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Discipline and grievance at work

Learn the fundamentals of disciplinary and grievance policies and practices in the workplace

Introduction

Difficulties may arise at various points in the employment relationship, and disciplinary and grievance procedures are there to ensure that these challenges are dealt with fairly and consistently. For this reason, employers need procedures that support both the employer's and employee's perspective. Employers should follow both their own procedures and the Acas Code of Practice: Disciplinary and Grievance Procedures.

This factsheet examines the two main areas where a disciplinary system may be used: capability/performance and conduct. It offers comprehensive advice for handling disciplinary interviews, providing a detailed list of key recommendations for employers as well as potential outcomes. The factsheet also looks at handling grievances informally and formally.

What are disciplinary and grievance procedures?

Disciplinary and grievance procedures 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 ensure every individual is treated equally in similar circumstances and to deal with issues fairly and reasonably. They also ensure that employers comply with current law and follow the [Acas Code of Practice: Disciplinary and Grievance Procedures](#). Most employers have their own procedures which comply with the Acas Code.

Disciplinary procedures are needed to:

- Make employees aware of what's 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 standards required of them (for example training needs, or lack of clarity about job requirements) and to enable employers to take appropriate remedial action.
- 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 if employees complain about the way they've been dismissed.

Grievance procedures are needed to:

- Provide individuals with a course of action if they have a complaint which they're unable to resolve informally.
- Provide points of contact and timescales to resolve issues of concern.
- Resolve matters internally without recourse to an employment tribunal.

Disciplinary and grievance procedures are essential when informal mechanisms are ineffective, or inappropriate given the nature of the dispute. They can also help to avoid costly and time-consuming tribunal cases.

Employers should have clear individual dispute resolution procedures that are communicated to all staff. Line managers and any staff members involved in managing disciplinary and grievance matters must be properly trained in the organisation's policies and procedures and know how to implement them. All disputes should be handled in a fair and consistent way across the organisation.

Suspension and/or dismissal can have a significant detrimental impact on any individual. Immediate and ongoing support should be available to safeguard their health and wellbeing.

The legal position

The written statement of employment particulars (under the Employment Rights Act 1996) must include reference to any disciplinary, dismissal or grievance procedures, although the actual procedures can be supplied elsewhere, such as in a staff handbook. The availability of proper, fair procedures is a central to unfair dismissal law.

The [Acas Code of Practice: Disciplinary and Grievance Procedures](#) is crucially important for employers. An employment tribunal will consider whether the employer and employee

have followed the Code: if they haven't, the tribunal may adjust any awards made by up to 25% for unreasonable failure to comply. Different rules apply in Northern Ireland.

CIPD members can find out more about the Code and the law from our [Discipline and grievance procedures law Q&As](#).

Disciplinary and grievance procedures in the time of coronavirus

Acas has issued new guidance on [disciplinary and grievance procedures during the COVID-19 pandemic](#). The approach employers can take depends upon the nature of the offence or complaint, whether the workplace is open and on the social distancing measures. Some minor offences may be resolved by an informal telephone discussion. More serious matters may need the approaches referred to below if social distancing prevents normal disciplinary processes, such as pausing the process, or conducting investigations and/or meetings remotely,

There's more on what employers should be doing in our [Responding to the coronavirus hub](#).

Disciplinary policy and practice

Using the disciplinary process

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

Capability/performance

Capability issues may arise because an employee is unable to perform the work to a satisfactory standard due to inadequate training or 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 empathetically and offered appropriate support. Unacceptable levels of absence may still result in sickness absence procedures and warnings - see more in our [Absence management factsheet](#). Employers should ensure they comply with the Equality Act in cases of absence where the individual has a disability or health condition, including the duty to make

reasonable adjustments – see more in our [Disability and employment factsheet](#).

Conduct

Employee misconduct could cover a wide range of issues that vary in their level of seriousness, including:

- 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
- theft
- fighting
- a criminal offence.

In all cases, an employer should follow their own procedures as well as the Acas Code.

The more serious offences may constitute gross misconduct, which could involve offences such as theft, physical violence or serious insubordination. Although the employer can dismiss an employee with immediate effect for gross misconduct, it's still important to follow a fair procedure and investigate the alleged offence. There should also be an opportunity for the employee to respond before making a decision to dismiss

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.

The employer should always carry out a full and fair investigation to determine the facts and to decide if further action is necessary. Acas has published [guidance for those carrying out investigations](#), and recommends that an investigator should be trained for the role.

Record-keeping

Employers should keep meticulous records of disciplinary action and communication, which will be vital should a case go to an employment tribunal. The type of records to keep include:

- minutes of all meetings
- texts

- emails
- attendance notes
- notes of telephone calls
- copies of correspondence.

Handling disciplinary interviews

The employer should train and support all line managers to ensure that they are confident and competent to carry out disciplinary meetings. HR should advise about relevant legislation and the organisation's own policies and procedures, and how to prepare for and conduct interviews and meetings.

An employee or worker (see our [Employment status factsheet](#)) 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 to offer this at any 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 everyone involved in conducting the disciplinary process understands the importance of following the correct procedure; even if the case against an employee seems proven, the individual may still be treated unfairly if the correct procedures aren't followed.
- Ensure all the facts are investigated, 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 states why they've been asked to attend and that they may have a companion present.
- Give the individual reasonable notice, ideally more than 72 hours.
- Before the meeting, provide appropriate statements from the individuals involved, together with any key information both parties intend to rely on.
- Make sure another manager can be present 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 witnesses.

- 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 additional information before reaching a decision. Adjournments can be especially useful if the interview becomes heated or if people are upset.
- Communicate the decision in person if possible and give reasons, taking account of any mitigating circumstances, confirm review periods and ensure you give details of how to appeal.
- Confirm the decision in writing.

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, for example:

- 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 or improvement notice.
- Final written warning.

Employers should specify how long formal disciplinary warnings should stay on an individual's record. 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 longer, provided the timescale was specified in the organisation's disciplinary policy from the outset. The time

period for warnings to remain current, and the penalties imposed, must be reasonable given the circumstances. For example, the employer must take into account the nature of the misconduct and the employee's disciplinary record, and ensure consistency with penalties imposed in similar cases.

Dismissal

There are currently five potentially fair reasons for dismissal – as set out in our [Dismissal factsheet](#).

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 demonstrate fairness overall, for example by complying with internal procedures, treating employees consistently and carrying out a proper investigation.

If, despite the employer's efforts, the individual submits a tribunal claim, both parties must attempt to resolve the dispute by early conciliation using Acas or some other means of dispute resolution. The parties could also enter into a settlement agreement. CIPD members can find out more from our [unfair dismissal law Q&As](#) and our [wrongful dismissal law Q&As](#).

Maintaining people's dignity and safeguarding their health and wellbeing

Concern for the health and welfare of people involved in a disciplinary procedure, should be a priority at every stage. This should include access to [occupational health](#) assessment where requested or needed.

Suspension should be a matter of last resort, when working relationships have broken down severely and after all other reasonable options have been considered. It should be reviewed on an ongoing basis and be timebound.

If an organisation does fairly dismiss an employee, it should still have regard to the individual's health and wellbeing and the potential impact that the action could have on them. Even where the organisation has carefully followed a thorough process and the dismissal is justifiable and proportionate, it is likely to be a devastating outcome for the individual. The organisation should act with compassion as part of a person-centred approach, whatever the circumstances, and ensure that support is available where needed. The individual's dignity should be respected at all times.

Grievance policy and practice

Organisations must treat employee grievances in the same fair manner and ensure managers are familiar with the grievance procedure. Some additional factors apply when dealing with grievances concerning [harassment](#).

Handling grievances informally

An employer should encourage individuals to discuss day-to-day issues informally with their line manager, so that concerns can be heard and responded to as soon as possible.

Our [Managing conflict in the modern workplace](#) report shows that many employees and employers are open to more informal and positive ways to resolve conflict at work. Employers should consider using more positive and informal methods of 'alternative dispute resolution' such as [mediation](#).

However, if individual disputes can't be resolved informally, they should be raised formally through the grievance procedure.

Handling grievances formally

Employers should ensure that staff are aware of the formal route open to them through the grievance procedure, including:

- All stages of the Acas Code as well as the organisation's own procedures.
- How to raise the complaint and appropriate sources of support.
- Timescales for the organisation to deal with the complaint.
- 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 or worker should have the right to be accompanied to grievance hearings by a colleague or trade union representative as explained above.

As in disciplinary matters, employers should keep good records and follow the Acas Code.

Useful contacts and further reading

Contacts

[Acas – Disciplinary and grievance procedures](#)

[GOV.UK - Handling an employee's grievance](#)

[GOV.UK - Taking disciplinary action against an employee](#)

[nidirect - Resolving workplace disputes\(for Northern Ireland\)](#)

Books and reports

ACAS. (2019) *Discipline and grievances at work*. London: Acas.

AYLOTT, E. (2018) *Employee relations: a practical introduction*. 2nd ed. HR Fundamentals. London: CIPD and Kogan Page.

DEPARTMENT FOR BUSINESS ENTERPRISE AND REGULATORY REFORM. (2009) *Avoiding and resolving discipline and grievance issues at work*. London: BERR.

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Journal articles

FARAGHER, J. (2018) *The ultimate guide to disciplinaries and grievances*. *People Management* (online). 13 December.

JONES, C. and SAUNDRY, R. (2012) The practice of discipline: evaluating the roles and relationship between managers and HR professionals. *Human Resource Management Journal*. Vol 22, No 3, July. pp252-266.

SIMMS, J. (2017) *There's more than one way to solve a dispute*. *People Management* (online). 25 July.

SUTTON, J. (2018) *The role of HR in disciplinary meetings*. *People Management* (online). 2 May.

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