

EMPLOYEE DISCIPLINARY CODE

THE ROYAL
BOROUGH OF



KENSINGTON
AND CHELSEA

EMPLOYEE DISCIPLINARY CODE

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EMPLOYEE DISCIPLINARY CODE

Introduction

- 1 It is important that all Council staff behave well and do their job properly. Most do, and disciplinary action is rarely taken. But when it is, this Code ensures things are handled fairly and consistently. This Code applies to all Council employees, except Directors, staff in locally managed schools or employees on probation periods.
- 2 If your standard of conduct or work is unsatisfactory, your manager will tell you, and will encourage you to improve. If necessary, your manager will take disciplinary action. Proper procedures help everyone and should not be seen just as a way of imposing sanctions or as always leading to dismissal. As well as dealing with misconduct, this Code refers to attendance and work performance.
- 3 You should read and then keep this book. If you are unclear about anything in it, ask your manager or your personnel section.

Informal action: a manager's right to manage

- 4 Your manager has the right to talk to you one-to-one about any work-related issue, including conduct and work performance; this is part of a manager's job. Your manager can tell or remind you about standards and can reprimand you by word of mouth (sometimes called a "verbal warning" or an "oral warning"), for anything that you have not done, or done wrongly. This is informal action, aimed at bringing about an improvement. No record of informal action is made on your personnel file, although your manager may take a note of what was said. If your manager does choose to make a written note, you will be given a copy of it.
- 5 Informal action does not count as disciplinary action, and so you have no right to be accompanied by anyone else at an informal meeting with your manager, and you cannot appeal against informal action. A verbal or oral warning may be referred to in a disciplinary hearing up to six months later. If your manager decides during the course of an informal meeting, that formal action is needed, then he or she will stop the meeting and hold another, formal meeting later on.

Formal action: disciplinary action

- 6 If your manager decides that something is too serious to be dealt with informally, just by talking it through with you, then disciplinary action will be taken. Disciplinary action can be taken only during a disciplinary hearing. Disciplinary action is always formal, which means that
- things are always recorded in writing
 - you have a right to be accompanied at meetings
 - you have a right of appeal.
- 7 The Council is a public authority and expects you to do your job honestly and to the best of your ability, and to do nothing that may bring the Council into disrepute. The following paragraphs give examples of behaviour that the Council views as wrong and unacceptable. There are two types of misbehaviour, called gross misconduct and misconduct:

Gross Misconduct

- 8 “*Gross misconduct*” means misconduct, which is so serious that you can be dismissed for a first offence. Of course, circumstances will affect how serious an incident is. Only an Executive Director or a Director can dismiss you for gross misconduct. If you commit an act of gross misconduct, such as any of those listed below, you risk being dismissed. Here are some examples (this is not an exhaustive list) of the sort of act that is regarded as gross misconduct:
- 9 *Theft and Fraud.* Stealing from the Council or its employees, clients or any member of the public whilst at work; falsifying any document, record, claim or account; providing false information in support of an application for employment or promotion; corrupt practices such as asking for or accepting bribes or unauthorised hospitality, gifts, or gratuities; falsely claiming money or benefits from any local authority.
- 10 *Serious misbehaviour.* Assault; violent or dangerous behaviour, including fighting at work; serious physical or verbal abuse or bullying towards fellow employees, clients or members of the public, including maltreatment; indecent behaviour; serious negligence in performing work or in safeguarding property; using Council vehicles without authority; engaging in unauthorised employment during hours when contracted to work for the Council or during periods of sick leave.

- 11 *Breaching Council rules and policies.* Failing to observe the Council's Constitution, financial regulations, or departmental operating instructions; serious breaches of safety precautions, including neglecting safety equipment; any action which directly endangers others; breaching confidentiality so as to prejudice seriously the interests of the Council or any individual.
- 12 *Equal opportunities* Harassing or victimising someone for any reason (for instance because of their race, sex, or disability), or inciting or condoning such acts by others; serious breach of any equal opportunities legislation; serious or repeated contravention of the Council's equal opportunities policies.
- 13 *Computer-related issues.* Serious misuse of, or deliberate damage to, any Council computer hardware or software; any deliberate attempt to breach data protection or computer security rules (such as misusing passwords); accessing, storing or circulating offensive material via e-mail, the intranet or internet; deliberately breaching a software copyright or licence.
- 14 *Criminal offences.* Conviction for any criminal offence, which makes you unsuitable for employment; not disclosing an unspent criminal conviction

Misconduct

- 15 The other type of misbehaviour is called misconduct. This is not as serious as gross misconduct. You will not be dismissed for a first instance of misconduct. If you have been given a previous warning, then you may be given a final warning for misconduct. Sometimes misconduct is so serious that one warning is given which is both first and final. Once you have been given a final warning, then you may be dismissed if there is further misconduct.
- 16 Penalties for misconduct include warnings; removing benefits such as flexi-time; moving you to another job; withholding increments; or demoting you to a lower-paid job. Being an accessory to an offence may in itself lead to disciplinary action. These are examples of misconduct:
- 17 *Misbehaviour.* Not obeying a reasonable instruction; insubordination by word, act or manner; abusing your authority; using language or behaviour which is offensive to colleagues or others; sleeping on duty or being under the influence of alcohol or drugs (these may be gross misconduct in some situations).

- 18 *Attendance.* Prolonged or persistent absence from work without permission; persistent lateness; failing to comply with flexitime rules or other working hours arrangements; failing to comply with absence reporting procedures; failing to comply with sickness certification rules; neglecting your health such that it affects your fitness for work, or delays you returning from sick leave.
- 19 *Breaching Council rules and policies.* Not notifying your department of a gift, benefit, or hospitality you have received; minor breach of health and safety procedures; carelessly losing Council property; breaches of the Employee Code of Conduct (this may be gross misconduct in serious cases).
- 20 *Equal opportunities.* Minor breach of any equal opportunities legislation, or of the Council's equal opportunities policies.
- 21 *Computer-related issues.* Unreasonable use of a work telephone or fax machine for personal calls without permission; overuse or misuse of the Council's e-mail, intranet or internet system (this is gross misconduct in serious cases).

Departmental Rules

- 22 Your department may have other rules relating to particular services. Such rules must be written down, and your manager will give you a copy of these. You will be asked to sign to show that you have received them.

Disciplinary Procedure

- 23 If you are a trade union official or accredited staff representative, no disciplinary action will be taken against you until a regional officer of your trade union has been informed.
- 24 If you commit an exceptionally serious act of gross misconduct you may be instantly dismissed without notice. Normally, though, there will be an investigation before disciplinary action is taken for any alleged offence. As part of that, your explanation will be sought and considered before any disciplinary action is taken.
- 25 Before a disciplinary hearing is called, your manager will decide if any alleged misconduct or poor work performance is serious enough to warrant disciplinary action. (See paragraphs 47–50 about this.) You will be told in writing whether the allegation against you is seen as gross misconduct or misconduct.
- 26 If there is reason to think that you may have committed gross misconduct or misconduct, and disciplinary action is likely, then your manager may need to clarify facts and gather information before arranging a disciplinary hearing. This may involve your manager talking to you and to others to clarify facts. This is called a "preliminary investigation" You will be given reasonable notice of such a meeting, and you will be reminded in advance of your right to be accompanied by a Trade Union representative or another member of staff. You will be told the result of the investigation, and whether or not there will be a disciplinary hearing.

- 27 In most straightforward cases where facts are already clear, such a preliminary investigation may not be necessary, and a disciplinary hearing will be arranged. This may be conducted by your manager or by a panel of managers. A note-taker will be appointed. This will normally be a separate person to the panel. You may also take notes of your own if you wish. You will be reminded of your right to be accompanied by a Trade Union representative or another member of staff at any disciplinary hearing, and to call witnesses if you wish. Ahead of the hearing you must tell your department the name of any person accompanying you and of any witnesses you intend to call. Likewise, you will be told the names of any witnesses your manager intends to call. You will be given copies of the written evidence to be used at the hearing. You in turn must give copies in advance of any written documents that you will be using as evidence in the hearing. Your manager may give you a written warning.
- 28 If the allegation against you is one of gross misconduct, your manager will arrange for a disciplinary panel to hear the case against you. Such panel hearings, which may follow a preliminary investigation, will be made up of two or three people: managers and personnel staff. You will be given at least five working days' notice in writing of the hearing date, and told the allegations against you. If the hearing has to be adjourned your manager will confirm this in writing as soon as possible.
- 29 You will be reminded of your right to be accompanied at such a panel hearing by a Trade Union official or another member of staff. You can also call witnesses if you wish. Ahead of the hearing you must tell your department the name of any person accompanying you and of any witnesses you intend to call. Likewise, you will be told the names of any witnesses your manager intends to call, and who will be on the panel.
- 30 Your managers will tell you the outcome of a disciplinary hearing as soon as possible, normally at the end of the hearing itself. This will then be confirmed in writing. You will also receive a copy of the notes of the disciplinary hearing to which you can append any notes of your own.
- 31 If a disciplinary hearing finds you blameless, this will be confirmed in writing, and a record of the fact that you are blameless will be placed on your file.
- 32 Any disciplinary action will be recorded on your personnel file and confirmed to you in writing.
- 33 Any written warning will say when the situation is to be reviewed. Disciplinary action for 'misconduct' will normally be disregarded after twelve months' satisfactory service but if a longer period of time applies you will be provided with a written explanation of this; your Director will review warnings relating to 'gross misconduct' after two years. You can ask for confirmation of the review at the end of the appropriate period, and you can ask for an earlier review.

Postponing a disciplinary hearing

- 34 If you cannot arrange to be accompanied for a proposed hearing date, you can postpone the hearing once, for up to five working days (see paragraphs 45 & 46). If you fail to attend a further date, or if you do not turn up for any disciplinary

hearing without a sound explanation, the hearing may go ahead in your absence.

Suspension from work

- 35 Your supervisor may send you home from work during the course of a working day, and if this happens you will be paid for that day as normal and your supervisor will tell you why you are being sent home. Only your Director may suspend you beyond that. If you are suspended, your department will tell the local branches of UNISON and GMB. (If you are in the Education & Libraries department, the teaching unions will be told too.) You will be suspended only if your Director feels it is detrimental for you to be at work whilst the investigation or disciplinary hearing takes place.
- 36 Where your Director feels it is detrimental for you to be at work and there is clear evidence that you have committed gross misconduct, you may be suspended without pay, pending a disciplinary hearing. Otherwise, you will receive normal pay whilst suspended. Your Director will confirm your suspension in writing. If you are cleared at a disciplinary hearing then any pay withheld will be restored.
- 37 If you have been suspended without pay, you will have a separate right of appeal against this action to your Executive Director or to the Town Clerk and Chief Executive as appropriate and your department will try to arrange a disciplinary hearing within five working days, if you request that. This may be in everyone's interest, but you will always be given reasonable time to prepare your case. You will be reminded of your right to be accompanied at such a hearing.

Sickness absence during disciplinary action

- 38 If you become unfit for work due to illness whilst disciplinary action is being taken against you, your department will delay any planned investigation meeting or disciplinary hearing with you. Normally this will be for up to five working days, but a longer postponement may be agreed in an exceptional case. This will give you time to recover or to arrange for a colleague or trade union official to attend the meeting on your behalf. If you are unfit to attend you can if you prefer state your case in writing and this will be considered. If disciplinary action begins while you are unfit for work then it may be delayed, for the reasons set out above.

Grievances during disciplinary action

- 39 The Council's grievance procedure is separate from the disciplinary procedure. The grievance procedure does not apply to disciplinary matters. This means that if you are unhappy for any reason with the disciplinary sanction taken against you, then you can say so at the time and you may appeal (see paragraph 41) but you cannot raise a formal grievance about the sanction. If you raise a grievance about something else, while disciplinary action is being taken against you, your Director will decide whether your grievance should be heard before or after the disciplinary case, and will give you the reasons in writing for that decision.

Criminal Activity

- 40 The Council can take disciplinary action against you even if the Police are carrying out a criminal investigation. However, you will not be dismissed or disciplined simply because you have been charged or convicted of a criminal offence. Your Director will decide whether a conviction has an effect on your employment. If it does, then disciplinary action may be taken once the facts have been established. If you are remanded to prison pending a criminal trial, then the Council will suspend you from work, which will normally be unpaid. Disciplinary action may be taken in your absence.

Appeal Rights

- 41 The appeal procedure is used to deal with any complaint, issue or grievance you may have arising from disciplinary action taken against you. You have to appeal in writing, within two weeks of the date of the letter confirming disciplinary action. Your appeal letter should always be addressed to your Director (although your appeal may be heard by someone else – see paragraphs 43 and 44), and your letter must set out briefly the grounds of your appeal. This means that your letter must say why the disciplinary action against you was wrong or unfair. It is not enough just to say that you want to appeal, without giving any reasons. If your letter does not set out any grounds of appeal within two weeks, then your appeal will normally not go ahead. Your Director and a personnel officer will hear your appeal. Your Director's decision is final and there is no further appeal.
- 42 When you write to your Director to appeal, your Director may do one of two things. He or she can arrange for your appeal to be heard, or can ask the disciplinary panel to meet again if that is appropriate.
- 43 Your appeal will be heard by your Executive Director, if your Director took the disciplinary action against you, or if you were given a final warning. Your Executive Director and a personnel officer will hear your appeal. Your Executive Director's decision is final and there is no further appeal.
- 44 If you have been dismissed, demoted, or transferred; or if your Executive Director took disciplinary action against you, then the Council's Appeals Committee will hear your appeal, within three months.

Your right to be accompanied

- 45 The law gives you the right to be accompanied at any disciplinary hearing and any disciplinary appeal hearing. The law says that you can be accompanied by a work colleague, or by a trade union official. You may not be accompanied by anyone else. If you cannot find any suitable person to accompany you, a disciplinary or appeal hearing may be delayed, to enable you to find someone. Normally this will be for up to five working days, but a longer postponement may be agreed in an exceptional case. After that time it may go ahead whether you have someone to accompany you or not.

- 46 The person who accompanies you can put forward your case on your behalf, and can help you by giving you advice and support during a hearing. But that person does not have a right to answer questions for you, and if you are asked questions during a disciplinary or appeal hearing you must answer them yourself.

Poor work performance

- 47 If your work performance is sub-standard, your manager will decide if this is due to negligence or incompetence on your part. Negligence normally involves some blame on your part, for which disciplinary action may be taken. In such a case, your ability to do your job is not in doubt, but your work may be poor due to lack of motivation, effort or care. Incompetence on the other hand, means a lack of ability or experience. [Guidance on termination of Services on Grounds of Poor Performance](#) is also available.
- 48 Your work performance may suffer if your job changes and you lack the skills needed to do it. If this happens, you may be offered training or a transfer to another job, if one is available. Special consideration will be given to you if your work performance is poor because of illness, accident or any other factor outside your control, especially if you have a previous good work record.
- 49 If your work falls below the required standards, this is what will be done:
- . Your manager will tell you about the problem. He or she will discuss with you the problem, the possible causes and some suggested remedies. You will be asked for your explanation.
 - . Your manager will ensure that you are clear about what standard is expected.
 - . Your manager will give you a reasonable period in which to reach the required standard. If you do not do so, your manager will warn you in writing that your performance is unsatisfactory; will record in writing what the required standard is, how long you have to reach it, and what will happen if you do not. When the review period ends, if there are no longer concerns about your work performance, then any warning will lapse.
 - . Where possible, you will be offered training or coaching to help you to reach the required standard, especially if you are struggling following a promotion.
 - . Your manager will review and keep a record of your progress. If reasonable you will be given more time to reach the required standard of work.

- 50 If your work is extremely unsatisfactory, or if the potential consequences of poor work or an error are extremely serious, then the above measures will not normally be taken. From the outset you will be dealt with under the disciplinary code and may be dismissed. Apart from these exceptional circumstances, you will not be dismissed because of sub-standard work or for making an error unless you have been warned and given a chance to improve.

Absence From Work

- 51 Being unfit for work because of illness is not a disciplinary matter. The Council has separate procedures about sickness absence which are not part of this Code. Your manager will tell you about these. However, if you do not follow the rules for reporting sickness or for producing medical certificates, then you may face disciplinary action for misconduct (see paragraph 17), and you may lose pay, even if you are genuinely ill.
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