



ABILITY · EQUALITY · INDEPENDENCE

Disciplinary and Grievance Policy & Procedure



Objectives

- Review and understand the disciplinary and grievance policy and procedure
- Understand the importance of, and when to, manage grievances and conduct informally
- Understand how to decide the outcome of a hearing
- To know what skills and attitude is required when managing disciplinary and grievances cases.

What's new?

Disciplinary Policy

- Clarification of informal procedure
- Additional information on fact-finding and investigations
- Disciplinary sanctions renamed and specific timescales allocated to each sanction
- Additional examples of misconduct added
- Additional examples of gross misconduct added
- Clarification on how to appeal
- Additional information about delegation of roles during disciplinary process

Grievance Policy

- Clarification of informal procedure
- Additional information on investigations
- Addition of mediation information
- Collective grievance procedure added

Disciplinary Policy and Procedure

- Conduct vs capability
- Importance with dealing with misconduct
- Managing conduct informally
- Formal proceedings
- Investigations
- The hearing
- Warnings and dismissal
- Skills required
- Gross misconduct
- Suspension
- Appeals

Conduct VS Capability

Q: What is the difference between conduct and capability?

Misconduct: within employee's control

Lack of capability: outside employee's control

Can't do or Won't do?

Your approach to can't or won't may be very different depending which of the two you are dealing with.

Conduct VS Capability

1) Since changing to the new computerized system for recording important information, Bob, who is 61 refuses to get to grips with the IT.

2) Paulo has failed to complete a support plan you asked him to do by close of play yesterday. He has not done them before, but he has had the training. You notice he looks worried and upset.

3) Ranjit has left the computer on overnight again. You have told him informally about this before. You are concerned about data security.

Can't or Won't ?

DISCUSSION:

- Are these examples of Can't or Won't?
- Is it always clear?
- What would you need to find out?
- What questions might you ask?

Importance of dealing with misconduct

- Deal with issues promptly
- Issues may get worse if not addressed
- Not addressing issues may lead to the employee thinking their conduct is acceptable
- Difficultly dealing with the behaviour in future
- Conduct may worsen
- Documentation

Managing conduct informally

- Where there is unsatisfactory behaviour or a minor breach of the rules, hold an informal meeting with the employee
- Ensure the employee understands why their conduct is unacceptable
- Seek agreement on making sure behaviour does not continue
- Set a date to review employee's progress
- Keep a record of the meeting

DISCUSSION:

Why are informal meetings so important?

What could be the consequences if they do not occur?

How might this affect management of the conduct moving forward?

Formal process

Misconduct

- Highlighting where there has been a breach of the rules.
- Determining if formal or informal action peruses

Investigation

- Fact finding – finding out what happened
- Meet with the employee who has breached the rules
- Meet with any witness
- Give recommendations to deciding manager

Hearing

- If deciding manager agrees a hearing is appropriate they will usually chair the disciplinary. Deciding manager / disciplinary chair usually a more senior manager than investigation officer.
- Hearing chair looks through information about what happened – chair's role is to decide what to do about it.

Appeal

- Employee may appeal
- Must highlight reasons for their appeal
- Heard by more senior manager

What action would be appropriate in these scenarios; formal or informal?

Breakout 1 – Employee has been late for work on 3 occasions in the last month.

Breakout 2 – You overheard an employee swearing at their colleague during a heated discussion.

How would you manage this situation and why?

1. What else would you consider?
2. What questions would you ask the employee
3. Thought process

Investigations

Role of the investigation officer is to impartially establish the facts of suspected misconduct and determine if there are grounds to take formal action

Investigator will need to:

- Speak to the person subject of the investigation
- Decide if they need to speak to any witnesses
- Access relevant information i.e. previous warnings
- Check policies and procedures
- Take an objective and balanced view
- Complete an investigation report with key findings and recommendations

HR Support by

- Templates available, assist in investigation planning and writing of questions, assist with organisation of meetings, gathering evidence and documents, providing information from employee records, advising on consistency and internal procedures

Investigations

DISCUSSION

What challenges have you faced when completing investigations?

How did you / could you overcome them?

What is the difference between an investigatory interview and the disciplinary hearing?

The purpose of an investigation interview is to establish what happened.

The purpose of a disciplinary hearing is to decide what to do about it.




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5 minute break time

The Hearing

Prior to hearing

- HR will meet with you prior to the hearing to discuss
 - All documents will be forwarded to hearing manager – all parties have same documents
 - Decide if investigation manager / witness should be present
 - Employee will be advised of maximum warning / sanction that could be issued including dismissal
 - Meeting template issued from HR
 - Employees are entitled to bring a representative
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Warnings



- Verbal documented and first written on file for 6 months, Final written on file for 12 months
- If misconduct occurs while warning still active, move up to next level of sanction
- After time period expired, warning should lapse
- No obligation to always start at beginning of disciplinary procedure
- Sanction should match seriousness of offence
- Act fairly and objectively when deciding what sanction to impose
- Do not overreact
- Do not take decision in heat of moment
- HR will advise on matters to consider to help **you decide** the outcome.

Making a decision

What might you need to consider when deciding an outcome?

Previous cases

Employees previous warnings / record

Our policies and procedures

Severity of the issue

Any mitigating circumstance

Balance of probabilities

Is the alleged act more likely to have occurred than not?

We are not a court of law – we do not need to prove beyond all reasonable doubt.

Dismissal

What are the 5 fair reasons to dismiss?

1. Conduct
2. Capability
3. Redundancy
4. Statutory ban
5. Some of the substantial reason

Is there reasonable belief?

DISCUSS:

What effects could an unfair dismissal claim have on the organisation?

Skills for disciplinary hearings

DISCUSSION:

What skills are required to chair a disciplinary hearing?

- Be **open, honest and unambiguous**
- Stick to facts and do **not express personal opinion**
- Be **specific** and avoid vague statements and generalisations
- Ask **open questions**
- **Actively listen** to employee and take what they say on board
- Use firm but non-accusatory **tone**
- **Avoid emotional reaction**
- Establish whether or not there is **any underlying reason** for the misconduct
- **Seek accountability** from employee
- Focus on **future improvement**
- Check for **understanding**

Gross misconduct

DISCUSSION:

What is gross misconduct?

What summary dismissal?

- Summary dismissal without notice or pay in lieu of notice
- Dismissal takes effect immediately
- Employee's contractual rights and benefits cease
- Irrespective of severity of employee's misconduct, dismissal never automatically fair
- On-the-spot dismissal almost always unfair
- Always follow required procedures before taking a decision to dismiss

Misconduct or Gross Misconduct

(Per Grace Eyre Policy)

Gross Misconduct

- Breach of standards of professional practice
- Any kind of discrimination or harassment
- Theft or attempted theft of property
- Working under the influence of alcohol or drugs
- Insulting, aggressive, bullying or abusive behaviour
- Failure to report a conviction, caution or bind over whilst in the employment of Grace Eyre

Misconduct

- Persistent lateness
- Unauthorised absence
- Attitudinal problem
- Offensive behaviour
- Carelessness / Neglect of duty

Suspension

DISCUSSION

When might it be appropriate to suspend someone?

What must be considered before suspending someone?

- Usually allegations of gross misconduct
- Speak to the employee – what's their side?
- Should not be a knee jerk automatic decision
- Who is making the decision?
- Why would we need to suspend the employee?
- What alternative have been considered to suspension?

Appeals

Employees have right to appeal; any warnings given to them and dismissal

- Appeals are usually heard by more senior manager
- Employee has 7 days to appeal
- Must give reason why they wish to appeal
- Appeals manager will review appeal reasons and determine if decision should be overturned, lessened or if it was appropriate
- Disciplinary hearing manager may be required to attend appeal for questioning.
- Right to be accompanied



5 minute break time

Grievance Policy and Procedure

- How we manage grievances effectively
- Stages
- Informal stage
- Formal stage / the hearing and investigation
- Resolving a grievance
- Appeals
- Mediation
- Collective grievance procedure

Managing grievances effectively

What is a grievance?

- A concern, problem or complaint that an employee raises
- Can concern matters such as their work, pay or working relationships

Grievance procedure allows...

- employees to raise genuine workplace grievances
- grievances to be dealt with fairly, objectively and without fear of blame

It's important we deal with employee grievances

- Promptly
- Fairly
- Consistently

Managing grievances effectively

The right attitude

- View raising of a grievance as an opportunity to resolve a workplace problem
- Once we know an employee has a grievance, can discuss with employee, take on board their point of view and, if possible, provide a solution or part solution
- Positive attitude may facilitate satisfactory resolution
- Negative attitude likely to alienate employee and aggravate situation

Acting promptly

- Deal with grievances promptly
- Delay likely to make matters worse
- Employee may be experiencing stress
- Working relationships may be disrupted
- Grievance may have a negative impact on employee's performance

Stages

Informal

- Stage 1
- Always try to resolve informally where possible
- Informal discussions with manager
- Documented discussions and outcome by manager

Formal

- Stage 2
- Formal meeting held
- Outcome confirmed in writing with right to appeal
- Right to be accompanied

Appeal

- Stage 3
- Must explain why they are appealing
- Heard by more senior manager
- Outcome confirmed in writing
- Right to be accompanied



DISCUSS:
What is the
difference
between
informal and
formal?

Informal Stage

- Discuss with the employee informally
- Find out the cause of their issues
- How do they feel the issues can be resolved?
- How can you support the employee?
- Case by case basis
- Take the complaint seriously
- Keep the employee updated with how you are dealing with their grievance
- Keep records of conversations and emails
- Let them know the outcome and what to do if they are still unhappy
- Ask HR for support or advice

Formal Stage – The Hearing

If it is not possible to resolve the grievance informally, or if the employee wishes, a formal grievance meeting should be arranged

Aims of the hearing

- Give the employee an opportunity to explain their grievance
- Look to resolve the grievance to the employees satisfaction
- Listen to what the employee has to say
- Try to understand their grievance and how they believe it should be resolved
- HR will give guidance notes and a template for the hearing

Formal Stage – Investigation

- The hearing may need to be adjourned to investigate any allegations raised by the employee
- It is usually the grievance chair who will complete the investigation
- The investigation should be completed impartially and thoroughly
- Check policies and procedures
- Remain open minded

What challenges have you faced / might you face during a grievance investigation?

Resolving the grievance

- Once the grievance has been investigated, the employee should be given feedback on the outcome
- It is not always possible to resolve the grievance to the employee satisfaction
- It is important to explain the reasons why action has or hasn't been taken
- Outcome will be confirmed in writing by HR with the right to appeal

DISCUSS

The situation: An employee has raised a grievance claiming a colleague is bullying them. During the grievance investigation – strong evidence has been found to support this.

How would this be managed?

Who would look into the misconduct and how would it be dealt with?

How do we explain the outcome to the employee thinking about confidentiality?

Appeals

- Employees have the right to appeal the decision if they are not satisfied
- Usually more senior manager who has not previously been involved will hear the appeal
- Grievance hearing manager may be required to attend the appeal to explain their decision. This will be the chair of the appeals decision.
- Right to be accompanied
- Role of appeal chair is to decide if the outcome was reasonable and fair.
- Outcome will be communicated to the employee and confirmed in writing by HR
- No further right to appeal

Mediation

- Mediation may be appropriate in some circumstances
- Could be external provider if more serious and complex or managers/ HR could facilitate the process
- All parties must agree to partake in the process
- Is a fully confidential process
- Could be an outcome of a grievance

Collective grievance procedure

- Very similar to regular grievance process
- Important to have guidelines should a collective grievance arise.
- We can support on a case by case basis.

BREAKOUT EXERCISE

Discuss how you would use the policy to manage the cases:

Group 1 – An employee raised a grievance because they believe they are being treated less favourably than their colleagues. They feel they always get the ‘bad jobs / bad shifts’ while at work.

Group 2 – An employee raised a grievance because they find their colleagues communication rude, abrupt and upsetting. They have spoken to their manager about it before, but they feel nothing has changed.

Consider the following:

How would you use the process to manage these cases?

Possible outcomes?

General notes



- Notes and record keeping
- Overlapping disciplinary and grievances
- Reasonable adjustments and accessibility
- Remote meetings and recording of meetings
- Offering support to employees going through processes



Any Questions?