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Disciplinary Policy and Procedure


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| Author's details | Sarah Norcup, Senior HR Advisor / Sarah Vincent Workforce Business Partner |

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| Type of document | Policy |
| Target audience | All Trust staff |
| Document purpose | This document describes the procedure for managing disciplinary matters in the Trust. |

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| Approving meeting | PCDC | Meeting date | 3 rd April 2024 |
| Implementation date | 15 th February 2021 | Review date | 30 th April 2025 |

| Trust documents to be read in conjunction with | |
|--|---|
| | Safeguarding Vulnerable Adults in Stoke on Trent and Staffordshire – Interagency policy and procedure |
| 3.09 | Freedom to Speak Up Policy |
| 3.02 | Resolution and Grievance Policy |
| 3.06 | Pay Protection Policy |
| 3.23 | Supporting Staff to Improve Performance Policy |
| 3.11 | Supporting Attendance at Work Policy |

| Document change history | | Version | Date |
|-------------------------|--|---------|------|
| What is different? | Policy has been updated as part of an interim phase 1 review in the following areas to reflect current practice at NSCHT. This is in response to NHSE/I letter sent to NHS Trust CEO and HR / People Directors dated 01 December 2020 sharing good practice to improve our people practices: | | |

| | | | |
|-------------------------------|--|--|--|
| |  <p>Examples of some of the changes are as follows:</p> <ul style="list-style-type: none"> - Policy underpinned by provisions of current ACAS best practice. - Ensuring objectivity and independence is maintained. - Application of “just culture” principles. - Relevant training provided. - Concern for the health and welfare of people involved in investigation and disciplinary procedures are paramount, inclusion of point of contact for pastoral support and communication plan. - Inclusion of investigation terms of reference | | |
| Appendices / electronic forms | <ul style="list-style-type: none"> - N/A | | |
| What is the impact of change? | <p>Impact of change demonstrates the Trust's commitment at a policy level to align with:</p> <ul style="list-style-type: none"> - People practice recommendations In May 2019 from NHSE/I in response to a tragic event at Imperial College Healthcare NHS Trust (ICHT) 4 years ago. <ul style="list-style-type: none"> o Sadly, Amin Abdullah, a nurse who at the time was the subject of an investigation and disciplinary procedure, tragically took his own life. - Best practice, including a review of ICHT's policy <p>This is a phase 1 Interim policy review to demonstrate at a policy level a fair and compassionate culture in line with the recently published People Plan and People Promise</p> | | |

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| Training requirements | No specific requirement, general awareness via usual communication channels |
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| Document consultation | |
| Directorates | JNCC Policy Working Group meetings |
| Corporate services | JNCC Policy Working Group meetings |
| External agencies | JNCC and JLNC Policy Working Group Meeting |

| | |
|---------------------------------|------|
| Financial resource implications | None |
|---------------------------------|------|

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|---------------------|
| External references |
| 1.N/A |

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| Monitoring compliance with the processes outlined within this document | N/A |
|--|-----|

| Equality Impact Assessment (EIA) - Initial assessment | Yes/No | Less favourable / More favourable / Mixed impact |
|--|--------|--|
| Does this document affect one or more group(s) less or more favorably than another (see list)? | | |
| – Age (e.g. consider impact on younger people/ older people) | No | |
| – Disability (remember to consider physical, mental and sensory impairments) | No | |
| – Sex/Gender (any particular M/F gender impact; also consider impact on those responsible for childcare) | No | |
| – Gender identity and gender reassignment (i.e. impact on people who identify as trans, non-binary or gender fluid) | No | |
| – Race / ethnicity / ethnic communities / cultural groups (include those with foreign language needs, including European countries, Roma/travelling communities) | No | |
| – Pregnancy and maternity, including adoption (i.e. impact during pregnancy and the 12 months after; including for both heterosexual and same sex couples) | No | |
| – Sexual Orientation (impact on people who identify as lesbian, gay or bi – whether stated as ‘out’ or not) | No | |
| – Marriage and/or Civil Partnership (including heterosexual and same sex marriage) | No | |
| – Religion and/or Belief (includes those with religion and /or belief and those with none) | No | |
| – Other equality groups? (may include groups like those living in poverty, sex workers, asylum seekers, people with substance misuse issues, prison and (ex) offending) | No | |

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| population, Roma/travelling communities, and any other groups who may be disadvantaged in some way, who may or may not be part of the groups above equality groups) | | |
| If you answered yes to any of the above, please provide details below, including evidence supporting differential experience or impact. | | |
| If you have identified potential negative impact: - Can this impact be avoided? Staff are required to complete mandatory education to ensure a safe service provision - What alternatives are there to achieving the document without the impact? Can the impact be reduced by taking different action? | | |
| Do any differences identified above amount to discrimination and the potential for adverse impact in this policy? | | |
| If YES could it still be justifiable e.g. on grounds of promoting equality of opportunity for one group? Or any other reason | | |
| Enter details here if applicable | | |
| Where an adverse, negative or potentially discriminatory impact on one or more equality groups has been identified above, a full EIA should be undertaken. Please refer this to the Diversity and Inclusion Lead, together with any suggestions as to the action required to avoid or reduce this impact. Discussed the above with the Inclusion & Diversity Lead – adjustments offered and made ensured equality and inclusion. For advice in relation to any aspect of completing the EIA assessment, please contact the Diversity and Inclusion Lead at Diversity@combined.nhs.uk | | |
| Was a full impact assessment required? | | |
| What is the level of impact? | | |

Training Needs Analysis for the policy for the development and management of Trust wide procedural / approved documents

Please tick as appropriate

| | |
|---|---|
| There is no specific training requirements- awareness for relevant staff required, disseminated via appropriate channels (Do not continue to complete this form-no formal training needs analysis required) | ✓ |
| There is specific training requirements for staff groups (Please complete the remainder of the form-formal training needs analysis required-link with learning and development department. | |

| Staff Group | ✓ if appropriate | Frequency | Suggested Delivery Method (traditional/ face to face / e-learning/handout) | Is this included in Trust wide learning programme for this staff group (✓ if yes) |
|---|------------------|-----------|---|---|
| Career Grade Doctor | | | | |
| Training Grade Doctor | | | | |
| Locum medical staff | | | | |
| Inpatient Registered Nurse | | | | |
| Inpatient Non-registered Nurse | | | | |
| Community Registered Nurse | | | | |
| Community Non Registered Nurse / Care Assistant | | | | |
| Psychologist / Pharmacist | | | | |
| Therapist | | | | |
| Clinical bank staff regular worker | | | | |
| Clinical bank staff infrequent worker | | | | |
| Non-clinical patient contact | | | | |
| Non-clinical non patient contact | | | | |

Please give any additional information impacting on identified staff group training needs (if applicable)

Please give the source that has informed the training requirement outlined within the policy i.e. National Confidential Inquiry/NICE guidance etc.

Any other additional information

Completed by

Date

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1 Policy Statement and Purpose

- 1.1 This document describes the procedure for managing disciplinary matters in the Trust.
- 1.2 This policy supports application of our Trust Values which guide our actions and behaviour as an employer and provider of services. These are:-

Proud to CARE:

- Compassionate
- Approachable
- Responsible
- Excellent

- 1.3 Our vision at North Staffordshire Combined Healthcare NHS Trust is “To be Outstanding” – in all that we do and how we do it. This vision is a “golden thread” instilled within our policies and processes and is achieved and continually improved through the high standards of conduct and behaviour exhibited by our staff and through our Trust Values: Compassionate, Approachable, Responsible and Excellent.
- 1.4 Our commitment is to foster and promote a culture that will aim to learn from any mistakes that may arise and to help our employees to improve and develop where their actions are in breach of Trust policies, or where their conduct fails to meet the expected behaviour standards.
- 1.5 This policy has been developed to drive an efficient process and framework to support fairness, transparency and learning with an intended outcome and focus on staff feeling confident and empowered to speak up when something has gone wrong, rather than fearing the placement of blame. When such circumstances arise, an objective examination should take place without undue delay to establish whether or not there is evidence to support the initiation for a formal investigation process; or whether an informal approach is more appropriate with any following learning outcome and improvements being acknowledged and implemented to the benefit of all employees and the Trust as a whole.
- 1.6 This policy should be applied equitably to all employees ensuring that there is no discrimination on the grounds of age, disability, race, ethnicity, gender, gender reassignment, sexual orientation, religion, belief, offending background, trade union activities, family circumstances or domestic/care arrangements.
- 1.7 The Trust’s Disciplinary Policy and supporting processes are fully compliant with the [ACAS Code](#) and best practice on disciplinary procedures and other non-statutory ACAS guidance; the [GMC’s ‘principles of a good investigation’](#), and other relevant professional bodies if/when they become available. Regular

reviews are carried out in a timely manner as part of the Trust's Policy review process. However, if the ACAS code is changed or legislation changes prior to the review date, a review will be instigated. This policy is negotiated as part of the Trust's Joint Negotiating and Consultation Committee (JNCC).

- 1.8 If it becomes apparent that an employee's capability to perform effectively in their job, for example due to a training need, is deemed to be the overriding reason for a mistake, this will be reviewed and managed in line with the Trust policy 3.23 Supporting Staff to Improve Performance Policy

2 Scope

- 2.1 This procedure applies to all staff employed by the Trust. The procedure will be applied equally to all employees, ensuring that there is no unlawful discrimination.
- 2.2 In the case of Medical and Dental staff, this procedure will apply to any matters concerning misconduct. However, where the alleged misconduct relates to matters of a professional nature or issues of professional conduct, the investigating officer must obtain appropriate independent professional advice. Similarly, where a case involving issues of professional conduct proceeds to a hearing under this policy, the panel must include a member who is medically qualified (in the case of doctors) or dentally qualified (in the case of dentists) and who is not currently employed by the organisation.
- 2.3 In exceptional circumstances, where an employee has less than 2 years continuous service with the Trust, the Trust may decide not to follow this procedure or to follow an abridged version of this procedure.

3 General principles

- 3.1 The procedure is designed to help and encourage employees to achieve and maintain standards of conduct acceptable to the Trust.
- 3.2 Where deemed appropriate the Trust will use formal counselling, to address misconduct issues before implementing the full disciplinary procedure.
- 3.3 The Trust recognises that it is a manager's responsibility to ensure that employees are aware of the standards and conduct expected of them and to give them assistance and support to meet them. This will include the provision of induction training, regular discussions as part of the personal review process and appropriate training and development.
- 3.4 At all stages of the procedure employees will have the right to be represented by a Trade Union representative or accompanied by a work colleague.
- 3.5 At the earliest appropriate stage the employee will be advised in writing of the

general nature of the complaint against them and will be given the opportunity to state their case before any decision is made. Different arrangements apply in safeguarding cases, please see section 8.

- 3.6** This procedure may be implemented at any stage.
- 3.7** An employee will have the right to appeal against any disciplinary sanction.
- 3.8** An employee who is called to give evidence as part of a disciplinary investigation or interview shall have the right to be represented by a trade Union representative or accompanied by a work colleague.
- 3.9** Confidentiality will be maintained at all stages of the procedure.
- 3.10** In the case of Medical and Dental staff, matters of misconduct will be managed in line with this policy, however the provisions relating to investigation and exclusion as laid out within 'Maintaining High Professional Standards in the NHS' will be applied.
- 3.11** Individuals should not be appointed as commissioning managers, investigating officers or panel members unless they have received related up to date training and through such training, are able to demonstrate the aptitude and competencies (in areas such as awareness of relevant aspects of best practice and principles of natural justice, and appreciative of diversity and inclusion principles required to undertake these roles. This includes, but is not limited to, race and cultural considerations, taking steps and undergoing training to enable inclusion to mitigate against unconscious bias) . This training includes, but is not limited to, coaching from members of HR.
- 3.12** Before commencing investigation and disciplinary procedures, appointed commissioning managers, investigating officers and other individuals charged with specific responsibilities should be provided with the resources that will fully support the timely and thorough completion of these procedures. Within the overall context of 'resourcing', the extent to which individuals charged with such responsibilities (especially members of the disciplinary panels) are truly independent should also be considered.
- 3.13** Concern for the health, wellbeing and welfare of people involved in investigation and disciplinary procedures should be paramount and continually assessed. Appropriate professional occupational health assessments and intervention should be made available to any person who either requests or is identified as requiring such support.
- 3.14** The development and application of our local investigation and disciplinary procedures are informed and underpinned by the provisions of current best practice, principally that which is detailed in the [ACAS 'code of practice on disciplinary and grievance procedures'](#) and other non-statutory ACAS guidance; the [GMC's 'principles of a good investigation'](#), and other professional bodies

if/when they become available. All commissioning managers, investigating officers and disciplinary panel members must review this best practice when involved in any investigation and disciplinary matters.

- 3.15** All measures should be taken to ensure that complete independence and objectivity is maintained at every stage of an investigation and disciplinary procedure, and that identified or perceived conflicts of interest are acknowledged and appropriately mitigated (this may require sourcing of independent external advice and expertise).
- 3.16** Consistent with the application of 'just culture' principles, which recognise that it is not always appropriate or necessary to invoke formal management action in response to a concern or incident, a comprehensive and consistent decision-making methodology should be applied that provides for full and careful consideration of context and prevailing factors when determining next steps ([Appendix 4](#)).
- 3.17** In all decision-making that relates to the application of sanctions, the principle of plurality should be adopted, such that important decisions which have potentially serious consequences are very well informed, reviewed from multiple perspectives, and never taken by one person alone.
- 3.18** A communication plan should be established with people who are the subject of an investigation or disciplinary procedure, with the plan forming part of the associated terms of reference. The underlying principle should be that all communication, in whatever form it takes, is timely; comprehensive; unambiguous; sensitive; and compassionate.
- 3.19** Mechanisms are established by which comprehensive data relating to investigation and disciplinary procedures is collated, recorded, and regularly and openly reported at the People, Cultural and Development Committee, which reports directly to Trust Board.

4 Supporting Employees

- 4.1** Being notified of a disciplinary matter and subject to allegations of misconduct can be an upsetting and stressful time for the employee and other colleagues involved.
- 4.2** It is important throughout the process that the employee is supported from a health and wellbeing perspective and therefore an appropriate point of contact will be allocated who is independent from the investigation. The point of contact will establish a communication plan and be able to provide pastoral support. Frequency of contact and support can be discussed to best suit the needs of the employee, however, once weekly contact is recommended in the first instance. The underlying principle should be that all communication, in whatever form it takes, is timely; comprehensive; unambiguous; sensitive; and compassionate.

- 4.3** The provision of the independent point of contact is a supportive measure for confidential communication with the intention to help to support and alleviate stress or other mental health issues that may arise. Communication and feeling informed and supported is key throughout the process. The Trust acknowledges that support is also important once a disciplinary process has concluded and the support from the point of contact will be available. A communication plan can be drawn up between the employee and the point of contact to ensure regularity of contact, tailored support and open communication.
- 4.4** Where there are concerns about an employee's health or wellbeing, Occupational Health advice will be obtained.
- 4.5** All employees, including those who are involved as witnesses, will be supported and will have access to Occupational Health and the Trust's Staff Counselling Service.
- 4.6** Where a person who is the subject of an investigation or disciplinary procedure suffers any form of serious harm, whether physical or mental, this should be treated as a 'never event' which therefore is the subject of an immediate independent investigation commissioned and received by the board. Further, prompt actions should be taken in response to the identified harm and its causes and whether the matter is RIDDOR reportable In line with [HSE guidance](#). Information with regards to 'never events' is outlined in [Appendix 3](#).

5 Conduct Counselling

- 5.1** In cases deemed to be minor misconduct, a manager may decide to undertake conduct counselling with the employee as an alternative to instigating all or part of the formal disciplinary procedure. This part of the process is informal and holds no right of appeal. The following apply:
- Conduct counselling will normally take place on a one to one basis
 - The purpose of the counselling will be to make the employee aware of the areas of misconduct and of the standards required.
 - Evidence will be discussed and the reasons for the misconduct will be explored and support/training offered where required. These will be documented.
 - A set of expectations will be set out to assist the employee to achieve the required improvement in their conduct and a timescale within which an improvement is required will be set out.
 - Formal disciplinary action may result if the necessary improvement in conduct is not forthcoming within a defined timescale
 - If it becomes apparent that the matter is more serious, then the discussion should be adjourned and the employee advised that it may be taken forward under the formal disciplinary procedure.

- 5.2** The content of each counselling meeting should be confirmed in writing with the employee and a copy kept on the personal file (see [appendix 5](#)).

6 Resolution Meeting

- 6.1** A resolution meeting is an alternative procedure in which a disciplinary matter can be considered and if appropriate a disciplinary warning (up to, and including, a final written warning) can be given to an employee. A disciplinary meeting is not suitable in cases of gross misconduct, when a referral may be made to a professional body, or where an employee is already subject to a final written warning or if some, or all, of the allegations are denied. The resolution meeting would take the form of a disciplinary meeting, rather than a disciplinary hearing, and would only be appropriate where the employee has taken full responsibility for their actions and accepted the allegations against them. It enables a faster resolution and closure to a disciplinary matter for the employee. It is a less formal meeting than a disciplinary hearing, consisting of the Commissioning Manager (which can be either the Commissioning Manager or a nominated deputy), HR representative, the employee and their representative (where applicable). By their nature, these discussions are “without prejudice” and should not form part of the Investigation Pack, any other documentation, or be verbally referred to at a later date should the allegation result in a hearing.
- 6.2** At the meeting, the Commissioning Manager (or nominated deputy) will feedback the outcome of the case review and the employee will have the opportunity to give a response to the allegations and raise any mitigation. If no further issues come to light, and before making any decision, the Commissioning Manager (or nominated deputy) should adjourn and take account of the employee’s disciplinary and general record, length of service, actions taken in any previous similar cases, the explanations given by the employee and whether the intended disciplinary action is reasonable under the circumstances. The Disciplining Manager may issue a disciplinary warning up to and including a final written warning. This will be confirmed in writing, with a copy placed on the employee’s personal file. The employee will have the right to appeal to the next most senior manager above the Disciplining Manager (or an appropriate equivalent) and will have 14 calendar days from receipt of the letter to do so.
- 6.3** A resolution meeting can be considered at any time during a Disciplinary Process, up to the point when a Disciplinary Hearing has been deemed appropriate by the Commissioning Manager, who will be supported by a member of the HR department. Where the original Commissioning Manager is unavailable, for example due to annual leave, it may be appropriate for this decision to be made by another Senior Manager, such as the Clinical Director or Director of Operations.

7 Disciplinary Procedure

7.1 Suspension

Suspension (termed 'exclusion' under 'Maintaining High Professional Standards'; (See 3.10). In some serious cases it may be necessary for the manager to consider whether it is appropriate to implement a period of suspension whilst the investigation is carried out. Suspension is not a disciplinary sanction and there is no assumption of guilt. This may be required if genuine risks are identified and all alternative options have been ruled out, for example where:

- an employee's presence constitutes a risk to him/herself,
- an employee's presence constitutes a risk to the Trust
- an employee's presence constitutes a risk to patients or staff
- an employee's presence constitutes a risk to the investigation

7.2 Prior to taking a decision to suspend full consideration will be given to alternatives to suspension and could include the employee temporarily:

- being moved to a different area of the workplace / Trust
- changing their working hours
- being placed on restricted duties including having reduced access to Trust systems where appropriate
- working under supervision
- being transferred to a different role within the organisation (the role should be of a similar status to their normal role, and with the same terms and conditions of employment).
- Other meaningful activities that the individual could do should be actively explored. This could include working remotely from home, carrying out activities such as audits, research or teaching.

7.3 Any decision to suspend/exclude an individual should not be taken by one person alone, or by anyone who has an identified or perceived conflict of interest. Except where immediate safety or security issues prevail, any decision to suspend/exclude should be a measure of last resort that is proportionate, time bound and only applied when there is full justification for doing so. The continued suspension/exclusion of any individual should be subject to appropriate senior-level oversight and sanction.

7.4 Any decision to suspend/exclude an individual is taken by a minimum of two Executives (The Director of People, OD and Inclusion, and either the Medical Director/Director of Nursing & Quality/Director of Operations (dependent on the allegation and registered professional status). The Executive Directors are briefed by the respective Associate Director and Workforce BP. Out of hours the Trust has an on-call system which ensures that an appropriate senior on call manager would be contacted who in turn would contact the Executive

Director on call before a decision to suspend/exclude. The matter is then picked up at the earliest convenience and further consideration given to ensure the suspension/exclusion is required e.g. review fact find information. With regards to Exclusions for medical staff, the above principles apply along with oversight provided to the Medical Director and Appointed Non-Executive Director, in accordance with Maintaining High Professional Standards requirements.

- 7.5** Suspension in these circumstances will always be on full pay including any allowances or enhancements that the employee would have normally received. These enhancements will be calculated based on an average of the preceding twelve weeks to the date that the suspension commenced.
- 7.6** The decision to suspend is not taken lightly and the Trust seeks to ensure that staff remain as supported as possible if this step is deemed necessary. In order to facilitate this, a Point of Contact will be allocated to a suspended member of staff who is responsible for establishing a communication plan, ensuring the staff member continues to receive routine organisational communications and remains in contact with the organisation while they are suspended or restricted. The Trusts Staff Support and Counselling Service will also be offered to support staff when suspended.
- 7.7** Once a decision has been made regarding suspension, the relevant Associate Director must be assured that the manager who gives this message is supported and competent to do so, whereby they demonstrate effective leadership in a human, compassionate and sensitive manner that takes into account the needs of the person, alongside following the process requirements. Managers delivering this message should arrange for a Trade Union representative to be available (where the individual is represented and where this is practicable subject to availability given the urgent timescales). Managers should also consider the most appropriate venue to deliver the message, identify what support is in place for the individual after receiving this message; such as the time needed to digest the message and if the individual wants to discuss with their trade union representative (where applicable) and or / their assigned point of contact, how they will get home safely, and their support at home.
- 7.8** When notifying an employee of the decision to suspend, every effort will be made for the manager to meet with them in person and the meeting will be followed up in writing. The employee will be notified:
 - of the reason for the suspension and that it carries no assumption of guilt (subject to safeguarding procedures – see [Appendix 2](#))
 - of the initial duration of the suspension and arrangements for any extension
 - of their point of contact who is a person allocated to the suspended member of staff responsible for ensuring that the staff member continues to receive routine organisational communications and remains in contact with the

organisation while they are suspended and for pastoral support

- that suspension is on full pay
- Of any conditions attached to the suspension, in particular the need to maintain confidentiality and to obtain permission from the manager before attending the workplace or other Trust site or contacting staff, and the need to remain available during normal working hours.
- If it is necessary to explain the employee's non-attendance at work, the manager and the employee will discuss and agree a statement for how they would like it to be communicated to colleagues and/or patients. The matter must be kept confidential, however, sometimes if no explanation is given people will make assumptions. Acknowledging the non-attendance but ensuring a confidential and neutral explanation is advisable for the wellbeing of the employee during suspension.

7.9 The terms of the suspension and the employee's obligations will also be provided which includes:

- not doing anything that could interfere with the investigation
- treating the matter confidentially
- seeking permission from the manager to contact colleagues
- if they wish to contact witnesses to support their case, they should do this via their manager or, if different, the manager dealing with the matter or their Trade Union representative or companion
- except for medical appointments, they must not visit Trust premises unless given permission by the line manager or a named deputy to attend for a specific purpose, e.g. a meeting a representative, an investigation meeting, a counselling appointment, a medical consultation
- the requirement to remain available between 9.00 am to 5.00pm, Monday to Friday, excluding public holidays, to attend meetings. Permission for any periods of absence, e.g. annual leave, must be requested

7.10 The **suspension will be for the minimum time necessary and will be reviewed on a regular basis** (see MHPS for formal reviews in the case of doctors and dentists). **Suspension will be lifted if the reason for suspension no longer exists and employee will be supported back in to the workplace.**

8 Safeguarding

8.1 In cases of allegation of abuse involving vulnerable adults or children, the issue should be reported immediately to the senior manager on duty, who will then report to the Executive Lead for Safeguarding and then through the process as laid out in the Safeguarding Policy; Managing Allegation of Abuse (see [Appendix 2](#) for additional information).

9 Counter Fraud cases

- 9.1** In cases which relate to allegations of fraud, the process may result in a criminal investigation by the NHS counter fraud agency which is different to the normal disciplinary process route.

10 Investigation

- 10.1** The overriding consideration should be that the investigation is undertaken promptly and in sufficient detail to establish the relevant facts. An indicative timescale may be given for completion of the investigation and where it is felt that this timescale cannot be achieved the employee and their representative should be advised of the likely further time needed by the Investigating Officer.

- 10.2** All measures should be taken to ensure that complete independence and objectivity is maintained at every stage of an investigation and disciplinary procedure, and that identified or perceived conflicts of interest are acknowledged and appropriately mitigated.

- 10.3** Prior to commissioning a formal investigation the Commissioning Manager will ensure careful consideration of context and prevailing factors should be reviewed when determining next steps. This is consistent with the application of 'just culture' principles, which recognises that it is not always appropriate or necessary to invoke formal management action, such as suspension or disciplinary investigation, in response to a concern or incident. This triaging process is to ensure the health, safety and wellbeing of our employees within a restorative and just culture context. The decision making methodology for triaging employee relations cases is [Appendix 4](#) of this policy document.

- 10.4** The Commissioning Manager will be the person to whom the investigating officer is accountable.

- 10.5** Where it is deemed that an investigation is required, the Commissioning Manager will appoint an Investigating Officer to establish all the relevant facts. This will be achieved through a process of interviews and consideration of any other appropriate information/ documentation and to produce a report in which the Investigating Officer will make a recommendation as to whether or not, on the balance of probabilities, there is a case answer. After the commissioning manager completes a detailed review of the report provided by the Investigating Officer, the Commissioning Manager will decide if the matter should be considered further in a disciplinary hearing.

- 10.6** The Commissioning Manager will formulate the terms of reference for the investigation and will provide this to the Investigating Officer. The terms of

reference will clearly explain what the investigating officer's role and responsibilities are and also the scope of the investigation.

10.7 All Investigating Officers should have received training: a central record will be held by the HR Department.

10.8 The Commissioning Manager should notify the employee at the earliest opportunity of:

- The general allegation
- That an investigation will be undertaken
- That they will be interviewed as part of that investigation
- How long the investigation is likely to take if they are able to make such an assessment.

10.10 Prior to interviewing the employee against whom allegations have been made, the investigating officer should notify the employee in writing of the general allegations. During the course of an investigation, it may be that allegations are amended, added to or disproven, in which case the employee will be informed accordingly. The investigating officer must avoid reaching early conclusions and must not focus only on those areas that may support one particular viewpoint. During the investigatory interview the employee should be given every opportunity to refute the allegations, to give their own account of events and to explain any mitigating circumstances.

10.11 Any employee interviewed as part of an investigation shall have the right to be represented at the interview by a Trade Union representative or accompanied by a work colleague. A note of the meeting will be produced by the Trust either from notes taken at the interview or a recording made of the interview. The employee will be provided with a copy of the notes.

10.12 All employees must be advised at the beginning of the interview that any information given may be used at a disciplinary hearing, if it is decided that such a hearing should take place.

10.13 Having gathered all the relevant facts, the investigating officer must produce a report which will be submitted to the Commissioning Manager.

10.14 The report should contain details of those employees interviewed as part of the investigation together with any other findings and relevant documentation. Copies of employee statements/meeting notes should be provided as an appendix to the report.

10.15 Having considered the investigation report the Commissioning Manager, supported by HR, will decide what action to take and advise the employee accordingly.

11 Disciplinary Hearing

11.1 In circumstances where a disciplinary hearing is deemed appropriate, then the commissioning manager should set a date for the hearing. Due regard should be given for the need for timeliness, but allowing sufficient time for the employee to arrange a companion and to prepare for the hearing.

11.2 A minimum of 7 calendar days' notice of a disciplinary hearing will be given.

11.3 Arrangements should be confirmed in writing to the employee giving details of:

- The date, time and venue of the hearing;
- The allegations against the employee;
- The right to be represented by a Trade Union representative or accompanied by a work colleague
- who will be present at the hearing on behalf of management;
- the names of any witnesses that will be called; copies of any relevant documents including the full investigation report;
- the requirement for the employee/management to notify the manager of any witnesses they intend to call; and
- Whether the employee could be dismissed as a result of the hearing, and the fact that if the allegations could amount to gross misconduct, summary dismissal is a potential outcome.

11.4 Disciplinary panels will normally comprise two managers (usually the commissioning manager) and one other, and a member of the HR Department. If professional, technical or otherwise sufficiently complex issues are involved, then a senior manager of the appropriate profession may also sit on the panel. Neither the second manager or the professional/technical manager should have been involved at an earlier stage.

11.5 If the employee has any additional evidence or information that they would like to be considered at the hearing, this information is to be submitted no less than 3 calendar days prior to the hearing.

11.6 Witness statements will be accepted by the panel as read; however the employee or investigating officer can call witnesses to the hearing.

11.7 If the employee wishes to call any witnesses, the names of the witnesses must be submitted to the panel no less than 3 calendar days prior to the hearing.

11.8 Disciplinary hearings may be recorded by the Trust with the mutual

consent of the employee, and/or a note-taker will be present.

11.9 The hearing process will normally be as follows:

- At the beginning of the hearing the allegations will be set out
- The procedure to be followed will be explained
- Management side will present their case, calling any witnesses that may assist in the presentation of the facts
- The employee will present their case, calling any witnesses
- The panel will adjourn and reach a decision

12 Disciplinary Sanctions

If it is decided that disciplinary action is required, then a number of measures are available. Although these are described as a series of sequential warnings, the procedure can be implemented at any stage depending on the nature and seriousness of the offence. The seriousness of the misconduct will determine the level of disciplinary action to be taken.

12.1 First written warning

In the case of offences that need action over and above counselling or where there is an accumulation of minor offences, the employee may be given a written warning, setting out the nature of the offence and if appropriate what improvement is required within what timescale. The likely consequences of any further offence or failure to improve performance should also be made clear. The First Written warning be confirmed in writing and will remain current for a maximum period of 12 months.

12.2 Final written warning

Continued misconduct or serious misconduct

In the case of further offences of misconduct or a first instance of serious/gross misconduct, the employee may be given a final written warning, setting out the nature of the offence and containing the statement that any recurrence or further misconduct may lead to dismissal. The warning will remain current for up to 2 years depending on the nature of the offence.

Final written warning and other measures as an alternative to dismissal

Where the decision of the Disciplinary panel is to dismiss the employee, they may go on to determine that, as an alternative to dismissal it is preferable to impose a final written warning in addition to other measures. These measures include down-grading, where appropriate, without protection and/or transfer without protection, as well as retraining. Where down- grading is applied the

employee will be advised of the period before they may be able to apply for vacant posts within the Trust on their former grade.

12.3 Dismissal

The final measure in the procedure is dismissal with the appropriate period of notice or payment in lieu of notice. The manager has discretion to decide whether the employee will be required to work their notice.

12.4 Summary dismissal

In cases of gross misconduct, summary dismissal without notice pay will apply.

13 Examples of Misconduct

The following list gives examples of the circumstances that could lead to disciplinary action (this list is not exhaustive).

- Employees are expected to combine prompt and efficient service with respect for the feelings of others, including patients, visitors and colleagues in line with the Trust values. Bullying and Harassment
- Employees refusing to work
- Employees must be open, honest and truthful in all their dealings with patients, colleagues and the public.
- Employees are expected to attend for duty for the hours detailed in their contracts of employment and as agreed with their managers.
- Being absent without permission. In cases of sickness or sudden domestic emergency, employees must inform their manager in accordance with Trust policy.
- During periods of sickness absence, employees are expected to keep their manager informed of their progress and submit GP fit note certificates promptly.
- Misuse of social media affecting the reputation of the Trust or causing colleagues distress/offence
- Employees must carry out reasonable instructions.
- Anyone undertaking other employment outside their contractual hours must ensure that it does not hinder or conflict with the interests of their employment with the Trust or their duty to abide by relevant professional codes of conduct or have any adverse effect upon their work performance. Employees should inform their managers of employment outside working hours.
- Breach of confidentiality

- Misuse of authorised access to information and systems, unauthorised access to information and systems, and any activity that could breach the security of the Trust ICT Infrastructure and any other breach of the Trust Information Security Policy
- Sleeping on duty (this does not include sleeping during agreed breaks or out of hours arrangements)
- Employees are expected to comply with health and safety requirements.
- Employees are expected to treat Trust facilities and property with respect.
- Employees must inform their managers of any charge, caution or conviction, relating to acts committed on or off duty, at the earliest possible opportunity.
- Failure to maintain professional registration where it is a requirement of the job (see requirements as per Trust Professional Registration policy)
- Employees should at all times undertake their work in accordance with Trust and departmental policies and procedures and, where appropriate, their professional codes of conduct.
- People are expected to display positive attitudes and supportive behaviours in line with Trust values in their interactions with other people
- Breaches of professional codes of conduct and Trust policies
- Behaviour outside of work that could affect the professional reputation of the individual or the reputation or operations of the Trust.

14 Examples of Gross Misconduct

Examples of gross misconduct could include (this list is not exhaustive):

- Serious lack of care to duties or other people which could result in serious loss, damage or injury ('gross negligence')
- Theft
- Fraud
- Deliberate falsification of records or documents
- Working without valid "Right to Work" documentation
- Working without statutorily required qualifications
- Working elsewhere whilst on sick leave
- False declarations made during the recruitment process
- Receipt of money, goods, favours or excessive hospitality in respect of services rendered while a Trust employee
- Physical violence
- Verbal abuse
- Harassment or bullying
- Unlawful discrimination
- Being unfit for duty through the effects of alcohol or drugs
- Abuse, misuse or deliberate damage of Trust property or equipment
- Serious breach of data security requirements, any activity that could breach security of the Trust ICT Infrastructure and any other serious breach of the

Trust Information Security Policy including serious misuse of authorised access / unauthorized access to information and systems.

- Serious breach of Health and Safety and other statutory rules
- Serious breach of a professional code of conduct as determined by the professional body
- Failure to act impartially or to declare interest in a contract or business in which the Trust is engaged or considering
- Scientific Misconduct - Fabrication, falsification, plagiarism or deception in proposing, carrying out or reporting results of research
- Serious breach of trust and confidence - Any act which causes irreparable damage to the relationship of trust and confidence between the employee and the Trust.

15 Notification of Outcome

15.1 When the decision has been taken on what action to take the hearing should be reconvened with all parties present. The manager should then explain the decision that has been reached and any conditions attached to it. The right of appeal and how to exercise it should also be explained.

15.2 Where there is insufficient time on the day to make a decision due to the amount of information presented, the hearing manager should advise the employee within what timescale they will notify them of the outcome and the method of notification.

15.3 The manager will confirm the outcome of the hearing in writing to the employee with a copy to the representative as soon as reasonably practicable and within no later than 7 calendar days of the hearing, any extension to this timeframe will be outlined from the outset A copy should remain on the personal record of the employee. The letter should:

- State the precise nature of the misconduct
- State if appropriate the improvement in conduct which is required and the timescale for such improvement;
- Specify the disciplinary action being taken and how long that action will remain on the employee's personal record;
- Specify any other action being taken;
- Indicate the consequences of any further offence or failure to improve performance; and
- Inform the employee of their right of appeal and how to exercise that right.
- Give the reasons for the decision where dismissal is involved

16 Action in particular cases

16.1 Trade Union representation

Where disciplinary action is being considered against an employee who is a trade union representative the normal disciplinary procedure should be followed. Depending on the circumstances, for example if the allegations relate to Trade Union duties, a discussion relating to the matter will take place between the Associate Director of Human Resources and the appropriate official employed by the union, after notifying the employee's agreement.

16.2 Criminal offences

If an employee is arrested on a criminal charge or served with a summons on criminal charges, whether or not arising out of their employment, their manager will need to consider whether or not the alleged offence has any implications for the duties of the individual in the Trust's employment.

The Trust reserves the right to suspend the employee from duty pending the outcome of any police investigation or criminal proceedings. Such suspension will be on full pay. In most cases it will be appropriate to proceed with internal investigations without waiting for the result of any criminal proceedings.

Where an employee is detained and unavailable for work due to criminal proceedings, they will be suspended on no pay. At the point they are released and become available for work a judgement should be made on whether they should be suspended on full pay pending an investigation.

Every effort should be made to enable the employee to respond to the allegations ahead of a hearing and where possible the hearing should be convened once the individual has been released. However the Trust retains the right to hold a hearing in the absence of the employee where a significant detention is likely.

17 Delays

17.1 Unavailable employee

The Trust will only consider requests for postponement of investigation and disciplinary meetings/hearings where there is a good reason for inability to attend. If the employee is unable to attend the rearranged meeting/hearing, the Trust reserves the right to hold the meeting/hearing in their absence.

17.2 Unavailable companion

Where delays are due to unavailability of union representatives, then only one request for postponement will be accepted. A new date will be given and the employee will be expected to arrange representation.

17.3 Failure to attend re-arranged hearing

Where an employee is unable or unwilling to attend a re-arranged disciplinary hearing without good cause the Trust will make a decision in their absence based on the evidence available at that time.

17.4 Ill health absence

Where a postponement is requested due to ill health, the hearing may be deferred on review of all the available evidence and, if it is, it will be reconvened at the earliest opportunity.

17.5 Where deemed necessary in these cases, and if further requests for postponement are submitted, advice will be sought from Occupational Health to ensure that the employee is well enough to participate and that all relevant support is being offered and reasonable adjustments made.

17.6 Where the employee is unable to attend a hearing within a reasonable time frame the Trust reserves the right to proceed with the hearing in their absence. The individual may be represented in their absence at the hearing by their trade union or a colleague and may make written submissions.

18 Levels of Authority

18.1 Wherever possible, disciplinary action, other than dismissal, should be dealt with by the employee's immediate line manager supported by a suitable person from HR. When the sanction may be dismissal, then, this will be dealt with by a manager at least 2 levels above the employee. This will normally be a member of a Directorate Senior Management Team or a manager at an equivalent level.

18.2 Where professional issues are involved and the manager hearing the case does not come from that discipline, a senior manager of the appropriate discipline will sit on the panel.

19 Appeals procedure

19.1 Where an employee wishes to appeal against the imposition of any formal disciplinary action they may do so following this procedure:

- Appeals against disciplinary action should be lodged with the next level of manager within 14 calendar days of receipt of written confirmation of the action.
- The appeal letter must state each ground on which the appeal is being made
- Appeals should be heard by the next level of management above the manager who made the original decision, supported by a representative from Human Resources. If 'professional' issues are involved, then a

senior manager of the appropriate profession may provide specialist advice to the Appeal manager or panel. This manager should not have been involved at an earlier stage.

- Not less than 5 calendar days prior to the hearing the disciplining manager and the employee will be required to submit to the panel and exchange with each other written statement of case which should fully address the grounds of the appeal.
- Employees will have the right to be represented by a Trade Union representative or accompanied by a work colleague.
- Appeal hearings will be recorded and/or a note-taker will be present

19.2 The appeal hearing will adopt the following procedure:

- The employee and/or representative will present the grounds for the appeal calling any witnesses.
- The management representative may ask any questions of the employee or witnesses as may the appeal manager or panel.
- The management representative will then be asked to outline the management case calling any witnesses that may be required.
- The employee and/or representative have the right to ask questions of the management representative and any witnesses, as does the appeal manager or panel.
- Both parties will have the opportunity to sum up their case with the employee speaking last.
- The hearing will then be adjourned to allow the appeal manager or panel to reach a decision in private. The appeal panel cannot increase the disciplinary sanction originally awarded.
- The Appeal Panel chair will confirm the method of communication for the decision.
- The decision of the appeal manager or panel will be notified to the employee in writing.

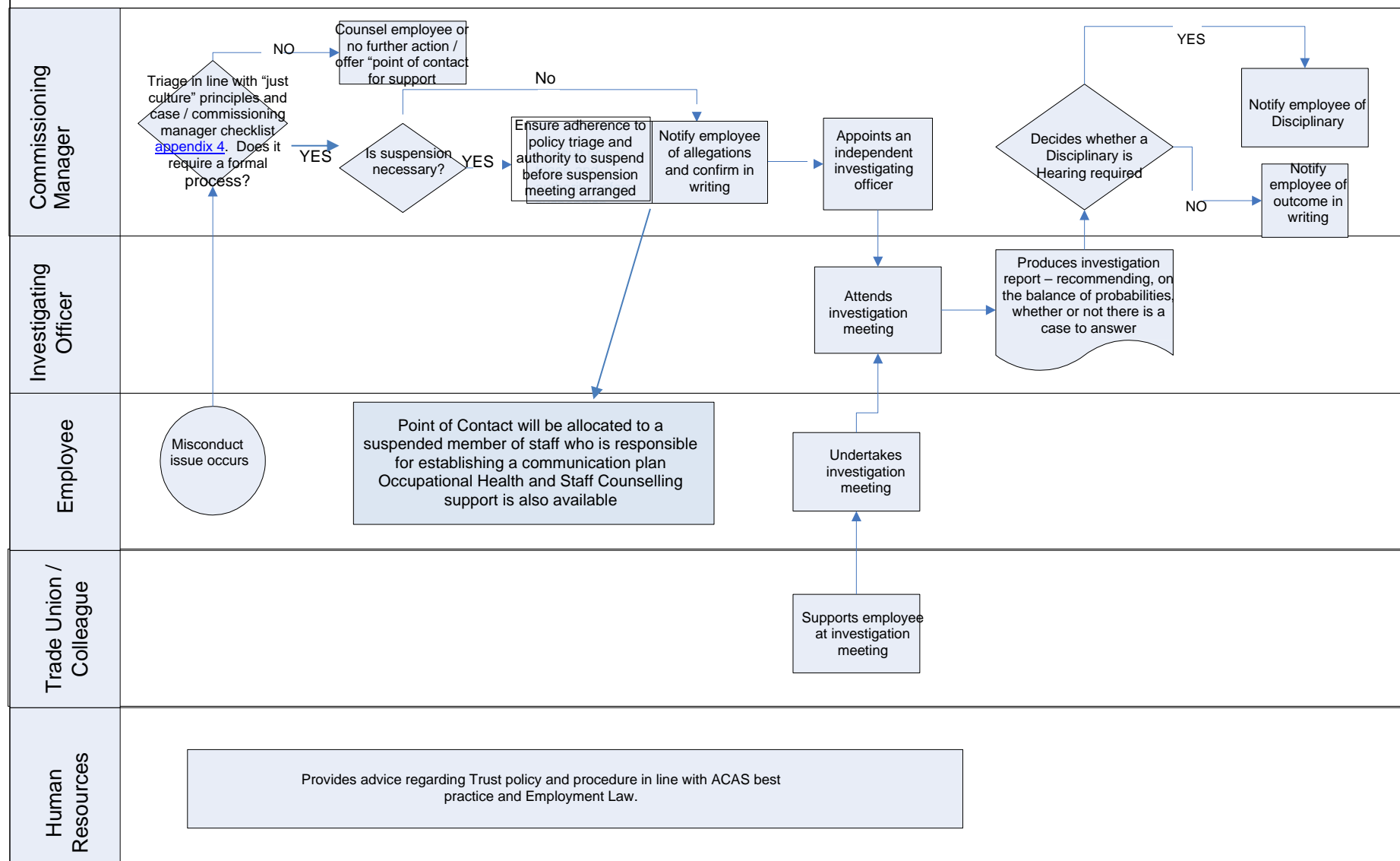
20 Referrals

In some circumstances it may be necessary to make a referral to the relevant external bodies. Managers should take advice from the appropriate professional lead for the trust before making such a referral.

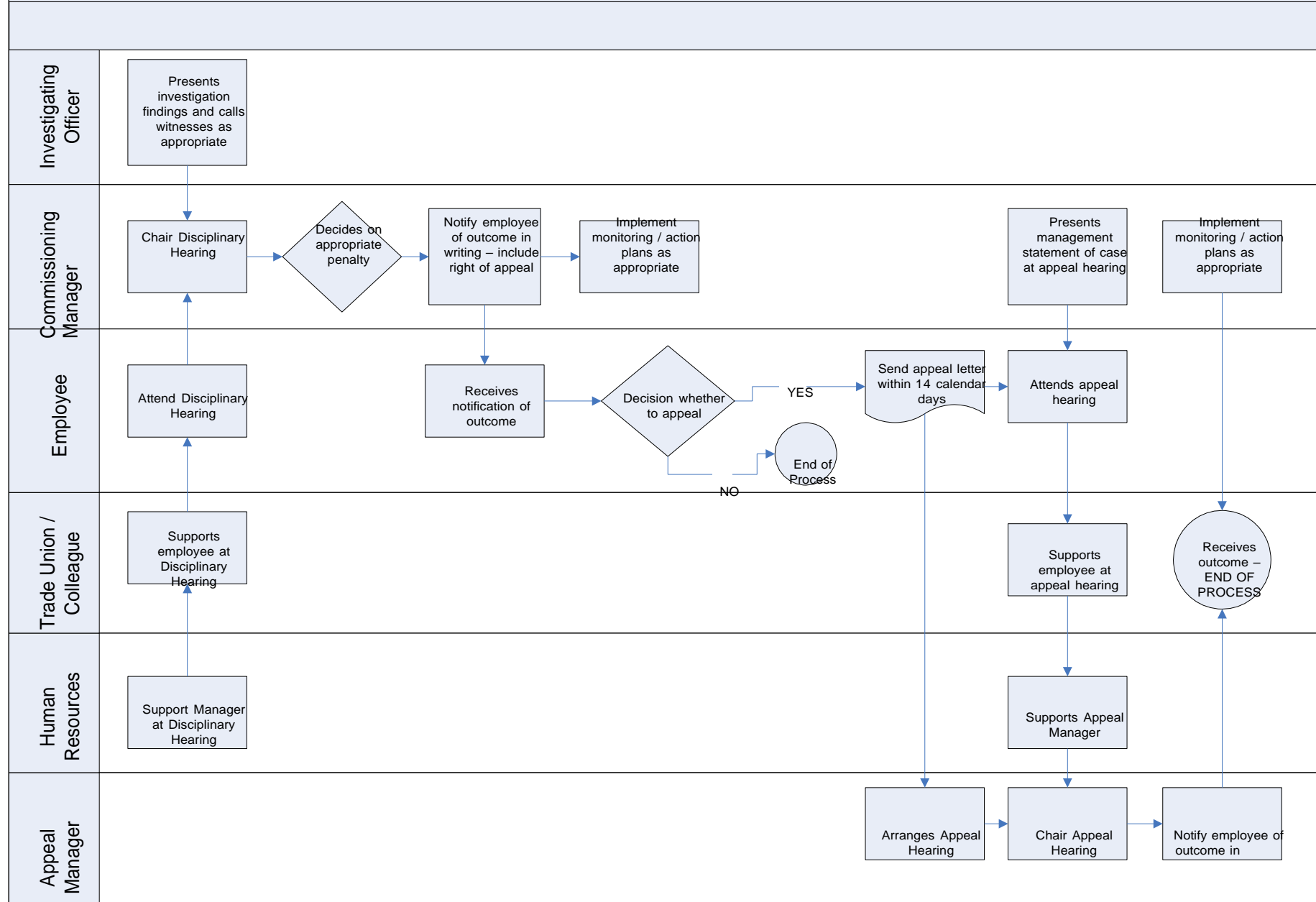
21 Implementation and Monitoring

This policy will be reviewed 3 yearly or earlier in light of changes in legislation or new national guidance.

Disciplinary Procedure (Appendix 1 - Page 1)



Disciplinary Hearing Procedure (Appendix 1 - page 2)



APPENDIX 2 - SAFEGUARDING

In cases of allegation of abuse involving vulnerable adults or children, the issue should be reported immediately to a senior manager.

These cases must be managed in line with the interagency policy and procedures for Safeguarding Vulnerable Adults and Children in Stoke on Trent and Staffordshire. The senior manager will make an appropriate referral to the relevant agencies/Local Authority Designated Officer (LADO) in line with these procedures.

The senior manager should consider whether it is appropriate for the worker to continue to work. Suspension should not be seen as an automatic response to an allegation and all cases should be individually considered. It may not be apparent whether suspension is necessary until wider information sharing and discussion between agencies has taken place. It may also be appropriate to seek an opinion of the LADO on the appropriateness of a suspension.

Suspension should be considered in any case if:

- 21.1.1 there is cause to suspect a child or vulnerable adult is at risk of significant harm
- 21.1.2 there is any possibility of further incidents or abuse;
- 21.1.3 the allegations warrant investigation by the police
- 21.1.4 the allegation is so serious it may constitute gross misconduct
- 21.1.5 continuing to work might compromise evidence; would adversely affect the worker, colleagues or service users, or if it might increase the suspicions or concerns.

Where suspension is deemed appropriate the individual should be notified that they are being suspended "pending an investigation into a safeguarding matter". Further details of the alleged offence should be given only after the strategy meeting (which should take place 2-4 working days after the incident) has been concluded and it is clear that to provide further details will not compromise any other investigation. Details of the allegation will usually be released at the initial investigation meeting, unless otherwise agreed with Strategy meeting leads.

No disciplinary investigation should be commenced prior to a referral to agencies and Designated Officers as stated in the Safeguarding Procedures and a resulting Strategy discussion /meeting has been held (where deemed necessary). Proceeding with a premature investigation may compromise evidence and adversely affect other formal investigations

APPENDIX THREE – NEVER EVENTS

The NHS Improvement defines ‘never events’ as ‘serious, largely preventable patient safety incidents that should not occur if the available preventative measures have been implemented by healthcare providers’.

More information can be obtained from NHS Improvement website

<https://www.england.nhs.uk/publication/never-events/>

<https://improvement.nhs.uk/resources/never-events-policy-and-framework/#h2-revised-never-events-policy-and-framework-and-never-events-list-2018>

APPENDIX FOUR

Case / Commissioning manager checklist Decision making methodology for triaging employee relations cases

The purpose of this checklist is to ensure that a comprehensive and consistent decision-making methodology is applied in response to a concern or incident that provides for full and careful consideration of context and prevailing factors when determining next steps.

This is consistent with the application of 'just culture' principles, which recognise that it is not always appropriate or necessary to invoke formal management action, such as suspension or disciplinary investigation, in response to a concern or incident.

This checklist responds to one of the requirements from the NHSEI review into improving people practices, in light of the tragic circumstances of Amin Abdullah, to ensure the health, safety and wellbeing of our people within a restorative and just culture context. Even though the just culture decision tree relates to patient safety incidents, the Trust believes that the decision making methodology is transferable and applies to all concerns and incidents; particularly as all of our people contribute to patient care whether that be directly or indirectly.

| Case / Commissioning Manager Checklist | Y / N | Rationale / findings summary |
|--|-------|--|
| <p>1. Are you clear on what the issue is and what policy you are using?</p> <ul style="list-style-type: none"> Starting with asking what has happened rather than who is responsible Is the issue is related to a wider engagement, <i>*cultural</i> or environmental issue across the team rather than a small number of individuals? Conduct (won't do) or capability (can't do)? Or grievance or raising concerns or Bullying & Harassment at Work? If it is a conduct issue, decide whether an investigation is necessary? Would a quiet word / informal action resolve the matter and be appropriate, subject to severity? Is it a safeguarding and / or police matter? Has MHPS been considered if medical staff member? <p><i>*cultural issue – e.g. team dynamics work related culture or relating to a protected or non-protected personal characteristic, including (but not limited to) religious, ethnic, national or cultural group, ability/disability, sexuality, gender or gender identity)</i></p> | | |
| <p>2. Have you reviewed the NHSI Just Culture guide and website to inform your decision making?</p> <ol style="list-style-type: none"> Deliberate harm test Health test Foresight test Substitution Test Mitigating circumstances | | |
| <p>3. Would you benefit from a preliminary investigation?</p> <ul style="list-style-type: none"> Where it is uncertain whether a full investigation is unnecessary or appropriate, a manager may benefit from trying to find this out first. Usually this would be limited to gathering appropriate initial evidence on the matter, e.g. witness statements. | | |
| <p>4. Have you fully considered all of the above to inform your decision?</p> | | <p>Delete as appropriate or specify if other – Informal action / Commission a formal investigation under the Disciplinary Policy / Temporary transfer / Suspension Facilitated meeting / Mediation / OD intervention</p> |

APPENDIX FIVE – Conduct Counselling Record

| | | | |
|--|--|----------|--|
| Date & location of Conduct counselling Meeting | | | |
| Staff Member | | Position | |
| Manager/ Supervisor | | Position | |

Please use the table below to record each aspect of the discussion, if it becomes apparent that the matter is more serious the meeting should be adjourned and the staff member advised that the issue may be taken forward under the formal disciplinary procedure. A copy of this signed form should be given to the staff member and a copy retained on their personal file.

| Misconduct issue | Evidence | Mitigation/reason | Expectation/Standard required | Training / Support required (what/by whom/when) | Timescale or deadline for improvement |
|------------------|----------|-------------------|-------------------------------|---|---------------------------------------|
| | | | | | |
| | | | | | |

If the necessary improvement in conduct is not forthcoming within the defined timescale or is the misconduct is repeated formal disciplinary action may be taken. If a reason preventing the improvement becomes apparent this must be raised by the staff member at the earliest opportunity and must be documented.

| | | | |
|------------------------|------|------------------------------|------|
| Staff member signature | Date | Manager/Supervisor signature | Date |
|------------------------|------|------------------------------|------|