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# Guidance on Disciplinary

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## Introduction

This British Dietetic Association (BDA) guidance on disciplinary will try to address any questions BDA members and BDA Trade Union Representatives may have in relation to facing the disciplinary process being instigated by their employer.

First of all you will need to get hold of a copy of your local Disciplinary Policy as this will explain the process in your organisation as this policy is negotiated locally and hence not part of the National Agenda for Change agreement. The exception to this is in Wales where they have all Wales Policies and not local Health Board Policies.

## Important to Note

This guidance document is based on UK legislation that specifically applies to England or on Codes of practice for England. The legislation in the devolved countries, Scotland and Wales may be different.

Please note that the legislation in Northern Ireland is totally different to the remainder of the United Kingdom.

The legislation is also different in the protectorates of The Isle of Mann, Jersey and Guernsey.

A BDA Member who is not in England is advised that once they have read this guidance as an example they should contact the BDA office for advice.

## What is a Disciplinary

A disciplinary process is instigated when an employer has concerns, problems or complaints about a BDA member in respect of misconduct and / or poor performance. The employer may have a separate capability procedure they may prefer to use to address performance issues rather than as a disciplinary.

The disciplinary process enables the employer to explain clearly what improvement is needed and should give the BDA member an opportunity to explain their side of the situation. It can lead to disciplinary action, including dismissal in more serious cases (referred to as cases of Gross Misconduct). Before taking formal disciplinary action or dismissing a member of staff, the employer may try to raise the matter informally. This is often a good way of resolving a problem quickly. Sometimes the problem may be the result of a misunderstanding, and the BDA member may be able to provide evidence to clarify the issue.

The organisation is encouraged to have its own discipline policy that complies with the ACAS code of practice.

If the organisation has a disciplinary policy the BDA member's employer and the BDA member should follow the policy and procedure as this enables the issue to be dealt with in a fair and consistent manner.

## Handling a Disciplinary in the Workplace

How the employer will address issues of misconduct and / or poor performance as a disciplinary will depend on the nature and severity of the issue. This guidance is designed to help employers, BDA members and BDA Trade Union Representatives deal with disciplinary situations in the workplace.

In misconduct cases, where practicable, different people should carry out the investigation and disciplinary hearing.

Disciplinary rules should give examples of acts which the employer regards as acts of gross misconduct. These may vary according to the nature of the organisation and what it does, but might include things such as theft or fraud, physical violence, gross negligence or serious insubordination.

### Investigation Stage

The employer should inform the BDA member of the problem and that there is to be a disciplinary investigation into the issue.

#### Establish the facts of each case.

It is important to carry out necessary investigations of potential disciplinary matters without unreasonable delay to establish the facts of the case. In some cases this will require the holding of an investigatory meeting with the employee before proceeding to any disciplinary hearing.

In others, the investigatory stage will be the collation of evidence by the employer for use at any disciplinary hearing.

If there is an investigatory meeting this should not by itself result in any disciplinary action.

Although there is no statutory right for a BDA member to be accompanied at a formal investigatory meeting, such a right may be allowed under an employer's own disciplinary procedure.

#### Invitation to Attend a Formal Stage Meeting

If it is decided that there is a disciplinary case to answer, the BDA member should be notified of this in writing. This notification should contain sufficient information about the alleged misconduct or poor performance and its possible consequences to enable the BDA member to prepare to answer the case at a disciplinary meeting.

It would normally be appropriate to provide copies of any written evidence, which may include any witness statements, with the notification.

The notification should also give details of the time and venue for the disciplinary meeting and advise the employee of their right to be accompanied at the meeting.

Where a BDA member is persistently unable or unwilling to attend a disciplinary meeting without good cause the employer should make a decision on the evidence available.

### Formal Stage Meeting

Hold a meeting with the BDA member to discuss the problem. The meeting should be held without unreasonable delay whilst allowing the BDA member reasonable time to prepare their case.

Employers and BDA members (and their companions) should make every effort to attend the meeting.

At the meeting the employer should explain the complaint against the BDA member and go through the evidence that has been gathered. The BDA member should be allowed to set out their case and answer any allegations that have been made against them. The BDA member should also be given a reasonable opportunity to ask questions, present evidence and call relevant witnesses. They should also be given an opportunity to raise points about any information provided by witnesses. Where an employer or BDA member intends to call relevant witnesses they should give advance notice that they intend to do this.

Allow the employee to be accompanied at the meeting.

BDA members have a statutory right to be accompanied by a companion when the disciplinary meeting could result in:

- > A formal warning being issued; or
- > The taking of some other disciplinary action; or
- > The confirmation of a warning or some other disciplinary action (appeal hearings).

To exercise the statutory right to be accompanied workers must make a reasonable request. What is reasonable will depend on the circumstances of each individual case. However, it would not normally be reasonable for workers to insist on being accompanied by a companion whose presence would not prejudice the hearing nor would it be reasonable for a worker to ask to be accompanied by a companion from a remote geographical location if someone suitable and willing was available on site.

The companion should be allowed to address the hearing to put and sum up the worker's case, respond on behalf of the worker to any views expressed at the meeting and confer with the worker during the hearing. The companion does not, however, have the right to answer questions on the worker's behalf, address the hearing if the worker does not wish it or prevent the employer from explaining their case.

### The companion

The chosen companion may be a fellow worker, a trade union representative, or an official employed by a trade union. A trade union representative who is not an employed official must have been certified by their union as being competent to accompany a worker.

## The Employers Response

The Employer decides on the appropriate action.

After the meeting the employer decides whether or not disciplinary or any other action is justified and informs the BDA Member accordingly in writing.

Where misconduct is confirmed or the BDA Member is found to be performing unsatisfactorily it is usual to give the BDA Member a written warning. A further act of misconduct or failure to improve performance within a set period would normally result in the issue of a final written warning.

If a BDA Members first misconduct or unsatisfactory performance is sufficiently serious, it may be appropriate to move directly to a final written warning. This might occur where the employee's actions have had, or are liable to have, a serious or harmful impact on the organisation.

A first or final written warning should set out the nature of the misconduct or poor performance and the change in behavior or improvement in performance required (with timescale). The BDA Member should be told how long the warning will remain current on their personal file.

The BDA Member should be informed of the consequences of further misconduct, or failure to improve performance, within the set period following a final written warning. For instance that it may result in dismissal or some other contractual penalty such as demotion or loss of seniority.

A decision to dismiss should only be taken by a manager who has the authority to do so. The BDA Member should be informed as soon as possible of the reasons for the dismissal, the date on which the employment contract will end, the appropriate period of notice and their right of appeal.

Some acts, termed gross misconduct, are so serious in themselves or have such serious consequences that they may call for dismissal without notice for a first offence. But a fair disciplinary process should always be followed, before dismissing for gross misconduct.

## The Appeal Outcome

Following the conclusion of the Disciplinary Hearing the Employer should provide the BDA Member with an opportunity to appeal.

Where a BDA member feels that disciplinary action taken against them is wrong or unjust they should appeal against the decision.

Appeals should be heard without unreasonable delay and ideally at an agreed time and place. The BDA Member should let employers know the grounds for their appeal in writing.

The appeal should be dealt with impartially and wherever possible, by a manager who has not previously been involved in the case.

Workers have a statutory right to be accompanied at the appeal Hearing by a companion.

The BDA Member should be informed in writing of the results of the appeal hearing as soon as possible.

## Suspension

In cases where a period of suspension with pay is considered necessary, this period should be as brief as possible, should be kept under review and it should be made clear that this suspension is not considered a disciplinary action.

## Special cases

Where disciplinary action is being considered against a BDA Member who is a trade union representative the normal disciplinary procedure should be followed. Depending on the circumstances, however, it is advisable to discuss the matter at an early stage with an official employed by the union, after obtaining the BDA Members agreement.

If a BDA Member is charged with, or convicted of a criminal offence this is not normally in itself reason for disciplinary action. Consideration needs to be given to what effect the charge or conviction has on the BDA Members suitability to do the job and their relationship with their Employer, work colleagues and customers.

## Notes

To exercise the right to be accompanied at a disciplinary meeting the BDA member should be reasonable about whom they call. For example it would not be reasonable for the BDA member to request a Representative from a remote geographical location if someone suitable and willing was available on site. Neither would it be reasonable for a BDA member to insist on being accompanied by a companion whose presence would prejudice the meeting.

Where a BDA member raises a grievance during a disciplinary process the process may be suspended in order to deal with the grievance.

If the grievance and disciplinary cases are related it may be appropriate to deal with both issues concurrently.

## What to do next

Your Employer will have a Disciplinary Policy based on the above guidance which they will follow, so you need to get a copy of your local Disciplinary Policy.

Remember your local BDA Trade Union Representative is trained in the Disciplinary process and how to advice and represent BDA members facing a disciplinary.

Therefore the local BDA Trade Union Representative is the BDA members' first point of contact for BDA Trade Union support regarding a disciplinary.

Otherwise the BDA member can contact the BDA Trade Union Office for advice and support which may be from a full time National Employment Relations Officer.

## References and Further Reading

- (1) ACAS Code of Practice April 2009 Discipline and Grievance Procedures Ref CP01 [www.acas.org.uk](http://www.acas.org.uk)
- (2) ACAS Discipline and Grievance at Work Ref HO2 [www.acas.org.uk](http://www.acas.org.uk)



