



Disciplinary Code For All Employees

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DISCIPLINARY CODE

CONTENTS

Section	Page
1. INTRODUCTION	3
2. GROSS MISCONDUCT	4
Theft, Fraud and Misrepresentation	4
Unauthorised/Improper Use of Council Property and Equipment/Systems.....	5
Health & Safety.....	5
Wilful Damage	5
Gross Carelessness/Negligence.....	5
Equality and Fair Treatment.....	5
Other Forms of Gross Misconduct	6
3. OTHER TYPES OF MISCONDUCT.....	6
Damage and Misuse of Council Property.....	6
Inappropriate Use of the Council's IT Systems and Procedures.....	6
Health & Safety.....	7
Breach of Confidentiality	7
Other Forms of Misconduct.....	7
4. MISCONDUCT OUT WITH THE WORKPLACE.....	8
4. SERVICE LEVEL SUPPLEMENTS TO DISCIPLINARY CODE	8
5. REVIEW OF DISCIPLINARY CODE	8

DISCIPLINARY CODE

1. INTRODUCTION

The council believes that discipline is essential for the conduct of the council's affairs and for the safety and well-being of all employees. The council further believes that disciplinary rules and procedures are necessary for promoting fairness and order in the treatment of individuals and in the conduct of industrial relations.

In recognition of its responsibility as an employer to determine the standards of conduct required by its employees, the council has drawn up a Disciplinary Code which details the types of misconduct which are considered to be in breach of the council's rules and will normally result in disciplinary action. This Disciplinary Code is issued by the council and is not an agreement with the trade unions.

The council will take reasonable steps to inform employees of the standards of conduct expected of them. In turn all employees should familiarise themselves with the rules governing their employment as contained in:

- their **letter of appointment**;
- the **Statement of Particulars** issued to employees in accordance with the requirements of the Employment Rights Act 1996;
- the **Scheme of Conditions of Service** as adopted by the council relating to their employee group; and
- **locally negotiated agreements** and other documents available in Services.

In addition, employees should also familiarise themselves with the minimum standards of conduct expected of them, as set out within the council's key employment policies including:

- Code of Conduct for Employees.
- Code of Practice – Promoting Appropriate Working Relationships and Behaviour
- Policy on Equality in Employment and Service Provision
- Internet, Social Media and Email Policy
- Health and Safety Policy
- Sickness Absence Policy
- Smoke Free Policy

This is not an exhaustive list of council employment policies. Employees are expected to comply with all council employment policies which can be read in full at <http://www.westlothian.gov.uk/article/2200/Policies-Procedures-and-Guidance>

It is recognised that rules should be enforced in a fair and consistent manner. It is essential, however, that each case is treated on its merits and that disciplinary decisions are taken which are reasonable in all the circumstances. In this regard it is the intention of the council that, in applying the guidance contained in this

Disciplinary Code, due consideration be given to an employee's general work record, length of service, personal and domestic circumstances etc.

2. GROSS MISCONDUCT

The disciplinary procedure defines 'gross misconduct' as behaviour of such a nature that the council is unable to tolerate the continued employment of the individual concerned. An individual may be summarily dismissed without previous warning where gross misconduct is deemed to have occurred.

The following list is neither exhaustive nor exclusive but is indicative of the types of misconduct which are classed as gross misconduct and which may lead to dismissal without notice:

Theft, Fraud and Misrepresentation

- theft of council property;
- theft of property not belonging to the council whilst engaged, or purporting to be engaged, on council business;
- dishonest or fraudulent acts e.g. deliberate falsification of time sheets, clock cards or other attendance records, work records, bonus sheets, expenses claims or other records, whether manual or computerised, relating to the financial transactions of the council;
- falsification of e-mail addresses, or otherwise generate messages in a manner which would make them appear to have come from someone else;
- purchase of goods or services, or conduct other transactions over the Internet in the council's name without proper authorisation in accordance with relevant council procedures in force at the time e.g. rules governing e-procurement;
- provision of false or misleading information or non-disclosure of information, either during the recruitment process or in subsequent employment, which materially affects the contract. In the case of employees who carry out regulated work with children or protected adults, this includes failure to disclose details of any police caution, police investigation, criminal conviction or criminal charge, or disciplinary action by a professional or regulatory body which materially affects the contract of employment;
- wilful breach of confidentiality or abuse of authority vested in a post;
- wilful non-disclosure of an interest, whether direct or indirect, in contractual arrangements between an agency and the council;
- communicate or distribute libellous or defamatory material about any individual, firm, body or organisation;
- claim to represent the views of the council unless authorised to do so.
- any act committed in contravention of the Bribery Act 2010 relating to the giving or taking of a bribe whilst engaged on council business including vicarious liability of senior officers for any such bribery offences committed by the council through its elected members or council employees with the consent or connivance of senior officers.

Unauthorised/Improper Use of Council Property and Equipment/Systems

- unauthorised use of council property;
- knowingly access or attempt to access inappropriate Internet sites, down-load, store, or circulate material which is illegal or inappropriate to the workplace. Inappropriate in this context includes sites or material which are pornographic, or involve illegal activity, or breach general standards of conduct set by the council;
- gain or attempt to gain, access to those parts of the council's network for which authorisation has not been granted, or to do so with the intention of damaging or disrupting the system, altering its normal performance or causing it to malfunction;
- use the Internet or e-mail systems for conducting a private or commercial business undertaking
- intentionally access or transmit information about software designed for breaching security controls or for creating computer viruses.

Health & Safety

- wilful breach of specified safety rules.

Wilful Damage

- wilful damage to, or misuse of, council property or resources;
- wilful damage to, or misuse of property or resources not belonging to the council whilst engaged, or purporting to be engaged, on council business.

Gross Carelessness/Negligence

- Gross carelessness or negligence in carrying out the duties and responsibilities of the post.

Equality and Fair Treatment

- serious discriminatory acts or omissions contrary to, or inconsistent with, the council's Policy on Equality in Employment and Service Provision involving:
 - the selection or non-selection of any person for a post within the council;
 - the provision or non-provision of any rights or benefits to any person employed by, or having contact with, the council;
 - other forms of discriminatory behaviour including contravention of the Code of Practice – Promoting Appropriate Working Relationships and Behaviour
 - inappropriate use of internet, social media and e-mail including private use out with working hours that breaches the standards and values set out within the council's Policies on Equality in Employment and Service Provision and Bullying and Harassment and/or which is otherwise abusive, threatening or offensive.

Other Forms of Gross Misconduct

- physical or indecent assault on any person whilst engaged, or purporting to be engaged, on council business;
- grossly indecent, abusive or threatening behaviour towards any person whilst engaged on council business
- grossly indecent, abusive or threatening behaviour out with working hours where an employee identifies him/herself as a council employee and it could reasonably be determined that the behaviour will damage the council's reputation or undermine public trust in the council;
- fighting at work;
- criminal conviction/civil liability or other unacceptable conduct which renders the employee unsuitable to carry out the duties and responsibilities of the post, whether or not the conduct occurred whilst on duty. In the case of employees who carry out regulated work with children or protected adults, this will include any police caution, involvement in police investigation, criminal charge or disciplinary action by a professional or regulatory body, which renders the employee unsuitable to carry out the duties and responsibilities of the post.

3. OTHER TYPES OF MISCONDUCT

There are other types of misconduct, which will normally result in disciplinary action being taken short of summary dismissal in the first instance. This disciplinary action may take the form of an oral warning, a written warning, a final warning, the withholding of an annual increment, suspension from duty without pay, or demotion and/or transfer to another post, or ultimately dismissal with notice. The action taken in any particular case will depend on the degree of seriousness of the misconduct, the employee's previous record and any other relevant factors. Exceptionally, misconduct normally resulting in action short of dismissal in the first instance may be regarded as gross misconduct if the circumstances are sufficiently serious.

The following list is neither exhaustive nor exclusive but is indicative of the types of misconduct which will normally result in disciplinary action short of dismissal being taken in the first instance but which may also ultimately lead to dismissal:

Damage and Misuse of Council Property

- careless damage to council property;
- careless damage to property not belonging to the council whilst engaged, or purporting to be engaged on council business.

Inappropriate Use of the Council's IT Systems and Procedures

- download, possess, distribute or copyright works (e.g. document, photograph, piece of music or video) without the consent of the copyright owner;
- use the Internet or e-mail systems for political activity;
- use the Internet or e-mail systems for betting or gaming purposes;
- use the Internet for engaging in on-line game playing, chat lines and other similar applications;
- post comments to newsgroups or chat rooms unless authorised to do so;

- participate in any activity that could cause congestion and disruption of network systems, including:
 - sending and forwarding unsolicited, irrelevant or inappropriate e-mail (known as 'spam') to groups or mailing lists;
 - participating in chain or pyramid letters or similar schemes;
 - making other excessive use of unsolicited e-mail.
 - use of the systems to sell personal items

Health & Safety

- less serious breaches of safety rules.

Breach of Confidentiality

- unauthorised disclosure of personal information in breach of the council policies and/or data protection legislation, including transmitting confidential or sensitive information relating to individuals or any aspect of the council's business over the Internet;
- breach the council's security arrangements (e.g. disclose computer password to others)
- unauthorised contact with the media.

Other Forms of Misconduct

- unauthorised use of property not belonging to the council whilst engaged, or purporting to be engaged on council business;
- unauthorised absence from work;
- carelessness or negligence in carrying out the duties and responsibilities of the post;
- refusal to obey reasonable instructions or otherwise fulfil the contractual obligations of the post;
- abusive, threatening or offensive behaviour towards any person whilst engaged on council business
- abusive, threatening or offensive behaviour out with working hours where an employee identifies him/herself as a council employee and it could reasonably be determined that the behaviour will damage the council's reputation or undermine public trust in the council;
- incapacity to carry out the duties of the post due to intake of alcohol or un-prescribed use of drugs;
- less serious discriminatory acts or omissions contrary to, or inconsistent with, the council's Policies on Equality in Employment and Service Provision or Bullying and Harassment;
- persistent bad timekeeping;
- persistent and unrelated short-term sickness absences.

4. MISCONDUCT OUT WITH THE WORKPLACE

A charge or conviction of a criminal offence committed out with the workplace will not automatically be reason for disciplinary action. Consideration needs to be given to what effect the charge or conviction has on the employee's suitability to do the job and their relationship with the council, colleagues and customers.

The council also takes this approach when considering other behaviour occurring out with the workplace that contravenes the council's policies or adversely impacts on an employee's contract of employment.

The provisions of this Code apply to all employees during working hours and outside normal working hours in the course of employment where an individual employee's action detrimentally affects the council or another council employee. The phrase 'in the course of employment' is significant in so far as it extends the scope of the Code in certain circumstances to situations that happen outside the immediate workplace.

When considering whether behaviour out with the workplace should be dealt with as a disciplinary matter the council will consider:

- The relevancy of the conduct to the workplace and/or the employee's contract of employment
- Any risk/damage to the council's reputation as a service provider
- The impact of the behaviour on the employee's relationship with colleagues, customers and clients
- The extent to which the behaviour breaches council policy

Behaviour occurring out with the workplace that may result in disciplinary action could include for example: theft, fraud, bullying and harassment, actions in contravention of the Equality Act, and private use of Social Media in contravention of council policies.

Contravention of any professional codes of conduct by employees bound by such codes, whether occurring within or out with the workplace may result in both referral to the professional organisation as appropriate and disciplinary action in accordance with the council's disciplinary policy.

5. SERVICE LEVEL SUPPLEMENTS TO DISCIPLINARY CODE

In certain circumstances it may be appropriate for a Depute Chief Executive to supplement this Disciplinary Code in recognition of particular requirements obtaining in the Service. In particular, a Depute Chief Executive may wish to indicate other types of misconduct, which constitute gross misconduct in relation to a specific group of employees and/or in a specific situation or circumstance. Where such a supplement is required, it shall be circulated to the relevant employees as an Appendix to this Disciplinary Code after consultation with the Head of Corporate Services.

6. REVIEW OF DISCIPLINARY CODE

This Disciplinary Code will be kept under review and may be amended from time to time. Appropriate measures will be taken to bring any amendments to the attention of employees.