

HANDLING DISCIPLINE AT WORK  
THE DISCIPLINARY INVESTIGATION  
THE ROLE OF WITNESSES

### Introduction

Few people would deliberately choose to commit an offence in front of other people who might give evidence against them! However, some offences may be completely unpremeditated, and thus take place within the vision or earshot of others, e.g. rudeness to a client, assault on a fellow employee. In other cases, the offender simply does not realise that someone else is able to observe the offence (e.g. via a one way only window); in others, the witness may come across the employee in flagrante delicto (e.g. sexual harassment).

In all these situations, it is essential for an appropriate member of management to conduct an interview with the potential witness to ascertain exactly what was done, seen or heard, before memories fade, and before recollections are tainted by discussions with (and possible threats by) others.

### Interviewing the Witness

#### a. Planning

- i. Find a quiet location; ensure no interruptions.
- ii. Create an informal, relaxed layout.
- iii. Allow plenty of time.
- iv. Run through what you think you know already about the case / incident (potential for corroboration).
- v. Think through the stages of the forthcoming interview. Make notes if helpful.
- vi. Is the witness known to you? What are his / her personal characteristics? How can we allow for these?

#### b. Conduct

- i. Welcome the witness pleasantly and courteously. Thank him / her for their time.
- ii. Explain your own role and interest in the case.
- iii. Explain the purpose of the interview.
- iv. Check that the time is convenient for the witness, particularly if external. Rearrange the meeting if really unavoidable.
- v. Recognise that the witness may be under tension, upset or worried.

**N.B** If the witness is also the sufferer (e.g. insulted member of the public, recipient of harassment) he / she may be very angry and / or demand instant action. Particular care must be taken to calm the person down and / or suggest an adjournment if appropriate. In the case of sexual harassment, persons may prefer to talk to someone of their own gender.

- vi. When the witness seems composed, ask something like 'please tell me in your own words what happened / what you saw, etc. Please don't feel rushed / take your time, etc.'
- vii. Listen carefully – try not to interrupt.
- viii. Show that you are interested: nod, smile, 'reward'.
- ix. Ask any clarification questions if necessary. Avoid 'leading'.
- x. Feedback what you have heard, point by point – gain agreement to your interpretation, or amend it as appropriate.
- xi. Tactfully assess any relationship that may exist with the alleged perpetrator (possibility of bias either way, or even malice).
- xii. Explain the next stages:
  - a. Preparation of witness statement.
  - b. Possible attendance at disciplinary hearing.
- xiii. Arrange a further meeting when the witness statement is complete:
  - a. For the witness to agree the content, if prepared by the investigator.
  - b. To obtain signature and date.
  - c. To explain proceedings of the disciplinary hearing if required.
- xiv. Thank the witness warmly for his / her co-operation.

### The Witness Statement

The ideal situation is where a witness writes his or her own statement, explaining clearly and concisely what was seen or heard! However, many potential witnesses feel reluctant or simply are not prepared to spend the time needed. In such cases, it is perfectly proper (subject to the safeguards mentioned below) for the investigator to prepare a draft witness statement from the witness's oral comments.

In such cases, it is absolutely essential that:

- a. The statement accurately reflects what the witness genuinely remembers.
- b. The witness has plenty of time to examine and amend it, so that he/she is happy that it represents his / her own observations / views accurately.

In all cases, the witness must be asked to sign and date the documents. Particularly if the situation might ultimately lead to termination of the employee's contract, it might also be sensible to have the signature witnessed.

The completed and signed statements should be appended to the report of the investigation, and passed to the appropriate senior manager – normally the potential chair of the future formal disciplinary panel, if convened. If a decision to hold such a panel, then the report, witness statements and statement of management case will be sent to the employee, together with the notification of the formal hearing.

### Whether or not to call the witness

There is no obligation to call witnesses to give evidence in person, but any fact that is crucial to the argument, and / or that may be disputed, needs the strongest

possible corroborative evidence. Accordingly, relying on a written statement alone may be insufficient, particularly if the employee's side indicate that they would wish to contest the statement.

#### Criteria for choice of witnesses

- Role in relation to the event (e.g. direct observation or hearsay).
- How the individual will 'come over' in the hearing.
- The number of facts that can be covered.
- Potential risk under cross examination.
- Knowledge of less desirable aspects of the case, on which he / she might be questioned by the other side.

#### THE RELUCTANT WITNESS

A potential witness may, of course decline to give evidence at an internal hearing. There may be an understandable reluctance to 'drop their mates in it', or even fear reprisals. In addition, an external witness may simply be unprepared to take the time and trouble to appear personally. In such a case, consideration might be given to conducting the interview in conjunction with the representative of the employee.

In practice, little else can be done to change such witnesses' minds, apart from reassurance about no victimisation and gentle moral pressure. Even in a court of law, where a witness can be ordered to appear, there is considerable hesitation to use a witness who might be 'hostile'.