**Managing Discipline**

*What is the difference between an investigation and a disciplinary?*

The purpose of an investigation is to fully understand the issue or allegation and establish the facts. The purpose of the investigation is not to make any decision about what should happen next. The purpose of the disciplinary hearing is to make a decision on whether action should be taken under the disciplinary policy, and if so, what that should be.

*Who is the most appropriate person to conduct an investigation?*

Ideally, the person conducting the investigation should be able to carry out the investigation independently, so they can find out the facts in a fair and independent manner. A suitable manager is someone who can carry out the investigation with an open mind and is capable of making a decision on the issues. Often, the most suitable person will be the individual’s manager, but this will depend on the nature of the issue under investigation. For example, there may be some occasions where the manager needs to provide a witness statement.

*When should I suspend someone during an investigation or disciplinary process?*

Normally, a member of staff should only be suspended if the matter is a potential gross misconduct offence, or the continued presence of the individual in the workplace during the investigation could prejudice the process. For example, there is a risk of others involved in the investigation feeling intimidated, or evidence being corrupted. Take advice from HR on the circumstances.

*Who is the most appropriate person to conduct a disciplinary hearing?*

There is a schedule within the disciplinary procedure, which sets this out. The most important factor when determining a disciplinary hearing manager is ensuring that they can deal with the matter independently and fairly.

*How do I prepare for a disciplinary meeting if I am the hearing manager?*

There is detailed guidance available on StaffNet including useful checklists. Specialist advice is also available from HR. In advance of the meeting, you should plan the questions that you want to put to the member of staff. Ensure that you are aware of the process to follow, and arrange for someone to take notes. Review the issue at hand along with any information or evidence that has been established so far.

*What information do I need to give a member of staff prior to a disciplinary hearing?*

The member of staff should be provided with the facts from the investigation, including written evidence and witness statements. They should also be formally invited to the meeting by letter, setting out the details of the meeting and their rights to be accompanied. Your HR representative will assist with this.

*What documents do I need to keep as part of an investigation or disciplinary process?*

You need to keep all of the relevant documentation. This includes witness statements, meeting notes, any documents provided to the hearing by the member of staff, any evidence replied upon when making the decision, and the outcome letter. These can all be retained on the individual’s personnel file – they should not be held locally by managers.

*What happens if a member of staff raises a grievance during a disciplinary process?*

This depends on the nature of the grievance raised. Often, it is possible to deal with both processes concurrently and independently if the issues are unrelated. Sometimes the disciplinary process needs to be delayed whilst the grievance is considered. Take advice from HR.

*Can a member of staff bring a solicitor or family member to an investigation or disciplinary meeting?*

No. The right to be accompanied is limited to work based colleagues or trade union representatives.

The only exception to this might be a companion who can ensure that an individual is not subject to any disadvantage in the hearing. For example, if someone requires a translator to ensure that they are able to fully participate and put their version of events. The University will make reasonable adjustments to ensure that disabled members of staff can fully participate in the process.

*What if the member of staff wants to bring a companion who cannot make the scheduled meeting?*

Members of staff may legally request a delay of up to five days in order to allow their chosen companion to attend. If there is going to be an excessive delay, they can be asked to choose an alternative representative or companion.

*What if a witness wants to remain anonymous?*

Normally, witnesses will be required to attend a hearing. It is possible for a witness to remain anonymous in some cases but these should be rare. However, before agreeing it is necessary to balance the information that this witness can provide against any potential negative impact upon the process or the employee under investigation. Consider if there is any other evidence to confirm their statement. Also consider why they might feel that they need to be anonymous. If you allow the anonymous evidence, then remove their name and any other identifying information from any documents.

*What does ‘reasonable’ mean in this context?*

Employment law requires an employer to act reasonably when dealing with investigation and disciplinary matters. There is no single definition of ‘reasonableness’. Each situation is different. Look at all the circumstances of the situation and weigh up the factors. If your judgment is based on rational, fair, sensible and unbiased thinking, an employment tribunal should view your action as reasonable.

*What happens if a member of staff goes off sick during investigation or disciplinary proceedings?*

It is still possible to proceed with the process depending on the circumstances. It is important to take into account the nature of the illness, its seriousness and longevity, whether it is disability related absence, or whether it is work related. It may be appropriate to get advice from Occupational Health, including specific advice on whether the individual is well enough to attend a hearing –or how long it will be until they can attend. HR can provide detailed advice on the specific circumstances.

If the illness is likely to be long term and the disciplinary matter is pressing, it may be possible to consider asking the individual to provide a written statement or ask them to nominate a representative to attend the meeting on their behalf.

Consider if any adjustments could take place – for example, if the absence is work related, the meeting could be held in a location other than the workplace.

It is important to strike a balance between the need to resolve the outstanding issue and the individual’s wellbeing and recovery.

*What happens if someone does not turn up to the meeting?*

Ask the individual why they failed to attend to establish if there was a valid reason for nonattendance. Provide another opportunity to attend. If the individual is unavailable for the second time the hearing will be scheduled one final time if there is a good reason for the nonattendance. If they continue to fail to attend without substantial reasons, you can consider holding the meeting in their absence and making a decision based on the evidence that you have. Make sure that the member of staff is aware that this is a possibility.