**Investigation Guidance**

**Who investigates?**

The responsibility for managing discipline lies firmly with management. It will usually be the line manager of the employee concerned who will carry out the investigation as he/she is responsible for ensuring that standards of conduct are maintained.

Additionally, where counselling has already taken place for reasons of misconduct, the line manager will have already reinforced those standards and must therefore carry the responsibility for acting if these standards have not been met.

There may, however, be occasions where for reasons of demonstrating reasonable impartiality, it would be inappropriate for certain officers to investigate. This might occur when the manager has been closely involved in an incident of misconduct and as such may be implicated in some way and indeed, where the officer may be a witness themselves.

Therefore, if the line manager considers that the fairness and objectivity of the investigation might be compromised if they were to investigate then he/she should contact their line manager so that an alternative Investigating officer can be appointed.

**Right to be accompanied**

Employees have a right to be accompanied at formal stages of the disciplinary process i.e. investigatory meetings and discipline/appeal hearings by a companion. This should either be a work colleague or trade union representative, but not a spouse or partner.

In certain exceptional and very limited circumstances a legal representative will be admitted to disciplinary/appeal hearings eg where an external regulatory body such as the GTC or SSSC is also going to be investigating the matter under their own procedures and there is a risk that the individual could be struck off by the regulatory body and no longer able to practice their profession. Employees are required to advise the Chair of the Disciplinary/Appeal Hearing in advance that they wish to be accompanied by a legal representative in order that HR advice can be sought to ensure the circumstances merit this.

If the employee has difficulty reading, or if English is not their first language then the content of the letter should be explained to them verbally.

**Does the employee have more than one contract of employment?**

The Investigating officer must check whether the employee has more than one employment contract with the Council. Any action taken as a result of an employee’s alleged misconduct in one post will not automatically apply to any other post the employee holds within the Council. Each case must be considered on its merits and advice should be sought from HR. The employee will be advised of the scope of the investigation and the same Investigating officer will investigate the allegations in relation to all relevant contracts.

**Dealing with the employee's non-attendance at the investigatory meeting**

If the employee is unable to attend the meeting, they should notify the Investigating officer and give the reason for the non-attendance as soon as possible and certainly in advance of the meeting. If they fail to attend because of circumstances outwith their control (for example unforeseen transport difficulties or a family illness), they should be invited to another meeting. Where no valid reason has been given then the employee should be informed that decisions will be made in their absence should they fail to attend a rearranged hearing without good reason.

If the employee is unable to attend because his/her “companion” is not available on the proposed date, the employee can suggest another date although it must suit everybody involved and be **no more than 5 working days after the original date**. Otherwise, the employee will need to select another companion to accompany them at the meeting or attend the meeting unaccompanied.

Should the trade union be unable to provide representation within 5 working days of the original date, you should not allow this to delay the process. You can insist that the pre-rearranged meeting go ahead as planned.

If the employee is unable attend because of illness then you need to establish when they are likely to be fit to attend. You may need to refer the employee to occupational health to establish whether they are medically fit to attend and participate in an investigatory meeting and if not, when they are likely to be fit to attend such a meeting. To avoid the matter becoming protracted, it may be that the employee may be willing to provide a written response if they are unfit to attend a meeting.

**HOW TO CONDUCT AN INVESTIGATORY MEETING**

**Preparation**

To ensure your investigation goes smoothly and without disruption it is important to prepare beforehand. If you prepare in advance then you will be able to have a clear understanding of how to hold the investigatory meeting and find out the background and surrounding circumstances to establish the relevant facts.

 Firstly, you need to give the employee adequate notice in writing.

 Arrange to conduct the interview in a private location, free from interruptions

 Ensure that you have a thorough understanding of the allegation/s made including dates of the alleged events

 Develop a list of relevant questions that you are going to ask to establish all facts

 You may also need to decide whether you will take notes at the meeting yourself or if you will be asking for a note taker to come along to the meeting. Be advised that the notes taken are for your benefit only and are to help you remember significant facts that come to light. If a note taker is present you must ensure that they understand and acknowledge the confidentiality entailed in being present

**Conducting the meeting**

The investigatory meeting should be restricted to gathering the relevant facts and not passing any judgement on the employee.

 Explain to the employee that the meeting is an investigatory meeting for the purpose of hearing their response to the allegation/s. Show the employee the Managing Discipline Procedure and indicate on the document the stage you are at

 Check that the employee understands the nature/substance of the allegations made against them

 Explain the purpose and format of the meeting, and deal with any procedural issues that may arise

 Explain to the employee under investigation that if they are a member of a registered body eg GTC, SSSC, a notification may be required depending on each body’s notification rules and the registered body may require sight of the full disciplinary papers, including witness statements.

 State the allegations made against the employee and ask for their response

 Ask the employee questions as a means of gathering further information and attempting to establish facts

 Probe for answers – don’t always accept the first response - there may be more under the surface. Point out and question any discrepancies

 Be sure that you are being understood. Don’t use jargon and do go over details a second time if the employee seems uncertain

 Give the employee the opportunity to conclude their response to the allegation/s by highlighting any aspects they consider to be particularly relevant, including introducing any mitigating circumstances

 Allow adjournments during the course of the meeting where you deem they are necessary or where the employee requests one

 Once you are reaching the end of your investigatory meeting, make sure you have covered everything, go over anything you are still not sure of

 Give the employee the opportunity to identify potential witnesses

 Advise the employee that you may need to call them to a further meeting should any other questions or allegations arise

 Advise that you confirm the outcome of your investigation at the earliest opportunity