

DISCIPLINARY AND GRIEVANCE PROCEDURES - THE DOS AND DON'TS

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Lawrence Ofori

Employment Solicitor

Morrish Solicitors LLP

Damian Kelly

Head of Professional Conduct & Regulatory,

Employment Solicitor

Morrish Solicitors LLP



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ABOUT US

- **Our firm was established in 1882 and we've worked with trade unions and associations for over 70 years**
- **We act for 32 trade unions and associations**
- **We act for people, not companies**



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Agenda

- **Dealing with a problem at work**
- **Raising a grievance**
- **Grievance and disciplinary**
- **Dealing with a disciplinary**
- **Summary**
- **Questions**



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Dealing with a problem at work

1. Check your organisation's policy

- **The policy might:**
 - **Give you some information that solves the problem;**
 - **Say how to raise a problem and who you can speak to.**

Dealing with a problem at work

2. Talk with your employer

- Raising a problem informally can often:
 - Resolve it more quickly;
 - Help maintain positive relationships at work.



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Dealing with a problem at work

3. Raise the problem formally/raising a grievance

- Your employer might encourage you to try informal resolution first. However, they should allow you to raise a problem formally if that's what you want.



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Raising a grievance

Tip 1: Understand your options and your employer's grievance policy.

- **If your organisation has its own grievance procedure, it should:**
 - **Follow the ACAS Code, as a minimum (even if there is no policy in place);**
 - **Be in writing and easy to find.**
- **You should always remember time is of the essence:**
 - **Raise the grievance as soon as you can;**
 - **Take any actions expected of you as soon as you can (Time Limits may have already started).**

Raising a grievance

Tip 2: How to raise a grievance.

- **In writing (to whoever is most appropriate);**
- **Explain what the grievance is about;**
- **Include any evidence in your email/ letter;**
- **Confirm what you want your employer to do to resolve the problem (be realistic);**
- **Include a time frame for a response.**



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Raising a grievance

Tip 3: Employer's response to a grievance.

- **Your employer must:**
 - **Follow the ACAS Code of practice to keep things fair procedurally.**
 - **Consider all the information by gathering evidence from all sides;**
 - **Keep confidential written records of what takes place during the grievance procedure, including any decisions/actions or appeals taken.**



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Raising a grievance

Tip 4: The grievance hearing/meeting.

- **Your employer should:**
 - **Hold the grievance meeting without unreasonable delay- ideally within 5 working days from the date the problem was raised formally;**
 - **You should be allowed enough time to prepare for the meeting;**
 - **However, yourself and any companions should make every effort to attend the meeting on the date set.**



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Raising a grievance

Tip 4 (continued): During the grievance hearing/meeting.

- **Your employer should:**
 - **Remain impartial.**
 - **Do their best to understand the feelings of the person raising the grievance.**
 - **Take notes or appoint someone else to take them.**
 - **Go through the evidence.**
 - **Consider if they need to investigate the matter further (If necessary, they can set up another grievance meeting once they have found out more information).**
 - **Take care in deciding on any actions - usually the employer will not need to make an immediate decision.**
 - **Sum up the main points at the end.**



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Raising a grievance

Tip 5: The outcome.

- **Your employer should decide the best outcome based on:**
 - **The findings from meetings and investigations;**
 - **What is fair and reasonable;**
 - **What their organisation has done in any similar cases before.**
- **Your employer should let you know the outcome of the grievance as soon as possible and in writing, (e.g. in a letter or email).**



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Grievance & disciplinary

Support services:

- **Trade union**
- **Occupational Health**
- **Citizens Advice**
- **Other support services which the employer may offer**



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Dealing with a disciplinary

- A disciplinary procedure is a formal way for an employer to deal with an employee's:
 - 'Misconduct' (unacceptable or improper behaviour).
 - 'Capability' (performance).
- Whether the employer deals with the issue under a capability or disciplinary procedure, they must do so fairly.

Dealing with a disciplinary

Tip 1: Follow fair procedure.

- **Your employer must:**
 - **Inform you straight away that they intend to start a disciplinary procedure;**
 - **They should do this in writing; and must include**
 - **Sufficient information about the alleged misconduct or poor performance; and**
 - **Possible consequences (e.g. a written warning or dismissal).**



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Dealing with a disciplinary

Tip 2: Has anything similar happened before? (band of reasonable responses).

- **Employers should check whether their organisation has dealt with a similar situation before.**



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Dealing with a disciplinary

Tip 3: The investigation.

- An investigation is to:
 - See if there is a case to answer;
 - Make sure everyone is treated fairly;
 - Gather evidence from all sides;
 - Help the employer to see what should happen next.
- At any stage the employer can still look at whether:
 - The formal procedure needs to carry on; or
 - The issue can be resolved informally instead.



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Dealing with a disciplinary

Tip 4: The hearing.

- **Should be held as soon as possible following the investigation, while allowing the employee reasonable time to prepare.**
- **The employer should put in writing the alleged misconduct or performance issue;**
- **Any evidence from the investigation;**
- **Any other information they plan to talk about;**
- **The date, time and location of the hearing;**
- **Information on the employee's right to be accompanied to the hearing; and**
- **The possible outcomes.**



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Dealing with a disciplinary

Tip 4 (continued): 'the right to be accompanied'

- **The employee must choose their companion from the following:**
 - **Someone they work with;**
 - **A workplace trade union representative who's certified by their union to act as a companion; or**
 - **An official employed by a trade union.**



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Dealing with a disciplinary

Tip 4 (continued): 'the right to be accompanied'

- To make a 'reasonable request' to bring a companion the employee should:
 - Tell their employer the name of the companion and whether they're a colleague or a trade union representative;
 - Give their employer enough notice, so they can plan for the companion to attend the meeting; and
 - Given the companion enough time to prepare for the meeting.



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Dealing with a disciplinary

Tip 4 (continued): During the hearing.

- **The employer should:**
 - **Explain the employee's alleged misconduct or performance issue;**
 - **Go through the evidence;**
 - **Make sure someone takes notes.**



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Dealing with a disciplinary

Tip 4 (continued): During the hearing.

- **The employee should be given the chance to:**
 - **Set out their case;**
 - **Answer any allegations;**
 - **Ask questions;**
 - **Show evidence;**
 - **Call relevant witnesses (with good notice);**
 - **Respond to any information given by witnesses;**
 - **Choose if their companion can speak for them at the hearing.**



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Dealing with a disciplinary

Tip 4 (continued): The employee's companion...

- ...should be allowed to:
 - Set out the employee's case.
 - Respond for the employee to any comments or points made at the meeting.
 - Talk with the employee during the hearing.
 - Take notes.
 - Sum up the employee's case at the end of the hearing.
- The employer may agree to allow the companion to answer questions on behalf of the employee. But this is not a legal requirement.



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Dealing with a disciplinary

Tip 4 (continued): Absence or sickness.

- The employer could look at:
 - Any rules their organisation has for dealing with failure to attend disciplinary hearings;
 - How their organisation dealt with similar cases in the past;
 - The seriousness of the disciplinary issue;
 - The employee's disciplinary record, general work record, work experience, position and length of service;
 - Getting a medical opinion on whether the employee is fit to attend the hearing (with the employee's permission).
- If the employer reaches a decision, they should tell the employee in writing and tell them of their right of appeal.



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Dealing with a disciplinary

Tip 5: The outcome.

- **The employer should decide the best outcome based on:**
 - **The findings from the investigation and meetings;**
 - **What is fair and reasonable;**
 - **What their organisation has done in any similar cases before.**
- **Each organisation might have its own versions of disciplinary outcomes. They should be written in your organisation's disciplinary policy or guidelines.**



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Dealing with a disciplinary

Tip 5 (continued): Which appropriate action is required...

- **No further action needed**
- **Informal warning**
- **Written warnings**
- **First written warning**
- **Taking other disciplinary steps**
- **Dismissal**
- **Appeal**



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Dealing with a disciplinary

Tip 5 (continued): No further action required.

- **The employer should:**
 - **Talk privately with the employee and any other staff who knew the disciplinary procedure was happening.**
- **They should make clear there is no longer anything to worry about and should help the employee get back to work as normal.**



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Dealing with a disciplinary

Tip 5 (continued): Informal warning.

- If the misconduct or performance issue was found to be small and not serious, the employer might just have an informal talk with the employee. Your organisation might call it a 'verbal warning'.



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Dealing with a disciplinary

Tip 5 (continued): Written warnings.

- **A first or final written warning should say:**
 - **What the misconduct or performance issue is;**
 - **The changes needed, as well as a timescale to complete the change;**
 - **What could happen if the changes are not made;**
 - **What could happen if there is further misconduct or no improvement to performance;**
 - **How long the warning will stay in place; and**
 - **In performance cases, any support or training the employer will provide**



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Dealing with a disciplinary

Tip 5 (continued): Final written warnings.

- The employer can give a final written warning if, within a set timeframe, the employee either:
 - Repeats or commits another misconduct.
 - Does not improve performance.
- If an employee does not meet the requirements of their final written warning in the timeframe set, it could lead to dismissal. The employer should make this clear to the employee.



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Dealing with a disciplinary

Tip 5 (continued): Taking other disciplinary action.

- E.g. Instead of dismissal, the employer could decide to demote the employee. This is when they move the employee to a less responsible role.
- Employers must first check what the employment contract allows and discuss it fully with the employee. The employee can have their chosen companion or representative with them for this.



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Dealing with a disciplinary

Tip 5 (continued): Dismissal.

- The employer might dismiss the employee in either of these cases:
 - **Gross misconduct** – some acts count as 'gross misconduct' because they are very serious or have very serious effects, for example fraud or physical violence.
 - The disciplinary procedure has had to be repeated and the employee previously had a final written warning.



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Dealing with a disciplinary

Tip 5 (continued): Dismissal.

- **The employee should be told as soon as possible:**
 - **The reasons for the dismissal.**
 - **The date the employment contract will end.**
 - **The notice period.**
 - **Their right of appeal.**



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Dealing with a disciplinary

Tip 6 After the disciplinary.

- The employer should offer the employee the right of appeal if:
 - The outcome is too severe;
 - Any stage of the disciplinary procedure was wrong or unfair.
- It is also important to keep records.



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Summary

- **Do**
 - **Understand your options;**
 - **Make sure your concerns / the issue is put in writing;**
 - **Ensure the employer's investigation should be prompt, fair and reasonable;**
 - **Ensure you have enough time to prepare**
- **Don't**
 - **Fail to put forward your side of the story**
 - **Fail to engage in the grievance/ disciplinary process**
 - **Cause further delay**

**ANY
QUESTIONS?**



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THANK YOU

Lawrence Ofori
Employment Solicitor

info@morrishsolicitors.com
033 3344 9600

Morrish Solicitors LLP
morrishsolicitors.com

Damian Kelly
Head of Professional Conduct & Regulatory,
Employment Solicitor

info@morrishsolicitors.com
033 3344 9600



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