



Managers Guide: Disciplinary Hearings

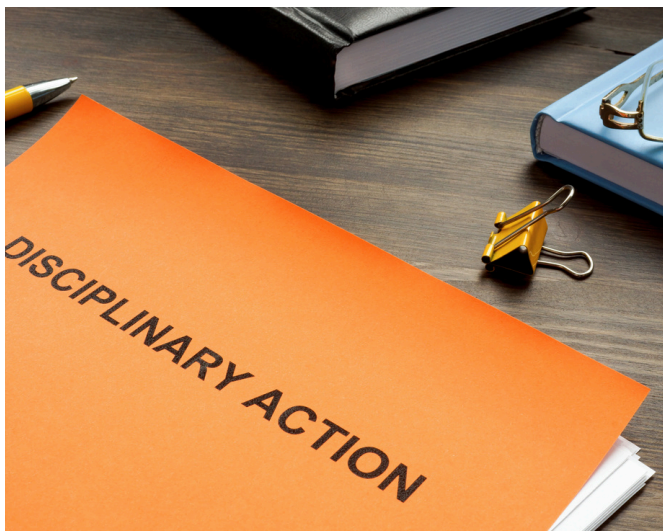
Introduction

The purpose of a disciplinary hearing is to allow an employee whose conduct is alleged to be unacceptable, and the disciplining officer, to have a full and frank discussion about the matter. It should be a two-way process and should follow the principles of natural justice.

No disciplinary action should be started before a full investigation has been carried out to determine whether or not there is a disciplinary case to answer. The amount of investigation needed will vary according to the circumstances, and could range from gathering together documentation, to conducting investigatory meetings and obtaining witness statements.

Importance of acting promptly

You should always act promptly to deal with any misconduct on the part of your staff. If you don't communicate to an employee that something that he or she has done is unacceptable, they may assume that his or her conduct is satisfactory. This will make it much more difficult going forward to deal effectively with the problem behaviour, which may get worse.



Meaning of Misconduct

There is no legal definition of misconduct, and no legal list of the types of behaviour that may be regarded as misconduct. The conduct which you regard as misconduct will be detailed in your disciplinary procedure, together with the behaviour which is considered to be gross misconduct.

It is important to advise all employees of what is classed as misconduct and gross misconduct, by providing them with a copy of, or access to the employee handbook and any subsequent updates.

Distinction between Misconduct and lack of Capability

Misconduct is any type of behaviour or conduct at work that falls below the standard required or is in breach of any company policy or rule. It is the agreed standard, policy or rule that is relevant, rather than a manager's subjective opinion and you must take care to act consistently across the company.

Lack of capability, on the other hand, exists where no matter how hard an employee tries, he or she is simply unable to perform the job to the standard required. However, if an employee fails to come up to the required standard as a result of their lack of effort, carelessness or negligence, this could be classed as misconduct because it is within the employee's control.

Sometimes it can be difficult to establish whether poor performance is due to inherent incapability or to lack of effort, laziness or negligence and in some cases, there may be an element of both. You should initially give employees the benefit of the doubt and not automatically jump to conclusions that anything that goes wrong is a result of employee misconduct.

Gross Misconduct

Gross misconduct is misconduct of such a serious nature that it fundamentally breaches the contractual relationship between the employee and the company. If an employee commits an act of gross misconduct, you will be entitled to dismiss them summarily, i.e. with immediate effect and without notice. However, a disciplinary hearing must still be held.

Examples of gross misconduct could include:

- fighting or physical violence;
- theft, fraud or falsification of documents;
- wilful or malicious damage to company property;
- failure or refusal to obey a reasonable instruction without good reason;
- transmitting confidential information outside the organisation;
- serious breach of health and safety rules;
- maliciously raising a grievance or making an allegation;
- serious misuse of computer, email or internet facilities; and
- bribery.
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These are, however, only examples. Your company disciplinary procedure will list further examples.

Summary Dismissal

Summary dismissal means dismissal without notice or pay in lieu of notice, regardless of whether any previous warnings have been given to the employee. In other words, once the decision to dismiss has been made, the dismissal takes effect immediately and all the employee's rights and benefits under the contract cease at the end of the day on which he or she is told of the dismissal.

Please remember that no matter how serious an employee's misconduct has been, dismissal can never be automatically fair. This is because the outcome of any unfair dismissal claim will depend not only on you having a solid reason for the dismissal, but also on whether or not you have properly followed the company's disciplinary procedures and acted reasonably in dismissing the employee.

In particular, bear in mind that an on-the-spot dismissal will almost certainly be unfair even where there has been an undisputable case of gross misconduct. You must always follow the required procedures before taking a decision to dismiss and as a minimum must investigate fully and fairly, and listen to the employee's explanation before deciding on what penalty to impose.

Disciplinary Rules and Procedures

All employers, irrespective of size or industry sector, are required to include within the written statement of terms and conditions of employment that must be given to all employees a note specifying any disciplinary rules and procedures applicable to them, or referring them to a document setting out these rules and procedures.

The note should also specify a person to whom the employee can appeal if dissatisfied with any disciplinary decision relating to him or her and the manner in which the application should be made. Full disciplinary rules and procedures are detailed in the employee handbook.

Disciplinary Rules

Disciplinary rules are useful because they set standards and make it clear to employees what conduct is and is not acceptable.

Rules may cover a range of issues such as:

- health and safety;
- timekeeping;
- bullying and harassment;
- personal use of office equipment, materials and stationery;
- obeying reasonable instructions;
- claiming expenses;
- care in handling company property;
- removal of company property from the premises; and
- use of email and the internet.



Disciplinary Procedures

Disciplinary procedures allow you to deal fairly and consistently with employees who breach the rules.

Although there is no legally required structure for a disciplinary procedure, we recommend a procedure based on ACAS guidelines, with two stages prior to dismissal:

Stage 1: Written warning

Stage 2: Final written warning

Stage 3: Dismissal

Before any warning is issued, the employee concerned should be given a chance to state his or her case at a disciplinary hearing. You should fully consider any explanations or mitigating factors put forward by the employee before deciding whether or not it is appropriate to issue a warning and, if it is, what level warning is appropriate in the circumstances.

There is no obligation in law always to start at the beginning of the procedure and the disciplinary procedure states that depending on the seriousness of the matter, the early stages of the procedure may not be used. What is important is that the type of warning issued (i.e. the penalty) should match the seriousness of the employee's offence.

For example, if an employee with no previous warnings committed a breach of safety rules that was relatively serious (but not serious enough to justify dismissal), you might decide to issue a final written warning.

It is important that you act fairly and objectively when deciding what type of warning to impose and take care not to overreact or take a decision in the heat of the moment.



Informal Approach to Tackling Misconduct

As a first step in tackling unsatisfactory behaviour or in the event of a minor breach of the employer's rules, you should hold an informal meeting with the employee to make him or her aware of how and why the behaviour in question is causing a problem.

The joint aim of the meeting will be to ensure that the employee understands why his or her conduct is unacceptable and to seek agreement on making sure that the behaviour does not continue or recur.

Despite the fact that the discussion is informal, you should set a date to review the employee's progress and keep a record of the meeting. The record should show the date and time of the meeting, state briefly what was discussed and record the fact that there was no formal outcome.

The employee should be given a copy of the record of the meeting, which could simply take the form of an e-mail confirming bullet points of the key issues discussed. It is important that you are able to show that the discussion has taken place, as you may need to rely on this as evidence for future formal disciplinary action.

Preventing Disciplinary Issues

Taking preventive steps before issues develop can create a positive work environment and reduce the need for disciplinary actions.

Establish Clear Expectations:

- **Define roles and responsibilities:** Ensure every employee has a clear job description and understands their role within the Company.
- **Set performance standards:** Make sure employees know the performance expectations, including key performance indicators and goals.
- **Communicate Behavioural Standards:** Develop and communicate company policies, including conduct, ethics, attendance and professionalism.

Provide Continuous Feedback:

- **Regular one-to-one meetings:** Hold regular check-ins with employees to discuss performance, challenges, and opportunities for improvement.
- **Praise and Recognition:** Recognise good performance and behaviour publicly to encourage positive reinforcement
- **Development Plans:** Encourage employees to pursue professional development, giving them the tools and opportunities to grow.

Training and Development:

- **Skill Development:** Offer training to help employees improve their job-related skills, which can preempt performance issues
- **Manager Training:** Ensure that managers are trained in leadership, coaching and conflict resolution.

Identifying Performance or Behavioural Issues

When issues arise, early intervention can prevent further deterioration. Managers should identify and address signs of concern proactively. There is an additional guide available for Performance Improvement Plans (PIP).

Recognising Warning Signs

- **Behavioural Issues:** Tardiness, unprofessional behaviour, or violations of company policy.
- **Performance Issues:** Missed deadlines, declining quality of work, or failure to meet performance targets.
- **Employee Feedback:** Negative feedback from colleagues or clients regarding an employee's work or behaviour.

Before formalising any disciplinary action, managers should gather the facts and context:

- **Collect Data:** Review performance reports, attendance records, or other relevant documentation.
- **Talk to Others:** If appropriate, speak with colleagues or clients who may have witnessed the issues.
- **Assess Impact:** Evaluate how the problem is affecting the team, project, or company.



Formal Procedures

If one or perhaps two informal warnings have not resulted in adequate improvement in the employee's conduct, there will be little point in continuing with informal action and you will need to move up a gear to formal action. The first step in any formal procedure will be to arrange an investigation into the employee's conduct. Where practicable, the investigation and any subsequent disciplinary hearing should be carried out by different people.

Investigation may include checking whether the employee has previously received any formal warnings and if these are still in date, talking to other managers who may have knowledge of the employee's alleged misconduct, or interviewing witnesses to the alleged misconduct. However, it may be a 'desk based investigation' gathering copies of documentation which evidences the issue.

Depending on the circumstances, it may be necessary to suspend the employee with pay for a short time while the investigation takes place. The employee should, however, be informed that the suspension is not a disciplinary sanction and does not involve any prejudgment.

If the investigation suggests that there is a disciplinary case to answer, the next step will be to write to the employee to set up a disciplinary hearing, giving the employee a minimum of 24 hours written notice and informing them of the right to be accompanied at the interview. It is important to ensure that the letter is appropriate to the circumstances and in particular that the allegations are properly stated. You need to give adequate details of the alleged misconduct and its possible consequences to enable the employee to prepare to answer the case at the disciplinary meeting. Copies of written evidence, including witness statements, should be included with the notification.

At the meeting itself, it will be important for the employee to be given a full and fair hearing. The employee should have a full opportunity to put forward his or her version of events and any mitigating factors or explanation. They should also have the opportunity to call relevant witnesses to support their case.

At the end of the meeting, you should summarise what has been discussed and then adjourn before reaching any conclusion about what, if any, formal disciplinary action to take.

The outcome, for example a written warning, should subsequently be communicated to the employee, first verbally in a reconvened meeting and then in writing.

All disciplinary hearings should be held in private and it is important to remember that the employee has the right to be treated with courtesy and respect, irrespective of what they are alleged to have done.

Right to be Accompanied

All employees are entitled in law to be accompanied at any formal disciplinary interview by either a colleague or a trade union official of their choice, regardless of whether or not the company recognises a trade union.

If an employee's chosen companion is not available at the proposed time of the meeting, they may request a reasonable alternative time falling within five working days of the original meeting date proposed, and you must postpone the hearing as requested. However, employees are only entitled to request a postponement once.

The employee has the right to decide, within limits, the role that he or she wishes their companion to play at the hearing. The companion must be allowed to:

- address the hearing on behalf of the employee, ie put his or her case;
- confer with the employee during the hearing;
- sum up the employee's case; and
- respond on the employee's behalf to any views expressed at the hearing.

However, the employee is expected to answer any questions asked and the companion cannot answer on their behalf. In some cases, the employee may wish to bring the companion along simply for moral support rather than for representation.

Keeping Records

Full records must always be kept of all meetings held with employees about their conduct, whether they are formal or informal, as well as the meeting outcomes, for example any warnings given. It is therefore good practice for a second management representative to be present in the meeting as a note taker.

These records should be held confidentially on the employee's personnel file and will be necessary in case further misconduct occurs or the employee fails to change their behaviour despite the measures taken. They will allow you to follow through the further stages of the disciplinary procedure at a later date if necessary.

Communication at the Meeting

Conducting a meeting with an employee to discuss unsatisfactory conduct is never an easy task and it is understandable that you may have doubts and worries over such a meeting. Open, honest and unambiguous communication will be essential if the meeting is to succeed.

In terms of communication, you should:

- state factually what the employee has done or not done and avoid expressing personal opinions about it;
- give the employee specific examples, for example "yesterday at the meeting you swore at Angela";
- avoid vague statements and generalisations such as "you have a bad attitude" or "you never meet your deadlines";
- ask open questions;
- listen actively to what the employee has to say and take it on board;
- ensure that his or her tone of voice is firm but not accusatory;
- avoid emotional reactions;
- try to establish whether or not there is any underlying reason for the employee's misconduct;
- seek the employee's agreement that whatever he or she has done or not done is unacceptable and why this is the case;
- ask the employee if he or she is willing to undertake to improve and/or to ensure that there is no repeat of the misconduct; and
- check for understanding, for example by asking the employee to state or summarise his or her understanding of what has been discussed and agreed.

You should ask if the employee believes that he or she has been given a full opportunity to explain the conduct in question and that the disciplinary interview has been conducted fairly. If the answer to either of these questions is "no", you should ask the employee to state why he or she thinks that this is the case, and take immediate steps before the meeting closes to put things right, where the complaint is legitimate. If the answer to the questions is "yes", this should be recorded in the notes.

Warnings

A formal warning should:

- explain the nature of the employee's misconduct;
- take into account any explanations or mitigating factors put forward by the employee;
- state the improvement required, i.e. give a clear indication what the employee is expected to do, or not do, in the future;
- state what will happen if the misconduct is repeated, i.e. the next stage of the disciplinary procedure;
- provide for a period of time during which the warning will remain "live" for disciplinary purposes;
- state that the employee may appeal against the warning and how and to whom he or she should appeal; and
- be recorded

A letter confirming the disciplinary warning should be sent with appropriate detail. The notes of the meeting should be sent out with the letter.

If the employee decides to appeal, where practicable the appeal hearing should be conducted by a manager not previously involved in the case, ideally someone who is senior to the person making the disciplinary decision.

Records of Warnings

All warnings, including informal warnings, should be recorded.

It is essential that records are kept, otherwise you will find it very difficult to defend any subsequent claim of unfair dismissal at an employment tribunal. This is because there is a requirement for an employer to act reasonably in an overall sense when dismissing an employee, and lack of evidence that the employee has been given fair warnings will be likely to lead the tribunal to conclude that you did not act reasonably.

Shelf Life of Warnings

A warning will usually remain active for disciplinary purposes for a defined period of time. There are no set time periods laid down in law, but our procedure states that a written warning will remain on file for a period of 6 months and a final written warning for 12 months. If further misconduct occurs while a warning is still active, you will be able to move up to the next level of warning.

After the time period has expired, the warning should either lapse or be reviewed by the manager.



Dismissal on Grounds of Misconduct

If, following a series of formal warnings, the employee's misconduct continues or is repeated, you may be able to proceed to dismiss the employee fairly.

It is usual for two warnings to be given before dismissal is contemplated. Dismissal should not be undertaken lightly and should normally be a last resort after all other possible courses of action have been explored. The employee should always be given the opportunity to appeal against the decision to dismiss and where practicable, any appeal hearing should be conducted by a manager not previously involved in the case.

Dismissal for misconduct will be unfair if you have not first given the employee warnings making it clear that continued or repeated misconduct will lead to dismissal. As discussed above, the exception to this principle is where the employee has committed an act of gross misconduct, which may justify summary dismissal.

Misconduct is a potentially fair reason for dismissal in law. However, for a dismissal to be fair, you also have to show that the employee's conduct was sufficiently bad to justify dismissal, that you acted reasonably in dismissing the employee for this reason, and that you followed a fair procedure.

Although there are some exceptions, in order to be eligible to bring a complaint of unfair dismissal before an employment tribunal, an employee is required to have a minimum of two years' continuous service as at the date of termination of his or her employment.

If you are unsure of any aspect of the disciplinary procedure, please contact your HR Advisor for further guidance.

Questions to Ask throughout the Process

Questions before acting:

- Have I set clear expectations for this employee's behaviour and performance?
- Have I provided constructive feedback and resources to support improvement?
- Do I have documentation to support my concerns?

Questions during the informal discussion:

- What challenges are you facing in meeting your performance goals?
- Is there anything impacting your ability to follow company policies?
- What can we do to support you in improving your performance?

Questions during formal warnings:

- What steps have you taken to address the issue we discussed?
- What resources or changes could help you meet these expectations?
- Do you understand what's required to improve?

Questions for final warnings or termination?

- Do I have a clear and documented history of the issue and attempts to resolve it?
- Have I followed company policy and consulted HR?
- Have I given the employee a fair opportunity to improve?

Remember, managing employee behaviour and performance involves identifying issues early, taking proactive measures, and implementing a fair disciplinary process when necessary. This guide is intended to help managers handle disciplinary matters effectively, with a focus on both addressing behaviour and performance issues.



Get in touch

This document is intended as a guide. If you have any concerns regarding its content, or for further information about disciplinary issues, or anything else to help make managing your HR easier then please get in touch. We'd love to help.

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