

Disciplinary Policy

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1 Introduction

- 1.1 Staff employed by PSOW are expected to maintain high standards of conduct. PSOW has a Staff Standards of Conduct Policy and staff are responsible for making themselves aware of its content, so that they observe it at all times.
- 1.2 This policy is designed to help and encourage all staff to achieve and maintain our standards of conduct. It aims to ensure consistent and fair treatment for all when potential breaches of expected standards occur.
- 1.3 This policy and process can be conducted in Welsh, if Welsh is the preferred language of the Staff Member, or in English if English is the preferred language. The preferences of the Staff Member, held by Corporate Services will be adhered to and the Staff Member will be advised that they may respond in Welsh and that the Welsh language may be used at any meeting regarding a disciplinary matter.

2 Definitions

- 2.1 The Line Manager – the member of staff's line manager, or another manager.
- 2.2 COO/Dol – Chief Operating Officer / Director of Improvement or Chief Legal Adviser / Director of Investigations.
- 2.3 DM – Disciplining Manager.
- 2.4 DIO – Disciplinary Investigating Officer
- 2.5 DAO – Disciplinary Appeal Officer.
- 2.6 HRBP - Human Resources Business Partner
- 2.7 Right to be accompanied – a companion may be a Trade Union Representative or a work colleague unconnected with the matter under consideration.

3 Principles

- 3.1 Instances of alleged misconduct will be dealt with in the strictest confidence.
- 3.2 The policy applies to misconduct at PSOW's premises; on external PSOW business; at an external event, such as a training course; or at any PSOW social function and includes activity by a member of staff that reflects negatively on the organisation.
- 3.3 A full investigation will always precede any disciplinary action **unless there are exceptional circumstances, such as in cases of gross misconduct.**
- 3.4 PSOW's Human Resources Business Partner must be consulted before any **formal** disciplinary action is considered.
- 3.5 Staff have the right to be accompanied at Disciplinary Hearings by their Trade Union Representative or work colleague.
- 3.6 Appropriate reasonable adjustments will be made so that members of staff with disabilities, or physical or mental health conditions, are not disadvantaged because of their disability or health condition, during the process.
- 3.7 Gross misconduct can result in summary dismissal – a non- exhaustive list of examples of misconduct, serious misconduct and gross misconduct is attached at Appendix 1. Dismissal will not result from a first breach of discipline that is not regarded as gross misconduct.
- 3.8 Any formal disciplinary action carries a right of appeal.
- 3.9 Confidential records of the entire process will be retained by the relevant Line Manager during the process. If a formal process is followed, the appropriate records must be kept on the personnel file held by Corporate Services.
- 3.10 If a Staff Member has a Contract of Employment which designates them as a remote worker, it may be necessary for any Hearings or formal meetings to be conducted online.

4 Actions upon receiving an allegation of Misconduct

Fact Finding

- 4.1 Upon receiving an allegation of misconduct, the Line Manager will carry out a fact-finding exercise, to establish whether there is evidence that the allegation can be substantiated or if there are questions to be answered. The Line Manager will gather witness evidence, as appropriate.
- 4.2 The Line Manager should liaise with PSOW's Human Resources Business Partner, at the earliest stage to determine whether to apply this Policy and if so, at which level. The HRBP should be kept informed at each stage of the process in order to support as appropriate.

Suspension or Transfer

- 4.3 It may be appropriate for the member/s of staff involved to be suspended from work, on full pay, if a serious allegation has been made and it is unreasonable for the staff member to remain at work. A suspension can protect the interests of the member of staff or their colleagues. A suspension may also be appropriate, if it would help facilitate a thorough investigation without disruption. It is important to note that suspension is not a disciplinary sanction. Prior to any suspension, the Line Manager must discuss the matter with the HRBP.
- 4.4 Where it has been agreed that suspension is necessary, the Line Manager alongside the HRBP will meet with the staff member, ideally in person to notify them of the suspension. If for any reason and in the case of a remote worker, a meeting in person cannot take place, then a meeting online may be arranged. This will be confirmed in a letter, detailing the suspension. The reasons for the suspension must be made clear within the letter.
- 4.5 A suspended person will be allowed access to work documents, to enable them to prepare their case. However, a suspended employee does not have the authorisation to visit the premises or contact any service users, colleagues or contractors, unless authorised to do so by the Disciplining Manager or HRBP. Neither are they authorised to amend or delete any documentation.

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- 4.6 Where a member of staff who is suspended wishes to contact another member of staff, or where they consider contact to be unavoidable, they (or their representative) may request agreement by contacting the Disciplining Manager or HRBP. A suspension should be for no more than 10 working days at a time. If further time is required, then a second period of suspension should be set out in writing to the employee.
- 4.7 Suspension is not always necessary and should be a last resort. It may however, be necessary to transfer the Staff Member under investigation to another role / department for the duration of the investigation. This should only be considered in cases where the investigation could be hampered if the Staff Member remains in post.

Informal Action

- 4.8 Where alleged misconduct is considered to be minor, the Line Manager may consider it appropriate to have a prompt, private discussion with the relevant member of staff. There is no right to be accompanied at this discussion.
- 4.9 During the discussion, the Line Manager will outline their concerns and the member of staff will have the opportunity to respond to the allegation against them.
- 4.10 Following the discussion, the detail will be recorded in a letter to the Staff Member outlining the issue, what improvement is needed and the timescale for improvement. It will also record what will happen if the improvement is not achieved. The Line Manager must be clear that failure to meet the required standards may lead to formal disciplinary action being taken. The Line Manager can offer support in improving standards through supervision or training and development.

Formal Action

- 4.11 If no improvement is made following Informal Action, or the alleged misconduct is too serious to be dealt with informally, formal action should commence.
- 4.12 Upon receiving a report of serious misconduct, whether or not there has already been informal action/a fact-finding exercise, the Line Manager, becomes the Disciplining Manager. In accordance with advice from the HRBP

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the Disciplining Manager will appoint a non-conflicted Disciplinary Investigation Officer (DIO). This may be an internal DIO or externally appointed DIO, depending on the issue and grade of the Staff Member against whom allegations have been made. The HRBP can support the DIO as required. The DIO will carry out a full and thorough investigation.

- 4.13 The relevant member of staff will be notified of the allegation in writing and informed who will investigate it. The letter will explain that the investigation aims to determine if there is a case to answer and how serious it is, either misconduct or gross misconduct. This Policy must be enclosed with the letter.
- 4.14 The DIO will conduct a prompt investigation to establish the facts, normally within ten working days. If the investigation extends beyond eight weeks, the DIO must advise the Disciplining Manager. The member of staff is expected to co-operate fully. They have a right to be accompanied at interview but must inform the DIO of this in advance. The DIO will prepare a report, including a recommendation as to whether there is a case to answer at a Disciplinary Hearing.
- 4.15 Upon completion of their investigation, the DIO submits their investigation report to the Disciplining Manager. The DIO should include in their report, whether they feel the allegations are substantiated and whether there is a case to answer.
- 4.16 The Disciplining Manager, having considered the report, will need to decide whether they agree with the conclusion of the DIO. If they agree there is a case to answer, they will write to the member of staff informing them. The Disciplining Manager will arrange a Disciplinary Hearing and will write to the member of staff informing them of the date of the Disciplinary Hearing, time, venue, allegations and outline their right to be accompanied. All evidence intended to be used at the Disciplinary Hearing will be provided to the member of staff in enough time for them to prepare their case.
- 4.17 If the member of staff wishes to submit any documents, they must be provided to the Disciplining Manager at least three working days before the Hearing. If they wish to call witnesses, they should make their own arrangements, but advise the Disciplining Manager prior to the Hearing. If the member of staff has been suspended, they would need the Disciplining Manager's permission before contacting work colleagues.

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- 4.18 If the member of staff is unable to attend the Hearing, they must inform the Disciplining Manager, who will rearrange within five working days of the original date. If the named companion is unable to attend, a postponement may be requested, for up to five working days following the original date. The Hearing will not be postponed for a second time and will proceed in the absence of the member of staff or companion.
- 4.19 At the Hearing, the Disciplining Manager will conduct the meeting in accordance with the structure outlined in Appendix IV. The member of staff is expected to answer all questions put to them, although a companion may present matters on behalf of the member of staff and question witnesses. A summary note of the Hearing will be made.
- 4.20 The member of staff will be informed of the outcome of the Hearing following the adjournment on the day where possible, and this will be confirmed in writing, generally within five working days. The letter will outline the allegation(s) and the reasons for the decision. It will detail any sanction applied and timescales applicable to that sanction. The letter will also outline the appeal procedure and the name of the Disciplinary Appeal Officer (DAO), who will normally be the next level of Line Manager.

5 Special Circumstances

- 5.1 If a complaint or grievance is raised by the member of staff during a disciplinary investigation, the procedure may either be suspended whilst the complaint / grievance is investigated, or the two investigations may run concurrently. If the grievance is found to be vexatious, it may be taken into account as part of the disciplinary procedure.
- 5.2 If the alleged misconduct relates to a criminal matter, PSOW will still investigate the issues as part of the disciplinary procedure and will not await the outcome of a prosecution. The inability to attend a Hearing will not prevent the procedure from continuing. The suitability of the member of staff to continue in their role and the risk of reputational damage to the office will be considered in any decision.

6 Sanctions available when Misconduct is proved

Verbal Warning (confirmed in writing)

- 6.1 Applicable for a minor, first offence, or for unacceptable conduct. The warning will outline the issue of concern, the improvement required and any relevant timescale for achieving the improvement. Repeat occurrences will result in a more severe sanction. The right of appeal is outlined.
- 6.2 The warning will stay on the member of staff's record for **three** months.

First Written Warning

- 6.3 Applicable for more serious offences; repeat offences where a previous warning has been given, or where conduct remains unacceptable. The detail of the warning is the same as that in the Verbal Warning, described in 6.1 above.
- 6.4 The warning will stay on the member of staff's record for **six** months.

Final Written Warning

- 6.5 Applicable for serious offences; repeat offences or failed improvement, but where dismissal is not appropriate. The detail of the warning is the same as that in the Verbal Warning (at 6.1 above), but also warns that a repeat offence may result in further disciplinary action being taken, up to and including dismissal.
- 6.6 The warning will stay on the member of staff's record for **twelve** months.

Dismissal

- 6.7 Applicable where conduct has not improved; where there is further misconduct, or for gross misconduct.
- 6.8 If the Disciplining Manager considers that dismissal is the appropriate sanction, this must be authorised by the COO/DoI or Ombudsman prior to notification to the Staff Member. In some circumstances, summary dismissal may be deemed appropriate. This will only occur in cases of proven gross misconduct and means immediate dismissal without notice pay.

Other Formal Action

6.9 PSOW may consider demotion to be appropriate, or that pay increases should be withheld.

7 Appeals

7.1 Appeals may be made to the named Disciplinary Appeal Officer (DAO), within five working days of the written decision, detailing the grounds for appeal, such as:

- New evidence, freshly obtained
- Procedural irregularities
- Challenge of the finding
- Claim of breach of employment law.

7.2 The DAO will arrange an Appeal Hearing for the member of staff to outline their case, with a right for them to be accompanied. They will only consider the Disciplining Manager's original decision. There will be a ten working day notice period for this Hearing, unless mutually agreed otherwise.

7.3 Papers must be provided to the DAO five working days before the Hearing.

7.4 The member of staff will be notified of the outcome of the appeal in writing within five working days. The decision of the DAO may be to confirm the original decision, to revoke it or to substitute a new (higher or lower) penalty. If the appeal is against dismissal, the dismissal may proceed before the outcome of the appeal, but the DAO may reinstate the member of staff, if the appeal succeeds.

7.5 The DAO's decision is final - there is no further right of appeal.

8 Review and publication

8.1 This Policy will be reviewed every two years and will be published internally and externally.

8.2 Any queries about this Policy can be directed to policycontrol@ombudsman.wales

Appendix I: Examples of Misconduct

Examples of Misconduct

The following list is **not exhaustive** and is a guide only. Relevant factors are the context and seriousness of the misconduct, along with the previous employment record of the member of staff. Serious misconduct may be regarded as 'gross misconduct'. It is important to take into account any reasonable adjustments that have been agreed, or any disabilities that may have impacted on the Staff Member's ability to meet the standards required. Advice should be sought from the HRBP.

Minor Misconduct Examples

- poor timekeeping;
- any minor breach of PSOW's regulations

Serious Misconduct Examples

- making allegations that are found to be vexatious
- persistent bad timekeeping or poor attendance;
- failure to comply with time recording or absence reporting procedures
- negligence resulting in minor loss, damage or injury;
- unauthorised absence or failing to attend a planned event;
- damage to the organisation's property;
- failure to observe the organisation's procedures;
- abusive behaviour;
- use of discriminatory or inappropriate language
- unreasonable refusal to follow an instruction issued by a manager or supervisor;
- irresponsibility in relation to the employee's activities or impropriety in relation to the employee's tasks for PSOW (whether or not within working hours), which PSOW reasonably considers to be detrimental to or conflicting with the interests of PSOW or its service users, or likely to affect the employee's standard of work;

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- failure to disclose any personal interest in relation to a matter the employee is involved in
- any breach of confidence relating to PSOW or its service users;
- smoking [or use of an e-cigarette] in non-designated areas of the organisation's premises;
- bribery offences under the Bribery Act 2010;
- breach of PSOW policy or staff standards of conduct.

Gross Misconduct Examples

- bullying
- rudeness, abusive behaviour or insubordination
- violence or drunkenness at work or at a work event
- breach of PSOW equality policies and standards, including unlawful discrimination or harassment
- theft/fraud involving PSOW finances or time
- corruption, including using an official position for personal or other gain
- unauthorised alteration of records
- improper disclosure or use of confidential information
- bringing PSOW into disrepute
- negligence affecting the work of PSOW
- misuse of PSOW facilities and equipment, e.g. email and internet, including the deliberate access of offensive material
- negligence/loss/damage to PSOW or service user's property/money/reputation
- endangering the health and safety of others
- failure to disclose an interest that compromises the work of PSOW
- stealing from the organisation, members of staff or the public;
- other offences of dishonesty;
- falsification of a qualification that is a stated requirement of the employee's employment or results in financial gain to the employee;

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- falsification of records, reports, accounts, expense claims or self-certification forms, whether or not for personal gain;
- sexual misconduct at work;
- conduct violating common decency
- fighting with or physical assault on members of staff or the public;
- deliberate damage to or misuse of the organisation's property;
- serious damage to the organisation's property;
- being under the influence of illegal drugs while at work;
- possession, custody or control of illegal drugs on the organisation's premises;
- serious breach of the organisation's rules, including, but not restricted to, health and safety rules and rules on computer use;
- deliberate and serious breach of confidence relating to the Company's or its customers or clients' affairs;
- the use for personal ends of confidential information obtained by the employee in the course of his/her employment
- gross negligence;
- conviction of a criminal offence that is relevant to the employee's employment;
- conduct that brings the organisation's name into disrepute; and
- discrimination or harassment of a fellow worker on the grounds of protected characteristics (sex, sexual orientation, gender reassignment, race, disability, age, religion or belief – including lack of belief; pregnancy and maternity and marital status); socioeconomic status; or use of the Welsh language.

Appendix II: Guidelines for the Disciplinary Investigating Officer (DIO)

- The DIO will seek advice from the HRBP before beginning a **formal** investigation.
- If, at any point during the investigation, the DIO considers their impartiality is compromised, they must advise the Disciplining Manager/HRBP, who will appoint a new DIO.
- The investigation is restricted to establishing the facts of the case – the DIO must not consider unrelated complaints or the general conduct of the members of staff. They must not be told about the member of staff's previous disciplinary record.
- The DIO should make and retain a record of formal interviews with all relevant witnesses. Subsequent statements should be agreed and signed by the witnesses.
- Information can only be recorded with the consent of the person disclosing it.
- If any party causes a delay or refuses to co-operate, the DIO must try to obtain essential information and report any difficulty in obtaining it to the Disciplining Manager.
- The DIO prepares an unbiased report on their investigation, which concludes whether the evidence indicates that the member of staff has a case to answer before a Disciplinary Hearing. No recommendation of guilt/innocence/sanction should be included in the report.
- The DIO must present their report to the Disciplining Manager within two working days of its completion.
- If a Disciplinary Hearing is convened, the DIO presents the case to be answered.

Appendix III: Guidance for Witnesses

- Witnesses include anyone present when alleged incidents occurred; anyone relevant to an investigation and anyone who has information that may assist an investigation, according to either party to the investigation. Witnesses are relevant to disciplinary, grievance, harassment or bullying investigations. Witnesses are expected to co-operate with investigations.
- For reasons of confidentiality, witnesses, when being questioned, will be informed that they are being interviewed as part of a disciplinary investigation, but will not be told the detail of the complaint being investigated. Doing so, could impact on the information shared and breach confidentiality.
- All matters arising from the investigation must be treated in the strictest confidence and must not be discussed outside the investigatory process. To do so is a disciplinary matter.
- Witnesses may be accompanied during their interview, but must answer questions themselves. Any companion is bound by the same duty of confidentiality as the witness.
- Witnesses are expected to be honest. Witnesses will be informed that giving wrong or misleading information to an investigation is a disciplinary offence and could result in an action of defamation by other staff.
- Notes will be taken at the interview by either a note taker or the DIO. This will form the basis of a Witness Statement which the interviewee will be asked to sign to confirm it is an accurate account of the interview. Witnesses may be required to attend any Hearing which may be held subsequently, to answer questions arising from their evidence. In cases of harassment, witnesses may be able to remain anonymous or not attend the hearing in person. If the complaint proceeds to a public Employment Tribunal, the witness may be required to present their evidence again.

Appendix IV: Structure of Disciplinary Hearing

Introduction

- Chair to thank attendees for coming and introduce self and role as DM.
- Chair asks those present to introduce themselves and their role in disciplinary.
- Chair outlines the structure of the meeting.
- Chair outlines the reason for the disciplinary – read out the letter of allegations.
- Chair asks Investigating Officer to present their Investigation Report.

Investigation Report

- Investigating Officer presents their Investigation Report and findings.
- IO can ask questions of Staff Member at any point during their presentation.
- If the IO is including witnesses, the IO can call their witness at any time during their presentation.
- The Chair and HRBP can ask questions of IO and the witness.
- The Staff Member and their Representative can ask questions of the IO and witness.

Staff Members' statement of case

- The Chair invites the Staff Member to present their case.
- If the Staff Member is calling witnesses, they can do so at any point during their presentation of their case.
- The Chair and HRBP can ask the Staff Member and witness questions.
- The IO can ask the Staff Member and witness questions.

Summing up

- The Chair invites the IO to sum up having heard the case the Staff Member has put forward. Has there been any mitigation which would change the IO's conclusions?
- The Staff Member has the last word and is invited by the Chair to sum up their case.

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- The Chair asks the Staff Member if they have had every opportunity to respond to the allegations against them?

Decision Making/Adjourn

- The Chair calls an adjournment while they deliberate. Only the Chair and the HRBP remain.
- If the Staff Member is recalled for clarification/further information, the IO must also be recalled at the same time and if the IO is recalled, the Staff Member must be recalled at the same time.

Conclusion

- Once the Chair has made their decision, they should recall both parties to the meeting and read out the outcome of the Disciplinary Hearing. This will be whether the allegations against the Staff Member are upheld or not and whether there will be a disciplinary sanction.
- The outcome will also include giving the Staff Member the right of appeal.
- This conclusion will be followed up in writing and sent to the Staff Member.

Appendix V: The Appeal Process

1. An appeal can only consider the original disciplinary issue; no new matters can be considered.
2. An appeal takes the form of a review hearing of the written grounds of appeal and considers any new evidence presented.
3. Appeals are heard by the Disciplinary Appeal Officer (DAO).
4. The appellant may be accompanied.
5. The DAO is the decision-maker and may be supported by the HRBP and a note taker. The original Disciplining Manager will attend.
6. Firstly, the appellant (or representative) sets out their grounds of appeal. The DM, DAO and HR Adviser may question the appellant about it.
7. Secondly, the DM responds to the grounds of appeal. The appellant, their representative, the DAO and HRBP may then question the DM.
8. The DM and the appellant then sum up their cases.
9. The parties withdraw, leaving the DAO and HRBP to consider the decision. The DAO may then recall the parties, if they wish to pose any further questions.
10. The Hearing may be adjourned if new matters have arisen or further enquiries need to be made.
11. A written decision is forwarded to the appellant (with a copy to their representative), as soon as possible and within two working days of the Hearing, unless there are extenuating circumstances.