



# Disciplinary Policy

# Disciplinary Policy

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## 1. Purpose

The Royal Borough of Kingston (RBK) is committed to promoting positive and constructive working relationships amongst its Employees. We believe our Employees are at the heart of this organisation to deliver the objectives of the [Corporate Plan](#) and to make Kingston better together by living our shared [STAR Values and Behaviours](#).

The Council expects services to be managed in a way that meets the highest expectations of those who access its services and the wider community, within an environment where professional conduct and probity are valued and recognised. This policy is designed to help and encourage Employees to achieve and maintain the required standards of conduct and behaviour and to provide a fair and effective process of dealing with alleged breaches of these standards.

This policy will apply to conduct in the workplace as well as activities and behaviour outside the workplace which may impact adversely on the Council and bring the organisation into disrepute. Misconduct at social events linked to the workplace can be deemed as an extension of the workplace. This policy should be read in conjunction with the Council's [Code of Conduct - RBK Staff](#) that is applicable to Council Employees to ensure a fair and consistent treatment of individuals.

## 2. Aims

- To provide and communicate transparent, equitable and effective arrangements for maintaining standards of conduct and behaviour required by the Council.
- To bring about improvements in conduct through support and encouragement.
- To take prompt, appropriate and proportionate action when breaches of these standards occur.
- To ensure that standards are communicated and clearly understood.
- To monitor disciplinary outcomes in terms of consistency or any discriminatory patterns and outcome for all employees including the one with protected characteristics

## 3. Scope

This policy provides a framework for protecting the Council's reputation and to establish and maintain appropriate standards of conduct in employment through the fair and effective management of disciplinary and conduct matters.

It applies to all Employees (including all those on fixed term contracts) except Employees in locally managed schools, Employees on probation and the Chief Executive, Section 151 Officer and Monitoring Officer.

Agency staff are not automatically in scope of this policy. The Recruitment Agency, as their Employer, will normally deal with disciplinary matters. It is important to notify the Agency as soon as matters arise and to agree how the matter will be taken forward, working together as necessary.

## 4. Principles

- Informal action will be considered, where appropriate, to resolve problems.
- No disciplinary action will be taken against an Employee until the case has been fully investigated.

- For formal action the Employee will be advised of the nature of the complaint against them and will be given the opportunity to state their case before any decision is made at a disciplinary meeting.
- Employees will be provided with written copies of evidence and relevant witness statements in advance of a disciplinary meeting.
- Employees may be accompanied to any interview, meeting or hearing convened under the formal procedure by a Trade Union representative or work colleague.
- No Employee will be dismissed for a first breach of discipline except in the case of Gross Misconduct, when the penalty may be dismissal without notice or payment in lieu of notice.
- An Employee will have the right to appeal against any formal disciplinary action.
- The seriousness of an offence will determine the stage of the disciplinary process.
- No recordings of any kind are allowed at meetings without the prior consent of HR or the chair.

## 5. Responsibilities

Assistant Director of People and Organisational Development - has overall responsibility to ensure compliance with this policy.

Human Resources - Employee Relations and Policy

- To advise Employees and managers on the application and interpretation of this policy.
- To provide advice and guidance on the procedure that managers should follow.
- Ensure that appropriate training is available for managers/supervisors to properly equip them to manage the procedure.
- Keep policy under regular review
- To monitor the use of this policy for equality monitoring purposes

Line Managers

- To set the standards for conduct required within RBK policies.
- To ensure that their Employees and especially newly recruited Employees familiarise themselves with this policy during their local induction.
- To ensure Employees complete and refresh their related mandatory training.
- To challenge, and deal with unacceptable behaviour in a timely manner.
- To act on early warning signs of misconduct and use their discretion to resolve problems through informal discussion, as constructive guidance can often resolve difficulties and avoid the need for formal disciplinary action.
- To raise ongoing concerns that may be affecting an Employee's behaviour in the workplace.

Employees

- To conduct themselves with honesty and integrity to promote an atmosphere of mutual respect, in accordance with the Council's [Dignity at Work](#) .
- To familiarise themselves with and adhere to acceptable standards of conduct, relevant policies, procedures and practices, rules and regulations.
- To seek clarification from their Manager if there are aspects of the above which they do not understand. Lack of familiarity with the procedures will not be an adequate excuse for inappropriate behaviour.

Note: Accredited Staff Representatives

If it is likely that disciplinary action may be taken against a Trade Union Representative, the Manager or Team contemplating the action must inform the Head of Employee Relations and the District (full-time) Officer of the Trade Union concerned prior to any Meeting, Hearing or action under this policy.

## 6. Disciplinary Procedures

The Disciplinary procedure is intended to ensure that allegations of misconduct are managed fairly and consistently. The disciplinary process is not punitive in nature, instead, its aim is to provide our Employees with appropriate advice and support which will equip them to achieve and maintain the standards of conduct expected at the Council. Where possible, disciplinary matters should be managed informally. Formal action will be taken in cases of serious and/or repeated misconduct.

The Disciplinary procedure relates to matters of misconduct. Matters relating to incapability due to ill health or disability shall be dealt with using the Sickness Absence Management Procedure. Matters relating to work performance shall be dealt with via the Capability Procedure.

It should be noted that the following definitions apply for Misconduct and Gross Misconduct.

**Misconduct** refers to any type of behaviour or conduct at work that falls below the standard required or is in breach of a Council policy or professional standards of behaviour.

**Gross Misconduct** is either deliberate wrongdoing or **Gross Negligence** by the Employee which is so **serious** that it fundamentally undermines the relationship of trust and confidence between Employee and Employer. Gross Misconduct entitles the council to dismiss the Employee without notice (known as a summary dismissal).

### 6.1 Misconduct Types

These rules apply to all Council employees (aside from the roles listed in the Policy). Any breaches of these rules may result in disciplinary action.

The list of rules amounting to misconduct or gross misconduct are neither exclusive nor exhaustive. There may be other offences of a similar gravity which will constitute misconduct or gross misconduct.

It should be noted that there may be circumstances where breaches listed as misconduct may be regarded as gross misconduct due to the nature, severity and / or frequency of the misconduct and taking into account the seniority of the job held by the employee.

## 7. Examples of Misconduct

The following list of offences are illustrative of the types of Misconduct that may lead to Disciplinary Action.

1. unauthorised absence, persistent: poor time keeping or failure to follow absence notification rules,
2. unreasonable language or behaviour towards colleagues, Managers, service users, the public or elected members especially in regards to any of the protected characteristics

(verbal or written abuse relating to a person's age, disability, gender reassignment, race, religion or belief, sex, sexual orientation, marriage and civil partnership and pregnancy and maternity)

3. repeated carelessness or serious negligence in performing duties or lack of attention to service requirements;
4. refusal to obey reasonable management instructions.
5. Covert recordings

**Misuse of materials, equipment or time, such as:**

1. carelessness leading to damage to property, materials or equipment of the Council, its clients or other Employees;
2. unauthorised use or abuse of Council materials, equipment or facilities, so as to waste time and/or incur a cost;

**Failure to comply with the Council's [Dignity at Work](#) such as;**

1. general remarks about any of the protected characteristics which are offensive including the use of patronising terminology, "jokes" or other words or actions detrimental to proper standards of service delivery and/or a good working environment.

**Breaches of contract of employment or Council policy such as;**

1. refusal to follow instructions, work priorities or flagrant disregard for Council policy or procedure to the detriment of service users, partners or the Council's reputation
2. disregard for Council policy, regulations, procedures or professional practices standards;
3. failure to discharge obligations in accordance with statute contract of Employment

## **8. Gross Misconduct**

Some acts by their very nature are so serious that they destroy the employment relationship (between the Employee and the Employer) and make any further working relationship and trust impossible or extremely difficult. These acts are considered to be Gross Misconduct and may lead to summary dismissal (dismissal without notice and without previous warnings following investigation and a disciplinary hearing). Some examples of Gross Misconduct are listed below, though the list is not intended to be exhaustive.

**Acts of Dishonesty, such as;**

1. improper use of an official position for private gain or the private gain of some other person, including soliciting or accepting bribes;
2. deliberate misrepresentation of personal information required by the Council, e.g. date of birth, status, qualifications, experience or health in seeking and obtaining employment;
3. making false or improper claims for payments or benefits or falsification of timesheets. For example, overtime or other claims, invoices, medical or self-certificates etc.;
4. engaging in unauthorised activities such as private work or non financial gain such as voluntary work during hours when contracted to work for the Council, or during periods of sickness without the express permission of the chief officer.
5. Insubordination e.g. not following reasonable management instructions resulting in significant impact, for example reputational damage.

**Theft, Misappropriation or Misuse of materials, equipment or time, such as:**

1. theft, misappropriation, unauthorised possession or malicious damage to property, materials or equipment of the Council, its clients or other Employees;
2. unauthorised use of Council materials, equipment, vehicles or Council facilities, whether during or outside the working day;
3. serious abuse of facilities such as telephones, e mail or the internet in a manner likely to bring the Council into disrepute;
4. use of Council labour for private purposes;

**Acts of Violence or Maltreatment, such as:**

1. fighting, physical assault or serious threatening behaviour towards clients, members of the public or colleagues;
2. maltreatment or failure to abide by practice standards in respect of persons in the Council's care.

**Acts of discrimination or harassment, such as:**

1. serious or persistent breaches of Council procedures and policies which result in discrimination in terms of service provision or employment;
2. threatening such action from position of authority or power including, for example, seeking sexual favours in return for Council services or advancement;

**Serious Breaches of Council Policy that undermine trust and put the Council at risk**  
such as:

1. disregard for regulations/procedures resulting in financial loss or claim against the Council or the risk of such losses or claims;
2. non compliance with or failure to report breaches of a safety code such as to endanger life or risk causing serious injury.
3. data that is inappropriately accessed or disclosed that breaches the General Data Protection Regulation.
4. Gross Negligence in the performance of duty including serious incapability for work due to alcohol or drug abuse.
5. serious breaches or serious neglect of safety rules causing actual or potential unacceptable injury, damage or loss - Health and Safety at Work Act 1974 Section 8

**Serious Acts of Misconduct prejudicial to the Council's interest**, whether committed at work or outside working hours, having regard to the nature of the offence, the duties of the Employee's post and any damage to the reputation and integrity of the Council, such as:

1. criminal offences which are incompatible with the Employee's duties;
2. misuse or deliberate unauthorised release of confidential information;
3. holding a position in an organisation whose objectives bring it into public conflict with those of the Council and where that position is thereby incompatible with employment by the Council.

<p><b>9. Stages</b></p> <p><b>Stage 1</b></p> <p><b>Informal</b></p>	<p><b>TABLE 1</b></p> <p><b>To listen to the Employee's explanations and reinforce professional standards</b></p> <p>In many cases, particularly with regards to minor breaches of conduct, the best way for Managers to tackle such problems is to discuss the matter with the Employee. This will allow ample opportunity for the Employee to address the concern in the hope that there would be no need to invoke formal action. This should be a two way process aimed at addressing any shortcomings and to ascertain any difficulties or problems the Employee may be facing. The emphasis should be on guiding the Employee in order to try to remedy the problem, for the Manager to assist and help the Employee to improve where possible and to advise the Employee of the Councils expected standards. Together, the Employee and their Manager will explore support mechanisms and ways in which they can achieve the necessary improvement and how this will be reviewed to monitor/assess progress.</p> <p>This is an informal meeting between the <b>Employee</b> and their <b>Line Manager</b> and the outcome may be referred to in subsequent formal proceedings.</p> <p><i>The format and conduct of informal meetings will be, as the Manager considers appropriate to the circumstances. The aim is to achieve clarity about messages and outcomes in a non-threatening environment for example like during supervision or 1 to 1 session.</i></p> <p>The Manager will confirm the <b>notes of the meeting</b> in writing to the Employee e.g. actions to be taken by the Manager and the Employee; the standard required to be met; the period set for monitoring and the date or conditions for further review.</p> <p><b>Possible Outcomes</b></p> <ul style="list-style-type: none"> <li>● No action required as satisfactory explanation was provided</li> <li>● Clarification of service standards and/or professional standards of behaviour</li> <li>● An indication that formal action will be taken should the breach recur</li> <li>● A record of this meeting will be given to the Employee</li> </ul>
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<p><b>Stage 2</b></p> <p><b>Formal</b></p>	<p><b>To be used where it may be deemed necessary to give a warning of the consequences if problems recur/required improvements are not forthcoming, or to give a final warning that continuous employment is at risk</b></p> <p>Where a formal disciplinary hearing is necessary following an investigation, the Employee will receive written notification, at least five working days in advance, of the requirement to attend and the nature of the issues to be considered. The Employee will be advised of their rights both to be accompanied by a Trade Union representative or work colleague. The Employee will be advised of the procedure for the conduct of the hearing of the events under discussion.</p> <p>At the disciplinary hearing, the Hearing Manager (usually 2nd line Manager or another Manager at similar level) will take account of the impact of the conduct on the delivery of services, the mitigation offered by the Employee and then will decide on further action to be taken and confirm the outcome in writing to the Employee within five working days. An Employment Relations &amp; Policy representative(HR Member of staff) will be present at this hearing and a note taker.</p> <p><b>Possible Outcomes</b></p> <p>These can include any of the actions listed below and, in addition, can include:</p> <ul style="list-style-type: none"> <li>● Issue of a written warning</li> <li>● Issue of final written warning that future employment is at risk should there be a continued failure to meet standards or a warning of the consequences of further misconduct.</li> </ul> <p><b>Consequence where there is insufficient improvement</b></p> <ul style="list-style-type: none"> <li>● If there is insufficient progress after a written warning then a further hearing will be convened with a final written warning as a likely outcome.</li> <li>● If there is insufficient progress after a final written warning then a dismissal hearing will be convened</li> <li>● A Manager may decide to extend any monitoring period before taking any further action, usually not more than 3 months (if there is insufficient improvement or insufficient evidence of the ability to sustain the required standard). The Employment Relations &amp; Policy team can be consulted.</li> <li>● Arrange a dismissal hearing</li> </ul> <p>In addition, withhold an increment. This means the Employee will not receive the next annual spinal column point increment. Please refer to Pay &amp; Rewards Strategy.</p>
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**Sanctions for Formal Hearing**

Formal Hearing	Hearing Manager	Sanction /Duration	Appeal To
1	Independent Manager	Written Warning 12-18 Months	Senior Manager
2	Independent Manager	Final Written Warning 2 years	Senior Manager

**Dismissal**

A dismissal hearing will be held when an investigation reveals a case to answer that amounts to Gross Misconduct or constitutes repetition of serious misconduct following a final warning. The hearing will be chaired by a Head of Service who will be supported by a member of human resources.

**Possible outcomes**

These can include any of the actions listed above as well as:

- Demotion means removal of duties in the same job that will result in no more than one grade lower and salary reduction
- Relegation means being transferred to a different post with different duties on a lower grade with salary reduction accordingly
- Dismissal

Dismissal may be authorised by the Chair of the Panel (Director level) , it will usually be only appropriate for:

Further misconduct where there is an active final written warning on an Employees record or

*Any Gross Misconduct regardless of whether there are active warnings on an Employees record. Gross Misconduct will usually result in immediate Dismissal without notice and pay in lieu of notice.*

Where any act of misconduct renders an Employee unsuitable for work with children and vulnerable adults, the Council is under duty to make a referral to the Disclosure and Barring Service (DBS).

[Dismissal Letter](#)

**Sanction**

Dismissal Hearing	Deciding Manager	Sanction /Duration	Appeal To
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	1	Senior Manager	Dismissal	Appeals Committee (members)

## 10. Grievances raised during the Disciplinary Procedure

A grievance registered during disciplinary proceedings will not normally suspend disciplinary proceedings unless the substance of the Employee's grievance is so serious and credible as to make it unreasonable to continue with the disciplinary proceedings. Where the grievance relates to the disciplinary allegation it will be investigated as part of the disciplinary investigation (for example, if the Employee is complaining about how the Employer is handling the disciplinary procedure or has a grievance that amounts to a defence to the disciplinary allegations). Where the grievance is about an unrelated matter it may be more appropriate for investigation to be conducted separately.

## 11. Representation

The Employee should make every effort to attend the Disciplinary Hearing. Where an Employee is persistently unable or unwilling to attend a Disciplinary Hearing without good cause, the Manager chairing the Hearing should consider whether a decision should be made in their absence on the available evidence.

The Employee is entitled to be accompanied by a workplace colleague, Trade Union Representative or Trade Union Official. It will not normally be considered reasonable for the Employee to insist on being accompanied by someone whose presence may prejudice the hearing or where the availability of that person is such that the hearing cannot be held within a reasonable timescale.

An Employee wishing to be accompanied by someone other than a workplace colleague or Trade Union Representative or Official, will not normally be allowed. Managers however should take into account the provisions of the Equality Act 2010 at all times. In exceptional circumstances and to enable a fair and balanced hearing (e.g. where a disabled Employee may need to be accompanied by a specific companion) such a companion may attend in addition to a Trade Union Representative or Official as a reasonable adjustment. Advice should be sought from the Employee Relations & Policy team for permission for them to attend. Such a companion cannot act as advocate for the Employee if a Trade Union Representative or Official is also present. The Employee's chosen advocate is allowed to address the hearing and sum up the Employee's case, but does not have the right to answer questions on the Employee's behalf, other than in exceptional circumstances as above. No legal representatives are allowed to attend any of the meetings.

Employees may also be accompanied at an investigative interview by a Trade Union representative or work colleague. At the Formal Stages and Appeal Hearings, Employees have a right to be accompanied, if they so wish, by an accredited Trade Union representative or work colleague.

At the formal stages a hearing can be deferred once if either the Employee or their representative cannot attend. If the representative cannot attend on a proposed date, the Employee can suggest an alternative time and date so long as it is reasonable and is not more than ten working days after the original date. However, it is for management to decide

whether it is reasonable to proceed if further postponements are requested. Virtual meetings will take place where face to face meetings are not possible.

## **12. Investigation**

There must be an investigative process appropriate to the circumstances prior to any meeting or hearing under this policy. In most cases this will involve some initial fact finding, which may include preliminary interviews to establish whether there is a case to answer and whether the issue is Misconduct or Gross Misconduct. The Employee should be informed in writing via a Notice of Investigation that formal disciplinary procedures have been instigated. During this initial fact finding the Employee can be accompanied by a Trade Union official or workplace colleague.

At the Formal Stages, particularly in complex cases, the investigation may be delegated to another Manager. It is the responsibility of the unit to identify and appoint an alternative Manager. Managers conducting investigations must respect confidentiality and avoid unnecessary delay. They have a duty to keep an entirely open mind and act fairly on the basis of all the evidence and representations made. Where an investigating officer finds that there is a case to answer in respect of allegations that would, if proven, amount to either Serious or Gross Misconduct, this should be clearly stated in their report. Advice is to be taken from Human Resources prior to convening any formal stage hearing.

The subject of an investigation has a duty to be available and attend investigative meetings. It is generally in their interest to co-operate by providing the relevant facts. The Employee concerned must be informed of the outcome of any investigation and be provided with the relevant information so that they have a reasonable opportunity to consider it before a hearing under this policy. In the event that a formal hearing is to be convened, Employees may request time to conduct any enquiries of their own that are necessary to prepare their case.

## **13. Suspension/Transfer**

An Employee may be temporarily suspended or transferred to alternative work:

- a) when further time is required to undertake more detailed investigations in a serious allegation of misconduct which could, if substantiated, result in dismissal.
- b) when a hearing has been convened which could result in the dismissal of an Employee.
- c) where the continued presence at work of the Employee pending the outcome of an inquiry into alleged misconduct or the results of criminal proceedings would reasonably be considered to be contrary to the best interests of the Council and/or the Employee in relation to their colleagues.

Conditions relating to a suspension can include requirements not to return to the workplace/other Council premises and/or not to contact colleagues. However, prior to making this decision the Line Manager must discuss it with the HR representative from the Employee Relations Team. Suspension from duty or transfer to alternative duties will be confirmed along with the reason that this action is being taken will be confirmed in writing by the Line Manager. A suspension buddy (a Manager or Employment Relations & Policy Specialist) will be appointed who will not be involved in any associated investigation procedure and would act as a point of contact for the Employee. It is important that the Employee is supported during this time and is able to contact someone at the workplace to discuss any concerns they may have. The Employee should be advised of Workplace Options- Employee Assistance Programme services. Workplace options is a confidential, independent, expert provider of Employee support services available 24 hours a day, 7 days a week, 365 days a year available on

Telephone: 0800 243 458

Email: [assistance@workplaceoptions.com](mailto:assistance@workplaceoptions.com)

The login is RBK and the password is Employee

SMS text (for call back): 07909 341229

Minicom (for those with hearing or speech difficulties): 020 8987 6574

The act of suspension is without prejudice and with pay i.e. contractual monthly/weekly pay continues but overtime and other irregular payments will not be made unless applicable during suspension or transfer. The purpose of suspension is to investigate and is not an assumption of guilt.

A period of suspension should be kept as brief as possible and regularly reviewed to ensure it is still necessary. A suspended Employee will usually still be expected to be contactable during normal working hours and available to attend any meeting and interviews that are necessary concerning the investigation.

#### **14. Arrangements for meetings and hearings under this policy**

Hearings should only be arranged once sufficient information has been obtained to establish the facts of the case. Employees must be given reasonable notice of hearings in writing and full disclosure of all material that the hearing will depend upon to make their decision e.g. provided in advance the written evidence-giving rise to allegations of misconduct. The Hearing Manager (Chair) will be at an appropriate level of seniority and should not have had previous involvement in the detail of the case. The decisions of the Hearing Manager on all such matters, including conduct process and attendance are final. An Employment Relations & Policy representative will be present at Stage 2 Hearings and stage 3 Hearings. A note-taker will be arranged by the Hearing Manager in all formal hearings.

#### **15. Formal Disciplinary Hearing**

The Hearing Manager will consider all the evidence. You will receive the following in writing at least 5 days before the hearing:

- Confirmation of panel members, note taker, the date, time and location of the hearing or virtual hearing details;
- A statement of the allegation;
- Copies of the evidence to be considered;
- Notice of the people who will attend the hearing;
- Notice of any witnesses who will attend the hearing; and
- Notice of the potential outcome

Ahead of the hearing you should:

- Advise the disciplinary panel of your accompanying person (if you wish to be accompanied);
- Advise the disciplinary panel of any special requirements (e.g. disability, language requirements);
- Provide a copy of your written statement of case within the agreed timescales; and
- Advise the disciplinary panel of any witnesses that you wish to call.

At the hearing you may:

- Be accompanied by a colleague or Trade Union representative ;

- Have reasonable adjustments if you are disabled or have other special requirements;
- Rely on a written statement of case (a brief summary of the most important points that the panel should consider, including special circumstances); and
- Call witnesses in support of your case.

At the hearing, management will present the allegations, the Employee and panel will have the opportunity to ask questions of them and any witnesses. The Employee will then have the opportunity to present their case. The Hearing Manager, Employment Relations & Policy representative and management can ask questions relating to the Employee's evidence, or that of their witnesses.

The Employee can ask for an adjournment at any time during the hearing. In addition, the Hearing Manager may also decide on an adjournment at any point. A nearby room will be made available for the Employee and their representative should they wish to exercise this option. For virtual meetings, the Employee and their representative can communicate with each other as appropriate during an adjournment.

The Hearing Manager may inform the Employee of their decision at the end of the hearing, but it's more likely that they will be informed of the outcome by written confirmation within 5 working days of the hearing. The Hearing Manager will dismiss the allegation where they find there is no supporting evidence or where there is appropriate mitigation. Alternatively, if they find that the allegations are well founded a disciplinary sanction may be issued. The Hearing Manager is accountable for their decision and must be able to demonstrate the thinking behind that decision and that the penalty is reasonable in view of all the circumstances.

Any warning given should be specific and leave the Employee in no doubt about:

- What behaviour has been found to be unacceptable
- Improvement required
- The consequence of not heeding the warning
- The period of time the warning is to be regarded as live.

### **Dealing with criminal charges and convictions**

Employees are expected to act within the law at work as this could damage public confidence in the Employee or the Council. Staff must notify the Council immediately in writing if they are charged with or convicted of any offence. This will not normally affect an individual's employment unless the offence seriously undermines public confidence in the Council; or makes them unsuitable for the job they do.

### **Lapsed Disciplinary Warnings**

Warnings that are issued will remain on file after they are spent. They will normally be disregarded for disciplinary purposes. There may, however, be occasions where an Employee's conduct is satisfactory throughout the period the warning is in force only to lapse very soon thereafter. Where a pattern emerges and there is evidence of abuse, the Employee's disciplinary record should be borne in mind in deciding how long any current warning should last. It would be artificial to act as though an incident had never occurred and was erased from the memories of both parties. If an Employee was to maintain that they were unaware of a particular rule, for example, and it happened that they had been warned about this breach of rule in the past, this could be checked on the Employee's file.

## 16. Appeals

All Employees have the statutory right of appeal against any formal disciplinary sanction. There is no appeal against informal advice or the imposition of an improvement action plan but if the Employee disagrees in writing this will be kept on file and may be referred to in any subsequent proceedings.

To register an appeal, the Employee must, within 10 working days of receipt of formal written notification of the disciplinary action, write to the Head of Employee Relations and Policy. The appeal must state which of the grounds listed below applies:

- A. the Employee considers that the allegation was not substantiated
- B. the Employee contends that a matter of fact referred to at the hearing was not properly taken into account by the Manager conducting the hearing (technical breach)
- C. the Employee contests the appropriateness of the type of penalty decided upon (sanction unjustified)
- D. that new information has come to light since the date of the hearing and it will significantly affect the previous decision.
- E. the Employee contends that there were material breaches of this policy

Appeals against written warnings or final written warning or demotion will be heard by someone senior to the person who made the original decision. In exceptional circumstances, if this is not possible, due to operational challenges or some other substantial reason, a Manager at the same level as the Hearing Manager may hear the appeal. They will be assisted by a HR representative. An Appeals Committee( elected members) will hear Appeals against dismissals. The Appeal Committee may confirm, amend or reject the decision to dismiss.

The Appeals Hearing Manager must be impartial and independent, have no prior involvement in the original decision or meeting and have no vested interest in the outcome of the appeal. The Appeal Manager would therefore not normally be from within the same Line Management chain and would ideally be someone from a different part of the organisation. The Appeal Manager should usually be at least one level higher than the original decision maker. Appeals should be heard as soon as possible after the date of the original decision.

It is important that matters are dealt with fairly, impartial and objectively. If the Employee has a genuine and reasonable concern about the integrity or impartiality of the Appeals Hearing Manager they should raise this with the Employment Relations & Policy team.

Every effort should be made to allay or address their concerns but this does not mean they can choose who deals with the matter.

In the event of an Employee being dismissed, or receiving an alternative sanction at a hearing where dismissal was a potential outcome, they are entitled to appeal to an Appeals Committee (elected members).

The Employee will be required to provide supporting information prior to the Appeal Hearing.

Where the disciplinary penalty is rescinded all records will be expunged from the Employee's personal file including the letter to the Employee and destroyed.

## Appeals Hearing Manager's Actions

Appeals should be heard without delay. The hearing will only address the concerns set out for the grounds of appeal.

A meeting should be arranged to hear the appeal within five working days of receiving the written appeal. The Appeals Hearing Manager should write to the Employee inviting them to a meeting.

The Appeals Hearing Manager should:

- Give at least 5 working days notice of the intended meeting, to allow sufficient time to prepare
- Inform them they have a right to be represented by a Trade Union representative or work colleague
- Arrange for a note taker to be present at the meeting (the note taker will have no involvement in the meeting other than to make a record of the discussions)

Employees have a statutory right to be accompanied by a Trade Union representative of a work colleague where a meeting could result in disciplinary action. If the Employee or their companion can not reasonably attend the meeting, the Employee should be asked to propose new dates to allow the meeting to take place within 5 days of the original meeting date.

It is recognised that exceptionally there may be delays in progressing matters. This could be due to the complexity of the case or because of short absences that are part of everyday working environments, such as an Employee or appeal Manager working patterns and/or short term absence. In these cases all steps should be taken as soon as reasonably practicable and the reasons for any delay recorded.

Appeal Hearing Process
<p><b>Case for the Employee</b></p> <ul style="list-style-type: none"><li>• The Employee will present their case against the reasonableness of the disciplinary action taken and may call witnesses. The appellant will be required to present clear evidence around why the sanction handed down is disproportionate or precisely where they has been an abuse of process</li><li>• The Presenting Manager may question the Employee and any witnesses.</li></ul>
<p><b>Managers Response</b></p> <ul style="list-style-type: none"><li>• The Presenting Manager will outline their rationale for the disciplinary sanction handed down and may call witnesses</li><li>• The Employee or their representative may question the Presenting Manager and any witnesses</li></ul>
<p><b>Appeal Hearing Manager may:</b></p> <ul style="list-style-type: none"><li>• stop and/or redirect any participant if at any time s/he believes that witnesses testimony or evidence being produced is irrelevant to the matter under consideration;</li><li>• call for any additional information/evidence to be provided, and/or witnesses to attend if deemed necessary to establish the facts.</li><li>• Adjourn the hearing where appropriate. The parties will be given reasonable notice of the reconvening of the hearing.</li></ul>

<p><b>Closing statements</b></p> <ul style="list-style-type: none"> <li>• The Presenting Manager, followed by the Employee or their representative may make final oral submissions to the Appeal Hearing Manager without introducing any new material.</li> </ul>
<p><b>Decision</b></p> <p>The Appeal Hearing Manager will:</p> <ul style="list-style-type: none"> <li>• consider the case and may recall the Employee and their representative and the Presenting Manager to clarify points on evidence already given. If recall is necessary both parties will return.</li> <li>• give their decision personally if practical to do so. In any case the decision will be confirmed in writing within five days of the conclusion of the hearing.</li> <li>• The possible decision outcomes can be:- <ul style="list-style-type: none"> <li>- to uphold Employee appeal and either revoke the decision completely</li> <li>- To refer case to be reheard by an independent Hearing Officer</li> <li>- to uphold Employee appeal and impose a lesser sanction</li> <li>- Dismiss the appeal and reconfirm penalty decision to Employee</li> </ul> </li> </ul>

## **Appeal Hearing Agenda**

**Introductions:** All parties introduce themselves and role

**Purpose of the Appeal Hearing** - Chair explains the purpose of the Appeal Hearing and Panel, To listen to the grounds of Appeal and to Management's response. To seek clarification for both parties. New evidence is not generally introduced at this stage, however, if new evidence is introduced the panel will decide whether or not to consider this.

Parties may request an adjournment during the meeting as it is recognised as being stressful.

The three possible outcome options available to the Panel are:

- The Appeal is agreed and a remedy is decided on
- The Appeal is agreed in part and a remedy is determined in respect of that part of the Appeal whilst the remaining part is not considered further.
- The Appeal is not agreed

**Reason for the Appeal** - Appellant

**Questions from the Panel**

**Questions from Management**

**Management to provide response**

**Questions from the Panel**

**Questions for the Appellant**

**Chair** asks all parties if there is anything further to add.

**Chair to summarise:** the points, the three options available to the panel

**Parties withdraw**

**Chair Deliberates**

**Outcome** will be notified in writing within 5 working days of the Appeal Hearing.

**Decisions of the panel are final**

**Reference Documents**

[Dignity at Work](#)

[Virtual HR Hearing/Meetings Protocols & Guidance](#)

[Code of conduct -RBK](#)

## **17. AGENDA TEMPLATE**

### **LETTERS**

1. [Template 1 - Dismissal Letter](#)
2. [Template 2 - Disciplinary Hearing Outcome Letter](#)
3. [Template 3 - Invite to Disciplinary Hearing](#)
4. [Template 4 - Notice to potential witness](#)
5. [Template 5 - Appeal outcome not upheld](#)

## **Template 1 - Dismissal Letter**

Dear xxx (*insert employee name*)

**STRICTLY CONFIDENTIAL**

### **The outcome of Disciplinary Hearing**

hearing held on (date) at (time). As you are aware, this hearing was held in relation to the allegation of (type of misconduct) on (date of alleged misconduct).

This matter was fully discussed at the hearing. I have considered all the evidence before it and I have taken your representations into account. I can confirm that it has been decided that you be dismissed in accordance with the Council's Disciplinary Procedure.

- a) The reason for the dismissal was xxx (*insert a summary of the nature of the unsatisfactory conduct*)
- b) The employment contract will be terminated on xxx (*include an appropriate period of notice unless summary dismissal is warranted*)

You have the right to appeal against the decision to dismiss you. If you wish to appeal, you should do so in writing within 10 days of receiving this disciplinary notice outcome to ..... stating the grounds for your appeal.

Yours sincerely

## Template 2 - Disciplinary Hearing Outcome Letter



xxx (*insert Manager Address Line 1*)  
xxx (*insert Manager Address Line 2*)  
Surrey xxx (*insert post code*)  
*Direct Line: xxx(insert Mgr tel nber)*  
*Email: xxx(insert Mg email address)*  
xxx(*insert date*)

xxx (*insert Employee name*)  
xxx (*insert address line 1*)  
xxx (*insert address line 1*)  
xxx (*insert county + postcode*)

Dear xxx (*insert employee name*)

### **STRICTLY CONFIDENTIAL**

#### **The outcome of Disciplinary Hearing**

Following the disciplinary hearing held on (date) at (location), this letter is to confirm that the outcome of the disciplinary proceedings is that you have been given a first/final (delete as appropriate) written warning in accordance with the Council's Disciplinary procedure.

The circumstances giving rise to the issue of this warning were (summary of the disciplinary offence and when it occurred). The matter was fully discussed at the hearing and, having taken your explanations into account, I have concluded that your behaviour constitutes misconduct.

This warning will be placed in your personal file but will be disregarded for disciplinary purposes after a period of **two years**, provided your conduct improves to a satisfactory level.

- a) The nature of the unsatisfactory conduct (delete) was xxx (*insert summary*)
- b) The conduct (delete) expected is xxx (*insert details*)
- c) The timescale within which the improvement is required is xxx (*insert details*)  
*Including review dates*)
- d) The likely consequence of further misconduct or insufficient improvement is

Final written/dismissal (delete as appropriate)\*dismissal option only available for some misconduct cases

- e) xxx(insert support offered for improvement)

You have the right, if you wish, to appeal against this disciplinary decision. If you wish to appeal, you should do so in writing within 10 working days of the date of this letter to [????]. Your written notice should state the grounds for your appeal.

Yours sincerely

### **Template 3 - Invite to Disciplinary Hearing**

Dear

#### **STRICTLY CONFIDENTIAL**

#### **Disciplinary Hearing**

I am writing to advise you that you are required to attend a disciplinary hearing on xxx (*insert date*) at xxx (*insert time*) am/pm, which is to be held in xxx (*insert venue*). The hearing will be chaired by (name) (and insert names) will also be present.

The purpose of the hearing will be to discuss your alleged misconduct, as set out in the attached document. I have also enclosed evidence in the form of (witness statements from (names)). I also enclose a copy of the Council's Disciplinary Procedure

You have the right to be accompanied at the hearing by a fellow worker, a trade union representative if you so wish, which you should arrange. Should you or your representative have a disability and require any reasonable adjustments for the hearing, please advise me as soon as possible, so that I can make arrangements accordingly.

Your representative will, if you wish, be able to put your case; sum up your case; and respond on your behalf to any view expressed at the hearing. They will also be allowed to confer with you during the hearing. However, they will not be able to answer questions on your behalf.

Depending on the facts established at the hearing, the outcome could be (state potential action), but a decision on this will not be made until you have had a full opportunity to put forward everything that you wish to raise and the hearing has been concluded. If you wish to submit any documents which are specifically relevant to the issues being considered you should do this at least 3 working days before the hearing.

If you are unable to attend the hearing, you must inform us of this fact as soon as possible. If your chosen representative is not available, you may specify another date for the meeting up to five working days later. Should you or your representative have a disability and require any reasonable adjustments for the hearing, please advise me as soon as possible, so that I can make arrangements accordingly.

May I take this opportunity to remind you that the Council has a 24/7 support and counselling programme for you and family members living in your home. Workplace options is a confidential, independent counselling service available 24 hours a day, 7 days a week, 365 days a year available on

Telephone: 0800 243 458 or by

Email: [assistance@workplaceoptions.com](mailto:assistance@workplaceoptions.com). SMS text (for call back): 07909 341229

Minicom (for those with hearing or speech difficulties): 020 8987 6574

The login is RBK and the password is Employee

In the meantime, if you have any queries in relation to the above, please contact me on the above telephone number.

Yours sincerely

xxx (*insert name of Manager*)

xxx (*insert post title*)

## **Template 4 - Notice to potential witness**

Dear xxx (*insert employee name – ie witness*)

### **Disciplinary Procedure – Investigation**

I would be grateful if you could attend an investigatory meeting on (date) at (time) at (place). This meeting has been arranged because we are in the process of investigating allegations that have been made relating to (name of employee) conduct in the workplace (on) (date). Therefore, I would like to invite you to a meeting on xxx (insert date) at xxx (insert time) at xxx (insert location). I understand that you may have: (delete as appropriate) - *witnessed the events that are alleged to have taken place or useful information concerning the employee's alleged misconduct that could assist me in conducting my investigation.*

Following this meeting, I will prepare a witness statement setting out all the information that you gave me and you will have the opportunity to ensure that it accurately reflects your version of events. Once you are happy with it, you will be asked to sign and date it. This could be used as evidence at a formal disciplinary hearing in the future.

Please note that this meeting is entirely a fact-finding exercise and it is not your conduct that is under investigation. The organisation has not yet determined whether or not it is appropriate for formal disciplinary proceedings to be taken against [name of employee]. This decision will be made only once a thorough investigation has been concluded.

I would be grateful if you could let me know whether or not you can attend the scheduled meeting [and whether or not you will be accompanied] by [date].

As this matter is currently under investigation, please keep the reason for the meeting and any discussions that take place confidential and do not discuss it with your colleagues.

Should you feel the need for personal support, you may contact the Council's 24/7 support and counselling programme. Workplace options is a confidential, independent counselling service available 24 hours a day, 7 days a week, 365 days a year available on:

Telephone: 0800 243 458

Email: [assistance@workplaceoptions.com](mailto:assistance@workplaceoptions.com). SMS text (for call back): 07909 341229

Minicom (for those with hearing or speech difficulties): 020 8987 6574

The login is RBK and the password is Employee

Thank you for your assistance in this matter.

Yours sincerely

## **Template 5 - Appeal Outcome Not Upheld**

Dear xxx (insert employee name)

**STRICTLY CONFIDENTIAL**

### **Appeal Hearing – Outcome**

I refer to the disciplinary appeal hearing held on (.....) in connection with your appeal against the decision of (name of manager taking decision) dated (....) to issue you with a disciplinary warning.

Having considered your appeal very carefully and taken into account your representations, it has been decided to uphold the decision of (name of manager) and retain the (nature of warning) warning on your record). This decision has been taken because (give reasons why appeal has been rejected).

You have now exercised your right of appeal under the Council's Disciplinary Procedure and this decision is final.

Your sincerely