

HR Guide

Disciplinary

The investigation 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 investigation stage

When should an investigation take place?

Investigations should begin as soon as a conduct or capability issue has been identified.

Sometimes it might be necessary to suspend an employee during the investigation stage (please contact the Alcumus HR Consultancy team to discuss suspension).

Who should conduct the investigation?

The investigation should be conducted by a manager who is familiar with the disciplinary procedure. It could be the employee's manager but remember that whoever conducts the investigation should not chair the disciplinary or appeal hearings. This is important particularly with conduct issues.

If the issue proceeds to a disciplinary hearing, contact the Alcumus HR Consultancy team for advice and the factsheet on disciplinary hearings.

Planning the investigations

As the investigating manager, you should:

- Ensure you understand the disciplinary procedure
- Remain neutral
- Consider carefully the scope of the investigation/what information you will need to obtain
- Consider how you will get this information. Think about the availability of records and witnesses: When will you be able to see them? Are they still employed?
- Remember that this is a fact-finding exercise only at this stage, no disciplinary sanctions are decided at the investigation stage.

The role of the investigating manager

The investigating manager should:

- Promptly gather all evidence

- Interview the witnesses and document these discussions - remember that if the matter proceeds to a disciplinary hearing this information would be enclosed with the disciplinary invite letter
- Question the witnesses, probe and clarify any points that are unclear
- As well as the interview notes, analyse key information which could include emails, paper records and forms, customer feedback or CCTV footage (seek guidance from the Alcumus HR Consultancy team before using CCTV footage)
- Maintain confidentiality
- Pass all records from the investigation to the chair for the disciplinary hearing
- Ensure all records from the investigation stage are stored safely and securely.

Speaking to witnesses

As the investigator, you should interview all relevant parties including, for example, those who may have been near the incident but may not have necessarily seen anything to demonstrate a full and proper investigation has been carried out. Ideally, any such interviews should be done face to face, however, if this is not possible you could:

- Speak to them via the telephone; or
- Ask the employee to submit a written statement. Remember that this must be legible, signed and dated by the employee.

Anonymity/disclosing witness statements

All witnesses should be made aware that:

- The matter is confidential and not to be discussed with anyone else
- All interview notes, e-mails etc. will be provided to the employee

What if an employee wishes to remain anonymous?

If the matter proceeds to a tribunal, a request for anonymity will only be accepted if there is a genuine fear of reprisal. This is extremely rare and hence all witnesses must be advised that all evidence will be disclosed.

Interviewing the employee

To ensure a fair process and get their version of events, the employee must be interviewed.

You should ensure that:

- The employee is fully aware of the allegations against them and what is being investigated
- The employee understands that this is the investigation stage and whilst no decisions will be made regarding sanctions, it will be decided whether to proceed to a disciplinary hearing
- The employee signs and dates their statement (if provided) and/or notes of your meeting
- The employee is given the opportunity to provide details of additional evidence or witnesses to be interviewed.

You must **not**:

- Infer blame or imply you have decided on the outcome of any subsequent disciplinary hearing
- Issue any disciplinary sanction.

What if the employee provides new evidence?

Any new evidence should be investigated, including speaking to any new witnesses, before deciding whether to proceed to a disciplinary hearing or not.

Deciding whether to proceed to a disciplinary hearing

Before deciding, the investigator should:

- Review all evidence and
- Consider any mitigating circumstances concerning the employee.

Possible outcomes of the investigation

The employee should be advised in writing of the outcome. This could be:

- No case to answer
- Issue a concerns letter but do not proceed to a disciplinary hearing or
- Invite to a disciplinary hearing.

Contact one of the Alcumus HR Consultancy team for advice on the next steps and template letters.