products, discounts, or anything else of value.

Gifts from suppliers or contractors:

- Gifts from suppliers or contractors doing business (or likely to do business) with the organisation should be declined, whatever their value.

- Low cost branded promotional aids such as pens or post-it notes may, however, be accepted where they are under the value of £6<sup>3</sup> in total, and need not be declared.

Gifts from other sources (e.g. patients, families, service users):

- Gifts of cash and vouchers to individuals should **always** be declined.
- Staff should not ask for any gifts.  
Gifts valued at over £50 should be declined unless they are accepted on behalf of one of the Trust's Charities - never in a personal capacity. These should be declared by staff.

Modest gifts accepted under a value of £50 do not need to be declared.

A common sense approach should be applied to the valuing of gifts (using an actual amount, if known, or an estimate that a reasonable person would make as to its value). If in doubt, please declare gifts and please beware when multiple gifts from the same source are received where the cumulative value exceeds £50.

Gifts and hospitality provided to patients / staff and stakeholders from exchequer funds should be modest, for example a sandwich luncheon, light refreshments at stakeholder events. Applications for charitable funds can be considered for larger stakeholder events, for example the annual general meeting.

#### **5.4.3 What should be declared?**

- Staff name and their role with the organisation.
- A description of the nature and value of the gift, including its source.
- Details of the supplier / third party making the offer
- Date of offer and, if accepted, date of receipt
- The rationale for refusing or accepting a gift
- Any other relevant information (e.g. circumstances surrounding the gift, action taken to mitigate against a conflict, details of any approvals given to depart from the terms of this policy).

Declarations should be made at the point of acceptance or refusal and no later than 1 month later, to ensure that the ESR is up-to-date.

Staff should be aware that acceptance of a gift or hospitality will exclude them from decisions related to offerors and that this may impact on their role.

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<sup>3</sup> The £6 value has been selected with reference to existing industry guidance issued by the ABPI:  
<http://www.pmcpa.org.uk/thecode/Pages/default.aspx>

#### **5.4.4 Charitable Donations**

Patients are permitted to make monetary donations to the Central London Community Healthcare NHS Trust Charity and Related Charities (see guidance for the acceptance and refusal of donations).

The Charitable Funds Committee monitors the use of such funds. The Audit Committee approves, on behalf of the Trust Board, the Central London Community Healthcare NHS Trust Charity and Related Charities financial statements. No inducements are acceptable under any circumstances.

### **5.5 Hospitality**

CLCH will always, where practicable and within budgetary constraints, pay the reasonable costs and expenses of employees in relation to their duties in support of CLCH business.

- Staff should not ask for or accept hospitality that may affect, or be seen to affect, their professional judgement.
- Hospitality must only be accepted when there is a legitimate business reason and it is proportionate to the nature and purpose of the event.

Particular caution should be exercised when hospitality is offered by actual or potential suppliers or contractors. This can be accepted if modest and reasonable, providing it is declared on ESR (or using the form if individuals have no access to ESR).

Meals and refreshments:

- Under a value of £25 - may be accepted and need not be declared.
- Of a value between £25 and £75 - may be accepted and must be declared.
- Over a value of £75 - should be refused unless (in exceptional circumstances) senior approval is given. A clear reason should be recorded on ESR as to why it was permissible to accept.
- A common sense approach should be applied to the valuing of meals and refreshments (using an actual amount, if known, or a reasonable estimate). If in doubt please declare any hospitality received.



Travel and accommodation:

- Modest offers to pay some or all of the travel and accommodation costs related to attendance at events may be accepted and must be declared.
- Offers which go beyond modest, or are of a type that the organisation itself might not usually offer, need approval by senior staff, should only be accepted in exceptional circumstances, and must be declared. A clear reason should be recorded on the organisation's register(s) of interest as to why it was permissible to accept travel and accommodation of this type. A non- exhaustive list of examples includes:
  - offers of business class or first class travel and accommodation (including domestic travel)
  - offers of foreign travel and accommodation.

## **5.6 Requisition and supply**

All CLCH staff who are in contact with suppliers and contractors (including external contractors and NHS providers of healthcare services), in particular those who are authorised to sign purchase orders, or place contracts for goods, materials or services, must adhere to those professional standards as prescribed by the Chartered Institute of Procurement and Supply (CIPS) Code of Conduct. Purchasing of supplies and services may only be carried out by a member of staff with the relevant responsibility.

All agents/procurement consultants engaged with the organisation in relation to the procurement process are required to make declarations which include previous engagements with suppliers who do or are likely to do business with the Trust.

Fair and open competition between prospective contractors or suppliers for NHS contracts is a requirement of NHS Standing Orders and of EU Directives on Public Purchasing for Works and Supplies. This means that:

- No private, public or voluntary organisation or company which may bid for NHS business should be given any advantage over its competitors, such as advance notice of NHS requirements. This applies to all potential contractors, whether or not there is a relationship between them and the NHS employer, such as a long-running series of previous contracts. For clarification, within the partnership contract with Capita, there is a first refusal mechanism to provide future services within the original scope of the OJEU<sup>4</sup> notice. For avoidance of doubt, the first refusal mechanism is evaluated against a range of criteria including value for money.
- Each new contract should be awarded solely on merit, taking into account the requirements of the NHS and the ability of the contractors to fulfil them.

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<sup>4</sup> Official Journal of the European Union

NHS employers should ensure that no special favour is shown to current or former employees or their close relatives or associates in awarding contracts to private or other businesses run by them or employing them in a senior or relevant managerial capacity. Contracts may be awarded to such businesses where they are won in fair competition against other tenders, but scrupulous care must be taken to ensure that the selection process is conducted impartially, and that staff that are known to have a relevant interest play no part in the selection.

Notwithstanding the above, staff, including medical and dental consultants, are not empowered to enter into contracts on behalf of CLCH unless specifically allowed by virtue of their job function within CLCH and/or where they have an official delegated budgetary responsibility as advised by the director of finance, contracts and performance.

## **5.7 Outside employment**

Staff should declare any existing outside employment on appointment and any new outside employment when it arises.

Members of staff considering taking on additional employment (whether for another company or for themselves) outside CLCH, should inform their line manager who will wish to ensure that the extra work would not adversely affect the work of CLCH. If a member of staff receives payment for work then they will be expected to carry out such work in their own time, i.e. outside normal working hours or during annual leave. Within the exception of those CLCH employees who are specifically allowed under their national and/or locally devised terms and conditions of service to undertake professional work of a private nature, e.g. part-time medical consultants, CLCH staff must declare any outside employment and must not engage in outside employment which may conflict with or be detrimental to CLCH work.

Full-time employees are reminded that the primary contract of employment is with CLCH and they should not take on additional work that prevents them from fulfilling their primary contract.

Part-time staff may wish to take on additional employment; however it is important that external work commitments do not prevent the employee from fulfilling their contract with CLCH.

For staff employed on a bank or locum basis, CLCH accepts that their work within CLCH may not be the primary employment. However, such staff are recommended to declare any existing contracts of employment so that CLCH can ensure compliance with the NHS code of conduct.

Before taking on external work that may lead to a potential conflict of interest, a CLCH employee should inform their line manager. In the case of non-executive directors, this would be the Trust Chair. This should include:

- staff name and their role with the organisation
- the nature of the outside employment, (e.g. a description of duties)
- the name of the external employer, and
- the hours to be worked and relevant dates
- other relevant information (e.g. action taken to mitigate against a conflict, details of any approvals given to depart from the terms of this policy).

Where necessary the Chief Executive and Chair will rule on such matters, taking legal advice where necessary, and will formally advise the employee or non- executive director of their decision.

No CLCH employee should embark on any business venture either relating to, or external to their employment, without the written authority of CLCH's Chief Executive or Senior Manager to whom they are responsible, but having due regard to CLCH employee rights as individuals.

Employees undertaking work outside of CLCH must also ensure they comply with the requirements and provisions of the Working Time Regulations 1998, including working time limits and rest periods and must ensure that tax obligations are met in full.

Undertaking any form of external employment during contractual hours is not permitted and will be considered as potentially fraudulent and dealt with in accordance with CLCH's counter fraud and corruption policy and response plan.

## **5.8 Sponsorship / loan arrangements and honorarium**

CLCH staff can be commercially sponsored when attending relevant conferences, but the employee must formally request and be granted, in advance, the appropriate authority from the Chief Executive or his/her relevant Director copied to ESR. In the case of non-executive directors, the authority would need to be from the Trust Chair.

Sponsorship of events by appropriate external bodies, for example pharmaceutical companies, will only be approved if a reasonable person would conclude that the event will result in clear benefit the organisations and the NHS.

During dealings with sponsors there must be no breach of patient or individual confidentiality or data protection rules and legislation.

No information should be supplied to the sponsor from whom they could gain a commercial advantage, and information which is not in the public domain should not normally be supplied.

At the organisation's discretion, sponsors or their representatives may attend or take part in the event but they should not have a dominant influence over the content or the main purpose of the event.

The involvement of a sponsor in an event should always be clearly identified.

Staff within the organisation involved in securing sponsorship of events should make it clear that sponsorship does not equate to endorsement of a company or its products and this should be made visibly clear on any promotional or other materials relating to the event.

Staff arranging sponsored events must declare this to the organisation.

Where an external organisation sponsors, wholly or partially, posts within CLCH, the Chief Executive and/or relevant Director will formally advise the sponsoring organisation, in writing, that the sponsorship will have no effect on any purchasing decision within CLCH.

Sponsored post holders must not promote or favour the sponsor's products, and information about alternative products and suppliers should be provided.

Sponsors should not have any undue influence over the duties of the post or have any preferential access to services, materials or intellectual property relating to or developed in connection with the sponsored posts.

CLCH specifically disallows "linked sponsorship arrangements" whereby external sponsorship is linked to CLCH purchases of goods and services.

CLCH specifically disallows "linked equipment loan arrangements" where the loan and/or testing of medical or any other equipment to CLCH is linked to equipment purchases.

### **Sponsored research**

- Funding sources for research purposes must be transparent.
- Any proposed research must go through the relevant health research authority or other approvals process.
- There must be a written protocol and written contract between staff, the organisation, and/or institutes at which the study will take place and the sponsoring organisation, which specifies the nature of the services to be provided and the payment for those services.
- The study must not constitute an inducement to prescribe, supply, administer, recommend, buy or sell any medicine, medical device, equipment or service.
- Staff should declare involvement with sponsored research to the organisation.

## **Shareholdings and other ownership issues**

- Staff should declare, significant<sup>5</sup> shareholdings and other ownership interests in any publicly listed, private or not-for-profit company, business, partnership or consultancy which is doing, or might be reasonably expected to do, business with the organisation.
- Where shareholdings or other ownership interests are declared and give rise to risk of conflicts of interest then the general management actions outlined in this policy should be considered and applied to mitigate risks.
- There is no need to declare shares or securities held in collective investment or pension funds or units of authorised unit trusts.

## **What should be declared on ESR including the free text field?**

- Staff name and their role with the organisation.
- Nature of the shareholdings/other ownership interest.
- Relevant dates.
- Other relevant information (e.g. action taken to mitigate against a conflict, details of any approvals given to depart from the terms of this policy).

## **Patents**

- Staff should declare patents and other intellectual property rights they hold (either individually, or by virtue of their association with a commercial or other organisation), including where applications to protect have started or are ongoing, which are, or might be reasonably expected to be, related to items to be procured or used by the organisation.
- Staff should seek prior permission from the organisation before entering into any agreement with bodies regarding product development, research, work on pathways etc., where this impacts on the organisation's own time, or uses its equipment, resources or intellectual property.
- Where holding of patents and other intellectual property rights give rise to a conflict of interest then the general management actions outlined in this policy should be considered and applied to mitigate risks.

## **What should be declared on ESR including the free text field**

- Staff name and their role with the organisation.
- A description of the patent.
- Relevant dates.
- Other relevant information (e.g. action taken to mitigate against a conflict, details of any approvals given to depart from the terms of this policy).

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<sup>5</sup> defined as £10,000 or above

## **Honorarium**

An honorarium is an ex gratia payment (i.e. one which would not usually be expected to be provided). Sponsorship may sometimes include the offer of honoraria to a member of staff.

Where a member of staff has received an offer of an honorarium they must consider the appropriateness of acceptance and whether this might be perceived as impacting on their impartiality. Staff should refer to the Trust Secretary for advice. Where a member of staff wishes to accept an honorarium and it is appropriate to do so, they must take annual leave. The member of staff should note that this may have tax implications. Appropriate declarations for tax purposes will need to be made by the individual.

### **What should be declared on ESR including the free text field?**

- Staff name and their role with the organisation.
- A description of the honorarium.
- Relevant dates.
- Other relevant information (e.g. action taken to mitigate against a conflict, details of any approvals given to depart from the terms of this policy)

### **Loyalty interests**

Loyalty interests should be declared by staff involved in decision making where they:

- Hold a position of authority in another NHS organisation or commercial, charity, voluntary, professional, statutory or other body which could be seen to influence decisions they take in their NHS role.
- Sit on advisory groups or other paid or unpaid decision making forums that can influence how an organisation spends taxpayers' money.
- Are, or could be, involved in the recruitment or management of close family members and relatives, close friends and associates, and business partners.
- Are aware that their organisation does business with an organisation in which close family members and relatives, close friends and associates, and business partners have decision making responsibilities.

### **What should be declared on ESR including the free text field?**

- Staff name and their role with the organisation.
- Nature of the loyalty interest.
- Relevant dates.
- Other relevant information (e.g. action taken to mitigate against a conflict, details of any approvals given to depart from the terms of this policy).

## **Donations**

- Donations made by suppliers or bodies seeking to do business with the organisation should be treated with caution and not routinely accepted. If an individual believes that it is appropriate or necessary to accept a donation of this type, advance senior approval from the relevant executive director should be sought and the donation must always be declared. A clear reason should be recorded as to why it was deemed acceptable, alongside the actual or estimated value.
- Staff should not actively solicit charitable donations unless this is a prescribed or expected part of their duties for the organisation, or is being pursued on behalf of the organisation's own registered charity or other charitable body and is not for their own personal gain.
- Staff must obtain permission from the organisation if in their professional role they intend to undertake fundraising activities on behalf of a pre-approved charitable campaign for a charity other than the organisation's own.
- Donations, when received, should be made to a specific charitable fund (never to an individual) and a receipt should be issued.
- Staff wishing to make a donation to a charitable fund in lieu of receiving a professional fee may do so, subject to ensuring that they take personal responsibility for ensuring that any tax liabilities related to such donations are properly discharged and accounted for.

## 5.9 Openness in the NHS

There have been increasing moves towards more “open government” in various areas of public life and the NHS is no exception. The Department of Health has issued a Code of Practice (2003), which sets out the basic principles underlying public access to NHS information. The code builds upon the already declared fundamental public service value of openness as set out in national code of conduct issued in 1994 and most recently the 2016/17 standard NHS contract.

The Freedom of Information Act gives everyone the right of access to information held by organisations, subject to some exceptions, for example commercially confidential information.

### **Procurement**

Procurement should be managed in an open and transparent manner, compliant with procurement and other relevant law, to ensure there is no discrimination against or in favour of any provider. Procurement processes should be conducted in a manner that does not constitute anti-competitive behaviour - which is against the interest of patients and the public.

Those involved in procurement exercises for and on behalf of the organisation should keep records that show a clear audit trail of how conflicts of interest have been identified and managed as part of procurement processes. At every stage of procurement steps should be taken to identify and manage conflicts of interest to ensure and to protect the integrity of the process.

## 5.10 Removal of confidential documents

All CLCH documents in electronic or hardcopy format (inclusive of patient medical and clinical records) remain the property of CLCH wherever they are held or stored. Employees will be deemed responsible for the security of these documents whilst not on site (all employees are required to comply with information governance policies including, for example, the records management policy and transfer of information policy). See information governance below.

Some employees may need to take home CLCH documents on which they are to work and which relate to their job function, however the removal of any other documents and/or computer disk media relating to the work of CLCH outside an individual employee’s job remit is strictly prohibited, except with the prior authorisation of your manager and/or responsible Director.

It is recognised that Trade Union representatives may, on occasion, need to remove documents that relate to their staff side duties.

All employees are required to comply with information governance policies including, for example, the records management policy and transfer of information policy. Questions about the transfer of information should be sent to the [clchig@nhs.net](mailto:clchig@nhs.net).



## **5.11 Whistleblowing / raising concerns at work**

The Trust encourages any member of staff having reasonable suspicions of fraud to report their concerns in line with the Trust's Raising Concerns (Whistleblowing) Policy and Counter Fraud guidance. The Trust Lead for Whistleblowing and the Freedom to Speak Up Guardian will seek to ensure, and with vigour, that no employee will suffer as a consequence of raising a concern.

CLCH also has a comprehensive Counter Fraud and Corruption Policy and Response'. This includes extensive guidance to staff and managers on appropriate actions to be taken." For example, when criminal activity, breach of a legal obligation (including negligence, breach of contract or breach of administrative law), miscarriage of justice, or the cover up of any of these is suspected.

Victimising or deterring staff from reporting their suspicions will be treated as a serious disciplinary matter. Abuse of this policy in the form of groundless or malicious reporting will be similarly treated as a serious disciplinary matter.

Under no circumstances should staff speak to the media representatives or any other third party, unless expressly authorised by the Chief Executive, about matters of fraud.

## **5.12 Use of CLCH resources**

Only in exceptional circumstances, and after specific written authority from the Chief Executive or the Director responsible for a service, may CLCH's resources (namely property and staff) be used for private purposes. For IT equipment – please refer to the Information Technology Security Policy.

## **5.13 Further guidance about the policy and its applicability**

If in any doubt about any matter concerning this policy or the Code of Conduct, seek advice in the first instance from your manager or the trust secretary at [clcht.trust.secretary@nhs.net](mailto:clcht.trust.secretary@nhs.net) .

## **5.14 Breach of policy**

Any breach of this policy will be dealt with in accordance with CLCH's Disciplinary Policy, available on the Hub. The Local Counter Fraud Specialist (LCFS) will be notified of any policy breach that may constitute a criminal offence in accordance with the Counter Fraud and Corruption Policy and the breach may be subject to a criminal investigation.

Where factors of systemic failures of wider issues occur, CLCH will learn from these and put in place systems to address these issues.

## **6. Consultation Process**

The following stakeholders were consulted in the creation of the original policy and comments incorporated as appropriate:

- Managers
- Staff Representatives
- Deputy Director of Finance
- Information Governance Team
- Local Counter Fraud Specialist
- Head of Equality and Diversity
- Members of the Human Resources Directorate.

## **7. Approval and ratification process**

Final approval was given by the Policy Ratification Group on 9 November 2020/

## **8. Dissemination and implementation**

This document will be placed on the Hub by the Quality and Learning Division (QLD) team. The QLD team will provide a reference number for the

policy. It will therefore be available to all staff via the CLCH.

Furthermore, the document will be circulated by the HR Manager to managers who will be required to cascade the information to members of their teams and to confirm receipt of the procedure and destruction of previous procedures/policies which this supersedes. Managers will ensure that all staff are briefed on its contents and on what it means for them.

## **9. Archiving**

The QLD team will undertake the archiving arrangements.

## **10. Training**

No specific training will be provided, however the key requirements of the policy will be routinely incorporated into counter fraud training provided to all staff.

## **11. Monitoring and auditing compliance with the procedural document**

Implementation of, and adherence to, this policy will be carried out by staff and managers in CLCH.

Monitoring of the policy will be carried out by the Audit Committee approximately annually, including an assessment of the effectiveness of the policy, number of declarations and any escalation required.

Equality impact assessments on the application of the policy will be carried out when the policy is being reviewed.

Random reviews performed by CLCH's external audit provider. The action plans and learning identified will feed process improvement initiatives and risk register population.

## **12. Review Arrangements**

This procedural document will be reviewed in January 2020 by the Trust Secretary.

## **13. Associated Documentation**

- The Freedom to Speak up - raising concerns at work policy (Whistleblowing)
- Disciplinary policy
- Standing orders and standing financial instructions
- Counter fraud and corruption policy and response plan
- Control of contractors policy
- Being open policy
- Code of Conduct for NHS Managers
- Information technology security policy
- Records management policy
- Transfer of information policy.

## **14. References**

The Bribery Act 2010. Available from [http://www.opsi.gov.uk/acts/acts2010/ukpga\\_20100023\\_en\\_1](http://www.opsi.gov.uk/acts/acts2010/ukpga_20100023_en_1)

NHS Code of Conduct (NHS Management Executive circular HSG (93)5. Available from <http://www.nhsemployers.org>

NHS Standard Contract 2016/17 'sunshine rule'

NHS England, 2017 Managing Conflicts of Interest in the NHS  
Guidance for staff and organisations

## **15. Appendices**

- A Equality impact assessment pro forma
- B List of CLCH registers
- C Types of declaration
- D List of staff who are required to make declaration
- E Declaration form (for staff who do not have access to ESR – e.g. Capita staff)

## 15. Appendices

### APPENDIX A: EQUALITIES IMPACT ASSESSMENT PRO FORMA

#### CONFLICT OF INTEREST POLICY AND CODE OF CONDUCT

##### Equality Analysis for Policies – Screening form

CLCH as a public authority has a legal requirement to analyse the impact of the policy on the protected characteristics of staff and patients. This helps us to check if there is a negative impact, how we can reduce that impact.

Does the policy affect groups of people based upon their protected characteristic? Think about the delivery of the procedural document and how it will be applied.

1. Protected characteristic	Positive impact	Neutral Impact	Negative Impact	Reason for impact and action required.
People of different ages (e.g. Children, young or older people).		X		
People of different religions / beliefs		X		
People with disabilities (physical, sensory or learning).		X		
People from different ethnic groups		X		
Men or women		X		
Transgendered people		X		
People who are gay, lesbian, and bi-sexual		X		

Refugees and asylum seekers		X		
2	<p>Please describe engagement and consultation process and the key feedback. Egg with teams, unions.</p> <p>Comments on the policy received from managers, Head of Equality and Diversity. Consultation also took place with various stakeholders, including staff representatives through the HR Policy Group.</p>			
3.	<p>If there are negative impacts upon people's protected characteristics. Does the policy in its current form need a full Equality Analysis Assessment to be completed?</p> <p>The policy will be applied consistently across all staff groups.</p>			
4.	<p>Have you signed this off with the Equality and Diversity team?</p> <p>Yes</p>			

Signed for team / working group: Name: Liz Lubbock

Date: 05/12/2013

Signed by Equality and Diversity team: Name: Lesley Soden

Date: 05/12/2013

## Appendix B: List of CLCH Registers

The following registers are maintained on behalf of the Chief Executive by the Trust Secretary

All registers are published on the Trust's website

<b>Register</b>	<b>Record made in electronic staff record (ESR) / reason why this is not possible</b>	<b>Format</b>	<b>Lead</b>
<b>Board register of interests</b>	Not all Board members have access to ESR	PDF file from word document <sup>6</sup>	Trust Secretary
<b>Register of interests declared at Board and committee meetings</b>	Captured through the formal minutes and added to register	PDF file from word document	Trust Secretary
<b>Board register of gifts and hospitality (NEDs)</b>	Not all Board members have access to ESR	PDF file from word document	Trust Secretary
<b>Procurement team register</b>	Capita staff do not have access to ESR	PDF file from word* document	Partnership Manager
<b>Commercial team register</b>	Included in CLCH staff register (ESR)	ESR export	Commercial Manager
<b>All staff who have expenditure approval authorisation</b>	Included in CLCH staff register (ESR)	ESR export	Head of Financial Control
<b>All staff who have payroll responsibilities</b>	Capita / provider staff do not have access to ESR	PDF file from word document	Head of Financial Control
<b>Decision making staff (defined as band 8c and above)</b>	Included in the CLCH staff register (ESR)	ESR export	Deputy Director of HR
<b>All staff</b>	Included in the CLCH staff register (ESR)	ESR export	Deputy Director of HR

<sup>6</sup> Template held by Trust Secretary

## Appendix C – Types of declaration

ESR classification	Type (s) of declaration
<b>Financial interest</b>	<p>Where an individual may get direct financial benefit from the consequences of a decision they are involved in making.</p> <p>This could include:</p> <ul style="list-style-type: none"> <li>• A director (including a non-executive director) or senior employee in another organisation which is doing, or is likely to do business with an organisation in receipt of NHS funding</li> <li>• A shareholder, partner or owner of an organisation which is doing, or is likely to do business with an organisation in receipt of NHS funding</li> <li>• Someone in outside employment</li> <li>• Someone in receipt of secondary income</li> <li>• Someone in receipt of a grant</li> <li>• Someone in receipt of other payments (e.g. honoraria, day allowances, travel or subsistence)</li> <li>• Someone in receipt of sponsored research</li> </ul>
<b>Indirect financial interest</b>	<p>Where an individual has a close association<sup>7</sup> with another individual who has a financial interest, a non-financial professional interest or a non-financial personal interest and could stand to benefit from a decision they are involved in making.</p> <p>This would include:</p> <ul style="list-style-type: none"> <li>• Close family members and relatives</li> <li>• Close friends and associates</li> <li>• Business partners</li> </ul>
<b>Non-financial professional interest</b>	<p>Where an individual may obtain a non-financial professional benefit from the consequences of a decision they are involved in making, such as increasing their professional reputation or promoting their professional career.</p> <p>This could include situations where the individual is:</p> <ul style="list-style-type: none"> <li>• An advocate for a particular group of patients</li> <li>• A clinician with a special interest</li> <li>• An active member of a particular specialist body</li> <li>• An advisor for the Care Quality Commission or National Institute of Health and Care Excellence</li> <li>• A research role</li> </ul>
<b>Non-financial</b>	Where an individual may benefit personally in ways which are

<sup>7</sup> A common sense approach should be applied to the term 'close association'. Such an association might arise, depending on the circumstances, through relationships with close family members and relatives, close friends and associates, and business partners.



<b>personal interest</b>	<p>not directly linked to their professional career and do not give rise to a direct financial benefit, because of decisions they are involved in making in their professional career.</p> <p>This could include, for example, where the individual is:</p> <ul style="list-style-type: none"> <li>• A member of a voluntary sector board or has a position of authority within a voluntary sector organisation.</li> <li>• A member of a lobbying or pressure group with an interest in health and care.</li> </ul>
<b>Nil return</b>	No interests in any of the above.

## Appendix D

### Decision making staff who are required to make a declaration

Executive and non-executive directors

All staff at band 8C and above\*

All staff who have expenditure approval authorisation\*

Those who have payroll responsibilities\*

Members of the commercial and procurement team

Medical staff\*

\* list to be provided by HR / financial controller on request – this will change regularly.

		Note
Executive Directors	Chief executive	
	Medical director	
	Chief nurse	
	Chief operating officer	
	Director of finance, contracts and performance	
	Director of people	
	Director of improvement	
	Director of partnerships and integration	
Non-executive directors (NED)	Chair	
	NED 1	
	NED 2	
	NED 3	
	NED 4	
	NED 5	
	Associate NED	
Commercial team	Commercial director	
	Head of contracts	
Procurement team	Assistant director of partnership and procurement	
	Head of partnership performance	
	Head of procurement	Employed by Capita
	Procurement business partners	Employed by Capita
	Procurement business partner	Employed by Capita
	Procurement business partner	Employed by Capita
	Procurement business partner	Employed by Capita

## Appendix E

### Conflict of Interest / Declaration of Interests, Gifts, Hospitality and Sponsorship Form

To be used by 'staff' (contractors, NEDs or partners) who do not have access to the Electronic Staff Record (ESR)

Declarations should be made:

- On appointment with the organisation in consultation with appointing manager
- When staff move to a new role or their responsibilities change significantly
- At the beginning of new, / major projects of work, for example procurement
- In response to proactive reminders (annually in December)
- If an interest is identified when a requisition is raised or approved
- As soon as circumstances change and new interests arise (for instance, in a meeting when interests staff hold are relevant to the matters in discussion).

Frequently asked questions can be found at [www.england.nhs.uk/ourwork/coi](http://www.england.nhs.uk/ourwork/coi)

<b>Name:</b>			
<b>Job Title:</b>		<b>Department and Service Line:</b>	
<b>Contracted hours with CLCH NHS Trust per week:</b>			

#### Gifts, hospitality and sponsorship (financial interest)

<b>Please indicate:</b> <input type="checkbox"/> Gift <input type="checkbox"/> Hospitality <input type="checkbox"/> Sponsorship - events, research and posts Please provide full details, including approximate cost, description, circumstances surrounding the gift and date received/planned of the gifts, hospitality and/or sponsorship. Include any action taken to mitigate against a conflict. <b>Please note – gifts of vouchers and cash must <u>always</u> be declined.</b>			
Date		Provider	
Description			
Value (£)		Reason	
Was gift/ hospitality / sponsorship accepted or declined?		Measures taken to resolve conflicts if they exist	

## Registerable interests

<b>Outside employment declaration (financial interest)</b>			
Appointment date		Name of outside employer	
Outside employment description			
Has approval been obtained		If so, by whom (state name)	
<b>Clinical private practice declaration (financial interest)</b>			
Date private practice commenced		Private practice name	
Speciality / procedures undertaken		Sessions undertaken, i.e. days, times, regularity	
<b>Loyalty interests (non-financial personal interest and / or non-financial professional interest)</b>			
Date loyalty interest commenced		Body/organisation/ individual name	
Description of loyalty interest			
<b>Significant shareholdings<sup>8</sup> declaration (financial interest)</b>			
Date shares were obtained		Type/number	
Name of Company name shares held with			
<b>Patents / Intellectual property (financial interest)</b>			
Date patent granted			
<b>Miscellaneous</b>			
Any other declaration			
<b>For all declarations made above</b>			
State what measures are being taken to manage /mitigate the conflict			
<b>Nil Declaration</b>	Please indicate here for Nil Declaration		

<sup>8</sup> £10,000 in value or above.

**Approval process - to be completed by the Line Manager)**

*I hereby confirm my acceptance of the above named individual receiving the gift/hospitality as described*

Name:		Job Title:	
Signature:		Date:	

Please see information contained on the following sheet on how to populate the above boxes.

**The information submitted will be held by CLCH NHS Trust for the purposes of the register in line with the conflict of interest policy. This information may be held in both manual and electronic form in accordance with the Data Protection Act 2018. Information may be disclosed to third parties in accordance with the Freedom of Information Act 2000 and published in registers that CLCH NHS Trust holds. (Please note we are mandated (state legal basis – under what act / requirement) to include both your name and job title and a summary of your declaration.**

**By completing this form, I confirm that the information provided above is complete and correct. I acknowledge that any changes in these declarations must be notified to CLCH NHS Trust as soon as practicable as and no later than 28 days after the interest arises. I am aware that if I do not make full, accurate and timely declarations then civil, criminal, internal disciplinary or professional regulatory action may result.**

**I give my consent for this information to be published on registers that CLCH NHS Trust holds.**

If consent is NOT given please give reasons\*:

--

<b>Signed</b>	<b>Date</b>
---------------	-------------

**If you are updating an original declaration or informing the Trust of a new ‘interest’ as described above, please complete and return to your Line Manager. *Line Managers - to send a copy of the form to [clcht.trust.secretary@nhs.net](mailto:clcht.trust.secretary@nhs.net)***

**SUBJECT TO ANY EXCLUSIONS \* THIS INFORMATION WILL BE COLLATED AND PUBLISHED ON THE TRUST’S WEB SITE IN JANUARY AND JULY ANNUALLY.**

## [Working from home guidance for non-clinical staff](#)

As a provider of critical health services to the community, it will be vital that we reduce the risk of passing on the coronavirus infection to each other and in particular to our front line colleagues.

Our clinical colleagues are going to require support over the coming weeks and months to enable them to remain safe and well, so that they can provide appropriate and timely care to our patients and communities. Likewise there are numerous non-clinical colleagues that provide direct essential support in the delivery of services.

There are some non-clinical colleagues that have a no patient-facing role. These non-clinical colleagues have an important role to play

For that reason, non-clinical staff are asked to discuss and agree the following with their managers:

- How they can work from home as soon as possible. This will help reduce the risk of passing on the coronavirus infection.
- Service Managers, Team Leaders and Head of Services are to agree with staff how a service will be able to deliver business continuity, and at the same time relieve clinical staff of any unnecessary burden. For all staff working from home, there will need to be a clear work plan and agreed deliverables in place.
- Staff working from home will need to discuss with their manager what activities (other than their normal roles) they might need to be redeployed to, so that the Trust is able to give maximum support to clinical colleagues. All colleagues have been asked to identify what skills they might have that can be deployed in support of meeting the pandemic.
- There will be a daily update of Allocate to ensure that the Trust is able report staffing levels and you will need to ensure that this is maintained on a daily basis.

### *Phone and IT access whilst working from home*

Staff working from home are to be available by telephone at all times during working hours, they must be able to access their work from home on either a laptop, or remotely via their own home desktop.

To support you working from home, if you have a Trust issued Laptop or tablet you can use this through CLCH VPN (Virtual Private Network) guidance can be found in the hub.

If you do not have access to a Trust device, you can set up a VDI (Virtual Desktop Infrastructure) by providing your name and email address through your Service Manager or directly through the Trust IT Service Desk. If you have not used VDI before, please familiarise yourself with the relevant guidance.

The agreement to work from home will remain under constant review, and will be considered

in the light of the needs of the organisation and the direct care of patients.

Staff should familiarise themselves with the [working from home guidance and documentation published on the Hub](#).

**TITLE:** Disability Policy and Code of Practice  
**VALID FROM:** FEBRUARY 2022  
**EXPIRES:** FEBRUARY 2025  
**REFERENCE** WFC24

This procedural document supersedes the previous procedural document: Disability Policy and Long Term Conditions Policy v3.0



<b>Version:</b>	4.0
<b>Policy reference and description of where held.</b>	WFC24 Intranet – Policies
<b>Title, name and contact details for author:</b>	Judith Glashen Equality Diversity and Inclusion Lead <a href="mailto:clcht.editeamclch@nhs.net">clcht.editeamclch@nhs.net</a>
<b>Title, name and contact details for responsible director:</b>	Louella Johnson, Director of People <a href="mailto:Louella.Johnson@nhs.net">Louella.Johnson@nhs.net</a>
<b>Approved by originating committee, executive or departmental management group</b>	HR Policy Group (sub group of JSCC) 25 January 2022
<b>Ratified by Policy Ratification Group:</b>	14 February 2022
<b>Review date:</b> 2 years maximum for clinical guidelines 3 years maximum for other documents	Review period begins August 2024 Expires February 2025
<b>Target audience</b>	All staff

### Version Control Sheet

Version	Date	Author	Status	Comments
1.0	April 2011	HRBP; Head of Equality and Human Rights	Archived	Amalgamated policy produced from policies of legacy organisations.
2.0	January 2012	HRBP; Head of Equality and Human Rights	Archived	Integration of CLCH and Barnet policy and update to take account of legal and organisation changes.
2.0	May 2014	Melissa Berry	Archived	Reviewed and updated.
3.0	September 2018	Yasmin Mahmood	Archived	Policy re-written and updated.
3.1	February 2022	Judith Glashen	Draft	Revised following feedback from HR Policy Group.
4.0	February 2022	Oliver Cook	Final	Minor updates following Policy Ratification Group approval.

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## **1. Introduction**

- 1.1** Central London Community Healthcare NHS Trust (CLCH / 'the Trust') recognises the benefits that can be gained from employing people with disabilities and, where reasonable adjustment and patient/staff safety permits, actively seeks to reflect and employ of people and reflect a diversity of disabilities amongst its workforce.
- 1.2** The Trust is committed to equality of opportunity in employment on the basis that unlawful discrimination is unacceptable. It aims to create an organisation which promotes equality and is free from discrimination and harassment, where all staff can fulfil their personal and professional potential in an environment of fairness, dignity, and respect.
- 1.3** The Equality Act 2010 (Equality Act / 'the Act') provides a definition of disability as a Protected Characteristic, used in considering to whom the Act might apply. It also makes it unlawful for employers to discriminate against current or prospective employees with disabilities because of a reason relating to their disability unless there is a justifiable reason for doing so.
- 1.4** If an employee identifies a condition which they consider to be a disability, but which is not covered by the definition within the Equality Act, the Trust will endeavour to be supportive and will seek advice and guidance from Employee Health.
- 1.5** The Trust has a legal duty, under the Equality Act 2010, to make Reasonable Adjustments if working arrangements or premises substantially disadvantage a disabled employee or a disabled applicant.
- 1.6** These duties apply to all areas of employment, including recruitment, training, career progression, working practices and dismissal.

## **2. Aims and Objectives**

- 2.1** The aim of this policy and code of practice is to ensure that all employment aspects of the Equality Act 2010 are adhered to regarding disability, as well as ensuring that any staff member who considers themselves to have a disability is supported in a positive way. For further information on the disability provisions of the Equality Act, (see **Appendix A**).
- 2.2** To achieve these aims, the Trust commits to:
  - Provide equal opportunities for a person with a disability in recruitment, education, training, promotion and transfer processes and in regard to their terms and conditions of employment
  - Ensure that people with a disability are given support and are provided with equipment, facilities and adjustments to working arrangements, where possible, to enable them to carry out their duties
  - Provide a safe working environment for people with a disability, free from direct or indirect discrimination, victimisation, bullying or harassment

- Fully investigate any allegations of discrimination and victimisation against a person with a disability under the Trust Policies for example, 'Addressing Bullying and Harassment – A Framework for Managing Unwanted Behaviour Policy'
- Develop employment practices in line with the Department of Work and Pension's Disability Confident Scheme. For details of this scheme see **Appendix D**
- Develop employment practices and undertake reporting as required in line with Statutory and NHS Standard Contract requirements and the NHS England Workforce Disability Equality Standard (WDES) For details of the WDES see **Appendix E**

**2.3** This policy applies to all staff / employees, workers, students, volunteers and contractors working on behalf of the Trust, including those working on part-time, fixed term, apprenticeship or bank contracts. Contractors and agency workers should also consult their employing organisation's Disability, Equality and Diversity or equivalent policy. Any Trust staff member who requires clarification concerning eligibility should contact their Human Resources Advisor / Human Resources Business Partner.

### **3. Definitions**

#### **3.1 Disability**

3.1.1 There is not a definitive list of impairments and health conditions that constitute a disability, and which are therefore afforded protection under the Equality Act 2010. Instead, the individual's situation must be assessed in terms of the following definition. The Act defines a person as having a disability if they have:

---

... "a physical or mental impairment and the impairment has a substantial and long-term adverse effect on their ability to perform normal day-to-day activities."

---

- **Substantial** means more than minor or trivial (see **Appendix A**)
- **Long-term** means that the effect of the impairment has lasted or is likely to last for at least twelve months
- **Normal day-to-day activities** A list of examples can be found in **Appendix A**

#### **3.2 Discrimination**

The Equality Act grants protection to employees on the grounds of their disability against the following situations:

3.2.1 **Direct Discrimination** is treating a person less favourably because of a Protected Characteristic or a combination of Protected Characteristics. It does not matter that they did not intend to do so.

The comparison is made with someone in the same or similar enough situation but who doesn't have the Protected Characteristic of disability. The comparator can be a real person or, where it's not possible to identify a comparator because the situation has never arisen before, a hypothetical comparator may be used.

3.2.2 **Discrimination arising from disability** is where someone is treated unfavourably because of something linked to their disability, but not because of the disability itself. The disabled person claiming this type of discrimination does not have to compare their treatment to how someone else is treated.

3.2.3 **Direct Discrimination by Association** is treating someone less favourably because they associate with an individual who has a disability. For example, someone is treated unfairly because their child has a disability, and this means that they sometimes have to leave work to deal with a problem that has occurred.

3.2.4 **Direct Discrimination by Perception** is treating someone less favourably because it is perceived (believed) that they have a disability, whether or not they actually do. For example refusing to appoint someone because it is thought that they are disabled when they are not.

3.2.5 **Due Regard** is the process of Equality Analysis and demonstrating 'Due Regard' for adverse impacts upon any the Protected Characteristics and is designed to embed Equality Inclusion and Human Rights (EIHR) considerations into CLCH business processes and enable a more evidenced approach.

The Due Regard process is where CLCH can evidence that decisions have been influenced appropriately by the Equality Analysis (Equality Assessment) that has been undertaken thus ensuring a proactive approach to inclusive practice whilst meeting the requirements of the Public Sector Equality Duty under the Equality Act 2010.

3.2.6 **Failure to disclose (share) a disability.** The Act does not prevent a disabled person keeping a disability confidential from an employer. By keeping a disability confidential / not sharing disability (status) with the employer (and unless the employer could reasonably be expected to know), the employer will not be under a duty to make a reasonable adjustment.

3.2.7 **Failure to make reasonable adjustments** (is a failure to comply with Section 6 of the Act) and is where an employer fails to make 'reasonable adjustments' for a disabled job applicant or employee without appropriate justifications.

3.2.8 **Harassment** is unwanted conduct related to a relevant Protected Characteristic which has the purpose or effect of violating an individual's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for that individual. This includes unwelcome physical, verbal or nonverbal conduct which causes the individual to feel threatened, humiliated, patronised, offended, embarrassed, unwelcome or frightened.

Harassment may be directed at individuals or a group of staff with disabilities and can refer to an isolated incident or repeated actions.

The unwanted conduct towards an individual or group with disabilities, is unlawful under the Equality Act 2010. The key is that the actions or comments are viewed as demeaning and impact negatively upon the recipient. (See Equality and Diversity Policy and Addressing Bullying and Harassment – A Framework for managing Unwanted Behaviour Policy).

3.2.9 **Indirect Discrimination** is applying criteria or practice equally to all people, but which has the effect of disadvantaging one group of people.

It is where a workplace rule, practice or process is applied to all employees, but disadvantages those who have a disability. An employee or job applicant with a disability claiming indirect discrimination must show how they have been personally disadvantaged, as well as how the discrimination has or would disadvantage other disabled employees or job candidates.

3.2.10 **Positive Action**– aims to ensure that people from previously excluded minority groups, can compete on equal terms with other applicants. It is intended to remedy the accumulated effects of past discrimination. The selection itself must be based on merit and all applicants must be treated equally, otherwise this is positive discrimination which is unlawful. Examples of Positive Action include arranging training especially for people from a particular racial group, or by taking steps to positively target and encourage people with disabilities to apply for specific types of training or jobs.

3.2.11 **Victimisation** is where an employee is treated less favourably to others because they have made a complaint about disability discrimination or has helped someone who has been discriminated against. Victimisation is unlawful under the Equality Act.

### 3.3 Reasonable Adjustments – How managers can support staff with disabilities

3.3.1 Reasonable adjustments aim to make sure that, as far as is reasonable, a worker with a disability has the same access to support around recruitment, selection, training and development and career progression as a person without a disability. If a workplace feature or working practice puts an employee with a disability at a disadvantage, an employer has a legal duty to see what 'Reasonable Adjustments' it can make and to meet with the individual to discuss what can be done to address the problem. For example, this could be supplying a special chair or power-assisted piece of equipment but may also include changing some of the employee's duties, but an employer does not have to change functions that are essential to the role.

3.3.2 By law, an employer must consider making reasonable adjustments when:

- They know, or could be expected to know, an employee or job applicant has a disability
- An employee or job applicant with a disability asks for adjustments
- An employee with a disability is having difficulty with any part of their job
- An employee's absence record, sickness record or delay in returning to work is because of or linked to their disability

- The employer must make the changes if they are reasonable

3.3.3 The employer must also consider reasonable adjustments for anything linked to an employee's disability. For example, if an employer does not allow an assistance dog in the building for a partially sighted person, it's likely to be discrimination.

3.3.4 In determining what is 'reasonable' depends on the situation and needs to carefully consider if the adjustment:

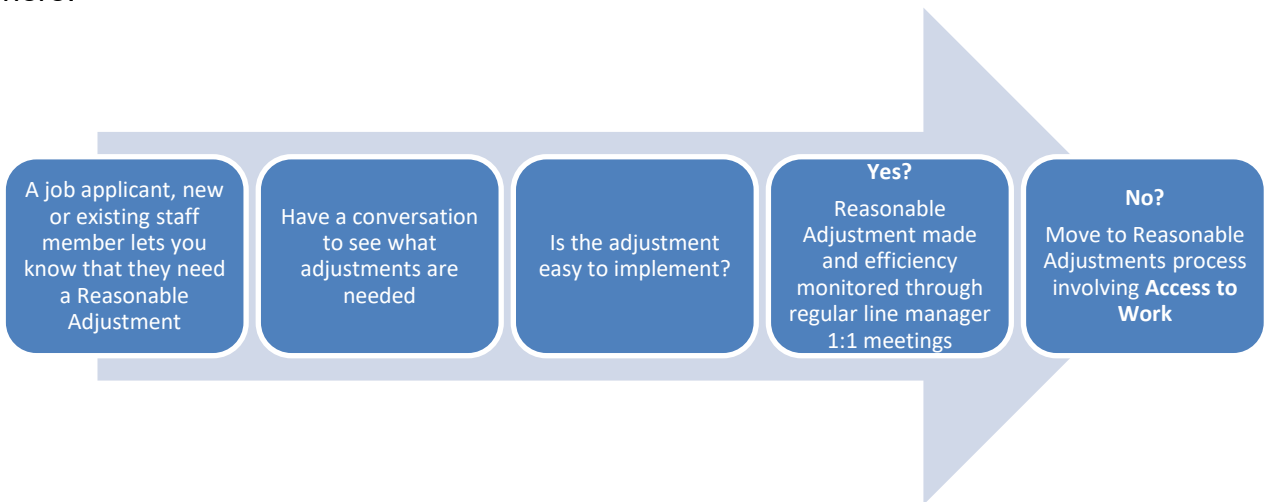
- Will remove or reduce the disadvantage for the person with the disability
- Is practical to make
- Is affordable by the employer or business
- Could harm the health and safety of others

3.3.5 Where adjustments are under consideration, staff with a disability should be involved in the decision-making, in so far as is reasonably practicable, as they can advise the extent of their needs.

3.3.6 The Act forbids the employer from making an employee with a disability pay for any required adjustments.

3.3.7 Regarding employment practice, unlike the provision of services to the public, there is no open-ended duty to make universal adjustments. The duty is owed to a particular worker or job applicant whom the employer knows has a disability and is likely to be disadvantaged.

3.3.8 A brief overview of some of the points at which conversations should be had is show here:



### 3.4 Monitoring Disability

3.4.1 The Public Sector Equality Duty (PSED) of the Act requires the Trust to show that it pays Due Regard to the three aims of the General Duty in the undertaking of its business as a public sector employer. These are to pay due regard to:

- Eliminate unlawful discrimination, harassment and victimisation and other conduct prohibited by the Act.
- Advance equality of opportunity between people who share the Protected Characteristic of disability and those who do not.
- Foster good relations between people who share the Protected Characteristic of disability and those who do not.

3.4.2 To meet this, the Trust must record the disability status of all its employees on HR Systems and to use anonymised data to analyse the progression and experience of its employees. The categories regarding disability monitoring that are held on the Electronic Staff Record (ESR) system are defined nationally and are as shown below as they appear on the ESR system:

- Learning disability / difficulty
- Long standing illness
- Mental health condition
- No
- Not declared
- Other disability
- Physical impairment
- Sensory impairment
- Prefer not to answer
- Yes – unspecified

3.4.3 To enable analysis of the experiences of disabled staff, the annual NHS Staff Survey also monitors using questions which are defined nationally.

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Do you have a long-standing illness, health problem or disability?

Yes     No

*By long-standing, we mean that it has lasted, or will last, for at least 12 months*

Has your employer made adequate adjustment(s) to enable you to carry out your work?

Yes     No     No adjustment required

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## 4. Duties

Whilst overall responsibility for ensuring that there is no unlawful discrimination within employment practices rests with the Trust Board, individual employees at all levels will accept personal responsibility for contributing to the practical application of this policy.

### 4.1 Corporate Responsibilities

- 4.1.1 The **Chief Executive** carries overall responsibility for ensuring that the Trust has the appropriate processes in place which adequately and appropriately support its staff.
- 4.1.2 The **Director of People** is responsible for reviewing, updating and amending the strategy and procedure to reflect changes in legislation or employment practice.
- 4.1.3 The **People and Organisational Development and Culture Teams** have a duty to participate in activities which develop employment practices in line with the Workforce Disability Equality Standard (WDES) and the required reporting. Likewise, to undertake activities which support and progress the Trust's commitment to the DWP 'Disability Confident' Scheme.
- 4.1.4 The **Human Resources Business Partners and Human Resources Advisors** will provide advice and assistance to line managers and their staff in the implementation of the policy and application of the code of practice.
- 4.1.5 The **Recruitment Team** have a duty to carry out recruitment and selection processes for the Trust in line with line with this policy. They also have a duty to participate in activities which are involved in developing employment (best) practice in line with the Duties of the Equality Act, Workforce Disability Equality Standard (WDES) and carrying out the required reporting. Likewise, to undertake activities which support and progress the Trust's commitment toward the Department for Work and Pensions (DWP) 'Disability Confident' Scheme.
- 4.1.6 **Operational Directors** are responsible for ensuring:
  - Effective implementation of the Equality Strategies for their Divisions
  - Staff within their remit comply with the contents of this and associated Policies

### 4.2 Managers have a responsibility to:

- Ensure that all their employees are aware of this policy and where they can find other information
- Act as the first line of contact if an individual employee wishes to discuss their disability and any implications of /on working practices
- Consider the advice and suggestions to possible adjustments that will assist the individual in carrying out their role or another suitable role. It is the responsibility of the manager, in discussion with the employee and with assistance from the HR Advisor, to determine the adjustments, it is 'reasonable' to implement.
- Make arrangements to acquire and implement the agreed Reasonable Adjustments including any equipment, auxiliary aids and adjustments to working patterns and to fund them from their local budget and then to arrange for full or partial reimbursement through the agreed *Access to Work* Grant
- Apply this policy fairly and consistently

- Consult with their employees who have disability at least once a year about their employment support needs to ensure they have the opportunity to develop and use their abilities as fully as possible at work. This should be undertaken as part of the Annual Appraisal process
- Keep a record, through written correspondence with the employee (copied to the HR Advisor) of any reasonable adjustments agreed.
- Participate in disability equality training provided by the Trust

**4.3 Organisers of events, training, conferences, meetings or development activities** have a responsibility to anticipate accessibility needs and to identify participants who may have disability access needs, to put these into in place, and fund the reasonable adjustments identified as being required. As a minimum, venues selected for Trust activities should be fully wheelchair accessible and have hearing loops enabled.

The Equality Act forbids the suppliers of services, (which includes training), from making a participant with a disability pay for any required adjustments.

**4.4 Staff members** have a responsibility to:

- Co-operate with measures introduced by the Trust to ensure equality of opportunity and non-discrimination
- Not to unlawfully discriminate nor induce or attempt to induce other employees to practise unlawful discrimination.
- Inform management if they know of or suspect that discrimination is taking place. Any person who knowingly discriminates against others may be subject to disciplinary action

4.4.1 In addition, staff members with disabilities are invited to become active partners, alongside Trust management and staff side, in the work around the implementation of a variety of disability equality initiatives to include the NHS Workforce Disability Equality Standard (WDES), DWP Disability Confident and Staff Equality Networks and Allies initiatives.

4.4.2 **Non-disclosure**

There is no legal obligation upon an employee with a disability to share / disclose their disability to the Trust. However, the Trust, by creating an environment and Culture where employees with disabilities feel safe to share, where they feel they can be open about their disability this will then have the benefit of appropriate adjustments being put into place to enable them to undertake their job duties.

The manager may not be expected to make adjustments if the individual has not disclosed information to meet their specific support requirements unless, they know, or could reasonably be expected to know, an employee has a disability. Where an employee does not disclose a disability and their work performance is affected by a lack of adjustments being in place and, where this leads to dismissal they may not be covered retrospectively by the Act.

**4.5 Employee Health Department responsibilities are to provide:**

- Advice to line managers and HR Advisors on employees' fitness to work and on possible adjustments that will assist the individual in carrying out their role or another suitable role. It will be for the manager to determine what is 'reasonable' to implement

the suggestions made by Employee Health clinicians may not be an exhaustive list of possible adjustments given that some adjustments or means of support might only be identifiable by those closer to the service in question.

- Advice on where the Equality Act does or might apply; either with certainty where the individual has a condition conferring automatic coverage, or where this may not be initially evident, Employee Health should endeavour to set out the considerations as to how / why the Act may be applicable, acknowledging that in some instances a definitive decision may need to be made by a legal authority and that potentially, this decision may be made, retrospectively. In this context, Employee Health advice should be offered based on the available information.
- Advice in the context of pre-placement and management referral assessments. The aim of pre-placement assessment is to provide managers with advice that will improve the chances of safely and effectively placing someone with a disability into the workplace. In a management referral context, the advice will be about maintaining someone in or returning someone to, the workplace.

#### **4.6 Trade Union representative's responsibilities are to:**

- Support, advise and represent their members where there is disagreement or conflict between the manager, acting on behalf of the Trust and a member of staff with a disability about the implementation or application of this policy and code of practice.
- Work in partnership with and alongside the Trust, Trust management and employees with disabilities, around the implementation of the NHS Workforce Disability Equality Standard (WDES), the DWP Disability Confident Scheme and other related programmes.

### **5. Code of Practice for Management of Disability**

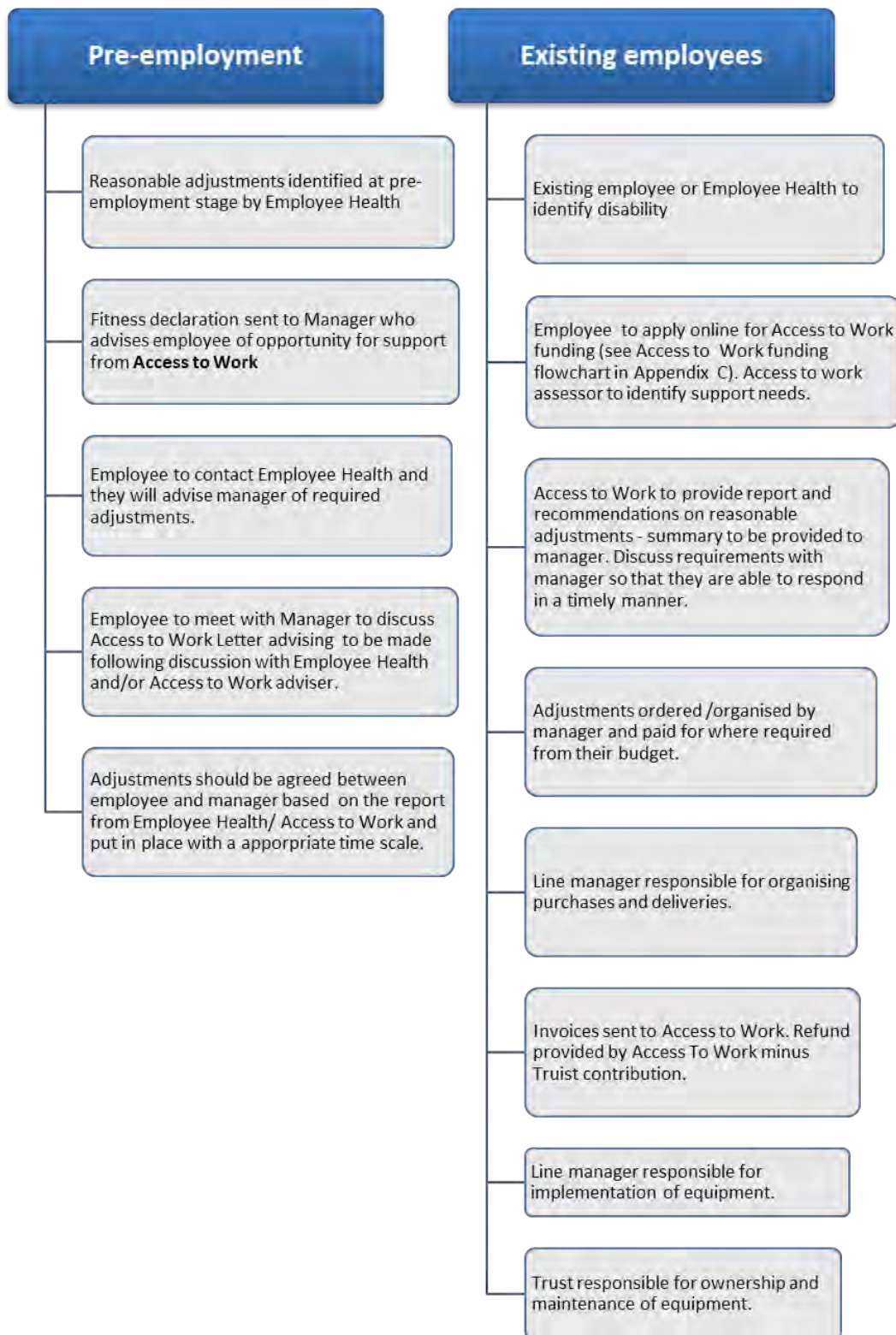
This section translates the need to consider the disability provisions of the Equality Act into actions and processes to follow as part of employing and managing individuals with a disability within the Trust. These guidelines aim to provide consistency in the application of the policy across the organisation. In addition, the involvement of HR Advisors and Human Resources Business Partners will provide consistency of application within their division.

#### **5.1 Recruitment and selection processes**

Recruiting managers must endeavour to ensure that recruitment and selection procedures are fair, that they meet the requirements of equality legislation and best practice and that they do not discourage people with a disability from applying.

Discrimination can take place at any and every stage of the recruitment process so recruiting managers must examine their actions and decision making at all stages of the process to ensure that disabled people are not excluded and to ensure that they are not directly or indirectly discriminated against on the basis of their Protected Characteristics.

It is expected that at least the Chair of the recruitment panel, whether involved in shortlisting or interviewing, must have undertaken the Trust's Recruitment and Selection training although ideally all panel members should have undertaken it. **The flow chart following details the reasonable adjustment process for both potential and existing employees**



### 5.1.1 Job Description and Person Specification

Recruiting managers are required to:

- Ensure that all job requirements listed within the job description and person specification are necessary and appropriately inclusive
- Consider how job requirements can be flexible e.g. is it essential that everyone in the department can answer the phone or move patients or could these tasks be shared across the team?

**Genuine Occupational requirements (qualifications)** Where it is part of the essential criteria for the role that the individual has a specific medical diagnosis or holds a particular protected characteristic or medical diagnosis / condition or personal experience, then this can form part of the essential criteria within the person specification without breaching the Equality Act. If a recruiting manager believes that a Genuine Occupational Qualification may apply, then they should discuss this with their Human Resources Business Partner prior to advertising. For example, a Mental Health Peer Support Worker would be required to declare their personal experience of being a user of secondary mental health care and would therefore disclose their underlying disability as part of their application. This is allowable under the Equality Act as it is deemed an essential criterion for the job.

### 5.1.2 Advertising

All Trust advertisements should include a statement encouraging applications from individuals with disabilities and display the DWP Disability Confident which is a government scheme that the Trust has signed up to.

As part of the *Disability Confident* Scheme, managers should consider Positive Action advertising such as placing advertisements in the disability press and via local user-led (disability) organisations as well as advertising via the NHS Jobs website.

All advertisements will reflect the job description and person specification and will not use words or phrases which indicate bias. Most posts should be advertised as being open to job share or other forms of flexible working in line with the Trust's Flexible Working Policy.

To encourage inclusion, adverts should include a variety of ways for the potential applicant to enquire further about the role being advertised, for example by including both the email address and the telephone number of the recruiting manager.

### 5.1.3 Application

Where the applicant feels that their disability makes applying online via NHS Jobs / TRAC difficult, the Recruitment Team can provide a printable version of the application form upon request.

Recruiting managers, via the Recruitment Team, should be prepared to receive applications in other formats, such as via paper hard copy or as a video where individuals indicate to the Recruitment Team their need to apply in another format.

#### 5.1.4 Shortlisting

All applicants declaring a disability who meet **all** of the essential criteria of the Person Specification should be offered an interview. This is Positive Action, supported by Job Centre Plus, as part of the Disability Confident scheme and aims to counteract the years of discrimination that have existed in the workplace for people with disabilities.

The recruiting manager is responsible for ensuring that any Reasonable Adjustments necessary to assist disabled applicants to fully participate in interview processes are put into place.

The Equality Act makes it unlawful to issue pre-employment medical questionnaires or to ask any questions about health or disability before making a job offer (see exception below regarding monitoring and interview adjustments). It is also unlawful to ask any third party, for example a current or ex-employer, for such information. The purpose of this is to prevent disability or health information being used to sift out job applicants without first giving them the opportunity to show that they have the skills to do the job.

Prior to offering an individual a job, health related questions can be asked **only** for the following two reasons:

- To enable reasonable adjustments to be made to the selection process and this information is collected separately from other information given in the application for the job, usually conducted by the recruitment team through the TRAC process at the point of being offered an interview
- To monitor the diversity of people applying for the job. This information is collected by the TRAC system separately from other information given in the application for the job and should not be shared with those conducting the shortlisting

#### 5.1.5 Interview and testing

When accepting an invitation to interview, if the candidate indicates that they require Reasonable Adjustments to the interview process, the Recruitment Team will inform the recruiting manager who is responsible for implementing any Reasonable Adjustments well in advance. These arrangements may include:

- Choosing a site for the interview that is wheelchair accessible and which has wheelchair accessible toilets
- Check the suitability of the room for someone declaring a visual impairment
- Use a quiet room with a hearing loop (in situ or a portable model) for candidates declaring a hearing impairment and highlighting the need for a hearing loop
- Booking a British Sign Language (BSL) signer through the Trust's interpreting provider
- Ensure that any selection tests planned do not put candidates with disabilities at a disadvantage and building in (25%) extra time to complete a test for candidates who have declared that they have dyslexia
- Make it clear to applicants that they may be accompanied to an interview or testing by an advocate, if they wish

Prepare interview questions based upon the person specification, which is itself based upon the role requirements within the job description to avoid making judgements which are not based upon the requirements of the role.

#### 5.1.6 Appointment

A disabled person applying for any job within the Trust should be assessed on their ability to carry out the requirements of the job successfully. An applicant should not be rejected solely because they can only do the job if certain aids are provided (e.g. to allow access to wheelchair users or the need for the Trust to provide special IT software). Any accommodation (aids or adaptations) should be taken into consideration in assessing a person's fitness to do the job.

All job offers for the Trust are all 'conditional offers', meaning that they are conditional upon receiving Employee Health Advice, including health clearance as appropriate for patient-facing roles and in considering necessary, reasonable adjustments as and when appropriate. Making an offer conditional upon medical enquiry and assessment and then asking health-related questions does not breach the Equality Act.

Following Employee Health Department assessment confirmation of recruitment to the post in question will be a management responsibility and confirmation is not entrusted to Employee Health Staff. This is because the question of whether any necessary adjustments are reasonable and can be implemented is the responsibility of the manager. Employee Health Staff can only identify where an adjustment is needed and should not offer a determination as to whether it can be implemented. Employee Health advice might prevent someone being deployed to certain roles or work environments within the Trust if this is for a health reason impacting on the safety of the prospective employee or the safety of patients. Decisions of this nature are approached from a risk assessment perspective and, with the exception of clear-cut cases, will involve the manager in conducting the risk assessment and making a judgement.

When a disabled person accepts a job offer, the appointing manager should discuss with them their employment needs **before their start date**. This is because for someone for whom this appointment signals the end of their receiving unemployment benefits, full, rather than partial, funding for equipment can be obtained from the Department for Work and Pensions *Access to Work* funding

(<https://www.gov.uk/government/publications/access-to-work-factsheet/access-to-work-factsheet-for-customers>)

providing it is applied for within 6 weeks of them being offered the job. In many cases this application will need to be made prior to their actual start date with the Trust in order to meet this 6 week deadline.

The new employee should be advised to refer themselves to *Access to Work* who will then come into their workplace and carry out an in-workplace assessment. *Access to Work* guidance states that it is the responsibility of the person with the disability to arrange this referral. This should be done in association with the line manager who should endeavour to attend the in-workplace assessment session. Please refer to Appendix C for the *Access to Work* application process.

When someone with a disability is appointed to a post, depending on the disability, the line manager may want to talk to them about the appropriateness of engaging a specialist agency to deliver training to their new team and colleagues (see Appendix B). However, only with the consent of the new employee, should the line manager brief colleagues on any personal emergency implications of **hidden disabilities** to avoid a breach of the new employee's confidentiality.

## **5.2 Managing staff members with disabilities**

### **5.2.1 Staff development**

Managers must ensure that people with disabilities receive the same opportunities as other members of staff to develop full and rewarding careers. To deny an employee access to training or development on the basis that they have, for example, a diagnosis of cancer, which may be life-limiting, is direct discrimination and is unlawful.

Access to training and development for disabled employees will be on the same basis as for other staff, with reasonable adjustments being made to ensure they are not disadvantaged, and the effectiveness of the training and development opportunity is not diminished.

For internal training opportunities, the employee with the disability and their line manager are expected to liaise with the Learning and Development Team to ensure that the training venue is accessible and that training materials are made available in an appropriate format. As a minimum, venues selected for Trust activities should be fully wheelchair accessible and have hearing loops enabled.

The team organising the delivery of any training or development event is responsible for making their event accessible including funding any necessary modifications. This applies equally whether the event is being organised by an internal Trust team, a local authority, a college, university, union or other independent training provider. The Equality Act forbids the suppliers of services, such as training, from making a participant with a disability pay for any required adjustments.

### **5.2.2 Supporting and retention of staff with disabilities**

Losing the services of employees who become disabled deprives the NHS of a considerable asset in terms of skills, experience and training. The Trust will therefore endeavour to support and retain staff affected by a disability to the extent possible.

Once it is brought to the line manager's attention that there is a health condition which may be covered by the disability provisions of the Equality Act, the line manager should make a management referral for the employee to the Employee Health Department who will arrange to meet with the individual to discuss their how their Reasonable Adjustment needs, and their disability may impact upon their role.



Employee Health will provide a report to the line manager with advice and details of possible adjustments that will assist the individual in carrying out their role or another suitable role. It will be for the manager to determine what is 'reasonable' to implement.

This report will be copied to the individual's HR Advisor. The suggestions made by Employee Health clinicians may not be an exhaustive list of possible adjustments given that some adjustments or means of support might only be identifiable by those closer to the service in question.

If an employee identifies a health condition which they consider to be a disability, but which may not be covered by the definition within the Act, the Trust will endeavour to be supportive and will seek advice and guidance from Employee Health.

If an individual with a disability feels that they are not receiving the adequate support for their disability from their line manager, they can contact Freedom To Speak Up Guardians, their HR Advisor their Trade Union Representative and/or refer themselves to Employee Health.

Where there is a need identified for an employee to undertake testing for e.g., dyslexia, dyscalculia or dyspraxia, the individual should be referred to Employee Health who will advise upon the appropriate assessment. Funding of such testing is often covered by the individual's team budget and is not eligible for *Access to Work* funding, although the adjustment recommendations arising from the testing may themselves be eligible for *Access to Work* funding.

Experiencing gradual loss of function, becoming disabled or being diagnosed with a condition which is covered by the disability provisions of the Act, can lead to uncertainty, insecurity and loss of confidence for an individual. A flexible, empathetic, understanding and supportive approach will enable the member of staff to continue to contribute to the Trust. Progressive conditions and those which fluctuate, are intermittent, relapsing or unpredictable may be more difficult to accommodate as there may be no clear prognosis, the condition may or may not shorten life expectancy and the speed or nature of the deterioration or recovery may be unpredictable. As the member of staff may be living with uncertainty around their future needs, it is important for the line manager to follow the Trust's Sickness and Absence Policy and involve the individual and, if requested, their trade union representative, in any decisions that directly affect their working life.

It is a key requirement of the Act for the employer to make 'reasonable adjustments' to accommodate the needs of an individual with a disability. The employer is required to think broadly of adjustments that could be made and to give the matter serious consideration. Using the Employee Health report, the line manager should discuss with the individual concerned what adjustments might be necessary and the employee must be involved at all stages.

The Act lists examples of '**Reasonable**' **Adjustments** to consider depending on the nature and effect of the disability. These include:

- Making alterations to premises
- Allocating some duties to other persons / someone else

- Altering hours of work – both the shift patterns and reducing the hours (and subsequent pay)
- Changing the place of work
- Allowing the employee to be absent for treatment, assessment or rehabilitation pertaining to their disability or long-term condition without penalty under the Trust's Sickness and Absence Management Policy
- Special arrangements for accessing training
- Modifying equipment, instructions, reference material or procedures for testing/assessment
- Provision of a British Sign Language interpreter
- Provision of parking facilities where needed by an individual with reduced mobility
- Alternative posts within the Trust if the current post cannot be adapted – in line with the Trust's Change Management Policy
- Retraining for employees who are newly disabled, or whose health condition is deteriorating for alternative work within the Trust

The Reasonable Adjustments agreed between line managers and the individual with the advice of Employee Health will be documented in the correspondence between the line manager and the employee and copies sent to the individual's Human Resources Advisor.

### 5.2.3 Time off for medical appointments

The Trust recognises that staff with a disability may require a higher than average number of periods or frequency of time off to attend medical and therapy appointments. Facilitating this attendance should be considered in discussion with their line manager with advice from HR and Employee Health.

Managers need to refer to the Sickness and Absence Policy for guidance related to medical appointments. For an employee with a disability, time off for medical appointments might make up part of their reasonable adjustment support plan. The Trust reserves the right to request proof of any appointment attended during working hours.

## 5.3 Health and Safety including Personal Emergency Evacuation Plans (PEEPs)

5.3.1 Health and Safety legislation should not prevent people with a disability finding or staying in employment and should not be used as a false excuse to justify discriminating against workers with disabilities.

5.3.2 There is no requirement to carry out a separate risk assessment for an employee with a disability as managers should already be managing any significant workplace risks, including putting control measures in place to eliminate or reduce the risks. If an employer becomes aware of an employee who has a disability, they should review the risk assessment to make sure it covers risks that might be present for that employee. For example, managers should ensure that the known needs of people with disabilities are taken into account when considering means of escape from a department during an emergency.

- 5.3.3 Employees with a disability that has some impact on their ability to evacuate the building in an emergency have a duty to inform their manager of this impact. Managers should ensure that any new member of staff is made aware of emergency procedures – how to raise the alarm and where escape routes are situated. Consider installing visual warning systems for people with impaired hearing in their permanent or frequently used base.
- 5.3.4 As detailed in the Trust’s Fire Safety Management Policy, the employee’s line manager or the person with the delegated responsibility for the work premises (usually the site manager) must complete a **Personal Evacuation Emergency Plan (PEEP)**. This is a bespoke ‘escape plan’ for individuals who may not be able to reach an ultimate place of safety unaided or within a satisfactory period of time in the event of any emergency. Discuss best methods with the individual themselves and communicate the information to the rest of the staff in the department and with the site manager.
- 5.3.5 PEEPs should also be completed for members of staff who are temporarily visiting another Trust site, for example to attend a meeting or training event. It is the responsibility of the person with a disability to inform the meeting / event organiser who is then responsible for completing the PEEP and informing the site manager.
- 5.3.6 In an emergency evacuation situation inform the local fire station and police of the location of any member of staff with mobility, hearing or visual disability impairments and long-term conditions using their completed PEEP.
- 5.3.7 Further information on PEEPs can be found under the Fire Safety section of the Hub. Search for ‘PEEP’.

#### **5.4 Trust Commitments regarding Disability Confident**

For full details of the three levels in the Department of Work and Pension (DWP) Disability Confident Scheme see Appendix D. The Trust has been registered with the Disability Confident Scheme since October 2017, agreeing to deliver on the five commitments overleaf. Subsequently, the Trust was awarded ‘Disability Confident Committed (Level 1)’, described below.

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1. To ensure that the recruitment process is inclusive and accessible
  2. To communicate and promote vacancies to disabled people
  3. To offer an Interview to disabled people
  4. To ensure that disabled employees are not seriously disadvantaged when applying for and doing their jobs.
  5. To support any existing employee who acquires a disability or long term health condition enabling them to stay in work.
- 

The Trust has also committed to offer disabled people one of the nine actions suggested by the scheme and has chosen: **Apprenticeships for new or existing employees.**

This means that the Trust is entitled to use the Disability Confident Committed badge on stationery, correspondence and website until reassessment in August 2024.

## 5.5 NHS Workforce Disability Equality Standard (WDES) requirements

The WDES is a set of 10 metrics, measured from data from the Electronic Staff Record (ESR) system and from the results of the staff survey which show the experience of Trust employees with disabilities and compares it to those without a disability. As part of the Standard NHS Contract, the Trust is required to publish these 10 metrics annually along with an action plan to reduce any differential experiences highlighted. The trust is also required to report this data to NHS England annually from August 2019. For further details of the WDES metrics see Appendix E

## 5.6 Complaints regarding the application of this policy

Any employee who considers they have been treated unfairly or discriminated against on the grounds of their Disability may raise a complaint/grievance initially with their manager, or if their manager is the subject of the complaint grievance, through their manager's manager in line with the Trust's Grievance Policy - A Framework for Resolving Differences.

If staff members feel their complaint is not dealt with, or disagree with the outcome, they have the right to take action through the Trust's Grievance Policy - A Framework for Resolving Differences and access their Trade Union representative if appropriate.

Staff can also contact a Freedom to Speak Up Guardian who will act as an independent and impartial source of advice and will be able to support staff (See Freedom to Speak Up: Raising Concerns Policy).

Complaints from **external** job applicants who consider that they have been treated unfairly or discriminated against on the grounds of their disability will be passed to the Director of People and / or the recruiting CLCH manager in the first instance, who will investigate the matter and respond to the applicant as appropriate.

The normal time limit for making a discrimination claim to an employment tribunal (for all forms of discrimination, including harassment and failure to make reasonable adjustment) is 3 months less one day from the date when the discrimination occurred. If the discrimination takes place over a period of time, the time limit starts to run at the end of that period. The discrimination is said then to be 'continuing'.

## 6. Consultation

The following stakeholders were consulted in the creation of this policy between July 2021 to November 2021 and comments incorporated as appropriate:

- Human Resources Business Partners and Advisors
- Organisational Development and Culture Team
- HR Policy Group
- A selection of Trust employees with disabilities who volunteered to be involved
- CLCH DAWN Staff Disability and Wellness Network

## **7. Approval and Ratification Process**

The Disability Policy and Code of Practice was discussed at the DAWN Network meetings between June and November 2021. It has also been sent to the DAWN Network mailing list and the HR and OD teams between June and December 2021 and comments received from them have been incorporated within this policy. The HR Policy Group approved the policy on the 25 January 2022. This policy was ratified by the Policy Ratification Group on 14 February 2022.

## **8. Dissemination and Implementation**

Once approved, this policy will be available on the Trust's intranet (Hub) and will be promoted through all existing internal communication channels. The Deputy Director of Workforce will disseminate the policy to all Human Resources Business Partners to cascade to their team members.

## **9. Archiving**

The QLD team will undertake the archiving arrangements.

## **10. Training**

Training is provided on request. If training is required, the employee and/or manager should contact the CLCH Learning and Development Team, Academy or Equality Diversity and Inclusion Team.

## **11. Monitoring and Auditing Compliance**

See Appendix F

## **12. Expiry and Review**

This policy will be reviewed in a 3-yearly from date of ratification for publication unless there are any changes in national guidance or legislation which make earlier revision necessary.

## **13. Associated Documentation**

Associated Trust documents include, but are not limited to, the following:

- Addressing Bullying and Harassment – A Framework for Managing Unwanted Behaviour Policy
- Change Management Policy Principles and Procedures
- Disciplinary Policy
- Equality Diversity and Inclusion (Staff) Policy
- Fire Safety Management Policy
- Flexible Working Policy
- Freedom to Speak Up: Policy
- Grievance - A Framework for Resolving Differences Policy

- People Strategy
- Sickness Absence Management Policy
- Temporary Deployment Policy
- Training and Study Leave Policy

## 14. References

ACAS (2017) *Disability Discrimination: Key Points for the Workplace* accessed at: [www.acas.org.uk/index.aspx?articleid=1859](http://www.acas.org.uk/index.aspx?articleid=1859)

CIPD Guidance on preventing Disability Discrimination in the Workplace accessed at: [www.cipd.co.uk/knowledge/fundamentals/emp-law/disability-discrimination](http://www.cipd.co.uk/knowledge/fundamentals/emp-law/disability-discrimination)

Citizens Advice (2018) *Discrimination At Work* accessed at [www.citizensadvice.org.uk/work/discrimination-at-work](http://www.citizensadvice.org.uk/work/discrimination-at-work)

Equality and Human Rights Commission (2011) *Equality Act 2010 Employment Statutory Code of Practice* accessed at: [www.equalityhumanrights.com/en/publication-download/employment-statutory-code-practice](http://www.equalityhumanrights.com/en/publication-download/employment-statutory-code-practice)

HM Government (2010) *Equality Act* accessed at: [www.gov.uk/guidance/equality-act-2010-guidance](http://www.gov.uk/guidance/equality-act-2010-guidance)

HM Government (2011) *Guidance on matters to be taken into account in determining questions relating to the definition of disability*  
[www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/570382/Equality Act 2010-disability\\_definition.pdf](http://www.gov.uk/government/uploads/system/uploads/attachment_data/file/570382/Equality_Act_2010-disability_definition.pdf)

HM Government (2017) *Disability Confident* accessed at: [www.gov.uk/government/collections/disability-confident-campaign](http://www.gov.uk/government/collections/disability-confident-campaign)

NHS England (2018) *Workforce Disability Equality Standard (WDES)* accessed at: [www.england.nhs.uk/about/equality/equality-hub/wdes/](http://www.england.nhs.uk/about/equality/equality-hub/wdes/)

## 15. Appendices

Appendix A: Guidance - Interpretation of the Equality Act (Disability Provisions)  
 Appendix B: Useful Contacts – Local Organisations  
 Appendix C: Access to Work Grants for staff with disabilities  
 Appendix D: Disability Confident  
 Appendix E: NHS Workforce Disability Equality Standard (WDES)  
 Appendix F: Compliance Monitoring Table  
 Appendix G: Equality Impact Assessment

## Appendix A: Guidance - Interpretation of the Equality Act (Disability Provisions)

### Definition of Disability

The Equality Act 2010 defines a person as having a disability if they have:

**“A physical or mental impairment and the impairment has a substantial and long-term adverse effect on their ability to perform normal day-to-day activities.”**

#### **1 Further explanation of the term ‘substantial’**

The requirement that an adverse effect on normal day-to-day activities should be a substantial one reflects the general understanding of disability as a limitation going beyond the normal differences in ability which may exist among people. A substantial effect is one that is more than a minor or trivial effect. When assessing if it is substantial the following should be taken into account:

##### **1.1 The time taken to carry out an activity**

The time taken by a person with an impairment to carry out a normal day-to-day activity should be considered when assessing whether the effect of that impairment is substantial. It should be compared with the time it might take a person who did not have the impairment to complete an activity.

##### **1.2 The way in which an activity is carried out**

Another factor is the way in which a person with that impairment carries out a normal day-to-day activity. The comparison should be with the way that the person might be expected to carry out the activity compared with someone who does not have the impairment.

##### **1.3 The cumulative effects of impairment**

An impairment might not have a substantial adverse effect on a person’s ability to undertake a particular day-to-day activity in isolation. However, it is important to consider whether its effects on more than one activity, when taken together, could result in an overall substantial adverse effect.

##### **1.4 The cumulative effects of multiple impairments**

A person may have more than one impairment, any one of which alone would not have a substantial effect. In such a case, account should be taken of whether the impairments together have a substantial effect overall on the person’s ability to carry out normal day-to-day activities.

##### **1.5 The effects of behaviour**

Account should be taken of how far a person can reasonably be expected to modify his or her behaviour, for example by use of a coping or avoidance strategy, to prevent or reduce the effects of an impairment on normal day-to-day activities. In some instances, a coping or avoidance strategy might alter the effects of the impairment to the extent that they are no longer substantial and the person would no longer meet the definition of disability. In other instances, even with the coping or avoidance strategy, there is still an adverse effect on the carrying out of normal day-to-day activities.

Account should also be taken of where a person avoids doing things which, for example, cause pain, fatigue or substantial social embarrassment, or avoids doing things because

of a loss of energy and motivation. It would not be reasonable to conclude that a person who employed an avoidance strategy was not a disabled person. In determining a question as to whether a person meets the definition of disability it is important to consider the things that a person cannot do or can only do with difficulty.

## **1.6 The effects of the environment**

Environmental conditions may exacerbate or lessen the effect of an impairment. Factors such as temperature, humidity, lighting, the time of day or night, how tired the person is, or how much stress he or she is under, may have an impact on the effects. When assessing whether adverse effects of an impairment are substantial, the extent to which such environmental factors, individually or cumulatively, are likely to have an impact on the effects should, therefore, also be considered. The fact that an impairment may have a less substantial effect in certain environments does not necessarily prevent it having an overall substantial adverse effect on day-to-day activities.

### **Example**

A person has had rheumatoid arthritis for several years. The effect on their ability to carry out normal day-to-day activities fluctuates according to the weather conditions. The effects are particularly bad during autumn and winter months when the weather is cold and damp. Symptoms are mild during the summer months. It is necessary to consider the overall impact of the arthritis, and the extent to which it has a substantial adverse effect on their ability to carry out day-to-day activities such as walking, undertaking household tasks, and getting washed and dressed.

## **1.7 The effects of treatment**

The Act provides that, where an impairment is subject to treatment or correction, the impairment is to be considered as having a substantial adverse effect if, it wasn't for the treatment or correction, the impairment is likely to have that effect. Treatment or corrections in this context would include prostheses or other aids, counselling, the need to follow a particular diet, therapies as well as drug treatment.

This applies even if the measures result in the effects being completely under control or not at all apparent so that it no longer has a substantial adverse effect on day-to-day activities. If the final outcome of the treatment cannot be determined, or if it is known that removal of the medical treatment would result in either a relapse or a worsened condition, one must consider the effects of the condition as if the individual were not taking that medication or following the required treatment regime.



### **Example**

A person with long-term depression is being treated by counselling. The effect of the treatment is to enable the person to undertake normal day-to-day activities, like shopping and going to work. If the effect of the treatment is disregarded, the person's impairment would have a substantial adverse effect on his ability to carry out normal day-to-day activities.

### **Example**

In order to manage their mental health condition, a person who experiences panic attacks finds that they can manage daily tasks, such as going to work, if they can avoid the stress of travelling in the rush hour. In determining whether they meet the definition of disability, consideration should be given to the extent to which it is reasonable to expect the person to place such restrictions on their working and personal life.

## **2 Examples where the ability to carry out 'normal day-to-day activities' may be affected**

### **2.1 Mobility**

Limited ability to walk without help or support, capacity to walk only unsteadily or at a very slow pace, inability to climb or descend stairs without assistance, or ability to do so only very slowly; difficulty in entering or leaving a motor car; difficulty in travelling on public transport, severe difficulty in changing from a seated to a standing position or vice versa; abnormal inability to bend or reach, acute shortage of breath which affects the capacity to move around, difficulty in standing due to pain or fatigue.

### **2.2 Manual dexterity**

Inability to pick up or handle ordinary objects, severe difficulty in writing or in performing keyboard work other than very slowly, inability to sort through papers manually except very slowly, lack of grip, physical restrictions in using a keyboard.

### **2.3 Physical co-ordination**

Inability to pour liquid from one vessel to another, serious difficulty in carrying out more than one activity at the same time.

### **2.4 Incontinence**

Lack of voluntary control over a (bodily) function e.g. urination or defecation.

### **2.5 Ability to lift, carry or otherwise move everyday objects**

Severe difficulty in picking up ordinary objects with one hand, inability to carry books, files or similar lightweight objects for a sustained period of time.

### **2.6 Speech, hearing or eyesight**

Difficulty in talking and communicating (e.g. aphasia, post stroke or brain injury), inability to give instructions to others, a speech impairment (i.e. dysarthria, dyspraxia of speech), difficulties or inability to use or have a conversation on the telephone, serious difficulty in seeing in low lights, inability to move round safely without bumping into people or objects. Persistent and significant difficulty in reading or understanding written material, where this is in the person's native written language, for example because of a visual impairment or developmental/acquired language impairment.

### **2.7 Memory or ability to concentrate, learn or understand**

Inability to carry out an everyday task due to a lack of understanding of the concept. Inability to remember or follow instructions, difficulty in waiting, difficulty in understanding written material where this is in the person's native written language. Persistent difficulty in recognising, or remembering the names of, familiar people such as family or friends; Persistent distractibility or difficulty concentrating.

**2.8 Ability to identify physical danger** such as engagement in reckless behaviour without understanding the risks involved, serious tendency to neglect basic functions such as eating and drinking or keeping warm.

### **2.9 Mental effects**

Persistent general low motivation or loss of interest in everyday activities, the effect of a phobia limiting, for example, leaving the house or entering an enclosed space, the effect of anxiety in going somewhere new. Frequent confused behaviour, intrusive thoughts, feelings of being controlled, or delusions. Persistently wanting to avoid people or significant difficulty taking part in normal social interaction or forming social relationships, for example because of a mental health condition or disorder. Compulsive activities or behaviour, or difficulty in adapting after a reasonable period to minor changes in a routine.

### **2.10 Intermittent loss of consciousness**

Which may have an effect on the individual's safety in conducting some activities.

### **2.11 Specialised activities**

Where work activities are themselves highly specialised or involve highly specialised levels of attainment, they would not be regarded as normal day-to-day activities for most people.

## **2.12 Indirect effects**

An impairment may not directly prevent someone from carrying out one or more normal day-to-day activities, but it may still have a substantial adverse effect on **how** the person carries out those activities. For example, where an impairment causes pain or fatigue, the person may have the ability to carry out a normal day-to-day activity but may be restricted in the way that it is carried out or the length of time that they can do it for.

## **2.13 Effect of treatment or correction measures**

Except in cases where a person's sight is being corrected by spectacles or contact lenses, the effect of the impairment on day-to-day activities is to be taken as that which the person would experience without the treatment or correction measures being in place.

## **2.14 Automatic coverage by the Act**

The Act also covers the following individuals listed below irrespective of the effect of their diagnosis on their day-to-day activities: This means that these people are protected by the Act from the point of diagnosis:

- Those who have or have had a diagnosis of Cancer (even if they are now in remission),
- Those with HIV infection,
- Those with a diagnosis of Multiple Sclerosis,
- Those with significant disfigurements (excluding tattoos or body piercings)
- Those who are certified as blind, severely sight impaired, sight impaired or partially sighted by a consultant ophthalmologist.

## **2.15 Progressive Conditions**

The Act has special provision for progressively deteriorating conditions whose effects increase in severity over time in that the individuals are regarded as having an impairment which has a substantial adverse effect before it actually has that effect. They are covered under the Act from the moment their impairment has **some** adverse effect on their ability to carry out normal day-to-day activities, provided that in the future the adverse effect is likely to become substantial. The progression need not be continuous, it may be intermittent and of fluctuating severity. Examples of progressive conditions to which these special provisions apply include Systemic Lupus Erythematosus (SLE), various types of Dementia, and Motor Neurone Disease (MND). This list, however, is not exhaustive.

## **2.16 Previous Disability**

The Act also applies in relation to a person who has previously had a disability that met the requirements of the definition in the past, but who is no longer disabled. For example, someone who had mental health issues in the past which constituted a disability even though they are now currently well.

## **2.17 Suffering the Debilitating Effects of Past Treatment**

The Act also protects a person who continues to experience debilitating effects as a result of treatments for a past disability.

## 2.18 Excluded Conditions

Certain conditions are specifically listed as **not** to be regarded as impairments and therefore are awarded no protection under the Act. These are:

- Simple sight conditions which are corrected by spectacles
- Addiction to, or dependency on, alcohol, nicotine, or any other substance (other than in consequence of the substance being medically prescribed)
- Seasonal allergic rhinitis (hayfever), except where it aggravates the effect of another condition
- Tattoos or any form of body piercing
- The tendency to set fires or to steal
- The tendency to physically or sexually abuse other persons
- The tendency to exhibitionism or voyeurism.

## 2.19 Notes for when considering impairments

It may not always be possible, nor is it necessary, to categorise a condition as either a physical or a mental impairment. The underlying cause of the impairment may be hard to establish and there may be adverse effects which are both physical and mental in nature. Furthermore, effects of a mainly physical nature may stem from an underlying mental impairment and vice versa.

Apart from in relation to the excluded tendencies mentioned above, it is not necessary to generally consider how the impairment is caused, even if the cause is a consequence of a condition which is excluded. For example in the case of an obese person, their obesity itself is not an impairment, but it causes breathing and mobility difficulties which substantially adversely affect their ability to walk. What it is important to consider is the effect of impairment, not its cause.

Since the (former) Disability Discrimination Act 1995 there has been no requirement for individuals to 'register themselves as disabled'. Individuals can register with their individual local authority as blind or partially sighted or as deaf which can give them access to concessions such as discount railcards, likewise if they have severe mobility problems, they can register for a Blue Badge parking permit. However, none of these are required for an individual with a disability to be covered by the Equality Act 2010.

In order to claim protection under the Act, a person must have an impairment that meets the Act's definition of disability and be able to establish that any less favourable treatment or harassment is because of their disability or because of a perceived disability.

For further guidance on interpreting the disability provisions of the Equality Act 2010 see Appendix A.

## 2.20 Not a substantial effect on a day-to-day activity

Here follows an illustrative and non-exhaustive list of factors which, if they are experienced by a person, it would **not** be reasonable to regard as having a substantial adverse effect on normal day-to-day activities. Whether a person satisfies the definition of a disabled person for the purposes of the Act will depend upon the full circumstances of the case.

- Inability to move heavy objects without assistance or a mechanical aid,
- Experiencing some discomfort as a result of travelling, for example by car for a journey lasting more than two hours
- Experiencing some tiredness or minor discomfort as a result of walking unaided for a distance of about 1.5 kilometres or one mile
- Minor problems with writing or spelling
- Inability to reach typing speeds standardised for secretarial work
- Inability to read very small or indistinct print without the aid of a magnifying glass
- Inability to fill in a long, detailed, technical document, which is in the person's native language, without assistance
- Inability to speak in front of an audience simply as a result of nervousness
- Some shyness and timidity
- Inability to articulate certain sounds due to a lisp
- Inability to be understood because of having a strong accent
- Inability to hold a conversation in a very noisy place, such as alongside a busy main road
- Occasionally forgetting the name of a familiar person, such as a colleague
- Inability to concentrate on a task requiring application over several hours
- Inability to undertake activities requiring delicate hand movements, such as threading a small needle or picking up a pin

## Appendix B: Useful Contacts - Local Organisations

<p><b>GOV.UK</b></p> <p><b>Access to Work</b></p> <p>Access to Work is a publicly funded employment support programme that aims to help more disabled people start or stay in work. It can provide practical and financial support if you have a disability or long term physical or mental health condition</p>	<p><a href="https://www.gov.uk/employment/work">https://www.gov.uk/employment/work</a></p> <p><a href="https://www.gov.uk/access-to-work">https://www.gov.uk/access-to-work</a></p> <p><a href="https://www.gov.uk/government/publications/access-to-work-factsheet/access-to-work-factsheet-for-customers">https://www.gov.uk/government/publications/access-to-work-factsheet/access-to-work-factsheet-for-customers</a></p>
<p><b>GOV.UK</b></p> <p>Government website A-Z on disability resources, issues and employment</p>	<p><a href="http://www.gov.uk/browse/disabilities">www.gov.uk/browse/disabilities</a></p>
<p><b>Jobcentre Plus</b></p> <p>Jobcentre Plus provides information and advice to employers to support them in the adoption of good employment policies and practices in the recruitment, retention, training and career development of disabled people.</p>	<p><a href="http://www.gov.uk/jobcentre-plus-help-for-recruiters">www.gov.uk/jobcentre-plus-help-for-recruiters</a></p>

## Appendix C: Access to Work Grants for staff with disabilities

**It is the responsibility of the individual with the disability or long-term condition to apply for the Access to Work funding (grant)** however assistance can be provided by the individual's line manager or by an outside agency if preferred.

Grants can be provided to provide the following types of support.

- Special aids and equipment
- Adaptations to existing equipment
- Travel to work although you may need to contribute what you would normally have to pay for travel to and from work
- Travel within work – this depends on the type of travel and what the employer would normally be paying
- Communication support at interviews
- A wide variety of support colleagues
- Awareness training for colleagues
- Alterations to premises

How much Access to Work grant you get depends on your circumstances. Your grant may be capped depending on when it was awarded or last reviewed. Access to Work funding is on-going, but, if you need further funding after 3 years, Access to Work will review your circumstances and support needs. Grants awarded after 1 April 2017 are capped at £42,100. Note: that an Access to Work grant won't affect other benefits and that this funding is a grant not a loan and there is no requirement to pay anything back.

The level of the funding will depend on:

- Whether you are employed or self-employed
- How long you have been in your job and
- The type of help you need

If you have been employed by the Trust for less than 6 weeks when you apply, then the funding will usually be at 100%. Funding will also usually be at 100% for support workers, additional travel to work and travel or communication support at interviews. In order to maximise the grant for new joiners, it is therefore important that an application for Access to Work funding is made **before or at the actual contractual start date**.

If you apply after 6 weeks in post, The Trust will need to contribute to the cost of recommended aids and equipment or adaptations to premises. As a large employer (of over 250 employees) the Trust will pay the **first £1,000 and 20% of the costs between £1,000 and £10,000**. Access to Work pays 100% of the costs between £10,000 and £42,100.

You can apply for an Access to Work grant online at: [www.gov.uk/access-to-work/apply](http://www.gov.uk/access-to-work/apply)

You'll need to provide:

- Your National Insurance number
- Your workplace address
- The name, email address and work phone number of a workplace contact - this should be your team manager (budget holder)

You'll also need to explain:

- How your condition affects you at work
- What help you're already getting
- What else could help you

Go to the website at [www.gov.uk/access-to-work](http://www.gov.uk/access-to-work) The site gives full explanations of eligibility and connects to an application page

If you need help completing the online application, contact the helpline on FREEPHONE Telephone: 0800 121 7479

Textphone: 0800 121 7579

<https://www.gov.uk/government/publications/access-to-work-factsheet/access-to-work-factsheet-for-customers> or email [dwponline.helpdesk@dwp.gsi.gov.uk](mailto:dwponline.helpdesk@dwp.gsi.gov.uk)

Equipment should be purchased and adjustments made. For example, IT equipment purchased and loaded onto the employee's laptop. It is the disabled employee's line manager who is responsible for organising the purchase and in liaising with the relevant Trust departments for its implementation, such as with IT or Estates.

The employer will buy the items or services and pay for them. Invoices are sent to Access to Work if they are fully funding it. If Access to Work is part-funding equipment, your employer should **pay in full** and invoice Access to Work. Access to Work will pay the money back, up to the amount of the grant you've been offered and with any contributions deducted, such as the Trust's contributions as employer.

Should amendments need to be made to an existing Access to Work application then these can be made over the telephone between Monday to Friday 08.00- 18.00 Telephone: 0800 121 7479 Textphone: 0800 121 7579.

**Note: The employer (the Trust) owns the equipment that it buys through the Access to Work grant scheme. They are also responsible for any maintenance, insurance and disposal costs.**

The individual's line manager undertakes an annual review of employee's reasonable adjustment needs as part of their Performance, Appraisal and Development Review (PADR) and this is recorded on e-PADR.

Should amendments need to be made to an existing application then these can be made over the telephone between Monday to Friday 08.00- 18.00 Telephone: 0800 121 7479 Textphone: 0800 121 7579.

### **Changing jobs**

If you change employers, you may be able to transfer equipment to your new employer. You cannot automatically transfer awards for support workers or travel. You would need to contact the Access to Work team to discuss your new arrangements (<https://www.gov.uk/government/publications/access-to-work-factsheet/access-to-work-factsheet-for-customers>).



## Other useful information

The RCN produced toolkits and guide for managers working with staff who are neurodiverse /with **neurodiversity** including dyslexia , dyspraxia and dyscalculia found here:- <https://www.rcn.org.uk/get-help/member-support-services/peer-support-services/neurodiversity-guidance>

The SCOPE website is also helpful in explaining the Access for Work application process. <https://www.scope.org.uk/advice-and-support/access-to-work-grant-scheme/>

## Access to Working funding process flow chart



## Appendix D: Disability Confident

The Department of Work and Pension's Disability Confident scheme aims to help organisations successfully employ and retain disabled people and those with long term health conditions. It was developed by employers and disabled people's representatives to make it rigorous but easily accessible. The scheme is voluntary and access to the guidance, self-assessments and resources is completely free.

There are 3 Disability Confident levels to support organisations on their Disability Confident journey:

- Disability Confident Committed (level 1)
- Disability Confident Employer (level 2)
- Disability Confident Leader (level 3)

Each level must be completed before moving on to the next.

### Disability Confident Committed (level 1)

To become Disability Confident Committed, organisations are required to:

- Agree to all of the five commitments listed below
- Take at least one action to improve opportunities for disabled people
- Sign up on the Disability Confident registration page on the DWP website
- Be prepared to deliver on these commitments within the next 12 months

#### 1. To ensure that the recruitment process is inclusive and accessible by:

- Ensuring against discrimination
- Making job adverts accessible
- Provide information to candidates in accessible formats, such as large print
- Provide invitations in alternative formats, such as electronically

#### 2. To communicate and promote vacancies by:

- Advertising vacancies through a variety of channels
- Getting advice and support from Job Centre Plus and from local disabled people's used organisations (see Appendix B)
- Reviewing current recruitment processes

#### 3. Offering an Interview to disabled people

Encourage applications from disabled people by offering them an interview, if they meet the essential criteria for the job, as specified in the Person Specification

#### 4. Ensure that disabled employees are not seriously disadvantaged when applying for and doing their jobs by:

Providing reasonable adjustments for the person's disability

#### 5. Support any existing employee who acquires a disability or long-term health condition enabling them to stay in work

Through meeting with the individual and identifying and implementing the reasonable adjustments required to enable them to stay in work

To attain its Disability Confident accreditation at level 1 the Trust has also committed to offer disabled people **at least one** of the nine actions listed below. The Trust has chosen Apprenticeships.

### **1. Work Experience**

A fixed period of time that a person spends with your business, when they can learn about working life and the working environment

### **2. Work Trials**

This is a way of trying out a potential employee before offering them a job. This can be informal or can be by agreement with Jobcentre Plus. If this is agreed with Jobcentre Plus, an employer can offer a work trial if the job it may lead to is for 16 hours or more a week and lasts for at least 13 weeks. The work trial can last for up to 30 days.

### **3. Paid Employment**

Permanent or fixed term

### **4. Apprenticeships**

For new or existing employees, they combine working with studying for a work-based qualification

### **5. Work shadowing opportunities.**

These offer potential employees experience of a workplace and occupational skills that are different from what they are used to. They are usually limited to observation only, are non-paid and don't give direct work experience, responsibility and skills. They ideally last between half a day and 2 days.

### **6. Traineeships**

These help young people who want to get an apprenticeship or job but don't yet have the right skills or experience.

### **7. Paid internships and supported internships**

This is a period of paid work experience lasting between one and four months. A supported internship is aimed at disabled people still in education who are seeking work experience so are often offered during the summer.

### **8. Student Placements**

These are university or college qualifications. They are usually for a set period of time, between 4 to 6 months.

### **9. Sector-based work academy placements**

These help you fill vacancies more effectively. They are available through Jobcentre Plus. They provide sector-based training, work experience and a guaranteed job interview.

## **Disability Confident Employer (level 2)**

Organisations are required to self-assess against a set of statements grouped into 2 themes:

Theme 1 Getting the right people for your business

Theme 2 Keeping and developing your people

## **Theme 1: Getting the right people for your business**

As a Disability Confident Employer, the organisation must ensure that it is carrying out **all** of the seven Theme 1 core actions listed below:

1. Actively looking to attract and recruit disabled people
2. Providing a fully inclusive and accessible recruitment process
3. Offering an interview to disabled people who meet the minimum criteria for the job
4. Applying flexibility when assessing people so disabled job applicants have the best opportunity to demonstrate that they can do the job
5. Proactively offering and making reasonable adjustments as required
6. Encouraging suppliers and partner firms to be Disability Confident
7. Ensuring employees have appropriate disability equality awareness

To be a Disability Confident Employer (level 2), the organisation must also commit to **at least one** action from the list below:

1. Providing work experience
2. Providing work trials
3. Providing paid employment (permanent or fixed term)
4. Providing apprenticeships
5. Providing a traineeship
6. Providing paid internships or supported internships (or both)
7. Advertising vacancies and other opportunities through organisations and media aimed particularly at disabled people
8. Engaging with Jobcentre Plus, Work Choice providers or local disabled people's user led organisations to access support when required
9. Providing an environment that is inclusive and accessible for staff, clients and customers
10. Offering other innovative and effective approaches to encourage disabled people to apply for opportunities and supporting them when they do

## **Theme 2: Keeping and developing your people: core actions**

As a Disability Confident Employer, the organisation must ensure that it is carrying out **all** of the six Theme 2 core actions listed below:

1. Promoting a culture of being Disability Confident
2. Supporting employees to manage their disabilities or health conditions
3. Ensuring there are no barriers to the development and progression of disabled staff
4. Ensuring managers are aware of how they can support staff who are sick or absent from work
5. Valuing and listening to feedback from disabled staff
6. Reviewing the Disability Confident Employer self-assessment regularly

Also, under Theme 2 the organisation needs to undertake **at least one** of the activities from the list below.

1. Providing mentoring, coaching, buddying and or other support networks for staff
2. Including disability awareness equality training in the induction process

3. Guiding staff to information and advice on mental health conditions
4. Providing occupational health services if required
5. Identifying and sharing good practices
6. Providing human resource managers with specific Disability Confident training

To validate the self-assessment, the Trust may decide to enlist the help and support of disabled employees, disability network groups, disability specific organisations and/or local disabled peoples' user-led organisations.

### **Disability Confident Leader (level 3)**

After achieving level 2 accreditation, organisations need to take two additional steps in order to become a Disability Confident Leader (level 3):

#### **1. Challenge**

The organisation subjects its self-assessment to an independent validation. This involves the validators looking at each of the criteria in the Disability Confident Employer self-assessment and being assured that the organisation:

- Is delivering against all of the core actions
- Can provide evidence for each of the activities that are being offered

As a large employer (over 250 staff) the Trust will collect the various information and data that clearly demonstrates that it is a Disability Confident Employer. The validator will require documentary evidence such as inclusive policies and procedures and may refer to the groups/organisations that you involved in the self-assessment process.

#### **2. Leadership**

As a Disability Confident Leader the organisation will be encouraging other employers to make the journey to become Disability Confident.

## Appendix E: NHS Workforce Disability Equality Standard (WDES)

The Workforce Disability Equality Standard (WDES) ([NHS England » Workforce Disability Equality Standard](#)) is a set of 10 specific measures (Metrics) that will enable NHS organisations to compare the experiences of disabled and non-disabled staff. This information will then be used by the relevant organisations to develop a local action plan and enable them to demonstrate progress against the indicators of disability equality.

The WDES is part of the NHS Standard Contract. [NHS England » NHS Standard Contract](#)

<b>The Workforce Disability Equality Standard Metrics</b>	
<b>Workforce Metrics</b>	
For the following three workforce metrics, compare the data for both Disabled and non-disabled staff.	
<b>Metric 1</b>	<p><b>Percentage of staff in AfC pay-bands or medical and dental subgroups and very senior managers (including Executive Board members) compared with the percentage of staff in the overall workforce.</b></p> <p>Organisations should undertake this calculation separately for non-clinical and for clinical staff.</p> <p>Cluster 1: AfC Bands - under 1, 1, 2, 3 and 4            Cluster 2: AfC Band 5, 6 and 7            Cluster 3: AfC Band 8a and 8b            Cluster 4: AfC Band 8c, 8d, 9 and VSM (including Executive Board members)            Cluster 5: Medical and Dental staff, Consultants            Cluster 6: Medical and Dental staff, Non-consultant career grade            Cluster 7: Medical and Dental staff, Medical and dental trainee grades</p> <p><b>Note:</b> Definitions for these categories are based on Electronic Staff Record occupation codes with the exception of medical and dental staff, which are based upon grade codes.</p>
<b>Metric 2</b>	<p><b>Relative likelihood of non-disabled staff compared to Disabled staff being appointed from shortlisting across all posts.</b></p> <p><b>Note:</b> i) This refers to both external and internal posts</p>
<b>Metric 3</b>	<p>Relative likelihood of <b>Disabled staff compared to non-disabled staff</b> entering the formal capability <b>process</b>, as measured by entry into the formal capability procedure.</p> <p><b>Note:</b></p> <p>i) This metric was mandated in 2020</p>

	<p>ii) This metric is based on data from a two-year rolling average of the current year and the previous year</p> <p>iii) <b>It must be noted that this metric looks at capability on the grounds of performance, rather than ill health.</b> Therefore, we request that organisations <b>only</b> submit data on those staff who are within performance management capability processes.</p>
<p><b>National NHS Staff Survey Metrics</b></p> <p>For each of the following four Staff Survey Metrics, compare the responses for both Disabled and non-disabled staff.</p>	
<p><b>Metric 4</b> Staff Survey Q13a-d</p>	<p>a) <b>Percentage of Disabled staff compared to non-disabled staff</b> experiencing harassment, bullying or abuse from:</p> <ul style="list-style-type: none"> <li>i. Patients/Service users, their relatives or other members of the public</li> <li>ii. Managers</li> <li>iii. Other colleagues</li> </ul> <p>b) <b>Percentage of Disabled staff compared to non-disabled staff saying that the last time they experienced harassment, bullying or abuse at work, they or a colleague reported it.</b></p>
<p><b>Metric 5</b> Staff Survey Q14</p>	<p><b>Percentage of Disabled staff compared to non-disabled staff</b> believing that the Trust provides equal opportunities for career progression or promotion.</p>
<p><b>Metric 6</b> Staff Survey Q11e</p>	<p><b>Percentage of Disabled staff compared to non-disabled staff saying that they have felt pressure from their manager to come to work, despite not feeling well enough to perform their duties.</b></p>
<p><b>Metric 7</b> Staff Survey Q5f</p>	<p><b>Percentage of Disabled staff compared to non-disabled staff saying that they are satisfied with the extent to which their organisation values their work.</b></p>
<p><b>The following NHS Staff Survey metric only includes the responses of Disabled staff</b></p>	
<p><b>Metric 8</b> Staff Survey Q26b</p>	<p><b>Percentage of Disabled staff saying that their employer has made adequate adjustment(s) to enable them to carry out their work.</b></p>
<p><b>NHS Staff Survey and the engagement of Disabled staff</b></p> <p>For part a) of the following metric, compare the staff engagement scores for Disabled and non-disabled staff. For part b) add evidence to the Trust's WDES Annual Report</p>	
<p><b>Metric 9</b></p>	<p>a) <b>The staff engagement score for Disabled staff, compared to non-disabled staff.</b></p>

	<p><b>Note:</b> This part of the metric is now solely a comparison between the engagement score for Disabled staff and non-disabled staff. b) Has your Trust taken action to facilitate the voices of Disabled staff in your organisation to be heard? (Yes) or (No)</p> <p><b>Note: For your Trust’s response to b)</b>  <b>If yes,</b> please provide at least one practical example of current action being taken in the relevant section of your WDES annual report. <b>If no,</b> please include what action is planned to address this gap in your WDES annual report. Examples are listed in the national WDES 2019 Annual Report.</p>
<p><b>Board representation metric</b>  For this Metric, compare the difference for Disabled and non-disabled staff.</p>	
<p><b>Metric 10</b></p>	<p>Percentage difference between the organisation’s Board voting membership and its organisation’s overall workforce, disaggregated:</p> <ul style="list-style-type: none"> <li>• By voting membership of the Board</li> <li>• By Executive membership of the Board.</li> </ul>



## Appendix F: Compliance Monitoring Table

Policy lead	Element(s) to be monitored	How will you ensure that the policy is being implemented (E.g. via an audit, KPIs )	How often will you monitor that the policy is being implemented	Reporting arrangements  (Which committee or group will the monitoring of the policy be reported to?)	Results of monitoring?
Director of People	That employees with a disability are consulted at least once a year about their employment support needs	Audit of the Performance, Appraisal and Development Review (PADR) process through the annual NHS National Staff Survey	Annually	People Committee	Guidance to managers, training (if required) communications to all staff through internal channels and amendments (as required) to the procedural document
Director of People	Progress against the Workforce Disability Equality Standard (WDES)	Analysis of ESR data, Employee relations Database and national Staff Survey results as stated within the WDES	Annually	People Committee and NHS England and Improvement (NHSEI)	Improvement in annual WDES results and experiences of disabled staff.  Narrowing/improving disparity as compared with non-disabled staff

<b>Policy lead</b>	<b>Element(s) to be monitored</b>	<b>How will you ensure that the policy is being implemented</b> (E.g. via an audit, KPIs )	<b>How often will you monitor that the policy is being implemented</b>	<b>Reporting arrangements</b> (Which committee or group will the monitoring of the policy be reported to?)	<b>Results of monitoring?</b>
Director of People	Progress Against the implementing the requirements of the Disability Confident scheme	Self-audit using Disability Confident	Annually  3-yearly Registration	Reported to Disability Confident (DWP)	DAWN Staff Equality Network actively involved as a partner to the Trust in undertaking self-audit.  Improvement in positive reports of implementation of Disability Confident.

## Appendix G: Equalities Impact Assessment

### Disability Policy

CLCH as a public authority has a legal requirement to analyse the impact of the policy on the Protected Characteristics of staff and patients. This helps us to check if there is a negative impact, how we can reduce that impact.

1. Protected Characteristic	Positive impact	Neutral Impact	Negative Impact	Reason for impact and action required.
People of different ages (e.g. Children, young or older people).	X			Positive impact for staff of all age group should they develop long term health particularly those associated with older age.
People of different religions / beliefs		X		This policy will have a neutral impact on religion or belief
People with disabilities (physical, sensory or learning).	X			The policy will have a positive impact on disability equality as the policy is written to explicitly address disability and equal treatment for people with a disability
People from different ethnic groups		X		This policy will have a neutral impact on race and ethnicity
Men or women		X		The Policy ensures equity and fairness of process and therefore should have no detrimental impact on staff / employees due to their Sex (Gender)
Transgendered people		X		This policy will have a neutral impact on trans equality
People who are gay, lesbian, and bi-sexual		X		This policy will have a neutral impact on sexual orientation equality
Refugees and asylum seekers		X		This policy will have a neutral impact as it only applies to those who have a legal right to work in the UK (including refugees) and does not cover asylum seekers
Marriage, same sex marriage and civil partnership		X		This policy will have a neutral impact on marriage and Civil Partnership (Status)

Pregnancy and maternity		X		This policy will have a neutral impact on Pregnancy and maternity however any conditions arising during or as a result of or following pregnancy or maternity may meet thresholds / criteria for consideration under disability equality under the Act
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2	<p><b>Please describe engagement and consultation process and the key feedback. E.g. with teams, unions.</b></p> <p>Policy reviewed by the Equality, Diversity and Inclusion Lead in consultation with HR and OD team members, Staff side, and members of the CLCH Staff Equality Networks</p>
3.	<p><b>If there are negative impacts upon people's Protected Characteristics. Does the policy in its current form need a full Equality Analysis Assessment to be completed?</b></p> <p>The Policy ensures equity and fairness of process and therefore should have no detrimental impact on staff / employees due to their Protected Characteristic of Disability.</p>

**Signed for team / working group:**

**Name:** Aniko Schwarc, Staff Side

**Date:** ...xx.xx.2022

**Signed:** Equality Diversity and Inclusion Lead

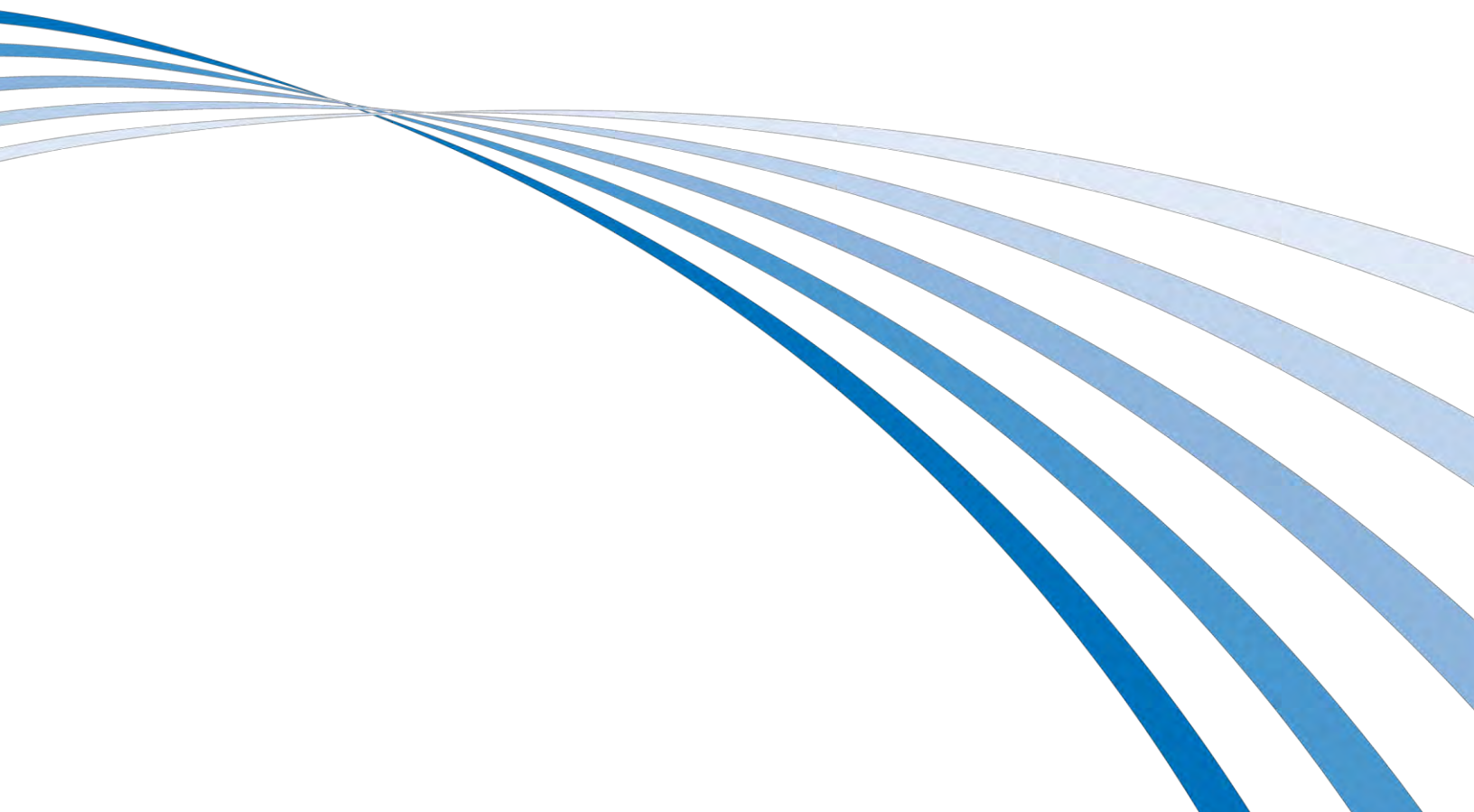
**Name:** Judith Glashen

**Date:** 18.01.2022



**TITLE: DISCIPLINARY POLICY**  
**VALID FROM: FEBRUARY 2021**  
**EXPIRES: FEBRUARY 2024**  
**REFERENCE: WFC16**

This procedural document supersedes the previous procedural document, Disciplinary Policy version 5.0.



<b>Version:</b>	6.0
<b>Policy reference and description of where held.</b>	WFC16 Intranet – Policies
<b>Title, name and contact details for author:</b>	Barbara Macanas Head of Employee Relations and Policy <a href="mailto:b.macanas1@nhs.net">b.macanas1@nhs.net</a>
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<b>Approved by originating committee</b>	HR Policy Group (sub-group of Joint Staff Consultative Committee) on 23 February 2021
<b>Ratified by Policy Ratification Group:</b>	25 February 2021 – Chair’s action 8 March 21 Full meeting.
<b>Review date:</b> 3 years maximum for non-clinical documents	August 2023 or sooner if new legislation, codes of practice or national standards are introduced
<b>Target audience</b>	All staff employed by the Trust.

### Version Control Sheet

Version	Date	Author	Status	Comments
1.0	04/01/11	Mark Handley	Archived	First Disciplinary Policy for newly formed CLCH.
2.0	16/01/12	Mark Handley	Archived	CLCH and Barnet policies integrated. Signed off at Policy Advisory Group on 16/11/2011.
3.0	07/10/2013	Liz Lubbock	Archived	Full review undertaken.
4.0	01/02/2017	Liz Lubbock	Archived	Full review undertaken.
5.0	Sept 2017	Liz Lubbock	Archived	Update to post titles in section 5.4.3, to reflect current organisational structure. Agreed at HRPG meeting on 07/08/17.
6.0	February 2021	Barbara Macanas	Current	Full review. Brought into line with Acas, and Imperial College policy as recommended by NHSE.

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## **1 Introduction and Scope**

- 1.1 This disciplinary policy and procedure provides a framework to ensure the application of a fair, systematic and consistent approach when the behaviour or action of a member of staff is in breach of workplace rules or falls short of the expected standards.
- 1.2 Central London Community Healthcare NHS Trust (the Trust) requires high standards of conduct from everyone and is committed to helping people improve and learn from mistakes. However occasions may arise when the conduct of a member of staff falls below the standards required and action will need to be taken to address this. Appendix A sets out the procedure in flowchart format.
- 1.3 This policy applies to all staff directly employed by the Trust. Separate local and national procedures are available for the Chief Executive and Directors of the Trust. Information can be obtained from the Director of People.
- 1.4 For medical and dental staff, this policy may be used in conjunction with the Trust's Concerns Policy and Procedure for Doctors, Dentists and Pharmacists. Professional conduct and competence of medical staff may also be considered separately by the relevant professional organisation.
- 1.5 Issues involving new staff still within their probationary period will be dealt with under the Trust's Orientation (Induction and Probation) Policy.
- 1.6 Where the ability of a member of staff to do their job is affected by a lack of skills or knowledge, or ill health, this will be managed under the Trust's Capability Policy or Sickness Absence Management Policy.
- 1.7 Staff with honorary contracts, students, bank staff, voluntary workers, contractors, seconded staff and agency staff, are expected to uphold the principles of this policy in line with their terms of engagement. Matters relating to individuals employed by a third party will be reported to and addressed by the source agency/company.
- 1.8 Other concerns may need to be raised under a different Trust policy, for example:
- Freedom to Speak Up: Raising Concerns Policy e.g. for safety of patients and/or staff
  - Counter Fraud and Corruption Policy and Response Plan
  - Code of Conduct and Conflict of Interest Policy e.g. in relation to bribery
  - Managing Safeguarding Allegations made against CLCH Staff (LADO) Policy

## **2 Aims and Objectives**

- 2.1 The Trust is committed to ensuring that appropriate policies, practices and procedures are in place and are adhered to by members of staff and other workers on its behalf. These are intended to support the Trust values of quality,

valuing relationships, delivering services we are proud of, and making a positive difference to our communities.

- 2.2 The aim of this policy and procedure is to encourage members of staff to learn from mistakes and to achieve and maintain high standards of conduct and behaviour in accordance with the requirements of the Trust and relevant professional codes of conduct, by:
- ensuring staff have a clear understanding of what is expected of them and the process to be used if conduct falls short of the standards required by the Trust
  - providing a fair, objective and consistent method of dealing with disciplinary matters and ensuring staff and managers are supported appropriately
  - helping to create good employee relations within the Trust

### 3 Definitions

**Disciplinary offence:** a level of misconduct or shortcoming requiring disciplinary action.

**Misconduct:** where a hearing panel deems a member of staff's behaviour does not meet requirements or values (see Appendix F for levels of misconduct).

**Serious misconduct:** where a hearing panel deems the misconduct is more serious but not gross misconduct.

**Gross misconduct:** where a hearing panel considers the offence serious enough to warrant summary dismissal or a sanction short of dismissal.

**Gross incompetence:** where it is deemed a member of staff has committed a single very significant error, or a number of substantial errors, and the actual or potential consequence is or could be extremely serious, for example endangering the welfare and safety of patients, service users or colleagues.

**Investigation:** the procedure for fact-finding and recommending whether formal, informal or no action should be taken.

**Investigating officer:** the person appointed to carry out an investigation.

**Commissioning manager:** the person who asks for an investigation to be carried out.

**Suspension:** where a member of staff is required to cease work or attendance at a Trust workplace during an investigation, if alternative arrangements cannot be made.

**Suspending manager:** the person who carries out a suspension.

**Hearing:** A formal meeting to listen to and consider the facts of the case and to determine whether a formal or informal sanction, or no sanction, should be given.

**First written warning:** a sanction imposed by a hearing where it is deemed misconduct has occurred.

**Final written warning:** a sanction imposed by a hearing where it is deemed more serious misconduct has occurred.

**Action short of dismissal:** a sanction imposed when a hearing panel deems the outcome should not be dismissal but a lesser sanction.

**Dismissal with notice:** a sanction imposed when a hearing panel deems further misconduct warrants this or when the nature of the offence is considered to constitute gross misconduct.

**Summary dismissal:** the sanction of dismissal without notice, when a hearing panel deems the offence constitutes gross misconduct.

## 4 Duties

4.1 **Managers** must ensure that their team is aware of the required standards of conduct and handle disciplinary concerns fairly and promptly in accordance with this policy and procedure. They are responsible for:

- promoting a culture in which concerns are dealt with openly and fairly, with an emphasis on learning from mistakes
- addressing concerns with staff at an early stage, through the appropriate process, and informally wherever possible
- maintaining communications to ensure members of staff receive clear and timely information and regular progress updates until the matter is concluded
- being aware of this policy and procedure and meeting their responsibilities within it
- seeking advice about formal disciplinary cases from their HR Business Partner or HR Advisor
- maintaining records of any informal conversations with staff and actions taken

4.2 **Staff** are required to maintain expected standards of behaviour and to comply with policy and procedure.

Staff are also expected to raise any concerns about colleagues' behaviour to an appropriate manager, especially where there could be consequences for patient or staff safety and wellbeing.

#### 4.3 **HR Resources (HR) will:**

- support a positive employee relations environment, working with managers and trade union/staff representatives to ensure this policy and procedure is applied promptly and in a fair and consistent manner
- advise and coach managers to develop the skills necessary to deal with cases confidently and effectively, ensuring their advice is compliant with the law and reflects best practice and the Trust's values
- maintain records of any formal or informal cases addressed under this policy including conduct issues raised, action taken and the outcome of any appeals lodged
- as part of the HR Policy Group, ensure that this policy is regularly reviewed and monitored

#### 4.4 **Trade Union Representatives will:**

- work with managers and HR to ensure this policy and procedure is applied promptly and in a fair and consistent manner
- provide support and advice to members of staff at all formal stages within this policy
- where an allegation arises, work with other stakeholders to ensure that decisions can be taken promptly, thereby minimising staff anxiety

A trade union representative will be allowed reasonable time off for union duties – please refer to the Trade Union Partnership and Recognition Agreement on the Trust's intranet hub.

### **5 Policy**

#### 5.1 **Principles**

- 5.1.1 This policy will be applied consistently and equitably and reflects the Trust's commitment to creating a positive culture of respect for all individuals including staff, patients, their families and carers as well as community partners, and to promote positive practice that values the diversity of all individuals and communities.
- 5.1.2 The fair treatment of staff supports a culture of fairness, openness and learning within the Trust, enabling staff to feel confident to speak up when things go wrong, rather than fearing blame.
- 5.1.3 Every attempt will be made to deal with matters speedily, whilst ensuring that matters are dealt with thoroughly. Timeframes given within this policy and procedure are for guidance only and if it is not practicable to adhere to these, all relevant parties will be notified and kept apprised of progress.

- 5.1.4 A manager may invoke any stage of this procedure, depending on the circumstances. However, every effort will be made to address problems informally where possible, and in line with Trust values and behaviours.
- 5.1.5 Reasonable adjustments or arrangements for meetings and hearings may be made e.g. for a member of staff or companion with a disability or for staff whose first language is not English.
- 5.1.6 If meetings or hearings are conducted virtually, participants should not have anyone physically with them who has not been invited or declared as a participant in the meeting. Participants' cameras should remain on for the duration of the meeting
- 5.1.7 An electronic recording may be made during interviews, meetings or hearings under this procedure, if agreed by all parties or where this may be required as a reasonable adjustment.
- 5.1.8 No member of staff will be dismissed for a first-time breach of discipline except in the case of gross misconduct, when the disciplinary action may be dismissal or summary dismissal (i.e. dismissal without notice or pay in lieu of notice).
- 5.1.9 Frivolous, malicious or vexatious complaints will not be tolerated and may result in disciplinary action. Managers will ensure that a staff member's future prospects within the Trust are not affected by such false accusations.

## 5.2 **Support**

- 5.2.1 Being involved in a disciplinary process can be upsetting and stressful for the member of staff and other colleagues affected. Counselling and advice on health and wellbeing is available if required from Employee Health.
- 5.2.2 Members of staff can also speak to the Freedom to Speak Up Guardian, a Freedom to Speak Up Champion, Mental Health Minder, Trade Union Representative or HR representative. Further FTSU information is available on the Trust's [intranet hub](#).
- 5.2.3 To help to avoid stress and anxiety for those involved, it is important for the manager to keep in regular contact and report on progress.

## 5.3 **Confidentiality**

- 5.3.1 Disciplinary matters will be treated sensitively, confidentially and with due respect for the privacy of any individuals involved. Information will only be shared with those who have a legitimate right to be informed in accordance with data protection legislation.

- 5.3.2 All parties must treat as confidential any information communicated to them in connection with a matter which is subject to this policy and procedure. Any non-adherence may be regarded as misconduct in itself.
- 5.3.3 All proceedings and records of disciplinary matters must remain confidential and kept in accordance with legislation, which gives individuals the right to request and have access to certain personal data including:
- the nature of the disciplinary
  - the Trust's response - what was decided and actions taken
  - the reason for the actions
  - whether an appeal was lodged
  - the outcome of the appeal
  - any formal minutes taken and copies of correspondence
  - any subsequent developments
- 5.3.4 In certain circumstances, some information may be withheld e.g. to protect patients, witnesses or other staff.
- 5.3.5 Records relating to any action taken under this procedure will be removed from the member of staff's personnel file once a warning or sanction has expired. These records will be kept on a separate central HR file for statistical analysis and for reference in any subsequent related disciplinary case.
- 5.4 **Preliminary enquiry**
- 5.4.1 A preliminary enquiry is an opportunity to determine whether there is enough evidence to indicate that misconduct may have taken place.
- 5.4.2 An objective and prompt examination of the issues and circumstances should be carried out with members of staff as appropriate, to establish whether grounds for further action exist, e.g. whether a full investigation is needed or whether an informal option can address the issue.
- 5.4.3 Managers should use the Decision Tree checklist at Appendix B to help to determine which policy or procedure is relevant and whether a formal or informal response is appropriate.
- 5.4.4 During a preliminary enquiry, if there is a concern about an employee being at work, special paid leave may be used while the enquiry is concluded and a decision reached on whether to suspend (see Section 5.6 – Suspension from duty).
- 5.5 **Informal procedure**
- 5.5.1 By addressing issues informally and at an early stage, they are usually easier to resolve, less time consuming and are less stressful for all involved. Advice may be sought from an HR Business Partner or HR Advisor.

5.5.2 Informal options may include:

- management supervision to support staff with their performance
- a conversation of concern to look at a specific conduct issue
- restorative conversation to help staff improve relationships
- mediation to help staff resolve relationship and communication issues
- coaching and mentoring as a support action

5.5.3 **Management supervision** enables a two-way discussion between the manager and member of staff to ensure:

- staff know what is expected of them and have appropriate support to meet their objectives
- staff carry out their duties effectively and efficiently, in line with good practice, and that areas for improvement are managed as they arise
- health and wellbeing issues are addressed
- staff are supported with continuous professional development
- promotion of equality and diversity

5.5.4 **Conversation of concern** is a two-way discussion between the manager and the member of staff to address minor infringements of rules or expected behaviour. It may be necessary for the manager to conduct an informal investigation (see Preliminary Enquiry, above) to establish the facts prior to the conversation of concern taking place.

There is no right to be accompanied at this informal meeting, nor is there a right of appeal against any action taken. It is important therefore that this informal conversation does not turn into formal disciplinary action, as this may unintentionally deny the member of staff certain rights, such as the right to be accompanied or to appeal.

The manager will discuss the issue with the member of staff informally, in private and as soon as possible, pointing out that this is not a formal sanction. The Conversation of Concern template at Appendix C should be used to summarise the discussion and any agreements reached.

The aim of the conversation is to:

- set out the nature of the problem
- explore the issue in more details, including any underlying reasons
- describe the expected standard of conduct/behaviour
- explain how the issues will be monitored within a set timeframe
- agree a plan of action to correct unsatisfactory conduct
- set up any necessary additional training or support, including a possible referral to Employee Health
- inform the employee that failure to make the necessary improvements may result in formal disciplinary action being taken

An outcome of the conversation could be that it may be more appropriate for the issue to be managed under another policy e.g. Capability or Sickness Absence.

If at the end of the review period, the member of staff has failed to achieve the required standards of behaviour or conduct, but this does not warrant formal action, the duration for expected improvement may be extended for any outstanding issues. The member of staff should be made aware that they will be monitored and that failure to meet required standards will result in the case being escalated to the formal stage of the disciplinary procedure.

Where there is a repetition of misconduct or issues of a similar nature, or there is a genuine cause for concern and no satisfactory explanation has been provided, these incidents will be noted by the manager as a series of such occurrences, and will require action under the formal procedure.

- 5.5.5 **Restorative conversation** is an alternative option to mediation, coaching or a 1:1 discussion and can also be used to support any outcomes agreed through a 1:1 or a formal process.

A restorative conversation comes from the idea of restorative practice used in the justice system. It is a facilitated meeting to allow individuals to work through conflict they may be experiencing through acknowledging what has happened, the impact this has had, who has been affected, what would help the parties feel better and what needs to happen to move things forward positively. It is different to mediation in that an agreed outcome is not necessarily sought.

Further information can be obtained from the HR Business Partner or HR Advisor.

- 5.5.6 **Mediation**

Mediation can be offered as an alternative way to support staff. It can be beneficial where there are difficulties in communication or relationships in work, especially in the early stages of conflict. It is a voluntary and informal process that provides a safe and confidential environment for people to talk about issues and to find a way to move forward.

There are trained mediators within the Trust and external mediation services available to help facilitate the process. More information is available on the Hub under “mediation” or email [clcht.employee.relations@nhs.net](mailto:clcht.employee.relations@nhs.net)

- 5.5.7 **Coaching and mentoring** can be used on its own or with other options to support a member of staff to improve conduct. More information is available on the Trust’s intranet hub under Academy / Development.



## 5.6 **Suspension from duty**

- 5.6.1 In most cases, suspension from work will not be necessary and the member of staff will be able to continue doing their normal job while matters are investigated. Suspensions will always be managed sensitively and confidentially.
- 5.6.2 The Trust recognises being placed on suspension is a difficult situation for any member of staff. Consideration should be given to appointing a support person for those on suspension to cover duty of care and welfare support. Support from Employee Health Services should also be offered. (See Section 5.2 - Support)
- 5.6.3 Suspension does not constitute disciplinary action but it may be necessary to enable the Trust to comply with its duty of care towards its staff and the public.
- 5.6.4 The Divisional Director of Operations, Executive Director or equivalent, has the power to suspend and should take advice from the HR Business Partner. They should use the suspension checklist at Appendix D to determine whether suspension or another alternative course of action is appropriate under the circumstances, before a decision is made.
- 5.6.5 A registered nurse, health visitor or registered Allied Health Professional (AHP) should normally be suspended following consultation with one of the following people: the Chief Nurse, Deputy Chief Nurse or their delegated deputy (Divisional Director of Nursing and Therapies) in conjunction with the HR Business Partner. For allied health professionals (AHPs) the Head of AHP should also be advised.
- 5.6.6 Medical /Dental/Pharmacist staff should normally be suspended following consultation with one the Medical Director or Clinical Directors, in conjunction with the HR Business Partner.
- 5.6.7 Outside office hours, the decision to suspend rests with the most senior manager on call who should discuss the suspension with the Director on call at the time, and with a senior HR representative at the earliest opportunity. As appropriate, the Chief Nurse or Medical Director will be notified the next working day by the senior manager.
- 5.6.8 The decision to suspend will only be taken if genuine risks are identified and all temporary alternative options have been ruled out. The actual task of suspending a member of staff can be delegated by the authorising manager to a senior manager.
- 5.6.9 Suspension should take place as soon as possible after the alleged incident has occurred. Guidance on carrying out a suspension meeting can be found at Appendix E, including the terms of the suspension and the member of staff's obligations.
- 5.6.10 Suspension from duty may be necessary e.g. where:

- there is alleged gross misconduct
  - serious criminal charges have been brought against the member of staff, or there are allegations of criminal activity
  - there is a risk to a staff member's health or safety
  - interests of the staff member, patients, colleagues, the public or the Trust are at risk
  - remaining on duty may inhibit a fair and objective investigation and no alternative duties are practicable
  - the staff member could tamper with or destroy evidence
  - working relationships have broken down significantly
- 5.6.11 If possible, a trade union representative or work colleague will be contacted before the suspension to provide support to the member of staff. However, this is not mandatory and should not delay the suspension. Contact should be made with the trade union representative or work colleague by the suspending manager or the HR Business Partner as soon as possible after the suspension to inform them that it has taken place.
- 5.6.12 If a recognised trade union representative is suspended, the full time officer of the relevant union will be informed, after obtaining the member of staff's agreement to inform the full time officer.
- 5.6.13 Suspension will normally be on full basic pay, including any additional allowances normally received under the contract of employment on a regular basis. However, the Trust reserves the right to suspend without pay where there is for example a lapse in professional registration or entitlement to work in the UK in circumstances where this is the responsibility of the member of staff, or bail restrictions prevent the member of staff from attending work.
- 5.6.14 To qualify for full pay during suspension, the member of staff must be available to the Trust during their normal working hours and attend meetings at the Trust's request.
- 5.6.15 The Chief Executive, an Executive Director or the Director of People may decide to suspend without pay e.g. where:
- a police investigation or criminal proceedings are involved which prevent an internal investigation being concluded
  - the staff member is held in custody/remand and the employment contract is frustrated
  - there is clear evidence of malpractice or foul play by the member of staff
  - the member of staff declines all reasonable alternatives to suspension without a valid reason
  - the member of staff is not available for work, e.g. abroad or working for another organisation without prior agreement with the suspending manager

- the member of staff is not maintaining appropriate communication as agreed at the point of suspension and/or making themselves available for relevant meetings without reasonable explanation
  - there are visa/work permit concerns affecting the right to work
- 5.6.16 If a suspension relates to a registered clinical professional, the member of staff may be required to self-refer as necessary to the appropriate professional governing body, informing them of the allegation. If any member of staff fails to self-refer as required, the Trust may make the referral on their behalf.
- 5.6.17 In serious cases, the Trust may have a responsibility to inform external or regulatory bodies such as the police or NMC/HPC. A decision will be taken by the relevant professional lead for the Trust and the Director of People. No NMC/HPC referrals are to be made on behalf of the Trust without sign off from the Chief Nurse or Deputy Chief Nurse.
- 5.6.18 If the staff member is accused of significant theft or fraud, then, in the interests of protecting public money, suspension without pay will also be considered as being in the public interest. If, subsequently, the allegations are disproved or unfounded, back pay will be applied.

## 5.7 **Investigations**

- 5.7.1 When any incident of misconduct is alleged to have occurred, the line manager will ensure that the facts are established promptly before memories of events fade. In certain circumstances all relevant information may be available to the manager at an early stage, and further investigation may not be necessary.
- 5.7.2 The manager will carry out some initial fact finding and meet the staff member to establish their version of events (see Preliminary Enquiry, above). The manager may also meet with other relevant individuals to get a good understanding about what has happened. The Decision Tree at Appendix B will help the manager to determine what is needed.
- 5.7.3 If a manager feels they are unable to consider the issue on an impartial basis, or where they are not available, with advice from their line manager and/or HR the matter will be referred to another manager of an equivalent level or higher, who has not been previously involved.
- 5.7.4 Similarly, if a member of staff believes a manager will not be able to consider the issue on an impartial and fair basis, they should request of the HR Business Partner that it is referred to another manager at an equivalent level or higher, who has not been previously involved.
- 5.7.5 Where it is decided that further investigation and/or formal action is appropriate, a senior manager will be responsible for commissioning an independent investigating officer to carry out the investigation, and for clearly defining the terms of reference i.e. what is to be investigated. Please refer to the Trust's

Investigation Guidelines – Workplace and the templates for an investigation plan and report.

- 5.7.6 A full and thorough investigation must then be undertaken as quickly as possible and normally within four weeks. This is an indicative timeframe and is dependent on the complexity of each case. If timeframes are to be exceeded, members of staff will be notified as appropriate.
- 5.7.7 The commissioning manager will notify the member of staff concerned in writing, normally within 7 days:
- that an investigation is to be carried out
  - the specific nature of the allegation(s) against them
  - the likely timescale for the investigation
  - the name and contact details of the the investigating officer, who will be in touch to make arrangements to meet
  - that they may be accompanied at any investigation meeting by a work colleague or trade union representative
  - the name and contact details of the HR representative who can provide procedural advice
- 5.7.8 The investigating officer will ascertain all the facts relating to the alleged disciplinary offence and produce a balanced report setting out their findings and taking into account any mitigating factors. It is not the investigator's role to prove the guilt or innocence of any party.
- 5.7.9 It is common for an investigator to be asked to make a recommendation, however they should restrict their recommendation to only suggesting whether any further action may be necessary or beneficial. In most circumstances an investigator should recommend formal action, informal action or no further action.
- 5.7.10 An investigator should not suggest a possible sanction or prejudge what the outcome to a disciplinary hearing might be, as this can be seen as unduly influencing the commissioning manager's decision and/or the outcome of any hearing.
- 5.7.11 Having received the investigating officer's report, the commissioning manager will take the decision whether any further action is necessary or whether informal or formal action is necessary under this disciplinary procedure.
- 5.7.12 If further evidence or incidents arise following completion of the investigation or following the report being submitted to the commissioning manager, the details of these may be submitted to the commissioning manager to determine if the investigation needs to be reopened to include these.

## 5.8 **Disciplinary hearing**

- 5.8.1 At this formal stage, no disciplinary action will be taken until the case has been fully and properly investigated. No decision will be made and no formal sanction imposed without holding a disciplinary hearing, at which the member of staff will be given the opportunity to state their case.
- 5.8.2 The commissioning manager, in discussion with a senior HR representative, will determine whether they will chair the hearing panel or ask a more appropriate person to undertake that role.
- 5.8.3 The chair of the panel will arrange the hearing and may delegate this task as appropriate. Panel members will have no previous involvement in the case (apart from commissioning the investigation) or any conflict of interest that could influence decision making.
- 5.8.4 They chair of the panel will write to the member of staff concerned, giving a minimum of 14 days' notice of the hearing and provide the following:
- notification of their requirement to attend the disciplinary hearing
  - the date, time and venue, and who will comprise the hearing panel
  - confirmation of details of the specific allegation(s) and why the conduct is unacceptable
  - a copy of the investigation report together with statements, notes of interviews and any other relevant information collected during the investigation
  - notification that they have the right to be accompanied by a trade union representative or work colleague and the ability to call any witnesses to the hearing
  - the names of any witnesses who may be called by management to attend the hearing
- 5.8.5 Managers with authority to dismiss are the Chief Executive, Executive Directors and senior managers who report to Executive Directors, therefore where dismissal is a possible outcome, a manager at this senior level will chair the hearing.
- 5.8.6 Where dismissal is possible for nurses, AHP and health visitors, the Chief Nurse or Deputy Chief Nurse should be on the hearing panel, or with the agreement of the Chief Nurse or Deputy Chief Nurse, this can be delegated to a Divisional Director of Nursing and Therapies. For allied health professionals (AHPs) the panel can also include the Head of AHP as the professional advisor.
- 5.8.7 An appropriate HR representative will be involved at formal stages of this procedure, including participation on hearing panels. If a member of HR has been involved in the case previously, they will not then be included on the hearing panel.
- 5.8.8 The Trust is committed to ensuring hearing panels are diverse in representation, have appropriate seniority and have knowledge, skills, experience and training that

are relevant to the case in question and cater for factors such as BAME status, disability status, etc. Panel members will be selected to achieve this, and where appropriate additional panel members will be recruited. If members of staff have any concerns in relation to diversity or possible bias of the panel, they can raise this with a senior HR representative.

- 5.8.9 Where the member of staff indicates that they need special assistance at the hearing, arrangements will be made to accommodate this. Disabled members of staff may also wish to be accompanied by a second person as a support worker or someone with knowledge of the disability and its effects.
- 5.8.10 An electronic recording of the hearing may be made if agreed by all parties or where this may be required as a reasonable adjustment. On request, a transcript of the hearing will be made available to the member of staff, their companion, the panel, the commissioning manager, the investigating officer and HR support.
- 5.8.11 Witnesses who have provided a statement as part of the investigation may be asked to attend the hearing to answer questions. Appropriate support will be provided by the Trust to facilitate this.
- 5.8.12 The member of staff has a right to be accompanied at a hearing where a formal warning may be issued, or some other disciplinary action (such as demotion or dismissal) could take place.
- 5.8.13 The companion must be a work colleague employed by the Trust, a trade union representative or an official employed by a trade union. A trade union representative who is not an employed official must have been certified by their union as being competent to accompany the member of staff. There is no right to legal representation.
- 5.8.14 If the staff member agrees, their companion will be able to address a hearing, question witnesses, confer with them, put forward their case, sum up the case, respond on their behalf to any view expressed at the hearing, but does not have the right to answer questions on their behalf.
- 5.8.15 In addition to the general right to be accompanied described above, no action under the formal procedure should be taken against an accredited trade union representative without prior discussion with a full time officer of that organisation, after obtaining the member of staff's agreement.
- 5.8.16 A minimum of 7 calendar days before the hearing, the member of staff must confirm their attendance to the hearing chair, whether they will be accompanied to the hearing and, if so, by whom, and the names of any witnesses they wish to call. Witnesses may be called if they have a significant contribution to make to the case. The member of staff is responsible for arranging the attendance of their own companion and witnesses.

- 5.8.17 Any additional information should also be presented to all parties a minimum of 7 days before the hearing and it is not usually appropriate to submit additional information on the day of the hearing. However in exceptional circumstances, the panel can accept a late submission, after considering its relevance and importance to the case.
- 5.8.18 Managers, members of staff and their companions must make every effort not to unreasonably delay the hearing.
- 5.8.19 If the member of staff or companion cannot attend a hearing on a proposed date, the member of staff can suggest an alternative date if it is reasonable and is not more than 7 calendar days after the original date, although consideration will be given to any work shifts.
- 5.8.20 If the member of staff is unable to attend a rescheduled hearing, alternative arrangements such as the companion attending on their behalf or written submissions may be considered, or the hearing may proceed in their absence. Only in exceptional circumstances will the hearing be rescheduled a third time.
- 5.8.21 If without reasonable explanation either party fails to attend within 15 minutes of the specified start time, the panel has absolute discretion to adjourn or to determine the outcome on the basis of the evidence provided and further representations from any party in attendance.
- 5.8.22 The procedure for a disciplinary hearing can be found at Appendix G.
- 5.8.23 Once all the facts have been considered by the hearing panel a decision will be taken on the appropriate action. Depending on the findings, this may result in no action being taken, informal action or a formal disciplinary sanction.
- 5.8.24 The member of staff should receive an outcome letter within 7 calendar days of the hearing, including the findings, a summary of any sanction imposed, and notification of a right of appeal. If a sanction short of dismissal is imposed, a warning will be given that dismissal could result if there is no satisfactory improvement. A template hearing outcome letter is available from HR.

## 5.9 **Formal disciplinary sanctions**

- 5.9.1 Examples of levels of misconduct can be found at Appendix F. The list is not exhaustive.
- 5.9.2 The hearing outcomes described below will not apply automatically, and higher/lower penalties may be applied if judged more appropriate, according to the circumstances of the case:

Level		Possible Outcome	Chair of Disciplinary Panel	Chair of Appeal Panel
1	Misconduct	First Written Warning and/or other sanction (6-12 months)	Minimum Band 7	Minimum Band 8a and above
2	Serious Misconduct	Final Written Warning and/or other sanction (12-18 months)	Minimum Band 8a and above	Minimum Band 8b and above
3	Gross Misconduct	Dismissal with/without notice, or other sanction (18-24 months)	Chief Executive, Executive Directors and senior managers who report to Executive Directors.	Chief Executive, Executive Directors and senior managers who report to Executive Directors.

5.9.3 The Trust may consider imposing a further sanction in addition to a warning, or as an alternative sanction to dismissal e.g. redeployment, regrading, restricted or change of duties and/or relocation.

5.9.4 Any instance of further inappropriate conduct or misconduct (either identical or related to the original concern) during the currency of an existing warning will normally then be assessed at a higher level within the procedure.

5.9.5 A record of warnings will be kept for the appropriate period of time but will then be considered spent, subject to achieving and sustaining satisfactory conduct. HR will maintain a central, confidential record of informal and formal disciplinary hearings and appeals in order to provide relevant data for internal audits and other analyses, ensuring adherence to the Trust's policies on data protection and information governance.

## 5.10 Appeals

5.10.1 A member of staff has the right to appeal against any formal disciplinary action. The procedure for an appeal hearing can be found at Appendix H.

5.10.2 Appeals may be raised by a member of staff on a number of grounds, for instance new evidence, undue severity or inconsistency of the penalty, or a failure in the investigation or disciplinary procedure detrimental to the member of staff's case.

5.10.3 The appeal may either be a review of the disciplinary sanction or a re-hearing, depending on the grounds of the appeal.



- 5.10.4 A member of staff wishing to appeal against a disciplinary decision must do so in writing within 14 days of the date the disciplinary hearing outcome letter was sent, to the Head of Employee Relations & Policy via [clcht.employee.relations@nhs.net](mailto:clcht.employee.relations@nhs.net) stating the grounds on which the disciplinary outcome should be reviewed
- 5.10.5 Principles applying to a disciplinary hearing (5.9.5 – 5.9.21 above) will apply to the conduct of an appeal hearing.
- 5.10.6 The appeal panel will normally be chaired by a manager at a higher level than the manager who chaired the disciplinary panel. They will have not been previously involved in the case or have any conflict of interest that could influence decision making.
- 5.10.7 The appeal hearing should be held within 28 days of receipt of the appeal but if this is not possible, the reasons will be explained to all parties in writing. Managers, members of staff and their companions must make every effort not to unreasonably delay the hearing.
- 5.10.8 The chair of the panel will arrange the hearing and may delegate this task as appropriate. The chair will write to the member of staff concerned, giving a minimum of 14 days' notice of the hearing and providing:
- the date, time and venue
  - details of who will comprise the hearing panel, and others in attendance
  - copies of relevant documentation
  - notification that they have the right to be accompanied by a trade union representative or a work colleague
- 5.10.9 An appeal must not be used as an opportunity to punish the member of staff for appealing the original decision, and it should not result in any increase in penalty as this may deter staff from appealing disciplinary hearing outcomes.
- 5.10.10 The appeal panel can take the following action:
- uphold the disciplinary sanction imposed at the disciplinary hearing
  - uphold the member of staff's appeal and either reduce or expunge the sanction
  - determine that the case should be reheard
- 5.10.11 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 within 14 calendar days of the hearing. The panel's decision will be final.

## 5.11 **Resignation during disciplinary**

- 5.11.1 Should a member of staff resign from the Trust during an investigation, the Trust reserves the right to complete the investigation based on all available information and to carry out any subsequent disciplinary hearing.
- 5.11.2 Members of staff who have left the Trust may remain subject to an investigation and will be invited to attend meetings or hearings voluntarily. The former staff member will be notified of the outcome in writing and the outcome may be referred to the relevant professional body if deemed appropriate.
- 5.11.3 Where the outcome would have imposed a disciplinary sanction, the Trust may choose to give details within an employment reference. Please refer to the References and Employment History Checks Policy on the Trust's intranet hub.

## 5.12 **Grievance during disciplinary**

- 5.12.1 There is no legal requirement that a disciplinary process should be postponed while the employer deals with a grievance raised by the member of staff.
- 5.12.2 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.
- 5.12.3 However the commissioning manager/panel chair 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 officer
  - there is possible discrimination against the member of staff
- 5.12.4 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.
- 5.12.5 Where the grievance raised by the member of staff is unrelated to the disciplinary process, but is raised while the disciplinary process is on-going, there is usually no need for the disciplinary process to be put on hold. Unless the circumstances in which the grievance is raised are so serious that they overshadow the disciplinary process, it is appropriate to investigate the grievance in parallel, but not as part of, the disciplinary process.

### 5.13 **Conduct outside work/criminal offences**

- 5.13.1 A member of staff's conduct outside their employment with the Trust may be subject to action under this procedure if considered by the Trust to be relevant to their employment. It may be deemed necessary to suspend the member of staff during the course of an investigation (see Section 5.6 – Suspension).
- 5.13.2 If an allegation or information is received which indicates that a member of staff (whether during or outside of work) has behaved in a way that poses a risk of harm to a child or vulnerable adult, or has possibly committed a criminal offence against them, such allegations will be referred immediately to the Trust's safeguarding lead who will notify external parties as appropriate
- 5.13.3 Where cases include serious personal data breaches likely to result in a risk to the rights and freedoms of data subjects, the Trust has a legal duty to report such cases to the Information Commissioner's Office within 72 hours via the Trust's Information Governance team.
- 5.13.4 In cases involving suspicion of fraud and/or corruption, the Trust's Counter Fraud Specialist will be informed. The Director of People (or authorised delegate) should consult with the Director of Finance to determine whether an investigation under the Disciplinary Policy will be pursued alongside the separate investigations under the Trust's Counter Fraud, Bribery and Corruption Policy and Response Plan.
- 5.13.5 If a member of staff has been arrested, cautioned, received a summons, reprimanded, warned, remanded in custody, charged or convicted of an offence outside of employment, this will not be regarded as an automatic reason for dismissal or other disciplinary action. However, members of staff have a duty to notify their manager of any such matters and they may be invited to attend an interview under caution.
- 5.13.6 Where the circumstances of the alleged offence may make the individual unsuitable for continued employment, or bring the Trust into disrepute, management will conduct appropriate enquiries where possible and may proceed to disciplinary action based on the evidence available, irrespective of the course of other proceedings. However the Trust will delay carrying out internal investigations and following the disciplinary procedure where requested by external authorities.
- 5.13.7 Where investigations are carried out by the counter fraud team or other agencies such as police or social services, separately from internal investigations under this procedure, the Trust will give full cooperation to try to ensure any such external investigations are carried out to a high standard.
- 5.13.8 If the member of staff receives a custodial sentence the employment contract will be frustrated and employment will be terminated.

## **6 Consultation Process**

The following stakeholders were consulted during the review of this current version of the policy and comments incorporated as appropriate: Staff Side representatives, HR Business Partners and HR Advisors, Equality Diversity & Inclusion Lead, Freedom to Speak Up Guardian.

## **7 Approval and Ratification Process**

This version of the policy was agreed at the HR Policy Review Group on 23 February 2021. Following approval by the Chair of PRG on the 25<sup>th</sup> February, final approval was given by the Policy Ratification Group on 8<sup>th</sup> March 2021.

## **8 Dissemination and Implementation**

This document will be placed on the Trust's intranet hub by the QLD team and will therefore be available to all members of staff. Furthermore the document will be circulated to all managers who will be required to cascade the information to members of their teams and to confirm receipt of the procedure and destruction of previous procedures/policies which this supersedes. Managers will ensure that all members of staff are briefed on its contents and on what it means for them.

The QLD team who will provide a reference number for the policy.

## **9 Archiving**

The QLD team will undertake the archiving arrangements.

## **10 Training Requirements**

New members of staff will be made aware of this policy and procedure. Training for managers will be provided on request to HR.

## **11 Monitoring and Auditing Compliance**

Please see Appendix I.

## **12 Review**

This policy will expire in February 2024. It will be reviewed six months prior to the expiry date in August 2023, or sooner if new legislation, codes of practice or national standards are introduced. It will be reviewed by the HR Policy Group.

## **13 References**

The following relevant legislation and statutory requirements and national standards have been considered when developing and reviewing this policy:

ACAS Code of Practice on Disciplinary and Grievance Procedures (March 2015)  
Data Protection Act 1998  
Discipline and grievance at work: the ACAS guide (July 2020)  
Employment Rights Act 1996  
Equality Act 2010  
Maintaining High Professional Standards in the Modern NHS

#### **14 Associated Documentation**

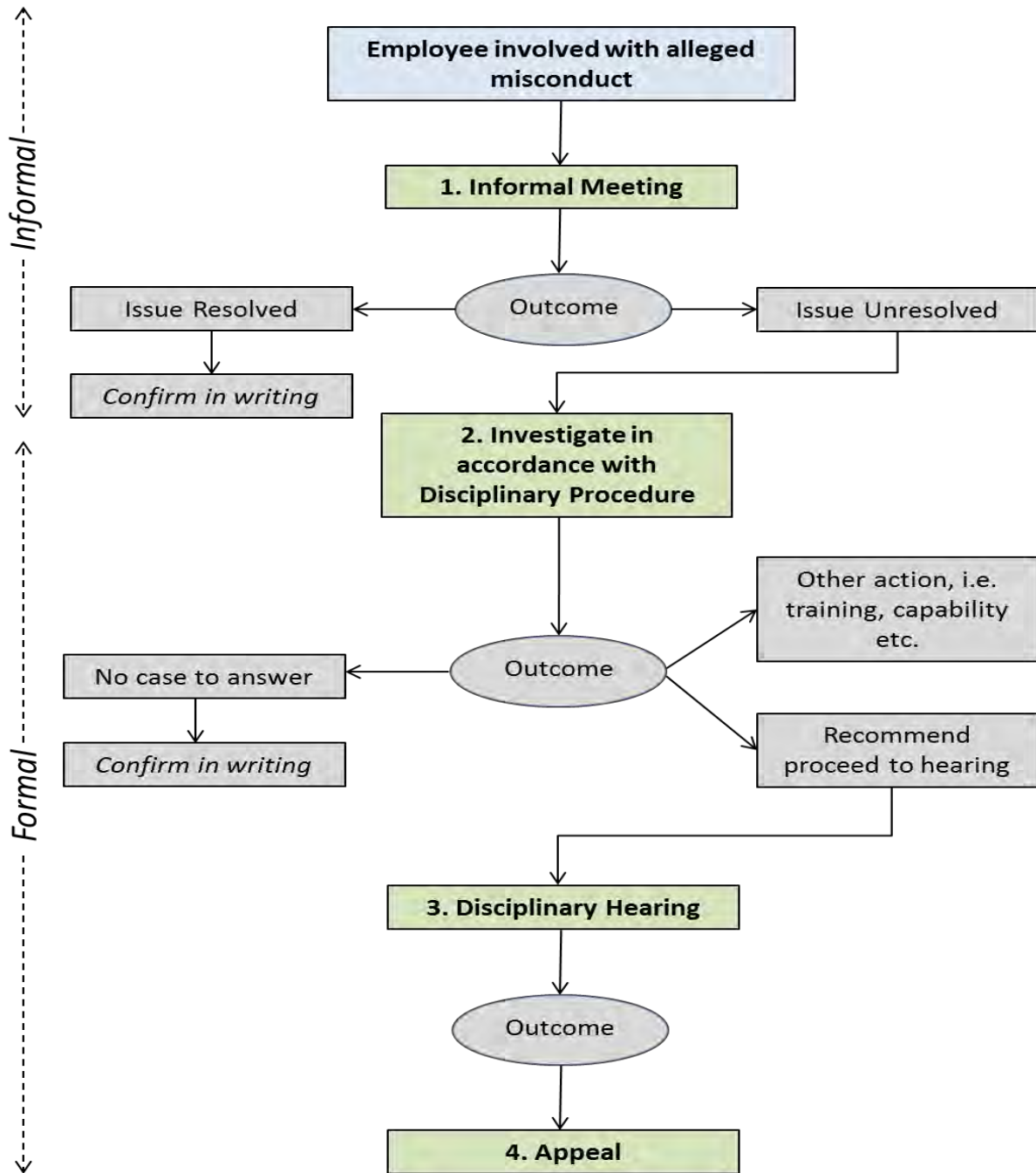
Annual Leave Policy  
Capability Policy  
Code of Conduct and Conflict of Interest Policy  
Concerns Policy and Procedure for Doctors, Dentists and Pharmacists  
Counter Fraud and Corruption Policy and Response Plan  
Equality & Diversity Policy (Staff)  
Freedom to Speak Up: Raising Concerns Policy  
Investigation Guidelines – Workplace  
Managing Safeguarding Allegations made against CLCH Staff (LADO) Policy  
Orientation (Induction and Probation) Policy  
References and Employment History Checks Policy  
Sickness Absence Management Policy  
Trade Union Partnership and Recognition Agreement

#### **15 Appendices**

Appendix A: Disciplinary Flowchart  
Appendix B: Pre-Investigation Decision Tree  
Appendix C: Conversation of Concern  
Appendix D: Suspension Checklist  
Appendix E: Suspension Meeting Guidance  
Appendix F: Levels of Misconduct  
Appendix G: Disciplinary Hearing Procedure  
Appendix H: Appeal Hearing Procedure  
Appendix I: Compliance Monitoring Table  
Appendix J: Equality Impact Assessment

Appendix A: Disciplinary Flowchart

# Disciplinary Flow Chart



V/General File/Policies & Procedures/Flow Charts/Appeal Flow Chart

## Appendix B: Pre-Investigation Decision Tree

This decision checklist should be used by the manager to help determine whether the issue can be dealt with informally or formally, before any action is taken to carry out a formal investigation. It will also help to determine whether the issue is best addressed under the Disciplinary Policy or another policy such as Capability, Grievance or Sickness Absence Management. If the issue is a safeguarding concern, it should be escalated to Safeguarding in the first instance.

Any decision should include steps to encourage and cultivate a culture of learning.

It may be necessary to hold a preliminary fact-finding meeting in order to answer the questions below.

[Where the member of staff is a Doctor or Dentist, please refer to Maintaining High Professional Standards in the Modern NHS](#)

<b>Name of member of staff</b>	
<b>Job title</b>	
<b>Division/Directorate</b>	
<b>Manager (decision maker)</b>	
<b>HR Representative</b>	
<b>Staff Side Representative</b>	
<b>Date(s) of occurrence</b>	
<b>Type of issue</b>	
<b>Date of decision</b>	

- 1. Background** – briefly describe the background to the issue (expand chronology as necessary)

<b>Chronology (timeline) of events</b>		
<b>Date and Time</b>	<b>Event</b>	<b>Comment</b>

## 2. Conduct

(a) Do you believe there was a lack of good judgement? Yes  No

If yes please provide details of probable cause – if related to competence or ill health, cover in Section 3 or 4

(a) Do you believe the member of staff's behaviour was unacceptable?

Yes  No

If yes please provide reason(s) why:

(b) Do you believe the member of staff's behaviour was deliberate?

Yes  No

If yes please provide reason(s) why you believe it was deliberate:



(c) Would another similar trained and skilled member of staff in the same situation act in a similar manner Yes  No

If yes please provide details of what you believe would have happened instead:

**3. Competence** (review of the member of staff's knowledge against their skills)

(a) Do you believe that the member of staff knew of the rule or conduct/performance standard required, or where appropriate, their regulatory body's code? E.g. were policies and procedures available, intelligible, correct and in routine use? Yes  No

If yes please provide details:

(b) Have there been any concerns raised previously through one to one meetings or during PADR? Yes  No

If yes, please review/provide evidence.

(c) Do you believe the member of staff did not have the knowledge of what to do and are therefore unable to carry out their duty in practice? Yes  No

(d) Were there any deficiencies in training or supervision? Yes  No

If yes please provide details:

**4. Ill Health**

(a) Is there a record of sickness absence related to this issue? Yes  No

(b) Is the conduct or competency related to ill health? Yes  No

(c) If yes, have you referred the worker to Employee Health? Yes  No

**5. Mitigating Circumstances**

(a) Are there any mitigating circumstances? Yes  No

If yes, please provide details:

- (b) Is this the first occurrence of this issue? Yes  No
- (c) Was the issue known previously to the manager? Yes  No
- (d) Do you believe the member of staff has been treated less favourably than other staff in the same circumstance? Yes  No

If no, please give details:

**6. Decision**

Consider whether the issue can be managed through an informal conversation to improve conduct or to identify training and development needs.

The member of staff should be informed within seven days of the decision.

Decision	Description	Outcome
<b>No action required</b>	Based on the analysis, there does not appear to be conduct or capability issues surrounding the member of staff.	
<b>Alternative management action</b>	Based on the analysis, a development plan needs to be considered with the appropriate support put into place. (The plan must be implemented within seven days of the decision.)	

<b>Applicable policy</b>	The appropriate policy to follow is: [Disciplinary/ Capability/ Grievance/ Sickness Absence Management]	
<b>Preliminary enquiry</b>	A (further) fact-finding meeting should take place and a decision made following this.	
<b>Formal investigation</b>	Carry out a formal investigation. The Trust's Investigation Guidelines should be used, along with the templates for planning the investigation and for writing up the investigation report.	

## Appendix C: Conversation of Concern

This template should be read and completed in conjunction with the Trust's Disciplinary Policy. It can be used by managers to summarise discussions/ outcomes at informal meetings and can be updated as appropriate to reflect individual circumstances. (Expand text boxes as necessary.)

<b>Name of Staff Member:</b>	
<b>Job Title:</b>	
<b>Division:</b>	
<b>Name of Manager:</b>	
<b>Date of Meeting</b>	

<b>Issue(s) discussed:</b> e.g. timekeeping
<b>Exploration of issues/Summary of key points discussed and the agreed outcome:</b>
<b>What needs to improve and why?</b> e.g. impact of conduct or behaviour
<b>Member of staff's explanation</b>
<b>Improvements and standards required including timescales</b>
<b>Agreed actions/support to be provided/duration</b>
<b>Next steps if no improvement</b>
<b>Date of next review meeting:</b>

Signed (Member of staff):

Date:

Signed (Manager):

Date:

**One signed copy of this notice to be retained by the manager, one copy to be given to the member of staff, and an electronic copy to be sent to the HR Advisor.**

## Appendix D: Suspension Checklist

<b>Name of Member of Staff:</b>	
<b>Job Title:</b>	
<b>Division:</b>	
<b>Name of Suspending Manager:</b>	

Brief outline of allegation(s):

The following questions may assist managers to determine whether or not suspension of a member of staff is appropriate. Assess whether any consequent risk is high, medium or low.

	Yes/No	Detail/Risk	Risk Level
Has there been a critical incident and/or serious allegation(s) made?			
Does the allegation(s) potentially constitute gross misconduct?			
Is there a risk of harm to self/ others if remaining at work?			
Would suspension cause patient safety issues? If so, how could they be mitigated?			
Has there been a breakdown in work relationships preventing continuation of working together?			
Is the presence of the employee likely to hinder an investigation?			
Is restriction of duties feasible? If so, what duties would you restrict?			

Are alternative duties feasible? If so, what would they be?			
Is temporary redeployment or transfer feasible? If so, what duties/what location?			
Is there another alternative e.g. change of hours?			
How will the employee's absence/change in work duties affect work colleagues and patients?			
Can you put into place workable arrangements to cover the employee's absence/change in work duties?			

<b>Action to be taken:</b>	<b>Rationale</b>
Restriction of duties	
Alternative duties	
Temporary redeployment or transfer	
Another alternative e.g. change of working hours	
Suspension	

Is your chosen course of action realistic and reasonable in the circumstances?

Who needs to be made aware of your chosen course of action? Do you need to ask IT to temporarily lock any accounts?

Is the employee an accredited Trade Union representative (so that, if action is to be taken, the relevant Full Time Officer can be notified of any change / attend any suspension meeting)?

Is there a need to issue any internal or external communications?

## **Appendix E: Suspension Meeting Guidance**

Suspension is a neutral, non-punitive act and not in itself disciplinary action. However, it is important to understand that it is likely to be perceived that way by the person affected and they may find it a distressing experience. The Trust has a duty to demonstrate care and compassion throughout the process and to reflect the Trust's values and behaviours.

### **1. Suspension meeting**

The following should be made clear to the member of staff at the suspension meeting:

- They are being suspended from work, the reason for the suspension and that details of the allegations will be supplied in writing within 7 days (if a letter has not already been prepared to hand to them at the meeting) including which policy/code it is thought they may have contravened.
- Suspension is a neutral act to allow investigation.
- The counselling and support available and that they have a right to seek support and advice from either a trade union representative or work colleague employed by the Trust, not involved in the investigation.
- Suspension will be for no longer than is necessary to investigate the allegations and, if appropriate, will be lifted earlier; that a review of the suspension will take place in approximately 4 weeks and 2 – 4 weeks thereafter.
- The name of the person who will act as their point of contact during the suspension, for any handover arrangements etc.
- Whether suspension is on full pay or unpaid (see paragraphs 5.6.13 – 5.6.15 of the policy)
- What will happen next within the procedure and the expected duration of the investigation. (Where an evening or night worker is being suspended, it may be necessary to clarify when the member of staff will be available to contact and/or meet.)
- Where they require access to information in relation to the investigation, they are required to contact the suspending manager to make the necessary arrangements.
- They must treat the matter confidentially and not contact work colleagues concerning the investigation or do anything that could interfere with the investigation
- They must remain contactable and available for meetings during their normal working hours and as per regulatory body requirements, not undertake work for any other employer - the Trust may be obliged to make any secondary employer aware of the suspension
- They must not enter Trust premises for the duration of the suspension other than:
  - for their own or their family's medical treatment



- at the request of the investigating officer or suspending manager
  - where an arrangement for access has been agreed in advance with the suspending manager
  - at the request of the member of staff's representative to attend a meeting or prepare a statement. Representatives will seek agreement from the suspending manager in advance for the member of staff to enter Trust property
- They must not make contact with work colleagues during the investigation and whilst on suspension without consent to do so by the suspending manager, with the exception of their trade union representative or workplace colleague acting as their companion.
  - During the period of suspension, they remain an employee of the Trust and are therefore still subject to all terms and conditions associated with their contract of employment.
  - During suspension, pre-booked annual leave will be honoured. If they wish to take annual leave during the suspension period, this must be requested in line with the Trust's Annual Leave Policy.
  - Any sickness absence must be reported in line with the Trust's Sickness Absence Policy to their point of contact during suspension. For recording purposes, they will be regarded as being on sick leave. If the sickness absence ends before the investigation or any formal hearing is complete, or where the risk remains, the suspension will be resumed.
  - Arrangements for the return of/access to Trust property during the period of suspension, including electronic devices, emails, keys and ID badges.

You should provide the member of staff with a copy of the Trust's Disciplinary Policy and check their contact details: home address, telephone number and email address.

## **2. Following the meeting**

The member of staff should be allowed to collect any personal belongings that they wish to take home, accompanied by the suspending manager.

A position change form must be completed to confirm suspension with or without pay.

The suspending manager must write to the staff member within 7 days of the suspension (if a letter has not already been given to them) and include the following:

- the allegation(s)
- reason for suspension
- confirmation of who commissioned the investigation
- the name of the investigating officer
- where possible, details of arrangements for the investigatory meeting and the likely timescale
- the suspension review period
- that the suspension is not an implication of guilt, confirmation of misconduct or disciplinary action
- that they must not enter Trust premises or contact work colleagues without authorisation in advance from the suspending manager

- details of the person who will act as their contact (name, phone number, email address)

A template letter is available from the HR Business Partner or HR Advisor.

### **3. During the suspension period**

The Divisional Director or equivalent will carry out a review of the suspension after 4 weeks and will send confirmation of the decision to the member of staff.

Suspension should continue to be reviewed on a 2-4 weekly basis and be lifted immediately if the circumstances of the case no longer justify suspension.

Whilst a member of staff is suspended, the commissioning manager must keep them informed of any delays, extensions to the suspension and action following completion of an investigation.

Staff may feel anxious whilst on suspension and maintaining communication throughout can help to reduce this. Managers could appoint an impartial third party to support and be a communication channel for the staff member. Employee Health and counselling service should also be made available.

### **Lifting a suspension**

On completion of an investigation, if the commissioning manager decides that there is no case to answer and suspension was not lifted at an earlier point in the investigation, suspension will usually be lifted immediately and the staff member will return to work with appropriate support. This may include, for example, counselling; 1:1 meetings, restorative conversations, mediation, coaching, mentoring.

In cases that proceed to a formal disciplinary hearing, the staff member is likely to remain suspended until the hearing is held.

## **Appendix F: Levels of Misconduct**

### **Level 1 – Misconduct**

A first written warning will be issued if conduct does not meet acceptable standards, setting out the nature of the misconduct and the change in behaviour required and the right of appeal. The warning will also inform the staff member that a final written warning may be considered if there is no sustained satisfactory improvement or change.

Examples of misconduct:

- failure to respond to an informal warning/notice of improvement
- repeated discourtesy to patients, the public or colleagues
- repeated lateness for duty
- failure to maintain satisfactory standards of conduct and behaviour
- minor breach of confidentiality
- minor breaches of health and safety rules
- minor breaches of the Trust's values and behaviours, policies, or other relevant professional codes of conduct

### **Level 2 – Serious Misconduct**

If the offence is sufficiently serious (but not gross misconduct) or if there is further misconduct or a failure to improve during the currency of a prior warning, a final written warning may be issued.

The warning will give details of the misconduct, the improvement required and the timescale. It will also warn that failure to improve may lead to dismissal (or some other action short of dismissal) and will refer to the right of appeal.

Examples of serious misconduct:

- failure to respond to a written warning at level 1
- more serious breach of confidentiality
- disregard of approved procedures
- more serious breaches of the Trust's values and behaviours, policies, or other relevant professional codes of conduct
- unauthorised absence from duty
- refusal to obey a reasonable management instruction
- maligning the Trust's name or procedures

### **Level 3 – Gross Misconduct**

If, on completion of the investigation and the full disciplinary procedure, the Trust is satisfied that gross misconduct has occurred, the result will normally be summary dismissal without notice/payment in lieu of notice.

However depending upon the circumstances of the case, the disciplinary panel may decide to impose a sanction short of dismissal, e.g. redeployment, regrading, restricted or change of duties and/or relocation.

Examples of gross misconduct:

- failure to respond to a final written warning at Level 2
- malicious damage to the property of the Trust or other parties
- continued unauthorised absence
- serious misuse of the Trust's property or name
- unauthorised removal, use, misappropriation, possession or theft of property belonging to the Trust, a fellow staff member, patient or member of the public
- other serious offences of theft, attempted theft, dishonesty or corruption, acceptance of bribes or inducement
- fraud, including breaches of Code of Conduct and Standing Financial Instructions
- deliberate falsification of records
- disclosure of confidential matters to unauthorised person(s)
- omissions or false statements in e.g. disclosure of interest, application for employment, patient/incident reports, or other Trust documents and records
- acts of violence or aggression, including physical assault, verbal aggression or fighting
- unlawful harassment, bullying or discrimination
- gross negligence, including serious breach of Health and Safety rules or conduct which may endanger the safety of others
- breach of contract, including negligence leading to statutory bar on continuation of contracted role (e.g. loss of State Registration or loss of driving licence)
- conduct associated with misuse of drugs and/or alcohol
- participation in other employment without Trust permission and/or where conflict of interest may arise
- improper use of electronic mail or internet facilities, e.g. deliberately accessing internet sites containing pornographic, offensive or obscene material
- sexual misconduct at work
- serious insubordination or disregard of agreed procedures
- significant breach of Trust values and behaviours, policies, or professional codes of conduct
- actions leading to loss of trust and confidence in the staff member's suitability for employment (this may include offences outside employment and/or bringing the Trust into disrepute)

## **Appendix G: Disciplinary Hearing Procedure**

This procedure should be read in conjunction with the Trust's Disciplinary Policy.

The panel, the employee and their companion, the commissioning manager/investigating officer presenting the management case and any HR representative supporting them, must be present throughout the hearing.

If the hearing is conducted virtually, participants should not have anyone physically with them who has not been invited or declared as a participant in the hearing. Participants' cameras should remain on for the duration of the hearing.

A record will be kept of the proceedings of the appeal hearing. An electronic recording may be made of the hearing if agreed by all parties or where this may be required as a reasonable adjustment.

### **1. Introduction - the Chair:**

- 1.1 Welcomes attendees and makes introductions, explains this is a formal disciplinary hearing conducted in line with the Trust's Disciplinary Policy.
- 1.2 If the member of staff is not accompanied, notes for the record that they have been advised of their right to be accompanied but have chosen to attend unaccompanied.
- 1.3 Confirms with the member of staff, the commissioning manager/investigating officer and panel members that they have received all the documentation relating to the hearing.
- 1.4 Emphasises the need for confidentiality (i.e. all parties must treat as confidential any information pertaining to the case) and explains the procedure:

### **2. Procedure:**

- 2.1 The investigating officer summarises the investigation findings and takes questions from the member of staff, their companion and panel members (in that order). If the commissioning manager is not chairing the hearing, they may also summarise the case and take questions from the other parties.
- 2.2 Any witnesses called by management are invited individually into the hearing and will take questions from the member of staff, their companion and panel members, and then depart.
- 2.3 The member of staff and/or their companion present their response and take questions from the commissioning manager/investigating officer and panel members.
- 2.4 Any witnesses called by the member of staff are invited individually into the hearing to take questions from the member of staff, their companion and panel members, and will then depart.

2.5 The commissioning manager/investigating officer sum up the management case.

2.6 The member of staff and/or their companion sum up their response.

### **3. Adjourn**

3.1 The panel then adjourns to consider the matter and reaches a decision. In a virtual hearing, the panel can leave the hearing and discuss the outcome via telephone or stay on the virtual hearing and ask attendees to log back into the hearing at a particular time.

3.2 The panel may recall any party, in the presence of the other parties, to clarify points of uncertainty on evidence already given.

3.3 If any new facts emerge during the course of the hearing, the panel decides whether further investigation is required. If so, the hearing will be adjourned and reconvened at a later date when the investigation is completed.

3.4 Before deciding the outcome, panel members consider:

- whether the allegations are substantiated
- if the facts are disputed, on the balance of probability which version is likely to be true
- whether there is a case to answer
- if there is a case to answer, which rules have been breached and whether the misconduct has contravened the Trust's values
- the seriousness/level of the misconduct
- the penalty applied/action taken in similar cases in the past
- advice from the professional lead (where appropriate)
- the individual's disciplinary record and general service
- any mitigating circumstances
- whether any proposed action is reasonable and proportionate, having considered all the circumstances

3.5 The panel normally makes a decision at the conclusion of the hearing, but reserves the right to delay a decision depending on the time available, complexity of the case and any other reasonable consideration.

### **4. Reconvene**

4.1 Where possible, the Chair informs management, the employee and their companion verbally at the conclusion of the hearing, of the panel's decision, any disciplinary or other action decided upon, the reasons for this action and the employee's right of appeal against the decision. This should be confirmed in writing within 7 calendar days.

4.2 Otherwise, the parties are informed if the panel's decision is to be delayed, and when the decision will be reached (this will normally be within 7 calendar days of the hearing and written confirmation given within 14 calendar days of the hearing).

In conclusion, the Chair thanks those in attendance for their time and co-operation.

## **Appendix H: Appeal Hearing Procedure**

This procedure should be read in conjunction with the Trust's Disciplinary Policy.

The panel, the member of staff and their companion, the disciplining manager presenting the management case (i.e. the chair of the disciplinary hearing panel) and the HR representative supporting them, must be present throughout the hearing.

If the hearing is conducted virtually, participants should not have anyone physically with them who has not been invited or declared as a participant in the hearing. Participants' cameras should remain on for the duration of the hearing.

A record will be kept of the proceedings of the appeal hearing. An electronic recording may be made of the hearing if agreed by all parties or where this may be required as a reasonable adjustment.

### **1. Introduction - the Chair:**

- 1.1 Welcomes attendees and makes introductions, explains this is an appeal hearing conducted in line with the Trust's disciplinary procedure.
- 1.2 If the member of staff is not accompanied, notes for the record that they have been advised of their right to be accompanied but has chosen to attend unaccompanied.
- 1.3 Confirms with the member of staff, the disciplining manager and panel members that they have received all the documentation relating to the appeal hearing.
- 1.4 Emphasises the need for confidentiality (i.e. all parties must treat as confidential any information pertaining to the case) and explains the procedure:

### **2. Procedure:**

- 2.1 The appellant and/or their companion put their case for the appeal to the panel, citing the grounds for appeal, and take questions from the disciplining manager and panel members.
- 2.2 Any permitted witnesses called by the appellant are invited individually into the hearing and will take questions from the disciplining manager and panel members, and will then depart.
- 2.3 The disciplining manager sets out the management case and the reasons the panel made the decision to issue the sanction and will take questions from the appellant, their companion and panel members.
- 2.4 Any permitted witnesses called by the disciplining manager are invited individually into the hearing and will take questions from the appellant, their companion and panel members, and will then depart.

2.5 The disciplining manager will sum up their case.

2.6 The appellant will sum up their case.

### **3. Adjourn**

3.1 The panel then adjourns to consider the appeal and reaches a decision. In a virtual hearing, the panel can leave the hearing and discuss the outcome via telephone or stay on the virtual hearing and ask attendees to log back into the hearing at a particular time.

3.2 The panel may recall any party, in the presence of the other parties, to clarify points of uncertainty on evidence already given.

3.3 The appeal panel can take the following action:

- uphold the disciplinary sanction imposed at the disciplinary hearing
- uphold the employee's appeal and either reduce or expunge the sanction
- determine that the case should be reheard

### **4. Reconvene**

4.1 Where possible, the Chair informs the parties verbally at the conclusion of the hearing, of the panel's decision and the reasons for the decision. This should be confirmed in writing within 7 calendar days.

4.3 Otherwise, the parties are informed if the panel's decision is to be delayed, and when the decision will be reached (this will normally be within 7 calendar days of the appeal hearing and written confirmation given within 14 calendar days of the appeal hearing).

4.4 The Chair advises that the panel's decision is final and there is no further opportunity for recourse within the Trust's internal procedures.

In conclusion, the Chair thanks those in attendance for their time and co-operation.



## Appendix I: Compliance Monitoring Table

### DISCIPLINARY POLICY & PROCEDURE

Element to be monitored	Lead	How Trust will monitor compliance	Frequency of monitoring	Reporting arrangements
Application of policy and procedure	Director of People	<p>An analysis and review takes place of suspensions, investigation outcomes and disciplinary sanctions under this policy and procedure to ensure it is applied consistently in line with best practice, Acas and relevant legislation.</p> <p>Information is collected where available and analysed to identify possible inequalities and included in the Trust's Equality, Diversity and Inclusion reports.</p>	Four monthly	People Committee

## Appendix J: Equality Impact Assessment

The Trust as a public authority has a legal requirement to analyse the impact of the Disciplinary Policy on the protected characteristics of staff and patients. This helps us to check if there is a negative impact and how we can reduce that impact.

Protected Characteristic	Positive Impact	Neutral Impact	Negative Impact	Reason for Impact and action required
People of different ages (e.g. children, young or older people).	X			The age of staff involved in disciplinary proceedings will be monitored and analysed annually. Actions to address any negative impact will be put in place if this is shown.
People of different religions / beliefs	X			The religion/belief of staff involved in disciplinary proceedings will be monitored and analysed annually. Actions to address any negative impact will be put in place if this is shown.
People with disabilities (physical, sensory or learning)	X			There could be a negative impact for people with a disability who are subject to disciplinary proceedings but their poor performance is due to their disability and not accessing reasonable adjustments. The application of the policy ensures that consideration of whether a staff member's disability is relevant to capability and could be addressed via reasonable adjustments. Disability status of staff involved in disciplinary proceedings will be monitored and analysed regularly. Actions to address any negative impact will be put in place if this is shown.
People from different ethnic groups (including Travellers and Gypsies, refugees and asylum seekers and other migrant communities)	X			The application of the policy and procedure may have a negative impact on BAME staff as the Workforce Race Equality Standard shows that staff from a BAME background are disproportionately represented in disciplinary cases. This negative impact is being minimised by having a clear disciplinary policy with specific guidance for managers including specifying the need to remain fair and apply the policy equally without prejudice. Ethnicity data from informal and formal disciplinary proceedings is reported regularly.
Men or women	X			The gender of staff involved in disciplinary proceedings will be monitored and analysed annually. Actions to address any negative impact will be put in place if this is shown.
Transgender People	X			Monitoring and analysis will include if any staff member has undergone gender reassignment (and disclosed to this Trust) and is involved in the disciplinary

				proceedings. Actions to address any negative impact will be put in place if this is shown.
People who are gay, lesbian or bi-sexual	X			The sexual orientation of staff involved in disciplinary proceedings will be monitored and analysed annually. Actions to address any negative impact will be put in place if this is shown.
People's marital status (including civil partnership)		X		
Pregnancy and maternity (how will the policy affect women who are pregnant or related maternity needs)		X		
Carers (although not a protected characteristic, you may want to consider if the policy affects people with caring responsibilities)		X		
Any other group likely to be affected by this policy (e.g. people on low income, homeless etc.)		X		
2. Please describe engagement and consultation process and the key feedback. E.g. with teams, unions. See sections 6 and 7 in the policy.				
3. If there are negative impacts upon people's protected characteristics. Does the policy in its current form need a full Equality Analysis Assessment to be completed? No				
4. Have you signed this off with the Equality and Diversity team? Yes				

Signed for team / working group:

Name: Barbara Macanas

Date: 24 February 2021

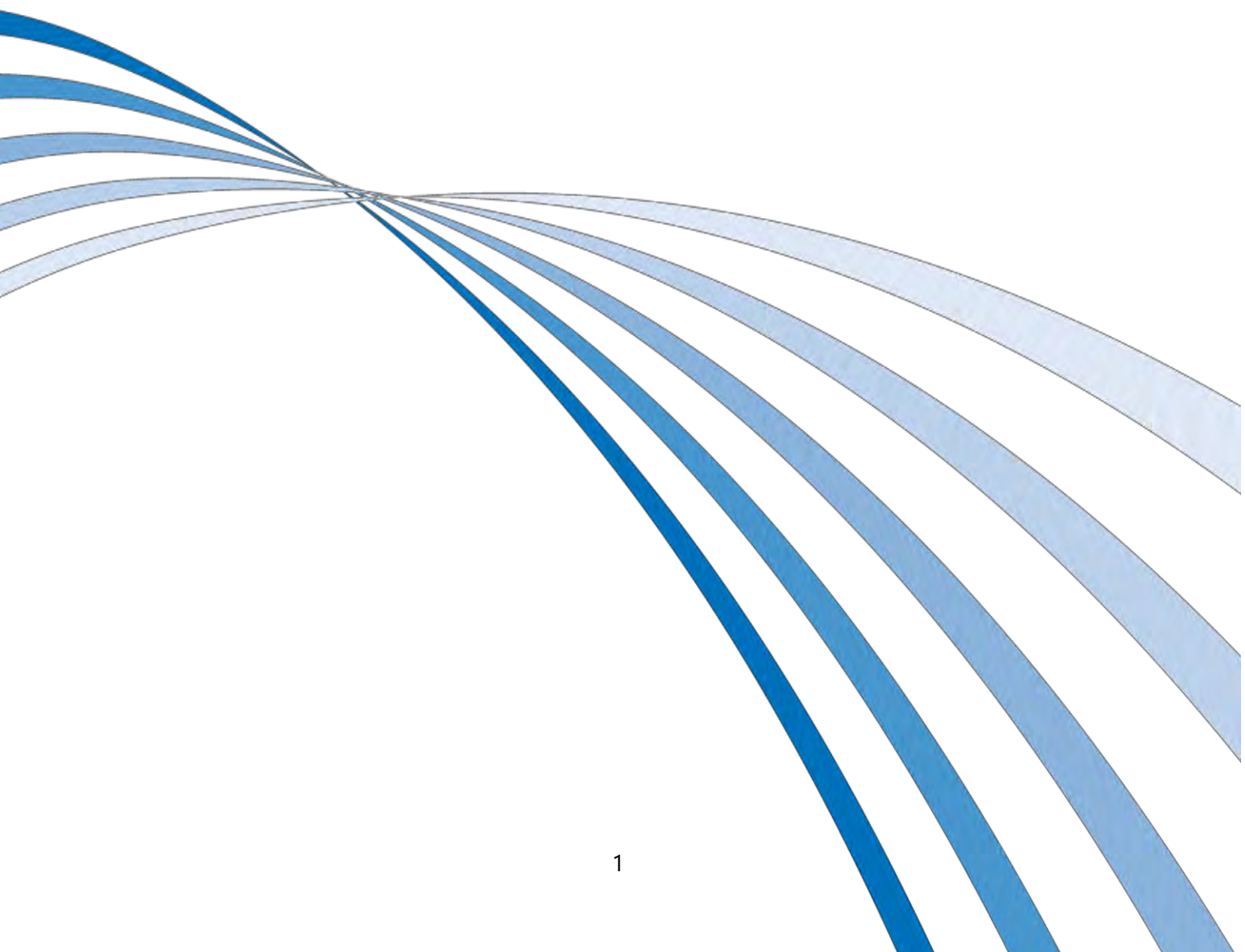


**TITLE: DOMESTIC VIOLENCE AND ABUSE POLICY**

**VALID FROM: SEPTEMBER 2020**

**EXPIRES: AUGUST 2023**

**REFERENCE: SG06**



Version:	4.1
Policy reference and description of where held.	SG06 Intranet – Policies
Title, name and contact details for author:	Safeguarding Team Work Stream 2 – DVA & Harmful Practices Heather Hunter-Whitehouse <a href="mailto:Trish.Stewart@nhs.net">Trish.Stewart@nhs.net</a>
Title, name and contact details for responsible director:	Trish Stewart Associate Director of Safeguarding <a href="mailto:trishstewart@nhs.net">trishstewart@nhs.net</a>
Approved by originating committee, executive or departmental management group	Safeguarding Committee 3 September 2020
Ratified by Policy Ratification Group:	12 September 2020
Review date:	January 2023 Earlier if new developments in the field require it.
Target audience	All CLCH staff

### Version Control Sheet

Version	Date	Author	Status	Comments
2	Review commenced in July 2016	Rachel Phillips, Adila Ahmed, Heather Hunter Whitehouse)	Final	Rationale for review/To include new legislation regarding coercion and control To make more accessible to practitioners To include training schedule/To improve scrutiny and quality assurance processes To ensure that learning and actions from Domestic Homicide Reviews are implemented across the Trust
3	April 2018	Heather Hunter-Whitehouse Rachel Phillips	Final	Appendix C - MARAC Process and Guidelines – added which was agreed by the Safeguarding Committee on 08/02/2018
4	June 2020	DVA & Harmful Practices Work Stream Heather Hunter-Whitehouse		MARAC Process updated in line with action plan from incident so that the list is triage prior to MARAC and team leads are notified of families to be discussed. Update of associated documents
4.1	August 2021	Emily Keeble	Final	Section 3 updated post Domestic Abuse Act 2021 (which received Royal Assent on the 29th of April 2021).

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## **1 Introduction**

High numbers of women and many men will experience domestic abuse in their lifetime. The impact of domestic abuse on the victim and on children even once they have achieved safety is severe and long-lasting. (SafeLives, 2020)

In an analysis of Domestic Homicide Reviews undertaken by the Home Office, it was found that a number of DHR reports identified the need for improved training and awareness on domestic violence and abuse (DVA) for GPs and healthcare professionals. There have been cases where victims had made disclosures but they had not been followed up or referred on to the appropriate agencies. In some cases, the review has stated that the healthcare professional had not known what to do when a patient disclosed DVA. (Home Office, 2013, updated 2017)

The NICE Guidance on states that people presenting to frontline staff with indicators of possible DVA are asked about their experiences in a private discussion and are offered referral to specialist support services (National Institute for Health and Care Excellence, 2016)

CLCH staff must be aware of their responsibilities to identify, respond and signpost to specialist services and support victims of Domestic Violence and Abuse (DVA) and their families.

## **2 Aims and objectives**

### **2.1 Sensitivity and identification**

Assist managers and staff in identifying DVA that may be impacting both clients and employees by providing information about the nature and prevalence of DVA and the impact it has on the health of individuals and families.

Increase awareness of the relationship between DVA and child abuse, protection and between DVA and vulnerable adults.

### **2.2 Response**

Ensure effective practice for health care professionals by providing guidance on appropriate and safe response for those affected by DVA.

Ensure CLCH staff members are well trained, confident and knowledgeable and they understand the impact of domestic abuse on children, enabling them to identify how to take action to help and protect children. (Ofsted, 2016)

Provide information and a consistent approach to responding to victims and their families regardless of ethnicity, gender identity or sexual orientation.

Improve health outcomes (both short and long-term) for individuals and families through recognition of the impact of DVA on health and responding to need appropriately.

Provide support and guidance for colleagues who are experiencing DVA or who have experienced it in the past.

### **2.3 Service provision**

Ensure that services to individuals and families are accessible and competent for all clients, with regards to language needs and cultural sensitivity when working with clients who may face additional difficulties in accessing support. This includes young people, people with disabilities, the travelling community, the LGBTQI+(lesbian, gay, bisexual and transgender) community, people from black, Asian and minority ethnic groups, the elderly, refugees, asylum seekers, the homeless, people with mental health needs etc.



### **3 Definitions and explanation of any terms used**

#### **3.1 Domestic abuse**

The Domestic Abuse Act 2021 (which received Royal Assent on the 29<sup>th</sup> of April 2021) creates a statutory definition of domestic abuse based on the existing cross-government definition.

‘Abusive behaviour’ is defined in the act as any of the following:

- physical or sexual abuse
- violent or threatening behaviour
- controlling or coercive behaviour
- economic abuse
- psychological, emotional or other abuse

For the definition to apply, both parties must be aged 16 or over and ‘personally connected’.

‘Personally connected’ is defined in the act as parties who:

- are married to each other
- are civil partners of each other
- have agreed to marry one another (whether or not the agreement has been terminated)
- have entered into a civil partnership agreement (whether or not the agreement has been terminated)
- are or have been in an intimate personal relationship with each other
- have, or there has been a time when they each have had, a parental relationship in relation to the same child
- are relatives

Controlling behaviour is a range of acts designed to make a person subordinate and/or dependent by isolating them from sources of support, exploiting their resources and capacities for personal gain, depriving them of the means needed for independence, resistance and escape and regulating their everyday behaviour.

Coercive behaviour is an act or a pattern of acts of assault, threats, humiliation and intimidation or other abuse that is used to harm, punish, or frighten their victim

Economic abuse means any behaviour that has a substantial adverse effect on the victim’s ability to

1. acquire, use or maintain money or other property (e.g. not allowing victim to use the family car)
2. obtain goods or services

The Act recognises children as victims of domestic abuse in their own right and extends the concept of harm to a child to include experiencing the effects of domestic abuse (e.g. if domestic abuse prevents the victim from meeting the child’s needs).

#### **3.2 The Serious Crime Act: Coercion and control**

The Serious Crime Act 2015 created a new offence of controlling or coercive behaviour in intimate or familial relationships. The new offence closes a gap in the law around patterns of controlling or coercive behaviour in an ongoing relationship between intimate partners or family members. The offence carries a maximum sentence of 5 years’ imprisonment, a fine or both.

#### **3.3 Domestic Abuse Act 2021**

The Domestic Abuse Act 2021 includes:

1. A new statutory definition of domestic abuse
2. The appointment of a Domestic Abuse Commissioner
3. New powers to deal with domestic abuse - Domestic Abuse Protection Orders and Notices Domestic Abuse Protection Orders

4. A duty on local authorities to provide support to victims of domestic abuse and their children in refuges and other safe accommodation and appoint a domestic abuse local partnership
5. Protection for victims and witnesses in legal proceedings
6. New offences involving abusive or violent behaviour
7. Other
  - a. New ways of managing offenders including the use of polygraph
  - b. New duties on local housing provision including granting secure tenancies for victims of DA and no longer requiring victims to prove priority need status
  - c. Charging for the provision of Medical evidence of domestic abuse is prohibited under the Act
  - d. The Act places the guidance supporting the Domestic Violence Disclosure Scheme (Clare's Law) on a statutory footing

### 3.4 Sensitive enquiry

**Routine enquiry** refers to frontline staff asking all service users about their experience of domestic abuse regardless of whether or not there are any signs of abuse, or whether abuse is suspected. (Agenda, 2019)

**Targeted enquiry** involves relevant practitioners applying a 'low threshold for asking' whether a service user is experiencing domestic abuse when the service user presents certain indicators of such abuse. 'Indicators' are used to describe all of the signs, symptoms, cues or settings through which domestic abuse can be identified. (Agenda, 2019)

### 3.5 Female genital mutilation (FGM)

A form of domestic abuse, female genital mutilation (FGM) is a collective term for a range of procedures which involve partial or total removal of the external female genitalia for non-medical reasons. It is sometimes referred to as female circumcision, or female genital cutting. FGM is a global issue and happens all over the world. Practising communities tend to originate from parts of the Middle East, Asia and Africa.

FGM is a crime in the UK. It is also illegal to take a British national or permanent resident abroad for FGM or to help someone trying to do this. The maximum sentence for carrying out FGM or helping it to take place is 14 years in prison.

FGM is recognised internationally as a gross violation of the human rights of girls and women. (Refuge, 2020)

For further information on FGM, please refer to the CLCH FGM Recording and Reporting Policy (Central London Community Health, 2019)

### 3.6 Forced marriage

A forced marriage is where one or both people do not or cannot consent to the marriage and pressure or abuse is used. It is an appalling and indefensible practice and is recognised in the UK as a form of violence against women and men, domestic/child abuse and a serious abuse of human rights.

The pressure put on a person to marry can take different forms:

Physical pressure might take the form of threats or violence (including sexual violence)

Emotional or psychological pressure might take the form of making someone feel they are bringing shame on their family, making them believe that those close to them may become vulnerable to illness if they don't marry

Denying them freedom or money unless they agree to the marriage

In some cases people may be taken abroad without knowing that they are to be married. When they arrive in that country, their passport(s)/travel documents may be taken to try to stop them from returning to the UK.

(Foreign & Commonwealth Office and Mark Simmonds,, 2013, updated 2020) (Crown Prosecution Service, 2020)

### 3.7 So called 'honour' based violence (HBV)

So called honour based violence (HBV) can be described as a collection of practices, which are used to

control behaviour within families or other social groups to protect perceived cultural and religious beliefs and/or honour. Such violence can occur when perpetrators perceive that a relative has shamed the family and/or community by breaking their honour code. It is a violation of human rights and may be a form of domestic and/or sexual violence. There is no, and cannot be, honour or justification for abusing the human rights of others. (Crown Prosecution Service, 2020)

### **3.8 Domestic Homicide Review**

A Domestic Homicide Review (DHR) is a locally conducted multi-agency review of the circumstances in which the death of a person aged 16 or over has, or appears to have, resulted from violence, abuse or neglect by a person to whom he or she was related, or with whom he or she was or had been in an intimate personal relationship; or a member of the same household as himself or herself. (Home Office, 2013, updated 2017)

### **3.9 Specialist DVA agencies**

Specialist DVA agencies are organisations with expertise in supporting victims of DVA at the highest risk of murder or serious injury.

They employ IDVAs (Independent Domestic Violence Advisors) who provide emotional and practical support to victims, and including legal options to keep a victim safe. IDVAs represent victims as multiagency meetings such as MARAC. (SafeLives, 2016)

### **3.10 Multi-agency Risk Assessment Conference (MARAC)**

A MARAC (Multi-Agency Risk Assessment Conference) is a confidential meeting to discuss how to help victims who are at high risk of murder or serious harm. The CLCH safeguarding team attend the multiagency meeting (including police) and share information to agree an individualized safety action plan.

### **3.11 DASH Risk Indicator Checklist**

The purpose of the DASH risk checklist is to give a consistent and simple tool for practitioners who work with adult victims of domestic abuse in order to help them identify those who are at high risk of harm and whose cases should be referred to a MARAC in order to manage their risk. If you are concerned about risk to a child or children, you should make a referral to ensure that a full assessment of their safety and welfare is made.

[DASH Risk Indicator Check List](#)

### **3.12 MAPPA:**

Multiagency public protection arrangements (MAPPAs) ensure the successful management of violent and serious sexual offenders including, crucially, in their resettlement and rehabilitation in the community. CLCH engages with MAPPA as necessary.

### **3.13 Domestic Violence and Abuse Disclosure Scheme**

The DVA disclosure scheme was implemented across England and Wales in March 2014 (so called Clare's Law).

#### **Right to ask**

Under the scheme an individual can ask police to check whether a new or existing partner has a violent past. This is the 'right to ask'. If records show that an individual may be at risk of DVA from a partner, the police will consider disclosing the information. A disclosure can be made if it is legal, proportionate and necessary to do so.

#### **Right to know**

This enables an agency to apply for a disclosure if the agency believes that an individual is at risk of DVA from their partner. Again, the police can release information if it is lawful, necessary and proportionate to do so.

## 4 Duties

### 4.1 Duties and Responsibilities

#### **NHS role and responsibilities:**

Health Services have a vital role in preventing harm, abuse, or neglect from occurring, as well as identifying signs of abuse or neglect and reporting concerns to local authorities.

#### **Chief Nurse**

The Chief Nurse is the executive lead for safeguarding for the Trust and advises the Trust Board on assurance in all aspects of safeguarding, including DVA.

#### **Associate Director of Safeguarding (ADS)**

The Associate Director of Safeguarding has a responsibility for ensuring robust arrangements are in place with regards to DVA and that those arrangements are reported on regularly, both internally to CLCH and externally to the safeguarding boards and commissioners in line with legislation and contractual requirements.

#### **CLCH Safeguarding Team:**

The Safeguarding Team will provide guidance, advice and support to managers, services and practitioners working with victims and perpetrators of DVA through safeguarding supervision, both planned and on an ad hoc basis. The Safeguarding Team represent the Trust at local MARACs, for safeguarding enquiries and planning and any other multi-agency meetings when required. The Safeguarding Team under the direction of the ADS will be involved in working alongside other agencies in line with legislation to support the Domestic Homicide Review processes.

#### **Clinical and Operational Leads:**

They are responsible for ensuring their staff are aware of, and can understand the requirements of this policy. This includes ensuring staff are up to date with training requirements and participate in supervision appropriate to their role.

#### **Frontline Staff:**

All employees (including bank & agency staff), students, apprentices, volunteers and contractors are required to adhere to the policies, procedure and guidelines of the Trust, including their roles and responsibilities under this policy.

Victims of domestic abuse are more likely to be in touch with health services than any other agency. However, perpetrators will often prevent them from seeking medical attention and it is important that health professionals are open to this possibility.

Health care practitioners are in a unique position to identify, assess, advise, support and refer families where there is DVA. They should always consider its broader effects on any children in the family. For information on recognising and responding to DVA, including the impact on children, please see section 5.2.

Staff must '[think family](#)' at all times and not limit their scope to either children or adults and must seek advice on concerns about DVA.

### 4.2 Human Resources

Under the Health and Safety at Work Act (1974) and the Management of Health and Safety at Work Regulations (1992), CLCH recognises its legal responsibilities in promoting the welfare and safety of all staff. Therefore, this policy applies to staff across all sites as well as agency and contract staff (and elected members).

Human Resources will advise employees and managers on the Trust's response to DVA situations by:

- Working with managers to grant leave, adjust work schedules, arrange salary changes, or relocate employees experiencing DVA
- Working with managers and employees experiencing abuse to develop personalised workplace safety

plan

- Maintaining a list of services and perpetrator programmes available locally and working with managers to grant leave if necessary for employees who perpetrate violence to attend appropriate local programmes
- Participate in regular DVA training
- Work with Associate Director for Safeguarding with regard to consultation with the LADO subsequent processes

## **5 Domestic Violence and Abuse Policy**

### **5.1 Domestic Violence and Abuse: information and context**

#### **5.1.1 Who are the victims of domestic abuse?**

Anyone can be a victim of DVA, but some, particularly women, are more likely to be victims.

Of the nearly 50,000 high-risk victims discussed at MARAC meetings across England and Wales

- More than 90% of these victims are female
- 5-10% are male
- 15% are black, Asian or minority ethnic (BAME)
- 4% are disabled
- 1% are lesbian, gay, bisexual or trans (SafeLives, 2020)

Whilst both men and women may experience incidents of inter-personal violence and abuse, women are considerably more likely to experience repeated and severe forms of abuse, including sexual violence.

They are also more likely to have experienced sustained physical, psychological or emotional abuse, or violence which results in injury or death. (Women's Aid)

Nearly one in three women who suffer from domestic abuse during their lifetime report that the first incidence of violence happened while they were pregnant.

Adolescent to parent violence and abuse (APVA) - there is currently no legal definition of adolescent to parent violence and abuse. However, it is increasingly recognised as a form of domestic violence and abuse and, depending on the age of the child, it may fall under the government's official definition of domestic violence and abuse. (Home Office)

#### **5.1.2 Impact on health**

DVA has a substantial effect on an individual's health.

Domestic abuse has significant psychological consequences for victims, including anxiety, depression, suicidal behaviour, post-traumatic stress disorder, low self-esteem, inability to trust others, flashbacks, sleep disturbances and emotional detachment. Physical injuries are also common including lost teeth, bruising, abrasions, fractures, internal injuries and miscarriages.

One in five high-risk victims reporting that they attended A&E as a result of their injuries in the year before getting effective help

Victims of abuse can also suffer ongoing health issues such as asthma, bladder and kidney infections, gynaecological problems, cardiovascular disease, fibromyalgia, chronic pain syndromes, central nervous system disorders, gastrointestinal disorders, migraines/headaches.

(SafeLives, 2020)

#### **5.1.3 Possible indicators**

There are not always physical signs of DVA and it often goes undetected and ignored, with injuries that go beyond those which can be seen, such as bruising, bite marks, fractures and cuts. There is no sure way of 'diagnosing' DVA but there are a number of factors that may be indicative – see Appendix A.

#### 5.1.4 Victim blaming

Victim blaming is widespread, underpinned by structural inequality between the sexes and is evident in various reports, interventions and approaches around domestic abuse. Examples include Serious Case Reviews where coercive control is misinterpreted as situational couple violence. (Douglas, 2019)

Practitioners must recognise the extreme difficulty for anyone living in a situation of domestic abuse to effect any change, including the difficulties of moving out of a controlling relationship. (Research in Practice, 2016) Leaving an abusive relationship is a very long and difficult process. This is made difficult for a range of reasons. If someone is experiencing DVA, they may:

- feel frightened and uncertain about what the future will hold
- feel frightened for the children
- feel it is in the children's best interests to stay in the family home
- feel ashamed and reluctant to tell or seek help
- have such low confidence and self-esteem that making decisions is a confusing and difficult task
- be isolated from family and friends and feel they have no one to turn to
- be worried about financial security if they leave
- not have information on services available
- have received a negative response, when they reached out to someone for support in the past
- be too exhausted to take on any life changes or major decisions
- still have feelings of love for their partner and fond memories of how things used to be
- hope and believe that things will get better

All women experience difficulty leaving violent relationships, but for women from black and minority ethnic (BAME) groups these problems may be exacerbated by racism, language barriers, immigration status, cultural differences and isolation. Black and ethnic minority women and girls are disproportionately affected by different forms of abuse, for example, forced marriage, dowry abuse, so called 'honour' based violence, sexual exploitation through trafficking and FGM. They are more likely to experience threats of deportation and abandonment, isolation, entrapment, multiple perpetrators and violence that may be indirectly condoned by family and community, for instance, for reasons of culture or perceived dishonor. (Department of Health, 2017)

The elderly, those with disabilities and LGBT individuals also experience additional barriers in both disclosing and leaving a violent relationship.

LGBTQI+ (lesbian, gay, bisexual and transgender) individuals also experience additional barriers in both disclosing and leaving a violent relationship. It is thought that the prevalence of domestic abuse in lesbian and gay relationships is about the same as experienced by heterosexual women. LGBT victims can be reluctant to seek help for domestic abuse because they would need to disclose their sexual orientation and fear a homophobic response from service providers. This is compounded by the fact that health (and other) practitioners may not be confident to identify LGBT domestic abuse. (Department of Health, 2017)

Leaving a violent relationship should not be the focus of interventions. Unfortunately leaving does not always stop the violence and many women are still exposed to abuse when they leave the relationship. Research has shown that women can be at higher risk during this time. The British Crime Survey found that 37% of women studied who had left their abusive partner reported that the violence continued. Women are at greatest risk of homicide at the point of separation or after leaving a violent partner.

Leaving a violent relationship is a process and not a one-off event. Practitioners should be mindful of this and regard any supportive interaction with a client experiencing DVA as positive as any such contact can provide information and empower a survivor.

Asking “why doesn’t he stop” and not “why doesn’t she leave”

Safe Lives, in their response to the Government’s Ending Violence against Women and Girls Strategy 2016 – 2020, states that from talking to women they have found that what they want is for their partners or ex-partners to receive specialist intervention to stop the abuse and that less than 1% of perpetrators get any specialist intervention to address their behaviour. (East, 2016)

### **5.1.6 Impact of DVA on children and parenting**

An increasing number of studies around the world have identified that certain adverse experiences during childhood can have long-term negative impacts on our health and wellbeing. The term adverse childhood experiences (ACEs) is used to describe these and includes experiences that directly hurt a child (e.g. physical, sexual or emotional abuse) or affect them through the environment in which they live. This includes growing up in a household where: domestic violence, parental separation, mental illness, alcohol abuse, or drug abuse is present, or where someone has been incarcerated. (Ford, 2017)

- 140,000 children live in households where there is high-risk domestic abuse
- 64% of high and medium risk victims have children, on average 2 each
- A quarter (25%) of children in high-risk domestic abuse households are under 3 years old. On average, high-risk abuse has been going on for 2.6 years, meaning these children are living with abuse for most of their life
- 62% of children living in domestic abuse households are directly harmed by the perpetrator of the abuse, in addition to the harm caused by witnessing the abuse of others (SafeLives, 2020)

It’s often difficult to tell if domestic abuse is happening, because it usually takes place in the family home and abusers can act very differently when other people are around.

Children who witness domestic abuse may:

- Become aggressive
- Display anti-social behaviour
- Suffer from depression or anxiety
- Not do as well at school - due to difficulties at home or disruption of moving to and from refuges

The effects can last into adulthood. But, once they’re in a safer and more stable environment, most children are able to move on from the effects of witnessing domestic abuse. (NSPCC, 2016)

Domestic abuse has a serious impact on parenting capacity.

- Perpetrating domestic abuse is a parenting choice (Mandel, 2016)
- It creates an inconsistent and unpredictable environment for children
- Carers affected by domestic abuse can exhibit a lack of emotional warmth and higher levels of aggression and rejection
- Even if they try to create a nurturing environment, these attempts can be undermined by the child sensing the fear and anxiety of the person being abused
- Children are harmed by hearing or witnessing violent incidents
- Children can be manipulated by a perpetrator and used against the victim (NSPCC, 2014)



### **5.1.7 Impact of Covid-19 pandemic**

Domestic abuse organisations observed increased household tension and domestic violence due to forced coexistence, economic stress, and fears about the virus. Increased isolation could create an escalation in abuse, where those who are living with an abusive partner or family member, may be less likely to ask for help. Fewer visitors to the household mean that evidence of physical abuse could have gone unnoticed.

The COVID-19 outbreak also curtailed access to support services for survivors, particularly in the health, social care, police and justice sectors. Emergency services experienced an overstretched workforce concentrated on tackling the pandemic.

(SCIE, 2020)

It is important that clients are aware that there is help available and this guide from SafeLives about safety planning in Covid-19 to support victims and survivors of domestic abuse to stay safe is available [via this link](#).

## **5.2 Domestic violence and abuse: recognition and response**

### **5.2.1 Sensitive enquiry**

There are a whole range of indicators to alert health professionals that a patient may be experiencing domestic abuse. Some of these are quite subtle and it is important that professionals remain sensitive to the potential signs and respond appropriately. Victims rely on staff to listen, persist and enquire about signs and cues. Staff must follow up conversations in private, record details of behaviours, feelings and injuries seen and reported, and support them to take action in a safe and considered manner.

All health practitioners, whether working in emergency, acute, primary care or community health, have a professional responsibility, if you identify signs of domestic abuse or if things are not adding up, to ask patients alone and in private, whether old or young about their experience of domestic or other abuse, sensitively. Routine enquiry into domestic violence and abuse is Department of Health policy in maternity and adult mental health services. (Department of Health, 2017)

See Appendix A for guidance on conducting sensitive routine and targeted enquiry.

### **5.2.2 Referral to a specialist DVA agency**

All CLCH staff should be able to respond to disclosure with sensitivity and know how to direct people to specialist services.

Specialist DVA services are provided by the voluntary and community sector, and funded through commissioning by local authorities, CCGs (Clinical Commissioning Groups) and PCCs (Police and Crime Commissioners) and from fundraising. These services provide support, advocacy, advice and sometimes counselling to local victims of domestic abuse. They employ IDVAs to work with victims at significant risk of harm. The specialist may offer each woman a keyworker or IDVA support, advocacy support with housing, attending court, accessing education and training, finding a job, referrals to other agencies, accessing children's services and building self-esteem, self-confidence and independence.

Organisations offering services in your area of work can be found on the CLCH Hub.

You can access support and advice regarding referrals from a member of the Safeguarding Team. Consent is required when making a referral to a specialist DVA agency.

### **5.2.3 Referral to MARAC**

Multi-Agency Risk Assessment Conferences support the protection of victims/survivors and children through timely sharing of information, assessment of risks to children and through developing effective action plans. (Ofsted, 2016)

Please refer to the Guidelines for Health Professionals on the MARAC Process (see Appendix C)

### **5.2.4 Safeguarding children and young people affected by DVA**

Children who live with domestic abuse should experience a child-centered approach from all professionals and the risks to them and their needs are assessed effectively and responded to appropriately. (Ofsted, 2016) See section 5.1.4 for information on the impact of DVA on children.

The Barnardo's DVA Risk Identification Risk Matrix (found on the CLCH Hub) can be used to assess the risks to children from DVA. If you are concerned that a child is at risk of significant harm due to DVA a referral should be made to children's services. Please refer to the CLCH Safeguarding Children and Young People Policy which can be found on the CLCH Hub

### **5.2.5 Safeguarding adults at risk**

A significant proportion of adults at risk, who need safeguarding, do so because they are experiencing domestic abuse.

Additional barriers for seeking help for adults at risk are:

- Lack of accessible information about abuse and legal rights
- Lack of accessible domestic abuse services
- Lack of accessible information about services to meet their care and support needs and about options such as direct payments
- Fear that interpreters (for example, British Sign Language) may not keep confidentiality
- Assumptions that physical and sensory impairments prevent people making their own decisions
- Being used to 'dependency' and a lack of respect and dignity, thus assuming abuse is normal and minimising its impact
- Fear of having to live in a care home
- Reliance on the abuser for care and support (Local Government Association, 2015)

If you are responding to an adult at risk who is experiencing abuse, you will need to follow the CLCH Safeguarding Adults at Risk Procedure and the Guidance for Adult Safeguarding Concerns which can be found on the CLCH Hub.

Responsibilities for safeguarding adults are set in legislation by the Care Act 2014. Adults have a legal right to make decisions where they have the capacity to do so, even if their choices seem unwise. (Mental Capacity Act, 2005) Safeguarding concerns should be made with the consent of the adult at risk – in keeping with the first principle of safeguarding (Department of Health, 2014). Article 8 of the Human Rights Act 1998 gives us a right to respect for private and family life. However, there may be justification to override consent, for example, protection of health, prevention of crime, protection of the rights and freedoms of others.

Where the person lacks capacity to consent, a decision will need to be made in the person's best interests.

## 5.2.6 Employees affected by domestic violence and abuse

**Where employees are victims of DVA**, managers are not expected to provide expert advice or replace trained professional counsellors however they should:

- Seek advice from Human Resources and refer to the staff wellbeing guidance on staff impacted by domestic abuse on the CLCH Hub [Staff Health and Wellbeing – Domestic Abuse](#)
- Be aware that domestic abuse victims are often targeted at work by telephone calls and emails and that the work place can easily be identified as a place of contact (Department of Health, 2017)
- Create an environment where employees feel safe and able to talk about domestic abuse
- Take the employee seriously and take a sympathetic, non-judgmental approach
- Advise the individual of their right to choose a course of action, including referral to appropriate agencies, and involvement of police - no referrals should be made on behalf of the employee without their consent
- Know about the support options available (see the CLCH Hub) and provide telephone numbers of support agencies and counselling services
- Discuss referring the employee to Employee Health for ongoing support and advice
- Provide a sympathetic work approach including time off for the victimised staff member to go to meetings associated incidents (Department of Health, 2017)
- Ensure communication is maintained with the employee during any absence, whilst maintaining confidentiality

**If DVA behaviour has been disclosed and acknowledged by the abuser, managers should:**

- Seek advice from Human Resources and refer to the Trust's Addressing Bullying and Harassment Policy
- Discuss with the employee making them aware of the policy and that DVA is not tolerated.
- Provide them with the relevant information for local groups for perpetrators e.g. the Respect Helpline (0808 8024040) which provides help to perpetrators to improve their behaviour towards their partner.
- Discuss referring the perpetrator to Employee Health.
- Do not collude with employees who justify their behaviour with excuses. Perpetrators are solely responsible for their actions.

## 5.2.7 Responding to disclosure (the Five Rs of Enquiry) (Standing Together etc., 2020)

At all stages of the process you can seek guidance from a member of the Safeguarding Team 020 8102 4218	<p>Step 1 RECOGNISE &amp; ASK screening questions of female clients over 16 (also males where there are concerns of abuse) Always talk to client when they are alone and in a place of privacy.</p>	<p>Remember it can be dangerous to ask about DA in front of anyone else Example of how to frame the question: Violence in the home is so common we now ask all our service users about it routinely Examples of direct questions: Are you in a relationship with someone who hurts you or tries to control you? Did someone cause those injuries to you?</p>		
	<p>Step 2 RESPOND Validate what has happened to them and give key messages.</p>	<p>Examples of key messages: You are not to blame for what has happened There is help available You are not alone You do not deserve to be treated like this Allowing yourself to admit you are being abused is the first step to seeking help Abuse is not your fault and you have a right to be safe, protected and supported Men can suffer domestic abuse too Domestic abuse does occur in same sex relationships</p>	<p>Remember, if all you are able to do is offer this key message, this is a really important step, even if the client is not ready for help.</p>	
	<p>Step 3 RISK ASSESS Assess the client's (and any children's) safety: Remember there are a number of ways an individual can be experiencing abuse.</p>	<p>Examples of questions to assess safety: Are you in a relationship with someone who hurts you? Did someone cause those injuries to you? Is your partner with you? Are you safe to go home? Where are your children? For further information on safety planning, see Appendix B</p>		
	<p>Step 4 REFER Explain services available; give leaflet, MARAC checklist (SafeLives DASH RIC) if appropriate. Throughout the process, always keep the client up to date with what is happening, key messages, recommendations and any referrals made.</p>	Outcome of routine enquiry		
		Disclosure of domestic abuse (current or historical)?		
No/Unclear		Yes		
Continue to build relationship, ask routine enquiry questions at contacts. Consider - instinct, care plan review, change in relationships or family circumstances.		Assess safety- is there an immediate risk to client, children, others?		
		Seek advice from the Safeguarding Team 020 8102 4218		
999 / discuss safety plan (see Appendix) / Referrals to Social Care (adults/children)				
Undertake MARAC checklist if trained to do so (SafeLives DASH RIC)				
Do they reach MARAC threshold? (Score of 14 or more on DASH RIC - DASH RIC guidance in section 3.11) , professional judgement, potential escalation)				
	Yes	No		
	Discuss with Safeguarding Team with a view to referring to MARAC with clients consent, if Discuss other onward referrals with client: Specialist DA agency Social Care (adults/children)	Discuss onward referrals with client: Specialist DA agency Social Care (adults/children)		
<p>Step 5 RECORD actions, outcomes and rationale for decisions made</p>				

### **5.2.8 Recording information on domestic violence and abuse**

Information on routine or targeted enquiry and disclosures should be recorded on client's record (adult) using the correct template – see guidance on the CLCH hub safeguarding pages.

You should record sufficiently detailed, accurate and clear notes to show the concerns you have and indicate the harm that domestic abuse may have caused, even if your suspicions have not led to disclosure. Remember that records can be used in criminal proceedings, obtaining injunctions and court orders, immigration and deportation cases, housing provision, civil procedures (e.g. family courts) and serious case reviews. When recording information, describe exactly what happened and use the patient's own words, with quotation marks, rather than your own. Document injuries in as much detail as possible and use body maps.

Your notes on domestic abuse should include:

- suspicion of domestic abuse which has led/not led to disclosure
- whether routine or targeted enquiry has been undertaken and the response
- relationship to perpetrator, name of perpetrator
- whether the woman is pregnant
- the presence of children in the household and their ages
- nature of psychological and/or physical abuse and any injuries
- description of the types of domestic abuse/any other abuse experienced and reference to specific incidents
- whether this is the first episode, or how long regular abuse has been going on
- presence of increased risk factors
- results of completed Domestic Abuse, Stalking and Honour Based Violence (DASH) risk assessment for the adult and a DVA Risk Identification Matrix (DVRIM) or DASH assessments for each child, if relevant
- indication of information provided on local sources of help
- indication of action taken (for example, direct referrals to a specialist DVA agency or to children's services)  
(DoH, 2017)

## **6 Consultation Process**

This is a reviewed document and was presented to the Safeguarding Committee on 3<sup>rd</sup> September 20

## **7 Approval and Ratification Process**

The initial draft of this procedural document was sent to the Safeguarding Committee on 3<sup>rd</sup> September 20

Final approval was given by the Policy Ratification Group on 14<sup>th</sup> September 20

## **8 Dissemination and Implementation**

This document will be placed on the intranet by the QLD team. The QLD team will provide a reference number for the policy.

It will be therefore be available to all staff via the CLCH NHS Trust intranet.

The document will be circulated to all managers who will be required to cascade the information to members of their teams and to confirm receipt of the procedure and destruction of previous procedures/policies which this supersedes. Managers will ensure that all staff are briefed on its contents and on what it means for them.

This policy will be made available on the Safeguarding page on the CLCH Hub.

## **9 Archiving**

The QLD team will undertake the archiving arrangements.

## **10 Training requirements (DH, 2017)**

Frontline staff should be trained and able to respond to disclosures of DVA to a level appropriate to their role.

### **10.1 Level 1 - CLCH Statutory Mandatory Training Booklet (Level 1)**

Level 1 trained staff will be able to respond to disclosure with sensitivity in a way that ensures safety and being able to direct people to specialist services - for dentists, allied health professionals, ancillary staff and care assistants.

### **10.2 Level 2 – CLCH Statutory Mandatory Training Booklet (Level 2)**

Level 2 trained staff will be able to make routine enquiry with sensitivity and empathy, assessing safety risk and offering a referral to specialist domestic violence services - doctors, nurses, public health nurses and midwives

### **10.3 Level 3 – DVA, routine enquiry and completing a DASH RIC assessment**

Level 3 staff will be able to provide an initial response that includes risk identification and assessment, safety planning and ongoing liaison with specialist services - safeguarding children and adult health professionals, MARAC representatives.

## **11 Monitoring and Auditing Compliance with the Procedural Document**

Compliance with this procedure document will be monitored against the following statements:

1. People presenting to frontline staff with indicators of possible DVA or abuse are asked about their experiences in a private discussion.
2. People experiencing DVA receive a response from level 1 or 2 trained staff.
3. People experiencing DVA are offered referral to specialist support services.
4. People who disclose that they are perpetrating DVA or abuse are offered referral to specialist services.

(National Institute for Health and Care Excellence, 2016)

## **12 Review arrangements**

This policy will be reviewed in January 2023 (or earlier if required). It will be reviewed by the Associate Director of Safeguarding.

## **13. Associated documentation**

- Safeguarding Vulnerable Adults at Risk Policy
- Safeguarding Children and Young People Policy.
- FGM Recording and Reporting Policy
- Addressing Bullying and Harassment: A Framework for Managing Unwanted behavior [link:](#)

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## **15 Appendices**

Appendix A Routine enquiry

Appendix B Safety Planning

Appendix C MARAC Process and Guidelines

Appendix D Compliance monitoring table

Appendix E Equalities impact assessment

## Appendix A Sensitive Enquiry

Information taken from Responding to Domestic Abuse: A Resource for Health Professionals (DH, 2017)

There are a whole range of indicators to warn health professionals that a patient may be experiencing domestic abuse. Some of these are quite subtle and it is important that professionals remain alert to the potential signs and respond appropriately. Some victims also drop hints in their interactions with health and care staff and their behaviours may also be telling. They rely on staff to listen, persist and enquire about signs and cues. They need staff to follow up conversations in private, record details of behaviours, feelings and injuries seen and reported, and support them to take action suitable for their organisation's systems and local pathways. Where the patient is an adult with mental capacity issues action is taken in line with their preferences and consent.

### The signs to look out for include:

#### Inconsistent relationship with health services

- frequent appointments for vague symptoms
- frequently missed appointments, including at antenatal clinics
- non-compliance with treatment or early discharge from hospital

#### Physical symptoms

- injuries inconsistent with explanation of cause or the woman tries to hide or minimise the extent of injuries
- multiple injuries at different stages of healing or repeated injury, all with vague or implausible explanations (particularly injuries to the breasts or abdomen)
- problems with the central nervous system – headaches, cognitive problems, hearing loss
- unexplained:
  - long-term gastrointestinal symptoms
  - genitourinary symptoms, including frequent bladder or kidney infections
  - long-term pain

#### Reproductive/sexual health issues

- unexplained reproductive symptoms, including pelvic pain and sexual dysfunction
- adverse reproductive outcomes, including multiple unintended pregnancies or terminations/miscarriages
- delayed antenatal care, history of premature labours or stillbirths
- vaginal bleeding, recurring sexually transmitted infections or recurring urinary tract infections

#### Emotional or psychological symptoms

- symptoms of depression, fear, anxiety, post-traumatic stress disorder (PTSD), sleep disorders
- self-harming or suicidal tendencies
- alcohol or drug misuse

#### Intrusive 'other person' in consultations

- partner or spouse, parent, grandparent (or, for elder abuse, a partner or family member) always attends appointments unnecessarily
- the patient is submissive or afraid to speak in front of the partner or relative, escort or spouse. The escort is aggressive, dominant or over attentive, talking for the patient or refusing to leave the room.

None of these signs automatically indicates domestic abuse, but even if the patient chooses not to disclose at this time, knowing that you are aware of the issues and are supportive builds trust and lays the foundations for them to choose to approach you or another practitioner at a later time.

## Privacy and direct questions

### Privacy

Many health settings are busy places, with people passing in and out of cubicles and offices, and this will not be conducive to revealing vulnerability or talking about feelings.

Only ever raise the issue of domestic abuse with a patient when you are alone with them in private and, if not, ask the escort to wait elsewhere.

Even if a patient is accompanied by someone of the same gender, that person could be related to the abuser or could be the abuser.

Ensuring that the client is alone can be difficult when supporting them over the phone or online.

Before contacting the client, be prepared - check the clinical record to see if there is safety information or a contact method that the client prefers.

Be ready for the possibility that the alleged perpetrator may answer the phone and know how you are going to deal with this. E.g. ask for a different name (have this prepared in advance) and then apologise for ringing a wrong number or ask to speak to the victim survivor and have a reason for your call prepared that is unlikely to raise suspicion and put the victim survivor at increased danger e.g. their child's health.

Ask closed questions to establish this, allowing them to give 'yes' or 'no' answers. Examples: Are you alone? Is it safe to ask you some questions about your relationship with \_\_\_?

If it is safe to talk to the client, establish a code word or sentence, which they can say to indicate that it's no longer safe to talk and end the call. (e.g. 'No I'm not interested, thank you' - in which case you should call back later).

Because domestic abuse can take many forms, it is important to look beyond signs of physical injuries. You may come across clients who will clearly say they are being abused and need help, but it is far more likely that you will encounter coded disclosures.

If it isn't a safe time then ask for a suggested safe time to call back. Be aware that situations change quickly and that risk is dynamic. It is important to always follow up and call back later or ask a colleague to call back if someone terminates a call abruptly. Following through is important in building trust with client. Ask if the client is alone to ensure that the perpetrator isn't in the same room. Be aware that the perpetrator of the abuse may be in the house or enter the house and ask the client to terminate the call if the perpetrator of the abuse comes into the room.

Ask if the client feels safe and if there is any immediate danger. Always advise calling 999 if there is any immediate danger. If the client is unable to do this, but wants to, you can offer to do this for them. Remind the client that if they are in danger they can still access healthcare services despite COVID-19 restrictions.

If the client does not speak English, ensure that an independent interpreter is available. Do not use family members or friends as translators.

(Standing Together etc., 2020)

### Ask direct questions

Explain that you are concerned (or, if it is a routine enquiry, that you ask everyone), and respectfully ask direct questions, such as:

Has anyone ever hit you? Who was it? What happened? When? What help did you seek?

Are you ever afraid at home or in your relationship?

Have you been pressured or made to do anything sexually that you did not want to?

Using an interpreter

Never use a relative or friend of the victim as an interpreter. Always use a professional interpreter, who has had domestic abuse training or an advocate from the local specialist domestic abuse agency. The interpreter needs to be the same gender as the victim and should sign a confidentiality agreement. Look at your patient and speak directly to them – not to the interpreter.

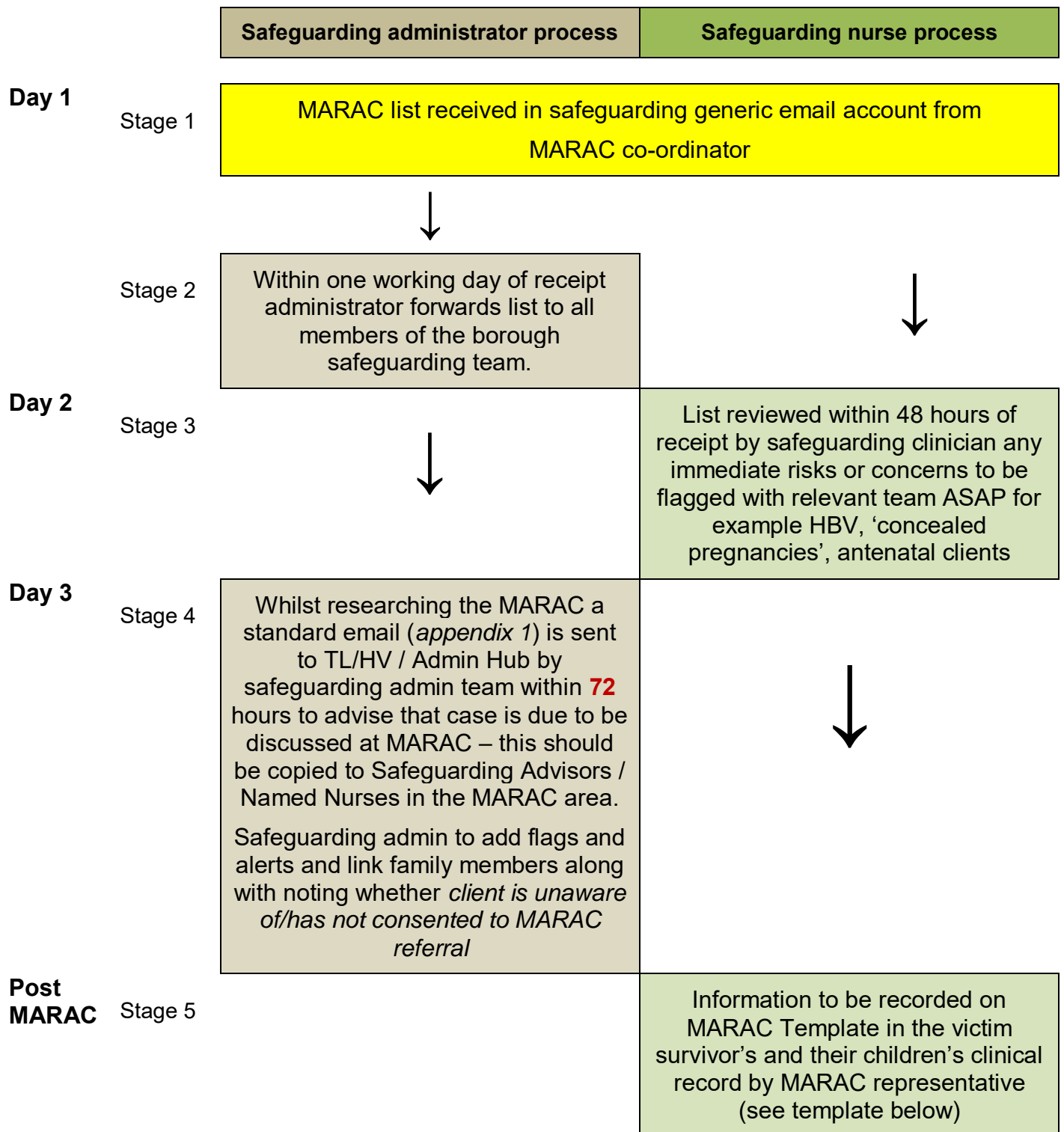
## Appendix B Safety Planning

- As always, if you or someone else is in immediate danger please call 999 and ask for the police. Silent calls will work if you are not safe to speak – use the [Silent Solution system](#) (see below for information)
- A referral to a specialist DVA agency for advice regarding safety planning
- Plan in advance how you might respond in different situations, including crisis situations.
- Keep with you any important and emergency telephone numbers (for example, local domestic violence service, the police domestic violence unit, GP, your social worker, if you have one, your children's school, your solicitor; and the Freephone 24 Hour National Domestic Violence Helpline 0808 2000 247)
- Teach your children to call 999 in an emergency and what they would need to say (for example, their full name, address and telephone number).
- Are there neighbours you could trust, and where you could go in an emergency? If so, tell them what is going on, and ask them to call the police if they hear sounds of a violent attack.
- Rehearse an escape plan, so in an emergency you and the children can get away safely.
- Pack an emergency bag for yourself and your children, and hide it somewhere safe (for example, at a neighbour's or friend's house). Try to avoid mutual friends or family
- Try to keep a small amount of money on you at all times – including change.
- Try to keep your mobile phone with you.
- If you suspect that your partner is about to attack you, try to go to a lower risk area of the house – for example where there is a way out and access to a telephone. Avoid the kitchen or garage where there are likely to be knives or other weapons; and avoid rooms where you might be trapped, such as the bathroom, or where you might be shut into a cupboard or other small space.
- Be prepared to leave the house in an emergency.
- Advice for staying safe online can be found on the SafeLives website by following [this link](#).  
(Women's Aid)

### The Silent Solution

- The '[Silent Solution](#)' is a system that alerts the police to 999 mobile callers who are in need of emergency assistance but are too scared or unable to speak.
- After calling 999 from a mobile, the call operator will ask the caller which emergency service they need. If the line remains silent, the operator may ask a series of questions and suggest that the caller tap the handset, cough or make a noise by way of response.
- If the caller remains silent and if the call operator cannot decide whether an emergency service is needed, they will forward the call to the 'Silent Solution' system.
- This is a Police automated message that begins with 'you are through to the police...' and lasts approximately 20 seconds.
- The message requests that the caller press 55 to be put through to the Police. If the caller does not press 55 the call will be terminated. It is therefore vital that victims of domestic violence are made aware that in an emergency situation they must press '55', to ensure that the Police are notified of the call.

## Appendix C MARAC Process and Templates



## **MARAC Templates**

### **Email from administrator following research on day 2/3:**

#### **Email to be sent as high priority with subject heading 'Pre MARAC Notification'**

*(NB CC to Named Nurse / Safeguarding Advisors for MARAC area)*

Dear Team Leader / HV / SN / Admin Hub

The following family are due to be discussed at the 'name of borough here' MARAC, on 'date here'  
NHS Number/s: enter family information here

Please note that this client is reported to be pregnant (delete if not applicable)

Please note that this victim/survivor is reported to either be unaware of/or has not consented to the MARAC (delete if not applicable)

Please ensure that any planned contact which includes appointment letters, home visits and telephone or video conference contact considers this risk.

If you or your team have any information which is not recorded on SystemOne and which should inform the MARAC, please share this with the safeguarding team as soon as possible.

Following the MARAC the 0-19 clinician should review the clinical records or contact their safeguarding advisor for further information

Kind regards

### **Post MARAC recording on clients' records:**

#### **Victim Survivor**

Discussed at (insert name of borough) MARAC on (insert date)

MARAC case number:

Is client aware of MARAC referral?: Yes/No

Is the victim survivor known to an IDVA service? Yes/No insert name of service?

Name of alleged perpetrator:

Relationship of alleged perpetrator to child:

Main issues and concerns:

Actions for CLCH:

#### **Child/ren:**

The mother (or other relationship of victim survivor to child) of this child was discussed at MARAC on insert date - please see mother's record (insert mother's NHS number) for further information.

## Appendix D Compliance Monitoring Table

Policy lead	Element(s) to be monitored	How will you ensure that the policy is being implemented?  E.g. via an audit, KPIs	How often will you monitor that the policy is being implemented	Reporting arrangements  (Which committee or group will the monitoring of the policy be reported to?)
Trish Stewart /DDO	People presenting to frontline staff with indicators of possible DVA or abuse are asked about their experiences in a private discussion.	Audit use of DVA templates	Annually	Safeguarding Committee
Trish Stewart	Staff have completed DVA training commensurate to role	monitor through KPIs held by divisions	Annually	Safeguarding Committee
Trish Stewart	People experiencing DVA or abuse are offered referral to specialist support services.	Evidence of local referral pathways to ensure that people experiencing DVA or abuse are referred to specialist support services.	Annually	Safeguarding Committee

## Appendix E Equality Impact Assessment Tool

### Domestic Violence and Abuse Policy 2020

CLCH as a public authority has a legal requirement to analyse the impact of the policy on the protected characteristics of staff and patients. This helps us to check if there is a negative impact, how we can reduce that impact. Please note that all information in the grid is taken from Responding to domestic abuse: A resource for health professionals, Department of Health, 2017

Protected characteristic	Positive impact	Neutral Impact	Negative Impact	Reason for impact and action required
People of different ages (e.g. Children, young or older people).	<input type="checkbox"/>			<p>Abuse of parents by children</p> <p>The prevalence of abuse of parents by their children under 18 years old is very difficult to ascertain. It is more commonly experienced by mothers than fathers – and is more common among single parents. A large proportion of the children and young people inflicting the abuse will themselves have been physically or sexually abused or have witnessed abuse. The elderly experience additional barriers in both disclosing and leaving a violent relationship. Fear of unknown intervention can feel more risky than the known fear of abuse, especially where perpetrators might be depended on as carers and also as relatives or friends. It may be that they act as a carer for perpetrator and may be worried about their health and wellbeing.</p> <p>For young women fear and financial constraints make leaving an abusive partner impossible, especially where there are lifelong social circles, such as from being in the same education establishment or local gang. For many, living with their parents with no financial independence is untenable.</p>
People of different religions / beliefs	<input type="checkbox"/>			<p>Religion, cultural beliefs and practices can contribute to the under-reporting of domestic abuse.</p>
People with disabilities (physical, sensory or learning).	<input type="checkbox"/>			<p>Those with disabilities also experience additional barriers in both disclosing and leaving a violent relationship. Fear of unknown intervention can feel more risky than the known fear of abuse, especially where perpetrators might be depended on as carers and also as relatives or friends.</p>



People from different ethnic groups	<input type="checkbox"/>			<p>Black and ethnic minority women and girls are disproportionately affected by different forms of abuse, for example, forced marriage, dowry abuse, honour-based violence, sexual exploitation through trafficking and FGM. They are more likely to experience threats of deportation and abandonment, isolation, entrapment, multiple perpetrators and violence that may be indirectly condoned by family and community, for instance, for reasons of culture or perceived dishonour.</p>
Men or women	<input type="checkbox"/>			<p>Women and girls want the abuse to end, but they do not always want the relationship to end. They might be afraid of the abuser, and the abuse often escalates and continues after separation. They could be financially dependent on the abuser, afraid to be alone, have lost their self-esteem and confidence to leave, still love or feel a bond with their abuser. They may want their children's father to be around when they are growing up and/or to remain within or near their family, social networks and community. They may be suffering long-term post-traumatic stress and be unable to make critical decisions.</p> <p>Abuse of men - DVA is largely perpetrated by men on women but variations are also evident, although women remain the main victim group. Nonetheless, men can be abused by other men or women in an intimate partner relationship. They may find it difficult to access services as they may feel that they will not be believed and they may be ashamed by the abuse and feel they have failed in the traditional perception of their masculinity. Fathers may fear that losing custody of children and think that mothers are more likely to be believed. They may be concerned that leaving will put their children at risk of abuse. Finance may play a part where men may lack resources to be able to set up another home and/or support their children if they move out. They may feel able to change the relationship by staying.</p>
Transgendered people	<input type="checkbox"/>			<p>Access to services may be difficult if the relationship is same-gender or transgender. It may not be public knowledge and there could be a fear of isolation.</p>

People who are gay, lesbian, and bi-sexual	<input type="checkbox"/>			It is thought that the prevalence of domestic abuse in lesbian and gay relationships is about the same as experienced by heterosexual women. LGBT victims can be reluctant to seek help for domestic abuse because they would need to disclose their sexual orientation and fear a homophobic response from service providers. This is compounded by the fact that health (and other) practitioners may not be confident to identify LGBT domestic abuse.
Refugees and asylum seekers				Refugees and asylum seekers may experience barriers to seeking help due to fears of deportation and abandonment, isolation, entrapment and multiple perpetrators and violence.
2	<p><b>Please describe engagement and consultation process and the key feedback. E.g. with teams, unions.</b></p> <p><b>Please see Section 6 of the Policy.</b> Balachandre Leelasoma, Equality and Diversity Lead for Unison, CLCH, was included in the initial consultation.</p>			
3.	<p><b>If there are negative impacts upon people’s protected characteristics. Does the policy in its current form need a full Equality Analysis Assessment to be completed?</b></p> <p>It is the aim of the policy to mitigate any negative impact by raising awareness of the issues that each equality group may face.</p> <p>Health and social care practitioners should understand equality and diversity issues and ensure that assumptions about people’s beliefs, values, gender identity or sexuality do not stop them from recognising and responding to DVA. (NICE Guidance: Domestic violence and abuse - Quality standard, National Institute for Health and Care Excellence, 2016)</p>			

**TITLE:** EMPLOYMENT CHECKS PROCEDURE  
**VALID FROM:** OCTOBER 2018  
**EXPIRES:** APRIL 2022  
**REFERENCE** WFC06

This document expiry date has been extended to April 2022 as per approval by the Policy Ratification Group in January 2022.

This procedural document supersedes the previous Employment Checks Procedure, version 4.0.

<b>Version:</b>	5.0
<b>Policy reference and description of where held.</b>	WFC 06 Intranet – Policies
<b>Title, name and contact details for author:</b>	Liz Lubbock, Policy, Projects & Engagement Lead. For advice, contact a Workforce Business Partner, HR Advisor or Capita HR team, as appropriate.
<b>Title, name and contact details for responsible director:</b>	Director of People and Communications
<b>Approved by originating committee, executive or departmental management group and date.</b>	Agreed at the HR Policy Group meeting on 20/08/18.
<b>Ratified by Policy Ratification Group:</b>	19 <sup>th</sup> September 2018
<b>Review date:</b>	March 2021
<b>Target audience</b>	All staff.

### Version Control Sheet

Version	Date	Author	Status	Comments
1.0	Dec 2010	Richard Mor	Archived	Amalgamation of H&F, K&C and Westminster policies.
2.0	Jan 2012	Richard Mor	Archived	Integration of CLCH and Barnet policies and update to take account of legal and organisation changes. Agreed in partnership and signed off by Policy Advisory Group.
3.0	Nov 2013	Ann Kelly; Liz Lubbock	Archived	Updated in line with changes to NHS Employers' Employment Check Standards and the introduction of Streamlining Staff Movements Programme.
4.0	Jan 2014	Liz Lubbock	Final	Minor changes: a new section 5.1.8 'Executive and Other Senior Appointments and Fit and Proper Person's Test'; post title updated in 5.1.9 (now 5.1.10) and 5.5 updated. Changes agreed at HR Policy Group meeting on 11 May 2015.
5.0	Sept 2018	Liz Lubbock	Final	Reviewed and updated

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## 1. Introduction

Central London Community Healthcare NHS Trust (CLCH), in partnership with Capita, ensures that it has robust recruitment and employment practices in place to verify a person's suitability for the job they are being appointed to do. CLCH, through Capita, will ensure that it is compliant with the relevant fundamental standards by undertaking the checks outlined within the mandatory NHS Employers' Employment Check Standards, and with other legal requirements, for all:

- applicants for all NHS positions (prospective employees) and
- staff in ongoing NHS employment.

This includes permanent employees, employees on fixed-term contracts, volunteers, students, trainees, contractors, and temporary workers on the Trust bank. It is also necessary to ensure that the temporary staffing providers comply with these standards when locums and agency employees are appointed.

## 2. Aims and objectives

CLCH, through its partner organisation, Capita, will ensure that all employees have undergone appropriate pre-employment checks to ensure the safe delivery of services to all patients, clients and public.

All job applicants will be treated in the same way at each stage of their recruitment process. All checks will be carried out in compliance with the Data Protection Act 1998, the new General Data Protection Regulation (GDPR) which takes effect in May 2018, anti-discrimination legislation, NHS Employment Check Standards and other legal requirements. Pre-employment checks will be the final part of the selection process for appointment and are not a substitute for an effective recruitment and selection process. This procedure sets out the various responsibilities and actions required.

This policy also aims to ensure that, in line with the Equality Act 2010 and CLCH's Equality and Diversity Policy, no employee, or prospective employee, receives less favourable treatment on the grounds of age, disability, race, gender, pregnancy and maternity status, religion and spiritual belief, sexual orientation, gender reassignment, marriage and civil partnership status.

## 3. Definitions

**Employment Checks:** the employment checks that employers must carry out before appointing staff into positions.

## 4. Duties

### 4.1 Prospective employees will:

- accurately and honestly provide all relevant information and documents required by CLCH to enable required pre-employment checks to be undertaken;
- provide documentary evidence of identity, the right to work in the UK, qualifications and/or professional registration.

#### **4.2 Current employees will:**

- accurately and honestly provide all relevant information and documents required by CLCH to enable ongoing and new checks to be undertaken;
- provide any relevant and updated documentary evidence of the right to work in the UK, qualifications and/or professional registration.

#### **4.3 Managers with responsibility for recruitment will:**

- attend recruitment and selection training and be aware of, apply and comply with all CLCH recruitment and selection procedures;
- carry out an effective selection process and satisfy themselves that the successful candidate is suitable to work for CLCH and is qualified to do the job;
- make decisions about positive DBS disclosures in conjunction with Workforce Business Partners and the Head of Service/Head of Safeguarding as appropriate.

#### **4.4 Capita HR team will:**

- ensure that all legal requirements, including those in the Equality Act 2010, and requirements in the NHS Employers' Employment Check Standards, are implemented and adhered to (available at [www.nhsemployers.org](http://www.nhsemployers.org));
- make it clear to prospective employees that appointment to any position is conditional on the necessary checks being satisfactory to CLCH and that any information disclosed on the application form will be checked;
- be responsible for seeking written assurances that all agency workers supplied have the correct level of clearances commensurate with the roles they will be required to undertake;
- inform all prospective employees that any offer of appointment may be withdrawn if they knowingly withheld information or provided false or misleading information that is relevant to their appointment, and that employment may be terminated should any subsequent information come to light once they have been appointed;
- ensure that every person appointed to CLCH has been subject to the appropriate pre-employment checks and that evidence is accurately stored on electronic or paper-based files (directly employed staff only) as appropriate and in line with the Records Management NHS Code of Practice;
- ensure that all information gathered and recorded during the recruitment and selection process meets all audit requirements and is stored and used only for its specified purpose (directly employed staff only);
- check original documentation, face-to-face with the applicant, to verify identity, right to work in the UK, professional registration and qualifications;



- update the Electronic Staff Record (ESR) with details of completed pre-employment checks;
- provide accurate reports and reminders to Divisions, relevant Trust Committees as required, and ad hoc reports;
- work with staff and managers in a timely and clear way to ensure required actions are taken to ensure all necessary checks are completed and refreshed as required;
- inform the Director of People and Communications, if they identify any issues regarding the effectiveness of the process and changes required.

#### **4.5 Employee Health Service will:**

- undertake screening and health checks of employees prior to the successful candidate starting in post;
- if workplace adjustments are required, provide guidance and recommend reasonable adjustments to ensure that the successful candidate is able to undertake the roles and responsibilities of the job being offered.

#### **4.6 Procurement team will:**

- be responsible for seeking written assurances that contractors supplied have the correct level of clearances commensurate with the roles they will be required to undertake by obtaining a copy of the temporary worker placement checklist.

### **5. Procedural document for employment checks**

#### **5.1 Employee checking process**

The Capita HR team will carry out the employee checking process to ensure prospective employees meet legislative, NHS and CLCH requirements. This section describes the checks currently required within NHS Employment Check Standards. Should they be updated and/or others introduced over time, Capita will implement them and inform the Director of People and Communications.

##### **5.1.1 Identity checks**

Identity checks are designed to determine that the information given by an applicant is genuine, it relates to a real person, and establishes that they own and are rightfully using that identity.

The purpose of undertaking identity checks is to minimise the risk of employing or engaging a person who is an illegal worker, or a person that is impersonating another. This is the first check performed and an application cannot progress until the Trust, through the Capita HR team, is satisfied that a person's identity is proven.

The Capita HR team will follow and comply with the NHS Employment Check Standard for “Identity Checks” to verify the identity of all prospective employees Trust employees. This will include, for example,

- meeting the applicant face-to-face,
- seeing and reviewing original identity documents,
- validating the authenticity of the documentation obtained,

The Capita HR team will also seek guidance from the Centre for the Protection of the National Infrastructure as necessary ([www.cpni.gov.uk](http://www.cpni.gov.uk)).

### **5.1.2 Right to work**

A right to work check determines whether an applicant has the legal right and permission to work in the UK.

Under the Immigration, Asylum and Nationality Act 2006, it is a criminal offence for employers to knowingly employ illegal workers and reinforces the continuing responsibility on employers of migrant workers to check their ongoing entitlement to work in the UK.

The Capita HR team will follow and comply with the NHS Employment Check Standard for “Right to Work Checks” which outlines the type of checks and documentary evidence which are required in order to verify a candidate’s legal right to work in the UK. This includes:

- the type and level of checks required;
- specific forms of right to work documentation;
- the type and level of checks for specific countries;
- the points-based immigration system.

Where necessary, they will seek guidance on preventing illegal working through the Home Office.

Before allowing a candidate to start work, Capita HR must:

- request right to work documents of the candidate;
- verify that all the documents are valid in the presence of the candidate;
- make copies of all documents presented and store them securely;
- record the date they made the check.

### **5.1.3 Employment history and reference checks**

An employment history and reference check refers to the process CLCH must follow to verify information already provided by a candidate as part of their application. It allows the Trust to gain a better picture about the candidate's previous employment, training and/or other activities undertaken out in the community, such as volunteer work, which can help confirm a recruitment decision.

Reference requests should be made after the interview process has taken place and once a provisional offer of appointment has been made. In certain circumstances, it may be deemed reasonable and proportionate to see references prior to interview, for example, when making senior appointments such as medical consultants or board members. All candidates must be advised in writing when obtaining references at an earlier stage in the recruitment process.

In all cases, permission must be sought from the candidate before obtaining a reference from their current employer, as they may not have informed them of their intentions to leave the organisation.

Previous employment history must be checked before an unconditional offer of employment is made to a prospective employee. Employment history, references and application forms must be cross-checked as part of this process.

The Capita HR team will follow and comply with NHS Employment Check Standard, "Employment history and reference check" which outlines the requirements for seeking references to verify a candidate's employment and/or training history. They will also comply with the Trust's References and Employment History Checks Policy.

They will make it clear to prospective employees that appointment to any position will not be made subject to satisfactory employment history and reference checks and that any information disclosed on the application form will be checked.

### **5.1.4 Criminal record checks**

A criminal record check relates to the data held about a candidate's criminal history. In the majority of cases, a check will include all criminal offences including cautions, convictions, reprimands and final warnings.

Criminal record checks help CLCH ensure that unsuitable people are prevented from working with those who are considered vulnerable because of certain circumstances. They are obtained through the Disclosure and Barring Service (DBS).

The need for a DBS check is determined by the activities and the type of access to patients that an employee, or prospective employee, will have. A DBS check must be carried out if the post meets the criteria. Obtaining checks on individuals who are not being appointed to, or are not employed in, an eligible position is unlawful.

The Capita HR team will follow and comply with NHS Employment Check Standard, "Criminal record checks" which outlines the legal requirements when considering candidates for NHS positions that are eligible for a criminal record check under the Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975. They will also follow and comply with requirements of the DBS and the Trust's Recruitment of Ex-Offenders and Use of Disclosure and Barring Service Policy.

### **5.1.5 Work health assessment**

A work health assessment refers to a variety of processes undertaken by CLCH to health screen staff in order to assess whether they are capable and fit to undertake a particular role. Its primary purpose is to help prevent work-related illnesses, injuries and the spread of disease and infection.

Successful applicants must have a work health assessment after a job offer has been made that adheres to equal opportunities legislation and good occupational health practice. The Capita HR team will make it clear to prospective employees that any offer of appointment is conditional pending the successful completion of pre-employment checks, including a health assessment.

The purpose of the health assessment is to assess whether prospective employees have any health condition or disability that may require:

- adjustments in the workplace to enable them to safely undertake the duties of the post offered; or
- restrictions to their role, e.g. exposure prone procedures for workers with a blood-borne virus which may impact on patients in their care.

All health assessments will take into account the requirements of the disability provisions within the Equality Act, 2010, and reasonable adjustments will be made where necessary.

The Capita HR team and Employee Health Services will follow and comply with NHS Employment Check Standard, "Work health assessments" which outlines the requirements that NHS Trusts should follow when carrying out a work health assessment on a candidate.

### **5.1.6 Professional registration and qualification checks**

Professional registration and qualification checks must be carried out to assure CLCH that prospective employees are qualified and competent to perform a particular role. This entails verifying that the candidate:

- has the necessary skills and qualifications for the job for which they are applying; and
- if applicable to the role, they are registered with the relevant professional body and they meet the required standards of training, competency and conduct to practice safely in their chosen profession.

Professional regulation is intended to protect the public, ensuring that those who practice in a particular profession are committed to providing high standards of care.

The Capita HR team will ensure that a prospective employee is recognised by the appropriate regulatory body and that they have the right qualifications to do the job. For medical staff, this also includes evidence that they have a License to Practice.

The Capita HR team will follow and comply with NHS Employment Check Standard for "Professional registration and qualification checks", which sets out the requirements to verify the professional registration (where relevant to the post) and qualification checks that need to be

carried out for all prospective CLCH employees; and the Trust's Validation and Ongoing Monitoring of Professional Clinical Registration Policy.

## **5.2 Executive and other senior appointments: and fit and proper person's test and duty of candour**

CLCH must meet the statutory fit and proper persons' requirements when making appointments to director level positions. This includes executive and non-executive, permanent, interim and associate positions, irrespective of their voting rights. Regulation 5; Fit and Proper Persons from the Health and Social Care Act 2008 (Regulated Activities) Regulations 2014 full outlines these requirements.

The level and type of checks required for all prospective employees are outlined within the NHS Employment Check Standards (see sections 5.1.1 – 5.1.6 above). Additional checks, as deemed appropriate by the Trust and in line with a fit and proper person's test, will be made prior to appointing an applicant.

The fit and proper person requirements focus on assessing the applicant's honesty, integrity, suitability and fitness, e.g. that they possess the right level of qualifications, skills and experience and, with all reasonable adjustments, are able to undertake the role and responsibilities being offered.

These may include, for example (but not limited to):

- using an external agency to investigate the prospective employee's previous employment history and their reasons for leaving previous posts;
- financial security checks for those with responsibility for the management and handling of organisational budgets;
- search of the disqualified directors register;
- undertaking checks with relevant regulators.

More information on "regulation 5: fit and proper persons: directors" (2015) is available on the Care Quality Commission and NHS Employers' websites.

## **5.3 Temporary workers**

The Capita HR team follow NHS Employment Check Standards for all appointments to the CLCH temporary workers' Bank. This is supported by the London Procurement Partnership framework agreements which require all necessary checks to be undertaken.

## **5.4 Agency workers and contractors**

The Trust has responsibility for auditing and monitoring all providers of contractors and services. Where the Trust has an agreement with a third party provider to undertake employments checks, the Trust's Procurement team will seek written assurances that the worker(s) supplied has the correct level of clearances commensurate with the roles they will be required to undertake, obtaining a copy of the temporary worker placement checklist.

## **5.5 Recording of checks**

The Capita HR team will record the status of pre-employment checks on ESR.

Reasons for decisions in relation to selection or rejection of applicants must be recorded and may be made available to applicants if requested. Applicants have the right to access any documentation held on them in accordance with the Data Protection Act 1998 and this will continue with the General Data Protection Regulation (GDPR) which takes effect in May 2018.

A written record of all decisions taken in accordance with this procedure should be kept for a minimum of one year or longer if stipulated in the Records Management NHS Code of Practice and/or the Trust's Records Management Policy.

## **5.6 Failure to satisfy employment checks**

The Capita HR team will refer any problems with pre-employment checks to the recruiting manager and relevant Workforce Business Partner and HR Advisor. The recruiting manager will be responsible for deciding whether an offer of employment is to be withdrawn with advice from the Workforce Business Partner. For clinical roles advice may also be sought from relevant clinical leads, e.g. Deputy Chief Nurses, Associate Directors of Quality, Professional Leads, and Medical Director.

When the decision to withdraw a conditional offer of employment is made the prospective employee will be informed in writing that the offer of employment is to be withdrawn, giving the failure to satisfy the pre-employment checks as the reason for this.

In the exceptional circumstances where an employee has commenced employment on a conditional basis pending the completion of pre-employment checks and the check requirements are not subsequently satisfied, the manager with appropriate authority and Workforce Business Partner will take necessary action which may include termination of the employee's employment giving the failure to satisfy pre-employment checks as the reason for this.

## **5.7 Alert notices**

An alert notice is a way of notifying NHS bodies about registered health professionals whose performance or conduct could pose a significant risk of harm to patients, staff or the public. It is intended as a means of alerting prospective employers to check the applicant's employment record and take up references in advance of appointment. Alert notices help to manage risk and are part of the wider NHS quality strategy for the protection of patients and staff.

An alert notice is issued by various bodies, e.g. NMC, GMC, and HCPC, at the request of an employer or ex-employer, who has reason to believe that a registered healthcare professional about whom they have concerns, may be seeking work in the NHS in their professional capacity. It will state the person's name, date of birth and NI number, their place of work and in what capacity they worked. The notice will give the name and address of a person to contact at the organisation which triggered the alert. No other information about the individual or details of the case are included.

The Capita HR team will check the alert notice files prior to recruiting an individual. If an individual is subject to an alert notice, the Capita HR team will refer to the recruiting manager and relevant Workforce Business Partner who must check whether they are suitable to be employed into the position being offered and/or will need to consider which safeguards need to be put in place.

## **6. Consultation Process**

The following stakeholders were consulted in the creation of this policy and comments incorporated as appropriate.

Workforce Business Partners and HR Advisors  
Capita HR team  
Head of Employee Health  
Head of Organisational Development  
Staff representatives on the HR Policy Group

## **7. Approval and Ratification Process**

The initial draft of this procedural document was discussed at the HR Policy Group meeting on 5 February 2018. The final version of the policy was agreed at the HR Policy Group meeting on 20 August 2018.

Final approval was given by the Policy Ratification Group on 19<sup>th</sup> September 2018.

## **8. Dissemination and Implementation**

This document will be placed on the intranet by the QLD team. The QLD team will provide a reference number for the policy.

It will be therefore be available to all staff via the CLCH NHS Trust intranet. Furthermore the document will be circulated to all managers who will be required to cascade the information to members of their teams and to confirm receipt of the procedure and destruction of previous procedures/policies which this supersedes. Managers will ensure that all staff are briefed on its contents and on what it means for them.

## **9. Archiving**

The QLD team will undertake the archiving arrangements.

## **10. Training requirements**

Specialist training and updates for the HR teams is obtained through ongoing professional updates received and ad hoc training as required, e.g. when new legislative changes take effect or professional bodies provide specific training days, e.g. Healthcare People Management Academy, Chartered Institute of Personnel and Development, and Capsticks.

Training to managers in application of the policy and the checking requirements is provided through 1-1 advice from the Capita HR Team and support as and when required from the Workforce Business Partners and HR Advisors.

## **11. Monitoring and Auditing Compliance with the Procedural Document**

See appendix B.

## **12. Review**

This procedural document will be reviewed in 2½ years' time in 2021. It will be reviewed by lead for HR policies.

## **13. Associated Documentation**

Equality and Diversity Policy (staff)

Resourcing and Recruitment Policy

Recruitment Of Ex-Offenders And Use Of Disclosure And Barring Service Policy

References And Employment History Checks Policy

Disciplinary Policy

Code of Conduct and Conflict of Interest Policy

Freedom to Speak Up: Raising Concerns Policy

## **14. References**

NHS Employment Check Standards (*last revised April 2016*)

“Regulation 5: fit and proper persons: directors” (2015)

NHS Confederation Briefing: The fit and proper person test (*November 2014*)

## **15. Appendices**

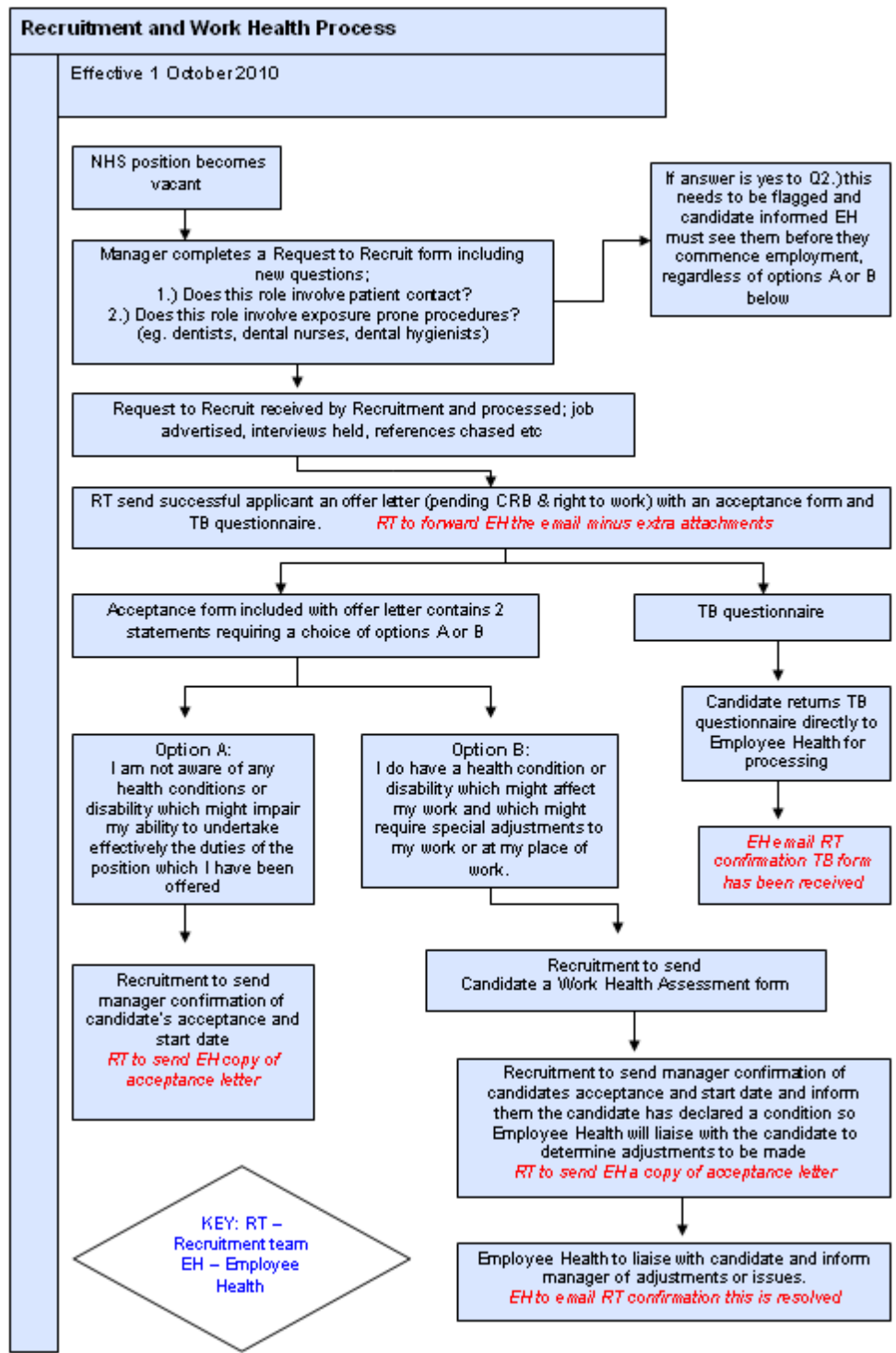
Appendix A: Recruitment and appointment process flow chart for employee

Appendix B: Monitoring and auditing compliance with the policy

Appendix C: Equality impact assessment pro forma



# Appendix A: Recruitment and appointment process flow chart for employee



## Appendix B

### Monitoring and auditing compliance with the policy

Policy lead	Element(s) to be monitored	How will you ensure that the policy is being implemented (E.g. via an audit, KPIs )	How often will you monitor that the policy is being implemented	Reporting arrangements (Which committee or group will the monitoring of the policy be reported to?)
Director of People and Communications	Types of check required: <ul style="list-style-type: none"> <li>• Identity</li> <li>• Right To Work</li> <li>• Professional Registration/ Qualifications</li> <li>• Employment History and Reference Checks</li> <li>• Disclosure and Barring Service (DBS)</li> <li>• Employee Health</li> </ul>	<ol style="list-style-type: none"> <li>1. Recruitment checklists are followed for each appointment by the Recruitment Team and double-checked by the HR Benefits and Compliance Team (for permanent staff); by the Temporary Staffing Team and double-checked by the Temporary Staffing Manager or TS Resourcing Manager for temporary workers.</li> <li>2. ID scanner used to check relevant official documents.</li> <li>3. Workforce reports provided for DBS checks; professional registration; work permits.</li> <li>4. Workforce report for UK nationality/ citizenship</li> <li>5. Internal audits.</li> <li>6. External audits.</li> </ol>	<ol style="list-style-type: none"> <li>1. At recruitment stage.</li> <li>2. At recruitment stage and when appropriate.</li> <li>3. Monthly</li> <li>4. Annually</li> <li>5. Annually</li> <li>6. Ad hoc</li> </ol>	Where there are concerns, risks are raised through the Workforce Group.

## Appendix C

### EQUALITIES IMPACT ASSESSMENT PRO FORMA

#### Employment Checks Procedure

CLCH as a public authority has a legal requirement to analyse the impact of the policy on the protected characteristics of staff and patients. This helps us to check if there is a negative impact, how we can reduce that impact.

1. Protected characteristic	Positive impact	Neutral Impact	Negative Impact	Reason for impact and action required.
People of different ages (e.g. Children, young or older people).	x			The policy states that the checks and associated documentation will only be used to check their right to work, not for disclosing confidential information such as age.
People of different religions / beliefs		x		
People with disabilities (physical, sensory or learning).	x			The policy outlines the Section 60 of the Equality Act 2010 which relates to the use of health-related questions during recruitment episodes. CLCH is limited under the act from asking applicants this type of question before making an offer of employment. The aim of this provision is to make it more difficult for disabled people to be unfairly screened out when applying for jobs, by restricting the circumstances in which employers can ask job applicants questions about disability or health.
People from different ethnic groups	x			The policy states that the checks and associated documentation are only used to check their right to work, not for disclosing confidential information such as country of birth.
Men or women		x		
Transgendered people	x			If an individual has undergone gender reassignment, individuals undertaking these checks must not disclose this under the Gender Recognition Act 2004.
People who are gay, lesbian, and bi-sexual		x		

Refugees and asylum seekers	x			This policy clearly outlines checks required to determine an individual's right to work. This reduces the risk of discrimination based upon someone's immigration status.
2	Please describe engagement and consultation process and the key feedback. E.g. with teams, unions. See section 6 in policy.			
3.	If there are negative impacts upon people's protected characteristics. Does the policy in its current form need a full Equality Analysis Assessment to be completed? No			
4.	Have you signed this off with the Equality and Diversity team? No			

Signed for team / working group: Name: Agreed at the HR Policy Group meeting on 20/08/18  
by:

Rena Nunes (Unison);  
Sujata Mahendran (Unite);  
Yolanda Alleyne (HR Advisor);  
Ranj Vekaria (HR Advisor);  
Liz Lubbock (Policy, Projects and Engagement Lead)

**TITLE: FLEXIBLE WORKING POLICY**

**VALID FROM: NOVEMBER 2018**

**EXPIRES: MAY 2022**

This document expiry date has been extended to May 2022 as per approval by the Policy Ratification Group in January 2022.

This procedural document supersedes the previous procedural document, Flexible Working Policy, version 3.0.

<b>Version:</b>	4.0
<b>Policy reference and description of where held.</b>	WFC39 Intranet – Policies
<b>Title, name and contact details for author:</b>	Adetutu Oredola-Showunmi, Senior Human Resources Adviser <a href="mailto:Adetutu.oredola-showunmi@nhs.net">Adetutu.oredola-showunmi@nhs.net</a>
<b>Title, name and contact details for responsible director:</b>	Louella Johnson , Director of People and Communications
<b>Approved by originating committee, executive or departmental management group</b>	Agreed through the HR Policy Group (sub-group of the Joint Staff Consultative Committee) on 05 November 2018.
<b>Ratified by Policy Ratification Group:</b>	12 <sup>th</sup> November 2018
<b>Review date:</b> 2 years maximum for clinical guidelines 3 years maximum for other documents	Review - May 2021 Expires – November 2021
<b>Target audience</b>	All staff.

## Version Control Sheet

Version	Date	Author	Status	Comments
1.0		Liz Lubbock	Archived	Integration of inner London and Barnet policies.
1.1		Liz Lubbock	Current	Reviewed and updated in line with employment legislation, particularly relating to the right to request flexible working, the application process and a homeworking form.
2.0		Liz Lubbock	Final	Version control amended on recommendation.
3.0	Nov 2017	Liz Lubbock	Final	Removed requirement for 26 weeks' continuous service with the Trust.
4.0	October 2018	Adetutu Oredola-Showunmi		Reviewed and updated in line with schedule

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## **1. Introduction**

CLCH recognises that its ability to deliver quality health care is dependent upon its ability to attract, recruit and retain a quality workforce.

The Trust is committed to offering flexible, modern employment practices which recognise that staff want to strike a sensible balance between their home and work life. In doing so, this will also assist the Trust in achieving its goals through an increase in staff motivation, a reduction in employee stress and improvements in performance and productivity.

## **2. Aims and Objectives**

The purpose of this policy is to provide a clear and consistent framework to address individual needs and provide support to employees who may wish to adopt an integrated approach to create flexible working systems that benefit all.

The policy outlines a range of leave and flexible working arrangements available to staff. The principles underlying the policy are to:

- Support a positive and healthy work-life balance for employees;
- Promote consistency and equity across the Trust;
- Ensure that employee needs are balanced with service needs.

The policy also complies with employment legislation including the Employment Rights Act 1996; Children and Families Act 2014; and the Flexible Working Regulations 2014.

The general principles of the Flexible Working Policy will apply to Doctors and Dentists. For further information about Doctors, refer to the National Health Service Hospital Medical and Dental Staff and Doctors in Public Health Medicine and the Community Health Service (England and Wales) Terms and Conditions of Service. For further information about Dentists, refer to the 'Salaried Primary Dental Care Services (England) Terms and Conditions of Service' January 2008.

### 3. Definitions

**Eligibility:** the criteria that an employee must meet to be allowed to apply for a flexible working option.

**Entitlement:** the amount to which an employee has a right to apply.

**Parental responsibility:** is where the employee is the mother, father, adopter, guardian, special guardian, foster parent or private foster carer of the child or have been granted a residence order in respect of the child. Alternatively, they may be married to, or the partner or civil partner of, the child's mother, father, adopter, guardian, special guardian, foster parent or private foster carer or person who has been granted a residence order in respect of a child.

**Relative:** is a mother, father, adopter, adoptee, guardian, special guardian, parent-in-law, son, son-in-law, daughter, daughter-in-law, brother, brother-in-law, sister, sister-in-law, uncle, aunt or grandparent. Step-relatives, adoptive relationships and half-blood relatives are also included.

**Standard work pattern:** the same number of hours are worked each day over a 5-day working week.

**Full-time employees:** those who work the, full-time hours i.e. 37.5 hours each week.

**Part-time employees:** those who work less than, full-time hours.

### 4. Duties

4.1 **Line managers** are responsible for:

- taking a creative and innovative approach to flexible working patterns.
- carefully considering flexible working requests in a reasonable manner and accommodating the employee wherever this can be achieved without adversely affecting service provision or compromising health and safety or working arrangements of employees and/or their colleagues.
- considering flexible working options when recruiting new employees and the effect on rostering work patterns in the service, thus supporting both recruitment and retention.
- keeping records and monitoring flexible working arrangements

- working with employees to determine how they will be able to perform their role and achieve key work objectives with flexible working arrangements.

#### **4.2 Employees** are responsible for:

- Having an initial discussion with their manager prior to making a flexible working request. They can also contact an HR Advisor, Payroll Clerk, Pensions Officer or staff representative to discuss the practical application of the policy and the effect on terms and conditions of service
- making a reasonable application, in writing and in good time, to their line manager for any proposed change to their existing working arrangements.
- carefully considering exactly what changes they wish to make before and after making their written request, taking into account how it may impact on colleagues and/or service provision.
- working with their line manager to determine how they will be able to perform their role and achieve key work objectives with flexible working arrangements..

## **5. Procedural Document for Flexible Working**

### **5.1 Eligibility**

All employees will be eligible to make a request for flexible working if:

- they have not made another statutory request for flexible working for a period of 12 months since the date of the original request;
- and meet any additional criteria required for the relevant flexible working option (sections 5.3 to 5.13.)

Employees are not required to have parental responsibility for a child or caring responsibilities for an adult in order to make a request to work flexibly.

When deciding on whether to agree to a flexible working request, the manager's decision will be based on the needs of the employee and on whether the request

can be accommodated within the needs of the service, also considering any potential impact on other staff. This applies to all options described in sections 5.3 to 5.13 of this policy

## **5.2 Flexible Working Options**

There are various flexible working options for which an employee may apply if they are eligible. In brief, they include:

- Annualised Hours (5.3);
- Condensed Working Hours (5.4);
- Flexible Retirement (5.5);
- Flexible Start And Finish Times (5.6);
- Home Working (5.7);
- Job Share (5.8);
- Part-Time Working (5.9);
- Temporarily Reduced Working Hours (5.10);
- Staggered Working Hours (5.11);
- Team-Based Self-Rostering (5.12);
- Term-Time Working (5.13).

Each option is described in more detail in sections 5.3 to 5.13 of this policy and within the flexible working application procedure (section 5.14).

Where appropriate, consideration should be given to other Trust policies, e.g. the Lone Worker Policy, Risk Management Policy, Annual Leave Policy, Special Leave Policy, etc.

## **5.3 Annualised Hours**

Employees' contracted hours are calculated over a year and then spread unevenly through the year, with fewer hours worked at certain times, e.g. during the school holidays. Usually the hours are divided into rostered hours, which are set, and reserve hours, when the employee can be called in to work as demand dictates and to cover unplanned work and employee absence. Please refer to Annualised Hours Policy for further guidance.

### **5.3.1 Eligibility**

All employees are eligible to apply for annualised hours regardless of their length of service.

### **5.3.2 Points To Be Considered**

Before an agreement with an employee can be finalised, the following points need to be considered and agreed:

- Does the role show a peak and trough pattern which would lend itself to an annual hours working pattern without an adverse effect on service needs?
- Can the service accommodate or adapt to lengthy periods of absence, e.g. during school holidays? What maximum period of absence could the service/department manage?
- How would the working pattern be arranged, e.g. number of hours per week/month, what days will be worked etc.
- How will pay be administered, e.g. 12 equal monthly instalments? If this method is applied, there must be a recovery clause for any overpayment if an individual leaves before completing the contracted hours for the period.
- Will another person need to be recruited to cover the job during the remainder of the year? If so, could cover be provided by temporary or trainee staff? Is this practicable/affordable/reasonable?
- Will the Trust incur any additional costs to cover absent periods?

### **5.3.3 Impact On Pay And Benefits**

If full-time hours for the post are reduced, the salary and all pay-related benefits will be reduced pro-rata to the full-time entitlements, e.g. salary, Life Assurance (if a member of the NHS Pension Scheme), pension, redundancy pay, annual leave, special leave, sick pay, maternity pay etc..

## **5.4 Condensed Working Hours**

Normal working hours are varied to suit an employee's needs, whilst working the full-time contracted hours for the post over a week or fortnight. For example, longer hours might be worked from Monday to Thursday, taking Friday off. Working hours may be condensed on a permanent or temporary basis.

### **5.4.1 Eligibility**

All employees are eligible to apply for condensed working hours regardless of their length of service provided they work a standard work pattern (see section 3 for definition) and are not required to handover to an oncoming shift. .

## **5.4.2 Points To Be Considered**

- Annual leave entitlement must be calculated in hours to ensure the correct annual leave entitlement is taken.
- Agreement with the line manager must be sought in advance and the employee's precise working pattern needs to be defined to ensure that service needs are met in full.
- If the service needs allow condensed working hours, this will mean there is greater coverage of the working day by the department as well as providing flexibility for the individual.
- Minimum break times must be taken during the working day according to Trust policy and in line with the Working Time Directive.
- Condensed hours cannot apply to staff who are rostered or who are required to handover to an oncoming shift.
- Are there any particular health and safety or security issues that need to be considered when working outside 'normal' hours?

## **5.4.3 Impact On Pay And Benefits**

Pay and benefits are not affected on the basis that the full-time hours for the job are worked over a week or fortnight. Annual leave will be calculated in hours and not days.

## **5.5 Flexible Retirement**

There are options regarding the age at which an employee retires, the length of time an employee takes to retire or the nature and intensity of work in the lead up to final retirement. The options vary depending on whether the employee is a member of the 1995 section, the 2008 section or the 2015 Scheme of the NHS Pension Scheme.

It is important that employees contact the Trust Pensions Officer or call the NHS Pensions Helpline on 0300 330 1346 or website ([www.nhsbsa.nhs.uk/pensions](http://www.nhsbsa.nhs.uk/pensions)) for more detailed information before making a decision about flexing their retirement.

### **5.5.1 Eligibility**

All employees who are members of the NHS Pension Scheme, regardless of their length of service, and who are aged 50 or 55 and over (depending on the section of the Scheme that applies to them) are eligible to apply for flexible retirement options.

If an employee does not belong to the NHS Pension Scheme but would like to know if they have flexible retirement options within their private pension scheme, they should contact their pension provider.

However, before applying for a flexible retirement option, the employee should speak to their line manager to establish whether or not the option may be available and what the implications are.

### **5.5.2 Flexible Retirement Options:**

- **Wind Down**

As an alternative to retiring, an employee can wind down by working fewer days in their current post. Pensions for part-time staff are calculated on the full-time equivalent salary, so if the employee winds down rather than retiring, this should not reduce the level of pensionable pay for the calculation of pension benefits. However, it will reduce the rate at which members build up future membership.

- **Step Down**

Employees in the 1995 section who are over the minimum pension age and would like to give up the responsibilities of their current role but do not want to leave work altogether, can look to step down into a less demanding job on lower pay (reduced by at least 10%), but that would still make use of their skills and experience. This would depend on the availability of such a post and on whether the employee was successful in applying for it. The pension already earned before the step down could be frozen by applying for protection. The employee could then start a second pension based on their stepped down pay. When they finally retire, they would receive both pensions.

- **Retire And Return To Work**

Members can opt to retire if they have reached the minimum retirement age, take all their NHS pension benefits and return to work in NHS employment. The employee would need to follow the retirement process and any change to contracted hours should be submitted as a flexible working request.

After taking the full pension, they cannot build up any further pension benefits. Some employees will need to make sure that they either take one complete month off or have a 24-hour break off the Trust payroll system, then work a maximum of 16 hours per week in the first calendar



month. If a member is between 55 years of age and 59 years of age and takes 'normal' retirement, the abatement rule will apply. One option, for example, would be to return to work on the Trust Temporary Staffing Scheme, working during winter months when pressure in the NHS is often intensified and when there is often a reduced opportunity to enjoy leisure time. The same rule as above applies regarding the break in service and the maximum of 16 hours.

For more information about returning to work and to clarify specific requirements, please contact the Trust Pensions Officer.

- **Draw Down**

This is only open to members of the 2008 section of the NHS Pension Scheme. This option allows members to take part of their pension benefits whilst continuing in NHS employment.

Employees returning to work under either of the flexible retirement options would be subject to the NHS Terms and Conditions of Service, including those relating to annual leave and sick leave. Where appropriate, these will be prorated. There may be a need to undertake refresher/reorientation training and complete a new Disclosure and Barring Service application.

## **5.6 Flexible Start and Finish Times**

Flexible start and finish times let employees choose when they start and finish work, within certain time limits agreed with the line manager. This allows employees the ability to decide when they work their hours within agreed parameters and ensuring core times of the service are covered. The system works well for full-time office employees, but may not be a viable option for employees working shift patterns.

### **5.6.1 Eligibility**

All employees are eligible to apply for flexible start and finish times regardless of their length of service.

### **5.6.2 Points To Be Considered**

- How would a flexible start and finish times arrangement affect the department/service?
- Arrangement and actual timings need to be defined to ensure that service needs are met in full.

- Will it allow for greater coverage of the working day by the department/service and provide flexibility for the employee?
- How would the hours worked be documented and working patterns be communicated between staff to ensure, for example, coverage of the full working day?
- Flexible start and finish times cannot apply to staff who are rostered but only to those who work a 'standard' week, and who are not required to handover to an on-coming shift, unless by mutual agreement with the team.
- Are there any particular health and safety or security issues which need to be considered when working outside of the 'normal' hours?
- An appropriate assessment of any risks that are identified would need to be carried out, for example, in line with the Lone Worker Policy.
- Would the department/service incur additional costs, e.g. enhancements triggered by working hours?

### **5.6.3 Impact on Pay and Benefits**

Pay and benefits are not affected on the basis that the full-time hours for the job are worked on a more flexible start and finish basis. However, clear arrangements must be agreed around core hours, how this will be recorded and monitored.

Contracted hours must be worked every week. There is no option to build up time to take a day off later.

## **5.7 Home Working**

Home Working is a practical consideration where an employees' work is self-regulated and is discrete to the extent that it can be undertaken outside the office.

Home Working can be on a regular, occasional or temporary basis and is where an employee meets their contractual obligations working some or all of their contracted hours from home.

### **5.7.1 Eligibility**

All employees are eligible to apply to work from home regardless of their length of service.

## 5.7.2 Points To Be Considered

- Home Working may be considered where a specific job can be undertaken at home and where there is clarity / clear objectives around what will be accomplished.
- This should not be considered if the job involves constant personal interaction with colleagues/patients.
- This can be considered if an employee is able to complete tasks at home or in the office. These must be agreed in advance.
- The employee must be flexible and attend the Trust's offices as required by the Trust.
- Employees will be subject to the same performance measures, processes and objectives that apply to office-based employees.
- Additional costs must not be incurred by the Trust as a consequence of Home Working, e.g. the Trust will not pay for the costs of an employee's travel between Trust premises and an employee's home.
- The Health and Safety at Work, etc., Act (1974) places the same obligations on the Trust to protect the health, safety and welfare of home workers who are employees, as they do for employees who are based on-site. This includes provision of such information, instruction, training and supervision as is necessary to ensure the home workers' health and safety. Home workers must also take reasonable care of themselves and others who may be affected by their work. The Trust must also ensure that so far as is reasonably practicable, their work activities do not pose a health and safety risk for persons not in their employment.
- Appendix A, "Health and Safety for Home Workers" details information to assist in ensuring that the working conditions at the employee's home comply with current best practice and compliance with health and safety legislation, when they are undertaking home working activities for the Trust.
- All employees are required to complete the Healthy Working programme, a health & safety on-line training program and self-risk assessment questionnaire for the workstation. An invitation to complete is sent to all staff when they join the Trust and thereafter annually as part of the yearly review process; a new invitation to complete the assessment is also sent if staff move locations or change bases. If necessary a health and safety advisor will support if areas of concern are highlighted during the assessment process that cannot be resolved by the individual or their line manager.

### **5.7.3 Impact On Pay and Benefits**

Pay and benefits are not affected on the basis that the full-time hours for the post are worked. Employees working part-time will be entitled to salary and other benefits on a pro-rata basis.

Contracted hours must be worked every week. There is no option to build up time to take a day off later.

## **5.8 Job Share**

Job Sharing is an arrangement whereby 2 employees share the accountability for one full-time job and the salary and benefits are divided between them according to the amount of time they each work. Each employee has a separate contract of employment but the contracts are linked in that the 2 employees share one post.

The majority of jobs in the Trust will be available to Job Share. However, if the line manager has concerns regarding the suitability of the post for a job share, they should discuss this with their HR Advisor. Line managers, after consultation with an HR Advisor, could decide that some jobs may not be suitable.

### **5.8.1 Eligibility**

All posts are eligible for consideration for a job share arrangement.

### **5.8.2 Advertising Vacant Posts**

Applications for vacancies in the Trust that are suitable for job share, are welcomed from either 2 job-share partners or from an individual who wishes to job share but does not have a partner.

### **5.8.3 Recruitment Process**

Each applicant will be considered separately and as part of a job share at shortlisting and interview. The first step for the Recruitment Panel is to establish whether one or both applicants meet the essential criteria specified by the Person Specification.

During their individual interview, each applicant will be asked a standard set of questions. In addition, the potential job share partners will be interviewed together and an additional set of questions will be asked of each of them to establish whether or not the partnership arrangement is likely to be workable, e.g. questions about their working style and preferences, their ability to make and stick to joint decisions, and if line

managers, to provide consistent management to the team. The interview panel may choose to cover issues in respect of working style/compatibility at a joint interview after the individual interviews have been undertaken. For the joint interview, questions will be supplied by the Recruitment Team.

If both are appointable, the interview panel will then need to decide whether or not they, as a partnership, represent the best appointment to the post in comparison with the other applicants. Appointment must always be made on merit.

If only one of the applicants is appointable, they will be considered against the other applicants in the normal way and the decision as to whether to appoint them will not be prejudiced by the fact that they do not at this stage have a job share partner.

#### **5.8.4 Application Process For Applicants Without A Partner**

An applicant without a partner will be considered in the same way as any other applicant and will not be prejudiced by the fact that they do not have a job share partner.

If a person without a job share partner or where a person who applied with a partner but only they were judged appointable, are deemed the most successful applicant, they will be offered the post subject to the following restriction: "The Trust will advertise for a job share partner and make all reasonable efforts to recruit a suitable partner".

If it is not possible to recruit a partner on completion of this process, the person who has been offered the post will be offered the opportunity to work full-time, and consideration will be given as to whether any other form of flexible working arrangement would assist them to do this, e.g. annualised hours, flexible start and finish times, etc..

If no mutually agreeable solution can be achieved, the offer of the post will lapse.

#### **5.8.5 Applications From Existing Staff**

Existing employees who wish to job share in their existing job, should discuss the matter with their line manager in the first instance and follow up this decision, if they wish to proceed, with a written request using the Trust's Flexible Working Request Form.

If the line manager agrees to the request, they will then advertise for a job share partner, and the same procedure will be followed as it set out above for recruitment to vacant posts.

As part of the interview process, both the existing job sharer and the job share applicants will be asked questions about their working styles etc. (as described above) in order to establish whether their partnership is likely to be successful.

### **5.8.6 Points To Be Considered**

There must be consideration of the operational requirements and constraints.

The work pattern will be jointly determined by the job sharers and their line manager and must include suitable arrangements for a hand-over meeting each week.

Job share hours may be split in a number of ways:

- by working one week on, one week off;
- a divided week, i.e. one job sharer works for part of the week and the other works the rest of the week;
- split day, i.e. one job sharer works in the morning, the other in the afternoon;
- a mixture of days or half days.

Decisions and information must be communicated between job sharers. There must be no opportunity for junior staff to be confused by job sharing arrangements or to be able “to play one against the other”. Ensure that there are effective communications in place to support job share working. This may include a Log Book, file notes, email, recorded messages and some calls at home.

Providing it is consistent with Banding, the content of the job could also be split with specific job sharers taking lead responsibility for certain activities.

### **5.8.7 Job Share Agreement**

Job sharers will be appointed on individual contracts of employment. The manager must send a Job Share Agreement to both job sharers and it should contain the following:

- the split of hours between the partners;
- the need for, and length of, any handover period between partners;

- the maintenance of a job sharer's log;
- annual leave entitlements and constraints;
- details of supervision, appraisals and Personal Development Plans;
- allocation of duties and distribution of work and responsibilities;
- such other items as need to be determined in writing.

The Agreement must be signed by all parties and a copy must be sent to the HR Department.

### **5.8.8 Remuneration And Grading**

Job sharers will be paid the appropriate rate of pay for the post, calculated pro-rata to the actual numbers of hours worked. Where it is appropriate, incremental progression will be on an individual basis within the grade of the post.

Unsocial hours, shifts payments etc., if applicable, will be calculated as though the post was occupied on a full-time basis and will be divided between the job share partners pro-rata to the actual hours worked. Job sharers who are required to work hours in excess of the contractual hours will qualify for time off in lieu or paid at the enhanced rate for additional hours.

All entitlements of a job share post will relate to all sharers employed against it. Any review of the grading of the post will consider the whole post and not the duties of an individual employed against part of the post.

### **5.8.9 Leave And Attendance**

Annual leave and public and bank holidays will be applied pro-rata to the hours worked.

There will be no compulsory requirement on a job share partner to work additional hours to cover his/her partner's short-term absence due to sickness or leave. If the individual is asked by their manager to work additional hours and agrees to do so, payment will be at plain time up to full-time hours unless time off in lieu is preferred by the employee.

Pending the engagement of a job share partner or during long-term absence of a job share partner due to sickness or maternity leave, temporary cover arrangements will be considered as follows subject to budgetary considerations:

- the remaining partner, if needed, may agree to work additional hours up to the total of the established post; or
- a temporary job share partner may be appointed to cover the balance of hours on a fixed term contract; or
- if unable to appoint on a fixed term contract, other arrangements may be made as appropriate and if authorised, e.g. a Bank worker.

Job sharers will be individually responsible to the relevant manager for their own duties and attendance.

#### **5.8.10 Termination Of A Job Share Arrangement**

If one partner in an existing job share wishes to terminate the job share, the line manager will review how the duties and responsibilities of the role are covered. If it is decided that the job share will continue, recruitment to the vacant job share post will be pursued. If it is decided that the duties and responsibilities of the role are best covered by a single full or part-time appointment, the remaining job share partner will be given the option to undertake the role on this basis.

In the event that a flexible working arrangement can no longer be accommodated within the needs of the service as a result of changes in operational requirements, the Trust's Change Management Policy will apply.

#### **5.8.11 Variations To The Agreement**

The job share partners and the relevant manager must agree any variation of the individual job share agreement. Any dispute between the job share partners or the manager on the operation of the job share will be dealt with under the Trust's Resolving Differences Policy.

### **5.9 Part-Time Working**

*(also see section 5.10: Temporarily Reduced Working Hours)*

The Part-Time Workers (Prevention of Less Favourable Treatment) Regulations 2000 govern the rights of employees engaged on a part-time basis. (See section 3 for definition of part-time employee) The aim of the regulations is to ensure that part-time workers (or those who, having been full-time, return to part-time work after an absence) are not treated less favourably than full-time employees. For example, part-time working employees have a right to receive the same rates of pay as full-time employees pro rata to hours worked and not to be excluded from training simply because they work part-time.



### **5.9.1 Eligibility**

All employees are eligible to apply to work part-time regardless of their length of service.

### **5.9.2 Points to be Considered**

- How many working hours a week are required for the post?
- If part-time working is agreed, how will the remainder of the hours/work be covered?
- How should the hours be worked? (each day and each week)
- What happens if additional hours are worked? Is payment made or is time off in lieu given? Please note that additional hours worked as a part-time employee constitutes part-time excess to be paid at standard rate until full-time hours are exceeded for the week.
- Does the agreement require flexibility in terms of hours/days worked?
- Will there be an impact on other staff?
- Are there any special overlaps required between the part-time post holder and others?
- Is this to be a permanent or temporary arrangement?

### **5.9.3 Impact on Pay and Benefits**

Salary and all pay related benefits are reduced pro-rata to the full-time entitlement, e.g. salary; Life Assurance (if a member of the NHS Pension Scheme); pension; redundancy pay; annual leave; special leave; sick pay and maternity pay.

## **5.10 Temporarily Reduced Working Hours**

*(also see section 5.9: Part-Time Working)*

Under this arrangement, an employee is able to work reduced hours for a specified period of time to deal with 'special circumstances'. This could include:

- a family personal emergency,
- the serious illness of a dependant ,
- immediately following maternity leave or a period of extended leave to allow for the employee to adjust to his or her work regime and duties; employment/career break, or
- to undertake a particular course of training or development.

Also refer to the Trust's Special Leave Policy for other types of leave staff may be entitled to, based on individual circumstances.

An employee would be able to reduce his/her working hours normally for a minimum of one month, up to a period of one year. Hours can be reduced by either a daily or weekly amount of time, i.e. could work short days or a short week.

Please note: this is not to be confused with a phased return to work which is detailed in the Sickness and Absence Policy.

#### **5.10.1 Eligibility**

All employees are eligible to apply for temporarily reduced working hours regardless of their length of service.

#### **5.10.2 Points To Be Considered**

- Could department/service needs be covered without unreasonable additional cost?
- What is the impact on the rest of the team?
- Flexibility should be shown in the event of a crisis over which the employee has little or no control.

#### **5.10.3 Impact On Pay And Benefits**

Salary and all pay-related benefits are reduced pro-rata to the full-time entitlement, e.g. salary, Life Assurance benefits (if a member of the NHS Pension Scheme), unsocial hours/premium payments, annual leave, special leave, redundancy pay, sick pay and maternity pay.

### **5.11 Staggered Working Hours**

Employees are able to determine their weekly working pattern within specified arrival and departure times on a planned weekly basis. Hours may be staggered on a permanent or temporary basis throughout the week or just on one or two days of the week. This differs from flexible start and finish times where the arrival/departure time varies from day to day with core hours specified.

#### **5.11.1 Eligibility**

All employees are eligible to apply for staggered working hours regardless of their length of service. When deciding on whether to agree to a flexible working request, the manager's decision will be based on the needs of the

employee and on whether the request can be accommodated within the needs of the service, also considering any potential impact on other staff.

### **5.11.2 Points To Be Considered**

- How would a staggered hours arrangement affect the department/service?
- Agreement and actual timings need to be defined to ensure that service needs are met in full.
- How the hours would be recorded and communicated would need to be determined.
- It may allow for greater coverage of the working day by the department/service and provides flexibility for the employee.
- Minimum break times (unpaid) must be taken during the working day according to Trust policy and in line with Working Time Regulations.
- Staggered hours cannot apply to staff who are rostered but only to those who work a 'standard' week, and who are not required to handover to an on-coming shift, unless by mutual agreement with the team.
- Are there any particular health and safety or security issues which need to be considered when working outside of the 'normal' hours? A risk assessment will need to be carried out.
- Would the department/service incur additional costs, e.g. enhancements triggered by working hours?

### **5.11.3 Impact On Pay And Benefits**

Pay and benefits are not affected on the basis that the full-time hours for the job are worked over 5 days or less.

Contracted hours must be worked every week. There is no option to build up time to take a day off later

## **5.12 Team-Based Self-Rostering**

The aim of team-based self-rostering is to promote and foster a culture where employees co-operate with each other to balance their work and personal commitments outside of work, and to develop a rota system that accommodates both.

Team members are given the ability to schedule their working day within an agreed framework of staffing levels and skill mix.

Each team member would enter their preferences on the roster. The designated shift co-ordinator would produce a draft roster which would either match preferences as closely as possible or would allow team members to choose shifts which are most convenient to them within existing shift patterns.

The needs of the team and the reason for the flexible working request would determine whether or not a shift pattern could be set. Shifts would need to be shared as fairly as possible within the team, i.e. night shifts and weekend working.

### **5.12.1 Eligibility**

A team is able to apply for team-based self-rostering if their department/service operates shifts.

### **5.12.2 Points To Be Considered**

- Do all employees in the team want self-rostering?
- Will there be any effect on patient care?
- What are the minimum and maximum levels needed for each shift?
- What mix of skill and Band is needed?
- Should there be a limit on the number of specific requests (for special occasions)?
- How will it be possible to ensure consistency of opportunity for certain shifts and ensure less popular ones are covered?
- Are there sufficient employees of the right seniority on duty at all times?
- Who will co-ordinate implementation and the final roster?
- Will it reduce absences and the need for Bank and Agency workers?
- Any clashes or shortfalls should be addressed by the team members in the first instance.

### **5.12.3 Impact On Pay And Benefits**

There may be an impact on unsocial hours or shift payments, dependent on how many unsocial hours shifts an employee is rostered to work.

Contracted hours must be worked every week. There is no option to build up time to take a day off later

## **5.13 Term-Time Only Working**

Term-time only working is related to school patterns. An employee is on a permanent contract but takes paid/unpaid leave during school holidays. Their employment rights and benefits are the same as for other employees, pro-rated where appropriate. (See appendix B)

### **5.13.1 Eligibility**

All employees are eligible to apply for term-time only working arrangements regardless of their length of service.

### **5.13.2 Points To Be Considered**

- Is the post suitable for term-time only working, especially where demand for services during the school holiday does not diminish, or may even increase?
- Can the service be provided with a reduced team?
- Will the protracted school holiday time absences cause difficulties for other employees/team members in terms of skill being removed from the team?
- Can any work be re-scheduled to be undertaken during term-time?
- How will this affect other employee's ability to take annual leave during school holiday periods?
- Can the work be covered using the Trust's Temporary Staffing Bank?
- Will there be an impact on patient care / continuity of care / service delivery?
- Does there need to be a limit to the number of posts that each department or team can accommodate as term-time only contracts?

### **5.13.3 Impact On Pay And Benefits**

The salary for a term-time contract is based on:

- The number of weeks actually worked, plus
- a pro-rata of the annual leave and general public and bank holiday entitlement.

The calculation for this is to divide the annual salary by the number of weeks in a year, and then to multiply this by the number of weeks that the term-time employee will be working, including an entitlement to annual leave and public and bank holidays. This will be divided into 12 equal payments, ensuring a monthly payment at a steady rate for the employee. (See appendix B)

Although a payment is made for pro rata annual leave and public and bank holidays, the leave must be taken during school holidays. In very exceptional circumstances, where an unexpected leave need arises, it may be possible to take annual leave during school term time if agreed with the manager. In these circumstances, the employee will need to make this time up during school holidays.

Of the 8 public and bank holidays, only one (the first May bank holiday) falls during term-time. All the other public and bank holidays fall within the school holidays when a term-time employee would not normally be working. Therefore, a payment for the 7 additional public and bank holidays has been built into the salary payment calculation for employees who work term-time only.

All calculations are pro-rated for part-time employees.

An employee will also need to consider the impact on their Life Assurance benefits (if a member of the NHS Pension Scheme), unsocial hours/premium payments, annual leave, special leave, redundancy pay, sick pay and maternity pay.

Please also see the Trust's Annual Leave Policy.

#### **5.14 Flexible Working Application Procedure**

- Prior to making a flexible working request, employees are encouraged to speak to their manager initially. They can also contact an HR Advisor, Payroll Clerk, Pensions Officer or staff representative to discuss the practical application of the policy and the effect on terms and conditions of service
- An employee who would like to request flexible working should complete sections 1 to 4 of the Flexible Working Application Form and submit it electronically. This eForm can be found on the intranet in the "HR eForms" section. See Appendix C for the Flexible Working Application Flowchart.
- Where the request is being made by a disabled person as part of a request for a reasonable adjustment to his/her working arrangements, the employee should state this in the written application.
- Employees can make one application every 12 months.

- The employee's line manager will acknowledge receipt of the flexible working request in writing and arrange to meet with the employee to discuss if required within 7 calendar days.
- The line manager will seriously consider the application with the aim of deciding whether or not the department/service can accommodate the requested work pattern.
- If the line manager agrees to the request and does not need to meet with the employee to discuss details, e.g. the terms and conditions relating to it, a decision can be made without the need for a meeting between the employee and the line manager.
- If the application is incomplete, the line manager should explain to the employee what additional or amended information s/he needs to provide and ask the employee to re-submit their form. If the employee refuses to provide the additional information requested, the application will be treated as withdrawn. The employee will not be able to make another application for a further 12 months.

#### **5.14.1 Meeting To Discuss Application**

If discussion is required, for example:

- the terms and conditions relating to the change need to be agreed, or
- the manager needs more information before a decision can be made,

the manager will arrange to meet with the employee within 28 days of receiving the fully completed application. In exceptional circumstances, this period may be extended in agreement with the employee and confirmed in writing.

An employee has the right to be accompanied by a trade union representative or work colleague employed by this Trust at the meeting.

The employee will have the opportunity to explain the reasons for the request, what flexibility they require and how this could be of benefit to both the employee and the Trust.

The meeting should also include a discussion about the contractual issues, e.g. hours, minimum unpaid breaks in line with Working Time Regulations, health and safety issues, training requirements, changes to annual leave

entitlement and any other terms and conditions affected following the proposed change.

In the event that the employee or their representative is unable to attend the meeting, prior notice must be given, unless in exceptional circumstances. It is up to the employee to seek to re-arrange the meeting and it should take place within 7 days of the date of the original meeting. Where an employee fails to attend both a first and re-arranged meeting, either at the initial decision stage or an appeal stage, without good reason, the Trust may treat the application as having been withdrawn by the employee and the employee must be notified.

### **5.14.2 Consideration And Decision**

The line manager will consider the proposed flexible working arrangements carefully, assessing the potential benefits to the employee and to the Trust against any adverse impact of implementing the changes.

Each request will be considered on a case-by-case basis and will be dealt with in a reasonable manner. Agreeing to one request will not set a precedent or create the right for another employee to be granted a similar change to his/her working pattern. Equally, the Trust will not discriminate against employees because of any protected characteristic.

The request may be agreed:

- in full; or
- it may be modified, or
- granted for a temporary period or
- the employee may be asked to try the flexible working arrangement for a trial period (see section 5.14.3).

The line manager will notify the employee of their decision within 14 days of the meeting. This should be by completion of the 'Manager Approval' section of the Flexible Working Application eForm.

This must be followed up in writing with information about the decision. This must include:

- **Application Approved:**
  - Manager updates information below on e-form and approves it;
  - Details of the new agreed work pattern;
  - The date on which the new work pattern will start;
  - Any changes to terms and conditions.



- Agreed date to review the application (if required)
- **Application Rejected:**  
 Manager updates information below on e-form and rejects it;
  - The business reason(s) why the application was rejected (see section 5.14.4);
  - An explanation as to why the business reasons apply;
  - Setting out the appeal process (see section 5.16).

### 5.14.3 Trial Periods

The manager may agree to a trial period if they, or the employee, are unsure as to whether the requested flexible working pattern will work in practice.

A trial period can be put in place for up to 6 months.

There must be a mid-way review meeting with the manager and employee to discuss if:

- the flexible working arrangement is likely to continue at the end of the trial period;
- there needs to be an adjustment to allow the arrangement to continue;
- the arrangement is likely to cease and the employee return to their original pattern of the work at the end of the trial period.

Once the new working pattern has been formally agreed as permanent, it will, unless otherwise agreed, constitute a permanent change to the employee's terms and conditions and manager completes approval on e-form as outlined in 5.14.2 above.

### 5.14.4 Reasons For Rejecting A Flexible Working Request

The Trust will make every effort to accommodate requests for flexible working. However, there will be occasions when requests are rejected and the reasons for the rejection must be explained to the applicant.

The reason(s) for rejection **must** be based on one of the following grounds:

- the burden of additional costs that would result from the proposal;
- a detrimental impact on quality;

- a detrimental impact on performance;
- a detrimental effect on the Trust's ability to meet patient/client needs;
- an inability to recruit additional staff to do the work;
- an inability to re-organise work among existing staff;
- a lack of work during the periods that the employee is proposing to work;
- the Trust is planning changes to the workforce.

The line manager must not reject a request for any other reason.

#### **5.14.5 Appeal Process**

An employee may appeal against a decision to reject their flexible working request.

- The employee must make their appeal in writing within 14 days of receiving the written confirmation from their manager that their application has been turned down.
- They must also set out the grounds for the appeal.
- The appeal meeting must be arranged within 14 days of receiving the employee's appeal notice.
- The appeal must be heard by a different manager, i.e. not the manager who made the original decision. An HR representative will also be present.
- The employee is entitled to be accompanied to the hearing by a trade union representative or a work colleague employed by this Trust.
- In the event that the employee or their representative is unable to attend the meeting, prior notice must be given, unless in exceptional circumstances. It is up to the employee to seek to re-arrange the meeting and it should take place within 7 days of the date of the original meeting.
- The manager must inform the employee of the outcome of the appeal in writing within 14 days after the date of the meeting:

- **Appeal Upheld:** the letter must:
  - be dated;
  - include a description of the new working pattern;
  - state the date from which the new working pattern will take effect.
  
- **Appeal Turned Down:** the letter must:
  - be dated;
  - state the grounds for the decision. These must relate to the grounds on which the employee appealed;
  - explain why the grounds for refusal apply. The explanation should include similar detail that was provided following the initial meeting.

This decision is final and there is no further appeals process.

### **5.15 Ending of a Flexible Working Arrangement**

In the event that a flexible working arrangement can no longer be accommodated within the needs of the service as a result of changes in operational requirements, the Trust's Change Management Policy will apply.

Employees can request a review of, or change to, a flexible working arrangement by submitting a fresh application for flexible working. Please also see section 5.14.3 on Trial Periods.

## **6. Consultation Process**

The following stakeholders were consulted in the creation of this policy and comments incorporated as appropriate.

Director or People and Communications  
 Acting Head of Human Resources  
 Workforce Business Partners  
 Managers  
 Staff Representatives  
 HR Transformational Team  
 Diversity and Inclusion Lead  
 Black Asian and Minority Ethnic (BAME) network  
 Positive about disability (PAD) network  
 Rainbow (LGBT) network  
 Fire, Health and Safety Advisor to CLCH  
 Employee Health Service

## **7. Approval And Ratification Process**

The initial draft of the Flexible Working Policy was reviewed with a staff representative on 14 August 2018, sent to the HR Policy Group on 20 August 2018 and discussed at subsequent meetings. The final version was agreed at the HR Policy Group on 5 November 2018.

Final approval was given by the Policy Ratification Group on 12<sup>th</sup> November 2018.

## **8. Dissemination And Implementation**

This document will be placed on the intranet by the Quality and Learning Division (QLD). The QLD team will provide a reference number for the policy.

It will be therefore be available to all staff via the CLCH NHS Trust intranet. Furthermore the document will be circulated by the Workforce Business Partners and Human Resources Advisers to all managers who will be required to cascade the information to members of their teams and to confirm receipt of the procedure and destruction of previous procedures/policies which this supersedes. Managers will ensure that all staff are briefed on its contents and on what it means for them.

A paragraph summarising what the policy covers will be sent to the communications team via [clch.communications@nhs.net](mailto:clch.communications@nhs.net) with a request for it to be included in This week@ and Managers' Cascade

## **9. Archiving**

The QLD will undertake the archiving arrangements.

## **10. Training**

None required.

## **11. Monitoring and Auditing Compliance with the Procedural Document**

Please see table at Appendix D

## **12. Review Arrangements**

This procedural document will be reviewed in 2½ years' time in 2020. It will be reviewed by the nominated HR lead for the policy.

## **13. Associated Documentation**

- Annual Leave Policy;
- Annualised Hours Policy;
- Change Management Policy;
- Display Screen Equipment Policy
- First Aid at Work Policy
- Freedom To Speak Up: Raising Concerns Policy;
- Health and Safety Policy;
- Lone Worker Policy;
- Maternity and New Parents Policy and Procedure;
- Portable Electrical Equipment Policy Remote Working and Portable Devices Policy
- Resolving Differences Policy
- Retirement Guidance for Managers and Employees;
- Risk Management Policy;
- Sickness and Absence Policy;
- Special Leave Policy.

## **14. References**

Relevant legislation, statutory requirements and national standards have been considered when developing this policy  
ACAS; XpertHR; CIPD; NHS Employers; NHS Terms and Conditions of Service and [www.gov.uk](http://www.gov.uk)

## **15. Appendices**

Appendix A: Home and Safety for Home Workers  
Appendix B: Calculation for Term-Time Only Employees  
Appendix C: Flexible Working Flowchart  
Appendix D: Compliance and Monitoring table  
Appendix E: Equality Impact Assessment Pro Forma

## Appendix A:

# Health and Safety for Home Workers

- Under the Health and Safety at Work, etc., Act (1974), Central London Community Healthcare NHS Trust (CLCH) has the same obligations to protect the health, safety and welfare of home workers who are employees, as they do for employees who are based on-site. This includes provision of such information, instruction, training and supervision as is necessary to ensure the home workers' health and safety. Home workers must also take reasonable care of themselves and others who may be affected by their work. CLCH must also ensure that so far as is reasonably practicable, their work activities do not pose a health and safety risk for persons not in their employment.
- CLCH's Health and Safety Policy outlines how CLCH manages health and safety in the organisation and this must be read in conjunction with this policy.
- The Management of Health and Safety at Work Regulations 1999 require CLCH to carry out a risk assessment of the work carried out by home workers. When undertaking the risk assessment, it is essential to decide who might be harmed, how they might be harmed and the likelihood of such arising. This will include the home worker themselves, family members, visitors to their home, and special consideration must be given to vulnerable persons (e.g. young children). Risk assessments must be undertaken in line with the CLCH Risk Strategy and Management Policy.
- Most work carried out by CLCH employees working at home will be low-risk, office-type work. An employee must never see patients/clients or any other individuals in relation to CLCH work activities in their own home.
- Prior to an employee commencing home based working for the first time, the following requirements must be met:
  - **Training:** All employees must have undertaken CLCH induction training and subsequent refresher training for Fire, Health and Safety and Moving and Handling.
  - **Risk Assessment:** With the employee, the line manager must complete a risk assessment of the work activities and work area involved, identifying **all** potential hazards. This should be completed using the CLCH risk assessment template and grading matrix from CLCH's Risk Strategy and Management Policy and must be undertaken in conjunction with CLCH's Health and Safety Policy. The employee must ensure that the home work-area remains safe and report any concerns or risks to their line manager immediately so that the risk assessment can be reviewed and CLCH can ensure they fulfil their duty to protect the health,

safety and welfare of home workers and any others who may be affected by the work activity.

- **Work/Electrical Equipment:** The employee is to be informed that CLCH are only responsible for the equipment they supply. Work equipment provided by CLCH must be suitable for its intended use, and the employee must receive adequate training and information on how to use the equipment. The manager must ensure that any electrical equipment provided by CLCH is checked for safety in line with CLCH policy and that it is maintained regularly. The employee is to be made aware that they need to ensure that plugs, leads, wires and cables are checked visually regularly and kept in a condition that does not cause harm, including their positioning in relation to trips and falls and that they must report any concerns about the safety or condition of electrical equipment provided by CLCH for work use at home.
- **Display Screen Equipment (DSE):** Any employee working at home on a computer must be trained beforehand to undertake their own risk assessments and ensure that any equipment they use is set up correctly so as to reduce any DSE risks, in line with the Healthy Working programme, a health & safety on-line training program and self-risk assessment questionnaire for the workstation. Staff who carry out regular work at home are advised against working from their sofa; kitchen or dining room table and should use appropriate office furniture. Those undertaking ad hoc home work are also advised against using the sofa, kitchen or dining room table, however, if they are able to set themselves up with their arms bent to 90° at the elbows and their wrists not bent up or downwards then this would be a satisfactory working position. Regular breaks or changes of position MUST be taken.
- **First Aid:** Where employees regularly home work, line managers should ensure that CLCH's First Aid At Work Policy is implemented. Employees must be advised that they have a responsibility to prevent accidents by ensuring the home work-area remains safe and report any concerns or risks to their line manager.
- **Accidents / Incidents:** Employees should be made aware that any accidents at home involving CLCH work activities must be reported in line with CLCH reporting policy and incident reporting system 'Datix'.
- **Lone Working:** CLCH's Lone Working Policy should be referred to. Line managers and employees should always have a means of communicating and, as a minimum, employees should provide their line manager with a contact telephone number for home working and ensure that contact is made during the day either by email or by telephone.

- **Information Governance:** Staff MUST ensure they do not leave confidential or persons sensitive information on display for others to read. Strict compliance with the Trust's information governance standards and policies is paramount.
- Any health and safety concerns in relation to home working should be discussed between the line manager and employee and support and advice obtained from CLCH's relevant competent person (for example, Fire Safety Manager, Health and Safety Manager, Local Security Management Specialist, Manual Handling Lead) as necessary.

References:

- Health and Safety Laboratory. 2004. Health and safety of home workers: Good practice case studies. Available: online – <http://www.hse.gov.uk/research/rrpdf/rr262.pdf>
- Health and Safety Executive. 2011. Home workers: Guidance for employers on health and safety (INDG226). Available online: <http://www.hse.gov.uk/pubns/indg226.pdf>



## Appendix B:

### Calculation for Term Time Only Employees on a Full-Time 37.5 Hours per Week Contract

An employee on a standard Term Time Only contract works 39 weeks per year minus one day (early May bank holiday). This equates to 38.8 weeks per year.

#### Calculation for an employee working full-time (37.5 hours per week)

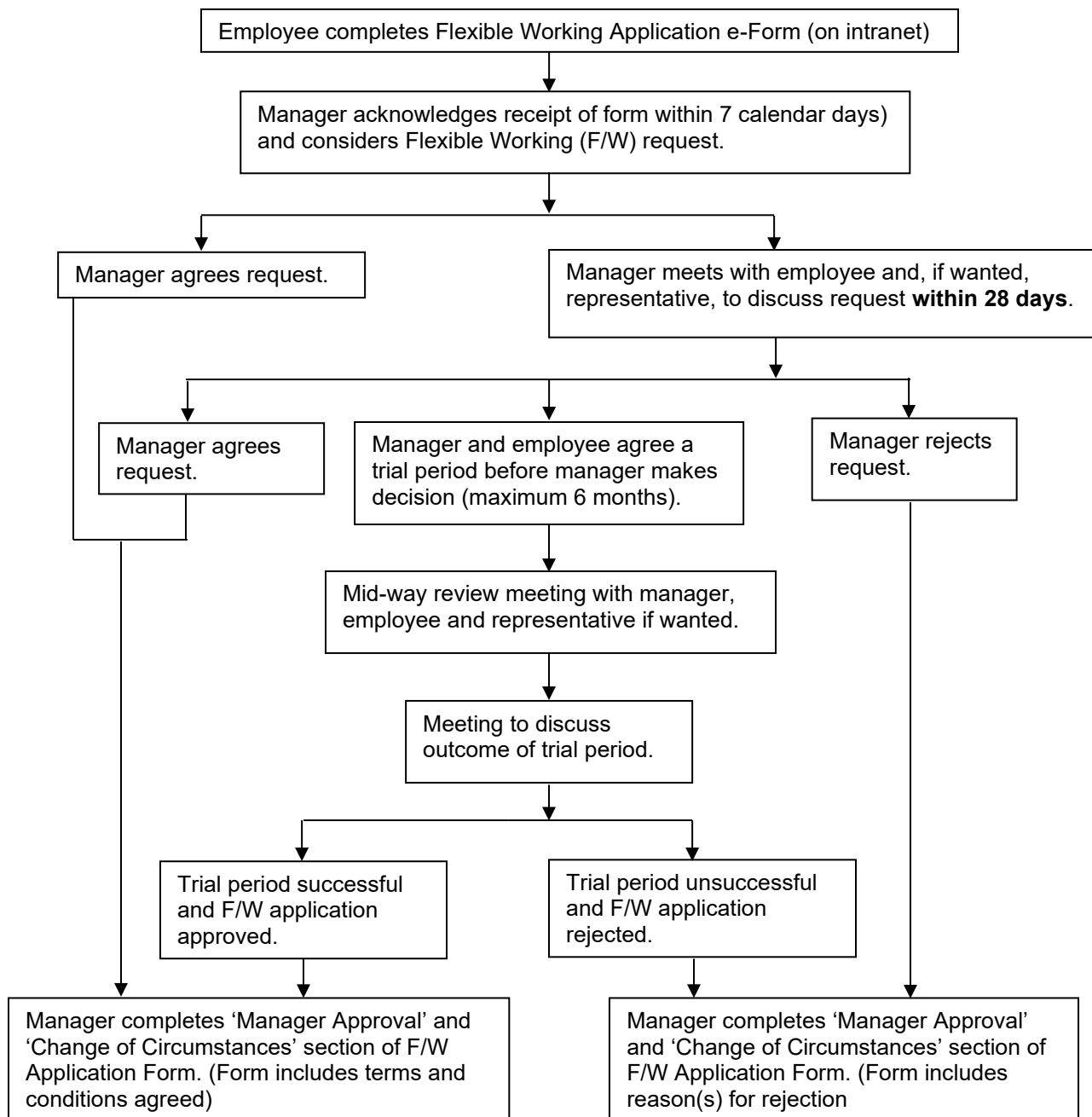
0 – 4 years' service:	works 45 weeks per year (52 weeks – 5.4 weeks annual leave - 1.6 bank and public holidays)
5 – 9 years' service:	works 44.6 weeks (52 weeks – 5.8 weeks annual leave - 1.6 weeks bank and public holidays)
10 + years' service:	works 43.8 weeks (52 weeks – 6.6 weeks annual leave - 1.6 weeks bank and public holidays)

An employee on working term time only should be paid as follows:

0 – 4 years' service:	38.8 weeks divided by 45 weeks = 86% of a full-time salary
5 – 9 years' service:	38.8 weeks divided by 44.6 weeks = 87% of a full-time salary
10 + years' service:	38.8 weeks divided by 43.8 weeks = 88% of a full-time salary

Appendix C:

**FLEXIBLE WORKING APPLICATION FLOWCHART**



**Appendix D: Compliance and Monitoring Table**

<b>Policy lead</b>	<b>Element(s) to be monitored</b>	<b>How will you ensure that the policy is being implemented</b>  For example via an internal or external audit, KPIs, surveys or any other evidence?	<b>How often will you monitor that the policy is being implemented</b> For example will the KPIs be looked at annually/quarterly	<b>Reporting arrangements</b> (Which committee or group will the monitoring of the policy be reported to?)	<b>Results of monitoring?</b>
Director of People and Communications / Head of Human Resources	Monitoring of Leave taken, and working hours and patterns	Managers are required to complete positive returns and submit them to Human Resources or update allocate as required. This serves as a record of leave, monitored by the manager locally.	<ul style="list-style-type: none"> <li>• Monthly</li> </ul>	A record is kept on ESR and on personnel records of employees enjoying flexible working arrangements.	<ul style="list-style-type: none"> <li>• Support a positive and healthy work-life balance for employees;</li> <li>• Promote consistency and equity across the Trust;</li> </ul>
Director of People and Communications / Head of Human Resources	Changes to contractual working hours and or patterns  The internal Pulse Survey results.	Applications for flexible working are submitted electronically, the reasons for approving or rejection applications are reviewed and analysed by the Transformational HR Team  The pulse Survey results will be assessed by the Transformational HR team to determine whether or not there could be an impact on the Flexible Working Policy	<ul style="list-style-type: none"> <li>• Quarterly</li> </ul>	A record is kept on ESR and on personnel records of employees enjoying flexible working arrangements.  Any recommendations for action will be followed up by the HR lead for the policy and any reviews to the policy will be approved via HR Policy Sub-Group and Policy Ratification	<ul style="list-style-type: none"> <li>• Ensure that employee needs are balanced with service needs.</li> </ul>

Policy lead	Element(s) to be monitored	How will you ensure that the policy is being implemented  For example via an internal or external audit, KPIs, surveys or any other evidence?	How often will you monitor that the policy is being implemented  For example will the KPIs be looked at annually/quarterly	Reporting arrangements (Which committee or group will the monitoring of the policy be reported to?)	Results of monitoring?
Director of People and Communications / Head of Human Resources	The annual Staff Survey results and exit questionnaires	The annual Staff Survey results and exit questionnaires will be assessed by the Organisational Development Team to determine whether or not there could be an impact on the Flexible Working Policy	<ul style="list-style-type: none"> <li>Annually</li> </ul>	Any recommendations for action will be followed up by the HR lead for the policy and any reviews to the policy will be approved via HR Policy Sub-Group and Policy Ratification Group	
Director of People and Communications / Head of Human Resources	changes in national guidance, legislation or learning from local stakeholders and its impact on the Flexible working policy	Any changes required will be included in the Policy which will be discussed through the agreed negotiating and approval mechanism.	<ul style="list-style-type: none"> <li>2 ½ years</li> <li>Earlier revisions will be made subject to changes in national guidance, legislation or learning from local stakeholders.</li> </ul>	<ul style="list-style-type: none"> <li>HR Policy Group a Sub-Group of the JSCC</li> <li>Policy Ratification Group</li> <li>Workforce Committee</li> </ul>	

**Appendix E: EQUALITIES IMPACT ASSESSMENT PRO FORMA**

**FLEXIBLE WORKING POLICY**

**Equality Analysis Template for Policies – Screening form**

CLCH as a public authority, has to show due regard under the Equality Act 2010, to likely impact of its policies or procedures on people with protected characteristics who may be staff or patients.

This helps us to address any negative impact, and consider ways to reduce that impact.

This screening form helps you answer the question - does this policy/function or proposal affect people with different protected characteristics?

Think about the delivery of the procedural document and how it will be applied. This template can be amended depending on the scope of the assessment (such as policies affecting staff or service users).

<b>1. Title of policy, strategy, procedure, proposal or function:</b>
Flexible Working Policy

<b>2. What are the intended outcomes of this work? <i>Include outline of objectives and function aims</i></b>
<ul style="list-style-type: none"> <li>• Support a positive and healthy work-life balance for employees;</li> <li>• Promote consistency and equity across the Trust;</li> <li>• Ensure that employee needs are balanced with service needs.</li> </ul>

<b>3. Who will be affected? <i>e.g. staff, patients, service users etc.</i></b>
All Staff

Protected characteristic	Positive impact	Neutral Impact	Negative Impact	Reason for impact and action required.
People of different ages (e.g. Children, young or older people).	X			All options are open to all staff except flexible retirement which is open only to those 50 or 55 and over who are members of the NHS Pension Scheme. There is an objective reason for this as

				the age criteria is linked to the national NHS Pension Scheme provisions of age and periods of service. People do not have to retire at a particular point and can make an application to retire flexibly. Trust staff can opt to continue working beyond normal retirement age if they so wish.
People of different religions / beliefs	X			The policy allows employees to request flexible working that could be applied for, for example, during periods of fasting or for other religious reasons.
People with disabilities (physical, sensory or learning).	X			The policy will have a positive impact on people with disabilities as it provides for reasonable adjustments.
People from different ethnic groups (including Travellers and Gypsies, Refugees and Asylum seekers and other migrant communities).			X	If English is not an employee's first language there may be a negative impact. Communication needs to be clear so employees understand the flexible working options. Language in this policy is clear. Extra time may be required to explain the details of the policy and ensure it is understood..
Men or women	X			The policy will have a positive impact upon women and men who have childcare or other responsibilities.
Transgendered people		X		None identified
People who are gay, lesbian, and bi-sexual		X		None identified
People's marital status (including civil partnership)		X		None identified
Pregnancy and maternity (how will the policy affect women who are pregnant or related maternity needs)	X			The policy will have a positive impact as women who are pregnant or have related maternity needs can use the policy to plan the best options available to them when returning to work.
Carers (although not a protected characteristic, you may want to consider if the policy affects people with caring responsibilities)	X			The policy will have a positive impact on people with caring responsibilities as use the policy outlines options available to manage work and caring responsibilities.

Any other group likely to be affected by this policy (e.g. people on low income, homeless etc.)		X		None identified
---	--	---	--	-----------------

2	<p>Please describe engagement and consultation process and the key feedback. E.g. with teams, unions or user groups.</p> <p>Consulted with subject matter experts, staff and union representative</p>
3.	<p>If negative impacts have been identified, please complete a full Equality Analysis, which will set out actions that need to be taken to mitigate those impacts.</p> <p>This policy does not need a full assessment as the organisation will review the application of this policy on at least an annual basis and will consider the action needed to address any adverse impacts, this will be analysed and published.</p>

Signed for team / working group:

Name: Yasmin Mahmoud, Diversity and Inclusion Lead

Date: 01 October 2018

**TITLE: FREEDOM TO SPEAK UP (FTSU) POLICY**

**VALID FROM: JANUARY 2021**

**EXPIRES: DECEMBER 2023**

**REFERENCE WFC 09**

This procedural document supersedes the previous procedural document, Freedom to Speak Up: Raising Concerns at Work Policy, version 8.0



<b>Version:</b>	9.0
<b>Policy reference and description of where held.</b>	WFC 09
<b>Title, name and contact details for author:</b>	Freedom to Speak Up Guardian <a href="mailto:liz.lubbock1@nhs.net">liz.lubbock1@nhs.net</a>
<b>Title, name and contact details for responsible director:</b>	Louella Johnson, Director of People, Executive Lead for Freedom to Speak Up
<b>Approved by originating committee, executive or departmental management group and date.</b>	Approved via HR Policy Group meeting on 27/10/20 and subsequent changes virtually on 05/01/21 with Head of ER and Staff Side Chair on behalf of HRPG.
<b>Ratified by Policy Ratification Group:</b>	11 January 2021
<b>Review date:</b>	March 2023
<b>Target audience</b>	Healthcare professionals, non-clinical staff, senior, middle and junior managers, volunteers, students, bank and agency staff, former employees and anyone else who undertakes work for CLCH.

### Version Control Sheet

Version	Date	Author	Status	Comments
2.1	April 2012	Liz Lubbock	Draft	Policy reviewed and updated.
3.0	August 2014	Kate Wilkins	Final	Finalised post PRG
4.0	June 2015	Liz Lubbock	Final	Wording added following publication of the 'Freedom to speak up' report by Sir Robert Francis QC (Feb 2015)
5.0	December 2016	Liz Lubbock	Final	Policy reviewed in light of new national policy and introduction of national and local Freedom to Speak Up Guardians. New title.
6.0	November 2017	Liz Lubbock	Final	Updated contact details following 2 FTSU Guardians being replaced and migration to nhs.net email accounts.
7.0	October 2020	Liz Lubbock	Final	3-month extension to current policy agreed.
8.0	January 2021	Liz Lubbock	Final	Policy updated and reviewed against the national FTSU policy template, National Guardian's Office policy review framework, learning from usage, NGO case reviews.
9.0	February 2022	Liz Lubbock	Final	Element added to monitoring appendix (page 27), an agreed action from external FTSU audit in August/September 2021.

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## 1. Introduction

### **Our Freedom to Speak Up Vision**

We are committed to promoting an open and transparent culture across the organisation to ensure that all members of staff experience a compassionate climate where they are confident to speak up and everyone can learn.

- 1.1 If you have a concern at work, it is really important that you speak up about it. It will help us to keep improving our services for all patients and the working environment for people who work for the Trust.
- 1.2 Speaking up should happen as 'business as usual'. When things go wrong, we think something *might* go wrong, or when things are good but could be even better, it is important that we all feel able to say something, confident that we will be listened to and that it will be used as an opportunity for learning and improvement.
- 1.3 Speaking up may take many forms. For example, it could be a quick discussion with a line manager, a suggestion for improvement made through a staff network, talking about an issue with the Freedom to Speak Up Guardian, or bringing a matter to the attention of a regulator (*see section 5.5 for more examples*).
- 1.4 You may feel worried about speaking up or may want to keep the concerns to yourself, perhaps feeling it is none of your business or that it is only a suspicion. We understand this but please do not be put off. Senior leaders and the entire board are committed to an open and honest culture.

**We will listen to you;  
Your concern will be acted upon;  
You will receive feedback; and  
You will always have access to support.**

## 2. Aims and objectives

- 2.1 The aim of this policy is to support staff and others who undertake work for CLCH, who have concerns. This includes healthcare professionals, non-clinical staff, senior, middle and junior managers, volunteers, students, bank and agency staff, former employees and anyone else who carries out work for CLCH.
- 2.2 There is guidance on how matters should be raised and how these should be addressed fairly, promptly and transparently. It covers:
  - what concerns you can raise;
  - feeling safe to raise your concern;
  - confidentiality;
  - who can raise concerns;
  - who you should raise your concern with;

- advice and support;
- how you can raise your concern;
- what we will do;
- where you can raise other concerns.

### 3. Definitions

**A concern:** for the purpose of this policy, a concern is anything that gets in the way of providing high quality effective care, either directly or indirectly, or that affects anyone's working life (see section 5.1 for examples).

**'We' and 'our':** refers to the Trust's senior leaders' expectations of the process, managers and other workers.

**'Confidentiality':** the identity of the person speaking up, and their concerns, will be kept private unless they consent to disclose the information, or there is a legal reason or imminent safety or safeguarding risk as to why this is not possible.

**'Anonymous':** the person speaking up does not give their name to anyone.

**'Staff':** relates to all employees of CLCH, including managers and supervisors.

### 4. Duties

**4.1 Staff and other people who undertake work for CLCH (*workers*),** have a duty to:

- speak up about any matters of concern about the delivery of care, services or malpractice within the Trust.
- behave responsibly and fairly towards any member of staff who speaks up.
- help us become an organisation that learns and innovates and the concerns raised constructively by staff are a key source of information.

**4.2 Managers,** in addition to their duties as staff member, have a key role to play in:

- creating this culture of safety, learning and innovation within which staff can confidently raise concerns, knowing that there will be a positive and constructive response at all levels of management and from colleagues.
- ensuring that staff can express concerns easily and that they are dealt with thoroughly and fairly.

**4.3 Chief Executive, Board Directors and Senior Leaders** must:

- model the behaviours to promote a positive culture in the organisation;
- work to help create an open culture which is based on listening and learning, and not blaming.

**4.4 Chairman and Non-Executive Directors** must:

- maintain their independent status;

- work to help create an open culture which is based on listening and learning, and not blaming.

#### **4.5 Staff representatives will:**

- feed staff views and concern themes into the Freedom to Speak Up Group, Joint Staff Consultative Committee and other appropriate groups to assist the organisation in understanding staff experience.

### **5. Procedural document for speaking up and raising concerns**

There is a one-page summary of the speaking up process on page 19 (*appendix B*).

#### **5.1 What concerns can I raise?**

We want you to speak up about:

- things that could be improved, as well as
- problems, issues or other concerns you may have.

You can raise a concern about anything that you think is getting in the way of high-quality effective care, either directly or indirectly, or that affects your working life.

#### **A few examples of this might include, but are not limited to:**

- ✓ unsafe patient care;
- ✓ poor or inadequate quality of care;
- ✓ unsafe working conditions;
- ✓ inadequate induction or training for staff/other workers;
- ✓ lack of, or poor, response to a reported patient safety incident;
- ✓ no response, or an inadequate response, to concerns that you have raised;
- ✓ negative impacts on staff/workers' wellbeing and morale;
- ✓ a bullying culture;
- ✓ being excluded, perceived stalking or other behaviours from staff that make you worry or feel threatened;
- ✓ feeling victimised for speaking up;
- ✓ feeling unsupported when experiencing behaviours from patients/carers that are unacceptable to you;
- ✓ suspicion of fraud, corruption or bribery, which must also be reported to our local counter-fraud team (*see section 5.5*).

Remember that if you are a healthcare professional, you may have a professional duty to report a concern. **If in doubt, please speak up about it.**

Do not wait for proof. We would like you to raise the matter while it is still a concern. It does not matter if you turn out to be mistaken as long as you are genuinely troubled.

This policy is not for people with concerns about their employment that affect only them. That type of concern is better suited to the CLCH [Resolving Differences Policy](#) (includes grievances and collective disputes), available on the intranet. Volunteers should raise any concerns regarding their roles with the Volunteer Manager and follow their escalation procedure.

## **5.2 Feel safe to raise your concern**

If you raise a genuine concern under this policy, you will not be at risk of losing your job. Provided you are acting honestly, it does not matter if you are mistaken or if there is an innocent explanation for your concerns.

We will not tolerate the harassment or victimisation of anyone raising a concern or any attempt to bully you into not raising any such concern. Any behaviour of this kind is a breach of CLCH values as a Trust and, if upheld following investigation, could result in disciplinary action against the perpetrator.

If you feel this is the case, please contact your manager, your manager's manager, HR, Executive Lead for Freedom to Speak Up (Director of People), the Freedom to Speak Up Guardian or one of the Freedom to Speak Up Champions (*see section 5.5*), or you can seek independent legal advice.

## **5.3 Confidentiality**

Ideally, we would like you to feel able to raise your concern openly. However, we appreciate that while you are willing for your identity to be known to the person you report your concern to, you may not want anyone else to know your identity. Therefore, the concern receiver will keep your identity confidential if that is what you want, unless they have your consent to disclose it, or if they are required to disclose it, e.g. by law.

If you are worried about this aspect, you can discuss your concerns in confidence with the Freedom to Speak Up Guardian and Freedom to Speak Up Champions first who will listen to you and talk with you about options.

You can also choose to raise your concern anonymously, without giving anyone your name, but this may make it difficult for us to investigate thoroughly and give you feedback on the outcome.

## **5.4 Who can raise concerns?**

Anyone who works, or has worked, in the NHS or for an independent organisation that provides NHS services, can raise concerns. This includes, for example,

permanent staff, agency workers, temporary workers, those on honorary contracts, students, volunteers and governors.

## 5.5 Who should I raise my concern with?

The most important thing for patient safety and improving the experience of all workers, is to speak to someone when you are uncomfortable, worried or anxious about something at work. The diagram below summarises who to speak with:



Contact details for the FTSU Guardian, FTSU Champions, staff representatives, Directors, Non-Executive Director and Local Counter Fraud specialist, and external bodies are on the 'FTSU' page on the intranet. All these people have been trained in receiving concerns and will give you information about where you can go for more support.



### 5.5.1 Freedom to Speak Up Guardian and Champions – Independent roles

CLCH's Freedom to Speak Up Guardian and Champions:

- provide an **independent, impartial and non-judgmental** source of support and guidance to everyone who works for CLCH, at any stage of raising a concern, regardless of the route chosen.
- will listen to anyone who approaches them with concerns, signposting them to how and/or where they can raise their concerns.
- treat your concern confidentiality unless otherwise agreed or there is a legal reason as to why this is not possible;
- provide a sounding board if you want to talk.

The Freedom to Speak Up Guardian, in addition, has also been given special responsibility and training in dealing with concerns. The Guardian will:

- help you to raise your concerns if you want and, if appropriate, can do so on your behalf although the preference is for staff to do so themselves;
- ensure that you receive timely support to progress your concern;
- escalate to the board any indications that you are being subjected to detriment for raising your concern;
- remind the Trust of the need to give you timely feedback on how your concern is being dealt with;
- ensure you have access to personal support since raising your concern may be stressful;
- if you would like, attend meetings with you when you are 'speaking up', in an independent capacity.

If you want to raise the matter in confidence, please say so at the outset so that appropriate arrangements can be made.

For their contact details, search 'ftsus' on the intranet. More information is included in appendix E, Freedom to Speak Up structure and roles.

## 5.6 Advice and support

We recognise that raising a concern can be stressful but you do not need to feel on your own. The Freedom to Speak Up Guardian will be able to support you through the process and afterwards. Freedom to Speak Up Champions are also a source of support.

You can find out more information by speaking with your manager, the Freedom to Speak Up Guardian, a Freedom to Speak Up Champion, Mental Health Minder, Staff Representative or HR Advisor. There is also information on the [intranet](#).

Staff can also access:

- counselling through [Employee Health Services](#) (you can self-refer);
- [mediation](#).

## **5.7 How should I raise my concern?**

You can raise your concerns verbally by phone, in person, or in writing (including email). Whichever route you choose, please be ready to explain as fully as you can the information and circumstances that gave rise to your concern.

## **5.8 What will we do?**

We are committed to the principles of the Freedom to Speak Up review and its vision for raising concerns, and will respond in line with them (appendix B).

On receipt, your concern will be recorded and you will receive an acknowledgement within 2 working days. The concern receiver will record the date your concern was received, whether you have requested confidentiality, a summary of the concerns and dates you have been given updates or feedback, and any lessons learned.

### **5.8.1 Investigation**

Where you have been unable or unwilling to resolve the matter with your line manager or clinical lead within a few days, a proportionate investigation will be carried out using someone suitably independent, usually from a different part of the Trust, and who has been properly trained (see appendix C). A conclusion will be reached within a reasonable timescale which we will notify you of. Wherever possible, a single investigation will be carried out, for example, where a concern is raised about a patient safety incident, we will usually undertake a single investigation that looks at your concern and the wider circumstances of the incident. The investigation will be objective and evidence-based, and will produce a report that focuses on identifying and rectifying any issues, and learning lessons to prevent problems recurring.

If you raised your concern with someone other than your line manager or clinical lead, appendix D explains the process.

It may be decided your concern would be better looked at under another process, e.g. our process for dealing with bullying and harassment. If so, we will discuss that with you.

Any employment issues that affect only you and not others, identified during the investigation, will be considered separately.

If you feel uncomfortable to work where you are whilst an investigation takes place, inform the concern receiver and consideration will be given to a temporary move.

### **5.8.2 Communicating with you (*includes timescales*)**

We will treat you with respect at all times and will thank you for raising your concerns. We will discuss your concerns with you to ensure we understand exactly what you are worried about. We will tell you how long we expect the investigation to take and keep you up-to-date with its progress. Wherever possible, we will share the full investigation report with you, whilst respecting the confidentiality of others).

A timescale guideline is below although this will vary depending on the type of concern you have spoken about and the ease or complexity of looking into it.

Timescale summary	
Communication	Expectation
<p>Receive an:</p> <ul style="list-style-type: none"> <li>• acknowledgement of your concerns,</li> <li>• an initial outline of steps to be taken,</li> <li>• likely timescale for looking into it (them), and</li> <li>• how you can access support, including the Freedom to Speak Up Guardian,</li> </ul> <p>from the person with whom you have raised it (<i>concern receiver</i>).</p>	<p>Within 2 working days</p>
<p>In most cases, concerns are expected to be fully looked into and you should receive a written response or update.</p>	<p>Within 10 working days</p>
<p>Where a more complex investigation is required, this may take longer. You should receive an:</p> <ul style="list-style-type: none"> <li>• update from the concern receiver and, if the investigation is incomplete,</li> <li>• an indication as to when you can expect the outcome.</li> </ul>	<p>Within 10 working days and again at 15 working days</p>
<p>The investigation should be completed.</p> <p>If this has not been possible, the concern receiver should notify you, their senior manager, and copy in their Director of Operations, as to the reasons for the delay.</p> <p>The senior manager will assess the situation immediately and make a decision about next steps.</p>	<p>Within 20 working days</p>

### **5.8.3 How will CLCH learn from your concern?**

The focus of the investigation will be on improving the service that CLCH provides for patients. Where it identifies improvements that can be made, we will track them to ensure necessary changes are made, and are working effectively. Lessons will be shared with teams across the Trust, or more widely, as appropriate.

## **5.9 Board oversight**

The board will be given high level information about all concerns raised by our staff through this policy and what we are doing to address any problems. We will include similar high level information in our annual report. The board supports staff raising concerns and wants you to feel free to speak up.

## **5.10 Raising your concern with an outside body**

CLCH would prefer you to raise concerns inside the Trust so that we have an opportunity to address them. However, if you do not feel able to do this, you can raise your concern outside the Trust with:

- NHS Improvement for concerns about:
  - how the trust and other trusts are being run;
  - other providers with an NHS provider licence;
  - NHS procurement, choice and competition;
  - the national tariff.
- Care Quality Commission for quality and safety concerns.
- NHS England for concerns about:
  - General practice;
  - Primary dental services;
  - Primary ophthalmic services;
  - Local pharmaceutical services.
- Health Education England for education and training in the NHS.
- NHS Protect for concerns about fraud, corruption or bribery.  
<http://www.nhsbsa.nhs.uk/Protect.aspx>
- Professional bodies, such as the Nursing and Midwifery Council, General Medical Council, and the Health and Care Professionals Council.

Contact details are on the 'ftsu' page on the intranet.

If you are unsure about what to do, you can contact the FTSU Guardian to talk about your situation, options or to use as a sounding board.

## **5.11 Making a 'protected disclosure'**

There are very specific criteria that need to be met for an individual to be covered by law when they raise a concern to be able to claim the protection that accompanies it. Categories mentioned in the Public Interest Disclosure Act (1998) include criminal offence, breach of a legal obligation, miscarriage of justice, health and safety, danger to the environment, deliberate concealment of the above.

There is also a defined list of 'prescribed persons', similar to the list of outside bodies in section 5.10 that you can make a protected disclosure to. To help you consider whether you might meet these criteria, please seek independent advice from the Whistleblowing Helpline for the NHS and social care (phone: 08000 724 725 or email [enquiries@wbhelpline.org.uk](mailto:enquiries@wbhelpline.org.uk)), Protect (*formerly Public Concern at Work*) (phone: 020 3117 2520) or a legal representative.

## **6. Consultation Process**

The following stakeholders were consulted in the creation of this policy and comments incorporated as appropriate.

Executive Leadership Team

Staff representatives

Managers

Freedom to Speak Up Guardian

Freedom to Speak Up Champions

HR & Organisational Development teams

Diversity and Inclusion Lead & WRES expert

Race Equality Network

Rainbow Network

Disability and Wellness Network

Local Counter Fraud Service

Volunteer Services

National Guardian's Office

Safeguarding Team

## **7. Approval and Ratification Process**

On 14 May 2020, draft one of the policy was sent for comments to the Chief Executive, Chief Operating Officer, Chief Nurse, Director of People/Executive Lead for FTSU, Non-Executive Director Lead for FTSU, Directors of Nursing and Therapies, Divisional Directors of Operations, Deputy Director of Workforce, managers, the HR team and FTSU Champions and managers.

In July 2020, the updated draft was sent for comments to staff networks, the volunteers' service and Academy from students' perspective.

On 10 September 2020, draft 4 of this policy was sent to staff representatives for comments. On 23 September 2020, the FTSU Guardian met with two staff representatives on 23 September 2020 to go through the policy, page by page, and comments were taken on board. On 29 September 2020, the policy was discussed at the HR Policy Group meeting on with staff representatives and HR representatives. The final version was agreed by the HR Policy Group on 29 September 2020. On 12 October 2020; the policy

was agreed at the Policy Ratification Group meeting, subject to any comments from the National Guardian's Office.

On 14 October 2020, the FTSU Guardian received comments on the policy verbally, from the National Engagement Manager at the National Guardian's Office, in the absence of a revised NHSE/I national template. These suggestions were taken on board and the updated policy sent to the Head of Employee Relations and Policy, and the Staff Side Lead for the HR Policy Group, for final agreement. On 27 October 2020, the updated FTSU Policy was formally agreed at the HR Policy Group meeting. Subsequently, changes were agreed virtually on 05 January 2021 with the Head of ER and Staff Side Chair on behalf of the HR Policy Group. This version was approved by the 11 January 2021 meeting of the PRG.

## **8. Dissemination and Implementation**

This document will be placed on the intranet by the QLD team. The QLD team will provide a reference number for the policy.

It will be therefore be available to all staff via the CLCH NHS Trust intranet. Furthermore the document will be circulated to all managers who will be required to cascade the information to members of their teams and to confirm receipt of the procedure and destruction of previous procedures/policies which this supersedes. Managers will ensure that all staff are briefed on its contents and on what it means for them.

Awareness of this policy will be raised by the Freedom to Speak Up Guardian and others through communications, attending team meetings, site visits etc.

## **9. Archiving**

The QLD team will undertake the archiving arrangements.

## **10. Training requirements**

The Freedom to Speak Up Guardian has received special training to undertake the role through the National Guardian's Office.

Freedom to Speak Up Champions have received training from the Freedom to Speak Up Guardian.

Training and awareness sessions will be run for staff as appropriate and required. Enquiries can be made through [clcht.ftsusupport@nhs.net](mailto:clcht.ftsusupport@nhs.net) or by contacting the Freedom to Speak Up Guardian listed in section 5.5.

Core Freedom to Speak Up training for all staff is provided through the Trust's Statutory and Mandatory level 1 booklet from 2020.

Managers and senior leaders, currently receive training on request, pending the development of a national training package by Health Education England.

The Trust's Welcome booklet is given to new staff for information and this includes information on Freedom to Speak Up.

## **11. Monitoring and Auditing Compliance with the Procedural Document**

See appendix G.

## **12. Review**

This procedural document will be reviewed annually to ensure the effectiveness of the policy. A full review will be undertaken in 2½ years' time in XXXX. It will be reviewed by the lead for HR policies.

## **13. Associated Documentation**

This policy should be read in conjunction with other policies where appropriate, e.g.:

- Addressing Bullying And Harassment Policy – A Framework for Managing Unwanted Behaviour;
- Being Open Policy;
- Resolving Differences Policy;
- Code of Conduct and Conflict Of Interest Policy;
- Disciplinary Policy;
- Capability Policy;
- Equality And Diversity Policy – staff;
- Counter Fraud and Corruption Policy and Response Plan;
- Trans Policy;
- Disability Policy.
- Complaints policy
- Safeguarding Children and Young People's Policy
- Safeguarding Vulnerable Adults at risk Policy

## 14. References

The main references are:

- “Freedom to Speak Up: An independent review into creating an open and honest reporting culture in the NHS” Report by Sir Robert Francis QC
- ‘National Guardian’s Office for Freedom to Speak Up’ publications, e.g.
  - ‘Guidance for boards on Freedom to Speak Up in NHS trusts and NHS foundation trusts’, July 2019
  - ‘Supplementary information on Freedom to Speak Up in NHS trusts and NHS foundation trusts’, July 2019 (NHS England and NHS Improvement)
  - National Guardian’s Office case reviews
- NHS England/NHS Improvement Freedom to speak up; raising concerns (whistleblowing) policy for the NHS, April 2016.
- Employment Rights Act 1996
- Equality Act 2010
- Public Interest Disclosure Act 1998

## 15. Appendices

Appendix A: Process for speaking up and escalating a concern

Appendix B: Process chart for raising a concern

Appendix C: Process for dealing with a concern informally

Appendix D: Process for dealing with a concern formally

Appendix E: Freedom to Speak Up Guardian and Champions – contact details

Appendix F: Governance structure

Appendix G: The culture we want to establish

Appendix H: Freedom to Speak Up self-reflective tool

Appendix I: Monitoring table

Appendix J: Equality Impact Assessment pro forma



**Some things to remember:**

**Your duty to raise a concern overrides any personal or professional loyalty.**

**Safety and quality is everybody's business regardless of your role, position or status.**

**If in doubt, always speak with someone about your concern.**

**Raise your concern as early as possible.**

**You can raise your concern verbally or in writing.**

**Try to raise your concern first with your line manager, clinical lead or supervisor if you can.**

**If you do not feel able to raise it with line management, speak with the Freedom to Speak Up Guardian or a Champion or see section 5.5.**

**You can raise your concerns, preferably by name, but if not, anonymously.**

**You should not be asked to prove your concern. You should explain as fully as you can why you are concerned.**

**You should be updated with progress and receive feedback on the outcome.**

**We will not tolerate the harassment or victimisation of anyone raising a concern or any attempt to bully you into not raising any such concern.**

**Thank you for raising your concerns.**

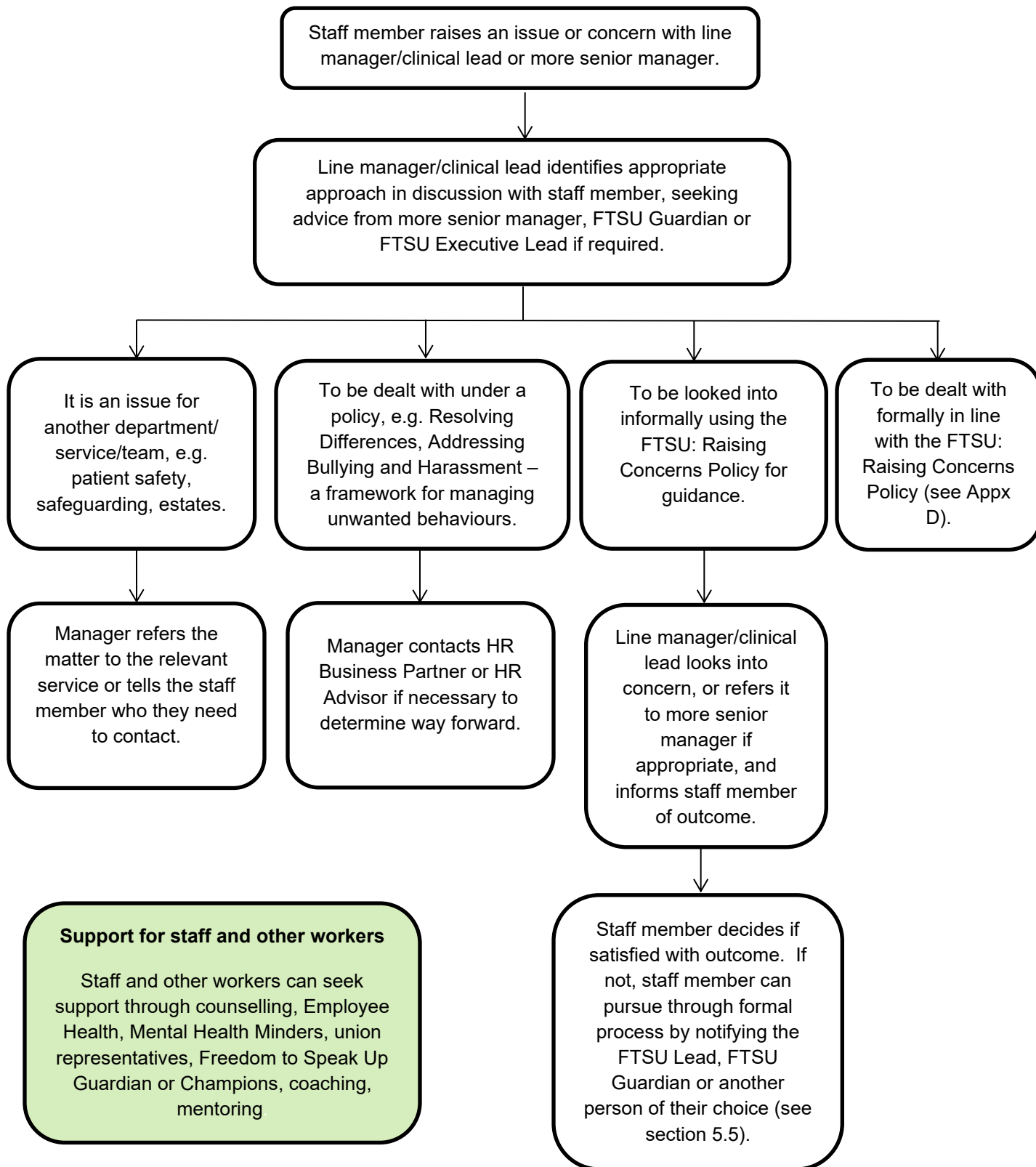
## Appendix B

### Process Chart for Speaking Up

Who can speak up?	Who with?	What happens?	What follows?	Feedback	Support
<p>Anyone, e.g.:</p> <ul style="list-style-type: none"> <li>• permanent staff;</li> <li>• temporary staff;</li> <li>• agency workers;</li> <li>• on honorary contracts;</li> <li>• students;</li> <li>• volunteers;</li> <li>• governors.</li> </ul>	<p>If comfortable to do so, the easiest way is usually through your</p> <ul style="list-style-type: none"> <li>• line manager, or</li> <li>• clinical lead, or</li> <li>• more senior manager.</li> </ul> <p>If you do not think this is appropriate, or would prefer to raise your concern with someone else, you can go to:</p> <ul style="list-style-type: none"> <li>• Patient Safety Team;</li> <li>• Safeguarding Team;</li> <li>• Human Resources;</li> <li>• Freedom to Speak Up Guardian</li> <li>• Freedom to Speak Up Champions</li> <li>• Staff representatives;</li> <li>• Director of People;</li> <li>• Chief Operating Officer</li> <li>• Chief Nurse;</li> <li>• Medical Director;</li> <li>• Director of Improvement;</li> <li>• Director of Finance, Contracting &amp; Performance.</li> <li>• Chief Executive;</li> <li>• Non-Executive Director.</li> </ul>	<p>You will receive an acknowledgement of your concern within 2 working days.</p> <p>The concern will be recorded, including:</p> <ul style="list-style-type: none"> <li>• the date the concern was received;</li> <li>• whether you have requested confidentiality;</li> <li>• a summary of the concerns;</li> <li>• dates when we have given you updates or feedback; and</li> <li>• any lessons learned.</li> </ul>	<p>A proportionate investigation will be carried out.</p> <p>This will be undertaken by someone suitably independent, usually from a different part of the Trust, and who has been appropriately trained.</p> <p>The investigation will be objective and evidence-based, and will produce a report that focuses on identifying and rectifying any issues, and learning lessons to prevent problems recurring.</p> <p>If you have raised a concern with FTSU Guardian support, the FTSU Guardian can attend meetings with you in an independent capacity if you would like.</p>	<p>We will:</p> <ul style="list-style-type: none"> <li>• treat you with respect at all times.</li> <li>• thank you for raising your concerns.</li> <li>• discuss your concerns with you to ensure we understand exactly what you are worried about.</li> <li>• tell you how long we expect the investigation to take and keep you up-to-date with its progress.</li> <li>• wherever possible, share the full investigation report with you whilst respecting the confidentiality of others.</li> </ul>	<p>Support is available for you throughout the process and afterwards. This includes, for example:</p> <ul style="list-style-type: none"> <li>• counselling through Employee Health Services;</li> <li>• mediation;</li> <li>• coaching;</li> <li>• mentoring;</li> <li>• resilience workshops.</li> </ul> <p>The Freedom to Speak Up Guardian will be able to support you through the process and you can seek advice from your union representative.</p>

## Appendix C:

### Process for dealing with a concern informally



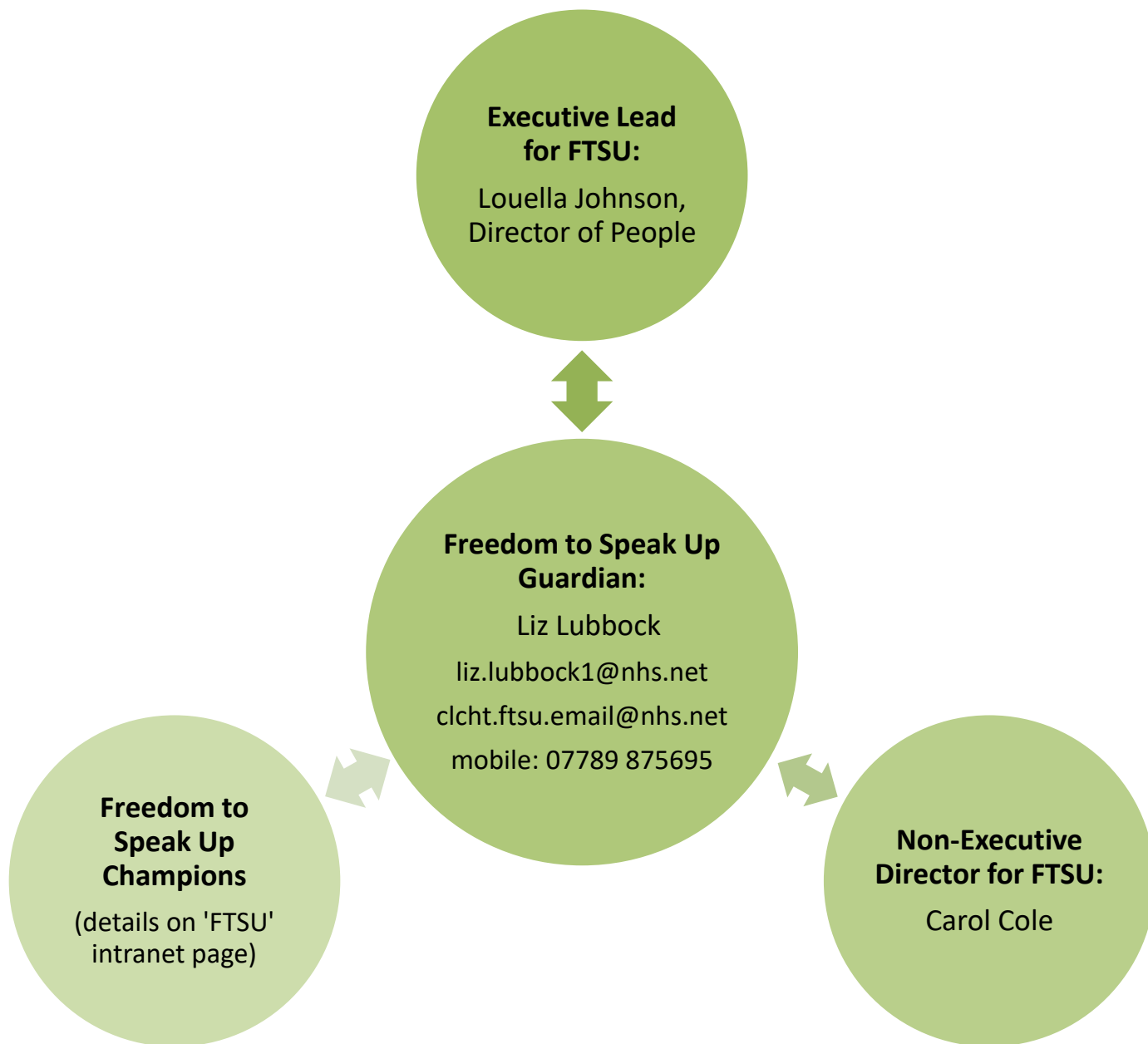
**Appendix D:**

**Process for dealing with a concern formally**



Appendix E:

Freedom to Speak Up structure and roles



Contact details for FTSU Champions, Executive and Non-Executive Leads, are on the 'FTSU' page on the intranet.

### **Freedom to Speak Up Guardian will:**

- act as an independent and impartial source of advice to staff at any stage of raising a concern;
- provide confidential advice and support to staff in relation to:
  - concerns they have about anything that gets in the way of patient safety or quality of care, or that affects their working life; and
  - the way their concern has been handled;
- help to raise the profile of speaking up within the Trust;
- have access to anyone in the Trust, including the Chief Executive or, if necessary, outside the Trust, to enable escalation of urgent matters rapidly.

More information is included in section 5.5.1.

### **Freedom to Speak Up Champions** are staff who have volunteered, and been trained to:

- act as an independent and impartial source of advice to staff at any stage of raising a concern.
- help to raise the profile of speaking up within the Trust.

More information is included in section 5.5.1.

### **Executive Director Lead for Freedom to Speak Up** (the Director of People) will, in addition:

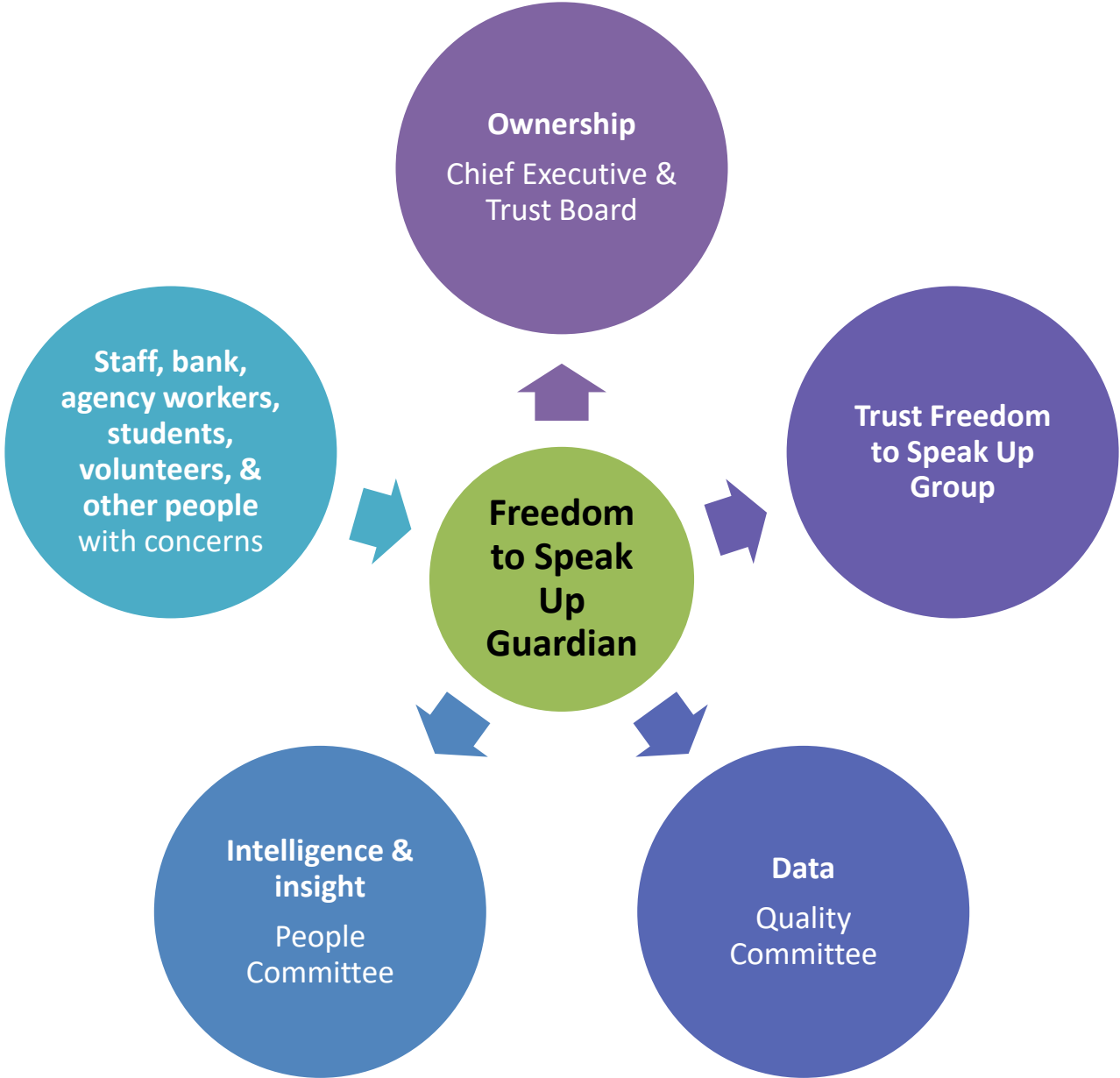
- oversee the creation of the FTSU vision and strategy;
- ensure instances where individuals may have suffered detriment for speaking up are promptly and fairly investigated and acted on;
- provide the board with a variety of assurances about the effectiveness of the trust's strategy, policy and process and conduct a biennial review.

### **Non-Executive Director Lead for Freedom to Speak Up**, will, in addition:

- provide challenge to the Trust board, to reflect on whether they could do more to create a healthy and effective speaking up culture;
- oversee speaking up matters regarding board members.

Appendix F:

Governance Structure

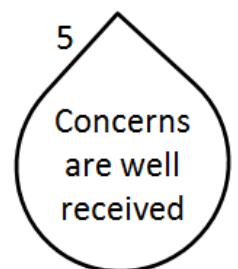
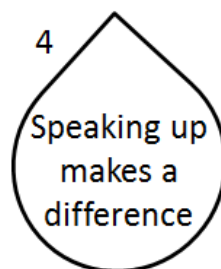
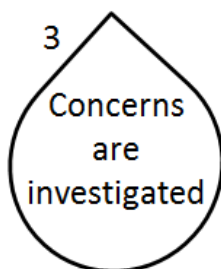
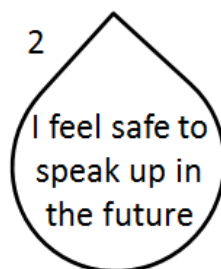
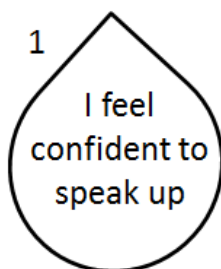
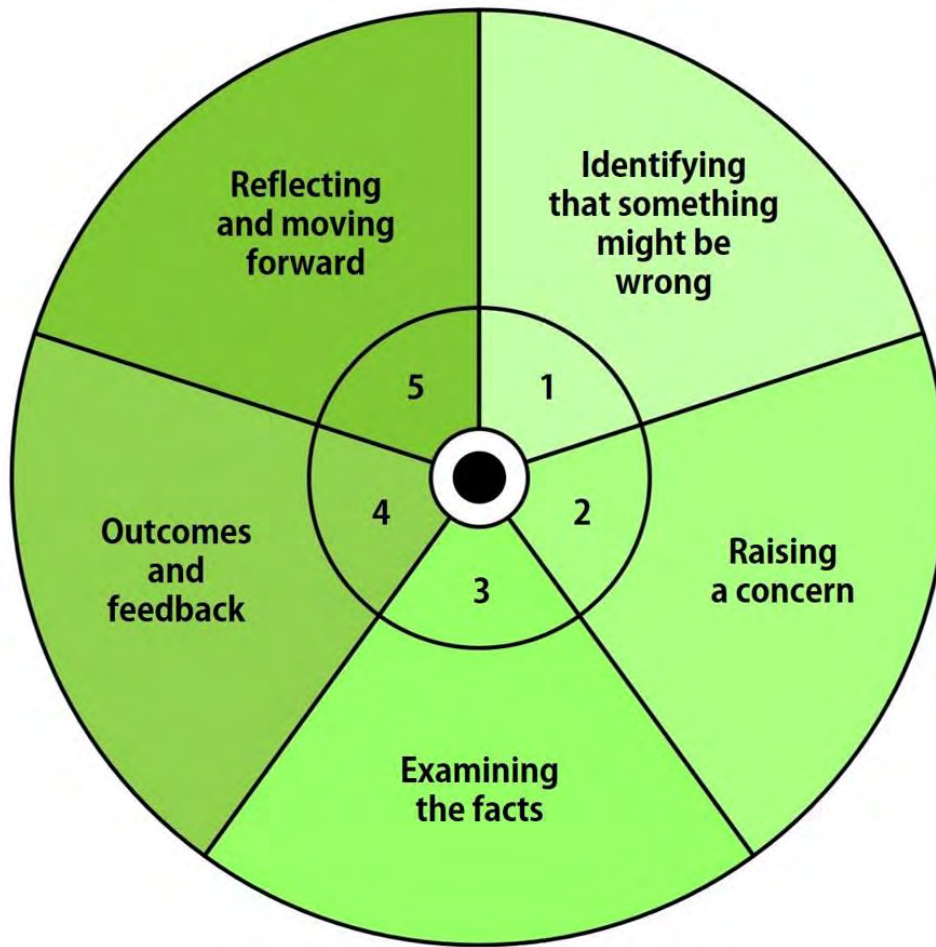


The Trust Freedom to Speak Up Group, meets 6-monthly and comprises the Chief Executive; FTSU Guardian; FTSU Executive Lead; FTSU Non-Executive Lead; Medical Director; Chief Nurse; Chief Operating Officer; Staff Side Chair.

## Appendix G

### The speaking up process

(Five step model of a good speaking up process: Sir Robert Francis QC, 'Freedom to Speak Up' review report)





## Appendix H

### Freedom to Speak Up self-reflective tool

If you were speaking up, what would you want to see that would encourage you?

How do you foster the environment so that your team feel encouraged to speak up to you?

Step	Factors to consider	What would encourage you to speak up?
<b>Identify that something might be wrong</b>	<ul style="list-style-type: none"> <li>• New starters may be seeing things in practice for the first time.</li> <li>• Everyone is busy and under pressure and sometimes it is difficult to take a step back and see things with fresh eyes.</li> </ul>	
<b>Raising a concern</b>	<ul style="list-style-type: none"> <li>• You might not know who to raise a concern with or the process to use.</li> <li>• How do you find the time to speak up when you are constantly busy?</li> <li>• What if it is one of your best friends who has done something that you think might be wrong?</li> <li>• What if someone more senior than you is doing something you don't agree with?</li> </ul>	
<b>Examining the facts</b>	<ul style="list-style-type: none"> <li>• Sometimes things are a matter of opinion.</li> <li>• It can take a long time to properly understand a situation and many factors might be at play.</li> </ul>	
<b>Outcomes and feedback</b>	<ul style="list-style-type: none"> <li>• How do you preserve someone's confidentiality?</li> <li>• What is there isn't a simple response to a situation?</li> </ul>	
<b>Reflecting and moving forward</b>	<ul style="list-style-type: none"> <li>• If an error has occurred, should someone be blamed?</li> <li>• What if I damage the organisation's reputation by admitting that something has gone wrong?</li> </ul>	
<p><b>What reflections do you have on how you encourage speaking up, and whether you might change your practice?</b></p>		
<p><b>If a manager, do you know how to speak up yourself and where to escalate concerns?</b></p>		

(source: National Guardian's Office)

## Appendix I:

### Monitoring table

Policy lead	Element(s) to be monitored	How will you ensure that the policy is being implemented	How often will you monitor that the policy is being implemented	Reporting arrangements
Director of People – Executive Lead for FTSU	Effectiveness of the process and support provided to staff.	<p>FTSU Guardian and staff feedback to Chief Executive and Director of People.</p> <p>Number of concerns raised through FTSU (data).</p> <p>Intelligence &amp; insight report.</p>	<p>6-monthly</p> <p>Quarterly</p> <p>4-monthly</p>	<p>Trust FTSU Group &amp; Trust Board</p> <p>Quality Committee</p> <p>People Committee</p>
Director of People – Executive Lead for FTSU	<ul style="list-style-type: none"> <li>- Workers are thanked for speaking up and are updated on any investigations undertaken.</li> <li>- Investigations are independent, fair and objective.</li> <li>- Outcomes and recommendations are reasonable and the impact of change is measured.</li> <li>- Where possible positive outcomes from speaking up cases are promoted.</li> </ul>	An independent quality assurance check of approximately five sample cases in accordance with self-review indicators aligned to the CQC well led domain, while safeguarding confidentiality.	Annually from 2023	<p>Trust FTSU Group &amp; Trust Board</p> <p>Quality Committee</p> <p>People Committee</p>

## Appendix J

### Equality Analysis for Policies – Screening form

CLCH as a public authority has to show due regard under the Equality Act 2010 to likely impact of its policies or procedures on people with protected characteristics who may be staff or patients.

This helps us to address any negative impact, and consider ways to reduce that impact.

This screening form helps you answer the question - does this policy/function or proposal affect people with different protected characteristics?

Think about the delivery of the procedural document and how it will be applied. This template can be amended depending on the scope of the assessment (such as policies affecting staff or service users).

<b>1. Title of policy, strategy, procedure, proposal or function:</b>
Freedom to Speak Up: Raising Concerns Policy
<b>2. What are the intended outcomes of this work? <i>Include outline of objectives and function aims</i></b>
To support an open and transparent culture across the organisation to ensure that all members of staff experience a compassionate climate where they are confident to speak out and learn.
<b>3. Who will be affected? <i>e.g. staff, patients, service users etc</i></b>
Staff and, indirectly, patients and service users.

1. Protected characteristic	Positive impact	Neutral Impact	Negative Impact	Reason for impact and action required.
People of different ages (e.g. Children, young or older people).	X			
People of different religions / beliefs	X			
People with disabilities (physical, sensory or learning).	X			
People from different ethnic groups (including Travellers and Gypsies, Refugees and Asylum seekers and other migrant communities).	X			

Men or women	X			This policy works to protect all staff and the FTSU Guardian has been put in place as an ambassador for culture change.
People who are gay, lesbian, and bi-sexual	X			
People who are gay, lesbian, and bi-sexual	X			
People's marital status (including civil partnership)	X			
Pregnancy and maternity (how will the policy affect women who are pregnant or related maternity needs)	X			
Carers (although not a protected characteristic, you may want to consider if the policy affects people with caring responsibilities)	X			
Any other group likely to affected by this policy (e.g. people on low income, homeless etc)	X			
2	Please describe engagement and consultation process and the key feedback. E.g. with teams, unions. See section 6 in policy.			
3.	If there are negative impacts upon people's protected characteristics. Does the policy in its current form need a full Equality Analysis Assessment to be completed? No			

**Signed for team / working group:**

Freedom to Speak Up Guardian: Liz Lubbock Date: 23/09/20

Equal Opportunities Officer for Unison: Leelasoma Balachandre Date: 23/09/20

Diversity and Inclusion Lead: Yasmin Mahmood Date: 29/09/20

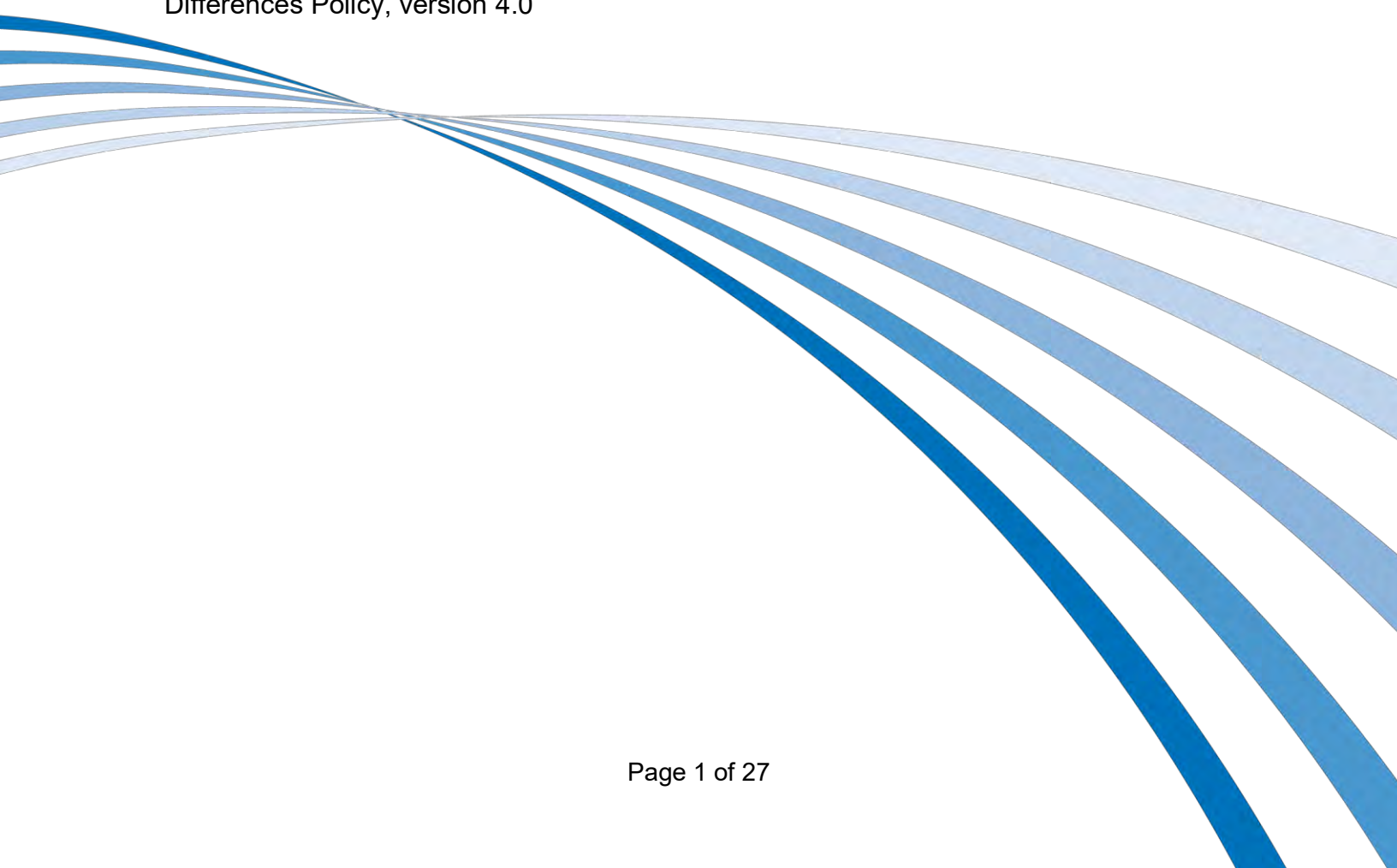
**TITLE:** GRIEVANCE POLICY  
A Framework for Resolving Differences

**VALID FROM:** SEPTEMBER 2021

**EXPIRES:** SEPTEMBER 2024

**REFERENCE** WFC 15

This procedural document supersedes the previous procedural document Resolving Differences Policy, version 4.0



<b>Version:</b>	5.0
<b>Policy reference and description of where held.</b>	WFC 15 Intranet – Policies
<b>Title, name and contact details for author:</b>	Barbara Macanas, Head of Employee Relations & Policy <a href="mailto:b.macanas1@nhs.net">b.macanas1@nhs.net</a>
<b>Title, name and contact details for responsible director:</b>	Louella Johnson, Director of People <a href="mailto:louella.johnson@nhs.net">louella.johnson@nhs.net</a>
<b>Approved by originating committee, executive or departmental management group</b>	HR Policy Group (sub-group of Joint Staff Consultative Committee) on 24 August 2021
<b>Ratified by Policy Ratification Group:</b>	13 September 2021
<b>Review date:</b> 3 years maximum for non-clinical documents	September 2024 or sooner if new legislation, codes of practice or national standards are introduced.
<b>Target audience</b>	All managers and substantive staff

### Version Control

Version	Date	Author	Status	Comments
1.0	Jan 2011		Archived	Integrated policies of inner London boroughs.
2.0	Jan 2012	Liz Lubbock	Archived	Integrated CLCH and Barnet policies in partnership.
3.0	July 2013	Liz Lubbock	Archived	Updated policy.
4.0	May 2018	Liz Lubbock	Archived	Grievance Policy reviewed and replaced with Resolving Differences Policy (includes grievances and collective disputes) to better reflect the culture that we are continuing to grow.
5.0	August 2021	Barbara Macanas / Sema Raj-Sahonta / Liz Lubbock / Sujata Mahendran / Rena Nunes / Audrey Sothcott	Current	Disputes removed (now within the Trade Union Partnership and Recognition Agreement). More closely aligned with Acas three-step guidance and emphasis on informal resolution wherever possible. Mental health issues included. Specific Appeals section added.

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## **1 Introduction and Scope**

1.1 This policy sets out the framework within which any problems, concerns or complaints raised by members of staff will be addressed and resolved in a fair, consistent and timely manner as near as possible to the point of origin. It reflects the Trust's values and expected behaviours and provides a process that supports members of staff and managers to work together constructively to resolve issues promptly. Please refer to Section 5.1: Support, for sources of help.

1.2 This policy follows the Acas code of practice and guidance by providing a three-step approach to prompt grievance resolution, i.e. to:

- hold a meeting with the member of staff to discuss the grievance and if necessary, investigate further
- make a decision on the appropriate action and inform the member of staff of the outcome
- allow the member of staff to appeal against the outcome if the grievance has not been resolved to their satisfaction

Please see Appendix A setting out the flowchart for the grievance procedure.

1.3 This policy covers work-related issues, and those that may cause grievances include:

- terms and conditions of employment
- health and safety
- work relations
- alleged discrimination
- alleged bullying, harassment and victimisation (see 1.7 below)
- new working practices
- working environment and workload
- organisational change
- breach of Trust policy or procedure

1.4 This policy applies to all staff directly employed by the Trust regardless of level or length of service. Staff on honorary contracts will be bound by their organisation's corresponding policies.

1.5 This policy does not apply to grievances related to:

- an individual who is no longer employed by the Trust
- individuals engaged through a third party, which will be reported to and addressed via the source agency/company
- collective agreements that allow negotiation of terms and conditions
- matters outside the Trust's control for example statutory deductions from wages

See Section 5.2: Principles, for more information.



- 1.6 Disputes are not covered by this policy, but are addressed under the Trade Union Partnership and Recognition Agreement between the Trust and recognised Trade Unions (see Definitions below).
- 1.7 Other concerns may need to be raised under a different Trust policy, for example:
- bullying, harassment and victimisation are not tolerated in any form and will be addressed in accordance with the Trust's Bullying & Harassment Policy and if subsequently necessary, the Disciplinary Policy
  - Freedom to Speak Up (FTSU) Policy for anything that prevents provision of high quality effective care, either directly or indirectly, or that affects anyone's working life
  - Incident Reporting and Serious Incident Policy
  - Counter Fraud and Corruption Policy and Response Plan
  - Code of Conduct and Conflict of Interest Policy e.g. in relation to bribery
  - Managing Safeguarding Allegations made against CLCH Staff (LADO) Policy

## 2 Aims and Objectives

- 2.1 The aim of this policy is to contribute to good working relations at all levels within the Trust, thereby underpinning the delivery of high quality services and adhering to the Trust's values of: quality, valuing relationships, delivering services we are proud of, and making a positive difference to our communities.
- 2.2 By setting out a structured procedure, this policy aims to help to develop a conflict resilient workplace and conflict competent managers and staff, through managers and staff identifying, preventing and resolving issues through a mix of dialogue and collaboration.
- 2.3 The aim is also to encourage resolution of issues informally wherever possible and as soon as possible.

## 3 Definitions

- 3.1 **Grievance:** a problem, concern or complaint members of staff raise with their employers. Grievances may occur at all levels and this policy applies equally to management and members of staff.
- 3.2 **Dispute:** a specific complaint in writing covering a matter related to the employment of staff by the Trust, raised not by an individual or a group of individuals, but by Trade Unions and professional organisations collectively on behalf of their members. This is not covered under this policy, but addressed via the Trade Union Partnership and Recognition Agreement between the Trust and recognised Trade Unions.

3.3 **Commissioning Manager:** the manager who asks for an investigation to be carried out. This may happen after the initial meeting with the member of staff raising a grievance, where a full investigation is deemed necessary. If the manager feels they are not sufficiently independent, they will ask another manager to commission the investigation.

3.4 **Investigating Officer:** the person appointed to carry out an investigation.

3.5 **Vexatious complaints:** complaints that are raised maliciously rather than as genuine concerns.

## 4 Duties

4.1 Everyone employed by the Trust is expected to abide by the Trust's values and expected standards of behaviour.

4.2 **Managers** are required to:

- ensure that members of staff are aware of this policy and how to raise an issue
- deal with issues compassionately
- take responsibility for resolving issues at an early stage and informally wherever possible, and support others to do so
- apply this policy fairly and consistently whilst maintaining confidentiality and wherever possible, adhering to timescales
- be responsible for supporting teams to function well, particularly while issues are being addressed
- request advice from HR as appropriate
- keep a record of activity in relation to addressing concerns
- ensure there is no less favourable treatment of a member of staff who has lodged a grievance
- if for example it is possible that misconduct or a breach of procedure has occurred, initiate an investigation as the commissioning manager
- maintain communication to ensure members of staff receive clear and timely information and regular progress updates until the matter is concluded

4.3 **HR Resources (HR)** will:

- provide support, advice and guidance throughout the process to managers and staff as appropriate, including co-ordinating meetings and appeal hearings, where delegated to do so, and attending in support
- support a positive employee relations environment, working with managers and Trade Union/staff representatives to ensure this policy and procedure is applied promptly and in a fair and consistent manner

- advise and coach managers to develop the skills necessary to deal with concerns or issues confidently and effectively, ensuring their advice is compliant with the law and reflects best practice and the Trust's values
- maintain records of any formal or informal cases addressed under this policy including action taken and the outcome of any appeals lodged
- as part of the HR Policy Group, ensure this policy is regularly monitored and reviewed in light of best practice and changes in legislation

#### 4.4 **Trade Union/Staff Representatives** will:

- work with managers and HR to ensure this policy is applied promptly and in a fair and consistent manner
- provide support and advice to members of staff during the grievance process
- work with all stakeholders to ensure that decisions can be taken promptly, thereby minimising staff anxiety
- as part of the HR Policy Group, ensure this policy is regularly monitored and reviewed in light of best practice and changes in legislation

#### 4.5 **Members of Staff** are required to

- maintain expected standards of behaviour and to comply with policy and procedure, raising issues in line with the principles of this policy
- settle issues/grievances informally wherever possible.
- take responsibility for resolving issues in their control and support others to do so
- raise concerns in a timely manner and attend meetings aimed at resolving issues, seeking support where needed
- ensure all relevant evidence and facts are presented for consideration, and to make arrangements for a companion if required
- consider participation in mediation if this is offered as a possible solution

## 5 **Policy**

### 5.1 **Support**

5.1.1 Being involved in a grievance process can be upsetting and stressful for the member of staff and other colleagues affected.

5.1.2 Where a member of staff feels unable to resolve the situation independently they can seek advice informally, for example from:

- the line manager
- the line manager's manager
- an accredited Trade Union representative [Link](#)
- an HR Business Partner or HR Advisor [Link](#)

- the Freedom to Speak Up (FTSU) Guardian or a FTSU Champion about any concern: [intranet hub](#) or [clcht.ftsusupport@nhs.net](mailto:clcht.ftsusupport@nhs.net)
- an Employee Health professional about counselling and advice on health and well being: [clcht.employeehealthsupport@nhs.net](mailto:clcht.employeehealthsupport@nhs.net)
- Health and Wellbeing Champions [Link](#)
- Mental Health Minders [Link](#) or [clcht.mentalhealthminders@nhs.net](mailto:clcht.mentalhealthminders@nhs.net)
- the Mediation Service lead through [clcht.employee.relations@nhs.net](mailto:clcht.employee.relations@nhs.net)
- a member of the Safeguarding Team if the issue is related to safeguarding

5.1.3 The manager should discuss welfare and any support the Trust may offer. Where it could assist resolution, staff may be referred to Employee Health.

5.1.4 Sometimes a process may cause extreme distress and even impact on a person's mental health. Managers should consider how they can provide support to minimise the risk of this happening e.g. whether the process can be adjusted in some way, such as allowing the individual to be accompanied at a grievance meeting or appeal hearing by a support worker or advocate from outside the organisation who has knowledge of the individual's mental health condition and its effects.

5.1.5 In some cases, it might be appropriate, with the agreement and involvement of the individual, to seek professional medical help or guidance as to how the grievance process can proceed fairly. If someone has an existing mental health condition which they have previously disclosed as a disability, the employer must make reasonable adjustments to the process.

5.1.6 To help to avoid stress and anxiety for those involved, it is important for the manager to keep in regular agreed contact with the members of staff affected, to ensure that they are supported as appropriate and to report on progress during the grievance procedure.

## **5.2 Principles**

5.2.1 This policy will be applied consistently and equitably and reflects the Trust's commitment to creating a positive culture of respect for all individuals including staff, patients, their families and carers as well as community partners, and to promote positive practice that values the diversity of all individuals and communities.

5.2.2 The fair treatment of staff supports a culture of fairness, openness and learning within the Trust, enabling staff to feel confident to speak up when things go wrong, rather than fearing blame.

5.2.3 Every attempt will be made to deal with matters speedily, whilst ensuring that matters are dealt with thoroughly. Timeframes given within this policy and

procedure are for guidance only and if it is not practicable to adhere to these, all relevant parties will be notified and kept apprised of progress.

- 5.2.4 Where a grievance is serious or a member of staff has attempted to raise a problem informally without success, they should raise the concerns with their manager verbally or in writing including any relevant evidence that will help to resolve the matter, and what action or desired outcome is sought. The notification form at Appendix B can be used for this purpose.
- 5.2.5 If the line manager is the subject of the grievance, the member of staff should submit their grievance to an independent line manager at the same or higher level to their line manager. Advice can be sought from the HR Business Partner.
- 5.2.6 When stating their grievance, staff should stick to the facts and avoid language which may be considered insulting or abusive.
- 5.2.7 Occasionally a grievance may arise where two or more members of staff have the same or similar grievance at the same time. With the agreement of the staff raising concerns, to avoid causing anxiety and stress by multiple investigations and meetings, and to ensure the best use of time and resources, the issues should be brought together under one process. This also prevents perceived manipulation of a series of allegations which may result in dismissal.
- 5.2.8 If the grievance is being raised by two or more members of staff, the names of the members of staff should be listed on the notification form (see Appendix B) and it should be signed and dated by all.
- 5.2.9 Where a manager feels they are unable to consider a grievance on an impartial basis or where the appropriate manager is not available, the grievance must be referred to another independent manager at an equivalent level or higher, who has not been involved in the matter previously.
- 5.2.10 Similarly, if a member of staff believes a manager will not be able to consider the issue on an impartial and fair basis, they should request of the HR Business Partner or HR Advisor that it is referred to another manager at an equivalent level or higher, who has not been previously involved. Please see Section 5.1 "Support" for other sources of help.
- 5.2.11 Members of staff who are the subject of the grievance will be informed at the earliest opportunity of the basis of the problem and given an opportunity to respond before any decisions are made.
- 5.2.12 In most cases, the members of staff involved will be able to continue doing their normal job while matters are investigated. However the manager should consider temporary redeployment where practicable for either party, if the interests of staff, patients, the public or the Trust are at risk or where working relationships have broken down significantly.

- 5.2.13 Reasonable adjustments or arrangements for meetings and appeals may be made e.g. for a member of staff or companion with a disability or for staff whose first language is not English.
- 5.2.14 If meetings or appeals are conducted virtually, participants should not have anyone physically with them who has not been invited or declared as a participant in the meeting. Participants' cameras should remain on for the duration of the meeting.
- 5.2.15 An electronic recording may be made during interviews, meetings or appeal hearings under this procedure, if agreed by all parties or where this may be required as a reasonable adjustment.
- 5.2.16 Members of staff may be accompanied at meetings or appeals under this policy. The companion must be a work colleague employed by the Trust, a Trade Union representative or an official employed by a Trade Union. A Trade Union representative who is not an employed official of the union must have been certified by their union as being competent to accompany the member of staff. There is no right to legal representation.
- 5.2.17 If the member of staff agrees, their companion will be able to address a meeting or appeal hearing, question witnesses, confer with the member of staff, put forward their case, sum up the case, respond on their behalf to any view expressed, but does not have a right to answer questions on their behalf.
- 5.2.18 A staff representative will be allowed reasonable time off for union duties – please refer to the Trade Union Partnership and Recognition Agreement on the Trust's intranet hub.
- 5.2.19 Members of staff may ask an official from any Trade Union to accompany them at a grievance meeting or appeal hearing, regardless of whether or not they are a member or the union is recognised. Work colleagues or Trade Union officials do not have to accept a request to accompany a member of staff and they should not be pressurised to do so.
- 5.2.20 If an individual is no longer employed by the Trust but submits a complaint either before or after they leave, they no longer have access to this policy or procedure. However the Trust should look into the complaint to ensure serious issues are not being ignored and provide an outcome to the individual. If the individual is the subject of a grievance, they should be invited to respond to allegations but cannot be compelled to do so.
- 5.2.21 Any member of staff who raises a problem or concern in good faith will not suffer any detrimental treatment for bringing the matter to the attention of management, even if the grievance is not substantiated. However, if it is found to have been raised with malicious intent the member of staff may be the subject of subsequent

disciplinary action. Managers will also ensure that a member of staff's future prospects are not affected by such false accusations.

### **5.3 Confidentiality and Record Keeping**

5.3.1 All grievance matters will be considered highly confidential and care should be taken not to jeopardise investigations. Discussions with other parties will only be acceptable where they are allowed within the procedure.

5.3.2 The Trust should keep a secure record of any grievances cases. Records should include:

- the nature of the grievance
- what was decided and actions taken
- the reason for the actions
- whether an appeal was lodged
- the outcome of the appeal
- any subsequent developments

5.3.3 Records should be treated as confidential and kept no longer than necessary in accordance with the Data Protection Act 2018. This Act also gives individuals the right to request and have access to certain personal data stored about them.

5.3.4 Copies of notes of grievance meetings and appeal hearings should be given to members of staff on request. In certain circumstances (for example to protect a witness) the Trust might withhold some information.

### **5.4 Step One: Grievance Meeting**

5.4.1 Managers should remember that a grievance meeting is not the same as a disciplinary hearing, and is an occasion when discussion and dialogue may lead to an amicable solution. A meeting should be arranged whether or not the concerns have been raised informally or formally, if not possible immediately then normally within 7 calendar days of being notified of the concerns.

5.4.2 Conversations should be handled in a way that is sensitive to the circumstances and the needs of the individuals concerned. It is important not to make assumptions at the outset about the facts of the case.

5.4.3 The following should be considered as part of the discussion:

- the nature and seriousness of the concern being raised
- if this is the appropriate procedure
- if the issue could be resolved in this meeting
- the parties' willingness to engage in a resolution meeting or a mediation process

- previous attempts to resolve the situation
- the number or frequency of previous complaints

5.4.4 The manager may decide to meet first with the member of staff raising the grievance but if they believe the issue can be resolved if the subject of the grievance attends as well, the person responding should also attend, with a companion if they wish. In this case, the person responding should be allowed to see relevant evidence and given at least 7 calendar days' notice of the meeting, in order to share this with their companion and properly prepare.

5.4.5 Where there is a request to postpone a grievance meeting for more than 7 calendar days because any of the parties is not available, it may be fair to allow the postponement if it does not cause unreasonable delay. The manager should consider the facts and decide what is fair and reasonable in the circumstances.

5.4.6 If there is a repeated failure to attend the meeting, without good reason, a decision on the outcome may be made with HR advice and in the absence of the member of staff, based on the information available.

5.4.7 The manager should:

- remain impartial and objective at all times
- arrange the meeting, ideally within 7 calendar days of receipt of the grievance, in private where there will be no interruptions
- arrange for someone who is not involved in the case to take a note of the meeting and to act as a witness to what is said
- in order to allow consistency of treatment, consider whether similar grievances have been raised before, how they have been resolved, and any follow-up action that has been necessary
- consider arranging for an interpreter where the member of staff has difficulty speaking English, and whether any other reasonable adjustments are necessary for anyone attending
- invite the member of staff to re-state their grievance and how they would like to see it resolved
- put care and thought into resolving grievances. They are not normally issues calling for snap decisions, and the member of staff may have been holding the grievance for a long time. Make allowances for any reasonable "letting off steam" if the member of staff is under stress
- consider adjourning the meeting if it is necessary to investigate any statements made or new facts which arise
- sum up the main points
- tell the member of staff when they might reasonably expect a response if one cannot be made at the time
- if there is a subsequent delay in the anticipated timescale for a response, for example due to the need to investigate matters, agree with the member(s) of staff how regularly they wish to be contacted for an update



5.4.8 It is generally good practice to adjourn a meeting before a decision is taken about how to deal with a grievance. This allows time for reflection and proper consideration. It also allows for any further checking of any matters raised.

## **5.5 Investigation**

5.5.1 An investigation must be undertaken as quickly as possible and normally within 28 calendar days. This is an indicative timeframe and is dependent on the complexity of the concerns raised. If timeframes are to be exceeded, members of staff will be notified as appropriate.

5.5.2 Unlike disciplinary investigations, it may be more expedient for the manager to investigate a grievance. A “light touch” fact-finding investigation may be all that is required in some instances, but where serious allegations are made or where the manager believes a more in-depth investigation is needed, they will commission an independent investigation officer to look into the concerns raised. Please refer to the Trust’s Investigation Guidelines - Workplace, and the templates for an investigation plan and report, on the Trust’s intranet hub.

5.5.3 The commissioning manager will ensure the member of staff who is the subject of the concerns raised, is notified 7 calendar days prior to an investigation meeting:

- that an investigation is to be carried out
- the specific nature of the concerns raised
- the likely timescale for the investigation
- the name and contact details of the the investigating officer, who will be in touch to make arrangements to meet
- that they may be accompanied at any investigation meeting by a work colleague or Trade Union representative
- the name and contact details of the HR representative who can provide procedural advice
- other sources of support as per Section 5.1

5.5.4 Where the concerns relate to matters of a medical or dental professional nature, or where an investigation identifies issues of professional conduct, the investigator must obtain appropriate independent professional advice.

5.5.5 The investigating officer will ascertain all the facts relating to the concerns raised and will produce a balanced report setting out their findings and taking into account any mitigating factors. It is not the investigator’s role to prove the guilt or innocence of any party.

5.5.6 It is common for an investigator to be asked to make a recommendation, however they should restrict their recommendation to only suggesting whether any further

action may be necessary or beneficial. In most circumstances an investigator should recommend formal action, informal action or no further action.

- 5.5.7 An investigator should not suggest a possible sanction as this can be seen as unduly influencing the commissioning manager's decision.

## **5.6 Step Two: Decision**

- 5.6.1 Having received the investigating officer's report, or having undertaken the investigation themselves as appropriate, the manager will take the decision on next steps.
- 5.6.2 When notifying a decision, the manager should set out clearly in writing any informal or formal action that is to be taken and the right of appeal of the member of staff who raised the concerns. Where the grievance is not upheld, the reasons must be carefully explained.
- 5.6.3 The manager might also want to arrange a "feed back" meeting with the member of staff who raised the grievance and the member of staff responding, either separately or together, in order to explain the decision.
- 5.6.4 If the commissioning manager decides formal action under the Disciplinary Policy is needed, the investigation undertaken within this Grievance Policy will form part of the management case within the disciplinary process. The commissioning manager will be required to present the management case at a disciplinary hearing, chaired by another manager who has not been involved previously.
- 5.6.5 Actions taken to resolve a grievance may have an impact on other individuals. While confidentiality is of prime importance, in some circumstances there may be other individuals who may need to know the outcome, or certain aspects of the outcome that will impact on them. In such cases, the member of staff who raised the grievance, and the member of staff responding, should be informed of who else will be told about the decision and what type of information they will be given.
- 5.6.6 It is important to ensure any action taken is monitored and reviewed, as appropriate, so that it deals effectively with the issues.

## **5.7 Informal Resolution**

- 5.7.1 Members of staff working for the Trust may at some time during their employment have problems or concerns about their work, working conditions or relations with colleagues or managers that they wish to talk about with management, each other, or in some instances, an independent third party. The Trust recognises that members of staff would want any issues to be resolved informally if possible and addressed promptly and constructively.

- 5.7.2 The aim is to address and resolve issues informally when they arise. The earlier an issue is raised, the more likely it is that a satisfactory resolution can be found.
- 5.7.3 If a staff member has an issue that is covered by this policy they should consider discussing the issue with the other member of staff if possible, as a first step and without delay, and consider informal options to address it. In most instances differences can be resolved without involving others parties and it enables a two-way discussion to explore both perspectives and agree the way forward.
- 5.7.4 Where a member of staff feels unable to resolve the situation independently they can speak to someone else in the Trust informally to seek advice. Please refer to Section 5.1: Support, for more information.
- 5.7.5 Where a grievance about a colleague is raised informally to a manager, after listening to the complaint to understand the concern, the next step should generally be for the manager to talk privately to the person complained about. This may help clarify the situation and can help move things forward towards a resolution. Alternatively, if those involved are willing, an independent mediator may be able to help in some circumstances.
- 5.7.6 The manager should bear in mind that it is not only the individual who has raised the grievance who may be distressed, but also the person complained about. Care should be taken that any informal discussion with them remains non-judgmental. In particular, the discussion should not turn into a disciplinary hearing.

## **5.8 Informal Action**

- 5.8.1 Informal options that can be considered include:
- a restorative conversation to help staff improve relationships
  - mediation to help staff resolve relationship and communication issues
- 5.8.2 A restorative conversation comes from the idea of restorative practice used in the justice system. It is a facilitated meeting to allow individuals to work through conflict they may be experiencing through acknowledging what has happened, the impact this has had, who has been affected, what would help the parties feel better and what needs to happen to move things forward positively. It is different to mediation in that an agreed outcome is not necessarily sought.
- Further information can be obtained from the HR Business Partner or HR Advisor.
- 5.8.3 Mediation can be offered as an alternative way to support staff. It is a voluntary and informal process that provides a safe and confidential environment for people to talk about issues and to find a way to move forward.

5.8.4 Mediation can be beneficial where there are difficulties in communication or relationships in work, especially in the early stages of conflict, including:

- a breakdown in working relationships
- personality clashes
- communication problems
- where there is perceived bullying, harassment or discrimination
- following an investigation or other formal procedure

5.8.5 Mediation may not be suitable if:

- used as a first resort – because people should be encouraged to speak to each other and talk to their manager before they seek a solution via mediation
- it is used by a manager to avoid their managerial responsibilities
- a decision about right or wrong is needed, for example where there is possible criminal activity
- the individual bringing a discrimination or harassment case wants it investigated
- the parties do not have the power to settle the issue
- one side is completely intransigent and using mediation will only raise unrealistic expectations of a positive outcome

5.8.6 Additionally a manager may decide to take informal action under the Disciplinary Policy, where either the member of staff raising the issue and/or the responding member of staff would benefit from:

- management supervision
- a conversation of concern to look at a specific conduct issue
- coaching and mentoring as a support action

## **5.9 Formal Action**

5.9.1 If the manager, as the commissioning manager for the investigation, decides formal action under another policy is needed, the investigation undertaken within this grievance procedure will form part of the management case.

5.9.2 The commissioning manager will be required to present the management case, with support from the investigating officer if required, at any meeting or hearing chaired by another manager who has not been involved previously.

## **5.10 Step Three: Appeal**

5.10.1 If the member of staff feels they have not received a satisfactory outcome to their grievance they should take the opportunity to appeal against the decision.

5.10.2 A member of staff wishing to appeal against a grievance decision must do so in writing within 14 calendar days of the date the grievance outcome notification was

sent, to the Head of Employee Relations & Policy via [clcht.employee.relations@nhs.net](mailto:clcht.employee.relations@nhs.net)

stating the grounds on which the grievance outcome should be reviewed.

- 5.10.3 The appeal hearing should be held within 28 calendar days of receipt of the appeal but if this is not possible, the reasons will be explained to all parties in writing. Managers, members of staff and their companions must make every effort not to unreasonably delay the hearing.
- 5.10.4 Where there is a request to postpone the appeal hearing for more than 7 calendar days because any party is not available, it may be fair to allow the postponement if it does not cause unreasonable delay. The manager should consider the facts and decide what is fair and reasonable in the circumstances.
- 5.10.5 If there is a repeated failure to attend the hearing, without good reason, a decision on the outcome may be made with HR advice and in the absence of the member of staff, based on the information available.
- 5.10.6 The appeal panel will normally be chaired by a manager at a higher level than the manager who made the initial grievance decision. They will have not been previously involved in the case or have any conflict of interest that could influence their decision making. The procedure for an appeal hearing can be found at Appendix C.
- 5.10.7 The chair of the panel will arrange the hearing and may delegate this task as appropriate. The chair will ensure the member of staff concerned is given a minimum of 14 calendar days' notice of the hearing and provided with details about:
- the date, time and venue
  - who will comprise the hearing panel, and others in attendance
  - copies of relevant documentation
  - their right to be accompanied by a Trade Union representative or a work colleague
- 5.10.8 Where the grievance is about a fellow member of staff, that individual should be informed both that the grievance decision has been appealed and the anticipated timeframe for the appeal decision, and should be provided with support where necessary.
- 5.10.9 As with the initial grievance decision, the member of staff who raised the concerns, and the member of staff responding, should be told if anyone else will be informed about the appeal decision and the type of information they will be given.

5.10.10 An appeal must not be used as an opportunity to punish the member of staff for appealing the original decision as this may deter staff from appealing grievance outcomes.

5.10.11 The appeal panel can take the following action:

- uphold the member of staff's appeal
- uphold the decision taken at the grievance meeting
- partially uphold the decision taken at the grievance meeting
- substitute a different course of action

5.10.12 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 within 14 calendar days of the hearing. The panel's decision will be final.

## **5.11 Status Quo**

5.11.1 The status quo (i.e. the working and management arrangements that applied before the cause of the grievance) will operate until the procedure has been exhausted.

5.11.2 In exceptional circumstances, where it is believed that the status quo contravenes overriding obligations, e.g. a serious health and safety risk or impact on service delivery, advice will be sought from the appropriate directors, HR and Trade Union representatives.

## **5.12 Grievance During Disciplinary**

5.12.1 There is no legal requirement that a disciplinary process should be postponed while the employer deals with a grievance raised by the member of staff.

5.12.2 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.

5.12.3 However the commissioning manager/panel chair 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 officer
- there is possible discrimination against the member of staff

- 5.12.4 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.
- 5.12.5 Where the grievance raised by the member of staff is unrelated to the disciplinary process, but is raised while the disciplinary process is ongoing, there is usually no need for the disciplinary process to be put on hold. Unless the circumstances in which the grievance is raised are so serious that they overshadow the disciplinary process, it is appropriate to investigate the grievance in parallel, but not as part of, the disciplinary process.

## **6 Consultation Process**

The following stakeholders were consulted in the review of this policy and comments incorporated as appropriate: HR Business Partners and HR Advisors, FTSU Guardian, Trade Union representatives, Equality & Diversity Lead, Counter Fraud Service.

## **7 Approval and Ratification Process**

The review of this procedural document was approved by the HR Policy Group on 31 August 2021.

Final approval was given by the Policy Ratification Group on **13 September 2021**.

## **8 Dissemination and Implementation**

This document will be placed on the intranet by the QLD team. It will therefore be available to all staff via the CLCH NHS Trust intranet.

Furthermore the document will be circulated to all managers who will be required to cascade the information to members of their teams and to confirm receipt of the procedure and destruction of previous procedures/policies which this supersedes. Managers will ensure that all staff are briefed on its contents and on what it means for them.

## **9 Archiving**

The QLD team will undertake the archiving arrangements.

## **10 Training Requirements**

Training and advice will be provided by HR Business Partners, HR Advisors, and the Academy, on request.

## **11 Monitoring and Auditing Compliance**

See Appendix D.

## **12 Expiry and Review**

This procedural document will be reviewed in 2.5 years' time in April 2024, arranged by the HR Policy Group.

## **13 Associated Documentation**

- Addressing Bullying and Harassment Policy
- Disciplinary Policy
- Capability Policy
- Equality and Diversity Policy – Staff
- Freedom to Speak Up Policy
- Investigation Guidelines - Workplace
- Trade Union Partnership and Recognition Agreement

## **14 References**

The following relevant legislation and statutory requirements, national standards, codes and guidance have been considered when developing this policy:

- Acas Code of Practice on Disciplinary and Grievance Procedures
- Discipline & Grievances at Work – the Acas Guide
- Data Protection Act 2018
- Equality Act 2010

## **15 Appendices**

Appendix A: Grievance Procedure Flowchart

Appendix B: Grievance/Appeal Notification

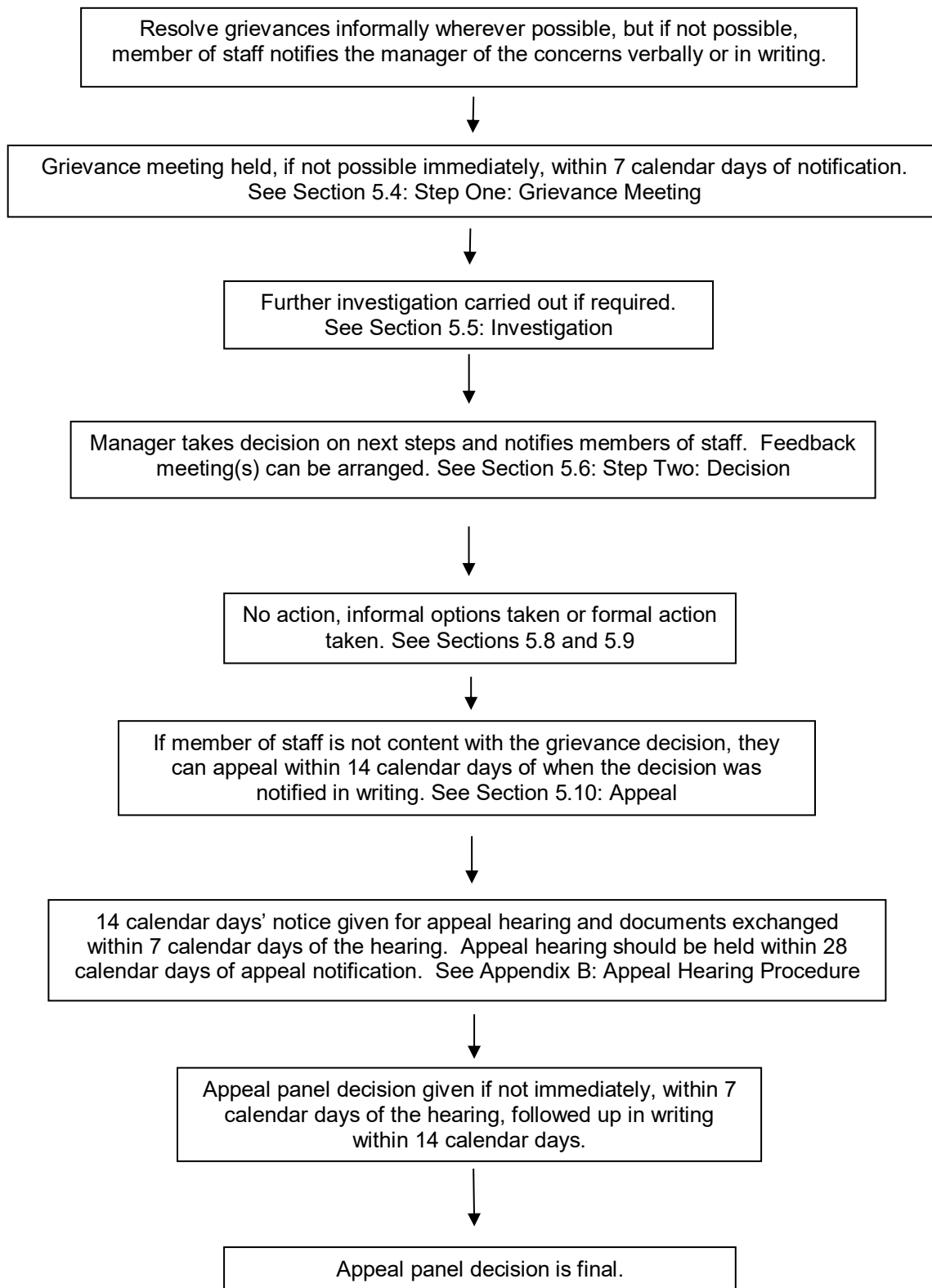
Appendix C: Appeal Hearing Procedure

Appendix D: Compliance Monitoring Table

Appendix E: Equality Impact Assessment



## Appendix A: Grievance Procedure Flowchart



## Appendix B: Grievance/Appeal Notification

(Please delete as applicable)

<b>Strictly Confidential</b>	Date:
NB: Where the notification is from more than one member of staff, a list of those raising the grievance or appealing, should be given and the notification should be signed and dated by all.	
<b>To:</b>  (the manager you wish to meet with or in the case of an appeal, the line manager of the manager who made the initial grievance decision)	<b>Copy:</b>  (HR Business Partner)
<b>From:</b>	<b>Job Title:</b>
<b>Department:</b>	<b>Line Manager:</b>
<b>Trade Union Representative (if applicable):</b>	
<b>SUBSTANCE OF GRIEVANCE/APPEAL</b>  This should include the grounds of your grievance or appeal, providing as much relevant detail as possible (you may attach additional information/evidence as necessary). If there are multiple issues, it is helpful to set these out under a maximum of four or five headings.	

**Names and contact details of any witnesses you wish to attend the grievance meeting/appeal hearing:**

**Please advise what steps have been taken to try to resolve the grievance:**

**Your preferred outcome and why you believe this will resolve the issue:**

**I confirm that the above information, and attached documents, are true to the best of my knowledge. I understand that making any false, malicious or untrue allegations may result in disciplinary action being taken against me in line with the Trust's Disciplinary Policy.**

**Signed:**

Please send this form to the relevant manager and a copy to your HR Business Partner. This notification will be acknowledged by the HR Business Partner/HR Advisor upon receipt and addressed in accordance with the Trust's Grievance Policy. A copy of the policy will be sent to you for information.

## **Appendix C: Appeal Hearing Procedure**

This procedure should be read in conjunction with the Trust's Grievance Policy.

The panel, the member of staff and their companion, the responding manager presenting the management case and the HR representative supporting them, must be present throughout the hearing.

If the hearing is conducted virtually, participants should not have anyone physically with them who has not been invited or declared as a participant in the hearing. Participants' cameras should remain on for the duration of the hearing.

A record will be kept of the proceedings of the appeal hearing. An electronic recording may be made of the hearing if agreed by all parties or where this may be required as a reasonable adjustment.

### **1. Introduction - the Chair:**

- 1.1 Welcomes attendees and makes introductions, explains this is an appeal hearing conducted in line with the Trust's grievance procedure.
- 1.2 If the member of staff is not accompanied, notes for the record that they have been advised of their right to be accompanied but have chosen to attend unaccompanied.
- 1.3 Confirms with the member of staff, the responding manager and panel members that they have received all the documentation relating to the appeal hearing.
- 1.4 Emphasises the need for confidentiality (i.e. all parties must treat as confidential any information pertaining to the case) and explains the procedure:

### **2. Procedure:**

- 2.1 The appellant and/or their companion put their case for the appeal to the panel, citing the grounds for appeal, and take questions from the responding manager and panel members.
- 2.2 Any permitted witnesses called by the appellant are invited individually into the hearing and will take questions from the responding manager and panel members, and will then depart.
- 2.3 The responding manager presents the management case and the reasons they made the initial grievance decision, and will take questions from the appellant, their companion and panel members.
- 2.4 Any permitted witnesses called by the responding manager are invited individually into the hearing and will take questions from the appellant, their companion and panel members, and will then depart.
- 2.5 The responding manager will sum up their case.
- 2.6 The appellant will sum up their case.

### **3. Adjourn**

- 3.1 The panel then adjourns to consider the appeal and reaches a decision. In a virtual hearing, the panel can leave the hearing and discuss the outcome via telephone, or stay on the virtual hearing and ask attendees to log back into the hearing at a particular time.
- 3.2 The panel may recall any party, in the presence of the other parties, to clarify points of uncertainty on evidence already given.
- 3.3 The appeal panel can take the following action:
  - uphold the member of staff's appeal
  - uphold the decision taken at the grievance meeting
  - partially uphold the decision taken at the grievance meeting
  - substitute a different course of action

### **4. Reconvene**

- 4.1 Where possible, the Chair informs the parties verbally at the conclusion of the hearing, of the panel's decision and the reasons for the decision. This should be confirmed in writing within 7 calendar days.
- 4.1 Otherwise, the parties are informed if the panel's decision is to be delayed, and when the decision will be reached (this will normally be within 7 calendar days of the appeal hearing and written confirmation given within 14 calendar days of the appeal hearing).
- 4.2 The Chair advises that the panel's decision is final and there is no further opportunity for recourse within the Trust's internal procedures.

In conclusion, the Chair thanks those in attendance for their time and co-operation.

## Appendix D: Compliance Monitoring Table

<b>Policy lead</b>	<b>Element(s) to be monitored</b>	<b>How will you ensure that the policy is being implemented</b> (E.g. via an audit, KPIs )	<b>How often will you monitor that the policy is being implemented</b>	<b>Reporting arrangements</b> (Which committee or group will the monitoring of the policy be reported to?)	<b>Results of monitoring</b>
Director of People	Number/ type of grievances	KPIs	Quarterly  Monthly by division	People Committee  Executive Leadership Team	Majority of grievances relate to application of policies and procedures
Director of People	Equality & Diversity	Information is collected where available and analysed to identify possible inequalities and is also included in the Trust's Equality, Diversity and Inclusion reports.	Quarterly	People Committee	Disproportionate number of grievances raised by BAME staff is reducing.

## Appendix E: Equality Impact Assessment

### Grievance Policy

CLCH as a public authority has a legal requirement to analyse the impact of the policy on the protected characteristics of staff and patients. This helps us to check if there is a negative impact, how we can reduce that impact.

1. Protected characteristic	Positive impact	Neutral Impact	Negative Impact	Reason for impact and action required.
People of different ages (e.g. Children, young or older people).		X		<p>This policy applies to all staff directly employed by the Trust regardless of level, length of service or protected characteristic.</p> <p>Managers and HR are required to apply the policy fairly and consistently and to ensure there is no less favourable treatment of a member of staff who has lodged a grievance. Reasonable adjustments or arrangements for meetings and appeals may be made e.g. for a member of staff or companion with a disability or for staff whose first language is not English.</p> <p>The HR Policy Group ensures this policy is regularly monitored and reviewed in light of best practice and changes in legislation.</p>
People of different religions / beliefs		X		
People with disabilities (physical, sensory or learning).		X		
People from different ethnic groups		X		
Men or women		X		
Transgendered people		X		
People who are gay, lesbian, and bi-sexual		X		
Refugees and asylum seekers		X		
2	Please describe engagement and consultation process and the key feedback. E.g. with teams, unions. See section 6.			
3.	If there are negative impacts upon people's protected characteristics, does the policy in its current form need a full Equality Analysis Assessment to be completed? No			
4.	Have you signed this off with the Equality and Diversity Lead? Yes			

Signed for HR Policy Group:

Name: Barbara Macanas, Head of Employee Relations & Policy

Date: 31/08/21