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# Disciplinary Policy and Procedure

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## Status of Policy:

**Updated September 2013**

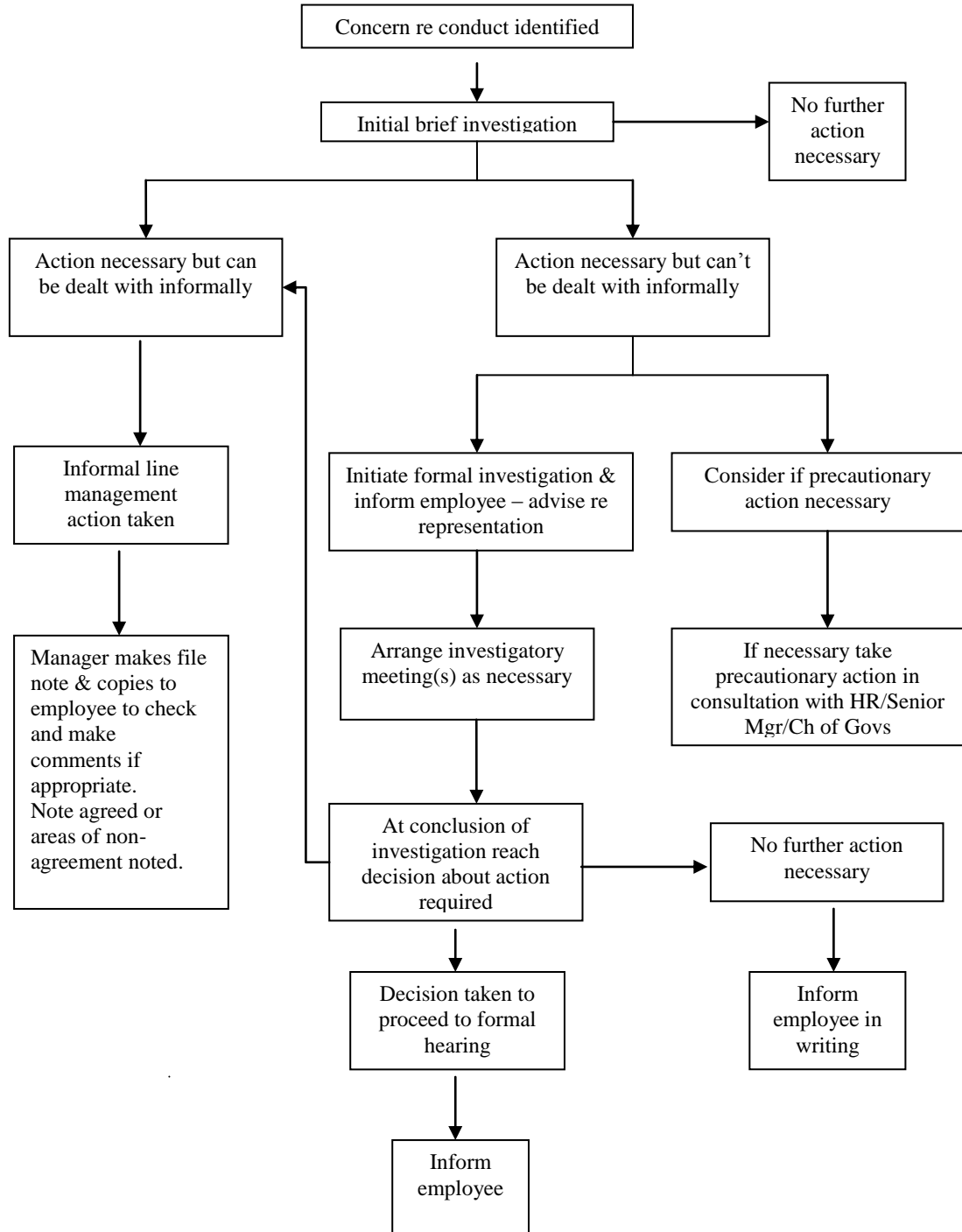
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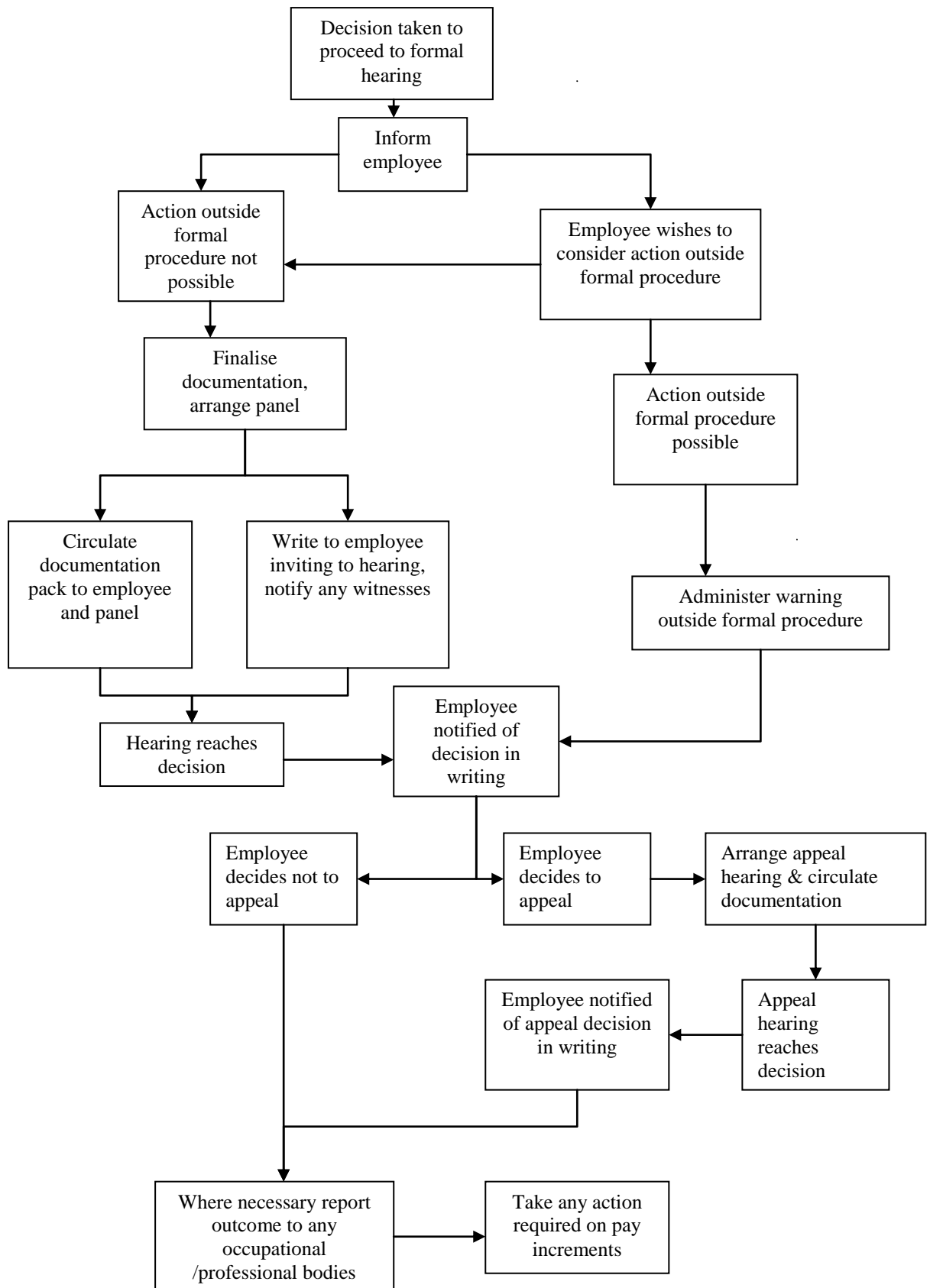
## 1. Scope and Principles

- 1.0 This policy and procedure promotes best practice and is to help and encourage all employees to achieve and maintain the required standards of conduct and ensure consistent fair treatment for all. The standards are outlined in the Standards of Conduct Procedure. It is an expectation that all staff will participate in and cooperate with this policy and procedure as required.
- 1.1 This policy and procedure applies to all employees of the County Council except: Employees within their probationary period; those on Apprenticeship schemes; those employed directly by schools under the Local Management of School arrangements except where the Governing Body of the school has formally adopted the policy. (Where schools adopt this policy, members of any panels referred to in the procedure will be School Governors).
- 1.2 If a concern or grievance is raised regarding any aspect of this Policy and Procedure, 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.
- 1.3 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. Line managers should make a file note and provide a copy to the employee, indicating that this is not a formal warning under the Disciplinary Procedure.
- 1.4 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.
- 1.5 In certain circumstances it may be appropriate to implement disciplinary action short of dismissal outside the formal Disciplinary Policy and Procedure (see Appendix 2 of this Procedure) but only where there is genuine mutual agreement.
- 1.6 Where child protection or vulnerable adult concerns and/or criminal offences are suspected, these procedures will normally take precedence. A pre-disciplinary investigation may be delayed while matters are considered under statutory/criminal procedures. Where serious allegations/concerns arise the manager should consider whether a report to Members/senior management should be made. Where matters of financial irregularity are suspected or other matters within the Veritau (internal audit) remit the Audit section must be informed. They may carry out a separate Audit investigation (or investigate jointly) and make recommendations to the investigating officer(s) and line manager.

- 1.7 Employees are required to disclose all convictions, arrests, charges and summons occurring while in NYCC employment. [Declaration of Offences statement.](#)

## 2. Disciplinary Procedure Flowchart





### 3. Right to be accompanied

- 3.0 Employees have the legal right to be accompanied by a trade union representative or work colleague at Disciplinary Hearings and Disciplinary Appeal Hearings. The Authority 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.

### 4. Pre-Disciplinary Investigation

- 4.0 Where line management action is not appropriate or has failed to achieve the required standard a pre-disciplinary investigation must take place. The line manager or another officer will investigate, gather the facts, identify and interview witnesses and obtain documentary evidence. The employee will be informed that an investigation is to be undertaken.
- 4.1 If necessary, the employee will be called to an investigatory meeting where there will be opportunity to answer questions related to the allegations. Reasonable notice of the investigatory meeting will be given.
- 4.2 Both the employee and witnesses must be made aware that what they say during the investigation will be recorded in writing and may be used as evidence in any subsequent disciplinary proceedings. Witnesses should also be made aware that they may be required to appear in person at any subsequent Disciplinary Hearing and Appeal.
- 4.3 Investigations should be concluded as quickly as possible. Where an employee's representative is unavailable to attend an investigatory meeting the employee must propose another date and time which should be no more than 5 working days later than the original date.
- 4.4 The employee should be informed in writing of the outcome of the investigation without unreasonable delay.

### 5. Precautionary Action (suspension/temporary re-deployment)

- 5.0 Precautionary action includes suspension from work or temporary transfer to another post/location or temporary restriction/amendment of duties. Precautionary action is not disciplinary action and does not indicate any pre-judgment of the allegation/s. The employee will remain on normal pay.
- 5.1 Suspension from work may be appropriate where the allegation/s indicate potential gross misconduct or where the employee continuing in their work may hamper the investigation or where they may commit further misconduct, or where they, or other people, may be put at risk by their remaining at work. A temporary transfer to another suitable post/location or restricted duties may be an alternative. 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.

- 5.2 Precautionary action should be taken after consultation with a HR representative of appropriate seniority and a senior manager (Corporate) (Chair of Governors – Schools). There are no rights to representation/accompaniment at a precautionary action meeting but if a trade union representative or work colleague is available at the time of the meeting the individual may be accompanied by such a representative.

## 6. Employee Support

- 6.0 The employee should be given details of the **Health Assured** as a source of support during the disciplinary process. **(Contact number 0800 030 5182 [www.healthassuredeap.co.uk](http://www.healthassuredeap.co.uk)).**

## 7. Unavailability and Sickness Absence

- 7.0 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.
- 7.1 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.
- 7.2 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.

## 8. Disciplinary Hearing

- 8.1 If a decision is reached that the concerns can only be addressed by a Disciplinary Hearing, the employee will be informed in writing. (However, see Appendix 2 – Disciplinary Action Outside the Formal Procedure). The letter, giving reasonable notice of the Hearing must include details of the allegation/s to be heard, the right to be accompanied as in Section 3 above, the names of the Panel members and the names of any witnesses to be called. All management documents to be referred to at the Hearing should be submitted to the employee and the panel members as soon as possible and definitely no later than 5 working days prior to the Hearing. Documentary evidence to be used by the employee and the names of any witnesses to be called by the employee should be submitted to the management representative and the panel members as soon as possible and definitely no later than 5 working days prior to the Hearing.
- 8.2 In the event of the unavailability of the employee due to sickness an alternative date will normally be offered, allowing a reasonable time for the employee to recover but normally within 10 working days of the original date. The timescale in para 4.3 above applies where the representative is unavailable. If the employee is still unavailable for the re-arranged Hearing then the Hearing may go ahead. If the employee wishes, their case may be

stated by his/her representative and/or the employee may provide a written statement of case in his/her absence.

- 8.3 A Disciplinary Hearing will be considered by at least one Officer of appropriate seniority who has no previous direct involvement in the case, and will normally be advised by a HR adviser. The Disciplinary Hearing Procedure is set out in the NYCC Hearing and Appeals Procedures.
- 8.4 In schools the Governing Body may choose to delegate authority to take disciplinary action up to and including dismissal to the Headteacher; the Headteacher and one or more governors; one or more governors.

Where authority is delegated to one or more governors, the Headteacher may attend to offer advice at all relevant proceedings and such advice must be considered by the governor(s) to whom the delegation has been made.

The Director of Children and Young People's Service (or a representative) may attend and offer advice at all proceedings relating to the possible dismissal of any employee and schools must consider such advice when reaching a decision (this also applies to Appeal Hearings).

Panels/Headteachers will normally be advised by a HR representative.

- 8.5 A note of the hearing will be kept and the hearing may be electronically recorded (not normally in schools).

## 9. Levels of Action (Sanctions)

- 9.0 All sanctions and the reasons for them will be confirmed in writing to the employee stating:
- the period after which the sanction will normally be disregarded for future disciplinary purposes, provided there has been no further formal disciplinary action taken against the individual during this period;
  - that a copy will be kept on their personal file.
- 9.1 **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.
- 9.2 **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.
- 9.3 **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 (nor will payment in lieu of notice be made). If there are exceptional mitigating circumstances the Panel may take action short of dismissal where, otherwise, dismissal would occur. This will 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.

- 9.4 **Increments.** When any formal disciplinary warning is applied it will have an effect on the individual's pay increment position as follows:
- a) For staff on NJC, JNC and Soulbury terms and conditions:
    - **No entitlement to** incremental progression at the next review point.
    - 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 at the time of their next incremental review.
  - b) For teaching staff – i.e. For centrally employed teachers or where a school has adopted disciplinary as performance criteria under the schools pay policy:
    - **No entitlement to** incremental progression at the next review point.

## 10. Right of Appeal

- 10.0 There is a right of appeal, with representation as in section 3 above, against any formal disciplinary sanction. The employee must give written notice of the appeal within 10 working days of receipt of the letter confirming the sanction and set out, in writing, the grounds for appeal. Appeals will be heard at the earliest available opportunity and reasonable written notice of the date and the arrangements will be given. The timescales for exchange of documents/notification re witnesses are as in Section 8 above. (See also NYCC Hearing and Appeals Procedures).
- 10.1 The Chair of the initial Hearing may be requested to attend the Appeal Hearing as a witness in order to explain how the decision was reached, and to answer questions.
- 10.2 Disciplinary Appeals Panels in schools must comprise of a minimum of two non-staff Governors. A panel of three governors is recommended. There must not be fewer Governors on the Appeals Panel than on the Hearing Panel. Panels will normally be advised by a Human Resources adviser. The Appeal Panel members must be different than those who heard the initial case.

## 11. Dismissals and Resignations

- 11.0 Where an employee is dismissed consideration must be given as to whether the matter is required to be reported to any professional/occupational bodies which require the reporting of misconduct issues in such circumstances e.g. Independent Safeguarding Authority, General Social Care Council. The process for reporting is set out in NYCC Guidance on Referrals to External Agencies Following Disciplinary or Capability Action.
- 11.1 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 and that :-



- the outcome will need to be referred to in any references provided (see NYCC Reference Policy and Procedure);
  - where required, the outcome will be reported to any professional/occupational bodies which require the reporting of misconduct issues in such circumstances.
- 11.2 Where an employee offers to resign prior to a Disciplinary Hearing, and the Hearing does not go ahead, it should be made clear to the employee that the allegation(s) will be referred to in any references provided and, where required, reported to any professional/occupational bodies. See [Schools Staff Information – Recruitment – Clearances for Guidance for Managers on completing reference template](#) and for the Template Form for completing References 2011

## **12. Record Keeping**

- 12.0 Managers should ensure that records of Disciplinary cases are kept in accordance with the NYCC Retention Schedule.

## Appendix 1

### Examples of type of 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.

#### Serious Misconduct

- 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 County Council's resources, or confidential information gained whilst in the employment of the County Council (except where employees are protected by the provisions of the County Council's Whistle-blowing Policy/Public Interest (Disclosure) Act 1998
- vii) Acceptance of gifts and hospitality in contravention of the County Council'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.**

## Appendix 1 (continued)

### Examples of type 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.

#### Gross Misconduct

- i) Theft or attempted theft, fraud or fraudulent falsification of accounts, or other official records.
- ii) Deliberate damage to the property of the County Council 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 County Council'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 County Council/Directorate 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 County Council 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) Actions or behaviours that result in a complete breakdown of trust and confidence between the County Council and the employee, even where any individual act in itself would not constitute gross misconduct.
- xv) Serious breach of professional codes of conduct/standards.
- xvi) Serious misuse of NYCC property or name.

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

## Appendix 2

### Disciplinary Action outside the Formal Procedure

North Yorkshire County Council

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#### Introduction

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- 1.0 Occasions will 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 the results of a formal investigation and is prepared to accept a formal warning without the formal hearing / appeal process.
- 1.1 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.
- 1.2 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.

<b>Guidelines</b>
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- 2.0 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.
- 2.1 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.
- 2.2 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.
- 2.3 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.

- 2.4 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.
- 2.5 The manager should also arrange to be accompanied by another manager (or HR representative) who will act as a witness to what is said and agreed.
- 2.6 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.
- 2.7 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.
- 2.8 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.
- 2.9 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.