

## HR Guidance

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# Managing poor performance

This business guide highlights the key issues that a business should consider when dealing with poor performance. Failure to follow the correct procedures can have serious financial and commercial implications for businesses, including unlimited damages in some cases.

## Managing poor performance

*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.*

### General good practice to help avoid potential claims

Businesses should follow good management practices to help avoid potential claims relating to a dismissal:

- Make sure that any employee-related policies and procedures the business has are always followed (for example, an equal opportunities policy).
- Address any issues with employees as soon as they emerge. Generally, an employer's position deteriorates the longer the delay.
- Think carefully before sending any e-mails to employees (for example, never send any aggressive e-mails as they could be used against the business by an employee in a future claim).
- In many circumstances an informal meeting with an employee can resolve a problem. However, employees must be made aware that a formal process could be used if an issue remains unresolved. The procedure for formally disciplining an employee is complicated, so take legal advice before starting the process.
- Keep records of any e-mails, letters, conversations or meetings (formal or informal) that the business has with employees relating to their performance.
- Conduct regular appraisals with employees to enable the business to give an honest assessment of their performance and allow them to raise any concerns.
- Do not give flattering performance reviews if they are undeserved. They could make it more difficult to dismiss an employee in the future.
- Use probationary periods effectively. If the business has any legitimate concerns about a new employee, it may be able to extend the period or dismiss them at the end of it. A business will have to provide at least one week's notice to dismiss (although it may be more, depending on what the contract says).
- Employees should not be sidelined, bullied or shunned in order to get them to leave. If an employee can demonstrate that they resigned because of the business' conduct, they could have a claim for constructive dismissal.
- Do not assume that the business can dismiss an employee simply because their fixed-term contract has come to an end. The employee may have a claim for unfair dismissal. Unfair dismissal is any dismissal that is not for a fair reason or does not follow the correct procedure.

## General good practice to help avoid potential claims (continued)

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Businesses should follow good management practices to help avoid potential claims relating to a dismissal:

- Always take any employee grievances or claims raised against the business seriously. Be particularly careful if an employee has raised a grievance or claim in the past. The business should make sure that any further allegations are dealt with fairly, to avoid the risk of them bringing a victimisation claim. Victimisation is a type of discrimination where someone treats another less favourably because they have made, or that person thinks they have made, a discrimination claim or have given evidence in connection with a claim.
- Sometimes, from both a practical and commercial point of view, it is simplest to try to reach a financial agreement with an employee to leave the business. Take legal advice before entering into any kind of negotiation. If an agreement can be reached, to protect the business, the employee should be asked to sign a settlement agreement. A settlement agreement is an agreement, usually in return for a fixed sum of money, in which an employee specifies that they will not bring a claim against their employer.
- There is no obligation on a business to provide a reference if one is requested. However, if a reference (oral or written) is provided for an employee the business must ensure that it is accurate. For example, a good reference should not be given to an employee that the business has dismissed for poor performance, as this could lead to a claim being brought against the business.