Disciplinary Policy and Procedure

Policy Statement

Whilst The Lioncare Group does not intend to impose unreasonable rules of conduct on its employees, certain standards of conduct and behaviour and levels of performance are necessary to maintain good employment relations and discipline in the interest of all employees. The Lioncare Group prefers that discipline be voluntary and self-imposed and, in the vast majority of cases, this is how it works. However, from time to time, it may be necessary for The Lioncare Group to take action towards individuals whose conduct or behaviour or level of performance is unacceptable. It will also occur where an employee knowingly breaks any legal requirement in connection with their employment.

The Lioncare Group recognises the difference between a deliberate or careless failure on the part of an employee to perform to the standards of which they are capable (in which case this Disciplinary Procedure will be used) and a case of incapability, where the employee is lacking in knowledge, skill or ability and so cannot perform to the standard required (in which case the Capability Procedure will be used). This Disciplinary Procedure also does not apply to cases involving genuine but persistent short-term sickness absence; in those cases, the Attendance Policy and Procedure will be used.

With the exception of the section on alternatives to dismissal (which is contractual), this disciplinary procedure is **non-contractual** and does not form part of an employee's contract of employment and may be amended at any time. The Lioncare Group may also vary this disciplinary procedure as appropriate in any case.

Minor Faults and Allegations of Minor Misconduct

Minor faults will be dealt with informally in the first instance through direct discussion 'in-the-moment', individual supervision sessions, coaching, counselling, training, or otherwise raising the matter to the employees 'attention with the aim of supporting the employee to improve their practice without the need for any formal or official action.

More Serious Allegations of Misconduct or Serious Performance Issues

In cases where informal discussion with the employee does not lead to an improvement in conduct or behaviour or level of performance or where the matter is considered to be too serious to be classed as minor, for example, unauthorised absences, persistent poor timekeeping, sub-standard work performance, etc. the following disciplinary procedure will be used.

Investigation

At all stages of the procedure, an investigation will be carried out in order for The Lioncare Group to establish a fair and balanced view of the facts relating to the disciplinary allegations against the employee, before deciding whether to proceed with a disciplinary hearing. This can include, where necessary, an investigation of social media websites (social media websites are a public forum, even if account privacy settings are set at a restricted access level).

Employees must co-operate fully and promptly in any investigation. This will include informing The Lioncare Group of the names of any relevant witnesses, disclosing any relevant documents, and attending investigatory meetings if required. The Lioncare Group will appoint an investigating officer to carry out the investigation.

The Lioncare Group will notify the employee in writing of the allegation or allegations against them and that the matter is being investigated. The employee may be asked to attend a meeting as part of the investigation.

The Procedure

Following any investigation, if The Lioncare Group considers there are no grounds for formal disciplinary action, it will notify the employee of this in writing and the procedure will be deemed to have ended.

Following any investigation, if The Lioncare Group considers there are grounds for formal disciplinary action, it will notify the employee in writing of the allegations against them and will invite them to a disciplinary hearing to discuss the matter, setting out the date, time and location of that hearing. The Company will provide sufficient information about the alleged misconduct or poor performance and its possible consequences to enable the employee to prepare to answer the case. This will include the provision of copies of relevant documentary evidence and witness statements where appropriate. The employee will normally be told the names of any witnesses whose evidence is relevant to their disciplinary hearing, unless The Lioncare Group believes that the identity of a particular witness should remain confidential, in which case as much information as possible will be provided while maintaining confidentiality. All employees must also treat as confidential any information or evidence communicated to them in

connection with an investigation or disciplinary matter.

Having given the employee reasonable time to prepare their case, a formal disciplinary hearing will then take place, at which the employee will be given the chance to state their case, accompanied if requested by a trade union official or a work colleague of the employees choice.

The hearing will usually be chaired by the Chief Executive Officer or on occasion may be chaired by an Assistant Director. The hearing will also be attended by someone whose role is to take an attendance note of the hearing. The investigating officer may additionally be present. The employee's chosen companion will be permitted both to address the hearing and to confer with the employee during the hearing, but they will not be permitted to answer questions on the employee's behalf. They are also not entitled to address the hearing against the employee's wishes or to act in a way that prevents anyone from contributing to the hearing. The employee must inform the chair of the hearing of the identity of their chosen companion in good time in advance of the hearing. If the employee's chosen companion is unavailable at the time the hearing is scheduled and will not be available for more than five working days after that time, The Lioncare Group may require the employee to choose someone else. The Lioncare Group may, at its absolute discretion, allow the employee to bring a companion who is not a trade union official or representative or a work colleague where this will help them overcome a particular difficulty caused by a disability or where they have difficulty understanding English. Individuals are not obliged to act as companions if they do not wish to do so.

If The Lioncare Group also intends to call relevant witnesses to appear at the disciplinary hearing, they will notify the employee in advance. Likewise, if the employee wants to call any relevant witnesses to appear at the hearing, they must notify the chair of the hearing in good time in advance of the hearing.

The employee must make every effort to attend the hearing. If they or their companion cannot attend, they must inform the chair of the hearing immediately so that an alternative date and time can be scheduled. If the employee fails to attend the hearing without good reason, or is persistently unable to do so, this could result in the hearing being held in their absence and then The Lioncare Group may have to take a decision based on the available evidence (including any written representations that the employee may have made). At the hearing, the employee will be allowed to set out their case and answer any allegations and will also be given a reasonable opportunity to ask questions, present evidence, call relevant witnesses and raise points about any information provided by witnesses.

Although The Lioncare Group will endeavour to hold a face-to-face disciplinary hearing with the employee in ordinary circumstances, The Lioncare Group reserves the right at its absolute discretion to hold the hearing (and any appeal hearing) remotely in exceptional circumstances, for example, in the case of a pandemic virus.

Please note it is the stated policy of The Lioncare Group that audio or digital recordings of meetings are explicitly prohibited without the express permission of The Lioncare Group and in writing and in advance of any meeting, and that except in very exceptional circumstance any such request would normally be rejected. To be clear, it is prohibited for employees to record (whether covertly or otherwise) the proceedings at any investigatory meeting and the disciplinary hearing, and at any appeal hearing. If The Lioncare Group discovers that the employee has done this covertly, they could be subject to further disciplinary action. Depending on the circumstances, it may amount to gross misconduct and could result in the employee's summary dismissal.

Following the disciplinary hearing, The Lioncare Group will decide whether or not disciplinary action is justified and, if so, the employee will be informed in writing of The Lioncare Group's decision in accordance with the stages set out below and notified of their right to appeal against that decision.

An employee will not normally be dismissed for a first act of misconduct, unless The Lioncare Group decides that it amounts to gross misconduct. In that case, summary dismissal without previous warnings may be appropriate. Otherwise, it should be noted that an employee's behaviour is not looked at in isolation but each incident of misconduct is regarded cumulatively with any previous occurrences. Please note that The Lioncare Group will deal with all disciplinary matters within a reasonable timescale. However, it reserves the right to extend these wherever necessary and if appropriate.

Stage 1: Written Warning

The employee will be given a First Formal Written Warning. This will set out the following;

- the reason for the warning
- how the employee needs to improve their conduct or performance

- the timescale over which the improvement is to be achieved
- that the warning is the first stage of the formal disciplinary procedure
- the likely consequences if the terms of the warning are not complied with.

The written warning will be recorded but nullified after six months, subject to satisfactory conduct and behaviour and performance.

Stage 2: Final written warning

A further instance of misconduct or failure to improve performance while a First Formal Written Warning is still active, or a first instance of serious misconduct or serious poor performance, will result in a Final Written Warning being issued. This will set out the following;

- the nature of the misconduct or poor performance
- how the employee needs to improve their conduct or performance
- the timescale over which the improvement is to be achieved
- a warning that dismissal will probably result if the terms of the warning are not complied with.

This final written warning will be recorded but nullified after twelve months, subject to satisfactory conduct and performance. However, The Lioncare Group reserves the right to extend the validity of the final written warning to a maximum of three years in cases of very serious misconduct verging on gross misconduct or where the employee has a history of misconduct issues.

Stage 3: Dismissal

A further instance of misconduct or failure to improve performance while a Final Written Warning is still active will normally lead to Dismissal with appropriate notice. A decision of this kind will only be made after the fullest possible investigation. Dismissal can be authorised only by the Chief Executive Officer. The employee will be informed of the following;

- the reasons for dismissal
- the appropriate period of notice
- the date on which his or her employment will terminate
- how the employee can appeal against the dismissal decision.

Alternatives to dismissal

This section only of the disciplinary procedure is contractual and forms part of an employee's contract of employment.

In some cases The Lioncare Group may at its discretion consider alternatives to dismissal. These must be authorised by the Chief Executive Officer and will usually be accompanied by a Final Written Warning. Examples include:

- demotion
- a period of suspension without pay
- loss of seniority
- pay reduction
- loss of future pay increment or bonus
- loss of overtime
- transfer to another department or job.

Misconduct

The Lioncare Group reserves the right to institute disciplinary action against an employee who commits a misconduct offence, and this may result in a disciplinary sanction such as a First Formal Written Warning or Final Written Warning. Examples of misconduct include:

- the failure and / or unnecessary delay on the part of the employee to report an incident of abuse, or suspected abuse, whether past or present, in relation to a child cared for by The Lioncare Group, to the appropriate person
- the failure and / or unnecessary delay on the part of the employee to log and / or record an incident or allegation of abuse, or suspected abuse, whether past or present, in relation to a child cared for by The Lioncare Group
- persistent lateness, poor timekeeping or otherwise failing to adhere to working hours
- time wasting including but not limited to when working from home or as part of a hybrid working arrangement
- unacceptable levels of absence
- failing to comply with absence notification and certification procedures
- a minor breach of The Lioncare Group's policies and procedures or the employee's contract of employment
- working from home contrary to the terms of the employee's contract of employment and without prior management approval
- a minor breach of health and safety or security rules
- inappropriate dress or appearance which is below required standards
- failing to behave in a professional, polite and courteous manner towards other employees, clients, customers or visitors
- using foul or abusive language or engaging in other offensive behaviour
- failing to comply with a reasonable management instruction or insubordination
- failing to comply with any measures implemented by The Lioncare Group in response to an emergency or other critical situation
- failing to willingly co-operate with other employees
- misuse of The Lioncare Group's property, materials or equipment, including excessive wastage of materials and minor damage to property
- excessive personal use of The Lioncare Group's telephones or other information and communications systems for personal calls and messages
- excessive personal e-mail or Internet usage
- negligence or carelessness in the performance of job duties
- failing to maintain satisfactory standards of performance at work
- failing to provide completed timesheets or to comply with other management requirements to account for the employee's working time and activities, including but not limited to in respect of time spent working from home or as part of a hybrid working arrangement
- failing to attend the workplace or other reasonably accessible location for meetings, training courses or other work-related events when the employee would otherwise be working from home and when instructed to do so by a manager
- witnessing or having direct knowledge of another employee's misconduct but failing to report it to The Lioncare Group
- negligently breaking a legal requirement in connection with employment.

The above is intended as a guide and is not an exhaustive list.

Gross Misconduct

Offences under this heading are so serious that an employee who commits them will normally be summarily dismissed, regardless of whether there are any active warnings on their record. In such cases, The Lioncare Group reserves the right to dismiss without notice of termination or payment in lieu of notice. Examples of gross misconduct, where The Lioncare Group has reasonable grounds for believing that the following matters have occurred, include:

- any breach of the criminal law, such as theft
- any unauthorised possession or removal of The Lioncare Group's products or property, or property belonging to another employee, client, customer or visitor, fraud (including making fraudulent or false expense claims), deliberate falsification of records, false declarations in connection with employment or applications for employment or any other form of dishonesty
- failing to work normal working hours, or giving false or misleading information relating to working time and activities, when working from home or as part of a hybrid working arrangement
- using The Lioncare Group's property, materials or equipment to carry out work for third parties on a personal basis without permission or other serious misuse of The Lioncare Group's property, materials or equipment
- misuse of The Lioncare Group's benefits, such as improper use of a staff discount card
- offering, promising or giving a bribe or requesting, agreeing to receive or accepting a bribe or bribing a foreign public official in connection with employment contrary to the Bribery Act 2010
- wilfully or negligently causing harm or injury to another employee, client, customer or visitor, physical violence, assault, fighting, bullying or grossly offensive, abusive or aggressive behaviour or language
- deliberately or negligently causing loss or damage to The Lioncare Group's property, or to property belonging to another employee, client, customer or visitor
- vandalism of, or otherwise intentionally interfering with, The Lioncare Group's computers or computer or telephone network
- serious carelessness or gross negligence, including grossly negligent acts or omissions
- serious dereliction of duty, including sleeping whilst at work and undertaking unauthorised activities during normal working hours
- wilful refusal to obey a reasonable management instruction or any other act of serious insubordination
- a serious breach of The Lioncare Group's policies and procedures or the employee's contract of employment
- repeatedly or seriously failing to comply with any measures implemented by The Lioncare Group in response to an emergency or other critical situation
- serious incapacity at work through an excess of alcohol or illegal drugs, whether consumed on or off The Lioncare Group premises but which affects the employee's ability to carry out their job duties whilst at work
- bringing illegal drugs or other illegal substances or items or weapons on to The Lioncare Group premises
- smoking on The Lioncare Group premises, other than in designated outside smoking areas
- logging on to sexually explicit websites, downloading or circulating pornographic or other offensive, illegal or obscene material or using the Internet or e-mail for gambling, illegal activities or the sending of offensive e-mails (e.g. jokes) to work colleagues (in the latter case, including from the employee's home computer in their own time)
- engaging in sexual activity on The Lioncare Group premises at any time
- posting derogatory, offensive, discriminatory or defamatory comments online (for example, on social media websites) about The Lioncare Group, its employees, clients or customers or otherwise conducting themselves online in a way that is detrimental to The Lioncare Group or brings The Lioncare Group into serious disrepute
- a serious breach of health and safety rules, including acts or omissions which endanger the safety of another employee, client, customer or visitor
- a serious misuse of safety equipment
- a serious breach of security or information security rules
- behaviour outside working hours or work location, which either results in or has the potential to result in criminal charges or convictions, which affect the employee's ability or suitability to perform their job duties or which may affect the Company's reputation or its relationships with its employees, clients or customers
- unlawfully discriminating against, harassing, bullying or victimising another employee, client, customer or visitor

because of age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race (including colour, nationality and ethnic or national origins), religion or belief, sex and/or sexual orientation

- a serious breach of confidentiality, including unauthorised access of computer and personnel records and communicating or leaking trade secrets or confidential information about The Lioncare Group or its employees, clients or customers to third parties
- unauthorised use, processing or disclosure of personal data
- working for a competitor without permission
- engaging in an unauthorised activity which conflicts with the interests of The Lioncare Group or its clients or customers
- undertaking unauthorised paid or unpaid work during normal working hours, including when working from home or as part of a hybrid working arrangement
- breaching copyright or any other proprietary interest belonging to The Lioncare Group
- knowingly breaking a legal requirement in connection with employment
- covertly recording the proceedings at any work-related hearing or meeting or otherwise conducting covert recording in the workplace
- bringing The Lioncare Group into serious disrepute, even if done in the employee's own time
- unauthorised absence from work, including failure to return from a period of annual leave or other approved leave of absence
- knowingly taking paternity, adoption, parental, shared parental or parental bereavement leave when not eligible to do so
- repeatedly working from home contrary to the terms of the employee's contract of employment and without prior management approval
- working from abroad without prior management approval and satisfaction of any relevant requirements
- dishonestly giving false information regarding the employee's COVID-19 or other required vaccination or exemption status
- victimising another employee for having raised concerns, made a complaint or given evidence or information under The Lioncare Group's whistleblowing policy, anti-bribery policy, dignity at work policy, grievance procedure, disciplinary, capability or attendance procedures or otherwise
- witnessing or having direct knowledge of another employee's gross misconduct but failing to report it to The Lioncare Group

The above is intended as a guide and is not an exhaustive list.

Suspension

In the event of an allegation of serious or gross misconduct and where necessary in the interests of the safety or welfare of the children cared for by The Lioncare Group, consideration will be given as to whether an employee may need to be suspended on full basic pay while a full and through investigation is carried out.

In considering whether or not suspension is justifiable, necessary and legally defendable, and where the allegation is concerned with a safeguarding matter in relation to the children cared for by The Lioncare Group, the threshold for referral to the Local Area Designated Officer will be used for guidance to assist in the decision-making process;

1. Has the employee behaved in a way that has harmed, or may have harmed, a child?
2. Has the employee possibly committed an offence against, or related to, a child?
3. Has the employee behaved towards a child or children in a way that indicates they may pose a risk of harm to children?

The above criteria relates to the employee's behaviour in the workplace, the community and in their home and social life.

As clarified in the high court ruling on the case between Agoreyo v London Borough of Lambeth, suspension should

not be treated as a 'knee jerk' response to the need to carry out an investigation and should not be considered a neutral act. Before making any decision to suspend, the employee will be asked for their response to the allegations unless and except in circumstances where the police have prohibited The Lioncare Group from discussing the matter with the employee (e.g. where it is believed that a crime has or may have been committed), and consideration will always be given to any alternatives to suspension. Any decision to suspend, even where the allegations are serious, will always be carefully thought through and must always be authorised and approved by the Chief Executive Officer. The decision whether or not to suspend an employee is always at the absolute discretion of the Chief Executive Officer acting as the employer on behalf of The Lioncare Group.

Any decision to suspend will be confirmed in writing and such written confirmation will include the reasons for the suspension and how long it is expected to last and will state that its purpose is to investigate the allegations. Any suspension will be for no longer than is necessary to investigate the alleged misconduct or poor performance or so long as is otherwise reasonable while any disciplinary procedure against the employee is outstanding and it will be kept under regular review to ensure that it is still necessary or reasonable. Suspension does not constitute either disciplinary action or a disciplinary sanction, it is not an assumption of guilt or blame and it does not indicate that any decision has already been made about the allegations.

Alternatives to Suspension

Alternatives to suspension that may be considered by The Lioncare Group and depending on the specific situation and circumstances include the following;

- Redeployment and / or a change of usual work-place
- Allowing the employee to work from home
- Agreement between the employee and employer for the employee to take a period of leave; this may be paid annual leave, special leave, or 'garden leave'.
- Agreement by the employee to refrain from work for an agreed period of time
- Temporary restriction on duties and / or authority
- Temporary allocation of alternative duties

Such alternatives will often be less stressful for the employee; however, it must be noted that it is only through a suspension that an employee can be required not to attend their place of work.

Appeals

An employee may appeal against any disciplinary decision, including dismissal, to the Chief Executive Officer of The Lioncare Group. Appeals must be submitted within five working days starting with the day after the date on which the employee received the written decision. Appeals should be made in writing and state the full grounds for appeal. The employee will then be invited in writing to attend an appeal hearing chaired by a senior manager or an Assistant Director or the Chief Executive Officer or an independent chairperson appointed by The Lioncare Group and this will set out the date, time and location of that hearing.

The appeal hearing will also be attended by someone whose role is to take an attendance note of the hearing, and the manager who conducted the disciplinary hearing and the investigating officer who investigated the misconduct or poor performance allegations may additionally be present.

At the appeal hearing, the employee will again be given the chance to state their case and will have the right to be accompanied by a trade union official or a work colleague of the employees choice.

Following the appeal hearing, the employee will be informed in writing of the appeal decision. The Lioncare Group may confirm the original decision, revoke the original decision or substitute a different penalty. The Lioncare Group's decision on an appeal will be final and there is no further right of appeal.

If the appeal is against dismissal, the date that any dismissal takes effect will not be delayed pending the outcome of the appeal. However, if the appeal is successful, the decision to dismiss will be removed and the employee will be reinstated with no loss of continuity or pay.

Employees With Short Service And Other Workers

Under current employment law, the disciplinary procedure does not apply to any employee who has been employed for less than two years. However, The Lioncare Group is a fair employer and will seek to apply its disciplinary procedure to all employees including those with short service to ensure a fair and proper process is applied to all.

However, this disciplinary policy and procedure does not apply to workers, agency workers, consultants or contractors.

This Policy Relates to the following Legislation

- Employment Rights Act 1996
- Equality Act 2010
- Employment Relations Act 1999
- Employment Act 2002
- Employment Act 2008
- Industrial Tribunals Act 1996
- The Protection of Freedoms Act 2012

This Policy Relates to the following Regulations

- The Education (Independent School Standards) Regulations 2014
- Children's Homes (England) Regulations 2015

This Policy Relates to the following Guidance

- ACAS Code of Practice on Disciplinary and Grievance Procedures
- Employment Practices Data Protection Code
- Discipline and grievances at work - the ACAS guide
- Safeguarding children and young people and young vulnerable adults policy (2015)
- Guide to Children's Home Standards Including Quality Standards (April 2015)
- Keeping Children Safe in Education (DfE 2020 updated January 2021)
- Working Together to Safeguard Children (DfE 2018 updated December 2020)

This Policy Applies To:

a) All those directly employed as an employee by Lioncare Ltd operating under the name The Lioncare Group.

Responsibilities Associated with this Policy:

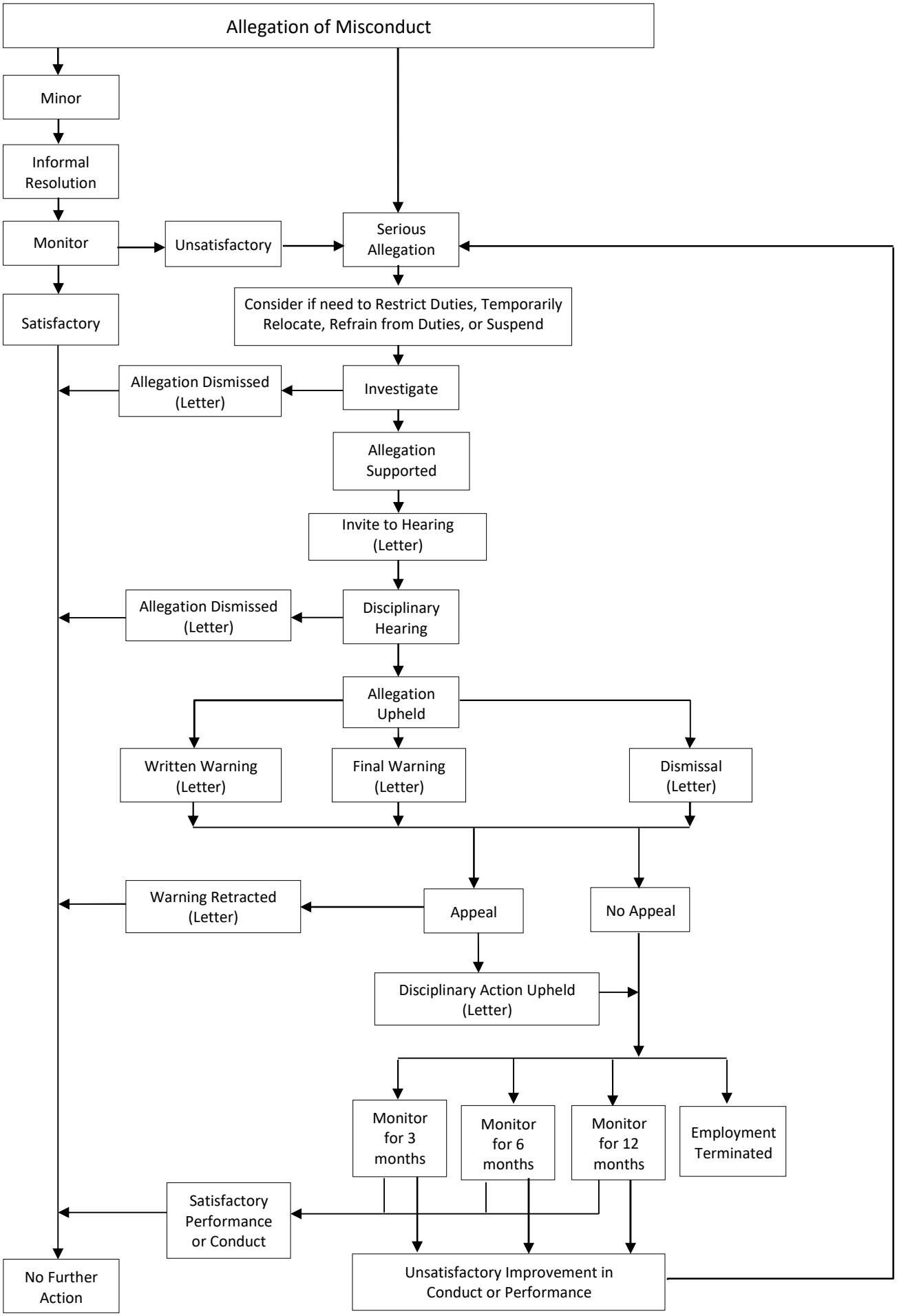
All employees, whether they are 'front-line' engaged directly in the task of caring for, educating, and supporting the children in our care, or 'ancillary' (e.g. House Keeper, Maintenance Worker, Administrator etc.), are personally responsible for managing their own conduct in relation to following this policy.

All employees whether they are 'front-line' or 'ancillary' are also responsible for supporting their colleagues and co-workers to follow this policy.

Members of the Management Teams (Senior Therapeutic Carers, Senior Learning Support Assistant, Senior Pastoral Lead, Senior Teachers, Deputy Managers, Head Teacher, and Registered Managers) are responsible for ensuring all those employed directly by The Lioncare Group as an employee are made aware of this policy and guidance, and for monitoring their safe and proper conduct whilst interacting with or work alongside or around or in proximity to the children in our care and for taking such action as necessary to prevent children being at risk of harm because of an adult's failure to follow this policy and guidance.

The Executive Team (Assistant Directors and Chief Executive Officer) are responsible for reviewing this policy annually and for ensuring this policy remains fit-for-purpose.

Monitoring and Review of this Policy:

The implementation of this policy and its corresponding guidance will be monitored continuously, and the policy itself will be reviewed annually by the Executive Team and in consultation with relevant others including where possible and feasible those involved in caring for, educating, and supporting the children in our care, and relevant external and / or independent legal and professional consultants and organisations and agencies.

Disciplinary Procedure Flow-Chart