

DISCIPLINE AT WORK

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DATE OF IMPLEMENTATION

This is a new procedure that will apply to all Discipline based cases from Tuesday 1st November 2005.
(1st Review June 2007)

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1 Introduction and Aims

- 1.1 **Purpose** - This procedure is designed to help and encourage all employees to achieve agreed acceptable standards of conduct and behaviour whilst ensuring that they all are treated consistently and fairly in line with ACAS standards and the Council's Equality and Diversity policy. The procedure is used when employees are alleged to have broken disciplinary rules. The Council's Code of Conduct sets out standards of behaviour and conduct, and Appendix 1 of this procedure outlines examples of potential misconduct and gross misconduct.
- 1.2 **Line management responsibilities** - Managers are responsible for the standard of conduct and behaviour of their staff and addressing any issues in accordance with this procedure. Reasonable time off will be provided to the employee and his/her representative to meet to prepare for any formal meetings, prepare witnesses of the employee case subject to clearance in advance with line management.
- 1.3 **Employee responsibilities** - Individual employees are responsible for maintaining appropriate standards of conduct and behaviour and for cooperating with the implementation of this procedure eg take all reasonable steps to attend any scheduled disciplinary investigation and/or appeal hearings.
- 1.4 **Employee representation** – Trade Union (TU) representatives or workplace colleagues are granted reasonable time off within the appropriate stages of this procedure to represent staff who make this request.
- 1.5 **Communication of this procedure** – Current employees will be informed about this procedure and new employees will receive details of this procedure during their induction and ongoing supervision meetings as and when appropriate. It is also available from Human Resources and is posted on the intranet. A full copy of the procedure is also available on request.

2 Principles – based on ACAS Code of Practice

Line managers applying this procedure will:

- Use the procedure primarily to help and encourage employees to improve their conduct, rather just as a way of imposing a punishment
- Inform the employee of the alleged misconduct and provide them with an opportunity to state their case before decisions are reached
- Ensure that the employee has early access to documentation supporting the allegations to enable a full and fair investigation
- Allow employees to be accompanied at disciplinary hearings
- Ensure that disciplinary action is not taken until the facts of the case have been established and the action is reasonable in the circumstances, taking account of any mitigating circumstances and/or relevant medical or other specialist advice (e.g HR Diversity Team) and/or the need to make reasonable adjustments as required by the Disability Discrimination Act (DDA)
- Not dismiss an employee for a first disciplinary offence, unless it is a case of gross misconduct

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- Give the employee a written explanation for any disciplinary action taken, ensure that the employee is made aware of the improvement that is expected and confirm her/his right of appeal against any sanction that is imposed
- Deal with issues as thoroughly and promptly as possible
- Act consistently, whilst having regard to the individual circumstances of the case
- Require issues of Child Protection and dealing with vulnerable people to take precedence

3 Scope of the Discipline Procedure

- 3.1 **Eligibility** – This procedure applies to all employees except the Chief Executive & Directors, school based staff, centrally based teaching staff and employees on probation, who have their own procedures.
- 3.2 **Issues covered by this procedure** - This procedure applies to issues of misconduct, including negligence. This procedure is also used in the context of other HR policies and procedures relating to conduct – including, for example, Substance Misuse, the Council's Code of Conduct and the Dignity at Work procedure.
- 3.3 **Issues NOT covered by this procedure** – This procedure does not apply to issues of Attendance or Capability - for which there are separate procedures.
- 3.4 **Job titles or roles** - Job titles or roles may be changed as a result of organisational restructures. It is management's responsibility to determine who has authority to implement this procedure.

4 Standards in applying this procedure

- 4.1 Line managers applying this procedure should:
- Investigate issues fully before taking formal action
 - Take no disciplinary action against an accredited recognised TU representative until, with her/his prior agreement, the circumstances of the allegation have been discussed with a full-time official of the union
 - Provide the employee with a written summary detailing the alleged misconduct or gross misconduct and any evidence against her/him prior to a disciplinary hearing and access to all relevant documentation which would assist him/her in responding to the allegation(s)
 - Inform the employee of the support available through the Council's confidential staff counseling service (EAP)
 - Give the employee the opportunity to make their case at a disciplinary hearing conducted by an appropriate level of manager
 - Inform the employee that, subject to the findings of an investigation of her/his alleged misconduct, the Disciplinary procedure will then be applied at the appropriate stage – with the employee made progressively aware that failure to improve their conduct could result in dismissal
 - Provide for the decision making process to consider possible alternatives to dismissal, where appropriate
 - Have regard to the Equality and Diversity policy

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- Maintain confidentiality and privacy at all times
- Maintain appropriate records, having regard to such issues as the Data Protection Act 1998

5 Records

5.1 Records are confidential and are kept within the requirements of the Data Protection Act 1998, which allows employees to access their records. Documents relating to child protection and vulnerable adults investigations will be retained, together with a written record of the outcome of the investigation. Where an employee receives a warning for child protection or vulnerable adult issues, these will remain on the employee's personal files in accordance with Local Authority Retention of Records Guidance.

5.2 Records will include:

- The allegation(s) against the employee
- The employee's explanation
- Any investigation report(s)
- The decision letter(s)
- Whether an appeal(s) was lodged
- The outcome of any such appeal(s)
- Any grievances raised during the Discipline procedure
- Any subsequent developments.

5.3 Investigation reports and decision letters are kept by HR on a confidential basis. Where there is no case to answer, they are destroyed. Where an allegation is upheld the details of the decision are retained until the warning period has expired.

5.4 Copies of decision letters, including details of sanctions, are removed from the employee's personal file after the expiry of the warning - unless paragraph 5.1 above applies.

6 Authority to conduct disciplinary matters – includes agency staff managing Council employees

NOTE – This procedure necessarily uses the generic terms 'line manager' and 'line manager's manager' – and each department will designate the specific managers who are delegated to undertake these roles, based on the current staff appraisal arrangements.

6.1 The Council has delegated authority to Chief Officers to specify levels of management to undertake disciplinary action. The specification will be in accordance with this framework.

6.2 The line manager is responsible for managing minor disciplinary issues on an informal basis and undertaking investigations up to the Disciplinary hearing stage- as outlined in section 8 below.

6.3 The line manager's manager is responsible for conducting a Disciplinary hearing and, where appropriate, authorising a recorded oral warning, written warning and/or a final written warning. However, where the line manager's manager is **not** a Head of Service (HOS) s/he is not authorised to conduct a disciplinary case which could result in dismissal. The line manager is authorized to deal with related allegations at the same hearing even if

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more than one employee is affected. This will be facilitated by concurrent investigations by one or more managers which will feed into the management report and hearing.

- 6.4 The HOS is responsible for authorising suspensions and, following an appropriate disciplinary hearing, a recorded oral warning, a written warning, a final written warning and/or a dismissal decision. S/he is also responsible for hearing appeals – unless the appeals are against dismissal.
- 6.5 The Director is responsible for hearing appeals against dismissal.
- 6.6 Where the employee reports to a HOS, the HOS is responsible, following an appropriate disciplinary hearing, for authorising either a recorded oral warning, a written warning, redeployment and/or a final written warning. However, only the Director may authorise a suspension and, after an appropriate disciplinary hearing, a dismissal decision. The employee has the right to appeal against a written sanction to the Director and against a dismissal decision to the Chief Executive, who may delegate any such appeal against dismissal to a Director who has not been involved in the case.
- 6.7 Where the employee is a HOS, her/his Director is responsible, after an appropriate disciplinary hearing, for authorising a recorded oral warning and/or a formal written warning. If there is a further incident involving potential disciplinary action the Director presents her/his case to a Director who has not been involved with the case, as delegated by the Chief Executive. The nominated Director will conduct any appropriate disciplinary hearing and, where appropriate, may authorise either a final written warning and/or dismissal. The right of appeal against any such final written warning or dismissal decision is to the Chief Executive, who may delegate this to a Director who has not been involved with the case.

NOTE – Where appropriate, the line manager concerned makes arrangements for the release of any witnesses and arranges a note taker for any appropriate formal disciplinary hearing and/or appeal hearing. (For confidentiality reasons the note taker will be a Council employee who is not related to the parties concerned)

7 The role of Human Resources (HR)

- 7.1 To assist all parties to identify the full facts of the case and advise the Council's officers on appropriate action(s) at all stages of the procedure.
- 7.2 To ensure that all parties are made aware of the support available through the Council's confidential staff counseling (EAP) service at all stages of the procedure.
- 7.3 To seek to ensure fairness and consistency in the application of the procedure and advise on the HR implications of relevant codes of practice.
- 7.4 To maintain confidential disciplinary files.
- 7.5 To attend all formal disciplinary and/or appeal hearings when requested by the line manager concerned, and confirming the administrative arrangements for such meetings e.g. the date, time, venue and circulation of documentation. (However, the line manager concerned is responsible for arranging a note taker, as appropriate) The same HR representative can attend all formal meetings unless a conflict of interest exists.

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8 The Informal Procedure (conducted by the line manager)

- 8.1 The informal stage of the procedure applies where an employee's conduct may need addressing outside of the normal day to day supervisory activity – whilst not being sufficiently serious to require a formal disciplinary meeting.
- 8.2 In such cases the line manager meets promptly with the employee to outline the required standards of conduct, the apparent shortfalls and the proposed improvement(s). In turn, the employee explains her/his recent/current actions and/or conduct, as appropriate.
- 8.3 Following the discussions, the line manager confirms whether or not s/he is satisfied with the employee's explanations. Where her/his concerns are confirmed, s/he outlines in writing the required standards of conduct, how the employee falls short of them, the improvement that is required and the way that the required improvement will be monitored. The line manager also confirms if and how the employee may be helped to achieve the required improvement – which may include additional support, development and/or training. Given the informal nature of the discussions, the monitoring period for improvement will normally be of a limited duration e.g. up to six weeks. However, it is made clear to the employee that further instances of the misconduct or lack of improvement may result in formal disciplinary action.
- 8.4 The line manager confirms the outcome of this discussion in writing to the employee as soon as possible.

9. The Investigation process – linked to the formal Disciplinary procedure outlined in section 10 below

- 9.1 Where appropriate, the employee's line manager is responsible for conducting a disciplinary investigation (see Section 10 below), although in cases of alleged fraud Internal Audit **must** also be involved. (See NOTE below) The line manager may, in consultation with the HOS and HR, appoint an appropriate manager who has not been involved with the case to conduct the investigation (the 'Investigating Officer'). If appropriate, the employee may be suspended during the investigation process and, in such cases, the line manager, in consultation with the HOS and HR (and Internal Audit for allegations of fraud), applies the procedure outlined in section 13. Where the allegation has been made by a complainant(s) outside of the employee's Department, the investigation will still be conducted by the immediate line manager.

NOTE – Cases of alleged fraud - Appendix 2 outlines the procedures that **must** be applied when investigating cases of alleged fraud – including the role of Internal Audit, the arrangements for suspension from work, the investigation process, the conduct of any subsequent disciplinary hearing arising from these investigations and confirmation of the Council's policy to prosecute proven acts of fraud. Timescales for the investigation and notification to the employee are decided in relation to the nature of each case.

- 9.2 The manager conducts an investigation where the potential issue of misconduct either:
 - relates to conduct which has recently been the subject of informal action or
 - appears to be more serious than matters which are normally dealt with informally.

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- 9.3 An employee who participates in an investigation must be given at least two working days notice, informed of her/his right to be represented and assured of confidentiality. (there are separate provisions where the matter involves a child or vulnerable adult)
- 9.4 The line manager completes the investigations as speedily as possible, but within a maximum of twenty working days. Where this is not possible, either through absence or the complexity of the issue, the line manager should advise the employee who is the subject of the investigation accordingly. NB See paragraph 9.1 above for cases of alleged fraud.
- 9.5 The line manager must be thorough and conduct a balanced investigation. All potential witnesses must be interviewed and statements gathered to support the investigation. All parties must be advised of the support available through the confidential staff counseling service.
- 9.6 At the completion of the investigation, the line manager reviews the relevant investigation reports with her/his appropriate line management colleagues, and HR as appropriate, and then advises the employee in writing either that there is no case to answer or that a Disciplinary hearing is necessary.
- 10 The formal Disciplinary hearing procedure (conducted by either the line manager's manager or by the HOS, as appropriate)**

NOTES

It is important that the manager with the appropriate authority undertakes the disciplinary hearing concerned – and paragraphs 6.3 – 6.7 outline the various levels of managers who have authority to conduct such formal disciplinary hearings.

There may be circumstances where the employee's line manager's manager may be personally involved or implicated with the disciplinary issue (or alleged fraud or discrimination). In such cases, the HOS may decide to appoint an appropriate manager who is independent of the case to conduct the investigation or disciplinary hearing and authorise any appropriate sanction. These persons can be from within or outside of the employee's Department, however the Head of HR and Director must be consulted before such a decision is made.

Arrangements for holding the Disciplinary hearing

- 10.1 The employee's line manager's manager is responsible for conducting the disciplinary hearing - although s/he must be a HOS to hear cases which could result in dismissal.
- 10.2 Where a disciplinary hearing is necessary the employee, and her/his representative as appropriate, are consulted over the date of the meeting and given ten working days notice of it. The employee is also informed in writing of the reason(s) for the disciplinary hearing and provided with all evidence that will be used to support the basis of the allegation eg the management/investigation report and any potential witness statements etc – with this information being provided, where possible, at least 5 working days prior to the disciplinary hearing. All documentation submitted by witnesses, the employee and/or his representative and management will be provided to all parties prior to the hearing to ensure a fair and balanced process. The manager has the right to instruct the attendance of any key witnesses to any meetings arranged under the formal procedure.

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- 10.3 The employee is allowed one change to the agreed disciplinary hearing date if either s/he, or her/his representative, is unable to attend for reasons which were unforeseen when the hearing was first arranged. This reconvened hearing must take account of the availability of all parties and be within five working days or by mutual agreement. Sickness will only be treated as a reason for non-attendance where the health condition of the employee is such that s/he cannot attend the hearing or follow the proceedings. Any such delay does not count against the (maximum) limit of 20 working days to complete the investigation process.
- 10.4 If the employee wishes to provide any supporting evidence and/or nominate any witnesses, s/he should do so at least two working days prior the disciplinary hearing. The line manager's manager will then obtain approval for the release of any such witnesses. The line manager's manager also informs the employee of the names of any witnesses attending the hearing to support the management case at least two working days prior to the meeting.
- 10.5 The manager conducting the Disciplinary hearing should seek advice from HR as appropriate. Where necessary to substantiate or clarify facts, s/he may decide to interview other parties at any stage of the procedure. The manager has a right to instruct the key witnesses to attend the hearing.

Conduct of the Disciplinary hearing

Appendix 3 outlines guidance relating to the conduct of a Disciplinary hearing.

- 10.6 The manager conducting the Disciplinary hearing:
- Fully investigates the evidence presented, including that from any witnesses
 - Makes a judgement as to what happened, based on the balance of probabilities
 - Determines whether and what action is necessary to improve conduct and/or behaviour – which may include a formal sanction, as outlined in section 11 below.

Communicating the outcome

- 10.7 Where possible, the manager conducting the hearing gives the decision and the reasons for it verbally on the day. S/he also provides in writing within five working days of the hearing a decision letter confirming the reasons for the decision and, where appropriate, the improved standards that must be reached, any support available to reach these standards (where applicable), any sanction that has been applied, the consequences of further misconduct and the manager to whom any appeal should be made (the grounds for any such appeal are outlined in paragraph 12.4).

11 Disciplinary sanctions

11.1 Recorded oral warning – which will be 'spent' after 6 months

This applies where an allegation of minor misconduct is upheld. A recorded oral warning confirms that either a written or final written warning may subsequently occur if there is a failure to change behaviour.

11.2 Written warning – which will be 'spent' after 6 months

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This applies either where behaviour has not improved within the duration of a recorded oral warning or where the upheld misconduct is more than minor. It warns that a final written warning may subsequently occur if there is a failure to change behaviour.

11.3 Redeployment

This applies where the HOS and HR can identify a suitable post at the same grade/pay either within or outside the Department. The Redeployment Procedure for Part Two cases must apply in such circumstances.

11.4 Final written warning – which will be ‘spent’ after 12 months

This applies where behaviour has not improved within the duration of a recorded oral warning or written warning. It also applies where the upheld misconduct is so serious as to warrant only one written warning, but insufficient to justify dismissal without notice. It warns that dismissal may subsequently occur if there is a failure to change behaviour.

11.5 Dismissal – with or without notice

This applies either where behaviour has not improved within the duration of a final warning (notice entitlement applies) or an allegation of gross misconduct is upheld (no notice entitlement).

11.6 Other sanctions

These can either be **in addition to** a written sanction or as an alternative to dismissal: for example demotion, redeployment or loss of increments. Any warning applied will be reviewed by the line manager, in consultation with HR, at the mid point of its duration. Any ongoing concerns will be discussed and a record of this placed on the personal file.

12 Appeals procedure (conducted by either the HOS or the Director, as appropriate)

Arrangements for holding a Disciplinary appeal hearing

12.1 An employee has the right of appeal against any sanction imposed following a Disciplinary hearing. A TU representative or work colleague may accompany an employee at an appeal hearing.

12.2 The decision letter from the manager who conducted the Disciplinary hearing confirms the name of the person to whom the appeal should be made. For an appeal against a dismissal or demotion decision, the Director hears the appeal. For an appeal against a sanction below dismissal and/or demotion the HOS hears the appeal – if, however, the HOS has already been involved in the case, the Director will conduct the appeal.

12.3 The appeal must be made in writing within five working days of the date of the decision letter. The appeal must state the grounds of the appeal – as outlined below.

12.4 The employee may appeal on the following grounds: -

- The procedure – a failure to follow procedure had an effect on the decision and/or
- The decision – the evidence did not support the conclusion of the manager and/or

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- The penalty – too severe given the circumstances of the case and/or
 - New evidence – has come to light since the Disciplinary hearing, and was not reasonably available at the time of that hearing
- 12.5 The appeal manager arranges the appeal hearing – as outlined in paragraphs 10.2-10.3 above. The employee must provide any supporting evidence to support the basis of her/his appeal to the named appeal manager within five working days of submitting her/his appeal. The employee must also provide the names of any witnesses at least two days prior to the appeal hearing. The appeal manager will then obtain approval for the release of any such witnesses.
- 12.6 The appeal manager, with the assistance of HR, ensures that the manager who conducted the previous Disciplinary hearing(s) provides a management case statement within five working days of receipt of the employee's appeal - this statement is then used at the appeal hearing.
- 12.7 The appeal manager, with assistance from HR, ensures that all parties receive the appropriate evidence prior to the appeal hearing. The employee has the same rights as in the Disciplinary hearing arrangements outlined in paragraphs 10.2 – 10.4.
- 12.8 The appeal manager conducting the Disciplinary appeal hearing should seek advice from HR, as appropriate. Apart from in exceptional cases (e.g dismissal appeal and/or when the employee did not attend the original hearing) the meeting will be conducted as a review of the evidence, focusing on the grounds of the appeal, not as a full rehearing.

Conduct of the appeal hearing

NOTE - Appendix 3 outlines guidance relating to the conduct of a Disciplinary appeal hearing.

- 12.9 The appeal manager:
- Determines whether the grounds for the previous disciplinary sanction are valid
 - Considers all the evidence, including any new evidence
 - Determines whether the sanction remains the same, is reduced, or removed.
- 12.10 The decision of the appeal manager is final and is communicated as outlined in paragraph 10.7.

13 Suspension from work - arrangements

- 13.1 There may be circumstances where the line manager recommends to the HOS that an employee is suspended (on full pay) eg pending an investigation. Following consultation with HR, the HOS confirms in writing with immediate effect the terms of, and reasons for, any such suspension decision. Arrangements for any such suspension are handled in a sensitive manner. Appendix 2 outlines the arrangements to be applied where the employee is alleged to have committed fraud.
- 13.2 Suspension before a Disciplinary hearing is not a punishment and is always on full pay – provided that the employee complies with the written conditions laid down in the letter of suspension.

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- 13.3 The employee can only be suspended when it is reasonable to believe that:
- The alleged breach of the rules amounts to gross misconduct, or
 - The employee's presence in the workplace may hinder the investigation.
- 13.4 The suspension decision is reviewed by the HOS every ten working days. Whilst on suspension the employee is required to be available to assist with any investigation at any time within normal working hours, unless s/he has agreed annual leave commitments.
- 13.5 Whilst on suspension the employee must not enter any Council work establishment without the prior permission of the line manager, and must not contact any Council employees regarding her/his disciplinary case other than:
- Her/his nominated TU representative or workplace colleague
 - Managers who contact her/him to complete the investigation. (any such contact is normally on a written basis)
- 13.6 Facilities are made available to a suspended employee, and her/his nominated TU representative or work colleague, to interview and take statements from those adults willing to be interviewed about the case. Separate guidance notes on the management of suspensions and managing the return to work are available from Human Resources.

14 Grievances arising during the Disciplinary procedure

- 14.1 If the employee wishes to raise a grievance during the disciplinary process that is related to the case in any way, s/he should submit details of the grievance in writing to her/his line manager's manager – who will brief the manager conducting the disciplinary process, as appropriate. The latter should take advice from either the HOS, the Director and/or HR as appropriate to **consider** whether it would be appropriate and beneficial to suspend the disciplinary process for a short period while the grievance is dealt with. Depending on the nature of the grievance, the manager, in liaison with the HOS, the Director and/or HR as appropriate, may also decide to bring in another manager to deal with the disciplinary process.
- 14.2 If the grievance is a complaint of unlawful discrimination or that the real reason for the disciplinary action is not the reason put forward by management, then the grievance must be dealt with under the (separate) Grievance Procedure. The employee should submit the grievance in writing to her/his line manager's manager – who should then apply the process outlined in paragraph 14.1 above.

NOTE – Reference will be made to the current ACAS Code of Practice on Disciplinary and Grievance procedures.

15 Sickness absence during the Disciplinary procedure

- 15.1 An employee who is unfit to attend a scheduled disciplinary hearing must provide a medical certificate confirming that s/he is incapable of attending the hearing.
- 15.2 In circumstances such as 15.1 above or others where the delay arising from any such absence may become problematic, the line manager discusses with the employee's representative and HR ways to enable the employee to attend the required disciplinary hearing as soon as is practicable.

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16 Review of the procedure

The Council has delegated powers to the Chief Executive to determine and implement this procedure.. The procedure has been developed following detailed consultation with a wide range of stakeholders, and will be reviewed on a regular twelve monthly basis in accordance with 'best value' continuous improvement principles.

Ged Curran
Chief Executive

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Appendix 1

Examples of misconduct and gross misconduct

The Council has established a Code of Conduct which sets standards of behaviour and conduct for all employees. This is necessary to:

- Ensure a safe and efficient workplace and positive working relationships
- Meet the higher standards of conduct required of employees providing a public service
- Protect the public confidence in the Council.
- Managers are expected to set a positive example regarding their own personal standards of conduct and behaviour.

It is recognised that more specific requirements are likely to apply to particular work groups or areas where the nature of the work may require more exacting standards of conduct than is generally the case e.g. certain professional groups of officers.

The examples set out below are therefore not exhaustive. They represent only potential acts of misconduct and/or gross misconduct – as the investigation of each alleged incident will necessarily be based on its individual circumstances.

Examples of potential Misconduct

Misconduct normally applies where there has been a breach of rules and/or procedures and/or unsatisfactory conduct. Where a misconduct decision is upheld, dismissal does not occur for the first offence. (Section 11 of the procedure confirms that, subject to its severity, a recorded oral warning, a written warning or final written warning will apply for misconduct)

The following examples outline **potential** acts of misconduct – recognising that each case will be treated on its individual merits.

- Discrimination or harassment against another employee or a member of the public on the grounds of gender, disability, health including mental health, race, colour, nationality, ethnic or national origin, age, HIV status, social or economic status, legal immigration status, marital status, sexual orientation, religion, political beliefs, trade union membership, carer responsibilities and irrelevant criminal records and convictions.
- Bullying or other unacceptable behaviour towards another employee, a Council Member, a client and/or a member of the public
- Repeated refusal to obey a reasonable and lawful instruction from a manager
- Negligence at work leading to either to personal injury to an employee and/or a member of the public and/or loss or damage to the Council, whether to services or property
- Misuse of Council facilities including email and internet
- Improper disclosure of personal information about another employee or which contravenes the Council's Code of Conduct
- Facing an allegation of a criminal offence either inside or outside her/his employment which would make the employee unsuitable for her/his type of work with the Council

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- Abuse of, or inappropriate use of, authority vested in any employee by the Council
- Unauthorised absence
- Poor timekeeping
- Undertaking unauthorised employment
- Being under the influence of alcohol, drugs or other substances
- Breach of the Council's policies

Examples of potential Gross Misconduct

Gross misconduct is defined as misconduct of such a serious nature that the employer can no longer tolerate the employee's continued presence at the place of work. **Gross misconduct may result in immediate dismissal (ie without notice) for a first offence.**

The following examples outline **potential** acts of gross misconduct – recognising that each case will be treated on its individual merits

- Serious acts of discrimination or harassment against another employee or a member of the public on the grounds of gender, disability, health including mental health, race, colour, nationality, ethnic or national origin, age, HIV status, social or economic status, legal immigration status, marital status, sexual orientation, religion, political beliefs, trade union membership, carer responsibilities and irrelevant criminal records and convictions.
- Fighting with, assault on or seriously abusive or threatening behaviour towards another employee, a Council Member, a client and/or a member of the public
- Serious or repeated bullying or other unacceptable behaviour towards another employee, a Council Member, a client and/or a member of the public
- Stealing from the Council, its employees, clients or the public
- Unauthorised removal and subsequent serious misuse of Council property
- Failure to declare an interest, direct or indirect, in any Council contract which has been, or is proposed to be, entered into by the authority
- Making false representation which could potentially result in substantial personal gain
- Serious improper disclosure of sensitive personal information about another employee/group of employees or which contravenes the Council's Code of Conduct and compromises the Council's position
- Criminal conviction for an offence, either inside or outside her/his employment, which would make the employee unsuitable for her/his type of work with the Council
- Serious abuse of, or inappropriate use of, authority vested in any employee by the Council

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- Serious misuse of Council facilities including email and internet. This includes deliberately accessing internet sites containing pornographic, offensive or obscene material
- Acceptance of bribes or other corrupt practices
- Serious breaches of safety rules including deliberate damage to, or misappropriation of, safety equipment
- Holding unauthorised employment
- Being seriously under the influence of alcohol, drugs or other substances whilst on work duties
- Refusal to settle a debt owed to the Council
- Making malicious or vexatious grievance allegations

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Appendix 2

Discipline procedure

Guidelines concerning allegations of fraud

Internal Audit are responsible for investigating all allegations of fraud – these may be received from employees or members of the public (known as Whistleblowing*). Fraud may also be identified through routine audit reviews.

The role of Internal Audit

- Where an alleged fraud is identified it must be passed to Internal Audit immediately, for them to conduct the investigation. The investigation will be independent of the manager concerned.
- Where a decision is then made to conduct a disciplinary investigation hearing, a representative from Internal Audit may appear as a witness – but will not conduct or hear the case.

Suspension from Work - arrangements

- Where the HOS concerned considers that the employee should be suspended from work pending further investigations, s/he must liaise with HR **prior** to authorising any such suspension decision. It is the view of Internal Audit that any allegation of fraud is potential gross misconduct and should automatically lead to the suspension of the employee.
- When an employee is suspended, the line manager, HR and Internal Audit, in matters relating to an allegation of fraud, must liaise to ensure that the removal of the employee's security cards, access cards and/or safe keys and the subsequent departure of the employee from Council premises is handled in a professional manner. (It is noted that the employee has the right to take personal items).

Investigation process

- The employee has the right to be accompanied by a Trade Union representative or workplace colleague at any investigation meeting if they so request.
- There may be circumstances involving potential criminal actions where the investigation interview is held under caution. (PACE Act 1984)
- When the investigation has been concluded by Internal Audit a report is sent to the Director of the department – outlining the findings, conclusion and recommendation(s).

Council policy to prosecute proven acts of fraud

- When fraud has occurred it is the Council's policy to prosecute the employee concerned.

*The Council has a separate Whistleblowing policy

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Appendix 3

Guidelines for a) the Disciplinary hearings procedure and b) the Disciplinary appeals procedure

The following procedure outlines the key stages in conducting a disciplinary hearing.

- The manager conducting the Disciplinary hearing asks everyone to introduce themselves and their role and explains the purpose of the hearing. S/he reads out the allegation.
- S/he checks that all parties are in receipt of the same documentation.
- The management representative presents her/his case. This might include the use of witnesses and/or presenting witness statements.
- To help establish the full facts of the case this evidence, whether written, oral or through a witness**, can be questioned by:
 - The employee or her/his representative
 - The manager conducting the Disciplinary hearing or the HR adviser.
- The employee, or her/his representative, presents her/his case and responds to the allegations. This might include the use of witnesses and/or presenting witness statements on behalf of the employee. This evidence, whether written, oral or through a witness**, can be questioned in turn by the other parties.
- The manager conducting the hearing may adjourn it at any stage to consider any aspect of the evidence or to take advice. The employee may also request an adjournment, as appropriate.
- The management representative and then the employee, or her/his representative, summarise their respective cases after all the evidence has been presented, including any mitigating circumstances.
- Where possible, the manager conducting the hearing gives his/her decision verbally, but in any case will provide a written decision letter within 5 working days of the hearing.

** Witnesses are normally only allowed in the room to give their evidence and to answer questions, and may not discuss their evidence with other parties. Where appropriate, they should be released from the hearing after being questioned. If they are likely to be recalled to answer any further questions they should wait outside the hearing room until they are either recalled to the hearing or released.

Guidelines for the Disciplinary appeal hearing procedure

These are conducted in the same way as a Disciplinary hearing – except that the appeal manager reads out the grounds of the appeal and the employee then presents her/his appeal first.

NOTE – For disciplinary hearings involving alleged fraud, Appendix 2 also refers.

APPENDIX 4

.CODE OF CONDUCT FOR EMPLOYEES

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1. INTRODUCTION

- 1.1 The main purpose of this Code is to provide rules and guidelines on minimum standards of conduct that you are expected to observe while in the employment of the Council so as to maintain and promote public confidence in the Council. It is not intended to restrict you in the general exercise of your civil rights as citizens, or residents of the Borough, nor rights to engage in legitimate trade union activities.

This code is intended to serve four other purposes:

Advice: to advise employees of circumstances where they should exercise particular care as to their conduct.

Caution: to caution employees about circumstances of conduct which are neither right nor wrong in themselves but where the exercise of individual judgment is necessary in order to maintain public confidence and the confidence of the employer. Failure to exercise caution could lead to outcomes necessitating disciplinary proceedings.

Information: to inform employees of some of the main provisions of their contract of employment and Council policies and procedures, which have a bearing on general conduct.

Instruction: to instruct employees of some of the main statutory provisions regulating the conduct of Local Government employees and regarding the standards of behaviour expected by the Council of its staff.

The public is entitled to expect conduct of the highest standard from local government employees. In recognition of this, and to avoid uncertainty in the matter, the Council has adopted this staff Code of Conduct, which sets out the guidelines to help maintain and improve standards. Equally, the Code is designed to protect employees from misunderstanding or criticism, which may be unjustly leveled at them. The Council therefore recommends this code to all employees. It is stressed that some of these provisions are cautionary rather than mandatory and represent advice about circumstances where experience has shown that employees may face difficulties.

Failure to heed the advice, exercise caution, or to comply with these instructions could lead to disciplinary action.

You are strongly advised to consult your Manager if you have difficulty understanding any of the provisions of this Code or how to comply with them.

The Code complements service-specific verbal or written rules & instructions and where applicable codes of conduct issued by professional bodies to which you may

belong. The Council expects you to comply with service- specific instructions and professional codes applicable to you. Breaches of the code may result in action being taken under the Council's disciplinary rules.

1.2 Who is covered by the Code?

The Code applies to all Council employees without distinction of grade or status. The Council also expects that anyone it engages or contracts to carry out any of its functions will comply with the requirements of the code. These include:

- consultants and their employees
- contractors and their employees
- the Council's partners and their employees
- employees of other organisations who have been seconded to work for the Council
- agency workers

In the event that the Code is breached, consideration will be given to terminating the contract/arrangement between the consultant/ contractor/ outside organisation and the Council, and/or to seek compensation and, as appropriate, refer the matter to the police, or other relevant regulatory body.

The application of the standards of this code to agency workers does not alter the underlying legal relationship that agency workers are not employees of the Council.

The Code will apply to employees in maintained schools and is commended for adoption by governing bodies of all schools within the Borough.

2. GENERAL CONDUCT

General

- 2.1 Employees are required to comply with the Council's policies, procedures, codes of practice, standing orders, contract standing orders, financial regulations, work instructions and their own professional codes of conduct.

Employees are required to undertake their official duties and responsibilities in an efficient manner and should not willfully neglect their duties and responsibilities. Employees are also required to comply with the terms and conditions of service as laid down in their Contract of Employment.

The Council expects you to deal with each other in a courteous manner at all times i.e. with respect and in a polite and dignified manner. The same courtesy is applicable to Council Members, any persons from outside organisations and to members of the public.

Equality and Diversity

- 2.2 Merton is an equal opportunities service provider and employer. All employees have a responsibility to promote, comply with and operate the Council's agreed Equality and Diversity Policy and related policies, practices and procedures. Employees must not discriminate against other employees of the Council, clients, customers or members of the public on grounds of race, colour, creed, age, ethnic or national origin, disability, gender, gender identity, gender expression, sexual orientation, religion, belief, marital status or Trade Union membership.

Attendance

- 2.3 Regular and prompt attendance for work is a requirement of the employment relationship. Unauthorised absence or lateness is disruptive to customers and other employees and is not acceptable. You are expected to comply with the Council's attendance procedure.

Responsibilities of Managers/Supervisors

- 2.4 Managers and Supervisors should take all reasonably practicable steps to:
- Ensure that you have adequate, well-equipped working conditions.
 - Ensure that you have a framework of supervision and support, including provision of enough work to keep staff busy but without allowing anyone to be overwhelmed.
 - Ensure that you know what standards of work and conduct are required, and where you are meeting, exceeding, or failing in relation to those standards.
 - Ensure that your learning and development needs are identified and, wherever possible within resources and Council business need, met.
 - Ensure that your own conduct does not undermine your impartiality when called upon to consider a misconduct complaint against you.
 - Keep up-to-date with legislation and with best working practice, and be both willing and able to pass on this knowledge.
 - Ensure that the provisions of the Health and Safety at Work Act are complied with.
 - Take responsibility for their own and your learning and development
 - Ensure that the Departmental Register of gifts and hospitality is Maintained

Responsibilities of all employees

2.5 You must:

- Show respect for the public, Contractors/Suppliers, 'partners' and colleagues and behave in a way, which cannot reasonably cause offence to anyone.
- Maintain reasonable conduct consistent with the duties of your post and the fact that these are performed in the context of public service and consistent with the codes of conduct of any professional organisation of which you may be a member.
- Give mutual support, consideration and respect to other colleagues.
- Make a positive contribution to a climate of equal opportunities within which everyone can feel comfortable and valued and able to give of their best.
- Maintain commitment, including acting in good faith in relation to the policies and procedures that the Council has adopted.
- Maintain records, tools and equipment and work in an orderly way, taking responsibility for personal and section workplace space, and helping to maintain standards of workplace procedure.
- Observe the need for personal and workplace security, including issues of safety, confidentiality and discretion.
- Ensure that the provisions of the Health and Safety at Work Act (as amended or supplemented) are complied with.
- Show consideration for customers. In particular you should ensure that you behave courteously and helpfully at all times especially when working in front line services like residents' homes, leisure facilities, refuse, schools and libraries.

Festivities/Celebrations/Christmas Parties

- 2.6 You must understand that inappropriate behaviour and comments, particularly relating to: sex, gender identity, gender expression, sexual orientation, race, disability; religion or belief are not acceptable, and will not be tolerated. You are reminded to apply the same standards of conduct during work-related celebrations and festivities as if you were at work.

You must behave in a respectful way with each other at celebration events and remember you are still at work and the Council's conduct rules apply.

Appearance/Dress Code

- 2.7 The Council recognises that there are many styles of dress, but also recognizes that it is important that you dress for work in order to give an appropriate image of the service you provide.

The manner in which you present yourself at work directly affects the Council's image, colleagues and the service. Your dress should reflect this responsibility and emphasise your respect for the people with whom you work, your colleagues and the service users. Managers will determine the appropriateness of your dress in relation to the service and/or local circumstances/requirements.

In addition, you are required to:-

- ☐ be clean, tidy and presentable at all times.
- ☐ never dress in any way which could intimidate, or cause offence to the public and/or colleagues, and which could undermine the image and reputation of the Council.
- ☐ Always wear uniform or protective clothing if these have been issued, or made available for particular tasks, and make sure that these are clean and in good repair.

The wearing of casual clothes for example Jeans; shorts etc may only be permitted on Fridays at the discretion of the local manager and the Head of Service.

Within this framework the Council will not exclude clothes worn for cultural or religious reasons unless there is a risk to health and safety.

Personal financial affairs

- 2.8 You must:-

- not conduct your personal finances in a way which results in Merton Council, or another public body, being defrauded (this includes claiming Housing Benefit to which you are not entitled; failing to register for Council Tax; claiming Council Tax discounts and exemptions as a Single Person, or occupying council property unlawfully)
- keep up to date with Council Tax, rent and service charges due to this Council – the Council will use any powers available to it to reclaim monies, including attachment of earnings.
- make proper arrangements to manage arrears, should they arise, and keep to agreements until accounts are cleared.
- not act for the Council in relation to your own affairs or affairs of your family or friends unless specifically requested to do so by a Manager who is fully aware of the situation

- avoid being the subject of legal action, which may bring the Council into disrepute and/or undermine the relationship of trust and confidence between the employee and the Council.

You must notify the Council at the earliest possible opportunity if there is a possibility that you cannot maintain payment of Council tax, rent, service charges or other monies due to the Council as a resident.

3. **INFORMATION AND COMMUNICATION TECHNOLOGY (INCLUDING E- MAIL AND INTERNET USE)**

The Council provides facilities to employees, trade unions and Councillors to send emails, to access the Internet and the use of phones, for Council-related business purposes.

The Council has adopted a policy for internal e-mail use. Details about the rules in the policy can be found in the ICT Policy, which is available on the intranet.

<http://intranet/departments/cs-index/cs-publications/it-reference/ict-policy.htm>

4. **GIFTS HOSPITALITY AND CORRUPTION**

Corruption

- 4.1 You must be aware that it is a serious criminal offence to receive or give any gift, loan, fee, reward or advantage for doing, or not doing anything or showing favour, or disfavour, to any person in their official capacity. This is treated as corruption.

Information

Prevention of Corruption Acts, 1906 and 1916

Under the Prevention of Corruption Acts, 1889 - 1916, it is an offence for you to solicit or accept any gift, loan, fee, reward or advantage if it is done as showing favour in any way in relation to the Council's business. Where it has been proved that you received money, gift or other consideration from a person holding or seeking to hold a contract with the Council, it will be seen as corruption unless proved otherwise. **This is very important to understand since it reverses the usual burden of proof in criminal cases.**

Local Government Act. 1972 (section 117)

Under the Local Government Act, 1972, it is an offence for you under cover of your office or employment to accept any fee or reward whatsoever other than your proper pay & benefits. The Council's legal opinion is that the acceptance of a gift is on the face of it an offence whether or not the donor expected any advantage.

Breaches of the above statutory provisions can lead to dismissal and also criminal prosecution.

4.2 Acceptance of Gifts/Register of gifts

- The offers of gifts to staff should be reported to Line Managers.
- The offer or acceptance of a substantial gift should be approved by your line manager and recorded in your departmental Gifts and Hospitality Register.
- The acceptance of gifts by you should only occur in limited circumstances, eg where refusal would cause offence/distress to a client, or where the gift is of low value (e.g. pens, mugs etc) and acceptance should be approved by the line manager.
- When considering whether it would be appropriate to accept you should ensure that no gift could be construed as a payment, bribe or other favour in respect of work performed for the council. The offering and the acceptance of bribes are criminal offences.
- You must not accept money and particular care should be taken when considering gifts from contractors; acceptance of any gift or hospitality in the course of the award of a contract may constitute a criminal offence.
- You must not request or ask for any gifts, including tips, at any time of the year.
- You must not accept any gift, whether or not substantial in value, unless it has been approved in advance by your manager. This does not apply to gifts between staff, for example, at Christmas or as leaving presents.

Information

The contents of departmental registers are reviewed regularly by Directors and reported by the Monitoring Officer to the Standards committee. These reports will include details of the recipient officer and the nature of any gift received. For this purpose a substantial gift is any gift considered to have a value of £25 or more.

Advice and Information

You should take account of the need to promote the Council's image, when at work. Gifts or gratuities received or delivered should be returned to the sender with an appropriate letter stating the Council's policy on such issues. Where the nature of the gift makes it difficult to return it, e.g. perishable goods such as flowers or fruit, the responsible manager must identify an appropriate method of disposing of the gift.

Hospitality

4.3 The offer and receipt of hospitality must be reported to managers. Managers must then report immediately to the Director, and complete the hospitality register in all instances via the respective Director/Director's PA. Where the Director is involved it should be reported to the Chief Executive) giving the following information:-

- Name of company or individual
- If the company/individual is seeking any permission or work from the Council
- The form of hospitality and location
- Whether it is in working hours; and
- Whether the offer was accepted

Advice and Caution

You are expected to exercise discretion in the acceptance of hospitality and ensure that your actions in no way undermine the confidence of Members, other employees and the public. This is very important in respect of offers of hospitality from contractors/consultants, voluntary or pressure groups, who carry out work on behalf of the Council, or, are seeking Council approval in certain areas (e.g. planning applications, grant applications).

The acceptance of hospitality must be strictly limited to occasions directly having relevant business purpose.

“Networking” has often been cited as a reason for acceptance of hospitality. It is recognised that keeping in touch with peers and contacts beyond the Council is important. However there is concern that “networking” could be used to justify a number of different types of hospitality – some appropriate for acceptance and others not so. For example, attendance at an awards dinner or professional seminar by a relevant officer might be regarded as appropriate for “networking”, whereas attendance at a race meeting or football match in the company of a contractor would however be difficult to justify. **It must be emphasised that you gain approval of your line manager, prior to acceptance.**

Examples of circumstance where the receipt of hospitality may be acceptable are:

- social occasions as the nominated representatives of the Council.
- drinks and basic hospitality at meetings held away from places of work, including the acceptance of basic working lunches etc if during lengthy meetings this is the most efficient use of time available (provided this does not occur in the context of the award or negotiation of any contract); and
- (with the agreement of your manager) a free place at a training event which is relevant to your job and which will permit the acquisition of training

without any commitment to the provider.

Acceptance of hospitality in the latter two cases should be reported to and, if possible agreed in advance by, your manager but need not be recorded in the departmental register.

4.4 Legacies

- You must not accept any legacy related to or arising out of this work as an employee; you should disclaim the gift, in which case it would be treated as part of the residue of the testator's estate.
- There may be occasions when members of the public (in receipt of Council services) may wish to show their appreciation of the services of the Council and/or particular Council employees by leaving money/ gifts to them in their wills. If you are aware that you may be left money/gifts you must declare this to your Director, the relevant details including name of the individual concerned, the service that has been provided, the reason for the legacy (if known) and the amount involved. Service users should be discouraged from doing this if you are aware of this intention.

Information

The Council can accept legacies to support it providing local services, or for the benefit of the residents of their area or for educational purposes but not for the relief of poverty.

4.5 Executorships/Executor of Wills

- The Council has agreed not to accept any responsibilities as Executor of wills. Therefore, you have no authority to accept appointment as an Executor on behalf of the Council.
- You must declare to your Director if you have agreed to become an executor in a personal capacity for a will of a service user in receipt of the Council's services personally provided by that employee.

(Misuse of power/job role) in Public Office

You are reminded that the Courts are rapidly rediscovering an old claim against Council Officers called “misfeasance (misuse of power/job role) in public office”. In brief, where you fail to carry out your duties in good faith and as a result damage (financial or otherwise) is caused to a person, that person will have the right to personally sue you. The matter can also be a criminal offence. This development requires that you should be very careful to follow Council policies, procedures and regulations.

5. USE OF INFORMATION**Rights of the Public**

- 5.1 You must be aware that the public has a right to request to see certain information under the Local Government Act, 1972 and under the Freedom of Information Act 2000. In most circumstances these rights are related to reports and background documents. When receiving such a request staff should be careful to deal with it politely and helpfully. Further details on this area can be found at:-

http://intranet/departments/cs-index/cs-policy/freedom_of_information.htm

Use of Official/Confidential Information

- 5.2 The classification of “confidential/closed” information should only be used when justified. Documents marked ‘confidential’ mean just that and you should be aware of the nature of such information and the consequences of disclosing it and any limited circulation relating to it. If in doubt, employees should consult their Director.

Misuse of confidential information for personal gain or the gain of relations, partners or friends, or other improper motives may lead to disciplinary action.

If you leave the Council’s service, you should not use and/or reveal confidential information gained whilst in the employ of the London Borough of Merton. Such conduct may lead to legal proceedings.

Information that identifies another person falls under the Data Protection Act 1998. You must process personal data in accordance with both the law and Council policies.

The Data Protection Act gives individuals, including Council employees a right to access information the Council holds about them. Unlawful processing of personal

data may lead to prosecution under the Data Protection Act.

6 RELATIONSHIPS WITH COUNCILLORS (MEMBERS) AND WITH OTHER OFFICERS.

- You must treat Members with respect. As you are also entitled to be treated with respect.
- If you consider that unreasonable Member pressure is being put on you to deal with a particular issue outside of established procedures and policies, this must be referred to your Director.
- You are not to approach Members direct about personal matters relating to your employment and conditions of service. Matters related to personal employment and conditions of service should be raised initially with the appropriate line manager and/or Departmental Human Resources Officer.
- Whilst a working relationship between you and Members has to exist to enable an effective, responsive service to be provided; the use of that relationship should not be abused.
- Close personal familiarity between you and a Member can damage this working relationship and may prove embarrassing to other employees and other Members.

Advice

You should realise that there may be situations in your personal life that may have a bearing on your employment. The Council cannot direct relationships, but you must exercise judgement in your relationships with Members not to create potential compromising situations or conflicts of interests in relation to your personal life or private commercial transactions.

All candidates for posts in the London Borough of Merton, whether they be existing employees, or not, are required to disclose whether they are related to an elected member, or are known to the elected member through activities external to the Council such as: local organisations, active in political parties, being neighbours or officers of the Council. In making such disclosures employees and their manager should be very careful to assess the situation so that there is no conflict of interest with the Council's business and integrity. Failure to disclose this will result in disqualification for the appointment and if appointed, liability to dismissal without notice.

Canvassing of Members of the Council by you in connection with any appointment or any matter relating to your job may lead to disqualification and disciplinary action.

6.1 Managers' relationships with their staff

- Close personal familiarity between managers and members of their staff can compromise efficient and proper working, and morale in the workplace. Where such a relationship occurs, the manager must bring it to the attention of her/his Director/Head of Service personally and in confidence.
- Further information on this can be found on the intranet under the "Staff Relationship Policy" – on the intranet.

6.2 Relationships with Contractors/Consultants

- All relationships of a business, private or personal nature with external contractors/consultants, or potential contractors, should be made known to the appropriate manager.
- Orders and contracts must be awarded on merit, by fair competition, and no special favour should be shown to businesses run by, for example, friends, partners or relatives in the tendering process. No part of the local community should be discriminated against.
- If you engage or supervise contractors/consultants or have any other official relationship with contractors/consultants and have previously had or currently have a relationship in a private or domestic capacity with contractors/consultants, you should declare that relationship to the appropriate manager. Details should be recorded in the 'Declaration of Interests Register' that is kept by Directors.

6.3 Relationships - with children and Young Persons who are service users

- If you are involved with young people as part of your job, you will need to be aware that your employment imposes on you a general duty of care. It is necessary therefore to maintain an acceptable level of safety at all times.
- The physical proximity between you and young people may necessitate contact from time to time. Since the conduct of young people can occasionally become dangerous, physical intervention may be required which, inevitably, is a high-risk activity. Written guidance cannot anticipate every situation: the sound judgement of you at all times remains crucial.
- Corporal punishment is prohibited in schools, children's homes, sure start centres, foster placements and in any Council building.
- The use of physical restraint of young people is prohibited except as an act of care not punishment and only in specific circumstances using specific methods but not otherwise.
- Close personal familiarity between you and children can compromise good

discipline and may lead to suspicion and allegation of improper conduct.

- If you work with children and young people you must seek advice from your Head of Service about acceptable parameters.

If you work with children and young people you must familiarise yourself with the Council guidelines “Physical intervention in the Management of Young People”.

All forms of abuse of children and young service users is prohibited. The Council takes the view that the following constitutes abuse;

- **Physical abuse**, including: hitting, slapping, pushing, kicking, misuse of medication, restraint, or inappropriate sanctions;
- **Sexual abuse**, including rape and sexual assault or sexual acts to which the young person has not consented, or could not consent, or was pressured into consenting
- **Psychological abuse**, including emotional abuse, threats of harm or abandonment, deprivation of contact, humiliation, blaming, controlling, intimidation, coercion, harassment, verbal abuse, isolation, or withdrawal from services or supportive networks;
- **Neglect and acts of omission**, including ignoring medical or physical care needs, failure to provide access to appropriate health, social care or educational services, the withholding of the necessities of life, such as medication, adequate nutrition and heating; and
- **Discriminatory abuse**, including abuse that is: racist, sexist, based on a person’s disability, sexual orientation, gender expression, gender identity and other forms of harassment, slurs, or similar treatment.
- **Financial or material abuse**, including: theft, fraud, exploitation, pressure in connection with wills, property or inheritance, or financial transactions, or the misuse or misappropriation of property possessions or benefits

Relationships with vulnerable adults

- 6.4.1 “A vulnerable adult” is a person of 18 years or over who is or may be in need of Council services by reason of mental or other disability, age or illness and who is unable to take care of him or herself, or unable to protect him or herself against abuse. Abuse may consist of a single act, or repeated acts.

All forms of abuse of vulnerable adults who are service users is prohibited.

The Council takes the view that the following constitutes abuse:

- **Physical abuse**, including: hitting, slapping, pushing, kicking, misuse of medication, restraint, or inappropriate sanctions;
- **Sexual abuse**, including: rape and sexual assault or sexual acts to which the vulnerable adult has not consented, or could not consent, or was pressured into consenting;
- **Psychological abuse**, including: emotional abuse, threats of harm or abandonment, deprivation of contact, humiliation, blaming, controlling, intimidation, coercion, harassment, verbal abuse, isolation, or withdrawal from services or supportive networks
- **Financial or material abuse**, including: theft, fraud, exploitation, pressure in connection with wills, property or inheritance, or financial transactions, or the misuse or misappropriation of property possessions or benefits
- **Neglect and acts of omission**, including: ignoring medical or physical care needs, failure to provide access to appropriate health, social care or educational services, the withholding of the necessities of life, such as medication, adequate nutrition and heating; and
- **Discriminatory abuse**, including abuse that is: racist, sexist, that based on a person's disability, sexual orientation, gender expression, gender identity and other forms of harassment, slurs or similar treatment.

Physical restraint of vulnerable adults is prohibited except as an act of care and not an act of punishment.

7. CONFLICT OF INTEREST

“Conflict of Interest” is a shortened way of describing a conflict of personal interest and contractual duty.

Examples

The following are a few examples of the types of interests and influences which could cause a conflict of interest.

- You are a Benefit Officer and deal with benefit application of friends and family.
- You are an Environmental Health Officer and you carry out an inspection (or make decisions on an inspection) involving a restaurant owned by you, your friend or business associate.
- You are buying goods and services and those goods and services are supplied by a supplier owned by you, your friend, family or business associate.
- You have links with an agency and you are employing agency staff.

In all these examples you have a contractual duty to apply Council policy and procedures rigorously but there is a danger that your personal interest would influence your judgement in applying Council policy and procedures.

Some conflicts may be unavoidable – however, you should always report them to your manager in advance. However public confidence is improved by showing that we have structures and processes, which show openness, sensitivity, challenge and accountability. You are required to implement and comply with these structures and procedures.

Public confidence is further improved by asking certain categories of staff to declare their interest in a written form to their Directors. Employees who are required to register their interest and fail to do so will be subject to disciplinary action.

Where an interest is declared the employee should take no further part in dealing with the matter in which an interest has been declared without specific clearance by their Director.

Under Contract Standing Orders all senior officers and officers involved in contracts should complete a declaration of interest form when they commence employment with the Council, even if there is nothing to declare. The declaration should be made where there is a change in circumstances but in any case every year.

You also have a duty to inform the Council if your spouse, or partner, or other family member, has an interest (direct or indirect) in any contract under consideration by the

Council.

Each Director is responsible for maintaining a register of any declaration given by an employee of the Council of a financial/monetary interest in a contract. These records are available for inspection in accordance with agreed procedures by any Member of the Council.

Information

a financial interest exists if:

- You or any friend, or relation of yours is a member of a company, or other body, with which the contract is made, or is proposed to be made, or which has a direct financial interest in the matter under consideration; or
- If you are a partner, or in the employment, of a person with whom the contract is made or is proposed to be made or who has a direct financial interest in the matter under consideration. If you are married and living with your spouse or partner the interest of one is seen to be the interest of the other if known to the other. For the avoidance of doubt, married persons living together includes partners living together. This also applies to people in a relationship but not living together.

If you have any involvement with outside organisations relevant to your area of employment with the Council, you should not, have any involvement with the affairs of the organisation (i.e. processing, advising on grants etc.). You should declare if you, or your spouse or partner, have an interest in a voluntary organisation, which is being considered for a loan, or grant by the Council, or other ties of which you are aware.

Employment Outside of the Council

- 7.1 You must not undertake any paid, or unpaid, work if your official duties overlap with your proposed work in a way which will cause a conflict of interest

The Council actively supports unpaid service to voluntary, or other, organisations and welcomes this involvement in Community Affairs. However, it is important that your unpaid service does not affect your job, or the reputation of the Council.

If you are considering taking up additional paid/unpaid employment you must first seek the approval of your Director in writing before taking up the post. Consideration will be given to the effects of such employment on the Council's services and interests.

Private work should not be undertaken for any person, company or contractor who is known by you to have a contractual relationship with the Council, or who is seeking work from the Council.

You are required to be solely occupied during your normal working hours with the business of the Council. No outside or private work of any sort should be undertaken in the Council's normal working hours, nor on official premises - even after working hours. The use of Council facilities (e.g. telephone, PC, email photocopying, typing) or equipment for outside or private work is strictly forbidden as well as incoming calls related to outside/private work.

If you have your own business, or are considering setting up your own business, you must seek the approval of your Director. You should not work in those businesses during working hours.

Publications, Broadcasts and Lectures and Communications with the Media and blogs

- 7.2 If you publish or authorise the publication of a book, or make any contribution to a book, which has no connection to your role at the council, you must indicate that the London Borough of Merton accepts no responsibility for the author's opinions or conclusions.

If you are acting as a spokesperson in either a personal capacity, or for outside groups, you should not bring the Council into disrepute by publicising material adverse to the Council or other employees. This is not intended to preclude Trades Unions from pursuing their legitimate industrial relations activities.

All personal information must be treated as confidential and must not be passed to anybody other than when the information is necessary to that person as an employee of the Council, or when proper authority has been obtained to do so from your Director.

Agenda papers must be treated as confidential until they have been published as a formal agenda. At this point they become public documents unless they are marked 'not for publication'. All agenda papers marked 'not for publication' are to be treated as such by you at all times, i.e. both before and after publication of a formal agenda.

If you participate in activities of outside organisations (e.g. professional bodies tenants' association, interest groups) you must not indicate you are representing, or acting, on behalf of the Council unless you have been specifically authorised to do so by your Director.

You must not invite any representative of the media on to any Council premises, unless you have been specifically authorised to do so by your Director and a member of the communications team.

All staff should consult the Communications Team on any media matter. The Communications Team in the Chief Executive's Department, is responsible for liaising with the media, and produce all official press releases and statements

made by the council. If you are asked by the media to make comments, you must immediately refer these to the Communications Team and your Director.

If you are asked to give lectures either in your own, or Council's, time on a subject connected with your official duties for the London Borough of Merton, should seek approval in advance from your Manager. Where the subject is not connected with your official duties no permission is required but should be conducted in your own time and should not be on a subject, which could represent a conflict of interest with your employment with the Council. Any fees received in an official capacity must be declared and paid into the Council's funds.

If you are asked to give lectures during the Council's normal working hours, which are not connected with your official duties, you will be expected to take annual or flexi leave. It is expected that any necessary preparation work for such lectures will be done - unless otherwise agreed - outside the Council's normal working hours.

"Blogging" is the practice of posting a personal diary on a website. The Council does not interfere with individual freedom of expression. However, the Council cautions if you produce a 'blog' which is not authorised and which may identify the Council, council client, Councillor or council officer in derogatory, or non- flattering terms, it will be treated as a disciplinary offence for bringing the Council into disrepute.

Disciplinary action will be considered against you, if you post damaging or offensive messages about other employees, Councillors or the Council on social networking sites such as Myspace, Facebook and YouTube.

Politically Restricted Posts

- 7.3 The Local Government and Housing Act 1989 puts restrictions on certain local government employees that prevents them from taking part in political activities.

Employees who are Chief Officers or Deputy Chief Officers, and employees who earn the equivalent of PO4 (SCP44) or more a year (excluding London Weighting allowance) or whose duties are considered to be "politically sensitive" (anyone who attends meetings to give advice regularly to Members and/or who speaks regularly on behalf of the Council to press or media journalists) even if they earn less than SCP44 a year are prevented from taking part in certain political activities. Such employees are not allowed to:

- stand as a candidate for election as a Councillor, Member of Parliament or Member of the European Parliament;
- hold office in a political party (although they can still be a member of a political party);
- canvass either at any election or poll on behalf of a political party or at any election or poll for a local authority, Parliament or the European Parliament; or- speak or write publicly on matters of political controversy (i.e. they are not

allowed to speak or write in public in a way which appears to encourage support for a political party).

The rules relating to speaking, or writing, publicly are determined by Central Government and the Courts.

Involvement with Voluntary Organisation Management Committees

You must not, within your official Council duties, serve as a full member of voluntary management committees. Full members are those who fulfil the organisation's criteria for membership, have been elected/appointed onto the management committee and have full voting rights.

You may serve in an official capacity as a co-opted member of a voluntary management committee provided that you have been authorised to do so. Co-opted members are those who do not fulfil the organisation's criteria for full membership but have been appointed onto the management committee because of some assistance and expertise they can bring to the organisation. Co-optees may or may not be able to vote depending on the terms of the organisation's constitution.

If you are serving in an official capacity as a co-opted member on a voluntary management committee and are allowed to vote by the organisation's constitution, you will vote in accordance with Council policy and will provide information to the relevant Director where issues of major policy or contentious issues arise.

You may serve in a private capacity on a voluntary management committee as either a full or co-opted member but you must not allow your private interest to conflict with your duty as a Council officer.

If you have any concerns about potential conflicts of interest you should discuss these with your line manager. The manager will, if necessary, seek advice/approval from the Director of your department and if the voluntary organisation is funded by Merton Council, the approval of the Director of the appropriate funding department.

Examples of possible conflicts of interest may include (but are not limited to):

- engaging in management committee work during Council time or using Council resources;
- serving as a member of a management committee while advising Councillors or other officers on issues related to that (e.g. funding, policy or procedural issues);
- discussing Council business/officers/Councillors in such a way as to unfairly or untruthfully put these in a negative light;
- promoting policies or practices through your position on the management committee which violate Council policies or practice (e.g. equal opportunities policies);

- providing sensitive or confidential information to the management committee obtained in your official capacity as a Council employee.

The responsibility for avoiding conflicts of interest lies with you. . While not obliged to inform the Line Manager of your private participation on the management committee of a voluntary your behaviour will at all times be governed by the relevant provisions of the Contract of employment and the National Joint Council Conditions of Service for Local Authority Employees known as the Green Book.

8. SUMMARY AND REVIEW

This code of conduct outlines the standards of behaviour expected of you whilst employed by Merton Council and it is important that you understand the implication of the Code for our work. If your standard of behaviour falls below that outlined in the Code, it could have a serious impact on the quality of services provided to Merton residents, or to the Council's image as a service provider and employer. Breaches of the Code could have serious consequences and may result in action being taken under the Council's disciplinary procedures, including the possibility for the contract of employment to be terminated.

Review

This document will be reviewed regularly with the involvement of all stakeholders.

Other policies that fall under this code include:-

- Health and Safety Policy

http://intranet/guidance_on_the_corp_hsw_policy_2008.doc

- Non Smoking Policy

<http://intranet/pdf-nosmokingpolicymar06.pdf>

- Substance Misuse

To be included on completion of revised document

- Data Protection Policy

http://intranet/data_protection_policy_050906.pdf

- ICT Policy

<http://intranet/departments/cs-index/cs-publications/it-reference/ict-policy.htm>

- Equality & Diversity

http://intranet/equality_diversity_policy_oct_2004-2.pdf

- Attendance Procedure

http://intranet/attendance_policy_oct_2007.pdf

- Staff Relationship policy

http://intranet/staff_relationship_policy_revised_2006-2.pdf

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