

D2 Conduct Policy

1 Policy

- 1.1 Barnet Borough Council requires good standards of conduct from its employees. The Council's Conduct Procedure applies to any misconduct or serious failure to meet the standards of performance.
- 1.2 The purpose of the Council's Conduct Policy and Procedure is to be corrective rather than punitive and it should be recognised that the existence of the Conduct Procedure is to help and encourage employees to achieve and maintain acceptable standards of conduct and to ensure consistent and fair treatment of all employees.
- 1.3 Decisions made within the procedure will be on the balance of probabilities. Therefore, where a decision is made, the decision-maker should be able to demonstrate a reasonable belief to support the decision made.
- 1.4 The above forms the Council's policy as at October 2010, it should be noted that: -
 - the policy does not confer any contractual rights
 - the Council will retain the right to review the policy at any time. Changes may result from employee, management and trade union feedback and/or from changes in employment legislation. The Council, following consultation with recognised Trade Unions, will implement revisions and updates.
 - The policy will cease on the 1 April 2013.

2 Scope

- 2.1 This policy applies to all Council employees, including Head Teachers, Teachers, school based support staff and Chief Officers.
- 2.2 A Chief Officer is defined as a Deputy Chief Executive, Assistant Chief Executive, Director or a designated Deputy to one of the Directors.
- 2.3 The policy excludes the Chief Executive.
- 2.4 The policy excludes employees who are on probation. The Probation Policy and Procedure will be applied.
- 2.5 The policy is recommended for implementation by staff directly employed by schools, for example those based in Academies.

3 Summary of Procedure

3.1 The Conduct Procedure contains the following stages:

Action	Action	Outcome
Establish the facts of the case Para 6.1. refers	Alleged misconduct takes place. Seek initial explanation, if satisfactory take no further action. Witnesses and / or initial complainant interviewed. Facts established and initial evidence gathered. Precautionary measures considered (Para 6.3 refers).	Decision made whether there is, or is not, a case to answer.
Inform the employee of the problem Para 6.2. refers	Employee informed, normally within 2 working days, of the allegation that a case is being investigated.	Employee has the opportunity to prepare for the formal meeting.
Formal Meeting to discuss the problem Para 6.4. refers	Employee invited to Formal Meeting, normally given 7 working days notice and advised of right of representation.	Employee given opportunity to see case papers of the evidence against them and given a further opportunity to prepare their own evidence in support of their claim.
Decision on appropriate action Para 6.5. refers	Formal meeting held and decision made. Right of appeal notified.	Outcome of the case is considered and made, from counselling through to dismissal and action short of dismissal.
Appeal Para 6.6. refers	Appeal lodged within 5 working days of notification of outcome. Employee given 7 working days notice of appeal hearing.	Final stage in procedure. Meeting held and case reviewed, not reheard.

4 Principles

- 4.1 Counselling will be offered, where appropriate, to resolve problems.
- 4.2 No disciplinary action will be taken against an employee until the case has been fully investigated.
- 4.3 At every stage in the procedure the employee will be advised of the nature of the complaint against him or her and will be given the opportunity to state his or her case before any decision is made.
- 4.4 Apart from the initial discussion seeking an explanation, at all stages of the procedure the employee will have the right to be accompanied by a recognised trade union representative or Barnet work colleague.
- 4.5 No employee will be dismissed for a first breach of discipline, except in the case of gross misconduct, when the penalty may be dismissal without notice or payment in lieu of notice.
- 4.6 An employee will have the right of appeal against any formal discipline penalty imposed.
- 4.7 The procedure may be implemented at any stage if the employee's alleged misconduct warrants such action.
- 4.8 The minimum three step procedure recommended by ACAS will be followed if an employee faces dismissal or certain kinds of action short of dismissal such as demotion or transfer.
- 4.9 Where reference is made to "working days" in this policy, the meaning of a "working day" for all establishments except Schools is Monday to Friday (excluding Bank and Public Holidays), irrespective of whether this is a normal working day for the employee. For Schools, "working day" means one of the 195 days in a School year; of which 190 days must be days on which the teacher may be required to teach pupils and perform other duties and 5 days must be days on which the teacher may only be required to perform other duties
- 4.10 Occasionally an employee who is subject to the Conduct Procedure may lodge grievances. Both processes will normally run at the same time, however, consideration may be given to suspending the Conduct Procedure whilst the grievance is investigated.

5 Conduct Procedure – General Guidance

5.1 Representation

- 5.1.1** Employees have a statutory right to be accompanied by a companion where the disciplinary meeting could result in:
- a formal warning being issued; or
 - the taking of some other disciplinary action; or
 - the confirmation of a warning or some other disciplinary action (appeal hearings).

- 5.1.2** The chosen companion may be a fellow London Borough of Barnet employee, a trade union representative, or an official employed by a trade union. A trade union representative, who is not an employed official, must have been certified by their union as being competent to accompany an employee. Exceptionally, in cases where the nature of the allegation would lead to a referral to a professional body or Independent Safeguarding Authority, an employee may request their companion to be a Legal Advisor in advance of the hearing. Such requests will be considered in the light of the allegation(s) and the employee advised of the outcome.
- 5.1.3** To exercise the statutory right to be accompanied, employees must make a reasonable request. What is reasonable will depend on the circumstances of each individual case. However, it would not normally be reasonable for employees to insist on being accompanied by a companion whose presence would prejudice the hearing nor would it be reasonable for an employee to ask to be accompanied by a companion from a remote geographical location if someone suitable and willing was available on site.
- 5.1.4** The companion should be allowed to address the hearing to put, and sum up, the employee's case, respond on behalf of the employee to any views expressed at the meeting and confer with the employee during the hearing. The companion does not, however, have the right to answer questions on the employee's behalf, address the hearing if the employee does not wish it or prevent the Council from explaining their case.

5.2 Qualifications and Registration of Professional Employees

- 5.2.1** Many posts within the Council require formal qualifications or registration with recognised professional bodies. It is the responsibility of all employees employed in such posts to ensure that they are appropriately qualified and registered for a statutory and / or contractual requirement. Failure to maintain this requirement, where it is not the fault of the registering body, may be treated as a disciplinary offence.

5.3 Referral to Independent Safeguarding Authority [ISA] and Professional Body

- 5.3.1** The Council has a duty to refer an employee to the ISA if it ceases to use their services, for example if they are dismissed, transferred or they resign pending an investigation, on the grounds that the employee has harmed a child/ vulnerable adult or placed at risk of harm a child/ vulnerable adult. This may be for example falsely claiming qualifications or relating to an employees health, where this raises an issue relating to the safety and welfare of children.

5.3.2 As part of any action within the Conduct Procedure the Council will also refer the employee to their Professional / Regulatory Body, such as GTC, GSCC, in circumstances where that individual is found to have breached professional standards and practices, in accordance with the regulatory framework of the Professional Body.

5.4 Criminal Acts

5.4.1 If an employee is charged with, or convicted of a criminal offence this is not normally in itself reason for disciplinary action. Consideration needs to be given to what affect the charge or conviction has on the employee's suitability to do the job and their relationship with the Council, work colleagues and customers.

5.4.2 Employees must immediately inform their line manager if they are convicted of any criminal offence, bound over to keep the peace and be of good behaviour, have accepted a caution from the Police or have been arrested and/ or charged with a criminal offence.

5.5 Gross Misconduct

5.5.1 Some acts, termed gross misconduct, are so serious in themselves or have such serious consequences that they may call for dismissal without notice for a first offence. A fair disciplinary process should always be followed, before dismissing for gross misconduct.

5.5.2 The following list provides examples of offences that are normally regarded as gross misconduct:

- theft, fraud, deliberate falsification of records
- fighting, assault on another person
- deliberate damage to Council property
- discrimination, intentional or direct
- incapability through alcohol or being under the influence of illegal drugs
- negligence which causes unacceptable loss, damage or injury
- act of insubordination or willful disobedience of a reasonable instruction or failure to follow procedure
- a breakdown of trust and/ or confidence in the employee
- unauthorised entry to computer records.

- 5.5.3 This list gives illustrative examples and each case will be considered on its facts.
- 5.5.4 The above list is neither exclusive nor exhaustive. There are other offences of similar gravity, which are fundamentally damaging to the relationship of trust and confidence with the Council that could constitute gross misconduct.

6 Conduct Procedure – Procedural Guidance

6.1 Establish Facts of the Case

- 6.1.1 It is important to carry out necessary investigations of potential disciplinary matters without unreasonable delay to establish the facts of the case. In most cases this will require the holding of an investigatory meeting with the employee before proceeding to any disciplinary hearing. In a minority of cases, the investigatory stage will be the collation of evidence by the Council for use at any disciplinary hearing, for example where an investigation into a grievance has concluded that there is a disciplinary case to answer.
- 6.1.2 If there is an investigatory meeting this should not, of itself, result in disciplinary action. There is no statutory right for an employee to be accompanied at a formal investigatory meeting, however the Council will offer the right of representation, in line with **Paragraph 5.1** but note **Paragraph 4.4**.
- 6.1.3 Where an allegation or suspicion is of a sexual nature the investigating manager is recommended to speak to the Director of Childrens' Services or HR, as appropriate.
- 6.1.4 In cases of allegations of a sexual nature involving pupils up to an including the age of 17 years the investigation will be undertaken in line with the Child Abuse Procedures.
- 6.1.5 In cases of alleged financial misconduct the Assistant Director, Audit, and in schools the Director Childrens' Services, must be informed. The audit team will liaise with the Investigating Manager in deciding how to proceed. This may involve notification to the Police to conduct a criminal investigation. Alternatively the Assistant Director, Audit, may conduct the investigation.
- 6.1.6 Complaints and allegations should be obtained in writing, signed and dated. In the cases of allegations by young children and those with special educational needs or where the complainant declines to make a written complaint, it is acknowledged that a written account may not be possible. In such cases the Investigating

Manager should make an account in writing of his / her discussions with the pupil / parent / complainant, which must be signed and dated.

- 6.1.7** Once a complaint or allegation is made in writing a meeting should be held with the complainant to discuss this in detail. These discussions should be confidential and conducted in a non-threatening and non-prejudicial manner, without witnesses present.
- 6.1.8** Any witnesses who are likely to be in a position to give direct evidence about the alleged offence should be interviewed. The witnesses should be informed that they could be required to give evidence at a disciplinary hearing.

6.2 Inform the Employee of the Problem

- 6.2.1** Where it is believed that there is sufficient substance in an allegation to warrant an investigation, and it is not one warranting urgent consideration of suspension, the employee must be informed, normally within 2 working days.
- 6.2.2** A fact-finding meeting should be arranged for the employee to respond to the allegations and to assist in establishing the facts. At this stage this is not a formal disciplinary hearing however the employee may be accompanied as per **Paragraph 5.1.** above but note **Paragraph 4.4.**
- 6.2.3** The substance of the allegation should be put to the employee and they should be given the opportunity to give their version of the incident or problem. The formal allegation and written evidence will not be supplied in writing at this stage, but will be released in advance of any formal hearing.
- 6.2.4** Following the investigation, if it is decided that there is a disciplinary case to answer, the employee should be notified of this in writing. This notification should contain sufficient information about the alleged misconduct or poor performance and its possible consequences to enable the employee to prepare to answer the case at a disciplinary meeting. It would normally be appropriate to provide copies of any written evidence, which may include any witness statements, with the notification.
- 6.2.5** The notification should also give details of the time and venue for the disciplinary meeting and advise the employee of their right to be accompanied at the meeting. The employee must also be notified if no further action is to be taken
- 6.2.6** Following the investigation, it may be decided not to take formal action. A counselling session might be appropriate and this could provide guidance as to future conduct and / or support and

reassurance. A summary of the counselling session should be sent in writing to the employee and a copy of the letter and any response to it will be held on the employee's personal file for a period of 12 months. Other outcomes of the fact-finding stage of the procedure could be to deal with the matter through the Capability Procedure or to take no further action whatsoever.

6.3 Precautionary Measures

- 6.3.1** In cases where a period of suspension is considered necessary, this period should be as brief as possible, should be kept under review and it should be made clear that the suspension is a neutral act and not disciplinary action. **Annex C** contains the authority levels who have the authority to suspend in line with this procedure.
- 6.3.2** Alternatives to suspension may include:
- Placing the employee on limited duties;
 - Temporarily transferring the employee to other duties and / or another workplace;
 - Providing the employee with work to do at home;
 - Where appropriate employees may be sent off duty for a cooling off period for the rest of the day the incident occurs and no more than one day in addition.
- 6.3.3** An employee who is subject to one of the above measures will continue to be on full contractual pay and allowances. Only where an employee is not believed to be legally working for the Council would suspension be without pay. All the terms of suspension will be provided in writing to the employee and will be regularly reviewed, on a minimum of a two weekly basis.
- 6.3.4** During a period of suspension the employee can still take annual leave with the approval of their line manager. However they must be able to return to duty and attend investigative and formal meetings. The employee's Chief Officer or the Director Childrens' Services as appropriate should only extend any suspension, which exceeds six weeks, following a review.
- 6.3.5** Where the investigation suggests that there might be a health problem, which is material to the alleged misconduct, it is important to obtain a report from the Occupational Health Service. In such cases the employee should be informed and asked to give written consent.

6.4 Formal Meeting to Discuss the Problem

- 6.4.1** The employee should be given a minimum of 7 working days notice of the date, time and place of the interview.
- 6.4.2** Written details of the complaint, including any documentary evidence, in as much depth as possible to enable the employee to know what is being alleged about his / her conduct, should be provided with the interview notification. A copy of these procedures should also be supplied. In exceptional circumstances the manager hearing the case may allow additional documents to be presented at the hearing, if they could not have been reasonably presented within the stipulated time to the other party.
- 6.4.3** Both the Council and the employee have the right to call witnesses and / or rely on documentary evidence as appropriate.
- 6.4.4** A formal interview should proceed with the employee present, unless there is medical evidence that they are unfit to attend. Under these circumstances a postponement will be arranged for the interview, normally within ten working days of the original date. It is acceptable to proceed in the absence of the employee concerned where the employee fails to attend both interviews.
- 6.4.5** The interview may also be re-scheduled, on one occasion only, if the chosen representative or companion is not available at the time being proposed for the interview. This will be re-arranged within ten working days of the original date.
- 6.4.6** The name and authority of the manager hearing the case will be provided to the employee and the range of penalties that s/he may impose ahead of the meeting. Where appropriate the employee will be informed that the allegation(s) under consideration could result in dismissal because:
- the allegation(s) could constitute gross misconduct ; or
 - the existence of a previous disciplinary record.
- 6.4.7** If relevant, a warning that recovery of any financial loss to the Council, usually by deductions from pay, will be made, should misconduct be proven, will be provided to the employee.
- 6.4.8** Where the manager believes that a witness has a reasonable belief that by giving evidence, there will be a detriment to the witness, the witness will be required to answer questions and reasonable steps will be taken to protect their anonymity.

- 6.4.9** Any evidence, gathered by either party as part of their investigations that will be presented as evidence at the interview, should be exchanged with the other party at least five working days before the meeting.

6.5 Outcomes

6.5.1 Counselling Note

If conduct does not meet acceptable standards the line manager will normally hold an informal counselling interview. A summary of that interview and agreed actions will be provided in the form of a counselling note. This will set out the conduct problem, the improvement that is required, the timescale and any help that may be given. The employee will be advised that it constitutes the first stage of the formal procedure. A record of the counselling note will be kept for 12 months, but will then be considered spent - subject to achievement and sustainment of satisfactory conduct.

6.5.2 Written Warnings

If the conduct does not meet acceptable standards, the employee will normally be given a written warning. See **Annex A** for authority levels to issue a warning at this stage. This will set out the nature of the misconduct and the change in behaviour required. The warning should also inform the employee that a final written warning might be considered if there is no sustained satisfactory improvement or change. If the offence is sufficiently serious, or there is a failure to improve during the currency of a prior warning for the same type of offence, a final written warning may be given to the employee. This will give details of the complaint, the improvement required and the timescale. It will also warn that failure to improve may lead to action leading to dismissal or some other action short of dismissal, and will refer to the right of appeal. A copy of this written warning will be kept by the line manager but will be disregarded for disciplinary purposes after 12 months subject to achievement and sustainment of satisfactory conduct.

6.5.3 Dismissal or action short of dismissal

If there is still a failure to improve the final step in the procedure may be dismissal or some other action short of dismissal such as demotion or transfer. Dismissal decisions can only be taken by the appropriate senior manager, see **Annex B**, and the employee will be provided, as soon as reasonably practicable, with written reasons for dismissal, the date on which the employment will terminate, and the right of appeal. The decision to dismiss will be confirmed in writing.

6.5.4 If some sanction short of dismissal is imposed, the employee will receive details of the complaint, will be warned that dismissal could result if there is no satisfactory improvement, and will be advised of the right of appeal. A copy of the written warning will be kept by the line manager but will be disregarded for disciplinary purposes after 24 months, subject to achievement and sustainment of satisfactory conduct.

6.6 Appeal

6.6.1 The employee can appeal against the manager's decision to issue a formal warning or against dismissal. The appeal must be made to the manager in writing within 5 working days of receiving the decision in writing.

6.6.2 The authorities listed in **Annex B** will hear the appeal.

6.6.3 The appeal should not be delegated to a manager or governor who has had any previous direct involvement or where there may be a conflict of interest.

6.6.4 The appeal is not a rehearing and is designed to review the decisions at the original hearing and decide whether they were reasonable in the circumstances.

6.6.5 The manager / panel hearing the appeal should give a decision about the outcome of the grievance within 10 working days. This decision is final within the Council and no further internal appeal is permitted.

Annex A

Authority Levels – Up to and including a final written warning

Job Role	Authority Level	Appeal Stage
Head Teacher – directly employed by the Council under Head Teachers’ pay and conditions	Governing Body, who should normally delegate this to the Chair of Governors	Panel of Governors
Head Teacher – employed by the Governors	Governing Body, who should normally delegate this to the Chair of Governors	Panel of Governors
Teacher, including Deputy Head Teacher - directly employed by the Council under Teachers’ pay and conditions School support staff	Head Teacher or Senior School Manager	Head Teacher, if not previously involved in case, or Panel of Governors
Teacher, including Deputy Head Teacher - employed by the Governors School support staff	Head Teacher, Senior School Manager or a nominated Governor.	Head Teacher, if not previously involved in case, or Panel of Governors
Trade Union Representative	Authority levels as per job role and a full time union official should be made aware of the disciplinary action	As per job role
Chief Officer	Chief Executive or individual nominated by him/her	Chief Executive
All other employees, not listed above including Centrally Employed Teachers	Chief Officer and their named nominees	A more senior manager than the manager who conducted the original hearing

Annex B

Authority Levels – Dismissal or action short of dismissal

Job Role	Authority	Appeal - Dismissal
Head Teacher – directly employed by the Council under Head Teacher pay and conditions	Governing Body, would recommend dismissal to the Local Authority. The LA have a statutory duty to issue the notice of dismissal within 14 days	Panel of Governors
Head Teacher – employed by the Governors	Governing Body, would recommend dismissal to the Local Authority. The LA have a statutory duty to issue the notice of dismissal within 14 days	Panel of Governors
Teacher, including Deputy Head Teacher - directly employed by the Council under Teachers’ pay and conditions School support staff	Governing Body, would recommend dismissal to the Local Authority. The LA have a statutory duty to issue the notice of dismissal within 14 days	Panel of Governors
Teacher, including Deputy HT - employed by the Governors School support staff	Governing Body, would recommend dismissal to the Local Authority. The LA have a statutory duty to issue the notice of dismissal within 14 days	Panel of Governors
Trade Union Representative	Authority level as per job role and a full time union official should be made aware of the disciplinary action	As per job role
Chief Officer	Chief Executive or individual nominated by him/her	Chief Executive
All other employees, not listed above including Centrally Employed Teachers	Chief Officer and their named nominees	Appeal will only be considered by a Chief Officer, or more senior to this if the Chief Officer made the decision to dismiss

Annex C

Authority Levels – Suspension

Job Role	Authority
Head Teacher – directly employed by the Council under Head Teachers’ pay and conditions	The Governing Body can suspend after discussion with HR / the Director Childrens’ Services. Chair of Governors and Director Childrens’ Services to be formally advised in writing. The full Governing Body should be made aware the suspension has taken place but given no more details. Only the Governing Body can end the suspension.
Head Teacher – employed by the Governors	The Governing Body can suspend after discussion with HR / the Director Childrens’ Services. Chair of Governors and Director Childrens’ Services to be formally advised in writing. The full Governing Body should be made aware the suspension has taken place but given no more details. Only the Governing Body can end the suspension.
Teacher, including Deputy Head Teacher - directly employed by the Council under Teachers’ pay and conditions School support staff	The Head Teacher and / or the Governing Body can suspend after discussion with HR / Director of Childrens’ Services. Chair of Governors and Director Childrens’ Services to be formally advised in writing. The full Governing Body should be made aware the suspension has taken place but given no more details. Only the Governing Body can end the suspension.
Teacher, including Deputy Head Teacher - employed by the Governors School support staff	The Head Teacher and / or the Governing Body can suspend after discussion with HR / Director of Childrens’ Services. Chair of Governors and Director Childrens’ Services to be formally advised in writing. The full Governing Body should be made aware the suspension has taken place but given no more details. Only the Governing Body can end the suspension.
Trade Union Representative	Authority is as per their job role however the case must be discussed with the Regional Officer or Regional Secretary.
Chief Officer	Chief Executive or individual nominated by him/her
All other employees, not listed above including Centrally Employed Teachers	Chief Officers and their Deputies can suspend. Line Managers can carry out the suspension pending approval. The Chief Officer must approve the suspension if it continues over 6 weeks.
In all cases where the employee is a member of a recognised trade union the Branch Secretary must be made aware by telephone, followed up in writing, of the suspension.	

Annex D

Retention of Warnings

Action	Period of time the Warning will remain on an employee's personal record
Counselling Notes	12 months
First Written Warning	12 months
Final Written Warning	12 months
Action short of dismissal	24 months

Allegations involving Safeguarding will be retained indefinitely, as per statutory requirements.