

# The Duty of the Investigating Officer in Disciplinary Proceedings

## FACTsheet

If you have been accused of abuse your employer has a duty to investigate any allegations that have been made against you, or to ensure that an independent investigation is carried out into them. You should always keep in mind that you may have a contractual obligation to co-operate with the investigation - unless for legal reasons - you have been advised not to do so.

Most employers will have written procedures for investigating complaints and/or abuse allegations. You should always examine them at an early stage of the process. If you do not have them to hand ask for them well before you make a response to any questions asked of you.

Check to make sure that the 'investigative stage' is separate from the 'hearing stage'. You have a right to be heard at each stage of the procedure. Normally the employer will appoint an investigating officer to look into the complaints made/allegations received. Typically the investigating officer will be your manager or a specialist worker. Unless the investigating officer has been given a special brief their job, usually, is to consider whether or not there is prima facie evidence of misconduct.

The investigating officer is obliged to carry out his/her investigation impartially. They must examine the issue from both sides. This means that they must look for facts which support the complaint/allegation, and look for facts which contradict the complaint/allegation. In addition they must demonstrate that they have done so. It is not sufficient for them to examine the position from the complainants point of view and simply ask the accused for their comments about what has been alleged.

The investigative officer has a responsibility to ask searching questions of both sides. (S)he must also look for witnesses or evidence that would support both sides of the case. If the accused asks them to interview a particular person or to examine a particular piece of evidence they must do so unless they can give a good reason why they should not.

In summary the investigating officer should:-

- act impartially.
- write to the accused person setting out in broad details what has been alleged, by whom, and in what context and time-frame.
- Give reasonable notice of any investigative hearing(s) that may be necessary so that the accused person can take legal advice and begin to prepare their defence.
- allow the accused person to be accompanied at any investigative hearing which may take place. This will usually be a trade union official or a colleague. (see ACAS guidance below)
- neither presume guilt or innocence.
- be thorough and searching in their inquiry
- keep accurate notes and, within an agreed time span, provide each party with details of their response to any questions asked of them
- inform the accused of any evidence which the complainant relies on.
- take an evidential approach to the investigation, and examine the facts.
- look at the issue from both sides and evidence that they have done so.
- not pre-empt any future hearing by pronouncing guilt. (Guilt can only be determined at a full hearing after the defence have made their case.)
- complete the task with the minimum possible delay.

You can find more information about an employers responsibility to carry out fair investigations in the [ACAS Handbook](#) and [Code of Practice](#).