

GUIDANCE NOTE

Disciplinary procedure

August 2020

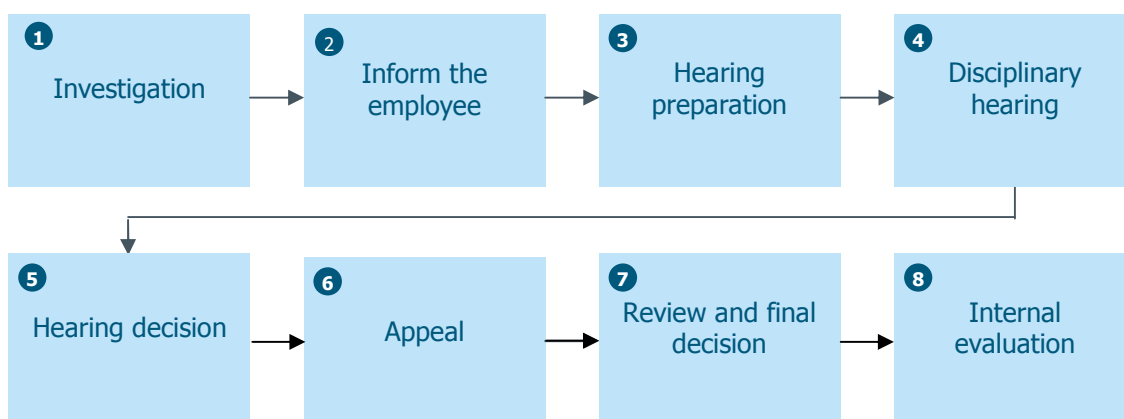
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WHAT TO DO WHEN A DISCIPLINARY ISSUE ARISES

- ✓ Deal with the issue promptly.
- ✓ Consider the requirements of any existing contractual or non-contractual disciplinary policy.
- ✓ Consider whether the issue could be dealt with informally, and whether mediation might be appropriate.
- ✓ Consider which managers should deal with the investigation and the disciplinary hearings. Where practicable, these should be different people.
- ✓ If the employee is or may be suffering from a disability, consider the duty to make reasonable adjustments at every stage of the process.

FORMAL DISCIPLINARY PROCESS



1

Investigation

- Consider who should conduct the investigation.
- Interview relevant witnesses (not necessarily everyone mentioned).
- Consider the need to re-interview some witnesses.

- Consider the need to interview absent employees/ex-employees/non-employees depending on the circumstances.
- Consider taking statements from witnesses and for them to sign to confirm what was said (not always necessary or advisable - depends on circumstances).
- Consider the need to maintain confidentiality.
- Consider whether witnesses can be anonymous (if they wish to remain so).
- Review any relevant documents.
- Consider if the employee should be interviewed. Care should be taken that this meeting does not become a disciplinary meeting. Even if the employee admits guilt in an investigation meeting, a disciplinary hearing should still be convened.

At this stage:

- decide whether, on the evidence collected, the issue should be pursued or dropped;
- consider whether any immediate action is required, for example suspending/transferring the individual in serious cases. (The Acas Code of Practice on Disciplinary and Grievance Procedures states that where suspension is necessary, the period should be as brief as possible, should be kept under review and it should be clear that the suspension is not considered disciplinary action.)

2

Inform the employee

Notify the employee in writing. This notice should include:

- sufficient information about the alleged disciplinary issue to enable the employee to prepare the case to answer at the hearing;
- information about the employee's right to be accompanied;
- time and date of the meeting (the employee should have sufficient notice to enable them to prepare for the hearing);
- the procedure to be followed;
- any witness statements (if considered to be required, and whether these should be anonymised);
- an opportunity for the employee to call any witnesses or rely on any documents.

3

Hearing preparation

- Consider whether to have a note-taker present.
- Ensure all relevant facts/documents are available.
- Check if there are any special circumstances to take into account.
- Consider evidence from employees who wish to remain anonymous carefully, and the reasons for the employees remaining anonymous.

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Disciplinary hearing

Different people should carry out the investigation and the disciplinary hearing.

Attendees

- The employee is entitled to be accompanied by an appropriate colleague/trade union representative.
- Decide who should attend from the Company, for example:
 - decision maker (ensure that this person has the authority to make the disciplinary decision);

- HR representative (to advise on procedure);
- a note-taker (if appropriate).

Meeting format

- Introduce attendees at the meeting.
- Explain the purpose of the meeting.
- Explain how the meeting will be conducted.
- Outline the investigation undertaken and issues investigated.
- Arrange for witnesses to attend to present evidence or answer questions (if appropriate). Both the Company and the employee should be given a reasonable opportunity to call witnesses, but should give advance notice if they intend to do so.
- Ask for comments and representations from the employee - the employee should have the opportunity to state their case.
- Question the employee carefully and encourage the employee to speak freely.
- Sum up the main points and ask the employee if they have anything further to add.
- If the employee raises new issues consider whether further investigation is required before concluding.
- Adjourn before a decision is made.

A decision to dismiss should only be taken where dismissal is "within the band of reasonable responses". This means the decision maker must have formed a reasonable belief in the employee's guilt and this must be on reasonable grounds following a reasonable investigation.

What to do if the employee does not turn up

- Consider the reasons for the employee's no-show. Be particularly wary of any ill health/stress related issues which arise.
- Consider whether there are any reasonable adjustments which should be made (if the employee is or may be suffering from a disability).
- Rearrange the meeting. If the reason for the postponement is non-availability of the employee's companion, the employee should suggest a reasonable alternative date within five days.
- If the employee is repeatedly unavailable, consider whether to proceed to make a decision on the evidence available. If so, the employee should be warned that this is the case.

5

Hearing decision

- Decide on the appropriate disciplinary action (if any).
- Ensure that the sanction is consistent with any previous decisions.
- Consider how long a warning should remain current (this may be specified in the disciplinary procedure).
- Consider what the consequences of further misconduct will be.
- Consider whether the decision and reasons should be given face to face at a meeting. Even where this is the case, the decision and reasons should be confirmed in writing without unreasonable delay.
- The written warning should set out the nature of the misconduct, the changes required, for how long the warning will remain live and what the consequences of further misconduct will be.
- Explain the right of appeal.

6

Appeal

- Decide on the appropriate manager to hear the appeal. This should be a manager not previously involved in the case. If possible, it should be a more senior manager than the one who dealt with the original hearing.
- Invite the employee to the meeting (reminding them of the right to be accompanied).
- Ensure any new evidence has been properly considered and the employee has had the opportunity to comment on it.

7

Review and final decision

- Set out the appeal decision in writing without unreasonable delay.
- Inform the employee that this decision is final.
- Record and retain any disciplinary warnings.
- Keep a written record of the disciplinary case. The record should include:
 - the complaint against the employee;
 - the employee's defence;
 - the findings made and the actions taken;
 - the reason(s) for the actions taken;
 - whether an appeal was lodged;
 - the outcome of the appeal;
 - any grievances raised during the disciplinary procedure;
 - subsequent developments; and
 - notes of any formal meetings.

Records are required under the Acas Code. Bear in mind data protection storage and retention obligations.

8

Internal evaluation

- Consider whether there is any training which needs to be put in place, for the employee or the wider workforce.
- Consider whether any of the employer's policies or procedures need to be changed.

Getting in touch

When you need a practical legal solution for your next business opportunity or challenge, please get in touch.

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