

Disciplinary Policy and Procedure Procedural Guidance

Conducting a Hearing

1.0 Introduction

1.1 The Hearing Officer will:

- direct and control the conduct of the hearing with fairness and impartiality;
- consider the information provided by the employee and manager
- determine whether the allegations are well founded, and, if so:-
- determine the level of disciplinary action to be imposed.

1.2 The Hearing Officer will seek confirmation that the employee understands:

- The nature of the hearing;
- The allegations against him/her;
- The right to be accompanied at the hearing;
- The process of the hearing.

2.0 Support/Representation

2.1 A member of the HR Team will attend the hearing to provide support and guidance to the Hearing Officer.

2.2 The employee has a statutory right to be accompanied at the hearing by either a trade union representative or work colleague.

2.3 The Investigating Officer may be accompanied by a member of the HR Team or another manager.

3.0 Format of the Hearing

3.1 The Hearing Officer will explain the format of the hearing, which will normally be as follows:

- The hearing officer and accompanying HR adviser may ask questions of either side throughout the hearing;

- The management case will be presented first by the investigating officer or by the management representative who may also be the hearing officer;
- Following presentation of the management case the employee and representative may question the management side;
- The employee and representative will present their case;
- Following presentation of the employee case the management side may question the employee;
- Both sides will be asked to summarise the main points of their case; management side first and the employee (and representative) second;
- The hearing will be adjourned and the hearing officer will make their decision.

4.0 Presentation by Management

- 4.1 In certain minor cases the Investigating Officer may be the Hearing Officer, in which case the Hearing Officer will present management's case setting out the allegations against the employee and call any witness to give evidence or refer to written evidence previously provided to those present at the hearing.
- 4.2 If the Investigating Officer is not the Hearing Officer, then following the presentation of the management case, the Hearing Officer may question the Investigating Officer and any witnesses that are called.
- 4.3 Material that has not been previously circulated will only be admitted at the hearing if both parties agree to it.
- 4.4 After each witness has given evidence, the witness may be questioned by the employee or his/her representative, following which the officer presenting management's case may re-examine the witness.
- 4.5 Following the complete presentation of the management's case, the employee or his/her representative will be allowed to question the officer presenting the management case.
- 4.6 The Hearing Officer and his/her adviser will be allowed to question the officer presenting the management case and his/her witnesses at any point during the presentation of the management's case.
- 4.7 Witnesses will only attend that part of the hearing when their evidence is given.

5.0 Presentation by the Employee

- 5.1 The employee or his/her representative will present the employee's case. As part of the case, he/she may call any witnesses to give evidence or refer to written evidence previously provided to those present at the hearing.
- 5.2 Material that has not been previously circulated will only be admitted at the hearing if both parties agree to it.
- 5.3 After each witness has given evidence, the witness may be questioned by the officer presenting the management case, following which the employee or his/her representative may re-examine the witness.
- 5.4 Following the complete presentation of the employee's case, the officer presenting the management case will be allowed to question the employer or his/her representative.
- 5.5 The Hearing Officer (if he/she is not presenting the management case) and his/her adviser will be allowed to question the employee and his/her witnesses at any point during the presentation.
- 5.6 Witnesses will only attend that part of the hearing when their evidence is given.

6.0 Summary of Case

- 6.1 Both the officer presenting the management case and the employee will then be asked to summarise their case with the management side being heard first. If the Hearing Officer has presented the management case, then he/she will summarise the management case before hearing from the employee.

7.0 Consideration of Outcome

- 7.1 The Hearing Officer will ask all parties other than his/her adviser to withdraw.
- 7.2 The Hearing Officer will decide whether or not the allegations made against the employee are substantiated and
 - If they are, then decide on the disciplinary action that would be appropriate;
 - If they are not, dismiss the allegations and find the case against the employee not proven.
- 7.3 The Hearing Officer may decide that further evidence is required before he/she can come to a decision.
- 7.4 In arriving at his/her decision on the employee's culpability or otherwise, the Hearing Officer should ask himself/herself the following questions:
 - Has there been as much investigation as is reasonable in the circumstances?

- Have the requirements of the Council's Disciplinary Procedure been properly complied with up to this point, including advance notice to the employee of the matter(s) to be considered at this hearing?
- Have I paid sufficient regard to any explanation put forward by or on behalf of the employee?
- Do I genuinely believe that the employee has committed the misconduct as alleged?
- Have I reasonable grounds on which to sustain the belief that on the balance of probabilities (i.e. is it more likely than less likely that the employee did what is alleged)?

“Yes” to each of these questions will mean finding that the employee has committed the act of misconduct.

7.5 In arriving at his/her decision on the disciplinary action to be taken, the Hearing Officer should ask himself/herself the following questions:

- Is the misconduct sufficiently serious to justify the disciplinary decision I am contemplating?
- Have I had regard to any mitigating circumstances put forward by or on behalf of the employee (and any response to these by management's representative, if any)?
- Is the decision within the band of reasonable responses of a reasonable employer in the circumstances?

“Yes” to each of these questions should mean that the disciplinary sanction to be imposed is appropriate.

8.0 Communicating the Decision

8.1 The hearing will then be reconvened and the parties verbally informed of the decision.

8.2 If the Hearing Officer is not able to make a decision on the day of the hearing, they must inform the employee that they will be advised of the decision in writing within 5 working days. If further evidence is required, the hearing will be reconvened as soon as the evidence is available. The new evidence will be presented in accordance with Paragraphs 4 and 5 above.

8.3 The employee shall receive written confirmation of the decision within five working days of the decision being made.

8.4 Confirmation letters must include:-

- The date and place of the disciplinary hearing

- Details of any representation
 - Details of the decision.
 - The specific reason(s) for which the disciplinary action (if any) was taken.
 - Details of any improvement in conduct, attendance or performance required, the timescale within which such improvements must be made and of the managerial support that will be afforded.
 - Details of the effect of failing to meet any improvement targets set (that higher level disciplinary action may be taken as a result of failing to meet improvement targets).
 - Details of the effect of the decision.
- 8.5 If a warning is issued, the length of time it will remain on the employee's file and therefore the fact that it will be a factor in any disciplinary matter that raises itself within that time period. Final written warnings must state that further misconduct or failure to meet the improvement targets set may result in dismissal.
- 8.6 If a dismissal, whether it is with or without notice and when the employment will end (the effective date of termination).
- Details of the employee's rights to appeal against the decision of the Hearing Officer.
- 8.7 The employee has a right to appeal against the decision of the Hearing Officer and should do this in writing stating the grounds of the appeal to the HR Manager within ten working days of being notified of the decision.