

HR Guidance

Disciplinary procedure

This business guide highlights the key issues a business should consider when conducting a disciplinary procedure connected with misconduct or poor performance.

Disciplinary procedure

Fairways HR guidance only provides an overview of the law in this area. For a complete understanding of how it may affect your particular circumstances in the workplace please contact one of our Consultants.

Why is it important to follow the Acas Code?

The Acas Code of Practice (Acas Code) was introduced in 2009 to replace the statutory disciplinary procedures. Employers are required to follow the code in disciplinary situations.

It can avoid a finding of unfair dismissal

The Acas Code was introduced to help businesses and employees deal effectively with issues of alleged misconduct or poor performance. When deciding whether an employee has been unfairly dismissed for misconduct or poor performance, an employment tribunal will consider whether the business has followed a fair procedure. It must also take the Acas Code into account when considering whether an employer has acted reasonably or not.

It can affect the level of compensation

If an employee's claim is successful, but either the business or the employee has failed to follow the Acas Code, the level of compensation awarded can be affected:

- If the business unreasonably failed to follow the Code, the employment tribunal may increase the employee's compensation by up to 25%.
- If the employee unreasonably failed to follow the Code, the employment tribunal may reduce their compensation by up to 25%.

How should misconduct or poor performance be handled?

Investigate the issues

- The business must carry out a reasonable investigation of the issue (for example, by conducting an investigatory meeting with the employee under investigation). Any investigatory meeting should not result in disciplinary action without a disciplinary hearing taking place first.
- If paid suspension is necessary during the investigation it should be as brief as possible and kept under review. The business should clarify that this is not in itself a form of disciplinary action.

How should misconduct or poor performance be handled? (continued)

Inform the employee of the issues in writing

- If, following the investigation, it is found that there is a case to answer, the business should notify the employee in writing of the alleged misconduct or poor performance and its possible consequences in sufficient detail to enable them to respond at a disciplinary hearing.
- The notification should set out details of the disciplinary hearing, including the time and place of the hearing.
- The disciplinary hearing should be held without unreasonable delay. However, the business must ensure the employee has reasonable time to prepare their case.
- Any written evidence (for example, witness statements) should be provided to the employee.

There must be a disciplinary meeting or hearing

- The business should not make a decision to dismiss or take other disciplinary action without a disciplinary hearing or meeting taking place first.
- If the employee is persistently unable or unwilling to attend, without good reason, the business is entitled to hold the meeting or hearing in their absence and make a decision on the available evidence.
- Both business and employee should give advance notice of any witnesses they intend to call.
- At the hearing:
 - the business should explain the allegations and go through the evidence;
 - the employee should be allowed to set out their case and answer the allegations; and
 - the employee should have a reasonable opportunity to ask questions, present evidence, call relevant witnesses and raise points about any information provided by the business' witnesses.

Inform the employee of the decision in writing

After the hearing, the decision should be sent to the employee in writing without unreasonable delay. Written warnings should set out:

- The nature of the misconduct or poor performance.
- The improvement required.
- The timescale for improvement.
- How long the warnings will remain current.
- The consequences of further misconduct (or failure to improve) within that period.
- The employee's right to appeal the decision and the procedure they need to follow to do so.

How should misconduct or poor performance be handled? (continued)

The employee has a right of appeal

- If the employee feels the disciplinary action against them is unjust, they may appeal in writing, specifying the grounds of the appeal.
- If the employee brings a tribunal claim without first appealing, any compensation awarded may be reduced.

Practical steps for businesses to take to improve their disciplinary procedures

- Involve employees in developing workplace procedures, and make sure those procedures are transparent and accessible to employees.
- Encourage managers to manage conduct and performance issues quickly and informally before they get to a formal disciplinary stage.
- Investigate issues thoroughly. Even if the employee has attended an investigatory interview, always hold a disciplinary hearing once all the evidence is available, and allow the employee to put their side of the story before making any decision.
- Keep written records, including minutes of meetings.
- Communicate decisions effectively and promptly, setting out reasons.