

Guidance for witnesses involved in internal investigations and hearings.

INTRODUCTION

Being asked to be a witness at an internal investigation or hearing meeting can be daunting, particularly if you are unsure of what will happen at the meeting. This guidance will give you an idea of what to expect if you have been asked to attend as a witness at one of these types of meetings.

You can also speak to the ER Case Manager for advice and information and your line manager or appropriate manager for welfare support. The University also has an Employee Assistance Programme (EAP) which is a free and confidential service available to all staff offering expert information, advice, counselling, and support on a wide range of issues. The service is available 24 hours a day, 7 days a week. It is provided by Health Assured (via Health Management Ltd) and can be accessed in the following ways:

- Freephone number: 0800 0280199 (Republic of Ireland: 1800 936071)
- Website: <http://healthassuredeap.co.uk/> (**Username:** Open | **Password:** Uni)

If you are unable to attend a meeting or hearing, or if there is a specific closed question to be answered, the Investigating Manager or Chair may on occasion, request a written witness statement from you. The principles as set out in this Guidance apply.

GLOSSARY OF TERMS

Witness Refers to any employee, contractor, worker, or visitor who may have seen, experienced or observed an event, which is the subject of an

investigation or hearing, or who may be able to provide information or knowledge relating to an issue or subject.

Witness Statement

This can be either a written statement from the witness (if specifically requested from the Investigating Manager or Chair) or the meeting record agreed by all parties present at the witness meeting.

Investigation

An investigation is the formal process by which the organisation gathers details, facts or any other evidence relating to an incident, allegation, or issue.

Hearing

A hearing is the process by which the organisation considers the findings from the investigation of a disciplinary matter and decides if a sanction should be applied and its severity.

If there is an appeal against the outcome of a grievance or a bullying and harassment case, this is also known as a hearing.

Sanction

A sanction is the issue of a penalty to an employee who has been found, following an investigation and hearing, to have infringed or failed to comply with formal standards of the University. For example, a sanction could be a written warning.

Investigating Manager

The manager, who has been asked to investigate the allegation(s), concern, or issue.

Employee Relations (ER) Case Manager

A People Hub colleague who will manage the process, guide the Investigating Manager and all involved parties. They also provide administrative support.

Representative Refers to the person who accompanies the employee or worker to the investigatory meeting or hearing. This could either be a Trade Union representative or an OU colleague. They are there to provide support. They may present their member's case and participate fully if their member wishes, but they cannot answer on behalf of their colleague or member.

Note-taker A note-taker is a neutral person who has been asked to take notes of the meeting.

1. BEFORE THE MEETING OR HEARING

You are attending a meeting or hearing as a witness, so your conduct or performance is not under investigation, and you are not the subject of the matter under discussion. You will have been asked to attend because you may have information that is relevant to the allegations or concerns that have been raised. However, OU standards of conduct, performance and behaviour still apply.

You will receive an invitation, either by email or by post, to the investigation meeting or hearing. The invitation will set out, as far as possible, what the matter under investigation is. For example, you might have witnessed an altercation between two members of staff.

The invitation will provide details of where and when the meeting is taking place, the dial-in details (if attending remotely via a call) and to whom you need to report. It will also include details of the Investigating Manager, the Employee Relations Case Manager supporting the investigation, and the note-taker.

After you receive the invitation, you should confirm your attendance or, if you are unable to attend, provide alternative dates when you could attend.

If you are a witness in a bullying and harassment case, you can bring a companion with you to the meeting, if the companion is a member of staff of the University or an accredited Trade Union representative.

Your companion will be there to support you, but they do not have the right to answer questions on your behalf. If the choice of companion is not appropriate or could cause a conflict of interest, the ER Case Team will advise you of this and ask you to choose an alternative. The ER Case Team will act reasonably in these scenarios. Reasons for refusal, except if confidentiality reasons prevent it, will be provided.

2. CONFIDENTIALITY

You will be expected to treat all details about the matter including your statement and anything that you hear in the meeting as confidential. This means you must not discuss it with anyone. The only exception is if you are a witness in a bullying and harassment case, where you may discuss it with a work colleague or Trade Union representative if they supported you in the meeting. They must also treat any details as confidential. Any breach of confidentiality may be treated as a disciplinary matter.

3. THE MEETING OR HEARING

As far as possible, the person in charge of proceedings will ensure that the meeting runs on time, but this cannot always be guaranteed. When you are waiting to go into the meeting, this can feel stressful. The meeting is part of a fact-finding exercise, and it is important that all relevant information is gathered, so earlier meetings sometimes run late for this reason. The person in charge of proceedings will try to inform you and your line manager of any significant delays, although this is not always possible.

You may encounter other people concerned with the incident while you are waiting. The person in charge of proceedings will do their best to avoid this happening, but if it does happen, remain calm and professional, and do not engage in conversation or speculation about the meeting.

At the beginning of the meeting, the Investigating Manager or Chair will introduce themselves and any other parties and clarify their role in the proceedings. The purpose of the meeting will be explained and details of the allegations under investigation will be set out. You will be asked

to confirm that you have received all the relevant paperwork if applicable.

In a bullying and harassment witness meeting, if you do not have a Trade Union representative or colleague with you to support you, the panel will ask if you are happy to continue unaccompanied.

Investigation or hearing meetings can sometimes be stressful. The panel will explain that you can ask for a break(s) at any time during the meeting and your request will be accommodated. The panel may also call for a break irrespective of whether you have asked for one.

The panel will ask you questions about your recollection of events. They may ask you about your role and why you were present at the time of the alleged matter under investigation.

4. YOUR DUTIES AS A WITNESS

As a witness, the evidence you provide must be truthful, given in good faith and be your own.

The University does not allow the recording of investigatory meetings unless it is specified as a reasonable adjustment for any of the parties present. Covert recording is not permitted and may result in disciplinary action. Notes will be made during the meeting, and you will be sent a copy of these to review shortly after the meeting. The notes are not a verbatim record of what was said but should be an accurate reflection of the discussion.

You will be allowed to correct and comment on the notes if you feel that something you have said is misleading or if you perceive they do not accurately capture the points discussed. You will be informed of the timescales within which to do this. You will also be advised that the notes will be disclosed to the subject of the investigation and to any other party to the complaint that has a right to see them, e.g., a respondent to a complaint.

At the end of the meeting, you will be asked if there is anything else you want to add. If you wish to clarify a point or if something else has

occurred to you and you believe it is pertinent to the investigation, you should mention it now.

This should conclude the meeting and you will be free to leave.

5. ADDITIONAL POINTS FOR INVESTIGATORY MEETINGS

When you enter the room, there could be a number of people already present. For example, the Investigation Manager, the Employee Relations Case Manager, and a note-taker. There may be more than three people if the investigation involves a panel.

The investigation is a fact-finding exercise. If you are unable to recall the events under investigation, did not witness them, or do not know the answer to any question, you need to say so. If you need a few moments to gather your thoughts, inform the panel that you need a few moments to think.

6. ADDITIONAL POINTS REGARDING HEARINGS

After the Investigating Manager, Chair or panel have considered the findings from the investigation, you may be called to a hearing. The purpose of the hearing is to look at the findings and conclusions following the investigation. You will receive a letter inviting you to attend the hearing as a witness and informing you where to report to and who to ask for.

You can bring notes into the hearing, or if you were a witness at an investigatory meeting, you can refer to the notes of that meeting. If you are unsure of the answer to a question, it is fine to refer to your notes throughout the hearing. It is better to do this than to try and remember or guess the answer to a question. If you need time to gather your thoughts, or you do not know the answer to a question, you need to say so.

It is not always possible to give you an exact time for when you will be called into the hearing, but as far as possible, you will be informed about any significant delays. If the hearing is postponed or does not go ahead, you and your line manager will be kept informed.

Giving witness evidence at a hearing can be daunting and there may be several people present, including the person about whom the allegations have been made. Your invitation letter will mention who the hearing will be heard by and will also give you the details of the other people who are likely to be present. When you enter the meeting, the Investigating Manager or Chair will introduce you to everyone present.

The panel chair will ask you questions about the event you witnessed, and you may also be asked questions by other people at the meeting, such as by the employee(s) under investigation or their representative(s). This will be conducted sensitively. You are entitled to request a break at any time during the meeting.

You will be informed when the outcome has been delivered. If the outcome of the investigation is challenged, your witness statement may be referred to in any subsequent review of the investigation.

7. USEFUL REFERENCES

Behaviours and Standards at Work Policy

Bullying and Harassment Policy

Bullying and Harassment Code

Disciplinary Policy

Disciplinary Procedures for Academic and Academic Related Staff

Disciplinary Procedures for Support Staff

Disciplinary Procedures for Associate Lecturers and Residential School Staff

Grievance Policy

Grievance Procedures for Academic and Academic Related Staff

Grievance Procedures for Support Staff

Procedures for dealing with work problems and issues raised by ALs (Grievance Procedures)

Staff Use of Recording Devices at Meetings Policy