



Welcome to the latest edition of IntERact. In this quarterly newsletter we are providing guidance on conducting a disciplinary hearing and a recent case of interest.

CONDUCTING A DISCIPLINARY HEARING

PREPARING FOR HEARING

Employee must be invited in writing to hearing without unreasonable delay whilst allowing reasonable time to prepare their case. The letter should contain the critical information to enable a fair disciplinary procedure. Copies of written evidence and statements should be provided prior to hearing. The manager responsible must ensure that the hearing location is discreet and telephones or equipment are disconnected to avoid interruptions.

BEFORE THE HEARING

- Read through disciplinary procedure to ensure familiarity
- Read thoroughly investigation information including statements
- Prepare questions to ask employee
- Ensure that note taker/witnesses are available to attend
- Has employee confirmed if accompanied, and if so by whom
- Allocate sufficient time for hearing and to consider decision

THE DISCIPLINARY HEARING

Give employee a full and fair hearing. Ensure employee given full opportunity to put forward their version of events and mitigating factors or explanations. Manager may adjourn the hearing in some circumstances (e.g. to gather further information or seek clarification). Must inform the employee how long hearing will be adjourned for. If the adjournment is to consider further information give the employee (and companion) reasonable time to review prior to reconvening and minute the fact.

ORDER OF EVENTS IN THE HEARING

Introduction

- Introduce hearing, explain purpose and how it is conducted.
- Introduce all individuals and confirm their respective roles (e.g. Company note taker)
- State the hearing is being conducted as part of Company's disciplinary procedure, and confirm a written record will be made.
- Advise if any witnesses requested to give evidence, and if so, who they are (Advance notice of this must be given to the employee).

Company's case

- Fully explain Company's case against employee's alleged or suspected misconduct
- Ensure all the relevant facts and evidence are put to the employee, with specific examples of incidents being given where possible.
- The employee is allowed full opportunity to question the manager on the Company's case, to question witness statements and to challenge the content of evidence.
- Employees' case
- Employee must be allowed a full and fair opportunity to present evidence and state their version of events, explain conduct or performance and state any mitigating factors.
- The employee may do this or request the companion (if appropriate) does this on their behalf.

General questions

- Question the employee on the evidence and facts and they must be allowed to answer the allegations. Ask the employee to

answer questions personally rather than the companion answering for them

- The employee may confer or consult with their companion at any time during the hearing on request
- Remain focused on the facts, the allegations and the incidents and do not be drawn away by trivialities that are irrelevant

Summarising/Conclusion

- Summarise the key points and advise the employee on when a decision will be made on whether to impose a disciplinary penalty on them
- Consider any mitigating factors put forward when making a decision about whether to impose a disciplinary penalty, and the level of any such penalty.
- Ask the employee if they feel that the hearing has been fairly handled and that they have been given a full opportunity to explain their conduct. If 'no' seek to resolve the issue before completing the hearing. If still a problem, adjourn the hearing and seek advice before closing the hearing.
- Inform the employee that they will have the right to appeal against any disciplinary penalty imposed on them.
- Close the hearing

GENERAL POINTS

At any point during the hearing, manager may adjourn if it appears necessary or desirable (including for the purpose of gathering further information).

When interviewing an employee at hearing it is important to:

- state factually what the employee has done or not done and avoid expressing personal opinions about it
- give the employee specific examples and avoid vague statements and generalisations such as 'you have a negative attitude' or 'you never complete your timesheets'
- ask open and closed questions and listen actively to what the employee has to say and take note of response
- ensure that your tone of voice is firm but not accusatory
- avoid emotional reactions - even if the employee is getting upset
- try to establish if any underlying reason for the employee's misconduct (i.e. any mitigating circumstances that you were not aware of)
- try to get the employee to accept conduct was not acceptable and to identify why it was not acceptable
- ask the employee whether they are willing to undertake improvement and/or to ensure that there is no repeat of the misconduct
- check for understanding, for example ask employee to state or summarise their understanding of what has been discussed and agreed

DECISION

The Manager is responsible for ensuring that the decision is communicated to the employee, ideally in person and subsequently in writing as soon as possible using the appropriate letter.

Ensure that notes are typed up and kept with the original notes (and the investigation file) in the event of an appeal or claim. It is preferable for the employee to sign and date the handwritten notes to show they are the correct versions.

Tips on holding a hearing (Check your own Company Policy)

1	Be clear following investigation about what the alleged breaches of conduct are—which policy, procedure or standard.
2	Any evidence being considered must be provided to employee before meeting along with the allegations.
3	Remain calm during hearing and focus on the facts and details—do not be drawn into heated arguments.
4	Give the employee a full and fair hearing. Do not prejudge a decision prior to hearing.
5	Allow the companion to ask questions or clarify and confer. However do not let the companion dominate the hearing or answer on behalf of employee. Maintain control.
6	Adjourn as required to consider information or seek clarity on individual points raised.
7	Review the employees service history and consider when applying an appropriate sanction.
8	Summarise the full hearing including any mitigation before reaching a decision and issuing sanction if required.
9	Justify by documenting how you came to the conclusions and why any sanction is appropriate and consistent. Communicate outcome in writing and ensure give right of appeal.
10	Retain all minutes and notes of the meeting in the event of an appeal. These notes should clarify what took place

Reasonableness of Investigation Manor Oak (PMG) Ltd v Kelly

Employment Appeal Tribunal (EAT) held that an employer did not unfairly dismiss an employee when it failed to investigate in detail the nature of his misconduct in circumstances where he had admitted his guilt. Mr Kelly was a service technician at a garage. The employer issued him with a final written warning arising out of the incorrect wiring of an engine to a van. He was advised that the written warning would remain on his record for 12 months.

Three months later, he passed a car during its MOT test when it should in fact have failed. It was found at a disciplinary meeting that the car should have failed its MOT as a result of a fault that had arisen from repairs that Mr Kelly had made to the car.

He was dismissed on the ground of negligence. He appealed, accepting responsibility for the damage to the car but arguing that the dismissal was an extreme response because he had been a long-serving employee and his negligence was not deliberate. His appeal was unsuccessful.

An employment tribunal found that the dismissal was unfair. The tribunal's reasons included that the employer had not carried out as much investigation as was reasonable because it did not take time to clarify the nature of the defect.

The EAT overturned the decision. Mr Kelly made clear admissions accepting responsibility for having caused the defect in the car, not noticing the defect and having certified it as passing its MOT test when he should have failed it. These were acts of misconduct.

In these circumstances, the onus was discharged from the employer of showing that it genuinely believed that the employee had committed misconduct, that it had reasonable grounds on which to hold that belief and that it had carried out a reasonable investigation before reaching its conclusion.

Useful Data

Statutory Maternity Pay	effective April 2009	£123.06 per week
Statutory Sick Pay	effective April 2009	£79.15 per week
Minimum Wage		
workers 22 years and older	effective October 2009	£5.80 per hour
workers 18 to 21 years	effective October 2009	£4.83 per hour
workers 16 to 17 years	effective October 2009	£3.57 per hour
Recent survey data of general interest		
Average Absence Cost	CIPD survey 2009	£692 per employee per year
Average Level of Absence	CIPD survey 2009	7.4 days per employee per year
Employee Turnover Rate	CIPD Survey 2009	15.7%
Average Recruitment Cost	CIPD Survey 2009	£4,000 per vacancy filled

If you have any questions or comments relating to this newsletter then please contact us on **0845 270 1148**
or email
Interact@outsetuk.com.

The information contained in this update is intended as a general review of the subjects featured and detailed specialist advice should always be taken before taking, or refraining from taking, any action.

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