



# Contents

<b>Introduction</b> .....	3
Examples of Misconduct.....	5
Examples of Gross Misconduct.....	5
<b>Overarching Disciplinary Procedure: Flowchart</b> .....	6
<b>Informal Resolution</b> .....	7
<b>Tool: How to... Carry out an Informal Meeting</b> .....	10
<b>Tool: Informal Meeting Note</b> .....	11
<b>Suspension</b> .....	12
<b>Investigation</b> .....	14
<b>How to...Carry out an investigation</b> .....	16
<b>Tool: Investigation Planning Template</b> .....	20
<b>Tool: Investigation Report Template</b> .....	21
<b>Formal Disciplinary Procedure</b> .....	23
<b>Disciplinary Appeal Procedure</b> .....	30
<b>Frequently Asked Questions</b> .....	33

# Introduction

ACAS define a discipline as:

***'The Disciplinary Procedure relates to matters of misconduct and inappropriate behaviour in the workplace'.***

This guidance is intended to support managers in the implementation of the University's **Disciplinary Procedure**. It seeks to explain the grievance procedure, the roles and responsibilities of those involved, and the support mechanisms that are available.

**Discipline is a concern, problem or complaint that may be related to a wide range of issues; including the allocation of work, the working environment or conditions or working relationships.**

We should focus on resolving individual concerns informally and quickly. This often has the best outcome and supports maintaining good working relationships between colleagues.

## ACAS Code of Practice on Disciplinary and Grievance Procedure

In March 2015 ACAS updated [Code of Practice on Disciplinary and Grievance Procedure](#) which sets out the minimum standards that employers are expected to comply with. It provides good practice advice for dealing with discipline and grievances in the workplace.

Whilst the Code of Practice is not legislation, Employment Tribunals are legally required to take it into account when considering relevant cases and can adjust compensatory awards by up to 25% for unreasonable failure to comply with any provision of the Code.

The good practice guidance includes:

### Dealing with formal grievances (Extract from ACAS Code)

Where some form of formal action is needed, what action is reasonable or justified will depend on all the circumstances of the particular case. Employment tribunals will take the size and resources of an employer into account when deciding on relevant cases and it may sometimes not be practicable for all employers to take all of the steps set out in this Code.

That said, whenever a disciplinary or grievance process is being followed it is important to deal with issues fairly. There are a number of elements to this:

- Employers and employees should raise and deal with issues **promptly** and should not unreasonably delay meetings, decisions or confirmation of those decisions.
- Employers and employees should act **consistently**.
- Employers should carry out any necessary **investigations**, to establish the facts of the case.
- Employers should **inform** employees of the basis of the problem and give them an opportunity to **put their case** in response before any decisions are made.
- Employers should allow employees to be **accompanied** at any formal disciplinary or grievance meeting.
- Employers should allow an employee to appeal against any formal decision made.

The University's Disciplinary Procedure is based upon the recognition that fair, transparent and consistent treatment of all employees is necessary in handling all situations related to discipline at work.

All organisations need to have in place a fair, consistent and equitable policy and procedure to ensure all aspects of performance standards and conduct are maintained. Our Disciplinary Policy & Procedure aims to provide employees and managers a framework within which they should operate. It is important that everyone knows and understands the standards of

performance and conduct that are expected of them during their employment with the University, and conversely, what they can expect from the University

The policy is governed by legislation as well as the ACAS Code of Practice for Disciplinary & Grievance (2015) and therefore as a manager, you do have to fulfill your legal obligations to ensure that there is a timely, fair, consistent and transparent approach taken throughout the disciplinary process. This Management Guidance Pack is designed to give you some practical help on dealing with misconduct at work.

A key underlying principle of this policy is that it is to help employees correct their behavior and we would strongly recommend that where there has been minor breach that these are dealt with on informal basis.

The legislation that governs discipline issues at work:

- Employment Rights Act 1996
- Employment Relations Act 1999
- Employment Act 2008
- Data Protection Act 1998



## Examples of Misconduct

The list below provides examples of misconduct and is not considered to be exhaustive. Other actions might be considered as misconduct potentially resulting in disciplinary action.

- Timekeeping and/or unauthorised absence
- Failure to carry out reasonable instructions and undermining of authority
- Breach of agreed University Policies and Procedures
- Minor breaches of Health & Safety regulations
- Improper use/damage of University equipment and resources (including telephone, email and internet)
- Bullying and/or harassment/discrimination of a colleague, student or member of the public related to race, gender, sexual orientation, disability, religion or believe, age or gender reassignment
- Unacceptable standards of work performance
- Poor customer service
- Unwillingness to take responsibility for the role



## Examples of Gross Misconduct

The list below is illustrative in relation to what might constitute gross misconduct. It is not exhaustive and other actions might be considered as gross misconduct potentially resulting in dismissal.

- Theft, attempted theft or unauthorised possession of property belonging to students, employees, the University or another person
- Serious incapability at work brought on by alcohol or illegal drugs
- Serious breach of health and safety rules
- Fraud or attempted fraud, including deliberate falsification of accounts, financial statements or records
- Bullying and/or harassment/discrimination of a serious nature of a colleague, student or member of the public related to race, gender, sexual orientation, disability, religion or believe, age or gender reassignment
- Physically violent, threatening, indecent behaviour or inappropriate sexual behaviour
- Wilful or negligent failure to comply with legal or other statutory requirements
- Conviction of a criminal offence that makes the employee unsuitable for their employment
- Deliberate damage to, or fraudulent misuse of, University property
- Internet and email abuse including the deliberate access of internet sites containing pornographic, offensive and obscene material
- Serious abuse of social media, including bullying and harassment of colleagues or bringing the University into disrepute
- Serious insubordination through deliberate refusal to carry out a reasonable instruction and serious undermining of authority
- Serious breach of confidentiality or data protection regulations
- Bringing the University into serious disrepute











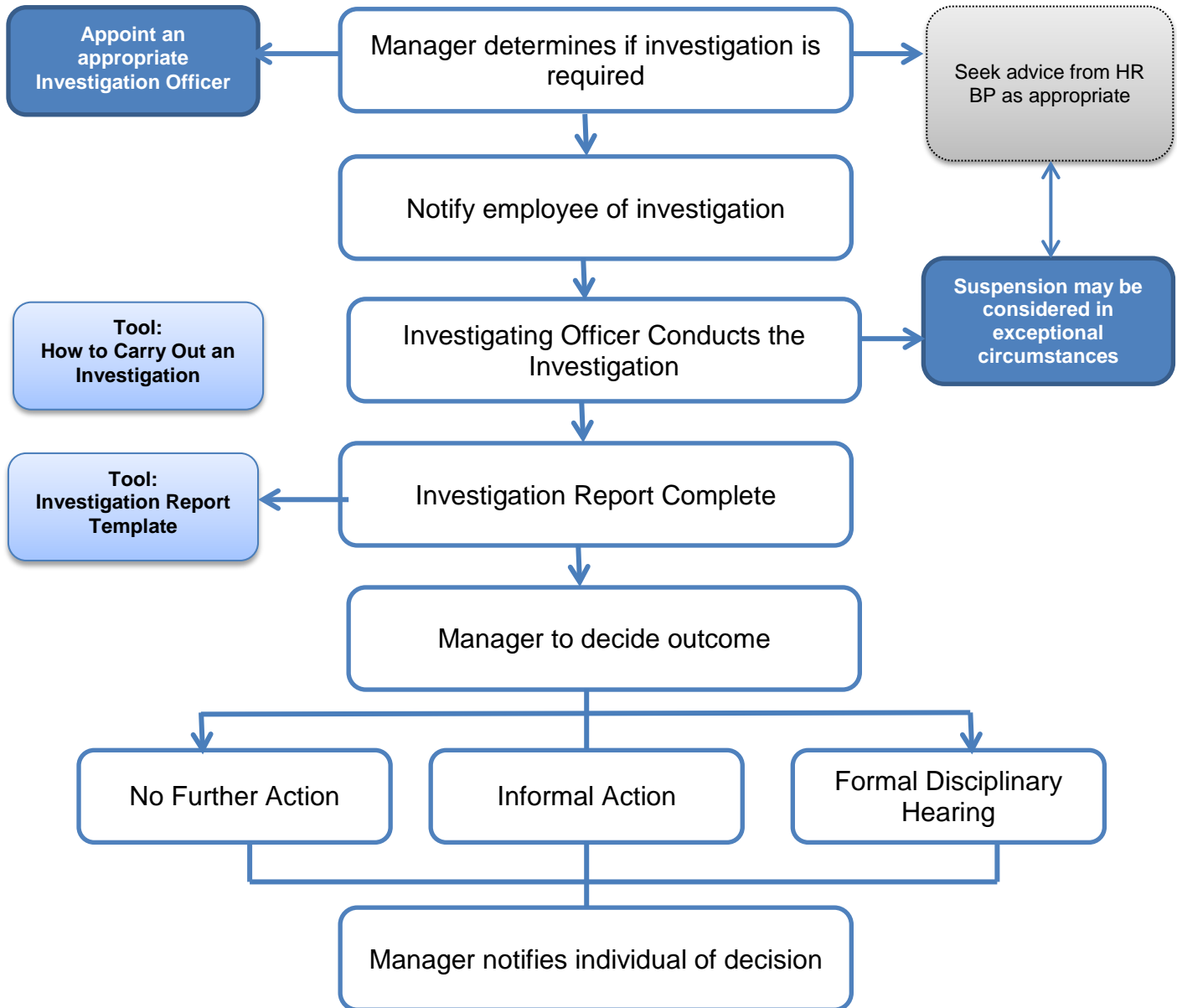








# Investigation



***The investigation will be undertaken in an open and transparent manner by someone that is independent to the case.***

***The Investigating Officer will consider all lines of enquiry suggested by the individual and pursue those which are appropriate.***

# Investigation

The disciplinary investigation is key to the process that must be followed prior to carrying out the formal disciplinary procedure, as an inadequate investigation may render the decision unfair. It is, therefore, important that investigating officers are made aware of the essentials of carrying out a reasonable investigation.



## Extract from ACAS Code of Practice

When investigating a disciplinary matter take care to deal with the employee in a fair and reasonable manner. The nature and extent of the investigations will depend on the seriousness of the matter and the more serious it is then the more thorough the investigation should be. It is important to keep an open mind and look for evidence which supports the employee's case as well as evidence against. It is not always necessary to hold an investigatory meeting (often called a fact finding meeting). If a meeting is held, give the employee advance warning and time to prepare. Any investigatory meeting should be conducted by a management representative and should be confined to establishing the facts of the case. It is important that disciplinary action is not considered at an investigatory meeting. If it becomes apparent that formal disciplinary action may be needed then this should be dealt with at a formal meeting at which the employee will have the statutory right to be accompanied. See also 'Use of external consultants' on p37.

## Who should conduct the investigation?

The 'Investigation Officer' is a management representative who will carry out the investigation into the allegations. The line manager in conjunction with the HR Business Partner will nominate an appropriate Investigating Officer which will be made on the basis of ensuring a fair investigation and avoiding any potential conflict of interest.

The investigation should be carried out by a management representative **who is not** the person who will conduct any resulting disciplinary hearing.

The person carrying out the investigation should not be involved in the matter in question in any way, for example as a witness. To avoid any suggestion of bias, the investigating officer should be someone who is not in the individual's direct line of management, if this is practicable.

Ideally, the investigating officer will have received training on how to carry out a disciplinary investigation.

# How to...Carry out an investigation

## Summary of Key Obligations

- Take into account that a reasonable disciplinary investigation will be essential to a fair dismissal for misconduct.
- Be aware that the ACAS Code of Practice on disciplinary procedures includes recommendations about disciplinary investigations.
- Make sure that the Investigating Officer is not connected in any way to the facts giving rise to the disciplinary charge.
- Ensure that the necessary investigations are carried out without unreasonable delay.
- Consider whether or not it is necessary to suspend the employee while the investigations are carried out.
- Where necessary arrange an investigatory meeting with the employee accused of misconduct, to obtain his or her account of events.
- Arrange meetings with witnesses to obtain their account of the incident or events and take their statements.
- Collect any relevant documents.
- Prepare a set of witness statements and relevant documents to be submitted to the disciplinary hearing and to the employee in question in advance of the hearing.
- Be aware that, although there is no statutory right for an individual to be accompanied at an investigatory hearing, the right does apply under our disciplinary procedure and or by reason of custom and practice.

## General principles

The investigating officer should not be connected in any way to the facts giving rise to the disciplinary charge in order to avoid any suggestion of bias in the way that the investigation is conducted. The ACAS code states that "**where practicable, different people should carry out the investigation and disciplinary hearing**".

The rules of natural justice require that the employee should know the nature of the charge against him or her and should be given the opportunity to state his or her case. The evidence collected during the investigation will be put to the employee in the disciplinary hearing and will enable the employee to state his or her case in response.

The ACAS code states that it is important to carry out necessary investigations of potential disciplinary matters without unreasonable delay to establish the facts of the case. In any event, it will be necessary for the employer to collect statements from witnesses as soon as practicable before memories fade.

## Good Practice Principles

When undertaking a fact finding investigation it is important that the Investigation Officer:

- keeps an open mind regarding the outcome
- ensures impartiality, fairness and confidentiality throughout the process
- Carries out the investigation timely
- is well prepared for the investigation



## **Suspension**

There may be occasions when it is necessary for the employer to suspend the employee with pay while it carries out its investigations. Suspension might be appropriate where, for example: the employee has been accused of bullying or harassment; or the employer has grounds to believe that the employee might deliberately cause damage if allowed to remain in the workplace. However, the employer should suspend the employee only after careful consideration, and keep the suspension under review to ensure that it does not become unnecessarily protracted. The employer should make clear that the suspension is neither a disciplinary sanction nor an assumption of guilt. For guidance on suspension, see '**Suspension**



**Always seek advice from your  
HR Business Partner**

## **Key Stages of the Investigation**

### **Planning an investigation**

- Make sure you are fully aware of the details alleged misconduct so that you can consider what facts and evidence will be required.
- Decide on the questions you would like to ask and consider if there is any other available evidence or documents that they might want to access (i.e. CCTV footage; emails etc).
- Decide who you will need to interview and in what order.
- Make the interview arrangements for as soon as practically possible – this will help to ensure that people's memory does not fade.
- The arrangements for the investigation interviews should be in a private room with no disruptions.
- If you anticipate that the investigation will take longer than the 28 days as defined in the procedure, you should make the individual and if relevant, their trade union representative, aware of this as soon as possible.
- Make sure you have someone in attendance to take notes, this should be a representative from People & OD.



***Check out our Investigation Plan Tool***

### **Interviewing the individual who is alleged misconduct**

- Interview the individual to understand their version of events.
- Give them advance notification in writing (no less than 5 days) to give them appropriate time to prepare for the meeting.
- Notify the individual in writing of the allegations made against them and provide them with any relevant documentation.
- Ensure that the individual is aware that they are entitled to be accompanied to the investigation meeting by their trade union representative or work colleague.

### **Witnesses**

- Witnesses are not normally expected to be accompanied at the investigation meeting, however, they can bring a work colleague or trade union representative if they wish.
- It is important that confidentiality is maintained throughout the process
- Witness statements can be anonymized to protect the witness if appropriate. If a witness insists on remaining anonymous, the Investigation Officer should discuss this with People & OD as it may not be possible to guarantee this if the case progresses to employment tribunal.

### **The meeting**

These are general guidance points on how to conduct an investigation meeting:

#### **Introduction to the meeting**

- Introduce yourself and your role
- Introduce anyone else who is part of the meeting, e.g. notetaker
- Describe the format of the meeting
- Put the person at ease – you are trying to establish the facts and nothing more at this stage.
- Ensure that the individual is aware that adjournments by either the them or the investigation officer may be requested
- Explain the reasons for the investigation and need for confidentiality
- Advise that a note of the meeting will be provided and they will be asked to confirm that they it is accurate
- For witnesses - advise that the notes of the meeting will normally be shared with the individual accused of misconduct

#### **During the Meeting**

- Have any questions that have been prepared ready
- Ask the individual to explain what happened in their own words and in their own way
- Stay focused on the allegations and the facts relating to these
- Only explore issues in more detail that are relevant to the case
- Seek clarification on any facts

#### **Closing the meeting**

- Summarise back to the individual what you have understood / written
- Ask if there is anything else relevant that they wish to add or any additional witnesses or documentation that may be relevant
- Advise what will happen next

### **Records of meetings**

- Notes of any meetings should be taken
- These should capture the responses to questions
- While it is important to capture key points reflecting the interviewee's words, the notes are not intended to be a verbatim record of the interview. Notes should be agreed as an accurate record of the meeting and signed and dated

### **Investigation Report**

- After completing the investigation the evidence should be collated together, to form the basis of a report
- It is important take into account all the evidence in order that the allegations can be considered objectively
- The report should provide a summary of the investigation findings
- The complexity of the report will depend on the complexity of the investigation
- The investigating manager should compile the report and issue a copy to the disciplining manager as soon as possible after the conclusion of the investigation meetings
- It is not the role of the investigating officer to determine if disciplinary action is appropriate, the disciplining manager will determine this once they have considered all of the evidence provided within the report

### **Next Steps**

- The disciplining manager will make a decision based on the facts and evidence available
- The disciplining manager must confirm to the individual in writing the outcome of the investigation within 7 days of receiving the report

# Tool: Investigation Planning Template

This template can be used to plan the investigation

<b>Investigating Officer</b>	
<b>Terms of reference</b>	
<b>Provisional time-frame</b>	
<b>Issues that need to be explored/clarified</b>	
<b>Sources of evidence to be collected</b>	
<b>Interview Questions</b>	
<b>Witnesses/Employee(s) to be interviewed</b> (including planned order of interviews)	
<b>Investigation meetings further arrangements</b> (When/where/notes to be taken by)	
<b>Investigation meetings to be completed by</b>	
<b>Collection of evidence to have been completed by</b>	
<b>Further considerations</b>	

# Tool: Investigation Report Template

*This is a template investigation report that an Investigating Officer may adapt to suit the particular circumstances of their investigation.*

Introduction	
Investigating Manager	
Date investigation commenced:	
Background to the investigation	

Process of Investigation	
Evidence Collected (Detail the evidence /documents collected)	
Evidence that could not be collected (List the evidence that could not be collected and why)	
People interviewed: (List all of the people interviewed)	
People not interviewed: (List any witnesses that could not be interviewed and why)	
Anonymised Statements: (If any, explain why and provide details of any enquiries into witness)	

## The Investigation Findings

Summary of written and/or physical evidence (name and summarise each document contained, set out how the evidence supported or did not support your findings and why)

Summary of witness evidence: (name and summarise each witness statement, quote from statement where relevant, set out how the witness statement supported or did not support your findings and why)

Facts Established (Detail what the investigation established)

Facts that could not be established: (Detail any part of the investigation that was inconclusive)

Mitigating Factors (Detail if there were any mitigating factors uncovered that are relevant)

**Other relevant information:** [detail any other information that is relevant to the matter]

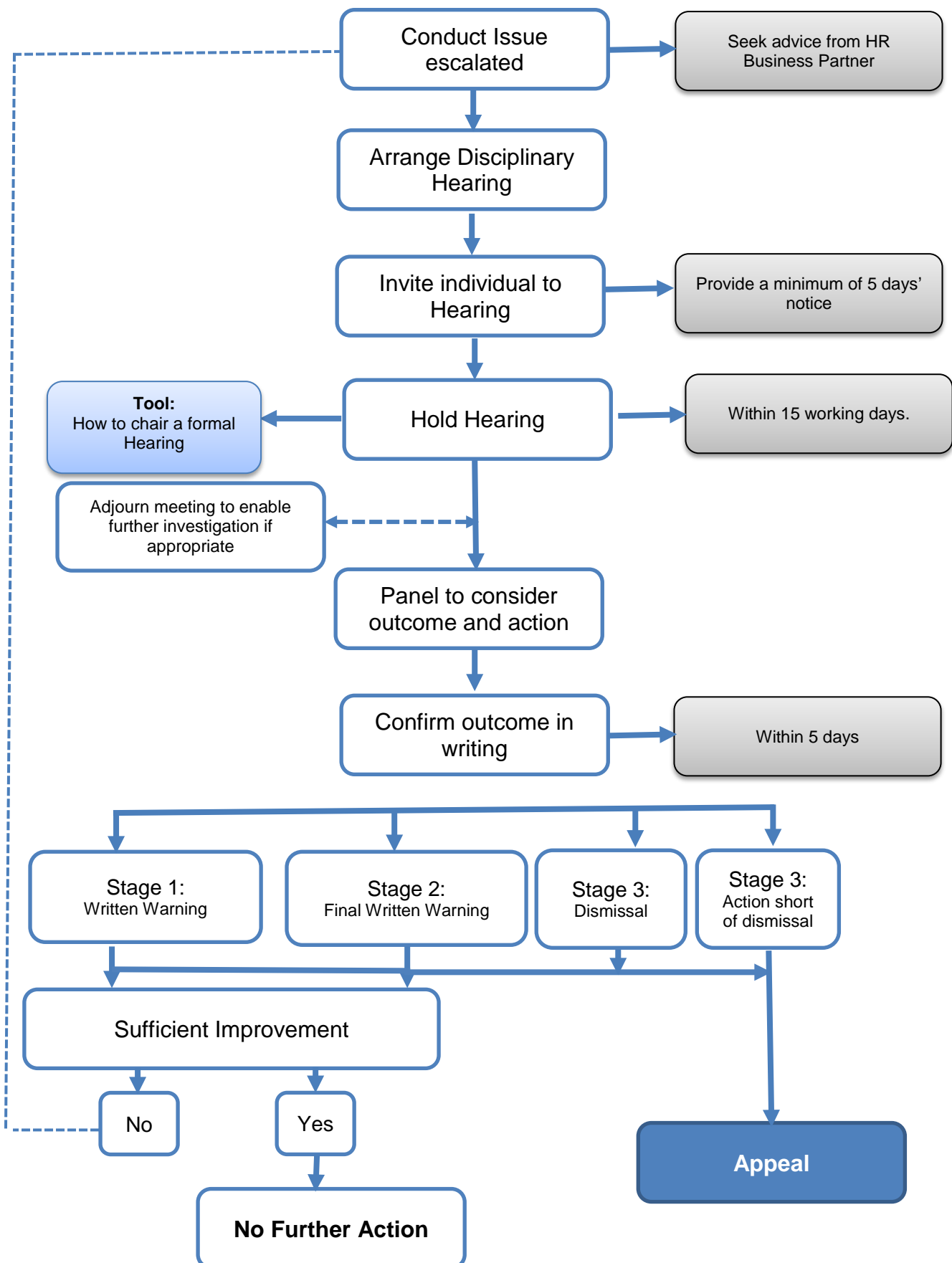
Investigating Manager Signature: \_\_\_\_\_

Date: \_\_\_\_\_

Date forwarded to Disciplining Manager: \_\_\_\_\_

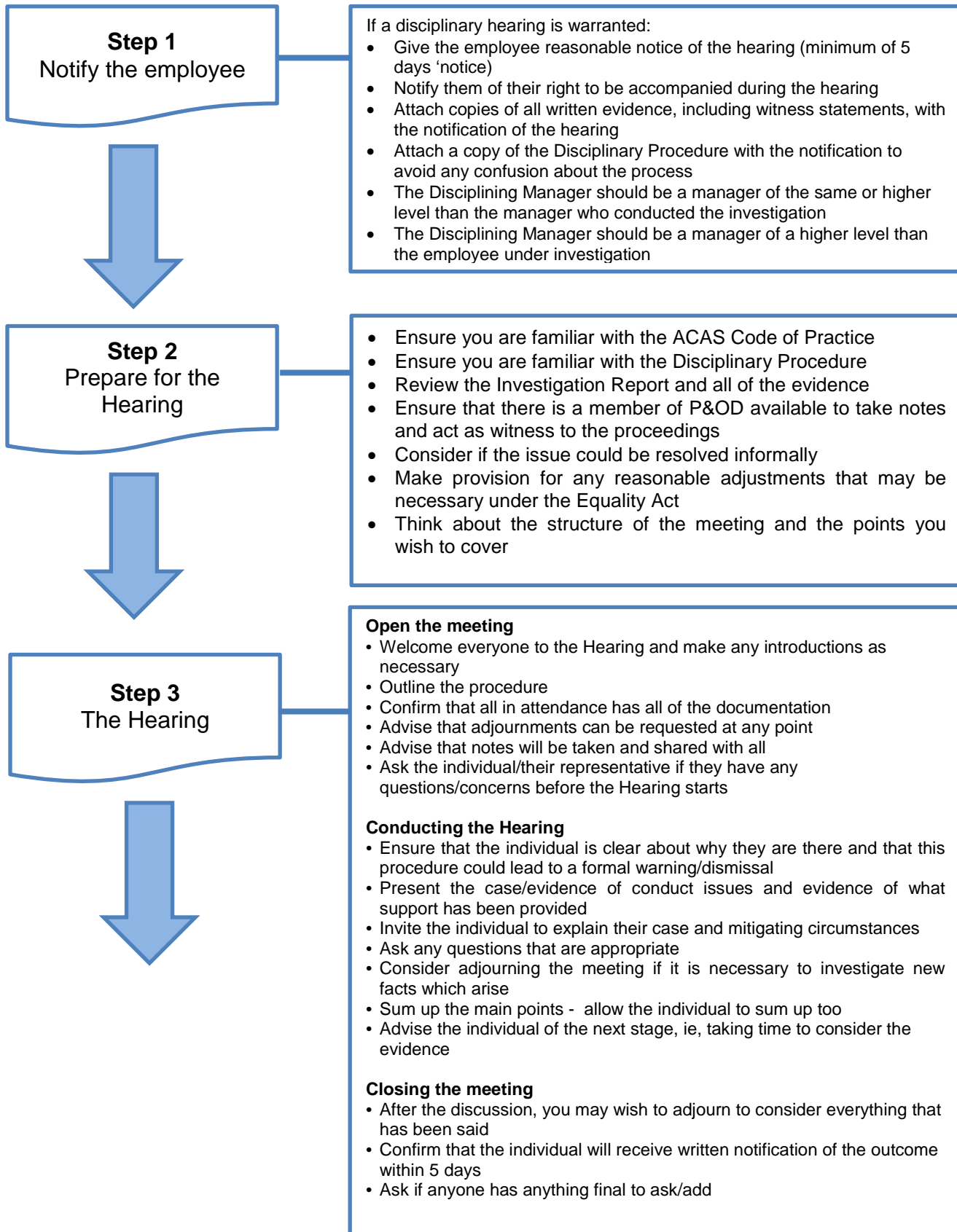
# Formal Disciplinary Procedure

## Formal Procedure: Flowchart

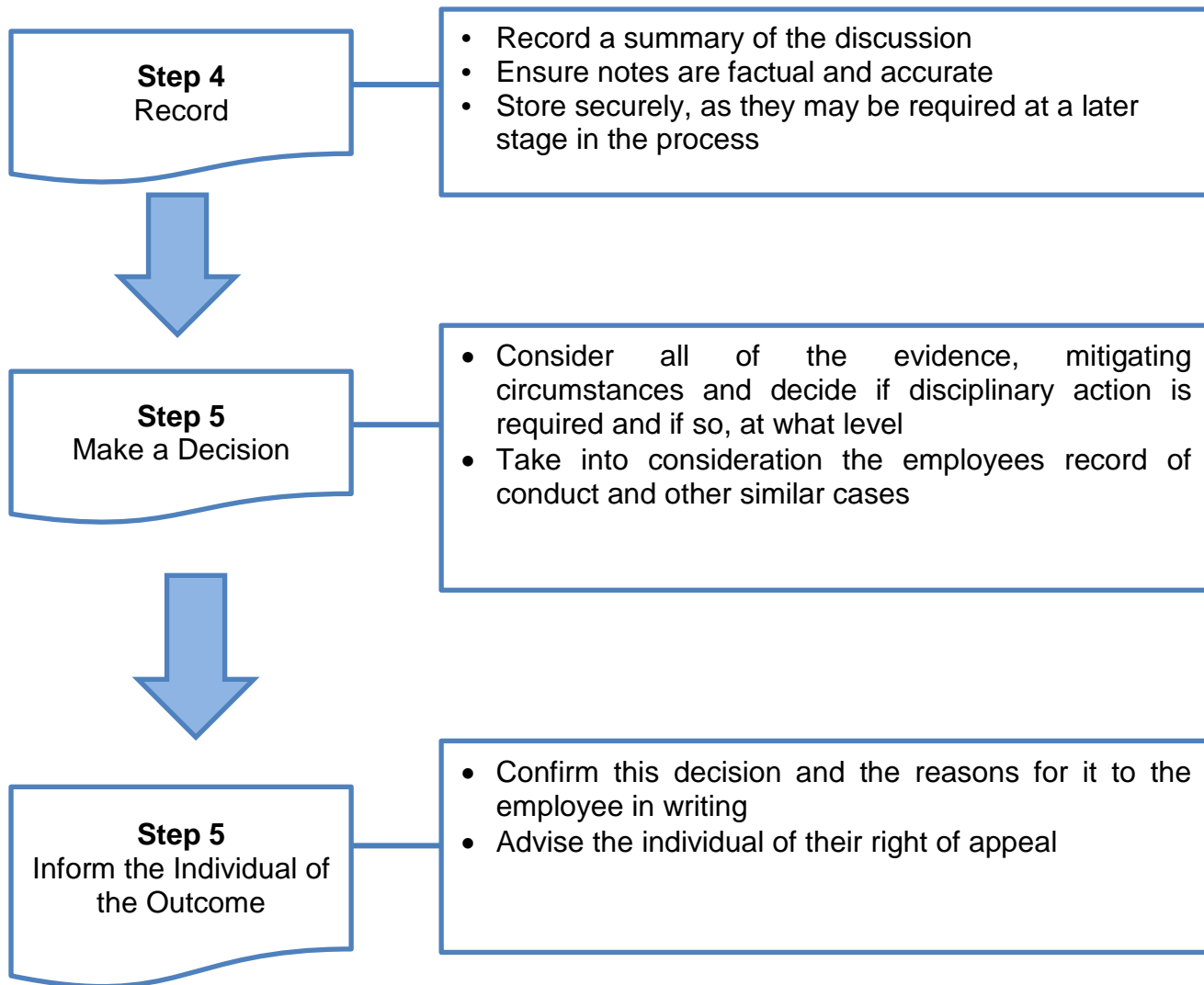


# Tool: How to... Chair a Formal Hearing

Here is a summary of the step by step guide that you should follow to make sure there is a fair disciplinary hearing







# Checklist for Planning & Conducting a Formal Disciplinary Hearing

PREPARATION	TICK
<p>Review the Investigation Report:</p> <ul style="list-style-type: none"> <li>Is a disciplinary hearing required – if yes follow checklist below, if not, send a letter to individual advising no further action.</li> </ul>	
Arrange a date for the disciplinary hearing to take place	
Arrange for a note taker to be present at the hearing	
<p>Send the invite letter to the employee enclosing all associated paperwork</p> <ul style="list-style-type: none"> <li><b>At least 5 days' notice must be given</b></li> </ul>	
Consider the individual– previous record, history, length of service	
Review all the evidence and ensure that you have all the facts to hand to discuss with the individual	
Prepare key questions and information to be gained	
<p>Ensure privacy and no interruptions</p> <ul style="list-style-type: none"> <li>Book an appropriate room and venue</li> <li>Allow adequate time for the meeting</li> </ul>	
<p><i>During the meeting record the following points:</i></p> <ul style="list-style-type: none"> <li>Date, time and location of the hearing</li> <li>Names and job titles of those present at the hearing</li> <li>A summary of the main discussion points. A verbatim account of what's discussed isn't necessary. Concentrate on the facts presented to prove, or disprove, the allegations and, in particular, the responses given by the individual.</li> <li>If there are adjournments during the hearing note the times the hearing stopped and reconvened</li> </ul>	
INTRODUCTION TO THE HEARING	
When you are ready to start, arrange for the parties to enter the room and take their designated seats. Give them a few minutes to get comfy and sort out their paperwork.	
Ensure that the individual received the letter of invite to the meeting.	
Introduce all those present and explain their part in the proceedings.	
If the individual is unaccompanied check that this is intentional and make a note to that effect. If they do want to be accompanied make the necessary arrangements before starting the hearing, even if this means calling an adjournment.	
If the individual is not in attendance check that the circumstances are in order for the hearing to proceed in their absence, i.e. that the individual has been notified that the hearing will proceed in their absence and/or the individual's has confirmed non-attendance.	
Outline the format the hearing will take and explain that:	

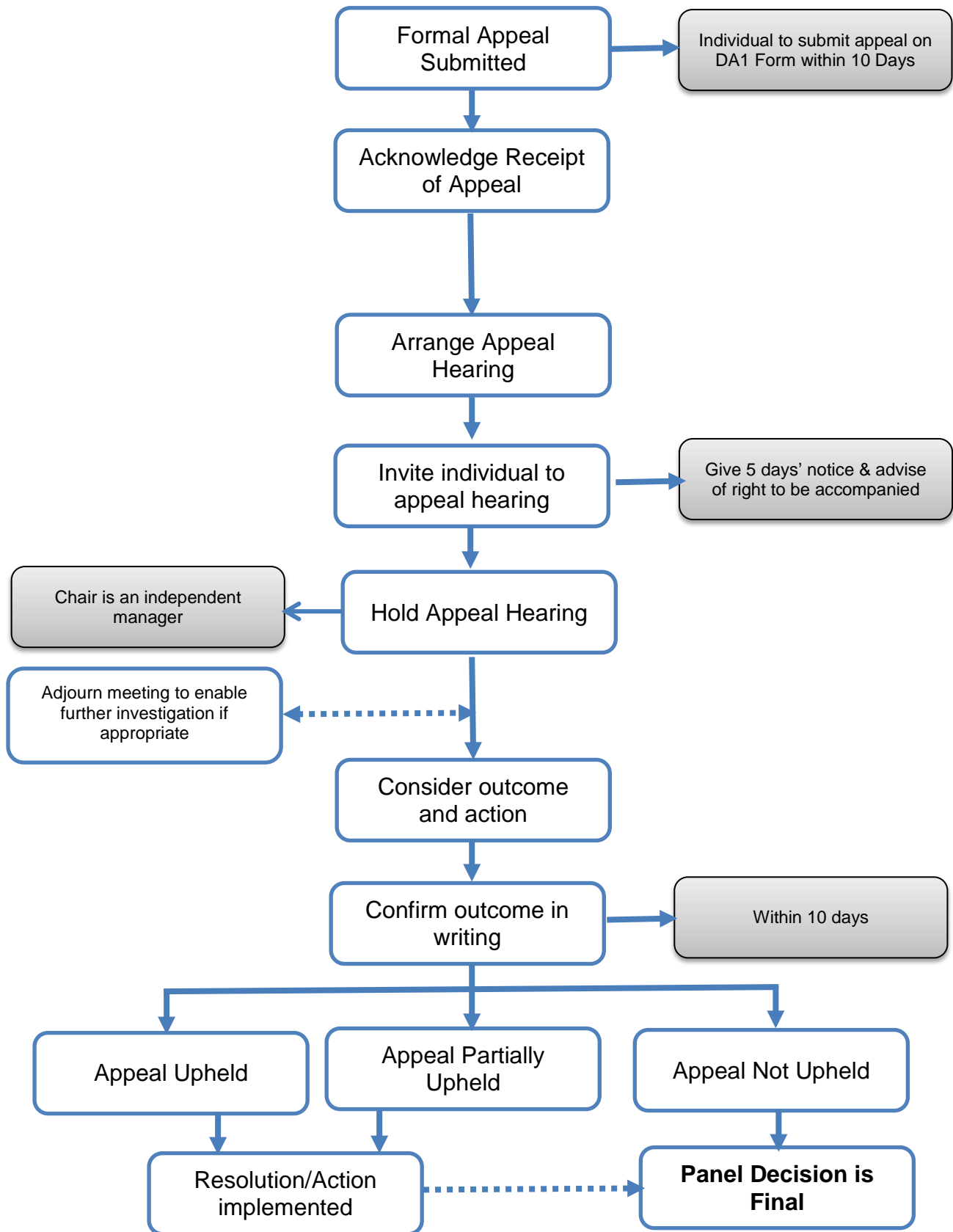
<ul style="list-style-type: none"> <li>You will review the facts and evidence to be certain that the individual's position is totally understood and you will allow the individual to state their case, challenge evidence and put forward any mitigating circumstances</li> <li>Both parties can adjourn the meeting at any time should they require a break</li> <li>If you have all of the information required to make a decision on the day there will be a final adjournment whereby all the facts, evidence and responses will be reviewed and a decision verbally communicated</li> </ul>	
Ask the individual if they have any initial procedural questions and if so answer those.	
Deal with any preliminary issues e.g. establishing whether there are any witnesses to call and if so what arrangements have been made for that to happen and finally decide upon the usage of any documentation submitted late by either party.	
Confirm that the procedure to be followed will be in accordance with the formal disciplinary procedure.	
<b>THE DISCIPLINING MANAGER</b>	
<p>The Disciplining Manager presents the allegation(s) and all the supporting evidence in detail</p> <ul style="list-style-type: none"> <li>If there are multiple allegations agree a numbering system and go through each allegation in turn, then when questioning is complete move on to the next allegation.</li> <li>For each allegation ask the individual as many questions as necessary to ensure that everyone in the hearing understands their position. Probe in particular for any mitigating circumstances.</li> <li>Use a balance of open questions so the individual can state their case, as well as specific questions, to establish the facts. It is dangerous to use leading, or closed, questions because the individual could claim that they were unduly influenced or not give the chance to speak. It is important to summarise and check understanding at regular intervals.</li> <li>For each allegation allow the individual and/or their representative to put questions to the Disciplining Manager.</li> </ul>	
<p>The Chair then calls in and questions any company witnesses, one at a time. Witnesses should be asked to contribute no more than an objective account of what they saw or experienced</p> <ul style="list-style-type: none"> <li>The employee and/or their representative put questions to the company witnesses.</li> <li>Panel members question the company witnesses if they wish</li> </ul> <p>The company witnesses withdraw from the hearing after their questioning has been completed</p>	
<b>THE INDIVIDUAL</b>	
<p>The Disciplining Manager will then invite the individual or their representative to make an opening statement in presentation of their case.</p> <p>Even if misconduct is readily admitted by the individual, it does not close the matter. The Disciplining Manager must find out the reasons behind the offence and consider any mitigating circumstances.</p>	
The Disciplining Manager put questions to the individual and their representative. It's important to <b>let them speak</b> , do not interrupt unnecessarily or contradict what your employee is saying.	
<b>CONCLUDING THE HEARING</b>	<b>TICK</b>
Summarise the key points of the employee's case so there is no misunderstanding on the basis of upon which a decision will be made	
The individual or their representative summarises their position.	
The Disciplining Manager asks the individual if there is anything more that they would like to add or anything else that they wish to be taken into consideration	

<p>The Disciplining Manager informs the individual that the meeting will now adjourn so the a decision can be made:</p> <ul style="list-style-type: none"> <li>• In some cases, for example where proceedings finish late in the day, it may be considered appropriate that parties are asked to reconvene at a later date, for instance the following day, for the decision to be announced.</li> <li>• <b><i>If new evidence comes to light which needs to be further investigated, adjourn the hearing. Conduct the further investigations and reconvene the hearing and go through the process again.</i></b></li> </ul>	
<b>THE DECISION</b>	
<p><b><i>Take as much time is need to enable you to fully consider the whole case and the meeting before making a decision.</i></b></p> <p><b><i>Don't rush your decision. Allow yourself time to collect your thoughts. Deliberate the facts with anyone else from the management side if they attended, including the HR Business Partner, if one attended the meeting. The Disciplining Manager must make the final decision, the HR Business Partner acts only in an advisory capacity.</i></b></p>	
<p>Evaluate all the evidence and come to a clear view about the facts</p> <ul style="list-style-type: none"> <li>• It may be necessary to recall the employee or a witness in order to clarify points of uncertainty on the evidence given.</li> </ul>	
<p>Consider penalties applied in previous cases</p>	
<p>Where the situation has been disputed, establish if you genuinely believe that the conduct has been sufficiently below standard</p> <ul style="list-style-type: none"> <li>• Is that believe based on reasonable grounds and have you conducted the most thorough investigation possible?</li> </ul>	
<p>Decide if the individual was entirely at fault or was it outside of their control, establish the true seriousness of the offence and consider any live warnings on their file.</p>	
<p>Before making the final decision the Disciplining Manager should ask themselves:</p> <ol style="list-style-type: none"> <li>1. Has there been as much investigation as is reasonable in the circumstances?</li> <li>2. Have the requirements of the disciplinary procedure been properly complied with up to this point?</li> <li>3. Has sufficient regard been paid to any explanation put forward by or on behalf of the individual?</li> <li>4. Is there a genuine belief that the individual has committed the misconduct alleged?</li> <li>5. Are there reasonable grounds on which to sustain that belief on the balance of probabilities (i.e. is it more likely than less that the employee did what is alleged)?</li> <li>6. Is the misconduct sufficiently serious to justify the disciplinary action being contemplated?</li> <li>7. Has regard been given to any mitigating circumstances put forward by or on behalf of the individual?</li> <li>8. Has regard been given to the individual's previous disciplinary record and general service?</li> <li>9. Have there been similar cases in the past? If so what was the outcome of those cases?</li> <li>10. Is the decision within the band of reasonable responses of a reasonable employer in the circumstances?</li> </ol> <p>The effect of answering yes to questions 1 to 5 is to reach the finding that the allegations have been found.</p> <p>Questions 6 to 10 help to determine whether the proposed outcome is reasonable.</p>	
<p>Summarise your findings and conclusion and decide on the appropriate penalty(ies) and justification</p>	

<p>for this – prepare this in writing to communicate to the individual</p> <p>Key points to mention are:</p> <ul style="list-style-type: none"> <li>• Clearly describe the decision and penalty, if any</li> <li>• Explain the right of appeal and how it operates</li> <li>• In the case of a warning, explain what improvement is expected, how long the warning will last and what the consequences of failure to improve will be</li> <li>• Confirm that written confirmation of the decision along with minutes from the meeting will follow in due course.</li> </ul>	
<b>CONFIRMING THE OUTCOME</b>	
It may be appropriate to reconvene the meeting and ask the individual if there is anything that they would like to add	
The Disciplining Manager reads out the decision and related action points.	
If the meeting has led to a clear indication that there is no disciplinary case to answer, this should be summarised, acknowledged, recorded and all participants thanked.	
Seek to get the individuals approval of the notes and ask them to sign and date the hearing notes before leaving the meeting.	
The Disciplining Manager brings the hearing to a prompt close, without further discussion or debate.	
<p>Prepare outcome letter and post to individual.</p> <ul style="list-style-type: none"> <li>• You can also send a copy of the notes</li> </ul>	
Retain all original notes and paperwork on the individuals personal file	

# Disciplinary Appeal Procedure

## Formal Disciplinary Appeal: Procedure Flowchart



# Appeal Procedure

In accordance with good practice and the ACAS Code of Practice, an individual has the right of appeal against the outcome of the disciplinary action.

## **The ACAS Code of Practice states:**

- Where an employee feels that the disciplinary action taken against them is wrong or unjust they should appeal against the decision.
- Appeals should be heard without unreasonable delay at an agreed time and place
- Employees should let employers know the grounds of their appeal in writing.
- The appeal should be dealt with impartially and wherever possible by a manager who has not previously been involved in the case.
- Workers have a statutory right to be accompanied at appeal hearings.
- Employees should be informed in writing of the results of the appeal hearing as soon as possible.

The appeal must be submitted in writing using the Notification of Appeal against Disciplinary Action (DA1) within 10 days of receiving the notification letter, stating the grounds of appeal.

## **On Receipt of an Appeal**

If an individual chooses to appeal against the outcome of their Disciplinary Hearing, it is good practice to acknowledge receipt of the appeal. The Department of People & OD will make arrangements for the appeal to be acknowledged who will also identify an appropriate manager to hear the Appeal. This will be someone that has had no prior involvement of the case.

## **Notification of Appeal Hearing**

Once the manager/committee for the Appeal has been confirmed, a representative from the Department of People & OD will write to the individual confirming the arrangements for the appeal and advising them of their right to be accompanied to the Hearing.

We advise individuals that every effort should be made to attend the Hearing, however, they should notify the Head of HR Services if they are unable to attend due to circumstances out with their control as soon as possible.

The appeal hearing will be held as soon as practically possible and we aim for no later than 10 working days after receipt. If, due to the complexity of the case this timescale will not be met, the Head of HR Services will write to the individual with a defined timescale.

## **The Appeal Hearing**

The appeal hearing is not a re-hearing, it's purpose is to review the original decision in light of the individual's specific grounds of appeal (e.g. where the individual feels that there has been undue consideration to the evidence/mitigating circumstances). A re-hearing would only be appropriate in circumstances such as procedural flaw.

# How to... Conduct an Appeal Hearing

The following is for guidance purposes, the Chair of the Appeal Panel will determine the most effective way to conduct the hearing.

<h2>Preparation</h2>	<ul style="list-style-type: none"> <li>• Ensure that the individual has been invited to the appeal hearing and has been provided with a copy of all the information</li> <li>• Consider if any reasonable adjustments are required for the individual or their representative</li> <li>• Ensure the location of the appeal is suitable, private and where there will be no distractions</li> <li>• Ensure that a member of the People &amp; OD team will be in attendance to take notes and to provide advice/guidance on procedures and employment law</li> <li>• Ensure that you have read all of the relevant documentation</li> <li>• Prepare any questions in advance</li> </ul>
<h2>Conducting the Hearing</h2>	<ul style="list-style-type: none"> <li>• Introduce all parties that are present and explain their role</li> <li>• Explain the purpose of the Appeal (i.e. to address the specific grounds of appeal)</li> <li>• Explain that the appeal will be conducted in a fair and impartial way and what the possible outcomes could be</li> <li>• Invite the individual to state their specific grounds of appeal, why they consider the original decision to be incorrect</li> <li>• Ask any relevant questions</li> <li>• Invite the individual to ask any questions</li> <li>• If new evidence or information emerges, it may be appropriate to adjourn to allow for further investigation – if this is the case, you should reconvene within a reasonable time</li> <li>• At the end of hearing, you should sum up the facts</li> <li>• Explain that a decision will be made in full following full consideration of the facts and evidence presented. This will be communicated in writing to the individual no later than 10 days following the Hearing</li> <li>• Explain that the decision is final, no further right of appeal</li> </ul>
<h2>After the Hearing</h2>	<ul style="list-style-type: none"> <li>• The manager/committee should carefully consider all of the evidence and reach a decision</li> <li>• This decision should then be communicated in writing within 10 days of the Hearing</li> <li>• If the appeal is upheld, the any actions identified should be communicated to the individual</li> </ul>
<h2>Record Keeping</h2>	<ul style="list-style-type: none"> <li>• As well as a record of any informal resolution and disciplinary hearings, you should ensure that you retain all documentation, evidence and correspondence relating to the appeal</li> <li>• Records should be kept confidentially and in accordance with data protection principles</li> </ul>



# Frequently Asked Questions

## **Q1. What should an employer do if an employee does not agree the minutes or notes of a disciplinary or grievance meeting and asks for them to be amended?**

- A1. Following a disciplinary or grievance meeting, the employer should provide a copy of the minutes or notes taken of the meeting to the employee concerned. If the employee does not agree that the notes are an accurate representation of what was said, the employer should ask him or her to provide a corrected version. If the employer agrees that the employee's version is accurate, the amendments can be agreed. If it does not agree that the employee's version is accurate, it should keep both versions on record. Should the meeting result in a dispute, for example a tribunal claim, both versions of the notes can be referred to, with acknowledgment that what was said at the meeting is not agreed.

## **Q2. Can an employee work elsewhere while on sickness absence?**

- A2. The fact that an employee is working elsewhere while on sickness absence could be evidence that the sickness absence is not genuine, but this is not necessarily the case and would depend on both the nature of work and the reason for the employee's sickness absence.

The employee's illness or condition may mean that he or she is not able to perform the work that he or she is employed by the employer to carry out, but that he or she could perform a different type of work. In *Perry v Imperial College Healthcare NHS Trust EAT/0473/10*, the Employment Appeal Tribunal held that there is nothing to stop an employee claiming sick pay while medically unfit for one job, and carrying out work for another employer in a job that they are fit to do.

The employer should investigate the circumstances fully before deciding whether or not to begin disciplinary proceedings.

## **Q3. Must an employer disclose notes and witness statements produced during a grievance or disciplinary procedure if an employee requests them?**

- A3. Employees have the right under the Data Protection Act 1998 to request access to information about them that is held on file, whether manually or on computer. For example, an employee who has raised a grievance and is not satisfied with the outcome may request copies of the written evidence on which the decision was made, including statements obtained from witnesses, or an employee about whom a grievance has been made may request evidence relating to the complaint. The employer can refuse to disclose the document in question if its disclosure would also reveal information about a third party who can be identified from the information, unless the third party has consented to the disclosure or it is reasonable in all the circumstances to comply with the request without his or her consent.

The employer should not automatically refuse to disclose a document if a third party, for example a colleague who has given a witness statement, does not consent to it being released. The employer should consider taking steps to anonymise the document before disclosing it. This might involve:

- blanking out the witness's name and any other information from which he or she could be identified;
- editing the statement to conceal the identity of the witness; or
- where there are several witness statements from different employees, preparing a summary of the information contained in the statements.

Ultimately, the employer should take a reasoned decision about whether or not it would be reasonable in the circumstances to disclose a witness statement or other document. This will involve balancing the witness's right to privacy against the employee's right to know what information is held about him or her, and its source.

Where a disciplinary investigation results in the decision to proceed to a disciplinary hearing, the employer should provide the employee with copies of any witness statements and other written evidence that will be referred to in the hearing. The employee has the right to know the case against him or her and to be able to challenge it, so evidence should be anonymised or withheld only where there is a strong reason for doing so.

The ACAS code of practice on disciplinary and grievance procedures, which is taken into account in relevant tribunal proceedings, states that it would normally be appropriate to provide the employee with copies of any written evidence with the notification of the disciplinary hearing. The non-statutory that accompanies the code states that the employer should give copies of any meeting records to the employee, but states that protecting a witness is an example of a circumstance in which withholding information may be appropriate.

#### **Q4. Can expired warnings be taken into account when deciding an appropriate penalty during subsequent disciplinary proceedings?**

A4. There are limited circumstances where it is possible to take expired warnings into account when deciding on the appropriate penalty in subsequent disciplinary proceedings. In *Airbus UK Ltd v Webb [2008] IRLR 309 CA* the Court of Appeal overturned the employment tribunal and Employment Appeal Tribunal (EAT) finding that a dismissal as a result of an expired warning must be unfair. The EAT had followed the approach of the Scottish Court of Session in *Diosynth Ltd v Thomson [2006] IRLR 284 CS* that an employer should not take into account an expired written warning when deciding the appropriate sanction for a subsequent disciplinary offence. In that case, the decision to dismiss the employee was found to be unfair because it was clear that the employee would not have been dismissed if the previous expired written warning had not been taken into account. However, in *Airbus* the employer had dismissed the employee primarily because of his misconduct, not because there was an expired warning. The extent to which the expired warning is taken into account by the employer will be a determining factor in assessing fairness. The Court of Appeal did specify that expired warnings should not be relied on as a matter of course.

Employers should also take into account data protection issues when dealing with expired disciplinary warnings. The Information Commissioner's *Employment practices data protection code* suggests that, where disciplinary procedures provide for warnings to expire, it should be made clear if the warning is to be removed entirely from the employee's personnel record or if it is simply to be disregarded in determining a future disciplinary penalty. If the former, the employer should put arrangements in place to ensure that deletion actually does take place when the warning expires.

**Q5. For how long should an employee be suspended while a disciplinary investigation into alleged misconduct is carried out?**

A5. The purpose of suspension is to allow the employer to carry out a reasonable investigation. It will not always be necessary for the employer to suspend the employee while it carries out an investigation. If a period of suspension is necessary, it should be as short as possible.

The employer should ensure that the investigation is conducted within a reasonable time, and should keep the employee updated as to how long the suspension is likely to last. If there is a delay, the employer should inform the employee and provide him or her with an explanation.

The employer should review the suspension on a regular basis to determine whether or not it is still necessary. In *Camden and Islington Mental Health and Social Care Trust v Atkinson EAT/0058/07*, the Employment Appeal Tribunal held that continuing an unnecessary suspension constituted a breach of the implied term of trust and confidence between the employer and employee and was grounds for constructive dismissal.

**Q6. Can an employer anonymise witness statements obtained during a grievance or disciplinary procedure?**

A6. Yes, an employer can anonymise witness statements obtained during a grievance or disciplinary procedure. However, while there is no legal requirement to disclose the identity of witnesses, failure to do so undermines the employee's right to challenge properly the evidence. Employers have an obligation to undertake a fair disciplinary procedure, which will include attempting to obtain reliable, corroborated evidence. The employer should explore the witness's reasons for wishing to remain anonymous and decide whether or not it should disregard such evidence or consider it as holding less weight than statements from named witnesses.

If anonymous evidence is to be used, the employer should seek to corroborate the evidence and to establish at least one identifiable witness, even if this person is not a direct witness to events, such as a manager who has been provided with information from witnesses. It should consider allowing the employee to formulate written questions to be put to the anonymous witness through the employer. The witness's answers can then be examined during the disciplinary process.

The employer should make the witness aware that his or her anonymity cannot be guaranteed. If the matter results in legal proceedings, he or she may be subject to a witness order requiring his or her attendance at the tribunal to provide evidence in the proceedings.

**Q7. Is an employer obliged to impose the same disciplinary action where two employees break the same rule?**

A7. No, there is no obligation on an employer to impose the same disciplinary action where two employees break the same rule. Each case should be decided on its own merits, and any sanction applied should take into account the individual employee's circumstances. For example, the employer should consider the employee's disciplinary record, his or her level of seniority and experience, and any mitigating circumstances. However, the employer

should also consider whether or not it is acting consistently, and should impose different sanctions only where it is reasonable to do so.

**Q8. When an employee who is subject to disciplinary proceedings raises a grievance, must the employer put the disciplinary proceedings on hold?**

A8. There is no legal requirement for an employer to postpone disciplinary (or capability) proceedings when the employee who is subject to those proceedings raises a grievance.

In many circumstances it will be appropriate for the employer to deal with the grievance as part of the disciplinary proceedings, particularly where the two are related (for example, if the employee is complaining about how the employer is handling the disciplinary procedure, or has a grievance that amounts to a defence to the disciplinary allegations).

The employer should allow the employee to set out the grounds for his or her grievance at a meeting during the disciplinary process, and should investigate and address the grievance concurrently with the disciplinary issue. If necessary, the employer can continue the grievance proceedings after the disciplinary procedure has been concluded, if there are issues that remain outstanding.

If the grievance is unrelated to the disciplinary, it may be more appropriate for the employer to deal with it separately. There will usually be no need for the employer to postpone the disciplinary procedure, unless the substance of the employee's grievance is as serious and credible as to make it unreasonable to continue with the disciplinary process.