



Disciplinary Policy

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Dissemination requirements	All Trust employees by intranet
Part of Trust's publication scheme	Yes

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The East of England Ambulance Service NHS Trust (EEAST) has made every effort to ensure this policy does not have the effect of unlawful discrimination on the grounds of the protected characteristics of age, disability, gender reassignment, race, religion/belief, gender, sexual orientation, marriage/civil partnership, pregnancy/maternity.

The Trust will not tolerate unfair discrimination on the basis of spent criminal convictions, Trade Union membership or non-membership. In addition, the Trust will have due regard to advancing equality of opportunity between people from different groups and foster good relations between people from different groups.

All Trust policies can be provided in alternative formats.

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1. Introduction

- 1.1 Here at EEAST we aim to promote a culture where you know and understand what is expected of you, and where you achieve and maintain high standards of conduct.
- 1.2 We want to ensure that a robust and fair process is followed to determine what should happen next and to address any concerns about conduct promptly, fairly, and effectively.

2. Purpose

- 2.1 The purpose of this policy is to outline our expected behaviours and, where we have any concerns about your conduct, it will let you know:
- the procedure that will be followed,
 - the roles of those involved, and
 - the support that is available to you.
- Our focus will always be on addressing specific behaviours or actions to facilitate improvement and rehabilitation, and to consider informal action, where appropriate, to resolve issues.*
- 2.2 In order to ensure fair and consistent treatment, this policy observes current employment legislation, the ACAS Code of Practice on Disciplinary and Grievance Procedures, and the ACAS guide to discipline and grievances at work which compliments the Code of Practice.
- 2.3 We understand that a disciplinary process can be stressful for everyone involved, and that different people might respond differently to stressful situations. This policy is designed to ensure fairness, transparency and to minimise any potential harm to our employees.

3. Scope

- 3.1 This policy applies to all EEAST employees, including those in a probationary period.
- 3.2 This policy does not apply to casual workers, agency workers, secondees, workers on honorary contracts or independent contractors. Depending on the circumstances, any allegations made against these individuals may be dealt with using an approach aligned to this policy in conjunction with any other relevant Trust policy, for example, Casual Workers Policy, Agency Workers Policy.
- 3.3 Where EEAST is not the employer of the individual, we will consider the approach to take, and the scope of any investigation to be undertaken, and will in appropriate circumstances, discuss these with the worker's employer / agency.

4. Duties

- 4.1 **Executive directors** are responsible for:
- ensuring the fair and equitable implementation of this policy,
 - making suspension decisions and chairing disciplinary/appeal hearing panels,
 - reviewing monthly reports of cases within their remit, including details of cases that are outside policy timeframes.
- 4.2 **Managers** are responsible for:
- communicating and reinforcing expected standards of conduct,
 - monitoring standards of conduct and addressing any concerns in a fair, consistent, and timely manner, and in accordance with this policy,
 - undertaking timely fact-finding processes and resolving issues using informal measures wherever suitable and appropriate,

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- taking and retaining notes of conversations and meetings, and being able to justify their decision-making process,
- organising welfare support for all parties, both during and after the process.

4.3 **Employees** are responsible for:

- familiarising themselves with, co-operating with and acting in accordance with this policy,
- acting in a way that is not offensive to others and that upholds EEAST's values,
- Reporting any inappropriate behaviour,
- Challenging any inappropriate behaviour (where appropriate),
- informing their line manager of any arrest, police caution(s), conditional discharges, criminal charges, and/or convictions as they become aware of them and before their next shift at work.

4.4 **Trade union (TU) representatives** are responsible for:

- giving advice to employees,
- representing and accompanying employees at disciplinary investigation meetings and hearings.

4.5 **Employee Relations (ER) representatives** are responsible for:

- providing advice and guidance at all stages of this policy,
- ensuring that any disciplinary venue provides suitable access and facilities for individuals with a disability,
- maintaining a central, confidential record of disciplinary investigations, hearings and appeals,
- providing relevant data for internal audits and other analyses, ensuring adherence to EEAST's policies on data protection and information governance.

4.6 **Commissioning Managers (CM)** are responsible for:

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- considering the fact-finding information provided about the alleged misconduct and with HR advice deciding appropriate next steps,
- with appropriate advice, determining if a Pre-Action Review Meeting is necessary for the consideration of suspension to safeguard individuals, patients, or the investigation,
- commissioning a formal investigation and setting out the allegation(s), as required,
- ensuring that the employee is provided appropriate welfare support,
- reviewing the progress of the investigation and ensuring the employee is kept up to date, for example, about timeframes, any delays,
- reviewing the investigation report and, with advice from the ER representative, deciding if any further action will be taken.

4.7 **Investigating Officers (IO)** must be impartial (not linked to the case and with no vested interest) and are responsible for:

- investigating any alleged misconduct in a fair and transparent way to establish the essential facts,
- ensuring that the CM is kept up to date with the investigation, and of anything that could affect suspension or temporary redeployment decisions,
- producing an investigation report within set timeframes and updating the CM with any reasons for delay.

4.8 **Welfare Officers** will be made available to affected employee(s), including any complainant, for example in harassment cases. The welfare officer is not provided details of the disciplinary allegations or the process but is responsible for:

- maintaining regular and agreed contact with and supporting an affected employee(s),
- signposting the employee to available support if required during the process.

- 4.9 **Cultural Inclusion Agents (CIAs)** are a supplementary role who may be involved when allegations are made from or against employees with a protected characteristic. (Further information is available on East24: [Cultural inclusion agents](#). CIAs are responsible for:
- providing independent advice and guidance when considering suspension,
 - providing independent advice at disciplinary hearing panels,
 - identifying and highlighting any issues of unconscious bias, conscious bias, or discrimination to other members of the team and ensuring that they are taken into consideration in the decision-making process.

5. Expected Behaviour

- 5.1 [Our values and behaviours](#) guide everything we do, the decisions we make and the way we interact with patients and with each other. We expect all our people to behave in a way that brings these values to life.
- 5.2 If an employee(s) behaviour is unacceptable, breaches our policies or procedures and/or falls short of our values, it may be considered as misconduct or gross misconduct (see **Appendix D** for some examples of these).

6. Anticipated timeframes

- 6.1 When any potential concern(s) about an individual's conduct or behaviour have been raised, all parties should deal with the issue promptly, without unreasonable delay, and in accordance with the following timeframes, wherever possible:

Action	Anticipated timeframe
Fact-find and/or informal stage (see Section 7 and 9)	
Conclude fact-find and meet with individual to confirm outcome of fact-find:	Within 7 calendar days of manager being made aware of the concern.

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Action	Anticipated timeframe
Investigation stage (See Section 13)	
Conclude any formal investigation:	Within 6 weeks of IO being assigned.
Inform the individual of the decision on how to proceed:	Within 7 calendar days of the CM receiving the investigation report.
Disciplinary hearing stage (See Section 15)	
Following the decision, a formal disciplinary hearing should be arranged and confirmed in writing:	As soon as reasonably practicable, giving at least 14 calendar days' notice.
Hearing chair to provide copy of management statement of case:	At least 14 calendar days before the hearing.
Individual to provide any written statement of case:	At least 7 calendar days before the hearing.
Hearing chair to provide outcome letter:	Within 7 calendar days of the hearing.
Appeal stage (See Section 18)	
Individual can choose to appeal against any formal sanction:	Within 7 calendar days of receipt of hearing outcome letter.
Appeal hearing to be arranged:	Within 28 calendar days of receipt of appeal.
Individual to submit their statement of case:	At least 14 calendar days before the appeal hearing.
Management to provide their written statement of case:	At least 7 calendar days before the appeal hearing.
Appeal hearing chair to provide written outcome letter:	Within 7 calendar days of the appeal hearing.

6.2 Timeframes within this policy may sometimes be varied, for example (this list is not exhaustive):

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- to allow for periods of pre-booked annual leave, shift patterns, etc,
- for an employee's wellbeing issues to be addressed appropriately,
- so that appropriate fact-finding and/or investigations can take place,
- for any additional information to be gained so that a fully informed decision can be made,
- where there are factors outside our control, for example, if safeguarding, fraud, and/or criminal matters have been identified which need to be investigated first.

If a timeframe is varied, the CM or an appropriate manager will ensure the employee and their representative are informed of the reason for the variation and a new timescale or review date confirmed and recorded, wherever possible.

6.3 **Disciplinary Procedure Flowcharts** have been included at **Appendix A** and **B**.

6.4 A list of internal and external support services is included at **Appendix C**.

7. Fact-finding

7.1 If there is a reasonable belief that an incident or event has taken place or something has happened that raises concerns about your conduct or behaviour, a manager (in most cases this will be a line manager where appropriate) will:

- where applicable to the situation, speak to you as soon as possible after the issue comes to light to carry out an **initial fact-finding** exercise (using the template available on East24).

This is to better understand the circumstances of what has happened and will usually take place before an Investigating Officer is appointed.

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- conclude any fact-find within seven calendar days from the date that they were made aware of the incident, wherever possible,
- liaise with a People Services representative, if applicable, and consider what action(s) needs to take place, for example:
 - take no further action (where it is evident that there is no concern, in which case the fact-finding template should be filed accordingly),
 - take appropriate action(s) through the Performance and Capability Policy (if issues are related to capability rather than behaviour or conduct),
 - take appropriate action through the Probation Policy, where the employee is currently under probation period.
 - follow an informal process (**see Section 9**),
 - follow a formal disciplinary process (**see Section 15**).

7.2 In exceptional circumstances, you will not be notified of an investigation where it is being carried out under the Local Counter Fraud/HR Liaison Policy, at the request of the police, due to serious safeguarding allegations, or as a result of a high-level DBS notification.

8. Grievance or Dignity at Work complaints

8.1 In line with ACAS guidance, if you raise a grievance (or Dignity at Work concern) during a disciplinary process, the process may be temporarily suspended in order to deal with the complaint. If the grievance and disciplinary cases are related, it may be appropriate to deal with both issues concurrently, for example, where the complaint is seen as mitigation relative to the disciplinary allegations being considered.

9. Informal process

9.1 Where an improvement in conduct or behaviour is required, and as part of day-to-day management, the manager will:

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- meet with you to discuss the outcome of the fact-find and/or the improvement required,
- ensure you are clear on what is expected,
- let you know whether there is any additional and appropriate support available to help you achieve the improvement, for example, coaching, mentoring, mediation, training, re-training,
- confirm the timeframe for the improvement to be made (dependent on the issue),
- ensure regular progress review meetings are held during this period,
- let you know the potential outcomes if the required improvement is not seen, for example progression to formal stages of this policy,
- follow up the discussions in a 'letter of expectation' outlining the above points.
- liaise with an HR representative to ensure that the outcome and support is recorded appropriately.

Although there is no right to be accompanied by a union representative or a workplace colleague during an informal process, you can request this if you feel that you would benefit from support.

9.2 There is no right of appeal against informal outcomes.

10. If we are considering a formal process

- 10.1 Prior to any formal investigation being undertaken managers must seek advice from an Employee Relations Case Manager or Advisor (ERCM or ERCA) to:
- review whether the initial fact find at **Section 7.1** has established sufficient factual information to proceed on a formal basis,
 - ensure that an appropriate Commissioning Manager (CM) is assigned,
 - consider if the fast-track (agreed outcome) process at **Section 20** would be appropriate,

- decide whether a formal investigation is required or whether the investigatory stage will be the collation of evidence by the line manager for use at a disciplinary hearing (in line with the ACAS Code of Practice on Disciplinary and Grievance Procedures),
- consider whether there are any risks to you staying at work during a formal process (see **Section 11**).

11. Consider whether to use suspension during the formal process

- 11.1 Because of the seriousness of some concerns, it may be necessary to tell you not to attend work (known as suspension) during the formal process, if we reasonably believe it would protect any of the following:
- the investigation (for example, if we are concerned that evidence could be damaged or witnesses influenced),
 - the organisation (where there is a genuine risk, or perceived risk, to colleagues, patients, service users, Trust property and/or third parties,
 - you while you are under investigation.
- 11.2 Where suspension is being considered, a manager will ensure that they pause and review the situation at a Pre-Action Review Meeting (see **Section 11.3**) by following the process outlined in the **Pre-Action Review Meeting Procedure (SOP14)** which is available on East24: [All Documents - Standard Operating Procedures](#).
- 11.3 **Pre-Action Review Meeting**
- 11.3.1 The objective of a Pre-Action Review Meeting (P-ARM) is to ensure that:
- we consider the wellbeing of anyone that we are considering suspending,
 - we only suspend someone if there is no other option, including considering whether we can handle the situation without suspension, for example, temporary

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redeployment to a different role, working from a different location,

- there is no differential experience for our employees to ensure there is consistency across the Trust in the approaches to suspension,
- regardless of any protected characteristics, no employee is treated less favourably than another,
- the initial evidence and/or allegations are reviewed by a panel to make a decision on the appropriate next steps.

11.3.2 The P-ARM meeting panel will include:

- two Executive Directors,
- or one Executive Director and a Deputy Director,
- And Senior ER Manager.

11.4 If you are suspended

11.4.1 If you are suspended it does not mean that we have already decided that you have done something wrong, and we recognise that it may be a stressful time for you. In order to provide support:

- you will remain on your normal contractual pay (excluding overtime),
- if your normal contractual pay includes Section 2 Unsocial Hours Enhancements these will be paid in accordance with the [Principles of Section 2 Enhancements](#) information available on East24,
- you will be offered a welfare officer, when necessary, a trained Mental Health First Aider will be considered.
- you should continue to book and take annual leave in line with the Annual Leave Policy,
- the decision to suspend you will be confirmed in writing and will be reviewed by the Head of ER or their deputy on a four to six weekly basis.

It is important that everyone involved keeps the suspension confidential wherever possible. Your manager will therefore discuss with you about what to

tell people who work with you and will not share any personal information unless necessary, in line with data protection law. If you have a family member who also works at EEAST please discuss this with your line manager.

12. Formal process

12.1 Safeguarding your health and wellbeing

12.1.1 We recognise that a formal disciplinary process is likely to be a difficult time for you. In order to support you, the CM will:

- write to you to let you know the reasons for the investigation, if there are any restrictions or a suspension in place and the nature of this,
- appoint an Investigation Officer (IO) and let you know who this is as soon as possible,
- set Terms of Reference for the investigation, which will include the recommendation of a six weeks' timescale for conclusion,
- oversee the investigation process, including liaising with the IO on a regular basis to review progress of the investigation, and addressing any concerns in a timely manner,
- ensure that you are kept up to date throughout the process by agreeing a communication plan with you,
- ensure that you are given access to a Wellbeing Officer and/or other wellbeing services as required,
- if you are suspended, or if significant welfare concerns are highlighted at any stage, you will be given access to a Welfare Officer. When necessary a trained Mental Health First Aider will be considered.

12.1.2 If the facts of the case warrant it, the CM may choose to appoint an external IO who must be approved by the Chief People Officer. The CM will continue to oversee the investigation.

If you or your representative has any additional needs, you should let your manager or the ER representative know so that reasonable adjustments to this policy and procedure can be made, as necessary.

12.2 Right to be accompanied

12.2.1 You have the right to be accompanied by a work colleague or trade union representative to all formal meetings / hearings.

Acting as a companion is voluntary and colleagues are under no obligation to do so. If they agree, they will be allowed reasonable time off from duties without loss of pay.

12.2.2 You and your representative should co-operate fully with this policy including making every effort to attend any investigatory meetings, and hearings without causing unreasonable or unnecessary delay. This may necessitate attending outside your or your companion's (where they are an EEAST employee) normal working pattern.

12.2.2 During a hearing your representative is able to:

- address the hearing to put forward and sum up your case,
- respond on your behalf to any views expressed,
- confer with you.

12.2.3 During a hearing your representative is not able to:

- answer questions on your behalf,
- address the hearing if you do not want them to,
- prevent the hearing panel and/or relevant managers from explaining the case.

12.2.4 You must let us know in advance who will be accompanying you, and bear in mind the practicalities of the arrangements, for example, by choosing to be accompanied by someone who is suitable, willing, and available on site rather than someone from a geographically remote location.

12.2.5 The CM and/or hearing manager may allow you to be accompanied by someone other than a work colleague or trade union representative, for example, a family member, where appropriate and in accordance with the Reasonable Adjustment process. They can accompany you in a supportive capacity but cannot represent you.

You are not entitled to bring a person acting in a legal capacity or where there is a concern around the reasonableness of the individual (see Section 12.2.4).

12.2.6 If your chosen companion will not be available on the proposed date, you can provide an alternative date which should fall within 14 calendar days of the original date. This will only be permitted on one occasion. If we are unable to facilitate the offered alternative date, we will reschedule as soon as possible after the 14-calendar day period.

13. Formal investigation process

13.1 In accordance with the Terms of Reference, the IO will get as much information as they reasonably can about the alleged misconduct by:

- looking for facts and evidence that support and/or contradict the allegation(s),
- investigating any mitigating factors presented to them, and
- presenting findings of fact to the CM,
- make a recommendation based on those findings for the CM's consideration as to whether there is a case to answer or not.

13.2 It is not the IO's role to:

- reach a conclusion on what happened,
- to prove guilt of any party.

13.3 The method of the investigation will vary depending on the circumstances, and will usually involve one or more of the following:

- hold an investigatory meeting with you,
- obtain a written statement from you,

- interview relevant witness(es),
- obtain a written statement from witness(es),
- collate information without the need for additional investigation.

Anyone who is interviewed or provides a statement as part of the investigation will be told why they are being interviewed and that where applicable they may be required to attend a formal hearing to give evidence.

13.4 Witness / complainant information

13.4.1 Any witness and/or complainant's statement(s) will be included and considered as part of the overall investigation, including where:

- they are not available for an interview or to attend a disciplinary hearing,
- it would not be appropriate or reasonable in the circumstances to invite them for questioning.

In some circumstances it may not be viable, appropriate, or reasonable to undertake investigatory meetings with patients or clients, the relatives of patient or clients, or members of the public.

13.4.2 All parties involved will aim to maintain the anonymity of any witness or complainant who has requested this, for example, if they raised a concern confidentially via our Freedom to Speak Up Policy. Any decision will be made after also considering our obligation to complete a fair and reasonable investigation and for the employee to know the allegations being made against them. This means that there may be occasions when, for example:

- only the ERCM / ERCA, CM and/or IO are aware of their name(s),
- the details are disclosed in order to conduct a fair and reasonable investigation and adhere to the principles of natural justice, despite it being against their wishes. This should always be outlined to them at the beginning of the investigatory process,

- anonymity cannot be maintained should the case proceed to Employment Tribunal.

13.5 Professional registration

13.5.1 You and the Trust will be expected to meet the relevant requirements for reporting disciplinary matters to professional bodies, for example, HCPC, GMC, Nursing and Midwifery Council (NMC). You should check your professional bodies requirements where applicable, and if you fail to make a relevant referral, the Trust will make the referral where appropriate.

14. Outcome after investigation

14.1 Once the investigation has been completed the IO will submit an investigation report to the CM, who will decide what should happen next:

14.1.1 No case to answer

If the CM decides that there is no case to answer they will let you know in writing that no further action will be taken, help you to get back to work as normal and keep a record of how they carried out the procedure for future reference.

14.1.2 Informal approach

If the CM decides that the conduct or behaviour issue(s) can be addressed through an informal approach, this will be completed in accordance with **Section 9**, and the case record updated accordingly.

14.1.3 Formal disciplinary hearing

A formal disciplinary hearing is where all the information and evidence can be considered by a panel before making a decision. If the CM decides that the conduct or behaviour issue(s) should be considered this way, a hearing will be arranged in accordance with **Section 15** or **Section 20**.

14.2 Letting you know the outcome

14.2.1 The CM will let you know their decision in writing within seven calendar days of receiving the final investigation

report. It would normally be best practice for the CM to seek advice from the ER Team before proceeding.

15. Formal disciplinary hearing

- 15.1 If it is decided that the matter should be considered at a formal disciplinary hearing panel, this will be made up of:
- the hearing chair,
 - where appropriate, a senior manager supporting the chair, or other professional advisory support to the panel and proceedings,
 - a Cultural Inclusion Agent, where applicable,
 - a safeguarding representative, for all safeguarding allegations or where applicable.
- 15.1.1 An ER representative will attend to provide advice to all parties present at the hearing.
- 15.1.2 A note-taker will attend to take notes, which will be shared as soon as practicable after the hearing.
- 15.2 The hearing will be arranged as soon as reasonably practicable, giving at least 14 calendar days' notice in writing, and providing you with:
- the date, time, and venue of the hearing,
 - the nature of the allegation(s) which are to be considered by the hearing panel,
 - the written statement of case prepared by the CM which will include copies of the investigation report, any witness statement(s), and evidence upon which they intend to rely,
 - what the highest possible sanction could be,
 - your right to be accompanied at the hearing (see **Section 12.2**).
- 15.3 You can also provide a written statement of your case, together with any witness statement(s), and evidence upon which you intend to rely at least seven calendar days before the hearing.

Both yours and the managers statement of case should include the name(s) of any witnesses that each intends to call

- 15.4 It is the responsibility of the parties concerned to arrange for the attendance of their witness(es). Where this is not possible, either party may contact the ER team to assist with the arrangements.

Where witness(es) are also EEAST employees their respective managers will be informed, and they will be allowed either time off with pay or time off in lieu to attend the hearing.

- 15.5 The hearing should be held without unreasonable delay, and you must make every effort to attend. If you fail to attend:
- without good reason, the hearing may be held and a decision made in your absence,
 - because of unforeseen circumstances outside your control, another hearing will be arranged,
 - for a second time, the hearing will be held and a decision made in your absence.
- 15.6 During the hearing you and the relevant manager will be given reasonable opportunity to ask questions, present a statement of case, and where appropriate call relevant witnesses.

16. Formal disciplinary hearing outcome(s)

- 16.1 The panel will decide on the balance of probability whether:
- the allegation(s), complaint, and/or concerns have been upheld,
 - any disciplinary sanction is justified or not.
- 16.2 If the facts of the case indicate that there is no case to answer you will be notified at the end of the hearing once the decision has been reached and in writing when the outcome letter is issued.
- 16.3 Where there is a case to answer and a disciplinary sanction is justified, and before

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making a decision on which of the potential outcomes available to them will be applied, the panel should take account of the following:

- your current disciplinary and general record,
- actions taken in any previous similar case(s) if appropriate, for consideration of patterns of behaviour,
- explanations, mitigation, or any extenuating circumstances you and/or the complainant provided, and
- whether the intended action is reasonable under the circumstances.

- 16.3 Any previously expired disciplinary sanctions will not be disclosed to the panel at any stage of the hearing before a decision has been made except where the allegations relate to safeguarding concerns.
- 16.4 Where there is a case to answer and the panel have reached an outcome, it may be appropriate for the ER representative to provide previous relevant sanctions (including expired) where there is a clear pattern of behaviour that needs to be considered.
- 16.5 The decision may initially be provided verbally unless you are informed by the panel that a longer period is required to reach a decision.
- 16.6 If a longer period is required, it will be agreed by all parties the best way to deliver the outcome to you. This may include either a face-to-face meeting, a virtual meeting, or a telephone conversation between you, your representative, and the chair.
- 16.7 In all cases you will be provided with the outcome in writing normally within seven calendar days of the outcome meeting, detailing the reason for the decision, any actions or sanctions applied and your right of appeal.
- 16.8 **Section 17** provides further information on the potential outcomes following a hearing.

17. Disciplinary hearing outcome

17.1 No further action

17.1.1 This is applied in situations where the facts of the case indicate that:

- there is no case to answer, or
- there is a case to answer but the panel have decided that the existence of significant factors would make issuing a formal sanction or management instruction unwarranted, and other informal measures would serve no purpose.

17.2 Informal approach

17.2.1 If the panel decide that the conduct or behaviour issue(s) can be addressed through with an informal approach, the relevant sections of the informal process at **Section 9** will be completed.

17.3 First written warning

17.3.1 A first written warning will usually be issued for a first act of misconduct where there are no other active warnings on your disciplinary record. The warning will apply for a period of 12 months in with data protection guidelines and will be disregarded after that time, provided there are no further and similar instances of misconduct during that time.

17.3.2 In line with **Section 16.8**, you will be informed in writing:

- of the first written warning and how long this will remain live,
- of the nature of the misconduct,
- of the improvement and/or standards required and the timescale to achieve this,
- that failure to improve, modify behaviour or achieve the required standard or conduct may lead to further disciplinary action in line with this policy,
- of your right of appeal.

17.3.3 A copy of the outcome letter will be kept on your personnel file and recorded by the Employee Relations Team.

17.4 Final written warning

17.4.1 If you already have a live written warning on your file, or where the misconduct is sufficiently serious despite having no other live formal warnings, you would usually be issued a final written warning.

17.4.2 A final written warning will usually apply for a period of no longer than 12 months in with data protection guidelines and will be disregarded after that time, provided there are no further and similar instances of misconduct during this time.

17.4.3 In line with **Section 16.8**, you will be informed in writing:

- of the final written warning and how long this will remain live,
- of the nature of the misconduct,
- of the improvement and/or standards required and the timescale to achieve this,
- that failure to improve, modify behaviour or achieve the required standard or conduct may lead to further disciplinary action in line with this policy, up to and including dismissal or action short of dismissal,
- of your right of appeal.

17.4.4 A copy of the outcome letter will be kept on your personnel file and recorded by the Employee Relations Team.

17.5 Authority to dismiss

17.5.1 To have authority to dismiss, the hearing must be chaired by a senior manager, who should be either: :

- a substantive manager of Agenda for Change (AFC) Band 8c or above,
- a seconded manager of AFC Band 8c or above, who has gone through the normal/full recruitment and selection process. This does not apply to managers who are covering an 8c role or above as a development opportunity,
- a substantive AFC Band 8b manager, with the agreement of the joint chairs of SPF.

17.5.2 The hearing chair will be advised by a member of the Employee Relations Team.

17.6 Dismissal with notice or action short of dismissal

17.6.1 If you fail to improve or achieve/maintain the required standard of conduct despite being previously issued a final written warning, or in cases where the misconduct is sufficiently serious, the panel may decide to:

- dismiss you with notice,
- issue another sanction amounting to 'action short of dismissal'.

17.6.2 Action short of dismissal would generally be issued as an alternative to dismissal in conjunction with a final written warning and:

- may include a change in role either on a permanent or temporary basis (where a suitable role is available) for which the terms and conditions, including salary, would apply,
- would result in an HR2a Form being issued for you to accept the terms of any new role.

17.6.3 In line with **Section 16.8**, a letter should be sent to you within seven calendar days confirming the:

- reason(s) for your dismissal, date of termination of employment, and period of notice or payment in lieu of notice you are entitled to, and your right of appeal, or
- the reason(s) for another sanction (including any relevant changes).

17.7 Summary dismissal

17.7.1 Certain types of misconduct or actions of gross misconduct are regarded so serious that dismissal without notice or payment in lieu of notice (summary dismissal) will follow (see **Appendix D** for some examples of gross misconduct).

17.7.2 In line with **Section 14.8**, a letter should be sent to you within seven calendar days confirming:

- the reason(s) for your dismissal,

- the date of termination of employment,
- your right of appeal (see **Section 16**).

17.8 Return of Trust Property

- 17.8.1 If you have been dismissed you must return all Trust property to the person referenced in your outcome letter. Failure to return items within a designated period will result in alternative arrangements being made directly by the Trust.
- 17.8.2 The commissioning manager will in normal circumstances be responsible for referring to the Leavers Policy and taking all appropriate actions, including ensuring the return of all Trust property.

18. Disciplinary appeal procedure

- 18.1 If you believe that your disciplinary hearing was not handled correctly, or you feel that the outcome and/or the level of the formal sanction given were unfair or unjustified, then you could decide to submit an appeal.
- 18.2 You can appeal in writing by emailing the Chief People Officer within seven calendar days of receipt of the formal disciplinary hearing outcome letter, and providing one of more of the following reasons for your appeal:
- the outcome (the decision that your behaviour amounts to misconduct and/or gross misconduct),
 - the level of the formal sanction given,
 - procedural issues.
- 18.3 The reason(s) for your appeal will be considered when deciding how the appeal will be handled. For example, if the reason(s) for your appeal relate to:
- the level of sanction given: the appeal panel may confine their deliberations to this issue,
 - procedural issues: it may be necessary to conduct the appeal based on a rehearing to remedy any potential previous failings.

18.4 Appeal hearing

18.4.1 If your appeal is against a:

- first or final written warning, this will be heard by a panel of two, one of which must be a more senior manager than the chair of the disciplinary hearing,
- dismissal or action short of dismissal, this will be heard by a panel of two, one of which must be a substantive AFC Band 8D or above.

18.5 The formal disciplinary hearing panel will be made up of:

- the appeal hearing chair,
- a senior manager supporting the chair, or other appropriate professional advisory support to the panel and proceedings,
- a Cultural Inclusion Agent, where applicable,
- a safeguarding representative, for all safeguarding allegations or where applicable.

18.5.1 An ER representative will attend to provide advice to all parties present at the hearing. However, if the Chief People Officer is part of the appeal panel, support from an ER representative may not be required.

18.5.2 A note-taker will attend to take notes, which will be shared as soon as practicable after the hearing.

18.6 The appeal hearing will normally be held within 28 calendar days of receipt of your appeal, unless circumstances arise, for example, the availability of the relevant parties. In these situations, the delay will not normally be for more than an additional 14 calendar days, and the ER Team will let you know about the delay and the reason for it.

18.7 You can provide a written statement of the grounds of your appeal, together with any information or evidence upon which you intend to rely, as soon as possible but at least 14 calendar days before the appeal hearing.

18.8 The relevant manager will provide a written statement of response, together with any information and evidence upon

which they intend to rely, at least seven calendar days before the appeal hearing.

Both yours and the managers statement of case should include the name(s) of any witnesses that each intends to call.

- 18.9 It is the responsibility of the parties concerned to arrange for the attendance of their witness(es). Where this is not possible, either party may contact ER to assist with the arrangements.

Where witness(es) are also EEAST employees their respective managers will be informed, and they will be allowed either time off with pay or time off in lieu to attend the hearing.

- 18.10 The hearing should be held without unreasonable delay, and you must make every effort to attend. If you fail to attend:
- without good reason, the appeal hearing may be held and a decision made in your absence,
 - because of unforeseen circumstances outside your control, another appeal hearing will be arranged,
 - for a second time, the appeal hearing will be held and a decision made in your absence.
- 18.11 During the appeal hearing you and the relevant manager will be given reasonable opportunity to ask questions, present a statement of case, and where appropriate call relevant witnesses.

19. Appeal hearing outcome

- 19.1 The outcome of your appeal will be to confirm, change, or remove the disciplinary sanction imposed. It will never be used as an opportunity to penalise you for appealing the original decision and will not result in any increase in sanction or penalty.
- 19.2 Wherever possible, the outcome of the appeal hearing will be given verbally after the hearing and confirmed in writing within seven calendar days.

In exceptional circumstances, the appeal hearing chair may extend this timeframe and will provide you with the reason(s) for the delay in writing.

- 19.3 The decision made by the appeal hearing is final and there is no further right of appeal.

20. Fast Track (Agreed Outcome) Process

- 20.1 If you admit the allegation(s) in full at any stage before the disciplinary hearing, including if you have provided mitigation for some allegations to be amended, it may be of mutual benefit for both you and the Trust to consider the option of a fast-track process.
- 20.2 During the fast-track process you would accept an agreed outcome of a sanction, up to and including a final written warning. In the event that you and the CM, or relevant manager, are unable to agree an outcome, the disciplinary procedure would continue and a hearing will be arranged to decide the outcome.
- 20.3 Full details is available in the **Fast-Track Process (Agreed Outcome) (SOP15)** located on East24: [Resources - Standard Operating Procedures \(SOPs\) - All Documents](#)

21. Dealing with special situations

21.1 Accredited trade union representatives

- 21.1.1 If disciplinary action is being considered against an employee who is a recognised trade union representative the normal disciplinary procedure should be followed.
- 21.1.2 In these situations, after obtaining the employee's agreement, the ER team will inform the relevant trade union's full time official employed by the union.

21.2 Safeguarding concerns

- 21.2.1 All EEAST staff, regardless of their position in the Trust, must not act in a way that breaches our safeguarding policies, for example, Safeguarding Adults Policy, Safeguarding Children and Young People Policy.

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21.2.2 If concerns are raised that you may have breached our safeguarding policy(s), either at work or because of actions within your personal life, your line manager must refer to and take the appropriate steps in accordance with this policy and any other appropriate policy(s), including (but not restricted to) those at **Section 21.2.1** and our Allegations against Staff Policy.

21.3 Criminal offences / allegations of fraud

21.3.1 If you are charged with, are being investigated for, or convicted of a criminal offence, whether at work or outside of work, you must inform your line manager in writing at the earliest opportunity and without unnecessary delay. If this is a motoring offence you must also refer to and act in accordance with our Driving Licence Policy.

21.3.2 Whether we are informed by you or by an alternative method, consideration will be given to what effect it has, or may have, on:

- your suitability to work within EEAST,
- your suitability to do your job, and/or
- the effect on your relationship with the Trust, work colleagues, customers, and/or patients.

21.3.3 In all cases your line manager will seek advice from an ER representative and senior manager, and having considered the facts will decide whether the conduct is sufficiently serious to warrant initiating the disciplinary procedure.

21.3.4 This decision is independent of any criminal action and/or legal proceedings, therefore if:

- criminal charges or investigations are underway, a decision may be made to initiate the disciplinary procedure and not to wait for the outcome of any police investigation or prosecution before deciding what action to take,
- you are not charged or convicted, a decision may be made to continue with our disciplinary procedure.

Charges and/or convictions are not automatic reasons for dismissal, and likewise acquittals or charges being dropped

do not necessarily mean that the disciplinary process will not continue.

21.3.5 If the police inform the Trust that their investigation needs to take place prior to our investigation, the timeframe for our investigation will begin at the end of the police investigation. However, in exceptional circumstances, it may be appropriate to begin our investigation alongside the police investigation.

21.3.6 If the police and/or Local Counter Fraud Specialist are involved in the investigation, for example, when an allegation of fraud or maltreatment of a patient(s) occurs, then line managers must seek advice from an ER representative before an investigation commences. Further information is also available in the relevant policy, for example, Safeguarding Adults Policy, Safeguarding Children and Young People Policy, Local Counter Fraud / Human Resources Liaison Policy.

21.3.7 Under the Forfeiture or Reduction of NHS Pension Scheme Benefits, you should be aware that convictions may have a negative effect on your NHS pension in certain circumstances.

21.4 Leaving the Trust during a disciplinary procedure

21.4.1 If you or any complainant decides to leave the Trust during the disciplinary process, the CM will decide what process should continue, for example to (this list is not exhaustive):

- complete the investigation,
- proceed to a disciplinary hearing,
- refer to the LADO (see **Section 21.2**) and professional bodies, if appropriate, (see **Section 24**),
- hold a 'lessons learnt' exercise.

Each case will be considered on an individual basis.

21.4.2 Any formal sanction will be included on our response to any employment reference request, alongside any reference to resignation during the disciplinary process.

22. Return to work plan

- 22.1 Where appropriate to the situation, you and your manager can complete a Return-to-Work Plan (PSRTW-01) to discuss additional support, for example, if you have been on temporary redeployment or suspension during a disciplinary process. The Return-to-Work Plan template is available on East24: [HR Policy Forms](#).

23. Vexatious and malicious complaints

- 23.1 A vexatious complaint is one that is pursued regardless of its merits, solely to harass, annoy, or subdue somebody. It is something that is unreasonable, without foundation, frivolous, repetitive, burdensome, or unwarranted.
- 23.2 It will be assumed that a complaint is made in good faith, however if the CM becomes aware that a complaint is made with vexatious or malicious intent, they may recommend further action is taken on that basis.
- 23.3 A complaint may be regarded as vexatious if the individual:
- persists in pursuing a complaint which has already been investigated by another or the same manager and provides no new evidence or material information,
 - seeks to prolong contact by continually changing the substance of a complaint, or by continually raising further concerns or questions whilst the complaint is being addressed,
 - fails to clearly identify the substance of a complaint, or the precise issues which may need to be investigated despite reasonable efforts by the manager to assist them,
 - complains solely about trivial matters to an extent which is out of proportion to their significance (this decision will be made in conjunction with an ER Case Manager / Advisor),
 - makes excessive contact with the manager or seeks to impose unreasonable demands or expectations on resources, such as responses being provided more urgently than is reasonable or necessary.

- 23.4 A malicious complaint is one that is made with the intention of causing harm, for example:
- deliberately seeking to defame a colleague or manager, and raising a complaint with this intent,
 - through lying about an issue or incident in the knowledge that this will cause harm,
 - through knowingly basing a complaint on rumour and gossip with the intention of causing harm.
- 23.5 Vexatious or malicious use of the Grievance Policy or the Dignity at Work Policy is not an acceptable way to deal with underlying concerns, and if evidenced may be investigated under this policy.

24. Subject Access Requests

- 24.1 If you submit a Subject Access Request (SAR) which relates to a disciplinary process, you must let the SARs Team know which specific information you require to progress your case. The SARs Team will prioritise these and complete the remaining aspects afterwards.

25. Referral to a regulatory body

- 25.1 In circumstances where a complaint is of significant concern, it may be necessary for any relevant regulatory body, such as HCPC, NMC, CIPD, AAT/MAAT to be notified in accordance with their guidelines.

26. Confidentiality

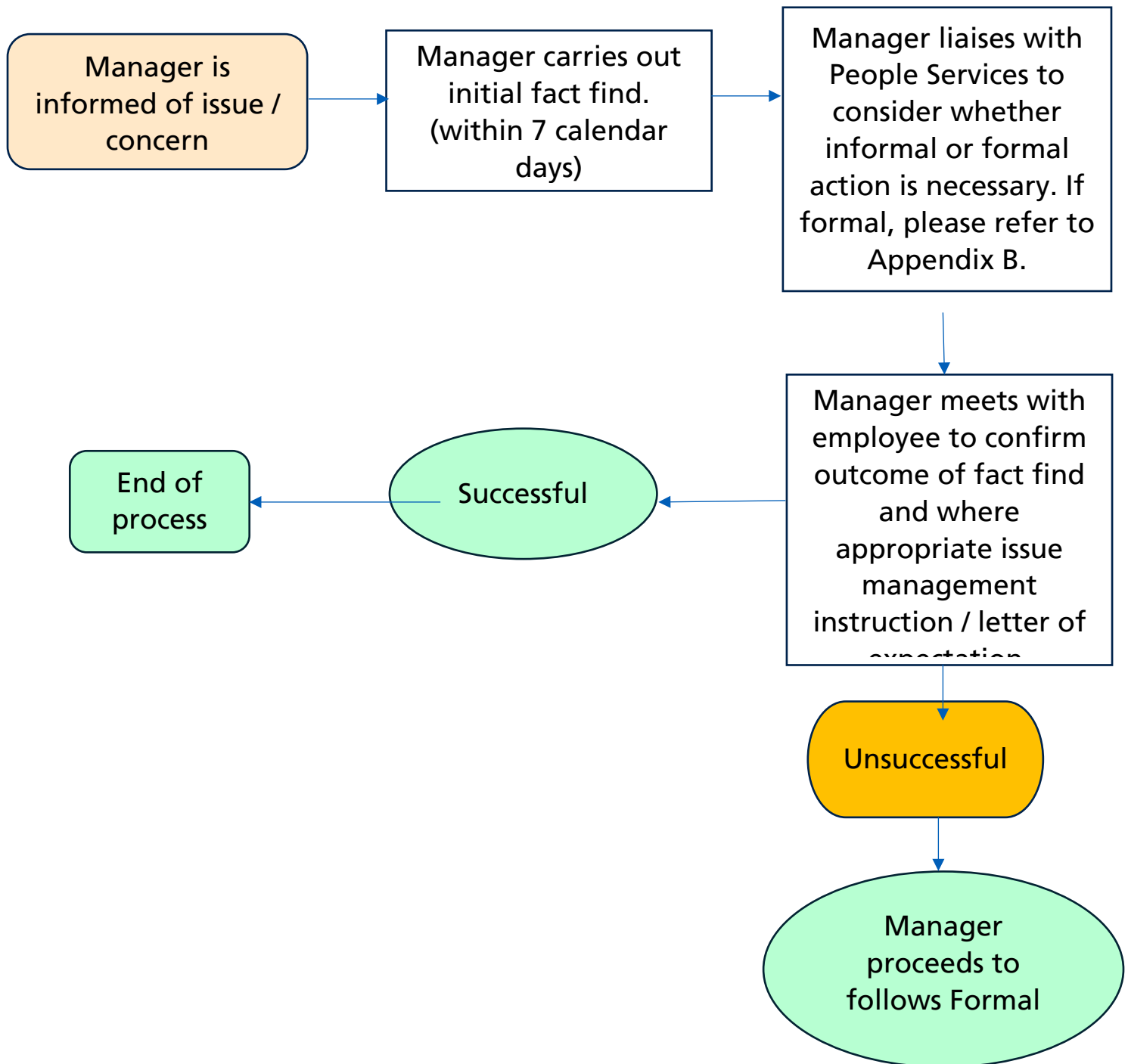
- 26.1 All information obtained under this procedure, whether written or verbal, must be treated as confidential by all parties, and only shared in accordance with this policy and procedure. Any breach of confidentiality may result in disciplinary action being taken.
- 26.2 All records should be kept by all parties in accordance with current data protection legislation.

27. Policy review

- 27.1 This policy will be reviewed on a three yearly basis or amended in the light of new employment legislation and/or relevant case law.

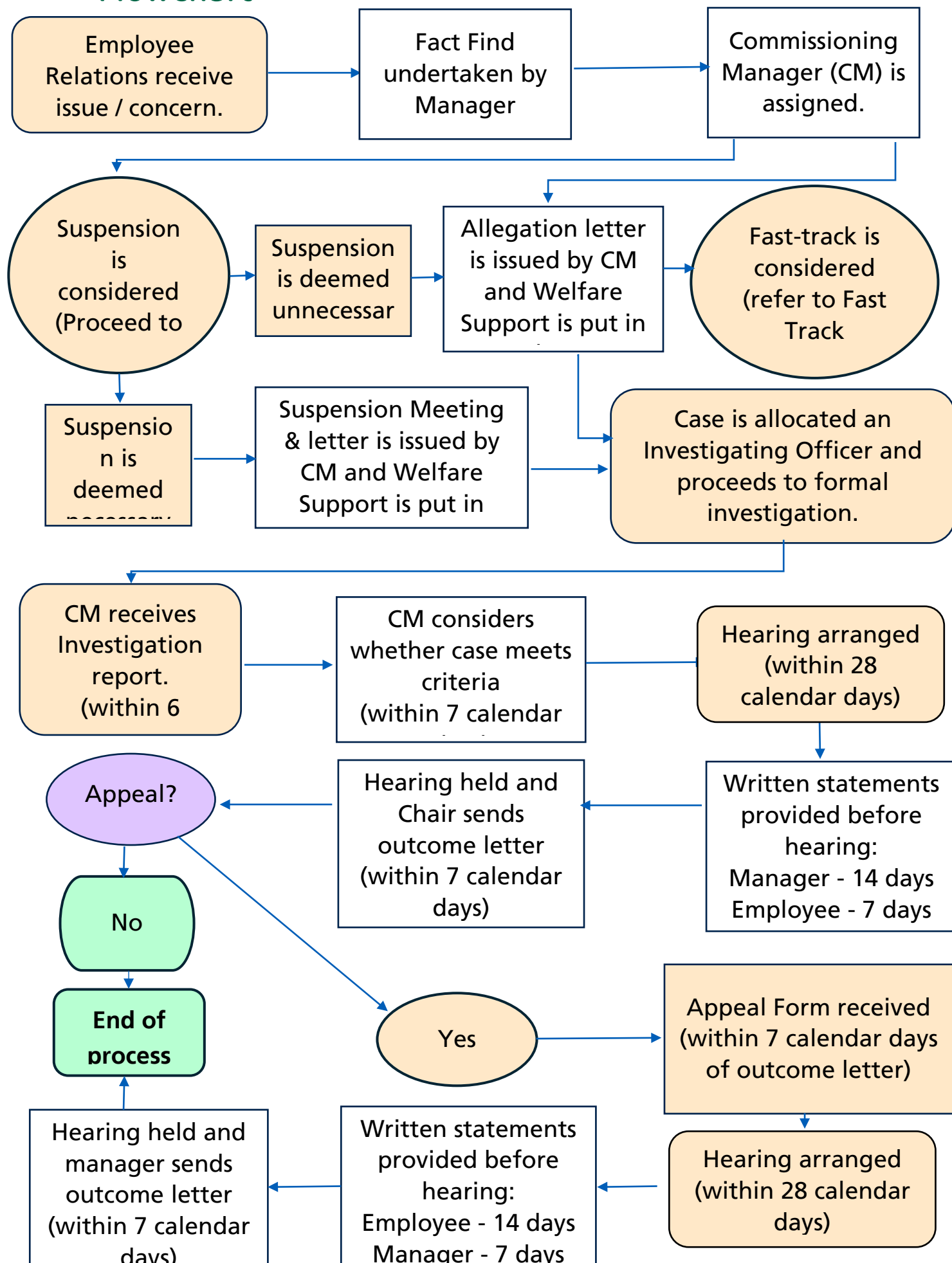
Appendix A - Disciplinary Informal Procedure

Flowchart



Appendix B - Disciplinary Formal Procedure

Flowchart



Appendix C

Internal Support Services

We offer a wide variety of support services which you can use if you need them:

- **The Wellbeing Team** are always here for you and can offer a range of support. You can email the team at wellbeing@eastamb.nhs.uk or refer to the [Wellbeing](#) section of East24 for the latest updates.
- **The Occupational Health Team** aim to keep people well at work and manage any risks in the workplace that could lead to work-related ill health. You can refer to the [Occupational Health](#) section of East24 for the latest information.
- **TASC [Crisis Support](#)** (Tel: 0300 373 0898) are there if you are experiencing suicidal thoughts, or you don't know what to do or who to turn to. **You can contact them day or night, all year round.**
- If you feel you are not in immediate distress but would like to speak to someone, you can contact the free **TASC helpline on 02477 987 922** (Monday to Friday 9am to 5pm).
- **EEAST's local [Wellbeing champions](#)** are trained staff who provide someone for you to talk to when you need it.
- **Staff equality networks** – we have six established networks who are committed to creating a more diverse and inclusive organisation. You can refer to the [Staff-Equality-Networks](#) section of East24 for more information and contact details.

External Support Services

There is also a wide range of external support available:

- [Work-related stress - NHS](#)
- [Stress and mental health at work - HSE](#)
- [Work and stress | Mind](#)

Appendix D

Examples of misconduct

This list is not exhaustive, but provides some examples of the types of behaviour that we may consider misconduct:

- unauthorised absence (also refer to the Attendance and Sickness Absence Policy and Procedure,
- poor or erratic time keeping,
- failure to follow a reasonable management instruction,
- minor breaches of policy or procedure likely to undermine efficient management or jeopardise the safety of other employees, patients, or members of the public,
- failure to comply with requirements to declare interests, gifts and hospitality received,
- minor occurrences of, misuse of, or failure to safeguard confidential information and/or patient data,
- failure to follow Trust policies and procedures.

Examples of gross misconduct

Gross misconduct is when an employee's misconduct is so serious, or has such serious effects, that it undermines and irreparably damages the working relationship making it no longer possible with immediate effect. Whether or not a particular action will fall into this category will depend upon a number of factors including the degree of seriousness and the responsibilities of the employee.

- This list is not exhaustive, but provides some examples of the types of behaviour that we may consider as gross misconduct:
Theft or attempted theft,
- Fraud (any deliberate attempt to obtain money or goods through falsification of records or documents, for example, time sheets, travel and expense claim forms),
- Inappropriate behaviour including physical violence or sexual misconduct,
- Distribution of materials of a sexual or gore nature,

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- Serious bullying, harassment, or unlawful discrimination,
- Deliberate and/or serious misuse or damage to Trust property or its name,
- Bringing the Trust into serious disrepute,
- Incapability whilst on duty brought on by alcohol or illegal drugs,
- Serious negligence which causes or might cause unacceptable loss, damage or injury,
- Serious infringement of health and safety rules,
- Serious breach of confidence (subject to the Public Interest (Disclosure) Act 1998),
- Serious act of insubordination,
- Criminal conviction outside work which could affect employee/patient relations or amount to a breach of trust,
- Misuse of Trust IT and/or communications equipment and systems, for example, deliberately accessing pornographic, offensive or obscene material liable to cause offence,
- The distribution or sharing of pornographic, offensive or obscene material liable to cause offence,
- Serious breach of confidentiality,
- Breach of contract of employment (any fundamental breach of contract or conduct which renders impracticable continuation of effective employment),
- Misuse of or failure to safeguard confidential information and/or patient data
- Serious or repeated breaches of Trust policies and/or procedures.

Appendix E

Equality Impact Assessment

EIA Cover Sheet	
Name of process/policy	Disciplinary Policy
Is the process new or existing? If existing, state policy reference number	Existing (POL116)
Person responsible for process/policy	HR
Directorate and department/section	People Services
Name of assessment lead or EIA assessment team members	HR Policy Subgroup
Has consultation taken place? Was consultation internal or external? (please state below):	Internal consultation through HR Policy Subgroup
The assessment is being made	Guidelines <input type="checkbox"/> Written policy involving staff and patients <input checked="" type="checkbox"/> Strategy <input type="checkbox"/> Changes in practice <input type="checkbox"/> Department changes <input type="checkbox"/> Project plan <input type="checkbox"/> Action plan <input checked="" type="checkbox"/> Other (please state) <input type="checkbox"/>

Equality Analysis

What is the aim of the policy/procedure/practice/event?

The aim of this policy is to outline our expected behaviours and, where we have any concerns about an employee's conduct, it will let them know the procedure that will be followed, the roles of those involved, and the support that is available.

In order to ensure fair and consistent treatment, this policy observes current employment legislation, the ACAS Code of Practice on Disciplinary and Grievance Procedures, and the ACAS guide to discipline and grievances at work which compliments the Code of Practice.

Who does the policy/procedure/practice/event impact on?

Race ☐

Religion/belief ☐

Marriage/Civil Partnership ☐

Gender ☐

Disability ☐

Sexual orientation ☐

Age ☐

Gender re-assignment ☐

Pregnancy/maternity ☐

Who is responsible for monitoring the policy/procedure/practice/event? **HR**

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What information is currently available on the impact of this policy/procedure/practice/event?

Having reviewed and updated the policy and completed a full consultation process, no negative impact was raised, and with the evidence available there is no negative impact.

Do you need more guidance before you can make an assessment about this policy/procedure/ practice/event? **No**

Do you have any examples that show that this policy/procedure/practice/event is having a positive impact on any of the following protected characteristics? Yes/No, if yes please provide evidence/examples:

Race ☐

Religion/belief ☐

Marriage/Civil Partnership ☐

Gender ☐

Disability ☐

Sexual orientation ☐

Age ☐

Gender re-assignment ☐

Pregnancy/maternity ☐

Please provide evidence: **This policy is designed to be inclusive of all employees.**

Are there any concerns that this policy/procedure/practice/event could have a negative impact on any of the following characteristics?

Yes/No, if so, please provide evidence/examples: **No**

Race ☐

Religion/belief ☐

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Marriage/Civil Partnership ☐

Gender ☐

Disability ☐

Sexual orientation ☐

Age ☐

Gender re-assignment ☐

Pregnancy/maternity ☐

Please provide evidence:

Having reviewed and updated the policy and completed a full consultation process, no negative impact was raised, and with the evidence available there is no negative impact.

Action Plan/Plans – SMART

Specific

Measurable

Achievable

Relevant

Time Limited

Evaluation Monitoring Plan/how will this be monitored?

Who – see Monitoring Table

How

By

Reported to

Appendix F – Monitoring Table

What	Who	How	Frequency	Evidence	Reporting arrangements	Acting on recommendations	Change in practice and lessons to be shared
Audit of employee experience, and that the policy and procedure is being applied consistently, fairly, and accurately for all employees.	Head of Employee Relations	Monitor ER Tracker data	Annually or as required	ER Tracker audits and reports.	Reported to and discussed at People Committee where required	Head of Employee Relations with the Head of HR People Partnering will address any actions or changes required.	Any change in practice will be identified and: <ul style="list-style-type: none"> • process updated with HR People Partnering team • HRBP / line manager training implemented • policy updated where required