

HR03

Disciplinary Policy

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Attachments

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| Attachment 1 | <u>Standards of Behaviour and Conduct</u> |
| Attachment 2 | <u>Suspension and Restriction of Duties Guidelines</u> |
| Attachment 3 | <u>Disciplinary Procedure</u> |

In addition the [HR Advisory toolkit](#) provides a range of additional resources including guidance, tools and templates.

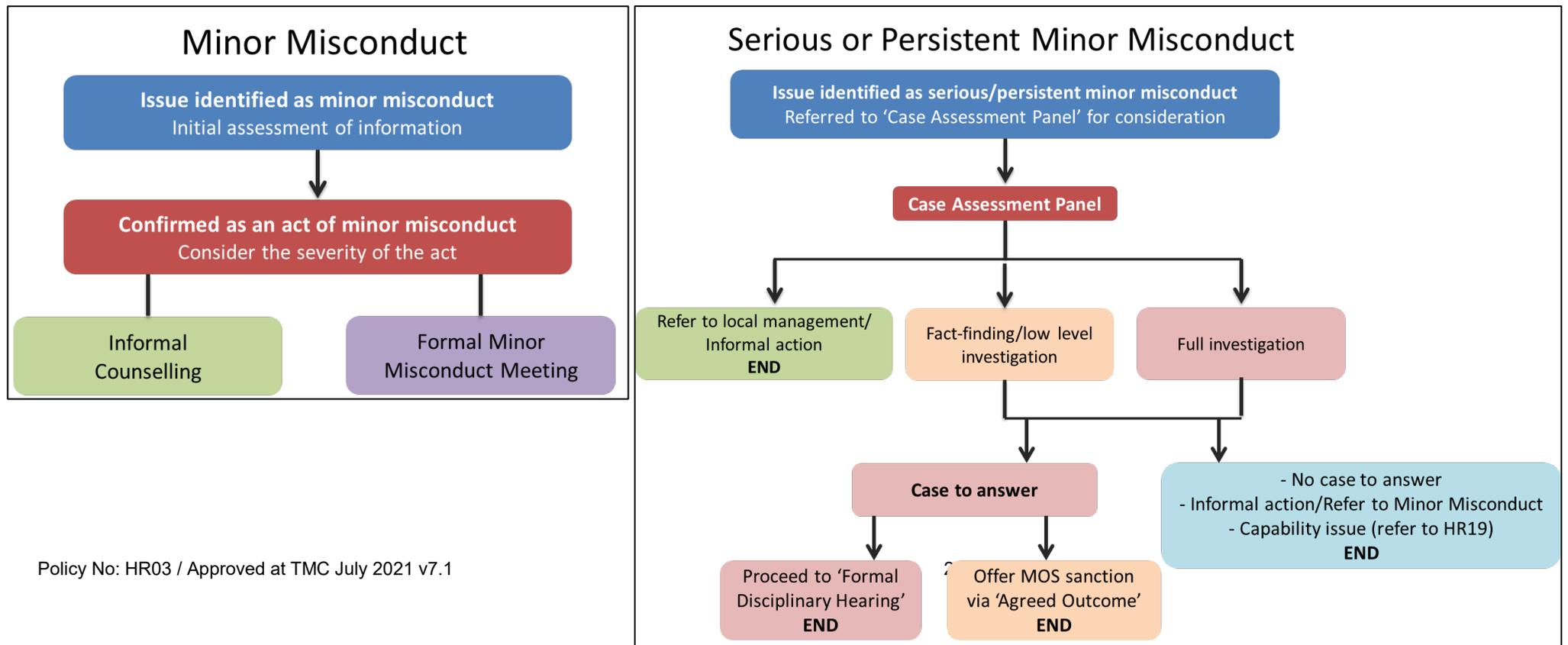
Policy on a page

The purpose of this policy is to ensure that there is a systematic approach to achieving the required standards of conduct and that any disciplinary action is fairly and consistently applied.

The three policy attachments include:

- **Standards of Behaviour and Conduct** – provides clarification of accepted conduct;
- **Suspension and Restriction of Duties Guidelines** – provides guidance and a framework to Trust managers;
- **Disciplinary Procedure** – describes the steps to manage employees who have failed to maintain acceptable standards of conduct. The two flowcharts below give an overview of the process for managing matters of minor misconduct and serious/persistent minor misconduct.

The [HR Advisory Toolkit](#) also contains a range of guidance documents and templates designed to support the implementation of this policy.



1.0 Policy Statement

- 1.1 The Trust expects its employees to act professionally and in accordance with Trust policies, rules and standards of behaviour at all times. Conduct that is deemed to be unacceptable will be managed in line with this policy.
- 1.2 The purpose of this policy is to ensure there is a systematic approach to achieving the required standards of conduct and that any disciplinary action is fairly and consistently applied. The Trust acknowledges its previous experience of implementing disciplinary processes and this policy aims to address lessons learnt.

2.0 Definitions

- 2.1 Conduct is defined as the standard of behaviour of an individual, measured according to the Trust's expected legal, professional and/or value based standards.
- 2.2 The table outlines definitions for terms referred to within the policy and its attachments.

| | |
|-------------------------------------|--|
| Agreed Outcome Disciplinary Meeting | A fast-track meeting in which a disciplinary warning (first or final written warning) is given to an employee. |
| Case Assessment | A meeting to support and enable consideration of identified disciplinary issues, taking account of just culture factors, risk factors, and case complexity. The supporting documentation provides a framework for the Case Assessment Panel and assist in determining an appropriate, fair and consistency way forward. |
| Case Manager | Will oversee the formal investigation processes including reviewing suspension status at 4-weekly intervals, supporting and enabling the investigation to be conducted effectively and efficiently, providing appropriate support and guidance to all parties, and reviewing investigation reports. The case manager may delegate any of the above duties to another appropriate manager to ensure an efficient and fair process. |
| Commencement Meeting | Meeting whereby the employee is informed of both the allegations and the commencement of the formal investigation, and whether any form of suspension or restriction of duties applies. |
| Companion | Representative of a recognised trade union, or a colleague who is a member of Trust staff. |
| Formal Disciplinary Hearing | Formal meeting between management and a member of staff in order to consider the facts of the case and determine if there has been misconduct and if so, whether it warrants formal disciplinary action. |
| Investigating Officer (IO) | Manager identified to fully investigate the issues of concern/allegations. |
| Low level investigation HR Lead | The nature of the case will determine whether it is appropriate for the low level/fact-find investigation to be led by an independent investigating officer or a member of the HR Advisory team. |
| Verbal warning | A warning that is given orally. A letter follows to confirm that the warning has been given. |

3.0 Accountabilities

- 3.1 The **Director Sponsor** will be accountable for the revision of this policy which will be necessary from time to time as a result of changes in legislation or in the light of experience when applying the policy and its associated procedures. Any revisions will be agreed through the Trust's Joint Negotiating Committee.
- 3.2 The **Executive Directors, Deputy Directors, Deputy Chief Operating Officers, Divisional Managers, Group Managers, Department Managers, Heads of Service and Director Managers** will be responsible for ensuring that this policy is fairly and consistently applied within their areas of responsibility in the Trust.
- 3.3 **Line managers** will be responsible for undertaking appropriate learning in order to comply with this policy and for the accurate maintenance of records in line with this policy.
- 3.4 **Employees** will be responsible for complying with the Trust rules and standards of behaviour at all times.
- 3.5 **Employees** who are managed under this policy will not be precluded from accessing the Trust Freedom to Speak Up Guardian.
- 3.6 The **HR Advisory Department** will be responsible for supporting the implementation of these processes, including relevant training/support for managers.
- 3.7 The **Occupational Health and Wellbeing Department (OHWB)** is responsible for promoting the physical and mental wellbeing of Trust's staff, including providing support and guidance to them and managers in the form of medical advice, guidance, support and health promotion. This is particularly important for staff subject to a disciplinary process.
- 3.8 **Staff side** will be familiar with the policy in order to provide advice and support to its members in respect of its application.
- 3.9 The **Local Counter Fraud Specialist (LCFS)** is responsible for investigating any instances of fraud and bribery. The LCFS will work with the Chief Finance Officer and the HR Advisory Department when undertaking the investigation. The investigation may be passed to the Police and the Crown Prosecution Service if deemed appropriate and in the public interest.

4.0 Policy Detail

- 4.1 This policy and its associated attachments applies to all staff employed by the Trust. It does not apply to 'bank only' staff, agency staff, or independent contractors (please refer to the terms of these individual agreements for how conduct issues will be managed).
- 4.2 In cases of misconduct by medical and dental staff, this policy must be read in conjunction with [HR28 Supporting Doctors to Provide Safer Healthcare Policy and Procedure](#). No disciplinary action must therefore be taken against a member of medical or dental staff before seeking advice on the process from the HR Advisory

Department. With regard to Doctors in Training, referral and close liaison with the Deanery is required.

4.3 It is essential that all managers are careful to follow the detailed procedure set out in this document. The HR Advisory Department is available to provide advice and guidance.

4.4 This policy does not form part of the contract of employment.

4.5 This policy is supported by the following attachments:

Attachment 1 [Standards of Behaviour and Conduct](#)

Attachment 2 [Suspension and Restriction of Duties Guidelines](#)

Attachment 3 [Disciplinary Procedure](#)

4.6 In addition the [HR Advisory toolkit](#) provides a range of additional resource including guidelines, tools and templates.

5.0 Financial Risk Assessment

| | | |
|---|---|----|
| 1 | Does the implementation of this policy require any additional Capital resources | No |
| 2 | Does the implementation of this policy require additional revenue resources | No |
| 3 | Does the implementation of this policy require additional manpower | No |
| 4 | Does the implementation of this policy release any manpower costs through a change in practice | No |
| 5 | Are there additional staff training costs associated with implementing this policy which cannot be delivered through current training programmes or allocated training times for staff. | No |
| | Other comments | |

6.0 Equality Impact Assessment

An initial equality impact assessment has been carried out and it indicates that there is no likely adverse impact in relation to Personal Protected Characteristics as defined by the Equality Act 2010.

7.0 Maintenance

This policy will be reviewed every three years or earlier if warranted by a change in standards or if changes are deemed necessary from internal sources.

8.0 Communication and Training

8.1 The HR Advisory Department will provide advice on the policy to staff, and advice and support to managers in the fair and equitable application of this policy as appropriate.

8.2 A manager training programme is available and will be advertised through staff bulletins and Divisional HR representatives.

8.3 A [HR Advisory Toolkit](#) is available to provide further guidance and support to managers.

8.4 All Group Managers, Matrons, Departmental/Directorate Managers are responsible for the communication of this policy to their staff.

9.0 Audit Process

9.1 The Chief People Officer has overall responsibility for the update and maintenance of this policy.

9.2 The Divisional Team, as well as the People and Organisational Development Committee will be responsible for monitoring its implementation and reviewing this policy to ensure it reflects national standards and best practice.

| Criterion | Lead | Monitoring method | Frequency | Committee / Group |
|--|-----------------------------|---|-----------|-------------------|
| Fair and consistent application of this policy | HR Manager/ Line Manager | - Audit of actions taken by gender, race, age and disability to identify any variations - Workforce Race Equality Standard report outcomes - NHS staff survey results | Annual | POD Committee |
| Analysis of case length | HR Advisory Department | Audit regarding length of cases/ timescales in relation to the time period aims detailed within procedure | Annual | POD Committee |

10.0 References

- ACAS – Code of Practice on Disciplinary and Grievance Procedures, March 2015
- ACAS – Disciplinary and Grievances at work: The ACAS Guide, March 2015
- HR19 – Trust’s Performance Capability Policy
- HR28 – Trust’s Supporting Doctors to Provide Safer Healthcare Policy and Procedure
- GP02 – Trust’s Local Anti-Fraud, Bribery and Corruption Policy
- HR16 – Trust’s Raising Concerns at Work Policy

Part A - Document Control

| | | | | |
|---|---|------------|---|--|
| Policy number and Policy version: HR03 v7.1 | Policy Title: Disciplinary Policy | | Status: Final | Author: HR Manager - Advisory Director Sponsor: Chief People Officer |
| Version / Amendment History | Version | Date | Author | Reason |
| | V1 | May 1995 | HR | Introduction |
| | V2 | April 2004 | HR | Review |
| | V3 | Feb 2008 | HR | Review |
| | V4 | Mar 2009 | HR | Review |
| | V5 | May 2011 | Terms and Conditions Policy Review Sub Group | Policy review following TCS |
| | V6 | April 2016 | HR Manager - Advisory | Policy review date and introduction of new policy elements |
| | V6.1 | Nov 2017 | HR Manager - Advisory | Minor amendments |
| | V7 | Apr 2019 | HR Manager – Advisory (interim) | Policy review |
| | V7.1 | June 2021 | HR Manager - Advisory | Interim review to incorporate introduction of piloted case assessment process |
| Intended Recipients: All staff | | | | |
| Consultation Group / Role Titles and Date: Main changes were piloted involving range of service leads, staff side and cultural ambassadors – September 2020 to January 2021; Staff Side – February 2021 | | | | |
| Name and date of Trust level group where reviewed | | | Joint Negotiating Committee – June 2021 Trust Policy Group – June 2021 | |
| Name and date of final approval committee | | | Trust Management Committee – July 2021 | |
| Date of Policy issue | | | July 2021 | |
| Review Date and Frequency (standard review frequency is 3 yearly unless otherwise indicated) | | | April 2022 (then every 3 years) | |
| Training and Dissemination: Information sharing and engagement at manager's meetings, launched via Divisional Management forums. Training programme available for line managers. Advice and guidance available from the HR Advisory Department as and when | | | | |

| | |
|---|---|
| required by managers and staff. | |
| To be read in conjunction with: HR19 Performance Capability Policy HR Advisory Toolkit HR28 Supporting Doctors to Provide Safer Healthcare Policy and Procedure (for medical and dental staff) | |
| Initial Equality Impact Assessment (all policies): Completed Yes Full Equality Impact assessment (as required): Completed No If you require this document in an alternative format e.g., larger print please contact Policy Administrator 8904. | |
| Monitoring arrangements and Committee | People and Organisational Development Committee (POD) |
| Document summary/key issues covered: This policy and its associated attachments provides standards of behaviour and conduct to be adhered to by staff, as well as a framework in which to manage misconduct and gross misconduct. | |
| Key words for intranet searching purposes | Behaviour Bribery Conduct Disciplinary Dishonesty Fraud Misconduct Restriction of duties Suspension |
| High Risk Policy? | No |

Name of document: HR03 Disciplinary Policy

Name of author: Jenni Smith

Job Title: HR Manager - Advisory

I, _____ the above named author confirm that:

- The Strategy/Policy/Procedure/Guidelines (please delete) presented for ratification meet all legislative, best practice and other guidance issued and known to me at the time of development of the said document.
- I am not aware of any omissions to the said document, and I will bring to the attention of the Executive Director any information which may affect the validity of the document presented as soon as this becomes known.
- The document meets the requirements as outlined in the document entitled Governance of Trust- wide Strategy/Policy/Procedure/Guidelines and Local Procedure and Guidelines(OP01).
- The document meets the requirements of the NHSLA Risk Management Standards to achieve as a minimum level 2 compliance, where applicable.
- I have undertaken appropriate and thorough consultation on this document and I have detailed the names of those individuals who responded as part of the consultation within the document. I have also fed back to responders to the consultation on the changes made to the document following consultation.
- I will send the document and signed ratification checklist to the Policy Administrator for publication at my earliest opportunity following ratification.
- I will keep this document under review and ensure that it is reviewed prior to the review date.

Signature of Author: *J Smith*

Date: 26th April 2021

Name of Person Ratifying this document (Director or Nominee):

Job Title:

Signature:

- I, the named Director (or their nominee) am responsible for the overall good governance and management of this document including its timely review and updates and confirming a new author should the current post-holder/author change.

To the person approving this document:

Please ensure this page has been completed correctly, then print, sign and email this page only to: The Policy Administrator

IMPLEMENTATION PLAN

To be completed when submitted to the appropriate committee for consideration/approval

| | | |
|--|--|---|
| Policy number and policy version HR03 v7.1 | Policy Title Disciplinary Policy | |
| Reviewing Group | People and Organisational Development Committee | Date reviewed: March 2021 |
| Implementation lead: JENNI SMITH, HR MANAGER - ADVISORY | | |
| Implementation Issue to be considered (add additional issues where necessary) | Action Summary | Action lead (Timescale for completion) |
| Strategy; Consider (if appropriate) 1. Development of a pocket guide of strategy aims for staff 2. Include responsibilities of staff in relation to strategy in pocket guide. | Policy will be communicated through the Divisional/ Department Meetings and Trust communication channels. | Upon policy approval HR Advisory Team |
| Training; Consider 1. Mandatory training approval process 2. Completion of mandatory training form | Line manager training programme available | Immediately available HR Advisory Team |
| Development of Forms, leaflets etc; Consider 1. Any forms developed for use and retention within the clinical record MUST be approved by Health Records Group prior to roll out. 2. Type, quantity required, where they will be kept / accessed/stored when completed | Tools and templates will be available on the HR Advisory Toolkit | Immediately available HR Advisory Team |
| Strategy / Policy / Procedure communication; Consider 1. Key communication messages from the policy / procedure, who to and how? | Launched via management forums, communicated through the chairs of approving committees, via the Intranet and Trust communication channels, and guidance provided by the HR Advisory team. | Upon policy approval HR Advisory Team |
| Financial cost implementation Consider Business case development | None | |
| Other specific Policy issues / actions as required e.g. Risks of failure to implement, gaps or barriers to implementation | n/a | |

Standards of Behaviour and Conduct

1.0 Procedure Statement

- 1.1 This procedure is designed to assist employees in providing clarification of accepted conduct in relation to their employment with the Trust and their duty to report to their manager if they are arrested on any charge or served with a summons on a criminal charge, whether or not arising out of their employment.

2.0 Accountabilities

- 2.1 As detailed within the main policy document, HR03.

3.0 Procedure Detail / Actions

- 3.1 The Royal Wolverhampton NHS Trust expects its employees to act professionally and in accordance with the Trust's Professional Values and Standards and accepted rules and standards of behaviour at all times.

- 3.2 Examples of such accepted conduct is detailed in the table below; however, the list is not exhaustive.

3.2.1 Staff are required to be punctual in observance of times of work:

- Staff are required to report punctually for work at the time stated in either department rotas or in their terms and conditions;
- They must observe the stated meal and refreshment breaks;
- No member of staff may leave their workplace before the stated finishing time without prior permission;
- Working times may only be varied with permission from their manager.

3.2.2 Staff are required to respect fellow employees:

- Not to verbally or physically intimidate, bully, threaten or coerce fellow employees;
- To maintain sanitary conditions in washrooms and keep one's workplace tidy;
- Not to discriminate, harass or victimise fellow employees in accordance with the Trust's equal opportunities policy; this applies to sex, race, colour, nationality, ethnic or national origin, disability, marital status, sexual orientation, responsibility for dependents, age, trade union or political activities, and religious beliefs;
- To follow all reasonable instructions of supervisors and managers.

3.2.3 Staff are required to respect the property of both the Trust and their fellow employees:

- Not to abuse, deface or wilfully damage Trust property;
- Not to make unauthorised personal calls on Trust telephones;
- Not to take Trust property for personal use either on or off Trust premises without authority;
- To use work time only for purposes authorised by the Trust;
- Not to place unauthorised documents on Trust notice boards and walls or remove or deface documents placed with the authority of management.

3.2.4 Staff are required to protect employee and Trust facilities:

- Must not smoke on Trust sites;

- Must not carry any form of weapon, explosive or unauthorised inflammable substance on Trust premises;
- To follow safe work procedures and to use only safe equipment which one is authorised and competent to use in the way it is intended to be used;
- In the event of fire or other alarms to comply with the Trust Fire Policy.

3.2.5 Staff are required to be free from the influence of alcohol or abuse of drugs:

- Must not be unfit for work due to the consumption of intoxicating beverages or substances prior to or during duty;
- Must not consume intoxicating beverages on Trust premises;
- Must not use or be under the influence of drugs at work through deliberate misuse;
- Must not be in possession or under the influence of illegal drugs on Trust premises.

3.2.6 Staff are required to be truthful and accurate when completing Trust document records (including paper and electronic documentation):

- This requirement includes completion of all personnel forms, medical records, leave requests, claim forms, clock cards and any other Trust forms including patient documentation;
- It is contrary to Trust rules under all circumstances to falsify time, attendance or work records of a fellow employee or encourage a fellow employee to take such action on one's behalf.

3.2.7 Staff are required to comply with all statutory requirements, Trust policies and relevant professional codes of conduct:

- It is the responsibility of each employee to be aware of the contents of such requirements which might affect their working conditions; for Trust policies the responsibility only applies once the relevant information and/ or training has been provided. Trust policies are available on the staff intranet and/ or upon request from a line manager.

3.2.8 Staff are required to respect patients, clients, relatives, and members of the public:

- Not to intimidate, threaten or harass by using physical, psychological or emotional violence, improper language or behaviour or other conduct likely to cause offence;
- To uphold the personal dignity of any individual in all circumstances;
- To respect the personal property of an individual patient or client at all times.

3.2.9 Staff are required to keep information obtained during the course of their job in confidence:

- Not to convey to any person not in the Trust's employment any document or information relating to the business of the Trust except that published for distribution to the general public, unless authorised to do so;
- To only make comment to the press or media in accordance with the Trust's Media Relations Policy;
- Not to divulge information relating to the treatment of patients or the personal details of an employee, including information covered by the Data Protection

- Act, to anyone who does not have the right to such information;
- Not to access Trust medical records except for the purposes of their duties.

3.3 **Gross misconduct**

3.3.1 Gross misconduct is an offence that fundamentally breaches the employment contract and will normally lead to dismissal, without notice, for a first breach. This includes, but is not limited to the following.

- Maltreatment, physical or verbal abuse of a patient;
- Harassment or discrimination;
- Disorderly or indecent behaviour during the course of duties;
- Intimidation, bullying, threatening behaviour, physical or psychological abuse;
- Being under the influence of alcohol during working hours;
- Being under the influence of drugs at work through deliberate misuse;
- Theft or fraud (see note below);
- Serious breach of health and/ or safety rules;
- Serious act involving refusal or failure to follow a reasonable instruction from a supervisor/ manager;
- Serious breach of Trust's policies or procedures involving patients, relatives, visitors or members of staff;
- Misuse of Trust property, equipment or IT systems;
- Bringing the organisation into serious disrepute;
- Serious breach of information governance, for example disclosure of confidential information.

This list is not exhaustive; please refer to Human Resources if you require any further guidance.

3.4 **Further information regarding theft or fraud**

3.4.1 Where a matter arises which related to a potential theft or unexplained loss of medication/drugs, this must be escalated to the Director of Pharmacy as soon as possible.

3.4.2 Note: [Standing Financial Instructions](#) – 2.3.2: *“Wherever any matter arises which involves or is thought to involve, irregularities concerning cash, stores, or other property or any suspected irregularity in the exercise of any function of a pecuniary nature, the Chief Finance Officer must be notified immediately.”* The manager alerted to the potential incident has the authority to contact the police in the absence of the Chief Finance Officer to avoid any delay.

3.4.3 In cases relating to fraud, the [Local Anti-Fraud, Bribery and Corruption Policy \(GP02\)](#) will also be followed and as such the Trust's Local Counter Fraud Specialist will be advised at the earliest opportunity.

3.5 **Conduct outside of work**

3.5.1 If an employee is cautioned (excluding for speeding), arrested, charged or served with a summons on a criminal charge, whether or not arising out of their employment, they must inform their manager as soon as possible. Where this prevents the employee from attending work, consideration will be given to withholding pay. All circumstances will be taken into full consideration and each

case will be considered on its own merit, in collaboration with Human Resources, before a decision is made to withhold pay.

3.5.2 The Trust reserves the right to pursue its own enquiries within the application of the Disciplinary Policy and its associated procedures. Investigations and disciplinary action will not necessarily wait for, or be dependent on, the outcome of police enquiries or legal proceedings. In all such cases the HR Advisory Department must be consulted.

3.5.3 In cases of criminal offences unrelated to the employee's employment, a member of the Divisional Management Team will consider the situation and its severity. This will be on the basis that the individual concerned has informed the Trust of the issue and it has not come to their attention through other sources. Failure to declare such situations will be treated as a serious matter and a discipline breach and will therefore be investigated accordingly.

4.0 Equipment Required
n/a

5.0 Training
As detailed within the main policy document, HR03.

6.0 References
As detailed within the main policy document, HR03.

Suspension and Restriction of Duties Guidelines

1.0 Procedure Statement

- 1.1 This document is intended to provide guidance and a framework to Trust managers in respect of conducting suspensions and restriction of duties.

2.0 Accountabilities

- 2.1 As detailed within the main policy document, HR03.

3.0 Procedure Detail

- 3.1 Suspension is regarded as a neutral act and not a disciplinary measure; it is merely a holding action pending enquiries and full investigation.
- 3.2 Suspension will be used as a last resort and consideration will be given to alternative action which would enable the employee to remain at work, for example transferring to another area; changing or restricting shift patterns; restricting access to equipment; restriction of duties.
- 3.3 Suspension or restriction from duties will be at full pay, which is the pay that would have otherwise been earned during this period. This is with the exception of employees held on remand by the court where it may be deemed appropriate to withhold pay dependent on the circumstance, or where an individual does not have the required professional registration legally required for them to carry out the role.

Determining the decision regarding full suspension/restriction of duties

- 3.4 At the point of a disciplinary issue being identified as serious or persistent misconduct, a Case Assessment meeting will take place. Its purpose is to support and enable consideration of identified disciplinary issues, taking account of just culture factors, risk factors, and case complexity. The supporting documentation will provide a framework for the Case Assessment Panel and assist in determining an appropriate, fair and consistency way forward. The principles of the Case Assessment process, including panel make up, is contained within the [Disciplinary Procedure \(HR03, attachment 3\)](#).
- 3.5 The Case Assessment Panel *may* also determine that consideration of a full suspension or restriction of duties, may be appropriate in certain circumstances, such as those listed below and/or where the Case Assessment risk score is medium-high or high (*this list is neither exclusive nor exhaustive*):
- Where there appears to be an incident/complaint that might involve gross misconduct or serious breaches of discipline;
 - To facilitate a full and proper investigation by management which would otherwise not be possible;
 - Where it is felt by the manager to be in the best interest of the employee concerned and his/her colleagues;
 - Where it is felt by management that an employee's continued presence at work constitutes a serious risk to patients, staff or NHS property;
 - Where an employee is in such a physical or mental condition that it is undesirable that he/she should remain at work; or

- Where an employee is under charge or suspicion of a serious criminal offence.
- 3.6 Whilst the suspension is a neutral act, this will not prevent the Trust from being able to refer to the appropriate regulating bodies during the period of suspension, such as NMC, GMC, HCPC etc.
- 3.7 **Out of hours**, – the Senior Manager On-Call must be made aware and approve any suspension or restriction of duties where it is determined that this action must take place without delay out of hours. In these circumstances the Case Assessment meeting must take place ‘in-hours’ as soon as possible to review the case and the suspension/restriction.
- 3.8 If a Trade Union/ Professional Organisation representative is to be suspended a Full Time Official will be notified in advance by a representative of the HR Department. In exceptional circumstances when this is not possible (for example, out of hours or when immediate suspension/removal from premises is required), the Trust will inform the Full Time Official as soon as practicable.

Conducting the suspension/restriction meeting

- 3.9 The employee must be informed of the suspension/restriction in person by the line manager (or another appropriate manager), which must then be confirmed in writing (template available). This will normally take place at the commencement meeting (i.e. when the employee is advised of the allegations and the commencement of the formal investigation process).
- 3.10 Following it being determined that suspension/restriction is appropriate, Human Resources will provide the appropriate manager with the relevant guidance document to enable the meeting to be conducted. This will include that the employee will be advised of the following:
- The allegations and the commencement of the formal investigation process;
 - The rationale for the decision i.e. due to the serious nature of the allegations;
 - That the decision is with immediate effect;
 - The terms and conditions of the suspension/restriction.
- 3.11 The [Disciplinary Procedure \(HR03, attachment 3\)](#) outlines the process that will then follow.

Terms and conditions of suspension/restriction of duties

- 3.12 *Full suspension terms and conditions* - the suspended employee must not:
- Enter Trust premises at any time unless authorised to do so by the Case Manager or the Investigating Officer (emergency access to the site for either personal treatment or to visit a relative or friend is not included in this restriction);
 - Make written or verbal contact with any employee of the Trust in a professional capacity, other than the Case Manager, the investigatory team or an appropriate individual identified by the Case Manager (this excludes any staff member; identified as the chosen ‘companion’ – definition included within the Disciplinary Policy). Where an individual chooses to discuss events with a member of their family, they must be aware that if this individual is employed by the Trust they are also bound by confidentiality;
 - Work for any organisation that provides a service to the Trust.

- 3.13 *Restriction of duties terms and conditions* - the employee:
- Is allowed to work in a partial/restricted capacity only and suitable work will be identified during this period;
 - Must not make written or verbal contact with any employee of the Trust regarding the case subject to investigation or the allegations that have been made (this excludes any staff member identified as the chosen 'companion' – definition included within the Disciplinary Policy). Where an individual chooses to discuss events with a member of their family, they must be aware that if this individual is employed by the Trust they are also bound by confidentiality.
- 3.14 It may also be identified that certain additional terms and conditions of suspension/restriction are identified dependent on the type of case.
- 3.15 The terms and conditions of full suspension or restriction of duties do not preclude an employee from accessing the Trust Freedom to Speak Up Guardian.
- 3.16 A condition of full suspension is that the employee must remain available within their usual working hours to enable them to participate in the disciplinary process. If the Trust believes that an individual is unreasonably delaying the process or is in breach of the conditions of their suspension, the Trust reserves the right to withhold pay.
- 3.17 Staff who are suspended from work are still bound by Trust policies and procedures.
- 3.18 **Sickness during suspension** - Employees who believe that they are unfit for work must follow the normal reporting arrangements as detailed within the Trust's [Supporting and Managing Staff Attendance at Work Policy \(HR13\)](#). Where the employee declares themselves unfit for work due to sickness, during any point of the suspension period, the pay terms will revert to sick pay in accordance with the employee's terms and conditions throughout the duration of their sickness absence. An Occupational Health and Wellbeing referral will be made in order to determine the employee's fitness to partake in the disciplinary process during this period.
- 3.19 **Annual leave during suspension** - Suspension from work does not affect employee's annual leave entitlement, and therefore annual leave will continue to be booked in the usual way. It is assumed that annual leave that is already booked will continue as planned, unless the employee advises otherwise. Normal carry over provisions will apply in respect of annual leave.
- 3.20 The suspension/restriction must be lifted if at any stage it is apparent that there is no serious case to answer or that the original rationale for the suspension/restriction no longer applies. Any decisions in relation to the lifting of a suspension/restriction must be verbally discussed with the individual, by the most appropriate person (this may be line manager or the original suspending officer) and then confirmed in writing (template available).
- 3.21 **Support during suspension/restriction** – the employee will be provided with an information booklet regarding disciplinary investigations either at the

commencement meeting or enclosed with the commencement letter. The booklet aims to provide staff with information about what being subject to a disciplinary process means and answers a range of questions that the staff member may have. It is recognised that this may be a stressful and worrying time for staff and the document therefore aims to signpost staff to where they can access practical and emotional support. Where the document is not received for any reason, a copy can also be requested from the HR Advisory department.

Review

- 3.22 The period of suspension/restriction will be overseen by the Case Manager in conjunction with their role overseeing the investigation process. Reviews will take place on a 4 weekly basis
- 3.23 Following the outcome of each suspension review, the Case Manager will write to the employee to advise that the conditions of the suspension/restrictions will continue, be lifted, or be amended/adjusted (template available).
- 3.24 On each of these occasions the Case Manager will consider relevant information provided from the OHWB team (where applicable) to ensure support mechanisms are in place for the suspended employee.

4.0 Equipment Required

n/a

5.0 Training

As detailed within the main policy document, HR03.

6.0 References

As detailed within the main policy document, HR03.

Disciplinary Procedure Guidelines

1.0 Procedure Statement

- 1.1 This document provides line managers and employees with a procedure that supports the Trust's Disciplinary Policy.
- 1.2 The aim of the procedure is to describe the steps to manage employees who have failed to maintain acceptable standards of conduct in line with the Trust's Professional Values and Standards and accepted rules and standards of behaviour.

2.0 Accountabilities

As detailed in the policy, HR03.

3.0 Procedure Detail / Actions

- 3.1 Where a manager identifies an issue which is categorised as either minor misconduct or serious or persistent minor misconduct this procedure should be followed.

(Please note that this procedure will only apply to drug/medication errors where it is evident that appropriate support/training has already been put in place to address errors, or where there is a clear non-adherence of Trust policies and procedures.)

If during completion of a 48 hour RCA process it becomes apparent that there are also issues of a conduct nature relating to an employee, HR advice must be sought at the earliest stage.

3.2 Procedure for initial management of Minor Misconduct

- 3.2.1 Upon the issue having been identified as Minor Misconduct the manager will consider the severity of the act. Dependent on this, the matter can either be managed through 'Informal Counselling' or a 'Formal Minor Misconduct Meeting'.
- 3.2.2 Examples of minor misconduct may include (but are not limited to): poor time-keeping, unauthorised absence, and failure to follow a reasonable management instruction.
- 3.2.3 [Flowchart 1](#) gives an overview of the process for initial management of Minor Misconduct.

Informal Counselling Discussion

- 3.2.4 This will take place when dealing with less serious matters in an attempt to informally address the areas of misconduct.
- 3.2.5 As this is an informal process, the private discussion will take place as soon as possible on a one-to-one basis and will take the following format:
 - *Step 1:* Manager explains the reason for meeting, the nature of the misconduct, and the reason for concern;
 - *Step 2:* Employee has the right to respond and to describe the events from their perspective;

- *Step 3:* Manager outlines expectations and describes acceptable conduct, ensuring that the employee is aware of the relevant policies, procedures or guidelines;
- *Step 4:* Both parties agree relevant actions, with the employee's ultimate aim being that they will ensure that misconduct is addressed;
- *Step 5:* Manager advises the employee that repetition of similar misconduct will result in formal action;
- If at any point it becomes evident that the problem is more serious than initially expected, the meeting will be adjourned and the course of action reviewed.

3.2.6 The discussion will be documented on the 'Informal Counselling Form' (template available in the [HR Advisory Toolkit](#)).

Formal Minor Misconduct Meeting

3.2.7 This meeting will take place when the act of minor misconduct requires formal management, where the outcome may warrant action up to and including a Verbal Warning.

3.2.8 The employee will be given 5 working days written notice of the meeting, the invitation to which must outline the areas of minor misconduct. The employee will be given the right to be accompanied by a representative of a recognised trade union or a colleague who is a member of Trust staff (template available in the [HR Advisory Toolkit](#)).

3.2.9 In advance of the meeting the manager will have prepared any required evidence which will enable the facilitation of discussions regarding the matter. The meeting will then take the following format

- *Step 1:* Manager explains the reason for meeting and confirms the right for the employee to be accompanied. They then explain the nature of the misconduct (including any relevant evidence) and the reason for concern
- *Step 2:* Employee has the right to respond and to describe the events from their perspective
- *Step 3:* Manager outlines expectations and describes acceptable conduct, ensuring that the employee is aware of the relevant policies/ procedures/ guidelines
- *Step 4:* Once the facts, evidence and any mitigating circumstances have been discussed, the meeting will be adjourned for a short period of time to allow due consideration of the facts to enable a decision to be made as to what action would be appropriate
- *Step 5:* The meeting will be reconvened. The manager will summarise the key points and confirm the outcome (i.e. no disciplinary action or a Verbal Warning). This will also include both parties agreeing relevant actions with the aim of the employee being that they will ensure that conduct is addressed. If it is deemed appropriate that a Verbal Warning is issued, this must be confirmed verbally along with the reason for it being issued and the detail surrounding its issue (identified below). The manager will advise that repetition of similar misconduct will result in formal action in line with the procedure to address repeated acts of minor misconduct
- *Step 6:* The outcome of the meeting will be confirmed in writing within 7 working days of the meeting.

- If at any point it becomes evident that the problem is more serious than initially expected, the meeting will be adjourned and the course of action reviewed.

Verbal Warning

3.2.10 The Verbal Warning is the first stage of the Formal Disciplinary Procedure and therefore must be confirmed in writing within the outcome letter and a copy kept on the personal file. Where staff feel a verbal warning has been unreasonably issued they may request a review by the next line manager.

3.2.11 The Verbal Warning will be considered 'live' for a period of 6 months, after which times it will be regarded as spent (template available in the [HR Advisory Toolkit](#)).

3.3 Procedure for management of Serious or Persistent Minor Misconduct

3.3.1 As soon as the issue is identified, written statements must be requested from relevant parties involved and witnesses. [Guidance for Production of Human Resources Statements](#) is available in the [HR Advisory Toolkit](#).

3.3.2 At the point of disciplinary issue being identified as serious or persistent misconduct the manager will escalate it to a member of the Divisional Management Team for the relevant group/department, and their divisional HR representative to enable a Case Assessment meeting to take place without delay (see below for the principles of Case Assessment).

3.3.3 Should the matter be confirmed as a potentially serious act of misconduct (for example cases of potential gross misconduct), consideration of full suspension from duty or restriction of duties may also be considered by the Case Assessment Panel. Guidance in relation to the process for suspensions is detailed within [attachment 2](#).

3.3.4 Should the Case Assessment Panel determine that a formal investigation process will take place the employee will be informed, in person, by the line manager or other appropriate manager of both the allegations and the commencement of the formal investigation process (commencement meeting). This meeting may also include advising the employee of any suspension or restriction of duty processes that has been put in place, if applicable.

3.3.5 The details of the commencement meeting must be confirmed in writing, including the name and contact details of the person undertaking the investigation (template available in the [HR Advisory Toolkit](#)). The employee will also be provided with an information booklet regarding disciplinary investigations either at the commencement meeting or enclosed with the commencement letter. The booklet aims to provide staff with information about what being subject to a disciplinary process means and answers a range of questions that the staff member may have. It is recognised that this may be a stressful and worrying time for staff and the document therefore aims to signpost staff to where they can access practical and emotional support. If the document is not received for any reason, a copy can also be requested from the HR Advisory department.

3.3.6 [Flowchart 2](#) gives an overview of the process for the management of Serious or Persistent Minor Misconduct.

Principles of Case Assessment

3.3.7 The purpose of the Case Assessment is to support and enable consideration of identified disciplinary issues, taking account of just culture factors, risk factors, and case complexity. The supporting documentation provides a framework for the Case Assessment Panel and assists in determining an appropriate, fair and consistent way forward

3.3.8 The Case Assessment Panel is made up of core and peripheral members as detailed below. The manager in attendance is the decision-maker of the process and the remaining members act as a sounding board providing advice, support, and appropriate challenge ensuring that due process is followed.

| | |
|--|--|
| Core member – must be in attendance for the panel to continue | Peripheral member – preferred to be in attendance however the panel can still continue if availability is proving difficult. Feedback should be provided after the panel. |
| Member of the management team for the division (e.g. group manager, matron, directorate manager, department manager – at least band 8a+) – Decision maker | Staff side chair |
| HR representative | Cultural ambassador |

3.3.9 The supporting framework will support the Case Assessment Panel in determining the way forward from the following options.

- **Local management/informal action**
- **Low level/fact-find formal investigation** – will involve the review of written statements, documentary evidence, the employee’s response from the commencement meeting, and seeking specialist or clinical input from an independent witness if required. In addition an investigation interview will also take place at the earliest opportunity with the employee subject to investigation and, where appropriate, a minimal number of witnesses. The nature of the case will determine whether it is appropriate for the low level/fact-find investigation to be led by an independent investigating officer or a member of the HR Advisory team. The findings will be provided to the Case Manager or another appropriate manager in a summary report.
- **Full formal investigation** – an Investigating Officer will be assigned at the earliest opportunity (template available) to gather the facts and present these findings in a written report to the Case Manager or another appropriate manager. To ensure an objective investigation, it may be necessary to appoint an Investigating Officer who is not the immediate supervisor/ manager. The Investigating Officer will be supported in the process by an HR representative.

Formal Investigation process

3.3.10 The Trust’s guidance document for [Conducting Formal Investigations in line with HR Policies](#) must be referred to as part of the investigation process.

3.3.11 The investigation will be overseen by the Case Manager, with particular focus on supporting and enabling the investigation to be conducted effectively and efficiently, including ensuring appropriate support and guidance to all parties.

3.3.12 The Trust is committed to ensuring that investigations are concluded within a reasonable timeframe, with an aim of 10 weeks from the point of Investigating Officer nomination to report submission for full investigations. As low level/fact-find investigations will be less complex in nature it is anticipated that in most circumstances the timescale for completion will be less than the 10 weeks. The operational demands of all parties along with other extenuating circumstances (such as restrictions put in place by external bodies) will be recognised, however, the Investigating Officer/Low level investigation HR Lead will report all delays to the Case Manager.

3.3.13 The written investigation/summary report will identify the key findings of the investigation and whether the evidence suggests that there is a case to answer (report template available in the [HR Advisory Toolkit](#)).

Formal Investigation Outcome

3.3.14 As a result the following options in the table are available to the manager reviewing the case, usually the Case Manager:

| Option | Action |
|--|--|
| There is no case to answer | Employee advised in writing |
| The case can be resolved through informal action/minor misconduct procedure | Delegated to the line manager to manage |
| The misconduct is found to be related to performance or capability | Manage in line with the Trust's Performance Capability Policy (HR19) |
| There is a case to answer and the investigation process does not suggest serious misconduct where the maximum sanction of dismissal may be a consideration e.g. gross misconduct | Proceed to an Agreed Outcome Disciplinary Meeting to facilitate the offer a First or Final Written Warning |
| There is a case to answer and the investigation process suggests serious misconduct where the maximum sanction of dismissal may be a consideration (dependent on the findings) e.g. gross misconduct | Proceed to a Formal Disciplinary Hearing |

Agreed Outcome Disciplinary Meeting

3.3.15 This is a fast-track meeting in which a disciplinary warning (up to, and including, a final written warning) is given to an employee.

3.3.16 It enables faster resolution and closure to a disciplinary matter for the employee and is a less formal meeting than a Formal Disciplinary Hearing. Parties in attendance will usually be a senior manager (such as the Case Manager), an HR representative and the employee. The employee has the right to be accompanied by a representative of a recognised trade union or a colleague who is a member of Trust staff.

3.3.17 An Agreed Outcome Disciplinary Meeting will not be appropriate in cases of serious misconduct where the maximum sanction of dismissal may be a consideration e.g. gross misconduct;

3.3.18 Prior to the meeting:

- The nominated senior manager or a HR representative will contact the employee or their representative to offer the opportunity to proceed through the Agreed Outcome process;
- The employee or their representative will be informed of the intended disciplinary sanction to be issued and a brief explanation of the rationale for this level of sanction (full feedback on the findings will be given at the meeting);
- Where the employee declines the offer of the Agreed Outcome process recourse to a Formal Disciplinary Hearing will take place.

3.3.19 At the meeting:

- The nominated senior manager will feedback the outcome of the investigation;
- The employee will have the opportunity to give a response to the allegations and raise any further mitigation;
- If no further issues come to light the nominated senior manager will offer a disciplinary warning;
- Where the employee accepts the warning, this will be confirmed in writing with a copy placed on their personal file (template available in the [HR Advisory Toolkit](#)). The employee has the right of appeal;
- Where the employee does not accept the warning or appeals against the warning after the Agreed Outcome meeting has concluded, recourse to a Formal Disciplinary Hearing will take place.

Formal Disciplinary Hearing

3.3.20 This is a formal meeting between management and a member of staff in order to consider the facts of the case and determine if there has been misconduct and if so, whether it warrants formal disciplinary action.

3.3.21 The Formal Disciplinary Hearing will take place in line with the Trust's guidance document for [Conducting Hearings in line with HR Policies](#). The panel chair must not have previously undertaken the role of Case Manager or nominated manager in any Agreed Outcome process that may have taken place.

3.3.22 As detailed within the hearing guidance, the outcome of hearing will be confirmed to the employee in writing within 7 working days of the hearing completion date. In all cases the outcome letter will outline:

- The nature of the incident and the key issues concerned;
- Any mitigating circumstances taken into account;
- The conclusions drawn;
- Details of any disciplinary sanction given, if applicable including:
 - The reasons for the issuing of a disciplinary sanction;
 - The length of the sanction and that after this time it will be deemed spent unless a further sanction has been issued in the interim;
 - An explanation that a repetition of a similar offence may lead to further disciplinary action.
- The right of appeal against the decision where warnings at levels 2-4 have been issued (see below).

Disciplinary Sanctions

3.3.23 The table below outlines the level of authority to act and appeal rights with regards to disciplinary sanctions.

3.3.24 Where an employee is appealing against a warning issued as part of the Agreed Outcome process, recourse to a Formal Disciplinary Hearing will take place.

3.3.25 Where an employee has been issued with a warning for a minor offence, they may ask for that decision to be reviewed. The employee should write to the next level line manager to request a review, within 7 calendar days of the Minor Misconduct meeting taking place.

3.3.26 The next level line manager will undertake a virtual review the documentation available and have informal discussions with both the employee and the manager that issued the warning before deciding on an outcome. HR support must also be sought at this stage by the verbal warning review manager.

| Warning Level | | Duration | Level of Authority to Act | Appeal Rights |
|---|---|-----------|---|--|
| Level 1 – Verbal Warning | Warning for a minor offence | 6 months | Immediate line manager/ supervisor | Next level manager review available |
| Level 2 – First Written Warning | In the case of repetition of a minor offence or for a more substantial offence | 12 months | Member of the Management Team for the relevant group/ department. Delegation will not take place to a position less senior than band 7. | Right of appeal to next level manager above decision-maker |
| Level 3 – Final Written Warning | Either following the issue of a First Written Warning, or in instances of misconduct sufficiently serious not to be tolerated a second time | 18 months | Minimum of member of the Management Team for the relevant group/ department. Minimum band 8a | Right of appeal to next level manager above decision-maker |
| Level 4 – Dismissal and Summary Dismissal | See below | n/a | Minimum of member of the Management Team for the relevant group/ department. Minimum band 8a | Right of appeal to next level manager above decision-maker |

Dismissal and Alternatives to Dismissal

3.3.27 Dismissal with notice, or payment in lieu of notice, will normally occur when earlier stages of the procedure have not resulted in the required changes in behaviour or performance.

3.3.28 In some circumstances it may be appropriate to consider alternatives to dismissal, for example, downgrading and/ or transfer of the employee to another post or location. In these cases it may be appropriate for a Final Written Warning to accompany this decision.

3.3.29 Some acts, termed gross misconduct, are so serious in themselves or have such serious consequences that it may be appropriate to dismiss for a first offence. In these circumstances this will be considered a summary dismissal, which will be without payment of notice or payment in lieu of notice.

3.3.30 Dismissal must be determined only by a duly authorised manager, and as such cannot be delegated to a less senior manager.

Right of Appeal

3.3.31 The Disciplinary Sanctions table indicates against which levels of sanction employees may appeal, and to whom this appeal must be made.

3.3.32 An employee may appeal on a variety of grounds, for example:

- The severity of the penalty imposed;
- Procedural irregularities;
- The employees perceived unfairness of the judgment.

An employee may submit new evidence in support of one or more of the above grounds of appeal.

3.3.33 An employee wishing to appeal must write to the relevant level of manager (detailed within the disciplinary sanctions table) within 15 calendar days of the decision, setting out in full the reasons for appeal and enclosing any documents that they wish to rely on. This will be used as the employee's Statement of Case.

3.3.34 Where an employee is appealing against a warning issued as part of the Agreed Outcome process, recourse to a Formal Disciplinary Hearing will take place.

3.3.35 Where an employee exercises their right to appeal against a warning issued as part of a Formal Disciplinary Hearing process, a formal appeal hearing will take place. The hearing will be held in order to consider the facts of the case and will conclude either:

- To uphold the original decision, or
- To allow the appeal.

3.3.36 Where the appeal is allowed following a formal appeal hearing, this may result in there being a decision to withdraw the sanction or for the level of action previously taken being reduced.

3.3.37 Where the appeal is not upheld following a formal appeal hearing, the original sanction and recommendations, if any, would remain in place.

3.3.38 Please refer to the guidance document for the [Conducting of Appeal Hearings in line with Human Resources Policies](#) for further details on the appeal process.

4.0 Equipment Required

A template letter pack is available from the [HR Advisory Toolkit](#).

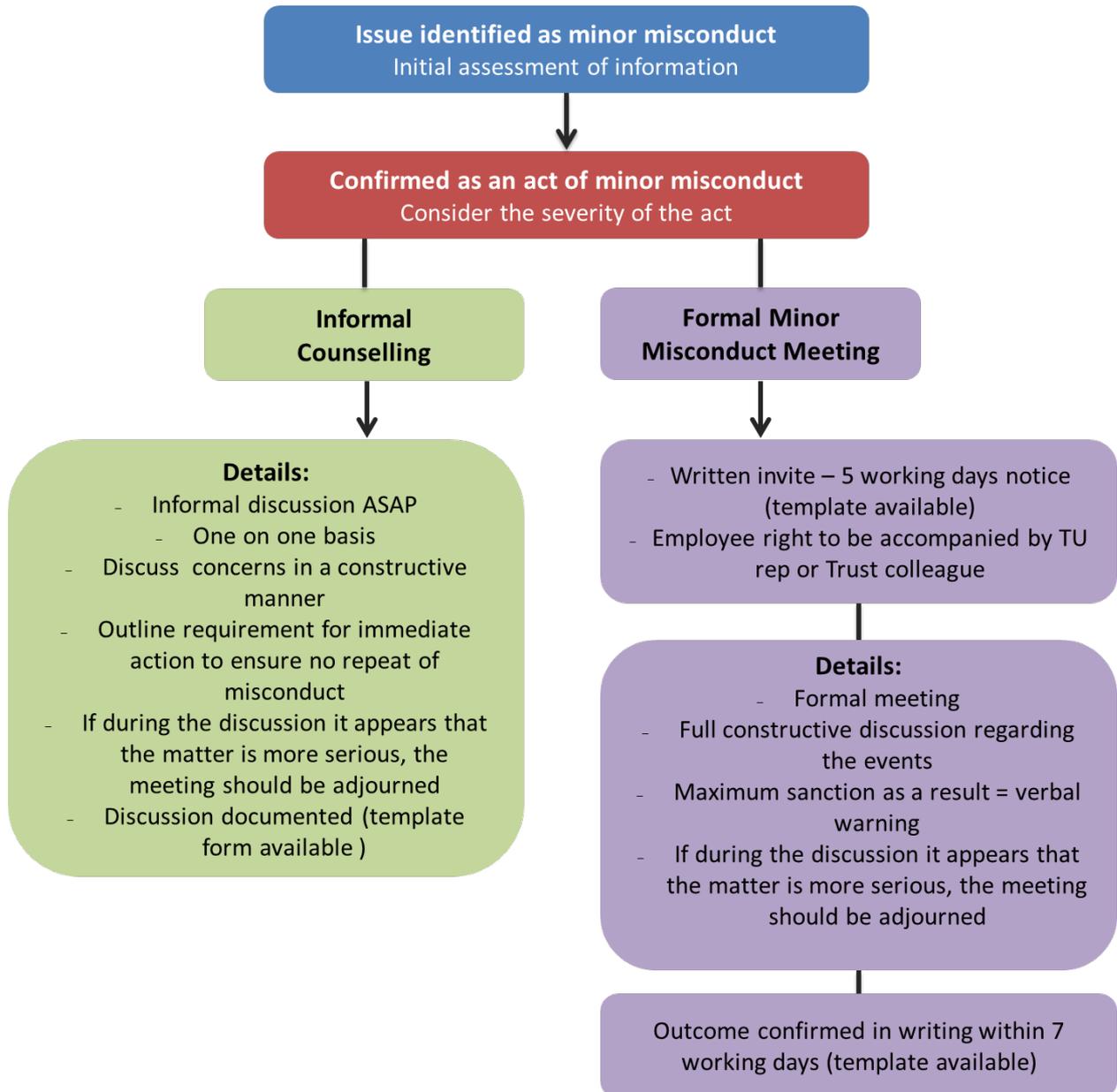
5.0 Training

A manager training programme is available and will be advertised through staff bulletins and Divisional HR representatives.

6.0 References

As detailed within the main policy document, HR03

Minor Misconduct



Serious or Persistent Minor Misconduct

** There may be circumstances where the matter is so serious that suspension is required to be considered immediately (e.g. out of hours) – in these cases the suspension will then be reviewed at a case assessment panel at next available time in-hours*

