

DISCIPLINARY, DISMISSAL AND GRIEVANCE PROCEDURES

Guidance for employers

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Foreword

On 1 October the Employment Act 2002 (Dispute Resolution) Regulations 2004 came into force. They lay down disciplinary, dismissal and grievance procedures that provide a framework for discussing problems at work. This guide explains the procedures. It is primarily intended for managers in small firms. Separate guidance will be available for employees from <http://www.dti.gov.uk/resolvingdisputes>.

This document gives general guidance only. It has no legal force and cannot cover every point and situation. If you would like advice on your particular situation, please see below for Acas contact details.

It is important to note that the Regulations aim to set a minimum standard and are not intended to replace existing best practice and the new procedures should complement your existing disciplinary and grievance procedures, not replace them. Your disciplinary and grievance procedures must be set out writing (see the following section for more details).

If you need more advice, Acas offers a number of services to help you, from good practice advice on setting up procedures to looking for a resolution if your employee applies to a tribunal. Their website is www.acas.org.uk and they have a helpline on 08457 47 47 47.

Chapter 1: Disciplinary and dismissal procedures

This chapter sets out the steps you need to take when you are considering dismissal or disciplinary action. Generally speaking, your aim should be to resolve the problem whilst keeping the employee on. That may not be possible, but you must follow the procedures set out below. Failure to do so may result in a tribunal case that goes against you.

Communicating your disciplinary and grievance procedures

From 1 October, all employers will be required to issue a written document that sets out their disciplinary rules and the new minimum procedures. This will only affect you if you haven't already made this information available to your staff or if your procedures change as a result of the new procedures.

This information can either be communicated in the employee's contract, his or her written particulars of employment or the letter sent when offering the employee a job. Alternatively, you could set out the details in a statement of change.

Guidance on producing this statement is available from the DTI and Acas¹.

¹ DTI guidance on producing a written statement of employment particulars can be downloaded from <http://www.dti.gov.uk/er/individual/statement-pl700.htm> or a sample written statement can be obtained from <http://www.dti.gov.uk/er/individual/example-pl700a.htm>. Acas guidance can be accessed at <http://www.acas.org.uk/publications/g01.html>.

If you do not issue this statement to your staff, and one of them takes an employment tribunal case against you and wins, you will be liable for an additional fine of up to 4 weeks' wages.

Informal warning

When someone is not performing satisfactorily or is misbehaving at work the first priority should be to help them to improve. Have an informal discussion of the problem with them. Make sure they understand what they are doing wrong and what they have to do to come up to standard. To remind yourself, make a brief note of the date on which the issue was discussed and what action was agreed.

Formal warning

If the issue isn't resolved or the matter is very serious, you should tackle the matter more formally. Invite the employee to a meeting and have a formal discussion with him or her. The employee has the right to be accompanied by a colleague or trade union representative. If you are not satisfied with the employee's explanation you should write the employee a letter setting out the problem, what you expect him or her to do about it, when you expect to see an improvement and what you will do if there is no improvement. Where the employee's poor performance or misconduct is sufficiently serious, for example because it is having a serious harmful effect on the business, it may be appropriate to issue a final written warning.

For example, an employee in a small shop is responsible for unlocking the premises every morning, but arrives unacceptably late. If informal

discussions do not resolve the issue, the employer could issue a final written warning, after holding a formal meeting. The final written warning could state that if the employee is late at any time during the next 6 months, he or she would be subject to dismissal procedures.

A final written warning should give details of and the grounds for the complaint. It should warn the employee that failure to improve or modify behaviour may lead to dismissal, and it should refer to the right of appeal. A tribunal is unlikely to find a dismissal to be fair unless you gave a final written warning (except in cases of gross misconduct).

If the situation still does not improve, and you feel further action against the employee is necessary you should start the standard procedure.

Standard procedure

The standard three-step disciplinary and dismissal procedures apply to

- All dismissals except:
 - ❖ ‘collective’ or constructive dismissals and dismissals where employment cannot continue for reasons beyond anyone’s control (see ‘When procedures do not apply’)
 - ❖ a very small subset of gross misconduct dismissals (see ‘Modified Procedure’ and ‘When procedures do not apply’)

- All disciplinary action, such as demotion or reduction of pay, except action which is part of a workplace procedure i.e. warnings (oral or written) and suspension on full pay.

Note that the standard procedure applies to the case of an employee who was on a **fixed term contract** of a year or more which is not renewed. It also applies when someone is dismissed on grounds of **age** and has not reached the age of 65 or whatever is the normal retirement age in the company or when someone is dismissed for **health reasons**. Remember that **part-time** employees must be treated in the same way as full-time ones. You should also use the standard procedure when you are making someone **redundant**². Failure to use the standard procedure in such cases may result in you losing a tribunal case.

The three steps are:

- i. The written statement.
- ii. The hearing
- iii. The appeal meeting

The written statement

You must prepare a statement setting out what the employee has done, or failed to do that may result in disciplinary action or dismissal. In the case of redundancy, retirement on health grounds or the end of a fixed term contract the statement should set out the circumstances which led you to take the

² Except when you are making more than twenty people redundant at one establishment in a period of ninety days when a different statutory regime applies.

decision to end the person's employment. A copy of this statement must be sent to the employee and you must arrange a meeting to discuss the matter. See page 18 for the relevant sample letter.

You do not have to put all the details of the employee's conduct in the written statement. But if you don't, the details must be explained to him or her before the meeting, so there is time for him or her to consider a response. The law does not allow you only to present this information at the meeting.

The hearing

When arranging the meeting, bear in mind that:

- The meeting should be far enough ahead that the employee has had time to think about the written statement but it should not be delayed for too long. The employee has a duty to take all reasonable steps to attend.
- The employee has a statutory right to be accompanied to the meeting by a workmate or a trade union representative.
- The meeting must be at a reasonable time and in a convenient location. If the employee or person accompanying them is disabled you must take this into account and make reasonable provision to ensure that they can participate fully.
- If you haven't already done so before writing, ensure you have carried out a thorough investigation of all the relevant circumstances of the case and communicate them to the individual before the meeting.

After the meeting you should decide what to do and tell the employee what your decision is. At the same time you must offer the employee the opportunity to appeal against that decision if it goes against him or her. Set a time limit for the appeal (the Acas Code recommends five days). See page 19 for relevant sample letter.

The appeal meeting

If the employee wants to appeal he or she must inform you. You should then arrange a meeting to hear the appeal. A sample letter is on page 20. The same rules apply to this meeting as to the hearing. If possible a manager more senior than the manager who held the disciplinary hearing should hold the appeal meeting. If the size of your firm makes this impossible you will need to make an extra effort to deal with the matter impartially. Following the appeal meeting you must inform the employee of your decision, making clear that it is final. A sample letter is on page 21.

Getting the most out of the meetings

The way you run the meeting could have important implications if the matter subsequently goes to an employment tribunal. Start the meeting by introducing all the people present and ensuring that everyone knows the background to and the purpose of the meeting. Remember that you are aiming to resolve the dispute and keep an open mind, listening carefully to what is said. If you can, have a fellow manager at the meeting who can take notes and discuss the meeting with you afterwards. Finish the meeting by summarising what has happened and telling everyone when you will give your decision. Leave yourself some time after the meeting to consider what

has been said and follow up any new points that came out of the meeting. If a particularly significant new fact emerges it may be best to adjourn the meeting while you look into it.

Dealing with delays

If the employee is genuinely unable to attend any meeting you arrange, for example if he or she is ill, you must offer another reasonable date. If you cannot make the meeting, you must offer an alternative date. If the person the employee has chosen to accompany him cannot make the date of the meeting you offer, the employee must propose another date and time which should be no more than five days later than the original date.

If this second meeting is missed, the law considers the procedure to be at an end and you can proceed with the dismissal or disciplinary action without going through any more steps.

Instant dismissal

It is almost always unfair to dismiss an employee without first making any investigation of the circumstances. However in very rare cases it has been known for tribunals to rule that an instant dismissal was fair because the circumstances made an investigation unnecessary. For example an employee who engaged in serious misconduct in front of witnesses and there was no likely explanation or mitigating circumstances. In these rare circumstances, the Regulations allow an employer to move directly from the written statement to the appeal without having to hold a hearing. So it is a

two-step procedure. You must follow these two steps or the dismissal is automatically unfair.

The written statement

You must prepare a written statement, setting out what the employee has done, or failed to do that resulted in their dismissal. It should also mention that the employee has the right of appeal against this decision. A copy of this statement must be sent to the employee.

The appeal meeting

If the employee wants to appeal he or she must inform you. You should then arrange a meeting to hear the appeal. A sample letter is on page 20. Following the appeal meeting you must inform the employee of your decision, making clear that it is final. A sample letter is on page 21.

It is best to regard the modified procedure as a safeguard rather than an viable option.

Employment Tribunals

If the grievance, disciplinary or dismissal procedures are not completed when the case goes to a tribunal the tribunal will decide whether that is the fault of the employee or employer. If it is the fault of the employer the compensation payable will be increased by at least 10% and possibly up to 50%. If it is the employee's fault the compensation will be decreased in the same way. If there is no award, there is no additional penalty.

Be aware that a tribunal can rule that a **dismissal** is unfair or that a grievance is justified even though you have stuck to the letter of the procedures. The tribunal must be satisfied that you acted reasonably in the circumstances (taking into account the size and resources of your organisation) .

The law on dismissal

If disciplinary action could end in dismissing an employee, employers must ensure the dismissal is fair. Fairness involves 2 key points:

- The reason for the dismissal must be one allowed by the law
 - Capability or qualifications of the employee
 - Conduct of the employee
 - Redundancy
 - Contravention of a duty or restriction or
 - Some other substantial reason
- The employer must act fairly. This means following the key principles set out below

PRINCIPLES OF REASONABLE BEHAVIOUR (drawn from the Acas Code of Practice on Disciplinary and Grievance Procedures)

- Procedures should be used to encourage employees to improve, where possible, rather than just as a way of imposing a punishment
- You must inform the employee about the complaint against him or her; the employee should be given an opportunity to state his or her case before decisions are reached
- The employee is entitled to be accompanied at disciplinary meetings
- You should not take disciplinary action until the facts of the case have been established
- You should never dismiss an employee for a first disciplinary offence,

unless it is a case of gross misconduct

- You should always give the employee an explanation for any disciplinary action taken and make sure the employee knows what improvement is expected
- You must give the employee an opportunity to appeal
- You should act consistently

Note that an employee cannot take a case of unfair dismissal against you until he or she has been employed by you for a year or more. There are some important exceptions to this rule. Some dismissals are **automatically unfair** whenever they occur. In particular you cannot fairly dismiss a woman for becoming pregnant or a trade union official or health and safety officer for carrying out legitimate duties³.

When procedures do not apply

There are some circumstances where the law recognises it isn't practical to expect an employer to go through the procedures before dismissing employees or taking disciplinary action. These are:

- Collective issues, where discussion between management and employee representatives is the appropriate way of taking matters forward. For example, when an employer dismisses a whole group of staff and immediately offers them re-employment on different terms.

³ For further information see <http://www.dti.gov.uk/er/individual/fair-pl714b.htm#04>.

- When employees are dismissed for taking industrial action (in the case of lawful, officially-organised action, special arrangements apply).
- When it is not possible for employment to continue, for example when a factory burns down.
- When one party behaves in such a violent or unreasonable manner that the other party could not be expected to sit down with them and go through the procedures. You should note that the fact that an employee is behaving unpleasantly and causing you stress and anxiety will not normally be taken as a reason for doing without the procedures. This exemption is to cover cases in which people have real reason to fear violence, harassment or vandalism if the procedures are gone through.

Chapter 2: Grievance procedures

A grievance is defined as some action that the employer or a colleague has taken or proposes to take which affects him or her, and which the employee considers has been taken for some reason that is not connected with the way he or she is doing the job. Employees should be encouraged to raise these issues informally. This may solve the problem quickly, and protect good working relations. However, if this informal approach does not work, then the employee must formally raise the grievance. You are required to participate in the following procedure.

Your employee cannot take you to an employment tribunal unless he or she has written to you about the grievance and waited 28 days (although there are some exceptions to this). The 28 day period is to allow you to respond but you should not wait that long if you can help it. If you fail to complete your side of the procedures, any award made in a tribunal case could be increased by 10% and maybe up to 50%. But if the employee starts the procedures but doesn't complete them, his or her award could be reduced by 10% and maybe up to 50%. If there is no award, there is no additional penalty.

Standard procedure

The standard three-step grievance procedure applies to almost all grievances (see the following section for exceptions).

Actions which are part of normal workplace procedures such as warnings and paid suspensions can be the subject of grievance procedures as can

behaviour by colleagues. Dismissal, however, cannot be the subject of a grievance – you must deal with this as explained in Chapter 1.

There are a few exceptions to the standard procedure (see ‘When the procedures do not apply’)

The three steps are:

- 1 The written statement
- 2 The meeting
- 3 The appeal

Written statement

The employee must set out his/her grievance in writing and send a copy to the employer.

Meeting

The employer must invite the employee to a meeting to discuss the grievance. You should not delay the meeting unreasonably but give yourself time to look into the background to the grievance and check what action has been taken in similar cases.

The meeting should be at a reasonable time and location and the employee has a duty to attend. The employee has a right to be accompanied by a colleague or employee representative. If the employee or the companion is disabled you should take all reasonable steps to ensure that they have no

problems participating fully in the meeting. (see 'Getting the most out of meetings' on page 7).

After the meeting you must inform the employee of your decision and offer an appeal meeting if the decision goes against him or her.

Appeal

If the employee is still dissatisfied, he or she should tell the employer that he or she wishes to appeal against the decision or lack of one. You must arrange a meeting to discuss the appeal. If possible a manager more senior than the manager who chaired the grievance meeting should chair the appeal meeting. If the size of your firm makes this impossible you will need to make an extra effort to deal with the matter impartially. After the meeting you should tell the employee of your decision, making it clear that it is final.

Modified procedure

In general, the standard grievance procedure will apply even after the employee has left your organisation. However there is a shorter procedure that can be used when the aggrieved employee is no longer working for the employer and:

Both parties agree in writing that it should apply; **or**

It is not reasonably practicable for one or other party to carry out the standard procedure. For example if one of them has left the country for an extended period.

The two steps are:

1. The ex-employee sends a written statement of grievance to his former employer
2. The employer writes back to the ex-employee giving his response to the points raised.

When procedures do not apply

The procedures do not need to be completed if the grievance is of a 'collective' nature. The grievance is counted as collective if it is raised by a recognised trade union or a workplace representative on behalf of two or more employees.

The procedures will not apply when one party behaves in such a violent and unreasonable manner that the other party could not be expected to sit down with them and go through the procedures.

Finally there will be circumstances when factors beyond the control of either party mean that it is effectively impossible for the procedure to be gone through, for example if one of the parties concerned leaves the country or becomes seriously ill.

Chapter 3: When procedures overlap

Complications can arise when the employee feels that a disciplinary action is unfair or involves unlawful discrimination. **It is very important that you carefully examine the case for any action to make sure that it is firmly based on the conduct or capability of the employee.** If the employee is dismissed for any reason, or subjected to some other action on conduct or capability grounds, and considers that you have acted unlawfully, he or she does not need to raise a separate grievance before being allowed to take you to an employment tribunal. But if the employee believes that disciplinary action, short of dismissal, was not genuinely based on conduct or capability, and/or that it involved unlawful discrimination, he or she would need to start a grievance procedure before being allowed to take you to tribunal.

In practice this should be less complicated than it looks. If you feel one of your employees deserves to be disciplined or dismissed and you are satisfied that your reasons are sound, then you should start the disciplinary proceedings by giving the employee the written statement and arranging the first meeting. If the employee feels that you are being unfair it is up to him or her to raise the matter in writing to you. This written statement can then be discussed at the first hearing or the appeal meeting. If the case then goes to a tribunal, the employee will not have disqualified himself or herself on the technical grounds that he or she failed to start a grievance procedure, and you will not have had to arrange two sets of meetings. The important thing is that the matter will have been properly discussed in the workplace before any further action is taken.

Chapter 4: Sample letters

Letter 1 : to be sent by the employer, setting out the reasons for the proposed disciplinary action or dismissal and arranging the hearing.

Dear.....

Date.....

I am writing to tell you that [insert organisation name] is considering dismissing OR taking disciplinary action [insert proposed action] against you.

This action is being considered with regard to the following circumstances:

.....
.....

You are invited to attend a disciplinary hearing on at am/pm which is to be held in where this will be discussed.

You are entitled, if you wish, to be accompanied by another work colleague or a trade union representative.

Yours sincerely

Signed Manager

Letter 2 : to be sent by the employer after the hearing

Dear.....

Date.....

On you were informed that [insert organisation name] was considering dismissing OR taking disciplinary action [insert proposed action] against you.

This was discussed in a meeting on Following that meeting, it was decided that: [delete as applicable]

Your conduct/ performance/ etc was still unsatisfactory and that you be dismissed

Your conduct/ performance/ etc was still unsatisfactory and that the following disciplinary action would be taken against you

No further action would be taken against you.

I am therefore writing to you to confirm the decision that you be dismissed and that your last day of service with the Company will be The reasons for your dismissal are:

.....
.....

I am therefore writing to you to confirm the decision that disciplinary action will be taken against you. The action will be The reasons for this disciplinary action are:

.....
.....

You have the right of appeal against this decision. Please [write] to
within days of receiving this disciplinary decision.

Yours sincerely

Signed Manager

Letter 3: Notice of appeal hearing

Dear.....

Date.....

You have appealed against your dismissal on, confirmed to you in
writing on Your appeal will be heard by in on
..... at

You are entitled, if you wish, to be accompanied by another work colleague
or a trade union representative.

The decision of this appeal hearing is final and there is no further right of
review.

Yours sincerely

Signed Manager

Letter 4: Notice of result of appeal hearing

Dear.....

Date.....

You appealed against the decision of the disciplinary hearing that you be dismissed/ subject to disciplinary action [delete as appropriate]. The appeal hearing was held on

I am now writing to confirm the decision taken by [insert name of the manager] who conducted the appeal hearing, namely that the decision to stands/ the decision to be revoked (specify if no disciplinary action is being taken or what the new disciplinary action is).

You have now exercised your right of appeal under the Company Disciplinary Procedure and this decision is final.

Yours sincerely

Signed Manager