

Guidance for Disciplinary Managers

Reviewing the case

When you are appointed as a disciplinary manager, you will be notified of the HR representative who will support you through this process. HR will provide you with all relevant documentation which will include an investigation report. The investigating manager will have recommended that there is a disciplinary case to answer for it to have progressed to this stage.

Your role is to review this documentation and chair a disciplinary hearing if you agree that there is a case to answer.

If you do not consider that there is a case to answer you may still wish to recommend appropriate informal supportive actions which may be beneficial in the circumstances, for example attending a specific training course. You should draft an outcome letter to the employee that confirms the decision and provides a detailed explanation of how this decision was reached. The letter will confirm that the case will not progress any further.

☑ A template for this outcome letter is available within the **Disciplinary Toolkit**.

If you agree with the recommendation, you will be required to chair a disciplinary hearing to decide if there is a case to answer and where applicable, determine an appropriate disciplinary sanction.

Communications

HR will contact you to schedule a date for the disciplinary hearing. This should be prioritised and held as soon as possible.

HR will write to the employee inviting them to attend the hearing providing them with at least five working days' notice. The letter will include details of:

- ☑ The allegation(s)/issue(s) of concern
- ☑ Possible sanctions
- ☑ The right to be accompanied by an appropriate work colleague or trade union representative
- ☑ Date, time and venue of the disciplinary hearing
- ☑ Reminder of the Employee Assistance Programme

The Disciplinary Policy and Procedure will be enclosed with the letter, along with all documentation gathered during the formal investigation and any additional information submissions.

The employee will be invited to submit any additional written submissions and/or provide the names of any witnesses they wish to call to the hearing at least two working days prior to the disciplinary hearing, so please schedule some time in your diary to review any additional information that is received.

You may wish to consider if it is more appropriate for any witnesses to provide a statement rather than to attend the disciplinary hearing.

Preparing for a Disciplinary Hearing

It is important that you keep an open mind regarding the outcome and ensure impartiality, fairness and confidentiality throughout the process.

Please ensure that you read the investigation documentation thoroughly. Consider the investigation findings and identify any specific issues that need to be explored during the disciplinary hearing. Consider the questions you wish to ask the employee/investigating manager/witnesses. Be prepared to be flexible about asking additional questions or amending them as new information comes to light. It is good practice to use open questions (who, what, why, when, how etc.) with closed questions to clarify points.

Useful open questions to consider could be:

- ☺ Can you take me through these events in your own words giving as much detail as possible?
- ☺ How do you feel? How did that make you feel?
- ☺ Why did you say/do that?

You may wish to prepare a script in advance of the hearing to ensure that you obtain all of the necessary information. This would include the key points (see *chairing a Disciplinary Hearing* below) which must be covered plus any specific questions.

☺ A template script for an investigation meeting is available within the **Disciplinary Toolkit**.

In alleged gross misconduct cases, you will chair the hearing and there will be a second manager on the panel as well. You should discuss the case with them in advance of the hearing.

If the employee has a disability or special requirements and has asked for adjustments to be made during the investigation process, you should try to accommodate reasonable requests wherever possible, taking into account any Occupational Health advice as appropriate.

Arrange a pre-meet with your HR representative (and second manager, if applicable) prior to the hearing to ensure that you are comfortable with the format for the hearing and to review your questions. Where appropriate, the HR representative will be in attendance at the hearing to provide support.

Right to be accompanied

The employee can be accompanied at their disciplinary hearing by a work colleague or trade union representative. They can confer with the employee during the hearing and may present all or part of their case, respond to any views expressed and sum up the case on their behalf. However, they are not permitted to answer any questions put directly to the employee at the hearing.

No parties attending an investigation meeting are permitted to use a recording device. This is to encourage openness and full participation of all parties during meetings.

Chairing a Disciplinary Hearing

It is important that you cover the following points during the disciplinary hearing.

Introduction

- ☑ Thank the employee for attending and inform them that you have been appointed to chair the hearing on the grounds of potential gross misconduct/misconduct in line with the Disciplinary Policy.
- ☑ Introduce all parties present and confirm their roles.
 - **Second Manager on the panel** - in cases of alleged gross misconduct.
 - **HR representative** – to offer procedural advice and take a note of the meeting.
 - **Investigating Manager** - if appropriate, to present the findings of the investigation.
 - **Employee's Manager** – if appropriate, to present the management case.
- ☑ Confirm if any witnesses will be called to join the hearing at a later stage.
- ☑ Note that the employee was given the opportunity to be accompanied at the hearing and that they have chosen to be accompanied OR have not chosen to be accompanied.
- ☑ Remind all parties of the expectation of confidentiality and honesty during the hearing.
- ☑ Advise that the meeting can be adjourned at the request of any party.
- ☑ Confirm that the format of the disciplinary hearing will be that the employee will be invited to respond to the allegations that have been raised against them and the management case will be presented (if applicable).
- ☑ Explain that as chair, you can ask questions at any time and all other parties can raise questions as long as they are posed through you.
- ☑ Check that all parties have received the documentation in advance, understand the format for the hearing and have any questions regarding the process.

Hearing

- ✔ Confirm that you have read and considered the outputs of the investigation conducted by [*name of investigating manager*] into the allegations raised against the employee.
- ✔ State precisely what the allegations/issue(s) of concern/complaint are.
- ✔ Invite the employee to respond to the allegations and call any witnesses.
- ✔ Invite the investigating manager to summarise their findings (if applicable).
- ✔ Invite the employee's manager to present the management case (if applicable).
- ✔ Opportunity for you and any other party to ask questions.
- ✔ Check if the employee has any further information that they wish to provide or have any final questions before the meeting concludes.

Closing the Hearing

- ✔ Advise the employee that the panel will consider all of the information provided during the investigation and at the hearing in order to reach a decision.
- ✔ Confirm with the employee that they will be notified of the outcome in writing within five working days. In some cases, it may be possible to adjourn the hearing and confirm the outcome on the same day. If there is to be a delay to this timescale, the employee will be notified of this and the reasons for it.
- ✔ Explain to the employee that if they are unhappy with the outcome they have the right of appeal. Any appeal must be lodged within ten working days of being notified of the decision.
- ✔ Remind the employee of the Employee Assistance Programme should they wish to access this free and confidential support service.
- ✔ Close the hearing and thank all parties for attending.

Outcome of the Disciplinary Hearing

Following the hearing, you are required to consider all of the information that has been presented to you before and during the disciplinary hearing to decide whether or not there is a case to answer. You will base your decision on the evidence that you have heard and if appropriate, on the balance of probabilities. If you decide that there is a case to answer, you will consider if this constitutes misconduct or gross misconduct and what disciplinary sanction is appropriate.

If you decide not to uphold the allegation, no sanction will be required but recommendations may be given. In exceptional circumstances, the allegation may be upheld, however mitigation is such that no disciplinary sanction is proposed.

Possible disciplinary sanctions are:

- ☑ **Written warning** – will remain in force for a set period of time (no longer than 12 months) and the expectation is that conduct or attendance should improve to a fully satisfactory standard.
- ☑ **Final written warning** – will normally remain in force for 12 months. Typically this sanction is appropriate for repeated incidents of misconduct, where there is insufficient or no improvement in attendance or conduct during the period of a current written warning or where the matter is deemed to be more serious.
- ☑ **Dismissal** – will typically be applied for incidents of gross misconduct, repeated incidents of more serious misconduct or where there is insufficient or no improvement in attendance or conduct during the period of a current final written warning.

An alternative to dismissal may also include a demotion to a post of a lower grade with immediate reduction of salary (placement within salary scale to be decided by the hearing panel) with retraining as appropriate.

Outcome letter

The employee should be notified of the outcome within five working days' of the disciplinary hearing. If you need more time to reach your decision (for example due to special circumstances, further investigations etc.), you should contact HR who will advise the employee that of the delay and when an outcome can be expected.

Once you have reached your decision, you are required to draft an outcome letter for the employee. It is important that your outcome letter contains sufficient detailed information to enable all parties to understand how and why your conclusion/s and decision/s have been reached. The following details should be included in the letter:

- ☑ The nature of the misconduct
- ☑ Confirmation of which allegations were upheld and which were not upheld
- ☑ The reasons for the decision – the findings
- ☑ The change / improvements required (with set timescales)
- ☑ How long any warning will remain in place
- ☑ The potential consequences of further misconduct or failure to improve within a given period
- ☑ Details of any support or training to be provided
- ☑ In the case of a dismissal, the reason, leave date and details of notice will be provided
- ☑ The right of appeal and process for making an appeal

☑ A template for the outcome letter is available within the **Disciplinary Toolkit**.

The HR representative will take a record of the disciplinary hearing and this will be made available to the employee within ten working days of the hearing.

Concluding the process

If the employee decides to appeal your decision, they have ten working days' in which to submit their appeal. If the matter progresses to a formal appeal hearing, you may be invited to present the management case at that hearing.

Once the process has concluded, please destroy all documentation securely in line with data protection principles. HR will maintain a master data file.

Please do not hesitate to contact your HR representative if you have questions at any stage of the process.

Alcohol or substance misuse - please note that the disciplinary procedure will be applied in cases involving alcohol or substance misuse. However, any decisions on disciplinary sanctions should take into account any mitigating circumstances such as whether the abuse has been admitted or if it is being dealt with, or could be dealt with, under the Alcohol and Substance Misuse Policy.