

## ROLE OF THE INVESTIGATING OFFICER & MODEL INVESTIGATION REPORT

### DISCIPLINARY PROCEDURES

#### PURPOSE OF THE INVESTIGATION

The purpose of the investigation is to obtain all the relevant facts about an alleged breach of discipline to:-

- (a) allow the civil servant who would conduct the disciplinary hearing to decide whether a disciplinary hearing should be convened; and if a hearing is arranged
- (b) provide sufficient evidence to allow the hearing to proceed.

#### **SELECTION OF THE INVESTIGATING OFFICER**

The investigating officer is normally:-

- (a) the line manager - generally for straightforward cases where the line manager may also conduct the hearing; or
- (b) another manager from within the organisation - usually for more complex and serious cases; or where the line manager is too close to the alleged offence (e.g. falsification of records which the manager has signed; or the manager is a key witness in the alleged misconduct where there is a conflict of views on events). Typically the investigating officer would be a middle/senior manager.

#### **CONDUCT OF THE INVESTIGATION**

An outline of the format of an investigation report is attached at [Annex A](#). The key issues for the investigating officer are:-

1. To establish the rule that is alleged to have been breached
2. To obtain evidence relevant to this allegation. This includes documentary evidence (job descriptions, time sheets, written standards of conduct, written instructions on procedures, written complaints, records of previous disciplinary incidents etc) and witness statements. It is recommended that signed witness statements are obtained, which may either be written by the witness or the investigating officer's notes on the interview which have been certified as accurate by the witness.
3. To obtain the employees version of events. This will include the reason for the breach of discipline if the facts of the case are not disputed. At this point the employee should be made fully aware of the complaint against them but is not entitled to any witness statements or other evidence obtained during the investigation, this will be provided by means of a copy of the investigation report if it is decided to proceed to hearing. From a practical point of view it can be useful to obtain all the supplementary evidence before meeting the employee to provide the investigating officer with background information which may be of assistance in conducting the interview.

NOTE: Under most current disciplinary procedures the civil servant does not have the right of representation during the investigation. However, it is good practice to allow representation during the investigation. Therefore the civil servant **should be advised prior to the**

**interview** that he/she can be accompanied by a "friend" (who may be his/her trade union or staff association representative) at the investigation interview.

- 4 To determine, on the basis of the evidence obtained:-
- (a) whether there is evidence of a breach of discipline; and if so
  - (b) the nature of the alleged offence(s)

The investigation may reveal additional offences or result in a change from the offence in the initial allegation. This is acceptable as the objective of the investigation is to obtain the full facts and draw conclusions from these facts.

NOTES:-

- (a) The investigation should focus on the alleged offence and should be as concise as possible. However, it is important that it does not omit any relevant evidence, in particular any issues raised by the employee to justify the action or their version of the events should be followed up.
- (b) Evidence of previous misconduct may be relevant in establishing whether the employee knew the standards of conduct required; or in establishing whether their version of events is consistent with previous behaviour (the disciplinary process is based on what "a reasonable person would believe" and not absolute proof as required in a court of law). However, previous acts of misconduct which have been dealt with on a formal or informal basis must not be included as an offence for the purposes of the current investigation.
- (c) Limit the contents of the report to the alleged disciplinary offence:-
  - (i) if the investigation raises other issues (e.g. procedural changes which would be beneficial) these may be raised separately with management.
  - (ii) the employees reason's for his/her actions should be requested during the interview with the employee and should be included in the report, normally in the employee's statement or notes of the interview attached as supporting evidence. The report should also identify any relevant facts which have been gathered relating to the incident being investigated. However, the report will not normally comment on the impact that any mitigating circumstances may have on any penalty that may be applied. Mitigation is a matter to be considered at the hearing (if the case progresses to hearing) after it has been determined whether an offence has been committed and, if it has, before deciding on an appropriate penalty.
- (d) The conclusions should be limited to identification of the offence (if any) and identifying that this is potentially gross misconduct if appropriate. It should not draw any direct conclusions on whether the civil servant actually committed the offence or on an appropriate penalty as this is for the hearing to determine.

**ANNEX A**

### **REPORT FORMAT**

Format should be simple and factual.

- **Nature of Complaint**

Outlines, details of complaint(s)/allegations with reference to dates, times, specific incidents etc where possible.

- **Background**

Brief paragraph to set scene i.e. individuals involved, working arrangements etc.

- **Outline Process**

Describe actions taken to investigate.

- **Employee(s) Response**

Give details of the employee's response/explanation for each incident/allegation.

- **Supplementary Evidence**

Brief details of any witness statement(s) or corroborative evidence (if available).

- **Findings and Evaluation**

Identify whether the investigation has revealed evidence of misconduct. If so identify the alleged misconduct (i.e. what rules or standards relating to his/her employment is the employee is alleged to have broken?). The investigating officer should **not** come to a conclusion about whether or not the employee has actually committed the alleged offence. This is for the hearing officer to determine (if it is decided the case should progress to hearing) after a full hearing of all the evidence, including the employee's response to the allegations.

- **Appendices**

Include all information relevant to the investigation (i.e. witness statements and copies of any relevant documentation)