

CIPD FACTSHEET - What are disciplinary and grievance procedures?

Disciplinary and grievance procedures are frameworks which provide clear structures for dealing with difficulties which may arise as part of the working relationship, from either the employer's or employee's perspective.

These procedures are needed to make sure everybody is treated in the same way in similar circumstances and to deal with issues fairly and reasonably. They also ensure that employers comply with current law and follow the relevant Acas Code of Practice (see below). Most employers will have their own procedures which comply with the Acas code.

Disciplinary procedures are needed to:

- let employees know what is expected of them in terms of standards of performance or conduct (and the likely consequences of continued failure to meet these standards)
- identify obstacles to individuals achieving the required standards (for example training needs, lack of clarity of job requirements, additional support needed) and to enable employers to take appropriate action
- enable employers and employees to agree suitable goals and timescales for improvement in an individual's performance or conduct
- try to resolve matters without recourse to external dispute resolution processes or an employment tribunal
- demonstrate to an employment tribunal that an appropriate process has been followed should an employee complain about the way they've been dismissed.
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Grievance procedures are needed to:

- provide individuals with a course of action if they have a complaint which they're unable to resolve through regular or informal communication with their line manager
- provide points of contact and timescales to resolve issues of concern
- try to resolve matters without recourse to external dispute resolution processes or an employment tribunal.
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Our survey *Getting under the skin of workplace conflict: tracing the experiences of employees* focuses on the nature of conflict and how it is dealt with inside organisations. It gives a representative view of how UK employees experience conflict at work and how this conflict plays out within the organisation.

The legal position

The most important UK legislation governing discipline and grievances at work currently includes the Employment Act 2008 and the Employment Tribunals (Constitution and Rules of Procedure) (Amendment) Regulations 2008. However, those in Northern Ireland should note that the Employment Act 2008 which repealed the previous **statutory** procedures for handling discipline and grievance issues is not applicable there.

We endorse the Acas Code of Practice *Disciplinary and Grievance Procedures*¹. Following the Code is crucially important for employers: an employment tribunal will consider whether the employer has followed the Code and, if they haven't, then the tribunal may adjust any awards made by up to 25% for unreasonable failure to comply.

Disciplinary policy and practice

Using the disciplinary process

There are two main areas where a disciplinary system may be used: capability/performance and conduct.

Capability/performance

Capability issues may arise because an employee doesn't have adequate training, or is just unable to do the work to a satisfactory standard for another reason. An employer must try to identify the reason and give appropriate support, before invoking a formal procedure. Situations where an individual is unable to do their job because of ill-health may also fall into this category. In these instances an employee should be dealt with sympathetically and offered support. However, unacceptable levels of absence could still result in the employer making use of warnings.

Conduct

Employee misconduct could range from continued lateness, failure to follow a reasonable management instruction, abuse of the organisation's computer system or Internet access, bullying behaviour or creating a hostile work environment, through to theft, fighting and committing criminal offences. The more serious offences may constitute gross misconduct. In all cases, an employer should follow the recommendations in the Acas Code.

Stages of the process

If disciplinary action is to be taken, it should usually have at least three main stages:

- a letter
- a meeting
- an appeal.

There must always be a full and fair investigation to determine the facts and to decide if further action is necessary. The Acas Code recommends at least these three steps should be taken in the majority of cases. However, in some cases a second meeting stage or other stages may be appropriate.

Record-keeping

Employers should keep meticulous records, as they will be vital should a case go to an employment tribunal. The type of records to keep are: minutes of meetings, emails, attendance notes, notes of telephone calls, copies of correspondence, and so on.

Handling disciplinary interviews

All line managers should be trained and supported so that they're able to carry out disciplinary meetings with their teams. The HR department should be able to advise them on relevant legislation and on preparing for and conducting the interview.

An individual is entitled to be accompanied by a work colleague or trade union official at formal disciplinary and grievance interviews. It's good practice for an employer also to offer this at any purely investigatory meeting. Employers don't usually have to allow other companions (for example family members or lawyers) but may do so if they wish.

Key recommendations:

- Ensure all the facts are investigated in advance, including consulting the individual's personal file for relevant information, and plan how to approach the meeting.
- Make sure the letter inviting the employee to the meeting says why they've been asked to attend and states that they're entitled to have a companion present.

- Give the individual reasonable notice, ideally more than 72 hours.
- Before the meeting, provide appropriate statements from people involved, together with any key information the employer intends to rely on.
- Make sure another member of management can be there to take detailed notes and help conduct the interview.
- Never pre-judge the outcome of the interview before hearing the employee's perspective.
- Start the interview by stating the complaint to the employee and referring to appropriate statements from people involved.
- Give the employee plenty of opportunity to put forward their side of the story and call any supporting witnesses.
- Employers can also call witnesses, but they can only be in the room for the relevant part of the interview – not the duration.
- Make use of adjournments; always take a break to consider and obtain any necessary extra information before reaching a decision. Adjournments can be especially useful if things become heated or people are upset during the interview.
- Deliver the decision (and give reasons, taking into account any mitigating circumstances), confirm review periods and ensure you give details of how to appeal.
- Confirm the decision in writing.
- Ensure everyone involved in conducting the disciplinary action understands the importance of following the correct procedure, as even if the case against an employee seems proven, they can still be deemed to have been treated unfairly if the correct procedures aren't followed.

Potential outcomes

No action

After the meeting, the employer may decide that no action is necessary. For example, if an employee was unclear about what was expected from them and they agree to try to resolve the issue via additional support or counselling.

Warnings

Alternatively, the employer may decide to give the employee a warning. An organisation's policy should outline exactly which warnings will be given. Here are some examples of warnings an organisation may use:

- verbal/oral warning (Acas no longer recommends this stage as part of a formal procedure but, for cases of minor misconduct, this will often be a reasonable method to prevent a problem from escalating)
- first written warning/improvement notice
- final written warning.

Employers should specify a 'life' for formal disciplinary warnings after which they are disregarded for disciplinary purposes. Typical timescales suggested in the Acas non-statutory guidance for the types of warning are:

- first written warning – 6 months
- final written warning – 1 year.

It may be appropriate for a warning to continue to be regarded for a longer period, provided the timescale was specified in the organisation's disciplinary policy from the outset. The time period employers select for warnings to remain current, and the penalties imposed, must be reasonable in all the circumstances. For example, they must take into account the nature of the misconduct, the employee's disciplinary record and be consistent with penalties imposed in similar cases.

Dismissal

There are currently five potentially fair reasons for dismissal. Employers need to be sure that any decision to dismiss an employee will be seen as 'reasonable' by an employment tribunal. The employer must follow the Acas Code before any dismissal and also have been fair overall, for example by complying with internal procedures, treating employees consistently and carrying out a proper investigation.

If, despite the employer's efforts, a tribunal claim follows the dismissal, then both parties must attempt to resolve the dispute by early conciliation using Acas or some other means of dispute resolution. The parties may also enter into a settlement agreement.

Grievance policy and practice

It is essential that grievances from employees are treated in the same fair manner and all managers must be familiar with their organisation's grievance procedure.

There are a number of additional factors to bear in mind when dealing with grievances concerning harassment.

Handling grievances informally

Individuals should be encouraged to discuss ordinary, day-to-day issues informally with their line manager. This helps concerns to be heard and responded to as soon as possible.

Where this has been unsuccessful, or circumstances make this route inappropriate, employers should consider using mediation or some other form of alternative dispute resolution such as 'facilitated discussion'.

Our report *Conflict management: a shift in direction?* highlights the shift in approach being adopted by employers towards greater informality in managing conflict and shows that more employers now see formal grievance procedures as the last resort.

However, if matters can't be resolved by other means, they should be raised formally through the grievance procedure.

Handling grievances formally

Employees should be aware of the formal route open to them, including:

- all stages of the Acas Code and any further elements of the organisation's additional procedures
- with whom to raise the complaint and appropriate sources of support
- timescales within which the organisation will seek to deal with the complaint
- details of the stages of the grievance procedure, for example, how a complaint may be raised with the next level of management if a satisfactory resolution isn't reached.

An employee should be given the right to be accompanied to grievance hearings by a colleague or trade union representative as explained above.

As in disciplinary matters, record-keeping is important and the Acas Code should be followed.

CIPD viewpoint

Ensuring that people are treated fairly and reducing the scale of conflict are important factors in the creation of a productive working environment. Employers and employees should seek informally to resolve most matters that arise in the course of the working relationship. This approach helps minor concerns to be resolved speedily, without the need for formal action. It also limits disruption to work and reduces any personal embarrassment in discussing issues of concern.

Disciplinary and grievance procedures are essential when informal mechanisms are ineffective, or where they're inappropriate given the nature of the issue arising. These procedures can also help prevent unnecessary staff turnover and absenteeism, as well as avoiding costly and time-consuming tribunal cases.

It's essential that those implementing these procedures have the necessary training and guidance to do so, in line not just with minimum legal obligations but also with the principles of fairness and natural justice reflected in the Acas Code.

Useful contacts

- [Acas – disputes and mediation](#)
- [GOV.UK - Handling an employee's grievance](#)
- [GOV.UK - Taking disciplinary action against an employee](#)
- [nidirect - resolving workplace disputes \(for Northern Ireland\)](#)

References

1. ACAS. (2015) *Code of practice on disciplinary and grievance procedures*. London: Acas. Available at: <http://www.acas.org.uk/index.aspx?articleid=2174>
- 2.

Further reading

Books and reports

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DEPARTMENT FOR BUSINESS INNOVATION AND SKILLS. (2009) *Avoiding and resolving discipline and grievance issues at work*. London: BIS. Available at: http://www.cipd.co.uk/subjects/emplaw/discipline/_dscgrvwrk.htm

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Journal articles

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