As well as a thorough investigation, a proper disciplinary hearing will be key to a fair misconduct dismissal. It is therefore essential that anyone tasked with chairing a disciplinary hearing ensures that the hearing is conducted in an equitable manner, taking into account the principles of natural justice and the “Acas code of practice on disciplinary and grievance procedures”.

This XpertHR Professional “how to” guide steers employers through the issues they need to consider when chairing disciplinary hearings.

The guide covers:
- Introduction
- An appropriate chair
- Before the hearing
- The right to be accompanied
- The hearing
- Adjournments
- The decision
- Following the hearing

Further resources from XpertHR Professional
Introduction
The chair of a disciplinary hearing should ensure the fair conduct of the hearing. The chair should also make sure that the rules of natural justice are followed, these being that the employee should know the nature of the charge and be given the opportunity to state his or her case, and that the disciplinary panel should be unbiased and act in good faith.

The chair of the hearing should also ensure that the principles contained in the Acas code of practice on disciplinary and grievance procedures [on the Acas website], which came into force on 6 April 2009, are followed. Although the code is not legally binding, so employers are not liable to proceedings if they fail to follow its recommendations, employment tribunals take the code into account in considering relevant cases, and are able to adjust any awards made by up to 25% for unreasonable failure to comply with any of its provisions. This adjustment can be up or down, depending on which party is at fault.

As there is an overriding obligation on the employer to act reasonably in carrying out a dismissal, the chair should also ensure that the employer’s own disciplinary procedure is followed and that there is overall fairness of process.

An appropriate chair
The chair should have the necessary authority under the terms of the employer’s disciplinary procedure. Some disciplinary procedures are specific as to who can hear a disciplinary case and which officers of the company have the power to impose sanctions such as dismissal. If dismissal is a possible outcome, it is important that the case is heard by an officer who has the relevant authority to dismiss.

The chair should be untainted by the process. This means that he or she should not have been involved in the factual matters giving rise to the disciplinary hearing and should not have been involved in the investigation. For example, an employee’s line manager should not hear the case if it is a charge of insubordination towards the line manager. A different manager should be appointed to hear the case.

The chair may hear the case alone or with other members of a panel. This will depend on the employer’s disciplinary procedure and/or custom and practice. A chair may hear the case with HR support and advice. It should be made clear to all involved in the hearing whether an HR panel member is present in an advisory capacity only, or as a joint decision maker.

Before the hearing
The chair and any other panel members should be familiar with the disciplinary procedure and should also have access to the Acas code and the accompanying non-statutory guidance [PDF format, 897K] [on the Acas website]. It would be advisable for the chair and panel members to re-read these documents in advance of the hearing.

The chair and any other panel members should also read in advance any papers submitted by the parties for consideration at the hearing. This may include witness statements and documentary records relevant to the issues.

The meeting should be held without unreasonable delay, but the employee should have reasonable time to prepare his or her case. The chair should be satisfied that this requirement has been met.

The right to be accompanied
The chair should make sure that the employee has been made aware of his or her right to be accompanied at the hearing.

If the employee attends the hearing without a representative the chair should check that he or she was made aware of the right and is happy to proceed unaccompanied. A note should be made of this.

If it becomes clear that the employee was not aware of this right and wishes to be accompanied or that the hearing was arranged at a time when the representative was not available and the statutory rules have not been complied with, the chair should adjourn to allow the rules to be met. If the companion cannot attend on the proposed date, the employee has the right to suggest an alternative date and time so long as it is reasonable and is not more than five working days after the original date.

The statutory right is to be accompanied by a work colleague or trade union representative. However, the employer’s disciplinary rules may extend the right, for example by permitting accompaniment by a friend or relative.

A tribunal may order compensation of up to two weeks’ pay if the statutory right has not been complied with. A failure to comply with the employer’s own extended rules would be considered as part of the overall question of fairness of procedure.
The hearing

It is advisable to have a note-taker at the hearing so that a full written record is kept. This should be someone who is not involved in the case.

The chair should outline the procedure to be followed during the hearing and introduce any parties who may be unknown to one another.

The chair should check that the employee is fully aware and has had advance notice of the disciplinary charge that he or she is facing. The hearing should be adjourned if the employee has not had advance notice.

The chair should check that each side has received copies of any documents that the other party intends to rely on during the hearing. If a party has not seen documents that will be used in the hearing, the chair should adjourn for a reasonable period of time to allow the documents to be read.

Each side should be given the opportunity to present its own case. The management case will usually be presented by the investigating officer.

If the employee is represented by a trade union representative or work colleague, the companion has the right to put the employee’s case, sum up his or her case and respond on the employee’s behalf to any view expressed at the hearing. The companion may ask questions of the employer’s witnesses but has no right to answer questions on the employee’s behalf. The companion should not prevent the employer from explaining its side of the case.

Adjournments

If the chair becomes aware of any breach of the company’s disciplinary procedure, there should be an adjournment to ensure compliance. The adjournment may be brief, for example an hour to read documents (depending on the length of the documents). The chair will need to exercise discretion and apply the principle of reasonableness in each situation.

If it transpires during the hearing that new matters have arisen that require further investigation and that a fair decision cannot be reached without this, the hearing should be adjourned to a later date to allow that investigation to take place.

If the employee or a witness becomes upset or distressed during the hearing the chair should ask if he or she would like a break.

The decision

Once each side has presented its case, the chair should sum up the key points of the hearing and then adjourn to consider the decision. A reasonable period of time should be allocated to decision making, and what is reasonable will vary according to the complexity of the case. If it is a particularly complex case it would not be unreasonable to inform the employee that the matter will be considered overnight and the decision given the next day. A hasty decision could lead to a suggestion by the employee that the matter was prejudged.

The chair and any other panel members should weigh up the evidence heard and make a decision on the balance of probabilities. There should also be consistency in decision making. If another employee has faced similar disciplinary charges in the past, the chair should consider the penalty imposed on any previous occasions so that there is consistency of treatment. The chair should be able to justify the reason for any departure from previous penalties.

Following the hearing

Once a decision has been made the employee should be informed and given the right of appeal. Even if the decision has been given verbally, the chair should confirm the decision and the right of appeal in writing. The employee should be given details of the person to whom any appeal should be addressed and should be given a time limit in which to appeal. The Acas guidance indicates that five days is usually appropriate, but the employer’s disciplinary procedure or custom and practice may allow for a longer period. In any event, the employer should reserve discretion to consider later appeals depending on the circumstances of the case.
More information on XpertHR Professional
If you found this “how to” guidance on chairing a disciplinary hearing useful, you may also be interested in the following XpertHR guidance on disciplinary issues:

› How to handle appeals against disciplinary decisions
› How to handle the situation where an employee goes off sick during a disciplinary process
› How to conduct a disciplinary investigation
› How to handle a situation where new allegations come to light during a disciplinary investigation
› How to decide on an appropriate disciplinary penalty

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