



DISCIPLINARY POLICY

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Under the Welsh Language Standards, employees have the right to make complaints, and respond to complaints or allegations made against them via the disciplinary process in Welsh. The Council will ensure that correspondence, documents and any associated proceedings, meetings and outcomes will be made available in Welsh. We will provide a simultaneous translation service from Welsh to English for associated meetings unless they are conducted in Welsh without translation services.

Dan Safonau'r Gymraeg, mae gan gyflogwyr hawl i wneud cwynion, ac ymateb i gwynion neu gyhuddiadau a wnaed yn eu herbyn drwy'r broses ddisgyblu yn Gymraeg. Bydd y Cyngor yn sicrhau bod gohebiaeth, dogfennau ac unrhyw gamau cysylltiedig, cyfarfodydd a chanlyniadau ar gael yn Gymraeg. Byddwn yn cynnig gwasanaeth cyfieithu ar y pryd o'r Gymraeg i'r Saesneg ar gyfer cyfarfodydd perthnasol oni chânt eu cynnal yn Gymraeg heb fod angen gwasanaeth cyfieithu.

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SECTION 1 - INTRODUCTION

Policy Statement

- 1.1 Disciplinary rules are necessary for the efficient and safe performance of work, and for the maintenance of good order and relations between the Council and its employees. This is essential to enable the Council to deliver quality services to the citizens of Cardiff.
- 1.2 An employee who breaches a particular disciplinary rule will be liable to disciplinary action under the Council's Disciplinary Policy and Procedures. It is therefore essential that employees observe and abide by the Council's rules, regulations and standards.
- 1.3 This Disciplinary Policy and its related procedures and guidance notes sets out the actions that will be taken when those rules, regulations and standards are breached or where, other than related to capability, job performance does not reach an acceptable level.
- 1.4 This s policy and procedures reflect, and are consistent with, the [ACAS Code of Practice on Discipline and Grievance Procedures](#)

Aims and Objectives

The aims of this policy are to:

- 1.5 Ensure the consistent and fair approach to the application of the Council's rules, regulations and standards for all within the Council. No formal disciplinary action will be taken against an employee without some investigation or assessment to establish the facts.
- 1.6 Primarily help, encourage and support employees to improve their behaviour and conduct, rather than just a way of determining or imposing sanctions.
- 1.7 Ensure that managers, employees and their representatives are aware of their rights, responsibilities and obligations within the disciplinary process.

Scope of the Policy

- 1.8 The Policy applies to **all** current employees (not ex-employees) of the Council with the exception of its schools based employees. The principles will apply to temporary employees including those employed through Cardiff Works.
- 1.9 The policy does not apply to agency workers, volunteers or those engaged by the Council on contracts for service. However, where an allegation is made against an individual engaged on a contract for service, the principles of the policy and procedures will be adhered to and, following investigation, appropriate action will be taken. If an

issue arises with an agency worker, the matter will be referred to that worker's agency, as they are the employer. A volunteer does not have a contract of employment, therefore their involvement with the Council will be discontinued.

- 1.10 If disciplinary action is being considered against a Trade Union official, the appropriate local Branch Secretary should be notified. If the local Branch Secretary is the subject of potential disciplinary action, then the Full Time Trade Union Officer must be notified. Advice must be sought and obtained from the Chief HR People Services Officer and Legal services, before a Trade Union official or Branch Secretary can be disciplined.

Awareness

- 1.11 All employees should be aware of standards of conduct and performance expected of them by the Council and any recognised professional code of conduct relevant to their role.
- 1.12 This Policy and its related procedures and guidance notes will be drawn to the attention of all employees. Those who have a responsibility to maintain discipline will be given training, and support as required. **It is vital that all involved adhere to all aspects of this policy to limit the potential risk of a legal challenge through an Employment Tribunal.**

Key Principles

- 1.13 Advice and guidance on the operation of this policy must be obtained from HR People Services before formal disciplinary action is taken against any employee. In the event of a dispute relating to the interpretation of the policy and / or procedures, HR People Services will make the final decision on interpretation.
- 1.14 As a general principle, the implementation of the investigation and disciplinary process will be confined to the Directorate. A case that appears to be particularly complex or sensitive may be referred to the Council's Disciplinary Investigation Service (**Appendix 3**) or to Internal Audit where there are matters of fraud/financial impropriety.
- 1.15 The employee will be advised of the nature of the allegation(s) and given the opportunity to respond to them. In exceptional cases, this may not happen, e.g. Protection of Vulnerable Adults (POVA) and Protection of Children, where separate statutory processes exist.
- 1.16 At all stages of the Disciplinary Procedures, including the informal procedure, the employee will be given the opportunity to be represented by a companion. A companion is defined as "*an employee of the Council, a trade union representative or an official employed by a trade union*" in accordance with the [ACAS Code of Practice](#).

- 1.17 A professional employee facing disciplinary proceedings will not normally be entitled to legal representation at a Disciplinary Hearing, unless the internal proceedings create a legal barrier to working in their chosen profession. Where the issue of an employee's future ability to work in their profession is determined by an independent third party (for example the [Care Council for Wales](#), [Education Workforce Council](#)) then the request for legal representation will not normally be agreed. This is because an internal disciplinary hearing is not normally regarded as determining an employee's civil rights, even if it results in dismissal. Any request to have legal representation at the Disciplinary Hearing will be considered on an exceptional basis only.
- 1.18 An allegation of a disciplinary offence must be dealt with at the time it occurs. It is unfair to stockpile them to deliberately impose a more serious disciplinary sanction on the employee concerned. However there may be occasions where, in order to establish whether an offence has been committed, there could be a period of monitoring employees, sanctioned by Internal Audit. If after that period of monitoring it is decided that a disciplinary offence has been committed, then it will not be regarded as stockpiling.
- 1.19 The policy sets out a series of outcomes that reflect either the progressive levels of disciplinary action having regard to previous action taken, or the seriousness of the allegations which are being considered. Prior to any disciplinary decision being taken, any mitigating factors and / or circumstances must be taken into account.
- 1.20 No employee will be dismissed for a first breach of discipline except where the breach constitutes gross misconduct. In circumstances where previous disciplinary sanctions have been applied and remain "*current*" then this may also lead to dismissal. Reference to **spent warnings may not be made**.
- 1.21 Warnings, issued in accordance with this procedure, shall be time limited and will be disregarded for disciplinary purposes after a specified period of satisfactory conduct has been achieved. The effective date of the warning/dismissal is when the employee is likely to receive the written communication (date of the letter +3 days).
- 1.22 Employees have the right to appeal against any formal disciplinary action taken against them.
- 1.23 Where an employee raises a concern (formerly known as a grievance), during a disciplinary process, the disciplinary process may be temporarily suspended in order to deal with the concern. Where the concern and disciplinary cases are related it may be appropriate to deal with both issues concurrently. Where such matters arise, a decision taken by the Directorate Manager will be communicated to those involved, following advice from HR People Services. If the disciplinary case is a matter of fraud, bribery or financial impropriety then the decision will be taken by the Audit Manager.

- 1.24 In accordance with [ACAS Code of Practice](#), and with the agreement of all involved, the disciplinary procedure and other concerns that require resolution can be suspended if mediation is deemed to be an appropriate method of resolving the dispute.

SECTION 2 - ROLES and RESPONSIBILITIES

2.1 It is important that everyone clearly understands their roles and responsibilities within the disciplinary procedure.

Employee Responsibilities

2.2 All Council employees are responsible for:

- Ensuring that their behaviour complies with the [Local Government Wales Code of Conduct](#) and any Directorate / external Codes of Conduct / Practice that govern the profession in which they are engaged
- Ensuring they understand and comply with this policy and fully co-operate with the requirements of the procedures when they are in operation
- Maintaining confidentiality at all times during any disciplinary proceedings, with the exception of any conversations which may be necessary with their companion
- Behaving and acting in a way that is consistent with the Council's values of openness, fairness and working together with others, as defined by the [Employee Charter](#)
- Participating in Hearings (where applicable) in accordance with the **key principles of confidentiality and the code of conduct for disciplinary hearings**, to enable the hearing to be conducted in a consistent and robust manner in the spirit of natural justice

Manager Responsibilities

2.3 **In addition to their responsibilities as employees**, Managers are also responsible for:

- Ensuring employees are aware of all relevant policies and procedures
- Applying the Council's Disciplinary Policy and Procedures fairly, consistently and in a timely way
- Seeking advice from HR People Services on all matters relating to conduct and discipline
- Keeping adequate notes and records of all events and evidence to support the use of the policy
- Undertaking a preliminary assessment of the likely level of seriousness of any allegation of misconduct
- Ensuring that if the allegation is in relation to Fraud / Financial impropriety, a referral is made to Internal Audit
- Ensuring that where an issue is identified that relates to the [Protection of Vulnerable Adults](#) (POVA) or Protection of Children, a referral is made to the POVA team or Children's Access Point (CAP) respectively

- Determining whether an informal or formal disciplinary procedure is the most appropriate course of action, including a Fast Track Procedure

Investigating Officer Responsibilities

2.4 **In addition to their responsibilities as employees**, Investigating Officers are also responsible for:

- Conducting an appropriate investigation, reviewing progress updating the Director/Assistant Director/Chief Officer and employee, and preparing the investigation report with recommendations
- Ensuring that the allegation is correctly recorded in all despatched letters
- Arranging any meetings and support required as part of the procedure, e.g. securing dates, despatching letters, inviting people to investigatory interviews and organising administrative support to make a record of the interviews
- Ensuring HR People Services are invited to attend all formal meetings and that employees are aware of their right to representation at these meetings
- Providing a 4 weekly review on progress of the investigation to the Director/Assistant Director/Chief Officer
- Where appropriate, providing a 4 weekly review on the suspension decision (in conjunction with the suspending manager) with recommendations to the Director/Assistant Director/Chief Officer
- Participating in Hearings in accordance with the ***key principles of confidentiality and code of conduct for disciplinary hearings***, to enable the Hearing to be conducted in a consistent and robust manner in the spirit of natural justice

HR People Services Responsibilities

2.5 **In addition to their responsibilities as employees**, HR People Service Officers are responsible for:

- Acting as advisor to all involved at all stages of the policy and procedures, and to ensure that the Council's Disciplinary Policy and Procedures are correctly applied
- Providing all employees with information and advice as necessary throughout the process
- Attending all formal interviews and hearings associated with the process.
- Answering questions on points of clarification of policy and procedure at interviews and hearings
- Monitoring that the Chair's recommendations are actioned within Directorates, and support Directorates to undertake any remedial action that may be necessary
- Reviewing and monitoring disciplinary cases and outcomes

- Reviewing and collating corporate monitoring data in relation to discipline for consideration by various groups, e.g. Senior Management Team, Works Council, etc
- Reviewing the application of the policy and procedures in the light of operational experience
- Participating in Hearings in accordance with the key principles of confidentiality and the **key principles of confidentiality and code of conduct for disciplinary hearings**, to enable the Hearing to be conducted in a consistent and robust manner in the spirit of natural justice

Hearing Chair Responsibilities

2.6 **In addition to their responsibilities as employees**, Hearing Chairs are responsible for:

- Ensuring that the Disciplinary Hearing is conducted in accordance with the key principles of confidentiality and **key principles of confidentiality and code of conduct for disciplinary hearings**
- Ensuring that the employee is fully informed of the circumstances and understands the allegations made against them
- Ensuring that the employee is fully informed of their right of representation
- Authorising attendance, where requested, of additional people at the hearing in the roles of Observer and / or Assistant, with consent of the employee concerned
- Considering all the evidence regarding the allegation(s) and make a decision whether, on the balance of probabilities, it is substantiated, taking into account any mitigating circumstances
- Evidencing and recording their decision making
- Ensuring consistency of decision making
- Ensuring that where appropriate, recommendations for specific actions are communicated to the relevant Directorate
- Participating in Hearings in accordance with the key principles of confidentiality and code of conduct, to enable the hearing to be conducted in a consistent and robust manner in the spirit of natural justice

Director/Assistant Director/Chief Officer Responsibilities

2.7 **In addition to their responsibilities as employees**, Directors/Assistant Directors/Chief Officers are responsible for:

- Nominating an appropriately trained and competent Investigating Officer within **7 calendar days**, if proceeding to a formal investigation
- Undertaking an initial assessment (or their nominated representative) in relation to conduct which appears to amount to a criminal offence
- Convening and chairing a meeting of a Police Referral Panel

- Following receipt of the Investigating Officer's report, making a determination whether to instigate disciplinary proceedings against the employee concerned
- Chairing a Hearing/Appeal and making appropriate disciplinary decisions where the employee is at an Operational Manager level
- Monitoring and reporting on Disciplinary Investigations (including suspensions and associated sickness absence) within their Directorate

Trade Union Representative Responsibilities

2.8 In addition to their responsibilities as employees, Trade Union Representatives are responsible for:

- Providing advice, support and representation to their members
- Working with managers, HR People services and employees to ensure that the Disciplinary Policy is adhered to
- Working with all involved to facilitate timely and early resolution to matters
- Attending interviews and hearings, and if unable to attend, suggest a suitable alternative date or a replacement Representative
- Participating in Hearings in accordance with the ***key principles of confidentiality and code of conduct for disciplinary hearings***, to enable the hearing to be conducted in a consistent and robust manner in the spirit of natural justice

Suspension Contact Officer Responsibilities

2.9 In addition to their responsibilities as employees, Suspension Contact Officers are responsible for:

- Identifying and collecting any **personal** possessions left in the workplace to return to the employee. They must not include any items that could be considered pieces of evidence in the forthcoming investigation, such as work records or documents, which should be secured by the manager
- Updating the employee on team news, providing minutes of meetings and Core Brief

Presenting Officer Responsibilities

2.10 In addition to their responsibilities as employees, Presenting Officers are responsible for:

- Making all the practical arrangements for the Hearing e.g. date, venue, minute taker
- Preparing for the Hearing and ensuring the "Disciplinary Pack" is circulated to the Hearing Chair, the Employee under Investigation and their Companion and the HR People Services representative in advance of the Disciplinary Hearing

- Presenting the case using documentary evidence where available and calling witnesses, or referring to witness statements as necessary. One of the witnesses called should be the Investigating Officer
- Answering any questions asked by the Chair, the Employee or their Companion
- Questioning the employee's case as appropriate
- Summing up the Management's case highlighting the salient points

SECTION 3 – PRELIMINARY ASSESSMENT PROCEDURE

- 3.1 Following an incident or where misconduct has allegedly occurred, the manager must make a preliminary assessment to determine, based on the information available at the time, the likely level of seriousness.
- 3.2 The initial assessment will consist of gathering preliminary pieces of information, and may involve discussion with individuals concerned (Refer to [Disciplinary Procedure: A Manager's Guide](#)).
- 3.3 The manager will then determine one of the following outcomes:
 - a. No case to answer - there is no evidence to support the allegation
 - b. Informal Procedure- due to the minor nature of the misconduct, actions are appropriate which may include written instruction/ advice/ training/ counselling/ coaching/ mentoring/ mediation etc. Actions must be recorded in [DigiGov](#) (Refer to the [Resolution Policy](#))
 - c. Formal procedure - A Fast Track disciplinary process may be considered appropriate
 - d. A formal disciplinary investigation will be required
- 3.4 Where the manager considers that a formal investigation is appropriate, they must advise their Director/Assistant Director/Chief Officer who should make a decision within **7 calendar days**.
- 3.5 Where the Director/Assistant Director/Chief Officer considers that the employee may have committed an act(s) of gross misconduct or there is some other reason why suspension would be necessary, the suspension procedure must be considered (refer to Section 6).

SECTION 4 – INFORMAL DISCIPLINARY PROCEDURE

- 4.1 Where appropriate, problems involving misconduct and poor performance should be addressed at least initially through an informal process. The manager must make every effort to try and resolve the difficulties with the employee concerned through the use of advice, providing clarification on roles and responsibilities and work instructions with the objective of encouraging and supporting employees to improve. (Refer to [Disciplinary Procedure: A Manager's Guide](#))
- 4.2 Managers should refer to the [Resolution Policy](#), and advice can be sought from HR People Services to support them in dealing with such issues. Mediation may be an option for early resolution to address a range of issues, including relationship breakdowns or personality clashes and so preventing issues escalating unnecessarily. Mediation support can be requested via HR People Services.
- 4.3 It is important that managers deal with issues informally as they occur, to avoid stockpiling, or problems being escalated to more serious stages. A record of discussion of the outcome of the verbal or written instruction to improve must be retained on the employee's [DigiGov](#) record and, where possible, the record of discussion should be agreed and signed by all involved.
- 4.4 Employees must understand that the formal disciplinary procedure will be instigated should they fail to meet a reasonable standard of conduct despite the fact that informal discussions have taken place, or where misconduct is sufficiently serious as to merit immediate consideration under the procedure.

SECTION 5 – FAST TRACK DISCIPLINARY PROCEDURE

- 5.1 The Fast Track Disciplinary Procedure is applicable for incidents / misconduct which would normally result in verbal or written warning. It allows for matters to be dealt with in a timely manner.
- 5.2 It is applicable where the employee has admitted in full all allegations made against them.
- 5.3. The Fast Track Disciplinary Procedure is **not suitable** for
- a) Circumstances where there is potential gross misconduct
 - b) Cases of repeat misconduct where the employee has already received a written warning
 - c) Any matters that include a safeguarding issue, a Police matter or fraud / financial impropriety
- 5.4. Where it would appear that a Fast Track Disciplinary Procedure may be applicable, the manager, HR People Services Officer, the employee and their companion **must consent to a Fast Track disciplinary process in writing by completing the Fast Track consent form.**
- 5.5. This process does not require an appointment of an Investigating Officer or submission of a full investigation report. A Fast Track Decision Meeting should be held as soon as possible after consent to proceed has been received from all parties. Any delay to the procedure should be for exceptional circumstances only. The Fast Track Decision Meeting is the opportunity for the employee and/ or companion to put forward comments and statements including mitigating circumstances. No witnesses will be called. The outcome of the Fast Track Decision Meeting must be recorded in [DigiGov](#). The employee will have a right of appeal against the decision in the form of a review (*Refer to [Disciplinary Procedure: A Manager's Guide](#)*).
- 5.6. It is **not acceptable** for a manager to actively seek new evidence with the sole intention of making a Fast Track Procedure ineligible.
- 5.7. Line managers may not deal with any cases in which they are implicated, and an independent manager must be appointed.

SECTION 6 - SUSPENSION PROCEDURE

Key Principles

- 6.1 There may be occasions where it may be appropriate that the employee is removed from their job or place of work whilst an investigation is conducted. (Refer to [Disciplinary Procedure: A Manager's Guide](#))
- 6.2 Suspension from duty is a neutral act and any removal of an employee from the workplace should be regarded initially as a precautionary measure. It is **not** a disciplinary sanction, does not imply that the employee has committed an act of misconduct, nor does it prejudice the outcome of any disciplinary investigation or proceedings that may arise.
- 6.3 To avoid any breach of the mutual duties of trust and confidence that exists between the employee and the Council, there must be reasonable grounds for suspension. Other than in exceptional circumstances, suspensions should not be authorised without prior consultation with HR People Services.
- 6.4 The decision to suspend should be determined as quickly as possible. There must be a preliminary examination to establish the facts before suspension is actioned and all other options must be considered before a suspension is authorised. The circumstances surrounding any decision to suspend must be fully documented using the [Suspension from Duty Form](#) in **Appendix 3** of the [Disciplinary Procedure: A Manager's Guide](#).
- 6.5 Where a suspension is implemented, the employee must be treated reasonably and fairly. The matter should be treated as confidential, as far as possible, so as not to cause unjustified harm to the employee's reputation.
- 6.6 It is recognised that an employee suspended or under investigation may feel anxious and/or stressed. The employee will have the right of representation throughout this process and they should be advised of various forms of support that are available e.g. [Employee Counselling Service](#) and [Employee Assistance Programme](#).
- 6.7 The decision to suspend must always be confirmed to the employee in writing including the reasons, and why the other options are not appropriate (Refer to [Disciplinary Procedure: A Manager's Guide](#)).
- 6.8 Where a Trade Union Official is to be, or has been suspended, the appropriate Branch Secretary must be informed. If it is deemed necessary to suspend a Branch Secretary from duty, the appropriate Full Time Trade Union Official must be notified. Advice from HR People Services and Legal Services must be sought and obtained before a Trade Union Official or Branch Secretary can be suspended.

Terms and Conditions of suspension

- 6.9 The terms and conditions of the suspension will be confirmed in the “***Suspension from Work***” letter. Whilst suspended, the employee’s normal terms and conditions of employment will continue to apply, including rules relating to annual leave and sickness reporting.
- 6.10 All suspensions shall be based on full average earnings but, in wholly exceptional circumstances, the Council reserves the right to suspend an employee on less than full pay or with no pay at all. Such exceptional circumstances could include the physical inability of the individual concerned to report for work should the suspension be lifted (for reasons other than certified sickness). Where employees are moved to alternative duties, an average of any additional payments that they would normally receive will be payable to ensure that employees are not financially disadvantaged.
- 6.11 Suspensions shall **not** be time limited but there is a clear expectation that all investigations, should be carried out as quickly as possible, and in sufficient time so that any disciplinary hearing deemed necessary can be conducted within **12 weeks** of the start of the investigation, and with reasonable notice of the hearings given to the employee and their companion. An investigation may only be extended in exceptional circumstances, e.g. where the outcome of a court case is pending.

Contact and Review

- 6.12 The suspension decision will be reviewed **every 4 weeks** by the Director/Assistant Director/Chief Officer and the employee will be updated accordingly. A suspension that is without reasonable and proper cause, or unnecessarily protracted, may amount to a breach of the implied terms and conditions, entitling the employee to resign and claim constructive unfair dismissal.
- 6.13 Contact with the suspended employee will be maintained by a specified Contact Officer, at least **every 4 weeks**, or as mutually agreed in writing, to reduce feelings of isolation. (Refer to [Disciplinary Procedure: A Manager’s Guide](#)).
- 6.14 The restriction to enter the workplace will only apply to the employee concerned. It will not apply to their companion. Where a suspended employee requires access to Council systems or documentation in order to prepare for their defence, they should contact HR People Services who will liaise with the relevant Directorate in order to obtain the information, and where appropriate arrange supervised access to the Council’s system.

Protection of Vulnerable Adults/Protection of Children

- 6.15 When an issue is identified that relates to the Protection of Vulnerable Adults (POVA), a referral should be made to the POVA team. Where the matter relates to a child protection issue, a referral should be made to the Children's Access Point (CAP) following the [All Wales Child Protection Procedures 2008](#). In both situations, matters will be dealt with in accordance with interagency protocols.
- 6.16 A multi-agency professional strategy meeting will be convened and appropriate actions agreed. Minutes of Strategy meetings can only be released with the agreement of all attendees, and all personal information relating to the service user must be blanked out to protect confidentiality. Where service users are involved, a decision will need to be taken as to whether this should take precedence over all other considerations.

Alleged Fraud/Financial Impropriety

- 6.17 Fraud is defined as *"any illegal act characterised by deceit, concealment or violation of trust by parties/organisations to obtain money, property or services; to avoid payment or loss of services; or to secure personal or business advantage"*.
- 6.18 Under the [Financial Procedural Rules](#), Managers are required to notify Internal Audit whenever any matters arise which involve, or are thought to involve, breaches of security, theft or irregularities concerning cash, stores or other property belonging to the Council.
- 6.19 Management will determine and agree with Internal Audit who will lead the investigation i.e. Directorate or Internal Audit (*Refer to the Fraud, Bribery and Corruption Policy and the [Disciplinary Procedure: A Manager's Guide](#)*).

Police Involvement in allegations against Council employees

- 6.20 The Director/Assistant Director/Chief Officer should make an initial assessment in relation to conduct which appears to amount to a criminal offence. The normal presumption should be to refer the matter to the Police.
- 6.21 If there is a suspicion or an allegation that a serious crime may have been committed (or is about to be committed), e.g. murder, rape, other serious sexual offences, arson, burglary, fraud, violent assault, etc. then the Director/Assistant Director/Chief Officer should refer the matter to the police immediately.
- 6.22 If, however, after carrying out their initial assessment the Director/Assistant Director/Chief Officer is satisfied that the conduct complained of amounts to a criminal offence, but is of a lesser order than the activities described in the preceding paragraph, they are

required to convene a meeting of a Police Referral Panel as quickly as possible to discuss the suspicion or allegation and the results of their preliminary assessment.

Police Referral Panel

- 6.23. With the exception of Child Protection and Protection of Vulnerable Adult issues (which have their own referral processes), the mechanism for referral will be via a Police Referral Panel which comprises officers from the employee's Directorate, HR People Services, Legal Services and Corporate Services (i.e. the Audit Manager where allegations concern Fraud and / or Financial impropriety). The Panel will be **chaired** by the Director/Assistant Director/Chief Officer.
- 6.24 The Police Referral Panel will meet and discuss the issues concerned to determine if the matters should be referred. If the decision is to refer the matter to the Police, the relevant Director/Assistant Director/Chief Officer should contact them without delay to formally put the matter into their hands.
- 6.25 The Police Referral Panel will decide whether the employee concerned should be informed that the matter is being, or has been, referred to the Police. Advice will be sought from the Police where appropriate.
- 6.26 Having referred the matter to the Police, the Director/Assistant Director/Chief Officer should initiate the Disciplinary Investigatory Procedure so that the internal investigation is conducted at the same time as the Police investigation.
- 6.27 The Police may ask for an internal disciplinary investigation to be delayed and/ or deferred pending the completion of their investigation to avoid the internal investigation interfering with their investigation. If and when such a request is received, advice and guidance must be sought from HR People Services and Legal Services.
- 6.28 Due to the length of time that some Police investigations can take, the Council reserves the right to conduct its own internal investigations and / or to instigate disciplinary proceedings against employees who are the subject of ongoing Police investigations.
- 6.29 If the decision of the Police Referral Panel is not to refer the matter to the Police, the Director/Assistant Director/Chief Officer should follow the Disciplinary Investigatory Procedure in the normal way.

SECTION 7 – INVESTIGATORY PROCEDURE

Purpose

- 7.1 This procedure is to be used to ensure that when a suspicion or allegation of misconduct by an employee comes to the attention of the Council, an adequate investigation, conforming to the rules of natural justice is carried out as quickly as is reasonably practicable.
- 7.2 The purpose of the investigation is to ascertain the facts as far as is reasonably possible, enquire into the circumstances surrounding the alleged misconduct, give the employee the opportunity to offer an explanation, interview all relevant individuals, take a balanced view of the information which emerges and prepare an investigation report detailing the main findings, and making recommendations which may include, amongst others, whether or not disciplinary proceedings should be initiated.
- 7.3 The standard that applies for workplace investigations is for the Investigating Officer to have reached a genuine belief based on reasonable grounds, on the evidence obtained and on the balance of probability, after having carried out as much investigation as was reasonable in the circumstances.

Key Principles

- 7.4 The Director/Assistant Director/Chief Officer must nominate an appropriately trained and competent Investigating Officer within **7 calendar days**, and assess the scope of the investigation to ensure the Investigating Officer is provided with the time / resources required to complete the task within the prescribed timescales, wherever possible. The individual appointed to conduct a disciplinary investigation must be aware of and familiar with the Council's Disciplinary Policy and Procedures.
- 7.5 All investigations must be proportionate to the concerns or allegations being considered. They should be carried out as quickly as possible, and in sufficient time so that any disciplinary hearing deemed necessary can be conducted **within 12 weeks** of the start of the investigation, and with reasonable notice of the hearings given to the employee and their companion.
- 7.6 The Directorate is responsible for making arrangements to closely monitor the progress of the investigation, **review it every 4 weeks** and either party will notify the other if a delay in the process is anticipated giving reasons. Extending the investigation beyond **12 weeks** is allowed but only in exceptional circumstances, and where there is reasonable justification. Such reasons should be communicated to all involved.

- 7.7 The Investigating Officer cannot chair any subsequent disciplinary hearing or subsequent appeal, convened as a result of their investigation. Any manager interviewed as part of the process cannot chair any subsequent hearing or appeal.
- 7.8 The Council reserves the right under the [Employment Practices Code](#) and [Data Protection Act](#) where it is deemed appropriate to monitor employees as part of a disciplinary investigation. Before contemplating any form of monitoring it is essential that the Investigating Officer seeks advice from Internal Audit / Monitoring Officer / Legal Services.
- 7.9 Individuals who have very serious concerns about any aspect of the Council's work should raise their concerns under the [Whistleblowing Policy](#).
- 7.10 The Investigating Officer must assess all the evidence that has been collected and prepare a written report for the Director/Assistant Director/Chief Officer, making any recommendations as appropriate which will include whether or not the matter should proceed to a disciplinary hearing. (Refer to [Disciplinary Procedure: An Investigating Officer's Guide](#))

Director/Assistant Director/Chief Officer Consideration

- 7.11 Once the report is submitted to the Director/Assistant Director/Chief Officer, any further allegations identified will be the subject of a separate investigation.
- 7.12 Following receipt of the Investigating Officer's report, the Director/Assistant Director/Chief Officer will make a determination within **7 calendar days** (unless there are exceptional circumstances) whether to instigate disciplinary proceedings against the employee concerned, advise the employee accordingly in writing within **7 calendar days** of the decision being made.
- 7.13 If the decision is made that the matter should not proceed then a letter should be sent to the employee notifying them of this within **7 calendar days** of the decision being made.

SECTION 8 - DISCIPLINARY HEARING

- 8.1 If following a disciplinary investigation, the decision is made to instigate disciplinary proceedings against the employee concerned, it will usually proceed to a disciplinary hearing.
- 8.2 Arrangements for a disciplinary hearing (i.e. date/time/venue) should be made by the Presenting Officer as soon as possible after the decision to proceed following discussion with the employee and their companion (where applicable). Any delays to this should be notified to all involved (Refer to [Disciplinary Procedure: A Hearing Chair's Guide](#)).
- 8.3 To ensure impartiality, a disciplinary hearing must be chaired by a manager who has not had any involvement in the circumstances giving rise to the act of alleged misconduct for which the disciplinary hearing has been convened.

*(N.B. "Involvement" means **direct** involvement in the case such as carrying out the investigation or witnessing the alleged misconduct. It does not mean that any manager who has some prior knowledge of a case should be prevented from chairing a hearing).*

- 8.4 Employees should be notified in writing **14 calendar days*** in advance of the Hearing. At the same time they will receive copies of all the relevant documentation that will be presented to the Chair of the Hearing, including the Investigating Officer's report concerning the allegations to be considered. In addition to administrative details concerning the arrangements for the Hearing, the letter should also refer to the seriousness of the disciplinary allegations and possible outcomes if proven.

*** Where the disciplinary pack contains excessive amounts of information this must be provided to the employee (and their companion) between 14 to 28 calendar days in advance of the hearing.**

- 8.5 The employee is required to submit documents on which they intend to rely upon at the Hearing to the Presenting Officer at least **7 calendar days** in advance of the Hearing. This will ensure that the Chair receives the bundle of all relevant documents 48 hours (2 working days) prior to the Hearing. This will give them the opportunity to review all the information and start to become familiar with the case details beforehand. The Chair should not make enquiries on the case prior to the Hearing.
- 8.6 The purpose of the disciplinary hearing is for the Chair to consider all the evidence regarding an allegation, and to make a decision whether, on the balance of probabilities, the allegation against the employee is substantiated. If the allegation is substantiated, the Chair should determine an appropriate sanction, dependant on the seriousness of

the allegation and taking into account any mitigating circumstances provided.

- 8.7 Requests for attendance at a Hearing in the roles of “Observer” (developmental purposes) or “Assistant” (complex cases only) must be made to the Chair **7 calendar days** prior to the date of the Hearing. Attendance for either role will be at the discretion of the Chair and must be with the consent of the employee under investigation.
- 8.8 Where there is more than one employee subject to disciplinary action, Hearings may be held separately or together depending on the circumstances of the case. Where it is decided to hold them together, the agreement of all involved must be obtained beforehand. If disciplinary hearings are held individually, then the outcome should be reserved until all hearings have been completed and jointly considered. The same Hearing Chair should be used to ensure consistency.
- 8.9 Where possible, the Chair’s decision, including appeal rights, must be communicated to the employee verbally either on the day or within **24 hours** of the conclusion of the Hearing. Where it is not possible to provide the decision verbally, the employee should be informed of the reason(s) for the delay. In complex cases the time may be extended but all involved should be notified where this is the case. Once communicated, the Chair’s decision is final.
- 8.10 The decision including appeal rights, will be confirmed in writing within **7 calendar days** of the Hearing.
- 8.11 The Council reserves the right to conduct a disciplinary hearing in the absence of the employee in circumstances where reasonable efforts have been made to secure that individual’s attendance. The employee will be notified in writing of the outcome and their right of appeal.

SECTION 9 - POSSIBLE DISCIPLINARY OUTCOMES

(Refer to [Disciplinary Procedure: A Hearing Chair's Guide](#) for applicable letters)

- 9.1 The possible outcomes of a disciplinary hearing are detailed below.
- 9.2 Disciplinary action is cumulative where previous misconduct has occurred and previous disciplinary warnings are current and have not expired. Expired warnings **cannot** be referenced.
- 9.3 If an employee has more than one allegation proven at a disciplinary hearing, the resultant disciplinary action will need to reflect the most serious allegation.

Verbal Warning – Valid for 3 Calendar Months

- 9.4 This sanction will be appropriate for a first minor breach or where actions taken / agreed under the informal stage have proven to be ineffective.
- 9.5 The person issuing the verbal warning must ensure that the person receiving it understands:
 - Why the verbal warning has been issued
 - The improvements required
 - That it is a formal warning, valid for 3 calendar months, specifies the expiry date and is issued in accordance with the Council's [Disciplinary Policy and Procedures](#) and there is a right of appeal
 - That if within the 3 calendar months they commit the same or different disciplinary offence, further disciplinary action will be contemplated
 - That the record of the warning will be kept on their [DigiGov](#) record but that it will be disregarded for any future disciplinary purposes after 3 calendar months, providing there has been the required improvement whilst the warning was in place
- 9.6 Once this warning has been communicated to the employee verbally, a record of it should be made on the relevant proforma, agreed and signed by all involved where possible and retained on the employee's [DigiGov](#) record for 3 calendar months.

Written Warning – Valid for 6 Calendar Months

- 9.7 This sanction will be appropriate if during the validity of the verbal warning, the required levels of improvement have not been achieved, the employee commits the same or further disciplinary offences or if the nature of the offence is serious enough to warrant action at this level.
- 9.8 A written warning will be valid for 6 calendar months with the expiry date specified. The reasons why the warning has been issued, the improvements required and the right of appeal must be included in the decision letter. A copy of the letter (including details of allegations heard, evidence considered and conclusions reached) will be placed on the employee's [DigiGov](#) record and will be disregarded for any future disciplinary purposes after 6 calendar months, providing there has been the required improvement whilst the warning was in place.

Final Written Warning – Valid for 18 Calendar Months

- 9.9 This sanction will be appropriate if, during the validity of the written warning, the required levels of improvement have not been achieved, the employee commits the same or further disciplinary offences or if the nature of the offence is serious enough to warrant action at this level.
- 9.10 A final written warning will be valid for 18 calendar months with the expiry date specified. The reasons why the warning has been issued, the improvements required and the right of appeal must be included in the letter. A copy of the letter (including details of allegations heard, evidence considered and conclusions reached) will be placed on the employee's [DigiGov](#) record and will be disregarded for any future disciplinary purposes after 18 calendar months, providing there has been the required improvement whilst the warning was in place.

Dismissal or Demotion to a lower grade position

- 9.11 This sanction will be appropriate if, during the validity of the final written warning, the required levels of improvement have not been achieved, the employee commits the same or any further disciplinary offences or if the nature of the offence is serious enough to warrant action at this level.
- 9.12 If an employee is dismissed or resigns in the course of an investigation/disciplinary process involving a child protection/vulnerable adult allegation a referral must be made to the appropriate body. In the case of teachers the [Education Workforce Council](#) and for care professionals the [Care Council for Wales](#) / [Health and Care Professions Council](#).
- 9.13 The decision may be either dismissal (with or without notice) or, in exceptional circumstances, demotion. **This will however be dependant on the existence of suitable vacancies within the Directorate.** Where, as an alternative to dismissal, the decision is demotion, a final written warning must also be issued.

- 9.14 Where demotion is proposed, the employee's agreement in writing must be obtained, otherwise the employee may make a claim for an unlawful deduction from wages. However the employee should be made aware that if they do not agree to the demotion, then the alternative will be dismissal.
- 9.15 The decision (including details of allegations heard, evidence considered and conclusions reached) must be communicated to the employee in writing and the right to appeal confirmed.

No Action

- 9.16 Where the Chair finds no case to answer, there is a standard letter available that must be issued to the employee within **7 calendar days** of the decision being made. This letter will not be retained on the employee's [DigiGov](#) record except where necessary to prove that a sufficient investigation has taken place (e.g. complaints relating to abuse of children / vulnerable adults) and will clearly mark that the allegation was unsubstantiated.

SECTION 10 - DISCIPLINARY APPEALS PROCEDURE

- 10.1 Employees subject to any formal disciplinary action have the right of appeal against the decision and should be notified of this in writing. Appeals must be made within **7 calendar days** from receipt of the written decision from the original hearing.
- 10.2 Employees with access to [DigiGov](#) can lodge an appeal using the system. Employees not on [DigiGov](#) can appeal via email or in writing. Only the employee has the right of appeal and they should identify the grounds on which they are appealing in that there was either :
- a) **A PROCEDURAL FLAW** clearly indicating what the flaw was and how the policy was not correctly followed / applied; and/ or
 - b) The **FINDINGS** were inconsistent with the evidence presented, providing written reasons for this; and/ or
 - c) The **SANCTION** was inappropriate, providing written reasons for this; and/ or
 - d) **NEW EVIDENCE** has come to light either since, or not considered at the disciplinary hearing, which could have a bearing on the original disciplinary sanction, providing written reasons how this could have a bearing on the case.
- 10.3 Appeals against a verbal warning, written warning and final written warnings will take the form of a review hearing. Appeals against dismissal or demotion will take the form of a complete rehearing. (Refer to [Disciplinary Procedure: A Hearing Chair's Guide](#))
- 10.4 The Directorate concerned must arrange the appeal hearing (i.e. date/ time/ venue) within **7 calendar days** of receipt of the appeal. Any delays to this should be notified to the employee and their companion (where applicable). If the employee or their companion is unable to attend on the proposed date, they can propose an alternative date/time providing that it is reasonable and is no more than **7 calendar days** after the date originally proposed for the Hearing.

Appendix 1: DISCIPLINARY RULES

- 1.0 The Council's Disciplinary Rules set out below are divided into misconduct and gross misconduct. The lists are intended to be examples only and are neither exclusive nor exhaustive. It has to be recognised that there may well be other acts of misconduct not listed below that would give rise to disciplinary proceedings. In determining the appropriate outcome, each case should be judged objectively, based on the merits of the evidence provided and any mitigation.
- 2.0 The proven degree of the alleged misconduct will determine whether the act is misconduct or gross misconduct. Incidences of misconduct will not normally result in dismissal, but this depends on the seriousness of the incident. However where the employee already has in place unspent warnings, the commission of a proven act of misconduct could result in a final written warning or dismissal.
- 3.0 Proven gross misconduct may result in dismissal without notice unless there are mitigating circumstances.
- 4.0 These Disciplinary Rules should be read alongside the Council's Disciplinary Policy and Procedures.
- 5.0 **Examples of Misconduct**

(Note: in certain circumstances the examples below may be considered to constitute gross misconduct)

- Failure to comply with the [Local Government Wales Code of Conduct](#) and any specific professional code of conduct and / or local agreed working arrangements which may exist within Directorates
- Minor breaches of any of the Council's Employment Policies or Procedures
- Persistent poor timekeeping
- Unauthorised absence from work
- Refusal to comply with a reasonable instruction
- Failure to comply with requirements within Council procedures, e.g. [sickness absence reporting procedures](#), [flexible working hours \(flexi\) schemes](#) / procedures
- Showing a lack of professional courtesy to colleagues, citizens, service users, suppliers or anyone outside of the Council
- Misuse or unauthorised use of Council resources, vehicles, equipment and facilities

- Inappropriate use of Council time, e.g. excessive use of time for personal correspondence, telephone calls and emails/internet use
- Failure to observe Council IT standards, [ICT security policies](#) and guidance on the use of IT facilities
- Failure to disclose an outside interest, gift, benefit or hospitality which would cause loss of confidence in the employee or the Council
- Failure to declare any other paid work or employment undertaken which conflicts with the Council's interests (in accordance with the [Officer's Personal Interests & Secondary Employment Policy](#)) or which results in contravention of Health & Safety or employment legislation

6.1 Examples of Gross Misconduct

- Gross misconduct is an act or omission that is of such a nature or so serious that, if proven, could lead to summary dismissal (dismissal without notice). The following acts, and offences of a similar nature, will be regarded as gross misconduct.

6.1 Breach of Trust

- Omission or conduct liable to lead to serious loss of confidence in the public service and/or bring the Council into disrepute ¹
- Criminal offences committed at work
- Conduct that is a serious abuse of position, e.g. misuse of personal position for personal gain
- Being an accessory to, condoning or failing to report a serious, potentially criminal disciplinary offence, e.g. an incident of abuse/suspected abuse of a child or vulnerable adult; failing to report that a colleague was obtaining financial or other reward from Council clients
- Behaved in a way that has harmed a child / vulnerable adult, or may have harmed a child / vulnerable adult
- Behaved towards a child / vulnerable adult in a way that indicates that they are unsuitable to work with children / vulnerable adults

¹ Refer to Disciplinary Policy Managers Guidance for further information

6.2 Misuse of Property

- Theft, or attempted theft, from the Council, its employees, partner organisations or service users, or from premises being visited during the course of employment
- Unauthorised possession and/or use of the Council's property, or the property of its employees, e.g. unauthorised use of a Council Identification Card to gain unauthorised access to property, receiving money or other considerations for the use of that property
- Malicious damage to, or any other unlawful act which involves the property of the Council or its employees

6.3 Dishonesty and Fraud

- Failure to disclose material information or knowingly making a false statement or omission when applying for a job
- Falsification of time sheets, bonus sheets, expense claim forms, car allowance claims, etc with the intention of defrauding the Council
- Persistent and / or serious abuse of the Council's [Flexible Working Hours \(Flexi\) Scheme](#) or any of the other [Flexible Working](#) policies and/or procedures
- Fraudulently claiming benefits to which the employee is not entitled to
- Deliberate disregard of the Council's [Financial Procedure Rules](#) or [Contract Standing Order and Procurement Rules](#) or general instructions concerning the collection, transfer, security and paying in of monies, the issue and receipt of tickets and the completion and submission of associated documents
- Undertaking other paid employment whilst receiving sick pay from the Council during a period of sickness or unauthorised absence, without prior management agreement
- Whilst on sick leave, indulging in activities that are likely to be inconsistent with the stated reason for absence and / or which is unlikely to be conducive to recovery

6.4 Health and Safety

- Any act, omission or negligence of Health and Safety legislation or Council Health and Safety related policies and procedures

6.5 Unacceptable behaviour at work

- Verbal abuse (e.g. swearing) and physical violence (e.g. fighting), whether actual or threatened towards colleagues, service users, citizens, suppliers
- Inciting others to commit violent acts or acts of gross misconduct
- Sexual misconduct/activities whilst on duty
- Harassment or discrimination on the grounds of race, gender, disability, religious belief, sexual orientation, age, ethnicity, caring responsibilities, membership of a trade union, employment status, marital status, spent convictions other than for jobs excluded by law
- Bullying, intimidation or victimisation, including inciting racial hatred
- Wilful and / or repeated refusal to carry out or comply with a reasonable order, instruction or contractual requirement
- Sleeping whilst on duty (unless undertaking paid sleeping-in duties)
- Raising issues under the Council's [Resolution Policy](#) that subsequently are proven to be malicious or vexatious

6.6 Alcohol and Drug Use

- Consumption of alcohol or the taking of illegal / unprescribed drugs or intoxicating substances at work in circumstances where it could constitute a health and safety hazard, where it would be in breach of a position of responsibility and trust
- Incapacity whilst at work due to the influence of alcohol or non-prescription drugs

6.7 Confidentiality

- Unauthorised disclosure of confidential and personal information including that which may be of use within a contract tendering situation or quotation procedure
- Deliberate breach of personal data.

6.8 Use of Information Technology systems

- Serious breach of the Council's [ICT Security Policy](#), e.g. accessing internet sites containing pornographic, racist or other discriminatory images / text / material, loss of confidential or sensitive data through negligence, loss of important or expensive equipment through

negligence, accessing/ utilising Council's IT for private use and / or personal gain

6.9 **Conduct Outside of Work**

- Committing an act of gross misconduct outside work / working hours or being convicted of a criminal offence which would prevent an employee from continuing to do their job or which affects their suitability to perform their work and / or which damages the relationship of trust that has to exist between the Council and its employees
- Acting in a way outside of work that would bring the Council into disrepute, e.g. committing acts of discrimination

6.10 **Failure to declare an interest**

- Failure to comply with the requirements of the [Local Government Act 2000](#) which requires an employee or office holder to declare an interest where it comes to their knowledge that a contract in which they have any direct or indirect pecuniary interest has been, or is proposed to be, entered into by the Council

6.11 **Defamation**

- Making defamatory statements in the course of employment (e.g. making statements that are or could be slanderous or libellous) whether orally, written, or in electronic communication. (A defamatory statement is a statement that *“will injure the reputation of another in the estimation of members of society generally”*).

Appendix 2: AUTHORITY LEVELS & APPEAL ARRANGEMENTS

| GRADE OF EMPLOYEE SUBJECT TO DISCIPLINARY PROCEDURES | MINIMUM LEVEL AUTHORISED TO SUSPEND FROM DUTY | MINIMUM LEVEL AUTHORISED TO CHAIR A HEARING AND MAKE APPROPRIATE DISCIPLINARY DECISIONS | MINIMUM LEVEL AUTHORISED TO CONSIDER AN APPEAL | |
|--|--|---|--|---|
| | | | Verbal, Written and Final Written Warnings | Dismissal or Relegation |
| 1. All employees up to and including Grade 10 | Operational Manager | Any Officer nominated by the Director / Assistant Director/ Chief Officer to undertake the delegated task. The officer must be at a more senior level than the employee subject to the disciplinary action. | Operational Manager | Director / Assistant Director / Chief Officer |
| 2. Operational Manager | Director / Assistant Director / Chief Officer | Director / Assistant Director / Chief Officer | Corporate Director | Corporate Director |
| 3. Director / Assistant Director / Chief Officer | Corporate Director | Corporate Director | Chief Executive | Panel of Elected Members* |
| 4. Corporate Director | Chief Executive | Chief Executive | Panel of Elected Members* | Panel of Elected Members* |
| 5. Chief Executive | Member Investigating Committee and Independent Officer | Member Investigating Committee and Independent Officer | Panel of Elected Members* | Panel of Elected Members* |

* Where Elected Members are involved the Monitoring Officer, in consultation with the Chief HR Services Officer, will organise a meeting of a panel of elected members appointed to hear the disciplinary case at the earliest opportunity. The Panel will contain not more than 5 and not less than 3 Members.

The Disciplinary Investigation Team

1. The Disciplinary Investigation team, based internally in the Council, will be set up to deal with disciplinary investigations that are more complex / potential gross misconduct investigations, those involving the police and safeguarding concerns but excluding schools' child protection cases (refer to [Welsh Government Guidance: "Disciplinary and Dismissal Procedures for Schools Staff"](#)).
2. The Team will exist as a **"virtual team"**, comprising of staff nominated by each Directorate to deal with these investigations. Nominated employees from HR People Services would also be part of the virtual team, and Internal Audit would be involved where there are matters of Fraud/Financial impropriety.
3. Members of the team would receive any additional and higher levels of training as required, to develop their knowledge and expertise.
4. Each Directorate would commit to enabling their nominated team member to be released from their day job during the period of the investigation, to ensure they are undertaken thoroughly, and as quickly, as possible. Directorates would manage their own cover arrangements.
5. Where appropriate, investigations could be cross Directorate if required, to increase impartiality.

Benefits of a Disciplinary Investigations Team

- a) Ready, willing and engaged Investigating Officers.
- b) Fewer Investigating Officers doing investigations on top of day job with reduced level of stress on employees.
- c) Improved sickness absence levels.
- d) Expertise developed so improved quality with fewer investigations flawed.
- e) Improved impartiality.
- f) Reduced cost of delivering training programme to fewer employees.
- g) Improved consistency of HR People Services advice from Investigation team officers.
- h) Reduced length of suspensions improved cost to Council.
- i) Reduced length of investigations improved cost to Council.
- j) Consistency of decision making.

Future Potential

Dependent upon the capacity of the team, there could be potential income generation for the council, if the team offered a costed service to other Local Authorities / schools.