Cliffe VC Primary School

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Disciplinary Policy & Procedure – Schools

Cliffe VC Primary School

Date adopted by School Governing Body	May 2020

Section		Page
1	Scope	2
2	Policy Statement	2
3	Decision-making	3
4	Procedure	3
4.1	Right to be accompanied	3
4.2	Informal action	3
4.3	Pre-disciplinary investigation	3
4.4	Precautionary action	4
4.5	Outcome of pre-disciplinary investigation	4
4.6	Disciplinary Hearing	4
4.7	Disciplinary sanctions	5
4.8	Appeals	5
4.9	Disciplinary Action and impact on increments	5
4.10	Child protection/criminal offences/financial irregularity cases	6
4.11	Referrals to external agencies	6
4.12	Resignations	6
4.13	Employee support	6
4.14	Unavailability and sickness absence	6
5	Examples of types of serious misconduct and probable consequences	6
6	Examples of types of gross misconduct and probable consequences	7
7	Flowdiagram	8
8	Action outside of the formal disciplinary procedure	10

Policy produced for Schools and Colleges under Local Management of Schools, together with Early Years providers under the HR service provision of North Yorkshire County Council.

Access: If you require this information in an alternative format, such as large type, audio cassette or Braille, please contact the HR Advisory Service.

1. Scope

1.1 This policy applies to all school based employees (all teaching and support staff) under the Local Management of Schools arrangement, with the exception of employees within their probationary

period, Newly Qualified Teachers who are subject to the NQT induction process and members of staff of Early Years providers under the HR service provision of North Yorkshire County Council.

1.2 The policy has been adopted by the Governing Body of this school/Early Year setting on the date shown on page 1.

1.3 The policy is to be used to deal with matters of misconduct where normal line management action has either failed to achieve the required standards or would be inappropriate in the circumstances.

1.4 In certain circumstances it may be appropriate to implement disciplinary action outside the formal disciplinary procedure but only where there is genuine mutual agreement. This should not be regarded as normal practice but can arise when for example an employee is made aware of the results of a formal investigation and is prepared to accept a formal warning without the formal hearing process. Appendix 1 provides details of action outside of the formal procedure. Link to appendix 1.

1.5 If a concern or grievance is raised regarding any aspect of this policy and the accompanying guidance it should be dealt with as promptly as possible within this process. Matters should only be referred to be dealt with through the Resolving Issues at Work Procedure where they are not related to the application of this policy for that individual case.

1.6 **Where reference is made to Manager within this policy, this meanS Headteacher.**

1.7 When reading and applying the policy, managers and employees should refer to the accompanying guidance. Relevant sections of the guidance are cross-referenced within Section 4 – Procedure.

2. Policy Statement

2.1. This school is committed to encouraging all employees to achieve and maintain high standards of conduct. This policy promotes best practice and is to help and encourage all employees to achieve and maintain the required standards of conduct as outlined in the NYCC Standards of Conduct procedure for School Based Employees, ensuring consistent fair treatment for all. It is an expectation that all staff will participate in and co-operate with this policy and the accompanying Guidance as required**.**

2.2. No employee will be dismissed for a first breach of conduct except in the case of gross misconduct when the sanction will normally be dismissal without notice. A fair process should always be followed in line with section 4 procedure and the accompanying guidance. Examples of gross misconduct are also outlined in section 6.

2.3. The application of this policy and the accompanying guidance complies with the ACAS Code of Practice for Disciplinary and Grievance.

2.4. Managers are strongly advised to take advise from the HR Advisory Service with regards the application of this policy and at all stages of the procedure.

3. Decision making *(Please refer to Guidance – Section 7)*

3.1. In line with Sections 35 and 36 of the Education Act 2002 and the School Staffing (England) Regulations 2009, Governing Bodies have the right to delegate initial staff dismissal decisions to

the Headteacher or to a group of governors, either with or without the Headteacher. Staff dismissal decision relating to a Headteacher should be delegated to a group of governors. In cases which may result in dismissal with or without notice, a representative of The Director of Children and Young People's Service is entitled to attend. In all cases, the Headteacher may attend to offer advice to all relevant proceedings provided he/she is not a witness in the case nor takes any part in the decision making process.

3.2. Where disciplinary decisions are delegated to the Headteacher, the Governing Body may extend this delegation to a Deputy Headteacher or Assistant Headteacher for disciplinary warnings with the clear exception of dismissal decisions.

4. Procedure

4.1. **Right to be accompanied** *(Please refer to Guidance – Section 2)*
Employees have the legal right to be accompanied by a trade union representative or work colleague at Disciplinary Hearings and Appeal Hearings. The school extends this right to other formal meetings of the Disciplinary Procedure e.g. investigatory interviews. The accompanying representative has a statutory right to address the hearing or meeting but no statutory right to answer questions on the employee's behalf.

Employees or anyone accompanying employees must not make any electronic recordings of any meetings or hearings conducted under this procedure.

4.2. **Informal action** *(Please refer to Guidance – Section 3)*
Disciplinary action should only be considered where normal line management action has either failed to achieve the required standards or would be inappropriate in the circumstances. Managers are able to take informal action where standards of conduct give cause for concern, draw deficiencies to the attention of the employee and indicate that formal disciplinary action will be considered if standards do not improve. This action is outside the formal disciplinary procedure. Managers should make a file note and provide a copy to the employee, indicating that this is not a formal warning under the Disciplinary Policy & Procedure.

4.3. **Pre disciplinary investigation** *(Please refer to Guidance – Section 4)*
Where formal disciplinary action is appropriate an Investigating Officer will be appointed to undertake a pre disciplinary investigation: they will gather the facts, identify and interview witnesses and obtain documentary evidence. The employee will be informed that an investigation is to be undertaken. Employees have the right to be accompanied by a trade union representative or colleague at any such investigatory interview.

An Investigating Officer may be the manager or, if this is inappropriate (e.g. if the manager may need to be called as a witness at any future potential Disciplinary Hearing), an alternative nominated senior member of staff. An external Investigating Officer may be commissioned to undertake the investigation on behalf of the school. An Investigating Officer may take no part in the decision making process.

4.4. **Precautionary action** *(Please refer to Guidance – Section 5)*
In some cases it may be necessary to take precautionary action (temporary redeployment or suspension) whilst an investigation takes place: this is not prejudicial in any way to the outcome of the investigation and the employee will remain on normal pay. Any such decision should only be made with full consultation with the Chair of Governors and the HR Advisory Service.

Precautionary action should be the last resort but may be appropriate where:

- the allegation(s) constitute potential gross misconduct
- where the employee continuing their work may hamper the investigation
- where they may commit further misconduct, or
- where they, or other people, may be put at risk by them remaining at work.

Any precautionary action should be kept under periodic review during the investigation as a consequence of the evidence gathered. Periods of suspension should be kept to the minimum necessary.

4.5. **Outcome of pre-disciplinary investigation *(Please refer to Guidance – Section 6)***
Following a pre-disciplinary investigation and consideration of the facts and evidence obtained, a a decision will made whether no further action is required, or whether a Disciplinary Hearing needs to be convened to consider the allegations, in order to make a decision regarding disciplinary sanctions.

4.6. **Disciplinary Hearing** *(Please refer to Guidance – Section 7)*
Where a Disciplinary Hearing is to be convened, the employee will be advised in writing (being given reasonable notice of the date of the hearing), and informed of the allegations to be heard, the right to be accompanied, the names of the Panel members and the names of any witnesses to be called.

The Disciplinary Hearing will be heard by either the Headteacher or a Disciplinary Panel in line with section 3 (decision making).

The purpose of the Disciplinary Hearing is to establish whether there are reasonable grounds that the employee has committed the alleged misconduct, and to decide on the appropriate disciplinary sanctions if applicable (see 4.8).

4.7. **Disciplinary sanctions** *(Please refer to Guidance section 8 and 9)*

Written warning: If the misconduct is sufficiently serious a written warning can be given. The sanction will normally be disregarded for disciplinary purposes after twelve months satisfactory conduct.

Final written warning: If there is repeated misconduct or the misconduct is sufficiently serious to justify only one written warning but not serious enough to justify dismissal, a final written warning can be given. The warning will normally be disregarded for disciplinary purposes after fifteen months satisfactory conduct.

Dismissal/action short of dismissal: If misconduct continues or gross misconduct occurs, the employee will normally be dismissed. In the case of gross misconduct, dismissal will normally be without notice (no payment in lieu of notice will be made). If there are exceptional mitigating circumstances the Panel may take action short of dismissal where, otherwise, dismissal would occur. This may be to apply a final written warning, possibly valid for future disciplinary purposes for an extended period above the normal 15 month period. In exceptional circumstances (i.e. where no repeat of an act of misconduct could ever be tolerated) a 'life of employment' final written warning may be issued. Action short of dismissal may also include a demotion and/ or transfer.

4.8. **Appeals** *(Please refer to Guidance section 10)*
Employees have the right of appeal against any formal disciplinary sanction. They must give written notice of their decision to appeal within 10 working days of receipt of the letter confirming the sanction and set out the grounds of appeal.

Appeals will be heard at the earliest opportunity and will be heard by an Appeals Panel, as outlined in section 3 (decision making).

All parties must submit full documentary evidence to be presented at the hearing together with details of any witnesses they wish to call as soon as possible and no later than 5 working days prior to the Hearing.

The chair of the Disciplinary Panel may be requested to attend the Appeal Hearing as a witness in order to explain how the decision was reached, and to answer any questions.

The focus of the Appeal Hearing should be the basis of the decision and sanction imposed by the Disciplinary Panel, in addition to the specific grounds of appeal. This will not under normal circumstances require a full re-hearing of the case and consideration of all of the original evidence. The remit of the Appeal Panel is to satisfy itself that the decision taken by the Disciplinary Panel was reasonable in the circumstances and that due process was followed.

The outcome of the Appeal Hearing must be confirmed in writing, normally within 5 working days of the date of the hearing.

4.9. **Disciplinary Action and impact on increments** *(Please refer to Guidance section 11)*

Support Staff: When any formal disciplinary warning is applied it will have an effect on the individuals pay increment position as follows: the loss of any incremental progression while the warning is live or, for staff already on the top spinal column point of the pay band or qualification bar, their salary will be reduced by one incremental point only with effect from the following April. The loss or withholding incremental progression will not span 2 financial years.

Teaching Staff: Where any formal disciplinary warning is applied, and the school has adopted disciplinary as performance criteria under the school pay policy, there will be no entitlement to incremental progression at the next review point.

4.10. **Child protection/criminal offences/financial irregularity cases** *(Please refer to Guidance section 12)*
Where child protection concerns and/or criminal offences are suspected, these procedure will normally take precedence. A pre-disciplinary investigation may be delayed which matters are considered under statutory/criminal procedures. Where matters of financial irregularity are suspected, or other matters within an internal audit remit, Veritau at North Yorkshire County Council must be informed. They may carry out a separate Audit investigation (or investigate jointly) and make recommendations to the Investigating Officer and manager. Please contact the HR Advisory Service for further information and advice.

4.11. **Referrals to external agencies** *(Please refer to Guidance section 13)*
Where an employee is dismissed consideration must be given as to whether the matter should be reported to any professional bodies which require the reporting of misconduct issues e.g. Disclosure and Barring Service (DBS), Teaching Regulation Agency. Advice should be sought from the HR Advisory Service.

4.12. **Resignations** *(Please refer to Guidance section 14)*
There may be cases in which an employee offers to resign or resigns prior to a Disciplinary Hearing. In these circumstances it should be made clear to the employee that the Disciplinary Hearing may still go ahead and reach a decision that:

- the outcome will need to be referred to in any references provided
- where required, the outcome will be reported to any professional bodies which require the reporting of misconduct issues in such circumstances.

4.13. **Employee Support** *(Please refer to Guidance section 15)*
The employee should be given details of the employee assistance scheme as a source of support during the disciplinary process.

4.14. **Unavailability and Sickness Absence** *(Please refer to Guidance section 16)*
If an employee is absent due to sickness during the disciplinary process, the Investigating Officer should determine the nature and likely duration of the absence. Advice may be sought from the Health and Wellbeing service regarding the employee's ability to take part in the process.

Where an employee is suspended and subsequently notifies Management that they are unwell, normal notification/medical certification requirements will apply. Such absence will count against the employee's occupational sick pay entitlement and their absence record.

Reasonable time should be allowed for the employee to recover. However if it is likely that the absence will be prolonged, with the employee continuing to be unfit to take part in an investigation/hearing, the disciplinary process may proceed in his/her absence. The employee's representative may give evidence and state the case for the employee. The employee may provide a written statement.

5. Examples of types of serious misconduct and probable consequences

This is not an exhaustive list of those instances that could be construed as **serious misconduct** sufficiently serious to warrant formal disciplinary action. The list is provided to give examples of the types of behaviour that could be regarded as such.

i) Unjustified refusal of a lawful and reasonable instruction.
ii) Persistent lateness, unauthorised absence, failure to follow sickness absence notification procedures.
iii) Verbal assault or threat of violence in the workplace to fellow employees or other people.
iv) Negligence in carrying out duties in accordance with relevant policies and procedures.
v) Negligence in the performance of duties and responsibilities not covered by iv) above (except where due to incapability).
vi) Unauthorised use of the school's resources, or confidential gained whilst in the employment of the school (except where employees are protected by the provisions of the Whistle-blowing Policy/Public Interest (Disclosure) Act 1998).
vii) Acceptance of gifts and hospitality in contravention of the School's Policy.
viii) Personal misconduct occurring outside of the workplace, which is deemed sufficiently serious to affect an employee's position at work.
ix) Inappropriate use of electronic communications, including email or internet access facilities.
x) Failure to abide by professional codes of conduct/standards
xi) Discrimination, bullying or harassment.

Note: Incidences described above would normally result in a written warning (which may be a final warning). Continued/repeated incidences of misconduct may however lead to dismissal.

6. Examples of types of gross misconduct and probable consequences

This is not an exhaustive list of those incidences that could be construed as **gross misconduct**. It is provided as an example of the types of behaviour that could be regarded as such.

i) Theft or attempted theft, fraud or fraudulent falsification of accounts, or other official records.
ii) Deliberate damage to the property of the school or that of any other employee.
iii) Physical or indecent assaults deemed sufficiently serious to affect an employee's position at work.
iv) Serious breaches of the School's Policy on the acceptance of gifts and hospitality.
v) Serious breaches of confidentiality (unless subject to the protection afforded by the Whistle-blowing Policy/Public Interest (Disclosure) Act 1998).
vi) Discrimination, bullying or personal harassment of a serious, wilful and/or sustained nature.
vii) Being incapable of work, or of working safely due to the influence of alcohol or drugs (unless the Capability and/or Occupational Health Procedures are deemed to apply).
viii) Serious negligence or wilful failure to comply with legal requirements of the School's various policies and procedures such as Health and Safety, Equalities, Data Protection, or any other legal or statutory requirement.
ix) Serious negligence, which causes or might have caused unacceptable loss, damage or injury.
x) Behaviour, which has brought the School or its services into serious disrepute.

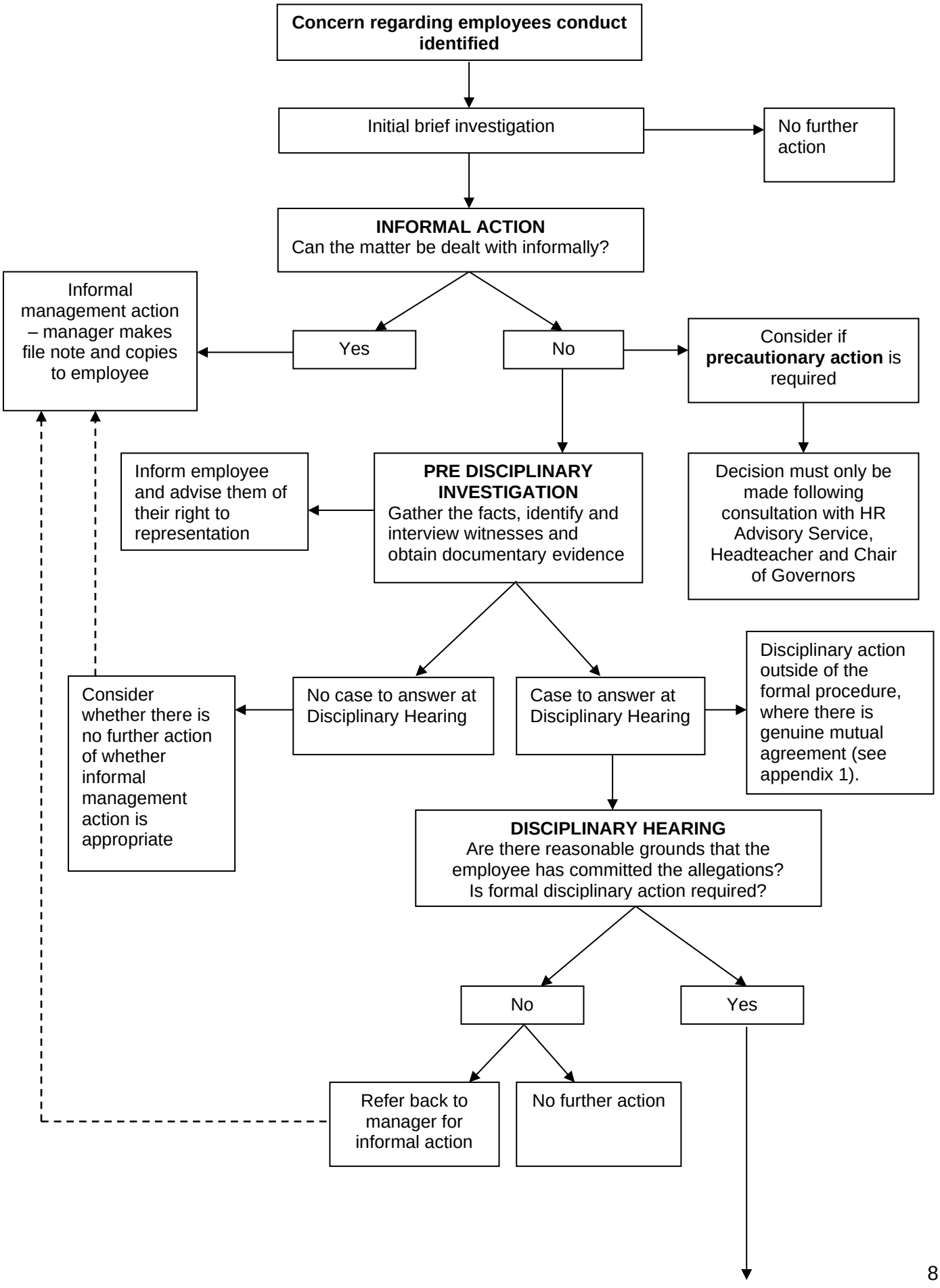
xi) Serious breach of computer security and/or information governance and/or abuse of electronic systems including the misuse of email and/or internet facilities and deliberately attempting to access pornographic, offensive or obscene material.
xii) Personal misconduct occurring outside of the workplace, including actions which result in the employee being unable to conduct, or unsuitable for, their type of work.
xiii) Serious and sustained insubordination.
xiv) Serious breach of professional codes of conduct/standards.
xv) Serious misuse of School property or name.

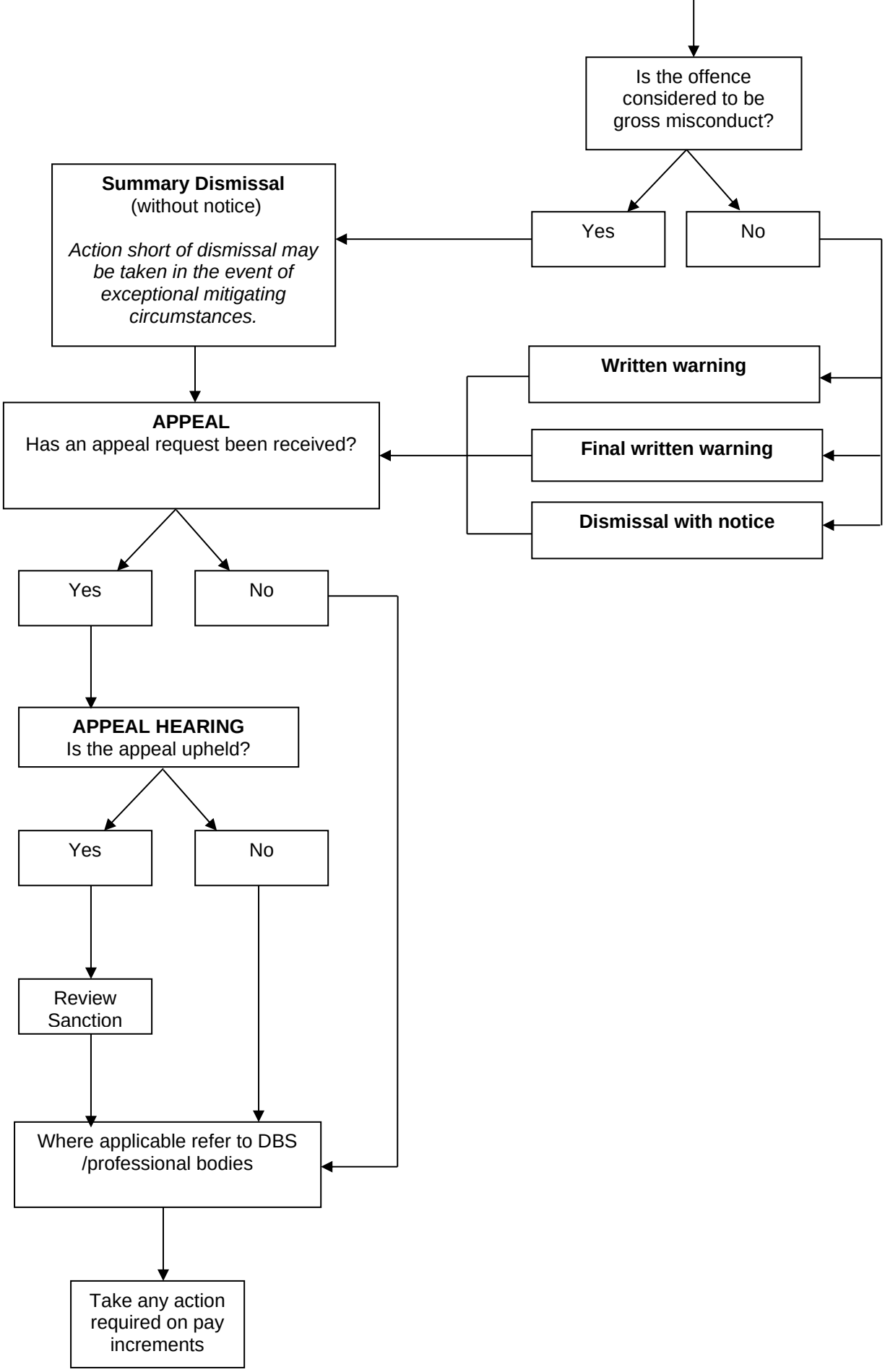
Actions or behaviours that could be construed as gross misconduct may lead the Investigating Officer to conclude that there has been a complete breakdown of trust and confidence between the School and the employee, even where any individual act in itself would not constitute gross misconduct.

Note: Incidences dscribed above would normally result in dismissal without notice. Action short of dismissal may be taken in the event of exceptional mitigating circumstances

7. Flow diagram

This flowdiagram should be read in conjunction with the Disciplinary Procedure and accompanying Guidance.




Is the offence considered to be gross misconduct?
Yes
No
Summary Dismissal
(without notice)
Action short of dismissal may be taken in the event of exceptional mitigating circumstances.
Written warning
Final written warning
Dismissal with notice
APPEAL
Has an appeal request been received?
Yes
No
APPEAL HEARING
Is the appeal upheld?
Yes
No
Review Sanction
Where applicable refer to DBS /professional bodies
Take any action required on pay increments

8. Appendix 1: Action outside of the formal disciplinary procedure

8.1. Occasions may arise when it is appropriate to take disciplinary action outside of the formal procedure. This should not be regarded as normal practice but can arise when for example an employee is made aware of a formal investigation and is prepared to accept a formal warning without the formal hearing/appeal process.

8.2. Such action can save a considerable amount of time and stress for all the parties concerned whilst also achieving the purpose of a disciplinary warning which is to correct an employee's behaviour and move forward.

8.3. However it is essential that due process is followed in accordance with these guidelines to avoid accusations of unfairness or undue pressure, subsequent misunderstandings or appeals.

This process is not appropriate if the disciplinary action sought is dismissal. If however during the process an individual offers their resignation its acceptance can be considered, provided due process is followed and management are confident that they can adequately defend any subsequent accusations of unfairness or undue pressure. If in doubt a formal hearing should be arranged.

8.4. It is management's responsibility to establish the facts of any case before proposing a sanction and therefore a formal investigation will normally be required and/or the evidence assembled in the usual way.

8.5. A meeting must be arranged at which the employee can hear a full explanation of the evidence and proposed penalty and at which they can comment and question the facts of the case and level of penalty proposed. If the employee has admitted to the misconduct a summary of the evidence should suffice.

8.6. The employee must be advised of their rights to a formal hearing and be given a copy of the formal procedure with explanation as necessary. They should be asked to confirm their understanding.

8.7. The employee must be given the right and encouraged to be accompanied by a union representative or colleague and be given adequate opportunity to take separate advice from their representative or colleague before the meeting, in adjournment and/or following the meeting or to seek independent advice within a reasonable period of time following the meeting.

8.8. The manager should also arrange to be accompanied by another manager (or representative of the HR Advisory Service) who will act as a witness to what is said and agreed.

8.9. If there is agreement to the proposed sanction, management must confirm in writing to the employee the facts of the case and the process that has been followed including the date of the meeting, those present, the information and advice given about the employee's rights under the formal procedure and their understanding of these and the agreed penalty.

8.10. The employee must be given the opportunity to consider the letter and take further independent advice before formally confirming their agreement in writing to that effect. A maximum period of 10 working days should be allowed for further advice and consideration.

8.11. Copies of the agreement signed by both parties should be retained on the employee's personal file. The agreed warning may then be taken into account in any subsequent disciplinary process up to the time limits specified in the formal procedure. The warning period will begin from the date the employee signs the agreement and will have an effect on incremental progression in line with section 4.9 of the Disciplinary Policy and Procedure.

8.12. Although unlikely to be required after agreement has been reached, the employee has the right of appeal against a warning issued under this procedure. In such cases the employee must write stating their grounds of appeal within 10 working days of receipt of the warning letter. In such cases the standard Disciplinary Appeals Procedure will be followed.

8.13. Please refer to the accompanying Disciplinary Guidance for template letters to be used. Link to Disciplinary Guidance.