

DISCIPLINARY PROCEDURE FOR CHIEF OFFICERS

(as defined in the Council's Pay Policy)

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Equalities:	<p>Mae'r ddogfen hon ar gael yn Gymraeg, ac mewn ieithoedd a fformatau eraill ar gais.</p> <p>This document is available in Welsh, and in other languages and formats on request.</p>



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CAERPHILLY COUNTY BOROUGH COUNCIL

DISCIPLINARY PROCEDURE FOR CHIEF OFFICERS

1. Scope of Procedure

- 1.1 This Procedure applies to all Chief Officers of the Council, as defined in the Council's Pay Policy, other than those designated as "Statutory Officers" namely the Chief Executive, the Monitoring Officer, the Section 151 Officer and the Head of Democratic Services.
- 1.2 This Procedure has been adopted by the Council for the purpose of dealing with disciplinary, capability and other similar issues in relation to Chief Officers of the Council. For the avoidance of doubt, this Procedure also applies to a breakdown of trust and confidence between the Chief Officer and the Authority.
- 1.3 Minor conduct issues can often be resolved informally. Formal steps will be taken under this Procedure if the matter is not resolved, or if informal discussion is not appropriate (for example, because of the seriousness of the allegation).
- 1.4 The objective of this Procedure is to:-
 - (i) encourage employees to achieve and maintain acceptable standards of behaviour;
 - (ii) provide a fair and consistent method of dealing with alleged failure to maintain acceptable standards of behaviour;
 - (iii) minimise disagreements about disciplinary matters; and
 - (iv) reduce the need for disciplinary action and dismissals.
- 1.5 Save where alternative arrangements have been agreed in advance between the Council and the Chief Officer, the steps set out in this Procedure should be followed. The parties recognise that it may be necessary to depart from the Procedure, from time to time, according to particular circumstances of a case. In such circumstances, both parties agree to give fair consideration to reasonable proposals to modify the Procedure accordingly.
- 1.6 This Procedure does not form part of a Chief Officer's contract of employment and it may be amended at any time.
- 1.7 Any disciplinary matters will be dealt with sensitively and with due respect for the privacy of any individuals involved. All individuals involved must treat as confidential any information communicated to them in connection with an investigation or disciplinary matter.

- 1.8 The Chief Officer will have the right to be accompanied by a work colleague or a Trade Union representative at all formal stages of this procedure. Trade Union representatives must have been certified by their Union as being able to accompany an employee. If the Chief Officer is to be accompanied by a work colleague, this colleague should not be someone who is directly involved in the case as their presence may prejudice the case or they may have a conflict of interest.
- 1.9 No person shall make or retain any audio or video recording of any meeting or other discussion which takes place as part of the disciplinary process, including but not limited to interviews with witnesses, disciplinary hearings and appeal hearings, unless the express consent of every person present has first been obtained.

2. Access to this Procedure

- 2.1 Where it appears that an issue has arisen which, if proven, could result in disciplinary action being taken against a Chief Officer, the Director of People Services will be responsible for ensuring an investigation is undertaken into the allegations of conduct or capability, or other issues under investigation in order to determine whether a case to answer appears to exist. In the event that action needs to be taken against the Director of People Services, an Executive Director will be chosen to fulfil this role. All references to the Director of People Services in this policy should be read subject to this provision.
- 2.2 In the event a disciplinary hearing is convened, the Chief Executive will be the Disciplinary Officer.

3. Timescales

- 3.1 The Procedure does not generally incorporate prescriptive timescales as it is recognised that these could be impracticable to achieve in the circumstances of a particular case. Where time limits do apply, they are included within the relevant section of this Policy. However, it is implicit that all stages of the Procedure be operated expeditiously by all parties in order to avoid unnecessary delay and prejudice to the interests of all parties.

4. Suspension

- 4.1 Suspension is not regarded as disciplinary action under this Procedure but as a neutral act which may be implemented where, in the opinion of the relevant member of Corporate Management Team it is believed that the Chief Officer's continuing presence at work might compromise the investigation or otherwise impair the efficient exercise of the Council's functions.

- 4.2 Suspension may also be necessary if an allegation is such that, if proven, it would amount to gross misconduct.
- 4.3 Prior to imposing suspension in any case, the relevant member of Corporate Management Team shall inform the Chief Officer of the reason for the proposed suspension and the Chief Officer shall have the opportunity to make representations before a decision is taken.
- 4.4 The necessity for the Chief Officer to remain suspended should be reviewed at regular intervals and where possible lengthy periods of suspension should be avoided. Further specific consideration should be given as to whether alternative working arrangements might be implemented which could avoid the need for the Chief Officer's suspension, whilst avoiding any compromise to the investigation or to the efficient exercise of the Council's functions.
- 4.5 Absence from duty during any period of suspension shall be on full pay.

5. Investigation

- 5.1 The Director of People Services will be responsible for informing the Chief Officer, in writing, of the allegations or other issues under investigation.
- 5.2 The Director of People Services will commission an investigator to undertake the investigation (the Investigator). This could be an individual independent of the Council or a suitably senior independent officer within the Council.

6. Terms of Reference for Investigation

- 6.1 It is vital that the Director of People Services determines the terms of reference for the investigation prior to its commencement, as this ensures that the focus of the investigation is appropriate.
- 6.2 These terms of reference should include: -
 - (i) The issue (s) to be investigated;
 - (ii) The methodology for conducting the investigation;
 - (iii) The proposed time frame – this should be realistic and there should be a provision for an extension, although equally the investigation should not be unduly protracted;
 - (iv) The resources available to the Investigator; and
 - (v) Details of who will be provided with copies of the report at the conclusion of the investigation.

- 6.3 The Investigator will be entitled to interview witnesses and carry out such enquiries as they deem necessary. This may include examining the Council's email, internet, and other IT systems, including the accounts of the Chief Officer. The Chief Officer shall fully cooperate with the Investigator and shall make themselves available for such interviews and meetings and provide any relevant documentation or information as the Investigator deems necessary.
- 6.4 The Chief Officer shall be given reasonable facilities and access to the Council's premises and systems as well as personal files/diary, etc. to allow them to prepare their responses on such terms as may be agreed by the Director of People Services or the Investigator.
- 6.5 The Director of People Services or the Investigator shall prepare a comprehensive report following their investigation (the Investigation Report) setting out the allegations and the Investigator's findings. The report shall include as appendices any witness statements collated and other relevant documentary evidence, which will be referred to at the disciplinary hearing.

7. Pre-Disciplinary Hearing Procedure

- 7.1 Within seven working days of receipt of the Investigation Report, the Director of People Services, or their nominee, shall send a copy to the Chief Officer. If the Investigation Report identifies allegations of misconduct and a need for further action, the Chief Officer will be sent, in addition to the Investigation Report, written notice of the specific allegations to be considered at the Disciplinary Hearing and any supporting documentation.
- 7.2 The Chief Officer shall, if they so wish, request further information and documents relating to the allegations within seven working days of receipt of the Investigation Report.
- 7.3 Any additional information and documentation requested will be provided by the Investigator, where relevant, within seven working days or such other time as appropriate in the circumstances.
- 7.4 Once the period for requesting further information has elapsed or once a response has been provided by the Investigator further to paragraph 7.3 above, the Director of People Services or their nominee shall give the Chief Officer not less than ten working days written notice of the date of the Disciplinary Hearing. The notice shall include:-
- (i) the time and place of the Disciplinary Hearing;
 - (ii) who will be in attendance at the Disciplinary Hearing;

- (iii) a copy of the Investigator's Report and any supporting documentation (including any witness statements where relevant) and the allegations to be considered at the Disciplinary Hearing;
- (iv) confirmation that the Disciplinary Hearing is convened under this Procedure and could result in disciplinary action;
- (v) confirmation that the Chief Officer may be accompanied at the Disciplinary Hearing by a Trade Union representative, an official employed by a Trade Union or a fellow work colleague ("Companion");
- (vi) confirmation that the Chief Officer can ask any person to be present as a witness or adduce any documents or written statements in support of his response, provided full details of such witnesses and copies of any such documents or statements are provided to the Director of People Services, or their nominee, at least five working days before the date of the Disciplinary Hearing, for distribution to all parties.

7.5 Within two working days of receipt of the notice, the Chief Officer shall either agree the date for the Hearing or propose to the Director of People Services a postponement for the date of the Hearing for a period not exceeding ten working days setting out the reasons for the request. For the avoidance of doubt, the postponement includes any postponement due to the availability of the Chief Officer's Companion. If the Chief Officer requests a postponement, the Director of People Services shall confirm a date for the re-arranged Hearing.

7.6 The Chief Officer and their Companion must make every effort to attend the Disciplinary Hearing (whether reconvened or otherwise). Failure to attend without good reason may be treated as misconduct in itself. If the Chief Officer fails to attend without good reason, or persistently fails to do so, the Disciplinary Hearing may proceed in their absence and a decision may be made based on the available evidence.

7.7 At least five working days before the date of the Disciplinary Hearing the Chief Officer shall give to the Director of People Services, or their nominee:-

- (i) Full details of any witnesses they wish to call;
- (ii) Copies of any documents which they wish to refer to in support of their response;
- (iii) Any written statements or submissions which they wish to submit; and

- (iv) Details of the Companion they wish to bring to the Disciplinary Hearing.

7.8 The Director of People Services or their nominee shall provide a copy of such documents and information to the Disciplinary Officer as soon as reasonably practicable thereafter and no later than three working days prior to the Disciplinary Hearing.

8. The Disciplinary Hearing

8.1 The procedure for the Disciplinary Hearing will be as follows:-

- (i) the Disciplinary Officer will explain the purpose of the Hearing and the procedure to be followed;
- (ii) the Director of People Services, or their nominee (who may include the Investigator) will present the complaint and introduce evidence in support of the complaint, including the Investigation Report, documents and witness evidence either in person or in writing as previously notified;
- (iii) the Chief Officer or his Companion and the Disciplinary Officer will have the opportunity to ask questions of the Chief Officer and/or their nominee, including direct questions to the witnesses;
- (iv) the Chief Officer or their Companion will introduce evidence in support of their response to the allegations, including documents and witnesses as previously notified;
- (v) the Director of People Services, or their nominee (who may include the Investigator) and the Disciplinary Officer will have the opportunity to ask questions of the Chief Officer and/or their Companion, including direct questions to the witnesses;
- (vi) both sides will sum-up their presentations, commencing with the Director of People Services or their nominee.

8.2 The Chief Officer's Companion can address the hearing, put and sum up the Chief Officer's case, make representations on behalf of the Chief Officer to any views expressed at the Disciplinary Hearing and confer with the Chief Officer during the Disciplinary Hearing. The Companion does not, however, have the right to answer questions on the Chief Officer's behalf. If the Chief Officer's choice of companion is considered unreasonable (see paragraph 1.8 above), the Director of People Services or their nominee may request that another companion be selected e.g. where the companion may have a conflict of interest or prejudice the Disciplinary Hearing.

8.3 The Disciplinary Hearing may be adjourned if the Disciplinary Officer needs to carry out any further investigations such as re-interviewing

witnesses in the light of any new points which are raised at the Disciplinary Hearing. The Chief Officer will be given a reasonable opportunity to consider any new information obtained before the Disciplinary Hearing is reconvened.

8.4 When the Disciplinary Officer has heard all of the evidence submitted, he/she will adjourn to consider what, if any, further action should be taken. The range of options available to them include:-

- (i) taking no further action;
- (ii) recommending informal resolution or other appropriate procedures be followed;
- (iii) referring back to the Investigator for further investigation and a further report;
- (iv) taking disciplinary action against the Chief Officer.

8.5 In the case of disciplinary action, this can include the following:-

- (i) a verbal warning (6 months);
- (ii) a written warning (12 months);
- (iii) a final written warning (18 months);
- (iv) a final written warning accompanied by demotion;
- (v) dismissal (whether summary dismissal or on notice).

8.6 Written warnings will set out the nature of the misconduct, the change in behaviour required, the period for which the warning will remain active, and the likely consequences of further misconduct in that period.

8.7 All others present at the Disciplinary Hearing will withdraw while the Disciplinary Officer considers their decision.

8.8 Where practicable, the decision of the Disciplinary Officer will be delivered orally after an adjournment. However, in order to ensure that the Disciplinary Officer shall be afforded sufficient time to fully consider their decision, their decision may be deferred and issued to the Chief Officer in writing within five working days of the Disciplinary Hearing, or as soon thereafter as is reasonably practicable.

8.9 The letter will outline the decision and the action, if any, to be taken and will set out the rights of appeal ("Decision Letter").

9. Appeal Process

- 9.1 The Chief Officer shall have the right to appeal the Disciplinary Officer's decision. The appeal will be heard by the Council's Appeals Panel. Any appeal must be made in writing to the Director of People Services within ten working days of the date of the Decision Letter including the grounds of appeal ("Notice of Appeal").
- 9.2 Within five working days thereafter the Chief Officer must inform the Director of People Services of the following details in relation to the Notice of Appeal and provide the following information:
- (i) whether the Chief Officer is to be accompanied at the appeal hearing by a Companion and if so by whom;
 - (ii) whether they wish to call witnesses and if so, their names and the nature of the evidence they will provide;
 - (iii) copies of any additional documents or information relevant to the appeal that was not provided at the Disciplinary Hearing;
- 9.3 Having considered the Notice of Appeal, the Appeals Panel will determine whether the appeal hearing will take the form of a full re-hearing or a review of the decision taken by the Disciplinary Officer.
- 9.4 If it is the fact that new evidence has come to light, i.e. evidence that was not available at the disciplinary hearing, the appeal will take the form of a full re-hearing. The procedure for an appeal re-hearing will be the same as the procedure for the disciplinary hearing, except that the Appeals Panel should have regard to the record of the original disciplinary hearing and its findings.
- 9.5 The presentation of new evidence that was not available at the time of the disciplinary hearing is the only reason that a re-hearing will be held. All other appeals will be a review of the disciplinary decision.
- 9.6 The Appeals Panel will consider the appeal as soon as reasonably practicable after the Notice of Appeal has been received. It will invite the following persons to be present at an appeal hearing:
- (i) the Chief Officer, who may be accompanied by a Companion; and
 - (ii) the Disciplinary Officer to explain their reasons for their decision and to answer any questions.
- 9.7 The Appeals Panel will be advised by the Director of People Services or their nominee and the Director of Legal Services & Monitoring Officer or their nominee.

- 9.8 At the Appeal, the employee or their Companion will be invited to detail the grounds of appeal. The Disciplinary Officer and the Appeals Panel can ask questions of the employee.
- 9.9 The Disciplinary Officer will present the reasons for their original decision. The employee and/or their Companion and the Appeals Panel can ask questions of the Disciplinary Officer.
- 9.10 Thereafter, the employee or their Companion will be invited to sum up their case, followed by the Disciplinary Officer.
- 9.11 Following the summing up, all parties will withdraw from the Appeal Hearing only leaving the Appeals Panel to make the final decision. The Director of People Services or their nominee and the Director of Legal Services & Monitoring Officer or their nominee will remain in an advisory capacity but will not take part in the decision-making process.
- 9.12 The Appeals Panel may decide to uphold or dismiss the original decision of the Disciplinary Officer or impose a different sanction within the range of penalties as set out in paragraphs 8.4 above. The final decision cannot increase the penalty that was originally imposed by the Disciplinary Officer.
- 9.13 The decision reached will be final and there is no further right of appeal.
- 9.14 If it is not practicable for the Appeals Panel to provide their decision orally, at the conclusion of the appeal hearing it will be notified to the Chief Officer, in writing, within five working days of the date of the appeal hearing, or as soon thereafter as is reasonably practicable.

10. Interpretation of the Procedure

- 10.1 In the event of a dispute relating to the interpretation of this procedure, the Director of People Services or a HR Service Manager along with a Corporate Director and the Cabinet Member for Corporate Services will make the final decision on interpretation.

11. Review of the Procedure

- 11.1 A review of this procedure will take place in 2 years or earlier if appropriate. Any amendments will be consulted with all the relevant parties, save for in the case of changes necessitated by changes to legislation.