

Disciplinary Policy

2019 - 2022

Version:	1.1
Approved by:	Remuneration and Terms of Service Committees
Date approved:	June 2019
Date of issue (communicated to staff):	September 2019
Next review date:	June 2022
Document author:	HR Manager and Head of HR & OD

CONTROL RECORD			
Reference Number N&N HR-004	Version 1.1	Status Final	Author HR Manager Head of HR & OD
			Sponsor Executive Director of Transition
			Team Human Resources
Title	Disciplinary Policy		
Amendments	None		
Purpose	The purpose of the disciplinary policy and procedure is to set and maintain standards of conduct within the CCGs and in doing so, ensure that all employees are treated fairly and consistently. It is designed to help and encourage all employees to achieve and maintain satisfactory standards of conduct.		
Superseded Documents	Disciplinary Policy		
Audience	All staff within the Nottinghamshire CCGs.		
Consulted with	Staff Engagement Group and Trade Unions.		
Equality Impact Assessment	July 2019		
Approving Body	Remuneration and Terms of Service Committees	Date approved	June 2019
Date of Issue	September 2019		
Review Date	June 2022		
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Contents

	Page
1 Introduction	4
2 Purpose and Scope	4
3 Responsibilities	5
3.1 Employees	5
3.2 Line Managers	5
3.3 Human Resources	5
4 General Principles	5
5 Disciplinary Process	7
5.1 Informal Discussion/Counselling	7
5.2 Suspension from Duty	7
5.3 The Investigation	8
5.4 The Formal Disciplinary Hearing	9
5.5 Disciplinary Action	10
5.6 Disciplinary Sanctions	10
6 Appeals	12
7 Professional Misconduct	12
8 Alleged or Actual Criminal Offences	13
9 Equality Statement	13
10 Monitoring and Review	14
Appendix A: Disciplinary Rules	15
Appendix B: Scheme of Delegation	17
Appendix C: Equality Impact Assessment	18

1. Introduction

- 1.1 NHS Nottingham City CCG, NHS Nottingham West CCG, NHS Nottingham North and East CCG, NHS Rushcliffe CCG, NHS Mansfield and Ashfield CCG and NHS Newark and Sherwood CCG (hereafter referred to as 'the CCGs') recognise that they have a duty to provide a policy that gives employees clear, simple and fair standards of conduct, attendance and job performance. The aim of this policy is to ensure consistent and fair treatment for all in the organisation.

2. Purpose and Scope

- 2.1 This policy applies to all staff, regardless of length of service, employed under a contract of employment with the organisation. It does not apply to independent contractors and agency workers working for the organisation under a contract for services.
- 2.2 To extend the policy to clinicians who are appointed as employees of the CCGs.
- 2.3 The policy will help to ensure that managers and staff understand their respective rights and responsibilities when handling disciplinary situations and sets out the forms of conduct which may result in a breach of the organisation's disciplinary rules, and the consequences of such a breach of discipline.
- 2.4 This policy adheres to statute and nationally recognised best practice as provided by the Advisory, Conciliation and Arbitration Service (ACAS) Code of Practice: Disciplinary and Grievance Procedures.
- 2.5 Many employees are members of professional bodies which have professional standards of capability, conduct and competence. The organisation requires employees in those professions to abide by those standards.
- 2.6 This policy does not apply to matters of underperformance, for which the Capability Policy should be used or for matters of health related attendance, which will be dealt with under the Sickness Absence Policy.
- 2.7 Employees will not normally be dismissed for a first act of misconduct, unless the CCGs decide it amounts to gross misconduct.

3. Responsibilities

3.1 Employees

3.1.1 It is the responsibility of the employees to ensure that they:

- Read, understand and comply with the policy.
- Attend investigation meetings as required.
- Submit statements when required in a timely way.
- Ensure that confidentiality is maintained at all times.

3.2 Line Managers

3.2.1 It is the responsibility of the Line Managers to:

- Make employees aware of the Disciplinary Policy and procedure and inform employees of the conduct, behaviours and actions that could be considered misconduct and gross misconduct.
- Make clear the expectations that surround behaviour, conduct and the rules and regulations that are to be observed.
- Use the informal stages of the process wherever possible.
- Deal appropriately with employees whose conduct falls below expected standards.
- Consult the HR Team when making decisions to suspend an employee.
- Seek advice from the HR team where potential misconduct is suspected.
- Keep appropriate written documentation relating to all allegations of misconduct.
- Treat all employees fairly by applying the policy consistently.
- Ensure that confidentiality is maintained at all times.

3.3 Human Resources

3.3.1 The HR Team will provide advice and support on all aspects of this policy to ensure consistent application and support.

4. General Principles

4.1 Informal and/or formal counselling or other good management practice will be used to attempt to resolve matters before any formal disciplinary action is taken, where possible.

4.2 At every stage in the procedure, the employee will be advised of the nature of the complaint against them in writing, and will be given the opportunity to state his or her case before any decision is made.

- 4.2 Before any decision is made it is necessary to establish all the facts of the case. Where it is alleged that misconduct or gross misconduct has occurred, it will be necessary to make the appropriate investigations into the matter. This should be carried out promptly and the investigation and report recorded in writing.
- 4.3 Where fraud is suspected it is necessary to seek the advice of the Senior Leadership Team and the Local Counter Fraud Specialist.
- 4.4 The employee will be given the right to be represented by a recognised Trade Union representative or workplace colleague at the formal stage of the disciplinary procedure. Representation does not extend to legal advisers at any stage of the disciplinary process. The CCGs may, at their discretion, allow you to bring a companion who is not a colleague or union representative (for example, a member of your family) where this will help overcome a particular difficulty caused by a disability, or where you have difficulty understanding English. A companion is allowed reasonable time off from duties without loss of pay but no-one is obliged to act as a companion if they do not wish to do so. If the companion is unavailable at the time a meeting is scheduled and will not be available for more than five working days afterwards, the employee may be asked to choose someone else by the CCGs.
- 4.5 Employees will have the right to appeal against any formal disciplinary sanctions imposed.
- 4.6 Although normal disciplinary standards will apply to Trade Union representatives' conduct, no disciplinary action should be taken until the circumstances of the case have been discussed with a full time officer.
- 4.7 The organisation will consider referral to the appropriate professional/registrations body where matters raised during a disciplinary investigation, hearing or appeal warrant this action.
- 4.8 Disciplinary matters will be dealt with sensitively and with due respect for the privacy of any individuals involved. All employees must treat as confidential, any information communicated to them in connection with an investigation or disciplinary matter.
- 4.9 Employees and anyone accompanying them (including witnesses), must not make electronic recordings of any meetings or hearings conducted under this procedure.

- 4.10 Employees will normally be told the names of any witnesses whose evidence is relevant to disciplinary proceedings against them, unless it is deemed that a witness' identity should remain confidential.

5. Disciplinary Procedure

5.1 Informal Discussion/Counselling

- 5.1.1 Depending on the seriousness of the allegations of misconduct, every effort will be made to resolve the matter by informal discussions with the member of staff before taking formal disciplinary action.
- 5.1.2 This will involve the Line Manager discussing the perceived shortfall in conduct with the member of staff concerned, and advising on what standards are expected. The discussion should also outline what needs to be done to improve and when a follow-up meeting will be held. Support or training should be offered where relevant and written notes should be taken by the Line Manager.
- 5.1.3 The notes of the meeting and the agreed actions should be shared and mutually agreed with the employee whose perceived conduct, behaviour or actions has fallen short of the expected level. This will then be signed by both the Line Manager and the employee. A copy of the notes will be placed on the employee's personnel file.
- 5.1.4 Informal action does not constitute disciplinary action, although a repetition of the conduct or a failure to improve may lead to formal action.
- 5.1.5 There is no right to be accompanied or right of appeal at the informal stage.

5.2 Suspension from Duty

- 5.2.1 Suspension is not a disciplinary sanction and is available to protect both the employee and the organisation. Suspension of an employee from duty should be considered as a last resort and should always be on full pay and benefits. Where it can be accommodated, alternatives to suspension must always be considered before suspending an employee; however it may become necessary in certain circumstances. These could include, but are not limited to, situations where:
- The action complained of requires the immediate removal of the employee from their place of work pending a decision of what action, if any, is to be taken.
 - It is necessary for the protection of a member of staff, a patient or the public.

- A full investigation is required and it is thought likely that an employee could impede, influence or affect the investigation process.
- There is a need to protect the interests of the organisation.

5.2.2 A period of suspension will be for no longer than is necessary to investigate any allegations of misconduct or so long as is otherwise reasonable while any disciplinary procedure is outstanding. The individual who has been suspended must not undertake paid work for another employer during their normal working hours with the organisation. This includes bank, locum and private work. While suspended the employee should not visit the CCG premises or contact any suppliers, contractors or staff, unless they have been authorised to do so by their Line Manager.

5.3 The Investigation

5.3.1 Where it has been identified that there has been further instances of misconduct, or there has been little/no improvement made or where the alleged misconduct is sufficiently serious, the case will progress to a formal investigation.

5.3.2 The manager should inform and provide supporting evidence to the HR Team of the need for formal investigation. The HR Team will then work with the manager to source an appropriate investigating manager.

5.3.3 The manager will inform the employee in writing, on the same day where possible but no later than three working days and outline the next stages of the process i.e. the appointment of the Investigative Manager.

5.3.4 The Investigating Manager assigned will be responsible for promptly ascertaining the full facts of the case, including obtaining statements from witnesses and for providing a write-up of the findings with recommendations on future actions once all statements have been concluded. Other options may include an assessment that there is no case to answer, handling it informally or handling it through another policy. Investigative interviews are solely for the purpose of fact-finding and no decision on disciplinary action will be taken until after a disciplinary hearing has been held.

5.3.5 Employees must co-operate fully and promptly in any investigation. This will include informing the CCGs of the names of any relevant witnesses, disclosing any relevant documents to the CCGs and attending investigative interviews if required. Should any employee be found to be deliberately attempting to interfere with or influence the outcome of any investigation, either through intimidation, harassment

or bullying of the investigating managers, witnesses or any other employee, they may be subject to disciplinary proceedings, including disciplinary action being taken against them.

5.4 The Formal Disciplinary Hearing

- 5.4.1 If, following an investigation, the alleged misconduct is considered to warrant disciplinary action, a hearing will be convened. The manager will normally make the arrangements and conduct the disciplinary hearing with the support of the HR Team. The hearing will be conducted by a panel including the manager or a manager of equal grade or higher as appropriate. The HR Team will be able to provide support as to the composition of the panel.
- 5.4.2 The employee will be advised in writing of the nature of the alleged misconduct and told what the likely range of consequences will be if it is decided after the hearing that the allegations are true. The employee will be provided with the relevant documentation i.e. the investigative report that has led to the hearing being scheduled and invited to attend a disciplinary hearing and offered the right to be accompanied.
- 5.4.3 The employee will be given written notice of the date, time and place of the disciplinary hearing. The hearing will be held ideally within ten working days of the decision providing the employee with a reasonable amount of time to prepare their case based on the information provided to them.
- 5.4.4 If the employee or companion cannot attend the hearing, the employee should inform the hearing Chair immediately and an alternative time will then be arranged. Every effort to attend the hearing must be made, and failure to attend without good reason may be treated as misconduct in itself. If the employee fails to attend without good reason, or is persistently unable to do so (for example for health reasons), we may have to take a decision based on the available evidence.
- 5.4.5 A companion is allowed reasonable time off from duties without loss of pay but no-one is obliged to act as a companion if they do not wish to do so.
- 5.4.6 At the disciplinary hearing, the Chair will go through the allegations and the evidence that has been gathered. The employee will be able to respond and present any evidence of their own. The companion may make representations and ask questions, but should not answer

questions on the employee's behalf. The employee may confer privately with their companion at any time during the hearing.

5.4.7 The employee may ask relevant witnesses to appear at the hearing, provided sufficient advance notice is given to arrange their attendance. The employee will be given the opportunity to respond to any information given by a witness. However, the employee will not normally be permitted to cross-examine witnesses unless, in exceptional circumstances, we decide that a fair hearing could not be held otherwise.

5.4.8 The Chair may adjourn the disciplinary hearing if any further investigation, such as re-interviewing witnesses, is required in the light of any new points raised at the hearing. The employee will be given a reasonable opportunity to consider any new information obtained before the hearing is reconvened.

5.5 Disciplinary Action

5.5.1 When determining the disciplinary action to be taken, the Chair of the disciplinary hearing should bear in mind the requirement to satisfy the test of reasonableness, in all circumstances; and as far as possible consider the relevant mitigating factors.

5.5.2 The employee may be informed verbally of the outcome of the disciplinary hearing however, this must be confirmed in writing, giving details of the sanction given, reasons for the decision and right of appeal.

5.6 Disciplinary Sanctions

5.6.1 No penalty should be imposed without a hearing. The CCGs will treat all employees fairly and consistently, and a penalty imposed on another employee for similar misconduct will usually be taken into account but should not be treated as a precedent. Each case will be assessed on its own merits.

5.6.2 Employees would not normally be dismissed for a first act of misconduct, unless it is decided it amounts to gross misconduct.

5.6.3 The formal sanctions available to a the Chair of the Disciplinary Hearing are as follows:

- First Written Warning - This level of warning may be issued where there is a breach of the disciplinary rules or where the informal/counselling stage has failed to achieve the required

improvement. It will usually be appropriate for a first act of misconduct where there are no other active written warnings on an employee's disciplinary record. The warning will be retained on the employee's personal file for a period of 12 months.

- Final Written Warning - A manager may issue a final warning in cases of serious misconduct, for example, where an offence may not warrant dismissal but is serious enough not to be tolerated a second time. This level of warning may also be issued where an employee has breached disciplinary rules, whilst subject to a previously issued first written warning. The warning will normally be retained on the employee's personal file for a period of 12-18 months.
- Dismissal - Dismissal is the ultimate and final sanction which can be imposed. The dismissal will be effective as of the date of the disciplinary hearing.
- Action Short of Dismissal - In some cases of gross misconduct, alternatives to dismissal may be considered as follows:
 - Downgrading (without pay protection);
 - Redeployment;
 - Extension of the warning period.

5.6.4 In both first written and final written warnings, if the manager is not satisfied that the employee's conduct has improved during the period of the sanction or if there are further incidents of misconduct, further disciplinary action may be taken in accordance with this procedure.

5.6.5 Once the warning time limit has passed, it will remain on file but will be disregarded in any further disciplinary proceedings.

5.6.6 Dismissal will not take place for a first breach of discipline unless it is a case of gross misconduct, but may take place if an employee's conduct remains unsatisfactory following a final written warning. In these incidents the dismissal will be with notice on full pay.

5.6.7 Summary dismissals for gross misconduct will be without paid notice and will take effect from the date of the hearing.

5.6.8 The employee should be informed in writing of the reason for dismissal, the date on which his or her employment contract will terminate, and their right of appeal.

5.6.9 In such circumstances, these alternatives will usually be accompanied by a disciplinary sanction, i.e. a written or final written warning, and a development plan.

5.6.10 Panel Chairs should consult with HR before imposing any sanction as part of an Action Short of Dismissal.

6. Appeals

- 6.1 Employees have the right of appeal against formal disciplinary sanctions. The employee should appeal in writing to the relevant senior manager (see **Appendix B**) stating their grounds for appeal, within ten working days of receipt of the date on the outcome/decision letter. If the appeal is against dismissal, the date on which dismissal takes effect will not be delayed pending the outcome of the appeal. However, if the appeal is successful the employee will be reinstated with no loss of continuity or pay.
- 6.2 The purpose of the appeal hearing shall be to review the decision of the disciplining manager, not to re-hear the original disciplinary hearing. The appeal panel have the authority to confirm the original decision, apply a lesser sanction or uphold the original management decision. Appeals will be heard in line with **Appendix B**.
- 6.3 If an employee raises any new matters in their appeal, the appeals officer may need to carry out further investigation. If any new information comes to light the employee will be provided with a summary including, where appropriate, copies of additional relevant documentation and witness statements. The employee will have a reasonable opportunity to consider this information before the hearing, and the employee or their companion may comment on any new evidence arising during the appeal before any decision is taken.
- 6.4 In cases involving allegations of professional misconduct, a senior professional from the appropriate discipline should be an additional member of the appeal panel.

7. Professional Misconduct

- 7.1 Contravention of professional codes, standards, practice, laws or rules by health professionals may lead to disciplinary action, including dismissal. The professional bodies may take action in addition to action taken by the organisation, and the organisation has a duty to report incidents of professional misconduct to certain statutory bodies e.g. General Medical Council (GMC), Nursing and Midwifery Council (NMC), Health Professions Council (HPC).
- 7.2 If the employee is also employed by another organisation, the organisation may be required to notify that organisation of the disciplinary action taken.

- 7.3 A refusal to undertake a medical examination requested by the CCGs is a failure to follow reasonable management instruction.

8. Alleged or Actual Criminal Offences

- 8.1 As the burden of proof is different in disciplinary hearings compared to criminal proceedings, the organisation does not need to wait for the outcome of police enquiries or court hearings before commencing investigations and bringing the matter to a conclusion. However, liaison with the Police may be advisable, depending on the situation. The organisation will consider the circumstances of the case and, following advice, decide whether to proceed or not with the internal investigation into the allegation against the employee, or delay it. Where an employee is unable or have been advised not to attend a disciplinary hearing or say anything about a pending criminal matter, the disciplinary manager may have to take a decision based on the available evidence.
- 8.2 Criminal offences or alleged criminal offences committed outside the place of employment are not necessarily matters for disciplinary action. The organisation will consider whether disciplinary action is necessary, where a member of staff is cautioned, charged with, or convicted of a criminal offence(s) related or unrelated to their employment.
- 8.3 The decision whether to take disciplinary action or not, will take into account whether the caution, charge or conviction is one that is relevant to the employee's employment, or makes them unsuitable for the type of work undertaken.

9. Equality and Diversity Statement

- 9.1 The Nottingham and Nottinghamshire CCGs pay due regard to the requirements of the Public Sector Equality Duty (PSED) of the Equality Act 2010 in policy development and implementation, both as commissioners and as employers.
- 9.2 As a commissioning organisation, we are committed to ensuring our activities do not unlawfully discriminate on the grounds of any of the protected characteristics defined by the Equality Act, which are age, disability, gender re-assignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex and sexual orientation.
- 9.3 We are committed to ensuring that our commissioning activities also consider the disadvantages that some people in our diverse population experience when accessing health services. Such disadvantaged groups include people experiencing economic and social deprivation, carers, refugees and asylum

seekers, people who are homeless, workers in stigmatised occupations, people who are geographically isolated, gypsies, roma and travellers.

- 9.4 As employers, we are committed to promoting equality of opportunity in recruitment, training and career progression and to valuing and increasing diversity within our workforce.
- 9.5 To help ensure that these commitments are embedded in our day-to-day working practices, an Equality Impact Assessment has been completed for, and is attached to, this policy.

10. Monitoring and Review

- 10.1 This policy will be reviewed every three years from the date of ratification.
- 10.2 The policy may be reviewed at an earlier date if necessary, for example, to update it in line with changes in employment law or good practice.
- 10.3 Any individual who has queries regarding the content of this policy, or has difficulty understanding how this policy relates to their role, should contact the “document author”.

APPENDIX A:

Disciplinary Rules

The following list of disciplinary rules is for illustrative purposes only and is not exhaustive.

Gross Misconduct

Gross misconduct is seen as misconduct serious enough to destroy the contract of employment by breaking the fundamental bond of trust and confidence between the organisation and the employee.

Listed below are examples of misconduct which may be considered to be gross misconduct and may warrant dismissal or action short of dismissal. This list is not exhaustive:

- Theft, including unauthorised possession of property belonging to the organisation or to any member of staff or any patient.
- Deliberate, malicious or negligent damage to the organisation premises, property or records.
- Deliberate falsification of any official organisation documentation.
- False declaration of qualifications or professional registration or information used in support of an application.
- Breaches of confidentiality, prejudicial to the interest of the organisation.
- Being unfit for duty because of the misuse/consumption of drugs or alcohol.
- Refusal to carry out a management instruction which is within the individual's capabilities including a serious act or acts of insubordination.
- Violent, dangerous, intimidating conduct; exceptionally offensive behaviour; exceptionally inappropriate behaviour; or assault.
- Any action or failure to act that threatens the health and safety of a patient, carer or another member of staff or a member of the public.
- Failure to observe organisation rules, regulations or procedures.
- Bullying or harassment in breach of the organisation's Acceptable Behaviours policy.
- Deliberate act of discrimination, victimisation or harassment against another member of staff, a patient or a third party relating to race, ethnic origin, sex, sexual orientation, marital status, religion, age or

disability.

- Gross negligence, incompetence or failure to apply sound professional judgement.
- Bribing or attempting to bribe another individual, or personally taking or knowingly allowing another person to take a bribe, including receipt of goods, money or excessive hospitality.
- Fraud – any deliberate attempt to defraud the organisation or a member of the public in the course of their normal duties, including dishonest claims for expenses and timesheets.
- A criminal offence, which may (whether it is committed during or outside an employee's hours of work for the organisation) adversely affect the organisation's reputation, the employee's suitability for the type of work he or she is employed by the organisation to perform or his or her acceptability to other members of staff or to patients.
- Unauthorised use or access of computer or other IT systems or breach of the Internet and/or e-mail Policy, including downloading or transmission of material which is defamatory, offensive, obscene, malicious, sexist or racist.

General Misconduct

Listed below are examples of offences, which amount to misconduct falling short of gross misconduct:

- Persistent lateness and poor time-keeping.
- Absence from work, including going absent during work, without valid reason, notification or authorisation.
- Smoking in prohibited areas.
- Failure to work in accordance with prescribed procedures.
- Failure to carry out reasonable instructions or non-co-operation with reasonable management activities.
- Using foul or abusive language towards patients, carers, members of the public or other employees.
- Incompetence or unsatisfactory work performance.
- Unreasonable standards of dress or personal hygiene.
- Minor contravention of Health and Safety procedures.
- Failure to observe the organisation's policies and procedures.

APPENDIX B: Scheme of Delegation

The Scheme of Delegation has been developed to manage any disciplinary or grievance processes within the CCGs. The table provides detail of the lowest grade officer that can take specified action or issue a disciplinary sanction.

Staff Group	Written Warning	Final Written Warning	Dismissal	Suspension from Duty	Appeals
Chief Officer	Clinical Chair in consultation with NHS England	Clinical Chair in consultation with NHS England	Clinical Chair in consultation with NHS England	Clinical Chair in consultation with NHS England and Head of HR & OD	Clinical Chair from a different footprint in consultation with NHS England and Head of HR & OD
Directors	Accountable Officer	Accountable Officer	Clinical Chair	Accountable Officer in consultation with Head of HR & OD	Clinical Chair in consultation with NHS England and Head of HR & OD
Employees who report directly to a Director	Director	Director	Director from a different directorate	Director in consultation with Head of HR & OD	Chief Officer in consultation with Head of HR & OD
All other employees	Line Manager (Band 4 and above)	Line Manager (Band 4 and above)	Director	Director in consultation with Head of HR & OD	Director from a different directorate in consultation with Head of HR & OD

APPENDIX C: Equality Impact Assessment for Disciplinary Policy

Date of assessment:	July 2019			
For the policy, and its implementation, please answer the questions against each of the protected characteristic and inclusion health groups:	Has the risk of any potential adverse impact on people in this protected characteristic group been identified, such as barriers to access or inequality of opportunity?	If yes, are there any mechanisms already in place to mitigate the adverse impacts identified?	Are there any remaining adverse impacts that need to be addressed? If so, please state any mitigating actions planned.	Are there any positive impacts identified for people within this protected characteristic group? If yes, please briefly describe.
Age¹	No	N/A	N/A	N/A
Disability²	Yes	Mechanisms are in place via the Communications and Engagement Team to enable the policy to be received in alternative formats.	N/A	N/A
Gender reassignment³	No	N/A	N/A	N/A
Marriage and civil partnership⁴	No	N/A	N/A	N/A
Pregnancy and maternity⁵	No	N/A	N/A	N/A

¹ A person belonging to a particular age (for example 32 year olds) or range of ages (for example 18 to 30 year olds).

² A person has a disability if she or he has a physical or mental impairment which has a substantial and long-term adverse effect on that person's ability to carry out normal day-to-day activities.

³ The process of transitioning from one gender to another.

⁴ Marriage is a union between a man and a woman or between a same-sex couple.

Same-sex couples can also have their relationships legally recognised as 'civil partnerships'.

⁵ Pregnancy is the condition of being pregnant or expecting a baby. Maternity refers to the period after the birth, and is linked to maternity leave in the employment context. In the non-work context, protection against maternity discrimination is for 26 weeks after giving birth, and this includes treating a woman unfavourably because she is breastfeeding.

Date of assessment:	July 2019			
For the policy, and its implementation, please answer the questions against each of the protected characteristic and inclusion health groups:	Has the risk of any potential adverse impact on people in this protected characteristic group been identified, such as barriers to access or inequality of opportunity?	If yes, are there any mechanisms already in place to mitigate the adverse impacts identified?	Are there any remaining adverse impacts that need to be addressed? If so, please state any mitigating actions planned.	Are there any positive impacts identified for people within this protected characteristic group? If yes, please briefly describe.
Race⁶	No	N/A	N/A	N/A
Religion or belief⁷	No	N/A	N/A	N/A
Sex⁸	No	N/A	N/A	N/A
Sexual orientation⁹	No	N/A	N/A	N/A
Carers¹⁰	No	N/A	N/A	N/A

⁶ Refers to the protected characteristic of race. It refers to a group of people defined by their race, colour, and nationality (including citizenship) ethnic or national origins.

⁷ Religion refers to any religion, including a lack of religion. Belief refers to any religious or philosophical belief and includes a lack of belief. Generally, a belief should affect your life choices or the way you live for it to be included in the definition.

⁸ A man or a woman.

⁹ Whether a person's sexual attraction is towards their own sex, the opposite sex, to both sexes or none. <https://www.equalityhumanrights.com/en/equality-act/protected-characteristics>

¹⁰ Individuals within the CCGs which may have carer responsibilities.