

Disciplinary Advice Sheet for Members



This advice sheet is designed to help you understand the disciplinary process, and give you some tips on how you can prepare for your hearing.

Please read in conjunction with your disciplinary policy.

Who will represent you?

Investigation meetings are not part of the legally defined “formal hearings” and you do not have a legal right to representation at them, but your internal policy may provide for this. Unite Regional Officers do not usually attend investigation meetings.

In organised workplaces where you have an elected Unite workplace rep they will normally represent you in a disciplinary hearing. Your local agreements will say when a full time Regional Officer becomes involved.

If there is no union recognition at your workplace you will be entitled to take a colleague into your disciplinary hearing. A Unite Regional Official or Accredited Companion may be able to represent you in more serious cases or at the final appeal hearing if available. Please contact your local office to check representation.

Suspension

Your employer might suspend you pending investigation / disciplinary hearing if they believe that keeping you at work could hinder the investigation; or if doing so would pose a risk to yourself, colleagues or the business. The law sees suspension as a “neutral act” if you are being paid your contractual wages whilst on suspension (or if you are not being paid but there is a term in your contract allowing the employer not to pay you whilst on suspension). In this regard the suspension is not “a punishment”. It should, however, not be an unduly long period. You should be given a letter stating that you are on suspension and outlining any conditions – very often they state that you should not contact anybody at the workplace except a named manager. You will also be able to contact your union rep if you have one at the workplace. Be careful as failing to comply with the terms of the suspension could bring its own disciplinary actions against you.

Investigation Meeting

If an allegation has been made against you your employer will carry out an investigation which is a fact finding exercise. As part of this process you might be invited to an investigation meeting where you will be interviewed and questioned about the allegation. This meeting should not result in a disciplinary sanction being awarded against you; but the information from the meeting can be used in a disciplinary hearing.

Disciplinary Hearing

A disciplinary hearing is when your employer will consider all the evidence collated in support of the allegation against you, and it is your opportunity to respond to or counter the allegation. Following the hearing your employer will make a decision about whether or not a sanction should be awarded against you, and if so what the severity of the sanction should be. Sanctions can range from a verbal warning to dismissal. You have the right to be accompanied by a Trade Union Representative or a colleague at your disciplinary hearing (see above).

Preparing for your Disciplinary Hearing

Your employer should send you a letter stating the date and time that the hearing will take place, details of the allegation against you and requesting you to attend. Prior to the hearing you should also receive a copy of the evidence that will be considered during the hearing and a copy of your employer’s disciplinary policy.

- If your TU Representative is not available on the date of the planned hearing then your employer has a statutory duty to re-arrange it within 5 working days.
- If you don’t receive a copy of the evidence, or a copy of the disciplinary policy then you should write to your employer requesting a copy of it prior to the hearing.
- If you are unclear on what the allegation against you is then you should write to your employer asking for clarity. It is important that you understand the allegation so you can respond to it during the hearing.

The three most common allegations that result in being invited to a disciplinary hearing are to do with conduct, capability & sickness absence. Once you know what the allegation against you is and when the hearing will take place you will need to start preparing your strategy for the hearing.

You should:

1. Read through all of the evidence.
2. Think through the kind of questions you are likely to be asked in the hearing (which will depend on the allegations against you). Note the answers you want to give.
3. Decide if you want to make a statement at the start of the hearing and write it in advance.
4. List the points you want to raise and discuss so that you can tick them off as each is covered to ensure you don't miss anything important.
5. Write a chronology of events – this will help you have a clear picture and to stay on track.
6. Decide if you want anything else added to the evidence bundle and advise your employer in advance. They might not accept evidence you take with you on the day of the hearing.
7. Consider are there any other witnesses you would like to be questioned at the hearing? Be aware that witnesses are only helpful at disciplinary hearings if you are sure you know what they are going to say. You don't need multiple witnesses if they are all going to say the same thing – one witness will be sufficient if this is the case.

Top Tips:

- **Remember that less is more...**...decide on the strongest argument to counter the allegation and stick to it. Don't get side-tracked with things that aren't relevant.
- **Don't hold anything back.** If you have evidence that you think will help your case you should raise it in your hearing or your appeal hearing. Don't "keep it up your sleeve" for an Employment Tribunal claim as you won't be able to use it as part of your claim if it wasn't raised during the disciplinary process.
- **Talk to and be honest with your TU rep.** If the allegation against you is true then please tell your TU Rep so they can advise the best strategy in the circumstances. Your TU Rep needs to be prepared as well and they can only prepare if they have all the facts.

What happens after the hearing?

You should be sent a copy of the notes of the meeting and asked to sign them to agree that they reflect the discussions that took place. Only sign them if you agree with them. If you disagree ask for them to be amended. Once you sign them it will be assumed you agree they are correct. You will not be able to get them amended at a later date. If your employer will not amend the notes then send an email/letter stating you do not believe the notes are a true reflection of the hearing.

You should receive an outcome letter informing you of the outcome of the hearing. You have the right to appeal the decision if you are not happy with it. You should put your appeal in writing and set out the grounds on which you are appealing. It is important to note that an appeal hearing does not re-hear all the evidence but usually relates to discussing a point of procedure (such as a biased investigation) or a sanction being too harsh.

If you are dismissed and not reinstated at appeal, you might (circumstance dependant) have a potential claim for unfair dismissal or discrimination. Speak to your Regional Officer about whether or not they think you have a case – not all dismissals are "legally" unfair. Please remember:

- You must have at least 2 year's services in order to make a claim for unfair dismissal.
- Discrimination is only against a protected characteristic (Age, Disability, Sex, Race, Marriage & Civil Partnership, Gender Reassignment, Pregnancy & Maternity, Religion, Sexual Orientation).
- You have 3 months less one day from the date of the act complained of to make a claim.
- If you believe you are being disciplined on the grounds of your trade union membership and/or activity you need to speak to your Regional Officer as soon as possible.