



Code of Conduct Policy

GOVERNMENT OF THE COOK ISLANDS

Effective: December 2014

Policy Statement

This policy provides guidance on standards of conduct required across the public sector and complements the Public Service Code of Conduct and duty to act as a good employer, as legislated in the Public Service Act 2009.

Scope

This policy applies to Heads of Public Sector Agencies and employees within the Cook Islands Public Sector.

Principles

The Public Service Act 2009 identifies the following values for public servants to adhere to:

Honesty	acting honestly, being truthful, and abiding by the laws of the Cook Islands
Impartiality	providing impartial advice, acting without fear or favour, and making decisions on their merits
Service	serving the people well through faithful service to the Government of the Cook Islands
Respect	treating the people, the Government of the Cook Islands, and colleagues with courtesy and respect
Transparency	taking actions and making decisions in an open way
Accountability	being able to explain the reason for actions taken, and taking responsibility for those actions
Efficiency and effectiveness	achieving good results for the Cook Islands in an economical way

The duty to act as a good employer requires employers develop and implement personnel policies which ensure the fair and proper treatment of employees during employment, including the impartial recruitment of employees, employee capability development opportunities and good and safe working conditions.

Employers and employees must commit to:

- Acting as good ambassadors of the Cook Islands Government and Public Sector
- Being honest and politically neutral
- Maintaining high standards of ethical behavior which support the agency's ethical standards
- Not allowing conflicts of interest to influence decisions made in an official capacity and professional behavior
- Promote equal employment opportunities, prohibiting all forms of discrimination in recruitment practices, employment relations and agency opportunities

Legislation and Regulations

The Public Service Act 2009, Employment Relations Act 2012, Ministry of Finance and Economic Management Act 1995-96, and Public Expenditure and Review Committee and Audit Act 1995-96, and other relevant legislation apply.

Definitions

Agency means any department, instrument, or agent of the Government and includes a body corporate or organisation that is wholly owned or controlled by the Crown

Complainant is a natural person (individual) who raises a complaint about any breach or alleged breach of the code of conduct policy by persons who must comply with this policy

Conflict of interest is where an individuals' perceived or real objectivity is impaired and can lead to the individual making a decision or taking action in their official capacity to derive personal benefit or favour others

Contractors includes persons engaged under a written contract where the terms of employment and code of conduct are specified in the contract

Department means any ministry or department including any agency or instrument listed in the Public Service (Identification of Departments) Order 2008

Discrimination is the unjust differential treatment of people, based on grounds including race, ethnic origin, skin colour or appearance; opinion and belief; religion; gender or sexual preference; disability; age; health status; and maternity status; and family status

Employee means any person who is an employee of the Public Sector

Employer means the Head of a Public Sector Department or Crown Agency, Ministerial Support Office or other agency or their delegated authority

Frivolous means not having any serious purpose, value or merit

Instant dismissal means dismissal without notice. This can apply in circumstances where there is a serious breach of legislation, policy or an employment contract or agreement

Natural Justice requires a fair and transparent procedure to be followed, and that the decision-maker operate free from bias

Political Neutrality in performance of duties means performing duties faithfully and loyally and apolitically, regardless of one's personal political beliefs or affiliations

Public Service Appeal Board established under Article 76 of the Constitution is comprised of: the Chief Justice, a Public Service employee or former employee representative appointed by the Queen's Representative on advice from the Prime Minister, and a Public Service employee or former employee nominated by the public service or an organisation of public service employees to hold office for a period of three years

Public Service Commissioner means the Public Service Commissioner appointed under Article 73 of the Constitution and Section 5 of the Public Service Act 2009

Public Sector includes Public Service Departments, Island Governments, Crown Agencies, Offices of Parliament, Ministerial Support Offices, State Owned Enterprises and other agencies

Racial discrimination is discrimination on an ethnic or cultural basis, independent of whether these differences are described or identified as racial

Sexual Harassment means unsolicited/unwelcome/offensive verbal, written and/or physical conduct of a sexual nature directed at a person

Vexatious is an action without sufficient grounds, to cause annoyance to another individual

Procedures

Employers are responsible for administering this policy. The employer is responsible for ensuring all policies are easily accessible to employees however, the onus lies with the employee to read, understand, familiarise and comply with this and any other relevant government policies. Any person who breaches this policy may have committed an act of misconduct and may be subject to disciplinary action and/or dismissal.

Misconduct

Misconduct is defined as unacceptable behaviour, action, or inaction not of the level of serious misconduct in breach of this policy, or which negatively impacts on other employees or the Agency.

Examples of misconduct may include but are not limited to the following actions:

- Non-compliance with Public Sector policies, code of conduct and values
- Failure to perform employment related tasks to specified standards
- Failure to report to work without notification to the respective manager or supervisor
- Failure to consistently report to work at the specified start time or after any break
- Failure to complete the stipulated hours of work required for the position
- Use of obscene or threatening language in the workplace
- Harassing behaviour of a sexual, racial or discriminatory nature
- Unprofessional behaviour in the workplace and publicly which brings the reputation of the department into disrepute
- Engaging in activities that undermine the confidence of members of the public in the neutrality of the public sector
- Personal attacks on the character of other employees, employers, members of parliament, other government stakeholders and members of the general public - in an official capacity
- Publicly criticising government policies in an official capacity
- Misuse of public-funded resources and assets such as offices and school halls, equipment and supplies (phones), communication (emails) and motor vehicles
- Soliciting or accepting gifts, rewards or benefits in an official capacity which might actually or apparently compromise the integrity of the employee, department or the public sector
- Smoking in restricted areas and/or failing to abide with the agency's no-smoking policy

Serious Misconduct

Serious misconduct involves serious wrongdoing whereby the actions of an individual are unlawful and/or of such significance as to make the continuation of the employment relationship untenable, or undermines the confidence and trust of parties in the employment relationship. Persistent misconduct may be classified as serious misconduct. Serious misconduct may justify instant dismissal of the individual.

Serious misconduct may include but is not limited to the following actions:

- Serious breaches of legislation, specifically the Public Service Act 2009, Ministry of Finance and Economic Management Act 1995-96, and Public Expenditure and Review Committee and Audit Act 1995-96
- Serious breaches of Public Sector Policies, Code of Conduct and Values
- Improper use or unauthorised disclosure of official or confidential information
- Possession or consumption of illicit drugs on work premises
- Consumption of alcohol on work premises without the authority of management
- Arriving for work or being at work, under the influence of alcohol or illicit drugs
- Unauthorised possession of agency property or any other person's property
- Frequent unauthorised absence from work
- Serious or persistent harassing behaviour of a sexual, racial, religious or discriminatory nature
- Incurring liability for an agency outside approved authorisation parameters
- Any convicted offence involving dishonesty or serious offences
- Assault or violence in any form at work or in any work-related environment
- Impairing or harming, or threatening to impair or harm, directly or indirectly, any individual or agency or the property of an individual or agency
- Failure to carry out lawful instructions from one's employer, manager, or their delegated authority
- Fraudulent practice which involves any act, or omission, or misrepresentation, that knowingly or recklessly misleads, or attempts to mislead, a party to obtain a financial or other benefit, or to avoid an obligation as determined by an investigation
- Corrupt practice which involves offering, giving, receiving or soliciting, directly or indirectly, anything of value to improperly influence the actions of another party as determined by an investigation

- Coercive practice which involves impairing or harming or threatening to impair or harm, directly or indirectly, any party or the property of the party to improperly influence their actions
- Collusive practice to achieve an improper purpose, including improperly influencing the actions of another party
- Intentional or reckless acts or omissions that lead to theft, waste or improper use of public sector assets
- Undeclared conflict of interest which leads to improper influence over a party's performance of official duties and responsibilities, contractual obligations, or compliance with applicable laws and regulations
- Obstructive practices which involve deliberately destroying, falsifying, altering, or concealing evidence material in an agency investigation; making false statements to materially impede an agency investigation; threatening, harassing, or intimidating any party to prevent it from disclosing its knowledge of matters relevant to an investigation, or from pursuing the investigation; or materially impeding the agency's contractual right to audit or access information
- Retaliation, detrimental act (direct or indirect), discrimination against, disadvantage or punishment of whistle blowers or witnesses during the course of employment, because of their actions or cooperation with an agency's investigation

Employers must take all reasonable steps to ensure that appropriate and sufficient protection is provided for: whistle blowers, witnesses or complainant who make disclosures under this policy.

Managing Misconduct and Serious Misconduct

Employers are responsible for managing the process for receiving, investigating and dealing with misconduct and serious misconduct in accordance with the principles of this policy.

1. Receiving allegations:

- Complainants must report alleged misconduct in writing within 14 working days of the circumstances or incident constituting misconduct or serious misconduct to the:
 - Head of Agency – where the allegation involves a public sector employee of that agency
 - Public Service Commissioner – where the allegation involves a head of agency
 Written complaints using the Public Sector Complaints Form must include details of:
 - All individuals directly or indirectly involved in the incident
 - The location, date and time of the incident
 - A description of the incident with relevant supporting documentation or evidence
 - Any third parties involved
- Where the complainant is unable to provide a written complaint after what they consider an unreasonable amount of time, they should refer it to the attention of the Public Service Commissioner.
- Complainants can remain anonymous, however, complaints confirmed to be vexatious, frivolous, or deceitful may be considered misconduct.
- Heads of Agencies or the Public Service Commissioner must acknowledge the complaint within three working days of receiving the complaint.
- An employer may suspend an employee on pay while an investigation is in progress
- The period of the investigation, up until the communication of the investigation recommendations, must not exceed one month, unless the investigation involves complex or complicated issues.

2. Investigations:

Alleged breaches of this policy may be investigated to confirm whether they constitute misconduct or serious misconduct.

2.1 Minimum criteria for an investigation to proceed:

- The complaint must be made by a natural person

- The complaint must relate to the conduct of a public sector employer, employee or contractor (where applicable)
- The complainant has reasonable grounds to believe the alleged conduct has occurred
- There is a reasonable possibility that the conduct constitutes misconduct or serious misconduct
- The alleged conduct is sufficiently important to investigate
- The complainant has provided their contact details – which must be kept confidential

If the complaint does not meet all the above criteria, the complainant must be notified in writing within three working days of acknowledging the complaint. If the complaint meets all the above criteria, an investigation is instigated and the complainant, accused and all relevant parties are notified of a pending investigation within five working days of acknowledging the complaint.

2.2 Investigation guidelines:

- Alleged misconduct or serious misconduct may be investigated, based on its facts and particular circumstances
- Individuals to be investigated must be advised of the alleged misconduct and given an opportunity to respond
- Professional judgment must be exercised during all stages of the investigation and all aspects of the investigation must be recorded in writing and placed on the respective individual's personnel file
- Every effort must be made to maintain the privacy of the complainant, the individual under investigation and witnesses
- Individuals involved in investigations may be accompanied by an appointed representative at meetings

If allegations of misconduct or serious misconduct are not borne out, an employee that has been suspended should be reinstated to their former employment status

2.3 Objectives of the investigation:

- To collate information regarding the allegation as quickly as possible
- To consider the information collected and draw reasonable, objective and impartial conclusions on the alleged conduct
- To maintain procedural fairness and confidentiality in the treatment of witnesses and the accused
- To make recommendations based on the conclusions drawn for remedial or appropriate action
- Investigations must apply the principle of natural justice at all times during the investigation. This involves procedural fairness to ensure a fair decision is reached by an objective decision maker.

2.4 Conducting the investigation:

- All discussions, phone calls and interviews with witnesses and relevant parties must be recorded or documented
- Persons under investigation or witnesses do not need legal representation during the investigation process
- A investigation report must be completed containing: a detailed outline of the allegation/s; an account of all information received and rejected information, including the reasons for rejection; and recommendations arising from the conclusions

3. Dealing with misconduct or serious misconduct:

If the employer or investigating body concludes misconduct or serious misconduct has occurred, the following remedies are available and must be communicated to the accused in writing within five working days of the conduct being confirmed as misconduct or serious misconduct:

3.1 Disciplinary Action

A warning may be issued in instances where behavioural changes are required and must be authorised by the employer:

- a first written warning (or verbal warning followed by a written warning); or
- a second and final written warning, stating any future breach or failure to perform required actions or standards may result in instant dismissal

The employer must include the following when issuing warnings:

- A clear description of the misconduct or serious misconduct
- Employee response to the misconduct or serious misconduct
- Outcome of investigations following the employee response, with relevant patterns of behaviour
- Prescribed remedial or corrective action to be taken
- Clear time frames for corrective action with consequences (if necessary) for not meeting corrective actions
- Confirmation in writing of outcomes after corrective actions have been completed

3.2 Instant dismissal for serious misconduct

- Employees may be dismissed without notice where serious misconduct is proven

Appeals against Remedies

Complainants may:

- Lodge an appeal to Public Service Commissioner if they dispute the findings or outcomes of the investigation by their employer. The Commissioner will then investigate the complaint and issue recommendations; or
- Utilise the mediation process provided in the Employment Relations Act; or
- Lodge a complaint with the Office of the Ombudsman; or
- Lodge an appeal the recommendations of the employer or Public Service Commissioner with the Public Service Appeal Board, through the High Court of the Cook Islands.

Heads of Departments who wish to dispute the findings and outcome of the investigation by the Public Service Commissioner use the process specified in Schedule 3 of the Public Service Act.

Other Provisions

All records relating to the administration of this policy must be kept for at least seven years and are only accessible by the employer and/or authorised staff. After the required seven year period, the department may destroy the documentation in adherence with government official information management policies.

OPSC is responsible for reviewing and updating this policy and associated documents from time to time.

Other information

For policy queries contact the Office of the Public Service Commissioner on phone (682) 29421 or email: opscinfo@cookislands.gov.ck