

Disciplinary Action - Eight questions to Consider

(Source Gee Encyclopaedia of Employment Law)

The following questions should be asked by a manager when considering the outcome of a disciplinary hearing.

1. Has there been as much investigation as is reasonable in the circumstances?
2. Where there is an established disciplinary procedure, have the requirements of that procedure been properly complied with up to this point, including advance notice to the employee of the matter(s) to be considered at this hearing?
3. Have I paid sufficient regard to any explanation put forward by or on behalf of the employee?
4. Do I genuinely believe that the employee has committed the misconduct as alleged?
5. Have I reasonable grounds on which to sustain that belief on the balance of probabilities (i.e. is it more likely than less likely that the employee did what is alleged)?

Pausing there, 'yes' answers to each of those questions will mean a finding that the employee has committed the act of misconduct. What to do about it will then become the next consideration for the manager. Three further questions will help with this, namely:

6. Is the misconduct sufficiently serious to justify the disciplinary decision I am contemplating?
7. Have I had regard to any mitigating circumstances put forward by or on behalf of the employee (and any response to these by management's representative, if any)?
8. Is the decision within the band of reasonable responses of a reasonable employer in the circumstances?

A similar approach using the same questions can be adopted by those hearing appeals under domestic disciplinary procedures.