**Establishing the facts - Guidance**

How to establish the facts of the case when employee misconduct is suspected?

**Purpose**

The purpose of establishing the facts is to gather information/evidence to establish if the suspicion of wrongdoing can be reasonably explained.

**Methods for Establishing the Facts**

You can collate the facts by:

* Observation & monitoring the employee suspected of misconduct, for example, if you believe the employee is not recording their break correctly you may decide to observe them over a period of time to see if your observations confirm this.
* Arranging to meet with the individual and others who may be able to provide explanation, information or evidence to potentially explain the suspected wrongdoing.
* Data gathering & reviewing records, for example, Timesheets, annual leave records.
* Securing CCTV footage and IT systems information, for example, if you suspect an employee is inappropriately accessing a work system you can request an IT report on usage.
* Evaluation & comparison exercises, for example, if you suspect an employee of incorrectly recording their working time you might compare their records with other colleagues.

**In collating the facts, you are trying to answer the following questions:**

1. What exactly is the suspected wrongdoing?
2. What rules does the wrong doing breach?
3. When did the suspected wrongdoing occur?
4. When did the suspicion of wrong doing first come to your attention?
5. How did it come to your attention?
6. If applicable, who told you about the suspected wrongdoing?
7. Who is suspected of the wrongdoing? Name, job title, manager & department
8. Why did it happen? (Consider carefully which of the fact finding methods will help you to answer this question)

**Establishing the facts by meeting with an employee**

Typically, when you suspect an employee of wrongdoing, you should promptly arrange to meet with them to get their explanation as part of establishing the facts **unless the alleged wrongdoing involves criminality, fraud, financial irregularities or safeguarding concerns. In these situations you must seek HR Advice in the first instance (see the Disciplinary Guidance section 2.3).** Speaking to an employee over the phone or via email or text is not as effective. A face to face meeting with the employee signals to them that the matter is important.

Many managers worry about being accused of getting it wrong, so remember you can always contact the HR Casework Team or speak to an appropriate manager in your service area e.g. your line manager for any advice and support in advance of arranging this meeting.

As part of meeting the employee, you must confirm if the employee has any other job roles, including casual work with Nottingham City Council or schools and academies.

**Prepare – Arranging to meet with the employee suspected of the wrong doing**

* Find a quiet and private room where you won’t be interrupted
* Give yourself time to have the meeting so you have the thinking space to ask the questions you need to and the time to listen to the employee
* Prepare emotionally for the meeting. For example, how you will react if the employee gets tearful or angry and says incriminating statements about you.
* Have the details for PAM Assist the Employee Assistance Programme on the ready to give the employee. This is a free and confidential lifestyle support service to employees and they are contactable on **[insert contact details].**
* This is a management meeting, so the employee does not have the right to TU representation nor do you have to give them advance notice of the meeting.
* Plan your meeting script – You cannot expect to just meet with the employee to just get an idea of what has happened. You should pre-prepare how the meeting is going to run. You should be clear about what details you are going to put to the employee during the meeting – How will you introduce the wrongdoing? Has there been similar suspected wrongdoing in the past? Do you have records of previous discussions about these concerns? What was the outcome/consequence of those discussions? Do you have the specifics examples of the concern that you want the employee to respond to? Do you have the necessary documentary evidence and observations to show the employee for their response? Are you aware of the policies and procedures that the suspected wrongdoing may have breached? √ Think about your communication style/skills and how you will you maintain control of the meeting.
* Record, clearly, the details of the meeting and the employee’s response as you will need to reflect on this to decide how the matter will be progressed.
* Ask the employee to read your written record and sign to confirm that this captures the discussion.
* Prepare what you will tell the employee at the end of the meeting

**Pulling the facts together:**

You should use the ‘Establishing the facts’ Template to collate all the facts you have gathered into one document. This will help in deciding if:

**(a)** You have a genuine suspicion that misconduct may have occurred

**(b)** You do have a genuine suspicion, next consider if the conduct could be managed outside of a formal process

**(c)** The misconduct is serious or it is inappropriate to manage an improvement informally, speak with an appropriate senior manager and contact the HR Casework Team without delay for advice.

If you decide that the wrongdoing can be reasonably explained and/or you are going to address the matter informally, then you should inform the employee of this outcome and keep a record of this action.