

Excerpt from the Council's Disciplinary Procedure 2007 (this does not form part of the Human Resources Procedures Rules and is for illustrative purposes only as to what may constitute misconduct)

3. Disciplinary Rules

1. It is not possible in this document to define all acts of misconduct that could lead to the Procedure being used.
2. Misconduct is a breach of the express or implied terms of an employee's contract of employment and is essentially behaviour which does not meet defined standards or standards which any person would accept as reasonable.
3. A distinction is made between:
 - Minor misconduct – such cases will be dealt with informally and the full Procedure will not be used
 - Misconduct – this may be repeated minor misconduct or allegations of misconduct which require formal investigation and possible action. This Procedure will be invoked in such cases.
 - Gross misconduct – this is alleged misconduct so serious that, if substantiated, represents a fundamental repudiation of the contract of employment by an employee and which would justify summary dismissal i.e. dismissal without notice. While there may be some conduct that will always be classified as 'gross', the distinction between 'misconduct' and 'gross misconduct' may be a question of seriousness.

Examples of conduct which will normally be regarded as gross misconduct include:-

- theft or fraud;
- physical violence or purposeful bullying;
- deliberate and serious damage to property;
- serious misuse of the Council's property or name;
- deliberately accessing and/or disseminating internet sites or electronic material containing pornographic, offensive or obscene material; serious insubordination;
- unlawful discrimination or harassment;
- bringing the Council into serious disrepute;
- serious incapability at work brought on by alcohol or illegal drugs;
- causing loss, damage or injury through serious negligence;
- a serious breach of health and safety rules;
- a serious breach of confidence; and
- breaches of the Code of Conduct.

4. Minor Misconduct

1. For a first minor breach of discipline, a manager may issue an informal warning without the need to follow any set procedure. A note that such a warning has been given will be kept on the employee's personal file and a copy given to the employee. Although no right of appeal is available against such informal action an employee may raise a grievance if the issue of such

the warning was unreasonable and/or the note made was inaccurate and the matter cannot be resolved informally.

2. The period for retaining any such note on the personal file will be set down on the note however, this period will not exceed 4 months in normal circumstances. Once the period is 'spent' the note (and any copies whether 'hard' or 'soft') will be removed from the file and securely destroyed.

5. Misconduct

For more serious suspicions or allegations of misconduct the following formal procedure will apply:

1. The employee's Manager will verbally advise the employee of the allegation(s) against them and that these will be investigated. In some cases it may be appropriate and reasonable to seek the employee's version of events immediately as part of that investigation, but in many instances it will be more appropriate to interview the employee later as part of the investigation. In any event, the employee will be advised that this meeting is to investigate the facts of the matter and is not a disciplinary hearing.

The allegations, and that there will be an investigation, will be confirmed in writing, as will the possible outcomes of the investigation and the right of employees to be accompanied at any subsequent meetings to discuss the allegations.

2. The Manager will institute an investigation, which will involve collection of relevant documents if applicable and, where appropriate, interviews with witnesses and the employee concerned. The facts ascertained will be documented.

The manager must ask for an independent manager to conduct the investigations etc where s/he considers that they have been too closely involved in the incident in question or have not been able to keep a sufficiently open mind to ensure that fairness and natural justice are maintained. They may also opt for an independent investigation where they consider it advisable for maintaining future good relations within the team or where there are allegations of bias against them.

3. On the basis of an investigation the Manager will decide if there is a 'case to answer'. If not, the employee will be advised accordingly, both verbally and in writing. Where there is, the Manager will organise a formal disciplinary meeting which will include:
 - Setting out in writing the basis of the allegation and an explanation of the 'case to answer', including providing a copy of all the documented evidence ascertained in the investigation
 - Arranging a date, time and venue for a meeting with the employee. This must provide a reasonable time for the employee to prepare and consult with whoever might be accompanying them. Reasonable and genuine requests to postpone the meeting will be considered sympathetically and the statutory grounds for postponing the meeting are set out ACAS handbook.
 - Confirming in writing to the employee the date, time and venue for the meeting and re-confirming their right to be accompanied

4. A disciplinary meeting will be held between the Manager and the employee with their accompanying representative if appropriate. The Manager should be accompanied too and, depending on the nature of the case (its seriousness and complexity), others may also attend e.g. a note-taker and/or witnesses.
5. The Manager will have due regard to the following matters before deciding whether any action should be taken: -
 - the facts identified in the investigation report;
 - the employee's explanation (including any relevant mitigating circumstances),
 - their length of service and employment record
 - the decisions made in other cases
 - any general considerations of fairness, reasonableness and consistency

The outcome will be advised both verbally and in writing.