

## Disciplinary procedure

### 1 . Step 1: Understanding the options

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

- 'misconduct' – this is unacceptable or inappropriate behaviour
- 'capability' – this is the ability to perform the job properly

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 should 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.

There are things employers should do to help an employee improve if there are problems with their performance at work. These might include:

- mentoring or coaching
- training

Employers should try these things first before starting a formal disciplinary procedure.

Some employers might use a separate 'capability procedure' instead of a disciplinary procedure. This must still be in line with the [Acas Code of Practice on disciplinary and grievance procedures](#).

[Find out more about dealing with problems with an employee's performance](#)

### What counts as misconduct

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

Some misconduct examples include:

- bullying
- harassment

- 'insubordination' – for example, refusing to do work
- being [absent without permission](#) – also called 'absent without leave' or 'awol'

But your organisation might have its own examples.

## If misconduct happens outside work

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 misconduct is and whether it could affect 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 must still carry out an investigation and a fair disciplinary procedure. They might then decide on [dismissal without notice](#) or payment in lieu of notice.

Examples of gross misconduct at work could include:

- fraud
- physical violence
- 'gross negligence' – this means a serious lack of care to their duties or other people
- serious insubordination – for example, refusing to follow policies or take reasonable orders from a supervisor

What is seen as gross misconduct can depend on the organisation. Your organisation might have its own policy or rules with examples.

## 2. Step 2: Following a fair procedure

If an employer feels they need to start a disciplinary procedure, it's important to tell the employee straight away.

They should put this in writing, for example in a letter or an email. This should include:

- information about the alleged misconduct or poor performance
- possible consequences, for example a written warning

The employee should have this information in time to prepare for a disciplinary 'hearing'. This is a meeting where the employer considers all the evidence before making a decision.

The employer must make sure they follow a full and fair procedure throughout.

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

## The importance of following a fair procedure

The [Acas Code of Practice on disciplinary and grievance procedures](#) is the minimum an organisation should follow.

You might have your own code or policy with some differences that better suits your organisation.

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 [legally classed as an employee](#). But to keep good working relationships, employers should follow the same fair procedure for all workers.

## Training for employers and managers

To learn more about the Acas Code and how to follow a formal procedure, you can book [Acas training on discipline and grievance](#).

## If anything similar has happened before

Employers should check whether their organisation has dealt with a similar situation before.

To ensure fair treatment, employers must 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 problems
- further action, for example the employee raising a grievance
- legal action in the future

The employer must keep all personal information confidential in line with data protection law.

## Looking after employees' wellbeing and mental health

Going through a disciplinary procedure can be very stressful. It's important that employers consider the wellbeing and mental health of their employees.

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

- absence
- mental health problems
- existing mental health problems 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.

[Find out more about supporting mental health at work](#)

## 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.

[Find out more about dealing with grievances at work](#)

## If the employee wants to resign

The employee might want to resign or feel they have to leave when facing a disciplinary.

This could lead to 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. They should give them the chance to change their decision to resign.

[Find out more about resignation and dismissals](#)

Related content

[/acas-guide-to-discipline-and-grievances-at-work](#)

## 3. Step 3: Carrying out an investigation

To follow a fair procedure, the employer must carry out an investigation. This is to get as much information as they reasonably can about their employee's alleged misconduct or poor performance.

[Find out more about investigations at work](#)

## 4. Step 4: The hearing

Where the investigation shows the employee has a case to answer, the employer should ask them to a disciplinary 'hearing'. This is a meeting where the employer hears all the evidence before making a decision.

### 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 use our [letter templates for giving an employee notice of a disciplinary hearing](#).

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 has 'the right to be accompanied' at a disciplinary hearing. This means they can bring a 'companion' with them.

### Who the employee or worker can bring with them

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

- someone they work with
- a workplace trade union representative who's certified by their union to act as a companion
- an official employed by a trade union

Employers might allow companions who do not fall within the above categories. For example, a partner or legal representative.

Under discrimination law, employers must make [reasonable adjustments](#) for disabled employees. This might mean allowing someone else to be their companion. For example, a support worker or someone with knowledge of the disability and its effects.

### Requesting a companion

If the employee wants to bring a companion, they must make a 'reasonable request' to their employer.

To make a reasonable request, the employee should:

- tell their employer the name of the companion and whether they're someone they work with or a trade union representative
- give their employer enough notice, so they can make arrangements for the companion to attend the meeting

The companion should also be given enough time to prepare for the meeting, for example to look at any evidence.

## What happens in a disciplinary hearing

The hearing is the chance for both the employer and employee to state their case. Everyone, including the 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 – giving them good notice
- respond to any information given by witnesses
- choose if their companion can speak for them at the hearing

The employee's companion must be allowed to:

- set out the employee's case
- respond for the employee to any comments or points made at the meeting
- talk with the employee during the hearing
- take notes
- sum up the employee's case at the end of the hearing

The employer might agree to allow the companion to answer questions on behalf of the employee. But this is not a legal requirement.

You can find more detailed advice on holding disciplinary hearings in the [Acas guide to discipline and grievances at work](#).

## At the end of the hearing

The employer should 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 contact them and rearrange it.

The employer should also check if it would help to make other arrangements. For example, holding the hearing somewhere else if the employee is worried about coming to the workplace.

In some circumstances, an employee might still be too sick or not willing or able to attend. The employer will need to decide whether to carry on without them.

The employer could look at:

- any rules their organisation has for not attending disciplinary hearings
- how their organisation 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 hearing (with the employee's permission)

The employer might decide they need to carry on with the hearing without the employee. If they do, they should tell the employee and give them the chance to submit a written statement.

They should consider all the evidence and tell the employee of their decision in writing. They should also tell them of their right of appeal.

[Find out more about managing sickness absence](#)

Related content

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

## 5. Step 5: Deciding the outcome

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 organisation has done in any similar cases before

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

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

## Telling the employee

The employer should tell the employee of the outcome as soon as possible and in writing. For example in a letter or email.

If the employee's conduct or performance has not improved in the timeframe set, the employer should repeat the disciplinary procedure.

The employer should repeat the procedure until either:

- improvements are made
- dismissal is the only fair and reasonable option

[Use our letter templates for giving disciplinary outcomes](#)

## When no action is needed

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

To keep good working relationships, the employer should talk in private with anyone involved with the disciplinary procedure.

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

The employer should 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 organisation might call it a 'verbal warning'.

The employer should 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
- any support or training the employer will provide, if related to a performance issue

## First warning

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

## Final warning

After the first 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 demote the employee. This means moving the employee to a role with less responsibility.

Employers must first check what the employment contract allows and discuss it fully with the employee. The employee has the right to be accompanied in this meeting.

You can find more detailed advice on other disciplinary actions in the [Acas guide to discipline and grievances at work](#).

## Dismissal

The employer might dismiss the employee. They could end their contract in either of these cases:

- 'gross misconduct' – when the employee has done something that's very serious or has very serious effects, for example fraud or physical violence
- 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 organisation's policy on this.

As soon as possible, the employer should tell the employee:

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

The employer must follow a fair and reasonable disciplinary procedure before deciding on dismissal. An employment tribunal takes this into account if an employee claims unfair dismissal.

[Find out more about dismissals](#)

## 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 appealing a disciplinary outcome](#)

## 6. Step 6: After the disciplinary

After a disciplinary procedure has finished, employers might want to talk about it to individual staff.

### Talking to staff

The disciplinary outcome and details must remain confidential. However, where appropriate, the employer should talk privately with any staff directly involved with the disciplinary procedure.

Usually this would be to let them know that the process is finished and to remind them not to talk about it with colleagues.

Employers could also tell them about any changes that will be introduced as a result of the process. For example, updating a policy or providing training on a particular topic.

This could help improve working relationships and stop rumours spreading.

### Keeping a record

Employers should keep a written record of all disciplinary cases. This includes cases where no action is needed. This is to help with any questions or similar cases in future.

In line with data protection law, records must:

- be confidential
- only be kept for as long as necessary

You can:

- [use our disciplinary record template](#)
- [find out more about data protection and employment records 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, it must be:

- fair
- accurate
- consistent with others

This means they might have to give information about disciplinary actions or investigations.

[Find out more about references](#)

## Get more advice and support

If you have any questions about disciplinary procedures, you can [contact the Acas helpline](#).

Acas also provides:

- [training on discipline and grievance](#)
- [free webinars](#) – including on disciplinary procedures
- [tailored support for employers](#)
- [free e-learning on discipline and grievance](#)