

POLICY: Disciplinary	REF: ESD006 Employment & Staff Development	VERSION: 1
APPROVAL BODY:	DATE : March 2017	REVIEW DATE:
LEAD PERSON:		
VERSION	REVIEWER/APPROVAL	REVIEW NOTES
1. 22/03/2017	Multi Academy Trust Board	New Policy
2.		

Disciplinary Policy

Purpose of the Policy

Activate Learning Education Trust aims to deliver the highest quality learning experience to our students, to inspire and develop the change-makers of the future. To succeed, we expect our employees to lead by example and adhere to exemplary standards of behaviour, conduct and attendance at all times.

The disciplinary process provides a framework for dealing with situations where employees clearly know what is expected of them by way of standards of work or behaviour.

It is our policy to ensure prompt, consistent and fair treatment for all employees and be clear about the expectations of both the employee and Activate Learning Education Trust.

What is the Difference between a Policy and a Procedure?

Many sources of information are referred to as 'policies' and/ or 'procedures'. A policy usually describes the Trust's approach to a certain issue. A procedure usually describes the process which the Trust will follow in respect of a particular issue.

Some subjects will have both a policy and a procedure; in others, the policy may form part of the procedure. Regardless of whether the information on a particular subject is called a 'policy', a 'procedure' or both, the key factor is that they set out guidance on how you should act and how the Trust will act towards you.

This document incorporates the areas relating to policy only. Process and procedures are set out in the Disciplinary Procedures and Guidelines, which should always be considered in conjunction with the policy.

This policy has been reviewed and revised in line with changes in legislation and incorporates all essential elements of the ACAS (Advisory, Conciliation and Arbitration Service) Code of Practice 2009. ACAS is the authoritative advisory and guidance body for both Government and employers. Every effort has been made to ensure that our policy reflects both the spirit of the code and best employment practice.

Policy Scope

The Disciplinary Policy is designed to help and encourage all employees to achieve and maintain expected standards of conduct, attendance and job performance. It will only be used when necessary and as a last resort.

Where possible, informal and/ or formal counselling, mediation, conciliation or other good management practice will be used to resolve matters prior to any disciplinary action being taken.

Matters relating to skills, aptitude, ill health and other capability issues will be dealt with under the Capability Policy. Considerations of other policies may also be required. Ill Health should be dealt with under Managing Sickness and Absence

The policy applies to all staff other than 'senior post holders' as defined in the Instrument and Article of Governance, and employees during a probationary period, covered under the Trust's Probation Policy.

Safeguarding

Where Safeguarding concerns are raised/ involved, the current Safeguarding guidelines and procedures must be followed and Group HR Services immediately notified who will consult with the LADO. Procedure under the disciplinary policy should be suspended until agreement has been given to proceed.

Criminal Offences

Whilst this may not in itself be considered a reason for disciplinary action, consideration must be given to the relevance and potential affect any charge or conviction would have on the employee's suitability to their role, relationships with colleagues and students, the impact on business reputation and the appropriateness within the Trust.

Group HR Services should be advised immediately if an employee is charged with or convicted of a criminal offence (including outside of employment).

Reference must be made to the policy for Recruitment of Ex-Offenders.

Trade Union Representatives

Normal standards of conduct and performance apply to Trade Union representatives as with other employees. Where disciplinary action is being considered against a Trade Union representative, the normal disciplinary procedure will be followed.

Where formal action is being considered the matter will be discussed with a regional official at an early stage.

General Principles

No disciplinary action will be taken until the allegations have been fully investigated and the employee is given the opportunity to state their case before any decision is made.

All matters will be handled without undue delay, with the employee being notified about the nature of the complaint at each stage of the process.

Any hearing will be formally notified with at least 48 hours' notice and all decisions confirmed in writing within five working days of any meeting.

The right to be accompanied by a colleague or workforce representative applies once formal disciplinary proceedings have been instigated. However, where in the view of the panel chair, it is considered that having a colleague or representative present for support will be beneficial this may be considered. Solicitors are not permitted.

Responsibilities

Line managers are responsible for ensuring that their team meets the appropriate standards of conduct and performance. Therefore they would handle all minor issues in a timely and prompt manner.

Group HR Services will assume the responsibility for handling and managing cases where the formal process is potentially required and conduct any investigation to ensure fair application of the policy across the Trust.

1. Informal Line Management Decision – Non-Disciplinary Stage

Before considering progression to the formal disciplinary process, the usual course of action for minor situations, i.e. minor misconduct or work performance issues in the first instance, would be an **informal discussion** between the line manager and their employee.

Examples of misconduct which, upon first occurrence should be addressed informally are listed below. This list is not meant to be exhaustive. If in doubt, managers should seek guidance from Group HR Services.

- Persistent lateness and poor time-keeping.
- Unauthorised absence from work or failure to follow the Absence Policy.
- Smoking within unauthorised areas.
- Failure to work in accordance with procedures.
- Inappropriate standards of personal presentation or personal hygiene.
- Initial work performance issues.

The line manager would immediately address and discuss the issue with their employee to give them the opportunity to resolve and improve.

Where improvement is required, the employee must be given clear guidelines as to:

- what is expected of them in terms of improving shortcomings in conduct or performance;
- the timescales for improvement;
- when this will be reviewed;
- the employee must also be told, where appropriate, that failure to improve may result in formal disciplinary action.

The usual outcome for a minor failing in performance or misconduct would be a **verbal warning** issued by the line manager.

A record of the meeting and the improvements required/ expected should be made and given to the employee. A copy will also be placed on the employee's personal file.

It is imperative that any actions are followed up and improvements recognised and recorded.

It would be expected that no further breaches would occur unless there were acceptable extenuating circumstances.

Where the desired improvement has not been made, or for more serious breaches, the line manager would seek immediate guidance from Group HR Services.

2. The Investigation – Non-Disciplinary Formal Stage

Where the informal process has failed, or the matter is more serious, a formal investigation would be carried out by a suitably trained manager or Group HR Business Partner who is not directly involved in the incident. This would determine whether disciplinary proceedings are appropriate.

Until the investigation has been completed and a decision made, any actions are not considered as disciplinary, even where it may be necessary to suspend an employee whilst the investigation is being carried out.

Suspension During Investigation

It may be appropriate to suspend an employee from their duties in certain circumstances. This list is not meant to be exhaustive and examples include:

- a serious misconduct allegation which, if proven, would result in summary dismissal;
- relationships have irretrievably broken down;
- the employee's continued presence at work could prejudice the investigation, i.e. witness intimidation or evidence tampering;
- the employee has acted in an offensive or violent manner, or threatened violence;
- the employee has been accused of serious bullying or harassment;
- there are grounds to believe that the employee might deliberately cause damage either to reputational risk or physical damage in the workplace, or

- where the matter under review is of a highly sensitive nature.

The final decision to suspend an employee will be made by the most senior manager on site, following discussion and agreement with the Group Director of Human Resources.

The Chair of Governors must be informed of any employee suspensions.

Suspension is not a disciplinary sanction and will be on full pay. This period will be kept as brief as possible, usually no more than 14 days in complex cases. Progress would be regularly reviewed by the investigating manager and updates provided to the employee.

The suspended employee has the right to question their ongoing suspension if they feel that the process is taking an unreasonable amount of time to progress.

3. Scope and Conduct of an Investigation

Evidence is gathered in the form of fact-find meetings, witness statements, historic file notes, performance reviews, etc.

In cases of disputed testimony, corroborating evidence should be sought.

The investigation held will be in proportion to the seriousness of the allegation.

An investigation does not form part of the disciplinary process and so there is no statutory right for an employee to be accompanied during this fact-finding stage.

The scope will be confined to the allegations raised. However, where similar issues have been previously raised, these should be reviewed and where relevant, considered for context, i.e. potential patterns of behaviour/ conduct or previous warnings. The purpose is not to re-hear or re-open any historic cases for investigation.

Whilst gathering evidence, permission may be requested by the investigating manager to use a digital recording device. Both parties would have to agree to this, the digital recording device would be provided by HR and the employee may request a copy of the audio file. The notes would still be written up for the case report.

4. Support for employees affected by disciplinary action

It is recognised that being subject to investigation and disciplinary action can be stressful for employees and for all parties involved. Every effort will be made to deal with and conclude matters promptly.

The Employee Assistance Programme is available to staff. Contact details are available from the HR Department.

5. Potential Policy Conflicts During Investigation

An employee may raise an Employee Related Concern (ERC), formally known as a grievance, during the investigation/ disciplinary process. If the concern:

- is unrelated to the allegation, proceedings should continue and the matter dealt with separately;
- essentially constitutes as the employee's defence, it is best to deal with both matters at the same time;
- seeks to criticise or cast doubt on the integrity of the disciplinary hierarchy, i.e. the management involved within the decision making process, any disciplinary proceedings would be adjourned and the concern investigated/ resolved, or if possible, side-stepped by appointing an independent panel from a different part of the business to deal with the concern separately.

Where an employee is subject to a medical fit note, it may be necessary to refer also to the Absence Management Policy.

6. The Decision Process Whether to Proceed with Disciplinary Action

When the investigation has been concluded, a case review by Group HR Services will determine whether there is:

- a) no case to answer;
- b) further information still required, therefore the investigation needs to continue (in proportion to the seriousness of the case), or
- c) sufficient evidence and cause for concern to progress to a disciplinary hearing.

The outcome as to whether or not the case is to be progressed should be communicated to the employee as soon as is reasonably possible.

7. The Formal Disciplinary Process – Disciplinary Pre-Hearing

Where the matter is to be progressed as a disciplinary and a hearing arranged, the employee should be informed in writing at least 48 hours beforehand, setting out the nature of the complaint, confirming the venue and time, the panel members and their right of representation.

In complex cases timescales may be extended to take into account the needs of both parties to have adequate time to review all relevant information.

Should the employee who is subject to disciplinary action resign during the course of the process, proceedings and action would still continue. However, an executive decision may be made under extenuating circumstances to cease proceedings.

The right to be accompanied can either be a colleague who is not involved with the case or a Trade Union representative. Solicitors are not permitted.

It is the employee's responsibility to obtain agreement of their chosen representative with Group HR Services before the hearing and to organise their attendance accordingly.

If the employee wishes to request further witnesses or introduce new witness statements to the hearing, these must be advised and presented to HR at least 24 hours beforehand.

Where the hearing needs to be rescheduled by the employee in the event of circumstances outside of their control, i.e. illness, it will be rescheduled.

Copies of the Disciplinary Policy, any relevant papers and evidence notes will be available to all parties on request at least 48 hours in advance of a hearing. Anonymity and confidentiality will be respected and considered by Group HR Services as to what, if and how certain sensitive information can or will be divulged. If appropriate, a pre-hearing meeting should be held with the employee to discuss how to consider and handle the feedback and evidence.

8. The Disciplinary Hearing

The panel members of the hearing would be a:

- a) suitable manager, and
- b) Group HR Business Partner

When selecting the panel, the severity of the complaint, the potential sanction and appeal must be considered in terms of authorisation levels.

Where the employee fails, without good reason, to attend a disciplinary hearing, after taking reasonable steps to establish the reason for the absence, the meeting may still proceed in his/ her absence.

The manager will chair the hearing and outline the proceedings.

The investigating manager will then present their findings to all parties. At the end of their summary both parties may ask questions.

The panel will then ask further questions of the employee and offer them the opportunity to state their case and make them aware of any mitigating factors which should be considered.

The hearing will then adjourn to allow time for decision making.

It may be possible to advise the decision at the hearing. Alternatively, further time may be required to fully consider the case and a date to reconvene would be agreed.

9. Possible Outcomes to a Disciplinary Hearing

The possible outcomes are:

- a) No case to answer or evidence to prove - no further action required against the employee.
- b) Further investigation required (usually following new evidence or information).
- c) There is a case to answer – case upheld and appropriate sanction applied.

No case to answer

If there is no substantive evidence to support the allegation or where the employee has provided an adequate and acceptable explanation, the panel will adjourn to discuss whether the case should be dismissed.

This would be confirmed in writing to the employee within five working days.

Further investigation required (usually following new evidence or information)

If new and substantive facts emerge during the hearing, it may be necessary to adjourn to consider and/ or arrange for further investigation.

Likewise, where the facts are in dispute, no disciplinary sanction is to be imposed until the case has been fully investigated and there is a reasonable belief that the employee committed the act in question.

Any future dates to reconvene should be agreed as soon as practicable.

The case is upheld

The case is upheld where it is agreed that the employee does not meet acceptable standards.

An employee will not normally be dismissed for a first breach of discipline, except in the case of gross misconduct or exceptional circumstances.

The normal penalty for gross misconduct is summary dismissal (without notice or payment in lieu of notice).

10. Disciplinary Sanctions

First Written Warning

The sanction for repetition of minor misconduct offences, or where the employee is found to be performing unsatisfactorily within a set period, is a written warning for six months.

Final Written Warning

A Final Written Warning will be applied where:

- an offence is of a very serious nature, even upon first occurrence, or
- an employee with a live warning persists in the misconduct or continued failure to improve within a set period.

Timescales for the expiry of Warnings

Warnings issued shall be deemed to have expired, further to no further issues, after the following periods of time:

- Verbal Warnings: 3 months
- First Written Warnings: 6 months

- Final Written Warnings: 12 months

Sanctions in addition to Warnings

Demotion or Transfer to alternative post or location

Further sanctions may be appropriate, i.e. re-deployment or post transfers. For example, where an employee's conduct is considered to be unacceptable and dismissal is not appropriate, or where work relationships have broken down.

Financial sanctions

Reduction in pay may be considered where re-deployment or post transfer is an appropriate resolution.

11. Gross Misconduct – Dismissal

Some acts, termed gross misconduct, are so serious in themselves or have such serious consequences that following a disciplinary hearing, they may call for summary dismissal.

Below are examples of offences which may be regarded as gross misconduct. This is not an exhaustive or exclusive list:

- Conduct believed to be violent, dangerous or intimidating.
- Bullying, sexual, racial or other harassment of an employee or a student.
- Theft or unauthorised possession of property belonging to any employee, student or the Group.
- Wilful damage of Trust property.
- Fraud or deliberate record falsification, i.e. academy registers, reports, accounts, expenses, self-certification forms.
- Refusal to carry out duties or reasonable instructions or compliance with Trust policies.
- Serious or deliberate acts of disrespect, insubordination or breaches of the employee code of conduct.
- Negligence, incompetence or failure to apply sound professional judgement.
- Misuse/ consumption of alcohol or drugs.
- Failure to observe the Trust's rules and procedures concerning health and safety at work.
- Serious breaches of confidentiality or security procedures.
- Criminal offences, irrespective of whether committed during or outside of work. This includes, but not limited to, bribery or corruption or where it (or could) adversely affect the Trust's reputation, the employee's suitability for the type of work they perform or acceptability to other employees or students.
- Deliberately accessing websites containing pornography, offensive or obscene material or creating or distributing pornographic material.

A decision to dismiss sits with the Head/Principal in conjunction with the Group Director of Human Resources & Organisational Development.

12. Post-Hearing Action

The employee will be advised of the hearing outcome in writing to the employee within five working days and confirming their right to appeal.

In cases of dismissal, the notification letter must confirm the grounds for dismissal, i.e. a 'written statement of reasons for dismissal' in line with ACAS guidelines - a right of employees with two years' service, the date on which their employment contract will be terminated, the notice period, if applicable, and right of appeal.

A copy of the written warning will be kept on the employee's personal file but will be disregarded for disciplinary purposes after the time period set out above, and subject to achieving and sustaining the required satisfactory conduct.

The employee will be advised of the potential consequences of further misconduct of failure to improve performance, i.e. further disciplinary action and sanctions, such as re-deployment or dismissal.

All records will later be disposed of in accordance with the Data Protection Act 1998.

Regulation of teacher misconduct

In cases of serious teacher misconduct the Trust will make a referral to the National College for Teaching and Leadership (NCTL), which is an executive agency of the Department for Education.

The employee will be notified that such a referral will be made.

NCTL is responsible for regulating the teaching profession in England and will investigate cases of serious teacher misconduct and decide whether to refer a case to a professional conduct panel. The panel then investigates whether a prohibition order should be issued.

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/401887/Teacher-misconduct-Disciplinary-Procedures-for-the-teaching-profession.pdf

13. Appeals

An employee has the right to appeal against the outcome of a disciplinary hearing.

An appeal will only be granted to re-consider the disciplinary sanction or a failure to follow policy; the purpose is not to revisit the original decision unless significant new evidence has come to light.

The appeal must be put in writing to the Head/Principal and be received within five working days of the hearing. The letter should contain the grounds for appeal.

Any disciplinary sanction imposed can be reviewed but not increased.

The appeal hearing will be held as soon as is reasonably practicable, ideally within ten working days of receipt of the appeal notice.

The appeal panel:

- Cases up to dismissal - a manager of higher seniority and a different Group HR Business Partner
- Cases resulting in dismissal - the Head/Principal or their designated deputy and a different Group HR Business Partner

The appeal decision is final and will be notified to the employee in writing within five working days of the appeal hearing.

Monitoring and Evaluation

The Trust and Head/Principal will monitor the operation and effectiveness of the Disciplinary Policy.

Policy created: March 2017

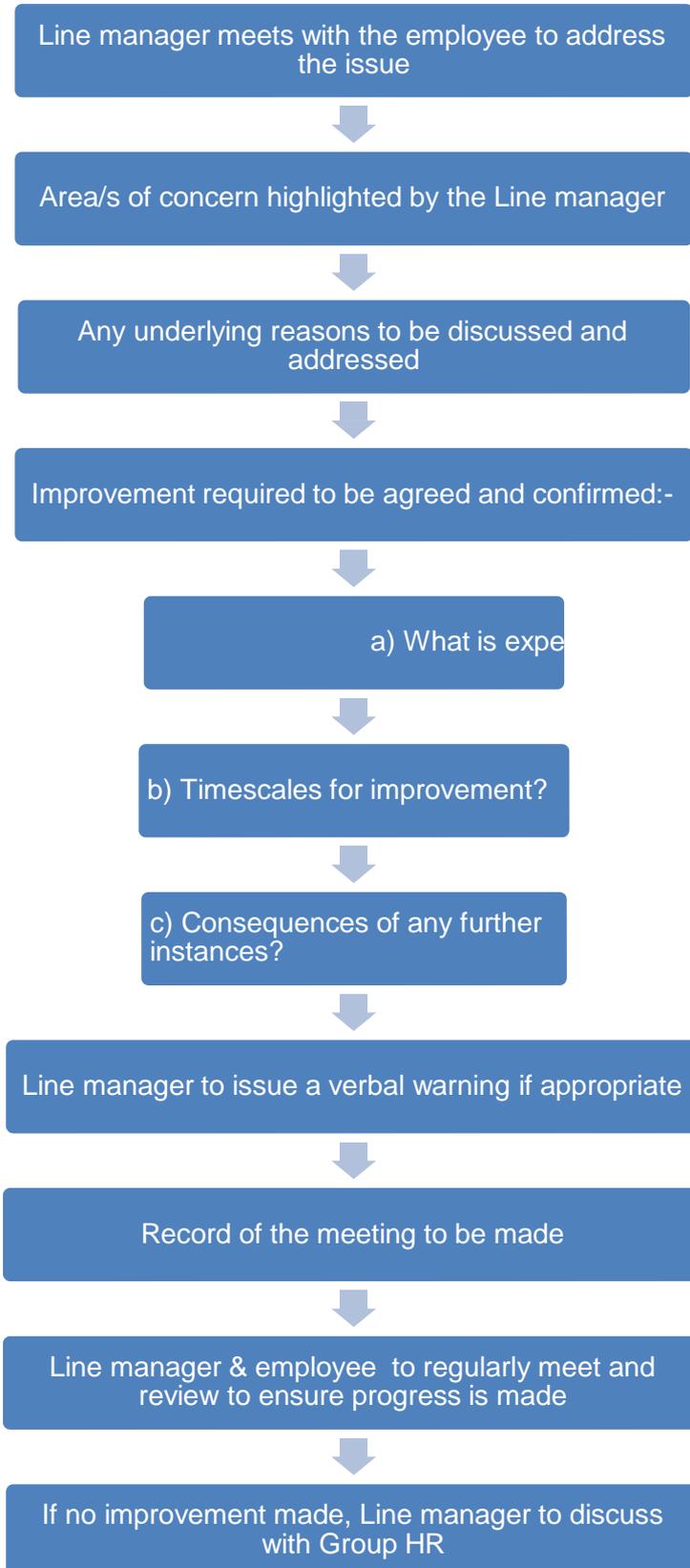
Policy review date:

Any changes to the procedure will be notified to all staff through the Trust's normal communication channels following consultation with workforce representatives.

Appendix 1

Informal Process - Non Disciplinary

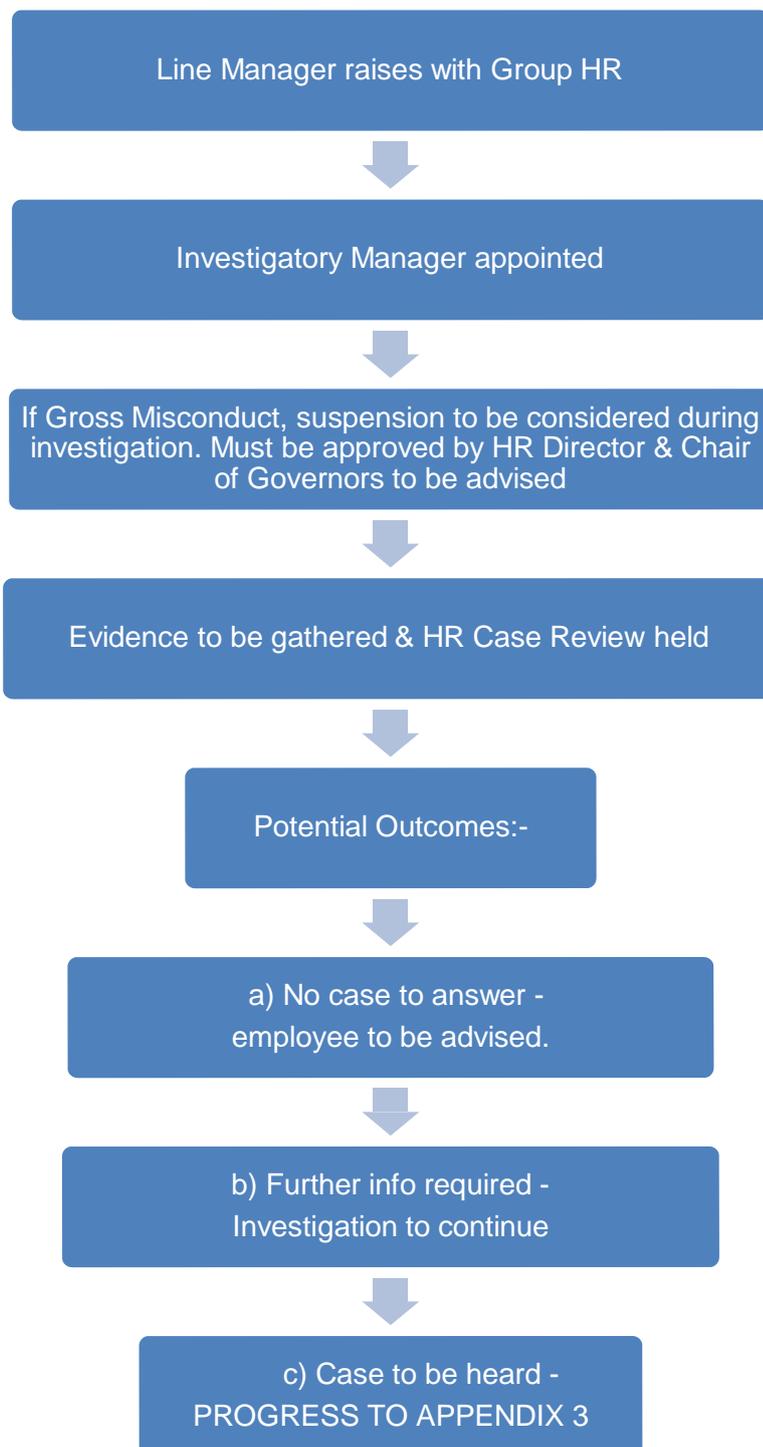
For minor situations, i.e. initial work performance or minor conduct issues.



Appendix 2

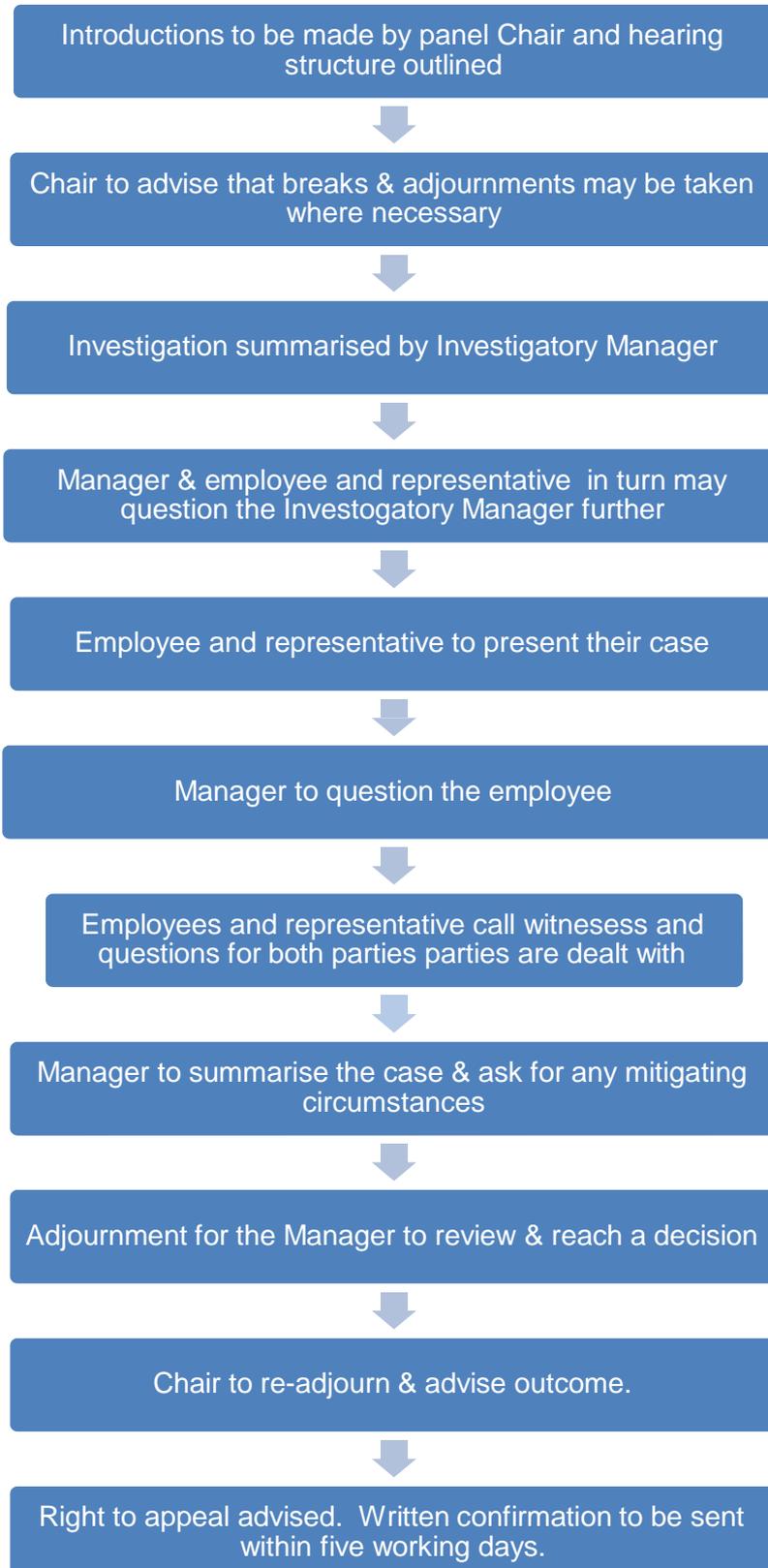
Formal Process – Non-Disciplinary

Initial stages for more serious cases or where the informal process has failed.



Appendix 3

Structure of a Disciplinary Hearing



Appendix 4 Structure of an Appeal Hearing

