

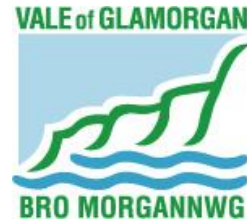
VALE of GLAMORGAN



BRO MORGANNWG

DISCIPLINARY PROCEDURE

**Human Resources Division
Directorate of Resources
Implementation Date 1st July 2019**



This document is also available in large print and other formats upon request.

DISCIPLINARY PROCEDURE

1. INTRODUCTION

- 1.1 It is recognised by all parties to this procedure that discipline is essential to the conduct of the Council's affairs and for the safety and well-being of all employees. This procedure therefore, has been written with reference to ACAS guidelines and Health and Safety legislation. It is equally the intent of all parties that disciplinary action will be considered and applied fairly and equitably. This procedure will apply to all employees except:-
- School based teaching and ancillary staff
 - Employees on JNC Chief Officers and Chief Executive Conditions of service
 - New employees during the initial probationary period. This procedure only applies if the issues are not connected to capability
 - Agency staff who are not contractually employed by the Council.
- 1.2 Employees subject to the disciplinary process have a right for any communication whether verbal or written to be undertaken through the medium of Welsh or English.
- 1.3 In the procedure the expression "the immediate supervisor" may include an employees' foreman, supervisor, section head or manager. The Appeals Panel will consist of one Elected Member drawn from a pool of 3 members, the Managing Director (or Service Director as substitute as nominated by the Managing Director) and the Head of Human Resources and Organisational Development (or a Senior Officer from Human Resources as nominated by the Head of Human Resources and Organisational Development).
- 1.4 Reference to Chief Officers throughout the procedure includes Operational Managers who are employed under the Chief Officer Terms and Conditions.
- 1.5 It is not an offence for an employee to disclose information concerning 'malpractice' within the Council [i.e. Whistleblowing]. Victimisation of a 'Whistleblower' is a serious matter and will lead to disciplinary action if proven. A 'Whistleblower' will not be victimised. See the councils Whistleblowing policy for more information.

- 1.6 Criminal charges or convictions outside employment should not be treated as automatic reasons for dismissal. An employee should not be dismissed solely because a charge against them is pending or because they are absent as a result of being remanded in custody. Consideration needs to be given to what effect the charge or conviction has on the employee's suitability to do the job and their relationship with their employer, work colleagues and customers. Please contact your HR Business Partner to discuss these circumstances.
- 1.7 Where disciplinary action is being considered against a Trade Union representative, normal procedure applies however consideration should be given to discussing the matter with the regional union officer following consent from the staff member.
- 1.8 All the time limits referred to in the procedure are working days and do not include Saturdays, Sundays or public and extra statutory holidays.
- 1.9 An employee may, where the procedure provides, be accompanied by a Trade Union Representative or a work colleague. Management will advise employees of their rights to be represented but it will be for employees to arrange their own representation.
- 1.10 An investigation is to take place prior to invoking formal disciplinary action. The Investigating Officer to be nominated by a Chief Officer of the Directorate. The investigating officer should contact their HR Business Partner for advice and assistance throughout this process.
- 1.11 Disciplinary interviews must be arranged and held by the Determining Officer where ever possible within 10 working days of the conclusion of the Investigation Stage.
- 1.12 Reasonable consideration should be given to rearranging disciplinary meetings if the employee or the representative is unable to attend. The rearranged meeting should take place within the following 10 working days.
- 1.13 The Determining Officer will be an employee's line manager or senior officer of the Council. The decision of the disciplinary will be that of the Determining Officer, following advice from the supporting HR Business Partner.

Informal Oral Warning

- 2.1 Informal warnings and/or counselling are not part of the formal disciplinary procedure and the employee should be informed of this. Minor cases of misconduct and most cases of poor performance may be best dealt with in the first instance by informal advice, coaching and counselling rather than through the disciplinary procedure. Managers need to ensure when issuing an Informal Oral Warning that the problems are discussed with the objective of encouraging and helping employees to improve, and that disciplinary action may be taken if the employee fails to improve either their performance or conduct.

Managers can deal with minor cases of misconduct without the appointment of an investigating officer and if necessary issue an informal oral warning.

- 2.2 If it becomes clear during the course of the informal interview that formal disciplinary action may be needed then the interview should be terminated and an Investigation conducted as outlined below. Informal warnings must be maintained within the manager's diary and not on the employee's HR personal file.

3 **THE DISCIPLINARY PROCEDURE**

Covert (meaning secretive) recording of meetings is not permitted and is considered a breach of an individual's rights under the Human Rights Act.

Investigation Stage

- 3.1 When dealing with potential disciplinary matters full regard should be given to the requirements of natural justice. Therefore, prior to invoking disciplinary action the case has to be carefully investigated.
- 3.2 An investigation must be carried out by an Investigating Officer nominated by a Chief Officer before any formal warning[s] are issued. Where the case is considered to be potential gross misconduct or a final written warning has previously been issued, the Determining Officer must be a Head of Service or above from within the Directorate. The investigating officer should contact their HR Business Partner for advice and assistance throughout this process.
- 3.3 The Investigating Officer should arrange for all the facts to be established as soon as possible and record all the findings. This will include taking written statements from any relevant witnesses, including the employee[s] concerned (to include dates and events). In certain circumstances, for example in cases involving potential Gross Misconduct, where relationships have broken down or where it is considered there are risks to an employer's property or responsibilities to other parties, the Investigating or Determining Officer should contact the Director of Resources and the Head of Human Resources.
- 3.4 If at the point of considering a potential disciplinary matter it is thought to be an issue of misconduct the employee and representative are to be formally advised. However, if during the investigation the situation looks like Gross Misconduct the employee and representative should again be notified.
- 3.5 Where a case potentially can amount to gross misconduct or where a final written warning has been previously issued, the Determining Officer must be a Head of Service or above from within the Directorate. In circumstances where the Head of Service cannot be readily released or identified or considered appropriate within the employing Directorate/Service the Managing Director will identify and nominate an alternative or another Head of Service within the Council.

Examples of what may be considered as Gross Misconduct are as follows:-

- Theft, or any other unlawful act which involves the property of the Council
- Any breaches to Health and Safety and failure to follow safe working practices
- Assault including domestic abuse in or out of the workplace
- Bringing the organisation into disrepute
- Failure to comply with council policies e.g. ICT, Safeguarding
- Making unfounded and/or malicious allegations
- Creating a hostile intimidating or degrading environment for colleagues or customers of the council – see examples of Bullying and Harassment in the Councils Grievance and Resolution guidance notes

This list is not exhaustive

- 3.6 When dealing with disciplinary matters where the potential of theft/fraud exists the Determining Officer must contact the 151 Section Officer or the Internal Audit Section to consider all available options.
- 3.7 In order to carry out a full and through investigation consideration may need to be given to redeploying the employee to another area of the council or in rare number of cases suspension from duty on full pay. In such circumstances it should be noted that the suspension is not considered as disciplinary action. . The employee is to be verbally advised of the suspension as soon as practical, followed up in writing within 5 working days. .
- 3.8 Where possible all investigations should be concluded within 20 working days, however if the timescale would affect the recording of true and accurate facts and hamper a full investigation the employee will be advised of the delay. Where Audit has carried out an investigation this report is provided to the investigating officer as a basis to their report.
- 3.9 Following the investigating process, the Investigating Officer should forward a copy of the investigation report with recommendations for consideration by the Determining Officer who may conclude:-
- i. That no further action is required – The report must not be maintained within the employee’s personal file.
 - ii. An informal oral warning is sufficient
 - iii. There appears to be sufficient information for formal disciplinary proceedings
- 4.0 **Formal Disciplinary Interview**
- 4.1 The Investigating Officer should forward the details of the investigation to the Determining Officer, as nominated by the Director. The

Determining Officer will determine what action is necessary, if any, within 3 working days.

- 4.2 If the Determining Officer believes there is a case to answer a formal Disciplinary Interview should be arranged within 10 working days. The employee must receive at least 5 working days notice of the date of interview and the employee and/or their representative must be supplied copies of all available documentation including the alleged issues. Rarely witnesses' statements may be withheld but the employee will be advised of the content. At the interview the employee has the opportunity to state his/her case and will be invited to answer the allegations that have been made. Consideration may be given to the provision of reasonable adjustments to accommodate the needs of someone with a disability.
- 4.3 At all formal meetings an employee has a right to be accompanied by a Trade Union representative or work colleague. The companion should be allowed to address the hearing to put and sum up the workers case, respond on behalf of the worker to any views expressed at the meeting and confer with the worker during the hearing. The companion does not however have the right to answer questions on the workers behalf, address the hearing if the worker does not wish it, or prevent the employer from explaining their case.
- 4.5 If the employee/employer is unable to attend he/she may postpone and a second interview will be convened within a further 10 working days from the original date. Should the employee/employer remain unable to attend he/she may send a representative/a written submission and the interview will be conducted in their absence, unless there are extenuating circumstances as determined by the Determining Officer having regard to the employee's/employer's written response. If the employee/employer does not accept the Determining Officer's decision regarding postponement the extenuating circumstances will be referred to the Head of Human Resources and Organisational Development who will consult with the employing Director/Head of Service.

5.0 **First Written Warning remains current for 12 months**

- 5.1 Where an employee's work, conduct or omission warrants potentially more serious disciplinary action, a first written warning may be given at a disciplinary interview, following an investigation. This warning is to be confirmed by the Determining Officer in writing [copy to be directed to the Head of Human Resources and Organisational Development under confidential cover] within 5 working days. The letter must state the nature of the offence, a brief explanation of the penalty imposed [including details of the infringement, expected improvements and potential for further disciplinary action], reasons for the decision, the fact that the employee has been given a first written warning and to whom the employee has a right of appeal. Human Resources will provide a template letter to be populated.

Final Written Warning remains current for 18 months

- 5.2 For a further offence after a first written warning, or for an offence of a similar nature, or an issue not serious enough to be termed Gross Misconduct but warranting more than a first written warning, a final written warning may be given. The employee may choose to be accompanied by a Trade Union Representative or work colleague. This warning must be confirmed in writing [copy sent to the Head of Human Resources and Organisational Development under confidential cover] within 5 working days. The letter must state the nature of the offence, the fact that an employee has been given a final written warning, a brief explanation of the penalty imposed [including details of the infringement, expected improvements and potential and further disciplinary action which may result in demotion or loss of seniority, the reasons for the decision, the consequences of any further disciplinary action and to which Chief Officer the employee may appeal against the final written warning. Standard Template letter should be provided by Human Resources.

Dismissal After a Final Written Warning or for Gross Misconduct

- 5.3 For a further offence after a final written warning, or for a similar offence or serious issue, the employee may be dismissed or redeployed to an equivalent or lower graded post.
- 5.4 The employee/representative may challenge the appointment of the Chief Officer determining the issue, on production of full written reasons to support their concerns. The decision will be determined in writing by the Managing Director in consultation with the Head of Human Resources and Organisational Development, who will either confirm that the identified Chief Officer continue determining the issue or appoint another Chief Officer.
- 5.5 If the Chief Officer considers that dismissal is warranted, the employee should where possible, be informed orally of the dismissal decision. The dismissal decision should be confirmed in writing by the Chief Officer in consultation with the Head of Human Resources and Organisational Development within 5 working days stating the reasons for the decision and providing details of the employee's right of appeal to the Appeals Panel, before whom the employee may appear in person and choose to be represented by a Trade Union Representative or work colleague.

6. APPEALS

- 6.1 An employee who is disciplined under this procedure must, when given written confirmation of the disciplinary action, be informed of their right of appeal and the procedure to be followed.

- 6.2 An employee/representative progressing an appeal must do so within 5 working days of the written confirmation, this should include full details of the reason for the appeal and any evidence they wish to have considered,
An extension of a further 5 working days may be granted dependant on the circumstances and with the agreement of the Head of Human Resources and Organisational Development.

.Appeals Against - Formal Disciplinary Action

- 6.3 An employee may appeal against a first or formal disciplinary action/warning to the Head of Service or other Chief Officer authorised for this purpose. Any appeal must be made in writing within 10 working days of the employee receiving confirmation of the first or final formal warning, together with any additional supporting documentation.
- 6.4 Appeals should be held within 20 working days of receipt of formal notice. The employee may be accompanied by a Trade Union Representative or work colleague.
- 6.5 The appeal must be heard by a Chief Officer, who has not been involved previously in the disciplinary proceedings and who is senior to the officer who gave the warning.
- 6.6 The Chief Officer hearing the appeal may maintain, or reduce the previous sanction, and should give a decision at the meeting or within 5 working days thereafter. The decision and the reason for the decision must be confirmed in writing to the employee within 10 working days of the meeting [copy of letter to be sent under separate cover to the Head of Human Resources and Organisational Development].
- 6.7 If the appeal is allowed, the warning will be removed from the records. There is no further right of appeal against a first or final warning.

Appeal Against - Dismissal

- 6.8 The appeal must be made in writing to the Head of Human Resources and Organisational Development within 10 working days of the employee receiving the letter of dismissal.
- 6.9 The Head of Human Resources and Organisational Development will arrange for the appeal to be submitted to the Appeals Panel on behalf of the Council.
- 6.10 The Appeals Panel shall consist of one Elected Member drawn from a pool of 3 members, the Managing Director (or Service Director as substitute as nominated by the Managing Director) and the Head of Human Resources and Organisational Development (or nominated Senior Officer from Human Resources as a substitute as nominated by the Head of Human Resources and Organisational Development). The Protocol for the Hearing of Employment Related Appeals sets out the

procedure to be followed on the day and includes details of reasons for substitutes including where participating in the panel would be a conflict of interest.

- 6.11 Canvassing members of the Appeals Panel, directly or indirectly will render the appeal void.
- 6.12 The meeting of the Appeals Panel to be held ideally within 6 weeks of the appeals registration in Human Resources unless delayed for good reason. The exchange of bundles/documentation to be performed within 15 working days of receipt of the bundle/documentation from either side. In the event that either side infringe this time scale the Chairman of the Appeals Panel will determine as to whether the appeal will be considered further at a later date.
- 6.13 If there is a delay the appellant will be consulted and informed of the reasons for the delay and the revised time frame as soon as possible.

Determination of the appeal will be by majority decision of the three participants involved, with delegated authority granted to the Managing Director or Service Director as nominated by the Managing Director.

- 6.14 The Appeals Panel may allow or reject the appeal, and their decision will be given verbally to the employee and the representative ideally, at the conclusion of the appeal hearing and confirmed in writing within five working days.
- 6.15 If the appeal is allowed, the employee may be re-engaged or reinstated and a lesser penalty imposed if deemed necessary by the Appeals Panel.
- 6.16 The Appeals Panel is the final level of appeal within the Council.

7. MONITORING AND REVIEW

- 7.1 This procedure will be monitored by Human Resources to ensure consistency of application. Basic statistics will be retained [in accordance with the Data Protection Act] for monitoring purposes.
- 7.2 The procedure will be reviewed on the basis of every two years or in the light of any developments in employment legislation or good employment practice.