

Handling a disciplinary procedure: conducting an investigation and preparing for a disciplinary

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Handling a disciplinary process: conducting an investigation and preparing for a disciplinary

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This is the first in a three part series of forthcoming updates about handling disciplinary procedures in your school.

We will begin with an examination of the investigation process, so often overlooked and misunderstood, and how to prepare the initial case which in turn is then presented to a disciplinary panel.

We will then provide practical tips and advice on the conducting of the disciplinary hearing itself and reaching an outcome and communicating that outcome to the employee in question.

Finally, we will discuss the appeal process and expunge some of the common myths surrounding the appeal stage, and the role it actually plays in the disciplinary process.

Conducting an Investigation

Managers who are asked or required to carry out disciplinary investigations must at all times ensure that they operate within the boundaries of their own internal policies and procedures.

They should also ensure that employees understand the policies and standards of behaviour expected of them by identifying and acting upon circumstances where an employee is in breach of policy or procedure.

It is very difficult sometimes to establish whether or not an issue or incident that has occurred warrants formal or informal action. When presented with an issue or concern, it is important firstly to consider whether or not formal action is even required. It may be appropriate, if only a minor breach or act of misconduct, to resolve the matter through informal discussions with the employee concerned.

However, if after preliminary considerations it is felt that formal action is to be taken, a fair and balanced investigation must be undertaken before commencement of any disciplinary procedure.

Appointing an Investigating Officer

Investigations should wherever possible, be carried out by someone who will not later be required to hold the disciplinary hearing or any appeal meeting. Ideally, the investigating officer would be impartial, more senior than the employee with whom the issue(s) relates, have the capacity to conduct investigations and produce the appropriate report and have the capability to be objective and handle the matter with sensitivity.

Is suspension appropriate?

There may be instances where suspension with pay is necessary while investigations are carried out. Examples of circumstances where suspension may be appropriate are; where there are safeguarding concerns, where relationships have broken down, in some (but not all) cases where the allegation is one of gross misconduct cases, or where there are risks associated to the employee being in the workplace such as risks to health and safety or to property.

Exceptionally, you may wish to consider suspension with pay where you have reasonable grounds for concern that evidence may be tampered with, destroyed or witnesses pressurised before the meeting.

Suspension with pay should only be imposed after careful consideration and should be reviewed to ensure it is not unnecessarily protracted. It should be made clear that suspension is not an assumption of guilt and is not considered a disciplinary sanction. You should always confirm the suspension in writing as soon as possible (ideally the next day) and keep it under review.

Check your internal policies as these may set down the procedure you are required to follow when suspending an employee.

Conducting an investigation – The Do's and Don'ts

Do's

There are a number of very important issues to consider when carrying out the investigation. When carrying out the investigation it is essential that you:

- ✓ **Are clear on the allegations under investigation.**
 - These allegations will flow through the whole process so it is important that they are accurate and reflective of the situation. It may be that they are amended or added to through the process and if so, further investigation may be required.
 - Give the employee an opportunity to respond to the allegations.
- ✓ **Are timely.**
 - It is important to carry out necessary investigations of potential disciplinary matters without unreasonable delay. This is particularly relevant in cases where the employee is suspended.
 - It is also important to give time frames to the employee in terms of the process that you are going through, and keep the employee up to date throughout.
- ✓ **Are objective.**
 - It is the investigating officer's job to provide the facts and not an opinion.
- ✓ **Gather and record facts.**
 - It is important when you are recording notes of the investigatory meetings or compiling your investigation report that you only record and gather facts that have been substantiated and not opinion.
- ✓ **Prepare questions in advance.**
 - You may want to make notes of any questions that you anticipate needing to ask and be prepared to ask additional questions to deal with any issues that arise. This avoids the need to have multiple meetings, which are not only time consuming but could be stressful for the employee.
- ✓ **Plan out who is involved.**
 - Who are the key witnesses and who may need to be interviewed in relation to the allegations?
 - Where you have obtained a witness statement, ensure that you send that statement to the individuals for checking of accuracy and to confirm that they agree with what has been written by signing it.
- ✓ **Conclude the investigation in a report with a summary of options.**
 - This doesn't have to be a formal report however it should clearly communicate the allegations, process followed, findings and summary. This makes it clear for the employee and disciplinary person/panel. It should not contain an opinion as to the employee's guilt.

- ✓ Check accuracy of evidence.
 - It is important to review the evidence you have collated and if you have any questions or concerns about any aspect of this you must go back and ask the relevant questions of the person.
- ✓ Send an appropriate letter inviting the employee to attend an investigatory meeting.
 - Make sure you provide the employee with reasonable time to prepare for the investigation meeting and to gain representation if your internal procedures allow for representation at this stage.
- ✓ Keep the process confidential.
 - Any outcome or discussions as part of the investigation must be kept confidential. There is no duty to report any outcome of any disciplinary hearing to anyone other than the employee.

Don'ts

However there are a number of things that should be avoided when carrying out an investigation. Wherever possible, ensure that you **do not:**

- ✗ Allow time frames to slip.
 - It is important to carry out investigations without unreasonable delay.
 - If you do not keep the employee up to date on the process or stick to any timeframes set in your internal policies and procedures then it could be seen as an unfair process. Review the process to ensure that it is not unnecessarily protracted as a result of your actions. Any lengthy delay could have a negative impact on the employee and the process (for example, witness' memories will fade over time).
- ✗ Make a decision on the outcome.
 - It is the investigating officer's duty to provide the facts following an initial meeting with the employee and any evidence collated from witnesses and documentation.
 - The investigating officer should provide all the relevant information for the disciplinary panel to be able to make an informed decision on the outcome.
- ✗ Conclude if further information is required.
 - It may be that during the course of the investigation, allegations may need to be amended or added to, if this is the case then the employee must be able to give a response to any new or changed allegations.
 - If there are further questions or evidence required you must ensure that this happens prior to concluding your investigation.
- ✗ Start an investigation without becoming familiar with the process, policy and procedure including time frames.
 - It is important that you are familiar with your internal policy and procedure so to ensure that you conduct a fair and thorough investigation in a timely manner. This will avoid protracting the investigation unnecessarily and ensures the smooth running of the process with the least disruption caused.

Remember

- The investigation is key in providing the necessary information to a disciplinary panel or person.
- The investigation provides the facts and evidence for a decision to be made.
- You must ensure that you make detailed notes at all stages of the procedure. However, please be aware that notes taken by anyone during any meetings may be disclosed to an Employment Tribunal and to the employee, therefore it is advised that only the note taker should take notes. If you do make notes such as questions you wish to ask, don't doodle or write comments that you would not wish the employee or an Employment Tribunal to see!
- It is important to collect and document evidence appropriately and have any witness statements signed to say that they are accurate.
- The investigation is to establish the facts; it is not to assume someone's guilt or innocence.
- It is perfectly reasonable to assume that the outcome of an investigation could be that no further action is taken (if there is no fact of guilt).

Preparing for a disciplinary hearing

If, following the investigation, the recommendation by the investigating officer is that the matter should proceed to a disciplinary hearing, then you should ensure that you follow your internal disciplinary procedure. If an employee has engaged in an act of misconduct that goes against your code of conduct, then you must follow a fair and objective disciplinary process before any formal disciplinary action can be taken.

I have discussed previously the fact that a disciplinary hearing should be conducted by an impartial person or panel in place to hear that disciplinary, who has had no prior involvement in the process.

Your internal disciplinary procedure is designed to help you, your employees and their representatives deal with disciplinary situations in the workplace effectively and fairly.

A lot of prior thought and time will have been put into your disciplinary process and it is highly likely that it will follow at least the minimum steps and process set out in the Acas code of practice for disciplinary and grievances. Therefore, in order for disciplinary action to be fair, you must follow the process set out. Furthermore, Employment tribunals can adjust any awards made to successful employees by up to 25% for unreasonable if you unreasonably fail to follow your internal process or the Acas code of practice..

What needs to happen before a disciplinary?

1. A thorough investigation needs to be conducted and concluded in line with any *internal* procedure.
2. The employee needs to have the opportunity to respond to any allegation(s) and see and read any evidence which will be presented at the hearing.
3. It is suggested that a report be presented to the person or panel hearing the disciplinary in order for them to understand the background to the case with any accompanying documentation such as witness statements.

How to prepare

The panel, (usually made up of 3 Governors) or the Disciplinary Officer should always try and ensure that the following steps are carried out prior to the disciplinary hearing;

1. Read the investigation report thoroughly and highlight any main points and any relevant evidence.
2. Note any questions in advance of the meeting.
3. Establish an agenda. It may be that your internal procedures supply you with an agenda. If not it is important to have a process for the meeting that allows everyone to make their representations and ask any questions for clarification.
4. Ensure all parties have copies of the same information.
5. Ensure that witnesses are organised. It is the responsibility of the investigating officer and the employee to organise their own witnesses, and witnesses are not obliged to attend.
6. Make sure someone has organised the following:
 - a. Any reasonable adjustments required by the employee to attend the meeting
 - b. A suitable room free from interruptions and ensures privacy and confidentiality.
 - c. Any refreshments
 - d. Support for the panel if required such as HR/Independent Adviser.
 - e. Note taker/recording equipment
 - f. Letter to the employee inviting them to the meeting
7. Familiarise yourself with the policy and procedure in terms of Acas Code of Practice on Disciplinary and Grievance Procedures as well as any internal procedures bearing in mind the failure to follow could increase any compensation awarded to the employee.

The next stage in the process is the conduct of the disciplinary hearing itself.

In our next e-shot, we will deal with the handling of a disciplinary hearing and discuss the format of the hearing, along with discussion of the roles which the various individuals play in the hearing.

We will then discuss the decision making process, and the factors that need to be taken into account when reaching a decision and communicating that decision to the employee.



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