

Disciplinary Policy and Procedure Draft v4 03Sept2012

Introduction

When Council rules have been breached, Brent's disciplinary policy and procedure provides a framework for managing misconduct.

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. People & Development and Legal Services are available to provide advice and support as required.

Policy statement

Policy summary

The 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 reflects current legislation and good practice. Employees will be covered by the policy, which is contractual. The Council reserves the right to amend the policy from time to time, after such consultation with the trade unions recognised by the council for collective bargaining purposes.

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, faith or belief, sexual orientation, age and disability.

Where clarification is required about how to handle issues under multiple policies and procedures, advice should be taken from a People & Development Adviser.

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

General principles

- This policy will be implemented transparently, fairly and consistently
- It applies principally but not solely to conduct at work
- People and Development 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 officer senior to the member of staff being disciplined
- Brent's Business Support Team will provide secretarial support to formal disciplinary hearings
- Documentation submitted outside the timescales of this policy will be heard only in exceptional circumstances.

Definitions and general information

Employees

This policy applies to all employees of Brent 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

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- 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)

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, members or customers
- Allegations of misconduct arising from action under other Council policies and procedures such as Fairness at Work.

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 Brent intranet [insert link].

Sanctions

Disciplinary sanctions, which may be taken, are:

- Written warning(s)
- Final written warning
- Relegation to a lower salary scale point within the employee’s grade
- Withholding a salary increment

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- Combination of the above
 - Dismissal with or without notice
 - Transfer to another job as an alternative to dismissal
 - Demotion to another job as an alternative to dismissal.

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.

Demotion and transfer may be offered as an alternative to dismissal exceptionally. Managers must seek advice from the Assistant Director, People and Development before any such offer is made to an employee.

Sanctions such as withholding an increment for one year or relegation to a lower scale point may also be used.

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 – 12 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.

Contractual Notice

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

Confidentiality

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

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.

Criminal Offences

Where allegations against an employee may potentially involve criminal offences, advice must be taken from the Assistant Director, People and Development 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, this will not normally be ground 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, this may be considered. 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.

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 People & Development Adviser on when suspension is appropriate.

Suspension will normally be with full contractual pay and must be approved by the Assistant Director, People and Development or Head of People Services in her absence.

A manager may send the employee home pending a decision on formal suspension. Employees must be available to the Council at all times during paid suspension. A suspended employee must:

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

The manager in writing will confirm the reasons for suspension to the employee. 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 People and Development 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 Head of People Services.

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 Assistant Director, People and Development.

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 Assistant Director, People and Development.

Roles and responsibilities

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

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- Adopt appropriate standards of behaviour towards others, including employees', members and customers 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 & Investigations whenever they become aware of it.

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.

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.

Directors, Assistant Directors and service heads

Directors, Assistant Directors or other managers at the same level of seniority or at a higher level of seniority as the Hearing Manager will hear appeals against disciplinary action short of dismissal. Directors, Assistant Directors or a Head of Service will carry out suspensions and hear panels which could result in dismissal.

Staff Appeals Sub Committee

The Staff Appeals Sub Committee will hear appeals against dismissal for Assistant Directors and above.

People & Development

The role of People & Development is to provide advice on this procedure and participate in any associated hearings.

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.

Applying disciplinary procedures

Timescales

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

Investigation

Where a disciplinary issue has arisen, a manager will seek advice from People and Development 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 Assistant Director, People and Development.

The Audit and Investigations Team will carry out investigations into cases of alleged fraud, corruption and financial misconduct, or conduct reported under Brent's Whistle blowing Policy 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 Assistant Director, People and Development considers by exception otherwise.

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

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.

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.

Investigation report

The Investigating Officer will produce an investigation report as soon as practicable and present it to People and Development and the Manager who commissioned the investigation. The report will give details of allegations, evidence, mitigation findings and 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 covered by an Adviser from People and Development.

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

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. It must provide a letter summarising the case, details of the decision made and the reasons.

Convening a disciplinary hearing

Brent's Business Support Team is responsible for organising disciplinary hearings and for ensuring that an accurate record of events is produced.

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

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- 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 provide 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.

Disciplinary hearing

The hearing will normally involve the Hearing Manager, a People and Development adviser and a note taker provided by the Business Support Team. The Hearing Manager will decide whether to consider documentation submitted by either party outside the timescales in this Policy.

The Hearing Manager will not have had any previous involvement in the case; will ensure that the process is fair; and implement rules of natural justice to ensure that:

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

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.

Dismissal approval process

All dismissal decisions need to be signed off by the Assistant Director, People and Development or the Head of People Services.

Appeals

Right of appeal

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.

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.

Process

Appeals against disciplinary action (including dismissal) will be heard by a Director or Assistant Director and the Hearing Manager will present the management case. An adviser from People and Development will be present. The Staff Appeals Sub-Committee will hear appeals against dismissal for Assistant Directors and above.

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 People and Development and Legal adviser will be present to advise the panel.

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.

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.

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 Head of People Services or in the event of a member appeal to the Assistant Director, People and Development.

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

Templates of relevant forms and letters can be found on the intranet or obtained from People & Development.

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. ANY CHANGES TO THE POLICY WILL BE UNDERTAKEN
WITH THE RECOGNISED TRADE UNIONS.**