

Disciplinary procedure: step by step

A disciplinary procedure is a formal way for an employer to deal with an employee's:

- unacceptable or improper behaviour ('misconduct')
- performance ('capability')

Before starting a disciplinary procedure, the employer should first see whether the problem can be resolved in an informal way. This can often be the quickest and easiest solution.

The employer could try solving the issue with their employee by:

- privately talking with them and any other staff involved
- listening to their point of view
- agreeing improvements to be made
- setting up a training or development plan, if it's a performance issue

Dealing with capability issues

Capability or performance is about an employee's ability to do the job.

Some employers might have a separate [procedure for dealing with capability or performance issues](#) that should be based on:

- support
- training
- encouragement to improve

Whether the employer deals with the issue under a capability or disciplinary procedure, they must do so fairly.

What counts as misconduct

Misconduct is when an employee's inappropriate behaviour or action breaks workplace rules.

Some misconduct examples include:

- bullying
- harassment
- refusing to do work ('insubordination')
- being [absent without permission](#) (some people call it absent without leave or 'AWOL')

But your workplace might have its own examples.

If misconduct happens outside the workplace

An employee could face disciplinary action for misconduct outside work.

For example, where an employee's behaviour in front of external clients at the work Christmas party reflects badly on the company.

It depends on how serious the employer sees the misconduct and whether it could have a bad effect on the business.

It's important the employer carries out a thorough investigation and can show the effect on the business.

When there is gross misconduct

Some acts count as 'gross misconduct' because they are very serious or have very serious effects.

If an employer finds there has been gross misconduct, they should still carry out an investigation and the full disciplinary procedure. They might then decide on dismissal without notice or payment in lieu of notice.

Examples of gross misconduct in the workplace could include:

- fraud
- physical violence
- serious lack of care to duties or other people ('gross negligence')
- serious insubordination

What is seen as gross misconduct can depend on the business, so your workplace might have its own policy or rules with examples.

If the employer feels they need to start a disciplinary procedure, they must make sure they follow a full and fair procedure throughout.

This is for the protection of the employee, the employer and their business.

2. The importance of following a fair procedure

The [Acas Code of Practice on disciplinary and grievance procedures](#) is the minimum a workplace must follow.

You might have [your own code or policy](#) with some differences that better suits your workplace.

Although the Acas Code is not the law, if a disciplinary case reaches an [employment tribunal](#), judges will take into consideration whether the employer has followed the Acas Code in a fair way.

The Acas Code mainly applies to those with employee [employment status](#). But to keep good working relationships, it's a good idea if employers follow the same fair procedure for all workers.

If anything similar has happened before

It's a good idea for employers to check whether your workplace has dealt with a similar situation before.

To avoid accusations of unfair treatment, employers should follow the procedure and policy in the same way for each disciplinary case.

They should gather evidence and make a decision based on what they know about each case.

Keep talking

It's important throughout the procedure for the employer to keep talking with both the employee being disciplined and any other staff affected.

Clear, regular and confidential communication can help avoid:

- misunderstandings
- a drop in work morale
- stress or other mental health issues
- further action, for example the employee raising a grievance
- legal action further down the line

The employer should keep all personal information confidential.

Looking after employees' wellbeing and mental health

Going through a disciplinary procedure can be very stressful, so it's important that employers consider the wellbeing and mental health of their employee.

Looking out for the employee's wellbeing and offering support can help prevent:

- absence
- mental health issues arising
- existing mental health issues getting worse

For example, as well as regular communication, the employer could arrange any meetings in a more private and comfortable location if this would help the employee.

See more advice on [supporting an employee with a mental health condition](#).

If the employee raises a grievance

If the employee raises a grievance during the disciplinary procedure, the

employer can pause the disciplinary and deal with the grievance first.

It might be appropriate to deal with both at the same time if the grievance and disciplinary cases are related.

See our guide to [dealing with workplace grievances](#).

If the employee wants to resign

The employee might feel they want to resign or “jump before they’re pushed” when they are facing a disciplinary.

This could risk the employee later claiming ‘[constructive dismissal](#)’ at an employment tribunal. They can only do this if they have worked for the organisation for 2 years or more.

The employer should try and talk through any concerns with the employee and encourage them to complete the disciplinary procedure first.

Employees can find out more about [resigning from a job](#).

Find out more about [ending employment](#).

Related content

[/code-of-practice-on-disciplinary-and-grievance-procedures](#)

[Download example discipline and grievance procedures](#)

[Download Discipline and Grievances at work - The Acas guide](#)

The employer must carry out an investigation to get as much information as they reasonably can about their employee’s alleged misconduct or poor performance.

[See our step by step guide to investigations](#).

Related content

[/investigations-for-discipline-and-grievance-step-by-step](#)

Where the investigation shows the employee has a case to answer, the employer should ask them to a disciplinary meeting or ‘hearing’.

3. Preparing for the hearing

The hearing should be held as soon as possible after the investigation, while giving reasonable time for the employee to prepare.

In good time before the hearing, the employer should put in writing to the employee:

- the alleged misconduct or performance issue
- any evidence from the investigation
- any other information they plan to talk about
- the date, time and location of the hearing
- information on the employee’s right to be accompanied to the hearing

- the possible outcomes

Employers can download [letter templates for giving an employee notice of a disciplinary meeting](#).

The employee can also bring evidence to the hearing, for example emails, to show and talk about.

The right to be accompanied

By law, an employee or worker can bring a relevant person ('companion') with them to a disciplinary hearing. This is called 'the right to be accompanied'.

The employee should tell their employer as soon as possible who they want to be their companion so arrangements can be made in good time.

Who the employee can bring with them

The employee must choose their companion from one of the following:

- a work colleague
- a workplace trade union representative who's certified or trained in acting as a companion
- an official employed by a trade union

Under discrimination law, employers must make reasonable adjustments for disabled employees. This might mean allowing someone else to attend, for example a support worker or someone with knowledge of the disability and its effects.

Employers can, but do not have to, allow companions who do not fall within the above categories. For example, some employment contracts might allow for a professional support body, partner, spouse or legal representative.

What happens in a disciplinary hearing

The hearing is the chance for both the employer and the employee to state their case. The employer, employee and employee's companion should make every effort to attend.

The employer should:

- explain the employee's alleged misconduct or performance issue
- go through the evidence
- make sure someone takes notes

The employee should be given the chance to:

- set out their case
- answer any allegations
- ask questions
- show evidence
- call relevant witnesses (with good notice)
- respond to any information given by witnesses

The employee's companion should be allowed to:

- set out the employee's case
- speak for the employee
- talk with the employee during the hearing
- take notes

For more details on holding disciplinary hearings, you can use [Discipline and grievances at work: The Acas guide](#).

At the end of the hearing

It's a good idea for the employer to take some time after the hearing to consider the case carefully before making a decision.

The employer should:

- tell the employee what happens next and give a timeframe
- take a written confidential record of the hearing

If the employee is absent or off sick

If the employee is absent or off sick for the disciplinary hearing, the employer should pause the disciplinary procedure until they return to work.

If the employee still says they cannot attend or if they go on extended sick leave, the employer should see if it would help to make other arrangements.

For example, if the employee is off with stress and is worried about coming to the workplace, they could hold the meeting somewhere else.

If the employee still refuses to or cannot meet, the employer will need to look at the case and come to a reasonable decision.

The employer could look at:

- any rules their workplace has for dealing with failure to attend disciplinary meetings
- how their workplace dealt with similar cases in the past
- the seriousness of the disciplinary issue
- the employee's disciplinary record, general work record, work experience, position and length of service
- getting a medical opinion on whether the employee is fit to attend

the meeting (with the employee's permission)

If the employer reaches a decision, they should tell the employee in writing and tell them of their right of appeal.

You can read more details in Appendix 4: Dealing with absence in [Discipline and grievances at work: The Acas guide](#).

Related content

[Download disciplinary meeting letter templates](#)

[/code-of-practice-on-disciplinary-and-grievance-procedures](#)

[Download Discipline and Grievances at work - The Acas guide](#)

After following a fair disciplinary procedure, the employer should decide on the best outcome based on:

- the findings from the investigation and meetings
- what is fair and reasonable
- what their workplace has done in any similar cases before

Each workplace might have its own versions of disciplinary outcomes. They should be written in your workplace's disciplinary policy or guidelines.

For a disciplinary outcome that's not a dismissal, it's a good idea for the employer to give the employee specific goals and timeframes for improvements.

4. Telling the employee

The employer should tell the employee of the outcome as soon as possible and in writing.

[Download letter templates for giving disciplinary outcomes](#).

If the employee's conduct or performance has not improved in the timeframe set, the employer should repeat the disciplinary procedure until improvements are made or until dismissal is the only fair and reasonable option.

When no action is needed

When it's decided there was no misconduct or performance issue, the employer should end the disciplinary procedure.

To make sure there is no bad feeling, the employer should talk privately with the employee and any other staff who knew the disciplinary procedure was happening.

They should make clear there is no longer anything to worry about and should help the employee get back to work as normal.

It's a good idea for the employer to keep a note of how they carried out the procedure for future reference.

Informal warning

If the misconduct or performance issue was found to be small and not serious, the employer might just have an informal talk with the employee. Your workplace might call it a 'verbal warning'.

It's a good idea for the employer to still keep a confidential written record of informal or verbal warnings for future reference.

Written warnings

A written warning is a formal warning that the employer can give the employee at the end of the disciplinary procedure.

A first or final written warning should say:

- what the misconduct or performance issue is
- the changes needed, with a timescale
- what could happen if the changes are not made
- what could happen if there is further misconduct or no improvement to performance
- how long the warning will stay in place
- in performance cases, any support or training the employer will provide

First written warning

A first written warning is normally the first step an employer will take when misconduct or poor performance is confirmed.

Final written warning

The employer can give a final written warning if, within a set timeframe, the employee either:

- repeats or commits another misconduct
- does not improve performance

In cases of serious misconduct or poor performance, the employer does not have to give a first written warning and can instead go straight to a final written warning. For example, where the employee's actions have, or could, cause serious harm to the business.

If an employee does not meet the requirements of their final written warning in the timeframe set, it could lead to dismissal. The employer should make this clear to the employee.

Taking other disciplinary action

The employer might look at other disciplinary action depending on the seriousness of the misconduct or performance issue.

For example, instead of dismissal, the employer could decide to move the employee to a less responsible role ('demotion').

Employers must first check what the employment contract allows and discuss it fully with the employee. The employee can have their chosen companion or representative with them for this.

For more detailed advice on other disciplinary actions, see [Discipline and grievances at work: The Acas guide](#).

Dismissal

The employer might end the employee's contract ('dismissal') in either of these cases:

- [gross misconduct](#)
- the disciplinary procedure has had to be repeated and the employee previously had a final written warning

Dismissal should only be decided by a manager who has the authority to do so. You can check your workplace's policy on this.

The employee should be told as soon as possible:

- the reasons for the dismissal
- the date the employment contract will end
- the notice period
- their right of appeal

Find out more on [ending employment](#).

To avoid the risk of an '[unfair dismissal](#)' claim, the employer should always follow a full and fair disciplinary procedure before deciding on dismissal.

The employee's right of appeal

The employer should offer the employee the right of appeal.

This is so the employee can raise an appeal if they feel:

- the outcome is too severe
- any stage of the disciplinary procedure was wrong or unfair

[Find out more about raising an appeal](#).

Related content

[Download disciplinary outcome letter templates](#)
[/appealing-a-disciplinary-or-grievance-outcome](#)

5. Talking to staff

The disciplinary outcome and details must remain confidential. However, where appropriate, it can be a good idea for the employer to talk privately with any staff who knew the disciplinary procedure was happening.

This can help avoid any negative effects on the business, for example:

- bad feeling
- gossip
- bullying
- low work morale

Keeping a record

No matter what the outcome, it's a good idea for employers to keep a [written record](#) of all disciplinary cases to help with any questions or similar cases in the future.

In line with data protection law, records should be:

- confidential
- only be kept for as long as necessary

You can read a [guide to data privacy from the Information Commissioner's Office \(ICO\)](#).

References after disciplinary action

By law, an employer does not have to provide a reference.

When an employer gives a reference they must make them:

- fair
- accurate
- consistent with others

This means they might have to give information about the employee's disciplinary outcome.

Find out more about [references](#).

Related content

[Job references](#)

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