

LOCALA

Disciplinary Policy

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<i>2</i>	<i>Merge of policy and procedure</i>	<i>May 2017</i>	<i>Merging two both policy and procedure into one policy.</i>
<i>2</i>	<i>Locala Values added</i>	<i>May 2017</i>	<i>Locala Values added</i>
<i>2</i>	<i>Prevent statement removed and Safeguarding statement added</i>	<i>May 2017</i>	<i>Prevent statement removed and Safeguarding statement added</i>
<i>3</i>	<i>Addition</i>	<i>October 17</i>	<p><i>Addition of two bulletin points to section 3.4.</i></p> <ul style="list-style-type: none"> <i>• Failure to follow Locala's policies, procedures and/or Codes of Conduct which potentially could lead to a patient and/or colleague coming to harm and</i> <i>• Failure to follow a professional's code of practice.</i>

When this document is viewed as a paper copy, the reader is responsible for establishing that it is that most current version.

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1. Overview

It is the responsibility of the individual and their line manager to ensure they are aware of the existence and content of the disciplinary procedure.

This procedure applies to all Locala colleagues, other than medical and dental professionals who are covered by a separate policy, unless it is found to be a misconduct issue it would come back to this policy. Line managers should bear in mind that under the Equality Act, employers are required to make reasonable adjustments for colleagues who have a disability.

All allegations of abuse or maltreatment of children either within the context of employment or outside the workplace must be handled in accordance with chapter 6 and appendix 5 of “working together to safeguard children 2006”. This is a statutory requirement of the local safeguarding boards.

2. Locala Values

Locala expect all colleagues to demonstrate our values as part of their day to day working lives; be caring, be inspirational, be part of it.

Be caring... putting customers at the heart of what we do and providing great customer service by giving and receiving support and respecting others.

Be inspirational... create a vision and get others to share it; engage and enthuse; take a positive approach to challenges and set high standards for self and others.

Be part of it... motivation to improve the performance of our services and make a real difference to others' health and quality of life. To be part of it at Locala, a person needs to be community-minded, able to build relationships and seek to continuously challenge themselves.

3. Dealing with Disciplinary Issues in the Workplace

When a potential disciplinary matter arises, the line manager must undertake necessary investigations to establish the facts promptly before memories of events fade.

3.1 Suspension

In certain cases consideration may be given to a period of suspension with full pay whilst a full and unhindered investigation is conducted. Such a suspension must only be imposed after careful consideration and in consultation with Human Resources. Suspension of a colleague must be reviewed and if extended confirmed in writing after 2 weeks and then regularly reviewed to ensure it is not unnecessarily protracted. Suspension is not disciplinary action nor is it an assumption of guilt.

Colleagues suspended from duty cannot work for any other organisation during hours contracted to Locala. Colleagues must also be available to attend any meetings within their normal working hours. Refer to the guidance on suspension included as an [appendix 1](#).

3.2 Registration of professional colleagues

Professionally registered colleagues have a duty to ensure that they maintain their registration in accordance with their contract of employment and the requirements of the appropriate professional or regulatory body. Failure to maintain registration will lead to suspension without pay and action being taken in accordance with this procedure. For further information please refer to the [Professional Registration Policy](#).

3.3 Fraud

The local counter fraud officer should be involved in any investigation where there are allegations of fraud. Refer to the [Locala Fraud Policy](#).

3.4 Gross misconduct

Gross misconduct will result in summary dismissal without notice and without pay in lieu of notice.

Examples of offences which would normally be regarded as gross misconduct are:

- Failure (where necessary) to hold statutory registration
- Failure to declare or disclose criminal convictions, investigations or any relevant information as required as part of the Disclosure and Barring Service procedure or as required by the employment contract
- Physical violence and assault
- Theft, Fraud, Embezzlement
- Discrimination of a serious nature on any grounds
- Bringing the Locala into disrepute
- Harassment and/or bullying of a serious nature on any grounds
- Breach of confidentiality (this applies to all breaches of confidentiality involving the release of patient and staff information without consent or proper cause)
- Information which could harm the business interests and image of the organisation. (This includes information gleaned from any source including IT systems and resulting from abuse of privileged position and inappropriate use of Social Media).
- Gross insubordination (including wilful act of refusing to do what a person in authority tells them to do. Refuses inexcusably to follow reasonable request which relates to their job or acts disrespectfully towards their manager and others)
- Deliberate damage to and/or misuse of Locala property.
- Racial or sexual abuse.
- Breach of health and safety rules including perpetration of a hoax or practical joke that could cause a potential health and safety risk.
- Being incapable of fulfilling the duties of the post through consumption of alcohol or other intoxicating substances, whether legal or illegal
- Inappropriate use of Smartcard
- Failure to follow Locala's policies, procedures and/or Codes of Conduct which potentially could lead to a patient and/or colleague coming to harm.
- Failure to follow a professional's code of practice.

This list is not exhaustive and is designed to give a flavour of what constitutes gross misconduct. Locala reserves the right to designate other breaches of conduct 'gross misconduct' when appropriate.

Where any colleague refuses to co-operate with Locala's disciplinary investigations and proceedings, this should not deter Locala from taking appropriate action. The colleague should be advised in writing that unless reasonable co-operation is afforded then a disciplinary decision will be taken on the basis of information available and could result in dismissal.

3.5 Dismissal

The Employments Rights Act 1996 lays down the grounds on which a dismissal is deemed to be fair. Dismissal will be confirmed in writing to the colleague. Colleagues have a right of appeal and these rights will be outlined in the outcome letter. Authority to dismiss is shown in [appendix 5](#).

3.6 Alcohol and substance misuse

Investigations and disciplinary action relating to alcohol and substance misuse should be dealt with in conjunction with the [Alcohol and Substance Misuse Policy](#).

3.7 Criminal charges outside the workplace

The advice of Human Resources should be sought. Failure on the part of a colleague to declare any information concerning criminal convictions under the Rehabilitation of Offenders Act 1974 prior to and throughout employment may result in immediate dismissal. Refer to the [Procedure on Employing People with Criminal Records](#).

3.8 Procedure relating to a trade union representative

In line with the ACAS code of practice, no disciplinary action should be taken against an accredited trade union representative until the circumstances of the case have been discussed with a full time officer or a senior union representative.

4. Informal Stage

The early identification of a problem will allow for minor misconduct cases to be dealt with informally by offering support and guidance. However, if informal action does not bring about an improvement formal action should be taken, or in cases of allegations of serious misconduct it would move into the formal stage. If unsure of what appropriate informal action may be taken, speak to a Human Resources representative for advice.

Inform the colleague of the problem

Where there is an allegation or concern about conduct the line manager should first establish the facts. Line managers are advised to seek Human Resource advice at this stage to ensure that the correct procedure is followed and any potential evidence is preserved. The line manager must meet with the colleague to discuss the allegation or concern. Should it become apparent during this discussion that a disciplinary investigation is required the line manager must stop the meeting. The colleague must be informed that they have the right to be accompanied at any future meetings as part of the formal process. Colleagues also have the right to halt this meeting should they wish to request representation. In these circumstances the allegation or concern would move to the formal stage. If the line manager establishes that there is no case to answer during this meeting this represents the end of the procedure.

5. Sanction Only Hearing

A Sanction Only Hearing may occur in circumstances where a colleague admits to the allegations made against them and confirms (either prior to or during the course of the investigation) that they do not wish the matter to undergo a full disciplinary investigation and/or a full disciplinary hearing.

A Sanction Only Hearing requires a colleague to complete the form in [appendix 6](#) and sign/date to confirm that the colleague is in full agreement with this approach. If appropriate, please discuss this option with your staff side representative before signing to confirm agreement. The colleague will have the right to be accompanied by one of the following: a Union Representative or a colleague, not acting in a legal capacity at the Sanction Only Hearing.

Please note any level of sanction can be issued at a Sanction Only Hearing except for dismissal. Colleagues cannot be dismissed at a Sanction Only Hearing.

6. Formal Stage

It is essential that matters are dealt with promptly, fairly and objectively within the given timescales.

Investigation

If the allegation or concern requires a full investigation it is the responsibility of the line manager in conjunction with a Human Resources representative to appoint an investigating manager. Refer to the undertaking investigations guidance and writing of investigatory reports guidance, [appendix 2](#).

The colleague will be notified in writing of the date, time and location of the meeting and they will be given 5 working days' notice (unless the colleague agrees to waive this timescale to attend a meeting within the 5 working days). The allegations or concerns to be discussed at the meeting must be outlined in the invitation to meeting letter. The colleague has the right to be accompanied by a trade union representative or a work colleague but it is their responsibility to arrange this. The invitation letter will be clear that this meeting is not disciplinary action.

As part of the investigation process other colleagues or key witnesses may also be required to provide statements or be interviewed. Interview notes should be shared with the interviewee to confirm they are an accurate record. Where witnesses are interviewed they need to be made aware they may be asked to appear as a witness to a disciplinary hearing. Witnesses do not have the right to be accompanied if they are not subject to disciplinary action themselves.

Any colleague who cannot attend a meeting must inform the investigating manager as soon as possible. If the colleague fails to attend through circumstances outside of their control then a further meeting will be arranged. **It should be noted that a decision may be taken in the colleague's absence if they fail to attend a rearranged meeting.**

Confidentiality is of upmost importance throughout the disciplinary process. Managers and individuals involved in the investigation will be informed they should not discuss the issue outside of the formal meeting, with colleagues or third parties.

Outcome of investigation

On conclusion of the investigation the investigating manager will present a report to the commissioning manager who will then decide whether a formal hearing is required.

Where it is decided that there should be informal action or no action, the colleague will be informed in writing. If there are any learning points from this investigation, it is the responsibility of the colleague and their line manager to follow this up and ensure all colleagues are debriefed following its conclusion.

Arranging and conducting a disciplinary hearing

The colleague will be notified in writing and in accordance with the hearings procedure, see [appendix 4](#). The colleague has the right to be accompanied to this meeting by a trade union representative or work colleague but it is their responsibility to arrange this.

The management report (if available at the time) and all other documentation gathered as part of the investigation will accompany the letter, along with a copy of this and any other relevant policy. If the management case is not available it will be sent to the colleague involved 10 working days before the hearing.

If the allegations against the colleague are potentially gross misconduct or the outcome of the hearing could be dismissal this will be stated in the letter and the matter will immediately be escalated to a relevant person who has the authority to dismiss, see [appendix 5](#).

The colleague **must** submit any supporting information to the Chair of the Disciplinary panel 5 working days prior to the hearing. **Information submitted after this time can only be considered with the agreement of all parties.**

7. Procedure for Hearings

Disciplinary hearings must be objective. The hearing will normally follow the procedure in [appendix 4](#), but there is nothing to prevent this being adapted if it best serves the interests of establishing the facts and/or allowing the colleague to have a fair hearing and is agreed by all parties.

If a colleague repeatedly fails to attend a hearing (or any meeting under this policy) Locala has the right to consider the facts and make a reasonable decision as to how to proceed. This could be to hold a meeting in their absence and make a decision on the basis of the information available. The colleague must have been made aware that this is a potential outcome.

8. Outcome of Formal Hearing

The Panel Members will make their decisions on the evidence presented to them. They will decide:

- Whether there has been a reasonable investigation.
- What they believed happened (on balance of probability).
- Whether they believe that the colleague is guilty of the misconduct.
- What is the appropriate sanction taking into account:
 - the nature and seriousness of the conduct;
 - what has been said by, or on behalf of the colleague by way of explanation;
 - any mitigation submitted in support of an admission
 - The colleague's previous employment record.

The colleague will, where possible, be informed of the decision of the Disciplinary panel on the day of the hearing. The hearing procedure will be followed, [appendix 4](#). It is possible that the panel may want to spend more time examining the evidence and so there will be times when the outcome will be delivered to the colleague on the next working day.

If the Chair of the panel establishes that there is no case to answer following the hearing, this is the end of the procedure. If there are any learning points or actions from this investigation, it is the responsibility of the colleague and their line manager to follow this up and ensure all colleagues are debriefed following its conclusion.

The levels of warning are:

- **Verbal warning**

This is issued for minor misconduct where informal action does not have the desired effect and remains on a colleague's personal file for six months. Although it is a verbal warning it will be confirmed in writing.
- **Written warning**

This is issued for serious offences or a repetition of minor misconduct following verbal warning. The warning will be confirmed in writing. The warning will remain on the colleague's file for nine months.

- **Final written warning**

This is issued for very serious offences where the colleague's actions have, or are liable to have, serious or harmful impact on the organisation, or a repetition of minor/serious misconduct following a written warning. It may be issued in a case of gross misconduct where there are mitigating circumstances. The warning remains on the colleague's file for twelve months.

- **Dismissal**

Dismissal will be confirmed in writing to the colleague and will outline whether the dismissal is summary or with paid notice. Colleagues have the right of appeal. The authority to dismiss rests with a director. This could be with or without notice.

Please see [appendix 5](#) for who has authority to take disciplinary action. As a matter of principle disciplinary action can only be taken by a manager who is senior to the colleague in question.

9. Pay Progression

Any formal sanction will result in a deferment of the colleagues pay progression for the period of the sanction. Please refer to the [Pay Progression Policy](#).

10. What if a Grievance is raised during a Disciplinary?

If a grievance is raised during a disciplinary please refer to the [Grievance Policy](#). Both procedures can run concurrently, if appropriate.

11. Appeals

Up to and including final written warning

Colleagues have the right of appeal against a disciplinary decision. The appeals procedure will be followed. Refer to the Appeals Procedure, which included in [appendix 4](#)

Appeals against dismissal

Appeals against dismissal will be considered by an appeals panel normally consisting of a non-executive director, a member of Executive Management Group (director) who has not previously been involved in the case, a Human Resource representative and a trade union representative. If appropriate, a clinical advisor may be required on the panel. Refer to [appendix 4](#).

New evidence at appeals stage.

An appeal is not a chance for a re-hearing of evidence but is an opportunity to challenge the disciplinary process, submit any evidence that was not available at the original hearing or to challenge a disciplinary action that is unfair/too harsh.

If the Appeal is because of new evidence the colleague must produce the evidence in advance of the Appeal and explain why it was not produced at the original hearing.

12. Safeguarding

When dealing with issues/incidents under this policy there should always be a consideration of the potential safeguarding concerns e.g. whether or not an adult or a child has been or may be harmed. Should safeguarding concerns be identified the 'Safeguarding Children or Safeguarding Adults at Risk Policy' must be used.

Appendix

1. Guidance for Managers– Suspension

Note: This guidance is intended to supplement the Disciplinary Policy

What is suspension?

Suspension is applied where there is a reasonable belief that an individual has breached the conduct standards (or in very rare circumstances, the capability standards) of the organisation in such a way that one of the criteria for suspension has been triggered (see below).

Suspension is not disciplinary action but is to enable the full and unhindered investigation of the issue. Whilst suspended the individual is expected to be available for work (e.g. to attend an investigatory interview). If the suspended colleague works for another organisation they can continue to work for them not in normal working hours for Locala, however if the allegations are of serious clinical incompetence, Locala may contact that organisation to inform them of the situation. Colleagues suspended from duty must be available in normal working hours to attend any meetings. Suspension in these circumstances is always with pay. This would be different should the individual be unavailable for work e.g. absent without agreed leave, in which case the organisation would not pay them whilst absent.

Who makes the decision to suspend?

Although normally carried out by a director or member of the senior management team, if no one else is available any manager may carry out the suspension of a colleague. Advice can be sought from the relevant director, Human Resource department or on call director.

The relevant director for the business unit/department must be informed that a colleague from their business area is suspended.

When would a colleague be suspended?

Suspension is warranted where:

- 1 The gravity of the allegations means they may constitute gross misconduct (see the guidance for a list of examples of gross misconduct)
- 2 The individual would hinder the investigation if they were at work, e.g. destroying/altering evidence.
- 3 The individual would pose a risk to patient care and/or colleague relationships.
Options such as temporary redeployment may be considered if appropriate (not an option in case 1)

The decision to suspend can be taken at the point where the manager forms a reasonable belief that one of the criteria above applies to the individual. It may be that the concern that triggers the investigation is sufficient to warrant suspension, but a decision may be made at any point during the investigation where there is sufficient information to make this judgement (e.g. information arising during the investigation of an issue not previously thought to warrant suspension).

Sometimes a concern will arise and, in line with good practice, the manager will speak to the colleague about it initially, as part of the line management relationship. At that point the manager may form a view that this is a serious matter. In such circumstances the meeting should be adjourned and further advice sought from a Human Resource representative or the relevant director.

Does the individual have the right to bring a representative to the suspension meeting?

No, this is not an investigatory meeting and it is not necessary for a colleague to have a

representative with them at the suspension meeting.

If circumstances permit, the colleague may wish someone to attend with them, however if no one is available, this is not a reason to delay the meeting– the individual must be seen about the suspension as soon as possible. They will have a right to representation at all other investigatory meetings.

The manager must ensure that they have a third party present to witness the conversation in case the details of the meeting are challenged later by either party. The role of this individual must be explained at the meeting.

What information should be given at the meeting?

A suspension meeting is a very stressful time for the colleague, therefore the tone should be as supportive as possible. Remember at this stage there is a serious concern about the colleague but this has not yet been investigated, much less proven. The suspension is to allow the investigation to take place, which will look at all of the facts and will not attempt to prove the guilt of the colleague.

The colleague must be informed that the meeting is formal but not part of the investigation and that they are being suspended.

They must be informed of the concerns that have led to their suspension and the reason for this under the Locala policy. At this stage it is likely only the broad details are available. It is a natural reaction for the colleague to want to have details at this stage. Inform them that this is not the appropriate time to start investigating the facts but confirm that they will be provided with more details and will be able to state their case at an investigatory meeting.

They must be informed that they will remain on full pay whilst suspended.

They must be informed that whilst suspended they are expected to be available during their normal working hours for any investigatory meetings, hearing or other contacts from the workplace. If they are unavailable because they take a holiday it is still subject to the normal approval process and it will count as annual leave.

It is good practice to ascertain if there are any reasons why they will not be available in the period of suspension. The period of initial suspension can be extended to give a reasonable chance to progress the investigation, e.g. if they are on holiday for a week.

The colleague should be informed that whilst suspended they should not contact the workplace or come onto the organisation's property without prior approval of a named contact(s) (unless they need to do so to seek urgent medical attention). They may however contact anyone acting as their representative.

All Locala property should be collected from in colleague being suspended, this includes laptop, phone, diary, ID badge and Smartcard.

It is recognised that suspension is stressful and isolating and that Occupational Health are available to give support to individuals through the counselling service. Ensure that the colleague is supported and check that they have arrived home safely following the suspension meeting.

It is good practice to agree how and when the colleague will next be contacted and what the next steps will be (usually an investigatory interview, it may be possible to share the date/venue at this stage). Following the investigation a report will be sent to the manager who instigated the investigation. If a formal hearing is required the colleague will be given all information relating to the case (as described in the procedure). A copy of the relevant procedure (usually disciplinary) should be given to the colleague.

Should a record be taken of the meeting?

It must be stated to all parties that the details of the meeting will be confidential but a file note will be made of what is discussed and that this will be passed to the investigating officers and made available to the colleague, as with other papers relating to the investigation.

The details of the meeting must be confirmed in writing to the suspended colleague within 72 hours of the meeting taking place.

There is a standard letter available from the Human Resources department that can be adapted to each circumstance.

How long should the suspension last?

The suspension will last until there has been sufficient investigation to allow a decision to be made to lift it, or until a formal hearing has been held.

An initial suspension should not last more than 14 days before being reviewed unless there are circumstances that warrant this. This is to allow the investigation to be progressed to a point where the suspension can be reviewed. At the end of this period the manager who is overseeing the investigation must inform the colleague if the suspension is being lifted or extended and the reasons for this.

What if the colleague submits a sick note?

Suspension is a stressful time, it is not uncommon for individuals being investigated to go on sick leave. In such cases an occupational health referral should be made. Occupational health should be appraised of the fact that the colleague is part of an ongoing formal investigation and asked to give an opinion on their fitness to take part in the process not necessarily to return to work.

While suspended a colleague should be available for work and must submit sick notes if they are not.

Who is responsible for managing the issue?

The manager who instigated the investigation is responsible for ensuring that it progresses in line with the procedure and in a timely manner. They are responsible for ensuring that the suspension is reviewed regularly and the suspended colleague is kept informed.

2. Undertaking Investigations

It is important to carry out investigations without unreasonable delay to establish the facts.

The purpose of an investigation is to establish all the facts of the case in order to decide if disciplinary action is required. The lack of undertaking a proper investigation can make any disciplinary action unfair. Properly conducted investigations provide a sound evidential basis for management action/inaction, minimise the risk of bias, help ensure fairness and consistency and are a legal requirement for a fair sanction.

Investigations can be time consuming and the investigating manager must prioritise other work so that the investigation can be undertaken in a timely manner. It is important not to underestimate the time an investigation will take.

The investigation manager will be supported by a Human Resources representative throughout the process.

Investigation meetings

The investigating officer should not have had any personal involvement with the colleague or events being investigated.

Have an action plan

- What information is needed
- Where can I get it from
- Witnesses/availability
- Statements/documents

Arrange accommodation

- Consider the venue
- Ensure comfortable surroundings

Timetable of interviews

- Establish a diary

- Ensure the least disruption to work routine
- Consider domestic circumstances

Documentation– Human Resource Department has a set of standard letters

- Invite to interview letters
- Explain reason for interview
- Explain right to be accompanied

Interviews

- Prepare in advance
- Inform the individual of their right to be accompanied
- Explain the reason for the meeting and the process
- Only questions relevant to the investigation to be asked
- Obtain specific answers (dates, times, places and faces)
- Fact finding– focus on facts not individuals
- Don't harass, ask leading questions or intimidate interviewees
- Encourage to recall events in own words
- Listen
- Keep calm and objective
- Avoid confrontational language
- Do not express opinions
- Right to be accompanied but the supporting person cannot answer the questions
- Adjourn if needed
- Two investigators– one leading one note taking
- Reflect back to check understanding
- If criminal activity is suspected take advice from HR– you may need to inform the police

Notes

- Date and place of interview
- Names of those present
- What was said
- Signed and agreed by interviewee

It is important that timescales are adhered to and documented.

Remember - it is facts that count not your opinion.

On completion of the investigation write a management report. A template is available from Human Resources.

3. Appeal against Disciplinary Sanction

Only complete and return this form, if you wish to appeal against the decision.

(NB this form should be completed and submitted within 15 working days of the date of receipt of the letter confirming the sanction.)

Name: Job Title: Department: Work Telephone No: Trade Union/Staff Representative
Date of hearing: Sanction Issued: Manager at hearing:
Basis of the appeal: <ul style="list-style-type: none">• Procedural irregularities• Sanction too severe in circumstances• Other <p>Please give brief details of the basis for your appeal. All applicants must complete this section:</p>

Name: (CAPITALS)

Signature: _____

Dated: _____

4. Hearing Procedure - Arranging and conducting a hearing

Before the hearing

The colleague will be advised in writing of the allegations to be discussed and given at least 10 working days' notice. Hearings may be arranged with less than 10 days' notice with the agreement of all parties. This would also mean the submission deadline of documents would change and agreed by all parties. Standard organisational correspondence should be used in all communications.

All statements and other documentation gathered as part of the investigation, including any investigation report, if appropriate, will be provided.

If the allegations are potentially gross misconduct and/or the outcome could include sanctions up to and including dismissal this should be stated in the letter.

No other documents or statements should be used or referred to if they have not been presented to the colleague at least 10 days prior to the hearing unless agreed by the colleague and their trade union representative at the hearing.

Any documents that support the colleagues' case must be presented at least 5 days prior to the hearing date. Documents presented after this time will not be considered.

The colleague will be advised of his/her right to call any witnesses. Colleagues should note that it is their responsibility to ensure that any witnesses are available and willing to attend at the required date and time. It is expected that in most cases an individual who has made a statement will be available if necessary to the hearing to answer questions about it. In the witnesses absence a written statement may be presented to the panel but the panel may consider the evidence as having less weight if they have been unable to challenge it with the witness in person.

If the issues to be considered involve professional conduct issues the line manager must ensure that they have access to appropriate professional advice and support to enable a fair and balanced decision to be made. This is usually facilitated by the inclusion of an appropriately qualified and experienced professional adviser being asked to accompany the manager at the hearing. This individual will be part of the panel. This person should not have been involved in the case at any other stage.

The colleagues will be advised of his/her right to be accompanied by a trade union official or work colleague.

The colleague will be informed who will be hearing the case and who is /are presenting the management case and any witnesses that will be called by management.

The letter will state that the hearing may result in formal action and advice will be included regarding the right to be accompanied by a trade union official.

Authority to take any level of formal action except dismissal rests with line managers.

At the hearing

The panel at the formal hearing will always include a human resource representative in an advisory capacity. The HR representative role will include arranging for the taking of comprehensive notes and advising the panel on

points of process or relevant employment law.

A tape/electronic recording of the hearing or the private deliberations would not normally be accepted.

The investigating team will present a summary of the management case including findings of any investigation. The investigating team may choose to bring any witnesses as part of their presentation.

The colleague will be encouraged to give his/her account/version of the incident with support. The representative can speak i.e. present the case for the colleague if desired but cannot answer questions for the colleague.

The colleague can be questioned by either the panel members or the investigating team during the hearing. It should be noted that whilst it is acceptable for a representative to present colleague's case they should not answer questions on their behalf if questions are put directly to the colleague by either the panel or the investigating team.

The investigating team presenting the management case and the colleague and representative, will withdraw at the end of the hearing so leaving the panel hearing the case, to deliberate independently on the outcome.

Witnesses called by either the presenting manager and the colleagues can be questioned and cross examined by all concerned at the hearing. Witnesses will only remain in the room for the duration of their evidence and to respond to any questions. If it is agreed by all parties that there are no further issues for each witness they can be informed of this and allowed to leave the building and return to work. Witnesses should not discuss the case with each other during the course of the hearing.

Hearings should be conducted in a structured fashion as follows:

<ul style="list-style-type: none">• The Chair will introduce those present.
<ul style="list-style-type: none">• The allegations will be set out by the management side, who will then present their findings from the investigation report.
<ul style="list-style-type: none">• The management side may call witnesses and present evidence.
<ul style="list-style-type: none">• The Panel may permit questioning of the witnesses by the colleague under discipline or their representative.
<ul style="list-style-type: none">• The Panel may ask questions.
<ul style="list-style-type: none">• The Panel may permit further questions of the witnesses by the management side.
<ul style="list-style-type: none">• The colleague or their representative will outline whether the colleague accepts or denies the allegations.
<ul style="list-style-type: none">• The colleague will give his/her account of the matter.
<ul style="list-style-type: none">• The Panel may permit questions of the colleague by the management side and may ask questions.
<ul style="list-style-type: none">• The Panel may ask questions.
<ul style="list-style-type: none">• The colleague or their representative may call further witnesses
<ul style="list-style-type: none">• The Panel may permit questions by the management side and may ask questions.
<ul style="list-style-type: none">• The Panel may ask questions.
<ul style="list-style-type: none">• The Panel may permit further questions by the colleague or their representative.

<ul style="list-style-type: none"> • The management side will sum up.
<ul style="list-style-type: none"> • The colleague or their representative will sum up.
<ul style="list-style-type: none"> • The meeting will be adjourned to allow the panel to consider the case
<ul style="list-style-type: none"> • The Panel informs the parties of the decision by letter, normally within 5 working days of the hearing.

The purpose of the hearing is to ascertain the facts and come to a considered decision. This process is to ensure that all parties have an opportunity to present and question evidence. Exceptionally the panel may vary the structure of the hearing if it believes that this will best serve the interests of justice, for instance, returning to question a party who has already given evidence in light of later evidence.

- All parties (except the witnesses) return when the outcome is delivered unless the hearing panel have not made a decision. In cases such as this all parties involved in the hearing (except the witnesses) will be informed of the panel decision within 24 hours
- The panel may at any time chose to call an adjournment to the hearing. This could be for a number of reasons including to request further information or clarification, to clarify points of procedure, emotional distress or to request further investigation of a previously undisclosed issue. This list is not exhaustive and it is for the panel to decide when an adjournment is appropriate

After the hearing

Letters advising colleagues of the hearing decision

- The letter must be sent within 5 working days of the hearing
- It must state who was present and in what capacity
- The letter must include a clear statement of the allegations and findings against the colleague against each of the allegations

If appropriate it must include the following:

- It must contain the level of disciplinary action imposed and the reason for this
- It must state that failure to improve could result in further action (including dismissal where appropriate) and that a warning deemed to have expired will not be considered in any further hearings following the timescale of the warning

It must also include the following:

- The right of appeal when appropriate and how to exercise that right (as detailed under the stages)
- Any action/improvement required by the colleague within a specified time period

Appeal Hearings

The appeal form must be received within 15 working days of the date of the written notification of outcome.

The purpose of the appeal panel will be two fold- firstly to rehear the original evidence and form its' own view as to a reasonable outcome and secondly, to satisfy itself that a proper process was followed at the original hearing in reaching the outcome. The chair of the original panel will therefore be expected to lead the presentation of the management case. All witnesses and evidence used in the original hearing should be made available to the appeal panel. Again where a witness is not available the panel may choose to attach less weight to the evidence they have not been able to explore. In the interests of justice the panel may also accept information that was not available to the original panel.

1. The organisation's representative shall state the management case in the presence of the appellant and the appellant's representative and may call witnesses
2. The appellant or the appellant's representative shall have the opportunity to ask questions of the management representatives and witnesses
3. The members of the appeal panel shall have the opportunity to ask questions of the management representatives and their witnesses
4. The management representatives shall have the opportunity to re-examine his or her witnesses on any matter referred to in their examination by members of the appeal panel, the appellant or the appellant's representative
5. The appellant or the appellant's representative shall put his or her case in the presence of the management representative and may call witnesses
6. The management representative shall have the opportunity to ask questions of the appellant and the appellant's representative and witnesses
7. The members of the appeal panel shall have the opportunity to ask questions of the appellant and the appellant's representative and witnesses
8. The appellant or the appellant's representative shall have the opportunity to re-examine his or her witnesses on any matter referred to in their examination by members of the Appeal Committee or the management representative
9. The management representative and the appellant or the appellant's representative shall have the opportunity to sum up their cases if they so wish. The appellant or the appellant's representative shall have the right to speak last. In their summing up neither party may introduce any new matter
10. Nothing in the foregoing procedure shall prevent the members of the panel from inviting either party to elucidate or amplify any statement they may have made in order to ascertain if there is any evidence to support any statements made. Alternatively the individual may claim that the matters are within their own knowledge, in which case the individual will be subject to examinations as witnesses under 2 or 6 above
11. The panel may decide to adjourn the appeal at any stage for any reasons they feel is appropriate. This may include, but is not exclusive to seeking further clarification, emotional distress, further investigation or advice on legal or procedural issues

Good Practice

Always deal with disciplinary, supporting colleague performance and grievance matters as promptly as possible since time can cloud memory. In addition, prompt action helps alleviate the build-up of stress for the colleague facing the allegations.

Hold hearings away from the colleague's immediate work location to avoid embarrassment.

Ensure that the hearing is free from any interruptions.

Be prepared to adjourn the hearing in the event of emotional distress or the production of any issues/evidence that have not been fully investigated.

Be totally fair and objective, it is an alleged offence and not the personality under consideration.

Be thorough in allowing all involved in the hearing to contribute fully. If new evidence comes to light that requires further investigation, adjourn and reconvene the hearing if necessary (to secure a just outcome).

Consider the colleague's record if appropriate and general employment record prior to making a decision.

In the interests of consistency, check penalties imposed in similar cases in the past. The human resources department will provide advice.

Always ensure that correspondence produced is in strict accordance with the procedures.

Remember that disciplinary, grievance and supporting colleague performance action is intended to encourage an improvement in performance.

Seek advice from the HR department with regard to all disciplinary, supporting colleague performance and grievance matters.

Confidentiality must be fully respected when dealing with these matters. This includes the maintenance of records.

The procedure should be strictly followed. However, it is accepted that there can be good reasons for going straight to a specific stage of the procedure, i.e. if the gravity of an offence can result in the bypassing of stages.

Also current warnings can be reiterated and the timescale re-applied where a further minor offence is committed within the time duration of the current warning. This should be very much the exception as reiterations can indicate a lack of serious concern. However, if dismissal ultimately occurs then it is also important to demonstrate that the colleague has been given every opportunity to improve.

5. Delegation for Managers with authority to take Disciplinary Action

Staff Category	Verbal Warning	Written Warning	Final Written Warning	Dismissal	Appeal
Chief	Chairman	Chairman	Chairman	Chairman	**Board

Executive					Excluding Chairman
Directors	Chief Executive	Chief Executive	Chief Executive	Chief Executive	**Chairman of Board
Colleagues Band 7 and above, or equivalent.	Director/Head of Service	Director/Head of Service	Director/Head of Service	Director/Head of Service	**Panel
Colleagues band 1-6, or equivalent	Operational manager/Head of Service	Operational manager/Head of Service	Operational manager/Head of Service	Operational manager/Head of Service	** Panel

** The level of authority recognises the need for flexibility in appointing the appropriate level of manager to deal with disciplinary matters.

** Appeal Panels in respect of Chief Executive disciplinary action will include a Non-Executive Director, a Director, the Head of Human Resources and a staff side representative.

** Appeal Panels in respect of Directors disciplinary action will include the Chairman, a Non-Executive Director, the Head of Human Resources or nominated deputy and a staff side representative (belonging to a union not involved in the case).

6. Sanction Only Hearing

I confirm that I acknowledge and admit to the allegation below:

Allegation:

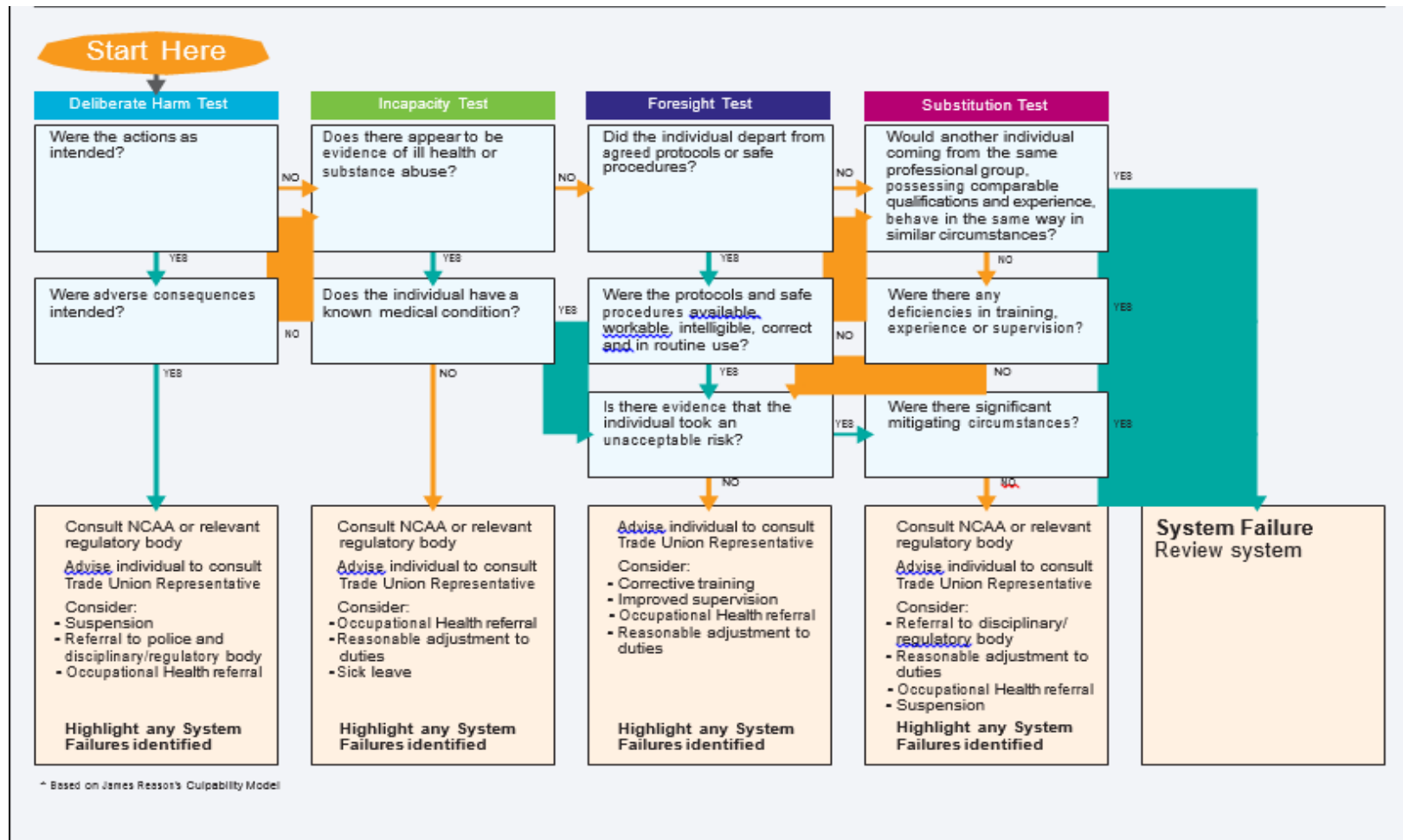
I sign to confirm that I agree to a Sanction Only Hearing.

I confirm that I have sought advice from my staff side representative - Yes/No

If no, I am happy to proceed with this option - Yes/No

Name: Date:
Signature.....

7. Incident Decision Tree



Guidance and information relating to this can be found on Elsie or by clicking on the link below.
<https://elsie.locala.org.uk/Interact/Pages/Content/Document.aspx?id=5037>

8. Equality Impact Assessment Tool

To be completed and attached to any policy document when submitted to the appropriate committee for consideration and approval.

	Insert Name of Policy		
	Disciplinary Policy	Yes/No	Comments
1.	Does the policy affect one group less or more favourably than another on the basis of:		
	• Race	no	
	• Ethnic origins (including gypsies and travellers)	no	
	• Nationality	no	
	• Gender	no	
	• Culture	no	
	• Religion or belief	no	
	• Sexual orientation including lesbian, gay and bisexual people	no	
	• Age	no	
	• Disability - learning disabilities, physical disability, sensory impairment and mental health problems	no	
2.	Is there any evidence that some groups are affected differently?	no	
3.	If you have identified potential discrimination, are any exceptions valid, legal and/or justifiable?		
4.	Is the impact of the policy/guidance likely to be negative?	no	
5.	If so can the impact be avoided?		
6.	What alternatives are there to achieving the policy/guidance without the impact?		
7.	Can we reduce the impact by taking different action?		