

## DISCIPLINARY POLICY



# **DISCIPLINARY POLICY**

## **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 as 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**

## Two types of action that a manager can take

### INFORMAL

Informal action does not count as disciplinary action. There is no right to be accompanied and no right of appeal. It is sometimes known as a 'verbal or oral warning'. If the manager makes a note of the conversation you will be provided with a copy, which will be recorded on your personal file.

Informal action may be appropriate for the quick resolution of issues before they escalate into more concerning breaches.

This normally involves a prompt 1-2-1 between the manager and employee, aimed at improvement through advice, discussion or training. The manager can inform or remind the employee about standards, and agree actions for improvement.

If during the informal discussion, the line manager considers more formal action is needed, he or she should stop the discussion and make arrangements for formal action to be taken.

Formal action should follow if this informal approach does not achieve the required improvement.

### FORMAL

Formal action is taken when a manager decides, following an investigation, that something is too serious to be dealt with informally.

Disciplinary action is always formal and can be taken only during a disciplinary hearing.

Disciplinary action means that;

1. Things are always recorded in writing
2. You have a right to be accompanied at meetings held under this procedure
3. You have a right of appeal

There are two categories of formal action;

1. Misconduct
2. Gross Misconduct

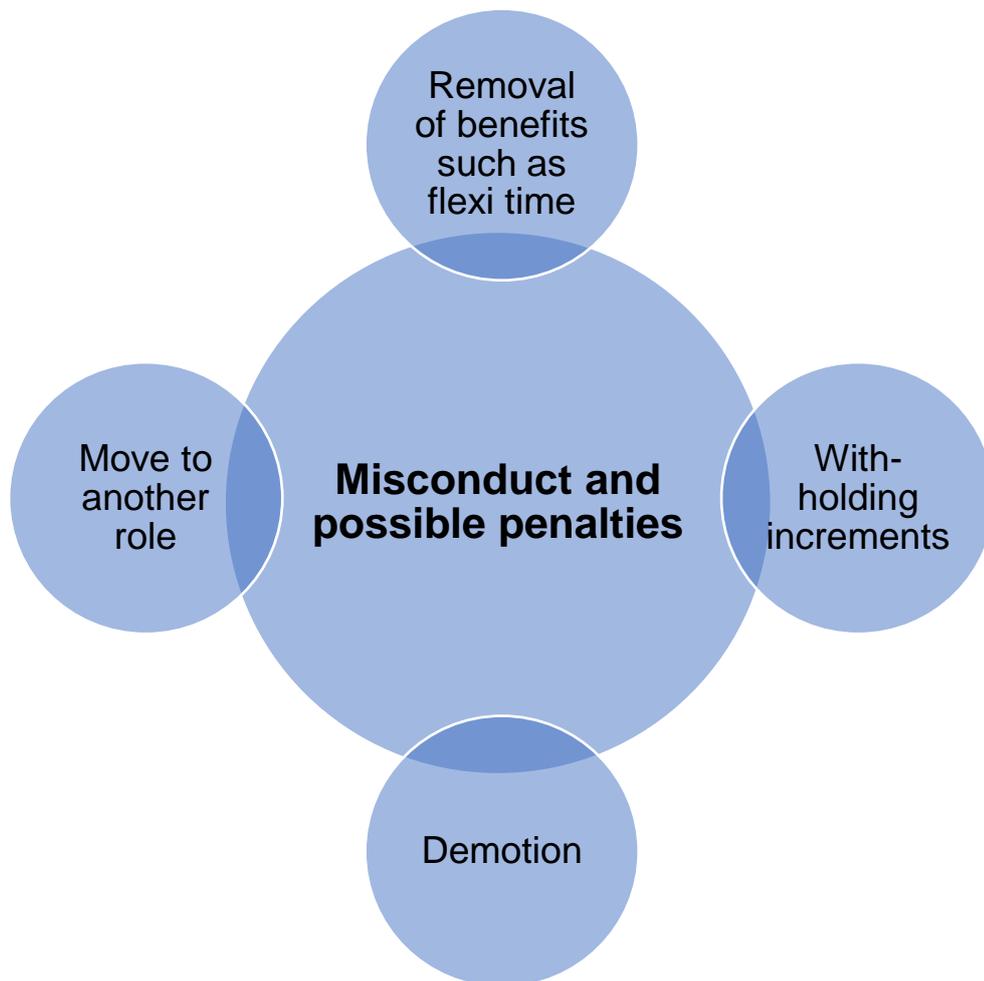
## Definitions and possible penalties

## 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. Only an Executive Director or Director can dismiss an employee for gross misconduct.



**RBKC takes a zero-tolerance approach to all forms of bullying, harassment and discrimination.**

In line with our corporate Equality, Diversity & Inclusion objective to: *'develop an open, collaborative and inclusive working environment where the principles of fairness and employee wellbeing are promoted, and everyone is encouraged to reach their full potential'*

Our aim is twofold:

- to promote a healthy, safe and inclusive working environment where poor behaviour is less likely to occur or be ignored, and

- to stop bullying, harassment or victimisation in the workplace and make it more difficult for harassers and bullies to act with impunity

This means that any allegations of bullying, harassment and discrimination will be taken seriously and handled sympathetically.

We strongly encourage any employee who has experienced such behaviours to come forward and RBKC will take any necessary remedial action as quickly as possible. **This includes where employees have experienced bullying, harassment and discrimination from colleagues and/or from service users or residents.** Employees wishing to raise concerns should speak to their line manager, HR or a Bullying and Harassment Adviser in the first instance.

Employees should be assured that initiation of formal procedures and the recording of incidents will only go-ahead following discussion with and in the full knowledge of the employee who has raised the complaint.

### 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
	Serious insubordination

Repeated failure to follow absence-reporting rules.	
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**

### Notification of allegation

- Manager notifies the employee in writing of the allegation and the potential outcome if the allegation is founded

### Investigation

- The Manager investigates the allegation, inviting witnesses, collecting any other available evidence, employee is invited to provide an explanation of allegation
- Employees are usually given five working days notice of an investigation and can be accompanied

### Manager decides if there is a case to answer

- Manager reviews available evidence and considers whether if formal action should be taken
- Employee will be advised if case will proceed to a hearing, or, if no further action should be taken

### If case proceeds to a hearing

- Employee is invited to disciplinary hearing, giving five days notice and can be accompanied. The employee may call witnesses
- The employee will be provided with the evidence that the manager will present at the hearing, along with the names of any witnesses that will be called by management, five working days in advance of the hearing
- The employee must provide any documents that they will be relying upon at the hearing and names of witnesses that the employee intends to call two working days in advance of the meeting. contd...

If the case proceeds to a hearing

- The employee will be notified of the manager hearing the case in advance of the hearing
- The employee must advise who will be accompanying them at the hearing
- The employee must advise their department of any witnesses that they are calling, and who may be accompanying them no later than two working days in advance of the hearing

Outcome of hearing

- The Chair of the panel will advise the employee of the outcome of the hearing in writing, as soon as possible following the hearing, but not later than ten working days following the hearing
- If following the hearing the hearing manager determines there is no case to answer, confirmation of this will be placed on file and confirmed in writing

Appeals

- The same or next level of management, independent of the process may hear any appeal
- Appeals against dismissal will be heard at Director or Executive Director Level
- An appeal should be made by the employee within ten working days

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

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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.