



Cambridgeshire
Chambers of
Commerce

This document has been put together courtesy of Nicola Cockerill, Solicitor at Hunt and Coombs (member of the Chambers' HR and Recruitment Sector). It is purely a guide but will need to be adapted for your own business.

GUIDANCE – for Manager's Only

Managers Guide to Disciplinary Proceedings

This guidance is intended to assist Managers dealing with disciplinary proceedings and should be used in conjunction with the disciplinary process which is detailed in the staff handbook.

Informal Approach

- It may be appropriate to resolve issues on an informal basis.
- Arrange a meeting with the employee to discuss the issue(s). Explain why their conduct is unacceptable and discuss and agree what can be done to ensure that the behaviour does not continue.
- Whilst this is an informal meeting it is recommended that minutes be taken to record the meeting. It should also be recorded that there was no formal outcome.

Formal Approach

- Where informal proceedings have been unsuccessful, or allegations are of a more serious nature, formal proceedings will need to be implemented.
- The first step will be to investigate into the allegation.

Investigation

- Arrange an investigation meeting with the employee
- In attendance should be a manager to chair the meeting and an appropriate member of staff to take the minutes of the meeting. The employee is not entitled to be accompanied.
- The allegation should be fully investigated with investigation meetings held individually with all witnesses.
- Once investigations are concluded the investigating officer should make a report detailing his/her findings and recommending whether the case should go to disciplinary.

Suspension

- Depending on the nature of the allegations it may be necessary to suspend the employee with pay for a short time while the investigation takes place.
- Suspension should only be made where necessary. For example where allegations are so serious that they could constitute gross misconduct or there is a concern that evidence could be tampered with. Always check with HR before suspending a person.

Disciplinary

- Write to an employee inviting them to attend a disciplinary meeting. If one possible outcome could be dismissal then they must be advised of this.
- The employee must be given the right to be accompanied by a trade union representative or work colleague.
- Reasonable notice should be given for the employee to attend.
- The employee should be provided with copies of any statements or evidence gathered during the course of the investigation process and on which the disciplinary panel will be relying on when deciding the appropriate sanction.
- The meeting should be chaired by a Manager (a different manager to the one whom investigated the matter) and should be accompanied by an appropriate note taker.
- The employee must be giving a fair hearing. No decisions should have been made by the disciplinary officer prior to the hearing.

Chairing the meeting: beginning

- The chair should introduce the people in attendance at the hearing and explain their role in the disciplinary process.
- If the employee is unaccompanied the chair should remind them of their right to be accompanied and check they are happy to proceed without a companion.
- If the employee is accompanied the chair may want to verify the companion to ensure they are entitled to be present. The chair may also take the opportunity to remind the companion of their role. They can address the disciplinary hearing including putting the employee's case forward, summing up and responding on their behalf to any view expressed at the hearing. However, they are not permitted to answer on behalf of the employee. They can confer with the employee during the hearing.
- The chair should ensure that the employee has:
 - a. Read and understood the applicable disciplinary procedure and
 - b. Understood the purpose of the hearing and
 - c. Received copies of any documents that will be referred to during the hearing.
- The chair should check whether any reasonable adjustments need to be made of the employee, companion or witness are disabled.

Chairing the meeting: managing case

- The chair should explain in detail the allegations that have been made against the employee and the evidence that is being relied upon in support of the allegations.
- It is good practice to remind the employee of the possible outcomes. This should have been provided to the employee, in writing, well in advance of the hearing.
- The evidence may be a report summarising a lengthy investigation, in which case it would be sensible for the investigating officer to be present to present it and answer any questions. Alternatively the chair can set out the details of the allegations and the evidence.
- In terms of witnesses, depending on the allegations, it may be sensible for the witnesses to be present to answer any questions put to them or the disciplinary officer may be able to rely on the written statements.

Chairing the meeting: employee's case

- The employee should be given the opportunity to ask questions, present their version of events and produce any evidence in support.
- They should have a reasonable opportunity to call witnesses, provided they have given advance notice of their intention to do so.
- They can also respond to or challenge any documentary evidence or witness testimony.
- If the employee has a full opportunity to present their version of events, and the employer has carried out as much investigation as is reasonable, the chair does not need to let the employee cross-examine witnesses, particularly if it would be likely to cause distress to the witnesses or affect the hearing in any way.
- If new evidence comes to light during the hearing, the chair should consider adjourning the hearing to check the facts or re-interview witnesses, and then reconvene to allow the employee a further right to respond.

Chairing the meeting: disruptive behaviour

- The employee, who will inevitably be under stress, may be angry, abusive or visibly distressed during the hearing. The chair should be sensitive to this and make sensible use of adjournments to allow the employee to regain their composure.
- The employee's representative might object to the procedure the chair is following or attempt to prevent the employee answering questions. The representative has no right to answer questions on behalf of the employee, address the hearing contrary to the employee's express wishes, or act in a way that prevents the employer or any other person making a contribution. The chair should ensure that a note is made in the minutes of any interruptions or objections together with their response to ensure there is an accurate record of the proceedings to deal with any subsequent disagreements or points raised on appeals.

Chairing the meeting: summing up

- Once both parties have presented their case the chair should summarise the information put forward. The employee should be asked whether they want to make any additional comments or ask any further questions at this stage.
- The chair should then inform the employee that all the information and representations will be considered. The meeting should be adjourned for a decision to be made or, if unable to reach a decision and more time is required to consider the information, the employee should be advised that he will be provided with a written outcome in due course.

Adjournment

- It may be necessary to adjourn the hearing – for example if an employee raises issues that require further investigation.
- If there is any further investigation then the employee should be given the opportunity to respond to the findings at a reconvened meeting.
- If no further investigation is required it is good practice to adjourn the hearing to consider the decision, even if the chair has an idea about the sanction they want to impose. This ensures that matters discussed at the hearing are considered properly and the employee can see that they have been treated fairly and reasonably. Announcing the decision immediately suggests the decision is predetermined.
- The length of the adjournment will depend on the complexity of the issues to be considered and whether further investigation is required. The employee should be given an indication of how long it is likely to be before the hearing is reconvened or the decision communicated. Any delay should be no more than is reasonable.
- If it becomes apparent that more time is required to consider the outcome then the employee should be notified of such and informed that a written decision will be sent to him in due course.

Considerations when reaching decision

- Length of service
- Disciplinary record
- Reason for absence/behaviour i.e. disability related / sex
- Sanctions available – warnings, demotion, dismissal

Communicating the decision

- Once the chair has reached a decision the hearing should be reconvened and the decision communicated and explained to the employee. The decision should also be communicated to the employee in writing following the meeting.
- The employee must be informed of their right to appeal the decision and given details of whom to address their appeal to.
- The letter confirming the decision should clearly set out;
 - a. The allegations against the employee
 - b. The findings in relation to each allegation
 - c. The reasons for the decision and
 - d. The action (if any) that the employer intends to take.
- If an employee is to be given a warning, the period that any warning is to remain in force should be clearly stated, along with the possible consequences of any further misconduct or continuing unsatisfactory performance. If there is a possibility that the “live” period of the warning may be extended if the employee’s conduct does not improve sufficiently during the review period, this must be made clear to the employee. The employee should also be advised about how and where the warning will be stored and whether it will be removed from their personnel file once it has expired.
- If the employee is to be dismissed the letter should set out the date the dismissal will take effect and any other relevant information such as arrangements for unused holiday entitlement and the return of company property belonging to the employer.
- The letter should also explain how to appeal against the decision. The employee should be told the name of the person to whom the appeal must be submitted, specify the grounds of appeal in writing and the timescales in which an appeal should be submitted.
- This should be reviewed by HR prior to being sent to the employee.

Postponement or failure to attend

- If an employee fails to attend the meeting, or seeks a last-minute adjournment, the chair will need to decide whether to adjourn the meeting.
- If unforeseeable circumstances are involved (such as illness or travel difficulties) it is usually appropriate to adjourn the hearing for a reasonable period of time. Circumstances will indicate what is reasonable.
- It is recommended that a postponement be allowed at least once.
- If the employee persistently fails to attend, or is unwilling to attend without good reason, the chair should consider whether the hearing go ahead in the employees absence.
- Where an employee is unable to attend the office for a disciplinary hearing consider other ways of conducting the hearing. For example:
 - a. By telephone
 - b. At a location nearer the employee's home address or
 - c. Using written submissions to be considered at the hearing in their absence.
- If an employee's chosen companion is unable to attend then the onus is on the employee to suggest an alternative date and it is usually recommended that this be agreed provided it is within a reasonable period of time.

Minutes and documents

- Detailed minutes of the meetings should be kept.
- The minutes should clearly show the date and time of the meeting, confirm who was in attendance and in what capacity, and state what was discussed.
- It is recommended that these are typed.
- Minutes do not need to be agreed with the employee but it is helpful if they are. However, if an employee disagrees with the minutes they should be given an opportunity to record their objections in writing. This is often by way of handwritten amendments on the typed minutes, which should also be retained on record.

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