

# **Disciplinary Policy and Procedure**

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## **Human Resources**

# Disciplinary Policy and Procedure

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# **1. INTRODUCTION**

When council rules have been breached, this disciplinary policy and procedure provides a framework for managing misconduct.

## **2. OUR APPROACH**

We expect our employees to observe and maintain the highest standards of conduct and managers are expected to address conduct issues in the course of day-to-day management of staff.

If misconduct is serious, Brent's disciplinary policy provides fair and effective arrangements for maintaining expected standards of behaviour at work. Managers are expected to implement the procedures objectively and consistently. Human Resources and Legal Services are available to provide advice and support as required.

## **3. POLICY STATEMENT**

### **3.1 Policy summary**

This policy reflects the following key principles for dealing with issues of misconduct:

1. High standards of behaviour must be maintained at work at all times
2. Employees are expected to read, understand and comply with the Code of Conduct
3. Managers are expected to use this policy where misconduct warrants it
4. Issues will be dealt with fairly, consistently and promptly
5. Employees will be informed about concerns over their conduct and the process to be followed
6. Employees will be given sufficient opportunity to prepare their response
7. Managers will ensure that action and decisions are taken objectively without unfair discrimination.

This policy is non contractual, and reflects current legislation and good practice. The council reserves the right to amend the policy from time to time on the recommendation of the HR Director and will consult the trade unions recognised by the council for collective bargaining purposes before introducing any proposed changes.

## **4. MANAGING DISCIPLINARY POLICY AND PROCEDURE**

The policy operates in conjunction with the Code of Conduct and other rules and standards of performance relevant to the way in which employees should behave at work. The council will ensure that the policy is applied fairly to all employees and does not have a negative impact in relation to the council's equality strands: race, gender, religion or belief, sexual orientation, age and disability, gender reassignment, pregnancy and maternity, marriage and civil partnership

Where clarification is required about how to handle issues under multiple policies and procedures, advice should be taken from Human Resources.

The Grievance Policy and Procedure is separate from this policy and should not be used for disciplinary matters.

#### **4.1 General principles**

- This policy will be implemented transparently, fairly and consistently
- It applies principally but not solely to conduct at work
- Human Resources will maintain a pool of investigators to ensure that all cases of alleged misconduct can be dealt with in a timely manner
- Hearings must be chaired by an “independent person” senior to the member of staff being disciplined. Section 7.7 defines who an independent person is.
- Documentation submitted outside the timescales of this policy will be considered only in exceptional circumstances.

### **5. DEFINITIONS AND GENERAL INFORMATION**

#### **5.1 Employees**

This policy applies to all employees of the council with the exception of:

- Employees in their probationary period. Disciplinary issues during the probationary period should be handled under the council's Probationary Procedure.
- Temporary employees with less than 12 months continuous employment with the council.
- Agency workers. Brent does not consider agency workers to be employees of the council. Any disciplinary issues should be addressed with the employing agency.
- Teachers, and school-based non-teaching staff where the schools have separately agreed processes.
- Employees within the scope of the Joint Negotiating Committees for Chief Officers and Chief Executives of Local Authorities (who are covered by separate disciplinary arrangements).

#### **5.2 Disciplinary policy**

This policy applies to all matters relating to:

- Conduct in the workplace
- Breaches of council rules and standards
- Activities and behaviour outside the workplace which may adversely affect the suitability of the employee to do their job, or the relationship between the council and the employee, or the relationship between the employee and work colleagues, elected members or customers
- Allegations of misconduct arising from action under other council policies and procedures such as Grievance Policy and Procedure.

#### **5.3 Misconduct**

There are two kinds of misconduct:

- Misconduct – breaches of Brent’s rules and procedures which may attract a range of disciplinary sanctions up to and including dismissal;
- Gross misconduct – breaches that are considered to be so serious that the basis of trust between the council and the employee is seriously damaged or destroyed, and which will normally result in dismissal.

This policy applies principally to conduct at work. However, there may be exceptional circumstances where conduct in an employee’s personal life may also involve sanctions up to and including dismissal.

Examples of acts of misconduct and gross misconduct are available on the [Disciplinary](#) web page.

## 5.4 Sanctions

Disciplinary sanctions, which may be taken, are:

- Written warning(s)
- Final written warning
- Dismissal with or without notice

Any formal action will be recorded and retained on an employee’s personal file and in certain circumstances may be declared to a statutory body.

Written warnings must state the period of time over which the warning will be regarded as ‘live’ for the following periods of time:

- First written warnings – twelve months from date issued;
- Final written warnings – two years from date issued.

An employee’s conduct must be satisfactory during this time and any lapses in conduct will result in a more severe penalty. There may be circumstances where it is appropriate to take account of previous expired warnings at the time of further misconduct.

Documentation relating to the disciplinary action will be retained on the employee’s personal file after the expiry of the disciplinary action taken.

There may on occasions be an acceptance on the part of the employee that misconduct (short of gross misconduct or where warnings have been issued and dismissal is a possible outcome) occurred. In these circumstances a request can be made to agree to a penalty without going through a disciplinary hearing. This would be by exception and must have the approval of the HR Director. The decision to accept a penalty without going through a disciplinary hearing would only ever be by exception through agreement between the council and the employee (and their representative). Employees retain the right to choose to defend his or her position at a formal hearing.

If the employee accepts the misconduct the next stage is for the hearing manager in consultation with the HR Manager to determine the sanction proportionate to the misconduct. If the individual disagrees with the sanction then a hearing would be convened to consider the reasonableness of the sanction. The hearing would not consider the facts of the case and whether misconduct occurred as the individual has admitted the misconduct. If the individual remains dissatisfied with the decision regarding the disciplinary sanction they retain the right to appeal against the reasonableness of the sanction.

## **5.5 Contractual Notice**

An employee who is dismissed from Brent's service will normally be entitled to contractual notice or pay in lieu of notice (subject to normal deductions) except where the dismissal is for gross misconduct where dismissal will be without notice or pay in lieu of notice.

## **5.6 Confidentiality**

Confidentiality and privacy will be maintained as far as possible during the disciplinary process.

## **5.7 Correspondence and records retention**

All correspondence with employees subject to disciplinary action (including letters convening hearings, details of allegations, documentary evidence and decisions of hearings) should be delivered either by 'hand' on behalf of the council, or by recorded or registered post or by email. A further copy should also be sent through the ordinary post.

Records must be kept detailing disciplinary action taken and will be retained on the employee's personal file.

## **5.8 Criminal Offences**

Where allegations against an employee may potentially involve criminal offences, advice must be taken from the HR Director before any action is taken under this policy.

Where an employee is the subject of a criminal investigation or a charge is pending regarding a criminal act, these will not normally be grounds to delay or prevent a hearing taking place. However, where a request is made by the police or Crown Prosecution Service to defer taking action, the HR Director may consider this. Any deferral of disciplinary action in response to such a request should not continue on an open-ended basis.

Managers must not rely on obtaining evidence from the police, but should conduct their own investigations prior to the hearing.

## **5.9 Suspension**

Suspension should be used during the investigation/disciplinary process when it is clearly inappropriate for the employee to remain in the workplace. Advice should be sought from a HR Manager on when suspension is appropriate.

Suspension will normally be with full contractual pay and must be approved by the HR Director or HR Manager in her absence. The HR Director has authority to suspend an employee where a situation arises which requires immediate action.

A manager may send the employee home pending a decision on formal suspension by the relevant Head of Service or HR Manager. For avoidance of doubt the suspending manager must be at Head of Service level. Employees must be available to the council at all times during paid suspension (employees who wish to take annual leave must discuss this with their manager and seek approval in the usual way). A suspended employee must:

- Not enter council premises without permission
- Not use council systems, or undertake council business, without permission
- Not contact or approach employees, customers or elected members
- Attend interviews during the suspension and co-operate with the investigation
- Return all council equipment e.g. ID pass
- Not engage in other work (paid or unpaid) during the contracted working time with the council.

The manager will confirm the reasons for suspension to the employee in writing. The manager will advise the employee how long the investigation is likely to last. Suspensions should be for as short a time as possible and should be reviewed on a regular basis.

Suspensions should be lifted promptly where there is no risk of prejudice to the investigation, or management consider there is no case to answer.

A suspended employee will require written permission from Human Resources to enter any council premises, whether this is to seek access to information or prepare a case. A suspended employee is not restricted from making contact with their trade union representative.

An employee who is medically unfit for work during suspension will be treated as absent for reasons of sickness and not on suspension. Pay may be withheld if an employee does not cooperate with the investigation during the period of suspension. Advice must be taken from the HR Manager.

### **5.10 Qualifications and Compliance Issues**

Employees in particular professions may need to hold a specific regulatory classification and/or maintain certain standards to carry out their job (e.g. registration with a professional organisation). Where this is the case, Brent may have a duty to report incidents of alleged professional misconduct or serious performance issues to the appropriate registration authority or statutory body. Advice should be sought from the HR Director.

If a statutory body is involved (for compliance/regulated posts), it is a requirement that serious allegations must be reported to it whilst disciplinary action is being taken against an employee.

Where conduct issues involve employees working in safeguarding children or vulnerable adults, it is not appropriate to terminate disciplinary action if the employee resigns before this is completed. Where such circumstances arise, the manager **must** seek advice from the HR Director.

## **6. ROLES AND RESPONSIBILITIES**

### **6.1 Employees**

Employees have a responsibility to:

- Familiarise themselves and comply with the disciplinary policy and procedures that apply in relation to their employment
- Comply with all reasonable management instructions
- Adopt appropriate standards of behaviour towards others, including employees', members and customers and co-operate with disciplinary investigations
- Tell managers as soon as possible where problems arise which may impact on their behaviour or performance at work, e.g. personal or health issues
- Report potential malpractice or fraud to their line manager or to the Head of Audit and Investigations whenever they become aware of it.

## **6.2 Temporary Employees**

Where disciplinary issues arise with a temporary employee with less than 12 months continuous service, the employee's manager or designated senior officer will investigate where appropriate, and a meeting will be convened with the employee to discuss the issues and impose any disciplinary sanction.

The employee will have a right of appeal to a manager of the same level of seniority as or at a higher level of seniority than the manager who made the disciplinary decision.

An employee may be dismissed without being given a prior warning.

## **6.3 Line managers**

Line managers have responsibility for conducting disciplinary hearings, other than when the outcome of the hearing results in dismissal, and must use these procedures and should not rely on informal processes.

## **6.4 Directors, Operational Directors and Heads of Service**

Directors, Operational Directors or other Heads of Service at the same level of seniority or at a higher level of seniority as the Hearing Manager will hear appeals against disciplinary action including dismissal. Managers below Head of Service level may **not** carry out suspensions and hear cases which could result in dismissal.

## **6.5 Staff Appeals Sub Committee**

The Staff Appeals Sub Committee will only be convened by exception at the discretion of the HR Director, for staff at Operational Director level and below. The staff Appeals Sub Committee will consider dismissal appeals of directors.

## **6.6 Human Resources**

The role of Human Resources is to provide advice on this procedure and participate in any associated hearings.

## **6.7 Trades Unions**

The role of the trades unions is to represent the views and interests of their members on this policy and associated procedures, as a need arises, and to advise and represent individual members as appropriate.

Where concerns about conduct involve an employee who is an official of a recognised trades union, the matter should be discussed at an early stage with an official employed by the relevant trades union. The HR Director or HR Manager should also be notified as soon as possible about cases involving trades union representatives and will advise if any other action is required. This should not delay managers taking the appropriate steps in the normal way under this policy.

# **7. APPLYING DISCIPLINARY PROCEDURES**

## **7.1 Timescales**

All parties involved in disciplinary proceedings have an obligation to co-operate in ensuring that processes and reasonable timescales are followed.

## **7.2 Investigation**

Where a disciplinary issue has arisen, a manager will seek advice from Human Resources and a decision will be reached as to who will carry out the investigation. This may be the line manager, an internal investigating officer or an externally appointed investigator. External investigators are appointed by the HR Director. All internal investigators must have undergone investigation training organised by the council.



The Audit and Investigations Team will carry out investigations into cases of alleged fraud, corruption and financial misconduct or anti fraud and corruption strategies.

Normally an employee will be informed in writing about any allegations as soon as possible, save exceptional circumstances.

Anonymous allegations made against an employee are not normally investigated unless the HR Director considers by exception otherwise.

Employees are required to co-operate with the investigation and further disciplinary action will be taken against an employee who refuses to comply with a reasonable management instruction in relation to an investigation.

### **7.3 Representation**

Employees have the right to advice and guidance at any formal stage in this procedure and at an informal stage meeting where a decision to move to the formal action procedure is likely to be taken. Employees also have the right to be represented and/or accompanied by either:

- A trade union representative or
- A work colleague (a person who is a council worker) but not a legal representative.

It is the employee's responsibility to organise representation on the relevant date. However, as far as possible, employees and their representatives will be consulted on the timing of meetings/hearings.

The representative can put forward a case on behalf of the employee and can give advice and support during the process. The representative cannot, however, answer questions for the employee. The employee must at all stages respond to questions asked during a meeting convened to address an employee's conduct.

### **7.4 Investigation report**

The Investigating Officer will produce an investigation report as soon as practicable and present it to Human Resources and the Manager who commissioned the investigation. The report will give details of allegations, evidence, mitigation findings and a recommendation on whether the case should proceed to a disciplinary hearing. The employee's account of the events, witness statements and supporting documentation should be attached to the report.

If the report is accepted and disciplinary action is required, a formal disciplinary hearing will be convened by the disciplining manager.

Where it is accepted not to proceed to a formal hearing, the employee will be informed.

### **7.5 Records of interviews, meetings and hearings**

A written record of all investigation interviews and hearings must be made. It will not be a verbatim record but will accurately reflect all of the issues raised at the interview/hearing.

Following an investigation interview the employee/witness(es) must be asked to sign and date the interview record as being an accurate record of the interview. Any disagreement concerning the record should be annotated in the document by the employee/witness(es) and reflected in the investigation report.

Following a disciplinary hearing the Hearing Manager is responsible for producing the record of the hearing. The Hearing Manager must also provide a letter summarising the case, details of the decision made and the reasons.

## **7.6 Convening a disciplinary hearing**

The disciplining manager is responsible for organising disciplinary hearings and for ensuring that an accurate record of events is produced (normally by the HR adviser to the hearing).

If a disciplinary hearing is convened, the employee will be informed in writing of:

- Date, time and place of the hearing
- Who will hear the case
- Who will present the case
- Details of the allegation(s)
- The status of the hearing and the possible consequences including where appropriate dismissal
- How any current 'live' warnings will be treated in reaching a decision
- The right to be accompanied by a trade union representative or Brent council worker
- The right to call witnesses and to produce relevant information.

The employee will be given:

- At least seven working days written notice of the disciplinary hearing
- A copy of the Investigating Officer's report (including witness statements) where an investigation has been conducted
- Access to a copy of Brent's Disciplinary Policy.

All documentation from both parties must be provided at least three working days before the hearing along with the names of any witnesses to be called. The employee and the Investigating/Presenting Officer are responsible for arranging any witnesses and organising their attendance.

In certain circumstances it may be appropriate to restrict the calling of witnesses where for example, it could have a detrimental impact on the future of the service provision or due to extremely sensitive circumstances. This would be by exception and where there is good cause. The council would not prevent the calling of witnesses in the case of gross misconduct.

## **7.7 Disciplinary hearing**

The hearing will normally involve the Hearing Manager and a Human Resources Adviser who will also be the note taker. The Hearing Manager will be an independent person who will not have had any previous involvement in the case. An independent person is defined as someone who will not have been involved in a manner which prevents them from determining an objective outcome. The Hearing Manager will decide whether to consider documentation submitted by either party outside the timescales in this Policy.

A manager below Head of Service level may not hear cases which may result in dismissal.

The Hearing Manager will ensure that the process is fair and implement and conduct the proceedings to ensure that:

- Brent's procedures are followed
- The hearing is free from any bias
- The employee understands the nature of the allegations

- The employee is given the opportunity to state his/her case.

The conduct of the hearing will be as follows:

- Manager's case examined and questioned
- Case for the employee examined and questioned
- Further questioning and clarification as requested by the Hearing Manager
- Closing statements
- Decision.

## **7.8 Decision**

The Hearing Manager will decide whether the allegation(s) is substantiated, based on the balance of probabilities taking all the evidence into consideration and any disciplinary sanction to be imposed.

Where possible, the Hearing Manager will give the decision verbally at the end of the hearing after a period of adjournment to make the decision. In all cases the decision will be given in writing within five working days of the meeting.

## **7.9 Dismissal approval process**

All dismissal decisions need to be signed off by the HR Director or the HR Manager in her absence.

# **8. APPEALS**

## **8.1 Right of appeal**

Appeals against disciplinary action (including dismissal) will be heard by a Director, Operational Director or Head of Service and the Hearing Manager will present the management case. An adviser from Human Resources will be present. The Staff Appeals Sub Committee will only be convened by exception at the discretion of the HR Director for staff at Operational Director level and below. The staff Appeals Sub Committee will consider dismissal appeals of Strategic Directors and those officers who report directly to the Chief Executive.

An employee has the right of appeal against disciplinary action taken under this procedure.

An appeal may be lodged on one or more of the following grounds:

1. Procedure – where failure to follow the correct procedure has had a material effect on the decision
2. The facts of the case – where the Hearing Manager came to a conclusion on a material point of fact, which no reasonable person could have reached
3. Sanction – where no reasonable Hearing Manager would have decided the particular sanction given the circumstances of the case
4. New evidence is available that could not have reasonably been raised at the disciplinary hearing and the absence of which had a material effect on the decision.

Appeals will not be allowed on any other grounds.

## **8.2 Timescale**

Appeals must be lodged in writing to the Hearing Manager within ten working days of the receipt of the letter informing the employee of the outcome of the disciplinary hearing and must outline the grounds of appeal.

## **8.3 Process**

Appeals against disciplinary action (including dismissal) will normally be heard by a Strategic Director or Operational Director or Head of Service and the Hearing Manager will present the management case. An adviser from Human Resources will be present.

The Staff Appeals Sub-Committee will hear appeals against dismissal for Strategic Directors and those officers who report directly to the Chief Executive.

An appeal lodged against dismissal does not require the employee to be reinstated pending appeal.

The Presenting Manager for the appeal will normally be the Hearing Manager at the original disciplinary hearing. An adviser from Human Resources will be present to advise the panel. For some appeals it may be appropriate to have a legal adviser present as well.

An employee will be given in writing seven working days notice of the appeal hearing. Documentation and information regarding witnesses to be called must be provided by both parties at least three working days prior to the hearing.

In certain circumstances it may be appropriate to restrict the calling of witnesses where for example, it could have a detrimental impact on the future of the service provision or due to extremely sensitive circumstances. This would be by exception and where there is good cause. The council would not prevent the calling of witnesses in the case of gross misconduct.

The appeal hearing will not be a rehearing and will only address the specific grounds of appeal set out in the employee's appeal submission, and new evidence where appropriate.

## **8.4 Decisions**

The possible outcomes of an appeal hearing are as follows:

1. Uphold the original decision in its entirety
2. Allow the appeal in its entirety
3. Allow the appeal in part (where the appeal challenges more than one finding of misconduct)
4. Increase or reduce the severity of the sanction.

Where an Appeal is suspended the case will be referred back to the original Hearing Manager who will seek the advice of the HR Manager or in the event of a member appeal the HR Director.

Decisions will be confirmed in writing outlining reasons for the findings. There is no further right of appeal.

## **9. MONITORING AND REVIEW**

Application of this policy and decisions taken on disciplinary matters will be monitored to ensure consistency and fairness.

This policy will be reviewed as necessary to take account of legislative changes, operational experience and best practice.

On the recommendation of the HR Director, the council reserves the right to make changes to the application of this policy from time to time.