

# Disciplinary policy and procedure

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# Disciplinary policy and procedure

## Version control

This document is subject to regular review due to legislative and policy changes. The latest versions of all our publications can be found on our website. Before contacting us about the content of this document, we recommend that you refer to the most recent version on the website and any relevant guidance.

Version	Date approved	Approved by	Notes / changes
1.0	20 July 2011	Full council	New policy
2.0	16 April 2018	Andrea Malam	Reformatting
2.1	17 December 2019	Cabinet	New policy
2.2	1 November 2023	Andrea Malam	EAP changed to VIVUP

# Disciplinary policy and procedure

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## TIMESCALES

**Please note:** For the purpose of timescales, 'days' are classed as working days and are based on a fulltime week (Mon-Fri) and not the contracted days of an employee.

Action	Minimum timescale
Written notice for formal meetings	A minimum of 5 working days
Written confirmation of suspension	Within 3 working days of suspension being issued
Employee to confirm attendance at meetings and submit formal documentation for consideration	At least 2 days before the meeting is due to take place - the exact time will be confirmed in writing
Manager to review suspension	Every 4 weeks
Employee notified of the outcome of the disciplinary meeting	Within 5 working days of the meeting or as reasonably practicable thereafter
Opportunity to appeal the disciplinary decision	Within 10 days of receiving the outcome letter
Employee notified of the outcome of the appeal	Within 5 working days of the meeting or as reasonably practicable thereafter

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## Roles and responsibilities

### Denbighshire Leisure Ltd. (DLL)

For the purposes of interpretation of roles and responsibilities please see below:

Denbighshire County Council	Denbighshire Leisure Ltd
Head of Service	Managing Director / Executive Team Member
Director	Company Board Director
Senior Management Team	Company Executive Team
Section 151 Officer	Company Accountant
Monitoring Officer	Company Secretary

The **Employee** is responsible for:

- co-operating with the disciplinary process
- maintaining confidentiality

The **Manager** is responsible for:

- managing conduct, reviewing circumstances, determining appropriate course of action
- ensuring that the Disciplinary policy and procedure is followed and implemented
- referring to the council's Safeguarding Panel for child protection or vulnerable adults issues
- seeking support and advice from HR and notifying the HR Business Partner of any formal procedures under this policy

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- ensuring that all admin tasks under this policy are carried out
- addressing concerns of minor misconduct with employees and agree targets and timescales for improvement
- ensuring that all employees are treated fairly and consistently
- ensuring that contact is maintained with the employee throughout the process

The Head of Service is responsible for:

- appointing a Deciding Officer and Investigating Officer
- carrying out the role of Deciding Officer in complex cases, or gross misconduct cases
- authorising an act of suspension along with the Head of Legal, HR and Democratic Services or HR Services Manager

The **Deciding Officer** is responsible for:

- compiling the terms of reference and informing the employee of allegations and formal process
- reviewing the investigation report and deciding what action to take
- chairing the disciplinary meeting and deciding on the appropriate disciplinary action to take

The **Investigation Officer** is responsible for:

- carrying out investigation and producing a report of findings to the Deciding Officer
- attend disciplinary meetings to present the information and answer questions

**Human Resources** are responsible for:

- monitoring, use, application, and reviewing the policy
- providing support, advice and guidance to managers and employees

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- coaching and mentoring managers who have little or no experience of this policy and procedure
- attending all disciplinary meetings (except any fast track meetings which may be held without a HR officer)
- ensuring that all disciplinary actions are recorded on the HR system and are processed in line with Data Protection legislation
- attending all appeal meetings
- advising on an act of suspension along with the relevant Head of Service

The **Appeal Panel** are responsible for:

- Conduct the meeting in an honest and objective manner.
- Ensuring that the procedure is followed and that timescales are adhered to, making sure that the employee is aware of these.
- Reminding the employee that they have the right to be accompanied and that they need to name their representative in advance of the meeting.

The Trade Union Representative or Colleague role is to:

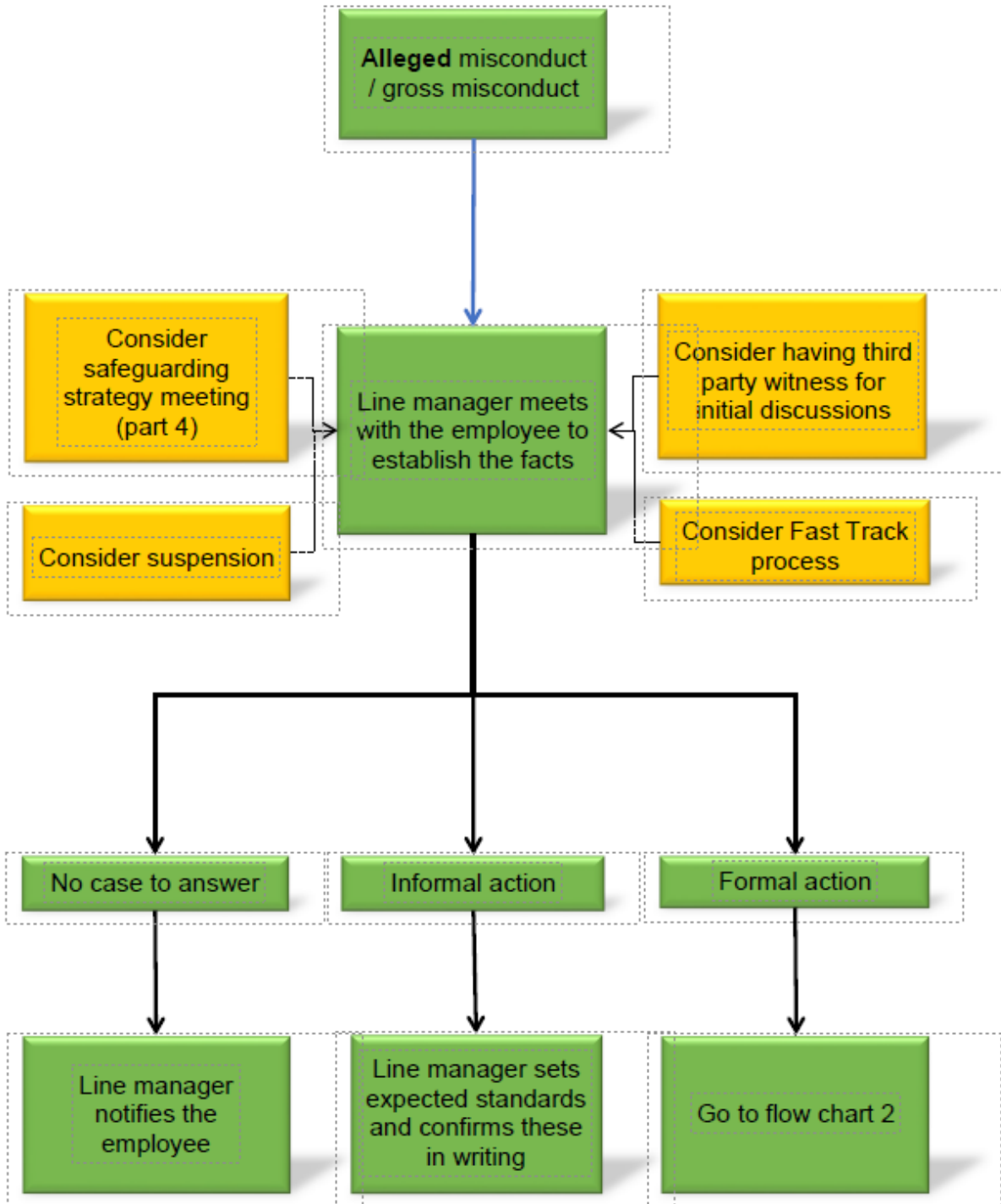
- Provide Support and Advice to employees
- Attend Formal meetings and can:
  - confer with the employee during the hearing
  - put forward the employee's case
  - sum up the employee's case
  - respond on the employee's behalf on any views expressed by the employer
- Should refrain from:
  - answering questions on the behalf of the employee
  - addressing the hearing if the employee indicates that he or she does not want this to happen
  - using their rights in any way that prevents the employer from explaining its case or prevents any other party at the hearing from contributing



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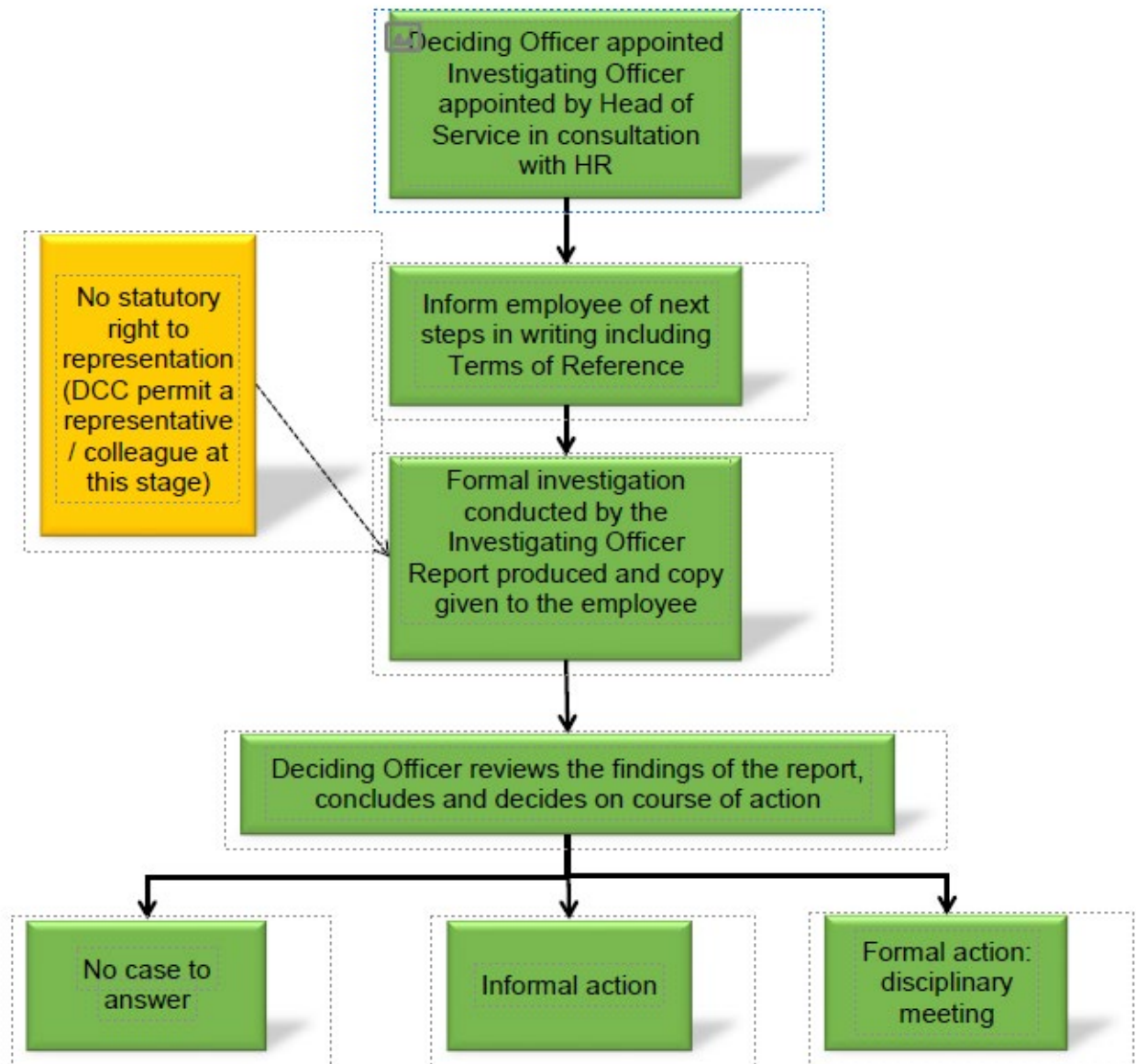
## Flowcharts

Flowchart 1: overview and initial considerations



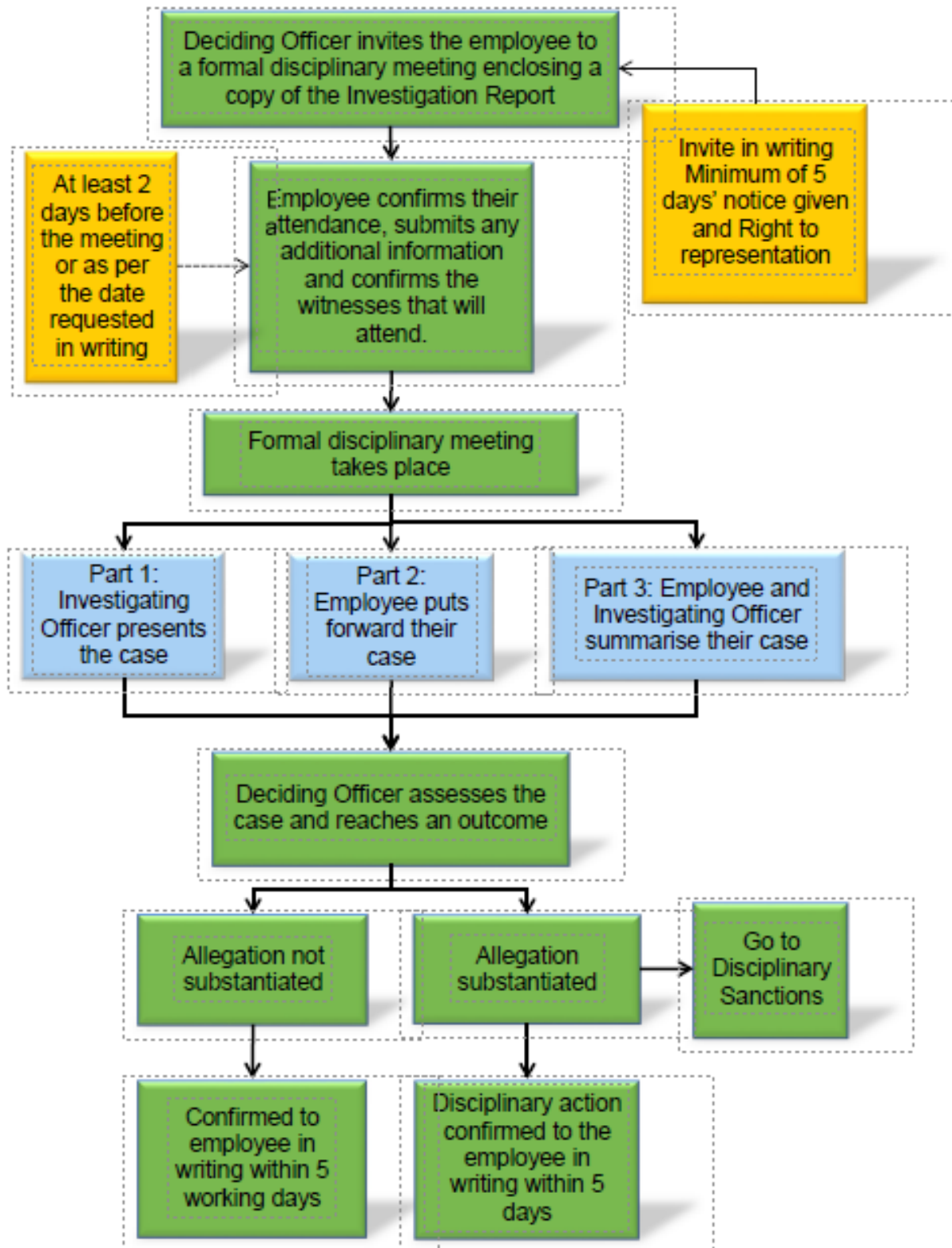
Flow chart 2: formal action

# Disciplinary policy and procedure



# Disciplinary policy and procedure

Flow chart 2: formal action (continued)



# Disciplinary policy and procedure

## What are Disciplinary matters?

### Introduction

The disciplinary procedure deals with issues relating to unsatisfactory conduct and aims to help and encourage employees to improve their conduct. This process will be used to manage conduct issues with the aim of bringing about improvement, rather than punishment. However, for cases of gross misconduct, sanctions including dismissal may be imposed.

The policy and procedure will apply to all employees of the council with the exception of:

- Staff appointed by a School Governing body
- Directors and Heads of Service
- Employees undertaking their probationary period There are two kinds of misconduct:

### Misconduct

Breaches of the council's rules and procedures which may attract a range of disciplinary sanctions which will not normally lead to dismissal without previous warnings, unless there is a current warning on file.

### Gross misconduct

Breaches which are considered to be so serious that the basis of trust between the council and the employee is seriously damaged or destroyed. Gross misconduct can result in summary dismissal without notice or payment in lieu of notice.

The following are examples of Misconduct and Gross Misconduct- please note this list is not exhaustive.

Misconduct is defined as conduct of a degree less serious, that does not warrant dismissal for a first offence, but which may nevertheless lead to dismissal if persistent. Some more serious acts of misconduct which fall short of gross misconduct might

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justify a final warning in the first instance if there is not a satisfactory explanation. The actions which may be taken include:

## Misconduct

Examples of misconduct may include (but are not limited to):

- Unsatisfactory attendance at work e.g. poor time keeping, unauthorised or unreported absence or persistent absence
- Misuse of the council's facilities
- Refusing or failure to carry out a reasonable management instruction
- Failure to comply with agreed working practices as outlined in the policies and guidance documents of the council
- Failure to take reasonable care of council property or using it for personal benefit without necessary permission
- Inadequate standards of work due to negligence, carelessness or idleness
- Failure to discharge obligations in accordance with contract of employment or professional practice
- Sleeping on duty (except where expressly permitted)
- Knowingly being an accessory to a disciplinary offence
- Making a malicious complaint of harassment and/or bullying against another employee
- Failure to demonstrate behaviour in line with Denbighshire County Council's core values and /or Code of Conduct
- Failure to treat employees/colleague with respect.
- Failure to comply with Health and Safety Regulations

## Gross Misconduct

Gross misconduct is misconduct of such a nature that the council is justified in no longer tolerating the continuing presence of the employee at the work place. If on completion of an investigation and disciplinary meeting, the council is satisfied that gross misconduct has occurred, the action the council may consider is dismissal.

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Examples of gross misconduct may include (but are not limited to):

- Malicious damage to council's property
- Negligence which causes or might cause loss, damage or injury
- Conviction of a criminal offence arising from or relating to the employee's work for the council, including non-disclosure of a criminal conviction at the interview stage where the post is covered by the Rehabilitation of Offenders Act 1974
- Conduct (including charges relating to a criminal offence) whether inside or outside working hours which may adversely affect the council's reputation, or which reflects on the employee's suitability for the type of work which they perform or their acceptability to other employees (this includes conduct via social media channels)
- Unacceptable conduct towards the council's customers, clients and the local community
- Conduct tending to bring the council or the employee into disrepute including violent behaviour or fighting whilst at work or on Council business or otherwise on the council's premises
- Raising an issue falsely or maliciously.
- Theft, fraud or deliberate falsification of records, e.g. make false travel or flexi time claims
- Acceptance of bribes, unauthorised gifts or gratuities or other corrupt practices
- Making false claims regarding their qualifications (formal or not) for a job
- Failing to disclose a criminal record in accordance with the requirements of the Rehabilitation of Offenders Act 1974
- Breach of rules on confidentiality/inappropriate disclosure of confidential information
- Unauthorised absence from the work
- Abuse of the council's Attendance at work policy
- Taking sickness absence in order to facilitate a holiday
- Persistent refusal to carry out a reasonable instruction
- Serious or persistent neglect of duties or any material breach or non-observance of those duties

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- Refusal or failure to obey the lawful instructions of their manager/and/or other members of management
- Serious or persistent acts of undermining their manager e.g. verbally (putting them down) to colleagues or clients, including via social media
- Deliberate disregard of the council's policies, procedures and guidelines
- Failure to observe any requirement of the council's Equal opportunities in employment policy including sexual, racial or disability based discrimination (including harassment)
- Bullying, harassment, victimisation or intimidation of colleagues, including via email and/or social media
- Breach of health and safety rules resulting in, or likely to cause, injury to others
- Being under the influence of alcohol or unauthorised substances or misusing substances/illegal drugs whilst at work, or on council business or otherwise on the council's premises
- Fighting or assault on a colleague, client or member of the public during work time/course of duties
- Verbal, sexual or physical assault on a colleague, client or member of the public during work time/course of duties
- Failure to report actual or suspected abuse of a child, or an adult, by another member of staff or another person
- Non-adherence to the council's ICT policies and guidelines (including policies referred to therein)
- Excessive personal use of the council's mobiles and landline phones

## Disciplinary Guidance

### Initial Analysis

In order to decide on the most appropriate course of action, listed below are some important factors for consideration prior to taking any management action

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## Fraud, theft, irregularity

If the circumstances involve suspected fraud, theft, irregularity, improper use or misappropriation of the council's property or resources, the manager should immediately inform the Head of Finance/Section 151 Officer in compliance with the council's Financial Regulations before any decision on the course of action is taken.

Safeguarding: Strategy Meeting / allegations of abuse / inappropriate behaviour towards a child or vulnerable adult

An immediate referral must be made to Denbighshire Children's Services or Adult Social Care if:

- the circumstances involve a concern or allegation of the abuse of a child or vulnerable adult by an employee
- there is information indicating that an employee has behaved towards a child or vulnerable adult in a way that may make the employee unsuitable to work with the individual.

At this point, the manager must consider whether any immediate action is needed to protect the child or vulnerable adult. This may include suspending the employee in question or moving them to a different environment where they are not in contact with children or vulnerable adults.

Confidentiality must be maintained and no internal investigation should take place before Children/Adult Services provide a decision regarding the next steps. In these cases, the responsibility for undertaking the investigation lies with Children/Adult Services and the Police. Actions will be agreed at a 'Strategy Meeting' to which the manager will be invited. Please refer to Safeguarding Policy.

Cases related to bullying and/or harassment

It may be appropriate at this stage to consider mediation. See Bullying and Harassment Policy for further details.



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## Initial meeting with employee and manager

Where a manager has a reason to question the conduct of an employee, a review of the particular circumstances will be undertaken to determine the appropriate course of action. A manager will hold an initial meeting with the employee and from this meeting will determine:

1. No case to answer
2. Informal action (Letter of Management Advice)
  
- 3a. Formal action: fast track process
  
- 3b. Formal action: full investigation

## No case to answer

From the review of the circumstances and initial meeting, the manager may conclude that there is no case to answer. The manager will notify the employee either face to face and confirmed in writing.

## Informal action

Cases of minor misconduct are usually best dealt with informally. If a manager has concerns regarding an employee's conduct, they should speak to the employee in a professional manner, explain expectations clearly defining the improvements that are required, listen to what they have to say and identify any ways to help improvements be made. The content of this meeting including agreed improvements and timescales should be confirmed in writing to the employee and will be placed on the employee file Management Advice Letter Template.

## 3a. Formal action - Fast Track Disciplinary Process

There may be instances where it is possible to fast track the disciplinary process.

The fast track disciplinary process allows for cases to be dealt with in a timely manner, to be completed within one month of the initial assessment, unless there are exceptional circumstances. A formal investigation will not be required, however, there

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should be an informal investigation completed by the manager pulling together all the known facts. The process will move directly to the disciplinary meeting.

Those situations where fast track may be suitable are as follows:

- Incidents that are regarded as "misconduct" which would normally result in a first written warning.
- The employee against whom the allegations are made has admitted to them in full.
- Where the employee does not admit to the allegation but there is factual evidence which the employee cannot refute, i.e. there is indisputable evidence.

If the manager feels that the fast track approach is appropriate, they must, in the first instance, discuss this with a Lead/HR Business Partner. A review of the information will be undertaken in conjunction with the manager, the employee and his/her representative/colleague and a decision taken as to whether the fast track process should be adopted. **This must be agreed by all parties in writing.** Fast Track Process Confirmation Letter Template.

If the decision has been made to fast track then the following process should be followed:

- Step 1:** The Deciding Officer will ensure (if not done already) that there is a written statement from the individual who reported the incident and also from the employee involved, together with any supporting information gathered.
- Step 2:** The Deciding Officer will write to the employee involved asking them to attend the fast track disciplinary hearing, and will provide a copy of all information gathered plus the date, time and venue of the hearing. At least 5 days' notice of the meeting should be given to the employee and the employee should be notified of their right to be represented at the meeting. See Representation

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**Step 3:** The Deciding Officer will hold the Disciplinary meeting and will be supported by a HR representative/colleague. The employee and their representative/ colleague will also be present. No witnesses will be called.

The procedure for the fast track meeting is as follows:

- Introductions are made.
- The Deciding Officer outlines the nature of the allegation(s) and advises that it (they) may result in disciplinary action up to and including a first written warning.
- The Deciding Officer will confirm that if an issue arises as part of the fast track process, which warrants a full investigation, the meeting will end and a full investigation will be instigated.
- The Deciding Officer confirms with the employee that they admit to the allegations previously stated or confirms the evidence available.
- The employee or their representative/colleague will have the right to put forward any comments or statements relating to the incident (including any mitigation).
- The Deciding Officer will adjourn briefly to give full consideration to the case.
- After reaching a decision the Deciding Officer will then communicate the decision to the employee and their representative/colleague. The penalty, if any, will not exceed first written warning. Should the Deciding Officer conclude that a higher penalty be issued, then the full formal investigation process should be followed.
- The Deciding Officer will send a letter confirming the decision of the meeting to the employee, advising them of their right of appeal.

Possible outcomes of the Fast Track Process are as follows:

- **No** case to answer
- Informal action
- First Written Warning
- Transfer the matter into Formal Action

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## 3b. Formal action - Full investigation

If the manager determines that the matter requires formal action which cannot be accommodated by the fast track process, then the full formal investigation process should be followed. This is outlined in the 6 steps that follow.

**Step 1:** Appointment of the Deciding Officer and Investigating Officer

The Head of Service will appoint a Deciding Officer and Investigating Officer. The Deciding Officer will normally be the employee's direct line manager, provided they are not involved in the case. If the employee in the disciplinary situation is a senior manager, or if the potential outcome is dismissal, the Head of Service should take the role of Deciding Officer. The Deciding Officer should compile the terms of reference for the investigation. Investigation and Terms of Reference Template.

**Step 2:** Consider if a strategy meeting should be convened, see Strategy Meeting

**Step 3:** Consider if the employee should be suspended, see Suspension below

**Step 4:** Employee informed of formal action by letter - Informed of Formal Action Letter Template

The Deciding Officer will write to the employee; in which they should outline:

- that a detailed investigation will be conducted
- the allegation(s) under investigation
- who the Investigating Officer will be
- terms of reference for the investigation
- that the investigation is not part of the formal disciplinary process
- that the employee will be interviewed by the Investigating Officer
- that meetings with the Investigating Officer should take priority
- that they need to co-operate fully
- right to representation: they do not have the right to representation however they may be supported at the meeting by a Trade Union representative or a colleague

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## Right to representation during investigation stage

The employee does not have the right to be represented at the investigation stage. However, if the employee feels they would like to have a trade union representative or a colleague present for support then this will be allowed. It will be up to the employee to arrange for someone to attend the interview in this capacity. Should their chosen support be unavailable on the date of the interview, then the employee must either attend on their own or arrange for someone else to accompany them instead. The interview will not be postponed in these circumstances.

### **Step 5:** Formal investigation conducted

A formal detailed investigation should be carried out by the Investigating Officer to gather evidence regarding the allegations. This investigation may also involve interviewing witnesses. The Investigating Officer will hold an investigatory meeting with the employee. The employee will have the opportunity to put forward their case. In order to complete their investigation, the Investigating Officer will have the right to access electronic/digital platforms i.e. emails sent and received by the employee if deemed necessary.

### **Step 6:** Review investigation findings and determine action to be taken

The Investigating Officer will summarise their findings in a report, which is to be presented to the Deciding Officer. The report should detail the facts of the case, note if the investigation has found any evidence surrounding the allegations and should note any points the Deciding Officer may wish to consider.

The Deciding Officer will then determine and proceed to:

- No case to answer
- Informal action
- Formal action

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In addition to the above sanctions, mediation can be considered, but only in cases where both parties agree.

In more serious cases it may be necessary to involve the Police, Head of Finance/Section 151 Officer and/or Internal Audit and Risk Management.

## **Trade union representative's disciplinary action**

No disciplinary action should be taken against a trade union representative until the circumstances of the case have been discussed confidentially with a full-time official or other appropriate representative of the trade union concerned. The full time official or other appropriate representative will be expected to maintain confidentiality at all times. The matter should be discussed with the appropriate HR Business Partner and a decision made as to who will contact the trade union thereafter.

## **Disciplinary Meeting Guidelines**

The formal disciplinary meeting should be arranged and conducted in accordance with the guidance as set out in this section.

### **Overview**

The employee will be invited with their representative/colleague to attend a meeting with the Deciding Officer and the Investigating Officer to discuss the findings of the investigation. Both sides will have the opportunity to present their case, call witnesses and ask questions. If the evidence presented during the disciplinary meeting is sufficient to satisfy the Deciding Officer that the allegations are substantiated, they may consider disciplinary action.

If the Deciding Officer believes that further investigation is required, the matter will be halted and reconvened when the information is available.

### **Representation**

An employee will have the right to be represented or accompanied by a trade union representative or workplace colleague during any formal part of the procedure.

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If the employee is not a member of a trade union, they may request support from an HR Officer or independent middle manager who can talk them through the process and provide advice on their rights. The HR Officer or manager will not however be able to attend any disciplinary meetings with the employee and the employee should therefore seek support from a colleague if they wish to have a representative with them. It will be up to the employee to arrange for someone to attend the meeting in this capacity.

The employee is required to name their representative/colleague in advance of the meeting. The representative/colleague can participate in the meeting, and present the case on behalf of the employee but they cannot answer questions on behalf of the employee.

It is the responsibility of the employee to ensure that their representative/colleague is available to attend the meeting.

Should their chosen representative/colleague not be available on the day of the meeting, then the employee may request a postponement. See Postponement for further guidelines.

### **Administrative arrangements prior to the meeting**

The Deciding Officer appointed to hear the disciplinary meeting will write to the employee at least 5 days prior to the date of the meeting. The letter will detail:

- Date, time, venue and purpose of the meeting
- Who will be in attendance (including any witnesses to be called)
- Details of the allegations to be discussed
- Possible outcomes of the meeting
- Copy of the Investigating Officer's report and supporting documents to be submitted to the meeting. It is the employee's responsibility to provide their representative with a copy
- Copy of the Disciplinary procedure (including the appeal process)
- Right to be accompanied by a representative, either a trade union representative or a colleague

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The employee will be asked to provide the following information at least 2 working days before the disciplinary meeting, confirming to the Deciding Officer:

- Attendance at disciplinary meeting
- Who will be accompanying them at the disciplinary meeting
- Whether they intend to request the attendance of any witnesses at the disciplinary meeting Whether they require any further information / documentation
- Copies of additional documentation that they intend to submit to the disciplinary meeting

## Notes during the disciplinary meeting

Normal procedure will be that all meetings are recorded using voice equipment supplied by Denbighshire County Council. If the employee does not wish to have the meeting recorded electronically then they will need to inform the Deciding Officer 3 days prior to the meeting.

If there are any reasons why it would not be appropriate, then a note taker will attend the disciplinary meeting and take independent notes. The Deciding Officer and Employee may take their own notes to assist them with the process.

Any recording will be treated as personal data under the General Data Protection Regulation (GDPR) in accordance with the GDPR Principles.

## Reasonable adjustments

Provision will be made for any reasonable adjustments to accommodate the needs of those attending the meeting. This may include holding the meeting in an accessible venue, providing an interpreter, additional equipment or allowing extra breaks etc. Reasonable notice is expected in order for suitable arrangements to be made.

## Postponement

If the employees chosen representative/colleague is not available on the date set for the disciplinary meeting, the employee has the right to have the meeting postponed



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once for up to five working days (Days are classed as working days and are based on a fulltime week (Mon-Fri) and not the contracted days of an employee). It is expected that all reasonable steps will be taken to attend the rescheduled meeting. In such cases one alternative date will be offered by the council which will as far as reasonably possible, take into account the availability of the chosen representative / colleague. If an employee's chosen companion will not be available at the time proposed for the hearing by the employer, the employer must postpone the hearing to a time proposed by the worker provided that the alternative time is both reasonable and not more than five working days after the date originally proposed.

Should the chosen representative/colleague remain unavailable for this alternative date, the employee will be expected to arrange an alternative representative/colleague to attend the rescheduled meeting.

### **Exceptional circumstances**

There may be occasions where unforeseen, exceptional circumstances that are beyond the control of the employee prevent the employee from being able to attend the disciplinary meeting. In such cases the employee will be offered one alternative date for the disciplinary meeting. Where the employee fails to attend on the rearranged date, even for a good reason the council is released from the requirement to invite them again, and the parties are regarded as having complied with the procedure. In such circumstances, the meeting will proceed and the employee's representative/colleague will be provided with an opportunity to present an absent employee's case on their behalf. Any submission in writing by the employee or their representative/colleague will be considered. In the absence of the employee, a decision will be made based on the information provided. The employee will be informed in writing of the overall decision and their right to appeal.

### **Failure to attend a disciplinary meeting**

When an employee fails to attend for a disciplinary meeting and provides no valid reason for non-attendance within 24 hours of the meeting date, the employee will be informed of an alternative date. Should the employee fail to attend on the rearranged

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date without a valid reason then the meeting will proceed and decisions will be taken in their absence.

Should an employee choose not to attend the disciplinary hearing, then this should be confirmed in writing and an alternative date for the disciplinary meeting will not be arranged in this instance.

### **Failure to attend a disciplinary meeting due to sickness**

An employee who is certified medically unfit for work will be expected to attend the disciplinary meeting. If the employee believes their medical condition is such that they cannot (or should not) attend the hearing, they should contact the person who wrote the letter confirming the details of the disciplinary meeting immediately.

In exceptional cases, the advice of the council's Occupational Health Advisor or Independent Consultant may be sought.

It is unlikely that stress related illnesses which have been brought about by the employee being subject to disciplinary proceedings, will be an acceptable reason for an employee not to attend a disciplinary meeting. In such circumstances it is in the interest of the employee that the proceedings are completed as quickly as possible.

On the very rare occasions when an employee is unable to attend a disciplinary meeting due to sickness, the council reserves the right to consider other methods to facilitate the employee's involvement, to ensure that the process can continue without unreasonable delay. For example, written submissions by the employee or their representative/colleague.

### **Witnesses**

As part of the investigation, the Investigating Officer is likely to have interviewed relevant witnesses. Either signed statements will be taken from the witnesses or minutes of the investigatory meeting will be produced and agreed upon. Such statements or minutes are likely to form part of the Investigating Officer's documents to be produced at the disciplinary meeting. However, in certain circumstances, and at the

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discretion of Denbighshire County Council, it may be appropriate for the Investigating Officer to request that witnesses attend the disciplinary meeting.

When it is not possible, reasonable or appropriate for such witnesses to attend, the Investigating Officer will arrange for a statement or minutes to be prepared and signed by the witness.

Similarly, there may be circumstances where it is impractical or inappropriate for a witness (at the request of the employee) to attend. In such cases, a formally recognised representative of the employee's Trade Union or, if such is not available, the Investigating Officer will arrange for a statement to be prepared and signed by the witness.

The employee will be given an opportunity to question any witnesses called by the Investigating Officer. It is important that the respect and dignity of witnesses who are present at disciplinary meetings is honoured at all times. Should the Deciding Officer believe that the witnesses are being subject to abuse, aggression or harassment during the disciplinary meeting, they should halt the proceedings and release the witness from the meeting.

## **Witness anonymity**

Wherever possible the employee who is subject to the disciplinary process will be provided with all necessary evidence and its source. However, there may be occasional circumstances where information has been communicated in confidence and that information has a 'quality' of confidence about it and therefore the source will be kept anonymous (i.e. simply saying it's confidential and marking it as such is not sufficient- there has to be something about the nature and quality of the communication which would justify non-disclosure).

## **Disciplinary Meeting Format**

### **Conduct during the meeting**

To ensure everyone is given the opportunity to state their case and respond to questions, the following guidelines should be adhered to by all present:

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- All parties should exercise self-control throughout the meeting
- All parties should treat others with dignity and respect
- All parties should listen to what the others are saying, do not interrupt someone while they are talking, if you think of something you want to say, make a note of it
- All parties should behave in a non-threatening manner, this means avoiding shouting, raising your voice, pointing, raising your hand/fist, and leaning across the table. It is up to the Deciding Officer to determine when someone is behaving in a threatening manner
- All parties should remain seated throughout the meeting

If the above guidelines are not adhered to, the Deciding Officer will have no alternative but to ask the offending party to leave and conduct the meeting in their absence.

### The Disciplinary meeting: principles

- A HR Officer will attend all disciplinary meetings, however fast track meetings may be held without a HR Officer present
- The Deciding Officer shall be responsible for ensuring that the disciplinary meeting is conducted in a fair, equitable, reasonable and thorough manner
- The Deciding Officer hearing the case will introduce all those present and confirm the purpose, status and ground rules of the meeting
- The Deciding Officer will check that the employee is accompanied by a trade union representative or colleague, if not, confirm this is from choice and if necessary the meeting will be adjourned to allow representation to be arranged.
- All relevant evidence, that is to be taken into account in determining the outcome of the disciplinary meeting, is presented to the employee
- The respect and dignity of witnesses and all participants will be honoured at all times by both parties
- At any time during the disciplinary meeting, the Deciding Officer hearing the case, may adjourn proceedings to enable further investigations to be undertaken

# Disciplinary policy and procedure

## Disciplinary meeting part 1: presenting the case - Investigating Officer

- The Investigating Officer will present their information, calling witnesses and/or referring to any 'prepared written witness statements'.
- The role of a witness, if called, is to provide points of clarification and not to restate the evidence they have already provided to the Investigating Officer.
- The employee or their representative/colleague may ask questions of any witness and/or question the Investigating Officer.
- The Investigation Officer may re-examine the witnesses, or refer to the statements.
- The Deciding Officer may ask questions of the Investigating Officer and/or the witnesses and may interject for points of clarification
- The Deciding Officer will thank the witnesses and ask them to withdraw from the meeting room, but remain available, for points of clarification if required later.
- The Deciding Officer at any time during the meeting may adjourn proceedings to enable further investigation to be undertaken.

## Disciplinary meeting part 2: the employee or their representative / colleague to present their case

- The employee or their representative/colleague will present their case, calling witnesses and/or referring to any 'prepared written witness statements'.
- If witnesses are called, they will be there to provide points of clarification and not to restate the evidence that they have already provided to the Investigating Officer.
- The Investigating Officer may ask questions of the witnesses and/or question the employee or their representative/colleague.
- The employee or their representative/colleague may re-examine the witnesses or refer to the statements.
- The Deciding Officer may ask questions of the employee and/or witnesses and may interject for points of clarification.
- The Deciding Officer will thank the witnesses and ask them to withdraw from the meeting room, but remain available, for points of clarification if required later.

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- The Deciding Officer at any time during the meeting may adjourn proceedings to enable further investigation to be undertaken.

### **Disciplinary meeting part 3: overall summary**

- The Investigating Officer will sum up the case.
- The employee or their representative/colleague will sum up the case.
- The Deciding Officer may recall the witnesses for points of clarification.
- The Deciding Officer will check that both sides have stated their cases to their own satisfaction and are satisfied with the proceedings to date.
- The Deciding Officer will ask the Investigating Officer, the employee and their representative/colleague to leave. Only the Deciding Officer and HR Officer to the meeting should now be present.

### **Disciplinary meeting part 4: making a decision**

The Deciding Officer will now consider the evidence as presented, consulting as they wish with the notes of the meeting. The Deciding Officer will give full consideration to the information presented and will determine:

- whether or not the case has been sufficiently investigated, and
- if on the balance of probabilities, the case against the employee has been substantiated.

If the answers to both are yes, the Deciding Officer then must determine the appropriate level of disciplinary action.

The Deciding Officer may recall the employee, their representative/colleague and the Investigating Officer to the meeting to announce the decision. Alternatively, the Deciding Officer may prefer not to recall the two sides but to defer their decision and to confirm the decision later in writing.

The decision will be confirmed in writing to the employee, in accordance with the outcomes listed below:

# **Disciplinary policy and procedure**

## **Outcomes of a disciplinary meeting**

### **Allegations not substantiated**

If the Deciding Officer concludes that the allegations are not substantiated, the employee, will be informed in writing within 5 working days of the meeting or as reasonably practicable thereafter of the disciplinary meeting

### **Allegations substantiated**

Before making a decision on any disciplinary sanction, account will be taken of the following:

- The employee's current disciplinary and general work record
- Any mitigating evidence
- Sanction taken in any previous similar cases
- The explanations given by the employee
- If the intended disciplinary action is appropriate under the circumstances

## **Disciplinary Sanctions**

There are a number of actions available to Denbighshire County Council, and these are set out below.

### **No case to answer**

From the review of the circumstances and meeting, the manager or Deciding Officer may conclude that there is no case to answer. The manager or Deciding Officer will notify the employee in writing. No reference will be made on the employees HR file.

### **Formal Action: first written warning**

If the decision of the disciplinary meeting is the allegations of misconduct are substantiated, the usual first step would be to issue a first written warning to the employee. This will be in writing, setting out the nature of the misconduct, the improvement required and the timescales over which the improvement should be

## **Disciplinary policy and procedure**

achieved. The employee will also be informed that the warning represents the first stage of the formal disciplinary process and that failure to improve or if any further misconduct occurs, even if it is not related to the original misconduct, could lead to a final written warning and subsequently dismissal. The employee will be informed of their right to appeal this decision.

The first written warning will be live for 12 months and will be disregarded for disciplinary purposes after this time subject to satisfactory conduct and performance. First Written Warning Letter Template.

### **Formal Action: final written warning**

If the misconduct is more serious or occurs when a previous warning is still 'live', a final written warning may be issued giving details of the complaint, outlining that if there is no satisfactory improvement or instances of further misconduct the outcome may result in dismissal.

The final written warning will be live for 24 months but will be disregarded for disciplinary purposes after this time subject to satisfactory conduct and performance. The employee will be informed of their right to appeal this decision. Final Written Warning Letter Template.

### **Formal Action: final written warning and relegation (demotion)**

Where poor performance due to negligence has occurred and there has been insufficient improvement after a previous warning or warnings, the Deciding Officer may conclude that, in addition to a final warning, downgrading the employee for a period of 6 months is appropriate. During the 6 months the employee will be paid at a lower grade salary and will receive necessary training, monitoring and regular review meetings.

At the end of the 6 months relegation period in addition to the regular review meetings the manager will invite the employee to attend a Disciplinary Relegation Review Hearing to determine the most appropriate action. This will take the same format as a disciplinary meeting but will focus on the employee's performance during the relegation period.



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If the employee's performance is sufficiently improved they can be reinstated to their previous post. However, the manager should not wait until the end of the 6-month period before taking further disciplinary action if it is required.

If the expected level of performance has not been achieved the manager can also consider permanently moving the employee to the lower grade or to dismiss with notice.

The final written warning will be live for 24 months but will be disregarded for disciplinary purposes after this time subject to satisfactory conduct and performance. The employee will be informed of their right to appeal this decision. Final Written Warning and Relegation Letter Template.

In exceptional circumstances, where an allegation of gross misconduct has occurred and instead of dismissal, the council may consider if the employee could be permanently relegated to another position. Examples of such instances include moving an employee to a role which does not include managing people or working within another team. This action would normally only be taken to prevent a dismissal occurring if appropriate.

This sanction can only be considered where there is a suitable vacancy available. Final Written Warning and Permanent Relegation Letter Template.

### **Formal Action: dismissal**

If, as an outcome of the disciplinary meeting, the evidence substantiates gross misconduct the employee may be dismissed with immediate effect. Dismissal may also occur if the employee commits a further serious misconduct or fails to improve to the required standard in the agreed timescale. The employee will be notified in writing within 5 working days of the meeting or as reasonably practicable thereafter in writing within 5 working days of the disciplinary meeting the reasons for the dismissal and the right to appeal against the decision. Dismissal Letter Template.

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## **Post Disciplinary**

### **Safeguarding and the duty to refer**

Denbighshire County Council has a legal duty to refer an employee who is dismissed or removed from a regulated activity (or may have done so if they had not left) because they have harmed or posed a risk of harm to a child or vulnerable adult to the Disclosure and Barring Service (DBS) Education Workforce Council (EWC) and or Social Care Wales (SCW). Any cases of this nature should be reported by the Deciding Officer directly to the HR Safeguarding Officer.

### **Notification to professional bodies**

Denbighshire County Council is obliged to report to the appropriate statutory or professional body any serious act of misconduct or gross misconduct where appropriate. To ensure consistency in the application of these disciplinary procedures, copies of correspondence must be provided to HR Safeguarding Officer.

All records will be kept and processed in line with Data Protection Legislation

### **Notice period for dismissal**

The person making the decision to dismiss an employee for reasons other than gross misconduct will determine whether the employee is dismissed with appropriate notice in line with terms and conditions and statutory entitlement. Dismissal as a result of gross misconduct will normally be without notice or payment in lieu of notice.

### **Bullying and harassment cases**

In cases of alleged bullying and harassment, the Deciding Officer should meet with complainant and alleged perpetrator within 3 months of the issue being raised to review the situation. The Deciding Officer may want to consider mediation as an outcome or to supplement the reviews.

# **Disciplinary policy and procedure**

## **Time limits on warnings: to include safeguarding**

In circumstances where an employee is absent due to sickness when a disciplinary decision is made against them or at any time within 4 weeks of a disciplinary decision being made against them, the duration of the sickness absence will not be counted when determining when a warning will expire. This also applies to any durations of long term sickness absence during the time limits. In such instances the above time limits for expiry of each level of warning will increase by the duration of the sickness absence.

## **Warnings related to Children and Vulnerable Adults**

Where disciplinary action is taken as a result of a complaint concerning the safety of children, young people and vulnerable adults, any warnings will not be disregarded after the time periods given and may be used as evidence in any future investigations and/or disciplinary meetings concerning any allegations involving children, young people and vulnerable adults.

## **Disciplinary records**

All documentation associated with individual disciplinary matters will be kept in accordance with data protection legislation. Copies of all disciplinary warnings will be kept on the employee's HR file, which may be paper based or electronic. However, they will be disregarded for disciplinary purposes at the end of their 'live' period.

All records relating to allegations of abuse of Children or Vulnerable Adults including any investigation and disciplinary meeting records will be kept on the employee's HR file whatever the outcome.

## **Disciplinary Appeal Process**

Please refer and adhere to the Corporate Appeals Policy for this process.

# Disciplinary policy and procedure

## Suspension

Suspension is a non-judgemental, carrying no implication of guilt and therefore should not be viewed as a disciplinary sanction. It is important that the employee is not given the impression they are being disciplined or dismissed, or that any decision has been taken concerning their future.

A Suspension risk assessment must be completed by the Manager with HR and agreed by Head of Service.

Suspension on full pay following consultation and advice from HR will be considered when:

- The continued presence of the employee within the workplace would place the council at risk
- The necessary investigation would be impeded by the continued presence of the employee at the workplace
- Where the employee could not otherwise be removed from the possibility of repeating the gross misconduct
- Where, because of the nature of the allegations, the employee may be subject to oral or physical abuse by other employees.

As an alternative to suspension, an employee can be transferred to other work in other departments at the discretion of the council, during the investigation process.

If suspension is deemed appropriate a full explanation of the reason for the suspension will be given to the employee. Every effort will be made to expedite the investigation process to limit the length of the suspension.

## Contractual arrangements during suspension

An employee who is suspended from the work place will receive full pay, however, if the employee is not willing or able to attend work then the authority will consider suspending the employee's pay until the matter is resolved, i.e. the pay they would have received if working normally and will be bound under the terms and conditions of

## **Disciplinary policy and procedure**

their contract of employment. Should the employee wish to take leave whilst suspended, the normal leave request procedures will apply.

Suspension is not a disciplinary sanction, however the employee will be required to adhere to the disciplinary policy and procedures and will be expected to be available for work and/or attend meetings. The normal notice period for meetings as stated in the policy will be given. Failure to comply with the conditions of the suspension or to cooperate with the investigation such as; non-attendance at meetings or not complying with reasonable requests for information, may result in the employee's pay being suspended.

The suspension will be reviewed on a calendar month basis, in cases of unavoidably lengthy suspensions appropriate counselling/support will be offered to the employee via the Occupational Health service.

Should the employee be absent due to sickness during suspension, the council's sick pay procedure and policy will apply and the manager may refer the employee to Occupational Health for support during the period of suspension.

### **Informing the employee of the suspension**

The employee should be informed of the nature of the allegation(s) and where possible, should be accompanied by another person or their representative.

When being informed of the suspension the employee should be advised they are not to enter their place of work or any other council premises unless invited to do so as a service user. If they need to attend their actual place of work as a service user, then prior permission of the Head of Service or HR Services Manager will be required.

If the employee wishes to collect personal belongings, this should be allowed, however they should be accompanied at all times.

Whilst suspended the employee should refrain from contacting colleagues in any capacity, who may be involved in the investigation. If contact is made with other colleagues or employees of the council, the employee should not discuss the case with them.

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The employee should return any keys, identify cards, security information and equipment, which they would normally hold. If any item is not available at the time of informing the employee of the suspension, suitable arrangements should be made for such items to be returned as soon as possible. The employee should be reminded of the contractual arrangements given above.

The employee should be escorted from the premises.

### **Confirmation of the suspension**

Suspension and associated arrangements should be confirmed in writing within 3 working days from being suspended

### **Requests for access**

If the employee requires access to information to assist in preparing their case they should approach HR for permission, specifying the information they are seeking and the reason why such information is required. The HR Services Manager will make the decision as to whether access is to be granted or if the information should be retrieved on their behalf. If access is granted for the suspended employee, they should be accompanied at all times.

### **Suspension of an employee during police investigations**

The council's decision to suspend an employee during police investigations will be made by considering the above factors.

An employee who is suspended from the work place will receive full pay, however, if the employee is not willing or able to attend work then the council will consider suspending the employee's pay until the matter is resolved.

### **Suspension of a trade union representative**

Suspension and/or investigation of trade union representatives will be confidentially discussed with the full-time official, preferably beforehand but if not possible, as soon

## **Disciplinary policy and procedure**

as possible afterwards. Full-time officials will be expected to maintain confidentiality at all times.

### **Returning to work after suspension**

When the employee returns to work after a period of suspension, the manager will discuss with them what actions, if any, can be taken to help with their return to work, this may include; accompanying them on their first morning, speaking to colleagues beforehand, referring them to Occupational Health for support. Although the manager can suggest what can be done, it is up to the employee to inform the manager if there is something specific which would help them. The manager will be led by the employee on this issue.

### **Additional information**

#### **Right to time off to be a witness Employer Requests**

An employee who has been called as a witness as part of the council's investigation, disciplinary or appeal process is entitled to reasonable time off to fulfil that role, by prior arrangement with their manager. This should include time to prepare before the meeting and to attend the meeting.

The manager has the right to refuse if not given sufficient notice or if unable to cover the absence. However, they should not unreasonably prevent the employee from attending.

#### **Employee requests**

Employees do not have to accept a request to be a witness and they should not be pressurised to do so, however they should be encouraged to co-operate as much as possible to ensure a fair and reasonable process.

#### **Criminal offences and miscellaneous cases**

An employee should not be dismissed or otherwise disciplined solely because they have been arrested, charged with, or convicted of a criminal offence. Consideration

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must be given as to whether the offence is one that puts into question the employee's continued suitability for the role in which they are employed.

If a criminal conviction leads to a custodial sentence, the employment contract may be ended by frustration of contract (both parties are willing to fulfil the contract but it is not possible due to a situation beyond their control) or breach of contract as it will not be possible for the employee to attend work.

It is the responsibility of the employee to inform their manager and report all offences of which they have been charged and/or convicted. Where disciplinary action is thought to be necessary, the matter must first be fully investigated and the council's formal procedure instigated. If it later comes to light that an employee has failed to declare a criminal charge or conviction, this may lead to disciplinary action.

### **Criminal offences**

Where a criminal offence has allegedly been committed by an employee inside or outside of work then the following procedure will apply:

- An investigation of the facts will occur in accordance with this procedure
- This investigation will not normally await the outcome of any parallel Police investigations
- Where it is established that there is a case to answer a disciplinary meeting will normally be arranged
- Where the alleged criminal offence is connected with an employee's employment, the Head of Service shall report this to the Head of Finance/Section 151 Officer and Internal Audit Services who, if they deem it appropriate, shall refer the case to the Police.

### **Factors that will be considered prior to taking action**

When an employee is suspected of a criminal or potentially criminal offence, the decision by the council to suspend the employee and/or take disciplinary action will be determined by the Deciding Officer in consultation with the service HR Business Partner taking account of the following factors:



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- Whether or not the offence is relevant to the job and whether or not it impinges on the contract of employment
- The breach of trust and responsibility vested on the employee to do the job for which they are employed
- The extent to which the offence makes the employee unacceptable to other work colleagues
- The potential risk to the public, other employees or the employee himself and DCC service users
- The effect on the council's image or reputation
- Whether, having investigated the matter the council believes that on the balance of probabilities the criminal offence was committed. It should be remembered the standard of proof for an employer is not the standard of proof applied in criminal proceedings that is 'beyond reasonable doubt'.

### Employees held on remand or sentenced to imprisonment

Employees held on remand pending the outcome of criminal proceedings or found guilty and sentenced to imprisonment will not be paid by the council and may cease to accrue holiday entitlements or any other contractual benefit for the duration of the remand or sentence. In determining whether the matter should be subject to the county's disciplinary procedure, the council will consider the matter fully taking account of the above factors as well as the likely length of remand or the custodial sentence.

If it is deemed that the matter should be subject to the council's disciplinary procedure the following modifications to the procedures will apply:

- The employee will be written to at the last known address, setting out the reasons why disciplinary action is felt appropriate and the likely outcome of this disciplinary action. This letter will also invite the employee to submit a written defence to the council within 21 calendar days of the date of the letter.
- Following the 21 days from the employee being written to, the council will then consider the matter fully and will advise the employee of the outcome of the disciplinary action and the reasons for the decision in writing. The employee will

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be informed of their right to appeal this decision which should be lodged within 21 days from the date of notification.

- If the employee wishes to appeal this must be in writing in accordance with this procedure. The council will consider this written submission and write to the employee with the final decision.

If during the course of the above procedure, the employee is no longer on remand or completes a custodial sentence, the relevant stage of the full procedure will apply.

### **Resignations**

There will be occasions when an employee submits their resignation during a disciplinary investigation, or immediately prior to a hearing. The decision to continue with the disciplinary process will be dependent on the allegations and the nature of the individual's employment; standard practice is to see the process through to completion. There may be situations where the council is obliged by other statutory bodies to pursue the matter to conclusion, for example, in cases of child protection or the protection of vulnerable adults and submissions to relevant bodies will be adhered to.

### **Grievance raised during other proceedings e.g. disciplinary, redundancy etc.**

There may be occasions where an employee, who is subject to another procedure, raises a grievance. The way in which this is handled will depend on the facts of each case. An assessment of the facts should take into account how the grievance is related (if at all) to the matter in hand.

Whether or not the grievance and the ongoing case are related will be determined by the appointed Deciding Officer of the disciplinary case.

### **Where the grievance and the disciplinary case are related**

In exceptional circumstances it may be appropriate to temporarily suspend the ongoing proceedings whilst the grievance matter is investigated further. The aim here is to establish whether the complaint has a material impact on the case and eventual

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outcome. It may also be appropriate for details of the grievance to be incorporated into the disciplinary investigation, due consideration should be given to this.

Please note that other ongoing proceedings should not be delayed unnecessarily.

### **Where the grievance and the disciplinary case are not considered to be related**

In such cases it is advised that both cases are dealt with separately and that they run concurrently. The disciplinary proceedings may not be impacted by the grievance raised and should therefore be able to continue as planned.

Refer to the Grievance procedure for details relating to the grievance process.