

## Disciplinary Procedure

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## Version Control Table

Version number and issue number	Date	Author	Reason for Change	Description of Changes Made
V3.0	December 2016	Clare Hammond, HR Manager	Review and refine processes	Re-formatted re-write of procedure
V4.0	April 2021	Chloe Allistone, HR Advisor	Periodic Review	Introduction of Just Culture principles including Investigation checklist & Staff Support Checklist Introduction of agreed outcome

## Consultation Table

This document has been developed in consultation with the groups and/or individuals in this table:

Name of Individual or group	Title	Date
Operational HR		May 2021
Workforce Policy Partnership Group		June 2021

This information may be made available in alternative languages and formats, such as large print, upon request. Please contact the document author to discuss.

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## 1. Introduction

1.1 The Trust is committed to ensuring that acceptable standards of conduct and behaviour are expected from all staff; in line with the Trust's values and we are committed to helping people improve and learn from mistakes. This policy and procedure is designed to ensure a fair, systematic and consistent approach is taken when an employee's behaviour or action is in breach of workplace rules and falls short of the expected standards.

Our People Strategy ([People Strategy \(esht.nhs.uk\)](https://www.esht.nhs.uk)), which is based on the NHS People Plan ([NHS England » NHS People Plan](#)), prioritises a culture that supports and grows our people.

Looking after our people means creating a positive, engaging working environment and keeping colleagues safe and healthy – both physically and psychologically. It is everyone's responsibility to contribute to an inclusive culture where all colleagues feel that they are treated according to trust values and demonstrate those values in our own compassionate behaviour, to inspire each one of us to thrive and develop to our full potential.

1.2 The fair treatment of staff supports a culture of fairness, openness and learning in the NHS by making staff feel confident to speak up when things go wrong, rather than fearing blame. An objective and prompt examination of the issues and circumstances should be carried out to establish whether there are truly grounds for a formal investigation and/or formal action. Would training for the employee, support, guidance or informal management be more appropriate and productive?

1.3 This procedure embeds a "Just Culture" approach to managing concerns, which can be seen as an environment where equal emphasis is put on accountability and learning, and one that when an adverse event occurs the instinctive approach is to ask "what went wrong?" rather than "who is to blame?"

1.4 Where an employee's ability to do their job is affected by a lack of skill or knowledge, or ill health, this will be managed by following the Performance Improvement Procedure or the Attendance Management Procedure

## 2. Purpose, Rationale, Principles & Scope

2.1 This procedure is intended to help maintain those standards and to ensure fairness and consistency when dealing with allegations of misconduct.

2.2 Minor conduct issues can usually be resolved informally by the line manager. This procedure sets out the informal steps and also the formal steps to be taken if the matter is more serious or cannot be resolved informally.

2.3 This procedure applies to all employees regardless of length of service. It does not apply to Temporary Workforce Services (Bank), agency workers or self-employed contractors.

2.4 This procedure does not form part of the contract of employment and it may be amended at any time following the usual process for changing procedures.

## 3. Definitions

**Disciplinary Standards** describe the types of conduct that warrant disciplinary action and are listed in Appendix B. This is a guide and not an exhaustive list.

**Responsible Officer** – senior divisional manager who reviews the outcome of the Pre-Investigation checklist and determines if formal investigation is required. NB not to be confused with the role of Case Manager in regard to medical and dental staff.

**Investigating Officer** – identified by the Responsible Officer to undertake a formal investigation into the allegations

**Hearing Chair** – Independent manager not previously involved in the process to chair disciplinary hearing

#### **4. Accountabilities and Responsibilities**

4.1 All colleagues are expected to behave in a manner that promotes good relations with other colleagues and are expected to present a professional image to the general public, patients/service users, relatives and carers.

4.2 All colleagues are responsible for ensuring they are aware of this procedure.

4.3 Managers must consider how they can support any colleague involved in this process. The following list gives examples of adjustments that may need to be considered. This list is not exhaustive.

- Consideration of any disability, e.g. access to rooms, larger font paperwork
- Consideration of carers responsibilities, e.g. timing of meetings
- Consideration of any health requirements, e.g. sickness, Occupational Health Advice
- Translation services

#### **5. Procedures and Actions to Follow**

##### **5.1 Employee Support**

5.1.1 Being subject to allegations of misconduct can be very upsetting and stressful for the member of staff and other colleagues affected. Managers will use the Staff Support Checklist to ensure that support is identified (Appendix H).

5.1.2 Investigating Officers are responsible for maintaining communications and will make every effort to ensure the member of staff being investigated receives regular progress updates on any investigation until the matter is concluded.

5.1.3 Where there are concerns about an employee's health or wellbeing, Occupational Health advice will be obtained.

5.1.4 Members of staff, including those who are involved as witnesses, will have access to Carefirst and can obtain information on support services available via the Occupational Health and Wellbeing, Supporting the Emotional Wellbeing of Staff extranet page.

##### **5.2 Assessment of allegations**

5.2.1 Allegations of misconduct will be carefully assessed by the relevant line manager, with HR advice, to decide if the matter can be managed informally where possible or whether there are grounds for further investigation and/or formal action.

5.2.2 The line manager will carry out initial fact finding, without unreasonable delay and should ensure that they have explored all of the issues where possible, being certain of the veracity of any facts and meet the member of staff to establish their version of events. The

line manager may also meet with other relevant individuals to get a good understanding about what has happened.

### 5.2.3 What is the difference between ‘fact finding’ and a ‘formal investigation?’

Establishing Facts (Informal)	Investigation (Formal)
Line Manager	Case Investigator appointed
Gathering information/facts surrounding the issue/complaint that have given rise to concern – readily available e.g. documentary records such as timesheets/written statements	Investigation is directed by established and agreed terms of reference
The individual concerned has been made aware informally that there is an issue	Individual notified formally by the Responsible Officer (RO) of formal proceedings that will take place
Issue is known about by local team manager(s)	Case discussed with the RO
No notice is required i.e. no invite to formal meeting; no right of representation	Right to notice to prepare following notification of formal invite to meeting in writing
No right of representation	Right of representation applies
Progress managed locally	Progress monitored by RO
Not following a formal process	Action in line with disciplinary process

Prior to an investigation commencing the line manager will review the information gathered and complete the Pre-Investigation Checklist (Appendix F) before the Responsible Officer makes a decision to commence any formal investigation.

## 5.3 Informal Action

5.3.1 One of the main aims of this procedure is to promote a supportive workplace culture where concerns about conduct or behaviour are dealt with informally and directly with those concerned wherever possible.

5.3.2 It is good practice for managers to deal with issues of minor misconduct informally. In many cases, an informal conversation between a manager and the member of staff will be sufficient to address any issues and identify if there are any prevailing contributory factors.

5.3.3 The line manager will discuss any concerns regarding the member of staff’s conduct and behaviour directly with them in an environment that is conducive to discretion and confidentiality. In some cases it may be appropriate for additional training, coaching and advice may be offered to the member of staff. When there are concerns about conduct, line managers will talk to the member of staff, as soon as possible, normally within a few days. The line manager should facilitate a conversation that is two-way, offering opportunity for the staff member to discuss and talk through the issue. If any scope for development or improvement is identified as a result of this the manager should provide constructive and honest feedback to the employee considering how best to support them in achieving this.

During this discussion the line manager will:

- Make the member of staff aware of the nature of the concern about their conduct or behaviour
- Advise the member of staff of the standard of conduct expected
- Support the member of staff to improve by agreeing standards and behaviours that need to be attained within a set timeframe

- Agree a period of review
- Complete a file note summarising the details of the conversation. A copy will be given to the member of staff and a copy will be retained by the line manager. If the member of staff's conduct has improved and is sustained the file note will be disregarded after a period of 12 months.

5.3.4 Should the concerns persist the line manager will review and give consideration to whether formal action under this policy should be invoked.

## **5.4 Formal Action - Investigations**

5.4.1. When a misconduct issue is alleged to have occurred and before any disciplinary hearing is held, the matter will be investigated. The Responsible Officer will review the outcome of the Pre-Investigation checklist and confirm if the investigation is to proceed.

5.4.2 In some cases of alleged misconduct, it may be necessary to relocate or exclude the staff member from work while the investigation(s) or disciplinary procedure (or both) are carried out. If excluded the staff member should not visit Trust premises or contact any Trust staff or patients unless authorised to do so by the manager (or line manager's manager), or in the case of a medical emergency. Exclusion is not considered to be disciplinary action. During the period of exclusion the Investigating Officer will maintain regular contact with the excluded member of staff, in order to keep the member of staff informed of any progress in the investigation. The Investigating Officer will agree with the member of staff what will be reasonable contact for the duration of the exclusion. See Exclusion from Work Guidelines for further information.

5.4.3 The Investigating Officer should make all efforts to complete the investigation within 6 weeks of appointment and submit their report to the Responsible Officer within a further five days. In cases where it is not possible to complete the investigation within 6 weeks, the Investigating Officer must inform the Responsible Officer about this and outline an update on the investigation, who will then communicate the new timescales to the member of staff.

5.4.4 Should the member of staff under investigation have concerns regarding the timeframe for the investigation they should raise their concerns with the Responsible Officer.

5.4.5 The Trust's Counter Fraud team are responsible for investigating allegations involving Fraud Bribery and Corruption, in accordance with procedures documented in the NHS Anti-Fraud Manual issued by the NHS Counter Fraud Authority. The investigation will be conducted in line with the Trust's Anti-Fraud Bribery and Corruption Policy, which outlines the process for criminal investigation by the Counter Fraud Service (CFS), and in conjunctions with HR as outlined in the Trusts Protocol for Parallel Criminal and Disciplinary Investigations.

## **5.5 Agreed Outcome**

5.5.1 Where the facts of the allegation are not in dispute, the member of staff has accepted the allegations against them and the allegations do not constitute gross misconduct where dismissal is a potential outcome; an agreed outcome process can be considered.

Appendix I details the agreed outcome process and this must be considered by the Responsible Officer with the full agreement of the individual and their Trade Union Representative or workplace colleague. The HR Department will support the Responsible Officer in this process.

If either the Responsible Officer or the staff member concerned does not accept an agreed outcome or level of sanction offered, the formal disciplinary process will be followed.

## 5.6 Disciplinary Hearing

5.6.1. The Responsible Officer will identify an independent manager, not previously involved in the process, to Chair the Disciplinary Hearing. A professional member of the Human Resources Department will be appointed to serve as Secretary to the Hearing Chair. The role includes ensuring the administrative aspects of the hearing are carried out and to advise the manager hearing the appeal on relevant employment law and good practice.

5.6.2 The member of staff will be given written notice of the hearing, including sufficient information about the alleged misconduct and possible consequences to enable them to prepare at least 10 working days prior to the hearing. The member of staff will be given copies of relevant documents and witness statements.

5.6.3 With the agreement of all parties and on the instruction of the Hearing Chair, the secretary to the Chair will make an electronic recording of the Disciplinary Hearing to ensure an accurate account of the hearing is made. The use of any other form of electronic recording or listening device, including mobile phones at meetings, without prior agreement is strictly prohibited and may be subject to further disciplinary action.

5.6.4 The member of staff has a right to be accompanied at the hearing by a trade union representative or a workplace colleague, to act as a companion.

5.6.5 If the member of staff refuses twice or is unable to attend a meeting the Chair may make a decision in their absence based on the evidence provided.

5.6.6 The member of staff should let the Hearing Chair know as early as possible, but no later than 5 working days before the hearing if there are any relevant witnesses they would like to attend the hearing or any documents or other evidence they wish to be considered.

5.6.7 The Hearing Chair will inform the member of staff in writing of the decision, usually within 5 working days of the hearing.

## 5.7 Disciplinary Action and Dismissal

Sanctions include the following;

- a) **Stage 1: First written warning.** Where there are no other active written warnings on a staff member's record, they will usually receive a first written warning. It will usually remain active for six months.
- b) **Stage 2: Final written warning.** In cases of further misconduct where there is an active first written warning on a staff member's record, they will usually receive a final written warning. This may also be used without a first written warning for serious cases of misconduct. The warning will usually remain active for 12 months.
- c) **Stage 3: Dismissal or other action.** Member of staff may be dismissed for further misconduct where there is an active final written warning on their record, or for any act of gross misconduct. Examples of gross misconduct are given in section 5.8.

We may consider other sanctions short of dismissal, including demotion or redeployment to another role (where permitted by the contract), and/or extension of a final written warning with a further period of review

Additional action as result of being issued with a disciplinary sanction: If a first or final warning is issued, the member of staff will not be awarded a pay increase on the pay step date whilst the sanction is still live. The Chair of the hearing will ask the line manager to action this. In those situations the manager should initiate a pay step



review meeting before the expiry of the warning, and if all other requirements have been met, the member of staff will progress to the next pay step effective from the date after the warning expires.

In addition to the issue of a final written warning the following actions may be appropriate:

- Transfer to another department/location/site
- Demotion or downgrading without pay protection
- Change of shift or working pattern

## **5.8 Appeals**

5.8.1 The staff member may appeal in writing to the Chief People Officer, stating the full grounds of appeal, within 10 working days of the date on which the decision was sent or given to the staff member.

5.8.2 The appeal letter should include all documents in support of the appeal, although the staff member may submit further documents up until a minimum of 5 working days before the date of the appeal hearing. Any documents submitted outside of this timeframe may not be considered. The appeal document and any supporting documents are considered to be the member of staff's statement of case.

5.8.3 An appeal meeting will be held, normally within 10 working days of receiving the appeal. This will be dealt with impartially by a more senior manager or Non-Executive Director who has not previously been involved in the case. The staff member will have a right to bring a companion; the companion may be either a trade union representative or a colleague.

5.8.4 A professional member of the Human Resources Department will be appointed to serve as Secretary to the manager hearing the appeal. The role includes ensuring the administrative aspects of the hearing are carried out and to advise the manager hearing the appeal on relevant employment law and good practice.

5.8.5 The staff member will be given copies of relevant management response documents, 5 working days before the appeal hearing.

5.8.6 The final decision will be confirmed in writing, usually within 5 working days of the appeal hearing. There is no further right of appeal.

5.8.7 In cases of appeal against a dismissal, the date of which the dismissal takes effect will not be delayed pending the outcome of the appeal hearing.

## **5.9 Gross Misconduct (Appendix B)**

5.9.1. Gross misconduct will usually result in dismissal without warning, with no notice or payment in lieu of notice (summary dismissal).

5.9.2 The following are examples of matters that are normally regarded as gross misconduct:

- a) theft or fraud
- b) physical violence (see appendix G) or bullying
- c) deliberate and serious damage to property
- d) serious misuse of the Trust's property or name

- e) deliberately accessing internet sites containing pornographic, offensive or obscene material
- f) serious insubordination
- g) unlawful discrimination or harassment
- h) bringing the Trust into disrepute
- i) serious incapability at work brought on by alcohol or illegal drugs in accordance with the Substance Misuse Policy
- j) causing loss, damage or injury through serious negligence
- k) clinical misconduct/compromise of patient safety
- l) a serious breach of health and safety rules
- m) a serious breach of confidence

This list is intended as a guide and is not exhaustive; further details can be found at Appendix B.

### **5.10 Referral to External Bodies**

Depending on the allegations, where an employee is registered with a professional body, such as registered nurse, midwife, or other, the regulatory body may be notified. This decision will be taken by the most senior professional lead from the Division, in conjunction with the relevant professional lead for the Trust such as ADN, Chief Pharmacist, Lead AHP etc. All referrals will be logged and overseen by the Lead nurse for workforce. See Professional Registration Policy for more details.

Where allegations concern the safeguarding of children or vulnerable adults, the Trust Safeguarding Lead must be notified without delay. See Policy for Safeguarding Allegations Against Staff.

The Trust has a legal duty to refer to the Disclosure and Barring Service if a member of staff has been removed from a regulated activity, see Disclosure and Barring Service Policy for more details.

Where appropriate, investigations by the counter fraud team, or other agencies, such as police or social services, may be carried out separately from investigations under this procedure. The Trust will give full cooperation and in these circumstances the Trust will only delay carrying out internal investigations following the disciplinary procedure where absolutely necessary. See Anti-Fraud Bribery and Corruption Policy and Protocol for Parallel Criminal and Disciplinary Investigations.

Where cases include serious personal data breaches likely to result in a risk to the rights and freedoms of data subjects, the Trust has a legal duty to report such cases to the Information Commissioners Office within 72 hours via the Trust's Data Protection Officer.

### **5.11 External Advice**

Employees are able to access further guidance on employment issues from the following bodies;

The Advisory, Conciliation and Arbitration Service (Acas) - [Acas | Making working life better for everyone in Britain](#)

Citizens Advice - [Citizens Advice](#)

## **6. Equality and Human Rights Statement**

6.1 An Equality and Human Rights Impact assessment has been carried out and is documented in appendix A.

## **7. Training**

7.1 Please refer to the Induction and Mandatory training policy and the Training Needs Analysis.

7.2 On-line guidance of the policies referred to in this policy can be found via the Extranet Page or the Human Resources Department.

## **8. Data protection**

8.1 When managing employees under the Disciplinary Procedure, the Trust processes personal data collected in accordance with its Data Protection Policy. Data collected from the point at which the Trust commences action under the procedure is held securely and accessed by, and disclosed to, individuals only for the purposes of managing their performance. Inappropriate access or disclosure of employee data constitutes a data breach and should be reported in accordance with the organisation's Data Protection policy immediately. It may also constitute a disciplinary offence, which will be dealt with under the Trust's Disciplinary Procedure.

**9. Monitoring Compliance with the Document**

**Monitoring Table**

<b>Element to be Monitored</b>	<b>Lead</b>	<b>Tool for Monitoring</b>	<b>Frequency</b>	<b>Responsible Individual/Group/ Committee for review of results/report</b>	<b>Responsible individual/ group/ committee for acting on recommendations/action plan</b>	<b>Responsible individual/group/ committee for ensuring action plan/lessons learnt are Implemented</b>
No. and level of sanction per year -- including agreed outcomes	Head of Operational HR	Selenity	Annual	Trust Board	HR SMT	HR SMT
Staff with protected characteristics	Head of Operational HR	Selenity	Annual	POD	HR SMT	HR SMT

## 10. References

- Employment Rights Act 1996
- Employment Relations Act 2004
- Employment Act 2008
- Protocol for Parallel Criminal and Disciplinary Investigations  
<http://nww.esht.nhs.uk/finance/cfs/>
- Advisory, Conciliation and Arbitration Service (ACAS) [Acas | Making working life better for everyone in Britain - NHS Improvements](#) Dido Harding letter 24 May 2010 with guidance relating to the management and oversight of local investigation and disciplinary procedures
- NHS Resolution “Being Fair – Supporting and Just and Learning Culture for staff and patients following incidents in the NHS” [Being fair report - NHS Resolution](#)

A Due Regard, Equality & Human Rights Analysis form must be completed for all procedural documents used by East Sussex Healthcare NHS Trust. Guidance for the form can be found [here on the Equality and Diversity Extranet page](#).

## Due Regard, Equality & Human Rights Analysis

<b>Title of document:</b> Disciplinary Procedure
<b>Who will be affected by this work?</b> E.g. staff, patients, service users, partner organisations etc.  All staff
<b>Please include a brief summary of intended outcome:</b>  To help maintain those standards and to ensure fairness and consistency when dealing with allegations of misconduct.

		Yes/No	Comments, Evidence & Link to main content
<b>1.</b>	<b>Does the work affect one group less or more favourably than another on the basis of:</b> (Ensure you comment on any affected characteristic and link to main policy with page/paragraph number)		
	• Age	Yes	Section 4.3,
	• Disability (including carers)	Yes	Section 4.3,
	• Race	Yes	Section 4.3,
	• Religion & Belief	Yes	Section 4.3,
	• Gender	Yes	Section 4.3,
	• Sexual Orientation (LGBT)	Yes	Section 4.3,
	• Pregnancy & Maternity	Yes	Section 4.3,
	• Marriage & Civil Partnership	Yes	Section 4.3,
	• Gender Reassignment	Yes	Section 4.3,
	• Other Identified Groups		
<b>2.</b>	<b>Is there any evidence that some groups are affected differently and what is/are the evidence source(s)?</b>		Section 4.3,
<b>3.</b>	<b>What are the impacts and alternatives of implementing / not implementing the work / policy?</b>		Section 4.3,
<b>4.</b>	<b>Please evidence how this work / policy seeks to “eliminate unlawful discrimination, harassment and victimisation” as per the Equality Act 2010?</b>		Section 4.3,
<b>5.</b>	<b>Please evidence how this work / policy seeks to “advance equality of opportunity between people sharing a protected characteristic and those who do not” as per the Equality Act 2010?</b>		Section 4.3,
<b>6.</b>	<b>Please evidence how this work / policy will “Foster good relations between people sharing a protected</b>		Section 4.3,

	<b>characteristic and those who do not” as per the Equality Act 2010?</b>	
<b>7.</b>	<b>Has the policy/guidance been assessed in terms of Human Rights to ensure service users, carers and staff are treated in line with the FREDA principles (fairness, respect, equality, dignity and autonomy)</b>	Section 4.3,
<b>8.</b>	<b>Please evidence how have you engaged stakeholders with an interest in protected characteristics in gathering evidence or testing the evidence available?</b>	WPPG
<b>9.</b>	<b>Have you have identified any negative impacts or inequalities on any protected characteristic and others? (Please attach evidence and plan of action ensure this negative impact / inequality is being monitored and addressed).</b>	Section 4.3,

**Appendix B**  
**EAST SUSSEX HEALTHCARE NHS TRUST**

**DISCIPLINARY STANDARDS**

Disciplinary standards and procedures are produced to ensure that you are aware of the standards of conduct expected of you and the type of conduct that will warrant disciplinary action including summary dismissal.

The following list has been drawn up to enable you to know and understand the types of conduct that will warrant disciplinary action and describe the Trust's approach to issues of staff misconduct but should not be regarded as exhaustive or complete

**1 Examples of conduct warranting disciplinary action**

- 1.1 Failure to knowingly carry out duties satisfactorily.
- 1.2 Failure to obey reasonable instructions.
- 1.3 Acts of insubordination.
- 1.4 Failure to comply with the Infection Control Policy.
- 1.5 Persistent failure to wear ID badge(s) or adhere to dress codes.
- 1.6 Failure to administer drugs in accordance with NMC guidelines.
- 1.7 Persistent bad timekeeping.
- 1.8 Unauthorised absence without good reason.
- 1.9 Unauthorised or inappropriate use of NHS property.
- 1.10 Smoking within Trust premises.
- 1.11 Using offensive language.
- 1.12 Other actions considered a breach of good conduct and/or likely to bring the Trust into disrepute.
- 1.13 Failure to provide an efficient, safe and high quality service with concern and respect for the feelings and well-being of other employees, patients and visitors.
- 1.14 Failure to observe the Trust internal policies.
- 1.15 Failure to follow the correct procedure for dealing with the media.
- 1.16 Inappropriate use of the internet.
- 1.17 Making malicious complaints under the Dignity at Work or Whistle blowing Policy.
- 1.18 Serious or persistent breach of Trust values.

**2 Examples of Conduct Warranting Dismissal**

- 2.1 There are in addition, certain types of conduct which are considered so serious as to constitute 'gross misconduct' and to warrant dismissal with no previous warnings and no notice or pay in lieu of notice.

**2.1.1 Dishonesty/Fraud**

- (a) Unauthorised possession or use of Trust property. E.g. removing Trust property from site. This includes property belonging to patients, visitors or other member of staff or installation of unauthorised software.
- (b) Deliberate falsification of records or the deliberate attempt to obtain money from the Trust by false pretences or from a member of the public in the course of official duties. This includes misrepresentation of entitlement to expenses or allowances; overtime or mileage claims
- (c) Falsification or misrepresentation of timesheets or clock cards.
- (d) The unauthorised receipt of money, goods, favours or hospitality in respect of any service rendered.



- (e) Giving or receiving a bribe in the form of a financial or other advantage to encourage the recipient to perform their functions improperly.
- (f) Undertaking paid or unpaid employment whilst claiming sick pay from the Trust or whilst on suspension from duty.
- (g) Any deliberate action that causes financial loss to the Trust.

#### 2.1.2 **Failure to Disclose an Interest**

- (a) Any action which is contrary to the Trust's Standing Orders or Standing Financial Instructions.

### 2.2 **Assault**

- 2.2.1 Any assault or attempt to cause injury (including verbal assault) upon a patient member of the public, or other employee that takes place on Trust premises or whilst on duty, including threats of serious assaults.

### 2.3 **Bullying and Harassment**

- 2.3.1 Any uninvited, unwelcome or unreciprocated behaviour of a sexual or social nature which is offensive to the person involved and causes that person to feel threatened, humiliated or embarrassed, or which compromise the protection of whistleblowers.
- 2.3.2 Any acts of harassment or discriminating behaviour so as to prejudice the health, safety and well-being of staff or others.
- 2.3.3 Serious breach of the Dignity at Work Policy.

### 2.4 **Gross Carelessness**

- 2.4.1 Any actions, or failure to act, which threatens the health or safety of a patient, member of the public or another member of staff on Trust premises or which may bring the Trust into disrepute.

### 2.5 **Malicious Damage**

- 2.5.1 To Trust property or to the property of patients visitors or staff.

### 2.6 **Being Unfit for Duty**

- 2.6.1 Through the effect of, for example, drink or drugs (subject to the recommendations within the Substance Misuse Policy) or by being asleep on duty when not appropriate.
- 2.6.2 Failure to report any contagious or infectious disease or any other hazard which may endanger the health of other staff, patients or visitors.

### 2.7 **Breach of Contract**

- 2.7.1 Conduct or behaviour which may render continuation of employment impossible or undesirable.

- 2.7.2 Action which results in loss of trust and confidence in the employee's capacity to continue to be employed by the Trust.
- 2.7.3 Breach of statutory requirements, e.g. Prevention of Illegal Working, Loss of Professional Registration, etc.
- 2.7.4 Conviction under court proceedings or cautions which in the opinion of the Trust renders the employee unsuitable to continue the duties for which they are employed.
- 2.7.5 Unauthorised possession, custody or control of illegal drugs on the premises.

## **2.8 Confidentiality/Unauthorised Disclosure of Information**

- 2.8.1 Failure to keep safe all personal information in relation to patients, their relatives or staff members
- 2.8.2 Breach of trust or misuse or unauthorised disclosure of any confidential information or data, documents or information relating to individual patients, members of staff, or affairs of the Trust.

## **2.9 Intentionally Making False Statements**

- 2.9.1 Falsifying documents, for example when incidents or accidents are being investigated, or when applying for employment, transfer or promotion, or in connection with medical examinations relating to the Trust.
- 2.9.2 Failure to disclose a previous conviction under the Rehabilitation of Offenders Act in securing employment with the Trust.
- 2.9.3 False Qualifications , false identity or immigration documentation or right to work and reside documentation

## **3 Special Rules**

- 3.1 Breach of departmental rules/codes (e.g. concerning safe handling of dangerous substances, radiological safety or operation of machinery).

## **4 Statutory Registration**

- 4.1 Certain staff are required by law to be registered with a particular body. If such registration or membership lapses or is cancelled the Trust will take immediate action to terminate the contract of employment of the members of staff concerned. See Professional Registration Policy.

## **5 Loss of Driving Licence**

- 5.1 Staff employed in posts for which there is a contractual requirement for the possession of a valid driving licence must inform their supervisor/manager if that licence is withdrawn for any reason. Failure to do this may result in summary dismissal. Where a person who is employed in such a post loses his licence their contract of employment may be terminated. Alternative working arrangements or employment will be considered in such cases but will be offered in the following circumstances only:

- 5.1.1 When alternative work arrangements may be made without detriment to the Trust's purpose and its patients and other staff members
- 5.1.2 Where a suitable alternative vacancy exists at the material time.
- 5.1.3 When the circumstances of the case merit such an offer being made.

## **6 Fraud**

- 6.1 Where there is a conduct issue that involves a matter of Fraud, Bribery or Corruption or financial impropriety, the Trust will notify the Trusts Counter Fraud Service and a counter fraud investigation may take place as outlined in the Trust's Anti-Fraud Bribery and Corruption Policy. If there are possible grounds for disciplinary action the Trust will carry out its own investigation and hearing under this disciplinary procedure.

## **7 Professional Bodies**

- 7.1 Employees who are subject to standards of performance/behaviour of professional bodies (e.g. NMC, GMC, HCPC, CSP) are reminded that the Trust has a duty to report instances of sub-standard performance or conduct to the appropriate body as well as carrying out its own investigation and taking disciplinary action in appropriate cases.

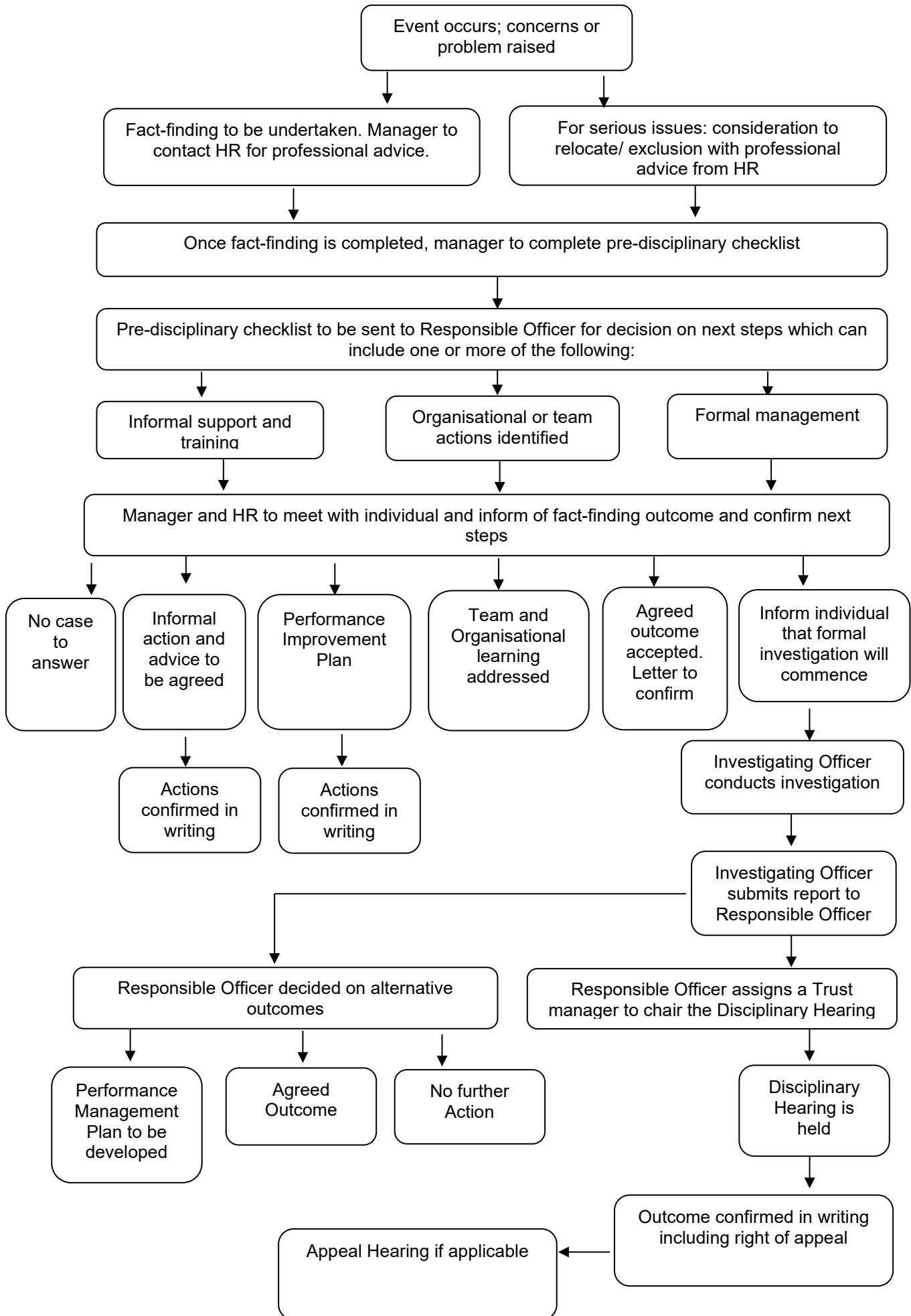
## **8 Independent Safeguarding Authority**

- 8.1 Employees are reminded that the Trust has a duty to report safeguarding concerns in relation to children or vulnerable adults to the Independent Safeguarding Authority.

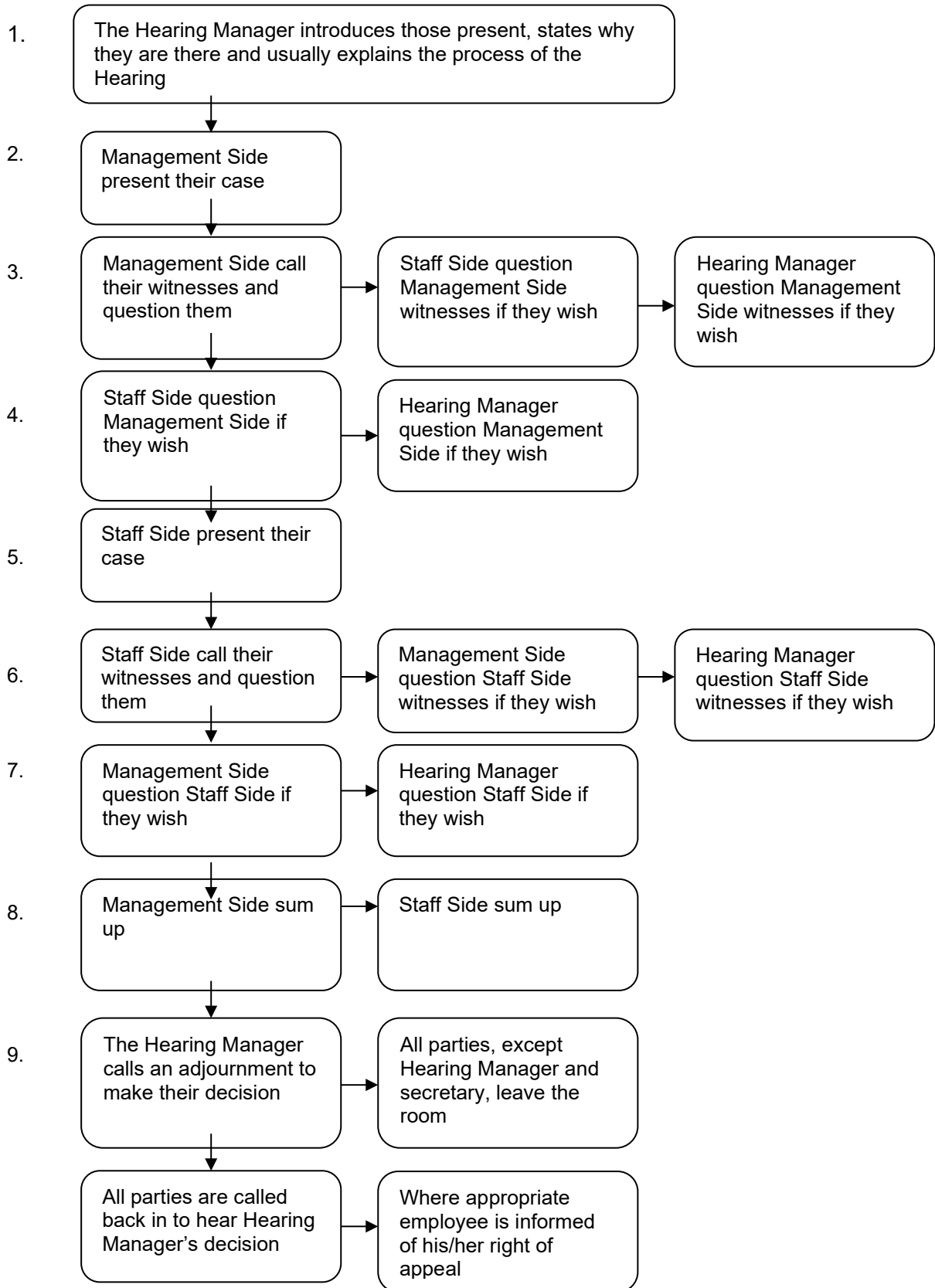
## **9 Criminal Offences Outside Employment**

- 9.1 As part of the usual pre-employment checks all staff, where appropriate, will have had a Disclosure carried out by the Disclosure and Barring Scheme (DBS) prior to appointment. If an employee fails to disclose a caution or conviction which appears on a DBS Disclosure, an investigation will be carried out by Trust Auditors which may result in disciplinary action being taken.
- 9.2 Any employee who is arrested on any charge or served with a summons on a criminal charge whilst employed by the Trust must inform his supervisor/manager as soon as practicable.
- 9.3 Criminal offences/alleged offences outside employment shall not be treated as automatic reasons for dismissal. The main consideration will be:
  - 9.3.1 whether the offence brings into question the employees suitability for their work, or
  - 9.3.2 whether it is unacceptable to other employees or patients or
  - 9.3.3 whether the Trust's reputation could be brought into disrepute if the employee were to remain employed by the Trust or
  - 9.3.4 Whether the employee did not declare the offence within a reasonable timescale of incurring it.
- 9.4 It is stressed, however, that each case will be considered on its merits and that there is no general rule that requires the automatic dismissal of a member of staff who is alleged to have committed an offence outside of employment.

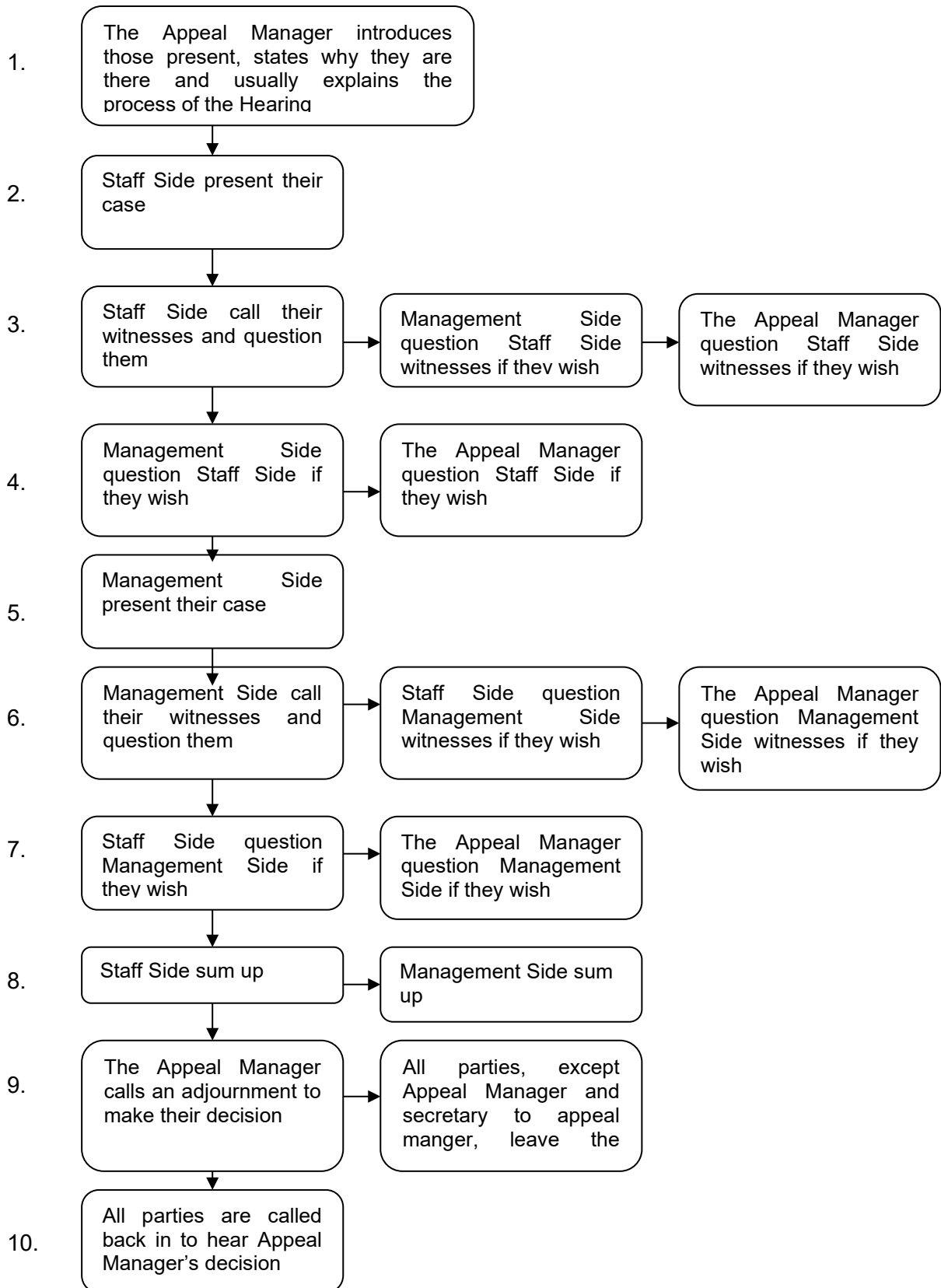
**Disciplinary Flowchart**



**Process of a Disciplinary Hearing**



**Process of an Appeal Hearing**



**Pre - Disciplinary Investigation Checklist**

As we seek to build on a ‘Just Culture’ in the organisation, a pre-disciplinary investigation checklist has been developed to mitigate against any ‘rush to judgement’ when entering staff into a formal process. This checklist is to be used by the investigating officer **BEFORE** a decision to formally investigate an employee or worker and once complete must be sent to the HR representative supporting the investigation.

<b>Employee/Worker Name:</b>	Click here to enter text.	<b>Role:</b>	Click here to enter text.
<b>Line Manager Name:</b>	Click here to enter text.	<b>Team/service:</b>	Click here to enter text.
<b>Area of work:</b>	Click here to enter text.	<b>Division:</b>	Click here to enter text.
<b>Date of incident</b>	Click here to enter text.	<b>Location:</b>	Click here to enter text.
<b>Reason for possible investigation:</b>	Click here to enter text.		

As a result of using the checklist, it is envisaged that issues are addressed appropriately prior to escalation which will improve overall employee well-being, reduce cost of absence, improve employee relations, the reputation of the Trust and reduce the cost of management time.

*Have you asked yourself the following questions before making a decision to formally investigate the individual concerned?*

**1: Deliberate Harm Test**

1a. Was there any intention on the part of the employee or worker to cause harm?   
 Yes  No

*\* If yes, follow Trust guidance for appropriate management action. This could involve: contact relevant regulatory bodies, suspension of staff, safeguarding and referral to police and investigation in accordance with disciplinary processes. Wider investigation is still needed to understand how and why patients/staff were not protected from the actions of the individual.*

**Additional Comments:** Click here to enter text.

**2: Health Test**

- 2a. Are there indications of substance abuse? Yes  No
- 2b. Are there indications of physical ill health? Yes No
- 2c. Are there indications of mental ill health? Yes No

*\*If yes, please follow appropriate Trust guidance including Care First/Occupational Health referral.*

**Additional Comments:** [Click here to enter text.](#)

### 3: Foresight Test

3a. Are there agreed protocols/accepted practice in place that apply to the action/omission in question?

Yes

No

3b. Were the protocols/accepted practice workable and in routine use?

Yes

No

3c. Did the individual knowingly depart from these protocols?

Yes

No

*\*If no to any of above - Action singling out the individual for a conduct investigation is unlikely to be appropriate; the patient safety /staff incident investigation should indicate the wider actions needed to improve safety .These actions may include, but not be limited to, the individual.*

**Additional Comments:** [Click here to enter text.](#)

### 4: Peer Test

4a. Are there indications that other individuals from the same peer group, with comparable experience and qualifications, would behave in the same way in similar circumstances?

Yes  No

4b. Was the individual missed out when relevant training was provided to their peer group?

Yes  No

4c. Did senior members of the team fail to provide supervision that normally should be provided?  Yes  No

*\*If yes to any of the above - Action singling out the individual for a conduct investigation is unlikely to be appropriate; the patient safety incident investigation should indicate the wider actions needed to improve safety for future patients. These actions may include, but not be limited to, the individual.*

**Additional Comments:** [Click here to enter text.](#)

### 5: Mitigating Circumstances

5a. Were there any significant mitigating circumstances?  Yes  No

*\*If yes, action directed at the individual may not be appropriate; follow organisational guidance, which is likely to include HR advice on what degree of mitigation applies. The patient safety incident investigation should indicate the wider actions needed to improve safety for future patients.*

**Additional Comments:** [Click here to enter text.](#)



6: Vulnerable Adult/Child

6a. Does the incident that has occurred involve vulnerable adults/children?  Yes  No

*\*If yes, please ensure that the Safeguarding checklist is completed and that you have discussed with Safeguarding Team.*

**Additional Comments:** [Click here to enter text.](#)

7: How well do you think you have reacted to the situation?

- 7a. Do you feel that you have managed this situation in a fair and consistent manner?  
 Yes  No
- 7b. Did you make the employee aware of the concern during your fact-finding meeting?  Yes  No
- 7c. Have you taken into account the answers to 2a, 2b or 2c applies?  Yes  No

8: How open have you been in taking an overview of the activities and Impact?

- 8a. Have you positioned praise or blame?  Yes  No  Neither -as far as I am aware
- 8b. Have next steps been discussed with the employee?  Yes  No

9: Trust Values and disciplinary policy

9a. Given that our Trust Values and disciplinary policy emphasises improvement and learning, not punishment, have you taken reasonable informal steps to resolve your concerns regarding this issue or similar issues leading up to this one, prior to considering a disciplinary investigation?  Yes  No

**Issues Previously Discussed:** [Click here to enter text.](#)

10: Outcome of fact-finding meeting

10a From the information gathered during the fact-finding exercise and based on the information above, what action should follow:

- Formal investigation meeting
- Performance Improvement Plan to be implemented
- Meeting of concern
- No case to answer

**If an Investigation is required please complete the following:**

<b>Investigating officer:</b>	Click here to enter text.
<b>HR Contact:</b>	Click here to enter text.
<b>Keeping in Touch/ Support:</b>	Click here to enter text.

<b>Have you got any pre-booked annual leave within the next 6 weeks?</b>	<input type="checkbox"/> Yes	<input type="checkbox"/> No
<b>Have you got capability to undertake this investigation within 6 weeks?</b>	<input type="checkbox"/> Yes	<input type="checkbox"/> No
<b>Have you informed your line manager of the need to undertake this investigation?</b>	<input type="checkbox"/> Yes	<input type="checkbox"/> No

Once completed please send to your Human Resources Representative.

**SAFEGUARDING CHECKLIST**

**Where a serious incident has occurred which involves patient/s and/or staff, the checklist below must also be completed.**

	<b>SAFEGUARDING CHECKLIST</b>	<b>COMMENTS</b>
<b>1.</b>	Is this a safeguarding issue?	
<b>2.</b>	Has the Service Director confirmed that this is a safeguarding issue?	
<b>3.</b>	Have the Safeguarding Team been informed?	
<b>4.</b>	Does a LADO referral need to be done?	
<b>5.</b>	Has the Service Director informed the police?	
<b>6.</b>	Has the patient/s and/or staff, been allocated a named contact for support and follow up?	
<b>7.</b>	Do other patients and/or staff need to be contacted?  If so, who will lead on this process?  How will staff be notified?	
<b>8.</b>	Has the CQC been informed by the Service Director?	
<b>9.</b>	Has the issue been referred to ISA by the Service Director?	
<b>10.</b>	Is a Datix required? If so, who will complete the Datix?	

<b>11.</b>	Has the case been discussed with the professional lead and consideration given to referral to the NMC or other professional body?	
<b>12.</b>	Has an internal safeguarding lead been identified for the case?	

## Violence and Aggression

1.1 Violence and Physical Assault is “The intentional application of force against a person or another without lawful justification, resulting in physical injury or personal discomfort” Source: Physical Assault Definition contained within Directions to NHS Bodies November 2003.

1.2 Aggression (non-physical assault) is “The use of inappropriate words or behaviour causing distress and/or constituting harassment”  
Source: Non-Physical Assault Definition contained within Directions to NHS Bodies November 2003.

In order to ascertain if a non-physical assault occurred, staff need to recognise what aggressive and assertive behaviours are and then make a judgement to determine what behaviour is being exhibited.

- Aggression - The person being aggressive will have a total disregard for the other person's interests or position. Aggressive behaviour has the result of the other person feeling hurt, belittled, controlled or humiliated. Source: Violence and Aggression Policy (including Red/Yellow card system).
- Assertiveness - A person is honest, direct and stands up for themselves in such a way that does not intimidate, belittle or leave the other person feeling violated. Source: Violence and Aggression Policy (including Red/Yellow card system).

For further information please refer to the Violence and Aggression Policy (including Red/Yellow card system).

**Staff Support Checklist**

This checklist should be used to ensure that staff are provided with timely and appropriate support and that a record of actions taken is kept.

**This form should be completed as appropriate (at the outset of the process and revisited on at least one further occasion) and retained by the manager until the matter is at an end. A copy of checklist should be forwarded to the HR Dept. so that it may be used for the annual audit process.**

<b>Employee name</b>			
<b>Job title</b>			
<b>Manager name</b>			
<b>Date completed</b>			
<b>SUPPORTING STAFF</b>		<b>Initial support</b>	<b>Follow-up</b>
		<b>Date</b>	
<b>1.</b>	Has a 'Buddy/Mentor' been offered, identified and agreed?		
<b>2.</b>	Has the staff member been signposted to Care First?		
<b>3.</b>	Was a referral to Occupational Health & Wellbeing discussed with the employee? give details, dates etc		
<b>4.</b>	Has other support been offered to the employee? Yes / No If yes, detail any support taken up. <i>Include any considerations given for staff with protected characteristics and the impact any action may have e.g. disability, race; where necessary seek advice from ESHT Workforce Human Rights &amp; Equality lead.</i>		
<b>5.</b>	Has a copy of the procedure been provided to the employee and the process explained?		

<b>Manager Signature</b>	<b>Date</b>
<b>Employee Signature</b>	<b>Date</b>

**ACTIONS**

- Copy of completed form given to employee
- Original Form to be filed in staff member’s file
- Copy of completed form sent to Human Resources

### Agreed Outcomes

Note: It is not appropriate to use agreed outcomes in cases of gross misconduct where dismissal is a potential outcome.

When managers make Agreed Outcome agreements they must be able to make the decision without having it overridden by a more senior colleague.

If, at the end of an investigation into a potential disciplinary issue, the employee accepts all the allegations made against them then there is no need to automatically proceed to a disciplinary hearing. The facts of the allegation are not in dispute and the employee has accepted their fault. What needs to be determined therefore is the level of sanction to be applied.

Agreed outcomes are only appropriate where both parties are agreeable to the process. If either the employee or their representative is unhappy with a proposal of an agreed outcome, then the normal disciplinary process must be followed.

Where there is agreement to an agreed outcome as being the acceptable way forward for both parties, the following principles should be followed:

Both parties must be in agreement to proceed in this way.

This decision is final and there should not be a later referral to a disciplinary hearing or appeal on this issue.

The relevant Responsible Officer with the authority to issue the disciplinary sanctions must be aware of and agree to the proposal for an agreed outcome.

Agreed outcomes can only be considered for cases where dismissal is not a likely outcome.

Cases must not interfere with, or compromise 'due process', e.g. audit.

A meeting should be held at which both parties (i.e. employee and their representative and the Responsible Officer) will be present, together with an HR Representative. The line manager may or may not be present but must be aware of the fact that the meeting is taking place.

At the meeting, all information relevant to the allegation(s) or complaint(s) must be available and both parties must have a full opportunity to discuss all the issues, in accordance with the normal principles of natural justice that every employee has the opportunity to freely state their case.

The meeting can be adjourned and reconvened at any time if, for example, there is a need to obtain further information.

The employee will be required to sign a letter of acceptance within 7 calendar days; referred to as 'the cooling off' period. If the individual wishes to withdraw from the agreed outcome process the Responsible Officer will make the decision whether or not a full Disciplinary Hearing is necessary.

In the event that the employee does change their mind, then the normal disciplinary process will be followed.

## **Doc ID #43 – Disciplinary Procedure**

Following the meeting and 'cooling off' period the Responsible Officer will write to the employee to confirm the disciplinary sanction and get their written agreement to the outcome (see standard letter Appendix I).

The disciplinary sanction issued, and accepted by the employee, will have the same status as those obtained via a hearing, except that there will be no recourse to an appeal.

All relevant documentation, including a record of the meeting, must be retained in the usual manner on the personal file, with copies sent to Human Resources and the Trade Union/Professional Association representative.