

How To - Conduct a Disciplinary Hearing

The purpose of the Hearing is to establish the facts of the case and make a decision on appropriate action. The manager chairing the Hearing is responsible for controlling discussions and ensuring they are conducted in an appropriate manner by following the agenda below as closely as possible.

Key activities for managers chairing a Disciplinary Hearing are:

Introductions

- ✓ Open the Hearing and make introductions that include:
 - Those present and the purpose of the Hearing
 - Where present, clarify the identity of a companion and their role at the Hearing
 - The nature of the alleged misconduct
 - Explanation of the format of the Hearing

Explain the purpose of the Hearing

- ✓ Clarify that the purpose of the Hearing is to discuss evidence collected in relation to the alleged misconduct and to allow the employee to respond to this before a decision is reached on appropriate action.
- ✓ Confirm with the employee that they have received copies of all evidence and provide them with the opportunity to provide initial comment.
- ✓ Establish whether the employee is prepared to accept the alleged misconduct and offer any mitigation.

Presentation and discussion of evidence

- ✓ Outline the case briefly by going through the evidence that has been gathered, including any witness statements and the investigation report.
- ✓ Clarify any areas of evidence or detail with the employee. The following are constructive ways of encouraging an employee to be more forthcoming:
 - Ask direct questions
 - Listen carefully
 - Be prepared to wait for a response
- ✓ Call any management witnesses to the Hearing:
 - Management will have the first opportunity to put questions to these witnesses.
 - The employee or their companion will then be provided with an opportunity to cross examine the witnesses.
 - The manager chairing the Hearing should ensure that the cross examination of any witnesses is conducted appropriately.
- ✓ Allow the employee or their companion to state their case and answer any allegations that have been made:
 - Consider and question any explanations put forward.
 - Ensure the employee is given ample opportunity to present their version of events, identify corroboration etc in their defence.
- ✓ Allow the employee and their companion to confer privately. This may include an adjournment.
- ✓ Allow the employee to call any witnesses to the Hearing and present any evidence in support of their case:
 - The employee or their companion will have the first opportunity to put questions to witnesses they have called.
 - Management will then have the opportunity to cross examine.
 - The manager chairing the Hearing should ensure that the questioning and cross examination of witnesses is conducted appropriately.

Summarise discussions

The manager should summarise the main points of the discussion after questioning is completed.

- ✓ If any new facts emerge, adjourn to consider whether further investigation is required and how this could be undertaken and the expected timescales where possible.
- ✓ Give the employee or their companion the opportunity to make any further comment or sum up their case before adjourning to reach a decision on the matter.

Adjourn the Hearing to reach a decision

- ✓ Call an adjournment before reaching a decision:
 - To come to a clear view about the facts.
 - Reach a decision, on the balance of probability, of what version of events is true. That is, when balancing or considering all of the available evidence, determine what is the most probable and likely version of events to have taken place, in the circumstances of the case and after reasonable investigation. There is no requirement for an allegation to be proven beyond reasonable doubt.
 - If the chair can reach a decision quickly it will be appropriate to ask the employee and their companion to leave the room then reconvene the hearing to deliver the decision.
 - Consider whether further time is required to reach a decision on the matter. If so, inform the employee or their companion of the timescales for the decision, agree with them the method of communication and confirm the outcome in writing. This should be communicated without unreasonable delay.

Evaluate the evidence

[Factors to consider when evaluating evidence at a disciplinary hearing](#)

Reconvene the Hearing

- ✓ Reconvene the Hearing, where a decision has been reached (ideally on the same day) to:
 - Inform the employee of the decision and any formal action to be taken if any.
 - Explain the rationale for the decision
 - Where formal action is being taken, explain the duration of the action, improvements in conduct expected within that period and consequences of any failure to improve.
 - Inform the employee of when a review of the formal action will be undertaken and what this will involve.
 - Advise the employee if the case is reportable (e.g. to SSSC, GTC and Disclosure Scotland)
 - If the decision is to dismiss, advise whether payment in lieu of notice will apply and make arrangements for the employee to be escorted from the premises.
 - Explain the right of appeal and how it operates.

Action at Conclusion of the Hearing

- ✓ It is the manager's responsibility to prepare and issue a letter to the employee to confirm the decision of the Hearing and any action taken without unreasonable delay.
- ✓ Ensure a copy of this letter is sent to the Employee Support Team to be placed in the employee's personal file. In cases where an allegation is not proven, records of the investigation and Hearing should be retained in the employee's file for only 12 months after the case is closed, after which time it should be removed. The outcome letter should be retained on file. If the case is reportable (e.g. to SSSC and GTC), records of the investigation and Hearing should be retained.
- ✓ Arrange monitoring of the employee's conduct.
- ✓ Ensure a date is noted in the manager's diary to undertake and complete the review of any formal action one month prior to the expiry of the formal action. Copies of letters following this review should be passed to Human Resources for the employee's file.
- ✓ For reportable cases, it is the manager's responsibility to ensure that the relevant bodies are notified. This may include providing them with copies of any investigation reports and outcome letters, resulting in 3rd party liability passing to that body.
- ✓ The manager must also inform the Chief Social Work Officer of all referrals