

# HR Guide

## Disciplinary

### The disciplinary hearing stage

This document does not constitute a legal opinion or legal advice and is intended to be a guide only. To ensure you follow best practice (and, if applicable, do not compromise your insurance), you should contact the Alcumus HR Consultancy team before embarking on the process and at each subsequent stage.

## **Disciplinary: The disciplinary hearing stage**

### **When should the disciplinary hearing take place?**

After investigations have been concluded and it has been decided that a disciplinary hearing is warranted, the employee should be invited to a disciplinary hearing in writing and given at least two working days' notice of the hearing from receipt of the invite letter.

This invite letter should detail where and when the disciplinary hearing is taking place, the allegations/concerns to be considered, the possible outcome of the hearing, enclose copies of evidence collected such as interview notes, statements, documents etc. gathered during the investigation and inform the employee of their right to be accompanied.

Please speak to a member of the Alcumus HR Consultancy team regarding the disciplinary hearing invite letter.

### **Who should chair the hearing?**

The hearing should be chaired by a senior person in the business who is authorised to carry out such hearings, deliver the potential sanction and, where reasonably possible, not had any previous involvement in the matter.

Depending on the size of the business, it may not always be possible for the Chair to be a different person to the investigator but please speak to a member of the Alcumus HR Consultancy team. The Chair should be accompanied by a colleague who can take notes at the hearing.

### **Planning for the hearing**

As the Chair of the hearing, you should:

- Ensure you understand the disciplinary procedure
- Review and understand all of the investigation material
- Think about the questions you wish to ask the employee in the hearing
- Be aware of any existing live sanctions the employee may have on their employee file
- Remember the purpose of the hearing is to establish the facts by discussing the situation at the hearing, listening to what the employee has to say and giving them a chance to raise any points that they wish to be taken into account before a decision can be taken.

## At the hearing

As the Chair of the hearing, you should:

- Introduce those present at the hearing and why they are there.
- If the employee has decided not to be accompanied, explain that the employee was given the right to be accompanied but chose to attend alone.
- Explain that the purpose of the disciplinary hearing is to consider whether disciplinary action should be taken in accordance with the Company's disciplinary procedure.
- Explain what the structure of the hearing will be:
  - State the concerns and/or allegations
  - Give the employee the opportunity to reply to the concerns and/or allegations and state their case
  - This will then lead to general questioning and discussion
  - Summarise what has been discussed
  - Adjourn to consider the facts/evidence
  - Reconvene the hearing (unless consideration is required overnight); and
  - Communicate the decision (if this is to be considered overnight then the decision may be communicated the next day and this could be at a reconvened hearing or over the telephone) and the decision will then be confirmed in writing.
- Explain that either party can adjourn at any point
- Make sure the employee has received and read all of the investigation material that accompanied the disciplinary hearing invite letter. If new evidence came to light after the disciplinary hearing invite letter was sent, allow the employee time before the hearing to consider this new evidence
- Conduct the hearing in line with the structure outlined above
- If, during the hearing, new facts emerge, decide whether further investigation is required, in which case adjourn the hearing and reconvene when the investigation is completed
- After all general questioning and discussion, summarise the main points concerning the concerns and/or allegations and the main points raised by the employee and/or

their representative to ensure nothing has been missed and to help demonstrate that it was a fair hearing

- Adjourn the hearing – consider all the facts and the employee’s responses before making a decision. If the facts are disputed, decide, in your reasonable belief, which version of the facts you believe to be true.
- Before making a decision, consider:
  - The gravity of the concerns and/or allegations
  - The penalty applied in similar cases in the past, to ensure consistency across the Company
  - The employee’s disciplinary record, length of service and general service
  - Any other mitigating circumstances such as, for example, admittance, remorse etc
  - Whether the proposed penalty is appropriate in all the circumstances.
- Reconvene the hearing (unless the decision has to be considered overnight)
- Deliver the decision (please do speak to a member of the Alcumus HR Consultancy team (where appropriate) to discuss your views before delivering the decision)
- Right of appeal: Verbally advise the employee that they have the right to appeal against the decision and that this will be confirmed in the outcome letter, together with the timescale in which to appeal and to whom.