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Organisation

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# Regional Disciplinary Policy & Procedure

August 2022



## Policy Procedure Development Overview

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## Section A: Disciplinary Policy

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### 1. INTRODUCTION

This document sets out the Business Services Organisation (BSO) Disciplinary Policy and Procedure in relation to employee conduct and ensures that just, fair and effective arrangements exist for dealing with disciplinary issues. The Policy should be regarded as a valuable tool to promote positive employee relations, effective partnership working and to improve standards of behaviour through accountability and learning.

The BSO are committed to our HSC values of [openness and honesty](#), [compassion, excellence and working together](#). These provide the framework for achievement of a Just Culture approach through supportive, constructive and fair evaluation of the actions of employee involved in an incident, error, concern or complaint.

We expect all employees to meet high standards of conduct and behaviour and, where this does not occur, we will encourage improvement and learning through application of our [HSC Values](#) to achieve and maintain these standards. We will seek to understand ‘what’ was responsible rather than ‘who’ was responsible and identify support for all involved. We will place equal emphasis on accountability and learning and only where appropriate proceed to formal disciplinary investigation.

### 2. SCOPE

This policy and procedure applies to all employees of the BSO including staff on fixed-term and bank contracts. The only exception is Medical and Dental Staff, where concerns about their conduct are handled through the ‘Maintaining High Professional Standards Framework’ until a decision is made to progress to a conduct hearing under this Disciplinary Policy. There is no requirement to re-investigate in these circumstances.

### 3. DISCIPLINARY PRINCIPLES

#### Fairness

- The application of this procedure will be consistent, prompt, impartial, reasonable and applied without discrimination. All parties will have a responsibility to expediate an outcome. Conflicts of interest at any stage will be declared.

#### Confidentiality

- Information relating to an allegation of misconduct will not be divulged to any parties not involved in the disciplinary process unless there is a specific need to share on a need to know basis. Information will be strictly confidential to those involved in the disciplinary procedure and records will be kept in accordance with the Data Protection Act 2018.

#### Equality

- This policy will be applied without any distinction to protected characteristics as defined within equality legislation and its application will be kept under review. In circumstances where any party involved has disability, reasonable adjustments will be considered in accordance Disability Discrimination Act (DDA).

#### Natural justice

- At every stage of the disciplinary procedure, the employee will be advised of the nature of the complaint, and will be given the opportunity to state his / her case. There may be occasions where a third party (e.g. PSNI) instructs the employer share any detail or evidence.

#### HSC Values

- The HSC Values will be considered at all stages to acheive a Just Culture in which equal emphasis is placed on accountability and learning.

#### 4. HSC VALUES APPROACH TO DISCIPLINARY

The HSC Values provide the framework for a Just Culture through supportive, constructive and fair evaluation of the actions of employees involved in an incident, error, concern or complaint. Through the application of the 3 step assessment stage the situation will be stabilised, support provided to those who need it and employees will have the opportunity to respond before screening takes place to determine appropriate next steps.

- Involve employees & recognize their contribution in making a difference/ improvement.
- Engage with employee reps and regulatory bodies as necessary in order to progress an issue

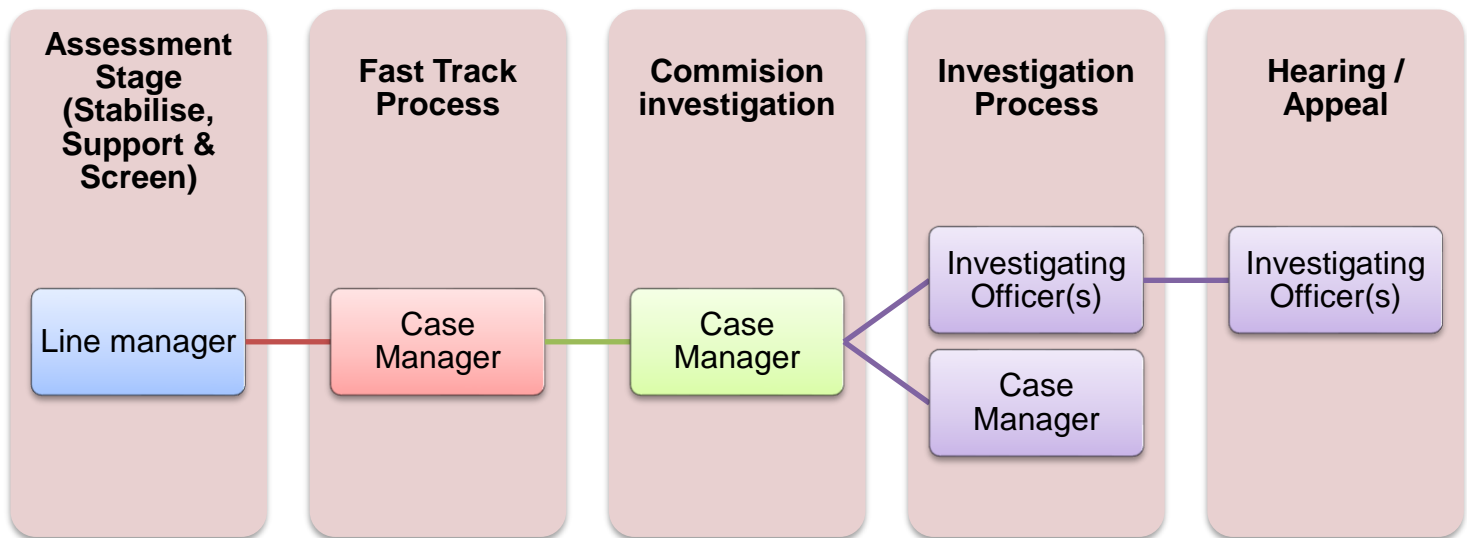
- Identify if (and what) support is needed by those directly and indirectly affected by an event.
- Where systems issues are found, singling out an individual is often unfair and counter-productive.



- Understand why failings occurred and how / if the system contributed rather than who was responsible.
- Identification of how learning leads to improvements across the system

- Employees should be confident to speak up when things go wrong rather than fearing blame.
- Openness about mistakes allows valuable lessons to be learnt so errors are prevented in the future

## 5. ROLES & RESPONSIBILITIES



**\*HR Advice and support available throughout all stages. Trades Unions will not normally be involved in the assessment stage but should be involved at all other stages. Employees will be engaged as appropriate throughout the process.**

### 5.1 All HSC Employees:

- Ensure conduct is aligned with HSC Code of Conduct and HSC values.
- Understand and comply with BSO standards relating to conduct and carry out duties in accordance with contractual obligations and with appropriate care.
- Participate fully with the disciplinary process including in a witness capacity if required. Attend Occupational Health to assess fitness to participate in the disciplinary process if they are unable to attend due to sickness.
- If they cannot attend a meeting / hearing they (or their Trade Union representative) must notify the HR Department and provide reasons. Depending on that reason the BSO may arrange a further meeting/hearing. If they do not attend this rearranged meeting/hearing the disciplinary process may continue in their absence based on the information available. Disciplinary action, up to and including dismissal can be taken in their absence if they fail to attend meetings/ hearings. In exceptional circumstances their Trade Union representative/work colleague may attend this hearing on their behalf and/or the employee may make written representations. These exceptional circumstances must be considered jointly on a case by case basis by the employee, HR and Trade Union representative / work colleague.
- In Police / criminal matters inform, and continue to update their line manager immediately of any investigation, charge, caution(s), pending prosecution, and/or subsequent conviction. Failure to inform may result in the initiation of a disciplinary process. Consideration will be given to the relevance of the issue to the duties of the post and/ or the role of the employee and the appropriateness of disciplinary action.

## 5.2 Line Manager:-

- Create and encourage an environment that reflects the HSC values of *working together; excellence; compassion; openness and honesty*;
- Embed a culture of learning and ensure actions support the aims of this Policy;
- When an incident, error, concern or complaint occurs objectively and expediently undertake the assessment stage to determine appropriate action (section 7);
- Ensure regular communication and ensure the employee's health and wellbeing is considered with the correct support put in place. If directly involved in the incident then allocate another manager to support the employee;
- If the employee is absent due to sickness ensure the BSO ATTENDANCE AT WORK POLICY is adhered to. An Occupational Health referral should be made to gain an assessment of the employee's fitness to attend meetings if they feel they are not fit to participate in the disciplinary process;
- Inform the Case Manager, Investigating Officer(s), or allocated HR Adviser of any concerns raised by the employee related to the investigation. Agreement should be sought from the employee prior to disclosing personal information;
- Maintain written records and ensure confidentiality.

## 5.3 Case Manager (usually a senior manager with no previous decision making involvement/ or HR can also undertake this role where appropriate) must:-

- Consider the information provided by the line manager following the assessment stage and if further action is required then decide the next steps with HR;
- If required, commission an investigation and appoint an Investigating Officer(s), giving due consideration to their capacity to conduct the investigation in a timely manner;
- Consider whether alternative working arrangements or suspension is necessary to safeguard patients, staff, the individual or the investigation process. (Section 12);
- Agree the terms of reference for the investigation jointly with HR and the relevant professional lead if appropriate if new evidence / information is presented by the Investigating Officer(s), agree any necessary amendments to the Terms of Reference. The employee should be advised in writing of amendments to the investigation terms of reference;
- Review alternative working arrangements / suspensions to determine if there is a continued need based on the investigations progress;
- Review the progress of investigation and update employee on investigation progress, including any delays and the reasons for these;
- Ensure that the investigation is following due process and conducted in a timely manner, and escalating where appropriate to senior management;
- Decide jointly with HR, and the relevant professional lead if appropriate, if there is a case to answer or not upon completion of investigation;
- Take forward any learning identified.



**5.4 Investigating Officer(s)** (appropriate officer(s) who is not a witness, where possible this will not be the immediate line manager):-

- Investigate and establish the facts in the case by holding fact-finding meetings and gathering statements and evidence as appropriate;
- Produce an investigation report for the Case Manager which will outline the facts of the case and should state whether the findings indicate if there is a case to answer;
- Make the Case Manager aware of anything additional that arises during the investigation that is not within the scope of the terms of reference. The Case Manager will review and decide whether an amendment to the terms of reference are required;
- Keep the Case Manager updated of anything that would mean alternative duties or suspension are no longer required, or required where they were not initially in place;
- Present the case to the disciplinary/ appeal panel if it progresses to hearing stage.

**5.5 Human Resources:-**

- Advise or signpost to well-being support where appropriate;
- Responsible for implementation and management of the Disciplinary Policy including staff training;
- Provide professional advice and guidance to managers following an incident, error, concern or complaint to agree on the appropriate next steps;
- Advise and support both Case Managers and Investigating Officers in disciplinary matters, in order to ensure consistency throughout the Trust;
- Liaise with Counter Fraud and Probity Services (CFPS), Safeguarding and Police Service of Northern Ireland in respect of parallel criminal / safeguarding and disciplinary investigations;
- On conclusion of the case, ensure retention of all records pertaining to the case in accordance with Department of Health (DoH) Retention & Disposal Schedule and Data Protection 2018.

**5.6 Employee Representatives (Companion in Medical & Dental cases):-**

In the case of non-Medical and Dental staff, an Employee Representative is any employee of the Trust who is an accredited representative of a trade union, professional organisation or staff organisation or a full time official of any of the above organisations or a fellow Trust employee. Legal Representation will not be permitted at any stage of this Disciplinary Procedure.

In the case of Medical and Dental staff, they have a right to be accompanied in line with Maintaining High Professional Standards in the Modern HPSS, Section 1 paragraph 30; "At any stage of this process - or subsequent disciplinary action – the practitioner may be accompanied to any interview or hearing by a companion. The companion may be another employee of the HSS body; an official or lay representative of the BMA, BDA, defence organisation, or friend, work or professional colleague, partner or spouse. The companion may be legally qualified but they will not, however, be acting in a legal capacity."

Employee representatives / Companions will:

- Provide advice and/or support to individual employees;
- Work in partnership with the BSO to ensure conduct and behaviour is in line with the HSC values;
- An employee under investigation for alleged misconduct/ gross misconduct or facing formal disciplinary proceedings has the right to be accompanied by an accredited trade union representative. Accredited trade union representatives can present evidence on behalf of the employee at the disciplinary hearing and appeal hearing;
- Trades union representatives who are being investigated have the right to be accompanied by a full time official.

## **6. ACTION IN PARTICULAR CASES**

### **6.1 Disciplinary action in the case of an employee representative, who is an accredited representative of a Trade Union, Professional Organisation or Staff Organisation.**

Normal disciplinary standards apply to the conduct of an employee representative however, if a concern, complaint or incident has occurred in the course of that employee undertaking their TU representative duties then a discussion should take place with a full-time official of the employees trade union, professional organisation or staff association to agree the application of the disciplinary procedure and next steps. Approval must be sought from the employee prior to discussing with the full time official.

If however the concern, complaint or incident relates to their 'substantive' post/duties then actions will be taken forward by line managers in accordance with this procedure as normal and in line with procedures for all other employees.

### **6.2 Police enquiries, legal proceedings, cautions and criminal convictions not related to employment**

Police enquiries, legal proceedings, cautions or convictions relating to a criminal charge shall not be regarded as necessarily constituting either a reason for disciplinary action or a reason for not pursuing disciplinary action. Consideration must be given as to;

- the extent to which the offence, alleged or committed, is connected with or is likely to adversely affect an employee's performance of duties
- calls into question the ability or fitness to perform their duties
- where it could call into question the trust and confidence in an employee
- any action taken by a professional body regarding an employee's registration.

In situations where a criminal case is pending or completed, the BSO reserves its right to take internal disciplinary action. The BSO will liaise with the PSNI to determine if a parallel internal investigation can proceed.

### **6.3 Allegations of Fraud and the interface with Counter Fraud & Probity Service**

Any internal investigation into allegations of potential fraud should be deferred until discussion has taken place with the local fraud liaison officer. This involvement does not necessarily mean a disciplinary investigation will not take place and each situation is to be judged on its own merits.

Any matter referred which raises any suspicion of theft, fraud, bribery or corruption must be dealt with in accordance with the requirements set out in this policy and the BSO Fraud and Bribery Policy. In cases of alleged theft, fraud or misappropriation of funds, action should include consultation with the Director of Finance, DoH and the PSNI as appropriate.

### **6.4 Organisation's duty to make referrals**

The BSO is required, where appropriate under the Safeguarding Vulnerable Groups (Northern Ireland) Order 2007, to make a referral if a person working with children or vulnerable adults has been dismissed, would have been dismissed, or considered for dismissal had they not resigned, or has been suspended, or transferred from a Child Care or vulnerable adults position.

Further, the BSO has a duty to make referrals to relevant professional bodies in certain circumstances e.g. Nursing Midwifery Council (NMC), General Medical Council (GMC), NI Social Care Council (NISCC), Health and Care Professional Council (HCPC) and also to the PSNI and share relevant information at appropriate stages.

### **6.5 Whistle blowing / Your Right to Raise a Concern**

When concerns are raised by an employee through the Trust's Your Right to Raise a Concern (Whistleblowing) Policy management and HR will, on a case by case basis, jointly determine the appropriate way forward, including the most appropriate policy for managing the process.

### **6.6 Conflict, Bullying & Harassment**

Any complaints made, in relation to bullying and harassment, will be assessed and if appropriate investigated in line with the BSO's Conflict, Bullying and Harassment Policy. If it is found that there is a case to answer the matter will progress through to informal structured conversation or formal disciplinary hearing where appropriate. There will not normally be a requirement to re-investigate if an investigation has already been conducted under the Conflict, Bullying & Harassment policy.

## Section B: Disciplinary Procedure

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### 7. ASSESSMENT STAGE (Stabilise, Support & Screen)

- 7.1 When an incident, error, concern or complaint comes to the line manager's attention, they should endeavour to stabilise the situation by providing support to those who need it and complete screening to determine the appropriate next steps.



#### STEP 1: STABILISE

- 7.2 It is important that the situation is stabilised so that immediate needs are addressed following an incident, error, concern or complaint. The purpose of this is to:
- Provide immediate care to those who need it.
  - Put any immediate measures in place to prevent a similar incident happening again.
  - Comply with duties to report internally and where appropriate externally.
- 7.3 To stabilise the situation formal suspension may not be required however in some circumstances there may be the need to remove one or more persons temporarily from a situation for their own safety, others safety, for recovery or a period of reflection.

#### STEP 2: SUPPORT

- 7.4 Following an incident, error, concern or complaint it is important to identify anyone who been hurt. This may be physical, emotional or financial. Those identified may include patients / service users, staff, managers, the organisation or another external organisation.
- 7.5 Once identified it is important to establish what is their need and whose obligation is it to meet that need.
- 7.6 Relevant information should be established quickly and may include:
- Details of the issue from the employee's perspective;
  - Establish date / time of incident;
  - Witness accounts (where appropriate);
  - Explore the impact (where applicable) on patient care or others;
  - Explore all associated pattern or repeated behaviours/ actions;
  - Circumstances at the time, including resources, service challenges, health and well-being and personal issues etc.

7.7 To gather this information line managers may need to ask the employee involved for their account. Notes of this discussion will be made available to the employee at the earliest opportunity and must be shared prior to or at the beginning of a formal meeting if the matter moves to formal investigation. These will be reviewed with the employee and any necessary amendments will be made in agreement before being used for the formal process.

### STEP 3: SCREENING

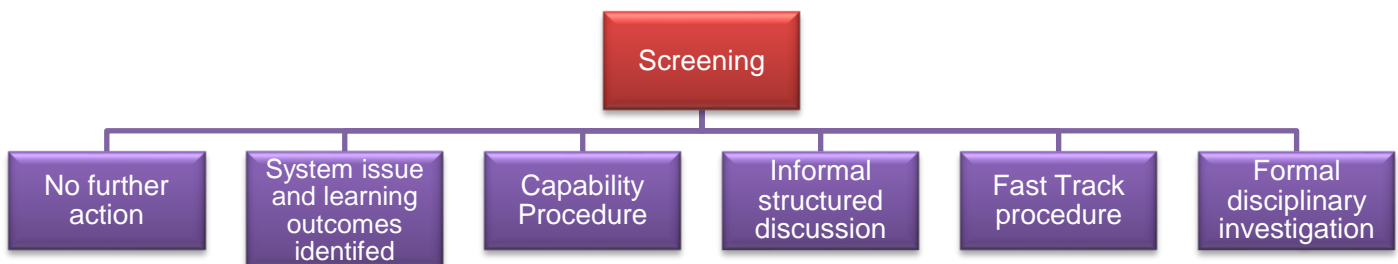
7.8 Screening should be completed jointly by the line manager and HR, including the relevant professional lead when appropriate using the template in Appendix E.

7.9 Once details have been established the following questions should be answered to determine the next steps.



7.10 The screening steps should be completed as quickly as possible with management treating this as a high priority. As a guide this should not take any longer than 3 working days however this is not a strict timeframe as it will depend on the specific circumstances.

7.11 The potential outcomes of the screening are outlined below.



## **8. INFORMAL STRUCTURED CONVERSATION**

- 8.1 Following the assessment stage where evidence shows that a formal investigation is not required then an informal structured conversation may be appropriate. Most concerns can often be addressed effectively and swiftly by the employee's immediate line manager having a structured discussion with the individual regarding the standards expected and the required improvement in their conduct within a timescale. This discussion should take place as soon as practicable following assessment and be treated sensitively and empathetically. It should be viewed as an opportunity to discuss BSO values and behaviours and allow employees to provide any reasons or additional information to the line manager.
- 8.2 During this meeting the Manager should:
- Explain that the meeting is informal in approach and is to discuss concerns;
  - Discuss the incident, error, concern or complaint with the employee and explain that the reason for holding an informal meeting is to reflect on the concerns, discuss and seek to understand the reasons and explore any support required;
  - Inform the employee of the standards expected by the BSO and the level of improvement needed within an agreed timescale;
  - Take a note of the meeting and share a copy with the employee for agreement and signature.
- 8.3 If there is repeated misconduct or no evidence of improvement within the agreed timescales discussed, then the manager should give careful consideration to escalation through formal processes, this may not necessarily be a disciplinary process and may be addressed under the Capability or Attendance Management Policy in consultation with HR. It is the responsibility of the manager to review with the employee their progress against required improvements.

## **9. FAST TRACK PROCEDURE**

- 9.1 The Fast Track process is applicable only in cases of misconduct and cannot be used in cases of Gross Misconduct (appendix A provides non-exhaustive list). Where the disciplinary outcome of a particular case is anticipated to result in a formal warning only, consideration can be given to move directly to that conclusion without either completing a full investigation or holding a formal hearing. This approach can speed up the disciplinary process.
- 9.2 The Fast Track Procedure will be considered in the following circumstances:
- There should be sufficient information or evidence available to determine appropriateness of a formal warning sanction;

- The employee must admit to misconduct, have learnt from the experience and be unlikely to repeat their behaviour;
  - The employee must agree to use of the Fast Track Procedure.
- 9.3 The fast track procedure can be suggested or requested by any party involved in the disciplinary process at any stage. The Case Manager alongside HR will determine the case as being appropriate for Fast Track. If the 'fast track' approach is deemed to be inappropriate the formal disciplinary investigation procedure will be initiated.
- 9.4 Where appropriate the Case Manager will convene a fast track meeting within 3 weeks, from date agreed suitable, to discuss the details of the case. Employees will be allowed the right of representation at this meeting. No witnesses will be called to attend this meeting.
- 9.5 In the event that the Case Manager considering the facts decides there is no case to answer based on the detail/evidence provided; this should be discussed with HR. In exceptional circumstances, the Case Manager may decide that the matter should be referred for further investigation and/or to a full disciplinary hearing if an investigation has already taken place.

<b>Fast Track Meeting</b>	The Case Manager outlines the nature of the allegation(s) accepted by the employee and advises that they may be awarded the agreed sanction of formal warning.
	The Case Manager confirms with the employee that they accept the allegations previously stated.
	The employee or their representative will have the right to put forward any comments relating to the incident.
	The Case Manager may wish to question the employee for any points of clarity and will consider the case.
	The Case Manager will then communicate their decision to the employee and their representative and confirm this decision in writing.

- 9.6 It is expected that the issuing of a formal warning sanction under the Fast Track procedure would conclude the disciplinary process however the employee maintains the right of appeal. An appeal of a formal warning issued under the Fast Track process will result in the formal warning being immediately removed from the employee's record and the matters will instead be progressed through the standard formal investigation process. An employee wishing to appeal the fast track sanction should write to the Director of Human Resources stating the grounds of their appeal within 7 calendar days of receipt of the letter containing the fast track Disciplinary decision.

## **10. WORKING ARRANGEMENTS DURING AN INVESTIGATION**

- 10.1 It may be appropriate to consider alternative working arrangements if feasible and appropriate during an investigation. Examples may include temporary transfer, modified or alternative duties. Consideration should be also given to whether these alternative working arrangements are applicable to any other contracts held within the organisation.
- 10.2 Alternative working arrangements, which would allow an employee to remain at work, should always be considered prior to precautionary suspension.

## **11. PRECAUTIONARY SUSPENSION**

- 11.1 In some exceptional circumstances it may be appropriate to suspend an employee with pay for a period of time in order to carry out the investigation. Suspensions should only be considered when an employee's continued presence at work places themselves, other employees or patients / service users at risk or when there is a risk they may hamper the investigation.
- 11.2 Suspension is precautionary and should not be regarded as disciplinary action or sanction, nor as an indication of blame or guilt but as a temporary measure. It does not imply that any decision has already been made about the incident, error, concern or complaint. Suspension therefore carries no right of appeal however an employee has the right to state their response to the suspension decision.
- 11.3 Precautionary suspension must be authorised by the appropriate senior manager or suitable deputy.
- 11.4 The reason for precautionary suspension should be made clear to the employee and confirmed in writing. When the reason for suspension is being conveyed to the employee, where possible, they should be accompanied by an employee/ trade union representative. The unavailability of a Trade Union representative however will not delay the meeting from taking place.
- 11.5 Any decision to precautionary suspend from work must be for the minimum necessary period of time. The decision must be reviewed, by the Case Manager, when further information is gathered which would allow a change but no later than every four weeks.
- 11.6 The Case Manager must maintain regular contact with the suspended employee, in order to keep them informed of any progress in the investigation. The Case Manager will agree with the employee what will be reasonable contact for the duration of the



suspension. If agreed the update will also be shared with the nominated Trade Union representative.

- 11.7 During the suspension, the employee remains on full pay as though they were at work, this will include any unsocial enhancements and on-call /sleep in availability allowances. Where an employee can demonstrate, based on previous working patterns that they would have undertaken work done while on-call or overtime had they not been suspended payment will also be considered in accordance with terms and conditions. Bank only staff who have regularly worked over the previous 13 weeks should be paid in accordance with their average earnings within that reference period.
- 11.8 The employee must not discuss details of the case with other employees other than their Trade Union Representative, the Investigating Officer(s) or HR Representative. An employee on suspension must not enter BSO premises, other than to obtain treatment for them or their families, meet with their trade union representative, attend staff support or with prior agreement from the Case Manager / Investigating Officer(s).
- 11.9 Employees who are suspended should not undertake any other work, within or outside the HSC, without discussing with the case manager and receiving authorisation to do so. This discussion needs to cover the type of work, what the role is and whether the reason for suspension would impact on this other workplace.
- 11.10 The BSO will honour annual leave which has been pre booked prior to suspension. Employees should advise the Investigating Officer(s) of further annual leave required during the period of suspension. It is expected that employees will be available for any meetings / appointments whilst on precautionary suspension. Employees should use their annual leave within the current leave year during which times they will be unavailable to attend meetings / hearings.

## 12. FORMAL INVESTIGATION PROCESS

- 12.1 An appropriate senior manager will be appointed as a Case Manager in all formal investigation processes. The Case Manager will agree the terms of reference at the commencement of the investigation with the Investigating Officer(s). If new issues come to light during the course of the investigation, the terms of reference will be reviewed and amended if appropriate. (*See investigation guidance for setting terms of reference*).
- 12.2 The Case Manager / HR will appoint an Investigating Officer(s) whose role it is to establish the facts. The investigation will be conducted as quickly as is reasonable taking account of the extent and seriousness of the allegations. The Case Manager or delegated manager / Investigating Officer(s) will meet with the employee who may be accompanied and/or represented by an employee representative, to advise them that they are the subject of a formal investigation and that they will receive the Terms of Reference and a copy of the Disciplinary Policy in writing.
- 12.3 The Investigating Officer(s) should ensure that any relevant witnesses are interviewed and that all relevant documentation is examined before a decision is made on the appropriate course of action.
- 12.4 All individuals interviewed as part of the investigation will be provided with a summary note of the meeting. They will be given the opportunity to confirm that it is an accurate reflection of what has been said, and return to the Investigating Officer(s).
- 12.5 The Investigating Officer(s) must update the Case Manager regularly within a mutually agreed timeframe. Regular contact must also be maintained with the employee within a mutually agreed timeframe not exceeding four weeks. The format of this contact, e.g. letter, email, should be agreed at the outset of the investigation.
- 12.6 The Investigating Officer(s) must provide a report outlining the investigation finding(s), conclusion(s) and recommendation(s) to the Case Manager. The Investigation Officer(s) will not determine the category of misconduct. The Case Manager should consider the report with HR, including the relevant professional lead, where appropriate, and jointly decide, whether there is a case to answer and if it should proceed to disciplinary hearing prior to confirming next steps. The employee should be verbally advised of the decision by the Case Manager or delegated manager as soon as practicable and this should then be confirmed in writing.
- 12.7 It should be noted that, if an issue has already been investigated under another agreed investigatory procedure and disciplinary action has been agreed as the most appropriate way forward, then there is no requirement to reinvestigate under this Disciplinary Procedure.

### **13. WHERE AN EMPLOYEE LEAVES EMPLOYMENT DURING AN INVESTIGATION**

Where an employee leaves before an investigation is completed they should be advised in writing that any reference provided for them will state they left whilst under investigation and there is an unresolved investigation into alleged misconduct. In some cases, it may be necessary to conclude the investigation following resignation of an employee. If the case indicates that it is serious enough to warrant a referral to the DBS or a professional body (if not already completed) the employee will also be notified of this and the referral made.

### **14. WHERE A GRIEVANCE IS RAISED**

Where a formal grievance is raised during a disciplinary process, the appropriate action will be determined on a case by case basis jointly by the Case Manager and HR.

### **15. ARRANGING A DISCIPLINARY HEARING**

- 15.1 If it has been established that the matter should be referred to a formal disciplinary hearing, then arrangements for this should be made without delay.
- 15.2 The Disciplinary Panel is made up of 2 managers at an appropriate level. If the incident, concern, complaint or error relates to a professional issue, and the panel does not include a member from the employee's professional background, an assessor may be identified to provide professional advice to the panel - Appendix B outlines the minimum level. In cases of professional misconduct involving medical or dental staff, the Disciplinary Panel must include a member who is medically qualified (in the case of doctors) or dentally qualified (in the case of dentists) who is not currently employed by the BSO (see Maintaining High Professional Standards in the Modern HPSS (Nov 2005) Section III Para 1).
- 15.3 The Investigating Officer(s) will present the case. In hearings involving medical or dental employees, the MHPS Case Manager will present the case.
- 15.4 In exceptional circumstances where an employee requests the postponement of a disciplinary hearing this will be considered on its own merits. If the employee does not attend a second hearing there is no obligation on the BSO to rearrange it again and the Disciplinary Panel may decide to proceed with the hearing in the absence of the employee. The letter confirming the rearranged meeting should inform the employee that the matter may be dealt with in their absence.
- 15.5 Whilst all reasonable efforts will be made to accommodate an employee's preferred representative if they is unavailable at the time a meeting is scheduled and will not be available for more than 7 calendar days afterwards, the BSO may ask the Trade Union to choose someone else to represent the employee so as not to cause further delay. Legal representation is not permitted at any stage of the disciplinary process.

- 15.6 Both the employee under investigation and the Investigating Officer(s) will be given the opportunity to request witnesses to attend the disciplinary hearing. Their subsequent evidence should clearly demonstrate why their attendance is relevant. Character witnesses should not attend disciplinary hearings but may provide a statement.
- 15.7 The onus is upon the Investigating Officer(s) and the employee / Trade Union representative to ensure that any witnesses are informed of dates, times and venue of the hearing. The BSO will ensure every effort is made to facilitate their availability at the hearing.
- 15.8 In cases of professional misconduct involving medical or dental staff, the Disciplinary Panel must include a member who is medically qualified (in the case of doctors) or dentally qualified (in the case of dentists) who is not currently employed by the (INSERT NAME OF TRUST / ORG) (see Maintaining High Professional Standards in the Modern HPSS (Nov 2005) Section III Para 1). The advice of the appropriate local representative body should be sought.
- 15.9 In the majority of cases, investigatory meetings and hearings will proceed without the need for digital recording of proceedings. However where there is mutual agreement or in cases where this is deemed necessary to facilitate a reasonable adjustment, virtual recording can proceed in accordance with the Memo of Understanding on Digital Recording of Hearings and Investigations 2015. Covert recording is not permitted under any circumstances.

## **16. FORMAL DISCIPLINARY HEARING**

- 16.1 A letter containing details of the allegation(s) and setting out the date and time of the disciplinary hearing, together with copies of the investigation report and **all** documentation that will be used or referred to during the disciplinary hearing, should be sent to the employee as soon as available and at least within 10 working days of the hearing. Additional documentation can be submitted for inclusion up to 5 working days before the hearing date unless otherwise mutually agreed.
- 16.2 If the disciplinary hearing could result in dismissal, the individual must be advised of this in the letter.
- 16.3 The disciplinary panel hearing the case at the Disciplinary Hearing should not have had any prior involvement in the formal investigation.
- 16.4 The employee shall normally be present during the hearing of all the evidence put before the Panel; however they may choose not to attend the hearing. It should be made clear that the hearing will proceed in their absence. Any written / video submissions by the employee in writing or by his or her representative will be considered. The BSO reserves the right to proceed to hear a disciplinary case in the absence of the employee where no adequate explanation is provided for the employee's absence.

- 16.5 Any witnesses required to attend the hearing should be granted the appropriate time off from their work. The employee representative cannot be a witness or potential witness to the disciplinary process.
- 16.6 At the Hearing, the Presenting Officer should set out the evidence in line with the allegations and the employee / representative should set out their case to answer the allegations.
- 16.7 Witnesses may be called by either party and can be questioned by the other party and/or by the Disciplinary Panel. Where professional competence/ conduct is in question, the Panel may invite a suitably qualified and experienced senior officer in the same profession from the BSO or outside the BSO to attend the hearing as an assessor. The assessor will be present in an advisory role only and has no decision making responsibility.
- 16.8 The Investigating Officer(s) and the employee/ representative will have the opportunity to make a final submission to the Disciplinary Panel at the end of the Hearing with the Presenting Officer going first. The Disciplinary Panel has the right to recall any witnesses and both sides and their representatives have the right to be present.
- 16.9 The Disciplinary Panel will review all the evidence presented before taking its decision. Firstly the Disciplinary Panel will determine on a balance of probability whether the allegations were or were not proven. Then in determining the sanction to be applied the panel will take into consideration the following:-
- the seriousness of the disciplinary breach in question;
  - the relevance and context of facts/information presented;
  - issues relating to fairness, consistency and the substantial merits of the information presented;
  - any currently live relevant disciplinary sanctions;
  - any mitigation.
- 16.10 The decision should be communicated in writing to the employee normally within 10 working days of the date of the hearing or as soon as reasonably practicable. In the case of formal or final warnings, the timescale of any sanction should be specified. The employee should be advised of the consequences of further breaches of discipline and informed of the right and method of appealing the decision.

## 17. DISCIPLINARY SANCTIONS

17.1 The sanctions for misconduct are set out below. A sanction cannot be imposed without a hearing unless the fast track process has been followed. All warnings will set out the nature of misconduct, the change of behaviour required, the period for which the warning will remain active, and the likely consequences of further misconduct in that

### Formal Warning

- A formal warning will remain live for a period of 12 months and may be given in the following circumstances:-
  - In cases more serious than would warrant informal action, but not serious enough to require another sanction.
  - In cases of repetition by the employee of minor acts of misconduct which have been the subject of previous informal structured discussions. active
  - Fast Track process

### Final Warning

- A final warning will remain live for a period of 24 months and may be given in the following circumstances:-
  - Misconduct where there is already an active warning on the employee's record; or
  - Misconduct considered sufficiently serious to warrant a final warning even though there are no other active warnings on the employee's record.

### Dismissal

- Dismissal will apply in situations where previous warnings issued have not produced the required improvement in standards or in some cases of Gross Misconduct. Pay in lieu of notice is appropriate in these circumstances.

### Summary Dismissal

- In some cases where Gross Misconduct has been established, an employee may be summarily dismissed i.e. without payment of contractual or statutory notice. period.

### Transfer or Downgrading

- The panel may at their discretion consider alternatives to dismissal and these will usually be accompanied by a final written warning. For example, a downgrade or transfer may be offered as an alternative to dismissal.

## 17.2 Other Recommendations

In addition to any formal sanction applied, there may be a range of other recommendations, which a Disciplinary / Appeal Panel may wish to stipulate such as supervised practice, training and development, additional supervision, mentoring or other relevant means of supporting corrective behaviour. In circumstances where it has been proven the BSO has suffered a financial loss the Panel may recommend that monies are recouped from the employee (HR advice should be sought in these cases). Additionally all parties are required to act in

accordance with the Department of Health Counter Fraud Strategy with regards to effective methods for seeking recovery of monies in these circumstances.

The Disciplinary / Appeal Panel may also wish to make recommendations to the relevant manager or professional lead in relation to review of current policies, procedures or systems where learning has been identified.

## **18. MANAGEMENT OF SANCTIONS**

The outcome of the disciplinary hearing / appeal should be communicated to the line manager following completion of the disciplinary process. It is the responsibility of the employee's line manager to monitor the conduct and performance of the employee on an on-going basis but specifically as outlined in any warning immediately following its issue. Line managers will also ensure that any remedial action as set out in a warning is actioned. Records of such reviews and progress will be maintained by the manager and discussed with the employee up to and including the end of the period stipulated in the warning. If an employee has been on sick leave during the period of a sanction the manager should ensure that any remedial action required is discussed on return to work.

## **19. APPEALS**

- 19.1 An employee wishing to appeal disciplinary action should write to the Director of Human Resources stating the grounds of their appeal within 10 working days of receipt of the letter containing the disciplinary decision. The appeal hearing will be arranged as early as practicable and the employee will have the right to be represented. The employee will normally receive 10 working days' notice of the date of the appeal hearing.
- 19.2 The Appeal Panel, will comprise of 2 managers from the BSO who have had no previous involvement in the case and who are normally at a more senior level than the Disciplinary Panel. In professional misconduct appeals involving medical staff and/or dentists, the Appeal Panel will comprise one additional medically/dentally qualified panel member who is not employed by the BSO or has not been previously involved in the disciplinary case.
- 19.3 Where the employee's professional competence/conduct is in question, the Appeal Panel may invite a suitably qualified and experienced senior officer in the same profession from the BSO or outside the BSO to attend the hearing as an assessor. The assessor has no decision making role.
- 19.4 The Appeal Panel will permit additional evidence not available or provided at the Disciplinary Hearing to be considered only if it is considered relevant to the original allegation. Employee's should speak to the Investigating Officer(s) should they require

access to such information and submit any relevant additional evidence 5 working days prior to the appeal hearing.

- 19.5 In most cases, the Appeal hearing will be a full rehearing of the case, unless agreed by all parties that only the grounds for appeal will be considered. This should be discussed and agreed ideally prior to the appeal hearing date or at the outset of the appeal hearing.
- 19.6 The Appeal Panel will have the authority to confirm, set aside, or reduce the decision of the Disciplinary Panel. It will not have the right to increase the decision of the Disciplinary Panel. Where the decision of the Appeal Panel involves a variation of the original disciplinary decision, it should state the reasons and any operative date. The decision of the Appeal Panel is final and will be conveyed in writing to the employee within 10 calendar days after the hearing. In the event of delay a written explanation will be provided.
- 19.7 In the event of reinstatement following an appeal the appropriate back payment will be made. Where an employee who is re-instated following an appeal can evidence a financial detriment, as a consequence of dismissal they may make a case for reimbursement of loss of earnings. This will be managed on a case by case basis.

## 20. REVIEW AND SIGN OFF

The operation of this policy will be monitored and reviewed regularly (every 3 years) to ensure its relevance and effectiveness.

The Disciplinary Policy and Procedure is effective from 1<sup>st</sup> July 2022.


<sup>21</sup> Signed on behalf of Trade Union Side



**ANNE SPEED**

**29 June 2022**

Signed on behalf of Management Side



**VIVIENNE TOAL**

**1 July 2022**



# APPENDICES

## APPENDIX A

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The following are examples of what may be considered as misconduct & gross misconduct. Please note that these lists are not exhaustive.

### Misconduct

- Failure to comply with a reasonable request;
- Abusive, objectionable or insulting behaviour;
- Foul or abusive language;
- Minor Breach of Professional Code of Conduct
- Repeated failure to maintain registration with appropriate professional body;
- Communication of any unauthorised written material;
- Failure to maintain the required standard of dress or presentation;
- Minor breaches of employment contract
- Negligent conduct;
- Minor breaches of (INSERT NAME OF TRUST / ORG) Policies;
- Breach of the Trust's Standing Financial Instructions (SFIs), Standing Orders (SOs), and/or Scheme of Reservation and Delegation (SoRD); standards of Business Conduct
- Failure to comply with HSC Code of Conduct and HSC Values and Behaviours
- Failure to renew professional registration
- Accessing inappropriate materials on the Internet during working hours
- Inappropriate use of internet and social network sites

### Gross Misconduct

- Theft / Misappropriation – any instance of unauthorised removal of property from the (INSERT NAME OF TRUST / ORG) or from a service user, carer or members of staff
- Physical Assault – Physical assault upon a service user, carer, a fellow employee or member of the public;
- Threatening / Menacing Behaviour towards a service user, carer, a fellow employee or a member of the public;
- Recklessness / Negligence in work – any action, or failure to act wilful non-compliance, which threatens the health and safety of a service user, carer, member of the public or another member of staff;
- Serious Damage – to HSC property, property of service users'/carers, or members of staff;
- Breach of the Anti-Fraud and Corruption (F06) – Acceptance of gifts, money, goods, favours or excessive hospitality in respect of services rendered;
- Confidentiality – loss of confidential information, unauthorised access to confidential information, disclosure or breach of confidence in relation to information regarding a service user/carers or member of staff except where such a breach constitutes a protected disclosure
- Discrimination or harassment;
- Breach of Professional Code of Conduct
- The concealment or destruction of evidence;
- Inappropriate or Unprofessional relationship with any service user.
- Deliberately accessing or downloading material from any site that is of a pornographic, discriminatory or of an offensive nature.
- Possession or attempt to supply alcohol /substances (may or may not be illicit);
- Being under the influence of alcohol /substances (may or not be illicit), prior to reporting for duty or whilst on duty, and has impaired ability to undertake duties;
- Communicating any material which breaches the (INSERT NAME OF TRUST / ORG) Equality and Diversity policies;
- Committing a serious act, which is deemed to be prejudicial to the interests of the (INSERT NAME OF TRUST / ORG) or its employees;
- Knowingly taking carers /parental /paternity /adoption leave for purposes other than supporting a child /dependant;
- Making malicious or vexatious allegations against the Trust, managers, colleagues or service users;
- Victimising an employee who has raised concerns under the Your Right to Raise a Concern Policy (Whistleblowing), Conflict, Bullying and Harassment Policy, Grievance, Disciplinary Policies/Procedures;
- Serious breach of the Trust's Standing Financial Instructions (SFIs), Standing Orders (SOs), and/or Scheme of Reservation and Delegation (SoRD);
- Misrepresentation at any time, including at the time of appointment or when applying for any post in the Trust, e.g. previous positions held, qualifications held, declaration of health, or failure to disclose a criminal offence or pending criminal action, subject to the provisions of Rehabilitation of Offenders Act 1974.
- Deception- giving false information including qualifications, health, immigration status, failure to disclose a criminal conviction or caution in order to gain employment or other benefits.

## APPENDIX B

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### PANELS FOR HEARINGS AND APPEALS

#### Misconduct & Gross Misconduct

	Hearing	Appeal
Staff below 5 <sup>th</sup> level	Level 5	<b>Level 4</b>
Staff at 5 <sup>th</sup> Level	Level 4	<b>Level 3</b>
Staff at 4 <sup>th</sup> Level	Level 3	<b>Level 2</b>
Staff at 3 <sup>rd</sup> Level	Level 2	<b>Level 2</b>
Staff at 2 <sup>nd</sup> Level	<b>Level 1 / Level 2</b>	<b>Chair / Level 1 / Level 2</b>

Level 1 – Chief Executive

Level 2 – Executive Director

Level 3 – Assistant Director / Co-Director/ Deputy Medical Director

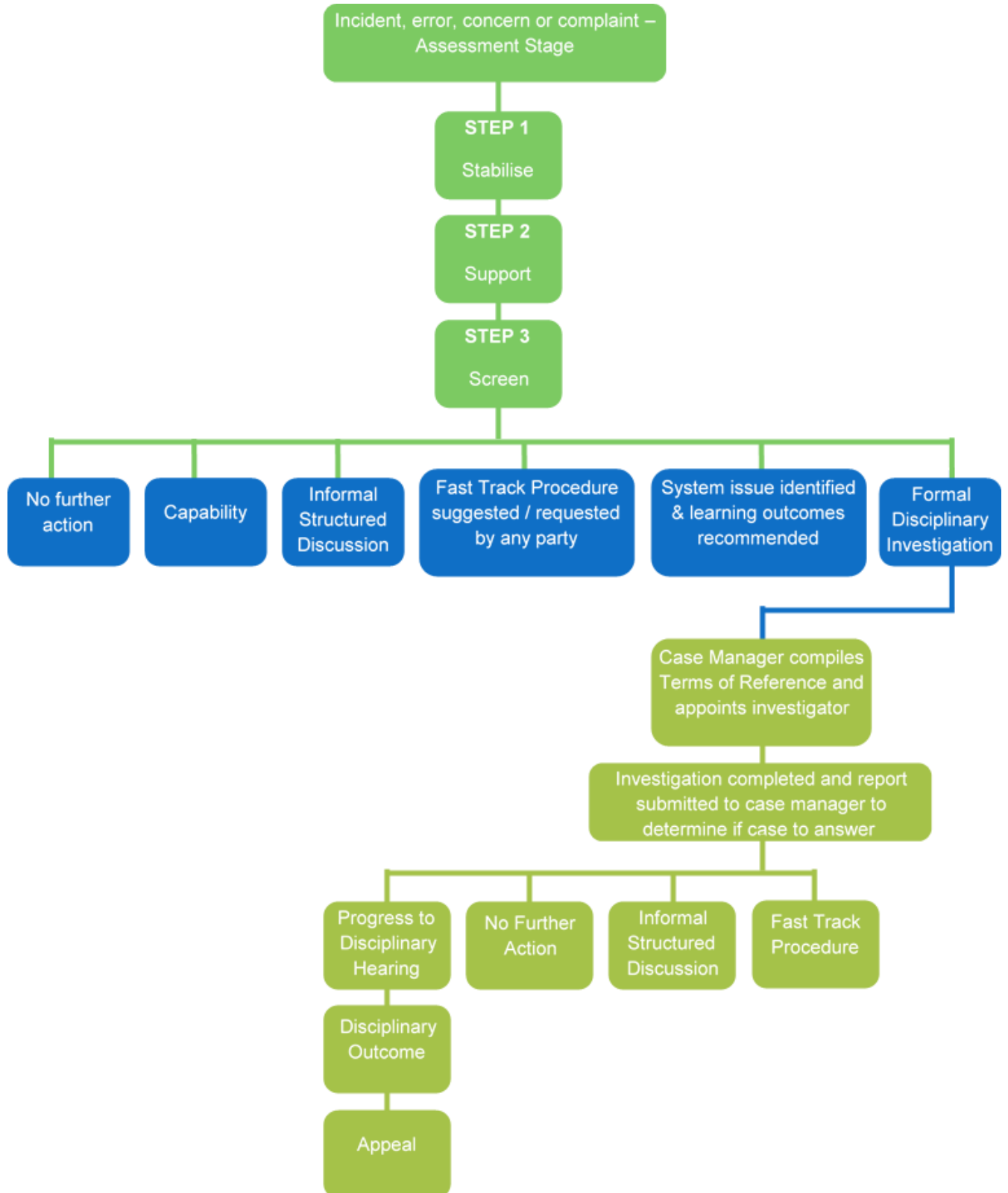
Level 4 – Senior Manager / Clinical Director

Level 5 – Service Manager / Clinical Lead

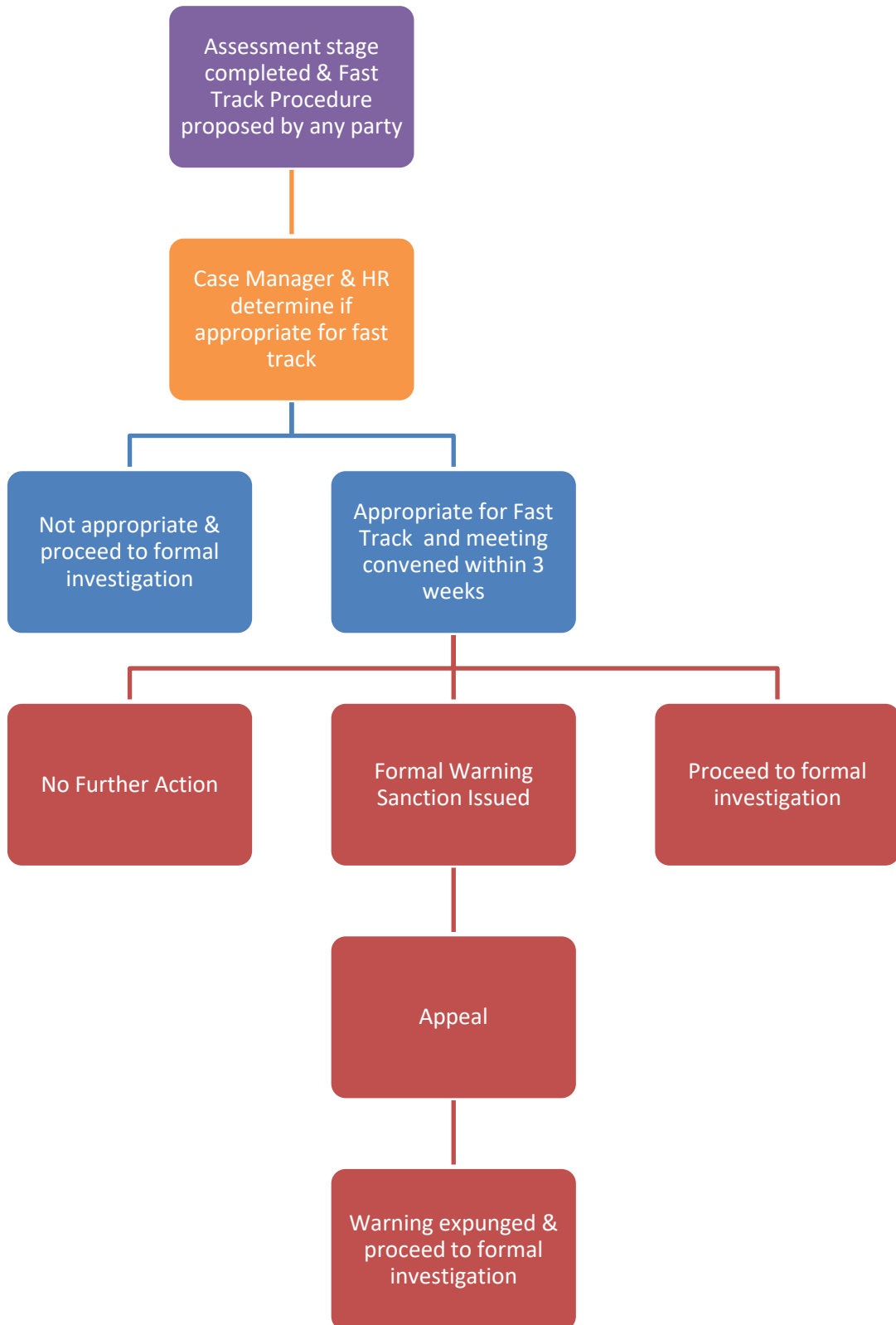
A suitable nominated deputy may be considered in some circumstances.

\*In cases of professional misconduct involving medical or dental staff, the Disciplinary Panel must include a member who is medically qualified (in the case of doctors) or dentally qualified (in the case of dentists) who is not currently employed by the BSO (see Maintaining High Professional Standards in the Modern HPSS (Nov 2005) Section III Para 1).

## Disciplinary Procedure



## Fast Track Procedure



## APPENDIX E

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To be completed jointly by Case Manager and HR including relevant professional lead where appropriate

To be completed by manager within 7 days of complaint/concern

### SECTION A - Details of employee

Name:	
Band:	
Location:	

### SECTION B - Nature of complaint/concern:

Please provide details of information gathered during the initial assessment.

**Please note:**

- In a case where there is a theft or fraud issue, you must liaise with Finance.
- In a case where there is a professional concern and / or a safeguarding issue, you must liaise with the identified contact within your Division, as this concern may have to be notified to the appropriate professional body.

**SECTION C – Decision and rationale (having considered all relevant factors)**

**Consideration of circumstances of case:**

1. Are the rules (policy, procedure, standards) known?		
2. Are the rules acceptable/practical in the circumstances?		
3. Was there any impact on a service user or others?		
4. Is there a concern that there was a deliberate intention behind the actions/inactions?		
5. Is there evidence that this is a skills/knowledge/training issue?		
6. Would another employee with same knowledge / experience / training have acted differently?		
7. Do the local systems and processes provide appropriate governance in the area?		
8. Is there evidence of sufficient supervision?		

**Consideration of mitigation:**

	Yes/No	Please detail:
Are personal circumstances and or health / disability of the employee a relevant factor in whether this goes to formal investigation?		
<p><b>Decision and rationale:</b>                      Consider the information arising from the questions above in agreeing whether this should proceed to formal investigation. As part of this assessment it will be useful to consider whether the issue of concern relates to health, performance and/or conduct.</p>		
<p><b>Is a formal investigation required?</b></p> <p>Please circle: <b>YES</b> or <b>NO</b></p> <p>If no, complete Section D.                      If yes, complete Section E.</p>		

**SECTION D – Details of any other action to be taken**

(for example, learning for the team, change in process, training to be completed, mediation, informal warning to be given).

**SECTION E - Terms of Reference**

1. To investigate (insert matters to be investigated)
2. To prepare a report outlining the facts.
3. To provide a set of recommendations for management to consider.
4. To keep the Terms of Reference under review as required.

This investigation will be conducted under the Disciplinary Procedure.

**SECTION F** (If considering any of the following measures please refer to relevant guidance in Disciplinary Procedure / Operational Guidance.)

Transfer to other duties?	Yes/No	Details of and effective date:
Restrict practice?	Yes/No	Details of and effective date
Place on precautionary suspension?	Yes/No	Effective date:

**Decision to place an employee on Precautionary Suspension/Restricted Practice or transfer to other duties must be reviewed by management every four weeks. (See section D of the Disciplinary Procedure)**

Name of Employee Support Contact:	
Name of Investigating Officer(s):	
Date employee was advised verbally of the investigation:	
Name of manager who verbally advised employee:	



**SECTION G – Authorisation**

Signed \_\_\_\_\_ Date \_\_\_\_\_  
**Case Manager**

Signed \_\_\_\_\_ Date \_\_\_\_\_  
**HR Manager**

Signed \_\_\_\_\_ Date \_\_\_\_\_  
**Professional Lead (if appropriate)**

## APPENDIX F

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### HSC Code of Conduct

[click here](#)

**Business Services  
Organisation**

**Regional Disciplinary  
Policy & Procedure 2022**