

Technical factsheet

Disciplinary, dismissal and grievance procedures

This factsheet is part of a suite of employment factsheets and a pro forma contract and statement of terms and conditions that are updated regularly. These are:

- The contract of employment
- The standard statement of terms and conditions
- Working time
- Age discrimination
- Dealing with sickness
- Managing performance
- Disciplinary, dismissal and grievance procedures
- Unlawful discrimination
- Redundancy
- Settlement offers
- Family-friendly rights
- Employment status: workers

It is very important for employers to ensure that they follow a good procedure in disciplining and dismissing employees. If a fair procedure is not followed, a dismissal is likely to be unfair, no matter how good the employer's reason for terminating the employment.

A framework of proper procedure for redundancy dismissals is set out in

Technical factsheet: Redundancy.

Where an employee is being dismissed for misconduct or where the dismissal relates to a competence problem, the standard procedure is set by the **Acas Code of Practice on Disciplinary Practices and Procedures in Employment** (to be found at [acas.org.uk](https://www.acas.org.uk)) ('the code'). It is legitimate to use a separate procedure to deal with performance – many employers follow a performance management procedure – because the emphasis is slightly different, but the basic principles of the code and of fairness must be followed in relation to all such dismissals. Suggested procedures where an employee is being

dismissed for performance reasons are set out in *Technical factsheet: Managing performance*. *Technical factsheet: Dealing with sickness* deals with dismissals for sickness and incapacity. It has recently been held that such dismissals need not comply with the Acas Code, although the procedure used must be fair.

In cases where it is applicable the code is not legally binding, but failure to follow the basic principles set out below may result in financial penalties at any future tribunal hearing. In considering the case, the tribunal will take account of any failure to follow it, and has the power to adjust awards by up to 25% for an unreasonable failure to comply. The same provision applies to the employee, in that if they unreasonably fail to follow the code by, for example, not lodging a grievance before resigning or taking legal action, then any award may be reduced by up to 25%.

The Acas Code in detail

The code concentrates on dismissal situations. The process for dealing with grievances is set out later in this sheet, and the employer should have a separate policy for this.

General principles

- Disciplinary and grievance policies should be laid out in writing.
- Where possible, employees should be involved in the development of policies.
- Managers should be made aware of them.
- Often formal action is necessary, but what is reasonable or justified will depend on the size and resources of the employer.

However, disciplinary matters should be dealt with fairly:

1. Employers and employees should deal with matters promptly; for example, meetings and decisions under the procedure should be held without undue delay.
2. Employers and employees should act consistently.
3. Employers should carry out any necessary investigations, to establish the facts.
4. Employers should inform employees of the basis of the issue and give them an opportunity to put their case before decisions are made.
5. Employers should allow employees to be accompanied to the disciplinary hearing.
6. Appeal against any disciplinary sanction should always be allowed.

DISCIPLINARY ACTION: THE PROCESS

The recommended procedure under the code is set out below and the policies used by the business should conform to this basic structure. These broad principles also apply to performance dismissals and the same structure of meetings should be followed. However, in performance management, the focus is on supporting the employee to attain a satisfactory standard of work, with support from the employer. Where the dismissal relates to sickness or incapacity, the focus of any procedure is on consultation with the employee about their medical condition, their treatment and prognosis and any reasonable adjustments that the employer should make. For details on this, see the relevant factsheets.

The rest of this factsheet is concerned with disciplinary action. An employer faced with a disciplinary matter should act as follows:

Establish the facts

Investigate without delay.

- Either
 - hold an investigatory meeting where necessary with the employee, without unreasonable delay, and, where relevant, interview any witnesses and/or
 - collate any evidence.
- Make a decision as to whether formal disciplinary action should be taken.
- If a disciplinary meeting results, a different person should investigate and conduct the disciplinary if at all possible. In some very small firms, where the issue is particularly contentious, it may be appropriate to use an independent consultant to deal with the formal hearing or any appeal.
- There is no statutory right to be accompanied at an investigatory meeting but the employer's procedure might allow it.
- Where gross misconduct is alleged, it will be appropriate to suspend the employee while the investigation is taking place. This should usually be with pay and should be for as short a time as possible, and kept under review. It should be made clear that the suspension itself is not disciplinary action.
The employer should then decide whether to proceed with formal disciplinary action.
- The manager who has carried out the investigation will usually give evidence of what they have found at the disciplinary meeting.

Inform the employee

- If a disciplinary meeting is to be held, inform the employee in writing with enough information to be able to defend themselves.
- If it is possible that the employee may be dismissed, it needs to be stated in the letter, and
- include copies of any written evidence, including statements, and
- notify the employee of time, date and venue, and
- advise the employee of their right to be accompanied (see below).

Hold the meeting

- Hold the meeting without unreasonable delay but give enough time for the employee to prepare their case; 48 hours is usually considered an absolute minimum.
- Employer and employee should make 'every effort' to attend the meeting as arranged.
- The employer
 - explains the complaint
 - listens to the employee's response
 - lays out its case, with any witnesses giving evidence, including the investigating manager
 - gives the employee the opportunity to ask questions, present evidence and call witnesses
 - gives the employee the opportunity to challenge the employer's witnesses.
- Where either party intends to call witnesses, they should give notice to the other side.

Right to be accompanied

There is a statutory right to be accompanied where the meeting could result in:

- formal warning being issued
- the taking of some other disciplinary action
- the confirmation of such (ie appeal hearings).

The companion can be a workmate, trade union (TU) rep or official employed by the TU. If a TU rep, they must be certified by the union as competent to accompany the worker. A recent amendment to the code reflects current case law and establishes that, once the employer has concluded that the employee is reasonable in asking for a companion (and it would be very rare for this not to be reasonable), then the choice of the companion is for the employee alone, and their choice cannot be challenged by the employer.

The companion **can**:

- address the hearing to sum up the employee's case
- respond on behalf of the worker to any views expressed at the meeting
- confer with the employee during the hearing.

The companion **cannot**:

- answer questions on the worker's behalf
- address the hearing if the worker does not want this
- prevent the employer from explaining its case.

Decide on appropriate action

- Inform the employee in writing.
- If the employer feels it is justifiable in the circumstances, they can decide on any disciplinary sanction. This would normally be either a verbal warning (these are in many employers' procedures and can still be used but they are no longer in the guidance and can be removed from disciplinary procedures now, at the employer's discretion), first or final warning. The employer may alternatively decide that dismissal may be appropriate
 - where gross misconduct is found to have taken place or
 - where the employee was already on a final warning for misconduct which has then been repeated.
- The employer should set out in writing
 - the nature of misconduct/poor performance and, where the sanction is a warning,
 - what is required for the employee to improve or what must not be repeated
 - the timescale for this
 - how long the warning will last (normally verbal warnings last six months and written warnings one year)
 - consequences of repetition.
- If it is a dismissal, the employee should be informed of
 - the employer's reasons
 - date of termination of contract
 - period of notice, if any; there will be no notice for gross misconduct but otherwise it must be worked and paid, or paid in lieu
 - right of appeal.

- If gross misconduct has taken place
 - only an employee with the appropriate authority can take that decision
 - there must still be a fair process
 - generally what constitutes gross misconduct should be set out by the employer in their policies, but certain types of conduct are generally considered to be gross misconduct even if there is no policy, eg dishonesty or violent conduct
- Where an employee is persistently unable or unwilling to attend a disciplinary hearing without reasonable cause, the employer should take a decision on the evidence available.

Opportunity to appeal

- The appeal should be heard without unreasonable time and delay.
- The appeal should be ideally at an agreed time and place.
- Employees should set out grounds for appeal in writing.
- Where possible, the appeal should be held by someone not previously involved in the case.
- There is a statutory right to be accompanied.
- The result should be conveyed to the employee in writing.

It is important to remember that a defective procedure is likely to make a dismissal unfair where it would have otherwise have been fair on the facts.

DEALING WITH GRIEVANCES

A grievance is a concern, problem or complaint at work which is raised by the employee. This could be about such matters as the employee's terms and conditions, what they are being asked to do, the way they are being treated or some perceived unfairness in decision-making, or some form of unlawful discrimination, bullying or harassment. Employers should note that a failure to deal promptly with a grievance, especially a serious one, may well entitle the employee to leave and claim unfair constructive dismissal.

The employee should let the employer know the nature of the grievance

If the employee is not able to deal with the grievance informally, it should be raised formally with a manager who is not the subject of the grievance and should:

- be in writing and
- set out the nature of the grievance.

Employer holds a meeting

- A formal meeting should then be held without unreasonable delay.
- Employers/employees and companions should make every effort to attend.
- Employees should be allowed to explain
 - their grievance
 - how they think it should be resolved.
- Adjournment may be necessary if investigation is needed.

Allow the employee to be accompanied

- This applies where the employee is complaining about the employer breaking a duty that is owed to the employee, which will be the subject of most grievances
- The chosen companion is as above with disciplinary meetings; all rules about selection and what they can do at meeting are the same.

Employer must decide on appropriate action

The employer must decide on what happens now, communicate it to the employee and, where appropriate, set out the action that the employer intends to take. The employee should be informed that they have a right to appeal:

- The grounds for appeal should be set out in writing.
- This should be done without unreasonable delay; many employers require the grounds for appeal to be set out within five days of communicating the result of the meeting.
- The meeting should be set without unreasonable delay and at a time and place that should be notified to the employee in advance.
- The appeal should be heard without unreasonable delay, by someone not previously involved in the case if possible.
- There is a statutory right to be accompanied, as with a disciplinary, set out above.
- The outcome should be communicated to the employee in writing without unreasonable delay.

Overlapping grievance and disciplinary cases

Where an employee raises a grievance during the disciplinary process, the process may be temporarily suspended in order to deal with the grievance. Where the two are related it may be appropriate to deal with them concurrently.

Collective grievances

This is not appropriate for grievances raised by two or more people to a trade union; they should be dealt with by the organisation's process.

Where should the disciplinary and grievance procedures be set out?

All employers must still ensure that the written statement of terms and conditions contains these procedures, or they are appended at the end of contracts or statements, or they are in an employee handbook that is reasonably accessible.

If your policies were drafted before 2009 – when the Acas procedure was amended – there are a couple of changes you could or should consider:

- There is no mention of verbal/oral warnings in the new procedure and you might wish to remove them from your disciplinary procedure.
- You should ensure that in respect of **each stage** of your formal disciplinary procedure you
 - write to the employee outlining the issue
 - hold a meeting
 - give the employee a right of appeal against any disciplinary sanction.

Many larger companies have already been doing this, but most small ones have only done this when dismissal was likely, and this practice needs to be amended to cover all formal meetings under both procedures.

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Issued January 2019

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