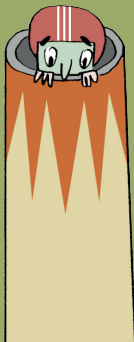


CM | MURRAY

The Little Book of
Senior Executives
Investigations,
Disciplinaries and Exits

Are you sure this will
make me a good leaver?



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Welcome

Being involved in an investigation into alleged wrongdoing can be very stressful for a Senior Executive, as can any subsequent disciplinary process and potential exit. This Little Book focuses on the key legal and practical issues to help you through the process.

It features the work of talented illustrator, David Orme.

Very best wishes

The Team at CM Murray LLP

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This booklet is only a brief overview of relevant English employment law and is for general purposes only. Specific legal advice should be taken on particular circumstances – please do contact us and we would be pleased to help you. Information is correct as of February 2019.

Legal Protections

If the disciplinary investigation is malicious, or in retaliation because you made complaints about discrimination or other wrongdoing, you may have a legal claim.



Facing Allegations of Wrongdoing

What Are the Key Areas of Risk for a Senior Executive?

Typical concerns raised by an employer can include the following:-

- Misconduct, including bullying and or harassment allegations
- Performance
- Regulatory or criminal issues

Sometimes these are triggered when employers investigate reports made by whistleblowers.

What Happens when Things go Wrong

Your employer may commence an investigation and then a disciplinary process, usually set out in the employment contract or staff handbook.

Your employer should also act in accordance with the ACAS Code of Practice on Disciplinary and Grievance Procedures and the ACAS Guide 'Discipline and Grievances at Work'.

These documents contain useful, practical information about what the process should be and what you can ask for, including witnesses, information and documents.

Are you
from ACAS?



Yes I'm from the
Against - Copious
Acronyms - Syndicate



Investigations

Your employer may invite you to attend an investigation meeting. There is no statutory right to be accompanied by a work colleague or trade union representative at an investigation meeting (although this is not uncommon in practice). Your companion can present your case, ask questions and make representations on your behalf, but cannot answer questions for you. A companion is often also helpful as a note-taker, a witness, and moral support. You can ask to be accompanied by a legal representative but there is no right to insist on this.

Disciplinary Action

You may be invited to a disciplinary meeting. There is a statutory right to be accompanied by a work colleague or a trade union official at a disciplinary meeting, but no absolute right to be accompanied by your lawyer.

Criminal or regulatory consequences flowing from the disciplinary may be a good reason to insist on bringing a lawyer to the meeting and it is sensible to take legal advice first.

I like what you've
done to this room,
it's very 'oppressive'.



What to Expect

You should be advised the nature of the allegation you are being investigated for, and have the opportunity to properly present your defence at any disciplinary hearing. Ask your employer for any documents you require for this. You are also entitled to call relevant witnesses and ask them questions, although this process is frequently done in writing rather than in person.

You asked me
once Winston
what was in
Room 101....

Is this my
new office?



Possible Sanctions

There are a number of possible outcomes to a disciplinary process which may include (but not be limited to):

- No sanction;
- An informal sanction;
- A written or final written warning with related penalties, e.g. a possible demotion or a reduction in bonus;
- Dismissal with notice; or
- In cases of gross misconduct, dismissal without notice.

Appeals

If any sanction is imposed, you should be advised of your right of appeal and the process for doing so.

The appeal should be conducted by someone sufficiently senior to review the original disciplinary decision, and could be someone external to your organisation.



Tactical Considerations

When an investigation or disciplinary process is announced or pending, you should consider the following:-

- Whether to raise a grievance
- Whether to submit a Data Subject Access Request
- Other tactical or strategic steps to maximise potential leverage
- Whether to engage in statutory pre-termination discussions or without prejudice negotiations
- Possible settlement
- Potential related legal claims and future employability

Settlement Discussions and Agreement

If settlement is an option, a negotiated, agreed exit recorded in a settlement agreement can include the following:

- An agreed settlement sum
(consider outstanding equity and bonus entitlements)
- Non-derogatory comments clause
- Confidentiality provisions
- Agreed internal and external announcements
- Reference
- Notice and garden leave

Will you choose mystery
Settlement Agreement
A, B or C?

Eh?!



- Waiver of restrictions on exit
- Legal costs contribution
- Outplacement support and
- A waiver of claims

You will need to seek independent legal advice to finalise a settlement agreement.

Key points to Remember...

In any Investigation or Disciplinary Process:-

- Consider the potential outcomes and how these may impact your future career and employability
- Consider PR advice and reputational issues and how best to manage these
- Consider potential legal claims and negotiating position as well as what terms you are seeking
- Consider applicable restrictive covenants, garden leave and any release
- Take advice early to minimise risk, and guide you through the process

Do you
like your
leaving gift?



This is
a tracking
device,
isn't it?



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CM Murray LLP is a specialist UK Employment & Partnership law firm.

Chambers and Partners:

Ranked Band 1 for Employment: Senior Executives

“Leading senior executives-focused firm, with notable expertise in whistle-blowing, discrimination claims, and restrictive covenants and their enforcement. Acts for clients from a range of sectors including technology and the financial services.”

Legal 500:

Ranked Tier 1 for Employment: Senior Executives

“CM Murray LLP’s ‘first-rate’ practice provides ‘prompt, to-the-point and professional’ advice for senior executives, often handling mandates with cross-border elements.”

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