

A guide to...

Disciplinary Procedures

If you're having a problem with one of your team, sometimes you might need to take more formal action and follow a disciplinary procedure to address unacceptable behaviour at work.

Unacceptable behaviour can mean a few different things, it might be to do with your employee's conduct at work or their capability within their job role.

Using this guidance

This guidance is designed to provide information and support to help managers effectively conduct disciplinary hearings, including setting up and preparing for the hearing, and deciding the appropriate disciplinary sanction.

This guidance has been made available to you for free.

Whilst you are welcome to use the documentation as you see fit, we strongly recommend that you take specific legal advice from the team at [Primed](#) as to the appropriateness of the documentation that you intend to issue in your particular set of circumstances.

We promise we are very friendly!

In the event that you do use the documentation without first taking our advice, we need to be clear that in those circumstances, no relationship is created between you and any of the [Outset Group Companies](#).

The aim of taking disciplinary action is to bring about an improvement in an employee's conduct (where applicable), to ensure there is no re-occurrence.

However, sometimes an employee's conduct is substantially serious that it may warrant dismissal.

Assigning a disciplining manager

The first decision is **who is most appropriate** to conduct the disciplinary hearing.

Ideally (although it's not always possible depending on the size of the employer), the disciplining manager will not be the same manager that conducted the investigation.

The **disciplining manager needs to be available immediately** and aim to **conduct the disciplinary hearing as quickly as possible** and ideally within a 2 week time period. It wouldn't be a good idea therefore to identify someone who is about to go on holiday for example.

A **note taker/Company witness should also be available** to attend the disciplinary hearing. This should ideally be **someone unrelated to the matter**, but could be the same person that attended the investigation meetings as note taker/Company witness.

Setting up a disciplinary hearing

The disciplining manager should:

- ✓ Write to the employee, giving the employee reasonable notice of the date and time of the disciplinary hearing in accordance with the employer's Disciplinary Policy
- ✓ State that the hearing will be held under the Disciplinary Policy and Procedure
- ✓ Provide written details of the allegations against the employee and whether the allegation(s) could constitute misconduct or gross misconduct
- ✓ Provide details of any evidence supplied by other employees, for example by enclosing copies of any witness statements
- ✓ Inform the employee of the right to be accompanied at the hearing by a colleague or trade union official of their choice
- ✓ State that the outcome could be disciplinary action or dismissal, as appropriate

There are two types of template invite letters available amongst the documentation suite: one for **misconduct** and one for **gross misconduct**.

Conducting the disciplinary hearing

A disciplinary hearing provides:

- An opportunity for the employer to outline the allegations and ask further questions based on the information gathered as part of the investigation (see 'Conducting Investigations')
- An opportunity for the employee to provide their version of events and explain their mitigation, where applicable

At this stage, the employee has the right to be accompanied by a colleague or trade union representative. If the employee specifically requests a companion who is not a colleague or trade union representative seek further advice before declining their request.

We recommend the disciplining manager attends with a note taker/Company witness.

To ensure the disciplinary hearing is as effective as possible, the disciplining manager should:

- ✓ Ensure they have a good understanding of the policy/procedure that the employee has allegedly breached;
- ✓ Make use of open questions such as "why", "who", "how", "where", "what", e.g. "What is your understanding of the correct procedure to follow?"; "Why, on [date], did you fail to adhere to the procedure?"
- ✓ Use further probing questions as the employee provides their explanation;
- ✓ Avoid the use of leading questions;
- ✓ Challenge the employee on any discrepancies with their story versus witnesses/documentation;
- ✓ Ensure that all gaps are covered – adjourning the meeting where applicable to seek further advice.

A **Disciplinary Meeting Plan** is a useful tool to ensure all introductory points are covered. It also provides space for the disciplining manager to outline their questions ahead of conducting the disciplinary hearing.

The employee will **not generally receive a copy of the disciplinary meeting notes until they receive the outcome** to the disciplinary hearing in writing. If, however, they request a copy of the meeting notes in the meantime, it would be reasonable to disclose these to the employee.

If the employee disagrees with the meeting notes, they should be asked the basis on which they disagree and the disciplining manager and Company witness/note taker should decide whether to accept the suggested amendments or leave the original notes as they are but include a separate document outlining the employee's rejected amendments.

The conclusion of the disciplinary hearing

Once the disciplining manager is satisfied that all relevant matters have been raised and discussed, the manager should bring the hearing to a close, i.e.

- Summarising the key points that have been discussed;
- Asking whether the employee has anything else they wish to add;
- Advising the employee that consideration will be made into the facts and the discussions held during the hearing, before deciding an appropriate disciplinary sanction;
- Advising the employee when and how they will be informed of the decision – this should be as soon as possible, but not before the manager has had the time and opportunity to consider all the facts.

In more complex cases it is advisable to receive expert advice before communicating differing sanctions to employees.

Choosing an appropriate disciplinary sanction

The disciplining manager should fully consider the facts of the case and the employee's version of events and any mitigation before making recommendations on the appropriate disciplinary sanction.

Outcomes could include:

- ✓ **No formal disciplinary sanction** – either the employee's explanation is accepted in full or the employee would benefit from further training/coaching/support
- ✓ **Written Warnings** – for example warning templates see: Written Warning and Final Written Warning
- ✓ **Dismissal** – either a progressive dismissal or a summary dismissal (in the case of gross misconduct)

While a **disciplining manager should consider consistency in applying a disciplinary sanction**, the disciplining manager is not restricted to a certain level of sanction per type of misconduct as long as the disciplining manager can differentiate why, for example, one employee has received a more severe sanction than another employee who committed the same offence.

The disciplining manager could, for example, take account of the following when deciding the appropriate sanction:

- Length of service and previous record including the existence of live disciplinary warnings
- Mitigation
- Degree of accountability
- Seniority of the employee concerned
- Whether the employee showed remorse for their actions or not

Different sanctions for the same offences does however increase the risk of challenge.



Communicating the decision

The employee should be informed of the **outcome of the disciplinary hearing as soon as possible**, ideally verbally and in writing at the same time. If this is not possible the written confirmation can follow, but it is **important that the decision is confirmed in writing**.

If the disciplinary hearing needs to be reconvened on a different day, there is no requirement to invite the employee to the reconvened disciplinary hearing in writing, but it is advisable to give the employee sufficient notice if, for example, their representative needs to attend.

The right of appeal

Employees must be **granted a right to appeal** against any disciplinary decision.

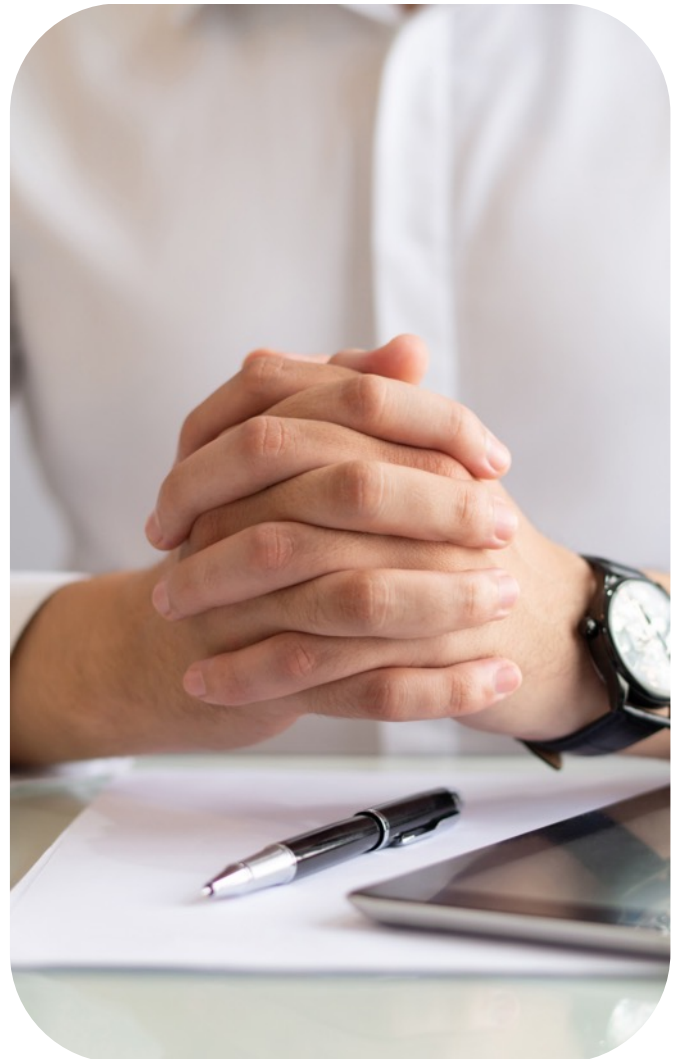
When an employee appeals, the **appeal hearing should be set up within the period specified in the disciplinary procedure**.

Although this may not be possible in very small organisations, the appeal should be heard by a more senior manager than the person who took the original disciplinary decision.

The **manager hearing the appeal should not have had any involvement** in either the investigation of the case or the disciplinary proceedings.

Once the disciplinary procedure, including the appeal stage, has been exhausted, the employee should be informed clearly that the disciplinary procedure is at an end and there is no further right of appeal.

The matter will be closed irrespective of whether or not the employee accepts the outcome.





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Need further help?

We hope you've found this guide to disciplinary procedures helpful.

If you're feeling a bit overwhelmed and would like someone to support you through the process, get in touch for a free consultation and we'll find the right solution for you.

[Book a free call](#)