

**TRUST CORPORATE POLICY
DISCIPLINARY POLICY AND PROCEDURE**

APPROVING COMMITTEE(S)	PWG SPF TPC	Date approved:	25/2/2022
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RELATED DOCUMENTS	Maintaining High Professional Standards in the NHS Policy and Procedure (MHPS) Capability Policy and Procedure Barts Health values and behaviours Trust Recognition Agreement Dignity at Work Policy and Procedure Managing allegations of abuse and neglect made against staff https://www.england.nhs.uk/patient-safety/a-just-culture-guide/		
STANDARDS	ACAS; https://www.acas.org.uk/acas-code-of-practice-on-disciplinary-and-grievance-procedures		
OWNER	Group Director of People		
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CONSULTATION	<i>Barts Health</i>	People Leadership Team Policy Working Group Staff Partnership Forum Trust Policies Committee
	<i>External Partner(s)</i>	NA
SCOPE OF APPLICATION AND EXEMPTIONS	<p>Included in policy:</p> <p><i>For the groups listed below, failure to follow the policy may result in investigation and management action which may include formal action in line with the Trust's disciplinary or capability procedures for Trust employees, and other action in relation to organisations contracted to the Trust, which may result in the termination of a contract, assignment,</i></p>	

	<p><i>placement, secondment or honorary arrangement.</i></p>
	<p>All Trust staff (including those in fixed term contracts), working in whatever capacity with the exceptions listed below.</p>
	<p>Exempted from policy: <i>The following groups are exempt from this policy</i></p>
	<p>This policy and procedure applies to all employees of the Trust. The only exceptions will be that of Medical and Dental Staff in which initially they must adhere to the MHPS policy & procedures prior to the disciplinary policy being used. The MHPS policy covers professional misconduct and capability concerns in medical and dental staff. Staff covered by Agenda for Change terms and conditions during probation. Staff covered by bank contracts.</p>

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1 INTRODUCTION

- 1.1 Barts Health (“The Trust”) is committed to promoting high standards of behaviour, conduct and performance for all staff to deliver an efficient and consistently high standard of care to its patients and service users.
- 1.2 The policy has been written in light of the Trust’s New Era Principles which include:
- Stop! there is a person in there
 - Simple and concise
 - Language
 - Pause and reflect before formal decision making
 - Timely, transparent and supportive processes
 - Early support and prevention
 - Repair and retain
 - Reflect and review
- 1.3 Barts Health NHS Trust requires high standards of conduct from everyone and is committed to helping people/employees improve and learn from mistakes. This policy and procedure is designed to ensure a fair, systematic and consistent approach is taken when an employee’s behaviour or action is in breach of workplace rules or falls short of the expected standards.
- 1.4 Just culture is the fair treatment of employees, supports a culture of fairness, openness and learning in the NHS by making employees. The expectation is that informal procedures will be used at every reasonable possible opportunity
- 1.5 An objective and prompt examination of the issues and circumstances should be carried out to establish whether there are truly grounds for a formal investigation and/or formal action.
- 1.6 Where an employee’s ability to do their job is affected by a lack of skill or knowledge, or ill health, this will be managed by following the Capability policy.

2 OUR VALUES AND BEHAVIOURS

2.1 The below table describes how the Trust WeCare values apply throughout this policy;

WeCare Value	Application to this policy
	<p>Employees and managers should treat others as they would wish to be treated. Employees should be made to feel welcome to contribute to any fact finding meetings and formal investigative procedures. A formal hearing should be welcoming to employees, their representative and any witnesses.</p>
	<p>Employees will be asked for their input and feedback at every stage of the policy and procedure, whether it is informal or formal. Employees will be given an opportunity to ask questions and clarification of procedures.</p>
	<p>All managers, employees and those involved in managing investigations should work together to ensure a swift resolution of the issues when making decisions about proceeding to formal stages and during any investigation stage. This includes the use of Pause and Reflect and a case management plan.</p>
	<p>Anyone believed to be involved in incidents of misconduct will be asked to provide an account of their actions prior to any formal investigations or proceedings take place. Case managers and investigating officers remain accountable for their role in the procedure and to ensure any activity is prioritised and the employee is communicated with at all times.</p>
	<p>The policy and procedure should take into account of the fact there is a person at the centre of any fact finding or formal procedure and all employees should adhere to the Trust values and principles of New Era principles as mentioned at section 1.2.</p>
	<p>Any informal or formal procedure under this policy should use pause and reflect to ensure there is no disparity between employees who have protected characteristics. Managers should take stock during each stage of the procedure to ensure there is equity. Managers should also seek advice from People colleagues for consistent approaches to managing similar issues in other departments.</p>

3 PROCESS, POLICY AND BEHAVIOURS

The policy provides a framework to manage concerns about someone's conduct in a fair and timely way. It aims to help employees achieve and maintain the required standards of conduct. It does not form part of the contract of employment and may be amended from time to time.

It is expected that all employees adhere to the Trust values and behaviours as well as their professional codes of conduct. Managers are responsible for setting, reinforcing and maintaining standards of conduct and behaviour.

3.1 Informal stage

Allegations of misconduct will be carefully assessed by the relevant manager, with advice from the People team, to decide if the matter can be managed informally where possible or whether there are grounds for further investigation and/or formal action. In all cases, informal options should be considered prior to any formal investigations and action being taken. A thorough Pause and Reflect procedure is required, prior to any formal action being undertaken. This Pause and Reflect procedure is outlined at Appendix 5.

- 3.2 Within 48 hours of an incident of suspected misconduct (or gross misconduct), a fact finding exercise may be undertaken. This should be presented to the case manager in the form of an initial report usually within two working days of the incident. Where this timescale is not possible, the employee will be kept informed of delays and projected completion. Relevant evidence may include independent witness statements, duty rotas, CCTV audit lists, policies, and training records etc.

Fact finding may not be necessary where the incident is a series of minor incidents of misconduct (e.g. lateness, going AWOL).

In some cases, a fact-finding process may have been carried out already as part of another process (such as an investigation under the Dignity at Work Policy) and in these circumstances, it is not envisaged that a further fact find process should be undertaken.

3.3 Improvement note

It is in everyone's interests to avoid the need to invoke formal disciplinary proceedings where possible. Therefore intervention may be appropriate to discuss conduct standards and the discussion may result in an Improvement Note being issued. The intervention should be carried out between an employee and their manager as part of good management practice. Such a meeting should be conducted in an atmosphere that encourages open discussion and enables employees to make the most of the opportunity for improvement provided to them. At the meeting, the manager should:

- Identify the unsatisfactory conduct.
- Discuss potential contributing factors and offer any support that might be appropriate to overcome these.
- Establish any other relevant circumstances.
- Identify the improvement required, specifying realistic, measurable objectives and the period over which these should be achieved and sustained.
- Confirm when the conduct standards will be reviewed and the fact that formal action could be taken if the required improvement is not satisfactorily achieved and sustained within the timescale.

[REF] COR/POL/009/2022/004

- Document the session with details of any action points identified and the agreed timescales. If the manager, in conjunction with the People advisers, considers it reasonable to do so, they may issue the employee an improvement note to ensure;
 - Clarity on the conduct issue
 - Details of the improvement required
 - Action required of both the employee and the manager to support the improvement, including the timescale.
 - Actions may include an apology to be issued, training, coach/mentor, facilitated conversation, mediation, action plan, review period or as a final resort, movement to a formal procedure.

3.4 It is important that during the monitoring period, the manager provides regular supervision. Employees are required to fully cooperate during this period, to achieve and then maintain the improvement outlined.

3.5 The improvement period will normally be three months although in specific circumstances this may be extended to a maximum of six months. A record of the improvement note will remain on the employee's personal file for six months, after which it will be removed from the employee's personnel file.

3.6 If this intervention does not bring about the necessary improvement within the agreed time, the manager may move to the next stage of this policy and procedure.

3.7 Allegations of Misconduct and Investigating the Facts

Where the matter is straightforward and an employee accepts the allegations made against them, there may not be a need for a formal investigation and an agreement to proceed to agreed outcome (see definition at Appendix 6) using an agreed outcome can occur thus removing the need for an investigation or a disciplinary hearing.

3.8 Agreed Outcome

When an allegation arises, which might result in formal disciplinary action, managers should advise employees to seek trade union advice or advice from one of the sources mentioned in section 8 of this policy. The manager must use the Pause and Reflect procedure outlined at Appendix 5. Where an investigation has been carried out in respect of a matter raised under a different Policy, including but not limited to the Dignity at Work Policy, and a decision made to proceed formally, the Pause and Reflect procedure will not apply in these circumstances.

3.9 At the agreed outcome meeting, the employee will have the right to bring a representative (as set out in the definitions) and a member of the People team will also be present (People Manager and above). Agreed outcomes are only appropriate where both parties (namely the Case Manager and employee) agree to it. If either of the parties disagrees, the normal disciplinary procedure must be followed.

3.10 An agreed outcome meeting should be held at which the Case Manager and the People Manager, as well as the employee and their representative, are present. The supporting documents will be provided to the employee and their representative 7 calendar days prior to the meeting. The meeting does not include witnesses or the investigating team where the agreed outcome takes place after an investigation had taken place.

3.11 At the meeting, all relevant information must be provided to those attending. Both parties must have a full opportunity to discuss all the issues and will do so in good faith. The agreed outcome will be confirmed in writing to the employee within 14 calendar days, by the Case Manager. This is to allow a further period of time for the employee to consider their decision to accept the outcome. The employee will be required to provide either written acceptance of their misconduct and the proposed disciplinary sanction, or written confirmation that they have changed their mind.

3.12 Formal stages

As we seek to build an inclusive culture in the organisation, the Pause and Reflect procedure (Appendix 5) has been developed to mitigate against any 'rush to judgement' in entering staff into the formal stages of this procedure. This Pause and Reflect procedure is to be used by the Case Manager before a decision is made to use the formal stages of this policy. It may be that following pause and reflect an improvement note is issued or other form of informal intervention.

3.13 Suspension

3.13.1 Who can authorise suspension?

When considering suspension, managers must assess the risks of the employee remaining at work and seek advice from the People team. Where a manager wishes to suspend an employee, they must seek approval from a senior manager and a People Business Partner/Manager.

If a senior manager is not available when an incident occurs which appears to warrant suspension, the most senior employee on duty may ask the person to go home pending an appropriate manager taking charge of any later action no later than the next working day.

3.13.2 Communicating the Decision to Suspend and Supporting Staff

Every effort will be made for the manager to meet with the employee to inform them of the decision to suspend. This will be followed up in writing within 5 calendar days.

Employees can be accompanied by a trade union representative or workplace colleague when informed of suspension. However, the unavailability of a representative will not prevent suspension from taking place.

The manager communicating the decision to suspend will:

- Explain the reasons for suspension and how long it is expected to last.
- Invite the employee to explain their version of events
- Explain that the decision has been made following a fact finding exercise.
- Explain the employee's responsibilities during their suspension.
- The employee will be given the name and contact details of someone who will keep in regular contact with them, whom they can contact if they have any concerns and who will update them on the progress of the investigation. This will normally be their line manager or a second named individual if the line manager is unavailable.
- Agree how they will keep in regular contact with the employee throughout.

- Give details about support from CIC and if it is necessary to explain the employee's absence,
- The manager will discuss with the employee how they would like it to be explained to colleagues and/or patients.

The terms of the suspension and the employee's obligations will also be provided which includes:

- not doing anything that could interfere with the investigation
- treating the matter confidentially
- seeking permission from the manager to contact colleagues
- During a period of suspension, the manager may suspend access to the email account and temporarily revoke remote access if in use or remove / restrict access to Trust systems by referral to the ICT department. The suspending manager may ask the employee to hand in Trust property such as keys, ID card, Trust mobile phone, bleep, laptop or any other mobile device at the time of suspension.

3.13.3 Continuation of Suspension / Restricted Duties

Suspension should be reviewed every 14 calendar days by the suspending manager in consultation with the People Business Partner and lifted when the reason for suspension no longer exists. Where it becomes evident that the period of suspension will be long term then the suspension may be reviewed every 21 calendar days with this confirmed in writing.

Staff should be informed that they remain suspended and told when the investigation is likely to be completed. This should be followed up in writing by the Case Manager.

Managers should make themselves available to meet with employees to discuss the progress of the investigation and inform the individual in the pastoral support role.

During the course of the investigation, it may be appropriate for a decision to be made that suspension should be lifted and the employee returns to their place of work and suitable arrangements should be made or for an alternative place of work for the duration of the investigation. This decision would normally be taken by the Case Manager.

The Case manager is responsible for ensuring the investigation timescales are met.

3.13.4 Pay during Suspension / Restricted Duties

Suspension is on normal pay, i.e., the pay the employee would have received if they had been at work based on an appropriate reference period (as outlined in Agenda for Change). Managers will be expected to complete a change form to this effect.

Pay is likely to be withheld where:

- The employee is no longer available for work, e.g. he or she is abroad or working for another organisation during their normal contracted working

hours or on his or her own behalf without prior agreement, or is in police custody or prison.

- The suspension relates to a lapse in professional registration or a visa/work permit concern which means the employee cannot legally work at all (visa/work permit) or in a registered capacity (professional registration).
- The employee is not maintaining appropriate communication and/or making themselves available for appropriate meetings.

During a period of suspension, the case manager will most likely prevent any form of work in the Trust where it is conducted in a different department due to the serious nature of the allegations.

Where an employee holds employment outside of the Trust and is suspended from the Trust, the employee is obliged to declare their alternative place/s of work and the suspension information may be shared with another employer if it is in the public interest where for example they hold professional registration or where there may be significant safeguarding concerns.

3.13.5 Availability during suspension

A condition of continued payment during suspension is that the employee must be available during their normal working hours to attend meetings. Where possible, staff will be given 7 calendar days' notice of a meeting to enable them to secure representation.

3.13.6 Visiting Trust Premises during suspension

Except for medical appointments, staff must not visit Trust premises unless given permission by the line manager or a named deputy to attend for a specific purpose, e.g. a meeting with a (trade union) representative, an investigation meeting, or potential witness.

These requirements do not apply in instances where an employee, as a patient, is required to attend Trust premises in order that they may receive treatment or medical consultation.

3.13.7 Leave during Suspension

Staff may take annual leave during suspension. Requests for annual leave should be made following the Trust or department procedure. The line manager will notify the investigation officer, the suspending managers and people team that a request was made and whether it was granted. As the member of staff does not have access to Trust booking systems, the line manager will need to enter this request on health roster themselves.

3.14 Investigation

The Pause and Reflect checklist should be signed by a member of Hospital Executive Board (or equivalent) and the site Director of People before a formal investigation proceeds. This should also be shared with the Investigating Officer.

Where matters have already been investigated, including but not limited to complaints raised under the Dignity at Work Policy, a pause and reflect process is not required in these circumstances.

The Investigating Officer should inform the Case Manager of any delays to the investigation. A clear case plan will be agreed between all relevant parties to ensure adherence to the 90 day timescales. The Case Plan (Appendix 10) will outline key details such as the timescales and key responsibilities.

Should the investigation result in a hearing, the Pause and Reflect checklist must be attached to any case report. The Pause and Reflect checklist can also be shared with the Investigating Officer.

On completion of the Pause and Reflect checklist, the Case Manager, in conjunction with a senior member of their local People team liaises with the member of the Site Executive Board or equivalent to establish that an investigation is appropriate and that all appropriate steps have been taken to cultivate a culture of learning from an incident rather than a punitive culture:

Following the decision to commence a formal investigation, the case manager should:

- Meet with the employee to share the allegations and to outline the next steps and potential outcomes
- Develop the terms of reference which clearly outlines the allegations and timescales for the investigation. (It is not necessary for the terms of reference to be agreed with the employee).
- Offer appropriate support including pastoral support
- Write to the employee to confirm the nature of the allegations and next steps within 7 calendar days of the meeting
- Agree a case management plan with the case investigator (template at Appendix 10).
- This may be shared with the People Adviser and the employee's representative

3.15 The case manager will be responsible for commissioning the investigation and for clearly defining the terms of reference is to be investigated along with the support and advice from the People Team. Investigations will be carried out without unreasonable delay.

3.16 In appointing the investigating officer, consideration must be given as to their suitability and neutrality. Priority must be given to the investigation and on being appointed as an investigating officer, it is the responsibility of both the appointing and investigating managers to review work schedules to ensure that the appropriate level of priority is given to the investigation and that it is completed thoroughly, fairly and without unnecessary delay before recollections fade. In order to maintain impartiality at all times, the investigating officer will not be the case manager.

3.17 The case manager will provide the investigating officer with Terms of Reference for the investigation. The investigating officer will be supported by a member of the People team throughout the investigation. They will work with the Case Manager to develop the case management plan and a list of any relevant witnesses to be interviewed.

3.18 The aim is for all disciplinary cases to be investigated and concluded within 90 days of the investigation being commissioned to the completion of any hearing where appropriate. This does not include the appeal stage.

3.19 The investigating manager will be responsible for producing a full written report setting out the facts established during the investigation. The investigating officer should only present the facts; avoiding offering their conclusions on actions that should be taken. All

investigations undertaken will be open and transparent to enable those participating to be fully aware of the;

- context
- importance and impact of the allegations on patient care, colleagues and the Trust

3.20 Notes of the investigation meetings will be retained and appended to the report. The notes will reflect the investigation meetings but may not be verbatim. The Trust will not accept attempts to covertly record meetings.

3.21 In certain circumstances, it may be considered appropriate for the Trust to engage the services of an independent person to undertake the investigation (in accordance with Trust procedure) and the case manager would be responsible for overseeing the arrangements for the investigation.

Where a member of staff leaves the Trust prior to the completion of an investigation, the investigation will be completed as far as possible to ensure issues of patient and/or staff safety are followed through. For registered staff, consideration will be given to the issue of a professional alert notice where the regulator will be informed.

3.22 Once the investigation is completed, the investigation report will be submitted to the Case Manager; who will consider the findings and with advice from the People team decide whether further action is required; whether there is no case to answer, whether the matter can be dealt with informally or whether a formal disciplinary hearing may be appropriate.

3.23 There are potentially 4 decisions open to the Case Manager: -

- **No case to answer** - In this instance, the line manager will meet with the employee and their representative (if applicable), to outline the outcome. This should be confirmed in writing to the employee and the letter retained on their personal file and recorded on ER Tracker by the People team.
- Appropriate for the matter to be dealt with **informally** - The case is not referred to a hearing, but remedies such as mediation, coaching and/or training may be put in place. It is important that these remedies are not treated or applied in a manner that could be interpreted as an alternative disciplinary procedure. These decisions should be taken with advice from the People team.
- The matter should be dealt with under another **Policy/procedure**
- The matter should be dealt with under this Policy in accordance with the **Formal** hearing procedure.

In all instances, the communication about next steps must be put in writing to the employee within 7 calendar days from the date of the meeting or decision.

3.24 **Third Party Investigation Reports**

Where investigations by third parties (police, counter fraud, etc.) are a feature of an investigation because they involve allegations of crime or fraud, staff subject to investigation may need to be questioned by the Investigating Officer in respect to the information contained in the third-party reports. In these circumstances, the Trust will only delay carrying out internal investigations where absolutely necessary.

3.25 Other Related or Unrelated Disciplinary Matters

Where during the investigation, additional issues come to light, the Investigating Officer will need to consult with the Case Manager. If as a result the terms of reference/allegations require extending then the employee under investigation should be informed as soon as is practicable. If they have not been given the opportunity to respond to newly added allegations they should be given the chance to do so.

Any disciplinary data that is currently live (for example a first written warning) that is considered relevant in showing a pattern may be referred to in cases of a similar nature for the same employee.

3.26 Criminal Matters Emerging as Part of an Investigation

Where matters of a potentially criminal nature emerge in the course of an investigation reference needs to be made to the Police, Counter Fraud, Professional Body and/or Health and Safety Executive as appropriate then advice should be sought through the People team.

Where someone is unable to attend due to being held by the authorities the Trust may continue in their absence. If an employee is unable to attend meetings and/or hearings, in exceptional circumstances they may send a trade union representative on their behalf or provide a written statement.

3.27 Grievances raised during the formal disciplinary procedure

Where an employee raises a grievance during the formal disciplinary procedure it may be temporarily suspended in order to deal with the grievance but where the grievance and the disciplinary cases are related it may be more appropriate to deal with both issues concurrently although this is likely to be the exception. The employee and their representative will be consulted in this respect.

3.28 Sickness during disciplinary proceedings

The ill health of an employee will not usually be grounds for preventing on-going disciplinary procedures.

Where the absence is likely to be short, the Trust will usually wait until the employee recovers and is able to fully participate.

When the absence is on-going and it appears that the employee is likely to remain off sick for an extended period, the Trust will refer the employee to the Employee Wellbeing Service to determine if they are sufficiently fit to participate in the formal procedure.

Following consultation with the Employee Wellbeing Service if it deemed the employee is fit to participate the procedure will continue.

Where it appears that the employee is not fit to take a full part in the disciplinary procedure, the Trust will consider the following measures to enable the employee to participate effectively:

Venue – Consider holding at a venue other than Trust premises

Written Representations – Where the employee may have difficulty in explaining his/her case, consideration will be given to allowing the employee to rely on written representations.

Timings – While being committed to the principle that matters are dealt with promptly the Trust may allow extra time for any stage of the disciplinary procedure to ensure that the employee can participate effectively.

It should be possible by using the special measures above to conduct a fair formal procedure in which the employee can participate. There may be exceptional circumstances when the employee will not be able to attend a formal hearing. In such circumstances the Trust reserves the right to proceed with the disciplinary hearing in the employee's absence.

Where this is the case the employee will be informed of the date, time and location of the hearing and remain free to attend. The representative may also attend in the absence of the employee, with the employees' consent prior authorisation.

The outcome of the hearing will be communicated in writing and the employee will be given the opportunity to appeal against any decision in line with the Trust's procedure to appeal.

3.29 Formal Hearing

Attending the Hearing

Employees are encouraged to attend formal hearings accompanied by an accredited trade union representative, colleague or other companion, of whatever professional background but not acting in a legal capacity. It is the responsibility of the employee to arrange their companion and to inform the Panel who they would like to attend.

Employees with disabilities may also wish to be accompanied by a second person as a support worker or someone with knowledge of the disability and its effects.

Where action is proposed involving an accredited trade union representative, the appropriate full-time officer will be contacted before action is taken.

Employees should make every effort to attend meetings and notify the Chair as soon as possible if they cannot attend. If an employee or their companion/representative is unable to attend, they must suggest an alternative date so that the hearing takes place within 7 calendar days from the original date. If an employee is unable to attend a rescheduled meeting, alternative arrangements such as telephone conference or video conference may be offered.

Where less than 24 hours' notice of the request to postpone is received (without reasonable grounds) the hearing may go ahead in the employee's absence. This will be the Chair's decision following advice from People team or Occupational Health where necessary.

What to Expect at the Hearing

At the hearing, the investigating officer/line manager will present the case and where applicable invite any witnesses.

The employee will be given the chance to set out their case, answer any allegations, ask questions, show evidence, call relevant witnesses, and respond to any information given by witnesses.

Any witnesses called to the hearing must have been interviewed as part of the investigation. If statements from Trust employees are presented as evidence, every reasonable effort will be made to ensure that they attend the meeting, unless it is agreed with the employee that the facts are not in dispute and/or the presence of one or more witnesses would serve no material purpose.

Opportunity to Indicate Response to the Allegation

Before the full disciplinary hearing commences, the Chair will give the employee the opportunity to indicate how they will respond to the allegation; that is whether the allegation is contested. This is not a statement of the case. If the employee does not contest the allegation, the Chair may decide that it is not necessary to hear the management case and may move directly on to the mitigating circumstances stage.

3.30 Witnesses

Witnesses may be called if they have a significant contribution to make to the case. If statements from Trust employees are presented as evidence, every reasonable effort will be made to ensure that they attend the meeting if their evidence needs to be tested at the hearing.

Managers will facilitate time-off from duty as appropriate.

3.33 Preparing for the Hearing

The employee will be given at least 7 calendar days' notice of the hearing in order to have time to prepare. The employee will be provided with two copies of the management report (investigation report) and any related documents including witness statements to be presented at the hearing. Any personal patient information will be redacted.

No supplementary information forming part of the management case should be tabled at the meeting unless in exceptional circumstances.

3.34 Hearing Panel and Attendees

The Trust is committed to ensuring hearing panels are diverse, have appropriate seniority and have the knowledge, skills, experience and training that are relevant to the case in question and cater for factors such as being from a Black and Minority Ethnic background or a disability, etc. Panel members will be selected to achieve this, and if necessary, additional panel members will be recruited. If employees have any concerns in relation to diversity or possible bias of the Panel, they can raise this with their Divisional Director or the Site Director of People.

Panel members will have no previous involvement in the case or any conflict of interest that could their influence decision making.

All disciplinary cases will be heard by an experienced or trained Independent manager (Chair) who is in a Director role. An Independent observer who may be an Inclusion Sighposter may also be in attendance. This individual will not be involved in decision making.

Cases that may result in a formal sanction including dismissal will be heard by a panel of at least two. The second panel member may be external to the site or

Trust who has the knowledge, skills and experience and who may reflect the background and/or specialty of the employee in question.

If the employee is a consultant or other senior doctor, the panel will be chaired by a medical director or their nominated deputy who has appropriate experience or training.

In all formal hearings, a People Manager will be present to advise on the process but will not be in a decision making role.

Also in attendance at the hearing, will be the employee who the allegation/s are against, their trade union representative or companion and where deemed appropriate, any witnesses.

The employee must notify the Chair of any witnesses they wish to call and provide any documents / statements at least a minimum of 3 calendar days before the hearing.

The Chair must arrange for a note taker to be present at hearings. This must not be a member of the panel. This is to ensure an accurate record (not verbatim) is kept of the hearing which is to be shared with the employee being disciplined. The outcome of the hearing should be sent to the employee within 7 calendar days of the hearing.

3.35 Guidelines on conducting a formal hearing

The procedure to be followed in a formal hearing is attached at (Appendix 8) but may be varied to take account of exceptional circumstances (e.g. patients/clients giving evidence).

3.36 Mitigating Factors

In considering the sanction, the hearing Chair/Panel will take account of the employee's previous work record and other mitigating factors. It may be possible for a reduced sanction to take place where there is extenuating mitigation and the Chair of the panel may wish to reduce the outcome such as considering an improvement note instead of a first written warning.

Furthermore, it may also be appropriate for the Chair of the panel to make recommendations for the employee to attend a facilitated meeting, make an apology or work to agreed actions relating to the allegations.

The outcome of a hearing will usually be notified in person by the Chair of the hearing. Only where this is not possible or the individual requests otherwise, should notification be by phone or in writing.

The outcome of the meeting will be confirmed in writing, within 7 calendar days, unless there is a good reason why longer consideration of the decision is needed. In such instances, the employee should be informed over the phone (if agreed) and in writing by the Chair. A copy of the letter will be copied to the employee's representative.

If disciplinary action is taken, the letter will include details of the complaint, the improvement required (if appropriate) and the right to appeal where a formal sanction is issued. It will also state that further disciplinary action may be taken if there is not a satisfactory improvement.

Hearings may result in no formal sanctions being issued; however standard setting, training and/or departmental/individual recommendations may be put in place, if appropriate.

Before a final decision is made, the employee should be given the opportunity to explain any mitigating circumstances that s/he would like the chair to consider, for example

Template letters can be obtained from the Trust's intranet, but managers are advised to seek People Team advice when confirming formal disciplinary sanctions in writing.

3.1.1 Chair's Decision

The Chair's decision should consider all information gathered in the investigation and heard during the disciplinary meeting including any mitigation submitted by the employee. The Chair may consider that it is necessary to adjourn the hearing to consider the evidence before issuing their decision.

Allegations do not have to be proven beyond all reasonable doubt but should be based on a balance of reasonable belief.

The rationale for reaching a particular decision should be clear when providing the outcome as well as in any letters confirming decisions. This should include the nature of the evidence presented, the key findings of fact based upon that evidence, the decision based on those findings and the consequent reason for any particular penalty as well as mitigating circumstances that were deemed material.

The Chair's decision should be sufficiently robust to stand up to the scrutiny of an appeal panel.

3.1.2 Formal Disciplinary Hearing Outcomes

When deciding whether formal action is appropriate and the level of action, consideration will be given to:

- The categories of conduct breaches as defined in the policy
- Any mitigation that the panel feels should be taken into account
- Whether recurrence is likely without formal action
- Whether any remorse and learning shown by the individual making recurrence unlikely
- The decisions applied in similar cases in the past
- How the conduct compares with that of other employees
- The employees member's disciplinary record (including current warnings), general work record, work experience, Expired formal warnings may not be taken into account
- Any special circumstances in the case in question
- Whether the proposed action is reasonable in view of all the circumstances
- Whether any training, additional support or adjustments to the work are necessary.

3.1.3 Possible Outcomes include:

- **No Disciplinary Action Taken and/or Alternatives** - If the Chair feels that the allegation is unsubstantiated and decides to take no formal remedial action, they may feel that standard setting, training or development is appropriate. They may also wish to discuss redeployment with the employee and their representative. The employee and their representative may also recommend redeployment as a potential option.
- In addition, actions may also include an apology to be issued, training, coach/mentor, facilitated conversation, mediation, action plan, review period or as a final resort, movement to a formal procedure.
- **Informal Action** - will normally apply where formal action is not considered necessary/appropriate but it is necessary to raise awareness of the concerns, offer advice and guidance and ensure the employee understands what needs to be done and how their conduct will be reviewed and over what period.
- **First Written Warning** - will normally apply where the issue is serious enough to warrant more than informal action and where a more significant remedial action is not appropriate. It will also apply in cases of repetition by the employee of minor acts of misconduct which have been the subject of an informal action within the preceding months. The length of time for which a warning is retained on an employee's member's file will reflect the seriousness of the circumstances concerned as determined by the Chair. Warnings will normally be for no less than 6 months and no more than 12 months.
- **Final Written Warning** - Will normally apply in cases where there is a repetition of acts of misconduct already the subject of a written warning or instance(s) of misconduct sufficiently serious not to be tolerated a second time. The warning will remain on the employee's record for 12 months from the date of the meeting.
- **Action Short of Dismissal** - Where appropriate, alternative action short of dismissal may be considered. The disciplinary sanction in this instance may include demotion (and subsequent decrease in pay), transfer to an alternative position or reduction of pay. This option can only be offered and applied where the practicalities have been fully explored

Where the penalty is one short of dismissal the record would be retained as if it were a final written warning for 12 months. Such sanctions will only be applied as an alternative to dismissal in specific cases after due consideration of all of the facts. If the employee chooses not to accept such action, dismissal could apply.

In applying this sanction, the following needs to be taken into account:

- ✓ It is in effect a dismissal and as such can only be applied where gross misconduct has been found or there is a current final written warning
- ✓ There must be a post available to move into
- ✓ The individual needs to accept the offer of reinstatement and if refused dismissal takes place
- ✓ The right of appeal remains even if the offer of demotion is accepted

- ✓ Advice should be sought from the senior people team if considering applying this sanction
- **Dismissal** - Will normally apply in cases of gross misconduct, or where the employee has a current final written warning or there is an accumulation of live warnings. In cases of gross misconduct, the dismissal may be without notice or payment in lieu of notice but any outstanding holiday entitlement or salary payments owed at the date of dismissal will be paid.

For other dismissals e.g. cumulative warnings, payment in lieu of notice will normally apply in accordance with the contract of employment.

3.1.4 Pay Step Progression and Formal Remedial Action

In line with Agenda for Change, it is the expectation that individuals are rewarded for good performance. Progression through the incremental pay points on a pay band will be based on an individual's performance each year.

In addition to the standard assessment criteria, employees who are being or have been managed throughout the formal stages of this policy in the last 12 months may not receive an incremental rise.

Any decision to not award an increment point is made at the discretion of the manager and should be based on the Appraiser's performance throughout the whole 12 months in conjunction with any capability and conduct concerns being formally managed.

This will be confirmed in writing to the employee.

3.1.5 Appeals

Employees have the right of appeal against any formal action taken against them and will be informed of this in the outcome letter following the hearing. The appeal is usually submitted to the next level manager or an appropriate manager who has not been involved in the case to date.

The time limit for lodging any appeal is 14 calendar days from the date of the letter following the formal hearing. Letters should be either couriered or sent recorded delivery to allow timeframes to be monitored. An email copy may be sent to the relevant person included in the outcome letter.

The appeal lodged should give clear details of the grounds of the appeal against the outcome of the formal sanction

The Trust will hold an Appeal Hearing within one calendar month of receipt of an appeal, whenever possible. Where delays occur in convening a panel all parties will be informed.

Appeals against dismissal will be heard by a Panel of at least two members. In most cases, the Chair should be a Director (CEO will hear appeals from Executive Directors and the Chairman for an appeal from the CEO) with a member of the People team as an adviser to the panel.

The remaining Panel members may include a member external to the Trust (where the issues are contentious) who has appropriate training and experience

The Trust is committed to ensuring Appeal Panels are appropriately diverse, experienced and/or trained. If employees have any concerns in relation to bias or

[REF] COR/POL/009/2022/004

diversity of the Panel, they can raise with their Division Director or the site Director of People.

Appeal Panel members will have no previous involvement in the case or any conflict of interest that could influence decision making.

Any formal action may, on appeal, be upheld, revoked or reduced.

4 ROLES AND RESPONSIBILITIES

<p>People Relations team</p>	<p>Advise staff and managers and People Site Teams (as necessary) on alternative informal resolution options.</p> <p>Support the Trust’s facilitators and mediators</p> <p>Ensure relevant training in investigations is provided throughout the Trust to support the procedures within this policy.</p>
<p>Support mechanisms</p>	<p>All staff involved should have equal access to support throughout and after any alternative or formal resolutions. These may include reflective work, team building and continued personal development.</p> <p>If the employee is uncomfortable discussing the matter with their manager or require additional input they can make contact with one or more of the support people who can help them, details of who they are and how to contact them are available on We Share.</p>
<p>Pastoral support</p>	<p>Additional support offered to anyone undergoing the formal parts of this policy. This should be a senior manager who is not involved in the handling of this case. This individual will be available to the employee from the commencement of the formal stages of this policy up to any appeal stage.</p>

5 INFORMATION AND SUPPORT

- 5.1 It is important that guidance and support is offered to the employee throughout the entire informal and formal procedure. This may take the form of signposting to the channels below as well as offering pastoral support and regular updates on timescales.
- 5.2 Those employees who are the subject of investigations, will be offered a meeting after the outcome to feed back any concerns or issues they may have had with the procedure. The Pastoral Support will also be on hand to guide them through this.
- 5.3 Any changes to decision making regarding the investigation or suspension should be communicated at the earliest opportunity by the Case Manager. The Pastoral Support is also available to provide updates and guidance to the employee throughout the formal procedure.
- 5.4 Inclusion Ambassador - trained colleagues who support other colleague by signposting them to different channels to raise any concerns they may have.
- 5.5 Mental Health First Aider – are qualified to act as a point of contact, reassurance for a person who may be experiencing a mental issue or emotional distress and to signpost colleagues to professional help.
- 5.6 Freedom to Speak Up Guardian - The Guardian Service is a completely confidential conversation for staff to speak up and raise concerns that is operated by an external and independent organisation. This is a safe and non-judgemental way to talk People through any work related issues with a Freedom to Speak Up Guardian.

Tel: 0333 003 2241 (24 hours)

Email: contact@theguardianservice.co.uk

Web: theguardianservice.co.uk

- 5.7 **Trade Union representative** - A union member could contact their staff representative for advice and support.
- 5.8 **People Relations Site Teams** - Human resource support teams are on each site to advise and support staff and managers in line with good management practice, policy and legislation. Their contact details are on We Share.
- 5.9 **Staff Diversity Networks** - The aim of the networks is to support Barts Health to provide an inclusive work environment with improved experiences for both staff and patients. The staff diversity networks are open to all staff from all backgrounds.

BME (black, minority and ethnic)

LGBTQ+

BartsAbility (either a physical or mental disability)

Women's

Carers'

The networks are an opportunity to meet like-minded staff and share experiences of working at Barts Health

[REF] COR/POL/009/2022/004

5.10 **'Support Colleagues'** - an employee (possibly external to the department and maybe unknown to the employee) should be identified by the case manager as skilled in supporting a colleague. Their role will be to keep in touch with the individual and listen to them.

5.11 **CiC (Employee Assistance Programme)** - An independent, free and confidential advice service. The service can offer practical advice or emotional support with either work or personal issues. They are available 24/7/365 and can offer:

- Emotional support and counselling
- Family and dependent care
- Legal and tax information
- Dealing with debt information
- Information sourcing and research services

LiveChat: well-online.co.uk Mon-Fri 9am-5pm

Email: assist@cicwellbeing.com

Call our advisors **0800 085 1376**

They also provide counselling and their website www.cip-eap.org has more information and topical helpsheets.

Username: bartshealth

Password: wellbeing

CiC operate a managerial advice line that takes calls from any employee who has managerial or supervisory responsibilities for others.

Call the managerial advice line for help and advice **0800 085 3805** which can be used to talk through your approach and practice difficult conversations with a coach over the phone.

5.12 **Employee Well Being Service (Occupational Health)** – The Trust's Occupational health service and well-being programme promotes physical and psychological well-being, prevents work-related diseases and carry out assessments to understand how health impacts on work. **Call: 020 359 4 6609**

5.13 **FURTHER INFORMATION –**

ACAS - <https://www.acas.org.uk/>

6 EVALUATING THE EFFECTIVENESS OF THE POLICY

6.1 **Outcome measures** - The policy aims to reduce the likelihood of BME staff relative to white staff entering the disciplinary procedure. The policy also aims to reduce the total number of formal disciplinary investigations and hearings and the timescales of each case. This is monitored on a monthly basis using Workplace Race Equality Standard data which is presented at local Staff Partnership Forums. In addition, data on case times will be shared at hospital board meetings.

6.2 How will lessons be learned?

Following each formal case, case managers and the relevant People Business Partner will review the case to understand lessons learned.

The Staff Partnership Forum already receives details of case data and this will continue with an emphasis on the outcomes of formal disciplinary cases.

6.3 How post procedure issues will be addressed:

Ongoing support through pastoral support will continue up to the outcome of the appeal hearing.

Any outcomes of disciplinaries will be scrutinised on a quarterly basis particularly being mindful of the outcomes of each formal disciplinary procedure and whether the final sanction was justified.

Quality

MONITORING PROCESS

APPENDIX 1

Issue being monitored	Monitoring method	Responsibility	Frequency	Reviewed by and actions arising followed up by
Length of time taken to undertake formal investigations	ER Tracker	People Relations team	Monthly	Staff Partnership Forum
Staff entering the disciplinary procedure based on ethnicity	WRES metric presented monthly and included in Case reports	People Relations Team and site People teams	Monthly	Inclusion Boards
Number of formal versus informal cases and use of Pause and Reflect	ER Tracker; uploading of informal cases to be included on ER Tracker	Individual site People teams	Monthly at SPFs in case data	Local and Trust wide SPFs
Learning from completed case	Following each formal case, case managers and the relevant People Business Partner will review the case to understand lessons learned.	People adviser involved in the case	Monthly or when team meetings are scheduled	Site team meetings with support from People Relations team

CHANGE LOG

Change Log – Policy Name		
Substantive changes since previous version	Reason for Change	Author & Group(s) approving change(s)
This is a completely new version of the Disciplinary Policy.	We have developed this in light of New Era principles and alongside staffside colleagues.	Michael Pantlin, Group Director of People
Amended some typos in the appendices – 27 May 2021	Tidied up the policy	Raj Bhamber Interim Group Director of People
Amended 20 September 2021	Amendments to make up of hearing panels, removed grades throughout the policy and clarified the role of the investigating officer.	Daniel Waldron, Group Director of People

APPENDIX 3

Impact assessments

Equalities impact checklist - must be completed for all new policies

EQUALITIES IMPACT CHECKLIST

<p>Which groups of the population do you think will be affected by this proposal? Other groups:</p>	
<ul style="list-style-type: none"> minority ethnic People (including gipsy/travellers, refugees & asylum seekers) 	<ul style="list-style-type: none"> People of low income
<ul style="list-style-type: none"> women and men 	<ul style="list-style-type: none"> People with mental health problems
<ul style="list-style-type: none"> People in religious/faith groups 	<ul style="list-style-type: none"> homeless People
<ul style="list-style-type: none"> disabled People 	<ul style="list-style-type: none"> People involved in criminal justice system
<ul style="list-style-type: none"> older People, children & young People 	<ul style="list-style-type: none"> staff
<ul style="list-style-type: none"> lesbian, gay, bisexual & transgender People 	<ul style="list-style-type: none"> any other groups
<p>N.B. The word proposal is used below as shorthand for any policy, procedure, strategy or proposal that might be assessed.</p>	<p>What positive & negative impacts do you think there might be? Which groups will be affected by these impacts?</p>
<p>What impact will the proposal have on lifestyles? For example, will the changes affect:</p>	
<ul style="list-style-type: none"> Diet and nutrition? 	
<ul style="list-style-type: none"> Exercise and physical activity? 	
<ul style="list-style-type: none"> Substance use: tobacco, alcohol or drugs? 	
<ul style="list-style-type: none"> Risk taking behaviour? 	
<ul style="list-style-type: none"> Education and learning or skills? 	
<p>Will the proposal have any impact on the social environment? Things that might be affected include:</p>	
<ul style="list-style-type: none"> Social status 	
<ul style="list-style-type: none"> Employment (paid or unpaid) 	
<ul style="list-style-type: none"> Social/family support 	
<ul style="list-style-type: none"> Stress 	
<ul style="list-style-type: none"> Income 	
<p>Will the proposal have any impact on?</p>	

<ul style="list-style-type: none"> • Discrimination? 	
<ul style="list-style-type: none"> • Equality of opportunity? 	
<ul style="list-style-type: none"> • Relations between groups? 	
Will the proposal have any impact on the physical environment? For example, will there be impacts on:	
<ul style="list-style-type: none"> • Living conditions? 	
<ul style="list-style-type: none"> • Working conditions? 	
<ul style="list-style-type: none"> • Pollution or climate change? 	
<ul style="list-style-type: none"> • Accidental injuries or public safety? 	
<ul style="list-style-type: none"> • Transmission of infectious disease? 	
Will the proposal affect access to and experience of services? For example:	
<ul style="list-style-type: none"> • Health care 	
<ul style="list-style-type: none"> • Transport 	
<ul style="list-style-type: none"> • Social Services 	
<ul style="list-style-type: none"> • Housing services 	
<ul style="list-style-type: none"> • Education 	
<ul style="list-style-type: none"> • 	
Equalities Impact Checklist: Summary Sheet	
1. Positive Impacts (Note the groups affected)	2. Negative Impacts (Note the groups affected)
Race Equality Does the policy take account of race equality legislation and the Trust's Race Equality Scheme?	See: Race Equality Scheme, Equal Opportunities Policy
Disability discrimination Does the policy take account of DDA legislation?	See: Equal Opportunities Policy, Employment of People with Disabilities Policy
Age discrimination Does the policy take account of relevant legislation?	See: Equal Opportunities Policy, Working beyond Retirement Age Policy
Gender discrimination Does the policy take account of relevant legislation?	See: Equal Opportunities Policy
3. Additional Information and Evidence Required	
4. Recommendations	

It is important the pause and reflect procedure is used and signed by senior site staff to ensure fact finding and the move to an investigation is proportionate and in keeping with the Trust's values.

Use of the WRES metric regarding the likelihood of BME staff compared to white staff entering the disciplinary procedure, will be measured on a monthly basis.

5. From the outcome of the Equalities Impact Assessment, have negative impacts been identified for race or other equality groups? Has a full EQIA process been recommended? If not, why not?

No

Manager's Signature:

Dee Mullner

Date:

29 September 2020

Appendix 4

Organisational Impact Assessment

Name of policy	Disciplinary Policy				
Date of impact assessment	17/09/2020	Completed by:	Dee Mullner	Position	Head of People Relations

Area for consideration	Description of issue	Trust contact	Policy author description of how issue has been taken into account in the policy/guideline
Financial impact on Trust	Does the policy impose an additional direct or indirect financial cost on the Trust and how will this be managed? – No	TBC	
Impact on PFI Service Providers	How will the policy impact on the volume/cost of services provided by the Trust's PFI partner and how has this been addressed? No	TBC	
Impact on other partner organisations	How will the policy impact on other partners? No	TBC	

PAUSE AND REFLECT CHECKLIST

RATIONALE

Our **WeCare** values shape everything that we do, every single day and so with an ambition to deliver ‘Safe and Compassionate’ care and to reduce inequalities in east London, making sure that there is no differential experience for staff working in Barts Health is essential. We are committed to ensuring that regardless of age, ethnicity, disability or any other protected characteristic, no employee is treated less favourably than another.

Based on our Workforce Race Equality Standard (WRES) information for the Trust, it became necessary to implement system changes to our disciplinary procedures. A review of our disciplinary procedure has been agreed by the Trust’s CEO led Equality & inclusion Board as part of efforts to address the disproportionate number of Black Minority Ethnic (BME) staff entering the *formal* disciplinary procedure, when compared to numbers of White staff.

To this end, a pause and reflect checklist has been developed to mitigate against any ‘rush to judgement’ in entering staff into the disciplinary procedure. This checklist is to be used by the reviewing manager **before** a decision to carry out formal disciplinary action.

These are system changes to cultivate a culture of learning from an incident rather than a punitive culture. Each site is to implement the “pause and reflect” prior to any disciplinary action being taken and each site Director of People is responsible for gatekeeping this procedure.

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

It is important that narrative is used to explain why each decision has been made.

PAUSE AND REFLECT CHECKLIST

This checklist is to be used by the line manager or an appropriate manager (reviewing manager) **BEFORE** a decision to formally investigate a worker is made.

The reviewing manager in conjunction with advice from a member of the People team liaises with one of the following people to establish that an investigation is appropriate and that all appropriate steps have been taken to cultivate a culture of learning from an incident rather than a punitive culture.

- Site **Director of Nursing and Midwifery** or **Associate Director of Nursing** - Nurses and Midwives
- Site **Medical Director** - Doctors and Dentists
- Site **Operational Lead** or **Divisional Manager** - All other Staff Groups

Name of Employee:

Job title and site

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

- a. Was there any intention to cause harm? Please explain rationale below

- b. Was the worker's judgement and competence impaired by substance misuse?

- c. Did the worker knowingly and unreasonably increase risk by breaching known safe operating procedures?

- d. In your experience, would another similarly trained and skilled employee in the same situation act in a similar manner? Please explain()

** Questions 1 a to 1d would be applicable in cases of serious breaches of policy?*

2. Have you reviewed the worker's knowledge against their skills and determined if the worker knew of the rule or performance standard? If so, which of these applies?

- a. Does the worker lack the knowledge of what to do and so can't in practice?

- b. The worker knows what to do in theory but can't in practice

- c. The worker knows how to and can in practice, but isn't able to

- d. The worker does not have the tools and equipment to do the job

- e. Are there agreed protocols in the department/ward

3. How well have you reacted to this situation? Have you as manager:

- Have you paused to reflect on the circumstances surrounding the incident?

- Have you created a respectful and honest environment where both parties can provide feedback? Please explain

- Raised the concern informally with the worker in the same way you would with any other worker? Please explain

- Actively observed or identified which of 2a, 2b or 2c applies? Please explain

4. Given that our Trust's Values and Disciplinary policy emphasise improvement and learning, not punishment, have you

- Sought to have informal discussions with the worker about this issue or similar issues leading up to this issue prior to considering disciplinary investigation? Please explain

5. Referring to question 2, if evidence is strong then:

- If worker does not know how, so can't in practice then a development plan is required

- If worker knows in theory but can't in practice then a development plan is required

- If worker knows how to and can in practice but isn't then continue with formal investigation for disciplinary action.

Finally, have you determined that by carrying out an investigation for disciplinary action against this individual it is consistent with how other workers have been treated for the same or similar misconduct action?

Signed -----

Name and title (Site Hospital Executive Board member or equivalent) -----

Date-----

Site-----

Signed – -----

Name and title (Site Director of People) -----

Date-----

Site-----

Name of Employee

Job title of Employee

Details of this will be attached to any formal investigation and signed by the relevant senior manager at the site

DEFINITIONS

Appendix 6

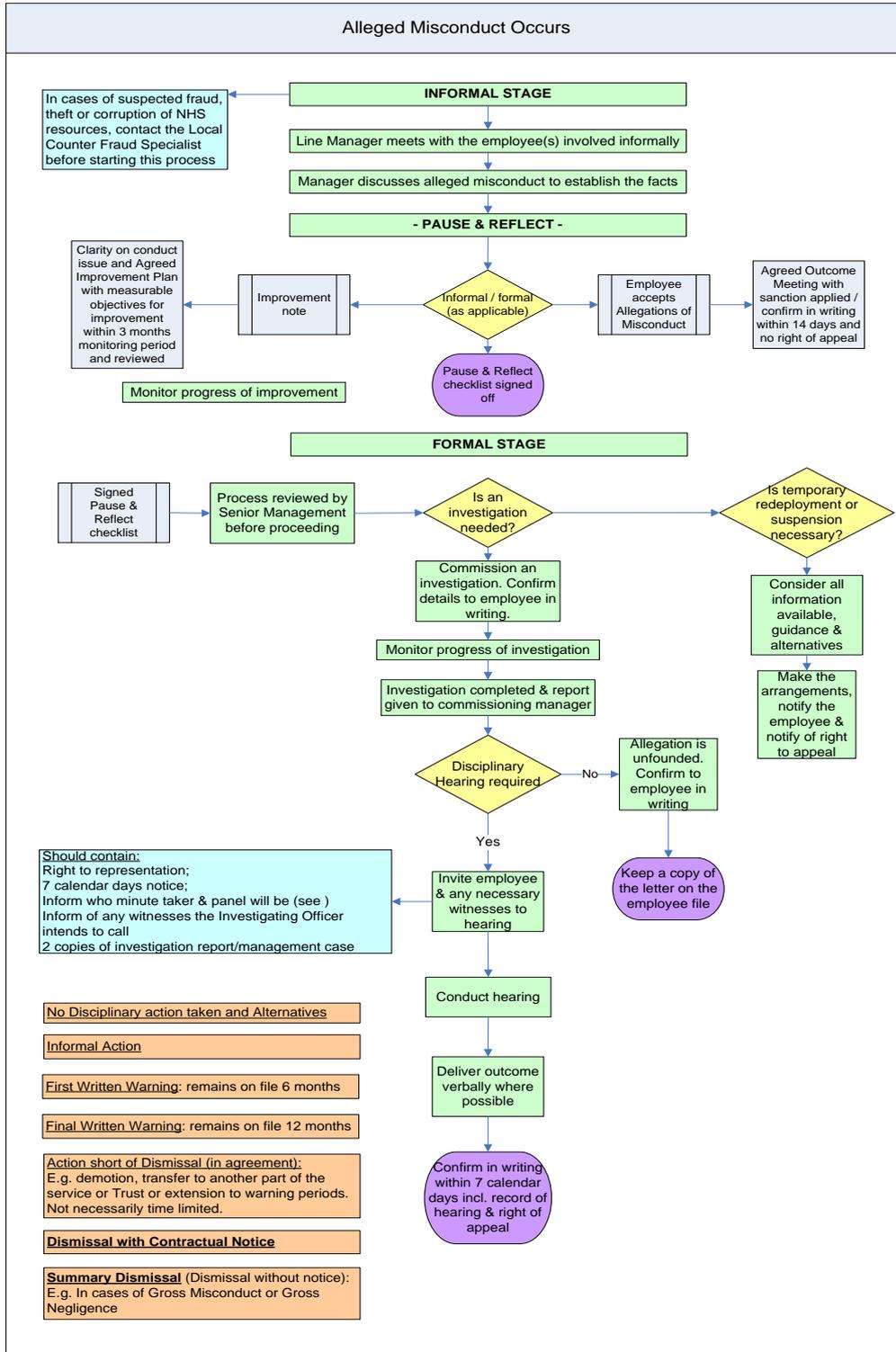
<p>Just culture</p>	<p>A just culture recognises that individual practitioners should not be held accountable for system failings over which they have no control and therefore in terms of how misconduct is managed, it is important that the causes of an incident are researched (through fact finding) and the pause and reflect procedure is used to establish whether the incident was a caused by a systems failure or the whether the individual was responsible.</p>
<p>Misconduct</p>	<p>The following are examples of what may be considered as misconduct. Please note that the list is not exhaustive.</p> <ul style="list-style-type: none"> • 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 the appropriate professional body • Communication of any unauthorised written material • Failure to maintain the required standard of dress code/uniform or presentation • Minor breaches of employment contract • Negligent conduct • Minor breaches of Trust Policies. • Breach of the Trust’s standards of Business Conduct • Failure to comply with Trust Values • Failure to renew DBS (when required) • Accessing inappropriate materials on the Internet during working hours • Inappropriate use of internet and social network sites, for example Facebook, Instagram, Tom-tom and Twitter
<p>Gross misconduct</p>	<p>The following are examples of what may be considered as gross misconduct. Please note that the list is not exhaustive</p> <ul style="list-style-type: none"> • Theft/Misappropriation – any instance of unauthorised removal of property from the Trust or from a service user, carer, patient or members of staff • Physical Assault – Physical assault upon a service user, carer, patient, a fellow employee or member of the public • Threatening behaviour towards a service user, carer, patient, a fellow employee, or a member of the public • Recklessness/negligence in work – any action, or failure to act, which threatens the health and safety of a service user, carer, patient, member of the public or another employee • Serious Damage – to NHS Health Service property,

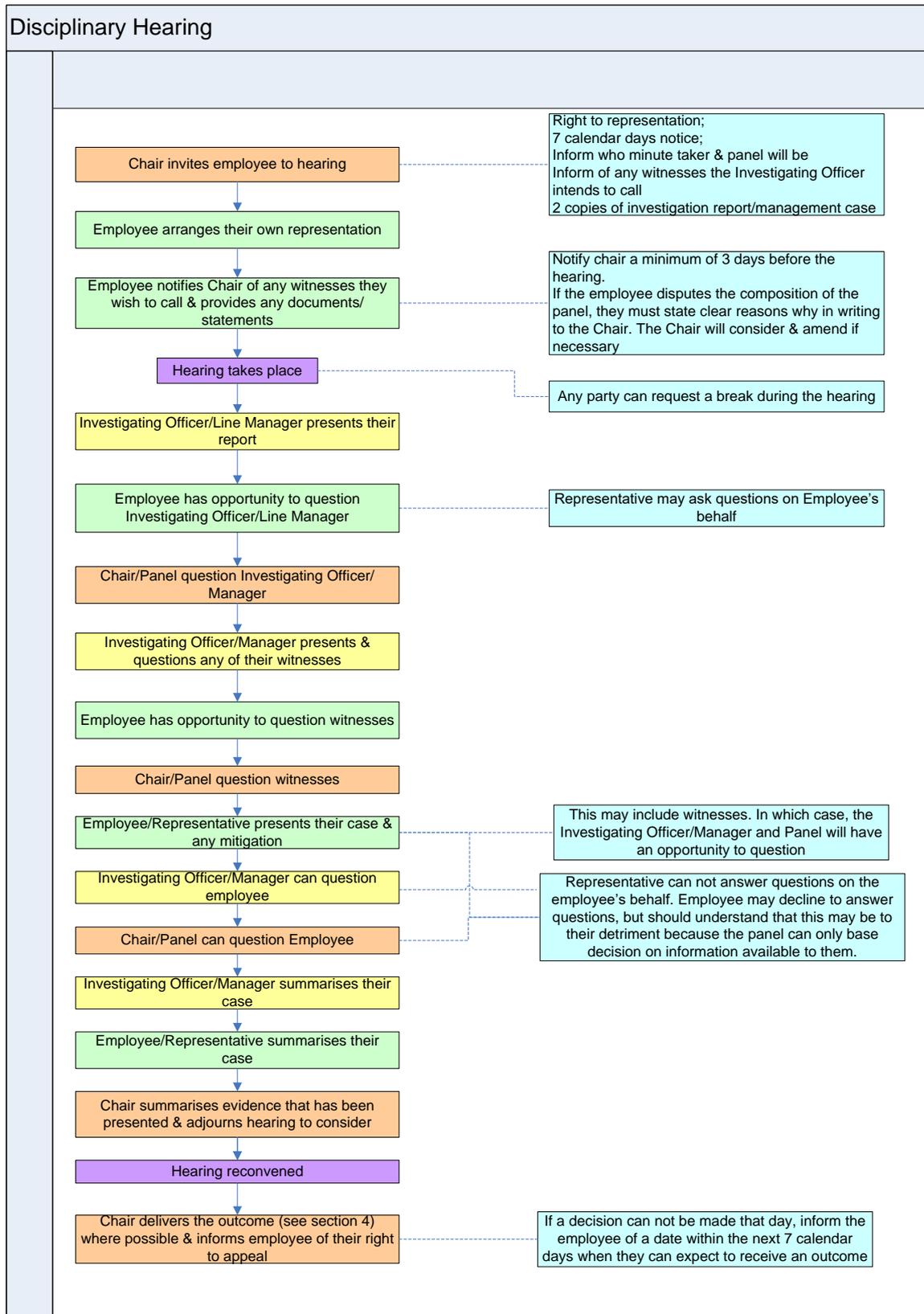
	<p>property of service users'/carers/patients, or members of staff.</p> <ul style="list-style-type: none"> • Acts of fraud and corruption including acceptance of gifts, money, goods, favours, or excessive hospitality • Confidentiality – loss of confidential information, unauthorised access to confidential information, disclosure, or breach of confidence in relation to information regarding a service user/carer/patient or employee except where such a breach constitutes a protected disclosure for the purposes of the Trust's Concerns at Work • Discrimination or harassment • Breach of Professional Code of Conduct • The concealment or destruction of evidence • Inappropriate or Unprofessional relationship with any service user or patient • Deliberately accessing or downloading material from any site that is of a pornographic, discriminatory or of an offensive nature • Sleeping whilst on duty • Possession or attempt to supply alcohol or substances (which may or may not be illicit) • Being under the influence of alcohol or substances (which may or not be illicit), either prior to reporting for duty or whilst on duty, which has impaired ability to undertake duties • Communicating any material which breaches the Trust Human Rights, Diversity, and Inclusion policy • Commits a serious act including criminal, which is deemed to be prejudicial to the interests of the Trust or its employees • Making or sending malicious or vexatious allegations against the Trust, managers, or colleagues • Victimising an employee who has raised concerns under the Whistleblowing, Dignity at Work, Grievance, Disciplinary Procedures • Serious breach of the Trust's Standing orders • 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, date of birth, declaration of health, or failure to disclose a criminal offence or pending criminal action, subject to the provisions of Rehabilitation of Offenders Act 1974
<p>Suspension</p>	<ul style="list-style-type: none"> • In some cases, it may not be appropriate for an employee to remain at work where there is potentially an issue about their conduct. Suspensions will be managed sensitively and confidentially. This is a neutral act which does not imply guilt and the decision to suspend an employee should not be prejudgment as to the truth of any allegation of misconduct.

	<ul style="list-style-type: none"> • Suspension will only occur where either the risk is such that making alternative arrangements is not appropriate or where such alternative arrangements are not possible. • The circumstances when it may be appropriate for the Trust to exercise this right are as follows: • Immediately following any allegation of suspected gross misconduct • Where the conduct of an employee places them at serious risk (e.g. aggression/intoxication) • Where the continued presence of the employee could put themselves, other employees, property or patients at risk • Where there is a risk of the employee tampering with evidence, influencing witnesses and investigation • The employee is the subject of criminal proceedings which may affect their ability to do their job. • Some other substantial reason affecting the employee or the workplace working relationships have severely broken down <ul style="list-style-type: none"> • Alternatives to suspension must be considered, with People team advice where appropriate and could include the employee temporarily: <ol style="list-style-type: none"> I. being moved to a different area of the workplace for the duration of the investigation II. changing their working hours III. being placed on restricted duties including having reduced access to Trust systems where appropriate IV. working under supervision V. being transferred to a different role within the organisation (the role should be of a similar status to their normal role/ or with full training to carry out the role, and with the same terms and conditions of employment). VI. Other meaningful activities that the individual could do should be actively explored. This could include working remotely, carrying out activities such as audits, research, or teaching.
<p>Agreed outcome</p>	<p>When the facts of the allegation are not in dispute by the employee and they have accepted responsibility, a decision can be taken by the Case Manager as to whether to proceed to an agreed outcome. Where this is the case, the level of sanction to be applied will be communicated to the employee at a meeting. The sanction applied can be a first written warning or final written warning (in cases where there is already a first written warning or where the misconduct is sufficiently serious not to be tolerated a second time). Cases involving gross misconduct will always require a formal investigation.</p> <p>There is no right of appeal where agreed outcomes have been used.</p> <p>Agreed outcomes can be used at any stage of the informal or formal procedure excluding issues involving gross</p>

	misconduct.
Fact finding	Before any decision is made to proceed to the formal stages of this policy, it is be important for the line manager to complete a fact-finding exercise (to occur within 48 hours of the incident) to establish facts and gather short witness statements. This is not necessary where the breaches of misconduct are repeats of minor misconduct or if there has been an investigation already conducted under another policy (e.g. Dignity at Work).
Pause and reflect	This is a procedure based on Just Culture principles of Just Culture allowed and developed by the Trust to improve the likelihood of BME staff entering the disciplinary procedure compared with white staff. The questionnaire is outlined at Appendix 5. This must be signed by a member of HEB or equivalent and the site Director of People before proceeding to an investigation. This can also be shared with the employee and their representative.
Representation	<p>An employee may wish to bring a representative to all formal meetings under this policy including suspension meetings (if it does not delay proceedings), investigation meetings, disciplinary hearing, or appeal hearing. The representative may be either a trade union representative or a workplace colleague not connected to the investigation.</p> <p>Representation does not occur during the informal stages of the policy.</p> <p>The representative may be legally qualified but will not be representing the practitioner in a legal capacity.</p> <p>At the request of the employee, they may be accompanied by an individual not involved with the case where it is evident this will provide additional support to them.</p> <p>Employees can seek trade union advice at any time.</p>
Facilitated conversation	<p>This is an alternative approach to resolving misconduct to try to resolve a workplace disagreement before it develops into more serious, formal disciplinary procedures, is to use facilitated discussions.</p> <p>The purpose is to ensure all parties' views are heard and communicated in line with Barts Health WeCare values.</p> <p>In this informal meeting issues will be discussed, and a way forward will be agreed with individuals having considered before the meeting what they would like as an outcome</p> <p>It is usually facilitated by the line manager or a colleague/peer who is likely to be external to the team and in some cases, the People team. The meeting may take place at the request of management so is not necessarily confidential.</p> <p>It is usually completed in a shorter period (approx. one to two hours) than mediation.</p>
Allegations	<p>The misconduct or gross misconduct under investigation which are under informal or formal investigation. These are written factually and able to be evidenced with witness statements and other documents.</p> <p>Allegations involving children and vulnerable adults will be referred to the Trust's safeguarding team.</p>
Investigation	The process of gathering the evidence linked to the allegations, and can include interviews from witness, CCTV

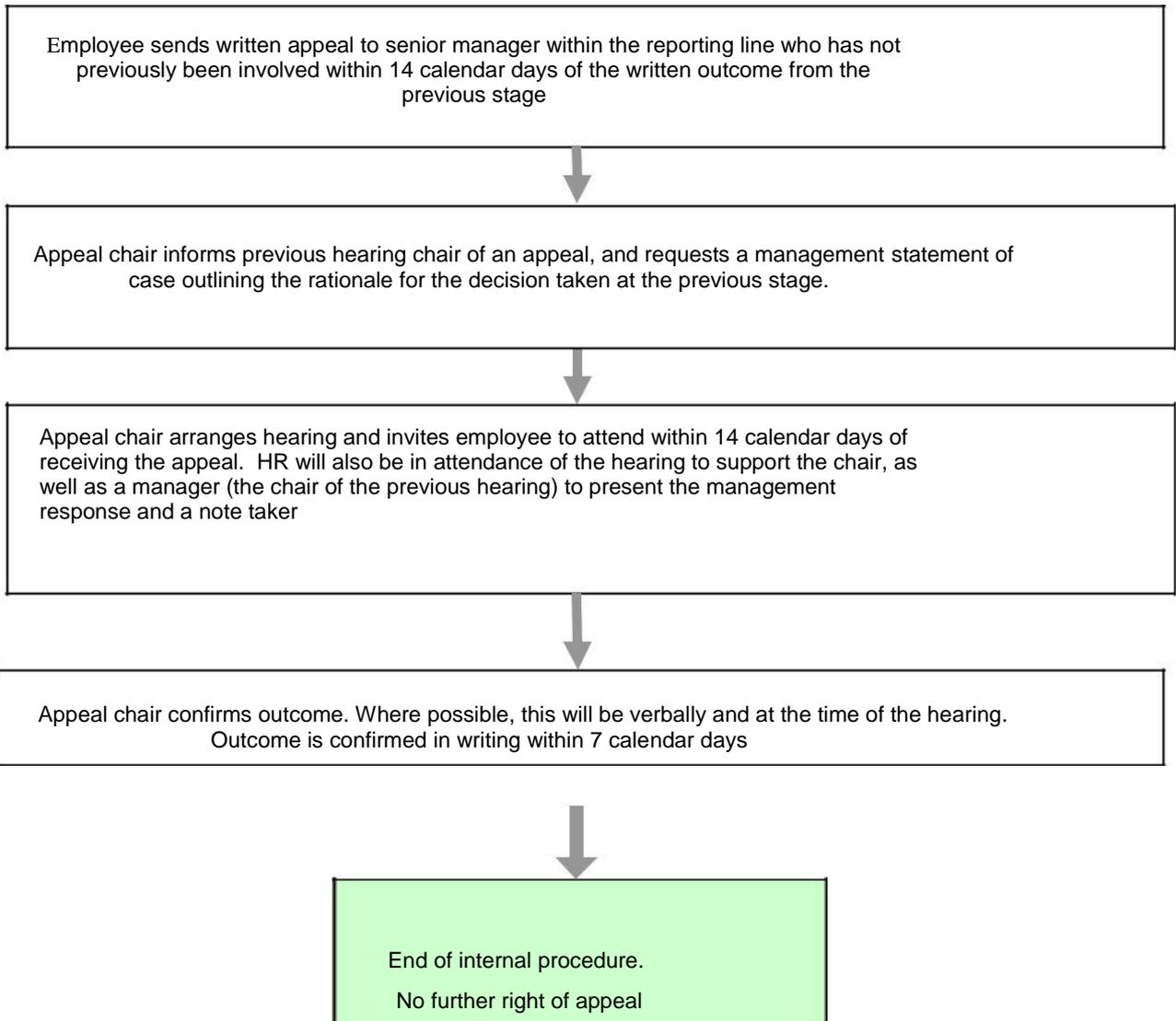
	footage, documents and employee records.
Management case	A summary of facts and findings. This can accompany an investigation report or in straightforward cases of misconduct, can be used as a standalone document.
Investigating officer	The IO is commissioned by the Case Manager and carries out a thorough and impartial investigation with terms of reference. They are responsible for conducting interviews and provide regular updates on the progress of investigations. Any additional allegations should be flagged as soon as possible. They may be required to attend the hearing to present their findings.
Case manager	<p>Has overall responsibility and accountability for the management of the case including appointing an investigating officer, drafting the terms of reference and ensuring pastoral support is made available to the employee.</p> <p>The Case manager and their People adviser will create a case plan to ensure case times are adhered to. This will be shared with the trade union representative or workplace colleague.</p>





Appendix 9

Appeal Stage



Case Management Plan

Date	Event	Name of people involved / witnesses	Details / Additional Information
Week 1	<p>Case Manager appointed</p> <p>Case Manager identifies and appoints an Investigating Officer.</p> <p>Case Manager commissions the investigation, outlining the terms of reference.</p> <p>Case Manager writes to the employee informing them of the allegations made against them and the terms of reference.</p> <p>The HR lead sets up the case management meeting to schedule dates for the investigation and tentative hearing dates.</p> <p>Union or workplace colleague can be invited - representative notified.</p>		
Week 2	Investigating Officer arranges meetings with the witnesses	<p>Identify key witnesses</p> <p>Areas of questioning</p> <p>Visit the incident site if appropriate / relevant to the investigation</p>	Documents / requested CCTV, any other evidence?
Week 3 - 6	Investigation meetings	Commence interviews with key witness	
Week 7-9	<p>Investigating Officer collates the information and concludes the investigation.</p> <p>Writes up investigation report with support from their People Adviser and includes recommendations</p>		<p>Ensure that all statements have been returned signed and dated</p> <p>Ensure all patients documents have been anonymised</p>

	within the report as to whether the facts uphold the allegations.		
Week 9-10	Case Manager makes the decision as to whether the case should go to a hearing Case Manager provides the employee with feedback via a meeting and /or written response as appropriate.		
Week 11-12	Planning a hearing Where appropriate a hearing is scheduled. People teams will co-ordinate/facilitate panel member's availability to attend the hearing <u>Determine panel</u> (if possible dismissal – must be Dismissing Officer on panel. HR Manager must also be on the panel).		
Week 12	After the disciplinary hearing Chair of the panel to confirm outcome and any sanction in writing within 7 calendar days and advises the employee of the appeals procedure.		