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DISCIPLINARY POLICY (Managing Staff Conduct and Performance Procedure)

1. POLICY STATEMENT

- 1.1 This document outlines the Disciplinary Policy and Procedure for the East of England Ambulance Service NHS Trust (the Trust).
- 1.2 The policy aims to promote, encourage and support all employees to achieve and maintain high standards of conduct and work performance through the application of a fair, effective and consistent approach when dealing with issues of staff conduct and performance.
- 1.3 This policy has been written in partnership by management and staff side, and in accordance with current employment legislation.

2. SCOPE

- 2.1 This policy applies to all staff employed by the Trust. Secondees to the organisation are also subject to the Trust's policies and procedures, but any serious breach of these or gross misconduct will be referred to their statutory employer and may result in termination of the secondment.
- 2.2 This policy does not apply to the:
 - management of ill health capability where the Trust Sickness Absence Management Policy would apply;
 - initial management of clinical issues where the Trust's Variation to Clinical Practice Policy.

3. ACCESS TO THE PROCEDURE

- 3.1 All employees are entitled to access this policy which is located in the HR Policies and Procedures Folders and/or on the Trust's Intranet. Copies are also available from the Human Resources Department and any employee can seek guidance from line management, their trade union representative or the Human Resources Department.

4. ROLES AND RESPONSIBILITIES

- 4.1 Decisions on the composition of disciplinary hearings and appeal panels within the Trust will ultimately rest with the Trust's Staff Partnership Forum. This decision making responsibility will be delegated to designated senior members of the Human Resources Department and staff-side members of the

Staff Partnership Forum. Panel composition decisions will therefore be made in partnership between one member of staff-side and one of the nominated members of the Human Resources Department.

- 4.2 The Human Resources Department is responsible for keeping the provisions within this policy in line with employment legislation and best practice people management principles.
- 4.3 Managers, HR staff and trade union representatives are responsible for providing advice and guidance to employees on the application of this policy and procedure.
- 4.4 Management and trade union representatives are responsible for bringing any mutually beneficial improvements to this policy to the attention of the Trust.

5. PRINCIPLES

- 5.1 The following procedure will be applied fairly in all instances where disciplinary action is regarded as necessary by the Trust's management, save to the extent that a minor reprimand is given for any minor act of misconduct committed by an employee (Refer to Section 6).
- 5.2 Without prejudice to Section 5.1, this procedure does not apply to:
 - Termination during or at the end of an initial period of training where appointment is subject to successful completion of that training, i.e. trainee technician and dispatch/call centre training – where a basic procedure in line with the statutory dismissal and disciplinary procedure will apply instead;
 - Termination by mutual consent.
- 5.3 Under this policy outcomes may vary between no case to answer and summary dismissal. These do not have to run in sequence but will take into account the alleged misconduct or performance of an employee. Employees will not ordinarily be dismissed for first disciplinary offence unless regarded as gross misconduct.
- 5.4 Where time limits are referred to in the course of this procedure they may be reasonably varied by mutual agreement between the employee and the Trust.
- 5.5 The Trust will meet its requirements with regards to reporting matters to professional bodies.

6. INFORMAL APPROACH

- 6.1 The Trust recognises that minor cases of misconduct and initial attempts to manage poor performance may best be dealt with by informal measures rather than through the formal disciplinary procedure. This is viewed as the day to day management of the employee.
- 6.2 Informal measures may include, but are not limited to, informal verbal warnings, advice, coaching, counselling, mentoring, training and retraining.

- 6.3 Informal measures are not part of the formal disciplinary procedure, and therefore there is no right to appeal against informal outcomes.
- 6.4 Where informal verbal warnings are issued, paper copies will not be held centrally.
- 6.5 There is no statutory right for the employee to be represented at informal stages.

7. FORMAL APPROACH

7.1 INVESTIGATION

- 7.1.1 When a potential disciplinary matter arises, an investigation will be carried out to establish the facts promptly before recollections fade, and where appropriate, statements will be obtained from any available witnesses. Records will be kept for later reference.
- 7.1.2 Depending on the circumstances of the case, the employee may be invited to attend an investigatory interview. If such an interview is held prior to a formal hearing, the employee will be informed at the outset that the interview is an investigatory interview. The Trust reserves the right to dispense with an investigatory interview and to proceed directly to a formal hearing where appropriate.
- 7.1.3 The methods of investigation will vary depending on the circumstances. Obtaining written and signed statements from key people is regarded as essential. Interviews may also be held where appropriate. Those making statements and/or being interviewed as part of the investigation will be told why, and that they may be required to attend any formal hearing to give evidence.
- 7.1.4 If a witness who is a member of staff has made a statement but is not available for questioning, this evidence will still be admissible with mutual agreement between the two parties.
- 7.1.5 In the event of poor performance by an employee, formal disciplinary hearings will usually be undertaken only where counselling of the employee, further training (if appropriate) and informal verbal warnings have failed to produce a satisfactory improvement to performance.
- 7.1.6 In certain cases, it may be appropriate to consider the need to suspend an employee (see Section 7.2).
- 7.1.7 Once all the facts have been investigated, a decision will be taken on the appropriate course of action. This may be to: drop the matter; deal with the matter by means of an informal warning, coaching, counselling, training and/or retraining; or, to arrange for the matter to be dealt with under this formal procedure.

7.2 SUSPENSION

- 7.2.1 In certain circumstances, for example in cases involving gross misconduct,

where it is considered there are risks to Trust property or responsibilities to other parties, or to aid an unhindered investigation, consideration should be given to a period of suspension. This would be with full pay.

- 7.2.2 All suspensions within the Trust will be managed in accordance with The National Audit Office guidance, The Management of Suspensions of Clinical Staff in NHS Hospital and Ambulance Trusts in England.
- 7.2.2 Any suspension should only be applied after careful consideration and should be regularly reviewed to ensure it is not unnecessarily protracted. Suspension should be carried out by the most senior manager available at the time after discussion with prior agreement from a Locality Chief Operating Officer, Director or Associate Director.
- 7.2.3 The use of suspension within this procedure is a neutral act and is not considered as disciplinary action.
- 7.2.4 Before a decision to suspend is taken, alternative options may be considered, such as temporary transfer to another department or station where this is operationally feasible.
- 7.2.5 Any decision to suspend will be subsequently confirmed in writing to the employee within 3 days this will outline the reason for, and the period of, the suspension and who their nominated welfare contact will be. The manager should contact Human Resources Department to obtain the standard format letter.
- 7.2.6 It is a condition of suspension that the employee does not undertake employment elsewhere, except where the Trust's prior written permission has been given in respect of any other employment. Any change of address must be notified to the employee's manager.
- 7.2.7 Staff under suspension must not enter Trust premises or use any Trust property without permission of the person who has suspended the employee.
- 7.2.8 Should an employee wish to go on annual leave whilst suspended then a request for annual leave should be made in the usual way.
- 7.2.9 Should an employee become ill whilst suspended then normal sickness absence rules will apply.

8. OUTCOME AFTER INVESTIGATION

- 8.1 Once the investigation has been completed, the investigator(s) will submit an Investigation Report to the manager from whom the request to investigate was made, who will then take a view on whether to drop the matter, deal with it informally, or arrange for it to be handled formally. If there is any doubt, the advice of Human Resources Department should be sought.
- 8.2 **Drop the matter**
 - 8.2.1 Where the facts of the case indicate that there is no case to answer then the matter should be dropped and the employee should be notified accordingly.
- 8.3 **Informal Warnings, Coaching, Counselling, Mentoring, Training and**

Retraining

- 8.3.1 Managers may issue informal verbal warnings – but they need to ensure that problems are discussed with the objective of encouraging and helping employees to improve.
- 8.3.2 A note of any informal warning, coaching, counselling, mentoring, training or retraining should be kept. Where informal verbal warnings are issued, paper copies will not be held centrally. This may be done in the form of a file note and copied to the employee. This should outline the details of the conduct or performance issue, the improvement and/or standard required, the time scale allowed for this and what action will be taken if they fail to improve either their performance or behaviour. Refer to Section 11.

8.4 Formal Disciplinary Procedure

- 8.4.1 Where the facts of the case indicate that there is a case to answer then the matter should be handled through the formal part of this procedure.

9. FORMAL DISCIPLINARY HEARING

- 9.1 Where it is determined that the matter should be handled formally, a hearing will be arranged as soon as is reasonably practical.
- 9.2 The employee will be notified in writing of the nature of the allegation what it is that they are alleged to have done wrong and the reasons why this is not acceptable and their right to representation (see Section 13).
- 9.3 Management will provide the employee with a written statement of its case at least 8 calendar days prior to the hearing including copies of any witness statements upon which management intends to rely. The employee will provide a written statement of their case at least 4 calendar days prior to the hearing, together with any witness statement upon which they intend to rely. Both parties should identify in their statement of case any witnesses they intend to call. All statements will be submitted to the hearing(s) and where statements are not agreed this will be identified to the Chair, who will make the final decision regarding the validity of the content of the statement.
- 9.4 It is the responsibility of the parties concerned to arrange for the attendance of their witnesses. In the case where witnesses are employees of the organisation, time off with pay, or time off in lieu will be granted for them to attend the hearing. It is not normal Trust policy to involve patients/clients/relatives or members of the public as witnesses as the meeting and the written statement will be relied on for evidence.

10. FORMAL DISCIPLINARY HEARING OUTCOMES

- 10.1 Following the hearing, the panel must decide whether disciplinary action is justified or not. Where it is decided that no action is justified the employee will be informed in writing within 4 calendar days. Where it is decided that disciplinary action is justified the panel will consider what form this should take.

10.2 Before making any decision, the panel will take account of:

1. the employee's current disciplinary and general record;
2. actions taken in any previous similar case;
3. the explanations or extenuating circumstances provided by the employee; and most importantly,
4. whether the intended action is reasonable under the circumstances.

10.3 Possible outcomes following the hearing are as follows:

10.3.1 Drop the Matter

Where the facts of the case indicate that there is no case to answer then the matter should be dropped and the employee should be notified in writing within 4 calendar days.

10.3.2 Informal Warnings, Coaching, Counselling, Mentoring, Training and Retraining

The facts of the case may indicate that this matter should be handled informally. This may include use of informal warnings, coaching, counselling, mentoring, training and retraining (see Section 6).

10.3.3 Formal Disciplinary Action

Where the facts of a case call for formal action then the following may be imposed:

- i) Formal Verbal Warning
- ii) Formal First Written Warning
- iii) Formal Final Written Warning
- iv) Dismissal or Other Sanction
- v) Summary Dismissal

11. FORMAL DISCIPLINARY ACTION SANCTIONS

11.1 Formal Verbal Warning

11.1.1 In the case of minor infringements of conduct and poor performance, the employee should be given a formal verbal warning. The employee should be advised in writing of the warning, the nature of the conduct or performance issue, the improvement and/or standard required, and the time scale allowed for this. The employee will be notified that this constitutes the first step of the formal procedure and the period of time that the warning will remain 'live'. The employee will also be advised of their right of appeal.

11.1.2 A copy of the letter notifying the employee of the formal verbal warning will be kept by the Human Resources Department.

11.1.3 A formal verbal warning will normally be disregarded after 6 months, provided there are no further and similar instances of misconduct or poor performance during this time. Where there has been significant marked improvement identified a formal verbal warning may be disregarded prior to the 6 months expiring. This would be within the authority of and at the sole discretion of the Chair of the panel.

11.2 First Written Warning

- 11.2.1 If the infringement is regarded as more serious, or if following a verbal warning the desired improvements have not been achieved, then the employee should be given a written warning. The employee should be advised in writing of the warning, the nature of the conduct or performance issue, the improvement and/or standard required, and the time scale allowed for this. The employee will also be notified that failure to improve or modify behaviour may lead to further disciplinary action under this policy. The employee will be notified of the period of time that the warning will remain 'live'. The employee will also be advised of their right of appeal.
- 11.2.2 A copy of the letter notifying the employee of the First Written Warning will be kept by the Human Resources Department.
- 11.2.3 A first written warning will normally be disregarded after 12 months, provided there are no further and similar instances of misconduct or poor performance during this time.

11.3 Final Written Warning

- 11.3.1 Where there is a failure to improve or achieve/maintain the required standard of conduct during the currency of a prior warning, or where the infringement is sufficiently serious, the employee should normally be given a final written warning.
- 11.3.2 The employee should be advised in writing of the warning, the nature of the conduct or performance issue, the improvement and/or standard required, and the time scale allowed for this. The employee will also be notified that failure to improve or modify behaviour may lead to further disciplinary action under this policy, including dismissal or some action short of dismissal. The employee will be notified of the period of time that the warning will remain 'live'. The employee will also be advised of their right of appeal.
- 11.3.3 A copy of the letter notifying the employee of the Final Written Warning will be kept by the Human Resources Department.
- 11.3.4 A final written warning will be disregarded after a period of 12 months, provided there are no further and similar instances of misconduct or poor performance during this time.

11.4 Dismissal or action short of dismissal

- 11.4.1 If the employee's conduct or performance still fails to improve, then the final step may be to dismiss. However, consideration should be given to a change in role, suspension without pay, or demotion to a lower grade job as an alternative. This would normally be done in conjunction with the issue of a formal warning, and any such alternative to dismissal would be offered subject to the express agreement of the employee.
- 11.4.2 A letter should be sent to the employee confirming the reasons for the dismissal or other sanction within 4 calendar days. In the case of dismissal the letter should give the date of termination of employment, setting out the

period of notice or payment in lieu of notice to which the employee is entitled and advise them of their right of appeal.

11.4.3 Authority to dismiss within the Trust falls within the responsibilities of posts of Locality Chief Operating Officer, Director and Associate Director.

11.5 Summary Dismissal

11.5.1 There are certain offences that are regarded as so serious that if they are committed by an employee then dismissal would normally follow. These offences are regarded as gross misconduct, and some examples of gross misconduct likely to result in dismissal are listed in Section 11.6. In the event that an employee commits an act of gross misconduct, the Trust will be entitled to terminate summarily the employee's contract of employment without notice or pay in lieu of notice.

11.5.2 A letter should be sent to the employee confirming the reasons for the dismissal, the date of termination of employment and their right of appeal.

11.5.3 Authority to dismiss within the Trust falls within the responsibilities of posts of Locality Chief Operating Officer, Director and Associate Director.

11.6 Examples of Gross Misconduct

A non exhaustive list of examples of gross misconduct includes the following:

- theft, fraud and deliberate falsification of records
- inappropriate behaviour including physical violence or sexual misconduct at work
- serious bullying, harassment or unlawful discrimination
- deliberate and/or serious misuse or damage to Trust property or name
- bringing the Trust into serious disrepute
- serious incapability whilst on duty brought on by alcohol or illegal drugs
- serious negligence which causes or might cause unacceptable loss, damage or injury
- serious infringement of health and safety rules
- serious breach of confidence (subject to the Public Interest (Disclosure) Act 1998)
- failure to deliver an acceptable level of patient care
- refusing to respond and/or attend an emergency or urgent case
- deliberately delaying a response to an emergency call
- criminal conviction outside work which could affect employee/patient relations or amount to a breach of trust
- misuse of Trust IT and/or communications equipment and systems for example deliberately accessing pornographic, offensive or obscene material liable to cause offence
- serious breach of confidentiality
- breach of contract of employment – any fundamental breach of contract or conduct which renders impracticable continuation of effective employment.

This is a non exhaustive list. The omission of any other category of behaviour will not preclude it from being considered as gross misconduct.

11.7 Misconduct or Misdemeanours

The following non exhaustive list sets out examples of misconduct or misdemeanours:

- Unauthorised Absence
- Poor standard of work
- Poor or erratic time keeping
- Provocative, abusive or turbulent behaviour including instances of insubordination
- Minor breaches of procedure likely to undermine efficient management or jeopardise the safety of other employees, patients or members of the public.

This is a non exhaustive list. The omission of any other category of behaviour will not preclude it from being considered as serious misconduct or misdemeanour.

12. DISCIPLINARY APPEALS PROCEDURE

12.1 An employee may appeal against any disciplinary sanction imposed against him/her, with the exception of informal verbal warnings or other informal outcomes.

12.2 If, however, an employee has a complaint against the behaviour of a manager during the course of a disciplinary case, they may wish to raise it through the Trust Grievance Policy. Enactment of the grievance policy will not automatically mean suspension of the disciplinary procedures. In such instances, each case will be considered individually by the Human Resources Department.

12.3 How to appeal

12.3.1 Appeals should be made in writing to the Director of Human Resources and Organisational Development within 8 calendar days of receipt of the letter informing them of the outcome of the formal hearing.

12.3.2 When lodging an appeal, the employee should state:

- a) the grounds of their appeal
- b) whether they are appealing against the finding that they have committed the alleged act(s) of misconduct or poor performance, or against the level of the sanction imposed.

12.3.3 The grounds on which the employee chooses to appeal will be considered when determining how the appeal will be handled. For example, if the grounds for the appeal relate to the level of the sanction imposed, then the appeals panel may confine their deliberations to this issue. If it is claimed that there are procedural irregularities it may be necessary to consider a re-

hearing to remedy any potential previous failings.

- 12.3.4 Any appeal will normally be heard within 40 calendar days of receipt of the appeal letter, unless exceptional circumstances arise in relation to the availability of the relevant parties. In such cases, the Human Resources Department will notify the employee of the delay, which will not be more than an additional 16 calendar days, and reason for it.
- 12.3.5 The employee should provide management with a written statement of its case at least 8 calendar days prior to the appeal hearing including copies of any witness statements upon which they intend to rely. Management will provide a written statement of their case at least 4 calendar days prior to the appeal hearing, together with any witness statement upon which they intend to rely. Both parties should identify in their statement of case any witnesses they intend to call. All statements will be submitted to the hearing(s) and where statements are not agreed this will be identified to the Chair, who will make the final decision regarding the validity of the content of the statement.
- 12.3.6 It is the responsibility of the parties concerned to arrange for the attendance of their witnesses. In the case where witnesses are employees of the organisation, time off with pay, or time off in lieu will be granted for them to attend the hearing. It is not normal Trust policy to involve patients/clients/relatives or members of the public as witnesses at the meeting and the written statement will be relied on for evidence.

12.4 Level of Appeal

12.4.1 Formal Verbal Warning

An employee's appeal against a formal verbal warning will normally be heard by the manager of the person who issued the warning.

12.4.2 Formal First Written Warning

An employee's appeal against a first written warning will normally be heard by the manager of the person who issued the warning.

12.4.3 Formal Final Written Warning

An employee's appeal against a final written warning will normally be heard by the Locality Chief Operating Officer or equivalent. Where the warning has been issued by a Locality Chief Operating Officer, then the appeal will be heard by another Locality Chief Operating Officer or Director or Associate Director of the Trust.

12.4.4 Dismissal or Action Short of Dismissal

An employee's appeal against dismissal or action short of dismissal will be heard by a three member panel of the Trust Board which will include at least one Non-Executive and an Executive Director.

12.5 Appeal Outcome

- 12.5.1 Upon completion of the appeal, and after adjournment, the Chair of the hearing will convey the decision to the employee. This decision is final. The decision will be confirmed in writing within 8 calendar days of the hearing. In exceptional circumstances, the Chair of the panel may extend this deadline and will provide written explanation for the delay to the employee.

12.5.2 The outcome of an appeal will be to confirm, decrease or cancel the disciplinary sanction imposed.

13. REPRESENTATION

13.1 Employees have the right to be accompanied at all formal investigations, hearings and appeals (covered in Section 7 onwards) by a trade union representative or a fellow worker (i.e., another of the Trust's workers). Employees will not be entitled to bring a person acting in a legal capacity.

13.2 There is no statutory right to be accompanied at informal meetings where attempts are being made to resolve matters before resorting to the formal procedure, or to counselling, investigative meetings or meetings to suspend an employee.

13.3 The chosen companion has a right to address the hearing, but no right to answer questions on behalf of the employee. However they will be allowed to participate fully in the hearing. They will also be given reasonable time to discuss the matter privately with the employee.

13.4 If the chosen companion cannot attend on the proposed hearing date then the employee can offer an alternative time and date so long as it is reasonable and falls before the end of the period of five working days beginning with the first working day after the day proposed by the employer. Where reasonably practical however arrangements will be made in agreement.

14. CONFIDENTIALITY

14.1 All information at any stage of this procedure, whether it is written or verbal information, must be treated as confidential information by all parties. Failure to do so may result in disciplinary action being taken.

14.2 All records should be kept by all parties in accordance with the Data Protection Act 1998. The Data Protection Act gives individuals the right to request and have access to certain personal data.

15. DEALING WITH SPECIAL SITUATIONS

15.1 Accredited Trade Union Representatives

In the case of accredited Trade Union Representatives, normal disciplinary standards apply with regard to their conduct and performance as an employee. However, if such action is being contemplated then the case should be discussed with a senior trade union representative or full-time official prior to its commencement.

15.2 Criminal Charges or Convictions Outside Employment

15.2.1 These should not be treated as automatic reasons for dismissal. The main consideration should be whether the offence is one that makes the employee unsuitable for working within the Trust. In all cases managers, having considered all the facts, will need to consider whether the conduct is sufficiently serious to warrant initiating the disciplinary procedure. The Trust's

decision is independent of any criminal action.

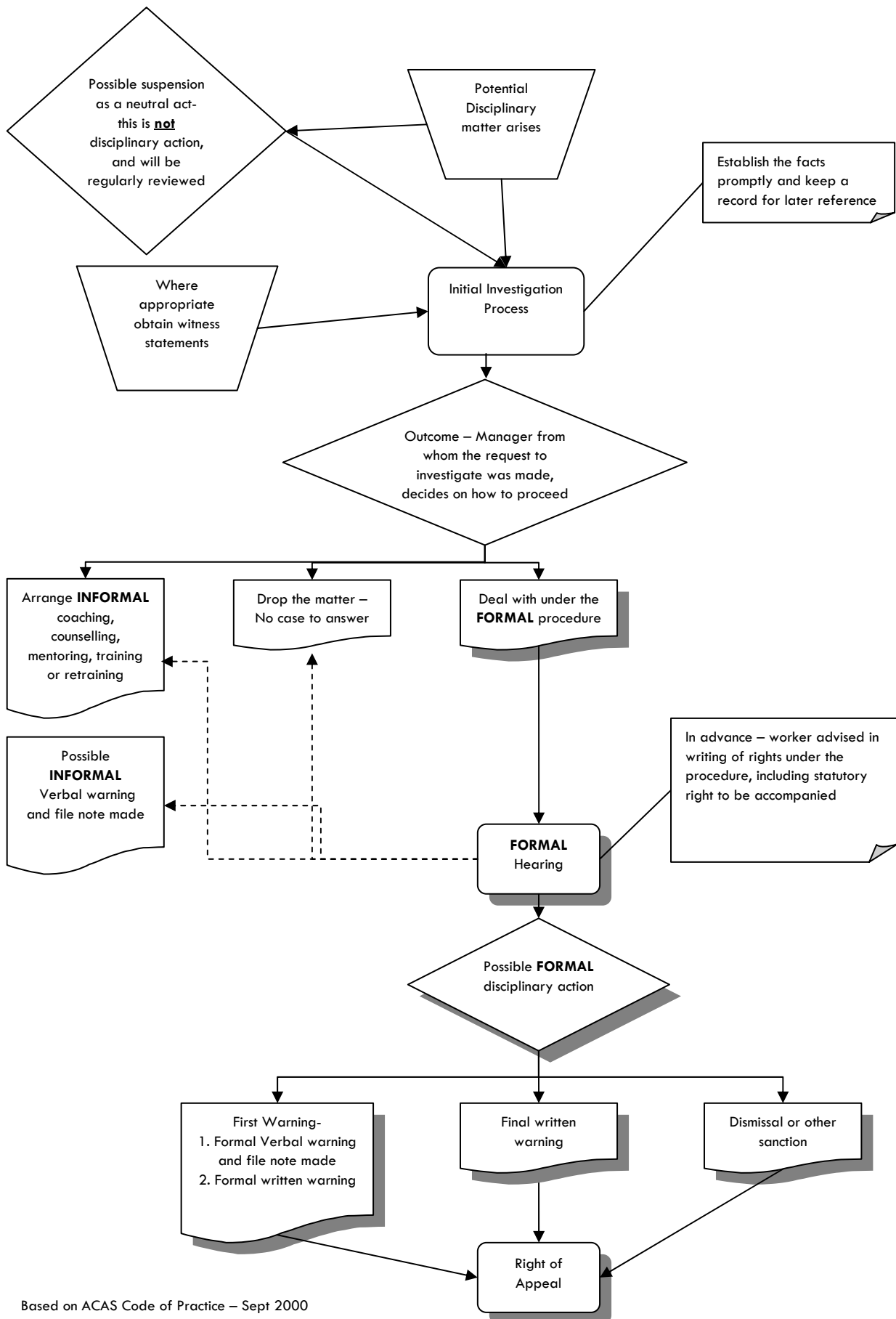
15.2.2 Where the police have to be involved in an investigation, (e.g. when an allegation of fraud or maltreatment of patients occurs), then advice from a member of the Human Resources Department should be sought.

15.2.3 Any employee who is being prosecuted for **any** criminal or motoring offence must inform their line manager in writing of the relevant details at the outset or the earliest opportunity thereafter.

16. POLICY REVIEW

16.1 This policy will be reviewed on an annual basis or amended in the light of new employment legislation and/or relevant case law.

Overview of the Disciplinary Procedure Process



Based on ACAS Code of Practice - Sept 2000