

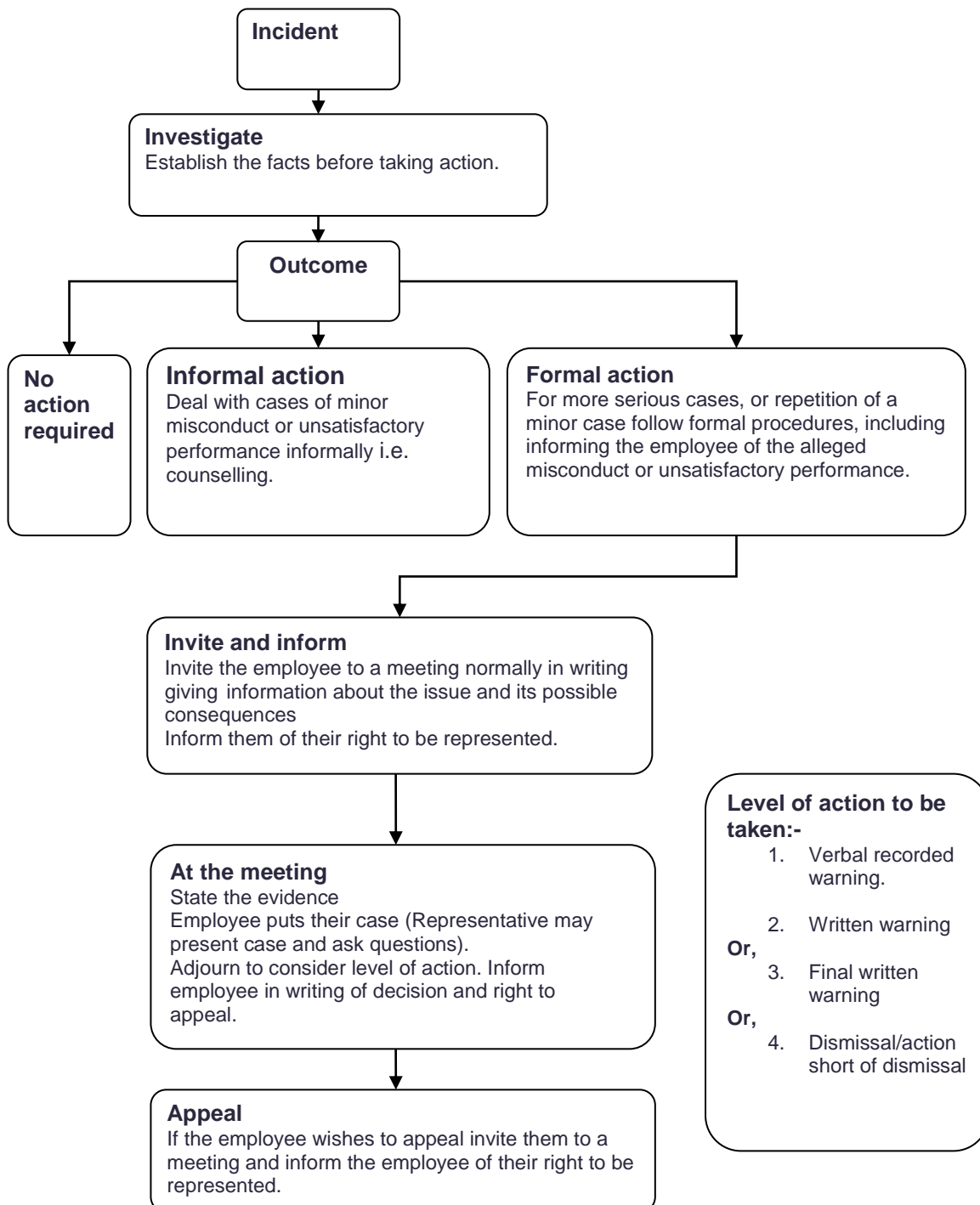
# Disciplinary process

## How to manage a disciplinary procedure

This Factsheet provides guidance to employers on how to use the disciplinary procedure – See also Factsheets Managing Performance Flowchart and Dismissal.

Employers should, wherever possible, consider informal action as a method of resolving problems rather than a formal disciplinary meeting whenever possible. Where an informal approach has not resolved the issue, or where more serious incidents occur, the formal procedure will be followed.

### Summary investigatory and disciplinary procedure



## **Investigatory and Disciplinary Procedure Guidelines**

### **Incident**

An incident occurs, which could potentially lead to a disciplinary matter.

### **Investigate**

Before considering any disciplinary process, an investigatory meeting should be held to establish the facts promptly. At this meeting you will discuss the issue and provide the employee with an opportunity to state their version of events.

The employee may be accompanied by a work colleague, or a union representative (if they are a member).

The investigatory meeting is held to establish the facts of the case and it should be made clear to the employee involved that it is not a disciplinary meeting and should not turn into one. You may need to further investigate the problem by taking the time to gather appropriate evidence, or by taking witness statements.

The investigation should be kept formal and polite, and you should encourage the employee to speak freely with a view to establishing the facts. Questions should be used to clarify the issues (e.g. open-ended questions like “What happened then?”) and to check that what has been said is correct. Closed questions requiring a straight “yes or no” answer should only be used when specific information is required, for example, “Were you at your workplace at 10.00?”

You should not get involved in arguments, or make personal or humiliating remarks. Physical contact, gestures or comments, which could be misinterpreted or misconstrued as being judgemental, should be avoided. If the employee becomes upset or distressed, you should allow time for them to regain their composure before continuing. If the distress is too great to continue then the meeting will adjourn and reconvene later.

At the end of the meeting the main points of the investigation will be summarised to ensure that nothing has been missed. This allows all parties to be reminded of the nature of the issues. Ideally an agreed written record of the meeting must be kept for later reference if required.

Once a full investigation has been completed, you must decide the outcome i.e. if the issue warrants further action, either informal or formal.

In certain cases, for example, in cases involving gross misconduct, where relationships have broken down or there are risks to employer’s property or responsibilities to other parties, the employee may be suspended with full pay while an unhindered investigation takes place. Suspension is not considered disciplinary action.

### **Outcome**

Having established the facts, you will decide what action to take:

#### **a. No action**

After the meeting, you may decide that no action is necessary. For example, if an employee was unclear about what was expected from them and they agree to try to resolve the issue, initially via additional support or counselling.

There will be situations where matters are more serious or where an informal approach has been tried but is not working. You should make every effort to resolve the matter by informal discussions before taking formal disciplinary action. Only where this fails to bring about the desired improvement or where the misconduct or unsatisfactory performance is considered to be too serious to be classed as minor, the formal disciplinary procedure may be implemented.

#### **b. Informal Action – Verbal recorded warning**

You may decide to give the employee a verbal recorded warning. This level of action would be as a result of continued minor breaches of standards of conduct or performance.

You should confirm in writing to the employee the improvements expected and appropriate timescales.

A verbal recorded warning will normally be disregarded after six months of satisfactory service.

#### **c. Formal Action - How will the formal disciplinary process be handled?**

##### **Step 1 – Review investigation**

You should review the investigation that has taken place. Notes of the investigatory meeting may be made available to the employee involved, and any other relevant documents, should they request them.

##### **Step 2 – Inform and invite to meeting**

You should provide the employee with a letter stating the nature and details of the issue. This will allow the employee time to prepare their case and any witnesses they may wish to be present. This letter should invite the employee to attend a meeting to discuss the problem formally and a minimum of 24 hours notice

(preferably 48 hours) will normally be given before the meeting takes place. The employee will be reminded of their right to be represented at the meeting.

### **Step 3 - Meeting to discuss the issue**

You should hold a meeting with the employee. At this meeting, the nature and detail of the problem will be discussed and the employee will be given the opportunity to state their case.

The employee can be represented by a union representative (if they are a member), or a friend.

Once all necessary information has been gathered, the meeting will be adjourned to:

- Enable you to make a decision about whether any action needs to be taken, and if so the appropriate level of action to be taken.
- Enable further investigation to take place before a decision can be made, and decide a date to meet again.

Once a decision has been made this will be communicated to the employee in writing and will state:

- The action taken
- The reason for the action
- The expected improvement (unless in the case of dismissal)
- The timescale for achieving this improvement
- A review date
- Any support the employer will provide to assist the employee
- The right to appeal against the decision.
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### **Step 4 – Right to Appeal**

Employees who have had disciplinary action taken against them will be given the opportunity to appeal. If the employee wishes to appeal against any disciplinary decision, they must appeal, giving their reasons in writing normally within seven working days of the decision being received.

An appeal against disciplinary action may be raised by an employee on various grounds, for instance, new evidence, undue severity or inconsistency of the penalty or defects in the original disciplinary procedure.

Any of which, can be remedied through a properly held appeal. A separate appeal meeting will be held, where the employee and their representative can present and discuss the grounds for their appeal with the employer.

### **Appeal meeting**

Before the appeal hearing commences, you should explain the purpose of the hearing, how it will be conducted (you should assure the employee that you will consider the appeal fairly), and the powers of those hearing the appeal.

The employee should be asked if they have had reasonable opportunity to prepare for their appeal and if they are ready to proceed. All the relevant documents should ideally be received prior to the appeal meeting. The employee will be asked to present the written grounds for appeal, which may include new evidence, new witnesses or statements along with any mitigating factors.

Once all the relevant issues have been thoroughly explored, you should summarise the main points of the appeal hearing to ensure that nothing has been missed. This allows everyone to be reminded of the nature of the issues and evidence presented at the hearing.

The employee should be asked if they have had fair hearing and whether they have anything else to say, or if there are any personal mitigation circumstances that the appeal panel should take into consideration.

You will then respond to the new evidence presented. The meeting will then adjourn to consider the evidence before a decision is made.

Once an appeal has been heard, you will make a decision based on the grounds of the appeal and consider any new evidence. Once the appeal meeting has concluded, you should notify the employee of your decision in writing, making it clear that the decision is final and the last step in the employer's procedures. The outcome of the appeal will depend on the individual case, however, examples of decisions available to the employer are:

- To uphold the appeal and overturn the original disciplinary action.  
In such cases, any warnings will be removed from the employee's record, and where an employee has been dismissed they will be re-instated without loss of service and paid for any loss of earnings and any other contractual entitlements.
- To overturn the appeal and uphold the original decision.
- No further action will be taken.

- To change the original decision. Where you subsequently believe that the wrong level of disciplinary action has been applied, then you may adjust the action.

## Levels of Disciplinary Action

Formal disciplinary action result in one of 4 levels of action described below: -

### Level 1 - Verbal recorded warning

This level of action would be for a minor breach of standards. Verbal recorded warnings will normally be disregarded after six months of satisfactory service.

### Level 2 - Written warning

This may be given for more serious breaches of standards, an accumulation of minor breaches, or where there has been a failure to improve, following a verbal recorded warning where the warning has not yet lapsed. Written warnings will be disregarded normally after nine months of satisfactory service.

The employee will also be informed that a final written warning may be considered if there is no sustained satisfactory improvement or change.

### Level 3 - Final written warning

Where there is no improvement in standards, or if a further offence of a similar kind occurs, or a first offence is sufficiently serious, a final written warning may be given. This warning will include the reason for the warning and a note that if no improvement results within 12 months, action as set out below (Dismissal or Action Short of Dismissal) may be taken. The warning should state clearly that dismissal would result from a failure to comply.

### Level 4 - Dismissal or action short of dismissal

If the conduct or performance has failed to significantly improve following a final written warning, or in the case of a first breach amounting to gross misconduct, consideration may be given to demotion, disciplinary transfer, or dismissal.

#### a. Action short of dismissal

Where there are mitigating factors the following actions may be considered as an alternative to dismissal: -

- Suspension from work without pay for an appropriate period.
- Demotion.
- Transfer.

In such cases, no loss of office payments will be made.

#### b. Procedural dismissal

This decision may be taken where there has been a further significant breach or significant failure to improve following a final warning, where the warning has not yet lapsed. Any decision to dismiss will be taken only after full investigation.

In normal circumstances, employees will be dismissed with notice and any accrued untaken holiday pay will be paid.

#### c. Gross misconduct dismissal

Where an employer suspects that an act of gross misconduct has taken place the employee may be placed on paid suspension while steps 1 - 4 of the disciplinary procedure are carried out. Paid suspension should not normally last more than seven days.

Any decision to dismiss should be taken only after full investigation, and when the employee and their union representative (if they are a member), or a work colleague have had the opportunity to state their case.

Clearly these stages represent an increase in seriousness. With the exception of extreme examples of misconduct, it would be inappropriate to 'skip' stages in the process. Ultimately, failure to reach the employer's standards may result in dismissal.

## Disciplinary Procedure General Points

### Right to be accompanied at formal meetings

An employee has the right to be accompanied by a union representative (if they are a member), or a work colleague, to formal disciplinary and appeal meetings. If an employee is having a union representative (if they are a member), or a friend at a meeting, they should inform the employer who the chosen representative is. The meeting date should be appropriate for the employee, employer and representative. The date and time of the meeting can be postponed for up to five days, or longer by mutual agreement, to allow the chosen representative to be present.

At the meeting the representative can present the case for the employee, ask points of clarification, request adjournments, sum up the case, but cannot answer questions for the employee. The employer can also have a companion present who has the same rights as the employee's companion (See above).

### **Adjournments**

An adjournment by the employer should occur before a decision about disciplinary action is taken. If further investigation is required during any meeting, there may be an adjournment and the manager will ensure that the employee is kept informed and given the time and opportunity to respond to new information. Adjournments may be requested at any stage by either the employer, or employee or their representative and a time to reconvene will be agreed before the adjournment takes place.

### **Record-keeping**

It is important, and in the interests of both employees and the employer that written records are kept during the disciplinary process. Records should include:

- Minutes of meetings, e.g. the complaint against the employee; the employee's defense; findings made and actions taken; the reason for actions taken
- Whether an appeal was lodged
- The outcome of the appeal
- Attendance
- Notes of telephone calls
- Copies of correspondence
- Any grievances raised during the disciplinary procedure
- Subsequent developments.

All records and matters discussed should be kept confidential. All records should be kept, as they will need to be available should the case go to an employment tribunal. Since the burden of proof is on the employer to show that the dismissal is not unfair or unreasonable, keeping records is vital.

During any meetings, the employer will be expected to keep notes, so they may ask another person to be present to assist. Notes taken will be agreed with the employee at the end of any meetings. Records will be treated as confidential and be kept no longer than is necessary in accordance with the Data Protection Act 1998.

Copies of meeting records will be given to the employee, including copies of formal minutes that may have been taken. In exceptional circumstances (for example under the employer's duty of care to protect a witness) some information may be withheld.

### **Suspension**

Where there appears to be serious misconduct, or risk to property or other people, a period of suspension with pay will be considered while the case is being investigated. This allows tempers to cool and hasty action to be avoided. Any suspension will be with pay and the period of suspension should be as short as possible. The employer should tell the employee exactly why they are being suspended. The employer should then inform the employee that they may be called in for a disciplinary meeting as soon as possible. Suspension will not be used as a sanction before any disciplinary meeting or decision.

### **Dismissal of a young person**

If a situation arises where a young person between the age of 16 and 18 years is to be dismissed for gross misconduct, they are protected by the Young Persons Act. The employer has a responsibility to ensure that they receive fair treatment, and in the case of representation at a disciplinary meeting this provision can be extended to a parent/guardian.

### **Grievance raised during the disciplinary process**

In the course of a disciplinary process, an employee might raise a grievance that is related to the case. If this happens, the employer should consider suspending the disciplinary procedure for a short period while the grievance is dealt with. Depending on the nature of the grievance, consideration and any representation on the matter will be taken into account in deciding whether to bring in another manager to deal with the disciplinary process.

### **Criminal charges or convictions**

An employee should not be dismissed or otherwise disciplined merely because he or she has been charged with or convicted of a criminal offence. The question to be asked in such cases is whether the employee's conduct merits action because of its employment implications.

Where an employee, charged with or convicted of a criminal offence, refuses to cooperate with the employer's disciplinary investigations and proceedings, this will not deter the employer from taking any appropriate action. The employee will be

advised in writing that unless further information is provided; a disciplinary decision may be taken on the basis of the information available and could result in dismissal.

### **Key legal points**

Issues related to disciplinary procedures and grievances are mainly covered by Employment Protection legislation that incorporates the concepts of fair and unfair dismissal. You should always be able to answer "yes" to the following questions, as an Employment Tribunal will look at the situation and consider the following questions:

- Have you been fair to the employee?
- Have you given the employee every opportunity to put their side of story?
- Have you carried out a thorough investigation and obtained all of the facts?
- Has the employee had the right to be represented at all stages of the procedure?
- Have they had the right to appeal?
- Where the answer to any of these questions is "No", then it is most likely that an Employment Tribunal will find that the employee concerned has been unfairly dismissed and will compensate accordingly.

Where an employee has been unfairly dismissed for a reason that is discriminatory, there is no limit on the compensation that may be payable.

An employee may be dismissed without notice or pay in lieu of notice if they have committed an act of gross misconduct.