

Appendix 1

# DISCIPLINARY PROCEDURE

## CONDUCT AND DISCIPLINE

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## **OVERALL CONTEXT**

### **MANAGING EMPLOYEE CONDUCT**

This policy and procedure provides managers with a structured framework that enables them to:

- Remedy any problems of misconduct promptly and effectively including gross misconduct
- Keep staff informed of the action they face if they fail to meet the Council's standards of conduct
- Deal with disciplinary matters lawfully, fairly, consistently and in line with the principles of natural justice.

### **LEGAL CONTEXT**

The framework for managing employee conduct takes into account the provisions of the Employment Rights Act 1996, the Employment Relations Act 1999, the Employment Act 2002 and the ACAS Code of Practice on Disciplinary and Grievance Procedures.

### **ADVERSE IMPACT ANALYSIS**

The Council wishes to ensure that its policies and procedures do not impact unfairly on employees with reference to race, sex, religion or belief, sexual orientation or disability. Managers are therefore required to ensure that their application of this policy and procedure does not have this adverse impact, for example, in the unbalanced use of formal processes on particular groups of employees compared to the informal process.

### **EMPLOYEES COVERED BY THIS POLICY AND PROCEDURE**

This policy and procedure applies to all permanent employees and to temporary employees with at least six months continuous employment with Brent Council.

### **EMPLOYEES NOT COVERED BY THIS POLICY AND PROCEDURE**

- The policy and procedure do not apply during the employee's probation
- To school based staff under LMS, and to teachers who are employed in units other than in schools, who are subject to a separate code
- To Chief Officers whose terms and conditions of employment are determined by the National Joint Council for Chief Officers in Local Authorities
- In respect of any act or omission of the employee (other than breaches of his/her contract of employment with the Council) which happened prior to his/her employment with the Council. This matter will be dealt with under a separate procedure.

## **OUTLINE OF POLICY AND PROCEDURE**

Dealing with formal discipline in the Council can be seen as a four-stage process (five if it is necessary to suspend the employee)

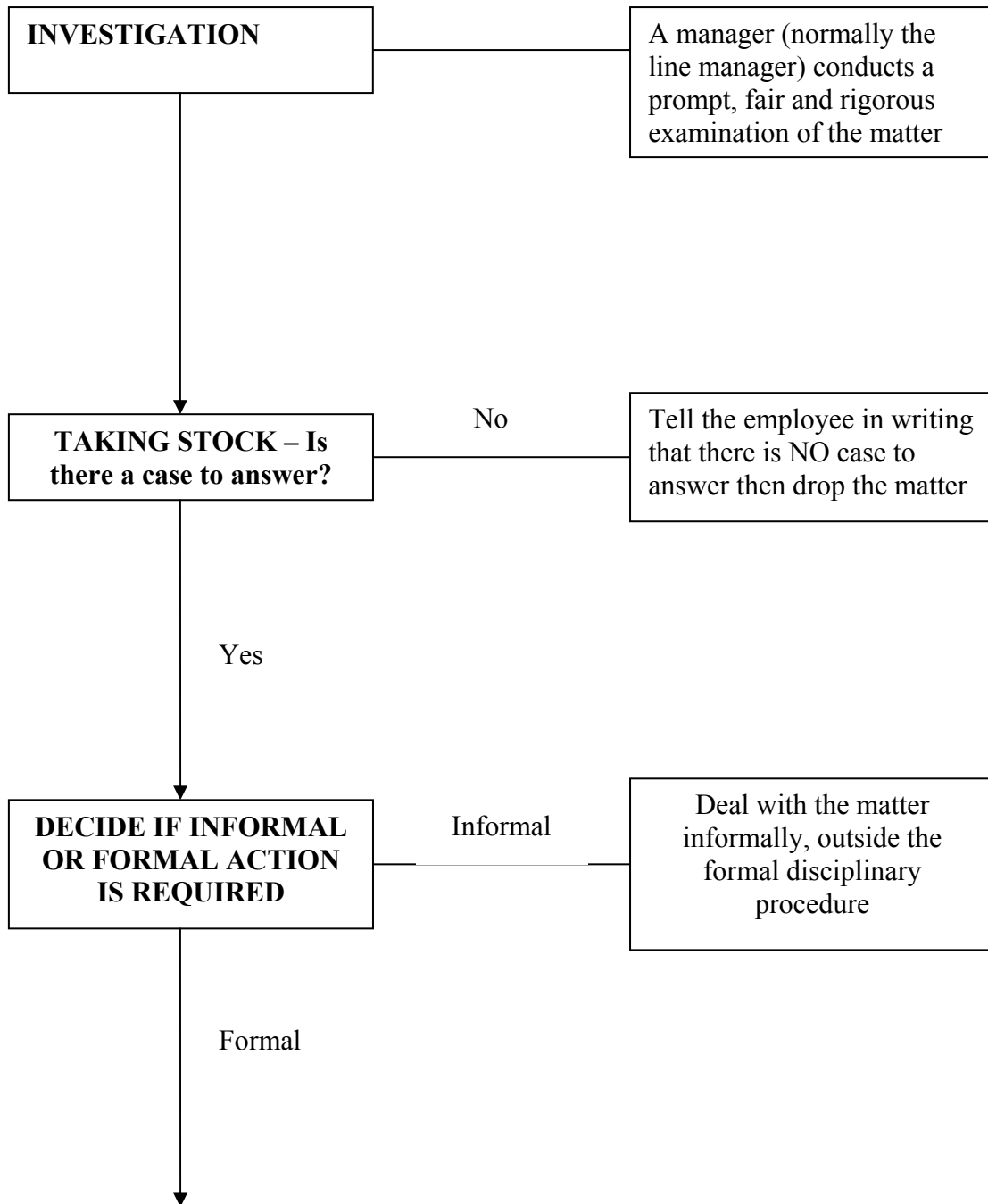
1. Investigation
2. Brief Suspension (If Appropriate)
3. Notifying the Employee of any Disciplinary Hearing
4. Disciplinary Hearing
5. Appeal

The employee is entitled to be represented at each stage of the procedure.

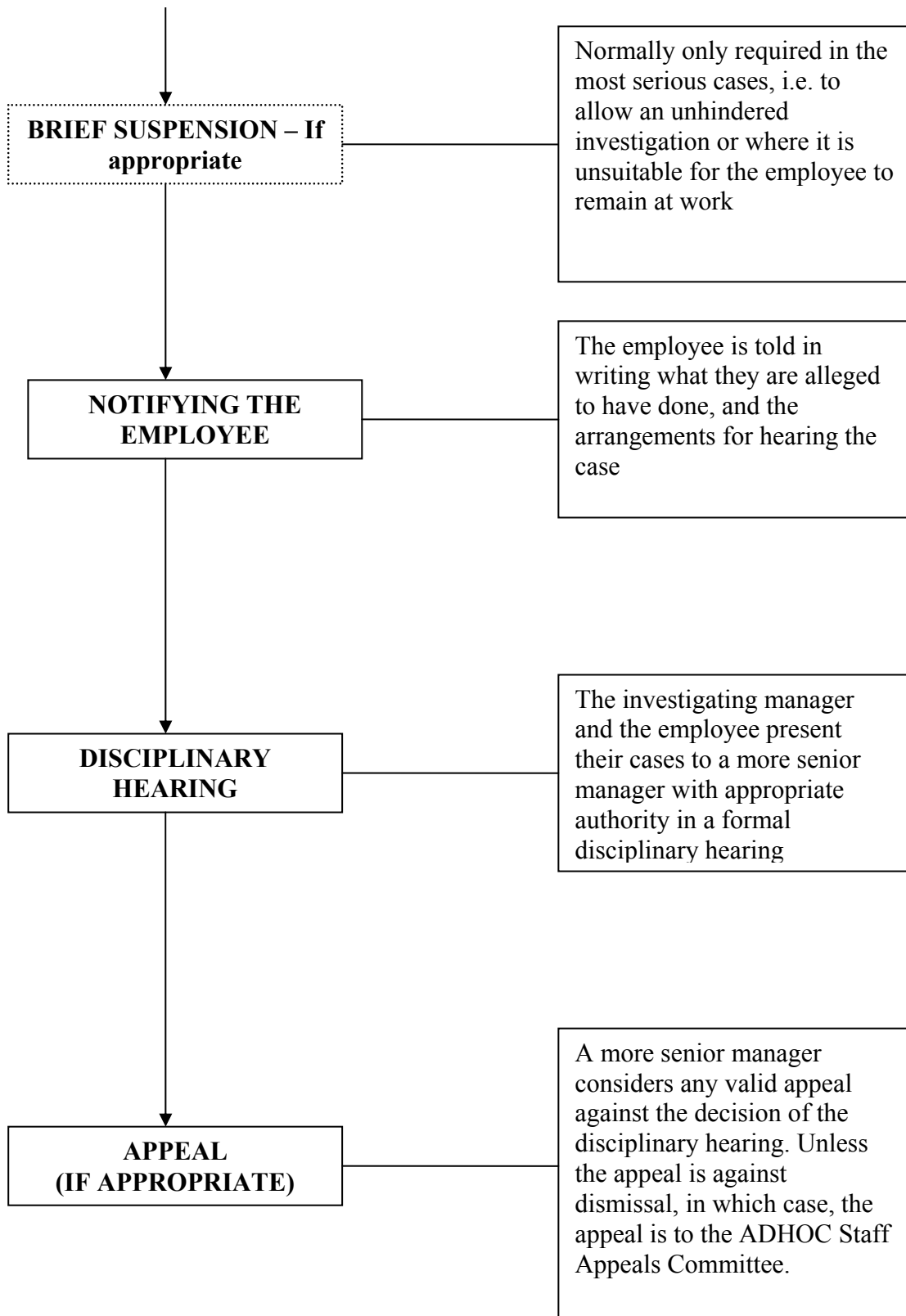
This policy and procedure provides for:

- Disciplinary matters to be investigated,
- The employee to be told of any allegation against them,
- The matter to be considered in a disciplinary hearing and,
- if appropriate, for the employee to have a right of appeal

## STAGES OF PROCEDURE



Formal Procedure:



## **1. INVESTIGATION**

### **The Line Manager will**

- Normally undertake the investigation. (There may be times when a more senior manager or the Special Audit and Investigations Unit carry out an investigation)
- Decide and keep under review whether the case warrants a period of suspension
- Plan the investigation to ensure the matter is dealt with fairly, effectively and promptly
- Meet with the employee, outline the nature of the allegation and gather relevant facts without undue delay
- Meet with any witnesses without any undue delay
- Gather evidence and take any witness statements promptly before memories fade
- Keep evidence secure and confidential
- Take stock of all the evidence and decide whether:
  - The employee has a case to answer in a formal disciplinary hearing
  - The matter can be dealt with by way of informal corrective action, and outside of a formal disciplinary hearing
  - To drop the matter
- If appropriate consult with a HR Manager or equivalent and deal with the matter formally in a disciplinary hearing conducted by a senior manager.
- If necessary prepare a written statement of the case for later submission to a formal disciplinary hearing

### **The employee is entitled to**

- Be told the purpose of any investigatory meetings
- The opportunity to be represented by a Brent employee or trade union representative, (but not a paid legal representative)
- Be told the nature of any allegation against them
- Give any explanation and to give their own account of events
- Be told in writing if there is no case to answer

## **ROLE OF AUDIT AND INVESTIGATIONS TEAM**

A member of the Audit and Investigations Team will undertake the investigation in cases of alleged fraud, corruption, and financial misconduct or conduct reported under the Council's 'Confidential Reporting Code'. The team will be responsible for obtaining all the evidence, interviewing the employee and any witnesses.

## **2. SUSPENSION**

### **The manager will**

- Where possible meet with the employee, outline briefly the nature of the allegation and hear any initial response the employee may wish to make
- Conduct a brief preliminary enquiry into the facts of the case and alternatives to suspension to satisfy him/herself whether suspension is appropriate before making any decision to suspend
- Explain any action of removal from the workplace to the employee
- Tell them they must be available to co-operate with the investigation
- Say how long the investigation is likely to last
- Notify any suspension to the appropriate HR Manager
- Review suspension at 10 working day intervals if the matter is not resolved

### **The employee is entitled to**

- Be told the reason why they are being suspended
- Be told of any conditions that apply to the suspension
- Give an initial response to any allegations
- The opportunity to be represented by another Brent employee or Trade Union Official but not a paid Legal representative
- Have the suspension confirmed in writing normally within three working days
- Be paid in full save in exceptional circumstances provided that they remain available to assist with or respond to the disciplinary process

Suspension should never be automatic and only be imposed after careful consideration. It should be made clear to the employee that the suspension does not involve any prejudgement of the case, and does not imply guilt.

It is only necessary where:

Gross misconduct is alleged, in which case suspension will normally be appropriate if the suspending manager decides the employee is to be removed from his/her normal workplace because the nature of the allegations pose a risk to people or property. Or

The investigation could be hindered by the employee's continued presence at work, and / or, because of the nature of the allegation/s, the employee's presence in the workplace poses a risk, and/or relationships in the workplace have broken down, and

Another option, which temporarily removes the employee from their substantive place of work during the process, is not possible and is not appropriate.

The suspending Manager is normally one with authority to do so. However if such a manager is not available the most senior manager on duty may send the employee home until the relevant parties can meet.

If no appropriate representative is available the employee may simply be sent home until the relevant parties can meet for a formal suspension meeting.



### **3. NOTIFICATION OF THE DISCIPLINARY HEARING**

#### **The Investigating Officer will**

Notify to the employee in writing of:

- The date, time and place of the disciplinary hearing
- What they are alleged to have done
- Who will present the case and who will hear it
- The names of any management witnesses
- Arrangements for exchanging documents, witness statements and the investigating manager's written report of the investigation, otherwise known as the case statement
- If the job is at risk and the reason for this
- Rights to representation
- Give the employee a copy of the Disciplinary Procedure

#### **The employee is entitled to**

- Reasonable notice (normally 10 working days) in writing of the date of the hearing and other details as set out above.
- The opportunity to be represented by another Brent employee, an official employed by a trade union or a certified trade union official (but not a paid legal representative). A certified trade union official is one whom the trade union has reasonably certified in writing as having experience of, or as having received training in acting as an employee's companion at disciplinary or grievance hearings.
- Postpone the hearing to another reasonable time within 5 working days after the original date –only if their representative will not be available at the time proposed
- Submit evidence, documents and the names of witnesses relevant to their case.

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Normally management will arrange for the employee to receive any additional documents and the final list of names of witnesses at least 5 working days before the hearing.

The employee will arrange for management to receive the documents and information they themselves wish to submit at least 3 working days before the hearing.

The job is normally only at risk where either:

The employee has a final unexpired written warning, or

The case appears to be one of gross misconduct

With the right communication there should be no need for any delay. There will normally be only one postponement.

## **4. DISCIPLINARY HEARING**

### **The manager hearing the case will**

- Conduct the meeting as a fact-finding process, ensuring good order and natural justice.
- Ensure that all the necessary facts are considered before making a decision on the case, if necessary by requiring other witnesses/evidence to be called/produced.
- Decide on any dispute about procedure at the outset.
- Carefully consider and evaluate the evidence presented by the parties at the hearing.
- Judge the facts of the case on the balance of probabilities
- Consider how serious the offence is
- Take into account the advice given by the HR Adviser or Legal Services adviser present at the hearing.
- Consider what action (if any) to take to improve conduct
- Apply any appropriate disciplinary sanction and explain any conditions that apply to it.
- Ensure that adequate notes are taken bearing in mind that a record of the hearing may be needed for an appeal or future Employment Tribunal case.
- Confirm the decision in writing and set out any right of appeal.

### **The employee is entitled to**

- The opportunity to be represented by another Brent employee, an official employed by a trade union or a certified trade union official (but not a paid legal representative)
- Save in special circumstances, hear the case made against them
- Put their side of events
- Bring witnesses to give evidence relevant to the case
- Question the evidence of the management witnesses (in special circumstances the employee and/or his/her representative may not be permitted to ask questions of a particular witness or witnesses).
- (The Council will release its employees to appear as witnesses as required by either side)
- A letter confirming the decision, the key issues considered in reaching the decision and any right of appeal where appropriate
- Appeal against any decision issued
- The appeal must:
- Be on specified grounds
- Set out in full the grounds of appeal
- Be lodged within 10 working days of the date the employee receives the decision letter

## 5. APPEAL HEARING

### The Panel hearing the appeal will

- Conduct the meeting ensuring good order and natural justice
- Decide any dispute about procedure
- Consider the grounds of appeal and if appropriate reconsider the decision of the disciplinary hearing
- If necessary change the decision on the facts of the case or reduce the severity of the management action
- Confirm the decision in writing

### The employee is entitled to

- Reasonable notice (normally 10 working days) in writing of the date of the hearing
- To be represented by another Brent worker, an official employed by a trade union or a certified trade union official (but not a paid Legal representative)
- Postpone the meeting to another reasonable time within 5 working days after the original date, only if the representative is not available at the time proposed.
- Put the grounds of appeal and bring evidence relevant to their appeal
- Hear and be able to question the management case

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The appeal will examine the grounds of appeal. It will not normally constitute a full rehearing and will be on one or more of the following grounds

**Procedure** – failure to follow procedure had a material effect on the decision

**The facts of the case** – the manager came to a conclusion on a material point of fact, which no reasonable person could have come to

**Sanction** – no reasonable manager would have come to such a harsh decision given the circumstances of the case

**New evidence** – Only new evidence that could not reasonably have been raised at the disciplinary hearing and the absence of which had a material effect on the disciplinary decision, can be considered. The appeal is not to be used to re-argue the case with different evidence.

## **DISCIPLINARY SANCTIONS**

**The following formal sanctions are available:**

<b>WARNINGS</b>	<b>NORMAL DURATION</b>
First Written Warning	6 months
Second /Advanced Written Warning	12 - 18 Months
Final Written Warning	24 months.

**Dismissal:**

Either in response to proven allegations of gross misconduct, or in response to proven allegations of misconduct whilst the employee has a final written warning on file, or in circumstances where a warning would be futile because there is no prospect of it securing an improvement in the employee's conduct.

### **Alternative Options to Dismissal**

Having decided that dismissal is within the range of reasonable responses, the hearing officer may, in exceptional circumstances, consider transfer or demotion as alternative options to dismissal provided the following criteria are met:

#### **A. Transfer to another suitable job –**

Can be applied in exceptional circumstances, as a possible alternative to dismissal in accordance with the above criteria, where there are extenuating mitigating circumstances and where the offence means the employee cannot continue in their original work place, but where the employee might be suitable to work elsewhere in the Council.

#### **B. Demotion –**

Can be applied in exceptional circumstances as a possible alternative to dismissal in accordance with the above criteria, but where there are substantial mitigating circumstances.

### **Extended Written Warnings**

Where the offence has been committed against a Council service user A First or Second Written Warning should remain active for 2 years

### **Final Written Warnings that are never spent**

In exceptional cases (for example inappropriate behaviour towards vulnerable people, or gross negligence of the duty of care for clients, or misconduct verging on gross misconduct) where it is decided not to dismiss because of the particular circumstances of the case. e.g. very strong mitigating factors. Nonetheless the misconduct may be so serious that the Council would be justified in never regarding a final written warning as spent. ACAS makes clear that in such cases the employer should make clear:

- That the final warning can never be removed
- The possible consequences of a recurrence

## **EXAMPLES OF MISCONDUCT**

It is impossible to list every type of act, which would result in disciplinary action for misconduct. The examples of misconduct below are given so that all Council employees have a general understanding of the type of act, which would result in such action.

1. Repeated lateness for work.
2. Unauthorised absence from work.
3. Repeated failure to follow absence-reporting rules.
4. Negligence at work leading to injury or loss of or damage to Council or public property.
5. Refusal to obey a reasonable and lawful management instruction.
6. Acts of discrimination, harassment, bullying, the making of remarks, or verbal abuse against employees, Council Members, clients or members of the public on the grounds of race, colour, nationality or ethnic or national origins, age, use of mental health services, sex, marital status, religious belief, sexual orientation or disability. The display within the workplace of any literature or material that could affect the dignity of others.
7. Breach of the Code of Conduct.
8. Inadequate standards of work due to negligence or wilful failure to perform.
9. Abusive or threatening behaviour towards an employee, Council Member, client or member of the public.
10. Engaging as a full-time employee in other business or additional employment without the express consent of the Council.
11. Failure to declare an interest, direct or indirect, in any Council contract, which has been or is, proposed to be entered into by the Council.
12. Failure to discharge obligations in accordance with statute or contract of employment.
13. Breach of Council policy, procedure or professional practice.

## **EXAMPLES OF GROSS MISCONDUCT**

It is impossible to list every type of act, which would result in disciplinary action for gross misconduct. The examples of gross misconduct below are given so that all Council employees have a general understanding of the type of act, which would result in such action.

1. Serious failure to comply with or apply the Council's Equal Opportunities or related Policies.
2. Serious acts of discrimination, harassment, bullying, the making of remarks, or verbal abuse against employees, Council Members, clients or members of the public on the grounds of race, colour, nationality or ethnic or national origins, age, use of mental health services, sex, marital status, religious belief, sexual orientation or disability. The display within the workplace of any literature or material that could seriously and adversely affect the dignity of others.
3. Serious breach of the Code of Conduct.
4. Grossly inadequate standards of work due to negligence or wilful failure to perform
5. Serious negligence, which causes unacceptable loss, damage or injury.
6. Serious acts of insubordination.
7. Culpable lack of care towards clients.
8. Serious incapability through abuse of alcohol or drugs (subject to use of the Council's policy for dealing with employees suffering from alcohol or drug misuse when appropriate).
9. Sexual misconduct at work.
10. Sexual offences.
11. Falsification of qualifications which are a statutory or essential requirement of employment or which allow the employee to succeed in getting another job with the Council or which result in additional remuneration.
12. Falsification of Council documents/forms e.g. attendance sheets, bonus sheets, subsistence and expense claims, application forms completed by Brent staff, etc.
13. Acceptance of bribes or other corrupt practices, such as improper use of an official position for private gain or the private gain of some other person
14. Serious breach of financial regulations, standing orders or other corporate standards including fraudulent activity and /or financial irregularity.

15. Unauthorised use and/or disclosure of confidential information relating to the business of the Council, its Members and employees or the members of the public with whom it has dealings.
16. Unauthorised removal, possession or use of property belonging to the Council, its Members, an employee, client or member of the public.
17. Theft of property belonging to the Council, its Members, an employee, client or member of the public, including Housing Benefit and Council Tax Benefit fraud.
18. Wilfully causing serious damage to the property of the Council, its Members, its employees, its clients or the public.
19. Serious breaches of safety policies or practices including deliberate damage to or misappropriation of safety equipment endangering other people.
20. Acts of violence including the physical assault of and serious threatening or abusive behaviour towards an employee, Council Member, client or member of the public.
21. Committing a criminal offence unconnected with the Council but which makes the employee unsuitable for continued employment with the Council. (e.g.) committing an offence of dishonesty against another public sector body such as another local authority, the Department of Work and Pensions or the National Health Service)
22. Undertaking unauthorised paid work during paid Council time or during any period of sickness absence.
23. Unauthorised or inappropriate use of software and related IT equipment, including processing, storing or transmitting offensive or libellous material via email, the internet or the intranet.
24. Any action, which brings or could bring the Council and its reputation into disrepute.
25. Any conduct which conflicts with, or detrimentally affects the Council's interest, or in any way weakens the confidence of the Council or the public in the employee. An employee's wilful non-payment of monies (for example, Council Tax or housing rent) owed by them to the Council would fall into this category.

## **MANAGEMENT GUIDANCE NOTES**

### **INFORMAL CORRECTIVE ADVICE, COACHING AND COUNSELLING**

Minor cases of misconduct may best be dealt with by informal advice, coaching and counselling, rather than through the Disciplinary Procedure. Therefore counselling or informal corrective discussions should normally be held unless the offence is repeated or serious enough to warrant immediate use of the formal procedure. As the manager you need to ensure that you discuss work problems with the employee at an early stage with the objective of encouraging and helping them to improve. These discussions are usually informal one to one meetings. But if the employee wishes to be accompanied by a work colleague or trade union representative, you must allow this.

- Explain to the employee:
- What they are said to have done wrong
- The proper standard of conduct expected
- How the conduct will be reviewed and over what period
- That this stage is not part of the formal disciplinary procedure
- That it may be necessary to move to the formal disciplinary procedure if the employee's conduct does not improve

As the manager you should retain your own notes of informal corrective discussions with the employee, as they may be relevant if it becomes necessary to take formal disciplinary action against the employee at a later stage. You must keep these notes secure and confidential but not on the employee's personal file. Give the employee a copy of the notes.

Depending on the circumstances of the case you may decide to write to the employee to outline the discussions at the meeting, and to confirm the correct standards of work required and any other agreed actions. Remember this is not a formal warning.

If, over time, your informal corrective discussions with the employee have not brought about sufficient improvement, then you should invoke the formal disciplinary procedure without undue delay.



## SUSPENSION

Suspension is the right course of action if having given the matter careful consideration you are clear that:

It is unsuitable for the employee to continue at their normal workplace pending completion of the investigation and any disciplinary hearing (e.g. because relationships have broken down, there are risks to the Council's property or responsibilities to other staff or clients) or the employee's continued presence in their normal workplace may hinder the investigation, and you are satisfied there are no other possible appropriate alternatives to suspension such as temporary transfer to another place of work in the Council.

Where gross misconduct is alleged suspension will normally be appropriate if you decide the employee is to be removed from his/her normal workplace, because the nature of the allegations poses a risk to people or property.

Tell the employee that:

- They are required to stay away from work (or to transfer to another workplace)
- This is to protect the Council's interests and to enable the conduct of a smooth, fair and prompt investigation
- During suspension they must not enter the workplace without prior authorisation from you
- You are the point of contact with the employee during suspension
- Suspension is not a punishment and does not imply guilt
- Save in exceptional circumstances suspension is on full pay as long as the employee is available to assist with, or respond to the disciplinary process.

If you do not have the necessary authority to suspend, either:

Refer the matter to the relevant more senior manager who does, or simply send the employee home and ask the more senior manager to authorise the suspension as soon as possible.

Managers should be just as prompt in lifting suspension if the investigation shows that:

It is suitable for the employee to return to his/her normal workplace pending completion of the disciplinary process and there is no risk of prejudice to the investigation

The employee has no case to answer

Do not allow the suspension to become unnecessarily protracted.

Review the suspension and record progress at 10 working day intervals.

Keep in regular contact with the employee.

Unless the case is particularly complex e.g. allegations of child abuse or major fraud aim to conclude the investigation within 4 weeks of the first day they are suspended.

If you have good reason to extend this period for a specific and brief period you must make a case for this to a more senior manager. You will need to outline:

- The reason for the delay.
- The likely date that the investigation will be completed.

In exceptional circumstances, e.g. where the employee is being held on remand in police custody, or where the employee has been suspended for a significant period of time but it is not possible for reasons beyond the Council's control to hold a disciplinary hearing, in such cases, it will be possible to suspend the employee without pay.

## **INVESTIGATION**

### **During an investigation:**

Talk to witnesses promptly before memories fade

Talk to the employee directly

Tell the employee that they can be accompanied when you are interviewing them

Take advice from an HR Manager or equivalent, particularly if you feel the scope of the investigation is wide, or the issues are complex

Do not involve senior managers in the detail of the case if they are likely to be involved in hearing the case.

### **Take statements (if necessary)**

The most helpful statements are:

Taken soon after the alleged incident

Hand written by the witness in his or her own words

Typed up later for ease of use

Signed, dated and witnessed by you

### **Collect evidence**

Keep original copies of documents that you will use in evidence

Check the employee's personal file for any current warnings.

Taking stock – Assessing the evidence

Consider the following:

Has the employee broken the rules?

Where are they recorded?

Do you apply the rules consistently?

Is it reasonable to expect the employee to know that their conduct was wrong?

Is the case about misconduct or incapability (For misconduct use the Disciplinary Procedure for Incapability use the Procedure for Managing Poor Work Performance)

If it is misconduct, is it gross misconduct?

Is there a case to answer i.e. is there a reasonable prospect of the allegation being found proven at the disciplinary hearing?

### **Obligations on Employees**

If an employee refuses to co-operate with an investigation the employee will be informed that the investigation will proceed, and decisions will be taken based on the available facts. Further disciplinary action may be taken against an employee who refuses to comply with a reasonable management instruction in relation to the investigation.

## **ROLE OF AUDIT AND INVESTIGATION**

It is normal practice for the Audit and Investigation Team to tape record investigative interviews and to provide a transcript as part of the evidence. The team will produce a report at the end of their investigation. This report will reach a conclusion and contain a recommendation as to whether or not the employee has a case to answer in a disciplinary hearing. The report will normally be submitted to the employee's line manager who will take advice from an HR Adviser and decide how to proceed with the matter. The Audit and Investigation Team will present the findings of their report if asked to do so, as part of any disciplinary hearing.

## **CRIMINAL OFFENCES**

In criminal cases it is not good practice to dismiss an employee purely because s/he has been charged with, or convicted of a criminal offence.

Instead as a manager you must:

Carry out your own investigation

Assess the available facts

Evaluate and use any information or evidence supplied by external sources

Treat the matter as an internal issue that is separate from any police investigation

Decide whether the employee's alleged misconduct affects their suitability for, or possibility for continued employment. If so, follow the normal disciplinary policy and procedure.

Generally it is not advisable to delay the Council's disciplinary process until after the conclusion of the criminal proceedings unless the court hearing is imminent.

The correct approach is usually to start the Council's disciplinary process in the normal way, and proceed with the hearing on the basis of the known evidence and circumstances.

## **DISCIPLINARY ACTION AGAINST TRADE UNION REPRESENTATIVES**

Trade Union representatives are subject to the same standards as other staff. Discuss the case with a HR adviser.

To avoid any claim of victimisation-

In all cases of potential disciplinary action against a trade union representative no disciplinary action should be taken until the circumstances of the case have been discussed with a full time official (e.g. a district official or full time branch official).

## **TIMESCALES**

### **Investigation**

Unless the case is particularly complex e.g. Involves allegations of major fraud, or child abuse, in which case the timescale can be extended

The Investigating Officer will:

- investigate the matter with no unreasonable delay
- Normally complete the investigation within 4 weeks

If this is not possible, the investigating Officer will keep his/her line manager and the employee Informed about

- Progress in the investigation
- The timetable for its completion, and
- The reason for any delay

### **Formal Disciplinary Hearings**

Those managers that have authority to hear formal disciplinary cases will:  
Seek to hear the case without undue delay, normally within three-four weeks of the decision that disciplinary action is required

### **Appeal Hearings**

Those managers that have authority to hear employee appeals will:  
Deal with any appeal without undue delay, normally within a 4-week period

In cases of appeal against dismissal every effort will be made to convene the Ad Hoc Staff Appeal Committee without any undue delay.

## **NOTIFICATION**

The aim of notifying the employee is to give him or her adequate information so that they can:

- Understand the allegation and respond to them
- Understand how serious the matter is
- Prepare for the case
- Arrange to be represented

## **Setting out the allegation**

Set out a clear description of what the employee is said to have done

Avoid general statements

Be specific, give times, dates, names etc

Specify which of the Council's rules or standards has been broken

Say if the allegation amounts to gross misconduct

If the employee has any current warnings on file, tell them the effect these may have on the decision.

## **Arranging the Hearing**

Given the employee has a legal right to be represented in a disciplinary hearing it makes good sense to consult the employee and their representative before setting the date for the hearing.

Give reasonable notice of the hearing, usually 10 working days, unless you can agree with the employee to a lesser notice period.

Make sure the employee understands:

Their right to be represented, bring witnesses, submit evidence and question the manager presenting the management case

The deadlines for submitting evidence and declaring witnesses

(normally 5 working days before the hearing for management, and three working days for the employee)

## **AVOIDING OR DEALING WITH DELAY**

Where an employee is unable to attend a hearing due to sickness or other legitimate reason, s/he will be entitled to be represented in their absence.

Alternatively you may wish to consider a short delay if the employee is likely to be able to attend the hearing within a reasonable period.

Where the employee is not represented in their absence and provides no good reason for non-attendance, as Hearing Officer, you will have discretion to proceed in the employee's absence.

Where you decide to grant a postponement because the employee has provided a legitimate reason for non-attendance you will normally grant only one postponement.

When notifying the employee of a reconvened hearing the Investigating Officer

Should warn the employee that the hearing may proceed in his/her absence if she/he fails to attend the hearing on the grounds of sickness

Inform the employee that if the hearing does proceed in his/her absence any submissions made on the employee's behalf by a representative or made by the employee in writing or on the telephone will be considered

## **HEARING THE CASE**

Normally the disciplinary panel will consist of 2 officers:

A manager with authority to chair the hearing and make the decision

Another officer (normally a HR or Legal Services Adviser) to advise on matters of procedure. The chair will be responsible for allocating a note taker wherever possible.

The chair:

Will not hear any case in which they are a witness, or of which they conducted the investigation.

Has discretion to increase the size of the panel, especially if they need advice on technical or specialist issues.

## **APPENDIX I**

### **MODEL PROCEDURE FOR THE HEARING:**

- Introduction - The Hearing officer introduces those present, explains the purpose of the hearing and outlines the procedure for the hearing
- Management Presentation - The presenting officer states the management case, and is questioned on it by the employee's side, then by the hearing officer, and the advisor
- Management Witnesses - The presenting officer questions own witnesses in turn. Each one is questioned by the employee's side and then by the hearing officer and the advisor. Any witness shall withdraw after giving evidence and answering any questions put to them.
- Employees Presentation - The employee's side states the case and is questioned on it by the presenting officer and then by the hearing officer and the advisor.
- Employee's Witnesses - The employee's side questions own witnesses in turn. Each is questioned by the manager and then by the hearing officer and the advisor. Any witness shall withdraw after giving evidence and answering any questions put to them.
- Re examination - At the Hearing Officer's discretion, a party may be allowed to ask questions of their own witnesses arising from the questioning of the other party.
- Summaries- After an adjournment (if needed) each side (management first) takes turns to summarise the case without introducing new evidence
- Decision Normally the hearing officer will adjourn to consider the case, consult with the advisor, and then recall the presenting officer and the employee's side and give the decision. The hearing officer retains the right to recall witnesses during the deliberating process if further clarification is required. If this does happen, both sides should be recalled into the hearing.



In cases where a management witness does not wish his/her identity to be disclosed to the employee, or at the Hearing Officer's discretion in other special circumstances, the Hearing Officer may hear that witness's evidence in the absence of the employee and/or his/her representative.

At the Hearing Officer's discretion in special circumstances the employee and/or his/her representative may not be permitted to ask questions of a particular witness or witnesses.

## **MAKING AND GIVING THE DECISION**

Where possible the Hearing Officer will give the decision on the day of the hearing and will call for a brief adjournment before reaching a decision:

Come to a clear view about the facts

If the facts are disputed, decide on the balance of probability what version of the facts is true

Before deciding the penalties consider:

The seriousness of the offence

The individual's disciplinary record and general service

Any mitigating circumstances

Whether the proposed penalty is reasonable in the circumstances

The need to ensure consistency of treatment of employees

Reconvene the hearing to:

Clearly inform the employee of the decision and the penalty

Explain the right of appeal and how it operates

In the case of a written warning, explain what improvement is expected, how long the warning will last and what the consequences of a failure to improve will be.

## **THE BALANCE OF PROBABILITIES**

Decide the facts of the case on the balance of probabilities. You do not have to be sure of what actually happened. You are entitled to prefer one version of events to the other, provided that you believe it more likely

Ask yourself:

Which version of events you genuinely believe?

Why do you prefer that version?

Is your preference reasonable, what is the evidence to support it?

Could you justify it to others?

If you decide that the case against the employee is proven

Consider separately what penalty to apply

## CHECK LIST

You might find it helpful to record your answers to the following questions:

- Has there been a thorough investigation?
- Has the employee had reasonable notice of the matters to be considered at the hearing?
- Has the Disciplinary Procedure been reasonably followed?
- Have you paid sufficient regard to any explanation offered by the employee?
- Do you genuinely believe that the employee has committed the alleged misconduct?
- Is it reasonable to have this belief on the balance of probabilities, given the evidence you have heard?
- Is the misconduct serious enough to warrant the sanction you are considering?
- Have you given due consideration to any mitigating circumstances?
- Is the decision within the band of reasonable responses of a reasonable employer?

## **SANCTIONS**

### **Written Warnings**

As the Hearing Officer you should use written warnings with the aim of securing an improvement in conduct, telling the employee directly and formally what standards of conduct are required.

What action you will take if the employee is involved in any further misconduct

You may want to give a first warning where:

Informal corrective discussions have not effected the required improvement  
For minor offences where the matter warrants formal rather than informal approach

You may give an advanced written warning where:

The employee has failed to improve to the required standard in response to the first warning.

Where the employee has committed a further minor offence related or unrelated within the time scale specified in the first warning; or

Where you consider that a first warning would be too lenient a penalty, but a final written warning would be too harsh e.g. accumulation of minor offences

You may give a final written warning where:

There has been a failure to improve conduct sufficiently in response to an advanced warning.

There has been a further minor offence related or unrelated during the life of the advanced warning.

You consider the offence is very serious.

Although managers often apply warnings in sequence, you do have discretion to apply the level of warning warranted by the seriousness of the case, and to specify a longer duration period for the warning if you think the case warrants it, i.e. where the offence has been committed against a Council service user a first or second written warning should remain active for 2 years. You may also set a maximum period for a warning to remain in force giving you the authority to review and de-activate the warning before the end of the period, if the conduct becomes very satisfactory.

There may 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 you may bear the employee's disciplinary record in mind in deciding how long any current warning should last.

## **Dismissal**

Dismissal can be the appropriate sanction where either an allegation of gross misconduct is proven, or where the employee has committed a further act of misconduct of whatever kind during the life of a final written warning, or in circumstances where a warning would be futile because there is no prospect of a warning securing an improvement in the employee's conduct e.g. an intransigent employee unwilling to change his/her conduct even after being warned at the hearing that dismissal would be a likely consequence of such intransigence.

## **Alternative Options to Dismissal**

### **A. Transfer**

You may only consider transferring an employee in limited circumstances i.e. Where there is a clear reason to do so arising from the matters heard at the disciplinary hearing. It might be felt that the employee should move to a job where they can, for example

Be more closely supervised, or

Not be required to handle cash, supervise staff, have personal contact with particular individuals, care for particular clients, etc.

Transfer is not a ready-made opportunity to export problems to other managers outside your own service area.

You cannot transfer an employee without their agreement unless the Council has a clear right to do because it is set out in the employee's contract of employment. Before reaching a decision to transfer an employee, as Hearing Officer you must check there is a suitable vacancy into which the employee can transfer, and you must discuss the matter with the appropriate manager in the new work area. The employee's salary and grade would be applicable to the new job.

Importantly the employee is entitled to receive appropriate induction and training in the new job.

Be told the reason for the transfer, and if possible how long it will be before they can be considered for a vacancy in the area they are transferred from.

Consideration of transfer can only apply, either in response to proven allegations of gross misconduct, or in response to proven allegations of misconduct whilst the employee has a final written warning on file. If the employee refuses to accept the transfer and the Council has no contractual right to require the employee to transfer, then dismissal is the appropriate sanction.

### **B. Demotion**

This sanction amounts to a downgrading of the employee and you can only consider this sanction where the offence would normally warrant dismissal but there is substantial mitigation, for example,

The employee has an excellent work record and the offence is out of character,  
or  
Some other substantial mitigating circumstances or reason.

Like transfer demotion is not an opportunity to export problems to other managers outside the employing service area.

As with transfer, demotion cannot take place without the agreement of the employee unless the Council has a clear right to relegate the employee because it is set out in the employee's contract of employment. If the employee does not accept the relegation or the Council has no contractual right to relegate the employee then dismissal is the appropriate sanction. If the employee accepts relegation or if the Council has a contractual right to relegate the employee then s/he must also be issued with a final written warning.

As with transfer, before reaching a decision to relegate the employee, you must check there is a known suitable vacancy into which the employee can be downgraded, normally in the same service area, and discuss the matter with the appropriate manager. You must ensure that the demotion can be achieved in a reasonable timescale, that the matter is not allowed to drift, and that the employee has the range of skills to do the job they are demoted to. Importantly, the employee is entitled to receive appropriate induction and training in the new job. The employee's salary and grade would be applicable to the new job.

The employee must be told the reason for the demotion and if possible how long it will be before they can apply for, or be considered for promotion. This would normally be in line with the duration of the final written warning.

## **NOTICE IN CASES OF DISMISSAL**

Dismissal for gross misconduct will always be 'summary dismissal' i.e. there is no notice period. Dismissal other than for gross misconduct will be on contractual notice, or summary dismissal with pay in lieu of contractual notice. Pay in lieu of notice will be subject to deduction of Income Tax and National Insurance.

## **Confirming the outcome of the Disciplinary Hearing**

As Hearing Officer you will confirm the outcome of the disciplinary hearing to the employee in writing, normally within 5 working days of the date of the hearing. Where you have decided on disciplinary action, you must confirm to the employee in writing:

The nature of the misconduct found

The penalty

The employee's right of appeal

To whom the right of appeal should be addressed

Where the penalty is a written warning the letter must confirm details of:

The duration of the warning, including the duration for determining the penalty in any future disciplinary action.

The improvement in conduct expected. As far as possible set out specific objectives so that the employee is clear about the required standard of conduct expected of them.

The likely consequences of any further misconduct which in the case of a final written warning must include dismissal as a likely consequence.

## **APPENDIX III**

### **HEARING AN APPEAL**

The appeal must be in writing and must be clear and specific about the grounds for appeal. Appeals can be raised on one or more of the grounds set down on page 11. The right of appeal must be disallowed where the letter of appeal does not meet these requirements.

One appeal is allowed at each stage of the formal disciplinary procedure. It does not apply to informal corrective discussions or counselling meetings.

The appeal must be lodged within 10 working days of the employee receiving the letter confirming the disciplinary decision.

The employee must provide to the manager who conducted the disciplinary hearing and to the appeal panel at least 10 working days prior to the appeal hearing any new evidence raised as a ground of appeal.

The manager who conducted the disciplinary hearing and the employee will provide each other and the appeal panel with any documents to be used by them and the names of any witnesses to be called by the seventh working day before the appeal hearing.

The employee will be given reasonable notice (normally 10 working days) notice of the date of the appeal hearing.

The format of the appeal hearing will be similar to the disciplinary hearing as set out on page 23 except that the appellant will present their case first.

For appeals against sanctions other than dismissal the appropriate senior manager will chair the meeting with a Human Resources or Legal Services representative present as an adviser. This manager will not have been previously involved, directly or indirectly with the case. The senior manager's decision will be final.

For appeals against dismissal the Ad Hoc Staff Appeals Committee will hear appeals with a Human Resources and or Legal Services representative present in an advisory capacity. Its decision will be final. In the event the dismissal decision is overturned at the appeal hearing reinstatement or reengagement with continuous service will apply.

The panel hearing the appeal will be entitled to refuse to consider documentation and/or hear witnesses presented or called by the parties, which it considers are not relevant to the grounds of appeal.

The appeal hearing will not normally constitute a full re-hearing of the case. It will only address the specific grounds of appeal set out in the employee's letter of appeal

The manager presenting the management case at the hearing will be entitled to introduce his/her own new evidence in response to any new evidence introduced by the employee.

The Appeal panel has the authority to:

Confirm the disciplinary decision

Impose a lesser sanction within the available range of sanctions as specified

Overturn the disciplinary decision.

Where the appeal panel decides to uphold the appeal in a case of procedural flaw or new evidence, they will have the discretion to refer the case back for a rehearing or to rehear the case themselves. Where the case is referred back for a rehearing they will decide, depending on the circumstances, whether the case should be reheard by the same officer who originally heard the case or by a different hearing officer.

## **RECORD KEEPING**

All records of disciplinary investigations, suspensions, suspension reviews, disciplinary hearings, appeals and spent warnings will be retained and kept securely and separately from the employee's personal file, but along side it.

All letters confirming the outcome of the disciplinary hearings and appeals will be held on the employee's personal file.

Such records will be retained until 6 months after the end of the employee's employment with the Council.

Records relating to the investigation of criminal matters may be kept for longer periods at the discretion of the investigating officer or by the Head of Audit and Investigations if this is necessary for the purpose of ongoing legal proceedings.



**APPENDIX IV**

**LEVELS OF MANAGEMENT THAT HAVE AUTHORITY TO TAKE VARIOUS FORMS OF DISCIPLINARY ACTION**

