

# Disciplinary Policy

July 2018  
(Draft for Discussion)



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# Table of Contents

1. Objectives and scope .....	4
2. Responsibilities.....	4
3. Disciplinary offences... ..	5
4. The authority to take disciplinary action.....	5
5. Allegations against Trade Union representatives.....	6
6. Relationship with the Grievance Procedure.....	6
7. Informal management of disciplinary issues.....	7
8. Formal management of disciplinary issues .....	7
8.1 Investigating the facts .....	7
8.2 Suspension.....	8
8.3 Disciplinary meeting .....	8
8.4 Right to be accompanied.....	9
8.5 Disciplinary sanctions - misconduct and serious misconduct.....	9
8.6 Disciplinary sanctions - gross misconduct .....	10
8.7 Appeal.....	11
8.8 Referral to external bodies.....	12
Appendix A - Managing formal disciplinary action flow diagram.....	13

## 1. Objectives and scope

- 1.1 This policy applies to all employees of Reading Borough Council, including those on permanent, temporary or part-time contracts, job sharers, and individuals on non-standard terms of employment, with the exception of the Head of Paid Service, Section 151 Officer and the Monitoring Officer for whom separate procedures apply.
- 1.2 It does not apply to agency staff and interims and staff employed by schools who may be covered by separate terms and conditions relating to their employment.
- 1.3 The following policy will be applied fairly in all instances where disciplinary action is regarded as necessary by the Council's management.
- 1.4 The Council reserves the right to implement the policy 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, except in cases of gross misconduct.
- 1.5 Where time limits are referred to in the course of this policy they may be varied by agreement between the employee and the Council.
- 1.6 The Council's **Code of Conduct** sets out clear advice on the standards expected of everyone who works for the Council, including casual workers, agency workers and self-employed consultants i.e. everyone who carries out work for or on behalf of the Council. The standards it sets out are consistent with the Councillors' Code of Conduct and the Values and Standards in Public Life included within the Nolan Committee Report 1996. All staff are expected to ensure that they have read and understand the Code of Conduct and if they have any questions, they should speak to their manager.

## 2. Responsibilities

### 2.1 Employees should:

- in addition to the Code of Conduct and other Council rules, make themselves aware of and understand any rules, procedures and standards applicable to their role and function
- maintain high standards of behaviour, attitude and conduct in keeping with the interests and standing of the Council at all times
- act with responsibility, judgement and good faith when doing their job
- carry out any reasonable instruction given by the Council's managers
- not bring the Council into disrepute

### 2.2 Additionally, managers should ensure that:

- all staff are aware of and understand any rules, procedures and standards applicable to their role and function
- induction, probation and supervision processes are applied appropriately and consistently in order to communicate the standards of conduct and behaviour expected

- employees are aware of the consequences of not complying with these rules, procedures and standards
- where necessary, ensure that guidance and training is given to employees to enable them to meet these standards
- they address any concerns with staff conduct promptly, explaining what the employee should do to improve, while keeping a record of what has been discussed
- if they consider it inappropriate to use informal methods, or if that approach has been unsuccessful, they should follow the formal stages of this policy

### 3. Disciplinary offences

3.1 Matters that the Council views as amounting to disciplinary offences include (but are not limited to) those listed below. In all cases an investigation will be conducted before further action is considered to establish the facts.

- Failure to comply with the Council's Code of Conduct
- persistent bad timekeeping;
- unauthorised absence;
- damage to the Council's property;
- failure to observe the Council's procedures;
- abusive behaviour;
- unreasonable refusal to follow an instruction issued by a manager or supervisor;
- poor attendance;
- data protection breaches and misuse of the Council's information;
- smoking or use of an e-cigarette in non-designated areas of the Council's premises;
- bribery offences under the Bribery Act 2010;
- bringing the Council into disrepute

### 4. The authority to take disciplinary action

4.1 The table in 4.2 details the 'designated officers' who are authorised to chair disciplinary meetings, suspend, issue disciplinary sanctions and hear appeals depending on their seniority.

#### Line manager

4.2 The immediate line manager or supervisor will be responsible for informal action and may be responsible for the investigation under the formal stages of this policy.

Table showing the 'designated officers' who are authorised to chair disciplinary meetings, suspend, issue disciplinary sanctions and hear appeals depending on their seniority

Disciplinary action in respect of:	A Director (other than Section 151 Officer and Monitoring Officer)	A Head of Service	All other employees
Investigate allegations	Head of HR and Organisational Development/ Chief Executive	Head of Service	An officer authorised by the Head of Service
Chair disciplinary hearing where dismissal is not a possible outcome	Sub Committee of Personnel Committee	Director	An officer authorised by the Head of Service
Chair disciplinary hearing where dismissal is a possible outcome	Sub Committee of Personnel Committee	Director	Head of Service
Chair appeal hearing	Sub Committee of Personnel Committee (with members not involved in the original hearing)	Chief Executive or a Director not previously involved in the case, Chair of Personnel Committee and one other member of Personnel Committee, or a substitute member(s)	Head of Service not previously involved in the case, Chair of Personnel Committee and one other member of Personnel Committee, or a substitute member(s)

## 5. Allegations against Trade Union representative

- 5.1 Where the Disciplinary Policy is to be applied to accredited trade union representatives, no formal action should be taken until the case has been discussed with a full-time trade union representative of the recognised trade union who is employed by the Council, or an official employed by the recognised trade union.
- 5.2 Removal from the workplace and/or suspension if necessary may occur without this prior discussion (as is the case for all other employees - see 8.2 below). The Head of HR and Organisational Development must be informed of these cases and the appropriate Designated Officer (see 4.2 above) must ensure the trade union official is informed as quickly as possible.

## 6. Relationship with the Grievance Procedure

6.1 A grievance raised by an individual in response to an investigation and/or management action into his or her alleged misconduct may be addressed in a number of ways, depending on the nature and timing of the grievance.

6.2 This could include:

- commissioning an independent investigation
- considering both issues at the same time in a single disciplinary/grievance meeting
- pausing the investigation/formal management action, while the grievance is heard

## 7. Informal management of disciplinary issues

7.1 Many potential disciplinary issues can be resolved by the line manager intervening at an early stage as part of their normal day-to-day responsibilities: 'A quiet word is often all that is required to resolve an issue' (ACAS Code of Practice).

7.2 In cases of minor breaches of discipline (e.g. lateness for work, careless mistakes, lack of attention to detail/instructions/procedures), the immediate line manager should discuss these concerns with the employee to ensure that the employee is:

- aware of the concerns
- knows what is required to meet expected standards of conduct
- made aware of the timescale over which an improvement is required
- made aware of the consequences of not achieving the required standard

7.3 This is not a stage in the formal Disciplinary Policy. It is part of the standard day-to-day relationship between managers and the people they manage.

7.4 However, in certain circumstances it will be necessary for the discussion and improvement required to be confirmed in an 'improvement plan' letter, as it may become necessary to pursue the issue through the formal Disciplinary Policy if there is a re-occurrence or a failure to improve to the required standard.

7.5 The objective of the informal approach is to address minor misconduct, seeking improvement to the required standard. Where it becomes clear that the misconduct is more serious managers should consider taking formal disciplinary action under this policy.

## 8. Formal management of disciplinary issues

### 8.1 Investigating the facts

8.1.1 An employee's line manager will promptly and thoroughly investigate any matter that is reasonably suspected or believed to contravene any of the Council's policies or rules or may otherwise be a disciplinary matter. The employee will be informed in writing as soon as possible as to the fact of an investigation, the allegations being investigated and when it has been concluded.

- 8.1.2 Depending on the circumstances of the case, the employee may be invited to attend an investigation 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 investigation interview. The Council allows employees to be accompanied to investigation meetings by a fellow employee or trade union representative.
- 8.1.3 If the allegations involve criminal behaviour and/or harm to vulnerable adults or children then HR advice must be sought before any action is taken.

## 8.2 Suspension

- 8.2.1 There may be instances where suspension with full pay is necessary while investigations are carried out. The Council has the right to suspend with pay where there are reasonable grounds for concern that evidence may be tampered with, destroyed or witnesses pressurised before the disciplinary hearing, or if there is a potential risk to the business or other employees or third parties in allowing the employee to remain at work. Such a suspension is precautionary; it is not disciplinary action in itself and does not imply any prejudgement of the outcome of the investigation.
- 8.2.2 Suspension will be confirmed in writing to the employee by their manager within five working days. The letter will confirm who the employee's point of contact will be for support during their period of suspension, including if they need assistance preparing their response to the allegations, and any restrictions on them attending their usual place of work.
- 8.2.3 The suspended employee must remain available to assist with, or participate in, the disciplinary process unless they have booked and agreed annual leave.

## 8.3 Disciplinary meeting

- 8.3.1 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. The hearing will be chaired by an appropriate 'designated officer' with the authority to take disciplinary action, as detailed in paragraph 4.2 of this procedure. The hearing manager will be advised by an HR professional and a note taker will also be present.
- 8.3.2 The Council will give the employee a minimum of five working days' advance notice of the hearing in writing. The letter will include the following details:
- the purpose of the hearing and that it will be held under the Council's Disciplinary Policy;
  - the employee's right to be accompanied at the hearing by a fellow worker or trade union official;
  - details of the nature of his/her alleged misconduct; and
  - provide to the employee all relevant information which will be relied upon during the hearing which should include statements taken from any fellow employees and/or the names of any witnesses that will be asked to attend.
- 8.3.3 The employee and their companion should make every effort to attend the hearing. Where the employee is unable to attend and provides a good reason for this, the

hearing will be adjourned to another day. Unless there are special circumstances mitigating against it, if the employee is unable to attend the rearranged hearing, it 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 allowed the opportunity to present the employee's case. The employee will also be allowed to make written submissions in such a situation.

- 8.3.4 Where the chosen companion is unavailable on the day scheduled for the hearing, it will be rescheduled, provided that the employee proposes an alternative time within five working days of the scheduled date. If an alternative date is proposed by the employee, it will not be unreasonably refused.
- 8.3.5 If the employee wishes to call witnesses to the hearing then he/she or their chosen companion must provide the names of any witnesses to the hearing manager at least three working days before the hearing. The employee or their chosen companion will be responsible for arranging the attendance of his/her witnesses. If the employee wishes to submit any documentary evidence to be considered at the hearing then he/she or their chosen companion must provide copies of this to the hearing manager at least three working days before the hearing.
- 8.3.6 At the hearing, the employee will be given a full explanation of the case against him/her. He/she will be permitted to set out his/her case and answer any allegations. The employee will also be given the opportunity to raise points about any information provided and to call his/her own witnesses.
- 8.3.7 The Council 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.
- 8.3.8 Following the meeting the Chair will decide whether or not disciplinary or any other action is justified. In all cases the outcome will be confirmed in writing to the employee within three working days of the meeting.

## **8.4 Right to be accompanied**

- 8.4.1 Individuals have a statutory right to be accompanied at formal disciplinary hearings. The chosen companion may be a fellow worker, a trade union representative, or an official employed by a trade union. Reasonable adjustments may be needed for a worker with a disability (and possibly for their companion if they are disabled). For example the provision of a support worker or advocate with knowledge of the disability and its effect. The employee must tell the hearing manager who they have chosen as their companion at least three working days before the hearing.
- 8.4.2 The Council considers it is good practice to allow the chosen companion to participate as fully as possible in the meeting, including putting questions to witnesses if appropriate. However the companion will not answer questions on the individual's behalf, or to address the meeting if the individual does not wish it. The companion should also not have any conflicts of interest.

## 8.5 Disciplinary sanctions - misconduct and serious misconduct

- 8.5.1 Broadly, where misconduct is confirmed, it is usual to give the employee a **first written warning**. The letter confirming the first written warning will set out the nature of the offence(s) committed and inform the employee that further misconduct is liable to result in further disciplinary action under this policy. A first written warning will usually remain live for six months from the date it is issued. The letter will also confirm the employee's right to appeal (see below).
- 8.5.2 Where an employee commits a further disciplinary offence(s) after a first written warning has been issued and remains live, then a **final written warning** will be issued. As an alternative, consideration may also be given to extending the first written warning. A final written warning may also be appropriate for more serious cases of misconduct where the Council would consider dismissal if the misconduct was repeated, without having given a first written warning beforehand. A final written warning will usually be live for 12 months from the date it is issued. A longer period may be given in certain circumstances (e.g. misconduct verging on gross misconduct, where there has been a history of warnings or where there are health and safety implications). The letter confirming the final written warning will set out the nature of the offence(s) committed and inform the employee that further misconduct is likely to result in dismissal. The letter will also confirm the employee's right to appeal (see 8.7 below).
- 8.5.3 Where the employee has committed further acts of misconduct (these being acts of misconduct other than gross misconduct) following a final written warning which remains live, the employee may be **dismissed with notice or with pay in lieu of notice**. The letter confirming dismissal will set out the nature of the offence(s) committed and will also confirm the employee's right to appeal (see 8.7 below).

## 8.6 Disciplinary sanctions - gross misconduct

- 8.6.1 Gross misconduct is misconduct of such a serious and fundamental nature that it breaches the contractual relationship between the employee and the Council. In the event that an employee commits an act of gross misconduct, the Council will be entitled to terminate summarily the employee's contract of employment without notice or pay in lieu of notice.
- 8.6.2 The Council will treat seriously any employee who is charged with a criminal offence, although being charged with, or convicted of, a criminal offence away from work does not automatically lead to dismissal. It would depend on the offence, its seriousness and the effect on the employee's ability to continue in the job, or on the Council's credibility with the public.
- 8.6.3 Matters that the Council views as amounting to gross misconduct include (but are not limited to):
- Persistent and wilful refusal to carry out a reasonable management instruction
  - Serious or deliberate failure to comply with:
    - the Council's Code of Conduct for employees
    - Financial regulations and standing orders
    - Corporate or Directorate Safety Policies and Practices

- Physical violence, threats or assault of, or towards, a member of the public, service users, Council Members or staff
- Theft or attempted theft of cash or property belonging to the Council's service users, an employee of the Council or the Council itself
- Cash shortage by reason of negligence in relation to money within the employee's responsibility
- Serious or persistent acts of discrimination or harassment against employees, clients of members of the public on any grounds
- Conduct of a fraudulent nature, including falsification of time sheets, claim forms and persistent misuse of the flexitime scheme, time sheets and fraudulently recording arrival on behalf of other employees, or inappropriate application of the Council's services
- Wilful and irresponsible actions or omissions which would endanger people or property
- Conduct liable to cause serious loss of confidence in the Council or considered contrary to the interests of the Council, in addition to those mentioned in the Code of Conduct, this includes criminal offences outside of work, which may affect the continued performance of the employee's contract of employment
- Interference with, or misuse of, Council computer systems, hardware, software or data, in such a way as to threaten the continued operation, integrity or security of the Council's systems
- Unauthorised removal and use of Council property
- Sexual offences / misconduct at work
- Improper use of an official position for private gain, including seeking and accepting bribes
- Unauthorised use and/or disclosure of information relating to the Council's business, its members, staff or service users (contrary to the Code of Conduct)
- Serious failure to discharge obligations in accordance with statute or contract of employment
- Sleeping on duty unless expressly permitted
- Serious incapability through the result of the influence of alcohol or other drug misuse
- Deliberately accessing internet sites containing pornographic, offensive or obscene material
- Serious insubordination
- Bringing the Council into serious disrepute
- Serious breach of health and safety rules
- A serious breach of confidence

## 8.7 Appeal

- 8.7.1 An employee may appeal against any disciplinary sanction imposed against him/her under the formal stage of this policy. The appeal will be heard by a senior manager who has not been involved in the decision to impose a warning on the employee, in line with the authority to take disciplinary action, as detailed in paragraph 4.2 of the Disciplinary Policy. If the appeal is against dismissal, the appeal will be heard by a panel comprising a senior manager who has not been involved in the decision to impose dismissal on the employee, the Chair of Personnel Committee and one other member of Personnel Committee or their substitute(s). The hearing

manager/panel will be advised by an HR professional and a note taker will also be present.

8.7.2 The employee must provide written notice of an appeal within five working days of receiving the written confirmation of the disciplinary sanction being imposed against him/her. The appeal should be sent to the manager who made the original decision. When lodging an appeal, the employee should state:

- the grounds of appeal; and
- 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, or both, or against the procedure not being followed correctly.

8.7.3 Appeal hearings will normally take place within 14 days of receipt of the employee's written notice of appeal. A guidance note for the process to be followed at the appeal hearing is available on the intranet. If the employee wishes to submit any documentary evidence to be considered at the appeal then he/she or their chosen companion must provide copies of this to the appeal panel at least three working days before the hearing.

8.7.4 The appeal manager/panel is obliged to consider any representations made by the employee and the employee's fellow employee or trade union official. They must also consider representations made by the manager who conducted the investigation and the manager who conducted the disciplinary hearing and imposed the disciplinary sanction. The appeal manager/panel 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 they find for the employee, all records of the disciplinary sanction shall be removed from the employee's record. In the event that the appeal manager/panel does not accept the representations made by or on behalf of the employee, they must uphold the disciplinary sanction.

8.7.5 Upon completion of the appeal, the appeal manager/panel will convey their decision to the employee. The decision will be confirmed in writing within three working days.

8.7.6 The outcome of the appeal is final. There is no further right of appeal.

## **8.8 Referrals to external bodies**

8.8.1 The Council will comply with regulations that require it to refer formal disciplinary action taken under this policy to other relevant bodies as appropriate.

8.8.2 There is a statutory requirement for the Council to comply with the provisions of the Safeguarding of Vulnerable Groups Act 2006 when dismissing a member of staff working with children or vulnerable adults, where the dismissal has occurred on grounds of misconduct which harmed, or placed at risk of harm, a child or vulnerable adult.

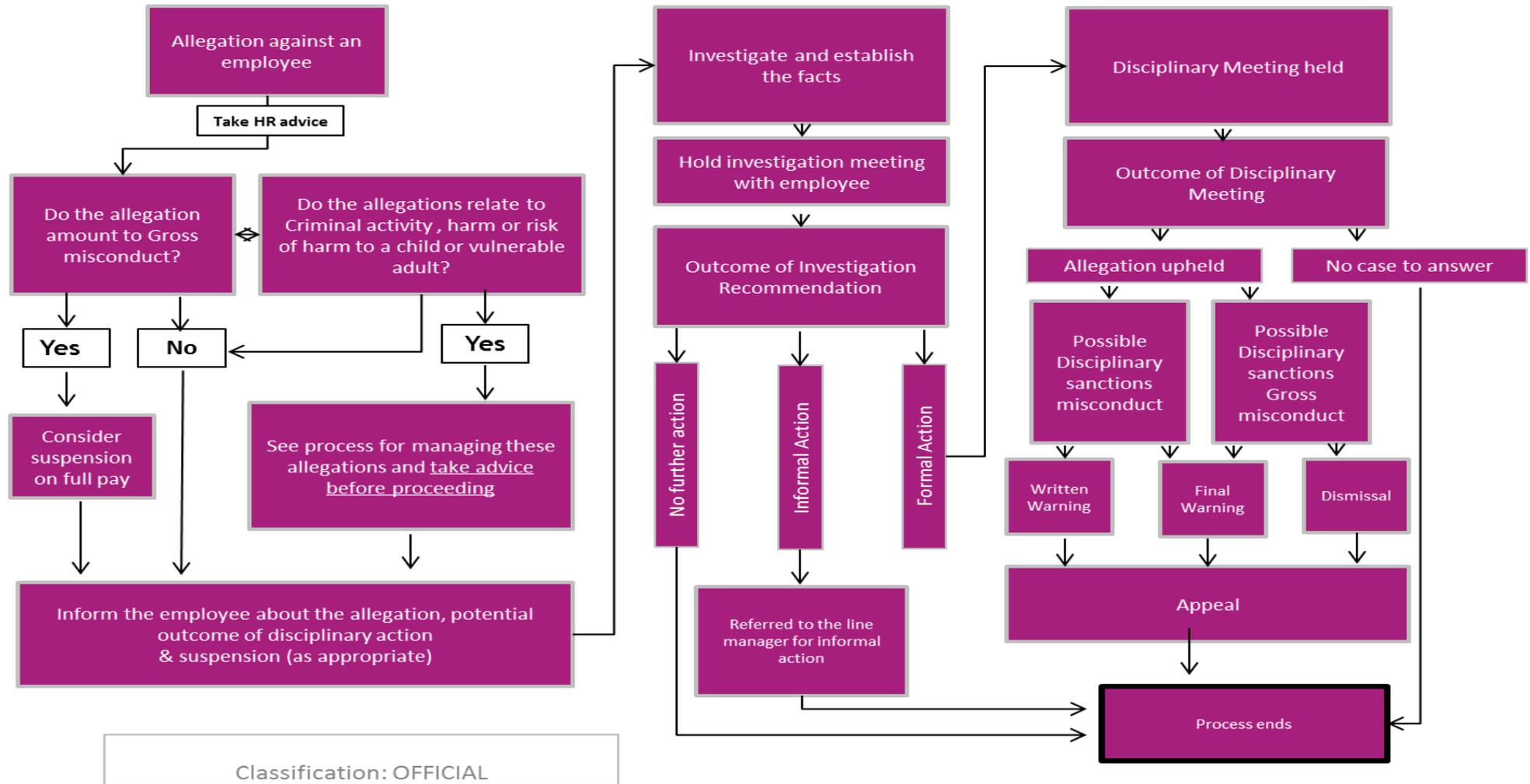
8.8.3 Where an individual is dismissed in these circumstances (or would have been dismissed had they not resigned, retired, been made redundant or transferred to a post not involving regulated activity) and where the circumstances of the case

meet the relevant thresholds, the details of the case must be referred to the Disclosure and Barring Service (DBS). In certain circumstances it may be appropriate to refer the individual to the DBS before the disciplinary hearing has taken place.

- 8.8.4 Where a registered manager, social worker or occupational therapist is suspended or dismissed on grounds of misconduct or professional capability, his/her Head of Service must ensure that the Health Care Professions Council (HCPC) is notified.
- 8.8.5 Where adopted by schools and a teacher is dismissed (or would have been dismissed had they not resigned) on the grounds of misconduct which could be considered 'unacceptable professional conduct', the case should be referred to the National College of Teaching and Leadership (NCTL).

# Appendix A

## Managing Formal Disciplinary Action



Classification: OFFICIAL