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Date	9 November 2023	Agenda item	CGo.11.23.9

DISCIPLINARY POLICY & ANALYSIS OF FORMAL BULLYING AND HARASSMENT AND DISCIPLINARY CASES APRIL 2022 TO MARCH 2023

Presented by	Faeem Lal, Director of HR (Interim)		
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Lead Director	Faeem Lal, Acting Director of HR		
Purpose of the paper	To outline the key elements of the Trust's updated Disciplinary Policy, confirm the support provided to staff who are suspended and/or involved in a disciplinary process and provide an analysis of the number of staff involved in a formal Bullying and Harassment and Disciplinary process during the period as April 2022 to March 2023		
Key control	To be one of the best NHS employers prioritising the health and well-being of our people and embracing equality, diversity and inclusion		
Action required	To note		
Previously discussed at/informed by	N/A		
Previously approved at:	Committee/Group/Academy	Date	

Key Options, Issues and Risks

BTHFT recognises the need for our people to be managed in a manner which is supportive, consistent, just and fair. We also recognise that our people need to be aware of the standards of conduct expected of them during their employment, and the consequences of failing to meet these standards of conduct.

The Trust's Disciplinary policy and procedure is designed to facilitate and encourage all employees to maintain acceptable standards of conduct, whilst safeguarding the interests of the Foundation Trust, its patients, clients and all our people.

A report is provided to the Trust Board regarding all suspensions across the Trust and disciplinary cases.

Analysis

The policy has recently been reviewed and updated to incorporate a Just Culture approach, which is based on the Just and Learning Culture credited to the Mersey Care Foundation Trust.

This approach supports managers to consider alternative means to address concerns and more minor misdemeanours, allowing a more positive approach to achieving improved behaviour and/or standards of conduct. It also recognises that at times there may be a significant system or organisational failure that has contributed to the incident/error which will need to be considered.

There are a variety of support mechanisms in place to support both staff and managers across the Trust, whilst investigation is ongoing. This report details all the support mechanisms and arrangements that are in place to support staff whilst they are suspended and/or under investigation.

During the period 1st April 2022 to 31st March 2023 there were 45 formal Bullying and Harassment and Disciplinary Cases. Of these 20 related to male and 25 to female. Although there were fewer cases involving male staff, the proportion of male staff subject to a formal process, in comparison to the proportion in the overall workforce is of concern.

Data indicates that **of the** formal cases across the Trust:

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- 25% of the Bullying and Harassment cases related to male employees.
- 52% of the Disciplinary cases related to male employees.
- 44% of all formal processes related to male employees.
 - Of which 29% were ethnic minority males

The data also shows that of the formal cases across the Trust:

- 33% of the Bullying and Harassment cases involved employees from an ethnic minority background.
- 48% of Disciplinary cases involved employees from an ethnic minority background.
- 44% of all cases involved ethnic minority employees.

This report provides an analysis of all these cases by gender, ethnicity and professional group; and outlines the findings of a comprehensive review undertaken by HR and EDI management teams.

Recommendation

Council of Governors are asked to note the information contained in this report.

Risk assessment						
Strategic Objective	Appetite (G)					
	Avoid	Minimal	Cautious	Open	Seek	Mature
To provide outstanding care for patients			g			
To deliver our financial plan and key performance targets			g			
To be in the top 20% of NHS employers					g	
To be a continually learning organisation				g		
To collaborate effectively with local and regional partners					g	
The level of risk against each objective should be indicated. Where more than one option is available the level of risk of each option against each element should be indicated by numbering each option and showing numbers in the boxes.	Low		Moderate	High	Significant	
	Risk (*)					
Explanation of variance from Board of Directors Agreed General risk appetite (G)						

Benchmarking implications (see section 4 for details)	Yes	No	N/A
Is there Model Hospital data relevant to the content of this paper?	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Is there any other national benchmarking data relevant to the content of this paper?	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Is the Trust an outlier (positive or negative) for any benchmarking data relevant to the content of this paper?	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>

Risk Implications (see section 5 for details)	Yes	No
Corporate Risk register and/or Board Assurance Framework Amendments	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Quality implications	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Resource implications	<input checked="" type="checkbox"/>	<input type="checkbox"/>

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Legal/regulatory implications	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Diversity and Inclusion implications	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Performance implications	<input type="checkbox"/>	<input checked="" type="checkbox"/>

Regulation, Legislation and Compliance relevance
NHS Improvement: (please tick those that are relevant) <input type="checkbox"/> Risk Assessment Framework <input type="checkbox"/> Quality Governance Framework <input type="checkbox"/> Code of Governance <input type="checkbox"/> Annual Reporting Manual
Care Quality Commission Domain: Well Led
Care Quality Commission Fundamental Standard: Staffing
NHS Improvement Effective Use of Resources: People
Other (please state):

Relevance to other Board of Director's Committee: (please select all that apply)			
People	Quality	Finance & Performance	Other (please state)
<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

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Bradford Teaching Hospitals
NHS Foundation Trust

DISCIPLINARY POLICY & ANALYSIS OF FORMAL BULLYING AND HARASSMENT AND DISCIPLINARY CASES APRIL 2022 TO MARCH 2023

1. Introduction

2.1 The purpose of this report is to provide an outline of:

- The Trust's updated Disciplinary Policy
- Analysis of the number of staff involved in a formal Bullying and Harassment and Disciplinary process during the period as April 2022 to March 2023.

2. Disciplinary Policy and Procedure

The Policy

BTHFT recognises the need for our people to be managed in a manner which is supportive, consistent, just and fair. We also recognise that our people need to be aware of the standards of conduct expected of them during their employment, and the consequences of failing to meet these standards of conduct.

The Trust's Disciplinary policy and procedure is designed to facilitate and encourage all employees to maintain acceptable standards of conduct, whilst safeguarding the interests of the Foundation Trust, its patients, clients and all our people.

The policy has recently been reviewed and updated to incorporate a Just Culture approach, which is based on the Just and Learning Culture credited to the Mersey Care Foundation Trust.

Just Culture is centred on the desire to create an environment where staff feel supported and empowered to learn when things do not go as expected, rather than feeling blamed. This is a culture that instinctively asks in the case of an adverse event: "what was responsible, not who is responsible". It is not about finger pointing and not blame-seeking. But it is not the same as an uncritically tolerant culture where anything goes that would be as inexcusable as a blame culture.

The principles of the updated procedure are to:-

- Adopt a Just Culture approach in dealing with untoward incidents
- Avoid taking a punitive approach when dealing with mistakes and errors where possible
- Utilise incidents as the basis to learn and adapt practice
- allow for matters to be dealt within designated timescales without undue delay and in a confidential manner ensuring the management of risk
- inform employees of their right to be accompanied at the earliest opportunity
- inform employees of the complaints against them and provide supporting evidence as part of the investigation
- inform employees what disciplinary action might be taken

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- outline the levels of authority management have when taking disciplinary action
- advise management to investigate fully before any disciplinary action is taken
- allow employees to have their say before management reaches a decision
- other than for gross misconduct or an offence of serious misconduct which also warrants dismissal, no employee shall be dismissed for a first breach of discipline
- ensure that employees are given an explanation for any sanction
- offers an employee a right of appeal against a decision
- ensure that employees are provided with details of expected changes in behaviour/conduct in the future

The Process/Procedure

The policy outlines the process/procedure that will be followed when it is necessary to take action of a disciplinary nature against employees. A flow chart of the process is attached at Appendix 1.

The intention is that potential disciplinary cases are dealt with at an early stage, with a view to resolving problems as quickly and fairly as possible; and that employees are encouraged to improve their standard of work and/or conduct.

The policy advises Managers to continuously apply a Just and Learning approach to managing disciplinary cases. Appendix 2 is a copy of the Just and Learning Guide included in the policy.

This supports managers to consider alternative means to address concerns and more minor misdemeanours, allowing a more positive approach to achieving improved behaviour and/or standards of conduct. It also recognises that at times there may be a significant system or organisational failure that has contributed to the incident/error which will need to be considered.

3. Suspension

Suspension is an emotive term and, although it is not of itself a conduct action, it can be seen by both the individual and others as having negative connotations, including implied guilt.

Whilst managing conduct related matters, managers are advised that suspension from work should be a last resort and proportionate in the circumstances. Before deciding to suspend an employee, the manager is advised to assess the degree of risk involved. This would include considering whether the employee poses a risk to clinical, financial or staff governance, or is a risk to self, others, patients or the organisation.

Mechanisms to remove risk must also be considered i.e. transfer to another area of work / department, putting in place additional supervision of work or restricting duties pending the investigation.

However, there are certain circumstances where an individual will need to be suspended from work whilst an investigation is carried out. These circumstances include:

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- where the allegation is gross misconduct and remaining in the workplace poses significant risk to the employee, his / her colleagues / members of the public or Foundation Trust property
- where the presence of the employee at work could hinder the investigation process

Suspension is not in itself a disciplinary sanction and will be for no longer than is necessary.

Previously the Trust's Disciplinary policy advised that staff under investigation should not contact any member of the Trust whilst an investigation was ongoing. However, we moved away from this stance a few years ago, to avoid staff feeling isolated.

Suspension arrangements were previously reviewed on a four weekly basis. To enhance the support to colleagues and to ensure both the suspension from work or limitations are still appropriate, the Policy has been updated to ensure all suspensions are reviewed fortnightly for the duration of the investigation.

4. Support Mechanisms

There are a variety of support mechanisms in place to support both staff and managers across the Trust, whilst an investigation is ongoing these include:

- Confidential Care Employee Assistance (CIC): Counselling advice and support.
- SPaRC Team (Spiritual Pastoral and Religious Care)
- Staff Advocacy Service
- Psychological support via Bradford District Care Trust (BDCT): Staff can self-refer for a range of online talking therapy courses through BDCT's My Wellbeing College.
- Healthy Minds: the doorway to mental health and wellbeing services across Bradford, Airedale, Craven and Wharfedale.

The Trust's intranet provides access to a variety of further wellbeing services/resources via this link - [Your Wellbeing – Bradford Teaching Hospitals Intranet \(bradfordhospitals.nhs.uk\)](https://bradfordhospitals.nhs.uk/your-wellbeing)

In addition, the following additional arrangements are implemented to support staff who are suspended and/or involved in disciplinary investigations:

- An independent manager is assigned to provide pastoral support.
- Where appropriate referrals to Occupational Health for advice, support, guidance and signposting to additional wellbeing organisations (i.e., Crisis Support, internal and/or external safeguarding support, etc.).
- Opportunities to be accompanied/represented at meetings by Trade Union representatives, Staff Advocates, or a work colleagues.
- Individual HR colleagues are assigned to support Commissioning Managers, Investigating Officers, Witnesses and Hearing Panel members.
- HR advice and support is continuously available to all staff involved in employee relations matters.

5. Formal Bullying & Harassment and Disciplinary Cases – 2022/23

As at October 2023, the Trust employs 23% male and 77% female staff. Ethnic Minority staff account for 40% of the Trust workforce.

During the period 1st April 2022 to 31st March 2023 there were 45 formal Bullying and Harassment and Disciplinary Cases. Of these 20 related to male and 25 to female. Although

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there were fewer cases involving male staff, the proportion of male staff subject to a formal process, in comparison to the proportion in the overall workforce is of concern.

Data indicates that **of the** formal cases across the Trust:

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- 33% of the Bullying and Harassment cases involved employees from an ethnic minority background.
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- 44% of all cases involved ethnic minority employees.

A comprehensive analysis of all cases has been undertaken by HR and EDI management teams in. This included a:

- Review of data across the Trust, each Care Group and CSU's
- Analysis by nature of allegations
- EDI focussed review
- Consideration of the Dido Harding guidance and the principles of a Just and Learning Culture.

This review identified the need for:

- greater consistency in the demonstration of an inclusive, compassionate and person-centred approach, underpinned by an overriding concern to safeguard staff health and wellbeing.
- consistent application of 'just culture' principles, which recognise that it is not always appropriate or necessary to invoke formal management action in response to a concern or incident.
- clarity, support, upskilling of managers so they are equipped to 'nip things in the bud' at an early stage and support staff to deliver their responsibilities effectively in accordance with Trust policies and procedures.
- clarity, guidance, support to staff to ensure they understand their responsibilities and how to deliver these in accordance with Trust policies, procedures and Values.

An 'Improving Employee Relations Casework - Action plan' has been developed by HR and EDI, to address the needs identified above.

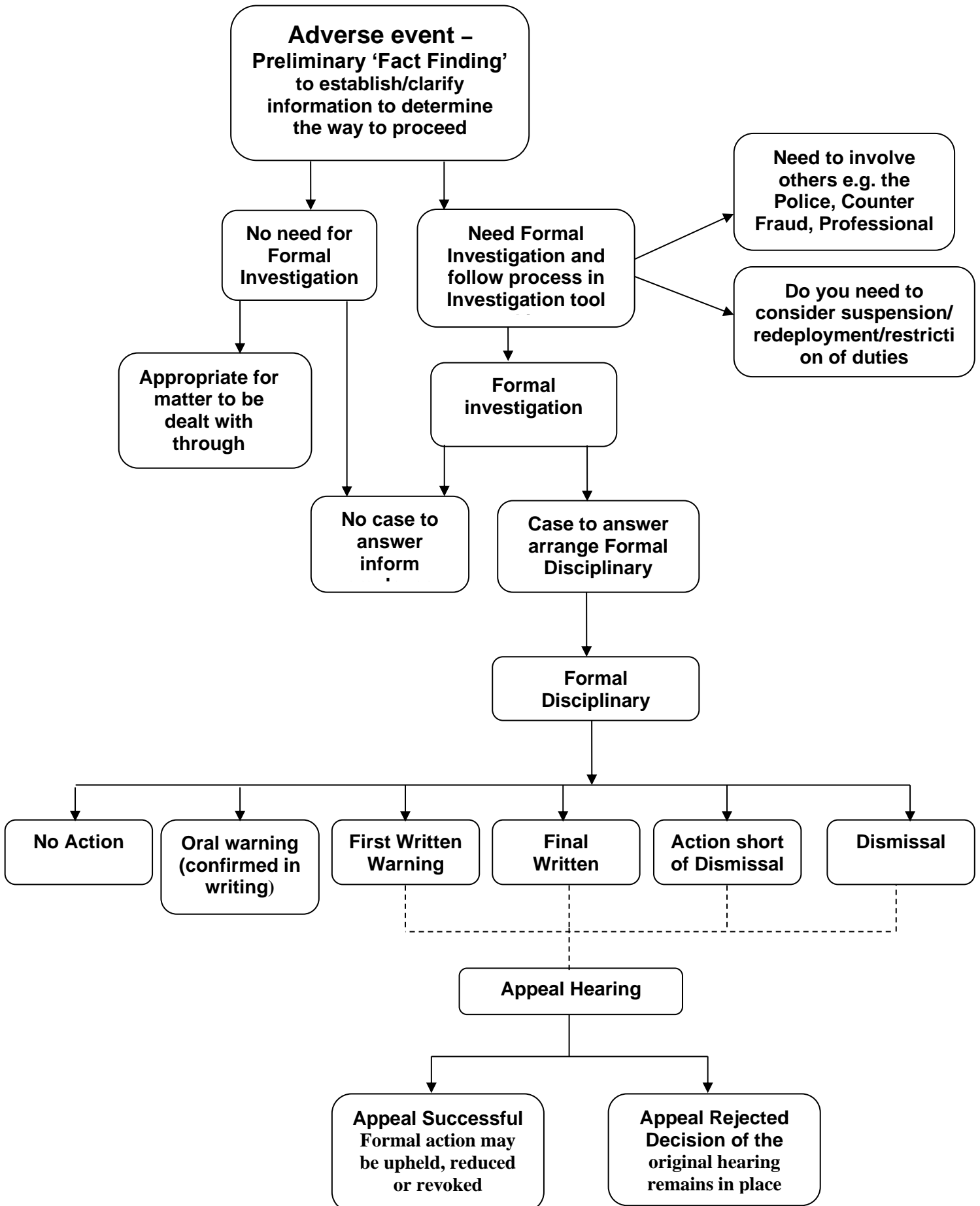
6. Recommendations

Council of Governors are requested to note the contents of this report.

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Appendix 1

PROCESS FLOW CHART



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JUST CULTURE GUIDE

A just culture guide

Supporting consistent, constructive and fair evaluation of the actions of staff involved in patient safety incidents

This guide supports a conversation between managers about whether a staff member involved in a patient safety incident requires specific individual support or intervention to work safely. Action singling out an individual is rarely appropriate - most patient safety issues have deeper causes and require wider action.

The actions of staff involved in an incident should **not** automatically be examined using this *just culture guide*, but it can be useful if the investigation of an incident begins to suggest a concern about an individual action. The guide highlights important principles that need to be considered before formal management action is directed at an individual staff member.

An important part of a just culture is being able to explain the approach that will be taken if an incident occurs. A just culture guide can be used by all parties to explain how they will respond to incidents, as a reference point for organisational HR and incident reporting policies, and as a communication tool to help staff, patients and families understand how the appropriate response to a member of staff involved in an incident can and should differ according to the circumstances in which an error was made. As well as protecting staff from unfair targeting, using the guide helps protect patients by removing the tendency to treat wider patient safety issues as individual issues.

- Please note:**
- A **just culture guide** is not a replacement for an investigation of a patient safety incident. Only a full investigation can identify the underlying causes that need to be acted on to reduce the risk of future incidents.
 - A **just culture guide** can be used at any point of an investigation, but the guide may need to be revisited as more information becomes available.
 - A **just culture guide** does not replace HR advice and should be used in conjunction with organisational policy.
 - **The guide** can only be used to take one action (or failure to act) through the guide at a time. If multiple actions are involved in an incident they must be considered separately.

Start here - Q1. deliberate harm test

1a. Was there any intention to cause harm?

Y

Recommendation:

Follow organisational guidance for appropriate management action. This could involve: contact relevant regulatory bodies, suspension of staff and referral to police and disciplinary processes. Wider investigation is still needed to understand how and why patients were not protected from the actions of the individual.

END HERE

No go to next question - Q2. health test

2a. Are there indications of substance abuse?

Yes

Recommendation:

Follow organisational substance abuse at work guidance. Wider investigation is still needed to understand if substance abuse could have been recognised and addressed earlier.

END HERE

2b. Are there indications of physical ill health?

Recommendation:

Follow organisational guidance for health issues affecting work, which is likely to include occupational health referral. Wider investigation is still needed to understand if health issues could have been recognised and addressed earlier.

2c. Are there indications of mental ill health?

if No to all go to next question - Q3. foresight test

3a. Are there agreed protocols/accepted practice in place that apply to the action/omission in question?

3b. Were the protocols/accepted practice workable and in routine use?

3c. Did the individual knowingly depart from these protocols?

If No to any

Recommendation:

Action singling out the individual is unlikely to be appropriate; the patient safety incident investigation should indicate the wider actions needed to improve safety for future patients. These actions may include, but not be limited to, the individual.

END HERE

if Yes to all go to next question - Q4. substitution test

4a. Are there indications that other individuals from the same peer group, with comparable experience and qualifications, would behave in the same way in similar circumstances?

4b. Was the individual missed out when relevant training was provided to their peer group?

4c. Did more senior members of the team fail to provide supervision that normally should be provided?

If Yes to any

Recommendation:

Action singling out the individual is unlikely to be appropriate; the patient safety incident investigation should indicate the wider actions needed to improve safety for future patients. These actions may include, but not be limited to, the individual.

END HERE

if No to all go to next question - Q5. mitigating circumstances

5a. Were there any significant mitigating circumstances?

Yes

Recommendation:

Action directed at the individual may not be appropriate; follow organisational guidance, which is likely to include senior HR advice on what degree of mitigation applies. The patient safety incident investigation should indicate the wider actions needed to improve safety for future patients.

END HERE

if No

Recommendation:

Follow organisational guidance for appropriate management action. This could involve individual training, performance management, competency assessments, changes to role or increased supervision, and may require relevant regulatory bodies to be contacted, staff suspension and disciplinary processes. The patient safety incident investigation should indicate the wider actions needed to improve safety for future patients.

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Based on the work of Professor James Reason and the National Patient Safety Agency's Incident Decision Tree

Supported by:



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