

KERRY COMMUNITY COUNCIL
DISCIPLINARY PROCEDURE POLICY

Kerry Community (the Council) aims to ensure that there will be a fair and consistent approach to the enforcement of standards of conduct throughout the Council. This policy and procedure are designed to help and encourage all employees to achieve and maintain standards of conduct, attendance and job performance. This policy also aims to resolve problems of conduct or performance and wherever possible to avoid dismissal.

1. PRINCIPLES

- 1.1 The Chair (or designated by Chair) to the Community Council is designated as the line manager of any employees of the Council.
- 1.2 The Community Council will designate a Councillor who will act as the line manager of the Clerk (the Chair unless otherwise decided by the Council).
- 1.3 No disciplinary action will be taken against an employee until the case has been fully investigated and a disciplinary hearing has taken place. The employee will be advised in writing of the nature of the complaint against them and the arrangements for the hearing.
- 1.4 The employee will be given the opportunity to state their case before any decision is made.
- 1.5 The employee will have the right to be accompanied by a colleague, lay or trade union official at all stages during the investigation, disciplinary interview or disciplinary appeal.
- 1.6 The Council will take into account any mitigating circumstances when reaching decisions on appropriate disciplinary penalties.
- 1.7 No employee will be dismissed for a first breach of discipline, except in the case of gross misconduct. The penalty for this will be summary dismissal, i.e., dismissal without notice or pay in lieu of notice.
- 1.8 An employee will have the right to appeal to the Council against any disciplinary penalty imposed.
- 1.9 The members of the Appeals Panel will not be in membership of the Disciplinary Panel.
- 1.10 The procedure may be implemented at any stage if the employee's alleged misconduct warrants such action.

In poor performance cases, where the reason is not within the control of the employee, the Council's capability policy and procedure will be used instead. But poor performance resulting from negligence, lack of application or attitudinal problems, for example, will be dealt with under the disciplinary procedure. Also, here an employee's absences are deemed to be of a casual nature, the employee will be dealt with under the disciplinary procedure.

2. PROCEDURE

Minor faults will be dealt with informally by the employee's line manager. The aim is that corrective coaching and further training will address all but serious matters.

Where the matter is more serious the following procedure will be used.

Stage 1 Oral warning

If the employee's conduct or performance does not meet acceptable standards, the employee's line manager will normally give them a formal oral warning. The employee will be advised of the reason for the warning. That it is the first stage of the disciplinary procedure and of their right of appeal. A record will be kept of the oral warning and placed on the employee's file. The warning will be disregarded for disciplinary purposes after six months, subject to the employee's satisfactory conduct and performance.

Stage 2 Written warning

If the offence is a serious one, or if a further offence or no improvement occurs within six months of the oral warning, a written warning will be given to the employee by their immediate manager. This will give details of the complaint, the improvement required and the timescale. It will warn the employee that, if there is no satisfactory improvement, further disciplinary action may be taken and it will advise the employee of their right of appeal. A copy of this written warning will be placed on the employee's file but will be disregarded for disciplinary purposes after nine months, subject to the employee's satisfactory conduct and performance.

Stage 3 Final written warning

If there is still a failure to improve conduct or performance, or if the employee's misconduct is sufficiently serious to warrant only one written warning, but insufficiently serious to justify dismissal, a final written warning will normally be given to the employee by their manager. This will give details of the complaint, will warn that dismissal will result if there is no satisfactory improvement, and will advise of the right of appeal. A copy of this final written warning will be placed on the employee's file, but will be disregarded for disciplinary purposes after 12 months, subject to the employee's satisfactory conduct and performance. In exceptional cases the period may be longer.

Stage 4 Dismissal

If conduct or performance is still unsatisfactory and the employee fails to reach the prescribed standards, dismissal will normally result. Only the Disciplinary Panel of the Council can take a decision to dismiss. The employee will be provided, as soon as reasonably practicable, with written reasons for dismissal, the date on which their employment will terminate (in accordance with the employee's notice entitlement), and will be notified of their right of appeal.

Gross misconduct

If the employee is accused of gross misconduct, the Council may suspend them from work on full pay while it investigates the alleged offence. This is normally for no more than ten working days. The Council will explain its reasons in writing. The employee shall not carry out their duties during suspension, other than for the purpose of attending disciplinary proceedings, including investigatory interviews.

The employee shall not contact any other councillors, employees, suppliers or customers of the Council, except the employee's representative, without the Council's consent. In cases of misconduct (situations less serious than gross misconduct) it might also be appropriate to suspend the employee if this assists with the investigation.

Examples of gross misconduct are:

- a) theft, fraud,
- b) any involvement in bribery, giving, receiving or facilitating bribes
- c) unauthorised entry to computer records or deliberate falsification of records
- d) a serious breach of the Council's rules on e-mail and Internet usage, health and safety policy, anti-bullying and harassment policy or data protection policy
- e) fighting or assault
- f) deliberate or reckless damage to Council property
- g) an inability to perform job duties through being under the influence of alcohol or drugs
- h) a serious breach of the Council's safety rules or a single error due to negligence which causes, or could have caused, significant loss, damage or injury to the Council, its employees or electors
- i) conviction of a criminal offence that makes the employee unsuitable or unable to carry out his or her duties
- j) a serious act of insubordination, such as deliberate refusal to carry out proper instructions
- k) acts of bullying, harassment or discrimination
- l) a serious breach of trust or confidentiality.

This list is not intended to be an exhaustive one and only gives an indication of the types of offence that may be considered gross misconduct.

If, on completion of the investigation and the full disciplinary procedure, the Council is satisfied that gross misconduct has occurred, the result will normally be summary dismissal, i.e. dismissal without notice or pay in lieu of notice.

Disciplinary investigations

The Council is committed to ensuring that all potential infringements of disciplinary rules are fully investigated. This may entail carrying out interviews with the employee concerned and third parties such as witnesses, colleagues and councillors, as well as analysing written records and information. It may also involve a search of the employee's person and/or property. The investigation report will be made available to all the parties

concerned. The identity of witnesses will be kept confidential where necessary. The Council may engage external professional assistance to undertake the investigation on its behalf.

Where an employee is called to attend an investigatory interview, it will be made clear that this is not a disciplinary hearing.

Disciplinary hearing

An employee will be invited, in writing, to a disciplinary hearing once the investigations are complete. Prior to the meeting the employee will be informed of the nature of the allegations that are to be addressed.

Appeals

If the employee wishes to appeal against a disciplinary decision, they must do so through their line manager within five working days of the receipt of the disciplinary letter. The appeal should be made in writing, stating the ground(s) on which the disciplinary penalty should be reviewed.

A Panel of 3, previously uninvolved Councillors will hear all appeals. In the rare circumstances where this is not possible, alternative arrangements will be agreed with the employee and their representative after seeking advice from One Voice Wales.

The appeals hearing will be normally held within ten working days of receipt of the letter. The decision of the Appeals Panel shall be final.

Appeals hearing

At the appeals hearing, the employee will be given the opportunity to state the ground(s) on which the appeal is made. The line manager who took the original decision will then have the opportunity to explain their decision to impose the given penalty. The Chair of the Appeals Panel conducting the appeal may exercise discretion as to whether or not the two parties will be present together during the proceedings. The hearing will be adjourned when all the evidence has been heard.

The Appeals Panel will consider the merits of the appeal, in private, before reaching its decision.

1. The Chair of the Appeals Panel will, whenever possible, verbally inform the employee of the decision reached and confirm this in writing no later than seven working days after the hearing.
2. The Appeals Panel has the authority to quash or reduce a disciplinary penalty or, in exceptional and appropriate circumstances, to increase it, in accordance with the penalties specified in the Council's disciplinary procedure.
3. An appeal hearing is intended to focus on specific factors that the employee feels have received insufficient consideration, such as:
 - a) an inconsistent/inappropriate harsh penalty
 - b) extenuating circumstances
 - c) bias of the disciplining manager
 - d) unfairness of the hearing
 - e) new evidence subsequently coming to light
4. Where an appeal against dismissal fails, the effective date of termination shall be the date on which the employee was originally dismissed.

NOTES

1. Employees will receive a written invitation to all disciplinary meetings.
2. Outcomes of formal meetings will be confirmed to the employee in writing.
3. A second individual may be invited to attend formal disciplinary meetings in order to act as a witness and note taker.
4. The timescales listed above will be adhered to wherever possible. Each party can request an extension of the permitted timescale, however, only where there are good reasons.
5. The Council reserves the right to seek assistance from external facilitators at any stage in the disciplinary procedure, in the interests of seeking a satisfactory outcome for all those concerned.
6. For employees serving their probationary periods, the Council reserves the right to speed up the decision-making process. It may choose to follow a truncated version of the above procedure in such circumstances.

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7. The grievance procedure should not be used for appeals against disciplinary decisions. That is the purpose of the disciplinary appeals procedure. If, however, the employee has a complaint against the behaviour of a Councillor or another employee during the course of a disciplinary case, they may raise it as a grievance with a designated Councillor or the Clerk. If necessary, the disciplinary procedure may be suspended for a short period until the grievance can be considered. Another Councillor may be brought in to deal with the disciplinary case.
8. This procedure is for guidance only and does not form part of employees' contractual rights. The contents may be subject to revision from time to time.

The procedures and policy will be reviewed regularly and/or at least annually.