



RBFRS Policy Document

Policy Name	Disciplinary Policy
Author	HR Adviser
Owner	HR Manager
Protective Marking	Official
Version	10
Status	This policy is contractual and has been subject to negotiation with relevant stakeholders
Issue Date	December 2018
Review Date	December 2021

Policy Statement	Difficulties may arise at various points in the employment relationship, and the discipline procedure is in place to ensure these challenges are dealt with fairly, consistently and without unnecessary delay. RBFRS are committed to ensuring the principle of natural justice applies and is clearly seen to apply at each stage of the disciplinary process.
Purpose	The purpose of this policy is to provide employees and managers with a clear set of procedures for managing disciplinary matters to help and encourage all employees to achieve and maintain appropriate standards of conduct and job performance.
Scope	<p>This policy applies to all employees of Royal Berkshire Fire and Rescue Service (RBFRS)</p> <p>For newly appointed employees who are in their probationary period, RBFRS retains the discretion to vary the procedure accordingly in respect of formal warnings, up to and including termination for a first breach of discipline.</p> <p>Separate procedures exist to deal with issues of Capability and Ill-Health.</p>
Supporting Information	<p>Appendix 1 – Disciplinary Process Flowchart</p> <p>Appendix 2 – Appeals Process Flowchart</p> <p>Manager Guides (Siren :Services>Human Resource> Managers Guides):</p> <ul style="list-style-type: none"> • Investigating Officer Guidance • Hearing Officer Guidance • Welfare Officer Guidance

Revision History			
Revision	Description	Author	Date
10	Policy Review, New Policy Template	Lucy Greenway/Jacky Manning	26/11/18

Authorisation	
Approving SLT Member	Becci Jefferies
Approving Director (if required)	Nikki Richards

1. Policy Description

This policy sets out the processes to follow if a problem arises with an employees conduct to ensure that all situations are dealt with fairly, consistently and without unnecessary delay.

2. Policy Detail

Procedure

To address disciplinary matters in the most effective and timely way, the appropriate manager should undertake an initial assessment to establish the circumstances of the case prior to commencing any further action. This initial assessment should be discussed with HR and the manager will determine whether any further action is required. This does not constitute part of any formal investigation although any information gathered may be used in the full investigation and the formal process should it be deemed appropriate.

Levels of Management

Where possible and appropriate Line Managers are responsible for dealing with all disciplinary issues at all levels of this procedure. Line Managers will also ensure that their staff are aware of and understand this policy.

Human Resources (HR) are responsible for maintaining a fair and effective disciplinary procedures and providing appropriate advice, guidance and training for managers dealing with disciplinary matters.

At the formal stages of the procedure the lowest levels of line management who can take action, subject to training and the ability to do so, are:

	Investigation Officer	Manager Assigning the Investigation / Hearing Officer
Formal Stage 1	Team/Watch Manager	Department/Station Manager
Formal Stage 2	Department/Station Manager	Senior/Group Manager
Formal Stage 3	Senior/Group Manager	Head of Service/Area Manager

The Investigating Officer would normally present the management case at the formal stages of the procedure. If the manager who would usually deal with a disciplinary issue (i.e. the line manager) is not available, or where there may be a conflict of interest, another manager at the same or higher level, according to the stage of the process being investigated, may be appointed to deal with the case.

Technical experts can be used to advise and support Investigation Officers should specialist advice be required.

Stages

The procedure may be initiated at any stage depending on the seriousness of the case, based on information available at the time. When allegations have been investigated and it is determined that a disciplinary hearing is required, the stage will be reviewed by the manager assigning the case based on the outcome of the investigation. Please note, the stage at which the disciplinary is heard can be reduced following the investigation, but should the matter warrant being heard at a higher stage, further investigation will need to be undertaken first and the individual notified accordingly.

Reasonable adjustments should be made to accommodate employees who have a disability at all stages of the process both formal and informal.

Informal Action

Cases involving minor misconduct, unsatisfactory performance (if wilful or caused by carelessness) or attendance should be dealt with informally at line management level in the first instance.

Managers will outline the expected outcome(s)/improvements, how these should be achieved and by when and recorded in a note for file to be placed on the employees Personal Record File (PRF).

Managers should monitor performance in the areas outlined and notify HR when performance has been maintained at a satisfactory level to initiate removal from the PRF.

Formal Action

Stage 1

The employee's Line Manager (or another appropriate manager) will investigate the matter and present their report to the manager who assigned the investigation (or a representative at a similar level if they are unavailable) to determine, based on the evidence provided, if a hearing is necessary. If at this point a hearing is deemed necessary the assigning manager will normally take on the role as Hearing Officer.

Where findings support a breach of discipline, the disciplinary outcome will be disregarded for disciplinary purposes after a **maximum of six months**.

The employee will be formally written to by the Hearing Officer confirming the outcome, the timescale for improvement and advising them of their right of appeal.

Stage 2

Where there is a failure to improve or change behaviour in the time scale set in Stage 1 or where the offence is sufficiently serious to initiate an investigation at Stage 2, the employee may be issued with a final written warning after a further investigation and hearing.

Where findings support a breach of discipline, the disciplinary outcome will be disregarded for disciplinary purposes after a **maximum of eighteen months**.

The employee will be formally written to by the Hearing Officer confirming the outcome, the timescale for improvement and advising them of their right of appeal. The outcome should also warn the employee that failure to improve may lead to dismissal or some other sanction such as demotion or disciplinary transfer and loss in pay.

Stage 3

Where an employee fails to improve after a Stage 2 warning or where the offence is sufficiently serious (following an investigation and hearing), employees may be dismissed with notice.

Sanctions or sanctions as an alternative to dismissal may also be considered. These are:

- A warning
- Demotion (after consultation with HR)
- Disciplinary transfer
- Loss of pay up to a maximum of thirteen days

Where findings of the hearing support a breach in discipline other than dismissal, the outcome will be disregarded for disciplinary purposes after a **maximum of eighteen months**.

Gross Misconduct

Acts which constitute gross misconduct are those resulting in a serious breach of contractual terms, making employees potentially liable for summary dismissal. Examples of gross misconduct might include (**note this list is not exhaustive**):

- Theft, fraud or bribery
- Physical violence
- Mental or Physical bullying

- Deliberate and serious damage to property
- Serious misuse of RBFRS' property or name
- Deliberately accessing pornographic, offensive or obscene material
- Unlawful discrimination or harassment (i.e. protected characteristics)
- Bringing RBFRS into serious disrepute
- Being under the influence of alcohol (above the level stated in the Drugs and Alcohol Policy), drugs or illegal highs, when on or available for duty.
- Causing loss, damage or injury through serious negligence
- Serious breach of health and safety rules
- A serious breach of trust and / or confidence
- Failure to obey a reasonable instruction
- Serious insubordination
- Serious breach of data security (e.g. a misuse of sensitive personal data or a breach of IT policies)
- Safeguarding issues
- Making covert recordings in formal meetings.

It should be noted that some investigations relating to safeguarding or where police investigations are instigated may not be commenced, if doing so will or may compromise investigations by the Police or Social Services. HR advice should be sought in these cases.

Individuals summarily dismissed on the grounds of gross misconduct will only receive annual leave based on statutory entitlement under the Working Time Regulations 1998, any paid holidays (including paid public holidays) taken shall be deemed first to have been taken in satisfaction of that statutory entitlement.

Internal cases of fraud will be raised with the Head of Finance and Procurement or their deputy in the first instance to identify if the prima facie evidence warrants consideration under the Anti-Fraud, Bribery and Corruption Policy, or if the investigation should be immediately handled under RBFRS Disciplinary Policy.

Suspension

Suspension is not disciplinary action and is neutral as far as an employee's possible blame worthiness is concerned. Suspension should be for the minimum possible period and should be regularly reviewed. Examples where it may be necessary include:

- To allow an investigation to be undertaken which might be inhibited by the presence of the employee
- When there are strong reasons for doubting the ability or willingness of the employee to work normally
- Where the safety of an employee or others may be compromised if they remain at work

Suspension should be considered as the last solution and preference should be given to other ways

of managing the situation.

Suspension should not be an automatic response to allegations of gross misconduct.

Suspensions will be approved by an appropriate level of management, as a minimum this should be a Department Manager or Group Manager after seeking advice from HR.

Employees should be informed of the reasons for suspension and any conditions which may apply during the period of suspension. Communication channels and support offered to employees during the suspension will also be discussed.

Employees will receive full contractual pay during a period of suspension, unless they commence sick leave in which case their pay will be in accordance with the rules of the relevant sick pay scheme. Full pay for Retained Duty System (RDS) employees will be calculated on a daily basis (in line with Annual Leave calculations).

Where an employee is suspended from the workplace a Welfare Officer will be assigned as appropriate, to act as a support to the individual while they are out of the workplace.

Disciplinary Hearings

Employees should be notified of the date and time of the hearing in writing. The length of time between notification of the hearing should not be less than:

- Stage 1 - Seven days
- Stage 2 - Ten days
- Stage 3 - Twenty-one days

The hearing should be held in an appropriate location with no interruptions to allow confidentiality to be maintained.

Personnel who will normally attend the hearing are:

- The Hearing Officer
- The employee
- The employee's representative (if they choose to have one)
- The Investigating Officer
- HR Representatives
- Any witnesses either party wishes to call
- Note taker (mandatory for Stage 3– to be arranged by the Hearing Officer)

The employee and their representative must advise the Hearing Officer of any witnesses they intend to call and provide copies of any documents they wish to be considered at the hearing at least **three working days (Monday - Friday)** before the date of the hearing.

Following the hearing, the Hearing Officer must confirm the outcome of the hearing in writing within **seven days**.

All parties will make every effort to attend the hearing. Employees who cannot attend a hearing must inform the Hearing Officer in advance as soon as possible. If the employee fails to attend as a result of circumstances outside of their control, another hearing should be arranged. If an employee fails to attend the rearranged hearing without good reason, a decision may be taken at the hearing in the

employee's absence based on the evidence available.

If the employee's representative cannot attend on a proposed date, employees have the statutory right to suggest another date as long as it is not more than seven days after the date originally proposed. This time limit may be extended by mutual agreement.

Retention of Disciplinary Records

A record of all disciplinary outcomes and disciplinary sanctions are held in HR for monitoring purposes and to ensure consistency of approach.

Discipline warnings and reports will be held in line with RBFRS HR Retention Schedule. Informal notes for file which are held on an employee's PRF (Personal Record File) will be removed in line with manager's instruction.

Representation

Employees can be accompanied by a fellow employee or Trade Union representative of their choice at all formal stages of the procedure with the exception of where the chosen representative has a conflict of interest e.g. they are also under investigation or a witness to the matter under investigation. In addition employees will be provided with the opportunity to be accompanied at investigation stage. Employees should inform the Hearing Officer of the name of their representative prior to the hearing.

Fellow employees or trade union officials do not have to accept a request to accompany an employee and they should not be pressurised to do so. Reasonable paid time off will be granted to an employee or Trade Union official who has agreed to accompany a colleague (this would include the hearing and time for the representative to familiarise themselves with the case). Due consideration for paid time off will be given to a Trade Union official who request to accompany an employee employed by another Fire Authority in the same region.

The representative is there to provide additional support and guidance to the employee and should be allowed to address the hearing in order to:

- Put the employees case
- Sum up the employees case
- Respond on the employee's behalf to any view expressed at the hearing

The representative can also confer with the employee during the hearing and participate fully in the hearing, including asking the witnesses questions.

The representative has no right to:

- Answer questions on the employee's behalf
- Address the hearing if the employee does not wish it
- Prevent the manager from explaining their case

Witnesses do not have the statutory right to representation during interviews or at the hearing, however where there is no delay to the process, requests for support will be assessed on a case by case basis.

Appeals

Employees have a right of appeal against outcomes of formal stages of the disciplinary process. Appeals must be submitted to the Head of HR and L&D (or a named representative) no later than **seven** days after they have been informed of the disciplinary action taken against them.

Appeals will be heard by a higher level of management than that which took the decision to impose a disciplinary sanction.

The grounds for appeal are:

- There was a defect in the procedure
- The issue was not proved on the balance of probabilities
- The disciplinary sanction was too severe
- New evidence has come to light since the hearing, which will have an impact on the original decision

Managers hearing appeals will be accompanied by an alternative HR representative to that which advised the original Hearing Officer

The Head of HR and L&D will determine whether a re-hearing is required i.e. the case is heard afresh with no referral back to the original hearing findings or if a simple appeal hearing can be undertaken, where by the findings of the original hearing are reviewed.

Appeal Re-Hearing

A re-hearing would normally be required if:

- There is a procedural defect at the original hearing such that the hearing was unfair
- New evidence has come to light that needs to be heard in full
- There is a dispute about the evidence given by one or more witnesses at the original hearing. In these cases it may be necessary to re-hear the witness evidence at the appeal

New evidence or witnesses will only be considered when they form the grounds of the appeal.

Appeal Hearing

The manager conducting the appeal will have the following documents available:

- All documents presented at the original hearing
- A copy of a record of the original hearing
- The letter confirming the outcome of the original disciplinary hearing
- The letter of appeal
- All other relevant information

The Appeal Manager will hear the appeal put forward by the employee and/or their representative and any relevant evidence presented. The management case will then be put forward responding to the grounds of the appeal. Both parties will be afforded the opportunity to bring relevant witnesses who can be questioned by all parties. The Appeal Manager will then reach their conclusion based on the documentation and submissions from both parties.

Appeals Against Dismissal

Appeals against dismissal must be lodged with Head of HR and L&D (or a named representative) in writing within seven days of the notification of dismissal. The appeal will be heard at Directorate level.

In cases of gross misconduct, dismissal will be summary following the hearing. If the employee is reinstated on appeal, pay will be reinstated and backdated.

In other cases of dismissal, employees shall be given contractual notice of dismissal following the hearing. Every effort will be made to conclude any appeal process within the notice period. Where it has not been possible to conclude the appeal process within the notice period, notice may be extended for a reasonable period with a view to concluding the appeal process within the notice period. If the dismissal is not upheld on appeal, the employee will be reinstated if the notice period was not extended.

In cases of sanctions other than dismissal, the sanctions should not be implemented until any appeal process has been concluded.

Discipline Procedure for Directors

The discipline procedure for Directors is based on this RBFRS' disciplinary procedure.

A preliminary investigation into allegations of misconduct will be conducted by a designated person at Director level.

If a preliminary investigation determines a potential case to answer, a formal investigation will be conducted. The CFO will appoint an appropriate investigator. Where necessary this may be an external person of an appropriate seniority.

The Chief Fire Officer will be the Hearing Officer for all hearings in relation to other RBFRS Directors unless there is a conflict of interest. Appeals will be held by a Sub-group of the Management Committee.

Cases against the CFO will be heard by a Sub-group of the Management Committee with any appeal being heard by a second Sub-Group of the Management Committee, members of which were not involved with the initial hearing.

General Issues

Where a Grievance is Raised During the Disciplinary process

The Investigating Officer should consider suspending the disciplinary procedure for a short period while the grievance is dealt with. Depending on the nature of the grievance another Investigating Officer may need to be assigned to deal with the disciplinary. In these circumstances, advice should be sought from HR.

Medical Fitness to Attend a Disciplinary Hearing

Where an employee is absent due to sick leave, the employee will be referred to Occupational Health for an assessment to ascertain whether they are medically fit to attend an investigation meeting or disciplinary hearing.

Where appropriate, the meeting can be held closer to the employee's home, or a written representation could be submitted. In exceptional circumstances in continuing absence of the employee, RBFRS may conclude a decision needs to be made on the information available. In such

cases advice will be sought from HR and assessed on a case by case basis.

Disciplinary Action Against a Trade Union Representative

Disciplinary action against a trade union representative can lead to serious dispute if it is seen as an attack on the union's functions. If disciplinary action is considered against a Trade Union representative ie it has been determined that a hearing is required, the case should be discussed (after obtaining the employee's agreement) with a senior Trade Union representative or permanent union official.

Resignations During Disciplinary Action

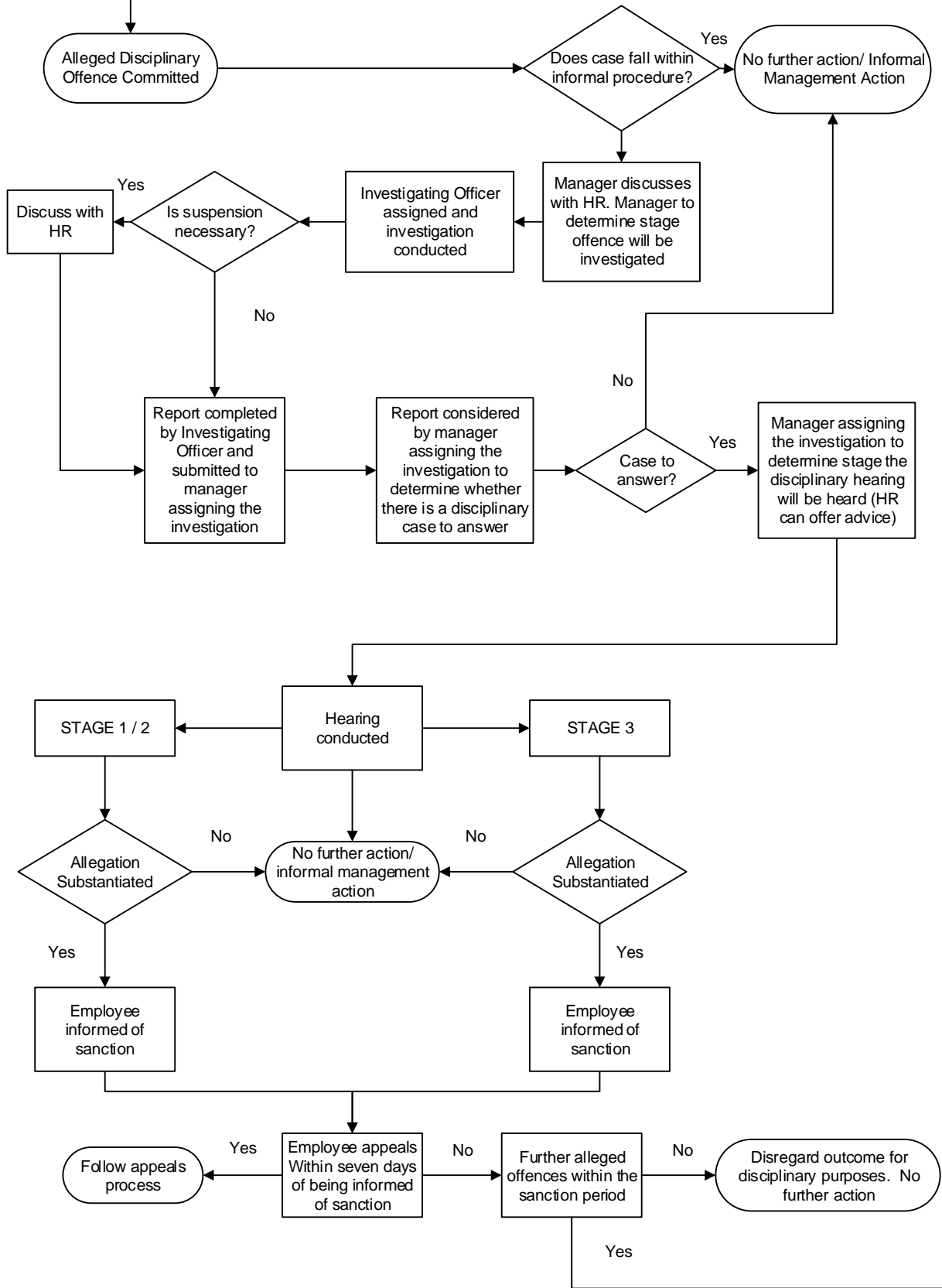
If an employee resigns after an investigation has commenced, proceedings will be concluded before the employee concerned leaves the service of RBFRS wherever possible. Where allegations relate to the safeguarding of children or vulnerable adults the process must be concluded. RBFRS reserves the right to take the necessary action to resolve outstanding issues relating to third parties and to reach a conclusion for the record based on the available evidence for use in relation to future requests for references or applications to re-join RBFRS.

Criminal Offences

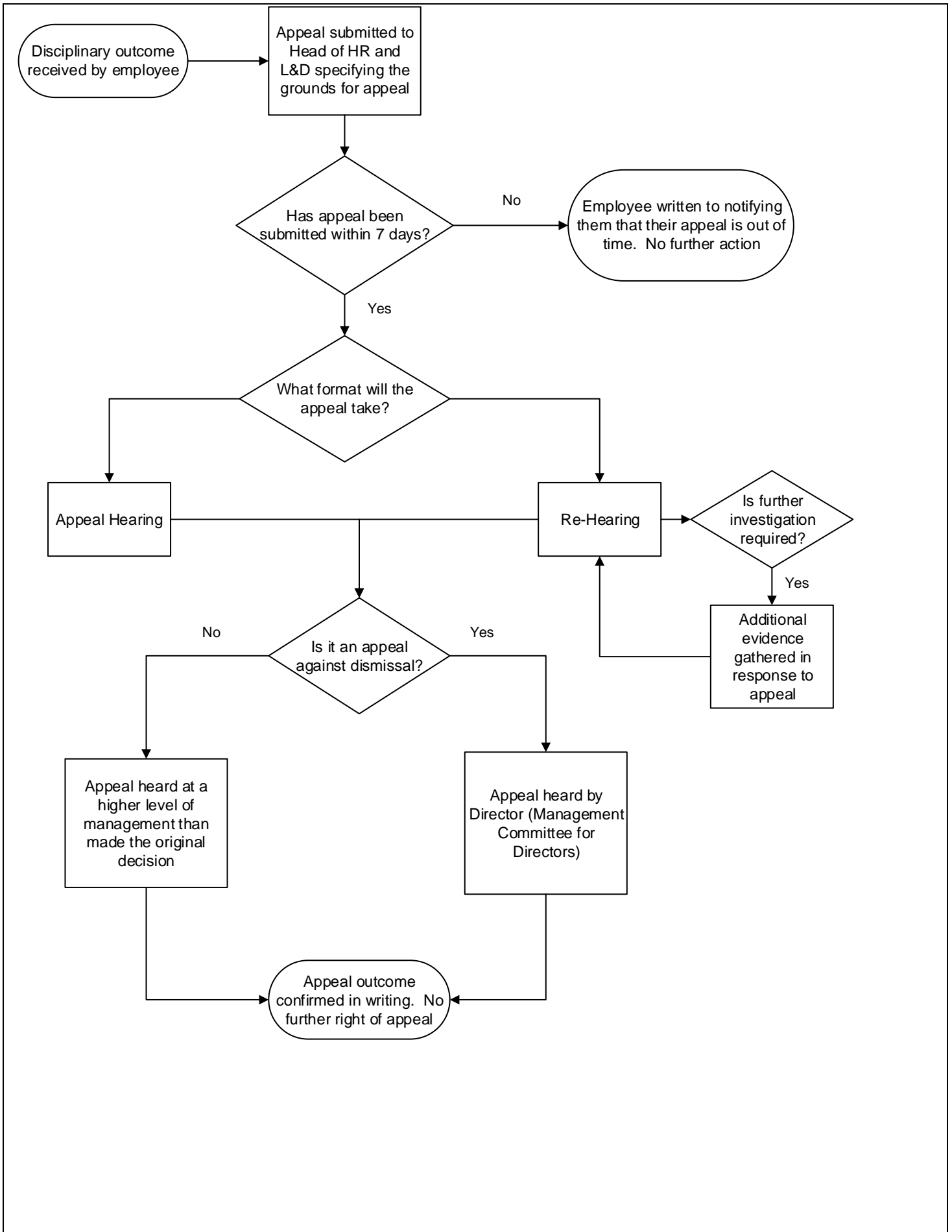
If an employee is charged with, or convicted of, a criminal offence not related to work, this is not in itself reason for disciplinary action. The manager should establish the facts of the case and consider whether the matter is serious enough to warrant starting the disciplinary procedure (i.e. is the alleged offence one that makes the employee unsuitable for the type of work they are employed to undertake).

Freedom of Information/Subject Access Requests

Any Freedom of Information or Subject Access Requests relating to disciplinary matters will be dealt with in accordance with the Data Protection Policy and the General Data Protection Regulations.



Appendix 2 - Appeals Process Flow Chart



3. Review

This policy will be reviewed in December 2021