

Merton's Council Policy for Leaving the Authority

Version 1.1
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Leaving the Authority

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Leaving the Authority

1. Introduction

- 1.1 This section contains provisions covering employees who leave the Council's employment, through resignation, retirement, redundancy or dismissal. Where appropriate reference is made to other sections for details of specific provisions covering employees leaving the Council.

2. Notice periods - general

- 2.1 The period of notice required to terminate an appointment with the Council must be clearly defined in the employee's statement of particulars. This will include the length of notice that both the Council and the employee are required to give.
- 2.2 In normal circumstances the length of notice required to be given by the employee and employer will be as set out in paragraphs 3.2 and 4.1 below. However there may be circumstances where either a longer or a shorter period of notice may be required to be given. Any such arrangement must, however, conform to the minimum statutory requirements. Managers must seek the advice of their Departmental Human Resources section before agreeing any variation to the provisions set out below.
- 2.3 Employees will normally be required to work through their period of notice. However, in exceptional circumstances the notice periods may be reduced or waived by mutual agreement, or pay in lieu of notice may be made. Before any such arrangement is agreed managers should seek the advice of their Departmental Human Resources section as to whether the proposed arrangement is appropriate.
- 2.4 An employee who is dismissed for gross misconduct will not be entitled to receive either notice in accordance with paragraph 4.1 below, or 'pay in lieu' of notice.

3. Notice provided by the employer

- 3.1 Local Government Conditions of Service provide for periods of notice to be in accordance with the provisions of Section 49 of the Employment Protection (Consolidation) Act 1978 as amended by the Employment Act 1982 and Employment Rights Act 1996.
- 3.2 The statutory minimum periods of notice are set out below: -

Continuous Service

One month or more but less than two years

Two years or more but less than twelve years

Twelve years or more

Period of Notice

One week

One week for each year of continuous employment

Not less than twelve weeks

- 3.3 For employees who were previously within scope of the APT&C, Craft and Manual agreements have specific provisions relating to the calculation of continuous service:
- i. Craft and Manual employees should have taken into account in the calculation of their notice period previous continuous service with other local authorities;
 - ii. APT&C employees should have taken into account in the calculation of their notice period previous continuous service with other bodies, *aggregated at half rate*.
- 3.4 These notice periods, however, are under review following the implementation of single status.
- 3.5 The above provisions also apply to casual and temporary employees [i.e. employees with contracts for less than three months duration and who have not accrued three months' continuous service].

4. Notice provided by the employee

- 4.1 The period of notice is under review following the implementation of single status. Currently, the period of notice which employees (other than temporary or casual employees) are required to give the Council to terminate their employment is:
- | | |
|----------------------------|-----------------------|
| Manual and Craft posts | one week |
| Posts graded Scale 1 - PO2 | one calendar month |
| Posts graded at PO3 to PO6 | two calendar months |
| Chief Officers | three calendar months |
- 4.2 The notice period required to be given by temporary or casual employees to terminate their employment will be set out in the Statement of Particulars of the individual.

5. Payment of salary on leaving the Authority

- 5.1 In view of the early salary processing date it is essential that notices of termination of employment are forwarded to the Payroll Section as soon as they are submitted. On leaving the Council's service, the final salary payment, together with Income Tax Form P.45 will be posted to an employee's home address on their last working day. Alternatively, they may call and collect these documents from the Payroll Section on that day. In these circumstances, employees might not receive a payment on the normal pay day of the month/week in which they leave.
- 5.2 If an employee leaves the service of the Council whilst the salary payable to him/her is under review, any arrears of salary, which subsequently arise on completion of the review, will only be paid to that individual on receipt of a written request. The individual should therefore apply in writing to the Payroll Section to claim any arrears of salary which may have become due to them for the period during which they were employed by the Council.

6. Leaving the service - holiday entitlement

- 6.1 Managers should ensure that employees under notice should be advised to take any outstanding annual leave within the notice period. Employees will not normally be given payment in lieu of un-taken holiday leave provided that they have been advised in this way.
- 6.2 Employees are expected to take their proportionate annual leave entitlement before their employment terminates. Managers should ensure that the employee is advised of this requirement in time to make the necessary arrangements. The date of termination of the employee's service with the Council should be agreed, where possible, to take account of any outstanding annual leave entitlement.
- 6.3 Where an employee is prevented from taking any outstanding leave due to pressure of work, he/she will be entitled, under the Working Time Regulations, to payment in lieu for any part of the statutory leave entitlement accrued but untaken as at the date of termination of employment. This is currently 20 days, but includes any bank or other statutory holidays which have occurred during the leave year.
- 6.4 Former manual workers are also able to receive payment in lieu for any other outstanding annual leave not taken. This does not apply to former officers.
- 6.5 The Council's practice for employee's leaving its employment is to require a refund for excess leave taken as at their last day of service.

7. Redundancy and early retirement

- 7.1 Employees whose posts are declared redundant and who are not re-deployed elsewhere in the Council's employment are entitled to the provisions of the Council's redundancy scheme, including time-off to seek other employment.
- 7.2 For details of the scheme see the procedure for Managing Reorganisation and Redeployment.

8. Retirement

- 8.1 To maximise employment opportunities for those under the age of 65, it is the Council's Policy that the standard retirement age for employees be age 65, with the exception of relief staff and the continued employment of permanent staff in exceptional circumstances.
- 8.2 Information on retirement and extension of service are contained in Retirement and Extensions of Service which is attached as **Appendix 4**.

9. Employee leaving the Council - handover process

- 9.1 The line manager is responsible for ensuring that the 'handover' process, when an employee leaves the authority or transfers to another department, is properly handled. This should involve arranging and holding:
 - i. a review meeting; and
 - ii. a handover meeting.
- 9.2 The departing employee also has an obligation to ensure that outstanding work is subject to a proper handover process with the line manager, and that files, records, etc. are left in proper order.

9.2.1 Review Meeting

- 9.2.2 As soon as it is known that an employee is leaving the Council's employment, for example, when the employee gives notice, the line manager should arrange a meeting with the employee to:
 - i. confirm the expected last date in post, taking account of any outstanding annual leave;
 - ii. discuss arrangements relating to untaken holiday leave, final salary payments, etc. or if appropriate to direct the employee to the Departmental Human Resources Section for such information;
 - iii. discuss outstanding work, identify priorities for work to be completed during the notice period, and tasks which are likely to remain uncompleted;

- iv. determine arrangements for handover of uncompleted tasks, for example, identifying other named employee(s) to take over tasks;
- v. draw up an action sheet in respect of all outstanding work;
- vi. set a date immediately prior to the employee's last day in the workplace for the handover process to be completed.
- vii. The line manager should also notify the Departmental Human Resources Section of the employee's expected last day in service, to enable the Human Resources section to make arrangements for an exit interview, if appropriate [see paragraph.10 below].

9.3 Handover meeting

9.3.1 The line manager should ensure that a meeting is held before the employee's last day in the workplace to complete the handover process. This meeting should take place in the last week that the employee is present in the workplace; although the last day is not normally the best time because of the potential clash with leaving functions, etc. and the lack of time to deal with any unforeseen problems which may be identified at the meeting.

9.3.2 At this meeting the line manager should:

- i. confirm the status of all tasks discussed at the review meeting;
- ii. take physical possession of files, records, etc.;
- iii. make arrangements for the return of the employee's security pass and any other Council property;
- iv. deal with any outstanding work related issues;
- v. thank the employee formally for his/her service to the Council.

10. Exit interviews

10.1 The Council has a policy that all employees who leave the service of the Council through their own choice should be given an 'exit interview' immediately prior to their departure. The purposes of such interviews are:

- i. to identify any underlying factors which have influenced the employee's decision to leave the Council; for example, an employee may leave for a better paid job elsewhere, but the decision may have been influenced by job dissatisfaction, lack of career development opportunities, etc., as well as by money;
- ii. to discuss any suggestions the employee may have as to how the duties of the post could more effectively be organised or undertaken;

- iii. to thank the employee for his /her efforts on behalf of the authority and wish her/him well for the future.
 - i. Information obtained from the interviews can be used by managers to improve methods of work and identify ways of improving the retention and motivation of employees. The interviews should not be seen as an opportunity for employee and manager to raise outstanding grievances or to indulge in un-constructive criticism. In particular the manager should refrain from criticising the employee's work performance.
- 10.2 It will not normally be appropriate to carry out 'exit interviews' with employees who have been made redundant, as there is a greater chance of the interview being confrontational. Similarly, it will not be appropriate to conduct interviews with employees who have been dismissed on grounds of conduct or performance. Managers will have to decide whether there is scope for any benefits to be obtained from the interview.
- 10.3 A Guidance Note on the conduct of exit interviews is contained in Appendix 1.

11. Providing job references

- 11.1 Recent developments, including case-law and reports on recruitment of employees in Social Services departments, have reinforced the need for employers to operate clear arrangements for the provision of properly structured job references. The Council currently has no formal policy covering provision of references for prospective employers of Merton employees, other than the special provisions which apply for employees involved in child care services. However, general guidelines on the provision of job references for Council employees are contained in Appendix 2.

EXIT INTERVIEWS - GUIDANCE NOTE

1. Introduction

- 1.1 It is the policy of the London Borough of Merton to offer an exit interview to every employee who voluntarily leaves the Council. The information will be used to identify management and operational issues and contribute to management processes. The interview should be an open and honest discussion between the employee and a Human Resources representative.

2. Purpose

- 2.1 The purpose of the interview is to obtain key information about the organisation, the job, working relationships, working conditions, reasons for leaving and recommendations for change. Feedback given during exit interviews will help to:
- identify areas for service development
 - identify trends in turnover
 - discover any problems with management, work or morale
 - assess the effectiveness of recruitment practices, e.g. how well the post suites the employee
 - identify future post requirements

3 The interview: preparation and process

- 3.1. It is important to encourage the employees to comment freely about the reasons for leaving the post and experience of work within the post. The interview should take place at a mutually convenient time.
- 3.2 The exit interview will not prejudice references.
- 3.3 A Human Resources representative will conduct the interview except for human resources staff where an independent person from the Chief Executive's Department will conduct the interview.
- 3.4 The object of the interview is to encourage the employee to comment freely about their experiences in the job and about working for Merton Council to

establish their true views and experiences. Whilst it will be essential to probe the information given to gain understanding, the comments must not generally be challenged in a judgmental way by the interviewer. It is the views of the employee that are relevant to the exercise.

- 3.5 To aid preparation the departing employee should receive a copy of the Exit Interview Form (click [here](#) for Forms) when their resignation / retirement is acknowledged by their Departmental Human Resources Manager. In exceptional circumstances the departing employee may complete the Exit Interview Form without attending an interview. In these instances the departing employee should send the form to their Departmental Human Resources Section prior to their departure. The key issue is that Merton Council receives the relevant information.

4 Documentation for the interview

- 4.1 The Departmental Human Resources representative who conducts the interview should complete the form, sharing the information recorded with the employee concerned. A copy of the contents of the form should be shared with the line manager after the employee has left the organisation.

5 Who will have access to the exit interview information?

- 5.1. The line manager, Corporate Human Resources and the grandparent manager. Will have access to the exit interview information.

6 Monitoring

- 6.1 The information gleaned from the exit interviews will be collated for the Departmental Management Teams by the Departmental Human Resources Manager and regular reports will be produced for the Corporate Management Team. click [here](#) for forms page and select 'Employees Attending Exit Interviews – Summary Form'

PROVIDING JOB REFERENCES

1 Introduction

- 1.1 Recent developments, including case-law and reports on recruitment of employees in Social Services departments, have reinforced the need for employers to operate clear arrangements for the provision of properly structured job references.
- 1.2 The following guidance has been prepared to assist managers in preparing and providing job references. Managers preparing references for a member of their team should also refer to [Appendix 3](#) for details of the Council's 'open staff files' policy.

2 Legal framework

- 2.1 There are various areas of the law that need to be considered including:
 - whether there is a duty on the employer to provide a serving or former employee with a reference
 - the employer's liability to the employee for inaccurate references
 - the employer's liability to the prospective employer for inaccurate references
- 2.2 The position on each of these are summarised below.

3 Duty to provide a reference

- 3.1 While there is no common law duty on the employer to provide references for current employees there may be a contractual right. This right may be an explicit term of the contract or an implied term. The House of Lords has set out the circumstances in which such a term could reasonably be implied are:
 - there is a contract of employment or services;

- the contract should be for work of a type where it is normal practice to require a reference from a former employer to secure new employment;
 - the employee cannot be expected to work in the particular field unless the employer provides a full and frank reference.
- 3.2 Where such a contract operates, it is necessary to imply a term that the employer would provide, either during employment or within a reasonable period after the end of the contract, a reference based on careful inquiry.
- 3.3 For most local authority employment it is normal practice to require a reference as a condition of employment, with an employee being unlikely to obtain a job in the absence of a full and frank reference. Therefore, it is likely that the courts would choose to insert into local authority contracts of employment an implied duty on the employer to provide a reference.

4 Employer's liability to the employee for inaccurate references

- 4.1 An employee may suffer serious loss because of an inaccurate reference. The loss may arise from a failure to obtain employment, or through dismissal from a job for unsatisfactory references. In these circumstances the employee has options through the courts open to them: defamation, malicious falsehood or negligence.

(i) Defamation

If an inaccurate reference damages the employee's reputation the employee can claim damages for defamation. In normal circumstances the burden is on the person making the statement about another individual to establish that it is true. However, with job references the referee can claim a defence of 'qualified privilege'. This protects the employer against any liability for an untrue statement provided that:

- i. the employer 'honestly believed' the truth of the statement; and
- ii. the employer was not motivated by 'malice'.

This will be difficult for the employee to establish unless the referee is reckless in drafting the statements contained in the reference.

(ii) Malicious falsehood

This applies to statements made maliciously - that is, defined as “calculated to cause damage”. It is similar to defamation, except that it applies to statements that damage a person’s business reputation rather than personal character. However, the burden of proof is on the employee to show that the statement is false. In general this is even more difficult to establish than defamation.

(iii) Negligence

Following a judgement by the House of Lords in 1994⁽¹⁾ this is a more attractive option for the employee. The employee can claim damages from the employer for negligence arising from negligent statements in the reference. The employer has a duty towards the employee to exercise reasonable care in compiling a reference. This duty of care will arise from an implied term of the contract, and will apply even after the employee has left the employment of the employer who gives the reference.

Where a reference is given the employer must exercise care and skill in its preparation “both as to factual content and as to opinion expressed” . If negligence in the preparation of a reference is established the employee only has to demonstrate that as a result s/he lost a reasonable chance of employment.

(1) Spring v Guardian Assurance plc & others, House of Lords 7/7/94

5 Employer’s liability to subsequent employers for inaccurate references

- 5.1 The position in respect of the employer’s liability towards subsequent employers arising from an inaccurate reference is unclear. However, it appears that the subsequent employer may be able to sue the employer for damages arising from negligent misstatements in a reference, if the former relies on the accuracy of the statement and the employee appointed cannot perform the jobs properly.

6 Providing a reference

- 6.1 In the absence of a formal policy the following guidelines contain a reasonable guide to best practice in the provision of references. They also take into account the impact of the Spring decision. (See note (1) at paragraph 4 above.)

- 6.2 Any employee should be provided with an employment-related job reference for any prospective future employer if requested. Although there is no statutory obligation to do so, the House of Lords decision suggests that most local authority employees may have an implied contractual right to a reference.
- 6.3 All references should be authorised by, and issued in the name of, a Head of Service or equivalent. This will ensure that the responsibility for the reference is placed at an authoritative level.
- 6.4 Subject to paragraph 6.3 above, the reference should be drafted by a manager who is reasonably familiar with the employee's performance. This will normally be the line manager or 'grandparent' manager. In exceptional circumstances a more senior officer may be required to draft a reference.
- 6.5 Before responding to a request from a prospective employer for a job reference for a current employee, the permission of the individual to provide a reference must be sought. If the individual does not give permission the prospective employer should be informed, in writing, that the Council cannot provide a reference: no further explanation should be given.
- 6.6 It is good practice, and consistent with Merton's 'open files' policy, (See Appendix 3 to share the contents of the reference with the relevant employee. This should be done after the reference has been sent to the prospective employer, to avoid getting into 'negotiation' about its contents.
- 6.7 Responses to requests for a job reference should be made by the referee within a reasonable time-scale, for example, within two weeks of receipt of the request.
- 6.8 References should be provided in written form only [subject to paragraph 6.9 below]. No reference should be given verbally over the telephone, even if the prospective employer says that the request is urgent.
- 6.9 Prospective employers sometimes ring the referee to query or to discuss the information provided in the written reference. If this happens the referee may respond, provided that the information given is accurate [see below] and is information that the referee would be willing to put in writing. A note summarising the information should be kept by the referee and shared with the relevant employee.
- 6.10 The referee can provide details of:
- the capacity in which the referee knows the employee;
 - the employee's service history with Merton;

- the employee's attendance record, but not details of any specific health problems;
 - any 'current' disciplinary offences;
 - an assessment of the employee's performance in his/her current post [subject to paragraph 6.11 below];
 - an assessment of the employee's suitability for the post for which the reference is being sought [subject to paragraph 6.12 below].
- 6.11 The referee must take all reasonable care to ensure that all information contained in the reference is relevant and accurate, taking reasonable care on both factual content and opinion. Failure to do so could leave the Council open to legal challenge by the employee or, should the person be appointed, by the prospective employer.
- 6.12 The referee should have regard to the information in the employee's personal file and other records when drafting the reference. For example, any assessment [good or bad] of the employee's performance in the current job should be consistent with his/her appraisal record. Comments on or assessments of the employee's skills, abilities and aptitude which cannot be supported by the available evidence should be avoided.
- 6.13 The reference must focus on the key criteria for effective performance in the job for which the reference is being sought. Ideally the prospective employer should provide both the job description and the person specification for the post. But if these, or equivalent information, are not provided the referee should not attempt to make an uninformed assessment about the employee's suitability for the job.
- 6.14 It should be noted that there are separate guidelines for job references for employees involved in working with children and other vulnerable clients. Further information is available from the relevant Departmental Human Resources Section.

[Link to Forms](#)

Open Staff Files

1 Introduction

- 1.1 All Council have the right, during their employment, to inspect their own personal files. The Council's policy on Open Staff Files, outlined below, sets out the procedures to be followed regarding an employee's access to information held on personal files.
- 1.2 Further information on drafting references is contained in **Appendix 2** above.

2 Details of the policy

- 2.1 This policy applies to all employee records held by the Council.
- 2.2 Currently personal information relating to an individual's employment with the Council is held by Human Resources, Payroll and Pensions Sections. Access to personal information can be expedited if the employee is able to state the nature of the personal information to be inspected i.e. general personnel records; pension records; pay records.
- 2.3 Detailed medical records are held by the Area Health Authority. Statutory provisions concerning access to medical records are set out in the Access to Medical Records Act 1988. A copy of the Act is available in the Corporate Human Resources section for inspection. Fitness certificates are held on personal files for inspection. Employees have access to medical records held by the Medical Adviser in accordance with the provisions of the Medical Records Act 1988.

3. Right of access to personal records

- 3.1 The operation of an open files policy applies to all records including:
 - a) Job application forms and supporting references
 - b) Employment contracts and other contracts documentation
 - c) Medical sickness certificates and a memoranda from the Council's Medical Adviser not covered by the terms of the Medical Records Acts

- d) Wage and salary information together with information concerning deductions, e.g. pensions, tax etc., and information concerning allowances e.g. car allowances etc.
 - e) Employee probationary reports
 - f) Interview records
 - g) Disciplinary/capability documents
 - h) Records relating to the application of conditions of service, e.g. special leave, acting up allowances, merit payments etc.
 - i) Training records
 - j) Employee appraisal records
- 3.2 Employment references provided to the Council are open to the relevant employee for inspection. Employees will similarly have access to references supplied by the Council held on personal files.

4 Access arrangements

- 4.1 Employees who wish to access their personal file should direct their request through their line manager or Departmental Human Resources. Where an employee requests access the following provisions will apply:
- (a) Records will be available at five working days notice (or earlier wherever possible) and inspection of the file will be by appointment.
 - (b) The employee is required to state whether or not they require access to Payroll information or non-Payroll information.
 - (c) The employee may be accompanied at the inspection by a trade union representative or work colleague.
 - (d) At all times during the inspection the parties will be accompanied by a responsible departmental officer delegated by the respective Chief Officer. The file may not be removed by the employee.
 - (e) Where records that should have been expunged are found on the file, the employee may request their removal and destruction.
 - (f) Employees may request copies of information held on their records.
 - (g) The employee must request permission from their line manager to be absent from the work place in order to carry out the inspection. Permission will not be unreasonably withheld.

- 4.2 The provisions set out above do not affect an employee's rights of inspection of personal information held on computer files under the terms of the Data Protection Acts 1984 and 1988. Click [here](#) for further information.

5 Storage Arrangements

- 5.1 All information relating to employee records shall be stored securely either in lockable cabinets or in a controlled access computer system. All employees shall ensure that confidential information held in employee records is not improperly disclosed.

RETIREMENT AND EXTENSIONS OF SERVICE

1 Introduction

- 1.1 In order to maximise employment opportunities for those under the age of 65, the Equal Opportunities and Personnel Sub Committee at its meeting of the 10th February 1993 clarified the Council's Policy that the standard retirement age for employees be age 65, with the exception of relief employees and the continued employment of permanent employees in exceptional circumstances.

2 Relief employees

- 2.1 Relief employees (because of the irregular nature of the employment) can be employed on a year on year basis subject to renewal of medical clearance.

3 Permanent employees

- 3.1 Extensions of service for permanent employees are permissible where it is in the interest of service provision. The period and the reason for the extension need to be clearly defined in the contract of employment and any extension of service granted will only be for a maximum of twelve months at a time. There is also a requirement to consult with the trade unions.

4 Pension entitlement

- 4.1 Where extensions of service occur, only members who were in the scheme before 2nd May 1995 can stay in the pension scheme beyond age 65. In these circumstances, benefits do not become payable until the employee actually retires but benefits will then be enhanced to take the period of deferment into account.

5 Medical clearance

- 5.1 Where an employee's service is extended, medical clearance must be obtained using the same process as for new starters. It will then be at the discretion of the Occupational Health Service as to whether or not the individual needs to undergo a medical examination.

6 Documentation

- 6.1 The employee concerned and the Payroll and Pensions Sections should be notified in writing. Appropriate documentation should be prepared.
-