

FACTsheet

Best Practice: summing up the case for the accused.

This outline needs to be adapted to suit individual circumstances. Normally in a disciplinary hearing both sides are invited to 'sum up' their case at the end. The management side should begin the process so that the accused has the 'final' say.

INTRODUCTION

Mr Chairman, in summing up the case for [the accused] it is my intention to do so in the following way.

- ↳ Firstly by reminding everyone what the issues are in the case,
- ↳ Secondly by identifying, and challenging the essential elements in the management case,
- ↳ Thirdly by re-examining the evidence which supports his innocence

THE ISSUES

- Firstly, re state the charges for clarity e.g.
The accused appears before this hearing accused of [re state disciplinary charges]
- Secondly, deal with any hidden agenda e.g.
I must make this very clear [the accused] is not here to answer for any alleged misconduct in the past, nor to answer for any unfinished' business relating to his previous employment.
- Thirdly, offer good character evidence e.g.
It is accepted by both sides [the accused] is conscientious, hard working and successful member of staff. He is an asset to this school and is a valued member of staff. [The accused] has made it absolutely clear throughout this process that all children need to be protected from the risk of harm, and that he has never harboured any sexual feelings towards children or committed any act of sexual abuse.

THE BURDEN OF PROOF

I now want to address the question of burden of proof. The accused has willingly and quite properly submitted himself for inquiry and examination by this panel. He has done his best to assist this hearing and approached both tasks with the thoroughness which characterises his work.

The accused is not however required to prove his innocence or indeed to prove that he is safe to work with children. The burden of proof lies with the investigating/presenting officer. What he/they have to do is, on the balance of probability, to prove that [the accused] the alleged events took place. Before the burden of proof can be discharged Mr Chairman you have to consider two things.

The first thing you have to decide is whether the investigation into the concerns raised comply with the relevant disciplinary procedures and the rules of natural justice? Has the investigation in *all* its respects been carried out competently and without bias? Have the investigating officers genuinely looked at both sides and do they evidence having done so. You also have to decide whether the process, at all stages, has been fair both in fact and in appearance, and whether [the accused] has been given a full opportunity to challenge the evidence given against him.

Let me say this in the accused's defence. Throughout he has maintained his innocence and pointed to evidence which clears him of the allegations. He has pointed out that the police and the Crown prosecution Service were satisfied that there is no case to answer. He is concerned, as I am, that the investigating officer has ignored his pleas to interview particular staff who were present at time of the alleged incidents, and that he/she has missed many opportunities to follow leads which point to his innocence. This is unacceptable, it is also sloppy investigative practice and points to a presumption of guilt.

The accused is not however suggesting that the investigating/presenting officer have acted in bad faith. What he is suggesting however is that right from start and at some critical points afterwards, errors of process and of fact have been made. These errors have set the tone for the continuing investigation and in my view has led to bias.

The job of the investigating officer in any disciplinary hearing is to present evidence which support the allegations made or concerns expressed AND to present evidence which points to the accused guilt. Their job is to assist the panel to establish the truth – not to act as judge and jury.

What the panel have to do is to weight up the evidence given. The evidence given by the complainants and any witnesses, the evidence given by [the accused] and his witnesses. They have to weigh up its merit and determine its significance.

It is important I make this point. Everyone who has given evidence of [the accused] have come to this hearing in full knowledge of the concerns which have been expressed about him. Each one of them been prepared to put their head above the parapet partly in order to assist the panel but also to ensure [the accused] receives justice. These are people who know [the accused] well either professionally or personally. Some hold, or have held important position of responsibility within their communities. Do you honestly believe they would speak up for [the accused] if there was even the slightest risk that [the accused] might be regarded as a risk to children. I ask you to consider their evidence in full and say this is it more likely that they know [the accused] better than the investigating/presenting officer? These are the things you have to weigh in the balance but before you do let me say something about the standard of proof.

THE STANDARD OF PROOF -THE EVIDENTIAL TEST

As a panel you have to determine this matter on the **balance of probability**. It is important to be clear about how one computes probability. You have to distinguish between possibility and probability. You have to set aside any idea that because a theoretical possibility exists that [the accused] could have [done what is alleged] that he actually did so. *POSSIBILITY IS NOT THE SAME AS PROBABILITY*

Your task is to take an evidential approach. What does the evidence from both sides show. You have to be clear than an allegation is no more than an allegation. It is not a statement of fact. It is something which needs to be looked into; it may be true, in part or in full, or it may be false.

In order to meet the balance of probability test three things are necessary.

- ↪ Firstly, all the evidence has to be examined. A judgement can then be made about their relevance to the issue.
- ↪ Secondly, the panel have to have a starting point. The starting point in this case should be that [the accused] does not pose a risk to children. (This reflects the principle that a person is innocent until proved guilty and that the burden of proof lies with the investigating officer/NSPPCC)
- ↪ Thirdly competing claims have to be *weighed* to see how, qualitatively and quantitatively they stack up.

Before any of these tests can be applied there is one important legal caveat that needs to be acknowledged:-

"the more serious the allegation the less likely it is to have taken place hence the stronger the evidence should be before one

concludes the allegation is established on any balance of probability" Re 11 and Ors (1996) judgement by Lord J Nichols.

What in essence this means is that the more serious the accusation the more cogent the evidence has to be.

You have heard a great deal of evidence from both sides in this case. There cannot be many things more serious for a /carer/teacher than to be accused of child abuse or regarded as a risk to children. Quite rightly the evidence needed to establish both of these things must be compelling. It my submission that the evidence relied on by the investigating/presenting officer is not cogent and cannot be relied upon

MANAGEMENT CASE

I want now to look briefly at the management case. In essence it boils down to this. They say:-

- [briefly summarise]

THE ACCUSED'S DEFENCE

I want now to look briefly at the defence case. Go through the relevant issues - see below.

- ↳ issues to do with procedures not being followed etc
- ↳ breach of natural justice/human/legal rights
- ↳ Errors of fact, errors of omission and commission. Points of emphasis
- ↳ Work through each allegation etc one by one and state defence succinctly

Further more I draw attention to the evidence given by picking out key points using quotes if possible.

- ↳ Witness A for the Management case
- ↳ Witness B for the Management case [pick out key points]
- ↳ Witness A for the Management case[pick out key points]

which supports my case.

Now comment on the strength of your own case.

- ↳ Witness X for the defence case said
- ↳ Witness Y for the defence case
- ↳ Witness Z for the defence case

If necessary refer to any character witness statements/evidence

Now summarise the facts/evidence shows

- ↳ Firstly
- ↳ Secondly
- ↳ Thirdly

Draw attention to any mitigating factors

- ↳ Firstly
- ↳ Secondly
- ↳ Thirdly

FINAL COMMENT

Finish with short statement of innocence

