

Handling a disciplinary procedure: the appeal process

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Handling a disciplinary procedure: the appeal process

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This is the final part of a three part series of updates about handling disciplinary procedures in your school. In the last update we discussed the actual disciplinary hearing.

In this update we will look at:

1. What an appeal is;
2. The format of the appeal hearing;
3. The roles that individuals play;
4. The appeal hearing itself;
5. The decision making process at appeal and the factors that need to be taken into account when reaching your decision; and
6. How to communicate that decision to the employee.

The legal bits!

Make sure:

- That you are familiar with the School's policies and procedures as you will need to follow the internal procedures of the School as well as the ACAS Code of Practice on disciplinary and grievance procedures.

Why? Failure to follow your own procedure may make the disciplinary process unfair and failure to comply with the ACAS code could increase any amount of compensation awarded by an employment tribunal for a successful claim by up to 25%. Useful, practical advice and the Code itself is available at www.acas.org.uk.

- Managers conducting meetings should do so without any discrimination. If an employee feels that they have been treated less favourably because of their:
 - a. Age
 - b. Disability
 - c. Gender reassignment
 - d. Marriage or civil partnership
 - e. Pregnancy or maternity
 - f. Race
 - g. Religion or belief
 - h. Sex or sexual orientation

Then that individual may present a claim for discrimination to an employment tribunal.

What is an appeal?

An appeal is an opportunity for an employee to have consideration given to the disciplinary sanction, grievance outcome or capability decision. It allows for the possibility of the decision made to be overturned, upheld or the sanction reduced.

Case law has indicated the importance of offering the right to appeal a disciplinary penalty, and this is reflected in the Acas Code of Practice on Disciplinary and Grievance Procedures and so should be applied where any formal disciplinary action is taken.

Whilst the procedural right to appeal may appear in different procedures, this particular e-shot focuses on appeals against sanctions imposed as a result of the employee's conduct.

The format for the appeal hearing

The employee should have communicated their points of appeal in writing within the time frames given in the decision letter informing them of the outcome of the disciplinary hearing. Do not be afraid to ask for more detail if the grounds of appeal are unclear.

There is no set format or agenda for an appeal hearing unless your internal policy or procedure states otherwise. If this is the case you should follow that internal procedure.

Some policies and procedures suggest that the appeal should be a complete re-hearing of the case, but we would not normally advise this approach unless the disciplinary process was procedurally flawed.

If your policy does not have an agenda, the suggested basic steps are as follows:

1. Make introductions and explain everyone's role;
2. Check any adjustments, required by the employee, have been made;
3. Explain the purpose of the meeting, for example, to consider the points of appeal;
4. Explain how the meeting will be conducted;
 - a) Presentation of points of appeal
 - b) Questions in relation to the points of appeal
 - c) Adjournment to consider the evidence and requirement for further investigation
 - d) Adjourn *if* further investigation is required*
 - e) Reconvene to discuss outcome of investigation*
 - f) Adjourn to consider the evidence
 - g) Decision made
 - h) Decision communicated.

(*these steps need only occur should there be a need for further investigation)

Roles

The panel

So far as possible any appeal should be heard or chaired by someone who has not been previously involved. Best practice would suggest a panel of up to 3 people made up of either the Head Teacher and Governors or just Governors. The panel would be responsible for:

- Reading the case paperwork;
- Chairing the meeting;
- Hearing the representation from the employee;
- Ensuring the panel has all the information in order to make a decision including consideration being given to whether further investigation is required;
- Making sure the process is conducted fairly;
- Making a decision; and
- Communicating the decision.

It is advisable not to include staff governors wherever possible. The panel are there to ensure that the case is presented and that the employee has an opportunity to state their points of appeal.

The panel should not have discussions with the original panel before the appeal hearing as this may lead to a biased view being taken.

The Chair

The Chair is responsible for ensuring that the agenda is followed and the decision is communicated to the employee.

It is advised that the Chair makes notes of the considerations and deliberations of the panel, made in the adjournment of the hearing.

The note taker

As with the disciplinary hearing process, you will need a note taker to detail the main points of the hearing.

The more detail the better as these notes are crucial for any potential employment tribunal claim. Always remember to keep the notes free from doodles or inappropriate comments!

The employee/representative

As with the disciplinary hearing, the employee has a legal right to be accompanied by a colleague or trade union representative at an appeal hearing.

The employee or their representative should present the points of appeal, and any evidence, for consideration by the panel.

The appeal hearing

The hearing should allow for evidence to be presented and questions to be answered in order for the panel to consider the points of appeal and reach a decision on whether the sanction given at the disciplinary hearing was reasonable and proportionate.

If your policy provides for a complete rehearing in any situation then you should refer to the guidance on handling a disciplinary hearing as you will need to follow this process again.

If your policy does not suggest that a rehearing is required, and the appeal itself is not on the grounds of a flawed process, you can simply ask the employee to present their points of appeal

and any evidence in support of their appeal and ask any questions in relation to what is being presented.

Remember, as with the disciplinary hearing use unofficial adjournments or “time out” as often as needs be so that employees can collect themselves and the panel can use the time to check that they have covered all of the points and discussed the questions that have arisen during the appeal hearing.

If you as the panel feel that further investigation is required you should adjourn the hearing until such time as the investigation can be completed.

The hearing should then be reconvened and the employee given the opportunity to respond to any findings before you formally adjourn to make your considerations.

The decision making process

The purpose of the appeal decision making process is to consider the original sanction and whether or not it is *reasonable* and *proportionate* in relation to the evidence presented by the employee.

What to consider

So, what should the panel take into account when making a decision?

- a) The original sanction;
- b) The considerations given for the original decision (these should be included in the minutes of the disciplinary hearing). Minutes should not be provided in the case of the appeal being a rehearing;
- c) Any new evidence including the findings of any further investigation; and
- d) Any limitations on the decisions the panel can make.

Recent cases have ruled that an employer cannot increase the severity of a sanction unless it is expressly provided for in your internal policies and procedures.

If, during the hearing, new evidence comes to light that leads to more serious allegations being levelled against the employee, the new allegations should not be dealt with at the appeal hearing simply by increasing the disciplinary sanction. You should adjourn the appeal hearing and then commence a disciplinary investigation into the new allegations. If there is a case to answer, this should result in a new disciplinary hearing being convened.

During your decision making process it is important that you note your considerations so that you can present them back to the employee and/or include them in the outcome letter. This is so that the employee is fully aware of what has been taken into consideration and it provides justification for your decision.

Communicating the decision

You should consider your internal policy and procedure as to whether or not you need to reconvene the hearing and give the outcome face to face or whether you can provide the decision in writing. Ideally the outcome would be communicated in writing, after considering all of the evidence. Either way the decision must be confirmed and given within any timescales included in your internal policy or procedure.

Furthermore, the employee should be informed that the decision is final, that there will be no further right to appeal, and that the internal process has concluded.

So, we have looked at how to conduct an investigation, a disciplinary hearing and finally, an appeal. This series is intended to be a practical guide and we realise that we can't cover every eventuality as no two situations are the same. Should you require more detailed advice on a specific case then please do contact us for assistance at any stage of the process.



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