

 Warwickshire POLICE  West Mercia POLICE		POLICY/ PROCEDURE
Security Classification	OFFICIAL	
Disclosable under Freedom of Information Act 2000	Yes	

POLICY TITLE	Disciplinary (POLICE STAFF)
REFERENCE NUMBER	A050
VERSION	3.0

POLICY OWNERSHIP	
DIRECTORATE	ENABLING SERVICES
BUSINESS AREA	PEOPLE SERVICES

IMPLEMENTATION DATE	March 2019
NEXT REVIEW DATE:	March 2022
RISK RATING	LOW
EQUALITY ANALYSIS	LOW

Warwickshire Police and West Mercia Police welcome comments and suggestions from the public and staff about the contents and implementation of this policy.
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1.0 POLICY OUTLINE

A disciplinary policy is the means by which rules are observed and standards are maintained. The policy and procedure are primarily to help and encourage employees to improve their conduct and/ or capability rather than to impose punishment. It enables managers to deal with shortcomings in conduct or capability to help the employee to become effective again.

This Policy sets out the Warwickshire Police, West Mercia Police and the Offices' of the Police & Crime Commissioner (OPCC) approach to managing members of Police staff/ employees whose:

- conduct falls below the acceptable standard as detailed within the College of Policing 'Code of Ethics' (The Code of Practice for the Principles and Standards of Professional Behaviour for the Policing Profession) [Code of Ethics](#)
- capability (performance and/ or attendance) falls below the acceptable standard

This Policy complies with employment legislation and guidance within 'The ACAS Code of Practice'.

2.0 PURPOSE OF POLICY

The purpose of the Policy is to ensure a fair, consistent and timely means of managing and maintaining standards of conduct and capability for permanent and temporary police staff employees of Warwickshire Police, West Mercia Police and OPCC

This Policy does not cover contractors, casual workers, police staff volunteers or workers employed by an agency.

The Policy will apply to all activities carried out in the course of the individual's employment within Warwickshire Police, West Mercia Police and OPCC. This includes work related or work connected social events and training courses held outside normal working hours and/or away from Force premises. The policy will also apply where unsatisfactory conduct occurs when the individual is not at work i.e.

- action may be taken where such conduct might cause embarrassment to, or bring Warwickshire Police, West Mercia Police or OPCC into disrepute
- be prejudicial to the effective performance of the individual's duties
- adversely affect working relationships with colleagues and/or members of the public.

2.1 Disciplinary Categories

2.1.1 Conduct

Conduct is the manner in which an individual behaves. Warwickshire Police, West Mercia Police and OPCC expect all Police Staff to maintain their conduct to the standard detailed within the College of Policing 'Code of Ethics' (The Code of Practice for the Principles and Standards of Professional Behaviour for the Policing Profession). [Code of Ethics](#)

A conduct matter is defined in the Police Reform Act 2002 as: any matter about which there is not or has not been a complaint, where is an indication (whether from the circumstances or otherwise) that a person serving with the police may have:

- committed a criminal offence; or
- behaved in a manner which would justify the bringing of disciplinary proceedings.

Misconduct is a breach of the 'Code of Ethics'.

Gross Misconduct is a breach of the 'Code of Ethics' so serious that it irreparably damages the employment relationship between the individual and Warwickshire Police, West Mercia Police or OPCC and dismissal would be justified.

Examples of Misconduct & Gross Misconduct are provided in [Appendix 1](#).

2.1.2 Capability

Capability is the ability to perform the duties of a role to the required satisfactory standard.

Incapability is the serious inability or failure to perform the duties of the role to the required satisfactory standard for a reason relating to the individual, including:

- a demonstrated lack of specific skills or abilities which have not been addressed through the Appraisal process (Performance Management policy & procedure)
- repeated failure to meet realistic objectives or targets
- gross incompetence
- inability to attend for work on grounds of ill-health, which may include persistent short term sickness absence or long term sickness absence

2.1.3 Probationary Period

All new appointees are required to demonstrate their suitability for the post during their probationary period.

Where individuals' performance does not meet the required standard, the Probationary Period procedure should be followed. (See Appendix 4)

2.2 Principles Of The Policy

- Issues relating to informal matters will be addressed by Line Management in the first instance, wherever possible. Formal disciplinary matters will be addressed by the appropriate level of management in relation to the level of seriousness of the matter.
- The informal and formal stages of the procedure may be followed sequentially, or dependent on the severity of the conduct and/ or capability issue, may be accelerated to a higher stage.

A Stage 3 hearing will be held in circumstances where:

- the allegation, if proven, would amount to gross misconduct
- an individual is absent from work for a prolonged period, and the Force Medical Adviser has advised that there is no prospect of a return to work within a reasonable period of time, but the individual does not meet the criteria for Early Ill Health Retirement.
- a medical condition continues to significantly affect an individual's ability to attend work regularly and/ or fulfil the main responsibilities of their role and all alternative options have been explored.
- there is evidence of a serious inability or failure of an individual to perform the duties to a satisfactory standard (gross incompetence)
- the lack of competence has a seriously detrimental effect on service delivery and could lead to serious consequences (such as safety, legal or financial implications).
- At every stage in the process the individual will be advised of the nature of the alleged disciplinary (conduct and/or capability) matter and have the opportunity to state his/her case before any decision is made.
- No disciplinary action will be taken against any Police Staff member/ employee until all available facts and supporting information have been considered.
- The individual will be given sufficient notice of any interview, meeting or hearing to enable him/her to prepare his/her case.

- Individuals will receive written notification of any sanction imposed upon them and have the right of appeal against any disciplinary action taken against them.
- Appeal hearings have the authority to revise the level of sanction imposed, which may result in an increase or decrease in the level of sanction. If a sanction level is increased during an appeal process a further appeal will be offered.
- The individual has the right to be accompanied at formal meetings and hearings by a recognised staff association representative or workplace colleague at all stages of the formal procedure. Reasonable time off will be granted to allow for adequate preparation for and attendance at any meetings held in accordance with this policy.
- Where a case of gross misconduct may exist, the individual may be suspended from duty, on full pay, pending investigations, however alternatives to suspension will be explored. Any suspension will be as brief as possible and never used as a sanction against the individual prior to a disciplinary meeting and decision. The individual will be kept informed of the progress of the investigation during the suspension period. Further information relating to suspension is detailed within the Suspension Procedure which can be accessed on the Intranet via the Operating Manual & Joint Polices.

2.2.1 Confidentiality and record keeping

- Written records will include details of the alleged unsatisfactory conduct and/or capability, the response from the individual, any findings and actions taken.
- Any information shared as part of the investigation process will be managed appropriately to minimise any risk to the organisation and the dignity of the individual.
- In certain circumstances the outcome of a disciplinary case may be reported in Force Orders and/or externally.
- Formal action e.g. Sanctions and Improvement notices, will be discounted for the purposes of further disciplinary action on expiry of the specified period, provided that the individual's conduct and/or capability has been satisfactory during that period. Discipline records will be held in accordance with appropriate Retention schedules and may be shared with other parties, in line with legislation and common law Police Disclosure.

- The use of recording equipment by employees will not be permitted during Disciplinary meetings or hearings. Recording equipment may be used by Warwickshire Police, West Mercia Police or OPCC during formal meetings and hearings.

3.0 IMPLICATIONS of the POLICY

3.1 Risks

The effective operation of this policy will minimise the risk of successful action against Warwickshire Police, West Mercia Police and OPCC under equality and employment legislation at Employment Tribunal.

3.2 Legal considerations

The most important provisions governing discipline at work are found within the Employment Act 2008 but other pieces of legislation cross refer to discipline issues i.e. Employment Rights Act 1996 as amended, Employment Rights Dispute Resolution Act 1998, Employment Relations Act 1999, Employment Rights Act 2004. By following the ACAS code of practice on disciplinary procedures the organisation will ensure it complies with all legislation.

In addition, legislation in relation to complaints and misconduct for Police staff is

- IPCC Statutory guidance 2013
- The Police (Complaints and Misconduct) Regulation 2012
- The Police Reform Act 2002
- The Police and Social Responsibility Act 2011
- The Police Barred and Police Advisory Regulations 2017.

3.3 Training

Management coaching may be required via staff in People Services.

4.0 CONSULTATION

Consultation has been undertaken by way of workshop with Unison representatives of Warwickshire Police & West Mercia Police along with a separate workshop consisting of HR professionals who will be advising managers on the operation of the this policy.

The policy has been circulated to members of the Critical Friends group (Federation, Unison, Legal Services, Risk Management, Health & Safety and Equality & Diversity and staff network groups) for consultation and feedback.

5.0 DOCUMENT HISTORY

The history and rationale for change to policy will be recorded using the chart below:

Date	Author / Reviewer	Amendment(s) & Rationale	Approval / Adoption
July 2014	Liz Fletcher/ Tina Smith	Policy harmonisation for alliance v1.0	JNCC – July 2014
July 2015	Liz Fletcher/ Tina Smith	Amendments to wording (See summary of change) V1.1	30/07/2015
October 2018	Julie Darby	Inclusion of Barred and Advisory Lists	JNCC 28/09/2018
February 2018	Julie Darby	Inclusion of Probationary Period procedure; Addition of H & B to gross misconduct; Amended authorised level of officer to hear Stage 3 v3.0	JNCC 21/03/2019

6.0 PROCEDURE

Definitions of Misconduct & Gross Misconduct - [Appendix 1](#)

Misconduct Procedure - [Appendix 2](#)

Capability Procedure - [Appendix 3](#)

Probation Procedure – [Appendix 4](#)

[Suspension Procedure.](#)

[Probationary Guidance](#)

7.0 ASSESSMENT AND ANALYSIS

A 'Health and Safety, Risk and Equalities Assessment' has been conducted. The key issues identified included:

- The possible increase in welfare needs particularly for those going through misconduct procedures.
- Police Staff with the protected characteristic of Disability may possibly be more affected, due to the nature of the Capability Procedure

Controls are recommended as follows:

- Welfare support may be offered through an appointed Line Manager

- Reasonable adjustments would be considered for those with the protected characteristic of Disability.

Appendix 1 Examples of Misconduct and Gross Misconduct

MISCONDUCT

The College of Policing, '**Code of Ethics**' details the Code of Practice for the Principles and Standards of Professional Behaviour for the Policing Profession.

Full details of the '**Code of Ethics**' can be accessed here [Code of Ethics](#)

In summary the **Standards of Professional Behaviour** cover the areas of

- **Honesty and integrity**
- **Authority, respect and courtesy**
- **Equality and diversity**
- **Use of Force**
- **Orders and instructions**
- **Duties and responsibilities**
- **Confidentiality**
- **Fitness for work**
- **Conduct**
- **Challenging and reporting improper conduct.**

Misconduct may occur when conduct falls below the acceptable standard of professional behaviour i.e. when there is a breach of the Code of Ethics.

The following are examples of the type of behaviour which may result in a breach of one, or more, of the **Standards of professional behaviour** (dependant on the circumstances). The list is not exhaustive and may include other acts of Misconduct not listed here. Equally, the type of behaviour listed below may, in certain circumstances, constitute Gross Misconduct.

Examples of Misconduct:

- Breach of Policies and Procedures in place.
- Frequent and/or persistent absence from work without reasonable cause.
- Failure to follow the procedures for sickness absence reporting
- Poor timekeeping, late attendance and excessive breaks
- Poor performance, where capability procedures are not appropriate (e.g. deliberate failure to work satisfactorily and engage with management)
- Insubordination/refusal to carry out reasonable instructions
- Abusive or offensive words or behaviour to other colleagues or members of the public (including through Social Media channels)
- Breach of the Dress and Appearance Policy and Procedure
- Breach of H & S legislation

- Unauthorised private activities during working hours without permission
- Unauthorised private use of Warwickshire Police and West Mercia Police property or equipment
- Speeding offences committed whilst driving on duty resulting in the issue of a fixed penalty or summons
- Detrimental comments regarding either Warwickshire Police or West Mercia Police which may bring the Force into disrepute (including through Social Media channels)

GROSS MISCONDUCT

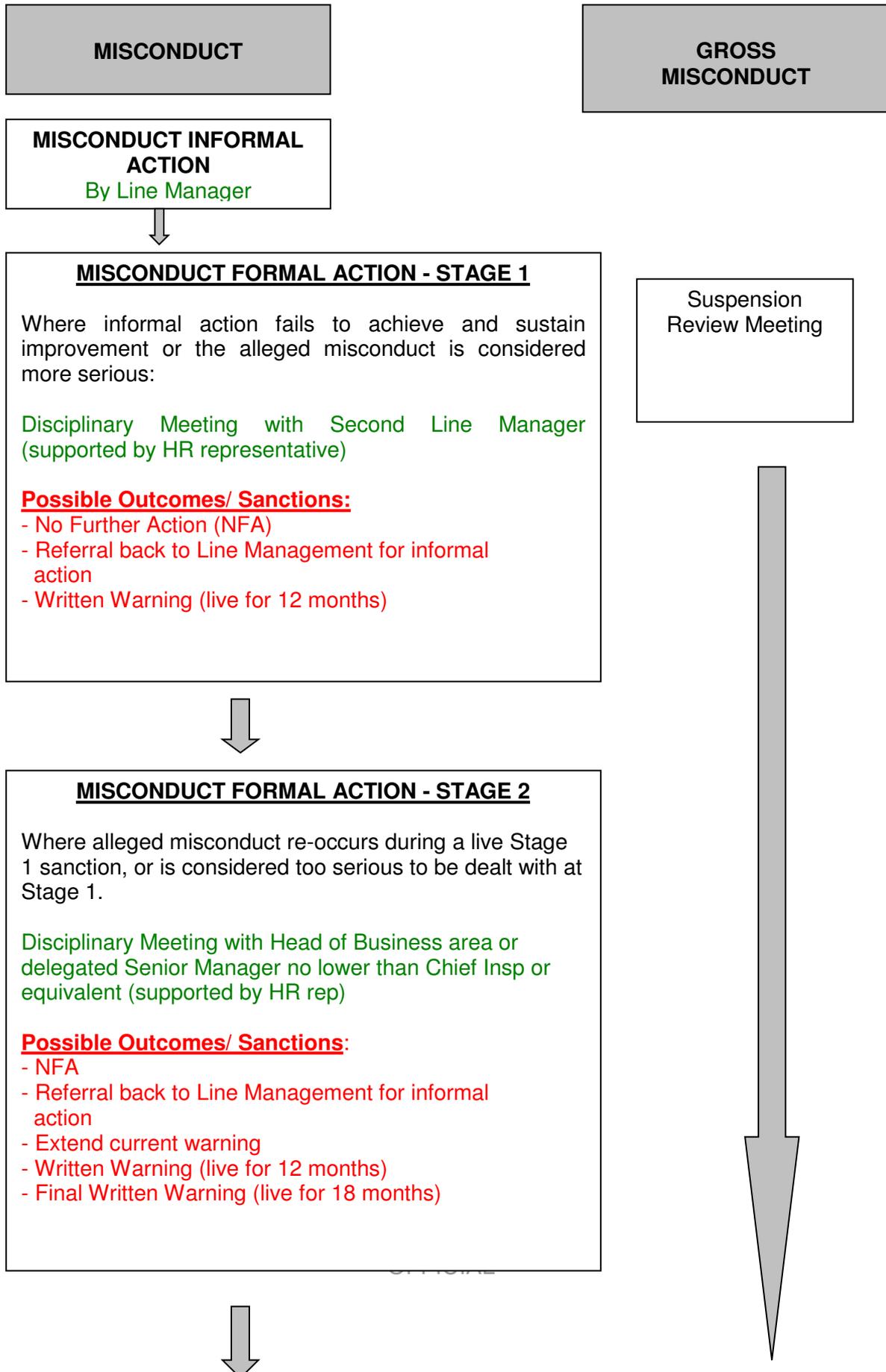
Gross Misconduct is a breach of the 'Code of Ethics' so serious that it irreparably damages the employment relationship between the individual and Warwickshire Police or West Mercia Police and dismissal would be justified.

The following are examples of the type of conduct which is in serious breach of one or more of the **Standards of professional behaviour** (dependant on the circumstances) and may be regarded a gross misconduct. This list is not exhaustive and, in certain circumstances may include other conduct not listed here.

Examples of Gross Misconduct:

- Theft and other offences of dishonesty including the falsification of expense claims, flexitime records and other documents
- Fighting, as the aggressor, or assault on another person.
- A serious breach of a colleagues dignity and respect (including through Social Media channels)
- Harassment and/or bullying
- Malicious and deliberate damage to a colleagues or Force property
- Neglect or deliberate action constituting a serious breach of Health and Safety regulations.
- Reporting for work under the influence of alcohol or illegal drugs.
- Unauthorised disclosure of confidential information
- Unauthorised and/or improper use of the Force's equipment, vehicles, property or funds.
- Breaches of the internet, email and Force IT systems e.g. unauthorised access of a computer system
- Corrupt practice or other conduct which would bring Warwickshire Police or West Mercia Police into serious disrepute
- Serious breaches of Force Policies and procedures.
- Serious breach of H & S legislation

Appendix 2: Misconduct Procedure



MISCONDUCT FORMAL ACTION – STAGE 3

Where alleged misconduct reoccurs during a live Final Written Warning, or may constitute Gross Misconduct.

Disciplinary Hearing with Chief Superintendent or Police Staff equivalent (or delegated Superintendent or Police Staff equivalent), supported by HR representative

Possible Outcomes/ Sanctions:

- NFA
- Extend Current Written Warning
- Written Warning/ Final Written Warning (live for 18 months)
- Transfer to another post/location (in conjunction with Final WW)
- Recovery of money or goods obtained by fraudulent means
- Dismiss without notice if Gross Misconduct
- Dismiss with notice
- In the event of dismissal inclusion on the Barred List.

NOTE:

- If Misconduct is alleged the appropriate Stage of the process will be entered dependent on the seriousness of the matter and whether a previous sanction issued is still 'live'.
- No disciplinary action will be taken against any Police Staff member until all available facts and supporting information have been considered.
- A Right of Appeal will be offered at each Formal stage. Details of the appeal process are contained within the guidance documents.

Appendix 3: Capability Procedure**INCAPABILITY****CAPABILITY INFORMAL ACTION**

By Line Manager

Appraisal process (Performance Management)
Attendance Review Meeting (Attendance Management)

**CAPABILITY FORMAL ACTION - STAGE 1**

Where informal action fails to achieve and sustain improvement or the incapability is considered more serious:

Disciplinary Meeting with Second Line Manager (supported by HR representative)

Possible Outcomes/ Sanctions:

- No Further Action (NFA)
- Referral back to Line Management for informal action
- Written improvement notice – improvement to be made within 3 months and sustained for up to 12 months

**CAPABILITY FORMAL ACTION - STAGE 1 – REVIEW**

Review Meeting held by Second Line Manager to establish if:

- Satisfactory improvement achieved after 3 months = must be further sustained for 12 months
- Satisfactory improvement partially achieved = consider extension period
- Satisfactory improvement NOT achieved and/ or sustained = move to Stage 2

**CAPABILITY FORMAL ACTION - STAGE 2**

Where incapability issues re-occur during a live Stage 1 sanction (i.e. satisfactory improvement not achieved or sustained for the 12 months since issued), or are considered too serious to be dealt with at Stage 1:

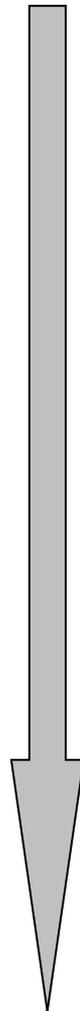
Disciplinary Meeting with Head of Business Area or delegated Senior Manager no lower than Chief Insp or equivalent (supported by HR rep)

Possible Outcomes/ Sanctions:

- Extension of previous written improvement notice
- Final Written improvement notice - improvement to be made within 3 months and sustained for up to 24 months

GROSS INCAPABILITY**Proceed direct to Stage 3:**

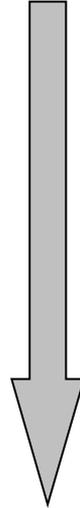
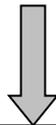
1. Individual LTS with no prospect of RTW in reasonable timeframe
2. Medical condition significantly affects individual's ability to attend work regularly and fulfil role
3. Serious inability or failure to perform duties
4. Incompetence has a seriously detrimental effect on service delivery (e.g. safety, legal, financial implications)



CAPABILITY FORMAL ACTION - STAGE 2 - REVIEW

Review Meeting held by Chair of Initial Stage 2 Meeting to establish if:

- Satisfactory improvement achieved after 3 months = must be further sustained for 24 months
- Satisfactory improvement partially achieved = consider extension period
- Satisfactory improvement NOT achieved and/ or sustained = move to Stage 3

**CAPABILITY FORMAL ACTION – STAGE 3**

Where incapability issues re-occur during a live Stage 2 sanction (i.e. satisfactory improvement not achieved or sustained for the 24 months since issued) or are considered too serious to be dealt with at the earlier Formal Stages:

Disciplinary Hearing with Chief Superintendent or Police Staff equivalent (or delegated Supt or Police Staff equivalent), supported by HR representative:

Possible Sanctions:

- NFA
- Extend current Written Warning
- Written Warning (live for up to 12 months)
- Final Written Warning (live for up to 24 months)
- Medical redeployment
- Transfer to another post/location (in conjunction with Final WW)
- Dismiss on grounds of capability with notice
- In the event of dismissal inclusion on the Barred List.

NOTE:

- No disciplinary action will be taken against any Police Staff member until all available facts and supporting information have been considered.
- A Right of Appeal will be offered at each Formal stage. Details of the appeal process are contained within the guidance documents.

Appendix 4 – Probation Period Procedure**New employee appointed on a probation period (usually 6 months).**

- Objectives should be set within 2 weeks of appointment
- Monthly one to one meetings should take place in order to monitor and review performance.
- Any concerns should be raised informally via the one to one meetings.
- Individuals should complete any necessary NCALT training packages required.

**Middle of probation period (usually 3 months)**

- Formal review of performance should take place.
- Any concerns regarding performance should be formally raised and if required an action plan agreed.

**One month before the end of probation period (usually 5 months)**

- Appraisal meeting should take place in line with MAX/Performance Management.
- First line manager to complete the Probation Record Form.

**Unsatisfactory Performance**

- Consideration of extension of probation period.
- Consideration of termination

**Satisfactory Performance**

- Confirm in post

**Termination**

- 2ND Line Manager recommends termination
- Head of Department confirms outcome in writing to member of staff.