



# Conduct *and discipline*

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There may be times when an employer will need to address issues relating to unsatisfactory conduct by employees. In these circumstances, the employer's policies and procedures relating to conduct and discipline should be followed. These must, as a minimum, follow the steps in the Acas Code of Practice on disciplinary and grievance procedures ('the Acas Code') a copy of which can be found here. Where there are no such written policies the Acas Code should be followed.

Issues concerning conduct can be complex. Whilst this information contains general guidance it is not a substitute for legal advice. Please call the helpline for further information.

The steps below are the key elements of a procedurally fair disciplinary process.

1. initial assessment of the allegation – is it appropriate to deal informally by “having a quiet word”?
2. Check any staff handbook for examples of misconduct.
3. If the allegation is serious, consider whether suspension is appropriate.
4. Appoint someone to investigate the issues.
5. Carry out initial investigations and take witness statements.
6. Hold an investigation meeting if necessary or

required by documented staff policies.

7. Decide whether there is a case to answer, if ‘yes’, invite to a disciplinary meeting.
8. Appoint a disciplinary manager where possible.
9. Invite the employee to a disciplinary meeting ensuring that the letter contains all the necessary information required by the Acas Code.
10. Ensure the meeting is conducted fairly.
11. Adjourn to consider the outcome.
12. Apply the key tests of “genuine belief” and ensure that any sanction is within the “range of reasonable responses.”
13. Write to the employee with the outcome of the disciplinary meeting.
14. Ensure that you give the employee a right of appeal.
15. If the employee chooses to appeal, appoint an appeal manager (where possible), and arrange an appeal meeting promptly and within the timescales provided in the staff handbook or a reasonable period.

## Disciplinary procedures and the ACAS Code

The employer's policies and procedures relating to conduct and discipline should be followed. These must,

# Conduct *and discipline*

ARAG

as a minimum, follow the steps in the Acas Code.

The procedure comprises three stages:

1. Investigation.
2. Disciplinary meeting.
3. Appeal.

Ideally, there will be different managers assigned to each of the above stages, but the Acas Code recognises that smaller employers may not have the personnel to achieve this, in which case there may be some overlap.

It is the responsibility of the employer to behave in a fair and reasonable manner throughout the disciplinary process.

## First Steps

The Acas Code recognises that some issues can be dealt with informally, often having a 'quiet word'. However, if the employee's alleged misconduct is more serious, or relates to persistent unacceptable conduct where informal discussions have been ineffective, formal disciplinary action may be necessary.

## The Investigation Stage

The investigator should first decide whether the alleged misconduct is so serious that suspension of the employee should be considered. Suspension will be appropriate if:

- **the matter under investigation is so serious it could be classed as gross misconduct and/or**
- **there is a risk of the employee interfering with evidence or potential witnesses and/or**
- **as a measure to protect against potential harm to the organisation, whether actual or reputational.**

The employer must write to the employee explaining the terms of the suspension and when this will be reviewed. Suspension is not to be used for trivial issues and care should be taken before doing so. Contact the helpline for more information and assistance as required.

Consideration needs to be given as to the sources of evidence – such as witnesses, IT records, CCTV footage or whatever other source of information is likely to help in establishing the facts. These sources then need to be investigated, with witnesses interviewed promptly

in privacy and with appropriate support if they feel nervous or reluctant to become involved.

Once the independent sources of evidence have been investigated, the employee may be invited to an investigation meeting. The employee is not generally entitled to be accompanied to that meeting.

Once the investigation stage is complete, the employer needs to decide if the evidence suggests that the alleged misconduct may have been committed. If so, a Disciplinary Manager should be appointed to conduct the process. If there is insufficient evidence, then no further formal action should be taken.

## The Disciplinary Meeting

If it is decided that there is a case to answer and that the alleged misconduct is serious enough to require formal action, a disciplinary meeting should be arranged.

The employee must be provided with a formal invite to the meeting, in writing, containing the following:

- **A clear description of the alleged misconduct.**
- **Copies of any witness statements and all other evidence which is relevant to the facts.**
- **Reference to the appropriate workplace policies outlining what may be considered an act of misconduct. It is always good practice to include a copy of any policy.**
- **Confirmation of the time, date, and place of the meeting and if anyone else will be present.**



# Conduct *and discipline*

ARAG

- Confirmation that the employee has a right to be accompanied to the meeting by a colleague or Trade Union representative.
- Notification of the range of possible outcomes up to and including dismissal.
- A template letter can be found in the document library.



## Conducting the disciplinary meeting

The disciplinary meeting should be dealt with as follows:

- A brief introduction of those present
- A description of the way in which the meeting will be handled
- Presentation of the investigation evidence
- Questions from the employee
- Employee's presentation of their case
- Questions from the person conducting the meeting
- Meeting closed pending decision

## The Decision

The decision and outcome of the meeting has two parts for consideration. Is there enough evidence to form a genuine and reasonable belief that the employee has committed the act of misconduct as described. And if that is the case, what should be the outcome. Any decision on the sanction must be within what is known as the 'range of reasonable responses'. In other words,

the sanction should be fair and proportionate to the 'offence'.

A template letter for the outcome can be found in the document library.

## Warnings

Wherever possible the employer should refer to the staff handbook for guidance. Generally, the employer should issue warnings in the order of:

1. Verbal warning/informal warning which is not part of the Acas code but is frequently used
2. First written warning
3. Final written warning

Verbal/informal and first written warnings will commonly be "live" for 6 months from the date they are imposed, with final written warnings normally "live" for 12 months.

In some serious cases an employer may consider a final written warning for a first offence. Please call the helpline for advice if assistance is required.

In all instances (including verbal warning), the outcome should be confirmed in writing. The allegations and the findings in respect of each should be set out along with the decision regarding the level of warning.

## Dismissal

Employers should always seek advice from the helpline before dismissing an employee, particularly where the employee has more than 2 years' service, which is the required length of service before an employee may bring an unfair dismissal claim. Some types of unfair dismissal, e.g. where discrimination or retaliation for protected acts such as "whistleblowing" is alleged may be brought by employees with shorter service. For more advice, please call the helpline.

Any dismissal must be fair in law and within a 'range of reasonable responses'. Sometimes an employee commits an act so serious it destroys any trust and confidence the employer may have for the employee. That may be classed as gross misconduct. Common examples include:

- Theft or other serious dishonesty
- Fighting, violence, intimidation or assault

# Conduct *and discipline*

ARAG

- **An act that seriously damages the reputation of the employer (without justification)**
- **Taking drugs at work or being under the influence of drugs or alcohol at work.**

There are many other situations, which the law may consider justifying dismissal, and well drafted disciplinary policies will provide a fuller list of examples.

It may also be that the employee has a history of disciplinary issues and may already have a final written warning on their file for misconduct. If they are found to have committed another act

of misconduct whilst that final written warning remains live, the employer may decide to dismiss the employee for being in breach of that final written warning. It is important to note the type of misconduct does not have to be the same in each case. For further information and guidance please call the helpline.

## Notice Periods on Dismissal

Any employee dismissed for misconduct in breach of an existing final written warning is entitled to be paid notice equal to the greater of their contractual notice or statutory notice relevant for their length of service. An employee can be required to work during that notice period.

An employee dismissed for gross misconduct is not entitled to receive any notice of termination or pay. Their employment will be terminated immediately on the day that decision of the outcome of the disciplinary is notified to them. They will, however, be entitled to receive payment for any unused holiday to that date.

## Q & A

### Can employees be disciplined for bad behavior outside of work?

The answer is, briefly, sometimes. If the incident identifies the employee as working for the employer, their actions may be referred to as

'bringing the employer into disrepute'. This applies to both criminal and non-criminal activity such as activity on social media sites.

Furthermore, if the employee engages in unprofessional conduct against other employees (again often social media related) that could also be actionable.

Employers should check that their disciplinary policies include such actions as necessary. This can be a complex area and further advice should be sought from the helpline.

### What should be done if a colleague is reluctant to be a witness?

Employees who witness an incident can sometimes be reluctant to assist with an investigation.

They may, for example, be concerned with the consequences of being seen to help an employer. Some witnesses may request that their statements be anonymised. This is generally not recommended as good practice.

For disciplinary proceedings to be fair, it is important that the employee knows the case they have to answer. They need to know what allegations have been made against them in order that they can respond to them. The Acas investigations guide states that an investigator should try to avoid anonymising witness statements whenever possible, because it diminishes the opportunity for the employee under investigation to effectively challenge the evidence against them.

### Is the employee under investigation entitled to pay during suspension?

Yes, the employee under investigation should be paid as normal during any period of suspension. If the employee has pre-booked holiday during this time that should go ahead.

### How should the employer deal with an employee who fails to attend a disciplinary meeting or requests a postponement?

If there is a 'no show' without explanation, it is good practice to invite the employee again with an indication that the next meeting will go ahead if the employee does not attend that time.

If the employee is ill the meeting may have to be postponed until they are well enough to attend.

However, if this becomes long term there may be other issues to consider. This can be a complicated area and further advice should be sought from the helpline.

If the employee wished to rearrange the date, often due to a Trade Union rep being unavailable, the Acas Code



# Conduct *and discipline*

ARAG

recommends an adjournment for up to five days.

However, it can be longer than this and an employer should consider all reasonable requests.

## **Can the disciplinary meeting be postponed if further investigation is needed?**

Yes, issues that have been raised by the employee may require further investigation including witnesses may need to be re-interviewed. If new information has come to light then this should be given to the employee in writing, with sufficient time to consider it before giving the employee the opportunity to respond at a reconvened meeting.

## **What do we do if the employee raises a grievance during the investigation or disciplinary process?**

Paragraph 46 of the Acas Code of Practice states: 'Where an employee raises a grievance during a

disciplinary process, the disciplinary process may be suspended in order to deal with the grievance. Where the grievance and disciplinary cases are related it may be appropriate to deal with both issues concurrently.'

It is not uncommon for this to happen, and the employee may think that by doing this they will be able to stall the disciplinary process indefinitely. If this situation arises further advice can be obtained from the helpline.

## **What are the potential consequences for the employer of not following the Acas Code?**

The disciplinary procedure that the employer followed will be taken into account if the case reaches an employment tribunal. Further, if the employer unreasonably fails to follow the Acas Code it may result in an uplift of up to 25% in any compensation awarded to the employee.

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