

# Disciplinary Policy and Procedure

Ffederasiwn Ysgolion **Llanidloes** Schools Federation



This policy does not apply to teachers employed in educational establishments

Status	Version 1
Policy Author	Daniel Owen / Elen Chennetier
Date of Issue	06.07.2022
Date of Review	
Agreed by	Governing Body
Next Review Date	Summer 2024
Authorisation	Chair of Governors Date: 06.07.2022  Signature:

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## **1. Introduction**

- 1.1 This policy is designed to help and encourage all employees to achieve and maintain standards of conduct, attendance and job performance (deliberate failure or refusal to perform at the required standard). It is the employee's responsibility to ensure that they are carrying out their duties in line with all Powys County Council (the Council) policies, the Officer's Code of Conduct and importantly, the values of the Council.
- 1.2 This policy sets out the Council's approach to handling instances of unsatisfactory performance and conduct in the workplace by employees of the Council.
- 1.3 The aim of this policy is to ensure consistent and fair treatment for all in the Council.

## **2. Principles**

- 2.1 Both managers and employees need to understand that the Council is guided by its vision and values. In some cases, disciplinary action will be taken where employee acts or omissions are incompatible with the Council's values, in particular the need to act professionally. The Council's vision and values can be found on the intranet.
- 2.2 This policy includes the core principles of law as set out in the Acas Code of Practice on Disciplinary and Grievance Procedures. The law regarding unfair dismissal requires the Council as an employer to act reasonably when dealing with disciplinary issues. In this regard, every effort will be made to conduct disciplinary investigations in a reasonable manner and without unnecessary delay.
- 2.3 The Council treats personal data collected during the disciplinary procedure in accordance with its Data Protection policy. Information about how your data is used and the basis for processing your data is provided in the Council's Employee Privacy Notice.

## **3. Scope**

- 3.1 This policy applies to all Council employees (although it does not apply to certain Chief Officers (viz. Head of Paid Service, the Monitoring Officer, the Chief Finance Officer and the Head of Democratic Services)) and teachers employed in educational establishments, including apprentices, trainees and those on fixed-term contracts.

## **4. Informal Procedure**

- 4.1 On occasion, it may be necessary for managers to discuss minor incidents of misconduct and breaches of the Code of Conduct with employees. Often, very minor misconduct issues may be dealt with during the employee's Individual Performance Review (IPR). Minor misconduct, for the purposes of this policy, is considered as being misconduct which although may be a minor deviation from established rules and practice, does not constitute a serious breach that would destroy the relationship of trust that has to exist between the Council (as employer) and its employees.
- 4.2 Generally, informal disciplinary action will take the form of a private, one-to-one discussion where the line manager will give constructive feedback to the employee about their conduct or performance and discuss with them ways of improving. Employees must be given the opportunity to raise any mitigating circumstances at this meeting. Any notes or letters developed as a result of informal action should be signed by the employee.

- 4.3 The line manager must ensure that they have given clear information to the employee as to what improvement action is required and when this will be reviewed (often by way of an Action Plan). The discussion should be confirmed in writing to the employee and notes of the discussion kept for reference purposes.
- 4.4 If, during discussions, it becomes apparent that the matter is more serious than first understood, the meeting should be adjourned and the employee informed that the matter will be progressed under the formal disciplinary procedure.

## **5. Formal Procedure**

- 5.1 The formal procedure will be used to address serious cases of misconduct, repeated minor incidents of misconduct, breaches of the Employee's Code of Conduct and/or performance, which can also relate to capability or sickness absence (reporting, frequent intermittent absenteeism, unacceptable level of absence). Progression to the formal procedure will also include instances of repeated misconduct, performance or sickness absence where the informal procedure has been used and no improvements have been made or where improvements have not been sustained.
- 5.2 Where an alleged breach of conduct relates to the abuse of vulnerable adults, the 'Policy and Procedure for the Protection of Vulnerable Adults from Abuse' will take precedence. Where an alleged breach of conduct relates to the abuse of children, the 'Child Protection Procedures' will take precedence.
- 5.3 Where an employee is under police investigation, any subsequent disciplinary investigation would not automatically be suspended pending the outcome of the police investigation, this would only be in circumstances where it has been specifically requested by the police.
- 5.4 Where there is an alleged breach of conduct, the employee will be informed in writing of the nature of the allegation(s).

### **5.5 Suspension**

- 5.5.1 In some circumstances it will be necessary for an employee to be suspended from duty on full pay whilst the allegations made against them are being investigated. Whilst suspension itself is not a disciplinary sanction and does not imply pre-judgement, suspension is not considered to be a neutral act by the Council and will only be considered as a last resort. All other options will be exhausted before suspension is approved, including restriction from duties or temporary redeployment. Suspension may be considered, but not limited to:
- Where it is felt that there may be a risk to other people or to Council property;
  - The allegation is so serious that it could create or amount to a serious breach of trust and confidence; and
  - It is not possible to place the employee in another place of business, ie. work restriction whilst the investigation is being carried out.
- 5.5.2 The decision to suspend an employee must be taken by a Head of Service (or their nominated senior officer) in discussion with the Professional Lead for Human Resources (or their deputy). Consideration will also be given to alternative measures, such as a temporary restriction to other duties.
- 5.5.3 If it is decided to suspend the employee, the Head of Service or their representative must arrange to meet with them as a matter of priority to inform them of their suspension or restriction. In exceptional circumstances, where a meeting cannot be arranged in a timely manner, the suspension meeting may be undertaken over the telephone.

- 5.5.4 A contact officer will be allocated for the employee and should be used as the point of contact for the Council. Employees who are suspended are not permitted to contact anyone within the Council (unless otherwise advised) other than their contact officer and are prohibited from visiting Council buildings unless requested to do so. Suspended employees who serve as school governors should check with their contact officer as to whether they will be permitted to conduct their governor duties.
- 5.5.5 Employees will receive confirmation of their suspension in writing within five working days of the suspension meeting.
- 5.5.6 Suspensions and restrictions will be reviewed every four weeks by the employee's Head of Service (or their nominated senior management representative) to ensure that the decision to suspend the employee is still valid and will be limited to as short a period as possible. If the decision changes as a result of any submissions made by the investigating officer or the employee, they will be notified in writing of the change. Employees can submit any relevant information in relation to their suspension at any point during the suspension period.
- 5.5.7 Suspension from work had previously been regarded as a "neutral" act. However, a recent High Court decision (2017) reaffirms a 2007 High Court judgement that suspension is not a neutral act. The Council does not consider suspension to be a disciplinary act.
- 5.5.8 Should the employee become absent due to illness during the period of suspension, or at any point throughout the disciplinary process, a doctor's certificate will be required. At this point, the employee's status changes from being suspended to being absent from work due to sickness and the employee may be referred to Occupational Health, in line with the Council's Sickness Absence Management policy.
- 5.5.9 Employees wishing to take annual leave during a period of suspension should request this through their contact officer, who will in turn contact their line manager. Employees should be available at all other contractual times during the suspension period for interview.

## **5.6 Investigation**

- 5.6.1 An investigating officer will be appointed to carry out a full investigation into the allegations made against the employee. The investigating officer will be appointed by the Head of Service and will usually be a manager from the same service area. The investigating officer's role is to put questions to the employee and any witnesses in order to, as far as reasonably possible, establish the facts of the matter and the compilation of the investigation report. In some circumstances, it may be appropriate for the investigating officer to undertake an immediate preliminary interview in order to establish whether there are prima facie ("at first glance") grounds for any particular allegation.
- 5.6.2 Depending on the complexity of the case, an HR representative may assist with the investigation process. HR will always be involved in the preliminary conversations of any investigation process and in gross misconduct cases, will support the investigation. With regard to an investigation, the HR representatives' role is to ensure that the process is conducted fairly and in line with all Council policies and procedures. It is not the HR representative's role to conduct the investigation, ask questions or write the investigation report – this is the responsibility of the investigating officer. However, HR representatives may ask clarity-seeking questions where the responses given are unclear or ambiguous. However, there may be instances where HR are requested to investigate and present a case at a disciplinary hearing; this will usually be at the request of senior management.

- 5.6.3 The purpose of the investigation is to gather all of the facts concerning the allegation, this will involve interviewing the employees at the earliest opportunity and any potential witnesses, reviewing relevant policies and procedures and giving consideration to any other relevant information as outlined by the terms of reference. Investigations will be conducted without unreasonable delay.
- 5.6.4 Any reasonable evidence, including GPS tracking information, CCTV footage and personal data, may be used as evidence and in any subsequent proceedings, in line with any applicable legislation; for example, the GDPR and the Human Rights Act 1998.
- 5.6.5 During the investigation interview the employee subject to investigation will be given the opportunity to respond to the allegations made against them and to provide any mitigating circumstances.
- 5.6.6 Employees interviewed as a witness will be requested to provide signed statements in respect of their evidence and may be required to attend any subsequent disciplinary hearing to answer questions in relation to their statement.
- 5.6.7 Employees are advised that they have a responsibility to take part in this procedure if they have information about the matter that should be made available.
- 5.6.8 Interviews will be recorded using an audio recording device or alternatively, written notes will be taken from the meeting.
- 5.6.9 Employees may wish to be accompanied at an investigation meeting by a trade union representative or Council colleague (provided that they are not part of the investigation). It is the responsibility of the employee to arrange this and investigation meetings will not be unduly delayed if the employee's chosen representative is unavailable.
- 5.6.10 Where an employee or their trade union representative are unable to attend the scheduled meeting an alternative date will be arranged, within 5 working days wherever possible, to avoid any unnecessary delays.
- 5.6.11 Once the investigating officer is satisfied that all necessary investigations are concluded, they will prepare a written report detailing their findings and conclusions from the investigation, but it is the role of the investigating officer to recommend whether there is a case to answer to or not.
- 5.6.12 The employee will be informed in writing of the outcome of the investigation and what the next steps will be, if any.
- 5.6.13 Where the facts are irrefutable or there is an admission by the employee and it is deemed to be potential gross misconduct, it may be appropriate to proceed to a disciplinary hearing without undertaking the investigation as detailed in paragraph 5.6.1 to 5.6.12 above; notice of the hearing will be provided within 2 clear working days.
- 5.6.14 In this circumstance the process as set out in 5.7.1 to 5.7.4 may not apply.
- 5.6.15 This process can only be undertaken with prior agreement of the Professional Lead for HR or their deputy and the Solicitor to the Council.

## **5.7 The Disciplinary Report**

- 5.7.1 As stated elsewhere in this policy, the investigating officer is responsible for compiling and writing the investigation report at the conclusion of the investigation. Note that this is a confidential report and its contents should not be shared with unauthorised persons under any circumstances. It is the role of the HR representative supporting the investigation to ensure that the investigating officer's report states only the details established by the investigation and that it is unbiased. It is not the HR representative's responsibility to write the report.

- 5.7.2 A template report is available from the HR representative. This template has explanatory notes that must be followed as far as reasonably possible, to ensure consistency.
- 5.7.3 The report is a statement of the details as established by the investigation. There is no place in the report for personal views or speculation.
- 5.7.4 It is important that as part of the report, all documentation that was referred to as part of the investigation are included as appendices. It is a specific requirement that the report and appendices, known as the “bundle” or “pack”, is paginated. Furthermore, extra care must be taken to ensure that all appendices accurately correspond with the bundle’s contents page.

## **5.8 Disciplinary Hearing**

- 5.8.1 On receiving the investigatory report, it will be determined whether the matter needs to proceed to a hearing or can be dealt with on an informal basis, or that further investigation is required. This decision will be made by the Service in consultation with HR.
- 5.8.2. Where the decision is made to proceed to a disciplinary hearing, employees will be advised in writing 5 clear working days in advance of the hearing date with a copy of all evidence obtained as part of the investigation process. Should trade union representatives require more notice, they can request a further period of 5 clear working days.
- 5.8.3 If employees wish to submit evidence to be considered by the panel they should do so 2 clear working days before the hearing. Evidence provided after this date will not be considered by the hearing panel unless there are clear extenuating circumstances.
- 5.8.4 Employees have the right to be accompanied at the disciplinary hearing by a trade union representative or work colleague (who has not had anything to do with the investigation), it is the responsibility of the employee to arrange this.
- 5.8.5 The disciplinary hearing offers an opportunity for the investigating officer(s) and the employee to present their respective cases and be questioned on it, discuss the allegations made, ask questions and call any relevant witness.
- 5.8.6 The hearing will usually be chaired by the Head of Service or their nominated senior officer. They will be advised by a representative from HR who has not been involved in the investigation. The final decision rests with the panel Chair. The role of the HR representative on the panel is restricted to giving advice on an appropriate sanction, issues of consistency and issues of law, policy and procedure. It is not the role of the HR representative to assess the employee’s credibility or culpability.
- 5.8.7 Where an employee fails to attend or postpones the disciplinary hearing, the hearing will be re-arranged in the first instance and will be arranged as soon as reasonably possible. If the employee fails to attend a second time or is unable to attend then the hearing will continue in their absence.
- 5.8.8 The format of the hearing will be as follows:
- Introductions and confirmation of the reason for the hearing;
  - Presentation of the management case including witnesses and cross examination by the panel and the employee. The investigating officer(s) must state why they have concluded there has been a disciplinary breach, what evidence they have relied upon from the investigation report to arrive at this conclusion and how serious they view the matter and the reasons why – simply restating the contents of the report is insufficient;
  - The employee’s reply and cross-examination;
  - Final questions and clarification from the Chair;

- Summing up from the management side;
- Summing up from the employee;
- Adjournment for panel to make a decision; and
- Reconvene to inform of the panel's decision, or decision to be conveyed in writing.

5.8.9 The outcome of the hearing will be confirmed in writing to the employee within 5 clear working days from the date of the hearing.

5.8.10 Possible outcomes of the disciplinary hearing are as follows:

- No disciplinary action taken against the employee. This will be confirmed in writing.
- A Written Warning – for cases of misconduct and unsatisfactory performance a first written warning may be considered appropriate. The warning will be retained on the employee's personnel record for 6 months from the date of the hearing. After this time it will be removed from their record.
- A Final Written Warning – if the employee has a current warning and further misconduct, unsatisfactory performance or sickness absence occurs, then a final written warning may be appropriate. This may also be seen as the appropriate sanction if the misconduct or unsatisfactory performance is seen as sufficiently significant to have a serious or harmful effect. The final written warning will be retained on the employee's personnel record for up to 12 months from the date of the hearing, when it will then be removed from the employee's file.
- Disciplinary Penalties Avoiding Dismissal – where the hearing finds an employee's conduct or capability to be unacceptable to the point that dismissal is a possible outcome, it may be appropriate to consider alternative penalties to dismissal. These penalties can include: demotion, which will normally include a reduction in pay; loss of seniority or loss of increment; disciplinary transfer. Any such actions will be viewed as an alternative to dismissal.
- Dismissal with Notice – where the employee has either failed to respond to previous warnings or their conduct amounts to gross misconduct, dismissal with contractual notice may be an appropriate disciplinary penalty. Where the employee's presence in the workplace would cause significant difficulty on either part, a payment may be made in lieu of notice. Employees will not be dismissed for a first offence, unless it is considered to be gross misconduct.
- Dismissal Without Notice or Summary Dismissal – this may be appropriate if it has been found at a disciplinary hearing that the employee's conduct amounts to gross misconduct where the mitigating circumstances are insufficient and/or where the employee's continued presence at work is untenable.

## **6. Employees with Convictions**

- 6.1 If an employee is charged with or convicted of a criminal offence whilst they are an employee of the Council they have a duty to report this to their employer via their direct line manager as soon as reasonably possible.
- 6.2 Employees will not automatically be dismissed or disciplined as a result of any conviction however employment implications may need to be considered, depending



on their duties and role within the Council, although summary dismissal may be appropriate.

- 6.3 Any requirements for an investigation should be conducted in accordance with the investigation process in sections 5.7.1 to 5.7.10 above.

## **7. Appeals**

- 7.1 If an employee does not accept the outcome or decision of the disciplinary hearing, they have the right to appeal and are required to do so in writing to the Professional Lead of HR and Development. The grounds for appeal could include, but are not limited to:
- Failure to adhere to the procedure;
  - Extenuating circumstances that were not considered;
  - Bias by the person carrying out the investigation;
  - New evidence subsequently coming to light which would have affected the decision.
- 7.2 The employee is required to submit their written appeal no later than within 5 clear working days from the date contained on the outcome letter. The HR Department will make arrangements for an appeal hearing. Every effort will be made to hear the appeal as quickly as possible.
- 7.3 Appeals against sanctions less than dismissal will be heard by a different Head of Service and an HR representative not involved in the original hearing.
- 7.4 Appeals against dismissal will be heard by Elected Members from the Council's Employment Committee, advised by a HR representative. The decision made by the appeal panel is final and will be confirmed in writing to the employee following the appeal hearing within 5 clear working days.

## **8. Overlapping Grievance and Disciplinary Matters**

- 8.1 Where an employee raises a grievance during a disciplinary process, the disciplinary process may be temporarily suspended in order to deal with the grievance. Where the disciplinary and grievance matters are related it may be appropriate to deal with both issues concurrently. In situations where a grievance has been investigated but is subject to appeal by the employee, it may be appropriate to conclude any grievance appeal before continuing with or concluding the disciplinary process.
- 8.2 However, if it becomes apparent that the employee subject to disciplinary action is raising grievances that are reasonably considered to be in bad faith, repetitive, frivolous, malicious and/or vexatious, or are raised with the intention of delaying the conclusion of a serious disciplinary matter, the Council may consider closing the matter without further investigation. However, it is important to note that for such grievances to be struck out, a proper, detailed assessment by the respective Head of Service needs to be undertaken and a written response provided to the aggrieved employee, stating the reasons why the grievance has been struck out. Any such decision must be carefully considered and approved by the Professional Lead for Human Resources. For example, in cases where an employee raises a grievance that is slightly different from an earlier grievance, a decision will be made as to whether the new matter raised is sufficiently different to justify it being considered as a new grievance.

## **9. Council Values**

- 9.1 The Council is determined to create a public service for the future that is driven by the right culture and behaviours. Further to this, the Council wants to deliver high performance and value for our communities.
- 9.2 Values are important to the Council and therefore wants its culture and working environment to reflect this.
- 9.3 The Council will use its values to create a positive working environment and to communicate the approach and behaviours to all employees. As noted elsewhere in this policy, employee behaviour and actions in conflict with the values of the Council may result in disciplinary action being taken and therefore employees should be aware that whatever role they play in the Council, they should act with professionalism and integrity, take a proactive attitude in all that they do, take a proactive and responsible approach to planning for the future, keep each other informed and act with honesty and integrity while working constructively, willingly and collaboratively across boundaries.

## Examples of Misconduct and Gross Misconduct

### A) Misconduct

- Disobeying instructions, i.e., when an employee without sufficient cause disobeys or omits or neglects to carry out a reasonable management instruction, whether in writing or not, which is in the employee's duty to obey including failure to observe the operational regulations and standing orders of the employing department. Repeated disobeying of instructions may be considered as gross misconduct.
- Abuse of authority when an employee's conduct in connection with their employment towards a fellow employee, or a member of the public, is unfair or abusive.
- Absence from duty, for example, when an employee without sufficient cause, is absent from duty or is late for duty or other attendance; or without permission or sufficient cause leaves their place of work, including taking excessive refreshment breaks.
- Medical capability where an employee is consistently failing to attend their place of work and carry out their duties as defined within their contract of employment. More details can be found in the Sickness Absence Management policy.
- Neglect of duty when an employee without sufficient cause fails to discharge the obligations which statute or their contract place upon them.
- Carelessness or neglect by the employee which causes any loss, damage or injury to occur to any person or property; or without sufficient cause fails to report any matter which it is their duty to report; or without sufficient cause fails to make an entry which it is their duty to make, in any book or document.
- Failure to properly account for, or to make a prompt and true return of any money or property which comes into the employee's possession in the course of their duties.
- Failure to carry out duties to an acceptable standard.
- Falsehood, i.e., when an employee knowingly or through neglect makes any false, misleading or inaccurate oral or written statement or entry in any record or document made, kept or required for the purposes of the Council; or has knowingly or through neglect falsified any information used in support of an application for any post in the employment of the authority. Serious falsehood has the potential to amount to gross misconduct.
- Failure to adhere to any of the Council's policies as they are applicable to the employee or their role.
- Any minor act or omission which is in conflict with the Council's values.
- Any minor misuse of employee and/or service user data.

***This list is illustrative and is not exhaustive.***

### B) Gross Misconduct

Gross Misconduct is defined as misconduct serious enough to destroy the contract between the employer and the employee, making any on-going working relationship and trust between the two parties impossible and which can lead to summary dismissal. Such acts include, but are not limited to:

- Theft;
- Fraud;

- Bribery and corruption;
- Serious breach of rules, policies and procedures;
- Serious breach of the Employee's Code of Conduct;
- Serious breach of trust and confidence;
- Breach or disregard of health and safety rules and working arrangements;
- Fraudulent or deliberate falsification of records for own gain e.g., financial records or other official council documentation (e.g. reports), qualifications, claims for financial reimbursement, etc.;
- Fighting, assault and/or displaying threatening behaviour or harassment towards staff or the public, including violent, dangerous or intimidatory conduct;
- Deliberate and/or negligent damage to Council property or property belonging to members of the public;
- Incapability through alcohol or being under the influence of alcohol and/or illicit substances;
- Serious negligence which causes unacceptable loss, damage or injury;
- Serious act(s) of insubordination or insolence;
- Reckless or serious misuse of a Council vehicle or machinery;
- Sexual misconduct at work;
- Serious breach of the Council's Equality and Diversity policy;
- Misconduct in public office (where an officer wilfully neglects to perform their duties and/or wilfully misconducts themselves to such a degree as to amount to an abuse of the public's trust in the office holder without reasonable excuse or justification);
- Harassment of a colleague or other member of staff who has exercised their right and their duty to report any malpractice as defined by the term 'whistle blowing';
- Serious breaches of health and safety regulations and policies which endangers others;
- Unauthorised accessing of computer records and systems. Unacceptable use of the internet, visiting web sites that contain obscene, hateful or objectionable materials. Downloading, viewing, displaying or sharing offensive materials as described in the IM&T Users' policy;
- Misuse of or improper interference with computer software;
- Being charged with and/or convicted of a serious criminal offence which renders the employee unsuitable to remain in the Council's employment;
- Participating in secondary paid employment during paid Council time, including whilst on sick leave;
- Failure to declare a direct or indirect interest in a company with which the Council places or intends to place business;
- Any serious act or omission which is in conflict with the Council's values, e.g. bullying, sexual harassment, racial harassment or any form of harassment or discrimination, etc.
- Any serious misuse of employee and/or service user data.

***This list is illustrative and is not intended to be exhaustive.***