

# Policy - Standard Policy Statements v1.0





**The following statements apply to all policies and procedures produced and agreed by HR for Denbighshire County Council including school specific documents unless otherwise stated on the document.**

### **Code of Conduct**

Denbighshire has an adopted Code of Conduct and it applies to all employees.

The Code outlines existing laws, regulations and conditions of service and provides guidance to assist local authorities and their employees in their day-to-day work. It sets out the minimum standards of conduct and behaviour that should apply and be expected from the public, colleagues and the Council as a whole.

Its use is intended to help maintain and improve standards and protect employees from misunderstanding or criticism.

It is recommended all employees read the Code of Conduct to familiarise themselves with the requirements placed on them by the Council.

There are many professions employed within the Council. As a professional, it is the employee's responsibility to adhere to the professional requirements determined within their Code of Conduct to ensure compliance.

### **Confidentiality**

All parties involved need to respect confidentiality at all times. Information must not be shared with anyone except those directly involved. This does not preclude a confidential consultation with a friend, personal adviser, colleague or trade union representative for support. However, if information relating to the issue was shared inappropriately and was considered to be malicious, action may be required under the appropriate disciplinary policy.

All information will be held in accordance with the Data Protection Act 1998.

### **Disputes about the procedure**

Any disagreements or grievances about the interpretation of the procedure, or the application of any related matters not covered in the procedure, must not delay the various elements of the Policy/Procedure or overall timetable determined as appropriate for handling any particular case.

## **Employment Legislation**

Employment legislation sets out the statutory minimum standards of employment for workplaces required by law. The council's employee related policies are developed in line with current legislation and at the least meet the minimum standard set out in such legislation.

A list of key legislation considered is included below. Please note that this list is not exhaustive.

Human Rights Act 1998  
Employment Act 2002  
Employment Rights Act 1996  
Equality Act 2010  
Working Time Regulations 1998

## **Equality**

In accordance with the Equality Act 2010 and in line with our Equality and Diversity Policy and Respect Booklet, no employee or job applicant will experience discrimination, harassment, victimisation or bullying, or receive less favourable treatment because of their age, disability, gender reassignment, marital or civil partnership status, race, pregnancy or maternity, religion or belief, sex, sexual orientation or caring responsibilities.

## **Ex-Employees**

Should an ex-employee make the council aware of malpractice or an area of concern or raise a grievance, it is good practice to consider any issues and meeting with the individual to discuss further. A written response should be provided but there is no right of appeal.

## **Implied Terms & Conditions of Employment**

All contracts of employment contain a range of express and implied terms.

*Express terms:* - these are terms which will usually be written, although they may have been agreed orally.

*Implied terms:* - these terms can be implied by what is known as the common law and by legislation. Implied terms in an employment contract are those which are not specifically agreed between the employer and employee.

*Terms implied by the 'common law'*

These include matters which are implied because of the conduct of the parties or because the term is something the parties would have intended when they entered into the contract. Terms can also be implied as a result of workplace customs. Examples include that the **employee will:**

- carry out reasonable, lawful instructions given by the employer
- provide personal service by not sub-contracting to another
- be ready and willing to work
- be reasonably competent
- take reasonable care of the employer's property
- behave with trust and confidence.

Other examples include that the **employer will:**

- provide reasonable working conditions and environment
- provide safe fellow employees, safe equipment, a safe working environment and a safe system of work
- behave with trust and confidence
- pay for work done if this is not explicitly agreed
- provide work
- handle grievances promptly
- protect employees from harassment and bullying.

*Terms implied by statute*

Other terms are implied by statute such as the national minimum wage, the right to a minimum period of notice, and a number of terms relating to health and safety. These will be implied into every contract of employment.

## **Investigation**

When employee related issues arise, it may be necessary for the council/school to commission an investigation to determine the facts of the case.

The employee who is subject to the investigation will be given a copy of the Terms of Reference for the investigation and supplied with a copy of the Investigation Officer's report.

An employee, who has made a complaint which has resulted in an investigation, will be given a copy of the Terms of Reference for the report and supplied with a copy of the Investigation Officer's report.

Employees, who have participated in an investigation, will be given a copy of the Terms of Reference for the investigation but will not be supplied with a copy of the Investigation Officer's report.

## **Mediation**

All organisations find themselves in employee relations situations and of course the best outcome is for issues not to arise in the first place, however it is inevitable that some of these issues will involve conflict between individuals, teams or the council.

The council will try and resolve workforce disputes at the earliest possible opportunity normally as part of an informal process prior to any formal proceedings taking place, but it can be as part of a formal process as well. Encouragement and support from the council to resolve things quickly and informally often stops a situation escalating out of all control and becoming unwieldy.

This is where mediation can be an invaluable tool, it gives the people involved an opportunity to resolve any issues themselves with the support of a mediator.

## **Meeting Arrangements and Requirements**

- **Representation**

An employee will have the right to be represented or accompanied at any formal part of the procedure by a Trade Union representative or workplace colleague. The employee will be informed of these rights prior to any formal interview.

Although the employee does not have the right to representation at informal meetings, the council will allow a Trade Union representative or workplace colleague to accompany employees to any informal meetings.

If the employee is not a member of a Trade Union they may request support from a member of HR Department or independent middle manager who can talk them through the procedure and provide advice on their rights. The HR member or manager will not however be able to attend any meetings with the employee and the employee should therefore seek support from a colleague if they wish to be accompanied. If the employee chooses to be accompanied by a colleague, the colleague must be an employee of the council.

An employee who has agreed to accompany a colleague at a grievance must be given reasonable amount of paid time off to fulfil that responsibility. This time will cover the meeting as well as reasonable preparation beforehand.

Trade Union representatives are also entitled to reasonable time off to fulfil their union duties as detailed in the Trade Union Facilities Agreement.

The companion, either Trade Union representative or work colleague, will have the right to address the meeting, put the employee's case, sum up and respond on the employee's behalf to any views expressed at the meeting, but does not have the right to answer questions for the employee. It is good practice to allow companions to ask questions and participate as fully as possible.

It will be up to the employee to arrange for someone to attend the meeting. Should their chosen companion not be available on the day of the meeting, then the employee can either:

- attend on their own
- arrange for someone else to accompany them or
- request a postponement

- **Postponement**

An employee may request one reasonable postponement of a meeting in the following circumstances:

If the employee's chosen representative is not available on the original date, the council/school will postpone the meeting for up to five working days. In such cases the council/school will offer one alternative date. If the employee's representative remains unavailable for this alternative date, the employee will be expected to arrange an alternative representative or attend the meeting on their own as the meeting will go ahead.

In exceptional circumstances where the employee is unable to attend a meeting due to a situation beyond their control the council will offer one alternative date.

- **Failure to attend a Meeting**

The employee will be advised in writing of the meeting details, time, date and location within the relevant notice timescale.

If the employee fails to attend a meeting or fails to provide at least 24 hours' notice of non-attendance to the invitee, prior to the meeting, the meeting will proceed in their absence. The employee's representative will have the opportunity to present the case on their behalf, and any submission by the employee or their representative will be considered.

A decision will be taken based on the information provided and the employee will be informed of the outcome of the meeting and their right to appeal (if applicable) in writing within 5 working days of the date of the meeting. In exceptional circumstances and by agreement with both parties this can be extended up to 10 working days.

- **Failure to attend a Meeting due to Sickness**

An employee who is certified medically unfit to work will still be expected to attend the meeting. If the employee's medical condition is such that they believe they are unable to attend the meeting, they should contact their manager/Head Teacher immediately. In exceptional cases the advice of the Council's Occupational Health Advisor, an independent consultant, or GP (with the employee's consent) may be requested to advise on their medical fitness to attend the meeting. It is unlikely that stress related illness, attributed to the associated procedure, would be an acceptable reason for an employee not to attend a meeting. In such circumstances it is in the interests of the employee that the proceedings are completed as quickly as possible.

An employee is fit to attend if the following criteria are met:

- Employee has the ability to understand the issue being addressed
- Employee has the ability to distinguish right from wrong
- Employee is able to instruct a representative to represent their interests
- Employee is able to understand and follow the proceedings, if necessary with extra time and written explanation

The presence of a physical illness or a mental health problem is not a contraindication to attending if the above criteria are satisfied. It may be expected that attendance might cause some increased anxiety or stress in the short term, but that this would diminish once the hearing has taken place. Delaying such procedures is likely to adversely affect health issues in the longer term, even if the outcome of the hearing is not anticipated to be favourable to the employee. However, if the procedure is likely to cause mental ill health to such a degree that the individual could be a risk to themselves or others, the hearing should be delayed.

For physical health problems the individual should be fit enough to be present for the duration of the hearing without significant detriment to their health.

On the very rare occasions when an employee is unable to attend a meeting due to sickness, the council/school reserves the right to continue without unreasonable delay. For example, written submissions by the employee or their representative to present the case on their behalf.

- **Reasonable Adjustments**

Provision will be made for any reasonable adjustments to accommodate the needs of a person at the meeting, provided reasonable notice is given to the manager/school prior to the meeting. This may include holding the meeting in an accessible venue, providing an interpreter, additional equipment or allowing extra breaks etc.

### **Occupational Health Department**

The Occupational Health Department is available to offer confidential emotional support whilst proceedings are on-going. This is available to all concerned but does not include procedural advice or support at actual hearings or meetings.

Occupational health may also be required to provide an objective medical opinion on the employee's fitness to participate in any investigation or proceedings. Where an occupational health referral is arranged it is important that employees attend appointments as the advice is considered when deciding how best to manage the proceedings going forward.

There is a contractual obligation on employees to attend an Occupational Health Referral. Should the employee choose not to attend the organised referral meeting(s) or assessment(s), the council will continue proceedings and use the most up-to-date medical information it has.

## **Stress**

### **What should happen if a person believes they are stressed?**

Following a discussion with the manager, it may be appropriate for the employee to complete a Stress Questionnaire. Alternatively, the employee may wish to complete one themselves, without their supervisor/line manager's intervention.

This questionnaire is available from the Occupational Health Department, together with further advice on the outcome of the completed questionnaire and any support provision available from the council.

## **Suspension**

There may be occasions where an employee should be suspended from work on full pay while an investigation into alleged misconduct is carried out. Suspension on full pay may be invoked prior to an investigation being carried out or at some point during the investigation if appropriate.

The employee will receive a full explanation of the reason for the suspension in writing within 3 working days of the decision to suspend and the suspension will be kept as short as possible.

The manager may refer the employee to Occupational Health for support at the onset and during the period of suspension.

It is not necessary to assume that suspension should automatically apply where allegations of gross misconduct have been made against an employee and the matter is under investigation. Suspension should only be considered when the following apply:

- The employee's presence could place the council at risk
- The employee's presence could impede the investigation
- The employee could possibly repeat the misconduct
- The employee may be subject to oral or physical abuse by other employees

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

When an employee is suspended, it carries no implication of guilt and is not part of the disciplinary process. It is important that an employee who is being suspended is not given the impression that they are being disciplined or dismissed at this stage.

### **Temporary Movement to Other Places of Work**

During a formal investigation, it may be appropriate to consider offering temporary work in another area (department/service/school) to either the person making a complaint or the person against whom a complaint has been made or both in order to neutralise what might be a difficult working situation. Such an arrangement will only last until the outcome of the complaint has been achieved and there will be no financial detriment to the persons(s) concerned.

### **Vexatious Claims**

All complaints made in good faith under any of the council's policies will be treated seriously. However, any malicious or vexatious allegations made against another employee would be treated as a serious misconduct issue and dealt with under the appropriate disciplinary policy.

### **Victimisation**

Victimisation occurs where less favourable treatment is given to those who bring proceedings, give evidence or information or allege breach of policy or relevant Professional Codes of Conduct.

Employees who make attempts or invoke procedures such as grievance or bullying and harassment as they have a genuine belief that they or a colleague have been subjected to inappropriate behaviour, should not receive less favourable treatment as a result.

### **Welsh Language Standards**

#### **Complaints**

If you receive a complaint from a member of staff or a complaint about a member of staff, and a meeting is required with that member of staff, you must - (a) ask the member of staff whether he or she wishes to use the Welsh language at the meeting; (b) explain that you will provide a translation service from Welsh to English for that purpose if it is required; and if the member of staff

wishes to use the Welsh language, you must provide a simultaneous translation service from Welsh to English at the meeting (unless you conduct the meeting in Welsh without translation services).

When you inform a member of staff of a decision you have reached in relation to a complaint made by him or by her, or in relation to a complaint made about him or about her, you must do so in Welsh if that member of staff - (a) made the complaint in Welsh, (b) responded in Welsh to a complaint about him or about her, (c) asked for a meeting about the complaint to be conducted in Welsh, or (d) asked to use the Welsh language at a meeting about the complaint.

### Disciplinary Procedures

You must - (a) state in any document that you have which sets out your arrangements for disciplining staff that any member of staff may respond in Welsh to any allegations made against him or against her, and (b) if you commence a disciplinary procedure in relation to a member of staff, inform that member of staff of that right.

If you organise a meeting with a member of staff regarding a disciplinary matter that relates to his or her conduct you must - (a) ask the member of staff whether he or she wishes to use the Welsh language at the meeting, and (b) explain that you will provide a translation service for that purpose if it is required;

and, if the member of staff wishes to use the Welsh language, you must provide a simultaneous translation service from Welsh to English at the meeting (unless you conduct the meeting in Welsh without a translation service).

When you inform a member of staff of a decision you have reached following a disciplinary process, you must do so in Welsh if that member of staff - (a) responded to allegations made against him or her in Welsh, (b) asked for a meeting regarding the disciplinary process to be conducted in Welsh, or (c) asked to use the Welsh language at a meeting regarding the disciplinary process.