



**Dorset County Hospital**  
NHS Foundation Trust

# Disciplinary Policy and Procedure EM16

<b>TITLE</b>	Disciplinary Policy and Procedure EM16		
<b>POLICY NUMBER</b>	<b>1690</b>	<b>VERSION NUMBER</b>	<b>13</b>
<b>APPLICABLE TO</b>	All Trust employees		
<b>AIM OF POLICY</b>	To promote and maintain high standards of conduct, professionalism and attendance. To ensure the safe and effective operation of the Trust, that disciplinary action is fairly and consistently applied and that management, unions and employees are aware of their rights and obligations in respect of disciplinary and appeals procedure.		
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## PREFACE

### EQUALITY IMPACT AND COMPLIANCE ASSESSMENT

#### 1. General

Title of document	Disciplinary Procedure
Purpose of document	To promote and maintain high standards of conduct, professionalism and attendance. To ensure the safe and effective operation of the Trust, that disciplinary action is fairly and consistently applied and that management, unions and employees are aware of their rights and obligations in respect of disciplinary and appeals procedure.
Intended scope	All employees of the Trust.

#### 2. Consultation/ Schedule of stakeholders

Which groups/associations/bodies or individuals were consulted in the formulation of this document?	Partnership Forum (including all unions recognised by the Trust); Policy Sub Group; Medical & Dental Sub Group; Line Managers
What was the impact of any feedback on the document?	Feedback was incorporated where possible
Who was involved in the approval of the final document?	Partnership Forum
Any other comments to record?	None

#### 3. Equality Impact Assessment

Does the document unfairly affect certain staff or groups of staff? If so, please state how this is justified.	No. All staff subject to disciplinary action or investigation are treated the same regardless of race, sexual orientation, gender, age, religious belief or disability.
What measures are proposed to address any inequity?	None.
Can the document be made available in alternative format or in translation?	Yes, on request to the Human Resources Department

#### 4. Compliance Assessment

Does the document comply with relevant employment legislation? Please specify.	Employment Rights Act 1996 as amended, Employment Rights Disputes Resolution Act 1998, Employment Relations Act 1999, Employment Rights Act 2004 <b>Safeguarding Vulnerable Groups Act (SVGA 2006), Safeguarding Vulnerable Groups (Northern Ireland) Order 2007</b>
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#### 5. Document assessed by:

Name	Melanie Harris
Post Title/Position	HR Manager
Date	August 2020

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## **1. Executive Summary**

- 1.1 This procedure applies to all staff employed by Dorset County Hospital NHS Foundation Trust.
- 1.2 Line managers will contact human resources (HR) as soon as an incident occurs which potentially breaches discipline.
- 1.3 It is important for disciplinary proceedings to be concluded as swiftly as possible. The timescales set within this policy will only be varied with the approval of the Director of Workforce and Organisational Development.
- 1.4 Managers will seek to resolve matters informally without recourse to the formal procedure. Only where this is not possible will the formal procedure be invoked
- 1.5 The formal procedure is broken into 2 Stages; Stage 1 is to make preliminary enquiries as to whether or not there is a case to be heard. Stage 2 is a formal investigation. If a hearing is required it will be held promptly following the investigation.
- 1.6 If suspension is deemed necessary during investigation, this is a neutral act without prejudice. You will receive full pay during suspension.
- 1.7 You have a statutory right to be accompanied by a workplace colleague or Trade Union representative. Such a representative may be legally qualified but cannot represent you in a legal capacity.
- 1.8 It is your responsibility to identify your representative and to make necessary arrangements with them.

- 1.9 There are three levels of sanction that can be issued at a disciplinary hearing; first formal warning, final warning or dismissal. The level of the sanction will be entirely dependent on the degree of seriousness of the offence.
- 1.10 Sanctions will usually remain live for 12 months, although this can be extended up to 2 years. The Disciplining Officer will specify the level and length of the sanction following the hearing.
- 1.11 Gross misconduct may lead to dismissal at a hearing without notice and without payment in lieu of notice.
- 1.12 You can appeal against any formal warnings or dismissal.

# 1 Policy Statement

This policy applies to staff employed by Dorset County Hospital NHS Foundation Trust. It takes account of the ACAS Code of Practice – Disciplinary and Grievance Procedures.

Medical and Dental Staff are subject to the Trust's Policy for Maintaining High Professional Standards for Medical and Dental Staff, which is available on the Trust Intranet. This Disciplinary Policy and Procedure will apply to Medical Staff only to the extent, and in the circumstances described in the Trust's Policy for Maintaining High Professional Standards for Medical and Dental Staff and not further or otherwise. However, if the matter relates solely to matters of alleged personal misconduct of medical or dental staff then this policy will be followed. Early advice should be sought from Human Resources on the appropriate application of these policies.

Wherever possible Line Managers will be expected to resolve matters informally. The Trust will make every effort to avoid the use of formal action and the disciplinary process will only be instigated when the matter cannot be resolved informally.

## 2 Aims of the Policy

It aims to:

- 2.1 Ensure that investigations and disciplinary hearings are concluded as swiftly as possible, in the interest of the individual and the organisation.
- 2.2 Ensure the safe and effective operation of the Trust.
- 2.3 Ensure that everyone is aware of their rights and obligations in respect of disciplinaries and appeals.
- 2.4 Ensure that disciplinary action is fairly and consistently applied throughout the Trust.
- 2.5 Promote and maintain high standards of conduct, professionalism, performance and attendance.

## 3 Who is the policy for

- 3.1 This policy applies to all employees of the Trust.

## 4 Definitions

- 4.1 **Allegation** – in respect of this policy means alleged incident/action/occurrence undertaken by an individual(s) on 'X'; date at 'X' time.
- 4.2 **Investigating Officer** – the employee's line manager or an independent party

- 4.3 **Disciplining Officer** – the employee’s line manager or an independent party  
The line manager will not take the role of both the Investigating Officer and the Disciplining Officer.
- 4.4 **Investigatory Interview** – an interview conducted by the Investigating Officer to elicit the facts surrounding the Investigation. A HR Manager or HR Advisor may also be present.
- 4.5 **Statements** – handwritten or typed, signed and dated by the originator. These will have been requested usually by the Investigating Officer with a view to an individual(s) recording an incident as close to the event as possible.
- 4.6 **Statement of Case** – a written report on the facts discovered including any documentary or other evidence gathered by the Investigating Officer.
- 4.7 **Disciplinary Hearing** – an oral presentation of evidence and consideration of documents previously disclosed by the Investigating Officer and TU Representative in the presence of the Disciplining Officer and HR Manager. Witnesses may be called to give evidence.
- 4.8 **Relevant Conduct (for the purpose of DBS)** – an action or inaction that has harmed or placed a child or vulnerable adult at risk of harm. Any conduct that endangers a child or vulnerable adult, if repeated could endanger them, involves sexual material relating to children, involves sexually explicit images depicting violence against human beings.
- 4.9 **Harm Test (for the purpose of DBS)** – is satisfied if the relevant person believes that an individual may harm a child or vulnerable adult, cause a child or vulnerable adult to be harmed, put a child or vulnerable adult at risk of harm, attempt to harm a child or vulnerable adult or incite harm to a child or vulnerable adult.
- 4.10 **Regulated Activity (for the purpose of DBS)** – An individual is involved in regulated activity if they undertake an activity whether paid or unpaid of a specific nature that involves contact with children or vulnerable adults on a frequent, intensive or overnight basis or undertake any activity in a specified place that provides the opportunity for contact with children or vulnerable adults on a frequent, intensive or overnight basis.
- 4.11 **Controlled Activity (for the purpose of DBS)** – An individual is involved in controlled activity if they are ancillary support workers in further education, or healthcare setting which is done frequently or intensively and gives the opportunity for contact with children or vulnerable adults.
- 4.12 **Controlled Drugs Accountable Officer (CDAO):** Person responsible for ensuring and providing assurance that the organisation has effective systems in place for the safe and secure management of controlled drugs (CDs). The CD



AO must be informed if there has been or there is the suspicion of diversion of any drugs in the Trust.

## **5 Principles of the disciplinary procedure**

- 5.1 The procedure is designed to establish the facts quickly and to deal consistently and fairly with disciplinary issues.
- 5.2 No disciplinary action will be taken, or penalty imposed, until the case has been fully investigated.
- 5.3 If there are any relevant personal, domestic or social circumstances these will be considered when following this procedure.
- 5.4 At every stage in the procedure you will be advised of the nature of the complaint against you, and will be given the opportunity to put your case before any decision is made.
- 5.5 At all stages, you will have the right to be assisted by a colleague or a Trade Union representative.
- 5.6 You have the right to appeal against any disciplinary action or sanction imposed.
- 5.7 You will not be dismissed for a first breach of discipline, unless the incident is found to be gross misconduct, in which case the sanction will be dismissal without notice and no payment in lieu of notice will be made. There are some examples of gross misconduct in Section 17 of the policy.

## **6 Timescales**

- 6.1 The timescales set out in this policy will only be varied in exceptional circumstances, for example, sickness, planned leave or bereavement. Any variation to timing will be approved by the Director of Workforce and Human Resources in discussion with Trade Union Representatives where applicable.
- 6.2 A provisional timeline, including planned dates for potential meetings, will be set at the beginning of the process.

## **7 Who is responsible for disciplinary action?**

- 7.1 Initial stages of disciplinary action will normally be undertaken by your Line manager. They will seek advice from Human Resources before making any decision to suspend.
- 7.2 Your Line Manager with the **approval** of Human Resources will appoint an independent party to conduct any or all of the following:

7.2.1 To be the Investigating Officer (i.e. to investigate your alleged offence)

7.2.2 To be the Disciplining Officer (i.e. to hear your case and apply a sanction)

7.2.3 To advise the Disciplining Officer regarding the level of sanction

7.3 Your Line manager will not take the role of both the Investigating Officer and the Disciplining Officer.

## **8 What is a disciplinary offence?**

8.1 The following offences will normally trigger disciplinary action:

- Disruptive, antisocial behaviour
- Being under the influence of alcohol or illegal drugs
- Intimidation of, or physical violence towards, another employee, patient or visitor
- Bullying
- Sexual or racial harassment
- Theft or fraud
- Refusal to comply with reasonable instructions
- Misuse of Trust property
- Disregard of health and safety instructions
- Negligence
- Misuse of email, Internet and other computer systems including the distribution of material of a sexual, violent or discriminatory nature via Trust equipment such as PCs.
- Failure to send Patient Identifiable Data (PID) using the correct and agreed method as set out in the Trust's Email Policy. More details are available on the Trust's Intranet Site. <http://www-local/departments/general/ict-department-1/documents/EMail%20Policy%202009.pdf>
- Loss of confidential information and/or breach of the Data Protection Act (i.e. a breach of any of the 8 Data Protection Principles) or breaches of Confidentiality including inappropriate access to health records.

- Breach of Trust policies and rules

8.2 This is not an exhaustive list. The level of action will depend on the seriousness of each individual case. See section 16 for examples of gross misconduct.

## 9 The informal procedure

9.1 In minor cases of misconduct your Line Manager will try to resolve the matter informally. This will involve informal discussions. Your Manager will write to you to confirm these discussions and a copy will be kept on your personal file. If there is no further incidence of misconduct, this record will be disregarded after 6 months. If these informal steps fail to bring about an improvement in your conduct, the formal procedure will be implemented.

## 10 Stage 1 - Preliminary Enquiries

10.1 When misconduct occurs, your Line Manager will carry out initial enquiries to quickly establish the facts and assess the seriousness of the allegation. S/he will take into account the comments of any available witnesses. Where appropriate, the enquiries may include an informal discussion with you. It is envisaged that preliminary enquiries will be completed as quickly as possible, usually within 2 working days. If your Line Manager believes (after preliminary enquiries) that further investigation is required, a formal investigation will commence.

## 11 Stage 2 - Investigation

11.1 Your line manager will:

- 11.1.1 Inform you that there will be a formal investigation that will be completed as soon as possible, ideally within **10 working days**. More complicated investigations may take longer but timescales for completion must be agreed with the Deputy Director of Workforce & Human Resources. If an extended investigation period is agreed, the provisional timeline (section 4.2) will be updated accordingly.
- 11.1.2 Clearly define the allegations against you.
- 11.1.3 Provide you with a copy of this Policy.
- 11.1.4 Inform you of the support available and your right to representation.
- 11.1.5 Confirm the discussion in writing.
- 11.1.6 Complete the terms of reference for the investigation (Appendix E) and provide this to the Investigating Officer.

- 11.2 This is a formal investigation to establish a reasonable belief as to whether an offence has been committed. The standard of proof for internal investigations and any subsequent disciplinary hearing is 'on the balance of probabilities' and does not have to be proven 'beyond reasonable doubt'.
- 11.3 It is your responsibility, with the support of your representative, to prepare your case in defence of the allegations against you during the formal investigation.
- 11.4 If during the course the investigation new allegations are raised which are unrelated to the original allegation these will be dealt with separately. If related allegations arise you will be informed immediately to enable you to prepare any defence.
- 11.5 If the allegation pertains to any deliberate attempt to defraud the Trust, its patients or members of staff, or to corrupt practices such as the unlawful receipt of money, goods, favours or excessive hospitality in respect of services rendered then the Local Counter Fraud Specialist will be notified. This will be done through HR. Prior to the commencement of a Counter Fraud investigation a meeting will be held with the local Counter Fraud Specialist, Director of Finance, Workforce Manager and appropriate Line Manager. If it is not appropriate to involve the Director of Finance another Director will be informed.

For further details please refer to the Trust's Fraud Policy and Parallel Sanctions Framework (available via the HR Intranet Site)

<http://194.101.238.20/employment/Counter%20Fraud/Counter%20Fraud%20front%20page.htm>

## **12 Action Following Investigation**

- 12.1 Following the investigation, there are several potential courses of action that may be taken by your Line manager following discussion with Human Resources:
- The allegations are discovered to be unfounded and you are informed of this in writing.
  - It is considered sufficient to undertake an informal discussion falling short of a disciplinary hearing (see section 7).
  - It is decided that a disciplinary hearing is required.
- 12.2 If it is considered that an informal discussion is required you will meet with your Line Manager for this purpose.
- 12.3 Should a complaint have been raised against you that led to an investigation your line manager will meet with the complainant to provide a summary outcome

confirming the matter has been dealt with but not disclosing to the complainant the action if any that has been taken.

- 12.4 If it is decided that a disciplinary hearing is needed, you will be informed of this in writing. The letter will clearly outline the allegations to be considered by the disciplining officer and the possible outcomes from the hearing including if dismissal is likely to be considered. No further allegations will be considered at the hearing.
- 12.5 You will be required to provide HR with documentary evidence in support of your case **6 working days** before the hearing, including any witness statements that will be relied on and details of any witnesses to be called. Documents should include page numbers for ease of reference during the hearing.
- 12.6 The Line Manager or Investigating Officer (if the Line Manager is acting as Disciplining Officer) will also be required to provide Human Resources with documentary evidence in support of their case **6 working days** before the hearing, including any witness statements that will be relied on and details of any witnesses to be called. Documents should include page numbers for ease of reference during the hearing.
- 12.7 **Human Resources will:**
- Provide you with a copy of the Disciplining Officer's case **5 working days** prior to the hearing and inform you if any witnesses are being called.
  - Provide the Disciplining Officer with a copy of your case **5 working days** prior to the hearing and inform them if any you are calling any witnesses.
- 12.8 The disciplinary hearing will take place within **8 working days** of completion of the investigation.

### **13 Sickness absence during disciplinary proceedings**

- 13.1 It is in your interest for the disciplinary hearing to be held as quickly as possible. However, if you become sick during disciplinary proceedings and this prevents you from attending a hearing, you must provide a Medical Certificate and you will be referred to Occupational Health. A hearing will be held following the expiry of your Medical Certificate or sooner if your GP or OH advise that you are fit to attend a hearing (or if you declare yourself fit to attend). However, the Trust does reserve the right to make the decision to proceed to a Disciplinary Hearing if sickness is prolonged and is resulting in a delay to the conclusion of the disciplinary process .

### **14 Non-attendance**

14.1 You must make every effort to attend the hearing. With your agreement, your representative may attend in your place. The hearing may be postponed once in exceptional circumstances. When a hearing is postponed it will be rearranged within 5 working days unless agreed otherwise in exceptional circumstances.

14.2 Any failure to attend that is not covered by an exceptional circumstance will result in the hearing continuing in your absence.

## 15 Resignation

15.1 Should you choose to resign rather than go through the disciplinary procedure, the investigation will be completed as fully as possible and a disciplinary hearing held if appropriate.

15.2 If a hearing is required following your resignation this will be arranged in accordance with the process detailed within this policy. Should you choose not to attend the hearing this will proceed in your absence.

15.3 Any information relating to the investigation and /or disciplinary hearing will remain on your personal file and may be used should you ask for a reference or apply to be re-employed.

15.4 Where the matter relates to a professional issue covered by your professional code of conduct then the professional body may be contacted for advice. If you are a member of a professional body and misconduct is found, the professional body will be informed following the hearing and details of the investigation and hearing will be referred to them if requested. **When doing this, care must be taken not to divulge third party information.** The professional body will be made aware of your right to appeal and the subsequent outcome of any appeal hearing.

## 16 The Disciplinary Hearing

16.1 The Disciplining Officer will conduct the hearing as set out in Appendix A. They may seek advice from a Professional Adviser if the issue relates to an area outside their normal sphere of responsibility/expertise.

16.2 You will have opportunity to:

- Respond to the allegations being made.
- Provide relevant evidence to support your case.
- Raise any additional issues that you think the Disciplining Officer should take into account when reaching a decision.

16.3 You may request reasonable adjournments at any time during the hearing. Any such requests will not be unreasonably denied.

16.4 Once you have had reasonable opportunity to state your case the Disciplining Manager will adjourn the hearing to consider the evidence. Wherever possible a decision will be reached on the same day, but if this is not possible, the Disciplining Manager will contact you the next working day to inform you of their decision.

16.5 In extenuating circumstances the Disciplining Officer may deem it appropriate for an employee to be offered the opportunity not to attend a formal hearing, yet be awarded a first formal warning sanction. The sanction must be agreed between the Disciplining Officer, relevant HR Manager and the employee and their representative must be made aware of the predicted sanction and that they accept this level of sanction and opt to not attend any scheduled hearing.

16.6 As standard, handwritten notes of the hearing will not be taken; instead all disciplinary hearings will be audio taped by the Workforce & HR department using a dictaphone.

16.7 An audio file of the hearing will be available to you and your representative should you wish to receive a copy and would be provided via email after the hearing has concluded.

16.8 The Workforce & HR department will retain a copy of the audio file and will produce a written summary of the hearing for cases proceeding to an appeal.

## **17 Disciplinary Sanctions**

17.1 The sanction applied will be dependent on the degree of seriousness of the offence.

17.2 A series of minor offences or a repetition of one offence may involve working through each possible sanction whilst a serious offence may lead directly to a final formal warning or even dismissal.

17.3 The Disciplining Officer must discuss the sanction to be applied with Human Resources before doing so. The main potential outcomes are:

### 17.3.1 No disciplinary action taken

### 17.3.2 First Formal Warning

If informal discussions have not led to an improvement in your performance, your conduct does not meet acceptable standards, or there is evidence of a minor misdemeanour or breach of policy, you will normally be given a first formal warning.

### 17.3.3 Final Formal Warning

You may be issued with a final formal warning where there has been a repetition of an offence already the subject of a current warning or where serious misconduct has taken place.

#### 17.3.4 Dismissal

You may be dismissed following an act of gross misconduct or where there has been repetition of offences already the subject of current warning(s). If you commit an act of gross misconduct, you will normally be dismissed without notice or payment in lieu of notice. If you commit an act of further misconduct despite previous warnings, you will normally be dismissed with notice. For examples of actions considered to be gross misconduct please see section 17.5 of this policy.

- 17.4 In addition to issuing a disciplinary sanction or in situations where no disciplinary action is taken the Disciplining Officer may also consider one of the following actions if deemed appropriate:

#### Redeployment

If it is deemed you are unable to return to your current department following the outcome of a disciplinary hearing you may be redeployed to another area of the hospital into a role of the same pay band deemed as suitable alternative employment.

#### Downbanding

If it is deemed you are unable to work at your current pay band you may be downbanded through redeployment to another post deemed as suitable alternative employment, this post would be one band lower than your current payband. Pay protection would not be applicable in this circumstance.

#### Performance Management

If it is deemed that there are concerns relating to the employees performance the Disciplining Officer may recommend formal performance management processes are commenced, in line with the Performance Management Policy, to support the employee in improving their standard of work.

- 17.5 The following actions are examples of gross misconduct;

- Theft or unauthorised possession of property belonging to the Trust, patients or staff



- Corrupt practices, continued or negligent failure to comply with standing financial instructions, unlawful receipt of money, goods, favours or excessive hospitality in respect of services rendered
- Fraud, any deliberate attempt to defraud the Trust or patients or members of staff. This would include the falsifying of time records or expenses or obtaining employment by deception.
- Assault, physical violence or malicious ill treatment of patients or other members of staff. This does not include necessary control and restraint.
- A wilful and serious failure to treat patients and their families with compassion, dignity and respect.
- Incapacity to perform normal duties through the consumption of alcohol or the misuse of drugs. Due recognition will be taken of the Alcohol & Drugs Policy.  
<http://194.101.238.20/employment/policies/New%20Policies%2027%201%2007/AlcoholandotherDrugsatWork.pdf>
- Being in possession of an illegal substance; or being involved in the sale or distribution of illegal drugs.
- Intentionally causing damage to the property of the Trust, patients or other members of staff.
- A deliberate act which seriously endangered the health or safety of oneself or others.
- Knowingly allowing a serious breach of the Trust and/or Statutory Health & Safety Regulations.
- A serious breach of confidentiality, loss of confidential information and/or breach of the Data Protection Act i.e. a breach of any of the 8 Data Protection Principles.
- Professional misconduct, breaches of conduct according to the appropriate Professional Codes of Practice.
- Negligence in the performance of the employee's duties
- Misuse of the Trusts time, property or name
- Misuse of the Internet by deliberately accessing internet sites containing pornographic, offensive or obscene material
- Bringing the Trust into serious disrepute

- Any deliberate attempt to bully, unlawfully discriminate, harass or victimise patients or other members of staff whether on the grounds or disability, race or sex or any other reason.
- Repeated failure to maintain professional registration.
- Working in other employment paid or unpaid whilst absent from work, through sickness or other incapacity (unless an employee has two distinct contracts and is deemed medically fit to work under one contract but not the other).

17.5 If theft is proven, dismissal will occur. The lack of value of any property stolen will not be considered a mitigating factor.

## 18 Documentation

18.1 You will be sent written confirmation of the outcome of the hearing within **3 working days**, unless agreed with you otherwise. The letter will state:

18.1.1 The sanction imposed

18.1.2 The reasons for the sanction being imposed

18.1.3 The consequences of a repeat offence, the length of time the warning will be valid for, the right of appeal, including time limits and to whom an appeal should be made.

18.2 An additional copy will be sent to your representative if present at the hearing. A copy of the letter will be retained on your personal file.

18.3 In general, warnings will remain live for 12 months. In serious cases the disciplining officer can extend this to a maximum of 2 years, although the Deputy Director of Workforce & HR will authorise an extension of this kind. The length of time the warning will remain live will be specified at the hearing.

18.4 Warnings will normally cease to be live following the specified period of satisfactory conduct and will then be disregarded for future disciplinary purposes.

18.5 Once the period of the warning has ended, the letter will be placed in a sealed envelope. In accordance with the requirements of the Data Protection Act the letter must be retained on your personal file for the remainder of employment with the Trust and for a further year thereafter, before being confidentially destroyed (shredded). Therefore the envelope will be clearly marked 'private and confidential – to be retained on file for a year after employment has ceased and then confidentially destroyed - to be opened only by the HR Manager.

- 18.7 An electronic record of all disciplinary action is kept within the employee relations module of ESR (Electronic Staff Record) for monitoring purposes to ensure the consistent application of this policy. Access to this module is restricted to Human Resources.

## **19 Representation**

- 19.1 You have a statutory right to be accompanied by a workplace colleague or Trade Union representative. Such a representative may be legally qualified but cannot represent you in a legal capacity.
- 19.2 It is your responsibility to identify your representative and make all necessary arrangements with them. If your representative is unable to attend a meeting within the timescales set out in this policy, one other date and time convenient to you and your representative will be arranged within 5 working days or you will need to identify another representative who can attend.
- 19.3 If you have asked a colleague to accompany you during the disciplinary process, s/he can take a reasonable amount of paid time to support you.

## **20 Role of Human Resources**

- 20.1 Managers will contact Human Resources as soon as an incident occurs which potentially breaches discipline.
- 20.2 Representatives from Human Resources will be present at all disciplinary hearings. Human Resource's role is to provide advice to the Disciplining Officer on process and policy and to provide administrative support.
- 20.3 Human Resources have a responsibility to ensure that investigations are carried out with the appropriate level of diligence.
- 20.4 Human Resources will also ensure openness and transparency within any proceedings.
- 20.5 If you are involved in a disciplinary matter, please read through this policy. You are also able to contact Human Resources for advice in relation to procedural matters.

## **21 Suspension**

- 21.1 If your Line Manager and Human Resources consider it necessary, your Line Manager may suspend you on full pay whilst the investigation is being conducted.

- 21.2 Suspension from duty is without prejudice and is not a disciplinary measure.
- 21.3 If you are a doctor or dentist the guidance relating to exclusion in the Trust's policy on Maintaining High Professional Standards for Medical and Dental Staff will be followed.
- 21.4 When deciding to suspend you, the following will be taken into consideration:
- Whether your presence at work would impede a full investigation being undertaken or prejudice the outcome.
  - Whether the issue presents a risk to patient care or a risk of further occurrence.
  - Whether it would be considered unreasonable to expect you to remain at work given the circumstances of the case.
- 21.5 Suspension and its reasons will be confirmed in writing. You will continue to receive full pay, including enhancements that you would have earned whilst at work. If you work on the bank or have an 'as and when' contract with the Trust you will be paid for the shifts that have already been confirmed to work during the period of suspension.
- 21.6 You will be advised that you should not enter Trust property without prior agreement with your Line Manager or Human Resources unless you or a member of your close family requires emergency medical treatment, in which case you will let your Line Manager know retrospectively.
- 21.7 During the period of suspension you must remain available to the Trust during normal working hours in order to participate in the investigation process. Any annual leave booked prior to suspension will be honoured.
- 21.8 Although you may be asked to keep matters confidential, it is important that you continue to receive support. It may be appropriate to identify a colleague not involved in the case who is able to provide confidential support; this must be done with the agreement of your Line Manager. You may also access the Occupational Health Department whilst suspended from work.
- 21.9 At the time of your suspension, your Line Manager will agree with you how often your suspension will be reviewed. All suspensions must be initially reviewed after **one week**. Your Line Manager will notify the Director of Workforce and HR of your suspension.
- 21.10 If after 21.4 has been considered, Your Line Manager and Human Resources may consider an alternative to suspension such as temporary redeployment and/or amended duties to enable you to continue working whilst the investigation is being conducted.

21.11 In order to reintegrate you back to your role, and if deemed appropriate, your line manager and Human Resources will invite you to attend a meeting to discuss whether or not it is necessary to alter your working pattern, complete additional training or undertake a phased return in order to facilitate your return. There may be occasions where you need to seek support from the Trust Employee Assistance Programme, Care First or Occupational Health.

## 22 Trade Union Representatives

22.1 Where disciplinary action is being considered against an accredited Trade Union representative, the full circumstances of the case shall be discussed with a Workforce Manager and the appropriate full time Trade Union official prior to disciplinary action being taken.

## 23 Professional Advice and Involvement

23.1 If you are a member of a profession and subject to a disciplinary hearing relating to a professional issue, an appropriate professional will be asked to advise the Disciplining Officer if s/he is not within your profession.

23.2 Human Resources will be consulted in any case warranting application of the Disciplinary Procedure.

23.3 If you are a member of a professional body and misconduct is found, the professional body will be informed following the hearing and details of the investigation and hearing will be referred to them if requested. **When doing this, care must be taken not to divulge third party information.** The professional body will be made aware of your right to appeal and the subsequent outcome of any appeal hearing. Any subsequent requests from the professional body for information or contact with Trust staff as potential witnesses at hearings held by the professional body must be referred to the Director of Workforce and HR. The Director of Workforce and HR will then ensure that Trust staff are appropriately supported through such processes.

23.4 Similarly, if as a result of a disciplinary hearing it is concluded that the law has been broken and the police have not been involved as part of the investigation, the Disciplining Officer is required to notify the police.

23.5 All postal correspondence with professional bodies and/or the police in relation to disciplinary matters must be sent by recorded delivery.

## 24 Referral to the Disclosure & barring Service (DBS)

24.1 The Trust has a duty to refer cases that are related to safeguarding children or vulnerable adults in the workplace to the Disclosure & Barring Service (DBS) when the following two conditions have both been met.

1. The Employer withdraws permission for an individual to work in a *regulated activity* (this does not include removal due to suspension), with children and/or adults or would have done so had that individual not resigned, retired, or been transferred to a position which is not *regulated* or because;
2. They think that the individual has:
  - engaged in *relevant conduct*,
  - satisfied the *Harm Test*, or
  - received a caution or conviction for a *relevant offence*.

24.2 It is the line manager's responsibility to refer cases to the DBS with the support of Human Resources.

24.3 Withdrawal from regulated or controlled activity need not be on a permanent basis in order to bring about a referral. Referrals should be made to the DBS using the DBS referral form and should include supporting evidence and documents.

24.4 ADBS referral may be in addition to a referral to a professional body.

24.5 You should **not** refer someone until preliminary investigations have been undertaken.

## **25 Serious Untoward Incident Reporting Process**

25.1 The Strategic Health Authority is required to receive notification of all serious untoward incidents from all NHS Trusts and Primary Care Trusts within its boundary.

25.2 The Serious Untoward Incident Reporting Policy details incidents involving staff and the criteria that would constitute a report under this system.

25.3 The Director or Deputy Director of Workforce and HR must be notified in the event that an incident is likely to meet the criteria to determine if a report is required.

25.4 A report should then be made through the Strategic Executive Information System (STEIS) at the earliest opportunity.

25.5 Reports can be entered on to the STEIS system by the nominated Workforce Managers.

## 26 National Clinical Assessment Service for Pharmacists

- 26.1 The National Clinical Assessment Service (NCAS) supports healthcare organisations and practitioners in resolving concerns about individuals' performance. Its remit extends to Pharmacists including Locum Pharmacists.
- 26.2 If concerns involving a Pharmacist are performance related and not of a disciplinary nature. The Trusts Performance Management Policy must be followed.
- 26.3 Individual Pharmacists with concerns about the performance of a peer should raise the concern through the Chief Pharmacist.
- 26.4 When there are concerns involving a Pharmacist, guidance should be sought from the relevant HR Manager
- 26.5 Referrals to NCAS should be made by the Chief Pharmacist or Senior Manager with responsibility for the services provided by the pharmacist about whom a concern has been raised.
- 26.6 Further information on the services of NCAS can be found on their national website.

## 27 Appeal

- 27.1 You can appeal against any formal warnings or dismissal. If you wish to appeal you must write to the Deputy Director of Workforce & Human Resources within **5 working days** of receiving the written confirmation of the outcome of your disciplinary hearing. You should state the full grounds of your appeal in your letter.
- 27.2 The appeal will take place within **10 working days** of receipt of the notice of appeal. If insufficient detail of the grounds of appeal is provided, further detail will be requested and the appeal will take place within 10 working days of receipt of this.
- 27.3 Where dismissal has occurred, the relevant Executive Director will hear the appeal, supported by a Human Resources representative. For disciplinary action short of dismissal the Line Manager of the Disciplining Officer will normally hear the appeal.
- 27.4 It should be noted that an appeal hearing is not a re-hearing and the grounds for appeal are therefore limited to procedural issues or because new evidence has come to light.
- 27.5 If new evidence has come to light it may be necessary for further investigation to take place. The further investigation should be completed within 5 working days

of the notice of appeal. Should new evidence come to light during the appeal hearing it may be necessary for further investigation to take place in which case the hearing may be adjourned to enable this to be undertaken. The further investigation should be completed within 5 working days and the hearing reconvened within 10 working days of the original hearing.

- 27.6 The Disciplining Officer will be expected to attend the appeal to respond to your appeal unless they have the opportunity to meet with the chair of the appeal ahead of the appeal meeting. The Disciplinary Officer will be accompanied by the Human Resources representative present at the disciplinary hearing either at the appeal hearing or when meeting the chair of the appeal. Appendix C details the expected format of the appeal.
- 27.7 After an adjournment you will be informed whether or not your appeal has been upheld and on what grounds. The chair of the appeal may increase the original sanction up to and including dismissal. Should the Manager not be in a position to confirm an outcome following adjournment, the final decision will be communicated to you in writing within **5 working days**.

There is no further right of appeal.

## **28 Implementation & training**

- 28.1 You can access this policy via the HR intranet however your line manager will ensure that hard copies are available to you if you do not have access to the internet. In addition, your line manager will inform you of any changes to the existing policy.
- 28.2 Informal training and support can be provided by the Human Resources Team for staff and managers expected to comply with this policy.

## **29 Monitoring & review**

- 29.1 As a minimum, this policy will be reviewed every three years however a review may take place sooner in response to new evidence, legislation or guidance.

## **30 Further guidance**

- 30.1 Further guidance on conducting an investigation is contained within Appendix B. Further guidance on conducting an appeal hearing is contained within Appendix C. A policy flowchart and timeline is contained within Appendix D. Standard letters and templates are available from the Human Resources department.

## **31 Linked or Associated policies/procedural documents**

- Maintaining High Professional Standards



- Fraud & Parallel Sanctions
- Alcohol & Drugs
- Serious Untoward Incident Reporting
- Performance Management
- Email Policy
- Guidance on supporting staff experiencing Domestic Abuse

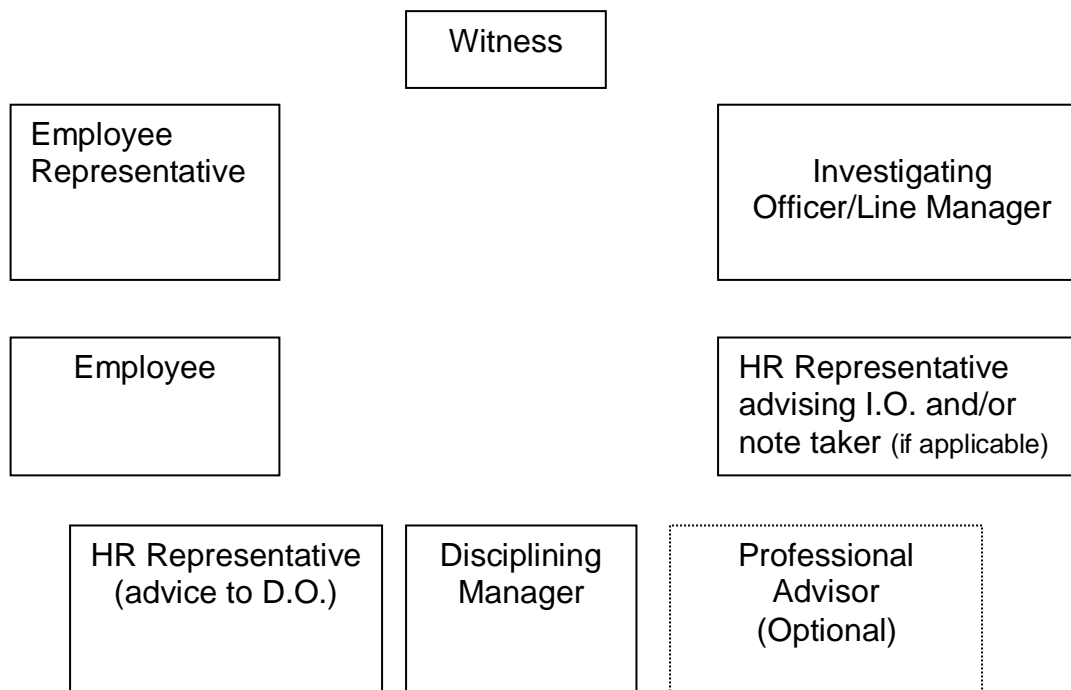
## **32 References**

- ACAS Discipline and Grievances at work
- Employment Rights Act 1996 as amended, Employment Rights Disputes Resolution Act 1998, Employment Relations Act 1999, Employment Rights Act 2004
- ISA Referral Guidance <http://www.isa-gov.org.uk/>

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## APPENDIX A - STRUCTURE OF DISCIPLINARY HEARINGS

### 1 Seating plan



### 2 Order of proceedings

1. You and your Representative are asked to enter the room at the same time as the Investigating Officer/Line Manager and HR Representative. The Disciplining Officer introduces you and your representative detailing the individual roles of those present.
2. The Disciplining Officer ensures that you have a copy of the Trust's Disciplinary Procedure.
3. The Disciplining Officer ensures that everyone present has copies of all the documentation that will be referred to during the hearing.
4. The Disciplining Officer sets out the process to be followed during the hearing, as follows:

1. The Investigating Officer/Line Manager to describe the sequence of events leading up to the hearing, present the findings of the investigation and call witnesses as required.
2. Witnesses questioned by Investigating Officer/Line Manager.
3. Witnesses questioned by Disciplining Officer/Professional Advisor as required.
4. Witnesses questioned by you or your Representative.
5. Disciplining Officer reminds witnesses of the need for confidentiality before they leave the hearing.
6. You or your Representative are invited to respond to management case and call witnesses as required.
7. Witnesses questioned by you or your Representative.
8. Witnesses questioned by Disciplining Officer/Professional Advisor as required.
9. Witnesses questioned by the Investigating Officer/Line Manager.
10. Disciplining Officer asks you or your Representative any further questions arising.
11. Investigating Officer/Line Manager and you or your Representative each asked to sum up his/her cases.
12. Adjournment for consideration of case and to reach a decision regarding the outcome. HR to provide information relating to any live disciplinary warnings at this stage.
13. Findings and sanction presented and hearing drawn to a close.

## **APPENDIX B- GUIDELINES FOR CONDUCTING AN INVESTIGATION**

### **1. Procedure for Carrying Out an Investigation**

Having established that an investigation is required, the Line Manager will consult with Human Resources and appoint an Investigating Officer.

- 1.1 The Investigating Officer will familiarise themselves with the nature of the allegation/complaint, reading any statements that have already been presented and will give consideration to other evidence.
- 1.2 The Investigating Officer will be required to talk to any witnesses to the alleged behaviour (or performance) and will, if necessary, ask them to make written statements about what happened. (See points 2.1.4 and 2.1.5)
- 1.3 In some cases, it may also be necessary for the Investigating Officer to visit the site of the alleged misconduct if this helps to put events into context.
- 1.4 From the information that has been given, the Investigating Officer will draw up a list of the people that need to be seen and will contact them to arrange a mutually convenient date/time on which to meet. Interviews should, however, be arranged to take place as soon as possible whilst events are still fresh in the minds of the witnesses and so that matters can be resolved quickly.
- 1.5 You will usually be interviewed by the Investigating Officer. You will always be given the opportunity to respond to any related allegations arising during the course of the investigation.
- 1.6 In setting up the meetings, the member of staff concerned and any witnesses should be advised that they may bring a work colleague or Trade Union representative with them.
- 1.7 The point should be made that the matters to be discussed are confidential and should not be discussed with anyone else outside the meeting.
- 1.8 The Investigating Officer will complete the investigation within 10 working days. Any variation to this must be agreed with the Head of Human Resources and you will be informed of this by your Line Manager.
- 1.9 On completion of the investigation, the Investigating Officer will produce a report that summarises the evidence and makes recommendations where appropriate. The Investigating Officer will then pass the report to the Line Manager who will draw conclusions and consider what action is required.

## 2. Procedure for Conducting Interviews as Part of an Investigation

The Investigating Officer will

- Choose a suitable place in which to hold the interview
- Ensure privacy and eliminate distractions
- Have available any supporting documentation, pen and paper

### 2.1 Structure of Interviews

At the meeting, the Investigating Officer will

- 2.1.1 Ensure that all those involved understand that the investigatory interview is part of the information gathering process and is intended to help the Line Manager to decide whether formal action is appropriate.
- 2.1.2 Remind the staff of their right to representation and check that, if they are attending on their own, they are happy to proceed without.
- 2.1.3 Remind witnesses of the need for confidentiality. Any breach of confidentiality will in itself be dealt with under the Trust's Disciplinary Procedure.
- 2.1.4 Give witnesses the opportunity to provide a statement of events if they wish but this is not essential if the process detailed in 2.1.4 is followed.

(Statements should be factual, specific, setting out the dates/times of incidents, **dated and signed**. Help in writing statements may be sought from a Trade Union representative or Human Resources. Where possible they should be typed, but if handwritten, they must be clear and legible).

- 2.1.5 Clarify the purpose and scope of the interview, advising the witness of which Trust Policy(s) the allegations is being investigated under.
- 2.1.6 Give the witnesses a copy of the original allegation/complaint, setting out the background and main points. Care should be taken not to disclose particulars of any third parties unless necessary.
- 2.1.7 Draw out information and facts, distinguishing them from opinions and inferences.
- 2.1.9 Restate in own words, ensuring that the interviewee understands and accepts the restatement. Clear up any misunderstandings.
- 2.1.10 Summarise and ask the witness whether they have any questions.

- 2.1.11 Let the witness know what happens next and the likely timescales. Explain that the statement taken at the meeting (and/or statement already provided) will be included in the investigation report, and the individual(s) under investigation may see the notes on this basis. Remind the witness that they will be expected

confirm and sign the statement as soon as possible and within a provided timescales. If statements have not been signed and returned in the timescale provided, it will be assumed that the content is agreed and the Investigating Officer will use the statement as part of the management case).

- 2.1.12 Draw the meeting to a close, thank the witness for attending and offer any support that they might need. This can be provided by Human Resources, a Trade Union Representative or Care First. Where the allegation relates to bullying or harassment, they may also be referred to a Freedom to Speak Up Guardian.
- 2.2 If, as an outcome of the initial investigation, there is fresh evidence that has not been considered by witnesses, it may be necessary to arrange a further meeting to discuss this with them.
- 2.3 There will be no victimisation of anyone who makes or helps someone else to make a complaint and circumstances such as this will in themselves constitute grounds for action under the Trust's Disciplinary Procedure.

## **APPENDIX C – Guidelines for Conducting an Appeal**

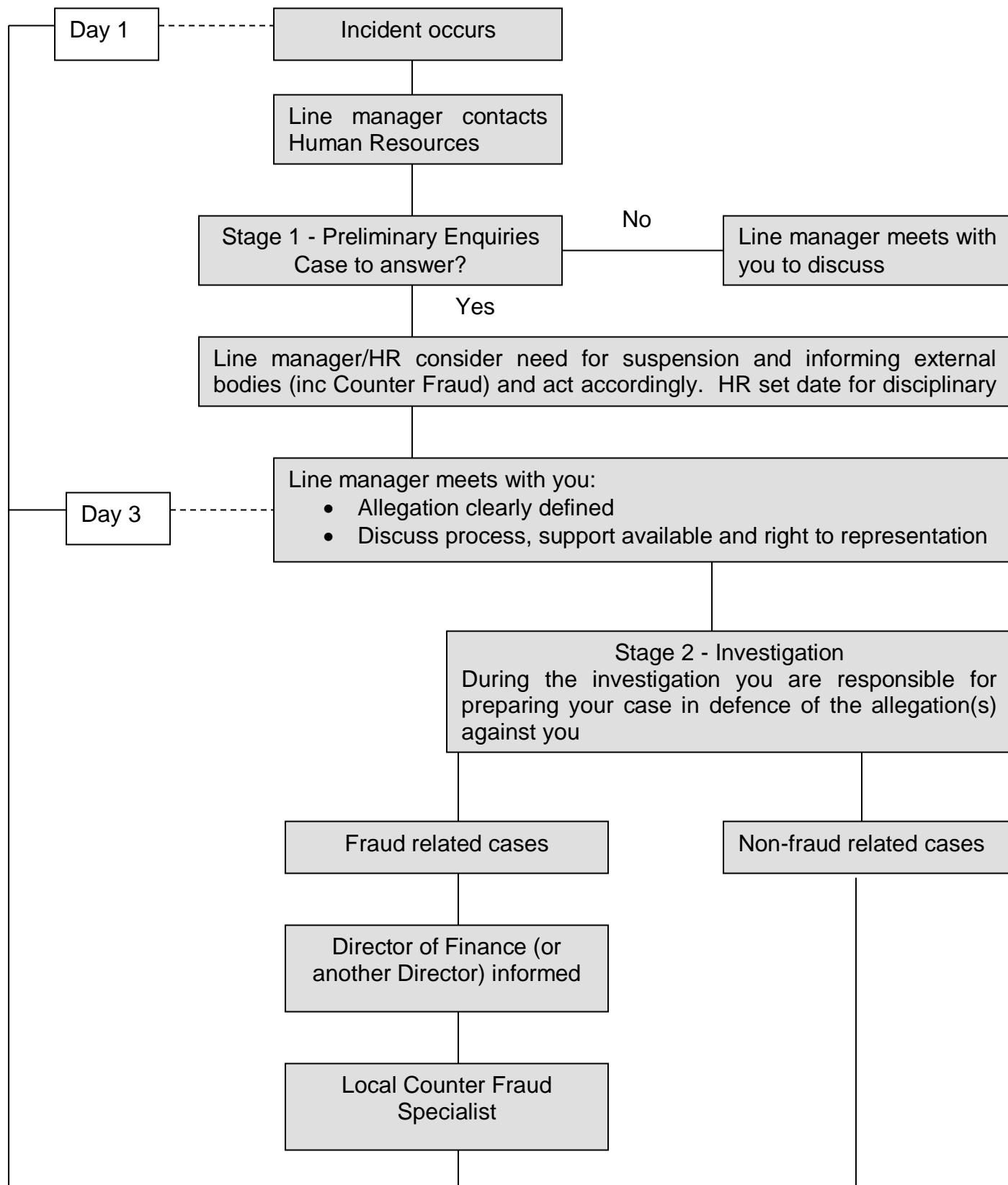
- 1.0 You and your Representative are asked to enter the room at the same time as the Disciplining Officer and HR Representative (if they are in attendance).
- 2.0 The Manager hearing the appeal introduces you and your representative detailing the individual roles of those present and the purpose of the appeal hearing.
- 3.0 The Manager hearing the appeal ensures that everyone present has copies of all the documentation that was referred to at the disciplinary hearing as well as the notes of the disciplinary hearing, the letter informing you of the outcome of the hearing and your notice of appeal.
- 4.0 The Manager hearing the appeal sets out the process to be followed during the hearing, as follows:
  - 4.1 You or your Representative are invited to outline the grounds for your appeal
  - 4.2 The Manager hearing the appeal asks you any questions arising
  - 4.3 If the Disciplining Officer is present they will be asked to respond to your appeal. If they are not present their response will be confirmed by the Manager hearing the appeal.
  - 4.4 The Manager hearing the appeal asks the Disciplining Officer any questions arising if they are present. If they are not present the Manager hearing the appeal will advise you of the questions they have already asked and detail the response given.
  - 4.5 You or your Representative are asked to sum up your case.
- 5.0 The hearing is adjourned for consideration of appeal to reach a decision regarding whether or not the appeal is upheld and on what grounds. The Manager hearing the appeal will also consider if the outcome of the appeal is to increase the original sanction up to and including dismissal. If the Disciplining Officer is not present at the appeal, they will be available for the Manager hearing the appeal to ask any



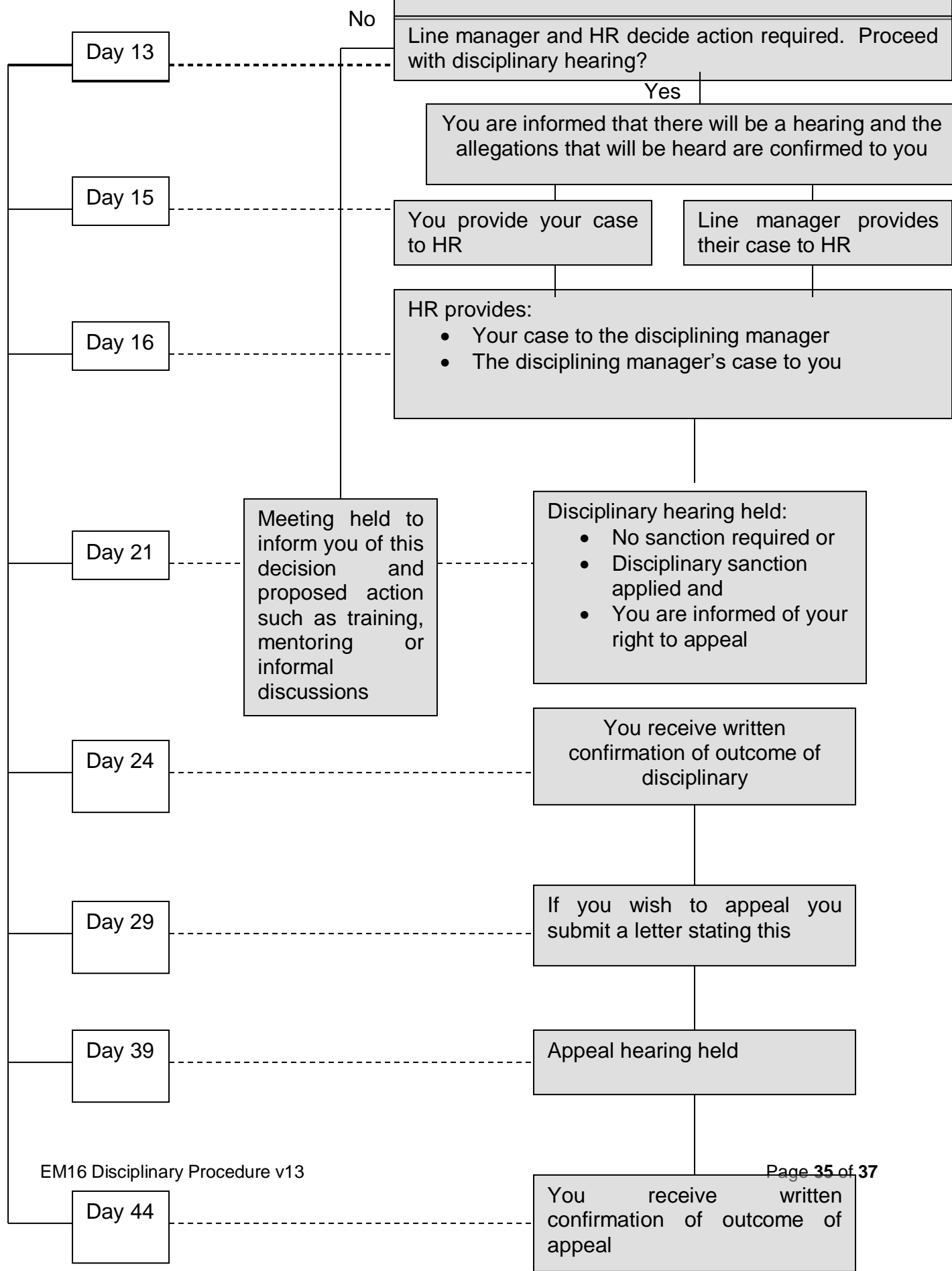
outstanding questions. Should the Manager not be in a position to confirm an outcome at that time, the outcome will be communicated to you in writing within 5 working days.

6.0 Findings presented and hearing drawn to a close.

## APPENDIX D - Disciplinary Procedure Flow Chart and Timeline



## Stage 2 investigation report completed



## **APPENDIX E – Investigation Terms of Reference**

STRICTLY PRIVATE AND CONFIDENTIAL

### **INVESTIGATION TERMS OF REFERENCE**

To XXXX, Investigating Officer  
From XXXX, Line Manager  
Date XXXX  
RE XXXX, <Job Title>

#### Introduction

XXXX is a <Job Title> based at XXXX. The term of employment began on XXXX.

#### Concerns

The fundamental concerns are that XXXX is a potential risk to staff/patients/organisation because his/her behaviour/conduct/performance/management falls beneath the standards expected of a <Job Title>. In particular:

1. Set out allegation (list each allegation separately)

#### Instructions

1. You are required to carry out a confidential investigation into the concerns above. You should carry out this investigation in a fair and impartial manner in accordance with the Trust's Disciplinary Procedure.
2. Please collate any relevant documents and interview any witnesses that you consider relevant to the concerns listed above. Please obtain witness statements from all witnesses that you interview. Any witnesses interviewed should be reminded of the confidentiality of this matter.
3. Please complete the investigation by no later than XXXX and produce a report which sets out:
  - The details of the incident and/or sequence of events and who was involved.
  - How you carried out the investigation.
  - The evidence that you gathered and the sources you gathered from.

- Any findings of fact that you have had to make as part of your investigation (e.g. if there is a conflict of evidence) and the reason for these findings.
  - Was compliance to relevant organisational/professional policies a factor?
  - Your findings in respect of each of the concerns above. In doing this please consider any explanations given by XXXX and any mitigating factors.
  - Any matters for further investigation.
4. Appended to your report should be the statements from all the witnesses that you have spoken to and copies of all the documents that you have considered as part of your investigation.
5. Once you have produced your report, please provide a copy to the Line Manager.

### Assistance

XXXX has been asked to provide HR support to you. Please do take advice from them so that they may support you in this investigation. A template report will be provided to you.

If you have any questions about the investigation or if issues arise later, please do not hesitate to contact me.

Signed \_\_\_\_\_

Name \_\_\_\_\_

Position Line Manager

Date \_\_\_\_\_