



FACT SHEET



Procedural fairness and natural justice – Rights of employees

1. To know in advance, the nature and context of the allegation/issue.

In terms of the nature, you will need to have a clear understanding from the employer on what basis the meeting is being held and how they are treating it. For example, is it intended as a counselling session, is it intended to be a disciplinary hearing. The issues here relate to a disciplinary hearing.

If you are given a vague indication, e.g. the manager may say to your member that I want to talk to your unacceptable attitude. This would be insufficient information for you to properly respond at the meeting. You can approach it in one of two ways: either ask for fuller and better particulars to consider prior to the meeting, or else attend the meeting to listen to allegations. If they remain vague or are complex, then it is reasonable for you to ask for them in writing and state that you will respond.

2. To have reasonable opportunity and sufficient time to answer all of the allegations and respond to them.

Unless you have all of the details provided to you prior to the meeting you will need to take the allegations 'on notice' and respond after careful consideration of the allegations.

It is an easy trap to fall into to start responding to new allegations raised during the meeting, particularly where the member feels outraged about what is an obvious untruth. This can often be a tactic. You must be consistent, do not respond immediately to anything, even if the allegation is blatantly untrue and can be instantly denied.

3. To have Union representation at any meeting or interview.

Whilst some disciplinary or grievance procedures may be prescriptive about the steps to be followed, if a member believes attending any investigatory meeting or hearing without representation could prejudice them, then they should insist on having union representation. It is particularly important that there is representation during the investigatory phase as this is when the member may need a witness as to what occurred or when necessary incrimination could occur.



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4. To have a full investigation into all of the relevant matters surrounding the allegation.

Obviously, the gravity of the alleged offence will dictate the nature and extent of any inquiry but the principles include the right to demand that the employer provides evidence in support of the allegation; that during the enquiry you have the ability to provide any witnesses in support of your defence of the allegations. You also have the right to have any mitigating circumstances taken into account.

5. You have the right to be heard by a fair and independent person.

I think we all acknowledge that this is the difficult one. However, the obvious example is that the person who should be conducting the investigation or providing you with a warning, should not be your supervisor with whom you allegedly have a bad attitude towards.

6. To have an accurate written record of the proceedings.

Any notes to record the proceedings should be agreed by all present. If your employer provides you with an inaccurate written record you should not sign to say you agree with it. You have the option to sign that you have received the record, but note that you dispute certain aspects of the record or you could produce your alternative record.

The last point to make is that no matter what the allegation – you have the right to be treated with dignity throughout the process and for your matter to be investigated without bias.