

Disciplinary Policy & Procedure

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Introduction

1. Disciplinary Rules and Procedures help to support employee relations as well as fairness and consistency in the treatment of employees. This Procedure is designed to help and encourage all employees to achieve and maintain standards of conduct, behaviour and attendance in the workplace.
2. The disciplinary policy and procedure does not deal with sickness absence (other than unauthorised absence and abuse of the Sickness Absence Scheme), work performance/capability, redundancy or bullying and harassment investigations, all of which are dealt with by the Sickness Absence Management Policy, Capability Policy, Redundancy Policy and Dignity at Work Policy respectively.
3. The rules relating to employee conduct, behaviour and attendance are summarised in the employment contract, Employee Code of Conduct, Codes of Practice and Professional Standards relating to specific occupations, Employee Guide, this Procedure and associated documentation.
4. This Procedure reflects the guidance set out in the ACAS Code of Practice on Disciplinary and Grievance Procedures.

Scope of Procedure

5. This Procedure covers all employees excluding staff on the complement of locally managed schools and employees within a probationary period for whom separate procedures applies. It also excludes Heads of Service, Directors and the Chief Executive, all of whom are subject to separate disciplinary procedures.

General Principles

6. Informal action will be considered by the line manager, where appropriate, to resolve minor breaches of discipline.
7. The disciplinary investigation or formal procedure may be suspended at any stage to explore mediation as a means of resolving the disciplinary matter if agreed by the relevant Director or nominated representative and the employee.

7. Suspension from work with pay should be considered only as a last resort and the suspended employee advised that this is not considered disciplinary action and how pay will be calculated during this period. It is in the interests of all parties to progress the investigation and disciplinary hearing (if appropriate) as quickly as possible. Any suspension should be kept under review and the employee informed of the progress of the investigation at regular intervals. (Please note, in some cases, account will have to be taken of the requirements of professional Codes and Standards governing child and vulnerable adult abuse). The People Management (PM) HR Advisors must be consulted before a decision to suspend is made.
8. Whenever possible, employees will be informed of the complaint made against them from the outset and a fair investigation will be conducted into any allegations that have been made prior to commencement of disciplinary action. As part of the investigation, an employee must, wherever possible, have an opportunity to respond to the allegations.
10. If, following investigation, the complaint or allegations are not substantiated, all reference to the issue will be deleted from the employee's personal file and other related records.
11. Officers who investigate an alleged disciplinary issue will be precluded from adjudicating upon it.
12. At all formal stages of the procedure the employee will have the right to be accompanied by a companion. A companion may be a trade union representative or official¹ or a work colleague.
13. A minimum of 14 calendar day's written notice of a disciplinary hearing will be given to employees (except in cases of Gross Misconduct where it may be appropriate to deal with the matter as quickly as possible). This notice period can be reduced by mutual agreement but should be long enough to give the employee time to prepare.
14. In the written notification of the hearing the employee will be advised of the nature of the complaint and will be provided with written copies of evidence and relevant witness statements in advance of a disciplinary hearing.
15. At the hearing the employee will be given the opportunity to state his or her case before any decision is made by the disciplinary panel.

¹ The TU representative who is not an employed official of a trade union must hold written certification from their Union that they have experience of or have received training in acting as a companion. This may take the form of a card or letter.

16. If an employee cannot attend a disciplinary hearing, they must advise of the reasons as soon as possible. If the reason is outside the employee's control and unforeseeable at the time the meeting was arranged (e.g. illness), another hearing will be arranged. If the Trade Union representative or official or work colleague cannot attend, another date can be arranged, provided it is not more than 7 calendar days after the original date.
17. Failure to attend a disciplinary hearing without good reason may result in a decision being taken in the employee's absence.
18. If it is decided to proceed with a disciplinary hearing without the employee being present, they should be given the opportunity of sending a representative to attend the meeting on their behalf or to make written representations which can be considered at the hearing.
19. If an employee is represented by a Trade Union representative or official or work colleague, copies of disciplinary hearing notices, witness statements, written warnings, etc. will be sent to that person, unless the employee advises otherwise, in writing.
20. Dismissal will not normally be appropriate for a first breach of discipline except in the case of proven gross misconduct, when the penalty will be dismissal without notice or payment in lieu of notice.
21. It is good practice to give employees at least one chance to improve before they are issued with a final written warning. However, if the misconduct is sufficiently serious e.g. because any continuance is likely to have a harmful effect on the Authority or its services, then it may be appropriate to move straight to a final written warning.
22. An employee will be given a written explanation for any disciplinary sanction and have the right to appeal against the disciplinary action.
23. The deadlines contained within the procedure can be varied with mutual agreement.
24. Support and counselling may be offered to employees involved in disciplinary investigation and hearings. Please contact PM HR Advisors for advice.
25. Investigating Officers and Disciplinary Hearing Panel members must consider disabled employees' needs during the process and make reasonable adjustments as necessary. For example, ensuring that locations have appropriate access, written information is provided in a suitable format, etc.

Roles and Responsibilities

26. The following is provided as guidance only. There may be circumstances which dictate a different allocation of roles and responsibilities. All officers who are likely to be involved in investigations or disciplinary hearings should be provided with appropriate training and/or support. Please contact the HR Advisor for advice.

27. **People Management (PM).** To ensure consistency, the PM HR Advisors will provide advice at every stage of the procedure and will monitor and report on the application of the Policy. The HR Advisor will also be responsible for ensuring that written records are retained on personal files for the appropriate period and following the principles of the Data Protection Act.

28. **Investigating Officers.** The investigation is usually carried out by the employee's line manager (with advice from a HR Advisor), who will be responsible for interviewing the employee and witnesses, taking notes and having established the facts, producing a written report outlining their recommendations on whether or not there is a case to answer. If it is agreed that informal action is all that is needed, the line manager will usually deal with this. If the case moves forward to a disciplinary hearing, the investigating officer will usually present the case to the hearing. If it is considered inappropriate for the line manager to carry out an investigation, another officer may take the lead (Refer to the Investigation Policy and a HR Advisor for advice).

29. **Disciplinary Hearing Panel.** The Panel will usually consist of a representative from the Department (Director or Head of Service or their nominated representative), HR Advisor, and a note taker (provided by the employing department). Administration of the hearing including disciplinary notice letters, collation of supporting documentation, arranging for attendance of witnesses, etc will be the employing department's responsibility with advice from a HR Advisor, as appropriate. The Panel will hear the facts of the case and will decide whether or not disciplinary action is appropriate and if so what level of action will be taken. The outcome of the hearing will be confirmed in writing by the Service Director or their nominated representative. The decision to dismiss rests with the Disciplinary Hearing Panel but this is confirmed in writing by the Assistant Chief Executive (PM).

Procedure

Investigation

30. When a potential disciplinary matter arises, it should be investigated by the investigating officer in line with the Investigation Policy. Written records of any interviews with the employee or witnesses should be kept. Having established the facts, the investigating officer must produce a written report outlining their findings and any recommendations. If, following investigations, the matter is considered to be minor and not appropriate to be referred to a formal disciplinary hearing, a written report will not be necessary and the employee will be dealt with informally (see paragraphs 31 – 33).

Informal

31. If it is decided that the issue is minor then this may best be dealt with informally. The employee should be seen and provided with support to improve such as additional training, coaching or advice (if appropriate). A note should be made of the interview and its outcome, which will be retained (with a copy to the employee) by the line manager.
32. As this is intended to be an informal one to one meeting, employees will not usually have the right of accompaniment.
33. If informal action does not bring about an improvement or the issue is considered to be too serious to be classed as minor, then the formal procedure must be invoked.

Formal

34. A disciplinary hearing must be set up and the employee must be informed in writing of the date, time and location of the hearing, the right to be accompanied, the procedure to be followed and sufficient information about the alleged misconduct and its possible consequences to enable the employee to prepare to answer the case, including witness statements and any other relevant documents. Where the employee or the investigating officer intends to call relevant witnesses they should give advance notice that they intend to do so.
35. At the hearing, the Panel should explain the complaint against the employee and go through the evidence that has been gathered. The employee should be allowed to set out their case and answer any allegations that have been

made. They should also be allowed to ask questions, present evidence, call witnesses and raise points about any information provided by witnesses.

36. At the end of the hearing, the Panel will decide whether disciplinary action is justified and if so, what form this should take. This decision may not necessarily be made on the same day but will be made and the employee informed of the decision and, if appropriate, the resulting disciplinary action, in writing within 7 working days. If this is not practical, this time limit can be extended by mutual agreement.

Failure to attend a meeting

37. There may be occasions when an employee is unable or unwilling to attend a meeting as part of the investigation or disciplinary process, e.g. illness. Before proceeding with the meeting the investigating officer or the panel should consider the following:

- medical opinion on whether the employee is fit to attend the meeting
- the seriousness of the disciplinary issue under consideration
- the employee's disciplinary record (including current warnings), general work record, work experience, position and length of service
- The rules relating to conduct, behaviour and attendance outlined in para.3.

38. Where an employee continues to be unavailable to attend a meeting the Authority may conclude that a decision will be made on the evidence available. The employee will be informed where this is the case

Misconduct and Gross Misconduct

39. The following are examples of misconduct. Depending upon the type or severity of the misconduct, some of these behaviours may need to be treated as gross misconduct. (See below)

- Poor time keeping
- Refusal to follow a reasonable instruction
- Security breaches
- Unauthorised absence from work
- Negligence
- Criminal acts (whether or not the police authorities have decided to prosecute)

- Breach of health and safety rules
- Inappropriate use of the Authority's IT systems, telephones and other communication systems

Gross Misconduct

40. Acts which constitute gross misconduct are those resulting in a serious breach of contractual terms and may result in dismissal, even for a first offence. Examples include:

- Theft or fraud
- Physical violence or bullying
- Deliberate and serious damage to property
- Serious misuse of the Authority's property or name
- Using the Authority's IT equipment and/or network to access or publish pornographic, offensive or obscene material
- Action resulting in a serious breakdown in trust and confidence between the employer and employee
- Serious insubordination
- Unlawful discrimination or harassment
- Bringing the Authority into serious disrepute
- Serious incapability at work brought on by alcohol or drugs
- Causing loss, damage or injury through serious negligence
- Serious breach of health and safety rules
- Unauthorised removal of Authority property
- Physical, verbal, financial, psychological or emotional abuse of any person
- Putting colleagues, clients or customers of the Authority at personal risk of harm

This list is not exhaustive. There may be other offences which could constitute gross misconduct.

41. The Head of Audit, Procurement and ICT must be advised at the outset of cases where fraud, corruption or theft is suspected.
42. If an employee is suspected of gross misconduct and therefore liable for summary dismissal, the matter will be investigated and if the facts support it, a disciplinary hearing will be arranged.
43. In some cases it will be necessary, both during and after the conclusion of a disciplinary investigation, to report to professional bodies such as the Care Council for Wales, Education Workforce Council and to the Independent Safeguarding Authority which is the government agency which keeps records of staff who are not able to work within education and care sectors.

44. If the allegation of gross misconduct is substantiated at the disciplinary hearing, summary dismissal may be considered for which no notice is required nor payment in lieu of notice.

Disciplinary Action

45. Where, following a disciplinary hearing, the Panel agrees that disciplinary action is justified it must decide what form this will take and inform the employee in writing. Before making this decision, the Panel should consider the following:
- whether the Authority's rules indicate the likely penalty that will be imposed as a result of a particular misconduct
 - the penalty imposed in similar cases
 - whether the standards of other employees are acceptable and consistently applied
 - the employee's disciplinary record (including current warnings), general work record, work experience, position and length of service
 - any mitigating circumstances which might make it appropriate to adjust the severity of the penalty
 - whether any training, additional support or adjustments to the work area are necessary; and most importantly,
 - whether the intended action is reasonable under the circumstances.

Actions available include:

First Formal Action - Written Warning

Where misconduct is confirmed it is usual to give the employee a written warning. Usually issued for an initial breach of discipline or where this is considered reasonable under the circumstances. In the confirmation letter, the employee should be informed:

- Of the nature of misconduct
- Any period of time given for improvement and the improvement expected
- The disciplinary penalty and, where appropriate how long it will last
- The likely consequences of further misconduct within the set period following the warning. (e.g. final written warning and ultimately dismissal)
- The timescale for lodging an appeal

- that the warning will be placed on their personal file but will be disregarded for disciplinary purposes after a specified period

Final Written Warning

Usually issued when the employee fails to improve or change their behaviour despite a written warning, commits other unrelated offences within the time limit of the initial warning or where the offence is sufficiently serious. The content of the letter will be similar to the above but the consequences of further misconduct may be dismissal or some other penalty.

Dismissal or other penalty

If an employee fails to improve or change their behaviour or commits other unrelated offences within the time limit of the previous warning, then dismissal or another penalty will be considered. As an alternative to dismissal (where appropriate), departments are advised to consider issuing a final written warning in conjunction with other penalties and impose what is considered to be reasonable under the circumstances.

Other penalties include:

- Demotion (permanent and temporary) – if temporary the period of demotion must be set out in the letter to the employee
- Reduction in salary (permanent and temporary) - if temporary the period of reduction must be set out in the letter to the employee
- Disciplinary transfer to another job or department.

If an alternative penalty to dismissal is agreed, the employee will be advised in writing that any continuing failure to improve or change their behaviour or committing of other unrelated offences within the agreed time limit may result in dismissal.

A decision to dismiss should not be based on an expired warning but the fact there is an expired warning can be a factor for determining why a lesser sanction is not considered reasonable

Note: Some of these penalties may impact on future pension provision for employees who are members of the Local Government Pension Scheme and appropriate advice must be sought.

Time Limits for Written Warnings

46. In most cases, written warnings will be retained on the employee's personal file but will be disregarded for disciplinary purposes as follows:

First written warning – After 12 months

Final written warning – After 18 months

However, there may be occasions when the employee's conduct is satisfactory throughout the period of warning only to lapse soon thereafter. Where a pattern emerges and/or there is evidence of abuse, the employee's disciplinary record will be considered by the panel when deciding how long a warning should last.

Grievances raised during a disciplinary case

47. If, in the course of the disciplinary process, an employee raises a grievance, the Departmental Director or their representative must consider whether it is appropriate to temporarily suspend the disciplinary process in order to deal with the grievance. Where the disciplinary and grievance cases are related it may be appropriate to deal with both concurrently. The suspension should not be unnecessarily protracted and should allow for the grievance to be dealt with as quickly as possible. Advice should be sought from a HR Advisor and reference made to the ACAS Guide.

Trade Union Officials

48. If disciplinary action is being considered against an employee who is a trade union official the normal disciplinary procedure will be followed. The line manager must seek advice at an early stage from a HR Advisor in such instances.

Criminal charges and cautions or convictions outside work

49. If an employee is charged with, cautioned or convicted of, a criminal offence which is not related to work, this is not in itself reason for disciplinary action. The facts will have to be established and a decision made as to whether the matter is serious enough or relevant to their job. The same investigatory and disciplinary process will apply and need not await the outcome of any prosecution.

50. Dismissal is not automatic for employees who are absent from work as a result of being remanded in custody. In these cases, advice should be sought from a HR Advisor.

Appeals

51. An employee has the right of appeal against disciplinary action (excluding informal) on the following grounds:
- If the employee thinks the penalty is unfair or unreasonable in the circumstances
 - New evidence comes to light which could have affected the outcome of the disciplinary hearing
 - Failure to follow procedures
52. The appeal should be made in writing wherever possible, to the Assistant Chief Executive (PM) within 14 calendar days of receipt of the disciplinary or dismissal letter. The letter should outline the detailed reasons for appeal and will be acknowledged within 14 calendar days. Employees who need advice when submitting an appeal should contact a HR Advisor or their Trade Union representative.
53. The Assistant Chief Executive (PM) will convene an appeals panel to consider the appeal. For disciplinary sanctions that fall short of dismissal the appeals panel will comprise of two Directors (or their nominated Head of Service) and a member of the Executive Board. The Appeal Hearing should be held at a reasonable time and place. This should take place as soon as possible and the employee should take all reasonable steps to attend.
54. The Staff Appeal Panel (which is made up of Councillors advised by a HR Advisor and Legal Services as appropriate) hears all disciplinary dismissal appeals.
55. The Appeal Hearing and decision is final and there is no further right of appeal within the Council.

Keeping records

56. Written records must be kept throughout the disciplinary process, including:
- The complaint against the employee
 - The employee's defence
 - Findings made and actions taken

- The reasons for actions taken
 - Whether an appeal was lodged
 - The outcome of the appeal
 - Any grievances raised during the disciplinary procedure, and
 - Subsequent developments
 - A copy of all correspondence relating to the disciplinary investigation, hearing and appeal process
 - Copies of notes of any formal meetings.
57. Records should be retained on the employee's personal file.
58. Records should be treated as confidential and kept in accordance with the Data Protection Act 2018.
59. If an employee is represented by a Trade Union official or work colleague, copies of disciplinary meeting notices, meeting notes, response letter, etc will be sent to that person, unless the employee advises otherwise, in writing.

Training and Support

60. All Officers and Councillors involved in the disciplinary process must receive appropriate support and/or training. Contact the Occupational Development Team for further information.

Monitoring this Policy & Procedure

61. The application of this policy and procedure will be monitored by PM. All departments must ensure that they advise PM HR team of all formal and informal disciplinary action taken.

Equalities

All employees are required to adopt a positive, open and fair approach and ensure the Authority's Equality and Diversity Policy is adhered to and applied consistently to all irrespective of race, colour, nationality, ethnic or national origins, disability, religion and belief or non-belief, age, sex, gender reassignment, gender identity and gender expression, sexual orientation, pregnancy or maternity, marital or civil partnership status.

In addition, the Welsh Language Standards ask us to 'ensure that the Welsh language is treated no less favourably than the English language' and this principle should be adopted in the application of this Guidance.

If you have any equality and diversity concerns in relation to the application of this policy and procedure, please contact a member of the HR Team who will, if necessary, ensure the policy/procedure is reviewed accordingly.

If you require this publication in an alternative format please contact CHR@carmarthenshire.gov.uk