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**Date: 22nd July 2015**

Dear Sir/Madam,

A meeting of the **Cabinet** will be held in the **Sirhowy Room, Penallta House, Tredomen, Ystrad Mynach** on **Wednesday, 29th July, 2015** at **2.00 pm** to consider the matters contained in the following agenda.

Yours faithfully,

A handwritten signature in blue ink that reads 'Chris Burns'.

**Chris Burns**  
INTERIM CHIEF EXECUTIVE

## A G E N D A

	Pages
1 To receive apologies for absence.	
2 Declarations of Interest. Councillors and Officers are reminded of their personal responsibility to declare any personal and/or prejudicial interest(s) in respect of any item of business on the agenda in accordance with the Local Government Act 2000, the Council's Constitution and the Code of Conduct for both Councillors and Officers.	
To approve and sign the following minutes: -	
3 Cabinet held on 15th July 2015.	1 - 4

To receive and consider the following reports on which executive decisions are required: -

A greener place Man gwyrddach



4	Provisional Outturn for 2014/15.	5 - 18
5	National Non-Domestic Rate Relief Grant Funding - WG 'Wales Retail Relief Scheme' 2015/16.	19 - 30
6	Proposed Public Spaces Protection Orders at Bargoed, Blackwood, Nelson and Caerphilly Bus Stations (Including Caerphilly Train Station Area) and Various Bus Shelters.	31 - 70
7	Draft Social Media Policy.	71 - 90
8	Draft Disciplinary Policy and Procedure.	91 - 144
9	St. James Primary - Final Account.	145 - 148

**Circulation:**

Councillors Mrs C. Forehead, N. George, D.T. Hardacre, K. James, Mrs B. A. Jones, R. Passmore, D.V. Poole, K.V. Reynolds, T.J. Williams and R. Woodyatt,

And Appropriate Officers.



## CABINET

### MINUTES OF THE MEETING HELD AT PENALLTA HOUSE, TREDOMEN ON WEDNESDAY 15TH JULY 2015 AT 2.00 P.M.

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#### PRESENT:

Councillor K.V. Reynolds - Chair

#### Councillors:

Mrs C. Forehead (HR and Governance/Business Manager), N. George (Community and Leisure Services), D.T. Hardacre (Performance and Asset Management), K. James (Regeneration, Planning and Sustainable Development), Mrs B. Jones (Deputy Leader and Cabinet Member for Corporate Services), R. Passmore (Education and Lifelong Learning), D.V. Poole (Deputy Leader and Cabinet Member for Housing), T.J. Williams (Highways, Transportation and Engineering).

#### Together with:

C. Burns (Interim Chief Executive), N. Scammell (Acting Director of Corporate Services), D. Street (Corporate Director Social Services), C. HARRY (Corporate Director Education and Community Services)

#### Also in Attendance:

D.A. Thomas (Senior Policy Officer (Equalities & Welsh Language)) and C. Evans (Committee Services Officer).

#### 1. APOLOGIES FOR ABSENCE

Apologies for absence had been received from Councillor R. Woodyatt (Social Services)

#### 2. DECLARATIONS OF INTEREST

There were no declarations of interest received at the beginning or during the course of the meeting.

#### 3. CABINET – 1ST JULY 2015

RESOLVED that the minutes of the meeting held on 1st July 2015 (minute nos. 1 - 5) be approved and signed as a correct record.

## **MATTERS ON WHICH EXECUTIVE DECISIONS WERE REQUIRED**

### **4. APPROPRIATION OF LAND AT SNOWDON CLOSE, RISCA**

The report sought approval to appropriate land at Snowdon Close, Risca (as shown on the plan accompanying the report) from informal leisure purposes to planning purposes.

Having considered the report and advice from the Head of Legal Services, and in noting the receipt of an application for a village green, the report was withdrawn, for consideration at a later date.

RESOLVED that the report be withdrawn, for consideration at a later date.

### **5. WELSH LANGUAGE STANDARDS – FINAL CONSULTATION**

The report afforded Members an opportunity to consider and comment on the Standards within the draft Compliance Notice received from the Welsh Language Commissioner on 22nd June 2015. It also sought to delegate powers to the Acting Director of Corporate Services, in consultation with the Cabinet Member for Corporate Services, to agree the full response to be submitted by the consultation deadline of 20th July 2015.

The Welsh Language (Wales) Measure 2011 aims to modernise the legal framework regarding the use of the Welsh Language in the delivery of public services and makes provision for the specification of standards of conduct. This replaces the system of Welsh Language Schemes under the previous Welsh Language Act 1993.

The Council previously responded to consultation on the proposed standards in 2014 and has now received the Compliance Notice in accordance with Section 47 of the Welsh Language (Wales) Measure 2011. The Compliance Notice shows the standards that will apply to the Council and gives timescales for implementation.

Cabinet noted a briefing paper which outlined details of changes made to standard categorisation since the circulation of the original report, based on information and evidence received from services. Members were invited to make any comments or feedback before Monday 20th July 2015, to include in the response to the Welsh Language Commissioner. The response will focus upon the Standards which are not reasonable or proportionate and those which require longer timescales.

Members thanked the Officer for the report and considerable work and effort that has been input by the staff and a Member requested further information to be provided on the changes.

Members expressed concerns for the substantial financial implications for meeting some of the standards, such as Standard 41, which required that all agendas, minutes and other papers made available to the public are produced in Welsh. It was noted that, in conjunction with the implementation of a number of other standards, the cost to the authority could reach over a £1million. Members were assured that any concerns, including substantial financial implications and staff cost and time would be included in the response document.

Following consideration and discussion, it was moved and seconded that the recommendations contained in the officer's report be approved. By a show of hands this was unanimously approved.

RESOLVED that for the reasons contained in the officer's report: -

- i. the submission of the response to the Welsh Language Commissioner including agreement to Standards highlighted in green with "Y" and objection to Standards highlighted in red with a "N" on the grounds that they are disproportionate be approved.

- ii. the Acting Director of Corporate Services, in consultation with the Cabinet Member for Corporate Services be delegated to agree the final response, using the template provided by the Welsh Language Commissioner, along with supporting evidence, by 20th July 2015.

The meeting closed at 2.32pm

Approved and signed as a correct record subject to any corrections made at the meeting held on 29th July 2015.

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CHAIR

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## CABINET – 29TH JULY 2015

**SUBJECT: PROVISIONAL OUTTURN FOR 2014/15**

**REPORT BY: ACTING DIRECTOR OF CORPORATE SERVICES & S151 OFFICER**

### 1. PURPOSE OF REPORT

- 1.1 To provide Cabinet with details of the provisional outturn for the 2014/15 financial year prior to the annual audit by the Authority's External Auditors PricewaterhouseCoopers.
- 1.2 To seek Cabinet approval of recommendations for the use of service reserves for specific purposes as set out in the report.

### 2. SUMMARY

- 2.1 In advance of the Statement of Accounts being audited and presented to Council on the 29<sup>th</sup> September 2015, this report provides an overview of the Council's performance against the budget for the 2014/15 financial year. Members receive detailed budget monitoring reports as part of the Scrutiny process throughout the financial year.

### 3. LINKS TO STRATEGY

- 3.1 The Provisional Outturn Report encompasses all the resources used by the Council to achieve its strategies.

### 4 THE REPORT

- 4.1 The outturn position is attached as Appendix A and is summarised below:-

	£'000
Service Directorate Underspends	6,578
Miscellaneous Finance Underspend	1,707
Partial Release of Equal Pay Provision	1,234
Council Tax Surplus	1,414
Housing Revenue Account (HRA) Underspend	6,814
Schools Underspend	312
<b>Total: -</b>	<b>18,059</b>

- 4.2 The Service Directorate underspend of £6.578m represents 3.71% of net Directorate budgets. During the year Officers have been mindful of the anticipated significant cuts in funding for future years and expenditure has been curtailed in a number of areas to support the Medium-Term Financial Plan (MTFP). This prudent approach has resulted in a number of savings being achieved in advance and underspends being higher than would normally be the case.

- 4.3 After adjusting for earmarked reserves, 50% of underspends are carried forward by Directorates and are available to meet the requirements of these service areas. The remaining balance is transferred to the General Fund. Overspends are normally funded from future Directorate budgets or balances brought forward from previous years. Service reserves held by Directorates can be used to fund one-off cost pressures or to pump-prime service reconfiguration but they cannot be relied upon to deliver balanced budgets on a recurring basis.
- 4.4 The table in Appendix B shows the movements on the General Fund balances from 1st April 2014 to 31st March 2015 and current agreed commitments for 2015/16. The forecast General Fund balance as reported to Council on 25th February 2015 was £10.078m. The updated position is a projected balance as at 31/03/16 of £13.126m, a variance of £3.048m. The variations to forecast are as follows: -

	<b>£,000</b>
Increased contribution from Service areas (including Miscellaneous Finance).	1,642
2014/15 Council Tax surplus higher than the projected £1.2m.	214
Partial release of Equal Pay provision.	1,234
Release of other earmarked reserves and provisions higher than anticipated.	65
A469 Closure Remedial Works - Costs lower than anticipated.	168
Industrial Action Clawback - Lower than anticipated.	(3)
Adjustments to provision for Senior Officer Suspension costs.	(272)
<b>Total Increase: -</b>	<b>3,048</b>

- 4.5 In light of the significant financial challenges that lie ahead it would be prudent to retain the General Fund balance at the projected level of £13.126m. This will provide some headroom to support the delivery of the Medium-Term Financial Plan in future years in respect of pump-priming and Invest to Save schemes. Once the provisional financial settlement and indicative allocations have been announced by the Welsh Government in October 2015, this situation could be revisited but at the present time there is uncertainty in respect of the Revenue Support Grant (RSG) and other grant funding for 2016/17 and future years.
- 4.6 The following paragraphs comment on the 2014/15 underspends as detailed in Appendix A.

**Education and Lifelong Learning (£1.211m Underspend)**

- 4.7 Overall the Directorate (including Schools) is reporting an underspend of £1.211m. This includes an underspend of £312k for Schools, which will be taken to earmarked balances, and an underspend on central Education & Lifelong Learning of £899k. The most significant variances (over £100k) are as follows: -

	<b>(Over)/Under £000</b>
Home to School/College Transport	(167)
Behaviour Support	(115)
Relief/Supply Cover	109
Additional Support (Primary & Secondary)	(162)
SEN Out-of-County Recoupment	1,043
Grant Clawback (Ynys Hywel)	(104)



- 4.8 The Transport budget is managed by the Engineering Division (Environment Directorate), with variances ring-fenced to Education. An overspend of £167k has been reported, which is due to increased demand, primarily in relation to ALN (Additional Learning Needs) and SEN (Special Educational Needs) transport and a lack of capacity from taxi and minibus providers to compete for contracts. The transport protocol for Inclusion is currently being reviewed.
- 4.9 The overspend on the Behaviour Support budget is due in the main to a planned investment in Behaviour Support training across Primary and Secondary Schools. To date, an amount of £62k has been spent to address behavioural issues that are giving rise to increasing cost pressures across Additional Support, EOTAS (Education Other Than at Schools) and an increase in potential Tribunal cases. This one-off investment which will run into 2015/16 is essential to assist in Medium-Term Financial Plan savings targets moving forward.
- 4.10 The Relief/Supply Cover budget funds the school costs of sickness in the Special Resource Bases and maternity leave. The nature of this budget means that there is always a level of uncertainty year-on-year.
- 4.11 The overspend on Additional Support (Primary & Secondary) is closely linked to an increase in Statements around ASD (Autistic Spectrum Disorder), which is a national trend.
- 4.12 The underspend on the Recoupment budget (Special Educational Needs and Looked after Children) includes a one-off saving arising from the release of £611k of Out-of-County accruals from previous financial years. The in-year underspend of £432k should be considered alongside the Additional Support budget. Whilst the Additional Support budget is overspent, this cost is significantly less than the cost of an Out-of-County placement.
- 4.13 During the 2014/15 financial year a payment £104k was made to the Big Lottery Fund following a breach of grant terms and conditions in relation to Ynys Hywel Outdoor Education facility. The breach related to the disposal (sale) of this asset, for which grant funding had been received dating back to project commencement in 2003 and final claim completion in 2007. Funding of £348k had been received from the Big Lottery and the asset retention period was 20 years.
- 4.14 Additional income received in-year, vacancies and savings linked to the Directorate's Medium-Term Financial Plan have also contributed significantly to the overall underspend for the Directorate.
- 4.15 During the 2014/15 financial year LMS Contingency funding of £150k was used to purchase IT equipment for Schools. This will be repaid by Schools over a period of 5 years and represents better value for money than using external leasing arrangements.
- 4.16 Cabinet will be aware that the Welsh Government has supported a £1.5m bid for a permanent extension to Islwyn High School to accommodate 5 additional classrooms, additional toilet facilities and an extended dining hall. This approval is part of CCBC's 21<sup>st</sup> Century Schools funding (Band A programme) and as such CCBC is required to match fund with WG on a 50/50 basis. It is proposed that the 50% CCBC share (£750k) is funded from accumulated Education & Lifelong Learning service reserves.
- 4.17 Caerphilly CBC officers are currently working with Torfaen CBC (Lead Sponsor) and other Partners to secure European Social Fund (ESF) funding for the continuation of Bridges into Work (BIW) and Working Skills for Adults (WSFA). BIW (non Communities First Areas) will work with participants aged 25 years and older who have been unemployed for at least 3 years or economically inactive. The project aim is to support residents to achieve qualifications, access volunteering opportunities and gain paid employment (anticipated participants of 520 over 3 years). The WSFA project aims to upskill working people aged 16 years and over to gain accredited qualifications. These will include essential skills, ICT and relevant vocational qualifications (anticipated participants of 240 over 3 years).

- 4.18 The 2 projects will attract ESF funding of circa £1.5m for Caerphilly CBC covering a three-year period and the funding offers will need to be accepted in early August 2015. However, to receive this funding Caerphilly CBC has to provide total cash-backed matched funding of up to £543k over the three-year period. Cabinet is requested to approve the use of Education & Lifelong Learning service reserves to fund the matched-funding requirement of up to £543k.

#### **Social Services (£3.754m Underspend)**

- 4.19 The overall outturn position in respect of Social Services for 2014/15 is an underspend of £3.754m. £32k of this underspend relates to the Integrated Transport Unit (ITU) within the Environment Directorate and arises from more efficient practices in respect of the transport of looked after children. The remaining underspend of £3.722m relates to budgets managed solely within the Directorate of Social Services.
- 4.20 £392k of the underspend can be attributed to posts held vacant in anticipation of savings requirements for the 2015/16 financial year. £967k of the underspend has also enabled the Directorate to minimise the impact of savings requirements for the 2015/16 financial year by allowing budgets to be realigned to actual spending and demand levels experienced in 2014/15.
- 4.21 A further £1m of the underspend will help the Directorate to absorb the additional demographic pressures anticipated in 2015/16 without the need for additional corporate funding. As a result, the £1m demographic growth for Social Services that had been earmarked in earlier approved drafts of the Medium-Term Financial Plan was removed from the final 2015/16 budget.
- 4.22 Of the remaining £1,363k underspend, £786k related to Children's Services, £324k related to Adult Services and £253k related to Business Support Services.
- 4.23 The underspend in Children's Services includes one off savings of £178k resulting from a refund of contributions from the Blaenau Gwent and Caerphilly Youth Offending Service and additional vacancy savings achieved while appointing to revised structures that were agreed as part of the 2014/15 budget settlement. The remaining underspend of £608k can be attributed to the success of strategies to manage demand for child placements but with some placements costing in excess of £200k per year this budget area is extremely volatile.
- 4.24 After adjusting for the implications of the 2015/16 budget strategy, the remaining underspend of £324k in Adult Services amounts to just 0.6% of the Adult Services budget.
- 4.25 The underspend within Business Support Services is largely due to one-off savings resulting from favourable settlements in respect of the construction costs of the Rhymney Integrated Resource Centre and service charge refunds in respect of the former lease of Hawtin Park.
- 4.26 As a result of the underspend in 2014/15, the Directorate's accumulated service reserves will increase to £3.4m. However, after the 2015/16 Social Services budget was approved in February 2015, Welsh Government announced a significant reduction in Caerphilly's Supporting People Grant allocation. This late announcement has left no time to plan and it is therefore proposed to transfer an amount of £474k from service reserves into a earmarked reserve to mitigate the financial impact for 2015/16 while a sustainable solution is developed for the longer-term.
- 4.27 It is also proposed to transfer an amount of £400k from accumulated service reserves in order to create an earmarked reserve for Caerphilly CBC's liability in respect of future repayments of the Welsh Government Invest to Save loan awarded to the Gwent Frailty Partnership. Initially it had been anticipated that the Partnership would deliver recurring savings for the Directorate, which could be used to fund the loan repayments. However, any savings that have been achieved have been more than offset by additional demand on Frailty services. Therefore, the creation of this reserve will avoid the need to create an additional revenue budget to fund repayments due through to the 2020/21 financial year.

## **Environment Directorate (£981k Underspend)**

- 4.28 The overall outturn position for the Environment Directorate after the approved use of service reserves is an underspend of £981k. This underspend does not include ring-fenced underspend of £32k in relation to Social Services Transport and ring-fenced overspend of £167k in relation to Home to School Transport. These variations are included in the Social Services and Education & Lifelong Learning Directorates' outturn positions respectively.
- 4.29 The Regeneration and Planning Division is reporting an overall underspend of £522k. This is mainly due to staff vacancies in Business Enterprise Support, Urban Renewal and Planning Development Control, reduced operational costs and increased income generation (particularly in relation to some of the Tourism Visitor Centres and Industrial Properties). These underspends are partly offset by overspends in relation to a shortfall in fee income in Planning Development Control and Building Control and also costs associated with the wind down of the GO 2 Initiative and costs associated with voluntary severances for staff at Blackwood Miners Institute. Whilst the level of underspend is significant, it needs to be noted that the Regeneration & Planning Division have been subject to 2015/16 budget cuts of £622k towards MTFP savings and a large element of the 2014/15 underspend relates to savings achieved in advance.
- 4.30 The Engineering Division is reporting an underspend of £104k (excluding the underspend noted above in relation to Social Services Transport (£32k) and the overspend in relation to Home to School Transport (£167k)). An overspend of £590k in relation to Highway General Road Maintenance and Flood & Drainage Works is offset by an underspend in relation to Winter Maintenance and underspends in Transport Engineering, Traffic Management, Engineering Projects Group and Concessionary Fares income.
- 4.31 The Head of Engineering Services has submitted a proposal to establish a ring-fenced Winter Maintenance reserve to help deal with instances of severe winter weather. The proposal is to ring-fence underspends on the Winter Maintenance budget and set these aside in a reserve with a maximum cumulative value of £500k. This proposal has been considered by the Acting Director of Corporate Services & S151 Officer and the Interim Head of Corporate Finance and it is recommended that the full Winter Maintenance underspend should be ring-fenced to a reserve on an annual basis (subject to the £500k cap) where other budgets within the Engineering Division are reporting a net underspend. In financial years where a net overspend is reported on other Engineering Services budgets any transfer into the ring-fenced Winter Maintenance reserve would be adjusted to take account of the overspend.
- 4.32 For the 2014/15 financial year the Winter Maintenance budget has underspent by £383k. However, other budgets within the Engineering Services Division are reporting an overspend of £279k resulting in a net overall underspend of £104k. Due to the timing of this report £52k of this net underspend has already been transferred to the General Fund. Cabinet is therefore asked to approve the transfer of the remaining £52k into a ring-fenced Winter Maintenance reserve.
- 4.33 The Public Protection Division is reporting an overall underspend of £218k, the most significant elements of which are underspends in relation to Trading Standards & Licensing £97k, Environmental Health £50k and Catering £71k. These underspends are mainly due to a combination of staff vacancies (£43k of which is due to posts not being filled to support Medium-Term Financial Plan savings for 2015/16), reduced operational costs and increased income generation primarily in relation to Pest Control and Schools Catering. These underspends are partly offset by overspends mainly in relation to Pollution Control issues.
- 4.34 The Community & Leisure Division has reported a net overall underspend of £128k. However this includes a £216k overspend in Waste Management & Cleaning Services, primarily due to ongoing increases in dry recycling treatment costs and costs associated with dealing with increased recyclable waste at Civic Amenity sites. There is a £480k underspend in relation to Cemeteries, which is ring-fenced for future investment in Council cemeteries provision.

- 4.35 The Direct Labour and Direct Service operations (Building Cleaning, NCS and Vehicle Fleet Management) have overall reported healthy cash profits of £206k.
- 4.36 There is £197k of unallocated vacancy management savings for the Directorate, which are reported as an overspend. This unallocated saving is being addressed through new savings proposals as part of the ongoing work on the Directorate's Medium-Term Financial Plan.

#### **Corporate Services – (£944k Underspend)**

- 4.37 The final outturn position for the Directorate of Corporate Services is an underspend of £944k, the most significant elements of which are the following:-
- Corporate Finance is reporting an overall underspend of £531k. This relates in the main to delays in appointing to vacant posts together with vacancies that have been held to support Medium-Term Financial Plan savings requirements for the 2015/16 financial year. A proportion of the underspend also relates to one-off grant funding of £133k.
  - Legal & Governance is reporting an underspend of £164k. This underspend was generated due to a delay in the backfilling of posts following the appointment of the Interim Head of Legal Services, vacancy management and additional one-off income.
  - Information and Citizens Engagement is reporting a net underspend of £130k due in the main to vacant posts being held to support the Medium-Term Financial Plan savings requirement for 2015/16.
  - Procurement is reporting an underspend of £59k due in the main to delays in appointing to vacant posts and one-off additional income generated in-year.
  - Health & Safety is reporting an underspend of £26k due to increased income.
  - Performance & Property is reporting a net underspend of £118k. The main underspends were on Corporate Buildings (due to energy savings) and reduced planned maintenance spend. Building Consultancy also reported an underspend of £22k due to extra fee income.
  - Private Housing reported an overspend of £58k which was attributable to the reduction of agency fee income as a consequence of a reduction in the Private Housing capital programme over recent years
  - General Fund Housing which includes Housing Advice and Homelessness underspent by £15k.
  - A net overspend of £41k is reported on other Corporate Services budgets.

#### **Miscellaneous Finance - (£1.707m Underspend)**

- 4.38 Budgets in Miscellaneous Finance underspent by £1.707m, the most significant elements of which are the following: -
- The Authority has utilised internal borrowing to part-fund its Capital Programme. This, along with a planned delay in borrowing at preferential rates has resulted in an underspend of £1.715m on debt charges. Savings that are recurring have been incorporated into the budget for 2015/16.
  - Returns on investments were better than anticipated resulting in an additional £244k of investment income. The 2015/16 budget assumes an increase in investment income.
  - A number of budget heads were identified as Medium-Term Financial Plan savings in advance contributing £452k to the 2014/15 underspend.
  - The reported underspends have been partially offset by setting aside funding to meet a potential WDA clawback in relation to the Oakdale Land Reclamation scheme. This was referred to in a report on Islwyn West Secondary School presented to Cabinet on the 17<sup>th</sup> June 2015.

### **Partial Release of Equal Pay Provision (£1.234m)**

- 4.39 As part of the regular review of earmarked reserves and provisions, due to the number of claims being settled the Equal Pay provision has been reduced resulting in £1.234m being released to working balances.

### **Council Tax Collection – (£1.414m Surplus)**

- 4.40 This represents an increase of £214k above the assumed level of £1.2m for the 2014/15 financial year.

### **Housing Revenue Account (£6,814m Underspend)**

- 4.41 Over half of the underspend for the HRA is attributable to unrequired revenue contributions to the WHQS Capital Programme (£3.8m). This was anticipated throughout the year as it became apparent during surveys that a high level of previously achieved works had already been carried out (36% of the Programme). There were also delays in awarding internal works contracts and issues with small lots contracts.
- 4.42 £340k of the underspend was due to salary savings, mainly from turnover of staff. £1.3m of savings also arose on the Housing Subsidy and Capital Financing Recharges due to the guideline rent given by WG, and interest rates being lower than estimated. An underspend of £1.6m was also identified from the Building Maintenance budget, in particular the non-DLO budget, which was not fully utilised due to the in-house response team undertaking more work directly rather than needing support from external contractors.
- 4.43 Members are asked to note and endorse an appropriation arising from Ty Croeso (which generated a surplus on its lease of £50k) intended for future repairs and maintenance of the building and investment into preventing homelessness. The scheme was recently refurbished at a cost of £500k funded from Housing General Fund balances; therefore any lease surplus will be appropriated to Housing General Fund. It is intended to transfer this asset to General Fund Housing as the scheme meets the needs of homelessness which is a Council function.
- 4.44 HRA Working Balances stand at £21m at the end of 2014/15. The majority of this funding is earmarked for the WHQS programme.

### **HRA Capital**

- 4.45 Total expenditure on the WHQS Capital Programme for 2014/15 was £15.3m, which consisted primarily of internal works and resulted in some 700 properties being completed. The Programme underspent against its budget by some £13.5m which was predicted early in the year as high levels of previously achieved works became evident along with issues with internal works contracts and resources. To address the underspend and maintain the workflow for the in-house Team, the 2015/16 Programme has been revised to reflect the slippage coming forward.
- 4.46 There were 24 Right to Buy sales during the year resulting in a useable capital receipt of £420k.

### **General Fund Capital Programme**

- 4.47 The General Fund Capital Programme for 2014/15 resulted in targeted spend available of £55.4m after including all in-year grant allocations and Section 106 monies. An amount of £27.6m remains unspent at financial year-end, the majority of which represents slippage that will be carried forward into the 2015/16 financial year. The most significant areas of slippage relate to Education and the 21<sup>st</sup> Century Schools Programme (£13.4m), Urban Renewal (£4m), the Engineering Division (£3.6m), Property Services (£2.4m) and Community and Leisure Services related schemes (£2.1m).

- 4.48 A detailed analysis of capital expenditure and slippage was presented to the Capital Strategy Group on the 22nd June 2015 and a report will be presented to the P&R Scrutiny Committee on the 30th September 2015.

### **Usable Service Reserves**

- 4.49 As outlined in paragraph 4.3, after adjusting for earmarked reserves 50% of underspends are carried forward by Directorates and are available to meet the requirements of these service areas in subsequent financial years. The table below provides a summary of the reserves arising from cumulative Directorate underspends along with projected balances assuming that recommendations within this report are agreed by Cabinet: -

<b>Service Area</b>	<b>Opening Balance (01/04/14) £000's</b>	<b>In-Year Movement £000's</b>	<b>Closing Balance (31/03/15) £000's</b>	<b>Proposed Use Of Reserves £000's</b>	<b>Projected Balance (31/03/16) £000's</b>
<b>Education &amp; LL</b>	<b>1,552</b>	326	<b>1,878</b>	<b>(1,293)</b>	<b>585</b>
<b>Social Services</b>	<b>1,717</b>	1,675	<b>3,392</b>	<b>(874)</b>	<b>2,518</b>
<b>Environment</b>	<b>419</b>	205	<b>624</b>	<b>(52)</b>	<b>572</b>
<b>Corporate Services</b>	<b>874</b>	494	<b>1,368</b>	0	<b>1,368</b>
<b>Totals: -</b>	<b>4,562</b>	<b>2,700</b>	<b>7,262</b>	<b>(2,219)</b>	<b>5,043</b>

- 4.50 A reserves strategy is currently in the process of being drafted and this will be presented to Cabinet during the Autumn.

## **5. EQUALITIES IMPLICATIONS**

- 5.1 There are no direct equalities implications to this report in terms of the financial information being presented for 2014/2015.

## **6. FINANCIAL IMPLICATIONS**

- 6.1 As detailed throughout the report.

## **7. PERSONNEL IMPLICATIONS**

- 7.1 There are no direct personnel implications arising from this report.

## **8. CONSULTATIONS**

- 8.1 There are no consultation responses that have not been reflected in this report.

## **9. RECOMMENDATIONS**

- 9.1 It is recommended that Cabinet: -  
i) Notes the provisional 2014/15 outturn position.

- ii) Approves the recommendation to utilise £750k of Education & Lifelong Learning service reserves to match-fund the cost of the permanent extension at Islwyn High School (paragraph 4.16).
- iii) Approves the recommendation to utilise up to £543k of Education & Lifelong Learning service reserves to match-fund the ESF funding for the Bridges into Work and Working Skills for Adults projects (paragraphs 4.17 and 4.18).
- iv) Approves the use £474k of funding from Social Services accumulated reserves to mitigate the 2015/16 financial impact of the cut in Supporting People grant while a sustainable solution is developed for the longer-term (paragraph 4.26).
- v) Agrees to the transfer of £400k from accumulated service reserves to an earmarked reserve to fund Caerphilly CBC's liability in respect of future Welsh Government Invest to Save loan repayments for the Gwent Frailty Programme (paragraph 4.27).
- vi) Approves the establishment of a ring-fenced Winter Maintenance reserve with a cumulative maximum value of £500k and the transfer of £52k into this reserve in respect of the 2014/15 financial year (paragraphs 4.31 and 4.32).
- vii) Notes and endorses the £50k appropriation for future repairs and maintenance at Ty Croeso (paragraph 4.43).
- viii) Approves the transfer of Ty Croeso from a Housing Revenue Account (HRA) asset to a General Fund asset (paragraph 4.43).

## **10. REASONS FOR THE RECOMMENDATIONS**

- 10.1 To ensure that Cabinet Members are aware of the provisional outturn for the 2014/15 financial year.
- 10.2 To secure Cabinet approval of proposals for the utilisation of service reserves.

## **11. STATUTORY POWER**

- 11.1 Local Government Act 1972.

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Consultees: Corporate Management Team  
 Cllr Keith Reynolds, Leader  
 Cllr Barbara Jones, Deputy Leader & Cabinet Member for Corporate Services  
 Mike Eedy, Finance Manager, Environment  
 Andrew Southcombe, Finance Manager, Corporate Finance  
 Jane Southcombe, Financial Services Manager, Education & Lifelong Learning  
 Mike Jones, Interim Financial Services Manager, Social Services  
 Lesley Allen, Principal Accountant, Housing  
 Gail Williams, Interim Head of Legal Services & Monitoring Officer

Background Papers: -

Stephen Harris Ext. 3022 – Final Accounts working papers for 2014/15

Appendices:-  
 Appendix A - Provisional Outturn Summary 2014/15  
 Appendix B - Movements on General Fund

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## PROVISIONAL OUTTURN 2014/15

## SUMMARY

SERVICE AREA	UNDERSPEND (OVERSPEND) £'000'S	TAKE TO GENERAL FUND £'000'S
Education & Lifelong Learning	899	449
Social Services	3,754	1,877
Environment	981	211
Corporate Services	944	502
Miscellaneous Finance	1,707	1,707
Partial Release of Equal Pay Provision	1,234	1,234
Council Tax Surplus	1,414	1,414
<b>TOTALS</b>	<b>10,933</b>	<b>7,394</b>

OTHER	UNDERSPEND (OVERSPEND) £'000'S	TAKE TO GENERAL FUND £'000'S
Housing Revenue Account (HRA)	6,814	N/A
Schools	312	N/A
<b>OVERALL TOTAL SURPLUS</b>	<b>18,059</b>	<b>7,394</b>

Service area surpluses are subject to a 50% take to General Fund balances after specific agreed earmarking of funds. Miscellaneous Finance and Council Tax surpluses are transferred in total to General Fund balances.

School and HRA balances must be ringfenced to those service areas.

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## APPENDIX B

**MOVEMENT ON GENERAL FUND**

	£000's	£000's
<b>Opening Balance 01/04/2014</b>		<b>16,135</b>
<b>Use of Funds as Previously Agreed by Council: -</b>		
A469 Closure Remedial Works	(132)	
21 <sup>st</sup> Century School Match Funding	(735)	
Proposed Waste Transfer Station	(850)	
2013/14 Council Tax Surplus to Support 2014/15 Budget	(1,200)	
Provision for Senior Officer Suspension Costs	(395)	
One-Off Funding to Support 2015/16 Savings Proposals	(1,822)	
Transfer to Earmarked Reserve to Support Capital Programme	(4,845)	
<b>Total Funds Taken In-Year</b>		<b>(9,979)</b>
<b>Funds Transferred into General Fund: -</b>		
Education & Lifelong Learning – 50% of 2014/15 Underspend	449	
Social Services – 50% of 2014/15 Underspend	1,877	
Environment – 50% of 2014/15 Underspend	211	
Corporate Services – 50% of 2014/15 Underspend	502	
Miscellaneous Finance – 100% of 2014/15 Underspend	1,707	
Partial Release of Equal Pay Provision	1,234	
Council Tax Surplus 2014/15	1,414	
Industrial Action Clawback 2014/15	233	
Release of Earmarked Reserves and Provisions 2014/15	821	
<b>Total General Fund Contribution 2014/15</b>		<b>8,448</b>
<b>Total In-Year Movement</b>		<b>(1,531)</b>
<b>Closing Balance 31/03/2015</b>		<b>14,604</b>
<b>2015-16 Commitments Previously Agreed by Council :-</b>		
2014/15 Council Tax Surplus to Support 2015/16 Budget Savings	(1,200)	
Increase in Provision for Senior Officer Suspension Costs	(278)	
		<b>(1,478)</b>
<b>Anticipated Closing Balance 31/03/2016</b>		<b>13,126</b>

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## CABINET – 29TH JULY 2015

**SUBJECT: NATIONAL NON-DOMESTIC RATE RELIEF GRANT FUNDING – WG  
'WALES RETAIL RELIEF SCHEME' 2015/16**

**REPORT BY: ACTING DIRECTOR OF CORPORATE SERVICES AND S151 OFFICER**

---

### **1. PURPOSE OF REPORT**

- 1.1 The Welsh Government (WG) Minister for Economy, Science and Transport has announced a new national non-domestic rate (NNDR), also known as business rate, 'Wales Retail Relief Scheme' 2015/16. Relief granted by the Authority under this new scheme is to be reimbursed by WG by way of a specific cash-limited grant but, before any relief is awarded, the Authority must consider and adopt the new scheme. Approval is therefore sought to adopt the new retail relief scheme in accordance with the guidance set out at Appendix 1.

### **2. SUMMARY**

- 2.1 This report gives details of a new rate relief scheme offered by WG and attaches at Appendix 1 details of the new Scheme. Adoption of the new scheme as set out at Appendix 1 is obligatory because WG has prescribed the details for the scheme. The Authority must formally adopt the new scheme set out in the guidance at Appendix 1 in order to obtain the WG grant funding.

### **3. LINKS TO STRATEGY**

- 3.1 This grant-funded initiative is aimed at developing economic activity in Wales. This is linked to the Anti-Poverty Strategy and the Prosperous theme from the Caerphilly Delivers - Single Integrated Plan.

### **4. THE REPORT**

- 4.1 WG has announced the 'Wales Retail Relief Scheme' 2015/16 (the Scheme). It is intended that the relief under the Scheme will be made available subject to the Authority adopting the new Scheme as set out in the guidance at Appendix 1 and accepting the grant offer.
- 4.2 The Scheme aims to provide assistance for eligible occupied retail non-domestic properties with a rateable value of £50,000 or less by offering relief of up to £1,500 on the business rate bill for the financial year 2015/16, subject to State Aid limits. The estimated funding for the Scheme in respect of this Authority is £724k but the grant terms allow the Authority to submit evidence no later than 31st October 2015 to WG to increase this, if the estimate proves inadequate.

- 4.3 This is the second consecutive year in which WG has established a 'Wales Retail Relief Scheme'. The only difference between this year's scheme and last year's scheme is the amount of relief offered; in 2014/15 the maximum relief offered was £1,000 whereas in 2015/16 this amount has been increased to £1,500.
- 4.4 Relief is to be provided under Section 47 of the Local Government Finance Act 1988 in accordance with the criteria and conditions specified in the guidance set out at Appendix 1 of this report.
- 4.5 Appendix 1 is a guidance document issued by WG which in effect prescribes the detailed criteria and conditions for the Scheme.
- 4.6 In order to qualify for this rate relief, the guidance requires that the ratepayer completes an application form issued by the Authority relating to the Scheme; such application to be submitted to the Authority within the time periods detailed in the guidance.
- 4.7 As a condition of accepting the grant offer, the Authority must make the business community aware of the Scheme through its usual channels, such as its website, Town Centre Newsletter and the 'Newsliner' publication. In addition, the Authority must write to ratepayers that it considers to be eligible for relief under the Scheme to inform them about the availability of relief and to provide information on the application process. The Authority's Business Rate Team will therefore write to all eligible businesses enclosing the appropriate application form to try and maximise take up of the Scheme.
- 4.8 Full details of the Scheme, including the qualifying criteria, are included in the guidance set out at Appendix 1.

## **5. EQUALITIES IMPLICATIONS**

- 5.1 WG has carried out an Equality Impact Assessment (EIA) regarding their 'Wales Retail Relief Scheme'. No evidence has been identified to suggest that the Scheme would have a differential impact on any of the protected characteristics. Each application will be dealt with on its own merits, but will follow the guidance set out in Appendix 1

## **6. FINANCIAL IMPLICATIONS**

- 6.1 There are no direct financial implications to the Authority as the Authority will be reimbursed by Welsh Government for any relief granted, provided it can evidence no later than 31<sup>st</sup> October 2015 (if needed) that any additional expenditure falls within the terms of the 'Wales Retail Relief Scheme' 2015/16 grant offer.
- 6.2 Based on an initial assessment of qualifying businesses for the 'Wales Retail Relief Scheme' 2015/16, this funding will be utilised for circa 560 businesses. These figures are subject to change due to the daily amendments made to the Authority's rating list.

## **7. PERSONNEL IMPLICATIONS**

- 7.1 Regarding the 'Wales Retail Relief Scheme' 2015/16, a small administration grant of £1,500 is offered by WG regarding the work undertaken to deliver the scheme.

## **8. CONSULTATIONS**

- 8.1 There are no consultation responses which have not been reflected in this report.

## **9. RECOMMENDATIONS**

- 9.1 It is recommended that Cabinet adopts, with immediate effect, the Wales Retail Relief Scheme 2015-2016, in accordance with the guidance set out at Appendix 1 and the provisions of section 47(1)(a) and section 47(3) of the Local Government Finance Act 1988.

## **10. REASONS FOR THE RECOMMENDATIONS**

- 10.1 To ensure that the Authority complies with the grant conditions in order to obtain and fully utilise the grant funding in respect of any rate relief awarded under the WG Scheme as detailed in the guidance set out at Appendix 1.

## **11. STATUTORY POWER**

- 11.1 Local Government Finance Act 1988 and Local Government Act 1972, 2000 and 2003.

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Anwen Rees, Equalities Training & Promotions Officer

Background Papers:

Contact Council Tax and NNDR Manager (ext. 3421)

Appendix 1: 'Wales Retail Relief 2015-16 - Guidance'

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# Business Rates

Wales Retail Relief 2015-16

Guidance

Version 1

# Contents

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# Business Rates Wales Retail Relief – Guidance

## About this guidance

1. This guidance is intended to support local authorities in administering the “Wales Retail Relief Scheme” announced by the Welsh Government in April 2015. This Guidance applies to Wales only.
2. This guidance sets out the detailed criteria which the Welsh Government will use to determine funding relief for retail properties. The Guidance does not replace existing legislation on retail properties or any other relief.
3. This is Version 1 of the Wales Retail Relief 2015-16 Guidance.
4. Enquiries on the Schemes should be sent to: [businessrates@wales.gsi.gov.uk](mailto:businessrates@wales.gsi.gov.uk)
5. The relief is being offered from 1 April 2015 and will be available until 31 March 2016. Applications for relief under the Wales Retail Relief 2015-16 scheme will not be accepted after 31 March 2016.

## Introduction

6. The retail sector is changing, particularly due to internet shopping, and many high streets are having to adapt to changing consumer preferences in how people shop. This relief aims to support businesses in Wales that are responding to the challenges that result from this changing retail environment. It is also aimed at contributing to the development of sustainable and vibrant town centres.
7. The Welsh Government has announced that it will provide relief of up to £1,500 on the business rates bill for all occupied retail properties with a rateable value of £50,000 or less in the financial year 2015-16, subject to State Aid limits.
8. This document provides guidance on the operation and delivery of the scheme.

# Section 1:

## Wales Retail Relief 2015-16

### How will the relief be provided?

9. As this is a temporary measure, we are providing the relief by reimbursing local authorities that use their discretionary relief powers (under section 47 of the Local Government Finance Act 1988). It will be for individual local billing authorities to decide to grant relief under section 47 but the Welsh Government will reimburse local authorities for the relief that is provided in line with this guidance (using a grant under s31 of the Local Government Act 2003).

### How will the scheme be administered?

10. Local authorities will be asked to identify the total amount of relief provided under the scheme in their National Non Domestic Rate Return 3 (NNDR3) return. A line will be provided in the NDR3 return for this purpose.
11. Due to the State Aid requirements, the Scheme is application based.
12. Local authorities are responsible for providing ratepayers with clear and accessible information on the application process.

### Which properties will benefit from relief?

13. Properties that will benefit from the relief will be occupied hereditaments with a rateable value of £50,000 or less, that are wholly or mainly being used as retail premises, that is, shops, restaurants, cafes and drinking establishments.
14. We intend that, for the purposes of the scheme, “shops, restaurants, cafes and drinking establishments” will mean as follows (but subject to the other criteria in this guidance):
  - i. **Hereditaments that are being used for the sale of goods to visiting members of the public:**
    - Shops (such as: florist, bakers, butchers, grocers, greengrocers, jewellers, stationers, off licence, newsagents, hardware stores, supermarkets, etc)
    - Charity shops
    - Opticians
    - Pharmacies
    - Post offices

- Furnishing shops/ display rooms (such as: carpet shops, double glazing, garage doors)
- Car/ caravan show rooms
- Second hand car lots
- Markets
- Petrol stations
- Garden centres
- Art galleries (where art is for sale/hire)

**ii. Hereditaments that are being used for the provision of the following services to visiting members of the public:**

- Hair and beauty services
- Shoe repairs/ key cutting
- Travel agents
- Ticket offices e.g. for theatre
- Dry cleaners
- Launderettes
- PC/ TV/ domestic appliance repair
- Funeral directors
- Photo processing
- DVD/ video rentals
- Tool hire
- Car hire
- Cinemas
- Estate and letting agents

**iii. Hereditaments that are being used for the sale of food and/ or drink to visiting members of the public:**

- Restaurants
- Drive through/drive in restaurants
- Takeaways
- Sandwich shops
- Cafés
- Coffee shops
- Pubs
- Wine Bars

15. To qualify for the relief the hereditament should be wholly or mainly being used as a shop, restaurant, café or drinking establishment. This is a test on use rather than occupation. Therefore, hereditaments which are occupied but not wholly or mainly used for the qualifying purpose will not qualify for the relief.
16. The list set out above is not intended to be exhaustive as it would be impossible to list the many and varied retail uses that exist. There will also be mixed uses. However, it is intended to be a guide for authorities as to the types of uses that the Welsh Government considers for this purpose to be retail. Authorities should determine for themselves whether particular properties not

listed are broadly similar in nature to those above and, if so, to consider them eligible for the relief. Conversely, properties that are not broadly similar in nature to those listed above should not be eligible for the relief.

17. As the grant of the relief is discretionary, authorities may choose not to grant the relief if they consider that appropriate, for example where granting the relief would go against the authority's wider objectives for the local area.
18. The list below sets out the types of uses that the Welsh Government does not consider to be retail use for the purpose of this relief.

**i. Hereditaments that are being used wholly or mainly for the provision of the following services to visiting members of the public:**

- Financial services (e.g. banks, building societies, cash points, bureau de change, payday lenders, betting shops, pawn brokers)
- Medical services (e.g. vets, dentists, doctors, osteopaths, chiropractors)
- Professional services (e.g. solicitors, accountants, insurance agents/ financial advisers, tutors)
- Post office sorting office
- Tourism accommodation such as B&Bs, hotel accommodation and caravan parks
- Sports clubs
- Children's play centres
- Day nurseries
- Outdoor activity centres
- Gyms
- Kennels and catteries
- Show homes and marketing suites
- Employment agencies

**ii. Hereditaments that are not reasonably accessible to visiting members of the public**

19. Accordingly, if a hereditament falls within paragraph 18(i) or (ii) it will be ineligible for relief under the scheme even if there is ancillary use of the hereditament that might be considered to fall within the descriptions in paragraph 14 (i), (ii) or (iii).

### **How much relief will be available?**

20. The total amount of government-funded relief available for each property for 12 months under this scheme is £1,500. The amount does not vary with rateable value and there is no taper. There is no relief available under this scheme for properties with a rateable value of more than £50,000. Local authorities may however use their discretionary powers to offer further discounts outside this scheme.

21. The eligibility for the relief and the relief itself will be assessed and calculated on a daily basis. The following formula should be used to determine the amount of relief to be granted for a particular hereditament in the financial year:

$$\text{Amount of relief to be granted} = \text{£}1500 \times \frac{A}{B}$$

Where:

A is the number of days in the financial year that the hereditament is eligible for relief; and

B is the number of days in the financial year

22. Wales Retail Relief can be provided in addition to Small Business Rates Relief as well as any hardship or discretionary relief awarded by the local authority. The relief will be applied against the net bill after the other reliefs have been applied.
23. Where the net rate liability for the day after all other reliefs but before retail relief is less than the retail relief, the maximum amount of this relief will be no more than the value of the net rate liability. This should be calculated ignoring any prior year adjustments in liabilities which fall to be liable on the day.
24. Ratepayers that occupy more than one property will be entitled to relief for each of their eligible properties, subject to State Aid de minimis limits.

### **Splits, mergers, and changes to existing hereditaments**

25. The relief should be applied on a day to day basis using the formula set out above. A new hereditament created as a result of a split or merger during the financial year, or where there is a change of use, should be considered afresh for the relief on that day.

### **State Aid**

26. State Aid law is the means by which the European Union regulates state funded support to businesses. Providing discretionary relief to ratepayers is likely to amount to State Aid. However Wales Retail Relief will be State Aid compliant where it is provided in accordance with the De Minimis Regulation (1407/2013).
27. The De Minimis Regulation allows an undertaking to receive up to €200,000 of De Minimis aid in a three year period (consisting of the current financial year and the two previous financial years).
28. Desk instructions covering the administration of De minimis schemes are available at:

<http://wales.gov.uk/topics/businessandconomy/stateaid/guidance/deminimus/?lang=en>

## Section 2 – Calculation examples for 2015-16

### Example 1 – An occupied shoe shop with a rateable value of £40,000

Rateable Value = £40,000

Rates due (excluding any reliefs)	= £40,000 x 0.482	= £19,280
Minus 12 months Wales Retail Relief	= £19,280 - £1,500	= £17,780
Rates due (including Wales Retail Relief)		= <b>£17,780</b>

### Example 2 – A shoe shop with a rateable value of £40,000 that is unoccupied between 1 April 2015 and 30 September 2015 and is then occupied until 31 March 2016.

Rateable Value = £40,000

Rates due (excluding any reliefs)	= £40,000 x 0.482	= £19,280,
Minus 3 months (no empty rates payable)	= £40,000 x 0.482 x $\frac{91}{365}$	= £4,806.79
Minus 6 months Wales Retail Relief (01/10/15-31/03/16)	= £1,500 x $\frac{182}{365}$	= £747.94
Total due for year		= <b>£13,725.27</b>

### Example 3 – An occupied shoe shop with a rateable value of £10,000 that is in receipt of small business rate relief of £473 per year.

Rateable Value = £10,000

Rates due (excluding any reliefs)	= £10,000 x 0.482	= £4,820
Minus small business rate relief of 10%	= £4,820 - £482	= £4,338
Minus 12 months Wales Retail Relief	= £4,338 - £1,500	= £2,838
Rates due (including all reliefs)		= <b>£2,838</b>





## CABINET – 29TH JULY 2015

**SUBJECT: PROPOSED PUBLIC SPACES PROTECTION ORDERS AT BARGOED, BLACKWOOD, NELSON AND CAERPHILLY BUS STATIONS (INCLUDING CAERPHILLY TRAIN STATION AREA) AND VARIOUS BUS SHELTERS**

**REPORT BY: DIRECTOR OF SOCIAL SERVICES**

---

### **1. PURPOSE OF REPORT**

- 1.1 To seek a Cabinet decision to bring into being new Public Spaces Protection Orders (PSPOs), under the Anti-Social Behaviour, Crime and Policing Act 2014, to alleviate anti-social behaviour at local authority bus stations namely Bargoed, Blackwood, Nelson and Caerphilly (including Caerphilly Train Station area) and various bus shelters.

### **2. SUMMARY**

- 2.1 The Anti-Social Behaviour, Crime and Policing Act 2014 brought in a new power for local authorities to deal with anti-social behaviour problems in a geographical area by imposing conditions on the use of an area. The aim is to ensure that the law-abiding majority can use and enjoy public spaces, safe from anti-social behaviour.
- 2.2 PSPO's replace a number of existing legal provisions including Designated Public Place Orders, Gating Orders and Dog Control Orders. Existing Orders made under previous legislation subsist for a period of 3 years from October 2014; at this point they will be treated as PSPO's.
- 2.3 PSPO's can prohibit a wider range of behaviours than previous legislation. PSPO's are subject to a consultation and notification process and may be appealed in the High Court within 6 weeks of an order being made. An appeal may be made by an 'Interested Person' i.e. a person who lives, works in, or regularly visits the 'Restricted Area'.
- 2.4 This report considers the need, reasonableness, consultation and enforcement of the PSPOs as described.

### **3 LINKS TO STRATEGY**

- 3.1 The single integrated plan replaces the statutory community safety partnership plan and encompasses the strategic aims of the partnership through the 'Safer Caerphilly' theme. Statutory partners deliver two key priorities relevant to this report:

S1- Reduce Anti-social behaviour and reduce the fear of becoming a victim of anti-social behaviour

S3- Reduce the harm caused to communities through substance misuse

## 4 THE REPORT

4.1 Section 59 of the Act allows a local authority to make a PSPO relating to the activities carried out, or likely to be carried out, in a public place if it is satisfied on reasonable grounds that two conditions are met:

- (i) activities are having a detrimental effect on the quality of life of those in the locality, or it is likely that they will do;
- (ii) that the activities are of a persistent or continuing nature, are unreasonable and justify the restrictions imposed by the order.

PSPOs subsist for a maximum of 3 years within which time they may be renewed or varied. A shorter time period can be set depending on the issue the PSPO is intended to control. The Orders annexed are intended to cover a three year period.

The Council can make a PSPO on any public space within its own area. The definition of a public space is wide and includes any place to which the public, or any section of the public, has access on payment or otherwise as a right by virtue of express or implied consent, for example a shopping centre.

Before making a PSPO a Council must consult with the local police via the Chief Officer and the Police and Crime Commissioner. Also any community representatives that they think appropriate for example a residents association, an individual or groups. Before making an Order the Council must publish a draft order in accordance with the required Regulations.

A PSPO can be drafted from scratch based on individual issue being faced in a particular public space and can include multiple restrictions and requirements in one order e.g. prohibit alcohol, and placing requirements on individuals carrying out certain activities.

Councils should ensure that measures are necessary to prevent the detrimental effect on those in the locality and reduce the likelihood of the detriment effect continuing or recurring.

Against this background the following consideration has been given to the introduction of PSPO's in Bus Stations and Bus Shelters.

The background to the proposed inclusion of the Caerphilly Train Station area is set out in the Report.

### 4.2 **Bus Stations and Bus Shelters**

The Safer Caerphilly Partnership, in discussions between Gwent Police and the Local Authority Community Safety Unit, Integrated Transport Unit and the Town Centre Development Manger have determined that Public Spaces Protection Orders at the four local authority bus stations and selected bus shelters (see Appendices 2 and 3) are needed to alleviate problems being experienced by members of the public.

4.3 In relation to bus stations Gwent Police have provided evidence of persistent youth annoyance, anti-social behaviour, substance misuse, damage to property and intimidation of members of the public taking place at Bargoed, Blackwood, Caerphilly and Nelson Bus Stations. Issues vary at each station. For example newly planted trees were recently damaged at the regenerated Nelson Bus Station. Bargoed Bus Station and Caerphilly Bus Station have a high number of reports related to youth anti-social behaviour.

4.4 Blackwood Bus Station suffers from congregations of homeless substance misusers who make use of the area for seating and shelter. Incidences of defecation in the waiting area, discarded needles, and persons injecting and sleeping in the public toilet are recorded. Homelessness support services work extensively with these individuals, however many are resistant to support. At present; there is no ability to prevent individuals sitting in the bus

stations all day. Persistent complaints are received from members of the public, local businesses and the taxi trade. Our local authority Cleansing staff have had to deal with the clean up of excrement, blood and drug paraphernalia. Enforcement operations are conducted by partners and proactive use is made of the CCTV system, however current resources and legal powers are not sufficient to address the persistent nature of the problems.

- 4.5 A Problem Solving Group convened to deal with issues at Blackwood Bus Station has drafted the proposed Order at Appendix 2 based on the Transport for London byelaws. Prior to the new Act enquiries were made with Welsh Government, however there was no ability for the local authority to consider similar controls at transport interchanges through good rule and governance byelaws.
- 4.6 The bus shelters in the proposed Orders at Appendix 3 have been the source of complaint from members of the public to the Integrated Transport Unit, Community Safety Wardens and Gwent Police. Due to the fact that complaints are only on record for these bus shelters it is not possible to extend the proposed controls to all local authority shelters.
- 4.7 Appended to this report are the terms of the proposed Orders (Appendices 2 and 3) and the 'Restricted Area' maps (Appendix 4) that delineate the extent of the bus stations based on enforceability and historical problems encountered. In relation to the listed bus shelters the restricted area will be confined to the area occupied by the bus shelter itself. Also appended are the Safer Caerphilly Partnership's Explanatory Notes for Public Space Protection Orders (Appendix 1).

#### 4.8 **Consideration and consultation**

In determining whether to make an Order the local authority must have consideration of the rights of freedom of expression and assembly in the European Convention on Human Rights. It is considered that the evidence of issues affecting the local community justifies their being brought into being.

- 4.9 The local authority is required to consult with the Chief Constable, the Office of the Police and Crime Commissioner, appropriate community representatives, and owners and occupiers of land in the restricted area. Further, the local authority must notify town and community councils. Consultation and notification has taken place and no adverse responses have been received. Gwent Police and the Integrated Passenger Transport Unit are particularly supportive.
- 4.10 In addition to statutory consultees consultation has taken place with British Transport Police and Arriva Trains Wales in relation to the Caerphilly Bus Station. The Caerphilly and Blaenau Gwent Youth Offending Service, the local bus companies and neighbouring business owners at the bus stations have also been consulted.
- 4.11 A summary of responses is given at Appendix 5.
- 4.12 As a result of the consultation Arriva Trains Wales, the lessees of Caerphilly Train Station, requested that the area proposed at the Caerphilly Bus Station be extended into their leased area of land to encompass the Caerphilly Train Station within the Restricted Area. The basis of the request was to make enforcement more seamless and allow British Transport Police to make use of the new provisions as partners in helping to control anti-social behaviour in the town. The British Transport Police evidence of anti-social behaviour supports this request as set out in the body of the Report; the evidence suggests that both areas should be treated in the same way. As the landowner Network Rail were consulted on the inclusion of the area within the Restricted Area, they have indicated that they are fully supportive of the proposal. For the purposes of the Restricted Area map, the Bus Station and Train Station are described as the Caerphilly Transport Interchange.

- 4.13 Stagecoach requested that an additional bus stop be included at Heol Aneurin, Penyrheol due to problems being experienced by their staff and the travelling public. This request is supported by Gwent Police evidence, the area is a persistent source of anti-social behaviour.
- 4.14 Proposed and new Public Space Protection Orders must be publicised. However the new legislative regime allows that local authority websites may be used instead of press notices. The text of the proposed PSPO's was publicised with a social media message driving the public towards a web page and also by public notices placed in the locations. Responses received were limited to complaints about anti-social behaviour in areas not subject to the proposed Public Space Protection Orders. These have been progressed by referral to the Community Safety Warden Service.
- 4.15 **Enforcement**
- The local authority must provide sufficient signage to allow users of the area to be aware of the conditions imposed and the consequences of non-compliance.
- 4.16 It is an offence to breach a provision in a Public Spaces Protection Order punishable by a fine up to level 3 on the standard scale (£1000). In relation to restrictions relating to alcohol the fine is up to level 2 on the standard scale (£500). Alternatively a fixed penalty notice may be offered. The local authority has authorised its Community Safety Wardens to issue fixed penalty notices in the amount of £100 for breaches, reduced to £75 for payment within 7 days. Police Constables are directly authorised under the Act. Gwent Police have indicated that they would make use of local authority fixed penalty notices, subject to an internal decision-making process.
- 4.17 In the first case it is considered that, in line with the Public Protection Division's Enforcement Policy, the proposed orders would be considered as a deterrent with an advisory approach taken prior to any consideration of enforcement action. Continued or escalating behaviour amounting to breaches of the terms of the order would be enforced as appropriate. Where alcohol is being drunk, or is intended to be consumed in breach of the order it is only an offence under the Act to fail to cease drinking when asked to do so by an authorised officer, or to fail to surrender anything in a person's possession which is believed to be alcohol or a container for alcohol.
- 4.18 Failure to pay a fixed penalty notice is an offence that would be prosecuted in court.
- 4.19 A Policy is under development with the Caerphilly and Blaenau Gwent Youth Offending Service to consider an intervention process for those aged under 18 whose behaviour has escalated to the stage where a fixed penalty notice is appropriate, to avoid court action if possible on non-payment.
- 4.20 While there is the potential that placing controls on the proposed areas may displace activity elsewhere it is considered that the users of the transport facilities are disproportionately affected by the activity of the few. Any issues displaced will be dealt with using normal means including police action for low level public order and the perpetrators being fed into the existing multi agency anti-social behaviour intervention processes.
- 4.21 Public Space Protection Orders must be reviewed before they expire and guidance issued by the Home Office suggests they are reviewed at least annually. In common with the previous legislative regime it is proposed that an annual report be taken to Scrutiny Committee to achieve this.

## **5. EQUALITIES IMPLICATIONS**

- 5.1 The locations covered by this report are used by people who for various reasons have to access public transport. Older people, lone women, people with disabilities and many other minority groups for example who would use public transport can be impacted to a greater degree by anti-social behaviour at these locations, and so the proposed new PSPOs therefore link to and support the Council's Strategic Equality Objectives 1 (Tackling Identity-based Hate Crime and Incidents) and 3 (Physical Access).

## **6. FINANCIAL IMPLICATIONS**

- 6.1 To provide signage for the proposed PSPOs for bus stations and bus shelters is estimated to cost £1000.
- 6.3 For the 2013 – 2016 period the local authority has allocated £50,000 of its Welsh Government Outcome Agreement funding to Community Safety per year. Both anti-social behaviour and alcohol related disorder are included within the current Outcome Agreement. It is proposed that the cost of replacing and providing signage will be met from the budget.
- 6.4 Proposed and new PSPOs must be advertised. There is no longer a requirement to use press notices and hence costs are significantly less than under the previous legislation. Regulations permit the use of the local authority's website. Signage will support public knowledge.

## **7. PERSONNEL IMPLICATIONS**

- 7.1 Additional enforcement responsibilities will be met from within existing budgets. Local Authority Community Safety Wardens has been granted the new powers in the scheme of delegation and are already dealing with such issues on the street. It is expected that the new powers and proposed PSPOs will increase their effectiveness. Staff have been consulted.

## **8. CONSULTATIONS**

- 8.1 All statutory consultations have been undertaken as detailed above, no negative responses were received. This report has been sent to the consultees listed below and all comments received are reflected in this report.

## **9. RECOMMENDATIONS**

- 9.1 (i) That Cabinet note the evidence in support of the proposed Public Space Protection Orders;
- (ii) That Cabinet agree to make the proposed Public Spaces Protection Orders for bus stations and bus shelters and the Caerphilly Transport Interchange.

## **10. REASONS FOR THE RECOMMENDATIONS**

- 10.1 (i) To alleviate significant anti-social behaviour, disorder and annoyance for users of the bus stations/shelters residents and businesses nearby.

## 11. STATUTORY POWER

- 11.1 Section 59 of the Anti-Social Behaviour, Crime and Policing Act 2014  
The Anti-social Behaviour, Crime and Policing Act 2014 (Publication of Public Spaces Protection Orders) Regulations 2014  
Section 17 of the Crime and Disorder Act 1998

Author: Kathryn Peters, Community Safety Manager Ext. 5108  
Consultees: Councillor Nigel George, Cabinet Member for Community and Leisure Services  
David Street, Director of Social Services  
Rob Hartshorn, Head of Public Protection  
Superintendent Marc Budden, West Gwent Local Policing Unit  
Chief Inspector Nick McLain, West Gwent Local Policing Unit  
Gail Williams, Acting Head of Legal Services  
Terry Shaw, Head of Engineering Services  
David A. Thomas, Senior Policy Officer (Equalities and Welsh Language)  
Sian Phillips, Human Resources Manager  
Mike Eedy, Finance Manager  
Michaela Rogers, Youth Offending Service Manager  
Lisa Lane, Solicitor

### Appendices:

Appendix 1 of 5	Public Spaces Protection Orders Explanatory Note
Appendix 2 of 5	Draft Order covering Bus Stations
Appendix 3 of 5	Draft Order covering Bus Shelters
Appendix 4 of 5	Restricted area maps- Bargoed Bus Station Blackwood Bus Station Caerphilly Transport Interchange Nelson Bus Station Bus Shelters
Appendix 5	of 5 Summary of consultation responses



## SAFER CAERPHILLY PARTNERSHIP

### Public Spaces Protection Orders – Explanatory Notes

#### **1. What are Public Spaces Protection Orders?**

Public Spaces Protection Orders (PSPOs) were introduced by the Anti-Social Behaviour, Crime and Policing Act 2014. PSPOs are intended to deal with problems in a geographical area by imposing conditions that apply to the use of that area. They are designed to ensure that the law-abiding majority can use and enjoy public spaces, safe from anti-social behaviour.

PSPOs replace a number of existing orders, Designated Public Place Orders, Gating Orders and Dog Control Orders.

PSPOs can prohibit a wider range of behaviours than existing orders complementing the existing 'good rule and governance bye laws' but with a fixed penalty available on breaches.

There is less government oversight than with bye laws and less reporting requirements. The consultation and publication of orders are intended to be more cost effective with no requirement to use newspapers.

There is, however, a right of appeal to the High Court within 6 weeks of an order being made or varied. The grounds are that there was no power to make the order, or its restrictions, or that it was improperly made.

#### **2. Who can make a Public Spaces Protection Order?**

The Local Authority is responsible for all existing and new orders including gathering evidence of continuing need and consulting adequately with the community.

The enforcement of PSPOs can be the responsibility of Authorised Officers of Caerphilly County Borough Council, Police Constables and Community Support Officers (if designated).

PSPOs can apply on any public space to which the public, or any section of the public has access, whether or not payment is required to enter, and whether or not provision to enter is expressed or implied e.g. a shopping centre.

#### **3. What Sort of Activity can Public Spaces Protection Orders Prohibit?**

The definition in the Act is very wide and allows, subject to the proper consultation, that PSPOs be issued for activities such as:

## APPENDIX 1

- Drinking in a public place
- Ensuring dogs are kept on a lead
- Allowing access to certain areas by residents (and legitimate callers) only
- Preventing access to a certain place for a limited time to prevent crime
- Prohibiting access to areas other than for intended purposes e.g. bus stations and interchanges

In the instance of drinking in a public place breach of a PSPO only occurs if asked to stop drinking by an Authorised Officer and the person refuses to do so. This is to allow discretion where the consumption of alcohol is not associated with anti-social behaviour e.g. a family picnic in a public park where a small amount of alcohol is being consumed. PSPOs do not apply to premises covered by the Licensing Act 2003.

A PSPO will identify:

- The activities referred to
- The area covered
- The duration of the order
- The effect of Sections 63 or 67 of the Act

### **4. How long do Public Spaces Protection Orders Last?**

PSPOs last for a maximum period of 3 years. They may be renewed for a further 3 year period (or such shorter time as required) provided they are reviewed, assessed and remade before they expire.

PSPOs will be made based on evidence of need and an initial consultation and publicity. In order to be renewed or extended there must be a continuing need. Some orders e.g. those preventing the consumption of alcohol are likely to be reviewed and renewed over an extended period of time.

Existing orders (Designated Public Place Orders, Gating Orders and Dog Control Orders) will continue for a period of 3 years after which time it is expected that it will be reviewed and converted to PSPOs.

Public Spaces Protection Orders can be varied by:

- Increasing the area covered
- Altering, reducing or removing a prohibition/requirement
- Adding a new prohibition/requirement

Public Spaces Protection Orders may be discharged such that they cease to have effect. Any variation or discharge must be published.

### **5. What is the Process for making a Public Spaces Protection Order?**

The Local Authority must be satisfied that two conditions are met;



## APPENDIX 1

- i. That activities are having a detrimental effect on the quality of life of those in the locality, or it is likely that activities in that area will have such an effect; and
- ii. The effect will be of a persistent or continuing nature, is unreasonable and justifies the restrictions imposed by the order.

If the Local Authority is satisfied that the necessary conditions are met, it will define that restricted area and will prohibit the activity, restrict the activity, or both, in the terms of the order.

Before making, varying, extending or discharging a PSPO the Local Authority must consider the European Convention on Human Rights with regards to article 10 (freedom of expression) and article 11 (freedom of assembly). The Local Authority must also consult with the Chief Officer of Police and the Office of the Police and Crime Commissioner. As well as whatever community representative the Local Authority considers necessary, and the owners/occupiers of any land in the restricted area, if it is practical to do so.

The Local Authority must also notify parish councils and community councils.

A prohibition/requirement may be framed so that it applies to everybody or specified categories of people; so that it applies all the time or at specified times; so that it applies in all circumstances or only in specified circumstances.

A PSPO, or variation, must be published on the Local Authority's website, and by notices placed in the vicinity of the restricted area. Similar notices must be placed when the order is discharged. Notices must be sufficient to draw attention to the fact an order is in place and the effect it has.

Orders may last for a maximum of 3 years, however, they can be extended before they expire if it is necessary, based on reasonable grounds, to prevent a recurrence of the behaviour that originally supported the order. An extension can only be for a maximum of 3 years. Extensions must be published in the same way as original orders i.e. on the Local Authority website and by notices placed in the area.

### **6. What About Rights of Way?**

A restriction on a public right of way on a highway can only be made after considering;

- The likely effect on nearby occupiers of premises
- The likely effect on other persons in the locality
- If the highway is a through route, the availability of convenient alternative routes

Before making PSPOs that affect rights of way there must be a consultation with local affected persons who can make representations that must be considered.

Such PSPOs are restricted in that;

## APPENDIX 1

- Occupiers access from the highway cannot be restricted
- They can't affect access to dwellings where no other access exist
- They can't affect access to businesses or recreational facilities
- They can't affect rights of way on special roads, trunk roads, classified or principal roads, strategic roads and highways

A barrier may be erected and the PSPO may authorise the operation and maintenance of such barriers.

### **7. What Happens if I Breach a Public Spaces Protection Order?**

An offence is committed under Section 67 of the Act to do anything that is prohibited, or fail to do anything that is required by a Public Spaces Protection Order.

On conviction the maximum fine is set at Level 3 (£1,000).

Consuming alcohol in contravention of an PSPO is only an offence under Section 63 if asked not to do so, or if failing to surrender the alcohol on request. On conviction the maximum fine is set at Level 2 (£500).

A constable or authorised person may issue a Fixed Penalty Notice under Section 63 or 67. If accepted as an alternative to prosecution it will discharge any liability for the offence.

The Fixed Penalty Notice amount is set a £100, or £75 if paid within 7 days, and is payable to the Local Authority.



PROPOSED DRAFT

**CAERPHILLY COUNTY BOROUGH COUNCIL**  
**ANTI-SOCIAL BEHAVIOUR, CRIME AND POLICING ACT 2014**  
**Public Space Protection Order covering the**  
**Caerphilly County Borough Council Bus Stations At**  
**Caerphilly, Blackwood, Bargoed & Nelson and the Passenger Bridge and Train**  
**Station at Caerphilly**

Caerphilly County Borough Council ("the Council") in exercise of its powers under Section 59, 60, 63, 66, 67, 68, and 72 of the Anti Social Behaviour Crime and Policing Act 2014 ("the Act") and all other enabling powers hereby makes the following Order

1. The Order shall come into operation on XXX and shall have effect for a period of 3years thereafter unless varied or discharged by further orders of the Council.
2. The Order relates to the areas defined edged red on the attached maps known as Caerphilly Bus Station, Blackwood Bus station, Bargoed Bus Station, Nelson Bus Station and the passenger bridge and train station at Caerphilly (referred to in this Order as "the Restricted Areas")
3. The Order is made because the Council is satisfied on reasonable grounds that activities at the Restricted Areas are having a detrimental effect on the quality of life of those in the locality, or it is likely that activities will have such an effect, and that the effect is, or will be, of a persistent or continuing nature and is, or will be, unreasonable and justifies the restrictions imposed by the Order. The activities at the Restricted Areas having been or likely to be carried out and have or likely to have a detrimental effect include damage to property, anti social behaviour and drinking alcohol in public.
4. In making this Order consultation has taken place with the Chief Constable, the Office of the Police and Crime Commissioner, relevant community representatives, the Town and Community Councils, and owners/occupiers of the Restricted Areas (where relevant) and of neighbouring properties.

## APPENDIX 2

### 5. DEFINITIONS

"Authorised Person(s)" means a person authorised for the purposes of Section 63 and 68 of the Act by the Council.

6. The effect of the Order is to impose the following prohibitions and requirements within any part of the Restricted Areas.

6.1 No person shall loiter unless they are waiting for public transport or waiting to meet somebody using public transport.

6.2 No person shall remain if reasonably asked to leave by an authorised person or constable

6.3 No person shall behave in a disorderly, indecent or offensive manner

6.4 No person shall soil, damage, deface or detach any part of the Restricted Areas.

6.5 No person shall be in possession of a potentially dangerous item. A potentially dangerous item is any item, which in the opinion of an authorised person, or constable may be used to harass, alarm or distress any person or damage, deface or soil any property.

6.6 No person shall wilfully obstruct or impede an authorised person or constable in the execution of their duty.

6.7 No person shall be in possession of paraphernalia for the consumption of controlled drugs.

6.8 Any person reasonably suspected, by an authorised person, or constable, of breaching any of the prohibitions or requirements set out in this Order shall give his name and address when requested to do so by an authorised person or constable.

6.9 No person shall consume alcohol when requested not to do so by an authorised person or constable.

6.10 No person shall be in possession of an open container of alcohol.

7. Section 67 of the Act applies to the prohibitions and requirements set out in paragraphs 6.1 to 6.8 of this Order namely

(1) It is an offence for a person without reasonable excuse-

(a) To do anything that the person is prohibited from doing by paragraphs 6.1 to 6.8 of this Order, or

## APPENDIX 2

- (b) To fail to comply with a requirement to which a person is subject under paragraphs 6.1 to 6.8 of this Order,
- (2) A person guilty of an offence under this section is liable on summary conviction to a fine not exceeding level 3 on the standard scale
- (3) A person does not commit an offence under this section by failing to comply with a prohibition or requirement that the local authority did not have power to include in the public spaces protection order
- (4) Consuming alcohol in breach of a public spaces protection order is not an offence under this section (but see section 8 below)

8 Section 63 of the Act applies to the prohibitions set out in paragraphs 6.9 and 6.10 namely that where a constable or authorised person reasonably believes that a person:

- (a) Is or has been consuming alcohol in breach of prohibitions 6.9 and/or 6.10 of this order; or intends to consume alcohol in breach of prohibition 6.9 and/or 6.10 of this order

The constable or authorised person may require that person

- (b) Not to consume, alcohol, or anything which the constable or authorised person reasonably believes to be alcohol;
- (c) To surrender anything in that person's possession which is, or which the constable or authorised person reasonably believes to be, alcohol or a container for alcohol
- (d) It is an offence for a person, without reasonable excuse, to fail to comply with a requirement imposed by a constable or authorised person under section 63.
- (e) A person guilty of an offence is liable on conviction in the Magistrates' Court to a fine not exceeding level 2 on the standard scale.

## 9. FIXED PENALTY

A constable or authorised person may issue a fixed penalty notice to anyone he or she believes has committed any offence under this Order. A person will have 14 days to pay the fixed penalty of £100, or a discounted amount of £75 if paid within 7 days. Failure to pay the fixed penalty will result in prosecution.

## 10. APPEALS

Any challenge to this Order must be made in the High Court by an interested person within six weeks of it being made. An interested person is someone who lives in, regularly works in, or visits any of the Restricted Areas. This





**PROPOSED DRAFT**  
**CAERPHILLY COUNTY BOROUGH COUNCIL**  
**ANTI-SOCIAL BEHAVIOUR, CRIME AND POLICING ACT 2014**  
**Public Space Protection Order covering various**  
**Caerphilly County Borough Council Bus Shelters and Bus Stops**

Caerphilly County Borough Council ("the Council") in exercise of its powers under Section 59, 60, 63, 66, 67, 68, and 72 of the Anti Social Behaviour Crime and Policing Act 2014 ("the Act") and all other enabling powers hereby makes the following Order

1. The Order shall come into operation on XXX and shall have effect for a period of 3 years thereafter unless varied or discharged by further orders of the Council.
2. The Order relates to the bus shelters and bus stops defined edged red on the attached maps (referred to in this Order as the Restricted Areas) a list which is referred to in the Schedule to this Order.
3. The Order is made because the Council is satisfied on reasonable grounds that activities at the Restricted Areas are having a detrimental effect on the quality of life of those in the locality, or it is likely that activities will have such an effect, and that the effect is, or will be, of a persistent or continuing nature and is, or will be, unreasonable and justifies the restrictions imposed by the Order. The activities at the Restricted Areas having been or likely to be carried out and have or likely to have a detrimental effect include: damage to property, anti social behaviour and drinking alcohol in public.
4. In making this Order consultation has taken place with the Chief Constable, the Office of the Police and Crime Commissioner, relevant community representatives, the respective Town and Community Council's, and owner/occupiers of neighbouring properties.
5. **DEFINITIONS**  
  
"Authorised Person(s)" means a person authorised for the purposes of Section 63 and 68 of the Act by the Council.
6. The effect of the Order is to impose the following prohibitions and requirements within any part of the Restricted Areas.
  - 6.1 No person shall loiter unless they are waiting for public transport, or waiting to meet somebody using public transport.

### APPENDIX 3

- 6.2 No person shall remain if reasonably asked to leave by an authorised person or constable
  - 6.3 No person shall behave in a disorderly, indecent or offensive manner
  - 6.4 No person shall soil, damage, deface or detach any part of the Restricted Areas.
  - 6.5 No person shall be in possession of a potentially dangerous item. A potentially dangerous item is any item, which in the opinion of an authorised person, or constable may be used to harass, alarm or distress any person or damage, deface or soil any property.
  - 6.6 No person shall wilfully obstruct or impede an authorised person or constable in the execution of their duty.
  - 6.7 No person shall be in possession of paraphernalia for the consumption of controlled drugs.
  - 6.8 Any person reasonably suspected, by an authorised person or constable, of breaching any of the prohibitions or requirements set out in this Order shall give his name and address when requested to do so by an authorised person or constable.
  - 6.9 No person shall consume alcohol when requested not to do so by an authorised person or constable.
  - 6.10 No person shall be in possession of an open container of alcohol.
7. Section 67 of the Act applies to the prohibitions and requirements set out in paragraphs 6.1 to 6.8 of this Order namely
- (1) It is an offence for a person without reasonable excuse-
    - (a) To do anything that the person is prohibited from doing by paragraphs 6.1 to 6.8 of this Order, or
    - (b) To fail to comply with a requirement to which a person is subject under paragraphs 6.1 to 6.8 of this Order,
  - (2) A person guilty of an offence under this section is liable on summary conviction to a fine not exceeding level 3 on the standard scale
  - (3) A person does not commit an offence under this section by failing to comply with a prohibition or requirement that the local authority did not have power to include in the public spaces protection order
  - (4) Consuming alcohol in breach of a public spaces protection order is not an offence under this section (but see section 8 below)



## APPENDIX 3

8 Section 63 of the Act applies to the prohibitions set out in paragraphs 6.9 and 6.10 of this Order namely that where a constable or authorised person reasonably believes that a person:

- (a) Is or has been consuming alcohol in breach of prohibitions 6.9 and/or 6.10 of this order; or intends to consume alcohol in breach prohibition 6.9 and/or 6.10 of this order

The constable or authorised person may require that person

- (b) Not to consume alcohol, or anything which the constable or authorised person reasonably believes to be alcohol;
- (c) To surrender anything in that person's possession which is, or which the constable or authorised person reasonably believes to be, alcohol or a container for alcohol

It is an offence for a person, without reasonable excuse, to fail to comply with a requirement imposed by a constable or authorised person under section 63.

A person guilty of an offence is liable on conviction in the Magistrates' Court to a fine not exceeding level 2 on the standard scale.

## 9. FIXED PENALTY

A constable or authorised person may issue a fixed penalty notice to anyone he or she believes has committed any offence under this Order. A person will have 14 days to pay the fixed penalty of £100.00, or a discounted amount of £75 if paid within 7 days. Failure to pay the fixed penalty will result in prosecution.

## 10. APPEALS

Any challenge to this Order must be made in the High Court by an interested person within six weeks of it being made. An interested person is someone who lives in, regularly works in, or visits and of the Restricted Areas. This means that only those who are directly affected by the restrictions have the power to challenge. The right to challenge also exists where an order is varied by the Council.

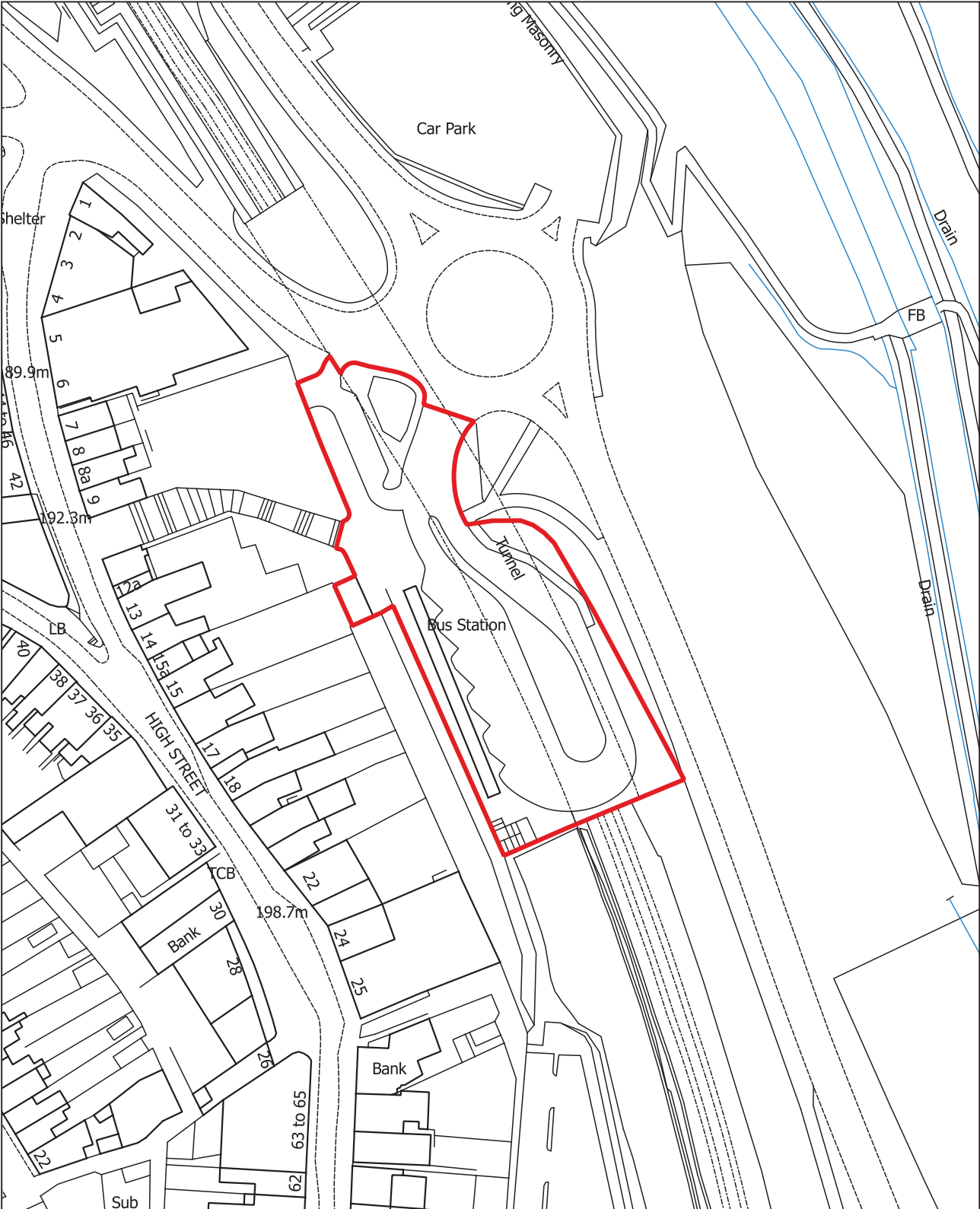
Interested persons can challenge the validity of this order on two grounds: that the Council did not have power to make the order, or to include particular prohibitions or requirements; or that a of the requirement of the legislation was not complied with in relation to the Order.

## SCHEDULE



Bargoed Bus Station

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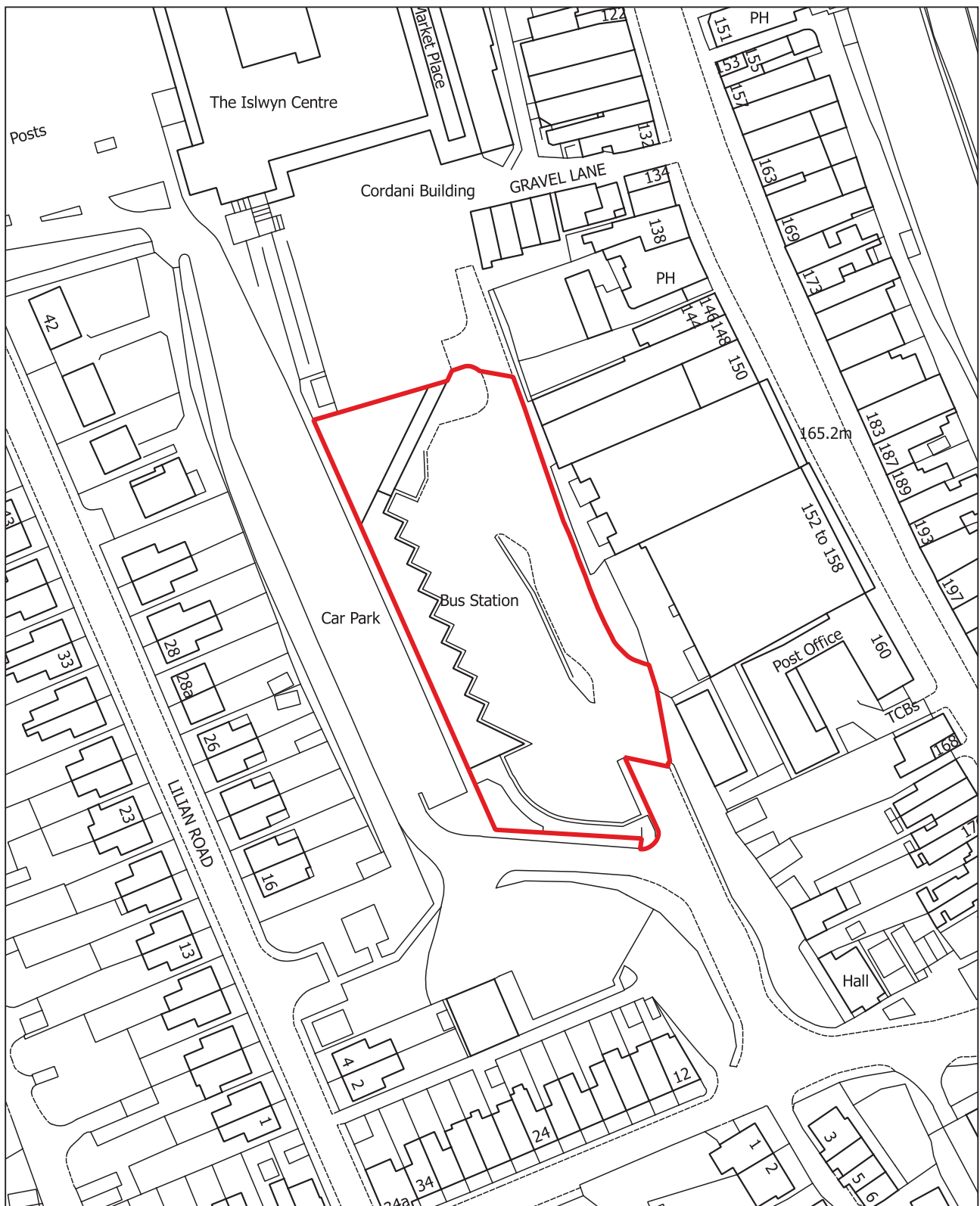


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Blackwood Bus Station

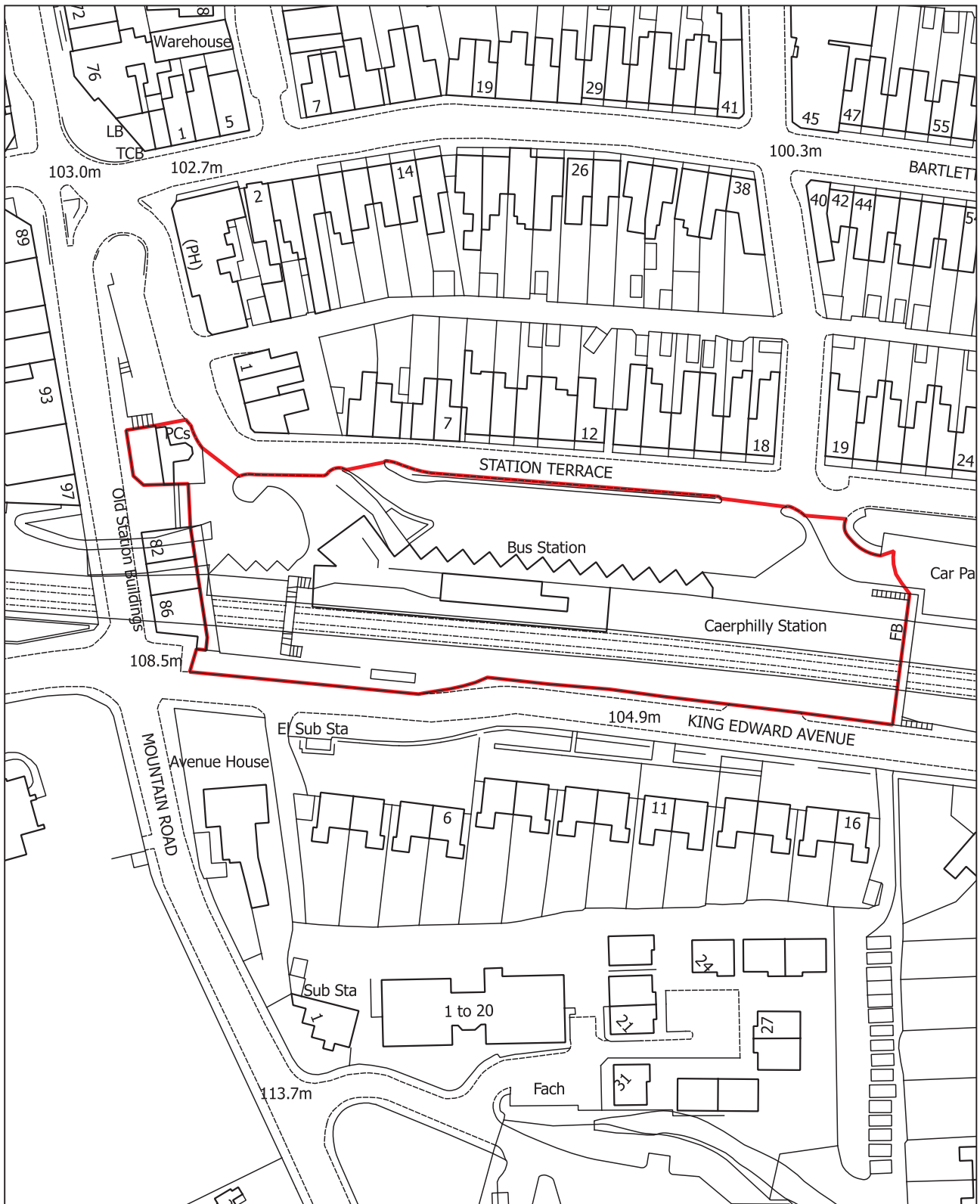
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Caerphilly Bus Station

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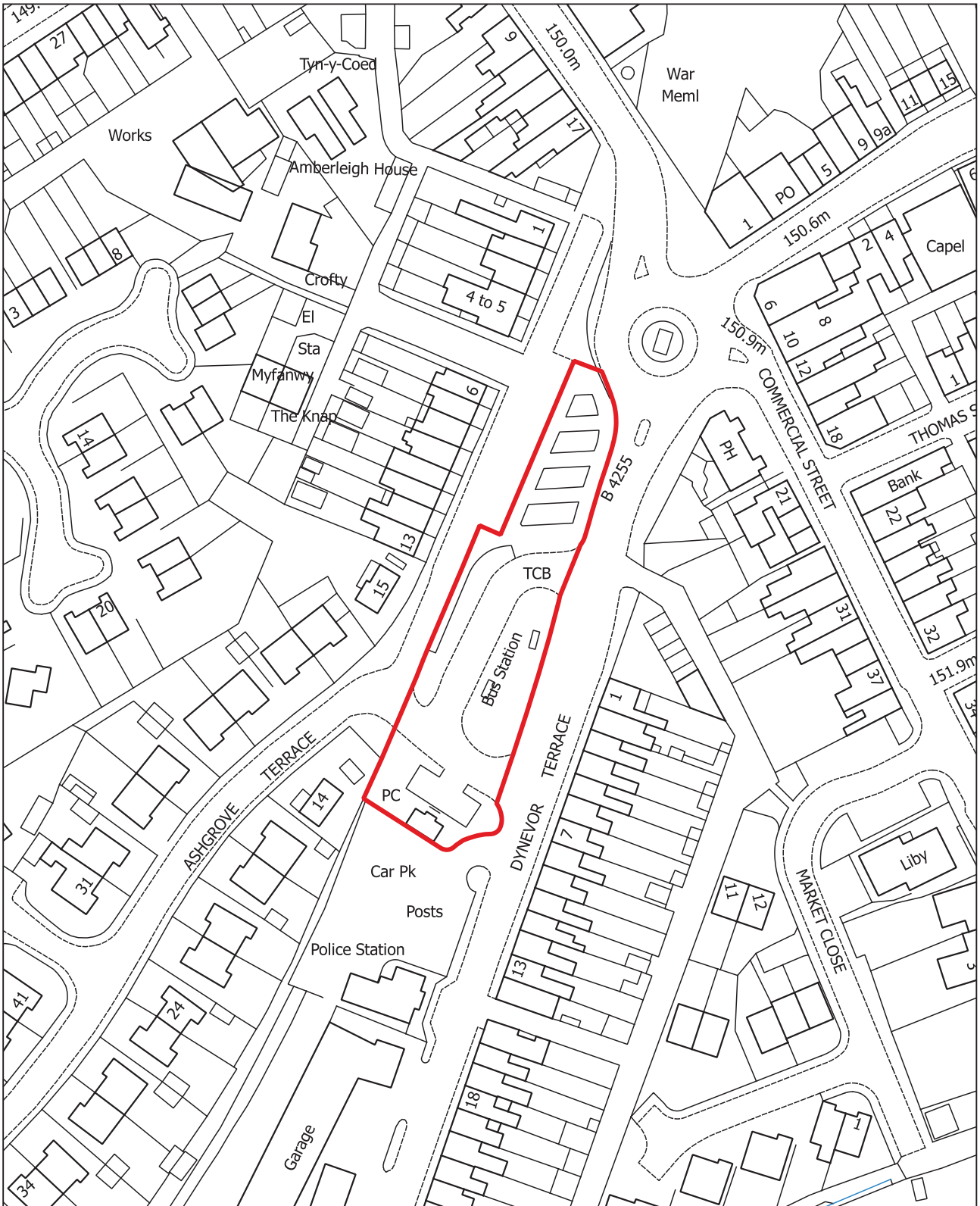


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Nelson Bus Station

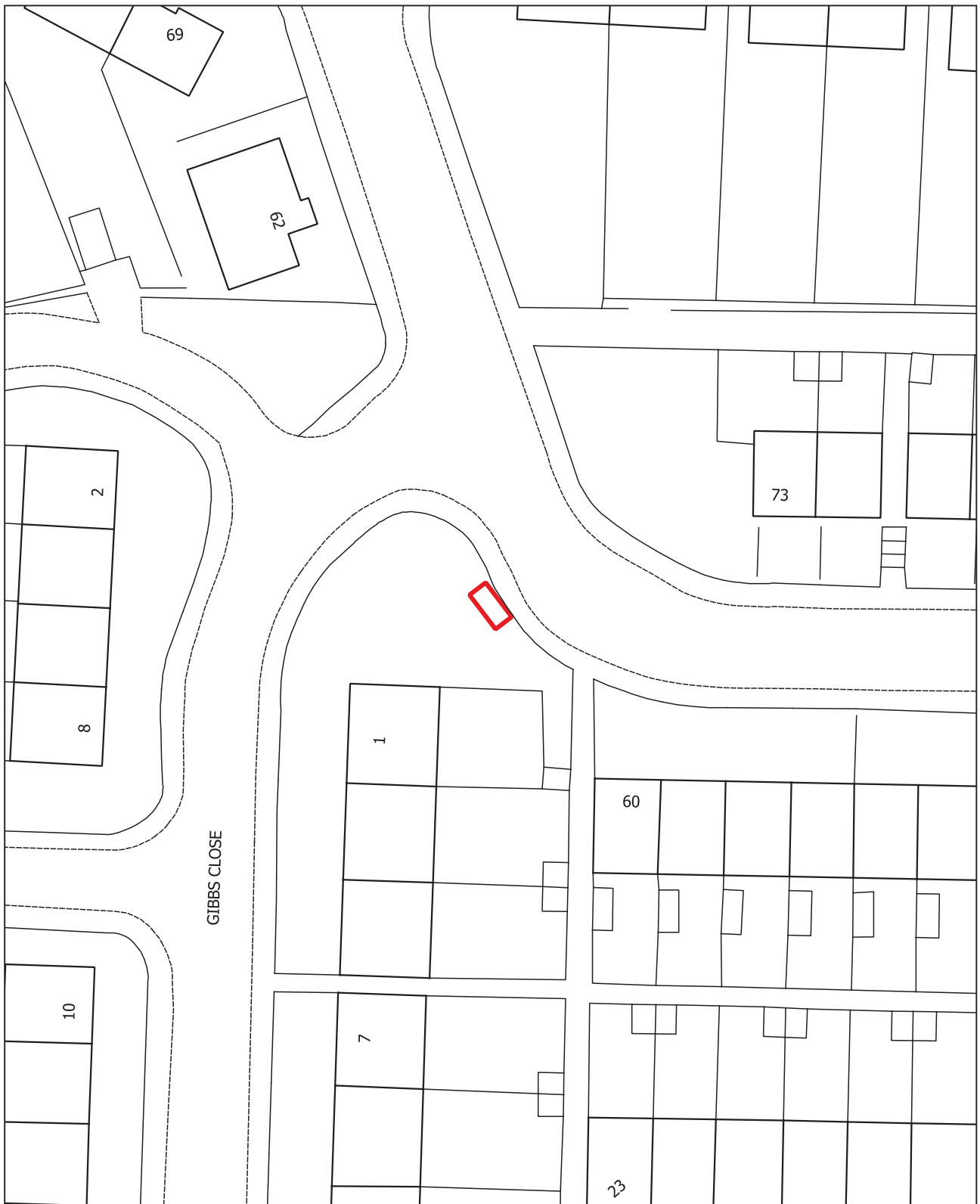
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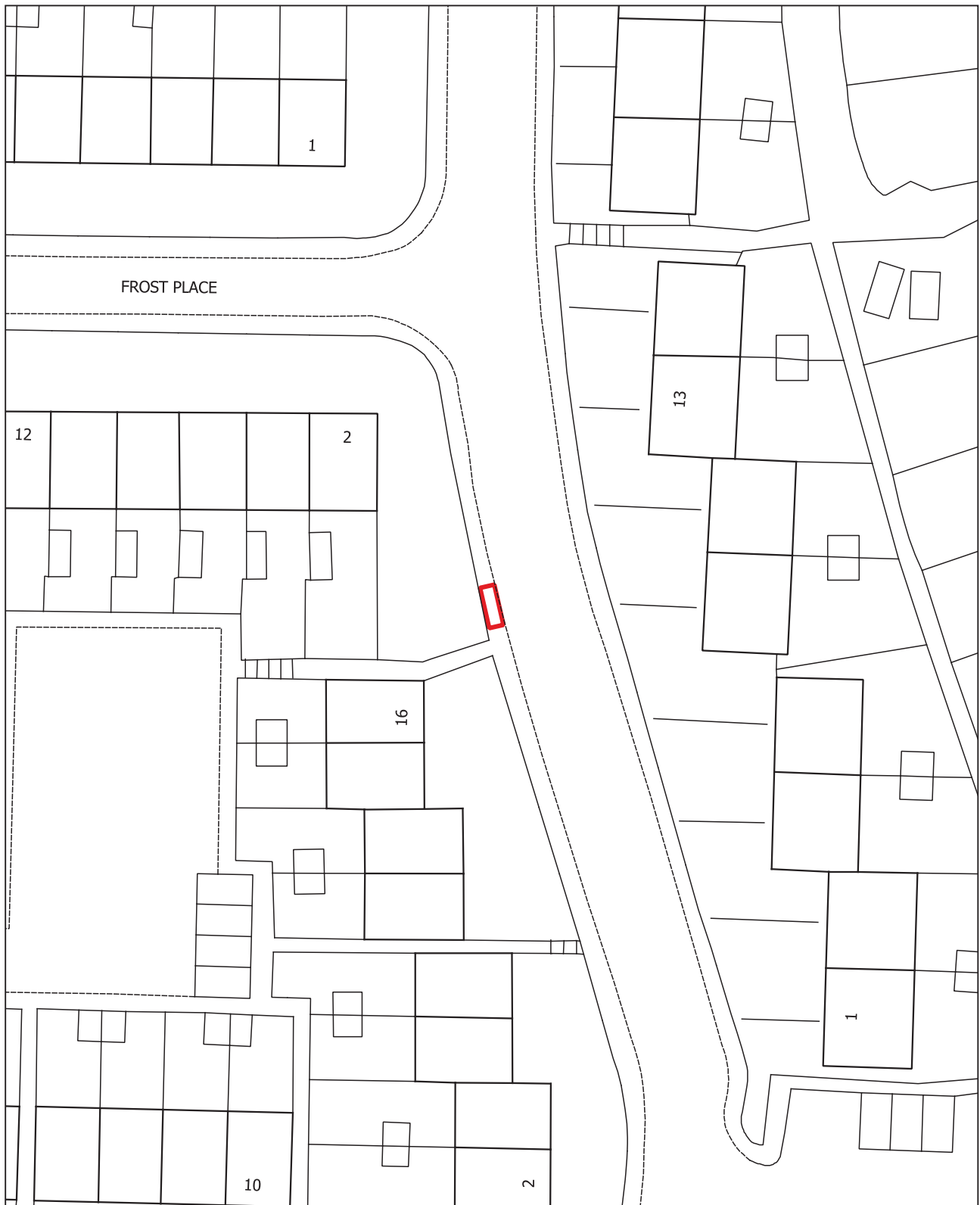


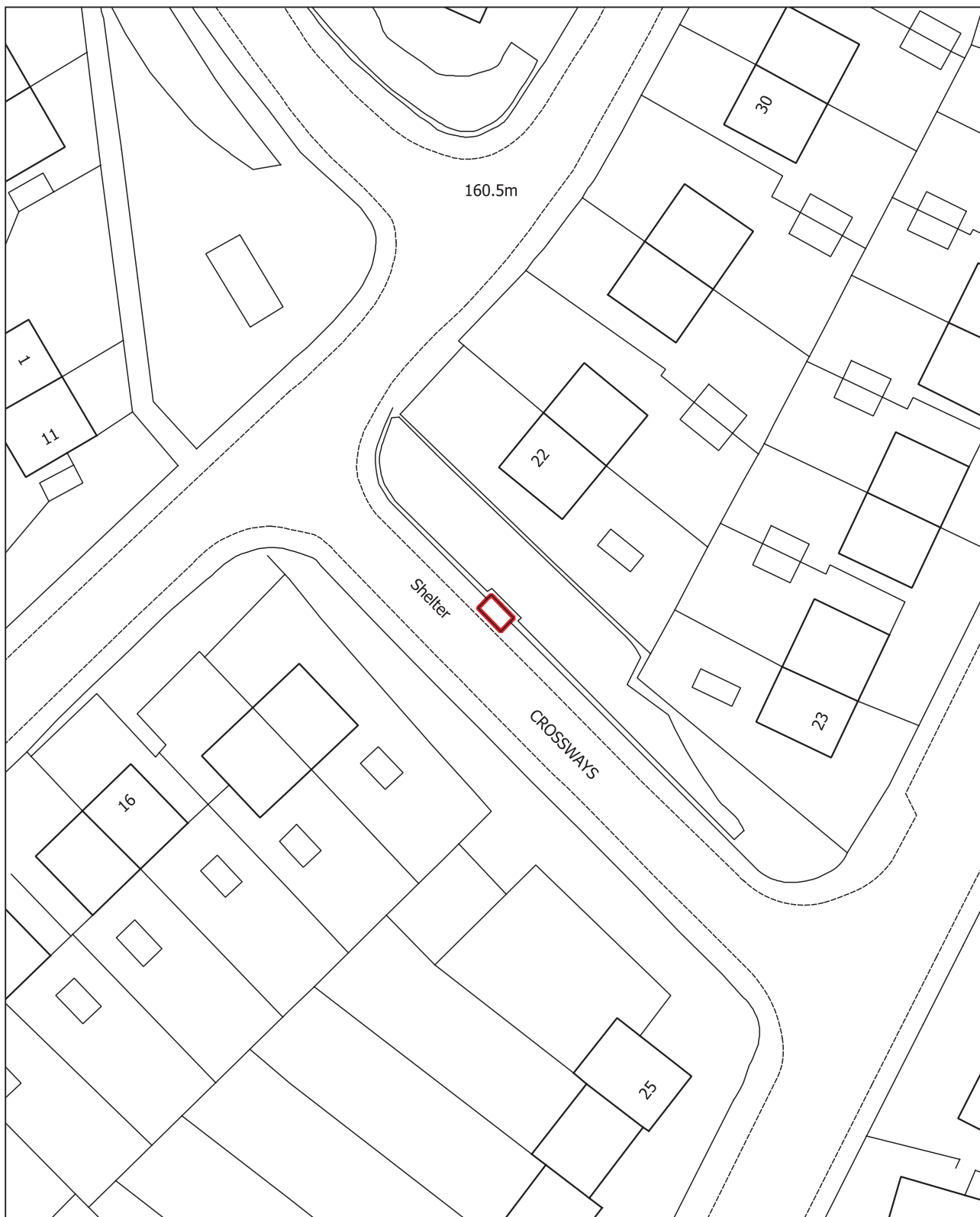
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Chartist Way, Gibbs Close, Blackwood

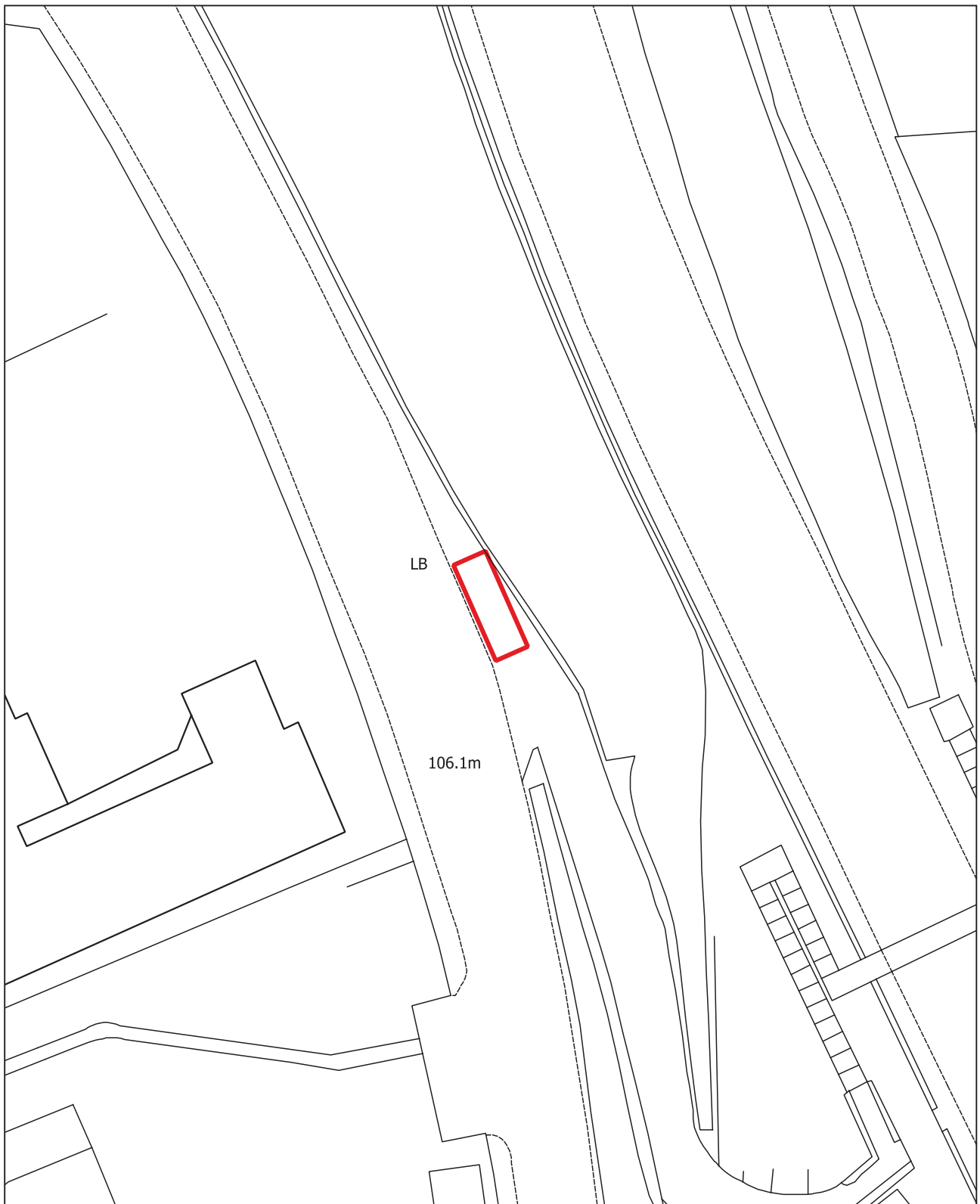
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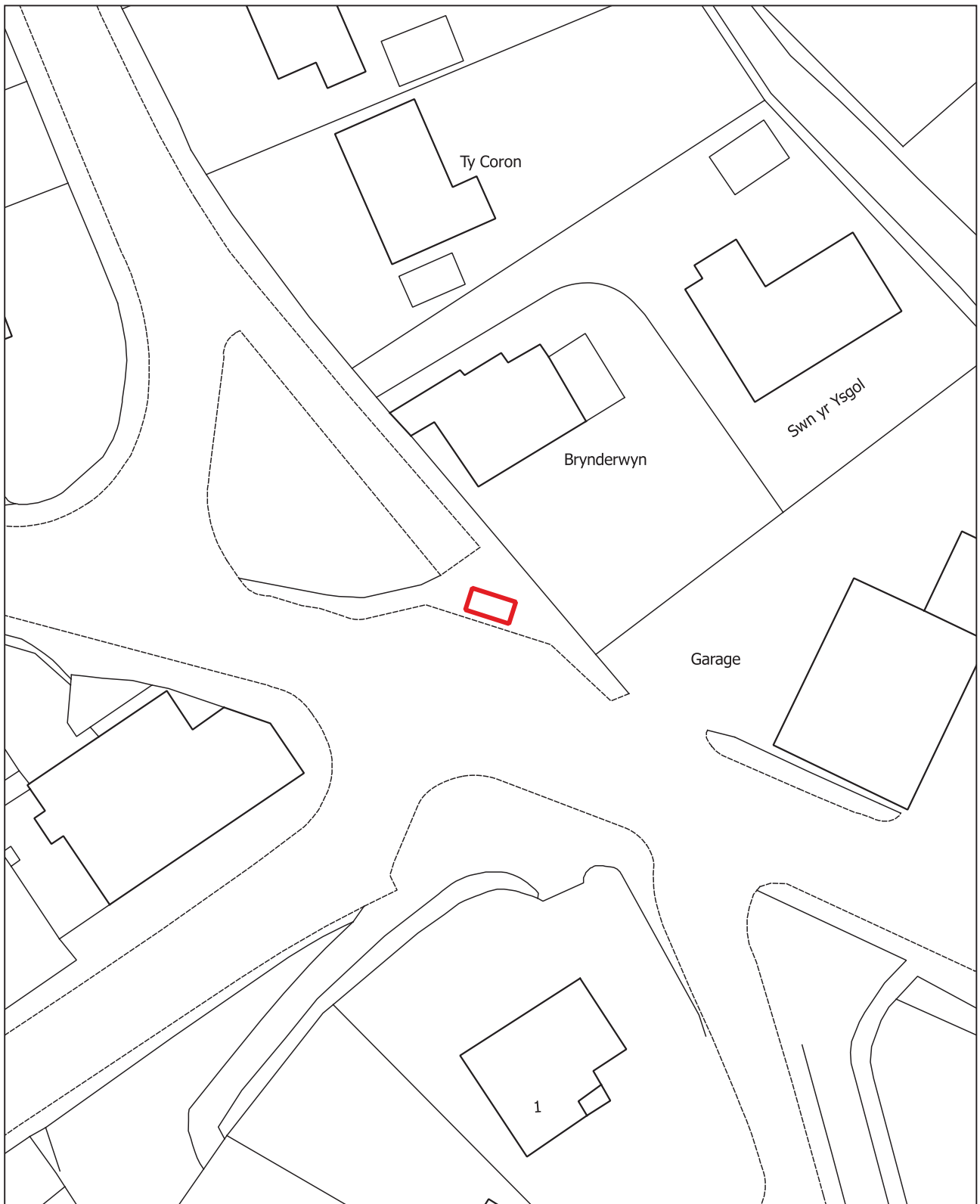




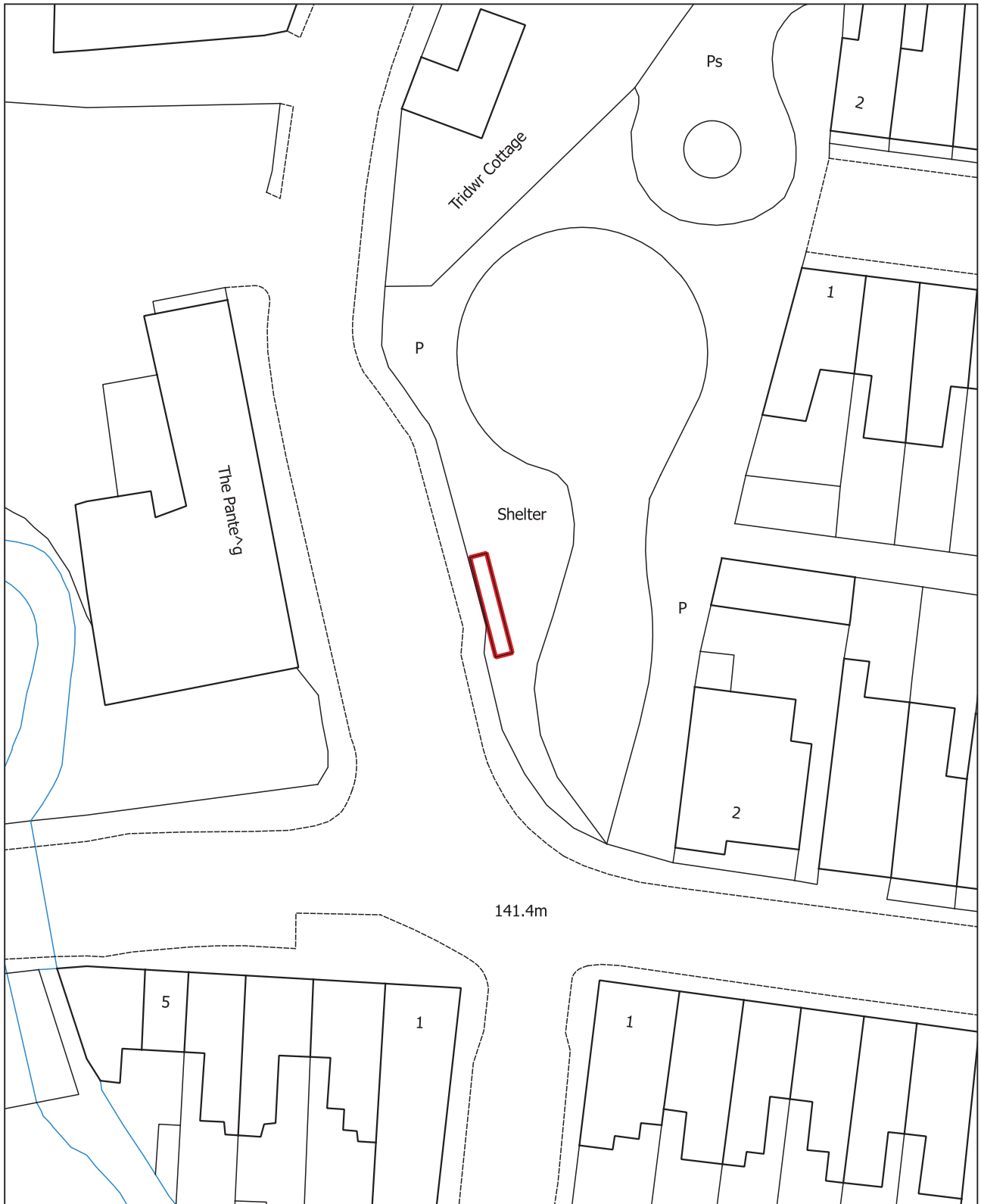


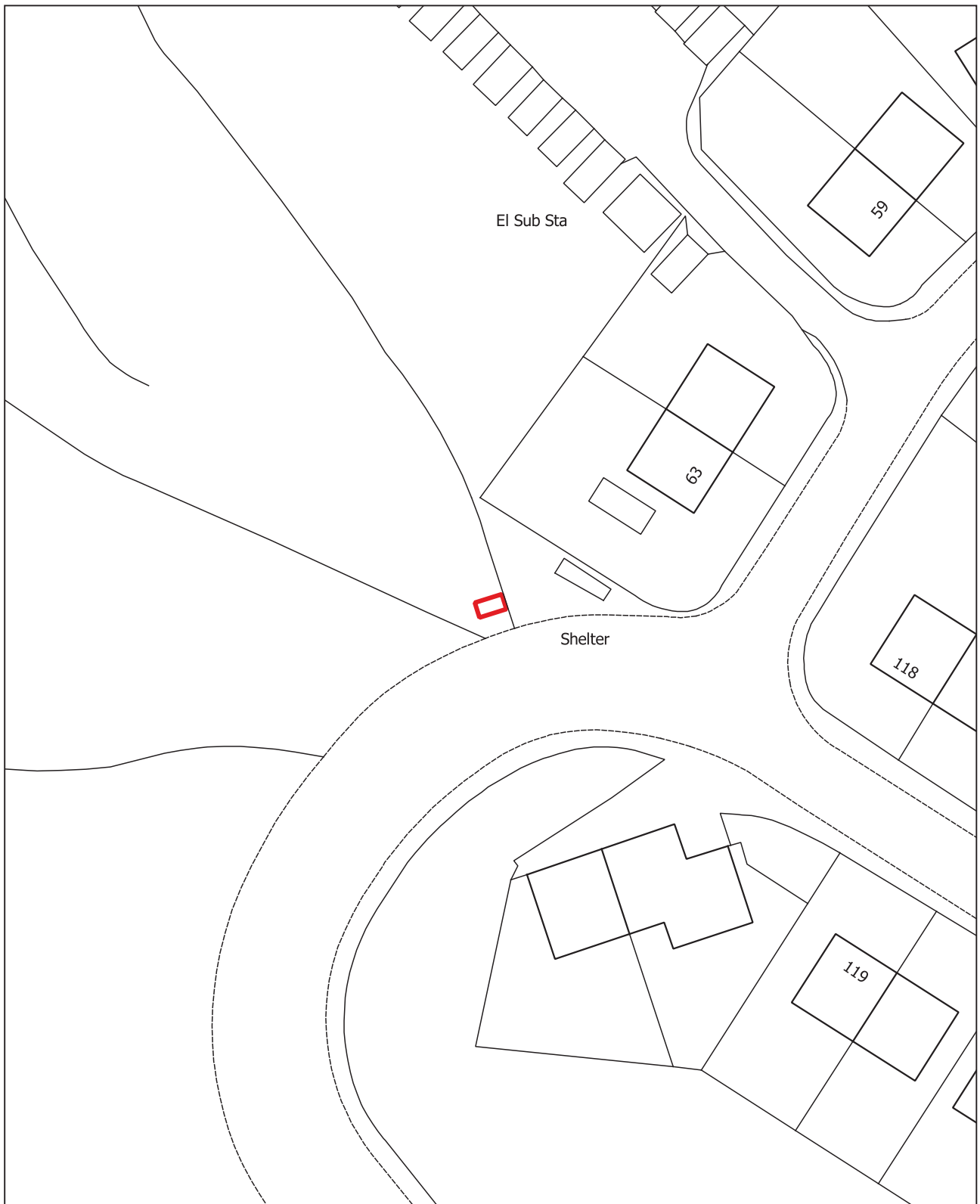


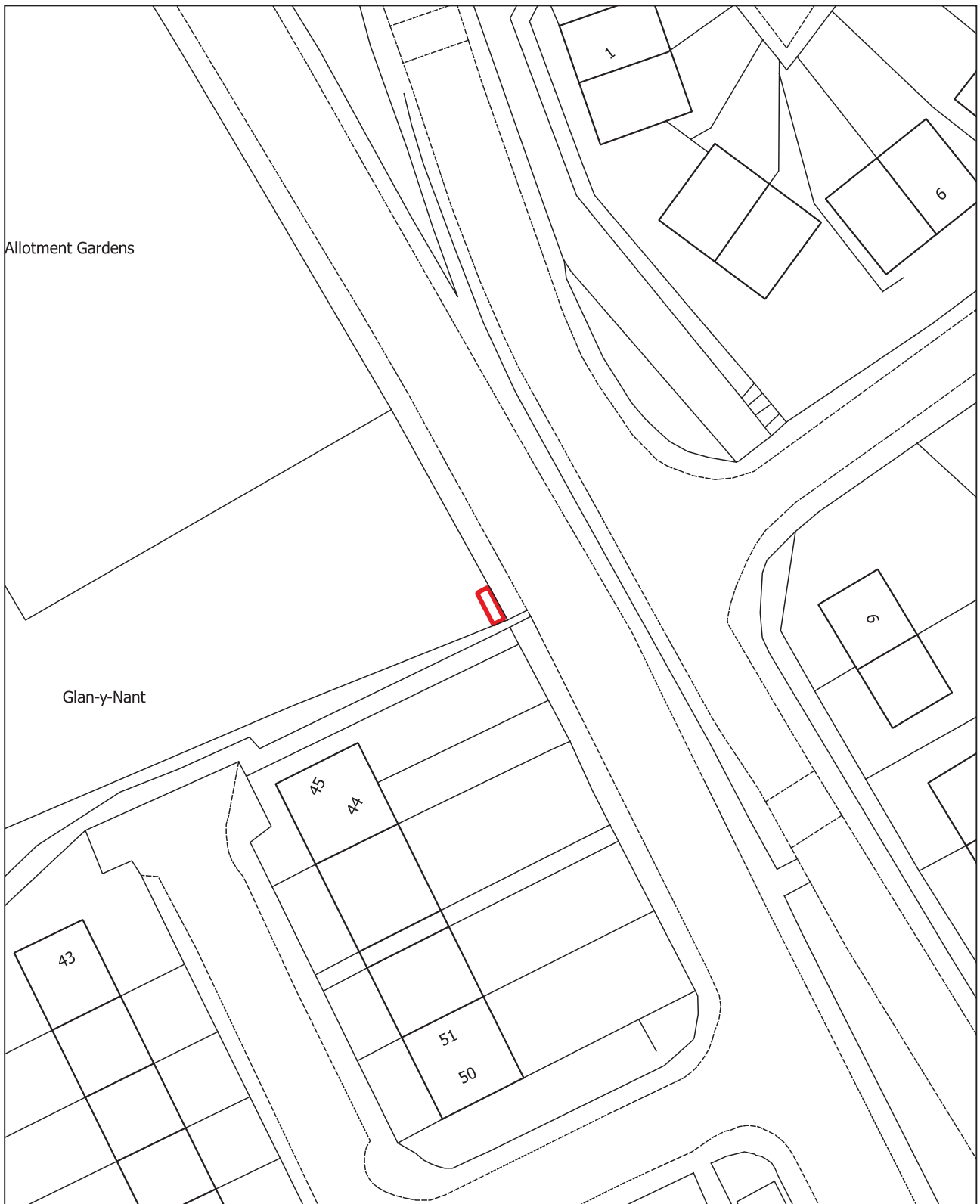


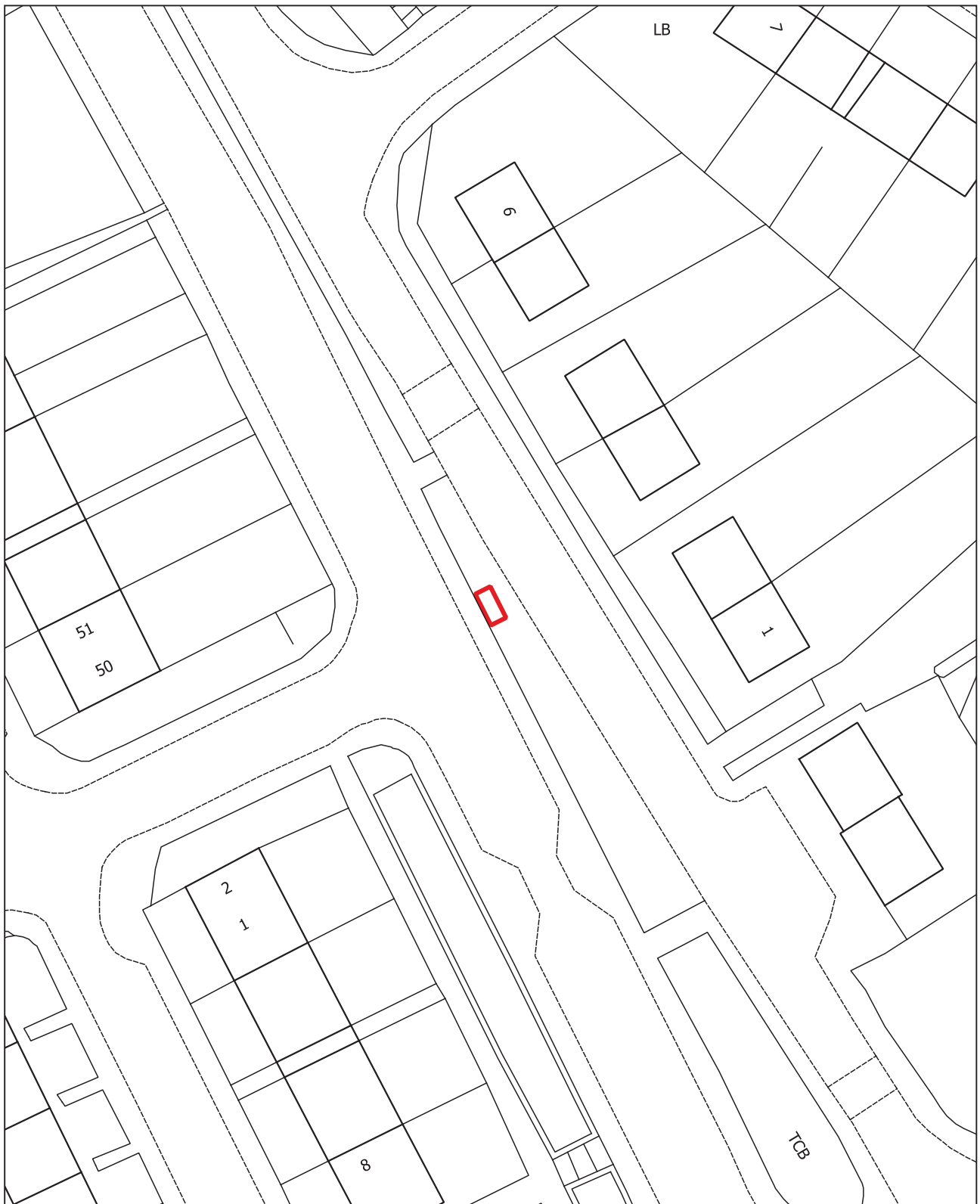


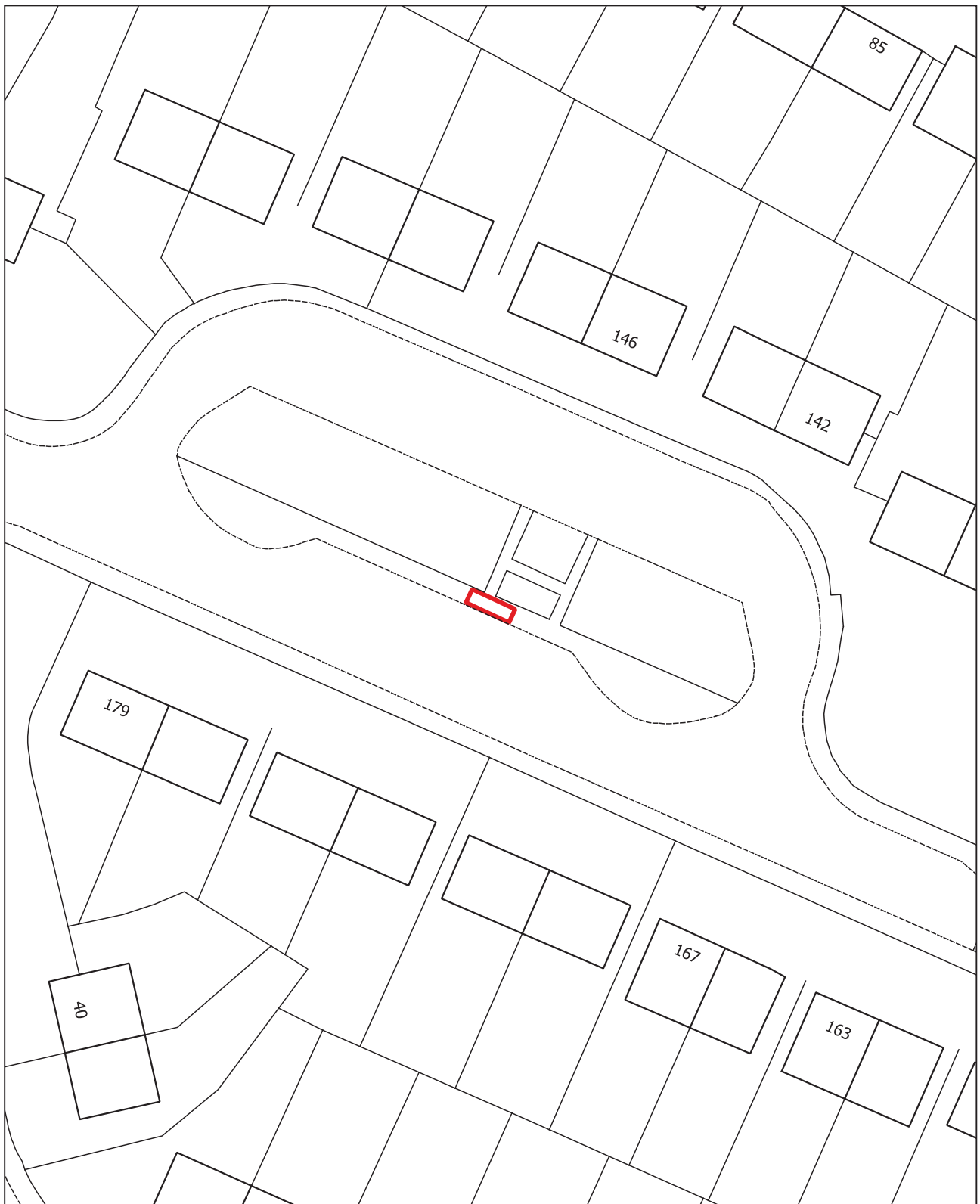












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## **Appendix 5 Summary of Consultation Responses**

- I would be supportive of these proposals. This is a creative use of the new powers by the local authority- Superintendent Marc Budden, West Gwent Local Policing Unit.
- Fully supported by us as there has been recorded issues around ASB at the location as part of a wider ASB issue in Caerphilly. These measures will help curtail this behaviour and support a Partnership approach. The orders are there to protect persons using the facilities safely, so no objections to any improvements in public safety. I can't see a down side.- Inspector Gareth Jones, Caerphilly South Local Policing Area.
- I am extremely supportive of this idea and very much welcome its introduction.- Inspector Carl Williams, Caerphilly Central Local Policing Area.
- I think the PSPO for the bus station is a great idea and will give both us and Gwent another tool in our arsenal in order to deal with ASB in Caerphilly. BTP would support the implementation on the PSPO and help to enforce it, as we deal with issues on the bus station regularly anyway.- PCSO Lewis Parsons, Cardiff Area Neighbourhood Policing Team, British Transport Police.
- Personally, I think it would be a good idea to include the railway station in the PSPO so that it covers the Caerphilly 'interchange' of bus and train station. Our colleagues in BTP have already spent a significant amount of time responding to anti-social issues at the station so anything that will help as a deterrent is to be welcomed.- Geraint Morgan, Arriva Trains Wales.
- Network Rail would fully support these heightened measures to counter the ASB in the area including the station.- Ian Messner, Network Rail.
- We are very supportive of measures to reduce anti-social behaviour issues and therefore support both these proposed Public Space Protection Orders. We have noticed both our depots in Caerphilly Borough record much higher number of incidents than our other depots around South Wales. Additionally we have noted increasing issues of anti-social behaviour at Blackwood Bus Station.- Richard Davies, Commercial Director, Stagecoach Wales
- This seems a positive step that could improve these community spaces. We approve and support these measures.- W John Harris, Harris Coaches
- Anything that makes the environment safer for the traveling public has my full support. Some prospective passengers feel unsafe when there are gangs around bus stops or in bus stations and are deterred from travelling, hopefully the orders will

encourage bus use in the evenings and weekends and make life easier for drivers.-  
Gareth Evans, Accessible Transport Officer, Caerphilly County Borough Council.

- Roger and to a lesser extent I have been closely involved in the discussions and development of these orders and they will hopefully be beneficial for the Police / CSW's to control antisocial behaviour at bus stations and shelters. Blackwood Interchange is still the biggest problem in this respect and these Protection Orders will give additional powers to address the current problems. For example – youths loitering at present is difficult to address – the new orders will give more leverage on this.- Huw Morgan, Integrated Transport Unit, Caerphilly County Borough Council.
- I support these proposals.- Cllr Nigel Dix, Blackwood.
- I would like to register my support.- Cllr Margaret Sargent.
- The Town Council are fully supportive of the introduction of Public Space Protection Orders at the Bus Station, and in deed at the Bus Stops identified in the consultation exercise.- Clerk to Blackwood Town Council, Mr John Hold.





## CABINET – 29TH JULY 2015

**SUBJECT: DRAFT SOCIAL MEDIA POLICY**

**REPORT BY: ACTING DIRECTOR OF CORPORATE SERVICES AND SECTION 151 OFFICER**

- 
- 1.1 The attached report, which sought the views of Members on the introduction of a Social Media Policy, was considered by the Policy and Resources Scrutiny Committee on 14th July 2015, prior to its presentation to Cabinet.
  - 1.2 The Council's Disciplinary Procedure has been increasingly used to address alleged instances of online misconduct by employees. The Social Media Policy has therefore been developed to provide guidelines to employees on using social media in both their private and professional lives. This Policy is intended to clarify the responsibilities of employees both inside and outside of work when using social media, having regard to the high standards of conduct expected of Local Government Officers, and to protect Officers from potential misunderstandings and confusion.
  - 1.3 During the course of the debate, Members expressed a need for the Social Media Policy to be clearly communicated to all Council employees. As such, it was moved and seconded that subject to consideration being given as to how this Policy will be communicated to employees, the Policy be adopted. By a show of hands this was unanimously agreed.
  - 1.4 RECOMMENDED to Cabinet that:-
    - (i) the Draft Social Media Policy as appended to the report be adopted;
    - (ii) consideration be given as to how the Draft Social Media Policy will be communicated to all Council employees.
  - 1.5 Members are asked to consider the recommendations.

Author: R. Barrett, Committee Services Officer, Ext. 4245

Appendices:

Appendix 1 Report to Policy and Resources Scrutiny Committee on 14th July 2015 – Agenda Item 8

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## **POLICY AND RESOURCES SCRUTINY COMMITTEE – 14TH JULY 2015**

**SUBJECT: DRAFT SOCIAL MEDIA POLICY**

**REPORT BY: ACTING DIRECTOR OF CORPORATE SERVICES AND SECTION 151  
OFFICER**

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### **1. PURPOSE OF REPORT**

- 1.1 The report is seeking the views of Members prior to its presentation to Cabinet for approval for the introduction of a Social Media Policy for the employees of Caerphilly County Borough Council.

### **2. SUMMARY**

- 2.1 The report brings forward a Social Media Policy to provide guidelines to employees on using social media in both their private and professional lives, having regard to the high standards of conduct expected of Local Government Officers and to protect officers from potential misunderstandings and confusion.

### **3. LINKS TO STRATEGY**

- 3.1 The Policy links to the People Management Strategy and therefore to all other strategies, including the Council's Strategic Equality Plan and supplementary guidance. The Council relies on employees to deliver all its strategies and service provision.

### **4. THE REPORT**

- 4.1 The advancement of technology has led to a significant increase in the use of social media applications. Social media is the term used for online tools, websites and interactive media that enables users to interact with each other sharing information, etc. It can take many forms for example blogs; wikis; social networks; forums; podcasts; and content communities. This includes social networking sites and other sites that are centred on user interaction e.g. Facebook, Twitter, LinkedIn, You Tube, WhatsApp, Instagram, Snapchat, Flickr, icloud or Dropbox. This is not an exhaustive list. These websites may be accessed by PCs, tablets or mobile phones both inside and outside of the workplace.
- 4.2 Officers of the Council are of course free to use social media in their own time, but where Officers are identified directly or indirectly as a Council employee using social media in a personal capacity it is expected that they behave appropriately and in line with the Council's policies and values. Any inappropriate online activity will be a matter of concern for the Council.
- 4.3 The Council's Code of Conduct and Whistleblowing Policy refer to the standard of behaviour required by our employees and these rules apply to employees' conduct online.

- 4.4 The Council's Disciplinary Procedure has been used increasingly to address misconduct that is alleged to have arisen as a result of an employee's online conduct.
- 4.5 Currently, the Council does not have any guidance for employees in relation to their online conduct. The lines between public and private lives, personal and professional matters are hazy in online social networks. This policy and the guidance is intended to clarify the responsibilities of employees both inside and outside of work when using social media.
- 4.6 When using social media it is important that all data protection and information governance issues and legislation are adhered to. The policy details where employees are able to find further information on these areas.
- 4.7 A number of the Council's employees use social media on behalf of the Council to promote the Council's services and to consult with the residents of the borough. The Council operates a Facebook page, a Twitter account, You Tube, Flickr and Instagram.
- 4.8 The Council has a responsibility to ensure that it has a policy in place to investigate the disputed accuracy of posts and remove any posts that are found to be inaccurate or inappropriate on its social media sites.
- 4.9 Corporate Management Team (CMT) has agreed that employees are able to view the Council's social media sites within the workplace for up to a maximum of 30 minutes each day and this will be notified to employees via the HR Support Portal. Even though employees are able to access social media sites within the workplace they should always bear in mind that work based priorities will always take precedence.
- 4.10 The Policy is intended to cover employees' use of social media both on behalf of the Council and in their private lives in relation to what they should or should not say about their employment with the Council. It also provides Guidance to Managers on how to deal with these situations and how to provide support to anyone who has comments made about them on social media sites. A copy of the draft policy has been attached at Appendix 1. Training is already provided to employees who use social media on behalf of the Council so that they are aware of the appropriate standards of behaviour expected of them.
- 4.11 Advice on the policy has been sought from Information Technology, Communications and the Corporate Information Governance Unit and their comments have been included within the policy.
- 4.12 The Council's recognised trade unions have been consulted on the policy and the majority of the feedback has been included in the final draft of the policy, which is attached at Appendix 1. The one area that has not been included is where the trade unions were concerned whether an employee could be held responsible for their comments if they had not identified themselves as working for the Council. However, legal advice suggests that if it is reasonable for the comments to be attributable to the employee and identifies them as an employee of the Council then they can be held liable for their actions.
- 4.13 The new policy will be placed on the Council's HR Support Portal and employees will be made aware of the new policy via an all user email to employees and Managers. Managers of employees who do not have access to the Council's email system or Intranet will be asked to make their employees aware of the new policy.
- 4.14 The Council has the option whether to introduce the policy or not but by its introduction, it is helping to provide guidance to employees on the standards expected of them, thus hopefully avoiding any future disputes about employees not being aware of what they can and cannot do in relation to social media. This will also reinforce the standards of behaviour expected of Local Government Officers as detailed in the Council's Code of Conduct for Officers. It also provides guidance to Managers on dealing with any misuse of social media that is brought to their attention.

- 4.15 The policy will apply to all employees except those employees directly employed by schools. For the policy to apply to schools each School Governing Body is required to adopt the policy. The HR Team will facilitate this process via agreed consultation process for school policies.

## **5. EQUALITIES IMPLICATIONS**

- 5.1 The Senior Policy Officer (Equalities and Welsh Language) has been consulted on the introduction of this policy. A number of Equalities and Human Rights issues were raised and discussed during the drafting of the policy and the results of those discussions are reflected in the final policy being presented here.

## **6. FINANCIAL IMPLICATIONS**

- 6.1 There are no financial implications attached to the introduction of this policy.

## **7. PERSONNEL IMPLICATIONS**

- 7.1 There are no personnel implications attached to the introduction of this policy.

## **8. CONSULTATIONS**

- 8.1 All consultation responses are included in the report.

## **9. RECOMMENDATIONS**

- 9.1 Scrutiny members are asked to consider the contents of the report and make a recommendation to Cabinet to adopt the policy.

## **10. REASONS FOR THE RECOMMENDATIONS**

- 10.1 The recommendation is made to support the Council to introduce a Social Media Policy that will provide guidelines to employees on using social media in both their private and professional lives, having regard to the high standards of conduct expected of Local Government Officers and to protect them from misunderstandings and confusion.

## **11. STATUTORY POWER**

- 11.1 Local Government Act 1972  
Local Government Act 2000  
Employment Rights Act 1996  
Data Protection Act 1998

Author: Susan Christopher, Principal HR Officer  
Consultees: Nicole Scammell, Acting Director of Corporate Services  
Chris Burns, Chief Executive  
David Street, Director of Social Services  
Lynne Donovan, Acting Head of HR and OD  
Sian Phillips, Acting HR Service Manager  
HR Managers  
Gail Williams, Interim Head of Legal Services and Monitoring Officer  
Angharad Price, Interim Deputy Monitoring Officer and Head of Democratic Services

David Thomas, Senior Policy Officer (Welsh Language and Equalities)  
Joanne Jones, Corporate Information Governance Manager  
HR Strategy Group  
Councils recognised Trade Unions

Appendices:

Appendix 1 Draft Social Media Policy

# Draft Social Media Policy

<b>Version of Policy</b>	<b>Version 1</b>
<b>Draft Number:</b>	<b>10</b>
<b>Policy Ratified By:</b>	<b>Cabinet</b>
<b>Date Ratified:</b>	
<b>Effective Date of Policy:</b>	
<b>Review Date:</b>	<b>2016</b>
<b>Applicable To:</b>	<b>All Caerphilly employees except employees directly employed by Schools unless the School Governing Body has adopted the Policy, Workers and Contractors.</b>
<b>Equalities Issues:</b>	<b>All Equalities considerations have been taken into account when drafting this Scheme.</b>

The Council's recognised trade unions have been consulted on this Scheme.



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## INTRODUCTION

1. Social media is a term for websites or smartphone applications based on user participation and user-generated content.
2. Social media is the term used for online tools, websites and interactive media that enables users to interact with each sharing information etc. It can take many forms for example blogs; wikis; social networks; forums; podcasts; and content communities. This includes social networking sites and other sites that are centred on user interaction e.g. Facebook, Twitter, LinkedIn, You Tube, WhatsApp, Instagram, Snapchat, Flickr, icloud or Dropbox. This is not an exhaustive list. If you are in any doubt as to whether you are able to use a particular site, please check with your Line Manager.
3. Our Code of Conduct refers to the standard of behaviour required by our employees. The same rules that apply to your actions in general, as found in the Code of Conduct, apply to your conduct online.
4. Officers of the Council are free to use social media in their own time, but where officers are identified directly or indirectly as Council employee using social media in a personal capacity it is expected that they behave appropriately. Any inappropriate online activity may lead to formal disciplinary action being taken against you.
5. The lines between public and private lives, personal and professional matters are hazy in online social networks. This guidance covers the responsibilities of employees both inside and outside of work.
6. This Policy must be read in conjunction with all relevant Council policies and procedures, data protection training and all relevant legislation. Copies of all the Council's policies and procedures are available on the HR Support Portal, from HR or your Line Manager. Further information on the use of social media can also be sought from the Information Commissioner (ICO) at <http://ico.org.uk>. Employees, who use Social Media on behalf of the Council, will be provided with detailed guidance on using it in line with the advice published by the ICO. If you do not adhere to the ICO code, it could result in the Council being fined for non-compliance, so it is important that you read the guidance for using social media. A copy of the detailed guidance is attached at Appendix 1. Employees must also check any processes relevant to social media within their Service Area.
7. The Council has a responsibility to ensure that it has a policy in place to investigate the disputed accuracy of posts and remove any posts that are found to be inaccurate or inappropriate on its social media sites.
8. Social media is not an appropriate place to raise concerns; employees should raise these in line with their line manager or the Council's Whistleblowing Policy.

## WHAT THE POLICY COVERS

9. The Policy covers employees' use of social media both on behalf of the Council and in their private lives in relation to what they can and cannot say which reflects upon their employment with the Council.

## DETAIL OF THE POLICY

### Using Social Media Outside Work

10. The personal image you project in social media may adversely reflect on the image of the Council. Therefore you should:

(a) **Show yourself in your best light**

By identifying yourself as a Council employee within a social network, you are now connected to your colleagues, Managers and often residents and the rest of the world. You should ensure that content associated with you is appropriate and does not release any confidential information about your work with the Council. Make sure that your online activities do not interfere with your work nor could be perceived as having a negative impact on your employment or commitments to the Council and its residents.

(b) **Think Twice**

You should use mature discretion in all personal communications in social media.

When using social media for personal purposes, you must not imply you are speaking for the Council. You must always be mindful of the Council's Code of Conduct and the standards and conduct expected of you as a Local Government employee.

Avoid use of the Council e-mail address, logos or other Council identification. Make it clear that what you say is representative of your personal views only. Where possible, include a standard disclaimer, such as: "Views here are my own and may not represent my employer". Be aware that the things that you post can link you back to being an employee of the Council even if you have not referred to it specifically in your posts.

Be sensible about disclosing your personal details as this may put you at risk. The background information you choose to share about yourself, such as information about your family or personal interests, may be useful in helping establish a relationship between you and your readers, but it is your decision to share this information. By revealing certain details you might be more vulnerable to identity theft. You have a responsibility for safeguarding your social media content and you should check the security settings on your social media forums. Social network profiles are not always as secure as you think they are, check the settings. Even if your privacy settings are turned on you must not discuss anything that could be classed as confidential information with anyone online even if they are a colleague.

Be extremely careful when receiving friend requests on social media forums from service users or family members of service users, students, contractors, etc. Exercise professional judgement when accepting these requests. Relationships with service users, their families, contractors, etc must be declared on a Register of Employees' Interests Form.

Don't forget that you are not allowed to check social media for personal purposes during working time.

Remember that there may be consequences to what you publish.

(c) **Know your obligations**

You must comply with other Council policies when using social media. For example, you must ensure that you do not breach Council confidentiality and information policies.

You must be mindful of the Council's confidential information and it must be protected. If you have any queries on this, please contact the Corporate Information Governance Unit.

Avoid being defensive. When you see inaccuracies or damaging information published about the Council seek advice from your Line Manager or the Communications Unit.

Be the first to correct your own mistakes and don't alter previous posts without indicating that you have done so. In a blog, if you choose to modify an earlier post, make it clear that you have done so.

If you leave the Council's employment, the confidentiality requirements of your employment also extend to your use of social media.

**(d) Show respect to all**

You should be respectful of the Council and your fellow employees. Be aware that people are entitled to their views. Derogatory and discriminatory comments are always wrong because of the impact and upset they can cause for colleagues.

Be prepared for a two-way conversation. You must make sure that what you say is fair and factual and avoids unnecessary or unproductive arguments.

**Guidance To Using Social Media For Communication At Work**

11. We encourage open conversation with residents and businesses. We believe in dialogue between employees and between employees and our residents and all other interested parties wherever they are. All Caerphilly Council sites will be instantly recognisable as being owned and managed by Caerphilly County Borough Council. The Council's Communications Unit will advise and support on all aspects of branding to ensure consistency in approach on corporate branding standards.
12. Such dialogue is crucial in our effort to engage with people and to support our values of openness, fairness, flexibility and teamwork. Social media should be used in a way that adds value to the Council's business. For example it is adding value
  - if it helps you, your co-workers, our residents or our partners to perform well and solve problems;
  - if it enhances services, processes and policies;
  - if it creates a sense of community; or
  - if it helps to promote our aims.
13. We expect you to exercise personal responsibility whenever you participate in social media as part of your duties.
14. This includes not breaching anybody's trust and confidentiality. Be sure that you are presenting accurate information and ensure nobody is misled.
15. Each tool and medium has proper and inappropriate uses. While we encourage all employees to join in conversations, it is important to understand what is recommended, expected and required when you discuss Council-related topics. If the conversation is about a work related topic, you are expected to use your Council email address to ensure that other members of the conversation are aware they are responding to a Council employee. This will also prevent any Council information being passed to unsecure private email addresses.

16. Don't use any social media tool without proper consideration. The IT Security and Communications Unit can offer support and advice on the steps to follow and the paperwork to be completed.
17. Caerphilly County Borough Council reserves the right to monitor the use of all electronic devices owned by the Council, and to monitor all Council social media applications as utilised by employees if it has a valid reason for checking. Such monitoring is covered by the Council's Information Technology Security Policy and is permissible under Article 8 of the European Convention on Human Rights and 10 of the Human Rights Act 1998. By using social media on behalf of the Council, you agree to the Council, as your employer, accessing and monitoring your social media activity. The monitoring and accessing of employees' social media applications will be undertaken in line with the Data Protection Act 1998.

### **As A User On Behalf Of The Council**

18. You should:
  - a) Not use any social media tool for Council business unless you have received appropriate training and you have the appropriate permissions to do so.
  - b) Abide by the Code of Conduct in all situations. If you have any uncertainty about publishing something online, and you are unsure if something you want to publish is appropriate, seek advice from your Line Manager and the Council's Communications Unit. If you as an employee are found to have posted something inappropriate, inside or outside work, the disciplinary procedure may be invoked. Examples of inappropriate behaviour are contained in Appendix 2. If in doubt, don't do it!
  - c) Declare yourself. Some bloggers and social media users work anonymously, using pseudonyms. We discourage this in blogs or other forms of online participation that relate to the Council.

We believe in transparency and honesty. If you are talking about your work, you must use your real name, be clear who you are, and identify that you work for the Council.

If you have a vested interest in something you are talking about, ensure you have made this clear. What you publish may be on the Internet indefinitely so consider the content carefully.
  - d) Follow copyright and data protection laws. For the Council's protection as well as your own, it is critical that you stay within the legal framework and be aware that libel, defamation, copyright and data protection laws apply.

Ask permission to publish or report on conversations that were private or internal to the Council. Be aware that content on social media websites may be subject to Freedom of Information Act 2000 requests.
  - e) Add value. Our reputation is made up in a large part by the behaviour of employees and everything you publish reflects on how we are perceived.

When acting on behalf of the Council, handle offensive comments swiftly and with sensitivity. If a conversation turns and becomes offensive in terms of language or sentiment, make sure you inform your audience exactly why you have removed the comment.

A few sentences should do, along the lines of: "This comment was removed because moderators found the content offensive. I will respond to your comments but please respect the views of everybody who comes here."

### **Caerphilly's County Borough Council's Protocol For Social Media Use**

19. If you already use social networks or blogs for personal use and you have indicated in any way that you work here, you should add a disclaimer that states that opinions on this site are your own.
20. If you want to start a social network or blog for Council purposes such as participation, engagement and consultation about the Council, you should tell your Manager and consult with the Communications Unit. This will ensure you gain the necessary information to do so effectively.
21. You must produce a business case including details of:
  - What you wish to communicate or learn and your target audience.
  - Your aims for the social network or blog and why you think a social network or blog is the right platform for communicating your messages.
  - What other channels of communication you will use to support your use of social networks.
  - How many times a day you intend to update/check the social network or blog.
  - Which other officers will have access to edit the social network or blog when you are unable to update it due to sickness/annual leave.
  - How you intend to keep records of the data that you post onto your social media site or blog.
  - Your commitment to updating the social network or blog to clearly state when you no longer work for the authority or handing over the site to the person who takes over your role.
  - Your commitment to reviewing the social network or blog and providing your Manager and the Communications Unit with data to ensure the social network or blog is being used effectively.
  - Content should be reviewed regularly.
22. Remember that if you break the law using social media (for example by posting something defamatory), you may be personally responsible.
23. If a journalist contacts you about posts you've made using social media you should not comment initially and speak to your Line Manager and the Communications Unit before responding.
24. All information you post when using social media on behalf of the Council is subject to the Freedom of Information Act 2000.
25. All information created as part of your job role constitutes a Council record and is evidence of the Council's work, and may be needed for reference by others in future.
26. All information is subject to a retention period, specifying how long it must be kept.
27. You must notify your Line Manager if
  - you feel that you or someone else is subject to abuse by colleagues through use of a social networking site, which has some reference to either parties being engaged by the Council.

- you receive a request for information that has not previously been published as this could be deemed to be a Freedom of Information request and as such should be logged by the Corporate Information Governance Unit.
- you become aware that any information has been shared inappropriately.

This duty to notify your Line Manager (whistleblow i.e. to report illegal improper or unethical matters that you see) is contained within the Council's Whistle blowing Policy. This duty is particularly important where you see something unacceptable in relation to children or vulnerable adults. When making a disclosure under the Council's Whistle blowing Policy, the procedure laid down must be followed prior to the release of any information into the public domain. If the disclosure is not made following the process laid down under the Council's Whistle blowing Policy then you may not be covered by the protection given by the Policy.

### Guidance For Managers

28. Under these guidelines Managers in each area will decide what is appropriate in conjunction with advice and guidance from the Communications Unit. They should not adopt an unnecessarily restrictive approach but be mindful of the potential risks when using social media. If a Manager feels that there has been any potential disciplinary offence committed, they should seek advice and guidance from their HR. As social media pages are classed as personal data, there is a need to be mindful of the Data Protection Act 1998 when storing, accessing and sharing this information. Managers should give thought to whether there is a less intrusive way of obtaining the information prior to accessing an employees' social media pages and must seek relevant advice from HR.
29. Managers should ensure that any special instructions relating to their Service Area are reasonable and explained clearly to employees and that they are understood by all. Managers should also ensure that employees who use social media as part of their job role are trained in its use and are aware of what is and is not appropriate behaviour.
30. Managers should bear in mind concerns about impartiality, confidentiality, conflicts of interest or commercial sensitivity.
31. In some cases individuals may be dealing with matters, which are so sensitive that rules may have to be set on what they can and cannot talk about using social media.
32. Managers should also have a duty to support any employee who is subject to disparaging comments or abuse via social media websites. If you become aware of this you should refer the matter to your HR Business Partner Team and ensure that the employee is provided with the details of the Council's Employee Assistance Programme ([Care First](#)). If you feel that misconduct has taken place, you should refer the matter to your HR Business Partner Team for further advice and guidance on dealing with the incident. If a Manager becomes aware of cyber bullying and does not take any action to deal with it, the Council may be held as being liable so it is important that the matter is treated seriously and appropriately.
33. If a Manager becomes aware of inappropriate use of social media by employees or a complaint about the use of social media, they must first contact their HR Business Partner Team for advice. This may result in the disciplinary procedure being invoked and the Manager undertaking a disciplinary investigation into the employee's alleged activity on social media applications. In any cases of potential disciplinary action, the harm and scale of the harm on the individual or the Council must be considered.
34. Managers must also ensure that they check the Council's Data Protection notification to the ICO's Office (found at [www.ico.org.uk](http://www.ico.org.uk)) to make sure that their Service Area's use of social media is covered.

## **INTERPRETATION OF THE POLICY**

35. In the event of a dispute relating to the interpretation of this policy the Head of Workforce and Organisational Development or the Human Resources Service Manager will make the final decision on interpretation.

## **REVIEW OF THE POLICY**

36. A review of this policy will take place when appropriate. Any amendments will be consulted on with all the relevant parties. However, in the case of amendments relating to legislative requirements, the policy will be amended and reissued.

**JULY 2015**

## CCBC Acceptable Use Policy for Social Media

The Council has a range of social media channels which we invite people to like or follow us on. They provide information on news, events, jobs, leisure, parks and much more for citizens, businesses and visitors.

We also provide alerts and updates on service changes and disruptions, events, publicity campaigns and consultations etc.

Most online communities have their own rules which we will always follow. We reserve the right to remove any contributions that break the rules of the relevant community, or which are not in line with the following general guidelines:

- be civil, tasteful and relevant.
- do not post messages that are unlawful, libellous, harassing, defamatory, abusive, threatening, harmful, obscene, profane, sexually oriented or racially offensive.
- do not swear.
- do not post content copied from elsewhere, for which you do not own the copyright.
- do not post the same message, or very similar messages, more than once (also called "spamming").
- do not publicise your or anyone else's personal information, such as contact details.
- do not advertise products or services.
- do not impersonate someone else.
- the Council reserves the right to restrict or remove any content that is deemed in violation of this social media policy or any applicable law.

### Monitoring Accounts, Responding and Replying

We are embracing new technology and social media platforms as an integral part of our Council communication. We recognise the opportunities that social media can deliver in terms of engaging with our citizens using their preferred communication tools and creating greater two-way conversation and engagement.

We monitor our main CCBC Twitter and Facebook accounts Monday - Friday 9am to 5pm (except Bank holidays and public holidays). If you contact us via these channels during these times we will reply as soon as possible but there could be delays on some requests whilst we investigate, but we will keep you updated. Posts may not immediately appear outside of these hours.

If your query is urgent please contact the Council's Out of Hours emergency number on 01443 875500. You can also get in touch using online forms that can be found on the Council's website – [www.caerphilly.gov.uk](http://www.caerphilly.gov.uk)

### Deleting Posts

Generally, we will not remove posts that are made on our social and digital media channels, however we will consider removing posts or blocking users or accounts that breach the guidelines outlined above, without any explanation.

Equally to maintain the Council's reputation we may moderate comments before they are published to our social media channels or even delete a post should it be inappropriate.



## **Liking, Following, Sharing and Re tweeting**

Please don't be offended if we don't 'Like' or 'Follow' you on social media. This doesn't mean that we are not interested in what you have to say, it's just that the numbers can get too high for us to manage.

We sometimes follow or like people who provide information that is relevant to our work as a local authority (for example central government accounts, local media, and our partners) or those whose information we can pass on for the benefit of many people.

Occasionally, we'll try and lend our support to local and national campaigns. There will also be times we'll need to like or follow an account in order to take part in conversations.

If we like or follow someone, retweet or share their information, it doesn't mean that we endorse them.

We try and share or retweet information that we think will be of interest to our followers, however please don't be offended if we don't retweet something you want us to.

As a trusted organisation, any sharing of information could be seen as endorsement of a particular view, individual or organisation, and it's important that we remain impartial and protect the Council's reputation.

## **Defamation**

Please take care not to make defamatory statements. In law this means a statement that lowers the reputation of a person or organisation in the eyes of a reasonable person. We will therefore take down any statement that could be deemed to be defamatory.

## **Pre-Election Period**

The Council itself, as opposed to its political administration, must be politically neutral in its communications. Therefore, please do not use any of our pages to promote party political messages or other content.

This is a particularly sensitive issue in the run-up to an election - local, general or European - and we need to be mindful of how content may be perceived (regardless of what was intended).

The Council will continue to publish important service announcements using social media but may have to remove any comments that, in its view, may compromise its obligation to maintain political neutrality.

## **Comments, Compliments and Complaints**

If you have a concern about something posted on a page that the Council is responsible for, you should contact the relevant Service Area or contact the Council's Communications Team which can either deal with your issue or identify and contact the profile 'owner'.

We monitor our main CCBC Twitter and Facebook accounts Monday - Friday 9am to 5pm (except Bank holidays and public holidays). If you contact us via these channels during these times we will reply as soon as possible but there could be delays on some requests whilst we investigate, but we will keep you updated.

Please note:

You should not rely on a social media platform itself to raise serious concerns. Not all platforms will be monitored continuously, especially outside normal working hours.

Our responses to replies, comments and direct messages depend on the individual service

Unless stated otherwise the views/comments given on any of our social media sites may not necessarily reflect the views of CCBC.

### **Privacy**

Any details you provide to register with the Council for social media such as Twitter and Facebook will only be used for that purpose. We do not cross reference these details with any other information held by the Council.

## **DEFINITIONS OF INAPPROPRIATE BEHAVIOUR**

The following actions may constitute inappropriate behaviour but it is by no means exhaustive.

- Using a site/tool for personal gain or to solicit business for personal gain.
- Publishing materials or comments that might be considered inappropriate, offensive, discriminatory or libellous.
- Behaving in a way which is considered to be inappropriate, offensive, discriminatory, libellous or brings the Council into disrepute.
- Publishing materials considered to be defamatory, discriminatory or to the detriment of the council, its partners and/or the public perception of the Council.
- 
- Publishing or disclosing data, which could put the Council or its customers or service users at risk.
- Publishing or disclosing personal information provided to the Council..
- Where there is evidence that an employee has misused social media and networking sites or has behaved inappropriately, disciplinary action may be taken in accordance with the Council's Disciplinary Procedure.

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## CABINET – 29TH JULY 2015

**SUBJECT: DRAFT DISCIPLINARY POLICY AND PROCEDURE**

**REPORT BY: ACTING DIRECTOR OF CORPORATE SERVICES AND SECTION 151 OFFICER**

- 
- 1.1 The attached report, which sought the views of Members on proposed amendments to the Disciplinary Policy and Procedure for employees of Caerphilly County Borough Council, was considered by the Policy and Resources Scrutiny Committee on 14th July 2015, prior to its presentation to Cabinet.
  - 1.2 Key changes to the Policy (which was last revised in 2010) include the introduction of a verbal warning as a means of dealing with less serious cases of misconduct, the removal of references to attendance issues (as this is now addressed via the Managing Sickness Absence Policy), the time limit to submit an appeal to be set as 10 days for all appeal types, and the introduction of a fast track process to deal with less serious matters of misconduct.
  - 1.3 Officers advised that the duration of disciplinary sanctions for a verbal, written and final warning would be set at 6, 12 and 18 months respectively. During the consultation process, it had been suggested that the sanction duration could be harmonised in line with those applied to teaching staff (3, 6 and 12 months), a stance supported by the Trade Unions. Officers advised that 12 months was deemed appropriate for a written warning following instances of serious misconduct.
  - 1.4 The revised Policy will apply to all Caerphilly employees, workers and contractors, and will also apply to non-teaching school-based staff where the Scheme is adopted by the School Governing Body. The revised Policy does not cover the Chief Executive, the Council's Monitoring Officer or the Council's Section 151 Officer as separate disciplinary procedures apply to these posts.
  - 1.5 Following consideration of the report, the Policy and Resources Scrutiny Committee recommended to Cabinet that for the reasons contained therein, the revised Draft Disciplinary Policy and Procedure as appended to the report be adopted. By a show of hands, this was unanimously agreed.
  - 1.6 Members are asked to consider the recommendation.

Author: R. Barrett, Committee Services Officer, Ext. 4245

Appendices:

Appendix 1 Report to Policy and Resources Scrutiny Committee on 14th July 2015 – Agenda Item 7

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## POLICY AND RESOURCES SCRUTINY COMMITTEE – 14TH JULY 2015

**SUBJECT            DRAFT DISCIPLINARY POLICY AND PROCEDURE**

**REPORT BY:      ACTING DIRECTOR OF CORPORATE SERVICES AND SECTION 151  
OFFICER**

### **1.        PURPOSE OF REPORT**

- 1.1        To seek views from members, prior to its presentation to Cabinet, for amendments to the Disciplinary Policy and Procedure for employees of Caerphilly County Borough Council.

### **2.        SUMMARY**

- 2.1        The report proposes amendments to the current Disciplinary Policy and Procedure as part of the policy review process and incorporates proposals from a pilot of a fast track process for dealing with disciplinary cases more efficiently.
- 2.2        This Policy and Procedure does not cover the Chief Executive, the Council's Monitoring Officer or the Council's Section 151 Officer as separate disciplinary procedures apply to these posts.

### **3.        LINKS TO STRATEGY**

- 3.1        The new procedure links to the People Management Strategy and therefore to all other strategies, including all equality strategies, policies and procedures, that rely on employees to deliver the strategy and service provision.

### **4.        THE REPORT**

- 4.1        The report proposes amendments to the Disciplinary Policy and Procedure which was last revised in 2010.
- 4.2        The report proposes a number of amendments with the key changes highlighted in the following paragraphs. A copy of the revised Policy and Procedure is attached at Appendix 1.
- 4.3        A key change to the procedure is the introduction of a verbal warning which is widely supported by both Management and Trade Union Representatives as a means of dealing with less serious cases of misconduct.
- 4.4        The current policy makes reference to attendance issues being addressed through the Disciplinary Policy and Procedure but this is now addressed via the Managing Sickness Absence Policy therefore all references to attendance have been removed from the new Disciplinary Policy and Procedure.

4.5 Previously the time limit to submit an appeal against a warning was 5 days with the limit extended to 10 days for an appeal against dismissal. This has, on occasions, caused confusion so it is proposed to set the time limit for all appeals under the Disciplinary policy and Procedure to 10 days.

4.6 A pilot has been running in the Directorate of the Environment on a fast track process to deal with less serious matters of misconduct. The purpose of the pilot was to determine whether a process to deal with cases where the facts were not contested between the parties would work for Managers, Trade Unions and employees. The feedback received from both Managers and Trade Unions has been supportive of the process and therefore it is proposed to include this facility in the Policy and Procedure for all employees in the Council. Reference to this is made in Para 25 of the Disciplinary Policy and Procedure and guidelines for Managers will be written to outline the process to be followed and where it is appropriate to use this facility.

## **5. EQUALITIES IMPLICATIONS**

5.1 There are some equalities implications in this report, and in its guidance on groups or individuals who fall under the categories identified in Section 6 of the Council's Strategic Equality Plan, which have been identified in the EQI Screening process, which will be addressed for the individuals concerned as and when the circumstances arise. There is no requirement for an Equalities Impact Assessment Questionnaire to be completed for this report.

## **6. FINANCIAL IMPLICATIONS**

6.1 There are no financial implications resulting from the introduction of the revised Disciplinary Policy and Procedure other than time required to brief Managers.

## **7. PERSONNEL IMPLICATIONS**

7.1 There are personnel implications for the training of Officers in the revised Policy and Procedure but this will be offset by a reduction in the time spent on dealing with disciplinary cases with the introduction of a fast track process.

## **8. CONSULTATIONS**

8.1 All consultation responses are included in the report.

## **9. RECOMMENDATIONS**

9.1 Scrutiny members are asked to consider the contents of the report and make a recommendation to Cabinet to adopt the procedure.

## **10. REASONS FOR THE RECOMMENDATIONS**

10.1 The new procedure:

- Introduces a verbal warning which allows Managers to deal with less serious acts of misconduct.
- Allows Managers (provided agreement is reached with HR, TU representatives and the Employee) to deal with cases more efficiently where the misconduct is less serious and there is no contention over the facts.
- Updates the current Disciplinary Policy and Procedure which still makes reference to attendance issues being dealt with as a disciplinary issue.



## **11. STATUTORY POWER**

11.1 Local Government Act 1972  
Local Government Act 2000  
Employment Act 2008

Author: Richard Ballantine - HR Manager, Ext 6749, ballar@caerphilly.gov.uk  
Consultees: Lynne Donovan – Acting Head of HR and Organisation Development  
Nicole Scammell - Acting Director of Corporate Services  
Chris Burns - Chief Executive  
David Street - Director of Social Services  
Members of HR Strategy Group  
Council's recognised Trade Unions  
Angharad Price - Barrister and Acting Deputy Monitoring Officer  
David A Thomas – Senior Policy Officer (Welsh Language and Equalities)

Appendices:  
Appendix 1 Draft Disciplinary Policy and Procedure July 2015  
Appendix 2 Caerphilly County Borough Council Disciplinary Procedure 2010

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# Disciplinary Policy and Procedure

<b>Version of Scheme:</b>	<b>Version 2</b>
<b>Draft Number:</b>	<b>8</b>
<b>Scheme Ratified By:</b>	
<b>Date Ratified:</b>	
<b>Effective Date of Scheme:</b>	<b>1<sup>st</sup> MMMMMM 2015</b>
<b>Review Date:</b>	<b>2017</b>
<b>Applicable To:</b>	<p><b>All Caerphilly employees except those employees directly employed by schools unless the School Governing Body has adopted the Scheme, Workers and Contractors.</b></p> <p>This procedure does not cover the Chief Executive, the Council's Monitoring Officer or the Council's Section 151 Officer as separate disciplinary procedures apply to these posts.</p> <p>This procedure does not cover employees who are on probation</p>
<b>Equalities Issues:</b>	<b>All Equalities considerations have been taken into account when drafting this Scheme.</b>

The Council's recognised Trade Unions have been consulted on this Scheme.



<b>SECTION</b>	<b>PAGE NO.</b>
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## INTRODUCTION

1. Caerphilly County Borough Council requires good standards of conduct from its employees along with satisfactory standards of work. In addition the Council requires all employees to take responsibility for their own conduct and behavior both inside and outside of the workplace. The Council's disciplinary procedure applies to all issues of alleged misconduct as well as failure to meet the required standards of job performance.
2. The purpose of the disciplinary procedure is to help and encourage employees to achieve and maintain acceptable standards of conduct and job performance and to ensure consistent and fair treatment for all employees.
3. This disciplinary procedure reflects, and is consistent with, the standard dismissal and disciplinary procedure set out in the Employment Act 2008 and the ACAS Code Of Practice on Discipline and Grievance Procedures (March 2015).
4. This procedure should be cross-referenced with all the relevant Council policies and procedures and the Code of Conduct. Copies of all the Council's policies and procedures can be found on the Intranet or obtained from your Manager or Human Resources.

## WHAT THE POLICY COVERS

5. This Policy should be used by managers to effectively deal with disciplinary issues which arise in their department.
6. This procedure supersedes all earlier procedures.

## GUIDING PRINCIPLES

7. Heads of Service through their Senior Officers and Supervisors have the responsibility for ensuring this procedure is applied to all employees in their Service Area.
8. Minor acts of misconduct or unsatisfactory performance can be dealt with informally but where formal action is necessary Managers will need to follow this procedure. Informal action can include having a quiet word with the employee and in most cases this will be enough to improve their conduct or performance. In some cases additional training, advice and guidance maybe appropriate which will highlight to the employee their conduct/performance needs to improve and that a repetition will lead to formal disciplinary action being taken. Any actions that are taken at the informal stage should be documented and notes made of the meeting to ensure that these actions are not forgotten should it become necessary to move to the formal stage of the procedure. However, it should be noted that these should not be referenced if there is no further misconduct or performance issues in the following 6 month period.
9. No disciplinary action will be taken against an employee until the case has been fully investigated. The nature and extent of the investigation will depend on the seriousness of the allegations; the more serious the allegation then the more thorough the investigation should be. Managers must seek advice from Human Resources prior to invoking the disciplinary procedure.
10. There are occasions where it may be appropriate for the employee not to be at work whilst the investigation is being undertaken or until such time as any subsequent disciplinary hearing is completed. Suspension in these cases is not a disciplinary sanction but a neutral act and as such it is not intended to be a punishment or a presumption of guilt. Employees will receive full pay for the duration of the suspension. It maybe appropriate for the manager to carry out a risk assessment to evidence their rationale for the decision they have taken to suspend or allow the employee to continue in work.
11. At every stage in the disciplinary procedure the employee will be advised of the nature of the complaint against them and will be given the opportunity to state their case before any decision is made. There are exceptions to this e.g. cases that relate to child protection or the protection of vulnerable adults.

- 12 The details of the alleged misconduct or a failure to meet the required standard of job performance will be set out in the letter inviting the employee to attend a disciplinary hearing.
- 13 At all stages of the formal procedure an employee will have the right to be accompanied by a work colleague, a trade union representative or official. Trade Union representatives must have been certified by their union as being able to accompany an employee. If an employee is to be accompanied by a work colleague, it must 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.
- 14 No employee will be dismissed for a first breach of discipline except in the case of gross misconduct. In the event of employees being dismissed as a result of gross misconduct, there will be no notice or payment in lieu of notice given.
- 15 The disciplinary procedure may be implemented at any stage if the employee's misconduct or job performance warrants such action.
- 16 At all stages, any information gathered or presented by all participants must be treated in the strictest confidence. All information gathered in relation to the case should be kept no longer than necessary in accordance with the Data Protection Act 1998.
- 17 All employees will be expected to co-operate fully with any investigations. Employees involved in disciplinary investigations who are absent from work for reasons of ill health will be required to attend meetings at any stage of the disciplinary process and to respond to communications without undue delay. If employees are unable to attend these meetings, due to ill health, the disciplinary process may be progressed. In this circumstance the employee may be represented at meetings by their chosen representative. Alternatively the Council reserves the right to carry out the investigation and progress the disciplinary process in the absence of the employee and their representative.
- 18 When disciplinary action is being considered against an employee who is a trade union representative the normal disciplinary procedure should be followed. However, it is advisable to discuss the matter at an early stage with an official employed by the Trade Union, after obtaining the employee's agreement.
- 19 Disciplinary action will be issued separately for misconduct and poor job performance. In cases of misconduct where an employee currently has a live Disciplinary warning on their record then progressive disciplinary action will be taken for each incident of misconduct even though they may not be related.
- 20 Verbal, written and final warnings will remain on an employee's personal file indefinitely but subject to satisfactory conduct or job performance, they will be disregarded for disciplinary purposes after their expiry date.
- 21 In certain cases, a final written warning may never be removed and if there is any reoccurrence of this type of conduct during the employee's employment it may lead to dismissal, e.g. In cases where final written warnings are issued in cases surrounding child protection and the protection of vulnerable adults.
- 22 An employee will have the right to appeal against any disciplinary sanction imposed. This will be the final stage of the disciplinary procedure.
- 23 Where an employee's job performance is the reason for disciplinary action, the sanction imposed may be a disciplinary warning and withholding of an increment. This sanction will not be applied until a full investigation has been undertaken into the circumstances surrounding an employee's job performance. If this sanction is applied a plan will be developed and agreed with the employee to ensure that the employee's job performance reaches acceptable levels. For further information on dealing with employees' underperformance, see the Council's Managing Underperformance Process.

- 24 In cases of redundancy, the ending of a fixed term contract or ill health termination, please refer to the relevant procedure for the process to follow.
- 25 Every effort will be made to deal with the disciplinary process as promptly as possible. Managers should ensure that the correct processes are followed to ensure the cases are dealt with fairly and consistently. The time taken will be dependent upon a number of factors including the complexity of the case and investigation, the availability of Officers and Representatives involved and the availability of witnesses. There may be occasions where the facts of the case are established quickly and there is little or no dispute about over them. In such cases and where the potential outcome is not a final written warning or dismissal then the parties can discuss the option of expediting the process to a speedy conclusion. However, this must be agreed by all parties (The Manager, HR, the Trade Union/Representative and the Employee ). If agreement is reached then a meeting can be arranged to conclude the process and the relevant sanction notified to the employee. HR will advise on the process to be followed.
- 26 Full consideration will be given to ensure that Employees and their Representatives are given equal opportunity to prepare and present their case. This may mean allowing further time to prepare for the Interviews and Hearings to cater for example translation, BSL, religious observance etc. Reasonable requests to make adjustments to the Disciplinary Policy and Procedure will be considered.

If an employee, or the person accompanying them is disabled, accessibility issues must be considered, and appropriate reasonable adjustments made, to allow them to take part in the disciplinary process.

## **MISCONDUCT**

- 27 It is important that every employee understands that local government employment calls for the highest standard of conduct, responsibility and integrity and that public confidence would be shaken were the least suspicion to arise that any employee could be influenced by improper motives. Failure to maintain acceptable standards both inside and outside of work could be in contravention of the Council's policies, Code of Conduct and/or its disciplinary procedure and lead to disciplinary action being taken against an employee for misconduct. In certain cases, it may be appropriate to involve Internal Audit where the case involves potential financial irregularities (as stated in the Council's Financial Regulations). In all appropriate cases, the Council will seek restitution. Similarly in cases where breaches of Health and Safety are being investigated then the Health and Safety manager must be informed.
- 28 The following are examples of offences, which generally amount to misconduct. Depending on the nature of the offence some examples of these could be viewed as gross misconduct: -
- Unauthorised absence from work.
  - Lateness.
  - Unsatisfactory and unacceptable performance of duties.
  - Failure to adhere to the policies and procedures of the council.
  - Using information obtained in the course of employment for personal gain or benefit.
  - Contravention of safety procedures.
  - Unauthorised use of the telephone/e-mail.
  - Contravention of the IT Security Policy, including the misuse of social networking sites.
  - Disruptive behaviour, e.g. undermining management, team morale or the efficient running of the team, etc.
  - Contravention of the provisions set out in the Code of Conduct.
  - Misuse of the flexi system

This list is not exhaustive or exclusive.

## GROSS MISCONDUCT

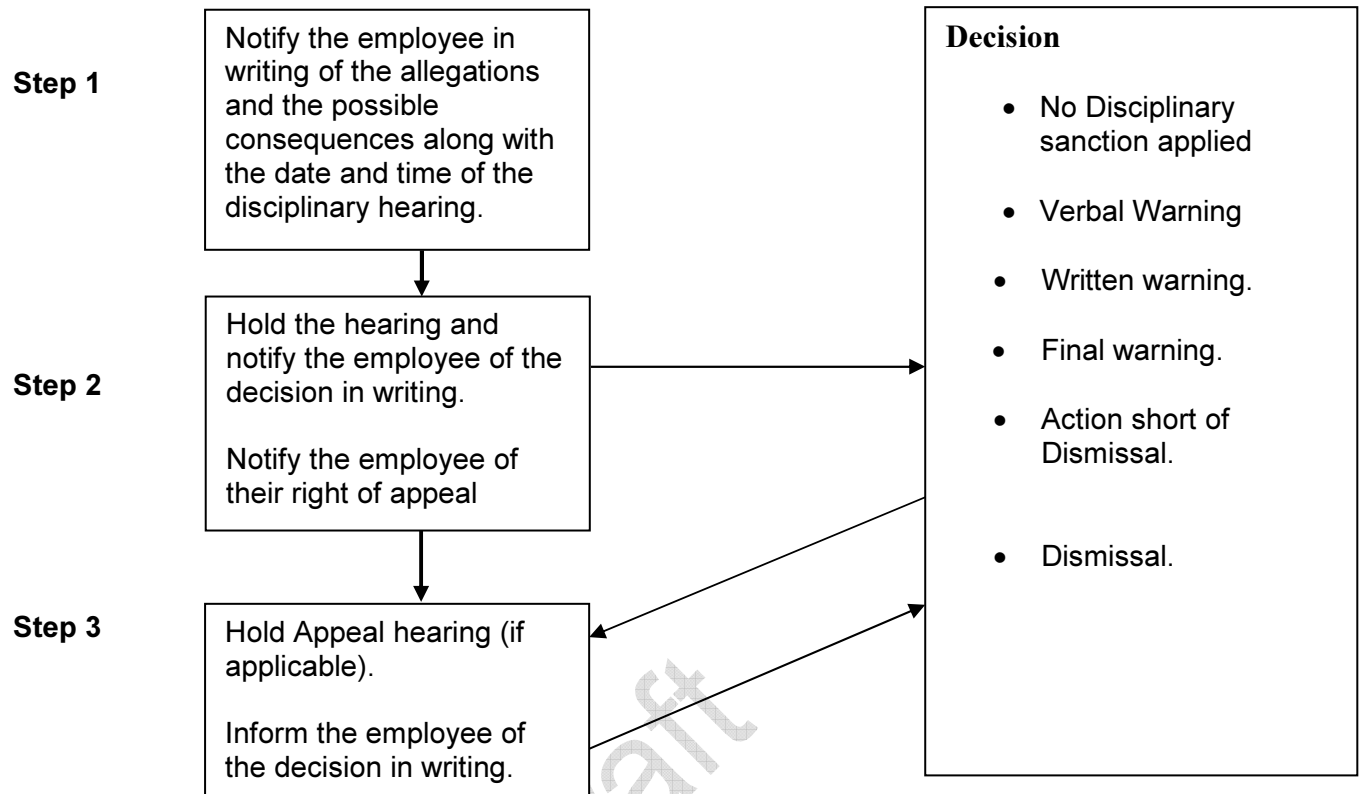
- 29 The following are examples of offences, which are normally regarded as amounting to gross misconduct and may be dealt with as such under the procedure: -
- Refusal to accept and act on a reasonable instruction from a Supervisor or member of management.
  - Fighting, assault, harassment, victimisation or abusive, intimidating, threatening or bullying behaviour. This includes sexual misconduct at work.
  - Theft, fraud, falsification of records (including qualifications which are a stated requirement of employment or which result in financial gain) or any dishonesty involving the Council, its employees, clients, members of the public, Elected Members, authorised visitors, or attempts to commit such offences.
  - Deliberate or reckless damage to the property of
    - the Council
    - its employees
    - visitors to Council premises.
  - Serious negligence that could lead to or result in loss, damage or injury.
  - Unauthorised disclosure of confidential information or information governed by the Data Protection Act 1998 (subject to the Public Interest Disclosure Act 1998). This includes the Council's rules in relation to electronic communication systems and computers.
  - Any action likely to endanger the health and safety of the employee or any other person.
  - Any action or behaviour, which could damage the Council's reputation, including rudeness to members of the public or clients and inappropriate use of social networking sites.
  - Serious breaches of the Council's policies and procedures or failing to comply with relevant statutory or regulatory requirements.
  - Serious acts of insubordination e.g. defiance, disobedience, etc.
  - Accepting a gift which could be construed as a bribe.
  - Conviction for any serious criminal offence while a Council employee, which renders the employee unsuitable for continued employment. This would depend on the facts of the case and the risk assessment undertaken by the manager under the Employment of Ex Offenders Policy. Serious breach of trust and confidence
  - Breach of the Council's Whistleblowing Policy or subjecting an employee to a detriment for making a protected disclosure.

This list is not exhaustive or exclusive.



## DISCIPLINARY PROCEDURE

- 30 Once the investigation process has been completed the following 3-step process must be followed in all cases where disciplinary action is being considered. Step 3 is only applicable if the employee exercises their right of appeal.



## DISCIPLINARY SANCTIONS

31. If an employee's conduct or job performance is proven not to meet acceptable standards the following sanctions can be applied

Stage	Sanction	Duration
1	Verbal Warning	6 months
2	Written Warning	12 months
3	Final Warning	18 months
4	Dismissal	

### Stage 1 - Verbal warning

32. If an employee's misconduct or unsatisfactory job performance is a relatively minor infringement, they will be given a verbal 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 of the verbal warning will be kept on the employee's personal file but it will be disregarded for disciplinary purposes after 6 months, subject to satisfactory conduct or job performance.

## **Stage 2 - Written Warning**

33. If an employee's misconduct or unsatisfactory job performance continues or the misconduct or unsatisfactory job performance is of a serious nature they will be given a formal written warning. The employee will be advised of the reason for the warning, that it is the second stage of the disciplinary procedure and of their right of appeal. A record of the written warning will be kept on the employee's personal file but it will be disregarded for disciplinary purposes after 12 months, subject to satisfactory conduct or job performance.

## **Stage 3 - Final Written Warning**

34. If there is a failure to improve or the employee's misconduct or job performance is sufficiently serious, a final written warning will be given to the employee. The employee will be advised of the reason for the warning, the duration of the warning, that it is the third stage of the disciplinary procedure and of their right of appeal. A record of this final written warning will be retained on the employee's personal file but it will be disregarded for disciplinary purposes after 18 months (although this period may be extended depending on the circumstances of the offence) subject to satisfactory conduct or job performance.

## **Stage 4 - Dismissal**

35. If there is a failure to improve or the employee's misconduct or job performance is sufficiently serious, dismissal will normally result. Only the Chief Executive, a Director, a Head of Service or the next most appropriate level of management can take the decision to dismiss. The employee will be provided, as soon as reasonably practicable, with the written reasons for dismissal, the date on which their employment will terminate and their right of appeal.
36. If an employee is found guilty of an act of gross misconduct, summary dismissal without notice or payment in lieu of notice will be the normal course of action. However, in some circumstances action short of dismissal may be substituted for the dismissal. This could include a final written warning together with any one or combination of the following examples:-
- Transfer to another job/location
  - Suspension without pay
  - Demotion/reduction in salary

## **Appeals**

37. At the appeal any disciplinary sanction imposed will be reviewed and it may be withdrawn, remain the same, or be decreased. The format of the appeal hearing will depend on the grounds for appeal. If the appeal is on the basis of the severity of the sanction or the misapplication of the procedure, then the appeal hearing will be a review of the original case. If it is the fact that new evidence has come to light which was not available at the time of the Disciplinary hearing then the appeal hearing will be a re-hearing. The presentation of new evidence is the only reason that a re-hearing will be held.
38. An employee who wishes to appeal against a disciplinary decision, other than in the case of dismissal, should make their appeal in writing on the form attached at Appendix 1 within ten working days of receipt of the decision, setting out the grounds for the appeal, to the HR Department who will liaise with the relevant Manager to hear the appeal. Appeals will be heard by a Manager not involved in the earlier decision.
39. All appeals against dismissal must be made in writing within ten working days of receipt of the decision, setting out the grounds for the appeal, to the Head of Human Resources and Organisational Development who will arrange for the appeal hearing to be convened. If the appeal is successful an alternative sanction may be imposed.

## **OVERLAPPING GRIEVANCE AND DISCIPLINARY CASES**

40. Where an employee raises a grievance during the investigation/hearing, the disciplinary process may be temporarily suspended in order to deal with the grievance. For example
- The grievance relates to a conflict of interest that the Manager holding the Disciplinary Hearing is alleged to have.
  - Bias is alleged in the conduct of the Disciplinary Hearing.
  - The Investigating Officer has been selective in the evidence they have supplied to the Manager conducting the Hearing.
  - There is possible discrimination.

Where the grievance and disciplinary cases are related it may be appropriate to deal with both issues concurrently.

## **INTERPRETATION OF THE POLICY**

41. In the event of a dispute relating to the interpretation of this procedure the Head of Workforce and Organisational Development or the Human Resources Service Manager will make the final decision on interpretation.

## **REVIEW OF THE PROCEDURE**

42. A review of this Policy will take place when appropriate. Any amendments will be consulted with all the relevant parties. However, in the case of amendments relating to legislative requirements, the Policy will be amended and reissued

**APRIL 2015**



**DISCIPLINARY APPEAL FORM**

<b>Employee's Name</b>		<b>Employee Number</b>	
<b>Job Title</b>			
<b>Service Area</b>			
<b>Location/Establishment</b>			
<b>Date of Disciplinary Hearing</b>			
<b>Disciplining Officer</b>			
<p><b>Do you wish to have representation at the appeal? If Yes, please state who will be representing you.</b></p> <p><b>Name:</b></p>	<p>Yes <input type="checkbox"/></p>	<p>No <input type="checkbox"/></p>	

I wish to lodge an appeal against the decision made in relation to the disciplinary action taken against me under the Council Disciplinary Procedure. The detailed grounds of my appeal are shown below.

**Grounds for the appeal including the reasons why you are not satisfied with the original decision. Please give full details.**

Please continue on a separate sheet, if required.

<b>Will you be presenting any new evidence at the Appeal Hearing?</b>	Yes <input type="checkbox"/>	No <input type="checkbox"/>
<b>If Yes, please give details.</b>		

<b>Signature</b>		<b>Date:</b>	
------------------	--	--------------	--

**Please forward the completed form to Human Resources.**

**FOR HUMAN RESOURCES USE ONLY**

<b>Date received by Human Resources:</b>	
<b>Type of Appeal</b>	Review <input type="checkbox"/> Rehearing <input type="checkbox"/>
<b>Human Resources Officer Allocated To Appeal:</b>	
<b>Manager/Panel hearing the Appeal:</b>	
<b>Appeal Date:</b>	
<b>Outcome:</b>	
<b>Date Processed:</b>	

## Guidance Notes

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Wherever the designation Manager is used throughout this scheme, it is taken to mean Head of Service, Line Manager, Supervisor, Officer in Charge, or anyone who has a responsibility for employees through their work.

These explanatory notes must be read in conjunction with the Council's Disciplinary Procedure

## SECTION 1 - DEFINITION OF ROLES

### Investigating Officer

The role of the Investigating Officer is to

- Undertake a full and thorough investigation prior to recommending whether: -
  - There is no case to answer.
  - Not to proceed to a Disciplinary Hearing but to deal with the issue informally by arranging counselling, coaching, etc.
- proceed with a Disciplinary Hearing as there is a case to answer. Notify the employee of the outcome of the investigation.
- Enlist the support of other officers to assist with the investigation.
- Notify other interested parties as laid down in the Council's Financial Regulations.
- Prepare a comprehensive report setting out the allegations including witness statements and other relevant documentation, which will be referred to at the disciplinary hearing. When preparing this report, the Investigating Officer should
  - Ensure that all the relevant facts are available including documentary evidence, witness statements and disciplinary records.
  - Check whether there are any special circumstances, such as personal or outside issues, that should be taken into account.
  - Be careful when dealing with evidence from an anonymous witness. Take written statements, seek corroborative evidence and check that the witnesses' motives are genuine.
  - Check that the standards of other employees are acceptable and that this employee is not being unfairly singled out.
  - Consider the employee's explanations and check them out.
  - Allow the employee time to prepare their case.
- Present the case at the Disciplinary Hearing supported by other Officers where relevant.

### Human Resources Support

The role of Human Resources is as follows: -

- To provide advice prior to the commencement of the disciplinary process where Human Resources' attendance at the actual meeting can be discussed. It is not a pre-requisite for Human Resources representatives to attend all disciplinary meetings that may result in a verbal or written warning. For final written warnings and dismissal cases, Human Resources staff must be in attendance.
- To provide advice, guidance and support to Investigating Officers, Disciplinary/Appeals Officers/ Panels.
- To provide support to the Investigating Officer to compile the report for presentation at the Disciplinary Hearing.
- To provide administrative support such as note taking at interviews, hearings and appeals, preparing Statements of Case and arranging appropriate facilities on behalf of Officers/Panels arranging suitable venues and times for the meetings and ensuring that any special requirements are made for employees/Officers/Panels in relation to their involvement with the disciplinary procedure.

The Human Resources Advisor can only advise one party during the disciplinary process e.g. if they are involved in the investigation, they cannot advise the Disciplining Officer at the Disciplinary Hearing or subsequent Appeal.

### **Disciplinary Officer/Chair of the Disciplinary Hearing**

The Disciplinary Officer/Chair should ensure the correct procedures are followed as set out in Section 4.

The Disciplinary Officer should establish what disciplinary action has been taken in similar circumstances in the past to ensure a consistent approach across the Council. Advice should be sought from the Human Resources Advisor on policy and procedures prior to the decision on the sanction being made.

The Disciplinary Officer/Chair has the responsibility of deciding the outcome of the Hearing and informing the employee of their decision, in writing, together with the reasons for doing so.

### **Appeal Officer/Chair of the Appeal Hearing**

The Appeal Officer/Chair should ensure the correct procedures are followed as set out in Section 5.

To ensure a consistent approach across the Council, advice should be sought from the Human Resources Advisor on policy and procedures prior to the decision being made.

The Appeal Officer/Chair has the responsibility of deciding the outcome of the Appeal Hearing and informing the employee of their decision, in writing, together with the reasons for doing so.

### **Representatives**

Employees have the right to be accompanied by a work colleague or a trade union representative/official at a disciplinary hearing or as part of the investigation process. Trade union representatives must have been certified by their union as being able to accompany an employee. If an employee is to be accompanied by a work colleague, it must be someone who is not directly involved in the case as their presence may prejudice the case or they might have a conflict of interest. A disciplinary hearing is defined as a meeting, which could result in

- A formal warning being issued to an employee, i.e. a warning that will be placed on the employee's record.
- The taking of some other disciplinary action such as suspension without pay, demotion or dismissal, or other action.
- The confirmation of a warning or some other disciplinary action, such as an Appeal Hearing.

Employees do not have the right to be accompanied at informal discussions or counselling sessions.

The Representative can: -

- Put the employee's case.
- Sum up the employee's case.
- Respond on the employee's behalf to any view expressed at the hearing.

However, they cannot answer questions on the employee's behalf.

If an employee's representative is unable to attend the date of an interview/disciplinary hearing, the interview/disciplinary hearing may be postponed until they, or another representative, are available. However, this postponement should not be more than five working days after the original date of the interview/disciplinary hearing, unless agreed by both parties, and no further postponements will be granted.

Employees should inform the Investigating/Disciplining Officer who, if anyone, will be accompanying them at the interview/hearing.



## **Witnesses**

The Investigating Officer will interview any appropriate witnesses and produce a witness statement based on those interviews, this may include witnesses identified by the employee (or their Representative) under investigation. A representative from Human Resources may also be present. Witnesses will be requested to sign and date their statement as a true and accurate record and be advised that they may be required to attend any subsequent Disciplinary Hearing.

Witnesses can only be called to appear at the Disciplinary Hearing if they have previously submitted a signed witness statement. This applies equally to witnesses called by the employee or their representative.

## **SECTION 2 - MISCELLANEOUS**

### **Suspension**

There may be occasions where it may be deemed appropriate for an employee to be suspended from work whilst the investigation is undertaken. Examples of this could be where there is an allegation of gross misconduct, which, if proven, could lead to dismissal, where relationships have broken down or where there are risks to an employee's or the Council's property or responsibilities to other parties. Prior to suspending an employee consideration should be given to whether it is necessary to suspend or whether alternative working can be considered e.g. temporary relocation. This alternative work should relate to the employee's skill set. Suspension will be limited to the shortest possible time and kept under review.

After six weeks a formal review will be undertaken. The Head of Human Resources and Organisational Development and the Head of Legal Services and Monitoring Officer or their nominated representatives will conduct this review. It will take the form of a report from the Officer who carried out the suspension giving the allegations against the employee, the progress to date and the reasons why the employee should continue to be suspended from their duties. As a result of this report, the Head of Human Resources and Organisational Development and the Head of Legal Services and Monitoring Officer will decide whether suspension is still the most appropriate course of action.

Whilst suspended the employees' normal terms and conditions of employment will apply including rules relating to requests for annual leave and notification of sick leave. It may be appropriate, depending on the allegations, to impose conditions on the employee e.g. not to visit any of the Council's premises whilst they are suspended or contact other employees.

It should be appreciated that where an employee is facing a disciplinary investigation it is a stressful period so the Investigating Officer should remind the employee of the advice, information and counselling service which is available from the Employee Assistance Programme provided by the Council. This is a totally confidential service and all conversations between employees and the counselling service are confidential.

Employees who are suspended will be given a nominated contact within Human Resources should they wish to discuss the progress of their case. However, no details of the investigation will be divulged.

Investigating Officers must remember that they have a duty of care to all the employees within a Service Area, both those who have had allegations made against them and those who are acting as witnesses.

### **Terms of Reference for Investigation**

It is vital that the Investigating Officer determines the terms of reference for the investigation prior to its commencement, as this ensures that the focus of the investigation is appropriate.

They should include: -

- The issue (s) to be investigated.
- The methodology for conducting the investigation.

- The proposed time frame – this should be realistic and there should be a provision for an extension.
- The resources available to the Investigating Officer.
- Who will be provided with copies of the report at the conclusion of the investigation?

### **Investigations carried out by external bodies.**

There may be occasions where external agencies become involved in investigations of a serious nature e.g. cases relating to the protection of vulnerable adults and child protection issues. In such cases it is essential that advice is sought from the HR Department before undertaking any internal investigations. This may result in the internal process being delayed until the conclusion of the investigation or action arising from the investigation is known e.g. court proceedings. However, in other cases the external bodies will not carry out its own investigation until the conclusion of any internal proceedings. Examples are the professional bodies (General Teaching Council for Wales, Care Council for Wales), Health and Safety Executive.

Human Resources will also advise whether any evidence gained during the external investigation can be used in the internal disciplinary process.

### **Police**

In certain circumstances, it may be necessary to involve the Police where criminal acts are alleged to have taken place. The decision to involve the Police will be taken following consultation with the Chief Executive and/or appropriate Director, the appropriate Head of Service and the Head of Human Resources and Organisational Development. They will also decide on whether it is appropriate to await the outcome of any police investigation and/or criminal proceedings before commencing the disciplinary process. This decision will depend upon the nature of the offences, the need to maintain confidentiality and the potential impact on the Council.

Criminal offences outside employment will not be treated as automatic reasons for dismissal or another disciplinary penalty. Each situation will be judged in the context of whether the offence committed has relevance to the employee's duties and an appropriate Risk Assessment undertaken. The major consideration will be whether the offence is one, which renders the employee unsuitable for continued employment. Employees are required to disclose criminal offences and failure to do so may lead to disciplinary action being invoked.

Where there are Police proceedings pending, the Investigating Officer has the option to wait for the outcome of the Police investigation and/or criminal proceedings before commencing the disciplinary process. However, where those investigations/ proceedings are not relevant or are prolonged, the Manager will need to consider whether to proceed with disciplinary action before the Police investigation has been concluded. Consultation with Human Resources should take place before making this decision. Should the Manager wish to proceed they will need to clearly record the reasons for taking such action.

If an employee is unable to meet their contractual obligations and attend work for the foreseeable future because of on-going court hearings, they have been remanded in custody or have been imprisoned, the contract will be deemed to be frustrated and will automatically terminate. In such circumstances then the rights and obligations of both the employee and the Council would come to an end and the employee would not be entitled to any pay or other benefits in respect of notice. In such an event the disciplinary procedure would not apply and any investigations or disciplinary action currently underway would cease immediately. Prior to making any decisions regarding the frustration of an employee's contract, Managers should refer to the Head of Human Resources and Organisational Development for further advice and guidance.

## **Notification to Statutory and Professional Bodies**

Statutory bodies regulate certain professions and in those professions employment is conditional upon continuing registration. Examples include Solicitors and the Law Society, Social Workers, etc. In these professions, the Council has a duty to report any incidents of alleged professional misconduct or serious performance issues to the appropriate registration authority. This duty to notify must be exercised quite separately to any disciplinary action. The registration authority is quite likely to undertake its own investigation. The Manager need not wait for the outcome of any such investigations before continuing with its own internal investigations and/or taking steps under the disciplinary procedure.

In cases where the outcome of the disciplinary investigation results in action short of dismissal and a Statutory Body subsequently determines that the employee's registration is suspended or removed, the Manager should consider whether suitable alternative work is available before taking action to dismiss the employee because of conduct or capability. The advice of the Head of Human Resources and Organisational Development and the Head of Legal Services and Monitoring Officer or their representatives should be sought in these cases.

## **SECTION 3 – INVESTIGATION PROCESS**

Investigations are increasingly a feature of the employment relationship. One of the main reasons for this is that employers are frequently required by Employment Tribunals to demonstrate why they reached a particular decision, for example the dismissal of an employee.

Once an employee has shown that they have been dismissed and that they are eligible to present a complaint for unfair dismissal, the Employment Tribunal will consider the facts of the case and whether procedures have been followed. The Council must overcome three hurdles: -

- It must show that the reason for dismissal was one of the five potentially fair reasons for dismissal (these are capability, conduct, redundancy, breach of a statutory enactment, and some other substantial reason e.g. failure to accept new terms and conditions).
- It must show that it complied with a fair procedure.
- It must show that it acted reasonably in treating that reason as a sufficient reason to dismiss.

The Employment Tribunal will scrutinise how fair the Council's policy is and the procedure that it adopted at the time of the dismissal. An internal investigation will form part of that procedure. As soon as a Manager becomes aware that they should conduct an investigation within their Service Area, they should contact Human Resources for further advice and guidance.

The Employment Tribunal cannot substitute its own decision for that of the Council's but it will determine whether the Council's action fell within the band of reasonable responses to the circumstances.

Carrying out a fair and thorough investigation provides an Investigating Officer with the opportunity to establish the facts of a particular matter and be in a much better position to decide on a course of action.

It must be emphasised that the investigation process is not a 'one way process.' An investigatory interview is the first opportunity that an employee has to respond to the issues under investigation.

## **PLANNING THE INVESTIGATION**

### **Who Should Investigate?**

The Investigating Officer should not be linked to any of the allegations being made and generally will be the employees line manager.

The Investigating Officer should be fully briefed on how any allegations have arisen and any issues of immediate relevance.

It is vital that the Investigating Officer is provided with sufficient resources and time to devote to the investigation. It may be necessary to remove other duties from them on a temporary basis to accommodate them undertaking the investigation.

The Investigating Officer who recommends that there is sufficient evidence to go forward to a Disciplinary Hearing cannot be the same officer who hears the case and decides if any disciplinary action should be imposed. NB. This provision does not apply to cases where all the parties agree to expedite the process to a speedy conclusion. See paragraph 25 of the Disciplinary Policy and Procedure for further details.

### **The Order Of Interviews**

Ideally, the person whose conduct is being called into question should be seen last so that they can answer all the questions relating to the details of the case against them. If this is not possible it may be necessary to re-interview this person as a result of further information coming to light during the interviews.

To some extent the order of the witnesses may be determined by the availability of the witnesses. However, the Investigating Officer should try and plan the interviews in a reasonably logical order.

The person making the allegation or raising the issue should be interviewed first but it may be necessary to re-interview them again later on in the light of further information coming to light during the interviews with witnesses.

### **What Does the Investigating Officer require**

#### **Time**

The amount of time required to undertake an investigation will vary from case to case but it is important the Investigating Officer is able to devote their time to fulfil their obligations and ensure the case is dealt with in a timely manner.

The timescale will depend on the complexity of the matter under investigation, the availability of witnesses and relevant documents, the level of experience of the Investigating Officer and the seriousness of the allegation.

Frequently, further allegations come to light during the investigation, which means that the investigation becomes more complex and takes more time to conclude. In this case the Investigating Officer shall ensure that all interested parties are kept informed of the new timescales.

#### **Resources**

If the Investigating Officer is required to interview witnesses, they will need access to a room, the use of a note taker/typist and confidential storage.

### **CONDUCTING WITNESS INTERVIEWS**

The terms of reference will detail the methodology of an investigation. This may include a review of any relevant documentation and witness interviews. Managers should ensure that witnesses understand the seriousness of the investigation and in particular do not speak about the investigation to anyone other than those officers involved in conducting the investigation. Again it is important to identify all potential witnesses both those identified by the Management side and those identified by the employee side.

It should be explained to the witness at the start of the interview that any statement that they make as part of the investigation may be used in formal action under the Council's policies and procedures at a later date. Every effort should be made for witnesses to attend Hearings in order that examination or cross-examination can take place. If witnesses are unable to attend a Disciplinary Hearing, then the Disciplinary

Officer/Chair will have the authority to decide what weight can be given to the witness statements and whether they can be accepted in evidence.

These interviews should be: -

- Structured, with full notes taken, to be typed as soon as possible after the interview has taken place.
- Held in a confidential environment.
- With one interviewee at a time. If an employee is to be accompanied during the interview, the companion should be someone who is not a potential interviewee, as this would 'contaminate' evidence.

During the investigation, the Investigating Officer may be privy to the potential use of or reference to confidential information and this could include reference to service users or clients. There is potentially a conflict between the need to protect the confidentiality of any client information and natural justice in providing the employee with access to information, which either supports the allegation made or alternatively provides the employee with information to support their version of events.

The Investigating Officer should note why each witness has been interviewed and what their relationship is with any of the main parties to the investigation. To aid consistency, all participants should be given the same introduction as to the reasons why they are being interviewed. This introduction should explain: -

- Who the Investigating Officer is.
- The context of the interview (particularly if it is taking place under the auspices of a disciplinary or grievance procedure).
- For what purposes the statement will be used.
- The meaning of confidentiality in this context.
- How and when they can expect to see and review their statement.

## **INVESTIGATION INTERVIEWS**

### **Questioning Techniques**

The Investigating Officer has a set of questions to be asked and information to gather. The interview should be structured to ensure that all the relevant information is obtained from the relevant people. Normally during an investigation, further evidence will be uncovered which was not included in the Investigating Officer's original line of enquiry. This may mean that they need to re-interview a number of employees to find out their perception of an incident/event or whether they witnessed a specific event.

Even though the Investigating Officer may find that employees are using unspecific terms such as 'bullying' or 'inappropriate behaviour' they should not accept these without further questioning. The employee should be asked to give specific examples of such behaviour, including dates and times if possible, to support what they are saying.

Wherever possible, open questions should be used to encourage the witness to provide as much information as possible. These are questions that start with who, what, where, when, why, how, etc. Closed and probing questions may be used to seek clarity, if required.

To reinforce the idea that what the Investigating Officer is looking for is the interviewee's perception on the incident, or sequence of events, the following phrases may be useful.

- In your own words.....
- Tell me about .....
- Describe to me .....
- Give me an example of ....
- How did it make you feel?

Leading questions should be avoided, such as 'Would you describe Mr. Bloggs as aggressive or sarcastic?' 'You did everything you could to be supportive, did you?' The reason for this is that the Investigating Officer must on no account influence the interviewee's account of what happened as this could lead to a flawed and biased investigation.

It is important that the questions that are asked reflect what the Investigating Officer has gathered as a result of other interviews and reviews of any other evidence. This will help in evaluating the evidence at the end of the process.

At the end of the interview, the Investigating Officer should have gathered the following information.

- The names of those involved that the witness is aware of.
- The date and time of any alleged incidents.
- Details of what took place, in the order that it took place.
- How the witness reacts to any evidence that is inconsistent with their account of what happened.
- How the employee felt after the incident(s).
- Any steps that the employee has taken to try and resolve the situation, if appropriate.
- What the employee's preferred solution is, if appropriate.

## Notes

It is vital that notes are taken contemporaneously, in case the Investigating Officer's recollection is later called into question. It can be very useful to record responses under the question that has been asked. However, this is not always possible if the interview goes 'off track' and the interviewee gives very long responses to the questions.

Wherever possible a note taker should accompany the Investigating Officer. It may be that for particularly sensitive interviews, the note taker is not present, particularly if the witness objects. The note taker is bound by the same rules of confidentiality as everyone else involved in the investigation.

The notes should be typed up as soon as possible after the interview and sent out to the witness for signing. Two copies of the notes should be sent out, one for the employee to keep and one to be returned to the Investigating Officer. Employees are able to make small changes to the notes, for points of clarification, accuracy, etc but if the witness disagrees fundamentally with the notes of the interview, and the Investigating Officer does not agree with the witness' version, the witness may refuse to sign the notes of the interview. In this circumstance, both sets of notes should be submitted to evidence and the fact that the notes were not signed off recorded in the investigation report.

## **Preparing Witness Statements**

A witness statement should record the facts as stated by the witness at the interview, written (within reason) in the language that they used, following the train of events as they experienced them. If, when preparing the statement, a gap in the information is identified or there is ambiguity in what has been recorded, then the witness should be asked to clarify the situation rather than someone else putting their own interpretation on the events. The witness should be asked to sign and date the statement and in doing so they are confirming that it is a true and accurate version of events.

Witnesses should not be coerced into signing a statement if they are unhappy with it, they may ask for modifications before they are happy to sign it.

If a witness who is reluctant to participate in the investigation also refuses to sign a statement then the Investigating Officer can either omit the statement, or include it making it clear that it is an unsigned (and therefore unvalidated) statement. This will usually be given less weight at the hearing and any subsequent Employment Tribunal.

## **Exchange of Information**

In certain cases where the evidence is detailed and complex the Investigatory Report and supporting documentation should be given to the employee 10 working days prior to the date of the disciplinary hearing to allow them to study the information. Any documentary evidence the employee wishes to be considered at the hearing should be submitted to the Investigating Officer at least 5 working days prior to the disciplinary hearing.

In other cases where the information is limited then the parties can agree to an earlier exchange of information and a date for the disciplinary hearing.

At the same time as the documentation is exchanged, both parties will also declare the names of any witnesses who are to be called to provide evidence at the disciplinary hearing and the capacity in which they will appear.

The Disciplinary/Appeals Officer/Panel will have the opportunity to call other employees to the Disciplinary/Appeal Hearing to provide expert opinion to clarify issues, which have been raised as part of the Hearing.

Prior to an appeal hearing taking place, the employee or their representative must detail their grounds for appeal and provide any new documentation to be used at the appeal hearing. This should be provided to the Investigating Officer 10 working days prior to the appeal hearing taking place. The Investigating Officer will then provide any new documentation to be submitted to the appeal hearing to the employee or their representative 5 working days prior to the appeal hearing taking place.

Copies of the information/evidence to be presented at disciplinary/appeal hearings will be provided to the Disciplinary/Appeals Officer/Panel a minimum of three working days prior to the disciplinary hearing/appeal hearing taking place. The confidentiality of the case must be maintained at all times and any lapses in confidentiality will be dealt with either, in the case of employees, under the Council's Code of Conduct or, in the case of Elected Members, the matter will be referred to the Standards Committee.

## SECTION 4 – DISCIPLINARY HEARINGS

The procedure to be followed at a Disciplinary Hearing is detailed below: -

1. At the commencement of the hearing, the Disciplinary Officer/Chair hearing the case will introduce the parties present and their role, outline the procedure to be followed and will confirm that all parties understand the procedure.  
  
NB: if the employee is not represented at the Disciplinary Hearing, they should be reminded of their right to be accompanied.
2. The Disciplinary Officer/Chair hearing the case will detail the allegations against the employee and explain that the purpose of the hearing is to consider whether any disciplinary action should be taken in accordance with the Council's disciplinary procedure.
3. At any stage during the hearing the Disciplinary Officer/Panel will be able to question any of the parties present.
4. The Investigating Officer will detail the case against the employee concerned. The employee, their representative and the Disciplinary Officer/Panel hearing the case can ask questions.
5. The Investigating Officer will call witnesses, as appropriate, to provide evidence in support of the allegations against the employee.
6. The employee or their representative will be able to ask questions of the Investigating Officer and any witnesses.
7. Each witness will leave the room after giving their evidence.
8. Steps 5 - 7 will also be adopted in relation to the employee or their representative's presentation of their evidence.
9. If matters come to light during a Disciplinary Hearing which require further investigation consideration should be given to either: -
  - a. adjourning the Disciplinary Hearing to enable further investigation to be carried out **or**
  - b. deciding whether the investigation should be dealt with separately and if required a separate Disciplinary Hearing convened.
10. After both parties have provided their evidence, the Investigating Officer and the employee or their representative will be given the opportunity to sum up detailing the main points of their respective cases. The Investigating Officer will sum up first. No new evidence can be submitted at this stage.
11. Following the summing up stage, all parties will withdraw leaving only the Disciplinary Officer/Panel authorised to make the final decision and the Human Resources Advisor.
12. The Human Resources Advisor will only be present to provide advice on policy and procedure. They will not take an active part in formulating a decision on the case.
13. In making their decision, the Disciplinary Officer/Chair can, if required, recall any of the parties, including witnesses, involved to clarify any areas of misunderstanding or doubt. If one party is recalled, then the other party must be present to hear any questions and the answers provided.
14. When deciding whether a disciplinary penalty is appropriate and what form it should take, the Disciplinary Officer/Panel should consider whether the Council's policies and procedures indicate what the likely penalty will be for this particular misconduct if proven, the penalty imposed in similar cases in the past, the employee's disciplinary record (but not expired warnings), position and length of service, any special circumstances which might be appropriate to adjust the severity of the penalty and whether the proposed penalty is reasonable in view of all the circumstances.



15. The decision can be communicated verbally to the employee but this must be confirmed in writing to the employee as soon as reasonably practicable after the Hearing. If a disciplinary penalty is imposed, the employee will be informed that they have a right of appeal

## **SECTION 5 - APPEAL HEARINGS**

The procedure to be followed at an appeal review hearing is detailed below: -

### **Appeal Review Hearing**

1. At the appeal any disciplinary sanction imposed will be reviewed and it may be withdrawn, remain the same, or be decreased.
2. At the commencement of the appeal review hearing, the Appeals Officer/ Chair of the Appeals Panel hearing the case will introduce all parties present, outline the procedure to be followed and will confirm that all parties understand the procedure.
3. The employee or their representative will detail the grounds of appeal against the decision made at the original disciplinary hearing. The Disciplinary Officer/Chair of Disciplinary Panel who made the decision at the original disciplinary hearing can ask questions of the employee. The Appeals Officer/ Panel can ask questions of the employee.
4. The Disciplining Officer/Chair of the Disciplinary Panel will present to the Appeals Officer/Panel the reasons for the decision that was made at the original disciplinary hearing. The employee or their representative can ask questions of the Disciplinary Officer. The Appeals Officer/Panel can ask questions of the Disciplinary Officer.
5. After both sides have provided their evidence, the employee or their representative will be given the opportunity to sum up detailing the main points of their case. The Disciplinary Officer/Chair of the Disciplinary Panel representing the Council will be given the opportunity to sum up the main points of their case.
6. Following the summing up stage, all parties will withdraw leaving only the Appeals Officer/Panel authorised to make the final decision and the Human Resources Advisor. Officers who are acting as 'expert witnesses' to the case may also remain in the room at the request of the Appeals Officer/Panel. However, they will not take part in the decision making process.
7. The Human Resources Advisor will only be present to provide advice on policy and procedure. They will not take an active part in formulating a decision on the case.
8. In making their decision, the Appeals Officer/Panel can, if required, recall any of the parties involved to clarify any areas of misunderstanding or doubt. If one party is recalled, then the other party must be present to hear any questions and the answers provided.
9. The decision can be communicated verbally to the employee but this must be confirmed in writing to the employee as soon as reasonably practicable after the Hearing. The decision of the appeals review hearing will be final.

## Appeal Re-hearing

The procedure to be followed at an appeal re-hearing is detailed below: -

1. At an appeal re-hearing any disciplinary sanction imposed will be reviewed in the light of new evidence becoming available. The previous sanction may be withdrawn, remain the same, or be decreased. The re-hearing will follow the process outlined below.
2. At the commencement of the appeal re-hearing, the Appeals Officer/Chair of the Appeals Panel hearing the case will introduce all parties present, outline the procedure to be followed and will confirm that all parties understand the procedure.
3. The Appeals Officer/Chair of the Panel hearing the appeal should ask the employee to outline the grounds of their appeal.
4. At any stage during the re-hearing, the Panel will be able to question any of the parties present.
5. The Disciplinary Officer/Chair of the Disciplinary Panel will outline the case against the employee. The employee or their representative and the Appeals Officer/Panel can ask questions of the Disciplinary Officer/Chair of the Disciplinary Panel.
6. The Disciplinary Officer/Chair of the Disciplinary Panel can call witnesses, as appropriate, to provide evidence in support of the case.
7. The employee or their representative and the Appeals Officer/Panel can ask questions of the witness(es) and will be given an opportunity to comment on any new evidence that has arisen during the appeal hearing prior to any decision being taken.
8. Each witness will leave the room after giving their evidence.
9. Steps 6 – 8 **will** also be adopted in relation to the employee or their representative's presentation of their evidence.
10. After both parties have provided their evidence, the Disciplinary Officer/Chair of the Disciplinary Panel will be given the opportunity to sum up detailing the main points of the case. The employee or their representative will be given the opportunity to sum up the main points of their case. No new evidence can be submitted at this stage.
11. Following the summing up stage, all parties will withdraw leaving only the Appeals Officer/Panel authorised to make the final decision and the Human Resources Advisor. Officers who are acting as 'expert witnesses' to the case may also remain in the room at the request of the Appeals Officer/Panel. However, they will not take part in the decision making process.
12. The Human Resources Advisor will only be present to provide advice on policy and procedure. They will not take an active part in formulating a decision on the case.
13. In making their decision, the Appeals Officer/Panel can, if required, recall any of the parties involved to clarify any areas of misunderstanding or doubt. If one party is recalled, then the other party must be present to hear any questions and the answers provided.

The decision should be communicated in writing to the employee as soon as is reasonably practicable. The decision of the Appeals Panel will be final.

# CAERPHILLY COUNTY BOROUGH COUNCIL

## DISCIPLINARY PROCEDURE

**APRIL 2010**

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Wherever the designation Manager is used throughout this procedure, it is taken to mean Head of Service, Line Manager, Supervisor, Officer in Charge, or anyone who has a responsibility for employees through their work.

## **INTRODUCTION**

1. Caerphilly County Borough Council requires good standards of conduct from its employees along with satisfactory standards of work and attendance. The Council's disciplinary procedure applies to all issues of alleged misconduct as well as failure to meet the required standards of job performance or attendance.
2. The purpose of the disciplinary procedure is to help and encourage employees to achieve and maintain acceptable standards of conduct, job performance and attendance and to ensure consistent and fair treatment for all employees.
3. This disciplinary procedure reflects, and is consistent with, the standard dismissal and disciplinary procedure set out in the Employment Act 2008 and the ACAS Code Of Practice on Discipline and Grievance Procedures.
4. This procedure should be cross-referenced with all the relevant Council policies and procedures and the Code of Conduct. Copies of all the Council's policies and procedures can be found on the Intranet or obtained from your Manager or Human Resources.

## **SCOPE OF THE PROCEDURE**

5. The disciplinary procedure applies to all employees except those school based support/teaching staff for whom the Governing Body sets the local terms and conditions of employment.
6. This procedure does not cover the Chief Executive, the Council's Monitoring Officer or the Council's Section 151 Officer as separate disciplinary procedures apply to these posts.
7. The Council's recognised trade unions have been consulted on the introduction of this procedure.
8. The effective date of this procedure is 1<sup>st</sup> April 2010. This procedure supersedes all earlier procedures and should be used to deal with all disciplinary issues that arise.

## **GUIDING PRINCIPLES**

9. Heads of Service through their Senior Officers and Supervisors have the responsibility for ensuring this procedure is applied to all the employees in their Service Area.
10. Minor acts of misconduct will be dealt with informally but where formal action is necessary this procedure will be invoked. Informal action will include counselling which will highlight to the employee their actions are unacceptable and that a repetition will lead to formal disciplinary action being taken. Any actions that are taken at the informal stage should be documented, and notes made of the meeting, to ensure that these actions are not forgotten should it become necessary to move to the formal stage of the procedure.
11. No disciplinary action will be taken against an employee until the case has been fully investigated. Managers must take advice from Human Resources prior to invoking the disciplinary procedure.
12. There are occasions where it may be appropriate for the employee not to be at work whilst the investigation is being undertaken or until such time as any subsequent disciplinary hearing is completed. Suspension in these cases is not a disciplinary sanction but a neutral act and as such it is not intended to be a punishment or a presumption of guilt. In these circumstances, this period will be with full pay for the duration of the suspension.
13. At every stage in the disciplinary procedure the employee will be advised of the nature of the complaint against them and will be given the opportunity to state their case before any decision is made. In exceptional circumstances, this may not happen. In the main these cases will relate to issues surrounding child protection or the protection of vulnerable adults.
14. The details of the alleged misconduct or a failure to meet the required standard of job performance or

attendance will be set out in the letter inviting the employee to attend a disciplinary hearing.

15. At all stages of the formal procedure, the employee will have the right to be accompanied by a work colleague, a trade union representative or official. Trade union representatives must have been certified by their union as being able to accompany an employee. If an employee is to be accompanied by a work colleague, it must 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.
16. No employee will be dismissed for a first breach of discipline except in the case of gross misconduct. In the event of employees being dismissed as a result of gross misconduct, there will be no notice or payment in lieu of notice given.
17. The disciplinary procedure may be implemented at any stage if the employee's misconduct, job performance or attendance record warrants such action.
18. At all stages, any information gathered or presented by all participants must be treated in the strictest confidence. All information gathered in relation to the case should be kept no longer than necessary in accordance with the Data Protection Act 1998.
19. All employees will be expected to co-operate fully with any investigations. Employees involved in disciplinary investigations who are absent from work for reasons of ill health will be required to attend meetings at any stage of the disciplinary process and to respond to communications without undue delay. If employees are unable to attend these meetings, due to ill health, the disciplinary process will be progressed. In this circumstance the employee may be represented at meetings by their chosen representative. Alternatively the Council reserves the right to carry out the investigation and progress the disciplinary process in the absence of the employee and their representative.
20. If it is necessary to take disciplinary action against a trade union representative, the normal disciplinary procedure should be followed. Depending on the circumstances however, it is advisable to discuss the matter at an early stage with an official employed by the union, after obtaining the employee's agreement.
21. Disciplinary action will be issued separately for misconduct, poor job performance and attendance. In cases of misconduct, progressive disciplinary action will be taken for each incident of misconduct even though they may not be related.
22. Written and final warnings will remain on an employee's personal file indefinitely but subject to satisfactory conduct, job performance or attendance, they will be disregarded for disciplinary purposes after their expiry date.
23. In certain cases, a final written warning may never be removed and if there is any reoccurrence of this type of conduct during the employee's employment it will lead to dismissal. In the majority of cases this would relate to final written warnings issued in relation to cases surrounding child protection and the protection of vulnerable adults.
24. An employee will have the right to appeal against any disciplinary sanction imposed. This will be the final stage of the disciplinary procedure.
25. Where an employee's job performance is the reason for disciplinary action, the sanction imposed may be a disciplinary warning and withholding of an increment. This sanction will not be applied until a full investigation has been undertaken into the circumstances surrounding an employee's job performance. If this sanction is applied a plan will be developed and agreed with the employee to ensure that the employee's job performance reaches acceptable levels. For further information on dealing with employees' underperformance, see the Council's Managing Underperformance Process.
26. In cases of redundancy, probationary issues, the ending of a fixed term contract or ill health termination, please refer to the relevant procedure for the process to follow.
27. Every effort will be made to deal with the disciplinary process as promptly as possible.

28. If an employee, or the person accompanying them is disabled, accessibility issues must be considered to allow them to take part in the disciplinary process.

## **MISCONDUCT**

29. It is important that every employee understands that local government employment calls for the highest standard of conduct, responsibility and integrity and that public confidence would be shaken were the least suspicion to arise that any employee could be influenced by improper motives. Failure to maintain acceptable standards both inside and outside of work could be in contravention of the Council's Code of Conduct and/or its disciplinary procedure and lead to disciplinary action being taken against an employee for misconduct.
30. In certain cases, it may be appropriate to involve Internal Audit where the case involves potential financial irregularities (as stated in the Council's Financial Regulations). In all appropriate cases, the Council will seek restitution.
31. The following are examples of offences, which generally amount to misconduct. Depending on the nature of the offence some examples of these could be viewed as gross misconduct: -
- Unauthorised absence from work.
  - Lateness.
  - Unsatisfactory and unacceptable performance of duties.
  - Time wasting.
  - Contravention of safety procedures.
  - Unauthorised use of the telephone/e-mail/contravention of the IT Security Policy, including the misuse of social networking sites.
  - Disruptive behaviour, e.g. undermining management, team morale or the efficient running of the team, etc.

This list is not exhaustive or exclusive.

## **GROSS MISCONDUCT**

32. The following are examples of offences, which are normally regarded as amounting to gross misconduct and may be dealt with as such under the procedure: -
- Refusal to accept and act on a reasonable instruction from a Supervisor or member of management.
  - Fighting, assault, harassment, victimisation or abusive, intimidating, threatening or bullying behaviour. This includes sexual misconduct at work.
  - Theft, fraud, falsification of records (including qualifications which are a stated requirement of employment or which result in financial gain) or any dishonesty involving the Council, its employees, clients, members of the public, Elected Members, authorised visitors, or attempts to commit such offences.
  - Deliberate or reckless damage to the property of
    - the Council
    - its employees
    - visitors to Council premises.
  - Serious negligence that could lead to or result in loss, damage or injury.
  - Unauthorised disclosure of confidential information or information governed by the Data

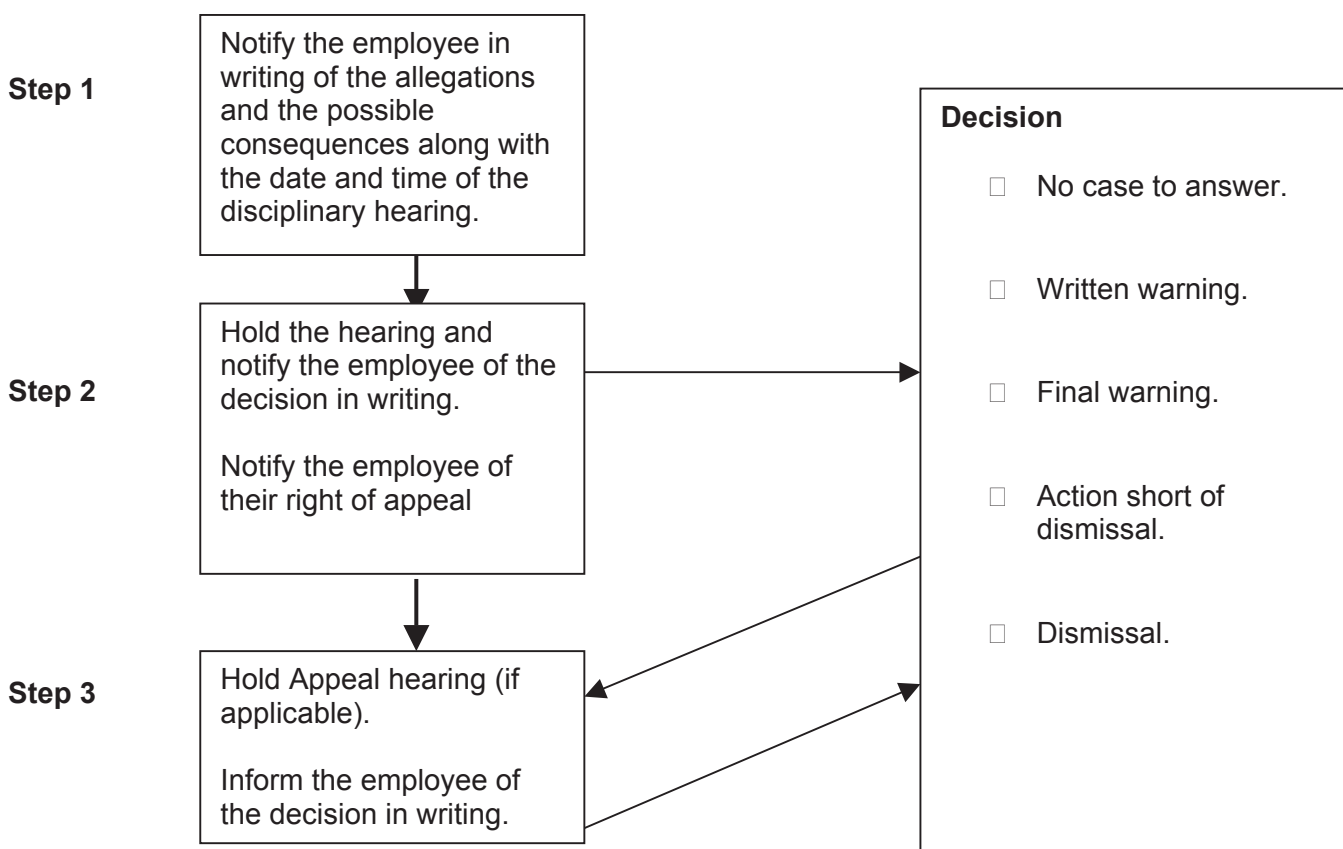
Protection Act 1998 (subject to the Public Interest Disclosure Act 1998). This includes the Council's rules in relation to electronic communication systems and computers.

- Any action likely to endanger the health and safety of the employee or any other person.
- Any action or behaviour, which could damage the Council's reputation, including rudeness to members of the public or clients and inappropriate use of social networking sites.
- Serious breaches of the Council's policies and procedures or failing to comply with relevant statutory or regulatory requirements.
- Serious acts of insubordination e.g. defiance, disobedience, etc.,
- Accepting a gift, which could be construed as a bribe.
- Conviction for any serious criminal offence while a Council employee, which renders the employee unsuitable for continued employment. This would depend on the facts of the case and the risk assessment undertaken under the Employment of Ex Offenders Policy.

This list is not exhaustive or exclusive.

### DISCIPLINARY PROCESS

33. Once the investigation process has been completed the following 3-step process must be followed in all cases where disciplinary action is being considered. Step 3 is only applicable if the employee exercises their right of appeal.





## **DISCIPLINARY SANCTIONS**

### **Stage 1 - Written Warning**

34. If an employee's conduct, job performance or attendance is proven not to meet acceptable standards, they will be given a formal written 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 of the written warning will be kept on the employee's personal file but it will be disregarded for disciplinary purposes after 12 months, subject to satisfactory conduct, job performance and attendance.

### **Stage 2 - Final Written Warning**

35. If there is a failure to improve or the employee's conduct, job performance or attendance is proven to be unsatisfactory or if the misconduct is sufficiently serious, a final written warning will be given to the employee. The employee will be advised of the reason for the warning, the duration of the warning, that it is the second stage of the disciplinary procedure and of their right of appeal. A record of this final written warning will be retained on the employee's personal file but it will be disregarded for disciplinary purposes after 18 months (although this period may be extended depending on the circumstances of the offence) subject to satisfactory conduct, job performance and attendance.

### **Stage 3 - Dismissal**

36. If there is a failure to improve or the employee's conduct, job performance or attendance is proven to be unsatisfactory or if the misconduct is sufficiently serious, dismissal will normally result. Only the Chief Executive, a Director, a Head of Service or the next most appropriate level of management can take the decision to dismiss. The employee will be provided, as soon as reasonably practicable, with the written reasons for dismissal, the date on which their employment will terminate and their right of appeal.
37. If an employee is found guilty of an act of gross misconduct, summary dismissal without notice or payment in lieu of notice will be the normal course of action. However, in some circumstances action short of dismissal may be substituted for the dismissal. This could include a final written warning together with one of the following disciplinary transfer, suspension without pay, demotion or reduction in salary.

### **Appeals**

38. At the appeal any disciplinary sanction imposed will be reviewed and it may be withdrawn, remain the same, or be decreased. The format of the appeal hearing will depend on the grounds for appeal. If the appeal is on the basis of the severity of the sanction or the misapplication of the procedure, then the appeal hearing will be a review of the original case. If it is the fact that new evidence has come to light, then the appeal hearing will be a re-hearing. The presentation of new evidence is the only reason that a re-hearing will be held.
39. An employee who wishes to appeal against a disciplinary decision, other than in the case of dismissal, should make their appeal in writing on the form attached at Appendix 1 within five working days of receipt of the decision, setting out the grounds for the appeal, to Human Resources who will liaise with the relevant Manager to hear the appeal. Appeals will be heard by a Manager not involved in the earlier decision.
40. All appeals against dismissal must be made in writing within ten working days of receipt of the decision, setting out the grounds for the appeal, to the Head of Human Resources and Organisation Development who will arrange for the appeal hearing to be convened. If the appeal is successful an alternative sanction may be imposed.

## **OVERLAPPING GRIEVANCE AND DISCIPLINARY CASES**

41. Where an employee raises a grievance during the investigation/hearing, the disciplinary process may be temporarily suspended in order to deal with the grievance. For example
- The grievance relates to a conflict of interest that the Manager holding the Disciplinary Hearing is alleged to have.
  - Bias is alleged in the conduct of the Disciplinary Hearing.
  - The Investigating Officer has been selective in the evidence they have supplied to the Manager conducting the Hearing.
  - There is possible discrimination.

Where the grievance and disciplinary cases are related it may be appropriate to deal with both issues concurrently.

## **INTERPRETATION OF THE PROCEDURE**

42. In the event of a dispute relating to the interpretation of this procedure, Corporate Human Resources will make the final decision on interpretation.

## **REVIEW OF THE PROCEDURE**

43. A review of this procedure will take place when appropriate. Any amendments will be consulted on with all the relevant parties. However, in the case of amendments relating to legislative requirements, the procedure will be amended and reissued.

**APRIL 2010**



Will you be presenting any new evidence at the Appeal Hearing?	Yes	<input type="checkbox"/>	No	<input type="checkbox"/>
If Yes, please give details.				

Signature		Date:	
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**Please forward the completed form to Human Resources.**

**FOR HUMAN RESOURCES USE ONLY**

Date received by Human Resources:	
Type of Appeal	Review <input type="checkbox"/> Rehearing <input type="checkbox"/>
Human Resources Officer Allocated To Appeal:	
Manager/Panel hearing the Appeal:	
Appeal Date:	
Outcome:	
Date Processed:	

## Supplementary Notes

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Wherever the designation Manager is used throughout this scheme, it is taken to mean Head of Service, Line Manager, Supervisor, Officer in Charge, or anyone who has a responsibility for employees through their work.

These explanatory notes must be read in conjunction with the Council's Disciplinary Procedure

## **SECTION 1 - DEFINITION OF ROLES**

### **Investigating Officer**

The role of the Investigating Officer is to

- Ensure that a full and thorough investigation is undertaken prior to recommending whether: -
  - There is no case to answer.
  - Not to proceed to a Disciplinary Hearing but to deal with the issue informally by arranging counselling, coaching, etc.
  - To proceed with a Disciplinary Hearing as there is a case to answer.
- Notify the employee of the outcome of the investigation.
- Enlist the support of other officers to assist with the investigation.
- Notify other interested parties as laid down in the Council's Financial Regulations.
- If appropriate, prepare a report setting out the allegations including witness statements and other relevant documentation, which will be used at the disciplinary hearing. When preparing this report, the Investigating Officer should
  - Ensure that all the relevant facts are available including documentary evidence, witness statements and disciplinary records.
  - Check whether there are any special circumstances, such as personal or outside issues, that should be taken into account.
  - Be careful when dealing with evidence from an anonymous witness. Take written statements, seek corroborative evidence and check that the witnesses' motives are genuine.
  - Check that the standards of other employees are acceptable and that this employee is not being unfairly singled out.
  - Consider the employee's explanations and check them out.
  - Allow the employee time to prepare their case.
- Present the case at the Disciplinary Hearing supported by other Officers where relevant.

### **Human Resources Support**

The role of Human Resources is as follows: -

- To provide advice, guidance and support to Investigating Officers, Disciplinary/Appeals Officers/Panels.
- To provide advice prior to the commencement of the disciplinary process where Human Resources' attendance at the actual meeting can be discussed. It is not a pre-requisite for Human Resources employees to attend all disciplinary meetings that may result in a written warning. For final written warnings and dismissal cases, Human Resources employees must be in attendance.
- To provide support to the Investigating Officer to compile the presentation at the Disciplinary Hearing.
- To provide administrative support such as note taking at interviews, hearings and appeals, preparing Statements of Case and arranging appropriate facilities on behalf of Officers/Panels arranging suitable venues and times for the meetings and ensuring that any special requirements are made for employees/Officers/Panels in relation to their involvement with the disciplinary procedure.

The Human Resources Advisor can only advise one party during the disciplinary process e.g. if they are involved in the investigation, they cannot advise the Disciplining Officer at the Disciplinary Hearing or subsequent Appeal.

### **Disciplinary Officer/Chair of the Disciplinary Hearing**

The Disciplinary Officer/Chair should ensure the correct procedures are followed as set out in Section 4.

The Disciplinary Officer should establish what disciplinary action has been taken in similar circumstances in the past and think about the structure of the Hearing and make a list of points that they wish to cover. To ensure a consistent approach across the Council, advice should be sought from the Human Resources Advisor on policy and procedures prior to the decision on the sanction being made.

The Disciplinary Officer/Chair has the responsibility of deciding the outcome of the Hearing and informing the employee of their decision, in writing, together with the reasons for doing so.

### **Appeal Officer/Chair of the Appeal Hearing**

The Appeal Officer/Chair should ensure the correct procedures are followed as set out in Section 5.

To ensure a consistent approach across the Council, advice should be sought from the Human Resources Advisor on policy and procedures prior to the decision being made.

The Appeal Officer/Chair has the responsibility of deciding the outcome of the Appeal Hearing and informing the employee of their decision, in writing, together with the reasons for doing so.

### **Representatives**

Employees have the right to be accompanied by a work colleague or a trade union representative/official at a disciplinary hearing or as part of the investigation process. Trade union representatives must have been certified by their union as being able to accompany an employee. If an employee is to be accompanied by a work colleague, it must be someone who is not directly involved in the case as their presence may prejudice the case or they might have a conflict of interest. A disciplinary hearing is defined as a meeting, which could result in

- A formal warning being issued to an employee, i.e. a warning that will be placed on the employee's record.
- The taking of some other disciplinary action such as suspension without pay, demotion or dismissal, or other action.
- The confirmation of a warning or some other disciplinary action, such as an Appeal Hearing.

Employees do not have the right to be accompanied at informal discussions or counselling sessions.

The representative can: -

- Put the employee's case.
- Sum up the employee's case.
- Respond on the employee's behalf to any view expressed at the hearing.

However, they cannot answer questions on the employee's behalf.

If an employee's representative is unable to attend the date of an interview/disciplinary hearing, the interview/disciplinary hearing may be postponed until they, or another representative, are available. However, this postponement should not be more than five working days after the original date of the interview/disciplinary hearing, unless agreed by both parties, and no further postponements will be granted.

Employees should inform the Investigating/Disciplining Officer who, if anyone, will be accompanying them at the interview/hearing.

## **Witnesses**

The Investigating Officer will interview any appropriate witnesses and produce a witness statement based on those interviews. A representative from Human Resources may also be present. Witnesses will be requested to sign and date their statement as a true and accurate record and be advised that they may be required to attend any subsequent Disciplinary Hearing.

Witnesses can only be called to appear at the Disciplinary Hearing if they have previously submitted a signed witness statement.

## **SECTION 2 - MISCELLANEOUS**

### **Suspension**

There may be occasions where it may be deemed appropriate for an employee to be suspended from work whilst the investigation is undertaken. Examples of this could be where there is an allegation of gross misconduct, which, if proven, could lead to dismissal, where relationships have broken down or where there are risks to an employee's or the company's properties or responsibilities to other parties. Prior to suspending an employee consideration should be given to whether it is necessary to suspend or whether alternative working can be considered e.g. temporary relocation. This alternative work should relate to the employee's skill set. Suspension will be limited to the shortest possible time and kept under review.

After six weeks a formal review will be undertaken. The Head of Human Resources and Organisation Development and the Head of Legal Services or their nominated representatives will conduct this review. It will take the form of a report from the Officer who carried out the suspension giving the allegations against the employee, the progress to date and the reasons why the employee should continue to be suspended from their duties. As a result of this report, the Head of Human Resources and Organisation Development and the Head of Legal Services will decide whether suspension is still the most appropriate course of action.

Whilst suspended the employees' normal terms and conditions of employment will apply including rules relating to requests for annual leave and notification of sick leave. It may be appropriate, depending on the allegations, to impose conditions on the employee e.g. not to visit any of the Council's premises whilst they are suspended or contact other employees.

It should be appreciated that where an employee is facing a disciplinary investigation it is a stressful period so the Investigating Officer should remind the employee of the advice, information and counselling service which is available from the Employee Assistance Programme provided by the Council. This is a totally confidential service and all conversations between employees and counselling service are confidential.

Employees who are suspended will be given a nominated contact within Human Resources should they wish to discuss the progress of their case. However, no details of the investigation will be divulged.

Investigating Officers must remember that they have a duty of care to all the employees within a Service Area, both those who have had allegations made against them and those who are acting as witnesses.

### **Terms of Reference for Investigation**

It is vital that the Investigating Officer determines the terms of reference for the investigation prior to its commencement, as this ensures that the focus of the investigation is appropriate.

They should include: -

- The issue (s) to be investigated.
- The methodology for conducting the investigation.



- The proposed time frame – this should be realistic and there should be a provision for an extension.
- The resources available to the Investigating Officer.
- Who will be provided with copies of the report at the conclusion of the investigation.

### **Police Involvement**

In certain circumstances, it may be necessary to involve the Police where criminal acts are alleged to have taken place. The decision to involve the Police will be taken following consultation with the Chief Executive and/or appropriate Director, the appropriate Head of Service and the Head of Human Resources and Organisation Development. They will also decide on whether it is appropriate to await the outcome of any police investigation and/or criminal proceedings before commencing the disciplinary process. This decision will depend upon the nature of the offences, the need to maintain confidentiality and the potential impact on the Council.

Criminal offences outside employment will not be treated as automatic reasons for dismissal or other disciplinary penalty. Each situation will be judged in the context of whether the offence committed has relevance to the employee's duties and an appropriate Risk Assessment undertaken. The major consideration will be whether the offence is one, which renders the employee unsuitable for continued employment. Employees are required to disclose criminal offences and failure to do so may lead to disciplinary action being invoked.

Where there are Police proceedings pending, the Investigating Officer has the option to wait for the outcome of the Police investigation and/or criminal proceedings before commencing the disciplinary process. However, where those investigations/ proceedings are not relevant or are prolonged, the Manager will need to consider whether to proceed with disciplinary action before the Police investigation has been concluded. Consultation with Human Resources should take place before making this decision. Should the Manager wish to proceed they will need to clearly record the reasons for taking such action.

If an employee is unable to meet their contractual obligations and attend work for the foreseeable future because of on-going court hearings, they have been remanded in custody or have been imprisoned, the contract will be deemed to be frustrated and will automatically terminate. In such circumstances then the rights and obligations of both the employee and the Council would come to an end and the employee would not be entitled to any pay or other benefits in respect of notice. In such an event the disciplinary procedure would not apply and any investigations or disciplinary action currently underway would cease immediately. Prior to making any decisions regarding the frustration of an employee's contract, Managers should refer to the Head of Human Resources and Organisation Development for further advice and guidance.

### **Notification to Statutory and Professional Bodies**

Statutory bodies regulate certain professions and in those professions employment is conditional upon continuing registration. Examples include Solicitors and the Law Society, Social Workers, etc. In these professions, the Council has a duty to report any incidents of alleged professional misconduct or serious performance issues to the appropriate registration authority. This duty to notify must be exercised quite separately to any disciplinary action. The registration authority is quite likely to undertake its own investigation. The Manager need not wait for the outcome of any such investigations before continuing with its own internal investigations and/or taking steps under the disciplinary procedure.

In cases where the outcome of the disciplinary investigation results in action short of dismissal and a Statutory Body subsequently determines that the employee's registration is suspended or removed, the Manager should consider whether suitable alternative work is available before taking action to dismiss the employee because of conduct or capability. The advice of the Head of Human Resources and Organisation Development and the Head of Legal Services or their representatives should be sought in these cases.

### **Investigations Undertaken By External Agencies**

There may be occasions where external agencies become involved in investigations of a serious nature relating to the protection of vulnerable adults and child protection issues. It is essential that prior to the

commencement of any internal disciplinary investigations, advice is sought from Human Resources as to whether the disciplinary investigation should be delayed until the external investigation is concluded.

Human Resources will also advise whether any evidence gained during the external investigation can be used in the internal disciplinary process.

### **Investigatory Interview**

The Investigating Officer will normally interview the employee under investigation as part of the process and reasonable notice should be given which should not normally exceed five working days. The employee should be advised that disciplinary action could be taken once the investigation is complete.

### **Exchange Of Information**

In certain cases where the evidence is detailed and complex the Investigatory Report and supporting documentation should be given to the employee 10 working days prior to the date of the disciplinary hearing to allow them to study the information. Any documentary evidence the employee wishes to be considered at the hearing should be submitted to the Investigating Officer at least 5 working days prior to the disciplinary hearing.

In other cases where the information is limited then the parties can agree to an earlier exchange of information and a date for the disciplinary hearing.

At the same time as the documentation is exchanged, both parties will also declare the names of any witnesses who are to be called to provide evidence at the disciplinary hearing and the capacity in which they will appear.

The Disciplinary/Appeals Officer/Panel will have the opportunity to call other employees to the Disciplinary/Appeal Hearing to provide expert opinion to clarify issues, which have been raised as part of the Hearing.

Prior to an appeal hearing taking place, the employee or their representative must detail their grounds for appeal and provide any new documentation to be used at the appeal hearing. This should be provided to the Investigating Officer 10 working days prior to the appeal hearing taking place. The Investigating Officer will then provide any new documentation to be submitted to the appeal hearing to the employee or their representative 5 working days prior to the appeal hearing taking place.

Copies of the information/evidence to be presented at disciplinary/appeal hearings will be provided to the Disciplinary/Appeals Officer/Panel a minimum of three working days prior to the disciplinary hearing/appeal hearing taking place. The confidentiality of the case must be maintained at all times and any lapses in confidentiality will be dealt with either, in the case of employees, under the Council's Code of Conduct or, in the case of Elected Members, the matter will be referred to the Standards Committee.

## **SECTION 3 – INVESTIGATION PROCESS**

Investigations are increasingly a feature of the employment relationship. One of the main reasons for this is that employers are frequently required by Employment Tribunals to demonstrate why they reached a particular decision, for example the dismissal of an employee.

Once an employee has shown that they have been dismissed and that they are eligible to present a complaint for unfair dismissal, the Employment Tribunal will consider the facts of the case and whether procedures have been followed. The Council must overcome three hurdles: -

- It must show that the reason for dismissal was one of the six potentially fair reasons for dismissal (these are capability, conduct, redundancy, breach of a statutory enactment, retirement and some other substantial reason e.g. failure to accept new terms and conditions or retirement).

- It must show that it complied with a fair procedure.
- It must show that it acted reasonably in treating that reason as a sufficient reason to dismiss.

The Employment Tribunal will scrutinise how fair the Council's policy is and the procedure that it adopted at the time of the dismissal. An internal investigation will form part of that procedure. As soon as a Manager becomes aware that they should conduct an investigation within their Service Area, they should contact Human Resources for further advice and guidance.

The Employment Tribunal cannot substitute its own decision for that of the Council's but it will determine whether the Council's action fell within the band of reasonable responses to the circumstances.

Carrying out a fair and thorough investigation provides an Investigating Officer with the opportunity to establish the facts of a particular matter and be in a much better position to decide on a course of action.

It must be emphasised that the investigation process is not a 'one way process.' An investigatory interview is the first opportunity that an employee has to respond to the issues under investigation.

## **PLANNING THE INVESTIGATION**

### **Who Should Investigate?**

The Investigating Officer should be independent of the main parties of the investigation and should not have had any involvement with any of the actions to be investigated.

The Investigating Officer should be fully briefed on how any allegations have arisen, the relevant organisational structure and any issues of immediate relevance.

It is vital that the Investigating Officer is provided with sufficient resources and time to devote to the investigation. It may be necessary to remove other duties from them on a temporary basis to accommodate them undertaking the investigation.

The Investigating Officer who recommends that there is sufficient evidence to go forward to a Disciplinary Hearing cannot be the same officer who hears the case and decides if any disciplinary action should be imposed.

### **Terms of Reference for Investigation**

See Section 2 above.

### **The Order Of Interviews**

Ideally, the person whose conduct is being called into question should be seen last so that they can answer all the questions relating to the details of the case against them. If this is not possible it may be necessary to re-interview this person as a result of further information coming to light during the interviews.

To some extent the order of the witnesses may be determined by the availability of the witnesses. However, the Investigating Officer should try and plan the interviews in a reasonably logical order.

The person making the allegation or raising the issue should be interviewed first but it may be necessary to re-interview them again later on in the light of further information coming to light during the interviews with witnesses.

## **What Does the Investigating Officer Require**

### **Time**

The amount of time required to undertake an investigation is frequently underestimated by Investigating Officers at the outset. Please be realistic when doing this. The timescale will depend on the complexity of the matter under investigation, the availability of witnesses and relevant documents, the level of experience of the Investigating Officer and the seriousness of the allegation.

Frequently, further allegations come to light during the investigation, which means that the investigation becomes more complex and takes more time to conclude. In this case the Investigating Officer shall ensure that all interested parties are kept informed of the new timescales.

### **Resources**

If the Investigating Officer is required to interview witnesses, they will need access to a room, the use of a note taker/typist and confidential storage.

## **CONDUCTING WITNESS INTERVIEWS**

The terms of reference will detail the methodology of an investigation. This may include a review of any relevant documentation and witness interviews. Managers should ensure that witnesses understand the seriousness of the investigation and in particular do not speak about the investigation to anyone other than those officers involved in conducting the investigation.

It should be explained to the witness at the start of the interview that any statement that they make as part of the investigation may be used in formal action under the Council's policies and procedures at a later date. Every effort should be made for witnesses to attend Hearings in order that examination or cross-examination can take place. If witnesses are unable to attend a Disciplinary Hearing, then the Disciplinary Officer/Chair will have the authority to decide what weight can be given to the witness statements and whether they can be accepted in evidence.

These interviews should be: -

- Structured, with full notes taken, to be typed as soon as possible after the interview has taken place.
- Held in a confidential environment.
- With one interviewee at a time. If an employee is to be accompanied during the interview, the companion should be someone who is not a potential interviewee, as this would 'contaminate' evidence.

During the investigation, the Investigating Officer may be privy to the potential use of or reference to confidential information and this could include reference to service users or clients. There is potentially a conflict between the need to protect the confidentiality of any client information and natural justice in providing the employee with access to information, which either supports the allegation made or alternatively provides the employee with information to support their version of events.

The Investigating Officer should note why each witness has been interviewed and what their relationship is with any of the main parties to the investigation. To aid consistency, all participants should be given the same introduction as to the reasons why they are being interviewed. This introduction should explain: -

- Who the Investigating Officer is.
- The context of the interview (particularly if it is taking place under the auspices of a disciplinary or grievance procedure).
- For what purposes the statement will be used.
- The meaning of confidentiality in this context.
- How and when they can expect to see and review their statement.

## Investigation Interviews

### Questioning Techniques

The Investigating Officer has a set of questions to be asked and information to gather. The interview should be structured to ensure that all the relevant information is obtained from the relevant people. Normally during an investigation, further evidence will be uncovered which was not included in the Investigating Officer's original line of enquiry. This may mean that they need to re-interview a number of employees to find out their perception of an incident/event or whether they witnessed a specific event.

Even though the Investigating Officer may find that employees are using unspecific terms such as 'bullying' or 'inappropriate behaviour' they should not accept these without further questioning. The employee should be asked to give specific examples of such behaviour, including dates and times if possible, to support what they are saying.

Wherever possible, open questions should be used to encourage the witness to provide as much information as possible. These are questions that start with who, what, where, when, why, how, etc. Closed and probing questions may be used to seek clarity, if required.

To reinforce the idea that what the Investigating Officer is looking for is the interviewee's perception on the incident, or sequence of events, the following phrases may be useful.

- In your own words.....
- Tell me about .....
- Describe to me .....
- Give me an example of ....
- How did it make you feel?

Leading questions should be avoided, such as 'Would you describe Mr. Bloggs as aggressive or sarcastic?' 'You did everything you could to be supportive, did you?' The reason for this is that the Investigating Officer must on no account influence the interviewee's account of what happened as this could lead to a flawed and biased investigation.

It is important that the questions that are asked reflect what the Investigating Officer has gathered as a result of other interviews and reviews of any other evidence. This will help in evaluating the evidence at the end of the process.

At the end of the interview, the Investigating Officer should have gathered the following information.

- The names of those involved that the witness is aware of.
- The date and time of any alleged incidents.
- Details of what took place, in the order that it took place.
- How the witness reacts to any evidence that is inconsistent with their account of what happened.
- How the employee felt after the incident(s).
- Any steps that the employee has taken to try and resolve the situation, if appropriate.
- What the employee's preferred solution is, if appropriate.

### Notes

It is vital that notes are taken contemporaneously, in case the Investigating Officer's recollection is later called into question. It can be very useful to record responses under the question that has been asked.

However, this is not always possible if the interview goes 'off track' and the interviewee gives very long responses to the questions.

Wherever possible a note taker should accompany the Investigating Officer. It may be that for particularly sensitive interviews, the note taker is not present, particularly if the witness objects. The note taker is bound by the same rules of confidentiality as everyone else involved in the investigation.

The notes should be typed up as soon as possible after the interview and sent out to the witness for signing. Two copies of the notes should be sent out, one for the employee to keep and one to be returned to the Investigating Officer. Employees are able to make small changes to the notes, for points of clarification, accuracy, etc but if the witness disagrees fundamentally with the notes of the interview, and the Investigating Officer does not agree with the witness' version, the witness may refuse to sign the notes of the interview. In this circumstance, both sets of notes should be submitted to evidence and the fact that the notes were not signed off recorded in the investigation report.

### **Preparing Witness Statements**

A witness statement should record the facts as stated by the witness at the interview, written (within reason) in the language that they used, following the train of events as they experienced them. If, when preparing the statement, a gap in the information is identified or there is ambiguity in what has been recorded, then the witness should be asked to clarify the situation rather than someone else putting their own interpretation on the events. The witness should be asked to sign and date the statement and in doing so they are confirming that it is a true and accurate version of events.

Witnesses should not be coerced into signing a statement if they are unhappy with it, they may ask for modifications before they are happy to sign it.

If a witness who is reluctant to participate in the investigation also refuses to sign a statement then the Investigating Officer can either omit the statement, or include it making it clear that it is an unsigned (and therefore unvalidated) statement. This will usually be given less weight at the hearing and any subsequent Employment Tribunal.

## **SECTION 4 – DISCIPLINARY HEARINGS**

The procedure to be followed at a Disciplinary Hearing is detailed below: -

1. At the commencement of the hearing, the Disciplinary Officer/Chair hearing the case will introduce the parties present and their role, outline the procedure to be followed and will confirm that all parties understand the procedure.  
  
NB: if the employee is not represented at the Disciplinary Hearing, they should be reminded of their right to be accompanied.
2. The Disciplinary Officer/Chair hearing the case will detail the allegations against the employee and explain that the purpose of the hearing is to consider whether any disciplinary action should be taken in accordance with the Council's disciplinary procedure.
3. At any stage during the hearing the Disciplinary Officer/Panel will be able to question any of the parties present.
4. The Investigating Officer will detail the case against the employee concerned. The employee, their representative and the Disciplinary Officer/Panel hearing the case can ask questions.
5. The Investigating Officer will call witnesses, as appropriate, to provide evidence in support of the allegations against the employee.
6. The employee or their representative will be able to ask questions of the Investigating Officer and any witnesses.



7. Each witness will leave the room after giving their evidence.
8. Steps 5 - 7 will also be adopted in relation to the employee or their representative's presentation of their evidence.
9. If matters come to light during a Disciplinary Hearing which require further investigation consideration should be given to either: -
  - a. adjourning the Disciplinary Hearing to enable further investigation to be carried out **or**
  - b. deciding whether the investigation should be dealt with separately and if required a separate Disciplinary Hearing convened.
10. After both parties have provided their evidence, the Investigating Officer and the employee or their representative will be given the opportunity to sum up detailing the main points of their respective cases. The Investigating Officer will sum up first. No new evidence can be submitted at this stage.
11. Following the summing up stage, all parties will withdraw leaving only the Disciplinary Officer/Panel authorised to make the final decision and the Human Resources Advisor.
12. In making their decision, the Disciplinary Officer/Chair can, if required, recall any of the parties, including witnesses, involved to clarify any areas of misunderstanding or doubt. If one party is recalled, then the other party must be present to hear any questions and the answers provided.
13. When deciding whether a disciplinary penalty is appropriate and what form it should take, the Disciplinary Officer/Panel should consider whether the Council's policies and procedures indicate what the likely penalty will be for this particular misconduct if proven, the penalty imposed in similar cases in the past, the employee's disciplinary record (but not expired warnings), general work record, work experience, position and length of service, any special circumstances which might be appropriate to adjust the severity of the penalty and whether the proposed penalty is reasonable in view of all the circumstances.
14. The decision should be communicated in writing to the employee as soon as reasonably practicable after the Hearing. If a disciplinary penalty is imposed, the employee will be informed that they have a right of appeal. A copy of the notes (not verbatim) will also be included with this correspondence.

## **SECTION 5 - APPEAL HEARINGS**

The procedure to be followed at an appeal review hearing is detailed below: -

### **Appeal Review Hearing**

1. At the appeal any disciplinary sanction imposed will be reviewed and it may remain the same or be decreased.
2. At the commencement of the appeal review hearing, the Appeals Officer/ Chair of the Appeals Panel hearing the case will introduce all parties present, outline the procedure to be followed and will confirm that all parties understand the procedure.
3. The employee or their representative will detail the grounds of appeal against the decision made at the original disciplinary hearing. The Disciplinary Officer/Chair of Disciplinary Panel who made the decision at the original disciplinary hearing can ask questions of the employee. The Appeals Officer/ Panel can ask questions of the employee.
4. The Disciplining Officer/Chair of the Disciplinary Panel will present to the Appeals Officer/Panel the reasons for the decision that was made at the original disciplinary hearing. The employee or their representative can ask questions of the Disciplinary Officer. The Appeals Officer/Panel can ask questions of the Disciplinary Officer.

5. After both sides have provided their evidence, the employee or their representative will be given the opportunity to sum up detailing the main points of their case. The Disciplinary Officer/Chair of the Disciplinary Panel representing the Council will be given the opportunity to sum up the main points of their case.
6. Following the summing up stage, all parties will withdraw leaving only the Appeals Officer/Panel authorised to make the final decision and the Human Resources Advisor. Officers who are acting as 'expert witnesses' to the case may also remain in the room at the request of the Appeals Officer/Panel. However, they will not take part in the decision making process.
9. The Human Resources Advisor will only be present to provide advice on policy and procedure. They will not take an active part in formulating a decision on the case.
10. In making their decision, the Appeals Officer/Panel can, if required, recall any of the parties involved to clarify any areas of misunderstanding or doubt. If one party is recalled, then the other party must be present to hear any questions and the answers provided.
11. The decision should be communicated in writing to the employee as soon as is reasonably practicable. The decision of the appeals review hearing will be final. A copy of the notes (not verbatim) will also be included with this correspondence.

### Appeal Re-hearing

The procedure to be followed at an appeal re-hearing is detailed below: -

1. At an appeal re-hearing any disciplinary sanction imposed will be reviewed in the light of new evidence becoming available. As a result of this the sanction may remain the same or be decreased. As a result the re-hearing will follow the process outlined below.
2. At the commencement of the appeal re-hearing, the Appeals Officer/Chair of the Appeals Panel hearing the case will introduce all parties present, outline the procedure to be followed and will confirm that all parties understand the procedure.
3. The Appeals Officer/Chair of the Panel hearing the appeal should ask the employee to outline the grounds of their appeal.
4. At any stage during the re-hearing, the Panel will be able to questions any of the parties present.
5. The Disciplinary Officer/Chair of the Disciplinary Panel will outline the case against the employee. The employee or their representative and the Appeals Officer/Panel can ask questions of the Disciplinary Officer/Chair of the Disciplinary Panel.
6. The Disciplinary Officer/Chair of the Disciplinary Panel can call witnesses, as appropriate, to provide evidence in support of the case.
7. The employee or their representative and the Appeals Officer/Panel can ask questions of the witness(es) and will be given an opportunity to comment on any new evidence that has arisen during the appeal hearing prior to any decision being taken.
8. Each witness will leave the room after giving their evidence.
9. Steps 6 – 8 **will** also be adopted in relation to the employee or their representative's presentation of their evidence.
10. After both parties have provided their evidence, the Disciplinary Officer/Chair of the Disciplinary Panel will be given the opportunity to sum up detailing the main points of the case. The employee or their



representative will be given the opportunity to sum up the main points of their case. No new evidence can be submitted at this stage.

11. Following the summing up stage, all parties will withdraw leaving only the Appeals Officer/Panel authorised to make the final decision and the Human Resources Advisor. Officers who are acting as 'expert witnesses' to the case may also remain in the room at the request of the Appeals Officer/Panel. However, they will not take part in the decision making process.
12. The Human Resources Advisor will only be present to provide advice on policy and procedure. They will not take an active part in formulating a decision on the case.
13. In making their decision, the Appeals Officer/Panel can, if required, recall any of the parties involved to clarify any areas of misunderstanding or doubt. If one party is recalled, then the other party must be present to hear any questions and the answers provided.
14. The decision should be communicated in writing to the employee as soon as is reasonably practicable. The decision of the Appeals Panel will be final. A copy of the notes (not verbatim) will also be included with this correspondence.

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## CABINET – 29TH JULY 2015

**SUBJECT: ST. JAMES PRIMARY – FINAL ACCOUNT**

**REPORT BY: CORPORATE DIRECTOR, EDUCATION & COMMUNITY SERVICES**

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### **1. PURPOSE OF REPORT**

- 1.1 To note the outcome of the final account and to endorse the proposals for funding the anticipated net shortfall in funding.

### **2. SUMMARY**

- 2.1 The report seeks approval to funding the anticipated net shortfall in provision as well as noting developments in the process to concluding the issuing of the final certificate for making good and agreeing the final account sum.

### **3. LINKS TO STRATEGY**

- 3.1 The Local Authority is required to pay liabilities arising from legally binding decisions in order to comply with its legal obligations.
- 3.2 Budget decisions impact on all Council strategies. This report relates, primarily, to the efficient and effective use of the Council's revenue and capital resources.

### **4. THE REPORT**

- 4.1 Following an OJEU procurement process Vinci PLC, one of the largest construction companies in Europe, was appointed in January 2010 to construct the St James and Greenhill Primary Schools.
- 4.2 Both the Greenhill and St. James Primary School projects were completed in 2011 but there was a dispute between Vinci and CCBC over the final accounts. The Greenhill scheme has subsequently been agreed but the St. James final account had not been finalised.
- 4.3 As no agreement was reached with Vinci, the matter was referred to adjudication on 11 November 2013. The adjudicator sent out his decision letter on 23 December 2013.
- 4.4 It awarded £537,000.63 to Vinci as well as the adjudicator's fees and said that these sums should be paid within 7 days. The decision also said that it did not bind the parties in terms of the final account as it related to an interim certificate.

- 4.5 The adjudication decision represented a very disappointing outcome for CCBC.
- 4.6 At this stage, 3 options were considered, namely:
- Option 1 - Challenge the adjudicator's decision
  - Option 2 - Pay part of the award under the adjudicator's decision
  - Option 3 - Pay the adjudication sum and follow a clear process for the final account to try and recover or reduce the overall costs.
- 4.7 The interim Chief Executive made a delegated decision to support option 3. This was made on 24 January 2014, under the Council's constitution, due to the urgency to avoid enforcement action.
- 4.8 An assessment took place at that time of the final account value. Having taken account of the adjudicator's decision, the 2013/14 final accounts provided for an overall anticipated £523,000 net shortfall in provision.
- 4.9 There remained a number of outstanding contract issues which Vinci needed to resolve. These included 9 mechanical defect issues and 6 building related issues. The most significant outstanding issue, however, related to information to submit for the BREEAM assessment, which is necessary to secure WG funding.
- 4.10 Progress in resolving these outstanding matters had been slow since the adjudication decision, despite a number of reminders.
- 4.11 An officer meeting took place with Vinci on 23 October 2014. It was evident that there were significant variations in the respective final account valuations. It was agreed that CCBC's external QS would work with Vinci officers to agree a final account value as a priority.
- 4.12 Vinci were also requested to complete the remaining defects and to complete the outstanding BREEAM information. No further payments were made to Vinci, pending the completion of these matters.
- 4.13 Agreement was reached on a provisional final account sum, amounting to circa £5,750,000 by mid December 2014.
- 4.14 There was also good progress since October 2014 in resolving the outstanding mechanical (e.g. heating and ventilation) and building (lighting, damp and equipment) defects. The outstanding BREEAM information has also been received.
- 4.15 Confirmation was received on 8 July 2015 that all outstanding defects have been satisfactorily concluded and the appropriate certificates have been issued. As a consequence, the retention monies will be released.
- 4.16 On this basis, the final account sum of £5,735,227.93 can be confirmed.
- 4.17 A number of site issues require completion which are either outside the scope of the initial contract or were matters lost on adjudication. These include:
- Turfing of play area at rear of school
  - Stone picking and making safe peripheral areas to playing field
  - Drainage works to area in vicinity of football pitch

It is estimated that these works would cost in the region of £40,000.

4.18 The process leading to the settlement of the final account has been arduous and time consuming. As a consequence it is proposed to review the arrangements and to produce a more detailed report to the 21<sup>st</sup> Century Schools Board which is hoped will assist with future contract arrangements. This process has already progressed and resulted in the recommended way forward in respect of the proposed Abertyswg/Pontlottyn Primary School, as agreed by Cabinet on 17 June 2015.

## 5. EQUALITIES IMPLICATIONS

5.1 An EIA screening has been completed in accordance with the Council's Strategic Equality Plan and supplementary guidance. No potential for unlawful discrimination and/or low level or minor negative impact has been identified, therefore a full EIA has not been carried out.

## 6. FINANCIAL IMPLICATIONS

6.1 Provision was originally made in the capital programme for a sum of £4,677,000. Scrutiny (01/03/2011 and 25/01/2012) were notified of further budget increases (virements) of £200,000 on each of these occasions. An additional, circa £225,000, has been funded from the education capital programme. The subsequent outcome of the adjudication which referred to an interim account meant there would still be a significant under provision in relation to the final account sum.

6.2 It was evident that there was a significant variation between CCBC's and Vinci's final account valuations. When CCBC's accounts were closed for 2013/14 it was assessed that a realistic best case scenario would be a final account sum of £5,836,000.

6.3 This assumed an overall £523,000 net shortfall in provision. The Directorate identified funds to finance this amount, as follows:

	£
• Directorate's revenue balances	274,000
• Redirection from Lifelong Learning capital programme schemes no longer progressing	<u>249,000</u>
	<b><u>523,000</u></b>

The funding of the shortfall has not been actioned, awaiting confirmation of the final account sum.

6.4 The final account sum is circa £100,000 less than the sum reserved in the accounts. There are a number of outstanding site issues as identified above.

6.5 It is recommended that these outstanding issues are resolved at a cost of circa £40,000 from the residual £100,000 amount in the final accounts. This would result in the take from the Directorate's revenue balances being reduced from £274,000 to £214,000.

## 7. PERSONNEL IMPLICATIONS

7.1 There are no direct personnel implications.

## 8. CONSULTATIONS

8.1 Consultations have been undertaken as identified below. Comments received have been reflected in the report.

## **9. RECOMMENDATIONS**

- 9.1 To note the action taken previously by the Interim Chief Executive and to agree the proposed utilisation of circa £40,000 of residual funding for the project as recommended in section 6 of the report.
- 9.2 To note agreement to the final account to Vinci in the sum of £5,735,227.93.
- 9.3 To fund the revised shortfall of £463,000 (£523,000 - £100,000 + £40,000), through release of Education reserves to the value of £214,000 and re-direction of Lifelong Learning Schemes capital schemes to the value of £249,000.
- 9.4 Prepare a report for the 21<sup>st</sup> Century Schools Board to review the outcomes of this process and determine if there are lessons to be learnt in moving forward with future contracts.

## **10. REASONS FOR RECOMMENDATIONS**

- 10.1 Cabinet confirm the financial arrangements as set out in section 6 of the report.

## **11. STATUTORY POWERS**

- 11.1 Local Government Acts, 1972 and 2000.

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Consultees: Keri Cole, Chief Education Officer  
Councillor Rhianon Passmore, Cabinet Member for Education & Lifelong Learning  
Stephen Harris, Interim Head of Corporate Finance  
Gail Williams, Acting Head of Legal Services/Monitoring Officer  
Mark Williams, Building Consultancy Manager  
David A Thomas, Senior Policy Officer (Equalities & Welsh language)  
Angharad Price, Barrister, Legal & Democratic Services  
Lynne Donovan, Acting Head of People Management & Development  
Jane Southcombe, Financial Services Manager  
Mike Lewis, Principal Accountant – Education Central.

Background Papers: Adjudicator's decision dated 23.12.13.  
Confidential Legal Advice (Legally Privileged Exempt Legal Advice).