

## **CYNGOR SIR POWYS COUNTY COUNCIL**

### **Disciplinary Policy and Procedure**

This document applies to all employees with the exception of:

- Chief Officers**
- Teachers** (for whom there are alternative policies)

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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 Council policies and Code of Conduct.
- 1.2 This policy sets out the Council's approach to handling instances of unsatisfactory performance and conduct in the workplace by employees of Powys County Council.
- 1.3 The aim is to ensure consistent and fair treatment for all in the organisation.

## **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 (things that they do) or omissions (things that they should have done but didn't) are incompatible with the values, in particular:
- Accessibility – employees and managers will ensure that all Council services are accessible to all;
  - Openness – employees and managers will ensure that they are open and honest with one another and their service users;
  - Focus – employees and managers will ensure that they maintain their focus with regard to service delivery;
  - Engagement – employees and managers will ensure that they meaningfully engage with one another and their service users.

## **3. Scope**

- 3.1 This policy applies to all Powys County Council employees, with the exception of chief officers and teachers employed in schools.

## **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.
- 4.2 This 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 will be given the opportunity to raise any mitigating circumstances at this meeting.
- 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 Formal 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 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 maintained. Where there is an alleged breach of conduct, the employee will be informed in writing of the nature of the allegation(s).
- 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 precedent. Where an alleged breach of conduct relates to the abuse of children, the 'Child Protection Procedures' will take precedent.
- 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.

### **5.5 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 considered. Consideration will also be given to alternative measures, such as a temporary restriction to other duties. Suspension may be considered, but not limited to:
- Where it is felt there may be a risk to other people or to Council property;
  - To enable a full and fair investigation to be carried out unhampered;
  - The allegation is so serious that it could create or amount to, a serious breach of trust and confidence;
  - It is not possible to place the employee in another place of the business; i.e., 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 officer) in discussion with the Professional Lead for Human Resources (or their deputy).

- 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.
- 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 the contact officer and are prohibited from visiting Council buildings unless requested to do so.
- 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 officer) 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 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 is not considered a punitive action.
- 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/illness and the employee will be referred to Occupational Health, if this is deemed necessary in terms of the Sickness Absence policy.
- 5.5.9 Employees wishing to take annual leave during a period of suspension should request this through their contact officer. Employees should be available at all other 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.
- 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 assist with the investigation.
- 5.6.3 The purpose of the investigation is to gather all of the facts surrounding 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. Investigations will be conducted without unreasonable delay.

- 5.6.4 CCTV footage, and personal data may be used as evidence and in any subsequent proceedings, in line with any applicable legislation; for example, the Data Protection Act 1998 and the Human Rights Act 1998. GPS tracking information may also be used in cases of Gross Misconduct.
- 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 All employees have the right to be accompanied at an investigation meeting by a trade union representative or work colleague, (provided that they are not part of the investigation). It is the responsibility of the employee to arrange this.
- 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. It is the role of the investigating officer to recommend whether there is a case to answer 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 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 5.7.6 will 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 Disciplinary Hearing

- 5.7.1 On receiving the investigatory report the hearing panel will determine whether the matter needs to proceed to a hearing, can be dealt with on an informal basis or further investigation is required.
- 5.7.2. The purpose of the disciplinary hearing is to establish the facts, decide if a breach of conduct has occurred, seek to rectify the behaviour and to arrive at a decision on what disciplinary sanction to impose, if any.
- 5.7.3 The disciplinary hearing is conducted by a panel and offers an opportunity for the investigating officer(s) and the employee to present their case and be questioned on it, discuss the allegations made, ask questions and call any relevant witness.
- 5.7.4 The hearing panel will be chaired by the Head of Service or their nominated 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.
- 5.7.5 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 or employees without representation require more notice, they can request a further period of 5 working days – no additional extensions will be granted.
- 5.7.6 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.
- 5.7.7 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.
- 5.7.8 Where an employee fails to attend or postpones the disciplinary hearing, the hearing will be re-arranged in the first instance, this 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.
- 5.7.9 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 employee's reply and cross-examination;
  - Final questions and clarification from the panel;
  - 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.

5.7.10 The outcome of the hearing will be confirmed in writing to the Employee within 5 clear working days from the date of the hearing, although on occasion it may be necessary to extend this time period and the employee will be advised of this.

5.7.11 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 12 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 24 months from the date of the hearing when it will then be removed from the 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 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 Powys County Council they have a duty to report this to their employer via their direct line manager as soon as 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 authority.

6.3 Any requirements for an investigation should be conducted in accordance with the investigation process in paragraph 5.6.1 to 5.6.12 above.

## **7. Appeals**

7.1 If an employee does not accept the outcome/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. The grounds for appeal could include, but is 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 5 clear working days from the date contained on the outcome letter. The HR Department will make arrangements for an appeal hearing. Every attempt will be made to hear the appeal as quickly as possible.

7.3 Appeals against sanctions less than dismissal will be heard by a Head of Service or their nominated officer and a 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, although on occasion it may be necessary to extend this time period and the employee will be advised of this.

## **Appendix A - Examples of Misconduct & 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.
- Abuse of authority when an employee's conduct in connection with their employment towards a fellow employee, or a member of the public, is oppressive 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 his/her 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 within the Sickness Absence Management policy)
- Neglect of duty when an employee without sufficient cause fails to discharge the obligations which statute or his contract place upon him/her.
- 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 his/her duty to report; or without sufficient cause fails to make an entry which it is his/her 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 his/her 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 authority; or has knowingly or through neglect falsified any information used in support of an application for any post in the employment of the authority.
- Failure to adhere to any of the Council's policies as they are applicable to the employee or their role.

**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. Such acts include, but not confined to:

- Theft.
- Fraudulent or deliberate falsification of records for own gain e.g., financial records or other official council documentation, qualifications, claims for financial reimbursement etc.
- Fighting or assault and/or showing threatening behaviour or harassment towards staff or the public.
- Deliberate damage to Council property or property belonging to members of the public.
- Incapability through alcohol or being under the influence of illegal drugs.
- Serious negligence which causes unacceptable loss, damage or injury.
- Serious act of insubordination.
- Reckless or serious misuse of a council vehicle or machinery.
- Sexual misbehaviour at work.
- Serious breach of the Council's Equality & Diversity policies.
- 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'.
- Bribery/ acceptance of bribes or participation in other corrupt practices.
- Serious breaches of health and safety regulations and policies which endangers others.
- Unauthorised entry to computer records. 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.
- Being convicted of, or charged with, 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.
- Failure to declare a direct or indirect interest in a company with which the authority places or intends to place business.

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