



MODEL DISCIPLINARY PROCEDURE FOR SMALL ORGANISATIONS

Employers should comply with the Acas Code of Practice for disciplinary and grievance procedures which can be downloaded from www.acas.org.uk/dgcode2009. Otherwise they could face having to pay an increased award at an employment tribunal.

Four key points for a fair disciplinary procedure are:

1. The employee should fully understand the case against him or her.
2. The employee should have an opportunity to state their case.
3. The employee should have an opportunity to appeal against the decision.
4. The employee should have the opportunity to be accompanied at any formal meeting if they wish.

It is essential to have discipline and grievance procedures written down so that everyone is clear about what is required. All new employees should receive a copy or know where they can get a copy of the procedures within 8 weeks of starting their employment (as part of the requirements for the written statement of terms and conditions).

An example model procedure is included below suitable for small voluntary sector organisations or charities. Employers are entitled to

adopt more detailed procedures if they wish, so long as they follow the requirements of the Acas Code.

The disciplinary procedure does not need to be part of the contract of employment, which makes it easier to change it over time according to changing needs. Instead it can be referred to in the contract so that everyone knows about the process.

An example of how this reference can be made within your contract of employment is found in the PEACe Model Contract of Employment:

“The disciplinary procedure is attached but does not form part of this contract.”

Disciplinary procedures should be regularly reviewed to make sure they are relevant and effective. Also ensure that managers and Board members receive training on operating the procedure.

It is recommended that you obtain a full copy of the *Acas Code of Practice on Disciplinary and Grievance Procedures* and also read the non-statutory Acas Guide to get more comprehensive advice on how to carry out fair procedures.

To obtain a copy: download from www.acas.org.uk/dgcode2009

All employers must comply with the Code of Practice.

PLEASE NOTE

The boxes within the model procedure below contain additional notes and guidance for the employer and should be deleted from the final document used by your organisation.

Replace the phrase 'the Organisation' used throughout the document, with the name of your organisation.

Model Disciplinary Procedure for Small Organisations

1 Introduction

The purpose of the Organisation's Disciplinary Procedure is to help and encourage all employees to achieve and maintain required standards of conduct and work performance. The aim is also to ensure that the Organisation's services are maintained and effective while all staff are treated fairly and equitably.

This procedure sets out the action that will be taken in response to alleged misconduct or poor work performance.

Line managers must ensure that their staff are aware of general and specific rules, standards and procedures covering work and conduct. Employees must familiarise themselves with these standards and procedures and follow them.

In appropriate cases of minor misconduct or unacceptable performance or behaviour, managers should use informal action before formal disciplinary action is taken. This may include setting clear targets and expectations, monitoring progress over a reasonable time period and providing additional coaching or training.

Informal approaches are encouraged in the Acas Code of Practice for Disciplinary and Grievance Procedures www.acas.org.uk/dgcode2009. A quiet word with a staff member or asking for support from a line manager may be all that is needed.

Some workplace disputes can be resolved through the support of an independent third party or mediator. Mediation does not decide on who is right or wrong. Nor can the parties be forced to undertake mediation –

it must be a purely voluntary process.

But if the issue cannot be resolved informally, formal action might be necessary.

No disciplinary action will be taken until a case has been thoroughly investigated. When starting an investigation into an allegation of misconduct or poor performance, there shall be no assumption that disciplinary action will automatically follow.

The investigation is a crucial part of the disciplinary procedure. Where a serious level of disciplinary sanction is being considered, particularly if a potential dismissal is being considered, the investigating officer should ideally not be the same person as the person or people who make the disciplinary decision. However it is recognised that this may not be possible in very small organisations with limited number of senior managers and Board members.

In some circumstances, organisations may decide that they want an external HR consultant to undertake the investigation, but ultimate responsibility for the nature of the investigation still lies with the employer. It would not be appropriate to ask an external consultant to undertake the disciplinary meeting and make any disciplinary decisions on behalf of the organisation.

The aim of the investigation is to establish the facts before taking any disciplinary action, and an open mind should be kept. It should be carried out without unreasonable delay. A fact-finding meeting with the employee and any witnesses may be necessary, or it may just involve collation of evidence, whatever is appropriate for the case. But without some means of establishing the facts through an investigation, any subsequent decision on dismissal may be unfair.

If an investigation meeting is required with the employee, warn the employee in advance and allow them time to prepare.

Employees will not normally be dismissed for a first breach of discipline, except in the case of gross misconduct, when the penalty will be dismissal without notice and without payment in lieu of notice.

Sometimes when misconduct is so serious or could have such serious consequences it would be appropriate to dismiss someone without notice (sometimes called summary dismissal). However the employer should still follow a fair procedure with an investigation, an opportunity for the employee to put their side of the case at a meeting and the right to appeal as well as the right to be accompanied at the disciplinary meeting and appeal meeting. It should be made clear to the employee before the meeting takes place, that dismissal is a possibility. After careful consideration, a short period of suspension with full pay (see Section 5 below) may be helpful whilst the investigation is taking place.

The reference to summary dismissal in the disciplinary procedure should ideally be mirrored in the employment contract. The contract clause for Termination of Employment should include, for example:

“In the case of gross misconduct you may be dismissed without notice and without pay in lieu of notice” .

Your written procedure should give some examples of the sorts of misconduct that are considered gross misconduct (see Section 3 below).

The procedure may be implemented at any stage if the alleged misconduct or poor performance warrants such action.

2 Who is authorised to take disciplinary action?

- Informal action/First warning or Improvement note/Final warning: Line Manager
- Dismissal: Chief Executive or Chair of the Board of Trustees or other designated member or members of the Board of Trustees

3 What is gross misconduct?

Gross misconduct is defined as misconduct serious enough to destroy the employment contract between the Organisation and the employee which makes further working relationship and trust impossible. Gross misconduct is normally restricted to serious offences. The principal reasons for summary dismissal could include but are not limited to:

- ❖ criminal offence which affects the individual’s ability to carry out his/her job;
- ❖ physical assault by an employee on any other person;
- ❖ theft, misappropriation or unlawful destruction of property: the

- Organisation's, employees' or others';
- ❖ the giving or receiving of bribes or unauthorised gifts;
 - ❖ serious infringement of safety rules or negligence which causes unacceptable loss, damage or injury;
 - ❖ supplying security access codes to any unauthorised person;
 - ❖ unauthorised disclosure of information or misuse of trust of a serious nature;
 - ❖ making malicious or unfounded allegations of a serious nature;
 - ❖ deliberate falsification of any documents or claims, including time sheets, overtime or expense forms;
 - ❖ misconduct at work or away from work of such a serious nature as to bring into disrepute either the employee's position or the organisation;
 - ❖ serious discrimination relating to a protected characteristic (age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex and sexual orientation);
 - ❖ harassment of a serious nature;
 - ❖ deliberately accessing internet sites containing pornographic, offensive or obscene material;
 - ❖ persistent alcohol or drug abuse;
 - ❖ serious or persistent IT misuse;
 - ❖ engaging in unauthorised employment during hours when contracted to work for the Organisation or during periods of designated leave, for example annual or sick leave, time off for training, etc.;
 - ❖ failure to disclose unspent criminal conviction(s) or any convictions, whether spent or not, in respect of posts exempt under the terms of the Rehabilitation of Offenders Act 1974;
 - ❖ providing false information on a job application form including false information concerning immigration status.

4 The procedure

If informal action fails to achieve the required improvement in performance or behaviour, then this procedure is followed. This procedure applies to all employees, once their probationary period is completed. The procedure for probationary employees is described in Section 6 below.

i. Invitation to a Disciplinary Meeting

Following an investigation the employee should, without unavoidable delay, be given a letter detailing the allegation, the possible consequences and inviting them to a disciplinary

meeting.

The meeting should ideally be arranged within five to ten working days of the alleged misconduct or poor performance issue, allowing reasonable time for the employee to prepare their case.

This will also state that they have the right to be accompanied by a trade union representative or work colleague at the meeting.

The employee only has a statutory right to be accompanied by either a fellow worker, a trade union representative or official employed by a trade union at a disciplinary or appeal meeting. Any entitlement offered above this is entirely at the discretion of the employer. This companion can speak at the meeting on behalf of the employee, but they cannot answer questions on the employee's behalf.

You may decide to also allow employees to be accompanied at any formal investigatory meetings but this is not essential under the Acas Code.

Where the organisation employs only one worker or in other exceptional circumstances, you may decide to allow the employee to be accompanied by a union representative **or friend**. Similarly you may allow them to be accompanied by a friend at any Appeal meeting.

You should also consider whether any reasonable adjustments are required for disabled employees, such as allowing a support worker or sign language interpreter to attend the meeting.

At the same time the employee will be provided with copies of all documentation and supporting evidence to be presented at the meeting.

The employee should receive details about the problem in advance of any formal meeting to give her/him time to read and digest the information. To suddenly produce new information or allegations about an employee at a disciplinary meeting is likely to be seen as unreasonable.

It will be unusual for witnesses to give oral evidence at a disciplinary hearing but if witnesses are to be called the employee should be notified

in advance.

The notification letter should also explain the possible consequences such as a potential warning or dismissal.

If an employee fails to attend a disciplinary meeting, you should try and rearrange the meeting at least one more time. If the employee continues to be absent but has a good reason such as sickness (including stress-related illness), it would be good practice to be more flexible about rearranging the meeting more than once if possible, or you could offer to hold the meeting at a place or time more convenient to them, or allow them to provide their response in writing or via their representative.

Ultimately, the employer can go ahead with the meeting in the absence of the employee and make a decision based on the information they have, as long as the employee has been given every opportunity to participate and put their side of the case. The employee should be warned that this will happen should they not turn up again. The employer should also consider any written representations made or representations made by the representative if they attend alone.

ii. Disciplinary Meeting

Where possible, a note-taker, who must be uninvolved in the case, will take down a record of the meeting.

If there are any witnesses, they should not be present throughout the meeting. They should be called in, one by one, to give their evidence and asked to leave once they have done so.

The Line Manager (or Chair of the Board of Trustees as appropriate) will open the meeting with an explanation of its purpose and will read aloud the allegations.

The employee and her/his representative can ask questions including of any witnesses called.

The Line Manager/Chair will then ask the employee if s/he wishes to take the opportunity to respond to the allegations or concerns or if there are any mitigating circumstances to be taken into account. The Line Manager/Chair may question the employee and any witnesses called.

The Line Manager (or Chair) will summarise the main points of

the discussion and ask the employee if they have anything further to say.

The Line Manager (or Chair) will then consider the details heard in private. S/he must decide whether the case against the employee has been established on the balance of probabilities, i.e. whether misconduct is confirmed or the employee's performance is found to be unsatisfactory.

If this is the case, when they are considering appropriate disciplinary action, s/he should also consider any special, mitigating circumstances, the employee's previous disciplinary or performance record, how the Organisation has dealt with similar cases in the past and whether the proposed action is reasonable in view of all the circumstances.

The Line Manager (or Chair) shall give the employee written confirmation of the decision normally within five working days of the meeting. This will include notifying the employee of her/his right of appeal and the procedure to be followed.

The employee should be informed in writing of any decision on whether disciplinary action is appropriate and how long the penalty will last, the improvement expected, the time period for improvement, and the procedure and time limits for appeal.

If the decision is to be dismissal, the employee should be notified as quickly as possible, explaining the reasons for the dismissal and the date when the employment will end.

iii. Disciplinary Action

If following the disciplinary meeting it is decided to take action, one of the sanctions below may be applied.

Stage 1 - Written Warning

If conduct does not meet acceptable standards the employee will normally be given a written warning by his/her supervisor/line manager. S/he will be advised of the reason for the warning, that it is the first stage of the disciplinary procedure and of their right of appeal. A copy of this written warning detailing the complaint; the change in behaviour required; and dates for review will be kept in the employee's personal file but will be disregarded for disciplinary purposes after a specified period.

Or

Improvement Note for Unsatisfactory Performance

If performance does not meet acceptable standards the employee will normally be given an improvement note by his/her supervisor/line manager. S/he will be advised of the reason for the note and of their right of appeal. A copy of this note detailing the performance problem; the improvement required; the set timescale for improvement; and dates for review will be kept in the employee's personal file but will be considered spent after a specified period – subject to achieving and sustaining satisfactory performance.

The Acas Code does not specify a particular period to consider warnings or improvement notes to be 'live'. The specified period could depend on the seriousness of the offence but must be consistent with past practice.

The Acas guidance accompanying the Code, when referring to the first warning/improvement note states "A record of the warning should be kept, but it should be disregarded for disciplinary purposes after a specified period (e.g., six months)."

The guidance also goes on to state that "a copy of the note should be kept and used as the basis for monitoring and reviewing performance over a specified period (e.g. six months)."

Stage 2 – Final Written Warning

If performance is still unsatisfactory or if a further misconduct occurs, or if the misconduct is sufficiently serious to warrant only one written warning but insufficiently serious to justify dismissal (in effect both first and final written warnings), the employee will be given a final written warning. This will give details of the complaint; the improvement required; the set timescale for improvement; and dates for review. It will warn that dismissal may result if there is no satisfactory improvement and will advise of the right of appeal. A copy of this final written warning will be kept on file but will be disregarded for disciplinary purposes after 12 months (in exceptional cases duration may be longer) subject to achieving and sustaining satisfactory conduct or performance.

The Acas guidance accompanying the Code, when referring to the final warning/improvement note gives an example of a specified period of 12 months for final written warnings.

However you could state "a period to be specified by the decision maker at the time the final warning/note is given" and therefore it could depend on the seriousness of the offence but must be consistent with past practice.

Stage 3 - Dismissal

If conduct or performance is still unsatisfactory and the employee fails to reach the prescribed standards, or if the offence constitutes gross misconduct, dismissal will normally result. The employee will be provided as soon as reasonably practicable with written reasons for dismissal, the date on which his/her employment will terminate and be advised of the right of appeal.

Note that employees with at least two years' continuous service have the right, on request, to have a written statement of particulars of reasons for dismissal. Any employee who is dismissed while pregnant or on maternity/adoption leave must be given a written statement of the reasons for dismissal, whether or not requested and regardless of length of service.

The Acas Code of Practice on Discipline and Grievance states that an employee **must** be informed of the reasons for dismissal **as soon as possible**, and it is always best to put this in writing. In practice, therefore, it is advisable to provide written reasons for dismissal in all cases.

iv. Appeal

An employee may appeal against the decisions of the disciplinary meeting taken under this procedure to the Chair of the Board of Trustees, or if the Chair has already been involved in an earlier stage of the procedure, to the Vice-Chair of the Board of Trustees.

The employee wishing to appeal against a disciplinary decision, must do so in writing within five working days of receiving written notification of the disciplinary action, stating the reasons for the appeal. Any documents submitted in support of the appeal must be attached.

Arrangements for the appeal meeting will be made by the Chair (or Vice-Chair if appropriate) who will ensure that a note-taker is

present if possible. The appeal meeting should be held without unavoidable delay. Where possible, at least two members of the Board will constitute an Appeal Panel and excluding any who line-manage the employee and who made the decision which is the subject of the appeal.

Ideally the manager or Board members who will deal with the appeal, should not have undertaken the original investigation or made the original disciplinary decision. But this may not always be possible for small organisations, in which case they should try to approach the appeal in as unbiased and open-minded a manner as possible.

The decision following the appeal meeting should be given in writing to the employee.

The decision of the Appeal Panel or person hearing the appeal shall be final.

5 Suspension

Suspension without pay is regarded as a form of penalty once a disciplinary decision has been made. It can only be used if it is **expressly mentioned in the employee's contract of employment** otherwise the employee could take action for breach of contract.

If you wish to include this provision the contract should state:

"The Organisation may suspend you from work on full, reduced or nil pay during an investigation or disciplinary proceedings."

Suspension with pay for a reasonable period will not be in breach of contract where the allegation is of a serious nature. However, you are still advised to include this option within your contract of employment, e.g.:

"The Organisation may suspend you from work on full pay during disciplinary proceedings."

It is part of the disciplinary procedure but **it is not a penalty**. The suspension period should be kept to a minimum and the investigation should be carried out speedily.

Suspension is not a disciplinary action and will normally be on full pay. It should only take place where it is considered that the employee may impede the disciplinary investigation or commit further offences if he/she remains at work.

The Chief Executive or Chair of the Board of Trustees will inform the employee in writing that s/he is to be suspended immediately: stating the nature of the alleged offence, the purpose of suspension, and its anticipated duration.

Suspension in these circumstances should be no longer than required to complete the investigation.

If, on completion of the investigation and the full disciplinary procedure, the organisation is satisfied that gross misconduct has occurred, the result will normally be summary dismissal without notice or payment in lieu of notice.

6 Probationary employees

This full procedure does not apply to probationary employees. However in all cases the requirements as outlined in the Acas Code of Practice on Disciplinary and Grievance Procedures must be followed.

The Line Manager of a probationary employee will assess the employee's performance through the probationary supervision and review process. Warnings will normally be given to employees before any final action being taken should there be concerns about performance or conduct.

Where dismissal of the probationary employee is considered due to unsatisfactory performance or conduct, or in cases of gross misconduct, the employee will be notified in writing of the problem, the time and venue for the probationary review meeting, their right to be accompanied by a trade union representative or a work colleague of her/his choice and the potential dismissal outcome. A meeting will be held and the employee will be entitled to appeal.

If the employee wishes to appeal against the dismissal, he/she must do so in writing to the Chair within five working days of receiving written notification of the dismissal, stating the reasons for the appeal. Any documents submitted in support of the appeal must be attached.

Arrangements for the appeal hearing will be made by the Chair who will ensure that a note-taker is present if possible. Where possible, at least two members of the Board will constitute an Appeal Panel and excluding any who line-manage the employee and who made the decision which is the subject of the appeal. The employee may be accompanied by a trade union representative or a work colleague of

his/her choice at any appeal hearing.

The decision of the Appeal Panel or person hearing the appeal shall be final.

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