

Employee Policy HR Consult

1. Policy Statement

Our Disciplinary Policy [which reflects ACAS guidance](#), aims to secure a change in behaviour and/or attitude in circumstances where either fall short of our expected values and behaviours. Our commitment to inclusion across race, gender, sexual orientation, age, religion, identity, and experience drives us forward every day. We will aim to deal with a majority of minor misconduct incidents informally and quickly through effective communication and support between you and your manager. Often a discussion stating NHSBT expectations and talking you through available support is enough to resolve the situation. In some cases, it may be that additional training, coaching and advice or facilitation, will be enough to support you in your improvement. However, where previous informal attempts to resolve concerns have failed or where the issues are of a more serious nature, the formal process will be necessary.

Formal Disciplinary action will only be taken against an accredited trade union representative following discussion with the relevant union Full Time Officer.

All investigation teams and panel members will have received coaching and development in the handling of investigations and disciplinary panels prior to their involvement.

As a health provider we have a Duty of Candour to be open with patients and service users when things go wrong. We need to promote this throughout our organisation, ensuring that we are honest and transparent in all our behaviours and relationships. Therefore, any such concerns will be investigated under this policy.

Just Culture

We all know that occasionally things may go wrong at work. As you will be aware, when this happens, we have processes for investigating and managing an incident. [Just Culture Guide](#) has been published by NHS Improvement to support the conversations and decision making by managers when, on the rare occasion, it may be appropriate to consider individual actions involved in a patient and /or donor safety. The Just Culture guide should be used in the investigation of incidents to help all stakeholders, including the employee, understand how the appropriate response to the person involved in an incident, differs according to the circumstances where an error was made.

2. The Process

It is part of your manager's role to communicate with, develop, provide support and motivate you in the workplace. Through discussion with your manager you should be clear of the standards and expectations required for the role and the expected attitudes and behaviours needed to deliver this effectively. Your performance is also discussed at your PDPR and at regular meetings as and when required. In some cases, your meetings with your manager may be noted by means of a file note, e mail etc. The **Management Record of Informal Discussion** document at [Appendix 1](#) may also be used. In each case you will be given a copy for your own records.

Following any potential issue of misconduct, your manager will meet with you in a private environment on a 1:1 basis, and ask you to explain what has happened, to establish the initial facts of the alleged incident. This allows you the opportunity to give your version of events, so that your manager can fully understand the situation, before deciding on the next course of action. As part of this process, your manager may also need to meet with other people to help gather the facts.

If, after this meeting it becomes evident that there is not a problem, you will be informed of this straight away.

Investigations

If a behavioural concern or an allegation of misconduct that has been made towards a member of staff as part of the Just Culture, the Manager, with the support of an HR Consultant, the Manager will need to complete the '[Just and Learning Culture Questionnaire for Managers](#)' and complete and submit a [Disciplinary Triage Form](#) to HR Direct. An independent panel will then review the triage and determine and decide the next course of action, and if formal action is appropriate, please see page 7 for the process.

All informal options for resolution will have been considered ahead of a formal disciplinary processing commencing. See Appendix 4 for examples of such behaviour.

Incidents of alleged serious or gross misconduct may result in immediate formal investigation. Should this be the case, you will be asked to attend a formal investigation meeting, where we will ask you to tell us about your recollection of the event, ask you more details about the situation and to enable you to provide your views and comments. As this is a formal meeting, you have the right to representation by an NHSBT employee or representative of a recognised Trade Union you belong to and we strongly encourage you to arrange this.

The investigation notes and any other information gathered as part of the investigation evidence may be used at a future panel, therefore, it is important that you provide an accurate account of what happened. Reasonable notice will be provided for formal investigation meetings and will be held without unreasonable delay. It is in the interest of all parties that any disciplinary investigations are completed as quickly and effectively as possible. We will explore options with you to facilitate this, for example using TEAMS or telephone meetings as an alternative to face to face

Your manager may carry out the formal investigation if appropriate; however, in most cases, an independent manager may be asked and supported by another manager to ensure independence and objectivity. This may be someone who has the required operational knowledge or a member of the HR team. Your manager's initial findings will be passed to the investigation team whose role it is, to establish the facts formally in a fair, reasonable and timely manner. This may involve obtaining the detail behind the information gathered already and/or undertaking investigation meetings with the necessary people involved, including you. Whether you are being investigated or a witness, or providing information to the investigation team, you will be given the chance to give your side of the story and may be accompanied by a Trade Union representative of a recognised Trade Union you belong to or an NHSBT employee, during any meetings.

If during the course of a Root Cause Analysis possible misconduct is identified, then a separate disciplinary investigation will take place.'

If the investigation team conclude that your case should be referred for possible disciplinary action, they will produce a report detailing their findings, including the mitigating circumstances that you have put forward in order to support your defence, and their recommendations.

Their report will be sent to a more senior manager within your Directorate who will review it, in conjunction with a People Directorate representative and either:

- recommend that the case is referred to a panel for a decision or

- where appropriate and reasonable a sanction can be offered to you (up to and including an Improvement Note or a First Written Warning). At this stage you and your representative should consider this as a potential outcome, without the requirement to go through a full disciplinary panel process. This option will only be relevant where the case is clear and where you accept that this is your preferred outcome.

You will be advised of the rationale behind either recommendation. If a sanction is recommended and you choose to accept this, there will be *no* need for you to attend a formal disciplinary hearing. You will be given 7 calendar days to consider whether you accept this or not. If you do, you will *not* have the right to appeal. If the recommended sanction isn't acceptable to you, then you will be required to attend a full disciplinary panel.

Suspension

We view suspension as being an absolute last resort and in every situation, we will explore all options available to avoid suspension from duty. For example, you could be temporarily redeployed to a different post or work location during an investigation, or alternative duties and/or restricted duties will be considered. This would not necessarily be at the same level of responsibility, depending on the details of the suspension and the availability of work. In some cases, however a 'cooling off' period may be advisable by sending you home, normally until the following working day. This will be conducted by an appropriate manager.

The decision to suspend will be based on a number of factors i.e. safety, impact on the investigation, risk etc. In more serious situations or to facilitate an investigation, taking you out of the working environment completely will be considered and may be necessary on reviewing the flowchart at [Appendix 2](#). Should this be the case, the reasons will be fully explained to you. A manager will meet with you and confirm any suspension, detailing why this is felt necessary and the anticipated period of the suspension.

We recognise that while suspended from work, you are not in contact with colleagues and to support you during the period of suspension, your manager or a nominated contact will keep in touch with you to update you on the progress of the investigation and to discuss any support you may need.

Stages of Formal Disciplinary Action and the Disciplinary Panel

No disciplinary action will be taken until the case has been fully investigated and a Disciplinary Triage process has been completed. If it is recommended that you attend a formal Disciplinary Panel you will be given the necessary time at the hearing to present your case. The process that will be followed at the hearing is explained at [Appendix 3](#)

There are a number of examples at [Appendix 4](#) that detail the type of sanction you could be issued. In all cases the seriousness of the misconduct and any mitigating circumstances presented by you will be considered by panel members.

If you are issued with any sanction, it will cease to be 'live' following the specified period and will normally be disregarded for future disciplinary purposes of the same or similar situation. However, in exceptional circumstances a full or part of a disciplinary record may be reviewed.

Managers within the organisation are authorised to issue sanctions, or to dismiss you, subject to the outcome of the appropriate process being followed. You can see details of the level of authority below.

Warnings and level of authority to issue:

Line Manager at:	Improvement Note	First Written Warning	Final Written Warning	Dismissal
Supervisor	No	No	No	No
Duty manager	Yes	No	No	No

Line Manager	Yes	Yes	Yes	No
Director & 2 levels below *	Yes	Yes	Yes	Yes
Warning removed from file	6 months	12 months	18 months	N/A

*This will include Regional Manager or equivalent for OTDT only

The post holders above who have the authority to issue a final written warning or to dismiss from the Organisation are also able to conduct a *suspension* from duty.

For the purpose of termination of ending contracts for health reasons or redundancy, the dismissal authority may be delegated to an appropriate manager on a case by case basis. Fixed Term contract dismissals are covered in the NHSBT Secondment and Fixed Term Policy.

Improvement Note

An improvement note will be issued to you:

- When there has been a lack of improvement following informal discussions previously recorded and provided to you. This will explain to you the concern your manager has, the expected behaviour, and any agreed actions and how these will be followed up **OR**
- As the outcome of a panel for a first minor misconduct case

This will be valid for 6 months.

First Written Warning

A First Written Warning will be issued to you:

- When there has been insufficient improvement in your conduct after informal action or an Improvement Note has not brought about the required improvement, **OR**
- As a result of an investigation into a more serious case.

This will set out the problem, the standard expected, the improvement that is required, the timescale and any support that may help you.

This will be valid for 12 months.

Final Written Warning

A Final Written Warning will be issued to you:

- if your behaviour or conduct is sufficiently serious, **OR**
- if you should carry out a further misconduct while having a current warning on your record.

This will set out the problem, the standard expected, the improvement that is required, the timescale and any support that may help you.

This will be valid for 18 months.

In each case, you will receive the outcome of the formal meeting or panel in writing, within 7 calendar days including your right to appeal.

Alternatives to Dismissal

It is possible that you may not reach the required improvement set out in previous warnings, therefore the final step in this procedure may be dismissal or an alternative may be considered such as demotion or transferring you to a vacant alternative role at either the same grade or a lower grade.

Existing staff on the Redeployment Register, who have *not been* disciplined, will be considered before you, should this occur. If an alternative is possible and considered appropriate, you would receive the terms in writing, however should you refuse to accept an alternative, you would leave us with no option but to dismiss you.

Dismissal

The decision to dismiss you will be taken as a last resort.

There are two types of dismissal.

Dismissal with Notice

- this may occur where previous sanctions have not brought about the required improvement and/or
- following a further breach of discipline, where you may already have had several written warnings on record for different breaches of conduct

Unless you are being dismissed for reasons of gross misconduct, you will receive the appropriate period of notice or payment in lieu of notice. You would be expected to take any remaining annual leave, before you last day at work.

Summary Dismissal –

- this would be the likely outcome if you are dismissed for gross misconduct.

This would be with immediate effect from the time of the decision and your right to payment will cease immediately. You will not be paid a period of notice, or payment in lieu of notice, but would be paid any outstanding annual leave entitlement.

In both cases, this will be confirmed in writing by the chair of the panel, within seven calendar days of the outcome. The letter will confirm the reason for their decision, the effective date, and it will also include details of your right to appeal.

Arrangements will be made following dismissal for you to return any NHSBT property that you may have.

Appeal

If you are not satisfied with the outcome of the panel, you may appeal

- This needs to be in writing, within 7 calendar days of the date of the letter confirming the outcome. The letter should be sent to the next level of management, except in the case of dismissals where this is sent to the Appeals secretary.
- Within 21 calendar days from the date of the outcome letter, you will be required to provide full details of your grounds for appeal
- This will then be provided to the chair of the disciplinary panel for them to prepare their response to your grounds of appeal, which will be provided to you a minimum of 7 calendar days before the appeal.

An appeal panel will be held without unreasonable delay. The letter notifying you of the panel will contain or confirm what documents and information have been provided to you and the panel. The appeal panel will be:

- led by someone more senior than the manager who chaired the Disciplinary Panel and not previously involved in the process
- be supported by a HR representative
- Supported by another impartial person who has been appropriately trained OR
- where a dismissal has occurred a nominated National Senior Staff Side Representative.

You and the chair of the disciplinary panel can separately present information to the appeal panel about the process followed so far. The panel will make a final and binding decision, confirming the

appeal outcome in writing within 7 calendar days. It should be noted that an appeal panel will not re-hear a case; however, it will establish that the policy and process applied in the original hearing was fair. Therefore, new evidence may not normally be presented. However, a panel may choose to accept new evidence presented by both parties at an appeal hearing. The decision of the appeal panel is final and marks the conclusion of the NHSBT Disciplinary process.

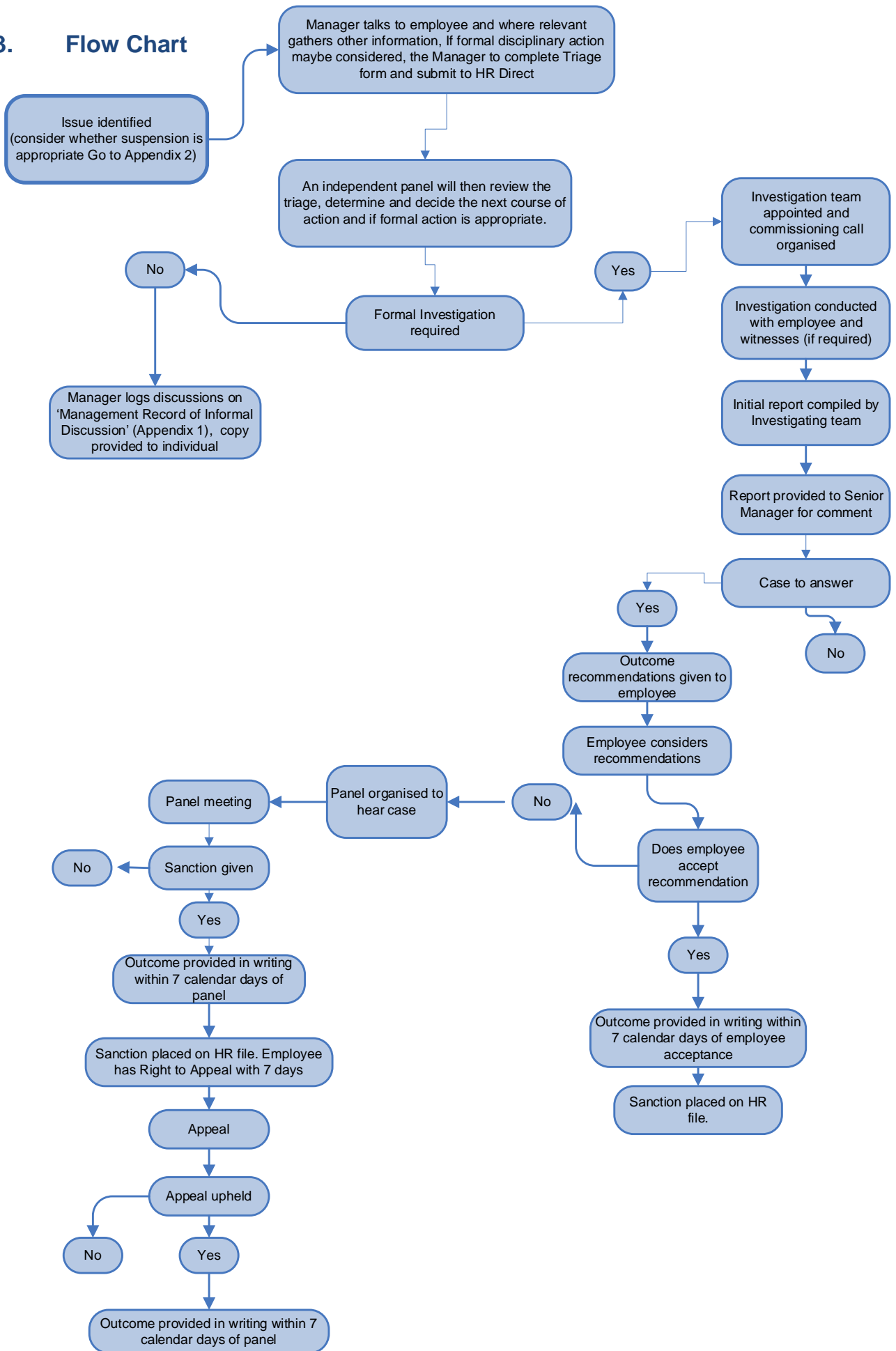
Pay Progression

As part of the Pay Progression criteria, where there is a live sanction on file at the time of the Pay Progression discussion, this will impact on you progressing to the next pay step. Details can be found on People First and in the [NHS Terms and Conditions](#)/Pay Progression.

Confidentiality

All conversations, be it informal or formal, meetings, witness statements, investigations etc, must be kept confidential by all parties involved. We appreciate that this can sometimes be difficult when working in a small team or close environment; however, so that the issue raised can be brought to a swift conclusion and everyone feels able to move on, confidentiality must be maintained. Any breaches in confidentiality will be taken seriously.

3. Flow Chart

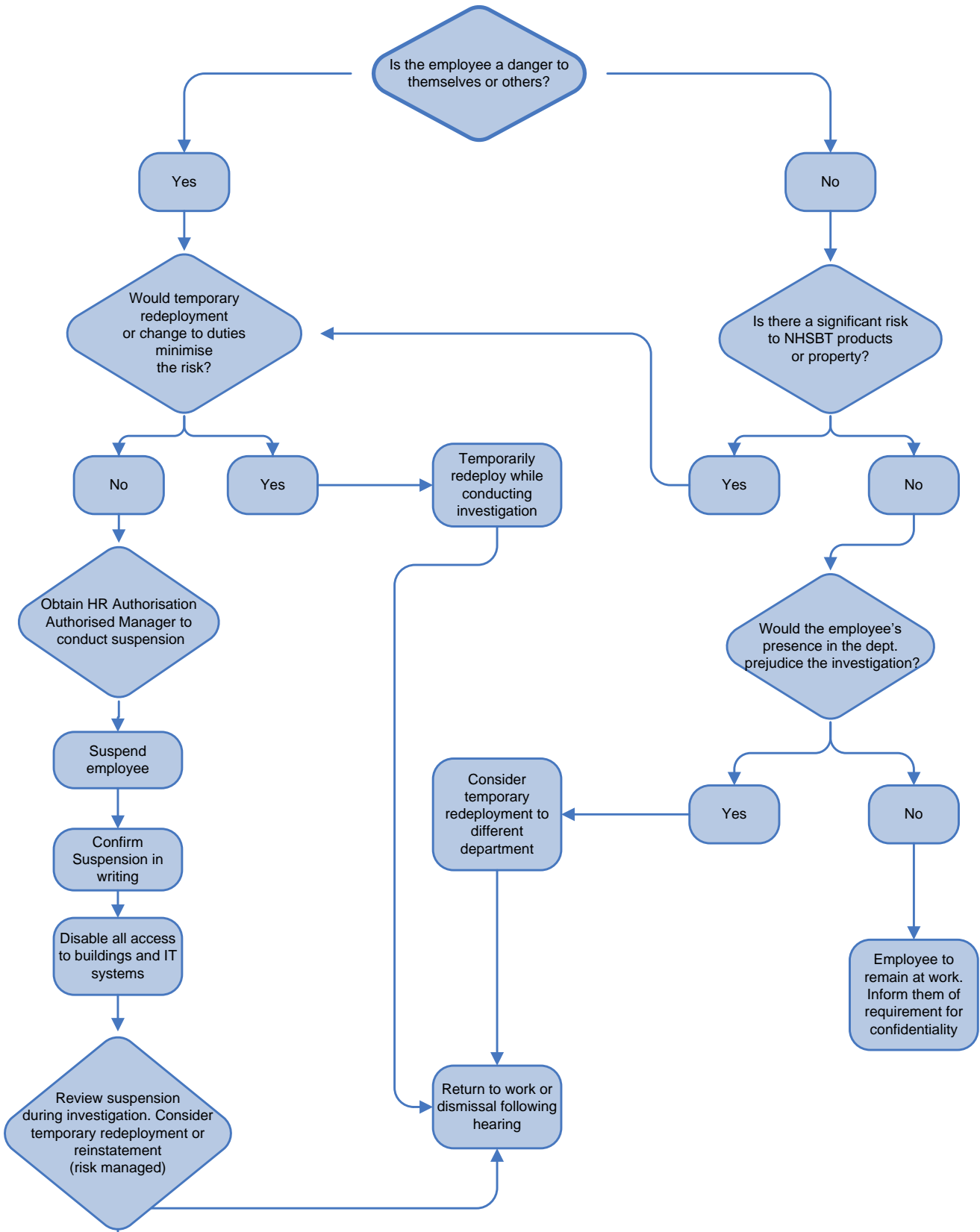


Management Record of Informal Discussion

Employee's Name:	Date:
Details of behaviour:	Behaviour expected by manager/NHSBT:
Actions:	
*Please be aware that repeated/similar behaviour may result in a formal process being considered	
Follow up:	
Supervisor Signature:.....Date:.....	
Print Name:.....	

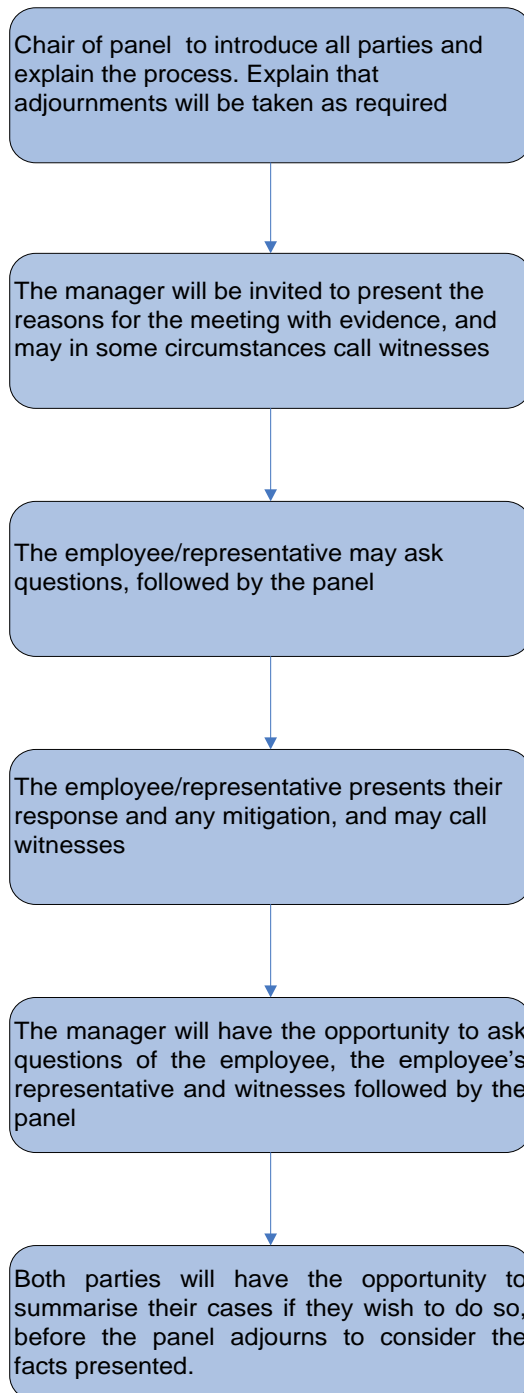
Both parties to retain a copy for reference

SUSPENSION FLOWCHART



NB: In cases of lapsed professional registration, criminal convictions or breach of UK Work Permit Regulations, suspensions will be without pay.

Disciplinary Panel Guidance



NB: The chair may decide to alter the proceedings if they think it is appropriate and will tell you at the beginning. In the case of appeals, the person appealing their case will normally present first.

EXAMPLES OF MINOR/SERIOUS/GROSS MISCONDUCT

We cannot list all occurrences that could lead to disciplinary action, as this is not practical. However, each case will be considered individually and ultimately it is for the Chair to consider all of the facts of a case, in conjunction with the NHSBT Mission and Values. The examples shown are only a guide and not exhaustive.

Minor misconduct

- Being late for work without reasonable explanation
- Being absent without leave without reasonable explanation
- Changes to normal and accepted work in practice
- Showing disrespect to anyone including insubordination
- Verbal abuse
- Failure to undertake your duties in a competent manner
- Smoking on premises (first offence)

Such occurrences could result in a discussion with your line manager using a Management Record of Informal discussion or in some cases, an Improvement note. If repeated this may result in further warnings.

Serious Misconduct

- Refusal to carry out reasonable managerial written or verbal instructions
- Failure to comply with Health & Safety Policy and Guidance
- Actions which compromise NHSBT reputation, including by Social Media
- Misrepresentation of NHSBT on external groups or bodies, not advising NHSBT of any decisions taken by the group/body that may affect NHSBT business or requiring a change to our process and practice
- Being late or absent from work on a regular basis
- Failure to change your conduct as a result of earlier warnings
- Harassment or Bullying (see Dignity at Work Pledge and Policy)
- Refusing to carry out necessary and reasonable training within agreed timescales

Such occurrences could result in first written, final written warning, alternatives to dismissal, or, in extreme circumstances, dismissal.

Gross Misconduct

- Theft of NHSBT, donors or employee's property
- Corrupt Practices such as receiving money, goods, favours or excessive hospitality in return for NHSBT business
- Deliberately defrauding NHSBT e.g. false declaration of travel claims, expenses, attendance and other official records, obtaining employment by deception
- Bribery
- Working with another employer whilst on sick leave, depending on the nature of work relevant to the condition.
- Incapacity through alcohol or drugs resulting in a risk to donors, patients or others
- Deliberately causing damage to NHSBT, donors or employees property
- The assault on donors, members of the public or any NHSBT employee whether on or off NHSBT premises
- Any action or failure to act that endangers donors, members of the public and/or employees (Gross carelessness/negligence)
- Unlawful discrimination against an employee/donor/member of the public
- Breaches of confidentiality or General Data Protection Regulation
- Deliberate intention to breach Information Governance Rules
- The conviction for criminal offence occurring in or out of work resulting in inability to attend work, or failing to notify us of any caution, criminal charge or conviction

- Refusing to carry out necessary and reasonable training within agreed timescales which may cause damage or harm to donors or patients

Such occurrences could result in dismissal. Any fundamental breach of your Employment Contract which makes your continuation of employment impossible is also likely to lead to dismissal. This category includes failure to meet statutory requirements e.g. hold a driving licence should you need to drive is an essential part of your job.

4. Policy Approval and Review

Policy version	UCD/People/Disciplinary/002v1.8
Title	Disciplinary Policy
Approved by SPC	October 2021
EIA completed	9 th June 2022
Counter Fraud check	18 th November 2021
This document replaces	UCD/People/Disciplinary/002v1.7
Effective Release Date	June 2022
Review Date	February 2022
Author	Daryl Hall
Filepath	G/HR/HR/Everyone/Policies
Distribution	Available on People First