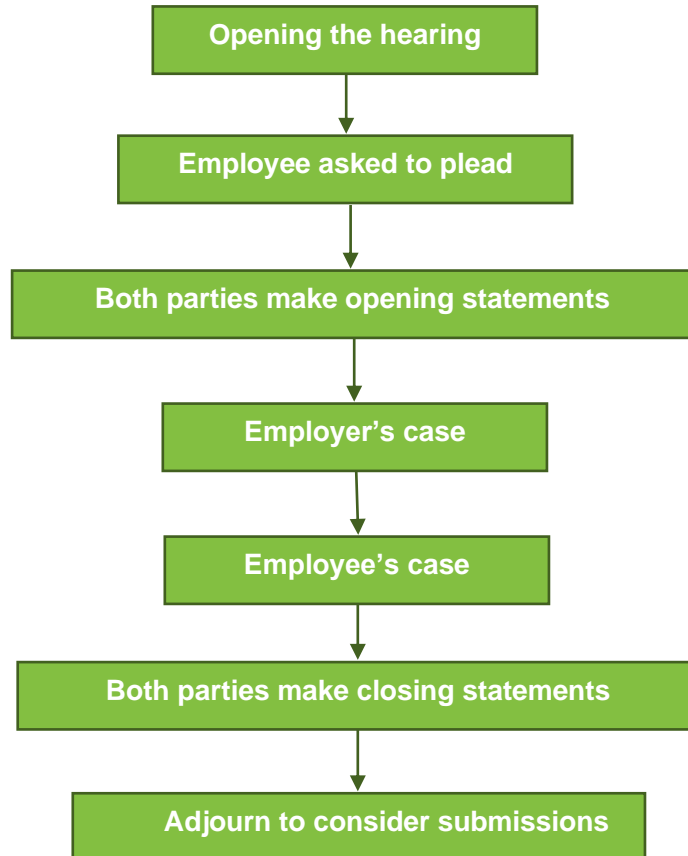
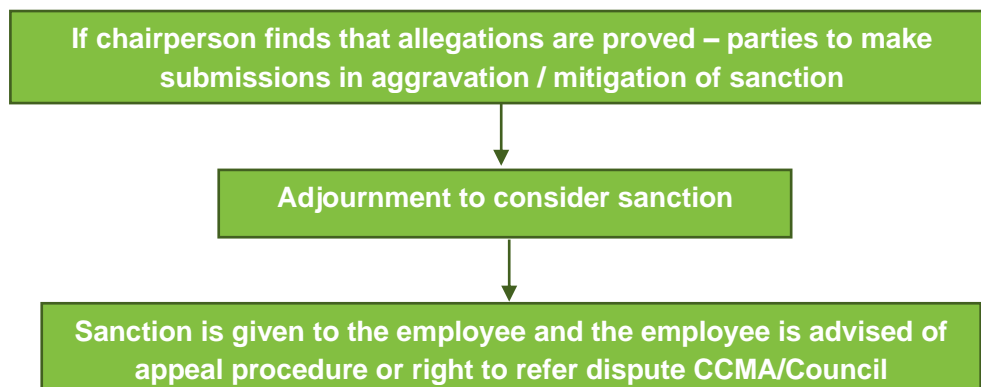


The Stages in a Formal Disciplinary Hearing ¹

Stage One



Stage Two



¹ The Code of Good Practice: Dismissal, does not require a formal hearing. The holding of a formal hearing is the prerogative of the employer, or by agreement in a collective agreement.

Description of the Stages in a Formal Disciplinary Hearing

Stage	Description
Opening the hearing	<ul style="list-style-type: none"> The chairperson introduces him/herself and establishes who the parties are and who their representatives are. The chairperson finds out whether an interpreter / fellow employee conversant in the required languages is needed for the employee or witnesses. The chairperson advises the employee of his/her rights during the hearing (to state a case, to call witnesses, to ask questions) and finds out if the employee has had enough time to prepare, understands the allegation/s (charge) and has consulted with his/her representative. The chairperson explains how the hearing will be run.
The employee is asked to plead	<ul style="list-style-type: none"> The allegation/s is put to the employee and the employee is asked whether s/he admits or denies the allegation/s. If the employee admits the allegation/s, the hearing will move directly to stage two without listening to evidence.
Employer's case	<ul style="list-style-type: none"> The initiator (employer's representative) will start first and will call company witnesses one at a time. The witnesses called will answer questions put to them by the initiator. The initiator should avoid asking them leading questions as it may be unfair to the employee, and it may also weaken the employer's case (weight to be attached to such evidence by the chairperson is less). The employee or his/her representative will question (cross-examine) the employer's witnesses. The initiator may clarify certain issues with his/her witnesses that were raised during cross-examination (this is called re-examination). The chairperson may ask questions for clarification at any time. After all the employer's witnesses are called the employer's case is closed.
Employee's case	<ul style="list-style-type: none"> The employee or his/her representative will call his/her witnesses, one at a time. The witnesses will answer questions put to them by the employee and/or his/her representative.

Stage	Description
	<ul style="list-style-type: none"> As in the case of the initiator, leading questions should be avoided. The initiator will cross-examine the employee's witnesses. The employee and/or his/her representative may clarify certain issues with his/her witnesses that were raised during cross-examination (re-examination). The chairperson may ask questions for clarification at any time. After all the employee's witnesses are called the employee's case is closed.
Closing statements	<ul style="list-style-type: none"> Both parties will summarise their cases and try to convince the chairperson why s/he should find in their favour. Parties must argue on the basis of the evidence led; no new evidence should be introduced at this stage. The initiator will begin first and has a right of reply after the employee's closing statement.
Adjournment to consider whether the allegations have been proved.	<ul style="list-style-type: none"> The chairperson will adjourn the hearing to decide whether the employee contravened the rule(s) and whether the allegations have been proved.
Finding on whether the allegations were proved.	<ul style="list-style-type: none"> The chairperson will reconvene the hearing and tell the employee whether the allegations against him/her have been proved. If the allegations are not proven, the chairperson will close the hearing.
Argument in mitigation and aggravation	<ul style="list-style-type: none"> If the chairperson finds the employee contravened the rules and that the allegations have been proved, the hearing enters a new phase to determine a penalty (sanction). The chairperson will ask the employee to provide mitigating circumstances. This means that the employee must provide the chairperson with facts and arguments (like his/her personal circumstances and his/her length of service or good disciplinary record) to convince the chairperson to be lenient and not to impose a harsh penalty. The initiator may provide aggravating circumstances, (e.g. if the employee has been found to be dishonest, has previous warnings, that the employer can no longer trust the employee and the relationship is damaged), and convince the chairperson to impose a harsh penalty.

Stage	Description
Adjournment to decide penalty / sanction	<ul style="list-style-type: none"> The chairperson will adjourn the hearing again to consider an appropriate sanction.
Sanction delivered- further steps explained	<ul style="list-style-type: none"> The chairperson will reconvene the hearing to advise the employee of the sanction and if it is dismissal, the right to refer it to the CCMA or applicable bargaining council. If an appeal process is specifically available in terms of a company procedure, the chairperson should advise the employee of this right and the time period to appeal. There is no automatic right of internal appeal, but if the employer's policy provides for an appeal process this must be followed. This process can also be done in writing without reconvening the hearing if this is more practical.

Whatever the outcome of the disciplinary enquiry, the chairperson must confirm it in writing.

See Template: Termination of Services –Conduct

See Guideline: Termination of Services - Conduct

See Guideline: Recording Disciplinary Sanctions