

Appendix 4

*North
Wiltshire
District
Council*

**UNDERTAKING DISCIPLINARY
INVESTIGATIONS**

GUIDANCE NOTES

GUIDANCE NOTES FOR UNDERTAKING INVESTIGATIONS

A full investigation is essential, particularly where misconduct is suspected. An employer cannot normally take action against an employee on the basis of a mere suspicion. Any case must be based on reasonable grounds. It is essential that the investigation is carried out as quickly as practicable, while making sure that it is carried out effectively.

If an Employment Tribunal concludes that management investigation of a suspected or alleged disciplinary offence has been less adequate than would have been expected of a reasonable employer, an unfair dismissal finding is likely to result.

Who carries out the Investigation?

Normally the **Head of Service/Team Manager** or another officer nominated by the **Deputy Chief Executive Officer/Head of Service/Team Manager**. The Investigating Officer should be, where practicable, senior to the person being investigated, and cannot act as a panel member on any disciplinary hearing arising from the investigation. The Investigating Officer will be required to present the management case at any disciplinary hearing arising from the investigation.

The Investigating Officer should use the **Head of Human Resources/Human Resources Adviser** as a source of advice as long as this person is not directly involved. In some complex or sensitive cases the **Head of Human Resources** or a member of the Human Resources team may be requested to be directly involved.

Human Resources will provide, where practicable, a note taking service during the investigation. **If another employee outside of Human Resources is used as a note taker, their role should be clearly explained at the commencement of the meeting.**

What is an Investigation?

– It is a fact-finding process, which makes recommendations to management. It may involve the investigation of records/documents etc. as well as interviewing employees etc.

Investigation and investigators are not ‘independent’. Investigation is a proper part of the management function. Investigators however must undertake the task in an objective way and must not form a view on the circumstances until the facts have been established. It is important to note that every effort must be made during the investigation to determine the facts rather than to look for indications of guilt.

How to go about it –

- Review information already available
- Decide what is missing and how you might find that information

- Where there is a complaint the first step is likely to be further discussion with the complainant – by telephone or by interview

Who should you see ? -

- This needs to be decided on the circumstances of each individual case
- You need to ensure that anyone who may have relevant information is seen, irrespective of which 'side' of the story the information might support (i.e. do not just collect evidence that supports the allegation)
- The list of people to be seen may grow as early interviewees name other people who may have relevant information
- There may be occasions when it may be appropriate to undertake a trawling approach i.e. to interview a whole work group/section to identify whether anyone has relevant information. This is however time consuming, disruptive and, as with all investigations, causes some stress to the people concerned. This approach should only be adopted in circumstances which warrant it e.g. in respect of more serious issues/allegations where relevant information cannot be identified by other means
- Information gathering should be done by interview. It is not appropriate to obtain information by telephone, unless there were a limited number of minor points to be clarified with someone
- You will need to decide what order to see people in, and it is likely in the majority of cases that the employee being investigated will be seen last.
- Interviews need to be set up, giving notice if possible and the reason for the interview

Confidentiality; -

- You will need to think about the venue, it is often better to be somewhere other than the workplace. Please ensure that you are not disturbed by ringing phones or people walking into the work area
- You will need to think about when you are seeing people and what reason they can give for leaving the workplace
- You will need to ensure that everyone is aware that they must not discuss the content of the interview with anyone else
- Explain to the witnesses why they are being interviewed but be discreet about how much you tell them about the investigations. You are interested in what they can tell you first hand and should avoid

hearsay evidence. It must be made clear to all those involved in the investigation that they must retain strict confidentiality

Accompaniment: -

- Employees subject to investigation are entitled to be accompanied, and must be made aware of this. However the unavailability of the accompanying person should not allow the process to be unreasonably delayed. Reasonableness however must be paramount.

Importance of dealing with issues urgently

- It is essential that issues are dealt with as a matter of urgency, as delays and uncertainties have a detrimental effect on both staff and service delivery

The Interviews: -

- You will need to prepare, in advance, your areas of questioning and to think about the order of the questions and the types. Use open questions to start with and then more specific questions to get clarification or to establish details. Use 'play back' (repeat), questions to check you have understood/heard correctly. It is important to remember that further questions can be asked in addition to pre-prepared questions.
- State the purpose of the interview and, in general terms, the matters about which the employee is going to be questioned
- Make sure that it is understood that the information may be followed up and acted upon. Any discussion with the interviewees on confidentiality must provide for the possibility that the information may be used in subsequent formal processes but will be confidential in that context except as required by law or express authority, see the use of witness statements at a disciplinary hearing.
- Think about when and how you give information to the employee e.g. question someone about their view of an incident fully before putting to them any alternative versions you may have heard from other witnesses
- Always push interviewees for dates , times etc. and other precise details
- Take very full notes (it may be helpful for you to have a note taker with you).
- The interview should be conducted in a calm and controlled atmosphere. It is not a process of interrogation. You should ensure that there is a quiet room, out of earshot from others, where the

employee can be spoken to in private. Make sure that you have left instructions that no one should disturb the meeting whether by telephone or physical intrusion.

- Try and follow a natural, logical line of enquiry – if necessary, see people again to ask further questions or clarify points already covered.
- The investigation must identify the expected or required standards of conduct/performance as well as what actually happened. These standards may exist in contracts of employment, job descriptions, management instructions, strategies and procedures, working guidelines, as well as in established practice.

Rights of witnesses

- The witness has the right to remain anonymous if they wish, however, it should be made clear to them that this may affect the outcome of the investigation, especially in cases where there is no independent corroboration.
- The witness can be approached by both the Investigating Officer and the person being investigated, the witness can decline to be interviewed by either party.
- The witness cannot be compelled to attend the disciplinary hearing, however, it should be made clear to them that this may affect the outcome.
- The opportunity should be available to either party to put questions in writing to the witness. In addition if the witness is unwilling to attend the disciplinary hearing there should be an opportunity to put questions during the hearing, through adjournment of the proceedings.

Statements

- Information provided during the investigation needs to be recorded in the interviewer's notes taken at the interview. These need to be agreed with the interviewee and should be sent to the individual for confirmation, as, if the result of the investigation is a formal disciplinary hearing, these may be used as part of the evidence.
- If formal disciplinary action is subsequently taken then statements (typed) detailing relevant information provided by the witnesses will need to be produced. This can be done by : -
 - Interviewers producing a written record of the whole interview (to be agreed and where possible to be signed by the witness)

- Interviewers producing a statement containing relevant information provided by the employee at the interview (and where possible to be signed by the witness)
- Witness asked to produce a signed statement in their own words

(Please note Witnesses may feel particularly vulnerable e.g. cases of bullying and harassment, and may want support during this process.) Anonymous statements may be used where there are valid reasons for anonymity, e.g. where the witness may fear physical recrimination.

Use of statements at a disciplinary hearing

- The employee should have the opportunity to challenge the witness statement and to question the witness at any disciplinary hearing. However, there is no universal requirement of natural justice or general principle of law that an employee must be shown, in all cases, copies of witness statements. In addition witnesses cannot be compelled to attend a disciplinary hearing.
- The Investigating Officer must ensure that a fair and reasonable investigation has taken place, before a decision is made. It will be the Investigating Officer's decision, on advice from the **Head of Human Resources**, as to whether a witness statement or witness is used at the disciplinary hearing. It should be remembered as a general principle that it is safer to disclose unless there is good reason to withhold the statement.
- Anonymous witness statements may be used, in cases where they are the Investigating Officer must ensure that the statement is in writing and that possible fabrication has been checked. As a general principle anonymous statements should not be used unless they can be corroborated.

Relationship with other agencies

- Where there is police involvement or where the incident may amount to a criminal act, advice should be sought from the **Head of Human Resources**.
- **Section 151 Officer and the Council's Internal Audit provider** must be notified of any matters concerning financial irregularities immediately
- Where an audit investigation has been undertaken, management will receive an audit report, and decide on a course of action. This may include an additional management investigation prior to formal disciplinary action. Where disciplinary action is taken management will take the action using Audit in an 'expert witness capacity'

Report back from Management Investigation

This is a formal written report to the Chief Executive/Deputy Chief Executive Officer/Head of Service/Team Manager (as appropriate – please note the Chief Executive/Deputy Chief Executive should only be sent the report if the investigation relates to a Head of Service/Team Manager) setting out:

- How the investigation has been conducted
- What has been established as fact and/or what evidence exists that is relevant
- What recommendations have been reached

The outcome of Investigation should:

Determine whether or not there is a case to answer on the facts of the specific incidents. The investigation should conclude with recommendations, which should include :

- Case to answer
- 'prima facie' case (on the face of it)
- identify precisely what the allegations are which need to be answered
- management advice/interview/reprimand/verbal warning
- formal disciplinary action

(Mitigation is not relevant in deciding whether there is a case or not)

In the light of the investigation you may need to: -

- make changes to management practices
- take no further action
- review temporary arrangements (e.g. supervision) made to facilitate the investigation

Investigations where criminal charges are pending

It should be remembered that an employee should not always be dismissed or otherwise disciplined just because he or she has been charged with or convicted of a criminal offence. The question that must be asked is whether the employee's conduct warrants action because of the implications for his her employment.

Suspension should be considered if it is considered that the risk of allowing someone to continue in work is unacceptable.

The facts should be investigated as per the above guidelines. Where the police are involved they should not be asked to conduct the investigation or to attend any disciplinary hearing.

If the crime is not work-related then disciplinary action may only be justified if the employee is remanded in custody or is given a sentence of imprisonment.

Summary

- Conduct the investigation, establish the facts and evidence, undertake interviews with the subject, colleagues and witnesses, review relevant previous management instructions and policies & procedures and detail any breaches
- Complete a formal written report to the Chief Executive/Deputy Chief Executive Officer/Head of Service/Team Manager (as per advice under 'Report from Management Investigation) detailing the allegation; how the investigation has been conducted; what has been established; the relevant evidence and finally whether or not you recommend the case to proceed to a formal Disciplinary Hearing.
- The Chief Executive/Deputy Chief Executive Officer/Head of Service/Team Manager will review the report and make their recommendation on whether or not to proceed to a formal Disciplinary Hearing
- Contact Human Resources who will assist on the next stage of the procedure. You will need to provide all information gathered during the investigation, together with the Chief Executive/Deputy Chief Executive Officer/Head of Service/Team Manager's recommendation
- Remember that all information gathered during an investigation is confidential. Ensure when sending it to another person it is in a sealed envelope, marked "Confidential, For Addressee Only"

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	Elaine Orchard	April 2008	Changes to be made to job titles

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