**DISCIPLINARY POLICY**



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**Introduction**

The Council puts communities first and through our values and behaviours our aim is to achieve excellence in everything we do. Achieving this requires the highest standards of conduct from all our colleagues.

Most colleagues come to work with the intention of doing a good job, and they undertake their roles properly and conduct themselves in a professional and appropriate way in carrying out their duties.

Disciplinary action is rarely taken, but when misconduct occurs and is regarded is serious, the Council’s disciplinary policy provides a fair and effective process for maintaining expected standards of conduct and behaviour.

Managers should be prepared to address conduct issues promptly and objectively.

This policy applies to all employees of the Council except, those employed in schools under the control of Governing bodies . The principles of this code also apply to agency workers, volunteers and contractors.

A separate procedure applies to those staff on probation.

There is also a separate policy for Executive Directors, Directors and Chief Officers

**Roles and Responsibilities**

Employees

The Standards of conduct and behaviour expected from employees are set out in the Council’s Code of Conduct. All employees should familiarise themselves with their responsibilities under the Code of Conduct.

In addition, colleagues are expected to comply with other related policies, procedures and standards applicable to their work.

Role of HR

HR provides advice to line managers on employment law, Council policy and procedures as they relate to disciplinary matters. They may also advise on the appropriateness of management action under this policy, with a view to achieving consistency across the Council. Unless they are active participants in an investigation or panel hearing they will not seek to influence the decision making process.

Role of Managers

The principles of natural justice are integral to this policy and which complies with the latest employment legislation and the ACAS Code of Practice.

Managers are required to comply with this policy to ensure that the Council acts appropriately.

All employees have the right to be treated fairly and with respect and managers shall ensure that their actions adhere to the principles of fairness and reasonableness.

Representation

Employees have a statutory right to be accompanied at the disciplinary hearing and any appeal by a Trade Union representative or work colleague.

Whilst investigatory meetings do not attract a statutory right to accompanied, RBKC recognise that such situations can be stressful and employees may be accompanied. Dates of meetings, will be mutually convenient, wherever possible.

Roles of Representatives

The representative will be able to address the disciplinary panel to present the employee’s case, respond on behalf of the employee to any views expressed at the meeting and confer with the employee.

The representative will not be able to answer questions or address the panel if the employee does not wish it or prevents the employee from explaining their case.

**Types of action a manager can take**

**Definitions and possible penalties**

Misconduct

This is not as serious as gross misconduct. Employees will not be dismissed for a first instance of misconduct. Misconduct may be the result of informal action not having the desired effect, or, during informal action when discussions or investigations indicate that the situation is more serious.

Where employees have been given a previous warning then they may be given a final warning for misconduct.

Sometimes misconduct is so serious that one warning is given which is both first and final. Once an employee has been given a final warning, they may be dismissed if there is further misconduct.

Gross misconduct

This is so serious that an employee can be dismissed for a first offence. Circumstances will affect how serious an incident is. If you commit an exceptionally serious act of gross misconduct you may be dismissed without notice. Only an Executive Director or Director can dismiss an employee for gross misconduct.

**Longevity of Warnings**

|  |  |
| --- | --- |
| Type of Warning | Time remains ‘live’ |
| First written | 1 year |
| Final written | 3 year |

**Examples of misconduct and gross misconduct**

Matters which may be viewed as amounting to disciplinary offences include, but are not limited to;

|  |  |
| --- | --- |
| **MISCONDUCT** | **GROSS MISCONDUCT** |
| Persistent bad timekeeping | Assault/violence |
| Unauthorised absence | Theft, fraud or dishonesty |
| Failure to observe RBKC policies and procedures, including at departmental level | Serious negligence |
| Abusive behaviour including bullying and harassment | Gross dereliction of duty |
| Repeated failure to follow absence-reporting rules. | Serious insubordination |
| Unreasonable refusal to follow an instruction issued by a manager | Discrimination or serious bullying and/or harassment |
| Computer related issues | Serious breach of confidence |
| Inadequate standards of work due to negligence or wilful failure to perform  | Criminal offences |
|  | Failure to safeguard RBKC property or serious breach of health and safety rules |
|  | Misuse of RBKC assets |
|  | Incapacity due to alcohol or illegal drugs |

**Suspension**

An employee may be suspended on full pay where;

* The employee’s presence constitutes a risk to colleagues or customers
* The employee’s continued presence could prevent the facilitation of a full and proper investigation

Consideration such as a temporary change to duties or a transfer to another location should be made as an alternative to suspension.

Employees should be informed of the terms of the suspension and that whilst it is part of the formal process, it does not constitute disciplinary action. Whilst suspended, employees must not access any work premises or contact any work colleagues without the explicit permission of the designated contact.

Any suspension will be confirmed in writing, detailing the reasons for the suspension.

Whilst suspended from duty, employees are able to apply for and take annual leave, after agreeing this with the designated contact.

The continued need for suspension will be kept under review, ensuring the period of suspension is proportionate and not elongated.

**The Procedure for taking formal action**

**If the employee raises a grievance during the disciplinary process**

Where an employee raises a grievance during the disciplinary process, The Investigating or Hearing Manager shall seek advice from HR in such instances.

In normal circumstances the grievance will be considered after the disciplinary process has been concluded.

**Mitigating factors**

Once the hearing manager has reached a decision that the employee's conduct amounts to misconduct or gross misconduct, consideration will be given to any factors that would mitigate against any sanction, prior to the sanction being given. It is important that the hearing manager draws a distinction between evidence that suggests that the employee has not committed misconduct and mitigating factors relating to the employee's circumstances, which are relevant after the employer has concluded that the employee has committed the misconduct. The hearing manager should consider whether or not any of the following potential mitigating factors could be relevant.

**Previous conduct**

Previous conduct may be a mitigating factor, in particular where the employee has an unblemished record. For example, if a long-serving employee with no previous disciplinary record commits an act of misconduct that could justify dismissal, it could be reasonable for the hearing manager to give the employee a final written warning, even where another employee may have been dismissed in the same circumstances.

**Health or disability**

Health issues may be a mitigating factor if they were related to the employee's behaviour, or in some way explain the employee's actions. Where the employee has health issues that may be relevant to his or her conduct, the employer should consider at the outset of the disciplinary process whether or not the employee may be covered by the Equality Act 2010. The employer should consider if it is necessary to obtain a medical report to establish whether or not the condition mitigates the employee's conduct, and whether or not disciplinary action against the employee in the circumstances would amount to discrimination because of his or her disability.

**Provocation**

The hearing manager should consider the individual circumstances, including whether or not the employee was provoked. For example, if an employee is disciplined for verbally abusing a colleague, it may be appropriate for the employer to impose a lesser sanction if the employee clearly was provoked by the colleague, compared with an unprovoked act.