



## Disciplinary policy and procedure

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Type of document	Policy
Target audience	All CWP staff with some limitations in respect of medical staff
Document purpose	This document sets out the policy and procedure for dealing with issues that may warrant consideration of / actual disciplinary action, in a fair and reasonable manner.

Approving meeting	Workforce and OD Sub Committee	Date 17-Mar-14
Implementation date	Mar-14	
Reviewed	Mar-15 followed by an annual compliance review	

CWP documents to be read in conjunction with	
<a href="#">HR9</a> <a href="#">GR41</a> <a href="#">HR3.18</a> <a href="#">CG1</a> <a href="#">HR3.8</a>	<a href="#">Disciplinary Investigation Toolkit</a> Handling concerns about the conduct, capability and health of medical staff Corporate records policy Capability policy and procedure Fraud theft corruption policy How to raise and escalate concerns within work (incorporating whistleblowing) policy

Document change history	
What is different?	<ol style="list-style-type: none"> <li>1. Wording changed throughout to reflect name change of CRB to DBS.</li> <li>2. Fast track can be used by staff who are not a member of a staff side organisation.</li> <li>3. Staff can now request fast track direct but are advised to take appropriate advise.</li> <li>4. Wording up dated in relation to suspensions and the authority needed.</li> <li>5. Wording up dated to clarify link with Policy on Handling concerns about the conduct, capability and health of medical staff.</li> <li>6. Quick reference flowcharts for disciplinary and appeal process included</li> </ol>
Appendices / electronic forms	Appendix 9 – frequently asked questions removed and included in Toolkit
What is the impact of change?	The changes allow staff to access a quicker process to resolve issues, including staff that are not a part of staff side. Wording is now in line with all other policies to ensure consistency.

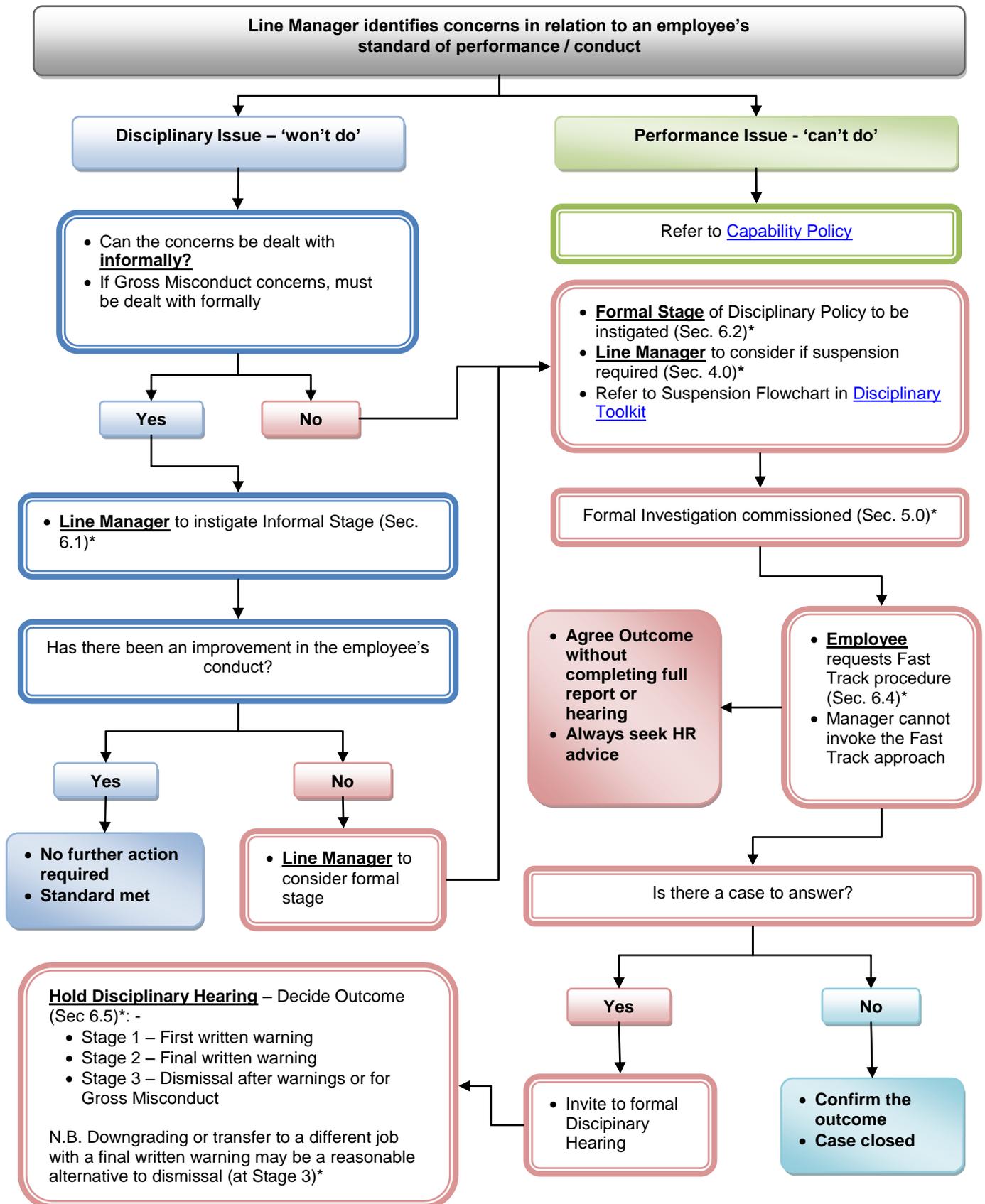
To view the documents Equality Impact Assessment (EIA) and see who the document was consulted with during the review please [click here](#)

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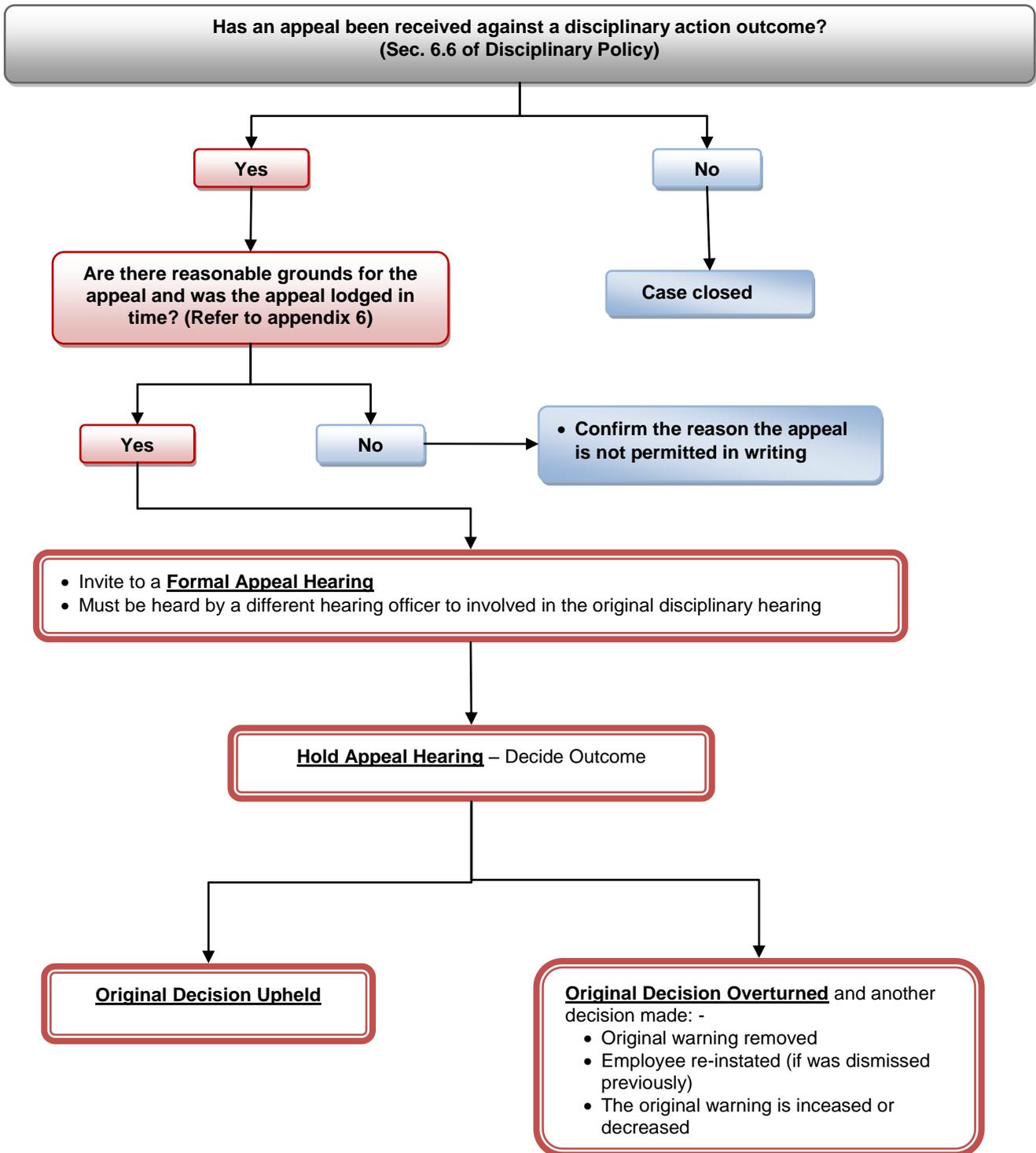
## Quick reference flowchart for disciplinary procedure

For quick reference the guide below is a summary of actions required.



## Quick reference flowchart for the appeal procedure

For quick reference the guide below is a summary of actions required.



## 1. Introduction

This procedure has been agreed between management and staff representatives within the trust and applies generally to all employees within Cheshire and Wirral Partnership Foundation NHS Trust (CWP).

Medical and dental misconduct / competency issues will be investigated in accordance with CWP's [Handling concerns about the conduct, capability and health of medical staff](#).

A toolkit has been developed which contains further guidance on the disciplinary policy and procedure which includes standard templates and forms. This may be accessed via the following link: [Disciplinary Toolkit](#)

The Advisory Conciliation and Arbitration Service (ACAS) have produced a Code of Practice in relation to disciplinary practice and procedures in employment, the content of this document reflects that code;

The cornerstones of this policy are:

- Invoking the disciplinary procedure is normally action of the last resort by management in dealing with workplace issues. However, whilst the majority of trust employees consistently conform to required standards of conduct, it is essential that a written disciplinary policy exists and that all CWP staff are aware of its content;
- The responsibilities and entitlements of employees are clearly stated within it;
- The duties and responsibilities of managers are clearly set out within it;
- Managers are made aware of their duties and responsibilities in matters of discipline through processes of briefing, training and reflection on practice;
- Both managers and other employees are aware of the roles of recognised trade unions / professional bodies in supporting employees suspected of possible misconduct / gross misconduct;
- Training for managers will emphasise the importance of behaving both fairly and reasonably in all matters of employee discipline. Trade union representatives will be given access to the same training as that provided for line managers;
- It is essential that the people to whom the trust provides services have full confidence in the competence, conduct and performance of the whole of the trust's workforce. Disciplinary action will be taken as deemed necessary by management to sustain that confidence.

### 1.1 Policy principles

- The burden of proof applied by management in reaching disciplinary decisions will be 'on the balance of probabilities';
- An employee has the right to be accompanied by a recognised trade union / professional body representative, workplace colleague or another person at all formal stages of the disciplinary procedure. Trade union representatives and work place colleagues are entitled to provide representation;
- An employee will not normally be dismissed for a first offence, except in cases of gross misconduct / negligence;
- An employee will have the right of appeal against any formal disciplinary sanction applied (except where a sanction has been agreed as appropriate between management and the employee via the fast track process without a formal hearing having taken place);
- Management may initiate the application of the disciplinary procedure from any of its stages, dependent upon the circumstances of each individual case. There is no requirement to follow all of the stages – or apply all disciplinary sanctions – either progressively or sequentially;
- In the interests of natural justice (justice delayed is justice denied); management will make employees aware of allegations against them in writing at the earliest possible time and seek to complete all stages of disciplinary action (from investigation to disciplinary decision) as quickly as is reasonably practicable and actively seek to avoid undue delay.

Recognised trade unions / professional bodies are expected to co-operate at all times in achieving that;

- All trust employees are required to co-operate fully in all stages of a disciplinary process, including investigations arising as part of joint working with partner organisations. Failure to co-operate on the part of trust employees may, of itself, lead to disciplinary action being taken;
- Whilst management reserves the right to suspend an employee of the Trust pending a disciplinary investigation ([appendix 1](#)), full consideration will always be given to a temporary transfer to other work as an alternative to suspension for the period of the investigation. Ultimately, a decision to suspend an employee has to be taken on the basis of the information available to management at the time. In all cases, any suspension will be for the shortest possible period and will be regularly reviewed;
- No formal disciplinary action will be taken against an employee without management having previously undertaken an investigation;
- In no circumstances can a decision to dismiss be taken without management having previously undertaken an investigation;
- No formal disciplinary action will be taken against an employee without the employee concerned having been accorded the opportunity to respond to the allegations made against them;
- Records held as a result of the application of any part of the CWP's disciplinary policy and procedures will be treated as confidential and be held in accordance with the [corporate records policy](#), shaped in accordance with the provisions of the Data Protection Act 1998;
- Performance standards are built in to the disciplinary procedure and the Associate Director of Workforce and Development is responsible for ensuring that monitoring takes place, that actual performance is reported from time to time to the Workforce and Organisational Development Sub Committee (WODSC) (or any successor committee) and that recommendations for improving performance are made where necessary.

## 2. Purpose and Expectations

The core purpose of a disciplinary policy and procedure is to ensure clarity as to how principles of fairness and reasonableness are to be applied in dealing with matters that may warrant consideration of / actual disciplinary action.

In implementing the policy, it is intended that it:

- Encourages members of staff to achieve and maintain standards of acceptable conduct and performance<sup>1</sup>;
- Provides a consistent and fair process for dealing with alleged unacceptable standards of conduct and or performance;
- Is accompanied by detailed guidance to managers on how disciplinary matters should be handled;
- Gives emphasis to seeking to resolve disciplinary issues at the earliest possible stage, avoid delay and bring about improvements rather than simply imposing formal sanctions;
- Minimises the scope for reasonable disagreement about the process and results of disciplinary action.

In aiming to maximise the effectiveness of this policy, cornerstone roles / responsibilities are as follows:

### All employees

- **Are expected** to conduct themselves in a manner which conforms with the best traditions of the NHS, in a way which patients / service users should reasonably be entitled to expect and in full accordance with the established standards of both the trust and regulatory / professional bodies;

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<sup>1</sup> Matters of performance may be dealt with under the [Trust's Capability Procedure](#). However, continued poor performance after due warning and opportunity for improvement may result in disciplinary action being necessary under this procedure.

- **Are required** to co-operate with all of the provisions of this policy, in particular with regard to disciplinary investigations and enabling the earliest possible resolution of disciplinary issues;
- **Are required** to bring to management's attention workplace issues / incidents which do not conform with reasonable service or personal conduct standards or which may bring the good reputation of the trust into question (see [how to raise and escalate concerns within work \(incorporating whistleblowing\)](#));

### 3. Representation

An employee has the right to be accompanied by a companion of their choosing at any formal stage of a disciplinary process (including during a disciplinary investigation). The companion may be a workplace colleague, a trade union or professional body representative or another person. This right will be made clear to the employee at the time of suspension and / or before any disciplinary action is taken.

It is a core principle of this policy / procedure that it is in no-one's interest to delay the consideration of a (potential) disciplinary matter. The disciplinary hearing should be held without unreasonable delay. It is the employee's responsibility (not management's) to ensure the availability of a companion and the right to be accompanied will not be allowed to unduly delay the process of investigation or in reaching a disciplinary decision.

### 4. Suspension

[Appendix 1](#) has full information about suspension. In cases of potential gross misconduct or where management otherwise considers it to be in the best interests of either the trust or the employee to remove the employee from the workplace pending a disciplinary investigation - an employee may be temporarily suspended from work. Suspension will normally be on full basic pay (but see [appendix 1 - para 4](#)), plus the payment of any applying allowances on the basis of the average of such payments actually made over the previous 3 months.

### 5. Disciplinary investigations

No formal disciplinary action will be taken without an investigation having taken place and a written statement of management case unless the fast track process is followed, see para 6.4 for further details of this process.

Further information on disciplinary investigations is contained in [appendix 1](#) and in the Toolkit.

### 6. Disciplinary procedure

Although not exhaustive, the sorts of issues which will give rise to the need for management to consider disciplinary action are set out in [appendix 2](#).

The Trust's disciplinary procedure consists of 2 stages:

- Informal stage;
- Formal stage.

#### 6.1 Informal stage

Informal discussion

- Except in cases of possible gross misconduct, initial management concerns about misconduct should normally be raised as an informal discussion between manager and employee - prior to any formal action being considered;
- The purpose of an informal discussion is to establish the basic facts, discuss matters of concern and establish the behaviour / performance change required. A 'progress review' meeting date will usually need to be established;
- The requirement for an informal discussion should be made clear to the employee beforehand. The employee has no right to representation at the informal meeting but does have the right to seek advice from an accredited trade union / professional body representative;

- The informal discussion will normally be on a one to one basis (employee and manager);
- The purpose of an informal discussion is to identify areas for conduct / performance improvement and clarify the support necessary from the line manager. Where necessary, a joint action plan will be agreed - including timescales and review dates. If appropriate to the individual circumstances, the employee may be informed that a failure to improve may result in formal disciplinary action being considered;
- Formal action may be considered following the informal discussion which may include suspension (or action as an alternative to suspension);
- The results of an informal discussion must be notified to the employee in writing within 5 working days of the discussion taking place – including any action to be taken and a copy retained on the employee's personal file;
- Following the meeting the manager should ensure a record of the meeting is documented and monitor on an ongoing basis both informally and through supervision.
- There is no right of appeal against the outcome of an informal meeting.

## 6.2 Formal stages

The formal stages of the procedure apply where management has reasonable grounds to consider that:

- There has been no improvement in the employee's conduct / performance following an informal discussion and the communication of clear remedial action expectations;
- The employee's conduct / performance is such that formal disciplinary action (subject to an investigation) is considered unavoidable (e.g. gross misconduct);
- The results of an investigation indicate that there is a disciplinary case to be answered by an employee;
- Information available to management indicates that a disciplinary investigation needs to be commenced, to establish whether or not disciplinary action subsequently needs to be taken.

An employee will not normally be dismissed for a first breach of discipline except in cases of gross misconduct.

### 6.2.1 Structure of formal stages / sanctions

The disciplinary procedure comprises of up to 3 formal stages:

- Stage 1 - First written warning;
- Stage 2 - Final written warning;
- Stage 3 – Dismissal.

Downgrading or transfer to a different job, with a final written warning, may be a reasonable alternative to dismissal (at stage 3).

Depending upon the nature of the individual case, it may be appropriate for management to commence the process at any stage, including – for matters of gross misconduct – stage 3. It follows that an employee does not have to have been given sanctions under each stage prior to a decision to dismiss.

## 6.3 Disciplinary hearings

- A disciplinary hearing will take place in the light of the conclusions / recommendations of enquiries conducted by a line manager or an investigation carried out by an investigation officer (who may be another line manager) appointed by management;
- A disciplinary hearing will be held as soon as is reasonably practicable following the conclusion of information gathering / an investigation;
- Employees are required to co-operate with the organisation of and attend a disciplinary hearing. Where an employee persistently is unable or unwilling to attend a disciplinary meeting without good cause, after due warning a decision will be made in their absence on the evidence available to management with sanctions issued up to and including dismissal;

- An employee will be given a minimum of 10 working days notice of the date of a disciplinary hearing – that notice to be in writing. The trust will look to provide a maximum of 2 alternative dates / times in the event of the employee being unable / unwilling to attend the first date set. If necessary the hearing will take place in the employee's absence on the second alternative date;
- The complete written management statement of case / summary of information upon which management will rely will be sent to the employee at least 10 working days in advance of the date of the hearing;
- The employee or their representative is required to submit any papers to be considered at the hearing to the nominated hearing officer at least 5 working days in advance of the hearing date;
- The employee or their representative is responsible for making the nominated hearing officer aware of any personal circumstances which may be reasonably foreseen to be likely to affect the employee's comfort during the course of a disciplinary hearing (e.g. mobility constraints or the effects of an underlying medical condition) in advance of the hearing date;
- An employee is entitled to be accompanied at a disciplinary hearing by a workplace colleague, trade union / professional body representative or some other person of the employee's choosing. The trade union / professional body representative or workplace colleague may provide representation;
- Unless otherwise agreed by the hearing officer the employee may be accompanied by only 1 person at the hearing;
- The process of the disciplinary hearing will follow a standard protocol ([appendix 4](#)). The hearing officer will always be accompanied by a representative from Human Resources (HR) and has the right, dependent upon the case under consideration to take other relevant expert advice during the course of the hearing as they see fit.

#### **6.4 Fast track procedure**

Where the disciplinary outcome of a particular case is anticipated to result in a first written warning, an employee may ask management to move directly to that conclusion without either completing a full investigation or holding a formal hearing. It should be noted however that there should be sufficient information for both the employee to request a fast track and for management to make a decision on the appropriateness of the request. In responding to any such request:

- Management will seek to ensure that employees have discussed the matter with their staff side representative or a colleague if they are not a member of a staff side organisation before making such a request;
- The commissioning manager should seek HR advice before the management response to the request is given;
- Management will remind employees that there will be no right of appeal against a warning given using fast track.
- The management decision as to whether to take that 'fast track' route is final;

Where management considers that the 'fast track' approach is inappropriate for whatever reason, the normal process will be followed. The management decision on process to be followed is final.

There is no scope within this procedure for management to seek to invoke a 'fast track' approach to disciplinary action.

#### **6.5 Application of sanctions**

##### **Stage 1 - First written warning:**

- May be applied for 6 or 12 months dependent on the circumstances of the case effective from the date of the hearing at which it is issued;
- Decision letter issued within 5 working days of the date of the completion of the hearing and will include a warning that failure to improve or the committing of a further act of misconduct which merits disciplinary action may result in a final written warning being

issued. It will also detail the employee's rights of appeal (except where the 'fast track' approach has been adopted).

### **Stage 2 - Final written warning:**

- Lasts for 12 months from the date of the hearing at which it is issued;
- Decision letter issued within 5 working days of the date of the completion of the hearing and will include the statement that any further serious misconduct or cause for significant complaint in respect of work performance, may result in dismissal. It will also detail the employee's rights of appeal;

### **Stage 3 – Dismissal:**

- Will normally be with paid notice unless the dismissal is on the grounds of gross misconduct;
- Decision letter issued within 5 working days of the date of the completion of the hearing and will detail the employee's rights of appeal.

**NB:** Downgrading or the offer of transfer to another job may be an alternative to dismissal where dismissal would be a fair and reasonable decision, but where the hearing officer determines that there are significant mitigating circumstances. In such a situation downgrading will be accompanied with a final written warning.

## **6.6 Appeals against disciplinary sanction decisions**

As a general rule employee rights of appeal will be set out clearly as part of the hearing officer's decision and subsequently confirmed in writing.

There is no right of appeal against a warning applied as a result of the application of the 'fast track' process.

Any appeal must be made in writing within 10 working days of the employee receiving the hearing decision letter and otherwise in accordance with the details set out in that hearing decision letter. The grounds upon which the employee wishes to appeal must also be stated clearly ([appendix 5](#)).

**NB:** Management reserves the right not to allow access to an appeal where no reasonable grounds for appeal are stated in writing. Simply appealing on the basis of not agreeing with the decision given, e.g. will not be a valid appeal reason. In the event of an appeal not being allowed, the management reasons will be set out in writing and given to the employee.

An appeal will always be heard by a different hearing officer / panel to the one(s) involved in the original hearing. Appeals against dismissal will always be heard by a special sub committee of the trust board.

Appeal hearings will be held at the earliest time reasonably practicable after the receipt of the employee's written appeal. The procedure to be followed in appeal hearings is at [appendix 6](#).

If the employee is unable to attend the appeal hearing, one alternative date and time will be offered – at which the appeal will be heard in the employee's absence if necessary.

## **6.7 Expiry of warnings**

Warnings issued under this procedure will automatically expire at the end of the stipulated warning period and normally subsequently be disregarded for all purposes. However, given the trust's service delivery responsibilities, in the event of a pattern of behaviour becoming apparent whereby an employee's conduct / performance declines with the ending of formal warning periods, management reserves the right to consider the necessity of allowing previous (expired) disciplinary decisions to be counted. This would be only in exceptional circumstances and with the agreement of the associate director of workforce and development or head of human resources. The reasons for such unusual action would be fully explained to the employee and their trade union or professional body representative.

## 6.8 Reviews

Where a final / written warning has been issued the trust requires that a review of the impact of the warning be carried out after 6 months. That necessitates the hearing officer meeting with the employee and their immediate line manager. The employee will have the right to be accompanied, but no right of representation in this discussion. The results of the discussion will be confirmed in writing within 5 working days of the meeting.

**NB:** This meeting is for the purpose of progress review only. It has no authority to seek to alter the outcome of the original disciplinary hearing.

## 7. Applying for other jobs

An employee with a 'live' formal warning is entitled to apply for other jobs. The fact of their disciplinary record will be made known to the recruiting manager / organisation as part of their reference of employment with the trust.

## 8. Resignations

- Where an employee resigns during the course of a disciplinary investigation / process, the full procedure will be concluded (in their absence, if necessary). The outcome will be notified to the employee and, if a disciplinary sanction is the outcome, the employee so notified in writing and invited to respond within a stated timescale;
- Where an employee has resigned and the decision of a disciplinary process is to apply a sanction which would normally have to be notified to a regulatory body, such notification will be made in writing and the employee informed;
- Where an employee is known to have resigned in order to take up alternative employment, the new employer will always be advised of the outcome of the disciplinary process in the event of sanctions having been the outcome;
- Where a (potential) disciplinary matter arises in respect of the behaviour / conduct of a temporary member of the trust's workforce (i.e. where the worker is contractually an employee of another organisation - for example, an agency worker), an investigation will need to be carried out in accordance with the provisions of that worker's employing organisation's policies. All such cases should be discussed with HR as a matter of urgency.

## 9. Fraud

Where fraud is suspected, the advice of the fraud investigator will be sought immediately, as part of the investigatory process and in accordance with the trust's [fraud theft corruption policy](#). The director of finance will be personally informed immediately and regularly briefed on the subsequent disciplinary process.

## 10. Trade union representatives and disciplinary action

Normal expectations of conduct / performance apply to representatives of recognised trade unions / professional bodies who are also employees of the trust. However, no disciplinary action should commence against a trade union / professional body representative in advance of:

- The manager having discussed the matter with a senior HR manager;
- A discussion having taken place with a full time official of the trade union / professional body concerned.

## 11. Abuse of patients / service users

In the case of any disciplinary matter involving abuse of patients, the director of nursing, therapies and patient partnership and director of operations, will be personally informed immediately and regularly briefed on the subsequent disciplinary process.

Where such matters relate or may relate to the protection of vulnerable adults or children, the advice of the safeguarding lead must be sought as part of the initial decision making process and consideration given to referring the case to the Disclosure and Barring Service (DBS).

## **12. Referral to professional body**

The director of nursing, therapies and patient partnership should be consulted in relation to referring clinical staff to the appropriate professional body at any stage of the process.

## **13. Industrial action**

In any case in which disciplinary action is being considered following / in connection with industrial action, the chief executive must be informed.

## **14. Medical staff**

All issues relating to the conduct/competency of medical staff will be investigated with reference to the procedures set out in CWP's Handling concerns about the conduct, capability and health of medical staff. Where it is necessary to take formal action in relation to misconduct the Trust's Disciplinary Policy will be followed.

## **15. Criminal acts**

Employees subject to DBS checks are required to disclose information about any involvement they may have with the police (including on personal matters) during the course of their employment. All such 'during employment' disclosures should be considered by line management and the need for possible disciplinary investigation / action discussed with a senior HR manager.

For any employee disclosing personal involvement in a criminal act or such information coming to light by other means, management will always consider the possible consequences for continued employment in discussion with a senior HR manager.

## **16. Security issues**

Any potential or potential breaches of security should be reported to the trust's security services manager.

## **17. Misuse of smartcards**

Suspected misuse of Smartcards should be reported to the Registration Authority Manager and HR where consideration will be given to withdrawing certificates.

## Appendix 1 - Provisions for suspension pending disciplinary investigation

1. Suspension from duty pending disciplinary investigation is an option only in circumstances where the serious nature of the allegation / potential allegation of misconduct / gross misconduct against an individual employee (or group of employees) is such that management determines that it is unavoidably in the best interests of both the Trust and affected employee(s). Suspension will be necessary if the employee or a service user could be at risk or where the employees continued attendance at work could impair the conduct of the investigation. Suspension is a neutral act and does not imply guilt and is not a disciplinary sanction in itself.

**Before suspending an employee, management must give serious consideration to possible alternative measures available, e.g. moving the employee to another work area or role. A refusal to accept a reasonable temporary alternative move on the part of the employee may, of itself, give rise to disciplinary action;**

2. Any period of suspension will always be kept to a minimum and the need for its continuance regularly reviewed. The trust should ensure a greater sense of urgency is applied to the investigation in any case where an employee is suspended. However, where management action is held pending the outcome of a parallel criminal / adult protection / child protection investigation, it may be the case that suspension lasts for some time:

3. Employees will continue to receive full basic pay during any period of suspension – except in the case of lapsed professional registration or similar statutory obligation, when suspension may be unpaid. The reasons for any period of unpaid suspension will be explained to the employee at the time of suspension and confirmed in writing subsequently;

4. Advice must be sought from the director of nursing, therapies and patient partnership in all cases prior to the suspension decision being made and discussed with a senior member of the HR team. If suspension is considered necessary and contact cannot be made with either the director of nursing, therapies or patient partnership or director of operations, the decision will be made by the most senior manager of the service on duty or on call at the time and the action subsequently confirmed at the earliest possible time with the director of nursing, therapies and partnership. A record of the decision should be recorded on the form provided at [appendix 21](#) in the [Disciplinary Toolkit](#)

5. Where the need for possible suspension arises, the employee will be advised orally of the management decision at the earliest possible time, which will be confirmed in writing subsequently. At the time of the suspension discussion, the suspending manager will:

- If necessary, seek advice from a senior HR manager about the process of suspension;
- Give the employee a reasonable opportunity to seek the support of a trade union / professional body representative for that discussion;
- Make the employee aware of the allegation made against them and seek their immediate response;
- Make a note of the employee's response and consider its impact on any decision to suspend;
- If proceeding with the suspension, explain to the employee why temporary deployment to an alternative role / workplace is not an option;
- Take the employee's ID badge and any other Trust property e.g. mobile telephone and give them a copy of the trust's 'guidance to suspended employees';
- Confirm the decision to suspend in writing.

In the event of the employee not being accompanied at the suspension meeting, the suspending manager must also ascertain the name of the employee's chosen representative and ensure they receive a copy of the 'decision to suspend' letter.

The immediate line manager of the suspended employee is responsible for maintaining regular duty of care contact with a suspended employee, keeping a record of when contact is made and the support provided in those contacts (see [appendix 26](#) in the [Disciplinary Toolkit](#) and ensuring that the need for continued suspension is regularly reviewed (in discussion with the appointed investigating officer and general manager). Discussion must have taken place with the Director of Nursing, Therapies and Patient Partnership prior to any decision being made to end a period of suspension (unless it runs until the conclusion of a disciplinary hearing);

6. During a period of suspension, an employee must remain available for work / contactable by the trust as employer during the periods when they would normally be on duty and should keep the trust informed of any change in address / contact details. Sickness or the taking of annual or study leave should be reported to the employee's line manager in the usual way. In the event of a suspended employee not being available for contact by the trust without good reason, consideration may be given to the need for disciplinary action;

7. During a period of suspension, an employee will not be allowed to enter trust premises without the express permission of their immediate line manager and must not attempt to make contact with any work colleagues connected with the allegation which led to the suspension (other than their trade union / professional body representative): doing so may give rise to the need to consider disciplinary action;

8. During a period of suspension, an employee must seek the permission of their immediate line manager to enter trust premises for the purpose of meeting with their trade union representative dealing with the case or to access the staff counselling / occupational health service or accompany another individual for treatment: in all such cases, permission will be given automatically.

## Appendix 2 - Disciplinary investigations

1. No formal disciplinary action will be taken without an investigation having taken place and a written statement of management case (unless the 'fast track' process is followed).
2. In matters of straight forward disciplinary issues, the employee's line manager will be responsible for preparing the management case against the employee, making all of the necessary enquiries to do so. For more complex / serious matters, management may decide to appoint an independent investigating officer: in that event, a full management case will be produced at the end of the investigation, containing recommendations as to further action to be taken (if any) and submitted to the manager who commissioned the investigation. Investigating officers should not be appointed if there is a conflict of interest e.g. witness to the misconduct or behaviour.
3. The purposes of any investigation under the disciplinary policy are to:
  - Ensure an employee is fully aware of the allegations made against them;
  - Ascertain the facts / contextual circumstances of the matter, as far as is reasonably practicable;
  - Give the employee the opportunity to offer an explanation in response to specific allegations;
  - Enable the enquiring line manager / investigating officer / commissioning line manager to form a balanced view as to any recommendations for action or level of disciplinary sanction. The final decision as to whether a matter should go to a disciplinary hearing rests with the commissioning manager;
  - Help demonstrate that the Trust has acted both fairly and reasonably in dealing with the allegations made against an employee.
4. An employee is entitled to be accompanied by a trade union / professional body representative or workplace colleague at an investigation interview or meeting. However, the unavailability of a particular representative or work colleague will not be allowed to unduly delay the progress of the investigation.
5. In conducting an investigation, the line manager / investigating officer will meet with the employee to discuss the allegations made against them. The employee will be given a minimum of 5 working days notice of the meeting and details of the allegations made against them, plus any supporting information available at the time. More than one interview may be necessary.
6. Witnesses to an incident may also be interviewed as part of an investigation.
7. In all investigatory interviews, an employee will be given the opportunity to state their case. A written statement will be taken, signed and dated. Any physical evidence will be retained if reasonable to do so. The same processes will be applied to any witnesses. Tape recording will not be used by any party at any stage of the process.
8. At the conclusion of an investigation, a summary / report will be written, including recommendations. A senior HR manager will be consulted as to the appropriate recommendations as part of finalising the report. The report will normally be finalised within 15 working days of the conclusion of the investigation.
9. Recommendations will normally fall within the range of:
  - The complaint / allegation has not been substantiated and no further action should be taken against the employee;
  - The matter does not warrant formal disciplinary action, but does require some action (e.g. training) either under the informal stage of this procedure or by reference to another policy - and a structured action plan implemented with defined timescales for review and completion;
  - Misconduct has taken place and an early disciplinary hearing should be convened;

- Gross misconduct has taken place and suspension should be considered pending the early establishment of a disciplinary hearing.

10. The investigating officer will meet with the commissioning manager and discuss the outcomes of the investigation. The commissioning manager will then determine the next stages, including:

- Deciding who will advise the employee of the action to be taken as a result of the investigation;
- In the event of disciplinary action being necessary, agreeing with the investigating officer the recommended level of disciplinary sanction to be sought from a hearing;
- In consultation with a senior HR manager, deciding the content of the written 'management case' to be relied upon at a hearing and agreeing on matters such as witnesses;
- Organising a disciplinary hearing;
- Agree who will present the case. If the commissioning manager presents the case the investigating officer will be the main management witness.
- Meeting with a senior HR manager after the conclusion of any disciplinary hearing to ensure that a plan exists to implement any disciplinary decision and that 'lessons arising' are summarised.

### **Appendix 3 - Examples of Misconduct Giving Rise to the Need to Consider Disciplinary Action**

This list, whilst giving some of the more common breaches of good practice / rules and the level of disciplinary action which may be taken, is **not** exhaustive. As each case will be considered on its individual merits and in the light of individual circumstances, the actual response to a breach of the rules may be different.

#### **Examples of Misconduct – warnings for a first offence**

- Unacceptable personal behaviour;
- Poor timekeeping;
- Unsatisfactory standard of performance;
- Failure to carry out reasonable management instruction;
- Rudeness to any employee, patient or member of the public;
- Breach of confidentiality;
- Breach of a professional code of conduct;
- Conviction for a criminal offence, the nature of which does not warrant dismissal;
- Absenting oneself from duty without permission;
- Contravention of Trust Standing Financial Instructions or any Trust policy or procedure.

#### **Examples of Gross Misconduct – resulting in dismissal**

- For repeat / continued offences as listed at 1 above;
- Conviction for serious criminal offence in the course of employment, e.g. theft, assault;
- Conviction for criminal offence outside work where the employee's professional standing or performance is affected or where continued employment would be illegal;
- Failure to maintain personal professional registration as required by regulatory bodies;
- Gross misconduct at work. Again, the following is a list of examples and is not intended to be exhaustive:
  - Theft, fraud or deliberate falsification of records;
  - Serious bullying or harassment;
  - Deliberate damage to Trust property;
  - Serious insubordination;
  - Misuse or misappropriation of Trust property or name;
  - Abuse of position;
  - Bringing the Trust into disrepute as an employer;
  - Serious incapability whilst on duty brought on by alcohol or illegal drugs;
  - Serious negligence which causes, or might cause, unacceptable loss, damage or injury;
  - Serious infringement of governance / risk management / health and safety rules;
  - Wilful or serious maltreatment or assault on patients, members of public or other employees;
  - Deliberate disclosure of privileged or confidential information to unauthorised persons;
  - Negligent or deliberate failure to comply with legal requirements and / or the Trust's policies concerning clinical / medical matters;
  - Inappropriate use of the internet / e mail facility, electronic record systems, smartcards.
  - Giving false information to secure employment with the Trust.

## Appendix 4 - Scheme of delegated authority

As the employer, the Trust Board has decided to delegate authority to take disciplinary action, up to and including dismissal, as per the schedule below.

It should be noted that any disciplinary action may be taken at a more senior level than that specified in the schedule.

In the event of there being any doubt as to how the scheme of delegate authority applies in any situation, a senior HR manager should be consulted.

Disciplinary action	Minimum level of Management	Appeal level
First written warnings	Team Manager (band 7) or above	General Manager or above including Special Sub-Committee of Trust Board*
Final written warning	Clinical Services Manager, Head of Department or above	General Manager / Associate Director or above including Special Sub Committee of Trust Board*
Dismissal (or down grading as alternative to)	General Manager/Associate Director or above	Special Sub-Committee of Trust Board*

### NB:

\* The Special Sub - Committee of the Trust Board shall:

- When considering matters relating to employees other than Executive Directors or the Chief Executive, always comprise 3 Directors, 2 being Non Executive Directors and 1 an Executive Director not previously involved in the individual case under consideration; and
- Be advised by the Associate Director of Workforce and Development or the Head of Human Resources;
- Be chaired by a Non Executive Director.

When considering matters relating to Executive Directors or the Chief Executive, the Special Sub-Committee will comprise 3 Non-Executive Directors only.

## Appendix 5 - Disciplinary hearing procedure

1. The management representative ('presenting officer') shall state the management case in the presence of the employee and the employee's representative and may call witnesses.
2. The employee or the employee's representative shall have the opportunity to ask questions of the management representative and witnesses.
3. The members of the hearing panel shall have the opportunity to ask questions of the management representative and witnesses.
4. The management representative shall have the opportunity to re-examine his or her witnesses on any matter referred to in their examination by members of the hearing panel, the employee or the employee's representative.
5. The employee or the employee's representative shall put his or her case in the presence of the management representative and may call witnesses.
6. The management representative shall have the opportunity to ask questions of the employee and the employee's representative and witnesses.
7. The members of the hearing panel shall have the opportunity to ask questions of the employee and the employee's representative and witnesses.
8. The employee or the employee's representative shall have the opportunity to re-examine his or her witnesses on any matter referred to in their examination by members of the hearing panel or the management representative.
9. The management representative and the employee or the employee's representative shall have the opportunity to sum up their cases if they so wish. The employee or the employee's representative shall have the right to speak last. In their summing-up, neither party may introduce any new information or matter.
10. The management representative, the employee, the employee's representative and any witness's present witnesses shall withdraw.
11. The hearing panel shall deliberate in private, only recalling both parties to clear points of uncertainty on evidence already given. If any recall is necessary both parties shall return notwithstanding only one is concerned with the point giving rise to doubt.
12. The management representative, the employee and the appellant's representative will be recalled and advised orally of the panel's decision.
13. The panel's decision will be confirmed in writing within 5 working days of the completion of the hearing.

**NB:** At any stage of the hearing, the hearing officer has the right to call for further information to be provided either by management or the employee (or the employee's representative) or for employees not previously involved in the hearing to attend as witnesses. That may necessitate an adjournment. Both the management representative and the employee (or the employee's representative) will be able to ask questions of anyone called as a panel witness.

## **Appendix 6 - Disciplinary procedure - Employee right of appeal**

1. An employee has a right of appeal against any formal disciplinary action taken by management (accept for 'fast track' warnings).
2. Any appeal must be made in writing within 10 working days of the employee receiving the disciplinary hearing decision letter and otherwise in accordance with the details set out in that hearing decision letter. The grounds upon which the employee wishes to appeal must also be stated clearly in the written appeal, for example:
  - The penalty was too harsh, inappropriate or inconsistent with decisions taken in other similar (specified) circumstances;
  - Specific extenuating circumstances were not fully considered;
  - The process of the hearing was unfair (in some specified way);
  - New (specified) information has come to light which, if known at the time of the hearing, might have affected the disciplinary decision.
3. Management reserves the right not to allow access to an appeal where no reasonable grounds for appeal are stated in writing. Simply appealing on the basis of not agreeing with the decision given, for example, will not be considered a valid appeal reason. Management will give its reasons for not allowing an appeal in writing to the employee.
4. No written request for an appeal received by management after the elapsing of 10 working days from the date of the hearing will be considered, unless special mitigating factors are accepted by management. The unavailability of a trade union / professional body representative will not be counted as an acceptable reason for delay in submitting an appeal.
5. An appeal will always be heard by a different hearing officer / panel to the one(s) involved in the original hearing. Appeals against dismissal will be heard by a Special Sub Committee of the Trust Board.
6. Appeal hearings will be held at the earliest time reasonably practicable after the receipt of the employee's written appeal.
7. Documentation to be relied upon at an appeal will normally be that used in the original hearing, unless agreed otherwise in advance by the Chair of the appeal hearing. Papers from both parties will be circulated at least 5 working days in advance of the appeal hearing date.

## **Appendix 7 - Disciplinary appeal hearing procedure**

The purpose of an appeal is to allow for a final review by the trust of an earlier management decision.

The purpose of this protocol is to set out the 'on the day of the hearing' procedure to be followed by the Appeals Sub Committee in considering an employee's appeal.

### **Prior to the start of the hearing:**

One of the non executive directors present is appointed as hearing chair:

### **Hearing procedure:**

#### **Stage 1 – Employee's case for review:**

The appellant employee (or the employee's representative) shall put their case for review in the presence of the management representative. The appellant may call witnesses;

The management representative shall have the opportunity to ask questions of the employee appellant, the appellant's representative and witnesses;

The members of the Appeals Sub Committee shall have the opportunity to ask questions of the employee appellant, the appellant's representative and witnesses;

The appellant employee (or the employee's representative) shall have the opportunity to re-examine their witnesses on any matter referred to in their examination by management or members of the Appeals Sub Committee;

**NB:** Witnesses will only be present at the hearing when called by the employee and then only for the duration of questioning.

#### **Stage 2 – Management case:**

The management representative shall state the management case in the presence of the appellant and the appellant's representative. The management representative may call witnesses;

The employee appellant (or their representative) shall have the opportunity to ask questions of the management representative and witnesses;

The members of the Appeals Sub Committee shall have the opportunity to ask questions of the management representative and witnesses;

The management representative shall have the opportunity to re-examine their witnesses on any matter referred to in their examination by the employee appellant (or their representative) or members of the Appeals Sub Committee.

**NB:** Witnesses will only be present at the hearing when called by the management representative and then only for the duration of questioning.

#### **Stage 3 – Summing up:**

The management representative shall have the opportunity to sum up their case if they so wish. No new matter or information may be introduced at this stage;

The employee appellant (or their representative) shall have the opportunity to sum up their case if they so wish. No new matter or information may be introduced at this stage.

**NB:** The employee appellant (or their representative) shall have the right to speak last.

**Stage 4 – Sub Committee deliberations:**

The employee appellant, the appellant's representative and the management representative present shall all withdraw whilst the Sub Committee considers its decision.

The Sub Committee shall deliberate in private, only recalling both parties to clarify 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.

**Stage 5 – Giving decision:**

The employee appellant, the appellant's representative and the management representative will be recalled and advised of the Sub Committee's decision. Part of that should be confirmation that the decision will be given in writing subsequently. The hearing ends.

The Sub Committee's decision will be confirmed in writing within 5 working days of the verbal decision having been given to the employee.

**NB:** At any stage of an appeal hearing, the Chair has the right to call for further information to be provided either by management or the employee (or the employee's representative) or for employees not previously involved in the hearing to attend as a panel witnesses. That may necessitate an adjournment. Both the management representative and the employee appellant (or the employee's representative) will be able to ask questions of anyone called as a panel witness.

## Appendix 8 - Guidance for appeal panel members

### Introduction

This guidance relates to appeal hearings resulting from cases of misconduct: however, most of the principles can also be applied to other types of hearings i.e. capability and grievances.

Appeal panel members must have received at least basic training on employment law issues and the trust's core HR policies, procedures and practices before agreeing to sit on an appeal panel. Training support is available from the Head of Human Resources.

Before hearing an appeal, all members of the appeal panel must have read the Trust Disciplinary Policy and Procedure - with particular reference to the reasons for appeal which are set out in [appendix 5](#) and the appeals procedure set out in [appendix 6](#).

The requirement to have an internal appeal is good employment practice and is covered / referred to in the ACAS Code of Practice on Disciplinary and Grievance Procedures. The overarching legal framework for dismissals is covered mainly by the Employment Act 2008 and the Employment Tribunals Regulations 2008.

The ACAS Code is not legally binding but failure to follow the Code will be taken into account by Employment Tribunals in hearing individual cases.

### Purpose of panel

The role of the appeals panel is to review the management decision at an earlier, formal stage. In doing so, the panel will consider the following:

- Was the disciplinary procedure followed?
- Was the process fair?
- Was the outcome reasonable?
- Was the outcome consistent with other decisions in like circumstances?

It is **not** the role of the panel (or indeed an Employment Tribunal) to establish if someone is innocent or guilty. It **is** the role of the panel to consider if, on the balance of probabilities, the trust acted fairly and reasonably in making the decision being appealed against. Therefore, an appeal provides a final opportunity for the trust as employer to make a reasonable decision on an individual case.

In deciding if a fair and reasonable process has been followed, the panel needs to be assured that managers have followed the Trust Disciplinary Policy and Procedure and that the decision the original hearing had arrived at was in the band of reasonable responses having taken into account any mitigation offered at the time.

### What the ACAS code says

The ACAS code advises that:

- Employers and employees should raise and deal with issues **promptly** and should not unreasonably delay meetings, decisions or confirmation of those decisions;
- Employers and employees should act **consistently**;
- Employers should carry out any necessary **investigations**, to establish the facts of the case;
- Employers should inform employees of the basis of the problem and give them the opportunity to **put their case** in response before any decisions are made;
- Employers should allow employees to be **accompanied** at any formal disciplinary or grievance meeting;
- Employers should allow an employee to **appeal** against any formal decision made.

The Code goes on to say:

- Appeals should be heard without unreasonable delay and ideally at an agreed time and place. Employees should let employers know the grounds for their appeal in writing;

- The appeal should be dealt with impartially and, whenever possible, by a manager who has not previously been involved in the case;
- Workers have the statutory right to be accompanied at the appeal hearing;
- Employees should be informed in writing of the results of the appeal hearing as soon as possible.

It should be noted that the further points of good practice contained in the policy have been incorporated into the trust disciplinary policy and procedure.

### **Appeal panel papers**

Prior to an appeal hearing taking place, the panel can expect to receive the following:

- A written management statement of case;
- A written employee statement of case (if supplied);
- Chronology of main events leading to need for previous hearing;
- Copy of employee's job description and department structure chart;
- Copy of the invite to attend appeal hearing letter;
- Copy of the previous stage decision letter;
- Copy of the appeal panel procedure.

In addition, the HR manager supporting the appeal panel will have available at the hearing (for the panel's reference only):

- Employment history of the employee;
- Employee's training record.

### **Appeal panel process**

The appeal panel process is set out in [appendix 6](#) of the Trust disciplinary policy and procedure. The panel will normally make a decision based on the information presented to it, but may:

- Seek additional information;
- Call additional witnesses;
- Adjourn for specific purposes.

The appeal is the employee's so they will usually present their case first.

### **The appeal panel's decision**

The range of possible outcomes for the employee are as follows:

- The original decision is upheld;
- The original decision is overturned and another decision made as follows:
- Warning is removed;
- Employee is reinstated (if dismissed previously);
- The first warning is increased or decreased.

The panel may also set out some recommendations for both employee and, more usually, management to take forward. For the employee, these may include how the employee should be managed in returning to the workplace. For management, the panel may make recommendations in respect of lessons learned from the case.

The appeal panel is a special sub committee of the Trust Board and has delegated responsibility to make a decision on behalf of the Trust Board. Decisions made by the panel will be final and, if necessary, reflect the majority view of the panel. Any differences of opinion which take part during the private deliberations of the panel will not be reflected in the outcome letter which will reflect only the final decision of the panel.