



# Human Fertilisation & Embryology Authority

## Disciplinary Policy

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### In this policy:

- ▶ 1. Introduction
- ▶ 2. Confidentiality
- ▶ 3. Investigation
- ▶ 4. Right to be accompanied
- ▶ 5. Informal procedure
- ▶ 6. Suspension
- ▶ 7. Formal disciplinary procedure
  - Raising the issue
  - Role of companion
  - The disciplinary hearing
  - Disciplinary action
- ▶ 8. Appeals
- ▶ 9. Warning expiry
- ▶ 10. Gross misconduct
- ▶ 11. Criminal convictions
- ▶ 12. Records

### Handling disciplinary action – Procedure

# 1. Introduction

- 1.1. It is necessary for the proper operation of the HFEA's ("the Organisation") business and the health and safety of the employees that a disciplinary procedure operates fairly. The following procedure will be applied in all instances where disciplinary action is regarded as necessary.

The Organisation reserves the right to implement the procedure at any stage as set out below taking into account the alleged misconduct of an employee. Employees will not ordinarily be dismissed for a first disciplinary offence.

Where time limits are referred to in the course of this procedure they may be varied by agreement between the employee and the Organisation.

Employees have the right to be accompanied at a formal disciplinary hearing by a fellow worker or trade union official of their choice.

Matters that the HFEA views as amounting to disciplinary offences include (but are not limited to):

- persistent bad timekeeping;
- breach of confidentiality
- unauthorised absence;
- minor damage to property;
- failure to observe procedures;
- abusive behaviour;
- unreasonable refusal to follow an instruction issued by a manager or supervisor; and
- poor attendance;

This list is not exhaustive

- 1.2. The scope of this policy extends to all HFEA employees, both permanent and fixed term. Staff who are on secondment should refer to their terms of secondment to establish whether this policy applies.

## 2. Confidentiality

- 2.1. The organisation's aim is to deal with disciplinary matters sensitively and with due respect for the privacy of the individuals involved. As such, all employees must treat as confidential any information communicated to them in connection with any investigation or disciplinary matter.
- 2.2. Any statements provided will be treated as confidential documents. However, it is not possible to give a witness an absolute guarantee of confidentiality as:
  - the accused employee will have the right to be told about the witness statement; and
  - courts and tribunals may order disclosure of documents, irrespective of whether or not they are confidential.
- 2.3. Employees have the right under the Data Protection Act 1998 to request access to information about them that is held on file, whether manually or on computer. The Organisation may, however, legitimately refuse to disclose the document in question if its disclosure would reveal the identity of a third party, especially if this might be a breach of confidence in relation to the third party. This would be likely to occur in relation to a witness statement.
- 2.4. However, the Organisation will not automatically refuse to disclose the statement. It should either request consent from the author of the statement to disclose the document to the employee, or take steps to anonymise the document before disclosing it. The latter might involve:
  - blanking out the witness's name and any other distinguishing features before disclosing the document to the employee (through, for example, photocopying the document);
  - editing the statement to conceal the identity of the witness; or
  - where there are several witness statements from different employees, preparing a summary of the information contained in the statements.
- 2.5. The Organisation will take a reasoned decision about whether or not to disclose a witness statement. This will involve balancing the witness's right to privacy against the employee's right to know what information is held about him or her, and its source.

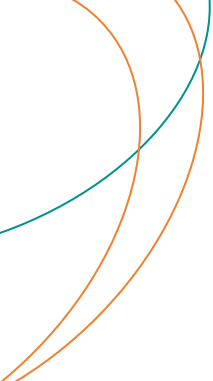
### 3. Investigation

- 3.1. An employee's supervisor or manager will promptly and thoroughly investigate any matter that is reasonably suspected or believed to contravene any of the Organisation's policies or rules or may otherwise be a disciplinary matter. The employee will be informed as soon as possible of an investigation and when it has been concluded.
- 3.2. 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 disciplinary hearing, the employee will be informed at the outset that the interview is an investigatory interview. There is no right for employees to be accompanied at a formal investigatory interview. The Organisation reserves the right to dispense with an investigatory interview and to proceed directly to a formal disciplinary hearing.
- 3.3. Investigatory meetings may also be necessary with others, and not only the individual who is subject to the disciplinary action.
- 3.4. During any investigatory meeting conducted by the Organisation, the following will take place:
  - The employee will not be entitled to any strict notice period in advance of the meeting, to know in advance what the issues being investigated are, or to have copies of any evidence already obtained. The employee will not be entitled to be accompanied.
  - The parties present at the meeting will introduce themselves and confirm their respective roles at the meeting.
  - The person leading the meeting (the chair) will explain its purpose and how it will be conducted. The purpose of the meeting will normally be to establish the facts and determine whether or not the employee may in fact have committed acts of misconduct that would warrant a disciplinary hearing.
  - The chair will state that the meeting is not part of the formal disciplinary process and is simply a fact-finding exercise. The chair will explain that no disciplinary action will result from this meeting but will confirm that a written record of the meeting will be made.
  - The chair will ask the employee whatever questions are appropriate to determine whether or not the suspected misconduct took place and whether or not the Organisation will need to investigate the matter further.

- The chair may give details of specific allegations or evidence already gathered (unless disclosure is protected under the whistleblowing procedure), but is not required to do so.
- The employee will be allowed a full and fair opportunity to state his/her side of events, explain his/her conduct or performance and state any mitigating factors.
- The chair will question the employee on his/her evidence and raise points about any information provided by witnesses (if applicable).
- At any point during the meeting, the chair may adjourn the proceedings if it appears necessary or desirable to do so (including for the purpose of gathering further information).
- The chair will sum up the key points of the meeting.
- The chair will inform the employee about when a decision will be made on whether or not the employee will face a disciplinary hearing.
- The chair will close the meeting.
- The chair (as investigatory officer) will conduct any further investigation required by having investigatory meetings with potential witnesses and obtaining and considering documentary and other evidence.
- The chair will recommend that either the matter proceed to a disciplinary hearing or that no further action is taken.
- If the decision is taken to proceed to a disciplinary hearing the chair will pass the conclusions of the investigation and the evidence gathered to the disciplining officer.

## 4. Right to be Accompanied

- 4.1. The employee has the right to be accompanied by a fellow worker or trade union official at any disciplinary meeting or subsequent appeal. The trade union official need not be an employee of the Organisation, but if he/she is not a fellow worker or an employee of his/her union, the Organisation may insist on him/her being certified by the union as being experienced or trained in accompanying employees at hearings.
- 4.2. The choice of companion is a matter for the employee, however, the Organisation reserves the right to refuse to accept a companion whose presence would undermine the process. Individual workers are not obliged to agree to accompany a colleague. Companions will be given appropriate paid time off to allow them to accompany colleagues at a hearing or appeal hearing.

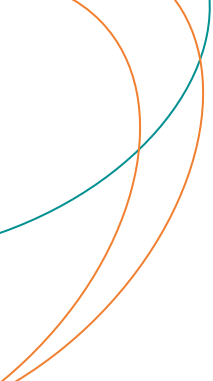
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- 4.3. At any hearing or appeal hearing, the chosen companion will be allowed to address the meeting, respond on the employees behalf to any view expressed in the hearing, and sum up the case. However, both the hearing and appeal hearing are essentially meetings between the employer and employee, so any questions put directly to the employee should be dealt with by them and not the companion.
  - 4.4. Where the chosen companion is unavailable on the day scheduled for the meeting or appeal, the meeting will be rescheduled, provided that the employee can propose an alternative time within five working days of the scheduled date.
  - 4.5. The employee will not be permitted to bring a legal representative.

## 5. Informal Procedure

- 5.1. All unsatisfactory conduct or performance will, in the first instance, be the subject of informal discussions, offering every opportunity to improve performance or conduct. Formal disciplinary action will only be taken if informal discussions are to no avail, unsatisfactory conduct or performance continues or the misconduct or performance is of a sufficiently serious nature that informal action, in all the circumstances, is inappropriate.

## 6. Suspension

- 6.1. Suspension from duty is not a disciplinary penalty. It is a neutral act and does not imply guilt. An employee may be suspended if it has been alleged that he/she has committed an act of misconduct that is seriously detrimental to the proper running of the organisation's service and/or it is essential for the proper conduct of an investigation.
- 6.2. An employee will receive full pay while he/she is suspended. A preliminary investigation will be undertaken prior to any decision to suspend to support 'reasonable suspicions' of gross misconduct



6.3. The manager should invite the employee to a meeting and inform the employee that he/she may be accompanied by a workplace colleague or trade union representative. The employee will be given until the end of that working day to arrange this. The meeting may proceed if the employee cannot be accompanied within this period of time. The manager should inform the employee of the following:

- that he/she is suspended from duty with immediate effect, in line with the Organisation's disciplinary policy
- the reasons for his/her suspension
- that the suspension will be for as short a time possible
- that suspension is a neutral act and does not imply guilt
- that he/she should not return to his/her place of work without the prior knowledge and consent of his/her manager
- that he/she is expected not to discuss any aspect of the investigation or suspension with colleagues (unless they are acting as workplace colleague or in their trade union capacity)
- that he/she should be available during normal working hours for any interviews that are necessary, that he/she should notify the manager or Human Resources of any periods that s/he will be away from his/her normal address
- that at least 1 day's notice of any investigatory meetings will be given.

6.4. The suspension will be confirmed in writing within 3 working days, and where this is not possible, as soon as practicable. The manager is responsible for ensuring that advice and support is provided throughout the suspension period to the employee and must keep him/her updated on the progress of the investigation at regular intervals.

6.5. The following managers have the authority to suspend or dismiss:

Chair  
Chief Executive  
Director of Compliance  
Director of Finance, Facilities & IT  
Director of Strategy & Information  
Senior Legal Adviser

These managers may delegate the authority to suspend or dismiss to Authority Members or Heads level, but at no level below.

## 7. Formal Disciplinary Procedure

### ► Raising the issue

- 7.1. Where upon completion of an investigation, there are reasonable grounds to believe that an employee has committed an act of misconduct, the employee will be invited to attend a disciplinary hearing before the employee's department manager/head or manager of a similar level to the departmental manager/head. In the event of poor performance by an employee, disciplinary hearings will usually be undertaken only where counselling of the employee, further training (if appropriate) and oral warnings have failed to produce a satisfactory improvement to performance. This will be done under the capability procedure.
- 7.2. In the event of a disciplinary hearing taking place the Organisation will:
- give the employee a minimum of two working days advance notice of the hearing;
  - tell the employee the purpose of the hearing and that it will be held under the Employer's disciplinary procedure;
  - explain the employee's right to be accompanied at the hearing by a fellow worker or trade union official;
  - give the employee written details of the nature of his/her alleged misconduct; and
  - provide to the employee all relevant information (which should include statements taken from any fellow employees or other persons that the Organisation intends to rely upon against the employee) not less than two working days in advance of the hearing.
- 7.3. Where the employee is unable to attend a disciplinary hearing and provides a good reason for failing to attend, the hearing will be adjourned to another day. Unless there are special circumstances mitigating against it, if the employee is unable to attend a rearranged hearing, the rearranged hearing will take place in the employee's absence. The employee's fellow worker or trade union official may attend in such circumstances and will be

*“The organisation will give the employee a minimum of two working days notice...”*

allowed the opportunity to present the employee's case. The employee will also be allowed to make written submissions in such a situation.

- 7.4. Where the chosen companion is unavailable on the day scheduled for the meeting, it will be rescheduled, provided that the employee proposes an alternative time within five working days of the scheduled date.

► Role of companion

*“The employee will be entitled to be given a full explanation of the case against him/her...”*

- 7.5. The employee's chosen companion has the right to address the hearing to put the employee's case, sum up the case and respond on the employee's behalf to any view expressed at the hearing. The companion may also confer with the employee during the hearing. However, there is no requirement for the employer to permit the companion to answer questions on behalf of the employee, or to address the hearing where the employee indicates that he/she does not wish this.

► The disciplinary hearing

- 7.6. A disciplinary hearing will normally be conducted by the employee's department manager/head together with the Organisation's HR Manager/Officer (the panel). Any member of management responsible for the investigation of the disciplinary offence(s) shall not be a member of the panel, although such managers may present any supporting facts and material to the disciplinary hearing. The employee will be entitled to be given a full explanation of the case against him/her and be informed of the content of any statements provided by witnesses. The employee will be able to call his/her own witnesses. He/she will be permitted to set out his/her case and answer any allegations. The employee will be given a reasonable opportunity to ask questions, present evidence and call relevant witnesses. He/she will also be given the opportunity to raise points about any information provided by witnesses. Where the Organisation intends to call relevant witnesses it will give the employee advance notice of this. The employee must also give advance notice if he/she intends to call relevant witnesses.
- 7.7. The Organisation may adjourn the disciplinary proceedings if it appears necessary or desirable to do so (including for the purpose of gathering further information). The employee will be informed of the period of any adjournment. If further information is gathered, the employee will be allowed a reasonable period of time, together with his/her fellow worker or

trade union official, to consider the new information prior to the reconvening of the disciplinary proceedings.

- 7.8. As soon as possible (within five working days) after the conclusion of the disciplinary proceedings, the employee's department manager will convey the decision of the panel to the employee and will also inform the employee what disciplinary action, if any, is to be taken. The decision will be confirmed in writing. The employee will be notified of his/her right of appeal under this procedure.

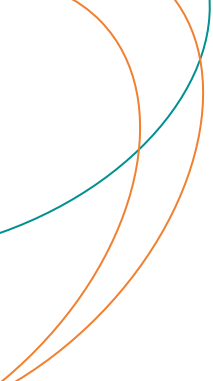
► Disciplinary action

- 7.9. Where, following a disciplinary hearing, the Organisation establishes that the employee has committed a disciplinary offence, the following disciplinary action may be taken.
- 7.10. Where a minor offence or offences have been committed, a recorded oral warning may be given. The warning will ordinarily state that any further misconduct will render the employee liable to further, more severe disciplinary action. The employee should be informed of the period that the warning will remain "live". During this period, the Organisation may rely on such a warning in the event of further misconduct on the part of the employee.
- 7.11. Where either a more serious disciplinary offence has been committed or further minor offences have been committed by an employee following a recorded oral warning that remains "live", the employee will receive a first written warning. The warning will:
- a. set out the nature of the offence committed;
  - b. inform the employee that further misconduct is liable to result in further disciplinary action under this procedure;
  - c. specify the period for which the warning will remain "live", after such period, the warning will automatically lapse and
  - d. state that the employee may appeal against the warning.
- 7.12. Where the employee has committed further acts of misconduct (these being acts of misconduct other than gross misconduct) following a final written warning the employee may be dismissed with notice or with pay in lieu of notice.

- 7.13. Where the Organisation establishes that an employee has committed an act of gross misconduct, the employee may be summarily dismissed.
- 7.14. Where a final written warning is given to an employee, the Organisation may also impose on the employee:
- a. disciplinary suspension;
  - b. in line with any provision in the contract of employment, stoppage of pay for such period as the Organisation thinks fit in the circumstances
  - c. in line with any provision in the contract of employment, transfer to a job of a lower status.
- 7.15. The above sanctions may be imposed in conjunction with other forms of disciplinary action.
- 7.16. Where an employee commits a further disciplinary offence when a first written warning has been issued, or where the conduct is sufficiently serious to warrant this, a final written warning may be issued.

## 8. Appeals

- 8.1. An employee may appeal against any disciplinary sanction imposed against him/her. The appeal will be heard by a senior manager who has not been involved in the decision to impose the disciplinary sanction on the employee. The senior manager is obliged to consider any representations made by the employee, the employee's fellow employee or trade union official and those of the manager who conducted the investigation and the manager who conducted the disciplinary hearing and imposed the disciplinary sanction. The senior manager hearing the appeal must decide on the basis of both sets of representations, together with any subsequent facts that may have come to light, whether or not to uphold the disciplinary sanction. In the event that the senior manager finds for the employee, the senior manager shall allow the appeal and shall remove all records of the disciplinary sanction from the employee's record. In the event that the senior manager does not accept the representations made by or on behalf of the employee, the senior manager must uphold the disciplinary sanction.

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- 8.2. When lodging an appeal, the employee should state:
    - a. the grounds of appeal; and
    - b. whether he/she is appealing against the finding that he/she has committed the alleged act or acts of misconduct, or against the level of disciplinary sanction imposed.
  - 8.3. The employee must provide written notice of the appeal within five working days of being informed of the disciplinary sanction being imposed against him/her.
  - 8.4. Appeal hearings will normally take place within ten working days of receipt of the employee's written notice of appeal.
  - 8.5. Upon completion of the appeal, the senior manager conducting the hearing will convey his/her decision to the employee. The decision may substitute a different penalty. The decision will be confirmed in writing within five working days.
  - 8.6. The Organisation's decision at the appeal is final.
  - 8.7. Where an appeal lies against a dismissal by the panel, the panel's decision to dismiss will have had immediate effect and, therefore, if the dismissal is by notice, the period of notice will already have commenced on the date that the decision was given by the panel. If the panel's decision was to dismiss the employee summarily without notice, the Organisation will be under no obligation to reinstate or pay the employee for any period between the date of the original dismissal and the appeal decision and the original date of termination will stand. In the event that the panel's decision to dismiss is overturned, the employee will be reinstated with immediate effect and he/she will be paid for any period between the date of the original dismissal and the successful appeal decision. His/her continuous service will not be affected.

## 9. Warning Expiry

9.1. Warnings will remain “live” on a personnel file for the following periods:

- Oral warning – six months
- Written warning – six months
- Final warning – twelve months

9.2. Once the warning is no longer “live”, an employee will receive confirmation from HR that the warning has lapsed and will be disregarded from further disciplinary proceedings. The paperwork attached to the warning will, however, will be kept in HR for the duration of the employees employment with the Organisation.

## 10. Gross Misconduct

10.1. Gross misconduct is misconduct of such a serious and fundamental nature that it breaches the contractual relationship between the employee and the Organisation. In the event that an employee commits an act of gross misconduct, the Organisation will be entitled to terminate summarily the employee's contract of employment without notice or pay in lieu of notice.

10.2. Matters that the Organisation views as amounting to gross misconduct include (but are not limited to):

- stealing from the Organisation, members of staff or the public;
- other offences of dishonesty;
- falsification of a qualification that is a stated requirement of the employee's employment or results in financial gain to the employee;
- falsification of records, reports, accounts, expense claims or self-certification forms, whether or not for personal gain;
- sexual misconduct at work;
- fighting with or physical assault on members of staff or the public;
- deliberate damage to or misuse of the Organisation's property;
- serious damage to the Organisation's property;
- drunkenness or being under the influence of illegal drugs while at work;

- possession, custody or control of illegal drugs on the Organisation's premises;
- serious breach of the Organisation rules, including, but not restricted to, confidentiality, health and safety rules and rules on computer use;
- gross negligence;
- conviction of a criminal offence that is relevant to the employee's employment;
- conduct that brings the Organisation's name into disrepute; and
- discrimination or harassment of a fellow worker on the grounds of sex, sexual orientation, race, disability, age or religion or belief.

This list is not exhaustive.

“ The senior manager hearing the appeal must decide on the basis of both sets of representations, together with any subsequent facts that may have come to light...”

## 11. Criminal Charges

- 11.1. Criminal charges or convictions for offences of dishonesty or violence committed outside working hours may result in disciplinary proceedings being taken against the employee up to and including dismissal. The Organisation will consider whether or not the employee's conduct or convictions merit action because of employment implications.
- 11.2. A charge or conviction for any other type of offence may result in disciplinary proceedings being taken against the employee where, in the opinion of the Organisation, the charge or conviction is such as to affect, or be likely to affect, the suitability of the employee for the position in which he/she is employed, or the business or reputation of the Employer, or where the existence of the charge or conviction could, in the opinion of the Employer, otherwise seriously undermine the trust and confidence that the Employer has in the employee.
- 11.3. Employees under investigation for charges will be dealt with on a case by case basis, depending on the nature of the charge.

## 12. Records

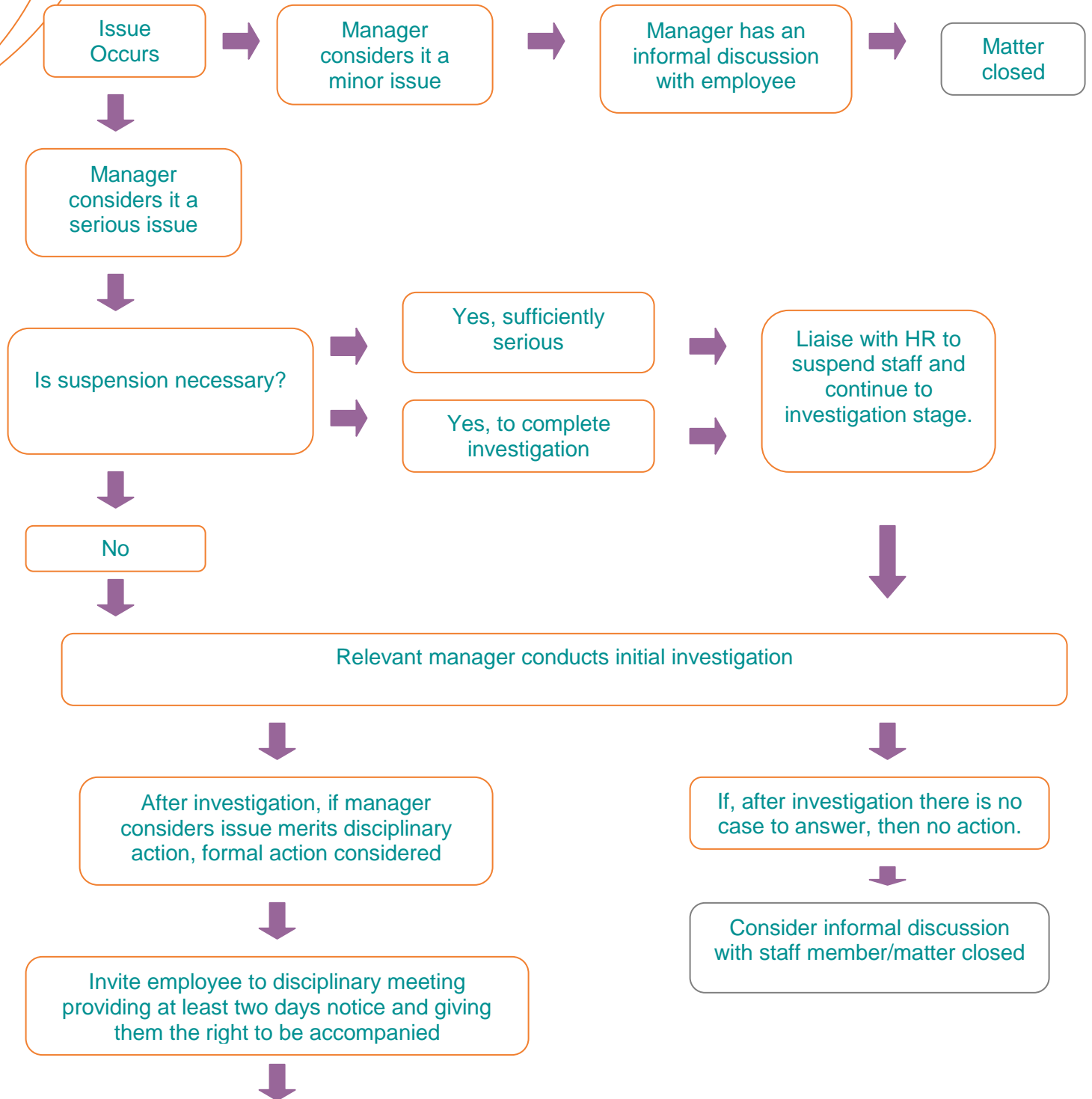
12.1. Confidential records may be kept of:

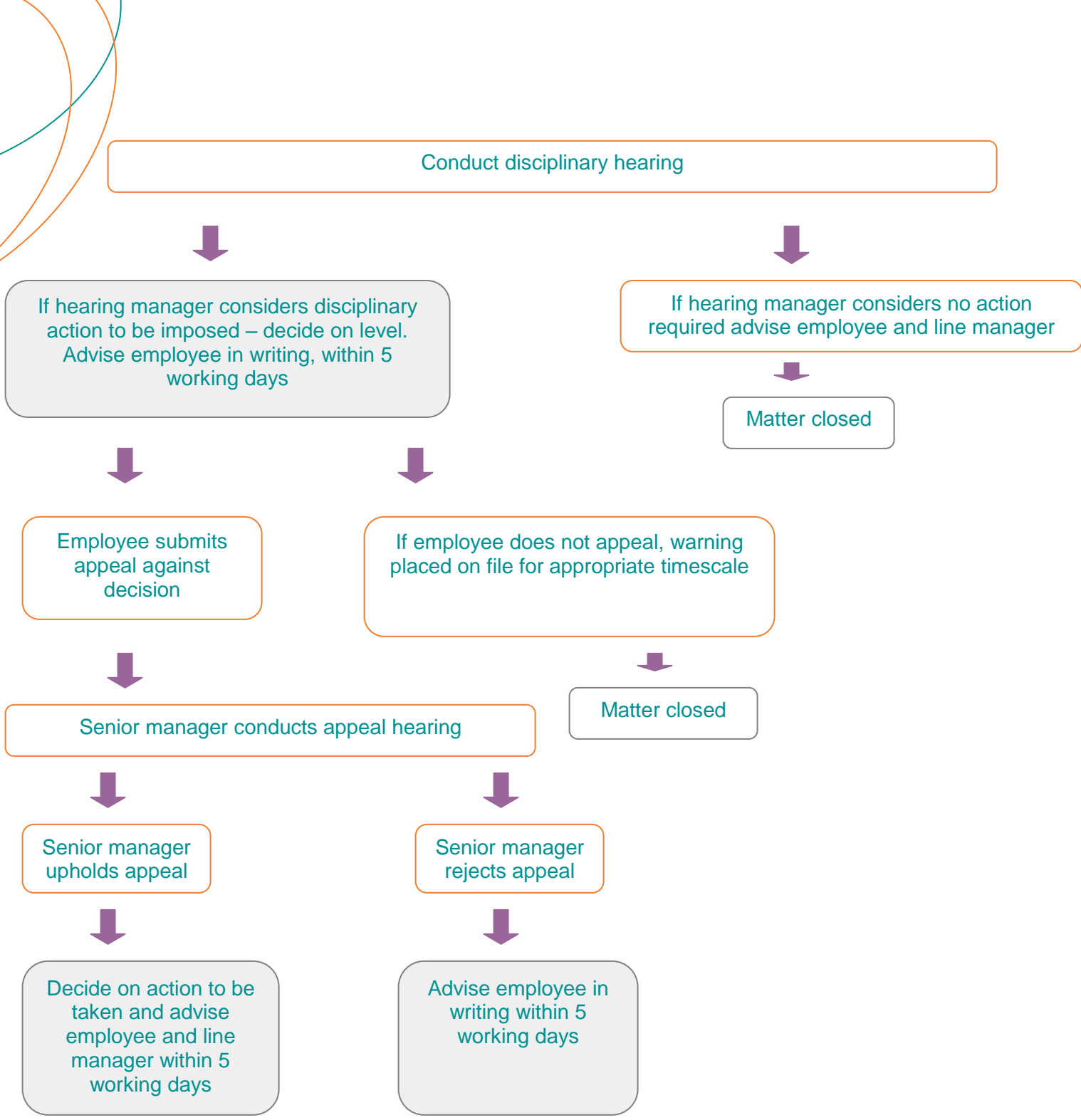
- the nature of the disciplinary, including all written statements
- what was decided and the action taken
- reasons for action taken
- whether there was an appeal and, if so, the outcome
- any subsequent developments

12.2. Meeting notes and letters will be placed on the personnel files of the employees concerned.

*This procedure will be periodically reviewed. Any amendment to it will be notified to employees in writing by the Organisation's HR Manager and such written advice will inform employees as to the date when any amendment comes into effect. This may be by means of the Organisation's intranet.*

## Handling Disciplinary Action – Procedure





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1	Updated in line with legislation	Julie Hegarty	Rachel Hopkins	1 <sup>st</sup> July 2010