

Performance conduct and capability

Employers must not discriminate against neurodivergent employees when dealing with issues related to performance.

Performance management procedures are usually only for those with the [legal status of employee](#).

Someone is not likely to be an employee if they're:

- an agency worker
- a casual worker
- on a zero-hours contract

Performance can relate to either:

- conduct – an employee's behaviour at work
- capability – an employee's ability to do their job

Some neurodivergent people do not see themselves as disabled. However, being neurodivergent will often amount to a disability under the Equality Act 2010.

Making sure employees have support

Before using a formal performance, conduct or capability procedure, an employer must make sure they've done all they reasonably can to support an employee.

Using a formal procedure without exploring support first could:

- cause employers and employees to spend unnecessary time and effort
- cost an employer money
- lead to an employee making a claim to an employment tribunal
- have a negative effect on an employee's wellbeing

Find out more about:

- [reasonable adjustments for neurodivergent employees](#)
- [supporting disabled people at work](#)

Example of support avoiding performance procedures

Sam regularly gets distracted in the office and misses deadlines. Sam's manager talks to them about this. Sam agrees they're struggling and thinks they might have ADHD.

Sam and the manager discuss what might help. Sam asks for a quiet space to work and regular check-ins to support with time management. Sam's manager agrees for Sam to use a meeting room whenever it's available. They also get noise-cancelling

headphones and start weekly catch-ups to check work is on track.

Sam's performance improves. If Sam's manager had started a performance procedure, this could have caused Sam stress and made work more challenging. And it might not have addressed the poor performance issue.

Carrying out a formal procedure

There might be situations when an employer needs to formally investigate a neurodivergent employee's performance. This could be:

- if there's a conduct or capability issue even after support is in place
- for reasons not related to their neurodivergence

Under discrimination law, employers must make [reasonable adjustments](#) for disabled employees.

During formal procedures involving neurodivergent employees, this could include:

- talking through written correspondence with a dyslexic employee or repeating important information
- setting out meeting records clearly for an autistic employee who finds disorganised information distracting
- giving a dyspraxic employee extra time to train on computer software, to help them improve their performance during a capability procedure
- allowing someone with knowledge of an employee's neurodivergence to attend formal meetings – for example, a support worker

A neurodivergent employee might not see themselves as disabled. But it's still good practice for an employer to agree to these kinds of adjustments.

Employers should offer support even if an employee only shares their neurodivergence when a formal procedure is started.

Find out more about:

- [dealing with problems with an employee's performance](#)
- [capability and performance related to disability](#)

Example of when a formal procedure is appropriate

Sidney is autistic. Sidney has a designated room to go to when they need time out during the day.

Sidney is annoyed because their football team lost a match. During a team meeting, Sidney shouts abusive language at another employee. Even after some time out, this behaviour continues.

Sidney's manager starts a disciplinary investigation, as this behaviour is considered misconduct.

Sidney already had a reasonable adjustment in place that could have helped in the situation. It is appropriate for Sidney's manager to start an investigation.

If an employee thinks they're being treated unfairly

If an employee thinks they're being treated unfairly, they should raise it with their employer.

Raising the problem informally

It's usually best for an employee to raise a problem informally first by talking with their employer.

Doing this can:

- resolve the problem more quickly
- help maintain positive relationships at work
- avoid formal procedures, which can be stressful

[Find out more about how to raise a problem at work](#)

Raising a formal grievance

An employee can [raise a grievance](#) if either:

- raising the problem informally does not resolve it
- they feel the problem is too serious to deal with informally

A grievance is where someone makes a formal complaint to their employer.

As an employee, you might be nervous about raising a problem with your employer. However, your employer should take you seriously. And there are ways to get support.

For example, you can:

- speak to your trade union representative, if you're a member
- ask for [reasonable adjustments](#) during the grievance procedure
- bring someone along to a [grievance meeting](#)

If you need support writing to your employer, you can use our templates for:

- [a grievance letter](#)
- [a disciplinary appeal letter](#)
- [a grievance appeal letter](#)

Contact the Acas helpline

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