

## Disciplinary Policy & Procedure

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This policy sets out Leeds Community Healthcare (LCH) NHS Trust's Disciplinary Policy and Procedure (the Policy).

This policy applies to all employees of LCH including Medical and Dental staff except for matters concerning the professional conduct and/or competence of Medical and Dental staff, which should be referred to the Trust's Maintaining High Professional Standards in the Modern NHS Policy in the first instance.

The policy will not apply to "workers" such as staff employed on an honorary contract or through an agency for which the responsibility rests with the individual's statutory employer.

The policy has been drafted to comply with statutory requirements, professional codes of conduct and the following ACAS Code and guidance. This policy should be read together with other relevant Trust policies, procedures, and local guidance. The Trust has also produced a toolkit to supplement this policy, which provides further information and templates.

This policy provides guidance on the expected standards of conduct within the Trust and the approach to dealing with these matters when expected standards are not met or adhered to.

This policy has been developed in consultation with staff side and management representatives, and other key stakeholders.

The policy may be reviewed at the request of management or staff side by giving four weeks' written notice to the Director of Workforce with reasons for the review.

This policy may affect your pensionable pay and could impact on your pension. Please refer to NHS Pension agency on [www.nhsbsa.nhs.uk/pensions](http://www.nhsbsa.nhs.uk/pensions) or (0113) 2066222.

## **Equality Analysis**

LCH's vision is to provide the best possible care to every community we serve. In support of the vision, with due regard to the Equality Act 2010 General Duty, an Equality Analysis has been undertaken on this Policy.

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## **1. Introduction**

The policy's primary purpose is to correct behaviour by offering appropriate support and/or retraining. This policy does not apply to concerns regarding an employee's performance.

If formal disciplinary action is required, the Trust is committed to ensuring that all stages of the procedure, from investigation to conclusion, are dealt with in an open and transparent manner.

What the Trust considers to amount to misconduct is set out at appendix B of this policy.

## **2. Aims and Objectives**

The Trust is committed to supporting and encouraging staff to achieve and maintain acceptable standards of conduct.

The key principle of these procedures is to take timely, corrective action and ensure that there is no recurrence of the issues.

It is important that the Disciplinary Policy is not used punitively, but is instead used to ensure that satisfactory conduct is maintained by all employees. The Trust aims to achieve this by providing advice to managers about how to follow a fair process within a framework in which staff are aware of the standards of conduct expected of them during their employment and the consequences of failing to achieve these standards.

## **3. Definition of Roles**

### **Commissioning Manager**

On consideration of the initial facts, the Commissioning Manager decides whether to drop the matter, deal with it informally or to commission a formal investigation. If commissioning a formal investigation, the Commissioning Manager will consider whether suspension or an alternative is appropriate, identify a suitable Investigating Manager and issue appropriate Terms of Reference to the same.

### **Investigating Manager**

An independent, appropriately trained Manager (Band 7 or above) appointed to establish the facts of a case.

## **4. Responsibilities**

### 4.1 Joint Responsibility

- Good working relations are vital for the Trust to operate successfully and provide its essential services. Management, staff side representatives and employees accept the responsibility of working together with the shared intention of facilitating good working relations.
- Senior Managers and staff side representatives will work in partnership to ensure consistency and fairness in the way the policy is applied to employees, addressing areas of ineffective practice as appropriate.
- All staff employed by Leeds Community Healthcare NHS Trust must work in accordance with the Leeds Safeguarding Multi-agency Policies and Procedures and local guidelines in relation to any safeguarding concerns they have for service users and the public with whom they are in contact

### 4.2 Management Responsibility

Management will:

- ensure that employees are aware of and understand the standards of behaviour required of them by the Trust;
- act fairly, consistently and timely when dealing with employees under this policy;
- ensure appropriate documentation is completed and stored in line with agreed data protection and personal records guidance

### 4.3 Employee Responsibility

Employees will:

- comply with this policy and uphold the standards of behaviour required of them by the Trust;
- raise any questions or concerns they have about the standards of behaviour required of them with their line manager or a HR representative;
- co-operate with management in the implementation of this policy and procedure for example, by attending meetings, replying to questions, providing information, and attending as witnesses if necessary;
- comply with their own professional code of conduct at all times;

- raise concerns about their colleagues' behaviour or practice with their line manager, or another manager, if the line manager is not the most appropriate person to approach

#### 4.4 Workforce Department Responsibility

The Workforce Department will:

- advise and support managers and employees on the interpretation and application of this policy and procedure;
- ensure training and education in the application of this policy is available to managers;
- direct employees to support available within the Trust if appropriate

#### 4.5 Trade Union Responsibility

Trade Unions will:

- provide advice and support in investigation meetings, hearings and appeals and;
- contribute to the development of the Trust's employment policies and practices

### **5. Right to be Accompanied**

An employee has the statutory right to request to be accompanied by a supporter in any formal disciplinary investigation or hearing. The supporter may be a work colleague not acting in a legal capacity, an accredited Trade Union representative or an official employed by the employee's Trade Union.

Nothing in this policy will affect the right to any reasonable adjustments needed to help the employee or their supporter, for example, foreign language interpretation where either the employee or the supporter has difficulty understanding or communicating in English. This may be in addition to a trade union representative or official.

Any request to be accompanied must be reasonable. The employee should let the workforce department know if they are being supported / represented by a trade union or

professional body representative as soon as is practicable if a hearing is to take place, as well as the name of the supporter.

The employee is responsible for involving their supporter initially, and ensuring that dates of hearings are passed on to the supporter. Once a supporter is identified, they should normally be included in all correspondence with the employee, either in hard copy or electronically.

It is the responsibility of the employee to ensure that any case materials are prepared, sent and received within the timescales contained in the policy. Making such arrangements should not cause undue delay to the process as it is in everyone's interests to proceed promptly.

If the supporter is unavailable at the date and time of the hearing, the supporter and employee can suggest an alternative date or time provided a) the reason the supporter is unavailable is reasonable, b) all panel members are available on the proposed date/time. This should usually be within seven working days of the original date, although in exceptional circumstances this may be extended by mutual agreement.

The role of the supporter in any hearing is to assist and support the employee. The supporter is allowed to present the employee's case, sum up the employee's case, and respond to any view expressed on the employee's behalf. They should also be given the opportunity to ask questions of presenting managers and witnesses on the employee's behalf. The supporter is also entitled to time out to confer with the employee during the hearing as needed. The supporter may not answer questions on behalf of the employee, disrupt the process, or prevent the Trust from explaining their case. The supporter is not allowed to address the panel if the employee does not wish them to do so.

## **6. Duty to Inform Employer Regarding Criminal Offence**

An employee, whose conduct is subject to a criminal investigation, charge or conviction must inform their line manager in writing or by email immediately. Employees are also obliged to report to their line manager any criminal activity or investigations into criminal activity in which they may be involved with during their employment with the Trust.

If the employee becomes aware of any conduct of a family member, partner or friend outside of work that may affect the employee's employment relationship with the Trust, they should immediately inform their line manager.

Each notification will be assessed on an individual basis and will not necessarily lead to disciplinary action being taken.

Following disclosure, the line manager should liaise with a HR representative to determine whether formal disciplinary action needs to be taken.

The main consideration should be whether the offence is one that makes the employee unsuitable for his or her type of work, or, affects the employment relationship with the Trust, their relationship with colleagues or patients, or, where this conduct brings the Trust's reputation into disrepute.

Staff who are employed for all or part of their duties as a driver, or where the requirement to drive is an essential part of their duties, must inform their managers immediately if charged with any driving offence, including exceeding speed limit offences.

## **7. Police Investigations**

A complainant may, under relevant legislation, choose to make a formal complaint to the Police about a member of staff employed by or working under contract for the Trust.

In such situations:-

- any Police investigation will take priority over internal investigations;
- the Trust's Investigating managers must not hamper the Police investigation;
- internal investigations may continue if appropriate during Police investigations (Police advice must be taken as to whether it is appropriate to continue an investigation). The Trust's investigating managers must be mindful of the need to undertake investigations without unnecessary delay

## **8. Safeguarding Children and Adults**

The Trust will investigate all allegations of harm to children or adults made against an employee in line with this Policy and the West Yorkshire Consortium's policies and procedures. Managers are directed to access the relevant Standard Operating Procedure (SOP) for concerns relating to Safeguarding Adults and Safeguarding Children

Further information can be found in the Safeguarding and Looked After Children section on Elsie.

Any disciplinary process involving allegations of abuse or neglect must be concluded irrespective of a person's resignation.

## **9. Conduct or Allegations Outside Of Work**

In some circumstances, an employee's conduct outside of their working hours may affect their working relationship with the Trust. For example, involvement in criminal activity and investigation may substantially affect the employee's capacity to work or may question their suitability for the kind of work which they are employed to do. When such circumstances arise, they will be dealt with in accordance with this Policy.

Any allegation of domestic violence or child/adult abuse involving the employee that comes to the Trust's attention must be referred to the Police, a Local Authority Designated Officer (LADO) and/or the safeguarding procedures.

## **10. Referral to Regulatory Bodies**

### 10.1 Referral to Professional Body

Where concerns are raised about the conduct or competence of a member of staff, the manager to whom the concerns were reported must discuss their concerns with the Medical Director/Responsible Officer/ appropriate clinician or therapist within the Trust who must then inform the Executive Director of Nursing prior to commencing any internal investigation or referral being made to a professional body.

If it is decided that a referral is appropriate, the employee will be informed of this action before it takes place.

### 10.2 Referral to Disclosure and Barring Service (DBS)

Where the outcome of a disciplinary hearing is to permanently remove a person from regulated activity through dismissal (or they would have been removed if the person had not resigned, retired or made redundant), due to safeguarding concerns, then the Trust has a legal obligation to refer the individual to the DBS.

Where the outcome of the disciplinary investigation or hearing, does not lead to the permanent removal of the individual from regulated activity, the Trust may, where appropriate, still make such a referral, however, it is not legally obliged to do so and considerations must be made in relation to the Data Protection Act and Human Rights Act.

Further information is available on the DBS website [www.gov.uk/db](http://www.gov.uk/db)

## **11. Concerns, Complaints and Reports**

Conduct issues may come to light in a number of ways: a manager or colleague might report concerns; there may be a complaint from inside or outside the organisation. Employees are encouraged to raise any concerns they might have with their line manager or their manager's manager where appropriate, in the first instance. The identified manager, with advice from an HR representative, will make a decision as to the most appropriate Trust Policy to deal with the matter. There are times when a failure to raise concerns could be a disciplinary offence in itself, for example when an individual becomes aware of a threat to patient safety posed by another employee and does not report it.

Nothing in this Policy affects an individual's right to raise a concern under the Trust's Whistleblowing Policy and the individual will not suffer a detriment in having done so.

## **12. Training Needs**

Managers are required to be trained in the effective use of the Disciplinary Policy and Procedure and attend updates as required.

## **13. References**

NHS Terms & Conditions

ACAS

NHS Constitution

## **14. Monitoring Compliance and Effectiveness**

Workforce will provide reports on the number of formal disciplinary cases as part of the employee relations monitoring data.

## **15. Approval and Ratification process**

This Policy will be approved by the JNCF and ratified by the Trusts' Remuneration Committee.

## **16. Dissemination and Implementation**

Following ratification this Policy will be available to all staff via the Trust intranet site.

A short summary of its contents will also be published with a further notification appearing in Community Talk.

## **17. Review arrangements**

This policy will be reviewed in three years following ratification or sooner if there is a local or national requirement.

## **18. Associated documents**

Managing Attendance Policy and Procedure

Managing Concerns with Performance Policy

Bullying & Harassment Policy

Professional Registration Policy

Freedom to Speak Up Policy

Records Management Policy

Employee records – guidance for managers

Maintaining High Professional Standards in the Modern NHS Policy

Counter Fraud and Anti-Bribery Policy and Procedure

Confidentiality Code of Conduct

West Yorkshire Consortium Safeguarding policies (adults and Children's)

Child Protection Manual

<http://nww.lhp.leedsth.nhs.uk/common/guidelines/detail.aspx?id=578>

[http://westyorkscb.proceduresonline.com/index.htm\(children\)](http://westyorkscb.proceduresonline.com/index.htm(children))

[http://www.leedssafeguardingadults.org.uk/\(adults\)](http://www.leedssafeguardingadults.org.uk/(adults)).

Local Authority Designated Officer SOP

## Appendices

### APPENDIX A – The Procedure

#### 1.1 Informal Procedure

The key principle of these procedures is to take timely, corrective action and ensure that there is no recurrence of the issues.

Managers are encouraged to deal with minor conduct issues informally in the first instance by means of advice, guidance, further training or coaching (refer to Appendix C for examples of misconduct).

Informal action is often a more satisfactory method of resolving problems than taking formal disciplinary action. Informal action represents an attempt to correct a situation and prevent it from becoming worse without using the Disciplinary Procedure.

The manager may for example identify a training need or may be satisfied that nothing more than a discussion is required to bring about an improvement in the employee's conduct. If the manager decides after discussion that the matter can be dealt with by way of informal action the employee must be informed of that there and then. This is a normal feature of a line manager's function and does not represent formal disciplinary action.

The manager should make a written record of any discussion held with the employee and any agreed actions/timescale for improvement. This must be shared with the employee, and kept in the employee's local file.

There is no formal right to be accompanied at this stage but any request will not unreasonably be refused.

Every effort should be made to deal with allegations informally in the first instance. Where conduct issues cannot be dealt with by way of advice or guidance, because for example: they are too serious; or there have been repeated incidents previously dealt with informally and there has been no improvement, the manager should progress the matter to the formal procedure.

## 1.2 Formal Procedure

**Before any formal disciplinary action is taken a HR representative must be consulted.**

## 1.3 Sickness During The Process

The Trust recognises that formal procedures can be stressful for all those concerned and may have a detrimental impact on health and wellbeing. Should any party require additional assistance to support their attendance at work during this process they can seek advice from their line manager and / or a member of the HR team. If an employee is sick during the formal procedure they will be referred to Occupational Health for an assessment of their health, to determine if they are fit to continue with either the investigation and/or subsequent hearing, and if not, when they will be and whether they require any adjustments to enable them to continue with the investigation and/or subsequent hearing.

The Trust's Managing Attendance Policy and Procedure will continue to apply as in the case of any other sickness absence.

## 1.4 Suspension

Suspension is not a disciplinary sanction and does not imply that a decision has already been made about the allegations.

An employee will receive full pay during the period of suspension unless absent due to sickness, in which case the Trust's Managing Attendance Policy and Procedure will apply or if an employee has failed to renew their professional registration, in which case the Trust's Professional Registration Policy and Procedure will apply.

Alternatives to suspension, such as a transfer to other duties/change of base will be considered in the first instance where appropriate.

Suspension may be considered:

- where alleged concerns, if proven, could constitute gross misconduct;
- where there is concern that the individual may be a danger to patients, other staff or themselves;
- where relationships have broken down;
- where it is felt that the individual's presence in work may impede the investigation;
- where there is concern that further offences may occur.

Suspension of Medical and Dental staff will always be dealt with under Maintaining High Professional Standards in the Modern NHS Policy.

Exceptionally, employees who work in prison or police health care settings may be suspended on the advice of the Prison Security Service or Police Constabulary. Any related disciplinary proceedings will be undertaken under this policy, although Prison Security Service or Police Constabulary procedures will be taken into account.

Once a decision is made to suspend an employee the suspending manager must;

- consult with a HR representative to discuss the individual case;
- arrange to meet with the employee and their Companion if applicable to inform them of the reason(s) why they are being suspended from duty;
- advise the employee of the availability of support from the Trust's Occupational Health department or external counselling service;
- provide the employee with the reasons for the decision to suspend in writing on the day where possible.

If an employee unreasonably refuses to meet with the manager and engage with the process, or all reasonable attempts to contact the employee fail, then they will be informed of their suspension in writing and instructed not to commence duty but to contact a named manager (advice will be sought in this instance from a HR representative).

Should an issue arise out of office hours, which a manager feels may warrant suspension, the on call manager should be informed and the employee should be placed on paid authorised leave until the situation can be reviewed with a senior manager and an HR representative and a decision made.

The Commissioning Manager will review the suspension throughout the investigation. Whilst it is expected that suspension will remain in place for the duration of the investigation, should evidence come to light that suggests the suspension should be lifted, the Commissioning Manager will inform the employee in writing and arrange their return to work.

During suspension the employee will:

- remain contactable during their normal working hours and make themselves available to attend meetings if required;
- notify their line manager immediately of any changes of address/telephone number;
- not, under any circumstances, have contact with or seek to influence anyone or anything associated with the allegations;
- comply with Trust rules in relation to confidentiality;
- obtain permission from the Investigating Manager to access Trust premises (this should not preclude the employee from accessing any Trust premises for their own healthcare needs);
- not undertake alternative employment of any description that has not been expressly authorised by the Trust or previously declared to the Trust;

- request any annual/special leave as per local procedures.

In exceptional circumstances and in consultation with the Lease Car Department and a HR representative, it may be necessary to suspend the use of a Trust lease car. This decision will take in to account the nature of the allegations.

### 1.5 The Investigation

No disciplinary action will be taken against an employee until the Trust has investigated the allegations against them.

The manager to whom the allegations were initially reported or who dealt with the matter informally must notify an appropriate manager at Band 8a or above (the Commissioning Manager) providing brief details. The Commissioning Manager, with advice from a HR representative will produce the Terms of Reference for the investigation and appoint an independent manager (the Investigating Manager) to investigate the allegations and produce a report of their findings (the findings report).

The Investigating Manager may, when appropriate, be supported by an HR representative.

The nature and extent of the investigation will depend on the seriousness or complexity of the matter and whether the facts are agreed or disputed. The Investigating Manager, in consultation with a HR representative, will determine how the investigation will be conducted.

The Investigating Manager's role is to carry out a thorough, objective investigation into the allegations establishing the facts of the case as quickly and efficiently as possible.

The Investigating Manager should aim to complete the investigation within 6 weeks of being instructed by the Commissioning Manager. Employees are required to co-operate fully in the investigation and not cause any unnecessary delay. The six-week time limit may be extended after consultation with the employee and their Companion if applicable.

Employees will be kept apprised of the progress of any investigation. Should any additional allegations arise during the course of the investigation the employee will be notified and the investigation process followed.

The investigation should not be delayed whilst the employee seeks advice or representation.

Following a thorough investigation and for incidents of minor misconduct the employee may approach the Commissioning Manager and agree with the Commissioning Manager, that a sanction may be applied without the requirement to attend a disciplinary hearing.

This can only apply where:

- the employee admits their misconduct;
- the employee accepts personal responsibility for their action;
- the warning is no more than a first written warning;
- the employee has been accompanied at all times through the investigation (if applicable);
- the Commissioning Manager has reviewed the investigation undertaken;
- the Commissioning Manager is satisfied that any admission of guilt has not been given under duress and;
- the sanction is an appropriate sanction for the misconduct.

The Commissioning Manager must make it absolutely clear to the employee that they are entitled to attend a disciplinary hearing for an independent panel to consider the evidence and reach a conclusion and that in accepting a sanction at this stage, they are forgoing this statutory right. This must be confirmed in writing to the employee and the employee must sign a copy of that letter to confirm their agreement to this. A copy of this letter must be retained on the employee's personnel file.

### 1.6 The Investigation process

- At the commencement of the investigation, a letter will be sent by the Investigating Manager to the employee detailing the allegation/s under investigation enclosing a copy of this policy and the Terms of Reference. The employee will be given 5 working days' notice of the proposed date for the investigation meeting and confirmation of their right to be accompanied at the meeting. The employee should attend the investigation meeting prepared to answer the allegations and should bring with them any information/documents that they consider are relevant.
- At the investigation meeting the Investigating Manager will ensure the member of staff is fully aware of the nature of the allegation/s and has the opportunity to state their account. The Investigating Manager will ask the employee to identify any witnesses that they feel should be interviewed as part of the investigation process and any documents that they consider relevant. It is the Investigating Manager's ultimate decision as to how the investigation is conducted.
- A written record of the investigation meeting will be taken. The record is not a verbatim record of the meeting. The employee or their companion may also make notes of the meeting.

- Following the investigation meeting the employee will be provided with a copy of the written record of the meeting. The employee is required to return to the Investigating Manager, a signed copy of the record to indicate their agreement to the contents. If the employee does not consider that the record is an accurate reflection of what was said at the meeting (remembering that the record is not intended to be verbatim) they are entitled to make reasonable amendments to the record to reflect what the employee considers they said. Any amendments must be made clear and a signed copy returned to the Investigating Manager. If after the meeting, the employee has any further information or documentation that they consider relevant, they should forward it to the Investigating Manager.
- The Investigating Manager will meet with relevant witnesses to the alleged misconduct. A written record of the meeting will be taken. The record is not a verbatim record of the meeting.
- It must be made clear to witnesses that their statements may be used as evidence in a formal disciplinary hearing and they may be required to attend as a witness.
- Witnesses will be given sufficient time to agree the written record taken as part of the investigation and will be able to make reasonable amendments before signing and returning a copy, which will form their witness statement.
- The Investigating Manager will then prepare their findings report setting out the allegations and their findings of facts in relation to the allegations and conclusions and forward to the Commissioning Manager for a decision on the next steps.

### 1.7 Investigation outcome

Upon completion of the findings report, the Investigating Manager will forward it to the Commissioning Manager to decide either:

- no case to answer;
- remedial action such as further training, supervision or referral to Occupational Health;
- further investigation;
- progression to a formal hearing

Once the decision is made, the Commissioning Manager will write to the employee enclosing the findings report and notifying them of their decision and the action that will be taken.

## 1.8 Formal Hearing

If the decision of the Commissioning Manager is that there is a case to answer in relation to the misconduct a formal disciplinary panel hearing will be convened by a HR representative.

## 1.9 Composition of the Panel

The composition of the formal disciplinary panel will take into account the nature/seriousness of the alleged misconduct.

The panel will always comprise of an appropriately trained independent manager (Chair) and a HR representative to hear the case, neither of whom have had any prior involvement in the issue.

If appropriate, one member of the panel should have special knowledge of the subject on which the hearing is based (professional advisor).

The professional advisor will be experienced in the particular subject matter under review, and must not have had any direct involvement in the circumstances leading up to the hearing.

The professional advisor may only advise the panel on any professional or technical matter arising during the course of the hearing which they feel may be related to the case. He/she will not be entitled to vote on the decision.

## 1.10 Anonymous Witnesses

This section applies to all parts of the disciplinary process.

In exceptional circumstances a witness may request to remain anonymous, however it must be noted that anonymity cannot be guaranteed and a witness must have clear justification for making such a request.

The manager dealing with the request, which may be made at a number of points in the procedure, will decide whether or not it is appropriate to withhold the identity of the witness.

The manager will take into account the reasons given by the witness for remaining anonymous; advise the witness about the requirements for a fair process; that an employee has the right to know the details of the allegations that they are being asked to answer and how remaining anonymous may affect the process.

If, having spoken to the witness, the manager is satisfied by their reasoning, then the manager can determine whether or not it is appropriate for that witness to remain anonymous having balanced the need to protect the witness and the right of the employee to a fair hearing.

Employees against whom allegations have been made should have the opportunity to raise their concerns about the information provided by an anonymous witness. The employee will be given the opportunity to put questions to the anonymous witness in writing prior to a formal hearing taking place (if applicable).

#### 1.11 Preparations for the hearing

A HR representative will be responsible for setting up the formal disciplinary hearing. It is expected that the formal disciplinary hearing will be convened within 25 working days of notification of the outcome of the investigation. The HR representative will send a letter to the employee setting out the allegation/s, the possible consequences if the allegations are upheld (including, where appropriate possible dismissal) the date, time and location of the hearing and the employee's right to be accompanied. The letter will be sent at least ten working days before the hearing.

Where failure to attend the hearing is with prior notice and the reason given for non-attendance is reasonable i.e. sickness, the hearing will be reconvened.

Where failure to attend is due to sickness absence from work an occupational health referral may be required to advise if the individual is fit to attend the hearing.

Where failure to attend is not notified prior to the hearing the nominated HR representative will write to the employee requesting a reason for their non-attendance. The hearing will be reconvened at a date and time that is suitable for the panel members.

If the reconvened hearing is not attended by the employee or their nominated representative the hearing may proceed in their absence.

If the employee fails to attend without good reason, or is persistently (no more than two times) unable to do so (for example for health reasons) the Trust may have to make a decision based on the available evidence.

If the companion is unable to attend then the procedure at Section 4 will apply.

The Investigating Manager will prepare the management case for the hearing. The management case will typically include the findings report, written records from the investigation meeting with the employee and witness/es, and copies of any documents or information relevant to the investigation.

The employee may also produce a statement of case including any relevant material to support their case.

Both the full management case and the employee's statement of case should be provided to the HR representative five working days prior to the hearing who will then exchange the statements of case between the parties four working days prior to the hearing

The Investigating Manager and the employee must notify the nominated HR representative of their intention to call any witnesses to the hearing (including their names and job titles) no later than five working days prior to the hearing. Confirmation of witnesses will be made to both sides with the exchange of information or as soon as reasonably possible thereafter.

If witness statements are used/submitted as part of the management or employee case and are material to the case then the witness will be required to attend the hearing to allow for questioning by both parties and a thorough examination of their evidence by the panel.

If witness attendance is contested by either side, the Chair will decide upon the appropriateness of their attendance. However, if witness evidence is contested and said witness is unable or unwilling to attend the hearing, the panel will consider what weight will be given to that evidence when reaching their decision and may discount it altogether.

Each party is responsible for ensuring their witnesses' attendance at the hearing (if the employee is suspended and therefore unable to contact witnesses directly, the employee must inform the HR representative who will make the necessary arrangements).

There is no provision for witnesses to be represented either during the investigation process or at the formal hearing. In exceptional circumstances this may be facilitated, for example to accommodate any requirements under the Equality Act 2010.

## 1.12 The procedure to be followed at a formal disciplinary hearing

### *1.12.1 Introductions*

The Chair will introduce the people present at the hearing; explain the purpose of the hearing (i.e. to consider whether disciplinary action should be taken), the purpose of the accompanying person and how the hearing will be conducted as outlined above. The Chair will also ensure that the employee understands the allegations that the employee is required to answer

### 1.12.2 *Management Case*

- The Investigating Manager will present information from the investigation using the full management case.
- The employee/their companion can question the Investigating Manager and the management witness(es) if they are called.
- The Panel will then question the Investigating Manager and each witness.
- The Investigating Manager can re-examine the management witness if required and then complete their presentation.

### 1.12.3 *Employee Case*

- The employee will then present their case using written statements and witnesses if required.
- The Investigating Manager can question the employee and their witness(es).
- The Panel will then question the employee and each witness.
- The employee can re-examine the employee's witness(es) if required and then complete their presentation

### 1.12.4 *Summary*

The Investigating Manager and the employee will be invited to sum up their case for the Panel.

### 1.12.5 *Panel Decision*

Where possible, the Chair will recall both parties after an adjournment to announce the decision verbally. If a decision cannot be made without further deliberation, it may be necessary to communicate the decision in writing at a later date. In either event, it is expected that the outcome will be confirmed in writing to the employee and their companion no later than five (5) working days after the hearing date.

Alternatively, if the Panel requires access to additional information in order to clarify any points, the disciplinary hearing will be adjourned and re-arranged when additional information is available and for a decision to be reached. The Investigating Manager and employee will be provided with any additional information in advance of any rearranged hearing. As an alternative to holding another hearing, the Panel may determine that the most practical and effective way of considering any additional information is to invite comments in writing on the information for the Panel to consider in private before reaching a decision.

### 1.12.6 *Disciplinary Sanctions*

The range of sanctions for misconduct are set out below. What the Trust considers to be acts of misconduct are set out at appendix C. This is not an exhaustive list.

The Trust aims to treat all employees fairly and consistently and the sanction given to another employee for similar misconduct may be taken into account but should not be treated as a precedent. Each case will be assessed on its own merits with consideration given to:

- the seriousness of the disciplinary breach in question;
- the circumstances and features of the particular case;
- the employee's current employment record;
- fairness, justice and consistency.

An employee will not normally be dismissed for a first act of misconduct unless the Trust decides it amounts to gross misconduct.

#### **Stage One – First Written Warning**

It will usually be appropriate for a first act of misconduct where there are no other active written warnings on an employee's disciplinary record.

The employee will be warned that repetition or other subsequent misconduct may lead to further disciplinary action being taken against them, not excluding dismissal. An employee will also be informed that the warning will remain on their personal file for **12** months.

#### **Stage Two – Final Written Warning**

It will usually be appropriate for misconduct where there is already an active written warning on an employee's record or misconduct that the Trust considers sufficiently serious to warrant a final written warning even though there are no other active warnings on their record.

The employee will be warned that a repetition or other subsequent misconduct may lead to further disciplinary action, not excluding dismissal. The employee will also be informed that the warning will remain on their personal file for between **12 – 24** months.

#### **Stage Three – Dismissal/Termination of Employment**

It will usually only be appropriate for further misconduct where there is an active final written warning on an employee's record or any gross misconduct regardless of whether

there are active warnings on an employee’s record. Gross misconduct will usually result in immediate dismissal without notice or payment of in lieu of notice (summary dismissal).

*1.12.7 Notification of Outcome*

If an employee is issued with a sanction following a disciplinary hearing the employee’s line manager and Head of Service will be sent a copy of the outcome letter. No other parties will be notified of the disciplinary outcome except in the case of dismissal where it may be appropriate to make a referral to a professional body.

*1.12.8 Details of Warnings*

Details of all warnings will be confirmed in writing and a copy of the sanction letter kept on the employee’s HR file for the life of the sanction at which point it will be considered spent but not removed from the file.

If an employee is absent from work for more than 2 weeks (other than for annual leave and sickness absence) including maternity leave, career break etc., then the warning will be suspended for that period and be resumed on their return to the workplace. **The line manager is responsible for notifying the HR representative in these circumstances who will update the employee records accordingly.**

1.13 Authority to undertake disciplinary action

This schedule sets out the minimum level of authority required to undertake disciplinary action. This does not preclude the involvement of more senior management at an earlier stage of the process if appropriate.

<b>Authority to Suspend</b>	<ul style="list-style-type: none"> <li>• Trust Non-Executive Directors (only for suspensions of staff at Board level and above)</li> <li>• Trust Board Level Directors</li> <li>• General Manager or equivalent</li> <li>• Band 8a or above</li> </ul>
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	<b>Disciplinary Hearing</b>
First Written Warning	Band 8a or above
Final Written Warning	Band 8a or above
Dismissal	General Manager or equivalent or above

#### 1.14 *Right of Appeal*

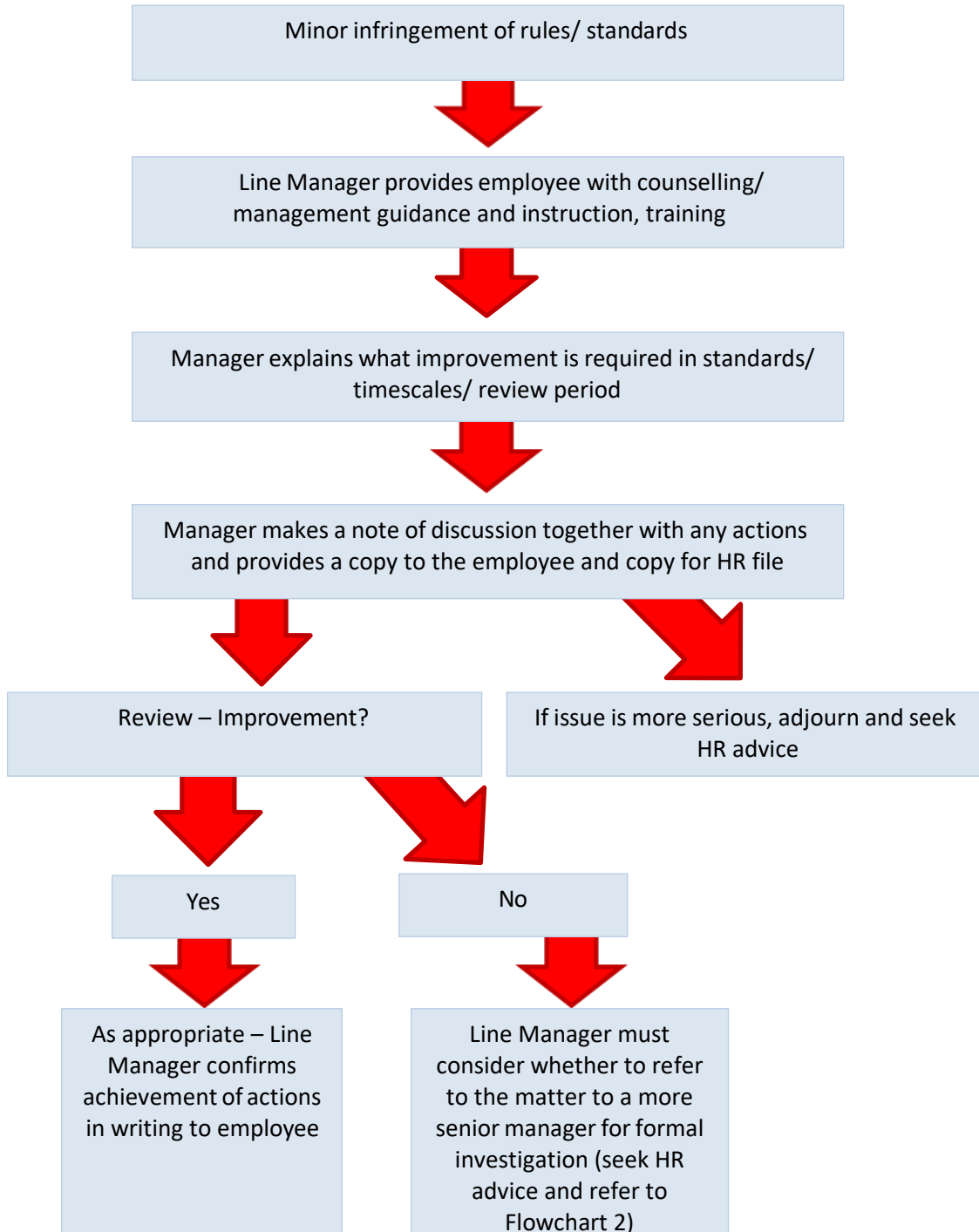
Employees have the right of appeal against formal disciplinary outcomes. In wishing to exercise this right, the employee should write to the Director of Workforce within fifteen working days of the date of the letter confirming the decision clearly setting out the grounds for their appeal.

All appeals will be dealt with in accordance with the Trust's Appeal Policy.

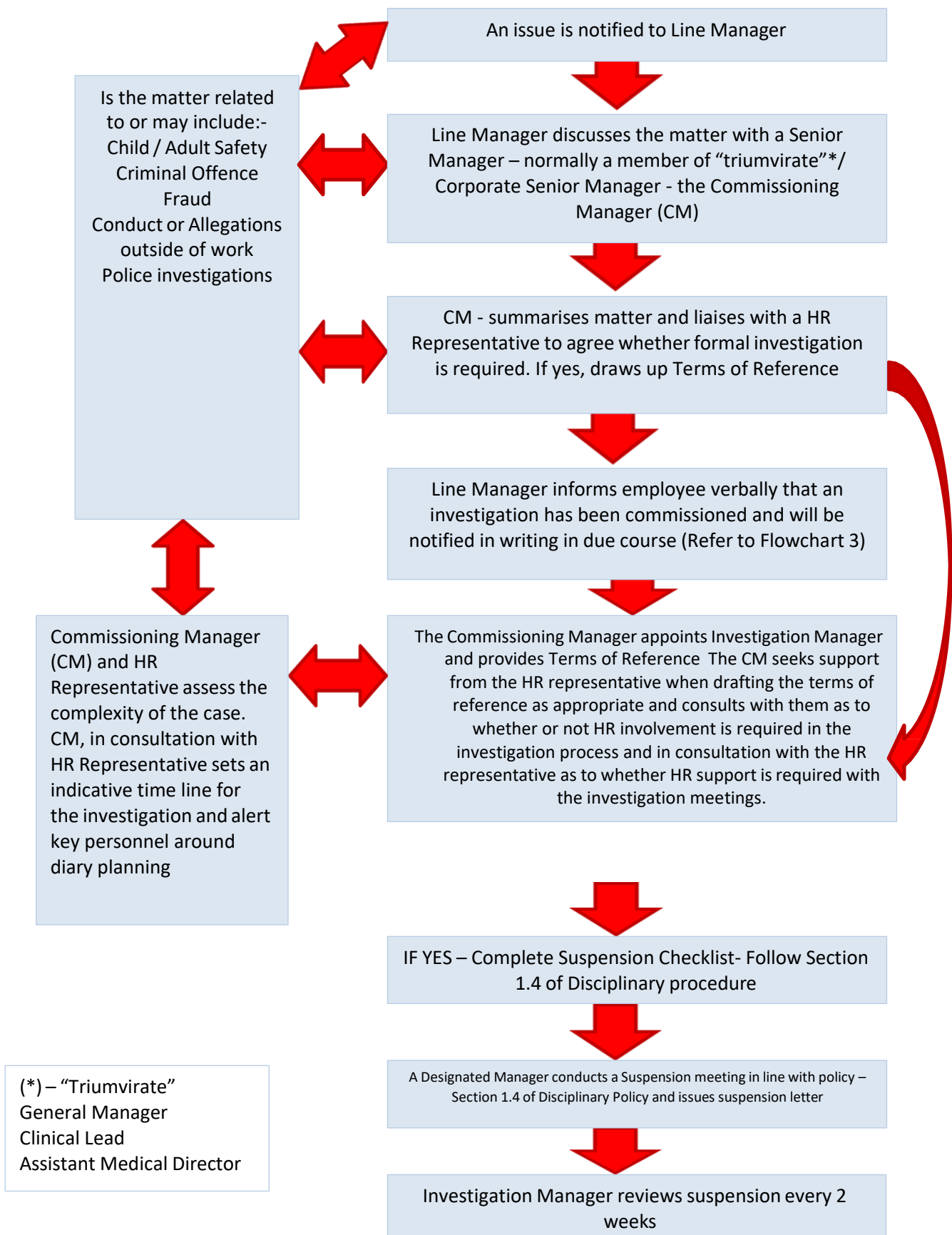
**Note – all records and reports received / created by the disciplinary panel should be forwarded to the relevant HR representative at the end of the process.**

## APPENDIX B - Process Flowcharts

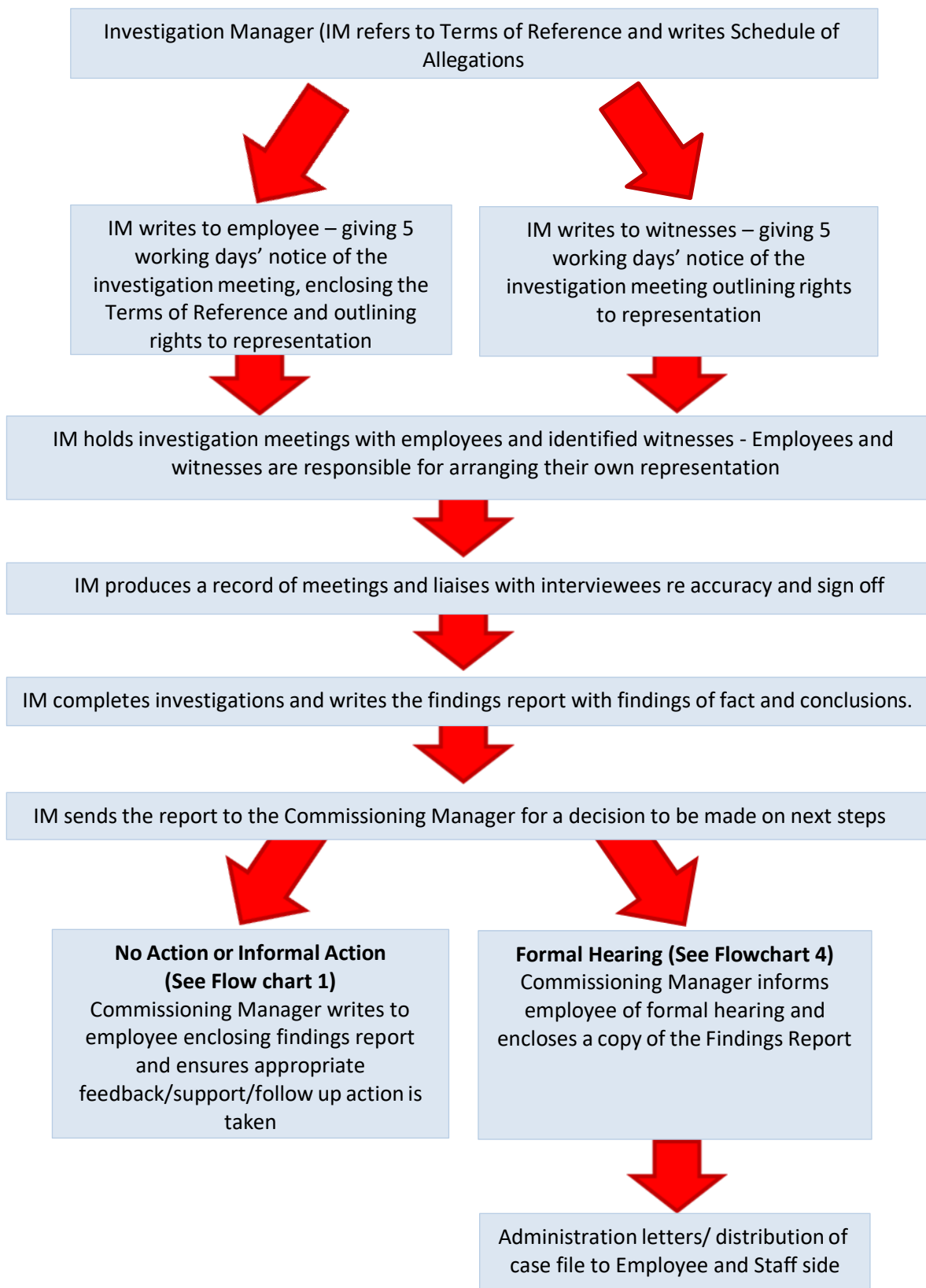
### 1. INFORMAL ACTION



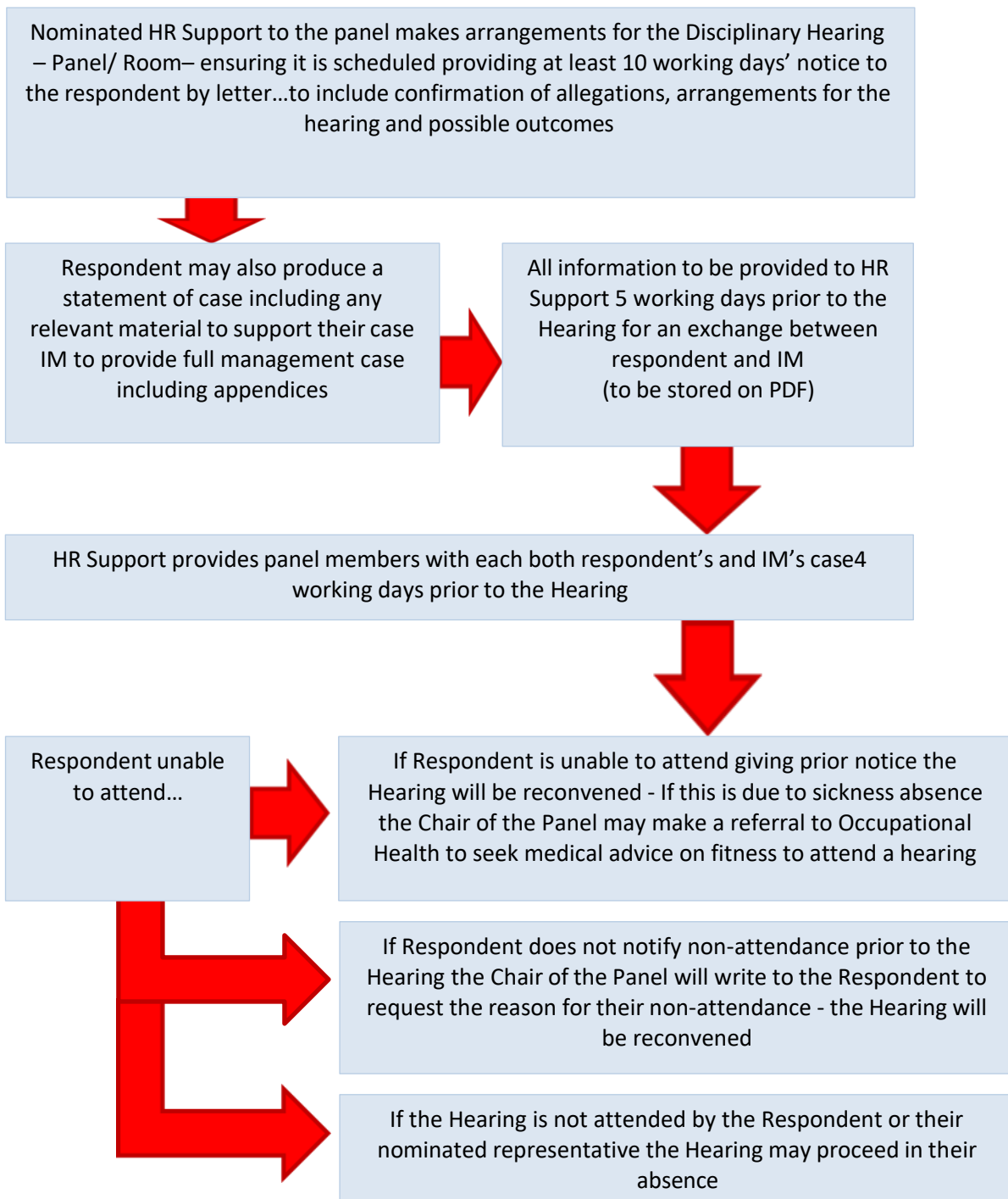
## 2. ESTABLISH COMMISSIONING MANAGER/CONSIDER SUSPENSION/APPOINT INVESTIGATING MANAGER



## 2. INVESTIGATION



#### 4. ARRANGING A DISCIPLINARY HEARING



## 5. DISCIPLINARY HEARING – Roles of Panel Members

### **Independent Chair:-**

Independent Chair of Panel opens the proceedings

### **Investigating Manager:-**

Sets out the allegations and presents their findings report

May call witnesses and present evidence

Upon conclusion of considerations / questions – will sum up

### **Respondent:-**

Will outline whether they accept or deny the allegations and will provide their account of the matter

May call further witnesses and present other evidence

Will sum up immediately prior to the Investigating Manager

### **The Panel:-**

May permit questioning of witnesses by the Respondent / Representative

May question the Investigating Manager

May permit questions of the Respondent by the Investigating Manager and may ask questions

May permit questions by the Investigating Manager and may ask questions

May permit further questions by the Respondent / Representative

### **Considers the case in private**

Informs the parties of the decision on the day – unless by agreement at a later date (exceptional circumstances)

Having considered whether they had access to all relevant information and advice – if not adjournment



The Panel will confirm the decision in writing to the Respondent / Representative and set out the reasons for it and will notify the Respondent of the right to appeal – within 5 working days of the Hearing  
The letter should be copied to the Panel members, the Investigating Manager, the Line Manager and HR



A written record of the Disciplinary Hearing will be retained in PDF Format

## **DISCIPLINARY HEARING – Roles of Panel Members (continued)**

### **Role of HR Support to the Panel:-**

The HR representative will provide advice in respect of the application of this procedure- S/he will support the manager in the process of making an informed, fair and reasonable decision- He/she will ask questions at the hearing and challenge evidence where required

### **Role of Note Taker:-**

Will take a written note of the proceedings during the hearing. These will be notes of key points and will not be a verbatim record. Notes will be retained in PDF format in the employee's HR file

## **APPENDIX C - Disciplinary Rules**

ACAS guidance suggests all organisations agree rules of performance and conduct which set out the standards of behaviour expected from their employees, with examples of disciplinary action that may be taken if the rules are broken.

The following list gives examples of actions likely to give cause for disciplinary action. The list is not exhaustive as it is not possible to cover every circumstance of misconduct.

Gross misconduct is defined as any fundamental breach of a rule or standard of expected behaviour which has the effect of being a repudiatory breach of the employment contract. Such breaches fundamentally affect the relationship between employee and the Trust.

Examples of gross misconduct include but are not limited to:

- theft, fraud, falsification of records, impropriety or dishonesty
- violence or threat of violence
- bullying, harassment, intentional unlawful discrimination or sexual misconduct (see Acceptable Standards of Behaviour Policy)
- compromising patient, care or safety
- breach of any statutory or regulatory requirement concerning patient trust, care or safety
- malicious or wilful damage to property or misuse of property
- serious insubordination
- being unfit for work because of alcohol or drug abuse (see also Alcohol Policy in first instance)
- misuse of drugs or breach of any drug handling requirements
- breach of health and safety requirements
- breach of confidentiality
- misuse of the Trust computer, internet or e-mail facility
- any failure of integrity or probity in research.
- failure to maintain professional registration as per the Trust's Policy on Professional Registration
- criminal offences outside of work which substantially affects the employee's capacity to work or clearly indicates their suitability for the kind of work which they are employed to do
- bringing the Trust into disrepute
- damaging working relationships between members of staff and/or damaging the Trust's relationship with its patients through social media or otherwise
- Working whilst off work sick without permission
- Gross negligence

### Misconduct

- breach of any of the Trusts policies and procedures

- unauthorised absence from work and/or poor time keeping
- failure to comply with a reasonable management instruction
- failure to observe departmental rules, procedures or protocols.
- Being under the influence of alcohol or drugs
- Engaging in employment outside of normal working hours which adversely affects their employment with the Trust.
- Failure to notify professional body where required, i.e. involvement in formal proceedings
- Inappropriate work related comments on social media platforms, i.e. Facebook, Linked In, Twitter (this list is not exhaustive)
- Negligence/failure to achieve an acceptable standard of study or to pass examinations essential for the fulfilment of the job
- Unsatisfactory/attendance timekeeping
- Abuse of concessionary breaks e.g. extending breaks or returning late without permission to do so
- Failure to observe Dress Code policy
- Minor deliberate acts of carelessness and/or negligence, which do not cause undue risk to health and safety
- Behaviour at work, or whilst on NHS premises likely to cause offence to fellow employees and others or likely to cause a nuisance and create disharmony
- Failure to meet performance standards in relation to quantity, quality and efficiency of work performed (where such failure is considered wilful rather than simply as a lack of competence on the part of the employee, when the performance policy may be more appropriate.