



## Disciplinary Procedure

---

<b>Contents</b>	<b>Paragraph</b>
Purpose and Scope	1
Rights of Representation	2
Authority to Initiate Disciplinary Action	3
Disciplinary Investigations	5
Disciplinary Hearing	6
Disciplinary Action	8
Disciplinary Letter	12
Dismissal and Relegation	15
Appeals	17
Suspension	19

### **Appendices**

1. Conduct of Disciplinary Hearings
2. Disciplinary Action
3. Conduct of Disciplinary Appeals
4. Summary of Disciplinary Action

## London Borough of Bromley

The Council's disciplinary procedure is to cover those cases where an employee's work conduct and performance is so significantly below the required standards that formal disciplinary action is judged necessary. It does not cover the normal day to day supervision where a line manager may have to counsel, train or otherwise discuss with an employee instances of poor performance. As part of normal supervision, a line manager may have to give an oral caution to an employee: this does not form part of the formal disciplinary procedure. Not until informal supervision, training and counselling has failed to produce satisfactory conduct, or is considered to be inappropriate in the circumstances of the case, should the formal disciplinary procedure be used. The line manager must make clear to the employee when the formal as opposed to the informal procedure is being used.

### Disciplinary Procedure for Employees

#### Purpose and Scope

1. This procedure is designed to help and encourage all employees of the London Borough of Bromley achieve and maintain good standards of conduct, attendance and job performance. This disciplinary procedure applies to all employees covered by Bromley Council's Localised Pay and Conditions of Service, with the exception of:
  - (a) new entrants to local government service, who have not completed their six month probationary service. These employee do not have the right of appeal against disciplinary action taken against them. However, they may seek advice from the Director of Human Resources.
  - (b) trade union officials - although normal standards of conduct at work are expected of these staff, no disciplinary action beyond formal oral warning (see paragraph 10) should be taken until the appropriate branch secretary or full-time official has been informed.
  - (c) teachers, college lecturers and all other staff in schools and colleges are covered by the articles of government or rules of management of the educational establishment in which they are employed.
  - (d) chief officers - only the General Purposes and Licensing Committee may determine disciplinary action against a chief officer.

#### Rights of Representation

2. Employees have the right to be represented at all stages of the disciplinary procedure. They may be represented by a recognised trade union or another person of their choice.

### Authority to Initiate Disciplinary Action

3. Each chief officer must define within their department the level of disciplinary action which each of their managers can take within the procedure.

Usually a:

- (a) line manager (defined as an employee's immediate line manager) may initiate disciplinary action under the procedure;
  - (b) senior manager (defined as the next or appropriate senior level of management above the line manager) is authorised to conduct formal disciplinary hearings, issue formal written and oral warnings, recommended dismissal or relegation.
  - (c) chief officer is authorised to hear first stage appeals against disciplinary action, and is authorised to suspend, relegate or dismiss an employee. In cases of dismissal, or suspension without pay, a chief officer should consult with the Chief Executive.
4. To ensure fairness throughout the procedure it is imperative that a different manager within a department carries out each of the different levels of disciplinary action. It is wise therefore to keep to the guidance described in 3 above.

### Disciplinary Investigation

5. When a disciplinary matter arises which may require formal disciplinary action:
  - (a) the line manager must investigate the circumstances thoroughly and establish the facts promptly, normally within fifteen working days. They should take into account the statements of any available witnesses. A statement may also be requested from the employee being disciplined.
  - (b) When the facts are established the line manager will decide whether formal disciplinary action is appropriate. If it is decided to take formal disciplinary action the employee should be instructed to attend a disciplinary hearing, see 6 below.
  - (c) consideration should be given to the need to suspend the employee during the investigation - see paragraphs 18 to 20 below.

### Disciplinary Hearing

6. The senior manager should send the employee a letter which
  - instructs the employee to attend a formal hearing
  - contains a written statement of the allegations against the employee
  - advises the employee that the hearing forms part of the Council's formal disciplinary procedure
  - advises the employee of his/her rights of representation (see paragraph 2)

7. This letter should be sent within five working days of the decision to have a formal hearing. The hearing will be chaired by a senior manager, other than the line manager initiating the action (details of the conduct of the hearing are set out in Appendix 1).

### **Disciplinary Action**

8. The manager chairing the hearing must first decide at the hearing whether the case for disciplinary action has been established. This decision will be taken after they have heard the evidence presented by the line manager and the employee concerned.
9. The chair will then have to decide what action, if any, is reasonable in the circumstances and will consider the following:
- the employee's disciplinary record: including whether previous relevant warnings or cautions have been given
  - the employee's age, length of service and general performance
  - any circumstances, for example, domestic problems which may have a bearing
  - any procedures which relate to the disciplinary offence
  - action taken in similar cases in the past
10. The possible disciplinary penalties are:

<u>Level of Performance</u>	<u>Possible Disciplinary Penalty</u>
Work performance below required standards.	An oral warning may be given which should be recorded on file.
Work which is persistently or seriously below standard.	A written warning may be given.
Misconduct of a serious nature; failure to work to required standards after previous warnings.	Final written warning, transfer or relegation to another post, dismissal with notice.
Gross misconduct.	Dismissal without notice.

11. Appendix 2 sets out examples of misconduct. In no case can an employee be dismissed without first having attended a formal disciplinary hearing.

### **Disciplinary Letters**

12. The decision on the outcome of the disciplinary hearing will be given to the employee at the end of the hearing whenever possible and in any case in writing, within five working days of the hearing.

13. If a disciplinary penalty is to be imposed, the employee must be informed in writing of:
- the nature of the disciplinary charge
  - a brief summary of the evidence presented at the disciplinary hearing
  - the nature of disciplinary penalty imposed
  - the standard of performance required in the future
  - the time scale within which the performance will be monitored and improvement assessed
  - arrangements for guidance, supervision or training, where appropriate
  - what will happen if work performance fails to meet the required standards
  - the opportunity to ask the chief officer for clarification of the action proposed
  - the employee's right of appeal
14. A copy of this letter should be sent to the employee and his/her representative and a copy retained on file. An employee may request, a year after the event and each subsequent year, the chief officer to endorse any recorded warning letter that it be disregarded in future. The chief officer will respond in writing to this request within five working days, giving reasons where this request is refused.

### Dismissal and Relegation

15. The Chair, in the light of the evidence presented at a disciplinary hearing, may recommend that an employee should be dismissed or relegated. The employee should first be informed orally of this, the reasons for it and rights of appeal.
16. The chief officer will authorise the relegation and confirm his/her decision in writing to the employee. The chief officer will consult with the Chief Executive authorising dismissals. The Chief Executive will inform the employee in writing of the decision to dismiss. These letters should also contain the reasons for dismissal or relegation and the rights of appeal. **ONLY IN CASES OF GROSS MISCONDUCT CAN AN EMPLOYEE BE DISMISSED FOR A FIRST BREACH OF DISCIPLINE.**

### Appeals

17. An employee who has been formally disciplined may appeal against the decision. In the first instance the chief officer will hear the appeal. An employee will also have the right for his/her appeal to be heard by a panel of Members if dissatisfied with the chief officer's decision but only in cases of dismissal, relegation or suspension without pay.
18. A request for an appeal must be made to the chief officer within ten working days of the receipt of the letter detailing the outcome of a disciplinary hearing. The conduct of an appeal is detailed in Appendix 3.

### Suspension

19. A chief officer may decide, in view of the special circumstances of a case to suspend an employee on full pay prior to the disciplinary hearing. Such a suspension is not a disciplinary action in itself, but a means of providing a breathing space to enable investigations to be carried out. It will be used to protect the interests of the Council and the employee during the investigation and to ensure investigations are impartial.
20. A chief officer in consultation with the Chief Executive may suspend an employee without pay where appropriate. The chief officer in consultation with the Chief Executive may also convert a suspension from full to no pay as a result of the investigation taking place.
21. An employee would normally be suspended after the chief officer or his/her nominee has formally interviewed the employee and wherever possible with his/her representative.

The Chief Executive shall determine any questions of interpretation of this procedure.

NB. This is a jointly agreed procedure of the Local Joint Consultative Committee - Officers with the sole exception of the provision for the Chief Officer to suspend without pay, which is unacceptable to the Staff Side.

## Appendix 1

### Conduct of a Disciplinary Hearing

1. The Chair hearing the case will explain the procedures to be followed in the hearing.
2. The Chair will ask both the Council representative and the employee whether witnesses are to be called.
3. The Chair will read out the allegations set out in the written notification of the hearing.
4. The line manager will present the evidence against the employee and will call witnesses as appropriate.
5. The employee (and/or representative) may question the evidence presented by the line manager and witnesses.
6. The employee (or representative) will present their evidence and call any witnesses.
7. The line manager may question the evidence presented by the employee and witnesses.
8. The line manager may sum up his/her case.
9. The employee may then sum up his/her case.
10. The Chair will determine whether the allegations against the employee are true. If further investigations are necessary it may be appropriate to adjourn the hearing at this stage.
11. If the allegations are found to be true the employee will be told of this.
12. The Chair will then tell the employee what disciplinary penalty, or other action will be taken, see paragraph 9 of the disciplinary procedure. In cases where dismissal or relegation is proposed, the manager will inform the employee of his/her recommendation to the Chief Officer.

## Appendix 2

### Types of Misconduct Warranting Formal Disciplinary Action

THIS LIST SERVES ONLY TO PROVIDE EXAMPLES OF MISCONDUCT AND MAY BE ADDED TO AT ANY STAGE

1. Work performance below required standards
  - Unreliability - e.g. absenteeism, poor time keeping, unauthorised absence
2. Where work is persistently or seriously below standard
  - Failure to respond to previous oral warnings about poor performance
  - General neglect of duties
  - Refusal to obey reasonable instructions
  - Disregard of safety rules
  - Disruption of others' work
  - Insubordination
3. Misconduct of a serious nature, and/or failure to work to required standards despite previous warnings
  - As (2) above, where employee has failed to respond to previous warnings, training, guidance or supervision given.
  - Where the nature of disruption, insubordination etc. is of a more serious nature than in (2) above.
  - Misconduct which is considered insufficiently serious to justify dismissal, but serious enough to warrant a final written warning.
  - Sexual and racial abuse.
4. Gross Misconduct
  - Theft, fraud, deliberate falsification of records, fighting, assault on another person, deliberate damage to Council property, serious incapability through abuse of alcohol or drugs, serious negligence which causes unacceptable loss, damage or injury, serious act of insubordination, sexual offences, sexual misconduct at work, culpable lack of care towards clients, violent or abusive behaviour to the public or colleagues including serious sexual and racial harassment. It also includes any serious breach of confidence or deliberate unauthorised use or disclosure of any computer held or computer generated information from which an individual can be identified including software piracy.

## Appendix 3

### Conduct of Disciplinary Appeals

This procedure relates to the conduct of appeals to Chief Officers or Members.

However in the case of first stage appeals:

- a) the employee should write to the chief officer requesting an appeal within ten working days of receiving a formal disciplinary letter; and
- b) the Chief Officer will take the place of the panel of Members in hearing the appeal.

A clerk will be in attendance throughout proceedings to give advice on procedural matters only.

- i. When an employee decides to appeal to a panel of Members, he/she should inform the Chief Officer within 10 working days of receiving the letter detailing the Chief Officer's decision on the first stage appeal. (See paragraph 17 of the disciplinary code on rights of appeal).

Note: HR Consultancy set up Members Appeals Panels where cases progress to this stage. However, it will be the responsibility of departmental officers to present the Council's case to appeals panels, although advice and assistance may still be sought from Human Resources if required.

- ii. The appeals panel will consist of three Members who are not Members of the employing committee, and a secretary.
- iii. The hearing will be arranged as soon as practicable and no later than 10 working days after the expiry of the notice of dismissal (where given). At least five working days notice will be given of the date of the appeal hearing.
- iv. The employee may be represented by his/her trade union or another person. Witnesses may be called and documents produced at the hearing to support his/her defence.
- v. The local authority's representative(s) will put the management's case in the presence of the employee and will call any witnesses.
- vi. The employee (or his/her representative) may ask questions of the local authority's representatives and witnesses (if any).
- vii. The employee (or his/her representative) will put his/her case in the presence of the local authority's representative and will call any witnesses.

## Human Resources Division

---

- viii. The local authority's representative may then ask questions of the employee, and witnesses (if any).
- ix. The Members of the appeals panel will then ask questions of the local authority's representative, the employee and their witnesses.
- x. The local authority's representative and the employee (or his/her representative) can sum up their cases, if they wish.
- xi. The local authority's representative and the employee, their representatives and witnesses will then withdraw.
- xii. The panel, with the clerk in attendance, will consider the evidence in private. They may recall either party to clear points of uncertainty on the evidence already given. If recall is necessary both parties are to return even if only one is concerned with the point-giving rise to doubt.
- xiii. The panel will give the decision to the local authority's representative and employee personally, or in writing, as appropriate.

Appendix 4

Disciplinary Action: Summary

This outline of possible disciplinary actions must be read in conjunction with the full disciplinary procedure. The numbers in each box refer to the paragraphs in this procedure.

