

Livewell Southwest

## **Disciplinary Policy**

Version No 5.7  
Review: October 2019

### **Notice to staff using a paper copy of this guidance**

**The policies and procedures page of LSW intranet holds the most recent version of this document and staff must ensure that they are using the most recent guidance.**

**Author: Human Resources Manager**

**Asset Number: 185**

## Reader Information

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<b>Author</b>	HR Managers in partnership with JTUF
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## Document review history

Version no.	Type of change	Date	Originator of change	Description of change
For previous review history please contact the PRG secretary.				
4.7	Reviewed	Dec 2012	PRG	Review date extended, no other changes made
5	Updated	May 2013	HR & JTUF	Amendments to Organisation name and streamlining of Policy in consultation with JTUF
5.1	Minor amendment	January 2014	HR & JTUF	Removed the following sentence from the bottom of Page 26 "I will review progress with you at three months."
5.2	Minor amendment	November 2014	HR & JTUF	Include section on DBS referral due to safeguarding issues
5.3	Reviewed	July 2015	HR Policy Group	Reviewed and minor changes
5.4	Updated	October 2015	HR Policy Group	Minor change made to 8.2.2 to reflect best practice
5.5	Updated	September 2016	HR Policy Group	Change to 8.2.4 and 8.3.4 as agreed at May 16 policy group
5.6	Updated	October 2016	HR Policy Group	Inclusion of dismissal procedure
5.7	Updated	April 2017	HR Policy Group	Minor update for informing trade unions, panel structure, and informing professional bodies.

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# Disciplinary Policy

## 1. Purpose and Scope of this Policy

- 1.1 The purpose of the Disciplinary Policy is to provide a framework within which managers can work with employees to maintain satisfactory standards of conduct and encourage improvement where necessary. This Policy applies to all employees.
- 1.2 Issues of capability and performance, which are not regarded as due to conduct or negligence, will be managed in accordance with the Performance Management Policy. Issues of sickness absence, which are not the result of misconduct, will be dealt with in accordance with the Sickness Policy'. Excluded from this Policy are issues relating to the professional conduct or competence of Medical and Dental staff which are dealt with under separate provisions. (See the Maintaining High Professional Standards Policy on the Intranet).
- 1.3 This Policy has been designed to promote fairness and consistency and has been drafted so that it is compliant with the ACAS Code of Practice.
- 1.4 This Policy does not form part of any employee's contract of employment and it may be amended at any time. We may also vary this policy, including any time limits, as appropriate in any case.

## 2. Investigations

- 2.1 The purpose of an investigation is for us to establish a fair and balanced view of the facts relating to any disciplinary allegations against you, before deciding whether to proceed with a disciplinary hearing. The amount of investigation required will depend on the nature of the allegations and will vary from case to case. It may involve interviewing and taking statements from you and any witnesses, and/or reviewing relevant documents. Investigative interviews are solely for the purpose of fact-finding and no decision on disciplinary action will be taken until after a disciplinary hearing has been held.
- 2.2 Two managers will be assigned to conduct the investigation, one of whom will have a lead role (one of which will be a HR representative). If a HR representative is not part of the investigation team, a HR Manager will be able to provide guidance and advice on the process.
- 2.3 At all stages of the Policy the employee has a right to be accompanied by a work colleague or trade union representative or an official employed by a Trade Union and the employee must be informed of that right (see Section 4).
- 2.4. You must co-operate fully and promptly in any investigation. This will include informing us of the names of any relevant witnesses, disclosing any relevant documents to us and attending investigative interviews if required.
- 2.5 The Investigating Officers will produce a short report on completion of the investigation outlining next steps. The report will normally be sent to the appropriate senior manager.

2.6 Where an investigation or hearing results in a decision that there is no case to answer this will be confirmed to you in writing.

2.7 **Referral to DBS (Disclosure & Barring Service) will occur** – if, as a result of a disciplinary sanction, an employee is dismissed or removed from working with children or vulnerable adults (or would, or may have, if the person had not left or resigned) because the person:

- Had been cautioned or convicted for a relevant offence;
- Engaged in relevant conduct in relation to children and/or vulnerable adults (i.e. an action or inaction (neglect) that has harmed a child or vulnerable adult or put them at risk of harm); or
- Satisfied the Harm Test in relation to children or vulnerable adults (i.e. there has been no relevant conduct (i.e. no action or inaction) but a risk of harm to a child or vulnerable adult still exists).

HR will inform both the Safeguarding and Governance Leads of any such referrals.

2.8 In the event of a Trade Union steward being under investigation as part of a disciplinary, the commissioning manager will be responsible for informing the full time officer for the specific trade union.

### **3. Notification of a Hearing**

3.1 Following any investigation, if the investigation officer decides there are grounds for disciplinary action, you will be required to attend a disciplinary hearing. We will inform you in writing of the allegations against you, the basis for those allegations, and what the likely range of consequences may be. We will also include the following where appropriate:

- a summary of relevant information gathered during the investigation;
- a copy of any relevant documents which will be used at the disciplinary hearing; and
- a copy of any relevant witness statements, except where a witness's identity is to be kept confidential, in which case we will give you as much information as possible while maintaining confidentiality.

3.2 We will give you written notice of the date, time and place of the disciplinary hearing. The hearing will be held as soon as reasonably practicable, but you will be given a reasonable amount of time, usually seven days, to prepare your case based on the information we have given you.

3.3 The employee will be advised in writing that the hearing is a Disciplinary Hearing and advised of the date, time and place of the hearing, the right to be represented and may call witnesses in support of their case and confirmation of the date to submit case papers.

3.4 Copies of all documents relevant to the investigation should be available to all parties no later than five working days before the hearing date. Any papers

presented after this time will be referred to the Panel Chair to decide if they are admissible.

#### **4. The right to be accompanied**

- 4.1 You have the right to be accompanied by a work colleague or trade union representative or an official employed by a Trade Union at any disciplinary or appeal hearing. A work colleague is allowed reasonable time off from duties without loss of pay but no-one is obliged to act in this capacity if they do not wish to do so.
- 4.2 You are not entitled to be represented by a barrister or solicitor working in a legal capacity. It would also not normally be reasonable for employees to request to be accompanied by a companion, i.e. family member/friend, whose presence might prejudice the meeting or hearing.

#### **5. Suspension**

- 5.1 In some circumstances we may need to suspend you from work and suspension is by no means an implication of guilt.
- 5.2 Suspension will only occur where necessary and only after consultation with the HR Department and appropriate Director/Deputy or Locality Manager or equivalent. Should an issue arise out of hours, advice should be sought from the appropriate on-call Senior Manager.
- 5.3 Suspension will be on full pay (regular earnings averaged over last four months) and should not be regarded as disciplinary action and will be considered where:
  - (a) a serious offence is alleged
  - (b) the continued presence of the individual concerned would prejudice the completion of the investigation
  - (c) it is judged to be in the best interests of the employee

Employees who are suspended will be subject to a fortnightly review.

- 5.4 During suspension you must be reasonably available for further interview. You must not enter your place of work or contact any client or member of staff without pre-arranged accompaniment or consent.
- 5.5 Consideration to suspend without pay will be given in some instances where there is significant evidence of fraud as specified by the Local Counter Fraud Specialist. To enable an employee to be suspended without pay, an investigatory meeting must take place before the decision is taken. The Head of HR should be involved in the decision making process. The employee will have the right to be accompanied at this meeting; they must also be given the right to appeal the decision.

## 6. Criminal matters

- 6.1 In any matters relating to fraud and/or corruption, LSW reserve the right to have these issues investigated by the organisations Local Counter Fraud Specialist in accordance with the NHS Fraud and Corruption Manual.
- 6.2 Should a Safeguarding investigation be required, any internal investigations will not normally continue until these are completed. However, each case will be considered on its own merits.
- 6.3 If an employee is subject to a police investigation any internal investigations will not normally continue until these are completed. However, each case will be considered on its own merits.

## 7. Disciplinary Hearing

- 7.1 You will be advised in writing that the hearing you have been invited to is a Disciplinary Hearing and informed of the date, time and place of the hearing and the right to be accompanied.
- 7.2 Management and Trade Union case papers should be exchanged no later than five working days before the hearing date. Both Management and Trade Union must produce enough sets of case papers for each member of the Panel, the presenting manager, the employee and Trade Union representative. Any papers presented after this time will be referred to the Panel Chair to decide if they are admissible.
- 7.3 The constitution of the panel for a disciplinary hearing is dependent on the circumstances of each individual case. The Chair is assisted by up to two other people to provide expertise and specialist advice.

For example, a panel could consist of the following members: -

Deputy Locality Manager or above	Chair
Senior Manager	Assistant Panel Member
HR Manager	Assistant Panel Member

- 7.4 If the issue is a minor matter and does not constitute Gross Misconduct or potential dismissal, then the panel would usually consist of the appropriate senior manager and HR support, i.e. HR Manager.
- 7.5 You must make every effort to attend the Hearing, and failure to attend without good reason may be treated as misconduct in itself. If you or your companion cannot attend the Hearing you should inform us immediately and we will arrange an alternative time.
- 7.6 If you fail to attend a Disciplinary Hearing (where the hearing has already once been postponed at your request) the Disciplinary Panel will decide whether the case will be heard in your absence. The decision will be based on the information available and communicated to you.

- 7.7 At the Disciplinary Hearing we will go through the allegations against you and the evidence that has been gathered. You will be able to respond and present any evidence of your own. Your companion may make representations to us and ask questions, but should not answer questions on your behalf. You may confer privately with your companion at any time during the Hearing.
- 7.8 We may adjourn the Disciplinary Hearing if we need to carry out any further investigations, such as re-interviewing witnesses in the light of any new points you have raised at the hearing. You will be given a reasonable opportunity to consider any new information obtained before the hearing is reconvened.
- 7.9 The Panel must call an adjournment before reaching a decision. You will be clearly informed of the decision and outcome. Where a disciplinary remedy is imposed, the Panel Chair must confirm the outcome by letter within five working days of the Disciplinary Hearing.
- 7.9 We will inform you of our decision and our reasons for it verbally after the Disciplinary Hearing, and in writing usually within one week of the hearing.
- 7.10 You have a right of appeal against any disciplinary decision.
- 7.11 A digital sound recording of the hearing will be made. A transcript will be made in the event of an appeal and will form part of the papers for that hearing.
- 7.12 Upon completion of the disciplinary hearing it will be the responsibility of the panel Chair to make a referral to the relevant professional body where applicable to inform them of the outcome of the process. This may include the NMC, HCPC, or other relevant professional regulation bodies.

## 8. Disciplinary penalties

- 8.1 The following table sets out the penalties for misconduct:

	<b>Outcome</b>	<b>Given for</b>
Stage 1	First Written Warning	More serious misconduct or further offence
Stage 2	Final Written Warning	More serious misconduct or further offence
Stage 3	Dismissal	Gross misconduct or further offence

### 8.2 Stage 1 – First Written Warning

- 8.2.1 Action should be considered either where:

- a) there has been an accumulation of minor offences of a similar nature; or
- b) where there has been a more serious offence

- 8.2.2 Normally, written warnings may only be issued by a senior manager following a disciplinary hearing. However, where there is no dispute about the facts of the case, the process may be expedited, at the explicit request of the employee and by mutual agreement of all parties, so that

the investigating officers following the preliminary investigatory meeting may issue a written warning or a final written warning.

8.2.3 A first written warning will remain active for twelve months. Therefore, a record of the written warning will be kept on file and this will remain active for 12 months from the date given and then archived in both the manager's and HR's files to the back of the file.

8.2.4 Whilst a first written warning is active on file, the employee is not permitted to apply for any internal vacancies/secondments unless approved by the Head of HR.

In addition, the employee will not be permitted to work additional hours or overtime, this restriction relates to work both in substantive posts and other areas within Livewell SW. The employee will not be permitted to undertake work in other organisations via NHSP or other agencies. This restriction can only be removed by a Locality or Deputy Locality Manager or Professional Practice and is only expected to be removed in exceptional circumstances.

8.2.5 Following archiving it will be disregarded in deciding the outcome of future disciplinary proceedings but may be used in determining the sanction.

8.2.6 Any periods of absence from work exceeding four weeks will extend the period of the warning by the same time span.

8.2.7 Insufficient improvement or further misconduct of a similar nature within the warning period may warrant further disciplinary action.

### **8.3 Stage 2 - Final Written Warning**

8.3.1 A final written warning may be issued where:

- a) a written warning has failed to achieve the necessary improvement;  
or
- b) a first offence or an act of misconduct has occurred, which is considered serious but not sufficient to justify dismissal

8.3.2 A final written warning may be issued by the disciplinary panel following a disciplinary hearing. It will set out the nature of the misconduct, the change in behaviour required, the period for which the warning will remain active, and the likely consequences of further misconduct in that active period.

8.3.3 A final written warning will usually remain active for 24 months. Therefore, a record of the final written warning will be kept on file and this will remain active for 24 months from the date given and then archived in both the manager's and HR's files to the back of the file.

- 8.3.4 Whilst a final written warning is active on file, the employee is not permitted to apply for any internal vacancies/secondments unless approved by the Head of HR.

In addition, the employee will not be permitted to work additional hours or overtime, this restriction relates to work both in substantive posts and other areas within Livewell SW. The employee will not be permitted to undertake work in this organisation via NHSP or other agencies. This restriction can only be removed by a Locality or Deputy Locality Manager or Professional Practice and is only expected to be removed in exceptional circumstances.

- 8.3.5 Following archiving it will be disregarded in deciding the outcome of future disciplinary proceedings but may be used in determining the sanction.
- 8.3.6 Any periods of absence from work exceeding four weeks will extend the period of the warning by the same time span.
- 8.3.7 Insufficient improvement or further misconduct of a similar nature within the warning period may warrant further disciplinary action.
- 8.3.8 In addition to a final written warning, the Disciplinary Panel may conclude that additional sanctions are appropriate as an alternative to dismissal. These may include demotion with a reduction in pay and/or disciplinary redeployment, and/or withholding of future increments.
- 8.3.9 An unsatisfactory review identifying insufficient improvement or further misconduct of a similar nature within the warning period may warrant dismissal or consideration of a further disciplinary sanction under the disciplinary policy. This will be clearly stated in the letter advising you of the final written warning.

#### **8.4 Stage 3- Dismissal**

- 8.4.1 The Disciplinary Panel may carry out dismissal as a result of a disciplinary hearing.
- 8.4.2 You may be dismissed if you are found to have committed an act of Gross Misconduct, where there is an active final written warning on record, or where there is an accumulation of minor matters with prior disciplinary action or you have continually not met standards previously agreed.
- 8.4.3 Dismissal for a first offence is only likely to be applied in cases of Gross Misconduct. A non-exhaust list of gross misconduct offences can be seen in Appendix 1.
- 8.4.4 Immediate dismissal is also appropriate for any gross misconduct during the probationary period.
- 8.4.5 Dismissal will be effective from the date of the Disciplinary Panel's decision and will be without notice.

## 9. Appeals

9.1 You have the right to appeal against a disciplinary sanction (over and above a verbal warning) or dismissal against you. If you wish to lodge an appeal against disciplinary action or dismissal you must inform the Head of HR in writing setting out the reasons for appeal within five working days of receiving written notification of the disciplinary action taken.

9.2 Appeals will normally be heard by the following:

Disciplinary Action	Appeal Heard By
Stage 1 - First Written Warning	Deputy Director or above
Stage 2 - Final Written Warning	Deputy Director or above
Stage 3 - Dismissal	Deputy Director or above

**NB1** If a Director is subject to Disciplinary Action at any level then the Appeal will be to Livewell Southwest Board.

**NB2** Different arrangements apply to both Medical and Dental and Adult Social Care (TUPE'd on 1 April 2015) staff for whom there are locally agreed and recognised policies.

9.3 If you raise any new matters in your appeal, we may need to carry out further investigation. If any new information comes to light we will provide you with a summary including, where appropriate, copies of additional relevant documents and witness statements. You will have a reasonable opportunity to consider this information before the hearing, and you or your companion may comment on any new evidence arising during the appeal before any decision is taken.

9.4 If you are appealing against dismissal, the date on which dismissal takes effect will not be delayed pending the outcome of the appeal. However, if your appeal is successful you will be reinstated with no loss of continuity or pay.

9.5 The appeal hearing may be a complete re-hearing of the matter or it may be a review of the fairness of the original decision in light of the procedure that was applied in deciding on the disciplinary action and any new evidence that has emerged since the initial hearing. This will be at our discretion depending on the circumstances of your case. In any event the appeal will be dealt with impartially.

9.6 We will give you written notice of the date, time and place of the appeal hearing. This will normally be within seven days after you receive the written notice.

9.7 Please Note: The appeal panel may uphold, reduce or increase any disciplinary penalty against you. If the sanction against you is increased, you will be permitted a further right of appeal against this increased sanction.

- 9.8 We will inform you in writing of our final decision as soon as possible, usually within one week of the appeal hearing. Where possible we will also explain this to you in person. There will be no further right of appeal.

## 10. Sickness Absence

It is acknowledged that disciplinary action may be a cause of stress and anxiety. However, it is in the interests of all parties concerned to expedite the process in a timely manner. Therefore, should you be sick during any disciplinary process, LSW reserves the right to only pay you SSP during this absence. Employees on sick leave are **reasonably** expected to cooperate and attend meetings during the disciplinary process. Where necessary advice will be sought from Occupational Health & Wellbeing or appropriate other expert sources e.g. GP, Consultant, Social Worker.

## 11. Grievances

- 11.1 Where a grievance is raised by you concerning matters arising from the disciplinary process, the grievance will be presented as part of the employee's case to the disciplinary panel for consideration. A grievance must not be used to delay the disciplinary process.
- 11.2 If the grievance is unconnected to the disciplinary matter, the grievance process and disciplinary process will run separately and concurrently, except in cases of gross misconduct, where you are suspended from work. In such circumstance, the grievance will be heard after the disciplinary process has been concluded.

## 12. Support Mechanisms

- Buddy – A buddy is offered to a member of staff at the beginning of the investigatory stage to discuss the process with you, however they cannot attend meetings with you
- Occupational Health & Wellbeing 01752 437222 – this is our external Occupational Health provider located at Derriford Hospital offering free and confidential counselling.
- Trade Union Office, Mount Gould Hospital – 01752 434450
- HR Department – 01752 434613

## 13. Monitoring Compliance and Effectiveness

The effectiveness of this policy will be monitored through the HR Policy Group.

**All policies are required to be electronically signed by the Lead Director. Proof of the electronic signature is stored in the policies database.**

**The Lead Director approves this document and any attached appendices. For operational policies this will be the Locality Manager.**

**The Executive signature is subject to the understanding that the policy owner has followed the organisation process for policy Ratification.**

Signed: Director of Clinical Practice and Development  
Date: 25<sup>th</sup> October 2016

## Appendix A

### Gross Misconduct

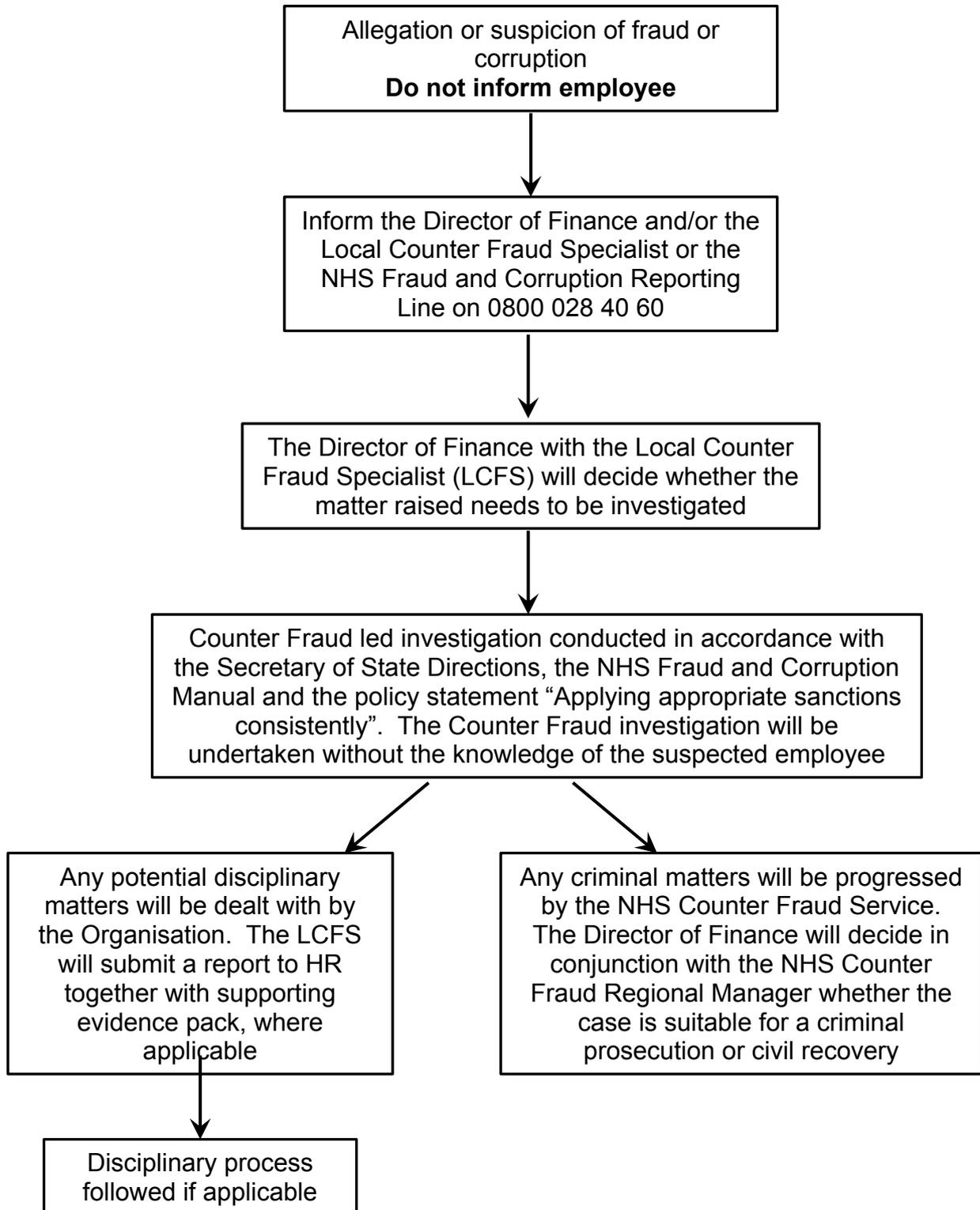
Offences that may be regarded as Gross Misconduct include (not exhaustive):

- a. Ill treatment of patients
- b. Theft and/or fraud
- c. Being under the influence of alcohol or drugs at work - this issue may be looked at under the Drug/Alcohol Policy
- d. Flagrant disregard of published safety rules or Livewell Southwest's working rules
- e. Falsification of records
- f. Assault, attempted assault, fighting and/or violence
- g. Breach of confidentiality
- h. Acceptance of bribes
- i. Criminal conviction outside work which would have major adverse effects on relations with employees or patients
- j. Dishonesty regarding employment matters
- k. Failure to abide by Standards of Business Conduct Regulations for NHS Staff HSG (93) 5
- l. Deliberate damage to Livewell Southwest property
- m. Serious negligence which causes unacceptable loss, damage or injury
- n. Serious act of insubordination
- o. Unauthorised entry into, and use of, computer records or misuse of Livewell Southwest's intranet or internet
- p. Any form of harassment or bullying
- q. Discrimination on any unjustified grounds

This list is not exhaustive and staff are reminded that employees found guilty of Gross Misconduct may be dismissed.

## Appendix B

### Devon Counter Fraud Services



## Appendix C

### Disciplinary Hearing - 3-Step Procedure

The disciplinary hearing will follow a 3 step process as outlined in legislation. This is as follows:

#### Step 1 – Written notification

- 1.1 The organisation will set out in writing the employee’s alleged circumstances which have led it to contemplate a disciplinary sanction which may include dismissal. In this letter the employee will be invited to attend a meeting (described in Step 2) and advised of their right to be accompanied by either a Trade Union representative or a work colleague. The letter inviting the employee to the meeting will also provide an indication of the potential outcome of the meeting, which may include dismissal.
- 1.2 The employee must be aware of the basis of the alleged circumstances in advance of the meeting (Step 2) and the employee will be given all relevant documentation relating to their case at least 5 working days (Monday – Friday) in advance of the meeting.
- 1.3 The employee must provide sufficient copies of any relevant documentation relating to their case for all panel and management representatives 5 working days in advance of the meeting.

#### Step 2 - The hearing

- 2.1 The employee will be responsible for arranging for their Trade Union representative/work colleague to attend the meeting. In the event that they or their representative are unable to attend the planned meeting they should contact the meeting organiser to request for the meeting to be rescheduled.
- 2.2 The meeting will be held at a venue decided upon by Livewell Southwest and where consideration has been given to the privacy and dignity of the employee.
- 2.3 The organisation will be represented at the meeting by up to two other people to provide expertise and specialist advice. The panel could consist of the following:

<b>Chair</b>	This will be a Deputy Locality Manager or nominated Senior manager and with no prior direct involvement in the case.
<b>Senior Manager</b>	This may be a senior manager to provide expertise and specialist advice and with no prior direct involvement in the case.
<b>HR Representative</b>	With no prior direct involvement in the case

- 2.4 The process for managing the meeting is described in detail at Appendix D

- 2.5 The Chair will ask the presenting manager to explain the reason for bringing the case to the meeting and go through the evidence that has been gathered. This may include calling witnesses.
- 2.6 The employee will be allowed to ask questions, present evidence, call witnesses and be given an opportunity to raise points about any information provided by witnesses.
- 2.7 Following an adjournment the Chair will give the employee notice of their decision at the end of the meeting. All outcome decisions will be confirmed in writing within 5 working days of the meeting along with the right of the appeal.
- 2.8 Notice periods will be dependent on the nature of dismissal. Summary dismissal relating to gross misconduct does not include notice.

**Step 3 – The appeal**

- 3.1 Employees will be given the opportunity to appeal the outcome of the meeting described in Step 2.
- 3.2 Where a dismissal has taken place, the appeal meeting need not take place before the dismissal has taken effect (for instance, during a period of notice).

An employee who wishes to lodge an appeal against their dismissal should inform a Senior HR representative within five working days of receiving written notification of the dismissal. Any appeal must be in writing and should include the grounds for the appeal.

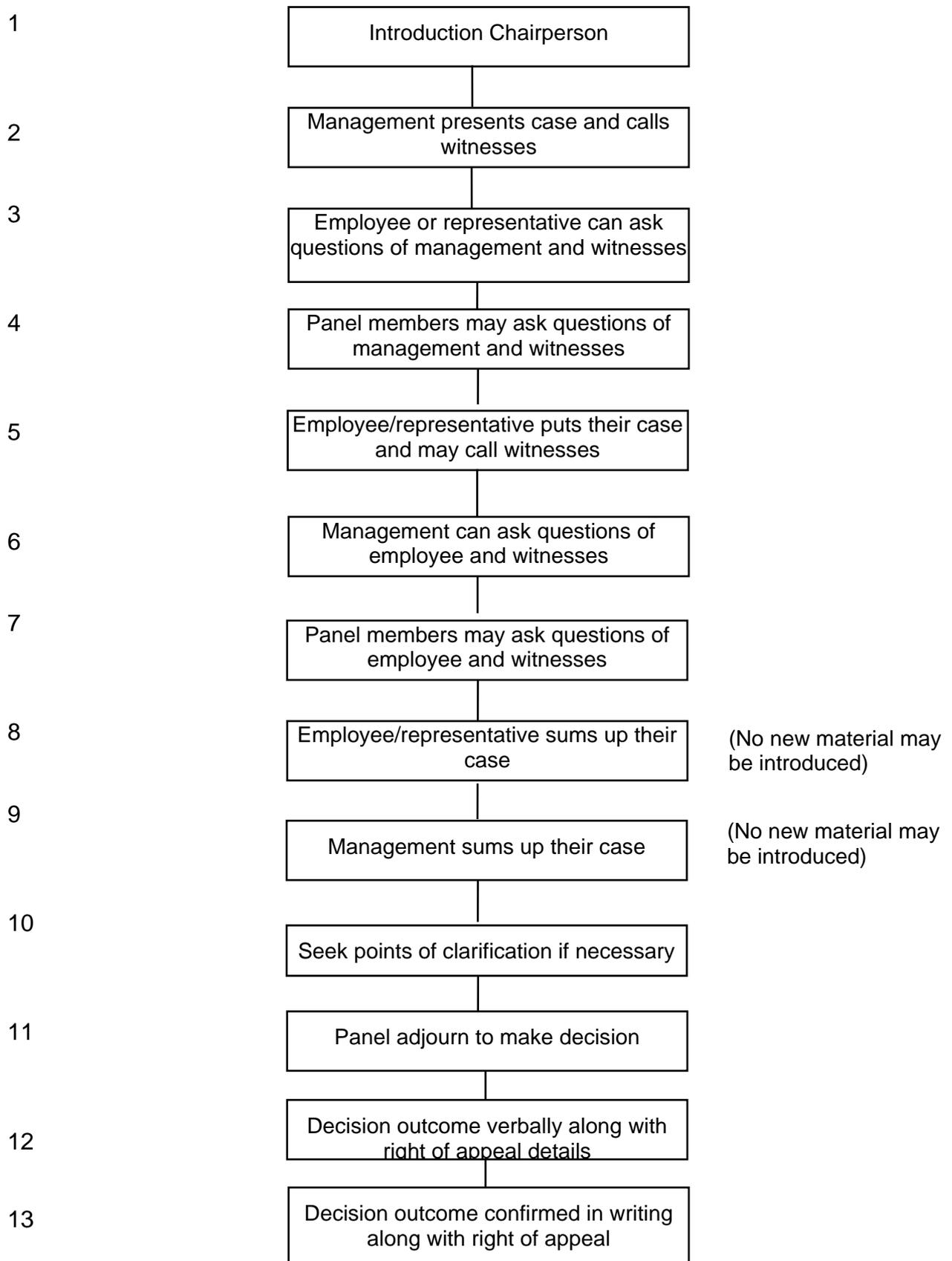
- 3.3 In order to hear the appeal, a further meeting will take place. The organisation will be represented at the meeting by at least the following:

<b>Chair</b>	This will normally be a Deputy Director or above or their nominated representative. The Chair will not have had any prior involvement in the case
<b>Senior Manager</b>	This may be a senior manager to provide expertise and specialist advice and with no prior direct involvement in the case.
<b>HR Representative</b>	Normally a senior HR representative with no prior involvement in the case

NB If a Director is subject to Disciplinary Action at any level then the Appeal will be to Livewell Southwest Board

- 3.4 The process for managing the appeal is described in detail at Appendix E.
- 3.5 The decision of the Chair is final and there is no right to further appeal. This will be made clear to the employee.

## Appendix D Disciplinary Hearing – Step 2 – Flow Chart



## Appendix E

### Disciplinary Appeal Hearing – Step 3 - Flow Chart

