

HELP! I'm facing disciplinary action

Guidance for UNISON West Midlands Community members

UNISON members working in the Community & Voluntary Sector (CVS) may face greater scrutiny at work; which on occasions may lead to disciplinary action.

Disciplinary action in this sector is commonplace, similar to the NHS and Education sector for reasons around safeguarding vulnerable adults and children. Your employer may be required to conduct investigations and disciplinary action to comply with statutory bodies such as CQC, Local Authority Safeguarding or Disclosure & Barring Services.

What is a "Disciplinary"?

This is where it is alleged that you may have breached the employer's rules/policies/procedures. The main reasons for disciplinary hearings are:

- **Conduct** (this means something you've done or not done) It could be a relatively minor matter which may not require a formal action to be taken, or it could be much more serious, up to and including "serious gross misconduct" If you are accused of "gross misconduct" you may be suspended and participate in an investigation or fact find meeting (see Suspension/Investigation guidance)
- **Capability** (this means your employer thinks you are not doing your job properly)
- **Long term sick leave** (Linked to Sickness absence and monitoring and can be linked to Capability)

If you are accused of a disciplinary offence, you will be required to attend a disciplinary meeting. If someone else is accused of a disciplinary offence you may be required to attend as a witness. If your employer requests your attendance as a witness to a disciplinary hearing; contact **UNISON DIRECT on 0800 085 857** for advice.

In either case; **DO NOT confirm or attend any such meetings without speaking to a UNISON rep/Branch Caseworker and do NOT sign any statements without checking with your rep/Branch Caseworker first.**

UNISON CASEFORM

UNISON DIRECT or the Branch will post or email you a UNISON CASEFORM. It is a condition of your membership that you complete the caseform as soon as possible to ensure you are represented and supported by UNISON. Failure to cooperate can lead to UNISON withdrawing support. Complete all relevant sections and use the template



West Midlands Community Branch

below to guide you. Guidance on how to complete the caseform will be included with the caseform. **If you require assistance or have specific needs call UNISON Direct for advice.**

The caseform is a legal and binding contract, setting out the understanding that UNISON is your sole representative. You should bring your CASEFORM with you at the disciplinary meeting.

Disciplinary Policy/Procedures

You may have already received this at any investigation or suspension stage. Contact your employer and request a copy of your disciplinary policy and/or procedure at the earliest opportunity. Read and make a note of any processes that may have not been followed; such as suspension without pay, informal process not followed etc.

Request a copy of your employment contract as some policies are "contractual" and provide more than statutory rights. Check your employment contract for any references to "contractual policies". Ask your employer to provide copies of any contractual policies which may apply to you. This is particularly important, as UNISON members working in the Community and Voluntary Sector (CVS) may be TUPE transferred to CVS employers from NHS or Local Government. These policies may provide you with additional timescales, guidance and rights.

If your employer fails to follow a contractually binding disciplinary policy you may be able to claim breach of contract.

Keep a note of dates when you receive any letters/communication from your employer. Use the template below and record all communication.

Disciplinary invite letter and management case

Your employer may refer to disciplinary action as a meeting or hearing and write to you inviting you to attend. Check your disciplinary policy for any timescales from the date of the letter to the date of meeting.

Contact UNISON Direct as soon as you receive a letter and DO NOT AGREE OR CONFIRM ATTENDANCE FOR MEETINGS BEFORE CHECKING IF REPRESENTATION IS AVAILABLE.

As a minimum, your employer should write to you and provide the following:

- Date, time, venue for the disciplinary meeting/hearing
- Notification of the right to be accompanied to the hearing
- Details of the alleged misconduct/poor performance, to enable the employee to prepare for the hearing
- Copies of any written statements and other written evidence



West Midlands Community Branch

- Any policies or procedures setting out conduct, performance, capability.

If any of the above information is missing you have a right to postpone the process until you receive full documentation. (See template letter)

Regardless of what your contract says- the law, under Section 10 of the Employment Relations Act 1999 entitles employees to be accompanied at a disciplinary meeting by a Trade Union representative **or** work colleague.

Right to be accompanied

The disciplinary letter should always say you have a right to be accompanied under the ACAS CODE OF PRACTICE by one of the following:

- A work colleague- usually a friend who works with you
- A trade union representative – either a UNISON rep or workplace contact who is accredited by UNISON.
- An official employed by a trade union-Branch employed Caseworkers/Case Referral Unit - Regional Organiser.

The person who attends with you is called a “*chosen companion*”. You do not have the right to bring anyone else to the meeting unless you require an interpreter or advocate for disability issues. Remember to inform UNISON Direct if you require support for interpreting or advocacy.

The “*companion*” may address the hearing and confer with the employee/worker during the hearing. The “*companion*” may present and sum up the employee/workers case and may respond on their behalf to any view expressed at the meeting, but cannot answer any questions on behalf of the employee/worker.

You may be entitled to compensation for up to 2 weeks’ pay (currently £489.00 max per week) contact UNISON Direct immediately for advice if your employer refuses you to be accompanied.

What should you do if your employer refuses to change the date?

- Ring **UNISON DIRECT on 0800 085 7857**, who will inform your rep/Branch caseworker to contact you. Your Rep/Branch caseworker will contact your employer directly or provide you with the details of their availability for the disciplinary meeting. Pass on details of your employer to your Rep/Branch Caseworker when they contact you. Keep disciplinary details nearby when you call.
PLEASE NOTE – ONLY your assigned Rep/Branch Caseworker can provide dates and times of availability.



West Midlands Community Branch

- Inform your employer that you will be accompanied by a UNISON rep/Branch Caseworker and pass on their details. Inform your employer that you have a legal right to be accompanied by your "chosen companion" and **The ACAS CODE OF PRACTICE entitles you to change the original date to enable you to be accompanied by a Trade Union Rep as long as the date is within 5' working days' of the original date.**

Use the template email/letter wording to postpone within 5 working days or/requesting additional information:

Date

Dear *(insert name of HR or disciplinary Chair- details on invite letter)*

Re: Disciplinary meeting –Invite letter received xx dated xx

(Wording to postpone the meeting)

I am writing to inform you that I cannot attend the disciplinary hearing on *(insert date/time/venue)* because my UNISON rep is unavailable. I understand that I am entitled to a postponement to any reasonable timescale within 5 working days of the original date if my representative is unavailable.

I would like to be accompanied at the disciplinary meeting by *(insert name and contact details of Rep/Branch Caseworker)* I agree to you contacting them directly to rearrange the date and time for the meeting.

I will require a private room for an hour before the start of the disciplinary meeting to prepare my case with my UNISON rep.

(Request for additional information)

I regret that I will be unable to attend the disciplinary hearing on *(insert date/time/venue)* because your letter dated *(insert date)* does not clarify the matters/allegations I have been accused of *(insert information/witness requested)*

Please can you supply me with this information, as I need this to fully prepare my answers to your concerns? I am prepared to attend a new date for the disciplinary to be mutually arranged after you supply me with the requested information.

I agree and consent to this information relating to my disciplinary to be shared with my rep/branch caseworker who will attend with me. *(Insert details of Rep/Branch Caseworker)* Thank you.

Yours sincerely - NAME CC *(name of rep/caseworker)*

ACAS Code of Practice

Employment Tribunals take into account, guidance set out in the ACAS Code of Practice; the Code recommends the following stages of a fair disciplinary hearing:

- Investigation - *See guidance on Investigation/ Fact Finding.*
- Suspension – *See guidance on Suspensions- **only** if necessary and kept as brief as possible where practical.*
- Disciplinary
- Appeal

If your employer does not follow the ACAS Code they may be in breach for unreasonably failing the following:

- Not warning the employer of the possible consequences of the disciplinary meeting – It should not come as a surprise if dismissal is a possible outcome of the disciplinary meeting.
- Not setting out the nature of the allegations clearly to the employee.
- Not providing the employee the relevant evidence of the case.
- Not providing a system of warnings where appropriate.
- Not allowing the employee to be accompanied at a disciplinary hearing.
- Relying on evidence from one particular source with no corroborative evidence.
- The absence of an appeal stage.
- Failure to keep clear record of the disciplinary process.
- Delays in dealing with disciplinary issues.
- Having the same person deal with the whole of the disciplinary process.

You should **NOT** be subjected to any detriment because you have exercised your right to be accompanied by a Trade Union Rep or Branch Caseworker.

Once you have been contacted by your Rep/Branch caseworker you should prepare for the meeting in the following way:

Preparing for a Disciplinary hearing/meeting

- If you want someone to attend the meeting with you, contact UNISON Direct and follow the guidance above. A Rep/Caseworker to be assigned to you.
- Use a personal email account to communicate with your UNISON Rep/Caseworker and not your employers email account.

- Check your letter and management case includes **all** information about the allegations. (*This can vary case to case from a single letter to a lever arch file size*) inform your employer/HR and Rep/Branch Caseworker immediately if anything is missing.
- Use the template below to make notes- start with the date/s of the allegations and when you joined UNISON.
- Make a note / statement to each allegation referred to in the letter/management case. Do you agree or disagree?
- Do you have any evidence to support your case? Or do you want to request evidence? Include this in the template and discuss this with your Rep/Branch Caseworker immediately.
- Do you want to call any witnesses? Your employer is not allowed to victimise anyone for attending a disciplinary hearing as a witness.
- Contact your employer and inform them you want to invite witnesses and request evidence.

The Disciplinary Hearing/Meeting

Your Rep/Branch Caseworker will meet with you an hour (*dependent on case/ discretion of UNISON Branch*) before your disciplinary hearing starts to prepare for the disciplinary meeting. Your Rep/Branch caseworker will discuss and email you before the disciplinary meeting to prepare.

They may meet you in a public place or at your place of work (*to be arranged with the employer*) before the disciplinary meeting commences. UNISON reps/Caseworkers will **not** meet at your home, unless the meeting (*usually sickness related disciplinary*) has been arranged by your employer and you agree for the disciplinary meeting to be held at your home.

Please bring **all** the letters, communication (in date order) management case and relevant information with you.

Be honest with your Rep/Branch caseworker as they can only help you if they have full facts of your case. Your Rep/Branch Caseworker will discuss:

- The disciplinary procedure
- The role of panel members (Chair, Investigation officer, HR)
- What they can and can't say at the meeting.
- Alternatives to attending in person- submitting written statements.
- Explanation/Statement to allegations
- Mitigation
- Potential outcomes
- Appeal process

Inform your Rep/Branch Caseworker of any updates such as new job, annual leave, holidays personal circumstances before the meeting starts and remember to switch your mobile to vibrate or silent mode.

The length of disciplinary meetings can vary considerably; ranging from 1 to 2 hours to over 2/3 days for more complex cases. You may want to consider bringing any medication you may need, light refreshments and bottled water. Inform your Rep/Branch Caseworker if you have any specific requirements.

During the hearing, you have a right to request adjournments to discuss any matters with your Rep/ Branch Caseworker. You should be prepared to answer the questions from the disciplinary Chair or HR adviser conducting the hearing.

The panel (disciplinary Chair and HR) will conclude the hearing by asking you directly if have anything else to say. **You must use this opportunity to refer to your prepared statement to:**

- Explain/ provide mitigation for the allegation/s
- Apologise and show remorse if you accept and agree your conduct/performance was unacceptable
- Talk about any training and development needs
- Talk about your clean disciplinary record (if you have on)
- Talk about how long you have worked there and the positive contributions you have made to the team/workplace/organisation.
- Talk about any relevant health issues
- Show a cooperative attitude
- Highlight management mistakes (*if appropriate*)
- Talk about personal issues affecting performance or capability
- Provide details of any colleagues you may know who were sanctioned for similar allegation/s. (this is very important as employers must apply a consistent approach for disciplinary issues and employees who commit similar acts of misconduct should receive similar penalties)

Disciplinary Outcome

The ACAS Code recommends that any outcome should be communicated within a "*reasonable timescale*" – check you policy /procedure for any prescribed timescales.

The outcomes of the disciplinary hearing are based on "*the balance of probabilities*" as opposed to criminal law, where an accused person is presumed to be innocent until proven guilty "*beyond all reasonable doubt*"

This means that your employer does **NOT** have to prove beyond doubt that an event or issue happened but only to show that it is most likely to have occurred. Your employer does **NOT** have to give evidence as proof to come to conclusion. Your Rep/Branch Caseworker can attempt to cast doubt on the outcome by showing alternative solutions to the event or by illustrating to the employer that the event might not have happened.



West Midlands Community Branch

Disciplinary outcomes vary from no case to answer to stages of sanctions ranging from verbal warnings to summary dismissal (*dismissal with no notice pay*)

When deciding whether dismissal is unfair, the employment tribunal will consider whether it is "*within the band of reasonable responses*" employment tribunals cannot substitute its view for the employer – they will consider whether the disciplinary process was followed fairly and if the sanction of dismissal was fair under the circumstances taking into account the employers' resources.

Contact your Rep/Branch Caseworker as soon as you receive a phone call or letter from your employer informing you of the outcome. It is highly unlikely that your Rep/Branch Caseworker will be provided with a copy of the outcome letter.

Appeal

You have the right to appeal against the outcome of a disciplinary hearing, but be aware of the time limits for putting in your appeal.

You should submit a written appeal as soon as possible using the following template:

Date

Dear (*insert name*)

Re: Appeal

I received your letter dated (*insert date*) on the (*insert date*) informing me on the outcome of the disciplinary hearing held on the (*insert date*)

The letter says I have been issued with a (*insert disciplinary sanction*) OR

I write to appeal against your decision to dismiss me.

The grounds of my appeal are: (*delete/amend as necessary*)

1. (*There was insufficient consideration of my explanation of the circumstances leading up to the dismissal.*)
2. (*That dismissal was too harsh a penalty given the circumstances.*)
3. (*My previous disciplinary record is clear and should have been considered in imposing a penalty less than dismissal.*)



West Midlands Community Branch

4. *(The previous warning that was considered in the decision to dismiss me should not have been taken into consideration as it is more than X months old)*
5. *(I have had long service with the company which I feel should have been considered in imposing a penalty less than dismissal)*
6. *(Insert other grounds of appeal)*

I would like to be accompanied at the appeal hearing by *(insert name and contact details of Rep/Branch Caseworker)*

Please provide me with the full minutes of the meeting, so I can check they are accurate and we agree the minutes held on the XXX. Please copy my UNISON Rep named above to all correspondence.

Thank you.

Yours sincerely

NAME

CC (name of Rep/Branch Caseworker)

Overlapping procedures/Safeguarding

Check:

- Your policy for guidance on overlapping grievance/disciplinary policy.
- Whether your employer has notified safeguarding or Disclosure or Barring Service (DBS) - contact UNISON DIRECT for advice.
- **Do not Trigger ACAS Early Conciliation – read the guidance notes in the Caseform sent you.**
- Inform your Rep of any outcomes from the police, safeguarding or DBS.

References

UNISON- Get help with issues at Work
<http://www.unison.org.uk/get-help/help-with-problems-at-work/>

ACAS Disciplinary and Grievance Code of Practice
<http://www.acas.org.uk/index.aspx?articleid=2179>

NHS Counselling
<http://www.nhs.uk/conditions/Counselling/Pages/Introduction.aspx>

Tamara Lewis – Employment Law Advisers handbook

