

Bristol, North Somerset and South Gloucestershire Clinical Commissioning Group Governing Body Meeting

Date: Tuesday 3rd April 2018

Time: 1.30pm

Location: Vassall Centre, Gill Avenue, Downend, BS16 2QQ

Agenda item: 11.3

Report title: BNSSG HR Policies

Report Author: Rob Osment, HR Business Partner, SCW CSU

Report Sponsor: Sarah Truelove, Chief Financial Officer

1. Purpose

The purpose of this paper is to confirm that the following policies have been reviewed, updated and aligned from the three CCG's into a single set of policies for the newly merged BNSSG CCG and provide clarity over processes and responsibilities.

- Grievance Policy and Procedure
- Disciplinary Policy

The policies will be shared with staff via staff briefings, placed on the CCG intranet and signposted in the CCG Induction Package.

2. Recommendations

The Governing Body is asked to formally approve these HR policies.

3. Background

At the Joint Consultative Committee meeting on the 26 February 2018, they were asked to consider in detail 6 new BNSSG HR policies and 2 Guidance Documents. The Grievance Policy and Disciplinary Policy are both contractual policies and require approval from the BNSSG CCG Governing Body ahead of publication. Non-contractual policies are approved by the BNSSG Corporate Policy Group chaired by the Deputy Chief Executive.

These policies have been written to align effectively with other proposed new BNSSG policies such as Appeals Policy, Guidance on Investigating Complaints and Allegations related to Employment, and Bullying and Harassment Policy. The terms of the policy have been amended to reflect best practice around the Investigation of Disciplinary cases and holding of a Disciplinary panel and the templates included as Appendices have been updated accordingly.

Both policies will enable BNSSG to maintain the appropriate standards of conduct required in the organisation to deliver the Operational Plan and Strategic Objectives.

These policies have been developed based on similar policies in place at other Clinical Commissioning Groups, in line with Agenda for Change Terms and Conditions and ACAS guidelines

4. Financial/resource implications

There is minimal financial implication as a result of implementation of these policies

5. Legal implications

These policies have been amended and updated in line with recommended best practice as outlined by ACAS and in line with the NHS Terms and Conditions of Service Handbook.

Both policies have been amended in line with relevant Employment legislation and have taken into account the NHS terms and conditions for employees outlined in the NHS Terms and Conditions of Service Handbook

6. Risk implications

No risks have been identified within these policies as a result of implementing them

7. Implications for health inequalities

An Equality Impact Assessment (EIA) Screening has been carried out on both of these policies. There is no identified negative impact as a result of these policies on any of the protected characteristics within the Equality Act 2010.

8. Implications for equalities (Black and Other Minority Ethnic/Disability/Age Issues)

An Equality Impact Assessment (EIA) Screening has been carried out on both of these policies. There is no identified negative impact as a result of these policies on any of the protected characteristics within the Equality Act 2010.

9. Consultation and Communication including Public Involvement

Feedback has been sought from BNSSG Joint Consultative Committee (JCC). Staff side representatives and Trade Union representatives have been able to comment on these policies and feedback received and where appropriate included in these policies.

A review of key HR policies has been undertaken, determined by the need to provide a robust infrastructure to support Agenda for Change and to implement national changes.

10. Appendices

Appendix 1 – Disciplinary Equality Impact Assessment Screenings

Appendix 2 – Grievance Policy Equality Impact Assessment Screening

Appendix 3 – BNSSG Disciplinary Policy

Appendix 4 – BNSSG Disciplinary Policy implementation plan

Appendix 5 – BNSSG Grievance Policy

Appendix 6 – BNSSG Grievance Policy implementation plan

Appendix 1 – Disciplinary Equality Impact Assessment Screenings

Equality Impact Assessment Screening		
Query	Response	
What is the aim of the document?	To set out the CCG responsibilities in relation to equal application of the policy to all staff	
Who is the target audience of the document (which staff groups)?	All staff	
Who is it likely to impact on and how?	Staff	Yes
	Patients	No
	Visitors	No
	Carers	No
	Visitors	No
	Other – governors, volunteers etc	Yes
Does the document affect one group more or less favourably than another based on the ‘protected characteristics’ in the Equality Act 2010:	Age (younger and older people)	No
	Disability (includes physical and sensory impairments, learning disabilities, mental health)	No
	Gender (men or women)	No
	Pregnancy and maternity	No
	Race (includes ethnicity as well as gypsy travellers)	No
	Sexual Orientation (lesbian, gay and bisexual people)	No
	Transgender people	No
	Groups at risk of stigma or social exclusion (e.g. offenders, homeless people)	No
	Human Rights (particularly rights to privacy, dignity, liberty and non-degrading treatment)	No

Appendix 2 - Grievance Policy Equality Impact Assessment Screening

Equality Impact Assessment Screening		
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Disciplinary Policy and Procedure

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Disciplinary Policy and Procedure

Policy ref no:	HR003
Author (inc job title)	Victoria Nangreave, HR Manager
Date Approved	<i>to be added by corporate team once policy approved and before placing on website</i>
Approved by	<i>to be added by corporate team once policy approved and before placing on website</i>
Date of next review	xxxxx
How is policy to be disseminated	Website and see below

Check list for Governing Body/approving committee	
Has an Equality Impact Assessment been completed?	TBC
Has legal advice been sought?	No
Have training issues been addressed?	Yes
Are there other HR related issues that need to be considered	No
Are there financial issues and have they been addressed	No
what engagement has there been with patients/members of the public in preparing this policy	None
Are there linked policies and procedures	Disciplinary Policy Grievance Policy, Appeals Policy, Bullying and Harassment Guidance on Investigating Complaints and Allegations related to Employment
Who will approve the policy	Governing Body
How will implementation be monitored	Through the SCW CSU HR Team
How will the policy be shared with: <ul style="list-style-type: none"> • Staff • Patients • Public 	Via the BNSSG internet site – The Hub and dedicated communication to CCG employees.
Will an audit trail demonstrating receipt of policy by staff be required; how will this be done	Line Managers to check staff are aware of new policy

Version Control		
Version	Date	Consultation
Version 1 - redraft of policy – aligning the three CCG policies together	16.02.2018	For JCC 26.02.2018

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1. Introduction

BNSSG recognises that from time to time employees may fall short of the standards required by the organisation or may fail to behave in an appropriate manner, either within or outside of the workplace. This policy and procedure has been developed to provide a fair, objective, effective and confidential way of dealing with such matters relating to conduct which may, following an investigation lead to a disciplinary hearing and possible disciplinary action.

This applies to all employees of the CCG and is in accordance with all legal requirements and Advisory Conciliation and Arbitration Service guidance. The policy aims to encourage employees to achieve and maintain the required standards of conduct, performance and attendance. It ensures fairness and consistency in the treatment of individuals. In cases where an employee fails to attain the required standard the disciplinary policy will be instigated and this may result in disciplinary action.

This policy does not apply to those employed by other organisations and Honorary Staff.

2. Purpose and scope

In order to operate effectively, high standards for performance and conduct are expected from all employees. Cases of minor misconduct or unsatisfactory behaviour are usually best dealt with informally. This policy aims to ensure that where some form of formal action is needed, issues are dealt with promptly, fairly and consistently.

3. Supporting Principles

- a) Employers and employees should raise and deal with issues promptly and should not unreasonably delay meetings, decisions or confirmation of those decisions.
- b) Employers and employees should act consistently.
- c) Informal action will be considered, where appropriate, to resolve problems
- d) Employees have a statutory right to be accompanied and supported by a fellow worker or trade union representative (see Appendix 2 for more information).
- e) The Investigating Officer will receive guidance and support throughout all stages of the procedure from a Human Resources professional.
- f) No formal disciplinary hearing will be set up until the case has been fully investigated by an Investigating Officer.
- g) Malicious allegations may be deemed as a disciplinary offence.
- h) The organisation will not normally take disciplinary action against a member of staff reporting clinical incidents involving patients and carers unless such allegations are later proved to be false and have been raised with Malicious intent.
- i) Except in a case of gross misconduct (defined in Appendix 1), an employee will not be dismissed for a first breach of conduct.
- j) Dismissals can only be sanctioned by an agreed Dismissing Officer.

- k) Where the facts are in dispute, no disciplinary penalty will be imposed until the case has been carefully investigated and it is concluded on the balance of probability that the employee committed the act in question.
- l) Disciplinary decisions will be recorded and monitored by the Human Resources Department to ensure that the Procedure is operated fairly and consistently.
- m) The process will be dealt with as swiftly as is reasonably possible.
- n) Confidentiality will be observed at all stages of the procedure by all parties including witnesses.
- o) Employees have the right of appeal against any formal sanction made at a formal hearing under the Disciplinary Procedure using the Appeals Policy.
- p) If there are concerns that the process has not been followed correctly or the policy breached, the employee is entitled to raise a grievance. However, should the grievance be against another issue this will not be investigated whilst the Disciplinary Investigation/Hearing is still ongoing.

4. Confidentiality

Our aim is to deal with misconduct and disciplinary matters sensitively and with due respect for the privacy of any individuals involved. All employees must treat any information communicated to them in connection with an investigation or disciplinary matter as confidential.

Employees will normally be told the names of any witnesses whose evidence is relevant to disciplinary proceedings against them, unless the CCG believe that a witness's identity should remain confidential.

5. Suspension

On occasions it may be necessary to consider suspending an employee. Suspension should only be authorised by member of the Executive Team. This is a neutral act which does not constitute disciplinary action and which does not imply guilt. All other options such as moving a member of staff to another role on a temporary basis should be considered before taking the action of suspension. The terms of suspension should be in writing and provided to the individual on the day of the suspension. All suspension will be without prejudice and with full pay.

In cases where a period of suspension with pay is considered necessary, this period must be as brief as possible, must be kept under review and it must be made clear that suspension is not considered a disciplinary action nor an inference of guilt.

6. How are Investigations Conducted?

Investigations will be conducted in accordance with the Guidance on Investigating Complaints and Allegations related to Employment. Managers must ensure that they refer to the Guidance on Investigating Complaints and Allegations related to Employment before conducting any investigation into allegations.

7. Rights to Accompaniment

At informal stages it is not usually necessary for employees to be accompanied. However should an individual ask to be accompanied this should not be unreasonably refused. In such cases managers should seek advice from a HR representative.

At formal stages of the procedure, employees have the right to be accompanied by their staff side representative or work colleague not acting in a legal capacity. They must be informed of their right and then choose whether or not to exercise it. It is the employee's responsibility to make arrangements to be accompanied.

Please note, in order to minimise any potential distress for all parties, we can only accept representation from staff side representatives or work colleagues and not relatives or friends who are not employed by the organisation.

Further information on the right to be accompanied can be found in Appendix A.

8. Professional Registration

Where an individual is required to have professional registration to undertake their role and fails to maintain this registration this could be considered a disciplinary act and will be considered under this policy.

Where an individual is registered under a professional body and is being managed under the disciplinary policy consideration must be given about whether it is appropriate to make a referral to the professional body. Advice should always be sought from HR where disciplinary action is being considered for someone with professional registration.

9. Criminal Charges

Where conduct is the subject of a criminal investigation, charge or conviction, there will be an investigation into the facts before deciding whether to take formal disciplinary action. It is not necessary to wait for the outcome of any prosecution before deciding what action, if any, to take. Where the employee is unable or have been advised not to attend a disciplinary hearing or say anything about a pending criminal matter, a decision will be made based on the available evidence.

A criminal investigation, charge or conviction relating to conduct outside work may be treated as a disciplinary matter if it is considered relevant to the employee's employment.

10. Who may Sanction Disciplinary Action

Disciplinary action shall be the responsibility of authorised levels of management to whom disciplinary powers have been delegated as follows:

Level of warning	Authorised Level of Manager
Informal Meeting	Manager at Band 7 or above
First Written Warning	Head of Department or equivalent
Final Written Warning	Associate Director or equivalent
Action short of dismissal	Director or Associate Director with delegated authority
Dismissal	Director or Associate Director with delegated authority

Should a formal hearing be convened the chair of the panel must satisfy the appropriate level of management to issue the warning.

Cases of disciplinary action involving the Chief Executive or members of the Clinical Commissioning Group Governing Body will be referred to NHS England.

11. Investigation

It is important to carry out necessary investigations of potential disciplinary and misconduct matters without unreasonable delay to establish the facts of the case, this should not take longer than one month. In exceptional circumstances, or where the case involves numerous parties, the investigation process may take a longer period of time to conclude and the employee will be notified of the delay.

The investigation will be undertaken by an independent investigating officer and is likely to involve holding investigatory meetings with the employee about the alleged misconduct, gathering evidence from the employer and potentially holding investigatory meetings with the employee's line manager and any witnesses as identified by the investigating officer.

Where an investigatory meeting is held, this must not by itself result in any disciplinary action against the employee. The investigating officer will be supported through this process by a HR professional.

Should an employee resign during an investigation, the investigation should be completed and an inquiry held in order to reach a decision based on the evidence available. This will depend on the seriousness of the issue. It may be necessary for an inquiry to consider informing the Independent Safeguarding Authority and/or other appropriate regulatory or professional bodies.

If the alleged misconduct is of a clinical or professional nature, advice will be sought from the appropriate specialist within the CCG.

12. The Informal Procedure

This is not part of the formal disciplinary procedure and this informal stage would be relevant to minor misconduct or carelessness. The objective of such discussion is to remedy and document the matters of concern. Formal disciplinary action should follow only where such problems persist or are so serious as to warrant formal action.

An Informal Conduct Meeting is designed to improve behaviour and prevent further episodes of misconduct without issuing an employee with a formal warning or causing them stress by being subject to a formal hearing.

Cases of minor misconduct are usually best dealt with informally between the employee and the line manager with the aim of providing training, guidance or advice to improve the employee's conduct and so avoid the need for formal steps. The conversation and

the outcome should be confirmed in writing and the required improvements clearly documented.

If an informal resolution is not successful or appropriate, disciplinary action may need to be taken.

13. The Formal Procedure

If informal discussions have not led to the required improvement in conduct, or the CCG consider the misconduct more serious the formal procedures will begin.

Where an alleged incident of misconduct has happened, the line manager or other authorised manager will appoint an Investigatory Officer to investigate the incident further. The Investigating Officer is impartial and conducts an investigation to establish the full facts and determine if there is a case to answer which therefore need a Disciplinary Hearing.

Following the investigation and consideration of the facts and evidence a conclusion will be made as to whether there is a disciplinary case to answer, or not. This decision will normally be made by the investigating officer. The employee must be notified of this outcome in writing.

Where it is concluded there is a case to answer, the employee shall be notified that a disciplinary hearing shall take place, be provided with a copy of the management report produced as part of the investigation and be given the right to be accompanied at the hearing. The individual should be given the opportunity to respond to the investigation report and submit a response report to the panel and management side prior to the disciplinary hearing.

Where it is concluded that there is no case to answer, the employee shall be informed of this outcome in writing, and advised that there will be no further action taken, and a hearing shall not be arranged.

No sanction can be issued without a formal hearing being convened to consider the facts of the case. A disciplinary panel can decide to issue a first written warning, a final written warning, or dismiss on the grounds of misconduct. When considering the type of sanction to issue the panel will consider:

- The information presented by management and staff side
- Any mitigation provided i.e. a very good record of conduct within the organisation
- The seriousness of the allegations
- The implications of the allegations on the organisation or individuals
- Any previous informal action to address the conduct
- The circumstances surrounding the conduct or issue presented

The panel will provide reasons for the sanction issued to the individual as part of the outcome letter.

14. The Disciplinary Hearing

Who should be on the panel for a formal disciplinary hearing?

- A Chair of the Panel who should normally be more senior than the Investigating Officer
- A Human Resources professional.
- One other senior manager of an appropriate level may also attend.
- When necessary an appropriate professional advisor should be included.

Who will present the Management Case?

The Investigating Officer will present the Management Case to the panel. Witnesses may be called in support of the Management Case. The Investigating Officer must notify the Panel and the subject of the disciplinary investigation if they wish to call any witnesses in support of their case, prior to the disciplinary hearing.

Who will present the Employees Case?

The employee who is the subject of the hearing will present the case. They may also be accompanied by a representative of a recognised trade union or a fellow worker (not acting in a legal capacity) who may present on their behalf.

Witnesses may be called in support of the employee's case. The employee must notify the Panel in advance if they wish to call any witnesses in support of their case. It is the employee's responsibility to arrange the attendance of their witnesses at the hearing.

How will the hearing be arranged?

Once the decision has been made to convene a formal hearing under the Disciplinary Procedure this must be confirmed in writing.

The letter to the member of staff should include the following information

- The date, time and venue of the meeting. [At least 10 days' notice will be given].
- The fact that this is a formal hearing under the Disciplinary Procedure.
- The nature of the allegation.
- Who will be on the Panel to hear the evidence
- Who will be presenting the Management Case (including any witnesses attending)
- The fact that the outcome of the formal hearing may be a disciplinary warning and may [if appropriate] include dismissal.
- That they may be accompanied by a representative from a recognised Trade Union or by a fellow worker, not acting in a legal capacity.

- A copy of the Management Case [Report of the Outcome of the Investigation] will be enclosed with the letter. This will include copies of statements relating to the case.
- Ask if there any special requirements such as the need for language facilities (interpreter), etc.
- The date that their response to the allegations (their case) if they wish to submit a response must be submitted to the panel by (5 working days before the hearing).

If an employee's companion cannot attend on the proposed date, another date may be suggested within 5 working days of the original hearing date.

If the employee refuses to attend the hearing, or cannot provide a substantial reason why they are unable to attend, it must be made clear to them that the hearing will still continue in their absence and a record kept of the reasons for this non-attendance.

The employee should seek guidance on how to compile a response to the allegation (their case). This may be sought from the Trade Union Representative if they are a member or from a work colleague

The member of staff should include within their case a specific response to the allegation. This should be concise and refer to any supporting documents or statements in the appendices. Where possible, Pages should be numbered and a contents page added at the front of the pack for ease of referencing at a meeting

No new information should be provided at this stage.

Arranging information packs for the hearing:

All members of the Panel and the Management Side will receive identical packs to that already sent to the employee and their representative containing the Management Side Case and the employee's response two days before the agreed date of the Hearing. The employee should inform the Panel Chair of the names of any witnesses who they will be calling to the hearing. Likewise, the Investigating Officer should inform the Panel Chair of the names of any witnesses who they will be calling to the hearing.

No new information can be submitted after this stage or during the hearing.

What happens at a Formal Hearing under the Disciplinary Procedure?

(See also flow chart in Appendix 2)

- a) The investigating manager will be asked to summarise the key points of the written statement of case and call witnesses in the presence of the member of staff and his/her representative.
- b) The members of the panel shall have the opportunity to ask questions of the manager and witnesses.
- c) The member of staff or their representative shall have the opportunity to ask questions of the manager and his/her witnesses.
- d) The manager shall have the opportunity to re-examine his or her witnesses on any matter referred to in their examination by members of the Panel, the member of staff or the member of staffs' representative.

Disciplinary Policy and Procedure

- e) The member of staff or their representative [i.e. Trade Union representative or fellow worker] shall put his or her case and call witnesses in the presence of the manager.
- f) The members of the panel shall have the opportunity to ask questions of the member of staff and his/her representative and witnesses.
- g) The investigating manager shall have the opportunity to ask questions of the member of staff and their representative and witnesses.
- h) The member of staff or their representative shall have the opportunity to re-examine his or her witnesses on any matter referred to in their examination by members of the Panel or the organisation's representative. They will also have the opportunity to ask the investigating manager or any witnesses called by the investigating manager any questions.
- i) The manager and the member of staff or the member of staffs' representative shall have the opportunity to sum up their cases if they so wish. The member of staff or their representative shall have the right to speak last. In their summing-up, neither party may introduce any new information.
- j) The Panel may at its discretion adjourn the hearing at any point in order that either party may produce further evidence or for any other substantial reason. At this point the manager, the member of staff and the member of staff's representative shall withdraw.
- k) The Panel advised by the Human Resources Professional, shall deliberate in private only recalling both parties to clear points of uncertainty on the evidence already given. If recall is necessary, both parties shall return, even if only one of them is concerned with the point that has given rise to doubt.
- l) Witnesses will normally be asked to leave the hearing at the conclusion of their evidence and the Panel Chair will indicate whether they should remain available for the duration of the hearing in case it is necessary to recall them.

Decisions of the Panel

The decision of the Panel, and the reasons for reaching that decision, will normally be announced at the end of the Hearing following an adjournment. If, due to reasons such as the amount of information presented or time constraints, etc., the panel may decide to adjourn the meeting to consider their decision and inform the employee of the outcome in writing. All decisions and the reasons for those decisions will be confirmed in writing within 5 working days of the decision made.

The written confirmation, which will be from the chair of the panel, should include:

- Date, time and venue of the hearing.
- Who was present
- The nature of the allegations.
- The decision of the Panel.
- The reasons for the decision.
- Reference to previous warnings if relevant.
- The implications of the decision.

- The duration of the sanction, if appropriate.
- The right of appeal under the organisation's Appeals Procedure (and enclose a copy of the Appeals Policy).

Possible Outcome

The outcome will depend on the details of the hearing and may be as follows:

a) **No case to answer**

The panel may decide there is no case to answer if they conclude that no misconduct has taken place. No further action will be taken with the employee and the matter shall be treated as closed.

b) **No formal action**

This may include for example the requirement for the individual to attend training or informal 'coaching' sessions with their manager or other identified individual.

Following the meeting, the notes of the informal meeting and improvement that needs to be made, will be placed on the employee's file for 6 months. There is no right of appeal against this informal action. If however you feel that the policy has not been followed and applied appropriately you do have the right to raise a grievance in line with the CCG Grievance Policy.

c) **First written warning**

Appropriate in cases involving offences of minor misconduct, or where attempts at coaching have failed to secure improvement.

To remain effective for 12 months from the date it is issued.

d) **Final written warning**

Appropriate where there is a current formal warning on file, or where serious misconduct is proven.

To usually remain effective for 24 months from the date it is issued. In some instances of serious misconduct or repeated offences the panel may at their discretion issue a final warning to remain active in excess of 24 months.

e) **Dismissal**

Appropriate in cases of gross misconduct, or potentially where there is a current final warning on file. A member of staff may be summarily dismissed [without notice or a payment in lieu of notice] **only** in the event of gross misconduct.

f) **Action short of dismissal**

In some cases of gross misconduct where dismissal was a clear possibility, but significant mitigating circumstances were presented to and accepted by the panel the decision of demotion and associated loss of pay to a more suitable job, if available, in conjunction with a final written warning can be taken. The level of demotion should be proportionate to the severity of the offence.

How to Appeal Against a Disciplinary Sanction or Dismissal

Members of staff have the right of appeal against a formal sanction made at a formal hearing under the Disciplinary Procedure. A copy of the Appeals Policy will be enclosed with the letter confirming the outcome of the formal hearing.

Appeals against informal outcomes are not permitted. If however you feel that the policy has not been followed and applied appropriately you do have the right to raise an appeal in line with the CCG Grievance Policy.

How are Records Kept?

In instances of a formal sanction being taken all current correspondence relating to the disciplinary action, including any letters confirming the outcome will be kept on the individual's personal file for the duration that the sanction is effective.

What Happens to Spent Warning?

Once the effective period of the warning is spent, all correspondence relating to the disciplinary action, including any letters confirming the outcome must be removed from the member of staff's personal file and destroyed.

How will Disciplinary Cases be Monitored?

All outcomes will be monitored to ensure that the policy and procedure is applied fairly and equitably.

15. Training Requirements

Training and support will be available to all line managers in the implementation and application of this policy.

16. Equality Impact Assessment

All relevant persons are required to comply with this document and must demonstrate sensitivity and competence in relation to the nine protected characteristics as defined by the Equality Act 2010. The Act prohibits discrimination on the basis of age, disability, gender reassignment, marriage/civil partnership, pregnancy/maternity, race, religion/belief, sex or sexual orientation. It also means that each manager or member of staff involved in implementing the policy must have due regard to the need to: eliminate unlawful discrimination, harassment, victimisation; advance equality of opportunity between those who share a protected characteristic and those who do not; and foster good relations between people who share a protected characteristic and those who do not. If you, or any other groups, believe you are disadvantaged by anything contained in this document please contact the Document Lead (author) who will then actively respond to the enquiry.

17. Monitoring compliance and effectiveness

This policy will be reviewed every 3 years but can be reviewed at any time if the CCG deems it necessary to do so or a review is requested by management or staff.

18. Counter Fraud

The CCG is committed to the NHS Protect Counter Fraud Policy – to reduce fraud in the NHS to a minimum, keep it at that level and put funds stolen by fraud back

into patient care. Therefore, consideration has been given to the inclusion of guidance with regard to the potential for fraud and corruption to occur and what action should be taken in such circumstances during the development of this procedural document.

19. References, acknowledgements and associated documents

Grievance Policy, Appeals Policy, Bullying and Harassment

Guidance on Investigating Complaints and Allegations related to Employment

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20. Appendices

1. Appendix 1 - EXAMPLES OF MISCONDUCT OFFENCES

Gross misconduct refers to any breach of the CCG's rules which is so serious that it irrevocably destroys the relationship of trust between the company and the employee. The following is a non-exhaustive list of offences which, if proven, is likely to result in dismissal without notice:

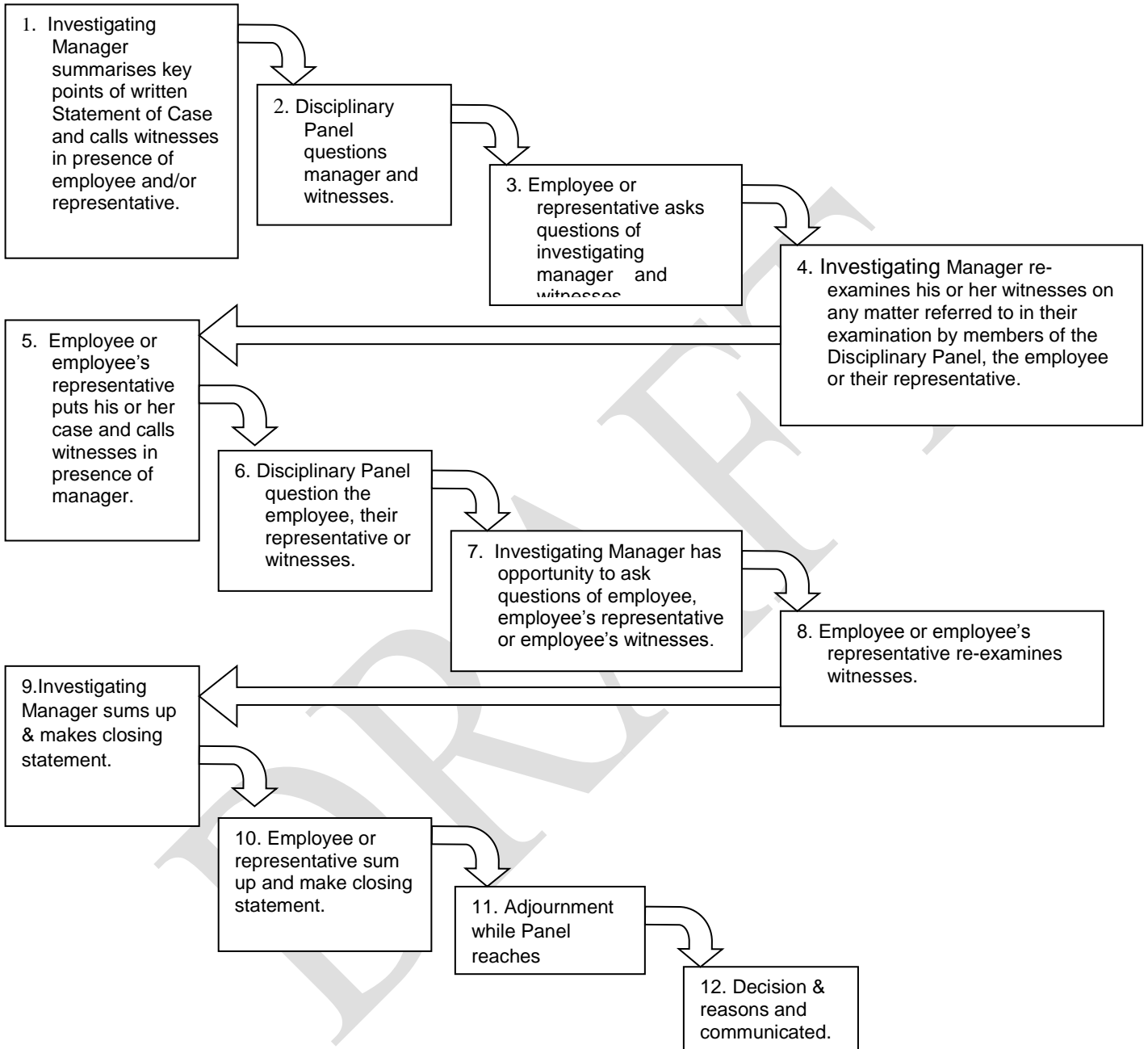
- Violence, either threatened or actual;
- Willful breach of member practices' Code of Conduct resulting in the member practice deciding that you cannot work at that location;
- Theft or unauthorised removal or use of CCG property;
- Malicious and/or negligent damage to CCG property;
- Fraud, dishonesty, falsification of CCG records or documents;
- Unauthorised disclosure of confidential CCG and/or patient information;
- Acts of discrimination or harassment on the grounds of age, disability, gender reassignment, marriage & civil partnership, pregnancy and maternity, race including nationality and ethnicity, religion or belief, sex, sexual orientation against any other employee, client or other third party;
- Taking, consuming or knowingly being under the influence of alcohol or drugs (other than medically prescribed) whilst at work;
- Unlawful possession of, or dealing in, drugs;
- Unauthorised use or copying of Computer software, and/or network; abuse of the CCG's e-mail or internet policy;
- Gross negligence;
- Any acts of aggression or serious discourtesy or rudeness towards staff or patients;
- Flagrant or serious acts of insubordination or the refusal to carry out a reasonable instruction;
- Breach of health and safety rules;
- Failure to maintain required professional registration;
- Bringing the organisation into disrepute; or
- Accessing internet sites with offensive or obscene content, including downloading and / or distributing offensive or obscene material.

The following is a non-exhaustive list of the misconduct offences which, if proven, are likely to result in disciplinary action being taken.

- Persistent lateness;
- Refusal to carry out reasonable instruction;
- Absenteeism;
- Minor infringement of the CCG's policies and procedures;
- Willful poor performance; or
- Breach of professional conduct.

2. Appendix 2 – DISCIPLINARY PROCEDURE FLOWCHART

Summary of What Happens At a Formal Hearing under the Disciplinary



Corporate Policy Implementation Plan Template

Policy Name Disciplinary Policy

Policy Owner:

Target Group	Implementation or Training objective	Method	Lead	Target start date	Target End date	Resources Required
Governing Body	Ensure GB is aware of CCG's responsibilities for disciplinary matter and provide assurance that appropriate process is established to ensure legal compliance	Cover paper to the policy to be presented to the Governing Body	HR Business Partner			staff time, governing body time
Executive Directors	Ensure awareness of responsibilities of CCG process to ensure compliance Individual Executive Director responsibilities Directorate Responsibilities	Discussion with individual directors	HR Business Partner			staff time, executive director time
Managers	Ensure awareness of CCG process and roles	Specific training sessions and 1:1 support to be provided, including awareness of the Guidance in handling Investigations and Complaints.	HR Business Partner			staff time
All Staff	Ensure awareness of CCG processes and procedures	Policy to be placed on website* Information about the policy and CCG process to be placed on the Hub Information about the policy and CCG process to be communicated through internal newsletter Awareness raising item at individual Directorate SMT and Directorate team meetings	HR Business Partner/HR Manager			staff time

Grievance Policy and Procedure

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Grievance Policy and Procedure

Policy ref no:	HR004
Author (inc job title)	Victoria Nangreave, HR Manager
Date Approved	<i>to be added by corporate team once policy approved and before placing on website</i>
Approved by	<i>to be added by corporate team once policy approved and before placing on website</i>
Date of next review	xxxxx
How is policy to be disseminated	Website and see below

Check list for Governing Body/approving committee	
Has an Equality Impact Assessment been completed?	EIA Screening Completed
Has legal advice been sought?	No
Have training issues been addressed?	Yes
Are there other HR related issues that need to be considered	No
Are there financial issues and have they been addressed	No
what engagement has there been with patients/members of the public in preparing this policy	None
Are there linked policies and procedures	Disciplinary Policy, Appeals Policy, Bullying and Harassment Guidance on Investigating Complaints and Allegations related to Employment
Who will approve the policy?	Governing Body
How will implementation be monitored	Through the SCW CSU HR Team
How will the policy be shared with: <ul style="list-style-type: none"> • Staff • Patients • Public 	Via the BNSSG internet site – The Hub and dedicated communication to CCG employees.
Will an audit trail demonstrating receipt of policy by staff be required; how will this be done	Line Managers to check staff are aware of new policy

Version Control		
Version	Date	Consultation
Version 1 - redraft of policy – aligning the three CCG policies together	16.02.2018	For JCC 26.02.2018
Version 2 – policy amended following comments from JCC	9.03.2018	For Governing Body 03.04.2018

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1. Introduction

BNSSG is committed to resolving your problems, difficulties or dissatisfactions in a sensitive, fair and speedy manner. It is your right to seek an appropriate resolution to your problems at work.

This policy has been drawn up in accordance with The Employment Act 2002 (Dispute Resolution) Regulations 2004 and the ACAS Code of Practice on Disciplinary and Grievance Procedures. This now includes the right of recent ex-employees to raise a grievance once they have left the organisation using the Modified Grievance Procedure.

2. Purpose and scope

The policy applies equally to all employees and ex-employees who have left the organisation within the previous three months. It cannot be used where NHS national agreements are in place e.g. pay awards.

Wherever possible, managers and staff should make every effort to resolve a grievance or potential grievance informally at a local level before invoking the grievance procedure.

For those employees whose first language is not English or who have a disability, expressing themselves formally can be difficult. In these circumstances, managers and Human Resources representatives should encourage individuals to seek help from a trade union representative or work colleague. Under the Equality Act 2010, reasonable adjustments to Grievance Procedures must be made which may include assisting employees to formulate written evidence if they are unable to do so because of their disability. In such circumstances advice should be sought from a Human Resources representative.

Where a complaint is maliciously raised, the manager must discuss the case with a Human Resources representative. It may be appropriate in these circumstances to invoke the Disciplinary Procedure.

In cases where two or more employees raise a grievance on the same issue, this will be known as a "Collective Grievance". In such cases, an appropriate representative may set out details of the grievance in writing on behalf of the employees. An appropriate representative shall be defined as Trade Union Representative or a nominated member of the group.

A grievance raised by an employee whilst subject to disciplinary proceedings and the grievance has a bearing on the disciplinary proceedings, it can be raised as a relevant issue in the course of the proceedings and disciplinary proceedings may be suspended. In instances where an initial investigation into the grievance finds that the grievance and disciplinary cases are related it may be appropriate to deal with both matters concurrently.

If the grievance complaint is found to have no bearing on the matters being investigated the disciplinary proceedings will continue and the grievance meeting will be heard at the conclusion of the disciplinary process.

All information shared and discussed during the grievance processes shall be dealt with in strict confidence by all parties.

All parties agree that a status quo should be maintained wherever possible, pending resolution of the grievance.

3. Mediation

Mediation may be considered at any stage of the procedure to secure an effective resolution. When considering mediation as a tool for resolution advice should be sought from the HR department. Mediation will be used only where all parties involved in the grievance agree.

4. Duties and responsibilities

The responsibility for the provision of the Grievance Policy rests with the CCG's Governing Body. It is the responsibility of the CCG's Executive Team to ensure that the Policy is implemented through the organisation's line management structure.

What are the Responsibilities of the Human Resources Department?

It is the responsibility of the Human Resources Department:

- To provide training for all managers and on-going support in the application of the policy in individual cases
- To ensure the policy is continually reviewed and updated as appropriate

What are the Responsibilities of Managers?

It is the responsibility of managers:

- To ensure the employees are made aware of the Grievance Policy and Procedure and their responsibilities under the policy
- To take timely, appropriate action to deal with grievances, balancing the needs of the individual with the needs of the service
- To put thought into resolving grievances, remembering that a grievance is not the same as a disciplinary matter and is an occasion when discussion and dialogue may lead to an amicable solution
- To endeavour to resolve grievances raised at the lowest level of the procedure as possible
- To keep written records during the grievance process
- To ensure that a resolution deals effectively with the grievance and any relevant outcome is monitored and reviewed as appropriate
- To consider the confidentiality of information before providing or discussing it
- To inform their Human Resources representative when a formal grievance has been raised
- To contact the Human Resources Team to discuss the Modified Grievance Procedure for ex-employees if this is to be implemented.

What are the Responsibilities of the Employee?

It is the responsibility of employees:

- To attempt to resolve the grievance as soon as possible by raising an issue normally with their line manager or an alternative manager, where appropriate

- Where an issue is with their line manager and it is inappropriate to raise the grievance directly, they should raise the grievance with the next level of management
- To detail the nature of their grievance in writing to the appropriate manager and complete the necessary forms attached (Appendix C)

What is the Role of Staff Side?

It is the role of staff side to negotiate, raise concern, or provide support on the member's behalf as necessary in relation to this policy

5. Time Limits

To assist the speedy resolution of grievances, time limits are identified at each stage of the procedure. However, there may be circumstances where it is **not** possible to comply with these time limits, in which case all reasonably practicable steps will be taken to ensure that the relevant stage is completed as soon as is possible after the expiry of the appropriate time limit. Completion of each stage of the procedure must be taken without unreasonable delay.

In this policy where time limits referred to are in days these are regarded as calendar days. In the interests of employee relations every effort should be made to complete the relevant part of the procedure without delay. The time limits can be extended, for example to take annual leave into account.

6. Rights to Accompaniment

At informal stages it is not usually necessary for employees to be accompanied. However should an individual ask to be accompanied this should not be unreasonably refused. In such cases managers should seek advice from a HR representative.

At formal stages of the procedure, employees have the right to be accompanied by their staff side representative or work colleague not acting in a legal capacity. They must be informed of their right and then choose whether or not to exercise it. It is the employee's responsibility to make arrangements to be accompanied.

Please note, in order to minimise any potential distress for all parties, we can only accept representation from staff side representatives or work colleagues and not relatives or friends who are not employed by the organisation.

Further information on the right to be accompanied can be found in Appendix A.

7. What is a Grievance

A grievance is an employment related problem which you individually or as part of a group cannot resolve informally.

Where appropriate, employees are encouraged to use mediation to resolve problems.

8. What Sort of Problems does this Procedure cover?

Any employment related concerns. Examples would be:

- Terms and conditions of employment, health and safety issues, relationships at work, new working practices, organisational change, or equal opportunities
- If you are dissatisfied with an action your manager has taken or proposes to take.

9. What Sorts of Issues are not covered by this Procedure?

- Any outcome of a disciplinary meeting which has its own appeals process
- Issues relating to a banding outcome, redeployment, termination of contract or redundancy – all of the above have their own appeals process
- An issue outside of the organisation's sphere of responsibility
- If you feel are you being harassed, victimised or the subject of discrimination please see the Bullying and Harassment policy for advice and action.

This policy does not link to the Appeals Policy – there are three stages to this policy and no further right to appeal.

10. Status Quo

Once a grievance has been lodged the "status quo" (original position) where practicable will operate until the procedure is exhausted. However, where there is a risk to service delivery "status quo" is unlikely to be maintained and this decision will always rest with the appropriate manager.

11. How do I Raise a Grievance?

You should aim to resolve your grievance(s) informally with your line manager and as soon as is reasonably practical. It is in everyone's best interest that grievances are resolved at this stage in a timely manner and every effort should be made to do so.

In some cases, depending on the situation, this may need to involve a third party.

If you cannot resolve your grievance informally, then you should raise it formally, using the procedure below.

It is important that you set out clearly the nature of the grievance and indicate the outcome that you are seeking. If your grievance letter is unclear, further clarification will be sought.

12. Raising a Formal Grievance

Step 1

Inform your manager of your grievance in writing and send a copy to your Human Resources department. If your grievance relates to your line manager, you may raise your grievance with your manager's line manager or another appropriate manager in the organisation. If you are unsure of whom to address your grievance to, HR will allocate an appropriate manager to hear your grievance.

If your grievance is in relation to the Chief Executive, this should be directed to the Chair.

If you need assistance in setting out your grievance(s), you are encouraged to seek help from your trade union representative or a work colleague.

Step 2

Your manager will then invite you to a meeting with them to discuss your grievance as soon as practically possible. You have a right to be accompanied at this meeting by either a trade union representative or a work colleague not acting in a legal capacity (see Appendix A on who may accompany you). A member of the HR department will also attend. You must take all reasonable steps to attend the meeting.

All employees involved in any grievance investigation will be expected to fully cooperate with the process. This includes making themselves available for any investigatory meetings within 5 working days of a request being issued by the investigatory team. Failure to attend an investigatory interview within this timeframe will result in the matter being escalated to the employee's line manager unless there is a substantial reason as to the lack of availability for the meeting. Please note other work commitments will not be seen as a reasonable reason for delaying an investigatory meeting.

All investigations must be seen as a priority due to the stress and upset that investigations cause individuals.

If you or your companion cannot attend on the proposed date, you may suggest another date, provided it is reasonable and not more than 5 working days after the date originally proposed. This limit may be extended by mutual agreement. Alternatively, in the case of a representative not being available for the meeting, staff may wish to seek a suitable alternative, including other staff side representatives, or a work colleague not acting in a legal capacity, who can accompany them but not represent them.

At the meeting you will need to explain your grievance and give an indication of how you think it might be settled.

If your manager feels your grievance requires investigation, the meeting will be adjourned in order for that to take place.

Following the meeting, your manager will respond in writing to your grievance within a reasonable time period (as a guide this will normally be 5 working days). If this is not possible this should be discussed with you. As part of the response, your manager will inform you of your right to appeal. This must be done within 5 working days of the date of the outcome letter.

Step 3

If you feel that your grievance has not been satisfactorily resolved, you have the right to an appeal meeting. You will need to raise the appeal in writing to the Chief Executive or the Chair if your grievance is with the Chief Executive. This should be received within 5 working days of the written outcome at step 2.

A Director will be appointed to hear your case, they will be accompanied by a Senior Manager and a Senior Human Resources representative may also be present in an advisory capacity. The Director will invite you to a meeting within 10 days of receiving your appeal. You have the right to be accompanied at the meeting by a Trade Union representative or work colleague.

It may be necessary to adjourn the meeting should an investigation need to take place before an outcome can be reached. You will be advised in writing of the reasons for the adjournment and the date the meeting is to be reconvened.

Following the appeal meeting, the decision will be confirmed in writing. You will be informed that this is the final stage and that you will have no further right to appeal.

13. Raising a Grievance after leaving the Organisation?

Wherever possible, a grievance should be dealt with before you leave. If you leave and raise a grievance or if the above 3 step procedure has either not started or been completed before you leave, the 'Modified Procedure' will apply. All grievances should be received within 1 month of an employee's leaving date to be considered.

14. Overlapping Grievance and Disciplinary Cases

Where an employee raises a grievance during a disciplinary process, the disciplinary process may be temporarily suspended in order to deal with the grievance. Where the grievance and disciplinary cases are related it may be appropriate to deal with both issues concurrently

15. Training Requirements

Training and support will be available to all line managers in the implementation and application of this policy.

16. Equality Impact Assessment

All relevant persons are required to comply with this document and must demonstrate sensitivity and competence in relation to the nine protected characteristics as defined by the Equality Act 2010. The Act prohibits discrimination on the basis of age, disability, gender reassignment, marriage/civil partnership, pregnancy/maternity, race, religion/belief, sex or sexual orientation. It also means that each manager or member of staff involved in implementing the policy must have due regard to the need to: eliminate unlawful discrimination, harassment, victimisation; advance equality of opportunity between those who share a protected characteristic and those who do not; and foster good relations between people who share a protected characteristic and those who do not. If you, or any other groups, believe you are disadvantaged by anything contained in this document please contact the Document Lead (author) who will then actively respond to the enquiry.

17. Monitoring compliance and effectiveness

This policy will be reviewed every 3 years but can be reviewed at any time if the CCG deems it necessary to do so or a review is requested by management or staff.

18. Counter fraud

The CCG is committed to the NHS Protect Counter Fraud Policy – to reduce fraud in the NHS to a minimum, keep it at that level and put funds stolen by fraud back into patient care. Therefore, consideration has been given to the inclusion of guidance with regard to the potential for fraud and corruption to occur and what action should be taken in such circumstances during the development of this procedural document.

19. References, acknowledgements and associated documents

Disciplinary Policy

Guidance on Investigating Complaints and Allegations Relating to Employment

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20. Appendices

Appendix A: Right to be Accompanied

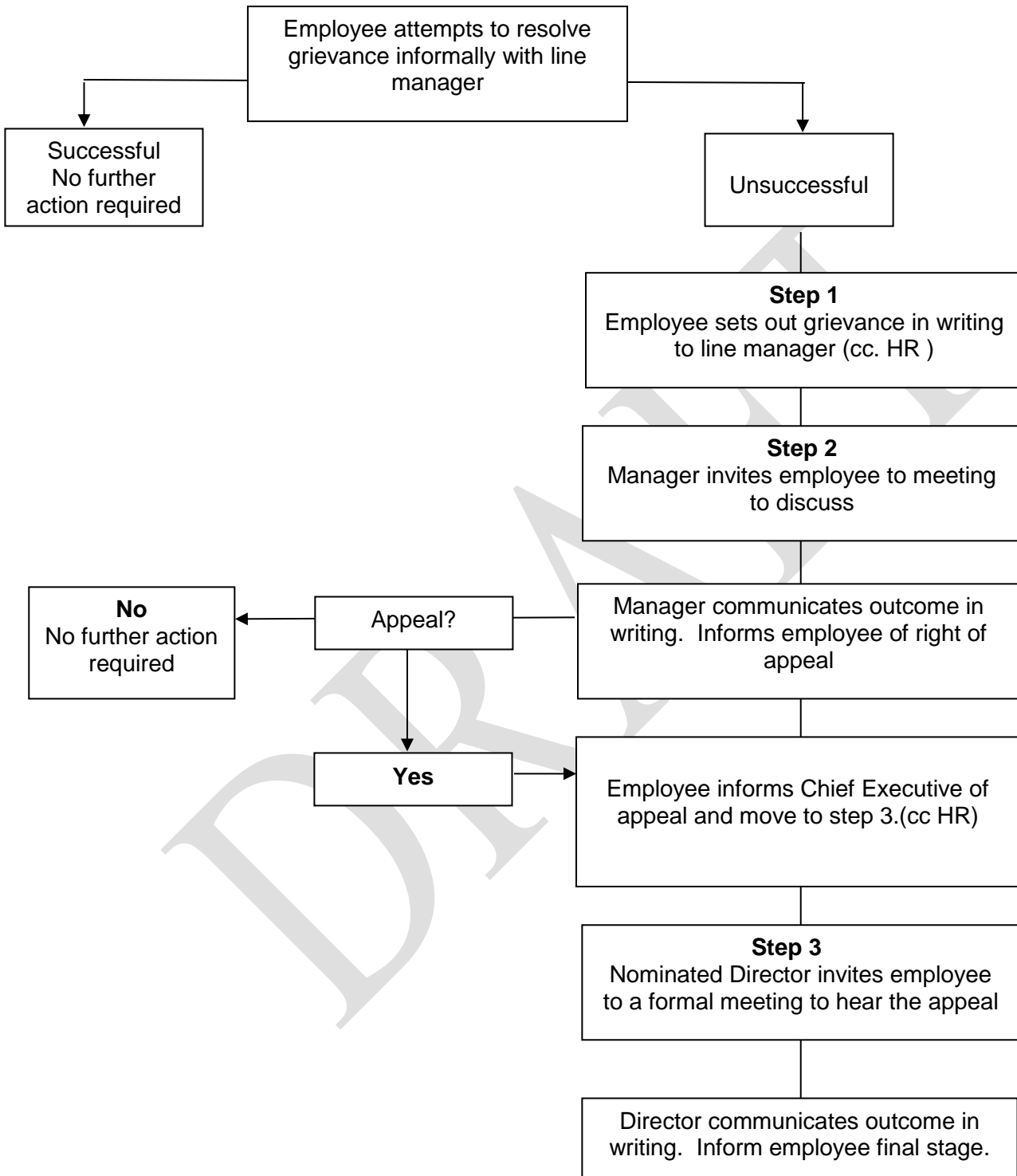
The right to be accompanied (adapted from ACAS Code of Practice).

- Any outcome of a disciplinary meeting which has its own appeals process
- All workers/employees have the right to be accompanied at a grievance meeting
- The companion can be a work colleague or a trade union representative not acting in a legal capacity
- You should tell your line manager/manager facilitating the grievance meeting who your chosen companion is
- Your companion can have a say at the meeting but cannot answer questions on your behalf
- When choosing a companion you should be aware that it would not be reasonable to insist on being accompanied by a colleague whose presence would prejudice the meeting or who might have a conflict of interest
- Nobody has to accept an invitation to act as a companion, and should not be pressurised to do so
- Work colleagues acting as companions can have reasonable paid time off to prepare for and attend a grievance meeting.

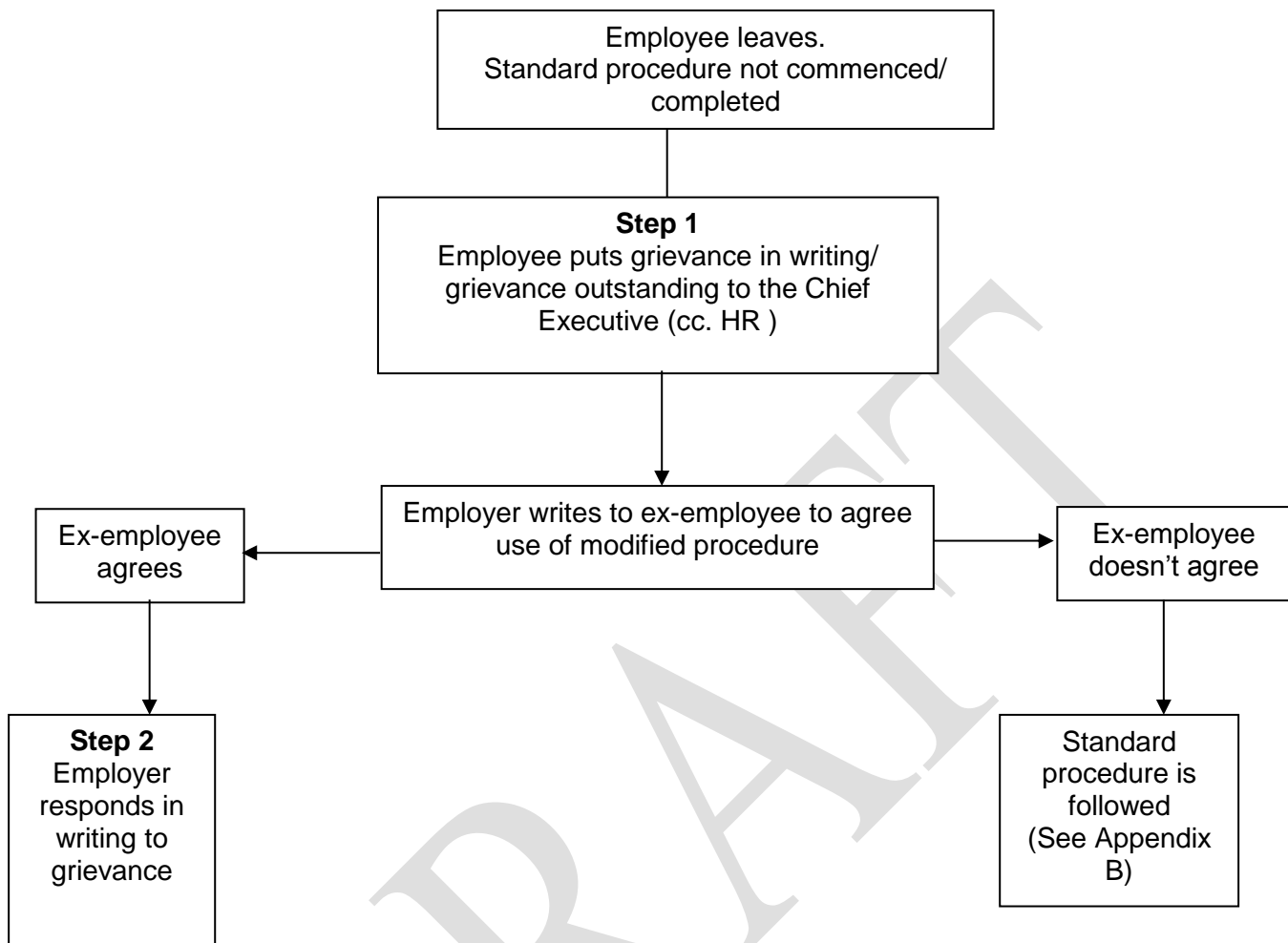
Appendix B: Grievance Meetings and Hearings - General Guidelines

- The aim of the meeting is to fully explore and discuss your grievance and to seek a mutually acceptable resolution
- Managers will be responsible for carrying out any investigation, including interviewing any witnesses and collating any relevant information
- Each party must submit and exchange a statement of case together with any supporting information to the panel at least 7 days prior to the a hearing taking place
- The arrangements for the meeting will depend upon the nature of your grievance. Managers responding to your grievance are expected to be sensitive to the needs of those involved
- You and any other party involved in the grievance have the right to be accompanied by a trade union representative or work colleague not acting in a legal capacity
- Employees will need to be available for any investigatory meetings within 5 working days of a request being issued by the investigatory team. Failure to attend an investigatory interview within this timeframe will result in the matter being escalated to the employee's line manager unless there is a substantial reason as to the lack of availability for the meeting. Please note other work commitments will not be seen as a reasonable reason for delaying an investigatory meeting
- If you or your representative cannot make the meeting date, you can suggest another date so long as it is reasonable and not more than five working days after the date originally proposed by the manager. This five day limit may be extended by mutual agreement. Alternatively, in the case of a representative not being available for the meeting, staff may wish to seek a suitable alternative, including other staff side representatives, or work colleague not acting in a legal capacity, who can accompany them but not represent them
- Both parties are able to call witnesses to the hearing
- A member of the Human Resources department will be present at the meeting to assist in any matters of procedure
- A note taker may be present at the meeting. A summary of the main issues under discussion will be recorded
- The manager considering your grievance may adjourn the meeting at any time in order, for example, that further evidence may be produced or for any other reason mutually agreed by you and others involved
- The manager may need to speak to you again for points of clarification or for further questions
- A companion or work colleague must not be part of the grievance or witness to any incident relating to the grievance

Appendix C: Standard Procedure Flowchart



Appendix D: Modified Procedure Flowchart



Corporate Policy Implementation Plan Template

Policy Name **Grievance Policy**

Policy Owner:

Target Group	Implementation or Training objective	Method	Lead	Target start date	Target End date	Resources Required
Governing Body	Ensure GB is aware of CCG's responsibilities for handling grievance matters and provide assurance that appropriate process is established to ensure legal compliance	Cover paper to the policy to be presented to the Governing Body	HR Business Partner			staff time, governing body time
Executive Directors	Ensure awareness of responsibilities of CCG process to ensure compliance Individual Executive Director responsibilities Directorate Responsibilities	Discussion with individual directors	HR Business Partner			staff time, executive director time
Managers	Ensure awareness of CCG process and roles	Specific training sessions and 1:1 support to be provided, including awareness of the Guidance in handling Investigations and Complaints.	HR Business Partner			staff time
All Staff	Ensure awareness of CCG processes and procedures	Policy to be placed on website Information about the policy and CCG process to be placed on the Hub Information about the policy and CCG process to be communicated through internal newsletter Awareness raising item at individual Directorate SMT and Directorate team meetings	HR Business Partner/HR Manager			staff time