

## Disciplinary Policy & Procedure



### Osmotherley Primary School

Date adopted by the school's Governing Body (based on NYCC model policy no #)	January 2019
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**Policy produced for schools under the HR service provision of North Yorkshire County Council.**

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## 1. Scope

- 1.1 This Policy applies to all employees (all teaching and support staff) of the school, with the exception of employees within their probationary period and those on Apprenticeship schemes.
- 1.2 The policy has been adopted by the Governing Body of this school 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. Members of staff should be encouraged to contact their trade union/professional association representative for advice in these circumstances.
- 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.
- 1.6 **Where reference is made to Manager within this policy, this could mean Principal, Headteacher, line manager, Head of Department/Faculty or Business Manager. Trustees or Local Governors may be involved where disciplinary issues relate to the Headteacher/Principal/senior managers or in Disciplinary Hearings and Appeals**
- 1.7 When reading and applying the Policy, managers 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. As such this policy promotes best practice and is to help and encourage all employees to achieve and maintain the required standards of conduct, ensuring consistent fair treatment for all. It is an expectation that all staff will participate in and co-operate with this policy and the 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 advice from the HR Advisory Service with regards the application of this policy and at all stages of the procedure.

## 3. Decision Making

- 3.1 Disciplinary and dismissal decisions will be delegated to the headteacher and a panel of governors. Two separate panels of governors have been established: a Disciplinary Panel and an Appeal Panel.

## 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 /professional association representative or work colleague at Disciplinary Hearings and Appeal Hearings. The School may choose to allow staff to be accompanied by a trade union /professional association representative or work colleague at investigatory meetings

### 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.

### 4.3. **Pre-disciplinary investigation** *(Please refer to Guidance – Section 4)*

Where formal disciplinary action is potentially appropriate an Investigating Officer will be appointed to undertake a pre-disciplinary investigation: he/she will gather the facts, identify and interview witnesses and obtain documentary evidence. The employee will be informed that an investigation is to be undertaken.

An Investigating Officer may be the manager or an independent nominated senior member of staff not connected with the case. An external Investigating Officer may be commissioned to undertake the investigation on behalf of the school.

### 4.4. **Pre-cautionary 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, and is not prejudicial in any way to the outcome of the investigation. This should be reviewed on a regular basis.

### 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 decision will be 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. Where no further disciplinary action is taken the investigating officer may choose to make recommendations e.g. where further training may be advisable.

### 4.6. **Disciplinary Hearing** *(Please refer to Policy section 8, also Guidance – Section 7)*

Where a Disciplinary Hearing is to be convened, the employee will be advised in writing and informed of the allegations to be heard and his/her right to be accompanied.

The Disciplinary Hearing will be heard by a panel in line with section 3 – Governing Body Committees.

The outcome of the Disciplinary Hearing, and any disciplinary sanction imposed and/or action must be confirmed in writing.

### 4.7. **Disciplinary Sanctions (where necessary)** *(Please refer to Guidance – Section 8)*

**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 Disciplinary Panel may take action short of dismissal where, otherwise, dismissal would occur. Action short of dismissal may include demotion/transfer to an alternative post and/or location.

4.8. **Appeals** (*Please refer to Guidance – Section 10*)

Employees have the right of appeal against any formal disciplinary sanction. He/she 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 in line with section 3 – Governing Body Committees.

The outcome of the Appeal Hearing must be confirmed in writing.

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**Please note that this is an optional section applicable only to those schools that have adopted or adapted the NYCC Increments Policy**

4.8 (a) **Disciplinary Action and impact on increments, where the school has included these clauses in its pay policy** (*Please refer to Guidance section 11*)

**Support Staff:** When any formal disciplinary warning is applied it will have an effect on the individual's 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, his/her salary will be reduced by one incremental point only with effect from the following April. The loss or withholding of incremental progression will not span 2 financial years.

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

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4.9. **Child Protection/criminal offences cases** (*Please refer to Guidance – Section 12*)

Where child protection and/or criminal offences are alleged, these procedures will normally take precedence. A pre-disciplinary investigation may be delayed while matters are considered under statutory/criminal procedures.

4.10. **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), National College of Teaching & Leadership (NCTL)

4.11. **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 a decision needs to be made, relevant to the context of the case, and made clear to the employee about whether 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.

4.12. **Employee Support** (*Please refer to Guidance – Section 15*)

Investigating Officers should consider offering appropriate support to employees involved in the disciplinary process, which includes giving employees the details of any employee assistance

scheme and advising members to contact their trade union/professional association representative.

4.13. **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.

Reasonable time should be allowed for the employee to recover, judged on a case by case basis. 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 provided this is acceptable to both the employee and representative. The employee may provide a written statement.

5. **Examples of types of serious misconduct and possible 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 possible 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).

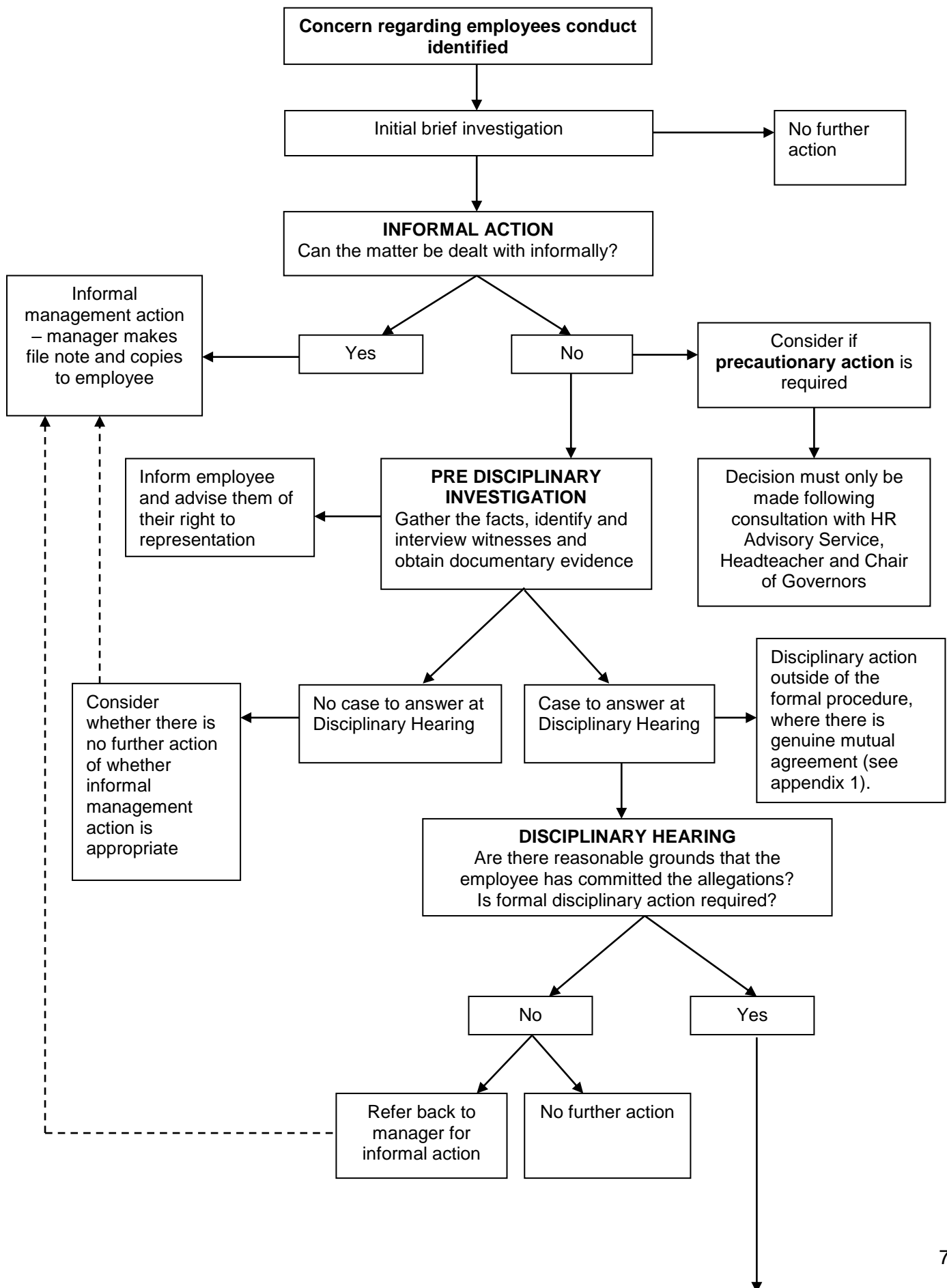
- viii) Serious negligence or wilful failure to comply with legal requirements of the School's various policies and procedures such as Health and Safety, Equalities, Data Protection, or any other legal or statutory requirement.
- ix) Serious negligence, which causes or might have caused unacceptable 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.

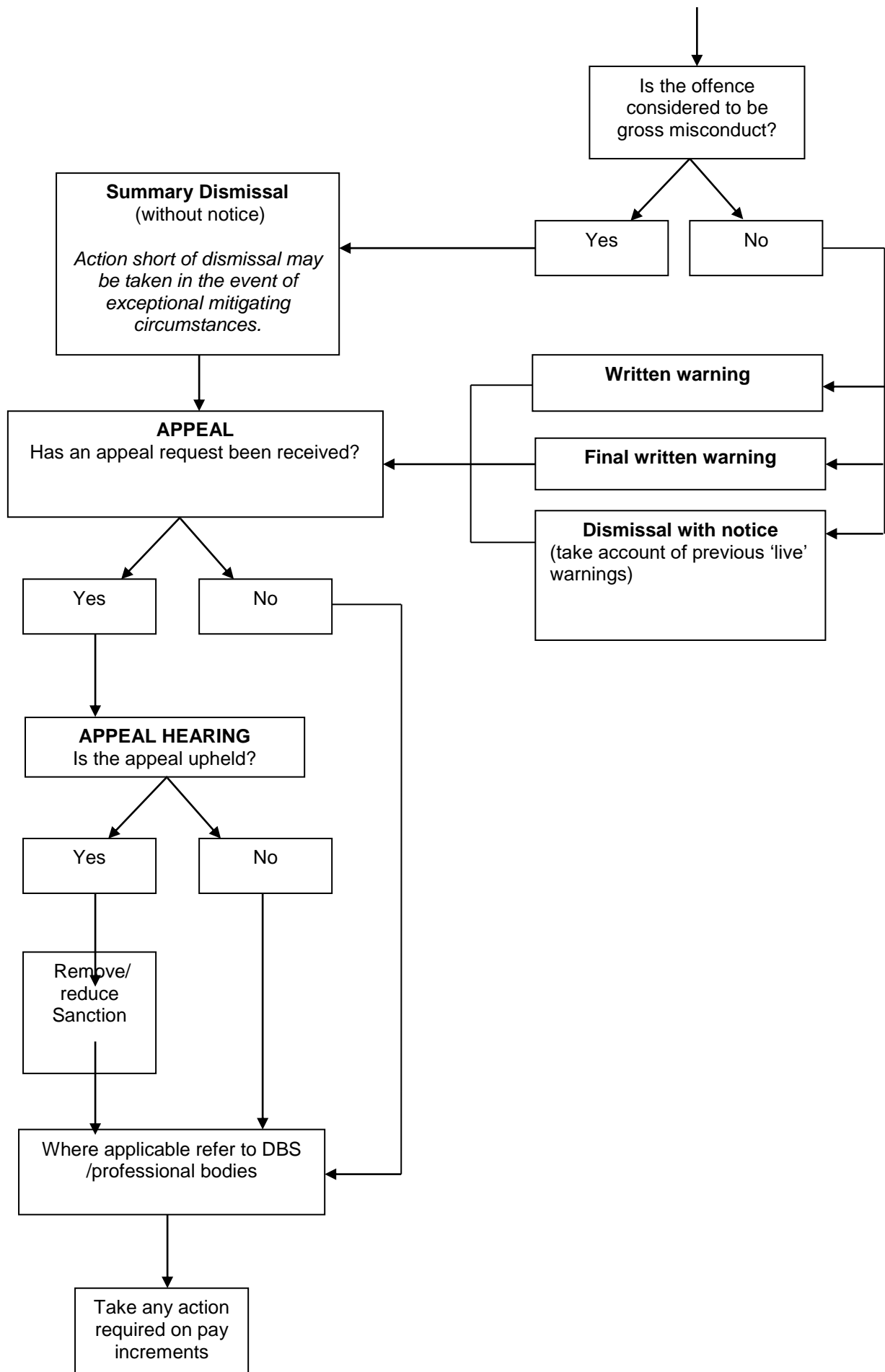
Actions or behaviours that could be construed as gross misconduct may lead the Investigating Officer to conclude that there has been a complete breakdown of trust and confidence between the School and the employee, even where any individual act in itself would not constitute gross misconduct.

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

## 7. Flowdiagram

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







## **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.
- 8.4. This process is not appropriate if the disciplinary action sought is dismissal. If however during the process an individual offers his/her 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.
- 8.5. 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.
- 8.6. 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.
- 8.7. 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.
- 8.8. 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 his/her 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.
- 8.9. 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.
- 8.10. 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 his/her understanding of these and the agreed penalty.
- 8.11. The employee must be given the opportunity to consider the letter and take further independent advice before formally confirming his/her agreement in writing to that effect. A maximum period of 10 working days should be allowed for further advice and consideration.
- 8.12. 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.
- 8.13. 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.

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