

Appendix A – Employee Rules and Examples of Gross Misconduct

Employee Rules

This document specifies the Rules which are applicable to all employees of Northern Devon Healthcare NHS Trust. The rules have been drawn up in accordance with the recommendations of the ACAS Code of Practice on Disciplinary Practice and Procedures in Employment (2009) which states that disciplinary rules and procedures are necessary for promoting fairness and order in the treatment of individuals and in the conduct of industrial relations. The rules should be considered in conjunction with any site instruction or local rules issued following consultation with the Staff Organisations Committee, Partnership Forum or Staff Representatives, as appropriate.

All employees are required to:-

- 1) Observe their Contract of Employment in all respects; this includes Terms and Conditions referred to in their appointment letter and in a Statement of Main Terms and Conditions, as amended from time to time, together with any agreed Job outline, and having regard to Trust Policies and Procedures, custom and practice.
- 2) Perform their duties as directed by their Manager or Supervisor in accordance with Clause 1 above.
- 3) Observe all directives and procedures issued by management, including local rules, instructions and Policy Statements appropriate and reasonable to the particular site where the employee works.
- 4) Give due consideration to the health, safety and welfare of others.
- 5) Observe agreed working hours; obtain the prior approval of their Supervisor for any foreseeable absence from work; and inform their Supervisor as soon as practicable of the reasons for and probable duration of any unexpected and unavoidable absence from work.
- 6) Send to the appropriate Officer, medical certificates covering periods of sickness absence in accordance with agreed procedures.
- 7) Conduct themselves in all other respects in a manner consistent with the proper performance of their duties; the maintenance of good relationships with patients and work colleagues; and having due regard to any Code(s) of Practice relevant to their employment capacity.

An employee accused of contravening any of the above rules will be dealt with in accordance with the Trust's Disciplinary Policy. That procedure stipulates the penalties which can be applied, including dismissal, when this is warranted by the gravity of the misconduct. Examples of misconduct which could lead to dismissal are set out below.

The rules stipulated above do not preclude the Trust from taking appropriate action in relation to an employee, where it is considered that action outside of the Disciplinary Policy may be beneficial.

Where an individual is aware that any theft, fraud, deliberate falsification of records, corruption or other irregularity has occurred, or is about to take place, it is important that they do not discuss it with anyone and should contact either the Director of Finance, the Local Counter Fraud Specialist or the NHS National Fraud & Corruption Hotline on 0800 028 4060 immediately and seek their advice before implementing this disciplinary policy. The Trust's Counter Fraud Policy and contact details for the Local Counter Fraud Specialist are available on BOB. See also Appendix I.

Examples of Gross Misconduct include, but are not limited to: -

- Fighting, verbal or physical assault on another person
- Physical violence, actual or threatened
- Serious and deliberate acts of insubordination
- Deliberate damage to Trust, client or staff member's property
- Serious negligence causing damage, loss or injury including failure to act on concerns
- Serious breaches of Health & Safety legislation
- Serious professional misconduct
- Serious or repeated negligent acts in the performance of duties
- Persistent failure to follow reasonable instructions
- Giving false or misleading information to the Trust
- Acts of harassment, discrimination or unfair treatment of others including those on the grounds of race, gender, disability or sexual orientation, age, marital status, pregnancy/maternity leave, trans-gender status, religion or belief.
- Misuse of social media, the internet, fax and e-mail system with reference to pornographic, obscene or other offensive material or sites which the Trust considers inappropriate
- Any tampering with, unauthorised access or inappropriate use of computer systems
- Misuse, abuse or deliberate damage to Trust property, including intellectual property or that of other employees
- Leaving the workplace without permission or reasonable excuse
- The supply or possession of alcohol or illegal drugs or being under the influence of alcohol or illegal drugs on Trust premises or during working hours
- Serious disregard for rules or instructions given by the Trust
- Dishonesty pertaining to money or property belonging to the Trust or in its care, or the property of patients or clients or any other property to which an employee has access in the course of work.
- Ill treatment of patients or any conduct or omission which puts the patient at risk of harm.
- Breach of confidentiality (except as provided for in NHS guidelines for protecting the public interest, and in any other guidelines or legislation e.g. for protection of children)
- Conduct likely to give offence to patients other employees or visitors, which also includes sexual offences or sexual misconduct at work
- Criminal conduct at work
- Falsification of remuneration (including time sheets, travel and expense claims or medical certificates)
- Falsification of qualifications which are a stated requirement of employment or any information used in support of an application for any employment within the Trust
- Contravention of the provisions of the Mental Health Act
- Unauthorised absence, putting Trust patients or services at risk, or showing that the member of staff no longer intends to be bound by their employment contract

- Conduct which brings the Trust's name into disrepute
- Failure to disclose a criminal conviction or caution & which renders the employee unsuitable or unable to carry out the duties for which they were employed
- Failure to disclose a pending prosecution
- A series of minor items of misconduct
- Serious professional misconduct which could result in removal from professional register where membership is a condition of employment
- Working for another employer whilst on duty, on call or standby or on suspension from duty with this Trust, or whilst off sick, without written permission from their manager
- The consumption of food or beverages provided for patients without permission
- Members of staff are not allowed to use, for self medication, any Trust medicines/drugs provided to wards or departments or drugs/medication belonging to patients
- Whilst reporting as being sick, working or indulging in activities likely to be inconsistent with the reason for absence and/or unlikely to be conducive to recovery
- Unauthorised sleeping on duty
- Misrepresentation – making a false or deliberately misleading statement in a job application, health declaration or other employment context

The examples given above are not exhaustive and other conduct not included may nevertheless be so self-evidently a fundamental breach of an employee's employment contract as to be an instance of Gross Misconduct.

Appendix B – Alternative Options to a Full Formal Disciplinary Hearing

There may be situations where there is a disciplinary case to be considered but where the Commissioning Manager considers the matter may be more appropriately dealt with through an alternative to a full formal disciplinary hearing. Where this is the case, the Commissioning Manager must discuss the case with an Assistant Director of HR before any alternative option is put to the individual and their representative.

The exact nature and constitution of the alternative offered will be determined by the circumstances of the case in question. Below are examples of potential scenarios and alternative options. **NOTE**; these are not intended to be exhaustive.

An individual will always retain the right to refuse any option offered as an alternative to a disciplinary hearing and will have the right to have their case considered through a full formal hearing. There will be no criticism of an individual for exercising this right and any Hearing will be conducted fairly and without prejudice.

Scenario 1

There is a clear disciplinary offence. The individual acknowledges the offence and the fact that they have behaved/acted inappropriately. There is no significant dispute to fact. The offence and/or circumstances surrounding the offence are such that dismissal/summary dismissal is not a sanction under consideration.

In this situation it may be appropriate to offer the individual the opportunity to accept a sanction deemed appropriate by the Commissioning Manager in consultation with the Assistant Director of HR without going through a disciplinary hearing. If the individual accepts this alternative, they will have no right of appeal against the sanction level. There may be additional provisions (eg a development programme, mediation, mentorship etc) put in place to support a positive resolution.

Scenario 2

There is a clear very serious disciplinary offence. The individual acknowledges the offence and the fact that they have behaved/acted wholly inappropriately. There is no significant dispute to fact. The offence and/or circumstances surrounding the offence are such that dismissal/summary dismissal is a sanction under consideration.

In this situation it may be appropriate to offer the individual the opportunity to attend a less formal hearing with a Panel but where the investigating officer is not required to attend to present the case (as there is no dispute to fact). In this scenario the individual would be solely presenting mitigation and their explanation of personal circumstances surrounding the situation. The Panel would retain the ability to issue any appropriate sanction including summary dismissal. The individual would retain the right of appeal but only against the severity of the sanction.

Scenario 3

There is a clear very serious disciplinary offence. The individual acknowledges the offence and the fact that they have behaved/acted wholly inappropriately. There is no significant dispute to fact. The offence and/or circumstances surrounding the offence are such that dismissal/summary dismissal would normally be a sanction under borderline consideration but there is very significant undisputed mitigation combined with a previous demonstrable history of exemplary behaviour and performance.

In this situation it may be appropriate to offer the individual the opportunity to accept a Final Written Warning (of 3 years duration) possibly combined with other sanctions/restrictions as an alternative to dismissal sanction without going through a formal disciplinary hearing. If the individual accepts this alternative, they will have no right of appeal against the sanction level.

Scenario 4

There is a clear professional failing. The individual acknowledges this. The individual feels that their relationship with the Trust has come to an end and they resign. However an issue of whether the matter will require notification to the professional regulatory body (eg NMC, HCPC) remains.

In this situation it may be appropriate to offer the individual the opportunity to attend a less formal hearing with a Panel but where the investigating officer is not required to attend to present the case (as there is no dispute to fact). In this scenario the individual would be solely presenting mitigation and their explanation of circumstances surrounding the situation. As the individual has resigned, the Panel will not make a determination on a disciplinary sanction but will confine their consideration as to whether in the interests of patient safety a referral to the professional regulatory body is required. There is no right of appeal against a decision to make a referral to the professional regulatory body.

Scenario 5

The individual is currently a registrant. There is a clear serious professional failing. The individual acknowledges this. The individual has long service and a good record. The individual has determined for themselves that they do not feel they can continue to work in a registerable role and is willing to voluntarily remove themselves from the professional register but would like the opportunity to continue working in a non-registered role. A vacancy for such a role is available.

In this situation a formal disciplinary hearing may not be necessary and the arrangements to transfer the individual in to the non-registrant position can be finalised and recorded in a less formal meeting.

Appendix C – Levels of Authority

Managerial levels at which suspension or disciplinary action may be taken

ACTION MANAGEMENT LEVEL

Suspension

Normally the Line Manager with the authorisation of an appropriate Director, Assistant Director, Divisional General Manager, Cluster Manager, equivalent level specialist manager or higher level of management

Written Warning

Line Manager (or other manager hearing the case)

Final Written Warning

Line Manager (or other manager hearing the case)

Dismissal

Appropriate Assistant Director, Divisional General Manager, Cluster Manager, equivalent level specialist manager or higher level of management.

APPEALS

Written Warning

One level above that of the manager who chaired the Disciplinary Hearing.

Final Written Warning

One level above that of the manager who chaired the Disciplinary Hearing except where the manager who chaired the Hearing was a Director in which case the Appeal Hearing will be chaired by an alternative Director.

Dismissal

Appeals relating to a decision to dismiss will be heard by an appeal panel Chaired by an Executive Director or Non-Executive Director accompanied by a manager with the designated authority to dismiss eg a DGM, Community Services Manager or equivalent level manager (see above).

Where the Chief Executive is the Dismissing Officer, the Panel should comprise two Trust Board Members one of whom will be the Chair of the Trust.

Appendix D - Guidance for Witnesses relating to Disciplinary Investigations and Hearings

These guidelines are intended to provide information and advice for the role of any witness involved in a formal disciplinary investigation. The Trust has a duty of care to all patients, staff and stakeholders therefore all concerns must be investigated. The Trust has procedures that must be followed to ensure a fair and systematic approach to the enforcement of standards of conduct and performance.

Primarily the role of the witness is:

- To provide an honest and accurate account of what they personally witnessed or heard.
- To respect the confidentiality of the investigation process and the rights of those involved with it.
- If required, to attend any Disciplinary Hearing or Appeal Hearing to present their evidence and undergo cross examination of the facts.

All employees within the Trust have an implied duty to raise issues of concern and to engage fully with investigations and hearings.

When concerns arise

- If concerns are raised about a member of staff's conduct of a sufficiently serious nature (which constitutes misconduct) and are not appropriate to be handled on an informal basis then a decision is made by a senior manager (usually DGM level or equivalent) to arrange an investigation and an Investigating Officer is appointed.
- If you have witnessed an incident or have concerns about a colleague you should complete an Incident Report Form and provide it to your manager.
- It can help both your memory and the investigators to make your own written statement including dates, times and the details of what happened. Please sign and date any statement.
- The Investigating Officer must seek as much relevant information as possible relating to the alleged misconduct to ascertain the facts and then provide a report to the Commissioning Manager which will help determine appropriate action.

Gathering the facts

- The Investigating Officer organises investigation interview meetings (often referred to as fact find interviews) with all relevant witnesses to ask them what they saw or heard. They will be asked to explain the situation as they recall and to be as specific as possible. Witnesses will be asked to read through the notes taken at the interview and to sign and date this as an accurate reflection of their account. Witnesses will be able to keep a copy.
- Alternatively the Investigating Officer may ask you to complete a written witness statement and will provide a template on which this should be completed. It is important

that witnesses complete this document from their own perspective with what they personally recall without discussing it with other members of staff.

- Witnesses will only be accompanied at an investigation interview or at any Hearing in exceptional circumstances.
- Witnesses need to be aware that anything that is recorded, whether it is the investigation interview, an incident form, email, or a written statement will be shared with the individual against whom allegations have been made should the matter be referred to a Disciplinary Hearing and will form part of the evidence gathered and disclosed for a formal Disciplinary Hearing.
- Sometimes there are differing perspectives or opinions, therefore witnesses should be expected to be questioned by not only the Investigating Officer but also, should the matter progress to a Disciplinary Hearing, the individual against whom allegations have been made and their representative and the Hearing Panel. The Chair of the Hearing Panel will manage the cross examination process to ensure that all parties are appropriately supported.

Communications and confidentiality

- You will receive written information regarding the investigation to your home address as this is often quicker for responses than internal mail due to shift working etc and helps to maintain confidentiality.
- Anyone involved in an investigation should treat the matter with the utmost confidentiality and not discuss it with colleagues or outside the Trust.
- You can discuss the matter with your Trade Union Representative, the Trust HR Representative, the Investigating Officer or Occupational Health.

After the investigation

- Once the investigation has been completed the facts will be reviewed and the Commissioning Manager will make a decision as to whether it requires further action in line with Trust Policy.
- Dependant on this decision you may be required to attend a Hearing as a witness.
- Alternatively you may not hear any more about this matter.
- Due to the confidential nature of investigations you will not be informed of the outcome.

Attendance at a Hearing

- It is the responsibility of the person calling the witness to ensure that they are aware of what will be required of them at a Hearing prior to the event.

- If you are required to attend a Disciplinary Hearing or Appeal Hearing as a witness you will be informed in writing that this is the case. You must make yourself available to attend the Hearing and your line manager will enable you to do this.
- You should bring your copy of your Witness Statement with you to the Hearing; if you cannot locate this contact the Investigating Officer prior to the Hearing and ask for another copy.
- You will be given a time and place to wait to be called.
- When the Hearing Panel is ready you will be asked into the room.
- In the room there will normally be up to 7 people;
 - The Hearing Panel will normally be made up of 3 people – a Chair person, a panel member and an HR representative
 - The employee against whom allegations have been made will be present with their representative or workplace colleague, if they choose to be accompanied
 - The Investigation Officer and their HR support will also be present.
- You will be provided with a seat and those present will introduce themselves so you are clear about their roles within the Hearing
- You will be asked questions first by whoever has invited you as a witness (the Investigating Officer or employee against whom allegations have been made and/or their representative). You will then be cross examined and asked questions by the Panel.
- Each of the above parties is likely to ask you different questions in turn about your statement/ interview.
- Once all questions have been asked you will be thanked for your time and able to leave.
- In some circumstances you may be required to attend and give evidence to an Employment Tribunal or professional body registration hearing, for example at the Nursing and Midwifery Council.

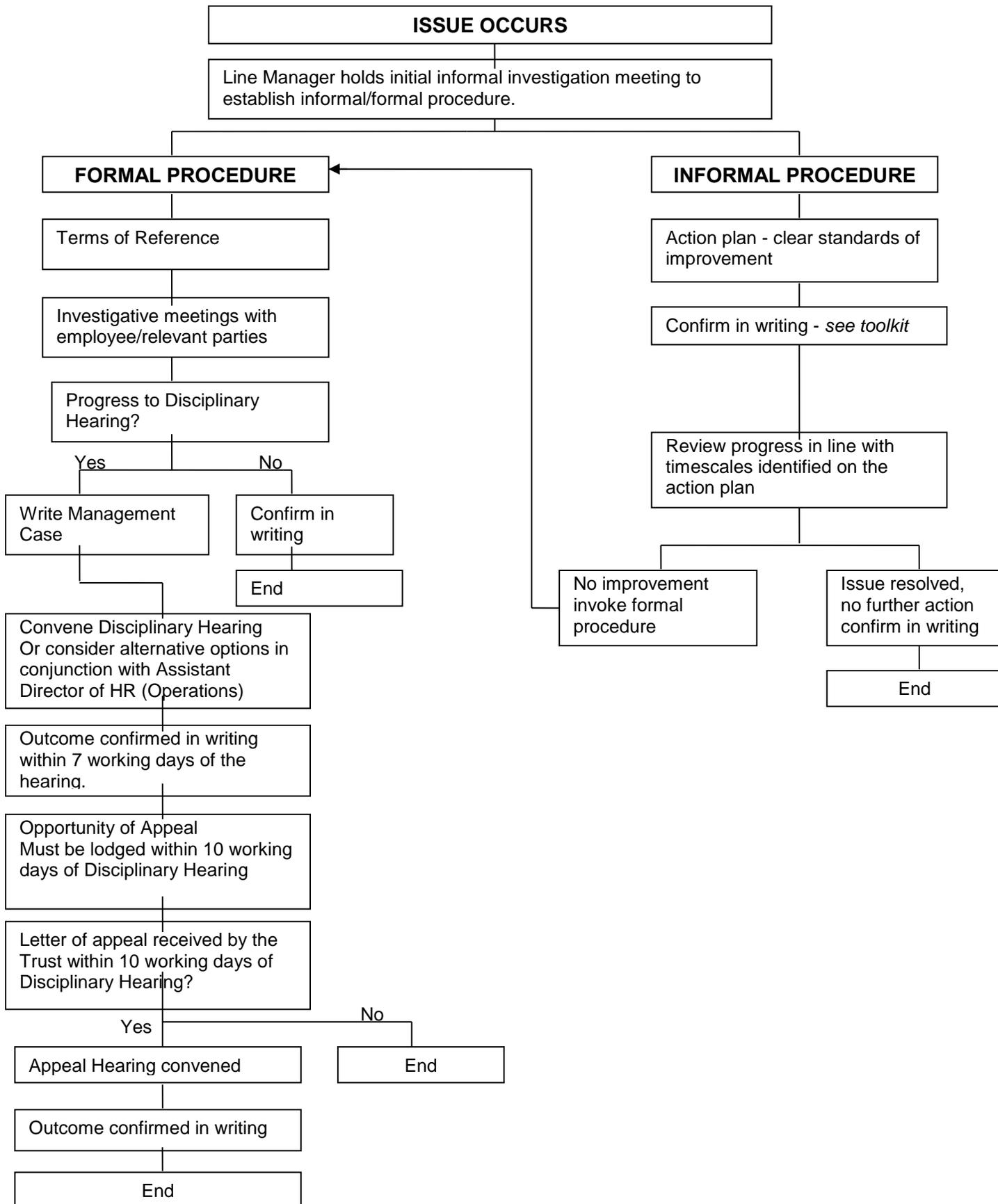
Support

Investigations can feel very formal and some people do feel concerned at 'speaking out'. The Trust, however, expects all employees to raise or escalate any concerns and will provide additional support if required. If you are concerned about attending an investigation interview or a Disciplinary Hearing as a witness you can seek further advice from the Investigating Officer and support from the HR Operations Team.

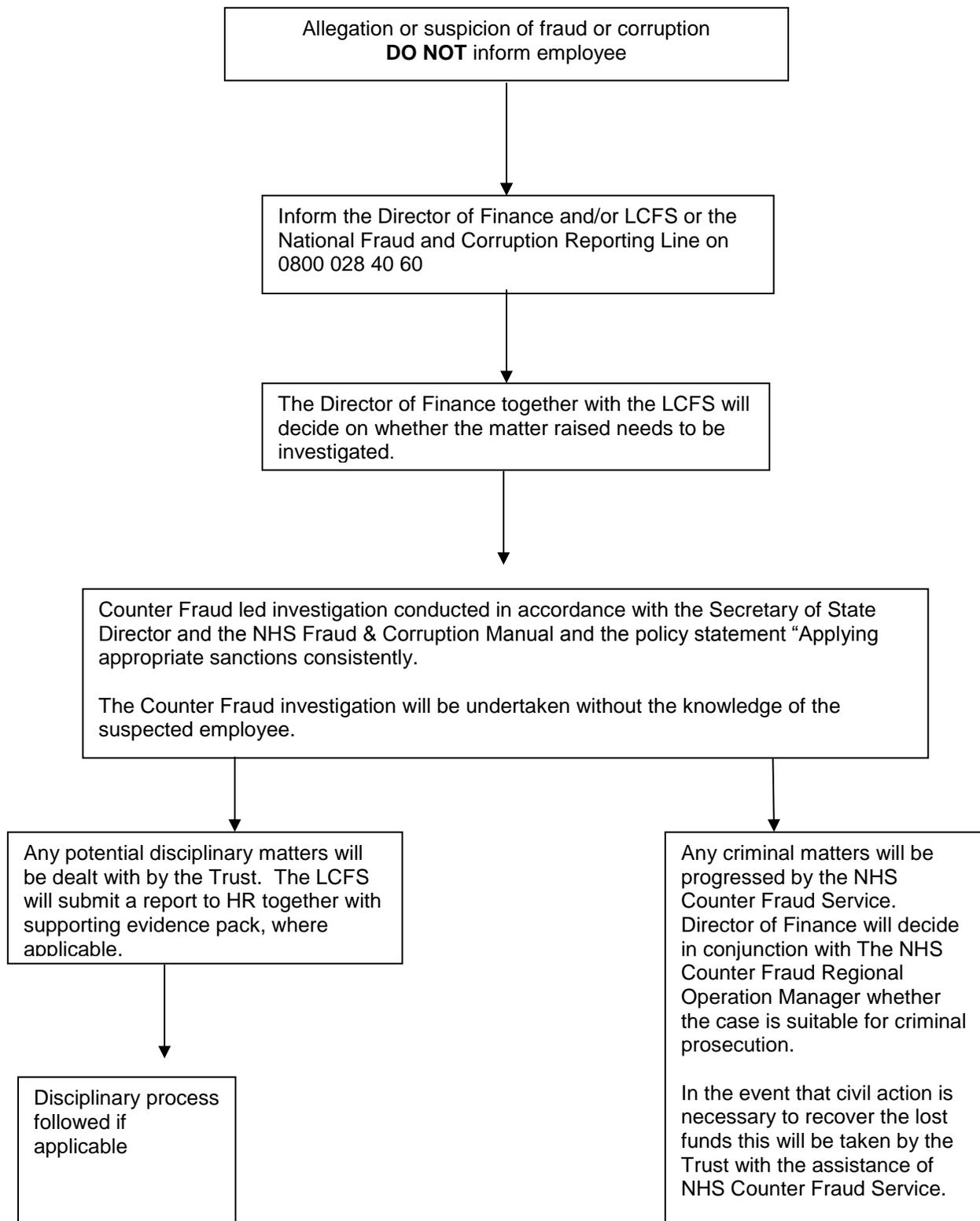
You are also able to access Occupational Health for additional support which can include confidential counselling.

Please note that in the event that the evidence that a witness has provided is found to be knowingly false or malicious they may face disciplinary action.

Appendix E – Disciplinary Summary Flowchart



Appendix F – Counter Fraud Procedure



Appendix G - Selection Criteria for Investigating Officer.

1. Rationale for use of an “Investigating Officer”

In order to ensure fairness, consistency and transparency across the Trust, all alleged breaches shall be investigated thoroughly and equitably.

The investigation should be undertaken by the Line Manager or where appropriate by an individual identified who has received training and/or should have gained appropriate experience in carrying out or assisting in investigations.

The Trust and Trade Unions/Staff Organisations share responsibility for supporting investigations, Disciplinary Meetings, Disciplinary Hearings and Appeals in a professional, robust and non-discriminatory manner.

2. Criteria for selection of an Investigating Officer

When it is considered necessary by the Commissioning Manager to appoint an Investigating Officer they must ensure that the individual selected meets the following criteria:

- must be available to commence the investigation and complete as soon as possible
- there is no identified conflict of interest in the matter being investigated
- has appropriate knowledge and/or training in order to undertake the investigation

In circumstances where the employee questions the impartiality of the Investigating Officer, they have the right to submit in writing to the Commissioning Manager or, if necessary to the Director of Workforce and Organisational Development, any objections to the selection stating reasons. Any objections should be lodged within 2 working days of being advised of the identity of the Investigating Officer.

3. When carrying out an investigation the manager or investigating officer should:

- identify the alleged breach of conduct
- establish if the standards of other employees are acceptable or whether this employee is being unfairly singled out
- consider whether the alleged breach was deliberate or accidental
- establish if the alleged breach is a result of failure to follow published rules, policies or procedures and check whether the employee has been made aware of them
- consider if the employee should be suspended, redeployed to an alternative role and/or base, provided with additional supervision or excluded from certain duties/responsibilities. Advice should also be sought from the HR Operations Team and for clinical staff from the Professional Practice Team on the appropriateness of suspension, a restriction of duties, redeployment to an alternative role, transfer of workplace or close supervision. Those with the authority to take action in these regards are set out in Appendix C.
- obtain all available information about the allegation, including written statements, interview notes, formal documents, records, personal files, incident forms, local protocols etc.

- Obtain and consider appropriate professional Codes of Conduct and Guidelines.
- Consideration should be given to the provision of an interpreter or facilitator if there are understanding or language difficulties on the part of the employee. This person may need to attend in addition to the trade union representative or workplace colleague though ideally one person should carry out both roles.
- Provision should be made for any reasonable adjustments to accommodate the needs of a person with disabilities.

**Appendix H – Guidance for Completion of Terms of Reference for Investigation
Strictly Confidential**

DIRECTORATE:	
INVESTIGATION COMMISSIONED BY:	
EMPLOYEE NAME:	
INVESTIGATING OFFICER:	Name: Role: Profession:
HR Support:	
<u>Other Supporting Information/References (E.g. Datix Number; SEA/SIRI Reference)</u>	

1. DESCRIPTION / SUMMARY OF EVENT:

Make clearer the level of detail expected

List of Allegations & Purpose of the Investigation:

2. Areas & Issues to be Investigated

Required for all investigations:

- Establish a timeline and chronology of events following the complaint / incident using all documentation.

- Identify key members of staff who had contact with the patient/carer/individual lodging concerns at the time of incident and afterwards.
- Interview staff involved in care delivery following the incident to establish individual staff recollection of the events, care and observation provided.

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Optional:

(Commissioning Manager to update and amend from the following as required including making additions as necessary:)

- Establish if the patient received all the necessary care and observation required following this incident
- Consider how the complainant was dealt with at the time of the incident
- Report back any risks the patient may have been exposed to in relation to actions at the time
- Establish Note any circumstances of mitigation
- Establish if the actions of staff were appropriate and in accordance with policy and expected standards of practice, with specific attention to the dignity, safeguarding and other relevant policies and procedures
- Consider Codes of Conduct and Professional Body Guidelines as appropriate.
- Review employee’s Personal File including current Job Description appraisal record and personal development plan, and establish if there have been any prior issues for the employee / practitioner and if any remedial actions are noted on the personal file, whether spent or not.
- Establish if there is any learning for the wider team
- Recommend action.

3. Suggested individuals who should be interviewed as part of the investigation

NAME	POSITION

4. Relevant NDHT Policies and Procedures (note this list is indicative and further Policies and Procedures/Codes of Conduct and/or Professional Guidance may be identified through the course of the investigation

- *(list Trust Policies and Procedures, Codes of Conduct and/or Professional Guidance)*

5. Outline Process and Timescales for formal Investigation

This should be adjusted depending on the complexity of the investigation and numbers of individuals to be seen; the example below is for a complex investigation most likely involving gross misconduct; for other investigations where notes are taken and signed in the fact-finding meeting the expectation is that investigations should take no more than 4 - 6 weeks to complete.

Week 1:

- Gather background documents and evidence, visit site of incident
- Convene interviews with those named above and confirm in writing
- Identify other people to be seen in order to complete the investigation

Weeks 2 and 3:

- Conduct interviews with those named above, as required
- Where necessary convene further interviews and confirm in writing

Week 4:

- Conduct remaining interviews
- Distribute interview notes for sign off by those interviewed and provide to home addresses with deadline for response.

Week 5:

- Draft investigation report.

Week 6/7:

- Finalise investigation report once signed statements returned or deadline for return has passed
- Submission of investigators' report to the Commissioning Manager (detailed above).

Week 8:

- Confirmation of no case to answer to be provided in writing

OR

- Notification of Disciplinary Meeting to be convened where appropriate with date for Disciplinary Meeting

OR

- Notification of Disciplinary Hearing to be convened where appropriate requiring submission of report and supporting documentation to employee and their trade union representative or workplace colleague, with date for Disciplinary Hearing.

(Note: This timetable needs to be considered in the context of the seriousness of the issues to be investigated along with the scale and the complexity of the investigation)

Date Final Report Required by Commissioning Manager

Terms of Reference completed by:

Name:

Date

Appendix I – Guidance for Employees involved in the Disciplinary Process

Introduction to the Disciplinary Procedure

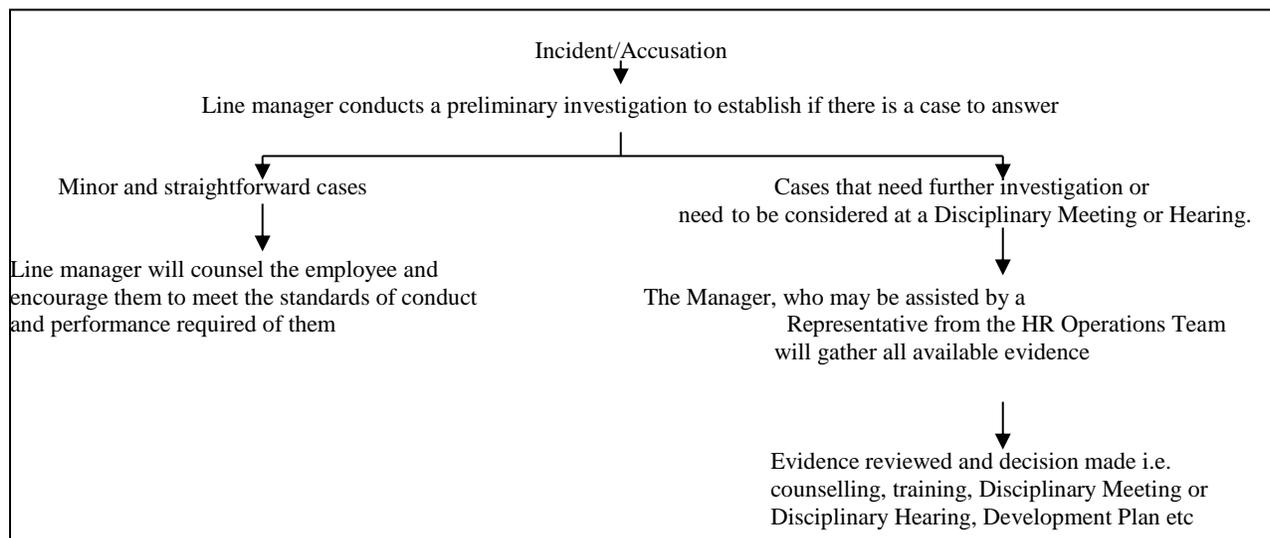
The Trust believes that all employees have the right to be treated with dignity and respect and will encourage a climate at work where dignity and respect for all staff, patients and visitors is the norm. To ensure this the organisation will:

- Take seriously and act upon any truthful accusation/ incident made about another.
- Make sure fair and appropriate action is taken following the incident/accusation.

"Disciplinary rules and procedures are necessary for promoting fairness and order in the treatment of individuals. Rules set standards of conduct at work; procedures help to ensure that the standards are adhered to and also provide a fair method of dealing with alleged failures to observe them." (ACAS Code of Practice on Disciplinary Practice and Procedures in Employment 2009)

There are many reasons why the disciplinary procedure may be invoked. Once someone has made an accusation about a member of staff or an incident has occurred, it must be investigated. The stage in the disciplinary procedure that will take effect will depend on the seriousness of the incident/accusation; the stages range from informal action through to dismissal.

When an incident/accusation of a breach of the organisations rules, procedures or policies has been made, there is a defined course of action which is laid out in the Disciplinary Policy/Procedure. A brief outline is depicted below.



The majority of staff become involved in the disciplinary procedure when a case needs further investigation. If there has been an incident and/or allegations have been made against you the

Manager investigating the case i.e. the Investigating Officer will interview you, they may be accompanied by a representative from the HR Operations Team.

After the fact-finding meeting the notes made at your interview will be reviewed with you before you are asked to sign them. Alternatively the notes made during the interview may be typed up, normally into a question and answer format for you to sign. Either way you will have the opportunity to amend the statement to clarify points and correct any inaccurate notes. All fact-finding interviews will be objective and questions based on the information received.

If the case proceeds to a Disciplinary Meeting a copy of your statement will be given to the Commissioning Manager, who will chair the Meeting, at least five working days before the Disciplinary Meeting. In addition you will be required to attend the Disciplinary Meeting.

If the case proceeds to a Disciplinary Hearing, a copy of your statement will be given to the Hearing Panel at least five working days before the Disciplinary Hearing. In addition, you will be required to attend the Disciplinary Hearing.

In most instances the Manager of the ward/department will conduct the investigation and will be the Investigating Officer. Where this is not appropriate an Investigating Officer will be appointed from another department/ directorate.

Your Involvement in the Disciplinary Procedure

Involvement in the disciplinary procedure, in whatever capacity, can be extremely stressful. Those being investigated will often find it to be a very stressful period, having concerns about what the outcome will be. It can be very upsetting to think that others feel you are capable of misdemeanour, whether you are guilty or not. It is therefore important that the individual is kept fully informed throughout the process and all involved are treated respectfully and courteously.

The aim of the investigatory process is to address the issues raised and to support all involved in overcoming these. The organisation will seek, wherever possible, to adopt supportive measures to help all individuals resolve the problem.

Those participating in the investigation as a witness are also likely to experience stress. Quite often giving evidence can feel like betrayal. However, taking part in addressing malpractice is likely to lead to positive outcomes for the staff member(s) concerned and their staff teams in the long run.

Confidentiality

Disciplinary procedures can in some cases take considerable time; especially when there are a lot of employees to be interviewed. This can sometimes arouse suspicion. The investigation is confidential and if you are the person against whom allegations have been made you may not be aware of the full extent of the allegations in advance of the fact-finding meeting. However, it is essential when providing information for the investigation that you are open and honest and concentrate only on what you know.

It is imperative for all involved in the investigation to avoid talking to each other about the incident/accusation being investigated or anything relating to the matter. 'All involved' would be expected to include those directly concerned with the matter, possible witnesses, the Investigating Officer, direct work colleagues and individuals outside the department/ward. Investigatory interviews are confidential, if these interviews are discussed it can jeopardise the process and often lead to inaccurate information being circulated.

Not being able to talk to colleagues and the limited information available will present a challenging situation, however, you are not being asked to remain in silence, everyone needs to talk to someone when under considerable stress; there are several factors to consider:

- Avoiding the expression of identifiable facts or details to those who may be able to identify individuals involved.
- It is important that you have the opportunity to discuss the situation with someone, you can and should trust your closest friend or relative, who are not involved, with the investigation, or you may wish to talk to your Union Representative and/or the Staff Counsellor. It would be wrong if the stress of the disciplinary procedure were to be detrimental to your health, well-being and relationships etc.
- You can seek support from the Trust's Occupational Health Department; any approach you make to them will be confidential; for contact details see Section 3 below.
- If you have been suspended from the workplace you will have a nominated person from within the Trust who you can talk to for support.

Also, you will have the opportunity to talk about your views and ask questions during your investigatory fact-finding interview. An investigatory interview is a time when you will have the opportunity to explain, in detail, your knowledge of the incident/accusation with the Manager investigating the case who may be accompanied by a representative from the HR Operations Team. They will ask you some questions regarding the incident/accusation and all that is expected is that you answer truthfully.

Representation

If you are the subject of a formal investigation, you are entitled to be accompanied by your Trade Union/Professional Organisation Representative or a workplace colleague throughout the whole formal investigatory procedure. Your Trade Union/Professional Organisation Representative will support and represent you throughout the process.

The Impacts of the Disciplinary Procedure

Individuals react differently when under the stress of a disciplinary procedure. Some of the most common responses are listed below.

1. Psychological Impacts

This may involve loss of motivation, forgetfulness or increased anxiety

2. Physiological Impacts

This may involve insomnia, tiredness or exhaustion

3. Behavioural Changes

This may involve acting out of character in some way, withdrawing from others or clumsiness

If you feel you need some support dealing with the stress of the disciplinary procedure, please do not hesitate contacting the Staff Counselling Service through the relevant Occupational Health Department:-

Exeter Occupational Health Services: - Tel: 01392 405800.

Barnstaple Occupational Health Service: - Tel: 01271 341520

Frequently Asked Questions

Q. How long will the disciplinary process take?

A. It is very difficult to predict how long each case will take. The more witnesses there are to interview, the longer it is likely to take. The disciplinary procedure is very time consuming. If you are involved in an investigatory interview, notes will be taken during the interview. These then have to be transcribed which can take some time. These may be reviewed and signed at the time, or may be sent to you, and your representative/workplace colleague, to check for accuracy and make any amendments required.

If you have any concerns about the length of time that it is taking please do not hesitate to contact the relevant representative from the HR Operations Team or your Union Representative and they will endeavour to provide a realistic time frame.

Q. What contact will I receive throughout the procedure?

A. You will receive the standard correspondence as laid out in the Disciplinary Policy and the Manager investigating the case and a representative from the HR Operations Team, if involved, will endeavour to keep you as up-to-date as possible.

Q. When will I be able to see all the allegations that have been made against me?

A. You will be advised of the nature of the allegations in writing, before attending the investigatory interview. If the investigation becomes formal you may be asked to attend a Disciplinary Meeting or Disciplinary Hearing. If you are asked to attend a Disciplinary Hearing all relevant information, including any statements, will be exchanged by both sides at least five working days prior to the Hearing.

Q. When should I access counselling?

A. The Disciplinary Procedure can be a stressful experience and counselling services are there to provide additional support to help you through a particularly difficult time. A counsellor is there to assist you to cope better and rationalise your thoughts. Speaking to a counsellor is confidential and is not an admission of guilt.

Q. Am I going to get sacked at the end of this?

- A. The disciplinary procedure endeavours to provide a fair method of dealing with alleged failures to observe standards of conduct at work. It is not the organisation's aim to dismiss an employee if the allegation(s) are found to be proven - where possible the organisation will support its employees through areas that need development, resolutions such as; arranging for counselling, relevant training, medical treatment or reasonable adjustments to your work are also possible outcomes. In cases of gross misconduct which are found to be proven dismissal is one possible outcome of the disciplinary procedure.

Q. Who can I talk to?

- A. Please follow the guidance notes above under the heading 'Confidentiality'. If you are unsure then please contact the HR Operations Team Advice Line.

If you are a member of a Trade Union or Professional Organisation, you can also get support and help from your Trade Union Full Time Officer.

Appendix J – Rights of Staff

You have the following rights:-

- To know the nature of the reasons for disciplinary action being considered and given at least 7 working days written notice of a proposed Disciplinary Meeting or Disciplinary Hearing.
- To be advised whether the outcome of a hearing could potentially result in your dismissal.
- To know the nature of the evidence against you and be given in writing the specific details of the concern, as far as is reasonably practicable.
- To hear the allegation against you and to have the opportunity to state your case before any decision is made.
- To be represented by an accredited Representative of a Staff Organisation (trade union representative) or workplace colleague. The Trust will allow sufficient time for the Representative to advise you and prepare your case.. The Trust will arrange for the release from normal duties of the accredited Staff Representative where he or she is an employee of the Trust, to enable them to help you.
- To look at records relating to any previous action taken in respect of your performance, conduct or attendance retained on your personal file.
- To be advised in writing of the outcome of the investigation and any Disciplinary Hearing or agreed alternative to a Disciplinary Hearing.
- To be reminded in writing of any Right to Appeal.

Appendix K – Appeals procedure

1 Lodging an Appeal

- 1.1 All appeals must be lodged in writing to the Director of Workforce and Organisational Development and be received within 10 working days of the date of the Hearing where the decision under appeal was notified unless a longer timeframe is agreed at the original Hearing.

All appeals must also be copied to the manager who made the initial decision.

In the exceptional circumstances where the outcome of a disciplinary process is not given at the Hearing and is only notified in writing then the deadline shall be 10 working days from the date of the letter/communication containing the outcome of the disciplinary Hearing.

The date by which the written notice of appeal must be lodged with the Director of Workforce and Organisational Development should be stated in the letter confirming the outcome of the disciplinary process.

- 1.2 The written appeal must include a clear and detailed statement of the issues such as:-
- Whether the procedure was followed correctly
 - Whether the action taken or outcome reached was fair and reasonable, eg in the case of disciplinary, the level of sanction being applied against an individual
 - Whether the action taken or outcome reached was within the band of reasonable responses

The written appeal should include the employee's desired outcome.

- 1.3 Any evidence from the employee in support of their appeal must be provided at least 7 working days before the appeal hearing. If the management side wish to make a written response to the information provided by the employee this must be submitted no later than 2 working days prior to the hearing.

2 Responding to an Appeal

- 2.1 The Director of Workforce and Organisational Development will acknowledge receipt of the appeal and will put in place arrangements for the appeal hearing to be held.
- 2.2 All appeals lodged will be heard as soon as possible, ideally within 28 working days from the date that the appeal notification is received, unless an extension to this period is agreed by both parties. As far as reasonably practicable, appeals against dismissal will take precedence.

3 Right to be accompanied

- 3.1 The employee has the right to be accompanied by either a trade union representative or a workplace colleague at the appeal hearing.

- 3.2 The manager who made the initial decision (the Trust's representative at the appeal) may be accompanied by an HR Representative.

4 Constitution of the Appeal Panel

- 4.1 Appeals relating to a **decision to dismiss** will be heard by an appeal panel Chaired by an Executive Director or Non-Executive Director accompanied by a manager with the designated authority to dismiss eg a DGM, Community Services Manager or equivalent level manager (see Appendix C). An HR Representative will also attend to provide procedural advice.
- 4.2 In the case of the Chief Executive Officer being the dismissing manager the appeal panel should comprise of two Board members one of whom will be the Chair of the Trust.
- 4.3 All **other appeals** will be heard by a manager more senior to the manager who made the initial decision. The senior manager will act as Chair.

5 Appeal Hearing Procedure

All Appeal Hearings will be undertaken in accordance with the following process:-

5.1 General provisions:

Consideration should be given to the provision of an interpreter or facilitator if there are understanding or language difficulties on the part of the employee. This person may need to attend in addition to the trade union representative or workplace colleague though ideally one person should carry out both roles.

Provision should be made for any reasonable adjustments to accommodate the needs of a person with disabilities.

The Trust may at its discretion choose to make a digital audio recording of the proceedings at the Hearing. Alternatively notes will be taken and this may require a note-taker to be present at the Hearing.

a. Introductions:

The Chair of the Panel will:

- introduce the panel and then ask the employee and management sides to introduce themselves
- confirm the Hearing is being held in accordance with the Trust's Disciplinary Policy Appeals Procedure
- summarise the steps below
- explain any housekeeping issues
- check that both sides are in possession of all paperwork pertinent to the case

- summarise the grounds of appeal to set the scene

b. The Case in support of the Employee:

- The employee or their representative shall put their appeal case to the Hearing Panel, in the presence of the Trust's representative ie management side. The employee may call witnesses in support of their case.
- The Trust's representative shall have the opportunity to ask questions of the employee, their representative and any witnesses.
- In circumstances where the Trust's representative wishes to ask questions of any witnesses, these should be directed through the Chair of the Panel. This is to avoid the witness feeling harassed or intimidated by cross questioning. It is for the Chair of the Panel to decide whether questions can be allowed.
- The Hearing Panel shall have the opportunity to ask questions of the employee, their representative and any witnesses.
- The employee will have the opportunity to ask their witnesses further questions on any matter that has been raised in this stage of the hearing.
- Witnesses for the case in support of the employee will be present only when required to be and shall withdraw immediately afterwards. However, if necessary, they must be readily available for recall until the Hearing is concluded.

c. The Case in support of the Trust

- The Trust's representative will present the Trust's management case to the Hearing Panel, in the presence of the employee and their representative, and may call witnesses.
- The employee or their representative will have the opportunity to ask questions of the Trust's representative and any witnesses they have called.
- In circumstances where the employee and/or their representative wish to ask questions of any witnesses, these should be directed through the Chair of the Panel. This is to avoid the witness feeling harassed or intimidated by cross questioning. It is for the Chair of the Panel to decide whether questions can be allowed.
- The Hearing Panel will have the opportunity to ask questions of the Trust's representative and any witnesses.
- The Trust's representative will have the opportunity to ask their witness further questions on any matter that has been raised in this stage and the stage above.
- Witnesses for the case in support of the Trust will be present only when required to be and shall withdraw immediately afterwards. However, if necessary, they must be readily available for recall until the Hearing is concluded.

d. Summing Up

- The Trust's representative will have the opportunity to sum up their case if they so wish.
- The employee or their representative will have the opportunity to summarise their case or speak last.
- Neither party may introduce any new evidence/information at this stage.

e. Adjournments

- Either side may request an adjournment during the appeal hearing and should do so if time is needed to gather thoughts or if things take an unexpected turn. Permission should be sought through the Chair who will give timescales for adjourning and reconvening.
- The Hearing Panel may at their discretion adjourn the Hearing in order that further evidence may be produced by either party, or adjourn for any other reason.
- During an adjournment, the employee, their representative, the Trust's representative and all witness shall withdraw.

5.8 Reaching a decision:

- Nothing stated above will prevent the Hearing Panel from seeking amplification on any statement made or from asking questions to ascertain whether statements will be supported by evidence.
- Where it is identified that insufficient evidence has been submitted to support the case, or that a decision cannot be made due to lack of material evidence, then the Hearing Panel have the right to suspend a decision until appropriate evidence is provided. In such circumstances, the hearing will be reconvened at the earliest opportunity or the final decision will be communicated in writing.
- The Hearing Panel will deliberate in private only recalling both parties to clear points of uncertainty on evidence already given. If recall is necessary both parties shall return notwithstanding only one is concerned with the point giving rise to doubt.
- Where possible decisions will be made on the day of the Hearing and will be communicated to both parties by recall. Where this is impractical the Hearing Panel has discretion to make alternative arrangements (e.g. re-convene at a later date or inform outcome by telephone, email or letter).
- Written confirmation of a decision will normally be provided within 5 working days and no longer than 7 working days from the appeal hearing unless an alternative agreed date is provided during the Hearing.

- The employee will be advised that the outcome of the appeal marks the end of the internal consideration of the case.

6 Possible Outcomes of appeal hearings:

6.1 The potential outcomes of an Appeal Panel are:

- I. To fully overturn the initial management decision or sanction
- II. To fully uphold the initial management decision or sanction
- III. To uphold aspects of the management decision or sanction and overturn others
- IV. To recommend an alternative solution or outcome where all or part of a decision is overturned
- V. To downgrade the sanction in place eg dismissal to final written warning
- VI. To recommend further investigation and reconsideration of the initial decision
- VII. To recommend a new investigation

6.2 The decision of the Appeal Panel will be final.

6.3 The Appeal Panel will normally confirm the outcome of the Hearing within 5 working days and no longer than 7 working days of the hearing unless an alternative agreed date is provided at the hearing. In exceptional circumstances the outcome may be provided in writing only; should this be necessary it will be agreed at the hearing. A copy of the outcome will be recorded on the employee's personal file.

Appendix L – Guidance in relation to Volunteers

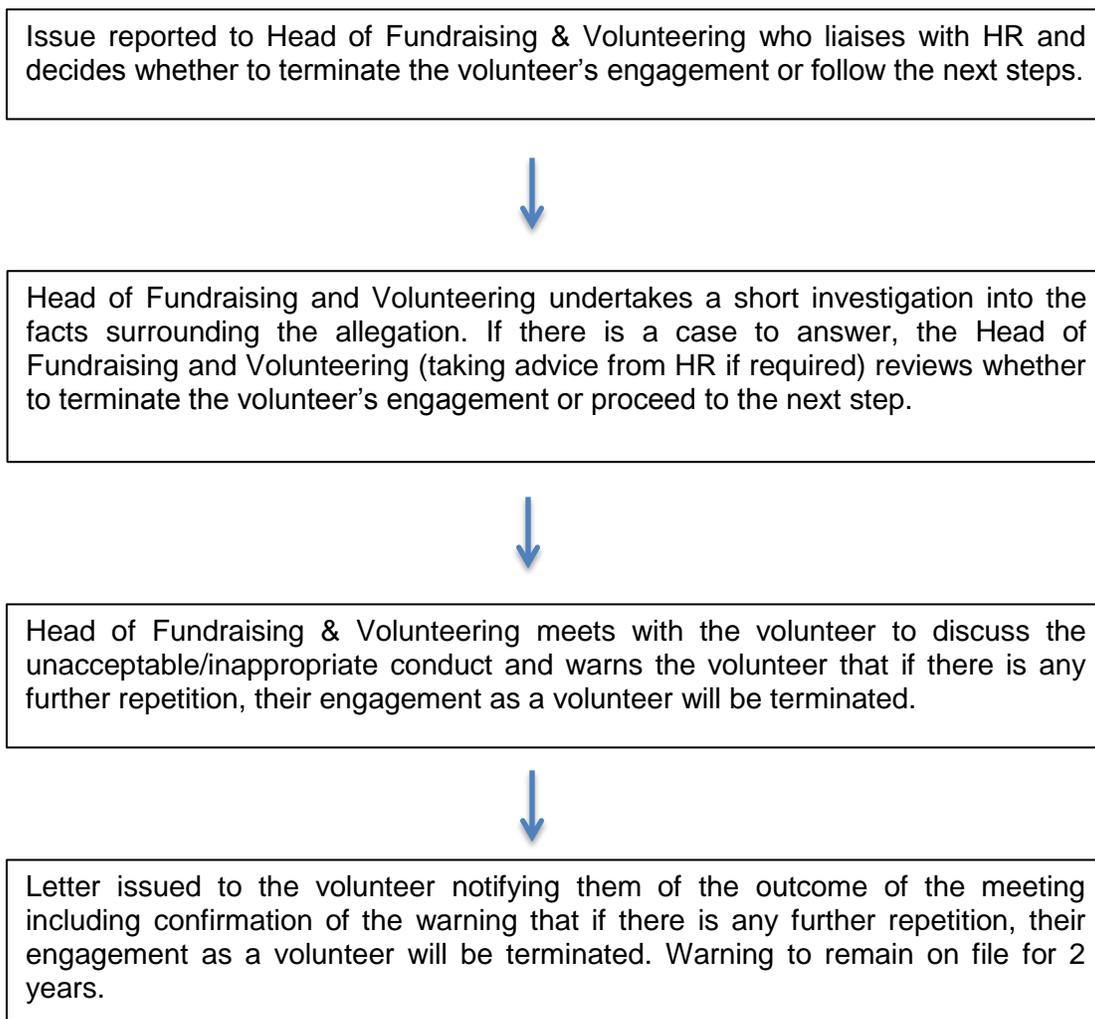
General

The Trust retains the right to terminate the engagement of any volunteer at any time without notice or formality and is not obliged to follow the full disciplinary policy and procedure.

Any concerns regarding the conduct of a volunteer must be reported to the Head of Fundraising and Volunteering who will seek advice as appropriate from the HR Team.

Issues of Minor Misconduct

At the sole discretion of the Trust, the Head of Fundraising & Volunteering, following consultation with HR, may choose to apply the following procedure for issues of minor misconduct pertaining to a volunteer rather than automatically terminating the engagement of the volunteer:-



Safeguarding Issues

Where a proven allegation of misconduct by a volunteer pertains to, or has implications for, the safeguarding of children or vulnerable adults it may be necessary for the Trust to make a referral to the Disclosure & Barring Service (DBS). Therefore while in such circumstances the Trust is likely to exercise its right to terminate the engagement of the volunteer, it will also be necessary to conduct a full investigation of the allegation in order for the matter to be reported fully to the Disclosure & Barring Service.

In such cases further advice and guidance should be sought from the Trust's Safeguarding Leads and HR.