

MANAGERS GUIDE

Disciplinary Meetings and Appeal Hearings

Guidance Notes for Disciplinary Meetings

The aim of this document is to help managers prepare for and conduct disciplinary meetings in a fair, consistent and professional way which complies with the principles of the Disciplinary Policy.

*An investigation should **always** be carried out prior to any potential disciplinary meeting in order to ensure complete and unbiased access to all the facts. The depth of investigation may vary based on the complexity of the issue and the apparent clarity of the facts. An investigation would not however be deemed necessary in the case of medically certified absence where the facts are usually clear and undisputed. Managers can get further help and support from HR.*

1.1 Preparing for a disciplinary meeting

1.1.1 Checking the process

- Following investigation which will usually include discussion with the employee, prepare carefully and ensure you have all the facts including statements from the employee and any witnesses;
- Question whether the standard of this employee is significantly worse than those of others or is the employee being unfairly singled out?
- Check whether the employee has any special needs or disability and make arrangements to accommodate them;
- Arrange a time and place for the meeting where there will be no interruptions. The venue should reflect that this is a line management, not an HR, issue;
- Tell the employee of the complaint, the procedure to be followed, the outcome of any initial investigation and that they are required to attend a disciplinary meeting. Advise of their right to representation. Confirm this in writing using the standard letter. N.B. An employee is entitled to be accompanied by a work colleague, employee representative or trade union representative / official. Where a union official is chosen, it would usually be appropriate that it is an official of the individual's own union, where recognised. There is no duty on a work colleague or union official to accompany an employee if they do not wish to do so;
- Allow the employee at least twenty-four hours to prepare their case, but hold the meeting at the earliest opportunity. It may be useful and save time at the meeting if copies of any relevant papers are given to the employee in advance. N.B. If the employee's representative cannot reasonably attend the meeting date, the employee may offer an alternative date so long as it is reasonable and is within five working days of the original date;
- Find out if there are any special circumstances to be taken into account. For example, personal, health related, or other issues affecting conduct;

- Consider what explanations may be offered by the employee and, if possible, check them out beforehand;
- Thoroughly check the disciplinary procedure, including available sanctions and action authority levels;
- Ensure that all the relevant facts are available, such as disciplinary record and any current warnings, other relevant documents (e.g. attendance records) and, where appropriate, written statements from witnesses;
- Where possible encourage the use of witness statements, rather than calling witnesses to appear in order to avoid a "court room" atmosphere. However, if the employee wishes to have a witness present evidence in person, they may do so;
- If the employee concerned is a union representative, contact HR who will discuss the circumstances with a trade union representative or full-time official prior to the disciplinary meeting. (This will ensure that the question of representation is addressed);
- If there are likely to be language difficulties consider whether a friend of the employee can assist as an interpreter or other arrangements can be made. Bear in mind that an employee with a disability may have special requirements;
- Consider how the meeting will be structured and make notes of the points which need to be covered;
- As part of the investigation, written statements may have to be obtained from all relevant parties, copies of which will be provided to the employee in advance of any disciplinary meeting. Statements must be signed as accurate by the witness/employee. In the majority of cases, we would expect all witnesses who provide statements to be prepared to release them for use at the disciplinary meeting.

In exceptional circumstances, for example where a witness fears reprisals, statements may be made anonymously, but great care must be taken when considering evidence given on this basis and the employee must be given an opportunity to challenge the evidence. The employee must be made fully aware of the nature of the case against them and given a proper opportunity of answering it. Where the essence of the case is contained in the statements, the employee must be given a fair and accurate account of what this is.

1.2 Conducting a disciplinary meeting

1.2.1 Explain the purpose and format

- Be civil and courteous but get to the point at once;
- Introduce those present to the employee and explain why they are there;
- If the representative is unknown to you, allow HR the opportunity to establish whether this representative is acceptable and be prepared to adjourn if necessary;
- If the employee is unaccompanied, remind them again of their right to representation;

- Explain that the purpose of the meeting is to review the situation and consider whether disciplinary action should be taken in accordance with the business' disciplinary procedure;
- Explain how the disciplinary meeting will be conducted and check the employee's and the representative's understanding.

1.2.2 Review the alleged facts of the situation

- Outline the facts as you understand them, either:
 - o Specifics about the situation/incident and/or
 - o Details about what has (or hasn't) happened since your last discussion;
- If there have been previous discussions, briefly review the problem, the action(s) agreed and the action(s) already taken. Acknowledge improvement, if any;
- Where possible, gain the employee's agreement that the facts as stated are correct;
- Where possible, gain the employee's agreement that the facts as stated do represent a breach of standards of conduct. Refer to specific standards where possible;
- If the misdemeanour constitutes gross misconduct, say so.

N.B. Don't allow the representative to answer questions addressed to the employee.

1.2.3 Give the employee and their representative the opportunity to reply

- Allow the employee a full opportunity to state their case, ask questions, present evidence and call witnesses if necessary. Ensure that witnesses are only present whilst giving evidence; thank them for their attendance;
- Listen and respond with empathy and ask for help in identifying reasons for the situation;
- Summarise the employee's information and check for understanding;
- Refrain from getting involved in arguments or emotional exchanges;
- Recognise that the problem may not in fact be a disciplinary one, in which case you may wish to briefly adjourn to consider the most appropriate course of action;

1.2.4 Ensure that the employee fully understands the consequences of their behaviour

- Explain the impact of the behaviour on the employee, their colleagues and the company, and why it is unacceptable;
- Outline the potential consequences, including those within the disciplinary procedure, if the problem remains unresolved.

NB:

- *If the employee becomes distressed, allow them time to compose themselves before continuing. If the employee is in extreme distress, consider adjourning the meeting and resuming later. If misconduct or gross misconduct, e.g. abusive language or threatened/actual physical violence occurs during the meeting, treat it as such. Adjourn the meeting and reconvene at a later date when this offence can be considered as well.*
- *The objective of the employee representative is to ensure that the case is heard fairly, that it is within procedure and that any level of disciplinary action is appropriate. Give the representative the opportunity to speak on their member's behalf and listen carefully to suggestions for problem resolution, if any. Ensure they focus on the specifics of the situation in hand and is not allowed to cloud the issue by discussion of irrelevant information.*

1.2.5 Adjourn to consider the facts and check new information

- Confer with HR regarding any new information;
- Take time on your own to make your decision;
- Discuss your decision with HR.

1.2.6 Communicate your decision

- Describe the action you are taking and why it is necessary;
- Acknowledge that the decision to take disciplinary action is your own;
- If a warning is being issued, explain which stage of the procedure is being used and why it is felt that this stage is appropriate. Explain that the warning will be confirmed in writing;
- Advise of the duration of the warning;
- Ensure that the employee understands that the purpose of the warning is to elicit an improvement; it is not a punitive measure;
- Explain what the employee must do to improve and what, if any, assistance you can offer to help them attain the required standards, including review periods if appropriate;
- Restate the potential consequences if the problem remains unresolved and highlight that the employee must take personal responsibility for resolution of the problem.

NB. Do not allow the discussion to be opened up again.

1.2.7 Inform the employee of their right of appeal

- Check the employee's understanding of the appeals procedure and ensure that they or their representative has access to the Disciplinary Policy;

- Explain that in usual circumstances the appeal must be from the employee and not the employee representative and that the grounds for the appeal must be clearly stated. Take account of individual employee circumstances when doing so.

1.2.8 Indicate confidence in the employee

- End on a positive note, where possible;
- Express your confidence in the employee's ability to reach the required standards.

Disciplinary Appeals Hearings

The aim of this section is to help managers prepare for and conduct disciplinary appeals hearings in a fair, consistent and professional way which complies with the principles of the Disciplinary Policy. It should be read in conjunction with the guidance notes for disciplinary meetings, the general approach to which is relevant to disciplinary appeals.

2.1 Preparing for a disciplinary appeal hearing

- Ensure that you are familiar with the Disciplinary Policy;
- Check that the appeal has come via HR. If not, inform HR of its receipt;
- Check that the grounds for appeal are valid as per the above document. If not, discuss with HR. In most cases it will be appropriate to describe in writing why the grounds for appeal are not considered valid, to refer the appellant to the relevant section of the appeals procedure and to allow another period of time (up to 5 days) to resubmit. It is unlikely that an employee would be given more than one opportunity to do so;
- Check that the appeal has been received within ten working days of written confirmation of disciplinary action. If not, discuss with HR;
- Check that you are the correct person to hear the appeal, i.e. that you were named as the appeal manager, that you have the authority to review the disciplinary manager's decision and that you are able to exercise independence, i.e. you have not been directly involved in the original decision making process;
- Discuss the situation with HR or the manager who was involved in the original disciplinary meeting;
- Familiarise yourself with any supporting documentation, e.g. notes of disciplinary meeting, statements, warning letter etc;
- Where possible encourage the use of witness statements rather than calling witnesses.
- Consider how the meeting will be structured.

2.2 Conducting a disciplinary appeal hearing

2.2.1 Explain the purpose and format

- Be civil and courteous but get to the point at once;
- Introduce those present to the employee and explain why they are there;
- If the employee is unaccompanied, remind them again of their right to representation;
- State your understanding of the grounds for the appeal and obtain the agreement of all parties;
- Explain that the hearing is not intended to be a complete rehearing of all the original evidence, its purpose is to review the original disciplinary proceedings to see that the decision reached was arrived at in a fair manner considering the evidence available at the time;
- Check that everyone has received copies of all relevant documents in advance, e.g. warning letter, statements, investigation notes, attendance record etc. If any party wishes to introduce late evidence decide whether to adjourn the hearing to allow advance consideration;
- Outline what discretion you have and ensure the understanding of the appellant and their representative;
- Explain how the appeal hearing will be conducted and check the employee's and the representative's understanding.

2.2.2 The appeal

- Introduce those present to the employee and explain why they are there; invite the appellant or their representative to put their case and the grounds for their appeal;
- Except for points of clarification, listen without interruption;
- Allow the management representative to ask questions at the end if they wish;
- The representative should not answer questions addressed to the employee.

NB:

- *if the appellant wishes to call a witness, allow them to present their evidence;*
- *clarify points of detail and question the witness as required - be as helpful to them as possible;*
- *ensure that the witness is only present for that part of the hearing at which they are giving evidence;*
- *thank the witness for their contribution.*

2.2.3 The management response

- Invite the management representative to state their case and to respond to the appeal;
- Allow the appellant and their representative to ask questions at the end if they wish.

2.2.4 Summing up

- Invite the management representative to sum up his case if they wish;
- Invite the appellant or their representative to sum up their case if they wish - ensure he has the right to speak last;
- Do not allow any new evidence to be introduced during summing up;
- Summarise your understanding by restating the main points which have been raised within the appeal, but do not allow further debate other than clarification.

NB: *Throughout stages 2 to 4, you may seek any clarification you require to expedite a full understanding of the situation. You may also adjourn at any point to seek further evidence or information if required.*

2.2.5 Adjournment

- Invite the appellant or their representative to sum up their case if they wish - ask the appellant, their representative and the management representative to withdraw for a specified time;
- Seek advice from HR on policy, practice and precedent;
- Ask HR to withdraw whilst you consider the appeal in private;
- If the employee is dismissed and you are upholding the decision, consider what your response will be if the employee requests a reference/consideration for future employment/an extended notice period etc.

NB: *Should you need to recall either party to clarify your understanding, both parties must return. Where a decision on dismissal is being upheld you will need to judge the employee's likely reaction in the light of a "nothing to lose" situation; arrange a discreet security presence if necessary. In any event, arrange that the employee leaves site immediately.*

2.2.6 Communicate the decision

- Recall all parties and communicate your decision. Explain the action you are taking and the reason for it;
- Explain that your decision will take immediate effect;

- Where the employee is dismissed and that decision is upheld, explain that the effective date of termination remains the one originally established. Be prepared for questions/comments/threats regarding employment tribunals or legal advice - do not enter into debate on this matter. State that the employee's representative will be able to advise them on the appropriate course of action;
- Where the employee is reinstated on appeal, explain that full continuity of employment is maintained;
- If a warning is being upheld, restate the necessity for improvement;
- Indicate what help will be given to assist the employee to meet the required standard;
- State that your decision is final;
- Explain that your decision will be confirmed in writing.

NB. Do not allow the discussion to be opened up again.

2.2.7 Indicate confidence in the employee (unless dismissed)

- End on a positive note, where possible;
- Express your confidence in the employee's ability to reach the required standards;
- Where the employee remains dismissed you may consider wishing them well for the future - however, do not be apologetic or say anything which may be interpreted as an indication that the business has treated them unreasonably.

Other points to be aware of

3.1 Record keeping

It is important and in the interest of both parties to keep written records during the disciplinary process.

Records should include:

- The complaint against the employee
- The employee's defence
- Findings made and actions taken
- Whether an appeal was lodged
- The outcome of the appeal
- Any grievances raised during the disciplinary procedure and any subsequent developments

Copies of any formal minutes should be typed up and shared with all parties to agree that they are an accurate representation. If the typed notes are agreed any hand written notes can be destroyed. Where there is disagreement on specific content of the notes this should be added as an appendix and any handwritten notes should be retained. In certain circumstances (for example to protect a witness) the manager may need to withhold some information (Local management should contact HR for advice).

Records should be treated as confidential and kept no longer than necessary in accordance with the GDPR and the Data Protection Act. This Act gives individuals the right to request and have access to personal data. They should be kept for up to 6 years after the employee has left. Records should be kept secure and confidential and not made available unless there is a requirement for legal purposes.

When recording the reason for termination you should ensure that it is accurate and accords with what the individual has been told is the reason.

Where there is no case to answer, records should not normally be retained although some exceptions e.g. bullying and abuse. But we need to make clear what was understood and what was established.

3.2 Role of the companion

Employees have a statutory right to be accompanied when required to attend certain disciplinary/grievance hearings. This does not apply to informal discussions or counselling sessions.

- Can be a fellow worker or union official (can be any union and from anywhere i.e. does not have to be local company union rep);
- They are not parents, partners, solicitors, professional bodies or temporary staff. The Company will refuse companions in this category unless they are also company employees;
- If the employee is a disabled young person you should consider allowing a non-company employee as a companion if the restriction will have a substantial detrimental effect. An example is if the individual has a cleft palate which makes understanding them difficult they may wish to be accompanied by a parent or an individual who is used to their speech patterns;
- Fellow workers should be given time off work to prepare for and go to the hearing;
- No one can be forced into accepting the role of companion;
- They should be allowed to address the hearing in order to:
 - o Put the employee's case
 - o Sum up the employee's case
 - o Respond on behalf of the worker to any views expressed at the hearing
 - o They have no right to answer questions on the employee's behalf or address the hearing if the employee does not wish them to do so.