

# Disciplinary Policy and Procedure

Date: Nov 2017    Review Period: 3 years    Review Date: Nov 2020

<b>Contents</b>	<b>Page</b>
1. Purpose of this Policy and Procedure	2
2. Scope and Principles	2
3. Roles and Responsibilities	4
4. Investigation	5
5. Precautionary action	6
6. Employee Support	6
7. Unavailability and Sickness Absence	7
8. Disciplinary Hearing	7
9. Outcomes of Disciplinary Hearings	9
10. Right of Appeal	10
11. Dismissals and Resignations	11
12. Disciplinary Procedure Flowcharts	12
<b>Appendix 1 – Types and Levels of Misconduct</b>	<b>14</b>
<b>Appendix 2 – Sequence of the Disciplinary Hearing/ Appeal</b>	<b>16</b>

## **1. Purpose of this Policy and Procedure**

- 1.1 This policy and procedure is to help and encourage all employees of Ebor Academy Trust to achieve and maintain the required standards of conduct as outlined in its Staff Handbooks and various policies, to promote best practice in employment and to ensure consistency and equity in its approach towards the management of cases where breaches are alleged to have taken place.
- 1.2 The Trust recognises that the aim of this policy is to improve the employee's conduct, rather than being merely punitive and this should be reflected in how cases will be dealt with. This procedure should be used to help find an appropriate resolution for all conduct issues; it is not appropriate for dealing with the following, which are managed using separate procedures:
  - Capability due to poor performance;
  - Long or short term absence and ill health retirement;
  - Redundancy;
  - Dismissals for legal restrictions, e.g. introduction of a new requirement/qualification for a post;
  - Dismissal for other substantial reasons, e.g. ending of a fixed term contract.
- 1.3 This disciplinary procedure follows the ACAS code of practice on Disciplinary and Grievance procedures (Updated March 2015).

## **2. Scope and Principles**

- 2.1 This policy and procedure applies to all employees of the Trust, except employees in their probationary period. The principles of the Disciplinary Policy and Procedure are set out below. It is the Trust's policy to ensure that:
  - Disciplinary action should only be considered where normal line management action has either failed to achieve the required standards or would be inappropriate in the circumstances. Managers are able to take informal action where standards of conduct give cause for concern, draw deficiencies to the attention of the employee and indicate that formal disciplinary action will be considered if standards do not improve. This action is outside the formal stage of the disciplinary procedure. Employees are supported and encouraged to maintain good standards of conduct and behaviour;
  - This procedure aims to ensure all employees are treated fairly, consistently, impartially, promptly, reasonably and applied without discrimination.

- Disciplinary issues should be dealt with promptly and without unreasonable delays; however, due consideration should be given to the complexity of the case, preparation time for the employee and the availability of representation. The employee will be kept updated throughout the procedure regarding timescales and potential next steps.
- Employees have the legal right to be accompanied by a trade union representative or work colleague at Disciplinary Hearings and Disciplinary Appeal Hearings. The Trust extends this right to all formal meetings of the Disciplinary Procedure e.g. investigatory interviews. The accompanying representative has a statutory right to address the hearing or meeting but no statutory right to answer questions on the employee's behalf.
- All documentation and information relating to the allegation of misconduct will not be distributed to any parties not involved with the process. Any information relating to a case will be kept in accordance with Data Protection legislation and any breach of confidence may be treated as a disciplinary case of misconduct.
- The employee will be given a full explanation of the allegation(s), in writing, at any stage of the procedure.
- At all formal stages of this policy the employee has the right to appeal. The appeals will be heard in an appeal hearing by representatives of the Governing Body that have previously had no involvement with the case.
- Audio/ visual recordings of the proceedings by the employer, the employee or their representative are not acceptable at any stage of this process. Conversely the use of surveillance evidence submitted as part of the case must comply with the organisation's surveillance policy.
- The disciplinary procedure is to be used separately from the grievance procedure. If an individual is already being investigated as part of the grievance procedure, the disciplinary process will not begin until the grievance has been completed. If a concern or grievance is raised regarding any aspect of this Policy and Procedure, it should be dealt with as promptly as possible within this process. Matters should only be referred to be dealt with through the Trust's Grievance Procedures, formal or informal, where they are not related to the application of this Policy for that individual case.
- This procedure will be applied without discrimination. If an employee has difficulty with any stage of this process due to a disability, it is their responsibility to raise this with their manager or Human Resources as soon as possible to enable the appropriate action to be taken.

- An employee will not normally be dismissed for a first breach of discipline unless s/he is found guilty of gross misconduct, where a penalty may be summary dismissal without pay in lieu of notice.
- Employees are required to disclose all convictions, arrests, charges and summons occurring while in the employment of the Trust to their headteacher / line manager without delay. Where an employee is accused or convicted of a criminal offence, the Trust will consider if the allegation/ offence is one that makes the employee unsuitable for his/her type of work and if so whether there is suitable alternative work available. Following this consideration, the employer may initiate the disciplinary process. Where matters of financial irregularity are suspected, the Trust's auditors should be informed.
- Disciplinary action will not be taken against an accredited trade union representative unless the case has been discussed with the representative's trade union. In these circumstances the HR Director and the full-time official from the appropriate union should be notified of the case.

### **3. Roles and Responsibilities**

#### **3.1 *The Trust will:***

- Ensure fair and appropriate rules relating to staff conduct are in place and are adequately communicated
- Regularly review use of the Disciplinary Policy and Procedure across the Trust, in consultation with the trade unions through the J.C.N.C.
- Provide sufficient funding for staff training and development so that they are fully equipped to meet the standards of conduct required.

#### **3.2 *School or CST Senior Management Team will:***

- Ensure that all staff within their jurisdiction are aware of the standards of conduct required of them
- Manage informal disciplinary issues
- Undertake investigations into alleged misconduct in a fair and timely manner and produce reports as necessary
- Undertake appropriate training and coaching as required for dealing with disciplinary issues
- Liaise with Human Resources staff regarding disciplinary investigations, hearings or appeals as appropriate
- Chair disciplinary hearings and appeals as required (NB If the disciplinary issue concerns the headteacher, then the investigation should be carried out by the Chief Executive and the hearing should be chaired by the member of the Governing Body.

3.3 *HR will:*

- Provide advice and guidance to line managers on misconduct issues as they become apparent
- Provide assistance and support to line managers on investigations, hearings and appeals, attending meetings as required
- Report to Trustees and senior management on the application and use of the Disciplinary Policy.

3.5 *The individual will:*

- Familiarise themselves with the behaviour expected of them whilst working with the Trust and be given adequate working time to do so.
- Participate fully in any training on the requirements of them relating to their conduct
- Participate in and cooperate with this policy and procedure as required
- Maintain full confidentiality of any disciplinary matters affecting them or colleagues.

## **4. Investigation**

- 4.1 Where any allegation of misconduct arises, the line manager will take reasonable action to establish the facts and having done so, will ascertain whether a formal disciplinary investigation is required, or whether the matter should be dealt with informally. At all stages, the employee will be made aware that they can access counselling/ support.
- 4.2 Where it is decided that the matter can be dealt with informally, the line manager will, having sufficiently investigated the matter, make a note of the issue and the action taken and notify the individual concerned. The line manager may issue the individual with an informal warning that further acts of misconduct may result in formal disciplinary action being taken against them. Training may also be recommended. If the individual does not agree with this course of action, s/he may raise their concerns with the line manager and/or with the relevant HR representative. His/her concerns will be considered and a record of them will be kept alongside the file note. The informal warning will be considered spent after a period of three months.
- 4.3 Where a formal investigation is deemed to be required, the line manager or another suitable member of staff will investigate. That person will gather the facts, identify and hold fact finding meetings with witnesses and obtain documentary evidence as required. The employee will be informed that an investigation is to be undertaken.
- 4.4 If necessary, the employee will be called to an investigatory meeting where there will be opportunity to answer questions related to the allegations. Reasonable notice of the investigatory meeting will be

- given. The employee will be informed at least 5 working days prior to the investigatory meeting, including that s/he has the right to representation by a work colleague or a trade union representative.
- 4.5 Both the employee and witnesses must be made aware that what they say during the investigation will be recorded in writing and may be used as evidence in any subsequent disciplinary proceedings. Witnesses should also be made aware that they may be required to appear in person at any subsequent Disciplinary Hearing and Appeal.
- 4.6 Investigations should be concluded as quickly as possible. Where an employee's representative is unavailable to attend an investigatory meeting, the employee/ representative must propose another date and time which must be no more than 5 working days later than the original date, unless by mutual agreement.
- 4.7 The employee should be informed in writing of the outcome of the investigation without unreasonable delay.

## **5. Precautionary Action (suspension/temporary re-deployment)**

- 5.1 Where it is believed that an investigation may be adversely impacted if the employee who is the subject of the investigation remains at work, the decision may be made to take precautionary action whilst it takes place. Precautionary action includes suspension from work or temporary transfer to another post/location or temporary restriction/amendment of duties. Precautionary action is not disciplinary action and does not indicate any pre-judgment of the allegation/s. Such action is especially likely to be the case if it is felt that there is a reasonable risk of others involved in the investigation feeling intimidated or unable to act objectively whilst it is conducted, or of evidence being corrupted, or if there may be a safeguarding risk by leaving the individual in their current role or in the workplace. The decision to suspend an individual will not be made lightly and will only be made on clear, justifiable grounds, taking into account all the facts available at the time and the other options. The employee will remain on normal pay in such circumstances, including regular overtime.
- 5.2 Suspension from work may be appropriate where the allegation/s indicate potential gross misconduct, or where the employee continuing in their work may hamper the investigation, or where they, or other people, may be put at risk by their remaining at work. A temporary transfer to another suitable post/location, or restricted duties may be an alternative. Precautionary action should be kept under periodic review during the investigation as a consequence of the evidence gathered. Periods of suspension will be kept to the minimum necessary.
- 5.3 Precautionary action should only be taken after consultation with an HR representative and an appropriate manager. There are no rights to representation/accompaniment at a precautionary action meeting but if a trade union representative or work colleague is available at the time

of the meeting the individual may be accompanied by such a representative.

## **6. Employee Support**

- 6.1 The employee will be given details of any support available to them during the disciplinary process, such as the Trust's employee assistance programme, which offers confidential counselling, amongst other services. Employees who are members of a trade union may also wish to contact their representative, as support is available through the trade union.

## **7. Unavailability and Sickness Absence**

- 7.1 If an employee is absent due to sickness during the disciplinary process, the investigating officer should determine the nature and likely duration of the absence. Advice may be sought from the Trust's Occupational Health service or the employee's G.P. regarding the employee's ability to take part in the process.
- 7.2 Where an employee is suspended and subsequently notifies management that they are unwell, normal notification/medical certification requirements will apply. Such absence will count against the employee's occupational sick pay entitlement and their absence record.
- 7.3 Reasonable time should be allowed for the employee to recover. However if it is likely that the absence will be prolonged, with the employee continuing to be unfit to take part in an investigation, the investigatory process may proceed in his/her absence. The employee's representative may give evidence and state the case for the employee. The employee may provide a written statement.

## **8. Disciplinary Hearing**

- 8.1 If a decision is reached that the concerns can only be addressed by a Disciplinary Hearing, the employee will be informed in writing. The letter, giving reasonable notice of the Hearing will include:
- a summary of the allegations,
  - the investigation findings and any accompanying evidence bundle,
  - the potential outcomes that could occur from the hearing
  - details of the right to be accompanied
  - the names of the individual or panel members hearing the case and the names of any witnesses to be called.
  - The employee's representative can call witnesses

- 8.2 All management documents to be referred to at the Hearing should be submitted to the employee and the Chair/ panel members as soon as possible and definitely no later than 10 working days prior to the Hearing. Documentary evidence to be used by the employee and the names of any witnesses to be called by the employee should be submitted to the management representative and the panel members as soon as possible and definitely no later than 9 working days prior to the Hearing. In cases where there is a large volume of information for all the parties to familiarise themselves with, either party may make a request to HR for the timescales to be flexed in order to provide reasonable time to formulate a response; such a request will not be unreasonably withheld. Similarly, where an employee wishes the Hearing to be held sooner, the notice periods for the exchange of information as outlined above may be reduced, with the agreement of all parties.
- 8.3 In the event of the unavailability of the employee due to sickness an alternative date will normally be offered, allowing a reasonable time for the employee to recover, but normally within 10 working days of the original date. The timescale in para 4.4 above applies where the representative is unavailable. If the employee is still unavailable for the re-arranged Hearing, appropriate medical opinion will be sought regarding the individual's ability to attend such a meeting. If medical opinion states that the individual will be unlikely to attend a hearing for more than a month, then the decision may be taken for it may go ahead and the individual may either provide a written statement to be considered, or be represented by their trade union or workplace colleague.
- 8.4 A Disciplinary Hearing will be considered by a panel of at least three people of appropriate seniority who have had no previous direct involvement in the case. In schools, this is likely to be members of either the school management team or Local Governing Body, who will normally be advised by an HR representative. In cases involving Central Services Team employees, it will involve a panel of three managers/ senior staff or Trustees, who again will be advised by an HR representative.
- 8.5 A note of the hearing will be kept.



## 9. Outcomes of Disciplinary Hearings

9.1 All sanctions and the reasons for them will be confirmed in writing to the employee stating the period after which the sanction will normally be disregarded for future disciplinary purposes, provided there has been no further formal disciplinary action taken against the individual during this period. Further training may be required of the employee at any stage of the process.

9.2 The possible outcomes of a disciplinary hearing are outlined below:

Stage	Outcome	Description
Informal Stage	Informal warning	An informal warning may be given under the informal stage of the disciplinary procedure in cases of minor misconduct or behaviour. It may be referred to the formal stage if a subsequent act of misconduct occurs. <b>Duration</b> - 3 months from the date of the conversation.
Formal Stage	Written warning	A formal written warning will normally apply where there is either further misconduct within the four months after an informal warning has been issued, or a sufficiently serious act of misconduct to warrant moving straight to the formal process. <b>Duration</b> - six months from the date of the letter confirming the warning.
	Final written warning	A final written warning will normally apply where there is a further breach of disciplinary rules during an active period of a written warning, or in case of serious misconduct. <b>Duration</b> - twelve months from the date of the letter confirming the warning.
	Dismissal with notice	Dismissal with notice may apply where a further breach of disciplinary rules occurs during an active period of a final written warning. No employee will be dismissed for a first offence unless it is one of gross misconduct (see below).
	Summary dismissal (no notice)	Dismissal without notice applies where an allegation of gross misconduct has been found at the Hearing. If there are mitigating circumstances the Manager/Panel may take action short of dismissal where dismissal would otherwise occur.

## 10. Right of Appeal

- 10.1 There is a right of appeal, with representation as described above, against any formal disciplinary sanction. The employee must give written notice of the appeal within 10 working days of receipt of the letter confirming the sanction and set out, in writing, the grounds for appeal. Appeals will be heard at the earliest available opportunity and reasonable written notice of the date and the arrangements will be given. The timescales for exchange of documents/notification re witnesses are as in Section 8 above.
- 10.2 The Chair of the initial Hearing Panel may be requested to attend the Appeal Hearing in order to explain how the decision was reached, and to answer questions.
- 10.3 Any employee, who has received a formal disciplinary sanction including dismissal, has the right of appeal. This will be heard by an Appeal Panel, made up of three members of the Governing Body or Trust (for schools), or three managers or Trustees (for the Central Services Team), who have had no prior involvement in the case. The appeal must be made in writing, giving the reasons and the basis for them, to the Hearing Manager, within 10 calendar days of receiving written confirmation of the disciplinary action.
- 10.4 An Appeal hearing will normally be heard within 20 calendar days, following receipt of a notification of appeal, unless agreed otherwise.
- 10.5 The purpose of an appeal is not to re-hear the original hearing and therefore the remit and scope of the considerations of the Appeal Panel is limited to the specific areas which the employee is dissatisfied with in relation to the outcome of the original hearing. There are seven grounds for appeal:
1. New evidence, relevant to the case which was not available at the original hearing
  2. That the finding that s/he committed the alleged act was not reasonable or appropriate in the circumstances
  3. The disciplinary sanction or penalty was not felt reasonable and appropriate in all the circumstances of the case
  4. A procedural error in the disciplinary process
  5. The investigation was flawed
  6. Mitigating circumstances and/or the employee's record was not taken into account.
  7. The principles of this policy were not applied or were not properly applied.

The Appeals Panel will therefore confine discussion to the specific areas the employee is dissatisfied with and will consider, based on the

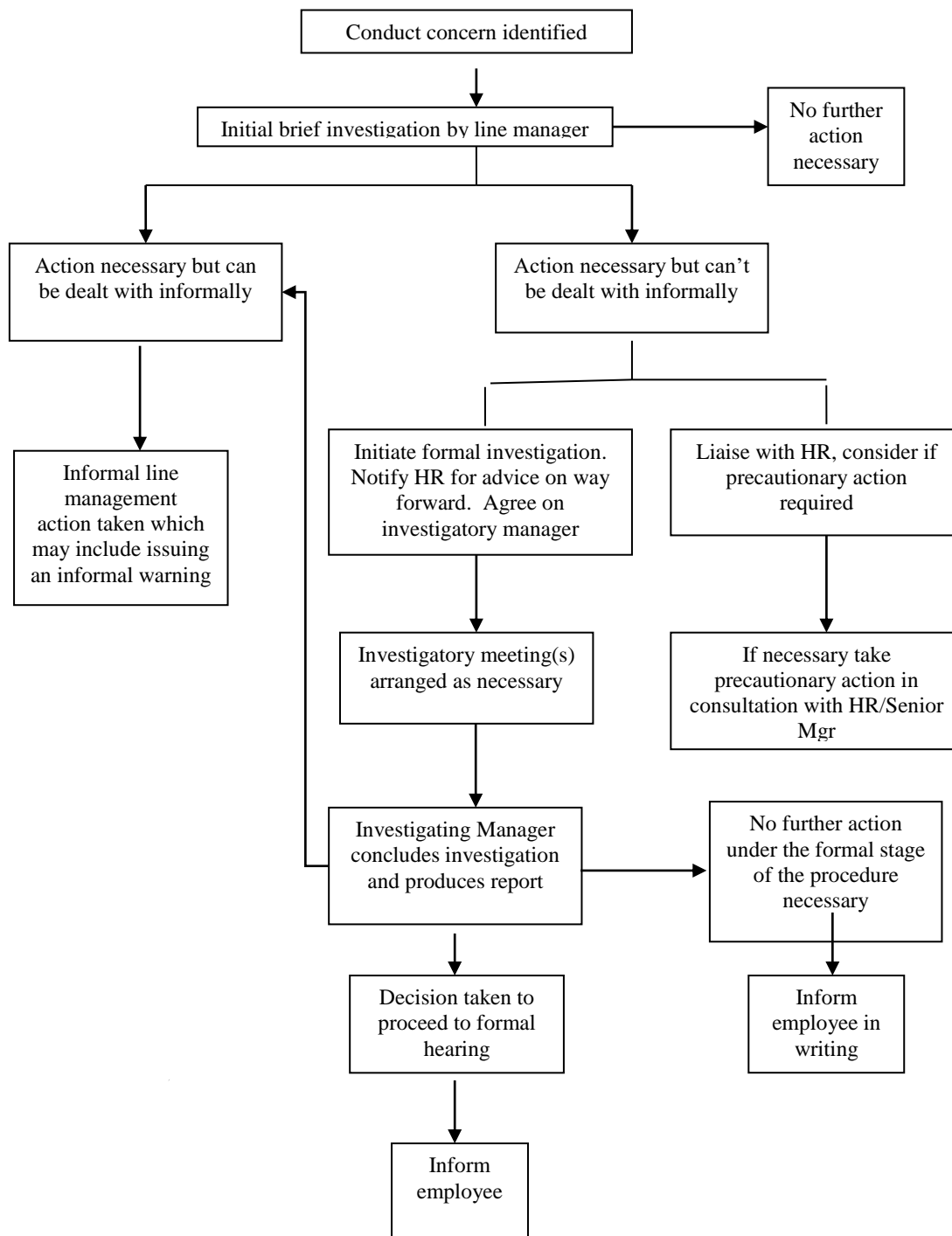
information available to the panel at the time, whether the original decision was fair and reasonable. If the employee is appealing on the grounds that there is new evidence, the panel will consider all of the new evidence presented and decide whether that information, if available at the time of the original hearing, would have made a material difference to the outcome.

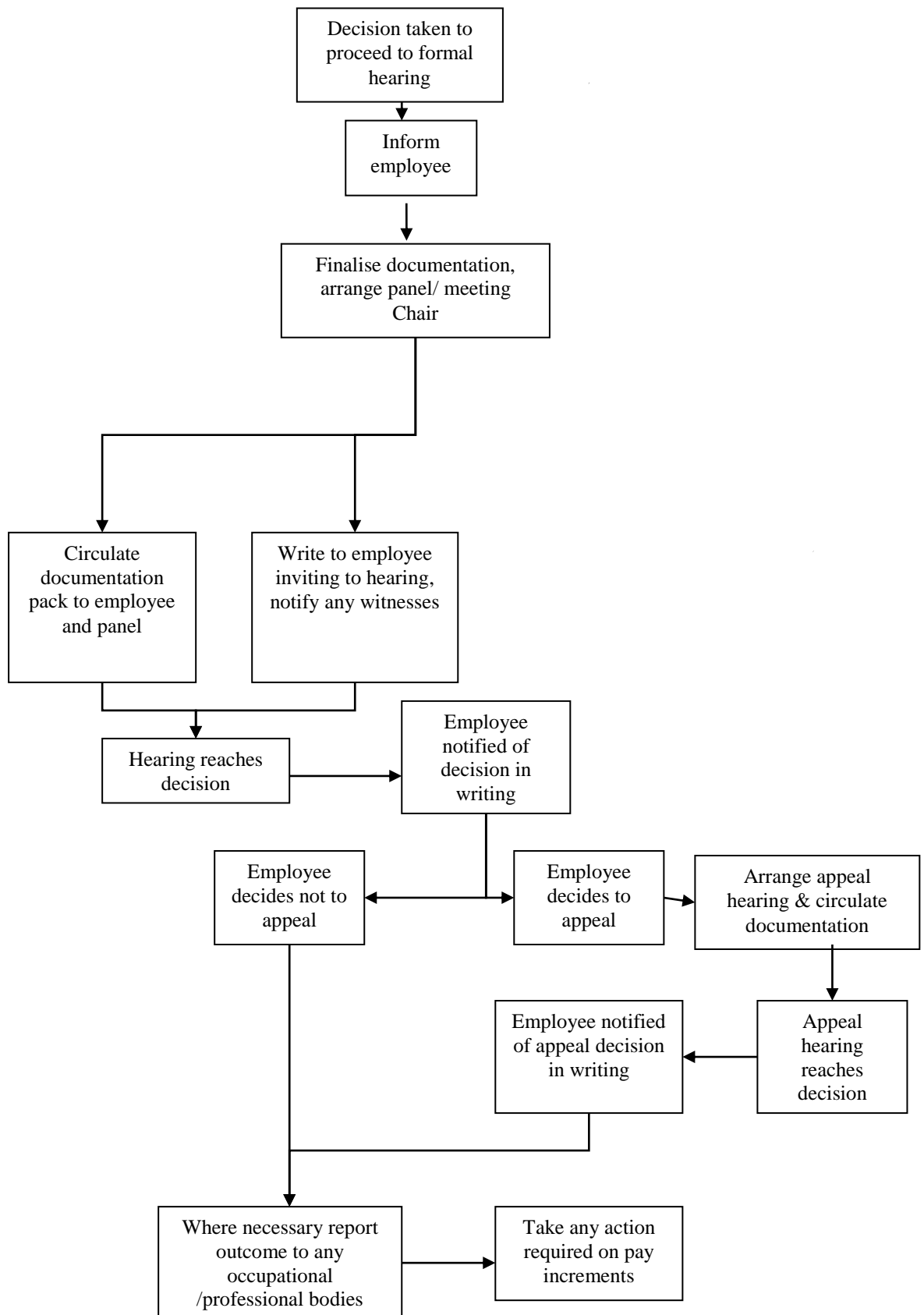
- 10.6 The documentary evidence available at the original hearing will be made available to the Appeal Panel for reference purposes. The employee and their representative will present their case for the appeal first and the Hearing Manager will have the opportunity to respond to this. As the purpose of the appeal is not a reconsideration of all matters, it is the responsibility of the employee to state their case bringing to the attention of the panel all relevant documentary evidence that should be considered.
- 10.7 The Appeal Panel will adjourn to consider their decision with their decision being final.
- 10.8 The outcome will usually be communicated to the member of staff in writing within five calendar days. In the event of an appeal being upheld, the disciplinary warning or dismissal may either be withdrawn or substituted with a different penalty. In the case of dismissal the employee should be re-instated or re-engaged with no loss of contractual pay or service.
- 10.4 The outcome of an appeal hearing will not be to increase the previous sanction imposed.

## **11. Dismissals and Resignations**

- 11.1 Where an employee is dismissed, consideration must be given as to whether the matter is required to be reported to any professional /occupational bodies which require the reporting of misconduct issues in such circumstances.

## 12. Disciplinary Procedure Flowchart





## Appendix 1

### Types and levels of misconduct

#### Misconduct that could lead to action under the formal disciplinary process

- i) Refusal of a lawful and reasonable instruction
- ii) Persistent lateness, persistent unauthorised absence, persistent failure to follow sickness absence notification procedures
- iii) Verbal assault or threat of violence in the workplace to fellow employees or other people
- iv) Wilful negligence in carrying out duties in accordance with relevant policies and procedures including Health and Safety
- v) Wilful negligence in the performance of duties and responsibilities not covered by iv) above (except where due to incapability)
- vi) Unauthorised use of the Trust's resources, or confidential information gained whilst in the employment of the Trust (except where employees are protected by the provisions of the Trust's Whistleblowing Policy /Public Interest (Disclosure) Act 1998
- vii) Acceptance of gifts and hospitality in contravention of Trust Policy
- viii) Inappropriate use of electronic communications, including email or internet access facilities
- ix) Failure to abide by professional codes of conduct/standards
- x) Discrimination, bullying or harassment.
- xi) Breach of disciplinary rules during the active period of a written warning.
- xii) Deliberate but not serious damage to the property of the Trust or that of any other employee

#### Gross Misconduct

The following are deemed gross misconduct for which the normal penalty would be **summary dismissal**.

- i) Theft or attempted theft, fraud or fraudulent falsification of accounts, or other official records.
- ii) Deliberate serious damage to the property of the Trust or that of any other employee.
- iii) Physical or indecent assaults at work.
- iv) Serious breaches of the Trust's Policy on the acceptance of gifts and hospitality
- v) Serious breaches of confidentiality (unless subject to the protection afforded by the Whistle-blowing Policy/Public Interest (Disclosure) Act 1998.
- vi) Discrimination, bullying or personal harassment of a serious, wilful and/or sustained nature
- vii) Being incapable of work, or of working safely due to the influence of alcohol or drugs unless in the Trust's rehabilitation procedure

- viii) Gross negligence or wilful failure to comply with legal requirements of the Trust's various policies and procedures such as Health and Safety, Equalities, Data Protection, or any other legal or statutory requirement
- ix) Gross negligence which causes unacceptable loss, damage or injury
- x) Behaviour which has brought the Trust or its services into serious disrepute.
- xi) Serious breach of computer security and/or information governance and/or abuse of electronic systems including the misuse of email and/or internet facilities, or deliberately attempting to access pornographic, offensive or obscene material.
- xii) Personal misconduct occurring outside of the workplace, including actions which result in the employee being unable to conduct, or unsuitable for, their type of work.
- xiii) Personal misconduct which results in a conviction for an offence which fundamentally affects an employee's role
- xiv) Serious and sustained insubordination
- xv) Actions or behaviours that result in a complete breakdown of trust and confidence between the Trust and employee, even where any individual act in itself would not constitute gross misconduct.
- xvi) Serious breach of professional codes of conduct/standards.
- xvii) Serious misuse of Trust property or name.

## Appendix 2

### Sequence of the Disciplinary Hearing / Appeal

#### 1. Introductions

The Chair should cover the following during their introduction:

- Ask all of those present to introduce themselves and explain their roles in the Hearing/Appeal
- Explain that the Hearing/Appeal will be carried out in accordance with Ebor's Disciplinary Policy and Procedure
- Check that the employee was informed of the right to be accompanied by a work colleague or recognised trade union representative.
- Explain that the accompanying representative has a statutory right to address the Hearing/Appeal, but no statutory right to answer questions on the employee's behalf.
- If the employee is unaccompanied - pay particular attention to ensuring that the employee is given every opportunity to state their case and ask and answer questions, bearing in mind their likely inexperience of formal hearings.
- Explain that an adjournment can be requested at any point during the Hearing/Appeal.
- Indicate that witnesses will only be present when giving evidence and answering questions.

#### 2. **For an Appeal Hearing only**, the first step is for the employee or representative to briefly explain the grounds on which the appeal has been submitted i.e. whether;

- on the facts of the case and/or;
- on the decision taken/sanction imposed and/or;
- due to procedural fault(s) and/or;
- new evidence has emerged

#### 3. Management present their case, including a description of the issue(s) and details of any investigation, referring to supporting evidence.

*(In Appeal Hearings, the Management case will focus on the basis for the original decision and the grounds of appeal.)*

Witnesses can be called as appropriate; however a written statement may be sufficient. A written statement should support witness testimony.



Consideration will be given by the Chair/ panel on the need for witnesses to remain available (but outside the Hearing) for possible recall.

4. The employee or representative can then question (or seek clarification) of management and any witnesses called by Management.
5. The Chair or Panel can ask questions (or seek clarification) of management and/or any management witnesses.
6. Management has the opportunity of clarifying any points that have arisen in the questions raised by the employee or representative or the Chair /Panel.
7. The employee or representative presents their case following the same procedure as in paragraph 3.

*In Appeal Hearings they should cover the grounds for their appeal by elaborating on the facts of the case which are in dispute, and/or reasons for challenging the sanction/decision, and/or procedural fault(s).*

Witnesses can be called as appropriate, but written statements may be sufficient. A written statement should support witness testimony. Consideration will be given to the need for witnesses to remain available (but outside the Hearing) for possible recall.

8. Management can then question (or seek clarification of) the employee or representative and any witnesses.
9. The Chair, or Panel, can ask questions (or seek clarification) of the employee or representative and any witnesses.
10. The employee or representative then has the opportunity of clarifying anything that has arisen in the questions raised by Management or the Chair/Panel.
11. Management should then be asked if they wish to briefly summarise their case.
12. The employee or representative should then be asked if they wish to briefly summarise their case.
13. The Chair should then ask that both parties are satisfied with the conduct of the Hearing/ Appeal.
14. Both parties will then be asked to withdraw to allow the Chair/Panel to consider the evidence presented to them. Should the Chair or Panel wish to recall one of the parties (to seek clarification or additional information) both parties must be called back into the Hearing/Appeal.