



Managers Guide: Disciplinary Appeals

Introduction

The ACAS code of practice states that all employees should have the right to appeal against a decision to issue a disciplinary penalty, and therefore it is an essential part of a fair disciplinary process.

Failure to allow an employee to appeal against any formal disciplinary action may lead to a successful claim of unfair dismissal.

Confirming the Right to Appeal

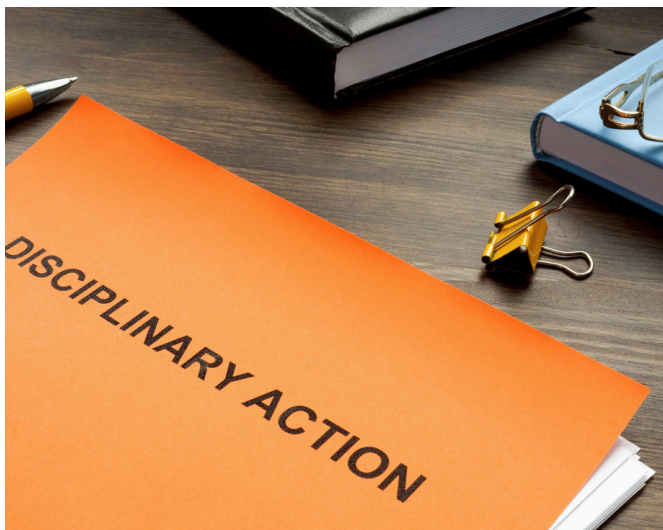
The letter confirming the decision to take formal disciplinary action should include reference to the employee's right of appeal and the person to whom the employee should appeal.

Any appeal should detail the employee's reasons for appeal and should be provided in writing within five working days of receipt of the letter confirming the disciplinary decision.

Reasons for Appeal

An employee may appeal against the findings of a disciplinary hearing and the action taken as a result, because they feel that the decision taken was too harsh given the circumstances or that the procedure was not conducted fairly or correctly.

Alternatively, new evidence may have come to light which suggests that the decision was not appropriate.



Organising an Appeal Hearing

Once the employee has submitted written confirmation that they wish to appeal against the disciplinary decision, you should arrange to hold an appeal hearing.

It is important that wherever practicable, the appeal is heard by a manager who was not involved in the original disciplinary case, and ideally someone who is senior to the person who made the original decision. If a more senior manager is not available, or if this is impractical, then a manager of an equivalent level to the one who took the decision should be asked to hear the appeal.

The manager who has been nominated to hear the appeal should be provided with a copy of all the paperwork relating to the original decision, including the notes of the meeting and any evidence. However, they should not discuss the case with the manager who made the decision, as the key principal of the appeal is for the decision to be reviewed independently.

The employee should be invited to the appeal hearing in writing, giving a minimum of 24 hours notice of the meeting and informing him or her of the right to be accompanied at the meeting.

Right to be Accompanied

All employees may be accompanied at any formal appeal hearing by either a colleague or a trade union official of their choice, regardless of whether or not the company recognises a trade union.

If an employee's chosen companion is not available at the proposed time of the meeting, they may request a reasonable alternative time falling within five working days of the original meeting date proposed, and you must postpone the hearing as requested. However, employees are only entitled to request a postponement once.

The employee has the right to decide, within limits, the role that he or she wishes their companion to play at the hearing. The companion must be allowed to:

- address the hearing on behalf of the employee, i.e. put his or her case;
- confer with the employee during the hearing;
- sum up the employee's case; and
- respond on the employee's behalf to any views expressed at the hearing.

However, the employee is expected to answer any questions asked and the companion cannot answer on their behalf.

In some cases, the employee may wish to bring the companion along simply for moral support rather than for representation.

The Appeal Hearing

As the person nominated to hear the appeal, you should make sure that you have all the paperwork relating to the original disciplinary decision to hand, in case you need to refer to it. In particular you may need to refer to what was said during the disciplinary hearing or pieces of evidence which informed the disciplinary decision.

You should open the meeting by introducing everyone present, explaining their role and explaining that the purpose of the meeting is to address the points that the employee has raised in their appeal and to reach an independent decision on whether the disciplinary decision was appropriate given the circumstances.

You should explain that you will not confirm your decision during the meeting, as it may be necessary to carry out further investigations, but that your decision will be confirmed in writing soon after the meeting. The outcome may be to uphold the original decision, overturn the decision or issue a reduced penalty. You should not increase the original decision as a result of the appeal.

You should then give the employee the opportunity to present their case and to explain why they feel the original disciplinary decision was wrong. They may think that the decision was too harsh or that the disciplinary procedure was not conducted fairly or properly, and they should be asked to explain why they feel this way.

Alternatively, new evidence may have come to light and you should allow the employee to present this evidence and explain how they believe it affects the original disciplinary decision. If they bring new evidence to the appeal hearing which was not considered at the disciplinary hearing, you will need to consider how this affects the original decision and why the evidence wasn't raised at the disciplinary hearing. It may be necessary for you to adjourn the meeting to carry out further investigations, but you should make sure that you consider all new evidence fully and carefully before making any decisions.

Once all the relevant points have been discussed, you should summarise your understanding of the employee's reasons for appeal, why they believe the original disciplinary decision was wrong and any evidence they have presented in support of that view. You should then adjourn the meeting to consider the facts and confirm your decision in writing.

Record Keeping

Full records must always be kept of all appeal meetings held with employees. It is therefore good practice for a second management representative to be present in the meeting as a note taker.

These records should be held confidentially on the employee's personnel file and will be necessary in case further misconduct occurs or the employee fails to change his or her behaviour despite the measures taken. They will allow you to follow through the further stages of the disciplinary procedure at a later date if necessary.

The Decision

You should be prepared to change the original disciplinary decision if you believe that it was not fully appropriate given the circumstances.

However, as the general principal of providing employees with the right to appeal against a disciplinary decision is for their protection, it is not appropriate to increase the severity of the disciplinary outcome. Therefore, you may decide to uphold the original decision, dismiss it in its entirety or impose a lesser sanction such as reducing a final written warning to a written warning.

Confirmation of the Decision

You should confirm your decision in writing within a reasonable timeframe and should advise the employee during the meeting as to how long you anticipate this taking. Your letter should detail your response to the employee's reasons for appeal and should explain why you have reached that decision in enough detail to make sure the employee understands your reasoning.

If the original decision was to dismiss the employee and you have decided that this was inappropriate and that they should be reinstated, this should be done immediately and their continuity of employment should not be affected. The employee should be paid for the period between the dismissal and re-engagement, taking account of any period of notice which may have already been paid.

If you are unsure of any aspect of the disciplinary appeals procedure, please contact your HR Advisor for further guidance.

Get in touch

This document is intended as a guide. If you have any concerns regarding its content, or for further information about disciplinary appeals, or anything else to help make managing your HR easier then please get in touch. We'd love to help.

Issue date: September 2024

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